ELDERS AND INDIGENOUS HEALING IN THE CORRECTIONAL SERVICE OF CANADA:
A STORY OF RELATIONAL DISSONANCE, SACRED DOUGHNUTS, AND DRIVE-THRU EXPECTATIONS

A Dissertation Submitted to the Committee on Graduate Studies in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy in the Faculty of Arts and Science

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Abstract

In our communities, we are continually challenged to reflect on effective responses to the people and events that put us at risk. This study is an examination of two distinctly different world-view responses: the colonial, dominant culture and the Indigenous world view. The retributive understanding of the dominant culture applies assumptions about the nature of the world that are vested in colonial, paternal, and punitive processes aimed to extract compliance as a means of deterrence. Conversely, the consensual precepts of Indigenous world view are rooted in community-based practices that require a process of collaboration and cooperation to create integrated relationships that glean responsibility.

This study brings light to bear on the ongoing relational dissonance that exists between the following: the disproportionate representation of men and women of Aboriginal descent held under federal warrant in Canada; the legislated mandate contained within the Canadian Corrections and Conditional Release Act that places successful community reintegration as a primary objective for the Correctional Service of Canada (CSC); and the role, place, and function of Elders who work in CSC reception centres, healing programs, and Pathways Initiatives.

This study explores the variables, assumptions, and differing world-views that contribute to the disproportionate representation of incarcerated adults of Aboriginal descent and the challenges that impede successful community reintegration. In order to effectively examine and make sense of the relational dissonance that exists between correctional theory and institutional practice, the research is driven by a central question:
What is the role, place, and function of Elders in the delivery of Indigenous healing programs within Canadian federal prisons?

The outcome of this work reveals practices of decolonizing justice and healing that can move assumptions and challenge paternal understanding. It is an approach that has the capacity to peel away relational dissonance, thus allowing space for public policy that sustains consensual understandings of community.
RESEARCHER (to an Elder): Is there something I should know?

ELDER: Never arrive without the sacred doughnuts!

When Elders bring participants together in a healing program, they begin by gathering the group in a circle. After a smudging ceremony, there is often a teaching; there is always participant sharing. In the prison setting, the sharing can be raw. In my experience, it is often laced with dark humour and, from time to time, moments of honesty that are both coarse and disturbing. The eventual coffee break infuses a sense of normalcy—as if the prison program could be a community gathering at a friendship centre or a community hall. The coffee makes space for individual exchanges to occur between participants and with the Elder. In these individual dialogues there are moments of epiphany . . . they arrive unexpectedly and in their own good time.

On special occasions, there are doughnuts . . .
Elders are at the centre of any [Indigenous] healing process, be it through ceremony, teaching or counselling. They are an invaluable resource. . . . A more thorough investigation of Elders services in federal institutions and Healing Lodges and factors that may inhibit their capacity to meet the needs of Aboriginal offenders is warranted.

(Sapers, 2012 p. 22)
Acknowledgements

This dissertation is the product of a community of people who shared and trusted, challenged and provoked . . . It is not the work of one person.

This community includes my committee, Dr. Chris Furgal and Dr. Nicole Bell, who shared their insight and wisdom. Elder Doug Williams and Elder Harvey McCue who agreed to be readers, scrutinizing the work to ensure and preserve the safety and security of the Elders who participated in this research endeavor. This community also includes Teri-Ann McDonald whose good-humour and precise editing skills proved to be indispensible.

To my supervisor, Dr. Deborah Berrill, special acknowledgement: she read the material more times than I can count . . . she persevered and coaxed . . . she respected my instincts and she accepted my eccentricities. More than anything she knew how to be critical when it was the last thing I wanted to hear. Deborah is the teacher I aspire to be!!

To the Elders who participated in this study: without them this would work not have happened! They trusted me with their words and their experiences . . . I hope I have done justice to the work they do.

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easier. For me, they exemplify the selfless commitment that is required to do the work of a community. I am grateful they are among my teachers.

I also need to acknowledge two friends of long standing; Victor McCoy and Robert Boucher. Victor holds the record as the longest serving ALO in CSC history. For over 30 years he poked and prodded and told really bad jokes. He made a difference, one guy at a time! Robert Boucher is unique in the world and pivotal in this work: he walked away from the CSC with his family and his optimism intact, which is no small accomplishment! Throughout this process he was my fairness barometer: When I was concerned I was harsh or arbitrary, he provided much needed perspective. Each of these men shared and listened, and they reflected back . . . for this I am very grateful.

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# Table of Contents

Abstract ............................................................................................................................................... ii

Acknowledgements ....................................................................................................................... vi

List of Figures................................................................................................................................... xiii

List of Tables ................................................................................................................................... xiv

Researcher as Positioned Subject ............................................................................................... xv

Chapter One: Introduction ........................................................................................................ 1
  Purpose........................................................................................................................................ 1
  Rationale for the Research Question.................................................................................... 2
    Mandate and Power.................................................................................................................... 3
    Disproportionate Representation ............................................................................................. 4
    Policy Development .................................................................................................................. 5
    Consensual Reconnection ......................................................................................................... 6
  Contextualization of the Issue ................................................................................................. 7
    Practical Context .................................................................................................................... 7
    Academic/Theoretical Context ............................................................................................... 9
  Three Justice Paradigms .......................................................................................................... 10
    Retributive.............................................................................................................................. 11
    Restorative .............................................................................................................................. 12
    Indigenous ............................................................................................................................... 12
    Summary of Justice Paradigms ............................................................................................. 13
  Concepts...................................................................................................................................... 14
    Reparative Justice ................................................................................................................... 15
    Restitution ............................................................................................................................... 15
    Colonization ........................................................................................................................... 16
    Decolonization ....................................................................................................................... 17
  Structure of the Dissertation ................................................................................................... 18

Chapter Two: Theoretical Context/Literature Review .......................................................... 21
  Narrative Spectrum: The Creation Narrative ....................................................................... 22
  Legislated Mandate .................................................................................................................. 25
  Theoretical Approaches Employed ....................................................................................... 27
    Dominant-Culture Theorists ................................................................................................. 29
      Foucault: Turning the soil .................................................................................................... 30
      Garland: Seeding the earth ................................................................................................. 38
      Berger and Luckmann: Harvesting the crop .................................................................... 45
      Summary of dominant-culture theorists .......................................................................... 48
    Decolonization Theorists ....................................................................................................... 50
      Edward Said ......................................................................................................................... 51
      Linda Tuhiwai Smith ............................................................................................................. 56
      Summary of decolonization theorists ................................................................................. 62
    Restorative-Justice Theorists ............................................................................................... 64
## References

* Nils Christie .......................................................... 66
* Howard Zehr .......................................................... 70

### Summary of restorative-justice theorists ......................................................... 73

* Healing Theorists .......................................................................................... 75
  * James Waldram .......................................................... 78
  * Wanda D. McCaslin .................................................. 80
  * Chief Justice Robert Yazzie ....................................... 81
  * Ada Pecos Melton ..................................................... 82
  * Gloria Lee ................................................................. 82
  * Michael Cousins ....................................................... 83
  * Nin Tomas ................................................................. 83
  * Rupert Ross ............................................................... 85

### Summary of healing theorists ......................................................................... 91

#### Conclusion of Theoretical Context/Literature Review ........................................ 92

## Chapter Three: Methodology ............................................................................. 95

### Research Design ............................................................................................. 95

### The Use of Auto-Ethnography in the Study ....................................................... 97

#### Part One: Critical Policy Review .................................................................. 98

* Critical Policy Review: Methodology ......................................................... 102

  * Selection of documents ........................................................................... 102
    * Document-review method ............................................................... 105
  
  * Theoretical reference points functioning as tools of analysis ................. 109
    * Theoretical perspectives ...................................................................... 110
    * Methodological tools from dominant-culture theorists ....................... 110
    * Methodological tools from decolonizing theorists .............................. 111
    * Methodological tools from restorative-justice theorists ...................... 112
    * Methodological tools from healing-methodology theorists .................. 113

#### Part Two: Elders’ Perspectives ................................................................. 115

* Methodology .................................................................................................. 119

  * Criteria for the selection of participants ............................................... 123
  
  * Interview design ....................................................................................... 125
    * Stage 1: Context, structure, and role .................................................. 127
    * Stage 2: Mind, knowledge, and place .................................................. 127
    * Stage 3: Body, experience, and function .............................................. 128
    * Stage 4: Spirit, healing, and affect ....................................................... 128
  
  * Interview questions ................................................................................. 128
  
  * Interview procedures ............................................................................... 130
  
  * Ethical considerations .............................................................................. 134
    * Protection of privacy .............................................................................. 135
    * Informed consent .................................................................................. 136
  
  * Interview analysis .................................................................................... 136
  
  * Participant review of the manuscript ..................................................... 138
  
  * Post-manuscript feast ............................................................................. 138

## Chapter Four: Critical Policy Review: A Rereading of Relevant Historical Documents ................................................................. 139
Chapter Five: Critical Policy Review: Royal Commissions of Inquiry, Supreme Court Rulings, and Operational Assessments ................................................................. 215

The 1996 Royal Commission on Aboriginal Peoples ........................................................................ 216

Summary ........................................................................................................................................ 220
### The 1996 Commission of Inquiry Into Certain Events at Prison for Women

- Personal Narrative: Researcher as Positioned Subject
- The Arbour Commission
- The Events that Led to Arbour
- The Commission of Inquiry
- Summary

### The 1999 Supreme Court of Canada Ruling in *R. v. Gladue*

- The Facts of the Case
- Summary

### The 2002 Supreme Court of Canada Ruling in *R. v. Sauvé*

- Summary

### The 2006 Roadmap to Strengthening Public Safety

- Summary

### The 2012 Spirit Matters

- Assessment of OCI Recommendations and CSC Responses
- Summary

### Critical Policy Review Conclusions

### Chapter Six: Elders’ Perspectives

#### Characteristics of Participating Elders

- Elizabeth
- Mavis
- Alexander
- Robert
- William

#### Dialogue Themes

- Humility
  - *Summary: Humility*
- Healing
  - *Summary: Healing*
- Ceremony
  - *Summary: Ceremony*
- Teaching
  - *Summary: Teaching*
- Relationship
  - *Summary: Relationship*

#### Chapter Summary

#### Chapter Conclusion

### Chapter Seven: Conclusions, Implications, and Recommendations

#### Limitations of the Study

#### Conclusions

- A Day in the Life

#### Scholarly Implications of this Study

- The Role of Internalized Perspective
- The Power of Assumption
A Methodology to Bridge Relational Dissonance .............................................. 379
Recommendations ................................................................................................... 383
References ...................................................................................................................... 387
Appendix One: Description of the Study ............................................................... 400
Appendix Two: Researcher’s Personal Statement ................................................... 408
Appendix Three: Informed Consent Form ............................................................... 410
Appendix Four: Prison For Women Interior Site Images and Floor Plans .......... 413
List of Figures

Figure 1. Qualitative exploratory design ................................................................. 97

Figure 2. Continuum of Care .................................................................................. 116

Figure 3. Police-reported crime rate since 1998..............................................

Figure 4. Expenditures on corrections increased in 2011–2012..............

Figure 5. The number of Aboriginal offenders under federal jurisdiction has increased,
yet the number of Aboriginal offenders in community-supervision settings has
remained static. ..........................................................

Figure 6. The number of offender deaths while in custody. ............

Figure 7. Aboriginal education principles and correctional education...

Figure 8. Daily operations orbit .............................................................................. 363

Figure 9. Charter of Rights and Freedoms ............................................................... 364

Figure 10. Institutional policies/exigencies .............................................................. 366

Figure 11. Corrections and Conditional Release Act ............................................ 367

Figure 12. Elders’ circle .......................................................................................... 369

Figure 13. Indigenous knowledge ................................................................. 370

Figure 14. Ritual ...................................................................................................... 371

Figure 15. Ceremony .............................................................................................. 372
List of Tables

Table 1. Comparative Qualities of Three Justice Paradigms............................................. 14
Table 2. Principles of Aboriginal Education................................................................. Error! Bookmark not defined.
Table 3. Correctional Strategy Impacts on Educational Programs. Error! Bookmark not defined.
Researcher as Positioned Subject

A rigorous research product must be credible, transferable, dependable, and confirmable (Baxter & Eyles, 1997). These outcomes cannot be achieved if my own lived experience and potential/consequent role as a positioned subject are not acknowledged from the outset.

In 1982, I completed a Bachelor of Education degree at Queen’s University and was subsequently certified as an elementary and secondary school teacher in Ontario. After experiences teaching children in the Ontario public school system, I made a career change and, in 1986, began work in Correctional Programs and Correctional Education in the Correctional Service of Canada’s (CSC) Ontario region. My professional experiences parallel many of the policy developments in the CSC following the 1981 passage of the Canadian Constitution Act and Charter of Rights and Freedoms. In subsequent years, I worked in the design of living skills and education programs and their delivery to federally incarcerated men and women in every security level. In 1989, I co-founded the Excalibur Learning Resource Centre Canada Corporation, a privately held specialist organization that provides education and correctional program services to the CSC. In our largest incarnation, we provided simultaneous program services to 29 CSC facilities in Atlantic, Ontario, and Prairie regions. In the course of this work, I managed all aspects of company operations including hiring, training, and supervising personnel. The supervision and in-service training requirements of my job often brought me into contact with other divisions of correctional programs, including the Elders who provided program services to Aboriginal offenders.
Between 1986 and 1999 I worked under the premise that the acquisition of literacy and numeracy skills would remedy a skills vacuum that contributed to poor decision-making by an individual that culminated in a prison sentence. Intellectually, I understood that the inability to read or calculate was not a direct contributor to the anti-social behaviour for which the federal warrant was imposed. While I understood that Aboriginal people were disproportionately represented in federal correctional institution classrooms, I had not internalized the ramifications of this fact. In 1999, my premise was challenged.

In January of 1999, during a site visit to the school at Edmonton Institution, an inmate student of Aboriginal descent (with whom I had had a long-standing classroom connection) introduced me to three other members of his class. He was related to all of them. In that moment, I began to see the students of the class in a different way. I could no longer see education as a simple connection between literacy and successful community reintegration. Before that moment, I had viewed correctional education as a well-ordered, rational, and predictable intervention beyond the reaches of systemic discrimination. My social contract with my students was one in which I was a participant in their process of personal investment—investment through which they could reinvent themselves and break the cycle of anti-social decision making that resulted in their incarceration. The family reunion at Edmonton Institution challenged my values and attitudes, my assumptions, and my understandings. That new understanding led to a Master’s Degree in Education and, more recently, this doctoral research.

In recent years, I have come to understand that moment as the beginning of a larger process. In this, Thomas King’s *The Truth About Stories* (2003) proved to be a
pivotal text. In it, King talks about the differences in world-view that emerge from our foundational narratives. Among these are the creation stories found in the book of Genesis contained in the King James Bible and in the Sky Woman Haudenoscaunee creation story told by King in *You’ll Never Believe What Happened*, his Massey Lecture. One world-view promotes values and assumptions that are arbitrary and punitive while the other promotes cooperation and collaboration. One asserts a singular paternal and colonial understanding that pursues compliance as its principle operational objective, while the other embraces humour and diversity to find a broad, consensual understanding of personal recognition and individual responsibility.

This understanding has been crucial, because one of the things I inadvertently learned along the way was that I wasn’t sure if my work as a correctional educator had contributed to a solution or if it had fed a problem. While this may sound irrational, it did not feel that way. . . . From the outside looking in, it would seem self-evident that teaching people to read and write and calculate and sequence would all be to the good. In the context of my work and this research process, however, I wasn’t sure. My supervisor and I have spent a good deal of time discussing the merits of phrases like settler and self-evident. Ultimately, I have come to understand that nothing is self-evident and that work that embraces self-awareness can overcome all hurdles. I owe Thomas King a good deal in helping me to arrive at this understanding. As you begin to wade through this writing, I leave you with this: “To every action there is a story” (King, 2003, p. 29).
Chapter One: Introduction

For over thirty years the Government of Canada has made it a priority to hire Aboriginal Elders to lead intervention and healing programs for the expanding community of offenders of Aboriginal descent\(^1\) held in Canada’s federal prisons (Sapers, 2012). Their placement is embedded in a general policy aimed at successful community reintegration that reduces the disproportionate representation of Aboriginal offenders held under federal warrant. Put another way, Elders are hired in the belief that offenders of Aboriginal descent will be less likely to return to prison if they participate in Elder-led programs. And yet, the disproportionate representation of federally incarcerated men and women of Aboriginal descent continues to escalate. For men and women of Aboriginal descent, successful community reintegration is proving to be distinctly more challenging than for other groups of federally incarcerated adults.

Purpose

The purpose of this study is to articulate the relational dissonance that exists in the spaces within and between correctional theory, institutional practice, and Indigenous world view. Specifically, the study addresses the disproportionate representation of men and women of Aboriginal descent that are held under federal warrant in Canada, the legislated mandate contained within the Corrections and Conditional Release Act that

\(^1\) The use of the term *offender* is understood to carry with it a history of colonization. In point of fact, there is a level of responsibility and dominant-culture objectification that is communicated with any of the terms available to describe these individuals including, but are not limited to, offender, inmate, convict, felon, convicted felon, and incarcerated adult. In this study, the term *offender* is used because it is consistently applied and defined in the legislation. As it refers to a person who has committed an offence, it is intended to be understood as the least offensive or problematic of the available options. Similarly, the term of *Aboriginal descent* is consistent with terminology used by the CSC and is used to refer to any identified or self-identifying Indigenous, Inuit, or Métis person.
places successful community reintegration as a primary objective for the Correctional Service of Canada (CSC) and the role, place, and function of Elders who work in CSC reception centres, healing programs, and Pathways Initiatives.

The study contrasts the legislated policies of the Correctional Service of Canada (CSC) and operational practices of the prison with the words and grassroots experience of the Elders, focusing on the years following the enactment of the 1992 *Corrections and Conditional Release Act* (CCRA). As such, the research positions a unique lens through which to view the role, place, and function of Elders in the delivery of Indigenous healing programs in the post-CCRA era.

**Rationale for the Research Question**

The pursuit of successful community integration requires offenders to navigate a series of structures, assumptions, and concepts. Power, knowledge, and compliance are the principle concepts that define the prison (Foucault, 1977) and, by extension, the process that leads to successful community reintegration. The relationship of power, knowledge, and compliance in the retributive prison isolates a binary question that has preoccupied theorists and placed role, place, and function of Elders in an academic context: Is compliance with generally understood, retributive, dominant-culture values and attitudes sufficient to meet the requirement for successful community reintegration? Or are individual internalized self-awareness and healing essential requirements? If the latter is true, then the retributive prison, as it currently exists, cannot produce successful community reintegration as a substantive or measurable visible outcome (Foucault,
It is within this dichotomy that Elders do their work and that theoretical concepts are understood.

The rationale for the study is rooted in the need to create new understandings that diminish the influence of the dominant-culture retributive-justice paradigm in a process of decolonization that uses Indigenous ways of knowing to empower the participants to seek and secure successful community reintegration.

This rationale is founded upon four elements: mandate and power, disproportionate representation, policy development and consensual reconnection. These are embedded in a series of relationships that are frequently defined by disconnection: a carceral prison apparatus whose declared aspirations, legislated mandate and operational practices are often at odds one to another; a disproportionate representation of people of Aboriginal descent held under federal warrant; and a small cadre of Elders across Canada who bring ritual, ceremony, Indigenous knowledge and healing to people and places in great need. The research aims both to make sense of the connections and disconnections that enable and impede the work of the Elders in the delivery of healing programs and to serve the larger Indigenous community in decolonizing the retributive prison.

**Mandate and Power**

The Government of Canada empowers the Correctional Service of Canada to administer the sentences of offenders held under federal warrants of more than 730 days. In this understanding, the CSC operates 54 institutions (prisons) across Canada. From a dominant-culture perspective, the federal institution appears to be a rational, predictable, and well-ordered containment process. This presumes that offenders held under federal warrant have internalized the judges’ comments contained in their sentencing documents
and are otherwise inspired to seek self-awareness for its own sake, applying the golden rule to (treat others as you would most like to be treated) all of their post conviction relationships. It also presumes that the professionals employed to administer the federal warrant are uniformly self-aware and possess all of the predispositions necessary to avoid confrontations among both their peer group and the offender population. Were this true, there would be no reason for the “morning meeting,” yet each morning, at every CSC facility in Canada, the day begins with an examination of the events of the previous evening/night shift. This essential daily ritual examines all of the logistics, labour relations, and behavioural challenges that emerged in the previous day. At the conclusion of any of these meetings, one inexorable conclusion is apparent: The prison functions in a perpetual state of anticipatory crisis.

The word *crisis* may seem harsh except when viewed through an anticipatory lens. The morning meeting is an operational dialogue in the application of power; it anticipates and acknowledges the challenges of operating a retributive facility in the aftermath of an adversarial criminal-court process. The morning meeting is an example of a ritual in which federal mandates and the application of power combine to produce results that can be both arbitrary and highhanded. Institutional rituals such as the morning meeting serve as a catalyst for an ongoing reparative debate to balance constitutional imperatives, legislative measures, and policy directives that are very often at odds with each other.

**Disproportionate Representation**

Among the common challenges at the morning meeting is an ever growing and disproportionate population of offenders of Aboriginal descent. The CSC has calculated
that the current population of Aboriginal peoples held under warrant will continue to
grow. Currently, Aboriginal offenders account for 21.5 per cent of the CSC’s
incarcerated population. In 2010–2011, Aboriginal women accounted for 31.9 per cent of
federally incarcerated women. Yet Statistics Canada reported that, in 2011, Aboriginal
people accounted for less than 4.3 per cent of Canada’s total population. Even more
disturbing, these numbers are the product of a two-decade-long pattern of rising
disproportionate representation. (Sapers, 2012, p. 3)

Policy Development

Policy development efforts to combat the challenge of disproportionate
representation are long standing. In 1995, the CSC formally acknowledged the challenge
when it unveiled its Continuum of Care policy. To some extent, the Continuum of Care
parallels the development of community-based restorative-justice initiatives. It is also a
by-product of the CCRA and various correctional investigations and commissions of
inquiry. It serves to illustrate the tension that exists between community-based,
restorative justice and retributive population-management systems within the federal
process. Regardless of the space the Continuum of Care inhabits, the document
anticipated the crisis of disproportionate representation and laid out an approach to
reduce it. The policy invested heavily in a series of correctional and reparative-justice
program offerings within the CSC. The overall goal was to equip participants with the
necessary skills to more efficiently move through the system and towards successful
community reintegration.

Elder-led programs—in which Aboriginal Elders are contracted to come into the
institution to work with individuals and groups of offenders—were among the priorities
confirmed in the Continuum of Care. Although these programs have been incorporated into the *Strategic Plan for Aboriginal Corrections* (2003), Elders are among the least understood of the professionals who work in Correctional Programs. An understanding of the development of policy that seeks to honour legislation as it serves operational imperatives is essential to successfully engage with the Elders responsible for the implementation of healing programs.

**Consensual Reconnection**

Elders employed by personal-service contracts within the Correctional Service of Canada inhabit a unique space, defined by three overlapping, and often conflicting, forces: the disproportionate and rising population of offenders of Aboriginal descent, the legislative policies of the CSC, and the operational practices of the prison. In some quarters, their placement and efforts are reviled as providing window-dressing for an unrepentantly retributive carceral process or, worse, as contributing to a 21st century, dominant-culture effort to recolonize Aboriginal people in crisis. In others, the people who do this work are fully fledged Elders who follow a call to service. In this calling, they are understood to be healers working to stem an epidemic. Somewhere along this spectrum, the Elders work to provide healing programs that reconnect people and communities. In the words of Canada’s correctional investigator, Howard Sapers, “A more thorough investigation of Elders services in federal institutions and Healing Lodges and factors that may inhibit their capacity to meet the needs of Aboriginal offenders is warranted” (Sapers, 2012, p. 22). Sapers’s call provides the final piece in the rationale to

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2 Given the number of government-authored documents that will be discussed at length in this dissertation, key documents will be cited and listed in the reference section by document name, rather than author.
investigate the role, place, and function of Elders in the delivery of Indigenous healing programs intended to reconnect people through successful community reintegration.

**Contextualization of the Issue**

I became aware of Elder programs in 1986, when I was working as a substitute adult basic education teacher at Millhaven Institution (located near Kingston Ontario), a maximum-security prison operated by the CSC. By 1986, Elder programs were an established fixture in the daily life of the institution. While some of the staff and many of the offenders revered these programs, others derided them. Regardless of perspective, Elder programs were, and continue to be, a fact of institutional life at every federal institution in Canada.

**Practical Context**

Each institutional setting presents different sensibilities and challenges; while some may overlap, each institution is measurably different from all the others. It is not unusual for staff members and offenders to speak about individual differences between institutions in cultural terms. Elder programs vary in size and process in ways that reflect the sensibilities, challenges, and culture of the institution.

Elders are employed under personal-service contracts and are compensated for their work. Each Elder is paired with an Aboriginal liaison officer (ALO) who is an employee of the CSC. The ALO serves as a conduit for administrative forms and policies to ensure that the dynamic security needs of the program and the site are addressed. Dynamic security needs might require monitoring an offender who has an ongoing challenge with depression, issuing movement passes to offenders when programs deviate
from the institutional routine, or managing challenges that emerge when members of rival gangs are assigned to the same Elder program. The backgrounds and responsibilities of Elders and ALOs are remarkably different. When the partnerships are successful, they have the potential to achieve something greater than the sum of their parts.

Programs vary in size and approach. In larger institutions, the Elder and the ALO may work with 20 or more offenders at a time. The approach to delivery may vary from one-on-one and small-group discussions to large group program teachings. In the large group settings, the participants often sit in a circle and follow a process similar to that of an alcohol- or drug-recovery program.

In all settings, participants are assigned to the program on a continuous entry and exit basis—meaning there is no fixed, formal beginning or end to a program. Participants come and go with the program, transfer, and parole requirements of the system. In smaller minimum- or maximum-security settings, an Elder might work with 30 to 40 offenders in a calendar year, while in larger medium-security settings, an Elder could work with as many as 120 offenders over the same period.

Regardless of institutional setting, ritual, ceremony, and reassuring predictability are key components of an Elder program. Ritual and ceremony can be understood to include a smudging ceremony to open the days’ session or a ceremonial sweat to mark the culmination of a larger process. Essential rituals can also be observed and understood in the established routines that move the program along. Everything that happens in the course of the program becomes part of a larger ritual agenda, from the way the talking circle is formed and observed to the mid-morning coffee break. Each ritual and routine is
a component of a larger agenda to engage the participants with Indigenous knowledge
(Elder A. Brant and Aboriginal liaison officer V. McCoy, personal communication, 2012)

**Academic/Theoretical Context**

This research investigates the role, place, and function of Elders whose principle mandate is to provide healing programs for offenders of Aboriginal descent. It should be understood that, from time to time, participants may include non-Aboriginal offenders and Elders may also be called upon to devote time and effort to the needs of staff. The Elders’ efforts in such endeavours fall outside their primary mandate. As such, the academic/theoretical focus of this study is on the interaction of Elders and healing programs with offenders of Aboriginal descent.

The timeframe of the study begins following the 1992 passage of the Canadian *Corrections and Conditional Release Act*, with its groundbreaking benchmark principle of least restriction, and ends with publication of the 2012 correctional investigators’ report *Spirit Matters: Aboriginal people and the Corrections and Conditional Release Act*. The academic and theoretical writers selected to explore this timeline are among a community of acknowledged experts whose work, in some cases, predates the study’s timeframe by as much as twenty years. Significantly, one of the catalysts for the early writers was a series of prison riots in 1971 that caused each of the G7 countries to reassess their approach to justice and prisons.

These riots began in Toulon and made international headlines. In September of the same year, a major riot at Attica State Penitentiary in New York State resulted in a major loss of life. Subsequent legal proceedings revealed a disregard for the human rights and constitutional rights of the offender population. As such, the riot received significant and
prolonged international attention. In Canada, Kingston Penitentiary rioted in April of 1971. While this riot did not receive the same kind of international attention as Touls and Attica, it added to a dialogue and perception that prison systems were not accountable. Each event led to public inquiries and reform movements. In the Canadian context, an argument can be made that the post-riot inquiry was a significant contributing variable in the creation of the Canadian *Charter of Rights and Freedoms* and the subsequent *Corrections and Conditional Release Act*. This confluence of events is salient because it provided the writers an activist, constructivist, and social-contract perspective from which to examine the visible outcomes of the prison.

The theorist writers selected in this study are not the only experts, nor do they fit into a single or neatly defined departmental discipline. They have been selected for the concepts they articulate and for their capacity to fuel and inform the work of their community. The healing perspective is the primary lens of the study; it is the central imperative that Elders assume as they go about their work. This imperative is embedded in the experiences and insights of Elders working within federal Canadian Correction and is explored in depth in Chapter 6 of the dissertation.

**Three Justice Paradigms**

To process the theory and practice of the prison and the words of the Elders, a glossary of essential paradigms, concepts, and terms is required. The study draws four essential concepts from two different disciplines: from contemporary, justice-related literature, the concepts of reparation and restitution; and from current cultural studies/Indigenous studies sources, imperialism, colonization, and decolonization. To
provide a contextual understanding of the Canadian correctional process as it applies to Aboriginal offenders and of the systemic role that Elders assume in working in the institutional setting, the study relies on three essential justice paradigms—retributive, restorative, and Indigenous.

**Retributive**

A significant feature of the retributive-justice paradigm is the need to punish. To achieve a sense that the offender received appropriate punishment, the state is empowered to impose a range of sanctions including imprisonment, public humiliation, and denial of entitlements (Foucault, 1977). In the context of current dominant culture, criminal offences are defined by a state-sanctioned, centralized criminal code. In this application, crime is understood as a violation of the law and the state. Offenders convicted of offences in criminal court are expected to express guilt and remorse. Regardless of their expression, the consequence of the guilty verdict is some measure of suffering, humiliation, and degradation of the offender (Foucault, 1977, p. 14). As such, the retributive-justice paradigm drives concrete dominant-culture, binary understandings that link offences against the state to an outcome that encompasses moral outrage and punishment (Foucault, 1977).

David Garland provides a more contemporary understanding of the retributive. He writes:

Punishment may be a legal institution administered by state functionaries, but it is necessarily grounded in wider patterns of knowing, feeling, and acting, and it depends upon these social roots and supports for its continuing legitimacy and operation. It is also grounded in history, for,
like all social institutions, modern punishment is a historical outcome which is only imperfectly adapted to its current situation. It is a product of tradition as much as public policy. (Garland, 1990, p. 21)

Ultimately, the retributive approach to criminal justice seeks to resolve three questions: What laws have been broken? Who did it? What do they deserve (Zehr, 2002)?

**Restorative**

In justice terms, the restorative paradigm is best understood as a process requiring a bilateral dialogue between the affected parties to achieve agreement and/or consensual understanding (Huculak, 2005); justice is restored when the involved parties reach a shared understanding about the offence that incorporates shared norms and values. Apologies, bilateral compensation, and forgiveness are employed to reach a heightened awareness of harm and of the need to accept responsibility for harm done. In restorative justice systems, crime is understood as a violation of individual people and community relationships (Zehr, 2002). Further, it is understood that violations create obligations involving victims, offenders, and, by extension, community members.

Ultimately, the restorative approach to justice seeks to resolve three questions: Who has been hurt? What are their needs? Whose obligations are these (Zehr, 2002)?

**Indigenous**

In the Indigenous paradigm, crime is understood as a violation of interdependent community relationships (Melton, 2005). In this paradigm, the primary objective is to restore relationships to wholeness, reconcile the parties, and re-establish community peace. Indigenous approaches seek to re-acquire community-based self-awareness; to
understand the challenges of self-interest, which we ignore at our peril; and to find
generosity in a world that too often values the transient and the material to the exclusion
of community well-being. Indigenous approaches seek to choose deliberatively for the
generations yet-to-be and to understand the need for action and the danger of doing
nothing. In justice terms, the Indigenous paradigm serves to describe a consensual
community process in which, for justice to occur, there must be recognition,
responsibility, restitution, and reconciliation (Dumont, 1996).

To achieve these outcomes, the Indigenous paradigm provides an inclusive
process that extends beyond the binary of perpetrator and victim to incorporate all of the
knowledge contained in the community. It seeks to simultaneously remedy all of the
potential harms to individuals, groups, and communities affected by the imbalance
created in the aftermath of a harmful act.

Indigenous justice systems seek to resolve three questions: What are our
responsibilities? What are our duties? Will our actions restore damaged relationships in
ways that produce peace and equilibrium (Tomas, 2005; Yazzie, 2005)?

**Summary of Justice Paradigms**

To put the complexity of the role of Elders into relief, I summarized qualities of
each of the three justice paradigms—retributive, restorative and Indigenous—and provide
a side-by-side comparison in Table 1 below. It should be understood that the central
heritage of the dominant culture justice system applied in Canada is retributive.
### Table 1. Comparative Qualities of Three Justice Paradigms

<table>
<thead>
<tr>
<th>Retributive Justice</th>
<th>Restorative Justice</th>
<th>Indigenous Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>What laws have been broken? Who did it? What do they deserve? (Zehr, 2002, p. 21)</td>
<td>Who has been hurt? What are their needs? Whose obligations are these? (Zehr, 2002, p. 21)</td>
<td>What are our responsibilities? What are our duties? Will our actions restore damaged relationships? (Thomas, 2005, p.135, Yazzie, 2005, p.125)</td>
</tr>
<tr>
<td>Crime defined by the violation of rules with the state as victim.</td>
<td>Crime is defined by harm to people. People and relationships are understood as victims.</td>
<td>Crime is consensually defined by the community: People, relationships, and community are understood as affected participants.</td>
</tr>
<tr>
<td>Wrongs create guilt.</td>
<td>Wrongs create liabilities and obligations.</td>
<td>Wrongs create responsibilities and opportunities for community-based atonement.</td>
</tr>
<tr>
<td>Guilt is absolute. Guilt is indelible.</td>
<td>There are degrees of responsibility. Guilt is diminished through repentance and reparation.</td>
<td>Guilt is driven by the personal responsibility of the offender to recognize his/her responsibility and seek community restoration.</td>
</tr>
<tr>
<td>Debt is abstract.</td>
<td>Debt is concrete.</td>
<td>Personal obligations flow from responsibility. Responsibility is achieved through atonement and restitution.</td>
</tr>
<tr>
<td>Debt is &quot;paid&quot; through punishment. Accountability = taking one’s &quot;medicine.”</td>
<td>Debt is paid by making things right. Accountability = taking responsibility.</td>
<td>Obligations are defined by the community and met via atonement and restitution.</td>
</tr>
<tr>
<td>Victims’ needs exist outside the harm done to the state. Restitution is rare.</td>
<td>Harm done to victims is balanced by making reparation. Restitution is anticipated and normal.</td>
<td>A process of recognition, responsibility, restitution, and reconciliation is required to wipe the tears of the victim away.</td>
</tr>
<tr>
<td>Offender is denounced in the belief that deterrence will be the result, yet responsibility and deterrence are not necessarily linked.</td>
<td>Responsible behaviour is encouraged; harmful acts are identified and denounced.</td>
<td>For reconciliation to be achieved, internalized responsibility is required.</td>
</tr>
</tbody>
</table>

**Concepts**

To make sense of the precedent and practice that contributes to the disproportionate representation of Aboriginal people held in Canada’s federal prisons, the
researcher relies upon several essential terms to define, explain, and clarify the
documents and events of the post-CCRA period. These terms—reparative justice,
restitution, colonization, and decolonization—are well understood in the academy and
more particularly in the postcolonial Indigenous research community.

**Reparative Justice**

In the contemporary dominant culture, *reparation* is understood as a process of
making amends for a wrong. This term is most commonly understood when applied to a
defeated nation state in the aftermath of a war. In this context, the defeated party is
compelled to make reparation payments to the victorious nation for the injury done in the
war. Reparation is a significant concept in retributive and restorative dominant-culture
justice paradigms (Foucault, 1977; Valandra, 2005). It emerged as a documented,
dominant requirement of justice in Europe in the 11th century, when King Henry I issued
the *Leges Henrici*, effectively separating the church and the community from control
over matters of justice (Umbreit, 1999). Currently, reparation is among the Correctional
Service of Canada’s most significant policy-driven engines. In the context of this study,
reparation is a concept that all of the parties are compelled to rely upon as they measure
their understanding of their individual roles and responsibilities within contemporary
justice.

**Restitution**

Restitution is a common thread that binds all of the ancient systems. This is true
of the Sumerian Code of Ur-Nammu (2060 BCE), the Babylonian Code of Hammurabi
(1700 BCE), The Roman law of Twelve Tables (449 BCE) and the Hebrew concept of
shalom (Umbreit, 1999). Each system confirms an understanding that crime destroys healthy, prosocial relationships and that, to correct the imbalance, the justice process must incorporate restitution if the entire community is to regain its balance and achieve reconciliation (Cousins, 2005). Restitution is defined more elegantly by Robert Joseph (2005):

As an integral part of a justice system, restitution eclipses codified offences involving property or material offence seeking recompense for physical, spiritual and/or material injury as it returns that which has been lost or stolen to its original state. As such, restitution is understood as a visible outcome in a process of consensual recognition, responsibility and reconciliation. (p. 262)

Colonization

Colonization in Canada is a complex matter. In discussing the early incarnation of colonization in Canada, Horvath notes that the, “the dominant relationship between the colonizer and the colonized is extermination of the latter” (Horvath, 1972, p. 47). As time passed, the dominant relationship evolved into one “in which settlers neither exterminate nor assimilate the indigenes. Settlers and indigenes may live either side by side or apart, but in either case there is a lack of wholesale acculturation or eradication (this is to imply that no culture change occurs)” (Horvath, 1972, p. 47). Chilisa and Preece (2005) consolidate Horvath’s work into a more current understanding. They understand colonization as

a brutal process through which two thirds of the world experienced invasion and loss of territory accompanied by the destruction of
political, social, and economic systems, leading to external political control and economic dependence on the west: France, Britain, Germany, Spain, Italy, Russia and, the United States. It also involved loss of control and ownership of their knowledge systems, beliefs, and behaviors and subjection to overt racism, resulting in the captive or colonized mind. . . . This was a violent way of dismissing the indigenous people’s knowledge as irrelevant and a way of disconnecting them from what they knew and how they knew it.

(p. 9)

Decolonization

In Indigenous Research Methodologies, Bagele Chilisa devotes considerable energy to defining decolonization. In this endeavour, she relies on the work of Linda Tuhiwai Smith and Chandra Mohanty. In this context, decolonization is understood as a “process of centering the concerns and worldviews of the colonized Other so that they understand themselves through their own assumptions and perspectives” (Chilisa, 2012, p. 13). Further, “it involves the restoration and development of cultural practices, thinking patterns, beliefs, and values that were suppressed but are still relevant and necessary” (Smith, 1999, p. 7). Decolonization is, thus, “a process of conducting research in such a way that the worldviews of those who have suffered a long history of oppression and marginalization are given space to communicate from their frames of reference” (Chilisa, 2012, p. 14). “It includes a critical analysis of dominant literatures . . . aimed at exposing the problematic influence of the western eyes” (Mohanty, 1991, p. 51).
One of the challenges in pursuing research of this kind is what to call the people who live and breathe within the prison paradigm. There are Elders and Aboriginal liaison officers and correctional officers, all of which fit into a neat package of prosocial understanding. But what of the people who are held in prison under federal warrant? Every term used to describe them carries a negative connotation. In the end, I chose the term applied by the Government of Canada in the Corrections and Conditional Release Act. For purposes of consistency whenever I refer to individuals held in prison under federal warrant I will refer to them as offenders of Aboriginal descent or offenders.

The use of the term offender is understood to carry with it a history of colonization. In point of fact, there is a level of responsibility and dominant-culture objectification that is communicated with any of the terms available to describe the individuals held under federal warrant. In this study, the term offender is used because it is defined in the legislation and consistently applied throughout the act. As such, it serves a touchstone for analysis. The term offender is intended to be understood as the least offensive or problematic of the available options.

Structure of the Dissertation

To effectively explore the research question—what is the role, place, and function of Elders in the delivery of Indigenous healing programs within Canadian federal prisons?—and to achieve the identified research objectives, the dissertation is structured in seven chapters.

Chapter 1 provides the rationale for the study, contextualization of the issue, and an overview exploration of the research question.
Chapter 2 offers a literature review of writers who have made substantial, overlapping contributions over time. They are categorized to mirror the chronology in which their research and understanding evolved within in the academy and were selected for their capacity to inform the context of Western dominant-culture justice systems. The literature review provides an exploration of theorists from four areas: dominant-culture theorists, colonization theorists, restorative-justice theorists, and healing theorists, who provide the primary theoretical lens for this study.

Chapter 3 provides an overview of the research design and the methodology used in the interview process and in the analysis of the words of the Elders interviewed.

The critical policy review in Chapter 4 presents a chronological overview of legislation and policy to create a critical context and timeline through which to understand the evolving work of Elder-led healing programs. The review commences with the 1992 Canadian *Corrections and Conditional Release Act* and ends with the 2012 correctional investigator’s report *Spirit Matters: Aboriginal people and the Corrections and Conditional Release Act (CCRA)*.

The Chapter 5 critical policy review builds on the outcomes of Chapter 4 by exploring the pertinent commissions of inquiry, Supreme Court of Canada rulings and Government of Canada operational reviews for the period 1992 through 2013. Using and the principle of least restriction as foundation, the operations of the Correctional Service of Canada and National Parole Board are assessed to provide the reader an understanding of the challenges, dissonance, and unexpected consequence that emerges as policy is translated into operational practice.
Chapter 6 of the study, “Elders’ Perspectives,” brings the voices, insights, and understandings of five Elders who have worked or are working with offenders of Aboriginal descent held under federal warrant. Their experience and knowledge provides a unique perspective from which to better understand the implications of healing in the context of the Correctional Service of Canada.

The final chapter of the research, Chapter 7, presents a discussion and findings in an effort to explore the ramifications of the research.
Chapter Two: 
Theoretical Context/Literature Review

The work of this chapter is organized around a three-pronged process of analysis: a narrative spectrum, a legislated mandate, and a theoretical chronology. This chapter will achieve a contextual understanding of the implications of the prison on all of the people who live and work within its walls. To do so, this chapter is organized to consolidate an argument that works to “follow the indigenous axiology of relational accountability” (Wilson, 2008, p. 43). In this endeavour each assumption, requirement, and theory is presented as part of what Linda Tuhiwai Smith (1999) calls “sharing knowledge” deliberately (p. 17).

To arrive at a contextual understanding of the research, the study establishes a narrative spectrum. In this narrative space, people in the dominant culture are encouraged to live in a binary day-to-day existence where the concepts of right and wrong are continually tested and where “if we believe one story to be sacred, we must see the other as secular” (King, 2003, p. 25). The discussion of the narrative spectrum is followed by a review of the legislative mandate, which is the operational expectation imposed by the Government of Canada on the Correctional Service of Canada (CSC) and the National Parole Board (CCRA, 1992). These two reviews establish an understanding of the contemporary dominant-culture binary narrative in which the prison exists and the duty to act fairly is often illusory. In this the adversarial paradigm assigning blame is more important than achieving a consensual recognition of responsibility (Jackson, 2002).

The relational-accountability process moves from narrative spectrum and legislated mandate through four theoretical perspectives: dominant-culture theorists,
decolonization theorists, restorative-justice theorists, and healing theorists. These elements serve as the critical lens through which the application of Correctional Service of Canada policy between 1992 and 2012, reviewed in Chapters 4 and 5, can be understood and triangulated with the words of the Elders (presented in Chapter 6).

**Narrative Spectrum: The Creation Narrative**

Everything that happens in a prison exists in ritual and narrative. It begins with the morning count of the inmate population, the first of as many as nine counting rituals. The day ends as it began, with the ritual count of the incarcerated held within the prison’s cells. For staff, the ritual of counting is contained in the manual and electronic logbooks that observe and record their movements over the course of a shift. Contained in the various counts is a narrative that affects everyone it touches: it evolves and morphs in the ritual and ceremony required for the proper presentation of incident reports at the institutional morning meeting. Each of these rituals, and many others, contribute to the social construction of a prison reality, a narrative reality that inhabits both time and space (Berger & Luckmann, 1967). The stories that emerge in the ritual and narrative constitute a relational lens, a “congruent whole” from which to view the assumptions and values that underpin the day-to-day operation of the prison (Wilson, 2008, p. 136).

The narrative spectrum of the prison is a mirror image of the world: In this reflection, its images are reversed. In this polarizing image the prison narrative parallels, romanticizes, and sometimes lionizes the assumptions of life beyond the walls where “culture determines the contours and outer limits of penalty” (Garland, 1990, p. 196). As
such, our “habitual thought processes” are called into question and our understanding of what should be named as sacred is challenged (Battiste, 2000, p. 189).

Sacred narratives permeate our constructed reality; in the context of the carceral prison they are both stark and omnipresent. Among the sacred narratives that exist in the parallel realities of dominant and Indigenous cultures are two creation stories: the Genesis creation story and the Sky Woman creation story. In this work I have relied on Thomas King’s version of the stories as a pivotal test. He presents these in written form in You’ll Never Believe What Happened from his Massey lecture series entitled The Truth About Stories (2003). In it, King talks about the differences in world-view that emerge from our foundational narratives. Among these are the creation stories found in the book of Genesis contained in the King James Bible and in the Sky Woman Haudenoscaunee creation story told by King in, his Massey Lecture. They are among the stories that serve as common narratives for the overlapping communities housed within the prison. These are stories that many of the staff and offenders grew up with; they are narratives that contribute to the common currency of understanding that each of us carries as we go about our lives. They serve to personify the end points of a narrative spectrum that is essential to making sense of the role, place, and function of Elders and healing programs in Canadian federal prisons.

At one end of the spectrum, the King James Bible Genesis creation story exemplifies the dominant-culture assumptions about people and place in a patrilineal universe. These assumptions are crucial in the social contract that defines the justice system from which the prison is built (Rawls, 1971). At the other extreme, the Haudenoscaunee Sky Woman creation story represents Indigenous understandings about
life and place in a matrilineal cosmos; these understandings are vested in a community-driven process of recognition, responsibility, reciprocity, and reconciliation (Taiaiake, 2009; Wilson, 2008).

The two creation stories set the dichotomy that confronts the prison and the Elders who work within its confines. The prison is the personification of the dominant-culture values, attitudes, and assumptions embedded in the Genesis story. It is patrilineal in its beliefs and adversarial in its attitudes. It can be nothing other, because it uses punishment as its foundation, retribution as its posts, and deterrence as its beams (Arbour, 1996; Monchalin, 2016).

Conversely the Elders, who apply Indigenous narrative in the ritual and ceremony of every interaction, exemplify the attitudes, values, and assumptions embedded in the Sky Woman creation story. The foundation of the building the Elders inhabit is recognition, the posts are responsibility, and the beams are restitution (Iacobucci, 2013; Wilson, 2008).

Embedded in the space between these understandings are moments of unforeseen consequence—those instances where the community of individuals (offenders and staff) who live the consequence of the prison function in ways that declare their position. These are the moments of epiphany, triumph, and tragedy in which people behave in ways that challenge the boundaries of policy and mandate. In the space between the two stories there is an emerging Indigenous language of critique (Smith, 1999) that emphasizes moments of relationality (Wilson, 2008).
Legislated Mandate

Arriving at a common understanding of the legislated mandate contained in the *Corrections and Conditional Release Act* (CCRA) is essential in defining the parameters of the policy analysis of the study. Passed into law in 1992, the CCRA also marks the beginning of the legislative timeframe addressed—a timeframe that ends with the Office of the Correctional Investigator’s 2012 report, *Spirit Matters: Aboriginal people and the Corrections and Conditional Release Act*. The CCRA is a pivotal document in Canadian history because, in justice-policy terms, it is the legislative actualization of the constitutional intent contained in the 1982 *Charter of Rights and Freedoms*. More significantly, the CCRA is pivotal because of the principle of least restriction contained in its opening pages. The principle of least restriction compels the CSC and the National Parole Board (NPB) to carry out the terms of the warrant, ensuring that the safety of the public and the needs of the offender are simultaneously balanced and that the offender is contained within the least restrictive setting necessary to maintain that balance. *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Sapers, 2012) provides the study a comprehensive third-party picture of how the principle of least restriction has been applied to offenders of Aboriginal descent.

The central measure of success applied by the Correctional Service of Canada to assess the success of its efforts regarding the principle of least restriction, as stated in its mission statement, is successful community reintegration. It is the end product of the proper application of the principle of least restriction and confirms the central mandate from which all variables are understood. The CSC’s mission statement explicitly affirms this understanding: “The main thrust of our energy and creativity is on working with the
individual offender to bring about his or her safe reintegration” (*Mission of CSC*, 1997, p. 7).

The pursuit of successful community integration requires the offender population to navigate a series of structures, assumptions, and concepts. Foucault (1977) and Garland (1990, 2001) argue that power, knowledge, and compliance are the principle concepts that define the prison and, by extension, the cascading (institutional transfer) process that leads the individual from penitentiary placement to parole and successful community reintegration. The relationship between power, knowledge, and compliance in the prison situates the role, place, and function of Elders as it situates the mandate of the Correctional Service of Canada/National Parole Board of Canada to achieve successful community reintegration for each person assigned under warrant by the courts (*Mission of the CSC*, 1997, p. 6). Ultimately, the legislated mandate assigned to the CSC and NPB contribute to an ongoing operational challenge.

At the centre of this challenge are the embedded narratives that confirm and reinforce the values of the prison. These narratives are the operating truths that are understood by the participants to be beyond discussion—truths that are understood to be sacred (Foucault, 1977). In more contemporary terms, Indigenous scholar Thomas King delves into how the concept of sacred is applied in dominant-culture narratives in his 2003 Massey lecture. In his presentation of the Genesis story, he suggests that established dominant-culture practices are focused around the systematic application of punishment and fear as catalyst for the creation of remorse and deterrence. More particularly, that remorse is required to achieve deterrence, which is an essential ingredient in producing prosocial understandings. For the CSC, prosocial understandings are measured in a
particular image of public safety. In this view, prosocial is measured in its capacity to honour the operational imperatives of the prison and in the system’s capacity to produce successful community reintegration.

Conversely the lessons contained in Thomas King’s presentation of the Sky Woman story advance the argument that cooperation and collaboration, serving as catalyst for recognition and responsibility, are more likely to produce successful community reintegration.

The intended direction of the Government of Canada to the Correctional Service of Canada is contained in the purpose and principles of the CCRA. Section 3b of the act directs the CSC in “assisting in the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community” (Mission of the CSC, 1997, p. 6). The language employed is explicit; the CCRA is directing the CSC to concentrate its efforts on self-awareness over deterrence, aligning itself more with the Sky Woman story than with the values and attitudes embedded in the Genesis story. It is in this conflicted and conflicting dichotomy of sacred and secular, ritual and narrative that wardens and Elders attend to their workplace responsibilities.

**Theoretical Approaches Employed**

The theoretical writers whose work is reviewed in this chapter were chosen as a means to explore the assumptions and theories foundational to understanding the chronology of events that impacted the development of federal Canadian prisons between 1992 and 2012. The writers selected in this literature review are not the only experts, nor
do they fit into a single or neatly defined departmental discipline. They have been
selected as major figures resulting from the interdisciplinary concepts they contribute and
for their capacity to inform the work of their community.

One of the catalysts for the early dominant-culture theorists was a series of prison
riots that occurred in 1971. These riots caused western European and North American
countries to reassess their approach to the pursuit of justice and the administration of
prisons. Each of these riots led to public inquiries and reform movements. An argument
can be made that, in the Canadian context, these inquiries influenced the subsequent
language of both the *Charter of Rights and Freedoms* and the *Corrections and
Conditional Release Act*.

The theorists included in this process contribute to a theoretical context that
connects dominant-culture theorists, decolonization theorists, and restorative-justice
theorists to a healing methodology employed as part of a larger Indigenous
understanding. These theories provide the critical lens through which Correctional
Service of Canada policies, including the 1992 *Corrections and Conditional Release Act*,
can be understood and triangulated with the words of the Elders.

The theoretical categories employed in this study were developed from a critical
reading of academics, who contribute from a variety of perspectives. Beyond the
interdisciplinary reality of the work, it became clear that the development of prison
theory was layered over time in the way that the geology of a landscape is formed. The
theorists selected are widely respected contributors in their fields.

The theoretical categories contained in this chapter flow from the justice
paradigms noted in Chapter 1: retributive justice, restorative justice and Indigenous
justice. The dominant-culture theorists speak to the retributive-justice paradigm and the use of tools of colonization to achieve compliance. Decolonization theorists build on the work of dominant-culture writers and, in turn, contribute to the work of restorative-justice writers. In this way, each category is linked to its predecessors. The work of healing theorists speaks directly to the third and final paradigm, Indigenous justice.

The review of each writer contains an overview/introduction to their work, an exploration of the criticism of their work, and a statement regarding the contribution they make to this literature review and in the creation of a critical lens.

**Dominant-Culture Theorists**

The dominant-culture theorists discussed in this review are Michel Foucault, David Garland, and Peter Berger and Thomas Luckmann.

In the development of their scholarship, Foucault and Garland provide a succinct genealogical explanation for the development of a western European prison tradition. Contained within their explanations is a spectrum of contributing theorists, with Marx and Engels at one end and Durkheim at the other. Each provides a view into modernity that is surprisingly relevant to the commodity-driven world that has emerged in the wake of globalization.

For Marx and Engel (1848/1998), modernity is understood as the “constant revolutionizing of production, uninterrupted disturbance of all social conditions, everlasting uncertainty and agitation distinguish the bourgeois epoch from all earlier ones” (pp. 38–39). In this work, they advance the argument that the tools of the criminality and the prison were rooted in an economic system that positioned incarcerated people in a judicial process as one might position pawns on a chessboard. In this view of
the economic relationship, the pawns are forever expendable, relegated to the bottom of the economic food chain, while those who are themselves confined outside the means of production become responsible (are to blame) for the pawns’ servitude within the class-based processes of social and economic regulation (Garland, 1990, p. 13).

Conversely, Durkheim concentrates more on concepts of morality in his identification of a collective consciousness, which is a “totality of beliefs and sentiments common to the average citizens of the same society [that] forms a determinate system which has its own life” (Durkheim, 1933, p. 79). In this he posits that crimes are violations of fundamental moral codes and cherished moral values that are held as sacred. According to Durkheim, these violations necessitate a passionate, hostile, and punitive response. For Durkheim, then, “passion . . . is the soul of punishment,” and vengeance is the primary motivation that underpins punitive actions (Durkheim, 1933, p. 82). Contained within the spectrum of Marx and Durkheim are others including Rusche (1933), Kirchheimer (1968), Ignatieff (1978), and Rothman (1980).

Imagine it is spring and it is time to go out on the land: Foucault’s work turns the soil, Garland seeds the earth, and Berger and Luckmann provide a tool to harvest the crop. In this process, the central themes for the dominant-culture harvest are power, knowledge, and compliance.

**Foucault: Turning the soil.** Foucault’s *Discipline and Punish: The Birth of the Prison* (1977) represents a pivotal moment in the discourse of the western prison. While his perspective is neither settler colonial in the North American context nor Indigenous in any context, his work is nevertheless foundational to understanding the sequential development of the Western dominant-culture prison. His selective genealogy touches on
Europe and North America in ways that can be simultaneously understood as history, philosophy and penology, legal analysis, and cultural criticism (Cayley, 1998). The work defies easy classification. I first read the book in 1987 while working as a life skills instructor at a medium security prison. In the context of that time and place, I read it as a history. Over time, I have come to understand it as a discomforting interrogation of my own dominant-culture assumptions. Ultimately, I have come to understand the work as an analysis of power and knowledge in the pursuit of compliance.

Foucault divides the work into a chronology of four distinct parts: torture, punishment, discipline, and prison. Within these there are five general themes: normalization of deviance, training of the body (to comply), Bentham’s panopticon, discipline and democracy, and the carceral system (Bentham, 1843).

His history commences with the recitation of a ritual torture and execution in the public square. In this, he documents how the use of public torture was regulated and organized around the metaphorical body of the sovereign. Contained within a set of codified doctrines and ceremonies, torture was justified through the sovereign’s position as the arbiter of knowledge and power and through the need for a public display to ensure the compliance of the populace. Over time, as sensibilities evolved with shifting values and attitudes, the political institutions that organized the collective community also changed. Foucault documents how the concept of crime became less an affront to the body of the King and more an affront to the security of the community. In post-revolutionary France, professionalized classes emerged and a more rational system of justice was demanded. In this new paradigm, the arbitrary power of the sovereign was limited as a rational criminal code was developed and applied. In this re-imagined system
of offences and punishments, the custodial imperative (incarceration) became the modus operandi.

Foucault observed the mechanisms and predispositions of the prison as it evolved and grew as an institution of the state. Using examples over time and across two continents, he notes trends that are connected by a common aspiration to normalize deviance. In this work, prisons seek to produce conformity rather than to extract the retribution that comes from torture. The prison requires an administration to assess and objectify the offender relative to their crime and apply sanctions that rely upon training to produce remorse. Ironically, the new system creates a language and culture that is disconnected from that of the offenders it was designed to treat. The documented surveillance of prisoners and their everyday activities is central to the process of extracting compliance. This documentation itself becomes a form of domination and oppression and a tool of power (O’Reilly-Shaughnessy, 2001). In its own way, the new system can be seen as more retributive than is torture in the public square, as the effect goes beyond physical pain to attack the soul of the individual.

Foucault’s assessment is sweeping. He notes the intent of the prison routine is to train the body (to comply) in order to produce “practiced and ‘docile’ bodies” (Foucault, 1977, p. 138). He also uses the words body and soul interchangeably. Disciplining the body is disciplining the soul. In each instance, he uses discipline as the term that binds the process (Scheurich & Mackenzie, 2005). Discipline is, above all, a “political anatomy of detail” (Foucault, 1977, p. 139), creating a culture of self-surveillance in which individuals act as if they are being constantly observed. This results in constant, uninterrupted self-supervision that “reverses the course of the energy, the power that
might result from it, and turns it into a relation of strict subjection” (Foucault, 1977, p. 138). What is left is a profoundly diminished and subordinated human being.

Foucault’s work goes further by exploring the architecture of uninterrupted supervision: Bentham’s panopticon. Versions of Bentham’s architectural design—which required a central hall with uninterrupted sightlines down cellblocks arranged like the spokes of a wheel—were produced around the western world. The panopticon ensured compliance yet required very few staff to control the movement and behaviour of a great many inmates. Thus, it induced conformity over what had come before—the retributive humiliation of torture in the public square. Foucault describes the sinister power prompted by its design: “The perfection of power should tend to render its actual exercise unnecessary. . . . This architectural apparatus should be a machine for creating and sustaining a power relation independent of the person who exercises it; in short . . . the inmates should be caught up in a power situation of which they are themselves the bearers” (Foucault, 1977, p. 201). In this way, the prison architecture becomes a tool in the effort to normalize deviance and train the body as compliance is extracted. This use of architecture is employed today at all of Canada’s 54 federal prisons.

Having explained the events that contributed to the process by which prisons were envisioned and built, Foucault turns his attention to the effect of the prison. He posits that “the development and generalization of disciplinary mechanisms constituted the other, dark side of these processes” (Foucault, 1977, p. 222). In this way, panopticism constituted a technique of universal coercion (Foucault, 1977). In this observation there is also a genealogical argument: As discipline takes hold and defines processes, the prison is predisposed to create systemic delinquency; that is, it promotes recidivism both in the
prison and in the community. Prisons were created as disciplinary institutions whose purpose was to directly apply confinement and deprivation to the soul and body: In the prison, individuals could not help but to be transformed. The goal was to provide docile, compliant, law-abiding individuals. Ironically, the effect of the transformation is the creation of an individualized criminal class and of the need for a professional class of persons to study, administer, and supervise them.

The prison cannot fail to produce delinquents. It does so by the very existence that it imposes on its inmates: whether they are isolated in cells or whether they are given useless work, for which they will find no employment, it is, in any case, not to think of man in society; it is to create an unnatural, useless and dangerous existence . . . the prison also produces delinquents . . . it is supposed to apply the law, and to teach respect for it; but all its functioning operates in the form of an abuse of power.

(Foucault, 1977, p. 266)

As the genealogy unfolds, Foucault creates a term consolidating the genealogy into a self-fulfilling prophecy, which he labels the *carceral system*. To arrive at this conclusion, he documents the failure of the prison in penological terms and its success in political terms. The prison, as an institution of the state, does not reduce crime in the long term. Moreover, it clearly maintains an ongoing capacity to produce recidivists. It persists for two fundamental reasons:

- It is deeply rooted in the wider disciplinary processes of the dominant culture (Foucault, 1977).
The creation of delinquency is useful as a strategy of political domination, because it enables politicians to use crime to enhance fear and to guarantee the authority and powers of the police (Foucault, 1977).

In so doing, the prison contributes to the creation of useful political mythologies including the myth of dangerousness that contributes to a stereotype of delinquency with which the electorate can identify. The prison does not control the criminal so much as it controls elements of a discontented working class by creating the criminal. For those outside the criminal class, the need to keep the community safe in the short run, by maintaining the prison, outweighs community-based methods that would eliminate its need to exist in the long run. For politicians compelled to run for office, long-run solutions are frequently beyond the scope of the election cycle. This is the unspoken rationale that supports the persistence of the prison. It serves as an instrument of the state in which punishment is understood as a political tactic situated within the general field of power relations.

This understanding and continuum are what Foucault identifies as the carceral. According to Foucault, the carceral continuum covers the whole social body: its principle task is to identify deviance, anomalies, and departures from the relevant norm. It applies a disciplined framework of surveillance to track small irregularities and significant crimes; in this endeavour it becomes its own recidivist, self-fulfilling prophecy. “The carceral system combines in a single figure discourses and architectures, coercive regulations and scientific propositions, real social effects and invincible utopias, programmes for correcting delinquents and mechanisms that reinforce delinquency” (Foucault, 1977, p. 271).
Foucault’s critics\(^3\) are both strident and passionate and raise important concerns:

- *Discipline and Punish* does not adhere to the conventional understandings of what makes good history.

- Foucault is selective in his approach; he blurs timelines and employs terms established in other academic disciplines for his own purposes.

- Changes to the laws of evidence—such as the abandonment of torture and the erosion (precipitated by shifts in religious practices) of the entire system of confession in which torture was grounded—are not given sufficient credit. These issues he either glosses over or disregards in his arguments.

- In his work, Foucault largely ignores the role of reformers. Writers such as David Rothman (1980) and Michael Ignatieff (1978, 1982) have placed reformers as the catalyst in changing the regimes and routines of the prison.

- Arguments are not based in evidence. This is the most significant criticism of Foucault in historical terms.

From the context of *Discipline and Punish* as a history, the criticisms have merit. Yet despite the criticism, Foucault remains a pivotal and necessary source in any prison discourse; he is as relevant today as he was 40 years ago.


