

**Maintaining Innocence:
The Prison Experiences of the Wrongfully Convicted**

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Modern research has been diligent and successful in discovering the causes wrongful conviction and its long-term consequences on the wrongfully convicted and their families. One area, however, remains relatively untouched by research efforts: the period between conviction and release, the period of incarceration itself. This paper outlines the experiences of wrongfully convicted persons in prison. While each incarceration term is an individualized experience, shared commonalities exist between these experiences. This paper considers the incarceration experience via two lenses: inmate and prison violence in Part I and mental health and segregation in Part II. The paper focuses largely on the Canadian perspective, with limited insights from other jurisdictions. Each section evaluates: (1) the general prison experience of all incarcerated persons, and (2) the distinct prison experiences of the wrongfully convicted as a result of maintaining their innocence. As little research exists on the unique experiences of the wrongfully convicted in prison, this paper looks to interviews and other sources where wrongfully convicted persons have discussed their prison experiences. These sources are few and far between and many wrongfully convicted persons echo the words of Thomas Sophonow (wrongfully convicted of the murder of a 16-year-old donut shop employee): “whatever happened in jail [is] nobody’s business.”¹

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¹ Scott Edmonds, “Sophonow hurt in prison, wife says,” *The Globe and Mail* (14 Nov 2000), online: www.theglobeandmail.com [Edmonds].

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I Introduction

Modern cognitive and social psychology has been diligent and successful in discovering what causes a wrongful conviction.² These insights have been instrumental in modifying our criminal justice system to account for problematic practices. From the advent of disclosure in *Stinchcombe*³ to ever-changing police confession techniques, it is clear that the area of wrongful convictions (*i.e.*, what causes wrongful convictions) is thriving. Similarly, researchers have also focused their efforts on the consequences of wrongful convictions and their long-term impacts on the wrongfully convicted and their families.⁴ Areas such as compensation and societal re-integration are growing and have a direct impact on current legal and sociological changes. Also growing is the literature on the disproportionalities of *who* is being wrongfully convicted, with racialized and minority communities bearing the brunt of the impact.⁵

However, there is one area that remains relatively untouched by research efforts, the period between conviction and release, the period of incarceration itself. It is this period that is a direct result of the causes of a wrongful conviction; and it is also this period where long-term trauma likely originates. To date, there is little research on the experiences of the wrongfully convicted while incarcerated. Though we know that incarceration is difficult and can have long-term consequences, we do not know the specific effects of incarceration on wrongfully convicted persons. We especially do not know the specific effects of incarceration on wrongfully convicted persons who maintain their innocence in prison. Thus, while we can study the long term psychological and health effects of wrongful conviction, we will never truly understand the foundation of these effects unless we evaluate their origin: the prison experience.

The purpose of this paper is to outline the specific and distinct experiences of wrongfully convicted persons in prison. While each incarceration term is an individualized experience, there

² Kathryn M Campbell, *Miscarriages of Justice in Canada: Causes, Responses, Remedies*, (Toronto: University of Toronto Press, 2018) [Campbell].

³ *R v Stinchcombe*, 1991 CanLII 45 (SCC), [1991] 3 SCR 326, online: <<https://canlii.ca/t/1fsgp>>.

⁴ Samantha K Brooks & Neil Greenberg, "Psychological Impact of Being Wrongfully Accused of Criminal Offences: A Systematic Literature Review" (2021) 61:1 Med Sci Law 45 [Brooks & Greenberg]; Adrian Grounds, "Psychological Consequences of Wrongful Conviction and Imprisonment" (2004) 46:2 Can J Corr 164 [Grounds].

⁵ See Campbell, *supra* note 2 at Appendix A. At least 10 of the 83 (12%) wrongfully convicted persons (or suspected wrongfully convicted persons) in Canada identified as indigenous, despite indigenous peoples representing only 4.9% of the Canadian population; Zieva Dauber Konvisser, "Psychological Consequences of Wrongful Conviction in Women and the Possibility of Positive Change" (2012) 5:2 DePaul J Soc Just 221 at 230-1 [Konvisser]; Samuel Gross, Maurice Possley & Klara Stephens, "Race And Wrongful Convictions In The United States" (7 Mar 2017) National Registry of Exonerations, online (pdf):

www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf at para 1.

are many commonalities shared between these experiences. This paper considers the incarceration experience *via* two lenses: Part I looks at inmate and prison violence, and Part II explores mental health and segregation. The paper will focus largely on the Canadian perspective, with limited insights from other jurisdictions. Each section will also evaluate: (1) the general prison experience for all incarcerated persons, and (2) the distinct prison experiences of the wrongfully convicted as a result of maintaining their innocence. Because little research exists on the distinct experiences of wrongfully convicted persons in prison, this paper relies on interviews and other sources where wrongfully convicted persons discussed their prison experiences. These sources are few and far between and many wrongfully convicted persons echo the words of Thomas Sophonow (wrongfully convicted of the murder of a 16-year-old donut shop employee): “whatever happened in jail [is] nobody’s business.”⁶

II Part I: Inmate and Prison Violence

A. General Treatment of Prisoners

The Correctional Service of Canada (CSC) and individual provinces are responsible for the administration and control of Canada’s federal and provincial prison population, respectively. Independent of correctional administration and staff, there also exists an internal mechanism of prisoner control—prison hierarchy. Prison hierarchy is the informal prison culture that governs inmate relations. In other words, prison hierarchy dictates the status of individual prisoners and how higher-ranking prisoners wield their influence over lower-ranking prisoners. While inmates often join together in social groups, and prison gangs remain pervasive,⁷ the most common underlying system of prison hierarchy is based on offences committed.⁸ Though variations and exceptions exist, the offence-based ranking of prisoners is as follows: murderers sit at the top, followed by organized crime affiliates and drug dealers, while abusers and rapists rate lowly and child predators rank at the bottom.⁹ Higher-ranking prisoners are viewed positively; they are admired for their crimes, which are seen as intimidating and potentially fear-inducing to other inmates.¹⁰ Conversely, low ranking inmates, child predators in particular, are not welcome; they are “acceptable targets for victimization.”¹¹ Other factors that can contribute to increased status while imprisoned include access to contraband¹² and gang affiliations¹³. Overall, the prison

⁶ *Edmonds, Supra*, note 1.

⁷ John Winterdyk & Rick Ruddell, “Managing prison gangs: Results from a survey of U.S. prison systems” (2010) 38:4 J Crim Jus 730; Mark Nafekh & Yvonne Stys, “A Profile and Examination of Gang Affiliation within the Federally Sentenced Offender Population,” Research Branch, Correctional Service of Canada (May 2004), online: www.csc-scc.gc.ca; Kathleen Harris, “Diverse mix of gangs and a growing security challenge for federal prisons,” *CBC News: Politics* (25 Mar 2018), online: <https://www.cbc.ca/news/politics/prison-gangs-diverse-csc-1.4590649>.

⁸ Rose Ricciardelli, *Surviving Incarceration: Inside Canadian Prisons* (Waterloo: Wilfred Laurier University Press, 2014) at 46 [*Ricciardelli 1*].

⁹ *Ibid*, Joseph Michalski, “Status Hierarchies and Hegemonic Masculinity: A General Theory of Prison Violence” (2017) 57 Brit J Criminol 40 at 50-52 [*Michalski*].

¹⁰ *Ricciardelli 1*, *supra* note 8 at 46; *Michalski, ibid* at 51.

¹¹ *Ricciardelli 1, ibid* at 47; Chantal van den Berg *et al*, “Sex Offenders in Prison: Are they Socially Isolated?” (2018) 30:7 Sexual Abuse 828 at 829.

¹² David B Kalinich & Stan Stojkovic, “Contraband: The Basis for Legitimate Power in a Prison Social System” (1985) 12:4 Crim J & Beh 435.

¹³ *Ibid* at 447-8.

atmosphere is one where higher-ranking prisoners prey on the lower-ranking prisoners, simply on the basis of status. The lower a prisoner ranks, the more acceptable they are as a target of victimization. While aspects of this hierarchy have eroded somewhat in various regions, the disparity between the average prisoner and child abusers still exists.¹⁴

Prisoners also abide by a convict code.¹⁵ This code can vary among prisons, but many of the basic principles remain the same: “(1) ‘never rat on a con’ and don’t get friendly with the staff; (2) be dependable (not loyal); (3) follow daily behavior rules or else; (4) I won’t see you, don’t see me, and shut up already; and (5) be fearless or at least act tough.”¹⁶ The code provides safety for prisoners, reassuring them that if they follow the rules, they will be respected and stay out of harm’s way.¹⁷ The reverse is also true — violation of the code devalues one’s status in the prison hierarchy, making non-conformers acceptable targets of victimization, and therefore, susceptible to violent attacks as punishment for breaching the inmate code.¹⁸ Though the code is pervasive within most prison systems (and broader criminal subcultures), and most, if not all prisoners are aware of the code, not all choose to subscribe to the retaliatory aspects of the code.¹⁹ Instead, some prisoners prefer to follow their own moral code, whether personal or religion-based. While the code works to enhance a prisoner’s perception of safety, it effectively leads to more violence among the prison population.²⁰ In essence, inmate violence is controlled by both correctional officers, and the prisoners themselves, based on prison hierarchy and compliance with the inmate code.

a. Female Inmates and Prison Violence

All female institutions are multi-level (usually medium and maximum) security facilities. Female prisons also subscribe to a hierarchy, although not as rigid as those seen in male prisons. Like in male prisons, child predators are also low-status and targeted offenders in female prisons. For example, Maria Shepherd entered Brampton’s Vanier Center for Women in 1992 after pleading guilty to manslaughter in the death of her 3 year old stepdaughter, Kassandra. While Mrs. Shepherd would later be exonerated for the crime, she recounts her experience: “I was barely in the doors of Vanier...and there was already inmates sitting in the same room as me...and very clearly told me that they had been waiting for me. I think had I not been pregnant, I may have been beaten and killed in there, because of the offence.”²¹ Among female facilities, two Ontario facilities are known for violence. First, the (now closed) Kingston Prison for Women (P4W). At P4W, Tammy Marquardt (wrongfully convicted for the murder of her infant son, Kenneth) recalls that

¹⁴Alison Liebling & Helen Arnold, “Social Relationships between prisoners in a maximum security prison: Violence, faith, and the declining nature of trust” (2012) 40:5 J Crim Jus 413 at 416.

