Submission of the Canadian Association of Elizabeth Fry Societies (CAEFS) to the Canadian Human Rights Commission for the Special Report on the Discrimination on the Basis of Sex, Race and Disability Faced by Federally Sentenced Women

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May 2003

Table of Contents

A. Background....3
D. Statistical Overview....9
1.Race....15
a)Context....15
b)Discriminatory Application of Security Classification Levels....20
c)Challenges to Achieving Conditional Release....22
2.Sex....23
a)Sexist Classification System....23
b)Paucity of Minimum Security Beds for Women....26
e)Exchange of Services Agreements....33
3.Disability....35
a)Structured Living Environment....37
b)Regional Psychiatric Centre....39
c)Behaviour Modification Approaches....40
d)Segregation as a Pseudo-Therapeutic Intervention....41
e)Voluntariness....42
1.Implementation of the Recommendations of the Arbour Commission....43
2.Breach of Fiduciary Duty and Compensation Required....45
3.Summary of Recommendations....46
a)Discriminatory Legislation....46
b)Accountability and Oversight....49
d)Remedying the Increased Criminalization of Women....52

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A. Background

On March 8, 2001, International Women's Day, the Canadian Association of Elizabeth Fry Societies (CAEFS), in conjunction with the Native Women's Association of Canada (NWAC), wrote to the Chief Commissioner of the Canadian Human Rights Commission (CHRC) to urge them to conduct a broad-based systemic review and issue a special report, pursuant to section 61 (2) of the *Canadian Human Rights Act*, regarding the treatment of women serving federal terms of imprisonment.

This complaint is made on the grounds that the manner in which the women prisoners are treated is discriminatory, as it contravenes several of the prohibited grounds articulated in s. 3(1) of the *Canadian Human Rights Act.* CAEFS is concerned about the discrimination on the basis of sex that is faced by women throughout the system. In addition, we are very concerned about the discrimination on the basis of race that is the particular experience of Aboriginal and other racialized women, as well as discrimination on the basis of disability that is experienced by federally sentenced women with cognitive and mental disabilities.

The basis of the human rights complaint is the fact that federally sentenced women face discrimination throughout the criminal justice system. This is particularly true of Aboriginal and other racialized women, as well as women with mental and cognitive disabilities. Accordingly, we have rooted our claim in the fact that all federally sentenced women are discriminated against on the basis of their sex, and that women who are racialized and women with disabilities are further marginalized and discriminated against in prison.

This complaint builds upon and supports the complaint of our member society, the Elizabeth Fry Society of Saskatchewan. In addition to the material that is already filed with respect to the aforementioned complaint, and previous reports of your commission on the issues of Aboriginal women prisoners in particular, we referred the Commission to a number of additional government documents that chronicle the nature and extent of the discrimination on the basis of sex, race, disability, as well as sexual orientation, experienced by federally sentenced women in 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.

CAEFS' request was supported by twenty-seven other organizations. The Commission decided to undertake a special report to Parliament with respect to the human rights violations experienced by women in prison and issue recommendations to the government based on its findings of the need to redress the discrimination occasioned by government policies and programs. As part of the process of developing submissions to the Canadian Human Rights Commission, CAEFS consulted with a number of national women's, Aboriginal and justice groups. These groups conducted independent research and a number have indicated that they will also make submissions directly to the Canadian Human Rights Commission.

B. Legal Context for the Imprisonment of Federally Sentenced Women

Women who are sentenced to terms of imprisonment of two years or more serve their sentences in federal prisons by virtue of section 743.1 of the *Criminal Code*. In relatively rare situations, a woman who receives a sentence of less than two years may be transferred from a provincial jail to a federal prison pursuant to section 16 of the *Corrections and Conditional Release Act.*

The *Corrections and Conditions Release Act* (CCRA) and *the Canadian and Conditional Release Regulations* (*Regulations)* is the federal legislation which governs the nature of imprisonment and the release of federally sentenced prisoners. Both common law and the *CCRA* provide that prisoners retain all the rights and privileges that are enjoyed by all members of society except for those which are necessarily removed by the consequences of the sentence of imprisonment. The CCR*A* and *Regulations* both include restrictions on the rights and privileges of prisoners and provide them entitlements and procedural protections.

A great number of procedures and practices implemented by the Correctional Service of Canada (CSC) are not spelled out in either the CCR*A* or the *Regulations* but are authorized by policy promulgated by the Commissioner of Corrections, pursuant to section 97 of the *CCRA*. For example, there is no provision in the *Act* that specifically requires the confinement of women in separate prisons for women, but it is a practice authorized by policy.

Policy also permits the incarceration of women in men's prisons in certain circumstances. The position of the Correctional Service of Canada is that both practices are legal, as neither infringes the enabling legislation. Too often, the power of the Commissioner to make policy and the implementation of that policy is understood as the freedom to take any measures not specifically prohibited by the CCRA and *Regulations*.

However, the legality of policy and the manner in which policy is implemented are not assessed only as against the requirements of the CCRA and *Regulations.* As with all governmental actions, decisions and actions taken by the Correctional Service of Canada must comply with the *Canadian Charter of Rights and Freedoms*, which applies to all members of society, including prisoners. Decisions that result in discriminatory treatment based on specified grounds are also subject to the *Canadian Human Rights Act*.

The problem faced by prisoners as targets of governmental action is that the CSC interprets and applies the CCRA from a perspective which allows it to control and restrict prisoners to the greatest extent possible. It does not adopt an interpretation focused on the legislative and constitutional entitlements of prisoners, and how to restrict them only to the extent that is actually necessary.

For the CSC, the entitlements of prisoners, whether legislative or constitutional, can be ignored or restricted when a security concern is implicated, no matter how important or fundamental the right and how tangential or speculative the security concern. From this perspective actions are not recognized as discriminatory or otherwise illegal where the purpose of the action is security.

Although there are many international instruments that Canada has adopted, ratified or otherwise agreed to be bound by, this submission will not address the nature of Canada's international obligations *per se*. CAEFS does recommend that the Canadian Human Rights Commission review the two bodies of research conducted by a previous Chief Commissioner, Mr. Max Yalden, on behalf of the Correctional Service of Canada. Both reports chronicle the extent to which CSC, and therefore Canada, is in violation of its international obligations when it comes to the manner it administers institutional and community corrections.

C. Historical Context

Notwithstanding their relatively low risk to the community in comparison with men, federally sentenced women as a group are, and have historically been, subject to more disadvantaged treatment and more restrictive conditions of confinement than men.

The history of Canada's treatment of women prisoners has been described as an amalgam of: stereotypical views of women; neglect; outright barbarism and well-meaning paternalism...From the beginning, the welfare of women prisoners was secondary to that of the larger male population.

> Arbour. *Report of the Commission of Inquiry into Certain Events at Prison for Women*, 1996, p. 239.
>
> Initially, women were imprisoned in a separate section of the Kingston Penitentiary. The deplorable prison conditions of women prisoners at Kingston Penitentiary and their abuse by male prison staff led to the recommendation for a separate facility for women prisoners. The primary reason for the construction of the Prison for Women was to protect the women prisoners.

The construction of a separate and somewhat independent prison in the 1930's was believed to present a viable solution to the historical dilemma of what to do with federally sentenced women. However, the new prison continued to treat women prisoners more disadvantageously than their male counterparts. The isolation of a small group of women in a separate facility led

to further marginalization and discrimination and the closure of Prison for Women was advocated as early as 1938, four years after the first women were imprisoned there.

> Arbour. *Report of the Commission of Inquiry into Certain Events at Prison for Women,* 1996, p. 240.
>
> Various government-sponsored reports have consistently found a pattern of disadvantaged treatment of federal women prisoners, based on poorly adapted prison policies and practices designed for a male prison population.
>
> *Archambault Report, 1938*
>
> "The prisoners are all confined in barrier cells with no outside windows. This is a very unnecessary form of construction for an institution for women prisoners." (p. 314)
>
> "This institution has not been inspected since its first year of occupancy. There is no recreation ground within the enclosure, not even a cinder or board walk and no provision for outdoor exercise of any kind" (p. 315)
>
> "There is no school and no teacher for the female prisoners" (p. 315)
>
> "The general conclusion to be drawn from women's relative place in crime is that, as a separate problem, it is comparatively unimportant, and that the custodial care and reformative treatment of women should be delegated to properly constituted and properly managed reformatories, and that no women should need to be confined in penitentiaries. There is no justification for the erection and maintenance of a costly penitentiary for women alone, nor is it desirable that they should be confined either in the same institution as me or in one central institution far from their place of residence and their friends and relations. (p. 148.)
>
> *Report of the Royal Commission on the Status of Women, 1970*
>
> 'Our main concern is that, however small, the female jail population, adequate treatment programmes and services should be organized for women. We recognize the difficulty of planning for a small number of inmates but we thing the correctional authorities should regard the size of the population as an asset rather than a liability. Most planning seems geared to male inmates and adapted for female inmates. We suggest that the smaller female jail population provides an opportunity to implement new methods of corrections." (P. 382)
>
> It is essential that an offender be given the opportunity for education or to learn a trade in order to be successfully rehabilitated and re-integrated into society. Female offenders have the same need as adequate education and training and should be encouraged to get their education, to qualify for training where

necessary, and to training geared to the labour market and not only in traditionally female occupations." (p. 383.)

McGuigan Report, 1977

One area in which women have equality in Canada - without trying - is in the national system of punishment. The nominal equality translates itself into injustice. But lets the injustice fail to be absolute, the equality ends and reverts to outright discrimination when it comes time to provide constructive positives - recreation, programs, basic facilities and space - for women (p. 134). The only federal institution for women is in Kingston and was built almost half a century ago, on the same design as all the maximum penitentiaries constructed for men over the previous 100 years." (P. 134).

The female offenders do not have adequate recreation, adequate programs, or space for an activity centre. There seems to be a remarkable indifference to casual neglect of women's needs by both regional and headquarters." (P. 137)

Remarkably, women have been penalized for their under representation as offenders in the criminal justice systems. Because of their smaller numbers, they have been denied the same program and vocational opportunities as men. Prior to the opening of the new regional prisons beginning in 1996, they were confined in one large multi-level prison, which was operated as maximum security.

> Women also served their sentences in harsher conditions than men because of their smaller numbers. They have suffered greater family dislocation, because there are so few options for the imprisonment of women. They have been over classified, or in any event, they have been detained in a facility that does not correspond to their classification. For the same reasons, they have been offered fewer programs than men, particularly in the case of women detained under protective custody arrangements, of which there are only a handful. They have had no significant vocational training opportunities. Until the opening of the new regional facilities, there were few opportunities for transfer, and very little access to a true minimum security institution.
>
> Arbour. *Report of the Commission of Inquiry Into Certain Events at Prison for Women*, 1996, p. 2000.

The under-representation of women as prisoners has been a justification for the failure to focus on the particular requirements of women prisoners. Correctional policies and practices for applied to women were an adaptation of what was considered appropriate for men, such that women are the correctional afterthought, the last 2-3% considered in terms of national policy.

> Correctional services in both institutional and community settings have been designed by men for men who comprise more than 90% of the correctional population. The development of services for women is usually an afterthought; programs which are available for them are often extensions or hand-me -downs"

> of programs established for males. Correctional Facilities are often mere appendages (either figuratively or literally) of facilities designed for males.
>
> Robert Ross and Elizabeth Fabiano, "Correctional Afterthoughts: Programs for Female Offenders," Solicitor General, 1985, p. 121.
>
> CSC. "Correctional Program Strategy for Federally Sentenced Women", 1994, p. 5.

An important effort on behalf of women to remedy discrimination experienced by them in the correctional system occurred with complaint to the Human Rights Commission in 1982 by Women for Justice, who cited the following examples of disadvantageous treatment of women prisoners as compared to men prisoners: educational programs, vocational programs, social and cultural programs, recreational programs, employment opportunities and pay, security classification, segregation facilities, medical and psychiatric services, geographic location, prison administration and policy development.

Subsequently, the Women's legal Education and Action Fund (LEAF) drafted a Statement of Claim, which was not filed, after negotiations between LEAF and the administration at Prison for Women partially addressed some of the issues in the Claim, as an interim measure pending closure of Prison for Women, and a more comprehensive examination of the future of corrections for women.