In the Canadian context, the carceral methodology identified by Foucault has remained constant. I acknowledge that his work is neither settler colonial in the North American context nor Indigenous in any context. However, the work is both noteworthy and essential to this study because he creates a sequential timeline from which to understand how punishment left the public square and how carceral prisons became the standard dominant-culture approach. Further, he provides a timeline and connection for the Quaker construction of Eastern State Penitentiary in Philadelphia and the re-engineered Canadian hybrid construction of Kingston Penitentiary. Each employed the application of segregation and isolation; their capacity to erode and diminish the human spirit remains the same as ever. Today, the prison is still engineered on many of the architectural principles delineated in Bentham’s panopticon: maximum-security inmates are still counted nine times a day, offenders are still arbitrarily strip-searched in an effort to preserve dynamic security, and the carceral prison still has the same dehumanizing effect. Foucault’s narrative approach may not rise to meet the constructed requirements of a particular academic discipline but that does not diminish his capacity to explain the current dominant-culture prison: His writing has unearthed the general, and often unspoken, operating assumptions that typify, habituate, and legitimize contemporary Canadian federal institutions.

Foucault’s work survives and thrives because he is the catalyst for a growing community of interdisciplinary voices that serve to harness his analysis in interesting ways. Among the most eloquent of the interdisciplinary voices is that of the next theorist in the dominant-culture review, David Garland. He assesses Foucault’s flaws and the achievement that *Discipline and Punish* represents in a single passage:
The ultimate question that needs to be faced, whether in penal policy or in social policy, are not about power or no power but instead about the precise way in which power should be exercised and the precise objectives to be pursued. Foucault carefully avoids such questions, seeing them as a matter for policy makers and not for intellectuals. Policy makers and politicians have to choose between evils, but, for Foucault, the intellectual has a different role—that of the critic who must refuse to endorse any form of power in order to be free to point to the dangers inherent in any and every power mechanism. “Critique doesn’t have to be the premise of a deduction which concludes: this is then what needs to be done. I should be an instrument for those who fight, those who resist and refuse what is” (Foucault, 1981, p. 13). (quoted in Garland, 1990, p. 5)

It is this critical posture, deliberately adopted, which gives *Discipline and Punish* its manifest political weakness but also its profoundly radical force (Garland, 1986, p. 880).

**Garland: Seeding the earth.** If Foucault’s turning of the soil exposed the carceral to the light, then Garland begins his work with analysis of the operation and failure of the prison as a potential tool of rehabilitation. The focus of Garland’s contribution is his 2001 book *The Culture of Control*. It is the third book in a trilogy that began in 1985 with publication of *Punishment and Welfare* and was followed by *Punishment and Modern Society: A Study in Social Theory* in 1990. In this context, Garland creates a space and model to plant seeds. His approach and work creates rigorous genealogies that explore, in depth and detail, the consequence of delinquency as a visible
outcome of the institutionalized prison. In this effort, he provides a more focused voice to those who are held under warrant. Moreover, his analysis and documentation support Foucault’s carceral assertion that, in the pursuit of unreasoned compliance, prison systems control knowledge and power in arbitrary ways that subordinate the body.

In the context of this study, Garland is understood as a foundational scholar in a process that makes sense of the trends of the prison over time from a macro perspective. He differs from Foucault in that Foucault only focused on the academy, while Garland’s scholarship has one foot firmly in the academy and the other in the operational world of the interdisciplinary social contract. “The purpose of theory is the development of knowledge and understanding of the world. And to serve that purpose, it must be put to work” (Garland, 2007, p. 165). He does not facilitate on behalf of any particular population contained within the prison, although the trends and mechanisms his research identifies confirm that the poor are more likely to be held under warrant and much more likely to recidivate.

Garland’s work conveys a certain diplomacy that Foucault’s lacks. His approach to theory is to find a voice that is more approachable within the academy and, by extension, more accessible to the lay community. The application of his theoretical lenses follows a forthright and predictable sequence from structuralist to functionalist to interpretivist. His questions are fundamentally concerned with social change, social order, and social subordination. He explores these questions in noteworthy historical moments that punctuate the day-to-day operation of dominant-culture justice. *The Culture of Control* becomes a focal point of this study because it effectively describes the
demographic trends of federal incarceration since the *Corrections and Conditional Release Act* became the legal imperative that drives operations of the CSC.

Garland’s work positions the reactionary habits that define contemporary prison reality, moments where the operational decisions of the prison suspend disbelief and eclipse reason. Writing almost a decade ago but equally relevant today Garland states,

> Today, crime and punishment are constantly in the news. Organizational decisions and policy-making are typically reactive and political, caught up in the exigencies of electoral competition. . . . The emergence of a new surface of policies and practices which was so much at odds with the orthodoxies of twentieth-century penal policy suggested the operation of new social forces and new group relations quite different from those that previously operated . . . [T]he various developments that had occurred were not reducible to a singular logic or process. There was a “new penology” of risk control, but also an old penology of vengeance and vindication. (Garland, 2004 p. 169)

*The Culture of Control* widens the analytical lens of previous research to include the formal and informal practices of crime prevention, crime avoidance, and crime control. In the context of this study, Garland’s (2001) most significant contribution is to identify structural shifts that include the decline of penal-welfarism (see below) and the rise of security management as a tool of law enforcement. His genealogy focuses on policies and processes applied in the field, rather than those proposed but not applied or discussed as policy is developed and deliberated. As he says, “The current configuration of
crime control and criminal justice is ‘the outcome’ . . . of political and cultural and policy choices—choices that could have been different and that can still be rethought and reversed (p. 201).

Garland’s scholarship advances theories that are particularly important to this study, including the criminology of penal-welfarism, the criminology of everyday life, and the criminology of the other. The criminology of penal-welfarism views crime as a deviation from normal and civilized behaviour. As such, criminality can be explained by individual pathology or social dysfunction. With this framing comes a corresponding, systemic responsibility to provide structures and opportunities for the individual to participate in rehabilitation. In this model, programming is built on generalized and paternal understandings of what the inmate needs to become prosocial. At one end of the spectrum, these programs could take the form of an industries program in which inmates sew mailbags on an assembly line and extend to the creation of school programs in which inmates become students and are taught to read. The common theme is the paternal, as it’s not necessary that participants have an internalized understanding of why the program will benefit them. Garland’s work provides a thorough historical context to the institutional arrangements that characterized the prison from the 1890s into the contemporary period.

In Canada, a strong argument can be made that passage of the CCRA and the 1999 Supreme Court of Canada decision in R. v. Gladue aligns with the criminology of penal-welfarism in which the “individual pathology” of postcolonial Indigenous reality compelled passage of Section 718(e) of the Canadian Criminal Code. This Supreme Court decision required judges to review and consider the circumstances by which
Offenders of Aboriginal descent came before the court. This will be discussed in greater length in Chapters 4 and 5.

Garland advances a theory of the criminology of everyday life, which offers a view of criminal activity amalgamated from theories that include rational choice, routine activity, crime as opportunity, and situational crime prevention. The driving assumption in this approach is that crime requires no special motivation, pathology, or abnormality. This approach posits that criminal activity occurs when prosocial impulse controls are absent and targets of opportunity are available. Garland’s criminology of everyday life explains a cycle of Canadian policy and correctional program development, such as living-skills and anger-management programs. In this process, individualized correctional plans defined the development, delivery, and participation standards for each person. These included the application of participant contracts developed with reference to the criminogenic factors (Christie, 1993) that contributed to the sentence for which the individual was incarcerated. The criminology of everyday life mirrors the period beginning with the *Corrections and Conditional Release Act* and ending with the Harper government’s 2007 publication of *A Roadmap to Strengthening Public Safety*.

Garland’s theory of the criminology of everyday life is reflected in the 2002 Supreme Court of Canada decision, *R. v. Sauvé*. In that case, the court tested the relationship of criminogenic controls to citizenship and, by extension, to achieving a proper understanding of the role of retribution and deterrence in the application of the sentence. The case centred on offenders’ right of to vote, which is a basic tenet of citizenship. The court concluded that suspending the right to vote of those held under federal warrant was unconstitutional. It was the second time the court ruled on the matter,
the first time was in 1991 and the crown appealed the ruling. The ruling’s most significant contribution, and an example of the criminology of everyday life in action, is that it sets out an evidence-based foundation from which to define and understand the concept of a criminogenic risk factor. The concept of a criminogenic risk factor, with all of its subjective “supply-side criminology” implications, has particular consequence for offenders of Aboriginal descent (Garland, 2001; Monchalin, 2016; Ross, 2006).

Finally, Garland advances a theory of the criminology of the other, which typifies criminals as outcasts to be feared and demonized. In this process, preventative action—including expanding provisions such as mandatory minimum sentencing and, in the United States, imposition of the death penalty—are driven by fear and resentment and result in a broader range of state punishments preoccupied with getting “tough on crime.” Garland’s criminology of the other mirrors the period between 2004 and 2013, which culminated in the removal of the principle of least restriction from the Corrections and Conditional Release Act (see Chapter 4).

In 2007 the Government of Canada, led by Conservative Prime Minister Stephen Harper, published A Roadmap to Strengthening Public Safety, which featured tough-on-crime rhetoric that mirrored Garland’s criminology of the other and typified criminals as outcasts to be feared and demonized. In the name of public safety, the report called for changes to the CCRA that would make parole more difficult to achieve and ensure those held under federal warrant would spend more time in prison. It went on to call for the criminalization and mandatory minimum sentences for a number of non-violent offences. This required the court to impose a federal warrant (a prison sentence for a period of
more than 730 days) at the time of sentencing. It stands as a clear example of crime control as industry (Christie, 1993) and personifies Garland’s criminology of the other.

In each of these criminologies, Garland identifies that the cycles that regulate the assumptions, attitudes, and values driving the operation of the prison are becoming shorter. In his identification of the criminology of the other, he goes onto identify a political agenda that has colonizing implications.

Garland’s critics are less strident than Foucault’s. He is criticized on methodological grounds that his scholarship does not include sufficient archival study to give it depth and scope. John Braithwaite, in What’s Wrong With the Sociology of Punishment? (2003a) puts it as follows:

What we are presented with is a genealogy of punishment, or a genealogy of crime control, not a genealogy of the punishment of the poor that self-consciously and transparently opts for the methodological prescription of selecting only archival inputs about the poor. The methodological error is merely one of failing to specify the limits of the project; it is a self-defeating error in the project’s own terms. What we get is a genealogy of punishment where the whole branch of the family tree that nourishes the practices of the present has been sawn off. (p. 7)

What concerns Braithwaite is Garland’s silence on the implications of the privatization of prisons and the creation of new regulatory institutions. Braithwaite notes that Osborne and Gaebler (1992) describe this as a prescription for government to steer rather than row, which by extension creates a paradox of a process in which the state itself becomes both an object and a subject of regulation (Braithwaite, 2003a).
Garland’s most significant contribution to this study is his identification of trends regarding how a dominant-culture government frames the relationships of offenders and prisons. This brings the theoretical context to Peter Berger and Thomas Luckmann.

**Berger and Luckmann: Harvesting the crop.** Berger and Luckmann are sociologists whose collaboration has been extensively cited for over 40 years. Their work serves as a benchmark in the creation of an empirically driven sociology of knowledge. Their principle contribution to this research endeavour is their 1966 work entitled *The Social Construction of Reality: A Treatise in the Sociology of Knowledge.* They have created a process by which the retributive prisons’ dogged pursuit of compliance can be triangulated to Foucault’s understanding of carceral power and Garland’s criminology of the other; yet Berger and Luckmann are the less abstract than either of these dominant-culture. To bring a merciful end to the agricultural metaphor, they drive the combine harvester in Garland’s wheat field.

As epistemologist T. S. Eberle (1992) notes, “The logic of the *Social Construction* [is] simple: Society must be grasped in its duality as an objective and a subjective reality” (p. 493). In their construction of society as having both objective and subjective realities, Berger and Luckmann address the challenges of critics who point out inconsistencies in the theoretical work of both Foucault and Garland. In so doing, they arrive at a summative premise and a pivotal question: “Traditionally the sociology of knowledge has been preoccupied with the history of ideas only. Now it must concern itself with everything that passes for ‘knowledge’ in society” (Berger & Luckmann, 1967, p. 26). They ask, “Is it possible that subjective meanings become objective facticities?” (Berger & Luckmann, 1967, p. 30). In these two statements, they provide the catalyst to a
process from which to navigate “how social phenomena has to be explicated before we can attend to the what and the why” (Eberle, 1992, p. 494).

In the context of the prison setting, Berger and Luckmann’s analysis provides a four-step sequence by which the dominant-culture carceral reality of the prison is generally constructed and understood: typification, habitualization, institutionalization, and legitimization. The four-step process identified in *The Social Construction of Reality* unfolds each day at the institutional morning meeting. The morning meeting anticipates and acknowledges the challenges of operating a retributive facility in the aftermath of an adversarial criminal-court process. It presents itself as a rational, predictable, and well-ordered vehicle in pursuit of a humane containment process; it seeks to balance constitutional imperatives, legislative measures, and policy directives that are very often at odds with each other. This presumes that offenders held under federal warrant agree with the judges’ comments contained in their sentencing documents and are otherwise inspired to seek self-awareness for its own sake. In this it is presumed that they will apply the golden rule (to treat others as you would most like to be treated) to all of their post-conviction relationships. It also presumes that the professionals employed to administer the federal warrant are uniformly self-aware and possess all of the predispositions necessary to side-step confrontations among their peer group and beyond to the offender population where subjective meanings are pounded into “objective facticities” (Berger & Luckmann, 1967, p. 30).

In this embodiment of assumptions, values, and attitudes, Berger and Luckmann’s four-step sequence of typification, habitualization, institutionalization, and legitimization is practiced as an internalized, institutional, colonizing ritual. Each morning meeting
begins with a ritual typification: Each and every offender is assumed to be irrational and unpredictable. To be safe, each and every offender must be presumed to be violent. The meeting follows a standardized agenda that habitualizes the typification of offenders and verifies that they are entities existing outside the reality of the dominant culture. As the meeting progresses, the policy implications of the morning reports are assessed, the overtime budget is balanced, and the institutionalization step is reaffirmed. The final step in the process is legitimization; this step is confirmed in the final moments of every morning meeting with reminders to be vigilant, as personal safety flows from strong, dynamic security. Throughout the day, as the process unfolds over and over again, the perpetual state of anticipatory crisis in which the prison functions is underscored. It is a crisis that is socially constructed each and every morning.

Critics of Berger and Luckmann, such as Paul Waltzlawick (1984), concentrate their concerns around a debate between advocates of constructivism, social constructionism, and the empirical sociology of knowledge with which Berger and Luckmann associate themselves. In this, they worked in the tradition of Weber (1978) whose research process applied a scientific orientation where the aim was to “describe and explain social actions and their consequences as they are, but not to proclaim any political stance on how things should be” (Eberle, 1992, p. 496).

In the context of this study, the most noteworthy critical debate is found in the dialogue between advocates of social constructionism and advocates of subjective constructivism. Berger and Luckmann are social constructionists; their method does not aim to impose a subjective or individualized value judgment on the outcome of a socially
constructed process. Suffice to say, the method Berger and Luckmann create is useful in verifying Foucault’s carceral system and Garland’s criminology of the other.

**Summary of dominant-culture theorists.** Of the dominant culture writers who play prominent roles in the theoretical context of this study, Foucault and Garland’s research provides a macro-view of the Western prison. Their work is foundational to understanding the sequential development and operational realities of the Western dominant-culture prison. In this work, they do not speak to the disproportionate representation of any particular community or group held within the prison or to the larger societal colonial process that may have contributed to the disproportionate representation a particular community or group. That is the work of another study; in this study, their contribution is to identify dominant-culture predispositions and the trends that flow from those predispositions. In support of this process, Berger and Luckmann provide insight into the dominant-culture ritual protocols that constitute the social construction of prison reality.

Dominant-culture understandings of the prison rely heavily on the binary, paternal, and adversarial assumptions embedded in the Genesis narrative. In this understanding, the incarcerated population of the prison is understood as a generalized class of people who have earned the disdain (direct and indirect) assigned to them by the courts, the warden and, by proxy, the prison staff. While Marx and Durkheim create awareness on the why and how of the prison, it is Foucault who brings the two understandings into specific contemporary relief. His identification of the carceral as a unique and inward-looking organism applies knowledge and power in ways that institutionalize and recycle the incarcerated population. In this understanding, the prison
actively seeks retribution in the belief that, in doing so, it will seed remorse and
deterrence. Ideally, remorse and deterrence are variables believed to reduce the number
of delinquents who require incarceration. Foucault’s analysis confirms that remorse and
deterrence are essential ingredients in growing a prison.

Garland builds on Foucault’s carceral understanding. His chronology of
criminalities, particularly the criminality of the other, contributes to an ideological
understanding. In the criminality of the other, evidence-based approaches to reducing
antisocial behaviours are rejected, as retribution is rationalized as a more effective means
to achieve and maintain public safety. Garland’s criminality of the other is understood as
a strategic governmental objective that uses aspects of carceral power and the selective
transmission of knowledge to inspire fear. The social construction of fear reinforces faith
in remorse and deterrence as sacred concepts. In so doing, elements of theories advanced
by others (including luminaries such as Marx and Durkheim) are morphed into an
emerging series of typifications (Berger & Luckmann, 1967) that evolve and change over
time. As they become ritualized and institutionalized, they present different faces to the
public while preserving the core beliefs that apply retribution to seed remorse and
deterrence. In this clash of beliefs, values, and attitudes, Berger and Luckmann’s four-
step sequence of typification, habitualization, institutionalization, and legitimization is
practiced as an internalized carceral ritual.

The dominant-culture theorists grapple with and explain the prison in macro
terms. From the warden to the correctional/security staff, there is a rationalizing
patrilineal sequence that worships law, order, and good government within the bounds of
a socially constructed carceral reality. In this belief, justice does not seek to discriminate
against a particular community of individuals. Rather, it functions in the third person and
typifies a space where it is believed that only delinquents are targeted for incarceration. It
is a relational sequence that seeks to preserve dominant-culture order; if the equality of
particular individuals is disturbed in the process, it is understood to be exceptional and
incidental. It relies on punishment and deterrence to accomplish its operational goals. For
dominant-culture theorists, the impact of systemic discrimination or disproportionate
representation to particular communities of people is understood as a collateral
consequence in a larger process (Arbour, 1996; Monchalin, 2016).

Decolonization Theorists

Decolonization theorists provide a lens that refines the focus of dominant-culture
theorists. Specifically, they identify how various groups are disenfranchised and
diminished in the historical and contemporary application of the Doctrine of Terra
Nullius (Dickason, 2002). They thus provide insight and understanding as to how the
disproportionate representation of offenders of Aboriginal descent is maintained and
perpetuated through colonizing assumptions and rituals. In the context of this study, two
decolonization writers stand out: Edward Said and Linda Tuhiwai Smith.

Each of these theorists begins their work with an embedded knowledge and
understanding of the doctrine of terra nullius. Terra nullius literally translates to
“uninhabited land” although it may also be understood as “empty land.” Confirmed as a
papal bull by Pope Urban II in the year 1095, its aim was to recruit converts to the
Catholic Church. Its effect was far more insidious because it typified, habitualized,
institutionalized, and legitimized classes of people as being empty vessels who did not
require consideration as fully vested citizens under the law. In the southern United States,
its legacy was the Jim Crow laws; in late twentieth century Canada, its legacy is contained in the disproportionate representation of people of Aboriginal descent held under warrant.

In it’s historical, colonial application in North America, the doctrine of terra nullius empowered European explorers and settlers to colonize areas without concern to the people or activities that may have gone before. Dickason (2002) elaborates:

Its gist was that since Amer-indians led a mobile life without settled abode “ranging” the land “like beasts in the woods,” they could not be classed as inhabitants according to European law. Further . . . Europeans believed Christian Rights prevailed over those of non-Christians. (p. 153)

In this way Said and Smith internalize Foucault and Garland, as they employ techniques pioneered by Berger and Luckmann to extend the generalized trends and predispositions identified by dominant-culture theorists to the colonized groups affected by the trends.

Edward Said. Said built his research on the work of theorists such as Hegel (1821), Sartre (1943), and de Beauvoir (1949) to document the concept and implication of the “Other.” In Orientalism (1978), he documents how western European culture applied a systematic paternal and colonial process to

- homogenize, to make us all the same;
- feminize, to make women somehow less than men; and
- essentialize, to generalize/reduce other cultures in ways that benefit the dominant culture.
Said’s work is a pivotal text in the field of postcolonial cultural studies. The central focus of Said’s work is not North America or for that matter Indigenous studies or even prisons. The focus of Said’s work is the peoples of Asia, North Africa, India, and the Middle East and their relationship to western Europe, particularly England and France. That said, the work still has substantial application to the role, place, and function of Elders working with offenders of Aboriginal descent. Using tools provided by people like Foucault, Garland, and Berger and Luckmann, Said creates a method that contributes significantly to the development of many practitioners in Indigenous studies.

The thrust of Said’s scholarship is that Orientalism is a method by which practical and cultural discrimination was applied by Europeans to non-European societies over time to establish and maintain European domination. In this endeavour, the social construction is warped and twisted to institutionalize and legitimize a particular western European, patrilineal, colonial value system. Said’s work documents and confirms a value system and method that tells one version of history and disregards all others, what historian James Blaut (1993) calls “ethnocentric diffusionism.”

In a colonial telling of history, the “Oriental”— anybody understood to be of non-European stock—is understood to be irrational, weak, and feminized: They are seen as the “Other.” In his chronology, Said concentrates his efforts on the English and French experience in the Middle East. This contributes to a parallel understanding for how people of Indigenous descent in North America can come to fill a federal prison; it is a direct product of centuries of applied Orientalism.

Said’s work changed the postcolonial understanding of the term Orientalism and for this he received a good deal of criticism. An excellent first-person, three-party debate
on Said’s work played out in the New York Review of Books between Oleg Grabar, Bernard Lewis, and Edward Said. The catalyst for the dialogue was an earlier article in the New York Review of Books by Bernard Lewis, an Oriental-studies historian and expert on the post–World War II relationship of Islam to the West. Entitled The Question of Orientalism, Lewis’s article was highly critical of Said’s book Orientalism.

The debate illustrates a larger dialogue within the academy around the effects of colonization. In this debate, Said makes an interdisciplinary argument that the variables that result in the exotic objectification of particular communities must be recognized and confirmed if they are to end, even though this may irrevocably change disciplines, such as Orientalism, within the academy. Said’s decolonizing work reinforces the existence of Foucault’s carceral as he moves the reader to a new understanding of the impact of colonization on the colonized. From a methodological perspective, it is an understanding that Bernard Lewis (1982) finds profoundly discomforting.

Mr. Said insists on politicizing the whole question and assigning a political significance not only to his own statements but also to those of any who have the temerity to question his facts and methods. . . .

Perhaps the most remarkable thing is Said’s answer to my charge that he falsified and rearranged the history of the Middle East to bear the structure of the hypothesis he wished to impose on it. On this question—of central importance—his only reply is to accuse me of misrepresenting the chronology of his treatment of Orientalism, the implication being that my error would equal and, so to speak, cancel out his own. . . .
The question under discussion is of profound significance and is part of the larger problem . . . of the perception of “the Other.” This is not limited to contrasting how one society perceives another but with how that other society perceives itself. It is also concerned the mutual perceptions of the two. . . . The tragedy of Mr. Said’s Orientalism is that it takes a genuine problem of real importance, and reduces it to the level of political polemic. (p. 7)

Said (1982) responds to the criticism in activist terms:

Lewis wishes to reduce Islamic Orientalism to the status of an innocent and enthusiastic department of scholarship . . . Lewis’s tactic is to blatantly suppress a significant amount of history. . . There are strong affiliations between Orientalism and, for example, the literary imagination as well as imperial consciousness. . . .

The Arabs and Islamists have responded with the aggrieved outrage that is their substitute for self-reflection . . . as if criticism itself were an impermissible violation of their sacrosanct academic preserve . . . it is rank hypocrisy to suppress the cultural, political, ideological, and institutional contexts in which people write think and talk about the Orient . . . it is extremely important to understand the fact that the reason why Orientalism is opposed by so many thoughtful Arabs and Muslims is that its modern discourse is correctly perceived as a discourse of power. (pp. 1–2)
The decolonization dialogue between Said and Lewis is indeed a discourse about power. The dialogue in this structuralist, adversarial exchange positions the role and function of new ideas that may threaten the existence of established Western academic disciplines. Simultaneously, Said and Lewis are debating whose voices should be permitted to contribute to the dominant-culture academy. Said’s identification of Other eclipses a label; it confirms a systemic inequity that has emerged over time.

Said’s writing contains an activist agenda that extends beyond the traditional structuralist limits of a binary oppositional dialogue. To Lewis, a dominant-culture historian of some note, Said has exceeded his brief. Said’s writing is positioned to challenge and incite, provoking a response that confirms the typifications and the rationalizations required to justify an inequity (Berger & Luckmann, 1967). Woven into his contribution, Said becomes a catalyst for decolonizing change.

Ultimately, Said endures much of the same interdisciplinary criticism levelled at Foucault; namely that he is a selective historian. The difference is perhaps that Said is anchored in an outcome of community-based self-awareness beyond the traditional reach of the academy. Said’s redefinition of Orientalism and recognition of the Other as the product of a dominant-culture social construct (colonialism) eliminate the need to discuss whether decolonization is necessary; he makes decolonization an imperative. In the context of this study, this is Said’s noteworthy achievement; he uses a dominant-culture approach to a dialogue to provide the reader a closer view than the dominant-culture theorists could otherwise provide. In bringing the reader closer to the ground, he makes it impossible to imagine a dominant-culture institution (of any description) that does not
practice some form of systemic discrimination. He also puts a face on the kinds of people who are most likely to find themselves the victims of systemic racism: anybody who is not male; anybody who is not white.

**Linda Tuhiwai Smith.** The second decolonization theorist whose work is applied within the study’s theoretical context is Linda Tuhiwai Smith, an Aboriginal woman of Maori descent who affiliates to the Ngata Awa and Ngati Porou iwi people of New Zealand. Her work has profoundly changed the dialogue and work of Indigenous studies around the world. In part, this may be because she takes a more consensual and Indigenous approach to the confirmation of knowledge than does Said. In this process, her understanding of criticism veers from the form of the adversarial debate that occurs between Lewis and Said. Smith’s work is sequential; it is vested in the processes and outcomes involved in building Indigenous knowledge. It is a seminal text that enhances researchers and academics’ understanding of how colonized research has been perpetuated; it raises awareness of the ramifications of colonizing practices and functions as a primer for how decolonizing research can be done.

As in the work of Edward Said, Linda Tuhiwai Smith’s *Decolonizing Methodologies Research and Indigenous Peoples* (1999) is not focused on the specific lot of Indigenous people in North America or those held under federal warrant in Canada. Smith moves beyond Said’s analysis of the Middle East and understandings of Orientalism to put an Indigenous face on colonization in ways that Said could not. In this process, *Decolonizing Methodologies* understanding of colonialism parallels the impact of the prison on the entire community of people connected to it: offenders, staff, and family and friends. As such, she is essential to this research.
Smith’s decolonizing imperative is to persuade each of us that it is important that we assume a duty of care for all the others in our community. Her focus is to explain what happened and why it happened and facilitate a dialogue to identify what we all need to do to ensure it doesn’t happen again. In her process, a law does not have to be punitive or retributive to be effective: It can become a guiding principle that is owned by a community.

Early in *Decolonizing Methodologies*, Linda Tuhiwai Smith asks a series of questions that are about research but ultimately speak to the discourse of a decolonized justice system that is capable of putting recognition and responsibility ahead of retribution. She rejects the notion that we live in a postcolonial period, insisting that we still live in an era of colonization. In this, she poses fundamental questions for all researchers: Whose research is it? Whose interests does it serve? Who benefits? Is her spirit clear? Does he have a good heart? Can they fix our generator? (Smith, 1999). Her questions are not adversarial; they acknowledge that all human activity must be in the world and of the world. They also position the assumptions, values, and attitudes of all of the affected community when a person is held under warrant.

Linda Tuhiwai Smith begins with a historical examination of colonization with reference to the treatment of Indigenous peoples, lands, and cultures over time. In this overview, she provides a glossary of essential terms that explain what happened. She follows with an economic explanation of how colonization comes to be. This explanation includes an appraisal of colonization’s effects on both the colonized and the colonizer. Finally, Smith provides the reader with a relational ontology: 25 Indigenous projects that
effectively communicate what needs to be done to engage in a decolonizing research agenda.

Smith does not write directly about prisons or criminology; the relevance of her work to the prison is contained in the triangulation of the legislated mandate of the CSC, the disproportionate representation of Indigenous people held under warrant, and Smith’s understanding of decolonization. Her work in decolonization theory confirms that all of the parties—the colonized (the offenders held under warrant) and the colonizing (the staff of the institution)—are negatively affected in the colonization process. When positioned in relation to the legislated mandate contained in the CCRA, it would seem reasonable to expect that the application of the CCRA’s principle of least restriction would move the CSC away from its carceral heritage, thereby reducing the disproportionate effect of Indigenous incarceration. In fact, the population of Indigenous peoples held under warrant in Canada’s federal institutions is growing exponentially. In this reality, the concept and challenge of decolonization is brought into sharp relief.

Smith (1999) begins her work by establishing two essential terms of reference: *imperialism* and *colonialism*. Her understanding of these terms underscores the multi-generational impact of a colonizing process on a community. Imperialism is “understood as the subjugation of ‘others’” (p. 21). Smith cites Mackenzie (1990) in further defining imperialism as

more than a set of economic, political and military phenomena. It is also a complex ideology which has widespread cultural, intellectual expressions. The reach of imperialism into “our heads” challenges those who belong to colonized communities to understand how this occurred, partly because
we perceive a need to decolonize our minds, to recover ourselves, to claim a space in which to develop a sense of authentic humanity” (MacKenzie, quoted in Smith, 1999, p. 22)

Smith goes on to define colonialism and its relation to imperialism:
Imperialism and colonialism are interconnected with colonialism being but one expression of imperialism. . . .

Colonialism was, in part, an image of imperialism, a particular realization of the imperial imagination.

Colonialism became imperialism’s outpost, the fort and the port of imperial outreach. Whilst colonies may have started as a means to secure ports, access raw materials and efficient transfer of commodities from point of origin to the imperial centre . . . colonialism . . . was also, in part, an image of the future nation it would become. (Smith, 1999, pp. 21–23)

As a form of relational analysis, Smith’s work is linked to the work of other theorists, including Paulo Freire’s position that the oppressor can be housed within the body of the oppressed (Freire, 1970) and Shawn Wilson’s pedagogy of place (Wilson, 2008). Each contributes to an argument that imperialism was integral to Europe’s expansion. That expansion was required to absorb both the oversupply of European goods being produced in Europe and the need of European industrialists to shift their attention to new markets where the costs of production would be lower and their ability to finance their investments more secure. While colonialism facilitated this expansion (by maintaining Europe at the centre of control), it also created a subjugating tide that enveloped everyone connected to the process (Freire, 1970). Smith extends the argument,
concluding that to achieve their goals Europeans were compelled to subjugate Indigenous populations as functionaries within an economic imperative (Smith, 1999). Put another way, she establishes imperialism as a global version of Foucault’s (1977) carceral where, “replacing the adversary of the sovereign, the social enemy was turned into a deviant, who brought with him the multiple danger of disorder, crime and madness” (p. 300).

Smith (1999) expands on this, saying, “the British had learned from their previous encounters with indigenous peoples and had developed much more sophisticated ‘rules of practice’” (p. 22). These included legislated identities which regulated who was Indian and who was not, who was Metis, who had lost all blood status as an indigenous person, who had the correct fraction of blood quantum, who lived in the regulated spaces of reserves and communities, were all worked out arbitrarily (but systematically), to serve the interests of the colonizing society. (p. 22)

This understanding frames Linda Tuhiwai Smith’s principle contribution to understanding the impact of the carceral on the people who live within the confines of the prison. While Said identifies the existence of the Other, Smith (1999) moves beyond the identification of imperialism and colonialism, creating space for each and every participant in the process to exist. As she says, “It was not just indigenous populations who had to be subjugated. Europeans also needed to be kept under control, in service to the greater imperial enterprise” (p. 22).

Her reworking of our understandings of the impact of imperialism and colonialism is an important aspect of Indigenous cultural politics and forms the basis of an Indigenous language of critique that
demands that we have an analysis of how we were colonized, of what that
has meant in terms of our immediate past and what it means for our
present and future. . . . What is particularly significant in indigenous
discourses is that solutions are posed from a combination of the time
before, *colonized time*, and the time before that, *pre-colonized time*.
Decolonization encapsulates both sets of ideas. (Smith, 1999, p. 24)

It is this last quote, Smith crystalizes her contribution to this theoretical context.
The effect of her approach is to harness the contributions of other Indigenous theorists
including, at one extreme, Vine Deloria, (1969) who took a very ideological approach to
confronting the impacts of colonization on Indian people and, at the other, Taiaiake
(2009), who works to move the dialogue away from what is wrong with a particular
group and towards what needs to be done to acknowledge and remedy the effects of
systemic discrimination on Indigenous people.

In this theoretical context, Smith’s (1999) final contribution is to codify
decolonization in a relational ontology of 25 Indigenous projects. These are not projects
in the sense of an educational program structured within the limits of a classroom or a
health-care program offered within the parameters of a hospital. These are best
understood as a series of relational concepts that she brings together to create a necessary
framework to create decolonized self-awareness. Of particular relevance to the relational
structures that define the prison experience are sections entitled “Claiming,”
“Intervening,” “Reframing,” “Restoring,” and “Negotiating.” Each is “strategic in its
purpose and activities and relentless in its pursuit of social justice” (p. 142). In the
context of the prison, it is an approach that acknowledges the reality of both the convicted
felon and the warden, the offender and the parole officer, the inmate student and the correctional educator. Each pays a price for participating in the carceral cycle; each is embroiled in a process of colonization that can only be suspended through the acquisition of self-awareness.

Smith’s critical analysis positions the concepts of recognition and responsibility as essential ingredients in a decolonizing process. In an Indigenous context, recognition and responsibility are guided by matrilineal and consensual principles of discourse. In this understanding, colonization has a generational impact and the disproportionate representation of people of Aboriginal descent held under federal warrant can be seen in terms beyond those of a dominant-culture interpretation of power, knowledge, and compliance.

**Summary of decolonization theorists.** In the context of this study, Said’s noteworthy contribution is anchored in his redefinition of Orientalism and in recognition of the Other as the product of a dominant-culture social construct. Said’s writing is positioned to challenge and incite, provoking a response that confirms the typifications and the rationalizations that are required to justify an inequity (Berger & Luckmann, 1967). In this work, Said eliminates the need to discuss whether colonization is a subjugating force or if decolonization is necessary. He makes it impossible to imagine a dominant-culture institution (of any description) that does not practice some form of systemic discrimination. The remarkable achievement is that he writes in a way that honours the continued application of theoretical understandings of social contracts (Rawls, 1971) and of the criminality of the Other (Garland 1990, 2001). In this endeavour
he puts a face on the kinds of people who are most likely to find themselves the victim of systemic racism.

Linda Tuhiwai Smith benefits from and builds on the work of those who have broken trail in the academy, principally Foucault and Said. They establish the carceral and the Other as relational facts. In so doing, they establish subjugation, objectification and genocide as legacy outcomes of colonization. Smith uses this space to create a decolonizing methodology.

Put another way, if dominant-culture theorists can be understood as the traffic engineers who, from high in the sky, monitor the lights to keep traffic moving, then Said is the cop at the intersection following a multi-vehicle crash. As he supervises the scene he requires each passing driver to come to a full stop and fully absorb the crash-site on his terms. He focuses on the individuals who, because they were not wearing their seat belts, were thrown from the vehicles. With this complete, Said then directs the observer to the detour that he has selected for them. In this metaphor, Smith plays a very different function; she is the police officer who comes to local community-service groups as part of a public service campaign promoting the use of seat belts.

In her presentation, she seeks a positive message that includes facts while avoiding the use of frightening, catastrophic images or bewildering statistics. A good deal is spent listening to the others in the room in an effort to find responsibility and reciprocity. In the end, she is a facilitator in a consensual encounter that centres on the effect of not using seat belts on both the individual and, in equal measure, the extended community of family and friends affected by a crash.
In this way, Smith’s approach to the application of decolonization theory is something akin to applying a seat-belt law; she gently persuades the audience to wear their seat belts in the same way she positions her decolonizing methodology—as a sequenced, overlapping skill-set to be applied in a variety of situations.

Smith’s (1999) reworking of our understandings of the impact of imperialism and colonialism is an important aspect of multi-generational Indigenous cultural politics and forms the basis of an Indigenous language of critique that “demands that we have an analysis of how we were colonized, of what that has meant in terms of our immediate past and what it means for our present and future” (p. 24).

Smith’s approach is not adversarial; it positions the assumptions, values, and attitudes of all of the affected community when a person is held under warrant. Her methodology highlights the dichotomy that Elders working in healing programs grapple with everyday: Is compliance with generally understood, retributive, dominant-culture values and attitudes (on the basis of fear and deterrence) sufficient to meet the requirement for successful community reintegration? Or are individual internalized self-awareness and self-actualization essential requirements for successful community reintegration?

**Restorative-Justice Theorists**

Restorative justice is best understood as a movement that grew out of the dominant-culture justice system in North America and Western Europe after 1970. Restorative justice processes require a dialogue between the affected parties in a dispute to achieve agreement and/or consensual understanding (Huculak, 2005). In restorative processes, justice is achieved when the involved parties reach a shared understanding
about the offence, an understanding that incorporates shared norms and values. Apologies, bilateral compensation and forgiveness are employed to reach a heightened awareness of harm and of the need to accept responsibility for harm done. In restorative-justice systems, crime is understood as a violation of relationships between individual people and within communities (Zehr, 2002). Further, it is understood that violations create obligations involving victims, offenders, and by extension community members. Restorative-justice methodologies seek to resolve three questions: Who has been hurt? What are their needs? Whose obligations are these? (Zehr, 2002).

The restorative-justice lens in this study relies on the work of Nils Christie (1993, 2004) and Howard Zehr (1990, 2002) as part of a growing community of researchers such as David Cayley, and Mark Umbreit.

Journalist David Cayley, who wrote *The Expanding Prison* (1998) documented the growth of the industrial retributive prison and explored alternatives to criminalization that are focused around restitution and repentance.

Mark Umbreit, Director of the Centre for Restorative Justice and Peacemaking at the University of Minnesota, wrote *The Handbook of Victim Offender Mediation* (2000). It is a part of a decades-long inquiry that can be traced from a 1994 work entitled, *Victim Meets Offender: The Impact of Restorative Justice and Mediation* and extends to his 2006 collaborative work with Vos, Coates, and Armour entitled, *Victims of Severe Violence in Mediated Dialogue With Offenders: The Impact of the First Study in the U.S.* His work is at the centre of an empirically grounded victim-mediation methodology applicable in a variety of settings.
Nils Christie. Nils Christie worked as a professor of criminology at the Faculty of Law, University of Oslo. His contribution to the field of restorative justice lies in his longitudinal study, which endeavours to make sense of the incarceration trends in Europe and North America through each of the eras identified in Garland’s research: the criminology of penal-welfarism, the criminology of everyday life, and the criminology of the other. As early as 1977, Christie begins to document the escalating trends of incarceration across Europe and North America, Christie identifies the “unwanted acts” that are classified over time as criminal and the punishments that are applied to deter delinquency. In the context of this study, his work uses urban, dominant-culture understandings to provide and advance an accessible rationale for restorative justice.

Among many publications in a lifetime of scholarship, Christie wrote two pivotal and concise texts in the field of criminology and restorative justice, *Crime Control as Industry* (1993) and *A Suitable Amount of Crime* (2004). From one perspective, they are longitudinal demographic research studies that confirm, in Europe and North America, an inexorable retributive march towards the criminology of the other (Garland, 2001). The evidence documented in the research serves as explanation for a binary justice system in which things are good or bad, black or white, guilty or not guilty. In this reality, the dominant culture pursues punishment and deterrence as a first response in the name of public safety. From another perspective, Christie’s work is also a rationale and a catalyst for a restorative approach. It is best explained in his own words, in a narrative from the opening pages of *A Suitable Amount of Crime*:
It is Sunday before noon, “church hours” is the old-fashioned term for these most quiet hours of the week. On several balconies facing the park, people enjoy late breakfasts, or are reading or relaxing.

A man arrives in the park. He carries plastic bags and sits down amid them. They contain beer bottles. He opens one bottle, two and then several, talks a bit to himself, then to some kids who soon gather around him. He talks and sings, to the enjoyment of his audience.

After a while, the man stands up, moves towards some bushes and opens his fly-buttons. Several of the kids move with him.

And here we need two apartment buildings, not one, to get our point across: The two houses facing the park are looking exactly similar, built as they are according to the same set of plans. But their histories are not the same. One house was built in the modern way, by a professional building company. All was ready when the tenants moved in, totally finished with a key in the door and an efficient lift from the garage up to each floor. Let us call it The House of Perfection. The other building had a turbulent history. The builder went bankrupt. There was no more money left. No lifts functioned, no entrance doors in the hallways, no kitchens installed—altogether a desperate situation. The prospective tenants—they had paid before the bankruptcy—were forced to remedy the worst defects. Joint actions were taken to fix doors and defective ceilings and floors, and a pathway of mud; crisis committees were created to sue the builder. It was
heavy work and enforced sociability. Let us call this building *The House of Turbulence.*

And now back to the man in the park.

A man, halfway hidden in the bushes, surrounded by kids, opening his buttons is a situation open for different interpretations. In *The House of Turbulence*, the case was clear. The man in the bush is Peter, son of Anna. He had an accident when he was little, behaves generally a bit strangely but is as kind as the midsummer night is long. When he drinks too much, it is just to phone his family and someone comes to take him home. In *The House of Perfection*, the situation is different. Nobody knows him. A strange man surrounded by kids. He exposes his penis. Decent onlookers from the balconies rush to telephones and call the police. A case of indecent exposure was registered, a serious sex case probably prevented.

What else could they do, the good neighbours in *The House of Perfection*, handicapped as they were by modernity. Their builder had not gone bankrupt. They were not forced to co-operate with neighbours. They were not forced to borrow tools from each other, to care for the neighbours’ kids while some others spread asphalt on the pathway, to meet in endless sessions on how not to lose even more in the bankruptcy. They were not forced to get to know each other, to create a system for co-operation and at the same time a stock of shared information. . . . They were, as conscientious citizens, left with only one alternative: to call the police. . . .
This has consequences for the perception of what is crime and who are the criminals. . . . The penal institution is an analogous situation to King Midas. All he touched was gold, and, as we know, he died from starvation. Much of what the police touch and all that the prisons touch, become crimes and criminals, and alternative interpretations of acts and actors might fade away. . . . Acts _are_ not, they _become_. . . . People _are_ not, they _become_. A broad social network with links in all directions creates at least uncertainty about what is crime and also who are the criminals. . . .

The neighbors in _The House of Perfection_ lived a modern life. . . . The case became a criminal case because these neighbours knew too little. . . .

This is a situation particularly well suited for giving unwanted acts the meaning of being crimes. (Christie, 2004, pp. 4–7)

In this narrative and in longitudinal data collected and sifted and sorted over decades, Christie becomes the restorative canary in the retributive coalmine. He demonstrates that the industrial, urban, binary retributive approach to crime requires re-engineering. The re-engineering proposed by Christie is rooted in a remarkably simple premise: “We need instruments that both clarify the past and help the future. Systems for truth and reconciliation might be one answer” (Christie, 2004, p. 94). “We cannot say, not concretely and exactly, when enough is enough. But we can say that punishment is an activity low in the rank of values. Punishment should therefore be the last alternative, not the first one” (Christie, 2004, p. 108).

Christie’s contribution to restorative justice is his capacity to identify the crucial dominant-culture assumption: the first instinct in the dominant culture is to punish even
though we are aware it will not make us safer. To have a safe community we need a new tool.

**Howard Zehr.** Howard Zehr trained as an historian and came to serve as Distinguished Professor of Restorative Justice at the Eastern Mennonite University Centre for Justice and Peacebuilding in Virginia. He is the author of two pivotal texts in the field, *Changing Lenses—A New Focus of Crime and Justice* (1990) and *The Little Book of Restorative Justice* (2002). In the context of this study, he is understood to be a pioneer in the creation of a restorative-justice methodology that grew from his work in victim-offender reconciliation, which is at the core of youth justice and family-court mediation policy across North America.

In this work, Zehr lays out a process that brings a mediator together with parties involved in a dispute (criminal and civil) to engage in a dialogue focused on harms done and consequent needs and obligations. In his approach, crime is defined by harm done to people, and both people and relationships are understood as victims. The approach recognizes that there are degrees of responsibility that define guilt and that guilt is diminished through repentance and reparation. To produce a balanced outcome, reparation is essential to making things right and is understood to be some kind of restitution for the harm done to the victim(s).

Zehr, as part of a community of restorative-justice theorists, has extensively studied three core restorative-justice models:

- *Victim–Offender mediation* affords victim and offender an opportunity to meet in the post-sentencing phase of a court-imposed warrant. The victim provides the offender detailed information concerning the effect of the crime on him or
her and the offender is provided an opportunity to express remorse and work to acknowledge the impact of their criminal anti-social behaviour.

- **Family-group conferencing** allows families to gather with a mediator to explore disputes that affect more than one individual. This technique is frequently used in marital dissolutions, where property and child custody issues can be polarizing. Ideally the parties in the dispute work together in one space to share their thoughts and concerns. In this technique, the mediator may separate the parties and shuttle between the parties to find common ground that might contribute to a negotiated agreement.

- **Community circles**, in which large groups of people affected in a particular dispute in the same way gather, applies family-group conferencing techniques. The community circle is modelled on the Indigenous healing circle that has been applied by Indigenous peoples around the world for centuries. In this model, shuttle mediation may also be employed but to find resolution to the dispute. Ideally the entire community that gathered at the beginning gathers again to confirm areas of agreement as they emerge.

In restorative justice, the aim is to match and apply the right restorative technique to the community of people immersed in the dispute. In the case of criminal offences, community circles can also be understood as sentencing circles. When sentencing circles occur, it is hoped that the larger justice dialogue moves from an understanding of crime as an affront to the body to an understanding that crime is often better dealt with when it is viewed as the product of conflict.
The applied restorative-justice methods documented in Zehr’s research (reasserted by Johnstone and Van Ness in 2011) do not replace the dominant-culture court system. Rather, the techniques provide for a more consensual setting in which lawyers and judges function more like referees than arbitrators. The restorative-justice alternative to dispute resolution mechanisms does not advocate for the complete abolition of established western European common-law adversarial processes. Restorative-justice advocates make the assumption that the system is basically sound and simply requires modification to enhance its effectiveness.

This differs dramatically from the conclusions of Canada’s 1996 Royal Commission on Aboriginal Peoples (RCAP), which strongly challenged the assumption that an adversarial process can result in the reconciliation that is essential to achieving recognition and responsibility. RCAP concluded that an entirely new system of justice was required to effectively represent the needs of Indigenous people. “Federal, Provincial and territorial governments (to) recognize the right of Aboriginal people to establish and administer their own systems of justice pursuant to their inherent right to self-government, including the power to make laws, within the Aboriginal nation’s territory” (RCAP, 1996, p. 224).

Restorative justice approaches have been effective in changing policy only as an added feature of the existing dominant culture justice system. Within the CSC, there are examples that can be identified as restorative justice policy. Examples are as follows:

- The Principle of Least Restriction from the 1992 Corrections and Conditional Release Act (see Chapter 4 for further discussion).
• The 1999 Supreme Court of Canada decision in the case of *Gladue* that, under Section 718.i(e), a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender to provide reparations for harm done to victims or to the community, and that restorative justice must be given particular consideration when dealing with Aboriginal offenders. (*Criminal Code of Canada*, 2012).

• *Commissioners Directive 785, Restorative Opportunities Program and Victim Offender Mediation Services* (last revised 2015-07-23).

Even with these and other examples available, it is noteworthy that restorative-justice arguments have not slowed Aboriginal incarceration rates in Canada. Nor did they dissuade the Harper governments (2006–2015) from making the system more retributive by changing both the Canadian criminal code and the sentencing guidelines. These changes have resulted in ever-rising incarceration and recidivism rates and in people being held under warrant who would never have been held in the early 1990s. This is the perhaps the greatest impact of the restorative-justice movement and explains its limited application in understanding the role, place, and function of Elders in the provision of healing programs within federal corrections that are at the centre of this study.

**Summary of restorative-justice theorists.** In the context of dominant-culture theory or decolonization theory, restorative justice is best understood as a movement. It is a re-engineering endeavour that grew out of the dominant-culture justice system in North America and western Europe after 1970. Restorative justice processes seek a collaborative, consensual dialogue between the affected parties in a dispute (Huculak, 2005). In the context of restorative-justice initiatives, crime is understood as a violation
of relationships between individual people and within communities (Zehr, 2002) and justice is achieved when the parties in the dispute reach a shared understanding of the offence and arrive at a collaborative outcome. On this basis, Restorative-justice methodologies seek to resolve three questions: Who has been hurt? What are their needs? Whose obligations are these? (Zehr, 2002).

Applied restorative-justice methods employed in the period of this study (1992 to 2012), or in the period leading to the timeframe of this study (1970 to 1991) did not replace or even displace the dominant-culture criminal-court system in Canada. The best that can be said is that restorative-justice techniques (such as community circles) employed in community settings provide a more consensual environment for lawyers and judges to go about their work.

The restorative-justice alternatives documented by Zehr, or for that matter Braithwaite (2003) or Rudin (2005), do not advocate for the complete abolition of established, adversarial western European common-law processes. In fact, restorative-justice advocates make the assumption that the dominant-culture justice system is basically sound and that with the right kinds of programs restorative-justice theory can encompass “an approach to repair the harm caused by crime that affects victims, offenders, and communities” (Monchalin, 2016, p. 280).

In settings where the dominant-culture need for retribution is less pronounced, the restorative-justice movement has grown: Youth justice and family law are prime examples. In areas of justice where the dominant-culture court systems require incarceration (where punishment and retribution is deemed necessary) the old typifications of the Other (Berger & Luckmann, 1967; Said, 1978) remain constant.
Further, the need pursue established understandings of delinquency (Foucault, 1977) in search of remorse and deterrence is more powerful than any restorative-justice argument even when there is evidence to support its expansion (Monchalin, 2016). To do otherwise would usurp the paternal and the sacred offered in the Genesis narrative (King, 2003).

Restorative-justice systems, in the context of federal warrants imposed by the courts in Canada, are window dressing for a system that is not engineered to apply the principle of least restriction (CCRA, 1992) in any meaningful way. The effect is to provide cover so legislators and civil servants may appear as progressives, incorporating the language of decolonization into policy as they maintain the apparatus of retribution.

**Healing Theorists**

Healing theory exists outside the dominant culture. Restorative-justice theorists begin their process with an assumption that victim–offender mediation, community circles and family-group conferencing, in concert with adversarial Judeo-Christian practices regarding the practice of common law, are essentially fair and just (Chaggama, 2012). Conversely, healing theorists challenge the assumption that an adversarial process can result in the reconciliation essential to achieving recognition and responsibility. In the context of a healing methodology, crime is understood as, “a violation of interdependent community relationships” (Melton 2005, pp.108–109). The primary objectives of a healing methodology are to restore relationships to wholeness, reconcile the parties, and re-establish community peace. In a healing process, participants must confront their complicity in the variables that led to and followed a dispute; pleading not guilty and observing the adjudication from a distance is not possible (Couture, 1983, 1994).
Indigenous approaches seek to reacquire community-based self-awareness, to understand the challenges of self-interest, and to find generosity in a world that too often values the transient and the material to the exclusion of community well-being. Indigenous approaches seek to choose deliberatively for the generations yet-to-be, to understand the need for action and the danger of doing nothing. They describe a consensual community process in which, for justice to occur, there must be recognition, responsibility, restitution, and reconciliation. Cousins (2005) puts it succinctly: “When we focus on the best interests of others within the clan or society, the motives of criminal behaviour, such as greed or vengeance, have far fewer opportunities to develop” (p. 146).

To achieve these outcomes, the healing methodologies begin with the individual as an integral component in an inclusive process that goes beyond the binary of perpetrator and victim, bringing to hand all of the knowledge contained in the community. It seeks to simultaneously remedy all of the potential harms to individuals, groups, and communities affected by the imbalance created in the aftermath of a harmful act. In so doing it seeks to resolve three questions: What are our responsibilities? What are our duties? Will our actions restore damaged relationships in ways that produce peace and equilibrium? (Tomas, 2005; Yazzie, 2005).

Healing theorists are vested in a grounded practice that places recognition and responsibility before punishment and deterrence. Their work begins with an understanding of justice that is not defined by an adversarial criminal-court process. Anishinabe scholar James Dumont provides a definition in *Justice as Healing* (2005):

> Justice is the pursuit of a true judgment required to re-establish equilibrium and harmony in relationship, family and society—a judgment
which is gwaik: straight and honest, while at the same time being minidjiwin: respectful of the integrity of all persons, both wronged and the wrong-doer. (p. 105)

The centre of a healing methodology in Elder-led healing programs is the medicine wheel. It is all encompassing. Its quadrants represent the seasons and the natural elements and, in the context of a healing program, the four elements of existence: spiritual, emotional, physical, and mental. It can be used in countless ways, from individual one-to-one teachings to large group teachings and interactions in a healing circle. Regardless, the focus is to bring individuals and groups to a state of self-awareness and, beyond, to interconnected responsibility. Where Foucault’s concept of the carceral (1977) demands compliance but not necessarily understanding, the medicine wheel challenges the participant to internalize and practice its teachings as part of a lifelong self-actualizing journey.

An example of how the medicine wheel can function as a teaching and, at the same time, as a policy aspiration is found in the CSC’s Aboriginal Corrections 2003 Continuum of Care model (to be referred to as Continuum). In consultation with Aboriginal stakeholders, the CSC developed new approaches to addressing the needs of offenders of Aboriginal descent. Aboriginal community research indicated that the major factors contributing to Aboriginal offenders’ success upon release were their participation in spiritual and cultural activities as well as other correctional programs (preferably delivered by Aboriginal people) and the support they received from family and the community. As the CSC puts it in its *Strategic Plan For Aboriginal Corrections* (2003), “The Continuum recognizes that Aboriginal communities must be involved in supporting
Aboriginal offenders during their healing journey and reintegration, as they link offenders to their history, culture and spirituality” (p. 105).

In this context, healers are agents of decolonization who focus their efforts on the individual person in relation to their community, rather than the dominant culture/urban collective relationship that is defined the Canadian Criminal Code.

There are many writers in this field who could be cited as examples of best practice in the application of healing theory; I have selected three healing theorists whose work provides broad representative insight.


- Wanda D. McCaslin, who brought together a central text as editor of *Justice as Healing* (2005). The forty contributors to the text had the benefit of the *Gladue* decision and the early days of the Continuum of Care to provide measure and perspective to their writing.

- Rupert Ross, whose most recent contribution to the field is *Indigenous Healing* (2014) Most significant in this is that the writing has the benefit of perspective that follows retributive conservative-government amendments to the CCRA and informs the author’s findings regarding the development and dissemination of healing programs.

**James Waldram.** James Waldram has served as the Chair of the Cultural Anthropology Program, College of Arts and Science, and as Coordinator of the Culture
and Human Development Program, Department of Psychology at the University of Saskatchewan. He was a founding faculty member of the Native Studies Department at University of Saskatchewan. In these roles, he has broken ground for many in the field of Indigenous studies.

Waldram produces an interesting perspective in *The Way of the Pipe*. His research precedes the current Public Service Commission practices that make it all but impossible to interview crown employees. Waldram is a medical anthropologist by training. His extensive use of interviews from offenders, liaison workers, and Elders, combined with his direct, straight-forward approach to the prose, documents two of the challenges encountered by the Indigenous community and researchers to that time.

- On the activism required to establish Elder healing programs, Waldram (1997) notes “Since the early 1980s, many Aboriginal offenders had been demanding recognition of their rights to religious freedom, to practice their spirituality while incarcerated, and in so doing to heal themselves in their own way” (p. ix).

- On the nature of the CSC understanding of Elder-healing programs, Waldram (1997) criticizes the CSC’s tendency to equate Aboriginal spirituality with Judeo-Christian religious dogma and practice: “Such an approach, in addition to being culturally and morally repugnant, necessarily limits the availability of the Aboriginal services to those that have Christian parallels. Hence, “equality” is, in effect, inequality” (p. 17).

These quotations document the activism that was necessary to create Elder-led healing programs and confirm the colonized place of offenders of Aboriginal descent held in Canadian federal prisons. In this regard, Waldram establishes decolonization as
part of a very recent history that lags significantly behind whatever has occurred in the general population.

He also documents the general, dominant-culture stereotype that all spirituality is religion and all religion is to be understood from a Western Judeo-Christian perspective. In the context of the time in which this work was published, these were significant observations that challenged the understanding of most people.

Waldram creates an inventory of programs on offer as he documents the growth of Indigenous spirituality as a tool to enable successful community reintegration. He describes the practices and beliefs and the cornerstones of the spirituality, and lays the foundation for current understandings of healing programs. In the context of the prison, Waldram (1997) is among the first to identify Indigenous spirituality as central to healing, stating that, “This form of healing is very dependent on the use, interpretation, and manipulation of cultural symbols as central to the process of healing” (p. 71).

Waldram is a good example of a healing theorist who makes concrete links to the work of decolonizing theorists and restorative-justice theorists. He presents both a theoretical analysis of symbolic healing and a discussion of the practices of Aboriginal spirituality. He is among the vanguard to argue that privileged Western scientific understandings are arbitrary and that there is no reason other than racism and continuing cultural oppression to deny the pivotal role of traditional healing and ritual process as fully legitimated therapeutic alternatives for offenders of Aboriginal descent.

**Wanda D. McCaslin.** Wanda D. McCaslin is a Métis legal scholar who received her training at the University of Saskatchewan. She is an academic, author, and researcher currently working at the Saskatchewan Law Foundation at the Native Law
Centre, College of Law; University of Saskatchewan. McCaslin is the editor of and a contributor to a central text in the study of decolonizing, restorative, and healing theory, *Justice as Healing: Indigenous Ways* (2005), which brings together forty scholars who make contributions towards an understanding of an Indigenous healing continuum.

Each contribution adds to the image of a matrilineal whole: In his article entitled “Healing as Justice: The Navajo Response to Crime” (2005), Robert Yazzie concentrates on the role of clans in consensual justice. In “Indigenous Justice Systems and Tribal Society” (2005), Ada Pecos Melton focuses her energy on documenting an Indigenous justice paradigm. For her part, Gloria Lee’s “Defining Traditional Healing” (2005) explores the concept that criminality can be understood as a disease that exists to offer the individual a teaching. In “Aboriginal Justice: A Haudenosaunee Approach”, Michael Cousins (2005) documents and advances the Great Law of Peace as the most significant and influential event in his people’s history. Finally, Nin Tomas (2005) provides a Maori perspective. In “Maori Justice—The Marae as a Forum for Justice,” she explores the essential function of spirituality and ritual spiritual processes in the achievement of peace and equilibrium as an essential outcome of an effective justice system.

**Chief Justice Robert Yazzie.** Chief Justice Robert Yazzie is a Navajo of the Folded Arm Clan. He also holds a JD from Oberlin College and has served a presiding judge of the district court of Window Rock, Arizona and as Chief Justice of the Navajo Nation. He writes,

> Why is clan relationship so important? We Navajos say of people such as ourselves—who may be strangers—“Treat strangers like they were a relative.” We deal with each other in ways to avoid confrontation and the
use of force. Force, coercion, and the ability to punish are not necessary to have law. (Yazzie, 2005, p. 123)

Ada Pecos Melton. Ada Pecos Melton is an enrolled member of the Pueblo of Jemez in New Mexico and has served as president of the American Indian Development Associates. She focuses her work on strengthening Indigenous methods of conflict resolution and peacekeeping to address issues of crime, delinquency, violence, and victimization in Indigenous communities. She notes,

Law and justice are part of a whole that prescribes a way of life. Invoking the spiritual realm through prayer is essential throughout the Indigenous process. Restoring spirituality and cleansing one’s soul are essential to the healing process for everyone involved in a conflict. (Melton, 2005, p. 109)

Gloria Lee. Gloria Lee is of Cree ancestry from the Pelican Lake area. She is a lawyer who received her training at the University of Saskatchewan and is currently Justice Director for the Saskatchewan Indian Institute of Technologies. Her contribution to the dialogue focuses on offence as a state of disease. This reference to disease is understood as dis-ease. It can apply to many maladies including the dis-ease that is left in the aftermath of anti-social behaviour:

When a person is afflicted with a disease, the traditional view is that the disease exists to offer the individual a teaching. . . . If the person chooses to treat only the symptom and ignores the teaching that is being offered, then the disease will return. . . .

Traditional Healers say that much of what they do involves sorting out the jumble of disorder . . . The disorder has many causes, but primarily it
is caused by not living life in a good way. . . . Understanding Healing begins with the Elders and what they have to teach . . . Healing begins with one’s own centre . . . For this reason, we are ultimately responsible for our own well-being. (Lee, 2005, pp. 98–99)

**Michael Cousins.** Michael Cousins is a member of the Mohawk Nation, Wolf Clan, Six Nations of the Grand River. He is a lawyer with additional graduate qualifications in criminology and has published in the areas of First Nations’ hunting and fishing rights and Aboriginal justice. He emphasizes free will:

Free will allows humans to make choices that release us from acting in a purely instinctual or impulsive manner. Being gifted with free will gives us the responsibility to use it in a commendable manner. People who use free will commendably treat all others with honor and respect. For them, other people’s well-being is as important, if not more so, than their own. Personal desires and gratification are not over riding objectives. (Cousins, 2005, p. 143)

**Nin Tomas.** Nin Tomas is descended from the Maori Iwi of Te Rarawa, Te Aupouri, Ngati Kahu, Te Hikutu, and Taranaki. Her teaching and research are comparative between Maori and Pakeha [European] conceptualizations of law, the legal process and justice, and their application by the judiciary. She is a senior Maori academic and a member of the Faculty of Law at the University of Auckland where she teaches public law. Tomas (2005) describes her perspective:

The process of discussion is one of weaving together and strengthening whakapapa (genealogical) links through our acceptance of obligations
toward human relations and our acknowledgment of actions that do not uphold these obligations. . . . When people are able to see themselves apart [sic] of the fabric of life, when they are able to identify those to whom they are closely related, when they are able to see themselves as the present manifestation of a long and unbroken physical and spiritual process, then healing can begin. (p. 138)

The most significant contribution of the volume Justice as Healing: Indigenous Ways (2005) is its capacity to bring the reader from an understanding of colonialism to an understanding of the role, place, and function of healing theory in achieving successful community reintegration. The contributors confirm that to achieve an internalized understanding of healing and healing theory, it must come from within and, like the seasons or the tides, it cannot be rushed. The volume touches on the implications and legacy of colonialism and the complexities of realigning political and social-contract relationships.

Ultimately, the book links dominant-culture theorists, decolonization theorists, and restorative-justice theorists in a continuum that culminates in applied healing. The work confirms the essential ingredients of a healing approach:

- To be effective and to ensure offences do not re-occur, crime must be examined and defined by the community as the product of a consensual process. In this process people, relationships, and community are all understood to be affected participants.
• When disputes arise, it is understood that wrongs create responsibilities and opportunities for all of the parties. For someone who has committed a wrong, community-based atonement is essential to achieve reconciliation.

• Guilt is driven by the personal responsibility of the offender to recognize his/her responsibility and seek community restoration.

• Obligations are defined by the community and met via atonement and restitution.

