

**THE CONTRIBUTION OF JUDICIAL DISCRETION TO A
GREYING CANADIAN PRISON POPULATION**

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ABSTRACT

Growing numbers of older incarcerated offenders raise a number of challenges for Correctional Services Canada (CSC). Without codification, the method for accounting for the relatively advanced age of older offenders before they become the responsibility of CSC is through judicial discretion. However, planned federal justice sentencing reforms would reduce the ability for judges to use discretion to account for the specific circumstances of older offenders. This raises the question: would sentencing policy changes result in a greater numbers of older offenders being incarcerated thereby aggravating the current *greying* of Canadian prisons? Using a sample of judicial decisions from the British Columbian Provincial Court Database, it is determined that judges are considering the 'older age' of offenders. Since judges are tempering the problem of prison population aging, the elimination of judicial discretion through sentencing policy changes would result in an aggravation of the current problems associated with prison population aging.

Keywords: older offenders; aging offenders; greying of prisons; aging prisoners; correctional programming; sentencing policy; mandatory minimum sentences; judicial discretion

Subject Terms: Older offenders; Older prisoners; Correctional institutions; Sentences (Criminal procedure) – Canada; Mandatory sentences – Canada

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CHAPTER 1: INTRODUCTION

The renowned demographer David Foot (1996) has summarized the importance of studying population trends by arguing that "[d]emographics explain about two-thirds of everything" (p. 2). Foot (1996) suggests that demographics:

... tell us a great deal about which products will be in demand in five years, and they accurately predict school enrolments many years in advance. They allow us to forecast which drugs will be in fashion ten years down the road, as well as what sorts of crimes will be on the increase. They help us to know when houses will go up in value, and when they will go down. (Foot, 1996: p. 2)

According to gerontologist Andrew Wister, demographics must be "understood within the context of social relationships and social institutions" (Wister, 2004: p. 4). As a relatively large birth cohort moves through its lifespan, social institutions, beginning with education and culminating with public cemeteries and crematoriums, will be affected by the demands of such a birth cohort. The baby boom generation (those born in the twenty years following the end of World War II) transformed Canadian society with its unprecedented size. "Persons born in this generation totaled 9.8 million people or almost 33% of the Canadian population as of the 1996 census" (Boe, 2002: p. 1). Since the baby boom generation is aging the Canadian population is aging. Moreover, "[t]he 'aging' of the boomer population will continue to be the central demographic trend dominating Canadian society for the coming decade" (Boe, 2002: p. 2). The aging trend makes it necessary to carefully plan for its impact because the social institutions that provide services for Canadians will have to do so for progressively older Canadians.

As a social institution, the Correctional Service of Canada (CSC) has not and will not escape the impact of a particularly large birth cohort. As Stewart (2002) has pointed out, "[a]s the general population in Canada is aging, so too is the ... offender population" (p. 1). In anticipation of this trend, CSC is called upon "to deal with the outcome of the 'greying of Canada' in prisons (Mumford, and Jobe-Armstrong, 2004: p. 231). Estimating the demands of a prison population based upon trends in the general population is problematic. For the general population, social institutions that will face increased demands because of population aging include pension plans, health care, and other government services (Uzoaba, 1995). However, the same aging population results in decreased demand on other government services (Wister, 2004) such that concerns about the impact of population aging may be exaggerated. For example, an 'older population' means proportionately fewer children and a reduction in the resources that children require. This frees-up resources for services directed toward older persons.

Estimating the demands of a prison population based upon trends in the general population is also problematic because older offenders could be considered to be qualitatively different from older people within the general population. According to Morton (2001) "[a]ging is a process that begins with conception and continues until death ... each person ages differently based on a series of factors, including his or her heredity and environment" (p. 81). Chronological age may be vastly different from functional age between individuals. For example, "some people might be physically or mentally old at 50 years of age, whereas others may be active and 'young' at age 70 ... [t]hus older people are more heterogeneous than any other age group" (Morton, 2001: p. 81). Many of these differences can be attributed to biological differences between people. However, the environment is also a factor for the aging process. As Morton (2001) comments, "[w]hile heredity may set the cellular stopwatch, environmental factors can

influence how fast it runs" (p. 81). Although chronological age is arguably an insufficient indicator of aging on its own, it is necessary to operationalize the definition of 'old' within correctional institutions for measurement purposes. It is also necessary to account for the contribution of environmental factors associated with aging. Within offender populations the age at which an offender is considered 'old' is frequently age 50 (Uzoaba, 1995; McAulay, 2000; Morton, 2001; Boe, 2002; Gal, 2002; Stewart, 2002; Mumford & Jobe-Armstrong, 2004). Likewise, those under community supervision are deemed 'older' upon reaching 50 (Uzoaba, 1995). Not surprisingly, "this relatively young age is based on the at-risk lifestyle of many inmates that results in their physiological age being as much as 10 years older than others in the same social-economic group (Morton, 2001: p. 80). The use of age 50 for assessing offenders as 'old' thus tries to incorporate both chronological and functional approximations of age.

This distinctive pattern of early aging among offenders is compounded because Canadians are living longer. Morton (2001) asserts that "the average life expectancy, although not anticipated to increase as much as it has in the past, will continue to rise" (p. 79). This suggests that a proportion of offender populations will be older sooner than their community counterparts and that this proportion will not be decreasing as quickly as has been the case in the past. Since offenders can be considered "old" at an earlier age but live as long as older people in the general population, offenders spend a longer time in what could be considered "old age." There is also some evidence to suggest that aging in an institutional environment makes unique demands upon this group of older persons. That is, "functioning in the prison setting can be more difficult than coping with limitations in one's own home ... [d]ifferent levels of functioning can be needed to live effectively even among different correctional facilities" (Morton, 2001: p. 80).

The aging of the incarcerated population has become a reality for CSC. Stewart (2002) provides evidence that the older institutionalized population" ... is growing at a much faster rate than that of younger offenders; [i]nmates who are 50 years of age and older now comprise 12% (1,600) of the institutional population" (p. 1). Furthermore, "[t]hirty-eight percent (38%) of the lifer's group will be 55 years of age or older before they are eligible for parole" (Stewart, 2002: p. 1). McAulay (2000) argues that the older offender population doubled between 1990 and 1998, and demonstrates that between 1994 and 1999 the percentage of the inmate population that was comprised of older offenders increased from 9.6 percent to 11.1 percent (p. 12). A large proportion of older offenders is also apparent amongst offenders under community supervision. According to Uzoaba (1995) the "proportion of older offenders in the community supervision population, ranging from 9% in the Atlantic region to 22% in the Pacific region, is higher than in the institutional population" (p. 2).

Research into the greying of offender populations points to some preliminary conclusions: offenders are aging; they are aging faster; they are "aging longer"; they may even be aging "harder" than their community counterparts; and older offenders comprise an increasing proportion of the offender population. This suggests that, for offenders, the aging process might be different from the aging process for older 'non – offenders.' Just as older people have different needs than younger people, so older offenders also have different needs from older people in the general population. These needs must be addressed by CSC. In fact, the needs of older offenders must, arguably, be taken into account by the entire criminal justice system.

Older prisoners can be categorized using a tri-partite typology. As Uzoaba (1998) points out, "[f]rom the parameters of older offenders for July 1996, it is quite evident that three distinct categories of older offenders can be delineated from their incarceration

history" (p. 6). Most, argues Uzoaba (1998), can be classified as repeat offenders or 'career criminals.' Career criminals have a "history unique to themselves ... [having] been convicted and incarcerated prior to their current imprisonment; the majority of them for sexual offences and violent crimes against persons" (Uzoaba, 1998: p. 6). Some researchers (for example Schmettmann, Adansi, and Long, 1998) report a perception that the size of this group will diminish over time. In other words, these 'career criminals' will 'age out' from a criminogenic lifestyle as their abilities to function decrease over time. With advancing age, these offenders will arrive at a point where they will no longer be able to physically commit crimes.

A second group of older offenders are those who have committed a first offence later in life. "[R]esearchers have noted specific criminal patterns that are peculiar to an older first offender" (Uzoaba, 1998: p. 7) in that first time offences encompass a variety of offence types. A third classification of older offenders, those who have been convicted while young and grown old within institutions, is also identified by Uzoaba (1998).

The first (career criminal) and second (first time offender) categories raise questions about the sentencing of older offenders. That is, given the differences between old and young offenders in an institutional environment, is it possible to apply the same principles and purposes of sentencing to both the young and the old? "The task of sentencing a convicted person," comment Mewett and Manning (1994), "... is one of the most difficult of all tasks facing a judge" (p. 18). This is because "finding the most appropriate punishment out of all the options usually open to him depends on a consideration of what is hoped to be achieved by any particular sentence" (op cit.). 'Punishment' might be interpreted to mean the imposition of a penalty for violation of the criminal law. Extending beyond a retributive interpretation, punishment is not an end in itself (Mewett & Manning, 1994) but, rather, is comprised of several elements that help

address why punishment is imposed at all. "It is probably beyond dispute to say that most people would now agree that the prime, if not the sole aim of punishment and of the criminal law is the protection of the public" comment Mewett and Manning (1994: p.19). Protecting the public might be achieved through incarceration but also can include elements of deterrence and rehabilitation.

"As used in criminal justice, [deterrence] refers to crime prevention achieved through the fear of punishment" (Caputo & Linden, 2000: p. 183). Whether general or specific, deterrence could be said to be working when a potential offender does not offend because of his or her appreciation that the potential costs of doing so will outweigh the benefits. However, this method of protecting the public appears insufficient given that it requires that the costs do, in fact, outweigh the perceived benefits. Furthermore, deterrence rests upon the probability of being caught. Deterrence assumes offenders have a static pattern of offending over their life course and, but for criminal justice interventions, would not otherwise desist from an offending pattern. Despite empirical questions about the effectiveness of the practice, deterrence persists as an element of sentencing. This might be due to the latent value of deterrence in re-affirming social values by denouncing criminal behaviour.

In terms of protecting the public, deterrence means the offender will choose not to offend because of the threat of criminal sanctions. Rehabilitation is different from deterrence because, for rehabilitation to have taken place, an offender must choose not to commit crime because they prefer to be law abiding irrespective of the threat of criminal sanctions. Rehabilitation is consistent with the idea of protecting the public and can take place within an institutional environment. As Mewett and Manning (1994) note, "... rehabilitation of the offender is now considered by many to be the chief, if not the sole, valid objective in punishing him ..." (p. 21). Regardless, if rehabilitation takes the

form of "education, medical treatment, or by offering him desirable alternatives, it is true that rehabilitation is probably the most economical in the long run and humanitarian objective of punishment" (op cit.). Thus, rehabilitation of offenders is consistent with both the practical and the philosophical requirements of punishment and sentencing. Rehabilitation demonstrates an awareness that offending patterns are apt to change given the appropriate guidance.

Arguably, incarceration is an effective method of protecting the public during the period an offender is incarcerated. Incarceration accounts for Uzoaba's third category of older offenders: those who have been convicted while young and grown old within an institution. Ideally, an offender would only be released back into society once he or she is deemed to no longer be a threat. More often, an offender will return to society at warrant expiry (Mewett & Manning, 1994). Section 718 of the *Criminal Code* states that: "[t]he fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more objectives ... [including] to separate offenders from society, where necessary." Aside from functional advantages including preventing prison overcrowding, and providing a stepped approach to societal reintegration or habilitation, current sentencing provisions allow for judicial discretion in determining the appropriate sentence to protect society. In many cases, the judiciary is called upon to determine if incarceration is necessary.

The purposes and principles of sentencing are identified within sections 718 to 718.2 of the Code. These sentencing provisions reflect a balance between theories of proportionality and specificity and the judiciary is called upon to provide this balance. While a sentence must be "proportionate to the gravity of the offence" (*Criminal Code*, s. 718.1), it must also reflect a number of mitigating or aggravating circumstances or

characteristics of the offender thereby affording specificity (*Criminal Code*, s. 718.2). Furthermore, s. 718.3(2) codifies this judicial discretion. Since the Canadian legal system does not contain codification that specifically provides for 'old age' as a mitigating factor in sentencing, considerations of advanced age would fall within the purview of judicial discretion. The problem is that the incarcerated offender population is aging. The effect of this demographic shift is that an increasing proportion of offenders are exhibiting greater needs and this is resulting in greater system demands. However, it is unclear whether it is necessary to incarcerate older offenders. Many life course developmental perspectives would suggest offenders eventually desist or 'age out' of offending patterns.

While demonstrating a multidisciplinary and explicitly integrated approach to understanding behaviour, life course developmental (LCD) perspectives push past static understandings of people and embrace dynamic explanatory frameworks. These perspectives allow for both continuity and change. Early empirical longitudinal evidence (for example, the Oakland Growth Study and the Berkley Guidance Study) suggests people are both a product of and act within their own developmental trajectory (Elder, 1994: p. 4). A developmental trajectory is a life course. In defining 'life course,' Elder (1994) states that the term "refers to the interweave of age-graded trajectories ... that are subject to changing conditions and future options, and to short-term transitions" (p. 5). In so doing, Elder is acknowledging evidence of both between individual and within individual differences.

While LCD perspectives appear to share similarities, there appears some disagreement about the causes and nature of offending over a life course (Thornberry, 2005: p.157). For example, Nagin and Paternoster (2000) suggest the presence of discord regarding the cause of positive correlations between past and future offending.

The division might be characterized as a disagreement between state dependence (committing an offence in and of itself increases the probability of subsequent offending) and population heterogeneity (the probability of offending is located within the individual). That is, a sociological origin of offending is contrasted with a more psychological source. Based on this division, it is not surprising that sociologists like Sampson and Laub (2005) side with state dependency while psychologists such as Caspi and Roberts (2001) have argued for individual probability. However, as Nagin and Paternoster (2000) also comment, "population heterogeneity and state dependence are not hostile to one another" (p 119) On the contrary. theoretical models that include both criminal propensity and the assertion that behaviour can influence subsequent behaviour are possible. Accordingly, LCD perspectives are theoretically able to reflect a multidisciplinary, explicitly integrated dynamic approach to explaining behaviour that is consistent with longitudinal research. In a refreshingly "curious spirit rather than a nihilistic one" (Garland & Sparks, 2000: p. 190), life course developmental theorists have constructed conceptual models that expand the reach of criminological understanding.

Is the life course perspective legitimate in the 'real world?' An "enormous volume" comments Farrington (2003), of aggregate "...longitudinal research on offending [was] published" during the 1990s (p. 222). Longitudinal research allowed for the value of the LCD perspective to be established quantitatively. However, there appears to be far less qualitative research that attempts to apply theoretical models with specific attention to individual and environmental characteristics. Most case studies only evaluate population heterogeneity factors thereby searching for a 'criminal type' (Loeber, Lacourse & Homish, 2005). "We use qualitative research," suggests Creswell (2007), "to follow up quantitative research and help explain the mechanisms or linkages in causal theories or models" (p. 40). This is because "theories provide a general picture of trends,

associations, and relationships, but they do not tell us about why people responded as they did, the context in which they responded, and their deeper thoughts and behaviours that governed their responses" (op cit.). Life course developmental perspectives appear to inform judicial discretion in terms of the emphasis on the specific circumstances of an individual. Further, these perspectives might inform judicial discretion with their attempt to balance continuity and change. When sentencing, the judiciary must make a decision about whether an offender will continue along the trajectory that brought him or her to the attention of the court or alternatively desist from criminal behaviour.

A greying prison population is problematic for CSC even if current sentencing policy remains unchanged. However, sentencing policy is subject to change given the justice mandate of the Canadian federal government. The current Canadian federal government has been elected on a justice platform proposing a "crack down on crime." Federal Conservatives argue that "[u]nder the Liberals, gun, drug, and gang crime has increased and border, port, and airport security has been soft ... (a) new government must toughen criminal justice, impose mandatory minimum sentences for serious crimes" (Conservative Homepage, par. 3). Among other solutions, the Conservatives endorse "ending house arrest for violent, sexual, and other serious offences" (op cit.). Parliament has already amended the *Criminal Code of Canada* to begin a reduction in the use of community sanctions with the elimination of house arrest for a variety of offences. This amendment is in force as of November 30, 2007 and will clearly increase the size of incarcerated populations. It is worth questioning whether proposed changes to current sentencing policy would further increase the proportion of the prison population that could be considered to be old. Such changes could increase the proportion of older offenders by eliminating judicial discretion that might currently result in a diversion of older offenders away from custodial sentences. The absolute number of

incarcerated older offenders might also increase as a result of changing sentencing policy because the types of offences identified by the new sentencing policy are overrepresented within the older offender offence types. In other words, changes to sentencing policy could well increase both the number of admissions and the effective sentence length for older offenders.

Despite the complexity of the relationship between population aging, prison populations and the effect of judicial discretion on aggravating or, alternately, mitigating the greying of Canadian prison populations, the research question for this thesis is relatively simple: would the elimination of judicial discretion result in a greater number and proportion of older offenders being incarcerated thereby aggravating the existing problem of population aging within custodial institutions? The answer to this question requires an investigation of two further issues: firstly, are Canadian judges considering the advanced age of offenders in their reasons for judgment and reasons for sentence?; and secondly, if so, how are Canadian judges considering age?

The sentencing of older offenders has the potential to be highly contentious given that the predominant offence types of this cohort are sexual and violent offences. Proposed sentencing policy changes are specifically directed at both sex offenders and violent offenders. Proponents of stricter sentencing for sexual offenders and violent offenders might argue that such measures are necessary to protect the public. Alternatively, opponents might criticize these proposed policies as lacking an understanding of the purposes of sentencing and misconceptions about criminal offending over the life course. If an older offender will naturally 'age out' of offending patterns, it is unnecessary to incarcerate for the purposes of rehabilitation or deterrence. It is also unnecessary to incapacitate an offender who has 'aged out' of a predisposition to committing crimes. However, the arguments from both perspectives are erroneous

without a greater knowledge of how the judiciary is currently considering 'age.' Based on the premise that discourse is 'situated, 'action oriented,' and 'constructed,' (MacMartin & Wood, 2005: p. 143) an examination of judicial discourse in a sample of the reasons for judgments and sentences might allow insight into the relationship between aging and the judiciary. The extent to which the judiciary may be alleviating the burden of a greying prison population, or alternatively aggravating the situation, is under-researched. Determinations of how judges are considering older age for judgment and sentencing purposes can then be extended to make a prediction about the practical impact of policies that would increase the number and proportion of older offenders being dealt with by CSC.

Chapter 2 summarizes the current research on population aging in Canadian correctional institutions as well as research evaluating considerations of age during sentencing. Chapter 3 contains the research findings from a sample of 59 cases from the British Columbian Provincial Court Database in which older age was acknowledged by the judge. The research results have been presented in two subsections. The first includes the results which establish that the total number of incarcerated older offenders will increase if sentencing policy changes because of the types of offences. The second demonstrates that, despite the specific characteristics of this sample of older offenders, there are no identifiable quantitative circumstances in which older age is considered by judges. Chapter 4 includes a discussion of the results which demonstrate that the total proportion of older incarcerated offenders will increase based upon judicial interpretations of age particularly as the interpretations relate to age as a mitigating extralegal factor for judgments of guilt and at the sentencing of older offenders. This section provides information about the circumstances in which aging is mentioned singly and in combination with other factors such as health or aging out of criminality. In

Chapter 5, the research results are contextualized within the existing research into the demands of aging offenders within institutional settings and the sentencing of such offenders and provides a reassessment of the phenomenon of greying prison populations in terms of the current knowledge of the topic and suggests future research directions.

CHAPTER 2: OLDER OFFENDERS AS A SPECIAL CATEGORY OF OFFENDER

Research into the 'greying' of institutionalized populations can be categorized into two areas: 1) research that focuses on the impact of old age in terms of providing services for older prisoners; and 2) research that evaluates the impact of older age at the time of judgment and sentencing. The first subsection understands prison population aging as a reflection of the demographic shift in the composition of the non-institutionalized population. Research that focuses on demographic shifts accepts that the greying of prisons is a reality and investigates the problems that this will create for CSC. Most of the research on prison population aging focuses on demographic compositional shifts so is included within the first subsection (for example, Boe, 2002; Gal, 2002; McAulay, 2000; and May, Wood, Mooney, and Minor, 2005). Research included in the second area focuses on the sentencing of older offenders and assumes that increases in the proportion of incarcerated offenders considered 'old' could be a function of increases in the sentencing of older offenders to custodial sentences. The research included in subsection two specifically examines sentencing practices associated with the effect of older age on sentencing (for example, Bergeron & McKelvie, 2004; Steffensmeier & Motivans, 2000; Bushway & Piehl, 2007). A summary of the research on aging within correctional institutions will be followed by a summary of the research on the relationship between aging and sentencing.

2.1 Considerations of Old Age within Canadian Prisons

The 'greying' of prisons is the idea that, over time, prisoners aged 50 and older will increase both in number and as a proportion of an institutionalized population. While research on institutional greying began during the 1980s, a focus on crimes committed by older persons has a longer history (Lemieux, Dyeson & Castiglione, 2002). "Few scholars," comment Lemieux and his colleagues (2002), "expressed any intellectual interest in older prisoners prior to the 1970s" (p. 441). Reportedly, earlier literature focused on theoretical explanations of crimes committed by elderly persons. The early attempts to understand older prisoners were primarily descriptive with a concentration on the "prevalence and types of crimes committed by older persons" (Lemieux, et al. p. 441). However, it is difficult to draw conclusions from the findings of descriptive research generated during the first ten years of the focus on older prisoners. Indeed, Rubenstein (1984) has conducted an early meta-analysis of this research and reported the findings were "sparse and sporadic" (p. 153) as well as "fraught with methodological limitations" (p. 164). Despite these weaknesses, demographic analyses of older prisoner samples and institutionalized populations suggested the proportion of older offenders was increasing (Lemieux, et al. 2002). During the 1990s, an increasing awareness of population aging stimulated an expansion in the research agenda regarding older prisoners to "examine a number of equally compelling issues: public safety, economic costs, institutional management, and humanitarian concerns" (Lemieux, et al. 2002: p. 440). Much of the recent research is directed toward health care costs and the costs associated with providing specialized services for older inmates (Lemieux, et al. 2002: p.441).

