Submission
of the
Canadian Association of Elizabeth Fry Societies
to the
United Nations Human Rights Committee
Examining Canada's 5th Report Regarding the
International Covenant on Civil and Political Rights

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Tables of Contents

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Introduction

The Canadian Association of Elizabeth Fry Societies (CAEFS) was originally conceived of in 1969 and was incorporated as a national voluntary non-profit organization in 1978. Today there are 25 member societies across Canada in 9 provinces, with interest for developing societies in the territories and the 10th province. CAEFS is incorporated pursuant to the provisions of the *Canada Corporations Act*. Local societies are incorporated under provincial statutes.

Both volunteer and paid staff are involved in governance as well as program and service delivery throughout the association. Programs and services are developed at the grassroots level, in accordance with the needs of the community and range from early intervention and crime prevention activities, to pre and post release work with criminalized and imprisoned women and girls. In the last year, 31 volunteers, including Board members, devoted a total of 6,073 hours of work to the CAEFS' office. This supplemented the work of CAEFS' two full-time staff members. In our 25 member societies, 1,545 volunteers put in a total of 109,555 hours, supplementing the time of 275 full-time staff and 169 part-time staff.

At the national level, CAEFS focuses on law and policy reform initiatives, informed by its membership and those women with the lived experiences of criminalization and imprisonment. The interactions of CAEFS with women serving federal terms of imprisonment have led us to take note of numerous instances of abuse of rights by the Correctional Service of Canada (CSC). In conjunction with the Native Women's Association of Canada (NWAC), CAEFS has combined these personal accounts with the findings of other equality seeking women's groups in Canada to serve as the basis for the *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.*

This report aims to provide the United Nations Human Rights Committee with information in order to assist the members of the Committee to adequately assess the extent to which Canada adheres to the provisions of the International Covenant on Civil and Political Rights. Specifically, this submission focuses on how Canada's inability to adhere to the Covenant affects women serving federal terms of imprisonment. It is not limited to exposing the situation of a particular individual but describes a consistent pattern of human rights violations.

It is to be noted that all domestic remedies appropriate for a claim of such magnitude have been exhausted. The issue of human rights abuses and discrimination against federally sentenced women was formally brought to the attention of the Canadian Human Rights Commission (CHRC) in a complaint filed on March 8th, 2001. The Commission publicly released issued its report and recommendations January 28th, 2004.

The Correctional Service of Canada (CSC) and therefore the Canadian government has virtually ignored recommendations made in both Louise Arbour's 1996 report entitled, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston,* and in the report by the Canadian Human Rights Commission (CHRC) entitled, *Protecting Their Rights*: *A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women.* For instance, in response to the CHRC's report, the CSC stated that they will address all items that the CHRC deemed needing immediate action by implementing a plan to act by the year 2007. The Canadian government has not only failed to implement these recommendations but has also neglected to provide an adequate plan of action for doing so.

After reviewing Canada's 5th periodic report on its compliance with the *Convention on the Elimination of All Forms of Discrimination Against Women,* in 2003, the United Nations Committee on the Elimination of Discrimination Against Women urged the federal government to take immediate action to address the nature and extent of women's poverty in Canada. Despite continuing to be one of the wealthiest countries in the world, Canadian governments have eviscerated the social safety net and have relegated increasing numbers of women to the margins, where they are increasingly likely to be victimized, criminalized, and imprisoned.

In 1996, the federal government significantly changed and eliminated national standards for social services, health services, and education. This meant that the provincial governments were no longer required to ensure that monies provided to the provinces by the federal government from federal tax revenues be prioritized to provide social services, health services and education services. This devolution of autonomy to the provinces was coupled with significant cuts to transfers for social assistance, health, and education.

This move provided an opportunity for the provinces to have free reign in how they spent public money. In most provinces in Canada, this now means that welfare rates and other social services, as well as health, especially mental health services, and educational services have been brutally slashed. The results are that increasing numbers of people are literally dropping through the increasingly drafty social safety net, while others are being scooped up and criminalized, resulting in ensnarement in the ever-stickier social control network of our criminal justice system. It is the most expensive and punitive, yet least effective, means of addressing social issues.

At the same time as we are seeing the retreat of the state, in terms of the provision of support services, we are seeing the incredible intrusion of the state in terms of increased security and control interventions. The result is increased criminalization of those who are most marginalized. This has a profound impact upon the inherent inequalities of women and girls, especially those who are poor, racialized and who have mental health issues.

Women who are sole-support mothers who fear that they will face the street, death, or jail because of the impact of the new policies, and are consequently concerned about the future of their children have contacted us. Some women have even indicated that they believe

that they should voluntarily surrender their children to the state before they are cut off of assistance, so that their children may be certain to have access to adequate food, housing, and clothing via child welfare resources.

We know the increasing numbers of women in prison is clearly linked to the evisceration of health, education, and social services. We also know that the cycle intensifies in times of economic downturn. It is very clear where we are sending the people who are experiencing the worst in the downturn in the economy and social trends. Jails are our most comprehensive homelessness initiative.[1]

Prisons should not continue to be the accepted fallback response to the evisceration of social and health services. They cannot be seen as an adequate substitute for inadequate social assistance, housing or community-based mental health resources. We believe this speaks directly to the need for clear and concerted decarceration strategies, as well as the need for newly developed and redeveloped linkages between provincial, territorial, and federal social service, education, health, and other support services.

Currently, there are approximately 810 women serving federal sentences (2 years or more). Of these, about 48% are incarcerated and about 52% are serving the remainder of their sentences in the community under various forms of conditional release (day parole, full parole, or statutory release). However, with respect to the Aboriginal women population (172), further challenges remain as almost 60% (103) of Aboriginal women are incarcerated compared to just over 40% (72) who are in the community. [2]

Funding is overwhelmingly devoted to the use of imprisonment.

As the Royal Commission on Aboriginal Peoples indicated in 1996,

> *There is no doubt in our minds that economic and social deprivation is a significant contributor to the high incidence of Aboriginal crime and overrepresentation in the justice system. We believe, however, that a further level of understanding is required beyond acknowledgment of the role played by poverty and debilitating social conditions in the creation and perpetuation of Aboriginal crime. We are persuaded that this further understanding comes from integrating the cultural and socio-economic explanation for over-representation with a broader historical and political analysis. We have concluded that over-representation is linked directly to the particular and distinctive historical and political processes that have made Aboriginal people poor beyond poverty.*[3]

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[1] Canadian Association of Elizabeth Fry Societies. *Finance Committee Submission: Pre-Budget Consultations: 2005 Federal Budget - November 2004.* Accees on line at http://www.elizabethfry.ca/submissn/prebg05/prebdg05.pdf

[2] Ibid.

[3] Report of the Royal Commission on Aboriginal Peoples. *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada,* 1996, p. 46.

