

Position of the Canadian Association of Elizabeth Fry Societies (CAEFS) Regarding the Classification and Carceral Placement of Women Classified as Maximum Security Prisoners

Identification of the Issues

Recently, individuals within the Correctional Service of Canada (CSC) have made a number of proposals concerning incarceration placement options for housing federally sentenced women classified as maximum security prisoners. These options have included, the construction of new maximum security prisons, the incarceration of women in isolated units in men's prisons, and the construction of new maximum security units at the regional women's prisons. CAEFS' remains firmly of the view that all federally sentenced women should be confined in the new women's prisons within their respective regions or at the Okimaw Ohci Healing Lodge, and that new maximum security units should not be constructed in those prisons.

CAEFS' believes that no useful purpose is served by ascribing different security levels to the federally sentenced women population. CAEFS' position in this regard is consistent with the majority of the research literature by concluding that women are over classified when tools designed for men are applied to them (Federally Sentenced Women Program (FSWP), *Literature Review*, CSC, 1994). We do, however, recognize that such a determination is a matter for legislative amendment since s. 30 of the ***Corrections and Conditional Release Act (CCRA)*** currently requires that all federally sentenced prisoners be assigned a minimum, medium or maximum security classification.

CAEFS' also believes that the number of women who are classified as maximum security is far too great. It is our view that this reality exists for the following reasons:

- 1) the current classification system is not appropriate for women and, when applied to federally sentenced women, results in their over classification;
- 2) the classification, as maximum security prisoners, of women who are identified by CSC as having mental health needs, in order to enable CSC to place them in a more controlled environment for treatment, contravenes the equality provisions of the constitution.

1) Current Classification System

For the purpose of this position paper, CAEFS will not address the matter of whether the current classification system meets the statutory requirements of the ***CCRA***, when it is applied to federally sentenced men. We do contend, however, that it has been repeatedly recognized that the current system, which was designed for men, results in significant over classification when applied to federally sentenced women. This is particularly true for Aboriginal women who are disproportionately classified as maximum security. Indeed, 41 % of federally sentenced women who are classified as maximum security women are Aboriginal, whereas Aboriginal women represent only 18.7 % of the total population of federally sentenced women, and less than 2% of the population of Canada.

The determination of a security classification, as required pursuant to the provisions of the ***CCRA***, is based upon an assessment by the CSC of each prisoner's probability of escape, level of risk to the safety of the public if s/he were to escape and the degree of supervision and control required in the penitentiary setting. As s. 17 of the Regulations indicates, those prisoners who pose a greater risk and need more control will be subject to more restrictive conditions of confinement.

Because escapes from prison by women occur so rarely and have consequently not been sufficiently studied, it is not possible to make reliable predictions about a woman's risk to escape. Moreover, because it occurs in such a completely different context, any prior failure to return from a temporary absence pass is not considered to be a good predictor of escape risk. Risk to the safety of the public is also difficult to predict for women because they have a lower overall recidivism rate than do men and a much smaller percentage of the crimes committed by them are violent (FSWP, *Literature Review*, CSC, 1994).

A gender neutral assessment of risk, based on women's offences, does not capture the circumstances in which women participate in violent offences and the fact that their violent offences are most often reactive and situational. Furthermore, women's offences are not contextualized by or correlated with their participation in institutional violence, or behavioural difficulties in prison. (Shaw, M. and Dubois, S. *Understanding Violence by Women: A Review of the Literature*, CSC, 1995).

A prisoner's "social history" is listed among the factors outlined in s. 17 of the Regulations which must be taken into account in determining the appropriate security classification level. These factors are assessed by CSC in accordance with the Needs Identification and Analysis component of the Offender Intake Assessment. In essence, this means that a prisoner's experiential background and degree of disadvantage prior to incarceration is identified, then assessed in a manner that basically identifies such as need factors, and then generally converts them into risk factors.

CSC utilizes risk factors to identify and assess those prisoners who require high security classification. For example, if an individual is assessed as having been the victim of spousal abuse or was considered unemployed at the time of arrest, she will be identified as having a "need" in those areas. The greater the number of identified needs, the higher the resulting security classification. Some examples of the criteria which measure the nature and degree of disadvantage experienced include: low educational level, poor employment history, a childhood that lacked family ties, physical "problems", physical problems which interfere with work.

Some criteria do not measure disadvantage at all. Rather, they expose explicit as well as implicit biases in the form of middle class standards of behaviour. Moreover, they attach significance to deviation from such norms. Examples of some of these criteria are listed as: has no bank account; has no collateral; has no hobbies; does not participate in organized activities; has used social assistance; lacks a skill/trade, profession; resides in a criminogenic area; unattached to any community groups; residence is poorly maintained.

