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Abstract

Canadian Prosecutors' Views on the Use of Capital Punishment for Defined Terrorist Activity

by

Aswani K. Datt

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Abstract

In the post-9/11 world, Canada has struggled with developing a sentencing regime that effectively punishes and deters defined terrorist activity such as the attack on the Canadian Parliament, the Danforth shootings, the rise of Khalistani and Islamic terrorism, and the Toronto Van Attack. Broadly speaking, the Canadian public still supports capital punishment, but it is unclear whether Canadian prosecutors perceive and view the issue in the same light in their professional and legal capacity. Canadian prosecutors are tasked with seeking sentences that meet criminal justice principles, including the principle of deterrence. Their views on what punishments are just and effective are important, as they have significant and broad discretion in asking the courts to impose sentences. Thus, while Clarence Darrow argued that "We have heard talk of justice. Is there anybody who knows what justice is? No one on earth can measure out justice." The criminal justice system functions within the legal fiction that prosecutors can make decisions on what justice can and should be. The present study used a grounded theory design by collecting data from Canadian prosecutors on their views about capital punishment as it relates to defined terrorist activity and their roles concerning administering justice on behalf of the public. A theme emerging from the interviews was that the general deterrence principle of sentencing was either false or too hard to quantify to make it a meaningful factor in sentencing. This study may contribute to a positive social change by helping develop a theory about how Canadian prosecutors view the role of punishment, their role as prosecutors in the criminal justice system, and how they view the effectiveness of deterrence as it relates to defined terrorist activity and capital punishment.

Canadian Prosecutors' Views on the Use of Capital Punishment for Defined Terrorist Activity

by

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Dedication

This dissertation is dedicated to the victims of Air India Flight 182.

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Chapter 1: Introduction to the Study

Canada, in its response to post-9/11 developments, passed the Anti-Terrorism Act in 2001 that set out a defined meaning for "terrorist activity" for the first time by amending Canada's Criminal Code (Anti-Terrorism Act, 2001). The key purposes of this legislation were the following: to recognize that terrorism is a matter of national concern and to convey that the Canadian government is committed to protect Canadians against terrorist activity while continuing to respect and promote the rights and freedoms guaranteed by the Canadian Charter of Rights and Freedoms (Canadian Charter, 1982).

Despite sentence ranges from 18 months to life imprisonment, terrorist activity and related threats in Canada have not reduced and continue to be at a medium threat level, which is defined as "a violent act of terrorism could occur" (Government of Canada, 2018, p. 3). Evidence has shown that individuals in Canada continue to express both the intent and capability to carry out violent acts of terrorism in Canada and against Canadian interests (Government of Canada, 2018, p. 5). It is thus apparent that there is a disconnect between the legislation and the desired results to reduce terrorism in Canada.

The increase in terrorism-related threats has presented an existential question as to whether the sanctions that are available to the courts are sufficient to meet overall sentencing objectives. General and specific deterrence are the core principles of sentencing in Canada (Criminal Code RSC, 1985; see s 718.2[a][v]). The Supreme Court of Canada has maintained that, as a matter of law, denunciation and deterrence, both specific and general, are important principles in the sentencing of terrorism offenses, given their seriousness (*R v. Khawaja*, 2012, para. 130). Thus, it is a matter of law that

when seeking penalties for terrorist activity, prosecutors must apply their minds to how deterrence will be addressed by the proposed sentence. Canadian prosecutors have significant discretion and political independence, and they can seek sentences within the parameters of a given law and their respective policy directions and are recognized as such by law and the Ministers of Justice (*R v. Boucher*, 1955, p. 25). Public and judicial scrutiny impacts their decision-making processes, and the reality of these factors cannot be underestimated. Understanding the views of prosecutors is, therefore, important in understanding how they come to seek sentences from courts.

Background of the Problem

Relevant research in Canada regarding terrorists' sentencing since 2001 has shown that jail sentences have not deterred terrorism in Canada (Amirault et al., 2017, p. 807). Terrorist threats have been increasing in Canada since 2001, and this matches the same trends globally (Government of Canada, 2018, p. 3). Currently, Canada is at a medium level of the threat of terrorism and has been at this level since 2014. A medium level of threat implies that a violent act of terrorism could occur (Government of Canada, 2018). Because there were no specific terrorist offenses in Canada until 2001 (Amirault et al., 2017, p. 773), the prosecution of defined terrorist activity in Canada is a recent phenomenon; thus, the views of prosecutors on the types of sentences that would deter this type of activity is unlikely to be a settled issue.

In the Canadian justice system, it is the courts that have the final say on sentencing and not the jury as is the case in the United States. The views of prosecutors are relevant because of the large amount of discretion that they have. Prosecutors are not

neutral in their decision-making process but have an advocacy aspect to their decisions (Woolley, 2017). The directives and framework provided to the prosecutors are often vague and contradictory, and they improperly incorporate undefined moral concepts into legal duties, and as such, they do not reflect the work that prosecutors do. There are also personal considerations that a prosecutor must be mindful of such as looking to be tough to continue their employment. For example, the Government of Canada (2014) provides a wide range of considerations and discretion to a prosecutor while seeking a sentence from the Canadian courts including for those convicted for defined terrorist activity. These relate to such aspects as the quantum of the sentence, custody for young persons, delayed parole, and whether to seek consecutive or concurrent jail sentences.

Further, the world has become more complicated and interdependent since Canada imposed a moratorium on the use of capital punishment in 1967 and abolished its use in 1976 (Government of Canada, 1985). Recent data has shown that 41% of Canadians support capital punishment in a general sense and believe that, in certain circumstances, the federal government should have it reinstated (Abacus Data, 2011, p. 4). Since imposing retributive punishment on criminals is fundamental to a society’s sense of criminal justice (Fehr & Fischbacher, 2004, p. 1), there appears to be a disconnect between a society’s desire capital punishment and how the criminal justice system punishes defined terrorist activity. If capital punishment were to be available in Canada for defined terrorist activity, the views of the Canadian prosecutors on this form of sentencing would also be essential in assessing its viability.

Problem Statement

The events of 9/11 and further terrorist attacks have had a permanent impact on how Canada prosecutes those involved in defined terrorist activity (Criminal Code RSC, 1985; see s 83.01[1]). Canada abolished capital punishment in 1976 (Government of Canada, 1985). Despite sentence ranges from months to life imprisonment, terrorist activity and threats have been increasing in Canada (Government of Canada, 2018). Data has shown that 41% of Canadians support capital punishment in a general sense and believe that the federal government should have it reinstated in certain circumstances (Abacus Data, 2011, p. 4). Since imposing retributive punishments on criminals is fundamental to a society's sense of criminal justice (Fehr & Fischbacher, 2004, p. 1), there appears to be an apparent disconnect between a society's appetite for employing capital punishment and how the criminal justice system punishes defined terrorist activity. No data has been compiled or analyzed on the specific relationship between the use of capital punishment for defined terrorist activity and the role of the prosecutor who has a special function as an independent Minister of Justice in Canadian jurisprudence (*R v. Boucher*, 1955, p. 25). The literature reviewed for this study identified wrongful convictions, race, due process, morality, proportionality, lack of political will (LaChappelle, 2012), deterrence problems (Mendoza-Valles, 2018), due process problems (Amirault et al., 2017), and costs as themes for arguments against the use of capital punishment (Davidson, 2011). However, none of these studies have examined the perceptions of prosecutors and how their perceptions could affect their decisions on whether to seek capital punishment as a sentence against those convicted of defined

terrorist activity if that option were to be available. This research has attempted to fill this gap.

Purpose of the Study

Civil society has a social responsibility to punish crimes (Locke, 1980). At an individual level, retribution motivates people's punishment responses (Carlsmith, 2006). At a macro level, public support for retributive sentences is determined by their apparent concerns about the moral cohesion (or lack thereof) present in society (Tyler & Boeckmann, 1997). Prosecutors hold a special place in the criminal justice system as they are the ministers of justice and have significant discretion and political independence. They are also to seek sentences within the parameters of the law and their respective policy directions. The purpose of this qualitative study was to understand the perceptions of prosecutors and how these perceptions and views may affect their decision-making process to seek capital punishment for defined terrorist offense if the option of capital punishment were to be available to them.

Research Questions

1. How do the perceptions and views of Canadian prosecutors relate to the issue of deterrence?
2. How do the perceptions and views of Canadian prosecutors about the role of criminal sentencing influence their support for using capital punishment for those convicted of defined terrorist activity in Canada?

Conceptual Framework

The theoretical framework for this study was rooted in deterrence theory. Deterrence theory is grounded in ideas that are fundamental to classical criminology. Inherent in classical criminology is the thought that humans are rational actors capable of exercising free will and are guided by a series of calculations that actually are a type of cost-benefit analysis (Reed, 2012). Criminal law jurisprudence in Canada tilts in favor of specific and general deterrence (Criminal Code RSC, 1985). The perceptions and views of prosecutors on deterrence and how it relates to capital punishment and defined terrorist activity are highly probative, as deterrence is a central framework in the sentencing of terrorists in Canada. The Supreme Court of Canada has directed courts to focus on both specific and general denunciation and deterrence as important principles in the sentencing of terrorism offenses given their seriousness (*R. v. Khawaja*, 2012, para. 130).

Nature of the Study

This study utilized a qualitative research method. Qualitative research is exploratory and can lead to uncovering trends and insights into a stated research problem. The purpose of this study was to better understand the perceptions of the Canadian prosecutors who operate statutorily under a high level of independence and discretion. The research design that has been selected for this research is grounded theory (O'Sullivan et al., 2017). The grounded theory allows a researcher to describe the essence of an event and look for reasons that support this event. I conducted interviews with 10 prosecutors in the Greater Toronto Area, which is the busiest criminal law jurisdiction in

Canada. It has a diversity of offenses and defendants, and it provided a rich database of information as opposed to those areas in Canada that are not as densely populated.

The purpose of this study was to better understand the perceptions of Canadian prosecutors who operate under a high level of independence and discretion. As they must focus on a variety of sentencing principles, their views on the subject are highly probative. Though capital punishment is not a form of punishment currently in Canada, it does not mean that it will never be revisited. Canada has moved toward more punitive sentences in the past decade by reducing the availability of conditional sentences and the introduction of mandatory minimum sentences.

Definitions

Capital punishment: The legal sanction of a court in taking the life of an offender after due process of law (Ehrlish, 1975).

Deterrence: Punishments that are timely, certain, and sufficiently punitive such that they can dissuade the same offender (specific deterrence) or other offender(s) (general deterrence) from committing the prohibited act in the future (Tomlinson, 2016, p. 33).

Prosecutor: The attorney general or, where the attorney general does not intervene, the informant and includes counsel or an agent acting on behalf of either of them (Criminal Code RSC, 1985).

Terrorist activity: An act committed for a political, religious, or ideological purpose to threaten the security of the public and influence government or organizations to act ore refrain from acting by causing death, serious bodily harm, property damage, or

serious interference with essential services or systems. This includes an attempt to commit any such act or being an accessory. It does not include an act that is committed during an armed conflict in accordance with customary international law or conventional international law applicable to the conflict, or in accordance with the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that all these activities are governed by other rules of international law (Criminal Code RSC, 1985).

Assumptions

Sentencing in Canada assumes that deterrence is effective. Deterrence operates firstly by relaying a message to a target group that a certain act is not permitted, and if they do it, they will face strong penalties. Second, it is intended to convey that the targeted group makes a rational choice between the prohibited conduct and the potential for the penalty (Tomlinson, 2016, p. 33). Another assumption of this study was that a democratic state has the legal authority to take the life of another, including a person convicted of a serious criminal offense after due process of law. It was also assumed that capital punishment for defined terrorist activity would be constitutional in Canada should it be introduced. Further, it was assumed that the fundamental purpose of sentencing the accused is to protect the society and to contribute, along with crime prevention initiatives, to promote respect for the law and to ensure the maintenance of a just, peaceful, and safe society by imposing just sanctions that have one or more of the following objectives:

- to denounce unlawful conduct and the harm done to victims or to the community that is caused by the unlawful conduct,

- to deter the offender and other persons from committing offenses,
- to separate the offenders from the society where necessary,
- to assist in rehabilitating the offenders,
- to provide reparations for harm done to victims or the community, and
- to promote a sense of responsibility in offenders and acknowledgment of the harm done to the victims or community. (Criminal Code RSC, 1985)

Scope and Delimitations

The purpose of this research was to determine the views of the prosecutors, generally, about the concept of deterrence. The purpose was also to examine the views of the prosecutors about the hypothetical prospect of the deterrence effect of capital punishment on defined terrorist activity. Canada has a bifurcated structure for administrating criminal justice. Both levels have their own Crown Policy Manual that guides the decision-making processes of the respective prosecutors. The study was limited to the prosecutors of the Greater Toronto Area with at least 10 years of experience.

Transferability

The findings in this research are transferable even though the research is qualitative in nature. Despite the bifurcated approach to the administration of criminal justice in Canada, there is only one criminal law that is applicable to the entire country. Second, the provinces may differ in their micro approaches regarding handling deterrence, but at the macro level, they are bound not only by stare decisis but also by the decisions of the Supreme Court of Canada on issues of national importance.

Limitations

The Greater Toronto Area is one of the most diverse regions of Canada. Compared to the whole country, it has almost double the percentage of immigrants and visible minorities (Satistics Canada, 2011). This limited geographic area is representative of the entire country. However, Canada is a vast country, and the participants from metropolitan areas may have views that are starkly different from those of residents of rural areas. The same can be said about English-speaking Canada as opposed to French-speaking Quebec. Quebec has a history of civil law, and traditionally, was been against capital punishment when it was legal in Canada.

A further possible limitation of this study may be the associations representing prosecutors and the two levels of government. Though I have significant contacts with prosecutors, including those who have experience in prosecuting terrorism cases, I may have needed clearance before approaching any prosecutors as participants. Furthermore, to obtain unfiltered data from my participants, I had to convince them that their identity will be protected, and this involved using my reputation in the legal profession.

Significance

Death has been inflicted as punishment throughout history. Traditionally, punishments given to individuals were retributive and coercive as they also entailed an attempt to use them to re-shape and correct the mind and soul of the erring individual. Retributive punishment did not try to restore the individual to that place in society that they had lost by breaking the law, but it aimed instead to create a person who obeyed

without question. Modern sentencing techniques need to encompass a wide variety of principles that go beyond mere retribution and coercion.

The increase of terrorist acts in Western democratic countries has called for Canadians to examine how the country punishes terrorist offenses. At the societal level, Canadians are moving toward a view of punishment that is focused on crime control. Canada has introduced mandatory minimum jail penalties for a wide range of offenses, reduction of conditional sentences, indefinite jail sentences for dangerous offenders, reduction in the number of preliminary hearings, and an elimination of peremptory jury challenges. This shift, socially and legally, may also be getting reflected in the views of prosecutors who are tasked with administering criminal law.

The failure of society to meet its social responsibility to punish crimes with appropriate penalties can erode the public's trust and bring the administration of justice into disrepute. The prosecution's directives provide a framework that draws on the inherent discretion and political independence of the prosecutors. The independence of the prosecutors advances the public interest by enabling them to exercise considerable prosecutorial discretion and properly fulfill their quasi-judicial role as Ministers of Justice. The Supreme Court of Canada has affirmed that given the seriousness of terrorism offenses denunciation and deterrence, both specific and general, will generally be paramount at the hearing for sentencing (*R. v. Khawaja,* 2012, para. 130). The perceptions of prosecutors in the context of capital punishment for defined terrorist activity would provide insight and potentially reveal their thought processes and

dilemmas that are involved in their decision-making regarding the seeking sentences in this context.

The discretion and views of the Canadian prosecutors can be significant as they establish the sentencing ranges for specific offenses. Their views on capital punishment as in relation to defined terrorist activity within the role of punishment and on the effect of deterrence, in general, would be highly significant. Canada has already been moving toward a more punitive crime control model of sentencing with higher offenses with mandatory jail sentences and the reduction of conditional sentences. Prosecutors are at the forefront of shaping the criminal justice system through their views and approaches in their advocacy for sentences. Assessing the views of Canadian prosecutors may have an impact in terms of preparing to deal with such an issue if and when it arises.

