

Policy, Practice and Privatized Prison Telephones in Saskatchewan

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Governing law and policy in Saskatchewan mandates fair and reasonable telephone access for prisoners in provincial correctional centres. Our community-engaged, qualitative research project investigated the state of telephone access in Saskatchewan correctional centres from the point of view of former prisoners. Our research shows that prisoners' experiences of telephone access cannot be described as fair or reasonable. Rather, telephone access is experienced by many prisoners as a precarious privilege that is perpetually at risk of revocation by guards. Former prisoners also placed the issue of telephone access squarely within a larger context of institutional violence and deprivation. Finally, our research highlights the ways in which the profit-seeking motives of a private prison telephone company impact prisoners' day-to-day experiences of unfairness with the telephone system, both in terms of technological problems and cost barriers that include and also go beyond the cost of individual calls.

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Les lois et les politiques en vigueur en Saskatchewan exigent que les personnes détenues dans les centres correctionnels provinciaux aient un accès équitable et « raisonnable » au téléphone. Dans le cadre de notre projet de recherche qualitative axée sur la communauté, nous avons examiné l'état de l'accès téléphonique dans les centres correctionnels de la Saskatchewan selon la perspective d'anciens détenus. Notre recherche montre que selon l'expérience des détenus, l'accès au téléphone ne peut être qualifié ni d'équitable ni de raisonnable. Nombre d'entre eux le perçoivent plutôt comme un privilège précaire que les gardiens menacent constamment de révoquer. Les anciens détenus ont également placé la question de l'accès au téléphone dans un contexte plus large de violence et de privation dans les établissements. Enfin, notre recherche met en lumière les façons dont la recherche du profit par une compagnie de téléphone privée à l'intérieur de la prison influe sur les expériences d'injustice subie jour après jour par les détenus quant au système téléphonique, tant en ce qui concerne les problèmes technologiques que les obstacles financiers qui incluent certes le coût des appels individuels, mais qui vont bien au-delà de ceux-ci.

I. Introduction

For prisoners, telephone access to the outside world is a lifeline. The ability to stay in touch with loved ones is vital for the maintenance of prisoners' human dignity and well-being. The ability to make calls to plan for housing, employment and supports following release is also essential on a practical level. Furthermore, empirical research has shown that meaningful telephone access in prison reduces the chance that people will return to prison following release.¹ Indeed, experts who have studied the data argue that reducing the costs of phone calls and doing more to facilitate contact with family should be top priorities for corrections officials who seek to improve community safety.² In this vein, the American-based Prison Policy Initiative concluded: "Making it harder for incarcerated people to stay in touch with people outside prison and jail harms incarcerated people, their families and communities and society at large."³

The importance of prisoners' ability to stay in contact with the outside world has been recognized by the United Nations' *Standard Minimum Rules for the Treatment of Prisoners* (adopted by Canada in 1975). That document states: "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."⁴ Canadian federal and provincial correctional legislation and policies, explicitly and implicitly, recognize the fundamental importance of telephone communication between prisoners and the outside world, reflecting a commitment to reasonable and fair access.⁵ The limited case law in Canada dealing with prison telephone access suggests that telephone

¹ This research is discussed below in section 3.

² Nancy G LaVigne et al, "Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships" (2005) 21:4 J Contemp Crim Justice 314 at 332.

³ Drew Kukorowski, Peter Wagner & Leah Sakala, "Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry" (8 May 2013), online (blog): *Prison Policy Initiative* <www.prisonpolicy.org> [https://perma.cc/VZ8B-N4BG] [Kukrowski et al].

⁴ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Standard Minimum Rules for the Treatment of Prisoners*, ESC Res 663 C (XXIV), UNESC, 1957, 1 at 6, online (pdf): <www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf> [perma.cc/K38G-PXUW]. The Standard Minimum Rules were adopted by Canada in 1975, which agreed to ensure that they were implemented in both federal and provincial systems. See Correctional Service Canada, *Women Offender Programs and Issues: The Cross Gender Monitoring Project 3rd and Final Annual Report* (Ottawa: Correctional Service Canada, 2013), online: <www.csc-scc.gc.ca/publications/fsw/gender3/cg-16-eng.shtml#P1590_122281> [perma.cc/86DL-M3UD] and Correctional Service Canada, *United Nations Standard Minimum Rules For the Treatment of Prisoners 1975* (Ottawa: Correctional Service Canada, 2015), online: <www.csc-scc.gc.ca/text/pblct/rht-drt/07-eng.shtml> [perma.cc/JE8S-A654]. Although the Standard Minimum Rules do not specifically discuss telephone access, the importance of communication for prisoners with the outside world is made clear.

⁵ See e.g. *Corrections and Conditional Release Act*, SC 1992, c 20, s 71(1); Ontario Ministry of the Solicitor General, *Inmate Telephone Communication (Policies and Guidelines)* (Toronto: Ontario Ministry of the Solicitor General, 2016), online: <www.mcscs.jus.gov.on.ca/english/Corrections/Policesandguidelines/CorrectionsInmateTelephoneCommunication.html> [perma.cc/V55E-CLQX]; *Correctional Institution Regulation*, Alta Reg 205/2001, s 31.

access in prison does not usually attract constitutional protection. The case law does suggest a recognition of the value of telephone access for prisoners and a concern for fair and non-capricious implementation of prison telephone systems.⁶ For example, in *Wedow v Canada (Correctional Service)*,⁷ the Federal Court held that the institution had a duty to facilitate reasonable telephone access. This was in accordance with the *Corrections and Conditional Release Act* and corresponding policy directives which permitted the institution to make telephone lines available in “emergency situations such as serious family illness or death, or for any other special circumstances.”⁸ The Court held that by refusing to facilitate telephone contact between Mr. Wedow and his young son, the Warden had used his discretion in a capricious manner.⁹

In Saskatchewan, the *Correctional Services Act*¹⁰ authorizes the head of corrections to establish telephone communication systems in correctional facilities.¹¹ The *Saskatchewan Corrections’ Inmate Telephone System Policy*¹² guarantees prisoners “reasonable access to a telephone service”¹³ and permits correctional directors to set local rules for telephone access.¹⁴ Although the rules for the various correctional centres vary in their specific content,¹⁵ they

⁶ The limited (and mostly dated) case law considering aspects of prison telephone access provides some high-level insight into the constitutionality of certain aspects of telephone systems, but the cases generally do not concern themselves with the reasonableness or fairness of day to day practices regarding the implementation of telephone policies. In the case of *Olson v Canada*, [1990] FCJ No 1045, 1990 CarswellNat 835 the Federal Court held that prisoners did not have a constitutional right to unlimited calls to their lawyers. In the case of *Hunter v Canada (Commissioner of Corrections)*, [1997] 3 FC 936, 1997 CanLII 6355 (FC), the Federal Court found that the restriction of calls to a limited list of numbers and the monitoring of calls was permissible under the *Charter*, but that a voiceover recording advising that the call was being monitored that played during the course of the call breached section 2(b), (freedom of expression) under the *Charter* and was not saved by section 1. The court also rejected a section 7 security of the person argument based on the argument that the system interfered with prisoners’ ability to maintain family ties. In *Alcorn v Canada (Commissioner of Corrections)* (1999), 163 FTR 1, 1999 Canlii 7643 (FC), aff’d at 2002 FCA 154 (CanLII), [2002] FCJ No 620, the Court found that raising the cost of local collect calls did not violate section 7 or 15 of the *Charter*. The court held that section 7 did not protect economic rights and that section 15 was not violated as neither poor inmates nor their families were analogous groups under section 15. The appeal court noted at paragraph 12 that a “subsidized service was not an entitlement and its withdrawal cannot result in discrimination under section 15 of the *Charter*”. In a rare success story, but that is explicitly limited to the situation of remanded prisoners, in *Criminal Trial Lawyers’ Association v Alberta (Solicitor General)*, 2004 ABQB 534, the Alberta Court of Queen’s Bench found that restrictions on remand calls violated the section 7 security rights of remanded prisoners as they directly impacted their ability to communicate to arrange bail and organize their defence.

⁷ *Wedow v Canada (Correctional Service)*, [2001] FCT 464, 2001 CFPI 464 [*Wedow*].

⁸ *Ibid* at para 27.

⁹ *Ibid* at paras 29–33.

¹⁰ *Correctional Services Act*, SS 2012, c C-39.2.

¹¹ *Ibid* at s 29(1).

¹² Saskatchewan, Ministry of Corrections, Public Safety and Policing, *Inmate Telephone System (Institutional Operations Policy Manual)*, Saskatchewan Adult Corrections (Regina: Ministry of Corrections, Public Safety and Policing, 29 August 2011) [*Saskatchewan Corrections*]. On file with the authors.

¹³ *Ibid*, s 1.1.

¹⁴ *Ibid*, s 1.3.

