doi:10.1093/bjc/azaa039 BRIT. J. CRIMINOL. (2020) **60**, 1480–1501
Advance Access publication 9 June 2020

REDUCING THE USE OF IMPRISONMENT: LESSONS FROM 20 YEARS' EXPERIENCE IN CANADA

Andrew A. Reid*

In order to reduce or constrain prison populations, many different strategies have been proposed, trialled, or implemented. In 1996, Canada created the first and, to date, most ambitious home confinement sanction, the Conditional Sentence of Imprisonment (CSI). This study tracks annual changes to correctional admissions since the introduction of the sanction to assess whether it has reduced custodial admissions for Aboriginal offenders. There is evidence that the CSI had a modest decarceration effect overall and for Aboriginal offenders specifically. These effects were strongest in the initial years after the sanction was introduced, with waning performance in the most recent decade. The decarceration effects have not been erased but nor has the serious problem of over-incarceration among Aboriginal offenders.

Key Words: community custody, house arrest, home confinement, alternatives to imprisonment, Aboriginal offenders, sentences

Introduction

In recent decades, all western jurisdictions have struggled to reduce or merely constrain their prison populations. Many different strategies have been proposed, trialled or implemented. Some of these innovations operate at the front end of the criminal process (e.g. providing alternatives to prosecution or imprisonment), while others release prisoners earlier than their anticipated release date (e.g. accelerated parole review). The most common approach to curbing the prison population involves creating (or enhancing) alternatives to institutional imprisonment or the adoption of more humane forms of custody (e.g. open prisons). The specific options have included: home confinement; intermittent (weekend) imprisonment; electronically monitored intensive probation and others. Of these, home confinement has been the most common option, although the ability of this sanction to reduce the volume of admissions to custody has yet to be established. This article focuses on the oldest such sanction.

More than 20 years ago, Canada created the first and, to date, the most ambitious home confinement sanction, the Conditional Sentence of Imprisonment (CSI). Introduced in 1996 along with other significant changes to Canada's sentencing regime, the CSI provided judges with a novel sentencing option. Unlike alternatives *to* custody, the CSI was conceived as a *form* of imprisonment to be served in the community under a series of restrictive conditions. This new penal sanction, it was envisioned, would provide courts with a unique option that would allow them to address the problem of over-incarceration (Daubney and Parry 1999; MacDonald 2013).

*Andrew A. Reid, Criminology Department, Douglas College, 700 Royal Avenue, New Westminster BC V3M 5Z5, Canada; andrew.reid@douglascollege.ca.

The new sanction was designed to replace some institutional prison sentences. While, at the time of introduction, the CSI was available for offenders for a wide range of criminal offences,[1] it was not intended to be applied widely. As set out in Canada's sentencing legislation:

> Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court (a) imposes a sentence of imprisonment of less than two years…the court may, for the purpose of supervising the offender's behaviour in the community order that the offender served the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order… (*Criminal Code*, R.S.C. 1985, c. C-46, s. 742.1.)

In other words, subsection (a) affirmed that in order for a CSI to be available as a sentencing option, a prison sentence of less than two years had to first be decided as the appropriate response. The community custody sanction was, therefore, viewed as a promising avenue to reduce institutional imprisonment at least for shorter prison terms.

To date, research on the effectiveness of the sanction in fulfilling that objective has been sparse. While early studies provided evidence of a decarceration effect (La Prairie and Koegl 1998; Roberts and Gabor 2003; Roberts 2004; Roberts and Gabor 2004), recent research has generated conflicting conclusions. Webster and Doob (2019) could find no evidence to suggest that the CSI resulted in a meaningful reduction to imprisonment, while Reid and Roberts (2019) concluded that the sanction had had a modest, and variable, overall effect with some provincial or territorial jurisdictions in the country experiencing greater decarceration benefits.

Over-Incarceration of Aboriginal Offenders

Canada's experience with the CSI also sheds light on a related cross-jurisdictional problem: the over-incarceration of Indigenous or Aboriginal peoples. In most western countries, Aboriginal offenders account for a disproportionate percentage of the custodial population. For example, in 2015, 50 per cent of the prison population in New Zealand self-identified as Māori—compared to 15 per cent in the general population (New Zealand Department of Corrections 2015; Statistics New Zealand 2015). In Australia, Aboriginal peoples represent 25 per cent of the prison population but only 3 per cent of the resident population (Jefferies and Stenning 2014). Even the United States, where Black incarceration rates are the highest in the western world, Native Americans also account for a disproportionate volume of admissions to custody (Sakala 2014).

Canada—the subject of this research—has also experienced high rates of Aboriginal incarceration and recent analyses demonstrate that the rate of Aboriginal admissions to custody has remained stubbornly high. In fact, over the past 15 years, Aboriginal admissions to provincial and territorial custody have climbed from 15 per cent (in 2000) to 28 per cent (in 2016) of all admissions, while the population of Aboriginal peoples in Canada remains less than 5 per cent (Roberts and Reid 2017; Malakieh 2018; Statistics Canada 2018).

[1]Almost 95% of custodial sentences being imposed across Canada in 1996 were eligible (if the other statutory prerequisites were met), including the most serious crimes of violence.

The architects of the new sanction intended the CSI to be applied more frequently to the Aboriginal offender population, thereby contributing to reducing the overpopulation problem for this profile of offender. This application of the CSI was subsequently endorsed by appellate courts (e.g. *R v. Gladue 1999*; R. v. Wells *2000*; Roach and Rudin 2020). As with the overall impact of the CSI on sentencing patterns, the impact on Aboriginal offenders has yet to be fully explored. The purpose of this article is to determine whether, and to what extent, the CSI contributed to reducing Aboriginal incarceration. Twenty-one years of data are drawn to provide the first comprehensive analysis, to date, of the effects of this novel alternative to institutional confinement on the use of different sanctions.

Related Research

Stable or declining crime rates coupled with persistently high rates of imprisonment have made research that assesses the ability for alternative or intermediate sanctions to reduce custodial populations become more imperative in recent years (Gazal-Ayal and Roberts 2019). Research related to Aboriginal offender populations in this regard is sparse, but a wider body of literature has emerged that focuses on general offending populations. Among those jurisdictions that have experienced the greatest success are Denmark, Finland, Norway and Sweden. These Nordic countries have implemented a variety of community sanctions, including conditional and suspended sentences, community service and electronic monitoring. In a review of their decarceration effects, Lappi-Seppälä (2019) identified that the conditional sentence had long played an important role as a substitute for imprisonment. The more recent community service and electronic monitoring approaches have also made notable impacts on incarcerated populations. Lappi-Seppälä (2019: 45) concluded that:

> [i]t is evident—even taking into account possible net-widening effects of community service in Norway, and probably also in Denmark and Sweden—that both new alternatives have substantially decreased the number of offenders that would have otherwise entered the prison system.

Other jurisdictions have not experienced the same degree of success. Irwin-Rogers and Roberts (2019) recently documented that the Suspended Sentence Order (SSO) in England and Wales had a lengthy period of time where it was rarely used because it was only permitted in exceptional circumstances. After major reform to the sanction in 2005, its use increased significantly. There were less than 3,000 SSOs handed down in 2004 but more than 40,000 in 2007. Although there was evidence that reforms to the SSO contributed to decarceration in the short term, SSOs began to displace community orders in the long term (i.e. evidence of net widening). Despite the initial success after reform efforts, Irwin-Rogers and Roberts (2019) concluded that the decarceration effects of the sanction were not able to be maintained.

Similar findings were reported by Emmanuel and Gazal-Ayal (2019) in their study of two community-based sanctions in Israel—the suspended sentence and service labour. While the suspended sentence contributed to a decline in custodial admissions over the short term, the decarceration benefits faded over time. Service labour had less of an impact over the short term and it too experienced diminishing success over the longer period. Much of the reason for the failure of the suspended sentence has been

attributed to changes in legislation and case law, which transformed the use of the sanction away from its original intended purpose of reducing imprisonment. This resulted in the sanction serving as yet another option in addition to imprisonment rather than a replacement for custodial sentences (Emmanuel and Gazal-Ayal 2019).

