

# The Risky Business of Risk Assessment

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## **Executive Summary**

Correctional authorities in many provinces and territories are utilizing actuarial risk assessment procedures with criminalized adults and youth within their jurisdictions. Although there are some incredibly problematic philosophical issues and extremely challenging practical problems that have been created by attempts to adapt imperfect models of risk assessment(s) designed for adults to the circumstances of youth, there is virtually no research regarding the appropriateness of applying such approaches to youth. This is especially the case when one considers the circumstances of some of our most marginalized young people.

This paper will highlight some of the major challenges and critical issues regarding the use of actuarial instruments. Since there is very little material that directly addresses the issues raised by, or the results of applying, these sorts of assessment approaches to youth, much of this paper will involve analysis and discussion of existing research and writing on the subject. In addition, the following discussion will include extrapolations and application of existing analyses and research results to the most marginalized groups of those who are criminalized. In particular, this paper will focus upon the circumstances of several young women who have been identified as some of the most "criminal" and "violent" youth in Canada by the systems that attempt to control them.

Given the realities and normal range of phases of adolescent development, it would be the rare young person who would not be assessed as challenging authority, under-employed, sexually experimenting, et cetera. In short, it would be the unusual teen whose actuarially assessed risk would be non-existent. The most reliable way to predict which young people will likely be assessed as high risk by actuarial risk assessment tools designed for adults, whether or not they have been adapted for use with/on youth, is to first assess or categorize them on the basis of their respective degrees of disadvantage and marginalization.

## Contextualizing the Issues

The proposed changes to the juvenile justice system, the Youth Criminal Justice Act (YCJA), particularly the provisions related to moving youth into the adult system, embody many tensions, some of which will be discussed later. On the one hand, the YCJA renders more procedurally and substantively stringent the test as to which young people will be subjected to the adult system. On the other hand, once relegated to that system, all privacy protections are stripped away, thereby reducing future rehabilitative and reform prospects.

This reality is perhaps best exemplified by an examination of some actual cases. To this end, I am appending The Story of K. I also recommend that the situations surrounding transfer applications involving other young people be examined and analyzed in light of the foregoing. The few with which I have been directly involved place the system in sharp relief and reflect the glare of race and class bias. One exception is J.W., a young racialized woman charged with murder, whose counsel conducted a relatively exhaustive review of the deficits of the adult correctional system to which the prosecutorial team wished to see her transferred. Other young, racialized, and disabled women who have been targeted for transfer have not been able to escape the adult system.

J.W. was not transferred and has therefore never been identified publicly. She has, however, been provided with opportunities for growth and development, as opposed to regression, thanks to the particular interventions of her family and some very committed staff within the youth justice system. The results of the positive, racially-cognizant, youth-directed, and supported approaches she experienced are underscored by her current reality. As I write this, J. is preparing for her final classes and examinations to complete her third year of university. Had she not been retained in the youth justice system, I would likely be visiting her in one of the four segregated maximum-security units for women located in men's prisons. Suffice it to say that if that were the case, experiences of other women reveal that the chances of her future ever resembling her current reality would be virtually non-existent.

In juxtaposition to J's story, is that of K. Like J, K was involved with a number of other young people and a few adults in the death of another young person. Also like J, K, a racialized young woman and, the only young woman charged in that particular case, was vilified, assessed and treated as a greater risk and threat to public safety than the young men and even some of the adults involved. This was despite a distinct lack of evidence clearly linking her to the actually planning of the event and, aside from her undenied presence, a lack of evidence of her direct involvement in the deaths. Despite the marked similarities of J and K's cases and backgrounds, from the point at which the respective decisions in their transfer hearings were made, however, their paths underwent a sharp and marked divergence.

K was transferred "up" and thereby essentially fast-tracked for the adult system. After serving approximately 18 months in two maximum security units in men's prisons, followed by a further six months in a men's halfway house, and several returns to prison as a result of administrative breaches of the conditions of her parole and subsequent probation order, K is still "just struggling to survive." In fact, as I write this, she is just completing her third year of probation, and seems to be losing hope that she will ever complete her high school education, let alone embark on her dream of a post-secondary education.

Both of these young women started out with similar backgrounds, educational opportunities, and "offence" involvement. The manner in which the system dealt with each of these young women exemplifies the extent to which assessment, classification, and the resulting treatment of and by the respective criminal and social justice systems can and does have a lifelong influence on the lives of young people. Later, the discussion in relation to the systemic response to Lisa Neve will further elucidate some of the most damning elements of current actuarial assessment trends.

It is therefore imperative, in my opinion, that every facet of the juvenile justice system collaborate to resist the pitfalls and mistakes of allowing the riskiest and most negative influences of either the juvenile or adult systems to prevail. I believe that resisting the use of currently touted actuarial risk assessment instruments is central to this struggle. Instead, we should build upon the successes of processes that build upon young people's skills and capacities and focus on documenting their successes, develop services and supports with and for them, and promote peer and self-directed initiatives as a priority. The new Act provides us with new opportunities to encourage and strive for success— mindful of, but not hampered by the risk of failure.

## Identification of the Issues

Most of the research literature regarding women prisoners concludes that they are over-classified when tools designed for men are applied to them (Federally Sentenced Women Program [FSWP], Literature Review, CSC, 1994). This is similarly the case when such tools are applied to young people, especially young women. Most youth are assessed as high risk in order to enable the juvenile justice system to place them in controlled environments for their own protection, ease of correctional management, public protection, and, sometimes, for treatment purposes. With the exception of public protection, it is respectfully submitted that the other rationale for detaining youth, pre-trial or post-conviction, contravene their rights under the provisions of the *Canadian Charter of Rights and Freedoms*.

Most provincial assessment and classification schemes adopt or adapt the models developed and utilized by the Correctional Service of Canada (CSC). The CSC system is based upon determinations of risk based upon assessments by their staff of each prisoner's probability of escape, level of risk to the safety of the public if s/he were to escape, and the degree of supervision and control s/he requires in the penitentiary setting. The tools treat all "offences" as homogenous categories which are not contextualized by or correlated with individual prisoners' personal histories and circumstances, situations leading up to their alleged involvement in their offence(s), their participation or non-involvement in institutional violence, or behavioural difficulties in prison.

A significant portion of the risk assessment process includes considerations of what are referred to as "static" factors that include historical and other immutable characteristics of a person's life. For instance, "social history" is one such factor that is taken into account by systems when they assess risks and assign security classification levels. As a result, the essence of this part of the assessment process is an examination of the individual's experiential background and degree of disadvantage prior to incarceration. Because so much of the research on the instruments used is performed exclusively within the justice system, it should come as no surprise that such "research" tends to be used to "validate" or otherwise credit such instruments as successful and reliable predictors of violent offending and recidivism. The researchers then basically convert the needs yielded by histories of disadvantage and discrimination and convert them into risk factors.

Risk factors are also used to identify and assess which detainees/prisoners require high security classification. For example, if an individual is assessed as having been the victim of child or spousal abuse or was considered unemployed at the time of arrest, s/ he will be identified as having a "need" in those areas. The greater the number of identified needs, the greater the likelihood that they will be perceived as "risky" and therefore the higher the resulting security classification. Some examples of the criteria used by the Correctional Service of Canada – adopted by many provinces in their correctional approaches to adults and youth – which measure the nature and degree of disadvantage experienced include: low educational level, poor employment history, a childhood that is judged to lack family ties, physical "problems" (i.e., disabilities) especially those which might interfere with work.

Some criteria do not measure disadvantage at all. Rather, they expose explicit as well as implicit biases in the form of middle-class standards of behaviour. Moreover, they attach significance to deviations from such norms. Examples of the types of assessments made under these categories include such assertions as:

has no bank account; has no collateral; has no hobbies; does not participate in organized activities; has used social assistance; lacks a skill/trade, profession; resides in a criminogenic area; is unattached to any community groups; residence is poorly maintained. Although these sorts of approaches may be modified to remove or override the ones that are obviously age-biased, the reality is that these sorts of assessments are similarly applied to young people in juvenile correctional systems.

