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A NATIONAL STRATEGY FOR THE REVITALIZATION OF THE CANADIAN CORRECTIONS SECTOR

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The IRPP's Canadian Priorities Agenda (CPA) project is the inspiration for the capstone seminar in the Master's in Public Policy Program in the Munk School of Global Affairs and Public Policy, University of Toronto. The course is offered in an intensive format as a core requirement in the final semester of the two-year program. *A Canadian Priorities Agenda: Policy Choices to Improve Economic and Social Well-Being* (IRPP 2007), the volume that came out of the CPA project, is the basic text for the course. It is supplemented by readings chosen by the instructors and guest presenters. The students take the role of judges, and for their final assignment they write a 5,000-word paper modelled on the judges' reports in the original project, in which they have to make the case for an agenda comprising five policies selected from options presented in the course. The instructor selects the best student paper, and since 2009 every year the IRPP has posted it on its website. With this paper by Mackenzie Claggett, we are marking the end of that tradition.

A National Strategy for the Revitalization of the Canadian Corrections Sector

Mackenzie Claggett

Introduction

In recognition of the continued existence of systemic racism, the Government of Canada developed an anti-racism plan titled *Building a Foundation for Change: Canada's Anti-Racism Strategy 2019-2022*.¹ The plan was unveiled in 2019; it established a federal Anti-Racism Secretariat in 2020 that uses a "whole-of-government approach" to assess how existing policies and services impact racialized communities and develop initiatives that work to end racial disparities. To meaningfully actualize its goal of an antiracist future, the secretariat should identify the corrections system as an area in need of significant reform.

From a racial justice standpoint, the status quo in the Canadian corrections sector is not sustainable. Indigenous and Black Canadians are overrepresented in the criminal justice system. Indigenous people represent 26% of incarcerated people in Canada, despite being only 4.5% of the general population. Since 2010, the number of incarcerated Indigenous people has increased by 52.1%.² In Saskatchewan and Manitoba, Indigenous offenders make up 75% of new inmates.³ Black people in Canada are also overrepresented, as they constitute 9% of the incarcerated population although they are only 3.5% of the population.⁴

Ending the racial disparities in the corrections system is critical to the achievement of racial equity and reconciliation with Indigenous peoples. The Truth and Reconciliation Commission's Call to Action #30 specifically calls on the provinces and the federal government to end the overrepresentation of Indigenous people in custody by 2025.⁵ This recommendation reflects the reality that incarceration, as it currently exists, exacerbates inequities and often fails to successfully rehabilitate offenders. Even studies funded by the Canadian Department of Public Safety and Emergency Preparedness have concluded that "prisons should not be used with the expectation of reducing criminal behaviour."⁶

¹ Canadian Heritage, *Building a Foundation for Change: Canada's Anti-Racism Strategy 2019-2022*, (2019): <https://www.canada.ca/en/canadian-heritage/campaigns/anti-racism-engagement/anti-racism-strategy.html>

² Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2018-2019*, (June 2019): <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20182019-eng.aspx#s5>

³ Statistics Canada, "Adult and youth correctional statistics in Canada, 2018-2019," (2020): <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016-eng.htm>

⁴ Tom Cardoso, "Bias behind bias: A Globe investigation finds a prison system stacked against Black and Indigenous inmates," *The Globe and Mail*, (2020): <https://www.theglobeandmail.com/canada/article-investigation-racial-bias-in-canadian-prison-risk-assessments/>

⁵ Truth and Reconciliation Commission of Canada, "Truth and Reconciliation Commission of Canada: Calls to Action," (2015): http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf

⁶ Paul Goggin and Francis T. Cullen, "The Effects of Prison Sentences on Recidivism," *Department of Public Safety and Emergency Preparedness*, (1999): <https://www.publicsafety.gc.ca/cnt/rsrccs/pblctns/ffcts-prsn-sntnccs-rcdvsm/index-en.aspx#:~:text=two%20viable%20recommendations,->

The criminal justice system creates two harms that pose significant barriers to racial equity and reconciliation. It perpetuates intergenerational disadvantage, and it promotes political disengagement. Studies in the United States and Europe have found that children with incarcerated fathers are twice as likely to be convicted of a crime themselves. Children with incarcerated parents also complete less education and are more likely to be unemployed.⁷ An institution that perpetuates these intergenerational harms against vulnerable populations ultimately promotes resentment and mistrust of state actors. Studies have demonstrated that contact with the criminal justice system is associated with lower participation in civic groups, a decreased likelihood to vote and higher mistrust of government.⁸

Another concern associated with the corrections sector is its rising cost. Between 2003 and 2013, expenditures on the federal corrections system grew by 70% when adjusted for inflation.⁹ This trend has continued, in fiscal year 2019-2020 the corrections system's budget increased by 4% compared with five years ago.¹⁰ In recognition of these trends, and in light of its commitment to antiracist policy-making, the Government of Canada needs to reshape its corrections policy.

This policy package outlines a proposal for the design of a national strategy for the revitalization of Canada's corrections system. It consists of three policies that will work to end the overrepresentation of racialized people in custody, while also achieving net cost reductions. The first policy is a recommendation that the federal government amend the *Criminal Code* provisions that unduly restrict bail eligibility, with the goal of reducing the remand population in provincial detention centres. The second policy is a recommendation that the government increase funding for rehabilitative programming to promote parole eligibility. The third policy recommends the government invest more in facility operations at federal institutions to improve living conditions for inmates.

