

May 2013

# Psychopathy and Sentencing: An Investigative look into when the PCL-R is admitted into Canadian courtrooms and how a PCL-R score affects sentencing outcome

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A thesis submitted in partial fulfillment of the requirements for the degree in Master of Education

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PSYCHOPATHY AND SENTENCING: AN INVESTIGATIVE LOOK INTO WHEN  
THE PCL-R IS ADMITTED INTO CANADIAN COURTROOMS AND HOW A  
PCL-R SCORE AFFECTS SENTENCING OUTCOME

(Thesis format: Monograph)

by

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Faculty of Education

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Education in Counselling Psychology

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## Abstract

Little is known about how and when the Psychopathy Checklist Revised (PCL-R) is being introduced into Canadian Courts or how it affects sentencing outcomes. Using the Lexis-Nexis Quicklaw Academic Database to retrieve judge's sentencing decisions, all 274 cases with PCL-R information for Canadian courts were included in this study. It was hypothesized correctly that PCL-R information would most often be introduced in Long Term Offender (LTO) and Dangerous Offender (DO) applications as well as sentencing cases for murderers and sex offenders. The 274 cases were then reduced to 37 cases in order to focus on sentencing without Dangerous Offender or Long Term Offender applications. It was hypothesized that a higher PCL-R score and detailed expert testimony on psychopathy would lead to a longer sentence. It was found, when the offender's offence was controlled for, a high risk to reoffend or a high PCL-R score significantly affected sentence length however the quality or quantity of expert testimony about psychopathy did not.

## Keywords

Psychopathy, PCL-R, Psychopathy Checklist Revised, Sentencing, Risk to Reoffend

## Co-Authorship Statement

Andrew Bisback, MSc. helped the author to review judge's decisions and collect relevant data. He then used that information to help the author code the qualitative data into quantitative data using the coding sheet created by the author.

## Acknowledgments

This thesis would not have been possible without the help of several individuals with whom I owe a great debt. First and foremost, I would like to thank Dr, Alan Leschied for his unconditional support and for allowing me to research something I truly love. This thesis would not have been possible without his expert guidance and his words of wisdom. I would also like to thank Dr, Susan Rodger for her excellent suggestions, advice and assistance with data analysis.

I would like to thank Dr. Andrew Johnson, who helped me successfully navigate the world of SPSS and to analyze my data. I could not have completed this without him and I am truly thankful for all his help and for all that he taught me.

I would also like to acknowledge Andrew Bisback for all of his hard work and long hours spent reading and coding judge's decisions. His enthusiasm for the project and for the criminal justice field, remind me of the importance of applying research in order to improve the lives of the people we work with.

I would like to acknowledge my husband, Ahmed Yousef, for the many hours he spent editing and reviewing my work as well for the wonderful suggestions that he gave. He was a source of never ending support and a constant reminder of my impending deadline.

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## Chapter 1

### 1 Psychopathy in Canada

The term psychopath has become a common phrase in popular media but it is important to have an understanding of the influence a person with psychopathy has on society and how the legal system is designed to protect society against this influence. The current research project is designed to investigate this topic, as well as how the Psychopathy Checklist Revised (PCL-R) is used in Canadian courts. The Psychopathy Checklist Revised (PCL-R), created by Robert Hare, is one of the most frequently used assessments in the area of corrections (Hare, 2003). Although this assessment was originally designed to identify psychopaths who have come in contact with the law, it has since been expanded and used to help identify psychopaths in the general population, including white collar workers (Hare, 2009).

Hereafter, the term psychopath will refer to any person who has received a score of 30 or more on the PCL-R. The term is not meant as a way to label or stigmatize any group but instead is solely used as a succinct way to describe common traits or characteristics found in people who have scored 30 or above on the scale.

#### 1.1 Overview of the Psychopath

Psychopath refers to a person with a personality disorder that includes a cluster of interpersonal, affective, lifestyle and antisocial traits and behaviours (Hare and Logan, 2009). People with these traits and behaviours are often described as deceptive, impulsive, irresponsible, manipulative, and glib. They have poor behavioural controls, lack a sense of empathy or guilt, have a callous disregard for other's rights, are sexually promiscuous, have a shallow affect and are constantly looking for stimulation; they are often described as being unethical, as they frequently engage in antisocial behaviours (Hare and Logan, 2009). Typically, psychopaths comprise 20-30% of the prison population (Hare, 2003).

In order to understand why psychopaths are so dangerous, it is critically important to understand how they think and view the world in relation to their criminal activity. Psychopaths exhibit a lack of remorse for their crimes and lack empathy for their victims. They are heavily focused on their own gratification and often go through life taking what they want from others with a complete disregard for the consequences of their actions. They do not accept responsibility for their actions and place blame on external sources, such as other people in their lives (Babiak et al., 2012).

With regards to their personality, psychopaths are known for being glib and charming, traits they use to manipulate and deceive other people. They are most often the 'life of the party' and appear to get along well with other people, easily making "friends" and getting others to trust them. Once they gain a person's trust, they have no problem using that relationship in order to take advantage of the other person (Patrick, 2007). At their core, psychopaths see others as either competitors or prey and feel what they don't go after, others will. This belief, mixed with their egocentric personality and their need for power and control, leads them to a life of anti-social behaviour, and in some cases crime and consequently jail (Patrick, 2007).

There have been claims that when faced with evidence of their guilt, psychopaths will claim they lost control or were provoked, taking no responsibility for their actions, but researchers have found evidence to support the opposite (Patrick, 2007). Porter et al. (2009) found that psychopaths' violence is often pre-meditated, emotionless, calculated and controlled, and further, that psychopaths who committed homicides planned the murders in advance and with a motive of either personal gratification or one that was sadistic in nature. Murders committed by psychopaths are not the result of a loss of emotional control, as they so often claim, and are in fact very goal oriented (Porter et al., 2009). Psychopaths' need to avoid accountability and responsibility often leads them to try and place the blame on others, and when that is not possible, in an effort to distance themselves from the crime, they will blame it on the victim saying it was a loss of control on their part that could not be prevented (Porter et al., 2009).

There is some evidence to suggest that psychopaths are highly adept at manipulating the criminal justice system. Porter et al. (2009) found that psychopaths often received reduced sentences and were more likely than non-psychopaths to be able to have their appeals heard by a higher court. Of particular interest here, the same researchers also concluded that the courts are persuaded by psychopaths, as parole boards were also found to be susceptible to their charm. Psychopathic sex offenders were 2.43 times more likely to be released compared to their non-psychopathic counterparts and psychopathic non-sexual offenders were even more likely to be released at 2.79 times the rate that non-psychopathic, non-sexual offenders were released. Overall, parole boards release psychopaths 2.5 times faster than their non-psychopathic counterparts even when they have a longer offence history and higher risk level (Porter et al., 2009).

Researchers have investigated why psychopaths are so proficient at persuading people in authority (Patrick, 2007). It was found that psychopaths are adept at imitating emotions that they believe will persuade those in authority, such as judges and jury members, to mitigate their punishment. By faking emotions, psychopaths are able to make those in authority believe that they were actually remorseful for their crimes and less likely to commit them in the future (Patrick, 2007). In his 1993 book “Without a Conscience”, Hare states that psychopaths are adept at impression management, and are skillful at identifying what information is being sought in a test or interview and consequently speak or act in a manner that is desired by the interviewer. Given this, malingering is a special concern with this population when completing courtroom evaluations. Taken together, this evidence suggests that psychopaths are skilled in studying people in order to determine what they really want to hear. As a result of growing up without experiencing the same feelings as other people, psychopaths learn to imitate the emotions of others and to find the right feeling or words needed in a given situation in order to get what they want (Hare, 2001).

## 1.2 Psychopaths and Offending

In order to answer the question of how psychopathic offenders deviate in committing crimes as compared with their non-psychopathic counterparts, Hakkanen-Nyhol & Hare (2009) studied Finnish offenders charged with homicide. They found that offenders who scored high on the PCL-R were more likely to leave the crime scene without informing anyone of the killing, to deny the charges, to be convicted of involuntary manslaughter rather than manslaughter or murder, and to be granted permission to appeal their lower level court sentence (Hakkanen-Nyhol & Hare, 2009).

