



Trans Rights as Risks: On the Ambivalent Implementation of Canada's Groundbreaking Trans Prison Reform

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Abstract

This paper analyses policy documents and interviews conducted in federal prisons to trace the emergence and early effects of Canada's recent wave of groundbreaking trans correctional reforms. I show that prison authorities were forced to adopt more inclusive policies due to the legal, financial, and reputational risks generated by new trans rights protections. Yet, by examining what rights both enabled and foreclosed once they materialized in the everyday of prison life, I argue that reform's implementation was fraught with ambivalence. Namely, this ambivalence was felt by the correctional administrators tasked with translating nebulous policy principles into concrete guidelines; by staff, whose front-line duty involved weighing rights against risks; and by trans prisoners, who grappled with how to balance their new entitlements with risks and uncertainties. What trans correctional reforms reveal, then, is that rights and risks are caught in an ambivalent and co-constitutive relationship in Canada's regime of prison governance.

Key words: trans prisoners, ethnography, prison policy.

Résumé

Cet article analyse des politiques, des documents ainsi que des entrevues menées dans les prisons fédérales pour retracer l'émergence et les premiers effets de la récente vague de réformes correctionnelles à caractère historique pour les prisonniers trans qui fut ratifiée au Canada. Je montre que les autorités correctionnelles ont été forcées d'adopter des politiques plus inclusives en raison des risques juridiques, financiers et réputationnels générés par les nouveaux droits des personnes trans. Pourtant, en examinant comment les droits ont été à la fois officialisés et mis de côté dans le quotidien du milieu carcéral, je soutiens que la mise en œuvre de la réforme était empreinte d'ambivalence. Cette ambivalence a notamment été ressentie par les administrateurs correctionnels chargés de traduire les principes

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nébuleux de la réforme en des lignes directrices concrètes, par le personnel dont le devoir de première ligne consistait à soupeser les droits par rapport aux risques ainsi que par les détenus trans qui ont dû s'efforcer de concilier leurs nouveaux droits avec plusieurs types de risques et d'incertitudes. À terme, une telle analyse des réformes correctionnelles trans révèle que les droits et les risques sont enchevêtrés dans une relation ambivalente et co-constitutive au sein de la gouvernance des prisons du Canada.

Mots clés : prisonniers trans, réforme correctionnelle, ethnographie, politiques correctionnelles.

Introduction

On January 13, 2017, the Correctional Service of Canada (CSC) announced its immediate adoption of a new case-by-case process for assessing trans prisoners' accommodation requests, which would include considering their self-identified gender for placement in sex-segregated institutions (Harris 2017). CSC framed this new approach as a response to Bill C-16, a piece of legislation set to add "gender identity" and "gender expression" to the Canadian Human Rights Act by mid-2017.¹ Canada's federal prison system thus indicated it was following in the footsteps of the province of Ontario, the first Canadian correctional jurisdiction to launch a groundbreaking rights-compliant reform in early 2015. With this announcement, CSC also reversed a policy amendment it had released just a few days before, which had improved trans prisoners' access to medical care but otherwise left intact the long-entrenched policy standard of relying on their genitalia alone—in other words, on their pre- or post-surgical status—to make placement decisions.

Anatomy-based placement was cemented as a correctional standard with the Canadian Human Rights Tribunal's 2001 decision in the *Kavanagh v. Canada* case (hereafter, *Kavanagh* case).² The Tribunal determined that CSC had discriminated against trans woman Synthia Kavanagh on the existing grounds of "sex" and "disability" by prohibiting her from obtaining sex-reassignment surgery (now called gender-affirming surgery) during incarceration and by placing her in men's institutions because of her pre-surgical status. Yet the Tribunal determined that genitalia-based placement was justified due to the burden that alternative accommodations represented for the federal system and to the risks that pre-operative trans women were believed to embody for incarcerated cisgender (non-trans) women (Smith 2014; Kirkup 2018a).

The *Kavanagh* case's outcome exemplifies how human rights processes are ambivalent balancing acts: they require determining not only whether and when discrimination has taken place, but also whether and when discrimination is justified. In this paper, I argue that while new trans human rights protections have seemingly rendered *Kavanagh*-era policies unjustifiable, Canada's recent wave of

¹ See *An Act to Amend the Canadian Human Rights Act and the Criminal Code*, SC 2017, c 13.

² See *Kavanagh v Canada (AG)*, 2001 CanLII 8496, [2001] 41 CHRR 119 (CHRT) [*Kavanagh*].

rights-compliant trans correctional reforms is still fraught with ambivalence. Specifically, by examining the conditions of possibility and early effects of CSC's reform process, I reveal that rights and risks are caught in an ambivalent and co-constitutive relationship in Canada's regime of prison governance.

In the first section, after a brief overview of the methods employed in the ethnographic study on which this article is based, I show that CSC and other reformed jurisdictions pledged to adopt more inclusive policies for trans prisoners because new trans rights protections emerged as a substantial "organizational risk" (Whitty 2011, 124) for correctional authorities. Then, in the rest of the paper, I go beyond what CSC claimed to achieve and, following other anthropological inquiries into law's everyday manifestations (Das and Poole 2004; Das 2004; Shore and Wright 1997; Nader 2005), I explore how the "rights ideal" (Armstrong 2018, 403) driving reform was translated into policies and, in turn, how policies materialized in correctional institutions.

In the second section, I offer a close reading of federal policy documents and expose that reform was premised upon two vague and conflicting principles: CSC's enduring risk-managerial commitment to operate safe and secure institutions, and its new rights-compliant duty to accommodate the unique needs of trans prisoners.³ Policymakers resolved the tensions between these principles by making accommodations contingent upon the development of seemingly rights-compliant individualized protocols for each trans prisoner. However, such protocols also entitled CSC to eschew its duty to accommodate in cases representing "overriding health or safety concerns which cannot be resolved," an important risk-managerial exemption that policy documents left undefined.

In the third section, I present evidence from interviews I conducted in federal correctional institutions and demonstrate that the ambiguities CSC wrote into its policies gave rise to pervasive ambivalences in the early days of reform. Namely, these ambivalences were felt by the correctional administrators tasked with translating nebulous policy principles into concrete guidelines; by staff, whose front-line duty involved weighing rights against risks; and by trans prisoners, who themselves grappled with how to balance their new rights-based entitlements with various forms of risk and uncertainty.

