

Article

## **IN SEARCH OF PENAL LABOUR CITIZENSHIP: PRISONER-WORKERS ORGANIZE FOR LABOUR RIGHTS IN CANADA<sup>1</sup>**

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### **Abstract**

Do Canadian federal prison-workers have a right to unionize? This key question is investigated in a case study approach to an attempt, by prison-workers, to organize a union in a Canadian federal penitentiary in British Columbia. The authors analyze prisoner-workers penal labour citizenship position via-a-vis the State's conceptualization of prison-workers as non-employees and difficulties in finding the appropriate Canadian jurisdiction to hear their case.

What better time than the present to organize some new members? There have been many attempts to organize the hamburger joints and the box stores, but these entities are monsters of bottomless cash resources. Why doesn't big labour send the 'Harper government' a real message and send some burly Teamsters, and some militant auto workers and for good measure some hairy assed steel workers to get every prisoner in Canada signed up? What the fuck is there to lose? One last defiant act! (Posted by the Oracleofottawa 2013)

Do Canadian federal prison-workers have a right to unionize? Does working on federal government employment programmes in federal prisons for "rehabilitative" purposes classify prisoners as employees of the state with the right to organize? By what and which Canadian jurisdiction should their right be heard? Which union should organize them? This paper examines these key questions through an analysis of a case study of prison-workers' attempts to unionize at Mountain Institution, a federal penitentiary in British Columbia.

The writer quoted above not only believes prisoner-workers should organize, but that they can be. The writer even proposes - tongue and cheek - a strategy for doing so - the use of muscle and tactics of reputedly brutish union members of a bygone era to get it done! (Jacobs 2006;

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<sup>1</sup> Research for this paper was supported by a research grant (Dr. author, PI) from the Social Sciences and Humanities Research Council of Canada (SSHRC). We want to thank Tonia Grace for comments and suggestions on this paper. We alone are responsible for its contents and how it is presented and expressed herein. This study uses qualitative methodologies to collect data, including interviews, survey of relevant information in local and national newspapers, other media sources, reports from Correctional Service Canada, and academic sources on crime, prisons, prison-workers and the punitive state.

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CBC/NFB 1985). And though this person's proposed agents in organizing might offend some,<sup>5</sup> many others are urging labour to organize prison-workers, and the marginalized and precarious in the economy (House 2020; Elk 2016; Khalek 2011; Innes 2019; Thompson 2012; Blankenship 2005; Kilgore 2013; Taibe and Lakhani 2023).<sup>6</sup> Two long-term incarcerated individuals at Mountain also think federal prison-workers can and should unionize.<sup>7</sup> They, however, decidedly proposed different tactics and more conventional avenues for so doing. That is, they relied on the interpretation of labour legislation to define prison-workers as employees of Correctional Service Canada (CSC) under federal labour law. This singular approach to labour law interpretation and rights-based campaigning seems "out-of-step" with contemporary calls for creative and innovative union strategies in social unionism models to organizing workers in 21<sup>st</sup> century neoliberal capitalism (Butovsky and Smith 2007; Aguiar and McCartin 2023; McCallum 2013; Yates and Coles 2014; Camfield 2011; Thomas and Tufts 2016; Crevier, Forcier and Trépanier 2015). Yet, lest we forget that it is often on-the-ground circumstances that dictate the approach, tactics and unfolding of campaigns (McAlevy 2012, 2016). In this case study, the approach was to campaign for penal labour citizenship rights through legal avenues pursued by prison-worker organizers and their lawyers to claim citizenship rights in the field of labour relations for the purpose of securing labour rights, in addition to those Canadians have in the Charter of Rights and Freedoms (Rashif 2017; Fudge 2014).<sup>8</sup> By penal labour citizenship we mean the extension of prison-workers' rights to industrial relations recognition and representation adding to the citizenship rights they already have in the Charter. Prison-workers organized a valiant campaign. But it was always a difficult one to win given the climate of neoliberalism and a corresponding punitive carceral state (Story 2021; Palmer 2019; Cunha 2014; Cassidy, Griffin and Wray 2020).

To set the context for the discussion of organizing at Mountain in the latter half of this paper, we begin with a succinct overview of the penitentiary, including details on "reforms" to humanize prison time.<sup>9</sup> From there we profile prison labour in Canada. Then, the relationship between prison-workers and organized labour is summarized. The paper then discusses the concept of penal labour citizenship embedded in the campaign's objective. The campaign is presented prior the conclusion which summarizes the main points herein contained and raises important issues for labour researchers to consider.

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<sup>5</sup> Including one of the referees of this article.

<sup>6</sup> See story of dancers in strip club in LA organizing <https://www.buzzfeednews.com/article/otillisteadman/strippers-star-garden-unionizing>.

<sup>7</sup> Since this organizing campaign, one of these individuals has been released from prison having served his sentence.

<sup>8</sup> See <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

<sup>9</sup> See Moran and Jewkes (2015) for a summary of the contemporary literature on prisons and the punitive state. Surprisingly, they neglect to review the abolitionist approach to prison, inequality and neoliberal capitalism. For a recent story on abolitionist organizing see Pesaruk (2021).

## Capitalism, Prisons and Incarcerating the Vulnerable

Like elsewhere,<sup>10</sup> the penitentiary in Canada rose with the development of industrial capitalism and the latter's twin concern for controlling and disciplining excess urbanizing populations, the poor, and unruly city folk disrupted by capitalist forces of production. The penitentiary served the needs of a rapidly expanding capitalist labour market in "creating" wage labourers and exploiting "cheap" and "docile" labour for profit through the adding or withdrawing of labour in-tune with swings in business cycles (Gilmore 2022; Montgomery 1993; Bauer 2018). The confinement of increasing number of people satisfied these objectives, and sought too to deter militant protests and sabotages against growing inequality and desperation.<sup>11</sup> And, as in explanations elsewhere, the penitentiary had too ideological functions in temporarily warehousing prisoners for their re-socialization into a redemptive and renewed civic life as a result of "participating" in developments of more "humane" forms of imprisonment in the ongoing art of confinement (Ellis 1979).<sup>12</sup> The emplacement of the penitentiary in society, and the conceptualizing of the criminal - especially articulated by prison reformers - evolved with the ideology of Enlightenment in industrializing societies. One prominent discourse flowing from this new interpretation of the place of human beings in society and their abilities to influence their own lives, focused on the rise of the bourgeois male liberal individual, the belief in the potential for human perfectibility, on the equality between men (sic), and the rehabilitative and redemptive transformative capabilities of the individual (Hernandez, Muhammad and Thompson 2015: 21).<sup>13</sup> This position laid out that prisons served to treat incarcerated human beings differently from previous barbaric forms (e.g. whipping and flogging) of violating the human body. So, the modernization of society was accompanied by new ways of thinking based on higher ideals for human beings including greater decency toward "fellow man" and their potential for intellectual growth. But the Enlightenment's focus on "fellow man" also rationalized the extermination of millions of people through slavery, genocide, the destruction of entire cultures, and the racial characterization and hierarchization of groups of people in the name of progress and civilizing barbaric and subhuman groups and cultures (Maynard 2017; Frederickson 2015). The effects of these revolutionary social and ideological transformations continue to impact our contemporary world and the prism through which groups of people continue to be viewed today.<sup>14</sup>

From within the ideology of reformism laid the belief in the capacity for individuals to change. This was overlaid with the belief that the virtues of hard labour build character, discipline

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<sup>10</sup> For a discussion of prisons and penal confinement beyond the global north, see the summarizing article by Cunha (2014) and Sudbury (2005) for women in the global prison-industrial complex.