¹⁵ *Ricciardelli 1*, *supra* note 8 at 46.

¹⁶ Rose Ricciardelli, “An examination of the inmate code in Canadian penitentiaries” (2012) 37:2 J Crim & Jus 234 at 234 [*Ricciardelli 2*]; Heith Copes, Fiona Brookman, & Anastasia Brown, “Accounting for Violations of the Convict Code” (2012) 34:10 Deviant Behav 841 at 846-48 [*Copes et al*]; Meghan M Mitchell, David C Pyrooz, & Scott H Decker, “Culture in prison, culture on the street: the difference between the convict code and code of the street” (2021) 44:2 J Crim & Jus 145 at 146-7 [*Mitchell et al*].

¹⁷ *Copes et al*, *supra* note 16 at 847-8.

¹⁸ *Mitchell et al*, *supra* note 16 at 149.

¹⁹ *Copes et al*, *supra* note 16 at 848-9.

²⁰ *Mitchell et al*, *supra* note 16 at 149.

²¹ Stella Acquisto, “Wronged: Episode 1: Maria Shepherd, convicted and exonerated of manslaughter,” *CityNews Toronto* (2 Oct 2017), online: <www.citynews.ca> at 00h:07m:10s [*Acquisto*].

she “learned to go down quickly, turtling on the floor, her arms protecting her head, her legs pulled up tightly to protect her abdomen as a torrent of fists and feet pounded on her”²² while the guards walked away or turned around. P4W was also the subject of a 1996 federal inquiry, the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, regarding multiple instances of inhumane strip and body cavity searches of inmates by male correctional officers and Institutional Emergency Response Team (IERT) members.²³ Second, the Grand Valley Institution for Women made news in 2007 for the death of Ashley Smith, 19, and the subsequent inquest which ruled Ms. Smith’s death a homicide due to the prison guards’ failure to intervene amid a suicide attempt.²⁴ Thus, while male and female prisons hold different prisoners, the environment cultivated within the prisons is quite similar.

b. Prison-Specific Inmate and Prison Violence

Inmate and prison violence also varies significantly between prisons. There are two prison systems in Canada: (1) federal penitentiaries; for offenders serving sentences of greater than two years, and (2) provincial reformatory prisons; for offenders serving sentences less than two years. Since the majority of wrongfully convicted persons in this analysis served their sentence in federal penitentiaries, and because provincial reformatory prisons vary by province in their administration, the provincial system is largely excluded from this analysis.

Federal offenders are evaluated and assigned to a prison security level that ensures public, staff and offender safety. Canada has three main security levels: minimum, medium, and maximum security. Research shows that the level of security corresponds to an increase in inmate and prison violence, with maximum security prisons being the most violent.²⁵ Again, this is due to the offenders themselves as well as the more restrictive conditions of incarceration. In Canada, there are six federal maximum security institutions—Atlantic Institution (in New Brunswick), Donnacona Institution (in Quebec), Port-Cartier Institution (in Quebec), Millhaven Institution (in Ontario), Edmonton Institution (in Alberta) and Kent Institution (in British Columbia)—and six multilevel security institutions that house maximum security units—Dorchester Penitentiary (in New Brunswick), Collins Bay Institution (in Ontario), Stony Mountain Penitentiary (in Manitoba), Saskatchewan Penitentiary (in Saskatchewan), Edmonton Institution for Women (in Alberta) and Fraser Valley Institution for Women (in British Columbia). Interestingly, Canada’s women’s institutions have consistently seen the most prisoner complaints relative to inmate population²⁶, with the most frequent complaint among all federal inmates, both male and female, being health-

²² John Chipman, “Falsely convicted, in maximum security and pregnant,” *Toronto Star* (14 Jan 2017), online: <https://www.thestar.com/news/insight/2017/01/14/falsely-convicted-in-maximum-security-and-pregnant.html> [Chipman I].

²³ Canada, *Commission of Inquiry into certain events at the Prison for Women in Kingston* (Ottawa: Public Works and Government Services Canada, 1996) at 58-94.

²⁴ Lisa Kerr, “Sentencing Ashley Smith: How Prison Conditions Relate to the Aims of Punishment” (2017) 32:2 CJLS 187 at 188.

²⁵ The John Howard Society of Canada, “Security level explains kinds of violence in Canadian prisons” (16 Aug 2018), online (blog): <https://johnhoward.ca/blog/security-level-explains-kinds-violence-canadian-prisons/> Canada, *Office of the Correctional Investigator Annual Report 2018-2019, vol 46* (Ottawa: Office of the Correctional Investigator, 2019) at 43. [OCI, 2019].

²⁶ OCI, 2019, *ibid* at 129-131; Canada, *Office of the Correctional Investigator Annual Report 2017-2018, vol 45* (Ottawa: Office of the Correctional Investigator, 2018) [OCI, 2018]; Canada, *Office of the Correctional Investigator Annual Report 2016-2017, vol 44* (Ottawa: Office of the Correctional Investigator, 2017) [OCI, 2017].

care and conditions of confinement²⁷. Furthermore, the maximum security institutions (and their accompanying maximum security Regional Psychiatric Centres) consistently rate highest for use of force incidents.²⁸ Millhaven Institution, built to replace Kingston Penitentiary (another infamously violent maximum security prison) is notorious for its forced lockdowns and significant inmate violence. Millhaven's J-unit is considered one of the most dangerous in Canada's correctional system— "riots happened almost every week, and [you] could smell the tear gas leaking through [the] vents. [You] woke up every Friday morning to the sounds of gunshots at the firing range"²⁹ says former inmate Karim Martin. Dorchester Penitentiary in New Brunswick, also has a long and violent past. In recent years, it has consistently seen the highest number of inmate complaints³⁰, and preventable deaths, most notably the 2015 case of Matthew Hines,³¹ which sparked a federal investigation. In sum, prison violence varies by prison, and is largely mediated internally via prison hierarchy and respect of the inmate code.

c. Comparing to Other Democratic Nations

When compared to other democratic nations, Canada's prisons fare closer to the United States than the Nordic nations, seeing high incarceration rates, poor prison conditions and vocational opportunities, and overall high recidivism. In contrast, Nordic prisons evidence lower rates of incarceration, and more humane conditions.³² The main differences between these systems appears to be the prioritization of offender rehabilitation³³ (in Nordic nations) rather than protection of the public (in Canada and the United States).³⁴ In prioritizing rehabilitation, Nordic nations have seen significant reductions in recidivism,³⁵ which in turn, protects the public at large.

This fundamental divergence in prison priority underlies many of the disparities between Nordic nations, Canada and the United States. First, both Canada and the United States have higher incarceration rates. While Canada's incarceration rate of 104 per 100,000³⁶ is much lower than the United States' 639 per 100,000,³⁷ both are significantly higher than that of most Nordic countries.³⁸

²⁷ *OCI, 2017, ibid.*

²⁸ See *OCI, 2019, supra* note 23 at 43. For the 2018-19 year, the top 3 use of force institutions are: (1) Millhaven Institution (20.0%, 309), (2) Kent Institution (7.8%, 120), and (3) Regional Psychiatric Centre – Prairies (7.7%, 119). For the 2017-18 year, the top 3 use of the force institutions are: (1) Millhaven Institution (13.5%; 176), (2) Regional Psychiatric Centre – Prairies (8.4%, 109) and (3) Edmonton Institution (7.5%, 89).

²⁹ Karim Martin, "What It's Really Like to Spend Time in a Canadian Prison," *Vice* (27 May 2016), online: <vice.ca>.

³⁰ See *OCI, 2019, supra* note 25 at 129; *OCI, 2018, supra* note 26 at 107. In the 2018-19 year, Dorchester Penitentiary received 277 prisoner complaints. In the 2017-18 year, Dorchester Penitentiary received 282 prisoner complaints.

³¹ *Canada, Fourth Independent Review Committee on Non-natural Deaths in Custody that occurred between April 1st 2014 to March 31st, 2017* (Ottawa: Correctional Service Canada, 2018) at 53.

³² John Pratt, "Scandinavian Exceptionalism in an Era of Penal Excess, Part I: The Nature and Roots of Scandinavian Exceptionalism" (2008) 48 *Brit J Criminol* 119 at 119-20 [*Pratt*].

³³ Katie Ward *et al*, "Incarceration Within American and Nordic Prisons: Comparison of National and International Policies" (2013) 1:1 *Engage: The Int J of Research & Practice on Student Engagement* 36 [*Ward et al*].

³⁴ *Ibid* at 38.

³⁵ *Ibid*.

³⁶ Institute for Crime & Justice Police Research, "World Prison Brief Data," online: <https://www.prisonstudies.org/> [*World Prison*].

³⁷ *Ibid* at United States.