¹⁵ For example, Pinegrove Correctional Centre has a list of free “business calls” which includes Indigenous Elders, political representatives and “medicine men”. Prince Albert Correctional Centre policy allows its

all reflect a commitment to fair and reasonable telephone access for prisoners.¹⁶

However, as Matthew Diller has suggested, analysis of policy that does not consider issues pertaining to ground-level administration is deficient.¹⁷ Consideration of ground-level practice is particularly important in prison contexts where, as Lisa Kerr points out, legal protections are too often “defeated by how regimes are administered.”¹⁸ Our community-based research sought to consider ground-level issues related to telephone access in Saskatchewan Correctional Centres. We interviewed 37 individuals who had been incarcerated in a Saskatchewan provincial correctional facility between 2013 and 2015 about their experiences with the prison telephone system. Our research reveals that notwithstanding the apparent dedication to reasonableness and fairness in official policy documents, telephone access in provincial correctional centres in Saskatchewan is plagued by many problems and experienced as anything but reasonable or fair by prisoners. These problems include the prohibitively high cost-per-call of the prison telephone system (which is operated by Telmate, a for-profit Texas-based prison telephone company), problems with the technology of the system, the low number of available telephones, frequent fights and violence related to the telephones and the inconsistent, often arbitrary, application of rules around telephone access.

Our research is significant because it represents the first qualitative study looking specifically at prison telephone access in a Canadian context.¹⁹ The research provides insight into the opaque, often tenuous, relationship between law, official prison policy and daily practice in an area that is rarely subject to

office to facilitate free personal calls in cases of emergency and for reasons of privacy, as well as to assist in release planning. The Regina Correctional Centre allows for a free, weekly long distance call for prisoners involuntarily transferred to their facility from a northern catchment area. Similar policies are not noted in the other institutions’ local rules.

¹⁶ For example, the Prince Albert local rules note that “access to the telephone system should be provided on a fair and consistent basis”.

¹⁷ Matthew Diller, “The Revolution in Welfare Administration: Rules, Discretion, and Entrepreneurial Government” (2000) 75:5 NYUL Rev 1121 at 1133–34 [Diller].

¹⁸ Lisa Kerr, “The Origins of Unlawful Prison Policies” (2015) 4:1 Can J Human Rights 91 at 119 [Kerr].

¹⁹ We note that others have briefly looked at telephone access as part of larger studies. For example, Michael Weinrath discusses issues relating to telephone access in *Behind the Walls: Inmates and Correctional Officers on the State of Canadian Prisons* (Vancouver: UBC Press, 2016) at 110–11, 114–15 [Weinrath]; Jason Demers includes at least one interview with a prisoner about the prison telephone system in Saskatchewan in his report, “Warehousing Prisoners in Saskatchewan: A Public Health Approach” (6 October 2014), online (pdf): *Policy Alternatives* <www.policyalternatives.ca/sites/default/files/uploads/publications/Saskatchewan%20Office/2014/10/warehousing_prisoners_in_saskatchewan.pdf> [perma.cc/U6BB-XCQS] [Demers]. Note that, as discussed further below, the issue of telephone access has recently received attention by media and policy makers in Saskatchewan and elsewhere in Canada. See e.g. Recommendation 5 of the “Ottawa-Carleton Detention Centre Task Force Action Plan”, recommending more affordable telephone access for inmates, online: <www.mcscs.jus.gov.on.ca/english/Corrections/OttawaCarletonDetentionCentreTaskForce/OCDCTaskForceActionPlan.html#confinement> [perma.cc/V963-B7QM].

judicial or public scrutiny.²⁰ By focusing on former prisoners' experiences of prison telephone access policies and practices, our research attempts to take note of what John Baldwin and Gwynn Davis refer to as "the development of working practices which do not figure in any account of legal rules."²¹ Borrowing Professor Michael Jackson's term, we might refer to the practices and experiences narrated by the participants in our study as a description of the "prison customary law"²² relating to telephone access in Saskatchewan provincial correctional centres. We argue that this unofficial, unwritten but influential set of practices is shaped by power relations between correctional officers and prisoners, and among prisoners themselves, as well as the profit seeking interests of the company that operates the system.

In this article, we first describe the research project and method. We briefly discuss the importance of telephone access in prisons for the well-being of prisoners, their families and society more generally. We introduce the private prison-telephone industry and discuss some of the controversies and problems associated with this industry. Turning then to our research, we focus on four themes that emerged from our interviews with former prisoners about their accounts of the prison telephone system in Saskatchewan.

The first theme concerns how prisoners learn about telephone access rules and policies. Most of the people we interviewed explained that they learned the rules and protocols about the telephones from fellow prisoners or from the interventions of correctional staff. Most were unaware that there were official written policies mandating reasonable telephone access. We argue that this failure on the part of institutions to make prisoners aware of the official legal and policy framework produces a situation where institutional actors are more easily able to act unfairly.

Second, we discuss the accounts of many of our interviewees about violence and threats associated with telephone access, including fights over telephones among prisoners and threats of consequences by corrections staff for failing to adhere to time limits and other rules about calls. This theme highlights a coercive aspect in the implementation and experience of telephone access within the larger context of carceral violence.

Third, we turn to the many criticisms we heard in our interviews about the technology of the prison telephone system. We consider how technological security features function to impede access to the system and drive up costs for prisoners. We also consider how unfairness caused by hypersensitive security features leaves prisoners, as a practical matter, without redress.

²⁰ See discussion at *supra* note 6.

²¹ John Baldwin & Gwynn Davis, "Empirical Research in Law" in Peter Cane & Mark Tushnet, eds, *The Oxford Handbook of Legal Studies* (Oxford: Oxford University Press, 2003) 880 at 886.

²² Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons* (Toronto: Douglas & McIntyre, 2003) at 1.

Finally, we examine the high fees associated with telephone access in provincial prisons. This theme requires us to analyze the ways in which profit-seeking corporate interests are woven into the administration of prison telephone access. We note that this is playing out in the broader context of ongoing corporate involvement in the design, construction and maintenance of prisons in Canada.

We conclude that the policies and practices that render the prison telephone system unaffordable, unreliable, often unavailable and permeated by a sense of precarity and threat cannot be described as reasonable or fair and invite efforts for improvement. In 2017, the provincial government announced changes to prison telephone policies, including lowering fees for long-distance calls and introducing a flat rate for all calls.²³ Despite these changes, our research suggests that there are persistent and systemic issues that will continue to create barriers to meaningful telephone access for prisoners and their loved ones.

II. Research Method and Background

Our community-engaged research project²⁴ brought together several Saskatoon-based community organizations that work directly with prisoners and/or former prisoners: STR8 UP: 10,000 Little Steps to Healing,²⁵ Community Legal Assistance Services for Saskatoon Inner City (CLASSIC),²⁶ AIDS Saskatoon,²⁷ Elizabeth Fry Society of Saskatchewan,²⁸ Mennonite Central Committee Saskatchewan²⁹ and the Micah Mission.³⁰ All of these organizations identified telephone access as a persistent problem facing prisoners and their families in Saskatchewan and wanted to see changes.³¹

²³ Legislative Assembly of Saskatchewan, Standing Committee on Intergovernmental Affairs and Justice, *Debates and Proceedings (Hansard)*, 28-1, No 12 (24 April 2017) at 199–200 (Dennis Cooley) [Standing Committee].

²⁴ For discussion of community engaged research methodologies, see Bonnie Jeffrey et al, eds, *Journeys in Community-Based Research* (Regina: University of Regina Press, 2014).

²⁵ STR8 UP, online: <str8-up.ca> [perma.cc/KF64-B99L].

²⁶ Community Legal Assistance Services for Saskatoon Inner City (CLASSIC), online: <www.classiclaw.ca> [perma.cc/CX4E-XLF3].

²⁷ Aids Saskatoon, online: <www.aidssaskatoon.ca> [perma.cc/9P8Q-S63Y].

²⁸ Elizabeth Fry Society of Saskatchewan, online: <www.elizabethfrysask.org> [perma.cc/EK7F-D32P].

²⁹ Mennonite Central Committee Saskatchewan, online: <mcccanada.ca> [perma.cc/QWB6-NXG9].

³⁰ Micah, online: <themicahmission.org> [perma.cc/3KZC-L8HN].

