

**Consultation Paper
for the
Special Report
on the Situation of
Federally Sentenced Women**

Canadian Human Rights Commission
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1. INTRODUCTION

Last year the Canadian Human Rights Commission received a letter from the Canadian Association of Elizabeth Fry Societies asking to file a complaint against the Correctional Service of Canada. The Canadian Association of Elizabeth Fry Societies alleged that federally incarcerated women are discriminated against on the basis of sex, race and disability by the Correctional Service of Canada. A number of other organizations also contacted the Commission asking to file a complaint or expressing their concern about the situation of federally sentenced women.

In response to the concerns which have been raised, the Commission will be issuing a special report addressing the treatment of women serving federal terms of imprisonment. The Commission report will serve to address the issues in a broad systemic manner and will enable the Commission to make recommendations based on its findings.

In order to identify the key areas of concern, the Commission met with the Canadian Association of Elizabeth Fry Societies, the Office of the Correctional Investigator and the Correctional Service and held a workshop on the situation of federally sentenced women in February 2002. The issues which will be examined for the special report include:

- Programming
- Classification
- Minimum Security Facilities
- Community Release Facilities and Services
- Health Issues
- Use of Male Guards
- Redress Procedures and Accountability

In order to obtain more information about the issues to be examined, the Commission has conducted a series of bilateral meetings and roundtables on specific issues. The consultation paper is another mechanism for obtaining input. It is intended to stimulate discussion and feedback about the seven areas being studied. For each of the seven issues information is provided as to:

- Legislated requirements as set out in the *Corrections and Conditional Release Act* and the *Corrections and Conditional Release Regulations*;
- Commissioner's Directives and Standard Operating Practices which guide the work of Correctional staff;
- The principles outlined in the 1990 Task Force on Federally Sentenced Women in its report, *Creating Choices*. The Task Force was established by the Commissioner of the Correctional Service of Canada to examine the correctional management of federally sentenced women and to develop a policy and plan

which would guide and direct this process in a manner that is responsive to the unique and special needs of this group;

- The findings and recommendations of Madame Justice Arbour based on her 1996 report, *The Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Justice Arbour's report included an examination of the broad policy issues raised during the inquiry and put forward a framework for women's corrections;
- Information about recent developments;
- Reference material, including recent research reports. (Only documents available publicly are cited.); and
- Questions for consideration.

A bibliography is also provided with information as to where the documents referred to in this paper may be obtained. Web sites, if available, are provided.

When preparing comments, it would be helpful if you could:

- Keep in mind that the purpose of the special report is to address broad based systemic issues, not individual concerns or problems requiring immediate attention;
- Provide the rationale for your proposed changes;
- In addressing issues raised by incarcerating women in men's facilities, bear in mind that it is anticipated that the moves from Springhill Institution, Saskatchewan Penitentiary and the Regional Reception Centre in Quebec to the enhanced security units in Edmonton Institution for Women, Grand Valley, Joliette Institution and Nova Institution may be completed in the near future. In the past, the Commission has expressed its concern about this situation through mechanisms such as its annual reports. The special report is intended to include forward-looking recommendations;
- As the Regional Psychiatric Centre in Saskatchewan will continue to be used for federally sentenced women, feedback about systemic issues related to its use for women offenders would be welcomed;
- Identify problems with exchange of services agreements with provincial institutions, such as the one currently being used to place federally sentenced women at the Burnaby Correctional Centre for Women, and recommend ways of addressing them.

addressing them.

2. BACKGROUND INFORMATION

The term *federally sentenced women* refers to women who have received a sentence of two years or more and, as a result, fall within the responsibility of the Correctional Service of Canada. Women sentenced to less than two years are the responsibility of the province or territory in which they are sentenced.

2.1 FACILITIES

There are five regional facilities for women offenders. As of March 31, 2002, the number of women in each facility was:

Edmonton Institution for Women	74
Grand Valley Institution	75
Joliette Institution	60
Nova Institution	30
Okimaw Ochi Healing Lodge	20
Total	259

Source: Corporate Reporting System, Correctional Service of Canada

As of March 31, 2002, there were 30 federally sentenced women at the provincial Correctional Centre for Women in Burnaby. The women are there under an Exchange of Services Agreement with the Province of British Columbia. The Government of British Columbia has announced that it is closing this facility. The Correctional Service is modifying its Sumas Community Correctional Centre to accommodate the federal women offenders in the Pacific Region, including those currently at the Correctional Centre for Women in Burnaby.

