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**Prisons: Canada's Default Response to Poverty, Homelessness and Mental Illness –
Especially for Women**

Elizabeth Fry – The Woman; The Association

The history of Elizabeth Fry is a long and distinguished one in Canada. Indeed, although Elizabeth Fry was born and worked in England in the early 1800s, she is perhaps better known in Canada since her work was transported here and is carried on by all of us.

The first Elizabeth Fry society was formally established in Vancouver in the late 1930's. Like so many of the other Elizabeth Fry societies, it started with a small group of women whose wealth and stations in life (something Elizabeth Fry also possessed) provided the perfect opportunities for them to undertake charitable work that permitted these women to contribute to those less fortunate than themselves. Many other Elizabeth Fry Societies were first started by similar groups of women endowed with the notion of *noblesse oblige*, while others started as offshoots of women's church groups.

Later, other Elizabeth Fry Societies started as adjuncts to the burgeoning women's movement in Canada during the 1960s and 70s. When the Elizabeth Fry Society was formed in Halifax for example, the feminists who were key in its formation initially determined that it should never have staff or receive any government resources. The women opposed any efforts to curtail the advocacy that they saw as vital and necessary to their role in working with and on behalf of criminalized women.

Today, there are 25 Elizabeth Fry Societies across the country. Their history, like the societies themselves, spans the gambit from many who are primarily interested in providing social services at the community level, to those who have a long interest in anti-oppressive work to address systemic inequalities. It should be no surprise, therefore, that the manner in which our membership works also ranges from service delivery on the basis of contracts with government -

to advocacy aimed at alleviating the systemic challenges faced by women. The result is a mixture of charitable models and social development approaches, fed by a strong vein of advocacy.

Within CAEFS, as is the case in many national and international women's and other social justice groups, we are faced with the false dichotomy between the roles of service providers and advocates. It is clear that neither can exist without the other. An excellent service provider is made so as the result of the very fact that she is an effective and experienced advocate and ally to those she works with and for. Similarly, an excellent advocate can only arrive at such excellence through her ability to walk and work with those about and for whom she presumes to advocate.

Action is advocacy – advocacy is action. Neither service delivery nor advocacy exists in isolation. In situations where those providing services are discouraged from advocacy it is almost inevitable that the services they provide will not fully meet the needs of their “target” group. Moreover, if an advocate has no appreciation of the services that are needed, advocacy may in fact be an empty process. Accordingly, the strength and value of much of what CAEFS exemplifies is evident by even a cursory examination of the role, responsibilities and array of services provided by CAEFS' membership.

CAEFS emerged from a membership which advocated for a national office as a means of ensuring that the advocacy function could exist at the most senior levels in Canada. The provision of grants designed to increase the perspectives and democratic involvement of non-governmental/community-based organizations provided the resources to establish the office in the early 1980's. In 1984, the federal government of the day implemented sustaining funding in the recognition that their own policies would be stronger and more effective if they were informed by the voices of those who would experience and therefore critique them.

The department of the Solicitor General, as it was then known, also wanted to end an earlier practice of contracting directly with community groups such as individual Elizabeth Fry and John Howard societies, recognizing that such a scheme of providing individual federal funding for service delivery did not ensure greater access of the public to services nor enhance input in matters of policy and/or law reform. They recognized that by placing resources in the hands of national organizations, whose mandate would be both the development of community based service delivery agencies in conjunction with law and policy reform, it could more readily enhance the government's own abilities to improve the democratic production of sound law and policy.

CAEFS, as an organization, is structured to ensure that the membership defines and directs the work of the association. Every year, CAEFS utilizes its resources to bring together two representatives from every member Elizabeth Fry Society in order to ensure that the policies, priorities, and directions determined by the national body are reflective of the will of the membership. Decisions are achieved by consensus, so that the general will is adhered to and individuals holding differing opinions agree to remain silent as the rest of the membership ventures forth on an agreed upon plan of action.

This history of developing policy is rooted in community initiatives and membership direction and is therefore a vital and important aspect of the CAEFS' network. The result is that every member has a voice, but no one member has veto. The manner in which these sorts of procedures build support, analysis, advocacy, and overall excellence in the pursuit of individual and systemic support and advocacy for criminalized women, is evident in some of the results of the many collective and collaborative initiatives that CAEFS has undertaken.

These include, participation in government initiatives such as the *Creating Choices: The Report of the Task Force on Federally Sentenced Women* (1989-1990), as well as those initiated in collaboration with other governmental and non-governmental groups, such as the *Self Defence Review* conducted by the honourable Judge Lynne Ratushny (1995-1997) and the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* conducted by Madam Justice Louise Arbour (1995-1996). Most recently, we have independently identified, defined, and shaped a national and increasingly international coalition, facilitated by our 2001 conference, *Women's Resistance: From Victimization to Criminalization* and most recently in the systemic review and special report of the Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (2001-2004).