Research that accepts that the greying of prisons is caused by a demographic shift focuses on the special needs of older prisoners in comparison with their younger

counterparts. Mumford and Jobe-Armstrong (2004), comment that "there is little research on how older offenders are affected by their prison environments" (p. 231). In spite of this, the available data "indicated concerns regarding older offenders that included the lack of comprehensive programs designed for them, rapidly increasing medical costs, and problems with housing" (Morton, 2001: p. 79). Apart from the 2002-2003-2004 Annual Report of the Correctional Investigator, little research has been conducted into policy associated with a greying, Canadian, prison population (Sapers, 2004). Research that focuses on the unique needs of older offenders evidences patterns of concern associated with physical and mental health and the physical environment within which these individuals must function. However, the primary focus of Canadian research has been programming (Boe, 2002; Gal, 2002; McAulay, 2000; and May, Wood, Mooney, and Minor, 2005); something that echoes Uzoaba's (1995, 1998) and Morton's (2001) concerns. Fear of victimization within the prison environment emerges from the literature as an additional concern for older offenders. Furthermore, it appears that attempts to ease the problems faced by older prisoners might, in fact, create additional problems or aggravate existing problems.

There is little doubt that the process of aging is associated with an increase in an individual's health care needs. "A number of studies have shown that older offenders have multiple health problems" (Gal, 2002: p. 1) that corrections must address. For example, Gal (2002) found that among older offenders the "most common ailments among this population are cardiovascular disease, diabetes, arthritis, hypertension and cancer" (p. 1). King and Bass (2000) also demonstrate the medical needs of older offenders will increase during the period of incarceration with their findings that although hypertension and diabetes were the most frequently reported ailments for older offenders until age 50, among "those 55-64 years of age, heart disease became a

problem and there was an increase in arthritis, chronic obstructive pulmonary disease, and prostate maladies" (p. 67). Access to health care supports CSC's mandate to provide ethical and humane treatment (Mumford & Jobe-Armstrong, 2000: p. 47) but is also essential to facility management. "Beyond legal mandates and ethical considerations," comments Morton (2001), "it is eminently practical for a correctional agency to take a wellness approach to managing older inmates" (p. 82). That is, a proactive response to health care is superior to a reactive one if potential medical problems can be avoided. For example, Morton (2001) notes that "[i]f testing and treatment of high cholesterol... delay a debilitating stroke or heart attack, it is much cheaper than providing 24-hour per day care for a bedridden inmate" (p. 82). However, this is not always possible. If a person is incarcerated at an older age, it has been found that he or she may bring a host of ailments with them to an institution. Whether a preexisting condition or something that developed while incarcerated (Gal: 2002), the problem is that "the increasing demand for medical services to meet the needs of the aging offender population will exert pressure on already limited resources" (p. 1).

The financial burden of institutional medical treatment cannot be understated. "Geriatric offenders are estimated to cost up to three times more to maintain in an institution and their health costs cannot be shared with, or offset by, provincial government health plans" (Stewart, 2002: p. 1). Additionally, "[a]ny specialized treatments or hospital stays in the community often add additional security costs for institutions due to the inmate status of the patient" (Stewart, 2002: p. 1), thereby exacerbating the financial burden. As Mumford and Jobe-Armstrong (2004) have stated, older offenders "may require the services of professional staff familiar with the physical components of the aging process and the patience and training to deal with them" (p. 228). Furthermore, incarceration in and of itself may cause medical problems for older

offenders. "The difficulty that an older offender may encounter in an attempt to cope with the stress of imprisonment can impact on the development of physiological and/or psychological problems" (Gal, 2002: p. 2).

While Gal (2002) determined that the centralization of medical services for elderly offenders would reduce the financial expense of such specialized treatment (p. 4) there might also be undesirable effects such as creating additional medical issues. Physiological health is only one component of well being. There is a concern that centralized medical services would isolate older offenders from their younger counterparts and in effect institutionalize them within an institution thereby causing further health problems particularly mental health problems. However, it is unclear whether this is a legitimate concern. "Studies that have examined the prevalence rates of mental health problems among older offenders are mixed" (Gal, 2002: p. 1). Elaborating, Gal (2002) reports that "... depression is the most frequently reported mental health problem among older offenders ... [because] ... incarceration accentuates an offender's sense of loss" (p. 3). It seems this might not be universally true given the finding that "[i]t appears that older offenders displayed fewer symptoms of depression and reported greater life satisfaction than younger offenders" (Gal, 2002: p.3). These findings collectively suggest that just as there is heterogeneity within non-institutionalized older people (Wister, 2004) there is also diversity within incarcerated older populations. But older offenders appear to generally exhibit a greater number of medical problems than younger prisoners.

Similar to health care issues, the aging process presents the possibility of a demand for modifications to the physical environment. According to Stewart (2002) "[i]nstitutional designs and routines do not accommodate the elderly or infirm well and impact greatly on staff resources and the well-being of the offenders" (p. 1). For

example, an older offender with mobility problems would require a large amount of direct staff attention. In an extreme case, corrections personnel might be required to act in a dual role as home care attendant and guard. It is unclear whether staff would be amenable to such a responsibility and to such employment demands. Further, the financial cost of retraining correctional officers for this type of role would be high. Preliminary research also suggests that the physical environment may have an emotional cost for older offenders. Since the "elderly and infirm have a greater need for privacy, calm, safety and structure in their environment ... [r]eady access to assistance, meals and bathing facilities is critical" (Stewart, 2002: p. 1). However, such modifications are also expensive. Like Gal's recommendation for centralized medical services to help ameliorate the cost, modifying a centralized location to fulfill these requirements would be more financially sound than modifying each institution in an attempt to fulfill the accessibility needs of older offenders. Likewise, it is unclear if this would create additional segregation issues. If the greying of prison populations is taking place, it is clear that a progressively greater proportion of offenders would require environmental modifications although the best method of making the modifications is unclear.

Programming for older offenders is as necessary as meeting their medical and environmental requirements. Stewart (2002) found "[a]ge specific programming is required to address the special needs of elderly and infirm offenders in the areas of special recreation, exclusion from the workforce, self-care, nutrition, [and] living in special care settings ..." (p. 1). However, research indicates that 'mainstream' correctional programming will not be sufficient for this age cohort (Boe, 2002; Gal, 2002; McAulay, 2000; and May, Wood, Mooney, and Minor, 2005). Both the content and the delivery of existing programming appear problematic for older people. The special characteristics of older offenders suggest that the structure of a program must be

specialized. For example, Stewart (2002) hypothesizes that "[d]ue possibly to reduced attention spans or physical limitations, modified methods of delivering selected core programming elements for those who could benefit on a one-to-one or on an 'in home' basis, needs to be developed" (p. 1). Gal (2002) supports this finding noting that "[f]rom a responsivity perspective, some treatment programs may need to be modified for the older offender to participate" (p. 4). Research findings that identified possible deterioration associated with advancing age provide evidence of possible solutions. For example, "most correctional programs are two to three hours in duration per day for a period of three months and this may be too long for an older offender to sit and give their full attention to" (Gal, 2002: p. 4). As a result, it has been suggested that "[p]rograms may have to be delivered for a shorter duration and over a longer period of time so that the older offender can participate without being in discomfort" (Gal, 2002: p. 4).

The content of the correctional programs offered for older offenders is also in some cases quite different from that needed by their younger counterparts. For example, it has been suggested that the focus for older institutionalized people should be away from reintegrative employment or educational opportunities toward health care or nutritional education (Uzoaba, 1998; Morton, 2001; Gal, 2002). Morton's (2001) research suggests that "[e]xercises designed to keep older people active" are vitally important to their health and "[e]ven programs that encourage people to take regularly scheduled walks or that teach people to exercise in their wheelchairs will prolong independence" (p. 84). Gal (2002) again reinforces the importance of not assuming there is homogeneity within the older offender population. This type of programming was not allegorically beneficial to all older offenders. However, it is recognized that some older offenders would benefit and are different from the general population. As is noted by Gal (2002), "when programs have been offered specifically for the older offender, it resulted in

increases in self-respect, a reduction in feelings of loneliness and depression, an increased desire for social interaction, and a renewed intellectual interest" (p. 4).

Thus far, the specific issues facing older offenders (medical, environmental, and programming, respectively) are somewhat easily substantiated; however, an older offender's fear of victimization while incarcerated is less clear. As Boe (2002) claims, "older people generally are more fearful of crime" (p. 5) and this seems to apply equally to the prison population as it does to the rest of society. However, fear of victimization within the prison environment appears different from fear within the community. There is some evidence that older incarcerated individuals fear victimization because of specific personal characteristics particularly their offence history. As Mumford and Jobe-Armstrong (2004) point out, the "majority of older offenders are more likely to be serving sentences for sex crimes" (p. 221). This finding is supported by Gal (2002) who found that "many of the older offenders were convicted of a sexual offence involving a child" (p. 3). Although Gal (2002) asserts that elderly sex offenders could be "more stressed about their offence" (p. 3), the treatment of sex offenders by other offenders within the prison population may lend credence to such an offender's fear of victimization. As is noted by Gal (2002), in this instance a fear of victimization "is probably reflective of the fact that ... [there is a] prison subculture of non-acceptance of such offenders" (p. 3). With respect to sources of stress, "Vega and Silverman reported that the two most disturbing events that older offenders identified were being locked up and abrasive interactions with other inmates" (Gal, 2002: p. 2). Furthermore, "[m]ost (92%) of the older offenders indicated that they had few, if any, interpersonal problems with staff ... [h]owever, the majority (78%) indicated that they had problems with other offenders" (Gal, 2002: p. 2). In spite of these findings it is unclear whether younger inmates represent a threat to older prisoners.

As is noted by Mumford and Jobe-Armstrong (2004) "[o]lder populations do not face a constant threat of victimization outside of correctional facilities" (p. 229), and whether or not victimization is more prevalent for elderly inmates within an institution not convicted of sex crimes is debatable. Furthermore, it is unclear whether fear of other inmates is peculiar to older populations or evidence of older offenders' willingness to report the fear in comparison with younger offenders. The research results are inconclusive about whether fear of victimization by older offenders represents a legitimate or assumed risk faced by older offenders. Boe (2002) notes that "[o]ne key factor is how well we manage the fear of crime itself" (p. 6). However, the best method of addressing fear of crime amongst older offenders is unclear. Research suggests the necessity of not assuming that all older offenders are alike. According to Boe (2002), within the institutional setting "[f]ear of crime is probably the most dangerous shift we face" (p. 5), not in the sense of potential victimization, but rather because it may prompt erroneous unsubstantiated policy.

In summary, research regarding the effect of older age within a correctional institution appears to revolve around public safety, economic costs, institutional management, and humanitarian concerns. It is evident that older offenders do in fact have some special needs and accordingly qualify as a special category of inmate. While the evidence about the psychological needs of older offenders is unclear, there is ample evidence that this group has specific physiological needs from both a medical and an environmental perspective. Additionally, there appears to be evidence that older offenders might benefit from a different programming structure. Whether victimization is particularly problematic for older offenders is not clear. However, themes such as avoiding the assumption of homogeneity within the older offender population and the

connected avoidance of 'blanket provisions' to address the needs of these offenders emerge.

Ultimately, the special needs of older offenders coupled with demographic shifts within correctional institutions, supports the notion that the 'greying' of Canadian prison populations is a legitimate and pressing concern. Greying trends require a philosophical and pragmatic reconsideration of offender management strategies which have been primarily focused on younger offenders. CSC is attempting to address this problem. What remains unclear is the role that the judicial level of the criminal justice system plays in effecting the greying of the prison population.

2.2 Considerations of Old Age during Judgment and Sentencing

While Uzoaba (1998) accepts that "the number of older prisoners in federal institutions is "bound to grow even if the current patterns in crime and sentencing remain unchanged" (p. 6), the discussion is again linked to resources for this cohort. However, as noted above, patterns in sentencing are apt to change given the objectives of the current Canadian federal government. Sentencing policy changes that require mandatory minimum sentences and an end to community sanctions would increase the number of incarcerated offenders. Andre and Pease (1994) provide a formula for estimating prison population sizes resulting from changes in sentencing policy. Andre and Pease's formula also makes it possible to determine if population increases or decreases are a function of increased sentence length or an increase in the total number of new admissions into correctional institutions. The formula $p = s \times r$, where p represents the total population as a function of effective sentence length (s) multiplied by the number of new admissions (r) into correctional institutions, allows for identification of the source of prison population growth (Andre & Pease, 1994). This formula is

particularly useful for interpreting the results of research that has evaluated the relationship between age and sentencing but that has not extended to population size or composition.

Though Andre and Pease (1994) discuss Canadian prison population growth, specific mention of an increasing prison population as a function of targeted sentencing is not included. Conversely, Bergeron and McKelvie (2004) have evaluated the effects of defendant age on severity of punishment but have not extended the discussion to the impact on prison population growth. Furthermore, the sample used by Bergeron and McKelvie (2004) was not based upon the opinions of judges but rather that of a Canadian sample of undergraduate students. It is not clear whether Bergeron and McKelvie's sample is reflective of judicial decision making. Steffensmeier and Motivans (2000) inquired whether "older defendants receive more lenient sentences compared with their younger counterparts and whether the effects of aging on sentencing outcomes manifests itself similarly across male and female offenders" (p. 141). This research acknowledges the special characteristics of older offenders but does not directly address prison population growth.

The relationship between age and severity of sentencing is also evaluated by Bushway and Piehl (2007) who question whether "age deserves a place at the table as a legitimate factor for decisions about retribution and incapacitation or if it deserves to be placed into the same category as race-an illegitimate, *extralegal variable*" (italics in original, p. 160). Again, the findings of this research have not been extended to a discussion of the greying of prisons. Furthermore, these types of research are quantitative so not easily compared to qualitative discourse analysis. That is, while numerical results are conclusive the interpretation of these results is speculative. There is a connection between age and severity (older people often receive less severe

sentences than their younger counterparts) but the foundation of the connection is unclear. It does not demonstrate how the judiciary is considering age; just that it is being considered.

Crawley and Sparks (2006) have recently taken a more qualitative perspective relying on an interview based methodology. Yet their research is restricted to release decisions rather than incarceration. While release is a legitimate concern for the size and composition of a prison population, it is not within the purview of the judiciary so not relevant to this analysis. Schmertmann, Adansi and Long (1998) link sentencing provisions, greying prison populations and prison population growth. However, their quantitative research is grounded in the so-called "three strikes" legislation within the California correctional system. Although 'three strikes' is undeniably a mandatory minimum sentence and a restriction on community sanctions, the indeterminate nature of the sentencing makes extrapolation to the Canadian context difficult. Furthermore, the consideration of age in this context is restricted to only one of the three types of older offenders: those who grow old within a correctional institution. Like Crawly and Sparks (2006), this focus shifts the research away from judicial decision making toward research grounded in the idea of demographic shifts. In spite of this weakness, the "demographic modeling of prison population dynamics" (Schmertmann, Adansi, and Long, 1998: p. 2) might be adapted for eventual quantification within the Canadian context but is inappropriate for an evaluation of judicial considerations of age. Demographic modeling does not provide information about the cause of population aging because it simply reports the effect.

Millie, Jacobson, and Hough (2003a, 2003b) address the impact of sentencing on prison population growth in the United Kingdom. These authors link their predictions to an increasingly punitive political climate; however, they refrain from discussion of greying

'prison dynamics.' There is a void in the research relating to policy developed on the platform of the Canadian Federal Conservatives. There is also little research that connects sentencing policy, older offenders, and increasing prison populations in general. Furthermore, there is a lack of research that specifically addresses the effect of judicial discretion on the proportion of prison populations that are considered to be older.

Bergeron and McKelvie (2004) juxtapose a retributive (just-deserts) model of sentencing in which a "more culpable defendant receives a more severe punishment" (p. 75) with a utilitarian model (p. 76) that allows for extra-legal factors. Within the utilitarian model, more severe sanctions would indicate incapacitation or deterrence whereas lighter sentences would be premised upon rehabilitation (Bergeron & McKelvie, 2004). The purpose of their research was to determine the effect of age (particularly old age) on punishment and to extend these findings to an association between age and the severity of a crime (Bergeron & McKelvie, 2004). The researchers used a vignette that identified the defendant as either 20, 40 or 60 years old and the Canadian undergraduate students were asked to provide sentencing recommendations (Bergeron & McKelvie, 2004). Although it was discovered that there is a curvilinear relationship between the age of the defendant and their perceived culpability these results need to be interpreted cautiously because the sample was not necessarily reflective of judicial sentencing decisions. There might be a difference between public perceptions of culpability and judicial perceptions of culpability. Unfortunately, there is insufficient information to determine whether the "age effect" is a function of bias or reflects a utilitarian perspective on sentencing. Though it is difficult to extrapolate this research to prison population growth, Bergeron and McKelvie (2004) do provide evidence that age may be a factor, albeit unconsciously, in determinations of culpability.

Steffensmeier and Motivans (2000) focused specifically on the judicial sentencing of older men and women in comparison to younger male and female offenders concluding that the former are treated more leniently than the latter. It was found that "older offenders of both genders were sentenced less harshly – they are less likely to be imprisoned than their younger counterparts and, if imprisoned, elderly defendants receive shorter prison terms" (Steffensmeier & Motivans, 2000: p.141). However, this effect, which the researchers called "the elderly advantage," diminished depending on the type of crime (specifically drug offending). Furthermore, "the within-gender elderly advantage was found to be greater for males than for women" (Steffensmeier & Motivans, 2000: p.141).

Using state wide sentencing data from Pennsylvania collected between 1990 and 1994, Steffensmeier and Motivans (2000) used logit models "to assess the effects of aging on the in/out or incarcerative decision" (p. 141) and ordinary least-squares regression to assess the impact of age on sentence length. The results indicated that age was a mitigating factor in terms of sentencing. Although Steffensmeier and Motivans (2000) concede the pattern of sentencing older offenders more leniently reflects a judicial bias, these researchers noted that it "also might reflect legitimate sentencing concerns of judges (in areas such as crime propensity, blameworthiness, and even the extra costs needed to jail older defendants)" (p. 141). However, because this was quantitative research, any interpretation of the results beyond the numbers is speculative. In other words, Steffensmeier and Motivans (2000) can determine whether age is a factor but they cannot conclusively determine how it factored in a particular decision. This research is also unable to account for negative evidence. Beyond the type of crime, how can situations in which older age was not a factor be explained? That said, this research suggests that the severity of sentences might be ameliorated by the

judiciary interpreting older age as a mitigating factor. Furthermore, the number of admissions, as was identified by Andre and Pease (1994), might be reduced by judges who consider old age as a mitigating factor.

Bushway and Piehl (2007) elaborate upon the idea of 'blameworthiness' in terms of the mitigating or aggravating effect of age on sentencing. Their research used simulated offending data to "isolate the observed relationship between age and criminality and therefore isolate the role age plays in describing criminality" (Bushway & Piehl, 2007: p. 163). Bushway and Piehl (2007) explain that by "using simulated data based on estimates from real data, we can isolate the observed relationship between age and criminality and therefore isolate the role age plays in describing criminality" (p. 163). While it would be possible to conduct the same tests with actual data the results would be more difficult to interpret. Bushway and Piehl (2007) report that using simulation data allows them to isolate the relationship between age and criminal convictions. The simulation data will not look like actual data however this method of data generation was chosen because it was necessary for these researchers to isolate their research effect. "Specifically, the simple correlation between age and criminal history in actual conviction data will be modest, given that people are selected into the criminal justice system by both offending severity and criminal history" (Bushway & Piehl, 2007: p. 180). The results are used to argue for the legitimacy of extra-legal factors (such as age) in sentencing decisions from two directions: 1) an older offender with the same number of past convictions as a younger would be less blameworthy because he or she evidences a lower propensity to offend; and 2) maturation is the best predictor of desistance, as found within life course research. By this reasoning, Bushway and Piehl (2007) argue that whether the judicial imperative is retributive or incapacitative, "consideration of age will reduce the weight placed on the number of past

convictions" (p. 173). Based on these results, age is not simply age but rather a "control for exposure time that is useful for making inferences about rates of offending and desistance probabilities that are not available from simple counts of offending" (Bushway & Piehl, 2007: p. 180). These researchers use the results to argue for codification of age in terms of acting as a mitigating factor in determining sentencing. Such codification would reduce the total number of admissions along with their severity (as identified by Andre & Pease, 1994) and, accordingly, cap prison population growth.

Acknowledging that the relationship between sentencing policy and prison growth is not a new phenomenon, Schmertmann, Adansi and Long (1998) further suggest that demographics within an institution have seldom been researched. Using the analogy of a prison system as a stable-population, these researchers suggest entrance into an institution might be considered in terms of a 'birth' and release as a 'death' resulting in population estimates. Coale and Trussell (1996) explain stable-population modelling as a classical demographic tool in which a "fixed schedule of mortality combined with a constant stream of births yields a population with an unchanging age distribution and a zero rate of increase, designated as stationary" (p. 471). However, such a model requires that the population under study must be closed to migration (Coale & Trussell, 1996). Schmertmann, Adansi and Long (1998) comment that past prison population analysis has used a classical stable-population model which is insufficient from a demographic perspective in explaining prison population dynamics. It is not possible to be re-born although it is possible to be readmitted into prison. Due to this weakness, these researchers suggest a multi-state life table is preferred because "[l]ike the populations of neighbouring regions, prisons and nonprison populations coexist and exchange members" (p. 446).

Using data obtained from the Florida Department of Corrections, Schmertmann, Adansi and Long (1998) researched the "basic demographic consequences of various sentencing policies, keeping other factors constant" ... "to learn about the sensitivity of demographic changes to policy parameters and possible behavioural changes" (p.453-454). The simulation transition led these researchers to conclude that under mandatory sentencing prison population growth would be substantial and further that the proportion of older prisoners would increase exponentially (Schmertmann, Adansi and Long, 1998). Intuitively, the effect is reduced if sentences are shorter in duration. Schmertmann, Adansi and Long (1998) provide an interpretation of the effect of imprisonment of older offenders from a demographic perspective. Arguing that "the costs and benefits of any new sentencing policy depend not on the characteristics of the people that they move from the street to prisons, but rather on the characteristics of the person-years that they move" (p. 458), this research appeals to the notion of maturation away from crime. Since older prisoners are less likely to reoffend than younger prisoners, Schmertmann, Adansi and Long (1998) argue that there are two primary considerations when switching a "person-year from streets to prisons: (1) what kind of person is being incarcerated, and (2) how old are they during the year in question?" (p.458).

In collaboration with the British Criminal Justice Policy Research Unit and the Prison Reform Trust, Millie, Jacobson, and Hough (2003) "mounted 48 face-to-face interviews with Crown Court judges, recorders and district judges; and ... 11 focus groups with 80 magistrates" (p. 200) to identify the deciding factors between custodial and noncustodial sentences. This research was conducted in response to rising prison populations "because legislation, guideline judgments and sentence guidelines have all had an inflationary effect on sentences passed" as well as an increasingly punitive political climate (Millie, Jacobson & Hough, 2003: p. 200). Acknowledging that

"[c]ertainly, sentencers' perceptions of changing patterns of crime are a factor in sentencing practice, regardless of their accuracy," (Millie, Jacobson & Hough, 2003: p. 200) this research demonstrates the awareness that sentencing is necessarily subjective.

