

Not Criminally Responsible Reform Act:
A Case Study Using a Penal Populist Framework

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Abstract

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My research project examined how the print and electronic news media, political actors and special interest groups represented the *NCR Reform Act* in ways that were consistent with penal populist tendencies. After performing a thematic analysis, seven interrelated themes and 17 subthemes were produced. The main findings indicated that these themes were reflective of penal populist tendencies. I found that the Conservative majority government strategically used the fear of crime, misinformation of criminal justice procedures and mental illness, and sensational NCR cases to their advantage. Furthermore, I saw that the Conservative majority government strategically displaced expertise and expert opinion to strengthen their own popularity and regain legitimacy. Lastly, the Conservative majority government politicized the image of the victim and symbolically used this image to demonstrate how the Canadian criminal justice system fails to prioritize victim rights by putting the rights of the criminals first.

April 26, 2016.

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Introduction

In Canada, individuals have always been exempt from criminal liability for actions committed when they were unable to appreciate the nature and the quality of such act as a result of a mental disorder. This exemption is outlined and described in Part XX.1 of the *Canadian Criminal Code*, also known as the mental disorder regime, which allows the courts to make a special verdict of “Not Criminally Responsible on Account of Mental Disorder” (NCRMD). As Verdun-Jones (2014) illustrates, an NCRMD verdict means that an individual has committed a criminal offence but is found not criminally responsible because of impaired mental capacity (p. 203). Because these individuals are not held responsible for the actions committed, this verdict usually results in time spent in a forensic institution with a focus on rehabilitation as opposed to prison (Crocker et al., 2015, p. 99).

The NCRMD regime in the *Criminal Code* has remained largely unchanged since 1992 when the Supreme Court of Canada decisions addressed *Charter* issues and set out to better protect the civil rights of accused individuals (Davis, 1993, p. 122). However, the most significant changes to the mental disorder regime since 1992 came when the Conservative majority government enacted the *Not Criminally Responsible (NCR) Reform Act*, the focus of this research project, in February 2013. The *NCR Reform Act* makes major changes to the mental disorder regime by placing more emphasis on public safety, victim support and victim involvement in the decision-making process regarding NCR accused persons. In brief, the *NCR Reform Act* includes provisions such as a new “high-risk” category for particular NCR accused persons resulting in less access to the community, a requirement that courts and Review Boards consider public safety first and

foremost when making decisions regarding an NCR accused person, non-communication orders to enhance public safety, and discharge notification for victims.

The *NCR Reform Act* is a case of particular interest for my research project because the Supreme Court of Canada did not drive the influential factors behind the changes that accompanied the NCR Reform Act, making the influential factors largely unknown. By contrast, the changes to the mental disorder regime in 1992 had clear influences and evidence to support the necessity of the changes; the Supreme Court of Canada held that the previous mental disorder provisions were unconstitutional under the *Charter of Rights and Freedoms* and, thus, struck them down (Grant, 1997, p. 421).

Out of curiosity about the factors that triggered this change in criminal justice policy, I examined the following research question: how do the print and electronic news media, political actors and special interest groups represent the *NCR Reform Act* in ways that are consistent with penal populist tendencies? I am particularly interested in finding potential influential factors behind the creation, development and implementation of the *NCR Reform Act*.

Having some sense of what lied behind these changes, I adopted a penal populism framework for my project. In brief, penal populism can be summarized as a theoretical framework that explains a shift in government policy making from one devised based on research and expert opinion to one devised based on public opinion. With a focus on the public's fears and insecurities resulting from societal changes, such as crime rates and social fragmentation, penal populism suggests that government officials begin to use the promise of criminal justice reform to focus and channel the public's opinion to appear as though they are more effective at helping the public cope with the aforementioned

insecurities. Thus, the emphasis on punishment and harsher crime control policies is a way to portray that the government is symbolically prioritizing the security and well-being of the public as it looks to put the rights of the public over those of the accused. I examined how the Canadian government, the print and electronic news media, and special interest groups discussed the *NCR Reform Act*. I examined emerging themes in text-based documents from the three aforementioned data sources to examine how the construction of the *NCR Reform Act* exemplifies and reflects penal populist tendencies.

My thesis begins with an in-depth explanation of the mental disorder regime in the *Criminal Code*. This also includes a description of the evolution and the history of the regime, beginning with the Daniel M'Naghten case in 1843. Furthermore, this also includes a review of important empirical evidence and literature regarding the effectiveness of the NCRMD system, pointing to the uncertainty regarding the necessity of the current provisions included in the *NCR Reform Act*. Following the explanation of the NCRMD regime in Canada is a review of essential literature surrounding the stigma of mental illness. This is essential because the individuals who will be subjected to the changes accompanying the *NCR Reform Act* represent an already stigmatized group. Of particular interest in this section is structural stigma: the policies and practices of social institutions that arbitrarily restrict the rights and opportunities of people with mental health problems (Livingston, 2013, p. 5). Moreover, this section also includes a detailed review of literature regarding how mental illness is presented in the news media, a form of structural stigma.

The next section will include my theoretical framework used for this thesis. This includes a review of David Garland's interpretation of Emile Durkheim's work on the

social functions of punishment as it relates to penal populism. Here, I also discuss John Pratt's framework penal populism and how it connects to the *Act*.

After explaining my theoretical framework and the background literature, I describe the methods used in my qualitative study, including a detailed explanation of the research design, data sources, sampling procedures, and analysis. Finally, I discuss the seven interrelated themes and 17 subthemes that emerged from the data and how these results connect to the broader literature as well an in-depth discussion of these findings as they relate to my theoretical framework.

Literature Review

Not Criminally Responsible on Account of Mental Disorder

It has always been a fundamental principle of the Canadian criminal justice system that an accused individual possess the capacity necessary to understand the wrongful nature of his or her actions in order to be convicted of an offence (Latimer & Lawrence, 2006, p. 1). The notion of being held 'Not Criminally Responsible on Account of Mental Disorder' (NCRMD) is rooted in a Canadian principle ensuring that, in order to be convicted of a crime, it must be proven that the act committed was wrongful and that it was committed by a guilty mind (Standing Committee on Justice & Human Rights, 2002). This expresses the notion that no act should be legally punished unless the accused mind is guilty, or an individual has the capacity to recognize the act as being wrong (Library of Parliament, 2013, p. 1).

The specific laws regarding criminal responsibility in the *Criminal Code of Canada* remained largely unchanged between 1892 and 1992 when Bill C-30 was passed as law (Glancy & Bradford, 1999, p. 301). This section highlights the evolution of the NCRMD defence in Canada. It begins with a discussion of the M'Naghten rules, followed by the *R. v Swain* case that led to the implementation of Bill C-30, the last major change to the mental disorder regime in the *Criminal Code of Canada*.

Daniel M'Naghten. In the seventeenth century, the criminal law recognized four models of insanity: idiocy, melancholy, total alienation of the mind, and perfect madness. Although these models were recognized, they were vague and poorly defined (Allnut, Samuels, & O'Driscoll, 2007, p. 292). As Allnut and colleagues (2007) explain, it was not until the Hadfield and M'Naghten trials that a more standardised legal approach to the

mental disorder defence was established (p. 292). In fact, the 1843 case involving Daniel M’Naghten in the United Kingdom served as the foundation for the current mental disorder defence in the *Criminal Code of Canada* (Library of Parliament, 2013, p. 1).

In 1843, Daniel M’Naghten attempted to assassinate Robert Peel, the British Prime Minister, because he believed that Robert Peel and the Tories were involved in a conspiracy and that he had no choice but to kill him (Allnutt et al., 2007, p. 292). M’Naghten failed to do so and ended up killing Edward Drummond, the Prime Minister’s secretary instead (Library of Parliament, 2013, p. 2). M’Naghten was acquitted by a trial jury on the basis of insanity, a decision that caused colossal controversy (Allnutt et al., 2007, p. 293). The case raised important questions in The House of Lords concerning the insanity defence.

The House of Lords created four criteria in response to the controversy raised as a result of the M’Naghten case. Firstly, it was determined that, in all cases, it must be assumed that every individual is sane and maintains enough reason to be responsible for crimes committed until proven otherwise (Library of Parliament, 2013, p. 2; Allnut et al., 2007, p. 293). The second criteria surrounded the necessities required in order to establish a defence of insanity. The House of Lords determined that it must be clearly proven that the accused individual was suffering from a disease of the mind, which deformed his or her reasoning, at the time of the act committed (Library of Parliament, 2013, p. 2). Thus, suffering from a disease of the mind would result in the accused individual not understanding the nature and the quality of the act he or she was committing or knowing that the act was wrong (Allnutt et al., 2007, p. 294). Thirdly, The House of Lords

identified that it was necessary that mental disorder be recognized as a legal concept as opposed to solely a psychiatric concept (Library of Parliament, 2013, p. 2).

R. v Swain. Following the M’Naghten case and subsequent establishment of criteria for the insanity defence, the *Criminal Code of Canada* remained relatively unchanged until 1982, when the Department of Justice initiated the Mental Disorder Project (Standing Committee on Justice & Human Rights, 2002, p. 1). The corresponding review paper was released one year later and concluded that the *Criminal Code* contained ambiguities, inconsistencies, and a general lack of clarity and direction. In the review paper, the Department of Justice further questioned the *Criminal Code’s* agreement with the *Canadian Charter of Rights and Freedoms* (Standing Committee on Justice & Human Rights, 2002, p. 2). As the Standing Committee on Justice and Human Rights (2002) pointed out in their report *Review of the Mental Disorder Provisions of the Criminal Code*, the final and most significant force for the legislative reform came from a Supreme Court of Canada decision in 1991 in *R. v Swain* (p. 2).

The accused individual in *R. v Swain*, Owen Swain, attacked his wife and two young children in October 1983 and was charged with both assault and aggravated assault. Swain was sent for a psychiatric assessment under the *Mental Health Act of Ontario* and was then transferred from jail to a maximum-security hospital, Penetanguishene Mental Health Centre. He was subsequently diagnosed with a mental illness and was treated with medication (Glancy & Bradford, 1999, p. 302). Swain responded well to treatment and was thus sent back to jail only to then receive bail until his upcoming trial in May 1985 with the condition that he continue to take his prescribed medication (Glancy & Bradford, 1999, p. 303).

During the Swain trial, the Crown wanted to use evidence of insanity regardless of Swain's defence counsel's objections. Despite the disagreement between the Crown and Swain's defence counsel, the evidence was ruled admissible and Swain was found Not Guilty by Reason of Insanity (NGRI) (Glancy & Bradford, 1999, p. 303). Consistent with policy prior to 1992, Swain was ordered to a strict custody at a medium-security psychiatric hospital at the pleasure of the Lieutenant Governor (Glancy & Bradford, 1999, p. 303; Grant, 1997, p. 420). At this time, it was mandatory that all individuals found NGRI be held in strict custody and that the judge did not have the ability to consider any other dispositions for the accused (Grant, 1997, p. 420). As a result of the mandatory detention, individuals found NGRI were being detained in custody for longer periods than if they had been originally convicted for the offence charged (Grant, 1997, p. 420). During the Supreme Court trial, Swain's defence counsel argued that the section of the *Criminal Code of Canada* requiring mandatory detention of all individuals found NGRI violated the *Canadian Charter of Rights and Freedom* (Glancy & Bradford, 1999, p. 303).

The Lieutenant Governor authorized Swain to be sent to the Clarke Institute of Psychiatry for further psychiatric assessment. He further ordered that a report be sent to the Advisory Review Board within 30 days of Swain's assessment in order to allow for a Review Board hearing. At the Review Board hearing evidence was heard from the psychiatrist who assessed Swain and additional psychiatrists who were also involved with Swain (Glancy & Bradford, 1999, p. 303). The Review Board thus advised that Swain be permitted to gradually re-enter the community (Glancy & Bradford, 1999, p. 303).

As a result of the Swain trial, in 1991, the Supreme Court of Canada ruled that the provision in the *Criminal Code* allowing the Crown to use evidence despite objection from the accused defence counsel violated section 7 of the *Canadian Charter of Rights and Freedoms* (Glancy & Bradford, 1999, p. 304). Section 7 of the *Charter* specifically states that: “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice” (Canadian Charter of Rights and Freedoms, 1982). The Supreme Court concluded that this provision deprived the accused individual of liberty because it did not involve a hearing to determine his or her present level of dangerousness (Grant, 1997, p. 420).

The Supreme Court further determined that the provision requiring that all accused individuals found NGRI be automatically detained violated both sections 7 and 9 – “the right not to be arbitrarily detained or imprisoned” (Canadian Charter of Rights and Freedoms, 1982) – of the *Charter* (Glancy & Bradford, 1999, p. 304). As Glancy and Bradford (1999) identify, the Supreme Court of Canada believed that this provision provided arbitrary detention while depriving the judge from any freedom to consider alternative dispositions, as there was no hearing to evaluate the accused individual’s mental state (p. 304).

Bill C-30: An Act to Amend the Criminal Code (Mental Disorder) and to Amend the National Defence Act and the Young Offenders Act. Prior to *R. v Swain*, Part XX.1 of the *Criminal Code* established a legal framework used to govern the treatment of individuals found NGRI (Library of Parliament, 2013, p. 2). The Supreme Court of Canada decisions made in the Swain case resulted in pressures on the Parliament to pass Bill C-30, a Bill that was many years in the making, and which was proclaimed

into law in 1992. Bill C-30 made major legislative changes to the *Criminal Code of Canada* section that deals with mentally ill offenders (Grant, 1997, p. 422). The intent of the new provisions in Bill C-30 was to improve the civil rights of accused individuals (Davis, 1993, p. 122). The Supreme Court of Canada deemed the provisions included in Bill C-30 to be constitutional in *Winko v. British Columbia* (1999).

As a result of Bill C-30, the current mental disorder regime in the *Criminal Code of Canada* states that:

16, (1) No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

(2) Every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities.

(3) The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue (s. 16).

Bill C-30 addressed cosmetic changes, which included changing Part XX.1 of the *Criminal Code* from the insanity defence to the mental disorder regime. Following the proclamation of Bill C-30, an accused individual is no longer found NGRI but instead found Not Criminally Responsible on Account of Mental Disorder (NCRMD). Snell (2000) asserted that the change from 'not guilty' to 'not criminally responsible' was not intended to change the defence; the change were intended to be beneficial as they

encouraged acceptance of the illegal act by addressing that the accused committed the act (p. 23).

Bill C-30 also replaced words such as “natural imbecility” and “disease of the mind” with the term “mental disorder” (Standing Committee on Justice & Human Rights, 2002, p. 2). Although terms were changed, the definition of mental disorder remained the same (Grant, 1997, p. 422); mental disorder is still defined as a disease of the mind in the *Criminal Code* (Standing Committee on Justice & Human Rights, 2002, p. 3). As Verdun-Jones (2014) describes, this definition is widespread enough to include all mental conditions that would be categorized as a mental disorder by a psychiatrist or psychologist excluding temporary states of intoxication and brief mental conditions caused by injury (p. 206).

Prior to the implementation of Bill C-30, an individual could be remanded for a psychiatric assessment because of a belief that he or she might be mentally ill. The basis of such remand was vague; as Davis (1993) highlights, although individuals were remanded for a test of mental illness, the previous provisions did not explicitly clarify in what way the mental illness was required to impair functionality (p. 122). Additionally, individuals were usually held in custody for the duration of their remand, which often lasted up to 30 days (Davis, 1993, p. 123). The new legislation, Bill C-30, introduces a replacement for the previous scheme of warrants of remand (Swaminath, Norris, Komer, & Sidhu, 1993, p. 568). Under the current legislation, an assessment order may be requested if the court has reason to believe that evidence is required to determine:

- (a) Whether the accused is unfit to stand trial;

- (b) Whether the accused was, at the time of the commission of the alleged offence, suffering from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection 16(1);
- (c) Whether the balance of the mind of the accused was disturbed at the time of commission of the alleged offence, where the accused is a female person charged with an offence arising out of the death of her newly-born child;
- (d) The appropriate disposition to be made, where a verdict of not criminally responsible on account of mental disorder or unfit to stand trial has been rendered in respect of the accused; or
- (e) Whether an order should be made under section 672.851 for a stay of proceedings, where a verdict of unfit to stand trial has been rendered against the accused (s. 672.11).

In order to address the vagueness of the previous scheme of warrants of remand, Bill C-30 indicated that assessment orders must be specific. Assessment orders must indicate where the assessment shall take place, whether or not the accused must be in custody for the duration of the assessment, and the expected duration of the assessment (Criminal Code, 1985, s. 672.13). Moreover, there is no longer a presumption of custody. Assessments are to be conducted on an outpatient basis unless it is otherwise indicated as necessary by a prosecutor or clinician (Swaminath et al., 1993, p. 123). Thus, as Davis (1993) demonstrates, assessment orders cannot be made to hold an individual in custody (p. 123).

Additional significant changes enacted by Bill C-30 came with respect to the changes to the dispositions (Grant, 1997, p. 422). Under the new law, an accused

individual found NCRMD is no longer automatically detained in a psychiatric facility (Standing Committee on Justice & Human Rights, 2002, p. 2). Bill C-30 holds that the court has the freedom to either render an appropriate disposition or defer the case to a Provincial Review Board once an individual is found NCRMD (Grant, 1997, p. 422). The *Criminal Code of Canada* indicates that:

A Review Board must have at least one member who is entitled under the laws of a province to practise psychiatry and, where only one member is so entitled, at least one other member must have training and experience in the field of mental health, and be entitled under the laws of a province to practise medicine or psychology (Criminal Code, 1985, s. 672.39).

In their article *The Review Board Systems in Canada: Overview of Results from the Mentally Disordered Accused Data Collection Study*, Latimer and Lawrence (2006) explain that the goal of the Review Board is to individually assess the accused and to deliver a disposition that will protect the public and help treat the accused individual's mental disorder (p. 1)

If the court renders a disposition other than an absolute discharge (a release without conditions), it is required that the Review Board hold its own hearing within 90 days of the initial disposition (Standing Committee on Justice & Human Rights, 2002, p. 2). If the court decides to defer the case, the Review Board hearing will be held within 45 days of the initial disposition (Grant, 1997, p. 422). Furthermore, all dispositions are required by law to be reviewed annually to assess the accused individual's progress and reintegration into the community (Library of Parliament, 2013, p. 2).

Additionally, under the new provisions of Bill C-30, the principle of proportionality in the criminal justice system is no longer an important element when determining a disposition (Latimer & Lawrence, 2006, p. 3). The Standing Committee on Justice and Human Rights (2002) explain that, under the new law, the courts and the Review Boards are required to impose a disposition that is the least restrictive while taking into consideration factors such as: public safety, the mental condition of the accused and the final goal of reintegration for the accused (p. 2).

Regardless of whether it is the court or the Review Board that renders the disposition, there are three options available (Grant, 1997, p. 422; Pilon, 1999). Following Bill C-30, section 672.54 of the *Criminal Code* states that the three options include:

- (a) Where a verdict of not criminally responsible on account of mental disorder has been rendered in respect to the accused and, in the opinion of the court or Review Board, the accused is not a significant threat to the safety of the public, by order, direct that the accused be discharged absolutely;
- (b) By order, direct that the accused be discharged subject to such conditions as the court or Review Board considered appropriate; or
- (c) By order, direct that the accused be detained in custody in a hospital, subject to such conditions as the court or Review Board considered appropriate.

The *NCR Reform Act*

In February 2013, the Conservative majority government proposed to amend the mental disorder regime with Bill C-54, hereby referred to as the *NCR Reform Act*. The Act was first introduced in the 41st Parliament, 1st session as Bill C-54 and was then re-introduced on November 25, 2013 (Maher, 2013). Following the re-introduction of the

Act, it was sent to the First Reading in Senate on November 26, 2013 and was thereupon sent to the Second Reading on February 11, 2014. The Act was then referred to the Standing Senate Committee on Legal and Constitutional Affairs and a Committee Report was presented on March 27, 2014. After the Third Reading of the Act on April 9, 2014, it was sent to Royal Assent on April 10, 2014 (Department of Justice, 2014).

The *NCR Reform Act* amends Part XX.1 of the *Criminal Code* and the *National Defence Act*. Part XX.1 of the *Criminal Code*, also referred to as the mental disorder regime included a general framework used in court to determine whether an individual will be held criminally responsible for his or her actions committed. Under the mental disorder regime:

No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong (Criminal Code, 1985, s. 16.1).

Therefore, the NCR regime allows the court to make a verdict of NCRMD if the accused individual is determined to have been suffering from a mental disorder that, at the time of the offence, impaired his or her ability to appreciate the wrongfulness of their actions. Although the individual did, in fact, engage in criminal behaviour, a verdict of NCRMD means that he or she is not convicted of, or punished for, the offence (Criminal Code, 1985, s. 672.35). For this reason, these particular individuals continue to be referred to as ‘accused’ persons rather than offenders.

The *NCR Reform Act* has three main components. The first main component of the Act suggests that the reforms put public safety first. The Act suggests amendments to

section 672.54 of the current *Criminal Code of Canada*. Prior to the implementation of the Act, the *Criminal Code* stated that the court or the provincial or territorial Review Board, established to make or review dispositions concerning any NCR accused person (Criminal Code, 1985, s. 672.38), must consider “the need to protect the public from dangerous offenders, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused” (Criminal Code, 1985, s. 672.54) when rendering an appropriate disposition. The *NCR Reform Act* suggests that the court or the Review Board should account for “the safety of the public, which is the paramount consideration” (NCR Reform Act, 2013, s. 672.54).

The public safety component of the *NCR Reform Act* amends the criterion that requires the disposition imposed be the “least onerous and least restrictive” in all circumstances (Criminal Code, 1985, s. 672.54). According to the *NCR Reform Act*, the disposition must simply be appropriate and necessary to the circumstances surrounding the case (NCR Reform Act, 2013, s. 672.54). Here, the safety of the public is of paramount consideration for Review Boards. This is followed by the mental condition of the accused; the reintegration of the accused into society and; any other needs of the accused (NCR Reform Act, 2013, s. 672.54).

Additionally, under the *NCR Reform Act* the Review Board has the ability to put in place non-communication orders between the victim and the accused individual in order to enhance public safety. The components of the Act relating to public safety will also allow for consistency within the interpretation and the application of the law across Canada (Prime Minister of Canada, 2013). Section 672.542 of the Act states:

When a court or Review Board holds a hearing referred to in section 672.5, the court or Review Board shall consider whether it is desirable, in the interests of the safety and security of any person, particularly a victim or witness to the offence or a justice system participant, to include as a condition of the disposition that the accused

- (a) Abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the disposition, or refrain from going to any place specified in the disposition; or
- (b) Comply with any other condition specified in the disposition that the court or Review Board considers necessary to ensure the safety and security of those persons.

A second component of the *NCR Reform Act* allows the court to designate an NCR accused person to a new “high-risk” category, which would deem the accused individual a threat to public safety. The act defines a significant threat to public safety as “...a risk of serious physical or psychological harm to members of the public – including any victim of or witness to the offence, or any person under the age of 18 years – resulting from conduct that is criminal in nature but not necessarily violent” (*NCR Reform Act, 2013, s. 672.5401*).

In order for the court to designate an NCR accused person “high-risk”, the act states:

674.64 (1) On application made by the prosecutor before any disposition to discharge an accused absolutely, the court may, at the conclusion of a hearing, find the accused to be a high-risk accused if the accused has been found not

criminally responsible on account of mental disorder for a serious personal injury offence, as defined in subsection 672.81(1.3), the accused was 18 years of age or more at the time of the commission of the offence and

- (a) The court is satisfied that there is a substantial likelihood that the accused will use violence that could endanger the life or safety of another person; or
- (b) The court is of the opinion that the acts that constitute the offence were of such a brutal nature as to indicate a risk of grave physical or psychological harm to another person.

In section 672.64 (2), the *NCR Reform Act* identifies five factors that the court must consider when deciding if an accused is high-risk:

- (a) The nature and circumstances of the offence;
- (b) Any pattern of repetitive behaviour of which the offence forms a part;
- (c) The accused's current mental condition;
- (d) The past and expected course of the accused's treatment, including the accused's willingness to follow treatment; and
- (e) The opinions of experts who have examined the accused.

A "high-risk" NCR accused will be denied a variety of rights that an NCR accused would be granted under the current mental disorder regime. The *NCR Reform Act* states that a high-risk NCR accused person will be subject to a disposition hearing but the final disposition must not include any conditions that will allow him or her to leave hospital property (NCR Reform Act, 2013, s. 672.64(3)). Thus, the accused individual will be denied escorted and unescorted passes into the community for the entire duration of their detention. Under the provisions of the Act, escorted passes into the community will only

be considered in a limited number of cases and such cases will be subject to a variety of conditions to ensure public safety (Prime Minister of Canada, 2013). Section 672.64(3) of the *NCR Reform Act* demonstrates that escorted passes will only be considered if:

- (a) It is appropriate, in the opinion of the person in charge of the hospital, for the accused to be absent from the hospital for medical reasons or for any purpose that is necessary for the accused's treatment, if the accused is escorted by a person who is authorized by the person in charge of the hospital; and
- (b) A structured plan has been prepared to address any risk related to the accused's absence and, as a result, the absence will not present an undue risk to the public.

Furthermore, under the *NCR Reform Act*, Review Boards have the ability to review a high-risk NCR accused person's disposition once every three years as opposed to the current entitlement of once every year, limiting their chances of being considered for absolute and/ or conditional discharge (Criminal Code, 1985, s. 672.81(1.31)).

According to the *NCR Reform Act*, the Review Board is entitled to extend the time for holding a review hearing if they are satisfied that the accused's condition is not likely to improve based on the information provided from the most recent disposition and assessment report (Criminal Code, 1985, s. 672.81(1.32)).