Still other criteria leave open the possibility of an interpretation of need/risk that is racist or homophobic. Examples of assessment criteria that exhibit such discriminatory biases include questions that examine whether: ethnicity is problematic; religion is problematic; there are inappropriate sexual preferences; sexual attitudes are problematic. Overall, many of the assessment criteria require front-line staff who have relatively little to no relevant training to make subjective appraisals of their respective applicability to each prisoner. Consequently, prisoners' individual assessments very much depend upon the judgment, attitudes, and perspectives of staff. The situation of Lisa Neve probably best exemplifies the risk of relying upon actuarial assessment instruments designed by and for men when looking at the situation of sexually abused, young, racialized, lesbians with disabilities who work and live on, and therefore by, the rules of the street.

### **Dissection of the Designation of Lisa Neve as a Dangerous Offender**

On June 29, 1999, the Alberta Court of Appeal released its decision to overturn the November 17, 1994 designation of Lisa Neve as a dangerous offender. Lisa was 21 years of age when she was labelled the most dangerous woman in Canada and sentenced to an indeterminate prison sentence. Previously, the first woman labelled a dangerous offender, Marlene Moore, killed herself in the Prison for Women in Kingston.

When Lisa was 12 years old, she was dragged into secure "treatment," followed fairly quickly by secure custody. The system was not impressed by her assertive and confident manner. Unlike so many other young women her age, she was clearly a respected and undisputed leader. These qualities are not ones that are generally accepted, much less encouraged or nurtured, in our social control systems – be they child welfare or criminal justice in orientation. They are seen as particularly unacceptable when embodied by a young woman. Sexism, racism, heterosexism, and class biases intersect to provide an incredibly discriminatory lens through which women like Lisa are viewed and judged. As a result, it did not take long for the adults in authority to label Lisa as a "problem" in need of "correction."

Once the labels were applied, they not only stuck, but they also attracted other labels that built upon and expanded those prior. Consequently, Lisa started out as "mischievous" and "a brat," only to be labelled later as an instigator, negative, and eventually, aggressive, sociopathic and then a dangerous offender. Largely based upon accounts of her institutional behaviour in young offender centres, as well as her "unfeminine" renegade behaviour while working the street, Lisa was characterized as the most dangerous woman in Canada by Justice Murray in 1994 and then as a maximum security prisoner by the Correctional Service of Canada for more than four years.

Including her pre-trial detention, Lisa spent approximately six years in jail for an offence which the Court of Appeal eventually determined warranted a three year sentence, as opposed to the indeterminate one imposed by Justice Murray. To make matters worse, she also spent most of her time living in some of the most severe and limiting prison conditions in Canada. As a result of the appeal, Lisa went from facing the rest of her life in prison one day, to receiving the decision and exiting jail within two days of the issuance of the court's decision.

As the Court of Appeal of Alberta judges pointed out at page 47 of their decision, "predicting future behaviour based on past conduct is an inexact science. It is precisely because this finding must rest at least in part on predictions of human behaviour – and often conflicting ones at that – that ... the difficulties and dangers inherent in a determination of future danger have been well recognized for years." In quoting the Law Reform Commission of Canada, from page 19 of *The Criminal Process and Mental Disorder*, Working

Paper 14, the Court of Appeal noted that, "...in the last few years legal and medical journals have been inundated with reports of studies considering various aspects of the reliability and predictive accuracy of psychiatric assessments of dangerousness. More remarkable than the bulk of this literature is its unanimity – it concludes that clinical predictions of dangerousness are at best suspect, and at worst, totally unreliable".

Furthermore, the Court of Appeal identified (at page 49) several considerations which they judged should be considered in evaluating the relative weight to be applied to psychiatric evidence and assessments; namely:

1. The qualifications and practices of the psychiatrist;
2. The opportunity the psychiatrist had to assess the person, including: length of personal contact, place of contact, role with ongoing treatment, and involvement with the institution in which the person is a patient or prisoner;
3. The unique features of the doctor-patient relationship, such as hostility or fear by the patient (or the psychiatrist) arising from the personalities, the circumstances of the contact, and the role of the psychiatrist;
4. Specifically and precisely what documents the psychiatrist had available and reviewed, for example, from earlier court proceedings, institutional records, other medical consultations, or treatment;
5. Nature and scope of consultations (this could include: personal contact with third parties, information from other health care professionals, prison authorities, police, lawyers, family);
6. Specifically and precisely what the psychiatrist relies on in coming to an opinion; and
7. The strengths and weaknesses of the information and material that is relied upon.

At page 50, the Court went on to articulate the kinds of situations that should be recognized as weaknesses if relied upon for the purposes of predicting risk as follows: "incomplete records; lack of reliability such as might occur where a document is created for one purpose but used for another (e.g., a prison incident report being used to predict future behaviour); lack of trustworthiness such as where the subject of an interview is lying or describing fantasies as if they were realities (including in diaries); lack of objectivity or first hand knowledge by the author of a report.... Another area of potential weakness arises from information provided by the offender.... It is necessary therefore that the Court be satisfied that a psychiatrist testifying ... understand the significance of the expert opinion in the determination to which it is directed."

The Court also discussed the importance of knowing the purpose and basis of such assessments, as well as the nature of the assessor's appreciation of the individual being assessed. "Another consideration which potentially affects the weight of experts' evidence has to do with the experts' contact with the offender. Here, there were dramatic differences in the profile of the doctor-patient relationship between Lisa Neve and each of the various psychiatrists. Some interviewed her only briefly and on few occasions. Others had a more sustained relationship with her, while one had treated her over a number of years" (50). The Court then went on to discuss the fact that "the essence of psychiatric diagnosis is the subjective assessment of the patient by a psychiatrist with testing sometimes being an available tool which may provide assistance. The reality is that a psychiatric assessment depends on information provided by the patient" (55).

As we saw in the case of Lisa Neve, one "woman's thoughts about murder can somehow be equated with a man's commission of a murder" (56). The Court also discussed the problem of the use of "secondary source information" (58) by psychiatrists in order to assess prisoners. Moreover, they also revealed that "it is evident that the sentencing judge did not take into account Neve's treatment prospects prior to deciding to designate Neve a dangerous offender" (61). It furthermore questioned "how could a doctor decide that an offender is likely to be a danger in the future (based on past conduct) or to be someone whose conduct is pathologically or substantially intractable without some understanding about what makes the offender the way he or she is, what motivated the offenses and similarly whether this will change the future? To put it another way, to label someone a risk in the future necessarily entails a present determination of treatment prospects, if only for the purpose of allowing the expert opine on the degree of intractability of the offender's conduct.... The sentencing judge clearly relied on evidence which certain psychiatrists had given

about the difficulty of treating psychopaths – and hence Neve – given their evidence that Neve was a psychopath.... The difficulty with these findings is the mistaken foundation on which they rest, namely opinions premised on treatment prospects for psychopaths. In our view, this approach, to decline to find Neve to be a psychopath, but to sentence her as if she were one, constitutes reversible error" (62-64).

The Court then went on to discuss the realities of life on the street, particularly for young sex trade workers. For instance, they took judicial notice of the fact that many young prostitutes are assaulted and murdered, and that the majority of those murdered were female. They asserted that, "no one should be surprised, therefore, to learn that many prostitutes arm themselves for defensive purposes.... While those living life at the margins of society cannot argue that their actions, whatever the motivation, should not attract criminal culpability, it does not follow that the circumstances in which the events occurred are irrelevant for sentencing purposes.... It is not possible to evaluate moral blameworthiness without having an understanding of the context in which the criminal act occurred" (66-67).