As of March 31, 2002, there were also 9 women at Isabel McNeil House in Kingston. As well, there are currently a number of federally sentenced women in men's correctional facilities. As of March 31, 2002, the number of women in men's facilities was:

Regional Psychiatric Centre - Prairies	11
Regional Reception Centre - Quebec	9
Saskatchewan Penitentiary	22
Springhill Institution	11

Total	53
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Source: Corporate Reporting System, Correctional Service of Canada

We understand that the federally sentenced women at the Springhill Institution (Nova Scotia), Saskatchewan Penitentiary (Saskatchewan) and the Regional Reception Centre (Quebec) are scheduled to move to the enhanced security units in Edmonton Institution for Women, Grand Valley Institution in Kitchener, Joliette Institution and Nova Institution in Truro by the end of March, 2003. The women's unit at the Regional Psychiatric Centre in Saskatoon will remain open.

As of March 31, 2002, less than half of the federally sentenced women were in prison.

Federally sentenced women March 31, 2002	Number	Percentage
Under community supervision or on bail	485	58%
In prison	358	42%
Total	843	100%

Source: Corporate Reporting System, Correctional Service of Canada

2.2 PROFILE OF THE WOMEN IN PRISON

As of April 14, 2002 the federally sentenced women in prison were classified as follows:

Classification*	Number	%
Minimum	99	38%
Medium	125	48%
Maximum	35	14%
Total	259	100%

Source: Performance Measurement, Correctional Service of Canada

* This data does not include women who are within 90 days of admission and have not yet been classified.

Although Aboriginal women represent only 3% of the female population of Canada, they accounted for 27% of the federally sentenced women in prison on March 31, 2002.

Race	Number	%
Aboriginal	98	27.4%
Caucasian	216	60.3%
Black	19	5.3%
Asiatic	7	2.0%
Other/Unknown	18	5.0%
Total	358	100%

Source: Corporate Reporting System, Correctional Service of Canada

2.3 PROJECTED INCREASE

The CSC has projected that the number of federally sentenced women in prison will increase to 449 by 2004. This could have a significant impact on those facilities which are already at or above their rated capacity and on women from areas of the country in which the facilities are already operating above their rated capacity.

Federally sentenced women	Projected Numbers for Dec. 2004
Under community supervision	625
In prison	449
Total	1,074

Source: Boe, Roger; *A Medium-Term Federal Offender Population Forecast: 2001 to 2004*; Research Branch, Correctional Service of Canada February, 2001

3. KEY ISSUES

3.1 PROGRAMMING

The legislative requirements for programming are found in sections 76-78 of the *Corrections and Conditional Release Act*. Section 76 requires the Correctional Service to “provide a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community.” Section 77 focuses on the needs of female offenders. It requires the CSC to “provide programs designed particularly to address the needs of female offenders; and to consult regularly about programs for female offenders with appropriate women’s groups and other appropriate persons and groups with expertise on, and experience in working with, female offenders.”

Section 102 of the *Corrections and Conditional Release Regulations* requires the institutional head to ensure that a correctional plan is developed and maintained to ensure that the inmate “receives the most effective programs at the appropriate time in the inmate’s sentence to prepare the inmate for reintegration into the community.”

Background

The Task Force on Federally Sentenced Women in its 1990 report, *Creating Choices*, called for each facility to be program-driven with:

- programs provided by community groups or agencies or the appropriate provincial agency which would help to ensure that the programs were available during the community release portion of the sentence;
- education provided by local boards, community colleges and universities;
- certain programs, such as twenty-four hour crisis counselling, delivered by in-house support workers; and
- individual and group counselling provided by local groups with expertise in the area.

Madame Justice Arbour, in her 1996 report *The Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, recommended that priority be given to the development of work programs that:

- have a vocational training component;
- provide a pay incentive; or
- constitute a meaningful occupation.

Justice Arbour called for appropriate programs to be developed in consultation with women's groups.

Existing Research

McDonagh, Donna *Federally Sentenced Women Maximum Security Interview project: "Not Letting The Time Do You"*

Eljdupovic-Guzina, Gordana *Parenting roles and experiences of abuse in women offenders: Review of the offender intake assessment, 1999* (Puts forward suggestions for ensuring core programs are meeting the needs of federally sentenced women)

A study of federally sentenced Aboriginal women in maximum security, *Federally Sentenced Aboriginal Women in Maximum Security: What happened to the promise of "Creating Choices?"*, was conducted for CSC by SkyBlue Morin who interviewed 85% of the Aboriginal women classified as maximum security. Programming was one of the areas examined in this study. (Appropriate programming is crucial for Aboriginal women who are over-represented within the prison system and within the maximum security classification.)