In general, people with high levels of psychopathic traits come into contact with the law at a younger age compared to their non-psychopathic counterparts (Forth & Book, 2007), are more violent during the commission of their crime (Porter & Porter, 2007), more prone to predatory, instrumental violence (Woodworth & Porter, 2002) and more difficult to treat and rehabilitate (Harris & Rice 2006; Wong & Hare, 2003). Porter and Woodworth (2007) also found that psychopaths were more likely than other offenders to omit major details of their offences and to minimize the instrumentality of their crimes by exaggerating the extent to which their crimes were reactive. Psychopaths were also more likely to shift the blame of the crimes to external forces and to focus on, “saving their own skin” (Hakkanen-Nyhol & Hare, 2009). As to why psychopaths are so dangerous, Hare (1993) stated,

They commit more than twice as many violent and aggressive acts, both in and out of prison, as do other criminals....For them (psychopaths), violence and threats are handy tools to be used when they are angered, defied, or frustrated, and they give little thought to the pain and humiliation experienced by the victims. Their violence is callous and instrumental-used to satisfy a simple need, such as sex, or to obtain something he or she wants-and the psychopath’s reactions to the event are much more likely to be indifference, a sense of power, pleasure, or smug satisfaction than regret at the damage done. (p. 89).

Porter et al., (2000) studied sexual offenders with a PCL-R score of 30 and above, the research cutoff score for a diagnosis of psychopathy, in order to determine the types of crimes committed by psychopaths. They found that 6.3% had been convicted for extra-familial molesting, 6.3% for mixed molesting, 10.8% for incest, 35.9% for raping and 64% for raping and molesting. These findings, when compared to the offenses committed by their non-psychopathic counterparts, suggest that psychopathic sexual offenders are more likely to target both children and adults, resulting in a larger potential victim pool. Consequently, this means that psychopaths are more likely to have a greater number of victims and pose a larger risk to society as compared to their non-psychopathic counterparts (Rice and Harris, 1997).

Even when in jail, psychopaths pose more of a risk for violence compared to their non-psychopathic counterparts. A 2000 study by Hare, Clark, Grann, and Thornton found that 42% of those with elevated PCL-R scores committed an assault in prison, compared to only 16.4% of those with lower scores.

Treatment outcomes for psychopaths have been a controversial topic, with many researchers finding evidence both in support of and against the effectiveness of treatment. Hare and Wong (2005) found that psychopaths responded better to treatment when relapse prevention techniques were integrated into a cognitive behavioural program that focused on taking personal responsibility. These researchers suggested that efforts should be made to emphasize that psychopaths are alone responsible for their behaviour and to teach more pro-social ways of using their abilities to satisfy their wants and needs. They found that conventional insight and empathy building programs were not effective in reducing recidivism (Hare and Wong, 2005).

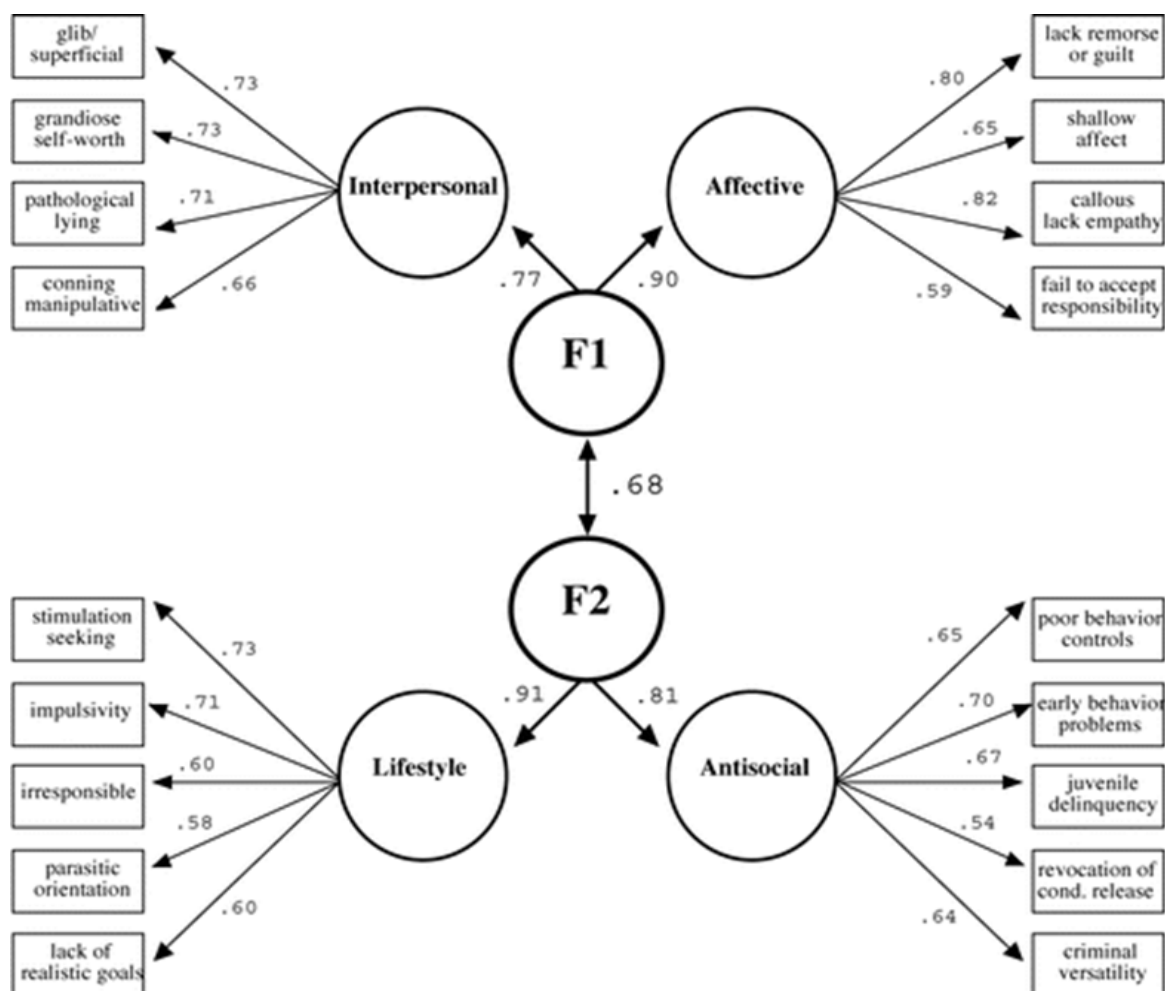
### 1.3 PCL-R Assessment Information

Hare's PCL-R is a 20 question assessment designed to assess the level of psychopathic traits an individual possesses. The 20 items are rated on a 3 point scale (0, 1, 2) according to the extent that each item applies to the individual. The maximum score

an individual can receive is 40 and the cut-off for a diagnosis of psychopathy is 30 (Hare, 2003). The average non-psychopath will score a 5 or 6 while the average corporate or white-collar psychopath will achieve a score in the 20's (Babiak & Hare, 2006). Sexually deviant psychopaths will tend to score the highest (Hare, 2003).

Figure 1.1 taken from Hare and Neumann (2008) shows the structure of the two-factor PCL-R higher-order representation of the four correlated factors model. Eighteen of the twenty items form the four dimensions: (i) interpersonal (glib/superficial, grandiose self-worth, pathological lying, conning/manipulating), (ii) affective (lack remorse or guilt, shallow affect, callous/lack empathy, fail to accept responsibility), (iii) lifestyle (stimulation seeking, impulsivity, irresponsible, parasitic orientation, lack of realistic goals), and (iv) antisocial (poor behavior controls, early behavior problems, juvenile delinquency, revocation of conditional release, criminal versatility). These four dimensions are combined together and divided into two factors: Interpersonal/Affective (F1) and Lifestyle/Antisocial (F2). Each of the eighteen items are taken as one question to be rated on the 3 point scale. The last two items which do not load on either factor are, "promiscuous sexual behavior" and "many short term relationships" (Hare & Neumann, 2008). Administrators of the PCL-R use a semi-structured interview, case history information and specific scoring criteria to rate each of the twenty items.






 Hare RD, Neumann CS. 2008.  
Annu. Rev. Clin. Psychol. 4:217–46.

Figure 1. Two factor analysis of the PCL-R structure.

## 1.4 Inter-Rater Reliability

Research suggests that scores for Factor 4 (Antisocial) of the PCL-R are the least subjective and vulnerable to the effects of evaluator variability (Rufino and Boccaccini, 2008). In Rufino and Boccaccini's 2008 study, nine doctoral students were given training on the PCL-R and asked to rate the subjectivity of each item. With an intraclass correlation coefficient (ICC) of .94 they agreed on which items required the most

subjectivity, with Factor 4 having the lowest ICC (Rufino and Boccaccini, 2008). Studies have found that Factor 4 is the most predictive of recidivism and is in fact more predictive than Factors 1, 2 and 3 combined (Walters et al., 2008).