Summary

Despite a gradual decline in the adult incarceration rate in Canada, terrorist activity is rising (Government of Canada, 2018, p. 3). The sentencing regime has not helped in reducing this phenomenon. Some have argued that the severity of sentences does not affect crime levels and that deterrence-based sentencing makes false promises to the community which distracts it from considering other approaches to crime reduction (Doob & Webster, 2003). However, a serious attack causing a significant loss of lives and property can be the type of moral panic that can quickly bring the issue of capital punishment for defined terrorist activity to the forefront. This study addressed the views of prosecutors in Canada regarding capital punishment in the event that this punishment is reinstituted in the country.

Chapter 2: Literature Review

The main purpose of this study was to examine the views of prosecutors on defined terrorist activity and capital punishment as a potential form of punishment for such acts. The threat of terrorist activity is on the rise in Canada and around the world (Government of Canada, 2018). But increased jail sentences (Anti-Terrorism Act, 2001) have not reduced the frequency or intensity of defined terrorist activity in Canada (Amirault et al., 2017). If a serious terrorist act occurs in Canada causing significant loss of life and property, it may create moral panic (Davis, 1980), requiring politicians to respond quickly to the public demand for harsher penalties for defined terrorist activity. Despite not using capital punishment since the late 1960s (Government of Canada, 1985), the Canadian public still broadly supports its use (Abacus Data, 2011). In 1991, the Supreme Court of Canada opined that there was no clear consensus in Canada that capital punishment is morally abhorrent and unacceptable though its use has been abolished in 1976 (*R v. Kindler*, 1991, p. 851). But normalizing disciplinary sanctions such as capital punishment has not affected the penal process (Garland, 1991, p. 161). Further, the court has not yet examined whether capital punishment is an effective form of sentence for defined terrorist activity in the post-9/11 environment.

Specific and general deterrence are key principles in Canada's sentencing process (Criminal Code RSC, 1985). In 2012, the Supreme Court of Canada indicated that denunciation and deterrence, both specific and general, are important principles in the sentencing of terrorism offenses given the seriousness of these offenses (*R v. Khawaja*, 2012, p. 130). The deterrence theory is a central aspect of sentencing and involves legal

fiction, which is the idea that humans are rational actors capable of exercising free will and are guided by a series of calculations that are actually a type of cost-benefit analysis (Reed, 2012). Some have argued that there is no evidence that deterrence works (Doob & Webster, 2003); however, Canadian prosecutors must take deterrence theory into account when they seek sentences from the courts.

The Canadian prosecutors represent the Crown and, in turn, the public before the courts and are considered as the Ministers of Justice (*R v. Boucher*, 1955, p. 25). They have the responsibility to act independently but within the framework of defined professional conduct (Government of Canada, 2014). If capital punishment is made applicable for defined terrorist activity in Canada, the question is what views prosecutors hold such as whether they would view capital punishment as effective. Prosecutors have their own views concerning the sentences to be sought and bring their own perceptions about their validity regardless of the guidelines and directives that they need to follow (Wooley, 2017). Understanding their views is therefore essential for assessing the effectiveness of making capital punishment applicable for defined terrorist activity in Canada.

Literature Review Strategy

The databases that were searched to look for literary resources for this study were the following: Google Scholar, EBSCO database, ScoINDEX, PsychInfo, Academic Search Complete, Quicklaw, Westlaw, and ProQuest Dissertations and Theses. This search was confined to peer-reviewed journals that contained the full text and references. Further, the aim was to limit the timeframe to 7 years. The keywords used were *death*

penalty, capital punishment, deterrence, prosecutor, criminal justice, sentencing principles, terrorism, and *defined terrorist activity*. The additional words that were used were *moral panic, public support, polling,* and *wrongful convictions.*

Conceptual Framework

Canada's criminal justice system is premised on assumptions about human behavior as it relates to punishment. An example of this is that a sentence ought to be proportionate to the offense (Criminal Code RSC, 1985; see s 718.1). Proportionality, in this context, is the principle that a sentence imposed on a convict must be meaningfully linked to the severity of the offense (D'Amico, 2015). One of the assumptions of proportionality is the belief that a just sentence can provide specific and general deterrence. The deterrence theory in this regard states that punishments that are timely, certain, and sufficiently punitive will dissuade the same offender (specific deterrence) or other offenders (general deterrence) from committing the prohibited act in the future (Tomlinson, 2016, p. 33). The rationale behind the deterrence theory is the belief that humans are rational actors, and they carry out cost-benefit analysis while arriving at their decisions (Reed, 2012). Specific and general deterrence are considerations that Canada has emphasized for its courts to necessarily consider (Criminal Code RSC, 1985; see s 718.2). Since the threat of domestic terrorism is rising in Canada (Government of Canada, 2018), an issue that needs to be addressed is whether the sanctions for defined terrorist activity fail to meet their deterrence objectives.

There are a variety of factors that undermine deterrence. For one, where there are several accused persons, the likelihood of all of them going to trial and being convicted is

reduced (Amirault et al., 2017, p. 781). Several studies have also shown that the longer the time lapse between the commission of an offense and the date of the sentencing for it, the severity of the sentence gets reduced (Amirault et al., 2017, p. 781). Canada discounts sentences in the pre-trial custody phase usually at the rate of 1.5 days for each 1 day of sentence. This is owing to considerations such as the presumption of innocence, right to bail, and the conditions of detention facilities (*R v. Myers*, 2019).

Another factor affecting deterrence is that Canadian prosecutors are usually tasked with examining a proposed sentence from a variety of angles. The above-mentioned requirements of the criminal code are one factor. The Supreme Court of Canada has also directed that deterrence be focused on concerning defined terrorist activity (*R v. Khawaja*, 2012). There are also organizational requirements. The federal prosecutors are required to take a strong approach against defined terrorist activity. The federal government has declared that terrorism is an existential threat to Canadian society in a way that murder, assault, robbery, and other crimes are not. Terrorists have rejected and challenged the foundations of Canadian society (Government of Canada, 2014). The federal government has also directed its prosecutors that the Crown counsels should also be mindful in assessing the individual factors of their cases. The courts so far have indicated that where offenders have knowingly engaged in terrorist activity that is designed to (or is likely to) cause the indiscriminate killing of innocent human beings, life sentences or sentences exceeding 20 years will generally be appropriate (Government of Canada, 2014). It is from all these sources considered together that the prosecutors can

be said to have received a clear direction that deterrence is a primary factor in the sentencing of defined terrorist activity.

Despite the fact that capital punishment has been imposed in Canada since the late 1960s and was banned in the 1970s, this does not settle the issue on a final basis (Government of Canada, 1985). The capital punishment debate rose again in the 1980s. In 1987, the House of Commons re-examined the issue but ended up voting 148 to 127 in favor of not reinstating the death penalty (CBC News, 2010). Despite the passage of time, there is still broad public support for capital punishment (Abacus Data, 2011). Further, should there be a change in the law due to a terrorist attack, the views of prosecutors on the use of capital punishment for defined terrorist activity has not been assessed in the light of the variety of the obligations that have been highlighted for them. This is a significant gap in the literature, and the data can provide an insight on this specific issue along with the general views of prosecutors on the issue of deterrence.

The relationship between the deterrence theory and the views of prosecutors is one that represents the application of this theory in a practical setting. The manner in which a prosecutor perceives and views a sentencing option has an impact on its effectiveness and application in court. For instance, a prosecutor who views simple probation as too weak a sentence for crimes of violence will likely seek only jail sentences. A prosecutor who views jail as too harsh and punitive for the first-time violent offenders will seek probation and other rehabilitative measures. Although the courts have the final decision on sentences in Canada, the prosecutors' offices set the parameters of the sentences they are seeking for the criminal offenses. It is rare for the courts to impose

a sentence higher than what was being asked by the prosecution. It is even more difficult for courts to deviate from the proposed sentences where the prosecution and the defense agree on the sentences that are fit to be awarded in particular cases (*R v. Anthony-Cook*, 2016).

The research questions that have been formulated for this study address this particular gap in the relevant literature. The answers to these research questions may reveal a fundamental distrust concerning the deterrence theory in general. The studies that have argued against that the deterrence theory are legal fiction and are not supported by evidence (Doob & Webster, 2003). More specifically, some have argued that capital punishment does not provide deterrence against defined terrorist activity (Mendoza-Valles, 2018).

Literature Review Related to Key Variables

Deterrence Theory

The deterrence theory is a theoretical proposition that punishments that are timely, certain, and sufficiently punitive will dissuade the same offender (specific deterrence) or another offender (general deterrence) from committing the prohibited act in the future (Tomlinson, 2016, p. 33). The purpose of state-sanctioned punishment is to deter the specific offender from recidivism and to prevent others from committing the same offense (Beccaria, 1819, p. 47). Based on deterrence theory, people respond to incentives and there would be a decrease in crime due to capital punishment (Ehrlish, 1975). However, skeptics have argued that the deterrence theory is unproven and, hence, not a useful theoretical premise (Doob & Webster, 2003). For example, it has been argued that

capital punishment is not useful and is disproportionate to most crimes (Beccaria, 1819, p. 99). Others have argued that the opponents of the deterrence theory have miscalculated the effect of delay and uncertainty in the application of capital punishment as a drag on its potential deterrent effect (Nagin, 2014). Despite this disagreement about the effectiveness of deterrence, the Canadian sentencing law holds deterrence theory as a key working principle, which is emphasized by the Supreme Court of Canada (*R v. Khawaja*, 2012, p. 130) and the Department of Justice with regard to defined terrorist offenses (Government of Canada, 2014). Therefore, prosecutors are expected to operate within this intellectual construct.

The deterrence theory cannot have success where there are no relevant criminal offenses. Prior to 9/11, Canada did not specify terrorism as a criminal offense (Amirault et al., 2017, p. 769). The legislation to deal with the moral panic of terrorism was rushed only 98 days after the 9/11 attacks (Anti-Terrorism Act, 2001). The lack of a legal response to terrorism may be because of a deliberate policy of cautiousness (Amirault et al., 2017, p. 772). In either case, Canada's criminal justice system was unprepared for a post-9/11 world.

Approximately 153 people have been convicted of terror-related offenses between 1963 and 2010, but this number does not include those who were acquitted and whose charges were stayed, withdrawn, or plea-bargained to non-terror related offenses (Amirault et al., 2017, p. 783). The average length of the sentences awarded to this population group was 88.72 months (Amirault et al., 2017, p. 785). Canada has a mandatory statutory release policy for non-murder related offenses set at two-thirds of the

duration of the sentence, so those convicted where a death was not involved automatically had their sentences reduced by that fraction. Out of this same population group, about 21.6% had attended some form of terrorist training, showing intent for planning and execution of their criminal activities, and the average age of these persons was 26 years (Amirault et al., 2017, p. 788). Thus, a short average sentence may not have the kind of deterrence effect that is desirable, as these offenders still had the prime of their life ahead of them after serving the sentence.

Further, post-9/11 there has been a certain ethno-religious motivation for Canadian citizens in that 60.9% of terrorists were motivated by Islamic extremism and 4.3% by Khalistani extremism (Amirault et al., 2017, p. 764). However, since the passing of the Anti-Terrorism Act (2001), the average duration of sentencing for defined terrorist offense has decreased (Amirault et al., 2017, p. 804), while the threat of terrorist activity in Canada is on the rise (Government of Canada, 2018). Thus, there is a clear disconnect between the type of sentences being given by the courts and the present terrorist threat level in Canada.

Moral Panic

Even though the awarding of capital punishment has been discontinued by the courts since the 1970s, it is still broadly supported today by the Canadian public (Abacus Data, 2011). Although terrorism and terrorist threats continue to be on the rise in Canada and around the world (Government of Canada, 2018), a terrorist attack would create a moral panic in the Canadian society (Davis, 1980). This moral panic occurred after the attacks on 9/11 when Canada rushed to reform its criminal laws on terrorism after only a

few months (Amirault et al., 2017). When a terrorist attack occurs in Canada, the public will demand a response, and this may mean that the politicians will have to discuss the use of capital punishment for defined terrorist activity.

There are a variety of sentencing objectives that a prosecutor must contemplate before seeking a sentence in court. These would vary depending on the charges. In the context of defined terrorist activity, the Supreme Court of Canada has directed that the primary sentencing objectives are to be denunciation and deterrence (*R v. Khawaja*, 2012, p. 130).

Before the 9/11 attacks, the criminal justice system in Canada was moving away from the crime control models of sentencing. The governments at both the levels had provided the court with a broad range of offenses that called for house arrest (conditional sentences), which emphasized on rehabilitation and restorative justice principles. The Canadian Government had argued that Canada had a high rate of incarceration, the costs were too high, and that the focus should be on rehabilitation (Parliament of Canada, 1994).

Post-911, there has been a return to the crime control models. Canada has sought to reduce and eliminate the applicability of conditional sentences and has imposed many punitive mandatory minimum sentences. There was, until recently, a 1-year mandatory jail sentence for sexual interference that was deemed to be unconstitutional by the Ontario Court of Appeal (*R v. B.J.T.*, 2019). One author described this movement as a renaissance for deterrence theory (Wilner, 2015, p. 439). This situation has forced the Supreme Court of Canada to develop a legal test to go beyond the punitive mandatory

minimum sentence that would constitute cruel and unusual punishment not just for a particular defendant but also for reasonable hypothetical cases.

Conceptual Framework of the Prosecutor

Notably, Canadian prosecutors are not at liberty to take overt positions that deterrence theory, as noted above, is problematic. They are bound by the principles of the law as applicable. Within the discretion that they have, however, they can decide on sentences that can be justified within their own analytical framework. In the context of this research, one prosecutor may decide that capital punishment may not deter in a general sense, whereas another may make the same decision but from the standpoint of a moral objection. The views and thought processes within this decision-making process are integral to understanding whether such a sentence would be useful. The approach adopted by this research study assumes that the use of capital punishment is legal in all constitutional contexts.

A prosecutor’s primary duty is not to seek to convict but to ensure that justice is done through a fair trial based on the merits of the case (Federation of Law Socities of Canada, 2017). There is a wide scope for discretion and confusion in this broad ethical framework as while the courts have invoked this duty for the prosecutors, they have tended to fail to meaningfully articulate what this duty means (Wooley, 2017, p. 797). Further, as the prosecutors have been given this theoretical framework, the courts have also viewed their decision-making with a high degree of deference, which further complicates this situation (Wooley, 2017, p. 810). This discretion is so strong that the courts have ruled that judicial review will come into play only when said discretion is

applied maliciously or in breach of the constitutional duties (Baker, 2017 CanLIIDocs 118, p. 441).

Yet, the ambiguous frameworks that have been provided by the courts and the codes of conduct make it unclear as to how prosecutor should proceed to seek justice (Wooley, 2017, p. 823). This study about how a prosecutor views their duty in the context of deliberating on the use of capital punishment for defined terrorist activity may seem more individualized in terms of how a prosecutor defines the role of seeking justice. The views of the prosecutors may, therefore, provide further data to contextualize the said ambiguous role that a prosecutor has to be in.

In the Canadian context, capital punishment was selectively and conservatively used in capital murder cases from 1867 to 1976. (Strange, 1995, p. 600). Capital punishment was sparingly used, and there was a gap between its alleged mandatory use in capital cases and its application as part of the prosecutor's discretion, political interference, and other societal shifts such as the abolition movement (Strange, 1995, p. 600). There is no current data about the views of prosecutors on the use of capital punishment for defined terrorist activity and how this sentence be reflected in a duty to seek justice before the court.