The Court also discussed the importance of distinguishing between "criminal culpability and moral blameworthiness," concluding that relevant distinguishing "factors include: the nature and quality of the acts themselves; the circumstances in which they occurred; the motivation behind them; the method by which they were committed, and...state of mind in committing the offenses, namely of whether they were lower or higher end of mens rea in terms of planning and deliberation as well as foresight of harm. ...accepting that it is valid to assess moral blameworthiness does not lead, nor should it, to excusing criminal offenses. Personal responsibility and accountability remain. But it does require placing on the moral culpability scale the constellation of other factors we have mentioned. ...there is another contextual dimension to this case which was over looked. Briefly stated, s. 3(1) of the Young Offenders Act recognizes that while protection of the public is an entirely legitimate sentencing objective, that objective is best served by placing rehabilitation of the youth at the forefront of the considerations in sentencing...in addition, given a young offenders lack of maturity, it may well be inappropriate, depending on the offenses committed, to evaluate his or her conduct against the standards one expects of adults." (page 67)

The Alberta Court of Appeal then went on to conclude, that, "taken at it's worst the juvenile record speaks of a young girl who has lived on the streets as juvenile prostitute since she was 12 years of age and in the course of doing so, carried a knife, committed one series of breaks and enters, failed to comply with some requirements of her incarceration (or bail or both), threatened a person on the phone thinking he was the pimp who had previously injured her friend, and twice unlawfully confined others in a misguided attempt to get what she wanted ... help with her medication (and cigarettes) in the first place and, believing she that she was to blame for a friend's death, an end to her life in the second.

In addition, in none of these events was anyone seriously hurt. There were no permanent or serious injuries, no gratuitous violence, much less brutality or random violence, of any kind. While a weapon was used in the two confinements, the weapon of choice, scissors in the one instance in which the victim initially cooperated, and a pen in the other cannot be compared, for example, to the use of a gun. What significant injuries occurred during this stage of her life, Neve inflicted on herself – not others – through self-mutilation. The two assault offenses are in a different category. The first occurred when Neve was 18 years old. This was Neve's first offense as an adult. Neve and her two friends, who were also prostitutes, confronted another female prostitute who owed Neve's friends some money. Neve struck the victim with the butt end of a knife breaking the victim's nose and cheekbone. Neve was convicted of assault with a weapon and sentenced to three months incarceration.

The second assault conviction occurred when Neve was 19. Arguably, this is the most serious offense in Neve's record. Based on the trial judge's review of the evidence it arose this way. Neve and her friends coaxed the complainant into the washroom at a nightclub. Inside the washroom, the women attacked the complainant. At some point, Neve used an exacto knife to slash the back of the complainant's neck. Fortunately, the injury was not life threatening. The trial judge's review of the evidence also shows that shortly after the incident, Neve contacted a police officer, whom she knew ... and immediately confessed to her role in what had happened.

At the dangerous offender hearing, [the detective] stated that when Neve contacted her, Neve apologized several times for what she'd done and said that she would leave town or kill herself. In fact, according to [the detective], Neve agreed to meet with her knowing she would be arrested....

We note that the trial judge who heard this case found Neve to be moderately intoxicated at the time of the assault. He also stated, on sentencing, that the motivation for the offense appeared to be jealousy over the complainant speaking to Neve's lover. He sited in mitigation her confession, her young age and the four months she spent in custody prior to sentencing, concluding that a fit sentence for the aggravated assault was two years consecutive to any other sentence being served. ...it is important to note that these are the only two offenses in Neve's record which resulted in what could be characterized as serious injuries and fortunately, in the second assault, the physical injuries turned out to be relatively minor.

As for the predicate offence, the robbery, the degree of violence involved was minimal. There is no question that an assault occurred during the robbery since Neve and [her co-accused] removed the complainant's clothes.... It cannot be denied that a knife was used to cut away the clothes and that in the process of doing so, the complainant's knee was nicked. However, on this point, namely the extent of the violence, the evidence speaks for itself. As we have already mentioned, the complainant herself, described the nick she received as a "tiny nick," a "little scratch" and " a small cut." She further agreed, and in our view, this is highly relevant, that Neve used the knife carefully to remove her clothing and did not hurt her" (69-70).

Madam Justices Fraser, Conrad and Picard, further noted that, "every offense which Neve committed was entangled in some way with her life as a prostitute. While prostitutes, juvenile or otherwise, are not immune from criminal prosecution and personal accountability, one cannot be oblivious to the realities of life on the street and it's corrupting influence. No one is suggesting that others in these subcultures are not entitled to protections from those who would visit violence upon them. They are. And no one is suggesting that an offender can abandon personal responsibility for criminal acts simply by pointing the finger of blame at someone or something else. But neither does this mean that ignoring extreme circumstances which sometimes result in those in the subculture turning to physical actions, or threats, or substance abuse, or whatever, in a misguided, and often illegal, attempt to deal with the fallout of a life of prostitution. Nor does it mean overlooking the possibility of cure or change if the offender is removed from the subculture" (71-72).

The Court further identified that such other considerations as personal circumstances need to be taken into account when assessing young people. To this end, they discussed Lisa's particular circumstances as follows:

"Here we have a youthful offender. Neve was only 18 when she committed the predicate offense here, the robbery, and 21 when convicted. She is partly of Aboriginal origin, having been adopted by her family when she was three months old. Her education is extremely limited since she quit school at 12, following considerable problems which arose, according to her father, between grades 4 to 6. She has been a prostitute since she was 12. She was involved in an abusive relationship with one of her pimps who was eventually convicted of a serious assault against her.

The sentencing judge found that Neve had a problem with substance abuse when not in custody, not only with alcohol, but also with other drugs. It must be concluded that Neve did not have a great deal of insight into the extent of these problems and others since the sentencing judge found that she 'was nonchalant about the use of drugs and didn't think she had a problem.' But the existence of drug problem is not unusual with juvenile prostitutes, many of whom resort to this escape to help them cope with life on the streets.... Hence the reason why the sentencing judge should consider the potential for improvement on this front if the offender is removed from the prostitution subculture and what effect this might reasonably have on the assessment of the likelihood of future harm" (72).

Hopefully the decision of the Alberta Court of Appeal in Lisa Neve's case will result in broader systemic changes to the administration of justice for women in Alberta and across Canada. The Court reaffirmed the decision of the Supreme Court of Canada in the Lyons case, by indicating that the dangerous offender provision, "applies to "...a small group of highly dangerous criminals" and that "the court must be satisfied that the pattern of conduct is substantially or pathologically intractable." They also challenged the acceptance in the lower courts of a psychological assessment of Neve that "effectively implies ... that a woman's thoughts about murder can somehow be equated with a man's commission of a murder..."

The Court also pointed out that "dangerous offender legislation is targeting that small group of recalcitrant offenders whose past behaviour is sufficiently entrenched that future risks to public safety warrant preventative detention" and noted that "every offence which Neve committed was entangled in some way with her life as a prostitute." They also pointed out that while it was not to be condoned, Lisa's violent offences were generally characterized as attempts to avenge wrongs done to others. Furthermore, they characterized Lisa as "a young woman with a relatively short criminal record for violence, [who was] disposed to telling shocking stories of violence."

Finally, in determining if and when the dangerous offender provisions should apply, the Court of Appeal determined that, "the question is whether, relatively speaking compared to all other offenders in Canada – male and female, young and old, advantaged and disadvantaged – Neve falls into that small group of offenders clustered at or near the extreme end of offenders in this country." They also found that Lisa Neve did not fit into that group at all and thereby cast significant doubt on the entire assessment and classification process, particularly when said process does not place the index offence or individual in the context of their lived realities and life experiences and circumstances.

### **Application of Actuarial Assessments Designed for Adults**

The Correctional Service of Canada and provincial corrections authorities use several tools and policy guidelines to determine the risk to the public that prisoners in their custody will re-offend if/when released from jail on conditional release or upon the expiration of their sentence(s). Risk assessments generally commence with an examination of criminal record histories, including young offender histories where they are available, an assessment of the offence severity, and identification and analysis of prisoners' needs. The needs assessment is essentially based on a systemic review of factors that relate to each of seven criminogenic need areas; namely, employment, marital and family relations, associates and social interaction, substance abuse, community functioning, personal and emotional orientation, and attitude overall. The needs assessment is designed to provide corrections' staff with an overview of the issues and backgrounds of each prisoner, which is then linked to his or her respective histories of criminal behaviour.

