

## **CAEFS' Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report On the Situation of Federally Sentenced Women**

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First of all, we want to thank the Canadian Human Rights Commission for this initial discussion document. It has provided significant material and impetus to prompt discussion on the human rights complaint. The paper does however cause several significant concerns.

It is vitally important that the Canadian Human Rights Commission understand that the information CAEFS has gleaned with respect to the discrimination faced by federally sentenced women, comes to CAEFS after a long history of working with and on behalf of women prisoners who face the discrimination on the basis of sex, race and disability. Primarily, we are concerned that the systemic nature of the discrimination faced by women prisoners is not well articulated in or by the paper. The fact that seven issues are being examined by a human rights perspective underscores and exemplifies this problem of not conducting the review in a manner that identifies and analyzes the intersection and inter-connection of the different grounds of discrimination in a manner that identifies the clear systemic roots and nature of the human rights violations experienced by federally sentenced women at the hands of the Government of Canada.

The complaint launched by CAEFS and other national equality seeking groups, focused upon the systemic discrimination experienced by federally sentenced women. The named party responsible for the discrimination was the Government of Canada, and not merely the Correctional Service of Canada. The facts associated with the sheer numbers of women serving federal sentences, their demographics, particularly those with respect to race and disability; present a *prima facie* case of discrimination. Accordingly, it is the contention of CAEFS and other organizations that the onus falls on the Government of Canada, including the Correctional Service of Canada, to establish how they will address the discriminatory patterns evidenced by their own data and research.

More particularly, we have comments regarding the nature of the issues raised, and these follow below. On page 5 of the discussion paper, some statistics with respect to the representation of federally sentenced women by race are included. While this is a very useful breakdown, it would be even more useful if the breakdown provided specifics with respect to the number of Aboriginal, Caucasian, Black, Asian, et cetera women by security classification. This information will likely only underscore the over-representation and discriminatory application and effect of classification processes et cetera in women's prisons. Regarding the questions raised with respect to assessment of women prisoners, our comments follow.

### **3. Key Issues**

#### **3.1 Programming**

- 1) *Are the programs provided to federally sentenced women comparable in quantity, quality and variety to those provided to federally sentenced men?*

Response: To start with, the manner in which the discussion paper outlines the ideas about what programming is, seems quite ad hoc and site specific (i.e. geared to what is easy and already available in that location), with no general assessment of what is needed in terms of training programs and what would provide meaningful, effective and appropriate educational, training and/or employment options for women. As such, the analysis really seems to be a bit backwards, starting with what the Correctional Service of Canada is doing, says they are planning or can do easily, rather than with a training/education goal that directs the services, vocational, training, employment and programs strategy overall.

Although it is clear that the programs provided to federally sentenced women are not comparable in quantity, quality, or variety to those provided to federally sentenced men, CAEFS objects to the use of federally sentenced men as the primary comparator group for federally sentenced women. It is our view that the particular needs and interests of women prisoners must be examined in and of themselves in order to ensure that they are able to achieve substantive equality. As the Women's Legal Education and Action Fund (LEAF) have clearly articulated in submissions to the Canadian Human Rights Commission (CHRC), formal equality analysis of merely comparing women prisoners to men prisoners will not address the discriminatory aspects of the treatment of federally sentenced women. Nevertheless, in each of the women's prisons, the numbers of services provided for women are inadequate to meet the needs of the women in those prisons.

With respect to job training opportunities, the usual programs available to the women in prison include cleaning and grounds keeping, while there are very few additional opportunities. In the Burnaby Correctional Centre for Women (BCCW), some federally sentenced women have access to working in the tailor shop, while others have an opportunity to work with the dog program and in the horticultural program. Opportunities for working in these placements are quite limited however, and the women must share these limited spaces with provincially sentenced women, whose numbers vastly outstrip those of federally sentenced women.

In the past, at the BCCW, a number of lifers were able to work in the floral shop. Although this work resulted in few long-term employment options for the women who worked there, many of the lifers very much enjoyed this job/training opportunity. However, as a result of the move of this program to the open living unit area of BCCW, (i.e. out of the secure living area) few federally sentenced women, let alone lifers, have been able to access this job placement for several years.

In the Edmonton Institution for Women (EIFW), there is a graphics shop that employs several women. Again, what otherwise might look like a very good vocational training and job placement opportunity, is in actuality not sufficient either. In fact, women who have worked in the graphic shop and have subsequently attempted to obtain employment in the community, have found that their skills are outdated, that the equipment they were using was

considered rather ancient in the business, and they were therefore not considered for job opportunities involving graphic artistry, for which they were led to believe they were trained.

At the Grand Valley Institution for Women (GVI), federally sentenced women in Ontario were promised that they would be able to learn several types of marketable skills, including expertise in archiving, restoring antiques, et cetera. There was supposed to be an arrangement made with the Dune Heritage Village historical site, that is next door to the prison, so that the women could not only gain skills and expertise in the area of restoration and archiving, but they would also be able to access the Heritage Village for work release and other employment opportunities. The reality has been that these opportunities have been entirely non-existent. The only non-traditional (i.e. not cleaning or grounds keeping) work that has been made available to any of the women at GVI, is one job opportunity that was made available for one lifer, who had previous experience and training in construction and labour work. That particular lifer was permitted to work on the work crew that constructed the maximum-security units at the Grand Valley Institution.

At the Etablissement Joliette, there were similarly very laudable plans for the development of vocational training opportunities for women. Prior to the opening of Joliette, it was anticipated that CORCAN would open a computer reclamation worksite at Joliette Institution. Unfortunately, CORCAN determined that more men could benefit from the program, and so the entire project was moved to a men's prison down the road. The alternative that was established for the women was to fold the box corners that were used to protect the furniture made by men at another neighbouring prison. That "industry" has since been removed and replaced by a sewing industry, whereby the women make men's underwear.

There has also been a call centre at Joliette Institution, but similarly to the experience that women faced when such an experiment was undertaken at the Prison for Women in Kingston, this work is extremely demoralizing, especially for those women whose self-esteem is already low. In addition, Joliette Institution provides opportunities for women to process and package food items which are distributed to their fellow prisoners. The reality is however, that even in Joliette Institution, where arguably the greatest number of work opportunities exist for women prisoners, none provide them with marketable skills that will allow them to obtain a living wage in order to support themselves and/or their children in the community.

In Nova Institution, aside from the dog-training program, there are very few work or training opportunities for women. Again, while the women who participate in the dog program very much enjoy it, none have obtained employment as a result of this program.

Suffice it to say, that aside from what might otherwise be referred to as work that is traditionally viewed as women's unpaid labour, such as cooking, cleaning and sewing, there are very few opportunities to obtain other training or employment experience. Even in the rare instances where such opportunities are made available, they are generally provided on an ad hoc basis and very few women actually have access to same.

In terms of educational opportunities alone, although all of the prisons offer adult basic education and upgrading, there are very few additional training programs offered for women. Again, when they are offered, access is generally limited and the programs are often not offered on a long-term basis. In addition, since funding for post secondary education was cut in 1992, many women serving long sentences have not been able to avail themselves of post secondary education. Post secondary education used to be a means whereby federally sentenced women serving long sentences could obtain educational goals that might assist them in developing new community integration potential.

Any women who now wish to obtain a post secondary education, must either be able to fund it themselves, or must rely upon the charity/support of their families or friends to assist them in such endeavours. It is precisely for this reason that CAEFS developed the Elizabeth Fry Memorial Bursary, a fund that provides up to six bursaries of \$500.00 each to women prisoners across Canada. Every year, the applications for this bursary increase in number such that the demand generally outstrips the available funding by a ratio of 20:1. It is abundantly evident therefore, that if the resources were available, many federally sentenced women would choose to avail themselves of education and training opportunities.

In terms of “treatment” or other therapeutic programming opportunities, the story is even more distressing. The presumption is that many women serving federal sentences have great need, and that their needs certainly outweigh their risks in terms of their potential to integrate into the community upon the expiration of their prison sentences. Unfortunately, the reality is that the women experience very limited opportunities to access therapeutic support while in prison.

At the Prison for Women in Kingston, following the deaths of seven women prisoners, an exemplary team of feminist therapists and counselors were hired to assist federally sentenced women. Aside from this period however, there have not been sufficient resources to assist women. Moreover, women complain that they are advised by staff within the institutions that they are supposed to receive counseling from their “primary workers” or “older sisters” (in the case of Okimaw Ochi Healing Lodge), yet these are the same individuals who also have the authority and power to conduct the most invasive and inhumane security procedures on them. One particular prisoner very articulately identified the incongruence of this relationship, “They’re telling you, to tell them all about your history of being raped as a kid and as a women, one minute, and the next minute, they’re telling you to take all your clothes off so that they can strip search you; how can you trust anyone who does that?”

Furthermore, many women have been advised that they may only access other counselors or psychiatrists and psychologists several times a year, and that unless they participate in the Special Living Environment (SLE), they will not have access to therapeutic support on an ongoing basis. In the EIFW for instance, there were several women who were advised that they could only see a psychologist four times on an individual basis, after which they would have to participate in groups if they wish to avail themselves of psychological support thereafter.