**Rupert Ross.** The final healing theorist is Rupert Ross. Mr. Ross is a former assistant Crown attorney who spent a lifetime working in dominant-culture law. A number of years ago, he began to question the method and outcome of the dominant-culture justice system. His most recent book, *Indigenous Healing: Exploring Traditional Paths* (2014) highlights a disparity in world views—a disparity that is understood through a relational lens.

Mr. Ross represents an essential and necessary transition from which to fully understand the importance of a healing methodology. His initial career as an assistant Crown attorney was vested in the assumption that equity and fairness were indelible elements in a dominant-culture justice system that was, above all, fair. At some juncture, he became aware that the systemic discrimination embedded in a colonized and colonizing dominant culture put certain individuals at a distinct disadvantage relative to others. With this revelation, he became an advocate of restorative-justice theories and methods that emerged in an effort to amend the adversarial system—as if its foundational assumptions could ever create equitable or transparent results.
Over time, it became clear that restorative-justice theories could not challenge the assumptions or processes of a dominant-culture criminal-justice system. For all the changes that emerged from the restorative-justice movement, Indigenous people were being held under warrant in greater and greater numbers. Having internalized the lessons of the dominant-culture theorists, the colonization theorists, and the restorative-justice theorists, Ross began work around relational-healing methodologies.

In his discussion paper “Exploring Criminal Justice and the Aboriginal Healing Paradigm,” Ross provides insight into the generational import of a relational lens in a healing paradigm. His findings are significant because of the path he has travelled, from dominant-culture prosecuting attorney to proponent of healing approaches as a means to achieve recognition, responsibility, and reconciliation. His key insights into the development and understanding of a healing process, with its incidental, ritual, and ceremonial understandings, are organized as follows:

In the dominant-culture retributive-justice paradigm, the system positions the violation of the criminal code as the centre of a larger pattern of behaviour. Within the Indigenous paradigm, an act of anti-social behaviour that puts the individual and/or the community at risk is a “signal of disharmonies within the offenders relational life, disharmonies which must be addressed if there is hope of preventing further criminal behaviour” (Ross, 2008, p. 8). To reach this conclusion, Ross has had to incorporate and internalize both Foucault’s carceral (1977) and Garland’s criminality of the other (2001).

Ross (2008) goes on to posit that in order to restore harmony, a relational analysis is required to understand all relationships contributing to the unsafe behaviour because “all of those relationships must be brought into the process so that everyone can see the
need to make better choices, and be given help in making them better” (pp. 8–9). In this understanding, Ross has also incorporated Linda Tuhiwai Smith’s (1999) relational ontology of 25 Indigenous decolonizing projects.

Ross (2008) goes on to explore the challenge of recidivism as a communication gap. In this he notes that the dominant-culture approach to justice has fueled the disproportionate number of people of Aboriginal descent who re-offend. Ross observes “The criminal justice system also seems to believe that . . . individuals can simply choose to alter their behavior. We threaten people with punishment in the belief that our threats will force them to make better choices.” (p. 8).

In this, Ross affirms his belief that the Canadian contemporary dominant-culture criminal-justice system is an institution in need of decolonization. To some extent, his understanding is most succinctly illustrated in Smith’s (1999) work regarding principles of “humanity,” which confirms that, in the context of the dominant culture, people of Indigenous descent are understood to be “not fully human” (p. 26). Ross also adds context and structure to the need and method for a healing process to begin:

In fact, its seems to be [that] a part of them recalled that childhood pain even as they victimized others, giving rise to intense guilt and self-loathing. Not knowing how to relate in any other ways, however, meant they’d abuse again and that their guilt and self-loathing would grow exponentially. (Ross, 2008, p. 9)

Ross’s significant contributions to an internalized understanding of the structure, history, and need for healing approaches is in understanding the reluctance of victims to participate in the Canadian dominant-culture criminal-justice system. He isolates the
imperative that effective approaches to resolving the disproportionate representation of Indigenous people held under federal warrant lie in creating a justice system that is not driven by punishment. Instead, he posits that justice is more effectively guided by relationality and relational accountability (Wilson, 2008).

The bedrock of this conclusion is found in Smith’s (1999) understanding of the phenomenon claiming and remembering. Ross puts it as follows;

Many victims choose not to bring their problems into our adversarial and punitive system because they don’t want that result . . . The Aboriginal preference for healing is not just a preference at all, but a necessary manifestation of a world-view that is fundamentally at odds with the artesian, Newtonian and Darwinian worldview in which I grew up. . . .

If your way of knowing focuses on relationships, it will be “natural” to see that the relationships between human, animal, plant, and earth “water aspects” of creations are fundamentally relationships of dependency, with us at the bottom as the most dependent. . . . Not so much linear chains of dependency as they are interwoven mutualities of such complexity that no one can truly “know” what will happen if one element changes its contribution to—its relationship with—the mix. . . .

The fundamental law to be discerned from aboriginal observation of the symbolic dynamics of the natural order is not Darwin’s entity-centred law of violent competition, but the law of respect. Each entity makes essential and unique contributions to the maintenance of a healthy whole. (Ross, 2008, pp. 2–6)
In these three paragraphs, Ross isolates the challenge neatly: In an Indigenous community, people of Indigenous descent absent themselves from the criminal-justice process applied in Canada because it is disconnected from their understanding and world view. As a matter of engineering, Ross would argue that the sentencing circles promoted in the restorative-justice movement by people like Zehr (2002) cannot work until the world view of the community is aligned with the justice system to which it applies. This corresponds to the work of Christie (2004), who writes about a 78-year-old man whose 86-year-old wife suffered with Alzheimer’s. When the illness had progressed to a point that left no option but to place her in a palliative-care institution, the man drugged and suffocated her. Subsequently, he prepared his wife for burial in the custom of his culture, sent a note to the police explaining the event, and then drowned himself. The police investigated this as a murder, yet in the context of Indigenous relationality, it can be understood as a story of unconditional love and overwhelming grief.

In the context of a criminal-justice system, Ross builds on the work of Gloria Lee (2005) in which she equates disharmony and disease. As Ross (2008) writes,

In Aboriginal approaches, the act is seen primarily as a signal of disharmonies within the offender’s relational life, disharmonies which must be addressed if there is any hope of preventing further criminal behavior. Once the act is understood, the spotlight shines elsewhere. (p. 8)

Ross (2008) later adds,

Our relationships are fundamentally centered on dependencies and human beings are not, as the western view seems to hold, fundamentally a collection of rights against others, but a bundle of responsibilities towards
others, towards all aspects of creation. . . . The Sweat Lodge teaches this view, dedicating each of its “rounds” to prayers with various themes. . . . Each prayer sung in that dark, moist place is a reminder of the sanctity of those other beings, those other aspects of creation, of the sacredness of our interconnections, and of our duty to act towards them with respect. . . . Such ceremonial affirmations of connection seem to be especially important to people who have grown up in abuse, for they have often been terrified into postures of wholesale alienation from the rest of creation. (p. 24)

In these short passages, the healing theory documented by Ross provides the reader both context and direction. He explains how current dominant culture came to be and why it is ineffective. He builds on this understanding to link a relational lens to an operational healing practice that is connected by consensus, recognition, and responsibility. In this endeavour, he provides insight into the importance of ritual and ceremony as he isolates striking differences between dominant-culture correctional programs and Aboriginal healing. Suffice it to say that the relational lens informs operational methods for the applied-healing theory that is so much a part of the work of other healing theorists such as Gregory Cajete (1994), R. G. Green (1998), Paul Williams (2004), James Sa’ke’j Youngblood Henderson (2005), Gloria Lee (2005), Michael Cousins (2005), Edward Benton-Banai (2005) and Sean Wilson (2008).

Ross’s principle achievement is in challenging the collective understanding of what is sacred and what is not. In so doing, he brings a lifetime of legal experience and challenges the reader to reconsider patrilineal punishment as a sacred entitlement for
those with power; in its place, he proposes a matrilineal healing model that is vested in community.

In his retelling of the Sky Woman/Genesis creation stories for the Massey lecture series, Thomas King (2003) synthesizes the dichotomy of the Ross argument much more elegantly than I can:

In Genesis . . . after the fall, while we gain knowledge we lose the harmony and safety of the garden and are forced into a chaotic world of harsh landscapes and dangerous shadows . . . In our native story, we begin with water and mud, and, through the good offices of Charm, her twins, and the animals, move by degrees and adjustments from a formless, featureless world to a world that is rich in its diversity, a world that is complex and complete . . . in Genesis, the post garden world we inherit is decidedly martial in nature, a world at war—God vs. the devil, humans vs. the elements. Or to put things into corporate parlance, competitive. In our Native story, the world is at peace, and the pivotal concern is not with the ascendency of good over evil but with the issue of balance.” (p. 24)

Summary of healing theorists. Healing theorists provide a consolidated understanding of colonialism that is essential to understanding the role, place, and function of healing theory in achieving successful community reintegration. It is the product of an internalized understanding of healing and healing theory that has considered the implications and legacy of colonialism and the necessity to realign political and social-contract relationships. In this process, these scholars link dominant-
culture theorists, decolonization theorists and restorative-justice theorists in a dialectic that culminates in applied-healing approaches.

In this process people, relationships, and community are all understood to be affected participants; crime must be examined and defined by the community as the product of a consensual process to ensure offences do not re-occur. When disputes arise, it is understood that wrongs create responsibilities and opportunities for all of the parties. For someone who has committed a wrong, community-based atonement is essential to achieve reconciliation. In this context, participants’ success in a healing program is driven by their achieving a level of self-awareness that results in a sense of personal responsibility—a moment of epiphany that recognizes the effect of their decisions and results in an internalized commitment to seek community restoration. Gloria Lee puts it best: “Healing begins with one’s own centre. . . . For this reason, we are ultimately responsible for our own well-being” (Lee, 2005, pp. 98–99).

**Conclusion of Theoretical Context/Literature Review**

The outcome of the theoretical context for this study is best understood as an internalized sequence of understandings that culminates in what Nicole Bell (in press) refers to as a *bundle bag*. The bundle bag for this study contains the tools, sacred objects, protocols, perceptions, and assumptions that contribute to an understanding of where we are and how we got here. As a non-Aboriginal Indigenous Studies researcher, my bundle bag relies on these understandings. The bundle bag that guides this study isolates and confirms the dichotomy presented in two different world views—a dichotomy that serves
as firewall to the efforts of an entire community of staff, incarcerated adults, and researchers who occupy the space that this study inhabits.

In acknowledging where we are and how we got here, the study confirms an imperative in which each person in the community has a responsibility to recognize, remedy, and address injustice. In the words of Cora Weber-Pillwax (2001),“ I cannot be involved in research and scholarly discourse unless I know that such work will lead to some change (out there) in that community, in my community” (p. 169). With this understanding, I selected a series of theoretical lenses to create my bundle bag: from dominant-culture understandings, to decolonizing understandings, to restorative-justice understandings, and culminating in Indigenous understandings.

The exploration of theory in this study confirms the outcome effects of two distinctly different world views: the dominant culture and the Indigenous. The theoretical understanding of the dominant culture applies assumptions about the nature of the world that are vested in a colonial, paternal, and punitive process. Conversely, the roots of understanding in Indigenous theory are concentrated on consensual assumptions that require a decolonizing process of collaboration and cooperation to produce recognition, responsibility, restitution, and reconciliation.

The bundle bag assembled through the theoretical context of this study is best understood as a ritual protocol that requires internalization. For me, the product of internalization is self-awareness; it is a decolonizing process that empowers and transforms. It is a call to arms that is best expressed by Thomas King (2003):

So here are our choices: a world in which creation is a solitary, individual act or a world in which creation is a shared activity; a world that begins in
harmony and slides towards chaos or a world that begins in chaos and moves towards harmony; a world marked by competition or a world determined by co-operation. And there’s the problem. (pp. 21–25)
Chapter Three:  
Methodology

Research Design

This qualitative exploratory study (Creswell, 2003) was designed in two phases (see Figure 1). First, applicable data was identified, collected, and analyzed for thematic content; this data was culled from applicable Government of Canada legislation, Correctional Service of Canada policies, and Government of Canada reports relevant to the provision of Elder-led healing programs in CSC institutional settings for the period 1992 through 2013 beginning with the 1992 Canadian Corrections and Conditional Release Act. The legislation, policies, and reports selected in the period from 1992 through 2013 were included for their capacity to highlight recurring policy regularities relevant to the implementation and operation of Elder-led healing programs provided by Aboriginal Elders to offenders of Aboriginal descent incarcerated in Canadian federal prisons (Patton, 2002). Once complete, the thematic content analysis of policy was followed by semi-directive interviews with five Aboriginal Elders who have provided, or are currently providing, intervention/healing programs to male and female inmates of Aboriginal descent incarcerated in federal prisons in Ontario. Through a process of data triangulation (Farmer, Robinson, Elliott, & Eyles, 2006), the study then contrasts the legislated policies of the Correctional Service of Canada and operational practices of the prison with the words and grass-roots experience of the Elders.

In concert with Chilisa’s responsive Indigenous research methodologies (2012), particular emphasis was placed on Indigenous understandings of credibility and confirmability. Credibility (understood as internal validity in quantitative research) was
achieved in the construction and application of a critical policy review in combination with Elder interviews. The combination was applied in an effort to reveal the multiple, lived realities of the participants and, in so doing, achieve substantial engagement for both researcher and participants (Chilisa, 2012). The following principles from the ethics guidelines of PhD program in Indigenous studies were of particular significance to achieving credibility in the work:

- Conducting Research within the value frameworks of Aboriginal peoples, including such values as respect, reciprocity, honesty, kindness, caring and sharing;
- Ensuring that benefit flows to Aboriginal peoples from research, and that any potential negative impacts are minimized;
- Respecting and protecting Aboriginal knowledge and the intellectual property of Traditional knowledge holders and Nations;
- Preserving cultural protocol and traditions appropriate to the local area or research participants.

Confirmability is essential to the integrity of qualitative research. Confirmability (understood in quantitative research as objectivity) was strengthened in this study by employing a design approach that required the triangulation of theory to policy and policy to participant responses. The design required that the researcher be disciplined in documenting the process of change to declare areas of progressive subjectivity as they occurred (Chilisa, 2012). This included note keeping and consultation of the notes as the work progressed. The design also required verification with participants in the form of member checks regarding the themes and patterns that developed in the collection and
analysis of data. In this process, strategies outlined in Linda Tuhiwai Smith’s (1999) *Decolonizing Methodologies* play a substantial role, particularly: story-telling, remembering, Indigenizing, and connecting.

The approach to qualitative exploratory design applied in this study is graphically displayed as follows:

![Qualitative Exploratory Design](image)

*Figure 1. Qualitative exploratory design*

**The Use of Auto-Ethnography in the Study**

Throughout the study there are narrative references to my lived experience in the field of correctional education. These are included to acknowledge the lived experiences and pressures that may have an impact on the research. A rigorous research product must
be credible, transferable, dependable, and confirmable (Baxter & Eyles, 1997). These outcomes cannot be achieved if my own lived experience and potential/consequent role as a positioned subject are not acknowledged from the outset. The requirement to declare the role of researcher as a positioned subject is essential to this study as a means to pursue a method that offers insights from within (Adams, Jones, & Ellis, 2015, p.37) in order to connect “the autobiographical and personal to the cultural, social, and political” (Ellis, 2004, p. xix).

**Part One: Critical Policy Review**

The purpose of the critical policy review was two fold. First, the review identified and assessed a chronology of policy documents over an extended period of time to achieve an understanding of the interface between the Correctional Service of Canada’s legal imperatives, policy expectations, and day-to-day practices. Second, this understanding of policy and operations over time was used to assess its ramifications in the context of dominant culture and decolonization theory with respect to the role, place, and function of Aboriginal Elders responsible for the provision of healing programs within facilities operated by the CSC. The fulfillment of that purpose is contained in the assessment of a chronology of Government of Canada legislation, Correctional Service of Canada policy, and those reports produced by/or in response to the policies and practices applied by the CSC in its operations. The chronology and assessment served as the first step in the triangulation of theory to policy and (in the interview phase of the study) policy to participant responses.
The rationale for the application of content analysis in the critical-policy review lies in its capacity to identify the patterns and disparities that emerge in the space between legislation, policy, and practice—those moments of unforeseen consequence that confirm the differences between perception, reality, and the things made sacred in the daily operation of a carceral institution (Boyatzis, 1998). In this study, content analysis was selected for its capacity to take volumes of qualitative policy data through a compare-and-contrast rereading process to identify core consistencies and meanings (Patton, 2002). A key objective in the content-analysis process was to establish a theme that would confirm the beginning of the timeline and the verifiable touchstone for the chronology. In this process, the policy is the *Corrections and Conditional Release Act*; its salient direction is contained in the principle of least restriction. Principle 4D, Part I, Institutional and Community Corrections reads as follows, “that the service use the least restrictive measures consistent with the protection of the public, staff members and offenders” (CCRA, 1992, p. 5) and Principle 101D, Part II, Conditional Release, Detention and Long-Term Supervision, “that parole boards make the least restrictive determination consistent with the protection of society” (CCRA, 1992, p. 35).

The principle of least restriction is a clear, explicit direction from the Government of Canada to the Correctional Service of Canada, the National Parole Board, and the Office of the Correctional Investigator. It effectively prohibits punitive retribution in the operation of the CSC and NPB: it requires the CSC and NPB to balance public safety and the preservation of citizenship in its pursuit of successful community reintegration. Most importantly, the principle of least restriction speaks to the evaluation criteria and methodology for the ongoing work of the Office of the Correctional Investigator (OCI) as
it assesses the measurable outcomes of CSC and NPB policies in reference to legislation and operational practice.

Content analysis is one of the OCI’s principle tools in the qualitative assessment of CSC and NPB practices; it duplicates the process that one would expect to be applied by the CSC and the NPB in the production, deliberation, and application of every correctional plan for every person assigned to their care. On this basis, the end point of the chronology is the 2012 report *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act. A report to Parliament by the Office of the Government of Canada Correctional Investigator* (Sapers, 2012), which marked the twenty-year anniversary of the implementation of the CCRA and generated responses from the CSC that were both unprecedented and defensive. In this, they employed content analysis to explain the outcomes of their operational practices.

The ongoing application of content analysis as a technique in program and policy assessment by the CSC, the NPB, and the OCI is, in itself, a rationalization for its application in this study. As a methodology, it is well placed to identify themes, trends, and patterns that can only be identified over time. The justification for the use of content analysis in the critical-policy review chapter of this study lies in the process by which the application of the principle of least restriction has been documented and in its relationship to successful community reintegration.

Each person held under warrant by the CSC has a correctional plan. Described by the CSC as a pivotal document, it is created at the beginning of the sentence of incarceration (*FORUM on Corrections Research*, 2000). It confirms the CSC’s understanding that each person held under warrant is to be treated as an individual
citizen; each individual correctional plan is to be constructed to address the principles of risk, need, responsivity, and professional discretion. To accomplish this goal, a team of professionals that includes an Elder assembles to work with the offender to produce a correctional plan that accounts for the individual circumstances and criminogenic needs that are unique to each offender (Bonta, Gendreau, and Cullen 1990).

Concurrently, each correctional plan aligns with the mission statement of the CSC, thus confirming the CSC and the NPB’s understanding of the principles of justice and, by extension, the social contract that defines their duty of care (Rawls, 1971).

The Correctional Service of Canada, as part of the criminal justice system and respecting the rule of law, contributes to the protection of society by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.

(Mission of the CSC, 1997, p. 4)

This understanding and relationship is reconfirmed in the assessments of the CSC produced by the OCI. Marking the twenty-year anniversary of the CCRA and the end point in the policy chronology of this study, the OCI’s Spirit Matters (Sapers, 2012) brings into sharp relief the key words in the CSC’s mission statement: “respecting the rule of law.”

The established OCI report protocols employ content analysis in its mixed-method approach to isolate and mark moments where respect for the rule of law was extended and those moments where respect for the rule of law was withheld. The justification for application of content analysis in the document selection and the critical review of this study lies in its capacity to triangulate the CCRA with its principle of least
restriction, the reports of the OCI (whose mandate is to provide objective third-party reporting directly to parliament), and the CSC’s 1997 mission statement in which the organization acknowledges its mandate and confirms its duty of care.

**Critical Policy Review: Methodology**

The legislation, policies, and reports selected from the period of 1992 through 2012 were included for their capacity to highlight evolving policy trends relevant to the implementation and operation of Elder-led healing programs provided to offenders of Aboriginal descent incarcerated in Canadian federal prisons (Patton, 2002). A chronological review and content analysis of relevant historical documents from this period was conducted. Content analysis refers to “a process of data-reduction and sense-making effort that takes a volume of qualitative material and attempts to identify core consistencies and meanings” (Patton, 2002, p. 453). The perspective taken in the analysis of documents aligns the principle of least restriction from the CCRA with postcolonial Indigenous ethical theory, “that recognizes power sharing within diversity as an integral part of fairness and social justice and as a means to challenge power structures in order to transform lives” (Chilisa, 2012, p. 174).

The lens used for the critical policy review relies on the presentation and internalization of two principal, theoretical approaches: the work of dominant-culture theorists Michel Foucault, David Garland, Thomas Berger, and Peter Luckmann and the work of decolonizing theorists Edward Said and Linda Tuhiwai Smith.

**Selection of documents.** The policy review is entrenched in the policy development and policy application efforts made by the Government of Canada and the Correctional Service of Canada to combat the documented and long-standing
disproportionate representation of offenders of Aboriginal descent. The catalyst for these efforts can be found in the documentation provided to the Crown via the annual Public Safety Canada Corrections and Conditional Release Statistical Overview reports, two Supreme Court of Canada decisions (Gladue, 1999 and Sauvé, 2002), and various reports to Parliament by the Office of the Correctional Investigator.

The documents listed in the timeline of this study were selected following a larger review of documents from the same period connected to the correctional-programs initiatives within the CSC (Quantick, 2007). In this process, pivotal documents relevant to the disproportionate representation of offenders of Aboriginal descent, Aboriginal Elders, and healing programs were identified. These documents, produced between 1992 and 2012, represent defining moments in the evolution of federal policy related to the incarceration of offenders of Aboriginal descent. The foundation document in the chronology is the 1992 Corrections and Conditional Release Act (CCRA). It marks the moment when the Penitentiary Service ceased to exist and the Correctional Service of Canada became an organizational reality. Subsequently, there have been a number of correctional investigations, coroners’ inquiries, Supreme Court Rulings and Crown commissions of inquiry. With each investigation, ruling, and inquiry there have been consequent revisions to legislation, governing practice, and operational policy. Each change has affected the capacity of federal-prison staff and inmates to navigate the institutional day. A rereading of the documents that form the chronology—in a process of content analysis that encompasses the three justice paradigms (retributive, restorative, and Indigenous) and the four theoretical perspectives (dominant culture, decolonizing,
restorative, and healing)—provides an overlapping series of lenses from which to
understand the difference between the intent of the documents and their application.

The documents that were reviewed, and their supporting rationale are as follows:

- **1992: The Canadian Corrections and Conditional Release Act.** The CCRA is
  unique in the Western world in that it was among the first of the government
  acts to be passed following the 1982 Charter of Rights and Freedoms. As
  such, it is pivotal to the development of post-charge policies and practices and
  serves as the road map for parole practices in the post-Charter era.

- **1996: Royal Commission on Aboriginal Peoples.** The commission issued a
  five-volume report that included more than 400 recommendations. The Royal
  Commission on Aboriginal Peoples represents the most comprehensive study
  of Aboriginal issues ever undertaken in Canada.

- **1996: The Commission of Inquiry into Certain Events at Prison for Women
  (Arbour, 1996).** The investigation and subsequent commission of inquiry was
  mounted after a video record of a series of cell extractions and body searches
  on the female population at the Prison for Women by the all male Kingston
  Penitentiary Emergency Response Team was broadcast on the CBC’s The
  Fifth Estate. The outcry from the public was shrill and visceral and the
  documents listed play a huge role in understanding the prison in the context of
  contemporary dominant-culture public policy.

- **1999: R. v. Gladue.** The Supreme Court’s Gladue ruling documents the case
  of an Aboriginal woman held under federal warrant. The ruling documents
  and acknowledges that the experience of being Aboriginal within the
  dominant culture played a significant role in the events that led to her
  conviction. More significantly, the ruling contributed to and required a
  developmental-policy dialogue that confirmed the uniqueness of Aboriginal
  people in the Canadian justice system.

- **2000: “Understanding Restorative Justice Practice within the Aboriginal
  Context.” FORUM on Corrections Research (Achtenberg, 2000).** This
  document is noteworthy because it serves as a record and reference point in
  the CSC’s efforts to interpret and apply the Restorative Justice paradigm in
  their operational processes.

- **2002: Sauvé v. Canada (Chief Electoral Officer).** The Supreme Court
  confirmed that those held under warrant retained the right to vote. This is
  noteworthy because it sets a standard for citizenship that is unique in the
  world. It confirms, in concrete terms, that the design and operation of the
  prison process must attend to the sentence as the punishment. Most
  significantly, it confirms that the state may only suspend rights that might
  impede public safety and/or the safety of the individual.
• 2003: Strategic Plan for Aboriginal Corrections. This plan, which includes the Aboriginal Corrections Continuum of Care, was developed in consultation with Aboriginal stakeholders, who worked with CSC to develop new approaches to addressing Aboriginal offender needs.

• 2006: A Roadmap to Strengthening Public Safety. This report is best understood as a kind of government white paper. It signalled the policy preferences of the governing party as it tested public opinion, both in the parliamentary debate and across the country, regarding the probable impact of the Government’s desired changes to the CCRA. The report also served as a blueprint for a significant ideological shift in policy and practice for the CSC.

• 2012: Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act. (Sapers, 2012). This report, presented to Parliament by the Office of the Government of Canada Correctional Investigator, flows from initiatives and investigations of the correctional investigator’s office. It is noteworthy to this process because it confirms the lamentable state of Aboriginal Corrections in Canada. Most important, it provides a continuum to better understand the perspectives of the CSC and the OCI with respect to the challenges that emerge in the disproportionate representation of Aboriginal People held under federal warrant.

• Commissioners Directive 702 Aboriginal Offenders (last revised 2013-11-12).

• Commissioners Directive 785, Restorative Opportunities Program and Victim Offender Mediation Services (last revised 2015-07-23). Commissioners’ Directives address the operational reality for those held under warrant. As such, they have a direct impact on the variables that define the ebb and flow of daily life for both staff and offenders within the institutional setting.

Document-review method. The critical-policy review commenced with an analysis of the original 1992 Corrections and Conditional Release Act and every subsequent revision to the act up to 2013. Each change to the act was noted and recorded. With this complete, each change was compared and contrasted over time to assess its potential impact on the CSC staff and offenders. Central in the legislative policy in the review was the principle of least restriction found in the opening pages of the CCRA (1992). The principle of least restriction is central to the policy review for several reasons. First and foremost, it is a clear directive that is understood as an operational
imperative from the Government of Canada to the three government agencies/departments listed in the act:

- For the CSC and the NPB, the principle of least restriction serves as instruction as to how the warrant imposed by the court is to be administered. A reasonable person would interpret the principle of least restriction to mean that the CSC and NPB would ensure that non-violent offenders would be contained in less restrictive settings than violent offenders, that those serving shorter sentences would spend a greater proportion of their sentence in supervised community parole settings than prison settings, that those with identified mental-illness challenges would be assigned to hospital settings over prison isolation cells and that there would be correctional programs available for offenders that corresponded to the correctional plan produced by the regional assessment unit for each offender at the beginning of the sentence.

- For the Office of the Correctional Investigator, the principle of least restriction is a pivotal requirement, levelled by the government on the CSC, the NPB, and the OCI, from which the success or failure of every aspect of correctional operations can be measured. The principle of least restriction eclipses crime rates, the challenges of providing for secure custody, and the design and delivery of correctional programs: It compels the CSC, the NPB, and the OCI to internalize the notion that citizenship is not suspended when a warrant is imposed on a citizen by the courts.
Subsequent to the passage of the CCRA, the CSC succinctly confirmed its understanding of the principle of least restriction in its mission statement:

Our Mission is also based on the principle that offenders, as members of society, retain their rights except for those necessarily removed or restricted as a consequence of their sentence. Given that we hold an enormous degree of control over the lives of the offenders in our care, we must be exceptionally vigilant in safeguarding their rights, and employing the least restrictive measures that are consistent with the protection of the public, ourselves as staff members and the offenders themselves.”

(Mission of the CSC, 1997, p. 6)

In addition to the ongoing assessment of the degree to which each document served the principle of least restriction, the documents were also, over time, referenced one to another in a process of content analysis that reflected on each of the three justice paradigms (retributive, restorative and Indigenous) and the four theoretical perspectives (dominant culture, decolonizing, restorative and healing). As inconsistencies, irregularities, and trends emerged in the review and rereading of policy, each of the paradigms was applied in sequence to assess the relationship between intent and operational application. Following this process, the identified inconsistency, irregularity, or trend was then assessed from each of the theoretical perspectives to assess its impact on the incarcerated individual in the context of the principle of least restriction.

The critical policy review analysis focused on exposing moments of unforeseen consequence, which I define as those instances in which the extended community of individuals who live the consequence of the prison (staff and offenders) functions in
ways that declare what is unrepentantly sacred and what is irrevocably secular. These are the moments when people—offenders and staff, staff and offenders—behave in ways that are beyond the bounds of declared policy and mandate. They are the moments of disparity that emerge in the compare-and-contrast process of reading and rereading documents. Each becomes evident through the lens of the justice paradigms (retributive, restorative and Indigenous) and theoretical perspectives (dominant culture, decolonizing, restorative and healing). Moments of unforeseen consequence bring into relief the policy variables and systemic decisions that contribute to the disproportionate representation of offenders of Aboriginal descent who fill institutional cellblocks and segregation units.

The last document considered in the critical policy review applied (in its own methodology) a process of content analysis that parallels the methodological approach applied in this study. The publication of the last document in the critical review chronology, *Spirit matters: Aboriginal People and the Corrections and Conditional Release Act. A Report to Parliament by the Office of the Government of Canada Correctional Investigator* (Sapers, 2012), coincided with the twentieth anniversary of the CCRA. Its method, findings, and recommendations are a synthesis of two decades of documentation by the OCI, the CSC, Crown Commissions of Inquiry, Supreme Court of Canada decisions, Commissioner’s Directives and new policies developed and implemented to address the evolving needs of the CSC and NPB between 1992 and 2012. While the CCRA can be understood as a visionary direction of intent, *Spirit Matters* (Sapers, 2012) functions more like a rear-view mirror providing an image of where the system has actually travelled. The OCI reporting protocol employs precedent to assess intent and performance. Its findings and recommendations avoid the binary assignment of
blame in favour of outcomes that honour the CCRA’s principle of least restriction. For this reason, the OCI assessment protocols contribute significantly to the methodological model applied in this study.

**Theoretical reference points functioning as tools of analysis.** The methodological tools employed in the study followed a sequential process in its assessment of both the “Critical Policy Review” and the “Elders’ Perspectives” sections of the study. The methodological tools were applied in sequence to find those moments of unforeseen consequence that bring the visible outcome of policy into relief. The reference point in the application of the methodological tools is the principle of least restriction. From a cursory reading of the principle of least restriction, it would seem to be easily understood as both transparent and even handed. In some respects, it can be understood as nothing more than the legislative personification of the golden rule in which each citizen treats every other citizen as they would most like to be treated. On this basis, when a moment of unforeseen consequence was unearthed, the principle of least restriction was referenced to assess which of the paradigms most readily applied. This was followed by an assessment of which of the theoretical perspectives best explained the cause and effect of the events and of the intent of the participants. Ultimately, the application of the methodological tools challenges the reader to reflect on the nature of relationship, particularly the binary relationship of sacred and secular in the administration of incarceration.

The methodology of the study involved the sequential application of seven lenses. The lenses fit into two larger groups: justice paradigms and theoretical perspectives. The critical policy review was concentrated in the justice paradigms and dominant and
decolonizing theoretical perspectives, whereas the “Elders’ Perspectives” chapter was more concentrated in the justice paradigms (Retributive, Restorative and Indigenous-justice) and the restorative and healing theoretical perspectives.

Theoretical perspectives. The theoretical categories contained in this chapter flow from the justice paradigms noted in Chapter 1: retributive justice, restorative justice and Indigenous justice. The dominant-culture theorists speak to the retributive-justice paradigm and the tools of colonization to achieve compliance. Decolonization theorists built their work out of the identification of colonization as an essential requirement to secure compliance, building on the work of dominant-culture writers and, in turn, contributing significantly to the work of restorative-justice writers. The work of healing theorists is an integrated outcome of the Indigenous-justice paradigm in an evolving process where each theoretical perspective is a product of its predecessors.

Methodological tools from dominant-culture theorists. As a first theoretical lens through which to assess the implications of policy and practice, dominant-culture theorists provide conceptual tools of analysis for the reading of documents. These include the following:

- Foucault’s (1977) work regarding the normalization of deviance, training of the body (to comply), Bentham’s panopticon, and the carceral system;
- Garland’s (1990, 2001) criminology of penal-welfarism, criminology of everyday life, and the criminology of the other; and
- Berger and Luckmann’s (1967) typification, habitualization, institutionalization, and legitimization, which identify and explain the
practiced, essential, and internalized institutional-colonizing ritual that defines the life of a prison.

**Methodological tools from decolonizing theorists.** Decolonizing theorists provide the second theoretical lens through which to assess the implications of policy and practice. They provide Indigenous research perspectives and decolonizing recognition tools for this study. The principle conceptual tools for this study are as follows:

- Edward Said’s (1978) contribution in this study is the notion of essentialization, in which other cultures are generalized/reduced in ways that benefit the dominant culture and contribute to the creation of the Other. The concept was used in this study to identify instances in policy and practice that generalized or reduced Indigenous offenders.

- Linda Tuhiwai Smith stipulates practices for the rereading of history that are respectful of Indigenous ways of understanding the world and place particular emphasis on story-telling, remembering, Indigenizing, and connecting. Her work focuses on three essential questions in a critical policy review:
  - For whom were these policies written?
  - By whom were these policies written?
  - Toward what form of social justice were the policies directed?

- Smith’s questions position the inquiry from a space of interconnectedness and relationality.
A rereading of policy documents that applies Said’s recognition of the Other and Smith’s pragmatic, decolonizing perspective works to better understand the implications of colonization on all of the participants engaged in the process.

**Methodological tools from restorative-justice theorists.** In the context of dominant-culture theory or decolonization theory restorative justice is best understood as a post-1980s movement. The central conceptual tools from this theoretical perspective that are applicable in this study are as follows:

- The restorative-justice alternative to dispute resolution mechanisms does not advocate for the complete abolition of established, adversarial, precedent-based, western European common-law processes. In fact, restorative-justice advocates make the assumption that the dominant-culture justice system is basically sound and that, with the right kinds of programs, restorative-justice theory can encompass “an approach to repair the harm caused by crime that affects victims, offenders and communities” (Monchalin, 2016, p. 280).

- Restorative-justice theory is best understood as a series of communication techniques (such as community circles) employed in community settings. They provide for a more consensual environment for dominant-culture lawyers and judges to function.

- Nils Christie’s 2004 contribution to the field of restorative justice lies in his longitudinal study designed to make sense of the incarceration trends in Europe and North America. His work tracks trends through each of the eras identified in Garland’s research: the criminology of penal-welfarism, the criminology of everyday life, and the criminology of the other. In
documenting the escalating trends of incarceration across Europe and North America, Christie identifies the “unwanted acts” that are classified over time as criminal and the punishments that are applied to deter delinquency. In the context of this study, his work uses urban dominant-culture understandings to provide and advance an accessible rationale for restorative justice.

- The federal Canadian justice system’s requirement that Gladue reports be created and submitted to the judge prior to sentencing is an example of a restorative-justice mechanism. In this context the requirement, which emerged in the aftermath of the *R v. Gladue* Supreme Court of Canada decision, recognizes the implications of decolonization theory as it acknowledges the reality of the dominant-culture justice system.

The application of restorative-justice perspectives in a rereading of policy documents provides bridging insights into how unplanned carceral moments, as well as moments of genuine, intuitive decolonization, occur. With respect to the assessment of the words of the Elders, restorative-justice theorists can be understood as translators who provide links between the noun-based language of the dominant-culture theoretical perspective and the verb-based language of the healing theoretical perspective.

**Methodological tools from healing-methodology theorists.** Healing theorists are vested in a grounded practice that puts recognition and responsibility before punishment and deterrence. As James Dumont (1996) puts it, healing justice is the pursuit of a true judgment required to re-establish equilibrium and harmony in relationship, family and society- a judgment which is gwaik:
straight and honest, while at the same time being minidjiwin: respectful of the integrity of all persons, both wronged and the wrong-doer. (p. 105)

The central conceptual tools offered by the healing theoretical perspective are as follows:

- In the context of the Correctional Service of Canada’s Continuum of Care policy, the centre of a healing methodology in Elder-led healing programs is the medicine wheel. It is an all-encompassing approach in which the quadrants of the medicine wheel represent the seasons, the natural elements, and the four elements of existence: spiritual, emotional, physical, and mental. It can be used in countless ways, from individual one-to-one teachings to large group teachings and interactions in a healing circle.

- The focus of a healing approach is to bring individuals and groups to a state of self-awareness and inter-connected responsibility. While Foucault’s dominant-culture concept of carceral (1977) demands compliance but not necessarily understanding, and decolonizing theorists establish an imperative to acknowledge the colonizing impact of the prison, the medicine wheel teachings provided within a healing perspective challenge each participant to internalize and practice the teachings as part of a lifelong, self-actualizing journey.

Applying healing perspectives to a rereading of policy documents provides individualized insights into the journey of each participant. In this process, the carceral moments are recognized and the decolonizing insights are affirmed. With respect to the assessment of the words of the Elders, healing theoretical perspectives focus on the
application of the principle of least restriction from within the individual participant. The healing perspective positions internalized recognition, responsibility, restitution, and revitalization as a lifelong endeavour that acknowledges the connections and relationality of everything the individual comes into contact with. The objective in a healing perspective is to help the individual to arrive at a place where successful community reintegration is a state of mind not a place you live.

**Part Two: Elders’ Perspectives**

The dialogues assessed in the “Elders’ Perspectives” chapter of the study serve as the second step in the triangulation of theory, policy, and participant responses, while the “Critical Policy Review” chapter seeks to triangulate the policy chronology, (punctuated by the principle of least restriction). The theoretical tools focused on in the critical policy review centre on the dominant culture and decolonizing theorists and those moments of unforeseen consequence that are informed by the sacred assumptions of the prison—assumptions that define (in policy terms) operational success and failure. In the assessment of policy and participant responses, “Elders’ Perspectives” uses the 2006 Continuum of Care (see Figure 2) as its policy focal point. It is a moment of unforeseen consequence that moves the analysis from dominant-culture and decolonizing perspectives to restorative and healing perspectives.
Figure 2. Continuum of Care (Correctional Service of Canada, 2003)

The 2006 Continuum of Care is not just a moment of applied-decolonizing theory created by the CSC. The Continuum of Care confirms an organizational understanding of the principle of least restriction. At the centre of the Continuum of Care is the medicine wheel (Strategic Plan For Aboriginal Corrections, 2003). While the medicine wheel is not at the centre of spirituality for every Indigenous community in the world—or for that matter even within the geographic boundaries of the Canadian nation state—its application (as a central feature of the Continuum of Care) provides a unique link from decolonization theory to restorative justice and healing methodology.

On this basis, the design for the dialogues that emerge in “Elders’ Perspectives” relies on linking the work of Patton (2002) to Chilisa (2012). In this way, there is space for simultaneous understanding: Patton’s definition of structure can be understood as Chilisa’s perspective on context; experience can be understood as the body; knowledge
can be understood as mind; and spirit can be internalized as healing (Chilisa, 2012; Patton, 2002).

Thus, the interviews moved through and across the themes of context, structure, and role; mind, knowledge, and place; body, experience, and function; and spirit, healing, and effect. This thematic approach corresponds to a high-priority organizational and program policy of the Correctional Service of Canada: the Aboriginal Continuum of Care (2006). Central to this policy is the CSC’s interpretation of the medicine wheel and its relationship to its mission and mandate:

The Medicine Wheel, found at the centre of the continuum, reflects research findings that cultural teachings and ceremonies (core aspects of Aboriginal identity) are critical to the healing process. Representing the cycle of life from conception to the return to the spirit world, the Medicine Wheel is a reminder that correctional interventions developed and implemented for Aboriginal offenders must take into consideration the past, the present and the future direction of Aboriginal people as a whole and of the Aboriginal person as an individual.

Surrounding the Medicine Wheel is the Aboriginal community. The Continuum recognizes that Aboriginal communities must be involved in supporting Aboriginal offenders during their healing journey and reintegration, as they link offenders to their history, culture and spirituality. The continuum also reflects the importance of community support at every step during the administration of the sentence.
In the program space between the Continuum of Care and the knowledge provided to me by the Elders, the linkages that apply the work of Patton (2002) to Chilisa (2012) reveal moments of unforeseen consequence to achieve four overlapping goals. They are as follows:

- Confirm a decolonizing methodology that is respectful of the rituals, stories, songs, and prayers that contribute to Indigenous knowledge and are essential to understand those researched individually and collectively from an Aboriginal perspective (Battiste, 2000; Chilisa 2012).

- Maintain the study’s proposed use of qualitative exploratory design (Creswell, 2003) and methodological data triangulation (Farmer, Robinson, Elliott, & Eyles, 2006).

- Raise the profile and focus of Chilisa’s (2012) responsive Indigenous research methodologies in which particular emphasis was placed on credibility and confirmability.

- Honour the established research-interview approaches documented and honed by Spradley (1979) and Patton (2002).

Significantly, the use of four thematic stages as a tool of analysis underscores the dichotomy that Elders navigate in the course of their daily work. It inhabits the space that is triangulated as they conduct their day-to-day work within the terms of the CCRA and the disparate relationship between operational policies/exigencies in the life of a prison.
whose legislated mandate is to apply the principle of least restriction in pursuit of the successful community reintegration of people assigned to their care.

**Methodology**

The purpose of the work in the “Elders’ Perspectives” chapter of the study is to apply a method that completes the triangulation of theory to policy (from the policy-review phase of the study) and policy to participant responses (from the interview phase of the study). In this process, the Elders words become an integral component in arriving at a more complete understanding of the role, place, and function of Elders in the delivery of Indigenous healing programs within Canadian federal prisons.

The rationale for the methodology of used in “Elders’ Perspectives” is vested in a series of semistructured interviews, the format of which was selected to effectively bring together three perspectives:

- the established thematic-research interview approaches of James Spradley, (1979) which contain distinguishing structural and contrast questions;
- the scholarship of Michael Patton (2002), whose approach to the structure of an interview question distinguishes between knowledge, experience, and feeling.
- the decolonizing perspectives and postcolonial interview methods documented by Chilisa (2012) that put emphasis on relationality, interconnectedness, and Indigenous ways of knowing.

The interview questions were designed to create a collegial dialogue in which each of the theoretical perspectives (dominant-culture, decolonizing, restorative-justice,
and healing methodologies) could be explored from within the community and institutional experience of the Elder. The rationale for the approach grew from an understanding that the Elders would be less likely to share their thoughts and feelings in a formal interview and that a semi-structured dialogue would encourage fuller, more comprehensive responses. The three perspectives were combined to develop sagacity (Emagalit, 2001), allowing the wisdom and beliefs of the Elders to be parsed from the shadow of the carceral prison (Foucault, 1977).

The justification for bringing together the work of Spradley (1979), Patton (2002), and Chilisa (2012) in the design and the application of interviews with Elders in this study lies in the disproportionate representation of offenders of Aboriginal descent held under federal warrant. The Aboriginal offenders place in the federal system is contained and illustrated in demographic data produced annually by Public Safety Canada in the period between 2008 and 2013:

- In that period, the Aboriginal population held under federal warrant increased from 3,788 to 4,764, an increase of 20.5 per cent or 4.1 per cent per year.
- In 2012–2013, Aboriginal offenders represented 23 per cent of the total federal population while Aboriginal adults represent just 3 per cent of the Canadian adult population. Within this demographic, Aboriginal incarcerated women represent 33 per cent of all incarcerated women, while Aboriginal men represented 22.6 per cent of all incarcerated men.
- In 2012–2013, Aboriginal offenders accounted for 23 per cent of all those incarcerated and 16.2 per cent of the population supervised in the community on parole. Within these statistics Aboriginal offenders were classified as
higher risk than non-Aboriginals—16.6 per cent versus 24.8 per cent for minimum-security settings, 65.6 per cent versus 60.9 per cent for medium-security settings, and 17.8 per cent versus 14.2 per cent for maximum-security settings. (*Corrections and Conditional Release Statistical Overview*, 2013)

In the context of the ever-rising trend that cycles and recycles offenders of Aboriginal descent through the federal-justice system, Elders are on the front lines of the work to break the cycles that end with incarceration. Their perceptions, experience, and wisdom are essential and integral to identifying and internalizing a decolonizing approach that reverses the trend.

Second, the Office of the Correctional Investigator, focused particular attention on Elders and healing programs. The significance of Elders’ work to address the disparities of the current disproportionate representation is captured in the words of Canada’s correctional investigator, Mr. Howard Sapers (2012):

Elders are at the centre of any [Indigenous] healing process, be it through ceremony, teaching or counselling. They are an invaluable resource . . . A more thorough investigation of Elders’ services in federal institutions and Healing Lodges and factors that may inhibit their capacity to meet the needs of Aboriginal offenders is warranted. (p. 22)

Third, Elders are directly linked to the *principle of least restriction* contained in the CCRA through the individual correctional plan produced by the CSC for each and every person assigned to an Elder-led healing program. The correctional plan is constructed to take into consideration four principles: risk, need, responsivity, and professional discretion. According to the CSC, the correctional plan is a pivotal document
created through the offender-intake process (OIA). The correctional plan is the most important document that a correctional jurisdiction produces regarding an offender. It is the strategic plan that defines the best professional opinion on how the CSC intends to manage the offender’s sentence and what expectations the agency has for the offender. It includes long-term, time-referenced goals (particularly with respect to important sentence milestones like conditional release eligibility dates), program requirements and their sequence, offender-specific supervision techniques, and behavioural indicators related to the offender’s crime cycle (Taylor, 2013).

Elders are among those who contribute to the creation of the correctional plan at the beginning of each sentence. In the context of the disproportionate representation of offenders of Aboriginal descent, an interview dialogue with Elders that explores their experiences, feelings, and knowledge regarding the design and administration of the correctional plan is essential.

Finally, an interview approach that brings together the work of Spradley (1979), Patton (2002), and Chilisa (2012) is justified as a link to the research of others who have worked in the development and assessment of healing programs over time and in the broader understandings produced in the evaluation of correctional programs.4

4 These research works include In search of your Warrior: A Critical Review (Couture, 1999); Aboriginal Pathways in federal corrections (Green, 2002), “In Search of Your Warrior Program” (LaBoucane-Benson, 2002; in Forum on Corrections Research, 14(3), pp.40–41); Practical Application of an Indigenous Research Framework and Two Qualitative Indigenous Research Methods: Sharing Circles and Anishnaabe Symbol-Based Reflection (Lavallee, 2009); The Relevance of a Cultural Adaptation for Aboriginals of the Reintegration Potential Reassessment Scale (RPRS) (Siouë & Thibault, 2001); Is There a Need for Aboriginal-Specific Programming for Aboriginal Offenders? (Trevathan, 2003); An Examination of Healing Lodges for Federal Offenders in Canada (Trevathan, Crutcher, & Rastin, 2002); and A Profile of Aboriginal Offenders in Federal Facilities and Serving Time in the Community (Trevathan, Moore, &Rastin, 2002).
Criteria for the selection of participants. Across Canada there are, at any one
time, more than 100 Elders working within CSC institutional settings. This is based on
the ratio of 54 institutions with an average of two Elders assigned to each institution
(personal communication A. Brant, Elder, and V. McCoy, Aboriginal Liaison Officer,
both of Frontenac Institution, September 2012). The Elders who participated in this study
were selected from within Ontario.

The selection process began with conversation and brainstorming with Al Brant
(who is himself an Elder in Ontario and who has also worked in the appointment process
for Elders) to develop a list of current and former Elders who might be open to
participation. Notably, these discussions yielded the observation that for the generation of
Elders appointed in the 1980s and 1990s, recruitment was essentially by word of mouth.
By comparison, the Elder appointments of the last decade required the CSC to complete a
series of community-based reference checks from individual and community sources that
considered knowledge, qualifications, and personal suitability in their placement. I
understand that, after 2013, this process became yet more formal as the CSC made efforts
to ensure that the Elders it appoints are understood to be Elders in their communities as
well (personal communication, A. Brant, August 2013).

Mr. Brant’s stature in the Indigenous community is the product of a lifetime of
working with youth in the Tyendinaga community. This community work is combined
with a decade of experience and knowledge working as an Elder within several
Correctional Service of Canada institutions. I have known Mr. Brant for several years and
approached him to help in the development of the selection-criteria process because he
graciously allowed me to shadow him for over a year in his work as Elder at Frontenac
Institution. This occurred as part of the Bimaazidiwn portion of the PhD program at Trent University. In approaching him for advice, he confirmed that Elders were unlikely to speak with someone who was not referred by another Elder. Further, it was concluded that Elders would be very unlikely to share their experience with someone who had not worked in federal correctional programs. Mr. Brant considered my previous experience as a correctional educator and consented to introduce me to Elders from within the corrections community of Elders in CSC’s Ontario region.

In seeking the participation of an Elder in the study, the following experiential attributes were identified as essential:

- The study required Elders of both genders who had worked at more than one security level within the Correctional Service of Canada’s Ontario region.

- The study required Elders who were currently working in Ontario or who had retired from service in this role.

- The study required Elders who had experience working in pathways units. Pathways units are housing environments/cell blocks/ranges within institutional settings that are focused to address the cultural and spiritual needs of First Nations, Métis, and Inuit offenders. Offenders who participate in a pathways unit have applied to live within the pathways setting.

In this endeavour, Elders from Ontario Region were identified who met the criteria. They were approached by Al Brant to see if they would be receptive to meeting with me to discuss their possible participation in the research study. All of the Elders approached were open to speaking with me and subsequently committed to participate in the study.
Interview design. The semistructured interview questions were designed to create a collegial dialogue. The approach grew from an understanding that the Elders would be less likely to share their thoughts and feelings in a formal interview and that a semistructured dialogue would encourage fuller, more comprehensive responses. The proposed interview questions incorporated the established research-interview approaches of Spradley (1979) and Patton (2002) with the postcolonial interview methods documented by Chilisa (2012). The questions included in the interview guide were focused to apply Chilisa’s three principles for conducting a postcolonial interview: relationality, connectedness, and responsibility.

A paramount concern was that the interview design promoted relationality, equality, and respect. To ensure that equality was properly placed in the interview methodology, tobacco was presented before the interview commenced. Additionally, each participant was provided an introduction from me to place my experience and perspective as a positioned subject in an effort to extend the courtesy and respect that had been extended to me by the Elders when they agreed to share their knowledge.

The principle of connectedness required that we engage in dialogues that enabled the Elders to draw on their connection to the people in, and the environment that houses healing programs. I understood from my experience as a correctional educator how important creating a safe environment was to learning. In my view it is even more important in healing programs; each interview was therefore held in a setting most convenient and comfortable for the participant. Efforts were made to ensure there was food and drink to create a restful place for dialogue. This was more than common courtesy; as interviewer, I was asking the Elders to speak about their interest and
experience in a workplace that is, at its best, distressful to most people. Confidentiality and security are only possible when connectedness is secured.

Finally, the interview methodology was designed to cultivate responsibility. In this instance, the outcome of a responsible dialogue is a process where Elders can bring Indigenous knowledge to the discussion in ways that bridge the space between the interview, the program participants, and the omnipresent prison (Chilisa, 2012; Monchalin, 2016).

Each person approached in the introductory and orientation meetings mentioned the medicine wheel as both essential knowledge and a high-priority tool in their work as Elders working with incarcerated adults. Given this, the interview focus veered from the initially proposed themes of knowledge, experience, structure, and feeling; these were replaced by the quadrants and corresponding themes of the medicine wheel to bridge the decolonizing insights of Patton (2002) and the healing insights of Chilisa (2012). In this study, these themes are:

- Stage 1: context, structure and role;
- Stage 2: mind, knowledge and place;
- Stage 3: body, experience and function; and
- Stage 4: spirit, healing and affect.

To bridge the dichotomy of the sacred’s application from within the carceral reality, the questions included in the interview guide were focused to make sense of the challenges encountered by Elders in the provision of healing programs. The interview guide references Chilisa’s three principles for conducting a postcolonial interview; in this application, a thematic and staged methodology contributes to understandings of
imperialism and colonialism that, in turn, form the basis of an Indigenous language of critique (Smith, 1999). The four-stage thematic methodology provides a sequenced approach to the assessment of the Elders’ words that meets two simultaneous requirements.

This approach respects the dichotomy between the tradition of the dominant-culture carceral (Foucault, 1977) and the postcolonial Indigenous reality of an Elder in the provision of healing programs (Waldram, 1997). It also honours “the interconnectedness and interdependence of all things and from the integration of spiritual beliefs, values, and experience as valid ways of coming to know a reality” (Chilisa, 2012, p. 182).

In this study, the approach to Elder assessment is a collaboration that contributes to the creation of a lens through which to better understand the words of the Elders. Bringing together the work of Spradley (1997), Patton (2002), and Chilisa (2012), the approach also incorporates the scholarly contributions of Cross, Earl, Echo-Hawk Solie, and Manness (2000) and Mertens (2009).

**Stage 1: Context, structure, and role.** Context seeks to explore the culture, community, and social history of Elders in their path to work in the provision of healing programs to federally incarcerated adults (Patton, 2002). In this part of the inquiry, the focus is on understanding how the life experiences of the Elders are organized and perceived in relation to the role they think they play in their work with offenders of Indigenous descent (Chilisa, 2012; Patton, 2002).

**Stage 2: Mind, knowledge, and place.** Mind explores the thoughts, memories, and emotional processes for the elders in their day-to-day work. Concurrently, knowledge
and place seek a perspective on the factual reality and hierarchy of healing programs and Elders from within the carceral reality of the prison (Chilisa, 2012; Patton, 2002).

**Stage 3: Body, experience, and function.** This quadrant seeks sagacity and wisdom regarding the physical aspects of the day-to-day work of healing programs. The interview dialogue explores how Elders function with participants and within the community of staff who make the institution their professional calling (Chilisa, 2012; Emagalit, 2001; Patton, 2002).

**Stage 4: Spirit, healing, and affect.** The spirit, healing and affect stage of assessment explores the affective dimensions of life that link the learned teachings and practices (both positive and negative) that led to incarceration to the necessary steps required to change the patterns that brought participants to prison. Of particular importance to this dialogue is the gathering of knowledge regarding how Elders feel about the provision of healing programs and its effect on the communities of people inside and beyond the walls of the prison (Chilisa, 2012; Patton, 2002).

**Interview questions.** The questions are organized to create a dialogue that bridges Patton’s (2002) question themes of structure, experience, knowledge, and feeling with the work of Indigenous scholars Cross et al. (2000) and Mertens (2009) who, in separate endeavours, applied four different and overlapping themes of context, body, mind, and spirit to a decolonizing method in their research. The questions were sequenced to encourage a narrative dialogue in pursuit of sagacity (Kaphagawani & Malherbe, 2000; Mkabela, 2005). The questions are sequenced to allow for reflection and reconsideration between each of the stages.

*Stage 1: Context, Structure, and Role:*
• How did you come to be an Elder working in correctional programs?

• How does a typical day unfold for you?

• What would you say is the purpose or goal of your work? How are your efforts best understood; as basic cultural literacy for Aboriginal participants; as an introduction to Indigenous knowledge; as a measurable connection to successful parole, or are there other ways your efforts are understood?

• If you were to describe the people who participate in your programs, what do they have in common? Have they changed over time? What makes them unique?

• What is the impact of pathways program? How does your program fit into the larger context as one of a number of correctional programs?

  **Stage 2: Mind, Knowledge, and Place**

• If you were describing your work to a stranger, how would you describe the work? Would words like restorative or Indigenous be included in your explanation?

• How would you characterize your relationship to the Aboriginal liaison officers who have been assigned to your program?

• So much of what happens in an institution is defined by policies and laws that are established and administered by people who have experienced the day-to-day demands of the institution: I would like to better understand the connection of your work to the policies and laws that frame the Correctional Service of Canada. Are there any particular policies or laws that are essential
to understanding your work? How does the *Corrections and Conditional Release Act* frame or impact your work?

- Are Gladue reports a feature of your daily efforts?
- If you were describing a policy or law that has the most significant impact on your work, what would it be?

*Stage 3: Body, Experience, and Function*

- What role does your work play in making the institution safer for the men or women assigned to your care?
- I am interested in better understanding how other prison staff affect Elders doing this kind of programming. What is your relationship to the parole officer, senior managers, health-care staff, and security staff? Are these competing forces or complementary networks in your work?
- Does the Continuum of Care play a role in your work?

*Stage 4: Spirit, Healing, and Effect*

- To what extent do Government of Canada policy and legislation support, challenge, or conflict with traditional Indigenous teaching?
- Reflecting on your work, what has been your single biggest challenge?
- With all that has transpired, what has been your single greatest accomplishment?
- Is there a story from your experience that needs to be shared?

**Interview procedures.** The Elder interview process was applied consistently with each Elder. I engaged in three conversations with each Elder: a 30-minute introductory telephone conversation, a 60-minute face-to-face orientation (to the research) dialogue,
and a 90-minute recorded interview. With each participant, conversations, dialogues, and interviews followed the same sequence of materials and questions. Elders were contacted in the same sequence in the introductory telephone conversation; when the introductory telephone conversations were complete, the orientation dialogues commenced. When the orientation dialogues were completed, the recorded interviews were conducted.

- The introductory conversations occurred in July of 2015. All of the conversations exceeded the proposed 30-minute duration. These conversations required a longer time frame than 30 minutes because the Elders made a series of inquiries about my experience and perspective regarding offenders and the prison.

- The 60-minute orientations were held individually with the three current Elders in July of 2015 in my kitchen in Wilton Ontario over tea, coffee, and freshly baked goods. The location was set with these three participants because it was the most convenient location to the routines of each Elder. For the two Elders who had retired, the introductory conversations were conducted at the Curve Lake Pow Wow in September of 2015 in a gathering space set aside for Elders. For each of the Elders, the introductory conversation was held at a time and location most convenient to the Elder.

- To begin each of the 60-minute orientation interviews, I shared a copy of the “Researcher as Positioned Subject” statement that opens this dissertation as well as my thoughts on the importance of the Elders’ work and of the research. These thoughts were as follows:
The work you do is complicated and challenging. For you to feel you can share your experiences, it is important that this process be a conversation and, as I am going to ask you how you have come to be an Elder working in a federal prison, it is only fair that you understand how I have come to this research process. I would therefore like to share with you my “Researcher as Positioned Subject” statement.

It is my hope that your experiences will cast light and understanding on how you function in the context of a federal prison and how your work contributes to the successful community reintegration of the men and women entrusted to your programs. Your work is not fully understood by the research community and is largely unknown in the general public; I am hopeful that your insights will provide a framework of best practice from which to move forward.

The statement was provided, in part, to make the point that I understood the language of the prison and had some understanding of the ebb and flow of an institution. It was my hope that the sharing would also contribute to a reciprocal relationship of trust, courtesy, and respect. All of these understandings are crucial to the day-to-day management of any correctional-program responsibility. In these settings you are only as good as the last thing you did; a professional reputation is hard to acquire and easy to lose. Finally, I felt the sharing would establish my own baggage and preconceptions about the work of correctional programs generally and the work of Elders in the provision of healing programs more particularly. The overall goal in sharing the “Researcher as Positioned Subject” statement was to secure the support of Elders who were comfortable
with me functioning simultaneously as a scribe and, in the assessment and analysis of
their knowledge, as an interpreter. While the scribe works to literally and accurately
reproduce words and ideas, the interpreter must internalize the words and interpret them
for presentation to the reader. In the internalization process, what was said and what was
intended may be called into question; in this context transparency is essential for trust to
be honoured.

Following negotiation with each Elder on time and location, the 90-minute
interviews were scheduled. As in the schedules for the introductory interviews,
convenience for the Elder was the determining factor. The 90-minute, semistructured,
guided interviews for the three current Elders were held the following month, in my
kitchen in Wilton in August of 2015.

The farm in Wilton is equidistant to each of the Elders homes and workplaces,
which allowed them to participate on the way to or from work in a setting that was low-
key and quiet. To ensure the kitchen could not be perceived as a source of power for the
interviewer, I made efforts to find out Elders’ beverage preferences to create a warm
meeting space in which the Elders would feel welcomed. My grandmother would have
referred to this as common courtesy; Shawn Wilson (2008) might call it relationality,
while Emagalit (2001) might reflect on it as the pursuit of sagacity. Ultimately, it was an
effort between the parties to find a time and place that allowed everyone to feel safe.

Before the interview commenced, as a token of respect, each Elder was presented
with tobacco. As in the orientation interview, tea, coffee, and the world’s best lemon-
poppy seed muffins were served.
The 90-minute interview with the retired Elders was, at their request, a group interview. It took almost three hours and was conducted at a Chinese restaurant in Peterborough. The restaurant was a favourite of both Elders and allowed them to carpool. The restaurant setting, with an excellent meal to precede the interview, made for a relaxed and collegial setting. There were no people seated within hearing distance to ensure the privacy of the Elders. Before the interview commenced, each Elder was presented with tobacco. As part of my commitment to both courtesy and respect, I paid for lunch.

After each interview was transcribed, the transcript was shared with the corresponding Elder. Interview transcriptions were shared with the Elders in pursuit of philosophic sagacity—the theory of knowledge and questions about knowledge that can be found in the experience and wisdom of Elders (Chilisa, 2012; Emagalit, 2001; Weber-Pillmax, 2001). The Elders in this study are separated from the legislation of the Government of Canada and operational-practices policies of the Correctional Service of Canada by a world view and a methodology that wholly rejects the sacred Western premise that the application, retribution, and punishment will, in time, produce remorse and deterrence.

**Ethical considerations.** The research culminates in this document is a product of a process that strives to build on principles of transparency and respect. These eight principles are articulated in Trent University’s *Ethics Guidelines for Ph.D. Program in Indigenous Studies* (2004). Particular emphasis was placed on working within the value frameworks of reciprocity, honesty, kindness, sharing, and caring. For me, it was very important to ensure that I had effectively and faithfully recorded the insights and wisdom
of the Elders who consented to participate. In this endeavour, I understand the trust they extended to me.

The ethics proposal for the research was submitted to the Trent University Ethics Board and was approved on December 15th, 2014. The proposal then moved onto the Indigenous Studies Ethics Board who approved the research, with amendments, on March 23rd; final approval granted on June 1st 2015.

The Indigenous Studies Ethics Board stipulations to the research were as follows:

- The board requested two additional external Indigenous readers to add safeguards in order to ensure that established principles of confidentiality and risk management were honoured as credibility and comparability were maintained. The readers appointed were Mr. Harvey McCue and Mr. Doug Williams. Mr. McCue is among a group of founding professors who created the Indian and Eskimo Studies program at Trent University some 40 years ago; it was the precursor to what has become the Indigenous Studies program. Mr. Williams is an Elder and director of the Trent University PhD program. Mr. McCue read and commented on the entire document; Mr. Williams read and commented on the interview-assessment chapter of the study.