Still other criteria leave open the possibility of an interpretation of need which is racist or homophobic. Examples of criteria that exhibit such discriminatory biases include: ethnicity is problematic; religion is problematic; inappropriate sexual preferences; sexual attitudes are problematic. Overall, many of the criteria require CSC employees to make subjective appraisals of their respective applicability to each prisoner. Consequently, prisoners' individual assessments very much depend upon the judgment of staff.

A 1997 study by CSC research staff ("*Maximum-Security Female and Male Offenders: A Comparison*") compared the characteristics of a group of men prisoners and women prisoners who had been classified as maximum security upon admission into prison. When security classifications were assigned, the same criteria were applied to both men and women. No account was taken of the ways in which the various criteria might impact women and men differently, particularly in terms of how they might affect their degree of risk within the meaning of s. 17 of the Regulations.

Not surprisingly, when the same criteria was applied to both groups, the results of the study indicated that both maximum security populations showed a similar history of disadvantage. Moreover, maximum security women showed more disadvantage and higher needs in such areas as drug abuse, spousal abuse, frequent experiences of victimization in social relations. Does this mean that CSC believes that federally sentenced women classified as maximum security prisoners require more security measures than federally

sentenced men classified as maximum security prisoners? If not, why has the distinction not been articulated?

Another 1997 Research Report prepared by the CSC ("*Risk and Need Among Federally Sentenced Female Offenders: A Comparison of Minimum, Medium and Maximum Security Inmates*") concluded that the "there is a corresponding increase in multiple parameters of risk and need as assessed at admission to federal custody" (p. 22) and " ... need levels increased with increased security designations" (p. 23). Again, this is not surprising given that part of the determination of security classification depends upon the identification of needs (p. 2). This study simply confirms that when the criteria are applied to women prisoners, maximum security women are identified as having a greater history of disadvantage or needs, than do women having lower security classifications.

Setting aside the issue of the integrity of the needs assessment criteria themselves, the only way needs could be relevant in determining security classification is if they are demonstrably related to the considerations set out in the Regulations. Section 17 does not mandate a security classification based on needs, but only on potential to escape, risk to the public if an escape occurs and the level of supervision and control needed in prison. Although CSC has essentially equated needs with risk, there is no demonstrated link between the criteria set out in the Needs Analysis which is used as part of the classification process and the kinds of risk in the Regulations which require increased security measures.

Furthermore, there is a serious constitutional defect with respect to the criteria used in the classification system. Many of the criteria target the disadvantage experienced by women as an avenue to increase her security classification. The result is that the most disadvantaged federally sentenced women prisoners are most likely to be subjected to the most restrictive conditions of confinement. The effect of a maximum security classification goes beyond the physical conditions of confinement and includes the opportunity to participate in meaningful work and vocational programs, work releases, other temporary absence passes, favourable consideration for conditional release by the National Parole Board (NPB).

Restrictions based on disadvantage, without proof that the proposed restrictions are necessary, contravenes the equality provisions of the *Canadian Charter of Rights and Freedoms*. It is CAEFS' view that this, in turn, imposes a duty upon the government not to exacerbate the disadvantage of federally sentenced women so impacted and to ameliorate the discriminatory conditions. In addition to the foregoing general comments, when the criteria are applied to Aboriginal women prisoners there is clearly a significant adverse impact on Aboriginal women, as evidenced by the disproportionate number of Aboriginal women who are classified as maximum security.

Consequently, in addition to the social science literature which suggests that the current classification system is not valid for women, as it is presently designed and applied to women, it infringes the equality provisions of the Charter.

2) Women with Mental Health Needs

Many of the federally sentenced women who are currently classified as maximum security prisoners are women who are identified by CSC as having mental health needs. The practical reality is that mental health needs have been equated with risk. Physical and mental disability are included in s. 17 of the Regulations as factors which must be considered in determining security classification. This does not mean, however, that the presence of a disability should result in an increased security classification.

Mental health concerns that are disabling undoubtedly create very real needs for federally sentenced women and therefore for CSC. But, equating mental health disabilities with risks only serves to perpetuate a social construction of persons with mental disabilities as dangerous. This is precisely the kind of stereotyping which is prohibited by the equality provisions of the Charter. Many of the women identified as having mental health needs do not pose the kind of risks to which s. 17 of the Regulations is directed.