Moreover, a number of the therapists who are hired on contract by the Correctional Service of Canada are men, and the women prisoners often object to having to work with male therapists, particularly where their histories of abuse have been at the hands of men in positions of authority over them. At the Regional Psychiatric Centre (RPC) for instance, in 2001, women prisoners were forced to see the only medical doctor available to provide services to them, a man, despite the fact that he was the subject of several charges laid against him by a woman in the local community. In this instance, the woman in the community alleged that the doctor had stalked and sexually harassed her. In the community, no women would have to endure such limited and coercive access to medical/health services.

Women prisoners repeatedly advise CAEFS that they are very interested in accessing programs and services that meet their needs. They also wish to engage in vocational and educational training that is designed to assist them to exit the prison with skills that will enable them to support themselves and/or their children in the community. It is our view that they are seriously hampered in this process by a lack of services and programs offered by the Correctional Service of Canada. Moreover, even when such programs are offered and the women express great interest and enthusiasm for same; the programs are rarely made available. For example, the recent offering of the “In Search of Your Warrior” program in the segregated maximum-security unit in the men’s prison at Saskatchewan Penitentiary was only made available once, and only for five women. The program has never been offered again, although at the end of February 2003, it is scheduled to run at the Okimaw Ohci Healing Lodge.

These realities only underscore the articulated position of CAEFS that all services and programs, as well as any risk assessment and classification tools, need to be women directed and focused upon meeting the needs of women prisoners in a manner that builds their capacity to integrate into the community. If services were offered that assist women in developing skills, as well as opportunities for them to obtain adequate income, shelter, food, et cetera, the entire process would go a long way towards assisting women in remaining in the community in the first place, and in returning to the community from prison. In terms of work release options, again the situation for women is incredibly bleak. In the very few instances where women have been able to avail themselves of work releases, they have generally been releases that the women themselves have advocated for, initiated, confirmed and developed a plan that allows them to access same.

- 2) *Is there a problem with access to programming in a timely manner and, if so, does it lead to women being incarcerated past their full parole eligibility dates?*

Response: As has no doubt been identified above, there is indeed a significant problem with respect to the access that federally sentenced women have to programming. Not only are those problems related to access to programs in a timely manner, but they are related to accessing such programs at all. In fact, there are a number of well documented cases, that reveal that the limited access to programming directly interferes with the ability of women to meet the terms of their “correctional treatment plan” in order to obtain a favourable recommendation from their case management teams. As such, they frequently experience delays in obtaining all forms of conditional release, including parole.

An examination of women's files will likely reveal that many of the women "voluntarily" waived their right to appear before the National Parole Board. As such, the Correctional Service of Canada frequently advises that those women, who have passed all parole eligibility dates without gaining any form of conditional release, have generally done so at their own behest. Lack of program availability too often is reconstructed as the choice of federally sentenced women to not engage in programs required for their "treatment". Worse yet, this construction of choice is then further reconstructed as poor or inappropriate and the women are blamed for any consequent delays in conditional release.

In addition, the eligibility dates that are being examined need to be identified clearly as it has also been CAEFS' experience that the earliest eligibility dates will often pass without women being able to access the community release options available to them. However, statutory release dates and day parole eligibility dates will usually see some form of release being sought and likely recommended by the Correctional Service of Canada. The distinction here is that women may be recommended at much earlier dates if they have access to services and programs and the support of their case management team. With out access to needed services and programs and support of case management personnel, their ability to successfully achieve a conditional release is extremely limited.

Accordingly, the question as posed is misleading, because the Canadian Human Rights Commission is only asking about whether women have been incarcerated past their full parole eligibility dates, as opposed to engaging in a more complete examination of why women are not being released to the community at the earliest possible eligibility dates. There is no doubt that access to services and programs, as well as the adequate completion of paperwork by Correctional Service of Canada staff, are directly related to this situation.

- 3) *Are women being provided with access to training which will assist them in being reintegrated?*

Response: As articulated in our response to question #1 above, it is our view that, in fact, women are rarely assisted with training that will allow them to enjoy an earlier or more fulsome integration into the community upon their release from prison. Moreover, in the relatively rare instances where women are provided access to training, it has generally been as a result of their insistent request, and often is met with institutional opposition rather than support and encouragement.

- 4) *Are there artificial barriers preventing access to programs, such as, for example, a grade 12 education requirement for some training?*

Response: While it is true that there are some barriers to women accessing training that involve their educational circumstances, in fact, the greatest barrier to accessing programs is their lack of availability. Many women have indicated that they would happily engage in refresher upgrading programs if it meant that they could then access vocational and/or academic educational opportunities.

- 5) *Are the accommodation needs of women with learning and other disabilities taken into consideration when training programs are being planned and delivered?*

Response: It is our experience that the accommodation needs of women with learning and other disabilities are not taken into consideration when training programs are being planned and delivered. In fact, such training opportunities are so rare that there is usually no difficulty finding individuals who do not have accommodation needs to access same. With the exception of one woman, who had to threaten a lawsuit and could only do so because she had sufficient material resources that allowed her to access legal counsel, women with physical and/or mental or cognitive disability are not accommodated within the prison, with respect to most aspects of prison life, including, but certainly not limited to, training programs. Rules, regulations, programs, services, et cetera are all geared towards individuals who do not have accommodation needs.

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

Response: It is the view of CAEFS that this recommendation made by Madam Justice Arbour, after a full and complete examination of the manner in which women's corrections was operating at the Prison for Women, as well as the plans for the operations at the new women's prisons, remains sound and should be implemented immediately. The Correctional Service of Canada continues to maintain that there is strength in having each regional prison linked to the regional management of corrections, rather than having a separate and parallel reporting structure.

As articulated in the position that CAEFS adopted in 1986, and which very much resembles the position taken by Madam Justice Arbour in 1996, the only manner in which the Correctional Service of Canada may succeed in elevating the needs of federally sentenced women within the service, is if they create a separate sixth region or separate infrastructure for federally sentenced women. Obviously, as is the case with each of the five regions that operate now, they may utilize and build upon the national infrastructure and the administrative policies that are available broadly throughout the Correctional Service of Canada. It is clear that the area of women's corrections will not enjoy any significant positioning within the Correctional Service of Canada with the current administrative structure.

It is also the view of CAEFS that Madam Justice Arbour's recommendation that there be a separate funding, reporting and service delivery structure, be implemented immediately. Moreover, it is also our view that such an approach could also provide the Correctional Service of Canada the opportunity to have women's corrections be the flagship for the Correctional Service of Canada. As many of the experts that Madam Justice Arbour consulted in 1995 articulated, the relatively small, but growing number of federally sentenced women in Canada means that innovative programming and services could be developed as pilot/experiments in women's prisons. Similarly, innovative community

release options could also be identified and developed that might also provide leadership for the rest of corrections.

As long as women's corrections remain a correctional afterthought, we are unlikely to see any meaningful change in the situations of women prisoners, nor the staff who are responsible for their incarceration. Currently, each woman's prison is reliant upon the particular interests, or lack thereof, of the regional Deputy Commissioners and the regional management of corrections for their resourcing and other attention to the services and programs provided for federally sentenced women in their respective regions

7) *Are the programs stipulated in the correctional plan available?*

Response: Depending upon the program that is articulated in individual women's correctional plans, they may or may not be available. There are many examples where programs that have been recommended for women in their initial correctional treatment plans, are not only unavailable in the prisons in which they are incarcerated, but may not be available at all throughout the Correctional Service of Canada. For instance, programming for sexual assault survivors is very limited and virtually none of it is independently provided, despite the fact that all those with expertise in this area advocate that such services always be provided in a manner that is independent and equality based in its approach.

Similarly, there are a small but increasing number of women who are being identified as requiring sex offender treatment programs. Until very recently, no such program existed for women prisoners. Indeed, the one that is currently in the process of being developed may not be appropriate either, as it merely involves an adaptation of the male program. Similarly, cognitive skills, anger management and several other programs that have been adapted from programs originally developed for male prisoners, have not been adapted to the particular needs or interests of women prisoners.

8) *Is the decision making process to determine the programming needs of offenders sufficiently individualized to their situation and needs? Does the planning take into consideration needs related to cultural background, mental and/or physical disabilities and history of abuse?*

Response: In theory, the decision making process to determine the programming needs of women prisoners is individualized to their situation and needs. In practice, however, this is rarely the case. Not only do many women complain that the process of developing the plan does not involve them, although they may be called in for a relatively short interview with their case management team and/or their primary worker, many do not feel the type of ownership that one would presume would exist if in fact the policies were put into practice (i.e. that the correctional treatment plan is based on women prisoners and staff working together to develop same). Given the foregoing, it undoubtedly goes without saying that correctional treatment programming rarely takes into account the cultural background, cognitive, mental and/or physical disabilities of women prisoners, much less their histories of abuse.



- 9) *Are Aboriginal women being over-programmed by being required to take Aboriginal and non-Aboriginal programs?*

Response: Based upon the information that is provided to CAEFS by Aboriginal women prisoners, it is our view that many Aboriginal women have very limited access to programs and services at all, much less those that are culturally appropriate. There are a few Aboriginal women, however, who believe that in some circumstances, they are required to participate in non-Aboriginal programs which they do not feel meet any of their needs. Conversely, some Aboriginal women have indicated that their Aboriginal ancestry is questioned when they have requested not be required to participate in Aboriginal programming.