In Australia, the suspended sentence of imprisonment has led an even more tumultuous trajectory. As documented by Freiberg (2019: 82):

> Suspended sentences were introduced in South Australia in 1886 and survive to the present day. In New South Wales, the sentence was introduced in 1900 and survived until 1974, only to be reintroduced in 2000 and again abolished in 2017. In Victoria, it was introduced in 1915, disappeared in 1958, was reintroduced in 1986, was modified in 1991, 1997, 2006, 2010, 2011, and was abolished in different levels of court in 2013 and 2014 following a series of reports by the Victorian Sentencing Advisory Council.

Reasons for the volatile history of the suspended sentence have been described as being, at least in part, disconnected from the effectiveness of the sanction in reducing prison populations and more to do with concerns in the way the sanction was designed, implemented and ultimately perceived.

In Canada, the CSI has been the most novel approach to reducing the use of prison. Despite the fact that it has been used as a replacement for institutional confinement for more than 20 years now, surprisingly the CSI has received little empirical attention. In the period following the introduction of the sanction, studies addressed several important issues, including judicial (Roberts *et al.* 2000b; Roberts and Manson 2004) and public (Marinos and Doob 1997; Sanders and Roberts 2000) reaction to the sanction, the use of conditions with the CSI (Roberts *et al.* 2000a), the perspectives of victims on the sanction (Roberts and Roach 2005) and the evolution of the sanction through appellate judgements (Roberts and Healy 2001).[2] Few studies, however, directly addressed the impact of the CSI on institutional imprisonment.

La Prairie and Koegl (1998) and Roberts and Gabor (2003) provided the first assessments of this type and found evidence that the CSI had had two effects simultaneously. First, the sanction had contributed to reducing the number of admissions to provincial prisons.[3] Over the four-year period after the CSI had been introduced, prison sentences declined 13 per cent in nine (combined) provincial jurisdictions. In fact, all but one of the jurisdictions included in the analyses experienced some decline, with reductions of imprisonment ranging between 5 and 47 per cent. Translating those percentages into raw counts, the authors concluded that 53,900 offenders had been diverted from institutional imprisonment during that initial four-year period.

However, there was also evidence of the well-known phenomenon of 'net widening': courts had been using the CSI to replace some community orders rather than terms of imprisonment (Roberts and Gabor 2003; 2004; Roberts 2004). Although five of the nine jurisdictions included in the study experienced some degree of net widening (ranging from 8 to 15 per cent), just 1 per cent of all cases that received a CSI in the four-year period were deemed to have received the CSI when they otherwise would have

[2]For an overview of research to 2000, see Roberts and La Prairie 2000.

[3]The sanction has a statutory ceiling of two years less one day; sentences above this limit are served in the federal prison system and represent only approximately 3 per cent of all custodial sentences (Maxwell 2017).

received a less severe form of community supervision (i.e. probation). As cautioned by Emmanuel and Gazal-Ayal (2019: 111–12):

> [i]nitial success does not immediately suggest sustainable, long-term success since studies are often conducted soon after a new type of sentence is introduced, so many of the conclusions from these sentencing studies do not continue to hold following later developments.

After 15 years of virtually no research assessing the impact of the CSI on institutional imprisonment, Webster and Doob (2019) concluded that there was 'no compelling evidence to suggest that the conditional sentence has had any measurable impact on provincial and territorial sentenced imprisonment' (Webster and Doob 2019: 182). Adopting a different methodology, Reid and Roberts (2019) employed correctional admissions data to track year-over-year changes to the three principal segments of Canada's provincial/territorial correctional systems (i.e. custody, CSI and probation). By isolating the effect that the percentage of CSI admissions had on the percentage of institutional custody admissions, they demonstrated that the CSI contributed a modest –7.65% per cent decarceration effect over the 21-year history of the sanction. Further, nine of the ten jurisdictions included in the analyses revealed decarceration effects ranging from –3.13 to –14.23 per cent, with only one province recording an increase to institutional custody due to changes in the use of the CSI over the study period.

Surprisingly, in the immediate period following introduction of the CSI in Canada, no research assessed the impact of the sanction on the Aboriginal offender population. Research on Aboriginal imprisonment rates provided the closest assessment of its effect. Roberts and Melchers (2003) analysed trends of Aboriginal incarceration in Canada between 1978 and 2001. In contrast to the general decline of imprisonment rates across the country as a whole, they found that Aboriginal imprisonment rates had actually increased during that period. Although Aboriginal incarceration declined in the period immediately following the 1996 sentencing reforms that brought the CSI into effect, there was no evidence of a causal relationship between that trend and the statutory amendments. In fact, Roberts and Melchers (2003) noted that non-Aboriginal admissions to prison declined at a more rapid rate than did Aboriginal admissions during that same period.

Reid (2017) provided the first empirical assessment on the relative use of the CSI among Aboriginal and non-Aboriginal offender populations. By employing a measure that compared the proportion of CSIs to total admissions of imprisonment (i.e. CSI and custody), Reid (2017) reported that, while Aboriginal offenders received a slightly greater proportion of CSIs during the period 2000–07, that pattern shifted and Aboriginal offenders received disproportionately fewer CSIs over the next five years. Reid's (2017) study provided an initial exploration into the use of the CSI among Aboriginal offenders but the analytic approach did not control for other effects. In particular, the study did not account for the possibility that net widening may have occurred, so no firm conclusions could be drawn about the decarceration effects of the sanction. The methods employed did not account for the possibility that some uses of the CSI may have actually been drawn from sentences that would otherwise have been supervised in the community (i.e. probation). In addition, the study only tracked the use of CSIs back to 2000, yet Reid and Roberts (2019) recently found that the greatest decarceration effects that may be attributed to the sanction occurred in the period 1996–2000. Recognizing these limitations, the current study assesses the impact of the

CSI on Aboriginal imprisonment and probation admissions over the life of the sanction to date, namely from 1996 to 2016.

Methods

Data

This study draws upon data from the Adult Correctional Services (ACS) survey. This survey collects annual data on new admissions to correctional systems across Canada. In addition to admissions, the survey captures information for three offender characteristics: Aboriginal identity, age and sex. For the purposes of this study, all custodial and probation admissions to provincial and territorial programs were retrieved for the period 1995–2016, with separate counts for Aboriginal and non-Aboriginal offenders. Conditional sentence admission counts were also analysed for the period 2001–16. These data were supplemented by conditional sentence admissions for the two groups that were reported for 1996 by Reed and Roberts (1998) and 1997–2000 by Hendrick *et al.* (2003).

Despite being comprehensive, these sources have two limitations. First, custody, probation and conditional sentences in the very small percentage (approximately 2 per cent) of cases where the Aboriginal identity of an offender was 'unknown' were excluded. Second, three jurisdictions reported only inconsistently to the ACS survey over the past 15 years.[4] For example, Prince Edward Island did not report community correctional admissions prior to 2010, while Manitoba did not report probation admissions from 1996 through 1999 and Alberta did not report custodial admissions between 2001 and 2004. Accordingly, these three jurisdictions were excluded from the study. In addition, data reported by Hendrick *et al.* (2003) did not include CSI admission counts for New Brunswick from 1996 through 2000. Consequently, it was also excluded. Finally, Nunavut separated from Northwest Territories in 1999. Because it was not possible to report on correctional program admissions for these jurisdictions throughout the 21-year period, both were excluded from this study.