Tracing Reform's Conditions of Possibility

Methods

Existing studies on trans incarceration, most of which describe the situation in the United States, have shown that trans prisoners are vulnerable to neglect and victimization when housed in identity-discordant institutions (see Jenness and Fenstermaker 2016; Rosenberg and Oswin 2015; Sumner and Sexton 2016). In this paper, I draw on an ethnographic research project intended to rectify the dearth of empirical data on trans imprisonment in Canada. This study's original aims were to determine what the consequences of Canada's anatomy-based placement policies

³ See Correctional Service of Canada, *Interim Policy Bulletin 584: Bill C-16 (Gender Identity or Expression)*, by Commissioner Don Head (Ottawa: Commissioner's Directives, 2017) [*Bulletin 584*].

were on incarcerated trans people, as well as to investigate why such policies continued to prevail at a time when other institutions were adopting more inclusive rights-compliant practices. But over the course of the research, I witnessed the significant rights-driven trans correctional reforms that Canadian jurisdictions undertook from 2015 onwards, and my objectives shifted to uncovering how these reforms were made possible and examining the effects of ensuing new policies.

Concretely, I conducted twenty-four months of multi-sited anthropological fieldwork (Marcus 1995) between 2014 and 2018, which involved participant-observation with various non-governmental organizations (NGOs) and service agencies located across Canada; an analysis of policy, case law, and media; and semi-structured interviews, focus groups, and informal recorded conversations with more than 100 persons. Participants included formerly incarcerated trans persons, activists, NGO staff, legal and medical service providers, law enforcement personnel, as well as thirty-six correctional staff members and thirteen trans prisoners I recruited between March and August 2018 in two federal prisons for men and one for women. In this article, I focus on the substance and outcomes of CSC's reform and principally rely on a close reading of pertinent policy and media documents and on an analysis of the interviews I conducted in federal prisons. But first, I contextualize CSC's reform by describing the legal transformations that preceded it.

Contextualizing Reform: Rights as Risks

CSC's pre-reform policies conformed with the bio-medical model of trans pathologization. This model emerged from psychiatric theories developed in the late nineteenth century and, since the 1950s, it has rested on the presumption that individuals whose sense of self as men or women does not conform with their bodily sex suffer from a disordered mental condition (MacKinnon 2018; Inch 2016).⁴ If thoroughly assessed and diagnosed by medical experts, this condition can warrant some trans persons' access to medical interventions like hormonal therapy and surgeries. Pathologization dictates that transition is a linear process involving sequential stages of medical treatment. In Canada, this has historically influenced provincial and federal jurisdictions to require trans people to undergo sex-reassignment surgery before obtaining new identity documents or accessing the sex-segregated spaces corresponding to their identity.

Yet, from the 1990s onwards, advocates pushed for the depathologization of trans subjectivity and sought to entitle a wider range of trans persons to a greater degree of decisional autonomy over their lives (Suess, Espineira, and Walters 2014; Irving and Raj 2014). This led to the rise of the model of gender self-determination, which aims to make "space for multiple embodiments [and] expressions" (Stanley 2014, 91) beyond the limits imposed by the gender binary (Spade 2006; 2011). In Canada, between the early 2000s and late 2010s, law reforms led to the adoption of more inclusive requirements for changes to identity documents and to the addition

⁴ The name of this condition has changed over time, most recently going from "gender identity disorder" to "gender dysphoria" (Davy 2015).

of gender identity and gender expression in human rights legislation (Singer 2017; McGill and Kirkup 2013; Kirkup 2018b). Trans personhood became a new legal category of difference—distinct from but equal to existing categories such as sex, disability, race, and religion—that the Canadian state promised to affirm and protect. As a result, public institutions were gradually constrained to affirm trans people’s self-determined identities regardless of their anatomy or appearance.

Legal scholars have argued that human rights have the potential to coerce correctional authorities into implementing more humane and just practices because “rights have the ability to manifest as a significant organizational risk” (Whitty 2011, 124) in the prison context (see also Murphy and Whitty 2007; Whitty 2016; Armstrong 2018). Organizational risk refers, first, to the actual or anticipated legal and financial consequences of rights-based litigation, and second, to “the capacity of human rights activism to propel an issue to center stage, damaging an organization’s operations and reputation, irrespective of actual legal liability” (Whitty 2011, 124). While it is well-established that risk is “a key organizing principle of contemporary correctional practice and offender management” (Maurutto and Hannah-Moffat 2006, 438), the concept of organizational risk links the prison sector to other public institutions that increasingly take up a “general corporate governance” (Whitty 2011, 126) style premised on managing both internal risks and what could be called extra-institutional risks (see also Sparks 2001; O’Malley 2004; Pratt 2017).⁵ In Canada, recent reforms suggest that correctional authorities were obligated to adopt new policies due to the known or anticipated organizational risk generated by new trans human rights protections.⁶

I mentioned above that Ontario was Canada’s first jurisdiction to release a new policy framework following the addition of trans rights protections in the province’s Human Rights Code.⁷ But Ontario’s groundbreaking prison reform is also partly attributable to the mediatized case of British citizen Avery Edison, a trans woman who was arrested for a minor immigration violation at Toronto’s Pearson International Airport in early 2014. Despite her passport indicating her gender marker as female, Edison was informed that because of her anatomy, she would be detained in a men’s correctional facility until her deportation. This triggered a movement of condemnations on social media and some media outlets, and Edison

⁵ This corporate governance style is evidenced in CSC’s 2017-18 *Departmental Result Report* (Goodale 2018). This document indicates that the key risks facing Canada’s federal correctional system are not only those associated with operational “safety and security” (12) or with “the complex and diverse profile of the offender population” (10). They also include the risks that CSC may “not be able to implement its mandate and ensure [its] financial sustainability” (14–15) or that it could “lose [the] support of partners” (16) who deliver “critical services” and “resources,” such as other criminal justice agencies and community organizations.

⁶ American and Canadian scholars have proposed that in spite of trans rights’ capacity to provide “remedies in some important contexts” (Spade 2006, 231), they fall short of transforming the institutional and structural barriers trans people face (Spade 2011; Currah 2006; Namaste 2011; Mandlis 2011; Irving 2013; Vipond 2015; Ashley 2018). If the pursuit of human rights (and hate crime) protections for trans people has not been devoid of ambivalence, Canadian trans correctional reforms demonstrate that rights have the potential to force even the most reluctant institutions to change. The question that then emerges, and which I aim to answer in this paper, is about the aftereffects of rights-driven institutional transformations.