Certainly, a concern that CAEFS has expressed on more than one occasion, relates to the fact that correctional programming for Aboriginal prisoners has too frequently been mandated. To require that Aboriginal women participate in “religious” ceremonies in order to maintain their status as being Aboriginal, is not only racist and culturally inappropriate, it violates their human rights and their rights pursuant to the *Canadian Charter of Rights and Freedoms*. Women who claim to be Christian, for example, are not required to prove same by attending chapel/church every Sunday. It is clear, however, that particularly for Aboriginal women, but also for other racialized groups, that their failure to adhere to Eurocentric notions of what their cultural heritage means, has resulted in racist determinations and that they may not validly claim their cultural and/or racial identities.

- 10) *Does the decision making process take into consideration needs linked to gender culture and physical and mental health?*

Response: The decision making process with respect to programming does not, in the opinion of CAEFS, adequately address the needs of women, particularly racialized women, nor does it meet the needs of women with mental, cognitive, and/or physical disabilities. In fact, as the experts who were brought together by the Correctional Service of Canada in 1999 articulated, the notion of developing core programs and then mandating women to participate in same is antithetical to the development of individualized programming and services that meet the unique gendered, racialized, class based, and ability based needs of women prisoners.

- 11) *Do policies, such as requiring the families of inmates to pay for university courses, perpetuate the disadvantaged situation of many offenders, including Aboriginal women who are estranged from abusive families?*

Response: The obvious question here is; why is this even a question at this stage? There should be no doubt at all that such policies that require the families of prisoners to pay for university courses, absolutely perpetuates the disadvantage and class situations of most women prisoners. In fact, such policies not only perpetuate but, we would argue, exacerbate the preexisting conditions of marginalization experienced by many women, particularly where these are compounded by multiple layers of discrimination, such as those experienced by poor Aboriginal women with mental and/or cognitive disabilities.

## **3.2 Classification**

### **3.2.2 Reassessment**

- 12) *What are the human rights implications of classifying women with mental health needs as maximum security?*

Response: The human rights implications of classifying women with mental health needs as maximum security are fairly self-evident in that they result in women being placed at higher levels of security, not because the women necessarily pose a risk to anybody other than themselves. In addition, many who enter the system with mental health needs experience an exacerbation of their disability as a consequence of the conditions of confinement to which they are subjected. In addition, those who have mental health disabilities which are exacerbated within the prison context, become identified/labeled as more difficult to service in the community, and therefore receive even more limited access to pre-release options such as temporary absences and conditional release, but also interfere with their ability to access programs upon release.

- 13) *Does the custody rating scale translate social disadvantage into pathologies?*

Response: Again, as evidenced by the number of women whose life experiences and background predetermine that they will experience social disadvantage, these women are penalized for that disadvantage. Part of that penalization includes a subjection to an overly secure environment, as well as a translation of the needs of those women effectively into risk factors by correctional authorities. This approach not only pathologizes women in too many instances, but it also further victimizes both within the prison and as a result of the impact of their treatment upon their community integration potential.

- 14) *Does the current classification system accurately assess the risks and needs of women offenders? If not should there be a different approach or system for female inmates?*

Response: The risk assessment tools and classification schemes that are used for women, particularly racialized women and women with disabilities, impose a male-based and male-normed approach on women prisoners. A social inclusion and equality based approach, and one that has been discussed in international fora, is based on the building of capacity of prisoners, rather than a focus on risk assessment, detection and punishment.

A capacity building model would necessarily focus upon the identification of need areas by and for women prisoners, followed by an assessment of their preferred manner of addressing those needs, followed by an allocation of resources according to the needs assessed and a woman directed approach to locating and/or developing necessary resources for individual women upon their release. In some areas, this is referred to as capacity building. Others refer to this approach as developing a brokerage model of community development. Most recognize it as social development through community development.

15) *Given the different types of sub-populations of Aboriginal women classified as maximum security, is a risk classification system the appropriate tool for the classification of Aboriginal offenders?*

Response: Further to the discussion above, it is our view that a capacity building model could be adapted with particular foci that involve Aboriginal women and the preferred means of addressing their needs within the context of communities that require more holistic capacity building approaches. In this manner, the responsibility of the broader Canadian Government should also be incorporated in the development of appropriate resources for women to develop self-directed services.

16) *Should risk prediction be the central goal of female classification?*

Response: Given that it is generally recognized that women do not pose a risk to the community, there is no doubt that there is little need for a risk based approach to classifying women. The statistics of the Correctional Service of Canada itself indicate that fewer than 1% of federally sentenced women released into the community recidivate for violent offences. Moreover, the recidivism rate of women is generally much lower and is mostly occasioned as either a preventative measure or as a result of a breach of parole that does not involve any new conviction.

17) *Are inmates aware of their right to grieve their security classification and reclassification?*

Response: Women prisoners are certainly supposed to be made aware of their rights to grieve their classification. In reality, however, most prisoners are not very well aware of their rights and even if they are, are loathe to grieve as a result of a real and perceived increased risk to them, their family contacts and their progress within the prison environment should they avail themselves of the grievance system, and/or other mechanisms.

### **3.2.3 Classification of Offenders Serving Life Sentences**

18) *Does the policy discriminate against offenders from one or more of these groups:*

- *Aboriginal offenders*
- *Visible minority offenders*
- *Young offenders*
- *Older offenders*
- *Offenders with a disability*
- *Women offenders in general*

Response: Yes, the statistics identified by the Correctional Service of Canada itself clearly identify that the new designating policy that requires prisoners serving a minimum life sentence for first or second degree murder to be classified as maximum security for at least the first two years of their federal term of imprisonment, discriminates against all of the groups named. This reality particularly holds true for those whose life circumstances cause

them to fit into more than one of the named categories and especially in light of the fact that many women prisoners serving life sentences for murder have been charged, convicted and sentenced as a result of their involvement in defending themselves and/or their children against violent partners. It is not surprising that many end up being classified as medium security fairly early on in their sentences.

Similarly, when it comes to young people, we know that young people who have been tried in the youth system are generally serving shorter sentences for first and second-degree murder, than are those who are convicted as adults in the ordinary court. Although Aboriginal prisoners are less likely to be serving life sentences for murder than they are for other offences designated as “personal violence” offences, when they are sentenced to life in prison, they tend to already suffer the discrimination of the classification system and would therefore experience the two year policy as a further layer of discriminatory application of Correctional Service of Canada policy. Overall, it is clear that it is young people and women who are most disproportionately impacted. Where young women are also racialized and/or disabled, the discrimination undergoes a multiplier effect in terms of the negative impact and long term results on young women.

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

Response: With respect to women prisoners, while there may not be a disproportionate number of Aboriginal prisoners impacted by the policy change, this does not mean that there is a non-discriminatory justification for the policy. The only justification for the policy, that is recognized by most, is that the Correctional Service of Canada was influenced by the Canadian Police Association and some victims rights representatives who expressed concern regarding one particular man who had been convicted in relation to the death of a police officer. Since the inception of the policy, there has been a great flurry of activity at the Correctional Service of Canada to develop the rationale for same. This *post facto* rationalization should not be confused with a rational basis for the policy. A policy that is based on stereotypes and assumptions is a policy rooted in discrimination.

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

Response: The human rights implications of such a policy should be fundamentally apparent and recognized as discriminatory on its face. If the Correctional Service of Canada maintains that any other justification exists, it should bear the responsibility of disproving or countering the *prima facie* case of discrimination.

21) *Does the higher time frame for review of the security classification of “lifers” versus “non-lifers” have a discriminatory impact on lifers?*

Response: Again, this obviously does and we question the rationale for even having to pose such a question. The annual reports from the office of the Correctional Investigator, as well as the submission from ourselves and many others have amply indicated just how and why the policy is discriminatory.

### **3.3 Minimum Security Facilities**

- 22) *Are the conditions under which the minimum security women are held more restrictive than for their male counterparts?*

Response: Further to the arguments already raised by the Women's Legal Education and Action Fund (LEAF) with regard to the problems posed by the use of male prisoners as the comparative group for women prisoners, it is abundantly evident that this kind of formal equality analysis, although it falls short of the necessary substantive equality analysis, reveals very clear evidence of discriminatory application of resources vis-à-vis women prisoners. Men who are classified as minimum security prisoners have access to minimum security prisons in every region of the country, whereas women classified as minimum security prisoners have access to 13 beds in the Isabel McNeill House in Kingston, or beds designated as minimum security within the regional prisons. The beds designated as minimum security within the regional prisons are virtually indistinguishable from the medium security beds.

- 23) *Do you consider that women offenders pose less or an equal risk to the community than male offenders? If less, should both groups be treated in the same manner?*

Response: Again, the proviso that male prisoners are not the appropriate comparative group applies to all of the following responses in this section. It is however clear to everybody who does this work that women pose far less of a risk to community than do men. This is true for those who are apprehended, charged, convicted, sentenced and more to the point, those who are not. Accordingly, and in keeping with our position that a substantive equality analysis must be applied in all of these cases, it is our view that women should have even greater access to community releasing options, as well as access to community for work release, child care, job training, vocational/educational/academic upgrading, et cetera.