The social context in which they are criminalized and imprisoned is integral to understanding Aboriginal women. Increasingly, societal norms, administrative policies, and laws are in conflict with their lives and their attempts to survive are resulting in their enmeshment in the criminal justice system. Federally sentenced Aboriginal women have significantly different personal and social histories in a number of ways. The social and economic marginalization of Aboriginal people, particularly status Indians living off reserve, is acute among Aboriginal women. The relationship of this marginalization to the criminal justice system has been well documented.

As a group, Aboriginal women come to prison at a younger age than do non-Aboriginal women. They generally have lower levels of education and employment. Alcohol and drug abuse is a greater problem for them and is reported to play a greater role in contributing to their criminalization. They also have a greater incidence of past physical and sexual abuse.[4]

Many have experienced disruption of their families and communities through the operation of racist government policies over generations. In general, both inside and outside prisons, native women have experienced much greater disruption in their lives than non-native women, facing racism directed against them individually, and facing the effects of racism against their communities. From a very early age, many have been adopted into non-native families, placed in non-native foster and group homes and into reformatories where they reacted against their original upheaval. As a result of disruption in their own communities they were much more likely to have experienced physical and sexually abuse, both as children and as adults, than the non-native population (91%) reported physical abuse and 61% sexual abuse.[5]

As prisoners, Aboriginal women suffer the compounded disadvantages of being both women and Aboriginal prisoners in a discriminatory correctional system.

Article 2: Equal rights and effective remedies

Pursuant to the first paragraph of Article 2, States are to ensure that all individuals in their jurisdiction are accorded the civil and political rights outlined in this Covenant without making distinctions based on race, sex, national or social origin or other status. It will be demonstrated that women serving federal terms of imprisonment in Canada are not accorded the civil rights that male prisoners are and are in fact discriminated against not only on the basis of sex but as on the basis of race, Aboriginal ancestry, sexuality and

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[4] Arbour, Madam Justice. *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, 1996, p. 220.

[5] Margaret Shaw et al. "A Survey of Federally Sentenced Women," *Task Force on Federally Sentenced Women*, 1990, p. 54.

economic and social status. This discrimination is most evident with respect to article 10 and the responsibility of states to respect the inherent dignity of persons deprived of their liberty. Discrimination of women deprived of liberties is further explored in the section of this submission that deals specifically with the respective article.

Canada and the CSC have also failed to exercise their legislative and regulatory authority to ensure that the civil rights of federally sentenced women are respected. Concrete recommendations have been made by a relevantly appointed commission of inquiry in 1996, as well as by the CHRC that would give a greater effect to the rights recognized in the Covenant, but the Canadian government and the CSC have declined to implement such measures. In its fifth report submitted to the UN Human Rights Committee in October 2004, the government of Canada addressed the CHRC report on federally sentenced women. The government was only able to tell the UN Committee that CSC "will study the recommendations and prepare a comprehensive response to the report".[6] Although CSC has now issued its response, it is far from satisfactory, much less comprehensive in nature.

Remedies for Violations of Rights

The third paragraph of Article 2 requires that effective remedies be provided for persons whose rights have been violated. This provision calls for every person to have their claims of human rights violations heard by a competent administrative, judicial or legislative authority. This is a right that is denied to women in federal prisons.

Currently the CSC provides for an internal grievance process that is available to federally sentenced prisoners who feel that their civil and political rights have been violated by CSC. The grievance procedure was criticized by Louise Arbour following the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Of greatest significance was her finding that CSC could not be expected to process complaints against themselves because of their inability to accept responsibility for what happens within the institutions.[7]

According to the Office of the Correctional Investigator, the power imbalance between prisoners and CSC/prison staff are a key cause of the ineffectiveness and inefficiencies of the current complaint mechanisms.[8] Of course this power imbalance is amplified for women from traditionally marginalized groups such as racialized women, Aboriginal women, women with disabilities, and women who are lesbian.

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[6] Government of Canada, *International Covenant on Political and Civil Rights, Fifth Report of Canada Covering the period January 1995 - April 2004*. Available: http://www.pch.gc.ca/progs/pdp-hrp/docs/fifth_iccpr/tdm_e.cfm, para 74.

[7] Canada. Commission of Inquiry into Certain Events at the Prison for Women in Kingston. *Report*. Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).

[8] Office of Correctional Investigator. *Correctional Investigator's Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women January 2004* (online). Available: http://www.oci-bec.gc.ca/reports/OCIResponse_CHRC_e.asp. [June 2005]

There are other explanations for the weakness and ineffectiveness of the current grievance procedure system. Women are rarely adequately informed about their right to grieve, and if even when they are fully aware of the right, they are most usually discouraged from utilizing the grievance process. Often women will not pursue a grievance because of a perceived or real threat that doing so might cause correctional staff to be an increased risk to them. For example, in order to implicitly or explicitly discourage women from lodging grievances, women in prison report instances where they are advised or encouraged to consider how grievances might affect their family contact visits, their community release planning process, their security classification and other aspects of their ability to progress through the correctional setting during their sentence.[9]

CAEFS has found that grievances rarely come to the attention of the national leadership in CSC, as they are often deemed to be 'resolved' by staff. In many cases the complaint is given to the staff member it is against or to the person who made the decision which is being grieved. This is unfair and illegal.

It has been communicated to women in both overt and subtle ways that if they complete the process they will experience an unpleasant outcome. It basically comes down to the women's word against that of the staff. CAEFS has seen and is aware of numerous situations at every prison for women, where prisoners have been pressured to either not file a complaint or grievance; or, if they have already filed, to withdraw it.

According to a report by the Women's Legal Action and Education Fund (LEAF), there is a presumption of staff innocence that skews the investigative process in favour of the respondent. This is coupled with an assumption that complainants are overly sensitive, overly excited and lack credibility.[10] What is most disturbing is that the Cross-Gender Monitor found that the grievance process was being used to route allegations of sexual misconduct against staff. It is inappropriate to be using the grievance process, which is ineffective and time consuming, to process complaints that deserve immediate attention and resolution.[11]

Federally sentenced women who are located in provincial facilities due to the Exchange of Services Agreements (ESAs) between the federal government and provincial governments do not even have access to the grievance process. This is because CSC does not require that the Corrections and Conditional Release Act (CCRA) apply to the conditions of confinement to which women are subjected pursuant to ESAs and/or Memoranda of

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[9] Canadian Association of Elizabeth Fry Societies. *CAEFS' Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women 2003.* (online). Available: http://www.elizabethfry.ca/caefs_e.htm. [June 2005]

[10] Women's Legal Education and Action Fund (LEAF). *The Tip of the Iceberg: Barriers to Disclosure of the Abuse and Mistreatment of Federally Sentenced Women May 2003* (online). Available: http://www.elizabethfry.ca/caefs_e.htm. [June 2005].