Questions

Some of the questions which have been raised are:

- Are the programs provided to federally sentenced women comparable in quantity, quality and variety to those provided to federally sentenced men?
- Is there a problem with access to programming in a timely manner and, if so, does it lead to women being incarcerated past their full parole eligibility dates?
- Are women being provided with access to training which will assist them in being reintegrated?
- Are there artificial barriers preventing access to programs, such as, for example, a grade 12 education requirement for some training?
- Are the accommodation needs of women with learning and other disabilities taken into consideration when training programs are being planned and delivered?
- Justice Arbour recommended that the federally sentenced women's facilities be

grouped under a reporting structure independent of the Region, with the Wardens reporting directly to the Deputy Commissioner for Women. (Recommendation 4c)
Does the fact that this recommendation was not adopted affect the continuity and consistency in programming for women and the attention devoted to women's programming in each region?

- Are the programs stipulated in the correctional plan available?
- Is the decision making process to determine the programming needs of offenders sufficiently individualized to their situation and needs? Does the planning take into consideration needs related to cultural background, mental and/or physical disabilities and history of abuse?
- Are Aboriginal women being over-programmed by being required to take Aboriginal and non-Aboriginal programs?
- Does the decision making process take into consideration needs linked to gender, culture and physical and mental health?
- Do policies, such as requiring the families of inmates to pay for university courses, perpetuate the disadvantaged situation of many offenders, including Aboriginal women and women who are estranged from abusive families?

3.2 CLASSIFICATION

Section 4 of the *Corrections and Conditional Release Act* identifies a number of principles to guide the Correctional Service in its work, including for the Service to use “the least restrictive measures consistent with the protection of the public, staff members and offenders” Section 30(1) of the *Corrections and Conditional Release Act* requires the CSC to “assign a security classification of maximum, medium or minimum to each inmate in accordance with the regulations made under paragraph 96(z.6).” Section 17 of the *Regulations* identifies factors to be taken into consideration in determining the security classification of inmates.

3.2.1 INITIAL RATING

Instructions for determining the security level of inmates are found in two of the *Correctional Service's Standard Operating Practices (SOPs)*:

- 700-14 Security Classification of Offenders
- 700-04 Offender Intake Assessment and Correctional Planning

We understand that during the Offender Intake Process, women, as well as men, are assessed primarily using the Custody Rating Scale and that, for female offenders, the Custody Rating Scale is completed by Community Parole Officers. The Custody Rating Scale, which is used to determine the initial security classification, consists of two independently scored sub-scales assessing institutional adjustment and security risk.

Institutional Adjustment (5 items)

- history of involvement in institutional incidents
- escape history
- street stability (e.g. employment, education, marital family adjustment, criminal associates, residence stability)
- alcohol and drug use
- age at the time of sentencing (number of points decrease as age increases)

Security Risk (7 items)

- number of prior convictions
- most severe outstanding charge
- severity of current offence
- sentence length
- street stability
- prior parole and/or mandatory supervision/statutory release
- age at the time of admission (number of points decrease with age)

3.2.2 REASSESSMENT

A review of the inmate's security classification occurs prior to recommending any relevant decision (transfer, temporary absence, work release or parole), or periodically (every 6 to 12 months) if decisions are not pending. Reassessment is done using the Security Reclassification Scale.

Background

The 1990 Task Force on Federally Sentenced Women questioned the need for women to be divided into the same security categories and subjected to many of the same rigid security measures as men. The Task Force noted that, while federally sentenced women present risks, it is primarily to themselves rather than society. It concluded the management of federally sentenced women should be based on risk/support, not risk/security and that sound assessments, which identify the required support and intervention strategies, are most effective for the women and for the protection of society.

Existing Research

Status of Women Canada funded an 18 month study of the current system of classification and assessment in federal women's prisons and their implications for gender and diversity. This report, *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada*, by Kelly Hannah-Moffat and Margaret Shaw was released in March 2001.