The third and final component of the Act is that it makes procedural amendments that will enhance the victims' involvement in the case (Canadian Bar Association, 2013). With this amendment, upon victim request, the Review Board will notify the victims when the accused is discharged (NCR Reform Act, 2013, s. 672.54b). Moreover, the Review Board will also notify all victims of the offence that they are entitled to file a

victim statement with the court if the accused is deemed high-risk. These (relevant) statements will be taken into consideration when determining the appropriate disposition, determining whether the accused is high-risk or revoking the high-risk designation (NCR Reform Act, 2013, s. 672.5(13.2)).

Review of Empirical Research Surrounding the NCRMD Regime

As I previously mentioned, the *NCR Reform Act* is the focus for this thesis because it proposed to make major changes to the *Criminal Code*, which remained relatively unchanged since 1992 when the mental disorder regime last underwent major reforms in Canada. The changes to the mental disorder regime in 1992 had clear evidence to support the necessity of the changes, for example; the Supreme Court of Canada held that the previous mental disorder provisions were unconstitutional under the *Charter of Rights and Freedoms* and, thus, struck them down (Grant, 1997, p. 421). The influential factors behind the provisions included in the *NCR Reform Act*, on the other hand, were not driven by the Supreme Court of Canada and remain largely unknown; the empirical evidence surrounding the effectiveness of the NCRMD regime following the changes in 1992 suggests that the changes in the *NCR Reform Act* were not necessarily required.

One of the main functions of the mental disorder regime in the *Criminal Code* is to protect the public by restricting the liberty of those NCR accused persons who are considered to be dangerous (Verdun-Jones, 2014, p. 215). Recall that, prior to the implementation of the *NCR Reform Act*, the *Criminal Code* stated that when making a disposition, a court or Review Board must:

Take into consideration the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and

the other needs of the accused, make one of the following dispositions that is the least onerous and least restrictive to the accused (Criminal Code, 1985, s. 672.541).

Thus, it would appear as though Review Boards were already considering public safety when making dispositions prior to the changes in the Act that specify that public safety is paramount consideration. In fact, in their sample of persons found NCRMD between 1992 and 1998, Livingston, Wilson, Tien and Bond (2003) found that only 2.5 percent of NCR accused persons were granted an absolute discharge at his or her first Review Board hearing following the verdict of NCRMD (p. 42). They further illustrate that common conditions attached to conditional discharges for NCR accused persons include: remaining under the general supervision of a director, being required to reside in a particular area (e.g., supervised setting approved by the director or in a forensic hospital), being required to report to an outpatient clinic for mental health treatment services and, refraining from using drugs and/or alcohol (Livingston, Wilson, Tien, & Bond, 2003, p. 412). Latimer and Lawrence (2006) identified similar results for common conditions attached to conditional discharges but they also included non-communication orders with victim (p. 25).

A further review of the empirical research on recidivism rates of NCR accused individuals who have successfully reintegrated into society would suggest that the changes that accompanied the *NCR Reform Act* were not applied to reduce recidivism rates of individuals found NCRMD. In a follow-up study conducted with individuals found NCRMD in Ontario, Quebec and British Columbia between May 1, 2000 and April 30, 2005, The National Trajectory Project found that only 16.7 percent of the sample had

committed a new offence in the three years following their original NCRMD verdict (Charette et al., 2015, p. 130). Similarly, Livingston et al. (2003), found that only 18 percent of persons found NCRMD between February 4, 1992 and February 4, 1998 committed a new offence two years following their NCRMD verdict (p. 413). As the *National Trajectory Project* explains, the recidivism rates for NCR graduates are lower than the recidivism rates of traditional offenders (Charette et al., 2015, p. 131). This suggests that, prior to the *NCR Reform Act*, the NCRMD regime and the Review Board systems are working effectively at preventing future offences involving NCR accused persons and therefore did not require changes.

The National Trajectory Project also found that recidivism rates were extremely low for NCR accused persons who committed a violent index offence (6 percent) (Charette et al., 2015, p. 130). In fact, recidivism rates were higher for NCR accused persons who committed a less severe index offence (21.6 percent) (Charette et al., 2015, p. 130). What is more is that the group also found that only 0.6 percent of the sample that did commit a new offence committed a violent offence (Charette et al., 2015, p. 130). This evidence is not consistent with the new “high-risk” designation in the *NCR Reform Act*. Recall that s. 672.54 of the *NCR Reform Act* states that the court can find the accused to be a high-risk accused if the court is; a) satisfied that there is a likelihood that the accused will use violence that could endanger society or, b) the court believes that index offence were of such brutal nature as to indicate grave harm to another person (*NCR Reform Act*, 2013, s. 672.54). Thus, the NCR accused persons who will be potentially designated a high risk NCR accused person do not appear to be the ones who reoffend.

Stigma of Mental Illness

It is important to consider the issues relating to mental health-related stigma when discussing the evolution of the *NCR Reform Act* because the individuals who will be subjected to the Act represent a marginalized group in society. Individuals with mental health problems, and NCR accused persons in particular, are easy targets because of prevailing negative stereotypes of mental illnesses throughout society that are intentionally, and unintentionally, used by penal populist political actors and governments. In other words, penal populist governments are able to use policies and practices to arbitrarily restrain individuals with mental illness in terms of rights and social opportunities (Livingston, 2013, p. 5). This form of stigma and discrimination, known as structural stigma, often results in the inequality of social, economic and political power for individuals with mental illness (Livingston, 2013, p. 5).

Penal populist governments are able to intentionally discriminate against individuals with mental illness with the implementation of policies and procedures that purposefully and consciously restrict the rights and opportunities of individuals with mental illness (Livingston, 2013, p. 5). On the other hand, this also occurs unintentionally; with the implementation of legislative policies that may unintentionally restrict individuals with mental illness despite efforts of remaining neutral (Corrigan, Markowitz, & Watson, 2004, p. 482; Livingston, 2013, p. 6). This typically occurs because individuals with mental illness are overly represented in particular groups who are subjected to specific social policies (Livingston, 2013, p. 6).

Structural stigma of mental illness is common within the criminal justice system. Individuals with mental illnesses can be placed as a higher risk of coming into contact

with the criminal justice system because of experiences with structural stigma in other areas of their social life, such as healthcare, difficulties securing employment and being limited to housing in dangerous neighbourhoods. Once individuals enter into the criminal justice system, they often experience structural stigma (Livingston, 2013, p. 16). For instance, Livingston (2013) identified that criminal justice system professionals ordinarily affirm negative stereotypes about individuals with mental illnesses (pp. 16-17). The endorsement of negative stereotypes likely affects practices; individuals with mental illness regularly remain unprotected by the criminal justice system and, in fact, many individuals with mental illness claim that policemen and prosecutors do not believe their claims. Additionally, being diagnosed with a mental illness makes it more difficult for an individual to obtain parole.

Mental Illness in the News Media

Structural stigma can also be seen throughout the news media, specifically through the ways in which the news media frames and portrays individuals with mental illness in a negative light, thus endorsing negative stereotypes surrounding mental illness in general (Corrigan et al., 2005, p. 551; Livingston, 2013, p. 19). As illustrated by Angermeyer & Schulze (2001), the news media accounts are one of the primary sources of information regarding mental illness for the general public (p. 470); it has the ability to shape beliefs in important ways. The representations in the news media plays a role in how the public understands mental illness and thus might have an influence on how the general public treats individuals with mental illnesses (Livingston, 2013, pp. 19-20).

There is a consistent tendency to over-report violent crimes that involve a mentally ill perpetrator in various newspapers and various countries (Angermeyer &

Schulze, 2001, p. 474) The news media has a particular preference for stories that involve psychotic disorders, such as schizophrenia. As a matter of fact, schizophrenia assumes its newsworthiness exclusively in terms of crime reporting (Angermeyer & Schulze, 2001, p. 482). In other words, the public almost always sees individuals with schizophrenia, such as Vincent Li, a man found NCRMD in 2008, as violent, dangerous and criminal.

Due to a predominance of crime stories published by the news media that show a connection between mental illness and crime, the public is generally led to believe that that connection is valid (Wahl, Wood, & Richards, 2002, p. 25). This produces a fear of crime and of mental illness among the general public. In general, the media takes individual concerns with crime and makes it available for them in a broader way. The media provides a schema of criminal events that is typically different from simple statistics of criminality by indicating that violent crimes are more common than in reality (Sacco, 1995, p. 143). Furthermore, the way that the media emphasizes certain types of crimes, for instance homicides involving mentally ill individuals and neglects other types of crimes influences the public fear of crime and mental illness (Gruenewald, Pizarro, & Chermak, 2009, p. 263).

Since, as previously discussed, the news media play an important role when it comes to informing the public and encouraging beliefs, this can strongly contribute to the negative stereotypes and stigmatization of mental illness in today's society (Philo, Secker, Platt, Henderson, McLaughlin, & Burnside, 1994, p. 272). In fact, mental health advocates have warranted that the information that the public consumes from the media tends to be inaccurate and that this information plays a large role in the stigmatization of

mental illness (Wahl, 1992, p. 348). The ways in which the media portrays mentally ill individuals contributes to the widespread stereotype that individuals who are mentally ill are violent, dangerous, unpredictable are more likely to be those who commit serious crimes (Kalucy et al., 2011, p. 539).

As a result, public attitudes and behaviours towards individuals with mental illness that affect the development of the illness and ensuing treatment arise. This is known as public stigma (Corrigan, Markowitz, Watson, Rowan, & Kubiak, 2003, p. 163). Public stigma can rob individuals labeled mentally ill of various important life opportunities, such as obtaining good employment opportunities and suitable housing (Corrigan, 2004, p. 616).

Members of the general public commonly believe that individuals with mental illnesses are violent, are to blame for their illness and are incompetent (Corrigan, 2004, p. 616). These individuals are particularly believed to be homicidal and thus should be feared; to have child-like views of the world; and are rebellious (Corrigan & Watson, 2002, p. 36). One of the ways in which the general public begins to apply such stereotypes to individuals with mental illness is through labeling; the application of a label by other individuals, such as the news media or the government or by association (Corrigan, 2004, p. 615). Once an individual is labeled, they are seen as a part of an out-group: different than the rest of society (Angermeyer & Matschinger, 2005, p. 319). The label of mental illness influences the public to further endorse the belief that individuals with mental health issues are dangerous and violent, increasing fear and the desire to increase social distance (Angermeyer & Matschinger, 2005, p. 308). Individuals with mental illness are customarily prevented from enjoying the various rights that members of

the general public are not prevented from as a result of the general public's endorsement of such stereotypical beliefs (Ben-Zeev, Young, & Corrigan, 2010, p. 319).

The effects of stigma can have detrimental effects on the individual living with mental health issues; a diagnosis of a serious mental illness enhances internalized negative attitudes and about the illness, or self-stigma because it activates the knowledge associated with stigma in society (Ben-Zeev et al., 2010, p. 319). This results in a reduction in self-esteem, self-efficacy, quality of life and the avoidance of treatment and thus, may lead to an increase in the severity of symptoms (Ben-Zeev et al., 2010, pp. 319-320).

Theoretical Framework

What is Punishment?

Since the NCRMD regime does not constitute an acquittal or punishment in the traditional sense, it is important to consider the nature of punishment through a sociological lens. Scholars who have considered punishment through a sociological lens highlight the works of various theorists, including Emile Durkheim (e.g. Garland, 1991; Karstedt, 2007). It has been suggested that Durkheim's work provided the groundwork for the most successful modernization of the criminal justice discipline because of his emphasis on the social importance of criminal justice (Garland, 1991, p. 23; Karstedt, 2007, p. 59). It has also been suggested that Durkheim did more than any other scholar to develop a sociological framework of punishment that places emphasis on the social importance of penal measures and institutions (Garland, 1990, p. 23). Note that for the remainder of this chapter I will be using David Garland's interpretation of Emile Durkheim's scholarly work.

Notwithstanding the criticisms, limitations and flaws of Durkheim's work, Garland (1990) advocates that Durkheim's theory expands perspectives and highlights connections that help scholars understand the social functions of punishment (p. 23). Durkheim insists that it is critical that society take a step back from the notion of dealing with offenders and to, instead, view punishment on a broad social level in order to acknowledge and understand the true traits and forces that make it work. Therefore, for Durkheim, one misses a fundamental feature of punishment when perceiving it as solely a calculated instrument for the rational control of individual conduct in society; core

elements for Durkheim are passion, irrationality and emotion fixed by a sense of sacred moral codes (Garland, 1990, p. 32).

Garland argues that, in his theoretical framework, Durkheim has a specific view of society, as he was concerned with identifying the various sources of social unity that he believed to be crucial to social cohesion within a society (Garland, 1990, p. 23). His view of society centers on an understanding of a common moral order and its important role in social life (Garland, 1990, p. 25). Garland asserts that Durkheim believes that essential to social life is a shared framework of meaning and moralities among members of the public, that is, a collectivity of beliefs and sentiments shared among members in society (Garland, 1990, p. 50). Without such a framework, Durkheim asserted that social life is, in fact, inconceivable, as an agreed upon set of norms regulates all exchanges between individuals (Garland, 1990, p. 23). Thus, as Garland pointed out, the ethics of society are set in a particular social organization (Garland, 1990, p. 24).

In his book *Punishment and Modern Society: A Study in Social Theory* (1990), David Garland demonstrated that Durkheim's views of morality and society allowed him to perceive punishment as a moral phenomenon that carries out both social and penal functions (p. 24). Thus, Durkheim took punishment to be the paramount object of analysis in his theoretical framework (Garland, 1990, p.12). In his work titled *The Division of Labour*, Durkheim perceives punishment to be a manifestation of society's moral order (Garland, 1990, p. 25). In other words, he views punishment as a social institution that is a matter of morality and social unity (Garland, 1990, p. 26). When strong bonds exist in society, punishments are desired and, in turn, these punishments re-establish and strengthen the social bonds (Garland, 1990, p. 28).

Consistent with Durkheim's views, Garland illustrates that crimes are a product of social norms and conventions that seriously violate the essential moral code in society. These criminal acts shock the collective conscience in society, that is, those individuals who follow the common moral code and define what is and is not criminal (Garland, 1990, p. 29). Due to the violation of deeply held social norms and conventions, crimes generate punitive reactions (Garland, 1990, p. 29). Therefore, in Durkheim's theoretical framework, punishment is an expressive institution and is a moral process that functions to conserve the shared moral and social values in society. As a social institution, punishment draws on the motivation and the support from the shocked and angered healthy consciences in society (Garland, 1991, p. 122).

Here, punishment is an opportunity for a societal realization of the moral values that are essential to the conscience collective in society. By responding to the violation of these morals, punishment strengthens and restates moral order (Garland, 1991, p. 123). As a result, penal measures are not necessarily directed at the offender but are directed at the audience of shocked and outraged individuals in society who believe their values and morals have been violated (Garland, 1991, p. 123). Garland illustrates that Durkheim holds that, as a result, a wide population feels that they are involved in punishment as they provide the state with their support and, thus, legitimacy (Garland, 1991, p. 122).

In his book *Punishment and Modern Society: A Study in Social Theory* (1990), Garland suggests that Durkheim overlooked the possibility of an existing conflict between political doctrine and the conscience collective. Garland explains that Durkheim believes that the two groups will manage to form a consolidated system of political authority and collective belief although this is not the case (p. 48). In his criticism of

Durkheim's historical account, Garland demonstrates that penal forms are, in fact, the disputed outcome of a continuous conflict between different forces in society and visions of society (Garland, 1990, p. 48). Although Durkheim perceives society's conscience collective believes in a specific set of core values, these values may be interpreted and understood differently by various divisions of society (Garland, 1990, pp. 53-54). Thus, within society, there is a struggle between competing groups, such as political actors and the sectors of individuals in society who have varying interpretations of the core values in society and who wish to execute their own interpretations of moral order.

Although the NCRMD regime in the *Criminal Code* is not a form of punishment because it exempts individuals from criminal liability for actions committed when they were unable to appreciate the nature and the quality of such act as a result of a mental disorder (Latimer & Lawrence, 2006, p. 1), it is possible that the *NCR Reform Act* includes provisions that are punitive in nature. When considering the punitive nature of the *NCR Reform Act*, it is important to discuss the social functions of punishment. Consistent with Garland's perspectives on Durkheim's theoretical framework of punishment discussed above, the *NCR Reform Act* can be represented as a punitive response focused on re-establishing and strengthening social bonds in society that began to deteriorate when crimes were committed (by an NCR accused person or a traditional offender). As a result of the Act's punitive nature, I will be applying David Garland's sociology of punishment and John Pratt's penal populism as theoretical frameworks to this thesis.

Although the Act does not represent traditional forms of punishment, such as imprisonment, particular provisions included may be punitive in nature. What the Act

does is take the focus of the NCRMD regime away from rehabilitation and shifts it towards punishment. This is especially evident with the new “high-risk” designation that accompanied the *NCR Reform Act*. As previously discussed, NCR accused persons designated high-risk will be denied a variety of rights and opportunities, including annual Review Board hearings and gradual privileges, such as escorted and/or unescorted passes in the community or on hospital grounds. In fact, the high-risk NCR accused person will only be allowed to leave hospital grounds for medical reasons and if there is no risk to the public (*NCR Reform Act*, 2013, s. 672.64). Both frequent Review Board hearings and increased privileges are important for an individual’s treatment and eventual reintegration into society. Thus, without these rights it is possible that NCR accused persons will be detained for longer periods of time than under the previous regime.

Additionally, the provision in the Act that alters the terminology in section 672.54 of the *Criminal Code* from “least onerous and least restrictive” to “necessary and appropriate in the circumstances” for when Review Boards make a disposition has the potential to be punitive. With this provision, it is possible that, while first and foremost considering public safety, the dispositions may be more restrictive than they would have been under the previous wording of the *Code*.

Although Durkheim offers an in-depth discussion of the various functions that punishment serves in society, he does not offer a discussion about the definition of punishment. Thus, for an understanding of the definition of punishment, I looked to Kent Greenawalt’s 1983 article, *Punishment*. Greenawalt (1983) asserts that, although punishment is a concept with no fixed boundaries, punishment involves an intentional imposition of pain or deprivation on people by those who maintain authority (p. 343-346).

As expected, he describes that punishment typically results from a violation of established laws (p. 345). A key aspect of punishment is that "...one must be able consciously to inflict harmful consequences because of the wrong that has been committed" (p. 344). Moreover, he contends that punishment and the painful consequences that accompany punishment usually follow judgement of blame for committing the wrongful act, although this judgement of condemnation may be debilitated or even absent in some cases of punishment (Greenawalt, 1983, p. 344).

Although the NCR regime is not a form of punishment, it seems appropriate to apply a theoretical framework that focuses on punishment to this analysis of the *NCR Reform Act* when considering Greenawalt's understanding of punishment. With this understanding of punishment, we are able to see that the *NCR Reform Act* is a piece of legislation that changing the rehabilitative regime by applying punitive measures. Although individuals found NCRMD are not convicted of a crime, Greenawalt (1983) explains that this conviction or judgement of condemnation is sometimes absent (p. 344), as it is in this case. Despite not being held responsible for their actions committed, the actions are still seen as wrong or worth punishing. Thus, consistent with the definition of punishment, the provisions in *NCR Reform Act* represent the infliction of harmful consequences by members of society with authority. It is important to note that the harmful consequences are not reflective of the various traditional harmful consequences that accompany punishment, such as prison sentences. Here, the punitive harmful consequences come in the form of taking away the individuals liberty and inflicting pain through several mechanisms, such as keeping the individual arbitrarily detained and restricting all access to the community essential for rehabilitation. Thus with this, I have

chosen to use David Garland's sociology of punishment and John Pratt's penal populism as theoretical frameworks for the analysis of the *NCR Reform Act*. The remainder of this section will describe and explain both frameworks for better understanding.

Punishment as a Social Institution

The sociology of punishment is a tradition that shapes the way we think about penal measures and criminal justice. In Garland's article *Sociological Perspectives on Punishment* (1991), he explains that the sociology of punishment is a body of thought that is comprised of a range of theoretical approaches and perspectives that do not form one clearly defined framework (p. 121). Although the sociology of punishment is not a single integrated framework, the various sociological theories are valuable to consider because they identify constraints and consequences that are present when penal policy is developed (Garland, 1991, p. 156). Furthermore, despite the differences among the theories, there are many similarities among the range of theories that come together to broadly define the framework as a whole.

Garland's perspective does not solely focus on the instrumental and moral aspects of punishment in society, but rather, views punishment as a social institution. Punishment is viewed as a complex set of interconnected process and institutions as opposed to a single existence (Garland, 1990, p. 17). Garland (1991) further contends that punishment should be recognized as a social institution that has a variety of effects that extend to more than just the population of criminals (Garland, 1991, p. 123).

Garland's (1991) sociology of punishment is concerned with distinguishing the social foundations of punishment and identifying the social implications of various penal

modes (p. 119). Thus, his perspective explores varying relations between punishment and society. To Garland, punishment is represents a wide range of purposes as well as historical values and meanings (Garland, 1990, p. 10). Garland argues that punishment and penal institutions cannot be reduced to a single objective because complex social institutions cannot be adequately explained by a single meaning or purpose (Garland, 1990, p. 17). Garland also posits that punishment and penal institutions are never fully rationally integrated to one single instrumental objective. Thus, he argues that viewing punishment as a means to a single purpose will lead to flawed expectations and interpretations because important sociological characteristics will be missed (Garland, 1991, pp. 117-118).

Campbell and Schoenfeld (2013) claim that it was necessary to develop a new sociology of punishment that can answer more questions that have become recently relevant. What has recently become important is to incorporate a new understanding of a punitive turn in the United States, in particular (Campbell & Schoenfeld, 2013, p. 1377). According to Campbell and Schoenfeld (2013), the new penal order is identified by a tough-on-crime rhetoric and a particular set of assumptions, including the idea that imprisonment is about incapacitating criminals because they are considered to be different than the rest of society (p. 1379). Furthermore, such perspective recognizes that penal measures and policies are now being shaped by policy makers and victims organizations, as opposed to experts, such as judges and criminologists (Campbell & Schoenfeld, 2013, p. 1379).

Similarly, Garland (2001) asserts that, as a result of societal changes, a new tough-on-crime rhetoric has emerged (p. 142). He notes that the political discussions

surrounding crime control issues have deviated to more highly and politically charged discussions (Garland, 2001, p. 13). Additionally, as a result of societal changes, policy making began to shift towards penal populism. As a result of this shift, penal policies are thus constructed to include and favour public opinion as opposed to expert opinion and research, such as judges and criminologists (Garland, 2001, p. 142). The dominant voice now includes that of the victim and their experiences and the fearful public (Garland, 2001, p. 13). This shift in penal policy making is best represented in John Pratt's theoretical framework of penal populism.

Punishment as a Political Strategy

Durkheim's view of punishment as a form of social expression grounded in emotions, Garland's (2001) explanation regarding the changes in penal policy making, and Campbell and Shoefeld's (2013) inquiry to develop a new sociology of punishment are emulated in John Pratt's (2007) theory of penal populism. Penal populism began to flourish in the 1990s (Pratt, 2007, p. 43) as sentencing and crime control policies began to shift and became harsher in most Western nations (Roberts, 2003, p. 3). This shift in crime control policies should not solely be understood based on its instrumental or penological objectives but also based on its sociological objectives expressed by Garland and the scholars highlighted in his writings, including Durkheim.

Populism has been termed a democratic argument; it is democratic because it appeals the common appreciation of including people's voices and it is an argument because it is free from ideology and a rigid set of policies (Brett, 2013, p. 410). Pratt (2007) argues that penal populism is not simply popularity based (p. 17). In his recent book *Penal Populism*, Pratt (2007) explains that populism is a type of political anomaly

that occurs when tensions emerge between the elite class and the common people in society (p. 17). He argues that penal populism specifically arises when "...there is an ideology of popular resentment against the order imposed on society by a long established, differential ruling class, which is believed to have a monopoly of power, property, breeding and fortune" (Pratt, 2007, pp. 16-17).

Penal populism reveals a political strategy whereby the government creates and applies a popular approach that allows for the use of moods, sentiments and voices of segments of the public, which feel that they have been ignored by the government in the decision-making process (Li, 2015, pp. 146-147; Pratt, 2007, p. 17). These groups feel left out or "disenfranchised in some way or other by the trajectory of government policy which seems to benefit less worthy others but not them" (Pratt, 2007, p. 17). Thus, as Kennamer (1994) suggests, in penal populism, the public refers to a subset of individuals in society who know what the current public policy issues are and how they can make meaningful public policy change (p. 3-4). In turn, public opinion refers to the views of this segment of society (p. 3-4), rather than the views of all people of society, since this would be so vast and beyond the limits for which policymakers can go (Kennamer, 1994, p. 3).

Pratt (2007) suggests penal populism speaks out for those groups in society who feel as though they are disenfranchised (p. 17). He further suggests that the development of populist policies has driven political actors to build stronger relationships with various groups that assert to advocate for the public because they look to these groups for information regarding policies. As such, the political debate has shifted from a debate that

favours traditional political beliefs and values to a debate that favours the expectations of strategically selected segments of society (Pratt, 2007, p. 19).

Penal populism asserts that politicians cater to the public's punitive attitudes and opinions, as perceived by political actors. Politicians further use issues relating to crime to their advantage and promote penal policies that are popular among the general public (Frost, 2010, p. 158). This is similar to Garland's perspectives on Durkheim's theoretical framework. Garland asserts that Durkheim believes that passion is the cause of punishment and vengeance is the core motivation that influences all punitive sanctions in society (Garland, 1990, p. 31). Durkheim contends that, since crimes are offences that violate society's sacred moral order and the healthy consciences feel personally outraged as a result of the violation, punishment thus corresponds to deeply held views among members of society (Garland, 1990, p. 31). In Durkheim's theoretical framework, such collective sentiments of the healthy consciences in society are to be guarded and maintained by the state. Thus, he views the state as being responsible for avoiding the collapse of moral authority in society (Garland, 1990, p. 52). Therefore, a basic correspondence will exist between laws and legal sanctions and popular sentiment; laws and state actions reflect and express, at least partly, such collective sentiments and deeply held beliefs (Garland, 1990, p. 54). As Durkheim maintains, collective sentiments, such as moral outrage and horror, provide a general framework for the support of penal laws and institutions (Garland, 1990, pp. 62-66). Furthermore, the actual rituals of punishment, such as court trials, sentencing, and the execution of punishments, give further definition to collective sentiments and thus, strengthen and gratify such sentiments (Garland, 1990, p. 67).