³⁸ *Ibid* at Denmark, Norway, Finland, Iceland, Sweden, Germany, Netherlands. In 2018, the rate of incarceration in Nordic countries from highest to lower per 100,000 are: Norway (65), Denmark (65), Sweden (63) Finland (53), and Iceland (37). Similarly, Canadian and USA rates are higher than Germany (69) and the Netherlands (63).

Second, Nordic nations tend to have more facilities with less capacity when compared to Canada and the United States. For example, Canada's 53 federal facilities (excluding provincial/territorial facilities), average around 500+ per institute, with the largest institution housing 835 inmates.³⁹ Comparatively, Rikers Island, one of the largest American prisons can house 15, 000 prisoners across 10 smaller compounds (~1,500 per facility).⁴⁰ Nordic facilities tend to be smaller, housing ~100 (350 at most) offenders per institution.⁴¹ Nordic prisoners in smaller environments allow greater control by prison administration, but permitting more freedoms for inmates.⁴² Because these Nordic countries have smaller territories but many small facilities, offenders are often able to stay near their communities and maintain existing social relationships.⁴³ In contrast, Canadian prisons that restrict freedoms by security type and suffer from perpetual staff shortages mean frequent lockdowns. Seeing as Canada is a larger territory, many prisons (particularly federal prisons) are isolated and far from the rest of the population. Interestingly, and despite the difference in incarceration rate, the level of overcrowding in American, Canadian and Nordic prisons appear largely similar, with the exceptions of Norway and Iceland.⁴⁴ Last, the most fundamental difference is educational and vocational opportunities. While comparative statistics are not readily available, it is clear that opportunities are abundant in Nordic prisons and largely lacking in Canadian and American prisons.⁴⁵

B. Treatment of Wrongfully Convicted Persons in Prison

Of the recognized wrongful convictions to date, most were sentenced to long prison terms and were often placed in some of Canada's most violent maximum security prisons. In other words, many wrongfully convicted persons entered into inherently violent environments. For example, Guy Paul Morin (wrongfully convicted of the rape and murder of his nine-year-old neighbour, Christine Jessop) served his sentence in Kingston Penitentiary, Donald Marshall Jr. (wrongfully convicted of the murder of his acquaintance, Sandy Seale) and Glen Assoun (wrongfully convicted of the murder of his former girlfriend, Brenda Way) both spent significant time at Dorchester Penitentiary, and Tammy Marquardt was held in the maximum security unit at Kingston's Prison for Women alongside notorious serial killer, Karla Homolka.⁴⁶ While many wrongfully convicted persons are later moved into medium, and sometimes even minimum security institutions, due to

³⁹ In Canada's six maximum security institutes, the capacities are as follows: Atlantic Institute (331), Donnacona Institution (451), Port-Cartier Institution (237), Millhaven Institution (495) Edmonton Institution (324) and Kent Institution (378) Correctional Services of Canada, "Facilities and Security," online: <csc-scc.gc.ca> (last modified 20 May 2021).

⁴⁰ *Facilities Overview*, online: City of New York Department of Correction <www.web.archive.org/web/20140924104701mp/http://www.nyc.gov/html/doc/html/about/facilities-overview.shtml>.

⁴¹ *Pratt*, *supra* note 32 at 120.

⁴² *Ibid* at 21-22; *Ward et al*, *supra* note 33 at 39.

⁴³ *Ward et al*, *ibid* at 38.

⁴⁴ *World Prison*, *supra* note 36. The capacity rates for the listed nations are as follows: Denmark (103.5%), Canada (102.2%), Sweden (101.6%), Finland (101.1%), United States (99.8%), Germany (78.7%), Norway (76.1%), the Netherlands (74.4%), and Iceland (68.2%).

⁴⁵ *Ward et al*, *supra* note 33 at 37.

⁴⁶ *Chipman 1*, *supra* note 22.

good behaviour,⁴⁷ the initial shock and violence experienced in any institution, but particularly the more violent institutions, is profound.⁴⁸

Furthermore, all of the wrongfully convicted persons listed on Innocence Canada's website were wrongfully convicted of crimes against children and/or particularly violent crimes (15 individuals convicted of murder; 1 convicted of sexual assault).⁴⁹ For those convicted of crimes against children, they entered their institution at the bottom of the prison hierarchy. As mentioned, child abusers are always acceptable targets of violence, even those such as Maria Shepherd and Tammy Marquardt, who were pregnant while incarcerated.⁵⁰ Similarly, William Mullins-Johnson (convicted of the rape and murder of his four-year-old niece Valin) was vilified, and in constant danger; a target for "any hero keen to earn his jail house stripes by taking out a child killer."⁵¹ Conversely, those convicted of violent crimes, such as James Driskell (wrongfully convicted of the murder of his friend, Perry Harder) and Romeo Phillion (wrongfully convicted of murdering an Ottawa firefighter, Leopold Roy), likely had higher-status within the prison hierarchy. However, this higher status is quickly lost by actively maintaining innocence. While committing a violent crime brings esteem and admiration, renouncing your affiliation with that crime also renounces the esteem and admiration that comes with it. Where before one's crime made them feared and capable of great harm to other offenders, this is no longer the case when one claims innocence. Suddenly, these innocent offenders are not violent, they are not feared, and they are not capable of causing great harm to other offenders. Their high-status in the prison hierarchy is lost.

In some prisons, publicly maintaining one's innocence can also be seen as a violation of the inmate code. Specifically, it is a violation of the "I won't see you, don't see me, and shut up already" rule. The essence of this rule is to mind one's own business and not get involved where one is not needed. Similarly, it is important to keep your own problems to yourself. There is an overall intolerance for "loud mouths"⁵² and those who disrupt the *status quo*. As written by Oregon State Institution inmate James D. Anderson, "If you...keep your head down, don't bother anyone, and don't act like a wimp and whine about your wrongful conviction, you won't have to worry about prison violence."⁵³ This is not to say that wrongfully convicted persons must hide their innocence to avoid inmate violence. Guy Paul Morin maintained his innocence (albeit, through

⁴⁷ For example, Romeo Phillion spent seven years at Kingston Penitentiary's Regional Psychiatric Centre (maximum security), before being transferred to Warkworth Penitentiary (medium security), Joyceville Penitentiary (minimum security), Collins Bay Penitentiary (minimum/medium security), Frontenac Institution (minimum security) and eventually Bath Institution (medium security).

⁴⁸ Robert Simon, "The Psychological and Legal Aftermath of False Arrest and Imprisonment" (1993) 21:4 Bull Am Acad Psychiatry Law 523 at 525 [Simon]. More violent institutions increase the prevalence of traumatic experiences such as physical, psychological or sexual abuse, and can have serious mental health consequences, as will be explained below.

⁴⁹ *Exonerations*, online: Innocence Canada <www.innocencecanada.com> [Exonerations]. At least 12 individuals (O'Neil Blackett, Richard Brant, Tammy Marquardt, Guy Paul Morin, William Mullins-Johnson, Maria Shepherd and Sherry Sherrett-Robinson) were convicted of child-related crimes (most often child murder, rape or manslaughter), and all individuals except Jack White (convicted of sexual assault) were wrongfully convicted of murder-related offences.

⁵⁰ *Chipman 1*, *supra* note 22; *Acquisto*, *supra* note 21.

⁵¹ David Bayliss, "The Mullins-Johnson Case: The Murder that Wasn't" (2006) 6 AIDWYC Journal 1 at 2 [Bayliss].

⁵² *Ricciardelli 2*, *supra* note 16 at 247.

⁵³ James D Anderson, "How to Survive in Prison as an Innocent Man Convicted of a Sex Crime" (1997) 9:3 Issues in Child Abuse Accusations – Institute for Psychological Therapies.

legal proceedings) while incarcerated and many of his fellow inmates at Kingston Penitentiary were sympathetic.⁵⁴ In fact, due to inmate sympathy of his innocence, Morin was able to remain in general population, even though he was convicted of child sexual assault and murder, a crime that usually subjects an offender to violent attacks.⁵⁵

The overall rule regarding maintaining one's innocence in prison seems to be this: if you are loud about your innocence, you become a target for violence. This is not because you are innocent, but because you have forfeited your prison status and violated the inmate code. If you maintain your innocence quietly, and only talk about it when asked, there is no reason to believe you will be subjected to more violence simply because you maintain your innocence. We will now consider this rule within the context of two cases: David Milgaard and Glen Assoun.

a. Case Study: David Milgaard

In 1970, David Milgaard was wrongfully convicted of the rape and murder of 20-year-old nurse Gail Miller. He was sentenced to life in prison (with no chance of parole for at least 10 years), and moved between prisons significantly, serving time at Prince Albert Penitentiary (now Saskatchewan Penitentiary), Stony Mountain Penitentiary, Dorchester Penitentiary, Millhaven Institution and Collins Bay Institution. He consistently maintained his innocence and spent almost 22 years in prison for a crime he did not commit, before being released in 1991. Milgaard has said, "I was just a young man inside a penitentiary, and the first thing I wanted to do was tell the whole world my story. I ended up getting a typewriter and I was typing inside the prison where everybody was open front cells, cages, and people could hear me and everybody was so upset at this young guy trying to type all night, and I'm lucky I'm still alive here to talk to you, today!"⁵⁶ While this suggests that maintaining one's innocence may lead to prison violence, it is more likely that this incident reflects inmate frustration at a violation of the inmate code. Specifically, it reflects a violation of the daily behaviour rules—do not be loud and typewrite during sleep hours.