The Correctional Service's classification system and offender intake process have been subject of numerous other research reports such as:

- Blanchette, Kelley *Classifying Female Offenders for Effective Intervention: Application of the case-based principle of risk and need.*
- Blanchette, Kelley *Inmate security reclassification: Increasing reintegration potential*
- Canadian Association of Elizabeth Fry Societies *Classification: The Risky Business of Risk Assessment.*
- Canadian Association of Elizabeth Fry Societies *Position of the Canadian Association of Elizabeth Fry Societies (CAEFS) Regarding the Classification and Carceral Placement of Women Classified as Maximum Security Prisoners.*
- Dell, Colleen Anne and Roger Boe *An Examination of Aboriginal and Caucasian Women Offender Risk and Needs Factors*
- Irving, Joy and Cherami Wichmann *An Investigation into the Factors leading to Increased Security Classification of Women Offenders*
- McDonagh, Donna *Federally Sentenced Women Maximum Security Interview project: "Not Letting The Time Do You"*
- Morin, SkyBlue *Federally Sentenced Aboriginal Women in Maximum Security: What happened to the promise of "Creating Choices?"*

Other Countries

- Brennan, Tim and James Austin *Women in Jail: Classification Issues*
- Hardyman, Patricia *Validation and Refinement of Objective Prison Classification for Women: The Experience of Four States and Common Themes*

Questions

- What are the human rights implications of classifying women with mental health needs as maximum security?
- Does the Custody Rating Scale translate social disadvantage into pathologies?
- Does the current classification system accurately assess the risks and needs of women offenders? If not, should there be a different approach or system for female inmates?
- Given the different types of sub-populations of Aboriginal women classified as maximum security, is a risk classification system the appropriate tool for the classification of Aboriginal offenders?
- Should risk prediction be the central goal of female classification?
- Are inmates aware of their right to grieve their security classification and reclassification?

3.2.3 CLASSIFICATION OF OFFENDERS SERVING LIFE SENTENCES

Current Situation

On February 23, 2001, the Correctional Service issued a new policy which requires offenders serving a minimum life sentence for first or second degree murder to be classified as maximum security for at least the first two years of federal incarceration.

The policy states that proposed overrides of the policy shall be exceptional and must be approved by the Assistant Commissioner, Correctional Operations and Programs.

The frequency of review of the security classification for these inmates has also been revised under the new policy. It will occur every two years, over the period of their incarceration, rather than annually, as is the case for other inmates.

Existing Research

The Office of the Correctional Investigator, in its *2000-2001 Annual Report*, noted that half of the offenders serving life sentences would normally be placed in lower security and the effect of being housed in the strictly controlled and stressful maximum-security environment will produce special challenges and disadvantages for young, Aboriginal, older and disabled offenders. This policy was described as contrary to law, unreasonable and improperly discriminatory to specified offenders groups.

This issue was raised again in the Office of the Correctional Investigator's *2001-2002 Annual Report*. It reiterated the earlier concerns about this policy and raised the issue of a need for a redress procedure to address the decisions taken under it.

Questions

- Does the policy discriminate against offenders from one or more of these groups:
 - Aboriginal offenders
 - visible minority offenders
 - young offenders
 - older offenders
 - offenders with a disability
 - women offenders in general

- Are there a disproportionate number of Aboriginal offenders impacted by the policy change? If so, is there a non-discriminatory justification for this policy?

- What are the human rights implications of a policy which requires some offenders, but not others, to be assigned a security classification based on an individual assessment?

- Does the higher time frame for review of the security classification of "lifers" versus "non-lifers" have a discriminatory impact on lifers?

3.3 MINIMUM SECURITY FACILITIES

Background

The initial design of the regional facilities and the Healing Lodge was based on the use of dynamic security for women and the least restrictive environment. After incidents at the Edmonton Institution for Women in 1996, additional security features were added to the regional facilities. As a result, minimal security women are now in a more restrictive environment than originally planned.

There is only one minimum security facility for women, the Isabel McNeil House in Kingston. Once the maximum security women are moved back to the regional facilities in Edmonton, Kitchener, Joliette and Truro, there will be three levels of security within each facility.

As of April 2002, there were 99 women classified as minimum security.

Existing Data

Data released by the Solicitor General in November 2002 indicates that the cost of maintaining an offender in the community is \$18,678 per year versus \$80,780 per year in a penitentiary (*Corrections and Conditional Release Statistical Overview*, figure B3)

Questions

- Are the conditions under which the minimum security women are held more restrictive than for their male counterparts?
- Do you consider that women offenders pose less or an equal risk to the community than male offenders? If less, should both groups be treated in the same manner?
- Does the fact that minimum and medium security women are housed in the same facility, unlike their male counterparts, constitute sex discrimination?
- Are there more effective and less costly ways of housing minimum security women?
- What impact will the projected increase in the number of women being sentenced to federal terms have on the ability of the current facility to meet the needs for incarceration ?
- Does the fact that minimum security women are incarcerated in the same facility as medium security women mean that they are treated as if they are medium security?
- Are there implications for minimum security women of being in the same facility as medium security women in terms of access to community programs and resources, work release programs and job training programs, escorted and temporary absences, etc.?
- Does the combining of minimum and medium security women have implications for the motivation of women to work to reduce their classification from medium to minimum?
- Does the lack of minimum security facilities impact on the ability of women to maintain ties with their children and other family members?
- Does the lack of minimum security facilities have a negative impact on the ability of women to be released into the community?