A penal populist government claims to listen to the people in society whose lives have been recently affected by crime (Johnstone, 2000, p. 162). Victims are especially important for a penal populist government (Pratt, 2007, p. 25). In fact, a populist political strategy asserts to give victims an advantage and thus gives victims' voices a sense of legitimacy and authenticity (Garland, 2001, p. 143). In such cases, victims are symbolically used by populist political actors to place emphasis on the ways in which the criminal justice system has entitled the interests and the rights of the criminal before those of the victims and thus the general public (Pratt, 2007, p. 25). By symbolically using the image of the victim of crime, these political actors politicize the image of the victim as opposed to projecting the actual interests and opinions of the victims themselves (Garland, 2001, p. 143). Garland (2001) goes so far as to suggest that political actors "...routinely exploit the victim's experience for their own purposes" (p. 143). Garland best illustrates the notion of the symbolic image of the victim in his book *The Culture of Control* (2001):

The symbolic figure of the victim has taken on a life of its own, and plays a key role in political and policy argument. The crime victim is no longer represented as an unfortunate citizen who has been on the receiving end of a criminal harm. His or her concerns are no longer subsumed within 'the public interest' that guides prosecution and penal decisions. Instead, the crime victim is now, in a certain sense, a *representative character* whose experience is assumed to be common and collective, rather than individual and atypical (p. 144).

This acceptance of public opinion and emphasis on victims allows policy making to work on an emotional ground rather than rational ground, reinforcing Durkheim's

belief that punishment is an expressive institution. Thus, feelings and opinions are more important in penal populism than rational evaluations of empirical evidence (Roberts, 2003, p. 88). As Durkheim suggested, the general public feels violated when criminal acts occur and threaten moral order. For this reason, penal populist policies feed on the collective conscience's expressions of anger, frustration and disenfranchisement with the criminal justice system (Pratt, 2007, p. 20).

Not only does penal populism involve an acceptance of the general public opinion as one with value and direction, it also "...involves a wilful disregard of evidence or knowledge, and this knowledge is accumulated and held, typically, by those who work within, or closely involved with, the criminal justice system" (Roberts, 2003, p. 65). Disregarding expertise is often done to regain legitimacy that diminishes as a result of the government's repeated inability to provide security and protection to society (Pratt, 2008, p. 367). Pratt (2008) suggests that inappropriate events that conflict with societal norms, such as crime, often lead the public to lose confidence and trust in the government resulting in governmental action (p. 367). In order for the government to regain the public's confidence and trust, they often realign power relations to include the public in decisions (Pratt, 2008, pp. 366-367). Thus, decision-making powers are assigned to the public rather than experts. Further, Pratt (2007) contends that, because penal policy debate has shifted to revolve around the newly developed relationships between the government and individuals and victim advocacy groups, concerns about criminal justice and penal reform have become more prevalent in public discourse allowing public concerns to supersede expert opinion and rationale (p. 31).

The instrumental displacement of expertise, defined as knowledge from individuals trained in the area of mental health and criminal justice practices, allows political actors to defend and justify criminal justice policy choices. Political actors use the removal of expert opinion from the debate to strengthen their own popularity by endorsing the public's opinion (Fenwick, 2013, p. 223). Tough-on-crime policies are justified and communicated to the public with simple, direct, everyday language (Fenwick, 2013, p. 223; Pratt, 2007, p. 24). Penal policy choices are thus justified by referencing the opinions and expressions of the public as opposed to the experts (Fenwick, 2013, p. 223). Thus, by attempting to persuade the public and achieve a sense of political legitimacy:

It [penal populism] seeks to discredit existing elites (most obviously public officials, lawyers and other criminal justice 'experts') who are overly attached to either (a) a conception of the underlying causes of criminality that seems to absolve offenders of their wrongdoing, and/or (b) due process values that are perceived as affording too much legal protection to offenders at the expense of victims and the public (Fenwick, 2013, p. 223).

As a theoretical framework, penal populism recognizes and acknowledges both the instrumental or penological objectives and the sociological objectives of punishment, aligning with Durkheim's theory. Instrumentally, penal populism refers to a program of getting tough-on-crime as well as a strategy for persuading the public and gaining electoral advantage. This refers to policies that advocate a tough stance on crime control issues, such as mandatory minimum sentences and the three-strikes laws that favour a tougher attitude on crime control issues (Fenwick, 2013, p. 217). Fenwick (2013)

illustrates that penal populism policies are popular because they reflect everyday notions of crime as well as represent the angry and fearful public attitudes towards criminals and crimes (p. 223).

Lastly, imprisonment is a central tool of penal populism (Pratt, 2007, p. 36; Roberts, 2003, p. 5). This is despite evidence suggesting that imprisonment is ineffective as a crime control strategy; Roberts (2003) illustrates that, in fact, the emphasis on imprisonment removes resources from more effective crime control policies (p. 6). Pratt argues that populist political actors aim for harsher sentences, more prisons, and to make the punishment of offenders "...a symbolic spectacle of reassurance and vengeance for an on-looking public, humiliation and debasement for its criminal recipients" (Pratt, 2007, pp. 37-38). In many cases, the punishments are unjustified on the basis of the offenders perceived level of dangerousness (Roberts, 2003, p. 6). Nevertheless, this emphasis on imprisonment as a way to protect the wellbeing and the security of the general public who are law-abiding, as penal populism looks to put the rights of the public and the community over the rights of the individual offenders by punishing those who threaten that security and wellbeing (Pratt, 2007, p. 36).

As reflected in Durkheim's theory of punishment, the emphasis on imprisonment reflected in penal populism is a way to further portray that the government, the guardian of moral order, is symbolically prioritizing the security and well-being of the citizens. In other words, penal populism is also concerned with prioritizing the rights of the public and the community over the rights of the individual offenders by punishing those who threaten that security and reinforcing social order (Pratt, 2007, p. 37).

Important factors of penal populism. To understand the recent phenomenon of penal populism in Canada, it is especially important to consider the news media, public opinion, political actors and special interest groups as four important elements. The dynamic relationship among these elements is demonstrated in Figure 1. Roberts (2003) highlighted that it is necessary to examine the news media as the central factor in the dynamic interaction that occurs during the causation of penal populism (p. 76). The news media plays a large role in shaping dominant perceptions of crime and justice in today's society because, according to Roberts, the news is a primary means by which each social institution interacts with one another (Roberts, 2003, p. 86). The figure in Appendix A illustrates the relationship between the four key social institutions in penal populism: public opinion, political actors, the news media, and special interest groups (Roberts, 2003, p. 87).

The news media serves as an important device that links together various individuals, groups and institutions that may not otherwise be connected. This allows the general public to keep in touch with the various parts of the political system (Kenamer, 1994, p. 103). These links allow for the general public to connect with political actors and governing institutions. Moreover, the news media serve as a source of direct information regarding public opinion, informing and influencing the way the public thinks about crime and criminal justice and, in turn, the way political actors think about public opinion (Kenamer, 1994, p. 103).

The portrayal of crime in the news media suggests to the public that crime is more prevalent and threatening in society than it really is and that more punishment is required to deal with the crime problem (Roberts, 2003, p. 76). In particular, the news media

devotes much of its time to violent crimes with a large focus on dramatic and violent crime stories (Roberts, 2003, p. 78). The reporting of crime becomes personalized in news media by privileging the experiences of the victims and their families (Pratt, 2007, p. 95). This, in turn, shapes public opinions and attitudes relating to crime and justice, making the public believe that punishment is necessary to reduce the apparent crime problem that is portrayed in news media.

The news media also directly influences political actors through the ways in which issues of crime and punishment are framed (Roberts, 2003, p. 76). Political actors use news media outlets to develop their views about public opinion; there is a common assumption that the news media reflects the true nature of public opinion (Roberts, 2003, p. 85). As a result of this dependence on the news media for public opinion, political actors often misperceive the public's opinion; they often believe that the public wants more harsh penal policies (Brown, 2011, p. 424).

Political actors also tend to use news media outlets as a target of their agenda setting (Kenamer, 1994, p. 9). It is important for political actors and for their parties to have a lot of media coverage, as this is how the public becomes informed with the actors and the issues. The importance of media coverage leads political actors to make many efforts to directly influence exactly what is portrayed in the news media. In fact, Kenamer (1994) suggests that political actors often use news media outlets to create or maintain an ideal perception of opinion that serve to support their own policy goals. Press conferences, press releases and trial balloon (a preliminary statement or announcement used to test the public's opinion) are all examples of various efforts taken by political actors to influence media coverage and supportive opinions (p. 10).

Political actors use their perceived beliefs that the public desires more punitive crime control policies to gain electoral advantage and popularity. Since these policies appear to be common sense, they gain attention from members of the general public (Fenwick, 2013, p. 223). Penal policies are susceptible to populism because there is typically a great deal of public concern surrounding crime, crime levels, crime control and the generally low levels of public knowledge about sentencing practices (Roberts, 2003, p. 65).

Although political actors often misperceive the public's opinion about criminal justice issues and penal reform, much of the public is misinformed about the real information, issues and policies that exist (Johnstone, 2000, p. 164). As a result, this lack of information about the criminal justice system is one of the primary reasons that punitive attitudes exist among the general public (Johnstone, 2000, p. 165). The general public is generally uninformed because their views, opinions, attitudes and evaluations regarding crime and crime control are influenced by cultural resources, such as images, values and opinion prevalent in Western culture that are exemplified in news media (Green, 2009, p. 518). Thus, as suggested by Green (2009), when members of the general public lack information, they typically look to collective judgment and the mass media to fill in the gaps (p. 524). The news media presents suggestions about how to think about and how to respond to crime thus shaping the public's opinions and views (Roberts, 2003, p. 76). This is also consistent with Garland's perspectives on Durkheim's theoretical framework; Durkheim asserts that the role of politics is to work with existing social moralities and to reshape them in accordance with particular political views (Garland, 1990, p. 53).

Durkheim believes that collective sentiments and laws are mutually interacting as opposed to simply related in a cause and effect relationship (Garland, 1990, p. 54). He further believes that, over time, the restriction and punishment of particular acts can begin to generate changes in the collective sentiment. In other words, the public may begin to view something as morally wrong over time with the continuous prohibition of such acts (Garland, 1990, p. 54). Durkheim demonstrates that since decisions surrounding punishment are expressed by leading institutions in society with a semblance of moral seriousness, they have the ability to set and shape the public's responses (Garland, 1990, p. 58).

Causes of penal populism. Garland (2001), and other theorists (e.g., Green, 2009; Pratt, 2007; Roberts, 2003) linked an increase in penal populism and a more punitive public opinion to the rapid social changes accompanied by late modernity experienced by most industrialized Western societies beginning in the 1960s. Such rapid social and industrial changes includes: social, cultural, economic, ecological, and political changes that create uncertainty, and, thus increase scepticism among the public. The many large-scale fears, anxieties and insecurities that people feel in response to such rapid social changes are likely to be translated into fears and concerns about threats to their own personal safety (Roberts, 2003, p. 68).

The rapid social changes that have occurred in most industrialized Western societies have made members of the public more aware of crime and thus, more concerned about crime by decreasing the amount of perceived social distance between them and crime (Frost, 2010, p. 163). Many of the societal changes discussed by Garland (2001) allowed for crime and the opportunity of victimization to appear more likely to

occur to the general public. Changes such as the creation of suburbs, improved transportation, electronics and the addition of the Internet changed social relations and daily life (Garland, 2001, p. 78). As Garland (2001) noted, these changes gave rise to an information society and made it easier for connections to be made across the world (p. 78). It is common for the public to believe that moral cohesion in society is declining and that the world, and not just the community in which they reside, is becoming more dangerous (Pratt, 2007, p. 71). When the public becomes fearful, anxious and insecure as a result of rapid social changes, the perceived problems of social welfare become new problems of social control. Consistent with Durkheim's theory, it is thus the responsibility of the government to take action and be perceived as protecting members of society and maintaining or re-establishing moral and social order.

Along with these societal changes came the introduction of the mass media, which also changed social and cultural relations. It allowed for the world to be connected to the news with easy access and further reduced the perceived social distance between the public, crime, and victimization (Garland, 2001, p. 85). Furthermore, the media is especially important in shaping public attitudes and opinions because much of the public is lacking direct experience with the criminal justice system. This also allows for policy makers to shape the nature of the discussions surrounding crime control and punishment and keep in touch with the public's uninformed, punitive opinion (Frost, 2010, p. 159).

Thus, the central ideas explained in Durkheim's theory of punishment are frequently reflected in penal populism. First and foremost, both the sociology of punishment and penal populism refrain from focusing solely on the instrumental objectives of punishment and, therefore, view it as a social institution. Here, punishment

is perceived as having a wide range of effects that extend to more than just the population of criminals. Therefore, both Durkheim's theory of punishment and penal populism take a step back from the common notion of punishment as dealing with offenders and view punishment on a broad social level. As a result, there is a perception that punishment is the manifestation of social order that is clearly depicted in both theoretical frameworks. These frameworks insist that the government is the guardian of moral and social order; they are expected to take action to protect moral and social order in society as well as protect the angered law-abiding citizens. The government does this by defending popular sentiment and emphasizing tough-on-crime policies that symbolically prioritize the security and well-being of the law-abiding citizens.

Additionally, common between both theoretical frameworks is the perception that punishment is also an expressive institution. What is significant is the notion that punishment draws on the motivation and support from the angry and shocked healthy consciences, or the popular sentiment, in society. An especially important feature of penal populism that follows accordingly is the acceptance of public opinion, allowing policymaking to work on an emotional ground rather than a rational ground. This indicates that punishment and penal policies are built around fundamental social values and norms. This further indicates that, in order for political actors and policymakers to be successful in a social and expressive institution such as punishment, they must claim to accept popular sentiment as a recognizable opinion with value and direction, such as populist political actors do. Consequently, this makes punishment a political necessity for the establishment and maintenance of authority and legitimacy. This is clearly illustrated by Garland (1990) in his reformulation of Durkheim's theory of punishment:

The processes of punishment do not necessarily promote 'social solidarity' in the sense implied by Durkheim. Rather they should be regarded as a ritualized attempt to reconstitute and reinforce already existing authority relations...Like all ritual of power, punishments must be carefully staged and publicized if they are to have their intended results, and can only succeed when the surrounding field of forces makes this possible (pp. 79-80).

Accordingly, the political use of punishment reinforces authority and social order by symbolically reasserting the order of authority and social order while simultaneously helping clear feelings of helplessness and insecurity that was once introduced by crime (Garland, 2001, p. 68). The notion of popularity suggested in penal populism is reflected here as political actors gain popularity from the general public as they strategically use punishment for their political benefit.

Methods

In this chapter, I will discuss the research design, methods, data collection and coding protocols used for this research project. Recall, my research question was as follows: how do the print and electronic news media, political actors and special interest groups represent the *NCR Reform Act* in ways that are consistent with penal populist tendencies? In order to answer my research question, I examined what dominant themes were reflected in the print and electronic news media, political documents and special interest groups' documents and written texts surrounding the *NCR Reform Act* to determine if they were reflective or not reflective of penal populist tendencies. Lastly, I focused on the potential benefits and harms associated with the themes surrounding the *NCR Reform Act*.

Research Design: Case Study

The research design of this research project is a qualitative case study of the *NCR Reform Act*. Despite the ambiguity of the term, case studies can most generally be defined as an intensive, in-depth examination and clarification of something (Gerring, 2004, p. 341; Neuman, 2006, p. 40). In particular, a case study can include the study of a single example of a distinct social process, organization or collective body that is seen as its own social unit (Payne & Payne, 2004, p. 31). The *NCR Reform Act* – the case chosen for this research project – is an example of a distinct social unit that can be followed from when the Act entered into the House of Commons and when the Act received Royal Assent.

Not only do case studies focus on the specific details of the chosen case but they also focus on the context surrounding the case. An additional focus on the context surrounding the chosen case allows researchers to link the actions of individuals to the

larger processes in society. Through case studies, researchers can make the specific interaction by which one factor influences another factor visible (Neuman, 2006, p. 41). By focusing on the news media, political actors and special interest groups, my research project targeted the context surrounding the case and attempted to tell a larger story as opposed to focusing on specific details of the Act. This allowed for influential factors and causal mechanisms behind the construction of the Act to be identified and understood.

The case study approach is not without its criticisms and limitations. Crowe and colleagues (2011) pointed out that the large volume of data and time restrictions that may be in place have the potential to impact the depth of an analysis (p. 7). This disadvantage demonstrates the importance of collecting only relevant information, as opposed to as much information as possible. By doing this, enough time will be set aside to produce an in-depth analysis and interpretation the data (Crowe et al., 2011, p. 7).

Additionally, the case study approach has been criticized for providing little basis for generalization. Case studies, and case studies that use qualitative approaches in particular, are not concerned with generalizing the findings. In fact, researchers do not claim that the research findings are automatically generalizable (Dooley, 2002, p. 336). Case study researchers do not assume generalizability because they have chosen to study one specific case for its own unique reasons and importance and this chosen case is not assumed to be perfectly representative of the population (Payne & Payne, 2004, p. 32) .

I chose to use a case study approach because case studies are preferred when the researcher looks to answer how, why and what questions; when they want to use multiple data sources; when they have little control over the case being studied; and when the chosen case is a contemporary case (Crowe et al., 2011, p. 6). When considering the *NCR*

Reform Act, all of the aforementioned conditions are true. Firstly, I looked to answer how and what questions in particular by using multiple data sources: print and electronic news media, written political documents and written special interest groups' documents. Secondly, I, as a researcher, had no control over the *NCR Reform Act* as it made its way through the House of Commons. Lastly, the *NCR Reform Act* is a contemporary case as it was first proposed on February 8, 2013 and has since been sent to Royal Assent on April 10, 2014.

Data Sources and Sampling Procedures

Data for this research project came from three groups of data sources based on the penal populism framework (see Figure 1 on page 39). The timeline for the data collection started on the date in which the *NCR Reform Act* was first introduced, February 8, 2013, and ended on the date in which each particular search was conducted, ranging from November 21 to December 7, 2014. Each search was systematically tracked for each group of data sources using an Excel file. Consistent with the penal populism framework, the datasets included a collection of written documents from: the news media, political actors, and special interest groups. Note that these three categories of data were created for the purpose of this thesis with the knowledge that they are diverse groups with variability.

News media documents. News media documents were chosen to maintain consistency with Roberts' (2003) framework of penal populism. Furthermore, the general public places much confidence in the popular media as it serves as a crucial source of the public's information about crime, mental illness and politics (Whitley & Berry, 2013, p. 106). By informing the public and shaping the public's views, the media significantly

contributes to the negative stereotypes and stigma of mental illness in today's society.

Much of the discourses surrounding the *NCR Reform Act*, including interviews conducted with victims and political figures were included in the news media. Moreover, the portrayals of particular NCRMD cases emphasized during the development of the Act were prevalent throughout the media.

News media articles for this research project were examined from: *The Globe and Mail* (one of Canada's two National print newspapers), *CBC.ca* and a wide range of Canadian electronic news sources retrieved from *Google News*. *The Globe and Mail* was chosen because of its known widespread coverage across Canada. According to Newspapers Canada (2012), *The National Post* and *The Globe and Mail* had the highest weekly circulation as of 2012 on a National level. For this study, *The Globe and Mail* articles were retrieved from the Lexis Nexis database, accessible through Saint Mary's University in Halifax, Nova Scotia and Algoma University in Sault Ste. Marie, Ontario. Date parameters in each search were from February 8, 2013 – the date that the Act entered House of Commons – to November 21, 2014 – the date of the *Globe and Mail* search. Search terms for the *Globe and Mail* included a combination of: "Not Criminally Responsible Reform Act" or "Bill C-54" and one or more of the following terms or phrases: "high risk", "mental illness", "offender" and "mentally ill offender" in the title and the body of the article. These search terms were chosen because I believed that they would adequately rule out irrelevant articles that pass over the topic and would provide me with the most relevant and significant articles.

CBC.ca articles were included because the National Audience Databank Inc. (2013) found that one in three Canadians read the news online as opposed to printed

editions. Electronic articles were retrieved directly from the *CBC* website. Since the *CBC* website does not have an Advanced Search function that allows for searching with combinations of key terms, two individual searches were conducted on the website. Search terms included: “Not Criminally Responsible Reform Act” and “Bill C-54”. Furthermore, the *CBC* website does not have an option for specific date parameters in the search, so as a result only articles published between February 8, 2013 and the search date, December 1, 2014 were included. Both searches were conducted with the setting “all omitted results included”.

By virtue of a small number of results from *The Globe and Mail* and *CBC.ca* searches, two Google searches were conducted. First, Google News searches were conducted using the key terms: “Bill C-54” and “Not Criminally Responsible Reform Act”. Second, general *Google* searches were conducted using the key terms: “Bill C-54” and “Not Criminally Responsible Reform Act” and one or more of the following terms: “mental illness” and “high-risk”. News articles from both *Google* searches published between February 8, 2013 and the search date, December 1, 2014, were included in the study.

Retrieved articles were screened and chosen if they are written in English, accessible through the Saint Mary’s University database (for *The Globe and Mail* only) and if the main focus of the article is the *NCR Reform Act*. To be included in the analysis, the *NCR Reform Act* had to have been mentioned in the title and/or the content of the article and be a substantial feature of the article. Articles were excluded from the analysis if they were letters to the editor, book or film reviews, obituaries or event listings. They were excluded if the article made a passing or irrelevant reference to the Act, such as an

article reporting that Vincent Li has been rewarded unescorted passes into the community with a small reference to the upcoming proposed changes.

My final sample size of print and electronic news media articles was 48, however, one article was removed based on irrelevance and two articles were removed because they were duplicate articles. Thus, a final count of print and electronic news media articles included in the study was 45; 10 articles from *The Globe and Mail*, 8 articles from CBC.ca, and 27 articles from various Canadian news sources retrieved from *Google*. These sources include: *The Star*, *Global News*, *The Huffington Post*, *The Sudbury Star*, *York Region News*, *Sun News Network*, *The National Post*, *The Vancouver Sun*, *The Winnipeg Free Press* and *The Toronto Sun*.

Political documents. Written documents from political actors were also examined and analyzed. This second dataset focused on written text produced by members of Parliament. With this second dataset, I intended to demonstrate how penal populism is exemplified throughout the political construction of the *NCR Reform Act*. It is important to note that this dataset did not solely include members of the majority government as a number of Parliament members have made comments concerning the *NCR Reform Act*.

The political documents included House of Commons and Senate debates, meetings, and reports. These written documents were retrieved from the Parliament website (<http://www.parl.gc.ca>). The Parliament website allowed me to have access to debates and minutes from each meeting regarding the Act using a keyword search of “Not Criminally Responsible Reform Act”, and ‘Bill C-54’ in the Hansard database.

After retrieving the House of Commons and Senate debates, meetings and reports, I searched the Government of Canada website for news releases, speeches and statements

about the *NCR Reform Act*. Key terms included a combination of “Not Criminally Responsible Reform Act” with “high-risk” and “mental illness”. I did not use “Bill C-54” or “Bill C-14” because they produced 25,000-70,000 results in a preliminary search.

Finally, I conducted a Google search for additional relevant written political news releases, speeches and statements. This search was conducted using the key terms: “Bill C-54” and “Not Criminally Responsible Reform Act” and a combination of “Not Criminally Responsible Reform Act” and “high-risk”. Documents from the Google search published between February 8, 2013 and the search date, December 3, 2014, were included in the study.

Retrieved documents were included if they were written in English with a main focus of the document being the *NCR Reform Act*. To be included in the analysis, the *NCR Reform Act* had to have been mentioned in the title and/or the content of the article, and must have been a substantial feature of the document. Similar to the news media sources, documents were excluded if they made a passing or irrelevant reference to the Act. For the purpose of this study, debates were deemed irrelevant if they made three or fewer references to the Act; the number of references was clearly highlighted in the Hansard search results.

My final sample size of written political documents was 31. This sample included: 7 House of Commons debates, 4 House of Commons meetings, 1 House of Commons report, 5 Senate debates, 3 Senate meetings, 1 Senate report, 5 Government of Canada documents and news releases, and 5 electronic documents retrieved from *Google*. These include position statements from the Liberal Government and Conservative MPs.

Special interest groups' documents. This third and final dataset came directly from special interest groups, specifically organizations and individuals that made submissions to the House of Commons concerning the *NCR Reform Act*.

Detailed information regarding which organizations made submissions to the House of Commons and Senate and which witnesses appeared before Parliamentary committees was found on the Standing Senate Committee on Legal and Constitutional Affairs website. Based on this information, I manually searched for the submissions made to the House of Commons on each of the 13 different organization websites.

Finally, I conducted a *Google* search for additional relevant written special interest groups' documents. This search was conducted using the key term: "Bill C-54" as well as with the combinations of key terms: "Bill C-54 and submissions" and "Not Criminally Responsible Reform Act and submissions". Documents from the Google search published between February 8, 2013 and the search date, December 3, 2014, were included in the study.