In response to the federal government's decision to regionalize the prisons for women, CAEFS developed our own regional structure in 1995-1996. Our current organizational model emerged from the labour of a regionalization committee formed by the membership. The members consisted of a representative Executive Director and a member of a Board of Directors of a local society identified to represent each region in the development of the new regionalized structure at the national level. Prior to regionalization, every local society was represented at the Board table.

In her day, Elizabeth Fry was regarded as rebellious and radical, and many completely misunderstood her rationale for devoting much of her life to working to alleviate the poverty and oppression of the women and children whom she first encountered in British prisons and poor houses. It is this legacy that CAEFS continues to breathe life into in Canada. If we replicated the services that Elizabeth Fry provided two hundred years ago, we would certainly be criticized for being stuck in the past. However, the fact that we have continued on, in the spirit and intent of her work to advocate as clearly, cogently and consistency as possible, in many areas that directly impact upon the women who are criminalized, echoes her spirit in our organization.

Priority Issues and Law Reform Initiatives

It seems entirely fitting that last year we marked the quarter century mark of our association by holding our national meeting in prison with the women on whose behalf we work and exist. Unfortunately, although we strive to see the end to the current use of criminalization and imprisonment to address social issues, we are witnessing a continued trend in the opposite direction. Indeed, the past decade has seen a number of women serving sentences of two years or more grow by 300-500% in some regions of the country, most notably where the proportion of

racialized, especially Aboriginal, women is highest. The challenges remain many as we continue to see the exponential increase in the marginalization, criminalization and imprisonment of women throughout this country and globally. The following will provide you with an overview of our challenges and achievements this past year, as well as some forecasting of the work that the membership projects for CAEFS.

Challenges to Laws and Policies

Systemic Review by the Canadian Human Rights Commission

Fifteen months ago, on January 28, 2004, the Canadian Human Rights Commission (CHRC) issued a special report in response to our complaint about the discriminatory treatment of women prisoners by the Canadian government. Entitled, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, the CHRC Report made 19 recommendations for far-reaching changes with respect to the manner in which the Correctional Service of Canada (CSC) might work to alleviate the systemic discrimination experienced by women serving sentences of two years or more.

Throughout the report, the Commission points to the tragic consequences that result from the defective manner in which women are initially assessed. Aboriginal women and women with mental disabilities are especially over-classified, often kept in segregated, isolated living conditions. Fewer women classified as maximum security prisoners would mean more women could be reintegrated into the community in a much shorter time, so CAEFS continues to work to urge the Minister of Public Safety and Emergency Preparedness to act to introduce a new classification system as well as the decarceration strategies that such a new approach to assessing and classifying women would necessitate.

CAEFS strongly supported the Commission's proposal for independent monitoring and accountability mechanisms. The call for judicial oversight reiterates the recommendations of Madam Justice Louise Arbour. In 1996, Justice Arbour reported on the failure of the Correctional Service of Canada (CSC) to follow the law and its own policies in dealing with women prisoners. Now, more than ever, we see that many recognize the vital need for an independent body to monitor CSC's adherence to principles of justice, fairness and the rule of law.

The Commission's report clearly identifies the discrimination experienced by women prisoners. CAEFS welcomes the opportunity to work with CSC, as well as the Ministers of Public Safety and Justice, to help implement recommendations that are vital to improving the lives of some of Canada's most vulnerable women. Via its report, the Commission has recognized the systemic review of the manner in which the human rights of federally sentenced women are violated and suggests ways that the human rights violations experienced by women prisoners may be remedied.

On March 8, 2001, the Canadian Association of Elizabeth Fry Societies (CAEFS) requested that the Canadian Human Rights Commission (CHRC) conduct a broad-based systemic review and

issue a special report, pursuant to section 61(2) of the *Canadian Human Rights Act*, regarding the treatment of women serving federal terms of imprisonment. CAEFS' request was supported by twenty-seven other organizations. The Commission decided to undertake a special report and issue recommendations to government based on its findings, addressing government policies and programs. This took the form of the special report, which the Commission has subsequently committed to continuing to follow-up in order to ensure that its recommendations do not merely languish in the report.

The basis of the human rights complaint was the fact that federally sentenced women face discrimination throughout the criminal (in)justice system. This was, and remains, particularly true of Aboriginal and other racialized women, as well as women with mental and cognitive disabilities. Accordingly, as part of the process of developing our submissions to the Canadian Human Rights Commission, CAEFS consulted with national women's, Aboriginal and social justice groups. We also commissioned additional research and provided resources for as many groups as possible to make submissions directly to the Canadian Human Rights Commission.

In October 2002, February and May of 2003, CAEFS sponsored consultations with national women's and equality seeking justice groups. Thanks to the resources we obtained from Status of Women Canada and the Voluntary Sector Initiative, we were also able to distribute resources to a number of groups in order to enable them to develop submissions to the Canadian Human Rights Commission. Such groups as, Strength In Sisterhood (SIS), Womyn4Justice, Native Women's Association of Canada (NWAC), the Women's Legal Education and Action Fund (LEAF), the DisAbled Women's Network of Canada (DAWN), the National Association of Women and the Law (NAWL), Amnesty International, the National Council of Women of Canada (NCWC), the Canadian Federation of University Women (CFUW) and several other organizations provided input to the Canadian Human Rights Commission.