The uncertainty of a sentence may have an effect on the views of the prosecutor. A proposed sentence that is likely to be quickly rejected by the court, carries with it a high degree of scrutiny. The possibility of wrongful conviction and post-conviction uncertainty too can be the key factors considered by the prosecutor. Several studies have shown that the problems related to the efficacy and administration of capital punishment

causes misconceptions in the minds of the public about its use despite there being a broad consensus for the use of capital punishment in a general sense (Miske, 2019). So, if a prosecutor wishes to seek capital punishment for defined terrorist activity, the statistics about the effectiveness of its deterrence effect may help resolve the misconceptions, if any (Miske, 2019, p. 4). Alternatively, if a prosecutor's view is based on their beliefs (such as morality) that are not grounded in law and data, then such views may be impacted by those effects because of which these factors are addressed in a non-statistical manner (such as moral and religious positions) (Miske, 2019, p. 4). What this shows is that a prosecutor, while working within an organization and legal structure, may still have personal positions that effect how they view a particular sentence. Determining this thought process is integral to understanding the effectiveness of their demand for capital punishment for defined terrorist activity should the latter become legal in Canada again.

In the context of defined terrorist offense, there are inbuilt sentence escalators in the law. An example of this is the direction of the Supreme Court of Canada to the courts that they should emphasize deterrence and denunciation (*R v Khawaja*, 2012, p. 130). There are legislative provisions that have the same effect. The courts are required to deem defined terrorist offense as inherently aggravating (Criminal Code RSC, 1985; see s 718.2[a][v]). In dealing with multiple counts, the courts are also required to sentence terrorist offenses consecutively rather than concurrently (Criminal Code RSC, 1985; see s 83.26). Furthermore, the prosecutors have the discretion to seek a life sentence for the underlying non-terrorist offenses that are part of defined terrorist activity (Criminal Code RSC, 1985; see s 83.27). This large amount of discretion is pertinent to the research

questions examined by this study. The decision-making process for exercising this discretion can be comparable to how a prosecutor may deliberate on the use of capital punishment for defined terrorist offense. Despite these provisions for heightened sentences, none of the sentences for defined terrorist offense are subject to any mandatory minimum jail penalties. From the legislative point of view, this is a strange situation where there are many examples of mandatory minimum penalties for offenses such as a first-degree murder that carries a minimum sentence of a jail term of 25 years (Criminal Code RSC, 1985; see s 231, s 235). Thus, mixed messages are being sent to the prosecutors, the courts, and, more importantly, the public. Such mixed messages undermine the principles of deterrence.

The trends to date show that since 9/11 to 2019, only five of the accused in Canada have been formally acquitted of terrorism charges (Nesbitt et al., 2019, p. 563), but only six individuals received a life sentence (Nesbitt et al., 2019, p. 563). These sentences indicate that that they hardly had any mitigating effect on a guilty plea compared to being found guilty, post-trial, for a terrorist offense (Nesbitt et al., 2019, p. 568). Such an effect may force these types of matters into trials and appeals as there is no real incentive to resolve them. This effect may be different, however, where the prosecutor seeks a life sentence or, as in the case of this research study, notifies the defense of their intention to seek capital punishment should there be a chance of a conviction. Further, in this scenario, the prosecutor may use the prospect of capital punishment as a negotiating tool to resolve the cases without the need for a lengthy and costly trial.

The available data shows that since there are very few life sentences given, the average age of offender is 25 years, and the duration of a life sentence is 13 years, harsher sentences are no panacea for dealing with defined terrorist offense (Nesbitt et al., 2019, p. 572). However, this ignores the parameters of deterrence theory that suggests that timely and sufficiently harsh sentencing provides specific and general deterrence. When Nesbitt et al., (2019) aruged that deterrence is not working, they are implicitly admitting that the lack of harsher sentences for defined terrorist activity undermines the requirements of the deterrence theory.

One study has argued that the conclusions to be drawn from this analysis is that defined terrorist offense is normal in the sentencing theory but is albeit deemed to be more serious than an offense such as first-degree murder (Nesbitt et al., 2019, p. 590). There is no doubt that this conclusion is at least valid, if not sound, when the factors above are assessed. However, the same study argues that the sentences are too punitive because they undervalue the principle of proportionality and the individual circumstances of the particular offender (Nesbitt et al., 2019, p. 613). This results in a cognitive bias on the part of judges who over emphasize the general nature of terrorist crimes at the expense of the individual nature of the offender (Nesbitt et al., 2019, p. 613).

However, if one were to translate this concern to the prosecutors' side, it is found that no data has been collected on whether the said cognitive bias exists on the part of the prosecutors. Since the judges have to give reasons, the assessment of their decision-making ability is normally apparent. In Canada, a jury does not decide a sentence of an accused, unlike in the United States. This research study can provide some insight into

whether any bias that was observed in the case of the courts exists in the case of the prosecutors in relation to defined terrorist activity.

The data that was collected from the Saskatchewan province about the views of prosecutors regarding sentencing related to hate crimes showed that harsh sentences for hate crimes were rarely pursued due to the prosecutors' views that these crimes were hard to prosecute and, normally, required evidence that was outside the experience of police officers to collect (Vaughn, 2009, p. 87). First, a prosecutor's perception about the crime being rare (in this case a hate crime) affected their perception that a strong sentence was required (Vaughn, 2009, p. 94). Second, the controversy about the effectiveness of a sentence or, as we have seen earlier, some misconception about a particular sentence (Miske, 2019) created a heavy onus on the prosecutor, further creating doubt in their mind and, thus, reducing the likelihood of them seeking that sentence (Vaughn, 2009, p. 95). Adequate research is lacking in Canada about this phenomenon as it relates to the use of capital punishment for defined terrorist activity.

In Singapore, prosecutors have the discretion to elect how a certain drug case will be prosecuted that could trigger a capital punishment sentence (Amirthalingam, 2018, p. 47). However, the independence of the prosecutor in Singapore is so highly protected to avoid political interference that even their codes of conduct are not in the public domain (Amirthalingam, 2018, p. 49). Consequently, we do not have reliable data about the views of prosecutors in Singapore as they relate to capital punishment and their roles as prosecutors.

When Colorado had capital punishment, the prosecutors were required to seek the inputs of the victim's family in addition to obtaining the approval of the District Attorney (Brauchler & Orman, 2016, p. 648). Given that in Colorado a jury determines whether capital punishment is to be the sentence or not, the views of the prosecutor are more diminished in this context (Brauchler & Orman, 2016, p. 649). In Canada, the jury has no input on the sentence other than on parole eligibility. This particular study did not obtain the views of the prosecutors to determine whether they thought capital punishment to be an effective form of sentencing.

There is some data available about the views of prosecutors in as much as they impact how a crime is prosecuted on a macro level. The National District Attorney's Association presented the views of its members to the various levels of government on the issue of the use of marijuana. They indicated that the view of its members was that there should be a national approach regarding the use of marijuana to encourage the rule of law in this regard as the concern was that it increased impaired driving problems, and the use of marijuana by young persons was a gateway to illicit drug use (Spahos & Zahnd, 2017). In this context, the views of prosecutors were articulated in a prospective and practical manner that was consistent with their duties to seek justice in the courts of law.

On a micro level, the prosecutors in Illinois expressed their views on capital punishment by indicating that it was still an effective tool of sentencing, despite the state having set out a moratorium on its use (Devine, 2005, p. 647). The views of these prosecutors were supported by the fact that the wrongful conviction cases were primarily

those that were pre-DNA analysis cases, that there is a standard procedure of video recording of the defendant's statements, and that there is a strong post-conviction appellate procedure (Devine, 2005, p. 647). Here, the culture of seeking capital punishment from the courts previously existed as the prosecutors viewed it as a legitimate form of sentence to protect the innocent despite the moratorium on its use in Illinois since 2005 (Devine, 2005, p. 638).

These different views also reflect the dichotomy of how prosecutors are selected. In Canada, the prosecutors are hired from the applicable levels of government and are subject to organizational guidelines. In this scenario, therefore, the views of prosecutors may reflect a macro-organizational approach to sentencing. In the United States, the prosecutors are often elected, and in turn, they seek election on certain platforms that may not reflect the status quo in the said jurisdiction. There is some evidence to show that despite the latter, the use of capital punishment by prosecutors differs in terms of its hypothetical use and its actual implementation for a particular defendant (Judges, 1999, p. 196).

There are also more practical considerations in terms of how and why prosecutors make their decisions. Thus, for instance, there is the legal concept that the Crown is indivisible. This means that, legally, the Crown and its high offices are one and the same and an individual actor cannot be divided up into separate distinct entities (Allen, 2018, p. 300). This legal fiction does not translate into the idea that all prosecutors are created equal, especially those in decision-making positions. Additionally, there are variations in terms of experience, job security, tenure, and a host of other micro factors that may

impact how a prosecutor answers the research questions that were asked during this study. This discrepancy is described by authors as forming part of a "conviction psychology" (Levine & Wright, 2017).

Conviction psychology refers to the tendency among prosecutors to prioritize convictions over justice due to the inherent structure of the workplace (Levine & Wright, 2017, p. 649). Some of the workplace factors that have been examined in this context include office incentives that reward prosecutors who have a high degree of convictions and plea deals (Levine & Wright, 2017, p. 649). This incentive system encourages the measurement of prosecutors' success through crime control data outcomes. By necessity then those prosecutors that focus on decisions based on due process considerations and interests of public justice are disincentivized. Researchers have argued that that the longer a prosecutor works in the office, the more their negative worldview dominates their work, thus, increasing the risk that the prosecutor will wrongfully convict someone based on the belief that that defendants must be guilty because their future careers and professional self-images depend on the fact that only the guilty are prosecuted and convicted (Levine & Wright, 2017, p. 349).

Further research on this aspect has suggested that years of criminal court experience makes the once idealistic new prosecutor more cynical about defendants, more committed to obtaining convictions in every case, and more skeptical about the value of the defense bar to the justice system. Thus, the longer they prosecute, it increases their taste for convictions (Levine & Wright, 2017, p. 652). The tendency toward prioritizing convictions over justice is an important factor in determining how a

prosecutor may answer the research questions in this study. This research may reveal some aspects of conviction psychology as an individual prosecutor's career impacts the choices they make, or it may provide an insight into how prosecutors adopt preventative measures to avoid conviction psychology consequences.

In Canada, the term "Crown" refers to the Queen of England in her private and public capacity (Allen, 2018, p. 299). The Queen is the head of the state in Canada, and the Crown attorney, or public prosecutor, theoretically represents the Queen (who could do no wrong) and, thereby, the public in criminal prosecutions. The Crown has also been described as a corporation that acts like any institution that endures through generations of incumbents (Allen, 2018, p. 300). However, unlike a normal corporation, a prosecutor that operates in a Crown like corporation still makes decisions as an individual within a broad framework of discretion (Allen, 2018, p. 304). One cannot underestimate the metaphysical reality that the strict organizational structure of the Crown office does not in any way diminish a prosecutor's individual beliefs and actions. Discretion and independence are the hallmarks of a prosecutor's responsibility. These may also reflect the personal characteristics of the prosecutor. Some of these characteristics may be ethical, religious, or cultural. Understanding this phenomenon in the context of defined terrorist offenses and capital punishment can shed light on how prosecutors exercise their responsibilities within their discretionary parameters.

A part of this human and individual dynamic is a person's professional reputation. A prosecutor may feel that their reputation may be damaged if they pick a sentence that is disapproved of by the court. This can occur with the original sentencing judge or when a

sentence is appealed against. Some authors have described this as judicial shaming (Bazelon, 2016), but this may be a term that is too pejorative when compared to the actual effect. This may be an American phenomenon, though, wherein the prosecutor speaks in measured tones to defend a criminal conviction that, in the eyes of the appellate justices was fatally infected by state-sanctioned misconduct, and in the rapid-fire exchanges, the judges demand to know how the prosecutor can take a morally indefensible position during the hearing of the appeal (Bazelon, 2016, p. 3). A court's disagreement with a prosecutor can have the same effect as a direct condemnation from a judge based on how a prosecutor subjectively perceives their reputation. In Canada, generally, the appellate prosecutors are not the same prosecutors who conducted the trial. This is not a hard and fast rule, but it is generally the case to allow a fresh perspective during an appeal.

Seeking public justification for the sentence of capital punishment for defined terrorist activity may involve more communication with the public that a prosecutor is, usually, not accustomed too. Prosecutors do have a broad scope regarding speaking to the public about a case (Greshman, 2016, p. 1183), but generally, they tend to be more reserved to avoid allegations tainting a potential jury pool. There may be no prejudice when a prosecutor speaks publicly about the need for capital punishment for deterring terrorist activity, but this may translate into specific prejudice if the same prosecutor is dealing with an actual accused (Greshman, 2016, p. 1184). The conflict, in this case, in the prosecutor's mind is between the need to justify a position such as capital punishment

to the public and the need to ensure that their public statements do not taint a potential jury pool.

Summary

This chapter details how the deterrence theory was used to examine the manner in which prosecutors are expected to determine the sentences not only in a general sense but also in the specific sense of defined terrorist activity in Canada. This is a new perspective, and it is unique as far as Canada is concerned as until the 9/11 attack, this country did not have any legal provisions against specific terrorist offenses (Amirault et al., 2017) despite the earlier tragic terrorist attack by Khalistani terrorists on Air India Flight 182, domestic and international terrorist threats are increasing in Canada (Government of Canada, 2018). An attack resulting in massive loss of life and property is inevitable, and this may bring about another fast change in the law, namely, stipulation of capital punishment for defined terrorist activity. There is already broad support for capital punishment in Canada (Abacus Data, 2011). How prosecutors view this potential change would have a serious impact on the effectiveness of capital punishment as a deterrent for terrorism. This chapter presents the key concepts that were reviewed in this regard while researching this topic.

The literature review has showed that prosecutors are have significant discretion in their organization’s structure to deliberate on and make decisions regarding sentences. They also are required under the law to focus on deterrence and denunciation while deciding on the sentence they would seek for defined terrorist activity. This deliberation is not uniform and may be the effected by the prosecutors’ personal views. These views

may be influenced by years of practice, job security, one’s reputation before the courts, and personal views based on ethics and principles. This dynamic appears to be complex and intricate. Understanding the views of prosecutors on how they view capital punishment as deterrence for defined terrorist activity may provide a theory of punishment in this field.

Chapter 3 contains a discussion on the methodology adopted for this research, the researcher’s role, the rationale and justification for selecting the proposed participants, and the data collection and the data analysis plan.

Chapter 3: Research Method

The purpose of this qualitative study was to assess the views of Canadian prosecutors on the issue of capital punishment for defined terrorist offenses. In this chapter, I provide the research design and rationale for this research. Further, I discuss my role as a researcher and detail my relevant professional and educational background. I also provide the methodology and data collection outline for this study. Thereafter, in this chapter, I address issues related to the trustworthiness of this study. Finally, I examine the potential ethical issues regarding the participants of this research.

Research Design and Rationale

The design of this grounded study was devised such that it would facilitate an examination of the views of the Canadian prosecutors on the principle of deterrence and how capital punishment may function in relation to defined terrorist activity. The following research questions were formulated to advance this study:

1. How do the perceptions and views of Canadian prosecutors relate to the issue of deterrence?
2. How do the perceptions and views of Canadian prosecutors about the role of criminal sentencing influence their support for using capital punishment for those convicted of defined terrorist activity in Canada?

For this qualitative research, I adopted a grounded approach. The grounded theory is an inductive approach to analysis. Inductive reasoning means that the researcher starts from the individual and then proceeds to the general (Johansson, 2019). Inductive reasoning involves seeking to create a connection between phenomena (Hume, 1962).

However, this study did not seek to prove any form of causation or resemblance, but rather, it attempted to develop an understanding of or a theory about how Canadian prosecutors think and act in relation to the proposed research questions. This contextual approach will help make the findings transferable to other contexts. Theories can be developed through observation of practice, and it should be possible to repeat the method, which in turn relates to their trustworthiness. Deductive reasoning, on the other hand, starts from a general theory from which the researcher hypothesizes a situation and then tests the hypothesis the data collected (Johansson, 2019). The grounded theory does not start with any particular theory prior to the data collection stage of research (Burkholder et al., 2016). The grounded theory was the best suited research design as it assesses the data first (i.e., it is inductive). This helped to develop an understanding concerning the research questions.