Lowering the reliance on remand, expanding parole eligibility and improving living conditions would divert individuals away from incarceration, directly or indirectly, by lowering recidivism rates. This strategy is wide-ranging and addresses every stage of incarceration and every type of inmate in the system, regardless of the risk profile. Because racialized people are in greatest need of effective programming and are most impacted by institutional mismanagement, greater investments will have an especially positive effect on them and will help to undo long-standing inequities in the system.

Prisons should not be used with the expectation of reducing, of prison could be enormous.

⁷ Bhuller et al., "Intergenerational Effects of Incarceration," *National Bureau of Economic Research*, (2018): https://www.nber.org/system/files/working_papers/w24227/w24227.pdf

⁸ Vesla M Weaver and Amy E Lerman, "Political Consequences of the Carceral State," *American Political Science Review* 104, no. 4 (2010): 831.

⁹ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2014-2015*, (June 2015): <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20142015-eng.aspx>

¹⁰ Statistics Canada, 2020.

Background

Division of powers

The Canadian criminal justice system is an area of jurisdiction shared between the provinces and the federal government. Under s. 91(27) of the *Constitution Act, 1867*, the federal government has control over the criminal law power, which in practice grants exclusive authority to establish the substantive criminal law and the rules of criminal procedure, such as bail requirements.¹¹ Enforcement of criminal law, however, is divided between provincial attorney generals and the federal attorney general. S. 2 of the *Criminal Code* stipulates that provincial prosecutors oversee most *Criminal Code* offences. Federal prosecutors oversee offences from other federal statutes, such as the *Controlled Drugs and Substances Act*, and some *Criminal Code* offences, such as those related to terrorism.¹²

Correctional facilities are also an area of shared jurisdiction. S. 91(28) of the *Constitution Act, 1867*, grants the federal government control over penitentiaries, while s. 92(6) grants provincial governments control over reformatory prisons.¹³ The actualization of this division is found in s. 743.1(1) of the *Criminal Code*. Individuals sentenced to two or more years enter a federal institution; all others, including those awaiting trial or sentencing, are housed in provincial institutions.¹⁴

Jurisdictional scan

The recommendations I present in this strategy are influenced by Norway's correctional system, which has one of the lowest recidivism rates in the world, at 20%.¹⁵ Its system is structured around optimizing rehabilitation. For example, it provides a wide range of educational programming, including vocational training and tertiary education. Evaluations of this programming have demonstrated its ability not only to improve employment prospects, but also to enhance self-esteem and positivity.¹⁶ The prison conditions are conducive to rehabilitation. Offenders are granted a significant degree of independence and access to resources, and Norway's system consists primarily of many smaller institutions, so they can be situated as close as possible to an offender's community.¹⁷ The system is based on the idea that the punishment of incarceration is only the deprivation of liberty, not the imposition of inhumane conditions.¹⁸

¹¹ *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3, s. 91(27).

¹² *Criminal Code*, RSC 1985, c C-46, s. 2.

¹³ *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3, s. 91(28), s. 92(6).

¹⁴ *Criminal Code*, RSC 1985, c C-46, s. 743.1.

¹⁵ Jessica Benko, "The Radical Humaneness of Norway's Halden Prison," *The New York Times*, (2015): <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html>

¹⁶ Christin Tønseth & Ragnhild Bergsland, "Prison education in Norway – The importance of work and life after release," *Cogent Education* 6, no. 1 (2019): 11.

¹⁷ John Pratt, "Scandinavian Exceptionalism in an Era of Penal Excess: Part 1: The Nature and Roots of Scandinavian Exceptionalism," *The British Journal of Criminology* 48, no. 2 (2008): 120.

¹⁸ *Ibid.*

COVID-19 Pandemic

The COVID-19 pandemic has shown that correctional institutions can efficiently divert inmates away from incarceration. Between February and June 2020, the inmate count was reduced significantly in every provincial jurisdiction. Reductions ranged from a low of 17% in Prince Edward Island to a high of 40% in Newfoundland and Labrador. Ontario saw a reduction of 30%.¹⁹ An increased reluctance to deny individuals bail during the pandemic, coupled with an expanded use of temporary absence permits that allowed inmates to serve time in the community, contributed to the dramatic reduction in the incarcerated population.²⁰ Prison depopulation during the COVID-19 pandemic exemplifies for the Government of Canada how this work can be done without posing a risk to public safety.

Policy Recommendations

My proposed national strategy for the revitalization of the Canadian corrections sector will have three key pillars:

- 1) Amend statutory provisions that unduly restrict bail eligibility
- 2) Increase funding for rehabilitative programming inside and outside federal corrections institutions
- 3) Invest in improving facility operations in federal institutions

Each of these proposals will work to achieve the objective of ending the overrepresentation of racialized offenders in the correctional system by diverting more individuals away from incarceration. This will be done directly, through either a reduced reliance on remand or an expanded use of parole, and indirectly by promoting conditions that lower recidivism rates. A by-product of a decreased reliance on incarceration will be a reduction in cost.

In addition to outlining the details of each policy proposal, the report will also consider their fiscal and political feasibility. Fiscal feasibility has to do with the potential costs of the policy and where the funding will come from, and political feasibility refers to the potential barriers associated with multilevel governance and public perception.