Millie, Jacobs and Hough (2003) specifically inquired about the reasoning behind decisions that were "on the cusp between custodial and non-custodial sentences" (p. 201) thereby providing a greater depth of information. These researchers questioned the specific factors that influenced whether an offender received a custodial sentence (or not) when a non-custodial sentence was an option. While age was not specifically noted as a factor in sentencing decisions, the personal circumstances of an offender were key. According to these results, "[s]entencers attached greater weight to the present circumstances and condition of the offender in such cases" and a "positive response to prosecution (for example, in terms of a show of remorse or willingness to co-operate with the courts) was often a significant factor, as was the offender's 'precious good character'" (Millie, Jacobson & Hough, 2003: p. 202). Since the research results identified the importance of having options to sentence with a community sanction, this work underscores the legitimacy of maintaining this option along with the requirement that sentencing must be offender specific and not hampered by blanket provisions such as mandatory minimum sentences. According to these researchers, variations between offenders require judges to tailor each sentence specifically to the individual offender.

Taken as a whole, the research into the connection between age and sentencing suggests that whether consciously or unconsciously considered as a legitimate extra legal factor, older offenders tend to receive shorter sentences than younger offenders. It also appears that the judicial interpretation of 'age' might be grounded in the assumption that older offenders will 'age out' of a criminal life style. As such, the need to incapacitate

those who will pose a marginal societal risk is questionable. Research also suggests that the consideration of age as an extra legal factor is necessarily subjective. Furthermore, sentencing appears to reflect not only the judicial interpretation of age but also policy and political agenda.

Both ideology and theoretical constructs are evident within the research that evaluates the connection between age and sentence severity and that which addresses sentencing and prison population growth. It is a shift in this balance toward classical theories that informs Millie, Jacobson, and Hough's, (2003) assessments. It is a shift in the balance toward classical theories that also informs an investigation of proposed Canadian criminal justice policy. When 'old age' is used as an extra legal factor it appears to be frequently based on the idea that older offenders will eventually 'age out' of a criminal lifestyle. Discretion is also evident in judicial decision making relating to initial findings of guilt. However, discretion carries with it bias. Bias is evident in research which found discriminatory sentencing practices for older offenders that appeared to be based upon assumptions about the effect of the aging process. This pattern was acknowledged by the research of Steffensmeier and Motivans (2000) and that of Bushway and Piehl (2007). Furthermore, there is no shortage of literature discussing bias within the criminal justice system (Hinch, 2000; Ko, 2001; Huber & Gordon, 2004; Mumford & Jobe-Armstrong, 2004) which tends to be explained from a conflict theoretical perspective.

The evidence suggests that the prison population is aging. Research also suggests that this is a problem the CSC will have to address because of the special needs of older offenders. What remains unclear is the role the judicial level of the criminal justice system plays in contributing to the greying trend. As an extra legal factor, age appears to be considered by judges during determinations of guilt and while

sentencing. Nevertheless, while numerical results are conclusive the interpretations of these results are speculative. There is a correlation between age and severity but the foundation of the connection is unclear. The correlation does not demonstrate how the judiciary is considering age, just that it is being considered. Consequently, it is necessary to determine how age is considered in order to predict how a punitive sentencing policy that eliminates judicial discretion would affect the greying of Canadian prisons. While quantitative data indicates that the total number of admissions into correctional institutions would be increased by sentencing policy changes, qualitative evaluation suggests the effective sentence length for older offenders would be affected as well. These issues are addressed in the next chapters.

CHAPTER 3: JUDICIAL CONSIDERATIONS OF OLD AGE

An assessment of the role of the judiciary, in terms of their impact on the greying of Canadian prisons, required an analytical method that provided an opportunity for determining whether judges use old age as a relevant consideration when determining guilt or at sentencing. Furthermore, it was necessary to ascertain how age was considered. Is old age a mitigating factor or, alternatively, an aggravating factor? As was noted in Chapter 1, a determination of the contribution of judicial discretion to a greying prison population requires the investigation of two main issues: firstly, are Canadian judges considering the advanced age of offenders in their reasons for judgment and reasons for sentence?; and, secondly, if so, how are Canadian judges considering age? As was noted in Chapter 2, if judges do, in fact, consider old age as a relevant consideration, an erosion of judicial discretion could increase both the numbers of admissions and the effective sentence lengths of older offenders.

In order to address these issues it was necessary to obtain a sample of judgments that would provide information about whether age was considered, and if so, how it was addressed. Following a brief description of the research process including the method and sample used for this research, this Chapter presents firstly, the quantitative data that demonstrates that older offenders will be targeted by potential sentencing policy changes, and secondly, a qualitative assessment of research results that demonstrate how the judiciary considers old age during findings of guilt and at the time of sentencing.

3.1 Research Method and Sample

Discourse analysis (DA), as a qualitative research method, uses naturalistic data rather than questionnaires, surveys or interviews (Mac Martin, 1996). In terms of understanding judicial discretion, DA is arguably preferable to questionnaires, surveys or interviews because research questions include such things as 'how judges actually consider age' rather than 'how judges think they consider age.' That is, DA allows for a separation between the actual and the perceived understandings of the influence of such factors as age on sentencing and judgment. Although there are variations on the specific methods used by individual discourse analysts, Harper (2006) suggests that all DA can be considered a "reactive, recursive and interactive endeavour" (p. 49). Accordingly, "[t]wo primary concerns can be said to shape the analytical attitude: a search for patterns in the data (shared features of accounts or differences between them); and consideration of the functions, effects and consequences of accounts" (Harper, 2006: p. 49). For the current research, DA is used for the discovery of patterns within judicial considerations of age following which the consequences of the patterns are extended to the impact of these patterns on possibly exacerbating an already aging prison population. 'Discourse' has been defined as "all forms of spoken interaction, formal and informal, and written texts of all kinds" (Potter & Wetherell, 1987: p. 7), and this definition was adopted in this thesis research.

The research sample was obtained from the online records of the Provincial Court Judgment Database. According to the Office of the Chief Judge, the database "is currently the only free public online source of Provincial Court judgments." It "is an important source of information for lawyers, the media, and the public, and continued expansion will include as many of the Court's judgments as possible" (Office of the Chief Judge, 2002). However, rigorous sampling techniques require disclosure that "[m]any of

the Court's judgments are delivered orally and have not yet found their way onto the website" (Office of the Chief Judge, 2002). Furthermore, the "decision to post decisions online remains with individual judges" (Office of the Chief Judge, 2002) and the database only dates back to 1999. These weaknesses suggest that some valuable discourses might be missing. As a result, this purposive research sample cannot be generalized to the rest of the Canadian older offender population. However, this undermines neither the reliability nor the validity of this research because the concern is whether age is discussed and how it is discussed by judges. Particularly, is old age a mitigating factor that would increase the number of custody sentences or would increase the effective sentence lengths if judicial discretion was eroded or eliminated?

The search feature of the database uses "Boolean operators (and, or, not) and the proximity operator (near) to specify additional search information... [as well as] wildcard characters (*) which can be used to match words with a given prefix" (Office of the Chief Judge, 2002). For example, the "query esc* matches the terms 'ESC,' 'escape,' and so on" (Office of the Chief Judge, 2002). Using a proximity locator, 'accused near age,' resulted in 536 judgments. These results were individually screened for accused aged 50 and up. This age was used because it is consistent with the functional / chronological cut-off identified through the relevant academic literature (Uzoaba, 1995; McAulay, 2000; Morton, 2001; Boe, 2002; Gal, 2002; Stewart, 2002; Mumford & Jobe-Armstrong, 2004) that is focused on older offenders. The accused's or offender's age was identified through actual reported age, date of birth, marriage date, immigration date, criminal record date and other similar indicators.

The research sample might not be representative of the overall demographic of the courts. However, it is not necessary to generalize from the sample since the research question requires determining only if age is considered and the circumstances

in which age is considered by the judiciary. Qualitative patterns of discourse about 'old age' were captured from the judicial Reasons for Judgment and Reasons for Sentence and the demographics of the sample (e.g. age, sex, race, and offence type) were also recorded. Each case included in the final sample was identified by a 3 digit number beginning with 'GO' (greying offender) because the name of the specific offender was not always available. In particular, cases that involved sexual assault of an underage family member did not identify the older offender by name. A complete list of the cases used for the research sample are included in Appendix A.

The final research sample (n=59) consisted of 37 Reasons for Sentence (about 63 percent of the total 59 cases) and 18 Reasons for Judgment (about 31 percent of the total research sample) as well as four cases that were both reasons for sentence and judgment. The mean age of the offenders in the sample was about 60 years (SD=8.70). Since 'age' is the most important variable for this research, it is necessary to note that the average offender age differences between the two sources of data were not significant. A sample containing both Reasons for Judgment and Reasons for Sentence was necessary for two reasons: firstly, the research question required that the results be extended to both judgment and sentencing decisions, and secondly, a larger sample would provide more information. Ideally, the judicial discourses for the Reasons for Judgment and the Reasons for Sentence would contain similar average ages so they could be used as a single source. If, for example, age is consistently used by judges as a mitigating factor during judgment, it would be expected that the average age of offenders at the time of sentencing would be lower than the average age of offenders during judgment. This difference would be because the 'older' offenders would be screened out prior to sentencing.

Qualitatively, significant average age differences between the Reasons for Judgment and the Reasons for Sentence could also be problematic because the sample would have already been screened for 'age as mitigation' resulting in lost data. This would mean that outside factors (e.g. offence seriousness, criminal record) were skewing the results. An independent samples t-test revealed no statistically significant difference ($t(24.2)=1.76, p=.09$) between the mean age of the offenders mentioned in the Reasons for Sentence and those in the Reasons for Judgment. However, the subjects in the Reason for Judgment ($M=63.56, SD=10.82$) category were slightly older than those included based on a Reason for Sentence ($M=58.63, SD=6.84$).

Not surprisingly, the vast majority of the sample was male ($n=58, 98.3$ percent). While the discourses took place in 25 different communities throughout the Province, about 15 percent occurred in Vancouver, and an additional 10 percent of the cases were conducted in Kelowna.

3.2 Research Results and Data Interpretation

3.2.1 How often is old age considered?

Based on the existing research into the impact of old age during incarceration and the effect of old age on sentencing, a number of key variables were identified as potentially important for this research. In particular, information was collected regarding offence type, ethnicity, educational history, and the existence of a criminal record. Data about whether or not the judge specifically noted the offender's age while introducing the relevant considerations for finding guilt or for sentencing were also collected.

The specific offences were recorded and each case was classified into a general 'offender type' based on *Canadian Criminal Code* classifications, the most serious offence being used for the purposes of classification. The sample included 26 sexual

offenders (about 44 percent), 14 violent offenders (about 24 percent), six property and six 'white-collar' offenders (approximately 10 percent each), and was comprised of four offenders or accused who committed a crime against the environment (almost seven percent) such as starting a forest fire. The proportions of offender types are set out in Figure 1.

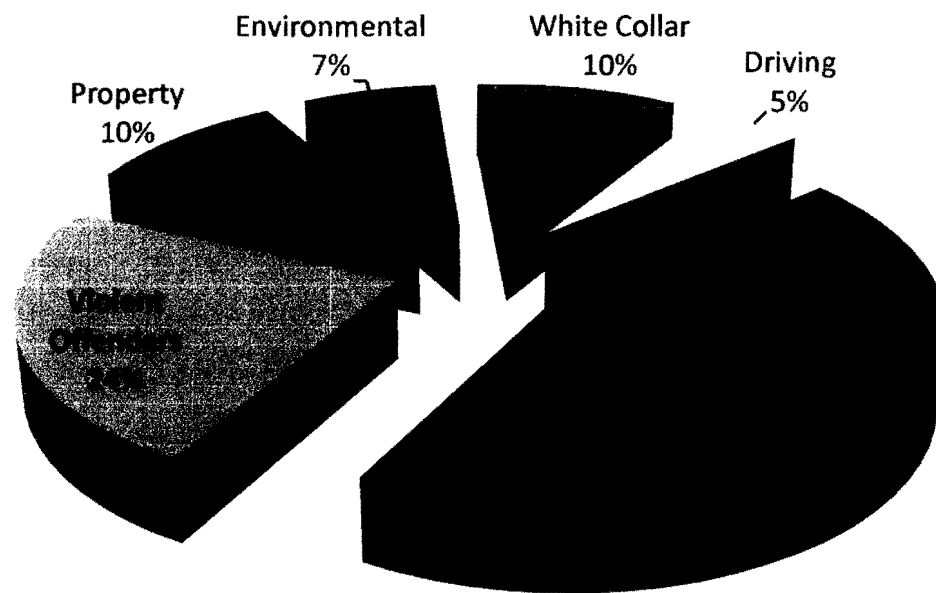


Figure 1: Old Offenders by Offence Type

The offenders categorized as 'sexual' ranged from offenders who had committed a single offence on one occasion to other older offenders who had committed multiple offences that took place over a number of years. Details of the first five offences for each case were recorded although, when the information was available, the total number of offences for each case was noted as well. The earliest offence included within the data set took place in 1959 and was reportedly the 'sexual assault of a person under fourteen years old' (GO002). According to the data, the offender in this case was 77-years-old at the time of the Reason for Sentence and pled guilty to nineteen different sexual offences that extended over a period of thirty-six years. The most recent sex offence within the

data set was a case of 'possession of child pornography' by a 60-year-old teacher (GO021). This offender pled guilty to possessing 598 child pornography images on his computer.

In total, from the information that was available in the Reasons for Judgment and Reasons for Sentence data set, the 26 older sex offenders were responsible for some 236 counts of 'for a sexual purpose, touching the body of a person under 14 years old' (*Criminal Code*, s. 151), 106 counts of 'repeatedly sexually assaulting the body of a male' (*Criminal Code*, s. 156), and 43 counts of sexual assault (*Criminal Code*, s. 271) and aggravated sexual assault (*Criminal Code*, s. 273). In several cases there was no information about the specific number of sexual offences committed by the offender, however, in two examples, according to the data there were "multiple counts and in a position of trust" (GO045) or there were reportedly "19 plus too many more to list" (GO002). An additional variable was determined based on whether or not the judge specifically included the offender's age at the time of sentencing or when passing judgment. For example, in one case the judge stated that he was "specifically considering the offender's advanced age as a relevant consideration" (GO045). For sixteen sex offenders, the offenders age was specifically mentioned by the judge at sentencing or when determining guilt.

The number of violent offences committed by the group categorized as violent offenders (n=14) were not as numerous as the number of sexual offences committed by the sex offenders. Examples of violent offences include robbery (*Criminal Code*, s. 343), kidnapping (*Criminal Code*, s. 279), assault (*Criminal Code*, s. 266) and impaired driving causing death (*Criminal Code*, s. 255.3). These offences took place between 1996 and 2005. The age range of the offenders deemed 'violent' was between 59 and 67-years-old (M=55, SD=7). For seven of the violent offenders, age was mentioned as a specific

consideration that needed to be noted; for another six violent offenders age was not specified as a relevant consideration during sentencing and judgment.

Within the data set, the youngest property offender was 51 years old (GO029) and pled not guilty to a charge of causing damage by fire or explosion (*Criminal Code*, s. 434) while the oldest offender within this category was reportedly 61 years old (GO034) and charged with breaking and entering (*Criminal Code*, s. 348). On average, the white collar offender category (n=6) was about 59 years old and included five cases of fraud (*Criminal Code*, s. 380). While one of the 'environmental offences' involved a 63-year-old male who negligently started a forest fire (GO055), the other three involved violations of the *Waste Management Act*, the *Wildlife Act*, and the *Fisheries Act*. While these offences took place between 1995 and 2003, there was no information about the offence date for the 77-year-old aboriginal man (GO007) charged with violating the Fisheries Act. According to this Reason for Judgment, the offender did not establish "he was fishing according to an Aboriginal right to fish for salmon (by means of a gill net) at the elder's site, located upstream of the Village of Yale, on the Fraser River" (GO0007). While age was identified as a relevant consideration for sentencing or determining guilt for all of the property offenders, and for three of the environmental offenders, there was no mention of the age of the offender while sentencing any of the 'white collar' offenders.

The ethnicity of the offenders was identified in 21 cases (about 36 percent). However, of those subjects for whom ethnicity was provided, about 48 percent were identified as 'Caucasian' while just over half (52 percent) were Aboriginal. While the age range for offenders for whom ethnicity was identified (both Caucasian and Aboriginal) was between 50 and 85 years old, the average age of the Caucasian offenders (M=59, SD=11) was slightly younger than the average of the Aboriginal offenders (M=62, SD=11). Interestingly, there was a specific age reference at judgment or sentencing for

all of the Caucasian offenders. This was not the case for Aboriginal offenders as the age of the offender was only specified as a relevant consideration for sentencing in six cases. Like ethnicity, education was seldom discussed within the judicial discourses (n=14), however when mentioned, subject education was predominantly some post secondary or higher (about 71 percent of the time). The demographics of the research sample are presented in Table 1.

N=59		Frequency	Percent
Variable			
Type of Discourse (N=59)	Reason for Sentence	37	62.7%
	Reason for Judgment	18	30.5%
	Other	4	6.8%
Specific Age Reference (N=54)	Yes	36	66.7%
	No	18	33.3%
Offence Type (N=59)	Sexual	26	44.1%
	Violent	14	23.7%
	Other	19	32.2%
Criminal Record (N=50)	Yes	21	42%
	No	29	58%
Ethnicity (N=38)	Caucasian	10	47.6%
	Aboriginal	11	52.4%
Education (N=14)	High school or less	4	28.57%
	More than High School	10	71.43%
Age (N=57)	50 to 54 years	19	32.2%
	55 to 59 years	11	18.6%
	60 to 64 years old	11	18.6%
	65 years and older	16	27.1%

Specifically, among the 14 cases for which educational information was available, two offenders had obtained high school graduation while an additional five offenders had reportedly completed some post secondary education. In two cases (GO001, and GO021) the data indicated that the offender had not completed high school. In particular, in one case, the offender's lack of education was introduced along with the judge's comment that during his trial the accused had "difficulty completing thoughts when attempting answers" (GO001). Although education was seldom mentioned within the data, in five cases educational level was reported as the completion of a post secondary degree. Two of these cases with degrees (GO010 and GO033) pled guilty to violent offences (threats and assault, respectively) while the other three were before the court for sexual offences. One of the educated, older sex offenders (GO009) was found guilty of 'sexual touching when in a position of authority' (CCC s. 153) another of the offenders with a degree was 'in possession of child pornography' (GO021), while the third was found guilty of 'sexually touching a person under 14 years' (CCC s. 246.1) and subsequently making pornography of the assault. As was the case for specific age references for Caucasian offenders, for all of the older offenders who had obtained a post secondary degree age was specified as a relevant consideration by the judge who determined guilt or imposed a sentence.

Within this sample, 50 of 59 possible cases contained information about the subject's criminal record (or lack thereof). Of the available information, 58 percent of the accused had no criminal record (n=29) and 42 percent reportedly had a record of past offending (n=21). The existence of both repeat and first time older offenders is consistent with Uzoaba's (1998) typology. Slightly less than half (48.3 percent) of the older offenders without a criminal record committed a sexual offence. About 17 percent had committed a violent or white collar offence, while very few first time older offenders

engaged in property crime (about three percent). This finding can be compared to the nearly 24 percent of older repeat offenders who engage in property or violent offending and the 38 percent of repeat offenders who committed a sexual offence.

An independent samples t-test indicated that those who have criminal records ($M=58.63$, $SD=6.41$) are slightly younger than those without criminal records ($M=60.28$, $SD=8.41$), although the difference was not statistically significant ($t(46)=-.724$, $p=.472$). This result means the average age of older first time offenders is quite similar to the average age of older repeat offenders within the data set.

As has been noted, in a number of cases included within the research data set, whether or not age was considered as a relevant legal factor at the time of sentencing or judgment was recorded. In some cases, the judicial consideration of the old age of the offender was manifest. For example, while sentencing a property offender in a Kamloops court, Judge Dohm commented that he was “required to consider the circumstances of the offender. Mr. Hall is sixty-one years of age... Mr. Hall presents as a sympathetic figure...” (GO018). Of the total number of cases in which the absence or presence of a specific age references was identifiable ($n=54$), almost 67 percent of the judicial discourses specifically referred to age while about 33 percent included no specific age reference. Although age was considered in the majority of cases, the circumstances in which age was considered are less clear.

3.2.2. Under what circumstances is old age considered?

Chi-square analysis was used to determine if there was a relationship between individual characteristics of the old offenders and whether or not the judge specifically considered the offender’s age for judgment or sentencing purposes. Chi-square is an appropriate technique for use with categorical levels of measurement for determining if

two variables are related. If the results of a chi-square analysis are significant, it can be concluded that there is a relationship between two variables; however it is not possible to determine the direction of the relationship. That is, if specifically mentioning age during sentencing was related to the actual age of an offender, chi-square could not confirm that an older offender is more likely to have his age acknowledged. However, chi-square could provide information that the two variables are related to one another thereby suggesting one of the possible circumstances in which age is considered at sentencing or judgment.

For this thesis, Pearson's chi-square analysis was used with each of the variables recorded within the Reason for Judgment and Reason for Sentence data set that provided information into the circumstances of the offender. These variables included: offence type, ethnicity, educational history, and the existence of a criminal record. Additionally, age was used to see if there was a relationship between a judge choosing to mention the offender's age and the offender's actual age. Each variable was identified as having a possible association with judicial considerations of old age.

Since chi-square analysis is highly sensitive to sample size, the 'offence type' variable was re-coded into three categories: sexual offences, violent offences and other. The categorization of offence types is also consistent with the thesis research question because the question is concerned with the impact of sentencing policy changes that affect violent and sexual offenders. The results of the analysis indicated that there was no statistically significant relationship ($\chi^2=1.351$, $df=2$, $p=.509$) between the offence type and whether the judge specifically considers age at judgment or sentencing. While the age of the offender was considered by judges about 73 percent of the time for sex offenders ($n=22$) (in 27.3 percent of sex offences there was no specific mention of the age of the offender), a specific age reference was made just over half of the time (53.8

percent) for violent offences (n=13). For the 'other' category which included property, environmental, driving and white collar offences (n=19), a specific age reference during judgment and sentencing was made about 68 percent of the time.

Similarly, there was no statistically significant relationship between the ethnicity of an offender and whether or not the judge considered the offender's age as a relevant legal factor when sentencing or at judgment ($\chi^2=3.600$, $df=1$, $p=.058$). This is a particularly interesting finding given that, as was noted, age was specifically acknowledged for all of the identified Caucasian offenders (n=9) in comparison to about 67 percent of the Aboriginal offenders (n=9). However, little can be concluded from this finding without retesting on a larger sample size.