- 24) *Does the fact that minimum and medium security women are housed in the same facility, unlike their male counterparts, constitute sex discrimination?*

Response: Obviously, the answer cannot be anything but yes. Again the responsibility for establishing any other position must fall to the Correctional Service of Canada.

- 25) *Are there more effective and less costly ways of housing minimum security women?*

Response: The most obviously effective and less costly, in terms of both human and financial cost, would be to house women in the community. This may be done by virtue of Sections 81 and 84 for Aboriginal and non-Aboriginal women prisoners. A plan for developing such a strategy should be commenced immediately. Moreover, since the capacity of many communities to accommodate those who are most marginalized and oppressed is systematically being dismantled and interfered with, strategies must include a capacity building component. As such, cost alone should not be the determinant factor.

Moreover, any examination of cost must consider both the human and financial components of a costing out of various options.

- 26) *What impact will the projected increase in the number of women being sentenced to federal terms have on the ability of the current facility to meet the needs for incarceration?*

Response: We believe this speaks directly to the need for the immediate commencement of clear and deliberate decarceration strategies. As we have articulated in many other venue and fora, we believe that the current focus on criminalizing and jailing increasing numbers of women will have a significant impact on the current prison population, as well as on future groups of women imprisoned in the regional prisons. Most obviously, if there are greater numbers of women in prison, we are likely to see increased issues pertaining to overcrowding, such as increased self-injurious behaviour, followed by increased assaultive behaviour amongst the women and between the women, followed by potentially assaultive behaviour between women prisoners and staff. In addition, more women will undoubtedly result in fewer programs and decreased availability of many programs and services to all women prisoners. 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.

- 27) *Does the fact that minimum security women are incarcerated in the same facility as medium security women mean that they are treated as if they are medium security?*

Response: It is certainly the view of women jailed in the regional prisons that there are few if any differences between those women who are classified as medium security and those who are classified as minimum-security prisoners. With the exception of some differences in some institutions between curfews, institutional movement and other relatively insignificant opportunities, the women themselves, whether they are minimum or medium security prisoners, describe the differences as negligible at best.

- 28) *Are there implications for minimum security women of being in the same facility as medium security women in terms of access to community programs and resources, work release programs and job training programs, escorted and temporary absences, etc.?*

Response: Minimum security women indicate that they believe that access to community programs and resources, as well as access to work release and job training programs, escorted and unescorted temporary absences, et cetera, are much more limited than the law and the Correctional Service of Canada policy anticipates. In addition, there is no doubt that the manner in which the Correctional Service of Canada has chosen to separate out different groups of women, both by security classification and other means, has resulted in the women prisoners themselves having to compete for the scarce and sparse resources that are available within the prison.

In addition, many women describe the impact of such physical barriers as fences, locked gates, razor wire, cameras, et cetera as reinforcing the more limited access that women

classified as minimum security prisoners have to the community. In addition, because the economies of scale are the primary factor which dictates the number of staff available at any one time in the women's prisons, many women report being advised that they may not enjoy their escorted temporary absence programs because of a shortage of staff escorts to accompany them into the community. This is both due to the economies of scale that limit the number of staff available at any one time, as well as the multiplicity of tasks that are assigned to staff, such that escort duties are often given low-priority on the list of the duties for which they are responsible. All of the foregoing mitigates against women having very easy access to the community, especially those who are classified as minimum-security prisoners.

29) *Does the combining of minimum and medium security women have implications for the motivation of women to work to reduce their classification from medium to minimum?*

Response: While it is fairly obvious to most women that there is little to no benefit to being classified as minimum security while they are in prison, there is no doubt a view that reduced classification may assist them in integrating into the community more quickly. The reality is, however, that increasing numbers of women are recognizing that the lack of community resources, as well as resources available specifically for women classified as minimum security prisoners, means that they may be wiser to wait until their statutory release dates to commence their reintegration into the community, rather than investing untold personal resources into a process that is limited and frequently unavailable to them.

Obviously, if they see little benefit in being classified as minimum-security prisoners, it should not be a surprise that many of the women do not strive to be minimum-security prisoners. Nor should it come as a surprise that the women prisoners whom the Office of the Correctional Investigator, ourselves and other groups, would expect to be classified as minimum security prisoners, are most usually not so classified. Moreover, many staff report that they see very little difference between the classification of women as minimum or medium security prisoners and therefore do not themselves place much emphasis on the importance of reducing security classification for women prisoners.

30) *Does the lack of minimum security facilities impact on the ability of women to maintain ties with their children and other family members?*

Response: For some, the lack of minimum security facilities directly impacts their ability to maintain ties with their children and other family members since they may have very limited access to their communities, which necessarily limits their contact with such family members. For others, however, the fact that there are only five regional prisons and the Okimaw Ohci Healing Lodge, all of which may be significant distances away from their communities of origin, would mean that even if women were in minimum security prisons in their current locations, they might still not enjoy access to their families. Rather, CAEFS is advocating a model for community release and minimum security prisoners which recognizes that small, individualized, women directed options that include the ability to build the capacity of individual women within their communities of choice, must be provided for federally sentenced women.

A substantive equality analysis which focuses on the building of women's capacity, would involve the development of a resourcing model that attaches human and financial resources to the needs that women identify as inhibitors to their successful integration into the community. In this manner, women could direct the brokering of resources for such things as the development of appropriate housing, support, training, educational, et cetera options for themselves. In this manner, integration would be geared directly to, for and by the very women who are seeking to integrate into the community, first as minimum security prisoners and subsequently as women serving the balance of their sentences in a context of community release prior to the expiration of their warrants of committal.

31) *Does the lack of minimum security facilities have a negative impact on the ability of women to be released into the community?*

Response: Building upon the previous responses, we would reiterate that the lack of minimum and community release options has a very obvious, long standing and cumulative affect and impact on the ability of women to be released into the community. Again, this *prima facie* case of discrimination against women serving federal terms of imprisonment must be remedied. The capacity building model involving the allocation and resources according to need clusters, as well as the notion of the ability of women to direct the brokering of resources to address their individual needs, is a model that is one of the few means whereby the Correctional Service of Canada might work to remedy the systemic discrimination currently experienced by women prisoners.

### **3.4 Community Release Facilities and Services**

32) *Do women have the same access to community release facilities as men?*

Response: As already articulated above, the community release facilities for women are far less adequate than those available for men. Moreover, a substantive equality analysis of the Charter and human rights violations experienced by women prisoners requires that the discrimination be rectified in a manner that does not merely utilize male prisoners as the comparator group.

33) *Are mixed gender community release facilities for women appropriate in light of the high proportion of women who come from abusive backgrounds or have young children?*

Response: Women themselves have repeatedly indicated that their preference is to be located in women only spaces, preferably those which allow them to live in an independent or semi-independent manner, in conjunction with their peers and young children. CAEFS continues to support this model and, indeed, supports the community release of women into the least restrictive methods of conditional release available.

Where women do desire housing that accommodates their families, it is most appropriate that resources be established that allow them to establish their own individualized community-based release options. In some cases, satellite apartments and private home



placements have proved appropriate, and is articulated in our CAEFS' 1998 position paper with respect to the community release options required by and for federally sentenced women. CAEFS is of the view that women are over incarcerated and required to live in overly secure environments once they are placed on conditional release in the community. As such, we reiterate our view that a capacity based brokerage model for the development of community release options for women is long overdue and a prerequisite to further development.

34) *Are the needs of Aboriginal women for culturally appropriate community release facilities being met?*

Response: As represented by the relatively small number of women who have been able to participate in *Section 84* arrangements, very few Aboriginal women have actually been able to access community release resources and options developed with, by and/or for them. Again, the capacity building and brokering model discussed above could go a long way to rectifying this reality.

35) *Are the required financial resources available for community groups to provide the community release facilities and services required for federally sentenced women, including Aboriginal women, women with mental disabilities and cognitive limitations, visible minority women and Inuit women?*

Response: Undeniably, inadequate levels of resources have been applied to the development of services and programs within prisons for women prisoners. This situation is even more acute when one considers the circumstances for women who are attempting to exit prison and integrate into their communities. As such, it should come as no surprise and is entirely predictable that Aboriginal women and other racialized women with mental and cognitive disabilities all experience even more significant difficulty and greater systemic barriers to their integration into the community. It goes without saying that there are virtually no resources available for these women.

Moreover, the very limited resources that are available are too often inaccessible to women for whom systemic barriers and discriminations are multi-layered and intertwined. As such, we again reiterate the need for a community release strategy that builds upon the capacities of women and provides resources, particularly financial resources to enable women to work on the development of the resources they need in the community. By attaching resource allocations to corresponding need areas, the Correctional Service of Canada could go a long way to alleviating the systemic barriers and therefore the discrimination experienced by federally sentenced women, particularly those who are discriminated against on the basis of race and disability.