Policy 1: Remove Unnecessary Statutory Restrictions on Bail Eligibility

Background

Since 2004, the in-remand population has exceeded the sentenced population in provincial prison counts.²¹ In 2018-2019, there were 133,267 individuals in remand, which amounted to

¹⁹ Canadian Civil Liberties Association, "Update on COVID-19 and prison settings," (2021):

<https://ccla.org/cclanewsites/wp-content/uploads/2021/03/2021-03-19-Prison-COVID-report-FINAL-REVISED.pdf>

²⁰ Michael Tutton, "Advocates critique rising jail figures in some provinces after initial COVID-19 fall," *CTV News*, (2021): <https://www.ctvnews.ca/health/coronavirus/advocates-critique-rising-jail-figures-in-some-provinces-after-initial-covid-19-fall-1.5358293>

²¹ Department of Justice Canada, "Broken Bail" in Canada: How We Might Go About Fixing It, (June 2015).

70% more adults in remand on an average day than those in sentenced custody.²² In Ontario, 71% of the provincial jail population is in remand.²³ An overreliance on remand poses constitutional challenges and perpetuates inequities that can undermine rehabilitation.

A reliance on remand poses constitutional challenges because individuals detained prior to trial are legally innocent. Under the *Canadian Charter of Rights and Freedoms*, all individuals are ensured the presumption of innocence [s. 11(d)], and they have the right not to be denied reasonable bail without just cause under s. 11(e).²⁴ Because of these rights, the default expectation is that an individual will be released without conditions. To impose conditions or deny release requires the Crown to have just cause.²⁵ To respect the s. 11(e) guarantee, all bail conditions imposed must be individualized, minimal, necessary and reasonable.²⁶ This is particularly important, because breach of a bail condition is a crime under s. 145(3) of the *Criminal Code*.²⁷

Despite the clarity of the law, as the Supreme Court has noted, numerous and onerous bail conditions are routinely placed on individuals.²⁸ Two reasons have been identified for this trend. The first is a “culture of risk aversion” among Crown prosecutors and judges, who prefer to use strict conditions to limit risks against the community.²⁹ The second is the fact that bail hearings often occur expeditiously, which means that many accused do not have appropriate counsel and are more likely to agree to onerous terms of release. All of these trends disproportionately affect Indigenous offenders and offenders with addictions or mental illness.³⁰

Breaching a bail condition is a crime, so placing multiple onerous conditions that make compliance more difficult creates a cycle of detention, restrictive release, and rearrest. This has become commonplace. Across the country, administration of justice charges were the most serious charges in over 20% of criminal cases completed; half of those cases stemmed from bail violations.³¹ (Administration of justice charges are offences related to one’s failure to comply with court-imposed requirements.) In the past 10 years, the number of administration of justice charges has increased solely because of increased allegations of broken bail conditions.³² Once

²² Statistics Canada, “Average daily counts of adults under correctional supervision, by type of supervision and jurisdiction, 2018/2019,” (2021): <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016/tbl/tbl02-eng.htm>

²³ Statistics Canada, 2020.

²⁴ Public Prosecution Service of Canada, *3.18 Judicial Interim Release*, (2020): <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch18.html>

²⁵ *R v Antic*, 2017 SCC 27 at para 21.

²⁶ *R v Zora*, 2020 SCC 14 at para 24.

²⁷ *Criminal Code*, RSC 1985, c C-46, s. 145(3).

²⁸ *R v Zora* at para 76.

²⁹ Department of Justice Canada, June 2015.

³⁰ *R v Zora* at paras 78-79.

³¹ Canadian Civil Liberties Association, *Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention*, (2014): <https://ccla.org/cclanewsites/wp-content/uploads/2015/02/Set-up-to-fail-FINAL.pdf>

³² *Ibid*.

individuals are rearrested for violating bail conditions, they are less likely to be granted bail again. As a result, one in five people are in remand because of a failure to comply with bail conditions.³³

Beyond the constitutional implications, an increased reliance on remand has negative consequences on the access to justice and rehabilitation. In terms of access to justice, remand limits an accused's ability to defend themselves in court. Incarceration restricts an accused's access to counsel and ability to assist in the collection of evidence. As well, remand often incentivizes a person to plead guilty. Accused who are denied bail are two and a half times more likely to plead guilty than those released.³⁴ Moreover, remand facilities tend to be overcrowded and lack rehabilitative programming. The Supreme Court has called remand one of the "worst aspects of the correction systems," due to the lack of recreational or educating programming.³⁵ These poor conditions, coupled with loss of income, housing, and social connections, all undermine offenders' rehabilitative potential, especially if they have existing vulnerabilities related to substance abuse.³⁶ If these vulnerabilities are exacerbated while offenders are in remand, this undermines their rehabilitative potential once they are sentenced and transferred to a federal institution.

Policy Details

My strategy includes the recommendation that the Government of Canada pursue legislative changes to expand bail eligibility. The first area of reform should be the reverse onus provision of the *Criminal Code* under s. 515(6). This provision shifts the onus onto the accused to prove their eligibility for bail when they are charged with specific crimes. While this requirement may be appropriate for serious charges, such as those related to murder or terrorism, it is not appropriate for less severe crimes. The Government of Canada should repeal s. 515(6)(c) and (d), which create a reverse onus for administration of justice charges and drug trafficking (regardless of the quantity allegedly trafficked).³⁷ These provisions disproportionately impact racialized and low-income individuals and are excessively punitive.³⁸

The second area of reform should be the justifications to keep an accused in custody under s. 515(10). Currently, Crown prosecutors must demonstrate one of the following: detention is necessary to ensure the accused's appearance in court [s. 515(10)(a)], it is necessary for public safety [s. 515(10)(b)], or it is necessary to maintain confidence in the administration of justice [s. 515(10)(c)].³⁹ In the initial bail reforms of 1972 only the first two provisions were present. After various constitutional challenges, the third ground was created in 2008. This ground differs from the first two because it shifts the bail eligibility analysis toward the perspective of the public,

³³ Lindsay Porter & Donna Calverley, "Trends in the Use of Remand in Canada", *Statistics Canada*, (2011): <https://www150.statcan.gc.ca/n1/pub/85-002-x/2011001/article/11440-eng.htm#a1>.