My final sample size of written special interest groups' documents was 16. This dataset included submissions and documents from: Alexander Simpson, Brett Batten, the Canadian Academy of Psychiatry and the Law, the Canadian Alliance on Mental Illness and Mental Health, the Canadian Bar Association, the Canadian Psychiatric Association, Centre for Addictions and Mental Health, Canadian Resource Centre for Victims of Crime, Canadian Lawyers Association, Darcie Clarke and Stacy Galt, Dave Teixeira, 11 national professional health organizations representing the mental health community, the RN Association of Ontario, the Schizophrenia Society of Ontario, Stacy Galt and the Office of the Federal Ombudsman of Victims of Crime.

Analysis

For my study, I performed a thematic analysis of the news media, political and special interest groups' documents surrounding the *NCR Reform Act*. A thematic analysis is a method for identifying, analyzing and reporting themes within a set of data. It is a flexible research tool that provides a qualitative rich and detailed account of data (Braun & Clarke, 2006, p. 78; Vaismoradi, Turunen, & Bondas, 2013, p. 400). To identify important themes, the researcher immerses him or herself into the data and carefully reads and re-reads the data (Fereday & Muir-Cochrane, 2006, pp. 3-4). The major aim of thematic analysis is to examine narrative material by breaking the text into smaller units of content and further describing and interpreting the content (Vaismoradi et al., 2013, p. 400).

A thematic analysis approach is associated with two modalities of approaches: deductive and inductive (Braun & Clarke, 2006, p. 83; Vaismoradi et al., 2013, p. 401). Braun & Clarke (2006) suggested that a deductive approach is useful for the general aim of a thematic analysis (p. 84). It tends to provide a less rich description of the entire set of data, but rather provides a more detailed analysis of some aspect of the set of data (Braun & Clarke, 2006, p. 84; Vaismoradi et al., 2013, p. 401). A deductive approach is driven by the researcher's theoretical interest in the area of research and is less driven by the data (Braun & Clarke, 2006, p. 84).

An inductive thematic analysis, on the other hand, is not driven by the researcher's theoretical framework or research interest; it involves the researcher coding without trying to fit the data into their pre-existing theoretical framework. In other words, the themes that are identified using a thematic analysis are heavily and directly linked to

the data. Thus, in order to provide the reader with a rich, detailed description of the data overall, the current thematic analysis was associated with an inductive approach to coding the data.

The thematic analysis involves a process of coding for themes. Coding is not solely one step; it is a process that continues to be developed and defined throughout the entire analysis (Braun & Clarke, 2006, p. 86). This process more specifically involves recognizing the important aspects of the set of data and encoding it before interpreting it. Codes are a word or a phrase that symbolically assigns a summative attribute for a particular excerpt of language-based data (Saldana, 2009, p. 3). They typically identify a particular feature of the data that is interesting to the researcher (Braun & Clarke, 2006, p. 88). A good code is one that captures the qualitative affluence of the research topic (Fereday & Muir-Cochrane, 2006, p. 4). The researcher discovers the themes in the data by connecting the codes that were established. Themes begin to cluster and the researcher begins to see similarities and differences between separate groups of data (Fereday & Muir-Cochrane, 2006, p. 7).

Since a deductive thematic analysis results in a detailed analysis of a particular aspect of the data as opposed to a rich description of the data overall, I chose to approach my thematic analysis using an inductive approach. Thus, I coded the data without trying to fit it into the penal populism framework. An inductive approach enabled me to identify and include codes and themes that I may not have expected to see, things that I did not know, and things that do not necessarily fit with penal populism.

Moreover, this thematic analysis was conducted at the semantic level as opposed to the latent level. Braun & Clarke (2006) suggested that researchers using a semantic

approach identify themes within the surface meanings of the data. The latent approach, on the other hand, begins to identify underlying ideas and assumptions that are believed to shape or inform the written discourses (Braun & Clarke, 2006, p. 84). For this research project, I chose to not look beyond what the news media, political and special interest group documents have written in order to present the reader a more descriptive description of the prevalent themes.

In order to think more about the research process and to begin to recognize how my own personal thoughts, assumptions and opinions about the *NCR Reform Act* shape the research, I wrote analytic memos throughout the entire research process. Saldana (2009) suggested that analytic memos are similar to a researcher's journal where he or she writes about the research process (p. 32). My analytic memos were written whenever anything significant to the coding or the analysis of my data comes to mind. Furthermore, as a result of recording analytic memos throughout the duration of the analysis process, additional inductive codes and categories may emerge.

Stages of analysis

Organizing the data. Once all of the data was collected using the procedures mentioned in the previous section, the data was uploaded into NVivo and further organized based on each type of data. Thus, three categories of data emerged from this process: news media articles, political documents and special interest group documents.

Becoming familiar with the data. As indicated by Braun & Clarke (2006), it is essential for the researcher to familiarise him or herself with the data to the extent that he or she is familiar with all of the content (p. 92). The process of becoming familiar with the scope of the data involves reading and re-reading the data. It is important for the

researcher to read in an active way, thus reviewing the data in a search for patterns and themes without losing any of the contexts within the data (Bradley, Curry, & Devers, 2007, p. 1761; Braun & Clarke, 2006, p. 87).

In their article *Using Thematic Analysis in Psychology*, Braun & Clarke (2006) suggested that it is ideal to read through the entire dataset at least once before coding (p. 92); thus, to familiarise myself with the data, I read through the entire dataset twice before beginning coding. During this process, I made analytic memos whenever something significant to the data analysis came to mind and whenever I thought of potential codes within the data.

Coding the data. The following stage, coding the data, began after I became familiar with the data and had a general understanding of the entire set. According to Bradley et al., (2007) coding provides the researcher with a formal system that enables organization of data and discovery of new links within the data (p. 1761). Therefore, by coding the data, the researcher is organizing the data into meaningful groups that assist in the formation of themes (Braun & Clarke, 2006, p. 89). Codes are labels that are assigned to portions of the data that identify a component that appears interesting to the researcher (Bradley et al., 2007, p. 1761; Braun & Clarke, 2006, p. 88). Codes are “the most basic segment, or element, of the raw data or information that can be assessed in a meaningful way regarding the phenomenon” (Boyatzis, 1998, p. 63).

For this study, I systematically worked through each document and identified interesting aspects of the data that I thought had the potential to form the basis of future themes or patterns across the entire dataset. I coded for as many potential patterns as possible with the recognition that further condensation and reviewing will be done after

each document was fully coded. Additionally, I attempted to ensure that data was coded with some of the relevant context surrounding the segment. Once each document was coded, I went through each item once more. This allowed me to move some data segments to new codes, thus refining existing codes and adding new concepts when necessary. Lastly, it is important to note that, although I used an inductive approach to coding my data, my specific interest and familiarity with penal populism likely influenced the choices that I made during the process because it made me more aware of certain penal populism issues and concepts.

I finished this stage with 7 themes and 17 subthemes. The smallest theme was made up of a total of 230 narrative excerpts whereas the largest theme was made up of a total of 796 narrative excerpts. A complete table representing the total number of codes in each theme and subtheme can be found in Appendix C.

Searching for themes within the data. Coding was considered complete when no more new concepts emerged from reviewing the data. At this stage, I began reviewing each code and the data within them to re-focus the analysis at a broader level with consideration of themes and patterns as opposed to individual codes (Braun & Clarke, 2006, p. 89). As a result, many codes were combined, refined and eliminated as I began considering the relationships among codes and how these may eventually form into themes.

Investigator triangulation. After reviewing each code and the data within them to re-focus the analysis at a broader level to develop themes, I discussed the emerging themes and findings with a supervisor to enhance the validity of the findings and seek multiple meanings to add an element of depth to the analysis (Tuckett, 2005, p. 35). This

is also known as investigator triangulation (Bryman, 2003, p. 1142). This process enabled me to generate new ideas where necessary and to openly discuss findings with someone who was also familiar with the research project. Moreover, this allowed me to understand that there were a variety of ways to think about my data and my findings.

Ensuring quality in qualitative research

It is important for qualitative researchers to take a variety of steps to ensure quality—or rigor—in the conduct of their research (Oliver, 2011, p. 359). To ensure quality or rigor of qualitative research, a researcher must begin thinking about how he or she can persuade his or her readers that the findings of the study are worth reading and paying attention to (Thomas & Magilvy, 2011, p. 152). There are five main aspects that a qualitative researcher should consider when conducting their research and each aspect will be discussed in the following section. These include: theoretical rigor, procedural rigor, interpretative rigor, evaluative rigor and generalizability.

Theoretical rigor. Theoretical rigor is extremely important for any research. Theoretical rigor refers to how well the research questions, aims and methodology fit with the research problem. What is especially important with theoretical rigor is clarification and justification. The clarity of the research question reflected in the aims of the study is especially important for evaluating the results and the interpretations of the study (Kitto, Chesters, & Grbich, 2008, p. 244). With regards to this research project, I have proposed a research question that is further reflected in the aims of the research project. Furthermore, I have clearly justified the choices I have made regarding the methodological approach and theoretical perspective of this research project.

Procedural rigor. Procedural or methodological rigor is also very important for any research. This may also be known as the dependability of qualitative research (Thomas & Magilvy, 2011, p. 153). This largely refers to the clarity and distinctness of the way the research was conducted. To ensure that a study achieves procedural rigor, the researcher should identify and explain all issues he or she encountered when accessing participants or data sources, how data was collected, recorded, coded and analyzed and how any errors were dealt with (Kitto et al., 2008). In other words, the researcher should leave what Thomas & Magilvy (2011) termed an “audit trail” (p. 153). Procedural rigor or dependability is thus achieved when another researcher is able to follow the original researcher’s path of decisions.

Important questions that I should consider to achieve procedural rigor have been suggested by Thomas & Magilvy (2011) and include: how and why particular data sources were selected for the research project? How was data collected (e.g., what search terms were used) and for how long? How was the data coded? And what specific techniques were used to establish credibility of the data (p. 153)? Moreover, I should also discuss any sampling procedures that were used if necessary. According to Kitto et al., (2008), simply mentioning the sampling strategy in the methodology section is not sufficient (p. 244). The key findings of the research must be evaluated in reference to the variety of characteristics of the data sources thus, I must also present the weaknesses and limitations of the sampling procedures and methodological choices and justify those choices made.

Interpretative rigor. Interpretative rigor refers to a full demonstration of the data or evidence of the research (Kitto et al., 2008, p. 244). As suggested by Oliver (2011), the

data should support the interpretations made by the researcher (p. 360). Furthermore, there should be appropriate evidence provided to support the relationships between the theoretical framework, the interpretations and the conclusions made by the researcher. Interrater reliability is commonly used in qualitative research to achieve interpretative rigor. Interrater reliability is a type of researcher triangulation that allows for multiple researchers to be involved in the analysis of the data. This allows for researchers to discuss the data and codes and to develop further codes as the discussions progress (Kitto et al., 2008, p. 244). There are also other techniques that will be used to enhance interpretative rigor for this research project. Kitto et al., (2008) demonstrated that interpretative rigor could also be achieved by using multiple sources of data (p. 244), such as various news media sources, political documents and special interest groups' documents. This helped with the development of a comprehensive understanding of the *NCR Reform Act* and the context surrounding the Bill.

Evaluative rigor. Evaluative rigor and reflexivity refers to assuring that the researcher addresses any and all ethical and political aspects of the research. In order for evaluative rigor and reflexivity to be achieved, the researcher must demonstrate that he or she is aware of his or her own sociocultural position and social setting and how it may influence their decisions made in regards to the research project (Kitto et al., 2008, p. 245). Thomas & Magilvy (2011) suggested that a researcher should be reflective when conducting qualitative research; he or she should remain self-critical about his or her perceptions about the research (p. 154). For this research project in particular, I used reflexive journaling as a tool to ensure that I remain aware and self-critical about my

perceptions concerning the *NCR Reform Act*. Thus, I wrote about out personal feelings, biases and insights in these journals.

Conceptual generalizability. Finally, conceptual generalizability refers to how well the research study's findings inform contexts and can be applied to contexts that vary from those in which the original study was undertaken (Kitto et al., 2008, p. 245; Thomas & Magilvy, 2011, p. 153). As previously mentioned in this proposal, case studies are not typically concerned with generalizing their findings. As a case study researcher, I do not assume generalizability of this research project because I have chosen to study one specific case for its own unique reasons and importance. I have not chosen to study the *NCR Reform Act* to be perfectly representative of other legislations and Bills. To ensure conceptual generalizability, I used the strategies that Thomas & Magilvy (2011) suggested. They suggested that a researcher should provide an in-depth description of the methodology used, the population studied and all other relevant information that is required for another researcher to conduct a similar study (p. 153).

Results

A total of seven interrelated themes and 17 subthemes were produced. In this chapter, I will describe each theme and subtheme and provide quotations from political actors, news media reporters, and special interest groups involved in the development and the drafting of the *NCR Reform Act*. A description each representative that is cited in this chapter, including their role in the dataset and their role within the penal populism framework can be found in Appendix B. Furthermore, a short description of each theme and subtheme with sample quotes can be found in Appendix C. The themes and subthemes produced include:

- 1) The social context that permitted the introduction of the *NCR Reform Act*
- 2) The *NCR Reform Act* assures that public safety is paramount consideration
 - a. Views that the *NCR Reform Act* will not improve public safety
 - b. Conflict between supporters for public safety and NCR accused persons rights
- 3) The government is supporting the needs and concerns of victims
- 4) Issues related to decision-making processes in NCRMD cases
 - a. Evidence-based decisions involved in drafting the *NCR Reform Act*
 - b. The shift towards courts as primary decision makers
 - c. The use of expert opinion in decision-making
- 5) Negative consequences of the *NCR Reform Act*
 - a. The *NCR Reform Act* is stigmatizing
 - b. The *NCR Reform Act* is punitive towards individuals with mental illness

- c. The *NCR Reform Act* will lead to more NCR accused persons in corrections
 - d. The *NCR Reform Act* will not survive Charter scrutiny
 - e. The *NCR Reform Act* will promote vigilantism
- 6) How the government addressed the declining levels of confidence and trust in the criminal justice system
- a. Ensuring consistency of interpretation of NCRMD
 - b. Ensuring an increased role and consideration of victims
 - c. Ensuring additional judicial oversight
 - d. Ensuring restricted access to the community for NCR accused persons
- 7) Concerns that the *NCR Reform Act* does not address issues related to resources
- a. We must improve mental health resources to prevent crime
 - b. Provincial financial resources must be addressed to accommodate these changes
 - c. What resources will be available for victims?

Theme 1: The social context that permitted the introduction of the *NCR Reform Act*

The social context that permitted the introduction of the *NCR Reform Act* was often described. Common in this theme was a discussion of the various factors that contributed to this social context. These factors included: high-profile NCR cases in the news media, the public's fears and anxieties, and an uneducated and misinformed public.

Representatives from the review board system, the mental health community and the New Democratic Party argued that the *NCR Reform Act* was a politicized response to high-profile cases that received a lot of attention in the news media. This attention

sparked emotional responses from the public because, “the whole issue of mental health and crime is a very emotional subject” (Hoang Mai, Member of Parliament, New Democratic Party, House of Commons debate, June 17, 2013), thus requiring that government action be taken to protect society:

[...] I really feel that the government is behaving as if it wants to make the issue much more political than it ought to be, especially if we truly want to examine it with cool heads. The government has addressed the issue twice at news conferences, announcing the bill to the media and the public (Guy Caron, Member of Parliament, New Democratic Party, House of Commons debate, April 26, 2013).

Representatives from the review board system, the mental health community and the New Democratic Party further criticized that politicizing the issue of the *NCR Reform Act* through the use of high-profile cases allowed the government to play on Canadian’s fears and anxieties. They demonstrated that the Act was developed based on the public’s fears and misinformation regarding mental illness and crime: “but to make case law based on high-profile cases, it’s more based on fear and misleading facts” (Chris Summersville, mental health advocate in print news media article Mackrael, 2013c).

In fact, members of the New Democratic Party and mental health community argued that the *NCR Reform Act* dealt with perceived threats that should not have been considered in the drafting of the Act:

It [the *NCR Reform Act*] deals with very real and perceived threats to the public that come from the not criminally responsible declaration by judges. I say “perceived threats” because part of what is driving this attempt to amend the law

is to play upon the fears of Canadians. We think that should be left out of our debates (Mike Sullivan, Member of Parliament, New Democratic Party, House of Commons debate, April 26, 2013).

Another factor that contributed to the social context permitting the introduction of the Act was the fact that “the public does not necessarily understand mental illness” (Hoang Mai, Member of Parliament, New Democratic Party, House of Commons debate, June 17, 2013). Not only did members of the New Democratic Party and mental health community claim that the public is uninformed regarding issues relating to mental health, NCRMD and the forensic mental health system, they argued that the language in the *NCR Reform Act* bolstered the lack of understanding because it did nothing to help educate Canadians about the complexity of mental illness: “what I’ve learned through this whole process is that the public and unfortunately, I think, some politicians, don’t understand what NCR really means, what the review board does in its process, and how risk assessments are done” (Chris Summersville, mental health advocate, House of Commons meeting, June 5, 2013).

Thus, three important factors contributed to the social context that permitted the introduction of the *NCR Reform Act*: the prevalence of high-profile cases, such as Vince Li and Guy Turcotte, in the news media; a fearful and anxious public; and an uneducated and misinformed public. These factors are consistent with penal populism. As Roberts (2003) suggested, penal policies are susceptible to populism because there is typically a great deal of public concern surrounding crime, crime levels and a lack of public knowledge about sentencing practices (p. 65). In the case of the *NCR Reform Act*, it appeared as though the government fed on the collective conscience’s expressions of

anger, frustration and disenfranchisement with the criminal justice system to develop the Act. The prevalence of high-profile cases in the news media increased the likelihood that the general public's views and opinions would be shaped a punitive direction. Further, the government appeared to play on the victim's fears of NCR accused persons and general lack of information to push their agenda forward.

Theme 2: The *NCR Reform Act* assures that public safety is paramount consideration

The issue of public safety was a large topic of discussion surrounding the *NCR Reform Act*. This theme begins with an examination of conflicting views regarding whether or not public safety is the paramount consideration in the current NCR regime. This theme is then further divided into two subthemes: (a) the *NCR Reform Act* will not protect society and (b) supporters for public safety vs. supporters for NCR accused person's rights. Mental health advocacy groups illustrated concerns that the *NCR Reform Act* will undermine many of the measures that already exist to protect society. Furthermore, conflict arose during the debate of the Act that pitted those who supported protecting the public against those who supported protecting the rights of NCR accused persons.

Many victims, victims' rights advocacy groups and some political actors representing the Conservative Party of Canada questioned whether or not public safety was the paramount consideration in the current NCR regime. This argument was based on the fact that, under the current regime, public safety is identified in a list of factors to be considered by review boards: "The hon. member is correct, in part, that the protection of the public is a consideration of provincial review boards. However, it is one of four

considerations that the board has” (Rob Nicholson, Member of Parliament, Conservative Party of Canada, House of Commons debate, March 1, 2013). Thus, to some members of the Conservative Party of Canada, this meant that public safety was not being considered before the other factors listed.

Mental health organizations and political actors from opposing political parties addressed this argument as they illustrated that the current NCR regime does, in fact, already make public safety the primary consideration: “the current law already requires courts and review boards to consider the need to protect the public from dangerous persons...” (Linda Duncan, Member of Parliament, New Democratic Party, House of Commons debate, April 26, 2013). Although public safety is one of four factors listed under the current regime, it is to be balanced and considered with each of the other factors during the decision-making process. At the House of Commons Meeting on June 10, 2013, Peter Coleridge, a mental health advocate from the Canadian Mental Health Association stated: “Finally, with regard to the public safety paramount provision, we are unaware of evidence to suggest that review boards are not already taking public safety into consideration when making dispositions.” Similarly, at the House of Commons debate on March 1, 2013, Francoise Boivin, Member of Parliament from the New Democratic Party made a strong statement regarding public safety:

Do the Conservatives really believe that a court or a commission would not consider the risk to public safety before releasing a person who was found not criminally responsible for a horrible crime? Do they take the people who sit on commissions or on the benches for idiots? If the answer is yes – that is the impression we sometimes have – they should have made the entire exercise

[making public safety paramount] mandatory. What did they do instead? They made it optional.

The individuals and organizations who clarified that public safety is already the paramount consideration in the decision-making process for review boards further questioned why these specific changes were included in the Act to begin with. Columnist Peter McKnight illustrated this in his Vancouver Sun article *Not Criminally Responsible Reform Act Puts Public Safety at Risk*:

Hence, public safety is and always has been the paramount consideration, which makes one wonder what the federal government expects to accomplish by mandating that public safety be the paramount consideration. Clearly, this is mere rhetorical sleight of hand, and will do nothing at all to improve public safety.

Moreover, on March 5, 2014, Senator George Baker from the Liberal Party of Canada made a similar assertion about the specific amendments regarding public safety:

The Supreme Court said in Conway that we can't seek an absolute discharge of an individual if the person continues to pose a significant risk to the public safety. I would not expect that to change. That's the cornerstone of the legislation. It always has been, which is why it's very difficult to comprehend why we need amendments to suggest that public safety is paramount when it's already written into the existing legislation and the jurisprudence.

Political actors representing the Conservative Party of Canada responded to these arguments by explaining the reasoning behind this provision in the *NCR Reform Act*.

These political actors emphasized that this was included in the Act because public safety should be the principal consideration regarding the release of a NCR accused. This was

clearly articulated by Rob Nicholson, Member of Parliament from the Conservative Party at the House of Commons meeting on June 3, 2013 when he said that:

Before this individual is even released it's very clear to the board that the protection of the public is paramount. That's the first consideration. It's not enough to say that's one of the considerations, there are a number of things they'll look into. No, this is the paramount consideration, and I think that is absolutely important.

Subtheme 2a: Views that the *NCR Reform Act* will not improve public safety.

Despite the fact that the *NCR Reform Act* specifically stated that public safety is the paramount consideration; mental health organizations and legal representatives argued that the Act would actually make society less safe. In an electronic news media article, mental health advocate Chris Summersville from the Schizophrenia Society of Canada stated: "we understand the need to protect Canadians from individuals that commit violent crimes, however this bill as currently written will not do this" (Rabson, 2013). Alexander Simpson from the Center for Addiction and Mental Health also made a similar statement at the Senate meeting on February 27, 2014:

First, I would want to be clear that this amendment will not improve public safety. I'm sorry to put it quite as boldly as that, but this is the case. None of these amendments will address issues that have currently been identified where the forensic system is failing; there is no evidence put before us that is the case.

These groups specifically demonstrated that, rather than protect society, the *NCR Reform Act* will actually undermine many of the measures that already exist to enhance public safety. This argument stems from the observation that the Act does nothing to

improve treatment options, reintegration or the prevention of such acts from occurring in the first place: “However, true protection of the public requires much more than detaining the NCR accused. Long-term public safety is best achieved through treatment and reintegration into society. Unfortunately, Bill C-54 does little to encourage this” (David Perry, legal advocate, House of Commons meeting, June 5, 2013). In fact, it was further argued that the *NCR Reform Act* was represented in such a way that did not correspond with the science of treating psychiatric illnesses and managing risk, which is what the NCR regime is all about:

Three aspects of Bill [C-54] will ultimately compromise the treatment and rehabilitation needs of those in the forensic system: altering the wording of subsection 672.54 of the Act; creating a new category of ‘high-risk accused’ using in part an individual’s index offence to determine the ‘high-risk’ designation; and restricting community involvement for ‘high-risk’ offenders (Alexander Simpson, mental health advocate, submission to House of Commons, February 27, 2014).

Secondly, mental health advocacy groups and representatives specifically referred to the provisions in the Act that restrict community involvement of ‘high-risk’ offenders. They argued that taking away the possibility of gaining additional privileges or liberties from an NCR accused person will not reduce the risk of having these individuals return to society; it will increase the risk and, therefore, reduce public safety. Representatives from mental health organizations pointed to the therapeutic importance of having increasing liberties for these individuals: “It will make it harder to transition NCRs safely back to the community since passes, which begin as escorted and lead to unescorted, assist in assessing true risk. It will risk stigmatizing people with significant mental health

problems” (Paul Federoff, mental health advocate, House of Commons meeting, June 5, 2013). Catherine Latimer from the John Howard Society made a similar statement on June 5, 2013:

I think it’s also important, though, to be able to release them in a graduated way, which this scheme doesn’t contemplate. It’s a good idea to figure out what their triggers are to ensure they can follow a medical regime, that they stay on their medications, that they don’t cross the path of the victims when they’ve been asked not to. You can do that better when you have a release with conditions.

Subtheme 2b: Conflict between supporters for public safety and supporters of NCR accused person’s rights. During the drafting and the debate of the *NCR Reform Act*, conflict arose that pitted those who supported protecting the public against those who support the rights of the NCR accused, despite widespread support for the amendments in the bill that favoured public safety and victim involvement. This was achieved by presenting those who supported NCR accused people’s rights as being against public safety. As Irwin Cotler, Member of Parliament from the Liberal Party of Canada asserted in his Huffington Post blog: “Moreover, by depicting critics of C-54 as uncaring toward victims, the Government stifled meaningful debate” (Cotler, 2013b). For instance, Bernd Walter from the British Columbia Review Board and the Association of Canadian Review Board Chairs stated, “the review board chairs who do this work on a daily basis have no wish to be pitted against or to appear to be opposing the interests of victims. We’re all on the same side here” (House of Commons meeting, June 12, 2013).

This theme is also consistent with penal populism. This theme points to the beginning of a potentially larger displacement of expert knowledge and opinion. This is

seen in the discussion of whether or not public safety is already the paramount consideration for review boards. Despite legal representatives and mental health advocacy groups illustrating this specific change is unnecessary because public safety is already the paramount consideration, political actors left this amendment unchanged. This shows an explicit disregard of expert input. By further portraying those who supported NCR accused person's rights as *against* public safety, legal representatives and mental health advocacy groups seemed to have lost a sense of legitimacy because their opinions were against that of popular discourse.