The submissions developed by all of the groups were of such a high quality, that we also compiled them for publishing and circulated them as a collection. University of Manitoba Law Professor, Debra Parkes, who contributed to the process on behalf of the National Association of Women and the Law (NAWL), continues to explore ideas as to how they may best be disseminated. CAEFS' response to a discussion paper issued by the Canadian Human Rights Commission, as well as our submissions and those of other equality-seeking groups have been circulated electronically to our membership, coalition partners and many others nationally and internationally. They are also available on the CAEFS web site. In addition, hard copies were distributed to each local Elizabeth Fry Society, coalition partner, libraries, organized groups, and individual prisoners.

On February 7, 2003, CAEFS, along with other national equality seeking women's and justice groups, presented our respective oral submissions to the Canadian Human Rights Commission. On May 13, 2003, we submitted our written briefs to the Chief Commissioner, Mary Gusella; and, on May 14, 2003, we released the submissions publicly. We also sent Solicitor General Wayne Easter [as he then was], his Parliamentary Secretary, the Commissioner of Corrections, and the Women Offender Sector at National Headquarters, the Correctional Investigator, women in prison and the CAEFS' membership copies of our submissions.

In addition, all of the submissions are available on our web site www.elizabethfry.ca as well as via linkages with the CHRC site www.chrc-ccdp.ca, and are available in alternate electronic format in the form of an MP3 disk. The MP3 disks were similarly widely distributed to our membership, equality-seeking groups who participated in the review process with us, as well as other community, and governmental groups with whom we work. In addition, as women inside requested, the oral presentations are available in a set of four compact disks for every woman in prison. All but 40 of the 375 sets of CDs have been distributed to the women inside to date.

The MP3 disks contain the written and oral submissions made by CAEFS and the others who made representations to the CHRC, as well as a slide show of the May 14, 2003 press conference. They are of such a high quality that CAEFS has already received a number of requests from faculties of law, as well as general studies libraries in universities across Canada and internationally. In addition, many professors and lawyers have advised us and other community based organizations, that the information available within the submissions is extremely useful and transferable to other areas of human rights, social development and equality work.

Perhaps most significantly, many are considering the analyses in the submissions to be useful for other vulnerable populations, not merely those who have been criminalized. For instance, anti-poverty and disability rights movements, as well as a number of racialized groups, have requested and been granted authority to quote extensively and otherwise utilize the arguments and references contained in the submissions of CAEFS and the other equality seeking-groups. In addition, Amnesty International and Human Rights Watch have indicated a keen interest in participating in the next stage of our international efforts to ensure human rights protections for criminalized women and girls in Canada. In addition, groups in Australia, Britain, and the United States are utilizing our work and the report of the Commission to foster support for similar processes that are being commenced in their international venues.

Although our Voluntary Sector Initiative and Status of Women Canada resources for this project were exhausted last year, CAEFS and the other coalition partners are committed to continuing to collaborate on efforts to ensure the implementation of the CHRC report and the long term commitment to continue our coalition work in support of social justice, decarceration and deinstitutionalization as priority agenda.

Furthermore, as a result of this initiative, CAEFS was again invited by such international NGOs as the Feminist Alliance for International Action (FAFIA), the Canadian Race Relations Foundation (CRRF) and Amnesty International (AI) to provide input to their respective submissions to the United Nations Committee for the Elimination of Discrimination Against Women (CEDAW) and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance of the UN Commission on Human Rights.

Additionally, as the Annual Reports of the Correctional Investigator, recent Auditor General's Report and the Public Accounts Committee response to the CSC's submission regarding the Auditor General's Report reveal, our capacity to influence the agenda of policy makers and

politicians also seems to have been ably enhanced by this process. Indeed, the aforementioned reports all reveal the impact of our submissions in respect of the systemic review by the CHRC.

Several other issues and initiatives have also arisen as a result of our initiation and involvement of the CHRC process. For example, it has resulted in a number of non-equality seeking groups inviting CAEFS to participate in discussions with respect to restorative justice, the definition of and orientation of new Law Commission projects, discussions regarding the sexual exploitation of children and youth, trafficking of women and girls, and their relationship to women's equality, several inter-organizational and community meetings, consultations, and joint planning initiatives, particularly child protection, juvenile justice, decarceration strategies, anti-regressive law and order initiatives, immigration, pay equity, violence against women as a matter for the federal government, women's equality as an issue of human rights as well as international trade and development.

The overall results of the process of developing CHRC submissions point to the need and obligation of the Canadian government to continue to support such initiatives from the independent women's movement and especially from equality-seeking organizations. The success of this process clearly demonstrated our capacity to mobilize and unify disparate branches of the movement to develop a collective effort to address fundamental issues of discrimination on the basis of sex, race, and disability.