The Hare manual (2003) reports inter-rater agreement for the PCL-R total score, with single evaluator intraclass correlation coefficients (ICCs) ranging from .86 to .94. However a recent U.S. study of opposing evaluator PCL-R scores from sexually violent predator (SVP) trials suggest that these scores may not translate into the forensic evaluations in the field (Murrie et al., 2008a). The study examined PCL-R scores from 23 sex offender civil commitment cases where the offender was scored by a prosecution evaluator as well as a defense evaluator. The agreement for the total PCL-R score was .39; a much lower score than those reported in the manual. The researchers found that scores reported by prosecution evaluators were significantly higher than those reported by the defense evaluators, which shows a possible partisan allegiance (Murrie et al., 2008a). Results such as these have produced concern that Hare's PCL-R inter-rater reliability scores cannot be reproduced in the forensic field.

In order to further investigate this topic, another study looked at inter-rater reliability with evaluators who had the same training and the same information such as files and video interviews (Murrie et al., 2008b). They found that evaluators in this case produced high inter-rater reliability scores. The study went on to suggest that these findings may have been different from previous studies looking at real world forensic settings because of the differences in information that evaluators would have in the field. In practice, opposing evaluators may have different offender information, conduct separate interviews, and have different training and experience with the PCL-R. Murrie et al. suggests that this might be responsible for the discrepancy between inter-rater reliability scores observed in forensic settings versus research settings (Murrie et al., 2008b).

Upon closer inspection, Murrie et al., (2008b) found that more than 30% of the variance between evaluators was due to evaluators consistently scoring all clients either higher or lower than other evaluators would have. When researchers compared evaluators

who scored the same offenders, they found that two evaluators differed on average by more than 10 points. Murrie et al, (2008c) also found that 20% of the variance was attributable to adversarial allegiance and 45% to the offender's natural variance on the PCL-R scale.

## 1.5 Allegiance Differences in Ratings

Although the APA Committee on Ethical Guidelines for Forensic Psychologists (1991) states "Forensic psychologists take special care to avoid undue influence upon their methods, procedures and products, such as might emanate from the party to a legal proceeding by financial compensation or other gains," this does not always appear to be the case in forensic settings, as research demonstrates there is often evidence of an allegiance difference in PCL-R scores (Edens et al., 2012).

Edens et al., (2012) looked at the overall problem of partisan allegiance in the American court system. They found that allegations of bias appeared more frequently in criminal cases (64%) versus civil cases (36%). Overall, the percentage of allegations were, " 28% referred to a mental health expert as being for sale, 27% referred to being a partisan/advocate, 21% referred to nonspecific bias, 14% referenced pseudoscience, 6% mysticism, 3% could not be classified" (Edens et al., 2012). Being for sale was the most common in criminal trials while partisan/advocate was most common in civil trials (Edens et al., 2012). With such differing scores from evaluators for the PCL-R, researchers are looking further into the problem of partisan allegiance.

Boccaccini et al., (2008) found approximately 30% of variance in PCL-R total scores were due to the scoring tendencies of individual Sexually Violent Predator (SVP) evaluators. A study to assess the differences in scoring was conducted to compare the PCL-R scores reported by (i) defense and prosecution and (ii) prosecution and state to those of independent raters who were trained in administering the PCL-R (Rufino et al., 2012). The researchers found that independent raters gave significantly higher scores to the offenders than both the allegiance and comparison cases, and suggest that this may be

due to the overall difficulty in scoring the offender and/or the fact that their PCL-R scores were derived from file review only as compared to file review and interview. Researchers also found the main source in score differences between the experts was due to individual scoring differences. They found 53.8% of the variance in the PCL-R total scores was attributable to rater differences (Rufino et al., 2012). Miller et al., (2011) found that some raters consistently reported higher scores across all offenders compared to their counterparts specifically for facets 1(21%) and 2 (27%). This was further validated with another study which found that examiners working on the same “side” of the judicial system have been shown to produce unreliable scores, especially in relation to Factor 1 traits (Edens et al., 2010).

Murrie et al., (2008c) suggest that the difference in SVP’s scores may not be necessarily due to evaluator variability but rather due to attorney’s “shopping around” for an evaluator who scored the evaluation in a way that would benefit their client. Instead of examining scores that are on the normal curve, we instead may be looking at the outliers. Dematteo and Edens (2006) found similar results which suggest PCL-R scores that attorneys did not find to benefit their argument were not introduced into court as evidence.

Another important area to consider is how much evidence and information is needed in order to adequately assess a person with the PCL-R. Previously, researchers have found that different forensic assessors often conducted different interviews where they may ask different questions and thus receive different responses (Boccaccini, et al., 2008). Another issue to consider is that PCL-R scores may be different between assessors due to the inadequate amount of information that they receive. It may be that different examiners believe they need different amounts of information to conduct the assessment. In Edens’ (2006) article, he astutely points out that the Hare (2003) manual states that the PCL-R should not be used without sufficient file information; however the manual does not define what constitutes sufficient information.

## 1.6 PCL-R Misuse in Courts

What does appear to be important is that the PCL-R is used in only appropriate settings and is not misused by prosecutors or defenders to promote their agendas in court settings. It is important to remember that the PCL-R was constructed as a measurement for psychopathy and should not be used outside this scope to make other determinations, such as malingering. Using it in these instances can be very destructive as the psychopath label has a very negative connotation and this can have significant impact on the jurors' decisions (Rendell et al., 2010).

In their article focused on the misuses of the PCL-R in court settings, Edens (2001) states that "Many forensic examiners inappropriately administer various psychometric measures, misinterpret their results or both, and then attempt to introduce this flawed information into judicial proceedings either through reports or direct testimony. Moreover, even well intentioned mental health experts can have their data misinterpreted by resourceful prosecutors and defense attorneys." Edens (2001) demonstrates this when he describes a court case where a psychiatrist used the PCL-R to draw a conclusion, stating in court that the accused was unlikely to have committed the crime of sexual abuse because he didn't have several of the traits exhibited by psychopaths. In this case the psychiatrist did not have enough information available to him to draw this conclusion, as it was not supported by existing empirical literature regarding a relationship between psychopathy and sexual violence (Edens, 2001).

## 1.7 PCL-R in American Courts

In 2006, Walsh and Walsh examined the application of Hare's Psychopathy checklist in U.S. courts. Using the Westlaw database, they reviewed cases from 1991-2004 where PCL-R testimony was introduced as evidence in the psychological assessment of the offender. They found that the PCL-R assessed psychopathy was being used in state and federal courts and had increased considerably in recent years, with 90% of the cases being decided after the year 1999, the most being decided in 2004. Overall

they found the PCL-R was being introduced in nine different contexts, namely, “commitment pursuant to sexual predator laws, parole hearings, death penalty sentencing, civil commitment, transfer from juvenile to adult court, termination of parental rights, sentence enhancement and sentence mitigation, competency to stand trial, and guilt determination” (Walsh & Walsh, 2006). The most common use was in commitment pursuant to sexual predator statute hearings, a close equivalent to a Dangerous Offender (DO) hearing for a sexual offender in Canada.

In adult court settings, formal assessments of psychopathy are increasingly being used to justify longer sentences, more stringent release conditions, death sentences, and civil commitment under SVP statutes (DeMatteo & Edens, 2006; Edens et al., 2005; Walsh & Walsh, 2006). DeMatteo and Edens (2006) found the PCL-R was most often introduced by the prosecution (64%) in U.S. courts to bolster legal arguments that a defendant was a danger to others and should be jailed.

## 1.8 PCL-R in Canadian Courts

If the court believes that an offender is a danger to society and a regular sentence would not adequately protect the public they can, depending on the amount of offences or type of offences committed by the offender, can put forth a Dangerous Offender (DO) or Long-Term Offender (LTO) application to the court. This can be done only after the person has been convicted of a crime and before sentencing has commenced (Public Safety Canada, 2011).

The law says that that a person who has just been convicted of sexual assault or another "serious personal injury offence" is a DO. If the individual is designated a DO, the court is required to sentence them to indeterminate detention in a penitentiary, unless it is satisfied that the evidence introduced during the DO hearing shows that a sentence of two years or more plus long-term supervision or a regular sentence would adequately protect the public (Public Safety Canada, 2011).

In order to assess whether a DO application should be submitted there are several factors that are considered by the prosecution. These are; the nature of the offence and the maximum penalty provided for that offence, the age and health of the offender, the number of victims and number of offences, the degree of violence of each offence, whether there was sexual intercourse with a young child, the pattern and time span of the offences, the offender's criminal history, whether a trust situation existed between the offender and the victim, premeditation or planning of the crime, the ability of the witnesses to tolerate court proceedings, the impact of the crime upon the victims, the possible impact of court proceedings on the victims, previous treatment of the offender, the availability of previous transcripts and/or witnesses, psychiatric assessments of the offender, the availability of any suitable treatment programs, the prognosis for successful treatment, and finally any mitigating or aggravating circumstances (Public Safety Canada, 2011).