A 1997 study by CSC research staff, entitled "Maximum-Security Female and Male Offenders: A Comparison," compared the characteristics of men and women prisoners who had been classified as maximum security upon admission to prison. When security classifications were assigned, the same criteria were applied to both men and women. No account was taken of the ways in which the various criteria might impact women and men differently, particularly in terms of how they might affect their degree of risk to public safety. Not surprisingly, when the same criteria was applied to both groups, the results of the study indicated that both maximum-security populations showed a similar history of disadvantage. Moreover, maximum-security women showed more disadvantage and higher needs in such areas as drug abuse, spousal abuse, as well as frequent experiences of victimization in social relations.

Setting aside the issue of the integrity of the needs/risk assessment criteria themselves, the only way needs could be relevant in determining security classification is if they are demonstrably related to the considerations as to which criminalized individuals are likely to pose a risk to the general public. In the

adult correctional schemes, especially the federal system, the legislated mandate of the correctional authorities is to conduct security classifications not based on prisoners' needs, but only on their potential to escape, risk to the public if an escape occurs, and the level of supervision and control needed in prison. Although the Correctional Service of Canada has essentially equated needs with risk, there is no demonstrated link between the criteria set out in their needs analysis – which is used as part of the classification process – and the kinds of risks articulated in the Regulations of the Corrections and Conditional Release Act, which can be read as requiring the assessment of increased security measures.

Youth who are regarded as lacking program motivation, behave in disruptive manner generally or during specific programs, as well as those who are not regarded as having learned anything from the programs in which they have participated, will tend to be negatively judged and therefore have a poor institutional adjustment rating, resulting in a high security designation. This is the reason why many First Nations youth, as well as those with mental and cognitive disabilities, end up with a high risk or maximum security designation.

In fact, overwhelmingly, the staff who work with young women who are classified as maximum security and high risk prisoners tend to describe them as young women who monopolize the staff, intimidate or even "contaminate" the other "girls," are unable to manage their anger/rage, or paranoia and concerns that they are being threatened. They are also described as incredibly needy and thus difficult to manage. In short, the current classification schemes result in women and girls tending to be classified as maximum-security prisoners more because of their risk to themselves, whereas male prisoners are primarily classified up from medium to maximum security as a result of assaults on other prisoners or staff.

Although the Correctional Service of Canada prides itself on the development of risk assessment criteria that are "objective," the current offender intake and assessment/classification process is very subjective. As staff have repeatedly pointed out, they often use a fair degree of discretion in order to interpret answers and questions used in assessment instruments for young people. Prison staff have also indicated that current intake assessment and risk assessment approaches require a great deal of interaction with computers, and relatively little direct contact with the prisoners being assessed and classified.

Indeed, in a review conducted for the Correctional Service of Canada, Donna McDonough identified three subgroups within the federally sentenced women population who received maximum-security classifications and designations. She argues that the most common reasons women are classified as maximum-security prisoners are that they are judged to have anti-social behaviours and criminal attitudes, they are assessed as having special needs that result from serious emotional and mental health issues, and/or they are labelled as "special needs" prisoners as a result of cognitive limitations and basic skill defects.

Another 1997 Research Report prepared by the CSC, *Risk and Need Among Federally Sentenced Female Offenders: A Comparison of Minimum, Medium and Maximum Security Inmates*, concluded that the "there is a corresponding increase in multiple parameters of risk and need as assessed at admission to federal custody" (22) and " ...need levels increased with increased security designations" (23). This assessment should come as no surprise given the reality that part of the determination of security classification depends upon the identification of needs (2). This study simply confirms that when the criteria are applied to women prisoners, maximum-security women are identified as having a greater history of disadvantage or needs than do women who are initially assessed as having lower security classifications.

Furthermore, when it comes to women prisoners in the federal system, most staff and prisoners alike describe the risk assessment process as one where staff identify women's risks based on their levels of institutional adjustment, which they see as identifying whether or not they cause disturbances, are able to care for themselves, or are in danger of engaging in self-injurious and/or suicidal behaviour. It does not tend to be the view of staff working with women prisoners and youth that they are at risk to escape or to commit violent offences against the public. Staff also repeatedly point out that although most women have

histories of abuse, the risk assessment questions regarding abuse and family violence generally do not apply to women because they assume the person who is being evaluated would most likely be a perpetrator, not the victim, of "domestic" violence.

Too many of the instruments that are used to assess and classify were developed with, by, and for men. In addition, it is well recognized that Aboriginal, Asian, and other racialized women and girls, especially those of African Canadian ancestry, cannot be adequately assessed by the current schemes developed for male prisoners. In addition to many prison staff agreeing that there are significant problems with the current assessment mechanisms, they feel that there is a need for specific researched-based needs assessments tools for women and youth, as well as women and youth researched-based tools that reflect their respective characteristics and lived circumstances.

As Alan Leschied indicates, many jurisdictions have started to use "multi-systemic therapy" for and on young people enmeshed in the juvenile justice and children's mental health systems due to the proliferation of resources for training staff and the seductiveness of utilizing and applying criminogenic risk factors to children and youth. He also acknowledges, however, that the cognitive and behavioural interventions promoted by risk-based principles of intervention are not seen as adequately "predictive" for "young girls and adolescent women as well as the very young offender" (39).

Margaret Shaw and Kelly Hannah-Moffat have also argued that "women need the language of success to see improvement" (36). More than one correctional officer has pointed that "in a men's prison you need a panic button whereas in the [segregated maximum security] units for women [in men's prisons], the staff need 'a box of kleenex' to do the assessments on women." For instance, issues pertaining to children, especially child care and custody issues, seem to have a far greater impact on women than men during the intake process. Women and girls are often described as "high maintenance" because of their trauma and abuse issues. They are also described as extremely demanding and needy by many staff.

Young women are also especially likely to be seen as in need of protection from the street and their assessments are often tainted by the child welfare concerns of well-intentioned and caring front-line staff and social workers. Far too many young women are detained in custody as a result of perceptions about the risks they face in the community, not the risks they pose to others.

Young women themselves summarily describe the constraints of institutional living as follows, "you can't be happy or they'll [the staff] assume you're high and throw you in the hole; you can't be too sad or they'll assume you're depressed and throw you in the quiet room – another hole". The obvious consequence of such lived realities is that young women tend to have to mute their reactions in order to not attract the attention of their keepers and the corresponding high risk labels and resulting high security carceral conditions.

Furthermore, the criteria used in such risk and classification systems as those employed and adapted by federal, provincial and juvenile correctional systems are discriminatory. Many of the criteria target the disadvantages experienced by women and youth, particularly those who are poor and racialized. The result is that the most disadvantaged are likely to be considered the greatest risks to others. They are therefore likely to be classified as requiring high security supervision, which, in turn, means that they will be subjected to the most restrictive conditions of confinement. Furthermore, the effect of a high risk designation extends beyond the physical conditions of confinement and includes the opportunity to participate in institutional programs and recreational opportunities, as well as community integration services.

Restrictions based on disadvantage, without proof that the proposed restrictions are necessary, arguably contravenes the equality provisions of the *Canadian Charter of Rights and Freedoms*. There is clearly a significant adverse impact youth, women and all racialized prisoners, especially young racialized women who are disproportionately labelled as violent.

## Critical Overview of Risk Assessment Tools Designed for Adults

As corrections' researchers such as Paul Gendreau, Tracy Little and Claire Goggin point out in their own work, their risk assessment research is "virtually silent on the prediction of recidivism among female offenders, minority groups ... and some important sample characteristics, such as risk level and the psychological make-up of the subjects studied ... variables such as age, criminal history, companions, family factors, gender, social achievement, and substance abuse are significant and potent predictors of recidivism ... anti-social risk factors in childhood can have far-reaching influence" (587-589).