While we are very pleased with the results of the Commission's Report, the response of the Correctional Service of Canada was unfortunately another link in the chain of inability or unwillingness to admit, evaluate or address the issues outlined. As we have all seen in far too many cases in the past, their response is once again that they plan to study the recommendations and report further in the next few years.

At this stage, having exhausted all internal remedies, we are now looking forward to the opportunity to once again present material to Madam Justice Arbour, in her new capacity as the United Nations High Commissioner on Human Rights.

In the meantime, it is wonderful to be here with you and we look forward to collaborating with some of our new found friends and allies in the international NGO community.

Cases and Law Reform in General

In addition to the foregoing, CAEFS participated in a number of additional systemic challenges to laws and policies via involvement in discussions, consultations, presentations, planning sessions and the development of evidentiary bases for human rights complaints, court cases, inquests, grievances and complaints and other forms of submissions with or in support of individual or groups challenging laws and/or policies that negatively impact on women and girls with and on behalf of whom we exist.

There are a growing number of lawyers who are interested in developing legal arguments with respect to the issues that we have been discussing in terms of the increased criminalization of

those who are most marginalized and oppressed. One argument that seems to have captured a fair degree of interest from several legal academics and practitioners is the notion that if the options available to individuals are so limited that they essentially amount to a choice to commit an offence and face the prospect of conviction and possible imprisonment or face homelessness, death or some other equally invidious option, then such individuals really have no ability to exercise a choice to commit or not commit an offence.

In situations where people have virtually no other options, other than the commission of an offence, homelessness, or starvation/death, they are left with virtually no free will, as their choices do not enable them to choose other opportunities that permit survival, let alone allow the person to thrive as a contributing member of the community. As such, we think it is quite arguable that, increasingly, we are seeing people being criminalized for whom there are really no other options in terms of how they may survive in our communities.

If such arguments are successful, we may see some significant changes in the nature of who is criminalized, for what reasons, and in which circumstances. Accordingly, we will continue our efforts to educate members of the legal profession, as well as academics and practitioners in terms of these realities, in the hopes that we may soon see some successful legal challenges and corresponding changes in the criminalization patterns of the women and girls with and on behalf we work.

CAEFS continues to speak publicly regarding these sorts of issues, in addition to continuing to participate in meetings, research and service development with legal academics, bar associations, the Law Commission of Canada, pro bono and wrongful conviction projects, and services of law students.

CAEFS at Home: Regional and National Advocacy

Maximum Security Classification of Women Prisoners

CAEFS looks forward to continuing to work with the coalition of groups that worked on the human rights submissions, as well as our membership to counter the use and continued existence of the segregated maximum security units for women in both the men's and the women's prisons. The CAEFS' membership, as well as women and a number of staff in the prisons, are assisting these efforts, as it is well recognized that keeping women in those units is not assisting them in gaining the earliest access consistent with the least restrictive correctional interventions mandated by the *Corrections and Conditional Release Act*.

Perhaps most egregious, is the experience of the women from Ontario who were first shipped to the segregated maximum security unit at the Saskatchewan Penitentiary. Then, when media attention encouraged the Commissioner of Corrections to announce the closure of that unit, the women were transferred across the country to the segregated maximum security unit at Springhill Institution. In April of 2003, as media attention was increasing around a number of women at that unit, the Correctional Service of Canada closed it too. The women were then shipped to Quebec for a 4-6 week stay that ended 18 months later, when, in October of 2004, they were

transferred back to Ontario.

With virtually nothing to do, tensions have run high in the unit and there was a serious assault in late 2003 and a number of other altercations have occurred before and since then. Suffice it to say that the women are anxious to be out of the unit, and some are not very keen on being returned to Ontario. Indeed, several have moved and others are attempting to gain access to the segregated maximum security unit at Joliette.

At Joliette, six of the ten women in the segregated maximum security unit as of April 2005 were Anglophone women, who are not from Quebec. As we have discussed in the past, it is quite clear that CSC is transferring many women whom they define as difficult to manage to Quebec. The contrast between the Joliette and other segregated maximum security units is clear and striking. The women at the Joliette Institution have far greater access to each other, programs, as well as to the rest of the institution. In addition, it is the only institution where we have not seen women routinely being moved within or outside the unit fully shackled and with two security escorts.

It is not surprising, therefore, that more women are seeking access to the institution, despite the reality of the limitations that exist with respect to their access to programs and services in English. This is even the case for Aboriginal women who recognize the choice to remain in Quebec will mean much more limited access to Aboriginal programming. Since this lack of access to Aboriginal programs is not acceptable, EFS Quebec continues to work with the women inside to assist them in grieving and remedying this situation.