However, the remaining seven jurisdictions include the most populous provinces (i.e. Ontario, Quebec and British Columbia), as well as a mix of jurisdictions from Canada's north (i.e. Yukon), west coast (i.e. British Columbia), prairie (i.e. Saskatchewan), central (i.e. Ontario and Quebec) and Atlantic (i.e. Nova Scotia and Newfoundland and Labrador) regions. In total 1, 257,471 custodial, 1,296,675 probation and 267,007 CSIs for the 21-year period are included in the analyses. The three most populous provinces accounted for more than four out of every five custodial (88 per cent), probation (86 per cent) and CSI (82 per cent) admissions.

Analytic Strategy

The primary goal of this study was to assess the extent to which the CSI may have differently affected custodial admissions of Aboriginal offenders. This type of assessment poses considerable challenges. As noted by Freiberg (2019; 94), imprisonment populations may

[4]In addition, the ASC notes that Nova Scotia and New Brunswick began reporting to the most recent version of the survey in 2002–03, Ontario began reporting in 2003–04, and British Columbia began reporting in 2008–09.

be 'influenced by many factors such as crime rates, reporting, prosecution and conviction rates, sentencing policies such as mandatory and presumptive sentencing, remand in custody rates, and the availability of other sanctions'. Therefore, an analytic method that studied the year-over-year changes to custodial, probation and CSI admissions for non-Aboriginal offenders and Aboriginal offenders was employed. By using percentages of total admissions rather than counts, it was possible to control for any influence of changes to the crime, arrest, charge or conviction rates during the study period.

In order to assess the impact of the CSI on institutional custody admissions, it was necessary to isolate its effect by discounting any influence that a change to probation may have exerted.[5] If e.g. a decrease to the percentage of institutional custody was accompanied by a decrease to the percentage of CSI admissions and an increase to the percentage of probation, no decarceration effect was recorded. In such a scenario, the decline in custody would be attributable to the corresponding increase in probation admissions. If, on the other hand, a decrease in the percentage of institutional custody was accompanied by an increase in the percentage of CSI admissions and decrease to probation, the decrease of custody was attributed to the change in CSI admissions. Further, when a decrease in institutional custody was accompanied by an increase to the percentage of CSI admissions and an increase to the percentage of probation, the difference was recorded as a partial decarceration effect. Under these circumstances, both the increase to probation and the increase to CSI admissions would have contributed to the decrease in custody. In any year-to-year change, it was also possible for the percentage of custodial admissions to increase.[6] In those instances, the same procedure was followed to isolate the impact of change to the percentage of CSI admissions on increases to custodial admissions.

To summarize, where it is possible that a change in the percentage of probation admissions may have *reduced* institutional custody admissions, that effect was discounted. Similarly, where a change in the percentage of CSI admissions may have *increased* the percentage of institutional custody admissions, that effect was recorded. By taking this approach, conservative estimate for the impact of annual changes to CSI admissions on the percentage of custodial admissions for each offending group was obtained.[7] The analyses begin by comparing the first year the CSI was introduced (1996) to the previous year (1995), where institutional custody and probation were the only available segments in the provincial/territorial correctional systems. All subsequent calculations compare to the previous (single) year of data.

[5]A matrix that summarizes possible changes to the sanctions in any given year is included in the Appendix.

[6]It was also deemed possible for there to be no annual change to the percentage of any or all of the admission types between any two years. After careful inspection of the data, however, no instance of this type of pattern was identified.

[7]In order to provide further confidence in the findings, comparisons between annual changes to custodial admissions and annual changes in the crime severity index (beginning in 1998) were also made. By studying the relationship between these two measures, it was possible to understand the extent to which changes in offence seriousness may have influenced changes to sentencing (i.e. the use of custody) in any given year. The analyses reveal very little correlation between annual change to the percentage of custody and annual change to the crime severity index. In fact, in eight of the ten jurisdictions included in this study, the direction of change was found to be the same in 50 per cent or less of the years (1998–2016). It was not, however, possible to compare the relationships between the crime severity index and use of custody for non-Aboriginal and Aboriginal offenders, individually. The crime severity index is not disaggregated by these offender profiles.

Table 1 *Count of CSI admissions by jurisdiction (1996–2016)*

Jurisdiction	Non-Aboriginal offenders	Aboriginal offenders
British Columbia	45,027	11,112
Newfoundland	5,808	99
Nova Scotia	11,602	807
Ontario	81,168	10,572
Quebec	65,993	4,000
Saskatchewan	7690	20,512
Yukon	708	1,014
Seven-jurisdiction Total	214,997	49,010

Sources: Adult Correctional Services Survey; Hendrick *et al.* (2003); Statistics Canada: Canadian Centre for Justice Statistics; Reed and Roberts (1999). Adult correctional services in Canada, 1997–98. *Juristat,* 19(4), Table 4.

In order to report on CSI admissions for both non-Aboriginal and Aboriginal offenders dating back to 1996, it was necessary to compile data from multiple sources. As a result, the sum of non-Aboriginal and Aboriginal admissions in this table differs slightly from those reported by Reid and Roberts (2019) where only a single data source was employed.

Findings

Volume of CSIs (1996–2016)

This study begins by reporting on the raw count of CSIs for each group. This contextualizes the relative use of the community-based form of imprisonment against the backdrop of other sanctions. Table 1 reports the frequency of CSI admissions across the seven provincial/territorial jurisdictions and for the combined total of those jurisdictions. Considering first the combined jurisdictions, nearly one quarter of a million CSIs were imposed over the past 21 years. Of that total, a non-trivial 49,010 (19 per cent) were imposed on Aboriginal offenders. Given that the CSI was introduced with the intention of replacing custodial sentences of less than two years, it ought not to have had any impact on other sentencing options. The count of CSIs, therefore, provides an estimate for the number of custodial admissions to provincial/territorial institutions that have been prevented and discharged in the community instead.

The 19 per cent statistic does, however, mask inter-jurisdictional variation. While five of the seven provinces/territories record more CSI admissions for non-Aboriginal offenders, Saskatchewan and Yukon report more CSIs for their Aboriginal offender populations. Despite Aboriginal peoples representing a minority in all seven jurisdictions reported here, both Saskatchewan and Yukon have recorded disproportionately high rates of over-representation for Aboriginal peoples in Canada's correctional systems (Roberts and Reid 2017). It is, therefore, not surprising that this offending group could be over-represented in this context as well.

Table 2 reports the frequency of annual CSI admissions for non-Aboriginal and Aboriginal offenders in the combined jurisdictions from 1996 to 2016. Figure 1 presents these data graphically, revealing two distinct trends. For non-Aboriginal offenders, the volume of CSIs increased rapidly in the first five years, then stabilized for the next 12 years within the 11,500–13,500 range, reaching a peak of 13,602 in 2009. After 2012, the volume of CSIs declined rapidly to 7,220 in 2016.

For Aboriginal offenders, the volume of CSIs rose steadily over the first 16 years to a peak of 3,007 in 2012. Where the decline of CSIs over the past four years has been

TABLE 2 *Annual count of CSI admissions for the combined seven-jurisdiction unit of analysis (1996–2016)*

Year	Non-Aboriginal offenders	Aboriginal offenders
1996	5,749	731
1997	9,969	1,459
1998	9,684	1,593
1999	10,863	1,905
2000	11,086	2,141
2001	11,837	2,139
2002	12,453	2,331
2003	11,314	2,342
2004	11,477	2,414
2005	11,134	2,317
2006	10,512	2,470
2007	11,346	2,414
2008	11,936	2,558
2009	12,380	2,792
2010	11,803	2,924
2011	11,564	2,993
2012	10,754	3,007
2013	9,848	2,762
2014	8,162	2,653
2015	6,906	2,584
2016	7,220	2,482

Sources: Adult Correctional Services Survey; Hendrick *et al.* (2003); Statistics Canada: Canadian Centre for Justice Statistics; Reed and Roberts (1999). Adult correctional services in Canada, 1997–98. *Juristat,* 19(4), Table 4.