36) *Are offenders in the community settings aware of the continuing availability of the complaint and grievance processes and the services of the Correctional Investigator?*

Response: Given that many women prisoners in prison have very limited understanding of the availability of the complaint and grievance processes, as well as the services of the Correctional Investigator, compounded by the perceived ineffectiveness of both methods for

achieving adequate redress where women are aware of the resources, it should come as no surprise that the knowledge and access to the complaint and grievance process of the Correctional Service of Canada, as well as the services of the Correctional Investigator, are negligible within community settings for federally sentenced women. It is precisely for this reason that CAEFS and others are recommending the development of adequate redress and resources for federally sentenced women. Unless the Correctional Service of Canada is required to redress the systemic discrimination that their policies and practices occasion, the existing skepticism of the value of such mechanisms will only persist. In situations where women prisoners have experienced the success of having their complaint or grievance upheld by the Correctional Service of Canada or where the Correctional Investigator had indicated support and had advocated for women prisoners, the victories have been empty, as the likelihood of any meaningful redress following such victories is illusory at best. In fact, such successes are relatively rare and, even where they do exist, too often do not result in meaningful change in the material circumstances of the women prisoners.

### **3.5 Health Issues**

#### **3.5.1 Health**

37) *The 2000-2001 and 2001-2002 Annual Reports of the Office of the Correctional Investigator raised the issue of women inmates being involuntarily transferred to a psychiatric facility for the purpose of assessment by psychiatrists. What are those human rights implications of this practice?*

Response: It is unclear to CAEFS what else needs to be said in this instance. It is extremely clear that the involuntary transfer of women to psychiatric facilities interferes with human rights and Charter protected rights at all levels, including those that are part of international human rights obligations and commitments.

38) *How is medical confidentiality ensured in a prison setting?*

Response: Medical confidentiality cannot be ensured in a prison setting. Indeed, there are many examples where women prisoners have complained about the fact that correctional staff and contracted medical staff may have shared information informally about their medical conditions. In addition, women routinely stress the fact that correctional staff too often refuse to allow them to consult in confidence with physicians and specialists when they exit the prison for special medical treatments in community based settings.

The most recent and undoubtedly cold example of the lack of medical confidentiality in a prison setting is articulated in the *Management Protocol – Women’s Institutions: Consultation Results* distributed February 21, 2003 by the Correctional Service of Canada. In that policy, the Correctional Service of Canada outlines that staff may remain present in situations where women are consulting medical professionals where the Correctional Service staff considers their presence to be necessary for “security” reasons. Such policies clearly violate the human rights and Charter rights of women prisoners.

39) *Is there a need for more health services to be provided by community based groups or individuals, as recommended by the Task Force?*

Response: The obvious rationale for the Task Force on Federally Sentenced Women recommending that health services be provided in the community, was a recognition that this is the most effective and meaningful way of ensuring that women's human and Charter rights are protected, not to mention the preferred manner of providing appropriate medical treatment and other health services for women prisoners.

40) *Should women with cognitive limitations be incarcerated?*

Response: While this issue is the subject of additional work being done by CAEFS and others, CAEFS is clearly of the view that the ability of those with cognitive limitations to adequately form the requisite intent to commit criminal offences is always called into question when we are faced with women prisoners who have cognitive limitations. It is CAEFS' view that the Correctional Service of Canada should immediately implement a decarceration strategy for all women prisoners, but particularly for those with mental and cognitive disabilities.

41) *What are the human rights implications of placing women with a mental illness in a prison versus a secure mental health treatment facility?*

Response: Further to the submissions of the DisAbled Women's Network (DAWN) of Canada, CAEFS is also of the view that women with mental and cognitive disabilities cannot receive adequate treatment in the prison setting. Because the fundamental focus in the prison is the maintenance of a secure custodial setting, mental health needs always take a backseat to security issues within the prison context. As such, it is our view that the provisions of the *Corrections and Conditional Release Act* which permit prisoners to be taken out of prison at any stage of their sentence for health reasons, must be read as requiring that all mental health services be offered in a community setting. Moreover, the fact that the experience of imprisonment frequently results in an exacerbation of mental health issues for women, underscores the need to decriminalize those with mental and cognitive disabilities. Finally, the over-representation of women with mental and cognitive disabilities amongst those women who are classified as maximum security prisoners further underscores the need to extricate women with mental and cognitive disabilities from a prison setting.

42) *Do programs such as dialectical behaviour therapy meet the needs of women offenders?*

Response: While the dialectical behaviour therapy model has been considered an effective out-patient model in other venues, particularly within the United States, it is our view that a number of issues mitigate against the development of successful therapeutic models with adequate human rights and Charter protections within a prison context. As such, CAEFS remains of the view that it is wholly inappropriate to develop a pretext of a therapeutic environment within a prison setting. This does not mean that women prisoners should not have therapeutic environments. In fact, it is CAEFS' view that such environments must be voluntarily accessed in community-based mental health settings, not prison settings.

- 43) *Is there an individualized assessment of the health needs of each woman and a plan developed to meet those needs?*

Response: There is supposed to be an individualized process for addressing the health and mental needs of each woman prisoner. The reality is that the process is rather perfunctory at best. In fact, if no services exist, the plan is necessarily limited accordingly. Again, the model of developing a capacity building approach with the ability to broker and develop services according to the constellation of needs presented by each individual woman poses the most likely means of annihilating the systemic discrimination experienced by women with mental and cognitive health issues.

- 44) *How are the protections, such as those related to use of administrative segregation, enforced for women with mental illnesses or cognitive limitations?*

Response: The ongoing and documented shortcomings of the legislative and administrative protections, most recently by the Correctional Service of Canada's own Task Force on the use of segregation and Madam Justice Louise Arbour's *Commission of Inquiry Into Certain Events at the Prison for Women in Kingston*, clearly articulate the failure of the Correctional Service of Canada to adhere to the existing legal, policy and procedural provisions that are supposed to guide and bind how the CSC administers and applies administrative segregation. Moreover, Madam Justice Arbour recognized that the abuses of administrative segregation experienced by women prisoners in 1994 at the Prison for Women in Kingston, did not represent isolated incidents. As such, she made clear recommendations regarding limitations on the availability and use of administrative segregation by the Correctional Service of Canada. Suffice it to say, these recommendations have not been accepted, much less implemented, by the Correctional Service of Canada.

There is no indication that this situation will change in the future without additional external intervention and the development of accountability mechanisms. Accordingly, the situation is all the more acute for those with mental illnesses and cognitive limitations. There is no doubt that women who have mental and/or cognitive disabilities are also more likely to have more limited ability to understand, much less exercise their rights in terms of the policies and legislation that govern the manner in which they are imprisoned.

- 45) *Are women with Fetal Alcohol Syndrome being diagnosed as such and provided with appropriate care?*

Response: Women who are diagnosed/labeled as having Fetal Alcohol Syndrome (FAS), Fetal Alcohol Effect (FAE) and/or Alcohol Related Neurological Disorders (ARND), are disproportionately poor, racialized women. Indeed, these labels are most often disproportionately utilized in countries with high rates of racialized indigenous populations. This is particularly the case in Canada, the United States, New Zealand and Australia. Conversely, the same is not true in the European Union countries and other countries where there are not high racialized indigenous populations. As such, there is growing recognition that these particular disabilities are also utilized as some of the most invidious forms of misogynous, racist, classist, and ableist social control. This reality notwithstanding, it is

undoubtedly true that individuals with alcohol related neurological disorders, as well as those with other mental disabilities tend to not be well diagnosed, and are therefore generally poorly served by prisons. This is particularly the case for women, and even more especially for Aboriginal women.

There is ample evidence that those with mental health and cognitive disabilities receive inadequate treatment and care within prison settings. Moreover, especially since the inception of the structured living environments, there is a growing belief that treatment options exist in prisons that are not available in communities. The very disturbing result of such beliefs is that increasing numbers of women are not only being sentenced to prison in the hopes that they will receive appropriate care and treatment, but there is disproportionate application of resources to prison settings, rather than an appropriate investment in the capacity of communities to support and address criminalized and non-criminalized peoples with mental and cognitive disabilities.

Even in instances where some individual women may benefit temporarily as a result of the care/treatment available to them in prison settings, there is no evidence that this treatment has long lasting positive impacts on the ability of these women to integrate into the community. Accordingly, it is the contention of CAEFS that the position of the DisAbled Women Network (DAWN) of Canada is the preferable approach; that the Government of Canada, particularly the Correctional Service of Canada, focus its resource allocation in this area to the development of community based care and integration options for women.

46) *Are the unique needs of women, such as self-harming women, being researched and addressed in an appropriate manner?*

Response: It is the view of CAEFS that the Correctional Service of Canada devotes disproportionate amounts of its resources to studying and restudying issues with a rather clear view to justifying preconceived ideas and approaches to addressing issues, rather than to actually developing the appropriate resources that prisoners need in order to address the issues that interfere with their ability to be contributing members of the community. The manner in which the Correctional Service of Canada has dealt with self-harming behaviours is but one example of the flaws with the approach of the Correctional Service of Canada. For instance, the Correctional Service of Canada has documented well the issues pertaining to self-harming behaviour amongst women, and the overwhelming conclusion has repeatedly been that peer support types of programs may offer the best interventions.

Rather than encouraging the enhancement of women directed peer support approaches, the Correctional Service of Canada has attempted to routinize and develop control mechanisms for peer support programs in the women prisons. The result has been that the peer support programs offered throughout the country are now mere shadows of the prototype that was developed with and by women prisoners, with the support of independent community based feminist therapists at the Prison for Women in Kingston.