⁷ See *An Act to amend the Human Rights Code with respect to gender identity and gender expression*, SO 2012, c 7.

was transferred to Vanier Centre for Women (*CBC News* 2014). In mid-2014, she filed human rights complaints against the Ontario Ministry of Community Safety and Correctional Services, alleging her treatment behind bars (e.g. intrusive medical examinations, misgendering, placement in segregation) amounted to discrimination. Ontario eventually settled her case in mid-2015, but even before doing so, in January of that year, the province released its new rights-compliant trans policy framework, self-promoted as “among the most progressive in North America.”⁸ Around the same time, British Columbia’s system was also targeted by mounting public and litigative pressure and, in November 2015, it became Canada’s second reformed jurisdiction.⁹ The province developed its new policy with input from Prisoners’ Legal Services (PLS), a legal clinic operated by the West Coast Prison Justice Society (WCPJS), which had previously supported numerous trans prisoners’ individual human rights complaints.

In December 2015, WCPJS filed a representative human rights complaint against CSC on behalf of federally incarcerated trans prisoners, but litigation was not the only catalyst for the federal system’s reform. In fact, CSC’s January 13, 2017, reform announcement was a direct response to a statement that Canada’s Prime Minister Justin Trudeau made the day before, on January 12, during a public townhall meeting held in Kingston, Ontario. At this event, trans advocate Teresa Windsor asked Trudeau what CSC would do for trans prisoners, whose situation she described as amounting to torture because they are often put in segregation in identity-discordant institutions. Though he avowed he had never before thought about the situation of trans prisoners, Trudeau promised the townhall’s audience and by extension, the national public, that his government would now address it to “do right in recognizing that trans rights are human rights.”¹⁰

Due to the legal, financial, and reputational risks that new trans rights protections represented for correctional authorities, trans prisoners have now allegedly been offered a space of inclusion where they were once doubly excluded. By this I mean that before reform, incarcerated trans people were excluded “by virtue of being prisoners in the carceral system” (Sumner and Sexton 2016, 638) and because of the pathologizing policies enforced in sex-segregated institutions. Through reform, trans prisoners have become exemplars of the Canadian state’s dedication to fulfilling its “carceral burden” (Dolovich 2009)—its obligation to care for and protect the individuals it deprives of liberty. Hence, trans correctional reforms align with Canada’s “balanced approach” (Meyer and O’Malley 2005, 205) to penal governance, a model premised on achieving an equilibrium between “punishment and correction” and, in recent decades, on developing targeted interventions for

⁸ See Ontario, Ministry of Community Safety and Correctional Services, *Admission, classification and placement of trans inmates, and staff training: highlights*, (Government Policy) (Ontario: Ontario Legislative Library, 2015).

⁹ See British Columbia, Ministry of Justice Corrections Branch, *Adult Custody Policy* (British Columbia: Adult Custody Division, 2005) at c 4.10: Case Management — Transgender Inmates.

¹⁰ Prime Minister Justin Trudeau, “PM Trudeau answers a question on trans rights in prison during a town hall in Kingston, Ontario” (12 Jan 2017) at 00h:01m:55s, online (video): Justin Trudeau, Prime Minister of Canada <pm.gc.ca/en/videos/2017/01/12/pm-trudeau-answers-question-trans-rights-prison-during-town-hall-kingston-ontario>.

other rights-protected categories of prisoners, such as women (Hannah-Moffat 2001; Hayman 2006) and Indigenous persons (WalDRAM 1997; Nielsen 2003).

As indicated by this account of Canada's recent trans correctional reforms, studying legal transformations can provide important insights into how the state grants inclusion to formerly excluded populations. Still, it is not sufficient to consider what law proclaims, and in this paper's next two sections, I go beyond what reforms purported to achieve and ask what trans rights both enabled and foreclosed upon their introduction in the prison. Other anthropologists have argued that critical insights into state governance can be gained by scrutinizing "the structure of rules and regulations embodied in the law" (Das 2004, 225), as well as by attending to "the space between law and its application" (Das and Poole 2004, 30; see also Shore and Wright 1997; Nader 2005). As such, in what follows, I first examine how the "rights ideal" (Armstrong 2018, 403) guiding CSC's reform was operationalized in policy documents, and second, how policies materialized in the everyday of prison life.

From "Rights Ideal" to Policy: Rights as Organizational Risks

CSC's policies are called *Commissioner's Directives* (CDs), and their purpose is to outline the federal system's "written rules and authorities" and the "procedures to be followed by staff."¹¹ Before reform, directives pertaining to the provision of trans medical care, trans prisoners' access to clothing and accessories, and genitalia-based placement were grouped under a policy item entitled *Health Service Policy Guidelines 800-5—Gender Dysphoria*. Above, I mentioned that a few days before announcing its new rights-compliant case-by-case approach for trans accommodations, CSC had released a formal trans policy amendment. Made effective on January 9, 2017, this amendment specifically aligned *Guidelines 800-5's* requirements for access to surgery with established international standards in trans health care (see WPATH 2011). In the year following this amendment, CSC made no additional formal modifications to its trans guidelines.

In mid-December 2017, CSC finally released a new policy document entitled *Interim Policy Bulletin 584—Bill C-16 (Gender Identity or Expression)* (hereafter, *Bulletin 584*), which remains in force at the time of writing. This brief document indicated that with the exception of the previously amended directives for surgery, *Guidelines 800-5's* content was instantly revoked. To replace it, *Bulletin 584* listed fourteen existing policy items covering a wide range of correctional practices and operations that CSC was in the process of reviewing.¹² *Bulletin 584* specified that, pending formal policy amendments, CSC's reform would be driven by two policy

¹¹ See Correctional Service of Canada, *Commissioner's Directive 200: Policy Framework*, by Interim Commissioner Anne Kelly, CDC 200 (Ottawa: Commissioner's Directives, 2018).

¹² *Bulletin 584*, *supra* note 3, the CDs listed in *Bulletin 584* are *Inmate Clothing Entitlements* (352), *Inmate Accommodation* (550), *Searching of Offenders* (566-7), *Urinalysis Testing* (566-10), *Personal Property of Offenders* (566-12), *Use of Force* (567-1), *Staff Protocol in Women Offender Institutions* (577), *Aboriginal Offenders* (702), *Preliminary Assessments and Post-Sentence Community Assessments* (705-1), *Immediate Needs Identification and Admission Interviews* (705-3), *Security Classification and Penitentiary Placement* (705-7), *Transfer of Inmates* (710-2), *Health Services* (800), and *Interventions to Preserve Life and Prevent Serious Bodily Harm* (843).

“principles” that would immediately “override any direction found in” existing policies. The first principle was CSC’s “commit[ment] to ensuring a safe, inclusive, and respectful environment for everyone, including staff, offenders, contractors, volunteers, and visitors,” and the second, its new “duty to accommodate based on gender identity or expression, regardless of the person’s anatomy (i.e. sex) or the gender marker on identification documents.”