[11] Correctional Service of Canada. *Cross Gender Monitoring Project: Third and Final Annual Report 2000* (online). Available: http://www.cscscc.gc.ca/text/prgrm/fsw/gender3/toc_e.shtml#TopOfPage. [June 2005].

Understanding (MOU) with provincial correctional and health authorities. Most provincial corrections and mental health legislation do not have adequate grievances provisions.

Article 3: Equal rights of men and women

With regards to imprisoned individuals, the Canadian state has not ensured that men and women have equal enjoyment to the civil rights set out in this covenant. Although article 10 of this covenant requires that people who are deprived of their liberty are to have their dignity respected, women prisoners are do not enjoy formal or substantive equality. CSC practices also render federally sentenced women more likely to be subjected to torture or cruel and inhuman or degrading treatment, which is contrary to article 7.

Louise Arbour writes in her report that, "From the beginning…the welfare of women prisoners was secondary to that of the larger male population"[12] The disadvantages faced by women prisoners compared to men have been documented over the past century in reports such as the *Archambault Report* of 1938, The *Report of the Royal Commission on the Status of Women* in 1970, the *McGuigan Report* of 1977, *Creating Choices*: The Report of the Task Force on Federally Sentenced Women in 1990, the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* in 1996, Chapter 4 of the Auditor General's April 2003 Report, the report of the Public Accounts Committee in 2003, and the report of the Canadian Human Rights Commission, which was released to the public in 2004.

Imprisoned women face particular challenges to enjoying the rights set out in this covenant, as the correctional system in Canada is designed primarily to service men and consistently neglects to respond to the particular needs of women. This is perhaps most evident and well-documented in terms of the lack of vocational training and community release options available to women prisoners and the classification system used to assess women's needs and the security risk they pose.

Scarcity for Minimum Security Beds and Community Release Options

Men who are classified as minimum security prisoners are placed immediately into minimum security facilities. There is a scarcity of minimum security beds for women. Men have access to over 30 minimum security prisons across the country, whereas there is only one minimum security prison for women in Canada and it only has ten beds.

In addition, there is virtually no difference between the minimum and medium security beds in the regional prisons for women. This results in women being subject to a higher level of security than the level at which they are classified. It also means that they are denied the benefits of minimum security which include fewer controls over liberty, more access to the outside community, and a better chance at being granted release into the community by the National Parole Board (NPB).

[12] Arbour. Report of the Commission of Inquiry into Certain Events at Prison for Women, 1996, p. 239.

Women pose much less of a risk to the community than do men. In fact, CSC and NPB records reveal that approximately only 0.39% of federally sentenced women released into the community recidivate for violent offences. Despite this fact, women have far fewer community release options and fewer employment training opportunities than men. Lack of accommodation options for women is the biggest obstacle to their being released into the community as soon as possible.[13]

Community release on day parole includes a requirement of residency in a community-based residential facility or halfway house and there are relatively few halfway house beds available to women across the country and fewer still that are women-only. For instance, the first halfway house for women is about to open in the Atlantic region and there are only two in the entire Prairie region. This results in many women being released into halfway house for men. This is not only inappropriate for safety reasons but habitually ends up with the particular needs of women being neglected as the houses are consumed with meeting the needs of the men.

Segregated Maximum Security Units

Although women prisoners generally pose less of a security threat then male prisoners, women have historically been subjected to more restrictive conditions of confinement than men. Due to lack of facilities, women classified as maximum security are either segregated into units in men's prisons, or are segregated into maximum security "pods" in women's regional prisons.

In a 1997 report the CSC deemed the maximum security pods for women in men's institutions as "relatively isolated" and "abnormal conditions" for confinement. This CSC document recommended alternative accommodations for these women stressing that this type of confinement will have detrimental affects on the health of the women. [14]

In her report on women in prison for the UN Sub-Commission on the Promotion and Protection of Human Rights, Ms O'Connor emphasizes that housing women in women's wings of men's prisons is contrary to the UN Minimum Standard Rules for the Treatment of Prisoners.[15]

Placing women in isolated units consigns them to a level of segregation to which men are not subjected. Women classified as maximum security prisoners are either kept in provincially or Correctional Service of Canada operated psychiatric facility where men are also imprisoned or segregated pods in the regional prisons for women. They are consequently subjected to extremely severe conditions of isolated confinement.

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[13] CSC. *Community Strategy for Women on Conditional Release*, 1998, p. 7.
[14] CSC 1997. *Human Rights and Corrections: A Strategic Model*, Chapter 5, part III, p. 2.
[15] Florizelle O'Connor, Administration of Justice, Rule of Law and Democracy, fifthly-sixth of the Commission on Human Rights Sub-Commission on Promotion and Protection of Human Rights. Available: http:daccessdds.un.org/doc/UNDOC/GEN/G04/148/57/PDF/G0414857.pdf?OpenElement.

Where men in maximum security prisons have a significant amount of freedom to access all areas of the prison, women in maximum security units are more restricted and require escorts and other uses of force, such as handcuffs and shackles, often to move within the unit. Furthermore, women who are confined to maximum security units are only permitted to leave the secure units accompanied by one to two staff members and in handcuffs, or body belts and shackles/leg irons. On the other hand, men in the general population of maximum security prisons do not have to wear restraints when moving about the institution and are not generally required to be escorted by correctional officers. In addition, where women are kept in segregation in small pods of about 4-5 people on average, men classified as maximum security prisoners usually live on larger ranges of upwards of 20 men or more. Men can generally also leave units in groups, unaccompanied and unrestrained.

Furthermore, since CSC does not consider the maximum security pods as segregation, none of the procedural safeguards provided for by law are employed for women held in these situations. The *Corrections and Conditional Release Act (CCRA)* and Regulations require the use of segregation to be justified by law and accords those who are so segregated access to some procedural safeguards.

Disparity of Programs Offered

The segregated status of women classified as maximum security prisoners also results in women receiving limited access to fewer services than their males counterparts. In speaking about the isolated maximum security units in his annual report of 1999-2000, the Correctional Investigator points out that these units "unreasonably isolate women and are discriminatory and inappropriately resourced to address the identified needs of those housed there."[16] At the time the units were only in men's prisons; since then, such isolated units have been constructed in each of the five regional prisons for women in Canada.