Most certainly, some women with mental health needs might require additional supports to function at a lower security level, by reason of their disability. Section 15 of the Charter has been interpreted by the courts to clarify that equal treatment does not necessarily mean the same treatment. Persons with disabilities, for example, may require that extra measures be implemented to provide them with the same level of service as the non-disabled community. Similarly, if a federally sentenced woman with a mental disability is having difficulty coping at a lower level of security, the response should not be to raise her security level. Rather, the appropriate response would be to provide her with the extra support required as a result of her disability to help her function at that lower security level.

CSC's *Mental Health Strategy for Women Offenders* advocates a structured and controlled environment in which to deliver mental health treatment. While this may be appropriate for some of the women currently classified as maximum security prisoners, it does not address the needs of all.

In a 1996 Report entitled *Giving Us A Chance - Needs Assessment: Mental Health Resources for Federally Sentenced Women in the Regional Facilities*, Dr. Margo Rivera reviewed the mental health needs of 26 women who CSC was concerned could not function adequately in the new regional prisons. She was asked whether the regional prisons had an appropriate level of mental health services to enable the women to cope with the responsibilities entailed in living in a less secure setting.

Dr. Rivera identified only 8 women in the entire population of federally sentenced women across the country who she identified as having mental health needs which required a very structured environment. She further found that none of the new prisons, as they were then being operated, had the capacity to accommodate such an environment. One of Dr. Rivera's recommendations was that a house in each of the regional prisons be dedicated and resourced to meet the needs of women who need a long term intensive healing program. She also suggested that, in the interim, an intensive program should be developed and established outside or separate from the regional prisons. Dr. Rivera recommended that this "healing house" be quickly established for the 8 women whom she had assessed as being in need of more structure.

Rather than implement the foregoing, CSC seems to have extrapolated from Dr. Rivera's Report that women identified as having mental health needs must be dealt with in highly structured and controlled environments which cannot be provided in the new regional prisons. During the October 15-16, 1997 conference on "Mental Health Problems of Women Offenders: Second Annual Queen's Conference on Mental Health Issues in Correctional Services", Dr. Rivera clarified that her report could not be read to justify the confinement of women with mental health concerns in separate units in men's prisons. She also indicated that her findings did not conclude that such women should be excluded from the regional prisons.

Using the need for mental health treatment as a reason to classify women as maximum security imposes harsher treatment on such women. Since this is based on their disability, it is clearly discriminatory and contrary to s. 15(1) of the Charter.

CAEFS' Proposal

If the security classification of federally sentenced women were based on demonstrated behaviour and individual achievements within institutional settings, as opposed to being predictions based upon criteria which has not been shown to have a reliable link to risk, and if women with mental health disabilities are properly supported to help them maintain a lower security level, then the number of women receiving a maximum security classification would be very small.

CAEFS' believes that all federally sentenced women should be incarcerated in the new regional prisons and that all Aboriginal women who choose to commit to the healing focus should have access to the Okimaw Ohci Healing Lodge. This was the plan that was adopted by CSC following the tabling in 1990 of the report of the Task Force on Federally Sentenced Women, *Creating Choices*. The extensive research conducted by and for the Task Force, as well as subsequent research and planning activities conducted by the Federally Sentenced Women Program since then, reinforced the validity of this approach.

Although the *Creating Choices* report has been characterized by CSC as a philosophy statement rather than an operational document, much of the material produced by the Federally Sentenced Women's Program is specifically directed towards implementation of the philosophical approach adopted by the government in 1990. It is also important to emphasize that the reasons offered by the government for abandoning the plan to confine all women in the new regional prisons were the conclusions of Dr. Rivera's Report and incidents which occurred at Edmonton Institution in 1994 (as articulated in a letter from O. Ingstrup (CSC) to K. Pate (CAEFS), dated August 19, 1996).

The fact that Dr. Rivera's Report does not support this approach has been referred to above. Furthermore, the Edmonton incidents were the subject of a national Board of Investigation, the results of which did not suggest that maximum security women cannot be confined in the regional prisons, but rather that there were a number of critical deficiencies in the operation of the Edmonton Institution for Women (EIFW). For instance, the investigative report indicated that the prison opened despite the reality that the construction of the physical plant was not complete, and that there was insufficient staff training, negligible programming, and little to no psychological or therapeutic treatment.

In addition, in her report, Dr. Rivera identified the abrupt withdrawal of psychotropic medication from a number of the women as having contributed to instability of the women in the EIFW prison population. It is CAEFS' view that a Board of Investigation Report which lays the blame on CSC for failing to operate the prison properly should not then have been used to justify the exclusion of maximum security women from all regional prisons and the Okimaw Ohci Healing Lodge. It is also extremely important to note that many of the women involved in the 1996 events at Edmonton were not classified as maximum security prisoners and others were not so classified prior to their arrival at EIFW.