Theme 3: The government is supporting the needs and concerns of victims

This theme describes and illustrates the ways in which the Conservative majority government demonstrated that they were devoted to addressing the concerns of victims. To address these concerns, the Conservative majority government consulted with victims and victim's rights advocacy groups and further added amendments to the *NCR Reform Act* that were directly related to their concerns. These concerns and amendments that are further discussed in this section include: victim safety being considered by review boards throughout the decision-making process, more information for victims regarding the NCR accused person and their intended release into the community, more victim involvement in the review board decision-making process, and an extended review period to assist with victim healing.

At various points throughout the drafting and debate of the *NCR Reform Act*, the Conservative majority government established that they were devoted to addressing the concerns of the victims of crime. This was stated by a number of different Conservative party members at varying points in time. For example, Bob Dechert, Member of

Parliament from the Conservative Party of Canada stated, “the government is very committed to addressing the concerns of all victims of crime, not just those impacted through the mental disorder regime” (House of Commons debate, October 21, 2013). Conservative Part of Canada Member of Parliament Ryan Leef also stated “our government is moving closer to recognizing that victims are an important part of the Canadian justice system, and we want to make sure they are adequately protected” (House of Commons debate, March 1, 2013). Lastly, at the House of Commons meeting on June 3, 2013, Conservative Party of Canada Member of Parliament Rob Nicholson articulated, “we don’t want anybody to be victimized in this country over and over again. So, yes, a major component of what we are doing here is ensuring that the individual concerns of victims are recognized.”

In order to address the concerns and needs of victims, the Conservative majority government consulted with individual victims, who reflect lived experiences, and victim advocacy groups, who are organized for political aims, during the development of the Act. Rob Nicholson, Member of Parliament from the Conservative Party of Canada explained this in an electronic CBC News article when he said: “the member asks who we have been listening to. I make no bones about it – we have been listening to victims. We meet with victims’ groups” (Fitzpatrick, 2013c). At a later date in the House of Commons debate on June 18, 2013, Conservative Party of Canada Member of Parliament Rob Nicholson clearly explained his procedure:

Whenever I leave Ottawa and visit any community across the country, I always sit down and meet with victims. They are very clear on issues like the not criminally responsible provisions of the Criminal Code, other areas of the Criminal Code and

indeed the procedures that are in our criminal courts and our judicial system.

They have been very clear that they want their priorities to be heard, that they are important and that their issues should be addressed. I have been very pleased and very proud that this legislation does exactly that. This is why I think it is so well received among victims' groups.

During these consultations, debates and meetings, victims frequently expressed concern that their safety was not being considered during the review board decision-making process. When discussing the 2012 release of Guy Turcotte, Isabelle Gaston (victim) specifically stated that, "I do not understand the rationale behind such a decision. I have the impression that people are playing Russian roulette with my life. I don't feel protected, really, at this time" (House of Commons Meeting, June 5, 2013).

It was also common for victims to express concern regarding their rights and the lack of information they received about the NCR accused person, their treatment progress and a potential release date: "on the contrary, we are not informed about anything and we do not have access to the information that would allow us to know what point in the process our aggressor has reached" (Isabelle Gaston, victim, House of Commons meeting, June 5, 2013). Another victim, André Samson, best explained the lack of information:

My family would very much have liked to know what was happening at the mental health review board hearings. We were never kept informed of the proceedings. We were never invited to the review board hearings. We were never given an opportunity to speak. We were cast aside. We were in a vacuum and we had no documents. For four or five years, we did not know where he [the NCR accused person] was living. Had my girlfriend not been a court clerk, my family

and I would not have known which hospital he was staying at (House of Commons meeting, June 10, 2013).

This also extended to being uninformed about when the individual would be released into the community: “victims who have become involved in the mental disorder regime have also expressed concern that they have no way of knowing when a not criminally responsible accused is going to be released or discharged into the community” (Bob Dechert, Member of Parliament, Conservative Party of Canada, House of Commons debate, October 21, 2013). Victims indicated that, without this information, they “...were afraid they would unexpectedly run into them [the NCR accused] without being adequately prepared” (Kevin Sorenson, Member of Parliament, Conservative Party of Canada, House of Commons debate, May 27, 2013). This fear appeared to be understood by other organizations, for example Alexander Simpson, a representative from the mental health community stated: “the victims are understandably deeply traumatized and find the thought of community reintegration of perpetrators horrifying” (House of Commons meeting, June 10, 2013).

Victims also claimed that, not only did they want their safety to be considered, they also wanted to be more involved in the decision-making process. Victim Isabelle Gaston explained the lack voice at review board hearings:

At no time did we have the right to say a single word. Only the accused’s own statements counted for anything. No psychiatrist questioned us; no one from the Institut Philippe-Pinel in Montreal and no one to provide another opinion. We sat in the room like statues. We never had a chance to say a word; we were never able

to share our opinion. Only the day of the murder counted (House of Commons meeting, June 10, 2013).

Finally, victims also stated that they did not have enough time to heal before the following review board period began: “I’m a grieving parent or trying to be one” (Carole de Delley, victim, House of Commons meeting, June 5, 2013). This was clearly articulated by Conservative Party of Canada Member of Parliament Robert Goguen:

She [Stacy Galt] emphasized that the current process of annual review hearings of an NCR accused disposition has had the effect of re-victimizing her family. In particular, the annual review hearing process for assessing the disposition of an NCR accused, at least in serious cases such as her family’s where the underlying act was the killing of three children, has made it more difficult to heal. Every time her cousin, the mother of those children, begins to make some progress a yearly review comes up. In her particular case, the month of review is also the anniversary of the tragedy (House of Commons debate, June 17, 2013).

The Conservative majority government, thus, responded to these concerns with the added victim-related provisions in the *NCR Reform Act*. The Act specifically addressed the victims’ concerns by ensuring that victim and public safety are specifically the paramount considerations in the decision-making process. With the *NCR Reform Act*, public safety “...should be number one, the paramount consideration, to begin with” (Rob Nicholson, Member of Parliament, Conservative Party of Canada, House of Commons meeting, June 3, 2013). Conservative Party of Canada Member of Parliament Dan Albas also explained that:

They [the government] address this concern by increasing the information that would be made available to victims and by ensuring that their safety was considered when decisions were made. For example, the bill would require courts and review boards to specifically consider the safety of the victim when determining whether a not criminally responsible accused remained a significant threat to the safety of the public (House of Commons debate, October 21, 2013).

A Backgrounder report on the *NCR Reform Act* published in April 2014 demonstrated further victim-related provisions that are consistent with victims' concerns:

The legislation will enhance the safety of victims and provide them with opportunities for greater involvement in the Criminal Code mental disorder regime by: ensuring they are notified, upon request, when the accused is discharged and providing them with information regarding the accused's intended place of residence; allowing for non-communications orders between the accused and the victim; and ensuring that their safety is considered when decisions are being made about the accused person (Department of Justice, 2014).

Furthermore, the extended review period was a response to victims' concerns that they did not have enough time to heal before annual review board hearings. Dave Teixeira, who consulted on the Act as a representative for victims, illustrated why the extended review period for particular individuals would be beneficial for victims' healing:

This is the pain the family goes through. If it were every three years, the family could heal. Between hearings, it's like an election, you're gearing up for the next election. Once they finish a hearing, they're gearing up for the next hearing.

There's no time to heal. Three years would give the family an opportunity to heal as well (House of Commons meeting, June 10, 2013).

It is important to note that it was not the solely Members of Parliament affiliated with the Conservative Party of Canada who argued for the importance of victim safety and victim involvement; there was widespread support among all members of Parliament, special interest groups and victims for the victim-related provisions in the *NCR Reform Act*. In addition to demonstrating their support at House of Commons and Senate meetings and debates, all special interest groups stated support for these provisions in their submissions. This included: the Center for Addiction and Mental Health, the Canadian Resource Centre for Victims of Crime, the Canadian Academy of Psychiatry and the Law, the Canadian Bar Association, the Canadian Psychiatric Association, the Criminal Lawyers Association, the RN Association of Ontario, the Federal Ombudsman for Victims of Crime, and the 11 organizations that represent the mental health community. In fact, portions of the victim-related provisions were often the only amendments that special interest groups supported: "The Criminal Lawyer's Association supports the provisions in the bill aimed at enhanced victim engagement, but takes issue with the other proposed amendments, particularly the high-risk accused category idea" (Criminal Lawyers Association submission to House of Commons, June 2013).

The Conservative majority government applied penal populist tendencies by describing and illustrating the various ways in which they were devoted to addressing the concerns of victims. Here, they addressed the ways NCR accused persons have been seen has favoured at the expense of victims of crime and responded by implementing victim-related provisions. Consistent with penal populism, victimization assumed an iconic

status for the government; they consulted with victims and groups that claim to speak for victims and used the concerns presented to develop specific victim-related amendments in the *NCR Reform Act*. Thus, victims' voices and victims' rights advocacy group voices were given legitimacy and authenticity.

Theme 4: Issues related to decision-making processes in NCRMD cases

This theme represents issues that were raised related to decision-making processes in NCRMD cases. This theme is divided into three subthemes, each of which will be described in this section. The first subtheme, evidence-based decisions involved in drafting the *NCR Reform Act* stated concerns from various special interest groups that the *NCR Reform Act* was not evidence-based. They pointed to the lack of consultation with mental health advocacy groups during the drafting of the Act. Moreover, despite being commissioned by the government, reports on the effectiveness of review boards were not used in the development of the Act. They further illustrated that political actors strategically used a report with a large error in it to make their point for the Act. The second subtheme, courts as primary decision makers, discusses the shift of decision making powers from review boards to courts in the *NCR Reform Act*. Mental health advocacy groups saw this amendment as unnecessary because review boards are chaired by someone with the qualifications of a judge (such as a current or retired judge) and have the specialized knowledge to make decisions regarding treatment and eventual reintegration into society. The final subtheme, the use of expert opinion in the decision-making process, discusses the importance of using expert opinion in the decision-making process of NCRMD cases. Mental health advocacy groups saw the provision involving the use of expert opinion in the decision-making process of NCRMD cases as important

but victims saw this as something that needed to be monitored to ensure good quality of expert opinion.

Subtheme 4a: Evidence-based decisions involved in drafting the *NCR Reform Act*. Many mental health organizations, legal representatives and review board representatives argued that the *NCR Reform Act* is a controversial Act because the amendments were ill informed and were not evidence-based. In an electronic news media article published in *The Star*, mental health advocate Dr. Richard Schneider from the Ontario Review Board and Review Boards of Canada stated, “if you want to enhance public safety, all the data is saying turn right and we’re going left” (Dempsey, 2014).

Mental health and criminal justice experts reflected on the lack of evidence-based decisions when they raised the issue that the major organizations with expert knowledge in this particular area were not consulted during the drafting of the Act. Chris Summersville, a mental health advocate from Schizophrenia Society of Canada, told *Canada.com* “the mental health community was completely disregarded” (Quan, 2013).

To justify, Conservative Party of Canada Member of Parliament Rob Nicholson asserted that the provinces and territories were consulted and have provided input. For example:

Nicholson was pressed to explain why he didn’t consult with mental health groups when drafting the bill. He responded that he consults on a regular basis with the provinces, who are responsible for hospitals and mental health care, and that he has received a lot of support from his provincial and territorial counterparts (Fitzpatrick, 2013d).

In addition to disregarding expert knowledge, groups articulated that the Conservative majority government did not consider the data that was collected for them in commissioned reports. Mental health organizations, legal representatives and review board representatives first claimed that there was no evidence to suggest that the existing NCR regime was ineffective or needed to be changed. Catherine Latimer from the John Howard Society said, “but as an evidence-based organization that is principally driven, we are unaware of any evidence suggesting that the existing review board procedures dealing with ‘not criminally responsible’ are flawed” (House of Commons meeting, June 5, 2013). Furthermore, in their submission to the House of Commons, the Criminal Lawyers Association made the claim that: “there is no evidence to suggest that the public is at risk from overly permissive review boards releasing dangerous NCR accused into the community without adequate consideration of public safety.”

These groups also pointed to the success of the existing NCR scheme in the *Criminal Code*, arguing that the regime and the review boards are, in fact, working properly. Here, they explained that available evidence, not considered by the government, shows low recidivism rates for NCR accused people – demonstrating that the system is working properly. Anita Szigeti from the Criminal Lawyers Association stated:

The important statistic is that fewer than 10 per cent – closer to 7 per cent – of those who are graduates of our current review board system go on to reoffend; whereas, if those folks choose not to pursue a section 16 or NCR defence and they end up in criminal justice going through the prison system, the recidivism there is much higher. That’s what you are seeing here: people accused of a violent criminal offence who ultimately end up NCR who previously had been convicted

and had gone through prisons based on a conviction (Senate meeting, March 5, 2014).

Furthermore, mental health organizations, legal representatives and review board representatives also pointed to concerns with the link established between brutality of the index offence and the NCR accused person's future risk in section 672.54 of the Act. They explained that it is well-known that the seriousness of the crime is not an indication of future violence from the NCR accused and thus demonstrated that the government did not refer to the available evidence: "the creation of a high-risk category based on brutality of the crime, for example, is not founded in any evidence. Brutality of the crime does not determine risk" (Lori Triano-Antidormi, victim, House of Commons meeting, June 5, 2013).

However, when the government did cite empirical evidence, they cited incorrect data to make a case for the Act. A large error was identified in a report produced by Crocker, Seto, Nicholls, and Côté for the Department of Justice in March 2013. When this error in the Department of Justice report was found in March 2013, Rob Nicholson's office was notified and sent an amended version of the report. Despite the new report, the incorrect data was purposefully still cited. As a matter of fact, in his Huffington Post blog post, Liberal Party of Canada Member of Parliament Irwin Cotler said "the Conservatives even hid the results of the above-mentioned study for three months, rather than confront empirical evidence that contradicts their approach" (Cotler, 2013b). Author Laura Stone best described the conflict surrounding the data error in her Global News article MPs Studying Wrong Data about Not Criminally Responsible Bill:

Nicholson and other MPs have cited statistics used in the initial report to make a case for the bill. But in March, it was discovered the initial report contained errors, said the main researcher from McGill University, Anne Crocker. The mistake inflated the number of previous findings of a not criminally responsible designation, said Baillie. As soon as she discovered the error, Crocker said she notified the department [...] The original report said 38.1 per cent of sex offenders found not criminally responsible and accused of a sex offence had at least one prior NCR finding; that number was changed in March to 9.5 per cent. It said 27.7 per cent accused of attempted murder had one NCR finding; that was changed to 4.6 per cent, and 19 per cent accused of murder or homicide with one prior NCR was changed to 5.2 per cent. The overall figure of 27.3 per cent of NCR accused having a past finding of NCR was changed, in the new report, to 6.1 per cent (Stone, 2013).

Following criticism from different groups, the government stopped citing the Crocker report altogether because both reports were considered unreliable. In an interview with Global News, Robert Goguen, Member of Parliament from the Conservative Party of Canada stated, “therefore we consider them both unreliable. We don’t know if the mistake was made in the first or the second (report), that’s why they’re unreliable” (Stone, 2013). Laura Stone also explained:

Di Mambro said the minister has stopped citing the statistics from the report altogether. She questioned why researchers changed their numbers 38 days after the legislation was introduced and after members of the mental health community came out against the bill (Stone, 2013).

Subtheme 4b: The shift towards courts as primary decision makers. One of the proposed changes in the *NCR Reform Act* was a shift in primary decision making powers from the review boards to the courts in the case of a high-risk NCR accused person. According to section 672.54 of the Act, following an application made by the prosecutor, the court will make the decision to determine whether or not the individual is a high-risk accused. Mental health organizations, legal representatives, Members of Parliament affiliated with both the Liberal and the New Democratic Party considered this requirement to be unnecessary because the review boards are judicial bodies that are chaired by judge (current or retired) or someone who is qualified to be a judge. Catherine Latimer from the John Howard Society demonstrated this at the Senate meeting on March 26, 2014 when she said:

The review boards are set up under federal legislation. The chair of the review board, according to the legislation in the Criminal Code, is someone who has been a judge of a court or, there's a saving section, could qualify as a judge of a court, and then there are two psychiatrists and other medical experts on that board as well. Yet, you are critical of their judgment that they made in a particular case.

These aforementioned groups recognized that review boards are, in fact, groups with specialized knowledge that enable them to make decisions regarding mental health and particularly an individual's treatment and reintegration. As Catherine Latimer from John Howard Society stated, "the review boards are equipped with psychiatrists and the medical expertise to actually make a fair assessment as to whether or not someone constitutes a future risk" (House of Commons meeting, June 5, 2013). This made mental health organizations and New Democratic Party Members of Parliament question if the

decisions about an individual's rehabilitation and reintegration into society should remain with review boards: "as has been pointed out by other members, are the courts the appropriate authority to be making a decision on the rehabilitation of the mentally disordered person? Should that not remain with the review boards and psychiatric care?" (Linda Duncan, Member of Parliament, New Democratic Party, House of Commons debate, April 26, 2013). This was similarly discussed by Bob Rae in the Liberal Party's publication titled *Liberals Oppose Bill C-54*: "these Review Boards are better equipped than regular courts to make determinations about the level of danger such an offender poses to the community and decisions taken about the best course of care to ensure they do not re-offend."

Bernd Walter from the British Columbia Review Board and Association of Canadian Review Board Chairs, addressed the review board's ability to assess future risk and demonstrated that it is also an important factor to consider when shifting the primary decision-making powers:

I should say that courts are not experts in risk prediction. Courts look back. They try to assess evidence to see if something happened, if an offence occurred beyond a reasonable doubt. The review boards, with psychiatrists and with community members already on them, are the experts in future risk prediction (House of Commons meeting, June 12, 2013).

Subtheme 4c: The use of expert opinion in decision-making. The importance of using expert opinion throughout the process of determining whether or not an individual is NCRMD was commonly discussed; courts will be required to consider advice from psychiatric experts, as is routinely done when deciding if an individual is NCR.

How they respond to treatment and when they are deemed ready and appropriate to return to their community, to society at large, is very much the purview, the responsibility, of medical experts, forensics, psychiatrists as well as the legal system working in tandem (Peter MacKay, Member of Parliament, Conservative Party of Canada, Senate meeting, February 27, 2014).

The use of expert opinion was seen as important because the experts are those who work closely with the NCR accused; they are familiar with each case and the individual's treatment, including his or her progress: "please give greater credit to review boards and the medical service providers – the professional experts. Evidence shows the work they do is producing successful results" (Chris Summersville, mental health advocate, House of Commons meeting, June 5, 2013).

Victims requested that the quality of the expert assessments and opinions presented to the courts be monitored at a provincial level to ensure that they are of the best possible quality:

It remains essential in my opinion that a national or at least a provincial reform be brought about to guide the experts who testify before the court. [...] It is urgent that rules and procedures be brought in as frames of reference for the experts who testify before the courts. The quality of the expert assessments presented to the judges as jury members must be monitored. Even if most of these expert assessments are of good quality, we must ensure that they respect all the rules of proper practice (Isabelle Gaston, victim, House of Commons meeting, June 5, 2013).

This theme is also consistent with penal populist tendencies. As previously noted, many special interest groups criticized that the *NCR Reform Act* was ill informed and not based on any evidence. This represents the larger issue of displacement of expertise; the government did not consult with experts in the criminal justice system and mental health issues and they failed to use evidence to develop the Act (which included commissioned government reports on the effectiveness of the review board system, for example). This allows us to see that the policy debate surrounding the *NCR Reform Act* shifted to an emotionally charged debate with the exclusion of expert opinion.

What is most interesting about this theme is the Conservative majority government's explicit attempt to discredit and condemn expert opinion by claiming that the Crocker report was unreliable despite the researchers fixing the error. Further, their attempt to continue using the Crocker report with a significant error in it showed a further attempt to play on the public's fears and lack of knowledge to pass the Act because the error seemed to be consistent with popular belief.

Theme 5: Negative consequences of the *NCR Reform Act*

Mental health organizations appeared to be concerned about the wider implications that the *NCR Reform Act* could have on NCR accused person and the mental health and criminal justice systems. They feared that public safety would actually be (unintentionally) compromised as a result. In an electronic CBC News article, Chris Summersville from the Schizophrenia Society of Canada stated: "let me be crystal clear: there are negative impacts and unintended consequences of this bill" (Fitzpatrick, 2013f). Louise Bradley from the Mental Health Commission of Canada made a comparable

statement: “while unintended, there is a concern that these discussions may reverse some of the progress we’ve made thus far” (House of Commons meeting, June 10, 2013).

This theme is divided into five subthemes: (a) the *NCR Reform Act* is stigmatizing, a concern that was prominent among mental health advocacy groups, with a particular focus on the new high-risk designation in the Act, (b) the *NCR Reform Act* is punitive towards individuals with mental illness and the potential to turn forensic mental health facilities into jails, (c) the NCR accused person will avoid using the NCR defence, a discussion largely focused on the proposed increased restrictions on NCR accused persons that may influence the individual to avoid using the NCR defence, (d) the *NCR Reform Act* will not survive Charter scrutiny, a discussion surrounding constitutional concerns with the Act, such as vagueness and arbitrariness, and (e) the *NCR Reform Act* will promote vigilantism, a discussion of concerns surrounding the provisions in the Act that will allow for victims to be notified of the accused’s intended place of residence and the possibility of vigilantism arising as a result.

Subtheme 5a: The *NCR Reform Act* is stigmatizing. Critics of the *NCR Reform Act* claimed that the Act is stigmatizing towards individuals with mental illness and mental health problems. This claim was particularly common among mental health advocacy groups: “instead of focusing on preventing the crime in the first place, Bill C-54 focuses on punitive and stigmatizing measures that undermine the purpose of the not criminally responsible designation in the first place” (Chris Summersville, mental health advocate, House of Commons meeting, June 5, 2013). Correspondingly, on June 10, 2013, Peter Coleridge from the Canadian Mental Health Association explained:

We are concerned that the proposed changes to the not criminally responsible provisions of the Criminal Code will negatively impact the lives of people found NCR, and unjustifiably increase the stigma toward people with mental illness that is pervasive in our society at the systematic, community, and individual levels.

Mental health organizations pointed to notable stigmatizing consequences of the high-risk designation. Mental health organizations believed that the new high-risk designation had eminent stigmatizing implications for the NCR accused because it established and reinforced a mythical link between mental illness and violence indicating that these individuals were likely to reoffend: “such an amendment would appear only to fuel stigma by creating an impression that all individuals who are found NCR are likely to reoffend” (Peter Coleridge, mental health advocate, House of Commons meeting, June 10, 2013). Dr. Lori Triano-Antidormi, a psychologist who attended meetings and debates as an individual and a victim made a noteworthy comment at the House of Commons meeting on June 5, 2013:

I think in terms of the stigmatizing, it has to do with the focus on the brutality of the act. It really does perpetuate the myth that people with mental illness are violent. We were well treated by the forensic community and educated that this is not the case. When I saw the media on the bill, it just struck me as very stigmatizing because of that attitude to lock them up for three years and don't review them again, and the punitive nature as well.

Mental health organizations noted that the stigma associated with the *NCR Reform Act* might lead to additional negative consequences, such as avoidance of treatment and

worsening of symptoms because of the known effects stigma has on an individual's self-esteem:

We know from studies that many people who would otherwise benefit from mental health services or care will not seek or fully participate in their care in order to avoid the labels that have the potential to diminish their self-esteem or social opportunities (Peter Coleridge, mental health advocate, House of Commons meeting, June 10, 2013).

Those who disagreed (Conservative Party Members of Parliament and victims) with the claims that the *NCR Reform Act* is stigmatizing argued that because the Act will only be applied to a small number of individuals, it would not fuel stigma. They argued that the Act conveyed that not all individuals with mental illness are dangerous or violent by only designating a small number of NCR accused persons to the high-risk category:

Your point about stigmatization – much like Senator Frum's reference to vigilantism – is something that I have heard and certainly contemplated. I believe this bill actually does the opposite of creating or furthering stigmatization. I say that because by designating, within that category of not criminally responsible, individuals who are deemed to pose a higher risk of violence or of being capable of brutality, I believe that should actually cause the public to say, 'Well not everybody who is not criminally responsible is a risk or poses the potential for further violence or brutality'" (Peter MacKay, Member of Parliament, Conservative Party of Canada, Senate meeting, February 27, 2014).

Subtheme 5b: The *NCR Reform Act* is punitive towards individuals with mental illness. Another concern with the *NCR Reform Act* was that the Act is punitive in

nature. Mental health organizations and legal representatives made claims that the Act focused on punishing those with mental health problems and had the potential to turn forensic mental health treatment facilities into jails. In her electronic CBC News article, *Psychiatrist Wary of Not Criminally Responsible Proposal*, Meagan Fitzpatrick illustrated that:

A psychiatry expert who has treated Vince Li, the man found not criminally responsible for the murder of Tim McLean on a Greyhound bus, says the bill proposing reforms to the NCR system risks turning mental health facilities into jails and shifts the focus to punishing those who are mentally ill instead of treating them.

Mental health organizations and legal representatives explained that the punitive nature of the Act is a problem because, as Part XX.1 of the *Criminal Code* points out, individuals found NCR do not commit crimes out of ill intent; they commit crimes out of an ill mind and, therefore, must not be punished: “it is important to keep in mind the distinction between a convicted offender and someone found to be NCR and to ensure that those with mental illnesses are treated appropriately” (Susan O’Sullivan, victim’s rights advocate, House of Commons meeting, June 12, 2013).

Furthermore, these special interest groups illustrated that imposing punitive measures would not benefit the victims in any way; it would not relieve their loss and it would not prevent similar incidents from occurring in the future: “however, we feel that pitting the rights of victims against the rights of criminals does not guarantee justice. On the contrary, implementing punitive measures will relieve neither the loss nor the

suffering” (Doris Provencher, mental health advocate, House of Commons meeting, June 10, 2013).