Current training, education, and therapeutic programs provided for women in prison are vastly inferior to those offered to men in terms of quantity, quality, and variety. It is not even enough to offer women the same programs as men, programs must be designed with the specific needs of women in mind in order to go beyond formal equality of services and attain substantive equality for women. In their report entitled *Correctional Afterthoughts: Programs for Female Offenders,* Robert Ross and Elizabeth Fabiano describe CSC services for women as after-thoughts and hand-me-downs of programs that were designed for men.[17]

Florizelle O'Connor comments, in her report to the UN entitled, *Administration of Justice, Rule of Law and Democracy,* that women prisoners are disadvantaged compared to men prisoners in terms of counseling, education, training and rehabilitation programs. She concludes that in addition to a lack of funding for prisons generally, the lower quality

[16] Correctional Investigator. 1999-2000 *Annual Report*, p. 29.
[17] Robert Ross and Elizabeth Fabiano, "Correctional Afterthoughts: Programs for Female Offenders," Solicitor General, 1985, p. 121.

programs for women are due to the fact that the programs are made for men and there is a lack of programs designed for women. [18]

In Canada, even when programs are characterized as being designed for women, they are generally adaptations of programs initially developed for men or mixed out-patient-type groups in the community. CSC also usually subjects women imprisoned in maximum security units to compulsory "therapeutic" programs. The majority of maximum security women are required to participate in "dialectical behaviour therapy" and/or "psycho-social rehabilitation,"[19] in order to access services and certainly if they wish to have their security classification reconsidered for reduction from maximum.

If women who are identified as requiring the therapy refuse to participate in the program they then have a behaviour contract imposed on them. Breaching this contract can result in punishments such as having one's television of radio removed, less time out of their cells, et cetera. Men are not subjected to such mandatory "therapeutic" programs and behavioural contracts. These policies result in breaches of liberty and discriminatory practices for federally sentenced women.

As the Auditor General, the all-party Parliamentary Public Accounts Committee, and the Canadian Human Rights Commission pointed out in reports that came out over the past few years, the Correctional Service of Canada spends many millions of dollars to operate the women's prisons, and a comparable pittance funding releasing options for women exiting prison.[20]

Women need additional support both in prison, and when they are released. Current training, educational and therapeutic programs do not meet the needs of the women in Canada's prisons. Although it is clear the programs are not comparable in quantity, quality or variety to those provided to sentenced men, it is not useful to make simple comparisons between programs for men and programs for women. Instead, the particular needs and interests of women prisoners must be examined to ensure substantial equality, and allow women prisoners to progress toward a successful reintegration into society.

Programs that should prepare women for meaningful work are virtually non-existent. In many cases, the emphasis is on traditional "female" skills, such as cooking, cleaning, and sewing. Where promising programs do exist, enrollment is often very limited or the equipment and training skills taught are outdated. Limited access to job training and educational programs directly interferes with the ability of women to meet the terms of their "correctional treatment plan". As a result, women frequently experience delays in

[18] Florizelle O'Connor, Administration of Justice, Rule of Law and Democracy, fifthly-sixth of the Commission on Human Rights Sub-Commission on Promotion and Protection of Human Rights. Available: http:daccessdds.un.org/doc/UNDOC/GEN/G04/148/57/PDF/G0414857.pdf?OpenElement.
[19] CSC. "Operational Plan - Intensive Intervention in a Security Environment".
[20] Canadian Association of Elizabeth Fry Societies. *Finance Committee Submission: Pre-Budget Consultations: 2005 Federal Budget - November 2004.* Accees on line at http://www.elizabethfry.ca/submissn/prebg05/prebdg05.pdf

obtaining all forms of conditional supervised and structured release into the community on parole.

For women with disabilities, there are even fewer training programs geared to their needs. Access to therapeutic counseling is very limited, especially for those with the greatest need, most of whom spend most of their time in virtual isolation in the segregated maximum-security units. Moreover, there is a coercive nature to the therapeutic treatment offered. Aboriginal women have limited access to programs and services of any kind, let alone programs that meet their cultural needs.

Federally sentenced women have the right to have ready access to programs and services designed by, with and for them. Such programs must also be supported and delivered by women staff and volunteers who have adequate training and understanding to deliver same.

The second step is to ensure that women in prison have the necessary support when they return to their communities. Too many women stay in prison long past all their eligibility dates. Furthermore, the prisons are ill-equipped to deal with the many challenges of reintegrating women into their communities after imprisonment. More often, they actually make such pre-existing challenges worse. Poverty, as well as the compounding discriminatory factors of racism, class bias and the stigma of being labeled a "criminal", makes it increasingly difficult for women to integrate into the community.

Moreover, as we are currently seeing, the level of desperation among the women, especially the young Aboriginal women, is creating a more volatile environment within the maximum security units. The rising tension and unstable atmosphere is strikingly reminiscent of that which existed on the range in the Prison for Women in 1994. It was the resistance of the women there that gave rise to the Arbour Commission of Inquiry in 1995-1996.

Aboriginal women are not a single homogenous group. Aboriginal federally sentenced women are First Nations, Metis and Inuit and come from different clans and regions. Geographic isolation denies them access to their communities and families, which prevents many Aboriginal women in prison from receiving the support and assistance they desire and require. Via the Okimaw Ohci Healing Lodge, the Correctional Service of Canada has attempted to provide limited services for Aboriginal women prisoners, but very few of the Aboriginal federally sentenced women have access to the Lodge and no women classified as maximum security prisoners are permitted any access at all.

To be successfully rehabilitated and returned and integrated into their communities, Aboriginal federally sentenced women must have access to programs that are created and facilitated by people from their cultural communities.

Article 7: Protection against torture

Federal policies and practices related to the treatment of federally sentenced women amounts to torture in a number of ways which will be described below and elaborated on throughout the discussion on persons deprived of their liberty as protected by Article 10 of this covenant.

The definition of Torture set out in the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) refers to severe physical and mental pain inflicted on a person to punish them or based on discrimination, by a person acting in an official capacity. Federally women suffer both physical and mental pain as a result of CSC practices.

Excessive use of segregation, the inaccessibility of effective recourses to address human rights violations, and the disregard for the particular needs of women, especially women with disabilities and Aboriginal women prisoners, all amount to state sponsored torture.

Subjecting women to the racist, sexist and heterosexist classification tool used to assess their needs and the security risk they pose amounts to nothing short of cruel, inhuman, and degrading treatment that too often also leads to torturous situations.

For a more detailed analysis of the Canadian government's violations of CAT please refer to CAEFS submission to the Human Rights Committee entitled "Submission of the Canadian Association of Elizabeth Fry Societies to the United Nations Human Rights Committee Examining Canada's 4th and 5th Reports Regarding the Convention Against Torture" (attached as Appendix I).

Article 10: Treatment of persons deprived of liberty

CSC demonstrates a systemic and persistent disregard for the inherent dignity and humanity of federally sentenced women. This disrespect is particularly evident with regards to the use of the discriminatory classification system, the inability of program and services to respond to the diverse needs of women, the use of men to guard/monitor women, and the CSC's segregation practices.

Discriminatory Classification System

CSC uses the same male-orientated classification tool to asses both the program needs of federally sentenced women as well as to asses the possible risk they present to the community in order to issue them a security classification.