In discussing the role of actuarial measures for predicting recidivism, Gendreau et. al. assert that the LSI-R may be used for juvenile, Native and women offenders and that Hare's assessment scale should be used to assess "the psychopathic dimension of anti-social personality ... by clinicians who are concerned with predicting violence" (590). All of this, however, flies in the face of the realities in such cases as that of Lisa Neve. Based upon clinicians' assessments of Neve, without any understanding of the context of her life or the manner in which she, individually, experienced that life, the result was an overwhelming assessment that she would likely commit not just serious offences but serious violent offences. Worse still, she was equated to a "male lust murderer."

Although writers such as Kelly Blanchette and Grant Coulson et al. have asserted that the LSI has some applicability to women prisoners, Joan Nuffield, the designer of the SIR Scale has critiqued the application of programs, measurement tools, assessments of risk and need, risk prediction and other institutional assessment approaches to women given that such tools are developed for, based on, and relate to, male populations. Nuffield also maintains that such male based assessment tools "consistently over classify women in security terms ... and place primary emphasis on security and risk rather than need." She also contends that women tend to have many needs and are generally regarded and classified as low risk prisoners. Nuffield further maintains that the use of "women's own knowledge to aid in the development of psychological skills and needs inventory for women" are advisable and challenges that, "it is questionable whether a classification tool developed primarily for risk prediction [for men] would be useful [for women]." She goes on to caution that many such instruments, including the SIR Scale were "developed to predict recidivism in a population of male penitentiary inmates".

Kelly Blanchette, on the other hand, has applied male needs assessment and risk prediction instruments to women and has concluded that they may be, "reliably used with female offenders." In addition, Blanchette and other Correctional Service of Canada researchers have linked women's histories of self-injurious behaviour and suicide attempts to violent recidivism. Indeed, Blanchette has repeatedly articulated that "a history of attempted suicide was the strongest predictor of violent recidivism in a sample of federally-sentenced women ... 50 per cent of the federal female offender population has a history of attempted suicide." She therefore identifies suicide attempts and self-injurious behaviour as criminogenic factors for women prisoners.

Unfortunately, corrections' researchers routinely fail to contextualize their work. For instance, the findings of Blanchette must be considered with the context that:

- a. 82 per cent of all women prisoners, and 90 per cent of Aboriginal women alone, who are sentenced to federal terms of imprisonment, have experienced serious histories of physical and/or sexual abuse;
- b. there is a high correlation between histories of sexual abuse and self-injurious behaviour;
- c. at a minimum, at least approximately 25 per cent of women in the general population have experienced sexual abuse, yet fewer than 1 per cent ever end up criminalized.

Outside of corrections' research, there is no valid or reliable evidence to substantiate claims that there is a causal relationship between self-injurious behaviour and suicide attempts and violent offending. Indeed, the only way researchers can find a correlation between these factors is if they only focus on "researching" prisoners. It is not surprising that research on a population of women prisoners serving two years or more,

approximately half of whom are imprisoned as a result of convictions for "violent" offences, 82 per cent of whom have been sexually abused and the majority of whom have engaged in self-injurious and suicidal behaviour, finds a correlation between these factors.

Unfortunately such findings have resulted in correctional justifications for the adaptation of programs developed by and for men who are violent for use with women prisoners, many of whom have been convicted of violent offences after they reacting to or defended themselves or others in situations where they were the targets of the "victims'" violence. As Elizabeth Comack's recent research reveals, women who use violence generally do so in different ways and for different reasons than do most men. It was in an attempt to address and alleviate the discriminatory treatment of women prisoners that groups such as CAEFS have long advocated the need for women-directed and gender-specific approaches. As the Task Force on Federally Sentenced Women articulated, federally- sentenced women have more in common with other women, than they do with imprisoned men.

Furthermore, as Kathy Kendall points out in her research, male-based programs "devalue and silence the voices and experiences of women prisoners ... [and] may serve to adjust women to oppressive penal practices while de-politicizing and individualizing their circumstances." Kendall goes on to challenge what she refers to as, "two prevailing myths: that women don't get angry and that those women who do are worse than angry men. Consequently women tend to suppress their anger." Ms. Kendall then goes on to discuss the reality that, research focussed upon women's special needs "assumes a male norm that is often rooted in traditional assumptions about women which in turn reinforce stereotypes of femininity." She then proceeds to discuss, the reality that "angry aggression is intensified within prisons because they encourage such a response...[and that] prison environment and broader social and economic structures must be altered rather than simply create psychological and individual ones" (36).

Kathy Kendall and other authors have also demonstrated that "women are more likely than men to be punished for trivial actions such as a lack of deference to authority and insubordination" and "prison aggression will only be effectively addressed by focussing on the regime rather than the prisoners themselves." For instance, Kendall asserts that "many programs constructed to address women's anger and/or aggression actually serve[s] the immediate goal of institutional management rather than assisting women in the long-term" (37-38). She then proceeds to discuss the "thwarting effects of the coercive environment." In fact, she concludes that institutional programming may contribute to the further oppression of women by focussing upon individual rather than structural and systemic issues. Ms. Kendall also encourages participants to situate their anger within the historical context to "challenge the dominant discourse ... and resist further oppression."

In addition, as Tim Brennan and James Austin found, "incarcerated women differ from male inmates in their behaviours and special needs – especially with regard to medical and mental health needs and family attributes ... many practitioners feel that current systems over classify and incorrectly house female inmates.... For inmates, classification can govern eligibility and access to programs, housing assignments, selection of cell mates, personal safety, eligibility for work status, consistency, fairness and equity while in jail" (2).

They also point out that "the most serious charge against gender-neutral classification tools is that they over classify female inmates ... because women's violence does not take into account two qualifying factors. First, women with violent offenses are often accessories and not leaders or instigators. Second, a large percentage of female violence occurs in long-term relationships, which is unlikely generalized to the public at large.... A key deficiency of risk-based jail classification systems is that the risk factors have inadequate predictive validity.... Thus, from a scientific perspective, initial risk-based classifications are arguably inapplicable to women since they fail their most fundamental task, which is risk prediction" (11). Without a doubt, the applicability of these same risk assessment schemes to youth is, at best, equally inappropriate and, at worst, incredibly damaging.

Finally, these authors have developed guidelines for designing "objective classification systems." They have proposed the following steps:

1. Obtain the support and commitment from agency management.
2. Establish an implementation team of key stakeholders.
3. Establish performance requirement, goals, and purposes.
4. Finalize a provision technical design that specifies classification goals, purposes and organizing principles, identifies key risk and needs factors, and selects a classification scoring format.
5. Conduct a pilot test and validation study.
6. Finalize the classification systems.
7. Implement the classification system.
8. Evaluate, monitor and revise the system based on the reality that classification systems are dynamic procedures that progressively evolve as new findings, experiences, and conditions emerge.

In Britain, the Howard League for Penal Reform has critiqued the risk assessment model utilized for women prisoners as, "focussing on just aspects of the person rather than including social and cultural factors to aid in understanding offending behaviour ... and reliance on information used during the adversarial legal process with a view to securing conviction rather than establishing a more objective view of events ... and giving little credence to the impact the prison environment has on behaviour or the limiting similarities between prison and the environment on release; and it's simplistic approach that suggests that the non-occurrence of a predicted risk factor is evidence of reduced risk of re-offending" (27).

In addition to the internal Canadian corrections' research, others have similarly identified and recommended that categories of risk factors be utilized to assess young people who they predict are likely to be aggressive and violent as children and adolescents. For instance, in *Youth Update: Predicting Violent Behaviour in Youth*, Borum (cited in Shamsie) suggests the best predictors of youth violence relate to young people's "historical factors (school problems, victim of maltreatment or physical or sexual abuse and neglect, family maladjustment, including parental criminality), clinical factors (substance abuse, risk taking and impulsivity, negative attitudes such as lack of empathy, remorse and aggression) and contextual factors (negative peer relations, including gang involvement and "delinquent" peers, poor parental management, characterized by extreme or inconsistent discipline, neighbourhood crime, lack of social support, and stress and losses)".