It is the view of CAEFS that while there are many women who provide excellent leadership and support to their fellow prisoners, very few are in fact afforded the opportunity to provide such support. The control of this and other peer and community based services must be

returned to the control of the community and be directed by the needs and articulated concerns of women prisoners if they are to be at all effective in the long run.

### **3. HIV/AIDS and Hepatitis C**

47) *Are the programs developed by CSC appropriate and effective for women offenders?*

Response: As Dr. Dianne Riley warned the Correctional Service of Canada in the mid 1990's, the results of their drug strategy and so called "war on drugs" were predictable and inevitable. Sadly, her predictions have been borne out many times over. Dr. Riley indicated that she was extremely concerned that the attempts to crack down on the importation and use of drugs within the prison system would result in prisoners deciding to utilize more dangerous legal and illegal substances, based merely on the reality of how easily they would be able to hide it, as well as how quickly the traces of such substances would pass through the human body. As such, the use of marijuana and other softer drugs has largely been abandoned by prisoners in favour of the use of much harder and potentially dangerous/lethal drugs. Inevitably, this has also resulted in the increased use of syringes and the corresponding increase in the incidence of Hepatitis C and other blood-borne diseases such as HIV and AIDS.

48) *Are preventive programs equally available to women offenders?*

Response: Further to earlier discussions regarding the inappropriateness of the use of men as comparator groups, this argument is particularly an issue with respect to women who are diagnosed as having Hepatitis C. The types of services and programs required for women are fundamentally those that address their areas of need and concern. It is well recognized that the use of substances to alter moods and thinking patterns is often developed as a means of coping with other issues such as childhood and adult physical and sexual abuse, poverty, racism, et cetera. As such, any kind of drug strategy that merely focuses upon the symptom, rather than the roots of substance use and abuse, will continue to fail. This is particularly true with respect to any kind of "preventive" programs. In order to be truly effective with respect to limiting the use of legal and illegal substances, the conditions for such use must be addressed fully and must commence with community based interventions.

49) *How can the problem of the prevalence of HIV/AIDS and Hepatitis C in women's prisons be addressed in a way that respects the human rights of inmates and security concerns of staff?*

Response: CAEFS would underscore the importance of full implementation of the Expert Committee on AIDS Prevention (ECAP). The ECAP proposed some very wide ranging and far reaching recommendations for the prevention of and to address the needs of prisoners with HIV, AIDS and Hepatitis C. All such interventions were necessarily premised on a respect for human rights and much time and energy was focused on insuring that the security concerns of staff were addressed. Indeed, a former Commissioner of Corrections who participated in the ECAP process and fully endorsed all of its recommendations, has concluded that the full implementation of that report is the only manner in which the

Correctional Service of Canada may adequately address the issues of HIV, AIDS and Hepatitis C in the prisons.

50) *Do inmates with HIV/AIDS or Hepatitis C have access to the same standard of care given to patients on the outside, including access to pain relief medication?*

Response: It is very clear that they do not, and this picture will be reinforced by the study that the Prisoners AIDS Support and Action Network (PASAN) that will soon be released. In that report, PASAN researchers have chronicled the extent to which women prisoners have not been provided with opportunities to access the types of interventions and supports that they need and desire. Indeed, the Correctional Service of Canada is well recognized as not providing adequate medication and medical intervention in situations where they believe security concerns may outweigh the health concerns, human rights and Charter protections of prisoners. As such, more potent pain relief, if it is perceived to have narcotic and therefore potential value as an item of trade within the prison setting, will not be made available to prisoners who require more extensive and intensive pain relief.

51) *Do women offenders have access to the same standard of drug rehabilitation given to male inmates, for example Intensive Support Units?*

Response: Again, CAEFS would reiterate the concerns that the standard of program delivery not be that which is available or not to male prisoners, but the standard is more appropriately that of the level of services required to meet the needs and concerns of women prisoners. Certainly, some women have indicated a desire for intensive treatment and support units. However, none have indicated a preference for the provision of these within the prison setting as opposed to community based settings. It is the view of CAEFS and other organizations that such intensive units are best provided in community based settings. Accordingly, we would recommend that health resources for such purposes be utilized to develop the requisite resources within the community for prisoners and for individuals released into the community on parole and other forms of conditional release.

### **3.6 Use of Male Guards**

52) *Should Canada be bound by the standard set in the United Nations' Standard Minimum Rules for the Treatment of Prisoners?*

Response: Canada should absolutely be bound by its commitment and adoption of the United Nations' *Standard Minimum Rules for the Treatment of Prisoners*. Discussions with the Correctional Service of Canada during the period when it was determined that male guards would be permitted to work on the front lines in the new regional women's prisons revealed that it was primarily a result of pressures from the guards' union that prompted the Correctional Service of Canada to revisit its original position that male guards should not be placed on the front line in women's prisons.

As the Cross-Gender Monitor confirmed, the concerns with respect to the lack of adequate support and safety mechanisms for women since the adoption of male staff in front line positions caused them to conclude that the decision by the Correctional Service of Canada to

allow men to work on the front line was an erroneous one from the outset. Moreover, it may best be described as a specious argument on the part of the Correctional Service of Canada that it actually expects anyone to accept the rationale that men on the front line in prisons for women is any way a “normalizing” experience for women.

Particularly given the reality of the previous lived experiences of most women prisoners (i.e. histories of physical and/or sexual abuse at the hands of family members as well as other men who have been in positions of authority over them) mitigates against this sort of rationale of any kind of viable or realistic reason for putting men in overt positions of power in prisons where they have absolute control over every facet of the lives of the women prisoners. It is the contention of CAEFS that at a minimum, the recommendations of the Cross-Gender Monitor must be fully implemented with respect to this particular area. There can be no doubt in anybody’s mind that to do otherwise would be to perpetuate and exacerbate current human rights and Charter violations.

53) *Is it discriminatory to exclude men from the position of primary care workers or is there a bona fide requirement to have only women primary care workers?*

Response: Further to the response above, it is clearly a bona fide occupational requirement, not to mention a “reasonable accommodation” of the women prisoners, and/or an appropriate affirmative action approach to require that only women guard women prisoners.

54) *If male front line workers are restricted from patrolling living units at night will the result be that female front line workers are required to work a disproportionate number of night shifts?*

Response: Again, we believe that the answer is obvious. Not only will women guards likely be expected to disproportionately work night shifts, but if male guards are kept in front line positions, yet not expected to fulfill all of the duties of the primary worker, it will clearly be a discriminatory situation for women guards/primary workers as they will be left to perform all of the least desirable duties. It must be recalled that many women who commence work with Correctional Service of Canada in order to work with women prisoners in the new regional prisons for women, did so with the clear expectation that they would be consequently in a position to provide additional supports, counseling and other services for women. Moreover many did not anticipate that they would be required to perform as many security duties as the job description entails to start with, let alone those occasioned by a complement of male staff who are not expected to perform such invasive front line security tasks. These issues are also well documented in the Cross Gender Monitor Report.

55) *Are there effective and timely mechanisms for incarcerated women to report problems of sexual, racial or other types of harassment, abuse or assault?*

Response: As many organizations, including the office of the Correctional Investigator and the Cross-Gender Monitor have repeatedly reported, there are no effective and timely mechanisms for women prisoners to report problems of sexual, racial or any other types of harassment, abuse or assault. Indeed, the very nature of an institutional environment, especially a prison environment, interferes with any impulse that a woman might have to



report crime. Sexual assault therapists and counselors have equated the prison environment to incestuous homes and other residential facilities when attempting to describe the manner in which secrecy enfolds and cloaks abuses that happen within prison settings.

Moreover, as the Cross-Gender Monitor indicated in their reports, it was only after several years of working within the prison context, and after women prisoners and their allies, such as CAEFS, encouraged them to disclose many significant incidents that the Cross-Gender Monitor started to learn of the extent of the sexual harassment, abuse and assault that was occurring in all of the women's prisons. All of this reinforces the reality that external oversight mechanisms are an absolute requirement of any plan to alleviate and address the human rights violations and discriminatory impact of programs, services and policies of the Government of Canada, particularly the Correctional Service of Canada, vis-à-vis federally sentenced women.

56) *Are there safeguards which could be put in place to facilitate the employment of male primary care workers? If such safeguards were adopted, how would their usage be monitored?*

Response: It is clear that despite the recommendation and ostensible placement of safeguards aimed at facilitating the employment of male primary workers, such safeguards have proven to be largely ineffective in preventing abuse, harassment and assault of women prisoners. Moreover, it has also been well recognized that any safeguards that were initially put in place with respect to the recruitment, training and monitoring of male staff, has undergone significant slippage since the opening of the new regional women's prisons. This reality was also a factor that was taken into account by the Cross-Gender Monitor when the recommendation was made to immediately cease the practice of hiring male front line workers in the women's prisons.

57) *What would the consequences be for the Correctional Service if the monitor concluded the safeguards were not being adhered to?*

Response: Here again, the question posed begs the reality that monitoring mechanisms that have been put in place have been proven ineffective. Accordingly, we again underscore the need for external oversight and accountability with respect to the manner in which the Correctional Service of Canada operates services and programs both within prisons and in the community for federally sentenced women.