Pursuant to section 30 of the CCRA prisoners are issued a security classification of either minimum, medium, or maximum. The degree of control and supervision imposed on prisoners is dependant on the security classification they receive. Section 17 of the Regulations requires that prisoners be classified based on their perceived risk to escape,

risk they pose to the public if they escape and the amount of supervision they are deemed by CSC to require. This classification takes into account the social history of a prisoner by using a set of pre-determined factors to identify the level of "need for improvement" of each prisoner. Erroneously and repeatedly, this classification approach effectively results in the translating of the needs of women into risk factors that tend to drive up the severity of their security classification.

According to these factors women are found to pose a greater risk, and are classified as higher security if they have been victims of domestic violence, if they have had a "childhood that lacks family ties", if they abuse substances or if they have a history of low employment, low education, if they are unattached to a community, or their residence is "poorly maintained", if they have "inappropriate sexual habits" or inappropriate sexual preferences, or are from a "problematic religion". Instead of accurately identifying factors associated with an increased degree of risk that the women pose to public safety, these criteria reveal discriminatory biases in both the legislation and CSC policy. In short, the classification system is classist, racist, sexist, and heterosexist and serves to disadvantage women from the most marginalized groups.

CSC now claims to have new gender-based or women-centred classification tools. Regrettably, as the Canadian Human Rights Commission indicated following their review of CSC processes, regardless of good intent, at the end of the day, the results of the new tools still reveal the same patterns of adverse impact on women prisoners, especially Aboriginal women and women with disabilities. Effectively, women prisoners are discriminated against and punished because of the disadvantaged nature of their life experiences and backgrounds. This approach results in unnecessary harm and suffering, as women are imprisoned in overly secure prisons, too often in segregation, where they are deprived of too many services and programs and therefore tend to have a more prolonged period in prison prior to conditional release. In addition, those who are released directly form such units into the community have suffer the added discriminatory adverse impact of heightened community integration challenges.

Aboriginal women are disproportionately classified as maximum security prisoners. In 2000, the Correctional Service of Canada acknowledged that Aboriginal women were over-represented in the maximum security population. 15.3% of Aboriginal women serving federal sentences were classified as maximum security prisoners compared to only 4.5% of non-Aboriginal women in prison. 43.2% of non-Aboriginal women were classified as minimum-security while Aboriginal women accounted for only 17.0% of minimum security women prisoners.[21]

In 1996, Louise Arbour identified that the classification tools discriminate against Aboriginal women. The CHRC found the same discriminatory treatment persisted in 2003. The documentation of the Correctional Investigator and CAEFS, as they regularly visit each of the prisons for women, reveal that the situation is not improving. In fact, for

[21] Patricia Monture-Angus, "The Lived Experience of Discrimination: Aboriginal Women Who are Federally Sentenced". 2002. Available: www.elizabethfry.ca/submissn/aboriginal/1.html. (June 2005).

those Aboriginal women whom CSC has subjected to the greatest degree of isolation, the situation is so desperate that they have started to act out in desperation against themselves, other prisoners, and the correctional staff. Their lack of trust in the integrity of the system, be it the classification, service provision, or due process and remedial mechanisms is underscored each time they resort to self injury, suicide attempts and hostage takings to try to address their individual and group grievances.

The depth and degree of systemic discrimination experienced by Aboriginal women means they are more likely than are non-Aboriginal women to have criminal records and to have previously experienced prison. They are also more likely to be convicted of a violent offence. Although analyses of the levels of state intrusion into the lives of Aboriginal people from birth to death, the discriminatory treatment of Aboriginal peoples by police, courts and corrections abound, CSC continues to refuse to recognize that its the failure to contextualize reinforces and heightens the levels of discrimination. Rather, CSC looks at the correlation of marginalization and criminalization and essentially concluded that it equates to an elevation of risk. This approach contributes to the over classification of Aboriginal women as maximum security prisoners.

The classification system also fails to take into account the impact of colonization on Aboriginal communities. The classification tools are highly individualized instruments that examine whether the prisoner in question is affected by any of the listed factors and does not consider that individuals cannot be held solely accountable for many of these factors. For instance, the poverty and deprivation in many Aboriginal communities is not generally examined as a consequence of colonization, but prisoners from such communities will be found to pose a greater risk, especially if it is also determined that they did not have a stable home, or experienced physical and/or sexual abuse. Professor Patricia Monture-Angus points out that the classification system is least effective at measuring risk but most effective as an affirmation of the negative impacts of colonialism on Aboriginal people.[22]

The CHRC asserts that the tools utilized by CSC assess Aboriginal prisoners on the basis of stereotypes and perceptions. The CHRC also concluded that the tools lack validity. There has been no research to prove that these tools should be applied to women, especially Aboriginal women, who are discriminated against based on gender, race, and culture.[23] The Office of the Correctional Investigator also identifies that the CSC classification and assessment tools translate social disadvantage into pathologies. That office is concerned with the contribution this makes to increasing the numbers of

[22] Patricia Monture-Angus, "Women and Risk: Aboriginal Women, Colonialism and Correctional Practice - Some Preliminary Comments." Workshop on Gender, Diversity and Classification in Federally Sentenced Women's Facilities, 1999.
[23] The Canadian Human Rights Commission, "Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women". Ottawa, 2003.

maximum security women beyond the numbers that the CSC currently attempts to accommodate.[24]

Segregation Policies

Over classifying women based on a discriminatory classification tool results in more women being classified as maximum security and placed in segregation. The resulting neglect of their needs is both disrespectful and neglectful of their dignity.

Not only does segregation serve no productive service, but also it poses a serious threat to the emotional and mental health of prisoners. Administrative or disciplinary segregation, as well as the new isolated maximum security units in the prisons for women, segregate women from the rest of the prison population. CAEFS has found that the isolation of women in segregated maximum security units in both men's and women's prisons, and the subsequent lack of regular programming or meaningful work, exacerbates the deleterious effects and conditions of segregation.

In Canada's fourth report to the Human Rights Committee it was stated that segregation is only used for specific safety and security reasons and that segregation was otherwise considered an exceptional measure.[25] In 2002-2003, however, CSC reported that there were 375 federally sentenced women in prison, and that there were 265 admissions of women to segregation the same year.

Aboriginal women tend to be segregated more often and for longer periods of time. As of 2003, the CHRC reported that Sandy Paquachon, an Aboriginal women, who is now entering her 4th month of hospitalization, most of which she has spent on life support in Intensive Care, as a result of her 'treatment' within a segregated prison mental health unit, had been in segregation for 567 days.