Data collection was carried out with the help of a brief questionnaire and follow up interview. Both these methods are consistent with qualitative research design. A qualitative research design helped develop an understanding as to why the participants in this study provided their perceptions (Burkholder et al., 2016). A quantitative research design would not have been the best fit for this study as this design seeks to analyze data that can be better reduced to numbers. Though the grounded research design can also be quantitative in nature, the qualitative approach was best suited for this study as the data to be collected was nuanced.

Role of the Researcher

My role as a researcher for this study is backed by 19 years of experience as a criminal defense attorney. During my career, I have developed professional relationships with many Crown prosecutors. Some of them have since progressed to hold senior positions, and some have even been appointed as judges. In Canada, judges are not elected. This unique position that I was in facilitated the data collection process for this study, as I approached the participants in the study in their full knowledge of my institutional connections.

A researcher must be cognizant of their bias. While adopting a qualitative research approach, a researcher's bias may occur because of their implicit or explicit value assumptions about several things starting with the research itself (Mackieson et al., 2019, p. 966). While carrying out this research, I tried my best to not be influenced, in any way, by my personal opinion about capital punishment. I have neither lived with nor worked in Canada when it had capital punishment. This is true for the vast majority of legal professionals in Canada, as capital punishment was abolished in the early 1970s and it was last employed in 1977 (Government of Canada, 1985). However, I have lived through some terrorist attacks. The bombing of the Air India Flight 1982 by Khalistani terrorists, the World Trade Center attacks, the 9/11 attacks in the United States, the attacks in Mumbai in 2011 by Islamic terrorists, and the consistent intensification of attacks and casualties in society and around the world in general. Putting aside my role as a legal professional, as a Canadian citizen, I do believe that the penalties in Canada for being convicted for committing acts of terrorism (or for being directly or indirectly

associated with the commission or direct/indirect promotion of such acts) need to be examined for their effectiveness within the role of punishment and sentencing principles. That said, I engaged in reflexivity in an active and ongoing manner. Reflexivity refers a researcher's awareness of the influence they are having on what they are studying and how the research process is affecting them (Mackieson et al., 2019, p. 967). Throughout this research, I was aware of and explicitly discussed and documented the relevant meanings that I associate with and my pertinent social interactions with regard to their construction of knowledge, which helped enhance the rigor and trustworthiness of the study (Mackieson et al., 2019, p. 967).

In conducting this research, I was always aware of my potential bias and personal views on the issue of criminal sanctions against terrorists. The impact of any potential bias was mitigated by the fact that the participant pool from whom the data were obtained—namely, Canadian prosecutors were not a vulnerable group. The participants are highly educated, independent minded, and logical in how they approached their professions. They have dealt with the inherent stress of balancing various interests of the public as they have been in roles as a prosecutor in courts, in often-complex government settings, and as officers of the court. Their answers to the questions asked of them were anticipated to be clear and concise, leaving little or no room for any bias in the interpretation of the answers.

Personal Identity

I am an Indo-Canadian male born in Canada. My parents immigrated to Canada from India in the early 1970s. I am a lawyer and have been in this profession since 2002.

I practice in the areas of criminal defense and civil litigation as a sole practitioner in the Greater Toronto Area. My professional experience includes all aspects of criminal cases, including serious sexual assaults and drug, gun, murder and cases. I have conducted countless judge alone and jury trials. My work experience has cultivated in a certain specialized skills including those pertaining to interviewing witnesses, questioning and carrying out research, oral advocacy, data collection, and evidence assessment. I have numerous contacts among Canadian prosecutors. My professional network spans across various levels of government and geographic jurisdictions.

Personal Academic Background

I obtained my BA (Hons.) degree from the University of Toronto in 1993 with a specialization in philosophy. I obtained my LL.B. degree from Dalhousie Law School (now known as the Schulich School of Law) in 2000. I have been practicing criminal law since 2002 as a sole practitioner. In 2013, I secured the LL.M. degree from Osgoode Hall Law School. Thereafter, in 2016, I enrolled at Walden University for their PhD program at the College of Social and Behavioral Sciences with a major in criminal justice.

Methodology

Participant Selection

The participants selected for this study were Canadian prosecutors who practiced in the province of Ontario. Canada has two levels of government prosecutors. One is the federal level that is the Public Prosecution Service of Canada. The other is the provincial level that, in Ontario, is the Ministry of the Attorney General.

Recruitment was not an issue for me, as I have been practicing criminal defense work since 2002 and have developed extensive relations with prosecutors at both levels. I approached them to seek their co-operation in a matter that was discrete and respected their privacy and professional situation within a government organization. An introductory letter setting out the scope of the research was provided to each Canadian prosecutor. If I had sent a letter to all prosecutors in the proposed geographic area, it may have created barriers, as there are two associations representing the said prosecutors. These associations would not have allowed their members to participate in such broad manner. Furthermore, it was anticipated that saturation of the data did not require hundreds of participants.

It was debated whether the number of participants in a qualitative study needs to be addressed in advance. This debate included four distinct approaches to determining the sample size: rules of thumb, conceptual models, numerical guides derived from empirical studies, and statistical formulae (Blaikie, 2018). It was resolved that this was an iterative process, and it may be difficult to determine the number of participants a priori. I thus started with a participant pool of 10 Canadian prosecutors and revaluated the number after to determine whether the research had reached saturation after the interviewing the first set of participants. Saturation refers to whether the observations are sufficient to justify the claims and conclusions of the research (Lowe et al., 2018). To measure saturation, a table was developed along with a codebook.

The sample design adopted for this qualitative research was that of non-random, purposive sampling. The conditions determined for the sampling were that it should be

representative in nature have a small sampling error. Purposive sampling is normally used in qualitative research studies. It is a technique where the researcher selects participants with the expectation that they will provide unique and rich data that is of value for the proposed study (Lee-Jen Wu Suen et al., 2014). This means that the participants were not interchangeable, and the sample size was determined by data saturation and not statistical power analysis (Lee-Jen Wu Suen et al., 2014). No additional interviews are needed if data saturation is achieved with the proposed sample size. The Canadian prosecutors did represent participants who aligned with the research. Other types of participants (such as police officers, judges, and civilians) would not have aligned with this research.

Saturation in a qualitative research setting refers to the answer to the question whether the observations are sufficient to justify the claims and conclusions of the proposal and thereby guide the researcher to either complete or continue sampling or refine the sampling methodology to fill in those aspects of a theory that appear to have low saturation (Lowe et al., 2018). To measure saturation, a researcher's table was developed along with a codebook to help in this task. The purpose of doing so was to establish saturation by showing that the later observations would not contribute any new themes to the research (Lowe et al., 2018, p. 193).

Data Collection

The approval of the institutional review board (IRB) at Walden University was taken before conducting the interviews (approval no. 05-15-20-0721714). IRB's approval was required to start any data collection work for this research, including any pilot in this

regard. This preliminary step required submission an application entitled Description of Data Sources and Partner Sites.

A component of the participant selection process was obtaining two signed copies of the participants' informed consent. The consent form was developed in collaboration with my chair as part of the IRB process. Some proposed questions were also drafted to give the participants a better idea of what was sought to be known from them.

The study participants were Canadian prosecutors from the Greater Toronto Area. 10 participants were interviewed to make a determination regarding saturation. A recruitment letter was not required as I had significant contacts and professional relationships with Canadian prosecutors over the years. All the participants were adults. Nothing about this research was stressful for the participants as the questions were directly related to their everyday professional work. Yet, the needed counseling was offered to each participant at the time of securing their informed consent.

The consent form made is clear to the participants that their identities would be protected and their involvement in this research will be anonymous. Only I knew the names of the participants, and they were all assigned random numbers. They were at liberty to stop answering at any time and refuse to answer any questions. Doing so was solely their choice, and no reasons needed to be given. It was expected that the recorded in person interview would take about 30–60 minutes. Only I would have access to the data collected, which was encrypted on my computer to which only I have access. The data collected from the participants will be kept in accordance with the guidelines set by Walden University. At present, the stipulated minimum duration for this is 5 years.

The informed consent form contained some sample questions to allow the participants to reflect on the research topic. This helped in develop richer data. The in-person interviews helped in terms of allowing the opportunity to ask follow up questions that were not evident earlier and, thus, added to the richness of the data collected even as it also helped ascertain saturation of the research.

The interviews of the participants were semi-structured and were conducted either in-person or via electronic formats. The purpose of adopting the semi-structured format was to start with an open and broad picture of the research topic and obtain views of the participants that were not, in any way, influenced by the researcher. As the interview progressed, the participant could focus on their answers such that they provided better quality data (Moser & Korstjens, 2019, p. 13).

Confirmability

The research method adopted for this study aims to create confirmability for my research. Confirmability refers to maintaining an audit trail of the collected data in terms of the interpretations that were made of the said data. This audit trail has been presented in the research along with the original quotes and other data that informed the researcher's interpretations. Readers of the research can then confirm that, given the same data, they might still arrive at the same conclusions (Ellis, 2019). A part of the confirmability process comprised the identification and removal of biases that may present itself in the data collection process. The same questions were used for each participant. All interviews were audio recorded for this very reason. A journal was used to record the amount of time and location of the interviews. A description of the

participants’ body language and other pertinent information that may have a bearing on the process of data collection and analysis was also recorded.

Data Analysis

The transcribed interviews were coded by me. To record the oral interviews of the participants, a transcriptionist’s services were used to prepare the transcripts. I have used this process many times as a criminal defense attorney. There is an implied confidentiality clause when a defense attorney retains the services of a transcriptionist. However, to make this more explicit, I had drawn up a Confidentiality Agreement to tailor the interview process more specifically to an academic setting.

The interviews were uploaded onto a secured website for the transcription service. The service agreement included a clause that they will delete the said files in due course and confirm this with me. Prior to uploading the interviews, all the identifying markers were removed, and random numbers were used to identify the participants.

The transcripts were tallied by me with the audio interview. A good transcript is one which focuses on the participants’ words and can be reviewed for its accuracy vis-à-vis the audio file. This helped identify important non-verbal cues (such as the tone of voice, coughing, and pauses) (Moser & Korstjens, 2019, p. 15). The data is the actual audio-recorded interview; the transcript is only an aid. This holds true also in a criminal law context where the interview itself is evidence, and its transcript is only an aid (Her Majesty the Queen v Sethi, 2015, p 14).

The grounded theory explains how a basic social problem that emerged from the data is processed in a social setting. Thus, a constant comparison method which involved

comparing the elements that are on one data source (e.g., the written survey) with elements in another data source (e.g., the follow up face-to-face interview) (Moser & Korstjens, 2019, p. 16).

The analytical induction approach has been followed because the grounded theory does not use literature to generate themes, concepts, or relationships, but instead, a theory emerges directly from the participants. The analytical induction approach, that includes the following seven steps: Step 1: Identify the phenomenon you want to explain; Step 2: Formulate a rough definition of that phenomenon; Step 3: Formulate a working hypothesis to explain the phenomenon; Step 4: Study one case; Step 5: Ask "[D]o the facts of this case fit my initial hypothesis?"; Step 6: If the answer is "Yes," go on to study the next case. If the answer is "No," EITHER redefine the phenomenon to exclude the case OR reformulate the working hypothesis, and Step 7: Continue till Step 6 until you have a "universal solution," i.e., until there is a practical certainty that the emerging theory has accounted for all of the cases that have been considered (Fielding & Lee, 1998, p. 22).

A grounded theory-based study is considered complete when new interviews produce no change in the themes. As discussed earlier, this is also referred to as saturation. Since the grounded theory is about theory-building rather than theory-testing, it is less focused on finding the extent to which the results can be generalized. All the cases or sites in the study are used to modify the themes and the emerging theory, leaving no theme left out against which the theory can be tested (Rubin & Rubin, 20111011, p. 209).

Trustworthiness

The research method adopted for this study makes this research trustworthy. Trustworthiness encompasses issues related to internal validity, external validity, and dependability. These aspects have been discussed below.

Internal Validity

Credibility or internal validity refers to the level of confidence that a reader has about the findings presented by the researcher being accurate and truthful (Polit & Beck, 2017). In other words, credibility refers to whether the findings, as presented, are actually what the researcher found them to be (Polit & Beck, 2017). It also refers to the researcher being able to draw meaningful inferences from instruments that measure what they intend to measure (Ravich & Carl, 20150828, p. 188). Credibility assessment has two main approaches. The first approach is that of triangulation, and the second of member checking (Ellis, 2019, p. 110). I have outlined the data collection method that preserves the true and accurate data from the participants. A reflective journal was maintained to keep track of my thoughts. Some of the draft questions that were already prepared were fine-tuned after the preparation of the IRB application. This too was done in consultation with my Committee Chair. It was expected that the data collection method adopted for this study will ensure internal validity of this research.

External Validity

Transferability or external validity seeks to ensure that qualitative research is bound contextually (Ravich & Carl, 20150828, p. 188). This is so because transferability is not about taking the findings from one research and applying them to another, but

rather about applying to other contexts as the data itself is contextual. This allows the audiences of the research to transfer aspects of a study design and its findings by taking into consideration different contextual factors instead of attempting to replicate the same research design and its findings (Ravich & Carl, 20150828, p. 189). By placing the data set in the context that it is in, other researchers can use the model of this research in their contexts.

Manners of Validity

Validity refers to the ways by which a researcher can affirm that the findings are accurate vis-à-vis the participants' experiences. It also includes the quality and rigor of a study (Ravich & Carl, 20150828, p. 186). Descriptive validity of a study refers to the factual accuracy of the data that is collected from the participants (Ravich & Carl, 20150828, p. 190). The data collection method proposed for this study ensures that this research has met descriptive validity. It also ensures that the collected data is accurate and is a true reflection of the participants' views.

Interpretive validity of a study is the match between the meaning attributed to the participants' behaviors and the actual participants' perspectives. It covers the accuracy of the analysis carried out for a study vis-à-vis the participants' lived experiences (Ravich & Carl, 20150828, p. 190). The best way to achieve interpretive validity for this study was to ensure that those words and concepts that were used by the participants are used. For this reason, the participants' answers were securely recorded and transcribed to ensure interpretive validity.

Theoretical validity of a study is its ability to explain the phenomena being studied, including its main concepts and the relationships between them (Ravich & Carl, 20150828, p. 190). The data gathered from the participants directly speaks to this study's research questions. The participants were not randomly selected. Further, they had direct data concerning the research questions. Furthermore, the interviews conducted to elicit their views and opinions were semi-structured.

Evaluative validity of a study pertains to whether the researcher concerned is able to describe and understand the data without being evaluative or judgmental themselves (Ravich & Carl, 20150828, p. 191). This is not an issue for this study as I do not have any particular personal view on the research questions themselves. Even if I did, I have been able to set aside those views as a professional researcher and have not allowed them to interfere in the data collection and data analysis processes.

Dependability

Qualitative research studies are considered dependable when they are consistent and stable over time. This entails that a research endeavor should have a reasoned argument for how data will be collected, and that the data is consistent and duly aligned with the researcher's arguments (Ravich & Carl, 20150828, p. 189). This requirement has been met in its entirety as per the research plan outlined in this chapter and contemporary notes have been made during the process to ensure that the plan was followed.

Confirmability

Confirmability refers to acknowledging and exploring the ways in which a researcher's biases and prejudices may affect their interpretations of data and to resolving

those effects to the fullest extent possible through structured reflexivity processes (Ravich & Carl, 20150828, p. 189). There are various ways to achieve confirmability. Triangulation is one method.