In 1990, a Task Force, which included a substantial representation of women prisoners and their advocates, concluded that a new direction was needed in women's corrections, which did not depend on the traditional coercive prison regime. A new model was proposed and accepted by the government. It proposed the closure of the Prison for Women in Kingston and the construction of five regional women's and an Aboriginal healing lodge. One of the rationales for this was the belief that in smaller prisons would foster more independence and responsibility and replace the crude authoritarian model.

Despite the recommendations in the 1990 Task Force, the conditions at Prison for Women, especially for Aboriginal women remained bleak, and culminated in several suicides by Aboriginal women. An inquest was called to inquire into the systemic problems facing Aboriginal women at Prison for Women.

Soon after the Report of the 1990 Task Force, conditions at Prison for Women became increasingly oppressive for maximum security women, who were confined to a single range within the prison for long periods of time. In 1994, an incident occurred at Prison for Women, which sparked a Royal Commission, which inquired into the strip-searching of women prisoners by men, the illegal transfer of women to the Regional Treatment Centre in the Kingston Penitentiary, a maximum security men's prison, and several months of segregation at Prison for Women in illegal and dehumanizing conditions.

The Report of the Arbour Commission found at all levels of the Correctional Service of Canada, generally, a pervasive culture of disrespect for the rule of law, and more particularly that the

needs of federally sentenced women were not being met by current correctional policies and practices. Within a year of the release of the Arbour Commission report, women classified as maximum security prisoners were transferred to men's prisons, where a number remain confined without any meaningful work, with little or no programs and with severe restrictions on their liberty.

Those who do not remain in men's prisons are now imprisoned in segregated maximum security "pods" and units in the regional women's prisons: namely, Nova Institution in Truro, Nova Scotia and in Edmonton Institution for Women in Edmonton, Alberta. Maximum security units are also due to open this year in the Etablissement Joliette and the Grand Valley Institution in Kitchener-Waterloo. The plans for the new women's prison that will open in British Columbia in the next year or so include that it is also slated to have a segregated maximum security unit.

D. Statistical Overview

> Women represent only 3.8% of the federal prison population, which includes 370 women who are imprisoned and 500 who are on conditional release in the community.
>
> CSC. "Regional Women's Facilities Operational Plan," 2002.

The context in which federally sentenced women commit offences resulting in death is important in understanding the risk they pose to society. In many cases, the offences were defensive in the sense that they were a reaction against abusive partners.

> In addition, the context of those offenses involving violence must be highlighted. Shaw's research found that almost all of the victims who were killed by federally sentenced women were known to the women; in 38% of the cases, the victim was a husband, common law partner or a relative, and in 49% of the cases, the victims were close friends or acquaintances. Killing often occurred in the context of long histories of abuse by partners, or itself-defense during arguments or fights. Only 5% (4 victims) were strangers. In contrast, men are less likely to kill immediate family or friends, but twice as likely to kill someone during the commission of another criminal act.
>
> Arbour. *Report of the Commission of Inquiry into Certain Events at Prison for Women*, 1996, p. 2301.

Upon their release from imprisonment, women are less likely than men to be convicted of a subsequent offence, even less so a crime of violence. This suggests that their risk to offend violently against the community is extremely low.

> On the whole, such women pose the least threat on release. The majority has been sentenced for murder or for trafficking or importing drugs. The likelihood that

> the great majority of them would become involved in subsequent violence or offending is remote...Women tend to have lower likelihood of reconviction than men, and if reconvicted, to be charged with less serious offences. In addition, the chances of not being reconvicted on release for both men and women are higher among those convicted of murder, drug offences and manslaughter than for other offences.
>
> Margaret Shaw et al. "Paying the Price: Federally Sentenced Women in Context, "1992, p. 16

Furthermore, federally sentenced women are not a group that has exhibited a sustained history of criminal activity.

> The fact that the majority of women are serving their first federal sentence also support the contention that previous offending histories have not on the whole been serious Overall, 87% of the population had never been federally sentenced before (Table IV) 15% had only a prior non-custodial sentence such as fine, a discharge or probation, just over a third (36%) had served a previous provincial sentence and 13% a federal sentence.
>
> Margaret Shaw et al. "Paying the Price: Federally Sentenced Women in Context, "1992, p. 9.

E. Social Context of Federally Sentenced Women

Prior to there coming into conflict with the law, many federally sentenced women have experienced multiple disadvantages.

> What seems evident is that many of the women face an overlapping series of difficulties in there lives, as disruptive upbringing tends to lead to dropping out of school and the failure to develop job skills, coupled with substance abuse and violence and mistreatment from many sources. This is borne out in examining the interrelationship between background factors in the lives of the women. Having a history of alcohol or drug abuse was related to both a disruptive early family life and a history of physical abuse.
>
> Margaret Shaw et al. "Paying the Price: Federally Sentenced Women in Context," p. 19.
>
> Women often present inter-related problems which need to be addressed (simultaneously or comprehensively) in order to effectively enable them to move forward. Common issues are dependency, low self-esteem, poor educational and vocational achievement, parental death at an early age, foster care, residential placement, living on the streets, prostitution, suicide attempts, self-injury, and substance abuse.

CSC. "Correctional Program Strategy for Federally Sentenced Women," 1994, p. 5

Many of the women have alcohol or drug addictions, which may have been involved in their offending in some way. Drug and alcohol abuse are more likely in women who have experienced child abuse, wife assault and prostitution.

CSC. "Correctional Program Strategy for Federally Sentenced Women," 1994, p. 6.

CSC. *Report of the Task Force on Federally Sentenced Women: Creating Choices*, 1990, p. 52.

Federally sentenced women are likely to be poor, undereducated and lacking vocational skills which would enable them to earn enough to be self-sufficient. Prior to their involvement with the law, 66% had never had steady employment or were unemployed most of the time, or had never worked. Only 38% had usually worked. Most of the work had been low paid and unskilled.

Robert Ross and Elizabeth Fabiano, "Correctional Afterthoughts: Programs for Female Offenders," Solicitor General, 1985, p. 40-42

Correctional Service of Canada, "Correctional Program Strategy for Federally Sentenced Women, "1994, p. 6

Report of the Task Force on Federally Sentenced Women: Creating Choicer, 1990, p. 52, 54.

Fifty-seven percent of the women had a high level of disruption in there early lives, such as the death of parents at an early age, a placement in foster care, constant changes in foster homes, residential placement, parental illness, alcoholism and abuse. For 39% of the population, this disruption was major, extensive and prolonged. Childhood disruption was followed in many cases by running away from home, living on the streets, prostitution and early addiction to alcohol and drugs, as well as further physical and sexual abuse from boyfriends or partners, acquaintances or clients, by suicide attempts and slashing, and in come cases psychiatric intervention.

Margaret Shaw et al. "Paying the Price: Federally Sentenced Women in Context," p. 17-18.

Prior to incarceration, 71% of federally sentenced women had experienced physical abuse and 56% had experienced sexual abuse.

Margaret Shaw et al. "Survey of Federally Sentenced Women," p. 29-30.

CSC. "Correctional Program Strategy for Federally Sentenced Women, 1994, p. 6.

Arbour. *Report of the Commission of Inquiry Into Certain Events at Prison for Women*, 1996, p. 201.

The social context of federally sentenced women is integral to understanding their offending and the correctional policies and practices which might address their disadvantage.

> The process of criminalization for women is indeed intricately connected to women's subordinate position in society where victimization by violence coupled with economic marginality related to race, class and gender all too often blur the boundaries between victims and offenders
>
> ...
>
> To outline the kinds of factors surrounding the offending of the women in this study does not mean that they are just victims of circumstances with no will of their own. Nor does it remove all responsibility for their actions. But it does point to a very real need to think about the way we apportion blame and expect people to pay for offending, and how they should accept that responsibility. It also points to the need to deal with those underlying experiences.
>
> Margaret Shaw et al. "Paying the Price: Federally Sentenced Women in Context, " p. 19

F. Women's Experiences of Imprisonment

One of the main features of imprisonment is the stigmatization and separation of prisoners from the rest of the community. Sixty-five percent of federally sentenced women are mothers and 66% of them had primary responsibility for raising at least some of their children prior to incarceration. Separation from their children and the inability to deal with problems concerning them are major anxieties for women in prison.

CSC. *Report of the Task force on Federally Sentenced Women: Creating Choices*, 1990, p l.

CSC. "Correctional Program Strategy for Federally Sentenced Women," 1994, p. 7

Self-injury is a common response by women to the stress of imprisonment. The majority of women who self-injure identified situations producing feelings of helplessness (47%), powerlessness (42%), or isolation (6%), as being those that make them want to self-injure. In the absence of resolution of feelings evoked by the childhood abuse, situations in later life that approximate the feelings of defencelessness experienced as a child will be difficult emotionally for the individual.

> Jan Heney, "Report on Self-Injurious Behaviour in Kingston Prison for Women, 1990, p.9

The use of violence by prisoners against themselves or against others is often interpreted as an expression of violent pathology of the individual prisoner and results in punishment. However, that approach omits the role of the prison regime in generating violence.

> In her comparative study of a number of women prisoners Mandaraka-Sheppard (19986) found the women saw fights and arguments as caused by such things as boredom, provocation, unreasonable or unfair treatment by staff, denial of rights, favouritism, constant security checks. She also identified severe methods of punishment, lack of incentives to god Behaviour, variation in the quality of staff and inmate relations, a perceived lack of autonomy, and staff age and experience.
>
> Such organizational practices and institutional characteristics overrode the effects of individual characteristics.
>
> Margaret Shaw, "managing Risk and Minimizing Violence," Presentation to Phase 2 of the Commission of Inquiry Into Certain Events at the Prison for Women", 1995, p. 12-3.

Finally, 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. A 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.

G. Current Reality

In Canada, there are currently five federal prisons for women located across the country. They are: Nova Institution in Truro, Nova Scotia; Etablissement Joliette in Joliette, Quebec; Grand Valley Institution in Kitchener-Waterloo region, Ontario; the Okimaw Ohci Healing Lodge on the Nekaneet Reserve near Maple Creek, Saskatchewan; and the Edmonton Institution for Women in Edmonton, Alberta. All federally sentenced women are incarcerated in those prisons, with the exception of those in British Columbia who are at the Burnaby Correctional Centre for Women, a provincial prison, pursuant to an exchange of services agreement pursuant to s.16 of the *CCRA*. There are also a small number of women who are imprisoned in other provincial prisons and provincial psychiatric institutions, also pursuant to exchange of service agreements between federal and provincial governments.

Federally sentenced women classified as maximum security prisoners are confined in ranges in men's medium security prisons at Springhill Institution in Springhill, Nova Scotia, Ste. Anne des

Plaines in Laval, Quebec, and the Regional Psychiatric Centre in Saskatoon, Saskatchewan. These ranges are segregated from the general populations of those prisons. In Ontario, CSC had planned to transfer maximum security women to the Regional Treatment Centre, which is a maximum security prison for men with mental health needs inside the walls of Kingston Penitentiary. The women who were scheduled to be moved in 1997 from the Prison for Women to the Kingston Penitentiary halted this plan as a result of an application to Court. CAEFS intervened in this action as a party to the proceedings.

Prior to the construction of the maximum security units, all five regional prisons for women held only women classified as minimum or medium security prisoners. Burnaby Correctional Centre for Women, which is a maximum security prison, confines women who are classified as minimum, medium or maximum security prisoners.

The conditions of confinement of women prisoners classified as minimum and medium security is virtually the same. With the exception of the allocation of a few so-called "minimum houses", women in either category are not separated from each other, but live together in the same houses, take programs together and engage in recreational activities together.

H. Specific Grounds of Discrimination Alleged Under the CHRA

1. Race

a) Context

In Canada, Aboriginal peoples are over-represented in the criminal justice system. Aboriginal women, in particular, are significantly over-represented both as victims and prisoners -- usually as both.