### **3.7 Redress Procedures and Accountability**

58) *Are inmates aware of their rights in terms of the offender grievance and other processes?*

Response: By and large, most prisoners will become aware of the grievance process available to prisoners within the first weeks or months of their imprisonment. In some prisons, the information is provided in prisoner handbooks. For most women prisoners however, it is a result of information shared by their peers that women prisoners become aware of such services as the grievance process, the office of the Correctional Investigator

and the role of organizations like CAEFS and their member societies. Unfortunately, however, most women prisoners have little faith in the likelihood of achieving success by utilizing the existing grievance and complaint systems within the Correctional Service of Canada. Their experience is that time frames are often not adhered to, complaints and grievances are rarely upheld, and the perspective of staff usually determines the manner in which the grievance/complaint will be “resolved”.

Moreover, many complaints and grievances are given to the staff members against whom the complaint or grievance is made or who made the decision which is being complained about or grieved. Such a process not only appears to be, but is patently unfair and illegal. In situations where women do pursue complaints and grievances, there are far too many instances where women report that they have received overt or subtle indications that they should not proceed with such grievances unless they wish to experience negative consequences as a result. Clearly, this sort of behaviour on the part of correctional staff violates existing Correctional Service of Canada policy and certainly is in contravention of the governing legislation.

The reality is that again, it is the women prisoners’ word against that of staff, when discrepancies about such matters arise. CAEFS has witnessed situations where women prisoners have been “encouraged” to either not file a complaint or, once filed, to withdraw same. If women are classified as minimum or medium security prisoners, the implicit or explicit threat is that if they are not happy within the prison, they may choose to be re-classified as maximum security because their institutional adjustment may be a problem. To be classified as maximum security means that women will be isolated in segregated maximum security units either in men’s prisons or within the regional prisons for women. Conversely, for women who are classified as maximum security the implicit and sometimes explicit threat that they receive is that their institutional adjustment may be perceived as remaining high if they are “complaining” about their conditions of confinement.

Furthermore, too often, when women do utilize the complaint and grievance system, especially if they are classified as maximum security prisoners, they will be described as “difficult to manage” and therefore the explicit and/or implicit threat is that they may not be reviewed and have their security classification reduced, even in circumstances where there is no other reason other than their resistance to abuses of authority for maintaining them at a maximum security level. For as long as the Correctional Service of Canada remains “self policing”, there is no doubt that the issues pertaining to the utilization of the complaint and grievance system will continue.

59) *Do Aboriginal women and racialized women make use of the current redress procedures?*

Response: It is our experience that even more so than non-racialized women, racialized women, especially Aboriginal women, recognize that any attempts to assert themselves are too often described by correctional authorities as indicative of the women’s inability to adjust to the prison environment and/or exemplifies their resistance to the “support and assistance” that the correctional staff are attempting to provide to them. Given the colonial history that is a reality for most Aboriginal women, as well as racialized women, especially Afro-Nova

Scotian women, the ability to access, much less experience justice at the hands of those who are in positions of authority in relations to their lives, is illusory and elusive.

60) *Does the current redress system meet the needs of federally sentenced women in a timely and effective manner?*

Response: As was already alluded to above, the complaint and grievance system does not tend to be handled in a timely nor effective manner. Indeed, it is rare for women to feel that their complaints have been handled in a timely and effective manner. Such events are frequently well documented and considered very worthy of note because of their rarity.

61) *Is mediation a useful tool for federally sentenced women?*

Response: In a context where the power is unequivocally and irrevocably unbalanced, it is the view of CAEFS that the use of mediation is never appropriate. From time to time, women prisoners will request assistance in mediating disputes amongst themselves (i.e. between prisoner peers). However, given the reality that correctional staff will always have authority over the lives and lived experiences of women prisoners, mediation should not be accepted as a viable means of addressing power imbalances or other issues that arise within the prison context. Critical research that has been conducted with respect to the use of mediation in family matters, particularly in instances involving violence against women, should be examined for further documentation of the devastating impact of using approaches that presume egalitarian and equal positions for all parties in circumstances where one party has significantly greater authority, resources and power over the other.

62) *How are the needs of federally sentenced women to have problems addressed balanced with the needs of staff for a system which protects their rights?*

Response: Madam Justice Louise Arbour clearly recognized that the Correctional Service of Canada was grasping at straws when they claimed a need to “balance” the rights of prisoners with those of staff, as a rationale for why they violated the human rights and Charter rights of women prisoners in 1994 at the Prison for Women in Kingston. Similarly, Madam Justice Arbour recognized that the Correctional Service of Canada did not respect, much less uphold the rule of law.

It is respectfully submitted that when it comes to human rights and Charter rights of prisoners, there can be no discussion of balancing, eliminating or lessening those rights under any pretext that diminishing prisoners’ rights somehow increases the safety of staff. In fact, the opposite is more likely to be the case, that the more the human rights and Charter protected rights of women prisoners are violated, the more likely it is that the conditions of confinement to which women prisoners are subjected will create situations that interfere with the safety of women prisoners, as well as with the staff within the women’s prisons.

This is exactly the scenario that has unfolded in the segregated maximum security units in men’s prisons, as well as the scenario that unfolded in 1994 at the Prison for Women in Kingston. Moreover, it is exactly what is anticipated in the new segregated maximum security units in the regional prisons for women. The policy framework and management

protocol that have been established for these units are clear indicia of the fact that human rights and Charter violations are not only anticipated, but prescribed by the Correctional Service of Canada policies and protocols that have been developed for those segregated maximum security units. It is extremely discouraging that the Canadian Human Rights Commission felt the need to repeat the question or notion that the Correctional Service of Canada frequently poses as its justification for violating the human and Charter rights of prisoners on a routine basis.

63) *Is the current system effective for lesbian and transgendered women?*

Response: The issues pertaining to all women, especially racialized women, similarly apply to lesbian and transgendered women. Moreover, it is well recognized that the heterosexist and patriarchal culture that permeate prisons interferes directly with the ability of women prisoners to exercise and enjoy their human rights without discrimination on the basis of sexual orientation.

64) *Is there an effective mechanism for identifying and addressing persistent problems which are occurring in more than one institution for federally sentenced women?*

Response: Although CAEFS routinely documents and monitors the circumstances faced by federally sentenced women throughout the country in all of the eleven federal institutions where women are currently imprisoned, there is no systematic, nor systemic model for identifying and addressing persistent problems occurring in one, let alone all of the regional prisons for women. Even the Prisoners' Committees, which in the past could be relied upon to document and articulate the concerns of the women in the prison population, are regularly interfered with by the prison administration such that they are virtually powerless to identify and articulate the needs and concerns of women prisoners. This sort of institutional interference with the self-governance of women prisoners only ensures that women prisoners are less likely to be comfortable raising the issues with which they may be concerned within the particular prisons in which they are located.

65) *Can women with cognitive limitations or mental health problems avail themselves of the redress system?*

Response: Theoretically, all women, regardless of their cognitive limitations or mental health problems, may avail themselves of the redress systems that currently exist on legislative or policy terms. The reality is however, much like the situation that exists for all women particularly those who are marginalized as a result of their racialized circumstances, women with mental and/or cognitive disabilities suffer greater disadvantage and greater limitations in terms of their ability to access any redress mechanisms. Indeed, their disabilities may directly interfere with their knowledge and awareness of such redress systems.

Furthermore, even if they are aware of the redress mechanisms available to them, federally sentenced women are even more likely to be discouraged from utilizing those mechanisms and are also more likely to be coerced into accepting abuses of power and authority on a regular basis. For instance, there are frequent examples of women with mental and/or

cognitive disabilities expressing fear that they cannot say anything about incidents of oppression, repression and abuse for fear that staff will be “mad” with them and they will be punished further if they report any such incidents to anyone, including prisoner peers.

### **External Options**

- 66) *Can all women contact outside services such as the Correctional Investigator or the local Elizabeth Fry Society?*

Response: Access to local Elizabeth Fry staff, as well as investigators from the office of the Correctional Investigator, varies from prison to prison and from prisoner to prisoner. CAEFS (the Executive Directive and regional advocates) visit the regional women’s prisons on a regular basis. The regional advocates visit every month, whereas the Executive Director visits one to three times per year, depending upon the perceived need for such visits. During such visits, the Executive Director of CAEFS generally makes herself available to all women in all parts of the prison, including living areas and segregation. In addition, meetings are organized with the prisoners’ committee, as well as other organized groups who may wish to meet with the Executive Director of CAEFS and/or the regional advocates in order to identify issues of concern to the women in their respective prisons.

Similarly, the investigators from the office of the Correctional Investigator visit each of the prisons on a regular basis and meet with any women who indicate a desire to do so. The difficulty in both incidences, especially with the Correctional Investigator, is that women must have a healthy mistrust of anybody who comes into the prison from outside in order to merely survive the prison experience. In addition to the visits, the office of the Correctional Investigator and Elizabeth Fry Societies accept collect calls and many Elizabeth Fry Societies, as well as the office of the Correctional Investigator have toll-free numbers in order to enable as many women as possible to have access to their services. In addition, Canadian Association of Elizabeth Fry Societies accepts collect calls and emergency numbers are made available for after-hours calls.