In light of the issues that were raised before the Canadian Human Rights Commission, as well as the relative success of the court action taken in Ontario to prevent the construction of the segregated maximum security unit in Kingston Penitentiary, CAEFS continues to examine the possibility of working with other groups in order to influence, legally or otherwise, current plans for federally sentenced women in British Columbia. Moreover, the treatment of women classified as maximum security prisoners amplifies the vital role and urgent need for our Regional Advocates to document extensively and obtain releases and all relevant documents regarding security classification, charges, punishments (especially the use of force and segregation) and transfers (especially involuntary and/or emergency transfers), the impact of CSC's policy regarding the placement of prisoners convicted of first and second degree murder in maximum security prisons for a minimum of two years, and any other matters involving the curtailing of women's liberty interests.

Lack of Discernible Difference Between Medium and Minimum Security

The Isabel McNeill Minimum Security House (IMH) in Kingston, Ontario, remains open under the ever-present shadow of pending closure. Although CSC continues to refuse applications from women seeking to transfer to IMH and therefore the numbers continue to fall, it is indefensible to contemplate the closure of the only real minimum-security beds for federally sentenced women in Canada.

The women who are currently imprisoned at the Isabel McNeill Minimum Security House continue to be interested in filing a lawsuit to prevent the house from being closed. Since some of the women are serving life terms of imprisonment, the issue is very significant for them, as well as all other federally sentenced women classified as minimum-security prisoners across Canada. Accordingly, at the request of the women at the Minimum House, CAEFS will continue to support their bid to remain at the Minimum House as well as their position that all women require access to minimum security placements that are similarly small, provide opportunities for women to leave daily for work and other steps toward community release.

CAEFS also remains of the view that we do not wish to support or see the construction of additional prison beds. In fact, CAEFS supports the closure of prisons. However, the paucity of minimum security beds for federally sentenced women and the lack of a plan on the part of the Correctional Service of Canada to remove fences in order to ensure that the 50% of federally sentenced women who are minimum security prisoners are actually accommodated in lower security settings, means that we are loathe to see closed the only 11 beds currently available across the country. The suggestion that later bed times, greater access to a patio slab or a deck [depending upon the prison] for after-hours smoking, and, in some prisons, having access to barbecues or blenders, somehow compensates for being subjected to medium security living conditions is deluding none, least of all the women who are living the experience.

Community Release Options

CAEFS continues to support all efforts to enhance the provisions of services to women exiting prison. When invited to comment on CSC's draft Correctional Strategy for Women, we once again expressed our extreme concern about the reality that there are virtually no community resources in some areas of the country and very limited resources overall for women, much less women exiting prison. In June 2003, CSC hosted what was promoted as a national meeting on community release options. As those working in local communities and the regions are too well aware, there has been far too little progress on this front. Despite laudable goals in some areas, nearly another year has passed with little if any changes for the better, in terms of results from such initiatives.

The work that the CSC is doing in this regard is fragmented and relatively uncoordinated. The efforts and interests of Aboriginal and other racialized groups, as well as the involvement of women with the lived experience, such as Strength in Sisterhood and Womyn 4 Justice is virtually non-existent. While some of our membership has been engaged in some districts and regions, this approach appears designed to build silos and divide efforts rather than encourage collaborative and inclusive initiatives across the country.

The Public Accounts Committee report, as well as that of the Auditor General focused upon the fiscal deficiencies of current approaches. CAEFS is most concerned about the human costs of perpetuating current inadequacies. Accordingly, we continue to encourage CSC to re-examine this entire area in order to evaluate the manner in which too many community programs are currently conceived, as well as the manner in which they will be developed and delivered in the future. Rather than slavish adherence to the current "program approach", CAEFS favours a more

individualized and self-directed approach, whereby resources are allocated in direct proportion and relation to the needs identified by federally sentenced women and corrections.

Such a model would more likely increase the investment of federally sentenced women themselves in the services with which they engage, as they would be directing the application of resources to assist themselves. It would also be likely to improve CSC's record in terms of human and fiscal reintegration success, a reality that would no doubt be of interest to the Auditor General and equality-seeking groups, as well as federally sentenced women and the Correctional Service of Canada as a whole. Resources would be much better spent if they were allocated according to the constellation of needs that CSC assesses or determines exist for each woman, so that each woman may develop and avail herself of the very individualized practical services and supports which she desires and requires in order to successfully integrate into her community of choice.

Particularly in light of the tremendous benefit that we have experienced from the rich exchange occasioned by the involvement of women's equality seeking, Aboriginal and social justice groups, including women with the lived experience of imprisonment, in our coalition work around the human rights review, CAEFS must continue to promote their full involvement in all future policy and program development activities. Our membership and these groups have worked collaboratively and they will continue to combine incredible enthusiasm, energy and very limited resources to achieve quite remarkable results. Since there remain insufficient community release options for women across the country, however, this continues to be a priority agenda item for the entire CAEFS' membership.

There is an incredible gender gap between the amount of resources devoted to traditional model of corrections and those that are specifically designed with, by and/or for women prisoners. Although the Correctional Service of Canada maintains that they have spent an inordinate amount of resources, time and energy attempting to meet the needs of women prisoners, the reality is that much of this 'wheel spinning' – has occurred largely because they have persisted in trying to adapt male programs to women prisoners.