Bulletin 584 instructed for these broad principles to be implemented through the development of “individualized protocols” for each trans prisoner, which would cover accommodations such as program participation, searches, urinalysis, “access to private and safe” bathroom facilities, and “preferred name and pronoun.” At face value, individualized protocols are legitimate rights-compliant devices that would enable prison staff to accommodate trans persons’ diverse and distinctive identities, needs, and preferences. Indeed, human rights law dictates that providing accommodations “requires an individualized approach” (Canadian Human Rights Commission, n.d., 3) adapted to the unique needs of each individual person (see Pothier 2009; Molloy 1992). But individualized protocols were not only a means for CSC to fulfill its new rights-compliant duty to accommodate trans prisoners. Given that correctional security classification schemes and risk-assessment tools rest on evaluating and responding to the specific needs and/or risks of each individual prisoner (Hannah-Moffat 2006; 2016), these protocols also empowered the federal system to uphold its risk-managerial principle. The development of individualized protocols therefore appears as a sensible strategy for CSC to achieve a balance between its reform’s two guiding principles, because the individualisation of needs is to rights-based accommodations what the “individualisation of risk” (Hannah-Moffat 2016, 37) is to correctional risk-management. However, *Bulletin 584* incorporated a substantial risk-centered caveat, also found in the policy documents of reformed provincial systems: that rights-compliant accommodations could be denied for cases representing “overriding health or safety concerns which cannot be resolved.” This suggests that individualized protocols authorized CSC to prioritize its risk-managerial commitment over its rights-compliant duty.

Significantly, *Bulletin 584* did not provide guidelines on how to develop individualized protocols, nor did it define what comprises “overriding health or safety concerns which cannot be resolved.” This lack of clarity created major challenges for correctional administrators and staff, in particular since the fourteen policy items listed in *Bulletin 584* had not been amended by the time I conducted research in federal institutions in 2018. What interviewees anticipated was that CSC would eventually rectify the ambiguities written in *Bulletin 584* through policy amendments but, to date, all policy items remain untouched. Moreover, a draft of policy amendments I received in mid-2017 implies that these items may not be devoid of ambiguities even once revised.¹³ While this draft of amendments may not correspond to the formal reviewed policies CSC will eventually release, they are

¹³ I obtained this document by way of a community group I collaborated with during fieldwork, which itself received it from an NGO that CSC contacted directly for feedback as part of what *Bulletin 584* calls an ongoing process of “consultation” with “internal and external stakeholders on the policies under review.”

worthy of attention because, according to an administrator involved in the consultation process, the version I received was still in circulation by as late as August 2018.

Draft amendments expose how CSC planned to amend each of the widely different items listed in *Bulletin 584* in the exact same manner. To give an example, like other policy items, *CD 567-1—Use of Force* was modified through the addition of one sentence, and nothing more: “The Deputy Warden, in collaboration with a mental health professional, will develop individualized protocols for inmates with gender considerations.” This implies that CSC did not intend to make major modifications to existing policies and that amendments would not provide clarifications about individualized protocols or “health or safety concerns.” The use of the term “gender considerations” in draft amendments is also peculiar, since it is not commonly employed in trans communities or existing literature.¹⁴ Still, the definition provided in the “glossary” section of draft amendments gestures to its intended inclusivity: “Gender considerations: refers to offenders whose current gender (i.e., identity or expression) has changed at any time since birth, or whose current gender does not match the gender usually associated with their current sex (anatomy). It also includes individuals whose gender or sex is non-binary.” While this definition signals that CSC intended to bring into line its trans policy regime with the model of gender self-determination, the sentence that draft amendments added to existing policy items also re-inscribed pathologization into the federal system’s reform by re-affirming “mental health” experts’ authority in the development of individualized protocols.

My close reading of *Bulletin 584* and draft amendments uncovers that CSC’s reform was driven by inherently vague and contradictory policy documents. They were vague because they neither clarified what individualized protocols should contain nor what they could exclude on the basis of “overriding health or safety concerns,” and they were contradictory given they endorsed both pathologization and gender self-determination. In turn, upon their implementation, CSC’s ambiguous policies had ambivalent consequences for correctional administrators, staff, and trans prisoners.

From Policy to Implementation: Rights as Everyday Risks Correctional Administrators: Adopting and Adapting Principles

The correctional administrators I interviewed, which included assistant wardens and correctional managers ($n = 6$), were receptive overall towards CSC’s rights-compliant reform, even if it represented a massive overhaul of long-established policy standards. However, all voiced concerns with how CSC announced its new policy to correctional personnel: *Bulletin 584* was posted on CSC’s website on December 13, 2017, but most administrators and staff were only alerted to it

¹⁴ This, in combination with evidence that some of the “stakeholders” CSC selected had no direct expertise on trans or criminal justice issues—including the NGO from which I received the draft amendments—raises concerns about the legitimacy of the consultation process described in *Bulletin 584*, *supra* note 3.

through an official memo circulated internally on December 27, the day it was set to come into force.

As one interviewee anticipated, the policy's sudden release would jeopardize staff "buy-in" or, in another's words, it would risk widening the gap between staff's everyday realities and "the paper pushers at CSC's Headquarters" in Ottawa. That *Bulletin 584* was made effective during the holidays was even interpreted as a strategic decision meant to catch institutions by surprise and stifle any resistance to the changes proposed. A correctional manager on the men's side expressed that it was not the first time that CSC had launched a reform in this way:

We all do in time conform to what the policies are. But the way it starts in CSC is, "Here's an email. Here's a memo." There is no education on it. There is no preparatory discussion on it. Ours is always a response. And one of the expressions I use is the "paintbrush." Do not take the paintbrush and paint us all the same colour. CSC corporate does that every day. [...] But they fail to realize.... We do not all have the same institutions.

For administrators, CSC was imposing a one-size-fits-all model that would not take into account variations across the institutional settings where policies would be implemented. Administrators were also perplexed that the fourteen policy items listed in *Bulletin 584* had yet to be amended. To cite an expression employed word-for-word by six different participants (administrators and staff), CSC had put the "cart before the horse" by initiating a reform process without first making formal policy amendments.

An assistant warden in the women's sector explained how *Bulletin 584's* lack of clear policy directives led some institutions to develop their own policy solutions, including for individualized protocols:

We basically took the interim *Bulletin*, made up a template, and that's what we use. And I've given it to other sites, because what I found out was that the male sites, when they get someone who identifies as female, they didn't think they had to do an individualized protocol. And then they want the inmates transferred to us, and I'm like, "Well where's your individualized protocol? What are we managing?" And the male side says, "Oh we don't need to do that." Well, yeah, they do.

