

50 Years of Canada's International Commitment to Human Rights: Millstones in Correcting Corrections for Federally Sentenced Women

Two years ago, as I was preparing to leave the office for a meeting, I received a call from a woman who is incarcerated in one of the then newly opened segregated maximum security units for women in men's prisons. I took the call, advising her that I did not have long because I was just about to leave for a meeting but that she would catch me before I left. After discussing her reason for calling -- she wanted to know how long she could be left in segregation without knowing why she was there -- she asked me what kind of meeting I was going to. I told her I was going to be discussing the application of the **Canadian Charter of Rights and Freedoms** to prison issues. Her response was, "Really? Great! Do you think you'll be able to get it to apply to us?" She was shocked to find out that it had applied for fourteen years at that point.

Given that experience and the fact that this year marks the 50th anniversary of the *Universal Declaration of Human Rights*, I decided to investigate how much women prisoners knew about their human rights. The results were dismally reminiscent of that telephone conversation of two years ago. Most women thought human, civil and *Charter* rights were all interchangeable terms for the same rights, but were not sure if they applied to them because they were in prison and/or thought they could be removed by prison administrators under the guise of disciplinary action. One woman was quite certain that prisoners could "waive them".

What does the legal protection actually amount to when, 16 and 50 years after their respective inceptions, prisoners do not know that they enjoy the protection of the *Charter* or the Universal Declaration on Human Rights? How can this be? Canada is touted around the globe as one of the most humane and progressive prison and correctional system in the world. Perhaps we need to reconsider the comments of those with considerable expertise and experience who have previously examined our correctional system. Madam Justice Louise Arbour reiterated Mark MacGuigan's description of imprisonment in Canada was that it epitomized injustice. Michael Jackson's description of the Correctional Service of Canada as a lawless state concluded that there was little hope that the Rule of Law would "implant itself within the correctional culture without assistance and control from Parliament and the courts".

The stripping and shackling of women by the male Institutional Emergency Response Team (IERT) from Kingston Penitentiary, and the subsequent nine months of illegal segregation of women was not the first, last nor the worst such incidents of human rights, *Charter*, and *Corrections and Conditional Release Act* (CCRA) abuses at the Prison for Women in Kingston. The abuse of power and lawlessness identified by Madam Justice Arbour and others have also been replicated in the new regional prisons for women. The fact that women are now imprisoned in segregated maximum security units in men's prisons has to be the most blatant quintessential example of human and *Charter* rights violations.

Time and space do not allow any kind of comprehensive review of the many incidents in women's prisons alone, that exemplify the extent of the abuses of power, blatant disregard and disdain for the law. However, the following examples provide a mere taste of the sorts of human rights issues we have tried to address since Arbour:

- women being strip searched outside the legislation and policy and in a mandatory routine way wherever the Correctional Service of Canada policy permits strip-searching for cause;
- women being stripped, shackled and left chained naked to a metal bed frame, without a mattress, in segregation; women being strapped to body boards in segregation;
- minimum security women being sent into the community in shackles for various forms of temporary absences;

- classification as maximum security prisoners and placement in segregated "enhanced security units" of all but one 18 year old Aboriginal women in the Edmonton Institution for Women in 1996;
- removal of medium and maximum security women from the Edmonton and Nova Institutions for Women and placement in provincial remand centres in 1996, followed by the decision to isolate all federally sentenced women classified as maximum security prisoners and many with mental health and capacity concerns in segregated maximum security units in men's prisons, as well as the installation in the new regional prisons of security and razor wire fences, additional alarms, cameras -- including infra-red, 360 degree capability, zoom lens, eye-in-the-sky models, thereby eliminating minimum security prison conditions for federally sentenced women imprisoned in the regional prisons;
- continued utilization of classification tools that disproportionately discriminate on the basis of race, class, gender and sexual orientation;
- abuse of provincial mental health provisions in conjunction with corrections sanctions, usually segregation, as exemplified by a recent situation in one of the segregated units in a men's prison during which mental health certification procedures were commenced against one woman who was engaged in self injurious swallowing of dangerous objects; the woman was placed in administrative segregation, but because the institutional psychiatrist had commenced certification procedures, for five days she was denied all rights and entitlements including basic legal and human rights, such as her right to counsel, access to any form of fresh air or exercise, she was also refused any opportunity to shower, was denied any reading or writing materials, including when she sought request and complaint and grievance forms; and, amazingly, she was not provided with therapy throughout the period that she was illegally detained in administrative segregation; indeed, she and I were advised that she had no rights under the *CCRA*, the *Charter* or *Human Rights Act*, as a result of the psychiatrist's decision to certify her; moreover, the woman was denied the procedural protections of the provincial mental health legislation, and, because the psychiatrist had only commenced, as opposed to completing, certification procedures, the woman was left in limbo for five days, at which time the procedure was abandoned and the woman was released from segregation.