³¹ We note that this issue has been raised by other organizations in the province over the years. Advocacy groups across the province have spoken out publicly in condemnation of the inaccessible fees. The John Howard Society, the Saskatchewan Coalition Against Racism (SCAR), Friends on the Outside and the Canadian Centre for Policy Alternatives are among those who have publicly articulated concerns about the high cost of calling and its effects on prisoners. See Barb Pacholik, “New jail phone rules a ‘hardship’”, *Regina Leader-Post* (28 May 2010), online: <www.pressreader.com> [perma.cc/K5TJ-A4HC]; “Phone calls to cost Sask. jail inmates”, *CBC News* (28 May 2010), online: <www.cbc.ca/news/canada/saskatchewan/phone-calls-to-cost-sask-jail-inmates-1.870705> [perma.cc/29CP-M822]; “Advocates for provincial jail inmates lament high telephone fees”, *CBC News* (March 18, 2014), online: <www.cbc.ca/news/canada/

Several law and social work students were also part of the research team. Together, we formed an informal coalition whose primary goal was to make a submission to the provincial Ministry of Justice explaining this issue and describing our recommendations relating to reform of the system. Members of the coalition also participated in public events that sought to highlight the issue of telephone access in the larger community and prepared a public report relating to our research.³²

We received funding through the Centre for Forensic Behavioural Sciences and Justice Studies at the University of Saskatchewan with the goal of conducting a qualitative study about telephone access in Saskatchewan Correctional Centres. Our project received ethics approval from the University of Saskatchewan Research Ethics Board.³³ The coalition worked together to develop interview questions for the study. We recruited participants who were willing to share their experiences through postering at community organizations in Saskatoon, Regina, Prince Albert and North Battleford, and through outreach by our community partners. To qualify for an interview, an individual must have spent time in a provincial correctional centre within the previous two years. Individuals who were interested in sharing their experiences contacted us and we set up, then conducted, in-depth, semi-structured interviews. Student research assistants conducted the interviews in the summer and fall of 2015. Interviews were recorded and transcribed verbatim. They were then manually coded for emergent themes with the assistance of a law student research assistant and a community member with an experience of incarceration. Themes were subsequently discussed and analyzed by the community coalition as a whole.

Participants in our study represented four correctional centres in Saskatchewan: Saskatoon Correctional Centre, Prince Albert Correctional Centre, Regina Correctional Centre and Pine Grove Correctional Centre (the only provincial women's facility). We asked participants to share their experiences of the prison telephone system. We also asked them to describe the rules governing the system as they understood them, share how they learned the rules and explain how the rules were applied or enforced.

We chose to focus specifically on the accounts of former prisoners because we were interested in the ways that telephone access policies and practices were experienced and understood by those who were directly subjected to them. Former prisoners have essential insights into the operation and impact

saskatchewan/advocates-for-provincial-jail-inmates-lament-high-telephone-fees-1.2576602> [perma.cc/E47R-3NXJ].

³² See "The High Costs of Calling: Telephone Access in Saskatchewan's Correctional Centres" (7 June 2017), online (pdf): *University of Saskatchewan* <www.usask.ca/cfbsjs/documents/HighCostOfCalling.pdf> [perma.cc/M7P6-JUQ7]. Coalition partners encouraged us to pursue a scholarly article focusing on critical aspects of the research.

³³ Ethics certificate on file with authors.

of prison practices that are unavailable in official documents and rarely considered by prison policy makers and administrators.³⁴ While the people we talked to shared their subjective perspectives and experiences, there were common themes that emerged across the interviews. While we cannot claim that this study is representative on a broad scale, the agreement we observed on issues among our respondents leads us to predict that a larger cohort would generally produce similar themes and critiques of the system. We had hoped to interview prison administrators but, unfortunately, were unable to arrange this due mainly to time constraints. Our initial investigation revealed that we would have had to gain approval from senior administrators before being permitted to interview correctional officers and that this process might take some time.³⁵ Certainly, the perspectives of correctional officers and prison administrators would be an interesting future study and may shed further light on the complexities relating to the administration of prison telephone access policies.³⁶

III. The Importance of Telephone Access in Prisons: A Review of the Literature

The ability of prisoners to maintain and develop ties to family, friends and community supports plays a crucial role in increasing the likelihood of their success upon release and decreasing the risk of recriminalization. This occurs in at least three ways: improved pre-release planning, maintaining prisoners' social supports and improving prisoners' mental and emotional well-being.

A. Release Planning

Release planning is key to ensuring a successful transition for prisoners re-entering the community.³⁷ Telephone access facilitates effective release planning³⁸ as prisoners have the opportunity to connect with community

³⁴ For another example of a qualitative study that focusses on the accounts of prisoners, see Debra Parkes et al, "Listening to Their Voices: Women Prisoners and Access to Justice in Manitoba" (2008) 26:1 Windsor YB Access to Justice 85.

³⁵ The difficulty that researchers face in gaining access to correctional officers and prisoners who are currently incarcerated is documented by Justin Piché in "Going Public: Accessing Data, Contesting Information Blockades" (2011) 26:3 CJLS 635 and Justine Piché, "Accessing the State of Imprisonment in Canada: Information Barriers and Negotiation Strategies" in Mike Larson & Kevin Walby, eds, *Brokering Access: Power, Politics, and Freedom of Information Process in Canada* (Vancouver: UBC Press, 2012) 234.

³⁶ For a recent detailed ethnographic study of life in Canadian prisons that considers the accounts of both correctional officers and prisoners, see Weinrath, *supra* note 19.

³⁷ Lloyd et al, "The role of primary health care services to better meet the needs of Aboriginal Australians transitioning from prison to the community" (2015) 16:86 BMC Family Practice 1 [Lloyd et al]; Luther J et al, "An exploration of community reentry needs and services for prisoners: a focus on care to limit return to high-risk behavior" (2011) 25:8 AIDS Patient Care & STDs 470 at 480 [Luther et al].

³⁸ Margaret Higgins et al, "Phone Calls Creating Lifelines for Prisoners and Their Families: a Retrospective

services and improve their ability to access available resources and support upon release.³⁹ Costs and time restraints on telephone calls encourage isolation from prisoners' family and social supports, making release planning more difficult.⁴⁰ A lack of release planning puts released prisoners in vulnerable positions, leaving them more likely to become recriminalized in the future.⁴¹

B. Social Supports

Sociological research supports the assertion that maintaining contact with family, friends and social supports reduces the chance of further entanglements with the criminal justice system upon release.⁴² An influential 2008 study by William Bales and Daniel Mears looked at the effect of maintaining social ties through prison visitation on rates of recidivism among 7,000 Florida prisoners.⁴³ They reviewed a range of previous studies that support the proposition that social supports accessed during prison are correlated with reduced recidivism rates after release. Their research found that visitation reduced recriminalization after release by 30.7%.⁴⁴ They concluded:

[T]he clear policy implication is that correctional systems should consider ways to increase visitation and, more generally, to create and cement ties to friends, families and communities ... the findings support the ideas that (1) continuing the maintenance of these ties is important for reducing recidivism, and (2) developing ties where they are not already present may also be important, perhaps even more so, for reducing recidivism.⁴⁵

Bales and Mears went on to suggest various strategies that could be employed by corrections systems to promote the maintenance and development of prisoners' social ties, including lowering barriers to telephone access.⁴⁶

These conclusions are supported by similar studies in Canada and the United States.⁴⁷ Although these studies focused on visitation, their findings can

Case Study on the Campaign for Prison Phone Justice in Minnesota" (2014), online (pdf): *University of St. Thomas* <www.stthomas.edu/media/interprofessionalcenter/FinalListeningSessionReport140318.pdf> [perma.cc/XD33-VDUN] [Higgins et al].

³⁹ Lloyd et al, *supra* note 37 at 5.

⁴⁰ Mari B Pierce, "Male Inmate Perceptions of the Visitation Experience: Suggestions on How Prisons Can Promote Inmate-Family Relationships" (2015) 95:3 *Prison J* 370.

⁴¹ Luther et al, *supra* note 37 at 480.

⁴² Creasie Finney Hairston, "Family Ties during Imprisonment: Important to Whom and for What?" (1991) 18:1 *J Sociology & Soc Welfare* 87 [Hairston]; "The Effects of Prison Visitation on Offender Recidivism" (2011) online (pdf): *Minnesota Department of Corrections* <mn.gov/doc/assets/11-11MNPrisonVisitationStudy_tcm1089-272781.pdf> [perma.cc/Q75Y-RYGH].

⁴³ William D Bales & Daniel P Mears, "Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?" (2008) 45:3 *J Research in Crime & Delinquency* 287.

⁴⁴ *Ibid* at 304.

⁴⁵ *Ibid* at 314.

⁴⁶ *Ibid* at 315.

⁴⁷ Dena Marie Derkzen, Renée Gobeil & Justin Gileno, "Visitation and Post-Release Outcome Among Federally-Sentenced Offenders" (2009), online (pdf): *Government of Canada* <publications.gc.ca/collections/collection_2010/scc-csc/PS83-3-205-eng.pdf> [perma.cc/E9AA-ATHG]; Grant Duwe & Valerie Clark,

be extrapolated to telephone access because telephone and visitor access serve the same goal of maintaining and developing contact with social supports.