There is nothing further in Milgaard's prison experience to conclude that any violence Milgaard experienced was the result of maintaining his innocence. It is well-known that Milgaard maintained his innocence primarily via legal proceedings and through the help of his mother, Joyce, who was instrumental in advocating for her son. It is possible that beyond this one incident, Milgaard did not loudly proclaim his innocence except at psychiatric evaluations, rehabilitation and therapy appointments, and parole applications. In fact, this is quite likely. At the beginning of his sentence, Milgaard was a troublesome inmate. In his first 18 months, prison officials recorded 31 institutional offences, including refusing orders and threatening guards.⁵⁷ This behaviour likely gained Milgaard status within the prison hierarchy as he learned to mind his own business and keep to himself, while rejecting the authority of the prison administration. He focused on his post-

⁵⁴ D'Arcy Jenish, "Morin fights back," *Macleans* (8 Jan 1993), online: <https://archive.macleans.ca/article/1993/1/18/morin-fights-back>.

⁵⁵ *Ibid.*

⁵⁶ Lauren Meister, "David Milgaard struggles daily after spending two decades behind bars while innocent," *Cochrane Now* (1 Oct 2020), online: <www.cochranenow.com>.

⁵⁷ D'Arcy Jenish, "The Survivors" *Macleans* (27 Apr 1992), online: <https://archive.macleans.ca/article/1992/4/27/the-survivors>.

secondary education and had “a desire to ‘avoid problems.’”⁵⁸ Similarly, it is likely that Milgaard’s successful prison escapes: one in 1973, from Dorchester Penitentiary, and one in 1980, following a day pass from Stony Mountain Penitentiary, gained him notoriety and thus higher status, despite his innocence. In a letter to his mother, Milgaard writes “back on the same range...all [prisoners] asked how I’d been and was I okay”.⁵⁹ Thus, in David Milgaard’s case, there is no evidence to suggest that maintaining his innocence while incarcerated influenced on the level of violence he experienced. Rather, Milgaard’s case suggests that the manner of maintaining one’s innocence, and related violations of the inmate code, may be potential instigators of violence.

b. Case Study: Glen Assoun

In 1999, Glen Assoun was wrongfully convicted of the murder of his former girlfriend, Brenda Way. He was sentenced to life imprisonment (with no chance of parole for 18.5 years) and served 17 years at Springhill Penitentiary and Dorchester Penitentiary, before being exonerated in 2019. Throughout his sentence, Assoun loudly and steadfastly maintained his innocence. “He was in the prison’s face with his claim of innocence, going so far as wearing a baseball cap [and jacket] proclaiming his wrongful conviction [as the hat read ‘Wrongfully Convicted 1998’].”⁶⁰ He would continue to make these baseball hats, even though they were repeatedly taken away from him.⁶¹

Even Assoun’s lawyer, Jerome Kennedy, was frustrated by Assoun’s protests that he was innocent when meeting with Assoun for the first time to help him get his conviction overturned.⁶² Assoun also recalls a time where he proclaimed his innocence after climbing to the top of a bell tower, an attempt that landed him in protective custody.⁶³ The decision to place Assoun in protective custody was likely two-fold: (1) to protect Assoun from himself, as prison officials likely saw his climbing the bell tower as a potential suicide attempt, and (2) to protect Assoun from other inmates, seeing as he violated the inmate code. By disrupting behaviour rules, being loud and calling unnecessary attention to himself and his innocence, Assoun made himself a target for inmate violence.

It also appears that Assoun’s actions in proclaiming his innocence also made him a target for violence at the hands of prison officials. Assoun recalls a time that he was severely beaten by seven prison guards, who left him severely bruised, with a shattered ankle and gangrene quickly settling in.⁶⁴ He was not allowed to see a doctor for 11 days. By his own account, Assoun believes the reason for this attack was “standing up for my innocence, because I was protesting my

⁵⁸ Canada, *Commission of Inquiry into the Wrongful Conviction of David Milgaard, Penitentiary Placement Report* dated Feb 21, 1986, (Ottawa: Correctional Service Canada, 2006).

⁵⁹ Canada, *Commission of Inquiry into the Wrongful Conviction of David Milgaard, Letter from David Milgaard to Joyce Milgaard* dated November 30, 1985 (Ottawa: 11 May 2006).

⁶⁰ Tim Bousquet, “Prison was hell’: Glen Assoun tells his story,” *Halifax Examiner* (19 Jul 2019), online: <www.halifaxexaminer.ca> [Bousquet 1].

⁶¹ Tim Bousquet, “CBC Uncover: S7 E5: The Cold Walls of Prison” *CBC Radio* (17 Jun 2020), online (podcast): <https://www.cbc.ca/listen/cbc-podcasts/187-uncover/episode/15785982-s7-e5-the-cold-walls-of-prisonat> at 00h:11m:44s [Bousquet 2].

⁶² Tim Bousquet, “CBC Uncover: S7 E4: Fresh Evidence,” *CBC Radio* (29 Jul 2020), online (podcast): <www.newsinteractives.cbc.ca> at 00h:06m:36s.

⁶³ Bousquet 2, *supra* note 61 at 00h:04m:02s.

⁶⁴ Bousquet 1, *supra* note 60.

innocence at the time”⁶⁵ and “they were teaching me a lesson.”⁶⁶ Another time, a prison guard called Glen Assoun a ‘rat’ in front of other inmates.⁶⁷ As mentioned, not being a ‘rat’ (or informant) is one of, if not the most important rule, of the inmate code. A claim like this surely made Glen Assoun the victim of multiple violent attacks, many of which were likely attempts on his life rather than simple beatings. In Glen Assoun’s case, it is clear that maintaining his innocence while incarcerated, and the manner in which he did so, had a direct influence on the level of violence that he experienced. Assoun’s innocence made him a target for violence.

Thus, it appears that being innocent while incarcerated *can* influence prison treatment. However, there is a difference between maintaining your innocence and proclaiming your innocence. Where the former causes no harm, the second appears to make one a target for violence at the hands of both fellow inmates and prison officials.

III Part II: Mental Health and Segregation

A. Mental Health and Segregation in Prison Generally

Mental health is a significant and growing problem within Canada’s prison systems. To date, the federal prison system has five Regional Psychiatric (or Treatment) Centres, each functioning as both a penitentiary and a hospital. These five centres have a combined ~675 bed capacity,⁶⁸ which is grossly insufficient for Canada’s approximately 14 000 federal inmates.

“Mental illness rates are about 4 to 7 times more common in prison than in the community.”⁶⁹

This is comparable to reported prison mental illness rates in the United States (estimated to be about 3 to 12 times higher than in the community),⁷⁰ but above those reported in Europe.⁷¹ The inflated mental illness rate in prison is multi-faceted. First, individuals with pre-existing mental illnesses are more likely to be criminalized because the circumstances that breed criminality, also breed mental illness. For example, experiences with poverty, substance abuse,

⁶⁵ *Ibid.*

⁶⁶ *Bousquet 2, supra* note 61 at 00h:23m:37s.

⁶⁷ *Ibid* at 00h:20m:53s.

⁶⁸ *Canada, Audit of Regional Treatment Centres and the Regional Psychiatric Centre* (Ottawa: Office of the Correctional Investigator, 2011) at 10.

⁶⁹ *Mental Illness and the Prison System*, online: Centre for Mental Health and Addiction (CAMH), <www.camh.ca> [CAMH].

⁷⁰ Seth J Prins “Prevalence of mental illnesses in US state prisons: A systematic review” (2014) 65:7 *Psychiatric Services* at 862.

⁷¹ See Eric Blaauw, Ronald Roesch, & Ad Kerkhof, “Mental Disorders in European Prison Systems: Arrangements for Mentally Disordered Prisoners in the Prison Systems of 13 European Countries” (2000) 23:5 *Int J Law Psych* 649. “Lifetime prevalence rates of mental disorders, including substance-related disorders and personality disorders, were found to be 71% in Denmark (Andersen, Sestoft, Lillebaek, Gabrielsen, & Kramp, 1996) and 71% in England (Birmingham, Mason, & Grubin, 1996). Current prevalence rates were found to be 64% in Denmark (Andersen *et al*, 1996), 62% in England (Birmingham *et al*, 1996), 63% in England and Wales (Brooke, Taylor, Gunn, & Maden, 1996) and 62% in Ireland (Smith, O’Neill, Tobin, Walshe, & Dooley, 1996)” Although outdated, this source provides insight into the levels of mental illness prior to any mental health interventions.

physical and emotional abuse and more, are risk factors for both mental illness and criminal behaviour.⁷² Mental illness itself can also be a source of an individual's criminal behaviour.⁷³ Second, the conditions in prison directly encourage mental illness. The prison system fundamentally deprives individuals of their liberty. It restricts one's ability to choose what to do and when to do it and deprives them of a sufficient social support system⁷⁴. Further, inmates often experience physical, emotional, and sexual abuse while incarcerated.⁷⁵ All of these are known risk factors that contribute to the high rate of mental illness in federal prisons.⁷⁶

a. Segregation

The increase in violence in prisons has led to an increased use of segregation (or solitary confinement). In both federal and provincial prisons, men and women with serious mental health and behavioural issues may be confined to a "secure unit" within the larger institution.⁷⁷ In 2015, approximately 26 percent of all male offenders, and 46 percent of all female offenders were admitted into segregation at least once.⁷⁸ Segregation can be used as both a punitive and protective measure. As a punitive measure, individuals who instigate violence, or otherwise need to be disciplined, are placed in segregation. As a protective measure, segregation is used to isolate an inmate due to a medical condition or risk of violence. In Ontario, inmate protection was cited as the reason for segregation in 40 percent of cases. For example, if a threat is made against an inmate's life, that inmate will be placed in segregation. COVID-19 outbreaks have also led to an increase in segregation. Once segregated, the reason for segregation does not matter as all inmates are treated the same.