Most prosecutors submit a DO Application with the knowledge that the majority of applications will be denied and a LTO supervision order will be put in place instead. A court can declare that an offender is a long-term offender if it is satisfied that three conditions are met. These are; if the offender's sentence will be longer than two years, if there is a significant risk that the offender will reoffend causing death, serious injury or other harm and if there is a reasonable possibility that the risk can be controlled in the community (Public Safety Canada, 2011).

Little research has been done on how the PCL-R affects DO and LTO applications. Lloyd, Clark & Forth (2010) reviewed Canadian courts cases where the PCL-R had been admitted. They found a trend for PCL-R scores to be related to trial outcomes. Specifically, psychopathy diagnoses were correlated to experts' ratings of treatment receptiveness, with those with the diagnosis of psychopathy receiving lower ratings of treatment amenability. This lower level of amenability to treatment was moderately correlated to a negative trial outcome such as long-term offender (LTO) or dangerous offender (DO) sentence. It should also be noted that expert's ratings of risk to re-offend were not related to trial outcome and instead treatment amenability was most predictive of scores (Lloyd et al., 2010).

## 1.9 Stigmatizing Effect of the Psychopath Label

Rendell, Huss & Jensen (2010) found that mock jurors more confidently convicted when prosecution testimony labeled the defendant as a psychopath compared to when the prosecution labeled the defendant as not mentally ill. Edens et al. (2004) found that when a prosecution examiner gave testimony diagnosing an offender as a psychopath, mock jury members were more likely to rate psychopathic offenders, as compared to offenders without this label as more dangerous to society even when risk to reoffend was held constant. This effect was present even when the defense provided rebuttal evidence that contradicted the psychopathy diagnosis.

In order to test mock juror's views on the death penalty and psychopathy, Edens et al., (2005) conducted a mock trial. They found that 60% of mock jury members supported a death sentence when expert examiners labeled a male defendant as a psychopath compared to those labeled as psychotic (30%) and not mentally disordered (38%). Edens et al., (2012) also found that the jury's perceptions of the male defendant's level of psychopathy strongly predicted support for his execution. They also found that a layperson was more likely to support execution of the defendant if he appeared to have a low level of remorse, high level of grandiose self-worth and a manipulative interpersonal style.

Edens et al., (2012) found that these interpersonal and affective traits generally associated with psychopathy had more predictive utility than did traits associated with a criminal history and socially deviant lifestyle. This furthered the evidence that the PCL-R can be very stigmatizing due to traits that are associated with it. Conning, manipulation, callousness, superficial charm and a lack of remorse are all considered to be morally reprehensible by society and just being associated with those personality traits can be very detrimental for offenders (Edens et al., 2009).

In one study focusing on how mental health labels impact mock jurors decisions, Edens et al., (2005) found that a label of psychosis was perceived as a mitigating factor



while a psychopath label was seen as an aggravating factor. Edens et al., (2003) also found that in mock death penalty cases, psychopathy testimony caused jurors to disregard important mitigating factors that would affect sentencing outcomes.

Both defense and prosecution attorneys believe that mental health evidence concerning psychopathy can be very influential for jurors. They describe such information as having considerable or extensive impact on the outcome of their cases (Edens& Cox, 2012). Edens and Cox (2012) also found that when mental health information was presented, the majority of time it was concerning antisocial personality disorder, psychopathy, and sociopathy. Attorneys also indicated that such mental health evidence was rarely excluded at trial even if there was considerable objection based on admissibility challenges from the opposing counsel (Edens& Cox, 2012)

On a positive note, Murrie et al., (2007) found that judges were more likely to recommend treatment when a psychopathy label was included with a description of core psychopathic traits. Murrie et al., (2007) also cautioned that clinicians who were very descriptive and detailed narratives around psychopathy may influence judges more than assigning a psychopath label as the narrative information may be misinterpreted.

As for the credibility of expert witnesses, Kwartner and Boccaccini (2008) reviewed the current literature and found that mental health experts were more likely to be perceived as credible if their testimony included the 4 C's: clarity, clinical knowledge, case specificity, and certainty. Although expert witnesses cannot state with absolute certainty the likelihood that an offender will reoffend, they were perceived as less credible if they state this in court. This information may lead many expert witnesses to be "over confident" with their answers and testify to things that are not within their scope of knowledge so as to appear competent to jurors. This can have a very negative effect on the offender to which this information pertains, as it may give the judge or jurors a false sense of security regarding the offenders risk to reoffend.

## 1.10 Controversy and the PCL-R

There have been some concerns advanced by researchers such as Skeem and Cooke (2010) that the PCL-R is too heavily focused on criminal activity and this implies that a criminal background is needed in order to state that someone is psychopathic. Along with this, they are also concerned with the use of the PCL-R as a risk assessment tool, as it was not originally designed for this (Skeem & Cooke, 2010). Hare and Neumann respond to this critique, stating that the PCL-R has its beginnings in the correctional system, not because this is what is required in order to score it, but because the correctional system has a wealth of psychopathic offenders, 20-30% of the prison population and a captive audience for study. The instrument also provides a wealth of information on the person and provides an outline of the collateral information which is needed to construct valid and reliable assessments (Hare and Neumann, 2010). It should also be noted that the cut-off score of 30 is meant only for research purposes and does not necessarily reflect the score necessary to assess someone as psychopathic. Hare himself used a lower score to assess for psychopathic traits in white collar criminals who, in most cases, do not have a criminal background (Hare and Babiak, 2009).

In regards to its construct validity, the PCL-R was never designed to predict an offender's risk to reoffend. Due to research that has shown a correlation between a person's PCL-R score, their risk to reoffend and other risk assessment scores such as the Level of Service Inventory Revised (LSI-R), some clinicians have decided to use the PCL-R as an indicator of risk and present this information in court (Skeem & Cooke, 2010). While the PCL-R may correlate to scores from the LSI-R, due to the construct validity of the PCL-R, the PCL-R should not be used in place of an assessment like the LSI-R that is designed to assess risk to reoffend (Bonta, 2007). Comparisons between instruments should only occur if the instruments were developed for the same purpose (Hemphill & Hare, 2004). As the PCL-R was originally designed to assess the clinical construct of psychopathy, this is all that it should be used for (Hare, 2003, 15).

The PCL-R was not meant to compete with risk assessments like the LSI-R. However, the information it provides can help clinicians to better understand the clients

with whom they work with (Hemphill & Hare, 2004). It should also be noted that measures such as the LSI-R assess criminogenic needs of the offender which can be helpful in sentencing (Bonta, 2007). This is something that cannot be derived from the PCL-R.

Finally it should be noted that, “A PCL-R score is not psychopathy any more than an intelligence test score is intelligence itself. “A PCL-R score represents a way, not the way to assess psychopathy” (Skeem and Cooke, 2010). As Skeem and Cooke have pointed out the PCL-R is not the only way to assess for psychopathic traits in offenders, however currently the PCL-R is the best validated tool to assess psychopathy (Skeem and Cooke, 2010).

## 1.11 PCL-R, Risk Assessment and Sentencing

In regards to sentencing, risk/needs assessments are used for two purposes. First, they are designed to differentiate high risk offenders from low risk offenders and to identify the offender’s criminogenic needs which can lead to appropriate sentence length as well as treatment.

Their second purpose is to reduce offender recidivism by assessing the appropriate level of supervision needed while still protecting the public by determining the threat the offender poses in a community setting (Bonta, 2007).

The PCL-R can be used as a responsivity tool to determine what treatment options may be the best, as well as the sentence that is needed to control for the personality of the psychopath such as impulsiveness, lack of empathy, lack of behavioural controls, manipulative behaviour, pathological lying, failure to accept responsibility, and so on (Hare and Neumann, 2008). These traits can make an offender harder to supervise in a community setting where it is necessary to ensure the protection of the community.

How do risk assessments fit in with sentencing? Bonta (2007) states that allow there may be problems with the integrity of the implementation of risk assessments and the PCL-R in a forensic setting, it should not invalidate of the use of them when properly administered by trained professionals. Without the use of risk assessment tools and the PCL-R in sentencing, judges may instead rely on their own feelings or instincts, which have been shown to be less accurate than risk assessments (Bonta, 2007). The judges reliance on personal feelings or instincts may be more inaccurate when dealing with psychopathic offenders who have been shown to be manipulative and able to acquire smaller sentences and earlier parole (Patrick, 2007; Porter et al., 2009).

In conclusion the strength of using both the LSI-R and the PCL-R in sentencing is not in choosing one or the other, but in combining them to give a sentence and treatment plan that is more responsive to the offender. While the LSI-R would be used to determine the risk to reoffend, the PCL-R can be used to determine level of psychopathy of the offender, and depending on that score, to steer the offender to the appropriate treatment such as an empathy building program for low scoring offenders and a CBT program geared towards self-interest for higher scoring offenders (Gendreau et al., 2002; Hare and Wong, 2005).