Finally, we must point out that prior to the opening of the regional prisons, in the Ontario and Prairie regions, the CSC was attempting to develop alternative accommodation strategies for federally sentenced women. This was occasioned by an increase in the number of federally sentenced women in those regions which exceeded the capacity of those regional prisons for women. In order to address these accommodation issues, CSC was considering the same sorts of options that they subsequently chose to utilize following the incidents at EIFW, namely, new construction within the regional prisons for women or the placement of women in units in men's prisons.

Minimum Security

Following the incidents which occurred at EIFW in the spring of 1996, and prior to CSC's decision to change policy so as to preclude women classified as maximum security prisoners from being placed in the new regional prisons, the CSC decided to enhance the static security measures in all of the regional prisons and at the Okimaw Ohci Healing Lodge. To this end, security fences were erected, razor wire, new cameras and other security devices were installed. The result is that women classified as minimum and medium security prisoners are now subject to the same perimeter security.

In CAEFS' opinion, this situation creates a significant distinction between the treatment of women and men who are classified as minimum security prisoners. Minimum security men live in prisons without fences. This distinction represents more than a difference in the physical structure, but includes the availability of work releases, temporary absence passes, employment opportunities and other release planning, as well as the likelihood of favourable consideration by the NPB.

Initially, the design of the new regional prisons for women provided minimal static security because research and international experience supported the use of dynamic security approaches. Since women prisoners pose minimal risk to the safety of the public within the meaning of s. 17 of the Regulations and therefore have lower security requirements than men, there should be increased opportunities for progressive experimentation with respect to dynamic security models within women's corrections. Unfortunately, the original design has been reversed. The result is that static security has been increased for

all federally sentenced women. It cannot possibly be argued that minimum security women have higher security needs than minimum security men.

One of the recurring historical criticisms of the Prison for Women in Kingston was that all women were subject to the same high security measures, regardless of their security classification. This situation has now been replicated in the new regional prisons.

CAEFS remains of the view that, at the very least, federally sentenced women classified as minimum security prisoners should live in houses situated outside the fences of the regional prisons as is the case for minimum security men. There is no operational reason why this could not be accomplished at the regional prisons in the same way that the Isabel MacNeil House operates outside the walls of the Prison for Women in Kingston.

Indeed, the entire women's prison population in the state of Minnesota, from minimum to maximum security, mental health and remand prisoners, are all housed in the unfenced Minnesota Correctional Facility - Shakopee. Shakopee was the prison that the Task Force on Federally Sentenced Women and the FSWP utilized as a model for the new regional prisons for women.

Women with Mental Health Needs

Women should not be assigned a security classification which depends upon their identification by CSC as having mental health needs. Rather, any security issues should be assessed in the context of the overall prison environment. Moreover, each woman's demonstrated behaviour should not be assessed in the absence of the kinds of therapeutic support which she may require. It is fundamentally inappropriate and unfair to assess women as high security for mental health reasons in situations where necessary therapeutic services are unavailable and have not been provided.

With additional supports, supervision and structure, many women might be integrated into houses within the regional prisons. And, those women who are identified as having significant mental health needs which would make it difficult for them to integrate in houses with other women, even if additional supports were provided, could live together in an environment of the sort proposed by Dr. Rivera. In the "healing house" she recommended, the staff complement she suggested included the following full time staff: primary workers (number not specified), 1 program/clinical director, 2 full time therapists, an expressive art therapist, an administrative assistant. Dr. Rivera also suggested that the following part time staff also be hired: a therapist to provide culturally appropriate services as required, a part time Aboriginal counsellor, an Elder, a physician and a psychiatrist.

Although the regional women's prison do not currently enjoy this sort of staff complement, CSC was prepared to commit significant resources to staff the two ranges which were planned for the segregated maximum security unit for women in the Regional Treatment Centre (RTC) at Kingston Penitentiary. These units were designed to house the 14 women who remained at the Prison for Women in June of 1997 - 3 of whom were scheduled to be moved to the mental health range and 11 of whom were slated to go to the maximum security side of the unit.

The full time staff positions identified for the Kingston Penitentiary were as follows: 18 correctional officers, 1 correctional supervisor, 1 case management officer, 2 psychologists, 2 program deliverers, 1 unit manager, 1 clerk, 7 nursing staff and 7 behavioural science technicians. The list of scheduled part time staff included a physician, a psychiatrist, an Elder, a Native liaison worker, a recreational officer and an art therapist.