This shows that, in spite of administrators' worry that CSC's reform was imposing blanket policies without considering individual institutions' distinct operational contexts, *Bulletin 584* entitled them to adopt its two principles by adapting them to their local needs. As such, CSC's policy implementation process featured an ongoing component of *ad hoc*, discretionary policy development. What this reveals, I argue, is that policies' ambiguity effectively made discretion the true guiding principle of CSC's reform.

The assistant warden's use of the term "managing," above, should also be noted here. It supports my earlier point that individualized protocols served both to accommodate prisoners' unique differences and to manage their individual risks. Since all prison administrators I met expressed apprehensions about *Bulletin 584's* lack of clarity on what would constitute "overriding health or safety concerns which cannot be resolved," it can be assumed they would likely interpret its principles in a

prudential, risk-averse manner. The quote above indicates that this may be especially pronounced for one policy item: *CD 710-2—Transfer of Inmates*.¹⁵ Another assistant warden (in the men’s sector) said that in the first weeks of January 2018, administrators organized a series of emergency meetings to discuss what “overriding health or safety concerns” would signify for transfer requests. What emerged from these meetings was that there was no consensus among administrators about what this exception encompassed. This participant described that a salient point of contention was whether or not individual prisoners’ past convictions constituted acceptable justifications to deny transfers:

I immediately asked [name], the warden, to get clarification on a couple points, particularly, what are the security issues that would preclude [a transfer], exactly. And [the warden’s] opinion is, “Well the obvious, like if they had offenses against females.” I’m like, “Pardon? That’s not obvious to me at all, we’ve got a ton of sex offenders that have committed offenses against males and they’re all here. That is nothing as far as I’m concerned.” I said, “I do not see that as making sense at all. That has nothing to do with how they want to identify. Their offences [...] are kind of irrelevant so, no, I don’t think that’s an obvious one at all.”

This assistant warden’s narration of a conversation among administrators reveals that a double standard could be applied for certain trans prisoners under the new policy regime. While men convicted of sexual offences against other men would unproblematically continue to be housed in men’s institutions, trans women convicted of similar offences against women may be considered too risky for women’s institutions.

Other administrators and some staff members believed that, regardless of their past convictions, trans women who had not undergone genital surgery would be too risky for women’s institutions, echoing the bio-essentialist arguments employed to justify genitalia-based placement policies in the *Kavanagh* case.¹⁶ Notably, interviewees did not express the same concern for trans women housed in women’s institutions after undergoing genital surgery. Trans women’s vulnerability to victimization in men’s institutions was also left unaddressed in administrators’ risk calculations. Moreover, the near totality of participants expressed concerns that trans men would be at great risk of being sexually assaulted if transferred to men’s institutions, but none considered them to be at risk or to represent a risk when housed with women. In all of these interpretations of risk, sexual violence was understood to involve two different sets of genitals and an act of coercive penetration, rather than the larger spectrum of non-consensual sexual contact reflected in the legal definition of sexual assault.¹⁷

Still, correctional administrators’ assessments of sexual riskiness encompassed other “health or safety concerns” beyond those related to prisoners’ safety. In the words of one of them: “Say if somebody was coming to a male institution, and if

¹⁵ Correctional Service of Canada, *Commissioner’s Directive 710-2: Transfer of Inmates*, by Commissioner Anne Kelly, CDC 710-2 (Ottawa: Commissioner’s Directives, 2018).

¹⁶ *Kavanagh*, *supra* note 2.

¹⁷ See *Criminal Code*, RSC 1985, c C-46 at s 265.1.

there are a lot of sex offenders at the receiving institution. Are they just going to go, ‘Oh, well, here’s free game,’ you know what I mean? And then that inmate ends up pregnant, right? Having a pregnant inmate at a male institution.” Other administrators and staff expressed a similar worry about the risk of pregnancy at men’s institutions, as these facilities would not be equipped to provide care to a pregnant prisoner. Even in women’s institutions, the risk of pregnancy was an important operational risk because the provision of pre- and post-natal care was already perceived as deficient by administrators. If sexual riskiness was primarily understood by participants to be circumscribed to the domain of risk of sexual assault, even the possibility of consensual sex was considered too risky because of the risk of pregnancy.¹⁸ This indicates that administrators anticipated that in assessing transfer requests, they would have to consider both potential risks to individuals’ safety and wider operational, legal, and financial risks. Nevertheless, interviewees expressed that the category of “health or safety concerns” could not be interpreted in a manifestly discriminatory manner since breaching prisoners’ rights could also have legal and reputational consequences. Indeed, by the time I conducted research in federal prisons, some prisoners’ transfer requests had been accepted because of the principles outlined in *Bulletin 584*.¹⁹

Although the examples I described in this section primarily concerned the risks associated with transfers, my interviews with administrators indicated they engaged in similar risk calculations for other accommodations listed in *Bulletin 584*.²⁰ My point is that their anxieties over placement illustrate how trans rights did not only represent an “organizational risk” (Whitty 2011, 124) before reform. They also materialized as potential risks—including physical, financial, legal, and reputational risks—during reform’s implementation. Administrators expressed that in translating ambiguous policy principles into guidelines for staff, they struggled with how to balance their new duty to accommodate the rights of trans prisoners and the yet-to-be-defined risks that both accommodations and refusals to accommodate could engender. This gave rise to other forms of ambivalence for the staff members tasked with implementing reform’s principles in their everyday correctional work.

Correctional Staff: Weighing Rights against Risks

Bulletin 584 was met with great surprise by the correctional staff I interviewed, who comprised correctional officers ($n = 8$), healthcare professionals ($n = 8$), parole officers ($n = 4$), programs officers ($n = 5$), teachers ($n = 3$), and chaplains ($n = 2$). Staff also reported that reform’s principles and practical ramifications were not clearly communicated to them. This, in combination with the lack of explicit policy directives found in *Bulletin 584*,²¹ created everyday correctional conundrums in reform’s early days, in particular for correctional officers and parole officers.

¹⁸ Robyn Emerton (2018) discusses similar tensions between rights-based accommodations and correctional conceptions of institutional risk in her unpublished dissertation.

¹⁹ *Bulletin 584*, *supra* note 3.

²⁰ *Bulletin 584*, *supra* note 3.

²¹ *Bulletin 584*, *supra* note 3.

A correctional officer explained that in the absence of formal policy amendments to the items listed in *Bulletin 584*, new accommodations for trans prisoners appeared as a form of special treatment that could jeopardize staff's capacity to manage the prison population at large:

An example is that all offenders must be in institutional dress during working hours. [...] Management says, "It is all the same," but then they come up with something like "Well, except for this case." And that's where correctional staff have a problem. 99.9% of the time you want me to enforce this rule, but not for this one individual. They don't take into account the impact that it has on us trying to enforce that [rule]. Because the rest of the population looks at that person and goes "Why can't I wear something else?"