## 1.12 Hypotheses

There is a lack of research on how and when psychopathy and the PCL-R are introduced into Canadian courts even though our legal system is appreciably different enough from the American legal system to warrant it. This study was designed to address this issue by conducting a descriptive study to examine when and how PCL-R scores and related information is introduced as evidence into Canadian court cases. The hypotheses are:

1. The PCL-R will be introduced more frequently in court cases dealing with more serious charges including murder, attempted murder, assault, sexual assault, and robbery

as well as cases involving a Long Term Offender and Dangerous Offender application by the crown.

2. The amount and depth of PCL-R testimony ((i) just the score, (ii) the score plus descriptive information on psychopathy and what the scores means, or (iii) expert descriptive testimony that includes the scores, information on what the scores mean according to risk as well as a professional opinion about the offenders would affect trial outcomes. Specifically input that was especially detailed and of larger quantity would have a negative effect on sentence outcome.
3. A higher PCL-R score would negatively affect the offender's sentence length.

## Chapter 2

### 2 Research Methods

An outline of the research methods used to collect, interpret and analyze the data for both the descriptive and sentencing study are provided in this section. No ethics approval was required for this study as the data was retrieved from a publically accessible website.

#### 2.1 Methods

This study used the case law survey method drawing on the Lexis-Nexis Quicklaw Academic Database in identifying published sentencing decisions in Canadian courts that included the terms PCL-R or Psychopathy Checklist Revised or Psychopath for the time period January 1, 2007 to December 31, 2012. Cases involving other psychopathy checklists such as the original Psychopathy Checklist (PCL), and the PSCAN were excluded while those with the Psychopathy Checklist: Youth Version (PCL:YV) were included for the descriptive study only. This search produced 332 cases. Cases were then eliminated if they were in French, if the PCL-R information was from another case or if the term psychopath was used by someone without a psychological or legal background. This narrowed the number of applicable cases to 274 which were then used to generate the descriptive study.

The 274 cases were then narrowed to include only those involving sentencing decisions by judges in cases that did not involve dangerous or long term offender applications by the crown. This reduced the sample to 87. Those 87 cases were screened and a case was eliminated if it could not be determined who produced the PCL-R information or if the PCL-R information did not come from professionals with psychological expertise. Psychological professionals were defined as psychiatrists or psychologists. This left 37 cases for analysis.

The 37 cases were coded based on offender characteristics, expert characteristics, and the content of the experts' mental health and risk testimony. Offender characteristics included the offender's age, age at first arrest, number of prior offences, ethnicity, current charge, history of addiction, current employment, previous hospitalization for mental health issues as well as any mental health diagnosis. Also coded were the variables related to the offender's plea of guilt, whether they were under the influence of a substance at the time of the offence or whether and the extent to which they showed remorse.

Psychological expert characteristics that were coded included their affiliation (to the defense, crown or to the court), their academic background as a psychologist or psychiatrist, as well as their previous experience conducting risk assessments with correctional clients. Their expert testimony was then coded if the expert provided information to the court about the psychological status of the offender, risk to reoffend, and/or treatment amenability. Raw PCL-R scores or descriptive PCL-R scores given by experts were coded within the following parameters; very low 0-4, low 5-10, medium-low 11-20, medium-high 21-29, high 30-35, very high 36-40. When experts gave their opinions on treatment amenability, level of supervision required and risk to reoffend this information was coded as low, medium or high. The purpose of the PCL-R testimony given by the experts was categorized as 1) to identify the person's level of psychopathic traits or 2) their risk to reoffend or 3) risk to reoffend and level of psychopathic traits or 4) capable of committing the crime. It was also coded as whether the PCL-R was the only assessment used or if it was used as part of an assessment package.

Finally, the length of the sentence was recorded in months and recommendations for mandated supervision were also noted. Sentence type and length was then coded as youth or adult and the location of the trial was noted.

The amount and depth of expert testimony was determined by the amount of information in the judge's decision as well as the range of information the judge gave which could only be obtained from the expert such as the character traits of psychopaths, their recidivism rate as well as treatment options. It was suggested for the purpose of this

study that judges who reported more information and expert testimony regarding PCL-R scores found it to be more persuasive and influential in regards to their decision making process. This methodology appeared to be the most meaningful way to gather information about the amount and depth of testimony as it was not possible to review court transcripts.



## Chapter 3

### 3 Results

Results for the descriptive study as well as the sentencing study are provided in this section. Descriptive statistics such as frequency, mean, standard deviation and range were reported in order to derive information about the amount and type of cases that involved PCL-R information. After eliminating cases where there was not enough information to conduct the sentencing study, Pearson correlation coefficients as well as analyses of variance and covariance were used in an effort to determine which variables affected sentence outcome.

#### 3.1 Descriptive Study

In order to test the first hypothesis, Nexis-Lexis Quicklaw Academic Database was screened for cases from 2007 to 2012 that contained the key words described above. Table 1 illustrates the number of court cases for each year from 2007 to 2012 that included information derived from the PCL-R. In the 274 cases included in the descriptive study, there were 50 cases in 2007, 41 cases in 2008, 41 cases in 2009, 49 cases in 2010, 47 cases in 2011 and 46 cases in 2012. The range of the sample was from 41 cases to 50 cases with the average being 45 cases per year, with a standard deviation of 3.96 cases.

Table 1

*Frequency of PCL-R Assessments in Canadian Courts by Year*

<b>Year</b>	<b>Frequency</b>	<b>%</b>
2007	50	18.2
2008	41	15.0
2009	41	15.0
2010	49	17.9
2011	47	17.2
2012	46	16.8
Total	274	100.0

To test the first hypothesis that DO, LTO, murder and sex offence cases would be the types of cases which included PCL-R information most frequently, all 274 cases were evaluated and categorized. Table 2 illustrates the different types of court cases that included PCL-R information within the 274 cases sampled. There were 109 cases (39.8%) that included Dangerous Offender applications; 15 cases (5.5%) that included Long Term Offender applications; 15 cases (5.5%) were Dangerous Offender appeals by the offender; 4 cases (1.5%) were Dangerous Offender appeals by the crown; 2 cases (0.7%) were Long Term Offender appeals by the offender; 78 cases (28.5%) were at the sentencing phase and did not fit into another category when PCL-R evidence was admitted; 13 cases (4.7%) were sentence appeals; 1 case (0.4%) was an appeal by an

offender for being sentenced as an adult; 1 case (0.4%) involved the determination of mensrea by the offender; 1 case (0.4%) was a request to try the offenders separately; 3 cases (1.1%) were appeals of Parole Board of Canada decisions by offenders; 1 case (0.4%) was an application by the offender to reduce the number of years until he was eligible for parole; 9 cases (3.3%) were sentencing cases where it was to be decided if the offender would be tried as a youth or as an adult; in 2 cases (0.7%) offenders were appealing their prison security classification; 1 case (0.4%) the Parole Board of Canada was requesting an assessment before a sentencing decision could be made; 3 cases (1.1%) involved child custody disputes between parents or between the parents and Children's Aid Society; 1 case (0.4%) was to determine whether psychological expert testimony should be admitted; 3 cases (1.1%) were sentencing appeals by the crown; in 2 cases (0.7%) the offender appealed being sentenced as an adult; 1 case (0.4%) was a defamation suit; 2 cases (0.7%) were Not Criminally Responsible trials; 1 case (0.4%) was a divorce trial; in 1 case (0.4%) the offender was appealing to have the PCL-R included; 1 case (0.4%) was a Long Term Offender appeal by the crown; in 1 case (0.4%) the offender appealed the Ontario Review Board's decision to postpone his review for six months.