Louise Arbour expressed that the worst aspect of segregation is that the prisoner has no idea how long they will be there, and no assurances that her health needs will be addressed. She wrote that "the findings that I made earlier support the conclusion that prolonged segregation is a devastating experience, particularly when its duration is unknown at the outset and when the inmate feels that she has little control over it."[26] She also recognized that women are affected differently than men by segregation. The use of segregation interferes with the rehabilitation process, in addition to jeopardizing safety and mental

[24] Office of Correctional Investigator, Correctional Investigator's Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women, January 2004. Available: www.oci-bec.gc.ca/reports/OCIResponse_CHRC_e.asp (June 2005).
[25] Canada, Fourth Report to the United Nations Human Rights Committee.
[26] Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report. Ottawa, Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: the Honourable Louise Arbour).

health by exacerbating distress, especially for those with histories of physical and/or sexual abuse.[27]

CSC built twice as many 'enhanced security' cells than the 'need' they initially projected for the original designs of the institutions.[28] It is the belief of CAEFS that CSC's rationale for the increase in the number of 'enhanced security' cells was rooted in the discriminatory way in which CSC deals with and sees federally sentenced women. This was evidenced by the subsequent decision of CSC to build new maximum security units, before even before the women classified as maximum security had been moved into the bigger and re-fortified 'enhanced' units. Women languished in segregated maximum security units for 7-9 years (depending on the region) while CSC enhanced and later rebuilt the new prison units for women they classified as maximum security prisoners.

Although the new maximum security units in the regional prisons for women are not considered segregation units by CSC, the relevant legislation, the *Corrections and Conditional Release Act,* is clear in differentiating two forms of confinement: segregation and general population. Consequently, any women who are imprisoned in the maximum security units in the five regionally located prisons across the country are living in conditions of segregation. They live on different ranges or pods and are generally not permitted to associate. Clearly, they are in conditions of segregation despite the fact that CSC does not acknowledge this reality.

Since CSC does not officially view women in maximum security units as being in a state of segregation, these women are not protected by the procedural rules regarding segregation and risk being subjected to greater abuse and torture.

It is CSC's policy to force all prisoners, both men and women, sentenced to life for murder to spend at least the first two years of their sentence in maximum security units, regardless of the results of their initial risk assessment. This policy has caused severe suffering for those women who must spend this time in the segregated maximum security units. This policy is considered contrary to the law by CAEFS, the Correctional Investigator and others.

The 'two year rule' or policy serves to further discriminate against the most marginalized groups of women who have been convicted of first or second degree murder. Among women, many murder convictions relate to their use of lethal force in response to violent attacks initiated by others. Indeed, a number of such situations involve women defending themselves and/or their children from attacks by abusive partners. After repeated documentation of the discriminatory nature of the policy and the development of legal cases with and by women subject to CSC's two years in maximum security rule, CSC

[27] The Canadian Human Rights Commission, "Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women". Ottawa, 2003.
[28] Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report. Ottawa, Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: the Honourable Louise Arbour).

announced that all women subject to the policy will be reviewed for exemptions. Many have since had the exemption successfully applied, clearly underscoring the discriminatory and arbitrary nature of this illegal policy initiative in the first place.

Many women are kept in segregation while undergoing psychiatric treatment. Segregation has been known to have devastating effects on women in prison, this is even more so when applied to women with mental health issues. The Disabled Women's Network of Canada (DAWN) found that many women placed in segregation within prison psychiatric settings, similarly do not have access to the procedural safeguards outlined in the provisions and regulations of the *Corrections and Conditional Release Act* (CCRA). Just because CSC characterizes the segregation not as a 'security' measure, but inappropriately categorizes it under the misleading moniker of "intensive psychiatric care" and a placement for 'treatment' purposes, [29] does not make it legal, just, or fair. Many women with mental health problems are segregated because they are a challenge to the prison staff. While this impulse may be understandable in some cases, it is not legal and is therefore not a valid purpose of segregation as set out in the CCRA.

Women can also be classified as maximum security and placed in segregation if they refuse treatment. Again, the DisAbled Women's Network is clear in their critique of this approach, "Extra control and supervision can not be supported under the guise of "treatment." …a prisoner has the right to refuse treatment."[30] Placing women in maximum security conditions because they choose to exercise their right to refuse treatment and/or not participate in treatment is an abuse of power that results in yet more women needlessly suffering from the condition of segregation units.

Madam Justice Arbour (as she then was) recommended that the courts provide external monitoring of CSC to ensure that their use of segregation complies with the law.[31] The CHRC recommended at the very least, that independent adjudication be employed for decisions relating to involuntary segregation. The CSC replied that independent adjudication was not within its legislative options but that they would develop options in collaboration with Public Safety and Emergency Preparedness Canada. To date, it would appear that CSC has essentially ignored the suggestions proposed by their colleagues in Public Safety and Emergency Preparedness Canada. Moreover, other than inviting the UK Inspectorate to visit two of the prisons for women in orchestrated visits wholly dissimilar than even what they do in Britain, the CSC has yet to reveal concrete evidence as to how they plan to realize this goal.

CSC's Task Force on the use of segregation found that segregation was being utilized in many ways that do not meet the legislative criteria. Prisoners were being placed in

[29] DisAbled Women's Network of Canada. Federally Sentenced Women with Mental Disabilities: A Dark Corner in Canadian Human Rights, February 2003. Available: www.elizabethfry.ca/caefs_e.htm (June 2005).
[30] Ibid.
[31] Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report. Ottawa, Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: the Honourable Louise Arbour).

segregation while waiting for cell space or for a transfer to another institution. It was found that "overall, CSC staff members and managers demonstrated a casual attitude towards the rigorous requirements of the law, both in terms of their understanding of the law and their sense of being bound by it."[32]

Programs and Services

Effective programming is essential in treating prisoners with humanity, and respecting their inherent dignity. It is also an essential component in ensuring mental and physical health. The *Corrections and Conditional Release Act* requires that prisoners be provided with appropriate programming to meet their individual needs.[33] The CHRC has indicated that the training, educational and therapeutic programs within CSC institutions do not meet the needs of federally sentenced women.

Fundamental to the lack of effective programming is the defective process used to identify the needs of federally sentenced women in the first place. As mentioned above, the classification tool used to assess the needs of women is based on racist, classist, heterosexist and sexist notions. Therefore, the classification tool is ineffective as it fails to take into account the social, economic, political, and cultural context of federally sentenced women. Whereas it would be useful to take into account the context and nature of the criminalization and imprisonment of women, the classification tool used by CSC fails to do this and instead focuses on such factors as a women's social history to identify levels of security risk that women pose.

The classification process further disrespects women as it not only neglects to take into account the individual needs of women but the process does not sufficiently involve the prisoners themselves. Despite the fact that women are often granted a short interview during the planning process, many women still feel excluded from and thus disempowered in terms of the needs assessment process.

Margaret Shaw writes that the process of criminalization of women is directly linked to their subordinate positions in society.[34] The classification tool cannot appropriately respond to women's needs unless it suitably factors in the disadvantages specific to women such as gender based violence, and the intersectional marginalization based on class, physical and mental ability, race, sexuality and gender.