Those who did not agree that the *NCR Reform Act* was punitive argued, “[...] the proposed reforms do not seek to impose penal consequences on people who have been found by the courts to be not criminally responsible on account of mental disorder” (Rob Nicholson, Member of Parliament, Conservative Party of Canada, House of Commons debate, March 1, 2013). These arguments were especially prevalent among victims. For example, victim Isabelle Gaston commented on this matter:

I do not agree with those who claim that the defenders of this bill are trying to be punitive with people who are not criminally responsible. Injustice is sustained by everyone, myself, my children and all of society. If supervision is punitive, we do not have the same vision of the work done by mental health workers (House of Commons meeting, June 5, 2013).

Subtheme 5c: The *NCR Reform Act* will lead to more NCR accused persons in corrections. Special interest groups were also concerned that because proposed Act increased restrictions on NCR accused persons deemed high-risk, these individuals would make the decision to go to jail or prison instead of using the NCR defence and receiving the treatment services. This potential problem was identified by Dr. Richard Schneider from the Ontario Review Board and Review Boards of Canada in his commentary article in *The Star* titled *Not Criminally Responsible Reform Act: Debate is off the rails*:

It is inevitable that many accused who might otherwise have considered an NCR defence will now do everything they can to avoid it because of the potentially disproportionate consequences. When this occurs they will end up in the regular

prosecutorial stream and from there, if convicted, into the prisons. One day this individual will be released from jail onto the street untreated and not supervised.

This is a very dangerous situation (Schneider, 2013).

Mental health organizations specifically pointed to the new high-risk designation because individuals might be frightened by the idea of remaining in a hospital for up to three years without appearing before a review board. It was agreed this might deter individuals from pursuing the NCR defence:

One must remember that individuals who are prospective HRAs [high-risk accused] are individuals who have elected to avail themselves of the NCR defence. By putting into part XX.1 provisions that might, for a lack of a better way of putting it, appear frightening to the accused—for example, the prospect of being locked up in a hospital, where clinically contraindicated, for up to three years with no opportunity for review—you will inevitably find many accused not availing themselves of the NCR defence. The result of that, of course, is that they will take their chances, take their lumps, in the regular prosecutorial stream. That same individual who might otherwise have gone through part XX.1 in the review board system will one day be dropped out onto the street with no supervision, no gradual reintegration, no treatment (Richard Schneider, mental health advocate, House of Commons meeting, June 12, 2013).

Legal representatives who consulted on the Act in House of Commons and Senate also expressed this concern. They argued that some defence lawyers would not necessarily recommend or suggest that their client choose to pursue the NCR defence because of the proposed increased restrictions. Lawyers demonstrated that their

responsibility is to advise their client of his or her options to ensure that he or she can make a decision regarding the defence. This includes all possibilities, such as the potential of not appearing before a review board for up to three years:

Right, so our obligations as defence counsel to our clients with serious mental disorders are no different than our obligations to any other client. We don't make the decisions for them of whether or not they advance a section 16 defence. It's their decision. As long as they are fit to stand trial, they make the decision about whether or not they want to seek an NCR designation. They make the decision about whether or not they want to oppose the Crown seeking this kind of decision. However, it's our obligation, the same as with any other client, to fully inform them with respect to the consequences that they can realistically expect. Even now, responsible counsel will tell individuals with very minor offences, who could avail themselves of a section 16 not criminally responsible defence, that the better course of action may well be to plead guilty because they may find themselves landing in the review board system indefinitely because we don't have capping provisions, and they could be detained for 10, 20 years when their index offence is nothing of a violent nature. We have to provide that advice. They make their own decisions (Anita Szigeti, legal representative, Senate meeting, March 5, 2014).

The counter argument to the concerns of defence lawyers and special interest groups was that it would be unethical for lawyers to advise clients who meet the criteria for the NCRMD defence to plead guilty and enter the traditional criminal justice system:

It is perhaps no surprise that I do not find the argument holds weight. Let us face it. These are practising lawyers, usually with a degree of specialization when they take these cases on. I cannot see that ethically they would have a client who was suffering from a mental disorder that would qualify them as being not criminally responsible and they would try to put them into the regular criminal system where they would get less treatment. I believe that the law society members are highly ethical and that this is a tactic that, quite frankly, would not be used. If so, it would definitely be reprehensible (Robert Goguen, Member of Parliament, Conservative Party of Canada, House of Commons debate, June 17, 2013).

Subtheme 5d: The *NCR Reform Act* will not survive Charter scrutiny. Mental health organizations, legal representatives and New Democratic Party MPs suggested that there were constitutional concerns with the *NCR Reform Act*. The majority of the constitutional concerns surrounded the language of the Act. Groups argued that sections 7 and 9 of the *Charter* could be used to mount a *Charter of Rights and Freedoms* challenge on the basis of vagueness and arbitrariness. In their submission to the House of Commons, the Canadian Bar Association argued, “[...] restricting an accused’s liberty on the basis of brutality may be considered arbitrary pursuant to s. 7 of the Charter.”

Legal representatives frequently addressed concerns with the change from least onerous and least restrictive to necessary and appropriate because of the Supreme Court of Canada ruling in *Winko v. British Columbia* in 1999:

The Supreme Court has repeatedly said that the “least onerous and restrictive” requirement is at the heart of the constitutional validity of the NCR regime.

Several cases going back nearly 15 years have affirmed this standard is essential for compliance with the Charter of Rights and Freedoms. The proposed amendment to remove this language would bring that constitutional validity into question. Introducing the new and untested language of “reasonable” and “necessary” in the circumstances serves to negate the goal of consistent application of the law by review boards across the country (David Perry, legal representative, House of Commons meeting, June 5, 2013).

Further, they criticized the added high-risk designation was unclear and vague. They argued that the lack of clarity in that designation would allow for the label to be applied to a large number of offenders based on the nature of the act committed:

I think the danger with the high-risk designation is that because it is unclear, it could start to be applied to more and more offences. That is problematic, because we’re then shifting the focus away from looking at the treatment of the accused – what the accused’s mental condition actually is – towards the nature of the offence that was committed. That goes against the whole purpose behind Bill C-54, which is to shift attention to public safety. (David Perry, legal representative, House of Commons meeting, June 5, 2013).

Subtheme 5e: The *NCR Reform Act* will promote vigilantism. Lastly, legal representatives and mental health organizations identified a concern about the potential emergence of vigilantism as a result of the *NCR Reform Act*. This concern came from the added provisions that will allow for victims to be notified of the accused’s intended place of residence upon release:

Finally, we've raised the potential for vigilante justice. At this stage, I want to point out that this is not a fanciful concern but is based on evidence. I would first point out that as of right now, there is no notification aspect to sex offender registration, both federally and here in Ontario. In other words, for convicted sex offenders, their intended place of residence is currently not released for the public or to victims. You're adding this punitive type of provision onto someone who hasn't even been convicted of a crime, when other individuals – convicted sex offenders- are not even subject to that onerous restriction. (Ian Carter, legal representative, Senate meeting, March 5, 2014)

At the Senate meeting on March 27, 2014, Peter MacKay, Member of Parliament affiliated with the Conservative Party of Canada also noted the importance of considering the potential for vigilante justice:

Public disclosure that provides the public and provides officials, police, with information on the whereabouts of accused even after release does, in the mind of some, create this possibility of vigilantism, of a risk to the offender. That is something that does have to be considered.

This theme illustrates the concerns that special interest groups had with the *NCR Reform Act*. These concerns were all brought up before the Act received Royal Assent, pointing, again, to the displacement of expertise. In this process, although the Act does not explicitly use imprisonment as a method of crime control, many special interest groups were concerned that the *NCR Reform Act* was punitive in nature because of the risk of turning forensic mental health institutions into jails. This concern is consistent with penal populism as imprisonment is a central tool for populist governments. In fact,

this may represent a symbolic attempt to prioritize the security and wellbeing of the general public; this may be symbolic because many special interest groups clarified that the punitive provisions will not immediately help victims nor will they prevent any future crimes.

Theme 6: How the government addressed the declining levels of confidence and trust in the criminal justice system

This theme discusses the steps that the Conservative majority government took to improve the public's perception of the criminal justice system. This theme is divided into four subthemes: (a) ensuring consistency of interpretation of NCRMD; the implementation of the *NCR Reform Act* would ensure consistency across Canada with regards to victim's rights and, thus, public confidence will be increased; (b) increasing the role and consideration of victims in the decision making process; by adding victim-related provisions that would increase their role and consideration in the decision-making process, victims will feel more protected and less concerned, thus public confidence will be increased; (c) ensuring additional judicial oversight; giving the decision-making powers to the courts was seen as allowing for extra judicial oversight, something that victims and victim's rights advocacy groups perceived positively, and (d) ensuring restricted access to the community; the government added a provision to the Act that extended the review period to ensure that NCR accused persons are receiving adequate care before being released into the community to help increase public perception of the criminal justice system.

Within the data set, various victims and political actors, especially those affiliated with the Conservative Party, explained that high-profile NCR cases, such as Vince Li and

Guy Turcotte, negatively impacted the public's perception of and trust in the criminal justice system. It is important to note that political actors did not refer to any evidence to suggest that the public's perception of and trust in the criminal justice system was negative impacted. In an interview with the Toronto Sun, Conservative Party of Canada Member of Parliament Peter MacKay explained that these events have "[...] caused the public to feel unsure, less confident and push for laws that clearly emphasize public safety" (Hume, 2013).

The decline in public confidence in the criminal justice system was a matter to address for these groups. The *NCR Reform Act* was strategically developed by the Conservative majority government to alleviate public concerns with the criminal justice system. In fact, Conservative Party of Canada Members of Parliament believed that the changes proposed in the *NCR Reform Act* would help increase the public's confidence in the criminal justice system. This was something that was also commonly reflected in Conservative Party of Canada statements. As Conservative Party of Canada Member of Parliament Robert Goguen stated: "Bill C-54 would thus increase confidence in the NCR regime and in the administration of justice more generally" (House of Commons debate, June 17, 2013).

Victims explicitly stated that the Act, particularly the provisions that deal with public safety, would renew their trust in the criminal justice system. For example, when asked if she believed the changes made in the Act would improve the public's perception about justice, Catherine Russell, a victim, said:

Absolutely I do. I think society in general needs to know that Canadians, and people who are being victimized...that there are rights for them as well, not just

for the accused. It seems to always go the way of the accused. It's time that victims and their families and society feel protected and that we take a stand on this. I feel very strongly about that (House of Commons meeting, June 12, 2013).

To add to this point, at the House of Commons meeting on June 5, 2013, another victim, Isabelle Gaston stated that, “[...] this bill gives me greater hope that one day, the scales that are the symbol of our justice system will once again attain a certain balance for the parties involved.”

Subtheme 6a: Ensuring consistency of interpretation of NCRMD. One of the ways that the *NCR Reform Act* was expected to increase public confidence was through the added provisions that ensure the consistency of interpretation of the NCR regime across Canada. According to political actors, the *NCR Reform Act* clarified and codified the existing NCR regime in the *Criminal Code*: “in addition, the proposed legislation would help ensure consistency in the interpretation and application of the law across the country” (Mathieu Ravnat, Member of Parliament, New Democratic Party, House of Commons debate, April 26, 2013).

With the clarification of the NCR regime, ensuring that all victims know their rights and the information to which they are entitled will increase confidence and trust. Susan O’Sullivan from the Federal Ombudsman best described this for Victims of Crime on June 12, 2013 at the House of Commons meeting when she said:

That was my comment about needing to ensure consistency across the country.

You are right to say some victims choose not to participate in that. But in order to make that choice they must know about it. They must know what their rights are.

They must know what they have access to. We also carry that responsibility.

Subtheme 6b: Ensuring an increased role and consideration of victims in the decision making process. The second way the Conservative majority government attempted to alleviate public concerns with the criminal justice system was by adding provisions that would increase the role and consideration of victims in the decision-making process. With the *NCR Reform Act*, victims and their families will be informed when an NCR accused is discharged and further will be told where the individual will be living. Victims will also have protection from non-communication orders that the courts and review boards can put in place. All of these victim-specific provisions were widely supported:

As we have already mentioned, we believe that victims should be given more prominence. Everyone here is in agreement. All the witnesses we have heard from, including those from the Bar, believe that more information should be provided to victims (Hoang Mai, Member of Parliament, New Democratic Party, House of Commons meeting, June 12, 2013).

The widespread support was also described in a Global News article titled *Justice Minister Peter MacKay Prepared to Go to Court over Not Criminally Responsible Law*: “the bar association – which represents 37,500 lawyers, notaries, students and academics – says it agrees victims should be notified when an accused is discharged [...]” (Stone, 2013).

Victims and victim advocacy groups believed that the implementation of non-communication orders between the NCR accused and the victim(s) would provide victims with a sense of distance and reassurance: “I think knowing where the person is, what stage the person is at, is part of the right to information. There is a need for transparency

and we must know the truth. That would reassure us [...] the non-communication order provides some distance” (Isabelle Gaston, victim, House of Commons meeting June 5, 2013).

Moreover, it was believed that being provided with information regarding the individual’s treatment and progress would help increase the victim’s sense of safety and confidence that the individual is getting the treatment he or she needs before entering the community. In turn, it was argued that this would help the victims feel more confident and satisfied with the criminal justice system and processes related to individuals found NCR:

Providing victims with information about the accused’s progress and release into the community can significantly increase their sense of safety and may increase their confidence that the accused is accessing supports to promote and maintain mental health. This information may also help victims to address general feelings of anxiety and isolation that come from finding themselves in an unknown and unfamiliar system, to prepare up-to-date relevant victim statements for review board hearings, and to plan for their safety. [...] Experts state that: In addition to the victim’s need to feel safe, information about the offender’s treatment plan and movement within the correctional system may promote the psychological healing of some victims, and may directly increase satisfaction with the justice process (Susan O’Sullivan, victim’s right advocate, House of Commons meeting, June 12, 2013).

Subtheme 6c: Ensuring additional judicial oversight. The third way the Conservative majority government attempted to enhance public trust in the criminal

justice system was by adding a provision that gave the primary decision-making powers to the courts, which allowed for additional judicial oversight. There was a perception that, if the primary decision-makers were the courts, then NCR accused individuals would not be released prematurely. For example, in the House of Commons meeting on June 5, 2013, Member of Parliament Robert Goguen from the Conservative Party of Canada stated:

Don't you think that in the minds of average Canadians sitting at home, they would take some comfort knowing that prior to Vincent Li, prior to Allan Schoenborn, prior to Andre Denny, and prior to Guy Turcotte being released into their society, in their hometown, that there's not one, but at least two levels of scrutiny to ensure that maybe – just maybe – the incidents that these perpetrators have caused will not recur in their community?

Later that month, at the House of Commons debate on June 17, 2013 Conservative Party of Canada Member of Parliament Robert Goguen also stated:

While the review board's recommendation would likely carry a lot of weight in hearings to change or remove a high-risk designation, Bill C-54's proposed scheme of allowing for additional judicial scrutiny of these designations would help preserve the public interest and confidence in the NCR regime overall.

Subtheme 6d: Ensuring restricted access to the community for NCR accused persons. Lastly, the Conservative majority government attempted to alleviate the perceived public concern with the criminal justice system by adding a provision that would extend the review period and restrict privileges for particular persons found NCRMD. This provision would help improve public confidence by ensuring that the

high-risk NCR accused person is involved in treatment for a sufficient amount of time, increasing the likelihood that he or she responds to treatment, before the possibility of discharge:

This should help put victims at greater ease that painful hearings would be held at sufficient intervals to ensure that they are meaningful and enough time has elapsed to ensure how a high-risk accused has responded to treatment received in forensic care (Robert Goguen, Member of Parliament, Conservative Party of Canada, House of Commons meeting, June 17, 2013).

Penal populism is reflected in this theme; it appears that the government generalized the victims' (e.g., Carole de Delley, Isabelle Gaston, Christine Russell, and Isabelle Gato) lack of confidence and trust in the criminal justice system as the public's lack of confidence and trust in the criminal justice system because they did not refer to any evidence suggesting a lack of trust and confidence. The government thus applied penal populist tendencies by taking steps to ensure that the public's confidence and trust in the criminal justice system and, in turn, the government, increased. They developed a common-sense Act that used sentiments and the voices of segments of the public who feel that they have been ignored by the government.

Theme 7: Concerns that the *NCR Reform Act* does not address issues related to resources

This theme represents concerns from mental health groups, victims' rights groups, political actors and victims regarding resources (i.e., mental health resources, financial resources, victim support resources). This theme is divided into three subthemes: (a) preventing crime by improving mental health resources; political actors and special

interest groups identified that the *NCR Reform Act* will do nothing to improve the mental health system, in fact, mental health advocacy groups explained that it would drain the already scarce mental health resources, (b) ensuring adequate provincial financial resources; many groups questioned whether the provinces and territories had enough financial resources to manage the changes that will come with the *NCR Reform Act*, and (c) what resources are available for victims; victim's rights advocacy groups and victims illustrated a desire for financial compensation and support services, although various organizations pointed to services outside of the criminal justice system.

Subtheme 7a: We must improve mental health resources to prevent crime. It was well established across all groups that there is a need for an improved mental health system in Canada, but the *NCR Reform Act* does nothing to address this need: "Bill C-54 would not have protected my family but an improved mental health system might have" (Lori Triano-Antidormi, victim, in Fitzpatrick, 2013f). The Canadian Bar Association addressed this in their submission to the House of Commons in March 2013:

Bill C-54 does nothing to ensure that adequate mental health services are available before a person comes in contact with the criminal justice system. Persons with mental illness are much more likely to engage in criminal behaviour when their condition is poorly managed. Once contact is made with the criminal justice system, adequate services must be provided – either through the forensic psychiatric system or mental health services in regular prisons – to reduce any threat to the public on release. Public protection and adequate treatment go hand in hand.

It was further demonstrated that more resources and support are required in the mental health system to prevent criminal consequences of mental illness: “[...] if the government is committed to preventing the criminal consequences of serious mental illness, it must devote more resources and support to the provincial authorities responsible for mental health” (Erin Dann, legal representative, House of Commons meeting, June 5, 2013).

It is important to note that there was an concern among special interest groups that the *NCR Reform Act* would drain the already scarce mental health resources because it would essentially result in “[...] pulling scarce forensic resources away from treating patients, and into the courts” (Makin, 2013). The drainage of resources was expected to come from high-risk individuals who might end up occupying forensic mental health beds as they waited for their review board hearing, despite not necessarily needing them. Catherine Latimer from the John Howard Society explained this at the House of Commons meeting on June 5, 2013:

The problem with the designation, and the regime that follows is it may be that people who can be quickly treated with psychotropic drugs and are able to be successfully and safely reintegrated into the community would have to wait an additional two years. Instead of the annual review, there would now be a three-year review. This would be an unfortunate and arbitrary detention of someone who does not need to be detained based on their mental health status. Moreover, those designated as high risk who have permanent brain injuries and conditions that are not treatable, such as FASD and senile dementia, could be subject to indeterminate detention.

Special interest groups also pointed out that the lack of mental health resources in the community has an additional impact on the police:

I think you would hear most police forces say that they've become a mental health service, picking up people off the streets, having to take them to hospitals, spending many hours in emergency services. I think that's a big problem of what's going on with people who are mentally ill, who subsequently may become violent and become NCR (John Bradford, mental health advocate, Senate meeting, February 27, 2014).

Subtheme 7b: Provincial financial resources must be addressed to accommodate these changes. Some questioned if the provinces had the appropriate financial resources to account for the change that could come with the implementation of the *NCR Reform Act*:

Also, what about financial support to the provinces? Is this new policy not being developed on the backs of the provinces? A spokesperson for the Department of Justice stated that the provinces would not receive any additional funding to address these new measures, yet we know there will be costs involved (Mathieu Ravignat, Member of Parliament, New Democratic Party, House of Commons debate, April 26, 2013).

Mental health organizations and political actors affiliated with the New Democratic Party and the Liberal Party questioned if the provinces and territories were consulted about the financial burden the bill might impose:

An obvious question is whether the provinces and territories have been consulted, as these costs will most certainly be downloaded to them for extended periods of

detention, the provision of psychiatric services and certainly the duty to notify and tract victims and the accused (Linda Duncan, Member of Parliament, New Democratic Party House of Commons debate, April 26, 2013).

Without addressing financial resources, in particular, Conservative Party of Canada Member of Parliament Rob Nicholson frequently stated that he had consulted with the provinces and territories and that they strongly supported the *NCR Reform Act*:

I was please at the response I received from my provincial and territorial counterparts.

A number of them have come out publicly to talk about this. [...] Certainly, they have made that point to me. We are very pleased to cooperate with them in our level of responsibility and within our constitutional jurisdictions (House of Commons debate, March 1, 2013).

Some groups questioned if the provinces would receive additional financial resources or compensation for the supplementary costs that would accompany the *NCR Reform Act*: “can the minister confirm that the provinces will not receive compensation for the additional costs that will be imposed on them for the administration of justice?” (Guy Caron, Member of Parliament, New Democratic Party, House of Commons debate, March 1, 2013). The government responded to these questions with the reassertion that the government takes the financial situation and needs of the mental health system very seriously; they explained that they have already provided additional financial assistance:

Mr. Speaker, the Government of Canada takes the whole issue of mental health very seriously. We have invested over \$376 million in mental health research. We have increased health transfers to the provinces to help them meet their

responsibilities in this area. My colleague, the Minister of Public Safety, would say that we have invested over \$90 million in helping the individuals who are in federal custody with mental health problems (Rob Nicholson, Member of Parliament, Conservative Party of Canada, House of Commons debate, March 1, 2013).

Subtheme 7c: What resources will be available for victims? Victim advocacy groups and victims themselves discussed the importance of adding financial aid and support services for victims. Financial resources were especially important for these groups: “I mentioned the enormous cost burden to victims earlier because I also wonder why there is no provisions being made in the bill for more resources for victims who have to live with the consequences of these criminal acts” (Mathieu Ravnagat, Member of Parliament, New Democratic Party, House of Commons debate, October 21, 2013). Similarly, Nathalie Des Rosiers from the Canadian Civil Liberties Association explained, “our position is that the bill responds to some of the victim’s needs, but not all of them. It gives information rights, but it does not give rights to financial aid, services, or support. That’s a mistake” (House of Commons meeting, June 10, 2013). Lastly, Ben Bedarf, a victim, explained his experience:

I recommend immediate funding for victims for expenses incurred and secure shelter supplied; access to the bank account in case the account is only in the spouse’s name; immediate funding, in some cases, for travel to their parents’ and/or grandparents’ home, even if the family lives out of the province. There should be a fund available for long-term assistance for people in need, either through employment insurance, the Canada pension plan, disability insurance, or

any fund that is appropriate for the long-term survival of the victim and possibly children, including teenagers (House of Commons meeting, June 10, 2013).

The victims' needs were widely accepted and recognized across the entire dataset but some special interest groups noted that the criminal justice system is not put in place to compensate victims for the damage done: "we must maintain a process where public safety is optimally achieved. The criminal justice system cannot repair damage or compensate victims for their losses" (Schneider, 2013). To special interest groups, victim rights and needs are exceptionally important, but they note that there are services elsewhere for these individuals: "I also believe that victims' support services, which can be found across Canada, provide their assistance in those situations" (Julie Besner, legal representative, House of Commons meeting, June 3, 2013).

To address the concerns of victim resources, various organizations from the mental health community suggested that the government consider utilizing restorative justice approaches because "the evidence from restorative justice processes is that if done well these can reduce burden on victims and lower recidivism" (Alexander Simpson, mental health advocate, submission to House of Commons, February 27, 2014). The Canadian Psychiatric Association addressed this in their submission to the House of Commons on April 18, 2013:

CPA encourages the government to go further in addressing victim needs by adopting additional victim supports and restorative justice approaches. Alternative supports are important as many victims do not wish to remain engaged in the offender's release process, experiencing it as re-victimization.

Apart from adding to the larger picture of the government displacing and discrediting expertise in the case of the *NCR Reform Act* (by disregarding statements made about the lack of prevention through improving the mental health system), this theme covers material outside the realm of penal populism. This theme discusses the many concerns about the need to improve the mental health system in Canada, ensuring that the provinces have enough financial resources to adequately deal with the changes that come with the *NCR Reform Act* and whether or not victims will receive any financial compensation and support services with the implementation of the Act.

Discussion

My thesis examined how the print and electronic news media, political actors and special interest groups represented the *NCR Reform Act* in ways that are consistent with penal populist tendencies. After performing a thematic analysis of 45 news articles, 37 political documents and 16 special interest groups' documents, seven interrelated themes and 17 subthemes were produced. The themes produced include: the social context that permitted the introduction of the *NCR Reform Act*, public safety is paramount consideration, the government is supporting the needs and concerns of victims, decision making, the negative consequences of the *NCR Reform Act*, confidence and trust in the criminal justice system and lastly, resources. I make sense of these findings by drawing from the theory of penal populism as well as the ideas offered by Garland and Durkheim in relation to punishment and society.

The social context, which involved a combination of the prevalence of high-profile NCR cases in the news media, the public's fears and anxieties and an uneducated and misinformed public, permitted the introduction of the *NCR Reform Act*. In fact, some groups argued that the Act was a politicized response to high-profile cases that received a lot of attention in the news media, allowing the government to play on the public's fears surrounding what appears to be a major crime issue.

The issue of public safety was central to the discussion surrounding the Act. There was much debate regarding whether or not public safety was in fact paramount consideration in the previous regime; this divided victims' advocacy groups and members of the Conservative Party on one side and mental health advocacy groups and legal representatives on the other based on beliefs. Most mental health advocacy groups

specifically argued that the Act would not protect society; it would make society less safe because it undermined many of the measures that already existed to enhance public safety such as providing privileges to NCR accused persons to support future reintegration.