The sample size was also problematic for the Pearson's chi-square that used the specific age reference variable and educational circumstances of the offender. Although the data contained very little information about the education of the older offenders, 75 percent of the time age was specifically mentioned in relation to the judgment or sentencing of older offenders who had obtained high school accreditation or less. For those older offenders who had some post secondary education or had obtained a degree, age was specifically considered in about 78 percent of cases. However, the relationship between educational circumstances and whether or not age was mentioned was not significant ($\chi^2=.012$, $df=1$, $p=.913$).

Twenty-one of the old offenders in the research data set had a criminal record while another 27 had no prior convictions. When the criminal record variable was compared to the variable that indicated whether age was specifically considered at sentencing or judgment the results showed that there was no statistically significant relationship between the two variables ($\chi^2=.962$, $df=1$, $p=.327$). This means that although age was acknowledged as a relevant consideration for about 76 percent of

those offenders with a criminal record and for about 63 percent for those without a criminal record, there is not an actual relationship between the two variables. A summary of the distribution of specific age considerations for each of the case circumstances is presented in Table 2.

		Specific age consideration?	
		Total	36 (66.7%)
Case circumstance		Yes	No
Offence Type (N=54)	Sexual	16 (72.7%)	6 (27.3%)
	Violent	7 (53.8%)	6 (46.2%)
	Other	13 (68.4%)	6 (31.6%)
Criminal Record (N=48)	Yes	16 (76.2%)	5 (23.8%)
	No	17 (63.0%)	10 (37.0%)
Ethnicity (N=18)	Caucasian	9 (100%)	0 (0%)
	Aboriginal	6 (66.7%)	3 (33.3%)
Education (N=13)	High school or less	3 (75.0%)	1 (25.0%)
	More than High School	7 (77.8%)	2 (22.2%)
Age (N=52)	50 to 54 years	9 (52.9%)	8 (47.1%)
	55 to 59 years	6 (60.0%)	4 (40.0%)
	60 to 64 years old	8 (80.0%)	2 (20.0%)
	65 years and older	11 (73.3%)	4 (26.7%)

Finally, the actual age of the offender was tested with the variable that indicated whether or not the judge in the case specifically included age as a relevant consideration while sentencing or when determining guilt. Although not supported by other research, it seemed intuitive that a judge would be more likely to consider the old age of an old-older

offender (e.g., an offender who is 70) as a relevant circumstance than the age of a younger-old offender (e.g. an offender who is 55). While the results of the chi-square analysis indicated that cases of offenders in the research sample between the ages of 50 and 55 included a specific reference to age about 53 percent of the time, whereas those between the ages of 60 to 64 (80 percent of the time) and offenders 65 and older (73.3 percent of the time) included specific age considerations at sentencing and during judgment more frequently, the results were not significant ($\chi^2=2.654$, $df=3$, $p=.448$). In other words, there is no relationship between the actual age of an offender and whether or not age is considered relevant for guilt finding or sentencing purposes.

In summary, although age is viewed by judges as an important consideration at the time of sentencing or judgment as is found within the research sample, the circumstances in which age is included are not clear. There is no statistically significant relationship between the type of offence committed by an older offender and whether the age of the offender is specifically considered by the judge as relevant during judgment and sentencing. This holds true for other offender circumstances including ethnicity, education and whether or not the offender or accused has a criminal record. There is also no statistically significant relationship between an offender's actual age and a specific mention of the offender's age by the judge who is presiding over the case.

CHAPTER 4: ASPECTS OF AGING CONSIDERED BY JUDGES

The quantitative findings suggested that although older age is considered by judges there do not seem to be any easily identifiable circumstances (e.g. offence type) in which it is most frequently considered. By this logic, the judiciary might not be considering age per se, or be considering age in a specific circumstance but rather considering the implications of older age (such as mobility, illness or maturity). As noted, the quantitative data provides information that the judiciary is considering age but it is necessary to use a qualitative approach to determine how the judiciary is considering advanced age for the purposes of judgment and sentencing.

The process of discourse analysis involves “a search for patterns in the data (shared features of accounts or differences between them); and consideration of the functions, effects and consequences of accounts” (Harper, 2006: p. 49). For this research, the identification of patterns in sentencing practices of judges with particular attention to how the judiciary interpreted old age was essential. As suggested by Berg (2004), the specific judicial discourse excerpts have been “sorted by categories, identifying similar phrases, patterns, relationships, and commonalities or disparities” (p. 267) under general headings.

While a number of ‘aging out’ or life course development style patterns materialized, other unconsidered dualities and commonalities within judicial discourse became evident. The recognition of additional patterns in the data required coding flexibility. Accordingly, the process gradually began to encompass abduction along with induction and deduction. “[I]t is important to keep the design under review as the study

proceeds ... " maintains Lewis (2004), "and to allow theory and data collection to inform each other" (p. 49). The data have been grouped into three broader categories for presentation. As was noted, because a number of the cases included in the sample involved child victims, the identity of the older offender is not necessarily known. To differentiate between the cases because some of the initials used in the case name were repeated, each case was assigned an identification code. The code begins with 'GO' and is followed by a three digit number.

While discourse analysis revealed numerous differences among discussions of age, similarities were also evident. Specifically, age was rarely discussed alone as might be the case for a young offender. Rather, offender age became relevant in terms of its relationship with illness or the potential for desistance. Age and race were considered as was age and credibility. Age and authority was a common duality. Discussions of age might also relate to career criminality. Furthermore, these dualities were also dichotomized. For example, for each discourse that considered career criminals in terms of desistance or aging out, another would consider career criminals in terms of the potential for escalating violence over time.

The principles of discourse analysis as a method were useful for identifying patterns within the data. MacMartin and Wood (2005) explain discourse analysis as 'situated,' 'action oriented,' and 'constructed,' (p. 143). By 'action oriented,' MacMartin and Wood (2005) mean "[c]ausal inferences and their implications are frequently performed indirectly through such constructions ... and are treated as members' concerns" (p. 143). This type of pattern is often reflected in the 'LCD Discourses' section. 'Constructed' considers discourse as speaking to both a version of the world that promotes a particular agenda, and the specific language that informs said agenda (op cit.). These constructs might be observed within 'Age and Social Status Discourses.'

Assertions that discourse is 'situated' means the judicial language is both 'occasioned' – "embedded in a particular context as part of some kind of sequence" (MacMartin & Wood, 2005: p. 143) and 'rhetorical' - they are designed to "uphold versions of responsibility and counter alternatives" (op cit.). These discourse patterns are somewhat situated within the 'Age and Discretion Discourses' section.

4.1 Life Course Development Discourses

No one is born old. To be old means that one necessarily has a past history and a potential future that provide a context for characterizing the individual at a given point in time. This idea can be extended to individuals of all ages and emphasizes the importance of viewing life as part of a continuous and dynamic stream with a beginning and an end. (Schulz & Heckhausen, 1996: p. 703)

According to Sampson and Laub (1992), "[a]ccepted wisdom holds that crime is committed disproportionately by adolescents...[a]t the same time, criminologists have not devoted much attention to the other end of the spectrum – desistance from crime and the transitions from criminal to noncriminal behaviour in adulthood" (p. 64). Interestingly, while reductions in criminal behaviour upon reaching adulthood have been documented (Sampson & Laub, 1992; Schulz & Heckhausen, 1996; Laub, 2004), the sample used for this thesis research suggests this is not necessarily always the case. The concept of desistance is a problem for this research sample since in order to be in the sample none of the offenders had ceased offending with age. However, a number of the judicial discourses specifically considered 'aging out' or 'desistance' during judgment.

Life course perspectives purport chronological age is envisioned as a bell curve upon which development gradually increases peaking in mid adulthood. "In old age, declines in both physical and cognitive functioning are evident (Berkman et al., 1993), although the rate of decline and domains in which decline occurs are quite variable and

may not be irreversible (Schale, Willis, & O'Hanlon, 1994)" (Schulz & Heckhausen, 1996: p. 703). Judicial discourses frequently appealed to the ideas of illness, aging out, and career criminal behaviour and because of this can be interpreted with life course perspectives. "The major concepts from the life course [perspective] include: a focus on continuity; change, especially turning points; age, period and cohort effects; and both internal and external forces that may shape life-course development" (Laub, 2004: p. 3). Key aspects of aging that were mentioned in the judicial discourses and are presented in this section include: decreased physical and mental functioning, internal and external controls, and the capacity for change, particularly as a response to rehabilitation.

While there is heterogeneity between the effect of chronological and functional aging there are also elements of homogeneity. As Schulz and Heckhausen (1996) point out, "it is unlikely that either an 80-year-old or a 10-year-old will ever achieve a world record time in the 100-meter dash" (p. 2). Similarly, judicial discourse reveals homogeneity in awareness of aging but heterogeneity in the impact of aging on criminality.

There is something ironic and, at some level, terribly troublesome about imposing lengthy periods of incarceration against persons who suffer from an illness...[reductions are] called "humanitarian grounds" because of grave health concerns. (GO041)

Throughout the judicial discourses analysed for this thesis research, discussions of age in terms of an increasing probability of poor health emerged. In some instances, 'ill health' (or potential ill health) appeared to lessen a sentence while in others it appeared to be noted but disregarded as other priorities took precedence. For example, while sentencing a 50-year-old offender, a judge commented that he had "... tempered this sentence significantly because of the accused's serious medical condition" noting that "...given the stroke that he sustained he has already been, for a considerable period

of time, in a jail of a sort" (GO048). However, it is unclear whether this is an interpretation of the effect of illness in conjunction with age, or just an interpretation of illness on its own.

The relationship between age and illness was more substantiated in other cases in which the judge afforded leniency to an older offender based on illness but also referred to the offender's age during the discussion of illness. For example, according to a Kamloops judge, the accused "...presents as a sympathetic figure. He is sixty-one years of age. He has a quiet demeanour, at least in the courtroom. Because of an operation, described in some of the reports, [he] has had to have the use for the last number of years of a mechanical voice box..." (GO018). When the relationship between age and illness were considered from this perspective, rulings tended to be "...mindful, because of ... personal circumstances and health considerations, [with judges commenting] I must not impose a sentence that is unduly long or harsh" (GO048). MacMartin and Wood's (2005) definition of 'action oriented' discourse was evident in the discussions of illness because the discourse seems to be constructing sympathy toward the offender and thereby promoting leniency for the offender's sentence. The use of language such as 'terribly troublesome' (GO041) and 'in a jail of a sort' (GO048) seem to be calculated to uphold a particular version of responsibility because the judge is reinforcing a societal responsibility and countering alternatives.

The comment that the accused presented a 'quiet demeanour' (GO018) is interesting for two reasons: firstly, a person who cannot talk is likely quiet, and secondly, it would be expected that a person in court would be quiet regardless of whether or not they had a mechanical voice box. Despite the lack of clarity about the offender's qualification as having a 'quiet demeanour,' the judge identifies the offender as a 'sympathetic figure' because of an older age and because he is ill.

The link between age and illness was possibly established best through discourses that referred not to existing illness but instead were concerned with potential illness. For example, in Penticton, a judge imposed a community sanction commenting that the offender “is now sixty-three years of age ... according to both the detailed submissions of his counsel as well as the pre-sentence report, is a man who is in a failing state of health. He has significant medical concerns” (GO008). Discourses such as this suggest that there is an assumption on the part of many judges that failing health is an inevitability given advancing age. In this example, the judge appeared to have acknowledged declining physical functioning as an aspect of aging that should be considered as a relevant circumstance when faced with an older offender.

In other instances, however, discussions of the relationship between age and illness took a decidedly more punitive tone in which, regardless of illness, denunciation and deterrence was prioritized. For example, another Kamloops judge commented “... considerations that I look at require me, in my view, on these set of facts, to go beyond the sympathetic factors that the court might have in relation to this specific offender” (GO055). In this case, ‘sympathy’ had a different tone. It verged on the patronizing. The same judge elaborated noting that the offender’s “remorse, and his accepting of responsibility is exceptional and genuine, but the wider public policy considerations and sentencing considerations of general deterrence, in [his] view, must take predominance in order to protect the public” (GO055). Accordingly, the classical desire for punishment ‘within the full extent of the law’ was fulfilled.

This type of consideration also appeared in discourses involving what could be considered the ‘very old’ (namely, those 85 and older) (Wister, 2004). In a Vancouver court, the interpretation of age for one individual was considered by a judge who commented that “... the accused’s ill and failing physical health at the age of 85 is not an

appropriate basis upon which to reduce any sentence to be imposed because of the number of offences committed here” (GO001). Interestingly, discourse in this case also revealed that the individual had difficulty completing thoughts when attempting answers, which the presiding judge attributed to “selective memory” rather than infirmity.

Discussions of illness and aging also overlapped into discussions of the effects of increasing age and the possibility of the desistance from criminal lifestyles. When ‘illness’ was discussed along with age, the discourses appear to take a chronological perspective on age in which illness (or potential illness) either created sympathy for the older offender or illness created sympathy but sympathy was less important than the purposes and principles of sentencing. A number of the discourses appeared to suggest declines in physical health were inevitable with the passage of time. However, when illness and age were discussed along with an extensive criminal record or career criminal, interpretations of age could be classified as functional age discourses. That is, judges seemed to consider the age and illness for offenders with a criminal record differently from age and illness of offenders without a criminal record. When the age and illness of repeat offenders was considered in the sample of discourses, the judges often extended the interpretation to a determination of whether or not the illness resulted in a situation in which the offender was no longer able to offend due to physical inability.

According to one discourse regarding a community sanction for an historical sexual assault, the judge commented that “... the present physical incapacity would tend to reduce the risk, I add, of recidivism considerably” (GO048). Superficially, this interpretation appears to refer to impotency in the sense that this older offender would not be able to perform sexually so would not commit further sexual offences. However, there is evidence that this judge does not consider that there is a direct link between sex crimes and a reduced libido. When compared to another judicial discourse by the same

judge, the reference is to inability in the physical sense rather than inability in the sexual sense. The same judge, in another case, commented that “offences of this nature have little or nothing to do with sex and a great deal to do with the exercise of power and control, humiliation, degradation, and turning people into objects” (GO006).

In another example, in a Vancouver court, a judge commented that the “...accused is a risk to prepubescent and adolescent females until such time as he is simply physically too aged to re-offend” (GO002). Considering the offender in this case was 77-years-old, this discourse might be interpreted to imply that the judge is relying on the inevitable end to life rather than gradual infirmity of a reduced libido. It might be considered a chronological interpretation of age. Although in the first example (GO048) the judge appears to consider functional aging and in the second example (GO002) the judge looks at chronological aging, both of these examples appeared to interpret the effect of age and illness on the likelihood of recidivism in terms of an inevitable decline in health brought upon by the aging process.

A number of discourses discussed the possibility of desistance or aging-out of criminal behaviour without reference to illness. In these cases, the discourse regarding aging out of criminal behaviour over time was not as direct but instead associated with external or internal forces that might motivate an older offender’s transition into law-abiding behaviour. In terms of ‘external forces,’ there was a pattern in the discourses of judges considering an offender’s attachment to conventional (or non-conventional) norms such as family or employment over an extended period of time. When a judge seemed to find a relationship between age and desistance as a function of ‘internal forces,’ the link appeared to be associated with an older offender’s ability or inability to be rehabilitated by the criminal justice system based on characteristics about the offender.

An older person's attachment to conventional societal norms was noted by a Campbell River judge who commented that, "[o]ver the past twenty years the defendant, who is now fifty seven years of age, has been an asset to his community" (GO003). This judge continued noting that the offender "has been gainfully employed by the same forestry company for many, many years" (GO003). This statement might be interpreted as judicial belief in the gradual desistance of crime throughout adulthood as identified by Sampson and Laub (1992), or Schulz and Heckhausen (1996).

Interestingly, the same discourse extended the explanation beyond community attachment to family bonds noting that the offender, "has supported and raised three daughters, and he has been married to the same woman for thirty-eight years" (GO003). Arguably, this discourse might demonstrate a 'stake in conformity' rather than an interpretation of an aspect of aging. However, the reference to "many, many years" and "for thirty-eight years" suggests but for this older offender's advanced age he would have not have had the opportunity to have an extended history of conventional behaviour. In this particular discourse, the judge appears to have 'constructed' age as an indicator of the opportunity for a history of conventional behaviour that would indicate the pattern in the offender's current and future conventional behaviour.

Sometimes, in terms of aging out, the latent 'action oriented' discourse merged with the manifest 'constructions' and contradicted one another. For example,

...there had been four prior sexual offences, three of which involved children; that three of the victims, as I said, were under age fourteen; that the victims were all strangers to the accused, they were all female, there was no grooming involved with any; and that ... had never been involved in any serious age appropriate relationship.... [based on his age] evidence was that there was an acceptable risk level such that there was no objective reasonable fear of re-offending. (GO047)

In this discourse, the judge appears to acknowledge that attachment to conventional social norms such as significant others is important for abstaining from criminality by

commenting on the relationship status noting that the offender “had never been involved in any serious age appropriate relationship” (GO047). This is consistent with MacMartin and Wood’s (2005) suggestion that discourse often will reinforce a particular agenda and use the language of the agenda. However, the causal inferences of the evidence provided by this judge are inconsistent with the assessment that despite the lengthy history of offending, and lack of conventional behaviours of this offender the judge concluded that “there was no objective reasonable fear of re-offending” (GO047).

Discourse analysis of judicial reasons for judgment and sentencing revealed considerable overlap between aging-out and career criminals in terms of aging resulting in internal forces that would motivate an older offender to cease criminal behaviour. The discourses that evidenced a link between internal forces and age were primarily considerations of the probability of rehabilitation for older offenders. While rehabilitation is arguably external to an individual, it involves a choice on the part of the individual so is considered internal for this thesis research. In some instances, judges appeared to construct age in terms of physical functioning, others considered age in terms of cognitive functioning. These ‘constructions’ work in conjunction with each other. However, again there was ambiguity between the discourses as to whether or not age would result in desistance or whether it provided a record of the failure of rehabilitative efforts.

For discourses associated with the relationship between age and internal forces, the important aspects of aging considered by judges appeared to be ‘experience’ and ‘maturity.’ For some judges, experience and maturity meant that it was ‘never too late’ for the older offender to rehabilitate himself. For other judges, age also indicated experience and maturity, however, the experience and lack of maturity evidenced by the offender indicated that it is not possible to ‘teach an old dog new tricks.’

A judge's interpretation of age as resulting in eventual physical decline was noted in relation to a 53-year-old career criminal property offender. A Port Coquitlam judge commented,

...I see from your record, obviously, as counsel has said, you have been unfortunately involved since 1970 with the criminal justice system and basically have gone through probations, fines, jails, parole, pretty well everything in terms of the types of sentencing that can be had. (GO015)

...Everybody has their own rock bottom, everybody has short or small windows where they can change, and it is important that we not write off anybody because often, for some people, things do change over a period of time. Sometimes it is just age. You get too old to climb a ladder at night and too old to stay up till 2:00 in the morning to break into places. So sometimes, in spite of yourself, you stop doing whatever your career crimes have been. (GO015)

However, the judge in this case appeared not to hold out hope that age would be an obstacle to this particular individual and instead noted the internal forces necessary to promote desistance from crime. Commenting, with almost comical resignation, this judge states that "at 53, if you have gone through all these resources, you are really either going to make the change on your own, and you already know where to look for help if you need it. You either will take it or you will not" (GO015). This discourse suggests an interpretation of age as connoting wisdom or experience in which an offender could choose not to re-offend. Additionally, this judge specifically acknowledges that the offender's capacity to change over time comes from within the offender himself.

A different judge commented on the relationship between age and rehabilitation, suggesting that the source of change was both internal and external to the individual, and further that desistance was both possible and probable despite a long history of offending. In a Kelowna court, the accused career criminal was afforded considerable respect from the judge who commented, "You are an interesting man, sir. You are obviously intelligent. You are articulate. You are often very persuasive when you talk.

You have a lot of skills and abilities” (GO037). Apparently, this particular judge put faith in directed rehabilitation as the judge continued by saying “[g]iven your age, that will take you to a point, I am hopeful, at which the problems that bring you before me today will have been addressed and you will no longer pose a threat to the public” (GO037). This illustrates the internal locus of control necessary for deterrence. It also appears the judge is attempting to reinforce the belief in self-control. It also suggests that, for this judge, age can be interpreted to connote maturity, experience and the opportunity for changing behavioural patterns.

As noted, other discourses that demonstrated a link between age and desistance from crime seemed to echo the idea that change was possible however doubted the possibility of the old offender choosing to rehabilitate himself. This interpretation of age is demonstrated by a New Westminster judge who appeared to note impatiently to the offender that “so far your life has been a waste. You have been nothing but a burden on society. You are far too old. You are one of the few offenders who is still offending at your age. Most people, frankly, run out of energy and run out of time, or their health runs out, before they get to your age” (GO016). While clear allegiance to a functional inability to offend is evident, this type of discourse appeared to slide toward the consideration that internal forces were necessary in the sense that the older offender had to actively choose to desist from crime.

In another example of the link between age and internal forces in which the judge appeared to look at experience associated with age but interpreted experience to mean an ingrained pattern of behaviour that was unlikely to change, the discourse took an almost amused and informal tone. For example, in relation to a 51-year-old property offender, a Vernon judge commented,

...realizing that the court of appeal and the Supreme Court of Canada have indicated that, if possible, rehabilitation should be the focus because if we could rehabilitate you, then everybody wins. But, Ernie, we have been trying this for forty years it looks like and you go a step ahead and two steps backwards. (GO030)

While this discourse raises questions about aging out, it also initiates questions about the value of deterrence. Demonstrating latent and manifest belief in the possibility of deterrence through rehabilitation, this commentary appears to impart the judge's idealistic / realistic conflicts. It is not clear whether this judge interprets age to indicate that rehabilitation is possible or not. It is clear that this judge interprets age as resulting in experience in which it is improbable that the offender will change his patterns of criminal offending.

Discussions concerning rehabilitation for career criminals are often less optimistic. In these cases, consideration of age and experience meant, despite the usefulness of rehabilitation, that advanced age would result in a pattern of behaviour over such an extended period of time that the offender would not be able to desist. Specifically, a 52-year-old violent offender who appeared in a Coquitlam court is informed:

...the accused is a career criminal, who escaped from custody, and while at large continued his criminal activities, particularly the use and dealing in drugs...[w]hile the Court is always mindful of the needs of rehabilitating offenders, given the background of this particular accused there is not any reasonable prognosis for his rehabilitation (GO036).

In this discourse, it is not certain if age was interpreted to mean that change was less probable over time or that the old offender's criminal record just took precedence over the offender's age. However, what is certain is that without the older age the offender would not have had sufficient time to accumulate an extensive criminal history.