The conditions of segregation significantly impact mental health. While the overall length of stay in segregation in Canadian federal facilities decreased from an average 40 days in 2005⁷⁹ to 27 days in 2015,⁸⁰ this is still well above the United Nations standard of 15 days⁸¹ and constitutes a human rights violation.⁸² In segregation, inmates are held alone, in approximately six by nine

⁷² CAMH, *supra* note 69.

⁷³ *Ibid.*

⁷⁴ Brooks & Greenberg, *supra* note 4 at 48; Simon, *supra* note 46 at 525; Konvisser, *supra* note 3 at 241.

⁷⁵ Grounds, *supra* note 4 at 170.

⁷⁶ *Ibid.* at 169; Brooks & Greenberg, *supra* note 4 at 49-50; Konvisser, *supra* note 5 at 245.

⁷⁷ Correctional Service Canada, "Security Levels and What They Mean" (3 May 2015), *Let's Talk* (Blog), online: <https://www.csc-scc.gc.ca/text/pblct/lt-en/2006/31-2/4-eng.shtml>.

⁷⁸ Canada, Office of the Correctional Investigator, *Administrative Segregation in Federal Corrections 10 Year Trends* (Ottawa: Office of the Correctional Investigator, 2015) at Section 1 [*OCI Trends*].

⁷⁹ *OCI Trends*, *supra* note 78 at Section 2.

⁸⁰ *Ibid.*

⁸¹ Juan E. Méndez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNGAOR, 66th Sess, UN Doc A/66/268 (2011) at 9 [*Mendez*].

⁸² The overuse of segregation is not a problem unique to Canada. Many other nations are also guilty of gross human rights violations related to segregation. For example, in the United States, Kalief Browder (a youth offender) spent approximately two years in solitary confinement at Riker's Correctional Centre (New York), awaiting a trial that never came. He later took his own life after struggles post-conviction. Similarly, Albert Woodfox spent four decades in solitary confinement in the Louisiana (Angola) State Penitentiary, a notorious maximum-security prison. In the United Kingdom, Gerry Conlon spent a total of 5 and a half years in solitary confinement (his single longest stretch being 10-months) at Long Lartin Prison in Worcestershire, England. Other jurisdictions have specific statutory protections for solitary confinement. In Germany, solitary confinement cannot exceed four weeks in any given year for any given offender, and in the Netherlands that number is reduced to two weeks.

foot cells for 20 plus hours a day, often without access to showers or clean laundry, programming (education, addiction support or spiritual services) and meaningful human contact.⁸³ Lockdowns are effectively segregation implemented on a unit- or prison-wide scale. In 2019, Canada supposedly abolished segregation and implemented structured intervention units (SIUs) and therapeutic ranges—these methods are effectively the same as segregation.⁸⁴ In fact, de-segregation has led to an increase in lockdowns and “dumping” of segregated inmates into therapeutic ranges, both of which are not subject to SIU rules, and thus, result in inmates spending more time in their cells (often more than 22 hours a day).⁸⁵ Humans are inherently social beings, and a chronic lack of social interaction has fundamental, long-lasting and irreversible negative effects on the human brain.⁸⁶ This is particularly true for younger offenders, whose brains are still developing. More specifically, segregation decreases the size of the hippocampus (the area responsible for learning, memory and spatial awareness) and increases the size of the amygdala (which controls fear and anxiety).⁸⁷ Thus, segregation fosters the perfect environment for mental illness.

Mental health and segregation are high risk factors for self-inflicted harm and suicide in prisons. The global rate of prisoner suicide is about three times higher than the general population.⁸⁸ Interestingly, in 2011-2014, the Nordic countries (excluding Denmark), France and Belgium, rated highest in suicide rates, followed by the rest of western Europe, Australasia and North America (both Canada and the United States).⁸⁹ Yet, in our federal penitentiaries, suicide is the leading cause of death after natural causes – in 2017-18, it accounted for approximately 11 percent of all prison deaths.⁹⁰ Approximately 1 in 5 inmates⁹¹ have attempted suicide, and individuals who have experienced segregation are more likely to attempt suicide.⁹² In fact, the majority of suicide attempts occur in segregation.⁹³

Overall, mental illness is increasingly prevalent in Canada’s prisons, and while Regional Treatment Centres exist to aid some prisoners, they are not sufficient to deal with all mental health care. Segregation is also a recognized practice that leads to mental illness and increases the risk of

⁸³ *OCI Trends*, *supra* note 78.

⁸⁴ See *Corrections and Conditional Release Act*, SC 1992, c 20, s 31(1)(b), online:

<https://laws-lois.justice.gc.ca/eng/acts/C-44.6/index.html>. SIU and therapeutic ranges are effectively the same as segregation. Inmates are still confined to small cells with variable access to services; the only difference is “the opportunity to interact, for a minimum of two hours, with others, through activities.”

⁸⁵ Canada, Office of the Correctional Investigator *Office of the Correctional Investigator Annual Report 2019-2020* (Ottawa: Office of the Correctional Investigator, 2020) at 55 [*OCI*, 2020].

⁸⁶ *Mendez*, *supra* note 81 at 26-27.

⁸⁷ Jules Lobel & Huda Akil, “Law and Neuroscience: The case of solitary confinement” (2018) 147:4 *Daedalus* 61 at 69-70.

⁸⁸ Seena Fazel, *et al*, “Prison suicide in 12 countries: an ecological study of 861 suicides during 2003-2007” (2009) 46:3 *Soc Psychiatry and Psychiatric Epidemiology* 191.

⁸⁹ Seena Fazel, Taanvi Ramesh & Keith Hawton, “Suicide in prisons: an international study of prevalence and contributory factors” (2017) 4:12 *The Lancet Psychiatry* at 949.

⁹⁰ *OCI*, 2019, *supra* note 25 at 23.

⁹¹ Fiona Kouyoumdjian *et al*, “Health status of prisoners in Canada: Narrative review” (2016) 63:3 *Can Fam Physician* at 217.

⁹² *OCI Trends*, *supra* note 77 at Section 3.

⁹³ Craig Haney & Mona Lynch, “Regulating Prisons of the Future: Psychological Analysis of Supermax and Solitary Confinement” (1997) 23:4 *NYU Rev L & Soc Change* at 525.

suicide and suicidal ideation. While actions have been taken against this practice, those actions are insufficient and the problems around mental illness in prison remain.

B. Mental Health and Segregation of Wrongfully Convicted Persons in Prison

Of the 22 individuals listed on Innocence Canada's website that served time in prison, five individuals spent time in one of Canada's Regional Psychiatric (or Treatment) Centres (RTC), five individuals conclusively did not, and information was not available regarding the remaining 12 individuals.⁹⁴ Even if we assume all outstanding individuals did not spend time in Canada's RTC, the prevalence of RTC time among the wrongfully convicted would be 22.7%, which is significantly above the national average of 0.05% (assuming maximum RTC bed capacity). The five individuals who spent time in Canada's RTCs are: Romeo Phillion (Kingston RTC, 7 years⁹⁵), David Milgaard (Prairies RTC and Pacific RTC, length unknown but believed to be within a few weeks to a few months⁹⁶), Glen Assoun (Shepody Healing Centre, 3 years),⁹⁷ Leighton Hay⁹⁸ (wrongfully convicted of the murder of Colin Moore; spent the majority of his 12 year sentence in psychiatric wings of two penitentiaries), and Tammy Marquardt (Queen Mental Health Centre, 3 months⁹⁹). Interestingly, only Leighton Hay entered the prison environment with a pre-existing mental health condition.¹⁰⁰ The other four individuals were either diagnosed with, or developed, a mental illness while incarcerated.

The prison environment is the perfect breeding ground for mental illness, particularly for the wrongfully convicted. Some of the unique factors that contribute to mental health struggles within the wrongfully convicted prison population are trauma and adverse life experiences, social isolation, the consequences of maintaining legal innocence, uncertainty of release and segregation. Each of these factors will be considered in turn.

First, like all prisoners, wrongfully convicted persons face the traumatic realities of prison.¹⁰¹ A significant number of wrongfully convicted persons experienced physical abuse, and many, such as David Milgaard¹⁰² and Guy Paul Morin,¹⁰³ report experiences of sexual abuse. Others report additional traumatic experiences. For example, Thomas Sophonow "discovered the

⁹⁴ *Exonerations*, *supra* note 49.

⁹⁵ *Memorandum of Argument on behalf of Romeo Phillion*, Application for Judicial Interim Release following Application under section 696.1 of the Criminal Code, Superior Court of Ontario, 2003, at para 4.

⁹⁶ Canada, Commission of Inquiry into the Wrongful Conviction of David Milgaard, *Psychiatric File on David Milgaard*, 325166 (Ottawa: 1 Mar 2006).

⁹⁷ *Bousquet I*, *supra* note 61 at 00h:05m:05s.

⁹⁸ Jesse Johnson, "Leighton Hay finally freed a decade after wrongful first-degree murder conviction", *National Post* (28 Nov 2014) online: www.nationalpost.com.

⁹⁹ John Chipman, *Death in the Family* (Toronto: Doubleday Canada, 2017) at 35 [*Chipman 2*].

¹⁰⁰ Alan Maki, "Wrongfully convicted of murder, Leighton Hay free after 12 years", *Globe and Mail* (28 Nov 2014) online: <<https://www.theglobeandmail.com/news/national/wrongly-convicted-of-murder-leighton-hay-free-after-12-years/article21825039/>>.