These are but a few of the examples of Canada's most recent and unenviable human rights record vis-a-vis federally sentenced women in custody. When women get out of prison, they face additional problems, occasioned by the severe lack of community release options for women. Again, contrary to Canada's international obligations and agreements, as well as domestic law and corrections policy, many Women are forced to go to halfway houses and other resources designed by and for men, whilst simultaneously trying to make ends meet, regain custody of their children and figure out how to survive.

Nearly a decade after the Correctional Service of Canada adopted the principles, philosophy and blueprint for action outlined by the Task Force on Federally Sentenced Women Report, *Creating Choices*, the community release components of the recommendations have not yet been implemented. Indeed, to date, there are no women-only day parole resources in the Prairie and Atlantic regions.

So, what is being done by groups and individuals, as well as the Correctional Service of Canada to remedy these situations? Basically, we continue to rely upon existing international obligations, domestic law and correctional policies and procedures. In addition to the existing mechanisms, we strive to create new ones. We encourage women to grieve, refer matters to the Correctional Investigator and the Canadian Human Rights Commission, make Access to Information requests, quote the *Standard Minimum Rules for the Treatment of Prisoners, Universal Declaration of Human Rights, CCRA, Charter, Canadian Human Rights Act, Commissioner's Directives, Regional Instructions, Standing Orders/Operating Procedures and Creating Choices*. We also work in coalition with women's and equality-seeking criminal justice advocates, academics, lawyers, and our membership, who use similar avenues of recourse at the regional and provincial levels. We also work to positively influence public attitudes, as well as bureaucratic action.

Corrections for women are in a dismal state. Even the Okimaw Ohci Healing Lodge, which held out great hope to be the least prison-like prison in the country is gradually experiencing the fortification of corrections. Too few Aboriginal women actually get there, although it was built for the women who remain at Prison for Women (P4W) or who are now in the segregated maximum security unit in the Saskatchewan Penitentiary. CSC is now even looking at taking provincially sentenced women into the Lodge to fill up the beds. So, now provincial women will be serving time in federal prisons -- some are already in Saskatchewan Penitentiary. All this, 50 years after the inception of the ***Universal Declaration of Human Rights***.

The challenge is to determine where we will go from here. Given our express mandate to work with and on behalf of women and girls involved in the criminal justice system, particularly those in prison, CAEFS Will continue to press for the human rights protections promised by Canada's adoption of ***Universal Declaration of Human Rights***, the ***Charter*** and the ***CCRA***, with the goal of having women stay in or return as quickly as possible to the community in a manner that is safe and supportive for the women themselves, as well as the community as a whole.

Although the implementation by the Correctional Service of Canada of Madam Justice Arbour's recommendations, as well as those of prior commissions, task forces and special reports, may best be described as extremely selective and somewhat self-serving, we are heartened by the current Solicitor General's expressed intentions to increase the effectiveness of corrections in Canada. Minister Scott has expressed a very real interest in seeing life breathed into the provisions of the ***Universal Declaration of Human Rights***, the ***Charter***, ***CCRA***, as well as the recommendation of the Arbour Commission and the Task Force on Federally Sentenced Women.

The Minister's outlook is already producing a trickle down effect within the correctional context. Senior correctional officials are seeking to increase the effectiveness and accountability of the CSC. Although the recommendations have not been satisfactorily implemented to date, following Madam Justice Arbour's scathing report, the CSC did establish a Task Force on Segregation and Working Group on Human Rights. Moreover, there is now a Human Rights section within the CSC.

The Deputy Commissioner for Women and the wardens of the new regional prisons continue to work toward the successful implementation of carceral and community-based services for federally sentenced women. Efforts have also been renewed to work constructively and cooperatively with federally sentenced women and their advocates. In addition, in her capacity as the Co-Chair of the CSC Policy Review Task Force, the Deputy Commissioner for Women was instrumental in ensuring that CSC cease the practice of imposing punitive sanctions upon prisoners who self injure. Women have historically spent long periods in isolation and faced all manner of institutional disciplinary action, including charges of damaging government property", as a result of self-injurious behaviour, so this is a significant step forward.

We hold out great hope that the next 50 years will actually see many more demonstrable examples of the ability of prisoners to enjoy and exercise the full protection of Canada's international and domestic commitments to protect their human rights.

Kim Pate - 09/98