<sup>11</sup> For evidence in Canada see Heron and Storey (1986) and for Britain, Thompson (1982).

<sup>12</sup> For the best account of the rise of the penitentiary in Canada McCoy (2012).

<sup>13</sup> For a discussion of the rise of the individualism in Enlightenment thought, see Gurevich (1995). This is not to be confused with the contemporary "carceral subject" of dispossession, precarity, and "dedicated to projects of survivability". This quote is from Brown and Schept (2017: 445).

<sup>14</sup> The literature on this is vast but we single out Frederickson (2015), Pratt (1992) and Galeano (1973).

and obedience, whilst also teaching valuable skills giving meaning to prisoners' lives. Hard labour was a disciplining mechanism for re-instilling societal values onto the incarcerated, and the redemption of his soul through the denunciation of the evilness of idleness materialized in the moral integrity of a hard day's work.<sup>15</sup> But this belief (almost always infused with religious fervour) in the power of hard labour to save and give meaning to prisoners was a fraud as prison administrators sold prisoners' labour power to industry by contracting them out, inviting industry to set-up shop inside its premises, or by indeed establishing their own industries intramurally. Prisoners' wages, already meagre, were further clawed back to pay for their self-care needs and incarceration.

The economic use and necessity of Black and Brown labour in prisons was institutionalized from the time of the abolition of slavery in the US (and Canada) as many freed black men were often incarcerated on trumped up charges and offenses meant to secure their labour by depriving them of labour market participation and mobility (Gilmore 2022: 118; Alexander 2020; Bauer 2018).<sup>16</sup> In the south their prison-labour in agricultural farms fed the US whilst in northern prisons they built city infrastructures for transport and movement, and manufactured good for general consumption (Nowakowski 2016: 95; Bauer 2018; Gilmore 2022; Hernandez 2011). For Black and Brown Canadians (and Americans), the belief in a redemptive character and rehabilitative person were rarely extended to understanding their experiences of slavery and colonization in this country (Maynard 2017). In their case, imperialism, colonization, dispossession, racist science and systemic discrimination underpinned the ideological belief that Black and Brown Canadians did not respond to persuasion or reform initiatives (Owusu-Bempah and Gabbidon 2020). For them only hard labour would subdue their "animalistic" nature. So, dehumanizing them was the way in to "control" their inherent aggressive and violent make-up (Owusu-Bempah and Gabbidon 2020: 114). In other words, aggressiveness and criminality was inherent to the character of Black and Brown Canadians. But "criminality," as Gilmore (2022: 176-195) reminds us, is a social and place-based discourse that resurfaced in the 1960s US at a time when the Black Panther Party and the Civil Rights Movement were making societal inroads for dignity and bread (for Canadian examples see Chan and Mirchandani 2002). The belief in the criminality of Blacks runs through the carceral state today in this country, as does the "threat" of Blackness. According to Robyn Maynard (2017), anti-Blackness is inherent to Canadian institutions - with special intensity in penal institutions - since slavery and colonization entails Blacks living in the "after-live" of this history and experience (see also Owusu-Bempah and Gabbidon 2020: 114). This ongoing legacy means that "Black Canadians are subject to invasive police surveillance that makes it difficult to exist in public space. Black folks, as well as being more likely to being stopped and questioned, are more likely than the general population to be charged, severely surveilled and incarcerated in jails or prisons, and are

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<sup>15</sup> It is said that prisons "instructed male prisoners on their lacking or suspect work ethic. Women, on the other hand, are "instructed" on their moral and proper ways to behave as a woman.

<sup>16</sup> Michelle Alexander (2020: 38) points out that "mischief" and "insulting gestures" were sufficient transgressions to imprison newly freed Black workers and then "sell" them to the highest bidder in labour contracts between prisons and farmers and emerging corporations.

less likely to be granted parole (Maynard 2017: 83). This after-live extends beyond the criminal justice system to mean “the policing of Black bodies [is] the policing of an anti-Black social order” (Maynard 2017: 40).

The experiences of Indigenous populations are no less tragic and traumatic given their experiences of imperialism, colonialization, genocide, dehumanization, dispossession and displacement in the ongoing history of Canada (Guenther 2022; Hylton 2002; Dell 2002). This history continues to shape Canadian institutions, like the justice system, in neglecting the lives and trajectories of Indigenous peoples of Canada. On the basis of his research into Indigenous peoples in the Canadian criminal system, Hylton (2002: 145) concludes: ...” there is a preponderance of evidence pointing to the importance of both systemic and overt discrimination in explaining justice system decisions regarding Indigenous population in Canada.” Indigenous populations’ endurance of brutality at the hands and laws of the penal state is something to behold, and shameful to Canadian history, identity and image. So shameful is this history that Nancy Macdonald (2016) sees contemporary prisons as new residential schools. Today, Indigenous peoples makes up 5% of Canada’s population, but over 30% of the federally incarcerated. As disturbing: 42% of women federal prisoners are Indigenous. And, for instance, their percentage of prisoners in Saskatchewan is a staggering 76% (Macdonald 2016), despite barely constituting 8% of the province’s population (Hylton 2002: 140). Dell’s (2002: 131,133) examination of Indigenous women’s experience of the Canadian criminal justice system – including police, courts and sentencing – reveals that they are ensnared in a “foreign justice system” where not only are they (and Indigenous men) not properly represented or fairly treated in the hall of “justice,” but they experience and endure a legal system that does not understand and take into account the cultural history of Indigenous women and men when marshalling them through the justice system. Furthermore, incarcerated Indigenous women are much more likely to be strip-searched, placed in isolation, have that isolation last longer, commit self-harm including suicide, and serve their entire sentence than white women prisoners (Guenther 2022; MacDonald 2016; Lemonde 2022). To echo Robyn Maynard (2017: 112), ...” prison is a site of violence, not one of healing.” And, too often prisons are used “as a substitute for social services for people with mental health and addiction issues.”<sup>17</sup>

Having provided context for the rise of the penitentiary, and profiling incarcerated Canadians, we turn next to describing the contemporary use of prison-workers in Canadian prisons.