The link between age and continuity in behaviour is directly established by other judges. For example, the long time offending evident in many older offenders was viewed as less likely to either discontinue through age or rehabilitation and in fact aggravate the likelihood of subsequent offences. For example, a judge in a Penticton court commented in relation to a 63 year old offender, "...[his] behaviour is of an entrenched and longstanding nature, given the thirty-year history of offending" (GO008). This offender was allotted the maximum custody sentence for the possession of more than 598 computer child pornography images. This discourse suggests a belief that age in conjunction with past offending indicates continuity in behaviour which makes it unlikely an older offender will choose to stop offending.

Judicial discourse analysis reveals consideration of the life course trajectory and the effect on criminality. In some instances this consideration appears in terms of 'aging out' or the mellowing effect of time. As Schulz and Heckhausen (1996) suggest, "when individuals reach the downward slope of the inverted U-function and experience declines in their ability to do some of the things that they were once able to do" (p. 3). However, other judges appear to attach their decision making to a developmental perspective more in line with learning than in line with desistance. Laub (2004) acknowledges that a "staple of life-course research is examining how events that occur early in life can shape later outcomes" (p. 2). This would support judicial discourses that viewed age in terms of the continuity in an older offender's behaviour and reported an interpretation of age in which past patterns of criminal offending would continue.

The most consistent finding throughout the discourses in regard to the research discourses included in this section is that there is no consistency among the patterns. That is, myriad factors impact interpretations of aging out in relation to illness and career criminals. Canadian judges appear to consider a variety of aspects of aging in

conjunction with what those aspects might indicate for the future of the older offender. In particular, age was interpreted to mean older offenders will likely experience illness and declining functioning. However, the importance of declining health when judging guilt or sentencing an older offender was undecided. Some judges appeared to consider illness associated with age as a legitimate consideration (GO041, GO048, GO018, and GO08) while other judges did not (GO002, GO055, and GO001). Some of the judicial discourses appeared interpret age as indicating attachments to conventional norms because of time (e.g., GO003) and indicated that an offender should be afforded leniency because of the historical record of conventional behaviour. Other judges indicated that age would result in a longer history in which to establish a pattern of conventional behaviour (e.g., GO047) but appeared to sentence despite this acknowledgement.

There appeared to be substantial disagreement among the research discourses regarding the link between age and continuity of behaviour as opposed to change in behaviour. There was much variation in whether age could be interpreted to result in changes in behaviour or whether age indicated ingrained patterns of behaviour that would remain stable. Even when there appeared to be agreement among the discourses that an older offender could change his or her criminal behaviour, there was disagreement as to whether the chances were probable or even possible for the specific offender included in the case. In general, a number of the discourses suggested that old offenders could be rehabilitated despite relatively old age (e.g., GO015, GO030, GO037, and GO016). However, other judges seemed to interpret old age as working against the offender's chances of desistance from crime (e.g., GO008 and GO036).

While further analysis might reveal greater patterns about the possible factors that affect judicial perspectives (e.g. record, offence type, or victim type) used in

conjunction with life course development dualities and aging, for these purposes it is sufficient to acknowledge that developmental age is considered by the British Columbian judiciary. However, whether age works for or against the offender or accused is undetermined. Despite the ambiguity about the effect of the age considerations, aspects of aging considered by judges appear to be decreased physical and mental functioning, internal and external controls, and the capacity for change particularly as a response to rehabilitation.

4.2 Age and Social Status Discourses

As was noted, judges seemed to consider the age and illness for offenders with a criminal record differently from age and illness of offenders without a criminal record. Similarly, judicial discourse regarding age appears to differ substantially depending upon other characteristics of the offender. Not surprisingly, clear differences in the interpretation of 'age' were evident depending on the offender's education, class or race. The judicial decisions take the specific characteristics and circumstances of each offender into consideration when sentencing or during judgment. However, the research sample indicated different patterns in the aspects of age that were considered by judges depending on the social status of the offender. Key patterns in the judicial interpretation of older age included within this section suggested a link between age and credibility and a link between age and what the gerontologists would refer to as a 'cohort effect' (Wister, 2004). A 'cohort effect' is the idea that a particularly important historical event can impact an entire age group.

For the non-aboriginal offender, age was often considered in terms of class or education. Age was also discussed as it related to credibility. A particularly interesting pattern among the research sample was the use of the term 'gentleman' to refer to the older offenders by several different judges. Although there was an absence in the

information about the ethnicity of the offenders in the research sample, of those thirty-eight offenders for whom this information was available, more than half (about 52 percent) were Aboriginal. None of the discourses in which a judge referred to the older offender as a 'gentleman' involved an Aboriginal offender. For the 'minority' offender, age often coincided with a discussion of Aboriginal status. Based on the age of the sample, much discourse surrounding age and First Nations considered the effect of residential schools on the offender's experiences.

While there seems to be a consensus amongst the research discourses that childhood experiences in residential schools would have shaped the experiences of offenders who attended these schools, the effect of these experiences on adulthood criminality varied. Importantly, a pattern between 'age' in terms of aboriginal or non-aboriginal status is evident: with minorities, the discourse is manifest while for majorities, it is far more latent. In other words, rarely did a judge state, "given your income I trust your testimony." The statement, "given your experience in a residential school, I believe a community sanction is most appropriate" was far more frequent.

The most surprising patterns identified from the judicial discourse research sample were those that considered the relation between age and class in terms of the offender's family standing within the offender's community. While it seems prudent to consider the family situation of a young offender to determine if a youth has available resources, it is unclear how the same consideration would apply to a competent adult. Beyond the possible value in conventional attachments such as employment and social relations, it is not clear how knowledge of an older offender's family history is relevant. However, within the judicial discourse sample, there were several cases in which the judge commented on the offender's parents despite the fact that the offender was not only an adult but an older adult.

According to a Penticton judge, for example, the deciding factor for selecting between a community or custodial sanction was that the 57-year-old offender was “the son of a well-known and respected Naramata family. Both of his parents were known for their contributions to the community. He is one of six children. He is now fifty-seven years of age” (GO053). Similarly, in another case in which a Kelowna judge addressed the issues of community versus custody sanction, the judge commented that a deciding factor was the offender’s mother who was “a well spoken lady who is now aged seventy and a microbiologist by education” (GO047). However, unlike the son of the ‘well known and respected Naramata family,’ the son of the microbiologist was both living with and caring for his seventy-year-old retired microbiologist mother. Although in only one of these examples the older offender had the responsibility for caring for an aging parent, both examples suggest an awareness on the part of judiciary that aging often results in shifts in responsibilities over an individual’s life course. This also suggests that both judges considered filial responsibility in that the 57-year-old offender received a custody sentence (GO053) while the 51-year-old offender received a community sanction (GO047) despite both presenting with similar offences and offence histories.

Based on patterns within the judicial discourse sample, it appears that an important aspect of aging is the social responsibilities of the offender. A judicial awareness that older offenders might be responsible for taking care of older parents was extended to the responsibility for caring for aging spouses. For example, while sentencing an offender, a Creston judge commented that given the offender’s “age, given his wife’s disability, given his limited income, [the judge] would direct that that sentence be served on an intermittent basis” (GO035). In this case, the offender was required to serve his sentence at the local RCMP detachment during the weekends. This pattern seems to extend the awareness of possible physical and mental deterioration

associated for aging beyond focusing solely on the offender himself to the aging that might also be affecting the people around an older offender.

A particular selection of discourse pertaining to the relationship between age and education provided interesting insight into judicial understandings of age. Throughout the discourse sample, education appeared to be considered valuable by a number of the judges. The education of the people the offender associated with appeared to be a positive consideration but so was the offender's own educational attainment. However, while in the majority of the cases included within the research sample educational attainment was not noted, in some instances the judge seemed to place a particular emphasis on how much schooling the offender had obtained. For example, in relation to a violent offender tried in a Terrace court, the judge noted that the "accused is 52 years of age, has lived in Kitimat for approximately 25 years, [and] has been a teacher over that period of time at an elementary school in Kitimat. The accused has also been very active in the community, particularly in sporting activities involving children" (GO033).

While it is not particularly extraordinary that this individual had no prior charges, the language of the judicial reference to this fact (i.e. "has no prior criminal record whatsoever, and he has no disciplinary background whatsoever from the College of Teachers in this province" (GO033)) is quite interesting. It would seem that having 'no criminal record' would be absolute and it is uncertain why the judge would feel compelled to include the modifier 'whatsoever.' In the opinion of this judge, this offender has,

...done a lot of good for many people over time, and in these circumstances, notwithstanding the fact that the victims in this case involve your spouse and a police officer, I am satisfied that there should be a conditional discharge and that you be placed on probation for a term of nine months. (GO033)

Which raises the question: would a younger, less educated individual receive the same treatment as this offender? Furthermore, according to this judge, the offender had also been a “contributing member of society for many, many years” (GO033) which again raises questions about the judge’s use of language since it is unclear why stating the offender had contributed for ‘many years’ instead of ‘many, many years’ would be insufficient. The use of the extra ‘many’ in this discourse appears consistent with MacMartin and Wood’s (2005) suggestion that language is ‘situated’ since it is both occasioned and rhetorical.

Had the offender not had the ‘time’ to do the ‘good,’ (or was younger) would the judge have imposed such a sentence? This case also raises questions about judicial interpretations of the value of a degree as the judge also noted “there is a clear public interest in allowing [this offender] to keep teaching” (GO033) despite the fact that the offender had committed a violent offence against his spouse and against a police officer. Alternatively, it might be that the lack of a criminal record also influenced this judicial finding. Despite the judicial language, and the recognition of the time invested in community service and education, the link between age and education is weak and it might be that education and community service and age are all being considered by this judge. However, there is no statistically significant relationship between these variables.

A more direct link between age and education was found in the case of a different violent offender who was sentenced by a Kelowna judge. The judge noted that this offender was ‘intelligent, articulate, persuasive with a lot of skills and abilities’ however the offender received a custodial sentence with the presiding judge noting that at the offender’s “age and stage in life, it is probably the federal system that is more appropriate” (GO037) for this individual. Additionally, the judge appeared to follow the offender’s own recommendation about sentencing and commented that he did “not

disagree with [the offender] that it may be that there are better resources available within the federal system" (GO037).

In another instance of an educated older offender being afforded credibility, the judge commented that the offender "is sixty years of age [and] a gentleman who in many ways has been a productive and contributing member of the community. He has completed not just his Grade 12 but a diploma in horticulture in Olds, Alberta, and then a four-year course in horticulture, following which he worked for a period of time in the city of Calgary in the parks department" (GO005). This case involved one count of impaired driving causing bodily harm, and a second count of impaired driving causing death. Age had been considered. It appears that 'age,' in this instance, had a mitigating effect when combined with education and community service. Additionally, the accused had an extensive criminal record which included a "number of convictions for property offences and one drug-related offence, which are not material or aggravating factors, in [the judge's] view, in this proceeding" (GO005). Accordingly, in this example, age and education are again resulting in the older offender being afforded credibility; however, in this case it is evidently not the absence of a criminal record that tempered the offender's sentence.

The relationship between education and age appears to have disparate interpretations. While the judge appears to acknowledge education and age, it might not be the case that these two offender characteristics are influencing one another but instead a third variable which might be credibility. That is, educational attainment indicates credibility and the lack of a criminal record indicates credibility but it is still unclear what the role of age is in this equation. It might be that age indicates that the offender has had time to create a history of community service or to otherwise engage in pro-social activities such as obtaining an education. However, within the research

sample there were also patterns of credibility without discussions of education suggesting age might connote credibility on its own.

In a Prince George court, for example, judicial discourse relating to a 51-year-old accused offered insight into judicial interpretations of age as it related to credibility. In this case, the judge's comment that "I accept the defendant's evidence as being the truthful recollection of an average citizen who had minimal past contact with the police, recalling unsettling events of police behaviour towards him while under police detention" (GO057) raised questions about age. It was interesting that the presiding judge, without the benefit of corroborating evidence, took the position of the older accused over that of the younger authority figure who in this case was a police officer. However, it might be that the offender's lack of a criminal record had a greater impact than age.

Majority status and advanced age is apparently not a guarantee of credibility as is demonstrated in a Kamloops court in which a 52 year old individual is "not [to] be reasonably capable of belief and [since the judge was] not satisfied that his testimony as to where, how and the manner in which he purports to have dropped his cigarette and put it out is truthful" (GO004). The judge in this case elaborated, noting that he found that the offender's "testimony [was] inconsistent with his prior statements, as contained in the agreed statement of facts. This is relevant on [sic] the assessment of his credibility" (GO004). In other words, as is the case with both illness and career criminal history, age appeared to be no guarantee of credibility afforded to the accused or the offender.

The use of the term 'gentleman' is of particular interest and might be telling in that it appears to be used in a number of the judicial discourses. However, it is not clear whether the use of the term 'gentleman' by the judges conveys respect or sarcasm. As used in the case of the sixty-year-old offender charged with two counts of impaired

driving, the judge notes that the offender “is a gentleman who in many ways has been a productive and contributing member of the community” (GO005). Based on the context of the use of the term ‘gentleman’ in this case it appears that it is a respectful term. The term ‘gentleman’ subsequently appeared within this judicial discourse on two additional occasions.

The context of the term ‘gentleman’ in two other cases lends additional support to the interpretation that the term indicates respect. The first case involves a judgment for a 65-year-old sex offender. In case this case, the presiding judge commented that the accused’s “demeanour in the witness box...was very unusual. That is one of the things that the trial judge has to look carefully at. He smiled a lot... he was even laughing when he said that he was only a human being” (GO054). However, this judge further suggested that such behaviour might be excused since a trial “is extremely hard on the individual that is involved, particularly a man such as this gentleman who is before the court today ...” (GO054). The judge elaborated on the individual characteristics and circumstances of this older offender and noted that the offender “has no criminal record. He has no involvement with criminal law. He is not experienced in the world of dealing with police officers or being dealt with by police officers. He is an ordinary citizen” (GO054).

Since use of the term ‘gentleman’ appeared to indicate respect for the older offender, it could be hypothesized that using this term actually says more about the judge than it does about the offender. That is, the age distribution within the judicial discourse sample might include a group of judges who have been raised to consider people older than themselves respectfully and refer to men older than themselves as ‘gentlemen.’ If this is the case, the aspects of aging considered by the judges in the research sample might be affected by assumptions about older people on the part of the

judges. However, the extent of a 'judicial cohort effect' in the interpretation of old age could be mitigated in that there were a number of cases in which the judges appeared to appreciate the possibility of a cohort effect acting upon older offenders. That is, the judges might be aware of their own biases.

A second sexual offender, for example, was considered a 'gentleman' presumably because of his 'relatively advanced age' (85 years) rather than his molestation of a nine-year-old friend of the family who was in his care. Additionally, although this individual had already violated a community sanction, the judge commented, "[b]y way of mitigation he is a gentleman of relatively advanced years with no prior record [who faced] considerable personal challenges...growing up in pre-war Germany" (GO056). Again, the term 'gentleman' appears to convey unwarranted respect. The acknowledgement that the offender in this case had a poor upbringing suggests the judge is aware of circumstances that might influence the development of an entire generation. This aspect of aging, referred to by gerontologists as a cohort effect (Wister, 2004), suggests there is the possibility for historical events that shape and impact an age cohort's development. For example, the great depression influenced an entire generation as did World War II. Alternatively, it might be that the judge is not appreciating the possibility of a cohort effect but rather looking at the specific circumstances that formed this individual (Laub, 2004).

Given that growing up in pre-war Germany suggests an advanced age, this can be considered judicial discourse about aging albeit latent. The 'considerable personal challenges' identified as important considerations while passing judgment are noted by this judge;

...during the war, tragically, [the offender's] father died in a prisoner of war camp; in due course ...[the offender] was raised by an aunt and older nieces. It is mentioned that his aunt had a physically disabled daughter

who [the offender] helped care for [the offender] never looked at that young girl inappropriately as he would get a slap from his aunt were he to do so. In due course [the offender] made what sounds like a courageous escape from East Germany into the west and eventually immigrated to Canada and has been a productive working member of the community. His personal life has included some difficult times, most particularly the breakdown of his marriage through religious tension between his spouse and him. (GO056)

This discourse about pre-war Germany sounds remarkably like others relating to residential school attendance. For example, there are some similarities between the history of the 85-year-old sex offender and a 61-year-old property offender: Explaining the circumstances of the 61-year-old property offender, the judge commented the property offender was,

...born about sixty-one years ago in Fort Smith, NWT... did not know his father...mother is described as being Métis in one source and Inuit in another source. He has two younger sisters. He spent some time in an orphanage ... at five years old, he and his sisters were removed from their mother and placed into Roman Catholic residential schools. He was separated from his sisters... [later] placed in foster care...he felt he was not treated well. The siblings located their mother in the U.S...was unable to see his mother before she passed away His marriage ended...[the] second marriage ended after seven years when his wife committed suicide. (GO034)

As these discourses suggest, both offenders were raised without a father and were separated from their mothers. According to the sample discourses, both offenders were abused (the 85-year-old would “get a slap” while the 61-year-old was removed from his aunt’s home and “not treated well” in foster care). While the 85-year-old appeared to have a number of household disruptions while growing up by moving from East to West Germany and finally to Canada, the 61-year-old similarly had a number of household disruptions by moving from his aunt’s home to an orphanage to foster care. Adult marital break downs were both noted and might be considered acknowledgment of turning-points as an aspect of aging that is considered by judges. The key difference between the ‘considerable personal challenges’ of the 85-year-old offender and those of

the 61-year-old offender is that there is codification to formally recognize the experiences of Aboriginal offenders.

In terms of the 85-year-old “gentleman,” the judge appeared to have acknowledged life course trajectories and turning points (Laub, 2004) as an important aspect of aging that requires consideration. However, in relation to the 61-year-old offender, the judge appears to be considering a cohort effect based on residential school attendance. As the presiding judge in this particular courtroom commented “conditions on the new order are aimed at specifically addressing... rehabilitation and recovery from effects of residential school” (GO0034).

In terms of interpreting how judges consider age as it relates to Aboriginal offenders, because of the codified attention required of the judiciary while considering First Nations offenders, it is far more difficult to identify patterns. The negative effect of residential school attendance was supported by a judicial discourse relating to the judgment imposed upon a 63 year old First Nations man from Squamish in which the judge stated: “[g]enerations of First Nations children suffered abuse in residential schools. The abuse that First Nations children suffered and the effects of that abuse, although well-known in First Nations communities, is only now acknowledged by Canadian society and law” (GO013). However, the judge in this discourse appeared to draw a stronger link to the learning experiences of individuals in residential schools as opposed to cohort effects. As this judge commented, since “quite severe post traumatic stress disorder and that disorder is directly linked to sexual abuse at the residential school” (GO013) this interpretation of the effect of residential schools might be more appropriately included within a discussion of individual development as opposed to cohort effects.

Based on the patterns identified from the judicial discourses sample, a number of aspects of age appear to be considered by judges in conjunction with personal characteristics or circumstances of the old offender. There appears to be a relationship between age and social class and a relationship between age and education. However, in relation to discussions in which age appeared to be linked to class, the aspect of aging implied by class was the shifting responsibilities that may occur over an offender's life course rather than class itself. When age was discussed in terms of education, other than the assumption that both aging and education occur over a period of time, the link appeared to be that education connoted credibility and that 'credibility' was the important consideration. Depending on the specifics of the case, it appears as if 'age' serves as an unofficial mitigating factor in both its latent and manifest contexts for the non-aboriginal offenders.

The use of the term 'gentleman' in relation to offenders appears misplaced. It seems that, in some instances, the judge is affording respect unbecoming the accused's offence history. Alternatively, it might be that 'gentleman' is used sarcastically although context suggests otherwise. Importantly, despite comparable ages between First Nations and Caucasian offenders and accused (when race was known), rarely was an aboriginal individual afforded credibility, or benefit of the doubt in terms of age.

Lacking specific codification, it appeared that 'age' might be used in much the same way as 'aboriginal status' is applied for identifying a possible cohort effect for Caucasian offenders. However, 'age' for aboriginal offenders only appears to function in the capacity of an understanding of residential school attendance. Alternatively, in terms of the age of majority status offenders, judges might be considering the life course trajectories of offenders and as well as transitions that take place over an offender's life course as an important aspect of aging. The judicial discourses associated with age all

gesture toward either mitigating or aggravating factors. Despite the ambiguity associated with the effect of age considerations, additional aspects of aging noted by judges appear to be shifting responsibilities, credibility trajectories and turning points and the existence of cohort effects.

4.3 Age and Discretion Discourses

A determination of how the Canadian judiciary are considering old age while sentencing and during judgment requires identifying the aspects of aging that are considered but also research into the effect of the judicial consideration. The question: 'do the aspects of aging considered by judges result in mitigation or aggravation?' remains unanswered. To be sure, offenders appeared to be judged or sentenced with particular attention to the individual offender's specific personal characteristics and circumstances. In other words, specificity in sentencing and judging was evidenced. There were patterns in which the offender or accused was judged or sentenced with a specific acknowledgment of old age. In these types of discourse, age might act as a mitigating factor either expressly or latently.

In other discourses, age appeared to be an aggravating factor if it implied authority, indicated that some age appropriate milestone had not been achieved, or suggested a position of trust. That is, the judiciary appeared to use discretion to either moderate or amplify a judgment or sentence depending on the characteristics of the offender. Yet judicial discourse also revealed patterns of proportionality grounded in thought that is more classical in nature. Sometimes the 'letter of the law' took precedence. Both manifestly and latently, this pattern was most evident when the judiciary rejected defence arguments or expert testimony. However, ironically, these cases represent a form of judicial discretion; they represent the discretion not to use discretion.

In a number of the discourses in the research sample, mitigation associated with age was frequently overt. Furthermore, judicial discourse appeared to construct and consider 'age' as an exterior force beyond the control of the offender. For example, a Vernon court passed judgment on a 61-year-old violent offender noting it "is apparent that he may have forgotten some of the details of the incident. I am taking into account his age and the nature of the incident" (GO042). In a different example, age was manifestly considered for a 68-year-old offender who failed to remain at the scene of an accident from which the victim eventually died. During the judgment, the Vancouver court judge commented "[t]he mitigating factors in this case can be summarized as follows....(ii) He is a 68 year old man of otherwise good character who has contributed enormously to the community throughout his life" (GO050). The judge in this case continued "[t]aking into account the personal circumstances of the accused, particularly his age ...I am satisfied that this sentence of nine months imprisonment can be served in the community under the terms of a conditional sentence order" (GO050).

In another discourse the judge noted that he was "required to consider the circumstances of the offender [in that the offender] is sixty-one years of age" (GO018). Similarly, in sentencing another 61 year old property offender, the judiciary specifically noted age commenting "... has been held with prisoners who are much younger and who have entirely different lifestyles, including different tastes in music and television" (GO034). Accordingly, these represented exemplars of external control but also suggest that age itself was deserving of consideration.