- The panel required that the Elders interviewed as participants in the study be referred to by pseudonym. In the meeting with the ethics panel, it was clear that their concerns were to preserve the privacy of the Elders in order to shield them from potential retribution following publication of the dissertation.

**Protection of privacy.** In the Trent University ethics process and the Indigenous Studies ethics review, the use of a pseudonym to protect the privacy of the Elders who
consented to participate in the research project was required. Each participant signed a confirmation acknowledging that his or her participant data remains the property of the participant. Interview records are stored in a locked, fireproof safe for seven years from the date of dissertation publication. All electronic interview transcripts are encrypted and also stored in a locked, fireproof safe for seven years. Beyond the final version of the study, no paper records of the study have been retained.

*Informed consent.* Informed consent was obtained through a three-step process. It began with a telephone inquiry to solicit Elders’ participation. In this dialogue, participants were provided a description of the research work (see Appendix 1). All Elders who were approached moved onto the second step, an orientation meeting. At this meeting, participants were provided a detailed oral step-by-step presentation of the research process. They were also provided a copy of both the researcher’s personal statement and the informed consent form for their consideration (see Appendix 2 and Appendix 3). The participants interviewed signed the informed consent form before the participant interview began.

*Interview analysis.* The interviews were analyzed using Creswell’s (2003) qualitative analysis and interpretive procedures. The process of interview analysis occurred as follows:

The analysis process began with the transcription of the recorded interviews. The transcripts were printed in double-spaced format. I checked the printed version of the transcripts against the recording to ensure the transcripts were an accurate reproduction of the interview.
Over the course of a week, I read and reread the interviews ten to twelve times to familiarize myself with the words of the Elders and, as Creswell (2003) says, to form initial impressions of the data.

To begin coding, I then read through each of the transcripts again; as I read, I highlighted in yellow my question and the last line of each response. This resulted in a distinct identification of my question, followed by the participant response. These were then formatted and printed to allow each question to be compared and assessed one to another and in reference to other questions and participant responses.

I then highlighted phrases or words that repeated in each response for the same question across respondents. I used the computer to collate all the responses from each of the participants by question, with all of the responses for a single question grouped into a unique file. I repeated the computer collation process for each of the thirteen questions.

Following this, I reproduced the highlighting of repeated words or phrases from the paper copy to the computer file. With this done, I reread the highlighted responses question by question, from one participant to the next, to isolate the similarities and differences between participants. These were highlighted to identify the emerging similarities and differences from participant to participant and question to question. In this work particular emphasis was placed on identifying links to the medicine wheel teachings (context, mind, body, and spirit) as a defining central feature of the CSC’s Continuum of Care.

Following this, I reviewed each individual participant transcript and looked for narratives that emerged in the text and collated these into groups sequenced around the medicine wheel quadrants of (context, mind, body, and spirit). With this complete, I
collated the similarities and differences, comparing the results of the responses to questions to the medicine wheel themes and the narratives in an effort to arrive at triangulated responses.

**Participant review of the manuscript.** Before finalization of the project results and interpretations and final presentation of this dissertation document, it was sent off for external review. The complete manuscript from the study was shared with external readers and participant Elders simultaneously. Each was provided the option of an electronic copy and/or a paper copy. Then, where possible, I met with each of the readers and Elders in person. Due to challenges of distance several were contacted by phone. No concerns were expressed. The objective of this revision process was two fold: to enhance internal validity of the data contained in the manuscript and, to ensure the process was consistent with the consensual expectations of an Indigenous methodology.

**Post-manuscript feast.** With the manuscript complete, efforts were made to bring to Elders together to thank them for their words, present them with a token of my respect (tobacco), and a gift of appreciation. Finally, each Elder was extended an invitation to attend the PhD defense.
Chapter Four:  
Critical Policy Review: A Rereading of Relevant Historical Documents

The purpose of the critical policy review was twofold: (1) to identify and assess a chronology of policy documents over an extended period of time to achieve an understanding of the interface between the Correctional Service of Canada’s legal imperatives, policy expectations, and day-to-day practices; (2) to take this understanding of policy and operations over time and assess its ramifications in the context of dominant-culture and decolonization theory with respect to the role, place, and function of Aboriginal Elders responsible for the provision of healing programs within facilities operated by the CSC. The fulfillment of this purpose is contained in the assessment of a chronology of Government of Canada legislation, CSC policy, and reports produced by/or in response to the policies and practices applied by the CSC in its operations. The chronology and assessment served as the first step in the triangulation of theory to policy and (in the interview phase of the study) policy to participant responses.

The critical policy review relies on two principal theoretical perspectives: Michel Foucault (1977) and his work on power, knowledge, and compliance within the carceral system and Linda Tuhiwai Smith (1999) and the decolonizing relational axiologies she pioneered with reference to Said’s concept of the Other (1978). The critical policy review applies a process of content analysis to identify and assess moments of unforeseen consequence. Content analysis refers to “a process of data-reduction and sense-making effort that takes a volume of qualitative material and attempts to identify core consistencies and meanings” (Patton, 2002, p. 453).
Using these lenses in a rereading of the documents reveals the difference between the intent of the documents and their operational application in the prisons. The common thread that binds the 21-year chronology is the 1992 Canadian *Corrections and Conditional Release Act* (CCRA).

**Context and Chronology**

To place the documents contained in the critical policy review into some kind of perspective, it is important to use a consistent frame that enables an exploration of policy intent and operational practice. To this end, the chapter begins in narrative and is followed by the presentation of current demographic data. The chapter then sets the chronology of documents to be reviewed with a rationale for their placement. These documents will be reviewed in this and the following chapter. Each document ends with a summary section that frames its impact in relation to three constructs: the demographic positioning of offenders of Aboriginal descent; the purpose and principles of the CCRA; and the four theoretical perspectives presented in Chapter 2—dominant-culture, decolonizing, restorative, and healing perspectives.

**Narrative Context**

Early in my career I secured a contract to provide education services to the Correctional Service of Canada’s medium-security prison located in Springhill, Nova Scotia. In the process of hiring, placing, and training staff, I became acquainted with a long-standing Correctional Service employee on the verge of retirement. He was a veteran of the Korean War who had spent his entire civilian working life as an employee of the Penitentiary Service/Correctional Service of Canada. In his career, he had worked
in various roles at various sites, from security officer to shop instructor. Over the years, he had gone back to school to complete a degree, subsequently rising to a middle-management position in the institutional hierarchy. In his career, the Penitentiary Service had become the Correctional Service and the Government of Canada had signed into law the *Charter of Rights and Freedoms*. Among his myriad skills, he was also a storyteller. He had lived an entire corporate history and needed to pass some of it along. Most of his stories were funny and endearing, but some were not.

In the 1950s and 1960s, Penitentiary Service staff at various penitentiaries administered corporal punishment to inmates in their custody. Punishment was supervised by the “keeper” and witnessed by staff chosen at random. When required, the keeper would select staff as they left the officers’ mess at the end of the noon meal. On one such occasion, my friend was selected to witness punishment. He had worked in the service for a number of years and in various locations and while he had never before witnessed punishment, he thought he knew what to expect. As a veteran who had seen combat as an infantry soldier, he thought he was beyond shock. He was mistaken. The inmate scheduled for punishment was a very young Mi’kmaq man. His institutional employment was as an inmate student in an adult basic-education class, where he spent his days learning to read. He was well known to the storyteller and well liked by the staff. According to the storyteller, the young man was mischievous; he had a dry wit and enjoyed a good practical joke. He was also a “brew king”; he made substantial income in the jail manufacturing and selling alcoholic beverages to the inmate population. According to the story, he joked that selling it and not drinking it made him feel positively Caucasian. He built himself a reputation for high-quality brew making.
(Considering the availability and quality of ingredients, the equipment to be employed and the settings used to produce the brew, the descriptor high quality is misleading. However careful and disciplined the production process, drinking any of the brew king’s product would put a customer’s health at significant risk. Nevertheless, in this role he was valued and respected in the inmate population. From the perspective of the warden, the brew king and his product represented a serious threat to the good order of the institution; it was only a matter of time before he was caught and, once caught, punishment was required.

The room in which corporal punishments were administered was equipped with only one piece of furniture, a frame with restraints. In preparation for punishment, the inmate stood facing the punishment apparatus where the restraints were secured and the subject was positioned. The security officer would raise the shirt of the inmate over his head to form a kind of hood, and applied the strap to the exposed flesh. The strap was made of perforated leather and of sufficient width, length, and thickness that, when applied in force, the impact caused the blood vessels beneath the skin to break. It was extremely painful.

The storyteller did not know who was being punished until the young man entered the room. They avoided eye contact. The young man was secured without comment. The charges were read; as punishment for his offence, he was to be strapped. In the pre-punishment briefing, the keeper had cautioned the witnesses that the entire sentence was rarely applied as the screaming made the process intolerable. In addition, he noted the belt was rarely re-applied to the same inmate for another offence. For most inmates, three or four strokes were more than enough to make a point. In this case, the entire sentence
would be applied. As the strokes were administered, the blood vessels broke but there were no tears and no screaming. Upon completion of the punishment, the inmate was released and, without a word, the medical staff redressed him. He was offered a wheelchair but refused. The only words uttered came from the young man. As he shuffled from the room, he looked from the keeper to the witnesses and said, “I know how to take a beating.” He was immediately transferred to a higher security prison. The storyteller never saw him again . . . and he never forgot.

For some, this story serves as an illustration of justice fulfilled; for others, it is a story of justice denied. Perhaps it is a story of triumph in the face of adversity? Conversely, it could be a story of power, oppression, colonization, and torture. If so, whose goals were achieved . . . and which of the participants was the most victimized?

The critical policy review in Chapter 4 concentrates its efforts on the statistical, demographic, legislative, and policy documents listed in the critical policy review chronology for the period 1992–2013. Central to this process is the * Corrections and Conditional Release Act*. Chapter 5 continues the critical policy review by concentrating its efforts on Commissions of Inquiry, Supreme Court of Canada rulings and operational assessments that occurred over the course of the 1992–2013 timeline.

**Demographic Context: Systemic Issues of Discrimination Related to Aboriginal People Held Under Federal Warrant**

The demographic context for the critical policy review is provided by data contained in the 2013 * Corrections and Conditional Release Statistical Overview*
(CCRSO) and by the operational imperatives that govern the Correctional Service of Canada.

The annual CCRSO dates back to 1998, when the Government of Canada (most recently via Public Safety Canada) produced its first annual report. The demographic data contained in the report provides a snapshot with which to understand the trends and predispositions that flow from conviction to warrant expiry. The annual report builds on police-reported, crime-statistics annual reports that date to 1963. The 2013 CCRSO data documented in this study provide a grounded image of the population variables that drive CSC and National Parole Board (NPB) operations and, by extension, the gaps that form between legislative intent and day-to-day application.

The operational imperatives of the CSC that are the foundation for measuring demographic success or failure are contained in the CCRA’s listing of its “Purpose and Principles”:

(a) carrying out sentences imposed by the courts through the safe and humane custody and supervision of offenders; and

(b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community. (CCRA, 2012 p. 4)

Section (a) refers to the intake of offenders to be held under federal warrant. The variables that define intake are beyond the CSC’s control; intake is defined by the criminal code and managed (to the moment of conviction) by the police and the courts.

Section (b) refers to the throughput (successful community reintegration) requirements of offenders to be held under federal warrant. Conversely, throughput is the
exclusive responsibility of the CSC and the NPB. Under the terms of the *Corrections and Conditional Release Act*, the community relies on the CSC to successfully reintegrate inmates into the community, which is the final stage of throughput.

The image provided in the following statistics is both complex and disturbing.

**Canadian Trends in Crime and Incarceration Rates Since 1998**

In Canada, violent and property-based crime rates have been steadily dropping for over twenty years (see Figure 3). With this trend in place, police are charging fewer people with crimes. It would be reasonable, then, to have seen a similar decline in the number of persons incarcerated in Canada. While the number of persons charged with violent crimes has gone down, the incarceration rate has continued to trend upwards, placing Canada in the upper third of comparable nation-states in terms of incarceration rates. In the sample of comparable countries selected by Statistics Canada in preparing the CCRSO, Canada has the fifth-largest population of incarcerated persons at 118 per 100,000. It would seem that crime rates for this period reflected a trend towards safer, less violent communities. Despite this trend, the Government of Canada’s response has remained constant, with a significant reliance on industrial, retributive, and deterrence-based methods (CCRSO, 2013, p. 3).
Expenditures in staffing within the CSC. From 2002 to 2012, the CSC budget went up by 53.5% (see Figure 4). As funding each year outstripped rises in the offender population, it would be reasonable to have seen shifts in the kinds of activities/personnel deployed by the CSC—shifts in priority that centred on its mission-statement mandate to achieve successful community reintegration. In 2013, the CSC employed 7680 full-time equivalent (FTE) correctional officers (security officers) in prison facilities across the country. In 2013, parole officers accounted 710 FTE positions. Correctional officers represented the largest staff group at 42.3% of the total, while parole officers represented just 3.9%. Correctional officers represent the largest single employee group employed by the CSC (CCRSO, 2013, p. 23).
Figure 4. Expenditures on corrections increased in 2011–2012. Source: Correctional Service Canada; Parole Board of Canada; Office of the Correctional Investigator; Statistics Canada Consumer Price Index. (CCRSO, 2013, p. 13)

Most significantly, the statistical reporting reflects that virtually no new program staff members were assigned in community-supervision (National Parole Board) settings. Based on the reported distribution of personnel, the CSC assigned its resources to incarceration/ custody/surveillance-related functions over community-supervision activities, even though such activities are less costly and more directly aligned with the restorative-justice/community-reintegration priorities stated in the CCRA’s principle of least restriction. It costs more than three times as much to incarcerate offenders than to supervise them in the community: In the case of male offenders, the 2012 annual, per-offender cost of institutional incarceration was $114,289, while the cost of community supervision was $35,101 (CCRSO, 2013, p. 25–26). Moreover, 15.4% of the CSC’s
annual personnel distribution is devoted to headquarters and administrative functions. If a portion of headquarters’ funding were redirected to frontline community supervision activities, thousands of offender beds could be created in the community. In this context, the CSC’s priorities are balanced in favour of the promotion and application of a self-fulfilling retributive prophecy rather than a restorative or healing approach focused on community re-integration.

**2013 Comparative Demographics: Aboriginal and Non-Aboriginal Offenders**

In the period between 2003 and 2013, several population trends were confirmed. The population of people of Indigenous descent held under federal warrant is increasing (see Figure 5). The federal offender population is getting younger. This is particularly true for offenders of Aboriginal descent; the disproportionate growth of younger Aboriginal offenders (of either gender) relative to all other groups is startling. Moreover, in 2013, of those serving out federal warrants in Canada one in four men and one in three women were of Aboriginal descent. These statistics are particularly startling given that Aboriginal people in Canada represent less than 4% of the general population. The evidence is emphatic: Aboriginal people were and continue to be disproportionately represented in Canada’s federal prison system.
Figure 5. The number of Aboriginal offenders under federal jurisdiction has increased, yet the number of Aboriginal offenders in community-supervision settings has remained static.
Source: For Chart and bulleted information: Correctional Service Canada (CCRSO, 2013, p. 63).

In the period between 2008 and 2013 the number of people held in segregation increased by 7.8%. Notably, 31% of the population held in segregation was of Aboriginal descent. Despite changes in policy and regulation in the period between 1992 and 2008, the systemic discrimination that produces this kind of disproportionate representation has remained constant.

According to the CCRS0, Canada’s 2007 general population suicide rate was 10.2 per 100,000 persons. In contrast, the CSC offender suicide rate in 2007 was 70 per 100,000 (see Figure 6), yet the CSC claims there is insufficient data to draw any reliable or valid conclusions with respect to mental health (CCRSO, 2013). Sections 85 through 89 of the 1992 Corrections and Conditional Release Act compels the service to provide registered health-care professionals to provide health-care and mental-health-care
services that conform with professionally accepted standards of care. This means that every time an offender is examined and/or treated, the health-care professional assigned to that patient interaction has a duty of care to create a record of the examination, diagnosis, and/or subsequent treatment. Given this, over this time period, there would have been hundreds of thousands of documented health-care interactions from which to build a valid and reliable mental-health database. Clearly data exist to provide informed policy and regulation for the CSC around appropriate provisions for health care and mental health care.

![Figure 6. The number of offender deaths while in custody.](chart)


It is hard to imagine that a significant number of those offenders who committed suicide—or, for that matter, those who committed murder were not suffering from some
form of mental illness in the days, weeks, and months before the deaths occurred. Further, it is hard to imagine that a significant proportion of the individuals who committed the in-custody murders were not suffering from some kind of mental illness. If all the CCRSO report reflected upon was data collected in the medical and investigation reports pertaining to each of the 530 deaths reported in the CCRSO contained in their statistics, one would think there would be a number of valid and reliable health and mental-health-care conclusions that could be drawn.

**Summary of Demographic Trends**

While overall rates of violent and property crimes continue to drop in the community, the number of offenders incarcerated in federal institutions continues to rise. Offenders are spending a greater proportion of their sentences in institutional settings than in supervised community/parole settings. The report confirms that statutory, direct release to the community is the least successful parole option in terms of successful community reintegration, yet it is the option most likely to be applied.

The 2013 CCRSO documents the following: Aboriginal offenders account for 22 per cent of the offenders assigned to the CSC; Aboriginal offenders are more likely to be held for violent offences and/or sexual assaults and/or drug-related crimes than Non-Aboriginals; Aboriginal offenders are held in higher levels of security for longer durations than any other subsection of the general population; Aboriginal offenders are less likely to receive any kind of parole than any other subsection of the population; when parole is granted, Aboriginal offenders are more likely to have their parole revoked than any other subsection of the population. There is no explanation provided in the report to
adequately explain, or justify, the systemic discrimination that Aboriginal offenders endure at the hands of the CSC or of the National Parole Board.

The image provided in these statistics is complex. Suffice it to say, the CSC does not function on a recognizable, conventional business model, responsibility-centred management model or, for that matter, on an established community health-care or education-service model. At $2.7 billion in annual funding, the CSC’s administration is richly funded and, beyond periodic reviews by the Office of the Correctional Investigator, the demographic results communicate that it is largely unaccountable. Thus, Foucault’s concept of carceral provides some insight into its organization and subsequent results. In its current configuration the CCSRO confirms that the CSC applies a time-honoured, Eurocentric, punitive approach to produce a reliable retributive outcome (Christie, 2004).

This position provides the critical policy review a touchstone from which to build a connected narrative in the Indigenous tradition. Perhaps this is a narrative of justice fulfilled; perhaps it is a narrative of justice denied. It could simply be a story of power, oppression, colonization, and torture. If so, whose goals were achieved? Which of the participants is the most victimized?

**Chronology of Documents**

Within the 21-year time frame of the study, there have been a number of correctional investigations, coroners’ inquiries, Supreme Court rulings and Crown commissions of inquiry. With each investigation, ruling, and inquiry there have been consequent changes to legislation, governing practice, and operational policy. Each change has affected the capacity of federal prison staff and inmates to navigate the
institutional day. The rationale for reviewing these documents, listed below, was presented in the “Selection of Documents” section of Chapter 3.

- 1996: *Royal Commission on Aboriginal Peoples*
- 2000: *FORUM on Corrections Research, Correctional Service of Canada, Understanding Restorative Justice Practice Within the Aboriginal Context*
- 2003: *Strategic Plan for Aboriginal Corrections*, including the Continuum of Care Model for Aboriginal Offenders
- 2006: *A Roadmap for Strengthening Public Safety*
- *Commissioners Directive 702 Aboriginal Offenders* (last revised 2013-11-12)
- *Commissioners Directive 785, Restorative Opportunities Program and Victim Offender Mediation Services* (last revised 2015-07-23)
A Chronological Assessment of Relevant Historical Documents

The legislative/policy review commences with the Canadian *Corrections and Conditional Release Act* (CCRA). The CCRA, which became law on June 18th 1992, replaced and consolidated the *Penitentiary Act* and the *Parole Act*. It grew out of the process established with the passage of the 1982 *Constitution Act*. Much of the language subsequently used in the CCRA is taken directly from the *Charter of Rights and Freedoms*. As such, the CCRA becomes the constant for the period after 1992. All of the post-1992 trends, inquiries, and policy changes are linked or referenced to the CCRA. The CCRA also serves as a measure of intent. In its two-decade history, the CCRA has been reviewed and revised by the Parliament of Canada no less than eight times; thus the CCRA is the pivotal document in translating the restorative intent of Parliament into operational practice in the CSC and the NPB. The Parliamentary revisions to the CCRA were not the product of one influence, and changes made to the CCRA illustrate that legislation does not exist in a vacuum. The following are among the variables that serve as catalyst for change:

- pressure from within government departments,
- a response to community/constituent generated desires,
- a response to statistical trends,
- a generalized desire for government processes to be more transparent,
- a response to research findings, and
- a response to ideological shifts within the governing party.
Regardless of what variables have served as catalyst for Parliamentary revisions to the CCRA, when viewed over time and through the lens of subsequent events, we can assess the alignment of legislative intent and operational application.

**The Principle of Least Restriction**

The most significant changes to the CCRA are the repeals of Principle 4D, Part I, Institutional and Community Corrections, which requires “that the service use the least restrictive measures consistent with the protection of the public, staff members, and offenders” (CCRA, 1992, p. 5) and Principle 101D, Part II, Conditional Release, Detention and Long-Term Supervision, which requires “that parole boards make the least restrictive determination consistent with the protection of society” (CCRA, 1992, p. 35).

The application of these principles established a restorative intent. Throughout the CSC and the NPB, the principle of least-restrictive measures compelled a series of ongoing and overlapping dialogues about the method and measure of successful community reintegration. The language of the clauses acknowledged that 97.8 per cent of federal offenders serve terms that will eventually result in some kind of community supervision. In so doing, the least-restrictive principles confirmed successful community reintegration as the CSC’s fundamental measure of success. The concept of successful community reintegration required vigilance regarding the variables that contribute to public safety, including victim’s rights. The changes to the act made in 2012 eliminate the language regarding least-restrictive principles. The new language reads as follows: “The protection of society is the paramount consideration for the service in the corrections process” (CCRA, 2012, p. 4). Further, “the service enhances its effectiveness and openness through the timely exchange of relevant information with victims,
offenders and other components of the criminal justice system and through communication about its correctional policies and programs to victims, offenders and the public” (CCRA, 2012, p. 5) Had the least-restrictive principles been retained and changes to the act been restricted to the additional language found in Section 3.1 (entitled Paramount Consideration), then the expressed intent of the act would have been made more declarative in its restorative intent.

**Health Care and Programs**

The second significant change to the act concerns a lack of change. Sections 68 (living conditions) through 90 (grievances) have remained as written since the 1992 legislation became law. In the body of this material is language pertaining to health care and programs. This is noteworthy because the sentencing, incarceration, and community supervision demographics documented in the 2013 Corrections and Conditional Release Statistical Overview confirm that population profiles in 1992 were radically different than those existing in 2013. Declarative language such as that found in Section 3.1 and Principle 4B may have provided restorative direction to the CSC as they grappled with the challenges of disproportionate Aboriginal incarceration rates, rising in-custody suicide rates or the substantive growth in offender populations serving two to five years for drug-related offences. Whether by benign neglect or conscious act, the language of the act regarding health care and programs communicates a retributive message to the public and the CSC. The effect of not speaking to shifting demographics via health care effectively communicates a retributive intent to the public and the CSC where resources, in the name of public safety and victims’ rights, are understood to be better allocated to
institutional incarceration (with its corresponding security imperative) than to a measurable community-reintegration process.

Most significantly, it effectively marginalizes the mission statement of the CSC, as it disenfranchises the professionals who research, design, and deliver effective health-care and correctional programs in the institution and, beyond, to the community.

**Conditional Release, Detention, and Long-Term Supervision**

The final significant changes to the act are found in Part II Conditional Release, Detention and Long-Term Supervision. Section 115 C, minimum time to be served was amended to read, “(i) six months, and (ii) one half of the period required to be served by the offender to reach their full parole eligibility date” (CCRA, 2012, p. 43). The effect of this change is to impose retributive criteria on site authorities, institutional staff, and the NPB. The impact can be seen in the rising institutional population of offenders (first-time and repeat offenders) who spend longer periods in institutional settings and less time in supervised community settings. The capacity of professional staff to use their professional judgment as they work to carry out a community-reintegration mandate is significantly restricted by the change in the language.

Lastly, the repeal of Sections 125, 126, and 126.1 of the act confirm a shift to the retributive. Section 125 dealt with the application for accelerated parole reviews. Section 126 provided the NPB with terms of reference and procedure to assess whether offenders were worthy of accelerated day parole at the six-month or one-sixth mark of the sentence. In repealing these sections, the intent of the act becomes less focused on successful community reintegration and much more focused on incarceration as punishment. The effect, intentional or not, is to reduce the importance of personal responsibility for staff
and offenders. In so doing, it favours traditional, industrial/Western approaches that punish in the ideological hope that public safety will be enhanced through a culture of general deterrence. In this way the repeal of these sections is both retributive and carceral.

**Review of the Regulations Attached to the CCRA**

This review of the CCRA and the subsequent changes to its regulations documents a series of low-level trends. Each small change contributes to shifts in language and focus, moving away from evidence-based and consensual dialogues that reward transparency and accountability towards a more inward-looking, ideological/carceral process. The impact of the changes is an increase in the capacity of the system to behave in arbitrary and high-handed ways. The detailed comparison review of the changes concentrates on four areas:

- purpose/principles and mission;
- administrative segregation and discipline;
- correctional programs; and
- rights of grievance, conditional release, detention, and long-term supervision

**Purpose/principles and mission.**

The “Purpose” and “Principles” sections of the act are the foundation on which everything in the administration of the warrant is built. This is reflected in the supporting mission documents that confirm successful community reintegration as a cornerstone of the CSC/NPB endeavour.
**Purpose.** Since it became law, the language stating the purpose of the act has remained unchanged:

The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by;

a) Carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

b) Assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community. (CCRA, 1992, p. 4)

**Principles.** In 2011, changes were made to Section 4 of the act, entitled “Principles That Guide the Service.” In its original form, Section 4A required “that the protection of society be the paramount consideration in the corrections process” (CCRA, 1992, p. 4).

In the 2012 version of the act, Section 4A was struck from the “Principles” section and replaced by an updated version of Section 4B; Section 4A was incorporated into the section discussing the purpose of the act, which states that “the protection of society is the paramount consideration for the service in the corrections process” (CCRA, 2012, p. 4).

In the 1992 version, Section 4B reads as follows:

The sentence be carried out having regard to all relevant available information. Including the stated reasons and recommendations of the sentencing judge, other information from the trial or sentencing process,
the release policies of, and any comments from, the national parole Board, and information obtained from victims and offenders. (CCRA, 1992, p. 4)

In the 2012 version, Section 4B became 4A and reads as follows:
The sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process, the release of the policies of and comments from the Parole Board of Canada and information obtained from victims. (CCRA, 2012, p. 45)

In 2012, Section 4C of the act was also changed. The 1992 version reads as follows, “The Service enhances its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication about its correctional policies and programs to offenders, victims and the public” (CCRA, 1992, p. 4). The amended 2012 version, renumbered as Section 4B, states, “The Service enhances its effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about its correctional policies and programs to victims, offenders and the public” (CCRA, 2012, p. 5).

The most significant changes to the “Principles” section of the 1992 act involves the complete removal of Section 4D, which reads as follows, “That the Service use the least restrictive measures consistent with the protection of the public, staff members and Offenders” (CCRA, 1992, p. 5). In 2012, 4D was replaced by a new 4C, which reads, “The Service uses measures that are consistent with the protection of society, staff
members and offenders and that are limited to only what is necessary and proportionate to attain the purposes of this Act” (CCRA, 2012, p. 5).

Section 4E of the 1992 version reads as follows, “That Offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence” (CCRA, 1992, p. 5). In 2012, Section 4E became 4D; it states “that Offenders retain the rights of all members of society except those that are, as a consequence the sentence, lawfully and necessarily removed or restricted” (CCRA, 2012, p. 5).

In the 1992 document, Section 4H requires “that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women, Aboriginal peoples, as well as to the needs of other groups of offenders with special requirements” (CCRA, 1992, p. 5). In 2012, the section was relabelled as 4G and the last phrase amended to “persons requiring mental health care and other groups” (CCRA, 2012, p. 5).

The final change was made to Section 4I, “That Offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programs designed to promote their rehabilitation and reintegration” (CCRA, 1992, p. 5). In the 2012 version, Section 4I (relabelled 4H) reads:

Offenders are expected to obey penitentiary rules and conditions governing temporary absences, work release, parole, statutory release and long-term supervision and to actively participate in meeting the objectives
of their correctional plans, including by participating in programs designed
to promote their rehabilitation and reintegration. (CCRA, 2012, p. 5)

Mission. Following passage of the CCRA, the Correctional Service
began an extensive national process of consultation and collaboration to create
a mission statement for the organization. The CSC mission statement is
unchanged and still in force. In fact, in 2014–15, the mission statement is
referenced in the rated requirements sections of requests for proposal for
organizations bidding to provide education and correctional programs in the
Atlantic region in at least two institutions. In the evaluation process for
contractor selection, bidders are expected to demonstrate their understanding
of the mission as it relates to education services to be provided. The mission
statement was carefully crafted: it is deliberate and forthright in its
interpretation of the intent of the CCRA.

Our mission is based on the principle that society is best protected when
offenders are able to re-establish themselves in the community under
conditions that minimize their risk of re-offending. It is important to
recognize that the vast majority of offenders are serving fixed terms and so
must eventually return to the community. Except for the relatively small
proportion of offenders serving life or indeterminate sentences
imprisonment by itself provides only a temporary guarantee of public
safety. Longer-term protection is best achieved through a strategy that
promotes and sustains the offender’s efforts to re-integrate into society as
a law-abiding citizen. Throughout the offender’s sentence, during both the
incarceration and release phases, we balance efforts of encouragement and assistance with measures of control, always with the understanding that public safety is paramount. (*Mission of the CSC*, 1997, Section 6, para 6)

The following quotations from the mission statement illustrate the service’s understanding of that intent:

Our mission is also based on the principle that offenders, as members of society, retain their rights except for those necessarily removed or restricted as a consequence of their sentence. Given that we hold an enormous degree of control over the lives of the offenders in our care, we must be exceptionally vigilant in safeguarding their rights, and in employing the least restrictive measures that are consistent with the protection of the public, ourselves as staff members and the offenders themselves. . . .

The mission is different from the law. It tells us not so much what we are required to do, but rather what we should strive to do, as members of an organization responsible for the safety of the public and the care and reintegation of offenders. . . .

We do not simply administer the sentence, but that at every stage, we also work with the offender to change his or her behaviour. Our policies and programs—indeed, all of our activities—are directed toward that end. . . .

The main thrust of our energy and creativity is on working with the individual offender to bring about his or her safe reintegration . . . the
degree and nature of the control exercised should work in support of reintegration efforts, not against them.

We recognize that our primary focus is on the reintegration of offenders, and we affirm that our efforts support the broader purposes of criminal justice. (*Mission of the CSC*, 1997, Section 6, para 1 to Section 7, para 5)

The revised language of the CCRA would seem to be at odds with the tone and intent of the mission statement. By way of example, consider the “Principles” section of the 1992 act in relation to the new language enacted in 2012:

- In 1992, principle 4D read as follows, “That the Service use the least restrictive measures consistent with the protection of the public, staff members and Offenders” (CCRA, 1992, p. 5).
- In 2012, 4D was replaced by a new 4C, which reads, “The Service uses measures that are consistent with the protection of society, staff members and offenders and that are limited to only what is necessary and proportionate to attain the purposes of this Act” (CCRA, 2012, p. 5).

A recent search of the CSC website (February of 2015) confirmed the mission statement has now been moved from prominence to the Government of Canada archive space on the website.

**Administrative segregation and discipline.** Administrative segregation is discussed in Section 31 of the 1992 CCRA. The language of the act regarding administrative segregation sounds benign, as if the consequences of assignment to segregation were akin to a clerk in an office cubicle spending time filling out third-party
expense claims. In fact, administrative segregation is a process that has the potential to do
great harm to everybody connected with it: Administrative segregation means solitary
confinement. Today, the slang of the institution refers to it as “seg,” but it has been
known historically by staff and inmates as the “hole.” Housing in administrative
segregation is solitary confinement in a single-person cell. Cells are wide enough to
accommodate a single bed, a toilet, and a sink. The cell is wide enough for the bed to
serve as a desk chair for a writing surface that is hinged to the wall. In contemporary
institutions commissioned after 1970, the doors are solid, with a small window and a
feeding slot; in older institutions, the doors are an open grate-and-bar design.

For the staff, a day in segregation involves watching and counting, ensuring that
the offenders are doing themselves no harm. For offenders, segregation is 23 hours of
containment and 1 hour of exercise. Depending on the varying logistic challenges of the
unit, a shower is made available to the offender twice or three times a week. Segregation
is not for the faint of heart. It carries long-term consequences for both the staff who
assign offenders to segregation and the offenders contained within it.

Administrative segregation sections of the act have been amended. The duration
section reads as follows, “Where an inmate is in administrative segregation in a
penitentiary, the service shall endeavour to return the inmate to the general inmate
population, either of that penitentiary or of another penitentiary, at the earliest appropriate
time” (CCRA, 1992, p. 14). In 2012, the duration section of the act was amended to read,
“The inmate is to be released from administrative segregation at the earliest appropriate
time” (CCRA, 2012, p. 15).
The grounds for confining an inmate in administrative segregation read, “The institutional head may order that an inmate be confined in administrative segregation if the institutional head believes there to be reasonable grounds” (CCRA, 1992, p. 14). It has now been amended to read, “The institutional head may order that an inmate be confined in administrative segregation if the institutional head is satisfied that there is no reasonable alternative to administrative segregation” (CCRA, 2012, p. 15).

The grounds themselves have also been amended; the 1992 grounds are as follows:

(i) the inmate has acted, has attempted to act or intends to act in a manner that jeopardizes the security of the penitentiary or the safety of any person, and
(ii) the continued presence of the inmate in the general inmate population would jeopardize the security of the penitentiary or the safety of any person,
(b) that the continued presence of the inmate in the general inmate population would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence, or
(c) that the continued presence of the inmate in the general inmate population would jeopardize the inmate’s own safety, and the institutional head is satisfied that there is no reasonable alternative to segregation. (CCRA, 1992, p. 14)

The 2012 version of the act was amended to read as follows:

(3) The institutional head may order that an inmate be confined in administrative segregation if the institutional head is satisfied that there is
no reasonable alternative to administrative segregation and he or she believes on reasonable grounds that
(a) the inmate has acted, has attempted to act or intends to act in a manner that jeopardizes the security of the penitentiary or the safety of any person and allowing the inmate to associate with other inmates would jeopardize the security of the penitentiary or the safety of any person;
(b) allowing the inmate to associate with other inmates would interfere with an investigation that could lead to a criminal charge under subsection 41(2) of a serious disciplinary offence; or
(c) allowing the inmate to associate with other inmates would jeopardize the inmate’s safety. (CCRA, 2012, p. 15)

Section 40 of the act refers to disciplinary offences; its wording remains constant but for two changes.

In discussing “an inmate [who] commits disciplinary offence” the 1992 version describes this person as “disrespectful or abusive toward a staff member that could undermine a staff member’s authority,” while the 2012 version describes the individual as “disrespectful toward a person in a manner that is likely to provoke them to be violent or toward a staff member in a manner that could undermine their authority or the authority of staff members in general” (CCRA, 1992, Section 40(f) p. 16).

In 1992 Section 40 (g) read, “is disrespectful or abusive toward any person in a manner that is likely to provoke a person to be violent; In 2012 Subsection (g) became, “is abusive toward a person or intimidates them by threats that violence or other injury will be done to, or punishment inflicted on, them” (CCRA, 2012, p. 17).
Summary of changes to grounds for segregation. The consequence of these changes to the CCRA was to provide institutional staff with greater autonomy and reduced accountability in the assignment and review of offenders to segregation. When tragedy occurs, as it does from time to time, the impact on everybody connected to the process is profound. Howard Sapers, Canada’s correctional investigator between 2004 and 2014, documented the impact of changes to the administration and operational practice of administrative segregation in the federal incarceration and subsequent suicide of Ashley Smith at Grand Valley Institution for Women. In 2008 he wrote,

The legal requirement to review a segregation placement at the 60-days mark extends the segregation review process beyond the institution and requires regional authorities to ensure compliance with law and policy. In the case of Ms. Smith, 60-days regional reviews were not conducted even though she remained on segregation status for almost one year. The failure to review Ms. Smith’s segregation status at the 60-days mark was in contravention of section 22 of the CCRA and paragraphs 29–32 of the Commissioners Directive 709-Administrative Segregation. (Sapers, 2008, p. 19, para 42)

Sapers’s example documents the high-handed, arbitrary, illegal, and restrictive behaviour of the CSC.

Correctional programs. Given the emphasis placed on reintegration in the “Purpose” section of the CCRA and the volume of changes made to the CCRA in its first two decades, it would be reasonable to assume that the sections directly or indirectly related to programs for female offenders, Aboriginal offenders, long-term supervision
and health care would have received attention. In fact, no changes have been made to the act in Sections 76 through 91.

Section 83 of the CCRA is particularly noteworthy and has remained unchanged since its inception: “For greater certainty, aboriginal spirituality and aboriginal spiritual leaders and elders have the same status as other religions and other religious leaders” (CCRA, 1992, p. 26). The fact that the language of Section 83 has remained unchanged is remarkable. In the context of its time, it is well intentioned in its commitment to “honour aboriginal spirituality, aboriginal spiritual leaders and Elders.” Given the unanimous 1999 Supreme Court of Canada ruling in *Gladue v. Canada* and the collective experiences of Elders, Aboriginal liaison officers and many other correctional-program providers over time, it is surprising that the language has not been revised to reflect the following:

- an evolving understanding that Indigenous knowledge, Indigenous ritual, and Indigenous ceremony are not a parallel faith in some kind of standardized western European religious tradition;
- confirmation that the diversity of the Aboriginal communities from which offenders are drawn, whether reserve or urban, adds to the complexity of the program challenge; and
- recognition that different Indigenous communities have different oral histories, rituals, ceremonies, and understandings.

**Rights of grievance, conditional release, detention, and long-term supervision.**
Changes to rights of grievance, conditional release, detention and long-term supervision provide insights into how warrants are administered by the CSC/NPB over the course of the period 1992-2012. The duty of care provided in the act to the CSC/NPB by the Government of Canada is as follows:

**Rights of grievance.** Grievance procedures found in Section 91 have remained constant throughout the life of the CCRA, which notes that “every offender shall have complete access to the offender grievance procedure without negative consequences.”

There have, however, been two additions. Section 91.1 now reads,

(1) If the Commissioner is satisfied that an offender has persistently submitted complaints or grievances that are frivolous, vexatious or not made in good faith, the commissioner may, in accordance with the prescribed procedures, prohibit an offender from submitting any further complaint or grievance except by leave of the Commissioner. . . .

(2) The Commissioner shall review each prohibition under Subsection (1) annually and shall give the offender written reasons for his or her decision to maintain or lift it. (CCRA, 2012, p. 32)

The impact of this addition is profound, as no language has been included to define the terms of reference; it is left to the institutional staff to decide what qualifies as persistent or vexatious. In making their recommendations (to the commissioner of corrections) the gulf between cause and effect is enormous. The commissioner is compelled to rely on the arbitrary sensibilities of staff, who are disconnected from the CSC’s national headquarters in a host of ways. Had this provision been in place in the original version, it is hard to imagine the Supreme Court of Canada would have
deliberated in either *Gladue v. Canada* or *R. v. Sauvé*. Each deliberation had significant *Charter of Rights and Freedoms* implications and each depended on an individual citizen’s right to grieve within the system and pursue their complaint through the courts. Each of these individual legal processes may very well have been interpreted by the warden of the institution as vexatious because the behaviour would have been persistent and could be interpreted to bring criticism to the management of the institution. In the pursuit of compliance the term vexatious becomes both ill defined and paternal.

**Conditional release, detention, and long-term supervision.** Changes to Part II of the act commence with an amendment to a definition that effectively broadens the scope of the role of CSC employees as it changes the emphasis placed on victims of crime. In the 1992 iteration of the act, victim is defined as a person to whom harm was done or who suffered physical or emotional damage as a result of the commission of an offence, and (b) where the person is dead, ill or otherwise incapacitated, the persons spouse, an individual who is cohabiting, or was cohabiting at the time of the person’s death, with the person in a conjugal relationship, having so cohabited for a period of at least one year, any relative or dependent of the person, or anyone who has in law or fact custody or is responsible for the care or support of the person. (CCRA, 1992, p. 3)

In 2012, the definition was expanded in its scope: Victim means a person to whom harm was done or who suffered physical or emotional damage as a result of the commission of an offence and, if the person is dead, ill or otherwise incapacitated, the person’s spouse or an
individual who is—or was at the time of the person’s death—cohabiting with them in a conjugal relationship, having so cohabited for a period of at least one year, (b) a relative or dependent of the person, (c) anyone who has in law or fact custody, or is responsible for the care or support, of the person, or (d) anyone who has in law or fact custody, or is responsible for the care or support, of a dependent of the person. (CCRA, 2012, p. 3)

With these passages, the CCRA has expanded the legislative understanding of the term victim in a manner that is decidedly restorative in its scope.”

They also illustrate how ideological shifts in one direction can sometimes enable and support understanding in another. In this instance, the government has pursued the rights of victims in an effort to bolster its commitment to punishment as a conduit to public safety. The unintended effect is to empower victims to become involved in the justice process in a more concrete fashion. This is a foundational, relational plank in any restorative or Indigenous justice paradigm that is often missed in ideologically driven retributive systems.

In the 1992 act, there was no definition for parole supervisor. A definition was added in 2012, which broadened the scope and authority of every staff member. The amendment states that parole supervisor, “has the meaning assigned by the definition ‘staff member’ in Subsection 2(1) or means a person entrusted by the service with the guidance and supervision of an offender” (CCRA, 2012, p. 3).

As in the beginning passages of the act, the opening sections of Part II, “Conditional Release, Detention and Long-Term Supervision” begin by stating its purpose and principles. Section 100 remains constant:
The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens. (CCRA, 1992, p. 35)

The 2012 version added a “Paramount Consideration” section as the preamble to the principles. “The protection of society is the paramount consideration for the board and the provincial parole boards in the determination of all cases” (CCRA, 2012, p. 39).

Other changes to the section have been made. In the 1992 version, Section 100/101 notes,

The parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial of the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender. (CCRA, 1992, p. 35)

In 2012, the principle was amended to read as follows,

(a) parole boards take into consideration all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process and information obtained from the victims, offenders and other components of the criminal
justice system, including assessments provided by correctional authorities.

(CCRA, 2012, p. 39)

These changes illustrate the ideological shift towards the retributive. The government is silent in its terms of reference for the reader to understand what they mean by the protection of society or the nature and gravity of the offence. Is society better protected by directing the NPB to pursue and measure successful community reintegration or by advancing a policy of parole denial that results in longer sentences within institutional setting? In this instance, the absence of language marks a shift away from evidence-based decision making and towards generalized deterrence.

Section 100/101 of the 1992 act requires “that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programs to offenders, victims and the general public” (CCRA, 1992, p. 35). Compare this with the 2012 version, which requires that “parole boards enhance their effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about their policies and programs to victims, offenders and the general public” (CCRA, 2012, p. 39).

The largest change to the principles of conditional release is the elimination of the 1992 principle “that parole boards make the least restrictive determination consistent with the protection of society” (CCRA, 1992, p. 35). It was replaced in 2012 with the principle that “parole boards make decisions that are consistent with the protection of society and
that are limited to only what is necessary and proportionate to the purpose of conditional release” (CCRA, 2012, p. 39).

Building on this change, the Crown amended Section 115 of the act, which now requires offenders to serve half their sentence plus 6 months before reaching full parole eligibility, where the 1992 version required that offenders serve half their sentence or 6 months, whichever is greater.

The collective effect of these retributive changes is to require first-time offenders of any category to serve a greater proportion of their sentence in an institutional setting as the options for parole, where eligibility exists, are narrowed. The general impact of these changes is to eliminate evidence-based decision making as a means to achieve successful community reintegration, in favour of a conceptual commitment to deterrence. For recidivists of any population subsection, the changes make parole less accessible and revocation more likely. The proof is found in the statistical data published in the annual Public Safety Canada Corrections and Conditional Release Statistical Overview, although crime rates are dropping, the population of offenders is going up.

Summary. The purposes delineated in the CCRA set out the operational imperative requirements assigned to the CSC by the Government of Canada. In a critical evaluation of the CCRA, these imperatives are understood as the “what” of their operational mandate. On first review, these purposes seem to be in conflict. Purpose “(a) carrying out sentences imposed by the courts through the safe and humane custody and supervision” (CCRA, 2012, p. 4) would seem to be steeped in the history and tradition of retributive, Western dominant-culture justice systems documented by Foucault (1977) and Garland (1990, 2001). Conversely, Purpose “(b) assisting the rehabilitation of
offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community” (CCRA, 2012 p. 4) is understood as a decolonizing imperative in the spirit of Said (1978) and Smith (1999).

When viewed as operational imperatives, the dual purposes of the act would seem to conflict; if the CSC is more efficient in achieving one it will be seen to short change the other. The authors provide a restorative tool to resolve this dilemma; it is contained in the Principle 4 (d) of the act and neatly describes “how” the CSC can honour a retributive imperative as it fulfills a decolonizing one—by “us[ing] the least restrictive measures consistent with the protection of the public, staff members and Offenders” (CCRA, 1992, p. 5). The provision of this language, in concert with its stated purpose, provides clear direction to the CSC on what their mandate is and how the Government of Canada wants them to go about achieving it. It is a reflection of Christie’s (2004) narrative about the man in the park (discussed in Chapter 2). In this narrative, Christie provides a persuasive argument, promoting a model for public safety that is beyond the reach of fear and retribution—a public safety that is nurtured and preserved through the perspective of a community commitment to individual understanding.

As such, the triangulation of the two purposes and the principle of least restriction define the “what” and the “how.” In this relationship, the CSC is compelled to provide custodial care that is removed from a punitive imperative; the term/duration of the sentence is the punishment, not the prison in which the detention is administered. The community expectation for the CSC is that successful community reintegration will be achieved. The principle of least restriction is, thus, the litmus test for evaluating every
change to the act in the 1992–2013 timeframe and for every other document contained in the study’s critical policy review.

The 2000 *FORUM on Corrections Research*, “Understanding Restorative Justice Practice Within the Aboriginal Context”

In January of 2000, in *FORUM on Corrections Research*, the Correctional Service published “Understanding Restorative Justice Practice Within the Aboriginal Context.” The publication serves as a time capsule from which to measure the impact of RCAP and the Arbour and Gladue rulings. It can also be understood as a senior-management briefing note to staff as to how particular issues and/or developments are to be interpreted. The central article of the publication (Volume 12 Number 1) was written by the CSC’s manager of Aboriginal issues, Melanie Achtenberg. The article speaks to what the senior-management ranks of the CSC understood to be the proper interpretation of Section 718.2 (e) of the Criminal Code of Canada, “that all available sanctions other than imprisonment that are reasonable in the circumstances, should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders” (*Criminal Code of Canada*, 2012, p. 426).

In the following quotations, Ms. Achtenberg identifies the parameters of restorative justice as understood in January of 2000: “Restorative Justice practices are becoming increasingly more popular as the guide posts to effective corrections policy” (p. 1).

Restorative Justice philosophy is based on the traditional practices of Indigenous cultures around the world. It is founded on the belief that criminal behaviour is primarily caused by the alienation of certain
members of society at large. Although it is the responsibility of every individual to make positive choices for their life . . . Restorative Justice principles are based on the understanding of compassion, that no one is an island. . . .

When a person becomes alienated or disconnected from that society, it is the responsibility of everyone in that society to bring that person back into a harmonious relationship with him/her “self,” as well as with the rest of the community. This may mean that the society itself needs to take a long hard look at its own practices and systems that may be “contributing factors” to the person’s alienation from it. The society may need to heal itself. (Achtenberg, 2000, p. 1)

While this language might appear restorative—leaning towards community-based applications over more traditional dominant-culture practices—it is not without qualification. Ms. Achtenberg (2000) goes on to write, “Attempts to reduce the number of Aboriginal admissions at the federal level seem to have failed.” In fact, “the percentage of federal admissions that are Aboriginal continues to increase: it was 11% in 1991–1992, 15% in 1996–97 and 17% last year” (p. 1). “Whether this is a problem for judges to resolve, as the much-criticized recent Supreme Court judgment suggests, is another question entirely” (p. 2).

The language selected by the author reveals the frustration the CSC felt with previous efforts to reduce the disproportionate representation of people of Aboriginal descent held within federal corrections. It also confirms a sense that many of the variables that might resolve this challenge are beyond the CSC’s control.
The final thrust of the article confirms the rightness of the *Gladue* decision: “The Supreme Court of Canada decision on the *R. v. Gladue* case is an historical achievement for all Canadians” (Achtenberg, 2000, p. 3).

Finally, Achtenberg sets the stage for the difficult work that is to follow: “Judges need to know that the facilities for best practices are in place before they can provide sentencing which is innovative and restorative” (Achtenberg, 2000, p. 3). On this matter, she defines the parameters for Section 81 and 84 of the CCRA.

Section 81 (CCRA) provides General Custody Agreements for the transfer of an Aboriginal offender to an Aboriginal community in a non-institutional setting with supervision of community members. Three other types of arrangements are also possible under Section 81 to facilitate the transfer of an Aboriginal offender to a spiritual or Healing Lodge, or other treatment facility in an urban setting.

Section 84 (CCRA) provides Aboriginal communities with the opportunity to participate in an offender’s release plan from a penal institution. The release plan must address the concerns and needs of the community as well as those of the offender. Successful reintegration becomes part of the overall healing path for all involved: the community, the offender and the victim. (Achtenberg, 2000, p. 3)

Thus, Ms. Achtenberg identifies the CSC’s external challenges, in the form of judges’ sentencing practices and the community’s resolve to create new spaces, facilities, and programs.

She spends the balance of the article dealing with how the CSC will proceed:
Restorative Justice and the Gladue decision is a way of creating a criminal justice system that restores the offender to himself, and thereby empowers him/her to make better choices in the future. In this way we are creating a dynamic within the society that restores the health of individuals while maintaining law and order, for the security of the community.

This change in philosophy can also be seen inside the prisons where Aboriginal specific training programs are being developed and delivered to Aboriginal offenders. Elders and Native Liaison Workers provide healing circles, counselling, and personal growth opportunities which assist offenders to change their lifestyle once they are on parole. Likewise the prison culture itself is changing as Elders and Native Liaison Workers work with other prison staff to create more peaceful solutions to prison conflicts and develop innovative options for the practice of Restorative Justice. (Achtenberg, 2000, p. 3)

Summary. In this article, the author provides instruction to staff as to how particular restorative issues and/or developments are to be interpreted. Achtenberg’s article/briefing note consolidates the CSC senior managements’ understanding of Gladue. Further, it confirms a working understanding of decolonization theory (Smith, 1998) and sets the stage for operational changes that align with both the restorative and healing approaches (Cayley, 1998; Christie, 1993, 2004; Melton, 2005; Tomas, 2005) necessary to meet the successful community reintegration imperative set out in the CCRA. The principal modality to be applied in this endeavour are Elders, who provide intensive programing for offenders, and native liaison workers who fill the breach for all other
demands. It is interesting and telling that the CSC did not commit to any other strategies (such as staff training or developing enhanced-research capacities) as a means to decolonize their operations. Nevertheless, *Gladue* and the Achtenberg article serve as a call and response moment that would not have been likely preceding publication of the 1996 report by the *Royal Commission on Aboriginal Peoples*.

**The 2003 Strategic Plan for Aboriginal Corrections and the Continuum of Care**

The 2003 *Strategic Plan for Aboriginal Corrections*, which introduces the Continuum of Care, is among the most restorative of the policies initiated and pursued by the CSC (Waldram, 1997). In fact, the Continuum recognizes and encompasses efforts made from within the CSC before the 1992 *Corrections and Conditional Release Act* became law. An example of this is the concept of the healing lodge that was presented in the 1990 report from the Task Force on Federally Sentenced Women. The Continuum also recognizes the findings of the 1996 *Royal Commission on Aboriginal Peoples*, in which the commission noted the disproportionate representation of Aboriginal people in the justice system and concluded that the Canadian justice system had failed Aboriginal people. It is also a serious attempt to apply the findings of *R. v. Gladue*. Most significantly, the Continuum of Care affects Aboriginal and non-Aboriginal offenders by shifting the program culture of the institution in ways that could not have been anticipated. Although programs represent only 5 per cent of the CSC budget, and education only a portion of that, the impact is significant and essential to achieve the successful community reintegration imperative stipulated in Purpose b of the CCRA.

The Continuum is best understood through the words of the people that created it:
The Aboriginal Corrections Continuum of Care model (to be referred to as Continuum), introduced in 2003, was developed in consultation with Aboriginal stakeholders working with CSC to develop new approaches to addressing Aboriginal Offender needs. Aboriginal community research indicated that the major factors contributing to Aboriginal Offenders’ success upon release were their participation in spiritual and cultural activities, as well as, programs (preferably delivered by Aboriginal people) and the support they received from family and the community.

The Medicine Wheel, found at the centre of the continuum, reflects research findings that cultural teachings and ceremonies (core aspects of Aboriginal identity) are critical to the healing process. Representing the cycle of life from conception to the return to the spirit world, the Medicine Wheel is a reminder that correctional interventions developed and implemented for Aboriginal offenders must take into consideration the past, the present and the future direction of Aboriginal people as a whole and of the Aboriginal person as an individual.

Surrounding the Medicine Wheel is the Aboriginal community. . . . The Continuum recognizes that Aboriginal communities must be involved in supporting Aboriginal offenders during their healing journey and reintegration, as they link offenders to their history, culture and spirituality. The continuum also reflects the importance of community support at every step during the administration of the sentence. (*Strategic Plan For Aboriginal Corrections*, 2003, p. 8)
In one sense, the Continuum of Care was the catalyst for an evidence-based professionalization movement in programs generally and education more specifically. This is most evident in the Prairie region, where regional headquarters staff and the institutional assistant wardens of correctional programs and chiefs of education recognized that, in some facilities, the Aboriginal population within the general population was over 50 per cent. Over the course of a decade, they worked to restructure their operations to better reflect the principles and policy requirements of the Continuum of Care. Among their tools was a process of regional contracting for education services. In this process, they produced annual evaluations around measurable outcomes that were refined in a series of request-for-proposal (RFP) documents. Over time, the RFP documents were reviewed and published in competitive processes every three years. Organizations wishing to provide services to the CSC had to speak the language of the Continuum and to have developed strategies for its implementation in the classroom. Bidders were required to meet a series of mandatory and rated requirements with particular emphasis placed on demonstrating a thorough theoretic and applied understanding of the Continuum. Bidders were also required to include operational work plans for the delivery of services in the context of the Continuum of Care.

The following is an example of pertinent questions (from the CSC) and answers (provided by my company, Excalibur LRC) submitted in the request for proposal for education services to the Oki Ma Ochi Healing Lodge in Maple Creek, Saskatchewan in 2006. The proposal led to a subsequent three-year contract award. I was a member of the writing team that produced the proposal.
By way of background, Oki Ma Ochi Healing Lodge is a women’s facility that is unique in the world. Everything about it, from its architecture to its admission process and program opportunities flows from the Continuum. Oki Ma Ochi strives to be the personification of the Continuum and of the CCRA’s restorative principle of least restrictive measures consistent with the protection of the public, staff members, and offenders. Oki Ma Ochi does not have a warden; the woman responsible for the overall operation of the lodge is known as the mother. Put another way, Oki Ma Ochi is a facility that aspires to operate within the Indigenous justice paradigm.

**Excerpt from Excalibur request for proposal.** The following questions from the regional administrator of Correctional Programs as chair of the contract proposal evaluation group and answers from me as principle writer on behalf of the proposal group at Excalibur serve as a primary research source and representation of how the parties had come to understand the interface between the purpose and principles of the CCRA and the Continuum of Care.

**What are the principles of aboriginal education that should be accommodated within correctional education?**

Statistics provide concrete evidence that Aboriginal offenders are highly over-represented in the prison population (*National Employment Strategy for Aboriginal Offenders*, 2009). Aboriginal offenders make up roughly half of the prison population in the Prairie region. Research indicates that needs for employment skills and educational upgrading among Aboriginal offenders are high. Johnstone (2000) found that almost 60 per cent of Aboriginal offenders had less than a Grade 10 education, while 63 per cent had employment skill needs. These high education and employment needs indicate an
important role for adult correctional education in the provision of programming to Aboriginal offenders. Both CD 702 and the National Employment Strategy for Aboriginal Offenders address the need for Aboriginal-specific employment-skills preparation programs in order to meet the specific requirements of Aboriginal offenders.

CSC’s Aboriginal Corrections Continuum of Care Model addresses the specific correctional needs of Aboriginal offenders, focusing on the concept of healing through culture and community. Further, the Continuum identifies that teachings and ceremonies are critical to the healing process and that interventions (programs) must take into consideration the past, present, and future direction of Aboriginal peoples and of individuals. In order to address gaps in the Continuum of Care, CSC’s 2006 Strategic Plan identifies three key objectives:

- to provide culturally appropriate interventions that address the specific criminogenic needs of Aboriginal offenders;
- to enhance collaboration with government agencies and Aboriginal community organizations and stakeholders; and
- to address systemic barriers internally and increase organizational cultural competence.

The Continuum of Care model ensures that Aboriginal education principles are accommodated within correctional education by

- identifying both the educational strengths and the educational needs of Aboriginal offenders at intake and accessing or constructing community-resource networks to support correctional education programs and individualized education plans;
• providing connections to culture, family, and community in correctional education programming by engaging the Aboriginal community as program resources; and

• establishing community networks for supporting further education or employment goals after release (see Figure 7).

Figure 7. Aboriginal education principles and correctional education.

The *Corrections and Conditional Release Act* (CCRA) (1992) entrenches the rights of Aboriginal offenders to have access to programs designed specifically to meet their needs for the purpose of their successful reintegration into the community. *CD 702 Aboriginal Programming* (1995-09-06) gives direction to adult correctional education programs through its recognition of the distinct needs of Aboriginal people. Implications stemming from *CD 702* for adult correctional education program principles, as well as for program design, include the following:
language is a factor that can affect/impact all learning interactions;

- differences in cultural approaches to learning require different teaching techniques; and

- the educational or employment problems addressed by the adult correctional education program have a different basis for Aboriginal offenders than for non-Aboriginal offenders.

**Nourishing the Learning Spirit.** The Aboriginal community refers to community-based, systemic barriers to Aboriginal lifelong learning, such as non-Aboriginal education systems. These systems often lack the capacity to teach Aboriginal culture, languages, traditions, values, and approaches to learning, leading to, among other things, education and employment needs.

The dominant culture’s education principles often focus on the object, or product, of learning, in isolation from the individual and the learning context. Conversely, Aboriginal teachings place emphasis on the self and its relationships to place and others (community). For Aboriginal peoples, the learning *process* is valued over the learning product. Much of the current literature on Aboriginal education refers to the concept of *the learning spirit*, which is the combination of learning strengths, gifts and capacities. This spirit is nourished through multiple relations with others, community, and place on the learning journey (Battiste, 2000).

The following seven foundational principles for Aboriginal education are taken from a synthesis of reports published by the Canadian Council on Learning and the Aboriginal Learning Knowledge Centre, University of Saskatchewan (see Table 2). The great extent to which adult correctional education is able to integrate the principles of
Aboriginal education allows for adherence to the Aboriginal program vision and objectives of CSC’s Strategic Plan for Aboriginal Corrections and also fulfills program accountability requirements to CD 702 and to the CCRA.

Table 2. Principles of Aboriginal Education

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<tr>
<th>PRINCIPLE</th>
<th>INTEGRATION WITH CORRECTIONAL EDUCATION</th>
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<tr>
<td>Aboriginal peoples view education as a vital area for holistic and lifelong learning and for transformation of their economic livelihood.</td>
<td>Components within correctional educational programs should be fully integrated rather than separate. Employment skill exploration and development are key objectives for Aboriginal education programs. Individualized education plans allow for short-term and long-term learning goals. Program objectives emphasize “learning how to learn.”</td>
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<tr>
<td>Learning is acknowledged as a lifelong process that requires both formal and informal opportunities for learning for all ages.</td>
<td>Aboriginal offenders should have opportunities to express ideas via a variety of media (written language, oral, artistic means, etc.). Correctional education programs reflect cultural lifelong-learning values. Individuals’ learning from informal situations must be recognized and acknowledged by the correctional education program.</td>
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<tr>
<td>Land, the knowledge and skills in and from place, language, and culture are integral parts of the learning and education process among Aboriginal people.</td>
<td>Aboriginal heritage, language, culture, and traditional knowledge should be an integral part of educational programs. Language and knowledges about/from culture and place are acknowledged as learner strengths. Learner’s background knowledge and experiences (prior learning) form the supporting foundations for new learning. Programming must be culturally appropriate, focusing on literacy and employment-skill programs that are delivered using culturally appropriate teaching methodologies, such as group work, sharing circles, and storytelling.</td>
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<tr>
<td>Aboriginal learning must be integrally linked to Elders and community and opportunities realized to build upon these connections and their language, knowledge, and culture.</td>
<td>Adult learning centres should involve Elders, native liaisons, and other members of the Aboriginal community in educational programming. As well, adult correctional education programs must encourage the development of community within the learning centre and its classrooms.</td>
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<tr>
<td>Learning development must focus holistically on Aboriginal individuals, including their spiritual, intellectual, emotional,</td>
<td>Correctional educators must broaden existing academic programs to include a holistic focus on all four of these aspects within each individual adult offender. Also, adult correctional educators must seek advice from Elders and</td>
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<tr>
<td><strong>PRINCIPLE</strong></td>
<td><strong>INTEGRATION WITH CORRECTIONAL EDUCATION</strong></td>
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<td>and physical selves, and acknowledge and foster their gifts and abilities.</td>
<td>native liaisons regarding Aboriginal student progress or difficulties.</td>
</tr>
<tr>
<td>Selecting and legitimating curricular knowledge are issues based on power, voice, and agency that require Aboriginal people to participate in curriculum development, deciding on the knowledge to be included in the curriculum.</td>
<td>Community educational programs designed by Aboriginal peoples for delivery to Aboriginal peoples can be tailored to meet the needs of Aboriginal offenders. For example, Alberta Education provides for Aboriginal program content to be included as the local program content portion of all courses. Students set learning goals in collaboration with correctional educators through individualized education plans.</td>
</tr>
<tr>
<td>The participation and involvement of community is essential to building a successful learning continuum and healthy, resilient communities. (from Battiste, M. 2005. “State of Aboriginal Learning”, background paper for the National Dialogue on Aboriginal Learning, Canadian Council on Learning).</td>
<td>In order to increase the effectiveness of educational programs and to decrease the likelihood of recidivism, correctional educators should actively cultivate linkages between their programs and community programs in order to strengthen the supportive function of community within the Continuum of Care model.</td>
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Through an ongoing process of program planning, implementation, and evaluation, in conjunction with Aboriginal community consultation, correctional education programs must ensure that Aboriginal correctional education program principles and design appropriately reflect the changing needs of the Aboriginal offender, Aboriginal initiatives, healing lodges, the community, and the releasing authorities. Correctional education programs must focus on holistic, lifelong learning and must incorporate culture, language, and community into program design and delivery.