CSC training programs are intended to prepare women for meaningful work upon release. The *UN Standard Minimum Rules for the Treatment of Prisoners* indicates that their treatment in prison should lead prisoners to have self-supporting lives on release. Such programs are virtually non-existent in Canada for women prisoners. Work options and

[32] Correctional Service of Canada, Task force Report on Administrative Segregation- Commitment to Legal Compliance, Fair Decision and Effective Results- March 1997. Available: http://www.csc-scc.gc.ca/text/pblct/taskforce/toc_e.shtml.
[33] Corrections and Conditional Release Act, ss.4(a), 77 and 80.
[34] Shaw et al. Paying the Price: Federally Sentenced Women in Prison, p.19

training programs often focus on traditional "women skills" such as cooking, cleaning, and sewing.

Women who once released have sough employment have reported that the administrators of job training programs in prison are often forced to use outdated equipment or training skills, due to such factors as bans on access to the internet and other advanced computer applications. For example, the Edmonton Institution for Women (EIFW) in Alberta has employed several women at a graphics shop. Upon release, when they attempted to obtain employment in the field, they found that the equipment they used and the skills they acquired were outdated and therefore did not serve them when they attempted to seek employment upon release in the modern graphic design industry. Most of the industry was computerized whereas women in prison have very limited access to computers and no access to the internet.

A very popular programming opportunity in Nova Scotia is the dog training program. However, none of its participants have ever obtained employment as a dog trainer or as a direct result of the skills they acquired in this program.

There are also many programs that either have limited enrollment or that really only exist on paper.[35] As a result of this general shortage in programming many women do not apply to the National Parole Board when they are first eligible for conditional release because they have not been able to complete the programming they are required to before their institutional parole officers will recommend that they can be considered for conditional release.[36] There are also very few training programs that are specifically geared towards women with disabilities.

There is an overall lack of appropriate programming for Aboriginal prisoners. This is despite the fact that the CHRC has stated that CSC needs to meet their promise to implement a separate but parallel program strategy for Aboriginal women.[37] Aboriginal women and racialized women often suffer from a lack of programs as the classification system translates their marginalization into a security issue. The CHRC report emphasizes that program implementation must respect the needs of women who are most vulnerable to discrimination

CAEFS has also observed that some Aboriginal women have been forced to participate in programming despite whether it suited their needs or matched their cultural heritage and/or traditions. Some Aboriginal women report that they have been pressured to participate in programming against their will. Some have even been threatened with losing their status as 'Aboriginal' prisoners if they do not participate in all spiritual or cultural programs.

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[35] Sky Blue Morin "Federally Sentence Aboriginal Women's Perspective" in Morin, Sky Blue *Federally Sentenced Aboriginal Women in Maximum Security: What ever happened to Creating Choices* (1999) http://www.csc-scc.gc.ca/text/prgrm/fsw/skyblue/toce_e.shtml

[36] The Canadian Human Rights Commission, "Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women". Ottawa, 2003

[37] Ibid.

This is a culturally inappropriate practice and violates the right not to be discriminated against based on race pursuant to the *Canadian Charter of Rights and Freedoms.*

One of the chief attempts of the CSC to accommodate the needs of Aboriginal women in prison was to create the Okimaw Ohci Healing Lodge. The incarceration of Aboriginal prisoners in western prisons tends to replicate the oppressive relationship of colonization of which Aboriginal peoples have been victims for years. The Healing Lodge attempts to provide a culturally appropriate alternative for Aboriginal women. One of the main problems with the Healing Lodge is that it does not accept women classified as maximum security prisoners despite the fact that it was initially designed to do so[38].

Louise Arbour stated "that access to the Healing Lodge should be available to all Aboriginal women, regardless of their present classification."[39] Both Arbour and the CHRC have recommended that Aboriginal women classified as maximum security prisoners be individually assessed and evaluated as to whether or not they can be admitted to the Healing Lodge. The CSC has rejected these recommendations.

In addition, because the Okimaw Ohci Healing Lodge is located in the western part of Canada, Aboriginal women from central or eastern Canada who do not wish to relocate to Saskatchewan to participate in the Healing Lodge programs have difficulty -- extreme at times -- in accessing programs to meet their cultural and spiritual needs.

Aboriginal women prisoners have also indicated they have been forced to participate in non-Aboriginal programs or forced to participate in programs that CSC has deemed mandatory for women who identify as Aboriginal. Some women have indicated that CSC officials question their Aboriginal ancestry if/when they refuse to participate in Aboriginal programming or "religious" ceremonies inconsistent with their culture or teachings. Refusing to participate in programs that stem from someone else's notion of their culture can result in a prisoner essentially losing her status as Aboriginal.

Considering the inaccessibility of the Healing Lodge to maximum security women and the inability for many women to relocate, it is extremely important that Aboriginal approaches to social and psychological health be implemented and integrated as a central part of CSC services and programming. Anything short of this demonstrates a lack of respect for Aboriginal cultures.

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[38] At the Okimaw Ohci Healing Lodge, the 'enhanced' or segregated unit was given the name of the 'Safe Lodge' or House. It was wired for cameras and had a staff post within the 2 besd unit. Although the Aboriginal women on the planning circle for the Lodge initially opposed the Safe Lodge, they suspended their objections after being advised that it was the only option if they wished to be able to accommodate women classified as maximum security prisoners. Most of the Aboriginal women whom the Keepers of the Vision hoped would be at the Lodge were classified as maximum security prisoners.

[39] Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report. Ottawa, Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: the Honourable Louise Arbour).

CSC has attempted to offer programming for women with mental health disabilities by creating Structured Living Environments (SLE). These units are operated according to a behaviour modification model that imposes more restrictive regulations on women than prisoners in the general population. This program amounts to involuntary psychiatric treatment, as it effectively holds prisoners without other options captive. Many women are warned that unless they participate in the SLE program they will not have access to counselors, psychiatrists, and psychologists more than seven times a year, or on a regular basis. Several women in the EIFW were advised that they would only have access to individual visits with a psychologist 4 times, after which they might have access to group therapy, should they be determined by CSC to be in need of additional counseling.

The Regional Psychiatric Centre (RPC) in Saskatoon is both subject to the CCRA and the *Saskatchewan Mental Health Act*. This psychiatric prison not only often results in subjecting women to greater use of force but leaves them with fewer administrative protections. Women at the RPC are routinely denied protections provided by the CCRA. It is not unusual to hear even very aggressive interventions, including uses of force, restraint, and isolation characterized and rationalized as treatment and not security measures.

On the other hand, security decisions may also prevail at times and in ways that neglect treatment objectives. This is particularly troublesome in terms of uses of force. Although the right to use force by correctional officers is highly regulated in order to provide legal protection for the prisoner, sometimes patients find themselves in situations where force is used against them at the discretion of a mental health professional in contexts largely devoid of legal safeguards.