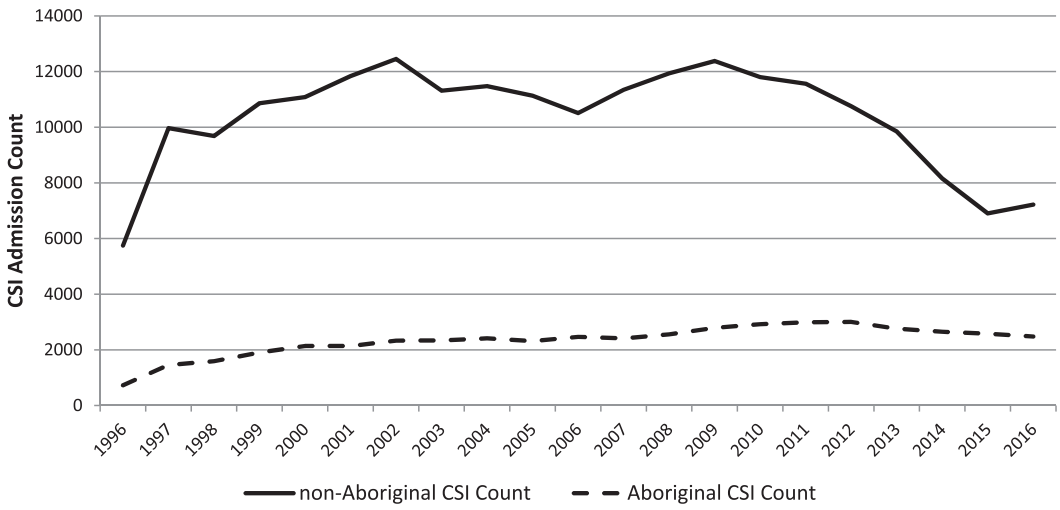

FIG. 1 Line chart of annual count for CSI admissions in the combined seven-jurisdiction unit of analysis (1996–2016). Sources: Adult Correctional Services Survey; Hendrick *et al.* (2003); Statistics Canada: Canadian Centre for Justice Statistics; Reed and Roberts (1999). Adult correctional services in Canada, 1997–98. *Juristat,* 19(4), Table 4.

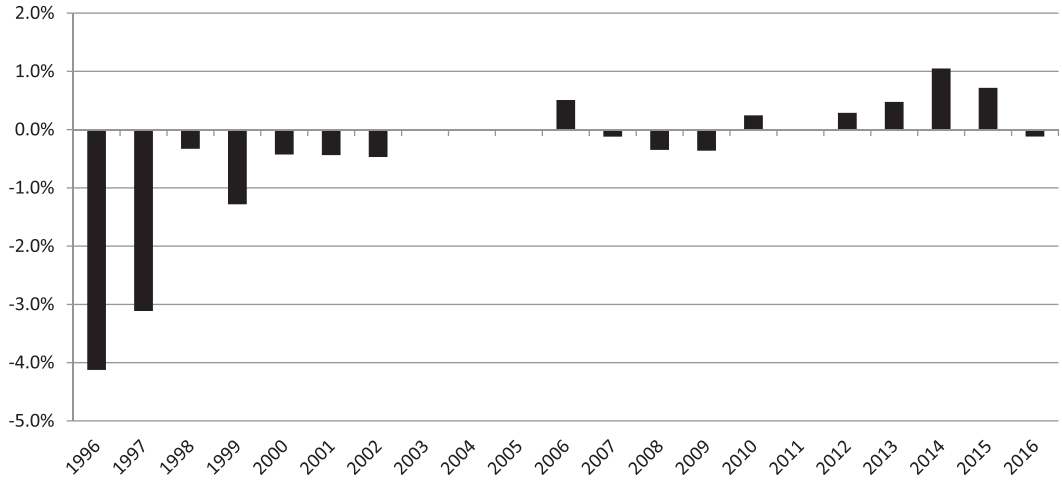

FIG. 2 Year-over-year bar chart of CSI impact on percentage of institutional custody admissions for non-Aboriginal offenders, combined seven-province/territory jurisdiction (1996–2016). Sources: Adult Correctional Services Survey; Hendrick *et al.* (2003); Statistics Canada: Canadian Centre for Justice Statistics; Reed and Roberts (1999). Adult correctional services in Canada, 1997–98. *Juristat*, 19(4), Table 4.

dramatic for non-Aboriginal offenders (i.e. a 33 per cent decline), the decline for Aboriginal offenders over the past four years has been less pronounced (i.e. a 17 per cent decline). In fact, the volume of CSIs imposed on Aboriginals remained greater in 2016 than it was in the first 12 years of its existence. This provides preliminary evidence that, while not used in great frequency in the context of total correctional sanctions, the CSI may have played a non-trivial role in the sentencing of both non-Aboriginal and Aboriginal offenders—at least during the first 15 years of its existence. Its prominence in the most recent five-year period, however, has been largely subdued.

CSI Impact on Custodial Admissions

Trend for non-Aboriginal offenders

Figure 2 charts the year-over-year CSI impact on the percentage of institutional custody admissions for non-Aboriginal offenders in the combined seven-jurisdiciton unit. Bars rising above the axis represent an increase to institutional custody, while bars dropping below the axis represent a decrease. In the first year of the CSI regime (i.e. 1996) there was a greater than −4 per cent decline to the percentage of institutional custody admissions that may be attributed to the increase in the percentage of CSI admissions. Importantly, this increase is independent of any change to the percentage of probation admissions.

Over the next several years, a similar pattern was observed. There were six consecutive year-over-year decarceration effects recorded; these ranged in magnitude between –0.3 and –3.1 per cent. After 2002, there were three years of no measurable increase or decrease to custody attributable to the CSI. Because the year-over-year chart is non-cumulative, it is important to summarize these trends. Over the first 10-year period, when the CSI was available, non-Aboriginal offenders experienced a cumulative –10.18 per cent decline to institutional custody that corresponded with increases in

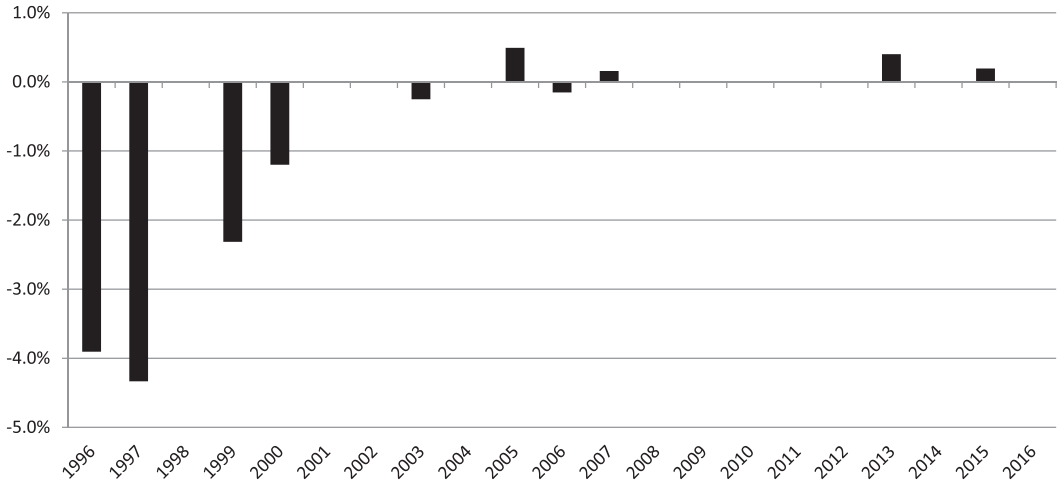

FIG. 3. Year-over-year bar chart of CSI impact on percentage of institutional custody admissions for Aboriginal offenders, combined seven-province/territory jurisdiction (1996–2016). Sources: Adult Correctional Services Survey; Hendrick *et al.* (2003); Statistics Canada: Canadian Centre for Justice Statistics; Reed and Roberts (1999). Adult correctional services in Canada, 1997–98. *Juristat,* 19(4), Table 4.

the percentage of CSI admissions.[8] Between 2006 and 2012, the impact of the CSI was more stable, with minor fluctuations contributing to both decarceration and an increase in institutional custody. During that period, there were annual changes of less than 1 per cent up or down in any given year. From 2012 to 2015, a more consistent pattern emerged. Four years of consecutive increases to the percentage of institutional custody coincided with decreases in the percentage of CSI admissions. This translates to a greater than +2.5 per cent (cumulative) increase to institutional imprisonment.