The incidence of these factors far exceeds the already excessive number of young people we are currently criminalizing. In addition, too many of these sorts of factors are ones which young people are not themselves able to fully influence or control. Moreover, given the reality that self-report studies such as the one conducted by Espelage, Bosworth and Simon, reveal that despite zero tolerance standards and zero violence aspirations of adults around them, 80.5 per cent of male and female students reported bullying their peers in the previous month. Results such as these indicate that the behaviours that may lead young people to be identified as violent are unfortunately widespread and pervasive amongst adolescents. The result is that interventions must focus on the context in which young people find themselves, the realities of the well-documented existence of racism and other forms of discrimination throughout the justice system, and not merely on actuarial risk assessments.

Another challenge to current risk assessment approaches has been issued by Maeve McMahon, who has indicated that, "in attempts to assist female offenders our efforts can be aided by intuitive insights coupled with scientific rigour. But to proceed through only one route or the other is to increase the danger of the penal system further oppressing women and girls who are already among those who are most vulnerable in our societies" (35).

Most of the contemporary literature regarding classification is predominately American, and most major discussions related to prediction and classification there and elsewhere has ignored women and young people as specific groups with differential need and risk factors. As we have seen in Canada too, rather than

develop and implement independent women-centred models, in accordance with the 1990 recommendations of the Task Force on Federally Sentenced Women, the classification and assessment literature, based upon which tools to assess women are developed, tend to be validated on the Canadian male correctional population. As a result, women are still the last two to three per cent of the federal prison population to be examined.

This is the reality despite the fact that attempts have been made during the past few years to apply and validate some of the male instruments for women prisoners (see, for example, Blanchette and Motiuk, 1995, 1997; Blanchette, 1997, 1998). The evidence as to the applicability of male instruments to women appears patchy at best. Some factors, however, must be seriously questioned. For instance, the rating of adult histories of abuse, self-injurious behaviour and suicide attempts as risk factors for violent re-offending have serious implications for women prisoners.

Without contextualizing women's experiences, especially their experiences with violence, it is dangerous and highly problematic to draw conclusions from such correlations. As has been alluded to above, if these were true predictors of violent offending then, given the incidence of violence against women and children, they should be the primary perpetrators of violent offences. The reality belies such insular assessments and research of isolated and unrepresentative groups. Moreover, the lack of attention to gender, race, class, and other areas of diversity results in a variety of layers of systemic discrimination and disadvantage. These range from over classification to a lack of attention to program and service needs and interference with community release and integration strategies/plans.

One of the most compelling, relevant and clear documentation of the shortcomings of the actuarial risk assessment process as predictors of future violent behaviour exists in research generated by the Correctional Service of Canada (CSC). As was discussed earlier, Brian Grant's work regarding the application of existing prediction instruments is especially relevant to these discussions.

Pursuant to the detention provisions of the Corrections and Conditional Release Act (CCRA), CSC identifies prisoners who they believe should be kept in prison for their entire sentence, without any opportunities for conditional release; namely, until the expiration of their respective warrants of committal. These are prisoners who CSC assesses as likely to commit an offence that would likely cause serious violent harm or death prior to the expiration of their warrant of committal to custody. Once a prisoner is assessed as someone who CSC believes should be referred for detention, their cases are referred to the National Parole Board (NPB) for a hearing designed to assess whether in fact they should be detained.

Despite the clear legislative language and intent, as well as the checks and balances of CSC and NPB assessments, CSC's own research tracking the results of the application of the provisions reveal that, on the whole, the individuals who are targeted for detention because they are apparently assessed as the prisoners who pose the greatest risk to the public, are not, in fact, the ones who are most likely to go out and commit violent offences after they are released from prison. In fact, Grant's research shows that those who are so assessed and thus detained in prison until their warrant expiry dates actually have a lower recidivism rate than those who are granted conditional release at some earlier stage of their sentence.

Moreover, the CSC research concludes that prisoner motivation is the best predictor of who will successfully integrate themselves in the community without recidivating. Conversely, their research also reveals that those prisoners who are targeted and referred for detention because they are assessed as so violent that they will likely cause serious bodily harm or death before the end of their sentence, do not, in fact, generally go out and recidivate violently. Indeed, the research actually shows that the assessment process for detention ends up targeting those prisoners who have characteristics that are judged as least appealing to staff, not those who are actually then returning to the community and committing violent offences. Not surprisingly, Aboriginal and other racialized prisoners are over-represented amongst the group of prisoners referred for detention. These results alone create significant questions regarding the reliability and validity of the risk assessment process which definitely shapes, and arguably dictates, key correctional and paroling decisions for prisoners.

## **Mental and Cognitive Disabilities**

Although not specifically related to prisoners with mental and cognitive disabilities, the following comments of one prisoner regarding current correctional assessment and programming initiatives summarizes the views of a number of those both before and following their releases from prison and provides a very clear and succinct articulation of the manner in which prisoners experience these processes:

I agree with what [she] and the other guy said.... We used to come in and get training and help so that we wouldn't be such fuck-ups out there.... Now, we get mind games and cog[nitive] skills and groups.... they seem to be more into making sure we don't feel so bad about being fuck-ups now, but we still need jobs and somewhere to live... We won't feel good for long if we're just back into the same old same old when we finally get out... How will cog skills help me support myself and my kids?

Many individuals whose mental and cognitive disabilities result in behaviour that untrained guards find difficult to manage in institutional settings are assessed as having high needs, yet are also frequently labelled as high risk even when their behaviour is essentially self-destructive, as opposed to being directed toward others in a reactive, much less predatory, manner. The practical reality is that mental and cognitive disabilities and related health needs are equated with risk and consequently usually result in an increased security classification.

In addition to the problems articulated above in relation to the impact of current assessment and programming approaches on the general population of prisoners, there is a multiplier effect to these problems for prisoners who have disabilities. Mental health concerns that are disabling undoubtedly create very real needs for prisoners and staff alike. However, equating mental health disabilities with risks only serves to perpetuate a social construction of persons with mental disabilities as dangerous. We are currently seeing this sort of construction in relation to young people, especially young Aboriginal and First Nations youth, who are labelled as having Fetal Alcohol Syndrome or Fetal Alcohol Effect – often without appropriate or accurate diagnosis. This is precisely the kind of stereotyping which is prohibited by the equality provisions of the *Charter*.

The equality provisions, s. 15, of the Charter requires both substantive and formal equality. As such, equal treatment does not necessarily mean the same treatment. For instance, persons with disabilities may require that extra measures be implemented to provide them with the same level of service as the non-disabled community. Thus, if young people with mental or cognitive disabilities are criminalized, the juvenile justice system response should not continue to vilify them. Rather, the more appropriate response would be to provide the extra support required as a result of their disabilities in order to assist them to function at the lowest level of correctional security and supervision possible, preferably in the community. Using the need for mental health treatment or cognitive support as a reason to assess youth as high risk or security imposes harsher treatment on them. Since such treatment is occasioned by the criminal justice response to their disability, it is clearly discriminatory and contrary to s. 15(1) of the Charter.

## **Alternate Assessment Proposal and Concluding Observations**

Intake assessment and security classification of youth should be based on demonstrated behaviour and individual achievements within community and institutional settings, as opposed to predictions based upon unreliable criteria, in terms of the reliability of such links to risk. In addition, if youth with mental health and cognitive disabilities are properly supported in the community, then the number being criminalized

would decrease significantly and the number of those being jailed and assessed as dangerous to the public would be very small.

With additional supports, supervision and structure, many youth, especially racialized young women, can and should be integrated into community-based, non-custodial or residential settings. And, those who are identified as having significant mental health and/or cognitive needs should be provided with more particular skill-building supports and services, not regressive restrictions and isolation.