Triangulation essentially seeks to employ multiple methods (e.g., observation and interviews); data sources (e.g., people and written records); data collectors, and theories to create a more comprehensive understanding of the issue, phenomenon, or people being researched. Its purpose is to ensure that the research outputs are comprehensive and strongly grounded. To ensure trustworthiness, I had set out procedures to ensure that the participants' data was recorded and analyzed accurately. Any potential bias was eliminated. The study participants were sophisticated legal professionals who were not likely to be influenced in any meaningful way.

Ethical Considerations

An application was prepared and submitted, as required, to the IRB at Walden University before to proceeding to the data collection stage. Each and every participant was informed about the necessary approval being received and was handed a copy of the said approval if they requested it. This helped the participants understand the approved conditions and boundaries of this research. It was made explicitly known to the participants on multiple occasions that they can withdraw at any time and refuse to answer any question, should they so choose, without having to provide any reason or justification.

The proposed participant group being a group of Canadian prosecutors is not a vulnerable group. They are legal professionals who deal with some of the most difficult

cases in the criminal law context. I know that as part of their employee benefits package they are offered counseling services at no charge to them, so I reminded each of the participants of this service and none of the participants requested such services.

Summary

The purpose of this study is to examine the views of Canadian prosecutors on the use of capital punishment for defined terrorist activity. The increasing risk of terrorism and the stable public support for capital punishment in a general sense provides a context wherein it becomes important to understand the views of Canadian prosecutors if the law changes to admit capital punishment for defined terrorist activity. Such an understanding would then be crucial to extrapolate the viability of the change in the law(s) concerned. Positive social change can, thereby, be initiated in the context of this qualitative and grounded study. Chapter 4 that follows, presents the findings/results of this study.

Chapter 4: Results

The purpose of this grounded qualitative study was to understand the perceptions and views of Canadian prosecutors and how these views may affect their decisions regarding seeking capital punishment for a defined terrorist offense, if this sentence were legally available to them. I conducted interviews of 10 participants who had a minimum of 10 years of experience as a Canadian prosecutor in the Greater Toronto Area to address the research questions on how the perceptions and views of Canadian prosecutors relate to the issue of deterrence and how the perceptions and views of Canadian prosecutors about the role of criminal sentencing influence their support for using capital punishment for those convicted of defined terrorist activity in Canada. This chapter details a review of the research setting, participant details, the data collection procedures, data analysis, and evidence of trustworthiness as well as the results of this research study. Some of the themes that arose from the interviews of the participants as they related to the research questions are also been examined.

Research Setting

I decided to recruit Canadian prosecutors who had at least 10 years of experience in the Greater Toronto Area using snowball sampling, which allowed me to interview those participants who I had no experience with. Due to the social distancing restrictions imposed by the Canadian government in the wake of the COVID-19 pandemic in Canada, all but two of the interviews were conducted either via Zoom (audio) or by telephone. The interviews were recorded and transcribed for this research study. The participants were informed that the interviews were being recorded and could ask for a copy or cancel

the interview at any time. The participants were also advised that if they cancelled the interview, they could ask me to delete the data and not use any of it. The participants who were interviewed did so with full knowledge and voluntarily and provided their consent for being interviewed in advance. The interviews were conducted without any pauses or interruptions. There were no factors or variables that affected or would affect the integrity of the data collected from the participants.

Demographics

Ten Canadians prosecutors who had at least 10 years of experience in the Greater Toronto Area were interviewed for this study. All the participants were adults and Canadian citizens. No other minimum criteria or boundaries were set regarding who could be interviewed for this study. To protect the participants' identity, a code was used for each participant, and it is this code that is referred throughout Chapters 4 and 5. Table 1 presents the demographic data of the participants. The gender and ethnicity-related information was provided by the participants themselves.

Table 1

Demographic Characteristics of Participants

Participant	Gender	Ethnicity	Years of Experience as a Prosecutor
1	Male	Black	20
2	Male	Caucasian	20
3	Male	Caucasian	30
4	Male	Caucasian	14
5	Male	Caucasian	16
6	Male	Indo-Canadian	11
7	Male	Mixed	11
8	Male	Black	12
9	Male	Indo-Canadian	14
10	Male	Indo-Canadian	13

Data Collection

The permission and approval for this study was obtained from IRB at Walden University. With the approval of the IRB, I sent out an adult consent form that also served as an invitation to participants. The form included a brief description of the study and my contact information. Many of those to whom the form was sent called me for certain clarifications as they are or were public servants and wanted to confirm the confidentiality and anonymity of their participation. All of them wanted to clarify that their experiences were personal in nature and that they were not speaking on behalf of the government or the attorney general. Once it was determined that they met the criteria and their questions were answered, each participant was asked if they wanted to proceed with their participation in the study. Those who said "yes" were asked to send an email with their affirmative consent on the adult consent form that was previously emailed to them. Thereafter, I proceeded to schedule either a Zoom (audio) or telephone meeting with them at their convenience. Two potential female participants wanted to participate but could not due to their workloads and failure to obtain timely permission from their respective management.

The participants were assured that the recordings of their interviews were confidential and anonymous and only I would have a copy. They could receive a copy of the said recording if they wanted. None of the participants asked for a copy of the recording. They were assured that they could cancel the interview at any time and that I would not use their answers and I would delete the recording if they so desired. None of the participants exercised this option. Every participant was interviewed separately and

on different days. All interviews were audio recorded with the consent of the participants concerned.

The interviews were not video recorded to avoid any possible confirmation bias in trying to decipher or interpret the body language and demeanor of the participants. The Ontario Court of Appeal has ruled that there are two major problems with demeanor evidence. First, it assumes that there is a normal range of reaction to highly stressful situations that is applicable to all individuals. Second, it assumes that outward appearance accurately reflects an individual's state of mind or emotional state (R. v. Trotta , 2004). The participants in my population group were highly educated, experienced, and sophisticated adults. I decided that it was more important to listen to their answers as opposed to trying to decode their body language.

None of the participants withdrew from this study. There were no unusual circumstances that occurred during the data collection process. Each participant's interview was carried out in accordance with the same general procedures. There were no material deviations from the interview topic, and no interviews were interrupted or adjourned to another day. The recording of each interview was secured on my password-protected laptop and not on any remote device or cloud system. Further, none of the recordings were saved with any identifiers that would be traced to the participants, and each file was given a number identifier only.

The interviews consisted of semistructured questions related to the role of the Crown office, the Crown Policy Manual on sentencing, employment status on seeking sentences, views on specific and general deterrence and the effectiveness of capital

punishment as a valid sentencing tool for defined terrorist activity. I asked all the participants the same core questions in the interviews. I allowed the participants to direct the interview at times to allow for context and depth to their answers. I tried to restrict myself to open-ended and qualitative questions. Through this process, I believe that I obtained in-depth information on the research topic.

Data Analysis

After obtaining and storing the data, I secured the services of a certified transcriber to prepare transcripts of the interviews. The certified transcriber services were subject to a confidentiality agreement. I reviewed the transcripts with the original audio recordings to ensure that the former was accurate. No material discrepancies were noted. The data were organized by sorting and coding it according to the themes that emerged from the data. This was done using NVivo software.

As part of the grounded approach, an analytical induction approach was employed in the following manner. First, I identified the phenomenon, which was part of the research questions. Then I formulated a rough definition of the phenomenon, asking participants to define from their experience the core concepts that form part of the phenomenon, including the purpose of sentencing and specific and general deterrence. Finally, I employed reduction and elimination. The answers and statements that did not meet the requirements of the study were eliminated. Care was exercised to not overly exclude those answers wherein some nuance or subtle reference existed that could be excluded just because, on the whole, these answers do not fit neatly into the codes and themes.

Evidence of Trustworthiness

A number of techniques were employed in this study to ensure that the evidence collected met the requirement of trustworthiness.

Internal Validity

Internal validity or credibility refers to whether the findings, as presented, are the same as the researcher found them (Polit & Beck, 2017). The sampling strategies that have been outlined contribute to an authentic rendering of the phenomenon. Canada's prosecutors (also referred to as Crown prosecutors) are the data set group. The minimum experience level of 10 years that was set for them not only meant that they had enough experience but also that they met the requirements to apply to be a judge in Canada. The Greater Toronto Area was chosen as the location as it represents the busiest and the most ethnically diverse region in Canada. As part of the blinding process, the participants were not made aware of any other details or data about other participants. The participants were selected either randomly or through the snowball sampling technique.

There was no attrition during this study. None of the participants withdrew their participation after giving their consent. Furthermore, as the participants were interviewed individually on separate days, there was no observable third-party effect that would change the outcome of the data collected. There was no observable researcher bias that would result from any imbalance of power or education. There was no maturation effect either as the data collection was conducted over only a few months, so the passage of time did not have an effect on the data collected.

The grounded approach adopted for this aligned with the research questions of this study as they were inductive in nature and were determined after the data were collected in an a posteriori manner. The data set that was selected included a variety of ethnic backgrounds and wide ranges of experience. The average for the years of experience for this participant group was 16.3 years. The median for the years of experience was 14.5 years, and the range of experience was 19 years.

External Validity

The results of this study are transferable as criminal law in Canada is the same nationally as opposed to the state-level differences in the United States. Furthermore, the Greater Toronto Area is the busiest criminal jurisdiction in Canada, and it also has the most diverse population set. The inclusion and exclusion criteria used to collect data for this study were well defined and set to ensure the generation of highly relevant and the richest form of data.

No particular feature about the data collection undertaken for this study limited or would limit the generalization of the study's findings. As the participants were selected randomly or via snowball sampling, no selection bias could set in that would affect the external validity of this study. The situational factors played no role in the data collection process such that they could or would affect the generalization of the findings.

Results

After analyzing the interviews (both audio and transcripts), certain themes began to emerge from the data. These emerging themes were grouped against the research questions formulated for this study as shown in Table 2.

Table 2

Themes

Research question	Themes
RQ1: How do the perceptions and views of Canadian prosecutors relate to the issue of deterrence?	• Specific deterrence and denunciation are the primary sentencing concerns. • General deterrence is unproven and not a serious sentencing consideration.
RQ2: How do the perceptions and views of Canadian prosecutors about the role of criminal sentencing influence their support for using capital punishment for those convicted of defined terrorist activity in Canada?	• Personal views, public opinion, and political influence would not impact the decision to seek capital punishment. • There is a very high legal threshold to seek capital punishment that is closer to certainty than to beyond reasonable doubt

This study has two research questions that were crafted in a logical order. The first research question is theoretical in nature and relates to the sentencing principles that Canadian prosecutors would have to deal with in the course of this public function for a vast array of sentences. The second question, in as much as it mentions the specific type of offense and sentence, logically flows from the first question. Consequently, proceeding in this order required the participant to be logically consistent in their answers. Though an outline was developed for the interview, the participants were allowed to expand on their points and talk about other relevant areas and considerations. The discussion was brought back to the questions when it seemed pertinent do so but by always allowing the participant to complete their answers.

The first question of the interview was “How many years have you been a Canadian prosecutor?” This question was considered necessary to establish the inclusion

and exclusion criteria of the participant pool. The minimum experience required was 10 years. None of the participants had any experience with a case involving the sentence of capital punishment as this form of sentence was prohibited before any of them began their career as a Canadian prosecutor.

The next question asked was "Has your level of experience had any impact on the type of sentence they would seek from the court?" In the answers, there was a general consensus that a Canadian prosecutor who has less experience and is not a permanent employee may feel the need to seek a higher range for the sentences to establish a reputation with the management and to try and secure a permanent position. Participants who were no longer Canadian prosecutors (retired) such as Participants 1, 2, and 3 were more open about this admission.

Participant 4 reluctantly admitted,

> I hate to say, you know, yes, I think in the earlier parts of your career depending on what the office is and you're receiving … you're just giving away the farm because you can't be bothered to do to the work. And if you're on contract and, you know, management finds out that, you know, these Crowns are just not doing their homework with respect to the plea … That could be a concern.

Participant 6 was quick to admit when he said,

> So, a lot of new Crown Prosecutors, they have a, sort of, pressure of renewing their contract, and as a result, they want to make it seem like they're much more committed to the job, and because of that, they often are found to seek harder punishments and harder sentences.

Participant 7 clearly indicated such a factor when he said,

> It was significant because I would generally determine what I felt was the appropriate sentence, and I did have experiences of senior Crowns critiquing my sentencing positions.
>
> Full-time Crowns, supervisory positions when they've learned of positions that I had taken on cases that they had some interaction with, they made a point of seeking me out and criticizing me for decisions that I had made.

Participants 4, 5, and 8 did not feel their employment status had any effect on what type of sentences they sought from the court. Participant 8 was adamant in stating,

> It would have no impact at all. As a Crown, whether a part-time, full-time, contract, it should have no impact on the way I execute my duties and my dispositions in terms of how I handle my cases.

The next question was "Has the particular Crown Office and its ethos had an effect on the type of sentences you sought?" The participants were generally in agreement that the Crown offices needed to be responsive to the community they served, and this was the proper course of action. The communities may be suffering more from particular crimes (such as drugs, gun violence, and impaired driving) and that particular Crown office had a duty to try and seek sentences for those offenses in the higher range. This is reflected in the recent case in the Supreme Court of Canada when it clearly stated that established sentencing ranges are not a hard and fast rule and that deviation from these ranges are permitted for particular offenses and offenders and in view of the community that is affected (*R v. Friesen*, 2019).

Participant 7 admitted that the ethos of the Crown office he worked in impacted the type of sentences he was required to seek. He stated,

> The culture of the office I worked at was highly prosecutorial. They sought convictions or findings of guilt pretty well on all cases they prosecuted, and their sentencing positions in my view were harsh. They were in the upper end of what Crown attorneys were generally seeking for dispositions.

Participant 8 said there was an office ethos, but it focused on delays and backlog of cases. He mentioned,

> depending on the volume of these particular matters in your jurisdiction and in my jurisdiction, we have to take that into consideration, and moving things along expeditiously is always a concern.

Participant 9 also admitted that a prosecutor's employment status had an impact. He also stated,

> I think the length of time that you're there in terms of your status makes inherently some sort of difference. To what extent that difference ends up affecting your ability as a Crown to do the job? It's hard to sort of pinpoint and distinguish. But I can see that somebody who has a six-month contract or a year's contract versus somebody who wants to be there for a career, long-term, will have a different attitude in terms of how they approach work and how they manage their caseloads.

The Crown Policy Manual governs the use of discretion in prosecutions at both provincial and federal levels. Participant 1 indicated that the Crown Policy Manual when

he said, [It has] created people who are: (a), incapable of making decisions, (b) no longer want to make decisions because they're terrified". He also indicated that due to his experience and reputation, the Crown office politics had no impact on his work as he said, "I just ignored them. After a while, they grew to understand that I believe in the enforcement of the law I [just] give you a tough prosecution, I do tough things". Participant 3 was more direct when he said,

> The Crown Policy Manual was written by bureaucrats at 720 Bay, and it was really a cover document that was designed to, you know, to protect them in the event that things went wrong. It didn't … have a lot of relevance to the reality of what went on in the courtrooms."

This view was corroborated by Participant 4 who said,

> The Crown Policy Manual doesn't really talk about sentencing ranges; it just sets very broad parameters. So, I would say that it's … minimal outside of the issue of mandatory minimums.

I proceeded to ask the participants about how they viewed the role of punishment. Participant 2 was very clear in that the primary role of punishment he said, "in my view was to protect the public." For him, punishment was a clear crime control approach to sentencing. Others such as Participants 4 and 6 spoke in broader terms about the role of punishment. Specifically, Participant 4 stated,

> [It was] to bring home the offender, the wrongness of his or her conduct that these consequences for repeated violations of the law so that the punishment should get more severe as the crime has increased and also to make the victim feel that it was

> worth their while to participate in the process too. Like if, you know, they…if the victims don't feel that there's any meaningful consequence, you know, why they're going to call the police next time? Why are they going to participate and be a witness and sit in the body of the court or … not the body of the court but the hallway of the court waiting to be called upon and being away from work?