In addition, the practical realities of the limited number of community release options for women, combined to the seeming precedence given to avoiding any possible risk, rather than utilizing least restrictive approaches, as well as delays in paperwork in the prisons, are resulting in increased numbers of women exiting prison on statutory release. Moreover, too many of these also are exiting with residency requirements. Still others, especially those with mental health issues, are being detained until warrant expiry largely as a result of a lack of adequate community release resources to support their integration.

Many academics and lawyers have reported that services need to be developed in conjunction with community-based, women-directed services, if there is to be any hope of them being successful. In addition, it is well recognized that a significant issue for women prisoners, and part of why they are one of the fastest growing prison populations in Canada (and around the globe), is that cuts to social programs and health care disproportionately impact women and children. As such, our organization and many others increasingly encourage Correctional

Services to focus on the development of “capacity-based models of assessing the risk that community release poses to women prisoners”.

The cuts to welfare that have been allowed to occur as a result of the virtual elimination of national standards in 1996, when the Canada assistance plan was repealed, has resulted in the provinces and territories being able to cut social services to the point that those who have historically been most marginalized are increasingly at risk. It is incontrovertible at this stage, that there are no provinces where welfare rates are actually adequate to support the poor. In order to survive, most people, especially poor mothers who are the sole supports of their families, are required to obtain income by means that would be considered fraudulent if welfare authorities become aware of it.

Some such behaviour is also considered criminal in and of itself. For example, if a woman sells her body at the end of the month to make her rent or feed her children, she may face the possibility of a “communicating for the purpose of prostitution” charge. Similarly, if she agrees to carry a package across the border, across the country, or across town, she may also face trafficking, importation or other similar sorts of charges. In addition, if she fails to report any additional income received, including debts owed to them (only people on welfare are required to declare debts and then have them counted as income), then she may also face fraud charge(s) as a result of investigations by welfare workers into such activities.

The Canadian Human Rights Commission has reiterated what many previous commentators have noted, namely, that women prisoners may have many needs, but it is rare that women pose a high risk to public safety. CSC has committed itself to the development of assessment and classification tools that are designed to assist women in being able to be held accountable for any criminal activity for which they need to be held accountable, while simultaneously allowing them to access resources to limit the risks they face upon release, and thereby assist their work towards successful integration in the community. Such a capacity-building model of risk assessment would necessarily identify the need to develop adequate housing, educational and vocational opportunities, as well as other opportunities to generate income, as priorities for women being released from prison.

Mental and Cognitive Disabilities

The key program approach of choice for CSC in addressing a wide range of mental health and cognitive disabilities is the Dialectical Behaviour Therapy (DBT) model for out-patient substance abuse therapy that they purchased from the United States and adapted for use in the women’s prisons. The use of DBT exposes very clearly the tyranny that is possible when ultimate power and control is cloaked in benevolent language and professed intent, absent real resourcing and addressing of concrete needs. We do not wish to suggest that the CSC staff consciously intend to induce dependence, but the very nature of imprisonment is such that it directly interferes with and impairs the ability of individuals, especially women, to survive the sorts of untenable situations to which they may be forced to return upon their release from prison.

We are extremely concerned that DBT is even offered in a prison setting; more so that DBT

involvement is characterized as voluntary. DBT induces reliance upon a program approach and seemingly operates in a manner that presumes ongoing institutional and professional support. In addition to questioning the overall utility of DBT as a means of assisting women to integrate into the community, when other more basic supports are prerequisite, it is our view that it is ethically and morally inappropriate to be considering, as CSC decided to this past year, to train parole officers and other community based staff to deliver DBT, as the dependency it induces on such staff is more likely to perpetuate, rather than address, any challenges to their reintegration potential.

Women who are encouraged to abandon previous survival strategies in favour of new “thinking” strategies, may in fact be set up to not only fail miserably at surviving upon release into the community, but they may also may be encouraged to feel worse about their inability to survive, absent any contextual analysis of the social and economic realities they face. As such, we encourage CSC to thoroughly and critically examine the extent to which many of the approaches are actually assisting and promoting community integration.

Albeit from an economical perspective, it is clear that the Auditor General had similar concerns regarding the lack of effectiveness of interventions that are currently provided for federally sentenced women. CAEFS and other groups continue to reiterate the primacy of the need for much more concrete and long lasting practical interventions to assist women in meeting their basic needs, particularly those related to accommodation, employment, training/education and personal supports, as a prerequisite to other more individualistic, psycho-social and behavioural types of interventions.

The presumption that inadequate welfare, unemployment, mental health and other health services, educational and vocational opportunities, et cetera, are in any manner within the control of women prisoners, or other members of vulnerable groups for that matter, is ludicrous at best. Worse still, it is these sorts of presumptions and judgments that also influence the manner in which staff interact with women, and which serves to reinforce the inability of CSC to understand, much less address, the very real life circumstances of the women in prison.

