

Criminalized and Imprisoned Women

A brief overview of the common experiences of criminalized women:

- high proportion of Aboriginal women;
- most are criminalized and/or in prison for the first time;
- most have experienced sexual and/or physical abuse;
- often as a result of unaddressed or unresolved trauma, many women anaesthetize themselves with legal and illegal substances;
- most are under the age of thirty-five;
- most are mothers and the sole supports of their children before they go to jail.¹

- Crime rates in Canada reached a 25 year low in 2006,² yet the numbers of women being imprisoned are increasing. In fact, the fastest growing prison population worldwide is women, particularly racialized, young, poor women and women with mental and cognitive disabilities. The escalating numbers of women in prison is plainly linked to the evisceration of health, education, and social services.³
- Between 1997 and 2006, the number of women in federal prisons grew by 22%.⁴
- Women account for fewer than 5% of all individuals serving sentences of 2 years or more and the vast majority of women prisoners are first time prisoners. In 2001, 82% of federally sentenced women were serving their first federal sentence.⁵
- In 2005, 48% of 810 federally sentenced women were in prison and 52% were out on bail or under community supervision. For Aboriginal women, however, the majority were imprisoned with only about 40% in the community.⁶

¹ Canadian Human Rights Commission. "A Profile of Federally Sentenced Women: Who Are They?", in *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Human Rights Commission, 2004.

² Statistics Canada. *The Daily: Crime Statistics, 2006*. On line:
<http://www.statcan.ca/Daily/English/070718/070718b.htm>

³ Canadian Association of Elizabeth Fry Societies. *Submission of the Canadian Association of Elizabeth Fry Societies to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness (39th Parliament) Regarding Bill c-10: An Act to Amend the Criminal Code (Minimum Penalties for Offences Involving Firearms)*. Ottawa: Canadian Association of Elizabeth Fry Societies, 2006 at 4.

⁴ Pollack, Shoshana. "You Can't Have it Both ways": *Punishment and Treatment of Imprisoned Women*. Waterloo: Journal of Progressive Human Services, 2009.

⁵ Canadian Human Rights Commission. *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Canadian Human Rights Commission, 2003 at 5.

- Two thirds of federally sentenced women are mothers, and they are more likely than men to have primary childcare responsibilities.⁷ There are about 25 000 children whose mothers are in either federal prisons or provincial jails in Canada each year. Separation from their children and the inability to deal with problems concerning them are major anxieties for women in prison.⁸
- In 2002-2003, for a population of 376 women, there were 265 admissions to administrative segregation, of which 83 were for a period of more than 10 days. This typifies the intransigence of correctional authorities when it comes to adherence of the law. Segregation can only be exercised when there is no other reasonable alternative to isolating the prisoner (pursuant to section 31 of the *Corrections and Conditional Release Act*). In one case, an Aboriginal woman was segregated for 587 days.⁹
- The three Aboriginal women who are subject to the unlawful super-maximum designation known as the “management protocol” have endured prolonged segregation and other punitive and inhumane conditions of confinement which the United Nations has defined as torturous. In addition, as a result of their reactions to their conditions of confinement these three and others have become convicted of additional charges while in prison; in one case the woman entered the prison serving a 3.5 sentence and is now serving well in excess of 20 years.¹⁰
- Although many reports, from the Task Force on Federally Sentenced Women, the Arbour Commission, the Auditor General, the Public Accounts Committee, the Correctional Investigator and the Canadian Human Rights Commission, have demonstrated that women prisoners pose a low security risk and are less likely to return to prison for new charges, the Correctional Service of Canada continues, for the most part, to use the same risk and needs assessment tools for both populations.
- Because the custody ratings scale is designed according to white, male, middle class standards, it results in skewed discriminatory assessments of federally sentenced women, resulting in too many being deemed high security risks. Among the hardships imposed by this is the fact that maximum security prisoners are isolated in segregated living units and, unlike their

⁶ The Canadian Feminist Alliance for International Action. *Submission to the United Nation Human Rights Committee on the Occasion of its Review of Canada's 5th Report on Compliance with the International Covenant on Civil and Political Rights*. Ottawa: FAFIA, 2005 at 51.

⁷ Canadian Human Rights Commission. *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Canadian Human Rights Commission, 2003 at 6.

⁸ Voices for Children. *Invisible Victims: The Children of Women in Prison*. Voices for Children, 2004. On line: <http://www.voicesforchildren.ca/report-Dec2004-1.htm>

⁹ Canadian Human Rights Commission. *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Canadian Human Rights Commission, 2003 at 44-45.