### **Prison Labour: In and out of the Cellblock**

Convict labour refers to work performed by incarcerated individuals in prisons or contracted-out prisoners hired to perform work for an employer external - but contracted to -

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<sup>17</sup> Peter Collins (2009) in <https://uppingtheanti.org/journal/article/04-prison-abolition-in-canada>. Accessed 5 June 2022.

prison administrations.<sup>18</sup> Convict labour has a long history in North America. It emerged with the introduction of penitentiary in Canada corresponding to the development of industrial capitalism and the latter's twin concern for controlling and disciplining excess urbanizing populations, the poor, and unruly city folk disrupted by capitalist forces of production (McCoy 2012; Palmer 1980; Cunha 2014). The penitentiary functioned to serve the needs of a rapidly expanding capitalist labour market in perpetual search of "cheap" and "docile" labour for high profit returns. The confinement of increasing number of people accommodated both of the above and sought to deter militant protests and sabotages against practices of growing inequality and desperation (Linebaugh 2003). The penitentiary served to temporarily warehouse prisoners for their re-socialization into a redemptive civil life via evolutionary developments in more "humane" forms of imprisonment where punishment, though less barbaric than in previous times, was no less intense in its use of repressive technological and architectural innovations, "well meaning" in prison reformist programs, and labouring regimes administered by professional "helpers and healers of one kind or another" (Ellis 1979; McCoy 2012). Convict labour, was also replacement labour force for slave labour once slaves were freed in the Southern US as capital sought out the continuity of cheap, controlled and muted workforce for industrial and personal gain (Bauer 2018). The "free" but captive workforce of African Americans into convict labour was purposefully facilitated by the introduction of "black codes" apprehending and incarcerating them on invented or minimal offenses to house them in prisons to perform work in the growing enterprise of work contracts between private industry and prison authorities. This practise of "leasing" convict labour to private companies to use as cheap and "unfree" labour continued well into the first half of the 20<sup>th</sup> century (Khalek 2011; Bauer 2018). Protests from prison sympathisers briefly push back its use, though chain gang work replaced it. In Canada chain gangs (defined as public work and ways [House 2020]), used prison-workers to upkeep public roads and other infrastructure facilities (Elk 2016; House 2020; Khalek 2011; Bauer 2018). After approximately a 30-year hiatus, convict labour returned with a vengeance in the 1970s as employers succeed in pressuring legislators (especially in the US) to ease restrictions on its use so that they could increase profit by paying below market value wage rates, whilst instilling a work ethic in prison-workers, "teaching" them work skills, respect for authority, and loyalty to corporate goals (Khalek 2011; Bauer 2018; Gibson-Light 2019).

In Canada, convict labour pre-dates the birth of Confederation (see House 2020: 11-16). The first accounts of convict labor in BC date back to 1859, when the government used convicts to supply physical labour power to construct and maintain roads, government buildings and other public works projects (McCoy 2012; Mason 2003). In 1871, BC joined Confederation as its fifth province. The incorporation into the nation-state meant a new administrative structure to the existing jail system pre-dating 1867 in BC. The new system emphasized greater accountability,

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<sup>18</sup>Space doesn't permit us to provide a summary history of the rise of the penitentiary and the various social programs applied to convicts to "humanize" them and their experiences in prisons. The interested reader in these developments can consult the following writers McCoy (2012); Palmer (1980); Moore, Burton and Hannah-Moffat (2003); Hannah-Moffat and Moore (2002); Ellis (1979); Brown and Schept (2017); Cunha (2014); Bauer (2018); Webster and Doob (2017); and House (2020).

efficiency and discipline in prison labour (Mason 2003). It also divided the responsibility for convicts between the provinces and the federal government in Ottawa. Under this system, and to this day, provinces are responsible for convicts who are sentenced to less than two years, whereas the federal government is responsible for those sentenced to two years or more (Mason 2003). The former are provincial prisoners housed in provincial prisons run and administered by individual provinces, and within which the individual was sentenced. The latter designation are federal prisoners housed in the corrections system run by the federal government across Canada (Correctional Service Canada 2013).

In 2008-2009 the CSC employed close to 5,000 of all federal prisoners<sup>19</sup> in its Special Operating Agency, CORCAN, a name derived from corrections and Canada.<sup>20</sup> They worked about 2.8 million hours collectively in one of the 103 shops operating in 36 of the 53 federal institutions in one of CORCAN's four business lines: manufacturing, textiles, construction and services (Correctional Service Canada 2013). Prison-workers either work on CORCAN assignments, undertake vocational training and certification, partake in the National Employability Program and/or on CSC work assignments (Correctional Service Canada 2014). In 2016 approximately 3,900 prisoners worked in 110 shops in 29 institutions amounting to approximately 2.2 million collective hours (Correctional Service Canada n.d.).<sup>21</sup> By 2018 there were approximately 100 shops in 31 institutions, employing almost 3,700 offenders.<sup>22</sup> And in 2010, in general, up to 20 percent of the offender population work for CORCAN, but by 2017 fewer than 10 percent of the prison population have employment opportunities (Correctional Service Canada 2009-2010, and Office of the Correctional Investigator 2016-17). In 2009 CORCAN registered \$70 million in sales, of which \$10 million went to the private sector (Correctional Service Canada 2008-2009). For 2010-11, the revenue was reported to be about \$60 million (Quan 2013). With the growth of the welfare state in the post-WWII period, and a "sense of caring" embedded in policies of the Fordist welfare state, prisoners benefited from a renewed effort to rehabilitate them via assigned work tasks for the purpose of instilling discipline and a new habitus (Ellis 1979: 47; Buitenhuis 2013). The post-war welfare state updated the 1940s view of rehabilitation of prisoners as "damaged" bodies due to their economic and living conditions. This view and the unfolding of the welfare state accelerated the growth, professionalization and legitimacy of a new class of social police professionals (e.g.,

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<sup>19</sup> Not all prisoners work; some attend educational programming and some are also unemployed.

<sup>20</sup> "CORCAN was created by the C[orrectional] S[ervices] C[anada] in 1980 to serve as its production and marketing arm." It operates its employment programs in federal correctional facilities, employing close to 5000 prisoners at the time of this writing. Since 1980 it has sold products to all levels of government in addition to charitable, religious and non-profit organizations. Since 1992, when the Correctional and Conditional Release Act replaced the Penitentiary Act; then CORCAN has been able to sell its (or rather inmate's) services and products also to the private sector for competitive prices. John Howard Society of Alberta, Inmate Industries 2002, <http://www.johnhoward.ab.ca/pub/old/respaper/indust02.htm>.