There is still very little consensus and few empirical or qualitative studies that provide guidance as to the best means of addressing the classification and community integration needs of young people. The evidence points to the importance of having separate classification systems for youth, as opposed to merely continuing to attempt to adapt systems based upon and biased toward, by and for adult males. Furthermore, a skill-based and capacity-oriented positive behavioural classification system rather than one focussed on the concept of risk would be preferable for young people. In addition to the obvious need articulated here and in other literature regarding the failures of the justice system, the new opportunities for innovative and youth-specific approaches provided by the principles and provisions of the new , should inspire renewed interest in this area.

Increasingly, particularly in the United States, researchers such as Barbara Bloom and Covington are discussing entirely different approaches to classification. These and other researchers, professionals and practitioners are proposing that such areas as the "pathways" of women and girls into the juvenile justice and adult systems be monitored and analyzed as a means of improving the effectiveness of interventions to assist those who are criminalized. They also recommend that we similarly monitor, presumably so that we may discern ways to attempt to replicate for others, the pathways used by women and girls to exit the criminal and juvenile justice systems.

According to Kelly Hannah-Moffat and Margaret Shaw, there is a growing body of international research which reveals the gendered and racialized nature of current risk assessment tools, while simultaneously questioning the appropriateness of adopting tools developed on and for male prisoners as though they are a homogenous population.

There is also no doubt that correctional staff, the front-line officers or guards, are the staff who are given the responsibility of administering intake assessment tests. Given the relatively limited training and different life experiences of various prison officers, it is not surprising that the application of the assessment and classification tools by staff often results in different interpretations of the meanings of questions as well as the reality that some staff will change questions and responses which they do not understand or with which they take issue. In addition, although there are staff who are sensitive to gender, race, and class issues, they lack the authority and/or ability to administer the assessment tools in a manner that take such realities into account.

Increasingly, at the international level, discussions are focussing upon the importance of developing approaches to working with women and youth which are designed to assist those being assessed to identify their own learning styles as well as their positive attributes and growth potential. Such new approaches, designed to tailor programming and services to women's learning styles, are strength-based and aimed at skill development. There is also a strong move toward what is referred to as "wrap-around services" to assist women and youth.

Central to the concept and philosophical base of "wrap around" and other "holistic" approaches is the notion of individualized and client-centred and directed assessment, planning, and service/program development. With the wrap-around approach, those working with the "client" are encouraged to focus on the impact, the context and the environment as key elements for predicting behaviour.

Moreover the focus is on highlighting, encouraging, and promoting positive behaviour. As a result, the expectation is that unlike most institutional files, which tend to chronicle every negative action and

attribute assessed in an individual by educational, health, child welfare, juvenile and adult correctional staff, client files are expected to be a place for the documentation of positive interactions and activities. The purpose of the former and overwhelmingly most common form of institutional file management is essentially to chronicle staff and organizational responses in order to provide self-justificatory evidence for what might otherwise be judged inappropriate, discriminatory or otherwise negative responses to marginalized institutionally controlled subjects. Indeed, virtually every investigation into institutional incidents, especially those related to allegations of abuse, self-injury and death, tend to include significant discussion of the negative attributes of those in care or custody as a means of framing exculpatory assessments with respect to staff and therefore institutional involvement and responsibility.

As Madam Justice Arbour so clearly articulated throughout her report following the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, despite a mission statement, core values and over-riding legislation which direct CSC to administer its mandate and responsibilities in a manner that is lawful, fair and transparent, the entire correctional system, atmosphere and machinery is so intransigent, defensive and arrogant that rather than, "be responsive to outside criticism, and [be] prepared to engage in honest self-criticism ... to give a fair and honest account ... the approach [is] to deny error, defend against criticism, and to react without a proper investigation" (173).

Depending of course upon how the provisions of the Youth Criminal Justice Act (YCJA) are interpreted and implemented, it could result in significant reductions in the use of custody for young people. For instance, more so than the Corrections and Conditional Release Act (CCRA), the YCJA directs the Canadian criminal justice system to arrest and revise current regressive and increasingly punitive approaches to criminalized youth, including some very pointed provisions aimed absolutely at decreasing the current trend to criminalize our most marginalized young people. This reality notwithstanding, our experience with the implementation of the CCRA, not to mention the Young Offenders Act and the Charter, reveal that legislative direction and protection alone is not sufficient.

Accordingly, despite the overall direction of the Act, we must be extremely vigilant in order to ensure that the nature and purpose of the assessment provisions in sections 34 and 35 of the YCJA are implemented in a manner that promotes creative and positive interventions for youth. If the prevailing federally funded and developed corrections' models of actuarial risk assessment techniques prevail, however, it is far more likely that assessments for youth will similarly result in preoccupation and therefore an excessive focus on identifying, monitoring, apprehending and detaining any and all youth who are perceived as "risky."

Risk-taking, challenging authority, and pushing the boundaries are rather basic characteristics of adolescent development. Within the context of a juvenile justice system wedded to actuarial risk assessments, however, they would likely be interpreted as criminogenic factors and potent predictors of future risk. Indeed, as the most recent replication of Brian Grant's research reveals, the application of such assessments by corrections generally results in the identification of the least appealing prisoners, as opposed to the most dangerous ones, being labelled as posing the greatest risk to re-offend violently in the community upon release. Paradoxically enough, it may be that the very youth who are not identified as a risk – especially those who are well able to negotiate their way through the system – who could in fact pose the greatest risk to public safety.

In addition, in order to better ensure that life is breathed into legislative intent to avoid the criminalization of our youth, community and social development efforts are paramount. Without adequate human and fiscal resources, young people who are in the greatest need will likely continue to be jettisoned from inadequate educational, health, social service and child welfare resources into the only system that has historically been unable to refuse them. The consequent criminalization of "acceptance" into the juvenile justice system exacts too great a human price to continue unabated.

It seems self-evident, therefore, that in addition to directing more resources outside of the juvenile justice system, all approaches within the system for those youth who are criminalized, must focus on supporting, encouraging and inspiring youth as an essential approach to all assessment and service provision

approaches. To achieve this means that there must be far greater emphasis placed upon the identification and support of individual and collective strength, rather than institutional compliance. Current hierarchical types of approaches currently utilized to assess and classify prisoners merely reinforce the tension between prisoners' willingness to disclose personal information and their need to be able survive in the institutional setting.

Especially in penal institutions, it is those who have the power to assess who have power over the individuals they are tasked with the process of classification. Many people have expressed reservations regarding the increasing trend to move towards the use of more actuarial risk-based tools for assessing all prisoners, especially those who are most marginalized and discriminated against as a consequence of their youthfulness, race, gender, poverty and other class realities, sexual orientation and lifestyle choices. There are increased calls for examinations of risky behaviour based upon situational or environmental factors that may contribute to the appearance or fear of risk.

The current classification and assessment schemes are clearly based on forensic psychology and are most often linked to the management of prisons. The current classification schemes applied to youth engage a great deal of subjective morality and focuses on such areas as the expected roles and expectations of youth. Rather than continuing to pathologize youth for their individual behaviour, the approaches taken by more progressive criminologists and sociologists is to attempt to develop means of contextualizing risk, while still addressing the behaviour which may be considered problematic. These workers recognize that notions of risk are "moral" categories and are therefore generally very subjective, and consequently often implicitly – occasionally explicitly – sexist, racist, ageist, homophobic, and classist in interpretation.

There is no doubt that women, especially First Nations and Aboriginal women, who after long histories of colonization may still defy attempts to confine them, will be among the first to be labelled a much greater risk to institutional stability and will likely therefore find themselves labelled maximum-security prisoners. The isolating conditions under which youth and adults who are classified as maximum-security prisoners are generally confined tend to generate personal stresses and frustrations that in turn result in self-destructive and sometimes reactive behaviour which may consequently result in additional labels of mentally disordered and/or violent.

Custodial environments, staff training (or lack thereof) and institutional services and programming can play a significant role in generating conflict. Unfortunately, the systems responsible for jailing both youth and adults do not even model well, much less excel at, self-reflection or correction. Rather, the focus is on pathologizing, individualizing, and sometimes "medicalizing" the experiences and legitimate resistance of their charges. Particularly for those who are most marginalized and therefore the objects and subjects of such stark realities, the systemic trends to assess and actuarially predict future behaviour, personalize, de-politicize, and decontextualize it.