C. Mental and Emotional Well-Being

Imprisonment causes negative psychological effects such as feelings of decreased self-worth and, especially, isolation.⁴⁸ Connection with family and friends promotes a greater sense of health and well-being for prisoners⁴⁹ and affirms the humanity, dignity and relationality of people in prison. Conversely, decreased contact with loved ones worsens the emotional well-being of prisoners. Participants in the research of Higgins et al. indicated that a lack of telephone contact increased feelings of “despair, anger and ‘me against the world’ attitudes.”⁵⁰

IV. The Prison Telephone Industry

As Greg McElligott points out, many corporations have been and continue to be invested in prison expansion, maintenance and operations in the Canadian penal field. He writes: “Public prisons, it turns out, have always been reliant on the private sector.”⁵¹ Thus, the presence of Telmate in Saskatchewan provincial corrections is part of a wider reality of corporate presence within Canada’s prison landscape. Numerous private corporations have been, and continue to be, involved in various aspects of the design, construction, maintenance and operations of prisons in Canada.⁵²

The Telmate-operated system in provincial correctional centres plays a significant role in the story of prison telephone access in Saskatchewan, and the profit-maximizing goals of the company are intertwined with prisoners’ experiences of unfairness. The prison telephone industry is a wildly profitable \$1.2 billion dollar enterprise in the United States.⁵³ The profitability of this

“Blessed Be the Social Tie That Binds: The Effects of Prison Visitation on Offender Recidivism” (2013) 24:3 *Crim Justice Policy Rev* 271 at 271–96.

⁴⁸ Shivani Tomar, “The Psychological effects of Incarceration on inmates: Can we Promote Positive Emotion in inmates?” (2013) 16:1 *Delhi Psychiatry J* 66 at 67.

⁴⁹ *Ibid* at 68; See also Hairston, *supra* note 42 at 87 and Fiona H Biggam & Kevin G Power, “Social Support and Psychological Distress in a Group of Incarcerated Young Offenders”, (1997) 41:3 *Intl J Off Ther & Comp Crim* 213 at 213–30.

⁵⁰ Higgins et al, *supra* note 38 at 9. See also Joshua C Cochran, “The ties that bind or the ties that break: Examining the relationship between visitation and prisoner misconduct” (2012) 40:5 *J Crim Justice* 433.

⁵¹ Greg McElligott, “Invested in Prisons: Prison Expansion and Community Development in Canada” (2017) 11:1 *Studies in Soc Justice* 86 at 108. See also Justine Piché, “A Contradictory and Finishing State: Explaining Recent Prison Capacity Expansion in Canada’s Provinces and Territories” (2014) 11 *Champ Pénal/Penal Field*, online: *OpenEdition* <journals.openedition.org/champpenal/8797> [perma.cc/59QG-YXW].

⁵² *Ibid*.

⁵³ See Timothy Williams, “The High Cost of Calling the Imprisoned”, *The New York Times* (30 March 2015), online: <www.nytimes.com/2015/03/31/us/steep-costs-of-inmate-phone-calls-are-under-scrutiny.html> [perma.cc/GUV8-GX3B].

industry is the result of exclusive contracts that prison telephone companies make with state prisons. The resulting monopolies allow what Cheryl Leanza terms “predatory prison phone rates.”⁵⁴ As Ben Iddings noted, “[i]n effect, these collusive arrangements between private phone companies and state prison systems encourage price gouging.”⁵⁵ Similarly, Cheryl Leanza writes:

While in other areas of telecommunications policy, competition is considered a primary tool for constraining telephone prices, in this case the rate payers – prisoners and their families – have no voice in the selection of the carrier. The prison system that does select the carrier actually benefits from the higher rates, leaving the actual consumer as a literally captive market, unable to shop around for lower prices.⁵⁶

This monopoly provides the private service provider with even greater power and control over prisoners’ lives.⁵⁷

In exchange for these exclusive contracts, American state prisons receive commissions (referred to as “kickbacks” by some commentators)⁵⁸ from the telephone companies based on an agreed percentage. In the American context, commissions received by states from the telephone companies can range between 18 to 60 percent, averaging around 42 percent.⁵⁹ While we were unable to independently confirm the details of the Telmate contract in Saskatchewan, a 2017 news article reported that the telephone company made \$9 million from the contract while the provincial government received “less than one million”.⁶⁰

The resulting exorbitant rates and hidden fees⁶¹ charged by prison telephone companies have been the subject of over a decade of advocacy and reform efforts in the United States.⁶² Finally, in August 2013, the Federal

⁵⁴ Cheryl Leanza, “Theory Applied: Walking the Halls of Power and the Streets in the Successful Campaign to End Predatory Long Distance Prison Phone Rates” (2015-2016) 28:2 J Civ Rights & Economic Development 185 at 187 [Leanza]. While prison phone companies have attempted to defend the high fees they charge as necessary because of security features of their systems, Ben Iddings has noted that extensive research and analysis has debunked this claim, and that the chief driver of high costs is the commissions. See Ben Iddings, “The Big Disconnect: Will Anyone Answer the Call to Lower Excessive Prisoner Telephone Rates?” (2006) 8 North Carolina JL & Technology 159 at 175 [Iddings]. Iddings notes the technology has become much cheaper and should make it possible to offer much more affordable rates (at 201).

⁵⁵ Iddings, *supra* note 54 at 162. See also Drew Kukorowski, “The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry” (11 September 2012), online (blog): *Prison Policy Initiative* <www.prisonpolicy.org/phones/report.html> [perma.cc/G739-N993].

⁵⁶ Leanza, *supra* note 54 at 188.

⁵⁷ Gillian Metzger, “Privatization as Delegation” (2003) 103:6 Colum L Rev 1367 at 1396 [Metzger].

⁵⁸ Kukorowski et al, *supra* note 3.

⁵⁹ *Ibid.* See also Demers, *supra* note 19 at 28.

⁶⁰ See DC Fraser, “Private Firm making millions off of Sask jail calls” (30 April 2017), online: *Regina Leader-Post* <leaderpost.com/politics/private-firm-making-millions-off-of-sask-jail-calls> [perma.cc/93LY-E64B] [Fraser].

⁶¹ See Kukorowski et al, *supra* note 3. They note that many American prison phone companies “have designed their systems and rules to maximize the collection of fees”, noting that up to 38% of all prison phone charges may be going towards these “hidden fees”.

⁶² Court challenges in the United States to excessive telephone rates have been unsuccessful. See Iddings, *supra* note 54 at 195; Madelein Severin, “Is There a Winning Argument against Excessive Rates for Collect Calls from Prisoners?” (2004) 25:4 Cardozo L Rev 1469.

Communications Commission (FCC) agreed to cap rates on inter-state calls to between 12 and 14 cents per minute.⁶³ However, several prison telephone companies (including Telmate) and states challenged the FCC's decision in court, obtaining a stay of the implementation of rate caps.⁶⁴ In February 2017, in what one reporter described as a "weird turn" of events, apparently as a result of the Trump administration's deregulation agenda, the FCC stated it would no longer defend the rate caps in court.⁶⁵ The case came to a conclusion in 2017 when the United States Court of Appeals for the District of Columbia Circuit ruled that the FCC had exceeded its jurisdiction in approving the rate caps.⁶⁶ This decision was decried by journalist Colin Lecher as a "massive blow to inmates and their advocates who have spent years litigating caps on the cost of such calls."⁶⁷ In the wake of this decision, New York City announced that it would make all calls from city jails free. A representative of city council noted that "the city has been profiting from some of the poorest and most vulnerable New Yorkers for years."⁶⁸ More recently, it was reported that the Texas prison system will be reducing calls from 26 cents per minute to 6 cents per minute.⁶⁹ However, most prisoners in the United States will not benefit from these initiatives and continue to face exorbitant telephone fees.

Telmate has moved into the Canadian correctional world and currently has contracts to operate provincial correctional telephone systems in Saskatchewan, Alberta, Nova Scotia, Prince Edward Island and most recently, Manitoba.⁷⁰ Jason Demers notes that for prisoners in Saskatchewan, the arrival

⁶³ Peter Wagner, "FCC prison phone regulation ruling published in Federal Register, to take effect February 11" (13 November 2013) online (blog): *Prison Policy Initiative* <www.prisonpolicy.org/blog/2013/11/13/fcc-register/> [perma.cc/AZ29-3HRM]; Brittni Downs, "A Decade-Long Cry For Help Answered: The FCC Lowers the Rates of Interstate Prison Phone Calls" (2014) 22:1 *CommLaw Conspectus* 131.