Trend for Aboriginal Offenders

Figure 3 charts the year-over-year CSI impact on the percentage of institutional custody admissions in the combined jurisdictions for Aboriginal offenders. The first years of the chart reveal a similar pattern to that of non-Aboriginal offenders (Figure 2). In the first year of the CSI regime, Aboriginal offenders experienced a –3.9 per cent decrease in the percentage of institutional sentences. That was immediately followed by a –4.3 per cent decrease in 1997. With no increase in institutional custody attributable to decreased use of CSIs until 2005, there were nine consecutive years of decreases to custody or no measurable impact. Even after a slight increase to the percentage of custodial admissions in 2005, a –11.51 per cent cumulative decrease to institutional custody was recorded during that initial period (compared to a –10.18 per cent cumulative decrease for non-Aboriginal offenders). From 2007 to 2016, no decarceration effect

[8]The cumulative percentages reported in this section (and in Tables 3 and 4) summarize the overall impact of the measurements carried out. These do not correspond to cumulative counts of admissions to custody because the number of admissions will vary for each year of the analyses. A summary of trends in the counts of custodial admissions is reported in the Summary of Findings section.

may be attributed to the CSI; either no effect or minor increases to incarceration are attributed to changes in the use of the CSI during that time.

As documented in Table 2 and Figure 1, CSI admission counts remained relatively high for Aboriginal offenders compared to non-Aboriginal offenders in the most recent seven-year period. Those counts do not, however, appear to have translated into further decarceration benefits. After accounting for trends in the use of all three correctional sanctions, the analyses indicate that 2006 was the last year where the CSI reduced the percentage of institutional custody admissions among Aboriginal offenders. This is a departure from the trend among non-Aboriginal offenders where decarceration benefits were achieved in four of the last ten years.

21-Year Cumulative Impact

Table 3 reports the 21-year cumulative CSI effect on institutional custody for the seven jurisdictions. Overall, the net impact of the CSI on institutional custody is moderate for both non-Aboriginal and Aboriginal offending groups. Non-Aboriginal offenders experienced a –7.85 per cent decline in institutional admissions that may be attributed to the CSI. Aboriginal offenders experienced a more pronounced –10.91 per cent decrease. From these aggregate statistics, it may be concluded that, over the 21-year history of the sanction, the CSI has largely served its intended purpose of modestly reducing the percentage of institutional imprisonment admissions. Anticipation that the new form of community custody would translate into a reduction in the use of institutional custody for Aboriginal offenders, specifically, also appears to have been realized.

Another key finding that emerged from these analyses is the inter-jurisdictional variation among Canada's provinces and territories. Table 3 reports that six of the seven jurisdictions experienced a net decarceration effect for non-Aboriginal offenders over the 21-year history of the community custody sanction. Newfoundland and Labrador and Saskatchewan experienced the greatest impacts with declines in excess of –13 per cent to institutional custody being attributed to the CSI. In British Columbia, annual changes to the percentage of CSI admissions contributed to an increase in institutional

Table 3. *Twenty-one-year cumulative CSI impact on percentage of institutional custody admissions for non-Aboriginal and Aboriginal offenders (1996–2016)*

Jurisdiction	Non-Aboriginal offenders	Aboriginal offenders
British Columbia	1.52%	–0.86%
Newfoundland and Labrador	–13.59%	–9.06%
Nova Scotia	–6.72%	3.07%
Ontario	–7.39%	–7.65%
Quebec	–9.46%	–5.93%
Saskatchewan	–13.08%	–13.61%
Yukon	–11.18%	–4.31%
Seven-jurisdiction average	–7.85%	–10.91%

Sources: Adult Correctional Services Survey; Hendrick *et al.* (2003); Statistics Canada: Canadian Centre for Justice Statistics; Reed and Roberts (1999). Adult correctional services in Canada, 1997–98. *Juristat,* 19(4), Table 4.

custody. In other words, in this particular jurisdiction, decreases to the annual percentage of CSI admissions have been associated with increases to institutional custody to a greater extent than any decarceration benefits. This finding is largely consistent with Reid and Roberts (2019) study, which also found British Columbia to have experienced an increase to institutional custody. These interprovincial differences seem to reflect different approaches to using the CSI across the country. It could be that the courts of appeal in some provinces may have taken a more supportive view of the new sanction, with the consequence that trial courts have imposed the sanction more often.

With respect to Aboriginal offenders, six of the seven jurisdictions were also found to have experienced CSI impacts that reduced the percentage of institutional incarceration. Only Nova Scotia is found to have had an increase (+3.07 per cent) to institutional custody due to annual change in the percentage of CSI admissions. In some cases, jurisdictions that revealed decarceration among non-Aboriginal offenders experienced a comparable magnitude of decarceration for Aboriginal offenders. Ontario e.g. revealed a –7.39 per cent decrease to custody for non-Aboriginal offenders and a –7.65 per cent decrease for Aboriginal offenders. Saskatchewan recorded a –13.08 per cent decarceration effect for non-Aboriginal offenders and a –13.61 per cent effect for Aboriginal offenders. Some jurisdictions, on the other hand, revealed greater differences. Both Newfoundland and Labrador and Quebec recorded a 4 per cent decarceration difference in favour of non-Aboriginal offenders, while Yukon recorded a greater than 6 per cent difference.

Evidence of net widening

Recognizing that the CSI is a form of imprisonment (albeit one that is served in the community), a measure to study year-over-year changes to total imprisonment (i.e. the proportion of imprisonment admissions that was either institutional or community based) was employed to explore evidence of 'net widening'. Net widening refers to an expansion of total imprisonment due to the availability of the CSI. Although the CSI was not intended to be used for cases that would otherwise have received a sentence less severe than custody, it could be possible for a proportion of the caseload, which previously would have received probation to be given the more severe (CSI) sentencing option. This would represent an expansion of imprisonment—an unintended consequence of introducing the sanction. Similarly, 'narrowing of the net' could also occur. Narrowing of the net refers to a reduction in total imprisonment admissions that may not be attributed to an increase to the percentage of CSI admissions. In other words, narrowing of the net may occur if a proportion of the caseload, which previously would have received custody or a CSI, is given the less severe option of probation. This phenomenon would reflect a judicial shift towards greater use of probation over and above any change to the use of CSIs.

In order to operationalize the measurement of change to total imprisonment, the percentage of custody and CSI admissions (combined) in 1996 is compared to the percentage of custody in 1995 (before the CSI became available). Changes to the percentage of custody and CSI admissions (combined) are then tracked over the remaining 20-year period. It was expected that no change to total imprisonment would be found; this would indicate no evidence of net widening or narrowing of the net. When considered

alongside the first measure (i.e. CSI impact on custody), we may confirm the observed effect. If the CSI was found to decrease custodial admissions while total imprisonment increased, then net widening must have occurred. Conversely, if the CSI was found to decrease custodial admissions while total imprisonment decreased, then a narrowing of the net would have occurred.

Table 4 reports the 21-year cumulative change to total imprisonment for non-Aboriginal and Aboriginal offenders. Overall, non-Aboriginal offenders experienced a –6.68 per cent decrease to total imprisonment since the introduction of the CSI. In other words, while the CSI was found to contribute to a –7.85 per cent decline to the percentage of institutional custody (see Table 3), there was also increased judicial reliance on community probation orders during that time. Aboriginal offenders, on the other hand, experienced a small (+0.02 per cent) net-widening effect. There was evidence of decarceration in the magnitude of –10.91 per cent (see Table 3), but there was also evidence that a small proportion of offenders who previously would have received probation received a sentence of imprisonment.