<sup>21</sup> Correctional Services Canada. Quick Facts. CORCAN – Employment and Employability, No date, <http://www.csc-cc.gc.ca/publications/092/005007-3016-eng.pdf>

<sup>22</sup> Correctional Service Canada. CORCAN - Employment and Employability. Sept. 7 2018. <https://www.csc-cc.gc.ca/publications/005007-3016-en.shtml>

educators, social workers, prison doctors and nurses, etc.) to manage and organize prisoners' prison time. This group believed crime to be socially determined, and compassion and inclusion to be the most effective means to re-socialize prisoners for re-entering society as improved people. Punishment shifted from the corporeal to "a pedagogy of therapy" (Moore, Burton and Hannah-Moffat 2003). But increasing bureaucratization and the expansion of corporate management of prisons, along with the failures of rehabilitation programs, and the 1970s business and lobbyists demands for entrepreneurial flexibility, led to greater exploitation of prisoners and with fewer options for them to influence the management of their confinement, including their working conditions (McElligot 2008). Not surprisingly, they rioted, organized hunger strikes, protested and sought unionization. They were determined to change and improve the terms of their imprisonment and the conditions of their labour power exploitation (Ellis 1979; Thompson 2011). This resistance did not last as Fordism declined and Neoliberalism unfolded with new strategies, arguments and approaches to attack and denounce most social progressive initiatives and programs, whilst beating back unions, institutionalizing workfare, and dismantling working class gains in an austere welfare state (McElligot 2008).

### **Organized Labour and the Incarcerated Worker**

The relationship between convict labour and organized labour has been, to say the least, tense, suspect, and complicated over the decades. Historically, trade unions and workers have been unkind to prison-workers claiming they represent unfair competition with their low wages and acquiescence, perform sub-standard work, and generally undermine workers' dignity and respect through the deskilling of their jobs (Palmer 2019; 1980). Over the years prison-workers have seen organized labour as disinterested in their labour plight, clueless on how to organize them, and afraid to bring them onto the house of labour as especially "stigmatized" workers (Blankenship 2005; Kilgore 2013). The literature on this relationship is rather scant and scattered through various publications touching on events in different countries (House 2020; Irwin 1980).<sup>23</sup> What we can surmise from a review of writings on prison protests is that prisoners – for the most part – have gone at it alone in forming their own union seeking legitimacy and representation (Irwin 1980; Thompson 2017). Fitzgerald (1977) surveys prisoner revolts in the US, especially since the Second World War. He finds numerous cases whereby calls to unionize and bring prisoners into labour unions comprise a significant demand by protestors vis-à-vis prison authorities. These calls include establishing independent union constitutions, leadership cadres, and demands regarding immediate improvements of workplace issues, including increasing wages and addressing working conditions and safety. Cummings (1994) describes prison protests in San Francisco in the 1960s and 1970s; he discusses how the idea of unionization arose and was pursued from within prisons

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<sup>23</sup> While we did not access to this book in revision this paper, we alert the reader to the forthcoming – Jordan House and Asaf Rashid, *Solidarity Beyond Bars: Unionizing Prison Labour*. Halifax, NS: Fernwood, forthcoming November 2022.



without outside unions' help. He concludes that it is the “romanticizing left” that is sympathetic and supportive of prisoners' rights and campaigns and not traditional trade unions.<sup>24</sup> Organized labour is cagey in supporting alliances between community groups and prisoners, even when the latter are labourers too (Thompson 2011; Kilgore 2013). DeGraffe (1990) proposes that prisoners' collective bargaining model be an alternative to the negotiation-through-violence models in the US and EU, and could be implemented “via the vehicle of inmate democratic unions” (DeGraffe 1990: 223). This model, DeGraffe proposes is a win-win for both prisoners and institutions since forms of prison self-government might serve as a useful and effective tool for not-violent conflict negotiation and resolution for those “problems that do not lend themselves to adequate reform by legislative or judicial bodies” (DeGraffe 1990: 223). Prison authorities will have to be bullied into accepting this idea as abolitionists push for an end to prisons and capitalism.<sup>25</sup> Indeed, most of the writings above retain – implicitly or explicit – the institution of the prison and focus on how prisons can be made more humane and responsive to the needs of the incarcerated. While this view remains hegemonic in our society – including within the mainstream left – many prison activists today are questioning the existence of prisons and indeed the entire justice system. In fact, the growing movement for the Abolition of prisons includes abolishing the police, the criminal justice system and indeed capitalism (Purnell 2021; Vitale 2021). In the words of Julia Sudbury abolition is about “see[ing] the big picture” and “build[ing] a broad-based mass movement against all forms of imperialism and neoliberalism, while working on the ground toward small and realizable goals.”<sup>26</sup>

In Canada, Luc Gosselin's (1982) book hints strongly at prisoners wanting to form unions to ensure a say in the way prison workers are treated while incarcerated. One such example occurred in the late 1970s when Ontario provincial prison-workers from the Guelph Correctional Centre were hired to work in an abattoir, in effect constituting more than half the workplace's workforce. There, they worked alongside unionized workers, performing the same tasks under the same conditions (Butcher Workman Educational and Benevolent Association 1977). They succeeded in their quest to join the Amalgamated Meat Cutters and Butcher Workmen of North America union, since the Ontario Labour Relations Board ruled they were integral to the operation and success of the abattoir business (Amalgamated Meat Cutter and Butcher Workmen of North America v. Guelph Beef Centre Inc 1977). Without their inclusion in the business, the employer, in the case of a bargaining deadlock and strike, could draw from this captive workforce to alter the power balance in his/her favour during labour negotiations. But in this case the workplace was a private business not a prison run by the CSC and the latter's claim that since prison-workers perform rehabilitative work, they do not qualify as employees and non-organizable (Ling 2019).

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<sup>24</sup> For a recent example of unions being opposed to prison reform, see <https://www.prisonlegalnews.org/news/2013/jun/15/solidarity-and-solitary-when-unions-clash-with-prison-reform/>

<sup>25</sup> As a referee for this paper wrote: “the abolitionist struggle [means] – no fucking prisons, no fucking police, and fuck capitalism.”

<sup>26</sup> Julia Sudbury (2009) in <https://uppingtheanti.org/journal/article/04-prison-abolition-in-canada>. Accessed 5 June 2022.

Recent analyses show a desire by some to organize convict labourers. For example, Elk (2016) writes of the International Workers of the World union (IWW) campaign to convince the AFL-CIO leadership to support campaigns to organize prison-labourers. He quotes IWW organizer, Jimi Del Duca, saying that organizing prisoners “could really shake things up,” and that prison-workers “have nothing to lose and everything to gain.” And since there has been a revival in the use of convict labour in the US and Canada as a result of large corporations influencing legislative change for the purpose of using this category of labourers, and companies like IBM, Boeing, and several others are making huge profits (\$392 million in 1980 to \$1.31 billion in 1994 in the US), the time seems ripe to organize prison-workers (Elk 2016; see also Khalek 2011). Yet, barriers persist. Thompson sees both guards and prisoners as members of the working class and unions should work towards eliminating the state’s divide and conquer relationship between the two groups. She adds that it behoves organized labour to unionize prison-workers to ensure their “value added” advantage in the labour market isn’t their low wages undermining the conditions of workers outside prisons (Thompson in Elk 2016; Kilgore 2013; Thompson 2012; Blankenship 2005; House 2020). Organizing prison-workers is also difficult since they are often locked-up and prevented from assembling (Findlay 2011). As a result, it is difficult for them to gather, and mobilize to discuss issues and build solidarity amongst themselves. Unsympathetic corrections staff and prison officials further hinder attempts to unionize by physically separating union-sympathetic prisoners, including involuntarily moving those who try to different institutions (McKnight 2013).<sup>27</sup> Some prefer to argue that prison-workers seek to identify and claim worker identity recognition vis-à-vis the labour movement and labour relations issues (House 2020). Our case study, instead, shows that worker status of prisoners is firmly set and “owned” by prison-workers. It is their “employee” status before prison authorities and state labour relations boards and tribunals that is not recognized and thus at stake. Still, solidarity with prisoners (and prison-workers) remains and grows in the country with innovative organizing such as Bar None – a rideshare to bring family members to visit their incarcerated sons or daughters – and SMAAC – Saskatchewan, Manitoba, Alberta Abolition Coalition (Pesaruk (2021). Vance (2021: 50) describes organizing in solidarity with prisoners at the Toronto South Detention Centre (jail) to protest their treatment by prison authorities. On May Day 2020, supporters outside the jail “demonstrated their solidarity with prisoners there [in the jail] by making noise and ‘shooting off fireworks’ on a road ‘visible from many of the massive prison’s windows.”