3.4 COMMUNITY RELEASE FACILITIES AND SERVICES

The legislative basis for community release is found at section 5 of the *Corrections and Conditional Release Act*. This *Act* also has two sections dealing with the release of Aboriginal inmates. Section 81 provides for the transfer of an offender to the care and custody of an Aboriginal community. Section 84 allows the Minister to enter into agreements with Aboriginal communities as part of an inmate's community release plan.

Background

In 1980, the Royal Commission on the Status of Women recommended a network of halfway houses for women newly released from correctional institutions be set up in centres across Canada, supported by public and private funds and operated by voluntary groups and agencies, in accordance with approved government standards (recommendation 163).

The 1990 Task Force on Federally Sentenced Women called for halfway houses for women, at a minimum, in Halifax, Newfoundland, Montreal, one other location in Quebec, northern Ontario, central/southern Ontario, Winnipeg, Saskatchewan, Edmonton, Calgary, Vancouver and northern British Columbia. The Task Force saw these facilities as being operated by community based agencies through contracts with CSC. The Task Force's plan included Aboriginal centres organized and run by Aboriginal groups or communities through contracts with CSC. In addition, it called for a variety of facilities such as satellite units, independently maintained apartments, home placements, addiction treatment centres, multi-use women's centres, mixed group housing and mothers and children centres.

In 1998, CSC released the discussion paper, *Community Strategy for Women on Conditional Release*. The CSC recently conducted consultations on the strategy and has just released its revised *Community Strategy* for women on conditional release.

Existing Research

The report, *Human Rights in Community Corrections*, prepared for the Correctional Service by the Working Group on Human Rights, chaired by Maxwell Yalden, discusses the rights of offenders in a community setting. It includes a section on the special needs of women and Aboriginal inmates.

The release of Aboriginal women into the community was one of the issues examined in the study entitled *Federally Sentenced Aboriginal Women in Maximum Security: What happened to the promise of "Creating Choices?"* conducted for CSC by SkyBlue Morin.

In 1998, the Canadian Association of Elizabeth Fry Societies released the paper, *Position of the*

Canadian Association of Elizabeth Fry Societies (CAEFS) Regarding the Conditional Release Options Required by Federally Sentenced Women.

Questions

- Do women have the same access to community release facilities as men?
- Are mixed gender community release facilities for women appropriate in light of the high proportion of women who come from abusive backgrounds or have young children?
- Are the needs of Aboriginal women for culturally appropriate community release facilities being met?
- Are the required financial resources available for community groups to provide the community release facilities and services required for federally sentenced women, including Aboriginal women, women with mental disabilities and cognitive limitations, visible minority women and Inuit women?
- Are offenders in community settings aware of the continuing availability of the complaint and grievance processes and the services of the Correctional Investigator?

3.5 HEALTH ISSUES

3.5.1 HEALTH

Section 86 of the *Corrections and Conditional Release Act* states that CSC will provide every inmate with “essential health care” and “reasonable access to non-essential mental health care that will contribute to the inmates’ rehabilitation and successful reintegration into the community.” The health care must conform “to professionally accepted standards.”

Section 87 requires the CSC to take an offender’s state of health and health needs into consideration when making decisions about placement, transfer, administrative segregation and disciplinary matters.

Section 88 states that “treatment will not be given to an inmate, or continued once started, unless the inmate voluntarily gives informed consent thereto.” The *Act* indicates that informed consent can only occur if the inmate has the capacity to understand and has been informed of the likelihood and degree of possible improvement, any significant risks, reasonable alternatives to the treatment, likely effects of refusing treatment and the right to refuse or to withdraw from treatment at any time.

The Correctional Service has a Commissioner's Directive on Health Services, CD800 and two Commissioner's Directives dealing with mental health, CD850 *Mental Health Services* and CD803 *Consent to Health Service Assessment, Treatment and Release of Information*.

Background

The 1990 Task Force on Federally Sentenced Women called for individual and group counselling to be provided, mainly, by community groups or individuals who have expertise in the identified area. The Task Force noted that this would ensure that programs continue to be available during the community release portion of the sentence so that there is continuity of programming.