Other discourse indicated a mitigating effect of age far more subtly. Within this type of discourse, age appeared to be working in conjunction with additional characteristics of the accused to temper a sentence. For example, patterns of mitigation often considered the relationship between age and illness. In one case, the relationship

between age and a decrease in physical and mental functioning was commented upon by a Penticton judge. This judge considered age in sentencing a 63 year old sex offender commenting that the offender,

“...has had difficulty in obtaining the proper food and medicine to address his medical problems in custody, and this has made his medical problems more difficult to manage and more painful... [she would] credit him for forty-eight months time served, which is at a rate somewhat higher than the two for one practice” (GO008).

In this example, illness due to age was considered to be a ‘double punishment’ suggesting that physical and mental decline is an important consideration.

However, whether or not a sentence is automatically mitigated based on functional decline is unclear. In another case, for example, the relationship between age and illness was latently considered in judicial discourse pertaining to a 66 year old multiple sex offender. The events in this case were hundreds of counts of sexual assault on a bi-weekly basis from 1965 to 1975 involving multiple victims. According to the Chilliwack judge, “it was apparent that the accused does not recall many of the events” (GO049) and thus a community sanction was appropriate. Nevertheless, it is unclear if the issue here is memory loss associated with age, or if frequent repetitive activities might blend into one. This judge seemed to correlate ‘age’ with automatic mental degeneration. The gerontological literature warns against such assumptions about age as assumptions are generally based on stereotypes and the population of older people has considerable heterogeneity (Wister, 2004).

While the legitimacy of the decisions to mitigate or not mitigate a sentence due to age are beyond the scope of this research, the finding that age is a mitigating factor in some cases is important. Furthermore, while age was manifestly a mitigating circumstance on its own, the effect of age on mitigating a sentence was far more subtle

when it was used in conjunction with other aspects of aging such as illness, education or credibility.

The research sample also reflected patterns in which judicial considerations of age resulted in age being an aggravating factor. Frequently a consideration of the offender's age as aggravating the offence was discussed in terms of positions of authority or trust. A Port Coquitlam judge, for example, commented that in terms of the "aggravation of the circumstances, there are also numerous factors... [p]erhaps the most serious is that... [the offender] was in a position of trust to this young girl" (GO023). This case draws attention to a latent understanding of older age as increasing the likelihood of positions of authority or trust which might be explained in three different ways. Firstly, like other patterns in which age is considered in conjunction with additional factors, it might be that age and trust work together in that age makes it more likely an offender will have had the opportunity to be in such a position. Secondly, it might also be that, in this case, the judge assumed that the older person had more free time to devote to activities that would put him or her in a position of authority.

Finally, it might be that some characteristics associated with being an older person connote authority or trust to the victim themselves. For example, a different Port Coquitlam judge commented that the offender had "allowed himself to get into a pattern of behaviour with a young girl that was illegal, criminal, unacceptable and violated the trust of that child and her mother" (GO045). What is particularly interesting about these statements is that in both instances the judge appeared to link responsibility for the crimes to the offender's actions and demand accountability. This is also evident in another case in which the judge specifically acknowledged the "abuse of parental trust and authority" (GO025) as an aggravating circumstance. In these types of discourses, it appears the judge is demanding a greater level of accountability from the offender based

of years and should have known whether he had extinguished his cigarette properly or not (GO055). As such, the mitigation of age in terms of both potential illness and wisdom garnered through experience were discounted in favour of enforcing the law.

Conversely, it appeared that remorse might result in mental distress for an older offender and in some cases be considered to be more important than upholding the law. For example, in relation to a 68-year-old white-collar offender, the presiding Delta judge stated "there is no question in my mind that these events must have caused him significant stress and even shame, as this was a very public event. He is also now involved in ongoing litigation which will continue the stress and concern for him" (GO014). In this case, the age of the offender and the remorse appeared to produce suffering so, in conjunction, seemed to be considered to be mitigating. Interestingly, this case might again be considered 'environmental' crime as it involved a violation of the Waste Management Act. Additionally, the offenders had similar backgrounds including employment, supporting family, and no criminal charges. This suggests the relationship between age and the law depends on the judge in question. In both instances, 'age' is used to justify a judgment and a sentence but to decidedly different ends. Alternatively, the 68-year-old was a land developer and head of a corporate enterprise while the 63-year-old was a private individual who lit a fire in the process of attempting to scare away a bear. Accordingly, it could be that corporations and individuals are just treated differently by the courts.

Discourse analysis reveals variability in the construction of 'age' as it relates to judgments and sentencing, however, a number of aspects of aging are considered by Canadian judges. In particular, when confronted with an older offender, judges appear to have considered age in terms of decreased physical and mental functioning, internal and external controls, and the capacity for change particularly as a response to rehabilitation.

Additional aspects of aging noted by judges appear to be shifting responsibilities, credibility trajectories and turning points and the existence of cohort effects. As a whole, the social status discourses demonstrate a judicial interpretation of 'age' in terms of specific considerations such as the provisions included in the *Criminal Code* for Aboriginals. Repeated use of the term 'gentleman' was disconcerting given the offence details but might originate in the relative age of the judge in comparison to the accused or to the offender. The assessment that the term 'gentleman' appeared to indicate respect within the judicial discourses was based on the context in which the term was used.

Regarding the age and mitigation or aggravation category, inconsistencies in judicial interpretations of age are again evident. The research sample included cases in which age was used directly and overtly as a mitigating circumstance that tempered the judge's sentence or assessment of the guilt or innocence of the offender. Other patterns within the sample in which age acted as mitigation linked age to other factors such as illness or experience. In terms of aggravation, age was considered an aggravating circumstance particularly when it placed the offender in a position of actual or implied trust. Furthermore, depending on the characteristics of the offender, victim and circumstances, age is either mitigating or aggravating. That is, judicial interpretation appears to be entirely contingent upon the circumstances and context of the case. Ultimately, the judicial discourse analysis revealed patterns but did not result in a clear and concise picture of the ways in which judges view 'age.' The judiciary does not allegorically interpret 'age' as indicative of guilt or a lack of guilt, nor is age consistently interpreted to indicate a custodial or alternatively a community sanction. However, age is considered.

The quantitative data does indicate that among older offenders there are individuals who fit the target group of the proposed sentencing policy changes. The policy changes specifically target violent and sexual offenders and since older offenders are frequently violent or sex offenders, sentencing policy changes could result in an increase in the absolute number of older offenders in custodial institutions. The impact of the quantitative and qualitative findings, in terms of the potential for increased sentence lengths and for custody sanctions, are discussed in the next Chapter.

CHAPTER 5: OLD AGE, SENTENCING POLICY AND CORRECTIONS

Chapter 1 raised the question of whether a proposed reduction in judicial discretion could exacerbate the problem of an already greying prison population. The answer to this question required a determination of whether judges were, in fact, considering the age of older offenders at sentencing or during judgment and, if so, how the relatively older age of these offenders was being considered. As was discussed in Chapter 2, past research suggests that a greying prison population presents a host of factors for which Correction Services Canada must plan but also suggests that the effect of older age on sentencing practices was not clear. In some of the past research the advanced age of older offenders appeared to temper the length of custodial sentences. In other examples, an offender's older age appeared to have no effect on the judge's decision. The quantitative research results that are included in Chapter 3 appear to be consistent with the existing research. Canadian Judges do, in fact, consider the relatively advanced age of older offenders. Furthermore, the discourse analysis reported in Chapter 4 demonstrated that, in some cases, 'old age' is considered to be a legitimate factor when deciding whether to apply community sanctions and to minimize the custodial sentence length of older offenders.

However, as was noted in Chapter 2, the link between sentencing practices for older offenders and the impact on prison population growth has not been established in the existing research. It was suggested that prison population growth could be understood as a function of an increased number of new admissions into custody along with longer custodial sentences (Andre & Pease, 1994). In this Chapter, the quantitative

and qualitative results of the research for this thesis are considered in terms of the existing research into old age and sentencing policy and are extended to a discussion of the impact on prison population growth by using a formula proposed by Andre and Pease (1994).

According to Andre and Pease (1994), estimates of prison populations are obtainable through the use of a three component mathematical formula in which p (population) "represents the number of people in institutions at any one time, r (receptions) is the number of offenders entering, and s (effective sentence length) is the "period during which people remain in prison" (p.139). The formula: $p = r \times s$ suggests an institutionalized population is a function of the number of new receptions (or admissions) multiplied by the effective sentence length. This simple formula serves as a "tractable method for estimating past, current, and projected" prison populations thereby enabling assessment of sentencing policy (Andre & Pease, 1994: p. 139). From the perspective of disinterested, objective analysts, Andre and Pease (1994) maintain that "the procedure does not imply any particular position with respect to the desired effects of sentencing policy" (p. 140), so it is useful for exploring potential sentencing policy changes.

Demonstrating their formula, Andre and Pease use an example involving the goal of reducing the prison population. "There are two basic ways population reduction might be accomplished:" argue Andre and Pease (1994), "[a] to lock up fewer people (reduce the number of receptions); or [b] to lock up the same number of people for less time (reduce sentence length)" (p. 140-141). Logically, then, it seems there are two basic ways to increase a prison population: [a] lock up more people; or [b] lock up the same number of people for a longer time. Based on $p = r \times s$, it might be possible to predict the implications of a federal criminal justice policy. However, by Andre and Pease's own admission, this formula is only "accurate to the extent that fluctuations in rates of

reception or discharge are small" (1994: p. 140). Mandatory minimum sentences would increase the effective sentence length and the cessation of community sanctions would increase the total number of new admissions to correctional institutions thereby increasing the total prison population.

The quantitative research results for this thesis demonstrated that the absolute number of older offenders admitted to prisons would increase if judicial discretion was reduced. Although there were no statistically significant relationships that would identify the specific circumstances in which judges considered age, based on the special characteristics of the older offenders included within the research sample, it appears that more older offenders would receive custodial sentences and that they would require more in-custody services specifically designed for this offender group as a result of sentencing policy changes. Since Canadian judges appeared to be interpreting 'old age' as a necessary factor for tempering sentences, the qualitative research results suggest that the proportion of older offenders within correctional institutions would increase with the elimination of judicial discretion.

In this final Chapter, a discussion of the quantitative research results in terms of the existing research into the special characteristics of older offenders will be followed by a discussion of the qualitative research results in terms of the existing research into sentencing older offenders. Following the discussions of quantitative and qualitative research result sections, suggestions for future research considerations are presented. The thesis research results suggest future research efforts need to address the programming designed specifically for older offenders and the legitimacy of 'aging out' as per life course developmental perspectives. Finally, the potential for additional exacerbated prison greying in an increasingly punitive federal political climate is discussed.

5.1 Increased admissions based on Quantitative Research Results

The proposed federal criminal justice policy specifically targets sexual and violent offenders (Conservative homepage). Statistics suggest that both types of offenders are particularly prevalent among the older offender cohort. According to Uzoaba (1995),

While only 13% of younger offenders [those under 50 years] in the institutional population are admitted for a sexual offence, almost one-third (32%) of inmates 50 to 59 years old and almost half of those 60 and older are admitted for a sexual offence. Homicide is also more likely to be the major admitting offence for older offenders (22%) than for younger offenders (16%) in the institutional population. Other types of violent offences ... are less common for older offenders. (Uzoaba, 1995: p. 4-5)

A similar pattern emerges from the non-institutionalized offender statistics in which the major "offence for older offenders under community supervision is homicide (39% for those 60 or older), with a sexual offence the next most common" (Uzoaba, 1995: p. 5). For the purposes of exploring prison population increases, the sociological reasoning behind these trends is less relevant than the effect.

There is some evidence to indicate that sexual and violent offences are disproportionately over-represented within older offender groups based on the British Columbian Provincial Court Database sample. Within this sample, nearly 68 percent of the offences were classified as either sexual (44.1 percent) or violent (23.7 percent). This finding is consistent with the reported findings of past correctional research (for example, Uzoaba, 1995, 1998; Gal, 2002; Lemieux, Dyeson & Castiglione, 2002). These statistics cannot be compared to the proportions of these types of offences in younger (those below 50 years of age) populations because this information is not included within the older offender research sample. By this reasoning, these results cannot be used to predict a 'greying trend' in which the population is increasingly becoming older. That is, these results do not help explain an increasing proportion of older offenders. What these

results do help explain is the assessment that older offenders would be impacted by sentencing policy changes that specifically target sexual and violent offenders. This could be interpreted to suggest that the absolute numbers of older offenders may, in fact, increase given the predominant offence types of older offenders. An increase in the absolute number of older offenders can be used to explain prison population growth as predicted by changes to sentencing policy but is particularly important in terms of understanding the special services that must be provided for older offenders.

An increase in the total number of people incarcerated raises institutional management questions along with increasing economic costs for housing those incarcerated. As was found in past research (Boe, 2002; Gal, 2002; Lemieux, Dyeson & Castiglione, 2002; McAulay, 2000; and May, Wood, Mooney, and Minor, 2005; Morton's (2001); and Uzoaba, 1995, 1998) there are additional economic and management considerations for older incarcerated populations. For example, Stewart (2002) reports that the financial cost of providing medical treatment for older offenders is as much as three times that of providing similar services for younger offenders. However, the psychological health of older offenders might be as in need of treatment as the physiological health particularly as it relates to first time older offenders becoming acclimated to the prison environment.

Past research into the special characteristics of older offenders suggested that this age group might have problems with integrating into a prison environment. Integration would be more difficult for older offenders than it would be for their younger counterparts. For example, Gal (2002) commented that adjustment for an older prisoner being incarcerated for the first time is particularly difficult. Uzoaba (1998) researched the demographic composition of incarcerated prison populations and determined the majority of older inmates could be categorized as 'career criminals' suggesting a number

of older offenders had past convictions for criminal offences. This was not the case for the sample drawn from the Provincial Court Database. Indeed, within this sample, the majority of older offenders had no past criminal record (58 percent). Only 21 of the 50 cases for which the data was available had a prior conviction. Of the 28 first time offenders within the sample, five offences were reportedly violent offences (about 17 percent) and about 14 older offenders (48.3 percent) were convicted of a sexual offence. This finding might be interpreted to mean that sentencing policy changes would require the incarceration of a group of older offenders (n=19) who also could be considered first time offenders. Thus, CSC would need to provide services for this group that helped with integration into the prison environment at an older age. That is, although the results of research into the psychological health of older offenders is mixed (Gal, 2002) there is some evidence that incarceration accentuates the offender's sense of loss.

This should not be interpreted to mean other offenders, whether repeat older offenders or offenders below the age of 50 years, do not have difficulty coping upon incarceration. On the contrary, CSC should help all offenders integrate into institutional living. The concern is that pre-existing medical conditions amongst aging individuals might be compounded by the additional stress of incarceration. The additional stress of incarceration might also effectively cause the onset of new medical conditions. As has been suggested by Gal (2002), the "difficulty that an older offender may encounter in an attempt to cope with the stress of imprisonment can impact on the development of physiological and/or psychological problems" (p. 2) that were not already apparent.

Using the chronological-functional cut-point of 50 years for determining when offenders could be classified as old, the sample demographics also suggest a potential for problems within the physical environment of institutions if more older offenders are serving custodial sentences. As has been reported, the sample includes 26 (about 68

on the premise that older people are considered 'grandfatherly' (GO054) and hence the offender abused that stereotype of older people to his own advantage. In this sense, age appears to be aggravating itself if trust is an issue in the circumstances of the case. It seems that a judge might be sentencing an offender because they 'should have known' that their older status put them into an implied position of authority.

A different pattern within the research discourses in which age resulted in aggravation was when judges seemed to acknowledge that age should be a mitigating factor (regardless of the judicial interpretation of age) but ignored age in favour of upholding the law. Interestingly, considerations of age appear almost apologetic when the judiciary was preparing to discount the personal characteristics of the offender in favour of applying the law as written. For example, while sentencing a 63-year-old offender who negligently had started a forest fire, the Kamloops judge commented,

...he is a person who has been considerably affected by this. He presents as one who is genuinely anguished and very remorseful for what happened, and he himself has suffered in the sense of distress from significant weight loss and he himself was trying to fight that fire on that day to the point of exhaustion. (GO055)

However, despite these personal characteristics and the evident remorse that appeared to cause physical illness for this older offender, the judge commented he was required "to go beyond the sympathetic factors that the court might have in relation to this specific offender" (GO055) noting,

His remorse, and his accepting of responsibility is exceptional and genuine, but the wider public policy considerations and sentencing considerations of general deterrence, in my view, must take predominance in order to protect the public from this type of activity which impacts the public, public resources, public lands, forests and property. (GO055)

In this case, the judge interpreted the age of the offender to mean that the offender 'should have known better' since the offender had been smoking cigarettes for a number

percent) violent and sexual offenders who would be specifically targeted by sentencing policy changes that would require incarceration for these types of offences. Within this group, about 62 percent (n=16) are between the ages of 50 and 64. However, the remaining 38 percent (n=10) are 65 years or older. Given research that suggests the functional age of older offenders is sometimes as high as 10 years more than non-offender populations, the proportion of offenders over the age of 65 who would be targeted by mandatory minimum sentences could be potentially problematic. That is, more 'older' old offenders would be incarcerated with the elimination of judicial discretion. It can be speculated that these groups would have potential medical issues and mobility issues that would need to be accommodated within an institutional environment. Although a greying institutional population has already necessitated a re-evaluation of the physical environment in terms of housing older offenders, changes to sentencing policy would exacerbate the currently recognized situation. While the full extent of this problem remains unclear, demographic indicators from the Provincial Court Database sample suggest an area demanding further research.

A number of researchers (Boe, 2002; Gal, 2002; McAulay, 2000; and May, Wood, Mooney, and Minor, 2005) have suggested the necessity of developing programming specifically tailored to older offenders. Indeed, programming for older incarcerated offenders has been a significant focus within older offender research. As noted by Gal (2002) "when programs have been offered specifically for the older offender, it resulted in increases in self-respect, a reduction in feelings of loneliness and depression, an increased desire for social interaction, and a renewed intellectual interest" (p. 4). While it has been concluded that the delivery of programming is problematic due to the deteriorious effects of advancing age (Gal, 2002; Stewart, 2002),

the content of programming specifically directed toward older offenders is also an issue (Uzoaba, 1998; Morton, 2001; Gal, 2002).

The current sample provides insight into the specifics of older offender programming particularly in the reported educational attainments of the sample. Although there was only educational information provided for 14 of the offenders within the sample, about 71 percent (n=10) of the offenders had obtained an education beyond high school. Within this group, five individuals reportedly had 'some post secondary' education, while the other five had a post secondary degree. This finding reinforces Uzoaba's (1998) suggestion for programming that shifts away from reintegrative employment or educational opportunities as presumably some offenders would have these opportunities. However, it should be cautioned that prospective programming needs require a much larger sample in order to substantiate such a recommendation.

If the potential for the victimization of older offenders, or fear of victimization by older offenders is linked to offence type as has been suggested (Boe, 2002), the sample provides preliminary evidence that this could be an increasing problem if the older offender population were to increase because of changes to sentencing policy. Some researchers have noted that older offenders report being more fearful of victimization by other inmates than younger offenders. It has been suggested that the heightened fear of older offenders might be due to the treatment of sex offenders within institutionalized populations. While the CSC provides services to protect sex offenders from conflicts with other inmates (Uzoaba, 1995, 1998), an increase in the absolute number of sex offenders would necessitate an increase in the number of protective facilities available for all sex offenders. However, if the protective custody population was comprised of an increasing number of older offenders, this type of service would be affected by additional demands such as the physical environment and type of programming that was available

within protective custody. If the fear of victimization based on sex offending is legitimate, the sample from the Provincial Court Database suggests that since 44 percent of the cases in the sample involve a sexual offence, and these 44 percent would receive a custodial sentence if sentencing provisions were changed, this could potentially increase the demand for protective custody geared specifically toward older offenders.

Although older offenders do not always fall within the offence categories specifically articulated by the sentencing policy changes to mandatory minimum sentences and the cessation of community sanctions, there appears to be some evidence that this is frequently the case. In terms of explaining the potential effect of changing sentencing policy on exacerbating an already greying prison population, the Provincial Court Database sample does allow for prediction based on offence type alone. That is, within the sample those offenders who committed either a sexual or a violent offence have been identified. Additionally, the type of sentence, either in the community or in custody has been recorded. Of the 37 Reasons for Sentence included within the sample, 25 (about 68 percent) related to either sexual or violent offences and as such would be considered under proposed sentencing policy changes. While a reported 60 percent (n=15) of the sexual or violent offences from the Reasons for Sentence subset received a custodial sentence, the other 40 percent (n=10) were given a sentence to be served in the community. With mandatory minimum sentences and a cessation of community sanctions, these 10 community sanctions would actually be served in an institutional setting. Perhaps more importantly, the sample suggests the 10 cases would be older offenders serving sentences in custody thereby increasing the number of older offenders the correctional system must accommodate.

While the research sample provides descriptive statistics in support of the argument that sentencing policy changes would increase the number of admissions to

correctional facilities, it does not provide details of how the judiciary is considering age in terms of findings of guilt or at sentencing. That is, while the quantitative variables in the sample provide information about the increase in receptions as predicted by Andre and Pease (1994), the effective sentence length remains unclear. Numerically, sentencing policy changes have the potential to increase the demand on the criminal justice system in terms of the physical and mental health issues of older offenders and possible changes to the physical environment to accommodate such offenders. Additionally, concerns about programming and the protection of older offenders appears legitimated if the number of older offender receptions increases. It is necessary to look more closely at the excerpts from the judicial discourse to determine the interpretation of age for both Reasons for Judgment and Reasons for Sentence and the resulting impact on prison population growth that also acknowledges the impact on effective sentence length for older offenders. While it is apparent that sentencing policy changes would increase the absolute number of older offenders, would policy changes also increase the proportion of older offenders beyond already existing prison population aging trends?

5.2 Increased effective sentence length based on Qualitative Research Results

As has been noted, other researchers have evaluated the relationship between age and sentence severity although rarely extended the discussion to the impact on prison population composition. It has also been suggested that a possible link between sentencing practices and prison population growth is provided by Andre and Pease's $p = r \times s$ formula. Sentencing severity, in this instance, is a function of its length. Indeed, May, Wood, Mooney, and Minor (2005) have found "judgments of the relative severity of sanctions have been relegated to questions of whether to incarcerate, and if so, how much incarceration to impose under the assumptions that imprisonment is the most

severe sanction and its severity is simply a function of its duration" (p. 374). The following is a discussion of the research results from the discourse analysis in terms of the fit with other research into the connection between age and sentence severity. Following this, the results are linked to the potential for changed sentencing practices and the probable impact on prison population greying.