### **Penal Labour Citizenship**

Industrial citizenship is a concept associated with Marshall (1992[1950]) and his discussion of citizenship rights. Marshall argued that capitalism developed and institutionalized civil, political

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<sup>27</sup> David Jolivet, a prison inmate at Mountain institution, BC, was transferred to the maximum-security prison Kent Institution in Agassiz, BC, shortly after his unionization work at Mountain Institution, and after accusations from CSC staff that he was plotting to attack prison guards (McKnight 2013).

and social rights and ascendancy of these rights were impetus for the emergence of other collateral rights. He did not say much about industrial rights except to indicate that they were secondary rights in the development of the broader and more encompassing rights mentioned above.<sup>28</sup> Marshall did define industrial citizenship as rights to association by individuals and groups originating in the workplace and confirmed and legitimated by the state in the capture of a country's industrial relations system. The literature debating Marshall's authority of rights is extensive and we won't relate it here (e.g. Bagguley 2013; Strangelman 2015; Natchwey and Seelinger 2020). Suffice to say that industrial citizenship is an encompassing term capturing the culture associated with workplace processes of management and state recognition, and the governance of the relationship between workers and their employers. For our purpose, penal labour citizenship connects the prison as both workplace and place of residence where real workers labour under insufficient rights and protections. Penal labour citizenship is prison-workers argument for inclusion in the industrial citizenship regime of a country regardless of their incarceration status.

The evidence redefining industrial relations and its implications for labour citizenship and trade unions is too long to discuss and cover here (Panitch and Swartz 2003; Howell 2019). Today's union density in Canada is low and dropping especially in the private sector (Government of Canada 2020). The welfare state continues to restructure to meet the needs of capital by adopting neoliberal policies of austerity and tampering citizens' expectations of welfare state provisions (Evans and Fanelli 2018; Rozworski 2015; Oates 2020).

The pursuit of penal labour citizenship underpinned the campaign in seeking first recognition of convict workers as employees of the federal state and then the right to form a union to represent them. Prisoners already possess some form of penal labour citizenship within the Charter (like other workers) since the latter contains right to association, right to representation and the right to collective bargaining even if workers earn their wage behind bars. And according to sources, they are covered by workers' compensation and are often addressed as employees by various communiqués from the warden's office (Grace 2014). So, penal labour citizenship is a claim for the extension of prison-workers' rights to industrial relations recognition and identity while also adding it to the already citizenship rights of prisoners in the penal code. It is the "citizenship" part in the penal labour idea that they are denied by the prison authorities standing in the way of proper recognition of their employment status. If federal prisoners only lose their right to freedom but retain voting rights, government pensions and other Charter rights like other non-incarcerated Canadians, then Mountain Institution activists believed in the right to representation and collective bargaining regardless of their status as incarcerated Canadians (Melnitzer 2000; CBC News 2002; Fudge 2014).

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<sup>28</sup> In this, we follow Baguley (2013), Strangelam (2015), and Natchwey and Seeliger (2020) and their discussion of Marshall's suggestions on the idea of industrial citizenship.

## The Mountain; the Institution

Located in Agassiz, BC, the Mountain Institution opened its cell doors in 1962. It was “built as fireproof and without workshops to house Doukhobor prisoners who engaged in work refusals and arsons in other Canadian prisons” (House 2020: 51). It is a federal medium security penitentiary run by the CSC. In 1969 the federal government designated it as a federal prison institution for prisoners and offenders requiring protective custody. It no longer serves this purpose today since it is an integrated prison with general population prisoners and offenders needing protective custody housed under the same roof (Grace 2014). Mountain is designated as a “work-focused prison where inmates must have steady jobs” (Findlay 2011). The majority of prisoners work for CORCAN in agribusiness, textiles, manufacturing, construction and (prison) services (John Howard Society 2002). According to the CSC (2005), 75 percent of offenders in the Pacific Regional, where Mountain and Kent institutions are located, work in one of its employment programs (Correctional Service Canada 2005). But according to Tonia Grace (2014), a criminal defense lawyer at one time representing this case, work hours have been reduced and unemployment in the prison was on the rise since 2014. And, employment programs offered, like prisoners working as mechanics, furniture makers, laundry staff and even haz-mat technicians (Lindell 2011a, b), do not prepare prisoners for the outside labour market (MacKrael 2014). This situation is another source of growing tensions in prisons (Jones, Bucerius and Haggerty 2019: 44).<sup>29</sup>

It was in 2010 that an inmate from Mountain, with an inmate from Kent Institution (Crawford 2011; Lindell 2011a), mounted their challenge to the federal labour legislation to seek recognition of inmate workers as employees under federal labour law. They sought union representation to improve safety in the workplace, including requests for proper work-related equipment, safety boots (Crawford 2011; Lindell 2001b), and access to vocational training programmes with defined steps to reach the top pay scale in the prison’s internal labour market (Lindell 2011a, b). The activists’ lawyer draws attention to the labour conditions at Mountain and in Canadian jails in general: federal prisoners generally get paid between \$5.25 and \$6.90 a *day* which amounts to, before deductions, \$35-\$40 every two weeks, as long as they remain in compliance with their correctional plans or “roadmaps to rehabilitation” (Lindell 2011a). According to James Phelps, the then-Deputy Commissioner of Correctional Programs and

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<sup>29</sup> The CSC is not publicly forthcoming about the employment conditions at its work sites. We reached out to the CSC to obtain information, such as annual reports, but have not had any success in obtaining information or reports from this organization. Our difficulty in getting information from prison authorities is not unique. Witness: Traditionally, Canadian correctional ministries have been comparatively closed off to outsiders allowing for few independent research opportunities. Consequently, Canadians mostly rely on research that has been conducted either internally by correctional ministries or in close collaboration with correctional ministries, but in contrast to Europe and the United States, we have few independent examinations of how Canadian prisoners experience and make sense of their lives inside of Canadian correctional facilities. This is especially true for women (Jones, Bucerius and Haggerty 2019: 44).