¹⁰ CSC Case Files.

minimum and medium security counterparts, are not eligible to participate in work-release programs, community release programs or other supportive programming designed to enhance their chances of reintegration.¹¹

- Notwithstanding their relatively low risk to the community in comparison with men, federally sentenced women as a group are, and have historically been, subject to more disadvantaged treatment and more restrictive conditions of confinement than men.
- The 2006 Report of the Correctional Investigator states that there has been a decline in the number of women participating in unescorted temporary absences. This signifies the culture of restriction that is becoming increasingly pervasive throughout the prisons.¹²
- More than half of all charges for which federally sentenced women are convicted are non-violent, property and drug offences. Property offences account for around 32%¹³ of all court cases and 47%¹⁴ of all charges against women. One reason why women account for 5% of admissions to federal penitentiaries is because they are far less likely than men to commit or to be convicted of serious crimes of violence which result in sentences in excess of two years.
- The recidivism rate for federally sentenced women is approximately 21%¹⁵, as compared to 59% for men. Only 1-2% of federally sentenced women are returned to prison as the result of the commission of new crimes; and less than 0.5% are for a violent offence. The overwhelming majority represent women who have their parole revoked as a result of administrative breaches of conditions of their community release.¹⁶ The recidivism rate for women released from the Okimaw Ohci Healing lodge is even lower.
- Federally sentenced Aboriginal women and other racialized women are singled out for segregation more often than are other prisoners. Data from the Correctional Service of Canada show that although Aboriginal women comprised 32% of all federally incarcerated women in February 2003, they accounted for 35.5% of all involuntary admissions to administrative segregation.¹⁷

¹¹ Canadian Human Rights Commission. *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Canadian Human Rights Commission, 2003 at 28.

¹² Sapers, Howard. *Annual Report of the Correction Investigator 2005-2006*. Ottawa: Minister of Public Works and Government Services Canada, 2006 at 10.

¹³ Canadian Center for Justice Statistics. *Female Offenders in Canada*. Canadian Center for Justice Statistics, 2008. On line: <http://www.statcan.ca/english/freepub/85-002-XIE/85-002-XIE2008001.pdf> at 10.

¹⁴ Ibid at 3.

¹⁵ Ibid at 5.

¹⁶ Ibid.

¹⁷ Canadian Human Rights Commission. *Protecting Their Rights: A Systematic Review of Human Rights in the Correctional Services for Federally Sentenced Women*. Ottawa: Human Rights Commission, 2003 at 45.

- Women who are classified as maximum security tend to be so designated because they are labelled as having difficulty adapting to the prison (i.e. institutional adjustment) rather than because they pose a risk to public safety.
- Eighty percent of all federally sentenced women report having been physically and/or sexually abused. This percentage rises to 90% for Aboriginal women.¹⁸
- Federally incarcerated women and men tend to have lower educational attainment than the Canadian adult population as a whole. While more than 80% of women in Canada have progressed beyond grade 9, for women prisoners, the figure is closer to 50%.¹⁹
- Imprisoned women have much lower employment rates than incarcerated men: in 1996, 80% of the women serving time in a federal facility were unemployed at the time of admission, compared to 54% of men.²⁰
- Reflexive of the types of crimes that women commit, those found guilty in court are more likely than men to be sentenced to prison. For example, Canadian statistics reveal that 25% of men versus 37% of women are jailed for theft.
- The context in which federally sentenced women are charged with causing death is important in understanding the risk they pose to society. In many cases, their actions were defensive or otherwise reactive to violence directed at them, their children, or another third party.²¹
- Relative to men, women pose a far lower risk to the safety of the community upon release and lower rates of recidivism.
- In 2001-2002, more than 40% of priority complaints and grievances (those considered to have a significant impact on a prisoner's rights and freedoms) were NOT processed within established time frames.²²
- The use of violence by prisoners against themselves or against others is often interpreted as an expression of violent pathology of the individual prisoner and results in punishment. However, that approach omits the role of the prison regime in generating violence.

¹⁸ Ibid at 7.

¹⁹ Canadian Human Rights Commission. *Protecting Their Rights: A Systematic Review of Human Rights in the Correctional Services for Federally Sentenced Women*. Ottawa: Human Rights Commission, 2003 at 7.

²⁰ Ibid at 7.

²¹ Ibid at 32.

²² Ibid at 64.

- Almost 50% of Aboriginal federally sentenced women are precluded from accessing the Okimaw Ohci Healing Lodge because they are classified as maximum security prisoners. Many are now confined in the new maximum security units in the regional women's prisons, while a small number remain confined in the segregated maximum security unit in the men's Regional Psychiatric Centre in Saskatoon. No maximum security women have ever been able to access the Healing Lodge.²³

Accountability and Oversight

- The more human rights and Charter protected rights of women prisoners are violated, the more likely it is that the conditions of confinement to which women prisoners are subjected will create situations that will interfere with the safety of women prisoners, as well as with the staff in women's prisons.
- Rather than address the breaches of the law by its staff, the Correctional Services have combated this by re-assessing the women as increasingly violent, without any contextual analysis of the manner in which the staff or prison environment encourage escalating forms of violence. They also then develop anger management, anti-bullying or anti-violence programs for the women, absent the inclusion of skills as to how to negotiate living in a stressful prison environment.²⁴
- Women prisoners in particular tend to be invisible to society, because of their relatively small numbers.²⁵
- Approximately 20 reports, investigations, and commissions of inquiry have chronicled the urgent need for oversight and accountability mechanisms to address the violations of the rights of women prisoners in Canada.
- In 1996, Louise Arbour in her report into the illegal stripping, shackling, transfer and segregation of women prisoners at the Prison for Women in Kingston, found that culture of the Correctional Service of Canada was one of disrespect for the rule of law. Accordingly, she made recommendations for judicial oversight and external accountability mechanisms.²⁶

²³ Ibid at 28-29.