¹⁰¹ *Grounds*, *supra* note 4 at 170. In a study of 18 wrongfully imprisoned men in the UK, 14 experienced terror of being assaulted or killed by fellow prisoners, 3 were victims of serious violence, 2 were sexually assaulted and one was stabbed. Many told stories of death threats, humiliation, abuse, segregation and other forms of distress.

¹⁰² Michelle Ruby, "Milgaard continues to fight for wrongfully convicted", *Brantford Expositor* (12 Mar 2020) online: <brantfordexpositor.ca>.

¹⁰³ Cynthia J. Faryon, *Real Justice: Guilty of Being Weird: The Story of Guy Paul Morin* (Toronto: Lorimer, 2012) at 110.

body of a fellow inmate who had committed suicide”¹⁰⁴ and Kyle Unger (wrongfully convicted of the murder of 16-year-old Brigitte Grenier) had a cellmate who slit his own throat with a razor while Unger was sleeping.¹⁰⁵ Second, adverse life experiences are a factor common to all wrongfully convicted persons, and also a significant risk factor for mental illness. Each wrongfully convicted person was investigated by police, charged with a crime s/he did not commit (often a particularly violent or reprehensible crime), convicted of that crime (possibly more than once) and then placed in prison. It is hard to imagine a more traumatic adverse life experience than this. However short or long the experience, the effect of a false imprisonment or wrongful conviction can be profound and long-lasting.¹⁰⁶ Third, many wrongfully convicted persons feel ‘out of place’ and either do not want to associate, or have trouble associating, with the highly criminalized offenders they are imprisoned with.¹⁰⁷ This adaptation to prison life leads many wrongfully convicted persons isolate themselves and disconnect from their emotions.¹⁰⁸ This social isolation has significant mental health consequences, especially when coupled with the removal of a pre-existing social support network as a result of imprisonment.¹⁰⁹ A good example of social isolation in prison is Glen Assoun. Glen Assoun said that he “developed no friendships [in prison]— not with other prisoners, not with guards, no sympathetic social worker. He was alone.”¹¹⁰ Additionally, Dorchester Penitentiary is a three-hour drive from Dartmouth, which made it difficult for his family to visit. Glen Assoun’s son, Glen Jr., only visited once in the 17 years due to issues with visitation applications.¹¹¹ As Assoun said, he was effectively alone throughout his prison experience. It is not surprising that all of these traumatic experiences would negatively affect one’s mental health. In fact, at least 11 wrongfully convicted persons conclusively suffered from depression while incarcerated.¹¹²

It is also interesting to note the specific mental health consequences as a result of maintaining *legal* innocence while incarcerated. Almost all wrongfully convicted persons begin working on their appeal upon conviction, and for many, much (if not all) of their time in prison is spent finding a way to get out of prison.¹¹³ This experience on its own is stressful, but becomes even more stressful for wrongfully convicted persons who must depend heavily on those outside the prison system—lawyers, family, friends and others—to advocate on their behalf, and whose preoccupation with preparing their legal case results in further isolation from other prisoners.¹¹⁴

¹⁰⁴ Sarah Harland-Logan, “Thomas Sophonow” online: *Innocence Canada* <https://www.innocencecanada.com/exonerations/thomas-sophonow/#ftn31>.

¹⁰⁵ Gabrielle Giroday, “A sort of freedom”, *Winnipeg Free Press* (12 Sept 2009) online: www.winnipegfreepress.com [Giroday].

¹⁰⁶ *Simon*, *supra* note 48 at 523.

¹⁰⁷ *Konvisser*, *supra* note 5 at 241.

¹⁰⁸ *Ibid* at 257. In the words of Craig Haney, “the wrongfully convicted have a more difficult time making sense of their experience...[p]rison for some people robs them of the ability to feel joy and happiness...their agency, their decision-making ability and forced in a sense to be disconnected from their emotions” as a way of adapting to their new world.

¹⁰⁹ *Brooks & Greenberg*, *supra* note 4 at 49; *Konvisser*, *supra* note 5 at 241.

¹¹⁰ *Bousquet 1*, *Glen Assoun*, *supra* note 61.

¹¹¹ *CBC Uncover*, *Glen Assoun*, *supra* note 61 at 00h:08m:40s.

¹¹² See *Exonerations*, *supra* note 94. These individuals include: Romeo Phillion, David Milgaard, Thomas Sophonow, Glen Assoun, Robert Baltovich, Anthony Hanemaayer, Tammy Marquardt, Kyle Unger, Maria Shepherd, William Mullins-Johnson, and Donald Marshall Jr.

¹¹³ *Grounds*, *supra* note 4 at 177.

¹¹⁴ *Ibid*.

Moreover, legal advocacy requires research, a lonesome task, and frequent communication with one's legal team (if s/he has one). Legal counsel can be difficult to obtain from prison, and often requires writing letters to anyone and everyone willing to help. Similarly, the lack of communication and access to phones and email makes it difficult for individuals with counsel to contact their counsel, thus potentially limiting one's involvement in his or her case. This inability to contribute to one's legal proceedings can leave individuals feeling helpless to their own plight, and more isolated in comparison to other prisoners.¹¹⁵ With time, this can lead to overall feelings of frustration, helplessness or low self-efficacy.¹¹⁶ All three of these – stress, helplessness and low self-efficacy – are risk factors for mental health challenges, and in particular, for anxiety and depression.¹¹⁷

Furthermore, a fixed prison sentence may positively influence one's mental health.¹¹⁸ A fixed sentence provides a semblance of control within a prison environment designed to make one feel powerless. In effect, knowing when you will be released creates a "light at the end of the tunnel" and can motivate one to keep up their spirits. Wrongfully convicted persons do not benefit from this perceived sense of control. For them, there is uncertainty regarding their release, and this uncertainty causes stress and anxiety.¹¹⁹ Wrongfully convicted persons do not see their prison sentence as something they must accomplish in order to be released. More often, they see their sentence as a roadblock hindering their release; a hindrance that must be removed via legal proceedings. In fact, wrongfully convicted persons are at significant mental health detriment due to their legal proceedings. The emotional rollercoaster of minor successes is often met with a devastating blow when appeals are unsuccessful, and less chances remain for release. For wrongfully convicted persons, the 'light at the end of the tunnel' is the appeals process, and when these proceedings fail, so can an individual's mental health. Psychologist Terry Kupers describes wrongful conviction as "the kind of hopelessness that can lead to suicide [which] is intensified by the knowledge that even though one is innocent, nobody cares about the unfairness of the punishment."¹²⁰ Based on the experiences of Romeo Phillion and David Milgaard, it is clear that the loss of an appeal can trigger a suicide attempt. Romeo Phillion attempted suicide multiple times while incarcerated at the Kingston RTC. Interestingly, Phillion's 7 year incarceration at Kingston RTC coincides almost perfectly with his appeals process as he was convicted in 1971 and his Supreme Court of Canada appeal was dismissed in 1977. Similarly, David Milgaard attempted suicide after his appeal to the Supreme Court of Saskatchewan was denied.¹²¹ Thus, it appears that legal proceedings are a double-edged sword, while they provide much hope and benefit to mental health upon success, they are devastating to mental health when unsuccessful, leaving wrongfully convicted persons helpless and hopeless.

¹¹⁵ *Ibid.*

¹¹⁶ Self-efficacy is the belief in one's ability to succeed or accomplish a particular task(s).

¹¹⁷ William R Miller, Martin E Seligman & Harold M Kurlander, "Learned helplessness, depression and anxiety." (1975) 161.5 J Nerv Ment Dis 347.

¹¹⁸ Kathryn Campbell & Myriam Denov, "Burden of Innocence: Coping with a Wrongful Imprisonment" (2004) 46:2 Can J Corr 139 at 154.

¹¹⁹ *Ibid.*

¹²⁰ *Konvisser, supra* note 4 at 248.

¹²¹ Cynthia J. Faryon, *Real Justice: Sentenced to Life at Seventeen: The Story of David Milgaard* (Toronto: Lorimer, 2012) at 72 [*Faryon*].

a. Segregation

Segregation is also a noteworthy contributor to an inmate's mental health. Of the 22 individuals listed on Innocence Canada's website who spent time in prison, eight individuals spent time in segregation, three likely spent time in segregation, and information was not available regarding the remaining 11 individuals. The list of individuals who spent time in segregation includes two women: Tammy Marquardt¹²² and Sherry Sherret-Robinson (wrongfully convicted of the death of her four-month-old son, Joshua).¹²³ At present, only three women have been exonerated. Thus, it would be premature to use this number to compare against the national average for women in segregation. However, the same situation is not true for the men. At least 42 percent of wrongfully convicted males were placed in segregation at least once, which is higher than the national average of 26 percent.¹²⁴ The men who spent time in solitary confinement include Robert Baltovich, David Milgaard, Glen Assoun, Thomas Sophonow, Kyle Unger, and William Mullins-Johnson. As mentioned, three men are thought to have spent time in solitary confinement. For Donald Marshall Jr., evidence that he spent time in segregation comes from the comments of a fellow inmate, Mike Grattan, who defines "confinement in segregation [as] common occurrence."¹²⁵ For Leighton Hay and Romeo Phillion, the belief that they spent time in segregation is based on the individuals having attended a Regional Psychiatric Institution, which often used segregation as a means to control mentally ill patients.¹²⁶ While all of these individuals experienced segregation throughout their incarceration, they do not share the same segregation experiences.