Operations, their wages are “linked to 15% of the federal minimum wage” – which was \$4.00 per hour in 1989.<sup>30</sup> The Harper government subjected them to a 30 percent reduction in pay, which was grieved by 9 prisoners in the Federal Court of Appeal (CFRC Prison Radio 2018; CBC News 2018).<sup>31</sup> Employed prisoners generally work twelve hours/day for six days a week (Lindell 2011a). The money they earn is tax-free and they can qualify for overtime pay (Lindell 2011a, b).

And while the governance regime of prisoner-workers contains an offender complaints and grievance procedural structure to address and resolve general prison complaints, including work-related issues, it too came under the ambit of the organizing drive due to its “complete slowdown” in the prison governing system.<sup>32</sup> On average, the CSC says that a “routine” grievance, which is supposed to be answered within 25 days of receipt by the Grievance Coordinator of an institution (Sapers 2012-2013), can take over 150 working days - seven months from initial filing to resolution. In the case of a high priority grievance, which is supposed to be answered within fifteen days, the number of days between filing and resolution can reach 100, or almost four months. At Mountain Institution, in 2011, 153 high priority complaints were made to the Office of the Correctional Investigator (Sapers 2012-2013). While it is not clear how many of these were work-related grievances, the lengthy delayed response rate sets the stage for the mounting of a campaign to organize prisoner-workers at Mountain Institution. The prison-workers, as a group, sought to secure their rights as a work force with collective bargaining power. So, organizers focused on work-related issues and on the inefficient conflict resolution in place and which ultimately defers to the Warden’s final say.

Once the campaign to unionize Mountain was mounted (Crawford 2011; Findlay 2011; CTV News 2011), other issues arose. These included: Which union would lead the campaign? If an existing union, which one? Or would these inmate/workers have to create their own union entity and identity in order to formalize organizing steps and legitimacy before the prison warden and the federal labour code? In some reports, the inmate workers by-passed approaching existing unions to represent them and instead formed their own organization free of assumptions about potential convicts as members (Crawford 2011). The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), for example, worried already in the 1990s about the trend to outsource prisoners throughout the public and private sectors in the United States and opposed the “unfair competition with unfree labour” (AFL-CIO 1997). It is also the case that unions have

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<sup>30</sup> Letter from Deputy Commissioner Phelps, Correctional Services Canada, to the Chairman of the Mountain Institution Inmate Committee; Obtained by one of the authors through Request for Information, Exhibit 17.

<sup>31</sup> Also see: Honourable Justice Roy, Federal Court Decision January 29, 2018, Citation: 2018 FC 94, <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/305567/1/document.do>

<sup>32</sup> For instance, in 2009, in total, 28,000 complaints were submitted to the correctional grievance system. This was an increase of 8,000 grievances from the 20,000 submitted in 2005 (Findlay 2011). In 2011-12, in order of importance, grievances were made about conditions of confinement/ institutional routine (27 percent) interactions with prison staff (24 percent) and healthcare (10 percent).<sup>32</sup> More specifically, according to Correctional Investigator Howard Sapers’ Annual Reports there were 74 employment-related grievances made in 2009-10; (Sapers 2009-2010) 78 for the period of 2010-2011 (Sapers 2010-2011) and 77 for 2011 to 2012 (Sapers 2011-2012).

public profiles and images to protect. Hence, representing or associating themselves with known convicts might not be the right image for unions especially at this juncture of weak unions and strong capital.

The inmate activists David Jolivet (McKnight 2013) and Vincent Villebrun<sup>33</sup> with a core group of fourteen prisoners from Mountain Institution (Findlay 2011) set-up their own union and named it Canadian Prisoners' Labour ConFederation, Local 001 (Crawford 2011; Lindell 2011a, b; and Waller 2013). Jolivet was the interim national president, while Villebrun was the interim vice president.<sup>34</sup> They were supported in their efforts by petitions from prisoners from six other jails across Canada (Crawford 2011). By March 2010 the activists and others had drafted a constitution for the union and began their work towards collecting signed union cards to bolster their case for certification. They signed up 229 prisoners (51%) of the 449 prisoners at Mountain (Findlay 2011). Natalie Dunbar, one of the activists' lawyer at the time, said that more than 76 percent of the prisoner population across Canada were supportive of forming a prisoner union (Crawford 2011). Similar information has also been suggested to us; apparently, there are hundreds of prisoners across 54 federal institutions (prison population in excess of 13,000) waiting to jump on the unionizing bandwagon, ready and willing to sign union cards (Grace 2014). During a radio interview with the Vancouver radio station News1130, Dunbar mentioned that some existing unions supported their efforts, but in muted solidarity only.<sup>35</sup> In a *Maclean's* Magazine article on the unionization attempt, Dunbar sounded optimistic about the campaign: "a prisoner's union could 'change the dynamic' between guards and prisoners for the better. '[She continues] Prison staff is unionized, and they have issues that they have to deal with and believe it or not some of those issues intersect with prison issues'" (Findlay 2011; see also Thompson 2012; Palmer 2019). She didn't elaborate on what these issues might be. Having set up the structure and constitution of the union necessary for a stand-alone organization, inmate activists sought permission to approach other prisoners to have them sign union cards. To do this, they requested permission from the prison warden to move about the prison. The warden refused, claiming the union was an illegitimate organization since prisoners were not employees of the state eligible for union rights and representation. The warden further argued, through his lawyer's petition at the Labour Board, that prison-workers are not employees of Corrections as defined by the Public Service Labour

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<sup>33</sup> A pseudonym used by this inmate; Vanessa Buchanan, Letter from Treasury Board of Canada Secretariat, dated March 23, 2012, Re: Complaint under section 190 of the Public Relations Labour Relations Act; Obtained by one of the authors through Request for Information.

<sup>34</sup> Letter from the Canadian Prisoners' Labour Confederation to the Public Service Labour Relations Board, dated January 31, 2012, Re: Complaint under section 190 of the Public Relations Labour Relations Act; Obtained by one of the authors through Request for Information, Exhibit; David Jolivet. Cell Count 69, "Confederation Update" (2013), 5 [http://prisonfreepress.org/Cell\\_Count/Cell\\_Count\\_-\\_Issue\\_69.pdf](http://prisonfreepress.org/Cell_Count/Cell_Count_-_Issue_69.pdf)

<sup>35</sup> Ms. Dunbar was unwilling to divulge to us the names of the unions and officials who stated their support for the convict union campaign. Tammy Moyer and Jim Bennie, "Lawyer Natalie Dunbar Speaks Live with News1130's Anchors Tammy Moyer and Jim Bennie," *News1130*, 4 March 2011 <http://www.news1130.com/2011/03/04/lawyer-natalie-dunbar-speaks-live-with-news1130s-anchors-tammy-moyer-and-jim-bennie/>

Relations Act. Therefore, he was in the right to dismiss and refuse the prison activists' internal campaign to get other prisoners to sign union cards. Jean-Paul Lorieau, a spokesperson for the CSC, remarked that prisoners have prisoners' committees where to bring complaints and issues for resolution (Findlay 2011). Committees do indeed exist; but prisoners find them ineffective and some are sceptical of their neutrality since the warden has the final say on who sits on the committee and what committee recommendations get implemented (Grace 2014; Melnitzer 2000).