Participant 5 was of the view that it was the court that determined the sentence. A Crown should ask for a fair sentence based on the case law. He further indicated that rehabilitation ought to always play a role in sentencing, He said,

> The idea is basically that at some point there's going to be reintegration into the society and … the sentence is one that is … so punishing or so crippling that, you know, makes your reintegration into the society impossible.

Participant 7 focused on recidivism and the protection of the public as the role of punishment. He mentioned,

> For the recidivist offender who has a high likelihood of harming people in the community, punishment should be custodial disposition, general deterrence and protection of the public's primary considerations. That, however, is limited to the worst offense and worst offender.

There was clearly a difference in the view of how specified punishment played a role in sentencing with those with significantly more years of years of experience taking a crime control approach and those lower down the experience ladder taking a due process and more inclusive approach to the role of sentencing.

Defining specific and general deterrence was the next area of questioning, and the participants' respective priorities were sought to be known. Generally, the participants defined specific deterrence as formulating a sentence that would help reduce recidivism. General deterrence was generally defined as a sentence that would deter a rational actor from committing a similar crime. This view was consistent with general deterrence theory. Ironically, though, there was a broad consensus among the participants that general deterrence was a legal fiction that was hard to quantify or measure. The participants were clear that they prioritized specific deterrence considerations over general deterrence. This practical consideration runs contrary to what the Supreme Court of Canada has mandated in the sentencing of terrorist offenses. The Supreme Court of Canada has said that general deterrence must be a factor in sentencing (*R v Khawaja*, 2012).

Continuing along these lines, the participants were clear that if capital punishment were to be an effective form of punishment for defined terrorist offense, it would be so for specific deterrence and denunciation purposes. Specific deterrence is met when the sentence is meted out by the state. There was, generally, no support for the traditional rationale for capital punishment as a tool for general deterrence. The inadequate understanding about general deterrence is consistent with the answers that they provided for the first research question. The participants indicated that the thought calculus of a terrorist is not consistent with the rational actor model that is at the core of the general deterrence theory. The participants did not believe that a terrorist would think about the type of sentence they would be facing prior to engaging in defined terrorist activity.

The next area of questioning was whether one's personal view on capital punishment would affect their ability to seek such a sentence for defined terrorist activity. Most of the participants were very clear that as a Minister of Justice, they had a duty to set aside any personal beliefs in assessing any form of punishment. However, there were outliers such as Participant 4 who indicated that he was personally against capital punishment and then sought to raise the legal and factual bar to seek such a sentence to an almost impossible standard so that this participant would never ask the court to impose it.

Themes

Based on the research questions, the themes that emerged from the collected data were the following: specific deterrence and denunciation are the primary sentencing concerns, general deterrence is unproven and not a serious consideration and, therefore, of very low priority, personal views, public opinion, and political influence would not impact the decision to seek capital punishment, and there is very high legal threshold to seek capital punishment that is closer to certainty than to beyond reasonable doubt.

Theme 1: Specific deterrence and Denunciation are the Primary Sentencing Concerns

Participant 1 said, "Deterrence to me is a sentence that addresses the wrongdoing by the person". Participant 1, who has extensive experience, believes in rehabilitation to be a part of specific deterrence. He added, "No matter what offense it is, everybody has an opportunity to change themselves a bit, I believe that. The problem with our punishment is we don't provide the resources to do that."

For Participant 2 specific deterrence is meant to "deter the individual himself. But in a practical sense, the individual as I would see it is only really deterred by being kept in… by being incarcerated, by being kept off the street." This rationale is especially applicable serious violent crimes. He could not "envisage specific deterrence being of any real effect other than with jail sentences." The punitive nature of the sentence is central to having the effect of specific deterrence for serious violent crimes.

Participant 4 took a more nuanced view of specific deterrence and focused on public denunciation and the risk of recidivism as parts of specific deterrence. He mentioned, "[i]f an otherwise good person who's been convicted of killing someone while drunk, and they may never do that again. So, specific deterrence really isn't the key variable there. It's general deterrence and denunciation. But we have more flexibility, I think Crowns feel and I feel, in fashioning a creative sentence or lower sentence with respect to specific deterrence." Participant 5 took a similar view of including recidivism in the role of specific deterrence when he said, t "If you continue to do the thing that that you're not allowed to do, you should expect to get worst treatment every time you do it."

As part of recidivism, Participant 7 emphasized that specific deterrence played a role only if the offender had a history. He stated, "It's a little easier to emphasize general deterrence where the individual has no criminal antecedents. So, specific deterrence becomes more of a factor if the history of the individual shows that they have engaged in criminal behavior either similar to that which they have engaged in or simply criminal behavior that's been found to be part of their personal history. So, if the person has a

history, then I think specific deterrence becomes more of a factor. If there is no history, then I think the emphasis is left with general deterrence."

This approach is consistent with the long-established legal principle that sentencing should be a very human process. Most attempts to describe the proper judicial approach to sentencing are only as close to the actual process as a paint-by-numbers landscape is to the real thing. I begin by recognizing, as did a trial judge, that the determination of a fit sentence is the product of the combined effects of the circumstances of the specific offense with the unique attributes of the specific offender (*R v. Hamilton*, 2004, para. 85).

Theme 2: General Deterrence is Unproven and not a Serious Sentencing Consideration

Participant 1 had concerns about general deterrence as it led to punitive consequences in that "general deterrence is … has led us to this point, mandatory sentencing. And you know and I know, mandatory sentencing is not the way to go (and that) I think general deterrence is not effective." Participant 1 was not convinced about general deterrence and the underlying assumptions about the rational actor. He clarified his viewpoint saying, "It isn't happening because it's an instantaneous, spontaneous, whatever, and even if they plan and deliberate something, often, the planner and deliberator is not thinking of general deterrence, what they're thinking is, can I get away with this?". This rational calculation involves the ability to get away with the crime, not about a future potential punishment.

Participant 2 was also doubtful about the effectiveness of the concept of general deterrence. He said, “General deterrence is a factor being considered, but I really don’t personally believe that it has a lot of meaning. I mean I’m…of the view that a great deal of the time the person is going to commit an offense and certainly even a serious offense then it doesn’t really matter what the going tariff is for offenses of that type that the person have … because of that person’s mental state may well do it anyway.” The main aim of capital punishment for defined terrorist activity is not general deterrence as “any affect it would have would be negligible” but rather specific deterrence and denunciation of the act itself such that the “person is unable to commit the same offense or similar offense” as is part of the role of punishment, protecting the public.

Participant 3 was of the opinion that general deterrence had some value, albeit limited. He indicated that “You know, people committing really serious criminal offenses, do they really consider the consequences. I think they do certainly to an extent. They may not be as intelligent as learners, someone like you, but they’re aware that if they commit murder, they’re going to go away for a very, very long time. So general deterrence is … certainly a factor.” This explains the position of Participant 3 on serious crimes, which is that he would not focus on specific deterrence but rather seek a harsh sentence. He explained “If somebody had committed a [serious] crime or serious violence, I would come in as hard as I could on sentencing.” Participant 3 did not actually make a distinction between specific and general deterrence. He stated that “academics … break it down as specific as general deterrence. I didn’t see that qualitative analysis as being particularly helpful.” He further alluded to the lack of information in

most cases to make this type of academic analysis applicable to a particular case when he said "Because every… case is different, God damn it. You know, you can talk about violence, but you know, how did it happen, what made it happen, what was the degree of violence that was involved?" Specifically, referring to capital punishment and defined terrorist activity, Participant 3 thought that the effect of general deterrence was minimal. He added, "[In] terms of general deterrence, I mean people do know that a death penalty exists, okay? And, I think, it has some effect, maybe not as much effect as we would like it to have, but it certainly ha[s] some effect on people who are contemplating serious crimes of violence."

Participant 4 thought that general deterrence and denunciation overlapped. He opined, "Denunciation, I think is beyond that where the court really wants to, you know, bring home to society that these types of offenses will be met with harsh penalties." Participant 4 was referring to serious crimes of violence.

Participant 5 was very clear that general deterrence could have an impact on specific offenses provided there was enough media coverage of the sentence. This is so because "The media has played a role in that. I think, you know, people generally I think know that you're going to be involving in a gun crime and you're going to be found guilty, you're going to get a relatively long sentence. I think, you know, some of that is lost when that sentence isn't really communicated, you know, into the community in a way." However, he was also clear why it may not work when he said, "[B]roadly speaking, it doesn't work because it's just not communicated out in the community." Specifically, with regard to defined terrorist activity, capital punishment could have an

impact hypothetically. He added, “I think in some cases, it would … speak to that person and their decision as to whether or not to participate in something that might attract a capital sentence. And, in other instances, I think it might be a badge of honor that they’re participating in something that attracts capital sentence. So it’s a question answered because it’s going to be again individually based.”

Participant 8 did not believe that capital punishment had any impact on general deterrence. He stated, “I personally don’t think that capital punishment is a deterrent. I think individuals that are going to do these types of activities will do them regardless.”

Participant 6 was an outlier in believing that general deterrence could have an effect on defined terrorist cases. This was consistent with his answers that general deterrence, in general, did work in certain cases. Participant 7 answered in a similar vein about a possible general deterrence effect when he stated “[A]n individual who may be considering a particular course of action that’s illegal may reconsider that course of action in the event they become aware of punishments that have been imposed by courts for similar like-minded individuals.” This answer was more hypothetical in nature.

Participant 9 was an outlier who viewed general deterrence as an effective principle for capital punishment. He stated, “If capital punishment was available as, (1) a general deterrence, and (2) as a very specific deterrence, I would be in favor of seeking those if they’re available.” Furthermore, he took the position that general deterrence was more important than specific deterrence. “[S]o it’s more general than it is to that individual, but in large part to be an example to anybody, any person thinking or wanting to contribute or to be a part of any sort of group that carries out such acts.”

Participant 10 did not think capital punishment would serve general deterrence principles. He stated, “Some people have no problem blowing themselves up, you know, whereas others, you know, are the masterminds behind it. So I don’t think that would help deter.”

Theme 3: Personal views, Public Opinion, and Political Influence Would Not Impact the Decision to Seek Capital Punishment

Participant 1 had strong personal feelings against the use of capital punishment for defined terrorist activity. However, he was very clear when he said, “My view is your personal religion, attitude, sexual orientation had nothing to do with that job. Your job is to execute the prosecution, to prove your case, to be fair about it, to avoid conflicts of interest, and the last thing you do is let yourself personally get involved. And there’s another reason for not getting personally involved. You will burn out faster than … and then you could think you’d be done.”

When Participant 2 started as a prosecutor, he was supportive of capital punishment “basically proceeding on the view that there is no repetition of offense.” However, his view evolved over the years. He clarified: “I gradually evolved as a prosecutor to the view that a capital punishment was barbaric, one might put it that way, approach that … should not be condoned in a just and democratic society.” He added that the evolution of his personal views would not impact his professional responsibility as a Minister of Justice. He was clear when he said “Your duty as a prosecutor would always outweigh your personal feelings. … I would be seeking a sentence, for example, would be a capital punishment or not, it would be according to my duty as a prosecutor.

[If there was capital punishment and if that was considered the law, then if I was unwilling to seek it, then it would strike me that I should not be a prosecutor if I was unwilling to seek it because of personal reasons."

Participant 6 had similar views. He stated, "So a lot of times, it's … it's not about, like your personal views, it's more about doing the job. And if capital punishment is on the table, it's allowed as an option and the perpetrator, the accused person meets the threshold to meet the sentence of death sentence, then I would pursue it. If he doesn't, then I wouldn't."

Participants 8 and 9 were just as adamant about their personal opinions not effecting their obligations. Participant 9 said, "None whatsoever. If it's legal and the circumstances are overwhelmingly clear that the individual is deserving of capital punishment, then I would have no issues with it."

On the other hand, Participant 4 would allow his personal views on capital punishment impact his job execution. He mentioned "I'll probably say that was against my personal beliefs and [hence] the conscientious objection. So, I wouldn't seek death penalty that was available." Thus, Participant 4 was an outlier considering that the other participants would not let personal views on the issue impact their role as a prosecutor.

Participant 5 admitted, "I think your personal views influence the way in which you see the world," but this applies to the use of the Crown's discretion in seeking any type of sentence from the court.

Participant 10 had strong views against capital punishment based on the issue of wrongful convictions. He would never seek a death sentence from the court. He said,

“History has shown us time and time again what are terrorist case or other cases that you know, with capital punishment there is always a chance or a possibility of wrongful convictions.”

Theme 4: Very High Legal Threshold to Seek Capital Punishment, Closer to Certainty Than to Beyond Reasonable Doubt

Participant 1 seemed to move the threshold to a higher level when he said, “There is intense planning and deliberation, there’s intense acquisition of instruments of death in order to commit the crime, the age of course, the circumstance of that person, the psychology of it because now I’ve become very aware in many of these crimes, there is something, a dynamic that happens in these organizations, especially as it affects young people. I would consider of taking the life for sure.” This view seems to exclude the parties to the offense and instead focuses on the principal actors. Similarly, Participant 2 raised the bar that he would ask for capital punishment where the offense “is more grave and more serious than … the average ordinary homicide which is bad enough.”

Participant 3 conveyed his serious concerns about how the Charter of Rights and Freedoms hampered proper sentencing, and this would have an impact. He opined, “It made … my role more difficult, and you know, it seemed like it weaken[ed] the whole justice system. It seemed like and my … perception was that the ... whole justice system had been watered down.”

Furthermore, Participant 3 despite talking about the harshness of sentences that he would seek clarified that he would reserve capital punishment for the rarest of the rare cases. He said, “The death penalty is something that should be sought by exception, only

in the very worst cases. But having said that, I can imagine that there are cases or could be cases of terrorist activity where it would be appropriate. And if that were so, I would ask for it. I wouldn't hesitate." The death and destruction caused in the wake of a terrorist attack were the main factors for Participant 3, who clarified "If, you know, a terrorist activity resulted in a multiple deaths, yeah, I'd seek a death penalty".

Participant 5 would not rely on a circumstantial conviction for a defined terrorist case to support a sentence for capital punishment. Despite the law being clear in Canada that there is no legal difference between circumstantial and direct evidence (*R v Acuri*, 2001), he opined, "[Y]ou should probably exercise your discretion to not seek such sentence versus you know, where it's legally available [where] the case is made out by evidence that is … sort of like a string of circumstantial pieces of evidence that speak to that finding."

Because of the finality of the sentence and the issues of wrongful convictions, Participant 5 moved the legal threshold closer a level of certainty than to beyond reasonable doubt by stating "If I'm the guy who's making a call and saying like, I want to end this person's life. Like by the exercise of a sentencing function that's available through the state, I would like to think that I'm pretty darn sure that what I'm asking for is the right thing to do based on the facts of the case, right?" This kind of thinking, according to Participant 5, was a part of the deliberative process regarding the use of discretion as a prosecutor.

Participant 8 stated “The evidence has to be clear and convincing. It can’t be just based on probabilities; it has to be convincing.” This is another example of a prosecutor not accepting circumstantial evidence as the basis for seeking capital punishment.

In order to seek capital punishment, Participant 6 would look to the rarity of the crime and its harm impact on the society. He answered, “It depends on how rare the crime is. Obviously, if it’s something just like, like a random drive-by shooting, I probably wouldn’t want to seek capital punishment for that. Whereas if it’s like, for example, the Boston bombing, I think that’s a very exceptional case, and the effects were very bad …So, I think a situation like that, it’s perfect for a capital punishment where it’s a rare crime like that, and it’s had a big effect on society.”

Participant 7 would look at the loss of life as the basis to seek capital punishment for defined criminal activity. He stated, “If there is loss of life, I would think that would be a major factor. If there was a loss of life involving those in public service, police officers, paramedics, fire people, you know, I think of 9/11 and the number of people that were adversely affected by the terrorist group that facilitated the act was extremely significant. So certainly, I think the effect on the community…loss of life would be major considerations. If there was no loss of life, it may be hard to articulate grounds for capital punishment.” This approach seems to be aligned with the principles of denunciation and proportionality.