²⁴ Pollock, Shoshana. *"I'm Just Not Good With Relationships": Victimization Discourses and Gendered Regulation of Criminalized Women*. Waterloo: Feminist Criminology, 2007 at 170.

²⁵ Canadian Human Rights Commission. *Protecting Their Rights: A Systematic Review of Human Rights in the Correctional Services for Federally Sentenced Women*. Ottawa: Human Rights Commission, 2003 at 5.

²⁶ Arbour, Louise. *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Ottawa: Solicitor General, 1996.

- Eight years later, the Canadian Human Rights Commission (CHRC) found an ongoing need for oversight and accountability mechanisms to address the discriminatory treatment of women prisoners in Canada. They also focused on the need to address the discriminatory security classification and discussed the need to ensure that correctional practices be remedied so as to not violate the human rights of women prisoners. The CHRC found that the discriminatory impact is exacerbated by the ineffectiveness of current grievance mechanisms and the lack of external oversight of CSC.²⁷
- In 2005, the United Nations Human Rights Commission (UNHRC) called on Canada to remedy the discriminatory treatment of women prisoners. Moreover, as part of their review of Canada's performance in relation to the International Covenant on Civil and Political Rights (ICCPR), the Commission called upon Canada to implement the recommendations of the CHRC, especially those related to external redress and the need for adjudication processes for prisoners. They also instructed Canada to report within one year on their progress on this front. No such report has been submitted.²⁸
- On April 27, 2006, the Correctional Service of Canada released its responses to 4 of the most recent reports critiquing their treatment of federally sentenced women. Despite many sweeping assertions of significant progress, the reality of continued human and Charter rights violations reveal a less than stellar record.

References

Adult Criminal Court Statistics 2002/2003. Ottawa: Statistics Canada, 2003.

Arbour, Louise. *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Ottawa: Solicitor General, 1996.

Auditor General Canada. *Report of the Auditor General of Canada to the House of Commons*. Ottawa: Minister of Public Works and Government Services, 2003.

Campbell, Mary. *Revolution and counter-revolution in Canadian Prisoners' Rights*. Canadian Criminal Law Review, 2006.

Canadian Association of Elizabeth Fry Societies. *Submission of the Canadian Association of Elizabeth Fry Societies to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness (39th Parliament) Regarding Bill c-10: An Act to*

²⁷ Canadian Human Rights Commission. *Protecting Their Rights: A Systematic Review of Human Rights in the Correctional Services for Federally Sentenced Women*. Ottawa: Human Rights Commission, 2003 at 71.

²⁸ United Nations Human Rights Commission. *Concluding Observations of the UNHRC in Relation to the Report Submitted by Canada Under Article 40 of the ICCPR*. 2005.

Amend the Criminal Code (Minimum Penalties for Offences Involving Firearms). Ottawa: Canadian Association of Elizabeth Fry Societies, 2006.

Canadian Association of Elizabeth Fry Societies. *Submission to the Canadian Human Rights Commission for the Special Report on the Discrimination on the Basis of Sex, Race and Disability Faced by Federally Sentenced Women*. Ottawa: Canadian Association of Elizabeth Fry Societies, 2003.

Canadian Center for Justice Statistics. *Female Offenders in Canada*. Canadian Center for Justice Statistics, 2008. On line: <http://www.statcan.ca/english/freepub/85-002-XIE/85-002-XIE2008001.pdf>

Canadian Feminist Alliance for International Action. *Submission to the United Nation Human Rights Committee on the occasion of its review of Canada's 5th report on compliance with the International covenant on Civil and Political Rights*. Ottawa: FAFIA, 2005.

Canadian Human Rights Commission. "A Profile of Federally Sentenced Women: Who are They?", in *Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Canadian Human Rights Commission, 2004.

Canadian Human Rights Commission. *Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Canadian Human Rights Commission, 2003.

Native Women's Association of Canada. *Position on the Human Rights Complaint on Federally Sentenced Women*. Ottawa: NWAC, 2003.

Pollock, Shoshana. *"I'm Just Not Good With Relationships": Victimization Discourses and Gendered Regulation of Criminalized Women*. Waterloo: Feminist Criminology, 2007.

Sapers, Howard. *Correctional Investigator's Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women*. Ottawa: Correction Investigator, 2004.

Statistics Canada. *The Daily crime statistics 2006*. On line: <http://www.statcan.ca/Daily/English/070718/d070718b.htm>

United Nations Human Rights Commission. *Concluding observations of the UNHRC in relation to the report submitted by Canada under Article 40 of the ICCPR*. Geneva: UNHRC, 2005.

Voices for Children. *Invisible Victims: The Children of Women in Prison*. Voices for Children, 2004. On line: <http://www.voicesforchildren.ca/report-Dec2004-1.htm>