³⁴ Department of Justice Canada, June 2015.

³⁵ Canadian Civil Liberties Association, 2014.

³⁶ Canadian Civil Liberties Association, 2014.

³⁷ *Criminal Code*, RSC 1985, c C-46, s. 515(6)(c) and (d).

³⁸ Canadian Civil Liberties Association, 2014.

³⁹ *Criminal Code*, RSC 1985, c C-46, s. 515(10).

rather than objective risks specific to the accused.⁴⁰ In the interest of upholding the principle of presumed innocence and avoiding unnecessary uses of remand, the Government of Canada should consider repealing s. 515(10)(c) as a ground of detention.

Finally, the strategy recommends that the attorney general issue a directive to federal prosecutors regarding the imposition of bail conditions and prosecuting administration of justice charges. While the *Public Prosecution Service of Canada Deskbook* provides guidance on bail conditions, a directive issued under s. 10(2) of the *Director of Public Prosecution Act* would be more binding.⁴¹ This directive should order federal prosecutors to properly apply Supreme Court precedent and avoid the imposition of bail conditions unless absolutely necessary. Conditions that an accused are unable to meet, such as abstaining from using drugs, should no longer be pursued. Administration of justice charges should be prosecuted as a last resort, with bail revocation used as an alternative punishment.

Financial Feasibility

Since this policy recommendation is focused on statutory and administrative changes, the cost to the Government of Canada is minimal. The impact would be most directly felt by the provinces, which would see declining operational costs in their correctional systems due to a reduced remand population. In Ontario, it costs \$183 per day to keep a person in jail.⁴² Lowering these expenses for provinces at a minimal cost to the federal government makes this proposal fiscally attractive.

Political Feasibility

One potential barrier to successfully reducing the provincial remand population through the expansion of bail eligibility is the division of powers between the provinces and the federal government. While the attorney general of Canada's directive would apply to federal prosecutors, the majority of *Criminal Code* charges are pursued by provincial prosecutors. As such, to achieve the policy's objective, the federal attorney general might need to collaborate with its provincial counterparts over similar directives. Similarly, bail supervisors are under the control of provincial governments. Provincial governments that adopt a zero tolerance approach to bail condition violations – for example, Manitoba – should be encouraged to consider a more lenient approach.⁴³

Another potential barrier to expanding bail eligibility is public perception. Releasing an individual on bail who has been charged with a serious crime creates the potential for public outcry, even if a judge has found the accused to not pose a safety risk. However, public perception of bail is generally favourable toward release. A Department of Justice survey found that 75% of Canadians

⁴⁰ Department of Justice Canada, June 2015.

⁴¹ Public Prosecution of Canada, 2020.

⁴² Canadian Civil Liberties Association, 2014.

⁴³ *Ibid.*

are in favour of expanding bail for low-risk offenders, and 68% are in favour of not charging individuals with an administrative offence if the offence does not involve criminal activity.⁴⁴

Policy 2: Increase Funding for Rehabilitative Programming

Background

Rehabilitative programming is critical to an individual's ability to successfully reintegrate into the community and to not recommit a crime. In federal corrections facilities, there are two significant challenges that undermine rehabilitative programming's effectiveness: capacity constraints and quality concerns. These two issues are apparent in every aspect of programming, be it correctional, educational, employment, health care or housing.

In the context of educational programming, there is a dramatic need among inmates. Approximately 49% of inmates have an educational level lower than grade 8, and 71% are below grade 10.⁴⁵ Despite this significant need, the Correctional Service of Canada (CSC) does not efficiently enrol inmates into educational programming. Approximately 19% of the total inmate population is on a waitlist for educational programming, and the average wait time is around five months.⁴⁶ This delay in programming means that less than one-third of inmates advance their educational levels prior to release.⁴⁷

Coupled with insufficient educational programming, there are also significant quality concerns with the programs that are provided. For example, since 1992, CSC does not pay for or provide post-secondary studies, making these programs financially inaccessible for most inmates, who are low-income. There are also significant institutional barriers that prevent inmates from accessing post-secondary courses. Because inmates lack access to a personal computer or email, they may only enrol in paper-based correspondence courses, which are increasingly rare.⁴⁸ The use of library computers is also impractical, as many institutional libraries have no computers or only one.⁴⁹

There is an equally pressing need for inmates to improve their employment skills – approximately 74% of inmates require skills training.⁵⁰ However, once again, significant capacity and quality constraints exist. CORCAN is the special agency that provides offenders with the opportunity to improve their employability, and it does provide a significant range of training opportunities in

⁴⁴ Department of Justice Canada. *Assessments and Analyses of Canada's Bail System*, (2018): <https://www.justice.gc.ca/eng/rp-pr/jr/rib-reb/bail-liberte/index.html>.

⁴⁵ Office of the Auditor General, *Report 6 – Preparing Male Offenders for Release – Correctional Service Canada*, (Spring 2015): https://www.oag-bvg.gc.ca/internet/English/parl_oag_201504_06_e_40352.html.

⁴⁶ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2017-2018*, (June 2018): <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20142015-eng.aspx>; Office of the Auditor General, Spring 2015.