The evaluation of judicial considerations of aging through a discourse analysis of Reasons for Judgment and Reasons for Sentence provides insight into sentence severity based on advanced age. In general, the findings indicated that the judiciary consider the age of an older offender for both findings of guilt and at sentencing. In some instances, age was a mitigating factor and accordingly appeared to reduce the relative severity of the sanction. In other cases, age appeared to aggravate the judicial decision. However, whether mitigating or aggravating, age appears to fall within the realm of extralegal factors identified by Bushway and Piehl (2007). For Bushway and Piehl (2007), it was not age that was a factor per se, but rather what advanced age indicates about the offender. In other words, older people had more time to offend over their life course so that the weight of past convictions for older individuals would be reduced. One of the discourses was consistent with Bushway and Piehl's (2007) assessment that the impact of a number of past convictions might be reduced because age is a "control for exposure time" (p. 180). Case G0018 demonstrated an instance where despite a prior record the presiding judge imposed a community sanction citing both age and illness as the reasons behind the decision. In terms of this accused's illness, the judge noted,

... [G0018] is a sixty year old male of a long standing history of eccentric behavior and cognitive and perceptual distortions beginning in early adulthood and to the present in a variety of contexts. He has had odd beliefs regarding telepathy and grandiose preoccupations, a history of unusual perceptual experiences (talking to God), odd thinking, (circumstantial, metaphorical). He has suffered psychotic, delusional, and hallucinatory episodes. (G0018)

This might be explained through Bushway and Piehl's argument that the advanced age indicated less 'blameworthiness' on the part of the accused. Alternatively, given the nature of the illness, it might be that the illness itself reduced the blameworthiness rather than the exposure time.

While a decrease in the impact of a past criminal record based on age was rarely found in the Provincial Court Database sample, patterns of age as indicative of additional mitigating circumstances were. For example, age was often considered in terms of the connection to illness (G0001, G0035, G0041, G0044, G0048, and G0057). However, the nature of the connection, or whether the illness was, in fact, a function of age, was not clear. It was suggested that this might be an interpretation of age that assumes that there are automatic declines in health based on advanced years. That is, it might be that the judiciary are assuming health will decline over time. It is unclear whether inevitable illness is a legitimate consideration or an assumption based on judicial bias. The idea that a consideration of age might reflect judicial bias was also questioned by Bushway and Piehl (2007) who considered whether age "deserves to be placed into the same category as race – an illegitimate, extralegal variable" (p. 160).

While Bushway and Piehl (2007) ultimately concluded that age was a legitimate factor and, as such, argued for a codification of age as an extralegal factor, it is unclear if this is an appropriate suggestion given the heterogeneity of the offenders in the Provincial Court Database sample. This heterogeneity within the elderly has been the basis for a general trend away from blanket provisions that impact this cohort (see, for example, Gordon & Verdun-Jones, 1992). Further, it is unclear how the codification of age could be useful for sentencing given that age was often found to be an aggravating factor for identifying blameworthiness (G0008, G0027, and G0029). For one case in particular (G0008), age appeared to be interpreted by the judge as indicating an

increased opportunity for time to offend (what Bushway & Piehl, 2007 refer to as "exposure time" which connotes less blameworthiness); however it was not reflective of the offender's reduced blameworthiness. On the contrary, for this judge, "exposure time" indicated the defendants "very sketchy and sporadic work history," lack of "real connection or involvement in the community," and behavior that was of an "entrenched and longstanding nature, given the thirty-year history of offending" (G0008). In this instance, the presiding judge appeared to interpret older age as working against the offender and sentenced accordingly.

While it is inappropriate to conclude a frequency measure from the discourse analysis with respect to the number of times judicial bias or assumptions about age were evident, there did appear to be interpretations of age that reflected assumptions or bias. This was most evident when old age was linked to race and education. Regarding education, several discourses (G0005, G0009, G0010, G0021, G0023, G0024, and G0048) used the defendant's lifelong educational achievements as a justification for reducing sentences. Particularly noteworthy was a case in which the judge commented that the accused has "... no prior criminal record whatsoever, and he has no disciplinary background whatsoever from the College of Teachers in this province" (G0033). In this case the judge specifically linked age to "exposure time" commenting "[y]ou are 52 years of age and have been a contributing member of society for many, many years" further suggesting there is "there is a clear public interest" in not imprisoning this offender (G0033). The reason this case is noteworthy is the language used by the judge. For example, rather than commenting the accused had "no criminal record" the judge stated "no criminal record whatsoever." As was discussed earlier, the use of the terms "many, many years" and "a clear public interest" also suggest the 'action oriented' function of discourse identified by MacMartin and Wood (2005). Accordingly, it seems that

“exposure time” is used by judges to reduce blameworthiness when considered in conjunction with educational attainment. However, the legitimacy of codifying an extralegal factor, as suggested by Bushway and Piehl, that applied to older educated offenders but not to all older offenders is questionable.

Steffensmeier and Motivans (2000) concede the pattern of sentencing older offenders reflects a more lenient judicial bias toward older offenders and noted that sentencing “also might reflect legitimate sentencing concerns of judges (in areas such as crime propensity , blameworthiness, and even the extra costs needed to jail older offenders)” (p. 141). This pattern appeared in several discourses from the research sample in which the idea of the offender ‘aging out’ was articulated by the judge. However, like other patterns identified within the sample, age was interpreted to mean aging out of a criminal lifestyle or alternatively that the offender would continue with a criminal career. That is, there was no uniform pattern for judicial interpretation of the effect of age over an offender’s life course. For example, in one case the judge cited the offender’s age as 61-years-old and commented that it “does not lead the court to the conclusion that this is the type of behaviour which he might outgrow with maturity” given the accused was still offending (G0018). In another case the judge commented “[y]ou are far too old. You are one of the few offenders who is still offending at your age. Most people, frankly, run out of energy and run out of time, or their health runs out, before they get to your age” (G0016).

However, the utilitarian interpretation of aging out was also considered by the judiciary. For example, in a different discourse the judge commented “[g]iven your age, that will take you to a point, I am hopeful, at which the problems that bring you before me today will have been addressed and you will no longer pose a threat to the public” (G0037). Based on these judicial comments, it appears that there is some evidence for a

utilitarian understanding of age, as proposed by Steffensmeier and Motivans (2000) and Bergeron and McKelvie (2004), among the judges included within the research sample.

Discourse analysis reveals variability in the construction of 'age' as it relates to judgments and sentencing. Patterns of discourse grouped within the broader category of LCD perspectives suggest little disagreement about the mortality of humans but considerable variation as to what aging means for criminality. As a whole, conflict discourses demonstrate a judicial interpretation of 'age' in terms of a specific consideration much like the legislation for aboriginals in s. 718.2(e) of the Canadian Criminal Code. Repeated use of the term 'gentleman' was disconcerting but might originate in the relative age of the judge vis a vis the accused or offender. Presumably, in some of the cases the judge is the younger of the two. Although the data are not currently available, it would be interesting to determine how often this is the case. Regarding the age and discretion discourses, inconsistencies in judicial interpretations of age are again evident. Depending on the characteristics of the offender, victim and circumstance, age is frequently either interpreted as a mitigating or an aggravating factor. In some instances, 'age' is neither. Ultimately, the discourse analysis revealed patterns but not a clear and concise definition of a judicial interpretation of 'age.' Clearly, the judiciary does not allegorically interpret 'age' as indicative of a finding of guilt or no guilt. Neither is age interpreted to allegorically indicate the imposition of custodial or community sanctions.

The judicial interpretations of age can be linked to the greying of prison populations. Within the literature into population growth this link was possibly best articulated by Schmertmann, Adansi and Long (1998) who argue against mandatory minimum sentences. They suggest that the maturation curve away from crime, as is found in advancing age, diminished the value of incarcerating older offenders. This was

manifestly articulated by one judicial decision in which the judge commented during the sentencing of a 68-year-old offender, "I am satisfied that there is no need to separate the accused from society in order to protect the public. (s. 718(c) of the Code.)" and "I am equally satisfied that he would not present a danger to the community were he directed to serve a sentence of imprisonment in the community. (s. 742.1 (b) of the Code)" (G0050).

For Schmertmann, Adansi and Long (1998) it is not the characteristics of the person but rather the characteristics of the person years that will impact the greying of prison populations. That is, Schmertmann, Adansi and Long (1998) argue that not only is incarcerating those unlikely to commit crime a strain on correctional resources but also erroneous for older offenders given the purposes of incapacitation. Within the Provincial Court Database sample a number of the discourses suggest a judicial belief that questioned the value of incarcerating an older offender (G0008, G0018, G0031, G0034, G00040, G00042, G0045, and G0050). In particular, one judge noted the chances of rehabilitating or deterring or otherwise protecting society through the incapacitation of a 61-year-old offender were minimal commenting "[p]enitentiary sentences have not deterred [this offender] in the past. Aside from the education that [this offender] has received while incarcerated, the sentences that he has served have had little, if any, rehabilitative component" (G0034). The judicial discourse in this case also articulated the special problems faced by an incarcerated older person commenting that the offender "has been held with prisoners who are much younger and who have entirely different lifestyles, including different tastes in music and television ... [and because of this he] has had difficulty sleeping and had been having headaches" (G0050).

While Schmertmann, Adansi and Long (1998) specifically focused on the utilitarian purpose of sentencing, Millie, Jacobson, and Hough (2003) evaluated

sentencing in terms of reinforcing an increasingly punitive climate. The need to balance a utilitarian perspective with a retributive focus was also identified by Bergeron and McKelvie (2004). This type of balancing was also found within the judicial discourses. Citing Chief Justice Lamer in the case of *R. v. M.(C.A.)* (1996), one judge commented,

Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risktaking of the offender, the consequential harm caused by the offender; and the normative character of the offender's conduct. Retribution ... should be conceptually distinguished from its legitimate sibling, denunciation (G0048)

In this case, the judge also acknowledged awareness of the possible mitigating factor of the offender taking note of diminished health linked to advanced age. The advanced age of the offender did not mitigate the sentence but rather aggravated it because of the position of authority the offender held over his victim.

In terms of judicial discretion there is thus evidence within the research sample that judicial discretion acts not only to appropriately balance the conflicting demands of sentencing but that sentencing is highly subjective and driven by the unique circumstances of the case (see also, Millie, Jacobson & Hough, 2003). This would appear consistent with Millie, Jacobson, and Hough's (2003) warning against increasingly punitive sentencing guidelines. Indeed, the sample suggests the judiciary is equipped to determine the appropriate sentence on a case by case basis and will not temper a sentence allegorically based on age if other sentencing guidelines outweigh the possible mitigating circumstances even if these circumstances include older age or illness.

The formula provided by Andre and Pease (1994) suggests the imposition of mandatory minimum sentences and an end to community sanctions would in fact temper judicial discretion resulting in a greater proportion of older offenders receiving custodial

sentences. While the demographic data from the Provincial Court Database sample demonstrated the absolute numbers of older offenders would increase, the discourse analysis data suggests the proportion of older offenders would also increase. This is because, although old age is not consistently mitigating in all circumstances, it is being used to decrease effective sentence length in some cases. In terms of Andre and Pease's formula, it appears that the proportion of older offenders within the prison population would increase, in some instances, because age mitigates the effective sentence length. The reason the discourse results are linked to proportion rather than to absolute numbers is because this would intuitively not be a mitigating factor for younger offenders.

To summarize, the quantitative and qualitative research suggests that Canadian judges are considering advanced age during judgment and sentencing and that often considerations of the older age of an offender result in older offenders being diverted away from custodial sanctions. As a result, the greying trend in Canadian prisons is likely to be tempered by the exercise of judicial discretion.

5.3 Future Research Considerations

Any assessment of a sentencing policy that results in the elimination of judicial discretion for sentencing older offenders has both practical and philosophical components. Regarding the practical considerations, it is unclear whether mandatory minimum sentences and a reduction in community sanctions are appropriate policies for older offenders who will eventually 'age out' of criminal offending. However, it is clear that the elimination of judicial discretion would exacerbate the potential problem of an already greying prison population thereby requiring CSC to increase the services available for older offenders at a quicker pace than is already occurring. The practical considerations lead to more philosophical considerations such as questions about the

necessity of incarcerating an older offender who is incapable of committing a subsequent offence due to advanced age. Similarly, it is unclear how the ideas of rehabilitation or deterrence are relevant to an older offender who may, in fact, naturally age out of crime. In other words, while the 'punishment must fit the crime,' it is also necessary that the 'punishment fit the offender.' By this logic, it might be that mandatory minimum sentences and a reduction in the use of community sanctions are inappropriate for older offenders and advanced age should be recognized as a legitimate legal factor for sentencing purposes. Alternatively, it might be that mandatory minimum sentences and a reduction in the use of non-custodial sentences are simply injudicious in and of themselves.

As has been noted, CSC is currently called upon to provide services for an increasingly greying prison population. The needs of an older offender population include different environmental, medical and programming services than those provided for younger offender groups. Logically, a dramatic increase in the size of the older offender population would necessitate a dramatic increase in the services available for an older population. Future research should be directed toward an ongoing assessment of the older offender services that have been developed by CSC. Given the reaffirmation that an older offender group is heterogenous, it is evident that programming for one older offender might not necessarily meet the needs of a different older offender and, as such, future research efforts should be directed toward establishing a plan for both within and between age group variability.

Besides demonstrating that sentencing policy changes could result in a dramatic increase in the incarcerated older offender population, the research sample also provided evidence that sentencing policy changes which include policies such as mandatory minimum sentences would have the effect of increasing the number of first

time older offenders who received custody sanctions. Future research efforts should be directed toward establishing if the pattern found within the thesis research sample is generalizable to the entire offender population. It is also important to establish the effect of late life incarceration on an older offender's mental health. Current research into the mental health of older offenders (see, e.g., Gal, 2002) suggests there is some uncertainty about the wellness of older offenders but that often depression appears to be an issue because "incarceration accentuates an offender's sense of loss" (p. 3). This research needs to be extended into the existence of mental health problems amongst older offenders that are specifically associated with a first time incarceration.

In terms of the CSC, the requirements for the treatment of older offenders remain unchanged although the demand for services would increase. This research does not specifically evaluate the availability of programming within institutions but rather sheds light on the judicial perception of such programming. However, judicial acknowledgement of the physiological health of a number of cases within this sample does reinforce the necessity of ensuring medical care be made available for older offenders.

It has been noted that the sentencing of older offenders will continue to be highly contentious given the predominant offence types amongst this cohort. The policy proposals of the Federal Conservative Government are specifically directed at both sex offenders and violent offenders based on criticisms of current policy and will increase prison populations regardless of any 'greying' effects. It remains unclear if older sex offenders are more fearful of possible victimization by other prisoners than are younger sex offenders. Similarly, it remains unclear if older sex offenders should be more fearful of victimization within prisons than older non-sex offenders. Given that sexual offences are the predominant type of offences for currently incarcerated older offenders (Uzoaba,

1998), and for the older offenders within the research sample, future research is necessary to determine if there are differences between older sex offenders and sex offenders who are under the chronological age of 50. Research that compares older sex offenders with younger sex offenders would help in determining if the current services for sex offenders are appropriate for an older offender population. It is unclear whether older sex offenders represent a special category within the special older offender category.

The older population is targeted by the new punitive punishment policy as the judiciary manifestly and latently considers age. But since judicial discourse reveals 'age' is not allegorically considered as a preference for a community sanction over a custodial sentence, the impact was far less than originally anticipated. While some of the judicial language used during sentencing indicated empathy or sympathy toward illness, other judges were less accommodating. Similarly, in relation to aging out or career criminals, judicial discussions often indicated a belief in the eventuality of aging out of a life of crime. Interestingly, references to aging out appeared during cases that were the exception to this pattern. In other words, although the discourses suggested that judges believe offenders will age out of criminality, none of the research sample had actually aged out since each offender continued offending. Future research that assesses the legitimacy of life course developmental perspectives with a particular emphasis on the prevalence of aging-out of criminality would be useful.

In many of the 'aging out' discourses the judge addressed the offender or the accused in language that could be interpreted as amused or resigned. However, other judicial language was far more critical of pervasive criminality and the associated older offender. These judges appeared to denounce the notion of aging out in preference for escalating criminal behavior. This interpretation of 'age' for career criminals raises interesting questions for the judicial interpretation of deterrence. These patterns revealed

that mandatory minimum sentences and a reduction in the use of community sanctions might not provide the deterrence sought by those following a retributivist ideology.

Retributivists would have us believe that mandatory minimum sentences and an end to community sanctions promote deterrence because they represent a swifter, more certain and proportionate punishment and thus perpetuate greater fear. The deterrent value of mandatory minimum sentences is suspect because "their predictable quality, which is said to afford their retributive and deterrent effects, also renders them inflexible and unduly harsh ..." (Gabor, 2001) in some cases. Deterrence also requires the offender would in fact commit a subsequent crime but for the imposed punishment. Life course perspectives suggest older offenders have the propensity to age out of a criminogenic trajectory thus requiring consideration of whether the purposes and principles of sentencing older offenders are fulfilled if mandatory minimum sentences are used.

Within the Reason for Judgment and Reason for Sentence sample, a number of judges appeal to a practical and pragmatic life course perspective in substantiating their decisions. This is consistent with the more practical and pragmatic principles and purposes of sentencing such as public safety. However, the more philosophical elements of sentencing, such as denunciation of criminal behaviour, are also important. Given the harm caused by sexual and violent offending, it is not surprising that there is a desire to punish these types of offenders within the full extent of the law. That is, there is something inherently appealing about retribution. "Nietzsche and Foucault are among those who ... think that human nature is such that we do get intrinsic even if disguised satisfactions out of inflicting authorized harm on others, as punishment necessarily does" (Bedau, 2005). However, "[o]thers will regard this satisfaction, such as it is, as a

perversity of human nature, and will say that we retain the practice of punishment because it enables us to achieve certain goals or results" (Bedau, 2005).

The retributivist or punitive Federal Conservative agenda still warrants further investigation. Importantly, the judicial discourse analysis also revealed that the judiciary is not, not sentencing older offenders to custodial sentences based on 'age.' With this information, the proposed Federal Conservative criminal justice policy might be less linked to philosophical retributive or punitive tendencies and it might be little more than political entrepreneurship. Based on the publicity necessary to succeed in an election, "candidates focus their campaigns on what they perceive to be issues that will motivate voters" (Dunn, 2004: p. 36). As is the case in the current Canadian political climate, victors "may even claim a 'mandate' from the people to pursue the policy direction emphasized in their campaign" (Dunn, 2004: p. 37). Evaluation of the judicial discourses suggested that judges are not erroneously 'soft on crime' while sentencing. On the contrary, a number of strict penalties were imposed on older offenders despite the offender's relatively advanced age. However, as Dunn (2004) comments, the "philosophical question of whether public opinion should determine policy may never be resolved" (p. 33). Yet, public opinion is notoriously unstable. If this is the case, it might be that the Federal Conservatives identify a public 'mandate' that is unstable at best and likely misinformed.

Future research into the practical considerations of eliminating judicial discretion and thus perpetuating prison population greying must, firstly, focus on more research into the special needs of older offenders while incarcerated and, secondly, ascertain the prevalence and likelihood of aging out of crime. From a more philosophical perspective, it is also necessary that future research efforts attempt to determine the legitimacy of including 'old age' as a codified mitigating factor within Canadian Law. Alternatively, it

might be that the current method of acknowledging older age through judicial discretion is the best possible method because it accounts for both within and between individual differences. If nothing else, judicial discretion affords specificity.

APPENDICES

British Columbian Provincial Court Database Sample

R. v. Waddell

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/03/p05_0302.htm
Citation: R. v. Waddell. Date: 20050628. 2005 BCPC 0302. File No: 154808-1-D.
Registry: Vancouver. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal
Division. REGINA. v.. THOMAS WADDELL. EXCERPT FROM PROCEEDINGS. REASONS
FOR SENTENCE. OF THE. HONOURABLE JUDGE F. E. HOWARD. Counsel for the
Defendant:
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Regina v. G.A.

URL: http://www.provincialcourt.bc.ca/judgments/pc/2003/01/p03_0175.htm
Citation: Regina v. G. A.. Date: 20030523. 2003 BCPC 0175. File No: 114654.
Registry: Vancouver. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA.
v.. G. A.. REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE C. J. BRUCE.
Counsel for the Crown: P. George. Counsel for the Accused: April 22, 23, and 24,
2003.
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R. v. L.B.A. - Ruling on Sentence Hearing

URL: http://www.provincialcourt.bc.ca/judgments/pc/2003/00/p03_0018.htm
Citation: R. v. L.B.A.. Date: 20030123. 2003 BCPC 0018. File No: 122144-1-KD.
Registry: Vancouver. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA.
CRIMINAL DIVISION. REGINA. v.. L.B.A.. RULING ON SENTENCE HEARING. OF THE.
HONOURABLE JUDGE P.L. MAUGHAN. Counsel for the Crown: Elliot Poll. Counsel for
the Defendant:
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R. v. Hall - Oral Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/01/p02_0174.htm
Citation: R. v. Hall - Oral Reasons for Sentence. Date: 20020408. 2002 BCPC 0174.
File No: 66189H-1. Registry: Kamloops. IN THE PROVINCIAL COURT OF BRITISH
COLUMBIA. REGINA. v.. GARY BERNARD HALL. ORAL REASONS FOR SENTENCE. OF
THE. HONOURABLE JUDGE T.A. DOHM. Counsel for the Crown: Counsel for the
Defendant:
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Regina v. J.W.D.:

URL: http://www.provincialcourt.bc.ca/judgments/pc/2001/00/p01_0058.htm
Citation: Regina v. J.W.D.. Date: 20010131. 2001 BCPC 0058. File No: 57604-01.

Registry:. Port Coquitlam. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Division. REGINA. v.. J.W.D.. REASONS ON SENTENCE. OF THE. HONOURABLE JUDGE M. BULLER BENNETT. Counsel for the Crown:. Counsel for the Defendant:.

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R. v. Way

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/03/p05_0318.htm

Citation:. R. v. Way. Date:. 20050628. 2005 BCPC 0318. File No:. 17610-2C.

Registry:. Salmon Arm. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Division. REGINA. v.. DAVID JAMES WAY. EXCERPT FROM PROCEEDINGS. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE E. R. BRECKNELL. 1]

THE COURT: David James

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R. v. K.D.W.

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/02/p05_0267.htm

Citation:. R. v. K.D.W.. Date:. 20050209. 2005 BCPC 0267. File No:. 70926-1.

Registry:. Port Coquitlam. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Division. REGINA. v.. K.D.W.. EXCERPT FROM PROCEEDINGS. REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE E. A. SATHER. BAN ON DISCLOSURE – s. 486(3) CCC.