The *2001-2002 Annual Report of the Office of the Correctional Investigator* identified health care as the second most frequently identified area of concern for female inmates.

In April 2002, the National Criminal Justice Section of the Canadian Bar Association presented its *Submission on Mental Disorder Provision of the Criminal Code* to the House of Commons Standing Committee on Justice and Human Rights' review of the mental disorder provisions of the Criminal Code. The Committee was urged to take steps to ensure that, whenever possible, people who are mentally ill receive treatment in an appropriate therapeutic context and not be imprisoned.

Existing Research

Report of the Standing Committee on Justice and Human Rights. *Review of the Mental Disorder Provisions of the Criminal Code*

Kendall, Kathleen *Time to think about Cognitive Behavioural Programmes*

Laishes, Jane *Mental Health Strategy for Women Offenders*

McDonagh Donna. *Federally Sentenced Women Maximum Security Interview project: "Not Letting The Time Do You"*

Pollack, Shoshana. *Results of CAEFS Survey Mental Health Services: Elizabeth Fry Societies*

Rivera, Margo *Giving Us A Chance" Needs Assessment: Mental Health Resources For Federally Sentenced Women In The Regional Facilities*

Questions

- The *2000-2001 and 2001-2002 Annual Reports of the Office of the Correctional Investigator* raised the issue of women inmates being involuntarily transferred to a psychiatric facility for the purpose of assessment by psychiatrists. What are the

human rights implications of this practice?

- How is medical confidentiality ensured in a prison setting?
- Is there a need for more health services to be provided by community based groups or individuals, as recommended by the Task Force?
- Should women with cognitive limitations be incarcerated?
- What are the human rights implications of placing women with a mental illness in a prison versus a secure mental health treatment facility?
- Do programs such as dialectical behaviour therapy meet the needs of women offenders?
- Is there an individualized assessment of the health needs of each woman and a plan developed to meet those needs?
- How are the protections, such as those related to use of administrative segregation, enforced for women with mental illnesses or cognitive limitations?
- Are women with Fetal Alcohol Syndrome being diagnosed as such and provided with appropriate care?
- Are the unique needs of women, such as self-harming women, being researched and addressed in an appropriate manner?

3.5.2 HIV/AIDS AND HEPATITIS C

In 1992, the World Health Organization issued *WHO Guidelines on HIV Infection and AIDS in Prisons*. Also in 1992, PASAN (Prisoners HIV/AIDS Support Action Network) released its report *HIV/AIDS in Prisons Systems: A Comprehensive Strategy*. In February 1994, the report, *HIV/AIDS in Prisons: Final Report of the Expert Committee on AIDS and Prisons*, was released. CSC is a partner in the Canadian Strategy on HIV/AIDS, adopted in December 1997.

Statistical Information

The 2002 report, *Action on HIV/AIDS in Prisons: too little, too late: a report card*, prepared for the Canadian HIV/AIDS Legal Network by Rick Lines, provides data on HIV/AIDS and Hepatitis C in prisons. The rates of HIV and Hepatitis C among women prisoners are much higher than among male prisoners and among the general population. The known cases of HIV infection among women in federal institutions was 4.7% in 2000, and, at one institution for women, the

rate was 11.9%. In the Canadian population the rate is approximately one in 600 people. Hepatitis C prevalence rates are even higher. Overall 19% of all federal prisoners and 41% of women prisoners were known to be Hepatitis C positive in 2000. This compares with less than one percent (0.8%) of all Canadians.

Recent Developments

In November 1999, an Addictions Research Centre was established for all addiction research and development activities within the mandate of CSC.

Existing Research

In 1996, the Canadian HIV/AIDS Legal Network released its report, *HIV/AIDS in Prisons: Final Report*. One of the report's 14 recommendations was that the federal and provincial prisons systems take immediate action to develop and implement effective education and prevention programs targeted specially to female inmates.

The 2002 Canadian HIV/AIDS Legal Network report, *Action on HIV/AIDS in prisons: too little, too late: a report card*, rated the response by the federal and provincial governments to recommendations, regarding education and prevention programs targeted specially to female offenders, as poor. Other issues raised in this report include the prevalence of tattooing in prison and the need to make it safer and the need for CSC to implement the 1999 recommendation of its Working Group for pilot tests of needle exchange programs in all five regions.