Throughout the dataset, the Conservative majority government expressed that they were devoted to addressing the concerns of victims. To address these concerns, they consulted with victims and victims' rights advocacy groups and further added amendments to the *NCR Reform Act* that were directly related to victim concerns. Victims cited in the dataset expressed that they wanted their safety to be considered during the Review Board decision-making process, to receive more information about the NCR accused person and that they wanted to be more involved and have their voices heard in the Review Board decision-making process. As a result, specific victim-related provisions were added to the Act.

The decision-making theme revealed a reconceptualization of expert opinion and knowledge. No mental health advocacy groups were consulted during the drafting of the Act and, despite being commissioned by the Conservative government; reports on the effectiveness of Review Boards were not used. This theme further revealed that Conservative MPs strategically took advantage of an empirical report with a large error in it to make their point for the implementation of the Act. Furthermore, with the Act, the Conservative majority government successfully shifted decision-making powers from the Review Boards to the courts, a change that many mental health advocacy groups deemed unnecessary because of the Review Boards' specialized knowledge in risk assessment and management.

Mental health advocacy groups, legal representatives and particular political actors were concerned about the wider implications that the Act could have on NCR accused persons and the mental health and criminal justice systems in Canada. They feared that, as a result of the Act, public safety would be (unintentionally) compromised for a multitude of reasons. They believed that the Act and the high-risk designation in particular were stigmatizing and punitive with the potential to turn forensic mental health facilities into jails. They also believed that NCR accused persons would, in turn, avoid using the NCR defence because of the proposed increased restrictions. Lastly, they believed that the Act would not survive Charter scrutiny and would likely promote vigilantism among the public.

The confidence and trust in the criminal justice system theme demonstrated that the Conservative government took various steps to ensure that the public's perception of the criminal justice system was not impacted. This theme illustrated that they used the Act to increase the public's confidence and trust in the criminal justice system by ensuring consistency of interpretation of NCRMD across Canada; increasing the role and consideration of victims with the inclusion of specific victim-related provisions; increasing judicial oversight with providing the courts with the primary decision-making powers; and denying NCR accused persons access to the community.

The last theme produced in this research project related to resources. All groups involved in the drafting and debating of the Act identified and agreed that the Act would do nothing to improve the mental health system; it would, rather, drain the already scarce mental health resources available. This particularly true because this theme also

demonstrated that it was unclear if the provinces would have enough financial resources to manage the changes that accompany the Act.

NCR Reform Act as Penal Populist Policy

In order to address how the *NCR Reform Act* was represented by news media, political actors and special interest groups, it is important to reflect on Garland and Durkheim's views on punishment as well as penal populism. These perspectives shape the way I viewed the development of penal measures by suggesting that we look at punishment as something other than a calculated instrument for the rational control of individual conduct in society. Instead, these traditions suggest that we look at punishment as a moral phenomenon that carries out social functions in addition to penal functions.

It is possible that the dataset surrounding the *NCR Reform Act* reflected penal populist tendencies because the Act perpetuated social stigma of mental illness to achieve political objectives. This further complicated the very nature of the NCRMD regime, which is to rehabilitate individuals rather than punish. By viewing punishment as a social institution with moral purposes that are shaped by a wide range of social forces with effects extending to more than just the population of offenders, as suggested by Garland (1990), it is possible to consider the strategic use of the Act and penal populist tendencies to achieve political objectives.

This section of the discussion chapter will include an in-depth discussion of the ways in which the themes produced in this thesis reflected penal populist tendencies. This will include a discussion of three major penal populist tendencies in particular: the social context that permitted the introduction of the *NCR Reform Act*, the reconceptualization of

who the expert is in the context surrounding the *NCR Reform Act*, and the acceptance of public opinion.

The social context that permitted the introduction of the *NCR Reform Act*.

The social context that permitted the introduction of the *NCR Reform Act* undoubtedly reflected penal populist tendencies. As previously discussed, special interest groups and political actors affiliated with the Liberal Party and New Democratic Party addressed three main factors that contributed to the introduction of the Act: high-profile NCR cases in the news media, the public's fears and anxieties, and an uneducated and misinformed public.

The prevalence of high-profile NCR cases in the news media presented members of the public with the misconception that individuals with mental health problems frequently commit crimes. As a result, the public may have developed heightened feelings of fear and insecurity because of the belief that the crime rates are increasing. Further, public fear of crime, which was likely heightened as a result of the prevalence of high-profile violent NCR cases in the news media, and their lack of understanding of mental illness and NCRMD, may have conceivably led to the perceived decline of confidence and trust in the criminal justice system that Conservative MPs alluded to in the dataset. The decline of trust and confidence in the criminal justice system and, potentially the government as a whole, typically occurs when the public becomes fearful of crime. As a result, the public begins to believe that the government is not capable of protecting them and repairing the perceived crime problem in society (Brett, 2013, p. 410; Sööt, 2013, p. 540). Moreover, in his article, *When Penal Populism Stops: Legitimacy, Scandal and the Power to Punish in New Zealand*, Pratt (2008) illustrates that a repeated inability to

provide security and protection to the public often results in a lack of confidence and trust in the government and thus a government's loss of legitimacy (p. 367). As illustrated by Sööt (2013), the public begins to support tough crime control policies when trust in political institutions is lacking. She further contends that this occurs because the lack of trust results in the need for more formal control mechanisms to protect the public (p. 539). This is consistent with Garland's representation of Durkheim's views on social order and crimes: crimes violate the deeply held social norms and values in society and thus generate punitive reactions from the public (Garland, 1990, p. 29).

Therefore, consistent with Garland's discussion of Durkheim's views of society and moral order, it would appear as though the Conservative government sought to increase the public's trust and confidence in the criminal justice system and potentially the government as a whole. This is because Durkheim views the government as being responsible for avoiding the collapse of moral authority and by guarding moral order in society (Garland, 1990, p. 52). Subsequently, with the *NCR Reform Act*, the public's fears and anxieties and the additional perceived decline of confidence and trust in the criminal justice system likely influenced the Conservative majority government's attempt to regain legitimacy. As a result, the government was able to attempt to rebuild the confidence and trust by realigning power relations to ensure that the general public have more influence, thus strengthening and re-stating moral bonds. Thus, in order to realign the power structure and regain legitimacy, the Conservative government did applied two major penal populist tendencies in particular: they disregarded expert opinion and knowledge, and accepted public opinion as one with true value and direction. As a result, there was a reconceptualization of *who* the expert is; policy debate shifted from one that favoured

experts with specific training and knowledge in mental health issues, risk assessment and risk management and criminal justice procedures and practices to one that favours victims' and victims' experiences.

The displacement of expertise, expert knowledge and expert opinion. Another prominent penal populism tendency that was seen throughout the dataset was the disregard and the displacement of expertise, expert knowledge and expert opinion during the development and the debate of the *NCR Reform Act*. Prominent in the existing penal populism literature is the understanding that criminal justice policy debate shifts from one that favours expert knowledge and opinion to one that favours public opinion (e.g., Pratt, 2007; Roberts, 2003). As Roberts (2003) contends: “penal populism involves a wilful disregard of evidence or knowledge [and] the more wilful that such politicians are in their disregard for the evidence about effectiveness and equity, the more we are inclined to regard them as penal populists” (p. 65). Further, Garland (1990) suggests that the moral purposes of punishment are based on ethical reasoning rather than empirical knowledge and evidence (p. 116). This was evident throughout the dataset and, as a result, led to a reconceptualization of *who* the expert is. It is important to note that here; when referring to expert knowledge and opinion I am alluding to the assumption that knowledge and empirical evidence comes from individuals with specialized knowledge and training in areas such as mental health issues, risk assessment and management and criminal justice procedures and practices.

In the case of the *NCR Reform Act*, the disregard and displacement of expertise occurred intermittently across the dataset. Most generally, I saw this when I considered the many concerns expressed by mental health advocacy groups and legal representatives.

There were seven major concerns expressed by these groups. First, these groups were concerned that the *NCR Reform Act* would unintentionally make society less safe by undermining the effective public safety enhancing measures in the *Criminal Code*, such as providing the NCR accused person with gradually increasing therapeutic privileges outside of the forensic institution. They were also concerned that there were stigmatizing and a punitive aspects of the Act that are not consistent with the very nature of the NCRMD regime in the *Criminal Code*. Moreover, groups were concerned that the implementation of the Act will lead to more NCR accused persons in corrections because they would be less inclined to use the NCRMD defence in court. Groups also believed that the Act would not survive *Charter* scrutiny on the basis of vagueness and arbitrariness. The last two concerns brought up by these groups were the possibility of vigilantism and the Act draining already scarce mental health resources instead of preventing crimes. Special interest groups raised these concerns prior to the Act receiving Royal Assent on April 10, 2014 with little to no response from the Conservative majority government in terms of addressing the concerns and improving the related provisions.

Likewise, it appeared as though the Conservative majority government intentionally displaced expert knowledge and resources. First, the Conservative majority government failed to consult with mental health organizations during the development of the Act. The lack of consultation with special interest groups resulted in the Act not being based on evidence produced through scientific research and reasoning; something that mental health organizations and legal representatives in particular criticized. This allowed for victims' voices and victim advocacy groups opinions and views to gain a sense of

legitimacy and authenticity, a matter to be further discussed at a later point in the discussion.

The dataset revealed an additional form of displacement of expertise with the added provision that gives the courts the primary decision making powers rather than the Review Boards, which was traditionally the case. Recall that, according to section 672.54 of the Act, following an application made by the prosecutor, the court will make the decision to determine whether or not the individual is a high-risk accused person. Many special interest groups indicated that the Conservative majority government did not refer to any empirical research that demonstrates the effectiveness of the Review Boards when it comes to risk prediction, assessment and management. For example, Anita Szigeti, a legal representative from the Criminal Lawyers Association explained that less than 10 percent of NCRMD Review Board graduates reoffend, suggesting that Review Boards are effective. Thus, the disregard for empirical research while developing this provision of the Act led to a further displacement of expertise with regard to who has the primary decision making powers. By taking away the decision making powers from the Review Boards, the Conservative majority government thereby displaced the expert knowledge from a group of individuals with specialized knowledge that enable them to make decisions regarding mental health and an individual's treatment and reintegration.

Thus, displacing expertise, expert knowledge and expert opinion allowed the Conservative majority government to defend and justify the choices made regarding the *NCR Reform Act* and also allowed them to strengthen their own popularity and thereby begin to regain legitimacy. The failure of the Conservative majority government to indicate the true levels of recidivism for NCR accused persons, particularly compared to

traditional offenders, allowed them to portray to the public that there is a crime problem occurring with individuals with mental health problems, despite evidence that would counter that argument. This also allowed the Conservative majority government to portray the stereotype that individuals with mental illness are dangerous to accomplish their political goals.

Furthermore, by strategically citing a research report that contained an error, the Conservative majority government was able to reinforce the notion that there is a crime problem involving NCR accused persons, demonstrating that reform is necessary to protect society. By leading the public to believe that NCR accused persons reoffend significantly more than they really do, the Conservative government was able to continue to instil fear to maintain and strengthen their popularity.

The new experts. An important feature of penal populism is that it accepts the public's opinion and attitudes, or collective sentiment, as a recognizable opinion with value and direction. In particular, the penal populist government claims to listen to the people in society whose lives have been recently affected by crime (Johnstone, 2000, p. 162).

Although public opinion in the sense of dominant, collective beliefs and opinions throughout society were not studied in this particular research project, victims and victims' advocacy groups were a large focus throughout the dataset. In fact, victims are particularly important for a penal populist government (Pratt, 2007, p. 25). In his book, *Penal Populism*, Pratt (2007) contends that penal populist governments create and apply a popular political strategy that allows for the use of voices of the portions of the public, which feel that they have been ignored in the decision-making process (p. 17). This was

reflected throughout the entire dataset; as suggested by Garland (2001), the Conservative majority government claimed to give victims an advantage and thus gave victims' voices a sense of legitimacy and authenticity (p. 143). Similar to Pratt's (2007) assertion and what was consistently seen throughout the dataset, this portion of the public feels disenfranchised by government policies that benefit those who are less deserving, such as NCR accused persons. For the *NCR Reform Act* and the Conservative majority government, this portion of the public was the victims of violent, and for some high-profile, NCR cases.

In fact, as commonly seen with penal populist governments and the Canadian Conservative majority government in particular, the victim assumed an iconic status throughout the discourses surrounding the *NCR Reform Act*. The politicized image of the victim was symbolically used by Conservative MPs to demonstrate how the criminal justice system has tended to prioritize the interest and the rights of criminals ahead of the needs of victims and the public. The victims' experiences and interests became the symbol for the rights and interests of all of the public. Reliance on the victims' personal experiences, often tragic and shocking, demonstrates to the public a reality of crime that statistics do not.

Additionally, the development of penal policies, such as the *NCR Reform Act*, has driven populist political actors to build stronger relationships with various groups claiming to advocate for public interests. This newly established nexus between political actors and law and order lobby groups was seen throughout the dataset. Here, I saw these relationships in the Conservative majority government's consultation with various victims' rights advocacy groups as well as with the inclusion of these groups in the House

of Commons and Senate debates and meetings regarding the Act. As suggested by Pratt (2007), the government looked to these groups for information regarding the development of the *NCR Reform Act*, giving these groups, like the victims, a sense of legitimacy and authenticity and reinforcing their expertise over who work in the criminal justice and mental health systems.

The Conservative majority government gave victims' voices a sense of legitimacy and authenticity, and, in turn, made them the *new* experts by displacing and (at times) discrediting expertise, expert knowledge and expert opinion and by thus shaping the *NCR Reform Act* in ways that respond to victims' concerns and opinions. Similar to Garland's interpretation of Durkheim's views of punishment, the government is using the Act to respond to draw on the motivation and the support from the angered public (Garland, 1991, p. 122-123). This suggests a shift that is alluded to in the majority of the penal populism literature; a shift in penal policy making from one that favours expert opinion such as empirical research and individuals specifically trained in mental health and criminal justice issues to one that now favours public opinion and victim experiences as the experts (e.g., Garland, 2001).

As a result of this aforementioned shift, policy making worked on an emotional ground rather than a rational ground. This reinforces Garland's interpretation of Durkheim's belief that punishment is an expressive institution and a moral process that is in place to maintain shared moral values in society (Garland, 1991, p. 122). Because of the offences committed by NCR accused persons that violate norms and values in society, the public generates emotional, angry and punitive reactions (Garland, 1990, p. 29). Thus, this allowed the government to use the Act to respond to the angered public and work

toward strengthening moral order in society (Garland, 1991, p. 123). Consistent with Garland's interpretation of Durkheim's views, the *NCR Reform Act* is directed at the emotional public who believes their values and morals have been violated as opposed to the offender (Garland, 1990, p. 123).

Potential harms and benefits associated with the themes and discourses surrounding the *NCR Reform Act*

Various potential unintended negative consequences of the *NCR Reform Act* were mentioned and explained by special interest groups throughout the data. One of the major concerns that mental health advocacy groups alluded to were the potentially stigmatizing consequences of the Act. By implementing the *NCR Reform Act*, they believe that the government arbitrarily restricted and denied individuals with mental illness in terms of rights and social opportunities. As noted by mental health advocacy groups and legal representatives in the decision making theme, the government failed to consult with specific expert knowledge and refer to empirical evidence to inform the decisions regarding the *NCR Reform Act*. By doing this, the Act received Royal Assent despite being ill-informed and not evidence-based. Thus, here the restriction of rights and social opportunities is based on broad categories, such as an individual's diagnosis, as opposed to specific criteria, such as individualized risk assessments, for example. This will allow for NCR accused persons to be detained in a forensic mental health facility indefinitely, regardless of his or her individualized risk assessment and treatment plan.

The arbitrary restriction of rights and social opportunities further applies to those individuals designated to the high-risk accused category; this is substantiated in the *NCR Reform Act* as it implies the misconception that the brutality of an NCR accused person's

index offence is an effective predictor of his or her risk for future violence and re-offence. As noted in the decision making theme, this is inconsistent with all recidivism data; in fact, in the dataset special interest groups noted that this opposes evidence as it is well-known that the seriousness of the crime committed has no indication of future violence from the NCR accused person. Moreover, it is important to note that the arbitrary restriction of the rights and social opportunities of NCR accused persons designated to the high-risk category is also inconsistent with what the Supreme Court of Canada stated in regards to detaining individuals found NCRMD: “there is no presumption that the NCR accused is a dangerous person. No restriction whatsoever on his or her liberty interests can be ordered without a positive finding that the NCR accused is indeed, a dangerous person” (Winko v. British Columbia, 1999).

With the changes proposed in the *NCR Reform Act*, individuals deemed high-risk will be detained in a forensic mental health facility for up to three years before having his or her progress and case reviewed by the provincial review board. By increasing the amount of time between review board hearings for these individuals, the government is restricting the rights and social opportunities of these individuals. Without the frequent review board hearings, a high-risk NCR accused person is restricted from opportunities to receive therapeutic privileges, which are especially important for an individual’s eventual reintegration into society. For example, these privileges include gradually gaining access to the community through escorted and unescorted passes outside of the forensic mental health facility. As many mental health advocacy groups identified throughout the data set, these restrictions can and will be dangerous for the public. They noted that, without

identifying areas such as treatment, prevention and an NCR accused person's reintegration into society, long-term public safety is not being addressed.

Conclusion

The goal of my research project was to demonstrate how the print and electronic news media, political actors and special interest groups represented the *NCR Reform Act* in ways that are consistent with penal populist tendencies. In order to address this, I conducted a thematic analysis to examine how the dominant themes were reflected in the print and electronic news media, political documents and special interest groups' documents and written texts surrounding the *NCR Reform Act*. My thesis revealed the ways in which these themes reflected penal populist tendencies.

The Conservative majority government strategically used the fear of crime, misinformation of criminal justice procedures and mental illness, and sensational NCR cases to their advantage. Furthermore, I saw that the Conservative majority government strategically displaced expertise, expert knowledge and expert opinion (keeping in mind I am referring to a positivist view of expertise) to strengthen their own popularity and regain legitimacy. There was a general lack of consultation with special interest groups during the development of the *NCR Reform Act*, special interest groups' concerns regarding the potential consequences of the Act were ignored and the government appeared to intentionally displace and discredit expert knowledge and empirical evidence that specifically addressed the low levels of recidivism for NCR graduates. The Conservative majority government's failure to indicate the true levels of recidivism rates allowed them to portray a crime problem in society and instil fear among members of the general public. By doing this, the government was able to defend and justify the tough-on-crime provisions included in the *NCR Reform Act* and thus strengthen their own popularity and regain legitimacy in Canada.

Moreover, the Conservative majority government politicized the image of the victim and symbolically used this image to demonstrate how the Canadian criminal justice system fails to prioritize victim rights by putting the rights of the criminals first. Here, the victims' experiences and interests became the symbol for the rights and interests of all of the public. This then gave victims' voices a sense of legitimacy and authenticity, and, in turn, made them the *new* experts by displacing and (at times) discrediting expertise, expert knowledge and expert opinion. This allowed the development and the implementation of the *NCR Reform Act* to work on an emotional ground, responding to victims' opinions, fears and concerns while strengthening the Conservative majority government's popularity.

Thus, penal populist tendencies were instrumentally used to successfully promote and implement a popular penal policy that amended the section of the *Criminal Code of Canada* that deals with individuals who are not criminally responsible. The government used the *NCR Reform Act* to garner support from the public by shifting the policy development and debate to one that acknowledges and accepts public opinion as opposed to expert opinion and knowledge. This reflected Garland and Durkheim's notions of the moral purposes of punishment, suggesting that an agreed upon set of norms and values regulate all exchanges between individuals in society.

References

- Allnutt, S., Samuels, A., & O'Driscoll, C. (2007). The insanity defence: From wild beasts to M'naghten. *Australasian Psychiatry, 15*(4), 292-298.
doi:10.1080/10398560701352181
- Angermeyer, M. C., & Matschinger, H. (2005). Labeling - stereotype - discrimination: An investigation of the stigma process. *Social Psychiatry and Psychiatric Epidemiology, 40*, 391-395. doi:10.1007/s00127-005-0903-4
- Angermeyer, M. C., & Schulze, B. (2001). Reinforcing stereotypes: How the focus on forensic cases in news reporting may influence public attitudes towards the mentally ill. *International Journal of Psychiatry and Law, 24*(4-5), 469-486.
doi:10.1016/S0160 2527(01)00079-6
- Ben-Zeev, D., Young, M. A., & Corrigan, P. W. (2010). DSM-V and the stigma of mental illness. *Journal of Mental Health, 19*(4), 318-327.
doi:10.3109/09638237.2010.492484
- Bill C-54: An Act to Amend the Criminal Code and the National Defence Act (Mental Disorder)*. (2013). 2nd Reading, June 18, 2013, 41st Parliament, 1st Session. Retrieved from Parliament of Canada website:
<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Docid=6244811>

- Boyatzis, R. E. (1998). *Transforming qualitative information: Thematic analysis and code development*. California: SAGE Publications.
- Bradley, E. H., Curry, L. A., & Devers, K. J. (2007). Qualitative data analysis for health services research: Developing taxonomy, themes, and theory. *Health Services Research, 42*(4), 1758-1772. doi:10.1111/j.1475-6773.2006.00684.x
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology, 3*(2), 77-101. doi:10.1191/1478088706qp063oa
- Brett, W. B. (2013). What's an elite to do? The threat of populism from left, right and centre. *The Political Quarterly, 84*(3), 410-413. doi:10.1111/j.1467-923X.2013.12030.x
- Brown, E. K. (2011). Constructing the public will: How political actors in New York state construct, assess, and use public opinion in penal policy making. *Punishment & Society, 13*(4), 424-450. doi:10.1177/1462474511414779
- Bryman, A. (2003). Triangulation. *Encyclopedia of social science research* (pp. 1142-1143). California: SAGE Publications.
- Campbell, M. C., & Schoenfeld, H. (2013). The transformation of America's penal order: A historicized political sociology of punishment. *American Journal of Sociology, 118*(5), 1375-1423. doi:0002-9602/2013/11805-0006

Canada. Department of Justice. (2014). *Backgrounder: Not Criminally Responsible*

Reform Act. Ottawa: Government of Canada. Retrieved from:

http://www.justice.gc.ca/eng/newsnou/nr-cp/2013/doc_32899.html

Canada. Parliament. House of Commons. Standing Senate Committee on Justice and

Human Rights. (2002). *Review of the mental disorder provisions of the Criminal*

Code. Retrieved from:

<http://www.parl.gc.ca/content/hoc/Committee/371/JUST/Reports/RP1032130/justrp14/justrp14-e.pdf>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human

Rights. *Debates*. 41st Parliament, 2nd Session, vol. 146, issue 004, October 21, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=2&DocId=6261739>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human

Rights. *Debates*. 41st Parliament, 1st Session, vol. 146, issue 217, March 1, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=6015018>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human

Rights. *Debates*. 41st Parliament, 1st Session, vol. 146, issue 241, April 26, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=6107447>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. *Debates*. 41st Parliament, 1st Session, vol. 146, issue 256, May 27, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=6179005>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. *Debates*. 41st Parliament, 1st Session, vol. 146, issue 271, June 17, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=6239224>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. *Debates*. 41st Parliament, 1st Session, vol. 146, issue 272, June 18, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=41&Ses=1&DocId=6244698>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. *Minutes of Proceedings*. 41st Parliament, 1st Session, no. 075, June 3, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6205271&Language=E&Mode=1&Parl=41&Ses=1>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. *Proceedings of Minutes*. 41st Parliament, 1st Session, no. 076, June 5, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6250250&Language=E&Mode=1&Parl=41&Ses=1>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. *Minutes of Proceedings*. 41st Parliament, 1st Session, no. 077, June 10, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6231388&Language=E&Mode=1&Parl=41&Ses=1>

Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. *Minutes of Proceedings*. 41st Parliament, 1st Session, no. 078, June 12, 2013.

Retrieved from:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6246523&Language=E&Mode=1&Parl=41&Ses=1>

Canada. Parliament. House of Commons. Standing Senate Committee on Legal and Constitutional Affairs. *Minutes of Proceedings*. 41st Parliament, 2nd Session, issue no. 3, February 26-27, 2014. Retrieved from:

<http://www.parl.gc.ca/Content/SEN/Committee/412/lcjc/pdf/03issue.pdf>

Canada. Parliament. House of Commons. Standing Senate Committee on Legal and Constitutional Affairs. *Minutes of Proceedings*. 41st Parliament, 2nd Session, issue no. 4, March 5-6, 2014. Retrieved from:
<http://www.parl.gc.ca/Content/SEN/Committee/412/lcjc/pdf/04issue.pdf>

Canada. Parliament. House of Commons. Standing Committee on Legal and Constitutional Affairs. *Minutes of Proceedings*. 41st Parliament, 2nd Session, issue no. 5, March 26-27, 2014. Retrieved from:
<http://www.parl.gc.ca/Content/SEN/Committee/412/lcjc/pdf/05issue.pdf>

Canada. Parliament. Library of Parliament. (2013). *Central Issues in Mental Health in Canada: Mental Health and the Criminal Justice System*. (Report 2013-88-E). Retrieved Aug 01, 2014 from:
<http://www.parl.gc.ca/Content/LOP/ResearchPublications/2013-88-e.pdf>

Canadian Bar Association. (2013). *Submission on Bill C-54: Not Criminally Responsible Reform Act*. Retrieved from: <http://www.cba.org/CBA/submissions/pdf/13-20-eng.pdf>

Canadian Charter of Rights and Freedoms, s 2, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

Canadian Psychiatric Association. (2013). CPA submission. Bill C-54: An Act to Amend the Criminal Code and the National Defence Act (mental disorder). Retrieved from:

[http://www.hsjcc.on.ca/Resource%20Library/Risk%20Assessment/The%20Consequences%20of%20Bill%20C-](http://www.hsjcc.on.ca/Resource%20Library/Risk%20Assessment/The%20Consequences%20of%20Bill%20C-54,%20the%20%20E%20%80%9CNot%20Criminally%20Responsible%20Reform%20Act%20E%20%80%9D%20-%20Canadian%20Psychiatric%20Assn%20-%202013.pdf)

[54,%20the%20%20E%20%80%9CNot%20Criminally%20Responsible%20Reform%20Act%20E%20%80%9D%20-%20Canadian%20Psychiatric%20Assn%20-%202013.pdf](http://www.hsjcc.on.ca/Resource%20Library/Risk%20Assessment/The%20Consequences%20of%20Bill%20C-54,%20the%20%20E%20%80%9CNot%20Criminally%20Responsible%20Reform%20Act%20E%20%80%9D%20-%20Canadian%20Psychiatric%20Assn%20-%202013.pdf)

Charette, Y., Crocker, A. G., Seto, M. C., Salem, L., Nicholls, T. L., & Caulet, M. (2015).