**How does the correctional strategy affect the role of education?**

“Good corrections is, in effect, the successful reduction of the risk of recidivism. It is the belief of the CSC that good programming is an essential element in reducing
recidivism…”(Correctional Strategy policy document of the Correctional Service of Canada, 2003). Educational programming must be designed and delivered with a view to reducing recidivism based on the four principles from the Correctional Strategy. Table 3 summarizes the effect of the Correctional Strategy on the role of educational programs.

**Table 3. Correctional Strategy Impacts on Educational Programs.**

<table>
<thead>
<tr>
<th>Correctional Strategy Principles</th>
<th>Role of Education in the Correctional Process</th>
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<tbody>
<tr>
<td>1. Offender needs should drive programs and service delivery in order to reduce recidivism.</td>
<td>Educational programs must respond to the criminogenic as well as academic and personal development needs of offenders. Programs must be accredited, and must target individuals’ needs as identified on the correctional plan. Program delivery must meet the needs of offenders by accommodating the full range of learning styles.</td>
</tr>
</tbody>
</table>
| Example: Employability An offender who reads below Grade 5 level and has no marketable job skills | ● Essential skills involved in employment interest and ability areas are targeted in instruction.  
● Teachers integrate job-related content into literacy upgrading, for example, computer skills. |
| 2. Programs must create an environment conducive to change. | Adult education theory suggests that supportive environments are crucial to transformation of behaviours. Educators must create non-threatening environments of mutual respect, conducive to experimentation and dialogue, where appropriate behaviours are modelled, practiced, and reinforced. |
| Example: Encouraging positive behavioural changes | ● Teachers reinforce positive behaviours appropriate to a respectful learning environment and challenge behaviours that are not, through methods such as “discussion topics.” |
| 3. The attitudes, values and skills of staff are agents of change. | Educational staff must be aware of the role of (educational) valuing as a change agent and skilled as mediators for transformative learning. Educators must be skilled in modelling “valuing” behaviours. |
4. An organized approach to establishing programming and effective follow-up throughout the sentence is required. Excalibur delivers programs based on a cognitive, social learning theoretical foundation. That common foundation is applied consistently throughout the Prairie region. Common skill and strategy guides and terminologies are used to ensure standardized assessing and reporting of student progress.

Example: Organized Reporting System: An organized approach to accurate, timely reporting of an offender’s educational progress.

- Parole officers have useful information in order to track offender performance.
- Program delivery officers can access current information about individual offender’s goals, motivations, learning styles, cognitive strategies, barriers to learning, etc.
- Program assignment boards have educational information to assign offenders to appropriate programs.

Example: Educators model prosocial, valuing behaviours

- Teachers are respectful, patient, fair, and supportive as students are challenged to examine values and attitudes (educational and other) developed in prior experiences.

Summary. The preceding materials from the Prairie region education request for proposal and the Excalibur LRC submission illustrate the impact of the Continuum of Care. The Continuum reaffirmed an understanding of the CSC’s mission statement in substantive ways. From the questions posed by the education authorities, and the language used in the Excalibur responses, there is sense of common purpose and, to some extent, a suspension of disbelief. The narrative they contribute to is ideological; in the shadow of the Continuum of Care there was a belief that if you taught people to read they would not reoffend. The fact that no hard link between literacy and reduced recidivism exists did not enter into the culture of the correctional-program community; it was a community that was fostered and nurtured in the application of the Continuum of Care.
It is also noteworthy that the Continuum was developed in isolation. Policies such as the Continuum of Care are routinely developed with preceding legislation and regulation as their foundation. In this instance, there was nothing in the CCRA and corresponding regulation to serve as foundation. Thus, the Continuum of Care can be understood as both a noteworthy and restorative achievement in the spirit of Christie (2004) and Cayley (1998) with healing implications via Waldram (1997) and Ross (2014).

The 2013 Commissioners Directives

In 2013, the CSC began a process of editing, revising, rationalizing, archiving, and republishing it’s 145 Commissioner’s Directives (CDs). The catalyst for these revisions was passage of the *Truth in Sentencing Act*, which was itself part of a larger package of crime legislation considered and passed in Parliament. The CDs that inform the legislation form the framework of policy documents that guide the Correctional Service of Canada (CSC) and the National Parole Board (NPB). These policies are key to understanding the relationships of staff and offenders. The process CSC engaged in was an effort to rationalize the 145 CDs around a common, shared language. The CDs are noteworthy for the specific items they address. As such, they define and explain how the CSC is to honour its legislated responsibilities.

Commissioner’s Directives are best understood as evolving documents. They are reviewed and revised and, in some cases, discarded over time. They are noteworthy for their capacity to define, explain, and direct staff on the operation and administration of every aspect of their mandate. Within each of the directives there are a number of policy bulletins. As an example, within CD 254, *Occupational Safety and Health and Return to*
Work Programs, there are two guideline documents and five policy bulletins. Each document refines and directs how staff is expected to behave in any given situation.

In this study, two pertinent Commissioner’s Directives are discussed: CD 702, Aboriginal Offenders, and CD 785, Restorative Opportunities Program and Victim-Offender Mediation Services.

CD 702: Aboriginal Offenders. CD 702 is not a new document; in fact it references and is contingent to the 2003 Continuum of Care. The CD includes GL-702-1, Establishment and Operation of Pathways Initiatives, and Policy Bulletin 424, which amended the CD on 2013-11-12. The CD was developed by the CSC and is quite detailed. It includes direction, definition, and background for each layer of the human-resource chain connected to the mandate stipulated to the CSC and the National Parole Board in the Corrections and Conditional Release Act. It is a reflection of what the CSC understands to be its role and function with respect to Aboriginal offenders.

The following is an effort to provide the reader an understanding of the number of layers of personnel and of the kinds of language used for each role. The following extracts have been taken from CD 702:

4. The Regional Deputy Commissioner may:
   a. establish, chair and maintain a Regional Aboriginal Advisory Committee to provide advice on the provision of correctional services to Aboriginal offenders pursuant to section 82 of the C.C.R.A.
   b. administer agreements with Aboriginal communities
   c. provide Aboriginal communities with the opportunity to submit a plan and participate in release and reintegration planning.
5. The Regional Administrator, Aboriginal Initiatives, will:

a. consult with Aboriginal communities, advisory committees and/or Councils of Elders for the purposes of:

i. Locating Elders/Spiritual Advisors to attend to the spiritual needs of offenders

ii. Entering into contracts for the services of Elders/Spiritual Advisors

a. monitor Pathways Initiatives to ensure directions provided in GL 702-1- Establishment and operations of Pathways Initiatives are followed.

6. The Institution Head will: …

b. ensure that Elders/Spiritual Advisors are afforded the same status as Chaplains, pursuant to section 83 of the C.C.R.A.

c. ensure offenders are provided with the services of an Elder/Spiritual Advisor, in consultation with the Regional Administrator, Aboriginal Services

d. provide the Elder/Spiritual Advisor with appropriately equipped facilities for the provision of confidential spiritual services

e. ensure that an Elder/Spiritual Advisor or an Elder’s helper of the same gender as the offender is available for ceremonies

f. ensure that the unique circumstances of the Aboriginal offender, as described in the definition of the Aboriginal social history, as well as culturally appropriate/restorative options are given due consideration in the decision-making process
g. designate indoor and outdoor space to conduct traditional ceremonies, including smudging with ceremonial medicines

h. ensure staff working with Aboriginal offenders are culturally competent relative to their role and have an understanding of the Aboriginal Corrections Continuum of Care model

7. The District Director will ensure:

a. offenders have reasonable access to Aboriginal-specific resources in the community

b. staff working with Aboriginal offenders are culturally competent relative to their role and have an understanding of the Aboriginal Corrections Continuum of Care model

8. The Elder/Spiritual Advisor will:

a. provide counselling, teachings and ceremonial services

b. provide advice to the Institutional Head when required regarding ceremonies, ceremonial objects, traditional medicines

c. as a member of the Case Management Team, participate in case conferences as required

9. The Aboriginal Liaison Officer will:

a. document Elder/Spiritual Advisor Reviews (if required by the Elder/Spiritual Advisor) and share them with the offender

b. take a supportive role with respect to cultural awareness and a liaison role with respect to general services to offenders and staff
c. as a member of the Case Management Team, provide the team with information regarding the offender’s participation in a healing path.

10. The Aboriginal Correctional Officer will:
   a. deliver Aboriginal correctional programs and complete reports in accordance with CD 726-Correctional Programs.

11. The Parole Officer will:
   a. incorporate comments provided by an Aboriginal offender’s Case Management Team into the Correctional Plan and Correctional Plan Updates as required
   b. as needed, request that an Elder/Spiritual Advisor Review be completed normally 60 days prior to the requirement to update an offender’s Correctional Plan.

12. The Aboriginal Community Development Officer will:
   a. support and promote involvement of Aboriginal communities in release planning pursuant to section 84 of the CCRA
   b. as a member of the Case Management Team, liaise with the team in the development of release plans under section 84 of the CCRA for offenders being considered for release on parole.

13. The Aboriginal Community Liaison Officer will:
   a. liaise with Aboriginal organizations, agencies or communities, when required, for assistance in maintaining resources and contacts for Aboriginal offenders who are being released to the community
b. provide support to offenders being released on statutory release who are utilizing a release plan under section 84 of the CCRA. \( \textit{(CD 702, pp. 2–4)} \)

This listing of job titles and requirements has been selected to illustrate the complexity of the organization and the extensive requirements of the legislated mandate. The language applied in this section of the CD also provides insight into the assumptions of the organization—assumptions that simultaneously defy and embrace outside assessment. An example of this is the choice of the words \textit{may} and \textit{will} in the title and introduction of each role: the deputy commissioner “may establish, chair and maintain a Regional Aboriginal Advisory Committee (RAAC) to provide advice on the provision of correctional services to Aboriginal offenders \( \textit{(CD 702, p. 2)} \) while the regional administrator, Aboriginal Initiatives “will consult with Aboriginal communities, advisory committees and/or Councils of Elders . . .” \( \textit{(CD 702, p. 2)} \).

If the regional deputy commissioner fails to establish, chair and maintain a RAAC, the job of the regional administrator, Aboriginal Initiatives role and function is made much more complicated and is less likely to be successful. More particularly,

- in leaving the function at the regional commissioner level as an optional activity, the CSC has confirmed that this function is less important than others that may require attention in the course of daily operations.

- The choice of language calls into question the capacity of communities to enter into agreements with the CSC and in their confidence that the agreements will be taken seriously.
Finally, there is no language in the materials for any of the job roles or functions with respect to reducing recidivism or of increasing the proportion of Aboriginal offenders on day or full parole.

As the directive moves from one function to the next, the language of each function becomes decidedly report driven. For instance, “The Aboriginal Liaison Officer will . . . document Elder/Spiritual Advisor Reviews (if required by the Elder/Spiritual Advisor) and share them with the offender (CD 702, p. 3). The Parole Officer will “incorporate comments provided by an Aboriginal offender’s Case Management Team into the Correctional Plan and Correctional Plan Updates as required (CD 702, p. 3). The emphasis is weighted away from evidence derived from human interactions and towards information that can be contained and managed on a computer. Without specific community-reintegration language or goals embedded within each function, the effect becomes more retributive than restorative.

To be fair, it should be noted that the description of an Elder’s duties is focused entirely on the offender relationship. The hurdle to accomplishing this mandate is contained in the language of the institution head who will “ensure that Elders/Spiritual Advisors are afforded the same status as Chaplains, pursuant to section 83 of the CCRA (CD 702, p. 3). This mandate is at best, a reflection of a dominant-culture paternal understanding of a consensual, matrilineal process: Elders are not Chaplains! At worst, it conflicts with the definition of Elder/Spiritual Advisor that is contained in the definitions section of CD 702, which follows the responsibilities section.

**Elder/Spiritual Advisor**: any person recognized by an Aboriginal community as having knowledge and understanding of the traditional
culture of the community, including the physical manifestations of the
culture of the people and their spiritual and social traditions and
ceremonies. Knowledge and wisdom, coupled with the recognition and
respect of the people of the community, are the essential defining
characteristics of an Elder/Spiritual Advisor. Elders/Spiritual Advisors are
known by many other titles depending on the region or local practices. An
eexample is Angakuk who is an Inuit Shaman or medicine man. (This
definition does not apply to inmates who may have ceremonial
knowledge.) (CD 702, p. 7)
The CD reinforces a restorative intent in Annex B where it speaks at some length
about the Continuum of Care:
The Aboriginal Corrections Continuum of Care model (to be referred to as
Continuum of Care), introduced in 2003, was developed in consultation
with Aboriginal stakeholders working with CSC to develop new
approaches to addressing Aboriginal offender needs. Aboriginal
community research indicated that the major factors contributing to
Aboriginal offenders’ success upon release were their participation in
spiritual and cultural activities, as well as programs (preferably delivered
by Aboriginal people) and the support they received from family and
community . . . the Medicine Wheel is a reminder that correctional
interventions developed and implemented for Aboriginal offenders must
take into consideration the past, the present and the future direction of
Aboriginal peoples as a whole and of the Aboriginal person as an individual. (CD 702, p. 8–9)

While this language meets a restorative standard, it should be noted that it came about in the aftermath of the *Gladue* decision. As such, it was a reaction to an adversarial process (a Supreme Court of Canada ruling) that was, in turn, imposed on a paternal and adversarial system. This is confirmed and compounded in the language of the CD. Staff training is key to move from an essentially retributive model to something else. The only time staff training is mentioned in this CD is in the memorandum on the creation of Pathways Initiatives. It is difficult to understand how the Continuum is expected to become a best or even common practice if security staff and senior management have not received comprehensive, ongoing training that would challenge the retributive attitudes, values, and assumptions currently in play.

The CSC’s awareness of its duty of care is further documented in the CD’s definition of cultural competence:

**Cultural Competence:** ability of individuals and systems to respond respectfully and effectively to people of all cultures, classes, races, faiths and ethnic backgrounds in a manner that recognizes, affirms, and values the cultural differences and similarities, the worth of individuals, families and communities and protects and preserves the dignity of each. (CD 702, p. 7)
Unfortunately, without a commitment to training and assessment regarding the concept of cultural competence, the Continuum of Care is effectively relegated to restorative window dressing.

**Pathways Initiatives.** Within the body of *CD 702* are guidelines for Pathways Initiatives. Pathways Initiatives are best understood as 24-hour-a-day immersion programs operated within the confines of institutional/prison facilities. The offenders live within a cell-block/living unit or housing complex depending on security level. In each setting,

a Pathways Initiative provides a path of healing within institutions for offenders who demonstrate a commitment to follow traditional healing as a way of life, 24 hours a day. Pathways is first and foremost an Elder-driven intensive healing initiative, that reinforces a traditional Aboriginal way of life through more intensive one-to-one counselling, increases ceremonial access, and an increased ability to follow a more traditional healing path consistent with Aboriginal traditional values and beliefs. The Elder services, programming and interventions provided in this environment are intensive and directed to individuals’ personal healing. The services available must be above and beyond the services that CSC is required to make available to all Aboriginal offenders. (*CD 702-1*, p. 2)

The offenders who participate in a Pathways Initiative are placed following an application and screening process. While the initial (primary) motivation for some participants may be restricted to transfer and parole, the restorative nature of the program challenges each participant’s values and attitudes in ways that require recognition and
responsibility from Pathways Initiative participants. The deliberate way the program is organized is reflected in the responsibilities section of the CD. Examples from the section read as follows:

**Responsibilities**

3. The Regional Administrator, Aboriginal Initiatives, will provide functional support for the operation of Pathways Initiatives within the region. He/she must be supportive of, and involved in, the development of any proposed Pathways Initiatives and will work with the Director General, Aboriginal Initiatives, to review existing Pathways Initiatives.

5. The Assistant Warden, Interventions, is responsible for managing and supporting the Elder/Spiritual Advisor. He/she is the primary manager responsible for the oversight of Pathways Initiatives and is a member of the decision-making team with regards to acceptance and removal from the Pathways Initiative.

6. The Elder/Spiritual Advisor will provide the cultural and spiritual direction for Pathways. Individual Counselling, ceremonial services and teachings are the main aspects of the Elder’s role within Pathways. The Elder will be part of the decision-making team with regards to acceptance and removal of offenders from the Pathways Initiative. The Elder will assess the commitment and dedication of an offender and provide a recommendation on acceptance from the waiting list.
8. Each region will ensure there is a Regional Pathways Coordinator who will assist with the development of the initiative and monitor implementation and results. The Regional Pathways Coordinator will: . . . 

d. support and monitor the management of new and existing Pathways Initiatives, train Institutional Pathways staff members on the Offender Management System (OMS) data entry process, work with Institutional Pathways on implementing and reviewing the Pathways Initiatives, and work with Institutional Pathways Coordinators (where applicable) ensuring that recording, reporting tools and tracking systems are maintained.

e. provide reports on results derived from OMS, expenditures and best practices to the Regional Administrator Aboriginal Initiatives, for submission to National Headquarters.

10. The Aboriginal Liaison Officer assigned to Pathways is responsible for entering the updated Elder Review document upon initial placement and final departure into the OMS and will share it with the offender. He/she will provide a mechanism for advancing the cultural spiritual needs of Aboriginal offenders through communication with case management and correctional program staff. He/she will work closely with the Pathways team members through communication with case management and correctional program staff. He/she will work closely with the Pathways team members to ensure there is an understanding of the offender’s work with the Elder/Spiritual Advisor. . . . He/she will also be part of the
decision making team with regards to acceptance and removal from the Pathways Initiative. He/she has a critical role in supporting the Pathways Elder.

11. It is recommended that each site have a dedicated Parole Officer as part of the Case Management Team. (CD 702-1, p, 2–3)

The deliberate restorative intent of the responsibilities is reinforced with the placement of a staff-education paragraph in the 10-point expectation list that an institution must meet to qualify for a Pathways Initiative at their site. While the language is far from sweeping and there is no corresponding funding expectation to accompany it, it is still noteworthy. The language confirms an understanding of the retributive assumptions of the prison as it defines the scope of achieving a restorative standard. From a logistic perspective, it provides an image of a system that is helpless to re-engineer its processes. The entire staff-education quotation demonstrates the CSC’s understanding of its duty of care:

**Staff Education**—Education about Aboriginal traditions and values will help staff understand why certain protocols must be followed. Training (such as Aboriginal Perceptions Training), should be offered to staff as well as informal learning opportunities. Attendance at events and/or ceremonies where applicable, as well as speaking to Elders, Aboriginal Liaison Officers or Aboriginal offenders about their culture, can enhance a person’s knowledge of Aboriginal culture. (CD 702, p, 2)

**Summary.** The language tells the reader that the CSC is aware of its duty of care; it also confirms a capacity to act on its responsibility. If recognition and self-awareness
are essential elements of restorative and Indigenous justice paradigms, then the CSC has achieved recognition. In this the CSC acknowledges its restorative duty of care as it downplays the retributive mandate imposed upon it by the Government of Canada, an individual is sentenced to a penitentiary as punishment and CSC delivers on that principle by admitting the individual to one of its institutions and, within the limitations of the original sentence ordered by the courts, holding that individual until it is determined that he or she can be safely returned to society. (Roadmap, 2007, p. 14)

**CD785: Restorative Opportunities Program and Victim Offender Mediation Services**

The CD is primarily designed to bring victims and offenders together in a mediated setting. The CD references Section 6 of the Canadian Bill of Rights and Section 26.1 of the CCRA to ensure that processes are in place to provide for victims and offenders to participate in victim-offender mediation services. The CD does a good job of setting the stage for an exchange of feelings and is less focused on the restorative effects of dispute resolution. In truth, it is more like a facilitated apology with a 3rd party acting as mediator. Within this limited context, the CD qualifies as a restorative policy. It is clear that a good deal of time and energy were expended to produce the CD and subsequent policy and programs. It would even be fair to conclude that this could be a foundational policy towards restorative and Indigenous understandings in the same way the Continuum of Care can be understood as a foundational opportunity towards restorative and Indigenous paradigm alternatives.
The challenges that this CD encountered are similar to those that confront CD 702.

CD 785 was not developed as part of the process that formed the framework for the 1992 CCRA. Although alternative to dispute resolution/restorative-justice programs were growing in the community prior to the development of the CCRA, they were focused on young offenders and in family law. As such, principles and practices of restorative justice generally, and mediation specifically, were not significant variables in the development of the CCRA. To the extent they may have been considered, the authors probably believed the matter had been addressed in Principle 4D, Part I, Institutional and Community Corrections—“that the service use the least restrictive measures consistent with the protection of the public staff members and offenders” (CCRA, 1992, p. 5)—and Principle 101D, Part II, Conditional Release, Detention and Long-Term Supervision—“that parole boards make the least restrictive determination consistent with the protection of society” (CCRA, 1992, p. 35).

If there is one variable that pushed the CD towards the archives, it is the dominant-culture adversarial-justice system. For those who are held under federal warrant, the restorative-justice paradigm is not the first course of action. From arrest to charges and trial and conviction, significant time elapses. During this time, a substantial proportion of offenders will arrive at a plea bargain that may have little connection to the offence or circumstances that led to arrest. Others may experience significant pressure to deny any connection to the events that resulted in charges in an effort to make the Crown meet its burden of proof. In this adversarial, paternal process, personal responsibility is put aside to escape punishment. Accused persons are represented by counsel and are not
compelled to speak. The time lapses and the court process combine to reduce the need for accountability.

In the postwarrant/parole-preparation phase of a sentence, the offender must master the art of demonstrating remorse. Participating in a victim-offender mediation does not change the sentence or increase the potential for parole and institutions are generally a great distance from the community in which the crime was committed. Given this, it is unlikely a victim would initiate a mediation process and even less likely that an offender would. Suffice to say, CD 785 has been put aside for lack of use.

In an effort to provide a complete image of how a restorative victim-offender mediation process actually unfolds, I was able to document the experience of one retired CSC person who was assaulted by an offender. Years later, Robert participated in mediation with the offender. The following is his narrative:

Robert was assigned as superintendent of a parole facility where he spent a good deal of time with the parolees. In the course of his duties, he worked with an offender on parole, whom I will refer to as William.

William was a repeat offender who was not considered dangerous but was understood to be impetuous. With this in mind, it was no great surprise when he left the halfway house and headed for the west coast. The fact that his supportive family lived in the same city as the halfway house did not figure into his reasoning process. After a number of months, he returned to the community to be closer to his family. In this process, he spent time with the minister from his church, and the Minister contacted Robert to say William wanted to turn himself in. With this information, Robert raised a warrant and contacted the OPP and RCMP who dispatched officers to go with him to
pick William up. On the way to William’s home, Robert briefed the officers and it was decided they would leave their side arms in their vehicles when the entered the residence.

When Robert rang the doorbell, William’s daughter answered and told them her father was gone and her mother was at church. The police officers entered the premises and began a walking tour of the house while Robert visited with the daughter in the kitchen. When the officers were about to begin the search of the basement, the daughter’s demeanour seemed to change. Robert concluded that she was either very upset by having police officers searching her home or that William was hiding in the basement. He reasoned that if William was in the house, it would be better to wait and apprehend him as he was leaving the premises. And so, he went downstairs to tell the officers that he believed the daughter when she said William was not in the house and so was calling off the search. They all agreed this would be the best course of action and did so in voice loud enough that William would understand he was not at risk. Unfortunately, the presence of three men in the basement had already raised William’s anxiety beyond all reason. On the way out of the basement, Robert looked around the corner into a storage area, the space where William was hiding. William panicked; without knowing who was looking in the storage area, he thrust a knife in the general direction of the person looking around the corner. It turned out Robert was within striking range. He was cut in the arm and the rib cage. William bolted up the stairs and within minutes the police had secured him fleeing the scene.

Subsequent to his arrest and in interviews and pre-trial conferences, William stated that he had stabbed the only man who had ever tried to help him. In fact, this
statement was included in the court record when the judge accepted William’s plea bargain in the stabbing offence.

Years later, Robert was contacted by William’s wife. She asked if Robert would be willing to meet with William at the institution. By the time William’s wife contacted Robert, William had passed his statutory release date. William would be held in the institution until warrant expiry. In short, William would serve every day of his sentence inside a medium-security institution. Remorse, regrets, and apologies would have no effect on the terms of the warrant. Robert agreed to a meeting; the mediation was not part of the *CD 785* protocol. No security personnel were in the room at the meeting and no mediator was present. The meeting was held in the administrative section of the prison, an area normally out of bounds to offenders.

The conversation took some time; there was a good deal to discuss. It culminated in a heartfelt apology from William and an acknowledgement that if Robert saw William in the community, he would welcome a conversation as he would a conversation with any neighbour. By any measure, the result of this dialogue was remarkable.

After the mediation, there was another meeting. The warden and the principle members of the security staff took Robert aside to forcefully express their great concern over the meeting. Each was concerned that by meeting one-on-one and without support, Robert had put his life at risk. Their heartfelt concern mirrored both the sincerity of William’s request to meet with Robert and the anticipatory crisis confirmed in the ritual of every morning meeting. At the morning meeting, every offender is understood to be a dangerous offender; all offenders and all staff are at risk, every minute of every day. The fact that William had been, in every possible measurable way, a model offender
committed to prosocial activities in various (Lion’s Club) service functions was lost in their assessment.

**Summary.** The narrative is noteworthy in a number of ways. The mediation was not part of the *CD 785* protocol. It is likely the mediation would not have happened were it not for the fact that Robert was an insider travelling in and out of the institution as part of his employment. The assumptions, made in the shadow of anticipatory crisis, have the effect of blinding the participants to those teachable moments that nurture a restorative or Indigenous paradigm. In this instance, there were a number of restorative moments.

The first was the discussion and decision to enter William’s home without side arms. It was restorative because it showed a certain respect for William’s family and demonstrated an investment in the assumption that discussion would be better than confrontation.

The second was William’s decision to plead guilty to the offence with the declaration that the stabbing was a terrible thing, that he had lashed out and injured the only man who had ever tried to help him.

The third was the initiative of William and his wife to take a message to Robert and to Robert for agreeing to meet.

The mediation proved to be a success because it was an informal, good-faith gesture by each of the parties. Had the parties gone through the exhaustive *CD 785* process of applying and scheduling, it is highly unlikely the mediation would have happened. If it had culminated in a meeting of the parties, there would have been other people in the room and that would have stifled communication. In this instance, the application of stringent administrative systems would have been to enable a retributive
self-fulfilling prophecy. In this spirit, it is fair to say that the CD was archived because it was rarely, if ever, applied. It was not archived as part of some larger or consciously retributive agenda.

Chapter Summary

While overall rates of violent and property crimes continue to drop in the community, the number of offenders incarcerated in federal institutions continues to rise. Offenders are spending a greater proportion of their sentences in institutional settings than in supervised community/parole settings. The trends confirm that statutory, direct release to the community is the least successful parole option in terms of successful community reintegration, yet it is the option most likely to be applied.

Aboriginal offenders account for 22 per cent of the offenders assigned to the CSC; Aboriginal offenders are more likely to be held for violent offences and/or sexual assaults and/or drug-related crimes than non-Aboriginals; Aboriginal offenders are held in higher levels of security for longer durations than any other subsection of the general population; Aboriginal offenders are less likely to receive any kind of parole than any other subsection of the population; when parole is granted, Aboriginal offenders are more likely to have their parole revoked than any other subsection of the population. Currently, 70% of offenders assigned to the CSC are held in federal institutions, while 30% are serving their sentences in community-supervision settings. These outcomes are in conflict with operational imperatives of the Corrections and Conditional Release Act (CCRA).

The purposes delineated in the CCRA set out the operational imperative requirements assigned to the CSC by the Government of Canada. In a critical evaluation
of the CCRA, these imperatives are understood as the “what” of their operational mandate. When viewed as operational imperatives, the dual purposes of the act would seem to conflict; if the CSC is more efficient in achieving retributive secure custody in pursuit of safety, it will be seen to short change the other—namely, successful community reintegration.

The authors provide a restorative tool to resolve this dilemma: It is contained in the Principle 4 (d) of the act and neatly describes “how” the CSC can honour a retributive imperative as it fulfills a decolonizing one—by “us[ing] the least restrictive measures consistent with the protection of the public, staff members and Offenders” (CCRA, 1992, p. 5). The provision of this language, in concert with its stated purpose, provides clear direction to the CSC on what their mandate is and how the Government of Canada wants them to go about achieving it.

As such, the triangulation of the two purposes and the principle of least restriction defines the what and the how. In this relationship, the CSC is compelled to provide custodial care that is removed from a punitive imperative; the term/duration of the sentence is the punishment, not the prison in which the detention is administered. The community expectation for the CSC is that successful community reintegration will be achieved. Thus, although the principle of least restriction is not solely a decolonizing proposition, it is a decolonizing operational imperative. Put another way, it is the balancing point from which the CSC and the NPB are to accomplish secure custody, public safety, and successful community reintegration. If the purposes of the act tell the CSC and the NPB the what of their mandate, then the principle of least restriction defines the how. As such, it is the litmus test for evaluating every change to the act in the 1992–
2013 timeframe and for every other document contained in the study’s critical policy review.

This understanding is confirmed by the CSC on at least two occasions; in Achtenburg, the CSC consolidates its managerial understanding of the restorative imperative that comes to fruition in the 2003 Continuum of Care. It is noteworthy that the Continuum was developed in isolation from within the organization and beyond existing regulation. In the normal course of events, policies such as the Continuum of Care are developed from the top down, with preceding legislation and regulation as their foundation. In this instance, there was nothing in the CCRA and corresponding regulation to serve as foundation. The fact that line staff saw a need for policy and then pursued that need confirms an internalized organizational understanding that aligns with a restorative and possibly even Indigenous justice paradigm duty of care. Thus, the Continuum of Care can be understood as both a noteworthy and a restorative achievement in the spirit of Christie (2004) and Cayley (1998), with healing implications via Waldram (1997) and Ross (2014).

This understanding is reconfirmed in CD 785 Victim Mediation, which—while it presented a daunting administrative process to approve and schedule a victim/offender mediation—was intended to facilitate a dialogue between victims and perpetrators. In the end it is fair to say that the administrative hurdles built into the CD stifled the initiative. The CD was archived because it was rarely applied, not as part of some larger or consciously retributive agenda.

The language of the demographic, legislative, and policy understanding of the chronology confirms that the CSC is aware of its duty of care; it also confirms a capacity
to act on its responsibility. If recognition and self-awareness are essential elements of restorative and Indigenous justice paradigms, then the CSC has achieved recognition.

Ultimately the Correctional Service of Canada is understood as a complex retributive organization with pockets of restorative and Indigenous paradigm innovation that defy the carceral reality of the prison. In my opinion, these pockets of restoration and “Indigeneity” exist because the staff who work in the prison do not go to work with the conscious intent to visit harm on another human being.

The CSC is retributive because its foundational assumption, made each and every morning, drives a wedge between restorative aspirations and retributive operations. The ritual of disconnection, practiced at every morning meeting, compels its participants to assume that every offender is understood to be a dangerous offender. In applying this assumption, all offenders and all staff are at risk every minute of every day. The effect is to relegate offenders to the status of second-class citizens—a necessary requirement in the disconnection ritual that is the morning meeting.

In this regard, the CSC reconfirms a settler colonial, assimilationist intent. While all of this language confirms the CSC’s awareness of its restorative duty of care, it comes without a commitment to staff training and assessment in the concepts of Indigenous cultural competence. In this vacuum, the language of the morning meeting rewards the ritual of disconnection.
Chapter Five: Critical Policy Review:
Royal Commissions of Inquiry, Supreme Court Rulings, and Operational Assessments

The purpose of the critical policy review is twofold: (1) to identify and assess a chronology of policy documents over an extended period of time in order to achieve an understanding of the interface between the Correctional Service of Canada’s legal imperatives, policy expectations, and day-to-day practices; (2) to take this understanding of policy and operations over time and assess its ramifications in the context of dominant-culture and decolonization theory with respect to the role, place, and function of Aboriginal Elders responsible for the provision of healing programs within facilities operated by the CSC. The fulfillment of this purpose is contained in the assessment of a chronology of Government of Canada reports produced by or in response to the policies and practices applied by the CSC in its operations. The chronology and assessment in Chapter 5 focuses on the pertinent Royal Commissions of Inquiry, the Supreme Court of Canada Rulings, and the operational assessments for the period 1992 through 2013.

The critical policy review applies a process of content analysis to identify and assess moments of unforeseen consequence. Content analysis refers to “a process of data-reduction and sense-making effort that takes a volume of qualitative material and attempts to identify core consistencies and meanings” (Patton, 2002, p. 453). The assessment and rereading of the documents reveals the difference between the intent of the documents and their operational application in the prisons. The common thread that
binds the 21-year chronology is the 1992 Canadian *Corrections and Conditional Release Act* (CCRA).

### The 1996 Royal Commission on Aboriginal Peoples

In 1991 the Government of Canada created the *Royal Commission on Aboriginal Peoples* (RCAP), a groundbreaking analysis of Indigenous citizenry; five years later, it tabled a five-volume final report, comprising 4000 pages and culminating in 440 recommendations. Over the course of its work, the commission held 178 days of public hearings, visited 96 communities, and commissioned various research studies incorporating the recommendations and findings of many past inquiries and reports.

It can be argued that the results of the RCAP are mixed; some might argue the work of the commission has been completely ignored. I believe the commission is best understood as a catalyst in affirming a foundational dialogue. Volume 3 of RCAP, “Bridging the Cultural Divide,” which focuses on justice issues, is a transformational document that culminates in 18 daunting recommendations. Recommendations 1 and 2 are typical of the recommendations from the report and bring light to bear on long standing issues of recognition and comity:

1. **Federal, Provincial and territorial governments recognize the right of Aboriginal nations to establish and administer their own systems of justice pursuant to their inherent right to self government, including the power to make laws, within the Aboriginal nation’s territory.** (RCAP, 1996, p. 224)

2. **Aboriginal justice systems [must] be able to exercise choice with respect to the types of offences they will hear and the particular offenders who are to come**
before them. Offences and Offenders not dealt with by the Aboriginal justice system would continue to be dealt with by the non-Aboriginal justice system. (RCAP, 1996, p. 254)

To understand why each of these recommendations has not been acted upon, they must be viewed from a dominant-culture/colonist perspective.

- The report and its recommendations required a consensual transnational understanding regarding the mandate of the commission’s work and recognition by the dominant culture of the need for fundamental structural change; this understanding does not exist.

- In concert, these recommendations require the creation of a parallel system of justice.

- To act on either recommendation would have required the dominant culture to endorse huge logistic changes, in both education and justice systems, acknowledging that the current retributive approach was ineffective and unfair and, by extension, asserting the “new” Indigenous approach to be more effective and fair.

- The professional social-service and legal-training infrastructure, under provincial jurisdiction, would be compelled to re-engineer their own assumptions, attitudes, values, and processes to deal with the logistic requirements and costs of implementation.

The commissions’ mandate requires a shared understanding of history—a decolonized understanding of history (Blaut, 1993; Smith, 1999). The following archived
highlights of the report found on the “A word From The Commissioner” section of the RCAP website illustrate the complexity of the challenge most effectively:

Canada is a test case for a grand notion—the notion that dissimilar peoples can share lands, resources, power and dreams while respecting and sustaining their differences. The story of Canada is the story of many such similar peoples, trying and failing and trying again, to live together in peace and harmony.

But there cannot be peace and harmony unless there is justice.

It was to help restore justice to the relationship between Aboriginal and non-Aboriginal people in Canada, and to propose practical solutions to stubborn problems, that the Royal Commission on Aboriginal Peoples was established.

We directed our consultations to one over-riding question: What are the foundations of a fair and honourable relationship between the Aboriginal and non-Aboriginal people of Canada?

Assimilation polices have done great damage, leaving a legacy of brokenness affecting Aboriginal individuals, families and communities. The damage has been equally serious to the spirit of Canada—the spirit of generosity and mutual accommodation in which Canadians take pride. Yet the damage is not beyond repair. The key is to reverse the assumptions of assimilation that still shape and constrain Aboriginal life chances—despite some worthy reforms in the administration of Aboriginal affairs.
To bring about this fundamental change, Canadians need to understand that Aboriginal Peoples are nations. That is, they are political and cultural groups with values and life-ways distinct from those of other Canadians. They lived as nations—highly centralized, loosely federated, or small and clan-based—for thousands of years before the arrival of Europeans. As nations, they forged trade and military alliances among themselves and with the new arrivals. To this day, Aboriginal people’s sense of confidence and well being as individuals remains tied to the strength of their nations. Only as members of restored nations can they reach their potential in the twenty-first century.

Let us be clear, however. To say that Aboriginal peoples are as nations is not to say that they are nation-states seeking independence from Canada. They are collectives with a long shared history, a right to govern themselves and, in general, a strong desire to do so in partnership with Canada. (RCAP, 1996)

In the context of this study, the most significant finding and corresponding recommendation is as follows:

It is the Commission’s view that the recognition and affirmation of existing Aboriginal and treaty rights in section 35(1) of the Constitution Act, 1982 gives the constitutional scope for Aboriginal self-government in matters relating to the establishment of justice systems.

The Commission recommends that federal, provincial and territorial governments recognize the right of Aboriginal nations to establish and
administer their own systems of justice pursuant to their inherent right of self-government, including the power to make laws, within the Aboriginal nation’s territory. (RCAP, 1996, p. 224)

Summary

It should come as no surprise that the justice recommendations contained in RCAP’s Volume 3 have not been enacted. In fact, most of the Commissions’ 440 recommendations have not been enacted. To some extent, this can be understood if RCAP is seen in the context of a strident decolonizing treatise (Smith, 1999) that leapt over the restorative dialogues (Cayley, 1998; Christie, 1993; Zehr, 1990) embedded in the CCRA’s principle of least restriction to land in an unequivocal healing methodology (Melton, 2005; Waldram, 1997; Yazzie, 2005).

Additionally, it should be understood that the publication of the RCAP documents marks the first time that the Government of Canada (and, by extension, the Canadian public) were compelled to interface with the inherent right of Indigenous peoples to pursue both self-determination and self-government. Even today, core historical markers such as the doctrine of terra nullius and the Proclamation of 1763 and their colonizing ramifications are not core offerings in any history program in any publically funded school district in Canada. To advance a common linguistic understanding of colonization, the entire relational history of Canada and Indigenous people must be incorporated into the core curriculum of the publically funded school system. To date, this has not been the case. Suffice it to say that the language and method of the RCAP moved so far from the internalized understandings of the dominant culture that settler-colonial elected officials
and policy makers were caught like deer in headlights. These officials did what deer do; they bolted into the woods and waited for the RCAP bus to pass.

The impact of the commission’s accomplishments is best seen and understood over time, where a number of hopeful indicators can be found; in the interest of brevity, they can be seen in the work of the 1996 Arbour Commission Report, the 1999 Supreme Court of Canada decision in R. v. Gladue, the 2003 Correctional Service of Canada “Continuum of Care” policy document and, most profoundly, in the 2012 Office of the Correctional Investigator’s report to Parliament, Spirit Matters: Aboriginal people and the Corrections and Conditional Release Act.

Each of these indicators contributes to an evolving awareness in Indigenous communities and in the general population of Canada of concepts like the inherent right to self-determination. Each endeavour pushes the boundaries of language and understanding: Each contributes to a decolonizing process. The fact that the disproportionate representation of Aboriginal peoples held under federal warrant continues to rise does not diminish the contribution of RCAP in a larger decolonization process.

**The 1996 Commission of Inquiry Into Certain Events at Prison for Women**

In April of 1994, a series of events took place at the Prison for Women (P4W) culminating in the Emergency Response Team from Kingston Penitentiary entering P4W where they conducted a series of cell extractions. In the months following a Crown Commission of Inquiry was appointed to resolve questions, concerns and complaints arising from events occurring during and after the events of April of 1994 decisions. The
commission represents first test of Parliament’s legislative intent and actual operational practices applied in a prison setting in Canada.

**Personal Narrative: Researcher as Positioned Subject**

In April of 1994, a series of events took place at the Prison for Women (P4W). In 1994 and 1995, I worked from time to time at P4W as a guest teacher in the Life Skills program. At the time, I was also fulfilling a regional contract to provide teachers, vocational teachers, living skills instructors, guidance counsellors, librarians, and educational records clerks to every institutional site in Ontario region. My staff supplied all of the educational and living skills staff to Prison for Women during this period. In the spring of 1994, P4W was in the process of being decommissioned; the women were to be transferred to new facilities (which were under construction) closer to their home communities. The new institutions were designed to support the process of successful community reintegration. In these new facilities, they were to live communally, in semidetached bungalows where they would exchange a cell for a bedroom. The cooking, cleaning, and general maintenance in their new accommodations was to be a cooperative venture.

In preparation for the change from prison to living unit, it became apparent that many of the women lacked skills required to function in the new environment. In response to this skills deficit, the school organized a variety of programs to prepare them. A horticulture program taught them how to grow a vegetable garden as a low cost, healthy supplement to their diets, while an English program focused on developing communication skills for daily living, and a life skills program concentrated on basic skills that included organizing a menu and cooking a meal. And so, every third Tuesday,
it was my job to teach a dozen women how to make a three-course meal. The objective was twofold: first, to teach them the practical skills of producing a healthy meal that could be re-served as leftovers or folded into a new meal the next day with no wastage. Second, to engage in a dialogue between the genders; one of the common factors each woman shared was a history of difficulty with men. My job was to provide them an opportunity to apply their newly acquired assertive communication skills on an outsider, on the most intimidating kind of outsider: a white male. Some weeks, the dialogue was angry, some weeks we talked about our children. It was never dull; the group often felt the need to call my masculinity into question.

The sessions began at 9 a.m., we sat down to lunch at noon, and by 1:30 p.m. the dishes were put away and whatever was left over was spirited back to the cellblock. The women were waiting outside the classroom when I arrived, and they often lingered until called for the count. For correctional educators, lingering is high praise. It was one of the most successful teaching experiences of my career. I never felt at risk and I never felt at ease; there was always an undercurrent that something was happening behind the scenes.

**The Arbour Commission**

In 1994, Prison for Women housed 142 prisoners—85 women of Aboriginal descent and 57 non-Aboriginal women—at all security levels, minimum through maximum. The prison was an old-fashioned jail, a labyrinth of claustrophobic, inadequate spaces that were poorly ventilated and noisy. The actions that produced the commission occurred in the segregation unit.

The building that contained the segregation unit was made of concrete and connected to the rest of the prison by sheet-metal air ducts that amplified sound. The
effect was that any activity occurring in the segregation range could be clearly heard in each of the other two cell ranges. The segregation unit housed up to 20 inmates who were either in disciplinary or administrative segregation (see Appendix 4). Inmates in the segregation unit were locked in their cells throughout the day, except for one hour in which they were supposed to be provided with daily exercise.

At the time of the incidents, the Prison for Women was in the decommissioning process. New facilities were under construction in locations across Canada. These included Nova Institution, Edmonton Institution for Women, Grand Valley Institution, and the Oki Ma Ochi Healing Lodge. Each was built on concepts more in tune with community living. Inmates in these facilities were to share detached and semidetached homes, each sharing a room with another person and contributing to the cooking, cleaning, and general maintenance of the house. This makes the events of April 22\textsuperscript{nd} through April 28\textsuperscript{th}, 1994 all the more startling.

On June 20, 1996 Madame Justice Louise Arbour published her report, *The Commission of Inquiry Into Certain Events at Prison for Women in Kingston*. The Commission was established by Privy Council Order 1995-608 on April 10, 1995 to fulfill two purposes: to make independent findings of fact regarding incidents occurring at Prison for Women beginning on April 22\textsuperscript{nd}, 1994 and to recommend improvements to the policies and practices of the Correctional Service of Canada. Her analysis was driven by 8 questions:

1) What is the law and/or policy applicable to the event?
2) Is the applicable law or policy appropriate?
3) Is the law or policy known within the Correctional Service?
4) Is the applicable law or policy perceived within the Correctional service to be appropriate?

5) If the applicable questions is not known, why is that so? Is it due to questions of complexity, issues of communication, understanding, acceptance, or otherwise?

6) Was the law or policy complied with in this case?

7) If the law or policy was not complied with, was there an appropriate response on behalf of the Correctional service?

8) If the law or policy was not complied with in this case, what should be done about it? (Arbour, 1996, p. 24)

Questions 1 through 7 would seem to support the view that P4W is just another carceral, but Question 8 and Justice Arbour’s response to it offer evidence to the contrary.

The Events that Led to Arbour

On April 22nd, 1994 an event occurred that set a process in motion. The event involved six B-range inmates at the hospital security barrier “pill parade,” a normal process in which inmates were provided regular dosages of medication. In this case, inmates Young and Shea were loud and aggressive in demanding medication. As the noise level went up, inmates Twins, Morrison, Emsley, and Bettencourt approached the barrier. Correctional Officers Vance, Boston, Metiver, and Fabio were assigned to the supervision of the barrier. Inmate Morrison attacked Officer Vance, kicking and striking her with an instrument capable of making puncture marks. Inmates Young and Twins located hobby craft scissors and were attempting to stab Officer Young when Officer Boston kicked them away. Ms. Twins was able to grab Officer Fabio around the neck and
announced she was now a hostage. In the intervening moments, Correctional Supervisor Gillis arrived, armed with mace, and ordered the release of Officer Fabio. Mace was used and Officer Fabio was freed. In the process, inmate Twins grabbed Officer Boston around the throat and told her to give up her keys or she would be stabbed. Correctional Supervisor Gillis attempted to control the situation and Ms. Twins kicked him in the groin, whereupon he used mace to subdue her. The entire incident took less than three minutes. The inmates were then placed in disciplinary segregation. Images of the interior of the prison offered in evidence at the inquiry can be found at Appendix 4.

In her appraisal of the incident, the judge concluded this was not a planned event. As no clothing or other evidence was secured after the event, there is no way to be certain. The instrument that was used on Officer Vance may have been a syringe; the judge concluded that Vance was convinced it was. No syringe was ever found, so again, there is no way to be certain. Observation reports normally required for submission before the end of the shift were either not done, were inadequately done, or were done in consultation with other staff between April 23rd and 25th. As a result, no charge of attempted murder was made.

Fear and distrust were two dominant emotions that were introduced in an environment in which fatigue, exasperation, even resentment and anger are not unknown. . . . The incident had profound and long term effects on the correctional staff who were most directly involved. . . . When examined from this distance, and without by any means trivializing it, the brief incident of April 22nd looks objectively less serious than it was perceived to be by the correctional authorities at the Prison for Women,
and by the staff members who were assaulted and their colleagues. On the other hand the sentiments and the emotions that it triggered were equally real and the challenge that it posed to the prison management was to deal with these two levels of reality. (Arbour, 1996, p. 47)

Notably, the decontamination procedures normally applied after mace has been used were not followed on April 22\textsuperscript{nd}; decontamination was limited to glasses of water poured over the eyes of the inmates. Further, the standard admittance procedures for disciplinary segregation were not applied to the six women when they were placed in segregation. Under normal circumstances, strip searches are conducted to ensure the inmates are not carrying weapons. In this case, it would be four days before searches were completed, more than enough time to slash oneself or get rid of evidence.

The city of Kingston’s police were advised that an investigation on that evening was not necessary: no statements were taken; no evidence was secured.

There was no report from a health care officer, no proper reporting with respect to the use of mace, and no record of the inmates being advised that they could provide their version of the extent of the use of force by the Warden. (Arbour, 1996, p. 48)

The events of April 22\textsuperscript{nd} were clearly instigated by the inmate population. On the surface, it would seem an opportunity for transparency and accountability—an instance where correctional staff followed the legal requirements to the letter and could make the distresses of their responsibility part of the public record. It should have served as a public discussion on the undesirability of using more force than necessary. But, in keeping with Foucault’s carceral, they looked inward.
Between April 22nd and April 26th the tension in the prison continued to build. Staff saw the event as an unprecedented attack on staff; their interactions contributed to a sense of paranoia and hysteria. The staff held a demonstration and demanded the transfer of the six inmates. Included in their response was an unwillingness to unlock the general-population ranges. For their part, the inmates were not provided with debriefings or an opportunity to talk it through in small groups. The parties were not talking to one another, the warden was losing the confidence of the staff, and the pressure continued to build.

In segregation, the verbal abuse became louder. The inmates began to throw food, drink, and bodily fluids at the staff as they passed the cells. By the evening of the 24th one inmate had slashed herself and another had attempted to hang herself. On the 25th the women began to set small fires in their cells. On the 26th the Chair of the Citizens Advisory Committee, Dr. Robert Bator, visited the segregation unit. He spoke with a number of the women; he later testified he did not feel threatened and was made to feel welcome by the inmates. In their conversations, many of the women repeated requests to speak with legal counsel. At no time in this period had they been advised by staff of their right to counsel or been provided access to a telephone. Both of these rights are entrenched in law. Dr. Bator was the first outside/community representative to speak with the inmates since the incident on the 22nd.

It is particularly striking that the question of whether the denial of rights and privileges would escalate an already disruptive situation was never addressed. Indeed, during the course of this inquiry when this proposition was suggested to senior correctional representatives, some appeared to
express surprise and interest in the novelty of the suggestion (Arbour, 1996, p. 65)

After Dr. Bator’s visit, things on the segregation range continued to unravel. None of the women had been granted access to showers or time in the exercise yard; toothpaste may have been offered but there is no evidence that toothbrushes or any other toiletries were provided. They were denied access to the Inmate Committee. The segregation unit staff was not rotated to other posts; in fact Officer Power worked 64 hours in this period. In the early evening of April 26th Officer Ostrom was confined to one end of the second tier of the range by threats from the inmates; she was escorted from the tier by Correctional Supervisor Warnell, who was armed with mace. Despite the fact that in this period Correctional Supervisor Gillis had visited the range and elicited positive responses from the inmates and that there had been several shifts with no antisocial behaviour, the Ostrom incident proved to be a catalyst in calling in the emergency response team.

From April 22nd on, the prison virtually closed in on itself. Whatever can be said now about the likelihood that any outside intervention would have produced desirable results, it is not healthy for victims and aggressors to be locked in with each other. . . . In my opinion, the unit was poorly managed during these four days, and most importantly, was not operated in accordance with explicit legal or policy requirements. (Arbour, 1996, pp. 67–68)

This brings us to the events of the evening of April 26th. Early in the evening, the inmates had, according to the institution’s medical authority, exhibited intoxicated behaviour. As the women had not been searched in the admission process there is no way
to know if intoxicants were smuggled in or passed from cell to cell by other inmates. Regardless, the range was very noisy. The warden consulted with staff and regional headquarters and requested the assistance of the emergency response team.

The team was made up of nine male correctional officers dressed in black combat fatigues with batons, helmets, and masks. One member of the team carried a large, transparent, plastic riot shield. The objective of the exercise was to provide sufficient shock to quickly remove an inmate from a cell and place her in another cell in restraints. The only person to speak throughout the process was the team leader. The process began with the member carrying the shield ramming it against the cell door and the team leader telling the inmate to lie face down on the floor. Several members of the team went into the cell and put restraints on the inmate, whereupon the clothing was cut off the inmate. The inmate was then marched backwards from the cell to the end of the range, where she was pinned to the wall by the shield, inspected for the presence of weapons, and then gowned. At this point in the protocol, the handcuffs were removed and a waist restraint and leg shackles put on the inmate. The inmate was then marched to another cell and locked down.

In male institutions where there is a history of this activity, this process is very unusual but not unheard of. The male inmates have some understanding of the process and it is organized and relatively quick. To that time, no emergency response team had ever been deployed at Prison for Women. The process took many hours.

It is against the law for a correctional officer of one gender to participate in the body search of an inmate of another gender. In this case, all the members of the
emergency response team were male, and there were no restraint gowns in stock. The entire process was videotaped as per the standing orders for cell extractions.

The women were not warned in advance of the cell-extraction process. Their arrival was, to say the least, a shock. The only person to object to the process was Dr. Pearson (the institution’s physician); she was extremely distressed by the process and made her feelings known to the warden during the search. After the fact, she filed written documentation of her concerns. She remained in attendance during the process to ensure no physical harm was done to the women. In place of the floor-length restraint gown normally used, paper gowns were provided. Dr. Pearson later testified that these were more bibs than gowns. Once in the new cells, the women were left in restraints without food or water until the following afternoon.

There is no evidence in the record that the warden was aware of the process applied by the emergency response team. There is no evidence that any of the correctional officers or managers who participated questioned the legality of the warden’s order. There is no correctional service record of any discussion on the psychological or psychiatric effects of this process on the women, many of whom had a documented history of sexual and physical abuse.

On May 6th, 1994, five of the segregation inmates were involuntarily transferred to the Regional Treatment Centre, a facility within the walls of Kingston Penitentiary. Shortly thereafter, two inmates filed habeas corpus applications; on July 12th they were ordered by the court to be returned to Prison for Women. One of the applicants was Ms. Joey Twins, who also requested a copy of the emergency response team videotape. The
Crown disputed her right to the images, but the court disagreed; the sections that involved her were released.

On May 24th, 1994, the correctional investigator met with the warden and brought to her attention the rights of the inmates in the segregation unit and the responsibilities of the institution. Among the immediate changes that took effect after the meeting was access to the exercise yard. Between April 22nd and May 24th inmates in segregation had not been granted the legally required one hour of exercise per day.

On December 7th, 1994, the women were released from segregation; almost eight months had passed since the April 22nd incident.

On January 20th, 1995, the Correctional Service Board of Investigation report on the events of April 22nd through April 29th was released. It was followed by a report from the Office of the Correctional Investigator on February 14th. The correctional investigator is severely critical of the board of investigation’s report, the use of the emergency response team and the subsequent conditions and duration of segregation for the inmates still housed at Prison for Women. He made note of the fact that the board is composed of three Ontario region managers, each of whom had been recently promoted. Most significantly, he disagrees with the Correctional Services’ position on the release of the videotape to Ms. Twins. In his opinion, it is her property. As such, she may do whatever she wishes with it. This is noteworthy because, unlike the board of investigation, the correctional investigator had viewed the tape. He understood its potential for negative fallout but was aware that Ms. Twins’ rights as a Canadian citizen are more important than the need of the Correctional Service to contain the event.
On February 21\textsuperscript{st}, 1995, the Canadian Broadcast Corporation’s (CBC) \textit{The Fifth Estate} ran a story on the events at Prison for Women. In its coverage, it aired Ms. Twins segment of the segregation unit videotape. As part of the documentary, the CBC interviewed the chairman of the Citizen Advisory Committee. In response to his comments, the union representing the correctional officers refused to participate in any mediation functions as long as he remained as chair of the committee. The strong working relationships Dr. Bator had worked to develop over his ten years with the Citizen Advisory Committee were not enough to weather the fallout and he felt compelled to resign.

**The Commission of Inquiry**

On April 10\textsuperscript{th}, 1995 the Arbour Commission was appointed to investigate the events of April 22\textsuperscript{nd} through April 29\textsuperscript{th}. Dr. Bator was among the witnesses called before the commission.

In the months following the appointment of Justice Arbour, there was a flurry of activity. One of her first decisions was to review applications for standing at the commission. She provided standing (and funding where needed) to eleven parties (Arbour, 1996, pp. 15–16.):

- the Canadian Association of Elizabeth Fry Societies;
- the Citizens Advisory Committee, to a limited extent;
- the correctional investigator;
- the Correctional Service of Canada;
- certain members of the emergency response team, to a limited extent;
the Inmate Committee;

some of the individual inmates involved in the incidents referred to in the commission’s terms of reference;

the Public Service of Canada and the Union of Solicitor General Employees;

the Native Sisterhood;

the Native Women’s Association of Canada;

the Women’s Legal Education and Action Fund;

In granting status and funding to these groups, Justice Arbour broke with convention and ensured that the carceral that contributed to the injustices was reviewed in a critical way. She brought to the table groups that, to that point, functioned on the margins of the carceral. In this regard, she applied a dominant-culture method to produce a decolonizing outcome. Witnesses to the commission ranged from inmate participants to the senior deputy commissioner. Each of the witnesses provided a view of events from a slightly different edge of the margin. Justice Arbour took all of these views to produce a consolidated image of a carceral in process. Her findings and recommendations are best viewed through direct quotation.

On the events of April 22nd, she comments, “On all of the evidence before me, I am satisfied that the guilty pleas, and the facts tendered in support of these pleas, present a reliable summary of the significant elements of the events of April 22nd” (Arbour, 1996, p. 44).

On the process of decisions between April 22nd to April 26th, she states,

One question raised by the evidence is whether or not the collective behaviour of the inmates was of a scale so unprecedented as to be
unmanageable, and in my opinion the answer to that question is no. Each inmate was lodged individually in a segregation cell, and although at times their collective behaviour was highly disruptive and, in some cases, assaultive to persons approaching their cells, it is inconceivable to suggest that between the evening of April 22\textsuperscript{nd} up until the evening of April 26\textsuperscript{th}, when the IERT was called in to intervene, nothing could have been done to bring the situation in that unit under control. (Arbour, 1996, p. 52)

On the subject of legal rights, Justice Arbour comments,

It is clear that the right to legal counsel was largely unknown. . . . One can fairly predict that unless some sanction is attached to the lack of compliance, the entitlement to legal assistance upon placement in segregation will remain largely illusory. This is an instance where, although the law is clear, it was largely unknown to those responsible for administering it; it does not seem that the law is perceived within the CSC as particularly appropriate. This assessment is entirely at odds with the importance attached to this right in all other elements of the criminal justice system. The suggestions advanced in the evidence that the right to counsel could not be complied with because of the behaviour of the inmates is entirely unacceptable, first, because it is not supported by the evidence, and secondly, because even taking the events at their most disruptive level, it could not provide an excuse for failure to comply with the law. . . . Nothing in their behaviour could dispense the Correctional
Service from discharging that modest obligation. (Arbour, 1996, pp. 57–58)

On the application of long-term segregation, she observes, “If prolonged segregation in these deplorable conditions is so common throughout the correctional service that it failed to attract anyone’s attention, then I would think that the service is delinquent in the way it discharges its legal mandate” (Arbour, 1996, p. 138). Further, she notes,

The incidents that gave rise to this inquiry could have gone largely unnoticed. Until the public viewing of the videotape which shed light on part of these events, and the release of a special report by the Correctional Investigator in the winter of 1995, the Correctional Service of Canada had essentially closed the book on these events. . . . This was perceived as, by far, not the most serious series of events to have taken place in a Canadian penitentiary. Sadly, that is probably true. At the Prison for Women, loss of life and self mutilation are among the many tragedies that occur, and are largely unknown to the public. My objective in bringing forward recommendations on various aspects of corrections that have been touched upon in this inquiry is to assist the correctional system in coming into the fold of two basic Canadian constitutional ideals, towards which the rest of the administration of criminal justice strives: the protection of individual rights and the entitlement to equality. (Arbour, 1996, p. 12)

Arbour’s recommendations challenge the essence of how women’s institutions are supposed to work. Arbour makes a long list of recommendations on the use of
administrative segregation. They include that placement in segregation be limited to three days. Beyond this, the institution is required to go to an independent adjudicator to secure approval for a placement of 30 days. In the event the institution believes the segregation should be further extended, they are required to go to court to secure approval and only for one more period of 30 days. The government entrenches all of her recommendations on the subject into law with only one modification: instead of 30 days, the government specifies 45 days.

On the subject of national boards of investigation, her recommendations entrench the requirement for at least one member of the board to be from outside the Correctional Service.

In response to the prison ignoring and/or marginalizing inmate grievances, her recommendations are adopted into law without modification. The service must now respond to any grievance within 72 hours, and the response must provide a clear outcome or remedy; where legal representation is necessary, the service must specify a process and schedule for the inmate to meet with a lawyer.

Summary

Arbour’s recommendations are extensive and sweeping. The results of the commission simultaneously illustrate the outcomes of Berger and Luckmann’s (1967) social construction of reality, the operationalization of Said’s (1978) concept of the Other, and Smith’s (1999) relational axiology. In so doing, they serve to create overlapping accountability frameworks that establish, define, and inform the citizenship of inmates and staff within the responsibility of the Correctional Service of Canada. In providing standing to The Native Sisterhood and The Native Women’s Association of
India, Arbour gives voice to the 60% of women held under warrant who are of Aboriginal descent. This is a decidedly decolonizing act. In considering the outcomes of the Arbour Commission, several things become clear:

- Despite the CCRA and the implementation of the CSC mission statement, Arbour documented that the CSC was a retributive enterprise.

- Viewing Arbour as an exercise in the application of Foucault’s processes, which is to explore reality from the margins, I am convinced this inquiry could only have happened because it involved women. Women are a small fraction of those incarcerated. While they are a quickly growing population, they remain among the most marginalized of the inmate population. As such, it is much easier for the general public to see them as real people, as someone’s mother, sister, daughter, or aunt.

- Arbour grants standing to advocacy groups with corresponding funding for research and legal council. In this decision, she brings them into a dominant-culture dialogue that would have otherwise silenced their voices. It is an act of healing that contributes to the Supreme Court decision in Gladue, the Supreme Court decision in Sauvé and, to some extent, the development of the Continuum of Care.

- The commission report documents the power of the individual in a narrative driven by perception. Individuals like Dr. Mary Pearson refute both the retributive and the carceral. Mary Pearson documented every step of the process at P4W. She represents the catalyst that creates public awareness. She came and went from P4W after the warden suspended her security pass. She
provided care to the women on the range the night of April 22\textsuperscript{nd} and in the months and years that followed. She advocated on behalf of the staff assigned to the institution in the years following its closure. She lost her job and suffered long-term damage to an otherwise sterling reputation. She testified for four consecutive days at the Arbour Commission, where she answered thousands of questions and provided credibility to the inmates and support to disenfranchised staff. The choices she made during and after April 22\textsuperscript{nd}, 1994 were unequivocal.

Ultimately Madame Justice Arbour used her position as a dominant-culture jurist to create a space for other kinds of voices. In so doing, she contributed to a decolonizing dialogue and exceeded the restorative intent of the principle of least restriction contained in the purpose of the CCRA.

**The 1999 Supreme Court of Canada Ruling in R. v. Gladue**

On December 10\textsuperscript{th}, 1998, the Supreme Court of Canada ruled in the case of *R. v. Gladue*; in doing so, it confirmed that the impact of generations of colonization must be taken into account in the sentencing practices of Canadian courts. The *Gladue* case represents a restorative outcome to a dominant-culture retributive paradigm. More significantly, it provided direction to lower courts on the interpretation of Canadian Criminal Code Section 718 (e) that led to changes in policy and practice alluded to in Volume 3 of RCAP for Aboriginals held under federal warrant. It reads as follows:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just,
peaceful and safe society by imposing just sanctions that have one or more
of the following objectives
(a) to denounce unlawful conduct;
(b) to deter the offender and other persons from committing offences;
(c) to separate offenders from society, where necessary;
(d) to assist in rehabilitating offenders;
(e) to provide reparations for harm done to victims or to the community,
and;
(f) to promote a sense of responsibility in offenders, and acknowledgment
of the harm done to victims and to the community.

Fundamental Principle 718.1. A sentence must be proportionate to the
gravity of the offence and the degree of responsibility of the offender.


The Facts of the Case

The accused was an Aboriginal woman who pled guilty to manslaughter for the
crime of killing her common-law, Aboriginal husband. She was sentenced to three years
imprisonment. At the time of the stabbing, the accused had a blood-alcohol content of
between 155 and 165 grams of alcohol in 1000 grams of blood. By way of comparison
the Ontario Traffic Act threshold applied to determine impairment is 80 grams of alcohol
in 1000 grams of blood (.08).