Other interviewees argued that unrevised policy items would risk complicating their everyday tasks since correctional work increasingly requires considering the unique needs and risks of a growing number of rights-protected categories of prisoners. In the words of another correctional officer:

How far do you go to accommodate somebody's uniqueness? And at what point do you draw the line? Nowadays, working here, it has become like, "Oh, you're Inuit? You're Aboriginal? You're Black? White? Muslim? You have mental health issues?" And now, the transgender thing. We already have so many variables in here. So... I don't know. I guess it's how accepting you wanna be to it all.

New rights-protected trans accommodations appeared to some interviewees as a form of special treatment and to others as a symbol of the proliferation of individualized correctional interventions. Regardless of their perspective, interviewees indicated that because of reform, correctional work would now involve weighing trans rights against other rights.

Moreover, certain staff members voiced that balancing trans rights against other rights also involved factoring in their own rights. Several participants identified the example of strip searches as an accommodation for which this was the case. For example, a correctional officer working at a men's institution disclosed her objections to conducting a strip search on a trans woman who has not undergone genital surgery and, in the following quote, her use of male pronouns denotes that despite reform, anatomy may remain the defining criterion some staff members will apply to authenticate a trans person's identity:

Like I said, we have to do the job. But then they tell us we have to strip search. Okay, but I don't want to. He's technically male still even though he identifies as female. We're told, "Well, no, you have to strip search him." [...] I don't have the right to refuse because I feel uncomfortable, but we have to strip him because he feels uncomfortable if a male strips him. Okay, but where do my rights go?

What this participant identified was that new trans rights felt like a violation of her own rights—a breach to what *Bulletin 584* identified as CSC's commitment to "ensuring a safe, inclusive, and respectful environment for everyone, including staff."

In contrast, a primary worker (as correctional officers are called in women's institutions) shared that administrators had attempted to prohibit him from

conducting searches on pre-operative trans men. This was because of the *Corrections and Conditional Release Act* (CCRA), the federal law governing CSC's operations.²² The CCRA's contents supersede any lower-level correctional rules, including *Commissioner's Directives*. To date, it explicitly states that searches must be conducted "by a staff member of the same sex" unless there are clear, immediate safety concerns to be averted. Before reform, the policy item pertaining to searches (*CD 566-7—Searching of Offenders*) outlined that for strip searches to be "conducted in a manner consistent with the CCRA," pre-operative trans prisoners' so-called "mixed gender physiology" had to be "take[n] into consideration."²³ Practically, this meant that to respect the prohibition on cross-gender searches, "female officers" would search a pre-operative trans woman's "upper body" and "male officers," her "lower body." For some administrators and staff, providing rights-compliant accommodations for strip searches would constitute a violation of the CCRA and of the guidelines listed in *CD 566-7*. Due to this and other discrepancies between the CCRA, unamended policy items, and the principles identified in *Bulletin 584*, there was no clear consensus among staff on what they were expected and legally obligated to do.

The example of strip searches also points to the existence of different protocols, correctional tools, and programs for incarcerated men and women. Here, it is key to mention that recent trans correctional reforms were preceded by CSC's rights-driven reform of its women's sector, which took place in the 1990s and early 2000s. Briefly, this reform aimed to respect imprisoned women's rights and respond to their unique needs and risks, and it was based on their "characterization [...] as relational, victimized, maternal, nurturing and disadvantaged" (Hannah-Moffat 2010, 198). It resulted in the establishment of new gender-responsive institutions for women (Hannah-Moffat 2001; Hayman 2006), with distinctive facilities, programs, and tools from those found in the men's sector. While it has been argued that gender-responsive correctional orientations have weakened since women-centered institutions first opened (Montford 2015), it remains that men's and women's facilities are different in both their operations and programs. As a result, numerous participants reported being unsure about the risk-assessment tools to employ and the programs to recommend for trans prisoners. This suggests that some correctional staff members perceived trans prisoners to be fundamentally different from other prisoners detained in men's or women's institutions. It should therefore come as no surprise that numerous participants divulged being distrustful of prisoners who did not "walk the talk," as a parole officer said. Another interviewee explained staff's mistrust as such: "First of all, if a person says they're female, I'm going to expect some sort of feminine attire. If they dress like a man, act like a man, don't shave, don't wear any makeup... How could we differentiate between male and female at that point? If an apple looks like an apple...." Although CSC's policy documents claimed that reform would entitle a larger spectrum of trans persons to accommodations, certain staff members reported relying on normative

²² See *Corrections and Conditional Release Act*, SC 1992, c 20.

²³ Correctional Service of Canada, *Commissioner's Directive 566-7: Searching of Offenders*, by Commissioner Don Head, CDC 566-7 (Ottawa: Commissioner's Directives, 2015) at Annex F.

gendered appearance and behaviours to determine the legitimacy of prisoners' requests for accommodations—particularly for transfer requests.

During interviews, I was informed that at least one person housed in a men's institution had been denied a transfer to a women's facility. Participants stated that this prisoner had a past of violent offences against women, which on its own may not have been a sufficient justification to reject a transfer request. However, this person had also only disclosed a trans identity after being incarcerated, was perceived by staff as having what one interviewee described as an "ambiguous gender presentation," and was uncertain about wanting to pursue medical transition. My goal here is not to establish whether this person's requests for accommodations were legitimate or not, nor whether they represented justifiable "overriding health or safety concerns which cannot be resolved." Instead, I propose that what this case and the rest of the evidence presented above exemplify is that reform's rights-compliant principle was in an ambivalent tension with two correctional logics (see also Cunha 2014, 221). First, it sat uneasily with prisons' risk-managerial logic, and second, it clashed with the binarily gendered correctional models imposed on each side of sex-segregation.

For a correctional officer, because of these tensions, CSC had left staff stuck "between a rock and a hard place." A parole officer described this ambivalent position as follows: "As the service pushes towards following government and wanting to be a leader, and giving these people their rights, I think we're jumping the queue. We're not educated. We haven't changed our protocols and our policies. [...] How bad is the discipline going to be on us if something goes wrong?" This quote illustrates that correctional staff were required to consider risks to their professional futures when balancing rights against risks. These processes of risk calculation could then lead staff to harbour feelings of mistrust when approached with requests for trans accommodations. This is because, according to a psychologist, suspicion is a pervasive correctional attitude that many staff members preemptively extend to the prison population at large: "There's a sense, I think, among anyone who's worked in corrections, that any privilege can be abused and will likely be abused. [...] I think the people who work within corrections may justly, and sometimes unjustly, be hypersensitive to it, and may be a little cynical of trans people, for example, because we're used to people trying to exploit." The lack of direction they received on how to implement policies generated feelings of ambivalence for prison staff, but the fact remains that they and administrators are ultimately entrusted with the discretionary power to determine how to detect and manage risks, and whether or not to obey policies (see Kerr 2014; 2015). Incarcerated trans persons are therefore subjected to correctional staff's decisional authority, and their experiences in the early stages of reform more broadly indicate that they, too, were invested in balancing the affirmation of their new rights with various forms of risk and uncertainty.