This development did not deter the activists and their fellow prisoners from petitioning the Canadian Industrial Relations Board (CIRB) for union recognition in April of 2010.<sup>36</sup> After some back-and-forth correspondence, the CIRB<sup>37</sup> informed them it was “unable to process this complaint as the Board has no jurisdiction over labour relations matters at the Correctional Service of Canada”.<sup>38</sup> Either on the advice of the Board or from their lawyer, the complaint was moved to the Public Service Labour Relations Board (PSLRB) for ruling. The PSLRB was petitioned by the activists who argued that prison-workers working in government employment programmes are indeed employees, and able to form an association for the purpose of organizing themselves into a union, *even if* they labour in a Canadian prison. The PSLRB, however, ruled that prisoners are “not employees of Correctional Service Canada” because they are not appointed to a position by the Public Service Commission as defined in the Public Service Labour Relations Act (PSLRA). Further, their “union” cannot exist since prisoners on government employment programmes are not employees of the state.<sup>39</sup> The activists countered that the case law the PSLRB used as referent was out of date and no longer applicable to this case. They argued, too, that prison-workers compete for jobs like all workers and that CSC has rigorous standards for hiring, which prison-workers have to meet to get hired. In this way, the activists stated that they are employees hired by the criteria set by the CSC. The PSLRB was not swayed by these arguments and ruled in favour of CSC.<sup>40</sup>

Interestingly, the PSLRB Chair wrote in her decisions summation that she had insufficient evidence “to determine that offenders in federal penitentiaries who participate in employment programs are employed” but, nonetheless, pointed out that she could not see how they can be defined as employees under the Act.<sup>41</sup> Perhaps the former statement by the PSLRB Chair is an opportunity for the activists to further enhance the description of the work prisoners perform

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<sup>36</sup> Letter from Human Resources and Social Development Canada, Collective Agreement Coordinator, to David Jolivet, no date; Obtained by one of the authors through Request for Information, Exhibit 8.

<sup>37</sup> The Canadian Industrial Relations Board hears and adjudicates on matters under the Canada Labour Code. For a statement on its function and purpose, see <http://www.cirb-ccri.gc.ca/eic/site/047.nsf/eng/home>.

<sup>38</sup> Letter from Canada Industrial Relations Board to David R. Jolivet, dated Sept. 1, 2011, in which the CIRB expresses it has, as a Board, “no jurisdiction over labor relation matters at the CSC”. Instead, they suggest, to contact the Public Labour Relations Board. Exhibit 9; in possession of authors; Obtained by one of the authors through Request for Information.

<sup>39</sup> Sylvie Gilbert, Association of Labor Relations Agencies. ALRA Advisor Newsletter July 2013, 5, advisor2013-07.pdf.

<sup>40</sup> Public Service Labour Relations Board. Mr. David Jolivet and Treasury Board. March 1, 2013. <http://ezproxy.library.ubc.ca/login?url=https://search.proquest.com/docview/858316469?accountxid=14656>

<sup>41</sup> Public Service Labour Relations Board. Mr. David Jolivet and Treasury Board. March 1, 2013.

while incarcerated. In the end, since prison-workers were not defined as employees under the Act, their union could not be interpreted as a legitimate employee organization. Therefore, given the presentations from both sides and the interpretation of the relevance passages of the Act, the activists' submission and complaint was deemed by the Chair "outside the jurisdiction of the PSLRB".<sup>42</sup>

News of this decision reached the floor of the Parliament. During question period, Ms. Candice Bergen, then Parliamentary Secretary to the Minister of Public Safety, was asked by a member of her own party to update Canadians on the government's position on prison unions. She replied:

Mr. Speaker, the suggestion that prisoners should have the right to unionize is just plain wrong. Most Canadians would see it as plain wrong. We welcome the common-sense decision of the Public Service Labour Relations Board that unions are indeed not necessary for convicted criminals.<sup>43</sup>

It is unclear to us how Ms. Bergen ascertained Canadians' views on unions for prisoners. Most striking is her (purposeful) misinterpretation of what the PSLRB Chair wrote. The Chair did not say that unions were wrong or unnecessary for prisoners only that according to her interpretation of the existing labour legislation, prison-workers did not meet the definition of employees of CSC and thus ineligible to unionize at this point in time under the PSLRB.<sup>44</sup>

Sometime soon after this decision was rendered, the activists' original lawyer was let go for Tonia Grace. With her assistance, the two activists revived the unionization campaign and challenged the decision of the PSLRB at the Federal Court of Appeal.<sup>45</sup> Here, the arguments were similar to those made before the PSLRB and the decision likewise - rejected. The federal Court of Appeal denied the request for a judicial review.<sup>46</sup> The PSLRB dismissed the complainant's case "without considering it on the merits." It concluded that "it has no jurisdiction to entertain the complaint because inmates of a federal correctional institution who participate in an institutional work program are not, by virtue of that participation, 'employees' defined in subsection 2 (1) of the Act because they are not appointed by the Public Service Commission to a position created by the Treasury Board." And having moved the case to the Federal Appeals Court, the decision rendered on the appeal in this court as the same:

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<sup>42</sup> Public Service Labour Relations Board. Mr. David Jolivet and Treasury Board. March 1, 2013.

<sup>43</sup> Candace Bergen, Public Safety. Parliament of Canada. *The Hansard*, 1 February 2013 <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5954632>.

<sup>44</sup> Public Service Labour Relations Board. Mr. David Jolivet and Treasury Board. March 1, 2013.

<sup>45</sup> Honorary Beverly McLaughlin, The Federal Court of Appeal Division, January 7, 2014, Jolivet <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/65792/1/document.do>

<sup>46</sup> Honorary Beverly McLaughlin, The Federal Court of Appeal Division, January 7, 2014, Jolivet <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/65792/1/document.do>



Inmates participating in work programs organized by the Correctional Service of Canada have not been appointed to a position in the federal public. As a result, *they are not ‘employees’ within the meaning of the Act.* (Our emphasis).<sup>47</sup>

Given this decision, prison-workers are employees non-gratta in official documents dealing with their labouring activities. Who then owns their labour power? Are prison-workers the outright property of the federal government both for the length of their incarceration and for their labouring activities? In other words, the incarceration of prisoners seems to be superimposed on their identity (or rather lack of) as workers engaged in manufacturing and service delivery work while earning meagre wages.