⁴⁷ Office of the Auditor General, Spring 2015.

⁴⁸ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2019-2020*, (June 2020): <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20192020-eng.aspx>.

⁴⁹ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2015-2016*, (June 2016): <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20152016-eng.aspx>.

⁵⁰ Office of the Auditor General, Spring 2015.

prisons and postsentence. While this is beneficial in theory, CORCAN has failed to adjust its programming to ensure offenders learn skills that are marketable. For example, some CORCAN programs offer textile jobs or manufacturing jobs with outdated technology. Of the CORCAN programs that do provide marketable skills, there are significant capacity limitations.⁵¹ There is also poor targeting of CORCAN programs; despite the high proportion of inmates who require skills training, the majority of participants are placed in the low need category for employment skills.⁵² The consequence of this poor programming is severe, as the income for the majority of federal offenders postincarceration is zero. For those with an annual income, the median was only \$14,000; Indigenous and female offenders earn much less.⁵³

Capacity constraints and poor program quality ultimately lead to delayed parole eligibility and poor continuity of care post-incarceration. Under the *Corrections and Conditional Release Act*, an offender is eligible for full parole after serving one-third of their sentence.⁵⁴ Offenders are eligible for day parole six months before they have served one-third of their sentence.⁵⁵ To be granted parole, the Parole Board of Canada assesses an offender's risk to the community and to what extent that risk can be managed. Success in rehabilitative programming, including educational and employment programming, is an important consideration in this determination.⁵⁶

Delays in administrative programming and in processing readiness for release reports mean that most inmates are not prepared for their parole hearings when they become eligible. In the 2013-2014 fiscal year, approximately 8% of offenders experienced their first release on parole and were prepared for the hearing when they first became eligible (figure 1). As the auditor general indicated, quicker access to parole allows for longer supervised community sentences, ultimately supports successful reintegration, and lowers recidivism.⁵⁷

⁵¹ Office of the Correctional Investigator, June 2020.

⁵² Office of the Auditor General, Spring 2015.

⁵³ Kelly Babchishin, Leslie-Anne Keown, and Kimberly Mularczyk, "Economic Outcomes of Canadian Federal Offenders," *Department of Public Safety and Emergency Preparedness*, (2020): <https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/2021-r002/index-en.aspx#s32>.

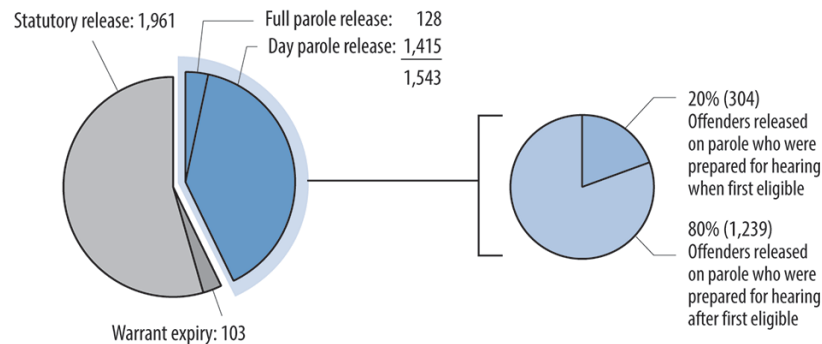
⁵⁴ *Corrections and Conditional Release Act*, SC 1992, c 20, s. 120.

⁵⁵ *Corrections and Conditional Release Act*, SC 1992, c 20, s. 119.

⁵⁶ Office of the Auditor General, Spring 2015, https://www.oag-bvg.gc.ca/internet/English/parl_oag_201504_06_e_40352.html.

⁵⁷ *Ibid.*

Figure 1
Release of inmates from federal corrections institutions, by types of release, fiscal year 2013-2014



Source: Office of the Auditor General, report 6, spring 2015. https://www.oag-bvg.gc.ca/internet/English/parl_oag_201504_06_e_40352.html

Note: Under s. 127(3) of the *Corrections and Conditional Release Act*, all inmates are entitled to be conditionally released after serving two-thirds of their sentence. This is a legal entitlement that does not require an offender to receive the approval of the Parole Board of Canada.

Capacity constraints and poor program quality also lead to poor continuity of care once an offender is released on parole, which undermines reintegration efforts. This is best exemplified in the context of health care and housing. Federal offenders have significant health needs. Approximately 16.5% have hepatitis C, 27% have chronic pain, 68% are overweight or obese, and 52.5% have substance abuse issues.⁵⁸ Despite these significant needs, health care services are not effectively streamlined for inmates at the time of release. For example, in only 10% of cases is a parole officer given accurate and comprehensive information about an inmate's health needs, and approximately 30% of inmates are released without a health card.⁵⁹

In the context of housing, capacity also remains a serious concern. CSC is responsible for funding community-based residential facilities (CBRF), which operate as halfway houses for some offenders on parole or statutory release. As of 2018, these facilities operated at full capacity, and the demand increased 21% between 2014 and 2018.⁶⁰ Because CSC prioritizes offenders who are eligible for statutory release (mandatory release after serving two-thirds of their sentence), the backlogs in housing availability disproportionately harm low-risk offenders on parole. Wait times for housing doubled to over a month in that 2014-2018 period. Limited housing availability also contributes to significant displacement at the time of release. For example, in 2018, 80% of offenders who resided at CBRFs in Kingston had requested to be located in the Greater Toronto

⁵⁸ Office of the Correctional Investigator, June 2015.