The National Trajectory Project of individuals found not criminally responsible on account of mental disorder in Canada. part 4: Criminal recidivism. *Canadian Journal of Psychiatry*, 60(3), 127-135.

Corrigan, P. W. (2004). How stigma interferes with mental health care. *American Psychologist*, 59(7), 614-625. doi:10.1037/0003-066X.59.7.614

Corrigan, P. W., Markowitz, F. E., Watson, A., Rowan, D., & Kubiak, M. A. (2003).

An attribution model of public discrimination towards persons with mental illness. *Journal of Health and Social Behaviour*, 44(2), 162-179.

<http://www.jstor.org/stable/1519806>

Corrigan, P. W., Markowitz, F. E., & Watson, A. C. (2004). Structural levels of mental illness stigma and discrimination. *Schizophrenia Bulletin*, 30(3), 481-491.

<http://dx.doi.org/10.1093/oxfordjournals.schbul.a007096>

Corrigan, P. W., & Watson, A. (2002). The paradox of self-stigma and mental illness.

Clinical Psychology: Science and Practice, 9(1), 39-53. doi:10.1093/clipsy.9.1.35

- Corrigan, P. W., Watson, A. C., Garcia, G., Slopen, N., Rasinski, K., & Hall, L. L. (2005). Newspaper stories as measures of structural stigma. *Psychiatric Services*, 56(5), 551-556. <http://dx.doi.org/10.1176/appi.ps.56.5.551>
- Cotler, I. (2013b, June 27). Not criminally responsible? The Conservatives are not interested. *Huffington Post (blog)*. Retrieved from: <http://www.huffingtonpost.ca>
- Criminal Code, R.S.C. 1985, c.46, s. 672.
- Criminal Lawyers Association. (2013). Submissions on Bill C-54: Not Criminally Responsible Reform Act. Retrieved from: <http://www.criminallawyers.ca/wp-content/uploads/2015/01/CLASubmissionsonBillC54Final.pdf>
- Crocker, A. G., Nicholls, T. L., Seto, M. C., Côté, G., Charette, Y., & Caulet, M. (2015). The National Trajectory Project of individuals found not criminally responsible on account of mental disorder in Canada. Part 1: Context and methods. *Canadian Journal of Psychiatry*, 60(3), 98-105.
- Crowe, S., Cresswell, K., Robertson, A., Huby, G., Avery, A., & Sheikh, A. (2011). The case study approach. *BMC Medical Research Methodology*, 11(100) doi:10.1186/1471-2288 11-100
- Davis, S. (1993). Changes to the Criminal Code provisions for mentally disordered offenders and their implications for Canadian psychiatry. *Canadian Journal of Psychiatry*, 38(2), 122-126.

Dempsey, A. (2014, April 19). 'Not criminally responsible' law misses point: Critics.

The Star. Retrieved from: <http://www.thestar.com>

Dooley, L. M. (2002). Case study research and theory building. *Advances in Developing*

Human Resources, 4(3), 335-354. doi:10.1177/1523422302043007

Fenwick, M. (2013). 'Penal populism' and penological change in contemporary Japan.

Theoretical Criminology, 17(2), 215-231. doi:10.1177/1362480613476785

Fereday, J., & Muir-Cochrane, E. (2006). Demonstrating rigor using thematic analysis: A

hybrid approach of inductive and deductive coding and theme development.

International Journal of Qualitative Methods, 5(1)

https://www.ualberta.ca/~iiqm/backissues/5_1/PDF/FEREDAY.PDF

Fitzpatrick, M. (2013c, May 28). Rob Nicholson not worried mental-health crime bill will

fuel stigma. *CBC News*. Retrieved from <http://www.cbc.ca>

Fitzpatrick, M. (2013d, June 03). Nicholson makes case for 'reasonable' mental-health

crime bill. *CBC News*. Retrieved from <http://www.cbc.ca>

Fitzpatrick, M. (2013e, June 05). Psychiatrist wary of Not Criminally Responsible

proposal. *CBC News*. Retrieved from <http://www.cbc.ca>

Fitzpatrick, M. (2013f, June 06). 10 voices on the 'not criminally responsible' reform bill.

CBC News. Retrieved from <http://www.cbc.ca>

- Frost, N. A. (2010). Beyond public opinion polls: Punitive public sentiment & criminal justice policy. *Sociology Compass*, 4(3), 156-168. doi:10.1111/j.1751-9020.2009.00269.x
- Garland, D. (1990). *Punishment and modern society: A study in social theory*. Chicago: University of Chicago Press.
- Garland, D. (1991). Sociological perspectives on punishment. *Crime and Justice*, 14(1), 115-165. doi:http://www.jstor.org/stable/1147460?seq=1#page_scan_tab_contents
- Garland, D. (2001). *The culture of control: Crime and social order in contemporary society*. Chicago: University of Chicago Press.
- Gerring, J. (2004). What is a case study and what is it good for? *American Political Science Review*, 98(2), 341-354.
[http://jgarand.lsu.edu/Readings%20for%20POLI%207961%20\(Fall%202005\)/Week%27/Gerring%20\(APSR%202004\).pdf](http://jgarand.lsu.edu/Readings%20for%20POLI%207961%20(Fall%202005)/Week%27/Gerring%20(APSR%202004).pdf)
- Glancy, G. D., & Bradford, J. M. (1999). Canadian landmark case: *Regina v. swain*: Translating M'Naughton into twentieth century Canadian. *Journal of American Academy of Psychiatry and Law*, 27(2), 301-307.
doi:<http://www.jaapl.org/content/27/2/301.full.pdf>
- Grant, I. (1997). Canada's new mental disorder disposition provisions: A case study of the British Columbia criminal code review board. *International Journal of Law and Psychiatry*, 20(4), 419-443. doi:10.1016/S0160-2527(97)00020-4

- Green, D. A. (2009). Feeding wolves: Punitiveness and culture. *European Journal of Criminology*, 6(6), 1477-3708. doi:10.1177/1477370809341227
- Greenawalt, K. (1983). Punishment. *Journal of Criminal Law and Criminology*, 74(2), 343-362.
- Gruenewald, J., Pizarro, J., & Chermak, S. M. (2009). Race, gender, and the newsworthiness of homicide incidents. *Journal of Criminal Justice*, 37(3), 262-272. doi:10.1016/j.jcrimjus.2009.04.006
- Hume, J. (2013, November 23). Those 'not criminally responsible' will have tougher time getting released. *Toronto Sun*. Retrieved from: <http://www.torontosun.com>
- Johnstone, G. (2000). Penal policy making: Elitist, populist or participatory? *Punishment & Society*, 2(2), 161-180. doi:10.1177/14624740022227935
- Kalucy, M., Rodway, C., Finn, J., Pearson, A., Flynn, S., Swinson, N., . . . Shaw, J. (2011). Comparison of British national newspaper coverage of homicide committed by perpetrators with and without mental illness. *American and New Zealand Journal of Psychiatry*, 45(7), 439-548. doi:10.3109/00048674.2011.585605
- Karstedt, S. (2007). Explorations into the sociology of criminal justice and punishment: Leaving the modernist project behind. *History of the Human Sciences*, 20(2), 51-70. doi:10.1177/0952695107076199

- Kennamer, D. J. (1994). *Public opinion, the press and public policy*. Westport: Greenwood Publishing Group.
- Kitto, S. C., Chesters, J., & Grbich, C. (2008). Quality in qualitative research: Criteria for authors and assessors in the submission of assessment of qualitative research articles for the medical journal of australia. *Medical Journal of Australia*, 188(4), 243-246.
<https://www.mja.com.au/journal/2008/188/4/quality-qualitative-research>
- Latimer, J., & Lawrence, A. (2006). *The review board systems in Canada: An overview of results from the mentally disordered accused data collection study*. (Research Report No. rr06-1e). Department of Justice Canada: Research and Statistics Division.
- Li, E. (2015). The cultural idiosyncrasy of penal populism: The case of contemporary China. *British Journal of Criminology*, 55(1), 146-163. doi:10.1093/bjc/azu059
- Livingston, J. D. (2013). *Mental illness-related structural stigma: The downward spiral of systemic exclusion*. Calgary Alberta: Mental Health Commission of Canada.
Retrieved from www.mentalhealthcommission.ca
- Livingston, J. D., Wilson, D., Tien, G., & Bond, L. (2003). A follow-up study of persons found not criminally responsible on account of mental disorder in British Columbia. *Canadian Journal of Psychiatry*, 48(6), 408-415. doi:
<http://dx.doi.org/10.1016/j.forsciint.2005.12.001>
- Maher, L. L. (2013). *Bill C-14, Not Criminally Responsible Reform Act – Re-introduced November 25, 2013*. Alberta. Retrieved from:

<https://www.lawlibrary.ab.ca/staycurrent/2013/11/26/bill-c-14-criminally-responsible-reform-act-re-introduced-november-25-2013/>

Mackrael, K. (2013c, May 07). Mental-health groups oppose crime bill. *The Globe and Mail (Canada)*, p. A4.

Makin, K. (2013, April 29). Critics small new 'high-risk' designation. *The Globe and Mail (Canada)*, p, A8.

McKnight, P. (2013, March 15). 'Not criminally responsible' reforms put public safety at risk. *Vancouver Sun*. Retrieved from: <http://www.vancouversun.com>

National Audience Database Inc. (2013). *2013 Study*. Toronto, Ontario. Retrieved from: <http://nadbank.com/en/studies/2013/overview-results>

Neuman, W. L. (2006). *Social research methods: Qualitative and quantitative approaches*. Boston: Allyn and Bacon.

Newspapers Canada (2012). *Daily Newspaper Circulation Data*. Toronto, Ontario.
Retrieved from: <http://www.newspaperscanada.ca/daily-newspaper-circulation-data>

Oliver, D. P. (2011). Rigor in qualitative research. *Research on Aging*, 33(4), 359-360.
doi:10.1177/0164027511410022

Payne, G., & Payne, J. (2004). *Key concepts in social research*. London: SAGE Publications.

Philo, G., Secker, J., Platt, S., Henderson, L., McLaughlin, G., & Burnside, J. (1994).

The impact of the mass media on public images of mental illness: Media content and audience belief. *Health Education Journal*, 53(3), 271-281.

doi:10.1177/001789699405300305

Pilon, Marilyn (2002), *Mental Disorder and Canadian Criminal Law*, Government of Canada, Law and Government Division

Pratt, J. (2007). *Penal populism*. London: Routledge.

Pratt, J. (2008). When penal populism stops: Legitimacy, scandal and the power to punish in New Zealand. *The Australian and New Zealand Journal of Criminology*, 41(3), 364-383. doi:10.1375/acri.41.3.364

Prime Minister of Canada (2013). *Government of Canada introduces the Not Criminally Responsible Reform Act*. Vancouver, British Columbia. Retrieved from:
<http://www.pm.gc.ca/eng/news/2013/02/08/not-criminally-responsible-reform-act>

Quan, D. (2013, February 28). Mental health organizations, researcher criticize proposed changes to legislation. *Canada.com*. Retrieved from: <http://o.canada.com>

R. v. Swain, [1991] 1 S.C.R. 933

Rabson, M. (2013, May 08). Bill to keep mentally ill in custody longer blasted. *Winnipeg Free Press*. Retrieved from: <http://www.winnipegfreepress.com>

- Roberts, J. V. (2003). *Penal populism and public opinion: Lessons from five countries*. New York: Oxford University Press.
- Sacco, V. F. (1995). Media constructions of crime. *The Annals of the American Academy of Political and Social Science*, 539(1), 141-145.
doi:10.1177/0002716295539001011
- Saldana, J. (2009). *The coding manual for qualitative researchers*. Los Angeles: SAGE Publications.
- Schneider, R. D. (2013, June 07). Not Criminally Responsible Reform Act: Debate is off the rails. *The Star (commentary)*. Retrieved from: <http://www.thestar.com>
- Simpson, A. (2014, February 27). Submission to Senate Committee on Legal and Constitutional Affairs. Re: Bill C-14, An Act to Amend the Criminal Code and the National Defence Act (mental disorder). Retrieved from:
http://www.psychiatry.utoronto.ca/wp-content/uploads/2014/03/Bill_c-14_Senate_submission_Simpson.pdf
- Snell, C. (2000). The Criminal Code amendments: The legal background. In D. Eaves, J. R. P. Ogloff & R. Roesch (Eds.), *Mental disorders and the Criminal Code: Legal background and contemporary perspectives* (pp. 19-38). Mental Health, Law, and Policy Institute: Burnaby, British Columbia
- Sööt, M. (2013). Trust and punitive attitudes. *Crime, Law and Social Change*, 59(5), 537-554. <http://dx.doi.org/10.1007/s10611-013-9427-0>

- Stone, L. (2013, June 11). MPs studying wrong data about Not Criminally Responsible Bill: Researchers. *Global News*. Retrieved from: <http://www.globalnews.ca>
- Stone, L. (2014, February 27). Justice Minister Peter MacKay prepared to go to court over Not Criminally Responsible law. *Global News*. Retrieved from: <http://www.globalnews.ca>
- Swaminath, R. S., Norris, P. D., Komer, W. J., & Sidhu, G. (1993). A review of the amendments to the Criminal Code of Canada (mental disorder). *Canadian Journal of Psychiatry*, 38(8), 557-570.
- Thomas, E., & Magilvy, J. K. (2011). Qualitative rigor or research validity in qualitative research. *Journal for Specialists in Pediatric Nursing*, 16(2), 151-155.
doi:10.1111/j.17446155.2011.00283.x
- Tuckett, A. (2005). Part II: Rigour in qualitative research: Complexities and solutions. *Nurse Researcher*, 13(1), 29-42. <http://dx.doi.org/10.7748/nr2005.07.13.1.29.c5998>
- Vaismoradi, M., Turunen, H., & Bondas, T. (2013). Content analysis and thematic analysis: Implications for conducting a qualitative descriptive study. *Nursing and Health Sciences*, 15(3), 398-405. doi:10.1111/nhs.12048
- Verdun-Jones, S. (2014). Mental impairment and criminal responsibility. *Criminal law in Canada: Cases, questions and the code* (pp. 201-234). Toronto: Nelson Education Ltd.

Wahl, O. E. (1992). Mass media images of mental illness: A review of the literature.

Journal of Community Psychology, 20(1), 343-352.

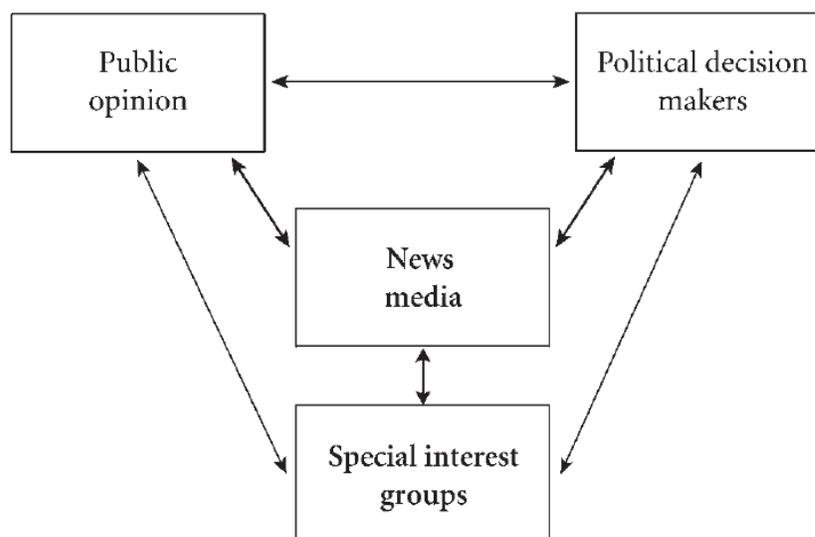
Wahl, O. E., Wood, A., & Richards, R. (2002). Newspaper coverage of mental illness: Is it changing? *Psychiatric Rehabilitation Skills*, 6(1), 9-31.

doi:10.1080/10973430208408417

Whitley, R., & Berry, S. (2013). Trends in newspaper coverage of mental illness in

Canada: 2005 to 2010. *Canadian Journal of Psychiatry*, 58(2), 107-112.

Winko v. British Columbia (Forensic Psychiatric Institute), [1999] 2 S.C.R. 625

Appendix A: Penal populism diagram

Retrieved from Roberts et al. (2003). This figure represents the relationship between the four key social institutions in penal populism: public opinion, political actors, the news media, and special interest groups.

Appendix B: Description of all representatives cited in the Results chapter

<u>Name</u>	<u>Role</u>	<u>Role in penal populism</u>
Alexander Simpson	Representative, Centre for Addiction and Mental Health	Special interest group
Andre Samson	Victim	Special interest group
Anita Szigeti	Representative, Criminal Lawyers Association	Special interest group
Ashley Dempsey	The Star reporter	News media
Ben Bedarf	Victim	Special interest group
Bernd Walter	Representative, British Columbia Review Board and Association of Review Board Chairs	Special interest group
Bob Dechert	MP, Conservative Party of Canada	Political actor
Carole de Delley	Victim	Special interest group
Catherine Latimer	Representative, John Howard Society	Special interest group
Catherine Russell	Victim	Special interest group
Chris Summersville	Representative, Schizophrenia Society of Canada	Special interest group
Dan Albas	MP, Conservative Party of Canada	Political actor
Dave Teixeira	Victim representative as an individual	Special interest group
David Perry	Representative, Canadian Bar Association	Special interest group
Douglas Quan	Canada.com Reporter	News media
Erin Dann	Representative, Criminal Lawyers Association	Special interest group
George Baker	MP, Liberal Party	Political actor
Guy Caron	MP, New Democratic Party	Political actor
Hoang Mai	MP, New Democratic Party	Political actor
Irwin Cotler	MP, Liberal Party	Political actor
Isabelle Gaston	Victim	Special interest group
John Bradford	Representative, Royal Ottawa Health Care Group	Special interest group
Julie Besner	Representative, Department of Justice	Special interest group
Kevin Sorenson	MP, Conservative Party of Canada	Political actor
Kirk Makin	Globe and Mail Reporter	News media
Laura Stone	Global News Reporter	News media
Linda Duncan	MP, Liberal Party	Political actor
Lori Triano-Antidormi	Victim	Special interest group
Louise Bradley	Representative, Mental Health Commission	Special interest group

	of Canada	
Mathieu Ravignat	MP, New Democratic Party	Political actor
Meagan Fitzpatrick	CBC News Reporter	News media
Mike Sullivan	MP, New Democratic Party	Political actor
Nathalie Des Rosiers	Victim's rights advocate, Canadian Civil Liberties Association	Special interest group
Paul Federoff	Representative,, Canadian Psychiatric Association	Special interest group
Peter Coleridge	Representative,, Canadian Mental Health Association	Special interest group
Peter McKnight	Vancouver Sun Columnist	News media
Richard Schneider	Representative,, Ontario Review Boards and Review Boards of Canada	Special interest group
Rob Nicholson	MP, Conservative Party of Canada	Political actor
Robert Goguen	MP, Conservative Party of Canada	Political actor
Ryan Leef	MP, Conservative Party of Canada	Political actor
Susan O'Sullivan	Representative,, Federal Ombudsman for Victims of Crime	Special interest group

Appendix C: Description of all themes and subthemes

Theme and subthemes	Description	Sample Quotes
<p>1. The social context that permitted the introduction of the <i>NCR Reform Act</i></p>	<p>This theme includes a discussion of three common factors that contributed to the social context that permitted the introduction of the <i>NCR Reform Act</i>. These include: high-profile NCR cases in the news media, the public's fears and anxieties, and an uneducated and uninformed public.</p>	<p><i>"But to make case law based on high-profile cases, it's more based on fear and misleading facts"</i> – Chris Summersville</p> <p><i>"What I've learned through this whole process is that the public and unfortunately, I think, some politicians, don't understand what NCR really means, what the review board does in its process, and how risk assessments are done"</i> – Hoang Mai</p>
<p>2. The <i>NCR Reform Act</i> assures that public safety is paramount consideration</p> <p>a. Views that the <i>NCR Reform Act</i> will not improve public safety</p> <p>b. Conflict between supporters for public safety and NCR accused persons rights</p>	<p>With the development of the <i>NCR Reform Act</i>, the Conservative majority government stated that public safety is the paramount consideration. Mental health advocacy groups illustrated concerns that the Act will undermine many of the measures that already exist to protect society and thus not improve public safety. Conflicting views pitted those who supported protecting the public against those who supported protecting the rights of NCR accused persons.</p>	<p><i>"Finally, with regard to the public safety paramount provision, we are unaware of evidence to suggest that review boards are not already taking public safety into consideration when making dispositions."</i> – Peter Coleridge</p> <p><i>"The review board chairs who do this work on a daily basis have no wish to be pitted against or to appear to be opposing the interests of victims. We're all on the same side here"</i> – Bernd Walter</p>
<p>3. The government is supporting the needs and concerns of victims</p>	<p>The Conservative majority government manifested that they were devoted to addressing the concerns of victims by consulting with</p>	<p><i>"The member asks who we have been listening to. I make no bones about it – we have been listening to victims. We meet with</i></p>

	victims and victims' rights groups and by adding amendments to the Act that were directly related to their concerns.	<i>victims' groups"</i> – Rob Nicholson <i>"I do not understand the rationale behind such a decision. I have the impression that people are playing Russian roulette with my life. I don't feel protected, really, at this time"</i> - Isabelle Gaston
4. Issues related to decision-making processes in NCRMD cases a. Evidence-based decisions involved in drafting the <i>NCR Reform Act</i> b. The shift towards courts as primary decision makers c. The use of expert opinion in decision-making	This theme represents issues that were raised related to decision-making processes in NCRMD cases. This includes the lack of evidence-based decisions involved in drafting the Act, the shift towards making the courts the primary decision makers in NCRMD cases, and the use of expert opinion in the decision-making process.	<i>"But as an evidence-based organization that is principally driven, we are unaware of any evidence suggesting that the existing review board procedures dealing with 'not criminally responsible' are flawed"</i> – Catherine Latimer <i>"The review boards are equipped with psychiatrists and the medical expertise to actually make a fair assessment as to whether or not someone constitutes a future risk"</i> – Catherine Latimer
5. Negative consequences of the <i>NCR Reform Act</i> a. The <i>NCR Reform Act</i> is stigmatizing b. The <i>NCR Reform Act</i> is punitive towards individuals with mental illness c. The <i>NCR Reform Act</i> will lead to more NCR accused persons in corrections d. The <i>NCR Reform Act</i> will not survive Charter scrutiny e. The <i>NCR Reform Act</i>	Special interest groups and some political actors addressed some concerns about the wider implications that the Act could have on the NCR accused person and the mental health and criminal justice systems. These concerns include: stigma, punishment, more NCR accused persons in corrections, Charter scrutiny and vigilantism. As a result of these negative consequences, they believe	<i>"Instead of focusing on preventing the crime in the first place, Bill C-54 focuses on punitive and stigmatizing measures that undermine the purpose of the not criminally responsible designation in the first place"</i> – Chris Summersville <i>"[...] restricting an accused's liberty on the basis of brutality may be considered arbitrary pursuant to s. 7 of the</i>

will promote vigilantism	that public safety will be compromised.	<i>Charter.</i> ” - CBA
<p>6. How the government addressed the declining levels of confidence and trust in the criminal justice system</p> <ul style="list-style-type: none"> a. Ensuring consistency of interpretation of NCRMD b. Ensuring an increased role and consideration of victims in the decision making process c. Ensuring additional judicial oversight d. Ensuring restricted access to the community for NCR accused persons 	<p>This theme discusses the steps that the government took to improve the public’s perception of the criminal justice system. These steps include: ensuring consistency of the interpretation of NCRMD, ensuring increased involvement of victims, ensuring additional judicial oversight with providing courts with the primary decision-making powers, and ensuring restricted access to the community for NCR accused persons.</p>	<p>“<i>Bill C-54 would thus increase confidence in the NCR regime and in the administration of justice more generally</i>” – Robert Goguen</p> <p>“<i>in addition, the proposed legislation would help ensure consistency in the interpretation and application of the law across the country</i>” – Mathieu Ravnignat</p>
<p>7. Concerns that the <i>NCR Reform Act</i> does not address issues related to resources</p> <ul style="list-style-type: none"> a. We must improve mental health resources to prevent crime b. Provincial financial resources must be addressed to accommodate these changes c. What resources will be available for victims? 	<p>This theme represents concerns from various groups regarding resources (i.e., mental health resources, financial resources, victim support resources). Groups identified that the Act does nothing to improve the mental health system; in fact, it would drain already scarce mental health resources.</p>	<p>“<i>Bill C-54 does nothing to ensure that adequate mental health services are available before a person comes in contact with the criminal justice system.</i>” – CBA</p> <p>“<i>Our position is that the bill responds to some of the victim’s needs, but not all of them. It gives information rights, but it does not give rights to financial aid, services, or support. That’s a mistake</i>” – Nathalie Des Rosiers</p>