Table 2

*Frequency of PCL-R Assessments in Canadian Courts by Year*

<b>Categories</b>	<b>Frequency</b>	<b>%</b>
Dangerous Offender	109	39.8
LTO	15	5.5
Do Appeal	15	5.5
Do Appeal by Crown	4	1.5
LTO Appeal	2	0.7
Sentence	78	28.5
Sentence Appeal	13	4.7
Sentencing as a Youth	1	0.4
Mens REA	1	0.4
Request to Try Case Separately	1	0.4
Judicial Intern Release Request	1	0.4
Appeal PBC Decision	3	1.1
Application to Reduce Years Until Parole	1	0.4
Sentencing Youth vs. Adult	9	3.3
Security Classification Appeal	2	0.7
PBC Request for Assessment Before Decision	1	0.4
Child Custody Parents and CAS	3	1.1
Psychological Expert Testimony Allowed	1	0.4
Sentence Appeal by Crown	3	1.1
Appeal for Being Sentenced as an Adult	2	0.7
Motor Vehicle	2	0.7
Defamation Suit	1	0.4
Not Criminally Responsible Trial	2	0.7
Divorce	1	0.4
Appeal by Offender to Have Assessment Included	1	0.4
LTO Appeal by Crown	1	0.4
Appeal ORB Decision to Postpone Review	1	0.4
<b>Total</b>	<b>274</b>	<b>100.0</b>

### 3.2 PCL-R and Sentencing Study

The 37 cases to be analyzed consisted of 1 female and 36 male offenders. In order for these cases to be analyzed, they were grouped based on the most serious offence committed by the offender. There were 10 offenders (27%) who had been charged with 1<sup>st</sup> degree murder, 2<sup>nd</sup> degree murder, manslaughter or attempted murder; 16 offenders (43%) who were charged with either sex offences against a child or an adult; and 11 others (30%) who were charged with various crimes such as terrorism, robbery, arson, assault, aggravated assault, forcible confinement, or assault with a weapon (please see Table 3).

Table 3

*Frequency of Offence Category*

Offence	Frequency	%
Murder	10	27.0
Sex offense	16	43.2
Other	11	29.7
Total	37	100.0

In order to determine which variables should be included in the analysis of variance and covariance, two tailed Pearson correlation coefficients were calculated and these may be found in Table 4. This includes the analyses of variables; sentence in months, PCL-R score, extent of psychopathy testimony, and risk to reoffend which were compared to each other. There were several significant correlations. The PCL-R score

was positively correlated to the amount of PCL-R testimony given  $r=.512$ ,  $p<.01$  and to the offenders risk to reoffend  $r=.557$ ,  $p<.01$ . Risk to reoffend was positively correlated to the amount of PCL-R testimony given  $r=.554$ ,  $p<.01$  and to a lesser extent the sentence in months received by the offender  $r=.395$ ,  $p<.05$ . PCL-R testimony did not appear to be significantly correlated to sentence.

Table 4

*Correlations between Four Major Variables*

		PCL-R score category	Risk to Reoffend	Described Psychopathy
PCL-R score category	Pearson Correlation	1	.557**	.512**
	Sig. (2-tailed)	N/A	0.003	0.002
	N	33	27	33
Risk to Reoffend	Pearson Correlation	.557**	1	.554**
	Sig. (2-tailed)	0.003	N/A	0.002
	N	27	29	29
Described Psychopathy	Pearson Correlation	.512**	.554**	1
	Sig. (2-tailed)	0.002	0.002	N/A
	N	33	29	35
Sentence in Months	Pearson Correlation	0.314	.395*	0.244
	Sig. (2-tailed)	0.075	0.034	0.158
	N	33	29	35

Notes: \*\* *Correlation is significant at the 0.01 level (2-tailed).*

\* *Correlation is significant at the 0.05 level (2-tailed).*

### 3.3 Sentencing Outcomes

This aspect of the analysis drew on the 37 cases that had been divided into three crime-based categories related to the offender's most serious charge; murder/attempted

murder, sex offences, and other offences. In order to test the second and third hypotheses, that a larger amount and depth of testimony as well as a higher PCL-R score would negatively affect sentence outcome, an analysis of variance was performed to examine differences between groups followed by a series of analysis of covariance calculations.

In the first analysis, shown in Table 5, the predictive power of the offender's crime category (ie. murder, sex offences or other) was examined with respect to the final sentence (shown in months). Using an analysis of variance calculation there was a significant difference between crime categories,  $F(2,32) = 4.728$ ,  $p < .05$ .

Table 5

*Analysis of Variance between Crime and Sentence in Months*

Source	Type III Sum of Squares	Df	Mean Square	F	Sig.
Corrected Model	17300.816 <sup>a</sup>	2	8650.408	4.728	0.016
Intercept	92016.806	1	92016.806	50.293	0.000
Crime	17300.816	2	8650.408	4.728	0.016
Error	58547.184	32	1829.600		
Total	163348.000	35			
Corrected Total	75848.000	34			

Note: Dependent Variable: Sentence in Months

<sup>a</sup>  $R Squared = .228$  ( $Adjusted R Squared = .180$ )

The initial analysis of variance examining the relationship between crime and the sentence with the PCL-R score covaried to isolate other relevant variables. This analysis identified an absence of a statistically significant relationship between crime and

sentence,  $F(2, 29) = 2.680$ ,  $p = .085$ , suggesting that the inclusion of an offender's PCL-R score influences the sentencing outcome. This is shown in Table 6.

Table 6  
*Analysis of Covariance with PCL-R Score*

Source	Type III Sum of Squares	df	Mean Square	F	Sig.
Corrected Model	17889.471 <sup>a</sup>	3	5963.157	3.044	0.045
Intercept	4273.260	1	4273.260	2.181	0.150
PCL-R score category	1696.050	1	1696.050	0.866	0.360
Crime	10503.073	2	5251.536	2.680	0.085
Error	56818.408	29	1959.255		
Total	161872.000	33			

Note: Dependent Variable: Sentence in Months  
<sup>a</sup>  $R^2 = .239$  ( $Adjusted\ R^2 = .161$ )

The next analysis, shown in Table 7, was based on the first analysis of variance calculation relating sentencing patterns and the category of crime convicted and covaried the effect of the expert's amount of testimony concerning the offender's level of psychopathy. A statistically significant result was identified between crime and sentencing, suggesting that the expert's descriptive testimony did not appear to significantly influence the sentencing outcome ( $F(2, 31) = 4.192$ ,  $p < .05$ ).



Table 7

*Analysis of Covariance with the Amount of Described Psychopathy*

Source	Type III Sum of Squares	df	Mean Square	F	Sig.
Corrected Model	19705.465 <sup>a</sup>	3	6568.488	3.627	0.024
Intercept	6881.146	1	6881.146	3.800	0.060
Described psychopathy	2404.650	1	2404.650	1.328	0.258
Crime	15184.020	2	7592.010	4.192	0.024
Error	56142.535	31	1811.050		
Total	163348.000	35			
Corrected Total	75848.000	34			
Corrected Model	19705.465 <sup>a</sup>	3	6568.488	3.627	0.024

Note: Dependent Variable: Sentence in Months

<sup>a</sup> *R Squared* = .260 (*Adjusted R Squared* = .188)

The final calculation, shown in Table 8, was based on the initial calculation of the category of crime and sentence outcome and covaried the expert's assessment of the offender's risk to reoffend. The relationship that emerged between the category of crime and sentence was no longer statistically significant,  $F(2, 25) = 2.485$ ,  $p = .104$ , suggesting that an offender's risk to reoffend does effect sentencing outcomes. In this analysis there were only 31 cases to analyze as there was no data on risk to reoffend for 6 offenders.

Table 8  
*Analysis of Covariance with Risk to Reoffend*

Source	Type III Sum of Squares	df	Mean Square	F	Sig.
Corrected Model	19356.967 <sup>a</sup>	3	6452.322	3.507	0.030
Intercept	2185.090	1	2185.09	1.188	0.286
Risk to reoffend	3209.657	1	3209.657	1.744	0.199
Crime	9143.735	2	4571.868	2.485	0.104
Error	45998.343	25	1839.934		
Total	152312.000	29			
Corrected Total	65355.310	28			
Corrected Model	19356.967 <sup>a</sup>	3	6452.322	3.507	0.030

Note: Dependent Variable: Sentence in Months

<sup>a</sup> *R Squared* = .296 (*Adjusted R Squared* = .212)

## Chapter 4

### 4 Discussion

The purpose of this study was to add to the limited amount of research concerning the use of the PCL-R in Canadian court cases. To do this, a descriptive study was undertaken with the purpose of investigating the frequency and types of cases which contain PCL-R information. The second part of this study investigated how the variables of risk to reoffend, PCL-R score as well as the amount and depth of PCL-R testimony would affect sentence outcome. As the variables of risk to reoffend and PCL-R score had a statistically significant negative impact on sentence length, the impact of these results on the application of the PCL-R in forensic settings is discussed. Finally, the study's limitations as well as suggestions for further research in the area of PCL-R and Canadian courts are included in this section.

#### 4.1 Descriptive Study Findings

The descriptive analysis showed that cases where PCL-R evidence was admitted appeared to be relatively constant over the last 6 years in Canada with 41 to 50 cases each year. It was not possible to determine how many cases there were overall in order to compare this to the number of cases that involved PCL-R information. Had this been possible it, might have given additional insight into how often PCL-R information was being used in each type of case, such as DO applications, and if the frequency of occurrence had increased over the past six years for certain case types or decreased for others.