⁶⁴ Emily Widra, "Indiana, Oklahoma, and Arkansas undermine their own criminal justice reform agenda with challenge of FCC regulation of prison phone industry" (14 March 2016) online (blog): *Prison Policy Initiative* <www.prisonpolicy.org/blog/2016/03/14/9states/> [perma.cc/W85M-RE2H]; See also Clifton Adcock, "State Officials Go To Court to Challenge FCC Cap on Inmate Phone Call Fees" (29 January 2016) online: *Oklahoma Watch* <oklahomawatch.org/2016/01/29/state-officials-go-to-court-to-challenge-fcc-cap-on-inmate-phone-call-fees/> [perma.cc/3TCX-HXCJ]; See Jon Brodtkin, "In Blow to Inmates' Families, Court Halts New Prison Phone Rate Caps" (7 March 2016), online: *Ars Technica* <arstechnica.com/tech-policy/2016/03/in-blow-to-inmates-families-court-halts-new-prison-phone-rate-caps/> [perma.cc/X7XT-M3VN].

⁶⁵ Colin Lecher, "The FCC's legal battle over prison phones just took a weird turn", *The Verge* (6 February 2017), online: <www.theverge.com/2017/2/6/14526888/fcc-lawsuit-prison-phones> [perma.cc/VW69-7ZMZ].

⁶⁶ Cecilia Kang, "Court Strikes Obama-Era Rule Capping Cost of Phone Calls from Prison", *The New York Times* (13 June 2017), online: <www.nytimes.com/2017/06/13/technology/fcc-prison-phone-calls-regulations.html> [perma.cc/X7YH-85R3].

⁶⁷ Colin Lecher, "The FCC can't cap the cost of in-state prison phone calls, court rules", *The Verge* (13 June 2017), online: <www.theverge.com/2017/6/13/15793550/fcc-prison-phone-calls-cap-court-decision> [perma.cc/3LNR-WS9C].

⁶⁸ Colin Lecher, "Texas and New York City are slashing inmate phone call rates", *The Verge* (1 September 2018), online: <www.theverge.com/2018/9/1/17800338/texas-new-york-prison-jail-phone-rates> [perma.cc/Q3JC-8GB7].

⁶⁹ *Ibid.*

⁷⁰ See Demers, *supra* note 19 at 27 and Kim Kaschor, "New Phone Rates in Manitoba Jails Create Barriers for

of Telmate has meant “maintaining contact by phone is increasingly being made into a for-profit endeavor that further restricts contact.”⁷¹ According to Demers’ study, the commission received by Saskatchewan Corrections from Telmate is 10% (lower than the rate for American prisons). The funds from the commission go into a Collective Trust Account intended to fund projects and activities that benefit prisoners.⁷² However, as Demers points out, even if the commission is not being put into general revenue for Corrections, it is important to note:

By taking commissions for phone services, Saskatchewan is following the lead of a number of American states in gouging mostly poor – and in the case of Saskatchewan, Indigenous – families whose only crime is to have a family member in prison. Families should not have to decide between paying for rent and groceries and keeping in touch with a husband, wife, parent, son, or daughter in prison.⁷³

At the time of our study, prisoners were paying a flat rate of \$1.85 for 20 minutes for local calls. For long distance calls, they were paying a connection fee, a fee per minute and a bill rendering fee, all of which totalled about \$8.00 for a 20 minute call.⁷⁴ As noted above, after our coalition’s research and submissions to the Ministry of Justice, the government announced changes to the fees. Each prisoner would now be entitled to one free call each day and both local and long distance calls were to be charged a flat-fee of \$2.50 for 20 minutes.⁷⁵ However, the government also announced an end to a dollar-a-day payment to prisoners, meaning that prisoners will have a very constrained ability to access funds to pay for calls.⁷⁶

To put the cost of calling into perspective for the time of our study, where prisoners earned between approximately one dollar and five dollars per day in prison, it would take more than a week for a prisoner to be able to afford one long distance call to family. As mentioned above, what the Prison Policy Initiative calls “hidden fees” are what makes the Telmate system truly exorbitant in terms of cost.⁷⁷ For example, Telmate charges additional fees

Inmates, Advocate Says”, *CBC News* (17 October 2016), online: <www.cbc.ca/news/canada/manitoba/manitoba-corrections-phones-inmates-1.3806686> [perma.cc/MB3U-TNMC]. Note that other provinces also have commission-based contracts with private phone companies. In Ontario, the government has been receiving commissions through its contact with Bell. Judy Trinh, “Province gets “kickback” from inmates’ collect calls, lawyer says”, *CBC News* (24 February 24, 2017) online: <www.cbc.ca/news/canada/ottawa/ontario-government-bell-jail-inmate-collect-call-commissions-1.3997146> [perma.cc/87ZF-JNP2].

⁷¹ Demers, *supra* note 19 at 27.

⁷² *Ibid* at 28.

⁷³ *Ibid* at 30.

⁷⁴ *Ibid*. Compare this price to current per minute call pricing in Saskatchewan, which ranges between 10 to 38 cents per minute (\$2.00-\$7.60 for a 20 minute call). See “Basic long distance rates”, online: *SaskTel* <www.sasktel.com/wps/wcm/connect/content/home/home-phone/long-distance/basic-long-distance-rates> [perma.cc/DR2S-GVPR].

⁷⁵ See Standing Committee, *supra* note 23 at 199 and Fraser, *supra* note 60.

⁷⁶ Fraser, *supra* note 60.

⁷⁷ Kukrowski et al, *supra* note 3.

for the establishment of a prepaid phone account and for calls where there is no prepaid account.⁷⁸ Furthermore, according to Demers, Telmate does not process reimbursements of monies remaining in accounts unless there is a balance of at least \$50, meaning this option is out of reach for many prisoners, realistically.⁷⁹

Finally, the security features of the system, which are designed to block three-way calls, immediately drop calls if a background third party is detected. Jason Demers notes that prison telephone companies gain massive profits through the implementation of three-way calling detection techniques.⁸⁰ He points out that the detection of three-way calls is a revenue stream for Telmate: if a three-way call is detected, the number called is blocked and a \$25 fee is charged.⁸¹ With any dropped call, the prisoner will have to place the call again, thereby incurring additional fees. The Prison Policy Initiative notes that prison phone companies have a profit motive to deliberately drop calls; “the companies cannot credibly claim that their self-interest is in making sure that the security procedures are not triggered inappropriately.”⁸² In its report entitled “Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry”, the Prison Policy Initiative concludes that “[a]s long as the prison phone industry can rake in a profit from providing poor service to customers, the phone companies have no incentive even to monitor the quality of their service, let alone compensate customers for undue disruptions and the accompanying charges.”⁸³ Based on a “comprehensive, nation-wide study in the United States, Telmate stood to collect approximately 40 percent extra in fees on each \$20 payment ... these hidden fees are how prison phone companies ... make profit in spite of commissions that reduce company income on base rates.”⁸⁴ As noted above, Saskatchewan Custody, Supervision and Rehabilitation Services receives a 10% commission.⁸⁵ While the installation of a Telmate system was initially justified as a monitoring device,⁸⁶ it is also a convenient revenue source. As observed by Hairston (writing in the American context):

The correctional policies and practices that govern contact between prisoners and their families often impede, rather than support, the maintenance of family ties.

⁷⁸ Demers, *supra* note 19 at 29.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Kukorowski et al, *supra* note 3.

⁸³ *Ibid.*

⁸⁴ Demers, *supra* note 19 at 30.

⁸⁵ *Ibid* at 28.

⁸⁶ Troy Fleece, “Texas contractor makes \$9 million from Saskatchewan prison inmates who want to make a phone call”, *National Post* (1 May 2017), online: <nationalpost.com/news/canada/texas-company-made-9m-off-of-phone-calls-from-saskatchewan-jails-the-province-made-less-than-1m> [perma.cc/AJV2-TMT9].

Many correctional policies are driven by the security and safety rationale that dominates the prison environment. Other policies, such as those governing the rate structure for the telephone systems for prisoner use, seem to be intended primarily to subsidize prison budgets and generate profits and/or to exert social control, not only over prisoners, but also over their families as well. Rules often bear little relevance to correctional goals and are insensitive to prisoners' family structures, cultural differences, and children's needs.⁸⁷

V. At Ground Level: Themes from the Study

Saskatchewan legislation and policy recognize a right to reasonable telephone access for prisoners, however, there is little detail in official policy or rules outlining how access to the system is to be allocated and monitored. The provincial *Corrections Inmate Telephone System Policy* provides guidelines and standards for the institutions and their staff to follow as they "allow inmates to have reasonable contact with family, friends and professional counsel."⁸⁸ The Policy specifically affords discretion to the directors of the institutions to establish relevant rules. Section 1.3 provides that "each correctional centre director is responsible for establishing local rules for offender access and utilization of the inmate telephone for personal and business calls."⁸⁹ Section 2.4 of the Policy provides that an internal review process be developed so prisoners can apply for telephone fee waivers on the basis of "exceptional financial and emotional hardship."⁹⁰ Despite this, it does not appear that such a process has been officially developed. The policy also provides that a few categories of calls are exempt from fees (e.g. for remanded and immigration hold prisoners) and that certain types of calls (e.g. to lawyers or the Ombudsman) are free.⁹¹ The institutions and their staff, therefore, have a great deal of discretion in the implementation of telephone access.