> Aboriginal women and their children suffer tremendously as victims in contemporary Canadian society. They are victims of racism, of sexism and of unconscionable levels of violence against women. The justice system has done little to protect them from any of these assaults. At the same time, Aboriginal women have a much higher rate of over representation in the prison system than do Aboriginal men.
>
> Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1: *The Justice System and Aboriginal People*, 1991, p. 475
>
> See also: Report of the Royal Commission on Aboriginal Peoples. *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*, 1996, p. 13
>
> Law Reform Commission of Canada. *Aboriginal Peoples and Criminal Justice*, 1991, p. 14.
>
> Statistically, the over-representation of Aboriginal women occurs both in provincial and federal prisons. Over the past 5 years, the percentage of federally sentenced women in prison who are Aboriginal has fluctuated grown from between 20-25%, and CSC statistics indicate that 27% of federally sentenced women are Aboriginal; 17-18% of federally sentenced men are Aboriginal.
>
> .
>
> CSC. "Regional Women's Facilities Operational Plan," 2002.
>
> As of September 1995, Aboriginal women comprised just over 13% of federally sentenced women overall. However, they comprised 19% of the population of federally sentenced women in prison, and only 7% of federally sentenced women in the community. 73% of federally sentenced Aboriginal women were in prison, while only 49% of the non-Aboriginal federally sentenced women were in prison. While there are no federally sentenced Aboriginal women in prison in Newfoundland or in Quebec, 50% of federally sentenced women in prisons in the Prairies and 24% of federally sentenced women in prisons in British Columbia were Aboriginal women.

Report of the Commission of Inquiry Into Certain Events at the Prison For Women in Kingston, 1996, p. 219-220.

Recent inquiries into the reasons for over-representation have concluded that while the issue is complex, two factors may be identified as the most significant; the criminal justice system is discriminatory in its treatment of Aboriginal people and Aboriginal people commit disproportionately more offences because of their marginalized status in Canadian society.

> Why in a society where justice is supposed to be blind, are the inmates of our prisons selected so overwhelmingly from a single ethnic group? Two answers suggest themselves immediately: either Aboriginal people commit a disproportionate number of crimes, or they are victims of a discriminatory justice system. We believe that both answers are correct, but not in the simplistic sense that some people might interpret them. We do not believe, for instance that there is anything about Aboriginal people or there culture that predisposes them to criminal behaviour. Instead, we believe that the causes of Aboriginal criminal behavior are rooted in a long history of discrimination and social inequality that has impoverished Aboriginal people and consigned them to the margins of Manitoba society.
>
> Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1: *The Justice System and Aboriginal People*, 1991, p. 85.
>
> See also: Report of the Royal Commission on Aboriginal Peoples. *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*, 1996, p. 26, 32-33.
>
> Law Reform Commission of Canada. *Aboriginal Peoples and Criminal Justice*, 1991, p. 14.

The marginalization of Aboriginal people is rooted in their historical exclusion from full participation in the dominant society and, more importantly, the interference with and suppression of their own culture.

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

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

The social context in which their crimes are committed is integral to understanding Aboriginal women who are criminalized. Increasingly, societal norms, administrative policies and laws are in conflict with their lives and their attempts to survive are resulting in their enmeshment in the criminal justice system.

> Federally sentenced Aboriginal women have significantly different personal and social histories in a number of ways. The social and economic marginalization of Aboriginal people, particularly status Indians living off reserve, is acute among Aboriginal women. The relationship of this marginalization to the criminal justice system has been well documented. As a group, Aboriginal women come to prison at a younger age than non-Aboriginal women. They generally have lower levels of education and employment. Alcohol and drug abuse is a greater problem for them and is reported to play a greater role in their offending. They also have a greater incidence of past physical and sexual abuse.
>
> Arbour. *Report of the Commission of Inquiry Into Certain Events at the Prison For Women in Kingston,* 1996, p. 220.

Many have experienced disruption of their families and communities through the operation of racist government policies over generations.

> In general, both inside and outside prisons, native women have experienced much greater disruption in their lives than non-native women, facing racism directed against them individually and facing the effects of racism against their communities. From a very early age, many have been adopted into non-native families, placed in non-native foster and group homes and into reformatories where they reacted against their original upheaval. As a result of disruption in their own communities they were much more likely to have experienced physical and sexually abuse, both as children and as adults, than the non-native population (91%) reported physical abuse and 61% sexual abuse.
>
> Margaret Shaw et al. "A Survey of Federally Sentenced Women, " p. 54.

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

> Imprisoned native women are triply disadvantaged: they suffer the pains of incarceration common to all prisoners; in addition, they experience both the pains native prisoners feel as a result of their cultural dislocation, and those which women prisoners experience as a result of being incarcerated far from home and family.

> Daubney Commission. *Taking Responsibility*, 1988, quoted in *Creating Choices*, p. 38

One of the failures of the correctional system is the disrespect for native culture and spirituality, and the failure of the CSC to recognize the centrality of their identities to many Aboriginal prisoners.

> There has been a great deal of public discussion of the differences between conventional and aboriginal approaches to social and psychological health. I think it is important that these differences be recognized and that the legitimacy of Aboriginal practices also are recognized and employed in correctional philosophies and programs.
>
> The holistic, community oriented approach to healing used by Aboriginal people does not fit easily into Western cultures and their penal environments. The reliance on elders, ceremonies (such as sweat lodges and sweet grass ceremonies) and the use of traditional medicines for spiritual guidance has been historically excluded from correctional settings.

Sky Blue Morin. "*Whatever Happened to the Promises of Creating Choices*," 1999.

> Arbour. *Report of the Commission of Inquiry Into Certain Events at the Prison For Women in Kingston,* 1996, p. 220.

Tragic evidence of the desperation of Aboriginal women incarcerated in Prison for Women is the epidemic of suicide during the period from 1989-1991, when 6 Aboriginal women committed suicide.

> Arbour. *Report of the Commission of Inquiry Into Certain Events at the Prison For Women in Kingston,* 1996, p. 220.

The incarceration of Aboriginal women in traditional prisons is culturally inappropriate. In fact, the confinement of Aboriginal women replicates the control and suppression of Aboriginal people by white colonizers from the time of first contact.

> For Aboriginal women, prison is an extension of life on the outside, and because of this, it is impossible for us to heal there. In ways that are different from the world outside, but are nevertheless continuous with it, prisons offer more white authority that is sexist, racist and violent. Prisons are then one more focus for pain and rage we carry. For us, prison rules have the same illegitimacy as the oppressive rules under which we grew up. Those few "helping" services in prison that are intended to heal are delivered in ways that are culturally inappropriate to us as women and as Aboriginal people. Physicians, psychiatrists and psychologists are typically white and male. How can those who symbolize the worst experiences of our past heal us?

> Native Women's Association of Canada. Fran Sugar and Lana Fox. "A Survey of Federally Sentenced Women," 1990, p. 13.

Aboriginal women experience imprisonment as a continuation of the historical imposition of non-Aboriginal systems and institutions on Aboriginal people. Because of their centuries' old oppression by white colonizers, Aboriginal women cannot derive any benefit it is designed to deliver.

> It is racism, past in our memories and present in our surroundings, that negates non-native attempts to reconstruct our lives. Existing programs cannot reach us, cannot surmount the barriers of mistrust that racism has built. It is only Aboriginal people who can design and deliver programs that will address our needs and that we can trust. It is only Aboriginal people who can truly know and understand our experience. It is only Aboriginal people who can instill pride and self-esteem lost through the destructive experiences of racism.
>
> Native Women's Association of Canada. Fran Sugar and Lana Fox. "A Survey of Federally Sentenced Women," 1990, p. 18.

Aboriginal women have identified other Aboriginal people and programs delivered and designed by them as the only source of assistance and help.

> Almost all the healing experiences that Aboriginal women who have been in the prison report in our interview lie outside the conventional prison order. They come through the bonds formed with other women in prison, through the support of people on the outside, and from the activities of the native Sisterhood.
>
> Native Women's Association of Canada. Fran Sugar and Lana Fox. "A Survey of Federally Sentenced Women," 1990, p. 14.

The Task Force on Federally Sentenced Women, which set a new direction for corrections with respect to federally sentenced women, concluded that Aboriginal women should serve their custodial sentences in a culturally appropriate environment. The Okimaw Ohci Healing Lodge was designed to meet that need.

> The voices from those Aboriginal people we did consult with were clear in their message. Just as we cannot tack women onto a male oriented system of corrections, so we cannot tack Aboriginal women on to any system, be it for men or women. Aboriginal prisoners, for example, told the Task Force of their need to be with other Aboriginal women, and to have free and wide access to the teachings and healing of their culture. They also spoke of the importance of keeping in touch with their families and communities.

> CSC. *Task Force Report on Federally Sentenced Women. Creating Choices*, 1990, p. 119.

Following the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, Madam Justice Arbour concluded that access to the Healing Lodge is essential for all Aboriginal women prisoners.

> In keeping with the spirit that animated its creation, I believe that access to the Healing Lodge should be available to all Aboriginal women, regardless of their present classification. If this could not be accomplished by simply reclassifying women under the current classification system, that system should be modified to better meet the needs of all women, using the criteria that are relevant to their circumstances.
>
> Arbour. *Report of the Commission of Inquiry Into Certain Events at the Prison For Women in Kingston,* 1996, p. 224.
>
> See also: Report of the Royal Commission on Aboriginal Peoples. Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada, 1996, p. 144-7.

This key recommendation of the Arbour Commission has not been followed. Rather, almost 50% of Aboriginal federally sentenced women are precluded from accessing the Okimaw Ohci Healing Lodge because of they are classified as maximum security prisoners. Many are now confined in the new maximum security units in the regional women's prisons, while others remain confined in maximum security units in men's prisons.

b) Discriminatory Application of Security Classification Levels

Aboriginal women are disproportionately classified as maximum security prisoners. Despite the evidence of the way the prison environment impacts on Aboriginal women, and the cultural inappropriateness of correctional practices, the security classification system as applied to Aboriginal women results in their being disproportionately classified as maximum security. Approximately 50% of Aboriginal women in prison are classified as maximum security prisoners, while of the non-Aboriginal federally sentenced women population; only 8-10% are classified as maximum security prisoners.

Aboriginal women are disproportionately classified as maximum security for several reasons. First of all, this is occasioned by the reality that the classification system relies on assessment instruments which are culturally inappropriate and which translate marginalization experienced by Aboriginal women in the community into risk.

These risk scales are all individualized instruments. This is a significant and central problem when it comes to applying these instruments to Aboriginal people (male or female). This individualizing of risk absolutely fails to take into account the impact of colonial oppression on

the lives of Aboriginal men and women. Equally, colonial oppression has not only had a devastating impact on individuals, but also concurrently on communities and nations.

> An examination of the risk predication scales utilized by correctional authorities identifies common consideration as being taken into account to predict risk. For example, "the Case Needs identification and Analysis" protocol identifies seven need dimensions, including employment, marital/family, associates, substance abuse, community function, personal/emotion and attitude." Several of these dimensions are particularly problematic for aboriginal "offenders." Too often, the norm is that Aboriginal people do not belong to communities that are functional and healthy, thanks to colonization. Therefore, constructing a "community functioning" category ensures that Aboriginal people will not have access to scoring well in this category. This is not a factor for which individuals can be held solely accountable. Rather than measuring risk, this dimension actually merely affirms that Aboriginal people have been negatively affected by colonialism. The same manner of assessment can be put forward for the dimension "marital/family" and "associates" as the incidence of individuals with criminal records is greater in Aboriginal communities. It has been frequently noted that the issue of substance abuse in Aboriginal communities is merely a symptom of a much larger problem. Therefore, this simple analysis demonstrates that scoring higher on these categories is predetermined for Aboriginal persons because of the very structure of the instruments. What is being measured is not "risk," but rather one's experience as part of an oppressed group.
>
> Patricia Monture-Angus, "Women and Risk: Aboriginal Women, Colonialism and Correctional Practice - Some Preliminary Comments." Workshop on Gender, Diversity and Classification in Federally Sentenced Women's Facilities, 1999.

The social construction of Aboriginal women as more violent further serves to engender an oppressive reaction by the prison system to that perception.

> To be a woman and to be seen as violent is to be especially marked in the eyes of the administration of the prisons where women do time, and in the eyes of the staff who guard them. In a prison with a male population, our crimes would stand out much less. Among women, we do not fit the stereotypes, and we are automatically feared, and labeled as in need of special handling. The label violent begets a self-perpetuation and destructive cycle for Aboriginal women within prisons. In P4W, everything follows from this label. But the prison regime that follows serves to reinforce the violence that it is supposedly designed to manage.
>
> Native Women's Association of Canada. Fran Sugar and Lana Fox, "Survey of Aboriginal Women in the Community, 1990, p. 5

> The greater incidence of previous incarcerations and violence in their offences creates the setting for a higher security classification and risk assessment for federally sentenced aboriginal women. This is heightened by the tensions and misunderstandings between Aboriginal cultures and that of the criminal justice and penal settings.
>
> Arbour. *Report of the Commission of Inquiry Into Certain Events at the Prison for Women in Kingston*, 1996, p. 221.

c) Challenges to Achieving Conditional Release

Aboriginal women are also granted conditional release at a slower rate. Like their male counterparts, Aboriginal women are generally released on conditional release at a later stage in their sentences. In part, this is owing to the higher security levels imposed on them, as the National Parole Board usually requires that prisoners achieve a lower level of security before release.