It is our view that most women are coerced into “choosing” to participate in such programs. Moreover, the women who have the most significant mental health disabilities are the least likely to participate in these programs. Furthermore, even for those women who may be assisted by these models while in prison, there is no follow-up for them once they are released from prison. And, the model may change the manner in which women think, but if they have no means of surviving once on the street, new thinking patterns may be largely irrelevant, and, as we are increasingly seeing, detrimental, to their survival.

In terms of the number of women who have histories of sexual and/or physical abuse, the Correctional Service of Canada has indicated that they are planning to develop new services for these women. Eighty-two percent of women prisoners serving federal sentences have experienced histories of physical and/or sexual abuse. The figure climbs to 90% when one considers Aboriginal women prisoners alone.

Many women with histories of abuse carry such labels as Fetal Alcohol Syndrome (FAS) or Fetal Alcohol Effect (FAE), as well as “borderline personality”, “psychotic”, “schizophrenic”, et cetera. There is no doubt that too many women are entering the federal prisons with significant needs. The Correctional Service of Canada is ill equipped to meet many of their cognitive and mental health needs. The result is that women with mental and cognitive disabilities are difficult for the prisons to manage, so they tend to be confined in the most isolated conditions, often in segregation. Such conditions of confinement only serve to exacerbate pre-existing and/or create new mental health issues. Certainly, extensive periods of isolation and the consequent sensory deprivation tend to create additional mental health issues for many women prisoners.

Ironically, the reflex of CSC to develop mental health services in prisons, is only serving to magnify the trend to increasingly criminalize women with mental and cognitive disabilities. Developing such services in prisons at a time when they are increasingly non-existent in the community is already resulting in more women receiving federal sentences. The existence of services in prison seems to be a significant factor in encouraging women to seek and for judges to impose federal sentences for women. Indeed, there are widely held beliefs that federal sentences allow women to access services in prison that are not available in community settings.

CSC is currently exploring the possibility of contracting with the Pinel Psychiatric Institute in Montreal to open a treatment unit for women prisoners in Eastern Canada. CAEFS will remain vigilant in order to try to avert some of the problems that have arisen in the Regional Psychiatric Centre (RPC) in Saskatoon, such as ensuring that women have the opportunity to make meaningful choices and to avoid a further repressive and restrictive environment.

The conditions of confinement to which too many of the women with significant mental and cognitive disabilities are subject, are extremely austere and too often constitute violations of their rights pursuant to the *Canadian Human Rights Act*, the *Corrections and Conditional Release Act*, and the *Canadian Charter of Rights and Freedoms*. Indeed, those who are able to access legal assistance frequently receive compensatory cash settlements in relation to abuse claims. To this end, CAEFS commenced work this year on the development of enhanced advocacy training materials for prison workers and advocates and we anticipate implementing the training material in the coming year.

In the coming year, CAEFS will work in partnership with the Canadian Mental Health Association and the Canadian Public Health Association in order to explore how best we may all work together to ensure that determinants of health form the basic underpinning to our work nationally. We plan to engage in dialogue with other national groups involved in both health and criminal justice issues in order to ensure that our individual and collective efforts are aimed at alleviating health deficiencies rather than exacerbating them.

Aboriginal Women Prisoners

The prison system is a microcosm of Canadian society and that means Aboriginal women in prisons are subject to the same colonial history of bias and inequality as Aboriginal peoples in open society. As perhaps best articulated by the Canadian Human Rights Commission, “the most

disturbing statistics relate to the disproportionate number of Aboriginal women in federal prisons” (page 6 of *Protecting Their Rights*).

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's 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. As such, the gross over-representation of Aboriginal women in prison necessitates the sorts of changes CAEFS has been advocating and that the Elizabeth Fry Societies and others have been working to provide.

Although Aboriginal women are only 1-2% of the Canadian population, they now represent more than 30% of federally sentenced women prisoners. They were 23% of the population three years ago. The over representation is even more pronounced among prisoners classified as maximum security, where Aboriginal women usually represent anywhere from 40-60% of the maximum security population. More often than not, this is because of a classification system that penalizes them for social and community deprivations beyond their control.

In terms of community release options, Aboriginal women are 14% less likely to be released into the community on conditional release than are non-Aboriginal women. Job training programs and educational opportunities are seldom geared to the specific needs of Aboriginal women. Also, although there is a Healing Lodge for Aboriginal women serving federal prison sentences, it only has the capacity to accommodate 30 women and there are generally more than 100 Aboriginal women in the federal prisons, so most Aboriginal women prisoners are precluded from accessing the Okimaw Ohci Healing Lodge.

Furthermore, another ramification of the racist classification system is the result that many of the Aboriginal women classified as maximum security prisoners are now confined in the new segregated maximum security units in the regional women's prisons, while others remain confined in segregated maximum security units in men's prisons.