Although women prisoners often object to having to work with male therapists, too often the only therapists available are men. This can be especially difficult for women who have been raped, assaulted, and/or otherwise abused by men. In 2001, women prisoners at the unit in RPC were forced to see a male doctor or not receive medical treatment, despite the fact that the institutional doctor was before the court charged with sexual harassment and stalking by women in the local community. Similarly, in the late 1990's at P4W (i.e. after the Arbour report) a man who, although unregistered in Ontario, worked as a psychologist with women at the Prison for Women until it closed, and about whom women complained to no avail, later pled guilty to criminal charges related to allegations brought by a woman in the community whom he apparently stalked and forcibly confined.

The Task Force on Federally Sentenced Women recommended that health services be provided in the community.[40] This recommendation has yet to be implemented. The need to access community health services is particularly crucial for prisoners with HIV/AIDS or Hepatitis C. It is clear that these prisoners do not have the same standard of care as do people from the outside. For example, the necessary pain relief required for prisoners with HIV/AIDS of Hepatitis C is not generally made available to them due to security concerns

[40] Correctional Services of Canada, Creating Choices: The Report of the Task Force on Federally Sentenced Women, 1990. Available: http://www.csc-scc.gc.ca/text/prgrm/fsw/choices/toce_e.shtml

as these drugs are concerned valuable as a trade item within the prison setting. The lifestyle and dietary approaches recommended for patients are also rarely an option for prisoners with HIV/AIDS or Hepatitis C.

Cross-Gender Monitoring and Sexual Harassment

The *United Nations Standard Minimum Rules for the Treatment of Prisoners* requires that "women prisoners shall be attended only by women officers."[41] CAEFS agrees and believes that all correctional staff who perform invasive security procedures, from strip searches to bed checks, should be women. CSC opines that their training and monitoring approaches allow them to adequately supervise men who work with women. They also have difficulty accepting that the grievance process does not safeguard against abuse in the institutions.

Again, CSC does not consider the histories of many of the women who are imprisoned. Most federally sentenced women have experienced abuse, mostly by men; and, often by men in positions of authority.

CSC appointed the Cross-Gender Monitor pursuant to the recommendations of Louise Arbour. CAEFS and many other women's groups, the Correctional investigator and women themselves recommended to CSC that only women be employed to work in the front lines in the regional prisons. After three years of examining the issue, the Cross-Gender Monitor also recommended that only women work on the front lines with women. Not only has the CSC chosen to ignore this recommendation, they claim that women in prison oppose the recommendation. The result is that men now work on the front line in all of the prisons for women, even at the Edmonton Institution for Women, which was the only prison that was initially staffed by women,

Louise Arbour points out in her report that our society generally does not tolerate the presence of non-intimate members of the opposite sex while private functions are being performed. She emphasizes that the situation in prisons is particularly unique since there are serious power dynamics at play between prisoners and staff as the prisoners are confined against their will.[42]

A major concern with having men work the front lines in women's prison is sexual harassment. Although the CSC claims that there have been no complaints of such misconduct this is not to say that women have not been subjected to it. CAEFS has found that indeed women are being subjected to sexual harassment but are unable to properly address it due to the lack of an effective complaint mechanism.

[41] United Nations Standard Minimum Rules for the Treatment of Prisoners, paragraph 53(3).
[42] Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report. Ottawa, Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: the Honourable Louise Arbour).

For instance, a number of women at the Fraser Valley Institution for Women (FVI) in British Columbia and the Grand Valley Institution (GVI) in Ontario have reported aggressive behaviour on the part of male staff this past year. It is not common for women to report or use the grievance system in the women's prisons, even when the breaches of law or policy they have experienced at the hands of staff are profound. The group of women who filed a grievance about staff behaviour at FVI were not permitted to personally retain a copy of the findings of the investigation, nor the response to their grievance.

CSC indicated that it was sensitive information that would be placed in their files, to which the women are provided limited access when staff permit. Therefore, in addition to being advised that their allegations were determined to be unfounded, the women were not provided with an adequate record of the matter. Because the women were not initially provided with the information, CAEFS applied pursuant to Canada's privacy and access to information provisions for copies of the investigation and grievances. Because of that process, CAEFS discovered that some of the staff who had provided information that supported the claims of the women prisoners were not interviewed, nor were there statements apparently considered by the investigation.

After CAEFS and the Correctional Investigator encouraged them to reconsider the inadequacy of their response, the CSC indicated that they judged the allegations to refer to a possible abuse of power and not necessarily to reflect "gender issues." In any event, they dropped the matter which clearly served to reinforce the pre-existing inclination of these and other women prisoners to not report because of fear that nothing would be done; and, worse still, that they would experience retaliation for bringing the issue forward in the first place. The primary staff person about whom the women complained is now back on duty and the women fear that CSC's response has granted him immunity to act with impunity.

At the time of writing this report, CAEFS is advised that the investigation of the second incident mentioned above is ongoing.

The CHRC observed that CSC staff were not respecting the safeguards that were put in place and designed to reduce the vulnerability of women in prison. Such safeguards would have precluded such things as male guards doing unit and bed checks and night rounds, not just strip searches and monitoring camera cells. Instead, male guards continue to do such checks, sometimes two men do them and the allegations of intimidation and harassment persist.

In response to Madam Justice Arbour's recommendation that explicit protocols be introduced for men working as front-line staff in prisons for women, CSC introduced the National Operational Protocol for Front-Line Staffing in women's institutions and maximum security units. It requires that staff and prisoners be advised of the protocol and that they be provided with a copy of it.[43]

[43] Correctional Service of Canada, Cross Gender Monitoring Project: Third and Final Annual Report, 2000. Available: http://www.cscscc.gc.ca/text/prgrm/fsw/gender3/toc_e.shtml#TopOfPage (June 2005).

The Cross-Gender Monitor found that there was no screening or training for many guards and that the National Protocol is largely violated. In one institution, 74% of staff could not name one provision of the protocol. CSC has admitted that, "There appears to be little system-wide understanding of the need for and strict enforcement of particular policies and practices designed to protect women prisoners from privacy violations and sexual misconduct."[44]

The report of the Cross-Gender Monitor stated that the power imbalance between guard and prisoner is too great to have an effective informal conflict resolution process. CHRC recommended that CSC appoint independent external investigations of such matters. Louise Arbour also recommended that CSC's sexual harassment policy be extended to prisoners. CSC states that its harassment policy and procedures are adequate and cover situations involving prisoners. CAEFS disagrees.

[44] Ibid.

A P P E N D I C E S

Appendix I :

Submission of the

Canadian Association of Elizabeth Fry Societies

to the

United Nations Human Rights Committee

Examining Canada's 4th and 5th Reports Regarding the

Convention Against Torture

Appendix II :

Developing International Norms and Standards to

Meet the Needs of Criminalized and Imprisoned Women