Trans Prisoners: Balancing Entitlements and Uncertainties

The thirteen prisoners I met in federal institutions were a small but diverse sample. Some strongly identified as women, others as men, and a few defined themselves as

non-binary, gender non-conforming, or as both trans and Two-Spirit.²⁴ The majority were known as trans at their institution but a few had only disclosed their identity selectively to staff members and other incarcerated persons. Some had accessed various aspects of medical transition while others had not done so or did not intend to in the future. A commonality to note across these otherwise different interviewees was that the new policy regime had not radically changed how safe they felt in prison. This was certainly more pronounced for trans persons detained in men's facilities, though women's institutions were not devoid of perceived risks or lived uncertainties.

American researchers have documented that, in order to increase their safety, trans women detained in men's prisons may prefer to conceal or downplay their identity by "conform[ing] to male gender norms" (White Hughto et al. 2018, 7; see also Jenness and Fenstermaker 2014). Of the seven prisoners I interviewed in men's institutions (all of whom were assigned male at birth), two shared that they fully concealed their gender identity and another two that they downplayed it depending on circumstances. For example, a person who chose not to present as a woman explained the risk-assessment process he (this person preferred to be addressed in the masculine at the time) engaged in even after the new policy's announcement: "The thought that is foremost in my mind is at this institution, it's perfectly fine. I could transition and present differently without any problem. But if something happens and I end up at a higher level of security, I'm in serious trouble. It's a personal safety thing." Beyond considering similar risks to his (this person also preferred masculine pronouns) safety, another interviewee shared wanting to wait until his child was older before beginning to "live full time as a woman" and starting medical transition, and that, in the meantime, he was presenting as "an ordinary guy." Another participant said she chose to wear more androgynous clothing and often did not shave her facial hair since it meant other prisoners paid less attention to her—both in terms of being mocked and receiving sexual propositions:

If it was completely acceptable, and nobody gave me any problems, I'd probably wear a lot more different things. [...] I'm not saying I'd be walking around in a dress every single day, but there's definitely a few different things I'd like to wear that I can't even picture myself wearing, just because I can think of all the ridicule I'd have to deal with. It doesn't help that I'm younger looking. Especially when I first got here, I was very clean shaven, and now I can't do that. [...] It's maybe about 25% better, just with a bit of stubble, just because I look that slight bit older, they're no longer interested.

For another interviewee, the main reason for alternating between a more masculine and a more feminine presentation was that she was employed in a stereotypically masculine profession at her institution and that she only presented as a woman while "off the job" to safeguard her relationship with her colleagues and supervisors.

²⁴ Cherokee scholar Qwo-Li Driskill explains that "Two-Spirit was chosen as an intertribal term to be used in English as a way to communicate numerous [Indigenous] traditions and social categories of gender" and/or sexuality "outside dominant European binaries" (2010, 72.)

Even trans prisoners who consistently affirmed their identity reported that they did not always want to request accommodations. A trans woman described that she would prefer to be transferred to a women's institution but was not willing to relocate far from her aging parents and her children, who lived within driving distance of her current institution. Another participant disclosed that, around a decade earlier, she was sexually assaulted in a men's maximum-security institution and that while she would "definitely feel safer" on the women's side, she preferred to stay at her current (lower security) men's facility. This was because she generally felt well-integrated and affirmed in the prison population, had recently started "a really wonderful relationship" with another prisoner, and was worried about how she would be received on the women's side.

The six persons I met in women's institutions revealed that in spite of the differences between the men's and women's sectors, trans prisoners may be bound to undertake comparable acts of risk calculation on each side of sex-segregation. These participants included trans men and other persons assigned female at birth, as well as trans women who transferred both under CSC's former policy regime and after *Bulletin 584's* launch. Leading researchers on trans prisoners' experiences in the United States have shown that "[g]ender transgression in women's prisons plays out in an entirely different context" (Sumner and Sexton 2015, 17) than in men's facilities, and that gender-variant embodiments may be more easily accepted in the women's sector. However, my interviews suggest that being a known or visible trans person can still have negative repercussions in women's institutions, and that this may be worse for trans women.

Administrators and staff perceived trans men and other persons assigned female at birth to be well-integrated, or even popular, in the women's sector. Yet, such prisoners were themselves more ambivalent about this question and some of their experiences evince that embodied masculinity can clash with the norms of proper gendered conduct that staff expect in women's institutions. In the words of one interviewee:

A lot of our programming is around women as mothers, women as nurturers, women as fulfilling certain roles. Granted, there's already been so much stigma around how women should be, and I think that's where the criminal process comes in really hard against women. Because criminal women aren't acting like women should. In here, those kinds of stereotypes continue to be reinforced. Especially for trans people, because here, you [might have] somebody who might not necessarily physically look like a woman or represent the ideal of "woman" that is enforced.

This person themselves identified as non-binary and said that this was seen as an incomprehensible form of identification by most staff, who treated them "like a woman." But other individuals revealed that even binarily-identified trans men's accommodation requests can be interpreted by staff as instances of "acting out" against the institution or forms of "non-compliance." One participant disclosed that this led him to avoid making certain requests in order not to jeopardize his prospect of obtaining parole.

Interviewees noted that masculine persons may nonetheless have a higher status than feminine persons in women's institutions, in line with research evidence

from the United States (Sumner and Sexton 2015). However, both staff and prisoners reported that this would only apply to persons assigned female at birth and that trans women's acceptance in the women's sector is highly dependent on their ability to display a normatively feminine, even hyperfeminine, gender presentation. Importantly, interviewees suggested that this would be the case regardless of trans women's surgical status. A parole officer described this by contrasting a trans woman who transferred to the women's side under the new policy regime with another who transferred post-surgery before reform:

Well, we thought there was gonna be more of an issue with the second one, because she still had her... appendage. But there was no.... It was just the way she came across. She's so feminine. Like really extremely feminine. She was literally a woman on fire. She still had her parts down there, but was way more female than I could ever even imagine being myself. She was just so a woman that she was so easy to accept. And I think she also came in after this other one who comes across as very manly, speaks manly, talks like a dude that's been in prison for thirty years. The contrast between the two made the second one's reception completely different.