Once again, these combined-jurisdiction summaries mask important jurisdictional variation in Canada. Two jurisdictions revealed net widening among the non-Aboriginal offender population. British Columbia's net widening was most pronounced at +13.98 per cent, while Nova Scotia recorded a modest +6.07 per cent. For Aboriginal offenders, four of the seven jurisdictions recorded net-widening statistics; these varied between +4.39 per cent (in Quebec) and +16.89 per cent (in British Columbia). These findings are concerning as they provide evidence that, in some jurisdictions, the CSI may not have been used as intended. They are particularly troubling for a jurisdiction such as Nova Scotia which revealed an increase to the percentage of institutional custody among Aboriginal offenders due to changes in the use of the CSI, alongside evidence of net widening.

Methodological Limitations

While the methodology employed in this study represents an improvement upon previous approaches, some limitations must be noted. Although the use of percentages as a

Table 4. *Twenty-one-year cumulative change to percentage of total imprisonment for non-Aboriginal and Aboriginal offenders (1996–2016)*

Jurisdiction	Non-Aboriginal offenders	Aboriginal offenders
British Columbia	13.98%	16.89%
Newfoundland and Labrador	–3.87%	7.28%
Nova Scotia	6.07%	8.58%
Ontario	–5.73%	–4.18%
Quebec	–24.16%	4.39%
Saskatchewan	–1.27%	–9.69%
Yukon	–20.48%	–10.82%
Seven-jurisdiction Average	–6.68%	0.02%

Sources: Adult Correctional Services Survey; Hendrick *et al.* (2003); Statistics Canada: Canadian Centre for Justice Statistics; Reed and Roberts (1999). Adult correctional services in Canada, 1997–98. *Juristat,* 19(4), Table 4.

total of all correctional admissions controls for any change to crime, arrest, charge and conviction rates that may occur at stages prior to sentencing, it is not possible to control for changes to offence seriousness over time. Data that may be used to control for offence seriousness are not available for disaggregation by ethnic origin or ancestry in Canada. Changes to offence seriousness have the potential to affect the use of custody, CSIs and probation at sentencing. Nevertheless, because the analytic method tracks the relationships between these three correctional admission types and discounts the impact of changes that could lead to erroneous conclusions (e.g. a decrease in the percentage of probation admissions contributing to an increase in the percentage of CSI admissions), there is greater confidence that changes to offence seriousness have not affected the findings.

In addition, due to the way in which correctional admissions are recorded in Canada, it was not possible to distinguish between simple (i.e. single sanction) and complex (i.e. multiple sanction) sentences.[9] It is, therefore, possible that some—or even many—offenders who were sentenced during the 1995–2016 period were admitted into multiple segments of the correctional system from a single disposition. This may have occurred if e.g. an offender was sentenced to institutional custody followed by a period of probation. In such a case, an admission to both custody and probation would be recorded. While this has the potential to cloud some of the interpretations that are sought from the analyses, it is not expected that the results would be different with the inclusion of these details in the analyses.

Finally, the correctional statistics employed here aggregate First Nations individuals into the single category of 'Aboriginal'. This is an oversimplification of the diversity among Indigenous peoples across Canada, as well as the variation within different communities. Future research should move towards understanding the differential impact that criminal justice has on diverse offending groups and communities.

Summary and Discussion of Findings

In 1996, Canada introduced the CSI in an effort to reduce prison admissions generally, as well as for Aboriginal offenders specifically. Both objectives have been met, albeit modestly. The raw count of CSIs provides the first form of evidence. The intended application of the CSI meant that each use would replace a prison sentence and there have been nearly one quarter of a million CSIs imposed to date. Of that total, nearly 20 per cent have been employed with Aboriginal offenders. Furthermore, the year-over-year analyses confirm the findings of early studies on the impact of the sanction, which concluded that the CSI had contributed to decarceration (La Prairie and Koegl 1998; Roberts and Gabor 2003; Roberts 2004; Roberts and Gabor 2004; Reid and Roberts 2019). In the first 10 years that the sanction was available (1996–2004), non-Aboriginal offenders experienced a cumulative decarceration effect of –10.18 per cent. Aboriginal offenders experienced greater decarceration during the same period; a –11.51 per cent decarceration effect was recorded.

As experienced in other jurisdictions that have employed community-based sanctions to reduce imprisonment, these initial trends were encouraging, yet the early

[9]It was also not possible to obtain data about breached community orders. As a result, it was not possible to track the number of admissions to institutional custody that was triggered by a breach of CSI conditions.

achievements have not been maintained (Emmanuel and Gazel-Ayal 2019; Irwin-Rogers and Roberts 2019). Changes to the percentage of CSI admissions in recent years have been associated with increases to the percentage of institutional custody admissions. For non-Aboriginal offenders, five of the past seven years revealed increases. For Aboriginal offenders, only three of the past ten years recorded increases but, in that same time period, no reductions may be attributed to increases in the CSI. These findings are also consistent with those recorded by Reid (2017) who documented a stable trend in the use of CSIs between 2000 and 2007 and a decline for both non-Aboriginal and Aboriginal offenders between 2008 and 2015.

These most recent trends coincide with a period of restricted use of the CSI since the coming into force of *An Act to Amend the Criminal Code (Conditional Sentence of Imprisonment)* in 2007 and *The Safe Streets and Communities Act* in 2012. Both of the legislative amendments were introduced and moved through the parliamentary process by the federal Conservative Government, the first with a minority rule and the second with a majority (after campaigning on a 'tough on crime' platform that promised significant reform to the criminal justice system). *An Act to Amend the Criminal Code (Conditional Sentence of Imprisonment)* removed a court's discretion to impose a CSI for serious personal injury offences, terrorism offences and offences associated with a criminal organization prosecuted by way of indictment and punishable by a maximum term of ten years or more. The *Safe Streets and Communities Act* further restricted the availability of the CSI by making it unavailable for: crimes carrying a maximum penalty of 14 years or life; offences resulting in bodily harm, involving the import, export, trafficking or production of illicit drugs or involving the use of a weapon; and a lengthy list of offences when prosecuted by indictment (including motor vehicle theft and theft over $5,000).

These legislative reforms were criticized by both practitioners and academics (Roberts 2006). Concern was expressed that the changes could increase reliance on institutional imprisonment and, in doing so, disproportionately impact Aboriginal offenders. For example, Chartrand (2001: 467) noted that 'mandatory sentences such as those imposed for firearms-related offences will clearly have a disproportionately negative impact on Aboriginal peoples' because they are more likely to own firearms than the general Canadian population. Newell (2013: 225) raised concern that '[r]estricting access to conditional sentences removes one tool previously available to courts to mitigate the over-incarceration of Indigenous people'.

Despite these concerns, the analyses presented here did not find compelling evidence that Aboriginal offenders experienced a disproportionate impact from the 2007 and 2012 legislative reforms. In fact, although the most recent trends are discouraging, over the long term, Aboriginal offenders have maintained greater decarceration benefits from the CSI. Across the 21-year history of the sanction, changes to the percentage of CSI admissions were found to be associated with a –7.85 per cent decrease to the percentage of institutional custody for non-Aboriginal offenders and an even more pronounced –10.91 per cent decrease for Aboriginal offenders. Further, six of the seven provincial/territorial jurisdictions reported decarceration effects for each offending group. Only British Columbia for non-Aboriginals and Nova Scotia for Aboriginal offenders experienced increases to the percentage of institutional custody associated with changes to the percentage of CSI admissions.