> In addition to being greatly over-represented in federal institutions, aboriginal offenders also experience special problems in terms of their gradual release, notably:
>
> 1. disproportionate slowness in obtaining various forms of parole;
> 2. higher rates of recidivism and revocation while conditionally released; and
> 3. relative weaknesses of community support systems.
>
> CSC. *Report of the Working Group on Human Rights: Human Rights in Community Corrections*, 1991, p. 32.

In his 1999-2000 Annual Report, the Correctional Investigator reiterated recommendations from previous reports to address the slower release rate of Aboriginal prisoners on conditional release and the failure of the Correctional Service of Canada to redress this disadvantage.

> Second, given the continuing disadvantaged position of aboriginal offenders in terms of timely conditional release, it is imperative that the Service's existing policies and procedures be immediately reviewed to ensure that discriminatory barriers to reintegration are identified and addressed. This review should be independent of the Correctional Service of Canada and be undertaken with the full support an involvement of aboriginal organizations.
>
> Correctional Investigator. 1999-2000 Annual Report, p. 32.

Aboriginal women have few community release options. The reality for many Aboriginal women applying for conditional release is that they cannot return immediately to their home communities. Other solutions must be actively explored which will provide the opportunity for release away from their home communities.

> The problems created by this fundamental tension between cultural experience and correctional programs are felt most on the release from prison. The chances of being able to plan for successful reintegration into the community are minimal in many cases. Many Aboriginal women cannot return immediately to their home communities for a variety of reasons. Due to the nature of the offence, or the complex relationships among the victims and offenders in small, often isolated communities, the communities themselves are often unwilling to accept offenders back after their release from prison.
>
> Arbour. *Report of the Commission of Inquiry Into Certain Events at the Prison for Women in Kingston,* 1996, p. 222.

Very few proposals have been encouraged with Aboriginal communities pursuant to s. 84 of the *CCRA* for the release of Aboriginal women on conditional release. The failure of CSC to actively explore this option in every case for Aboriginal women who might be interested in it means that they will be less likely to have viable release plans that would be favourably considered by the National Parole Board. Overall, they have few other options for release.

> In light of the continuing over-representation of aboriginals in the correctional population and the limited progress in meeting the intent of s. 81 an 84 of the CCRA, we recommend that the Service intensify its consultations with aboriginal representatives in how best this can be achieved and incorporate appropriate initiatives within the National Aboriginal Strategy.
>
> CSC, 1999. *Human Rights in Community Corrections*, p. 52.

2. Sex

a) Sexist Classification System

Section 30 of the *CCRA* requires that every prisoner be assigned a security classification of maximum, medium or minimum. A prisoner's security classification determines the type of prison in which the prisoner is incarcerated. According to their security levels, prisons are operated pursuant to rules that reflect the different degrees of supervision and control imposed on prisoners. Security classification is also implicated in various other decisions, such as the granting of unescorted temporary absences and work releases.

Section 17 of the Regulations sets out the factors that must be considered in assigning a security classification to each prisoner. It focuses such inquiries on the perceived risk posed by the prisoner in three areas: risk of escape, risk to public safety upon escape and the degree of control and supervision required in the penitentiary.

The provisions of the *CCRA* that mandate security classification apply equally to both men and women prisoners. Two issues that arise specifically for women, however, are: should women

be assigned a security classification at all; and, are the current instruments that measure risk valid for women prisoners?

The security classification of men serves a practical purpose because it is used to assign them to an appropriate prison by matching their security classification to the security level of the prison. The same practical application does not exist for woman.

Historically, federally sentenced women were imprisoned in the multi-level Prison for Women (P4W) in Kingston. All prisoners were subject to the same static security although the degree of freedom within the prison varied somewhat depending upon where women lived in the prison (ie. on the ranges in cage-style cells, or in the wings in small bedroom-style cells).

The new regional prisons for women are also multi-level, housing both minimum and medium security prisoners. The conditions of confinement for women classified as minimum and medium security prisoners are virtually the same, with only some minor differences. Both minimum and medium security women live together in the same housing units, attend programs and recreation together and have the same freedom of movement within the prison. Therefore, practically speaking, there is no appreciable difference between the two security levels and thus the need to classify women prisoners is rendered all the more questionable.

The CSC is also in the process of repatriating federally sentenced women classified as maximum security prisoners to the regional prisons. CAEFS and others have critiqued the correctional regimes to which these women will be subjected. Please refer to Appendix I for CAEFS' initial response to this plan.

Section 17 of the Regulations provides that a prisoner's social history must be taken into account in determining the appropriate security classification. Social history is captured in the "Dynamic Factor Analysis" which is an instrument used to assess the prisoners' background of disadvantage. According to CSC policy, "A Dynamic Factor rating is a compilation of professional judgments derived from the identification of immediate needs and the Need Operations Impressions [i.e. degree of severity of need] on each of the seven domains."

Standing Operating Procedure 704-4, Annex 700-04C, p. 3

The staff who complete the "Dynamic Factor Analysis" make a subjective determination as to whether or not each prisoner has "no need for improvement," "some need for improvement," or "considerable need for improvement" with respect to the factors included in the instrument.

According to the "Dynamic Factor Analysis," if a prisoner is assessed as having been the victim of spousal abuse or was unemployed at the time of arrest, she will be identified as having a "need" in those areas. Some of the criteria in the "Dynamic Factor Analysis" measure the nature and degree of disadvantage experienced prior to incarceration. For example, some of the pre-determinative factors to be identified include, "low educational level, poor employment history, a childhood that lacks family ties, physical problems and physical problem that interfere with work."

Some criteria do not measure disadvantage at all. Rather, they reveal biases that attach significance to deviations from middle class norms. Such areas include: whether the person "has no bank account, has no collateral, has no hobbies, does not participate in organized activities, has used social assistance, lacks a skill/ trade or profession, resides in criminogenic area, unattached to any community groups, residence is poorly maintained…". Many of these criteria may arguably not even identify a "need", much less a security risk to the general public.

Some of the criteria call for a subjective assessment of the prisoner's needs in a manner that is difficult to describe as anything but discriminatory on the basis of racism and heterosexism. These include such assertions as: "ethnicity is problematic, religion is problematic, inappropriate sexual preferences, sexual attitudes are problematic".

Some of the measures of disadvantage captured by the "Dynamic Factor Analysis" are incorporated into the risk analysis as a component of the "Custody Rating Scale", where the items "street stability" and "alcohol and drug use" are based on the some of the assessments made in the "Dynamic Factor Analysis". Needs identified by the application of that instrument will result in an elevated score on the "Custody Rating Scale, which in turn could result in a higher security classification, depending on the numerical score achieved.

Furthermore, even those factors on the "Dynamic Factor Analysis" which are not directly incorporated into the scoring of the "Custody Rating Scale" may have an impact on security level, since the successful completion of programs is often a requirement to gain a reduction in security classification. A prisoner who has been assessed as having "considerable need for improvement" in a particular area will be identified as requiring programming to meet that need.

Section 17 of the Regulations does not mandate classification based on needs, but only on risk to escape, risk to the public if an escape occurs and the level of supervision and control required within the prisons. The identification of "social history" as a factor in the risk assessment process in s. 17 of the Regulations invites discriminatory reasoning. Needs are equated with risk even though there is no demonstrated causal link between them.

Women prisoners are particularly disadvantaged by a security classification system which relies on needs which are equated with risk factors, as federally sentenced women have been characterized as being composed of a particularly disadvantaged ("high needs") population.

> CSC, *Community Strategy for Women on Conditional Release: A Discussion Paper,* 1998, p. 4

As evidenced by the number of women whose life experiences and background predetermine that they will experience social disadvantage, federally sentenced 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.

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.

b) Paucity of Minimum Security Beds for Women

According to previous correctional reports and the Annual Reports from the Office of the Correctional Investigator, approximately 40% of federally sentenced women are classified as minimum security prisoners. 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 30 minimum security prisons spread throughout every region of the country. Men who are classified as minimum security prisoners have access to 30 minimum security prisons spread throughout every region of the country. As soon as a man is classified as minimum security, he is placed on a list to be transferred and is transferred as soon as a space becomes available in a minimum security prison. The importance of access to minimum security prisons includes greater access to the community on temporary absences, fewer controls on liberty within the prisons, not to mention the increased likelihood of more favourable consideration for conditional release by the National Parole Board.

Consequently, one of the most egregious examples of the discriminatory treatment of women is that there is only one minimum security prison for women in Canada, with a capacity to house only 13 women. This prison, the Isabel McNeill House in Kingston, is slated for closure in the near future. There are some houses that are designated as minimum security placements within the regional prisons. The beds designated as minimum security within the regional prisons are virtually indistinguishable from the medium security beds however.

In the regional prisons, aside from the new super-maximum security units, there is virtually no difference in the conditions of confinement for women within the prisons based on their security

classification as minimum or medium security prisoners. The regional prisons have replicated and exacerbated one of the worst features of the discriminatory treatment that was central to the treatment of women imprisoned in the Prison for Women in Kingston. In practice, all women in the general population are subject to a higher level of security than that which even the CSC acknowledges they require.

c) Segregated Maximum Security Units for Women

Soon after the first regional prison, Edmonton Institution for Women, was opened, CSC decided that maximum security women would not be housed at the regional prisons. This decision is now said to have resulted from a number of incidents at the prison, but the decision was taken after a media-inspired tempest occurred following the flight of three women form the prison. All three were Aboriginal. All three were classified as maximum security prisoners. All three left through an open door while staff watched them leave. The local police who were summoned by the CSC staff captured all three within 10 blocks of the prison.

The "escape" resulted in an immediate decision to temporarily move all of the women out of the regional prisons and into segregated maximum security units in men's prisons. This plan was implemented in 1996 and was due to last for 18-24 months, just long enough for the regional prisons for women to be re-fortified with security fences, cameras, et cetera. Although one of the units in the men's prisons has now been closed, and we are repeatedly assured by CSC that two of the remaining three will close "soon", both remain open and full to date.

In addition to being refortified in 1996-1997, ostensibly so that the maximum security women could be returned to the prisons, their return has been further delayed by the decision of the CSC to further fortify their prisons for women. Accordingly, they are in the process of opening new segregated maximum security units for women in each of the women's prisons. The rationale for this is rooted in the discriminatory assessment, classification and treatment of federally sentenced women, especially Aboriginal women prisoners and those with mental and/or cognitive disabilities.

The internal CSC investigation into the February 1996 death [up until one year after Denise Fayant was killed, and 10-11 months after all of the federally sentenced women classified as maximum security prisoners were moved out of the Edmonton Institution for Women, the CSC was still referring to her death as a suicide] of Denise Fayant, as well as CAEFS' documentation of concerns in late January and early February 1996, clearly identified a number of factors that contributed to the destabilization of women and staff at the Edmonton prison. These factors commenced with the reality that the prison was opened prematurely, before the construction was completed and before the staff was fully trained. Many believe the prison was opened in late 1995, immediately following some of the most damning testimony of CSC at the Arbour Inquiry, solely to draw the attention of Madam Justice Arbour and the general public away from the situation and circumstances that were being revealed at the Inquiry.

CSC's own reports reveal that the Edmonton prison operated in state of confusion and ineptitude. In the absence of adequate resources and training, the administration implemented

invasive, punitive and illegal body, strip and room searches. In short, the women prisoners paid the price for CSC's mistakes and a punitive and reactive policy now requires that all maximum security women be housed in separate units, either in the newly constructed segregated maximum security units in the women's prisons in Nova and Edmonton, or in the segregated maximum security units in the men's prisons, Springhill, Ste. Anne des Plaines or the Regional Psychiatric Centre in Saskatoon.

> ...[S]eparate maximum security units for women have been set up in male institutions (so-called "co-located units") in all CSC regions and the conditions of confinement and procedural safeguards applicable to these groups raise particular concerns. Both the high concentration of Aboriginal offenders with limited access to appropriate programs and services and the relatively isolated and abnormal conditions of their confinement cannot but have detrimental effects on the women concerned. Alternative accommodation for this small sub-population of offenders should be a priority for the Service in terms of meeting its human rights obligations.
>
> CSC 1997. *Human Rights and Corrections: A Strategic Model*, Chapter 5, part III, p. 2.