At the sentencing hearing the Judge took into account several mitigating factors:

- The accused was a young mother and apart from an impaired driving
  conviction, there was no criminal record.
• Her family was supportive, and, while on bail, the accused had attended alcohol-abuse counselling.
• The accused has subsequently upgraded her education.
• The accused had made efforts to make amends to the family of the victim.
• The accused had a confirmed hyperthyroid condition at the time of the crime. The condition contributed to extreme behaviour and a pattern of overreactions in stressful situations.
• She showed signs of remorse and entered a plea of guilty.

The sentencing judge also identified several aggravating circumstances:
• The accused stabbed the deceased twice, the second time after he had fled in an attempt to escape.
• From the remarks she made before and after the stabbing, it was clear that the accused intended to harm the victim. In this instance, it was clear she was not afraid of the victim; she was, in fact, the aggressor.

The judge considered that the principles of denunciation and general deterrence must play a role even though specific deterrence was not required. He also indicated that the sentence should take into account the need to rehabilitate the accused. The judge decided that a suspended sentence or a conditional sentence of imprisonment was not appropriate in this case. He noted that there were no special circumstances arising from the Aboriginal status of the accused and/or the victim that should be taken into consideration, as both parties were living off reserve in an urban area. The sentencing judge concluded that the offence was a very serious one, for which the appropriate sentence was three years imprisonment.
Following the imposition of sentence, Ms. Gladue appealed to the Court of Appeal, which upheld the sentence. The substance of the appeal was that the court had not considered Section 718 (e) of the criminal code in its deliberations. Subsequent to the Court of Appeal ruling, Ms. Gladue appealed to the Supreme Court of Canada. This was the first occasion in which Section 718 (e) was cited as the substance of an appeal and, as such, the Supreme Court agreed to hear the case.

In a unanimous decision, the court simultaneously dismissed the appeal, clarified the decision, and provided sentencing direction for future decisions. In the dismissal, they found that it was not in the public interest to hold a new trial solely on the basis of Ms. Gladue’s Aboriginal status. In part, this was a reflection that, under the circumstances, the sentence of three years was an appropriate sanction given the seriousness of the crime. They also clarified the decision when they held that the Court of Appeal and the sentencing judge had erred in taking an overly narrow view of Section 718 (e) of the criminal code. They posited that the purpose of the provision was in part to address the historical overrepresentation of Aboriginal people in the criminal-justice system and that it applied to Aboriginal people regardless of place of residence or lifestyle.

**Summary**

In their ruling the Court established that

- restorative justice must be given particular consideration when dealing with Aboriginal offenders;
- established, punitive measures must also be given consideration;
Section 718 (e) of the criminal code applies to Aboriginal people in general, not only those who live in Aboriginal communities; and

restorative justice is a variable to be considered as well as, in serious cases, the requirement for traditional punishment.

More specifically, the court provided restorative direction to other courts when sentencing Aboriginal offenders. Specifically, courts must consider both the unique systemic or background factors that played a part in bringing the offender before the court and the types of sentencing procedures and sanctions that may be appropriate in the circumstances because of the accused’s particular Aboriginal heritage or connection. Within the CSC the impact was significant. Gladue was the catalyst for the development of the policy and program model entitled the Continuum of Care, in which evidence-based restorative and Indigenous androgogy is required to provide effective measurable and individualized programs focused on successful community reintegration. The backbone of this approach is the deployment of Elders to work within institutional settings.

The 2002 Supreme Court of Canada Ruling in R. v. Sauvé

In 1993, the Supreme Court of Canada affirmed the ruling of lower courts and confirmed that Section 51(E) of the Canada Elections Act was unconstitutional. To that time, Section 51(E) had denied the right to vote to anyone held under warrant. In response to the ruling, the Government of Canada enacted a provision to the act, disqualifying only those individuals serving federal sentences of 2 years or more. This was done as in an effort to limit the right to vote under Section 3 of the Canadian Charter.
The argument in support of Parliament’s action was that the provision was within the realm of a reasonable limit as set out in Section 1 of the charter.

On October 31st, 2002, in a 5 to 4 decision, the Supreme Court of Canada ruled for a second time. In the Sauvé v. R. (2002) case, Chief Justice Beverly McLachlin spoke for the majority as she declared that the right to vote is fundamental to democracy. Justice Gonthier, speaking in dissent, stressed the importance of giving deference to “Parliament’s reasonable view” on the basis that, if a law is struck down by the court and Parliament addresses the problem(s) described by the court, there is an unstated dialogue that ought to be honoured. The issue at hand was the provision passed by Parliament following the 1993 Supreme Court ruling. The subsequent provision denied the vote to individuals held under warrant with sentences of two years or more.

The matter at issue—whether limiting prisoner voting rights promotes or impedes democracy—essentially involves a question of “social or political philosophy” which may not be conclusively proven. Parliament has one point of view and Chief Justice McLachlin has a different view. In cases like this, Parliament ought to have the “last word” and the Court should not substitute Parliament’s reasonable choices with its own. (Gonthier, quoted in Supreme Court of Canada, 2002, para 68)

Chief Justice McLachlin agreed that there were instances where deference to Parliament was the most appropriate course. The exclusion to this guide was on the matter of fundamental rights. She went on to say, “The healthy and important promotion of a dialogue between the legislature and the courts should not be debased to a rule of, ‘if
at first you don’t succeed, try, try again” (McLachlin, quoted in Supreme Court of Canada, 2002, para 17).

She went on to say,

The government has failed to identify particular problems that require denying the right to vote, making it hard to conclude that the denial is directed at a pressing and substantial purpose. In the absence of a specific problem, the government asserts two broad objectives for S. 51(e): (1) to enhance civic responsibility and respect for the rule of law; and (2) to provide additional punishment or enhance the general purposes of the criminal sanction.

Vague and symbolic objectives, however, make the justification analysis difficult. The first objective could be asserted of virtually every criminal law and many non-criminal measures. Concerning the second objective, nothing in the record discloses precisely why Parliament felt that more punishment was required for this particular class of prisoner, or what additional objectives Parliament hoped to achieve by this punishment that were not accomplished by the sentences already imposed. Nevertheless, rather than dismissing the government’s objectives outright, prudence suggests that we proceed to the proportionality inquiry.

Section 51 (e) does not meet the proportionality test. In particular the government fails to establish a rational connection between section 51(e)’s denial of the right to vote and its stated objectives. With respect to the first objective of promoting civic responsibility and respect for the law,
denying penitentiary inmates the right to vote is more likely to send messages that undermine respect for the law and democracy than messages that enhance those values. The legitimacy of the law and the obligation to obey the law flow directly from the right of every citizen to vote. To deny prisoners the right to vote is to lose an important means of teaching them democratic values and social responsibility. The government’s novel political theory that would permit elected representatives to disenfranchise a segment of the population finds no place in a democracy built upon principles of inclusiveness, equality, and citizen participation. That not all self-proclaimed democracies adhere to this conclusion says little about what the Canadian vision of democracy embodied in the Charter permits. Moreover, the argument that only those who respect the law should participate in the political process cannot be accepted. Denial of the right to vote on the basis of attributed moral unworthiness is inconsistent with the respect for the dignity of every person that lies at the heart of Canadian democracy and the Charter. It also runs counter to the plain words of section 3 of the Charter, its exclusion from the section 33 override and the idea that laws command obedience because they are made by those whose conduct they govern. (McLachlin, quoted in Supreme Court of Canada, 2002, pp. 4–5)

On the matter of punishment and its role in justice, Chief Justice McLachlin observes,
With respect to the second objective of imposing appropriate punishment, the government offered no credible theory about why it should be allowed to deny a fundamental democratic right as a form of state punishment. Denying the right to vote does not comply with the requirements for legitimate punishment—namely, that punishment must not be arbitrary and must serve a valid criminal law purpose. Absence of arbitrariness requires that punishment be tailored to the acts and circumstances of the individual offender. Section 51 (e) *qua* punishment bears little relation to the offender’s particular crime. As to a legitimate penal purpose, neither the record nor common purpose supports the claim that disenfranchisement deters crime or rehabilitates criminals. By imposing a blanket punishment on all penitentiary inmates regardless of the particular crimes the committed, the harm they caused, or the normative character of their conduct, section 51 (e) does not meet the requirements of denunciatory, retributive punishment, and is not rationally connected the government’s stated goal.

The impugned provision does not minimally impair the right to vote. Section 51 (e) is too broad, catching many people who, on the government’s own theory, should not be caught. Section 51 (e) cannot be saved by the mere fact that it is less restrictive than a blanket exclusion of all inmates from the franchise.

Lastly, the negative effects of denying citizens the right to vote would greatly outweigh the tenuous benefits that might ensue. Denying prisoners
the right to vote imposes negative costs on prisoners and the penal system. It removes a route to social development and undermines correctional laws and policy directed towards rehabilitation and integration. In light of the disproportionate number of Aboriginal people in penitentiaries, the negative effects of Section 51 (e) upon prisoners have a disproportionate impact on Canada’s already disadvantaged Aboriginal population.

(McLachlin, quoted in Supreme Court of Canada, 2002, pp. 5–6)

This decision is significant on several levels. The case presented by the Crown confirmed that it was prepared to pursue an ethos of punishment and retribution that could not be demonstrated to have a prosocial, measurable impact on rehabilitation or successful community reintegration. It documented that it was prepared to modify its intent and undermine the purpose and principle of the CCRA, namely that

the purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by . . . assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community . . . and . . . us[ing] the least restrictive measures consistent with the protection of the public, staff members and Offenders.

(CCRA, 1992, p. 5)

It is interesting to note that principle 4E remains in the act through 2013; it states “that Offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence” (CCRA, 2012, p. 5).
Finally, the Sauvé case confirmed the collaborative and cooperative nature of court challenges and provided insight into the way direction from the government can be provided to individual departments. To pursue a decade-long process through to the Supreme Court of Canada, the Prime Minister’s Office (in this instance through several prime ministers representing different political parties), the Attorney General’s Office, and the Correctional Service of Canada would all have had to collaborate and cooperate. In this case, the Government of Canada chose to pursue a retributive agenda beyond the scope of any judicial sentencing notes. It is highly unlikely that judges at sentencing would declare that denying an offender the right to vote was a necessary requirement of the sentence in the same way that they might comment that, for offences committed under the influence of an intoxicant, alcohol or drug addiction recovery programs should be a necessary component of a correctional-program plan.

This understanding is bolstered when viewed through changes made to principle 4E of the 1992 act. In 2012, the principle was revised to read, “The Service uses measures that are consistent with the protection of society, staff members and offenders and that are limited to only what is necessary and proportionate to attain the purposes of this Act” (CCRA, 2012, p. 5).

Further changes were made in 2012 that effectively diminish the potential for court challenges to emerge, particularly in Section 91.1 of the 2012 act, under grievance procedures, which states,

If the Commissioner is satisfied that an offender has persistently submitted complaints or grievances that are frivolous, vexatious or not made in good faith, the commissioner may, in accordance with the prescribed
procedures, prohibit an offender from submitting any further complaint or
grievance except by leave of the commissioner. (CCRA, 2012, p. 31)

And Section 91.1 (2), “The Commissioner shall review each prohibition under
Subsection (1) annually and shall give the offender written reasons for his or her decision
to maintain or lift it” (CCRA, 2012, p. 31).

It is hard to imagine that these changes to the act, as well as those discussed
previously, were not an outcome of the Sauvé decision and the ongoing debate about the
proper role and function of the Court and its relationship to Parliament. It is even harder
to imagine that these changes to the act were not an outcome of the Sauvé decision and
the ongoing debate about the proper role and function of the Court and its relationship to
Parliament. Regardless, it is fair to say these changes are inconsistent with both the
language of the purpose of the CCRA and the language of the Supreme Court ruling that
the government cannot impose “a blanket punishment on all penitentiary inmates
regardless of the particular crimes they committed, the harm they caused, or the
normative character of their conduct, section 51 (e) does not meet the requirements of
denunciatory, retributive punishment, and is not rationally connected to the government’s
stated goal” (McLachlin, quoted in Supreme Court of Canada, 2002, p. 6).

Summary

The Sauvé decision serves as a most instructive primer on the nature of
citizenship as applied by the Supreme Court in the context of the Charter of Rights and
Freedoms. It also informs us as to how the court understands Parliament’s responsibility
regarding oversight and direction to the CSC. In this instance, the required direction is
more closely aligned with restorative (Cayley, 1998) and Indigenous justice paradigms
(Waldram, 1997; Yazzie, 2005) than with the retributive model pursued in the challenge presented to the Supreme Court.

The 2006 Roadmap to Strengthening Public Safety

In January of 2006, Canadians went to the polls and voted in a federal election. When the votes were counted, Stephen Harper and the conservative party had secured a minority government. The election was noteworthy in a number of ways:

- The Harper minority government followed a liberal minority government confirming that, while the electorate had expressed an appetite for change, it was a qualified mandate.
- The campaign that preceded the elections was among the most polarizing and negative in modern memory, with all parties presenting platforms that could be described as controversial.
- One of the issues to receive particular attention was crime and crime control.
- Mr. Harper was particularly strident in expressing his belief that Canada’s justice system needed to be made tougher.

On April 20th, 2007, the minister of public safety, the Honorable Stockwell Day, announced the appointment, “of an independent panel to review the operations of Correctional Service Canada (CSC), as part of the governments’ commitment to protecting Canadian families and communities” for presentation the following October (A Roadmap to Strengthening Public Safety, 2007, p. iii). On October 31st, 2007, the CSC review panel on safer communities submitted A Roadmap to Strengthening Public Safety.
The document provided a retributive blueprint and represented a significant ideological shift in policy and practice for the CSC.

The Government’s appointed committee was made up of five committee members. Mr. Rob Sampson, chair of the committee, served as a Conservative member of Ontario’s Legislative Assembly from 1995 to 2003. As a member of Premier Harris’s majority conservative government, Mr. Sampson served in Cabinet as the minister of correctional services from 1999 to 2002. In this portfolio, he oversaw a transformative period of review and change within the Ontario Ministry of Corrections that included a significant building process. His annual operational and capital expenditures totalled 1.1 billion dollars. Most controversial in his tenure were efforts to privatize adult institutional facilities and to create privately run “boot camps” for young offenders.

The balance of the committee was made up of

- Serge Gascon, former deputy chief of police for the Montreal Police Service. Mr. Gascon was a career police officer who served the City of Montreal for 30 years.
- Ian Glen, Q.C. was chair of the National Parole Board from 2001 to 2006. Previous to his appointment to the NPB, Mr. Glen as served as chief, communications security establishment, deputy minister of the environment, deputy secretary to the Cabinet (operations) and associate deputy minister of the Privy Council Office.
- Chief Clarence Louie served his community as chief of the Osoyoos Indian Band. He served as chair of the National Aboriginal Economic Development Board and as a member of the board of Aboriginal Business Canada.
Sharon Rosenfeldt had significant experience as an Aboriginal alcohol and drug counsellor at the Poundmaker’s Lodge Treatment Centre in Edmonton. She was cofounder and president of Victims of Violence, a national organization dedicated to improving the situation of crime victims. She has also served as chair of both the Ontario Criminal Injuries Compensation Board and the Office for Victims of Crime, an agency of the Ontario Ministry of the Attorney General.

The *Roadmap* report is best understood as a kind of government white paper. It signalled the policy preferences of the governing party as it tested public opinion regarding the probable impact of the government’s desired changes to the CCRA, both in the parliamentary debate and across the country. The report also served as a blueprint for a significant ideological shift in policy and practice for the CSC.

Tabled in October of 2007, the 241-page double-spaced report included 109 recommendations in five theme areas: offender accountability, eliminating drugs from prison, employability/employment, physical infrastructure, and eliminating statutory release in favour of moving to earned parole. The report also included a 22-page cost estimate for the construction and operation of a new corrections facility (prison) from Deloitte Financial Advisory an affiliated entity of Deloitte and Touche LLP. The Deloitte submission is particularly interesting for what it implies. In commissioning Deloitte to carry out the cost estimate, the Harper government was following on its 2006 election-campaign/safe-community rhetoric. The campaign called for 13 new prisons. The Deloitte pages imply that the sentiments expressed in the campaign were more than rhetorical, confirming the intent and resolve to expend considerable time, energy, money, and political capitol to simultaneously build and decommission facilities across the
country. This is particularly noteworthy in that, at the time of the report, violent crime rates had been dropping for more than a decade. This fact would seem to support the continuation of the sentencing and incarceration strategies already in place.

In the course of six months, the committee visited 33 institutions and community facilities spread out over each of the CSC’s five operational regions. It received written submissions from 36 interest groups, 17 individuals, and six wardens and district directors of parole. The committee also heard oral presentations from 23 groups, including the African Canadian Legal Clinic, Elizabeth Fry and John Howard Societies, the Canadian Criminal Justice Association, the Canadian Human Rights Commission, the Office of The Correctional Investigator, the Ontario Provincial Police Investigator, Pauktuutit Inuit Women of Canada, the Union of Canadian Correctional Officers, and the Union of Solicitor General Employees.

The report had the effect of any good white paper; it was lionized by some and demonized by others. Initially, the report was criticized for the composition of the committee—a standard opposition criticism for every government-generated inquiry/consultative initiative. This criticism was fairly levelled in that the committee’s composition and mandate was not the product of an open, parliamentary-committee process. If it had been an open committee, the membership and mandate would have reflected multiparty representation from each of the parties sitting in the house. It was also criticized for the short timeline in which the committee carried out its mandate. Of the two criticisms, the second is more substantive. The CSC is an agency of the Canadian justice system; as such, CSC challenges must be understood from arrest through to warrant expiry. Thus, issues for the CSC flow from one jurisdiction to the next with a
policy at one level creating unforeseen consequences in another. On this basis, there is merit in questioning whether the committee had sufficient time or expertise to internalize the information provided to them.

To its credit, the report is substantive in the way it identified the CSC variables that the Conservative government believed required attention and in the extent to which it redirected public policy. The report provided the CSC with direction as to how they were to interpret the concept of reintegration. The direction began with one-time, 2008 infrastructure funding of $478,800,000.00 to be spent over five years to address the recommendations that flowed from the report.

The new direction was confirmed in the May 2008 edition of *Let’s Talk*, (CSC’s in-house publication) in which Senior Deputy Commissioner of Corrections Don Head spoke on the subject:

*CSC is once again starting a new chapter—this time in response to the CSC Review Panel Report. The Panel’s 109 recommendations touch on every aspect of our business, ranging from institutional services to community corrections. Responding to these recommendations will position us well for the future to help ensure we achieve excellent public safety results in an integrated and consistent manner.* (Head, quoted in *Let’s Talk*, 2008, p. 6)

At the time the 2008 funding was provided and Mr. Head made his statement, no changes had been made to the CCRA by Parliament.

Documented criticism emerged in September of 2009 when Michael Jackson Q.C., professor of law at the University of British Columbia and Graham Stewart, former

For example, on the subject of offender accountability, the committee asserted that rehabilitation is a responsibility shared by the CSC and the offender and that the principles of the CCRA required amendment to emphasize offender responsibility and accountability. In this assertion, the panel recommended that principle 4D of the CCRA—“Offenders be held in the least restrictive measures”—be eliminated and 4E be amended from “retain all the rights and privileges that adhere to members of society except for those necessarily removed as a result of their imprisonment,” to a model in which offenders would retain “basic rights” and earn all other rights and privileges. Jackson and Stewart asserted this was a reflection of policies promoted by the Canadian Alliance Party and went on to provide a list of more substantive criticisms, the most significant of which is that the language used is inconsistent with the Supreme Court ruling in *Sauvé v. R.* (2002) and undermines the purpose stated in the act regarding reintegration:

> The onus on the correctional authorities that the exercise of their legal authority is in accordance with the least restrictive measures is consistent with and indeed mandated by the “retained rights” principle endorsed by the Supreme Court of Canada which means that it is not giving rights to inmates which requires justification, but rather, restricting them, which does. (Jackson & Stewart, 2009, p. xiv)
In my view, the most significant criticism from Stewart and Jackson concerns the government position that there are times when the government should be exempted from the constitutional standards that govern all other exercises of state coercive power. Put more succinctly,

the question never posed and therefore never answered by the panel are what legitimate correctional initiatives or interventions are presently precluded by requiring CSC to ensure that it respects the least restrictive measures consistent with the protection of the public . . . to be excepted from the constitutional standards that govern all other exercises of state coercive power? (Jackson & Stewart, 2009, p. xv)

The changes are among the most of the retributive of those asserted. In attempting to set aside its requirement to rise to the least restrictive standard, the government is asserting its arbitrary right to establish graduated scales of citizenship.

On the nature of conditions of confinement, the committee asserted that the willingness of an offender to participate in the rehabilitative process must be measured and managed via the correctional plan (also known as the correctional treatment plan). Jackson and Stewart (2009) acknowledged the need for a correctional plan but asserted that more was necessary:

While we do not dispute the necessity for a correctional plan, we also reject the notion that as presently structured it is all that is required to manage future risk and prepare the person for successful release. Effective corrections cannot consist of simply participating in a pre-ordered set of programs taken from a very limited menu. . . . The Roadmap recognizes the
need for continuity, but seems to be overly and unrealistically confident that this can be accomplished by the professional staff under the current framework of the correctional plan. (p. xvii)

In each quotation there is truth; conceptually, the correctional plan is a moving target. It depends on a commitment among the parties to seek self-awareness. As such, it evolves and changes with the circumstances and maturity of the participants. Efforts to produce a one-size-fits-all approach to the correctional plan or, for that matter, a uniform understanding of *prosocial* smack of the colonial and assimilationist approaches that produced residential schools. These selfsame policies tore Aboriginal children from their homes and communities for the better part of a century. Ultimately, it is a fair criticism of the committee to describe their approach to confinement and, more specifically, to the correctional plan as retributive, paternal, simplistic, and unnecessarily punitive.

On the subject of drug use in prisons, the committee supports a long list of enhanced-security measures, including drug dogs, drug-sensing technology, greater limitations on contact visits, enhancements to surveillance and intelligence gathering, and more substantial sanctions for those found in possession of drugs. Jackson and Stewart (2009) make the point that drugs in the institutional setting are part of an ongoing epidemic, a challenge that requires more creative program-based approaches in addition to the application of more stringent control measures: “CSC’s own internal audit of drug interdiction indicates that over the period 2001–2006 drug seizures in the visit areas accounted for less than 20% of drug seizures in penitentiaries” (p. xxi).

The committee’s recommendations are focused on security measures at the front gate and in the visits and correspondence process. While these measures are a step in the
right direction they only impact a small fraction of the challenge. These measures are an adversarial, punitive approach that relies on fear and deterrence to achieve its greatest impact. There is no method proposed in the report to deal with the security issues that will emerge, namely that as supply of drugs drops the value of drugs will go up. In this relationship, the volume of institutional violent assaults and murders will also rise. There are no recommendations around new correctional or health-care programs to address dependency, awareness, and education issues that could contribute to the reduction of demand for drugs in the institution. More significantly, the report is silent on the correctional Continuum and/or *Gladue v. R*. In this context, it appears that both the committee panel and its critics have made valid points.

On the nature of prisoners’ rights, the commission proposed that Section 4E of the CCRA be amended to read that,

Offenders retain basic rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence, or that are required in order to encourage the offender to begin to and continue to engage in his or her correctional plan. (CCRA, 2012, p. 5)

The changes proposed by the committee presumed that the majority of offenders were not engaged in or compliant with their correctional plans, as it asserted that human rights are the exclusive domain of law-abiding citizens and that, while held under warrant, rights are to be earned by offenders over time. This approach is in conflict with events at Prison for Women in 1993 and, later, in the aftermath of the Arbour Commission, which found, “The administration of criminal justice does not end with the
verdict and the imposition of a sentence. Corrections Officials are held to the same standards of integrity and decency as their partners in the administration of criminal law” (Arbour, 1996, p. 12).

The conflict between Charter rights and the panel’s recommendations is illustrated again in 2002 with the Supreme Court’s decision on the offender’s right to vote as described in Sauvé v. R.: “Charter rights are not a matter of privilege or merit, but a function of membership in the Canadian Polity that cannot be lightly cast aside.” (McLachlin, from Supreme Court of Canada 2002, para 14).

In this matter, the committee demonstrated an ignorance of the recent history of incarceration in Canada. Notably, the committee made no reference to Arbour in its deliberations or in its report. The committee was also silent on the 1999 decision in Gladue v. R. and the subsequent 2003 Continuum of Care policy document that was developed by the CSC in its efforts to address the disproportionate representation of Aboriginal people in its jurisdiction. In disregarding two decades of history, the committee turned way from evidence-based decision making in favour of a retributive ideological position that creates classes of people from arbitrary stereotypes in contravention of the Charter of Rights and Freedoms.

On the subject of earned parole, the committee proposed that statutory release and accelerated day parole be eliminated to be replaced with a system of earned parole. In this new system, release prior to warrant expiry would only be possible via a formal National Parole Board decision. This recommendation is not only in conflict with the development of community supervision models, developed following the 1971 Kingston Penitentiary
riot, but also reflects the predisposition of the committee towards a retributive/deterrence-driven model of correctional management.

To make it clear, the panel has taken the position that an individual is sentenced to a penitentiary as punishment and CSC delivers on that principle by admitting the individual to one of its institutions and, within the limitations of the original sentence ordered by the courts, holding that individual until it is determined that he or she can be safely returned to society. (*Roadmap*, 2007, p. 14)

In this instance, the language of the report is inconsistent with the purpose of both the act and of the CSC’s mission statement. It is also inconsistent with findings of the 2006 report of the Office of the Correctional Investigator, which documents the disproportionate representation of Aboriginal people held in custody and the difficulties encountered by Aboriginal people in qualifying for day or full parole.

On balance, the criticism levelled by Jackson and Stewart in this matter is substantive. In approaching earned parole in this fashion, the recommendation cannot achieve its rehabilitation goals. In combination with recommendations for mandatory minimum sentencing on offences that, in the past, either did not merit federal prison terms or could have been plea-bargained, the incentive for an offender to take responsibility is significantly diminished.

The most substantial criticism of Jackson and Stewart also illustrates the scope of the challenge presented to the committee panel in their work and, by extension, the CSC. It must be noted that the CSC is often tasked with applying policy where absolute power exists but control is, very often, illusory. The following quotations, from Mr. Howard
Sapers, comment on the case of Ashley Smith, a 19-year-old woman who committed suicide while contained in the segregation unit at Grand Valley Institution in 2007. His words put a human face on a report-and-transformation process that would otherwise be indifferent to its consequence.

There can be no dispute that Ashley Smith was a difficult, disturbed and challenging prisoner. After a stormy experience with the New Brunswick social agencies and youth authorities she was sentenced to close custody at age 16 after which she incurred 50 additional criminal charges, many of which were related to her response to incidents in which correctional or health professionals were attempting to prevent or stop her self-harming behaviours. As a result she spent extensive periods of time isolated in the “Therapeutic Quiet Unit” (i.e., segregation) at the facility. In January 2006, still on segregation status at the youth facility, Ms. Smith turned 18 years of age. Unfortunately, Ms. Smith’s challenging behaviours continued against custodial staff. The presiding judge gave Ms. Smith a custodial sentence for the new offences. Because the merged adult sentence was more than two years, Ms. Smith was transferred to Nova Institution of Women—a federal penitentiary—on October 31, 2006.

(Sapers, 2008, p. 2–3)

Sapers (2008) also notes that “in the space of one year, Ms. Smith was moved 17 times amongst and between three federal penitentiaries, two treatment facilities, two external hospitals, and one provincial correctional facility” (p. 5) and comments on the effect of these moves:
The majority of these institutional transfers occurred in order to address administrative issues such as cell availability, incompatible inmates and staff fatigue, and had little to do with Ms. Smith’s needs. Each transfer eroded Ms. Smith’s trust, escalating her acting out behaviours and made it increasingly difficult for the Correctional Service to manage her. . . .

A concrete, comprehensive treatment plan was never put into place for this young woman, despite almost daily contact with institutional psychologists. . . .

Since Ms. Smith’s death, the independent psychologist contracted by the Correctional Service to review her treatment during incarceration has interpreted her behaviour in part as a means of drawing staff into her cell in order to alleviate the boredom, loneliness and desperation she had been experiencing as a result of her prolonged isolation. . . .

This left the Correctional Service with a dilemma because its own Mental Health Strategy for Women, and its Intensive Intervention Strategy for Women were not appropriately designed or resourced to provide assistance to women who required specialized mental health care and intervention. . . .

The legal requirement to review a segregation placement at the 60-days mark extends the segregation review process beyond the institution and requires regional authorities to ensure compliance with law and policy. In the case of Ms. Smith, 60-days regional reviews were not conducted even though she remained on segregation status for almost one
year. The failure to review Ms. Smith’s segregation status at the 60-days mark was in contravention of section 22 of the CCRR and paragraphs 29-32 of the Commissioners Directive 709-Administrative Segregation.

The required regional reviews were not conducted because each institution erroneously “lifted” Ms. Smith’s segregation status whenever she was physically moved out of a CSC facility (e.g., to attend criminal court, to be temporarily admitted to a psychiatric facility, or to transfer to another correctional facility). . . . This totally unreasonable practice had the effect of stopping and starting “the segregation clock,” thereby negating any review external to the institution on the continuation of the placement in segregation. This in turn assisted in reinforcing the notion that segregation was an acceptable method of managing Ms. Smith’s challenging behaviours. (Sapers, 2008, pp. 5–10)

Jackson and Stewart’s (2009) response to the Smith case illustrates the point that, whether from the perspective of victim, staff, offender, or parliamentarian, any dialogue about justice issues is a dialogue about human rights.

The Panel is not responsible for Ashley Smith’s death. But the Panel has adopted the same policies adopted by the highly stressed staff at Grand Valley who subjugated the rights of Ashley Smith to the perceived needs of security and control. In our view the Panel was too easily captured by those who promote deprivation as a means to achieve compliance in a system where compliance often trumps all other considerations. (p. 196)
Summary

Ultimately, *A Roadmap to Strengthening Public Safety* needs to be understood as an ideological white paper from a minority Conservative government that was testing the limits of its own retributive rhetoric (Berger & Luckmann, 1967; Garland, 2001). In the 2006 election campaign, Mr. Harper presented images of Canadian communities and people at great risk due to rising numbers of violent criminals intent on destroying otherwise idyllic neighborhoods. In this rhetorical process he worked to establish a need for punishment and a faith in deterrence—a retributive ideology that was beyond the reach of third-party-verifiable evidence (Garland, 2001). For the most part, his message went unchallenged.

The most significant element of this retributive and mean-spirited document lies in the CSC’s carceral reaction to it (Foucault, 1977). Unless and until the CCRA was revised in Parliament, the CSC was bound by the legislation, policy, and regulation in place. Many of the changes outlined in the report took years to go through the legislative process, yet the commissioner of corrections moved from a mandate of least-restrictive measures and successful community reintegration to public safety and penitentiary as punishment virtually overnight. In so doing, the commissioner also contravened the expressed, evidence-based views of Justice McLachlin, who wrote for the majority in the Supreme Court of Canada’s decision in *R. v. Sauvé*. He acted on the basis of a report from a committee that did not enjoy the support or consent of Parliament. The commissioner’s announcement and subsequent operational direction clearly contravened the law. Words like high-handed, arbitrary, and retributive cannot adequately describe the process; the arrogance of it beggars the mind.
The 2012 Spirit Matters

On October 22nd, 2012 the Government of Canada’s correctional investigator (Office of the Correctional Investigator/OCI) published *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*, which confirmed the CSC’s ongoing systemic discrimination against Indigenous peoples. The OCI became well known to the public in 1995; since then, like Canada’s Auditor General, the OCI is understood by the public to play the role of ombudsman. The function, commencement, and discretion sections of Part III of the CCRA that enabled *Spirit Matters* also enabled the 1995 OCI report (on events at Prison for Women) and remain as written when the act became law in 1992. As such, they are in keeping with the purpose and principles of the 1992 act. The function, commencement, and discretion sections of the act, as applied to the OCI, read as follows:

It is the function of the Correctional Investigator to conduct investigations into the problems of offenders related to decisions, recommendations, acts of omissions of the Commissioner or any person under the control and management of, or performing services for or on behalf of, the Commissioner that affect offenders either individually or as a group.

The Correctional Investigator may commence an investigation (a) on the receipt of a complaint by or on behalf of an offender; (b) at the request of the Minister; or (c) on the initiative of the Correctional Investigator.

The Correctional Investigator has full discretion as to (a) whether an investigation should be conducted in relation to any particular complaint or request; (B) how every investigation is to be carried out; and (c)
whether any investigation should be terminated before its completion.

(CCRA, 1992, pp. 78–79)

The 2012 *Spirit Matters* report coincides with the 20th anniversary of the CCRA and was published more than a decade after the unanimous Supreme Court of Canada decision in *R. v. Gladue*. It is unique because it generated a public response from the Correctional Service of Canada. The report of the OCI and the CSC’s counterpoint create a kind of civil service “call and response.” They provide another, more succinct opportunity from which to view the nuance of intent and application and to assess ongoing and retributive and restorative trends. As the *Gladue* decision preceded the report by more than a decade, there was ample time and data to investigate, assess, and view the implementation of *Gladue* concerning the rights of offenders and staff along the entire span of control, from the Office of the Commissioner to the office of the institutional preventive security officer assigned to each institutional facility.

The aim of the OCI investigation was to determine the extent to which the Correctional Service of Canada (CSC) has reflected Parliament’s intent at the time the CCRA came into force. It examines the status and use of Section 81 and 84 provisions up to the period ending March 2012, identifies some best practices in Aboriginal corrections and assesses the commitment by CSC to adopt the principles set out in *R. v. Gladue*. The investigation concludes with key findings and recommendations for enhancing CSC’s capacity and compliance with Section 81 and 84 provisions of the CCRA. (Sapers, 2012, p. 2)
The methodology for the study was both transparent and accountable. The OCI included a multi-departmental document review that was shared with CSC headquarters for factual verification on August 31\textsuperscript{st}, 2012. Site visits to three of four Section 81 healing lodges was carried out. Interviews with headquarters staff, line staff including native counsellors working in Section 81 facilities, and Elders at Saskatchewan Penitentiary, Pe Sakastew Centre and leadership from the Nekaneet First Nation. The investigators also corresponded with a member of the 1980s Correctional Law Review and a former director of the Aboriginal Issues Branch of the CSC.

The report opens by establishing its terms of reference. In so doing, the correctional investigator reaffirms Parliament’s intent for Section 81 and 84:

The CCRA was enacted with the express purpose of contributing to the maintenance of a just, peaceful and safe society by: (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and, (b) assisting rehabilitation of offenders and their reintegration into the community as law abiding citizens through the provision of programs in penitentiaries and in the community. The principles guiding the CCRA during the period covered by this investigation include: (a) the protection of society be the paramount consideration in the corrections process; (b) the Correctional Service of Canada use the least restrictive measures consistent with the protection of the public, staff members and offenders; and (c) correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and
Aboriginal peoples, as well as to the needs of other groups of offenders with special requirements. (CCRA, 1992, pp. 26–27)

The key issues identified in the OCI’s report are as follows:

- Section 81 of the CCRA provided the CSC with the incentive and means to establish agreements with Aboriginal leadership and communities to provide for the care of Aboriginal offenders who would otherwise be held in custody. The concept was to raise Aboriginal control and participation in the custody and program provisions of the offender’s sentence. As of March 2012, only three agreements had been established, meaning that in four of six CSC jurisdictions (Atlantic, Ontario, Pacific and the North) no Section 81 bed capacity had been built. This state of affairs significantly impedes successful community reintegration.

- As of March 2012, there were only 68 Section 81 bed spaces in Canada. Spaces became available for women in September of 2011. The correctional investigator explained this outcome via an internal CSC policy that only minimum-security offenders would be eligible for placement, effectively excluding 90 per cent of the population from consideration.

- In this time frame, the CSC opened four minimum-security institutions with a total of 194 beds. Women account for 44 of the 194 spaces. This contributes to the double-bunking challenges at
medium-security sites, as it impedes successful community reintegration.

- External agreements to the operations of the CSC healing lodges are funded in five-year cycles. The correctional investigator noted that per-bed funding for CSC facilities was as much as four times higher than Section 81 healing lodge facilities. This is tangible evidence of the CSC’s commitment to retributive incarceration.

- It was never the intent of the CSC to run its own healing lodges. Aboriginal communities have been reluctant to assume responsibility for the facilities because of issues such as sustainable funding, ownership, and autonomy. Efforts to negotiate transfer agreements have been unsuccessful and have, for all intents and purposes, been abandoned. In some communities, this process has led to mistrust directed at the CSC by community leadership.

- Section 84 of the act was intended to enhance the information provided to the National Parole Board and, by extension, raise the volume of Aboriginal parolees and increase the number of offenders who achieve successful community reintegration; however the administrative process created by the CSC is understood to be cumbersome and time-consuming. In 2012, there were only 12 Aboriginal community development officers to bridge the interests of the offender and the community prior to release. With so few staff, very few communities have opened their doors to Aboriginal
parolees. Today Aboriginal offenders have less access to parole than non-Aboriginal offenders and, when on parole, they are more likely to have their parole revoked.

- The correctional investigator also noted that the CSC has limited understanding of Aboriginal peoples, cultures, spirituality, and approaches to healing. This limited understanding has compounded the challenges in the application of the Gladue factors in correctional decision-making throughout the system.

- The correctional investigator noted that the provision of Elders is inconsistent. Contractual instability and poor compensation undermine the effective application of CSC’s Continuum of Care model.

- The correctional investigator noted that in 2012 there was no deputy commissioner for Aboriginal corrections. This is an indication that the CSC treats the Continuum of Care as restorative window dressing for its retributive house.

- The correctional investigator concluded that the CSC had not met Parliament's intent with respect to the Section 81 and 84 provisions.

In these listed points it is understood that CSC does not control who is sent to prison by the courts. However, 20 years after the enactment of the CCRA, the CSC has failed to make the kind of systemic, policy and resource changes that are required in law to address factors within its control that would help mitigate the chronic over-representation of Aboriginal people in federal penitentiaries.
At the end of the report the correctional investigator made 10 recommendations. In the interest of brevity, I have focused on five recommendations with the corresponding responses from the *CSC’s Response to the Office of the Correctional Investigator’s Report Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*. They are as follows:

**Recommendation 1:** CSC should create the position of Deputy Commissioner for Aboriginal Corrections to ensure that adequate co-ordination takes place between and among the various components of CSC, federal partners, and between Aboriginal communities. (Sapers, 2012, p. 23)

CSC’s Response to Recommendation 1:

In CSC’s governance structure, the Senior Deputy Commissioner (SDC) is the most senior advisor to the Commissioner on correctional matters. The SDC is directly responsible for the advancement of Aboriginal corrections within CSC and for providing leadership in integrating Aboriginal initiatives with the overall correctional agenda. In this function, the Aboriginal Initiatives Directorate (AID) supports the SDC from both a corporate and operational perspective. As such, the needs of First Nations, Métis, and Inuit offenders maintain a prominent position in CSC’s priority setting, policy, planning, resource allocation, operations, and decision-making processes.

While CSC respects the OCI position on the recommendation, the service continues to believe that the creation of an additional Deputy
Commissioner position would add unnecessary bureaucracy and cost to the current governance structure. CSC has invested resources in more direct frontline operational programs and interventions designed to maximize the capacity of the field, regions, and sectors to collectively address the various challenges of Aboriginal corrections. (Response to the OCI, 2012, p. 2)

**Recommendation 2:** CSC should develop a long-term strategy for additional section 81 agreements and significantly increase the number of bed spaces in areas where the need exists. Funding for this renewed strategy should either be sought from Treasury Board or through internal reallocation of funds and amount to no less than the $11.6 million re-profiled in 2001 and adjusted for inflation. (Sapers, 2012, p. 23)

**CSC’s Response to Recommendation 2:**

CSC has a long-term strategy on Aboriginal corrections. This strategy is based on a continuum of care that begins at intake and continues until warrant expiry. This continuum of care recognizes the importance of a holistic approach along with specific interventions at each stage. In 2005–2006, CSC developed the Strategic Plan for Aboriginal Corrections, with the integration of the continuum of care throughout CSC as one of its three key recommendations. Healing Lodges are one of the components of this strategy.

It is important to note that CSC’s mission is to prepare offenders for reintegration to the community as law abiding, contributing members of society. Although healing lodges are an important part of the Aboriginal
continuum of care, the fact remains that they are considered correctional facilities within the meaning of the Act. Funding was re-profiled in 2003, with the knowledge and approval of Treasury Board, to support the establishment of programs, services and interventions that would better prepare the offenders for reintegration throughout their sentence. As a result of this realignment of resources, Aboriginal offenders now have a culturally appropriate continuum of services that begins at assessment, and continues through to reintegration. One of the key initiatives in the continuum of care is the creation of Pathways Initiatives. As of December 2012, 25 Pathways Initiatives have been established, at all security levels and in men’s and women’s institutions. Pathways Initiatives are a critical part of the Aboriginal Corrections Continuum of Care designed to reinforce a traditional Aboriginal way of life through more intensive one-to-one counselling, increased ceremonial access, and an increased ability to follow a more traditional Aboriginal healing path consistent with Aboriginal traditional values and beliefs. As part of the continuum, Elders and Aboriginal Liaison Officers are available in all institutions, and Aboriginal Correctional Programs, Aboriginal Community Development Officers, and Aboriginal Community Liaison Officers are in place in all regions, ensuring that offenders have support throughout their sentence, not only when they are placed in a section 81 healing lodge. These investments were critical to ensuring support and interventions at every stage of an Aboriginal offender’s sentence. . . .
In summary, CSC feels that the investment in the continuum of care was the right investment, and a solid foundation of services exists in all regions, and throughout an offender’s entire sentence. For these reasons, CSC is focusing its efforts on the community as part of its long-term strategy. The priority of the Strategic Plan for Aboriginal Offenders in the coming years is the development of strong and sustainable partnerships, resources and services that will support offenders upon release to the community. (Response to the OCI, 2012, pp. 3–4)

**Recommendation 3:** CSC should re-affirm its commitment to section 81 healing lodges by (a) negotiating permanent and realistic funding levels for existing and future section 81 healing lodges that take into account the need for adequate operating and infrastructure allocations and salary parity with CSC, and (b) continuing negotiations with communities hosted CSC-operated healing lodges with the view of transferring their operations to the Aboriginal community. (Sapers, 2012, p. 23)

**CSC’s Response to Recommendation 3:**
Section 81 agreements are built on sound, respectful relations amongst its stakeholders. CSC and the community/organizations negotiate and come to a mutual agreement after a long and complex process. These agreements are reviewed and re-negotiated very five years factoring in elements such as audit and evaluation results. . . .

Discussions with communities are on-going. If communities are interested in having CSC-operated healing lodges transferred to their
control, then further engagement would need to be initiated by the Aboriginal community where the healing lodge is situated. Communities must access their own capacity and community interest and support in pursuing any related change to an existing agreement. (*Response to the OCI*, 2012, p. 6)

**Recommendation 6:** CSC should thoroughly review the process for Section 84 releases with the goal of significantly reducing red tape and accelerating the process. (Sapers, 2012, p. 23)

**CSC’s Response to Recommendation 6:**

CSC firmly believes that success in the community is directly tied to community support and encourages Aboriginal families and communities to engage in the section 84 release planning process as early as possible. All offenders are informed of opportunities under section 84 at intake. While the section 84 release planning process can be viewed as lengthy and complicated, a formal process is required to ensure the offender consents, the community is able to express its willingness and interest in pursuing a section 84 release plan including the responsibility this entails, and to protect the privacy of all those involved including the victims. . . .

Taking all these elements into consideration, CSC will review its process for section 84 releases. In consultation with its advisory bodies, Aboriginal community representatives, and offenders, with a goal of ensuring the process is respectful and responsive. (*Response to the OCI*, 2012, pp. 7–8)
**Recommendation 8:** CSC must resolve issues faced by Elders in both institutions and healing lodges to ensure their primary concern and responsibility is the healing of Aboriginal offenders. Further, CSC should set realistic standards of service, caseloads, and payment for Elder services. CSC should be responsible for reporting on progress made in achieving those standards as part of its management Accountability Framework. (Sapers, 2012, p. 24)

**CSC’s Response to Recommendation 8:**

Through its 25 Pathways Initiatives, offenders have access to intensive healing and intervention. CSC has established resource indicators, so that every institution, regardless of the numbers of Aboriginal offenders, has appropriate access to Elders services. CSC negotiates and enters into contracts with Elders in order to provide the appropriate level of services.

. . . in relation to standards of service, caseloads, and payment or Elder services[,] CSC has reinforced that Elders are not expected to write reports, and that their key responsibilities are to assist in the healing process of Aboriginal offenders, offering counselling and support to those who request their services.

With respect to the Management Accountability Framework and as this is part of the CSC’s Strategic Plan fort Aboriginal Corrections, CSC sees no need to report on this outside of its existing accountability frameworks.

*(Response to the OCI, 2012, pp. 9–10)*
Assessment of OCI Recommendations and CSC Responses

The CSC, the National Parole Board and the Office of the Correctional Investigator (OCI) are all included in the language of the *Corrections and Conditional Release Act*. The language of the purpose and the principles of the act are consistent from one section to the next. By extension, it would be reasonable to say that when the OCI made recommendations at the end of a review or investigation identifying where the system was not compliant with the act, these findings would be read as operational imperatives. From the responses, it is clear that the CSC does not view a finding by the OCI as an operational imperative.

On the subject of CCRA Section 81, agreements for facilities and beds, it would have seemed reasonable that the volume of accommodations would be approximately in line with the proportion of offenders in the parole system. In 2012, the CSC reported in the Annual Corrections and Conditional Release Statistical Overview Report that there were 14,745 offenders incarcerated representing 63.4 per cent of the total population serving out federal warrants. They went on to report that 7,272 were on parole and actively supervised in the community. The division/proportion of those institutionally held versus those on parole is easy to understand; the logistical challenges of operating a community supervision system are more complicated than running a static facility (prison) where the compounding, systemic effects of continuous entry and exit are less pronounced. It is also easy to understand how the implementation of healing lodges would alleviate some of the logistic challenges for both the institutional (prison) facilities and the community parole facilities (half-way houses).
In 2012, the CSC reported that 71.6 per cent of male Aboriginals in the system were incarcerated in CSC institutions, a total of 3,197 men. Assuming that half of those Aboriginal offenders incarcerated would have become eligible and/or benefitted from a Section 81 healing-lodge placement, it would be reasonable to have seen approximately 1,600 beds spaces available with as many as half of the beds to be found in the Prairie and Pacific regions where the concentration of Aboriginal offenders was greatest. The OCI identified that after more than a decade of effort (which commenced with the Effective Corrections Initiative in the year 2000), the CSC had only managed to create 150 beds.

In 2012, the CSC reported that 63.5 per cent of female Aboriginals in the system were incarcerated in CSC institutions, a total of 191 women. Assuming that half of those Aboriginal offenders incarcerated would have become eligible and/or benefitted from a Section 81 healing lodge placement it would be reasonable to have seen approximately 96 beds spaces available with as many as half to be found in the Prairie and Pacific regions. The OCI identified that after more than a decade of effort, the CSC had only managed to create 44 beds.

The CSC’s response to the finding was to assume a defensive posture by putting the onus on Aboriginal communities. In their defensive response, the CSC cites the development of Pathways Initiatives. These are living units within the traditional prison setting where offenders may apply for placement. While assigned to a Pathways living unit, they are exposed to ritual and ceremony and provided with traditional teachings. The point that the OCI was making in his Section 81 recommendation was not that these programs are not useful but that they exist within the contemporary Western prison and
are only effective when they are proportionate to the number of healing-lodge beds. In educational terms, it is the difference between learning French via the travelling French teacher (who arrived with a cart of materials and a 30-minute daily lesson) and French immersion (where everything that happened in the program day happened in the language). The potential for internalization is much more likely in an immersion setting where all of the participants are compelled to challenge their values, attitudes, practices, beliefs, and expectations. It is apparent that the CSC is much more comfortable operating retributive prisons than restorative healing lodges. Their responses to the OCI’s recommendations, presented earlier in this section, reflect their discomfort.

Given the funding increases provided to the CSC in the previous decade ($1.58 billion dollars in 2002–03 to $2.7 billion dollars in 2012–13), it would seem reasonable that there would have been substantially more Section 81 beds—perhaps not a thousand beds but certainly more than 200.

On the subject of Section 84 releases, the CSC responds by stating that, “Offenders are informed of opportunities under section 84 at intake” (CSC’s *Response to the Office of the Correctional Investigator’s Report. Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*, p. 6). This assumes that the offenders are

- literate,
- have no medical or psychological or learning challenges that might impair cognition,
- able to speak the technical language of the CSC,
- not overwhelmed by the process of sentencing and transfer, and
- otherwise self aware.
A serious response from the CSC on this matter would have acknowledged the following:

- Canada’s incarceration rate is high relative to most western European countries and this fact creates a variety of challenges for the CSC.
- In 2012 there were only 12 Aboriginal development officers in the country to make connections between communities and offenders for the purpose of Section 84 releases in either urban or reserve settings.
- In 2012, there were 7,972 offenders serving sentences in the community of which 1,266 were of Aboriginal descent. They might also have commented on the fact that Aboriginal cultural advisors were present at only 422 of the parole hearings for Aboriginal offenders. Further, they might have reflected upon a disturbing 2012 statistic: with 7,972 parolees in the community, only 254 victim presentations were made at 140 parole hearings.

If the CSC were internalizing the restorative purpose and principles of the act, as understood in the mission statement and by the OCI in his report, these statistics would have been of paramount concern. The CSC is lamentably silent on a number of issues including, at the other end of the spectrum, the fact that 31 per cent of those offenders held in segregation (solitary confinement) are of Aboriginal descent. In adopting a posture of obfuscation, the CSC appears high-handed and arbitrary, denying its duty of care and, in so doing, undermining noteworthy efforts and good practices that do exist.
Summary

The CSC, the National Parole Board, and the Office of the Correctional Investigator (OCI) are all entrenched in the language of the *Corrections and Conditional Release Act*. The language of the purpose and the principles of the act are consistent from one section to the next. As such, it would be reasonable to say that when the OCI made recommendations connected to issues of non-compliance, the CSC would read these findings as operational imperatives from the Government of Canada. From the responses, it is clear that the CSC does not view these findings as operational imperatives.

The CSC response is unrepentantly retributive. In following this approach, they provide insight into the social construction of a CSC reality (Berger & Luckmann, 1967) in which the system applied from CSC national headquarters to the various institutional settings is both carceral and retributive (Foucault, 1977 Garland, 2001). One would assume that they would have acted on the recommendations in accordance with the law contained in the purpose and principles of the CCRA until such time as the law was changed. If so, the restorative and reintegration requirements stipulated in the act would have received attention over the retributive habits of the past. In this instance, the senior management of the CSC seems to have forgotten their history—a history that Madame Justice Louise Arbour spoke to in her 1996 commission report:

> It is clear that the right to legal counsel was largely unknown. . . . One can fairly predict that unless some sanction is attached to the lack of compliance, the entitlement to legal assistance upon placement in segregation will remain largely illusory. This is an instance where, although the law is clear, it was largely unknown to those responsible for
administering it; it does not seem that the law is perceived within the CSC as particularly appropriate. This assessment is entirely at odds with the importance attached to this right in all other elements of the criminal justice system. The suggestions advanced in the evidence that the right to counsel could not be complied with because of the behaviour of the inmates is entirely unacceptable, first, because it is not supported by the evidence, and secondly, because even taking the events at their most disruptive level, it could not provide an excuse for failure to comply with the law. . . . Nothing in their behaviour could dispense the Correctional Service from discharging that modest obligation. (p. 57)

Critical Policy Review Conclusions

The Correctional Service of Canada is a complex, retributive organization with pockets of restorative justice and Indigenous justice innovation that defy the carceral reality of the prison. Only when something has happened in a program area that requires the attention of the management and security staff are the typifications of the prison challenged (Berger & Luckmann, 1967). The CSC’s statistical results are a reflection of its retributive roots. In this regard, sociologist David Garland is correct in his assessment of the retributive nature of the traditional roots of the carceral prison.

Ultimately, the foundational carceral assumptions of the CSC drive a wedge between restorative aspirations and retributive operations. The ritual of disconnection, practiced at every morning meeting, compels its participants to assume that every
offender is a dangerous offender. In applying this assumption, all offenders and all staff are deemed to be at risk every minute of every day. In this regard, the CSC demonstrates its lack of understanding or, worse, reconfirms a colonial, assimilationist intent with respect to Indigenous people. The dehumanizing import of the retributive assumptions that underpin the morning meeting serve to reinforce the rituals of disconnection that dominate daily operations at the expense of successful community reintegration.

As a matter of policy, the CSC was given a mandate by the Government of Canada to operationalize either a restorative or an Indigenous justice paradigm. Contained in the CCRA and the principle of least restriction was the expectation that the CSC would be unreservedly fixed on achieving successful community reintegration for each of the citizens held under federal warrant. What was left largely unsaid was that to accomplish this the CSC needed to close older facilities from the carceral tradition and replace them with housing stock more akin to healing lodges.

Some scholars would argue that organizations like the CSC are unrepentantly retributive and incapable of change. In this view, the idea that the CSC could move its operational view from the retributive to the restorative, let alone from the restorative to the Indigenous, is beyond imagining. I take a different view: If the CSC’s creation of the 2003 Continuum of Care and later response to direction from the Harper government in 2007 is any barometer, I would say this conclusion is patently false.

In the first instance, the CSC created from within as it pushed away from its traditional retributive roots by creating policy and corresponding program offerings that were genuinely restorative. I would argue that the Continuum of Care is both recognition and entrenchment of the historical, ideological, and operational outcomes of Gladue v.
Canada and Sauvè v. Canada. This acknowledgement confirms the place of incarcerated men and women of Indigenous descent as individuals with the capacity for self-determination, as is recommended in the 1996 Royal Commission on Aboriginal Peoples.

From one perspective, the 2007 tough-on-crime initiatives ushered in by the Conservative government led by Prime Minister Harper would seem to undermine the progress confirmed in the Continuum of Care, even as a return to something that was comfortably retributive. I take a different view: In 2007, the CSC was responding to clear and funded direction that was in turn supported with substantive changes to parole and sentence administration guidelines. These changes ultimately sent more people to the CSC and kept them in institutional settings longer.

The key in understanding this chronology of events is not as a return to comfortable retributive outcomes but as confirmation of the capacity of the CSC and NPB to take direction. Had the Liberal Party governments led by Prime Minister Chretien or Prime Minister Martin set out explicit timelines, schedules, direction, and funding to decommission existing prison housing stock and replace it with healing lodges, the CSC was predisposed to take that direction (as the creation of the Continuum of Care supports). The truth of the matter is that the Liberal governments led by Mr. Chretien and then by Mr. Martin failed to provide explicit restorative or Indigenous direction that was supported by funding. In the absence of direction, the CSC and the NPB maintained the status quo.

To be an effective organization that operationalizes either a restorative or an Indigenous justice paradigm, the primary goal of the CSC must be to eliminate the need for its own existence. To accomplish this goal, the system must be unreservedly fixed on
successful community reintegration. For Ashley Smith, this would have required the warden and correctional staff who admitted her at Nova Institution to have been sufficiently empowered to take Ms. Smith directly to the emergency room at the local hospital in Truro and sit there until such time as qualified mental-health providers could provide effective and transparent care. They should have sat in that waiting room until the proper care was provided, even if it took days or weeks or months. Camping out in the emergency room would have acknowledged that Nova did not have the capacity to help Ms. Smith. It would have also have had an impact on the agenda of the morning meeting. . . . Imagine the consequences of not balancing the previous day’s overtime budget because additional staff were required to supervise the disconnection between a federal prison that does not have the expertise to treat an offender and a provincial health-care system that has abdicated its constitutional authority to treat one of its citizens.

Currently, 70% of offenders assigned to the CSC are held in federal institutions, while 30% are serving their sentences in community-supervision settings. Between 1992 and 2012, if the CSC had met the standard of “least restrictive measure” as defined in the CCRA, these proportions would have been reversed, with 30% held in federal institutions and 70% serving sentences in community-supervision settings. Given that violent-crime rates have dropped every year since before the CCRA was enacted, this was absolutely attainable. It may have meant that fewer people would have re-offended and that, as a consequence, fewer people would be working for the CSC today than in 1992. It would have meant that a greater proportion of staff would be community-based social workers and psychologists and teachers and nurses, while the proportion of institutional correctional officers would now be decidedly smaller. It would have meant closing two-
thirds of existing prisons and replacing them with community-based
treatment/supervision facilities modelled on the concept of healing lodges.

All of this could have been accomplished if the CSC had aligned its assumptions
and resources differently; this process requires a willingness to create a different
relational dissonance.

This understanding brings this research to focus on the Elders who bring healing
methodologies to an unapologetically retributive environment. In the next phase of the
research, interview data from five Elders is assessed to evaluate their role and function, in
their own words.
Chapter Six: 
Elders’ Perspectives

Everything that happens in a prison exists in ritual and narrative; the operational ritual and narrative of the prison and the program ritual and narrative of Elder-led healing programs establish a common understanding of what the carceral institution honours as sacred.

In operational terms, the sacred rituals and narratives of the dominant culture begin each morning with the first inmate count of the day. It is a moment of panopticon reinvestment in which the manual and electronic logbooks that define the retributive ritual of the prison are reset to observe, record, and assess the daily movements of each and every person (inmate and staff) who inhabits the space (Foucault, 1977). In this perpetual colonial carceral recalibration, the narrative evolves and morphs in various forms. As such, the entrenched rituals and “habitual thought processes” of the prison continuously challenge what is, or should be understood, as sacred (Cajete, 2000, p. 189, cited in Battiste, 2000).

The ritual and narrative of the Elder-led healing program is invested in a different world view; consensual versus retributive and healing versus deterrence (Foucault, 1977; Garland, 1990, Ross, 2006)). For incarcerated adults of Aboriginal descent, the fabric that links the narrative of the dominant-culture prison to the narrative of the Indigenous community can be found in the sacred stories each person grew up with. In the dominant culture the narrative of the prison relies on the King James Bible creation story while Indigenous tradition relies on the Sky Woman creation narrative. These are the traditional stories that each of the parties who inhabit the prison uses to navigate the relational
dissonance and the fractured relationships that permeate their experiences as they make sense of their place in the carceral world (King, 2003; Wilson, 2008).

At its core, the “Elders’ Perspectives” chapter contributes to the triangulation of theory and policy (from the policy-review phase of the study) and policy in relation to the words of the Elders (Smith, 1999). For Elders the aim is to work with each individual to achieve internalized recognition and responsibility that will contribute to personal restitution and potential community reconciliation. To accomplish this, the chapter relies on their words to identify and explore the themes that underscore the work of Elders and to bring into relief the challenges of Indigenous healing programs to federally incarcerated adults.

**Characteristics of Participating Elders**

The five Elders who participated in this study represent a cross section of people who are working or have worked with incarcerated adults in the provision of healing programs in federal settings.

For the generation of Elders appointed in the 1980s and 1990s, recruiting and placement was essentially by word of mouth. By comparison, Elders participating in this study who were appointed in the last decade were each vetted following a series of community-based reference checks conducted by the CSC in consultation with individual and community sources. The vetting process considered variables such as knowledge, qualifications, and personal suitability in their placement. After 2013, this appointment process was made more formal: In an effort to ensure that the Elders appointed by the

5 To protect their privacy, Elders are referred to by pseudonym.
CSC are understood to be (first and foremost) Elders in their home communities, Elders appointed after 2013 are vetted by a committee that includes Elders currently working in the field (Al Brant, personal communication, August 2013).

In demographic terms, the Elders who participated in this study can be described as follows:

- All five Elders worked in Ontario region. None of the five had experience in any other CSC region.
- Three of the Elders are currently working within CSC healing programs in Ontario region; two of the Elders are retired from the Ontario region.
- Two of the Elders are women, while three are men.
- One man and one woman in the participant group are lifelong speakers of their language, while another man in the participant group has been working to learn Mohawk for most of his adult life.
- Four of the five Elders had experience working with men in the Ontario region; the fifth Elder had experience working with men and women in the CSC’s Ontario region and was working at a female institution at the time of the interview.
- One Elder had extensive experience at the Ontario Region Regional Reception Centre. The Regional Reception Centre is the first institution an offender is sent to following conviction. It evaluates every aspect of the individual offender including health, education, and the circumstances that contributed to the offence for which the offender stands convicted. This
information is compiled to produce a correctional plan that results in penitentiary placement.

- Two of the Elders had experience working in maximum-security settings.
- Three of the Elders had experience working in Pathways units.
- All of the Elders have relatives who are residential-school survivors.
- Two of the Elders live on reserve communities.
- Two of the Elders grew up in urban settings.
- Two of the Elders come from Mohawk communities; three Elders are of Anishinabe descent.
- All of the Elders were over 50 years of age when they participated in the study.
- One of the Elders was himself incarcerated as a young man. He also has experience as an Aboriginal liaison officer, an experience that eventually led to his work as an Elder.
- Elders worked within CSC institutional settings for periods of between 4 and 28 years.

Elders are presented to the reader throughout the chapter from the most recently appointed of the Elders to those who have now retired from their role as Elders in the provision of healing programs in the CSC. By way of a more formal introduction, I offer the following:
Elizabeth

Elizabeth is the newest of the Elders working within the CSC to be interviewed in this study. She has been working “inside” for four years. She grew up off reserve in an urban setting. Her life experience contributes to a sense of empathy and understanding for a diverse group of urban Indigenous people whom she has encountered in her travels. Like them, Elizabeth found the language of her community and the rituals and ceremonies that function as underpinning to her culture were somehow distant. Her early years were an experience of immersion in the dominant culture. In terms of formal and academic qualifications, Elizabeth is the most credentialed of the Elders participating in this study. In this way, she is also most representative of the emerging generation of Elders working within healing programs.

From my perspective Elizabeth is a compact, understated woman who carries a certain timeless quality; she appears as someone who could be in her late forties or her mid-sixties. She is exacting in her dress; there is a quiet grace to Elizabeth that makes her a compelling personality. She did not grow up on reserve but in an urban setting where the dominant culture defined the rhythm of daily life. During our time together, there was very little conversation about childhood; there were, however, many references to family and friends who are as one to her.

For Elizabeth, school was a protracted affair. Her early adult years were filled with a series of hourly waged jobs in urban settings. In time, she returned to school where she and trained and worked as a registered nursing assistant. Later she went to university as a mature student, where she completed a bachelor of social work degree. After years of work as a practicing social worker, she went to graduate school, where she completed all
of the course work towards a master’s degree in Canadian studies, but she found herself overwhelmed by the process. In the aftermath, she sought support and help at the Friendship Centre in Ottawa.

There, I concluded that she discovered the women as the Friendship Centre discovered her. In short order, they hired her to work with them. In this process, it appears that everybody touched by her process benefitted. For Elizabeth, there was a need for serious work to resolve a moment of personal crisis. For the women, there was a lifetime of experience and commitment brought to bear on their behalf. While working with the women, there was lots of work around ritual and ceremony and lots of communal teaching.