Whereas some individuals only spent time in segregation once, others had multiple segregation experiences. The length, conditions, and reasons for segregation vary significantly between individuals, and between individual segregation experiences. For example, the experiences of the wrongfully convicted suggest that punitive segregation is shorter than protective segregation. Sherry Sherret-Robinson and David Milgaard were both placed in punitive segregation at least once. Sherret-Robinson was placed in segregation for a few days¹²⁷ following an altercation with another inmate. Milgaard was placed in segregation for 10 days after prison officials discovered a homemade alcoholic mixture Milgaard created to help with the pain of a gunshot wound.¹²⁸ In contrast, the experiences of those in protective custody are much longer, darker, and more restrictive. Robert Baltovich (wrongfully convicted of the murder of his girlfriend, Elizabeth Bain) says, "basically, I was locked up for 24 hours a day for months and months. I got the occasional visit but it was very difficult."¹²⁹ Glen Assoun was placed in protective segregation twice at Dorchester Penitentiary. The first time, prison officials decided to segregate

¹²² *Chipman 2*, *supra* note 99 at 82.

¹²³ Derek Finkle (re-posted by Sherry Sherret-Robinson) "Falsely Accused A Mother Fights Back – December 2007" (9 Feb 2008), *Sherry Sherret's Journal for Closure*, online: <<http://sherrysherret.blogspot.com>> [*Sherret-Robinson*].

¹²⁴ *OCI Trends*, *supra* note 77 at 2.

¹²⁵ Nova Scotia, Royal Commission on the Donald Marshall Jr. Prosecution, *Commission of Inquiry Concerning the Adequacy of Compensation Paid to Donald Marshall, Jr.*, by Gregory T Evans (Halifax, 1990) at 22.

¹²⁶ *OCI Trends*, *supra* note 77 at 23.

¹²⁷ *Sherret-Robinson*, *supra* note 123.

¹²⁸ See *Faryon*, *supra* note 121 at 82. Milgaard was shot by police when re-captured following a 77-day escape.

¹²⁹ University of Guelph, "Wrongful Conviction Day 2020 with guest exoneree Robert Baltovich - Text Transcript" (1 Oct 2020), online: *University of Guelph: Criminal Justice and Public Policy* <<https://cjpp.uoguelph.ca>>.

him for 90 days because they thought other prisoners intended to kill him.¹³⁰ The second time, Assoun was segregated for 90 days at his own request, after a prison official openly called him a ‘rat’ in front of other inmates.¹³¹ Thomas Sophonow was placed in solitary confinement throughout his entire stay at Stony Mountain Penitentiary. He spent 97 days “in a cell that measure[d] 5.5 feet by 10 feet for 23 hours a day, every day...the conditions were harsh and...during the one hour when he was let out of his cell for exercise and a shower there was no allotted place of exercise.”¹³² Kyle Unger was also effectively in segregation, experiencing lockup for 23 hours and 50 minutes per day in a cell with no windows. He said, “I never seen the light for two years.”¹³³ Based on these experiences, we can conclude that the average length of segregation for wrongfully convicted men is significantly above the national average of 27 days (as of 2015).¹³⁴ While it is clear that the wrongfully convicted spent more time in segregation than the average offender, it is unknown whether this fact is related to their innocence.

However, there are some reasons to suspect that the segregation of these individuals *could* be related to their wrongful conviction. First, as mentioned, Glen Assoun was not liked by prison officials and inmates because he constantly proclaimed his innocence. Thus, Assoun’s innocence was the beginning of the chain of events that would eventually land Assoun in protective segregation. Similarly, David Milgaard’s experience in segregation is linked to his prison escape, which he attempted because of his frustration and desperation at being an innocent man in prison. Moreover, any individual who was placed on suicide watch was likely placed in segregation, as individuals on suicide watch are often placed in segregation cells, or cells with similar conditions to segregation cells. Annu Saini, who was placed on suicide watch at Vanier’s Centre for Women says “suicide watch is one of the many paradoxes of prison life. You go in wanting to kill yourself and the conditions just make you want to kill yourself more.”¹³⁵ Thus, it is safe to assume that anyone who attempted suicide while incarcerated was placed on suicide watch (or *de facto* segregation) following medical attention. Tammy Maraquardt was placed on suicide watch following a suicide attempt in July 1998. This attempt was triggered by Tammy’s permanent inability to see her two children because it upset the adoptive mother and Tammy had no parental rights.¹³⁶ Even if Tammy won her appeal (which she did not), the adoption was final and she had no legal recourse to regain custody. In effect, her wrongful conviction caused her to permanently lose her children, which triggered her suicide attempt and landed her in *de facto* segregation. As previously mentioned, Romeo Phillion also attempted suicide and was placed on suicide watch multiple times, often coinciding with his appeal losses. Phillion’s *de facto* segregation is a direct result of his wrongful conviction. The same is true for David Milgaard, who attempted suicide and was placed on suicide watch following his appeal loss.¹³⁷ For these individuals, their segregation was either directly or indirectly related to their innocence.

¹³⁰ *Halifax Examiner*, Glen Assoun, *supra* note 60.

¹³¹ *Ibid.*

¹³² Manitoba, The Inquiry Regarding Thomas Sophonow, *Thomas Sophonow Inquiry Report* (Winnipeg: Manitoba Justice, 2010) at 189 [*Sophonow Inquiry*].

¹³³ *Giroday*, *supra* note 103.

¹³⁴ *OCI Trends*, *supra* note 76 at 8.

¹³⁵ Annu Saini, “Prison Notes: my time in suicide watch and solitary confinement”, *Now Toronto* (7 Mar 2018), online: <<https://nowtoronto.com/news/prison-notes-suicide-watch-solitary-confinement>>.

¹³⁶ *Chipman 2*, *supra* note 99 at 215.

¹³⁷ *Faryon*, *supra* note 121 at 72.

Regardless of the specifics, segregation itself has had clear psychological effects on the wrongfully convicted. This is seen via the recognized effects of segregation both in prison and post-release. For example, segregation is known to increase the rate of depression, suicidal ideation, and suicide.¹³⁸ Almost all wrongfully convicted persons listed as having spent time in segregation were diagnosed with depression while incarcerated, with the exception of Leighton Hay and Sherry Sherret-Robinson. This is not to say that these individuals did not suffer from depression, only that there is no evidence to support a claim that they did. Similarly, all wrongfully convicted persons who report having (1) contemplated suicide, or (2) attempted suicide, have spent time in segregation. For example, Kyle Unger admits, “I wanted to kill myself every day, but I could not put my parents through that. Not with the support they gave me.”¹³⁹ Segregation is also one of the factors that influences post-release mental health. Research recognizes that segregation can lead to trouble concentrating, memory loss, visual and auditory hallucinations, and more.¹⁴⁰ Interestingly, these are also many of the same recognized symptoms for post-traumatic stress disorder (PTSD). Evidence suggests that the wrongfully convicted may suffer from high rates of PTSD,¹⁴¹ and many individuals who spent significant time in segregation, such as Thomas Sophonow¹⁴² and Glen Assoun,¹⁴³ have suffered from symptoms of PTSD. Therefore, segregation is one of the many contributors to mental health challenges, both in prison and beyond.

b. Case Study: William Mullins-Johnson

The case of William Mullins-Johnson is a great example of the decline of an individual’s mental health due to wrongful imprisonment. More specifically, this case evidences many of the specific factors that we have mentioned that lead to mental illness. For example, Mullins-Johnson experienced significant adverse life effects and social isolation after he was wrongfully convicted following his niece Valin’s death. First, he had to cope with the news of Valin’s death and sexual assault. Because Mullins-Johnson knew he was not responsible for the crime, he began to suspect that his brother Paul may have committed the offence.¹⁴⁴ This was especially distressing as William and Paul were close since childhood. In reality, there was no sexual assault, and there was no crime. Second, not only was Mullins-Johnson investigated, charged, and convicted of the rape and murder of his niece; both offences that he did not commit, but he was shunned by his entire family. All four of his brothers, their wives and children, cut contact with Mullins-Johnson following his arrest because they all believed he was guilty. In this, Mullins-Johnson lost his entire support network, which added strain to his sentence. The only person who stood by him was his mother—she was his lifeline to the outside world and supported him during the 10 years he was incarcerated.

¹³⁸ *Mendez, supra* note 81 at 26-27.

¹³⁹ Richard Brignall, *Real Justice: A Police Mr. Big Sting Goes Wrong: The Story of Kyle Unger* (Toronto: Lorimer, 2015) at 103.

¹⁴⁰ *Ibid.*

¹⁴¹ *Grounds, supra* note 4 at 169.

¹⁴² *Sophonow Inquiry, supra* note 132 at 138.

¹⁴³ Joan Bryden, “Wrongfully Convicted Halifax man’s case sat on Wilson-Raybould’s desk for months”, *CBC* (28 Mar 2019) online: <<https://www.cbc.ca/news/canada/nova-scotia/wrongly-convicted-glen-assoun-case-delay-jody-wilson-raybould-1.5074732>>.

¹⁴⁴ “The Fifth Estate: A Death in the Family” *CBC News* (7 Jan 2009) at 00h:01m:23s, online (video): <<https://www.cbc.ca/player/play/1367250888>>.