- 67) *Is information on the numbers, types of complaints and actions taken available to senior management and the Office of the Correctional Investigator in a timely manner? Is this information available for Aboriginal women and racialized women?*

Response: The office of the Correctional Investigator reports on an annual basis with respect to the numbers and nature of the complaints that they receive from all prisoners, including women prisoners. While these complaints are not broken down by race or disability, the analysis that is contained in the annual reports is indicative of the reality that the issues that are a particular concern to racialized and disabled groups are indeed documented.

- 68) *Does the Office of the Correctional Investigator have the staff and financial resources to effectively protect the rights of federally sentenced women?*

Response: It has been well documented that the office of the Correctional Investigator does not have sufficient staff and financial resources to effectively represent all of the issues with

which they are confronted and made aware on a regular basis by women serving federal terms of imprisonment.

69) *Should the Office of the Correctional Investigator report directly to Parliament?*

Response: CAEFS has repeatedly articulated the view that the office of the Correctional Investigator should report directly to Parliament. In addition, it is the view of CAEFS and many other organizations that the Standing Committee on Justice and Human Rights should regularly expect an accounting from the Correctional Service of Canada with respect to issues raised by the office of the Correctional Investigator.

70) *Is there a need for an independent arms' length body to investigate allegations of sexual misconduct or assault?*

Response: It is the view of CAEFS and many other equality seeking women's organizations that an arms length body to investigate many matters, including allegations of sexual misconduct and assault, must be immediately implemented for federally sentenced women. CAEFS is most interested in models that will ensure that corrections is monitored via judicial oversight.

71) *Should there be recourse to an administrative tribunal? If so, how would a decision be made as to which cases should be referred to it?*

Response: CAEFS remains of the view that the recommendations made by Madam Justice Louise Arbour must be fully implemented. In particular, Madam Justice Arbour recommended that the Correctional Service of Canada be subject to judicial oversight. As was discussed in the workshop on redress mechanisms sponsored by the Canadian Human Rights Commission in November 2002, there is significant agreement that judicial oversight is required of all correctional decisions that involve further restrictions of liberty beyond that which is occasioned by the prison sentence itself. Alternatively, if an administrative tribunal is implemented for allegations of correctional misconduct and abuse of authority with respect to liberty and trust of prisoners, judicial appeal must always be an automatic option for those who desire such a redress mechanism.

The opposition of the Correctional Service of Canada to judicial oversight is reminiscent of the opposition expressed to independent chairpersons prior to their inception. Similarly, the police services across the country expressed the same kind of concerns prior to the inception to the *Canadian Charter of Rights of Freedoms*, as it was the view of police officers that it would be unwieldy for them to be informing people who were detained/arrested of their rights to retain counsel et cetera, while they were in the midst of an arrest.

Twenty one years later, it is clear that the issues and fears expressed by police officers and correctional authorities at the time have been largely unfounded. As Madam Justice Louise Arbour noted in her report on *the Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, "It is unlikely that the Correctional Service of Canada will willingly undertake the implementation of the rule of law within Canadian prisons." Accordingly, it is imperative that the Canadian Human Rights Commission recommend, as did Madam Justice

Louise Arbour, that external oversight mechanisms be immediately implemented and that judicial oversight of decisions that impinge further upon the liberty interests of prisoners be required.

72) *Is there a need for legislative sanctions for correctional interference with the integrity of a sentence?*

Response: The reasoning behind the recommendation by Madam Justice Louise Arbour that legislative sanctions be developed to address correctional interference with the integrity of a sentence were pointed and purposeful. There is no evidence to suggest that the rationale, nor the reason that these protections were recommended by Madam Justice Arbour, has been otherwise addressed by the Correctional Service of Canada. Indeed, every violation of human rights and Charter rights, not to mention breaches of the *Corrections and Conditional Release Act* that were cited by Madam Justice Arbour, have been replicated in the new regional prisons for women, as well as in the segregated maximum security units for women in men's prisons.

Accordingly, it goes without saying that there is a vital and urgent requirement that legislative sanctions be imposed where correctional authorities have interfered with integrity of a sentence. Moreover it is the view of CAEFS that the legislation also needs to be amended in order to ensure that the compensatory relief is legislated in such circumstances so that prisoners whose rights are routinely violated, and for whom the integrity of the sentence to which they were subject has been interfered with, may be adequately and appropriately remedied.

73) *Is there, as has been suggested, a problem with the accountability of the Correctional Service? If there is a problem, how should it be addressed?*

Response: First of all, it is insulting at best that this question has been posed in the manner that it was in the discussion document issued by the Canadian Human Rights Commission. It should by now be beyond question that there have been repeated calls for correctional accountability. These calls for accountability were reinforced, but not commenced, by Madam Justice Louise Arbour in her 1996 report. Indeed, the Office of the Correctional Investigator, the Task Force on Federally Sentenced Women and many previous reports and Commissions of Inquiry, not to mention the investigation conducted by the Correctional Service of Canada itself, have called for increased accountability within corrections and between the Correctional Service of Canada and other external bodies, including the office of the Minister responsible for Correctional Services, the Solicitor General of Canada, the Parliamentary Standing Committee on Justice and Human Rights and cabinet and Parliament itself.

The mere assertion by the Correctional Service of Canada that it is accountable, with no evidence of that being a reality in any respect, despite the existence of Section 77 and Section 80 of the *Corrections and Conditional Release Act*, leaves any external observer to conclude the ability of the Correctional Service of Canada to hold itself and its members accountable, is negligible at best.

It is our respectful submission, that the Canadian Human Rights Commission must immediately act in order to ensure that the strongest recommendations possible are made for the implementation of such accountability mechanisms as those that have been recommended before by the Parliamentary Standing Committee on Justice and Human Rights, Madam Justice Louise Arbour and other external observers, chroniclers, investigators, and commentators on the manner in which the Correctional Service of Canada has and continues to conduct itself.

74) *If the solution includes an administrative tribunal, what remedies should it have the power to provide, e.g. financial compensation, recommending to a court that the offender's imprisonment be modified to reflect the correctional interference with the integrity of a sentence?*

Response: Again, CAEFS wishes to reiterate an administrative tribunal is not the result that is being sought. Indeed, the experience of far too many, including those who have participated in the review of the Canadian Human Rights Act, have concluded that the tribunal process has not been an efficient or effective means of addressing legal wrongdoing. Moreover, although Madam Justice Arbour had the option of making such recommendations when she issued her report in April of 1996, she clearly also chose not to suggest such a process.

It is clearly time that a process that involves actual judicial oversight and review are the only relevant, appropriate and potentially effective mechanisms that should be suggested in order to allow situations of women prisoners and others subject to the authority of the Correctional Service of Canada to seek redress. Given this reality, it is also our view that financial compensation, as well as a mechanism that will permit women prisoners to actually access legal counsel and other advocacy assistance is also imperative. It is our view that a fund, comparable to the Court Challenges Program Fund, established in order to afford those most marginalized in Canadian society and those who are deemed to be in need of the protection articulated in Section 15 of the *Canadian Charter of Rights and Freedoms*, the opportunity to obtain legal representation.

CAEFS is of the view that a similar fund needs to be established for prisoners, such that the Prisoner Challenge fund may be accessed by those who are in prison and who may otherwise not be able to avail themselves of legal representation and assistance in order to ensure that their rights and entitlements are realized. This fund could be set up as a stand alone fund or as a division of the Court Challenges fund, in the same way as the Equality Rights and Language Rights divisions are currently structured.

In addition, it is the view of CAEFS that an external governance body and inspector general position is required to monitor the ongoing conditions of confinement experienced by women prisoners across Canada. The governance body could be set up pursuant to the provisions of Section 77 of the *Corrections and Conditional Release Act*, as could an inspectorate whose responsibility it would be to monitor the conditions of confinement in women's prisons.

The Task Force on Federally Sentenced Women envisioned a model whereby national advisory bodies would exist to govern the manner in which women's prisons were managed



in Canada. It also envisioned the existence of regional advisory bodies to govern the manner in which each individual prison was run. With the exception of one advisory body in the Atlantic region, there are no other similar advisory bodies for the women's prisons throughout the country. Accordingly, we believe it is now time to establish such oversight mechanisms.

### **Concluding Comments**

The foregoing was prepared in response to the discussion paper issued by the CHRC approximately two years after CAEFS launched a human rights complaint on behalf of federally sentenced women. The discussion document misses significant aspects of the systemic discrimination claim. CAEFS urges the CHRC to ensure that it is more comprehensive in the next phase of investigating, synthesizing and analyzing material in relation to this matter.

In order to prepare the special report on the systemic discrimination experienced by federally sentenced women at the hands of the federal government, the CHRC will need to ensure that their review includes a clear and critical review of the existing corrections material. The CHRC must also squarely face the pressing need to ensure that the escalating concerns regarding the ongoing human rights violations of federally sentenced women are externally monitored and that the federal government is held to account in ways that ensure that the human rights of prisoners and former prisoners are honoured and that breaches of their rights are remedied in a manner that is swift, fair and just.