The confinement of women in separate units in the women's, and even more so the men's, prisons amounts to segregation. It is impossible to regularly deliver programs or provide meaningful work to small numbers of women living in separate units, especially when sub-groups of the women are not permitted to associate with each other. The Correctional Investigator has consistently challenged this practice.

> The Service in responding on this matter last year, stated that "the conditions of confinement for maximum security women do not meet the legal requirements of segregation i.e., only out of cell for showers and one hour exercise daily." I am not in agreement with the Service's position as to what constitutes segregation, but the issue here is not "legal requirements"; it's the conditions under which these individuals have to live. These units in male penitentiaries unreasonable isolate women and are discriminatory and inappropriately resourced to address the identified needs of those housed there. Further, some of these units, at times, have been occupied by a single female offender. Is this not segregation?
>
> Correctional Investigator. 1999-2000 *Annual Report*, p. 29.

As the Correctional Investigator indicates, the confinement of women in separate units, whether in men's or women's penitentiaries, is segregation. The purpose of administrative segregation is "to keep an inmate from associating with the general inmate population". The general population of the prisons in which the three of the five maximum security units for women are situated is male. All of the women who are classified as maximum security prisoners are kept separate and apart from the general population, regardless of whether they are women or men prisoners. The *CCRA* does not contemplate different degrees of separation from the general population, other than segregation.

Sections 32 through 36 of the *CCRA* and sections 19 to 23 of the Regulations set out a detailed procedural code which must be complied with in order to ensure that a prisoner's continued detention in segregation is justified in accordance with the law. The Supreme Court of Canada has recognized segregation to be a "prison within a prison", which must be justified on its own legal basis. Because CSC takes the view that the women's maximum security units are not segregation, they do not comply with these procedural protections.

In a policy promulgated in February 2001, CSC now requires that all prisoners sentenced to life imprisonment for murder must serve at least the first two years of their sentences classified as maximum security prisoners. This policy applies regardless of the prisoners' risk as assessed in accordance with the criteria in s. 17 of the *Regulations*. This policy is especially onerous for women, who must serve their time in segregated pods within segregated maximum-security units. The Correctional Investigator found this policy to be illegal and that it would have particularly harsh consequences for women.

> In brought our concerns, and those of the various community groups, to the Commissioner on April 9, 2001. Pursuant to s. 177-179 of the CCRA In found that the service's decision to create the policy was:
>
> a. contrary to law
> b. unreasonable
> c. improperly discriminatory to specified offenders groups.
>
> ...
> The current situation of women offenders will produce even more drastic results. More women will be housed in the unacceptable circumstances of maximum security units in men's institutions. In Ontario, where no such units exist, women will be effectively exiled to other regions.
>
> 2001. *Annual Report of the Correctional Investigator*, p. 33, 32

In the Atlantic region, maximum security women are confined both in a segregated maximum security unit at Springhill Institution, which is a medium security prison for men, as well as in two segregated 5ive-bed "pods" within a maximum security unit that is further segregated from the general population of women prisoners at the Nova Institution. Currently, there are 10 women in the Springhill unit, 7 women in the two pods and 3 women in segregation at the Nova Institution.

Women in the segregated maximum security unit at Springhill are confined to a single range which is sub-divided into three sections, the "general" population, the "special needs" section, and segregation. The movement of women prisoners within the prison is severely restricted. For example, the women have access to the gym only a few hours per week and rarely have access to the main prison yard. Any programs are provided to them on the "unit", where there is little opportunity for confidential meetings with anyone, including the psychologist or parole officers. There is no meaningful employment, and little opportunity for meeting with volunteer

groups from outside the prison. All such meetings generally occur in a small common area that is adjacent to and observed by staff who hang about in the darkened and mirror-glass windowed staff security office.

Women in the Secure Living Unit (maximum unit) at Nova are similarly divided into three sections. There are two five-bed "pods", as well as a segregation area. Last week, five women were in the pods; while five were classified as segregated prisoners. By virtue of their lack of access to the general population, not to mention their incredibly restricted conditions of confinement, the law would describe all of the women as living in segregation. This morning, there are five women on one pod, two on the other, and three classified as being in segregation.

There is very limited access to programming and work placements, and virtually no movement off the unit. Until two days ago, with the exception of pre-arranged (usually legal) calls, all telephone calls were restricted and women only had access to pay phones that were located within close proximity of the staff's secure bubble. In addition, most women are only permitted off the unit in restraints and all movement of the women in general population must cease in order for a maximum security prisoner to exit the maximum security unit.

In the Quebec Region, maximum security women are sent to a similarly restricted women's unit at the Regional Reception Centre, a prison for men, which usually houses approximately five women classified as maximum security prisoners. The segregated maximum security unit at Joliette is set up in much the same way as is Nova. It was officially opened April 10, 2003, and was due to admit women four days later, but security system glitches continue to delay that process.

In the Ontario Region, there is no maximum security unit for women in any men's prison. In 1997, the Ontario Supreme Court granted an application for habeas corpus to prevent the transfer of women to a 34-bed unit at the Regional Treatment Centre at Kingston Penitentiary. The case ended when the Commissioner of the Correctional Service of Canada legally undertook not to operate a maximum security unit for women in that prison. Women who are classified as maximum security prisoners in Ontario have been transferred to the maximum security units in men's prisons in the Prairie, Quebec and Atlantic regions. Up until very recently – not uncoincidental to the planned opening of a three-pod segregated maximum security unit at the Grand Valley Institution in Kitchener – very few, if any, women were classified as maximum security prisoners in the Ontario region.

In the Prairie Region, after the Commissioner announced that the segregated maximum security for women at Saskatchewan Penitentiary would close at the end of March 31, 2003, the women who were there were transferred to the new three-pod segregated maximum security unit at the Edmonton Institution for Women, or across the country to the segregated maximum security unit at Springhill. The security measures and lack of access to programs, work placements and telephones in the maximum unit in Edmonton is comparable to that described above for the women at the Nova Institution. As of mid-April 2003, 13 women were spread throughout the three pods and two women were classified as segregated and housed in the segregation wing of the maximum unit.

The CSC does not plan to close the segregated unit for women at the Regional Psychiatric Centre in Saskatoon, an institution that is designated as both a penitentiary and a psychiatric facility. The Regional Psychiatric Centre houses approximately 12 medium and maximum security prisoners on one unit, with a separate isolation area of 3 cells. The women in this prison have access to a specially constructed yard and fenced spiritual grounds (the majority of the women classified as maximum security prisoners in the Prairie region are Aboriginal women). Due to recent construction, women also now have access to new programming space. Group programming at the RPC is offered to many of the women on a daily basis, but off-unit programs remain very limited. There are no vocational programs and only limited maintenance-style work for women imprisoned in all of the segregated maximum security units in the men's and women's prisons.

At present, in the Pacific Region, maximum security women are sent to the Burnaby Correctional
Centre for Women (BCCW), which is a maximum security provincial prison for women, in which, by agreement with the province, all federally sentenced women from that region are incarcerated. As a result of a recent decision of the Government of British Columbia to sever the Exchange of Services Agreement with the federal government, BCCW is scheduled to close March 31, 2004. As a consequence of this, all federally sentenced women in the Pacific Region will return to federal custody and plans are underway to retrofit the Sumas Community Correctional Centre to accommodate federally sentenced women.

Because they are kept separated from the general population in the respective men's or women's prisons, all of the maximum security units for women are extremely restricted forms of confinement, in which women do not have the same kind of freedom of movement within the prison and access to different areas of the prison as does the general prison population of men's maximum security prisons. CSC intends to close the maximum security units for women in men' s prisons and to house all maximum security women in separate units, or "Secure Units" in the regional prisons for women.

As discussed above, each of the regional women's prison, with the exception of the Okimaw Ohci Healing Lodge will have the following number of segregated maximum security cells: Nova - 10 cells in 2 pods, plus 3 segregation cells; Joliette - 10 cells in 2 pods, plus 4 segregation cells; Grand Valley -15 cells in 3 pods, plus 4 segregation cells; and Edmonton - 15 cells in 3 pods, plus 4 segregation cells. Each pod has a secure door between it and the other pod(s) so that it can be managed so that there is no interaction between women in the other pod(s) in the maximum security unit.

CSC. "Operational Plan - Intensive Intervention in a Secure Environment," 2002, p. 30.

These maximum security units in the regional women's prisons are segregation units. The units have their own small prison yards and program space. The plan is that some, although not all women will be able to access the prison gym and other program spaces in the prison, under

direct staff supervision, but only under escort and for specific purposes. For the most part, the women will be confined to their very small pods within the new maximum security units.

CSC. "Operational Plan - Intensive Intervention in a Secure Environment," p. 58.

The plan assigns four different security levels to women in the segregated maximum security units, which in turn affects their access to other areas of the prison. For example, a woman assigned a level 1 designation can leave the secure unit with 2 escorts in handcuffs or body belt and leg irons; a level 2 woman will be handcuffed while moving outside the unit, accompanied by 2 staff; a level 3 woman can leave the unit with 2 staff escorts and no restraints; and a level 4 woman can leave with only 1 escort.

There is no counterpart for this degree of separation and security in a maximum security men's penitentiary. For example, at Millhaven Institution, men in the general population of that maximum security prison do not wear restraints of any kind when moving throughout the institution. Although they are subject to search at various control points, they are not accompanied by staff. Men are not kept in tiny pods of 4-5 people, but live on ranges of approximately 20 men. They usually leave the unit together in a group, unrestrained and unescorted, to different areas in the prison, such as the gym, the yard, the hospital area or work and program areas.

The proposed plan for women, on the other hand, includes two "intervention approaches that will address a large majority of the identified needs of the women". These are "dialectical behaviour therapy" and "psycho-social rehabilitation". These "therapies" are compulsory for women classified as maximum security prisoners who are identified as requiring it. If women do not participate, because "research has shown some women go through phases where they don't want to do any programming", behavioural contracts will be imposed on the women. Failure to abide by the conditions of the behavioural contract will result in a consequence, such as the removal of the woman's television set or radio.

CSC. "Operational Plan - Intensive Intervention in a Security Environment", pp. 49-58.

Neither the *CCRA* nor any other legislation gives CSC the legal authority to impose therapy on prisoners who do not voluntarily consent to participate. Coercion to participate in therapy though the imposition of behavioural contracts does not produce voluntariness although it may result in acquiescence. The imposition of these "intervention approaches" imposes extra controls and conditions, which exceed maximum security circumstances in men's prisons. Furthermore, such policies amount to illegal and unauthorized intrusion into the residual liberty interests and entitlements of maximum security women – all under the guise of treatment. Men in maximum security prisons are not subjected to dialectical behaviour therapy, psychosocial rehabilitation or behavioural contracts.

Section 39 of the *CCRA* specifically provides that a prisoner shall not be disciplined other than in accordance with the express provisions in the *CCRA* and the *Corrections and Conditional Release Regulations*. The *CCRA* and the *Regulations* set out a complete code for the imposition

of any sanction upon prisoners, which includes formal notice, a hearing before an independent body and the imposition of sanctions specified in the *Act* and *Regulations*. Only activities set out in s. 40 of the *CCRA* can result in an institutional charge for which the sanctions specified in s. 44 of the *CCRA* may be imposed. Behavioural contracts or therapeutic "interventions" which impose sanctions or consequences upon prisoners do not comply with the legislation.

d) Community Release Options

Relative to men, women pose a lower risk to the safety of the community upon release and lower rates of recidivism. Women are provided with far fewer opportunities for release especially on day parole, where a requirement for residency in a residential facility or halfway house is often imposed. There are no halfway houses for women in the Atlantic Region and only three in the Prairie Region. Overall, there are far too few spaces in women-only halfway houses across the country. The result is that many women have been released to halfway houses for men, which is inappropriate, not only for personal safety reasons, but also because they are marginalized and forced to adapt to the needs of the larger male population.