⁵⁹ Office of the Auditor General, *Report 6 – Community Supervision – Correctional Service of Canada*, (Fall 2018): https://www.oag-bvg.gc.ca/internet/English/att__e_43231.html

⁶⁰ Office of the Auditor General, Fall 2018.

Area. This dislocation further severs an offender's connection with their family and community and hinders reintegration efforts.⁶¹

Policy Details

The strategy includes a recommendation that the Government of Canada increase funding for in-prison rehabilitative programming so that, at a minimum, all low-risk offenders are prepared to apply for parole by their first date of eligibility. To achieve this, adequate funding should be in place to ensure correctional, educational, and employment programming occurs immediately upon entry into a federal institution. Increased funding should also be targeted for community supervision services, to ensure there is sufficient capacity and proper continuity of services. For example, there should be sufficient space in CBRFs to allow CSC to place offenders in their own communities.

Financial Cost and Feasibility

Currently, 20% of CSC's budget is used for rehabilitative programming.⁶² However, in recent decades budget constraints have led to a decline in overall funding. For example, expenditures declined for educational and employment programming by 10% between 2014 and 2018.⁶³ Based on the 2020-2021 Departmental Plan of CSC, budgetary spending on "correctional interventions" for that year fell by approximately \$32 million, a 6% funding cut, compared with the previous year. Correctional interventions include funding for case management, as well as correctional, educational and employment programming.⁶⁴ These cuts are counterproductive, because they increase delays in processing low-risk offenders into parole, which the auditor general estimates costs CSC \$26 million a year.⁶⁵ Keeping offenders in custody longer is expensive. CSC estimates that it costs \$125,000 each year to keep one offender incarcerated, but it costs only \$30,000 for an offender to be under community supervision.⁶⁶

Given the high cost of incarceration, the potential for rehabilitative programming to move offenders into the community faster could make these investments cost efficient. The initial funding might require deficit financing before the long-term cost reductions appear, but eventually this increased funding could pay for itself from the reduced reliance on incarceration. Since delays in parole processing costs \$26 million per year, this is the minimum amount that should be invested in institutional programming, from an efficiency standpoint.

⁶¹ Office of the Auditor General, Fall 2018.

⁶² Office of the Auditor General, Spring 2015.

⁶³ Office of the Correctional Investigator, June 2018.

⁶⁴ Correctional Service Canada, *2020-2021 Departmental Plan*, (2020): <https://www.csc-scc.gc.ca/publications/005007-2608-en.shtml#d16>

⁶⁵ Office of the Auditor General, Spring 2015.

⁶⁶ Correctional Service Canada, *CSC Statistics – Key facts and figures*, (2020): <https://www.csc-scc.gc.ca/publications/005007-3024-en.shtml>

Political Feasibility

Public perception of parole in Canada is changing. In 1999, a general social survey conducted by CSC found that only 13% of Canadians believed that the parole system worked properly.⁶⁷ This has since increased to 40%.⁶⁸ Improvement in the public's perception of parole may make investments in rehabilitative programming and expanded parole eligibility less controversial. However, some level of risk is always associated with parole. Media reports about paroled offenders who recommit crimes can become easily sensationalized, particularly if the offender was previously convicted of a violent crime. The benefit of this recommendation is that the increase in rehabilitative programming would expand parole eligibility to low-risk offenders.

Policy 3: Invest in Facility Operations

Background

Unlike rehabilitative programming, facility operations involve elements of CSC that are centred on the proper functioning of federal corrections institutions. The most frequent complaints to the Office of the Correctional Investigator are associated with facility operations. The federal government should focus on improving three areas: offender assessments, food services, and correctional officer training.

The first area in critical need of investment is the offender assessment process. Proper investments in offender assessments are necessary to end the overrepresentation of racialized individuals in federal custody. CSC currently performs various assessments on offenders to establish their security risk and reintegration potential. These assessments disproportionately impact racialized people. For example, between 2012 and 2018, black offenders were 24% more likely than white offenders to receive a "maximum" security rating, and Indigenous offenders were 30% more likely than white offenders to receive the worst reintegration score. Having a high security rating means that the offender is transferred to an institution where rehabilitative programming is harder to access. Poor reintegration scores make it more likely for an offender's parole application to be denied.⁶⁹

These disparities experienced by racialized offenders are partially due to cultural biases that are entrenched in the assessments. Such biases are so ingrained that the Supreme Court of Canada has said that the practice violates CSC's statutory requirements. S. 24(1) of the *Corrections and Conditional Release Act* requires CSC to take all reasonable steps to ensure the accuracy of information it uses about an offender.⁷⁰ The Court's finding said that the CSC had failed to take "all reasonable steps" to ensure accuracy.⁷¹

⁶⁷ Statistics Canada, "General Social Survey – Victimization Public Use Microdata", (1999): <https://www150.statcan.gc.ca/n1/en/catalogue/12M0013X>

⁶⁸ Taylor Small, "Changing Times? Public Perceptions and Knowledge about Parole," (University of Ottawa, Master's thesis, 2020), https://ruor.uottawa.ca/bitstream/10393/40197/1/Small_Taylor_2020_thesis.pdf.

⁶⁹ Cardoso, 2020.

⁷⁰ *Corrections and Conditional Release Act*, SC 1992, c 20, s 24(1).

⁷¹ *Ewert v Canada*, 2018 SCC 30 at para 65.