Mullins-Johnson also experienced significant mental health struggles while incarcerated due to segregation, trauma, and maintaining his legal innocence. When he was arrested, William Mullins-Johnson was held in solitary confinement at the Algoma Treatment and Remand Centre in Sault Saint Marie for almost a year.¹⁴⁵ He was targeted by other inmates and prison guards, which continued following his conviction and transfer to Warkworth Institution where he was held until his release. Looking back, he recalls being “thrown in the hole [segregation] for frivolous things...guards saying that they should kill me; that I should die.”¹⁴⁶ He spent many long stretches in solitary confinement cells.¹⁴⁷ In fact, Mullins-Johnson was depressed and helpless—there was a “about a 3-4 year period where months on end...when I would lie in my bed and shake and cry, shake and cry, day in, day out, from sun up until whenever I went to sleep.”¹⁴⁸ It was the appeals process that kept him going, but following the denial of his Supreme Court of Canada appeal, he considered “slitting his wrists.”¹⁴⁹

As seen in his recounts, William Mullins-Johnson was significantly affected by his prison experience, and his mental health suffered as a result. Many of these struggles originated via his conviction, segregation, and prison sentence, and persist to this day. He says, “I know for a fact that I could be diagnosed with something, post-traumatic stress, whatever it is, I’m suffering it and I suffer it daily.”¹⁵⁰ It is for this reason that it is important for us to study the prison experience that lies at the root of these struggles.

Therefore, it is clear that wrongfully convicted persons experience more mental health struggles while incarcerated compared to the average prison population. This is seen in the increased prevalence of the wrongfully convicted in Regional Treatment Centres, and largely results from the unique struggles of being a wrongfully convicted person in prison, such as the emotional toll of legal proceedings and the lack of a fixed sentence. The statistics also reflect the fact that wrongfully convicted males are more likely to experience segregation in prison than convicted offenders. However, further research is needed to establish whether this fact is related to, or independent from, the unique circumstance of being an innocent person in prison.

IV Limitations and Future Research

Given the lack of available information on the prison experiences of wrongfully convicted persons in Canada, it is prudent to acknowledge the limitations of this study. First, this study is focused on the prison experiences of 22 individuals exonerated with the help of Innocence Canada. While there is no agreed upon number of wrongful convictions in Canada, that number is certainly more than the 22 included here. Kathryn Campbell identifies 70 wrongful conviction cases (and

¹⁴⁵ Robson Hall (University of Manitoba), “William Mullins-Johnson: A Terrible Miscarriage of Justice – January 15, 2010” (2 Sept 2015) at 00h:15m:15s, online (video):

https://www.youtube.com/watch?v=mD-hHz-7614&ab_channel=RobsonHall [Robson Hall].

¹⁴⁶ *Ibid* at 00h:12m:05s.

¹⁴⁷ Bayliss, *supra* note 50 at 38.

¹⁴⁸ Robson Hall, *supra* note 145 at 00h:09m:50s.

¹⁴⁹ *Ibid* at 00h:20m:50s.

¹⁵⁰ *Ibid* at 00h:11m:45s.

13 suspected wrongful convictions)¹⁵¹ and states that “these approximations are rough at best”¹⁵². This author is also aware of an initiative, led by Kent Roach and Amanda Carling at the University of Toronto, to create a “Canadian Registry of Wrongful Convictions” similar to the American National Registry of Exonerations database. Upon completion, it is believed that the Canadian Registry will include at least 83 wrongful conviction cases, and 164 data points including, gender identity, education, criminal record, immigration status, race, language, mental illness, and more. Similarly, the Criminal Conviction Review Group (CCRG), an initiative run by Canada’s Department of Justice, may also provide some insight into the number of suspected wrongful conviction cases in Canada. The CCRG reviews applications made by individuals suspected of being wrongfully convicted. While the lengthy process may deter individuals from applying and the process itself is not yet well-known, the CCRG “continues to experience a significant increase in new completed applications, averaging 17 per year over the past four years, up from an average of five per years in 2003 to 2015.”¹⁵³ Again, these numbers reflect only the known or speculated wrongful conviction cases in Canada. Researchers believe that the number of unacknowledged or unknown wrongful conviction cases in the United States falls within the range of 0.5-1%.¹⁵⁴ Using this American upper estimate of 1%, one researcher has posited that of the 87,214 Canadian custodial sentences in 2010, approximately 872 were wrongfully convicted.¹⁵⁵ Thus, the present sample of 22 cases is only the tip of the iceberg.

Second, there is a lack of existing research on the prison experiences of the wrongfully convicted. Even within a limited sample of 22 wrongfully convicted persons, there is a dearth of information. Imprisonment is a uniquely personal and sensitive experience for all inmates, much less wrongfully convicted persons for whom imprisonment reflects a period of unique emotional turmoil. Many wrongfully convicted individuals have not been given the opportunity to share their experiences, while others are unwilling to share, hoping to leave the circumstances of their wrongful conviction and all related experiences behind in an attempt to forge a new path.¹⁵⁶ The resources relied on in this study, largely newspaper articles, interviews and books, provide glimpses into the lives of wrongfully convicted persons while incarcerated. While together they can provide important insights, they do not provide a full and complete account of one person’s prison experience. In the same vein, a small number of cases that draws primarily on news accounts

¹⁵¹ *Campbell*, *supra* note 2 at Appendix A.

¹⁵² *Ibid* at 10.

¹⁵³ Canada, *Applications for Ministerial Review – Miscarriages of Justice – Annual Report* (Ottawa: Criminal Conviction Review Group) online: < www.justice.gc.ca/eng/rp-pr/cj-jp/ccr-rc/>. According to the CCRG’s annual reports, the number of applications (and completed applications, *i.e.*, documentation ready for review) per fiscal year (Apr 1 to Mar 31) are as follows: 2009-10: 22 applications (7 completed); 2010-11: 9 applications (3 completed); 2011-12: 16 applications (11 completed); 2012-13: 12 applications (3 completed); 2013-14: 13 applications (8 completed); 2014-15: 11 applications (5 completed); 2015-16: 7 applications (5 completed); 2016-17: 17 applications (15 completed); 2017-18: 27 applications (18 completed); 2018-19: 31 applications (18 completed) and 2019-20: 23 applications (16 completed).

¹⁵⁴ Marvin Zalman, “Qualitatively Estimating the Incidence of Wrongful Convictions” (2012) 48:2 *Crim Law Bulletin* 221 at 245-6. Zalman’s estimate of 0.5-1% (*i.e.*, 1%) is the most accepted value in the United States, however other estimates exist and are far-ranging. For example (and as noted by Kathryn Campbell in *Miscarriages of Justice in Canada* at 9-10), Justice Antonin Scalia proclaimed an error rate of 0.027% while in a study in the UK concluded rate of 6% (John Carvel, “Many Prisoners Could be Wrongly Jailed”, *Guardian Weekly* (5 Apr 1992)).

¹⁵⁵ *Campbell*, *supra* note 2 at 10, citing Myles F McLellan, “Private, Public and Prerogative Remedies to Compensate the Wrongfully Convicted.” (2012) Unpublished Report, at 6 (now found at Myles Frederick McLellan, “Innocence Compensation: The Private, Public and Prerogative Remedies” (2014) 45:1 *Ottawa L Rev* 57).

¹⁵⁶ *Edmonds*, *supra* note 1.

does not, and cannot, represent a complete picture of the prison experiences of the wrongfully convicted as a group.

More research into the prison experiences of wrongfully convicted Canadians is needed to correct current shortcomings. The limitations of this study reveal potential avenues for future research. There are at least two methods that can be used to expand the number and reliability of wrongfully convicted persons' prison experiences. One method is a survey or interview study of wrongfully convicted persons that poses a range of specific questions to probe the full range of in-prison experiences, whether positive, neutral or negative. While Kathryn Campbell and Myriam Denov's 2004 interviews with five wrongfully convicted persons provide some insight into the imprisonment experiences, this was not the fundamental purpose of this dated study. For this reason, updated and more specific data about prison experiences is needed to better understand whether these preliminary trends identified by Campbell and Denov continue to hold true, and whether they are felt broadly among the wrongfully convicted community in Canada. Another method could be a comprehensive review of the extensive and growing literature of wrongful convictions. Such a study could apply qualitative research techniques or "softer" literary criteria to draw information about the prison experiences of the wrongfully convicted. While such a method probably provides a less reliable assessment of prison experiences than a survey of a larger number of wrongfully convicted persons, the number of in-depth memoirs and accounts of prisoners could provide a deeper appreciation of this side of the issue of imprisonment of the wrongfully convicted. In effect, more research is needed to both generate academic research, and consolidate existing non-academic resources to better understand the unique experiences and struggles faced by wrongfully convicted individuals while imprisoned.

V Conclusion

In sum, there is very little information presently available to understand the hardships faced by wrongfully convicted persons in prison, and more specifically, the hardships faced as a result of maintaining their innocence while incarcerated. A preliminary socio-legal analysis of public information provided by Innocence Canada exonerees in various interviews and news articles suggests that there are significant differences between the average offender's prison experience and that of a wrongfully convicted person. For example, it appears that maintaining one's innocence, in and of itself, does not increase the risk of violence in prison. Instead, an increased risk of violence emerges when one is persistent and vocal about their innocence within the prison system. Furthermore, there are unique mental health risk factors present among the experiences of the wrongfully convicted, such as the emotional toll of legal proceedings and the lack of a fixed sentence. These factors contribute to the increased prevalence of mental illness and time spent in a Regional Psychiatric (or Treatment) Centre among the wrongfully convicted population compared to the average prisoner. It is unknown whether innocence is also a factor in the increased rate of segregation among the wrongfully convicted male population. Again, these are preliminary results based on the information available to the public. A more thorough investigation of the prison experiences of wrongfully convicted persons is needed to verify and expand on these preliminary findings. Until we understand the experiences of wrongfully convicted persons while incarcerated, we will be unable to provide them adequate treatment and compensation post-release.

References

The following references pertain to footnote 71:

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