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R. v. MacKenzie - Excerpt Oral Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2004/01/p04_0100.htm

Citation:. R. v. MacKenzie-Excerpt Oral Reasons for Sentence. Date:. 20040323.

2004 BCPC 0100. File No:. 24168-1-K. Registry:. Terrace. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. FRANCIS MACKENZIE. EXCERPT FROM PROCEEDINGS. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE E. F. de WALLE.

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Regina v. Lamarche - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2003/04/p03_0469.htm

Citation:. Regina v. Lamarche - Excerpt Reasons for Sentence. Date:. 20031127.

2003 BCPC 0469. File Nos:. 45831-1; 47036-1. Registry:. Chilliwack. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. CLAUDE JOSEPH LAMARCHE. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE W. A. YOUNG.

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R. v. L.V. - Reasons on Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/06/p02_0610.htm

Citation:. Regina v. L.V.. Date:. 20021023. 2002 BCPC 0610. File No:. 44522-1.

Registry:. Chilliwack. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. L.V.. REASONS ON SENTENCE. OF THE. HONOURABLE JUDGE W.A. YOUNG. Counsel for the Crown:. W. Herdy. Counsel for the Defendant:. 1] L.V. is charged

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R. v. Hodgkins - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2001/04/p01_0413.htm
Citation: R. v. Hodgkins - Excerpt Reasons for Sentence. Date: 20011130. 2001 BCPC 0413. File No: 58588-2C. Registry: Port Coquitlam. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v. MITCHELL WILLIAM HODGKINS. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE D. POTHECARY.
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Regina v. Conrad Sundman - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2001/04/p01_0450.htm
Citation: R. v. Sundman - Excerpt Reasons for Sentence. Date: 20010119. 2001 BCPC 0450. File No: C41740-02-DCR. Registry: Vancouver. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v. CONRAD SUNDMAN. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE E.A. ARNOLD.
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R. v. Houde

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/06/p05_0632.htm
Citation: R v. Houde. Date: 20051222. 2005 BCPC 0632 . File No: 27457-C-2. Registry: Duncan. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Court. REGINA. v. HENRY JOSEPH HOUDE. EXCERPT FROM PROCEEDINGS. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE E. QUANTZ. Counsel for the Defendant: J. Mackoff.
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R. v. Kowalewich - Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/06/p05_0634.htm
Citation: R. v. Kowalewich. Date: 20051214. 2005 BCPC 0634 . File No: 129694. Registry: Victoria. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Court. REGINA. v. LEONARD KOWALEWICH. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE E. J. QUANTIZ. Counsel for the Defendant:
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R. v. E.G.K.

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/07/p02_0706.htm
Citation: R. v. E.G.K.. Date: 20020710. 2002 BCPC 0706. File No: 29592. Registry: Penticton. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v. E. G. K.. EXCERPT FROM PROCEEDINGS. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE G. G. SINCLAIR. BAN ON PUBLICATION 539(1) AND DISCLOSURE 486(3).
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R. v. C.(M.):

URL: http://www.provincialcourt.bc.ca/judgments/pc/2000/00/p00_0064.htm
Citation: Regina v. C.M.. Date: 20000307. 2000 BCPC 0064. File No: 57801.
Registry: Port Coquitlam. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA.
REGINA. v.. C.M.. REASONS ON SENTENCE. OF THE. HONOURABLE JUDGE C. J.
BRUCE. Counsel for the Crown: Richard Romano. December 15, 1999, February 17,.
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R. v. G.T.W.

URL: http://www.provincialcourt.bc.ca/judgments/pc/2003/05/p03_0548.htm
Citation: R. v. G.T.W.. Date: 20030620. 2003 BCPC 0548. File No: 30271-1.
Registry: Penticton. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal
Division. REGINA. v.. G. T. W.. EXCERPT FROM PROCEEDINGS. ORAL REASONS FOR
SENTENCE. OF THE. HONOURABLE JUDGE G. G. SINCLAIR. BAN ON PUBLICATION S.
486(3) CCC.
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R. v. Suggitt - Oral Reasons for Order

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/01/p02_0187.htm
Citation: R. v. Suggitt - Oral Reasons for Order. Date: 20020418. 2002 BCPC 0187.
File No: 54422-1. Registry: Kelowna. IN THE PROVINCIAL COURT OF BRITISH
COLUMBIA. REGINA. v.. JAMES CHRISTOPHER THOMAS SUGGITT. REASONS FOR
ORDER. OF THE. HONOURABLE JUDGE R.R.SMITH. Counsel for the Crown: 1] THE
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R. v. Metcalfe

URL: http://www.provincialcourt.bc.ca/judgments/pc/1996/00/p96_0011.htm
Citation: R. v. Metcalfe. Date: 19961203. 1996 BCPC 0011. File No: 51677-01.
Registry: Coquitlam. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal
Division. REGINA. v.. PETER VICTOR METCALFE. EXCERPT FROM PROCEEDINGS.
REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE A. J. SPENCE. Counsel for
the Defendant:
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R. v. J.H.C. - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2004/02/p04_0295.htm
Citation: R. v. J.H.C. - Excerpt Reasons for Sentence. Date: 20040311. 2004 BCPC
0295. File No: 30372-4C. Registry: Penticton. IN THE PROVINCIAL COURT OF
BRITISH COLUMBIA. REGINA. v.. J.H.C.. EXCERPT FROM PROCEEDINGS. ORAL
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R. v. Redlick

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/03/p05_0309.htm
Citation: R. v. Redlick. Date: 20050602. 2005 BCPC 0309. File No: 39895-C2.

Registry: . Vernon. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Division. REGINA. v.. ARTHUR REDLICK. EXCERPT FROM PROCEEDINGS. ORAL REASONS FOR JUDGMENT. OF THE. HONOURABLE ASSOCIATE CHIEF JUDGE E. M. BURDETT.

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R. v. Weaver

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/03/p05_0311.htm

Citation: . R. v. Weaver. Date: . 20050524. 2005 BCPC 0311. File No: . 75367-1.

Registry: . Kamloops. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Division. REGINA. v.. KENNETH CHARLES WEAVER. EXCERPT FROM PROCEEDINGS. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE B. W. SUNDHU. 1]

THE COURT: Kenneth Cha

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R. v. Wittwer

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/03/p05_0351.htm

Citation: . R. v. Wittwer. Date: . 20050406. 2005 BCPC 0351. File No: . 57773-2A.

Registry: . Kelowna. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Division. REGINA. v.. DIETER HELMUT WITTEWER. EXCERPT FROM PROCEEDINGS. ORAL REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE H. C. STANSFIELD.

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R. v. Charlie - Reasons for Judgment

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/00/p05_0057.htm

Citation: . Regina v. Peter Sumner Charlie. Date: . 20050124. 2005 BCPC 0057. File

No: . 15348-1. Registry: . Chilliwack. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Division. REGINA. v.. PETER SUMNER CHARLIE. REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE WENDY A. YOUNG. Counsel for the

Defendant: . Anja Brown.

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R. v. Hahn and Shaw - Excerpt Reasons for Judgment

URL: http://www.provincialcourt.bc.ca/judgments/pc/2004/04/p04_0468.htm

Citation: . R. v. Hahn and Shaw - Excerpt Reasons for Judgment. Date: . 20040803.

2004 BCPC 0468. File No: . 148527-2-DC. Registry: . Vancouver. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal Division. REGINA. v.. DENNIS HENRY HAHN. and. BRIAN ALEXANDER SHAW. HONOURABLE JUDGE M. O. MacLEAN. M. L. Ahrens.

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R. v. Russell Hannibal - Ruling on Application

URL: http://www.provincialcourt.bc.ca/judgments/pc/2004/04/p04_0471.htm

Citation: . R. v. Hannibal - Ruling on Application. Date: . 20041214. 2004 BCPC 0471.

File No: . 64220. Registry: . Port Coquitlam. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. RUSSELL HANNIBAL. REASONS FOR JUDGMENT. OF THE.

HONOURABLE JUDGE F.E. HOWARD. Counsel for the Crown: . Counsel for the Defendant: .

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R. v. W.G.G. - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2003/03/p03_0345.htm
Citation: R. v. W.G.G. - Excerpt Reasons for Sentence. Date: 20030717. 2003 BCPC 0345. File No: 31748-1-T. Registry: Port Hardy. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v. W. G. G.. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE P. M. DOHERTY. 1] THE COURT: W.G.G. is b
Size: 31861 bytes
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R. v. Stout - Reasons for Judgment

URL: http://www.provincialcourt.bc.ca/judgments/pc/2003/01/p03_0111.htm
Citation: R. v. Stout. Date: 20030409. 2003 BCPC 0111. File No: 12502. Registry: Port Hardy. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v. MAGNUS LOUITT STOUT. REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE B. SAUNDERSON. Counsel for the Crown: Leslie M. Fillingham. Counsel for the Defendant:
Size: 22324 bytes
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R. v. Wallace et al

URL: http://www.provincialcourt.bc.ca/judgments/pc/2003/00/p03_0081.htm
Citation: R. v. Wallace et al. Date: 20030321. 2003 BCPC 0081. File No: 126004-1. Registry: Vancouver. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v. PAUL ELLIS NIELSEN. ROSEMARY HELEN WALLACE. VALENCIA NIELSEN. REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE ROSS TWEEDALE. Colin Sweeney, Q.C..
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R. v. Kruse - Oral Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/06/p02_0621.htm
Citation: Regina v. Ernest Joachim Kruse. Date: 20021218. 2002 BCPC 0621. File Nos: 37699-1; 37855. Registry: Vernon. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v. ERNEST JOACHIM KRUSE. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE E.R. BRECKNELL. Counsel for the Crown: 1] THE COURT: Ernest Joac
Size: 14112 bytes
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R. v. Patrick - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/06/p02_0648.htm
Citation: R. v. Patrick - Excerpt Reasons for Sentence. Date: 20021025. 2002 BCPC 0648. File No: 62886-1. Registry: New Westminster. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v. WALTER ROBERT PATRICK. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE D.M.B. STEINBERG.
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Date: 5/1/2003 9:43:18 PM

Regina v. Walter Robert Patrick - Excerpt Reasons for Judgment

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/04/p02_0420.htm
Citation: R. v. Patrick - Excerpt Reasons for Judgment. Date: 20020910. 2002 BCPC 0420. File No: 62886-1. Registry: New Westminster. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. WALTER ROBERT PATRICK. EXCERPT FROM PROCEEDINGS. REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE D. STEINBERG.
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Date: 10/7/2002 10:06:52 PM

R. v. R.M.H.-Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/05/p02_0575.htm
Citation: R. v. R.M.H. - Reasons for Sentence. Date: 20021205. 2002 BCPC 0575. File No: 12113. Registry: Port Hardy. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. R. M. H.. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE P. DOHERTY. Counsel for the Crown: L. Fillingham. 1] THE COURT: R. M. H. is
Size: 17196 bytes
Date: 1/30/2003 12:58:33 AM

R. v. Dewar - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/05/p02_0588.htm
Citation: R. v. Dewar - Excerpt Reasons for Sentence. Date: 20020926. 2002 BCPC 0588. File No: 27821-1-DT. Registry: Campbell River. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. DONALD DOUGLAS DEWAR. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE P. DOHERTY.
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Regina v. Dewar - Excerpt Reasons for Judgment

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/04/p02_0444.htm
Citation: R. v. Dewar - Excerpt Reasons for Judgment. Date: 20020709. 2002 BCPC 0444. File No: 31679-1-DH, Courtenay. 27821-1-DT, Campbell River. Registry: IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. DONALD DOUGLAS DEWAR. REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE P. DOHERTY.
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R. v. Martin - Oral Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/03/p02_0371.htm
Citation: R. v. Martin - Oral Reasons for Sentence. Date: 20020620. 2002 BCPC 0371. File No: 8117-1. Registry: Cranbrook. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. KENNETH MARTIN. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE D.L. SPERRY. Counsel for the Crown: 1] THE COURT: Kenneth Mar
Size: 9412 bytes
Date: 9/17/2002 5:01:36 PM

R. v. Oberton - Oral Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/03/p02_0372.htm

Citation: . R. v. Oberton - Oral Reasons for Sentence. Date: . 20020627. 2002 BCPC 0372. File No: . 55740-1 51819-1-K 51805-1. Registry: . Kelowna. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. HENRY MICHAEL EDWARD OBERTON. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE H.C. STANSFIELD.

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R. v. Caputo - Oral Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/02/p02_0237.htm

Citation: . R. v. Caputo - Oral Reasons for Sentence. Date: . 20020522. 2002 BCPC 0237. File No: . 16407. Registry: . Rossland. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. NOEL NATALINO CAPUTO. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE D.L. SPERRY. Counsel for the Crown: . Counsel for the Defendant: .

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R. v. Kozub - Oral Reasons for Judgment

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/02/p02_0276.htm

Citation: . R. v. Kozub - Oral Reasons for Judgment. Date: . 20020603. 2002 BCPC 0276. File No: . 67298-1. Registry: . Kamloops. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. LINDA CLARINA KOZUB. ORAL REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE B.W. SUNDHU. Counsel for the Crown: . Counsel for the Defendant: .

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Date: 7/17/2002 11:26:10 PM

R. v. Joachim Mario Schulp - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2001/04/p01_0431.htm

Citation: . R. v. Schulp - Excerpt Reasons for Sentence. Date: . 20010913. 2001 BCPC 0431. File No: . 60868-01. Registry: . Port Coquitlam. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. JOACHIM MARIO SCHULP. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE D. POTHECARY. Counsel for the Defendant: . H. Sarava.

Size: 16975 bytes

Date: 4/15/2002 10:11:35 PM

R. v. Poppoff - Proceedings at Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2001/03/p01_0302.htm

Citation: . R. v. Poppoff - Proceedings at Reasons for Sentence. Date: . 20011107. 2001 BCPC 0302. File Nos: . 7960 7972. 8070 8111. Registry: . Oliver. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. HARRY NICK POPPOFF. PROCEEDINGS AT REASONS FOR SENTENCE. HONOURABLE ASSOCIATE CHIEF JUDGE H.C. STANSFIELD.

Size: 33508 bytes

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R. v. R.C.D. - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2001/03/p01_0359.htm

Citation: . R. v. R.C.D. - Excerpt Reasons for Sentence. Date: . 20011127. 2001 BCPC 0359. File No: . 13152-C3. Registry: . Squamish. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. R. C. D.. EXCERPT FROM PROCEEDINGS. REASONS

FOR SENTENCE. OF THE. HONOURABLE JUDGE W.J. RODGERS. Counsel for the Defendant:.

Size: 24625 bytes

Date: 12/10/2001 11:54:49 PM

R. v. Woodland

URL: http://www.provincialcourt.bc.ca/judgments/pc/2001/02/p01_0255.htm

Citation: Regina v. Woodland. Date: 20011003. 2001 BCPC 0255. File No: C07173.

Registry: Prince George. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA.

REGINA. v.. KENNETH WALTER WOODLAND. RULING ON VOIR DIRE AND DECISION. OF THE. HONOURABLE JUDGE M.J. BRECKNELL. Counsel for the Crown: Counsel for the Defendant:.

Size: 32649 bytes

Date: 10/17/2001 7:51:45 PM

R. v. L.S. Andrews - Reasons on Application

URL: http://www.provincialcourt.bc.ca/judgments/pc/2001/01/p01_0147.htm

Citation: R. v. L.S. Andrews - Reasons on Application. Date: 20010226. 2001 BCPC

0147. File No: 25618. Registry: Campbell River. IN THE PROVINCIAL COURT OF

BRITISH COLUMBIA. REGINA. v.. LAWRENCE STEPHAN ANDREWS. REASONS ON

APPLICATION TO VARY CONDITIONAL SENTENCE ORDER. OF THE. HONOURABLE JUDGE P.M. DOHERTY.

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Date: 6/29/2001 5:33:54 PM

R. v. Louie - Excerpt Reasons for Judgment

URL: http://www.provincialcourt.bc.ca/judgments/pc/2000/02/p00_0230.htm

Citation: R. v. Louie - Excerpt Reasons for Judgment. Date: 20001017. 2000 BCPC

0230. File No: 7042. Registry: Creston. IN THE PROVINCIAL COURT OF BRITISH

COLUMBIA. REGINA. v.. ROBERT LOUIE. EXCERPT FROM PROCEEDINGS. REASONS

FOR JUDGMENT. OF THE. HONOURABLE JUDGE R. G. FABBRO. 1] THE COURT: I am going

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R v. Pilarinos and Bosetis:

URL: http://www.provincialcourt.bc.ca/judgments/pc/2000/00/p00_0048.htm

Citation: R. v. Pilarinos/Bosetis et al. Date: 20000512. 2000 BCPC 0048. File No: 70602-02C.

Registry: Burnaby. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA.

REGINA. v.. Dimitrios Pilarinos, Pete Bosetis, Nicolas Condilenios. Jamehid

Ghorbani-Vandamirshams and Nenita Gray. HONOURABLE JUDGE T.J. GOVE.

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R. v. Ferguson

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/03/p05_0391.htm

Citation: R. v. Ferguson. Date: 20050728. 2005 BCPC 0391 . File No: 72340-1.

Registry: Port Coquitlam. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA.

Criminal Division. REGINA. v.. ROBERT FERGUSON. EXCERPT FROM PROCEEDINGS.

REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE P. R. MEYERS. Counsel for the Defendant:.

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R. v. Brady

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/04/p05_0499.htm
Citation: R. v. Brady. Date: 20050927. 2005 BCPC 0499 . File No: 16873-2C.
Registry: Vernon. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal
Division. REGINA. v.. JOSEPH RAYMOND BRADY. EXCERPT FROM PROCEEDINGS.
ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE CHIEF JUDGE H. C.
STANSFIELD.
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R. v. Barre

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/05/p05_0509.htm
Citation: R. v. Barre. Date: 20051107. 2005 BCPC 0509 . File No: 76549-1.
Registry: Kamloops. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. Criminal
Division. REGINA. v.. MICHAEL WILLIAM BARRE. REASONS FOR JUDGMENT. OF THE.
HONOURABLE JUDGE B.W. SUNDHU. Counsel for the Crown: Counsel for the
Defendant:
Size: 102550 bytes
Date: 11/14/2005 7:29:53 PM

R. v. Robert Arthur Ferguson - Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/05/p05_0548.htm
Citation: R. v. Robert Arthur Ferguson - Reasons for Sentence. Date: 20050822.
2005 BCPC 0548 . File No: 67902-2C. Registry: New Westminster. IN THE
PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. ROBERT ARTHUR
FERGUSON. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE.
HONOURABLE JUDGE J.C. CHALLENGER.
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Date: 11/29/2005 8:21:34 PM

R. v. W.J.L.

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/05/p05_0572.htm
Citation: R. v. W.J.L.. Date: 20051116. 2005 BCPC 0572 . File No: 73123.
Registry: Port Coquitlam. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA.
REGINA. v.. W. J. L.. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE M.
BULLER BENNETT. Counsel for the Crown: J. Caldwell. Counsel for the Defendant:
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R. v. M.A.H.

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/06/p05_0614.htm
Citation: R. v. M.A.H.. Date: 20050923. 2005 BCPC 0614 . File No: 57467-4.
Registry: Kelowna. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v..
M. A. H.. EXCERPT FROM PROCEEDINGS. ORAL REASONS FOR SENTENCE. OF THE.
HONOURABLE JUDGE N. PHILLIPS. RESTRICTED ACCESS - SEX OFFENDER
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R. v. G.H.K.

URL: http://www.provincialcourt.bc.ca/judgments/pc/2005/06/p05_0618.htm
Citation: R. v. G.H.K.. Date: 20051206. 2005 BCPC 0618 . File No: 145222-1.

Registry:. Surrey. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. G.H.K.. REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE H. H. FIELD. Counsel for the Crown: Winston L. Sayson. Counsel for the Defendant: P. Michael Bolton, Q. C..
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R. v. Ferguson

URL: http://www.provincialcourt.bc.ca/judgments/pc/2004/05/p04_0591.htm
Citation: R. v. Ferguson. Date: 20040216. 2004 BCPC 0591 . File No: 32455.
Registry: Delta. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. BARRY WAYNE FERGUSON. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE J.C. CHALLENGER. Counsel for the Crown: Counsel for the Defendant:
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R. v. Massicotte - Oral Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2001/04/p01_0451.htm
Citation: R. v. Massicotte - Oral Reasons for Sentence. Date: 20011211. 2001 BCPC 0451. File No: 52693-1. Registry: Kelowna. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. HOWARD QUENTIN MASSICOTTE. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE R.R. SMITH. 1] THE COURT: Before me t
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R. v. Kozub - Oral Reasons for Judgment

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/02/p02_0276.htm
Citation: R. v. Kozub - Oral Reasons for Judgment. Date: 20020603. 2002 BCPC 0276. File No: 67298-1. Registry: Kamloops. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. LINDA CLARINA KOZUB. ORAL REASONS FOR JUDGMENT. OF THE. HONOURABLE JUDGE B.W. SUNDHU. Counsel for the Crown: Counsel for the Defendant:
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Date: 7/17/2002 11:26:10 PM

R. v. Sharpe - Oral Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/03/p02_0387.htm
Citation: R. v. Sharpe - Oral Reasons for Sentence. Date: 20020614. 2002 BCPC 0387. File No: 30365-C2. Registry: Penticton. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. THOMAS LEROY SHARPE. ORAL REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE N.N. PHILLIPS. 1] THE COURT: Thomas Shar
Size: 16498 bytes
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R. v. B.G.K. - Oral Reasons for Judgment

URL: http://www.provincialcourt.bc.ca/judgments/pc/2002/04/p02_0482.htm
Citation: R. v. B.G.K. - Oral Reasons for Judgment. Date: 20020625. 2002 BCPC 0482. File No: 20350-1. Registry: Cranbrook. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. B.G.K.. ORAL REASONS FOR JUDGMENT. AND RULING ON BAIL ORDER. OF THE. HONOURABLE JUDGE D.L. SPERRY, G. Sawchuk.

1] THE COURT: Before deli
Size: 27410 bytes
Date: 11/20/2002 7:35:04 PM

R. v. D.A.H. - Excerpt Reasons for Sentence

URL: http://www.provincialcourt.bc.ca/judgments/pc/2003/02/p03_0223.htm
Citation: R. v. D.A.H. Excerpt Reasons for Sentence. Date: 20030609. 2003 BCPC 0223. File No: 30170-C5. Registry: Courtenay. IN THE PROVINCIAL COURT OF BRITISH COLUMBIA. REGINA. v.. D. A. H.. EXCERPT FROM PROCEEDINGS. REASONS FOR SENTENCE. OF THE. HONOURABLE JUDGE P. DOHERTY. R. Yeo (as Agent for D. Marion).
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