We argue that reasonable access should include, at minimum, a telephone system that is accessible, reliable and affordable. Our research shows that the telephone system in Saskatchewan provincial correctional centres cannot be described as such. As noted above, the government announced several changes to the system in 2017, including a universal free call per day plus a new flat rate for both local and long-distance calls. However, our research reveals deeper and persistent problems with the operation of the telephone system at ground level. We turn now to the themes and issues raised in our interviews.

⁸⁷ Creasie Finney Hairston, "Prisoners and Their Families: Parenting Issues during Incarceration" in Jeremy Travis & Michelle Waul, eds, *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families and Communities* (Washington, DC: Urban Institute Press, 2003) 259 at 274.

⁸⁸ *Saskatchewan Corrections*, *supra* note 12 at 1.

⁸⁹ *Ibid.*, s 1.3.

⁹⁰ *Ibid.*, s 2.4

⁹¹ *Ibid.*, ss 2.3, 5.2.

A. The Guards Make the Rules

For the participants in our research, telephone access was a fragile privilege always at risk of being revoked. Not one participant referred to reasonable telephone access as a right held by prisoners. None referred to an awareness, while they were in prison, of the existence of official legislation, policy or institutional rules mandating reasonable telephone access for prisoners. Participants made it clear to us that on the ground in prisons, corrections staff make the rules. One participant explained that telephone access takes place within the larger context of how things work in prison, stating: "In jail, it's different, it's a whole different set of rules, it's totally different from the outside. It's all about eat or be eaten I guess." Another explained that the entire telephone system could be shut down at the behest of the staff, stating: "[T]he guards do have control, overall, control in the office. They can shut [the phone system] off." Another former prisoner stated that when it comes to telephone access, "[t]he staff don't tell you what the rules are, they just tell you what you are going to do."

Without awareness of a legal or policy framework that meaningfully supports the concept of reasonable telephone access including, for example, free calls in the case of emergency or emotional hardship, participants explained that telephone access was precarious and fragile. Telephone access was subject to arbitrary interventions by staff to allow and withdraw access. Participants indicated that telephone access was often contingent on prisoners' relationship with correctional officers and, in particular, their attitude of respect and good behaviour. One participant noted that "if you are caught arguing on the phone ... you can lose all access to your phone calls." Another said: "You know if you ask politely and reasonably, [the staff will help you]. They're not going to give it to you if you're going off and your phone doesn't wanna work." Another explained:

[S]ay [an] inmate ... put in a request for a trust deduction to be put in his Telmate account, but he got along with that guard ... they're buddy-buddy, they talked about this and that. Now, by the end of the week he'll have his phone calls, you know, his money, but the other guy, the guy [the guard] didn't like ... all of a sudden he's going "I'm still waiting on ... my money's not in my account yet".

A woman who had been incarcerated at Pine Grove Correctional Centre indicated that telephone access could be cut for two days for prisoners who attempted to prolong a call longer than the allotted time. She said the following of her experience:

If you're on for more than 15 minutes, they cut it off right away and then I get cut off for 2 days ... And I can't talk for two days on the phone. So I- I always get cut off for two days because I try to talk to my mom longer. My mom is 70 so I try to talk to her and let her know that I love her and that and make sure she's ok.

These accounts by participants are not reflective of written policies. The accounts support the idea that, on the ground, the implementation and operation of telephone access is unhinged from official policies, related more to the power and whims of individual staff members.

Most participants explained that they had to learn the rules and protocols of telephone access “by trial and error” or from fellow prisoners. One explained:

[I learned the rules] by trial and error ... it was more or less, told upon inmate to inmate, upon asking you know. Like a new person would come in and say, “well can I phone home”, you know, “yeah, you’re allowed to phone home but you’re only allowed 15 minutes on the phone” ... so that’s how the other person understood the restrictions of the phone.

Similarly, another participant stated: “[I learned the rules from] my brother actually. Because he did time before me”. Another participant noted: “[I learned the rules] by other inmates, they told me how to go about it”. Others noted that they became aware of policies as circumstances arose. For example, one participant talked about being allowed to use the staff phone at no cost when his mother died, becoming aware for the first time that a free call might be available in an emergency situation. Prisoners were left with an uneven and unclear understanding of policies and procedures and an ongoing sense that telephone access could be revoked at any time.

Some might argue that what prisoners understand as unfair treatment is simply the operation of official discretion. After all, correctional officers have significant discretion in prison contexts generally, and specifically, in administering telephone access. What our study suggests, however, is that corrections staff make decisions and respond to telephone access requests in certain, patterned ways that are obvious to prisoners. These patterns can be described as a form of policy. As Matthew Diller points out, when viewed in the aggregate, exercises of discretion very often can be shown to “have distinct patterns that, in effect, become the operative policy of the agency.”⁹² Similarly, Evelyn Brodtkin explains that discretion can very often be “structured by factors that influence informal behaviours to develop in systematic ways.”⁹³ As observed by Gillian Metzger, “incarceration by its nature entails exercise of substantial discretion in closed environments with little public visibility. Given their extreme dependence and vulnerability, prisoners face a particularly acute potential for harm from abuse of these powers.”⁹⁴ Prisoners’ inherent vulnerability to unfair treatment is compounded by the stigma of their constructed social identity as criminals and deepened further, in most

⁹² Diller, *supra* note 17 at 1174.

⁹³ Evelyn Z Brodtkin, “The Inside Story: Street-Level Research in the US and Beyond” in Peter Hupe, Michael Hill & Aurélien Buffat, eds, *Understanding Street-Level Bureaucracy* (Bristol, UK: Policy Press, 2015) 25 at 29 [Brodtkin].

⁹⁴ Metzger, *supra* note 57 at 1393–94.

cases, by intersectional identities of race and class. These layered stigmas may present justification for unfair treatment of prisoners in the minds of correctional officers making discretionary decisions.⁹⁵

What we heard about the rules and practices around telephone access are in keeping with the observations of critical legal scholars and sociologists, as well as official reports dealing with the roles of correctional staff and the operation of prisoners' rights. For example, Lisa Kerr has noted that "[r]ights in the prison context function more like pliable interests."⁹⁶ In addition, Michael Weinrath notes that "[t]here are significant criticisms ... of the continued capricious exercise of administrative authority within prisons."⁹⁷ In his ethnographic study of prisoners and correctional officers in Canadian prisons, Weinrath noted that correctional officers were often resentful of the rule of law and increased accountability measures that are perceived as "making day to day life more troublesome".⁹⁸ Official reports have also documented ongoing and troubling tendencies of some correctional officers to abuse their authority and decision-making powers.⁹⁹

B. Scarcity, Violence and Threats

Prisons are violent places. Deprivation as well as physical and psychological harm are routine, rather than exceptional, experiences for prisoners.¹⁰⁰ The 2013 Marin Report, for example, documented the high levels of excessive force inflicted on prisoners by correctional officers in Ontario correctional facilities.¹⁰¹ Numerous other studies and accounts document the violent nature of incarceration.¹⁰² Our interviews made it clear that prisoners experience the prison telephone system as one of the sites of violence and discipline within the institution, a theme that emerged in our research. Many participants described frequent violence, including fights and threats over

⁹⁵ See Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Englewood Cliffs, NJ: Prentice-Hall Inc, 1963) at 6; Jack Beermann, "Privatization and Political Accountability", (2001) 28:5 *Fordham Urb LJ* 1507 at 1536.

⁹⁶ Kerr, *supra* note 18 at 104.

⁹⁷ Weinrath, *supra* note 19 at 53.

⁹⁸ *Ibid* at 191-92.

⁹⁹ See for example Andre Marin, "The Code: Investigation into the Ministry of Community Safety and Correctional Services Response to Allegations of Excessive Use of Force Against Inmates" (June 2013), online (pdf): *Ombudsman Ontario* <www.ombudsman.on.ca/Files/sitemedia/Documents/Investigations/SORT%20Investigations/The-Code-EN.pdf> [perma.cc/YZW8-3P5K].

¹⁰⁰ See Robert Clark, *Down Inside: Thirty Years in Canada's Prison Service* (Fredericton: Goose Lane, 2017) at 15; Weinrath, *supra* note 19 at 34; Anastasia Chamberlen, "Embodying Prison Pain: Women's Experiences of Self-injury in Prison and the Emotions of Punishment" (2016) 20:2 *Theoretical Criminology* 205; Lisa Guenther, *Solitary Confinement: social death and its afterlives* (Minneapolis: University of Minnesota Press, 2013).

¹⁰¹ Diller, *supra* note 17.