Walsh and Walsh (2006) found an increase in the number of cases that involved the use of the PCL-R in U.S. courts between 1991 and 2004. However, it did not appear that there was a similar type of increase in Canada. This difference may have been due to the different time periods used in the American study and this one. It may be that if the

use of the PCL-R in the United States from 2007-2012 were examined, the increase may have tapered off revealing a similar pattern to Canada for that same time period.

The initial descriptive study examining the most common types of cases that included PCL-R information supported the first hypothesis, which stated that DO and LTO applications, as well as murder and sex offence cases, would be the most frequent types to use PCL-R information. This result may be due to the fact that murder and sex offence cases hold the potential for lengthy sentences as they are two of the most serious offences in Canada, and would thus warrant the amount of money and court time it would take to have experts assess the offender for psychopathy. DO and LTO applications are also noteworthy and would warrant the inclusion of PCL-R information as they may lead to the elimination or significant reduction to the offender's chances of returning to society. The expense of administering the PCL-R could be the reason why it appears most frequently with serious offences and why it is not increasing in use over the past six years.

Along with the types of cases noted above, the PCL-R was commonly admitted when judges were trying to determine whether to sentence a youth under the *Youth Criminal Justice Act* [YCJA] as a child or an adult. There was also PCL-R information in DO appeal cases; however it was impossible to ascertain whether this was due to the fact that PCL-R testimony was originally included in the DO application rather than being submitted at the time of the appeal. In the cases where there were judge's decisions for both the DO application decision and the DO appeal, PCL-R was referred to in both decisions and appeared to be a factor that the judge took into consideration before making his decision.

PCL-R was introduced most frequently in DO and LTO applications as well as sex offence cases which mirrored the results of Walsh and Walsh's (2006) study, which found the PCL-R was introduced most commonly in commitment pursuant to sexual predator laws and civil commitment cases. The most frequent use was in commitment pursuant to sexual predator statute hearings, a close equivalent to a Dangerous Offender hearing for sexual offenders in Canada. It would be natural to assume that since the PCL-

R is being used in cases with possible indefinite sentences; Canada, like the U.S., is using formal assessments of psychopathy to justify longer sentences such as civil commitment/dangerous offender designations (DeMatteo & Edens, 2006; Edens et al., 2005; Walsh & Walsh, 2006).

In the majority of cases (N=35), PCL-R testimony was introduced suggesting that the courts consider the concept of psychopathy and the identification of psychopaths to be relevant in court related decision making. As PCL-R testimony was found in 35 different types of court cases, this finding also suggests that the PCL-R is of relevance in cases other than sentencing, including parole hearing decisions, defamation suits and child custody hearings, as the results of this study suggest.

## 4.2 Relationship between the Four Key Variables

The results of the correlational analysis showed that PCL-R scores are positively correlated to the amount and depth of testimony given by the psychology expert witness. This finding suggests that as the PCL-R score of the offenders increased, so did the amount of time in court and the depth of expert analyses. These results could also have occurred if the experts gave limited testimony, such as the PCL-R score only, for those who did not receive a score of 30 or above and did not qualify to receive the label of psychopath. If the label did not apply to the offender, it could be expected that the experts did not provide an expanded explanation for the jurors or judge, or if they did, it was done within a very concise statement. Even if there was a large amount of testimony but no determination of psychopathy, judges could have dismissed the expert's testimony and left out PCL-R information in their decisions as they did not find the expert testimony to be applicable. This would explain why those with a lower PCL-R score also had expert witnesses who gave less information about psychopathy. There has been no research in Canada or the United States that explores how judges determine what information is included into their sentencing decisions. Results from such studies may further explain why we had a significant correlation between PCL-R score and amount and depth of testimony.

The PCL-R score and risk to reoffend were positively correlated with one another. Given the research by Hare (2003) that people with a high PCL-R score pose a greater risk to reoffend, this positive correlation was expected.

Based on the previous work of Hare and others, individuals who have a higher risk to reoffend should also be receiving a longer sentence. Findings from this study showed a positive correlation between sentence length and risk to reoffend which suggests that judges would appear to be integrating information regarding the risk to reoffend into consideration when sentencing. However, the fact that risk to reoffend was not the only significant results suggests that it is not the determining factor in sentencing decisions and that other factors, mitigating and aggravating, are also being considered.

### 4.3 Sentencing and Psychopathy

There are three critical reasons why we should research and try to understand the relationship between sentencing and psychopathy.

First, there is evidence to suggest that psychopaths are adept at manipulating the criminal justice system whereby they tend to receive reduced sentences or have their appeals heard by a higher court (Porter et al., 2009). We need to identify psychopaths in order to ensure that professionals such as judges, prosecutors, probation officers, police officers are not manipulated by them and receive a fair sentence that is proportionate to the crime, or at the very least equal to non-psychopath offenders. Although the PCL-R can be very helpful, there are questions related to the integrity of the implementation of the PCL-R, and potentially other risk assessment tools, in a forensic setting (Bonta, 2007). However, this should not invalidate the use of these tools when properly administered by trained professionals. Without the use of risk-assessment tools such as the PCL-R, judges may instead rely on their own 'feelings' or 'instincts' which have been shown to be less reliable than formal risk assessments (Bonta, 2007). Indeed, Patrick (2007) and Porter et al. (2009) have identified that judges' reliance on their feelings or

instincts may be more inaccurate when sentencing psychopathic offenders who have been shown to be manipulative and able to acquire smaller sentences and earlier parole.

Second, treatment that is imposed or recommended by the judge should be different for a psychopath, compared to a non-psychopath, offender. Psychopathic offenders tend to be difficult to treat and rehabilitate and it is often recommended that they receive different treatments such as relapse prevention techniques integrated into a cognitive behavioural program that focus on taking personal responsibility. (Harris & Rice, 2006; Wong & Hare, 2003; Hare & Wong, 2005).

Third, incarcerated psychopaths pose more of a risk for violence compared to their non-psychopathic counterparts. Hare, Clark, Grann, and Thornton (2000) found that 42% of inmates with elevated PCL-R scores committed an assault in prison, compared to only 16.4% of inmates with lower PCL-R scores. This makes it very important to be able to give psychopaths a higher level of supervision while incarcerated.

The third hypothesis, that offenders with higher PCL-R scores would receive longer sentences, was also supported by findings in this study; where the court was provided with an offender's PCL-R score, those with higher scores received longer sentences and had a higher risk to reoffend. This finding suggests that although the PCL-R may be misused in court or that judges, and prosecutors or defense attorneys may misinterpret the data, the current system does seem to produce the desired result of not allowing psychopaths to manipulate the legal system and receive a shorter sentence. This finding of longer sentences contradicts Porter et al.'s (2009) study that reported shorter sentences.

The second hypothesis of the study, that a larger amount and more in depth testimony would negatively affect sentence outcome, was not supported by the data. The finding by Murrie et al., (2007) that clinicians who provided very descriptive and detailed narratives regarding psychopathy influenced judges more than when they assigned the label 'psychopath' without any further narrative was not corroborated by results of this study. Indeed, this study found the psychopath label to be more influential in sentencing outcomes. This may be due to the timing of the studies and the increasing popularity of

the psychopath in popular media. As people, and indeed judges, become more sensitized to the stereotypical image of the psychopath, it may be that they automatically apply a negative label to the offender and do not require additional testimony in order to help them form their opinion. This would be consistent with Edens et al.'s 2009 and 2012 studies that found interpersonal and affective traits generally associated with psychopathy such as conning, manipulation, callousness, superficial charm and a lack of remorse are all considered to be morally reprehensible by society. Being associated with those personality traits can be very detrimental for offenders as it causes them to be labeled and stereotyped even within the legal system (Edens et al., 2009).

Overall, when offenders were categorized by their most serious charge they were given similar, statistically similar sentences. This study also found that PCL-R score and the offender's risk to reoffend were important factors in sentencing and accounted for some of the variance between sentence lengths. The amount and depth of testimony from expert witnesses regarding psychopathy did not appear to affect the sentence outcome for offenders. From these results it can be assumed that: the nature of the crime is predictive of the length of sentence; that PCL-R score and an offender's risk to reoffend are variables that are taken into account when determining sentence length; and finally, the expert witness' depth of testimony is not taken into account, to a meaningful degree, when determining sentence length.

The results in this study further validate Lloyd et al.'s (2010) Canadian study that found a trend for PCL-R scores to be related to trial outcomes.

#### 4.4 Limitations of the Study

Data for this study was limited to the cases where decisions were entered by judges into the Lexis-Nexis QuickLaw Academic Database. Data was also limited by the information that was provided by judges as their decisions ranged from 3 to 100+ pages long. In some cases, it was not possible to determine where the judge had acquired PCL-R information or what information s/he chose to include or exclude in their decision. This



information was also biased as the judge may have interpreted it differently than the expert intended or taken information out of context.