> A major obstacle to releasing women into the community in a more timely way is the lack of accommodation options for women in all forms of release, particularly day parole. CSC is required under the CCRA to exercise the least restrictive means possible and this must be considered in accommodation options.
>
> CSC. *Community Strategy for Women on Conditional Release*, 1998, p. 7

The lack of spaces for women in halfway houses and residential facilities also further prejudices women with mental health and/or cognitive disabilities or other special needs, who may require more support upon release to meet the challenges of reintegrating into the community. Conversely, many women do not require the structure of halfway houses and day parole releases to their own homes should be recognized as an appropriate option for them. Release to halfway houses on day parole, which is the norm for men, is not generally required for women because of their lower risk to the community and lower recidivism rates. Options include establishing satellite apartments and day parole to their own homes.

e) Exchange of Services Agreements

The current Exchange of Services Agreement (ESA) between the federal government and the province of British Columbia was executed prior to the coming into force of the *Corrections and Conditional Release Act (CCRA)* and does not reflect the obligations of the Correctional Service of Canada to federally sentenced women. The CCRA provides for several checks and balances in the power of the correctional authorities vis-à-vis their obligations to and entitlements of federally sentenced prisoners.

The ESA concerning federally sentenced women at BCCW has ignored this. As a result, they are seriously disadvantaged with respect to the rest of the federally sentenced prisoners in Canada. The ESA carves out of a discrete category of prisoners who are distinguished by being

women. Men who are federal prisoners in British Columbia receive the same statutory entitlements and protections as do other federally sentenced prisoners. This distinctive treatment of women replicates the situation which prevailed at Prison for Women. A discrete population of women prisoners receives lesser entitlements, ironically because they are so few and represent a more law-abiding population.

The ESA between the federal and B.C. governments disregards the legal entitlements of prisoners in a fundamental provision of the agreement -- the designation of prisoners who are covered by the agreement. The ESA grants authority to British Columbia to decide, together with the federal authorities, which women will be confined at Burnaby, in accordance with arbitrary criteria. This contravenes the *CCRA* (s.28 and s. 29), which gives the authority for placement and transfer to CSC exclusively, to be exercised in accordance with a range of criteria set out in the Act and Regulations.

Penitentiary transfers are matters that affect the liberty interest of prisoners and have often attracted the scrutiny of the courts on that basis. The procedural protections in the *CCRA*, and access to the grievance process are important entitlements, which are not applied to federally sentenced women covered by the ESA in B.C.

The ESA provides that a contract for 50 beds at BCCW for federally sentenced women. It also provides that in circumstances where the fifty allocated spaces available at Burnaby are full, and where there are no additional spaces available there, federally sentenced women may be transferred to other provincial prisons in British Columbia. Conditions of confinement, including access to services and programs, which meet the federal standards set out in the CCRA, cannot be approximated in a typical provincial jail.

Pursuant to the provisions of s. 76 of the *CCRA,* CSC is required to provide a range of programs to federally sentenced women to address their needs and contribute to their successful reintegration. A more stringent obligation exists with respect to meeting the needs of Aboriginal women pursuant to the provisions of s. 80 of the *CCRA*. The same obligations do not appear in the ESA.

The grievance procedure set out in the *CCRA* and the Regulations is not available to federally sentenced women at Burnaby either, nor does the B.C. Corrections Act provide a comparable procedure. This denies federally sentenced women a significant entitlement that Parliament has made available to those who serve lengthy terms of imprisonment. It is especially important that long-term prisoners have a means of redress against wrongful or illegal actions which may be applied to them over an extended period of time.

Segregation from the general prison population is a severe and restricted form of confinement, which the courts have held constitutes a separate and distinct form of confinement that requires its own distinct legal justification. The severity of segregation is recognized by Parliament in the *CCRA*, which provides for segregation review boards to control against its arbitrary imposition. The Arbour Commission found that the arbitrary and illegal use of segregation was so prevalent at the Prison for Women in Kingston that scrutiny by courts is necessary to properly

regulate extended periods of segregation. Federally sentenced women in B.C. are subject to a lesser standard of protections with respect to the use of segregation than are federally sentenced prisoners in penitentiaries across the country because the procedural protections regulating the use of segregation are not available to them under the agreement.

The ESA provides that the federal and provincial governments may agree upon what information can be released by the Director of Burnaby upon request by a federally sentenced woman, and further what information will be subject to the *Privacy Act* and *Access to Information Act*. This derogates from the broader entitlement to information outlined in s. 27 of the *CCRA* and circumvents the federal *Access to Information* and *Privacy Act* by circumscribing the information to which those Acts apply.

Currently, there is no provision in the agreement that refers to the Correctional Investigator, and that Office does not involve itself in matters relating to federally sentenced women in B.C. Section 167(2) of the CCRA excludes from the purview of the Correctional Investigator Investigations into "any problem of an offender related to the offender's confinement in a provincial correctional facility, whether or not the confinement is pursuant to an [ESA]". This recognizes the constitutional limitations of a federal investigative body over provincial authorities.

3. Disability

The *CCRA* establishes a complete statutory framework which includes all aspects of the confinement and release of prisoners serving federal sentences. The overriding principle expressed in paragraph 4(a) of the CCRA is the protection of society. The primacy of this concern reflects the traditional security based model for prison management. Because of the statutory mandate, CSC views virtually all decisions concerning imprisonment through a security prism. Unfortunately, CSC interprets this requirement to mean that security concerns prevail even over constitutional rights, including equality rights.

The discriminatory treatment of women with mental and cognitive disabilities is built right into the legislation. Mental disability is a factor which must be taken into account in determining security classification. Section 17 specifically stipulates that:

> The Services shall take the following factors into consideration in determining the security classification to be assigned to an inmate pursuant to section 30 of the Act;
> ...
> (e) any physical or mental illness or disorder suffered by the inmate.

A security classification scheme which takes into account, disability, whether physical or mental, is *prima facie* discriminatory. It associates security concerns with disability, which relies on the social construction of persons with mental illness or disorder as dangerous. For all prisoners, including those with disabilities, it is their conduct which should be taken into account in determining the level of institutional supervision and control which should be provided and that criteria is already included in s. 17(c) of the *Regulations:*

(c) the inmate's performance and behaviour while under sentence.

The inclusion of disability as factor in classification is consistent with the legislative and institutional imperative to categorize, classify and label. However, it contravenes the equality provisions of the *Charter* which prohibit the application of stereotypical assumptions based on membership in disadvantaged groups.

In its 2002 "Mental Health Strategy for Women Offenders", CSC casts a wide net in identifying women as having "mental health needs" and as requiring mental health services:

> Programs and services must be holistic insofar as they address the social context of women's lives and target those areas which have contributed to their criminal behaviour. Therefore, gender appropriate mental health services must respond to the experiences and related mental health needs of incarcerated women which include:
>
> - a history of relationships characterized by physical, emotional and sexual abuse
> - dependant children for whom the women had primary care taking responsibilities prior to incarceration;
> - low education attainment and limited opportunity for employment in adequately paid jobs; and
> - significant long term substance abuse
>
> CSC 2002. "Mental Health Strategy for Women", p. 13.

By translating social disadvantage into mental health needs, CSC pathologizes a significant portion of federally sentenced women and subjects them to a greater degree of control based on the attribution of mental disability.

The identification by CSC of women as having mental health needs also serves to satisfy a prison management objective. Although there are some women who would be identified as having a mental health disability if they were in the community, the vast majority would not be perceived as requiring nor would they be detained in a psychiatric hospital or group home either voluntarily or involuntarily. Some women might possibly be considered candidates for out patient treatment or some form of assisted living.

This is largely due to the reality that, in the community, there is a tolerance for a broader range of conduct because it is not required to conform to rigid institutional norms. In prison, conformity is mandatory from an institutional management perspective. Those who do not readily conform are not as easy to manage, so the institutional reflex is to render them more manageable by separating them from other prisoners. By pathologizing women and then imposing upon them a therapeutic model, CSC justifies their removal from the general population to a more controlled environment.

While the prevalence of mental disability among federally sentenced women may be higher than in the non-prison population, this does not mean that assumptions should be made about them which operate to their disadvantage, or that they should be a target for "treatment" in a prison environment.

Despite the reality that most women who are classified as maximum security prisoners who have a mental or cognitive disability are described by correctional authorities as not being capable of "managing" in general population, there is no significant statistical difference in the institutional adjustment of women with mental disabilities as compared to women with no mental health disability. A comparison between institutional charges, violent institutional charges, and time spent in segregation by women labeled with a mental disability and those who were not so labeled concluded that there was no significant difference. If this is the case, women with mental health disabilities should not be subject to more institutional controls than others.

> Blanchette**.** "The Relationship Between Criminal history, Mental Disorder and Recidivism Among Federally Sentenced Female Offenders", 1991, pp. 70-74.

In a 1996 study prepared for CSC, Dr. Margo Rivera assessed 26 women identified by CSC as having the greatest mental health care needs. She concluded that, of the entire population of federally sentenced women, only eight required extra supervision, support and treatment which was not available in the general populations of the regional prisons as they were structured at that time.

> Rivera. "Needs Assessment: Mental Health Resources for Federally Sentenced Women in the Regional Facilities", 1996.

CSC has departed dramatically from Dr. Rivera's estimate of the 8 women who could not function in the regional prisons without extra help by reason of mental disability. It has adopted strategies to deal with the women it identifies as having mental disorders in increasingly restrictive ways. Women who remain in the regional prisons are most often assigned to the Structured Living Environment. If they refuse to participate in the program or are removed from the program, they are frequently reclassified as maximum security prisoners and transferred to one of the segregated maximum security units in the men's or women's prisons, including the Regional Psychiatric Centre in Saskatoon.

a) Structured Living Environment

Each of the regional prisons has a living unit set aside as a Structured Living Environment (SLE) for women with mental disabilities who are classified as minimum and medium security prisoners. Although the Structured Living Environments are located in the same area of the prison as the general population living units, they are operated according to a different regime, called the Intensive Healing Program. This 'program', which relies on more supervision and control, is based on Dialectical Behaviour Therapy, an approach which originated in mental health facilities.

A program, which may be considered acceptable in a psychiatric hospital, is not necessarily, nor easily, transferable to a prison, without posing serious inequalities and disadvantage for prisoners who are identified with mental health and/or cognitive disabilities. The imposition of a program on prisoners, which is also used in hospitals outside the prison system, cannot be rationalized on the basis that it conforms to "professionally accepted standards" to which prisoners are entitled pursuant to s. 86 of the *CCRA*. Patients in a psychiatric hospital are there either voluntarily, in which case they freely choose to participate in the program, or they are there involuntarily, in which case they must be released when they no longer meet the statutory criteria for committal. Women in prison are compelled to be there by operation of law and will not be discharged when they no longer meet the committal criteria.

CSC's obligation under the *CCRA* to provide necessary mental health care is an entitlement of the prisoner which must be exercised in a manner which is truly voluntary. It does not create a right in CSC to impose treatment on prisoners, and certainly not on pain of raising their security level.

The concept of providing mental health "treatment" to a captive population is in itself suspect, where the power imbalances in the doctor-patient relationship are compounded by the power imbalances inherent in the jailer-prisoner relationship. This is especially true when the nature of the treatment imposes restrictions that are greater than those experienced by the general prison population. Extra control and supervision can not be supported under the guise of "treatment."

The legislative scheme of the *CCRA* may be characterized as providing a range of entitlements to prisoners within the overall context of the deprivation of their liberty consequent upon being sentenced to a term of imprisonment. The *CCRA* provides that prisoners retain the rights and privileges of all members of society, except those rights and privileges which are necessarily removed or restricted as a result of the sentence (s. 4(e)). CSC is obliged to take all reasonable steps to provide each prisoner with the least restrictive environment that is consistent with the supervision and control she needs and the program availability at that security level (s. 28).

Prisoners are entitled to [but not required to take] programs designed to address their needs, which will contribute to their successful reintegration to the community (s. 76). Prisoners are entitled to essential mental health care and reasonable access to non-essential mental health care that will contribute to their rehabilitation and successful reintegration into the community, and which must conform to professionally accepted standards (s. 85, s. 86). Except where treatment is imposed involuntarily pursuant to provincial mental health legislation, a prisoner has the right to refuse treatment (s. 88).

The confinement of women in the Structured Living Environments is more restrictive than in the general prison population because the units are operated according to a behaviour modification model which depends on consequences and sanctions which exceed those provided for by the normal rules and regulations of the prison. The same "interventions" that will apply in the new maximum security units for women (discussed above) are currently applied in the Structured Living Environments. For additional information regarding CAEFS critique of the SLEs, please refer to Appendix II.

b) Regional Psychiatric Centre

The Regional Psychiatric Centre (RPC) in Saskatoon is a dually designated facility -- it is both a penitentiary under the *Corrections and Conditional Release Act* and a psychiatric hospital under the Saskatchewan *Mental Health Act*. However, all of RTC's staff are employees of the Correctional Service of Canada. RPC's Executive Director is essentially the same as any warden of a penitentiary, is chosen from the ranks of those who are qualified to serve as wardens and has responsibility for the overall management of the prison. There is also a team of therapists, that is generally directed by a head or chief staff psychiatrist, who is primarily responsible for supervising admissions and treatment.