Summary

The data collected and presented in this chapter has focused on how the Canadian prosecutors with at least ten years of experience in the Greater Toronto Area viewed issues related to the role of punishment, specific and general deterrence, and the use of capital punishment for defined terrorist activity. The interviews were either conducted in person, over the phone, or via Zoom (audio). I interviewed ten male participants in total before achieving saturation. The average of the years of experience of this participant group was 16.3 years. The median of the years of experience was 14.5 years, and the range of experience was 19 years.

The participants provided a clear account of their views on the questions that were asked of them. Their answers were grounded in their personal and professional experiences. Their points regarding the areas of capital punishment and defined terrorist activity were hypothetical in nature as none of them had even prosecuted such a case. Their personal experiences seemed to have an impact on the answers provided, especially given the range of the questions. A strong theme emerging from all the interviews together was that the general deterrence principle of sentencing was either false or simply too hard to quantify to make it a meaningful factor in sentencing.

In Chapter 5, that follows, I will outline and analyze an overview of the themes and the literature that relates to them. Thereafter I will lay out the implications of this study for positive social change before concluding the chapter with recommendations for further research on this topic.

Chapter 5: Discussion, Conclusions, and Recommendations

For this study, I used the deterrence theory to understand how Canadian prosecutors viewed deterrence in general and the issue of capital punishment for defined terrorist activity in particular should this death sentence become legal again in Canada. Ten Canadian prosecutors, each with a minimum of 10 years' experience, from the Greater Toronto Area participated in semistructured interviews because Canadian prosecutors have significant discretion and political independence, seeking sentences within the parameters of the law and their respective policy directions and are, by law, considered Ministers of Justice (*R v. Boucher*, 1955, p. 25). Therefore, understanding the views of prosecutors in terms of how they come to seek sentences from the court is important. I asked the participants a number of questions on several pertinent aspects: the role of the Crown, the Crown Policy Manual, inter-office politics, seniority, employment status, their views on the role of punishment, their views on general deterrence, their views on specific deterrence, the interplay between the two forms of deterrence, their views on capital punishment and its impact on duties, whether capital punishment serves sentencing objectives in relation to defined terrorist activity, and the criteria needed to seek capital punishment from the court.

In the post-9/11 world, Canada has struggled with developing a sentencing regime that effectively punishes and deters defined terrorist activity. The increase in terrorist acts in Canada such as the attack on the Canadian Parliament, the Danforth shootings, the rise of Khalistani and Islamic terrorism, and the Toronto Van Attack in 2018 are salient examples of the failure in deterring terrorist activities. Broadly speaking, the Canadian

public still supports capital punishment (Abacus Data, 2011). Should Canada attempt to reintroduce capital punishment for defined terrorist activity, the views of prosecutors on this form of punishment are crucial to understanding its effectiveness.

Interpretation of the Findings

As part of this grounded approach, I employed an analytical induction approach to analyze the data collected through the interviews. A certified transcript service was used to transcribe the data. Two interviews were conducted in-person and face-to-face. Due to the restrictions imposed in the wake of the COVID-19 pandemic, the remaining eight interviews had to be conducted electronically. NVivo software was used to analyze the data and interview transcripts. Four distinct themes emerged from the data: (a) specific deterrence and denunciation are the primary sentencing concerns; (b) general deterrence is unproven and the focus is on denunciation; (c) personal views, political opinion, and political influence would not impact the decision to seek capital punishment for defined terrorist activity; and (d) there is a very high threshold to seek capital punishment, which is closer to absolute certainty than to beyond reasonable doubt. These four themes addressed the research questions for this study:

1. How do the perceptions and views of Canadian prosecutors relate to the issue of deterrence?
2. How do the perceptions and views of the Canadian prosecutors about the role of criminal sentencing influence their support for using capital punishment for those convicted of defined terrorist activity in Canada?

Findings Related to the Conceptual Framework

The deterrence theory is grounded in the idea that people will act based on a cost-benefit analysis (Reed, 2012). Deterrence is a central framework in the sentencing of terrorists in Canada (*R. v. Khawaja*, 2012, para. 130). For the most part, the study participants viewed the role of punishment in terms of not just punishing the act and the offender but also of encouraging victims to come forward to report crimes. This was more so with those prosecutors who had less than less than 15 years of experience. This due process approach to punishment can be attributed to the legal ethos and framework that gained ground after the Charter of Rights and Freedoms came into being. The prosecutors who practiced prior to the Charter seemed to take a more crime control approach to punishment where the offender was the central focus of punishment.

Some participants downplayed the impact of seniority and office ethos on their sentencing positions. In other words, those with more experience and seniority were saying that such factors had no impact on them. The security of employment position seemed to provide a level of confidence for the participants to seek those sentences they deem fit without unnecessary punitive managerial oversight and scrutiny.

The participants were either dismissive of the Crown Policy Manual or uncharitable to it. The Crown Policy Manual, for the more part, contains information on the criminal process and the role of the prosecutors in the criminal justice system. It is also used by the attorney general to provide direction to the prosecutors. It seemed that the Crown Policy Manual is only really referred to with regard to mandatory sentencing positions (such as minimum jail terms for impaired driving). The participants did not

seem to take the view that this policy handbook had greater relevance as it referred to other matters as well that were a part of their daily responsibilities.

The participants unanimously agreed that specific deterrence was a primary principle of sentencing, and in part, this required assessing recidivism and the prospects of rehabilitation. They were focused on the specific attributes of the offender and the circumstances of the offense. Some participants saw rehabilitation success to be higher with younger offenders then with those who had criminal records. Some participants focused on the post-sentence impact and how the offender would be able to reintegrate into the society.

The participants were, for the most part, weary or unconvinced about the general deterrence sentencing principles inherent in the ideology of classical criminology, which suggest that people are guided by a cost-benefit analysis (Reed, 2012). The participants were not convinced that such a legal fiction exists. They tended to focus on denunciation as a manner to interlay into general deterrence submissions. This tends to correspond with the previous research about the frailties of general deterrence (Doob & Webster, 2003).

Comparison of Data with the Literature Review

Theme 1: Specific Deterrence and Denunciation are Primary Concerns

The participants were asked about their priorities regarding these sentencing principles while seeking sentences from the courts. The answers were consistent in suggesting that specific deterrence must be a primary consideration in seeking a quantum of sentence, and this was consistent with the proportionality principle (D’Amico, 2015).

The participants believed that specific deterrence was real, and they included denunciation as part of this consideration. As a part of the specific deterrence considerations, they involved an assessment of the risk of recidivism and the prospects for rehabilitation (Nesbitt et al., 2019).

A focus on how the offender would enter back safely in the community was also a part of the sentencing calculation. This long-term approach seems to be a reflection of being able to act independently as a Ministers of Justice (*R v. Boucher*, 1955) and the fact that they have their own views and perceptions that are not quantifiable but go into their sentencing determination (Miske, 2019). There was a clear indication from the participants that they also looked at specific crime activities in the communities they served to address the local community's needs and expectations.

Capital punishment is a specific deterrent that emphasizes the principle of denunciation, which the participants were cognizant of. The nuance provided by participants was to shift away from specific deterrence on this issue and focus on issues related to wrongful convictions and proportionality. The finality of capital punishment as a specific deterrent seems to be a reflection of the prosecutors simply because of their lack of experience in this area. Terrorism was not considered an offense in Canada before the 9/11 attacks despite the Khalistani terrorists' attack on the Air India Flight 182 that killed 329 people in 1985 (Amirault et al., 2017). Only about 153 persons were convicted of terrorism offenses in Canada up to 2010 (Amirault et al., 2017). Despite there being a focus on specific deterrence and denunciation, the participants moved and shifted away from this focus when it came to capital punishment for defined terrorist offense. The shift

was due to lack of experience, the finality of the sentence, and the prospect of wrongful conviction. Thus, specific deterrence was not a deciding consideration by participants.

Theme 2: General Deterrence is Unproven and not a Serious Sentencing Consideration

The deterrence theory suggests that offenders are dissuaded by timely and sufficient punishment (Tomlinson, 2016) under the assumption that people respond to incentives (Ehrlish, 1975). There was an overwhelming rejection of the general deterrence theory by the participants as simply being false or not verifiable to be a useful and practical tool in court. Many participants said that they only paid lip service to the general deterrence theory. This may also be an implicit admission that the delay in sentencing and lack of public dissemination of this information creates a drag on the general deterrence effect at all levels (Nagin, 2014).

This finding is important because general deterrence is a central sentencing principle (Criminal Code RSC, 1985), and the Supreme Court of Canada has mandated a focus, among others, on general deterrence for defined terrorist offense (*R v. Khawaja*, 2012), and the Crown Policy Manual has provided directions for prosecuting this offense (Government of Canada, 2014). This deviation from general deterrence is a reflection of the wide degree of discretion that a Canadian prosecutor has on the vast majority of cases (Allen, 2018) they prosecute.

The participants were consistent with regard to their views that the sentences had no deterrent effect generally and specifically on any defined terrorist offense. Some of this was predicated on the unique motivations of the offenders who engaged in these

offenses. These views were not based on actual case experience but rather were personal perceptions. Their lack of experience with these types of crimes had led to the perception about the crime being rare or the controversy surrounding the sentence (Miske, 2019) or that the rarity of this crime can impact the severity of the sentence sought (Vaughn, 2009). The rareness of the offense can create a heavy psychological onus on the prosecutor, which can cause doubt about the effectiveness of any punitive sentence (Vaughn, 2009). The newness of capital punishment may require a prosecutor to speak to the public and make a public-convincing argument, and this may be a form of communication that the Canadian prosecutors are not accustomed or prepared to engage in (Greshman, 2016). The failure to communicate with the public can undermine any potential general deterrence effect.

Theme 3: Personal Views, Public Opinion, and Political Influence Would Not Impact the Decision to Seek Capital Punishment

An overwhelming majority of participants would not let their personal views affect their responsibilities to seek capital punishment for defined terrorist offense where such a sentence was warranted. For instance, if there was a serious terrorist attack resulting in a massive loss of life, a moral panic may ensue, and it is debatable whether such a position would survive such an impact (Davis, 1980). The public still broadly support capital punishment (Abacus Data, 2011). This has also been reflected by the courts that have indicated that there is no clear consensus that capital punishment was considered morally abhorrent by the public (*R v. Kindler*, 1991).

From Theme 4, the prosecutors seemed to make room for their personal views by raising the legal and evidentiary threshold before seeking capital punishment for defined terrorist activity. The lack of an organization experience with capital punishment is a clear reflection of a post-Charter legal environment and the fact that this sentence has not been carried out since 1967. Most participants viewed the role of punishment in a broader sense. A part of it included the ability to encourage complainants to come forward to report crimes. In Canada and in some other jurisdictions, there is already a mandatory consultation with the victims that have capital punishment. They make it mandatory to seek inputs from the victim's family (Brauchler & Orman, 2016) regarding the sentencing. In such an environment, it would be hard for a prosecutor to set aside personal views after dealing with families of victims, especially if there was a terrorist attack the resulted in a massive loss of life and property. The prosecutors are only human, and the theoretical position of not having personal views or political influence impact their decision-making process would be severely tested in a real-life situation.

Theme 4: Very High Legal Threshold to Seek Capital Punishment – Closer to Certainty Than to Beyond Reasonable Doubt

Due to the finality of the sentence of capital punishment, the prosecutors looked for standards of proof and aggravating facts that seemed to rise above that. In other words, they raised the threshold from proof beyond reasonable doubt to closer to absolute certainty of the offense being committed by the accused. This may be a reflection of the lack of a corporate culture of seeking capital punishment for defined terrorist offense (Devine, 2005). Furthermore, this may be an implicit attempt to create an impossible

standard thus allowing the participant to seek a more punitive custodial sentence (Amirthalingam, 2018). The personal views of a prosecutor may also be a factor given the diversity of opinions among the group of prosecutors themselves. There prosecutors in the United States who threaten the use of capital punishment as leverage to extract a guilty plea (Nesbitt et al., 2019).

The lack of any direction regarding sentencing from relevant legislation, governments, and the courts may also factor into this. Such an important decision requires better and more focused direction from the management and the courts. The prosecutors, like any other employee, have careers, and this is a reflection of the inherent structure of the workplace and one's employment security as a result (Levine & Wright, 2017). There are mixed messages that can be at play here in that there is no mandatory minimum sentence for defined terrorist activity. However, first-degree murder carries with it a minimum 25-year jail sentence, and there are similar mandatory sentences for offenses of impaired driving and sexual assault (Criminal Code RSC, 1985).

The participants shifted their personal views on capital punishment onto the raised threshold at which they would seek this sentence. Furthermore, doing so can be consistent with a prosecutor being fearful of judicial rebuke for seeking a sentence that would be disapproved by the courts. This phenomenon is referred to as judicial shaming (Bazelon, 2016). Having an appellate court rebuke your decision-making in a high-profile case can impact a prosecutor's legal reputation. This can be a factor in the raising of the legal and evidentiary burden in the consideration of capital punishment as a sentence for defined terrorist offense. A counter observation maybe that such judicial shaming may

have more impact in the United States of America where the prosecutors are elected than in Canada where the prosecutors are employees of the government.

Limitations of this Study

There were limitations to this research study. Only 10 participants were interviewed for this study when saturation set in. A larger sample size may provide further data and insight into these research questions. The participants were interviewed only once which could affect qualitative saturation (Sharir, 2017). Further, as is the case with any qualitative data collection, the data could be impacted by the participants' memory filters. This research study did not address the legal or constitutional viability of capital punishment for defined terrorist activity.

Due to the impact of the global COVID-19 pandemic, the researcher was not able to interview female participants. Two female participants had agreed to participate but due to increased work requirements and failure to get timely managerial clearance, they had to either reschedule, which would have severely delayed this research study. They chose the latter. Thus, the results of this research study cannot be generalized to all Canadian prosecutors in the Greater Toronto Area as no data could be obtained from this participant category.

Furthermore, the participant group was geographically restricted to those with experience in the Greater Toronto Area. Interviewing participants from the other areas of Canada could provide further data and insights that would reflect the diversity and federal nature of Canada. Thus, the results of this research study cannot be generalized to the entire spectrum of Canadian prosecutors despite there being one criminal law in Canada.

Recommendations

The results of this research lend themselves to proposing a number of recommendations. First, the prosecutors do not believe in the general deterrence effect of sentences. The Crown Policy Manual should be amended, therefore, to allow a prosecutor to deliver a more intellectually honest and consistent position to the court. Second, management must ensure that work review procedures do not incentivize newer prosecutors or those with less employment security from seeking higher penalties by being influenced by their employment status and in turn, creating a conviction psychology. Third, the individual Crown offices must be given clear guidance about focusing on crimes that are specific to their jurisdiction and the needs of the particular community they serve. Fourth, to avoid individual preferences from permeating into a defined terrorist case, the prosecutors should be asked to recuse themselves should they have personal views that prevent or impact their decision-making process to seek capital punishment. Finally, should capital punishment become a legal sentence for defined terrorist activity, the relevant legislation and the Crown Policy Manual must be made more specific to clearly indicate when capital punishment could/should be sought. This should include the type of relevant aggravating factors, stakeholder inputs, and other circumstances concerning the accused and the offense that should or should not be taken into account. Failure to detail these aspects will force the prosecutors to inject subjective beliefs about when such a penalty is warranted, which is unfair to the prosecutor, the accused, and all other stakeholders.

Implications for Social Change

The implications of this research for social change are that it provides a clearer understanding of how prosecutors view the role of punishment in the criminal justice system. Moreover, this understanding is grounded in experience and not in theoretical directives from the courts, the legislation, or the policy manuals. Canadian prosecutors have been tasked with seeking sentences that meet criminal justice principles, including the principle of deterrence. It is important, therefore, to understand their views on what is just and effective as they have tremendous discretion in asking the courts to impose a particular penalty. Their views must be expressed in an intellectually clear and honest manner.