In a similar example, a trans woman who had spent numerous years in men's institutions explained the challenges she faced when confronted with a whole new set of norms and expectations of what constitutes proper gendered conduct after she was transferred to a women's prison. Because of her appearance and rough demeanor, she was subjected to denigrating comments from some staff members and to harassment from numerous prisoners. She simply said: "Nothing had prepared me for a women's pen."

These cases demonstrate that in everyday encounters, the truth of people's sex is not determined by their genitalia but through a process of intersubjective social recognition contingent upon their capacity to achieve the normative look (Plemons 2017) expected for their identity—a look that requires a harmonious alignment between physical appearance and embodied gendered performance. But staff and prisoners' perpetuation of gender norms in women's prisons should not solely be seen as a form of bias. It is also a by-product of the broader gendered regime enforced in these facilities. Other researchers have argued that in spite of its rights-driven aspirations, CSC's women-centered, gender-responsive reform had nefarious consequences for many incarcerated women who did not conform to the idealized category of womanhood promoted in women-centered institutions, such as Indigenous women and those living with mental health issues (Hannah-Moffat 2001; Hayman 2006). The notion of empowerment underpinning women-centered rehabilitative interventions has also been designated "as a strategy of responsabilization" (Hannah-Moffat 2000, 512) that various prisoners—in particular those deemed "difficult to manage" (526) or "unempowerable"—fall short of fulfilling. Trans prisoners' experiences in women's institutions suggest that they, too, may fall short of upholding the norms of the proper gendered conduct expected of them. This may be the case for some prisoners more than others, given that perceptions of "normative, non-threatening gender" (Beauchamp 2013, 54) are always mediated by the presence or absence of other forms of difference, such as race, class, sexuality, and (dis)ability (see Snorton 2009; Katri 2018; Vitulli 2010).

Like non-incarcerated trans people who must balance their desire for self-affirmation with risks to their safety, income, family support, and other aspects of their lives (Scheim and Bauer 2015; Hébert, Chamberland, and Enriquez 2012; Sansão et al. 2018), the interviewees I presented above were invested in a process of balancing the possible benefits of new rights-based accommodations against their possible consequences. These participants also show that gender self-determination is one among many aspects of life in prison that trans people have to contend with to survive incarceration. Like other prisoners, my interviewees were engaged in balancing acts that involved, on the one hand, mitigating immediate threats to their safety and staff's "arbitrary exercises of power" (Ricciardelli, Maier, and Hannah-Moffat 2015, 508; see also Ricciardelli 2014; Maier and Ricciardelli 2019; Crewe 2011) and, on the other, managing the emotional and interpersonal dimensions of prison life. In another example, a trans woman shared that although she felt far safer since transferring to a women's institution, she was engaging in various strategies of risk-mitigating self-effacement post-transfer, out of a fear of getting into trouble. Speaking of the women in her housing unit, she said: "Sometimes I am scared they are going to accuse me. Or yell at me. Or do something bad for me. [...] So, I try to accommodate them and try to keep my distance because I don't want to be accused of something."

Regardless of where they were detained, trans interviewees of all genders described feeling like they were under more intensive scrutiny after *Bulletin 584's* release, and they were not alone in perceiving that CSC's new rights-compliant regime encouraged more surveillance. Some staff members from men's and women's institutions avowed they were now more vigilant around trans prisoners due to the risks engendered by reformed policies. Certain administrators and staff even stated that the use of segregation may be a viable solution to manage such risks—a strategy also employed pre-reform, as reported in the Kavanagh case decision. It is notable that throughout fieldwork, I only met one trans man who had succeeded in transferring from a women's facility to a men's, in his case in a reformed provincial system. What he told me about his post-transfer experiences was that he was considered too vulnerable for the general population and spent most of his year-long sentence in segregation. His case and others I have discussed above show that Canadian correctional authorities' rights-driven ambitions were caught in an ambivalent tension with their risk-managerial commitments—a tension that administrators, staff, and trans prisoners themselves wrestled with on each side of sex-segregation.

Conclusion

In this paper, I traced the conditions of possibility and early effects of a recent wave of groundbreaking trans correctional reforms in Canada. Focusing on CSC's reform process, I demonstrated that new policies materialized because emerging trans human rights protections represented "a significant organizational risk" (Whitty 2011, 124) for correctional authorities. Rights-driven reforms epitomized the Canadian state's self-proclaimed inclusive and "balanced approach" (Meyer and O'Malley 2005, 205) to penal governance. CSC's policymakers attempted to

achieve a balance between the principles of rights-compliance and of risk-management by making trans accommodations contingent upon the development of individualized protocols, but such protocols made discretion the true guiding principle of CSC's reform because they entitled staff to deny accommodations for cases representing an undefined category of "health or safety concerns." In turn, the new policy regime's ambiguities generated substantial ambivalences in the everyday of prison life. Namely, these ambiguities created disagreements among correctional administrators over the risks involved in accommodating trans prisoners or refusing to provide accommodations. They also generated confusion and suspicion for staff members, whose role became to weigh trans rights against their institutions' risk-managerial and gender-responsive mandates. Finally, they forced trans prisoners to not only anticipate the possible consequences of their new rights-based entitlements, but also to cope with reform's unintended consequences on each side of sex-segregation.

It could be claimed that the ambivalences I have identified in this paper are characteristic of the early stages of any process of reform, regardless of the institutional context in which it takes place. But recent cases involving trans prisoners detained in reformed provincial and federal institutions indicate that the ambivalent balancing acts that characterized the Kavanagh case—acts that involved not only determining when prisoners' rights are violated, but also when rights violations are justified—have persisted in the years following new policies' launch.²⁵ As such, in spite of their inclusionary promises, rights-compliant reforms have entitled correctional authorities to continue excluding trans prisoners on the basis of risk. What Canada's trans correctional reforms reveal, then, is that in prison, the "logic of rights" (Murphy and Whitty 2007, 811) is caught in an ambivalent relationship with the "logic of risks" (O'Malley 2004, 150). These reforms, as such, provide a window to reflect on the ambivalent nature of Canada's regime of prison governance, through which inclusion and exclusion are not polar opposites but co-constitutive potentialities.

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²⁵ See *Patterson v Canada (Minister of Justice)*, 2018 BCCA 493; *Boulachanis v Canada (AG)*, 2019 FC 456; *Canada (PG) c Boulachanis*, 2019 CAF 100 (cited in *Toutsaint v Canada (AG)*, 2019 FC 817).

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