¹⁰² See Brodtkin, *supra* note 93 and generally, Phil Scraton & Jude McCulloch, eds, *The Violence of Incarceration* (New York: Routledge, 2009); Karlene Faith, *Unruly Women: The Politics of Confinement and Resistance* (New York: Seven Stories Press, 2011) at 230-54.

telephones and corresponding force and surveillance by correctional officers, around the telephones. Typical responses included the following: "I've seen fights break out for [the phone] and it gets pretty hectic" and "there's a guard standing beside the phones ... 'cause people are always fighting, always taking too long, whatever' ... They watch you very carefully and they listen to the recording." Another noted: "[The phone system makes me angry] like where I'd argue with the guards." Yet another participant stated: "I would put [the phones] in a quiet place ... there's only three phones, they should have like six phones. And especially for Saskatoon, like that's a real mean place ... it should be like, in a little room instead of like in front of everybody and people walk by and fights happen."

Participants pointed out reasons for this telephone-centred violence. The problems, according to them, included the inadequate number of telephones within the institution coupled with the exorbitant costs of calling and frustrations with the technology. One participant explained:

There's not enough phones. When I was in jail, there was a lot of arguments over the phone and other things. Sometimes there would be fights over the phone because somebody would be talking too long ... I've seen people get themselves beat up right by the phone because there's not enough phones you know and people want to get in there.

Another stated: "[They should add] more phones, like more phones and longer telephone time ... there'd be no fights and any concerns about the other inmates."

Other participants noted that there is significant pressure on prisoners (especially on remanded prisoners, who at the time were allotted three free calls per day) to give up their calls or their telephone time. For example, one participant explained that "people get threatened, like 'give me your phone' ... People get beat up for not giving up their phone time." Other participants told us that strict rules preventing people from sharing their telephone funds are problematic. One individual stated: "[W]hy can't you give another person a call when they really want to call home, you know?"

Participants' accounts show that telephone access policies are implemented and experienced within a wider context of institutional violence which includes violence, and threats of violence, at the site of the telephones themselves. Every consideration of prison telephone policies should be alert to this context. Overt violence, and specific and general threats of violence, can defeat the intentions of official policies that promise reasonable and fair telephone access. Our interviews suggest that institutional decisions regarding the allocation and location of these telephones exacerbate tension and violence in the process.

C. Telephone Technology and Unfairness

The above discussion has examined former prisoners' experiences of the precariousness of their rights to access the telephone system as well as the violence that surrounds prisoners' experiences of telephone access. In this section and the next, we turn our attention to the numerous, detailed concerns we heard from participants about the Telmate telephone system. Two major problems identified by participants in our research are examined: first, problems with the technology of the system, and second, problems with the cost of calls. In this section, we consider the problems with the technology of the system identified by participants. These problems are wide reaching and significant to consider. These problems lead to frustration for prisoners hoping to make calls and expose how the operation of a privatized, profit-generating and robotized technology within a public correctional context can seemingly erode the institution's responsibility for fairness and due process.

The participants in our study chronicled numerous problems with the technology of the Telmate system. One of the major problems identified is the system's propensity to drop calls. The system is designed, for security reasons, to detect voices that may be coming from a third party and automatically disconnect the call upon detection. However, the individuals we spoke to talked about the way that this feature functions to interfere with communication with their loved ones and family. Additionally, this feature inflicts a financial consequence because the system charges the cost of a call even when a call is dropped. One person explained: "[Dropped calls] happened to me a few times ... Where I'm talking to my kids and ... then all of a sudden it just hangs up on me." Another noted: "There's many dropped calls, and sometimes they won't give you the money back on there. It's not a good phone system."

Another key problem is the system's hyper-sensitive voice recognition technology which blocks calls when the system does not recognize the prisoner's voice. Participants noted that this meant they were, sometimes, unable to place calls at all. One stated that "the one thing that sucks about that voice recognition thing though is if you end up with a cold and you go to try and make a phone call it won't recognize your voice whatsoever." Another explained: "[S]o first thing in the morning if you couldn't get through, because that computer isn't recognizing your voice ... how come they don't have a real person on the other end?" He noted: "It would say, voice not recognized, please try again. And then you'd do it over again and it'd say, well you know, keep doing that, and sometimes I'd totally give up, say, eh f* this and hang up." Another said there was always a feeling that "maybe you'll get lucky and the computer will recognize your voice this time."

These problems conspire to increase stress and frustration of people in prison. One participant put it this way: "Sometimes the number doesn't work

and you hear people going off ... people go off man, if their phone system doesn't work properly. They go off. Like really bad, it does affect people." Another explained the impact as follows: "[W]hen I was there I felt that, because of the Telmate phones, I felt like I was really isolated and stuck. I wish they just had regular phones. It feels so scary to have those Telmate phones." Overall, prisoners' accounts of the stress and costs relating to the technologized security features are consistent with Michael Weinrath's observation that security technology in federal prisons "punishes those who are trying to maintain relations outside."¹⁰³

The emotional toll and frustration generated by interactions with the Telmate technology are problematic in themselves from a fairness perspective. Yet, another consequence of the Telmate system's technology problems are the barriers to redress faced by prisoners who have experienced blocked or dropped calls due to the security technologies of the system. As participants in our research pointed out, when they experienced problems with the Telmate technology there was, usually, little assistance forthcoming from staff. Rather, staff told them that they must take up their grievances about the system with the company itself. As one participant told us: "[T]he guards didn't really care too much about the phones. It was right of request, and they wouldn't deal with it. When the phone was clicking in and out, their responses were ... there was nothing they could do." For the participants in our study, the process of taking up problems with the company can be described as Kafkaesque. As one person we interviewed noted, there is a claims process but it involves getting the phone provider to send transcripts of the call. He explained:

I phoned a lot of places where my phone call got dropped and then ... I phone and tell them about a dropped call ... and then because I didn't have the proof or I didn't have access to the phone system right in order for them to be able to trace it all back and showed them where my call was dropped I don't have access to that part of the phone system so I don't have the proof ... you have to phone the phone providers and then you have to get them to send the transcripts and once you get them to send the transcripts you have to show the transcripts in order for them to be able to give you back your phone call ... that takes anywhere from 6 months to a year.

Another participant simply noted that "[dropped calls] became lost in the system so it was a hard process to be reimbursed." Another participant explained that "when I'm on a phone talking, the call will automatically drop, and I'll lose my \$7 and 20 minutes. Then when I phone again I have to use another \$7 and 20 minutes."

Prisoners face difficulty, and even impossibility, in obtaining redress for money lost on mistakenly dropped calls or inability to access the system due to problems with the voice recognition technology. This difficulty calls attention to the ways that a profit-driven, privatized telephone service in prisons

¹⁰³ Weinrath, *supra* note 19 at 115.

causes fairness problems. As Alfred Aman points out, privatization in the context of prisons “subjects the activity in question to the forces of the market while freeing it from the various forms of regulation – both substantive and procedural – that apply to public bodies.”¹⁰⁴ By requiring prisoners to take up problems with the company, the process is effectively disconnected from the usual institutional administrative processes for complaints by prisoners. It is unclear how Telmate is accountable for the operation of its system. Critical public law scholars have pointed out important concerns regarding this lack of accountability. For example, Patrick Sharma has noted that private actors carrying out functions on behalf of governments are not accountable in the same way government bodies are.¹⁰⁵ Alfred Aman writes that private actors in privatized contexts “inevitably make policy when they carry out their delegated tasks and interpret the contracts under which they operate.”¹⁰⁶ This leads to what he calls a “democracy deficit” where values of public law such as fairness, transparency and accountability are at stake.¹⁰⁷ This situation is highly concerning in the prison context and should invite more, rather than less, regulatory oversight and accountability. As Ben Iddings argues, “[w]hen the wellbeing of the country’s poorest, most vulnerable citizens is entrusted to private corporations, policymakers must be certain that government contracts ensure adequate accountability, oversight and regulatory flexibility.”¹⁰⁸

D. The High Costs of Calling

The most serious problem associated with telephone access for participants in our study was the exorbitant cost of calling. They spoke about the high cost of both local and long distance calls and the various hidden fees and costs associated with the system that were referred to earlier. The people we interviewed emphasized how inaccessible the telephone system was due to the imposition of high fees. They spoke frequently about how expensive and unaffordable the calls were, which prohibited their ability to contact their families and other supports. One participant stated that “if you had no money

¹⁰⁴ Alfred C Aman, “Privatization, Prisons, Democracy, and Human Rights: The Need to Extend the Province of Administrative Law” (2005) 12:5 *Ind J Global Leg Stud* 511 at 513 [Aman]. See also Gillian E Metzger, “Private Delegations, Due Process, and the Duty to Supervise” in Jody Freeman & Martha Minow, eds, *Government by Contract: Outsourcing and American Democracy* (Cambridge: Harvard University Press, 2009) at 291.