The December 2002 House of Commons, Special Committee on Non-Medical Use of Drugs, in its interim report, *Policy for the New Millennium: Working Together to Refine Canada's Drug Strategy*, made a number of recommendations regarding access to substitution therapies, such as methadone; access to harm-reduction interventions; and access to programs and spaces for treatment of substance abuse upon release.

The following two articles in *HIV/AIDS in Prisons: Final Report* raised questions about the responsibilities of CSC from a legal perspective:

- Elliot, Richard “*Prisoner's Constitutional Right to Sterile Needles and Bleach*”
- Malkin, Ian. “*The Role of Law of Negligence in Preventing Prisoners' Exposure to HIV While in Custody*”

Questions

- Are the programs developed by CSC appropriate and effective for women offenders?

- Are preventive programs equally available to women offenders?
- How can the problem of the prevalence of HIV/AIDS and Hepatitis C in women's prisons be addressed in a way that respects the human rights of inmates and security concerns of staff?
- Do inmates with HIV/AIDS or Hepatitis C have access to the same standard of care given to patients on the outside, including access to pain relief medication?
- Do women offenders have access to the same standard of drug rehabilitation given to male inmates, for example Intensive Support Units?

3.6 USE OF MALE GUARDS

The United Nations' *Standard Minimum Rules for the Treatment of Prisoners* provide at section 53 (2) that no male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer and at section 53 (3) that women prisoners shall be attended and supervised only by women officers.

Background

The 1990 Task Force on Federally Sentenced Women considered the issue of male guards. It recommended that men not be hired to be the primary support for women in their day to day living situation. This did not preclude hiring men who are sensitive to women's needs and realities in areas such as education and programming. At the Prison for Women in Kingston, men were not employed as front line staff.

Correctional Service proposed allowing men in those positions in the new regional facilities. However, before they opened Justice Arbour released her 1996 report in which she recommended that an independent monitor be appointed to review the operational and policy impact of cross-gender staffing (having male front-line staff) in the new women's facilities.

In response to a recommendation in the Arbour report, CSC developed a protocol regarding the use of and procedures for male staff working in women's facilities (*CSC Women's Institutions and Maximum Security Units: National Operational Protocol - Front-Line Staffing*)

In 1998, Thérèse Lajeunesse and Associates were hired as an independent monitor as recommended by Justice Arbour. The Monitoring Team conducted research, interviewed women inmates and staff and requested input from stakeholders. The National Association of Women and the Law, the Office of the Correctional Investigator and the Canadian Association of Elizabeth Fry Societies made submissions opposing the use of male front line workers. The

Union of Solicitor General Employees of the Public Service Alliance of Canada supported the unrestricted use of men in front line positions. The final report of the Cross Gender Monitor recommended that males not be permitted to be front line primary care workers (Thérèse Lajeunesse and Associates *The Cross Gender Monitoring Project Federally Sentenced Women's Facilities: Third and Final Annual Report*)

There are currently men in front line positions at all of the regional facilities for women, except Edmonton, and all positions are open to men.

Questions

- Should Canada be bound by the standard set in the United Nations' *Standard Minimum Rules for the Treatment of Prisoners*?
- Is it discriminatory to exclude men from the position of primary care workers or is there a bona fide requirement to have only women primary care workers?
- If male front line workers are restricted from patrolling living units at night will the result be that female front line workers are required to work a disproportionate number of night shifts?
- Are there effective and timely mechanisms for incarcerated women to report problems of sexual, racial or other types of harassment, abuse or assault?
- Are there safeguards which could be put in place to facilitate the employment of male primary care workers? If such safeguards were adopted, how would their usage be monitored?
- What would the consequences be for the Correctional Service if the monitor concluded the safeguards were not being adhered to?

3.7 REDRESS PROCEDURES AND ACCOUNTABILITY

1) Internal Complaint and Grievance Procedures

The *Corrections and Conditional Release Act* at section 90 requires a "procedure for fairly and expeditiously resolving offenders' grievances" and at section 91 that "every offender shall have complete access to the offender grievance procedure without negative consequences." Sections 74-82 of the *Corrections and Conditional Release Regulations* provide details on the offender grievance system.

The Commissioner's Directive CD081, *Offender Complaints and Grievances*, outlines the

procedures. Staff and offenders are required to make every effort to resolve problems before pursuing a formal complaint.

The normal time frame for submitting a written complaint is within 30 days of the problem occurring. The time frames for written responses to complaints and grievances are 15 working days from receipt of the complaint for priority complaints and 25 working days for non-priority complaints. Priority complaints and grievances are those which significantly impact on the offenders' rights and freedoms. Provision is made for extending the time frames for responding to an offender who files multiple non-priority complaints or grievances.