It is important to provide additional context to ensure an accurate interpretation of these findings. After all, the analyses presented here were focused on just two dimensions

of a very complex criminal justice system. Because the analyses report on trends in the relationship between *percentages* of correctional admissions for each offending group, they may mask other important patterns. For example, the percentage of institutional custody admissions for non-Aboriginal offenders declined from 59 per cent in 1995 to 44 per cent in 2016 and, for Aboriginal offenders, from 59 to 47 per cent. Those statistics do not imply that the *counts* of admissions have declined at comparable rates. In fact, while the count of institutional custody admissions for non-Aboriginal offenders declined from 78,917 in 1995 to 42,222 in 2016 (a decline of approximately −46 per cent), admissions for Aboriginal offenders increased from 10,491 to 10,651, respectively (an increase of approximately +1.5 per cent).

The percentages of total correctional admissions that were used in the analyses also mask the following important trends: for non-Aboriginal offenders, the count of probation admissions declined from 55,701 in 1995 to 45,745 in 2016 (a decline of approximately −18 per cent) while the count of CSI admissions increased from 0 in 1995 to 7,220 in 2016. For Aboriginal offenders, the count of probation admissions increased from 7,437 in 1995 to 9,303 in 2016 (an increase of approximately 25 per cent), while the count of CSI admissions increased from 0 in 1995 to 2,482 in 2016. In other words, while the analyses reveal that the CSI has had an impact on reducing the percentage of institutional custody admissions for both non-Aboriginal and Aboriginal offenders, changes to counts of admissions in each of the segments of the correctional system reveal that the reductions observed have not been large enough to reduce the over-representation of Aboriginal offenders in the criminal justice system. Furthermore, trends among counts of the three correctional sanctions appear to have widened the gap between the representation of non-Aboriginal and Aboriginal offenders. This finding has been documented many times over including most recently by Reid (2017) and Roberts and Reid (2017).

These findings indicate that other factors are influential to the problem of over-representation for Aboriginal peoples in the criminal justice system and need to be explored. This necessarily involves consideration for all stages of the criminal justice process. For example, from the patterns documented here, it is clear that a greater number of Aboriginal persons are entering into the (front end) of the criminal justice system. This may explain why a decarceration effect by the CSI was observed, yet counts of custodial and probation admissions for Aboriginal offenders have increased. It may also explain the differential declines in the counts of CSIs imposed on the two offending groups after 2012. Reasons for increased offending or detection and, therefore, involvement in the criminal justice system for Aboriginal peoples are, at present, not well explained. Similarly, evidence of net widening experienced by Aboriginal offenders and narrowing of the net experienced by non-Aboriginal offenders need to be explored further in order to explain how these patterns manifest at sentencing. At present, these research avenues are not possible in Canada because the necessary data are either not collected or not made available.

This study also recorded great variation across the seven jurisdictions with respect to the impact of the CSI on institutional custody and total imprisonment admissions. This was true both within and between offending groups. While British Columbia was the only province to record a CSI effect associated with increased institutional custody admissions for non-Aboriginal offenders (+1.52 per cent), it maintained a (−0.86 per cent) decarceration effect for Aboriginal offenders. The opposite was true for the province

of Nova Scotia; it recorded a −6.72 per cent decarceration effect for non-Aboriginal offenders but a +3.07 per cent increase to institutional custody for Aboriginal offenders. Furthermore, while two provinces recorded net-widening effects for non-Aboriginal offenders, four were found to do so for Aboriginal offenders. Narrowing of the net was found to be as large as −24.16 per cent for non-Aboriginal offenders in Quebec, while net widening was found to be as great as +16.89 per cent in British Columbia. Future research will need to identify explanations for this widespread inter-jurisdictional variation in order to determine why the CSI has had such a positive effect in some jurisdictions yet very little effect in others.

Conclusions

Although this study provided evidence that a sentence of imprisonment served at home can help to reduce prison admissions among Aboriginal offenders, it is clear that the strategy has not gone far enough in Canada. Additional efforts are clearly needed to properly address the problem of over-representation in the criminal justice system. While it is not within the scope of this article to provide a thorough review of all available options, a few may be noted in brief. First, further research on the extent of involvement for Aboriginal peoples in the criminal justice system needs to be made. This necessarily requires greater access to data that documents Aboriginal identity. Second, drawing from the recent experience with the CSI, an expansion or enhancement of alternatives to custody seems to be supported. As a starting point, the recent legislative reforms in 2007 and 2012 that restricted the use of the CSI ought to be revisited so as to return that decision-making power to the judiciary. Further attention should also be given to find ways of reinvigorating the sanction, particularly in those jurisdictions where its use has been least prominent.

A more radical approach is, however, likely to be necessary in order to completely solve the problem (Roberts 2016). The development of separate sentencing legislation for Aboriginal offenders is one possibility that has been raised. It has been argued e.g. that existing legislation recognizing proportionality as the fundamental principle of sentencing does not allow sufficient attention to other considerations such as Aboriginality (Balfour 2013; Murdocca 2013). By implementing a separate sentencing code, a very different set of objectives, principles and sentencing options could be developed that are specific to Aboriginal offenders.

A less radical approach would be the adoption of sentencing guidelines. The development of sentencing guidelines has been recommended many times over the years by both government (e.g. Government of Canada 1984; Canadian Sentencing Commission 1987) and academic sources (e.g. von Hirsch *et al.* 1987; Doob 1999; Roberts and Bebbington 2013). If that were to be realized, a guideline with specific attention to Aboriginal offenders would be an option worthy of consideration. That said, drawing from the experience in England and Wales, Roberts (2012: 345) offered a 'hopeful but not optimistic' view about Canada's prospect for adopting a guideline sentencing approach.

An even more modest approach could include the strengthening of existing statements in sentencing legislation that relate to the use of custody. Currently, s. 718.2(e) of the *Criminal Code* states that:

all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

That language represents a relatively mild suggestion to courts, simply to 'give particular attention' to the circumstances of Aboriginal offenders. A more robust statement with a presumption against the use of imprisonment could be more effective. In all likelihood, comprehensive reforms will be required that involve one or more of these remedial options. Nevertheless, the results of this study lend support for the expansion and enhancement of alternatives to custody.

Canada is not alone in facing this ongoing problem. The over-representation of Indigenous peoples in Australia's criminal justice system was reported by the Royal Commission into Aboriginal Deaths in Custody close to 30 years ago (Johnston 1991). Despite a number of remedial efforts since that time, Indigenous peoples in Australia have become further over-represented in correctional populations. The rate of Indigenous imprisonment rose by 64 per cent between 2000 and 2012, while an increase of just 5 per cent was recorded for non-Indigenous offenders during the same period (Closing the Gap Clearinghouse 2013: 3). In New Zealand, a number of legislative amendments were introduced as far back as 1985 in an effort to reduce the over-incarceration of Māori. Yet between 1984–85 and 2014–15, the number of Māori starting a prison sentence increased by 105 per cent, while the number of New Zealand Europeans increased by 60 per cent (New Zealand Department of Corrections 2015: 11). Whether home confinement sanctions similar to the CSI in Canada could be as or more effective in other countries remains to be seen.

Funding

The author received no financial support for the research, authorship, and/or publication of this article.

References

Balfour, G. (2013), 'Do Law Reforms Matter: Exploring the Victimization-Criminalization Continuum in the Sentencing of Aboriginal Women in Canada', *International Review of Victimology*, 19: 85–102.

Canadian Sentencing Commission (1987), *Sentencing Reform: A Canadian Approach*. Supply and Services Canada.

Chartrand, L. N. (2001), 'Aboriginal Peoples and Mandatory Sentencing', *Osgoode Hall Law Journal*, 39: 449–67.

Closing the Gap Clearinghouse (2013), *Diverting Indigenous Offenders from the Criminal Justice System: Resource Sheet No. 24*. Australian Institute of Health and Welfare, Australian Institute of Family Studies.

Daubney, D. and Parry, G. (1999), 'An Overview of Bill C-41 (The Sentencing Reform Act)', in J. V. Roberts and D. Cole, eds., *Making Sense of Sentencing*. University of Toronto Press.