¹⁰⁵ Patrick Sharma, “Privatization and Legal Accountability” (30 April 2015) at 25, online: SSRN <papers.ssrn.com> [perma.cc/3BHW-6H6L]. See also Catherine E Akenhead, “How States can take a Stand Against Prison Profiteers” (16 April 2016), online: SSRN <papers.ssrn.com> [perma.cc/MTY7-H5TB].

¹⁰⁶ Aman, *supra* note 104 at 525.

¹⁰⁷ *Ibid.* In another context but with similar issues at play, see also Elizabeth E Joh, “The Undue Influence of Surveillance Technology Companies on Policing” (2017) 92 *NYUL Rev* 101. Joh notes the influence of private surveillance technology companies on policing practices and the corresponding erosion of accountability and transparency.

¹⁰⁸ Iddings, *supra* note 54 at 201.

you had no way of reaching out to your family. You're stuck." Another said: "It's expensive ... like we only get so much money, and so much time ... to talk on the phone and I don't know why they bring that system in there that, really, really you know, bugs people ... [it's] so costly."

Prisoners spoke of how their low daily income made it difficult for them to afford phone calls. One participant said: "[I]t's ridiculous ... I worked in the laundry and made a whole \$5 a day. A phone call is like \$7 for 20 minutes. So it's a little too pricey; it's ridiculous to be honest with you." Another participant said:

I was phoning back home to my mom's. I had to do it once a month because it cost me seven bucks for twenty minutes. Whether I used 20 minutes or not, if I used 15 or 13 minutes, it still take it at the whole \$7. It still counted as 20 minutes. Overcharging too much ... I could only phone home once a month, that's if I had enough money.

It is often the case in Saskatchewan that prisoners are held in centres far away from their families, who live in a range of urban and rural communities. As one participant said: "[A] lot of people coming in there, they're not rich, they don't have money to afford those long distance cards to phone home. And a lot of them are from way, far away and they have to get those calling cards and like I said, not a lot of them could ... connect with their family." Another participant stated: "I didn't need to phone anybody, anybody local ... It was just the long distance calls ... Like the long distance cards, they're ... there 10, 20 dollar ones, you know. They don't last long."

This problem has a particular and disproportionate impact on female prisoners who can be incarcerated only at the Pinegrove Correctional Centre.¹⁰⁹ It is inequitable that women are more burdened by the cost of calling because they are more likely to be incarcerated a longer distance away from their families and support systems. A woman who was previously incarcerated at the Pinegrove Correctional Centre stated: "They should get a new telephone company altogether, with more reasonable rates. Women, most of the inmates, are quite far from home, and we all have to phone long distance. So they need a new system, and a whole new telephone company." Another woman said: "[S]ome of the girls who come [to Pinegrove] are homeless. So they have to work for their money. And we only get \$3 a day. We're only allowed to make that much a day."¹¹⁰

Further, the people with whom we spoke noted several features of the

¹⁰⁹"Locked Out: Inmate Services and Conditions of Custody in Saskatchewan Correctional Centre" (October 2002) at 7, online (pdf): *Ombudsman Saskatchewan* <www.ombudsman.sk.ca/uploads/document/files/lockedout-en.pdf> [perma.cc/P6TG-ST43]; see also Margaret diZerega & Sandra Villalobos Agudelo, *Piloting a Tool for Reentry: A Promising Approach to Engaging Family Members* (New York: Vera Institute of Justice, 2011) at 8–9

¹¹⁰As discussed above, the daily wage has since been eliminated and the daily wage for work has been reduced to \$1 per day. See Fraser, *supra* note 60.

system that they described as unfair, functioning to drive up the costs of calling even more. One participant said: “[E]ven if it rang and rang and rang and it went straight to voicemail and even though it’s not an actual person that answers the phone you still get your phone call ... deducted.” Another participant stated:

[I]t’s hard to get money in my account. When a person has put money in my phone account, they also have to pay additional ... We never got our money back, and when we do leave a message on that phone system it’s like they don’t get back to use until two days later. They don’t really have an answer to what you’re asking, so you just lose your \$7.

Another example is the difficulty that prisoners have retrieving money in their telephone accounts following release. People must undergo an onerous bureaucratic process in order to claim amounts left on their account. As the Prison Policy Initiative has noted, this is one of the ways in which private for-profit prison telephone companies increase their profitability:

When someone is released from prison or jail, families welcome the chance to reconnect. But this event is a chance for prison telephone company profiteers to celebrate as well by either seizing the balance left over in a phone account or charging customer hefty fees to recoup their own money.¹¹¹

Participants in our study indicated that “it takes like 6 months for it to get approved in order for you to get that money back ... it’s like a 20-page thing you have to write up why you want the money back and whatever ... most people just leave their money there.”

In addition, a participant said: “I had money taken from me. I was incarcerated and still had money in my inmate phone account. I asked to be reimbursed and they took a percentage off my money to reimburse me. It costs money to put credit on your phone and it costs money to get your refund back. It’s not very fair at all.”

In the spring of 2017, following the submission of the coalition’s research report, Saskatchewan’s Ministry of Justice announced two changes. All prisoners in correctional centres would receive one free telephone call every day and the cost of calls, over and above that, would be substantially reduced to a flat rate of \$2.50, regardless of whether they were local or long distance.¹¹² Reducing one of the barriers for prisoners seeking to communicate with family, friends and supports on the outside was regarded as a positive development by the coalition. Unfortunately, at the same time, the government announced a plan to cancel the daily wage for all prisoners and reduce the wages for prisoners who work within the institution.¹¹³

¹¹¹ Kukorowski et al, *supra* note 3.

¹¹² Fraser, *supra* note 60.

¹¹³ *Ibid.*

VI. Conclusion

Despite official commitments in provincial correctional law and policy to provide reasonable telephone access for prisoners in Saskatchewan provincial correctional centres, our research shows that prisoners' experiences are anything but. The accounts of former prisoners reveal that telephone access is experienced by many prisoners as a precarious privilege that is perpetually at risk of revocation by corrections staff, functioning as a mode by which corrections staff exercise and maintain power. Former prisoners placed the issue of telephone access squarely within a larger context of institutional violence and deprivation, highlighting the ways that the allocation and withholding of telephone access contributes to a pervasive environment of violence, conflict and threats. Finally, our research highlights the ways in which the profit-seeking motives of a private prison telephone company impact prisoners' daily experiences of unfairness with the telephone system. This impact occurs in terms of technological problems and cost barriers which include, and go beyond, the cost of individual calls.

When asked about solutions, participants in our study were clear that investments in creating an affordable, accessible and easy-to-use telephone system would go a long way to reduce the negative impacts of the current system. They also agreed that transparent and consistent rules and policies about telephone access were essential. These solutions mirror the proposals put forward by federal prisoners in a 2017 study by Jarrod Shook and Bridget McInnis. Shook and McInnis solicited letters from federal prisoners about prison conditions and "what prisoners would like to see moving forward in terms of their main priorities and the types of social action those outside of prison walls could engage in to help address the challenges that presently characterize life in a federal penitentiary."¹¹⁴ They noted that "the majority of prisoners who wrote to us were simply asking for enough to afford their necessities and maintain contact with their loved ones."¹¹⁵

Our project, and this article, have addressed the issue of telephone access on the ground in Saskatchewan correctional centres by bringing together the accounts of former prisoners and analyzing these in light of legislation and policies. Clearly, the situation described by former prisoners is fraught with problems and pain. It seems clear that reforms must be based in institutional commitments to prioritize the fundamental need for human connection over money made at prisoners' expense. Such reforms could lead to a reduction in harm. Despite this, we are cognizant of the limits of calls for prison reform. Angela Davies reminds us:

¹¹⁴ Jarrod Shook & Bridget McInnis, "More Stormy Weather of Sunny Ways? A Forecast for Change by Prisoners of the Canadian Carceral State" (2017) 26:1/2 J Prisoners on Prisons 269 at 269-70.

¹¹⁵ *Ibid* at 290.

The history of the very institution of the prison is a reform. Foucault points this out. Reform doesn't come after the advent of the prison; it accompanies the birth of prison. So prison reform has always only created better prisons. In the process of creating better prisons, more people are brought under the surveillance of the correctional and law enforcement networks.¹¹⁶

Ultimately, our project points to the desire of prisoners to rejoin society outside the prison walls and their longing to be united, or reunited, with their loved ones. We recognize that even the most benevolent prison telephone access policies will always fail to achieve these goals. What is required are radical alternatives to imprisonment and an emphasis on the "rigorous, promising work of envisioning and practicing a world otherwise."¹¹⁷

¹¹⁶ Angela Y Davis, *Freedom is a Constant Struggle: Ferguson, Palestine, and the Foundations of Movement* (Chicago: Haymarket Books, 2016) at 22.

¹¹⁷ Michelle Brown & Judah Schept, "New Abolition, Criminology and a Critical Carceral Studies" (2017) 19:4 *Punishment & Society* 440 at 456.