There are four levels of grievance as follows:

i) Institutional Head or District Director

If an Institutional Grievance Committee has been established in the institution, an offender can ask to have his or her grievance considered by it.

ii) Regional Deputy Commissioner

iii) Assistant Commissioner, Policy, Planning and Coordination

iv) Outside Review Board

The Board is comprised of neutral community members who may submit recommendations.

2) Office of the Correctional Investigator

The Office of the Correctional Investigator was created in 1973. Its mandate, as set out in the *Corrections and Conditional Release Act* at section 167(1), is "to conduct investigations into problems of offenders related to decisions, recommendations, acts or omissions" of the Correctional Service. Section 192 provides for the Office of the Correctional Investigator to submit its annual report and special reports to the Solicitor General who must submit them to Parliament within thirty sitting days.

Existing Research

Concerns about the internal and external redress procedures and accountability have been raised in a number of reports including:

- The annual reports of the Correctional Investigator
- The report of the Sub-Committee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights entitled *A Work in Progress: The Corrections and Correctional Release Act*

- The report, *Human Rights and Corrections: A Strategic Model*, of the Working Group on Human Rights chaired by Maxwell Yalden
- The book, *Justice Behind the Walls: Human Rights in Canadian Prisons*, by Michael Jackson
- The report, *The Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, by Madame Justice Arbour
- The Third and Final Annual Report of the Cross Gender Monitoring Project by Thérèse Lajeunesse and Associates Limited
- Federally Sentenced Aboriginal Women in Maximum Security: What happened to the promise of "Creating Choices?"* prepared by SkyBlue Morin for Correctional Services Canada
- Report of CSC's Task Force on Administrative Segregation - *Commitment to Legal Compliance, Fair Decisions and Effective Results*

Questions

Internal complaint and grievance system

- Are inmates aware of their rights in terms of the offender grievance and other processes?
- Do Aboriginal women and racialized women make use of the current redress procedures?
- Does the current redress system meet the needs of federally sentenced women in a timely and effective manner?
- Is mediation a useful tool for federally sentenced women?
- How are the needs of federally sentenced women to have problems addressed balanced with the needs of staff for a system which protects their rights?
- Is the current system effective for lesbian and transgendered women?
- Is there an effective mechanism for identifying and addressing persistent problems which are occurring in more than one institution for federally sentenced women?
- Can women with cognitive limitations or mental health problems avail themselves

of the redress system?

External options

- Can all women contact outside services such as the Correctional Investigator or the local Elizabeth Fry Society?
- Is information on the numbers, types of complaints and actions taken available to senior management and the Office of the Correctional Investigator in a timely manner? Is this information available for Aboriginal women and racialized women?
- Does the Office of the Correctional Investigator have the staff and financial resources to effectively protect the rights of federally sentenced women?
- Should the Office of the Correctional Investigator report directly to Parliament?
- Is there a need for an independent arm's length body to investigate allegations of sexual misconduct or assault?
- Should there be recourse to an administrative tribunal? If so, how would a decision be made as to which cases should be referred to it?
- Is there a need for legislative sanctions for correctional interference with the integrity of a sentence?
- Is there, as has been suggested, a problem with the accountability of the Correctional Service? If there is a problem, how should it be addressed?
- If the solution includes an administrative tribunal, what remedies should it have the power to provide, e.g. financial compensation, recommending to a court that the offender's imprisonment be modified to reflect the correctional interference with the integrity of a sentence?

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LEGISLATION, REGULATIONS, COMMISSIONER'S DIRECTIVES AND STANDARD OPERATING PRACTICES

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Commissioner's Directives

Commissioner's Directive 081, *Offender Complaints and Grievances*
(http://www.csc-scc.gc.ca/text/plcy/cdshtm/081-cde_e.shtml)

Commissioner's Directive 800, *Health Services*
(http://www.csc-scc.gc.ca/text/plcy/cdshtm/800-cde_e.shtml)

Commissioner's Directive 803, *Consent to Health Service Assessment, Treatment and Informed Consent*
(http://www.csc-scc.gc.ca/text/plcy/cdshtm/803-cde_e.shtml)

Commissioner's Directive 850 *Mental Health Services*
(http://www.csc-scc.gc.ca/text/plcy/cdshtm/850-cde_e.shtml)

Standard Operating Practices

700-04 Offenders Intake Assessment and Correctional Planning
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700-14 Security Classification of Offenders
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