In an interview, Ms. Grace pointed out that a prominent Canadian Toronto Law firm, which she was reluctant to name, had agreed to look into the case and the arguments relevant to the issues in dispute. But after some deliberation, the firm decided instead the best course of action was not to pursue the case to the Supreme Court, but return it to the initial jurisdiction of the CIRB (Grace 2014). But since the CIRB functions to certify unions in federal jurisdictions, one can only imagine that prisoners do not qualify under this category – they are not public servants – and so arguments will have to be made as to why this is the proper jurisdiction, and the activists will have to present evidence in support of returning to this jurisdiction. Rashid (2017: 2) has been undeterred by these legal defeats and argues that prison-workers have been unjustly denied rights to organize. He proposes the following to recover the campaign: (1) Prisoner-workers are “wrongly denied ‘employees’ status because they are wrongly told they cannot be employees because their work is rehabilitation; they are vulnerable.” (2) Their “exclusion” “from the *Public Service Labour Relations Act (PSLRA)* unjustifiably infringes s. 2(d) of the *Canadian Charter of Rights and Freedoms (Charter)*, and is not saved by s.1.” and finally (3) If prisoner-workers are rejected status under the *PSLRA*, then their exclusion from the *Canada Labour Code (CLC)* infringes their s. 2(d) *Charter* rights, and is not saved by s.1.” It remains to be seen what (and who) will take this interpretation to court.

## Conclusion

To sum up, there are several outstanding issues at the centre of this case. First, how and via which mechanism/definition/identities will prison-workers be interpreted as “employees” necessary to convince jurisdictional tribunals of their merits before labour legislation? Second, who has jurisdiction to hear this new/old case? With respect to issue one, we raise the following

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<sup>47</sup> For details on the decision see, <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/65792/1/document.do>.

concerns: can federal prison-workers working in the prison be defined as workers and employees if they do not have a job? According to Ms. Grace, there are fewer and fewer jobs to be had in the prison; a trend also reported by Howard Sapers in his 2012/13 report (Sapers 2012-2013: 33). Will the definition instead be in terms of occupation rather than job and holding a job in the institution? Answers to these questions and concerns, as well as their legal ramifications in relation to labour protections granted, if any, will need continued investigation. Ms. Grace did say that in terms of defining prisoners as employees, CSC already does so in the context of workers' compensation matters, and apparently, she is gathering documentation that refers to prison-workers as "employees." Further, Ms. Grace seeks to define prison-workers as occupying the same worker identity as gardeners, cleaners, and other similar jobs being performed by free workers (non-prisoners) in the prison.

Regarding issue two, who will bring this case to its appropriate jurisdiction? What argument(s) will be most compelling for that jurisdiction to hear and rule in favour of the prisoners? What role will prison activists who led this campaign play? Can Rashid's (2017) arguments be a way forward to argue for the legitimacy of prison-workers as employees? This is further complicated by the fact that one activist has already been released and the other is incarcerated in Quebec some 3,000 km from Mountain. At this point, a clear strategy to address these challenges is not evident in our research findings and interview. Nor is it obvious what role will prison-workers and union activists play in a campaign defined and run by lawyers interpreting the legal framework on industrial relations.

Third, while there is much talk today of new community unionism to organizing workers through engagement with communities, this case shows that this approach cannot be applied without observing outstanding circumstances. In the Mountain campaign, prisoner-workers/activists are relying on old fashion union focus to try and win union recognition for members before labour tribunals. The focus is on the law and labour legislation and the legalistic processes this entails with respect to convicts. Butovsky and Smith (2009) have critiqued this rights-based and legalistic approach which many unions practise as a continuance of business unionism (but see King 2020). However, this singular focus seems warranted in this case given that organizers cannot call upon broad community groups for financial support and assistance given the criminal record of the activists leading the campaign. In labour analyses of the turn to legal processes, two arguments are paramount: (1) that doing so takes control of the campaign from the rank-and-file and puts it in the control of lawyers, with specific legal mechanisms and the legalese this entails, and (2) that the time-consuming aspect of the pursuit through legal channels challenges the determination, patience, as well as momentum of the campaign and activists' ability to sustain it for the long-term. But in the case of these prisoners, the grind of the industrial relations bureaucracy, while discouraging, is an insufficient approach to eliminate participating in the process. Plus, the prisoners behind the push have few allies outside the prison other than their lawyers which have changed over time. Excavating and extracting law and precedent is something the prisoners have time to do without reaching out to outside support, which may disappoint if

allies recoil from campaigning with and for “stigmatized” workers. This is because prisoner/activists have time on their hands and can wait it out over the long haul.

Fourth, can this campaign be successful without a “legitimate” union involved? What role for unions, and which one is willing to take up this case? Surely it cannot be the prison guards’ unions given the animosity and even strong dislike between guards and prisoners. To try and put both of these groups in the same union local would be disastrous for solidarity and even worse for relations at work. As the evidence above shows, prisoners resolved to form their own union rather than seek representation from an existing union. But there is a risk in prison-workers going it alone given the expertise, resources and experience an existing union can bring to an organizing campaign, not to say of negotiating a first contract. We are left with the same question – who will take up this challenge by seeking to work with prison-workers to get them organizing into a union? Which union is willing to stake a public façade as a supporter and identify for organizing prison-workers at the risk of a public smear campaign against it for supporting criminals? And, do “legitimate” unions have an appetite for cases like these when they seem so preoccupied with a “politics of pragmatism” focused on the narrow wishes of its members, and picking through the “best practices” of neoliberalism to conduct their work (Yates and Coles 2014; MacDonald 2014). Perhaps a way to pursue and resolve this is to consider how and why unions have organized “stigmatized” workers such as strippers and those in the “adult entertainment” industry (Brooks 2001). A recent review of stripper union members revealed that they organized themselves, even though, at some later date they joined the Service Employees International Union (SEIU). For instance, adult entertainers at the Lusty Lady in San Francisco organized under the Exotic Dancers’ Union which was an alias for a SEIU local in the city. Given the decline in union membership and the growth in workers in the service industry performing jobs that are no longer typical of the workers unions organized in the past, can unions ignore to organize them?

Couto (2006) provides some helpful legalistic advice on how to bypass the “stigmatized” identities or social perceptions of some workers, and focus on contesting some legal interpretations and definition of who is and isn’t an employee as defined in labour law. But legal victories are almost always better attained with the outside pressures of public opinion and well-organized community groups and supporters. In the Mountain Institution case described herein, public and community support are largely absent, or if present, muted. One can only hope that community activists see through the smokescreen of stigmatized identities and come to the aid of incarcerated workers desperate for a more equitable and fair treatment in their employment relationship with CSC. Finally, does a stake in the penal labour citizenship position have any potential to rally convict workers to organizing? Does it have potential to garner support outside prison-factories, thereby enabling solidarity with groups beyond convicts and in support of their campaigns? In theory, as we have pointed out, prisoners have rights protected in the Canadian Charter despite of their incarceration. Yet, these rights are not always granted nor protected as for example Parkes’ research reveals (Parkes 2007). Penal labour citizenship is our coined concept to capture the position convict workers are afforded in labour legislation and what they are excluded from. It is a concept that seems to us closely connected with what convict workers are pursuing even if the

carceral state restricts workers' maneuverability and increasingly reduces their ability to access labour rights and the protections unions offer.

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