It is clear that these experiences became the fuel she needed for what came next. With the women as her community, Elizabeth returned to graduate school, where she was among the first cohort to graduate as a master in Indigenous social work. This was followed by a number of years of work in the Ottawa area and a growing reputation as a person who had the capacity to help others find Indigenous knowledge. This is the foundation that brought her to work with incarcerated men and women in the provision of healing programs in CSC settings.

Mavis

Mavis is of Anishnabe descent. She grew up on reserve in a home with both her parents and grandparents. In this environment she learned her language, a language she nurtures and practices today. As a child her grandparents exposed her to teachings and knowledge related to medicine; she learned about the relationship of people to the land and to one another. Mavis is a mother, a grandmother, and a counsellor who has worked
with youth at risk and women in desperate need. In 2008, she began working as an Elder at Millhaven Institution; in the Assessment and Reception Unit, she worked with men entering the system right after sentencing, men who were often at the lowest point in their lives. In the practice of her calling, my sense is that Mavis brings patience, humour, and unvarnished truth to the lives of the men assigned to her care.

Mavis has a perpetual smile. In her straight-forward, no-nonsense approach she conveys a sense of purpose. In my view, she is a woman whose manner declares her as someone who has spent her life time breaking trail for others. This began as a child; her parents were residential-school survivors who carried all of the scars and all of the challenges that emerge from a childhood dominated by enforced assimilation.

For Mavis, home was a constantly changing community of children taken in by her grandparents as foster children. In this work they did what they could for people. They used the resources of their family farm to ensure that everybody slept with a full stomach. The daily work of the farm ensured that there was no time and no energy for poor decisions. Farm work also meant there was a strong connection between the children and the land.

As a girl, Mavis went to a day school where she studied in English. She was a good student who, unlike many of her generation, was able to retain her own language as she learned a new one. Later, there was a family and a desire to continue the work of her grandparents. When her marriage ended, she moved her children to the city. Once in the city, Mavis trained as a drug and alcohol addiction-recovery counsellor.

As the years passed there was lots and lots of work. Some of the work was community based, while other experiences were connected to employment as a
counsellor. Mavis has a slightly restless and independent spirit; sometimes this spirit compelled her to re-imagine her calling. In time she became a store-front counsellor, working with women and men in various states of crisis. In the storefront, a co-worker suggested she become an Elder working with the CSC. In this re-imagining of a calling, she was introduced to me.

**Alexander**

Alexander is a Mohawk man who grew up on reserve. He is a speaker of his language—a language he came to learn as an adult. He has spent his life working to understand and share the knowledge and heritage of his people with his community and beyond. For the better part of a decade he has worked with men in Ontario region federal prisons. The people he works with would describe him as an Elder, but it is a label he finds discomforting: When asked, he describes himself as a helper. Alexander holds academic qualifications as a counsellor. He has spent his life working with the youth of his community. He is also a father and a grandfather.

Alexander grew up in a loving and supportive family. His mother had a devout faith, which she expressed as an active member of her church community. As a teenager, Alexander began a process to find his Indigenous roots: It was really a process to find Indigenous knowledge that required a search to find opportunities to participate in traditional ritual and ceremony. In this process, his father proved himself to be a remarkable person. As Alexander sought his roots, his father made time to participate with his son as he explored the traditions of the longhouse.

Along the way, he met Haudenoscaunee Elder Tom Porter. Dr. Porter is a transformational figure in his community and in the academy. He is also among
Alexander’s most significant mentors; he helped Alexander to begin a process of community-based work and expertise development that would eventually lead him to his current role as a traditional teacher.

**Robert**

Robert is a tall, lean, and charismatic man. He has a warm smile and welcoming manner that is infectious and yet he also conveys profound vulnerability. The source of the vulnerability is his own past; it includes wounds inflicted on him and by him in an earlier time. He is unique among the Elders in this study because he is himself an ex-offender who served time as an incarcerated adult. In that process, he became acquainted with Elders who volunteered in the institution where he was held. In these relationships he began to learn and relearn the knowledge that emerges in ritual and ceremony. Upon release, he became a volunteer who worked with Elders and other incarcerated adults. As time passed he became one of the first generation of Aboriginal liaison officers employed by the CSC. Finally, after serving a number of Elders, he became an Elder himself.

The first generation of ALOs or Elders did not possess the credentials of subsequent generations. In fact, Robert never spoke to me about academic qualifications at all. For him, the responsibility that came with the experience as volunteer, ALO, and then Elder grew from his experience as an incarcerated adult. From his conversation, it is almost as if his life began in those introductory moments with the Elders; the stuff that preceded his conviction is to be understood as insignificant background noise. From his perspective it is clear that in that moment he began a three-decade process of paying it back and paying it forward. In this interview, it is clear that he understands his role as an Elder helper to his teacher, William.
For me, Robert personifies the power of experience when it is driven by ritual ceremony, recognition, and responsibility. He carries a clear sense of calling; during the pre-interview meetings at the Curve Lake Pow Wow, a number of men sought him out to thank him for his service. In this, there was a need to relive past challenges and to share sentimentalized accomplishments. There was also dark humour—anecdotes of people and places that are kept in storage:

Remember that guy . . . you know the one . . . Bobby . . . the guy who arrived from . . . and got beat up just in case he was a rat. Yeah, Yeah, I remember; they beat him with a can of salmon in a sweat sock and then dropped him at the barrier. When the keeper asked him what happened, he said he was allergic to seafood . . .

In the aftermath, Robert shares in the grim hilarity of the telling and deftly reminds the teller of the teachings, gently moving him away from romanticized memories of carceral rites of passage. Robert is an old hand: He projects affability as a means to coax and nudge rather than to confront.

William

William is of Mississauga descent. He is a fluent Anishinabe speaker who grew up in the language and on the Reserve. He comes from a prominent family in his community where both he and his brother are now recognized as Elders in the community. William is a large man; this, combined with a charismatic personality, leads me to conclude that in his physical prime he would have projected a larger-than-life persona that filled the room to bursting. When we met, he was suffering a protracted bout of ill health after two extended stays in hospital for respiratory-related challenges. By
William’s own account, his unqualified forty-year commitment to cigarettes and Diet Coke are significant contributors to his health challenges. My impression is that they will remain fixtures in his life.

For all of the health challenges, and there are many, for me he still projects a quiet charisma and a crackling sense of humour. Like Robert, he is an Elder of the old school. He does not communicate any of the credentialed, rhetorical understanding that comes so easily to the current generation of Elders. William practices a seat-of-the-pants counselling style that declares the obvious and then flanks to observe the reactions of those around him. At the Curve Lake Pow Wow, he spent the afternoon receiving reverential visits from a long line of people who sought him out to thank him for past teachings and to wish him well in recovering his health.

William was among the first of the Elders hired in Ontario in the 1970s. He began his work at Kingston Penitentiary, an infamous prison complex built in the 1830s on the shores of Lake Ontario in Kingston. In subsequent years, he worked in a number of settings, from maximum to minimum security. His last post was at Warkworth Institution. His career as an Elder in the provision of healing programs to federally incarcerated adults spanned over 30 years.

### Dialogue Themes

The fuel that sustains healing programs is Indigenous knowledge. Indigenous knowledge is always complex; it is never one thing. In the oral tradition, it takes root in the narrative of the moment (Chilisa, 2012). It always requires the learner to do something with the knowledge, even if that something is to learn when to do nothing. In
this space, the themes of the dialogues emerged from the words of the Elders. Embedded in the themes that emerge from the Elder dialogues is their perspective about the work: their personal role, place, and function; the role, place, and function of the participants; and the role, place, and function of the prison in the provision of healing programs. In the context of the prison, where the assumptions of the day-to-day often differ from the community outside the razor wire, the capacity of an individual to recognize their place in the process is key to whatever comes next.

In the reading and re-reading of the transcripts, I found myself highlighting and printing and comparing and contrasting and bearing in mind the principles of decolonizing research methodology stipulated by Linda Tuhiwai Smth (1999) and expanded on by Bagele Chilisa (2012). In this process, words and linked qualities emerged from the text of the dialogue. Sometimes this happened because Elders used the same word over and over again at similar points in the dialogue. Examples of this are words like teacher and teaching. In some cases, themes emerged from the context of the dialogue. Repeated disclaimers from Elders, such as Robert’s, “Well, even today, I don’t consider myself as an Elder,” led me to find qualities that had responses in common such as humility. Of the five themes, the only one that is not a word that was used repeatedly by Elders in the dialogues is humility.

The themes that arose in these dialogues help to highlight whatever comes after the personal recognition of the harm they have perpetrated. They are organized by and correspond with Wilsons’s (2008) work in relationality. For Wilson relationality is a process that puts internalization and good faith between individuals ahead of carceral compliance. The themes that emerged from these Elders in relation to their understanding
of healing are as follows: humility, healing, ceremony, teaching, and relationship.

Discussion of each of these themes begins with a descriptor to provide context. Within each of the themes, bulleted statements precede the words of the Elders as a way to isolate and illustrate what the Elders believe to be their role, place, and function in the provision of Elder-led healing programs.

**Humility**

*Humility* stretches beyond modest expressions or understated presentations of one’s own importance to the scheme of things. In this study, it speaks to the manner in which an individual comes to the role of Elder working in a federal prison: Humility speaks to the core relational values necessary to do the work of the Elder-driven healing programs (Wilson, 2008).

- None of the participants are comfortable with the title Elder. All of them have other words for how they understand their place in the work.

**Alexander:** Well it wasn’t by any intention, that I guess . . . I got into this, if you can call it this line of work, or helping I guess is what I see my role as, as a helper.

**Robert:** Well, even today, I don’t consider myself as an Elder. I started helping and supporting First Nations people after I got the support and help I needed as an offender back in the late 70s early 80s, because I did time myself.

**Elizabeth:** I don’t consider myself an Elder because you know, any of the Elders I’ve met they seem to have [been] very grounded in a lot of their teachings and I wasn’t raised with my family. I don’t have the language and I didn’t know my extended family until I was in my 20s. I’m more of Children’s Aid. . . . When I was younger, to me I didn’t have a [home]. . . . I’m more of a . . . I call myself an urban Indian because I didn’t
live on a reserve so I didn’t have that experience and I didn’t feel strong enough to be an Elder. . . . Living in Ottawa for ten years . . . the community there gave me that . . . to call me an Elder . . .

➢ *Elders working in the CSC come to the role at the direct and continual urging of others. Elders do not arrive at this work as one might seek a career in the dominant culture.*

**Mavis:** So anyway, from there, a friend of mine, she was already working down here and she says to me, “Remember you always said you’d like to start working with the men and they’re too scared or something to come and get the help?” I said, “Yeah” and she goes, “Well, come to work down here.” And she goes, “You’ll have lots of men to work with. There’s a lot of institutions. And with your knowledge of the ceremonies and culture and traditions you would help a lot of these men to find out who they are, like spiritually, emotionally, physically, and mentally.”

**Elizabeth:** There was an email that was sent to me by a friend and so I called and applied . . . and eventually I was hired after a few months. It is hard work but at the same time I enjoy working with my people.

**Alexander:** I was directed this way by the women of my community—specifically the women of my clan. At a clan meeting, they had heard these positions as quote unquote Elders were open in CSC, and the women of my clan at one of our clan meetings had said that they know I’ve been doing this work for a lot of years, for different reasons, all throughout the community and outside of our community and they were kind of worried about, not worried, maybe concerned about me doing a lot of work teachings, stuff like that. And getting paid a coffee mug or a pen or something like that.
for doing cultural teachings with people. And to me that was normal. Like I had my regular job whatever it may have been at the time, which really wasn’t really well paying, but the women kind of had kept an eye on me over the years and knew what I was doing, and I had a young family at the time, and they heard about this job coming up and they told me that I need to apply to this. . . . They said it’s, I have information that I need to share with the men that are in the prisons and they said you need to go there and do that, and then they said at the end, and it doesn’t pay very badly either, so! They were worried about me that way, they said this is what you do, you might as well get paid well for it, so they said apply, put your name in, we think you’ll do well, you’ll get accepted and you’ve got stuff to tell the guys in there to help them along, to discover themselves, or to heal themselves somehow along the way. So that’s kind of how I came into being where I am today, entering into my eighth year of servitude [laughs]. I’m just afraid to quit because the women know where I live!

➢ Elders never take credit for the work of others even when their role in the work is understood to be significant within the institutional community.

Alexander: Today one of our guys got day parole . . . and he credited the ALO and myself as having a huge impact . . . on changing his attitude and so on and his wife came from Hamilton to his hearing today. The board was really impressed with all the support that he had and looking at his file and changes and his attitude and everything like that. So I don’t know if that, to me, that’s an accomplishment but it’s not mine, that’s his. He did the work.

Summary: Humility. These declarations are noteworthy. In my 29 years of experience as a correctional educator, one of the commonalities between Elders whose
work is exclusively in the community and those I have encountered in my work as a correctional educator is that they are universally uncomfortable with being referred to as an Elder. It is a title they would never claim for themselves. The protocol for Elders is that the descriptor of Elder is something that is presented by others.

Elder is a Government of Canada term rejected by the people who design and deliver healing programs. The term helper (as in helper, rather that Helper) is the common word applied by Elders to themselves. The context in which they employ the term says a good deal about how they position themselves in the program-participant process. This reflects both a difference in world view and an acknowledgement that to refer to themselves as Elders would be entirely inconsistent with community practice. In this vein, the incarcerated adults who participate in healing programs routinely refer to them as Elders; this is entirely consistent with community practice.

Ross (2014) reflects on the need to use community based understanding and practice as a tool to challenge the unhealthy cycles of behaviour that result in being in conflict with the law. In this he tells us something about what needs to be done: it is the Elders who confirm the how. In applying the world view encapsulated in the Sky Woman creation story in the assumptions of the healing program Elders confront the desperation and isolation of the prison. More importantly they establish the time spent in program as an extension of the community that the participants wish to rejoin. In this space the Elders eclipse Waldrams (1997) assertions that institutional healing programs are largely symbolic.

The perspective of Elders is best expressed by Alexander: “[Community members said] I have information that I need to share with the men that are in the prisons and they
said you need to go there and do that.” The statement provides perspective on the way Elders come to the work and the way in which they go about the work. At the centre of the Elder perspective is the responsibility to share. The outcome of the sharing is not to bring attention onto the Elder: The visible outcome of the sharing is to empower the participant. The implications of the sharing are entirely in the hands of the participant.

Over time, the process by which the Government of Canada appoints individuals to the role of Elder has changed. In the early years, appointments were concluded entirely by word of mouth; now, committees of professionals, which include serving Elders, review applications and vet candidates to ensure appointees have deep community connections and diverse community support. The common ground in all appointments is that the individual who applies does so at the suggestion of others who are familiar with their work and learning in the community.

**Healing**

In Elder-led healing programs, *healing* is understood to be a lifetime process that eclipses any short-term or outcome-driven intervention to regain a state of wellbeing. Healing, in this context, is focused on the capacity of the Elder to look beyond the person who is presented by the individual. In the work of the healing program the individual is positioned to rise above criminal records and criminogenic factors in ways that empower the individual. It is the responsibility of the individual to do the work or, as Waldram says, “to correct and make right” (Waldram, 1997, p. 111).

- Each of the Elders reflected that the work of Elders is a calling—a call to service preoccupied with finding balance.
ROBERT: I started helping and supporting First Nations people after I got the support and help I needed as an offender back in the late 70s early 80s, because I did time myself. . . . There are a lot of people going around looking at the ground, they’re full of anger they’re full of issues. . . . And working and supporting the guys in the jails . . . one of the main issues were that [they were] grieving. I wish I would’ve told my dad or my sister or told ’em how I felt before they went in.

ELIZABETH: So, the healing has been the number one thing for me. When I started my healing, I realized spiritually I was out of balance. I did not know whatever this God or whatever that was, what I had was, what knowledge I had didn’t sit here with me. So I had to work on what that understanding was. And as I listened to Elders about the Great Spirit, the great mystery—in the language, there is no “he” or “she”, there just “is.” So that helped me to understand that this higher power if you want to call it . . . this God, this great mystery, this Creator, it just “is.” It neither is male; it neither is female. It just is. And, being the great mystery, I will find out what that is when I move through that. . . .

Okay. For me, working with the women [and with] that medicine wheel is very important. And learning from that medicine wheel about mentally, physically, spiritually, and emotionally that this is how we are as human beings. . . . It is hard work but at the same time I enjoy working with my people. There’s laughter and there’s teasing and it’s . . . we don’t . . . we can joke around and have fun while we’re working on our healing.”

ALEXANDER: [We arrive] as individuals that come from the community, and that’s what we do in the community, that’s what we do in the institution, and we don’t think twice about it.
ROBERT: I describe it [the healing program] as looking alongside at creation and see[ing] how beautiful it is. . . . There are a lot of people, our people, not only Indian people, First Nations people, there are a lot of people going around looking at the ground, they’re full of anger; they’re full of issues that they’re dealing with and they’re looking at creation and to see all the animals and it’s a long process of healing, a long process.

ELIZABETH: We want to help. We want to heal. We want to help people get well. . . . We want to help them walk in a good way.

➤ Learning how to acknowledge and understand grief is an important component of healing programs.

ELIZABETH: But I didn’t realize how deep that grieving was until later. It seemed to me like I was . . . when I looked back on it, it was like, 15 years. . . . But as I was going to university, I was also going to ceremonies. I would go to . . . if there was a sweat lodge, I was there. And I didn’t even have a car but I managed to get there.

RESEARCHER: Grieving. You’ve used it several times. Grieving tells me that something is happening or something has happened and there’s been a period of denial and there’s been a period of anger . . . the process is not comfortable or pleasant.

ELIZABETH: It’s very uncomfortable . . . and I think that’s why I think the Elders are helpful to the inmates. Because they’re [the participants are] experiencing . . . as they’re getting to know themselves, as they’re getting to understand themselves a lot better, they’re grieving.

➤ Healing requires that the distance between dominant-culture policy and Indigenous knowledge be acknowledged and forgiveness be extended.

ELIZABETH: It’s always in conflict.
RESEARCHER: It’s always in conflict?

ELIZABETH: I think. Because you’re coming from two worlds . . . two different world views. That’s how it was at the beginning and it’s still going on now. I don’t know if we’ll ever understand each other . . . with stuff that happened historically, some people don’t want to “go there” because it’s very hurtful and painful and, you know, to look and say “this is what happened.” When you put . . . when you take children out of their homes, forcibly, and this reminds me when I was 23 and expecting my child, I met the social worker who took my brother and I away from our home. We were seven [of us children] and well, [my brother and I were] maybe one and five—something like that—and she [the social worker] had married and had 6 children, a set of twins, and she had married the minister and here we are—I’m 23 and, of course, she’s older, she said to me: “I don’t know whatever possessed me to think that I could go into somebody’s home and take their children.” She said: “I can’t imagine anybody coming in . . .” and we’re not rich and, you know, my kids ran around barefoot, and she said: “I can’t imagine somebody coming in to take my kids, my children, out of my home and that’s what I did.”

RESEARCHER: This was part of her professional . . .

ELIZABETH: She was a social worker, yeah. But yeah, for her to share that with me at that time, I thought that was really kind—very honest. Because if anybody took her kids . . . how that . . . how my mother must have felt when she came in and took the kids out.

RESEARCHER: I can’t imagine how your mother felt.

ELIZABETH: Yeah. And this is, I think, for people putting together policies and that, I don’t think they really consider the human elements. . . . At times it like “this is
what we have to do and this is how we’re going to do it to get something done.” I mean, even with the environment now, you know, and I think we had spoken about something like that earlier . . . it’s just done. . . .

For me this thing of looking historically, it’s not about blaming and shaming, it’s about enlightening ourselves to what things were done sixty years ago or eighty years ago or whatever, and again, how can we learn from that now? What can we learn from that now? What can we change from that now? Are we going to do the same thing, like you said before . . . doing the same thing over and over again expecting a different . . .

RESEARCHER: A different result . . .

ELIZABETH: So we, as people living in this society, we need to look at those . . . we need to look at the past as a teaching. We need to look back to what has brought us here and how we can change that for the future generations, right? We have to look at our own prejudices and own fears and our own anxieties and our own racism . . . all of that stuff. How else are we going to grow if we don’t look at them? You know, in our teachings, we talk about those seven sacred teachings of respect and love and humility and I remind the women that there is the opposite seven sacred teachings of disrespect and hate and the opposite of all their . . . ignorance. . . . So we need to look at these things to grow spiritually, to grow emotionally, mentally.

➢ Essential ingredients in healing are discomfort, gratitude, and humour.

ELIZABETH: When I started looking at myself for heaven’s sake . . . I didn’t want to look at myself. Are you crazy? I didn’t want to look at my racism and my anger and my fear and all that. Putting it out there, which I did, but again, this is something that we
need to look at. . . . And I look around us here and I think, my goodness, how grateful I am for that, how thankful I am for this. . . .

For me, it’s reminding. Reminding the women to be grateful that yes, they are here—they did something, they broke a law—but they’re here. It’s a wake up call for you to start looking at what you did. What brought you to that and how are you going to change that? Because they’re the only ones that can change it. I can share with them, I can laugh with them, I can, you know, but I can’t do that work for them. . . .

So if they’re willing to listen. If they’re willing to [listen to] those things like get the sweat lodge together . . . I was there a couple of weeks ago when they built that sweat lodge and they were all working together. . . . They worked well. There was laughter, there was some frustration but they’re working that out, eh? . . . We are human beings: We do get angry, we do get frustrated but, you know, you’re here now so what are you going to do? How are you going to change that? By talking, by sharing, . . . talk to that person without getting angry first, but try to get to it right away when it’s happening and that’s not easy.

It’s not easy. . . . So when something does happen, what is going on in here? What is going on in here [gestures to her heart and her head]?

- In a healing methodology honesty works with humour to build trust.

ELIZABETH: The big thing is to just try to be yourself in whatever you’re sharing at the time. Because if I’m trying to . . . I feel like I’m being dishonest about something, then the people will pick it up, right? And then, like, how can you trust . . . how can you not . . . how can you trust if you’re . . . if I’m not being open. . . .
When I worked . . . when I was with the men and we go to the wellness room every morning at 8 o’clock for morning circle and they had two chairs there for the Elders and I came in one morning and one of the fellas was sitting where I normally sit. Usually when that happens, they would get up right away and move to another chair . . . this fella didn’t. And he . . . and he just stayed there. I came in and, you know, there’s lot’s that goes through your head in here and I thought, so where is there an empty chair? And the thoughts that go through your head here. . . . Where can I sit? I’m looking to see where an empty chair is and then I thought: I wonder if he’s testing me. So, and without even thinking, I just kept walking and I went like that [gestures with her thumb to direct him out of the chair].

And they all burst out laughing and he moved from the chair. But, I think that humour and for me too is basing whatever it is that’s happening in here too because I’m not a very good pushy person and for me to do that was not really something I would normally do. Normally, I would go and find another seat. . . .

And I think just being willing . . . you know, being willing to step out of your own little space . . .

RESEARCHER: It also tells you something about trust. I mean, they’re trusted to play with you. And for you to play with them because they were all clearly in on it and clearly laughed . . . that doesn’t fall out of the trees either . . . you all got a little out of your comfort zones.

ELIZABETH: Like, “get out of my chair!” . . . and I didn’t even say a word, right?

RESEARCHER: You didn’t need to.

ELIZABETH: No, I didn’t.
RESEARCHER: They all knew.

ELIZABETH: Yeah. And to me, that’s that humour that has helped us to be where we are, you know? Because we’d had a long history of change and I didn’t understand it when I first started. You know, when I first started my healing, I didn’t know a lot of that history and when I started going to school, mostly at Laurentian University, I went into a grieving. I went into a really deep grieving but the grieving isn’t something. . . . You know, you still have to get up and go to classes, you still have to get your work done, you still have to do all that. But the grieving was there where I continued to hear about the different things that happened. The losses of land, losses of cultural practices, of children from their homes and, of course, experiencing that myself also helped me to get here—to understand myself a little bit more, too. And I think when we get to that understanding of ourselves, people, we can put that energy out there without saying a lot. We can put it out there with our smiles or with our acceptance, being non-judgmental, not criticizing. But I mean, that takes time because there was a lot of criticism there and I cared about myself so having to work at, again, this location of “self” . . . getting a lot of that anger out and that fear . . . not to say that I still don’t have . . .

➤ Elders carry the responsibility of the work long after a participant has left the program.

MAVIS: This one Elder . . . was working with an older person who was getting released to the community, and then two weeks later, they shared with me. I said, “How’s that guy?” They said, “Oh, he passed [away].” Wow. [He lasted] Two weeks. Again, they’re used to being here. They don’t have, that’s what I see a lack of, nothing network for them to go—welfare, find a place to stay, they’re not using them or don’t know where
to go for them. That’s why I’m so—looking at their release plan. What are you gonna do when you get out? Where are you going? At that door, where are you going? Who’s coming to get you?

RESEARCHER: That’s a big question. Who’s coming to get you?

MAVIS: Yeah, that’s what I ask them.

RESEARCHER: Is there anybody coming to get you?

MAVIS: That’s it. Is anyone coming? How much money do you have?

RESEARCHER: I was at an institution recently and there was a guy who was leaving and his dad was picking him up, and in the five minutes that I was at the front gate, I learned that this was his second time. His father had told him, “There will be no third time.” And this young guy was maybe 23 or 24, so he had done two short—he’d done a provincial thing and then a federal thing, some combination, but this was not the first time he’d been in an institution and the CX, the security guy on the gate, was saying “Two things: you’ve got a father who picked you up and second thing is, don’t screw it up because we don’t want to see you again.” But you could see this young man—I don’t know that he fully understood that there are lots of guys that don’t have someone who picks them up.

MAVIS: How many get the chance to go back home? . . .

The ones that I worked with when I first started, they’re all gone. Or, there was two that passed. Passed away. Yeah.

RESEARCHER: Natural causes?

MAVIS: Yeah. Uh, One was awful. It was a killing—a shooting. Yeah. That was the first time I ever went through something like that. Traumatic. But I had help from the
other Elders. . . . And all the guys that were there at the time. We went to a lot of circles with the Elders, ceremonies, a lot of going out and they were pretty close. . . . We celebrate them. We remember them. We talk about them. We feast them. We bring food and we share. They talk about it and it’s less and less now. Talking about it, I don’t hear that pain in there anymore. Know what I mean?

RESEARCHER: It’s hard work what you do. It’s hard work.

MAVIS: Yeah. It is. But at the end of the day I’m happy that I helped somebody today.

Summary: Healing. Healing is a small word with great implications.

The words of these Elders indicate that healing requires self-awareness, words that are a bridge to theorists such as Tuhiwai Smith who clearly positions self awareness as a central feature in all healing endeavours (Tuhiwai, 1999). This is supported in the words of the Elders as evidenced in Elizabeth’s “I realized I was out of balance” and Robert’s “I describe it as looking alongside at creation.”

Healing requires resolve and determination. Robert notes, “I started helping and supporting First Nations people . . . because I did time myself.” Elizabeth adds, “So, the healing has been the number one thing for me.”

Healing requires connection. Elizabeth states, “It is hard work but at the same time . . . there’s laughter and there’s teasing.” Alexander elaborates, “They show a lot of respect for those people because they, like I said, they’re not going anywhere soon anytime soon. . . . They really value that time with the people who come into their lives”

Healing is ambitious, as Alexander attests: “Maybe sometimes I’m a conscience, bringing things to light maybe that sometimes we as human beings just want to keep in
dark places and not admit that these are dark things that we’ve done or think or do. . . .
I’m also encouraging them, trying to encourage them to have the bravery to look. And
then, asking them to tell me what they see.”

Ultimately, these Elders’ words reflect their understanding that healing is not easy. William observes, “They’re full of anger; they’re full of issues that they’re dealing with. . . . Robert adds. “It’s a long process of healing, a long process.”

For all that, there is method and relationship contained in these words. The method outlined by this group of Elders is to embrace each person as an individual. They acknowledge that some individuals move more effortlessly, while others may never have the courage to look at their own reflection. The healing is contained in the humility that comes with each person finding unqualified common ground, as highlighted by Elizabeth: “There’s laughter and there’s teasing and it’s . . . we don’t . . . we can joke around and have fun while we’re working on our healing.”

These Elders bring to life the words of healing theorist Nin Thomas, (2004) who writes that justice produces equilibrium. The contribution Elders make in this process is to move abstract theory to daily practice. In this process equilibrium is achieved when the individual acknowledges that nothing about the decisions they made that contributed to the incarceration imperative is fair or just. If justice exists it crystalizes when participants stop making excuses and blaming others and recognize the harm they have done to themselves and to their community. In this moment healing becomes a participatory activity that leads to equilibrium. Among the outcomes: participants provide themselves the opportunity to reacquire their personhood. Participants in healing
programs who have recognized the harm they have done can eclipse their fingerprint serial number to become someone’s brother, sister, aunt, uncle, father, or mother.

In the context of the prison, it is often difficult imagining these participants as people you would invite home for supper, yet that is exactly what Elders feel must be conveyed: that each participant is worthy of a supper invitation. For healing to happen, unqualified common ground must be found. In this understanding, humility and healing merge and overlap.

**Ceremony**

Ceremony, with its many rituals, is the foundation from which spiritual moments of participant epiphany occur. The use of ceremony in both ritual and prescribed forms seeks to reinforce the understanding that all things are related and that the rituals that contribute to ceremony are there to tell us, “when it is right and when it is not” (Wilson, 2008, p. 61). Ritual and ceremony in healing programs is understood as a concrete process that leads to changes in value systems. The aspiration of ceremony in healing programs is that participants will adopt the relational values of “generosity, caring, respect and altruism” in place of the myopic values that brought them to prison (Waldram 1997, p. 86).

*Each of the healing programs run by this group of Elders, regardless of gender or security level (including Pathways Initiatives), follows a similar ritual pattern. Each gathering of participants begins with gathering in a circle, smudging and ELIZABETH: I start at 8 o’clock and I start at the Pathways house and right now we have six women in there. This Pathways Initiative was started in April but the house itself wasn’t ready so we had to wait ’til the house was ready and then you could move the women in. We had*
four women in there and at 8 o’clock I have circle with them. We smudge and we pray. Sometimes if we have the time we’ll go around circle—we try to do that—but I have to be mindful that the women have to work. They do have their jobs, they do have school, they do have programs that they have to go to so when . . . if there’s . . . when there are women that don’t have those . . . to do that, I will stay with them and we’ll talk a little informally. If there’s one, it’s sort of like a one-on-one but if there’s two we’ll . . . For me it’s [ceremony is a way] for them to get to know me. . . .

I’m building a relationship with them and also, it’s not just working with the women. It’s working with the staff, too.

➢ then sharing. This is followed by a group session that incorporates a teaching.

MAVIS: So a typical day . . . we start with the circle, smudge, everyone goes around the circle, and then you do group. And then we also have . . . now I add crafts in there. And this, my co-worker [an Aboriginal liaison officer], he looks at me and goes, “How come you have crafts once a week?” I said, “Well, I'll show you why.” I said, “I want you to just observe all the guys, what they’re talking about, and their actions, how they talk to me, like what’s going on—I want you to observe that.” So after he agreed I said, “Okay, so what did you notice?” “So-and-so—they’re talking to each other! They don’t usually do that.”

➢ The foundation of the ritual and ceremony of Elder-led healing programs is the found in the medicine used in the teachings. In medicine wheel and sweat lodge teachings, tobacco, sage, sweetgrass, and cedar are integral to the connections to knowledge transmission. In these connections, participants are provided the tools to move from recognition to responsibility, restitution and reconciliation.
Mavis: When I do the group circle, I talk about all these medicines. I talk about how they’re used, why they’re used, and how it helps them. And I share this with them ongoing, once a week.

Alexander: If we’re outside and we’re getting ready for a sweat lodge or even the social event that we call the change of seasons, there’s a lot going on. So within a bigger group there’s still a process that they all understand. They understand that there is a process, and there’s respect in there as well. And even still amongst themselves, for the various reasons that they’re in prison.

Robert: Well I just kind of go on the mood again of the setting of an institution. We’d have circles they respect that, that this medicine is burning in the centre or that eagle feather that’s laying there, or that eagle feather is going around as a talking stick.

The ritual of the Elder-led healing program does not presume that the teaching must come from the Elder.

Mavis: One guy said, “Don’t you ever get mad?” And one guy said, “Oh yeah, she gets mad.” He said “I don’t hear her.” He said, “That’s it. She won’t talk to you.” “Oh, and how long?” “It depends on you.”

Alexander: I think it’s that, but it’s also I think learning by seeing, I guess maybe. Like if there’s, for an example, if there are lifers in there, and they see how the lifers are handling certain situations and so on and the short timers as they call them come in, they’re always encouraged you have to learn the flow of what goes on in the prison, and it’s the lifers that kind of set that out, this is the protocol for things. When they see the lifers, how they react and behave, I guess maybe with the Elders.
The ritual of the Elder-led healing program does not carry a series of program expectations delivered or enforced by the Elder although standards of behaviour do exist. The expectations of the Elder are vested in arriving at a respectful group understanding of what would be reasonable and positive.

ELIZABETH: I’m building a relationship with them and also, it’s not just working with the women. It’s working with the staff too.

ALEXANDER: We’re open to anybody. But we want people to be genuine. We don’t want them coming because we have a huge feast after sweat lodges, that sort of thing.

MAVIS: There’s hardly any swearing. “There’s medicines here in this room—I don’t want no swearing.” “Okay, so there’s no more swearing.” And I said, “If you continue that, you know, you can, there’s the door. I’ll have the ALO escort you and you can go back to your cell.” They say, “Okay, I’m sorry.”

ALEXANDER: They see a guy speaking with me off to the side, kind of like you can tell there’s always like one or two or three floating around and it’s kind of like they’re waiting their turn kind of thing, and when one guy gets up [then] somebody else will come and approach me, but everyone, it’s kind of like that’s part of the code. The rest of the guys see someone talking with an Elder off to the side and they’ll just kind of keep their distance. They’re not there to eavesdrop or anything . . . they respect that somebody is working on some stuff, one on one.

Ceremony takes many forms: It is a process of practice and ritual that links participants and Elders.
ELIZABETH: We had four women to start and then we just had one left. Two more women were brought in and things happened there. So one woman was removed because of, you know, other personal things. And what I learned from there is that we just can’t move the women and plunk them in there and say, “Okay here we are.” So with the last two women that came in, we had a welcoming circle for them where we all sat and we all talked and we introduced ourselves and got to know each other. We have a Pathways parole officer and she came and sat with us as well. It’s not easy living in a . . . you know a house with six other women.

MAVIS: So I use this where I am now. I have the medicine all the time and I just feel that, I go in to the building, I feel it, I’m very sensitive, and I will feel that negative. Soon as I walk in I’ll go, “Oh man, somebody just had an argument in here.” So then I’ll just clear the air and then some of the guys, even the staff will say, “So there’s a lot of negativity, eh?” I’ll say, “There was, didn’t you notice?” They’ll go, “Oh yeah.” And the guy, the one that was arguing with another staff was like, “Wow, I needed that I guess.” I said, “How you feel now?” He said, “Good.”

RESEARCHER: I had a guy really early on in Living Skills one time. We had a coffee machine. This guy, something had happened on the range and he’d look and he’d say, “Not until I can smell the coffee.” And we all kind of got it, you know—let’s just take five minutes and we can all smell the coffee.

MAVIS: So that’s how it is to smudge. But also, when I do the group circle, I talk about all these medicines. I talk about how they’re used, why they’re used, and how it helps them.
ELIZABETH: They are used to working with the other Elders that have been there for a couple of years. And I do counselling . . . do ceremony . . . and when I worked with the men before and I didn’t really have to do ceremony because the [other] Elder does the sweat lodge and different things at [Institution X]. . . . I didn’t have to do sweat lodge at [Institution Y] but I don’t have the experience of doing a sweat lodge and I won’t just go and do that. I feel like I have to have teachings and be given those teachings by an Elder. And then I found myself at [Institution X]. [laughs] . . .

Yeah. It would more demanding [to work with women in an institutional setting] because I’m required to do ceremony. And I was able to be in a sweat lodge last week and the Elder there let me be the lead it; which was pretty exciting . . . and we had fun with it. The women said it was good: There was humour and it was gentle, but it’s not because I was trying to make it that way . . . I kept missing the pit . . . and of course the steam wasn’t coming up. And the pit was big enough. We had that to laugh about.

RESEARCHER: It was dark.

ELIZABETH: And I was sitting further back and I kept missing the pit and landing over on the left side. But we finished. And this wasn’t a regular sweat – a healing sweat – it was more to open up this new lodge that had been built in a different part of the grounds . . . It was to bless that particular new lodge and to birth the drums. The women had made drums. The other elder had done a workshop for making drums and we birthed those drums at the same time. So I’m learning . . . I have to remember whatever the Elders said . . .

6 Institution names have been changed to protect anonymity.
Summary: Ceremony. Elders in this study, regardless of generation, have an unvarnished understanding of themselves in relation to the work they undertake. They come to the work and ceremony after significant personal reflection and study. It is an understanding that Wilson (2008) refers to as relational, in which experience and teaching are linked and it is understood that it is impossible for knowledge to be acultural (Meyer, 2001).

The central method applied by Elders in healing programs is ritual and ceremony; it is a decolonizing process that guides participants towards reflection. Elders present the participants with rituals and teachings from a series of oblique directions that require the participant to find recognition and responsibility in a self-initiating way (Couture, 1994).

Elders’ knowledge is concentrated in the Indigenous knowledge that flows from the teachings (Tuhiwai Smith, 1999). The language of the teachings does not concern itself with the language of the theorist or, for that matter, the language of policy makers. The vocabulary of the Elders does not include words such as restorative or Indigenous. To some extent, the success of an Elder–participant interaction can be understood to flow from the capacity of Elders to create programs that function beyond the ebb and flow of the prison in which they are located.

Among the current generation of Elders, each person places a slightly different emphasis on the day-to-day function of ritual and ceremony in their healing program. For the most junior of the Elders, the decolonizing program that she provides to incarcerated women is a gentle learning environment in which she combines ceremony and decades of social work experience and seeks to find balance one individual at a time. For the most senior of the Elders, the functional success of his Pathways Initiative program for male
participants can be measured in its capacity to create a culture of mentorship between participants and, by extension, between participants and other professionals within the institution (including ALOs and parole officers). For him, the sweat lodge is a key relationship component of his decolonizing healing program. For the Elder whose experience is rooted in four years of work in a reception assessment centre, healing programs flow to and from the medicine wheel teachings. She uses the medicine wheel in literally hundreds of ways in an effort to create avenues of communication between the participant and the parole officer and the participant and the correctional plan as a means to lay the foundation for communication between the participant and the community.

These three different understandings of the need for ceremony may be the unique contribution that each Elder makes to the personification of theory. When Couture (1994) writes about a three stage process of recognition, responsibility, restitution to secure reconciliation it is confined to the page. Each of these Elders has clearly understood that each participant needs to experience ceremony as a personal tool and that the tool that gets one person from isolation to recognition may not be applicable to any of the other participants in the program. The time and process by which one person gets from recognition to responsibility is different than any other person in the healing program. The common currency that connects one persons experience to another is ceremony.

The individualized and overlapping perspectives these Elders take on the role of ceremony challenge Waldram’s (1997) assertion that institutional healing is mostly symbolic. For these Elders ceremony is a means to model a host of positive assumptions, attitudes and values that the participants reflect back in lived ways.
Teaching

In the context of this study, teaching is more than the transmission of knowledge or, for that matter, the skills-based instruction required to complete a particular task. Teaching, in the context of Elder-led healing programs, relies on the integrity of the Elder to effectively listen and speak in the oral tradition; through ritual, ceremony, and narrative, Elders pass along the knowledge of the teachings, “honouring the lessons you’ve learned through saying that they have become a part of who you are” (Wilson, 2008, p. 123). In this responsibility, healing programs demand a commitment from everyone in the circle to actively become more self-aware.

- The role of Elders is to teach—to teach the same thing over and over again until the individual participant has learned how to internalize the teaching. Elders seek the support of other programs in support of the goal of internalization.

RESEARCHER: Do you see yourself as part of a greater correctional program family or is it a stand-alone sort of thing?

ALEXANDER: I think, I kind of see it as both. Which is kind of weird, like we do our thing with the guys and we’re hoping, and sometimes we actually see this, and I have in a good working relationship between ourselves and programs, the things that we’re teaching them culturally is also mirrored through the programs. . . . We can be telling them all these good lessons or whatever and they’re just kind of blowing us off, and someone else comes in and says the exact same thing and they go “Oh jeez, I’ve never heard that!”

WILLIAM: I think my purpose when I was there was to like I said [to] teach and teach and teach until most inmates . . . grasped what I was talking about—how we as a
people lived in respect to one another in respect to everything and teaching in that way so that if they ever got out, they would learn to walk through life in a good way. That was my main thing to teach them about how to live that good life, to learn those old ways about our people.

ALEXANDER: It’s not that anybody sat down and said, “These are the rules you have to abide by this.” It’s just something they already carry with them.

MAVIS: When I do the group circle, I talk about all these medicines. I talk about how they’re used, why they’re used, and how it helps them. And I share this with them ongoing, once a week, same, and it has to be every Wednesday or every Thursday, so that they’re used to it. Because if I mix it up they’ll go, “Now what are you doing?” So it had to be all the time on a Wednesday or a Thursday. So I would have the group and then they would learn. And they would say, “How come you’re repeating this?” These teachings. I talk about the tobacco again. I talk about the cedar again. I talk about the sage or the sweetgrass. “You talked about this last week.” “So, can you tell me everything I shared with you last week?” They go, “No.” I say “Well, there you go, that’s why we’re getting it again today. . . . They go “Okay.” I say, “That’s how we were taught. When I was growing up” . . . So that’s what I’m bringing to them—practicing that again.

ELIZABETH: For us it’s that we care. Bottom line is that we care. You know, why are our people in there and why are they coming back in? How can I help? It’s just . . . because that’s what we call ourselves, we’re helpers.

- Teaching in an Elder-led healing program requires the participants to understand themselves differently than they have in the past.
ELIZABETH: A lot of them have been abused in so many ways: emotionally, spiritually, physically—the whole ball of wax. So they’re hurting and they don’t feel good about themselves. And my job isn’t judging—they’ve already been judged. It’s not my job to judge them. My job is to help: help them to see how amazing they are as human beings and that they have gifts that they can share and to help others get well. . . .

It’s nice when you hear some of these young fellas, “I want to do something, I want to help others. . . . They may go out and stumble and fall again and come back in again but, “okay, what did you learn from that?” . . . We all stumble and fall so we can pick ourselves up again. What are we learning from that?

ALEXANDER: I’m a helper. Maybe in some instances a teacher, maybe sometimes I’m a conscience. . . . I’m also encouraging them, trying to encourage them to have the bravery to look. And then, asking them to tell me what they see. . . . I guess it’s for the lifers that I’ve seen and had experience interacting with, they all know, that like you said, they’re not going anywhere soon. But it’s about I don’t know for them, when they’re dealing with Elders in the system it’s like all we have [to give] is respect. . . . So they know that; they show a lot of respect for those people because they—like I said—they’re not going anywhere soon anytime soon, so they’re emulating that respect towards these people that they know are only here for a short time because they’re going to be gone at the end of the day or they might not see them for another week or two weeks or a month or whatever, so they really value that time with the people who come into their lives or cross their paths for that short time, so they’re really receptive in that way.

MAVIS: [There are] quite a few guys that [have] come back in my community that have changed. They’re married; they have jobs, something to look forward to, right. And
they’re even helping out in AA meetings. They sponsor them. So, they’re not looking for sponsors, they are a sponsor. . . . Yeah, so they’re leaders. That’s my community.

- The goal of the teaching is to create self-awareness as a process in restoring balance. In this process, participants learn how to reference experience as elements in understanding, accepting, and listening.

ELIZABETH: When someone, to me, has been incarcerated they’re out of balance so that healing is essential to restore them I guess is the word. I can only go from my experience and what I have to help the women to get an understanding of themselves. So, the healing has been the number one thing for me. . . . 'Cause it is a mystery right . . . for me, it’s just (learning how to go about) accepting. I have this acceptance of something that makes sense to me that it just “is.” It’s responsible for this earth. Everything. Every bit of life. The sunshine, the air, the water, the earth itself. And again, listening to Elders about the earth is our mother and provides for us every single thing that we need to live a good life . . . in the big picture, so this a learning thing—it’s a learning. What are we learning from this here so that we can work it better for the next time?

ALEXANDER: I think there are challenges because of our culture. The whole system isn’t based in our understanding, it’s not based in our world view, it’s not based in our notion of healing, it’s I don’t . . . it’s not a holistic. It’s very . . . the whole system is full of people who know great deals of information about very little. Does that make sense?

RESEARCHER: Very little or little things?

ALEXANDER: Little things. They know volumes and volumes of stuff about an atom but they don’t know what the big picture is. So it’s kind of hard to relate everything
else that’s around that one little speck because your field of vision is so narrow and all of your knowledge is based on that one thing, then how does everything else relate to that? . . . It’s like science can tell us a lot of things, from like a mind point of view, but science doesn’t come from the heart. And that’s where the rehabilitation of these guys is: knowing the things that come from our minds, how to rehabilitate these guys but it has to be tempered with the values of the heart at the same time . . . to be an example to the guys we’re trying to rehabilitate, to show them how to live from the heart as well as the [other correctional] programs make them think about how they need to act . . . but there’s no teaching on how to put the heart into those tools and that’s kind of where we come from as spiritual advisors.

They say that you know that’s a hard lesson for some individuals to learn because the greatest distance that can be travelled is between the mind and the heart, and to connect those two that’s another issue all together. . . . Whenever something happens that triggers them, its anger first. Instead of the way that I was taught was that if something surprises you it shouldn’t be anger, it should be wonder.

**Summary: Teaching.** Within the belief system applied by Elders, there are common threads. Among these is the understanding that they will, as William says, “teach and teach” until the program participants have mastered how to live in respect “to one another in respect to everything and teaching in that way so that if they ever got out they would learn to walk through life in a good way.” The object of the exercise is not to simply get out of prison; the object of the exercise is to teach participants how to walk through life in a good way. The Elders’ understanding of the importance of teaching in
healing programs is central for participants who need to learn how to build the community-based relationships that are key to securing healing and balance.

The foundation of the teaching is the ceremony and ritual that guides participants through the medicine-wheel teachings and the use of sacred tobacco, sage, sweetgrass and cedar in rising to the challenges of the day. Success can be measured, and the role of the Elder confirmed, when the participants internalize the medicine and find balance. At regular intervals Elders conduct sweat lodge ceremonies for which participants can spend months in preparation and in which the capacity to be self-aware and in the present is rigorously tested. In every sweat lodge, there is a round (during which new Grandfathers are added and the door of the sweat lodge is closed) in which participants suffer for the people. For participants in healing programs, this may be the most difficult lesson to learn. To develop the tools and the perspective to recognize their place in the world and to take responsibility for a little more than their share of the load.

The day-to-day structure of the teaching process provided by this group of Elders—regardless of gender or security level, including Pathways Initiatives—follows a similar ritual pattern. Each gathering of participants begins with gathering in a circle, smudging, and sharing, which are followed by a group session that incorporates a teaching. The teaching is provided in the form of a story from the past in which the people were confronted with a challenge and found how to resolve it in a sustainable way. As a structural standard, this reflects a common language and knowledge among the Elders that, in turn, rises to the duty of care aimed for in the CSC’s Continuum of Care policy.
This approach to teaching and the application of the teachings is a reflection of a decolonizing objective that theorists such as Linda Tuhiwai Smith (1999), Jonathan Rudin (2005), and Robert Ross (2006) have extensively explored. In the context of the teaching theme the differences between the contribution of the theorists and the Elders is as follows. The theorists work at a distance providing a panoramic macro image and an explanation what colonization is and why it must be deconstructed; by comparison Elders are embroiled in a one to one deconstruction that must explore the individualized colonization that each participant has experienced on their road to federal incarceration. When the participant has internalized their own individual colonized experience is the Elders must then work with each person to sort out how they are going to reconcile themselves to what is in the past and how they are going live a decolonized life going forward.

The words of the Elders reflect a clear understanding of the importance of teaching in the provision of healing programs. Each healing program is a unique reflection of the experience of its Elder. Often the reimagining required by the Elder to instill understanding moves the process outside the cultural parameters of the initial program teaching. The self-awareness that emerges from the experience is that the teaching becomes an internalized part of each participant. As Robert puts it, “It’s a way of life to us, to First Nations.”

**Relationship**

Relationship can be understood by the way in which individuals and groups behave towards each other. In the context of the Elder-led healing program this understanding is extended to acknowledge two world views: the policy and practice of
the CSC that relies on the assumptions of the King James bible creation narrative and the recognition and responsibility implicit in the Indigenous understanding that flows from the Sky Woman narrative. In this context, healthy relationships are understood to reduce the space between things strengthening the relationships we share (Wilson, 2008, p. 87).

- Each Elder comes to the work from a community-based understanding of responsibility.

Alexander: [The women in my community] said it’s, I have information that I need to share with the men that are in the prisons and they said you need to go there and do that . . . “We think you’ll do well, you’ll get accepted and you’ve got stuff to tell the guys in there to help them along, to discover themselves, or to heal themselves somehow along the way.”

Elizabeth: My focus is on helping the women to—and the men, when I worked with men to help them understand who they are because, as I said, when I first went to that circle, I didn’t know who I was as an Aboriginal person.

Robert: I started helping and supporting First Nations people after I got the support and help I needed as an offender back in the late 70s early 80s, because I did time myself.

- Elders in this group apply a method that requires participants to examine their past and present as a long-term process of reflection. In this self-reflection helping, encouraging, and sharing are integral to the work of participants learning how to take responsibility.

Alexander: I’m a helper. Maybe in some instances a teacher, maybe sometimes I’m a conscience, bringing things to light maybe that sometimes we as human beings just
want to keep in dark places and not admit that these are dark things that we’ve done or
think or do. . . . I’m also encouraging them, trying to encourage them to have the bravery
to look. And then, asking them to tell me what they see.

**Mavis**: You gotta be crazy to work here. You gotta be brave too. It just made me
. . . but that’s not why I come to work here. What made me come to work here is sharing
these teachings with you. Trying to help you see there would’ve been other options.

**William**: Our way of doing things, we teach and teach and teach over and over
again until it sinks in. If we’re lucky, they get it. . . . The way we do it is we give them
that opportunity to try to become good and be a good person and if they can’t [live] that
way that’s just kind of like; that’s the way.

**Alexander**: [Ultimately] It’s all on him, it’s that they have to make that
decision. We can refer them, but we can’t make them go. So sometimes we get really
tired arms from holding up that mirror hoping they’re going to see something other than
[to] go, “Oh, what a good-looking guy.”

- The policies and legislation that define the expectations and practices of
correctional institutions in the CSC do not figure prominently in the day-to-day
workings of healing programs. The relationships Elders build between themselves
and the participants and themselves and the staff are essential links between
people and policy.

**Elizabeth**: I’m not that familiar with all of your policies and CSC policies and
that. . . . I have pretty much stuck to what . . . what it is that I have to do because there’s
all kinds of people there who know what these policies are and if I have a question I can
ask the PO or I can ask my supervisor or I can ask the manager. . . . My focus is on
helping the women to—and the men, when I worked with men—was to help them understand who they are because, as I said, when I first went to that circle, I didn’t know who I was as an Aboriginal person.

ELIZABETH: So, they [the staff] will guide me on any of those policies. They’re the ones that are familiar with that. As an Elder, I think for me, I’m there to help the women to see who they are and to understand what this healing is about.

MAVIS: Sometimes it’s hard. Yeah. The one thing, all the time, every institution I come to work at, the first thing is that they’re trying to get the Elders to bring in tobacco. I said, “No, I’m not bringing in tobacco, because it’s not allowed. And they go, “Well, according to the seven blah, blah, blah, you can bring our medicines.” “Yeah, okay, so long as I see that you’re doing it for the purpose of using it in that ceremony. I’m gonna make sure that you’re in that circle and that you’re putting it in the fire. You’re not gonna go like this and . . . smoke later.”

ROBERT: For me, I never understood them, or wanted to take the time to understand them. . . . But for the policies and what not, that wasn’t my role; region up in Kingston [concerned themselves with that]. Wasn’t mine. I was there to meet the needs of the First Nations.

➢ Healing programs are challenged by the administrative demands of the CSC around cost, time, and program completion.

RESEARCHER: If budgets are the dominant issue, and if the demographics are changing, is that the conversation . . . we don’t have enough time to do things?

ALEXANDER: A big part is just the way that it’s expected to run, it’s all on turnover of guys, and as spiritual advisors, our question is how effective is this if we have
like six months to a year to work with a guy, how effective can we be? So we’re questioning it, those of us who are involved in it. It’s like, you talk about healing yet you don’t give the guys time to heal. And it’s about, it’s almost like they want drive-thru healing if you will. Kind of like order from the menu, you get it, pick it up at the window . . . McCulture has even reached the healing spirituality world. McSpirituality.

➢ *In the CSC Continuum of Care policy document, Gladue reports are an important tool in the transparent administration of sentences for incarcerated adults of Indigenous descent. Elders in this study are unaware of the place of the Gladue decision or Gladue reports in the administration of sentences.*

RESEARCHER: What about Gladue reports?

MAVIS: Oh, I don’t do Gladue.

ALEXANDER: No . . . that doesn’t really figure into anything that we do at all.

RESEARCHER: Do many of the guys you deal with come with Gladue reports complete or are you involved in creating them?

ALEXANDER: No we don’t have anything to do with them. There are writers out there but stuff like that hasn’t—I can see it coming into the institutions at some point, but it hasn’t gotten to us yet. It’s like, as far as programs right now, I think that’s as far as it goes, they’re looking into it to see if guys need that program or whatever, but I think mostly they just look at their offenses and base it on that, and not what has happened to them prior to any offenses. To me it’s two separate things.

➢ *Elder’s have a well-defined understanding of their position within the organization of the CSC institutions to which they are assigned. Aboriginal*
liaison officers are an important relationship that impacts the Elders ability to provide for the needs of the participants assigned to healing programs.

ELIZABETH: I’m not that familiar with all of your policies and CSC policies and that. . . . And I have pretty much stuck to what . . . what it is that I have to do because there’s all kinds of people there who know what these policies are and if I have a question I can ask. . . . Or, if I’ve done something, I will be reminded, you know, “That’s not what you do.” There, thankfully, for me . . . working at CSC, the ALO takes care of a lot of that . . . those things of what is . . . you know, those policies that are in place. . . .

So, they will guide me on any of those policies. They’re the ones that are familiar with that. As an Elder, I think I understand that for me, I’m there to help the women to see who they are and to understand what this healing is about.

RESEARCHER: So at this point the ALO is really a partner.

MAVIS: Yeah.

RESEARCHER: So, those ALO relationships?

MAVIS: Some of them are not good. I don't know . . . for me, I find a good ALO, if he’s working with you, about everything, talking, debriefing, when I was at [Institution Z] I debriefed with [an entire team of staff], it was pretty good. We would debrief every Friday and that’s what I did when I was in assessment, I would debrief with AWI [assistant warden interventions]. Actually, everyone, on Friday’s, and this would be every two weeks. I would call them into my office; it was a big space, so we would have the teachers there, ALO, security, . . . who else was there? Some of the CXs (security staff), one or two of the ones always on the strip. And I would call them and say and we’d have a meeting, “Okay, do these guys I’m working with have any problems, how are they in
school?” And then I would just make a note to myself who I’m going to talk to, so they’d get one-on-one, and we’d fix it, right there. Even school. I’d say, “Okay, I talked to your teacher who said a couple of times you missed school. What’s going on? How come you’re not going?” Or, “CX said you were upset the other day and calling somebody names. What’s going on?” So I’d ask them what happened there, and same with the ALO. The ALO would let me know what’s going on. I’d say “Oh, right, I’ll have a chat with this one.”

ALEXANDER: Their role [the ALOs] is actually at this moment being redefined by CSC . . . They handle all of the administration of the Aboriginal services within an institution to make our Aboriginal program run. So, they’re a liaison officer between the Aboriginal inmates and the institution, but they’re also a liaison officer between the Elders and the institution because we don’t, as Elders or spiritual advisors, whatever you want to call us, we don’t come from a security background and Aboriginal liaison officers have that training.

Some are very strong together, some are almost like worlds apart and they don’t work well together. So my experience is a lot of that is personality fits between the two—attitudes, understandings, and all of that. But it’s also cultural competency as well between the Elders and the ALO. If someone has been hired as the Aboriginal liaison officer and if they come on board and they don’t know anything about their own culture or anything like that it makes it difficult to be an effective team because it’s almost like sometimes the ALO is working with the Elders but is like there’s an unspoken communication about what needs to be done and sometimes . . .

RESEARCHER: You’ve got to work off each other.
ALEXANDER: Exactly. But if you don’t know how to do that . . . I guess it’s knowing their own culture. If they grew up not knowing anything about their culture, then all of a sudden they’re stuck into this position where it’s expected that you know your culture and you don’t, that’s problematic.

- Legislation and policy has a significant impact on the capacity of Elders to build the relationships necessary to the delivery of effective healing programs.

ALEXANDER: We’re impacted by everything. Because really when it comes down to it, we’re just, what’s the word, we’re just as impacted by all of the rules and policies and everything as much as the inmates are.

ALEXANDER: As individuals coming into the CSC, we’re not acknowledged . . . or even recognized . . . but we keep doing it because that’s what we do.

RESEARCHER: So it’s a policy change in tobacco then?

WILLIAM: Yup. Not only that but other medicines because if you bring traditional tobacco or ground up cedar right away they think that’s bad. But yet they don’t want to take the time to understand those teachings or smell it. One time I laid all the medicines out and I even lit it, for programs, for staff, at [Institution W]. I said smell this. This is what you’re going to smell in the institution because people are going to pray with it. Oh that one smells like tobacco. I said well that’s not tobacco. And I said I want you to understand the guys might use it in the wrong way but think about it. They’re in prison. They are going to try to smoke it. So right away when they try that they’re thrown in the digger [segregation] or transferred to another institution. And they go right down hill again and got to bring their self-esteem right back up again.
The application of dominant-culture, Eurocentric assumptions and policy undermines understanding and trust.

RESEARCHER: I’ve thought of you as an Elder, you’ve also described yourself as a spiritual advisor. Does that mean the system sees you more as a priest or a minister than an Elder?

ALEXANDER: Yeah, I think that’s how they set it up, but that’s not how we see ourselves. But I think that all comes from a system that is trying to set up something Indigenous without being put by Indigenous people. So they set everything up and see it based on what they know, so that’s the church and religions and so on, but that’s not where we come from, it’s not the same. It’s just not the same. . . . So the spiritual aspect of the individuals in the institutions, we help with that, but we’re also counsellors, kind of like on the level of social workers, but we also go into some very deep things with them as well. And some of the Elders have said we’re more like psychologists but we also do healings with traditional medicines at the same time so we’re providing health care. And at times as well we’re playing the role of liaison where there’s a breakdown in the role of liaison with the guys between the guys and the system, the institution we’re in. And sometimes we’re the liaison between the guy and the liaison officer because there’s a breakdown there. So we play a lot of different roles, and some of the old guys have gone to the NHQ [national headquarters] complaining. Saying that we’re playing all of these roles and expected to, then I want to be paid as this and as this and as this and as this rather than just one and expecting to play six other roles. So some of the old fellows kind of get quite upset about that. So we play a lot of different, we wear a lot of different hats . . . as individuals that come from the community . . . that’s what we do in the
community, that’s what we do in the institution, and we don’t think twice about it. But it took this old fellow saying this is what we do and all these individual things, like the 100,000 dollar jobs outside of the community, like people with letters behind their names, and we do these things and we do them very effectively and [we do them because we have a responsibility as] there are people who’ve done them for thousands of years, and yet as individuals coming into the CSC, we’re not acknowledged in that way or even recognized. . . . But we keep doing it because that’s what we do.

ROBERT: It’s a way of life and I tried to explain that to wardens or program people or even parole people that it’s a way of life to us, to First Nations.

WILLIAM: They don’t want to believe it.

ROBERT: Yeah, they don’t want to believe it. They don’t know.

WILLIAM: They want us to do it the white man way . . . They’re [the CSC] there for the pay cheque. Not to see a Native get their rehabilitation.

➤ *The Continuum of Care treats all First Nations people as if they were from the same community.*

ALEXANDER: In different institutions there’s quite a few Inuit fellows and in one of the institutions there was three guys, three Inuit fellows and the system the way that it’s set up . . . they were expected to be involved with the Aboriginal stuff, because that’s what we did at this institution. And so they were given medicines every time the rest of the guys were, at the same time, so they had the sage, the sweetgrass, the Indian tobacco, the sacred tobacco as well, so they got that, they did smudging with us, they came to our teachings, and some of them came to our sweat lodges and stuff, and it’s like, an Inuit fellow in a sweat lodge? It’s like come on frosty, come on into the sweat lodge. . . .
Once [laughs]. But I got so upset with the administration because these fellas were basically, culturally and language-wise, were hurting, because they were expected to be Aboriginal. And take on our teaching, and all of our practices. They didn’t know what to do with sage and with sweetgrass. You know, “We don’t have this stuff in our culture what do we do with it?” Tobacco of course they would just abuse it. That’s what they knew to do with tobacco. We gave them the teachings but that wasn’t their teachings.

RESEARCHER: Well and if they’re trying to hold the mirror up to see themselves they’re not seeing themselves in any of that.

ALEXANDER: No exactly, so it was a really hard struggle to get the system to bring in their own elders, because he wasn’t available at that time. We had one Inuit Elder that serviced all of the institutions in Ontario . . . which upset me quite a bit because they were putting pressure on me, the upper admin, to make these guys follow what the Aboriginal guys were doing. I said they’re not Aboriginal, they have their own ways, they have their own teachings, they have their own food. I mean why are we making them become Aboriginal, that’s not who they are. . . . There was that and a couple other opinions that I had that I wasn’t afraid to share. I saw me involuntarily transferred to another institution [laughs]. It’s all to do with numbers and nothing to do with the guys’ healing.

➢ Current policy does not make the ongoing health and well-being of Elders a priority.

RESEARCHER: How do you check in and ensure that you’re healthy and you’re self-aware when you spend all day helping other people be healthy and be self-aware?
ALEXANDER: That’s the question we keep putting to regional headquarters. We keep saying to them [the CSC] that we need, as Elders or spiritual advisors, we need to be together like quarterly, and that’s what the process is supposed to be. And that’s when we do our healing work on ourselves, and in theory it was that we do sweat lodges when we’re together. . . . We’re supposed to be able to bring in an outside Elder to do the work on us because we’re always conducting things and healing other people but we need to have that work done on ourselves, too. So we need someone outside CSC to come in and do that work on us so we can be participants rather than the conductors. So that’s our opportunity to heal.

- Current Elders believe forthright, respectful communication is an essential ingredient for enhancing and preserving the safety of each individual living and working in the prison.

ELIZABETH: I think all of us have a role in the safety of the institution. However way we do that . . . the men would say that they appreciated the Elders being there because the Elders treated them as if they were human beings, so to me that’s building in safety when you treat somebody as another human being. You talk to them in a respectful way. You listen in a respectful way. And you share . . . you share your stories, your knowledge and, to me, that’s when we are doing that, that is . . . people become more aware of how they interact with other people. . . . You listen in a respectful way. . . . To me that’s just common sense. . . . There’s no magic. . . .