The RPC is intended to operate in compliance with the provisions of the *CCRA*, the *Corrections and Conditional Release Regulations*, as well as the provincial mental health legislation. There are inconsistencies in the two legislative regimes, however, and the interaction of the *Mental Health Act* and *CCRA* at RPC operates consistently to the detriment of the patient/prisoners. On the one hand, patient/prisoners at RPC are denied some of the procedural protections set out in the *CCRA* that apply to prisoners in federal penitentiaries, on the basis that actions are taken for "treatment" rather than "security" reasons. On the other hand, security-based decisions of correctional officers may prevail to the serious detriment of real treatment objectives. It is much more like a prison than a treatment facility.

The status of prisoner/patient invokes an even greater power imbalance than the status of prisoner alone, as well as a significantly greater vulnerability to the abuse of power by guard/nurse/therapists. CSC justifies this reality of much greater intrusions into the residual liberty and integrity of prisoner/patients as requirements of the treatment program and claims authority pursuant to provincial mental health legislation. The social construction of both prisoners and patients with mental health and cognitive disabilities as dangerous makes them very vulnerable to increased security measures.

The change in status from prisoner to patient/prisoner represents a transition from a rights-based model to a therapeutic model. The power imbalance inherent in the status of prisoner has been recognized by Parliament in defining certain rights in the *CCRA* to contest arbitrary, unfair and abusive decisions. The same entitlements do not exist in mental health legislation where the power imbalance in the patient-doctor relationship is obscured by the language of the ethic of care. It is clearly not a rights based model, however.

The extent of this power imbalance combined with the absence of a rights-based model is perhaps best highlighted by an examination of the manner in which staff may engage in the use of force against prisoners. Corrections officers are designated as peace officers. Their right to use force against prisoners is the same as police officers and there is a well-developed body of law which imposes certain legal constraints on the use of force by peace officer. In the federal prison context, these legal constrains are reinforced by statutory limitations. The patient/prisoner who is also subject to the control of mental health professionals does not have

that protection, because at RPC, some of the rights conferred by the *CCRA* are suspended, not by legislation, but by administrative practice.

For example, a former psychiatrist at the Regional Treatment Centre in Ontario, also an institution designated as both a penitentiary and a psychiatric hospital, considers that the appropriateness of the use of force against the patient/prisoner is measured against the individual psychiatrist's conscience:

> By participating in the decision to use force, the clinician accepts personal responsibility that cannot be passed on. In accepting responsibility the clinician recognizes that his or her own conscience must be the deciding factor, and his or her own personal happiness as defined above -- his or her capacity to live with the decision -- assumes an importance that overrides ordinary pragmatism. It is with such perspective that the prison clinician might reconcile very difficult professional and ethical conflicts with the need to maintain some sense of dignity and self-respect.
>
> G.N. Conacher, *Management of the Mentally Disordered Offender in Prison*, 1996, p. 542

The patient/prisoner, as a rights-bearing person, does not exist where the substitution of the personal judgment and ethics of the individual psychiatrist offers no articulable standard against which the legality of the decision to use force can be measured.

c) Behaviour Modification Approaches

The *CCRA* provides that all prisoners are entitled to be in the general population of the prison in which they are incarcerated (s. 73). This means that they are entitled to the same degree of liberty within the prison as other prisoners within that prison. The degree of liberty of the general population of a prison varies, depending in the security level of the prison. The exception to this is administrative or punitive segregation. Punitive segregation may be imposed only after a conviction in institutional court for a disciplinary infraction, and a sentence to serve time in segregation may not exceed 30 days (s. 44 of the *CCRA*).

The fact that segregation is used as a disciplinary tool underscores that it is an especially severe form of imprisonment. Section 31 of the *CCRA* identifies that the purpose of administrative segregation is to keep prisoners from associating with the general prison population. Administrative segregation may only be imposed pursuant to specific statutory criteria set out in s. 31 of the *CCRA*, and in accordance with the procedural requirements in the *Regulations.* There is nothing in the legislation that permits CSC to restrict the freedom of any prisoner within the institution more than the rest of the general population, except in accordance with the strict requirements of the legislation.

At RPC, in the SLEs and in the new segregated maximum security units in the regional prisons for women, CSC has instituted behaviour modification style "level" systems. These sorts of

regimes are often utilized in psychiatric hospitals to control the degree of liberty permitted to those detained therein. In the prisons, this is precisely the rationale for the introduction of the levels for women prisoners in the SLE and maximum security units.

For example, at RPC, on Level 1, a woman will be placed in one of three cells in the isolation unit, where she may be deprived of her personal possessions and restricted to the cell except for showers or exercise in the prison yard for an hour a day. She may be handcuffed whenever she is out of her cell. Levels 2, 3 and 4 are progressively less restrictive and are described as gradually providing women with more "privileges". The decision to assign a level is made by a treatment team, which includes correctional officers, who are not mental health professionals. The authorization for the imposition of the level system is the Saskatchewan *Mental Health Act,* which implies that decision-making should be based on therapeutic considerations and rest with qualified mental health professionals.

Although there is no similar pretext of a legislative underpinning to authorize such approaches in prisons that are not dually designated as psychiatric institutions, this is the same approach being implemented in the SLEs and in the new segregated maximum security units in the regional prisons for women. Moreover, this is happening despite the reality that many of what CSC refers to as privileges are, in fact, legal entitlements for prisoners in general population.

d) Segregation as a Pseudo-Therapeutic Intervention

All medium and maximum security prisons for men and the women's multi-level prisons have segregation cells. In RPC, the cells are referred to as "seclusion". These cells amount to solitary confinement and may be used lawfully only under specific statutory criteria set out in the *CCRA*. Under the *CCRA*, a prisoner may be segregated only for her own protection or for the protection of others, or during the active investigation of an offence.

When a prisoner is placed in segregation involuntarily, she must be immediately advised of her right to counsel. This underscores the fact that segregation is recognized in law as a separate form of confinement or a "prison within a prison." In addition, pursuant to the *Regulations*, prisoners must be provided with written reasons for the segregation as well as an opportunity to respond to or rebut the decision. Furthermore, a segregation review board hearing must be held within 5 working days of a prisoner's placement in segregation, and every 30 days thereafter.

A prisoner may also be sentenced to segregation after a hearing of a disciplinary charge by an independent chairperson. A punitive sentence of this sort may not exceed 30 days. The *CCRA* recognizes segregation as an extremely onerous form of confinement.

At RPC, prisoners who act out may be placed in seclusion cells in the isolation or segregation area of the women's unit. CSC argues that the segregation provisions of the *CCRA* and the *Regulation*s are not invoked at RPC because seclusion is used for "treatment" rather than "security" reasons. This reality notwithstanding, a prisoner may be required to stay in segregated seclusion indefinitely, at the discretion of the treatment team, with no formal process for review. Prisoner may and consequently do end up being left in seclusion for an indefinite

period of time. This is one of the clearest examples of the manner in which prisoner/patients are disadvantaged when their statutory entitlements are withdrawn by reason of their mental disability.

The procedural protections for segregated prisoners are among the most important in the *CCRA*. In her *Report of the Commission of Inquiry Into Certain Events at Prison for Women in Kingston*, Madam Justice Arbour emphasized the harshness of segregation. Justice Arbour also proposed models of external scrutiny to monitor CSC and ensure compliance with their legislative obligations and procedural requirements. Regardless of the reason for the imposition of seclusion/segregation, the legal rationale for procedural protections under the *CCRA* is the same; namely, to protect against the use of an extremely restrictive form of confinement in an arbitrary and oppressive manner.

e) Voluntariness

CSC continues to perpetrate the myth that all women prisoners who are transferred to RPC must be voluntary patients. In addition to the documentation of several involuntary transfers of women to the segregated [Churchill] unit at RPC, even those women who are ostensibly there as a result of some degree of their own volition face the constant presence of uniformed correctional officers in the unit. There can be no doubt that the participation of correctional officers and nurse/guards on "treatment" teams raises real questions about the voluntary nature of prisoner compliance with treatment. Indeed, this issue underscores the element of coercion which is ever present in a prison setting.

Coercion is absolutely incompatible with voluntariness, especially in the context of a prison regime, which is by definition coercive. Women at RPC and the SLEs alike, are usually advised that if they do not consent to remain and/or participate in treatment, they will be considered more difficult to manage and therefore not suitable for the general population. If they are not already labeled as maximum security prisoners, they will likely be reclassified. They will be described as having elevated their security risk by virtue of their refusal to recognize their "need" for treatment to address their criminogenic "risk factors".

In the end, this will mean that women who do not consent to such treatment regimes will likely see their security classification level elevated to the maximum security designation, so they will be transferred to the closest segregated maximum security unit. Within the maximum security units, women are usually further segregated within those units by reason of mental health disability. This means that they may end up being confined in cells for 24 hours a day, with no personal property of any kind and released only for showers and exercise, for one hour daily, usually in shackles.

The practice of transferring women with mental health disabilities to maximum security units in men's prisons has been severely criticized as discriminatory by many. Notably, the Correctional Investigator has stated that:

> The placement of maximum security women and women with serious mental health problems in male penitentiaries is inappropriate. In indicated last year that

such placement was discriminatory and that regardless of the accommodations made, it was, in fact, a form of segregation. These women are not only removed from association with the general population of the institution they are housed in; they are as well, segregated from the broader general population of female offenders housed at the women's regional facilities. This segregation based on security classification and mental health status places these women, in terms of their conditions of confinement, at a considerable disadvantage to that of male offenders.

1999-2000 Annual Report of the Correctional Investigator, pp. 28-29.

I. Remedial Action Required

In light of the foregoing, and in conjunction with the submissions of Professor Patricia Monture-Angus, as well as those of other equality-seeking groups, CAEFS is seeking a number of specific recommendations from the Canadian Human Rights Commission to remedy the human rights violations evidenced by the detailed documentation of the discrimination faced by federally sentenced women in Canada

1. Implementation of the Recommendations of the Arbour 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 sections 77 and 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. Accordingly, 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 and 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.

Madam Justice Louise Arbour clearly recognized that the Correctional Service of Canada was grasping at straws when they discussed the fact that they needed to "balance" the rights of prisoners with those of staff, as a rationale for why they violated the human rights and Charter

protected 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 to diminish the human and Charter protected rights of prisoners, 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.

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 instances of 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 to monitor compliance with the existing provisions of the CCRA and Regulations and that judicial oversight of decisions that impinge further upon the liberty interests of prisoners be required.

The rationale for 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 Correctional Service of Canada has,

otherwise addressed the rationale, nor the reason that these protections were recommended by Madam Justice Arbour. Indeed, every human right and Charter violation, not to mention breeches 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 perhaps 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.

2. Breach of Fiduciary Duty and Compensation Required

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 the view of CAEFS that a fund, comparable to that established in order to enable 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* were afforded the opportunity to ensure legal representation as a result of the development of a "Court Challenges Program Fund". 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 subset, much as the Language Rights fund is set up as a subset of the Charter Challenges fund.

In addition, it is the view of CAEFS that an external governance body and inspector general type of 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 is 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.

3. Summary of Recommendations

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 and 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.

In summary, the Canadian Association of Elizabeth Fry Societies (CAEFS) urges the Canadian Human Rights Commission to immediately recommend the following remedial actions to address the discriminatory treatment of federally sentenced women in Canada.

a) Discriminatory Legislation

The appropriate response of the Canadian Human Rights Commission to the overwhelming evidence of the discrimination experienced by federally sentenced women is a finding that the existing legislation is discriminatory and should not be applied to women, particularly those provisions relating to security classification. CAEFS urges the Commission to recommend the following amendments to the CCRA to remedy identified human rights violations.

(i) Section 11 of the *CCRA* should be amended to prohibit the incarceration of women in federal penitentiaries for men.