Indeed, what all of the proponents of current risk prediction and actuarial instruments fail to address is why those with the same profile in the community (i.e., those who are not criminalized) do not offend. No explanations are put forth by such proponents as to why individuals with exactly the same characteristics as those who have been identified as risky in prison environments are not criminalized in a community-based context. Moreover, they tend to denounce and denigrate any attempts to contextualize their findings—deeming such analysis as, in fact, not analytical, but, rather, relegate it to the realm of anecdote and unscientific speculation, arrogantly ignoring completely such critique or summarily dismissing it as pedantic and irrelevant.

As Mary Eaton advocates, assessment models used with prisoners should focus on strengths rather than deficits so that approaches, services, and programs are enabling as opposed to disabling. In addition, particularly when we talk about young people, it makes more sense to talk about the hazards to young people as opposed to their potential for danger actions towards others. This flies in the face of the current rush to risk assessment and the allure of technical prediction approaches.

Policy makers are easily seduced by statistics that support the use of simple risk prediction mechanisms. Research that is designed on and around those who are already criminalized, without any recognition of the context in which people become criminalized – particularly social, economic, political, racial, gendered and other layers of potential discriminatory factors – will continue to lead to an over-estimation of risk, particularly for women and youth.

Maeve McMahon describes the current rush to risk prediction as part of the "McDonaldization of Corrections." She cites the increased focus on efficiency measures, the desire to quantify everything and render all behaviour predictable, and the desire to control as evidence of this trend. Another key and related challenge and critique of the work that is done by many corrections' researchers is that they tend to quote themselves and make bold claims regarding the success of risk assessment and actuarial prediction instruments on the basis of very small samples. Furthermore, as Loucks and Zamble identify in their research, existing risk assessment tools do not provide very accurate predictions of criminal recidivism or institutional/prison misconduct.

Moreover, proponents of current risk prediction and actuarial instruments fail to address the obvious question as to why those with the same profile in the community (i.e., those who are not criminalized) do not offend. The "research" is in fact devoid of explanations as to why individuals in the community who share the same characteristics as those who have been identified as risky in prison environments are not criminalized or otherwise labelled as a risk to community safety. Their research is limited to those who have been caught and imprisoned, without placing either the criminalized behaviour or individual within the context of relevant social, economic, political and other environmental influences and factors.

Whereas others have great difficulty challenging and explaining the causes of crime and the manner in which current problems may be addressed, many proponents of actuarial predictive risk assessments are incredibly sure of themselves and of the accuracy of their instruments and therefore their risk predictions. There is, however, a distinct lack of transparency, clarity, and accountability amongst the corrections-based, corrections-funded, and corrections-promoted research, policy, and practice. Furthermore, actuarial claims actually obscure reality.

Youths are routinely pathologized within professional discourse, too often portrayed as unremorseful monsters in need of medical treatment. Explaining youth crime as an individual problem denies the structural and cultural barriers that youths say contribute to their actions. These professional stereotypes are reproduced and confirmed as "truths" through such powerful institutions as the media.

Christie Barron's interviews with young people, police, and other professionals within the juvenile justice system, clearly elucidate the extent to which racism and other forms of discrimination are rampant within the system and consequently determine who the police watch, who the prosecutors try, who the judges jail and who the correctional authorities are refuse release. As Ms. Barron points out,

In addition to pathologizing and medicalizing youths, authorities create classifications that mystify the understanding of youth violence because the typologies are foreign to the youths' experience. For example, to comprehend the "violent youth," some of the authorities at Youth Court Services said that I should narrow my focus to one kind of violence. As was explained, there are two kinds of violence; the first is "instrumental aggression," whereby there is a purpose to the violence. It involves experiential learning and "often includes dysfunctional perceptions that justifies violence as a means to an end." This is the type of violence employed by gangs and psychopaths according to cognitive theorists.... By comparison, the youths made no reference to these types of violence. Most often youths' definition of violence had to do with simply hurting someone, but rarely, no matter how severe the assault, did they view themselves as inherently violent. Several youths made a clear distinction between themselves as people and the act of violence.... Hence the classification of the young respondents as "violent youth" by

the authorities, and admittedly by me, is an inaccurate description of who they are. This categorization totalizes youth: violence becomes the sole characteristic of their being.

... Painting violent youths as monsters makes it difficult for establishment authority to see youths as capable of remorse. And yet remorse is a central feature of the official assessment of criminality. All of the establishment authorities agree that "distress or internal discomfort" on the part of offender are an indication of remorse and hence a measure of the potential for the individual not to re-offend in future.

... In theory, remorse is an objective index of both the extent to which offenders have become contrite and, subsequently, their readiness for reintegration into normal and polite society. In practice, remorse is a religiously and socially sanctioned mechanism through which authorities are allowed to label and pathologize youths who do not conform in ways deemed necessary. Operationally, the concept of remorse individualizes and psychologizes youth crime by blaming youth offenders for their mistakes, allowing authorities to ignore poverty and other structural factors that contextualize individual behaviour. The oppressive nature of these processes is particularly underscored in the relationship between the concepts of remorse and abnormality a term which is used as a weapon against those who defy the expected. (69-71)

Ms. Barron further notes that, "The importance attributed to the medical model and the consequent need to classify behaviour have blindly focussed the authorities' attention on individual explanations of violence, thereby ignoring the structural realities that govern the lives of youth.... By comparison, the youths themselves readily contextualize their behaviour by pointing to structural factors, often associated with their socio-economic position in society. Poverty, early victimization and a need for respect all figured as experience-based explanations of their violent actions. However, in the collective mind of authorities, these structural determinants were either misinterpreted or conspicuously unacknowledged ... Race is also at issue in the perceived increase in youth violence. By focussing on individual explanations of crime, authorities overlook cultural and language barriers, as well as the destructive impact of racism, when assessing the behaviour of immigrant and racialized youths. That the salience of race and racial barriers is recognized by youth minorities themselves.... The importance of culture and poverty are ignored by those who oversee the youth justice system" (75-76).

Finally, as Shahid Alvi frames the issue, "if criminology is to advance better theories of youth and adult crime, it must come to terms with the multifaceted nature of crime. This means nothing less than rigorously studying the great variation in psychological, familial, sociological, and community factors that interact to produce criminal behaviour, within a society that is defined and shaped by power relationships of many kinds. We must not only take what is useful from existing theories of crime, but challenge and discard all that is not. There is much at stake here – for to continue to hang onto a criminal justice system based on theories and assumptions that are outmoded or inadequate is to deny justice to young people and the society in which they live" (118).

Christie Barron also discusses the justice system's "overwhelming tendency, in intellectualizing and designing programs for youth, to stress personality disorders and psychological solutions. As a result, there is limited appreciation of structural factors, such as poverty and a lack of opportunities, both as causes of youth crime and as valuable indicators where meaningful reform must begin." Ms. Barron goes on to discuss the nature of the youth justice systems reflection of "the conservative attitude of authorities and the enduring reliance on incarceration as the main means of dealing with violent youths. Young offenders relate to the system as non-adults clients and objects of authority. They are both resistant to and enmeshed in the relations of ruling" (90-91).

The foregoing material provides an overview of some of the myriad issues and pitfalls associated with utilizing current actuarial risk assessment instruments and approaches to or for youth. Rather than

attempting to adapt either the instruments or youth themselves to try to push them into existing risk assessment categories, I propose that we examine the possibility of developing models of supporting, and thereby classifying, young people which focus on strengths and gifts, as opposed to merely chronicling negative or risky behaviours. At a minimum, such approaches would provide a more positive series of descriptions of the youth who are criminalized. It might also promote more positive views of those youths by themselves, their parents (be that family of origin or adopted/state parents), professionals, and others with whom the youth interact.

K. Pate