The second area in need of investment is food services. Since 2014, food services have been the number one complaint from offenders to the correctional investigator.⁷² The cause of these complaints is CSC's 2014 implementation of the "cook chill" program, which reduced the amount spent a day to feed each inmate to \$4.98. The program helped CSC reduce its food budget by \$6.4 million each year by eliminating "scratch cooking," where offenders would prepare meals under staff supervision.⁷³ The result was a considerable decline in food quality. Instead of fresh meals being prepared, they are made at centralized sites, frozen and distributed to different institutions. Offenders receive powdered instead of fresh milk, and they get lower quality meat cuts, cheaper carbohydrate sources, and reduced vegetable variety.⁷⁴ Not only is the food quality poor, as the correctional investigator found, portions are also inconsistent and their size is inadequate for young men under 30. After an audit, only 21% of meals were found to be in accordance with Canada Food Guide requirements, and this was prior to the implementation of the 2019 food guide, which emphasized a greater intake of plant-based protein and fresh produce.⁷⁵

The importance of food services in correctional institutions cannot be understated. For example, issues with food quality were identified as a significant cause of the Saskatchewan prison riot in December 2016. The correctional investigator determined that small portion size, the lack of fresh food, unsanitary kitchen conditions, and poor compensation for kitchen workers were the triggers for the riot. It ultimately involved 200 inmates and led to one death. As a part of the resolution, CSC began to increase portion sizes.⁷⁶

Some provincial systems provide an example for how CSC can improve its food services. For example, Nova Scotia spends approximately \$10 a day to feed each inmate, which is the highest amount in the country.⁷⁷ This increased investment leads to higher-quality food. In Nova Scotia meals in correctional facilities are prepared by qualified chefs, who ensure that they meet Canada Food Guide requirements, including portion sizes.⁷⁸

The third area in need of investment is correctional-officer training, particularly with regards to workplace culture and de-escalation techniques. Many employees in federal institutions experience what the correctional investigator has called a "toxic" workplace. For example, in a staff survey at an Edmonton Institution, over 96% of respondents reported conflict in the workplace, 60% reported abuses of power, 23% reported sexual harassment, and 51% described their workplace as having a "culture of fear." The majority of staff feared their co-workers more

⁷² Office of the Correctional Investigator, June 2015.

⁷³ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2016-2017*, June 2017, <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20162017-eng.aspx>; Office of the Correctional Investigator, June 2015.

⁷⁴ Office of the Correctional Investigator, June 2017.

⁷⁵ Office of the Correctional Investigator, June 2019.

⁷⁶ Office of the Correctional Investigator, June 2017.

⁷⁷ Office of the Correctional Investigator, June 2019.

⁷⁸ Sharon Montgomery, "It costs about \$10 a day to feed an inmate in Nova Scotia's correctional system," *SaltWire*, (2019): <https://www.saltwire.com/cape-breton/news/local/it-costs-about-10-a-day-to-feed-an-inmate-in-nova-scotias-correctional-system-302004/>

than they did the inmates. The correctional investigator found that this culture created harsher conditions for inmates. The apathy and mistrust among correctional officers meant that inmate-on-inmate violence was permitted to happen for months without any intervention.⁷⁹

One of the causes of the toxic workplace culture identified by the auditor general is the failure to consistently complete initial assessments when complaints are filed by staff. CSC officials are supposed to complete an initial assessment before determining whether to accept a complaint for further investigation or dismiss it. The report found that in 90% of workplace violence complaints, 67% of discrimination complaints and 36% of harassment complaints, there was no initial assessment. In addition to contributing to arbitrary disciplinary action, this also fostered mistrust and perceptions of bias at CSC.⁸⁰

The excessive use of force by CSC is another reason there needs to be better correctional officer training. Currently, use of force interventions occur most often in an inmate's cell, and 41% involve inmates with documented mental health concerns. Despite the presence of health vulnerabilities and the contained settings, correctional officers use inflammatory agents like pepper spray to re-establish control.⁸¹ The correctional investigator has said that this is due to an entrenched "security-first response approach" instead of verbal interventions and nonviolent de-escalation techniques.⁸² The reliance on force is partly due to confusion among correctional officers about who is in charge of controlling responses to security incidents.⁸³ This lack of a clear line of authority makes a controlled, peaceful intervention less likely to occur.

Policy Details

The strategy recommends that the Government of Canada increase investments in facility operations, with a specific focus on the offender assessment process, food services and correctional officer training. For offender assessments, the federal government should provide CSC with adequate funds to conduct research on how security risk and rehabilitation assessments impact Indigenous and other racialized populations. This should be followed by the development of culturally specific assessments for different racialized populations. For food services, greater investments are required to improve food quality. The government should consider increasing its food budget to match Nova Scotia's \$10-a-day level.

Finally, the government should invest in improved correctional officer training to address CSC's toxic workplace culture and excessive use of force. To address workplace culture issues, part of the training should be targeted at officials responsible for initial complaint assessments, to ensure disciplinary actions are carried out appropriately. To address excessive uses of force, correctional officers should be effectively trained on CSC's Engagement and Intervention Model, which prioritizes the use of de-escalation (figure 2). Ensuring these issues are properly addressed

⁷⁹ Office of the Correctional Investigator, June 2019.