Furthermore, should Canada attempt to reintroduce capital punishment for defined terrorist activity, the views of the prosecutors regarding this form of punishment are crucial to understanding its effectiveness. Giving prosecutors a clear intellectual framework on how to assess the use of this potential sentencing principle should be grounded in what the prosecutors view as valid aims, such as specific deterrence and denunciation, as opposed to general deterrence. Given that the public broadly supports capital punishment (Abacus Data, 2011), it is a matter of time before a serious terrorist attack in Canada, such as the bombing of the Air India Flight 182, brings the issue of capital punishment back into the public and political discourse.

Conclusions

The world has become more complicated and interdependent since Canada imposed a moratorium on the use of capital punishment in 1967 and abolished its use in 1976 (Government of Canada, 1985). Research in Canada regarding sentences since 2001 for terrorist attacks has shown that jail sentences have not deterred terrorism in the country (Amirault et al., 2017, p. 807). In fact, terrorist threats have been increasing in Canada since 2001, which matches the global trend in this regard (Government of Canada, 2018, p. 3). The Supreme Court of Canada has directed the Canadian courts to focus on denunciation and deterrence, both specific and general, as important principles in the sentencing of terrorism offenses given the seriousness of these offenses (*R. v. Khawaja*, 2012, para. 130).

Despite worldwide reduction in the use of capital punishment and the lack of its use in Canada since 1967, a serious terrorist attack can conceivably create a moral panic to bring this issue back in the public spotlight (Davis, 1980). The 9/11 attacks brought forth quick legislation in the United States that increased the powers of the state and seriously reduced liberties (United States, 2001). Similarly, in Canada, terrorism-related legislation was rushed through in a matter of months after the 9/11 attacks (Anti-Terrorism Act, 2001). The law can change fast for a variety of reasons.

Civil society has a social responsibility to punish crimes and use those tools that were available to the individual in the state of nature (Locke, 1980). How the state views the role of punishment is of central importance in carrying out this responsibility. The prosecutors hold a special place in the criminal justice system as they are the Ministers of

Justice, and as such, they have significant discretion and political independence, and they can seek sentences within the parameters of the law and their respective policy directions. The purpose of this qualitative study was to understand the perceptions of the prosecutors and how these perceptions and views may affect their decision-making process to seek capital punishment for defined terrorist offenses if this sentence were to be available to them.

The data collected from the ten Canadian prosecutors with at least 10 years of experience in the Greater Toronto Area has helped to understand how they view the role of punishment, generally, and more specifically, the use of capital punishment for defined terrorist activity. The participants conveyed how they focused more on specific deterrence and denunciation as sentencing concepts as opposed to general deterrence. The participants were not convinced that a sentence had any general deterrent effect. Such a position runs counter to the established sentencing principles. The failure to allow prosecutors to be intellectually honest in their sentencing submissions can adversely affect and impact an individual offender.

This research study showed how professional and dedicated Canadian prosecutors are in relation to their professions. The participants did not specifically allow their personal views to impact their professional responsibility in deciding if capital punishment was warranted in any specific case. However, there is a disconnect between the prosecutors' views, on the one hand, and the underlying assumptions of general deterrence that human beings are rational actors who consider the consequences of their

behavior before deciding to commit a crime, on the other. This disconnect is unfair to the prosecutors.

Despite some guidance available to the prosecutors on a wide range of factors along with the discretion in seeking a sentence from the courts for those convicted of defined terrorist activity on such matters as the quantum of sentence, custody for young persons, delayed parole, and whether to seek consecutive or concurrent jail sentences, the prosecutors lack clear guidance on how and when to seek such a sentence (Government of Canada, 2014). This study has shown that in consideration of the special role that Crown prosecutors in the Canadian justice system much work remains to be done to reflect their actual views on the role of punishment and the parameters on how and when capital punishment should be requested for defined terrorist activity as a potential future sentencing consideration.

References

Abacus Data. (2011, January 26). *Majority of Canadians support death penalty in certain cases.* http://abacusdata.ca/wp-content/uploads/2011/01/Death-Penalty- Release-Final.pdf

Allen, J. G. (2018). The Office of the Crown. *Cambridge Law Journal, 77*(2), 298–320. https://doi.org/10.1017/S0008197318000338

Amirault, J., Bouchard, M., Farrell, G., & Andresen, M. A. (2017). Criminalizing terrorism in Canada: Investigating the sentencing outcomes for terrorists from 1963 to 2010. *The Journal of Criminal Law and Criminology*, 769–810.

Amirthalingam, K. (2018). The public prosecutor and sentencing: Drug trafficking and the death penalty in Singapore. *Oxford University Commonwealth Law Journal*. https://doi.org/10.1080/14729342.2018.1471835

Anti-Terrorism Act. (2001). SC c 41.

Baker, D. (2017). *The provincial power to (not) prosecute criminal code offences.* http://www.canlii.org/t/71v

Bazelon, L. (2016). For shame: The public humiliation of prosecutors by judges to correct wrongful convictions. *Georgetown Journal of Legal Ethics, 29*(2), 305–353.

Beccaria, C. B. (1819). *An essay on crimes and punishments* (2nd ed.). Philip H. Nicklin.

Blaikie, N. (2018). Confounding issues related to determining sample size in qualitative research. *International Journal of Social Research Methodology, 21*(5), 635–641. https://doi.org/10.1080/13645579.2018.1454644

Brauchler, G., & Orman, R. (2016). Lies, damn lies, and anti-death penalty research. *Denver Law Review, 93*(3), 635–714.

Burkholder, G., Cox, K., & Crawford, L. (2016). *The scholar-practitioner's guide to research design.*

Canadian Charter. (1982). *Canadian charter of rights and freedoms, s 7, Part I of the Constitution Act, being Schedule B to the Canada Act 1982 (UK), 1982, c11*.

Carlsmith, K. (2006). The roles of retribution and utility in determining punishment. *Journal of Experimental Social Psychology*, 437–451.

CBC News. (2010, June 7). Capital punishment in Canada. https://www.cbc.ca/news/canada/capital-punishment-in-canada-1.795391

Criminal Code RSC. (1985). c C-46.

D'Amico, D. (2015). Knowledge problems and proportionality. *Criminal Justice Ethics, 34*(2), 131–55.

Darrow, C. (1924). *Clarence Darrow on capital punishment.* Chicago Historical Bookworks.

Davidson, M. (2011). The ritual of capital punishment. *Criminal Justice Studies: A Critical Journal of Crime, Law and Society*, 227–240. https://doi.org/10.1080/1478601X.2011.593341

Davis, J. (1980). The London garrotting panic of 1862: A moral panic and the creation of criminal cases in mid-Victorian England. In V. Gatrell, B. Lenman, & G. Parker (Eds.), *Crime and the law: The social history of crime in Western Europe since 1500* (pp. 190–223). Europa Publications.

Devine, R. A. (2005). The death penalty debate: A prosecutor's view. *Journal of Criminal Law & Criminology, 95*, 637–648.

Doob, A., & Webster, C. M. (2003). Sentence severity and crime: Accepting the null hypothesis. *Crime and Justice*, *30*, 143–195. https://doi.org/10.1086/652230

Ehrlish, I. (1975). The deterrent effect of capital punishment: A question of life and death. *American Economic Review, 65*(3), 397.

Ellis, P. (2019). The language of research (part 20): Understanding the quality of a qualitative paper (2). *Wounds UK, 15*(1), 110–111.

Federation of Law Socities of Canada. (2017). *Model code of professional conduct.* flsc.ca/wp-content/uploads/2014/12/Model- Code-as-amended-march-2016-FINAL.pdf

Fehr, E., & Fischbacher, U. (2004). Third party punishment and social norms. *Evolution and Human Behavior*, *25*(2), 63–87. https://doi.org/10.1016/S1090-5138(04)00005-4

Fielding, N., & Lee, R. (1998). *Computer analysis and qualitative research.* Sage.

Garland, D. (1991). *Punishment and modern society: A study in social theory.* University of Chicago Press.

Glaser, B., & Strauss, A. (1967). *The discovery of grounded theory: Strategies for qualitative research.* Aldine Publishing Company.

Governent of Canada. (1985). *Questions and answers on capital punishment: Seventh draft.* Government of Canada.

Government of Canada. (2014). *Public prosecution service of Canada deskbook.* https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/index.html

Government of Canada. (2018a). *Canada's national terrorism threat levels*. https://www.canada.ca/en/services/defence/nationalsecurity/terrorism-threat-level.html

Government of Canada. (2018b). *Public report on the terrorist threat to Canada.* https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/pblc-rprt-trrrsm-thrt-cnd-2018/pblc-rprt-trrrsm-thrt-cnd-2018-en.pdf

Greshman, B. (2016). The prosecutor's duty of silence. *Albany Law Review, 79*(3), 1183–1219.

Her Majesty the Queen v Sethi, 2005 (ONSC 2015). http://canlii.ca/t/j183r

Hume, D. (1962). *On human nature and the understanding*. MacMillan Publishing Company.

Johansson, C. B. (2019). Introduction to qualitative research and grounded theory. *International Body Psychotherapy Journal, Vol.* #(1), 94.

Judges, D. P. (1999). Scared to death: Capital punishment as authoritarian terror management. *U.C. Davis Law Review*, *Vol.* #(1), 157–248.

LaChappelle, N. L. (2012). *Placing the american death penalty in the global context: A test of the marshall hypothesis.* [Doctoral dissertation, University]. ProQuest Dissertations & Theses Global.

Lee-Jen Wu Suen, Hui-Man Huang, & Hao-Hsien Lee. (2014). A comparison of convenience sampling and purposive sampling. *Journal of Nursing, 61*(3), 105–111. https://doi-org.ezp.waldenulibrary.org/10.6224/JN.61.3.105

Levine, K. L., & Wright, R. F. (2017). Prosecutor risk, maturation, and wrongful conviction practice. *Law & Social Inquiry, 42*(3), 648–676. https://doi.org/10.1111/lsi.12209

Locke, J. (1980). *Second treatise of government.* Hackett Publishing Company.

Lowe, A., Norris, A., Farris, A., & Babbage, D. (2018). Quantifying thematic saturation in qualitative data analysis. *Field Methods, 30*(3), 191–207. https://doi.org/10.1177/1525822X17749386

Mackieson, P., Shlonsky, A., & Connolly, M. (2019). Increasing rigor and reducing bias in qualitative research: A document analysis of parliamentary debates using applied thematic analysis. *Qualitative Social Work, 18*(6), 965–980. https://doi.org/10.1177/1473325018786996

Mendoza-Valles, L. A. (2018). *Does the death penalty deter homocides?* [Doctoral dissertation, University of Texas-Arlington]. https://rc.library.uta.edu/uta-ir/bitstream/handle/10106/27421/MENDOZAVALLES-THESIS-2018.pdf?sequence=1

Miller et al. v The Queen, 2 SCR 680 (SCC 1976).

Miske, O. A. (2019). *Death penalty beliefs: How attitudes are shaped and revised (Order No. 22592016).*

Moser, A., & Korstjens, I. (2019). Series: Practical guidance to qualitative research. Part 3: Sampling, data collection and analysis. *European Journal of General Practice, 24*(1). https://doi-org.ezp.waldenulibrary.org/10.1080/13814788.2017.1375091

Nagin, D. (2014). Deterrence and the death penalty: Why the statistics should be ignored. *Significance, 11*(2), 9–13. https://doi-org.ezp.waldenulibrary.org/10.1111/j.1740-9713.2014.00733.x

Nesbitt, M., Oxoby, R., & Potier, M. (2019). Terrorism sentencing decisions in canada since 2001: Shifting away from the fundamental principle and towards cognitive biases. *University of British Columbia Law Review*(2), 553. https://search-ebscohost-com.ezp.waldenulibrary.org/login.aspx?direct=true&db=edsglt&AN=edsgcl.597913024&site=eds-live&scope=site

O'Sullivan, E., Rassel, G. R., Berner, M., & Taliaferro, J. (2017). *Research methods for public administrators* (6th ed.). New York: Routledge.

Parliament of Canada. (1994, September 20). Parliamentary debates. *35th Parl., 1st Sess.* Canada: Hansard.

Polit, D. F., & Beck, T. C. (2017). *Essentials of nursing research: Appraising evidence for nursing practice* (9thed.). Philadelphia: Lippincott Williams and Wilkins.

R v Acuri, 2 SCR 828 (SCC September 14, 2001).

R v Anthony-Cook, 2 SCR 204 (S.C.C. 2016).

R v B.J.T., 694 (ONCA September 6, 2019).

R v Boucher, 16 SCR (S.C.C. 1955).

R v Hamilton, 72 O.R.(3d)1 (SCC August 3, 2004).

R v Khawaja, 3 SCR 555 (S.C.C. 2012).

R v Kindler, 2 SCR 779 (SCC 1991).

R v Myers, 18 (SCC 2019).

R v Nur, 1 SCR 773 (SCC April 14, 2015).

R v. Friesen, S.C.J. No. 100 (SCC October 16, 2019).

R. v. Trotta , C32352/C32570 (C.A. 10 28, 2004).

Ravich, S., & Carl, N. (20150828). *Qualitative research:Bridging the conceptual, theorectical, and methodological.* [VitalSource Bookshelf Version] vbk://9781483351759

Reed, M. (2012). Deterrence, theory of. In W. Miller (Ed.), *The social history of crime and punishment in America: An encyclopedia* (pp. 456–457). Thousand Oaks: Sage Publications.

Rubin, H., & Rubin, I. S. (20111011). *Qualitative interviewing: The art of hearing data* (3rd ed.). [VitaSource Bookshelf Version]. Retrieved from vbk://9781452285863

Satistics Canada. (2011). *Statistics canada.* Proportion of the school age population, by selected characteristics, in and out of census metropolitan areas (CMAs): https://doi.org/10.25318/3710009801-eng

Sharir, D. (2017). *The link between therapists' social class attributions and treating clients of low socioeconomic status.* Scholarworks.

Spahos, C., & Zahnd, E. (2017). How prosecutors are responding to shifting views on marijuana. *Journal of the National District Attorneys Association, (3)*, 18.

https://search-ebscohost-com.ezp.waldenulibrary.org/login.aspx?direct=true&db=edsglt&AN=edsgcl.513927445&site=eds-live&scope=site

Statistics Canada. (2019, May 9). *Adult and youth correction statistics in Canada, 2017/2018.* https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010-eng.htm

Strange, C. (1995). *The lottery of death: Capital punishment, 1867–1976* http://www.canlii.org/t/sgdc

Tomlinson, K. D. (2016). An examination of deterrence theory: Where do we stand? *Federal Probation*, 33–38 https://search-ebscohost-com.ezp.waldenulibrary.org/login.aspx?direct=true&db=tsh&AN=121317709&site=eds-live&scope=site

Tyler, T., & Boeckmann, R. (1997). Three strikes and you are out, but why?: The psychology of public support for punishing rule breakers. *Law and Society Review*, 237–265 https://doi-org.ezp.waldenulibrary.org/10.2307/3053926

United States. (2001). The USA PATRIOT Act: Preserving life and liberty: uniting and strengthening America by providing appropriate tools required to intercept and obstruct terrorism. U.S. Dept. of Justice.

Vaughn, A. (2009). *Crown prosecutor's perceptions of hate crime sentencing enhancements* https://ezp.waldenulibrary.org/login?qurl=https%3A%2F%2Fsearch.proquest.com%2Fdocview%2F759486752%3Facco

Wilner, A. (2015). Contemporary deterrence theory and counterterrorism: A bridge too far? *New York University Journal of International Law & Politics, 47*(2), 439–62. https://search-ebscohost-com.ezp.waldenulibrary.org/login.aspx?direct=true&db=tsh&AN=109346432&site=eds-live&scope=site

Wooley, A. (2017). Reconceiving the standard conception of the prosecutor's role. *Canadian Bar Review*, 795–833.