This study was also limited as it could only include the cases that went to court. It was not possible to assess how influential the PCL-R might have been in regards to cases which were settled before trial. Further research looking into how the PCL-R may affect settlement decisions by crown and defense attorneys would be beneficial to the overall understanding of how the PCL-R affects sentencing outcomes.

Further research with a larger sample size should be completed to replicate the results found in the present study. Due to the inconsistent nature of the data that is included in judge's decisions, we were unable to address how other factors that were coded might have affected sentence outcome. With more data on which to draw from, investigations could examine other mitigating factors that could potentially affect sentencing such as premeditation, showing remorse for the crime, a steady employment history, history of addiction, mental health diagnosis, and a pleading of guilt. We might also have been able to investigate if there is a correlation between sentence outcome and level of supervision required, treatment amenability or treatment options.

## 4.5 Future Research

DeMatteo and Edens (2006) found that the PCL-R was most often introduced by the prosecution (64%) in U.S. courts to bolster legal arguments that a defendant is a danger to others thereby requiring incarceration. Further research should look into whether prosecutors in Canada, similar to the U.S., are the most likely to introduce the PCL-R testimony and what benefit they believe it has.

Further research in Canada should also address the findings of Murrie et al., (2007) that found judges were more likely to recommend treatment when a psychopathy label was included with a description of core psychopathic traits. If this could be validated in Canada, then including treatment recommendations could offset the effects of the psychopath label.

As Murrie et al. (2008a) found a significant difference between inter-rater agreement for PCL-R scores in research versus forensic settings, further research should investigate the quality and inter-rater reliability of expert witnesses' PCL-R scores. A more thorough evaluation of the training received by expert witnesses as well the quality and quantity of the information they receive in order to evaluate the offender is needed. Other factors that may affect the amount of information gained in an interview with an offender such as gender, age, personality type, and profession should be explored.

In order to further investigate the correlation between PCL-R expert witness testimony and PCL-R scores, researchers should investigate experts for the amount and depth of testimony they give when the PCL-R score is low vs. high. It would be of value to evaluate how much importance judges place on PCL-R information and the extent to which it factors into their decisions. If judges tend to minimize the amount of information that becomes part of their decision for non-psychopathic offenders, this may explain the reason for the positive correlation between the two factors.

The majority of cases in this study involved offenders charged with serious person related offenses including murder, sex offending, child sex offending, and aggravated assault. Hence, it is evident that PCL-R information is being admitted in cases where indictable offences have taken place. There are also a large number of Dangerous Offender and Long Term Offender application cases where PCL-R information was admitted. Due to the possible lengthy sentences involved in all of these cases, it is pertinent that future research is focused on understanding how the PCL-R information influences the outcomes of these cases. While we can guess why the PCL-R is more prevalent in DO and LTO applications compared to other sentencing cases, further research should investigate whether this is due to a cost issue, resource issue such as the amount of time a psychologist would take to complete the assessment, or if there is another factor to explain this.

Finally future studies should compare the total number of sentencing, DO and LTO cases with and without PCL-R testimony in order to gain a better understanding of the frequency in which PCL-R assessments are being used in Canadian courts.

## 4.6 Implications of the Study

This research confirms that psychopaths will receive longer sentences compared to their non-psychopathic counterparts. What needs to be determined is whether this is a positive or negative outcome and if it should be the desired one. If psychopaths are deserving of a longer sentence, then the positive correlation between sentence and PCL-R score appears beneficial for society. If our focus is on rehabilitation, this positive correlation is a negative outcome of the sentencing process and further steps are needed in order to minimize the stigma that comes with the psychopath label.

In forensic settings, this research would suggest that prosecutors should do their best to include PCL-R information whenever they are hoping to achieve a longer sentence. Defense counsel on the other hand should try and oppose inclusion of the PCL-R if their client receives a high score or to admit PCL-R testimony themselves if they have a low scoring client.

It is evident by the high rate of violent recidivism that psychopathic offenders exhibit, that current treatment models do not seem to be as effective for them compared to their non-psychopathic counterparts (Porter, 2009). With the positive correlation found between PCL-R score and sentence length, longer sentences should be used to give psychopathic offenders not only more treatment but treatment that has a higher efficacy rate.

## 4.7 Conclusion

This study has supplemented the minimal amount of information available about how the PCL-R is introduced and used in Canadian courts. The descriptive study identified 27 different instances in which the PCL-R was introduced as evidence and showed the frequency that this occurs.

The first hypothesis, that the PCL-R will be introduced more frequently in court cases dealing with serious charges including murder and sexual offences as well as cases involving a Long Term Offender and Dangerous Offender applications by the crown, proved to be correct.

The second hypothesis stating that a large amount of descriptive testimony about psychopathy would lead to a greater sentence was not supported, as the variance in sentence length could not be explained by the amount or depth of testimony.

The final hypothesis that a higher PCL-R score would be predictive of a lengthier sentencing, also proved to be correct.

This study achieved its goal of shedding light on the use of the PCL-R in Canadian courts. It also supports the notion that the PCL-R is a determining factor in sentencing and warrants further research to gain a better understanding of how and when it is being used. Hopefully, this research will lead to a better understanding of how the assessments are used in Canadian courts as well as to prompt further research into increasing the reliability and validity of such assessments in forensic settings as the PCL-R affects sentencing decisions in Canada.

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## Appendices

Appendix A: Data Coding Sheet

Item	Criteria
Date of Case Judgement	mm-dd-yyyy
Place of Court Case	1=Fed 2=B.C, 3= AB, 4=SK, 5=MB, 6=Ontario, 7=Quebec, 8=NF, 9=NS, 10=P.E.I., 11=NB, 12=YU, 13=NWT, 14=NT
Current Charge: Murder	No=1, 1st Degree=2, 2nd Degree=3, Manslaughter=4
Attempted Murder	No=1, Yes=2
Sexual Offence against a child	No=1, Yes=2
Sexual Offence against an adult	No=1, Yes=2
Assault	No=1, Yes=2
Aggravated Assault	No=1, Yes=2
Robbery	No=1, Yes=2
Assault with a Weapon	No=1, Yes=2
Kidnapping	No=1, Yes=2
Forcible Confinement	No=1, Yes=2
Drug Trafficking	No=1, Yes=2
Uttering Threats	No=1, Yes=2
Theft Under	No=1, Yes=2
Theft Over	No=1, Yes=2
Failure to Comply	No=1, Yes=2
Failure to appear	No=1, Yes=2
Premeditated Offence	1=No, 2=Yes, Unknown=3
Previously Convicted for Similar offence	1=No, 2=Yes, Unknown=3

Offender Age	
Age at First Offence	
Number of Previous Offences	0=1, 1-4=2, 5-9=3, 10-15=4, 15-24=5, 25-39=6, 40+=7
Offender's Ethnicity	Caucasian=1, African American=2, Hispanic=3, Asian=4, Native American=5, Indian=6, Other=7, unknown=8
Mental Health Diagnosis	1=No, 2=Yes, Unknown=3
Previous Hospitalization	1=No, 2=Yes, Unknown=3
Addiction History	1=No, 2=Yes, Unknown=3
Under Influence at Time of Offence	1=No, 2=Yes, Unknown=3
Showed Remorse or Regret	1=No, 2=Yes, Unknown=3
Plead Guilty	1=No, 2=Yes, Unknown=3
Employed at Time of Offence	1=No, 2=Yes, Unknown=3
<b>Expert</b>	
Expert Name	
Expert Affiliation	Crown=1, Defense=2, or Court=3, Unknown=4, 5=jail
Expert's Previous Experience	1=No, 2=Yes, Unknown=3
Expert's Highest Academic Achievement	M.D.=1, Ph.D=2, M.A.=3, 4 = unknown
<b>Expert's Purpose</b>	
PCL-R Score	very low 0-4=1, low 5-10=2, medium low 11-20=3, medium- high 21-29=4, high 30-35=5, very high 36-40=6, unknown = 7
Described Characteristics of Psychopathy	none=1, small=2, large=3, unknown=4
Treatment Amenability	low=1, medium=2, high=3, unknown = 4
Treatment Options	medication=1, programming=2, medication & programming=3
Level of Supervision Required	low=1, medium=2, high=3, unknown = 4
PCL-R Used to Say	psychopath=1, risk to reoffend=2, psychopath & risk to reoffend= 3, capable of the crime committed=4
PCL-R Used as Part of a Risk Assessment Package	No=1, Yes=2, unknown=3

<b>Trial Outcome</b>	
Sentence (in months)	
Supervision (sentenced in months)	
Youth Sentence	No=1, Yes=2

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