⁸⁰ Office of the Auditor General, *Report 1 – Respect in the Workplace*, (Fall 2019): https://www.oag-bvg.gc.ca/internet/English/parl_oag_201911_01_e_43530.html

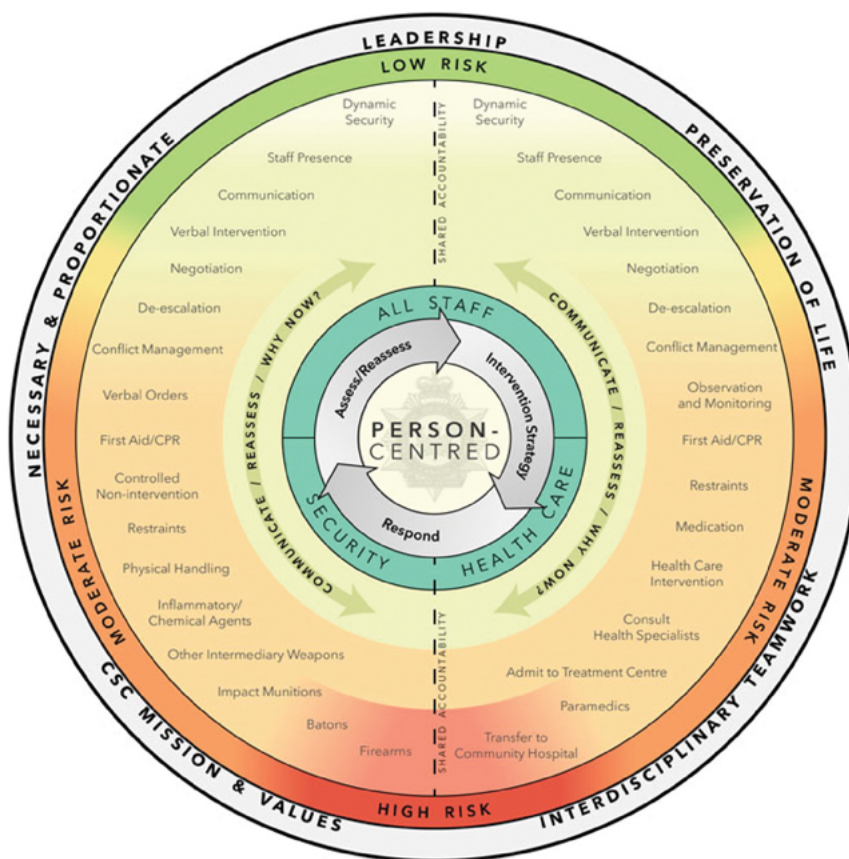
⁸¹ Office of the Correctional Investigator, June 2018.

⁸² Office of the Correctional Investigator, June 2019.

⁸³ Office of the Correctional Investigator, June 2018.

would require the government to extend the duration of correctional officer training from the current four months to closer to the three years found in Norway.⁸⁴

Figure 2
The Engagement and Intervention Model



Source: Office of the Correctional Investigator, “Management of incidents,” June 2018. <https://www.csc-scc.gc.ca/politiques-et-lois/567-cd-eng.shtml#s4>

Financial Cost and Feasibility

The cost of creating a culturally specific offender assessment system and improving correctional officer training is unclear from publicly available information. However, both of these issues fall within CSC’s care and custody budget, which was cut by 6% (\$102 million) in the 2020-2021 fiscal year.⁸⁵ The strategy recommends returning funding levels to the 2019-2020 levels to prioritize

⁸⁴ The Correctional Service of Norway Staff Academy, “Prison Education: Required Qualifications,” PowerPoint Presentation, January 2014; Correctional Service Canada, *Hiring Process-Correctional officer-Training and appointment*, (2019): <https://www.csc-scc.gc.ca/careers/003001-3004-eng.shtml>.

⁸⁵ Correctional Service Canada, 2020.

these initiatives. While the investments in these two priorities may initially constitute deficit spending, they could become cost neutral in the long-term, as they assist in rehabilitation and diversion from custody.

If we multiply the current CSC budget per inmate for food, which is \$4.98 per day, by the federal custodial population of 14,071,⁸⁶ this suggests that CSC's food budget is \$25.5 million per year. Increasing this budget to be comparable with Nova Scotia's expenditure would cost roughly \$51.3 million. The strategy recommends that the government invest the additional \$25.8 million dollars in food services. Again, while the initial investments may constitute deficit spending, adequate nutrition in federal custody should be viewed as a proactive measure that reduces the costs associated with misbehaviour, riots and potential litigation.

Political Feasibility

The biggest barrier to increased investments in facility operations is public perception. As with increased funding for rehabilitative programming, investments in might be subject to public opposition on the grounds that incarceration should be punitive, and "criminals" should not be prioritized when "law-abiding" citizens experience underfunded social services. However, the benefit of the strategy's recommendations is that these increased investments focus on internal improvements that do not have an immediate impact on the public. If the investment costs are offset by the declining incarcerated population, attention towards these policy changes will be reduced.

Conclusion

My strategy, which I have called "The National Strategy for the Revitalization of the Canadian Corrections Sector," will work to end the overrepresentation of racialized people in custody and achieve greater cost efficiencies. Because racialized people are overrepresented at every stage of incarceration, be it remand, short-term sentences or long-term sentences, improvements in each area will directly benefit them. The policies recommended here could reduce recidivism, specifically through the development of targeted improvements for racialized offenders, and they will work to eliminate the overrepresentation of racialized people.

All three policies contribute to promoting fairness in society by developing a more humane correctional system, while also improving the productive capacity of the economy by ensuring more individuals can reintegrate into communities and find employment. The first two policies achieve economic policy goals more directly by reducing custodial populations. The third policy primarily advances social policy objectives by creating fairer institutions. Overall, the strategy provides a pathway for the Government of Canada to advance racial equity and reconciliation through policies that also promote cost efficiencies.

⁸⁶ Statistics Canada, 2020.

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