Given the foregoing commitment of personnel, as well as considerable capital investment and operating resources for the unit that was scheduled to open in the RTC at Kingston Penitentiary, CAEFS is of the view that such resources could and should be re-directed to the regional prisons to provide the services

required to allow the prisons to accommodate all classifications of federally sentenced women. The confinement of women identified as having mental health needs at the regional prisons, rather than in separate and/or isolated facilities, is bound to make it more likely that they may be eventually integrated into the general prison population. Further, it increases the likelihood that they will enjoy a much easier, less stressful transition than would be the case if they continue to face the necessity of transferring from one institution to another, as is currently the situation for women in the Prairie and Atlantic regions. Any approaches which ease the transition phases are extremely important considerations for women who are regarded as having significant mental health needs.

Women Classified as Maximum Security Prisoners

CAEFS recognizes that there are some women whose behaviour makes it difficult for them to integrate into the rest of the prison population in a manner which is safe for themselves and for others. This very small number of women who would be assessed as maximum security prisoners if irrelevant criteria were excluded from the classification process should be accommodated in the regional prisons. In order to avoid the application of excessive security to other women within the institutional settings, it is CAEFS' view that it would be appropriate to house the women together in their own house within each of the regional prisons.

Any need for more restrictions, different rules and more structure may be best met by increased dynamic security measures such as enhanced and substantial interaction with properly trained staff. CAEFS is of the view that the rigid separation between the maximum security and lower security population that currently exists and is forecast by CSC to continue interferes with CSC's Mission Statement, Core Values and main strategies. Indeed, experiences to date in the separate maximum security units confirm that women placed in such units are experiencing significant difficulties in accessing the requisite services and programs to enable them to address areas identified as criminogenic factors. Consequently, women are not able to complete correctional plans, much less cascade into the regional prisons and ultimately enjoy successful community integration.

As we are starting to see women being released directly from the maximum security units into the community, concerns mount. It is now quite clear that separate maximum security units are making the eventual integration of women into the community more difficult. In addition, we are witnessing the creation of high tension climates in the isolated maximum security units. Simply put, the current institutional environment is generating conflict.

Dr. Rivera noted in her Report that maximum security women who had been placed in the enhanced unit at Edmonton Institution felt low in status and self respect in relation to the other women living in the "houses". The creation of such separate maximum security units in the prisons may result in some women rising to meet the label of maximum security prisoner by feeling that they have to live up to their image. In addition to the obvious institutional management problems, such isolation will invariably heighten the likelihood that the rest of the FSW population will be unreasonably fearful of the maximum women.

If separation is maintained instead by dynamic rather than static security measures, institutional security could be adapted so as to have less impact on the freedom of movement of the women classified as medium and minimum security. These women might very well otherwise have their movement restricted in order to accommodate movement of the maximum security population within the institution. In addition, the enhanced security and segregation units would be available for use in the case of crises. They might also be used to facilitate the transition process for women who previously have been kept in a high static security environment.

In order to maintain a more structured environment for maximum security women, CAEFS envisions increased complements and consequent availability of staff in the maximum security houses. Additionally, as maximum security women move throughout the prison, they would likely be accompanied by staff, as they moved through the institution either as a group or individually. Examples of such movement and

circumstances might include visits, medical and other appointments, and programs with others at lower security classification levels in the general prison population.

The CSC was quite prepared to commit staff to a number of dynamic security measures to keep the federally sentenced women separated from the male population at the RTC in Kingston Penitentiary. In fact, they planned such resource rich approaches as escorting and bussing the women from the range to the yard, regular visits and Private Family Visits (PFV) in on-site trailers, medical and programming activities. In short, staff were going to escort women to all activity areas and remain with them at all times. In addition, staff in the rest of the prison were going to be required to keep all of the men away from the women, including away from windows so that the women would not be viewed while in the prison exercise yard. The same level of separation would of course not be required in the regional prisons, but an appropriate level of attention by staff could permit the maximum security women to interact safely within the prisons.

Finally, as those responsible for women's correctional services in other jurisdictions internationally have reinforced, an integral part of any plan to house federally sentenced women, particularly maximum security women, is the opportunity for them to participate in meaningful programming. Meaningful employment and educational opportunities, especially vocational training, are some of the most crucial programming components required to enhance the likelihood of successful community integration for all federally sentenced women. And, as experiences in men's minimum prisons, Minnesota's Shakopee facility and Australia's Emu Plains institution confirm, the possibility of gaining marketable skills and work release options provide a powerful motivational force for prisoners to work to reduce their security levels.

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