(ii) Given the discriminatory application of s. 30 to federally sentenced women, the *CCRA* should be amended so as to exclude women from the application of s. 30. If any classification scheme is utilized, it must be predicated upon a model of assessing risk that recognizes and addresses the increased risks of laws and policies being in conflict with the lives of women prisoners and focuses on the development/building of women's capacities to participate fully in the community by ensuring that community release resources are brokered/allocated to women in accordance with their individual constellation of needs (ie. Providing requisite resources to address issues such as homelessness, lack of education, child care, et cetera, versus identifying such factors as increasing a woman's risk and consequent need for extra supervision).

(iii) A definition of administrative segregation should be included in the *CCRA*. Administrative segregation should be defined as confinement which restricts the entitlement to associate beyond that which is provided to the general prison population. In addition, the Act should include clear parameters for the use of administrative segregation.

(iv) Sections 33 and 34 of the *CCRA* ought to be amended to provide for either of the two segregation review models proposed by the Arbour Commission.

(v) Section 37 of the *CCRA* should be amended so as to remove the phrase "security requirements" and articulate a positive obligation on CSC to provide sufficient dynamic/staff support and physical structures which enable separated prisoners to exercise most of the entitlements of the general prison population.

(vi) Section 16 of the *CCRA* should be amended to provide that federally sentenced prisoners may only be confined in provincial jails with their consent and on a voluntary basis.

(vii) Sub-section 77(b) of the *CCRA* should be repealed and replaced by a new s. 77(b) that establishes a National Women's Governance Committee, co-chaired by SIS, NWAC and CAEFS, to provide advice to the Service and monitor the provision of correctional services to federally sentenced women in accordance with domestic law and international agreements.

(viii) New provisions, similar to sections 79, 81 and 84 of the *CCRA,* should be enacted to provide opportunities for federally sentenced women to serve their sentences and be released on parole to community organizations and facilities which provide services to women.

(ix) Section 87 of the *CCRA* should be amended to prohibit its application in any manner that might disadvantage prisoners with mental and/or cognitive disabilities.

(x) Sub-section 88(4) of the *CCRA* should be amended so as to restrict the participation of prisoners in demonstration treatment programs to those in which members of the public also participate. Such demonstration treatment programs should also be administered and evaluated by doctors external to the CSC Health Services.

(xi) Sub-section 125(3) of the *CCRA* should be amended so as to delete "social history" from the factors to be considered by the National Parole Board.

(xii) Sub-section 179(3) of the *CCRA* should be amended so as to require that the Commissioner of Corrections and the Chair of the National Parole Board are bound to act on a finding or recommendation by the Correctional Investigator with respect to a breach of the law.

(xiii) The *CCRA* should be amended so as to direct the Correctional Investigator to report directly to Parliament.

(xiv) The *CCRA* should be amended to include a new provision which would entitle prisoners to apply to court for a reduction of a fixed term sentence or, if the sentence is a mandatory minimum one, a declaration that the sentence was illegally or unfairly administered.

CAEFS further urges the Commission to recommend that regulatory and policy provisions pertaining to the regional prisons and federally sentenced women be further amended so as to:

(i) eliminate the use of mace or any other weapons;

(ii) eliminate the use and prohibit the establishment of institutional emergency response teams or police squads;

(iii) eliminate the use of arbitrary strip searching and restraints;

(iv) direct the use of dynamic and human interaction, as opposed to segregation and other forms of "enhanced security"; encourage the provision of immediate access to externally-based therapeutic/personal support in crisis situations, as well as such other approaches as peer support, to assist in diffusing and ultimately resolving situations;

(v) prohibit the use of involuntary transfers;

(vi) mandate the establishment and monitoring of effective accountability and grievance mechanisms for prisoners;

(vii) prohibit the development of Special Handling Unit (SHU) conditions of confinement for women, in name or practice (ie. both, the establishment of a SHU or the continued use of segregated maximum security units in the regional prisons);

(viii) eliminate the CSC policy to classify all prisoners convicted of murder to a minimum of two years as maximum security prisoners;

(ix) direct reform of the internal investigative process by ensuring that investigators are external to the CSC, with at least one member of each board of investigation examining issues involving federally sentenced women being a nominee of governing body; and that such boards have the independence to expand the scope of their investigations, the nature of evidence sought/collected, the publicizing of findings, et cetera);

(x) provide non-violent, women-directed and lesbian positive environments that create healthy atmospheres for prisoners, including lesbian positive staff who understand and support women who are dealing with a multiplicity of issues, including past experiences of violence, separation from children, et cetera;

(xi) mandate the provision of independent external mother-child and prisoner parenting supports at each of the regional prisons and the national Okimaw Ohci Healing Lodge, whereby participation is voluntary and may only be interfered with by relevant child welfare authorities;

(xii) mandate the provision of enhanced personal and professional development opportunities in each of the regional prisons and the national Okimaw Ohci Healing Lodge for prisoners serving prison terms, particularly for those serving prison sentences in excess of five years;

(xiii) mandate the provision of mental health resources in the community for women in each of the regional prisons and the national Okimaw Ohci Healing Lodge to access if they desire/require same, such services to be developed by relevant women-directed community-based mental health authorities;

(xiv) prohibit the employment of men to work in front-line positions in the regional prisons for women;

(xv) prisoners be encouraged in self-actualizing and self-expression, and that institutional resources focus upon and promote opportunities for prisoners to exercise choice and preference, whilst staff simultaneously model and expect pro-social, humane and respectful interpersonal interactions;

(xvi) advance the protection of prisoners' rights and entitlements, such as the access of prisoners to legal counsel;

(xvii) establishment of an independent tribunal to determine matters affecting prisoners.

b) Accountability and Oversight

(i) Judicial Oversight

In addition to implementation of the overall recommendations of the Arbour Inquiry, CAEFS recommends judicial oversight of decisions that impinge further upon the liberty interests of prisoners, and that long term segregation, in particular, be reviewable by the courts. Legislative sanctions must 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.

(ii) Inspector General

The clear lack of external oversight mechanisms must be immediately remedied. An external governance body and inspector general type of position is required to monitor the ongoing conditions of confinement experienced by women prisoners across Canada in order to ensure compliance with the existing provisions of the CCRA and Regulations. Accordingly, CAEFS recommends the creation of an office of Inspector General of Women's Prisons, similar to the Inspector General of Prisons that exists in Great Britain.

CAEFS further recommends that the Commission ensure that such a position be provided with the mandate and requisite resources, including the financial means, to conduct annual audits of institutional adherence to governing legislation and policy within each of the regional prisons for women, such audits to be submitted to the Solicitor General and the Standing Committee on Justice and Human Rights.

(iii) Governance Body

During the Arbour Commission, CAEFS joined both the Office of the Correctional Investigator and the Women's Legal Education and Action Fund (LEAF) in recommending that a commissioner of women's corrections be appointed to govern all matters related to federally sentenced women, including the supervision of the wardens of the new regional prisons and the Kikawinaw of the Healing Lodge, and that such office be independent of the current Correctional Service of Canada, by reporting directly to the Solicitor General. CAEFS further recommended that the individual appointed come from outside the ranks of CSC, and preferably be a woman whose experience encompasses human service administration in areas that could include social services, education and health services, as well as the criminal justice system.

CAEFS further recommended that the head of women's corrections be part of a mandatory governance body to be comprised minimally of individuals representing:

a) federally sentenced women, preferably at least

(i) two who are currently "serving prisoners", possibly elected from the chairs of the Sisterhood groups and Prisoners'

Committees of the new prisons and the Healing Lodge, and

(ii) two who are formerly imprisoned federally sentenced women, these individuals could be representatives of self-organized former prisoners, such as Strength in Sisterhood (SIS) thereby being selected by former and/or serving prisoners;

b) the Office of the Correctional Investigator;
c) the Native Women's Association of Canada;
d) the Canadian Association of Elizabeth Fry Societies;
e) the Black, visible minority and immigrant women's community(ies) (likely need more than one representative);
f) the union(s) representing correctional officers/Solicitor General employees.

We urge the Canadian Human Rights Commission to recommend the requisite changes to the role of the Deputy Commissioner for Women, including that she report to the sort of governance body envisioned above.

CAEFS further recommends that the Commission propose that s. 82 similarly apply to the Deputy Commissioner for Women, as well as the regional/institutional heads, and that she have a duty to report on a regular basis and issue a written report annually to the Solicitor General and the Parliamentary Standing Committee on Justice and Human Rights.

Pursuant to the foregoing, CAEFS further urges the Commission to recommends that regional advisory committees, similar in composition to that proposed for the national body, be established for each of the new regional women's prisons, including the Okimaw Ohci Healing Lodge and the new prison for women in the Pacific Region that replaces the Burnaby Correctional Centre for Women.

CAEFS also urges the Commission to recommend that the wardens of the regional prisons for women be held accountable for institutional adherence to the provisions of the *CCRA*, and that rates of conditional release and availability of relevant institutional and community programming to achieve successful community integration, be included as key variables in the evaluative process.

c) Access to Justice Issues

(i) Prisoner Challenges Program

Overall cuts to legal aid resources have only exacerbated the challenges for federally sentenced women who attempt to access resources in order to protect their human rights and/or address violations of human, Charter and CCRA protected rights and entitlements. Accordingly, CAEFS urges the Commission to recommend the establishment of federal government fund designed to

promote the access of women in prison to legal aid services to address issues related to their conditions of imprisonment and conditional release.

Adequate legal aid coverage is required throughout the country and legal clinics should be established specifically for prisoners, preferably staffed by experienced lawyers, as opposed to reliance upon student-staffed clinics alone. CAEFS is of the view that a similar fund to the Court Challenges Fund needs to be established for prisoners, such that the Prisoner Challenge Program funds 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.

(ii) Compensation

Pursuant to the issues raised by Professor Patricia Monture-Angus in her research for CAEFS, the federal government's breach of its fiduciary obligations to federally sentenced women, particularly Aboriginal women and women with disabilities, creates an obvious need for financial compensation. As such CAEFS encourages the CHRC to recommend a mechanism similar to the type established for victim compensation schemes be required in order to enable women prisoners and former prisoners to actually access compensation. Access to legal counsel and other advocacy assistance would also be imperative to a successful compensation strategy.

d) Remedying the Increased Criminalization of Women

Finally, as CAEFS has articulated in many other venue and fora, the current focus on criminalizing and jailing an 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.

(i) Capacity Building and National Standards for Social and Health Services

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

Accordingly, CAEFS encourages the CHRC to recommend that the federal government exercise its spending power in accordance with Canadian human rights and Charter protections by introducing national standards regarding the provision of social programs, as well as health and

educational services. The continued off-loading of responsibility for the marginalized, without the requisite resources to address the growing needs, will only result in increased reliance on our criminal justice system.

CAEFS further encourages the Commission to urge the federal government and particularly the Correctional Service of Canada to develop a risk assessment model that recognizes the increasing risk that legislation, policies and practices pose to the ability of women to successfully live in their communities. Such a model would necessarily focus upon the provision of requisite resources in accordance with the constellation of needs identified by and for women prisoners, such that the risk posed to her successful integration into the community may be effectively eliminated.

(ii) Decarceration Strategies

CAEFS implores the Commission to recommend that the federal government de-institutionalize as many women who are currently in prison as possible, commencing with Aboriginal women and women with mental and cognitive disabilities, and ensuring that all "correctional" resources attached to the incarceration of each woman follow her in to the community for at least the period during which she would have otherwise been in prison, thereby ensuring that the needs of the women, as well as their respective communities are met.

CAEFS further encourages the Commission to recommend that the federal government immediately institute a moratorium on the number of prison beds available for federally sentenced women throughout Canada and limit the utilization of same by capping the number of prison bed days available to each sentencing judge.

CAEFS further recommends that the CHRC recommend that the federal government actively support the provision and use of such non-incarceral criminal sanctions as probation, suspended sentences, attendance centre, educational and vocational programming or training, therapeutic and self-help services, neighbourhood and community service, restitution, compensation, mediation, and the variety of alternative forms of residentially-based treatment and community supervision options -- from halfway or quarter way houses to supported independent living and satellite housing projects.

CAEFS further urges the CHRC to recommend that the federal government repeal all mandatory minimum sentences and limits for parole eligibility.

Finally, CAEFS recommends that the CHRC regularly visit women's prisons and that they also encourage judges and Members of Parliament to exercise their rights of access to federal prisons. CAEFS also urges the Commission to encourage the federal government to promote public access and exposure to prisons, with a view to providing an opportunity for women in prisons to engage in public education to dispel myths with respect to the realities of the role, conditions and impact of prisoners and prisons.