Sections 81 and 84 of the *Corrections and Conditional Release Act*, which provide Aboriginal peoples with the opportunity to serve out their sentence or parole in their communities, have not been adequately implemented. Many Aboriginal communities are not in a position to take on section 81 or section 84 agreements without the requisite human and fiscal resources to enhance their capacity to adequately support all of the members of their communities. As the United Nations has repeatedly pointed out, Aboriginal people in Canada live in third world conditions. It is impossible to imagine how we can expect Aboriginal communities to undertake massive community development without resources. Accordingly, it is our view that significant resources need to be allocated to Aboriginal communities in order to counter the genocidal experience of so many Aboriginal women, children, and men being criminalized and institutionalized in our prisons and jails.

By virtue of the *Indian Act*, the Government of Canada has direct authority over the lives of Aboriginal people in Canada. As such, as Professor Patricia Monture has articulated in her research for us surrounding the systemic review of human rights violations of women prisoners (a copy of which is available on the CAEFS' web site for your information), the federal government has breached its fiduciary duty to Aboriginal women prisoners. The brief by the Native Women's Association of Canada is also instructive in this regard (also available on our web site). CAEFS and the Native Women's Association of Canada, as well as a number of other national organizations, have recommended that the Government of Canada compensate all women prisoners, and Aboriginal women prisoners in particular, for this breach of fiduciary duty. In addition, we have recommended that resources be allocated to enable Aboriginal women to contract with the resources they choose, in order to assist them in integrating into the communities of their choice.

Youth Criminal Justice Act (YCJA)

April 1, 2005 marked the second anniversary of the implementation of the ***Youth Criminal Justice Act***. Over the first two years of implementation, unofficial statistical reports from the provinces and the federal government report that incarceration rates across the country have dropped 30-50%. The last area to drop was the Prairies, where Aboriginal youth represent the overwhelming majority of imprisoned young people.

The YCJA recognizes the importance of extra judicial measures, such as warnings, cautions and referrals to victim-offender mediation and family conferencing, and encourages increased community involvement and responsibility toward young people via the utilization of Youth Justice Committees. Both the *Preamble* and the *Purpose and Principles* of the YCJA underscore the importance of the provision of appropriate interventions and services in order to promote the rehabilitation and integration of young people into society. CAEFS remains concerned that inadequate financing of community-based initiatives could result in a scuttling or erosion of the legal protections and community-based focus of the YCJA.

On the whole, the test outlined in the YCJA for the triggering of an adult sentence does appear to have prevented adult sentences from being imposed to date. Similarly, the presumptions in favour of community sanctions for most youth underscores the extent to which legislative change can and will trigger the more limited use of imprisonment. CAEFS remains cautious however, especially since existing programs and services remain inadequate to address the needs of young people. As such, we are concerned that eventually the lack of community resources will interfere with the progressive legislative intent of the YCJA.

CAEFS maintains that addressing service or programming deficits must be a priority if current successes of the YCJA are to be maintained. Additionally, provinces and territories must be encouraged to develop more gender-specific and culturally appropriate services and programs for young people. Too frequently, services and programs, which do exist, are ill equipped to deal with such intersecting issues as gender, race, class and sexual orientation. More community-based dispositional options and fewer custodial beds should exist throughout the country for all youth, but the need is particularly acute for young women.

CAEFS continues to support the development and enhancement of youth-positive community-based dispositional options, as well as the development of improved educational programs and services, particularly in community settings. For young women in particular, women-centred approaches are required. Because of their relatively low numbers in comparison to those of young men in the youth justice system, their specific needs are often ignored or at best subsumed by those of young men. Finally, the youth justice system must not remain the catchall for other systemic inadequacies. Young people are best served by supportive and proactive interventions, as opposed to the punitive and reactive types of approaches characterized by and endemic to criminal justice responses. Accordingly, CAEFS reiterates the need for cost-sharing agreements to prioritize the development of preventative and proactive approaches within the social service, child welfare, educational, medical and mental health systems as well as the youth justice system.

In addition to more traditional training approaches, CAEFS encourages the involvement of young people themselves, as well as front line workers in the development of professional and practical training programs as well as in the development of the services and programs. We endorse the efforts of groups such as Justice for Girls in Vancouver, the Youth Restorative Action Project in Edmonton and the National Youth in Care Network. Supporting the efforts of these and other young people to define issues and design youth-directed approaches to addressing their concerns are crucial to the success of any legislation, policies or services designed to address the needs of youth.



CAEFS continues to challenge Canadians to reach behind the walls and welcome women into our, and their, communities, so that they may take responsibility and account for their actions in ways that enhance our national, provincial and local commitment and adherence to fundamental principles of equality and justice. We look forward to working with you, our newest allies in the struggle to decarcerate women the world over.

For copies of CAEFS' speeches, submissions, position papers or additional information, please visit the CAEFS' web site at www.elizabethfry.ca, call us at 1-800-637-4606 or 613-238-2422, or fax us at 613- 232-7130.