Everyone’s at different points in their lives and I really believe in affirmations. You know, when I started my first job, there was an affirmation that I found that [if] I just changed the wording a little bit and I would say that every day as I made my way to work
that, you know, this place is a good place that everybody is doing their best—something like that. . . . They’re all good people and, you know, the warden and the, you know, the deputy warden and everybody is doing their best to help . . . to help us all whatever, whatever . . . that affirmation . . . really putting that within myself, when I went to work, I would find that people smile at me, you know?

RESEARCHER: That they reflect back what you give them.

ELIZABETH: And I didn’t even say a word, you know? I didn’t even say anything but this affirmation, “Everybody is doing their best. They’re all good people. They’re all kind people.”

RESEARCHER: Yeah and I think that’s the distinction. I don’t think of prisons as dangerous places, I think of them as sad places.

ELIZABETH: And I’ve never, never, never felt threatened—ever.

RESEARCHER: That’s typically the question of someone who’s never worked around these places, someone will inevitably say: “Aren’t you afraid?”

ELIZABETH: Never. I’ve never been afraid. You know, the fellas will say, say it’s a . . . and you know, I did a couple of things . . . “Now Miss, do you want me to walk you through this rough neighborhood?” . . . just going across to my little office over there and I say, “Yeah sure, that’s great.” . . . “I can even go out and get your car for you.”

RESEARCHER: And they would. They might not bring it back.

ELIZABETH: Yeah, so again the humour right? So, but it was just, “yeah, they know where they’re at.”

RESEARCHER: And they know why.
ELIZABETH: And they know why. And there’s fear. To me, it was really a step in a right direction when you’re saying I’m really afraid for a man to say, [I’m afraid] of my parole, I’m afraid to go . . . Just to admit that you have a fear is a big thing to me. Because we often deny it and say, “I’m not afraid of that. I’m not afraid of that. I’m not afraid of this.”

➢ The staff of the institution indicate to Elders that participation in healing programs has an immediate impact on the behaviour of participants that makes the institution safer.

ALEXANDER: I’ve heard it from staff . . . “I don’t know what you guys do in the ceremony but these guys come back really calm, they seem to be a lot more level-headed.” They’re not as quick emotionally I guess, they’re—we’ve heard that said in a couple of different institutions . . . “Whatever you’re doing with these guys just keep doing it because they came back calm.” . . . I think they find it valuable, I don’t know if they find it valuable for the guys, but I think they value it for themselves because the guys we deal with aren’t such a big a problem for the staff after they come out of being with us for an hour or two. But once they go back into the living units they become, it’s almost like a Jekyll and Hyde.

➢ Elders believe that positive relationships are the product of thorough communication. This belief extends to linking their work to the work of other professional providers in the institution.

ELIZABETH: We have to keep working on those lines of communication, right? Because again, this is new so if . . . even for me if, like, I don’t include all the team members on there and if I just say . . . say somebody asked me a question and say Joanne
asked me a question and I really should put that question out, you know, put that out to...

ALEXANDER: Where I am now, it’s quite different. It’s a very positive atmosphere amongst all the staff. Which is really strange for me because the different institutions I was in that wasn’t so much the case, but now it’s like the correctional management team actually acts as a team, which is hard to find. But to me it’s the personalities, I guess, of the individuals of how they see their role in. . . . So one specific inmate, how does the team relate to him? If they have a holier-than-thou attitude towards the guy or do they want this guy to heal. . . . we’re not just figuring out what needs to be done and then moving it along to different departments, we’re actually doing the work ourselves. We’re doing the triage and we’re doing the treatment. . . .but we also know our limits. . . . If there’s something that’s going on that a guy needs to deal with, but we’ve taken him as far as we can and we know that, it’s almost like we’re referring him to psychology. But it’s up to him if he goes. . . . it’s all on him, it’s that they have to make that decision. We can refer them, but we can’t make them go.

➢ **Elders bring a sense of urgency and responsibility to their experience with institution staff. Without exception, this requires the program participants to be the catalyst in the relationship between the Elder and the staff and between the staff and the Elder. This is essential in building effective relationships with parole officers.**

MAVIS: So this is the part where I start to remind them, “Well, okay, you gotta start working with your POs. You gotta start showing that respect there.” And I said,
“You can’t demand help, they won’t give it to you. You start talking nice, ask nice, you’ll get things. You know? So be respectful.” So I said, “You talk to your POs. And same with, what do you call them, CX2s, they call them—so even them, you gotta be nice. And they’ll show you that same respect—it’s how you are.” . . .

Everybody learns a different way, a different pace when they come out to the sweat, the ceremony. So I tell them about their POs, I said, “Sometime you’ll want to request transfer.” I said, “When you want a transfer they’ll call me, say ‘Have you done a report on him?’ . . . So then we’ll talk and share and go through this wheel [medicine wheel teaching] again.

- For first-generation Elders—those Elders who were among the group who worked in the early healing programs of the 1980s and 1990s—the assumptions about the healing-program participants they worked with impaired the capacity of Elders to talk to other staff and on behalf of offenders.

ROBERT: I’m not the one getting paroled: You ask him, I told the parole board that, and I says after he’s done talking, I’ll reflect on it. If he wants me to talk about what we covered, emotions, anger, the victim, what his plans are when he gets out. . . . but I think we should hear from him first. . . .

Me, I was hired by corrections to help support my people—not hang around with [CSC staff], not be involved too much with people who ran those prisons. I tried to stay out of that; I wanted to be on the ground with the guys. But I dealt with one guy because I had to get tarps, I had to bring the food in and do this and that. And he says, “Well how come you’re doing it?” And I said, “If you want to know you come down to the grounds
and listen to those teachings and what we’re going to do and why and he made the time to come down and sat with us and he learnt himself.

- **The contractual relationship of Elders to the CSC and the subsequent relationship of the finance department of the CSC to Elders have a profound influence on the capacity of Elder-led healing programs to be effective.**

**ALEXANDER:** It all boils down to finance, and the bean counters saying, “Yes we can afford this this year, no we can’t afford this.” It doesn’t have any . . . peoples’ need for healing doesn’t figure into any of this. It’s just dollars and cents, whether we can afford to do this or not and we’re telling them, “We need this, we need this down time, we need to be with each other, we need to decompress, we need to vent, we need to do all these things, we need to heal.” And our thing is we know through, I guess, being told in past years that we should have four they call them Elders gatherings per year, but then it all comes down to finance. Finances trump everything.

**RESEARCHER:** Even laws and polices?

**ALEXANDER:** Anything to do with Aboriginal stuff in CSC, it needs to be reviewed and it needs to be reviewed by those who work at the ground level. Rather than those who hang out in the ivory tower . . . because they’re making rules and policies and programs and everything for those of us who work at the institutional level and they have no idea what we do. But it also needs to be done regionally because we’re all different. We have programs in Ontario that were developed in the Prairies: doesn’t work. We need, we also need it to be done, have a lot of input down from the various Nations of Indigenous people that exist across Canada, because we’ll find that different programs are saturated with the culture and the teachings from various Nations, and they don’t
apply to other Nations . . . it’s almost like a pan-Indian kind of thing where everybody has to abide by the same thing. . . . You have to remember that as Elders, spiritual advisors, we’re contract personnel. We don’t really exist in CSC. We’re not essential services.

➢ From time to time, moments of epiphany come from unlikely sources: These are the relational narratives that fuel healing programs one voice at a time.

WILLIAM: There was a time when the wardens really, some of them . . . they helped, eh. It was good. The wardens, some of them, were just plain ignorant, didn’t want anything to do with our programs.

[recalling a conversation with a warden] “We’re interested in helping it out [the healing program]. What would you like us to do?” And I said—I’ll tell you what I said—“I want you to come to my institution and I want you and that warden to come into that sweat lodge.”

RESEARCHER: So the warden and the assistant deputy commissioner have shown up, it’s pouring rain, and you guys are having a sweat.

WILLIAM: And they weren’t there yet. So anyways I said the opening words, brought the grandparents into the lodge [and] here they come and I looked and there they were coming down the yard there, three-piece suits and everything and I said, “You coming in?” and they said, “Yeah we’re coming in.” So they all got in . . . and I said, “Are you going to undress?” and they said, “No we’re all right.” . . . So they crawl into the sweat lodge with their three piece suits on, so I shut them right in [poured water on the] grandparents [went around the circle]. . . . They open up the door and there were the two of them [in the lodge] in their underwear and their three piece suits piled beside them
They were having trouble there too with one of the guys [other institutional managers]. . . . They made him come in too. . . . [Over the course of my career] I had 18 wardens come to my programs. Sometimes we kind of lucked out.

- **Elders, regardless of generation, must be aware of the impact of their words and actions because they walk a fine line between being valued or resented.**

  **ROBERT:** For me it’s a case of jealousy. Jealousy. Because the guys listen more to you than the person that’s part of the system and they look at him, well he’s from First Nations but he’s a part of the system. So the guys paid more respect to us than him, and he didn’t like that.

  **ALEXANDER:** ALOs, though I haven’t run into any that are speakers of their language. . . .

  If you have issues that are unresolved, through the healing work that we do you can actually be doing a lot more damage than good to the men who maybe have the same issue. So it’s hopefully we have worked through the majority of our own crap kind of thing, because like I said, because if we haven’t we’re just spreading more fertilizer on top of their crap, too.

- **In healings programs, the adhesive that links people is respect. In this context, respect is an act of reciprocity. It extends beyond having regard for the feelings, accomplishments and rights of others. In the context of healing programs, it is manifested in an “ethic of mutual respect and self esteem” (Rawls, 1971, p. 225).**

  **ALEXANDER:** I guess it’s for the lifers that I’ve seen and had experience interacting with, they all know, that like you said, they’re not going anywhere soon. But it’s about I don’t know for them, when they’re dealing with Elders in the system it’s like
they have this “all we have is respect.” . . . They understand that there is a process, and there’s respect in there as well.

**WILLIAM:** What I was talking about how we as a people lived in respect to one another in respect to everything and teaching in that way so that if they ever got out they would learn to walk through life in a good way.

**MAVIS:** You gotta start showing that respect there. And I said, “You can’t demand help, they won’t give it to you. You start talking nice, ask nice, you’ll get things. You know? So be respectful.” So I said, “You talk to your POs. And same with, what do you call them, CX2s, they call them—so even them, you gotta be nice. And they’ll show you that same respect—it’s how you are.

**ELIZABETH:** You talk to them in a respectful way. You listen in a respectful way. And you share . . . you share your stories, your knowledge and, to me, that when we are doing that, that is . . . people become more aware of how they interact with other people. . . . You listen in a respectful way. . . . To me that’s just common sense. . . . There’s no magic.

**Summary: Relationship.** Elders in healing programs depend on reflection as a technique to develop relationships with program participants and staff. In this process the CCRA, the Continuum of Care and Gladue reporting are not crucial components in the work. Elders’ knowledge is concentrated in the Indigenous knowledge that flows from the teachings. The language of the teachings does not pre-occupy itself with the language of the theorist or, for that matter, the language of policy makers.

To the extent there is common ground it is best described by James Waldram (1997) when he explores the difficulties that staff encounter in understanding indigenous
spirituality as something different than religion. It is, I’m sure, a contributor to his view that institutional healing is limited to the symbolic.

Elders’ attitudes about their place in the system have changed over time. First-generation Elders view their place in the institution as being in ongoing conflict with the needs and desires of the prison. This view is in some ways a reflection of Waldram’s (1997) understanding. Conversely, new generations of Elders do not view themselves as external contract workers who exist outside the deliberations of the morning meeting. In the first few years of experience, Elders view CSC management and staff as expert colleagues whose support and guidance they can rely upon. Regardless of experience, all of the Elders understand their relationship with the Aboriginal liaison officer as an essential component in an effective program-operations partnership as a relational provision in healing programs. However, this relationship can be challenging if the ALO brings limited Indigenous knowledge to the partnership.

There is a generational gap that exists between Elders. For the first generation of Elders, there is a confrontational and paternal tone to their understanding of how the program participant is to be respected and cared for. They also sometimes feel a requirement to employ confrontation with CSC staff, which is different from the stance of current Elders. To some extent, this is confirmation that first-generation Elders understand themselves to be disconnected from the staff of the institution. In this understanding, they feel they must adopt a kind of paternal surveillance that advocates on behalf of the “guys” as it chastises them. Regardless, these Elders play a role in the security of the institution that reinforces an understanding of the prison in the 1980s and 1990s as a place where life-threatening violence between offenders and life-threatening
violence directed by the offenders onto staff was more pervasive and likely than is perceived by the current Elders working in 2016.

The unique contribution that current Elders bring to relationship is that they link relationship with respect and respect with justice. In this they do two significant things; first, they make concrete what James Dumont (2004) hypothesizes as a justice guided by the Creator’s natural law. Second they connect Joe Coutures (1994) process of recognition, responsibility and restitution as a path to reconciliation. In the context of an Elder led healing program each participant brings value to the program. If one participant stumbles or drops out it is understood that everyone’s path to the reconciliation that comes with justice has been blocked. In healing programs the adhesive that binds relationship is respect. It brings the teachings to life as it allows people the space to extend the benefit of a doubt. It is much more elegantly put by one of the Elders, MAVIS: “So be respectful . . . you gotta be nice. And they’ll show you that same respect—it’s how you are.”

**Chapter Summary**

The Elders words bring into relief their understanding of their role, place, and function in the provision of healing programs.

The Elders who provide healing programs inside Canadian federal prisons are engaged in a process of reciprocal learning. It begins with a rejection of a dominant-culture understanding of status and place. Elder is a Government of Canada term rejected by the people who design and deliver healing programs. If they were to refer to themselves in connection with their responsibilities, they would call themselves helpers.
This reflects both a difference in world view and an acknowledgement that to refer to themselves as Elders would be entirely inconsistent with community practice. In this vein, the incarcerated adults who participate in healing programs routinely refer to them as Elders; this is entirely consistent with community practice. In this way, participants understand healing programs as extensions of the traditional community they aspire to rejoin.

Over time, the process by which the Government of Canada appoints individuals to the role of Elder has changed. In the early years, it was entirely by word of mouth. Current practice is far more formal with committees of professionals, which include serving Elders, reviewing applications and vetting candidates to ensure that there are hard community connections and diverse community support in the eventual appointment of an individual. The common ground in all appointments is that the individual who applies does so at the suggestion of others who are familiar with their work and learning in the community.

Elders are engaged in a process of reciprocal healing. It begins with the understanding that anyone can find themselves is a state of crisis. Elders begin with the assumption that we all live in glass houses. For healing to happen they must first make space to acknowledge their place in the universe, as exemplified by Elizabeth’s statement: “I realized I was out of balance.” They must then make space for emotions that grow things “It is hard work but at the same time . . . there’s laughter and there’s teasing.” Finally, healing happens when Elders fulfill a duty of care to challenge participants, as noted by Alexander: “Sometimes I’m a conscience, bringing things to light maybe that sometimes we as human beings just want to keep in dark places and not
admit that these are dark things that we’ve done or think or do. . . . I’m also encouraging them, trying to encourage them to have the bravery to look. And then, asking them to tell me what they see.”

Elders are not afraid to be rigorous and dogmatic and demanding. Elders understand that their primary function in the healing paradigm is to teach; sometimes the responsibility requires them to teach the same lesson over and over again. The foundation of the teaching is the medicine and the ritual and ceremony that emerge in teachings that are connected to the medicine wheel and the sweat lodge. Success can be measured and the role of the Elder confirmed when the participants internalize the medicine and find balance.

Elders in healing programs depend on reflection as a technique to develop relationships with program participants and staff. The foundation of the teaching is the medicine and the ritual and ceremony that emerge in teachings that are connected to the medicine wheel and the sweat lodge. In this learning process, the CCRA, the Continuum of Care, and Gladue reporting are not crucial components in the work. Elders’ knowledge is concentrated in the Indigenous knowledge that flows from the teachings. The language of the teachings does not concern itself with the language of the theorist or, for that matter, the language of policy makers.

There is a generational gap that exists between Elders. For the first generation of Elders, there is a confrontational and paternal tone to their understanding of how the program participant is to be respected and cared for. For them, there is a sometimes a requirement to employ confrontation as a program communication tool with CSC staff. This is different from current Elders. To some extent, this is confirmation that first-
generation Elders understand themselves to be disconnected from the staff of the institution, whereas current Elders are much more likely to view staff, and ALOs more particularly, as team members in a prosocial working relationship.

Chapter Conclusion

The ritual and narrative of the Elder-led healing program is invested in a different world view than the understanding that produced the dominant culture prison. It is the difference between consensual versus retributive and healing versus deterrence (Foucault, 1977; Garland, 1990, Ross, 2014). The space between these two world views is captured in the relational dissonance that lies between the Genesis creation story and the Sky Woman creation story. These are the stories that explain the assumptions of the prison and the assumptions of the Elder led healing program. For program participants the two narratives highlight the relational dissonance and the fractured relationships that permeate their experiences as they make sense of their place in the carceral world (King, 2003; Wilson, 2008). For the Elders the aim is to work with each individual to achieve internalized recognition and responsibility that will contribute to personal restitution and potential community reconciliation.

In Elder-led healing programs, respect is the adhesive that binds humility, healing, ceremony, teaching, and relationship. It brings the teachings to life, as it allows people the space to extend to one another the benefit of the doubt. It is expressed much more succinctly by Mavis, “So be respectful . . . you gotta be nice. And they’ll show you that same respect—it’s how you are.” These simple statements reflect a world view that is
often at odds with the fear-based reality of the carceral prison and, indeed, of the dominant culture.

Elders understand their calling as a requirement to challenge the sacred assumptions that brought participants to their program. Through ritual and ceremony, good humour and respect, they require the men and women they work with to be self-aware and present. In this expectation, the men and women who populate healing programs are not offenders, inmates, convicts, drunks, addicts, thieves, liars . . . or the host of other labels applied to them in the time and space that preceded the healing program. In the healing program, and with the Elder, participants are understood to have the capacity to be trustworthy, forthright, reliable, self-controlled, intelligent, and knowledgeable. For most healing-program participants, labels like trustworthy or reliable are akin to putting on a custom suit, made just for them, for the first time: It is a new and slightly daunting experience.

The most profound contribution of Elders to our understanding of the role, place and function of Elders lies in their perspective. The theorist view is best understood as a panoramic vista photographed from the window of an airplane. From this distance theorists are engaged in a process of rhetorical criticism where Edward Said observes the process that contributes to the ‘other’ and Tuhiwai Smith builds on his observations to offer a list of techniques that might be the catalyst for decolonization. Along the way Robin Quantick observes that restorative justice initiatives do not challenge the underlying assumptions of dominant culture justice and Robert Ross laments a justice system that incarcerates people of Indigenous descent in disproportionate relation to all of
the others who come before the courts. The common space in all of this is that there is a Grand Canyon of relational space between the observer and the observed.

Elders are in the business of facilitating personhood. The distance between Elders and participants can be measured in inches. The Elder led healing program works with one person at a time, from the inside out. When failure occurs there is grieving and messy rebuilding. When success is achieved and individualized internalized self-awareness emerges the whole room feels it in their bones. It is a moment of epiphany where the Elder and the participant both understand that parole is a state of mind and that sometimes the participant may have done too much relational damage in the past to achieve community reconciliation in the future… and that’s OK…

Participants in healing programs are understood by the Elder to be someone’s brother, sister, aunt, uncle, father, or mother. In the context of the prison, it is often difficult imagining them as people you would invite home for supper, yet that is exactly what Elders labour to communicate in every aspect of a healing program: that each participant is worthy of a supper invitation.
Chapter Seven:
Conclusions, Implications, and Recommendations

For over thirty years, the Government of Canada has made it a priority to hire Elders to lead intervention and healing programs for the expanding community of offenders of Aboriginal descent held in Canada’s federal prisons (Sapers, 2012). The Elders’ placement is embedded in a general policy aimed at successful community reintegration, the intended impact of which is to reduce the disproportionate representation of Aboriginal offenders held under federal warrant. Put another way, Elders are hired by the CSC in the restorative and colonial belief that, with their participation, fewer offenders of Aboriginal descent will return to prison.

The purpose of this study is to articulate the relational dissonance that exists in the spaces within and between correctional theory, institutional practice, and Indigenous world view. Specifically, it explores the differences in world views and assumptions that are brought to bear on the people and events that put us at risk.

The pursuit of successful community integration is central to the ebb and flow of daily institutional life. To transfer through the system and eventually secure a parole offenders are compelled to navigate a series of colonial structures, assumptions, and concepts. Power, knowledge, and compliance are the principle concepts that define the prison (Foucault, 1977) and, by extension, from the CSC’s perspective, the process that leads to successful community reintegration. For theorists there is a well-documented relationship between power, knowledge, and compliance in the retributive prison. This work isolates a binary question that preoccupies theorists and places role, place, and function of Elders in an academic context: Is compliance with generally understood,
retributive, dominant-culture values and attitudes sufficient to meet the requirement for successful community reintegration? Or are Indigenous understandings of individual, internalized self-awareness, recognition, and responsibility essential requirements? If the latter is true, then the retributive colonial prison cannot produce successful community reintegration as a substantive or measurable visible outcome. It is within this dichotomy that Elders do their work and that decolonizing theoretical concepts are enacted.

The rationale for the study resides in the need to create new understandings of Indigenous ways of knowing that empower consensual communication to diminish the influence of the dominant-culture retributive-justice paradigm in a process of decolonization.

The research question that connects the purpose and rationale was as follows: What is the role, place, and function of Elders in the delivery of Indigenous healing programs within Canadian federal prisons?

The rationale for the research was founded upon four elements: mandate and power, disproportionate representation, policy development, and consensual reconnection. These elements were explored in a series of relationships within the Canadian carceral prison apparatus, connections that are frequently defined by their relational dissonance. These include a legislated mandate, declared aspirations, and operational practices that are often at odds with one another. Among the outcomes produced in this relational dissonance is a disproportionate representation of people of Aboriginal descent held under federal warrant; and a small cadre of Elders across Canada who bring ritual, ceremony, Indigenous knowledge and healing to people in great need.
The research identifies the connections and disconnections that enable and impede the work of the Elders in the delivery of healing programs.

**Limitations of the Study**

The primary limitations of the study rest in the size of the Elder interview group and its geographical restriction, as all members of the group come from one CSC region (Ontario region). These five Elders were recruited from an active Elder community with more than one hundred estimated members across Canada; thus, the small size of this study’s interview group limits the ability to reach generalized conclusions. It must be acknowledged that each region, and each institution within each region, has a different culture and character. On this basis, the fact that the interview group is contained to the Ontario region may impact the study.

The secondary limitations of this study lie in the culture of the population of the people contained under federal warrant (within a prison). As such, the culture and upbringing (including differences arising from urban upbringings versus reserve upbringings) of those who participated in this study may differ from those of Elders employed across the five CSC regions.

**Conclusions**

Success for the Correctional Service of Canada is measured by its capacity to produce successful community reintegration for the adults entrusted to their care. The colonizing architecture of secure custody facilities operated by the Correctional Service of Canada (with their panopticon assumptions and heritage) and the ritual systems required to sustain carceral surveillance in pursuit of unqualified compliance serve as a barrier to
meeting the Government of Canada mandate to achieve successful community reintegration. In fact, successful community reintegration cannot be achieved with the current colonizing architecture maintained and sustained by the Correctional Service of Canada.

Conversely, Elder-led healing programs employ decolonizing principles of consensual design and delivery—focused on the role of relationship, balance, and self-awareness—to arrive at internalized recognition and responsibility. The aim in this consensual decolonizing approach is for each person to find an internalized path to restitution and, to the extent possible, community reconciliation. In this approach ritual and ceremony are essential methodologies.

Put another way, Elder-led healing programs are far more likely to achieve successful community reintegration than retributive incarceration because healing programs seek to change the internalized core values of the individual’s one person at a time, from the inside out. Their pursuit of healing is vested in ritual and ceremony around traditional teachings that are rooted in community.

The CSC cannot produce successful community reintegration because the structural and cultural anatomy of the organization does not align with the mandate. The image that comes to mind is the flying fish. The flying fish can, with astounding effort, launch itself out of the water; from a distance, it appears to fly at altitudes of over one meter and to cruise at this altitude for distances of up to 200 meters. In point of fact, the flying fish does not fly; it glides. But not really . . . to glide as a bird does, the flying fish would require both the capacity to make use of thermal air currents to rise and fall and a whole new respiratory system so that it could exist out of water. Ultimately, the flying
fish does not fly; it does not really even glide. To paraphrase the Disney character Buzz Lightyear . . . it falls with style. With respect to the Government of Canada mandate on successful community reintegration, the CSC is a flying fish reacting to external demands beyond their control.

With this image in mind, the disproportionate representation of men and women of Aboriginal descent who are held under federal warrant must be understood to be the result of more than just systemic discrimination. To employ another image, this disproportionate representation is as the canary in the coalmine. The volume of people of Aboriginal descent in the Canadian federal criminal-justice system illustrates two things: that there is a disconnection in the processes that govern transfer and parole for incarcerated men and women of Aboriginal descent; and that, when successful reintegration does occur, it is an anomaly. My career in correctional programs began in 1986. In the 29 years that I worked in and around the CSC, I have never met anyone who went to work intending to visit harm on another person and yet that is undeniably what the current system does. The operational rituals, assumptions, beliefs, and practices are not designed to achieve successful community reintegration for any of the people assigned to the CSC’s care.

The central, operational, institutional ritual that frames the role, place, and function of all of the people who inhabit the institutional space is the morning meeting. It is the ground in which the essential disconnections between aspirations and operations are unwittingly planted, nurtured, and harvested.

The collective assumptions brought to bear at the morning meeting have consequence. Among the binary and adversarial assumptions that drive the endeavour is
what I have come to think of as the 3% assumption: While less than 3% of the offenders held under warrant are categorized as dangerous offenders (people like Paul Bernardo or Russell Williams) the morning meeting compels its participants to assume that every offender is understood to be a dangerous offender.

The consequence of the 3% assumption permeates every layer of the system. To achieve positions of authority, personnel are compelled to become experts in navigating the ebb and flow of the morning meeting. Consciously or unconsciously, the experience of the morning meeting impacts the negotiation between aspirations and operations. In this context, the experience of the morning meeting serves as a touchstone in the selection of the emerging generations of CSC leadership, thus perpetuating adversarial relationships between staff and offenders.

A Day in the Life

To put the self-fulfilling impact of the process into more concrete terms, let us imagine the process from the perspective of a young man of Aboriginal descent held under federal warrant. Based on statistics collated and published in 2013 by Public Safety Canada in its annual *Corrections and Conditional Release Statistical Overview* (CCRSO) the young man is probably below the average age of offenders in the general population. Statistically, it is very likely he did not finish high school. It is also very likely that he was under the influence of drugs or alcohol when the offence occurred. In fact, the research branch of the CSC has confirmed that fully 80% of offenders experience addiction challenges with alcohol and/or substance abuse (Grant, B.A., Varis, D.D., and Lefebvre, D. 2005). Given this research, it is not an enormous leap to conclude that
alcohol and substance abuse plays a role in the offences for which people are charged and convicted.

In this scenario, the young man meets the statistical averages of the system. He may be aggressive when he feels it is warranted; while this is probably noted in his file, it does not mean he is designated as a violent offender or, for that matter, has a violent predisposition. Statistically, he is likely to have entered the CSC’s daily institutional orbit as part of a plea bargain. On this basis, he will serve his sentence; as he accepted a plea bargain, there are no available avenues of appeal for him. As such, there is some documented appreciation of his circumstances, and, as this is probably not his first interaction with the courts, it can be presumed that he has some of the prerequisite institutional skills necessary to cope with incarceration.

His first CSC stop is the Reception Assessment Centre where, for three to four months, he will be evaluated and exercised and locked down in a process that culminates in a correctional plan. If he follows the plan as presented, it is presumed he will cascade through the system to achieve successful community reintegration. At this point in the process, the system divides itself between the logistic challenges of feeding, housing, and clothing people and producing an individualized correctional plan from which to manage their care. This is graphically represented in Figure 8.
Figure 8. Daily operations orbit

The daily operations orbit cannot focus on the needs of the individual because the reactive logistics of feeding and housing people effectively serve as a barrier to applying proactive, individualized responses. Instead, the system must rely on a binary process of checklists that are defined and administered around the warrant; the terms of reference, processes and acronyms applied in the administration of the sentence are very likely akin to new learning a new language. In this scenario, the young man remains invisible until
the day he is assaulted while on the exercise yard. At that moment, he leaves the daily operations orbit; he is now on the agenda at the morning meeting.

Figure 9. Charter of Rights and Freedoms

The video record reflects that he did not initiate the altercation and the security staff assigned to his range (cell block) report that he has been keeping to himself and is otherwise behaving in prosocial, dominant-culture ways. He is sent to hospital, where he is examined and then assigned to a different area of the institution. In this process, some
consideration will be given to assigning him to segregation as a protective-custody offender. All of this is noted on the offender management system, documenting that his constitutionally mandated due process/Charter of Rights and Freedoms requirements have been observed and respected (See Figure 9).

With the requirements of due process observed, the systemic dialogue of the morning meeting moves on to the offenders’ personal safety in relation to the Commissioners Directives and Institutional Exigencies (See Figure 10). Ultimately, this raises paternal questions for the meeting: How do we keep him off the agenda for the next morning meeting? Will he become an ongoing concern? Where do we put him? Should the assessment process be accelerated?

In this scenario, the correctional-plan process is accelerated in the name of dynamic security. In accordance with the findings published in the CCRSO, the exigencies of time and penitentiary placement mean that no CCRA section 84 Gladue report will be completed. Statistically, it is unlikely that one will ever be completed. This is a significant omission in light of the 1999 Supreme Court of Canada decision (Gladue) in which the court concluded that the individual variables that led to the imposition of a warrant on a person of Aboriginal descent must be taken into account in the administration of the warrant, the provision of correctional programs, and the parole planning and execution process. For a person of Indigenous descent, and in the absence of a Gladue report, the number of available, supported Aboriginal parole opportunities may be significantly limited. This is a fact that the offender is unlikely to appreciate, although he will undoubtedly live with the consequences, including decreased opportunity for community reintegration and increased potential for recidivism. The
absence of a Gladue report thus directly contributes the disproportionate representation of persons of Aboriginal descent held under federal warrant.

Figure 10. Institutional policies/exigencies

With the Charter and exigency challenges of housing and safety sorted, the process is now primarily defined by the warrant in relation to the *Corrections and Conditional Release Act* (See Figure 11). If the offender can demonstrate, manufacture, or simulate the appropriate volume of remorse in the various meetings and hearings, he can proceed according to schedule and in relative anonymity.
Figure 11. Corrections and Conditional Release Act

As an outcome effect, the institutional process is compelled to focus on logistics, groups, and trends (documented in Public Safety Canada’s annual CCRSO) before it can attend to individuals. Our young man can anticipate that he will spend more time in segregation than his non-Aboriginal peers. As time passes, he is unlikely to be transferred to minimum security at the same rate as his non-Aboriginal peers. More significantly, he is unlikely to be granted day or full parole: He will have to wait until his statutory release
date to secure a place at a halfway house.

Our young man thus has no gradual reintroduction to life outside the carceral. Once at the halfway house, he is more likely to have his parole revoked than non-Aboriginal parolees. For offenders of Aboriginal descent, the daily operations orbit is not a circle; it is an oval engineered to impede successful community reintegration. The effect is to distort the interior triangle with the institutional policies plane of the triangle becoming much longer than the Charter or CCRA planes; it is the personification of relational dissonance. This conflicts with the aims, objectives, methods, and philosophy of Elder-led healing programs.

The logistical processes of all CSC facilities grew from a panopticon model that places unqualified compliance as the goal. As such, it should come as no surprise when the established institutional-operations model proves itself expert at producing myopic and retributive results that are substantially disconnected from the spirit of the principle of least restriction. Where then do Elder-led healing programs fit into this image?

Elders and healing programs exist in the space inside the large triangle. In fact, given their consensual approach to communication, they function in the centre of a smaller daily operations orbit (see Figure 12). Their first task is to bring the individual to a level of self-awareness in which detention and deterrence are irrelevant to decisions regarding personal behaviour. This requires that, on a case-by-case basis, they break through the binary noise of institutional life to fundamentally change individual attitudes and values. As they establish the participant circle, they introduce a new triangle grounded in Indigenous knowledge, ritual and ceremony.
Figure 12. Elders’ circle

The circle they function within does not touch the planes of the interior triangle they rely on for program space and time. They begin a bottom-up process of effort concentrated on the whole person in which Indigenous knowledge and ritual and ceremony circles back and forth.
Figure 13. Indigenous knowledge

Ultimately, the work of Elders begins in a consensual bottom-up process that introduces Indigenous knowledge to the individual through the grey noise that is the daily operational cycle (See Figure 13). In this process, the Elder treats the offender as he/she might treat any other person they might encounter in their home community. As the program participant allows the Elder to push through the exigencies of the daily
operational cycle, the Elder can begin to introduce ritual to the relationship. This is a stark contrast to the carceral approach that puts dehumanization above self-actualization.

Figure 14. Ritual

In this model and over time, the relationship between the offender and the Elder begins to take root. As the offender becomes more comfortable, ritual is practiced more overtly in relation to Indigenous knowledge and in reference to the detention/deterrence objectives of the daily operational cycle. This is practiced as one might learn to play a
musical instrument, with teacher and student engaged in a call-and-response process until it becomes engrained and second nature. Over time it will become an interchangeable process between ritual and Indigenous knowledge (See Figure 14). When these moments begin to emerge, the Elder introduces ceremony as a means to internalize the teaching.

As ceremony begins to take root, the Elder and offender move back and forth, in no particular order between the daily orbit, Indigenous knowledge, ritual, and ceremony.
In this movement, the objective is that each person will integrate the process into recognition and responsibility, restitution and reconciliation in ways that internalize and confirm the teachings that emerge in ceremony (See Figure 15).

The aim of the process is not to manufacture a sense of guilt from which the system can measure some kind of deterrence. Rather, the object is for the individual to find an internalized and self-initiating desire to seek restitution for his or her own sake. In the case of federally incarcerated men and women, it is entirely likely that the restitution they make will only ever be symbolic, as the individual has probably violated the peace of their community in ways that cannot be reconciled. The object of the Elder-led healing program is better aligned with successful community reintegration because its objective is to work with each person, one person at a time, to help that person reach a state of self-awareness in which grace and objectivity are possible and the parole that may be extended by the National Parole Board ceases to be the primary objective.

Scholarly Implications of this Study

If this work has import in the academy, I believe it may be in its capacity to do three things:

- To emphasize the importance of the role of internalized Indigenous perspective in the creation of a decolonizing outcome.
- To recognize the power of assumption in the disproportionate representation of men and women of Indigenous descent who are incarcerated under federal warrant in Canada.
To document a methodology that bridges relational dissonance to eclipse assumption.

**The Role of Internalized Perspective**

The role of internalized perspective is concentrated in the work of the theorists delineated in Chapter 2 of the dissertation. Each has contributed to a canon that acknowledges, challenges and confirms the impact of colonizing policy on all of the people connected to the federal warrant. This perspective is affirmed in the relational dissonance that is identified in the critical policy reviews and later by the words of the Elders. Each theorist serves as rationale to continually reflect on two succinct decolonizing questions from Linda Tuhiwai Smith (1999, p. 10), “Whose interest does this serve?” and “Who benefits?”

Put another way the findings of Chapters 4 and 5 in this study go some distance to link Linda Tuhiwai Smith’s (1999) key questions to the Nin Thomas (2005) assertion that, “justice produces equilibrium” and Cora Weber-Pillwax’s (2001) declaration that,“ I cannot be involved in research and scholarly discourse unless I know that such work will lead to some change (out there) in that community, in my community”. These three theorists represent an Indigenous perspective that moves away from the binary and towards the holistic, from macro observations of systems to the micro views of the Elders.

The exploration of theory in this study and the words of the Elders show the outcome effects of two distinctly different world-views: the dominant culture and the Indigenous. The theoretical understanding of the dominant culture applies assumptions about the nature of the world, assumptions that are invested in a colonial, paternal, and
punitive process. Conversely, the roots of understanding in Indigenous theory are concentrated on consensual assumptions bound to a process of collaboration and cooperation.

The Elders’ in this study confirm that they are engaged in a process of reciprocal learning; it is an Indigenous healing response that facilitates a decolonizing of the self. In this process the Nin Thomas theory that justice produces equilibrium is actualized. In the environment of the prison the precursor to justice is decolonization. In healing programs the Elder and the incarcerated man or woman engage in a dialogue whose desired outcome is individual decolonization.

To achieve this outcome the Elders in this study bring four qualitative internalizing imperatives to the dialogue of the healing program: humility, recognition, acknowledgement and truth. *Humility* is an Elder honorific that is extended to an individual by their community. The Elders in this study insisted they were not Elders; they called themselves helpers. Helpers are never at the centre of a dialogue: they are partners in a process of reflective listening.

*Recognition* requires that an internalized distinction be made between healing and justice. Justice is the recognizable end result of a healing process that is owned by the individual. It can be measured in daily decisions that require forethought and balance. As such, Elders position the healing so that when balance emerges it can be celebrated and emulated by others in the healing program community.

*Acknowledgement* is a process outcome that is achieved through ceremony and teaching. It is grounded in the responsibility that comes with providing and participating in the same lesson as many times as it takes to achieve an internalized, decolonized
outcome. Acknowledgement is achieved when there is sufficient courage for the participant to declare that they don’t understand. Ceremony provides the space, patience and trust for this to happen.

*Truth* is an essential quality in a healing program. In healing programs Elders’ are akin to a mirror that reflects truth; sometimes the truth is discomforting. There is confirmation that healing is underway when the participant can look in the mirror and engage with the whole person they see. It is a reflective dialogue that is devoid of qualification: it acknowledges all of the variables that contributed to incarceration. It includes an inventory of the poor decisions the individual made along the way that did harm in their community.

In this spirit Tuhiwai Smith is a significant contributor to the work of this study. She is a concrete example of the requirement to internalize and challenge. In incorporating the work of Foucault (1977) (the carceral) Said (1978) (the ‘Other’”) and Garland (1990) (the criminology of the other) and she has created a decolonizing method that challenges ideological dominant culture typifications (Berger and Luckman, 1967)

The internalization of concepts such as Foucault’s Carceral or Tuhiwai Smith’s questions, “Whose interest does this serve?” and “Who benefits?” makes space for justice to produce equilibrium. It creates a mirror from which to reflect on various interpretations of the CCRA’s principle of least restriction and the pan Indian implications of the Continuum of Care. It explains why healing theorists such as Rupert Ross declare that the dominant culture court process is broken. Most significantly and ironically it makes space for the Elders. Ironically, because the Elders interviewed in this study were largely unaware of these theorists or of the legislation that called for the CSC to apply the
principle of least restriction. The Elders in this equation pursue a calling grounded in community-based responsibility.

It’s not that the theory and the legislation are not important, it’s just that Elders apply the tools of recognition and responsibility to build community from the individual to the group. Prison theory, legislation and institutional policy are engineered for a different focus. Healing programs are not akin to a destination driven education program that someone participates in to earn a diploma. These Elders did not arrive in healing programs as part of some dominant culture application and selection process. After years of community-based work their communities approached them and suggested they were ready to take on this responsibility.

Perhaps the contribution this study makes to the canon is that it shows that the people who support others’ healing, the “helpers” as they call themselves are a reciprocal hub on a wheel. They gather and disseminate ideas created in the academy as they collect, confirm and nurture effective community practice. From time to time their interface with questions like, “Whose interest does this serve?” and “Who benefits?” simultaneously serves the academic community, the legislative community and the indigenous community.

**The Power of Assumption**

The power of assumption is essential to understanding the administration of federal warrants in Canada. It is at the heart of David Garlands (1990) ‘criminology of the other’ and of Edward Said’s (1978)‘Other’ and Justice Louise Arbour’s (1996) pronouncements on events at Prison for Women and Howard Saper’s (2012) call for a Government of Canada study of Elders and Elder led healing programs.
The application of colonial dominant culture assumptions to criminal justice challenges provide an outcome explanation for the disproportionate representation of men and women of Indigenous descent who do not successfully reintegrate into the community. It explains the capacity of the CSC to interpret the rules for segregation in terms that held Eddie Snowshoe in an isolation cell at Edmonton Institution for 162 consecutive days. Ultimately Eddie Snowshoe committed suicide; his crime was a botched robbery attempt. A dominant culture assumption preoccupied with the need to exact retribution in an effort to secure compliance, remorse and deterrence might conclude his life and death is unfortunate collateral damage in a process to ensure that public safety is preserved. His family would argue a different set of assumptions should have been applied; assumptions that included the acknowledgement of and respect for his rights as a citizen protected by the Canadian Charter of Rights and Freedoms. The inclusion of acknowledgement and respect might even have made room for kindness, courtesy and reciprocity.

In the case of Eddie Snowshoe, if the larger systemic assumption had been that he was capable of working towards reassignment to the general population, and his correctional plan while in segregation had been amended to include daily sessions with an Elder, then the outcome of his story may have been different. If the outcome of the assumption (that he had the capacity to live in the general population result) had been an eventual general population assignment to an Elder led pathway’s initiative his story may have had a radically different ending.

Sometimes assumptions create questions and hybrids. Questions like how the Harper government could secure the unqualified CSC support of its get tough on
crime/public safety ideology in 2007 without changing the principles of the Corrections and Conditional Release Act (CCRA) until 2012. At other times assumptions contribute to hybrids: such as Indigenous policy developments that culminate in the Continuum of Care policy document. The policy was created as a consensual correctional community endeavor that incorporated views and suggestions and input from across the spectrum. Its language clearly acknowledges the restorative intent of the CCRA and of the need to function on principles that are aligned with Indigenous ways of knowing.

The relational dissonance identified in this study is its contribution to the canon. It is a contribution that directs light to the spaces between assumptions and questions and hybrids. As such it makes links to the academy, the institution and the need for healing programs. In so doing it brings the potential of ritual, ceremony and Indigenous knowledge to overcome the minefield that is created in the aftermath of cacreral assumption.

A Methodology to Bridge Relational Dissonance

The final potential contribution of this research to Indigenous Studies theory is contained in a graphic. It is the result of all the learning that came out of the internalization of dominant culture, decolonizing, restorative and indigenous theorists. It is a synthesis of analysis if a 20-year span of retributive organization that was expected to abide by and achieve a restorative legislative expectation. It is an acknowledgement that people who live in an adversarial environment do not intentionally seek out conflict.

The graphic demonstrates the challenge and the relationship contained in two world views and two very different methodologies. The outside daily orbit takes a decidedly macro approach to the administration of the institution. It assumes that the
justice system is sound. In its quest to secure individualized remorse from those incarcerated under federal warrant it understands its role is to balance public safety against successful community reintegration. The key phrase in that understanding is to balance public safety against successful community reintegration. In this relationship public safety and successful community reintegration are understood to be separate and not necessarily equal. On this basis the daily orbit pursues paternal system wide responses to its challenges.

Inside the daily orbit there is an Elder orbit. The Elder orbit is surrounded by ritual, ceremony and Indigenous knowledge. Unlike the daily orbit the Elder orbit starts with an individual and assumes they are there to learn how to become part of a community. It relies on a process of respectful dialogue in which the Elder offers a narrative teaching and then waits for the participant reflect back what he has gathered from the words. Over time the participant learns the ritual and begins to extend the narrative to other parts of his life. When this occurs self awareness begins to take root.
The relational dissonance that exists between the two realities can be better understood with a little imagination. Imagine the impact on the relationships if the daily orbit were an oval and not a circle. This image is at the heart of the study’s methodological contribution. If the daily orbit is understood as an oval then it is easy to appreciate the CSC’s ‘flying fish’ moments: moments when the mandate and the means contradict one another. In this context it is also easy to see why Elder led healing.
programs are valued by the staff and incarcerated participants. At one of the spectrum they are perceived to have a significant impact on dynamic security. Participants who are fully committed to their work in a healing program are perceived to be less likely to engage in institutional activities (such as the drug trade) that put themselves or the staff at risk. At the other end of the spectrum healing programs may accelerate the transfer process for incarcerated adults to lower level security facilities and parole.

When the system moves from oval to circle and back to oval Elder programs are designed to remain constant. The function of the healing program paradigm is to use ceremony and ritual to teach: the ritual and ceremony do not change regardless of the assumptions and politics of the institution. Success is confirmed when the participants internalize the medicine and move towards balance. When this occurs the individual participant is less likely to be involved in activities that would impede transfer or parole. As such, the Elder orbit functions independently of the daily institution orbit.

The primary objective of the Elder led healing program is for the individual participant to find an internalized and self-initiating desire to seek restitution for his or her own sake. It is entirely likely that the restitution they make will only ever be symbolic, as the individual has probably violated the peace of their community in ways that cannot be reconciled. Elder-led healing programs work with each person; one person at a time, to help that individual reach a state of self-awareness in which grace and objectivity are possible and the parole that may be extended by the National Parole Board ceases to be the primary objective.

For me this is the largest potential contribution of this study to the dialogue of the healing community. It is the graphic illustration of a world view and a method that
trumpet the capacity of the individual to achieve the self-determination called for in the *Royal Commission on Aboriginal Peoples* (1996), as they defy the implications of carceral design.

**Recommendations**

If successful community reintegration is to be more than a lofty goal, the CSC and the Government of Canada needs to engage in a process that includes four recommendations:

1. Review and renew the Continuum of Care with communities affected in its delivery to ensure it has not inadvertently become a colonizing pan-Indian approach to program delivery. Inuit men and women should not be compelled to participate in Cree teachings or Mohawk sweat lodges as part of their healing program because it’s the only option available to them. Each offender must be recognized as the person they are. In accordance with the Supreme Court of Canada decision in *Gladue*, each offender is entitled to a healing program that incorporates his or her culture and community.

2. Building on this study, a national study of Elders is needed to explore the role, place, and function of Elders in different settings—from region to region and community to community—to better understand the variety of ways Elder-led healing programs are conducted.

3. While focused only on Elder experiences, this study found that Elders and ALOs form an essential partnership in the implementation of healing programs. As such, the Elder–ALO partnership needs to be more fully understood. This calls for a
national study to explore the relationship of Elders and ALOs in different healing programs.

4. Issues of self-determination, self-government and the substance of citizenship rise from the dialogues of the Elders and the critical policy review. In the time frame of this study, the CCRA was assessed in light of the 1996 *Royal Commission on Aboriginal Peoples*, the 1999 Supreme Court of Canada ruling in *Gladue v. Canada*, the 2001 Supreme Court of Canada ruling in *Sauvé v. Canada*, and the 2012 OCI *Spirit Matters* report. Another study needs to be done to incorporate the process and outcomes of the 2015 *Truth and Reconciliation Commission of Canada: Calls to Action* report, which fell beyond the scope of this research. Linking these processes and assessing their implications is a substantive and necessary endeavour.

5. The CSC needs to build community supervision facilities that will support and promote both healing and successful community reintegration. Within their own best practices, the CSC operates two facilities that are templates for healing and successful community reintegration. They are the Oki Ma Ochi Healing Lodge located in Maple Creek Saskatchewan and the Henry Trail Community Corrections Centre on the grounds of Collins Bay Institution.

   In my experience, the Oki Ma Ochi Healing Lodge represents the best of the healing lodge facilities—nationally and possibly around the world—while the Henry Trail Centre functions as a transitional community space that is more than a halfway house and less than a minimum-security institution. For men and women whose needs are a challenge to anticipate and supervise, the Henry Trail
Centre facility model partnered with a healing lodge represents a transformative model better designed and engineered to produce successful community reintegration.

This building program should result in new facilities being built in the communities where incarcerated adults are most likely to be paroled. The building program should align with a plan to decommission beds in medium-security prisons currently operating in Canada. One of the measurable outcomes in this process will be enhanced community-supervision skills that result in a proportional shift to reverse the current 70/30 split of institution to community-supervision beds. This will result in facilities that are transformative because they are designed to heal and, thus, to position recognition above denial, responsibility above fear, and restitution in partnership with remorse and reconciliation above alienation.

Elder-led healing programs represent an opportunity to build on something that works—something that is aligned with who we are in our best moments. The work is not easy; it requires grit. It is best illustrated in the words of Elder Elizabeth as she explores the challenges of acknowledgement and forgiveness:

You’re coming from two worlds . . . two different world views. That’s how it was at the beginning and it’s still going on now. I don’t know if we’ll ever understand each other. . . . With stuff that happened historically, some people don’t want to “go there” because it’s very hurtful and painful . . . to look and say “this is what happened.” . . . It’s not about blaming and
shaming, it’s about enlightening ourselves to what things were done. . . .

How can we learn from that now? What can we learn from that now? What can we change from that now? Are we going to do the same thing . . . over and over again? . . . We need to look at the past as a teaching. We need to look back to what has brought us here and (ask ourselves) how we can change that . . .
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Appendix One:
Description of the Study

Overview

For over twenty years Aboriginal Elders have provided intervention programs to the burgeoning community of Aboriginal inmates held in Canada’s federal prisons (Sapers, 2012, p. 13). Their placement is embedded in a general policy aimed at successful community reintegration that seeks to diminish the disproportionate number of Aboriginal Offenders held under federal warrant. Between 1982 and today no peer-reviewed studies have been published assessing the design, method or efficacy of Elder-led intervention programs within Canadian federal institutions. On this basis, the study proposes to assess the history, policy and practice of Aboriginal Elders’ healing/intervention programs within Canadian federal institutions to address the following question:

- What is the role, place and function of Elders in the delivery of Indigenous healing programs within Canadian federal prisons?

The study will unfold in two phases; a thematic content analysis of the policies (beginning with the 1982 Canadian Charter of Rights and Freedoms) culminating in the current implementation of Elder-led intervention programs followed by group and individual semi-structured guided interviews with six Aboriginal Elders currently providing intervention programs to male Aboriginal inmates in federal prisons in Ontario. These semi-structured guided interviews will provide data to identify themes for comparative analysis. From these themes an exploration of the role and relationship of Aboriginal Elder programs in Canadian federal prisons will be undertaken to more
closely examine Indigenous practice, government policy and the development of a culture of restorative justice for Aboriginal Offenders within the federal prison setting.

Ultimately the study contrasts the policies of the institution with the words of the Elders providing a unique lens from which to view the developments of retributive, reparative and Indigenous justice paradigms in the Canadian post *Charter of Rights and Freedoms* era. The Elders who work in the front line of the institutional triage process (the people that Sapers’ describes as being ‘at the centre of any healing process’) have never been asked how they came to understand the work they do.

**Research design.**

The study will apply a qualitative exploratory design (Creswell, 2003, p. 17) and methodological data triangulation (Farmer, Robinson, Elliott, & Eyles, 2006, p. 379) to better understand the relationship between Elders, Staff and Offenders in the context of Retributive, Restorative and Indigenous justice system paradigms. The rationale for this study lies in the disproportionate representation of Aboriginals held under federal warrant and in the perceived role, place and function of Elders in the Canadian federal correctional environment. To explore elements of policy, understanding and program delivery the proposed study will apply the process diagrammed below (description follows):
Research Design

**POLICY REVIEW**

Policy review will highlight questions to be pursued in the interviews.

Policy may also be re-visited following a given set of interviews to re-explore a question or relationship that has been identified by an Elder as being significant in some way.

**INTERVIEWS WITH ELDERS**

Guiding question:

What is the role and function of Indigenous Elder intervention programs in a retributive justice system?

Methodological data triangulation of interviews & policy

Results

**Research process and protocol**

The proposed qualitative study will organize itself in two overlapping phases.

Phase one is a document search and analysis, phase two is a series of one on one interviews with Elders experienced in the delivery of Correctional Programs in the
Federal setting. Each phase contributes to an understanding of the Elder role around the three justice paradigms (Retributive, Restorative, Indigenous).

**Phase 1: Document review and analysis.**

The focus of phase one is a chronological thematic content analysis (Patton, 2002:250) of the Legislative Requirements, Commissioners’ Directives, Policy Statements and Reports of Commissions of Inquiry commencing with the 1992 Canadian *Corrections and Conditional Release Act*.

Within the proposed time frame there have been a number Correctional Investigations, Coroners’ Inquiries, Supreme Court Rulings and Crown Commissions of Inquiry. With each investigation, ruling and inquiry there have been consequent changes to legislation, governing practice and operational policy. Each change has affected the capacity of staff and inmates to navigate the institutional day.

The documents to be reviewed with their supporting rationale are as follows:

- **1992:** The Canadian *Corrections and Conditional Release Act*. The *Corrections and Conditional Release Act* is unique in the western world in that it was among the first of the Government Acts to be passed following the 1982 *Charter of Rights and Freedoms*. As such it is pivotal to the development of post-charge policies and practices and serves as the road map for parole practices in the post-Charter era.

- **1996:** *Royal Commission on Aboriginal Peoples* The 1996 *Royal Commission on Aboriginal Peoples* issued a five-volume report which included more than 400 recommendations. The *Royal Commission on Aboriginal Peoples* represents the most comprehensive study of Aboriginal issues ever undertaken in Canada.

- **1996:** The *Commission of Inquiry into Certain Events at Prison for Women*, (The Arbour Report). The investigation and subsequent Commission of Inquiry was mounted after a video record of a series of cell extraction and body searches on the female population at Prison for Women by the all male Kingston Penitentiary Emergency Response Team was broadcast on the CBC’s *The Fifth Estate*. The outcry from the public was shrill and visceral and the documents listed play a
huge role understanding the prison in the context of contemporary dominant culture public policy.

- 1999: *R v. Gladue*, S.C.R. 688 The 1999 Supreme Court *Gladue* ruling documents the case of an Aboriginal woman held under federal warrant. The ruling documents and acknowledges that the experience of being Aboriginal within the dominant culture played a significant role in the events that led to her conviction. More significantly the ruling contributed to and required a developmental policy dialogue that confirmed the uniqueness of Aboriginal people in the Canadian justice system.

- 2000: *FORUM on Corrections Research*, Correctional Service of Canada, “Understanding Restorative Justice Practice within the Aboriginal Context.” This document is noteworthy because it serves as a record and reference point in the CSC’s efforts to interpret and apply the Restorative Justice paradigm in their operational processes.

- 2002: The Supreme Court of Canada, *Sauvé v. Canada* (Attorney General) (2002) 3 S.C.R. 519 In 2002 the Supreme Court confirmed that those held under warrant retained the right to vote. This is noteworthy because it sets a standard for citizenship that is unique in the world. It confirms, in concrete terms, that the design and operation of the prison process must attend to the sentence as the punishment. Most significantly, it confirms that the state may only suspend rights that might impede public safety and/or the safety of the individual.

- 2003: *Strategic Plan for Aboriginal Corrections* including the Continuum of Care Model for Aboriginal Offenders. The Aboriginal Corrections Continuum of Care was developed in consultation with Aboriginal stakeholders working with CSC to develop new approaches to addressing Aboriginal Offender needs.

- 2006: *A Roadmap to Strengthening Public Safety*. The *Roadmap* report is best understood as a kind of government white paper. It signalled the policy preferences of the governing party as it tested public opinion around the probable impact of the Government's desired changes to the CCRA both, in the parliamentary debate, and across the country. The report also served as a blueprint for a significant ideological shift in policy and practice for the CSC.

- 2012: *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*. A report to Parliament by the Office of the Government of Canada Correctional Investigator. The document listed above flows from initiatives and investigations of the Correctional Investigators office. It is noteworthy to this process because it confirms the lamentable state of Aboriginal Corrections in Canada. Most important, it provides a continuum to better understand the perspectives of the CSC and the OCI with respect to the challenges that emerge in
the disproportionate representation of Aboriginal People held under federal warrant.

- *Commissioners Directive 702 Aboriginal Offenders* (last revised 2013-11-12). Commissioners’ Directives address the operational reality for those held under warrant. As such, they have a direct impact on the variables that define the ebb and flow of daily life for both Staff and Offenders within the institutional setting.

- *Commissioners Directive 785, Restorative Opportunities Program and Victim Offender Mediation Services* (last revised 2015-07-23). Commissioners’ Directives address the operational reality for those held under warrant. As such, they have a direct impact on the variables that define the ebb and flow of daily life for both Staff and Offenders within the institutional setting.

**Phase 2: The interview process.**

The proposed data collection procedure in Phase Two: Interview Process is as follows:

1) Pre-study Inquiry telephone call: In this first contact I will introduce myself and request a time when I can come to see the potential participant. In this call I will provide the Elder a brief description of the study.

2) Pre-study orientation meeting: The Pre-study orientation meeting is the first time I will meet the Elder. As such, I will present each Elder with Tobacco and thank them for agreeing to meet. To some extent this first meeting is an introduction that will confirm common a mutual understanding of the language of the institution. Each Elder will be provided with a written outline of the research study and a consent form. Each will be asked to take the materials under advisement. Each will be invited to attend a group meeting to ask questions and confirm their interest.
3) Individual semi-structured interview: Following the orientation meeting the individual interviews will commence. I estimate that each interview will last 90 minutes. The questions will be built around a relational interview method aimed to gather data in four categories: experience, knowledge, structure and feeling (Chilisa, 2012 and Patton, 2002). These categories have been selected to provide sequence and focus to the process by which Elders came to the work. It also provides some chronology and context around the impact of the work on the offenders, the staff and on the Elders themselves.

In the interview, the dialogue will seek to understand how the Elder came to work in Correctional programs. It will explore the experience, training and preparation that led to employment as an Elder within correctional programs. This interview will also seek to understand the daily personal process of providing programs in the correctional setting. It will pursue data to assess the Elders’ understanding in the early stages of their ‘institutional experience’ of the institution and of correctional programs. Significant effort will be made in this interview to collect data around the Elder’s understanding of policies such as the Corrections and Conditional Release Act in relation to Indigenous Knowledge.

4) Interview transcript follow-up via telephone and/or email: In the two weeks following the interview the recording of the interview will be transcribed. The transcription will be reviewed by the researcher and participant independently and discussed in a telephone conference to ensure that the Elder has an opportunity to ask questions, add information, express concerns or direct
deletions. It is hoped that this feedback loop will aid in crafting questions beyond those proposed for Interview. Regardless, the feedback loop from a review of the transcription will build on the relationship established to that time.

5) Post study group meeting: At the end of the interview process the Elders will be invited to gather as a group with to mark the moment and conclude the work. We will begin with a smudge and then, if the group feels it is appropriate; we will proceed to a Sweat Lodge Ceremony. Following the Sweat Lodge there will be a feast. Throughout this process, participants will have a number of opportunities to add thoughts, feelings and impressions around the process and to otherwise contribute in ways that help to acquire the good mind. No report of the dialogue at the final gathering will be made.
Appendix Two:
Researcher’s Personal Statement

The work you do is complicated and challenging. For you to feel you can share your experiences it is important the this process be a conversation and as I am going to ask you how you have come to be an Elder working in a federal prison it is only fair that you understand how I have come to this research process.

I began work in Correctional Programs and Correctional Education in April of 1986 as a substitute Adult Basic Education at Millhaven Institution. Over the years I have worked in the design and delivery of Living Skills and Education programs to federally incarcerated men and women in every security level as a Life Skills Instructor and subsequently as a Adult Basic Educator ion Classroom Teacher, Guidance Counsellor, Administrator and Education Contract manager. My professional experiences parallel many of the policy developments applied to the Correctional Service of Canada in the post Charter of Rights and Freedoms era. In 1989, I was a founder in the creation and incorporation of Excalibur Learning Resource Centre Canada Corp., a privately held specialist organization providing education and correctional program services to the Correctional Service of Canada. In our largest incarnation, we provided simultaneous program services to 29 Correctional Service of Canada facilities in Atlantic, Ontario and Prairie Regions. In the course of this work, I managed all aspects of company operations including hiring, training and personnel supervision. The supervision and in-service training requirements of my job often brought me into contact
with other divisions of correctional programs, including the Elders who provided program services to Aboriginal Offenders.

Between 1986 and 1999 I worked on the premise that the acquisition of literacy and numeracy skills would remedy the skills vacuum that brought people to the prison setting. Intellectually I understood that the inability to read or calculate was not a direct contributor to the anti-social behaviour for which the federal warrant was imposed. While I understood that Aboriginals were disproportionately represented in our correctional institution classrooms, I had not internalized the ramifications of this fact. In 1999 my premise was challenged.

In January of 1999, during a site visit to Edmonton Institution, an Inmate Student of Aboriginal Descent (with whom I had had a long standing classroom connection) introduced me to three other members of his class. He was related to all of them. In this moment I began to see the students of the class in a different way. I could no longer see education as a simple connection between literacy and successful community reintegration. The connection led to a master’s Degree in Education and more recently this research endeavour… it is my hope that your experiences will cast light and understanding on how you function in the context of a federal prison and how your work contributes to the successful community reintegration of the men and women entrusted to your programs. Your work is not fully understood by the research community and is largely unknown in the general public, I am hopeful that your insights will provide a framework of best practice from which to move forward.
Appendix Three: Informed Consent Form

Consent Form

My name is Robin Quantick. I am currently enrolled in the Indigenous Studies PhD program at Trent University in Peterborough Ontario. My PhD Dissertation research seeks to assess the history, policy and practice of Aboriginal Elders’ intervention programs within Canadian federal institutions to address the following question:

What is the role and function of Indigenous Elder programs in a retributive justice system?

The study will unfold in two phases; a thematic content analysis of the policies (beginning with the 1982 Canadian Charter of Rights and Freedoms) culminating in the current implementation of Elder led intervention programs followed by individual semi-structured guided interviews with Aboriginal elders currently providing intervention programs to male Aboriginal inmates in federal institutions in Ontario. These semi-structured guided interviews will provide data to identify themes for comparative.
analysis. From these themes an exploration of the role and relationship of Aboriginal Elder programs in Canadian federal prisons will be undertaken to more closely examine Indigenous practice, government policy and the development of a culture of restorative justice for Aboriginal Offenders within the federal prison setting.

To collect information for my research, I need to conduct two interviews of approximately 90 minutes in duration with Elders experienced in the design and delivery of intervention programs to Aboriginal Offenders. These interviews will be recorded using a recording device. Any information or comments will be kept strictly confidential, and will only be available to my Dissertation Supervisor, professor Deborah Berrill and myself. No participant will be identified in the compilation of the dissertation, or in the completed dissertation. All of the written information will be encrypted to preserve your privacy. All recorded information and encrypted electronic information will be secured in a locked fireproof file cabinet.

As the person being interviewed your participation in this research is entirely voluntarily. You may refuse to answer any question during the interviews, and may withdraw from the research at any time. As a participant in the research it is understood that the information you provide can be used as part of my dissertation research and in the final dissertation document.

Your signature below will confirm that you have read and understood the above details of the research and consent to participate in the interview process and have any information you provide used as part of the dissertation.

If you have any questions or concerns I can be reached at my office at 613-549-5494 or at rquantick@excalibur.ca. My supervisor is professor Deborah Berrill, she can
be reached at 705-748-2298 or at dberrill@trentu.ca. You may also contact the Research Office at Trent University by calling 705-748-1011.

Participant Signature and date


Researcher Signature and date
Appendix Four:
Prison For Women Interior Site Images and Floor Plans

Figure 3

Prison For Women
Second Floor (Cell Block)
Segregation Unit upper and lower tier of Dissociation side
(From the files of the Ontario Provincial Police)

Upper tier Dissociation side
(From the files of the Ontario Provincial Police)
Interior view of a cell
(From the files of the Ontario Provincial Police)

Exterior view of a cell
(From the files of the Ontario Provincial Police)
Cell with heavy metal tread plate
(From the files of the Ontario Provincial Police)