Doob, A. N. (1999), 'Can a Sentencing Commission without Power Accomplish Anything?', in D. Stuart, R. Delisle and A. Manson, eds., *Towards a Clear and Just Criminal Law*. Carswell.

Emmanuel, N. and Gazal-Ayal, O. (2019), 'Suspended Sentences and Service Labor in Israel-From Alternatives to Imprisonment to Net-Widening', *Law and Contemporary Problems*, 82: 111–36.

Freiberg, A. (2019), 'Suspended Sentences in Australia: Uncertain, Unstable, Unpopular, and Unnecessary', *Law & Contemporary Problems*, 82: 81–109.

Gazal-Ayal, O. and Roberts, J. V. (2019), 'Alternatives to Imprisonment: Recent International Developments', *Law and Contemporary Problems* 82: i–ix.

Government of Canada (1984), *Sentencing*. Government of Canada.

Hendrick, D., Martin, M. and Greenberg, P. (2003), *Conditional Sentencing in Canada: A Statistical Profile 1997–2001*. Canadian Centre for Justice Statistics.

von Hirsch, A., Tonry, M.H. and Knapp, K.A. (1987), *The Sentencing Commission and Its Guidelines*. Northeastern University Press.

Irwin-Rogers, K. and Roberts, J. V. (2019), 'Swimming Against the Tide: The Suspended Sentence Order in England and Wales, 2000–2017', *Law and Contemporary Problems*, 82: 137–62.

Jeffries, S. and Stenning, P. (2014), 'Sentencing Aboriginal Offenders: Law, Policy, and Practice in Three Countries', *Canadian Journal of Criminology and Criminal Justice*, 56: 447–94.

Johnston, E. (1991), *'National Report Volume 1', Royal Commission into Aboriginal Deaths in Custody*. Australian Government Publishing Service.

Lappi-Seppala, T. (2019), 'Community Sanctions as Substitutes to Imprisonment in the Nordic Countries', *Law and Contemporary Problems*, 82, 17–50.

La Prairie, C. and Koegl, C. (1998), *The Use of Conditional Sentences: An Overview of Early Trends*. Department of Justice.

MacDonald, M. (2013), *The Conditional Sentence Option*. Nova Scotia Courts: From the Bench, 2003.

Malakieh, J. (2018), *Adult and Youth Correctional Statistics in Canada, 2016/2017*. Juristat.

Marinos, V. and Doob, A. N. (1997), *A Preliminary Examination of Public Views of Conditional Sentences of Imprisonment*. Department of Justice Canada.

Maxwell, A. (2017), *Juristat: Adult Criminal Court Statistics in Canada, 2014/2015*. Canadian Centre for Justice Statistics.

Murdocca, C. (2013), *To Right Historical Wrongs: Race, Gender, and Sentencing in Canada*. University of British Columbia Press.

Newell, R. (2013), 'Making Matter Worse: The Safe Streets and Communities Act and the Ongoing Crisis of Indigenous Over-Incarceration', *Osgoode Hall Law Journal*, 51: 199–249.

New Zealand Department of Corrections (2015), 'Trends in the Offender Population 2014/15', available online at https://www.corrections.govt.nz/__data/assets/pdf_file/0017/13526/Trends_in_the_Offender_Population_201415.pdf [accessed on 17 October 2019].

R. v. Gladue (1999), 1 S.C.R. 688.

R. v. Wells (2000), 1 S.C.R. 61.

Reed, M. and Roberts, J. V. (1998), *Adult Correctional Services in Canada, 1996–97*. Juristat, Canadian Centre for Justice Statistics.

Reid, A. A. (2017), 'The (Differential) Utilization of Conditional Sentences among Aboriginal Offenders in Canada', *Canadian Criminal Law Review*, 22: 133–57.

Reid, A. A. and Roberts, J. V. (2019), 'Revisiting the Conditional Sentence of Imprisonment after 20 Years: Is Community Custody Now an Endangered Species?', *Canadian Criminal Law Review*, 24:1–37.

Roach, K. and Rudin, J. (2020), 'Sentencing Indigenous Offenders: From Gladue to the Present and Beyond', in D. Cole & J.V. Roberts, eds., *Sentencing in Canada. Essays in Law, Policy and Practice*. Irwin Law.

Roberts, J. V. (2004), *The Virtual Prison*. Cambridge University Press.

—— (2006), 'Reforming Conditional Sentencing: Evaluating Recent Legistlative Proposals', *Criminal Law Quarterly*, 52: 18–27.

—— (2012), 'Structuring Sentencing in Canada, England and Wales: A Tale of Two Jurisdictions', *Criminal Law Forum*, 23: 319–45.

—— (2016), *Sentencing Reform: Lessons from Foreign Jurisdictions*. Ottawa: Department of Justice Canada.

Roberts, J. V., Antonowicz, D. and Sanders, T. (2000a), 'Conditional Sentences of Imprisonment: An Empirical Analysis of Conditions', *Criminal Reports*, 30: 113–25.

Roberts, J. V. and Bebbington, H. (2013), 'Sentencing Reform in Canada: Promoting a Return to Principles and Evidence-based Policy', *Canadian Criminal Law Review*, 17: 327–47.

Roberts, J. V., Doob, A.N. and Marinos, V. (2000b), *Judicial Attitudes Towards Conditional Sentences of Imprisonment: Results of a National Survey*. Department of Justice Canada.

Roberts, J. V. and Gabor, T. (2003), 'The Impact of Conditional Sentencing: Decarceration and Widening of the Net', *Canadian Criminal Law Review*, 8: 33–49.

—— (2004), 'Living in the Shadow of Prison: Lessons from the Canadian Experience in Decarceration', *British Journal of Criminology*, 44: 92–112.

Roberts, J. V. and Healy, P. (2001), 'Recent Developments in Conditional Sentencing', *Canadian Bar Review*, 80: 1035–039.

Roberts, J. V. and La Prairie, C. (2000), *Conditional Sentencing in Canada: An Overview of Research Findings*. Department of Justice Canada.

Roberts, J. V. and Manson, A. (2004), *The Future of Conditional Sentencing: Perspectives of Appellate Judges*. Department of Justice Canada.

Roberts, J. V. and Melchers, R. (2003), 'The Incarceration of Aboriginal Offenders: An Analysis of Trends, 1978–2001', *Canadian Journal of Criminology and Criminal Justice*, 45: 211–42.

Roberts, J. V. and Reid, A. A. (2017), 'Aboriginal Incarceration in Canada since 1978: Every Picture Tells the Same Story', *Canadian Journal of Criminology and Criminal Justice*, 59: 313–45.

Roberts, J. V. and Roach, K. (2005), 'Conditional Sentencing and the Perspectives of Crime Victims: A Socio-Legal Analysis', *Queen's Law Journal*, 30: 560–600.

Sakala, L. (2014). 'Breaking Down Mass Incarceration in the 2010 Census: State-by-state Incarceration Rates by Race/Ethnicity', *Prison Policy Initiative*, 28, available online at https://www.prisonpolicy.org/reports/rates.html

Sanders, T. and Roberts, J.V. (2000), 'Public Attitudes Towards Conditional Sentencing: Results of a National Survey', *Canadian Journal of Behavioural Science,* 32: 199–207.

Statistics Canada (2018), 'The Aboriginal Population in Canada, 2016 Census of population', available online at https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2017027-eng.htm [accessed on 25 July 2018].

Statistics New Zealand (2015), 'New Zealand in Profile 2015', available online at http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-in-profile-2015.aspx [accessed on 22 July 2018].

Webster, C. and Doob, A.N. (2019), 'Missed Opportunities: A Postmortem on Canada's Experience with the Conditional Sentence', *Law and Contemporary Problems*, 82: 163–97.

Appendix. Summary of scenarios for annual change to percentage of correctional admissions.

	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6
% Custody	–	–	–	+	+	+
% Probation	–	+	+	+	–	–
% CSI	+	+	–	–	–	+