Submissions of the Canadian Association of Elizabeth Fry Societies: Five Year Review of the Corrections and Conditional Release Act

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I. Background

The Canadian Association of Elizabeth Fry Societies (CAEFS) is a federation of twenty-three autonomous societies. All local societies are community-based groups dedicated to the provision of programs and services with and for women and girls involved in the criminal justice system. In addition to our networking function, CAEFS provides a forum for public participation in and education about the criminal justice system. Our educational activities tend to concentrate on the inequities of women's experiences in and with the justice system.

CAEFS' submissions with respect to the review of the ***Corrections and Conditional Release Act (CCRA***) are based on our experience with women's corrections both prior to and since the enactment of the ***CCRA***. Since November 2, 1992, there have been significant developments in the area of women's corrections which signal the need for a legislative response. For example, most recently, federally sentenced women who have significant mental health issues and those classified as maximum security prisoners have been precluded from the new regional prisons for women and the Okimaw Ohci Healing Lodge. Instead, they are housed in segregated maximum security units in men's prisons.

In addition, there have continued to be serious violations of human and ***Charter*** rights of women prisoners beyond more well known 1994 incidents at the Kingston Prison for Women, which resulted in the Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Indeed, the findings and recommendations of the Arbour Commission, in which CAEFS participated fully, both as a party and witness to the proceedings, inform many of the recommendations made by CAEFS to the Standing Committee. References to the Report of the Commission of Inquiry Into Certain Events at the Prison for Women in Kingston are made throughout these submissions.

Underlying CAEFS' recommendations are two main interests and areas of concern. These are:

1. the implementation of Creating Choices: The Report of the Task Force on Federally Sentenced Women, which was adopted by the Solicitor General in 1990; and

2. the curtailment of those policies and practices of the Correctional Service of Canada (CSC) which are oppressive to federally sentenced women and contrary to the legislative provisions of the ***CCRA***.

II. Summary of CAEFS' Recommendations for Revisions to the *CCRA*

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

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. Sub-section 77(b) of the *CCRA* should be repealed and replaced by a new s. 77(b) that establishes a National Women's Advisory Committee, chaired by 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.

8. 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.

9. Section 87 of the *CCRA* should be amended to prohibit its application in any manner that might disadvantage prisoners with mental disabilities.

10. 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.

11. 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.

12. 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.

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

14. 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.

III. Recommendations for Revisions to the *CCRA*

A. Penitentiary Placement

Recommendation #1: **Section 11 of the *CCRA* should be amended to prohibit the incarceration of women in federal penitentiaries for men.**

The history of women's corrections federally began with the incarceration of women in a wing of the Kingston Penitentiary. They were kept in the men's prison in what were considered to be oppressive and restrictive conditions of confinement. Eventually, the Prison for Women was built across the street from the Kingston Penitentiary and in 1934 the women were moved there. Within four years, the Prison for Women (P4W) was described as "unfit for bears" by the Archambault Royal Commission to Investigate the Penal System of Canada.

The 1990 Task Force on Federally Sentenced Women was the fifteenth federal report to chronicle inadequacies of the correctional programs and carceral placement options for women sentenced to terms of imprisonment of two or more years. The 1990 Task Force recommended the closure of P4W and the construction of five new regional prisons for women, as well as a national healing lodge for First Nations women. The Task Force concluded that new regional prisons were required to provide women with greater access to their families and communities whilst they were incarcerated. It was never contemplated that certain categories of women would be excluded from the new prisons.

Prior to the opening of the new prisons, however, CSC took a big step backward in terms of women's corrections. On May 6, 1994, approximately two weeks after the April 1994 incidents at the Prison for Women, six women were involuntarily transferred to a segregated range in the Kingston Penitentiary. Upon application to the Ontario Court, General Division, the Court ordered that the women be moved back to P4W from Kingston Penitentiary. Moreover, the Court held that the confinement of women in men's prisons would require a legislative amendment. This transfer was part of the subject of inquiry of the Arbour Commission. In reviewing the 1994 transfer to Kingston Penitentiary, the Report of the Arbour Commission concluded that:

The placement of women in male institutions, as was done in this case, is fraught with difficulties. For one thing, there is, if nothing more, an appearance of oppression in confining women in an institution which will inevitably contain a large number of sexual offenders. This was particularly true of the Regional Treatment Centre. More troublesome, in my opinion, is the fact that the placement of a small group of women in a male prison effectively precludes their interaction with the general population of that institution. If transfer inevitably means segregation, the decision to transfer should take into account the limitations on the permissible use of administrative segregation (p. 104).

In spite of the conclusions of the Arbour Commission, the decision of the Ontario Court General Division, and the history of the deprivation imposed on women in men's prisons, federally sentenced women are presently confined in four federal penitentiaries for men. A proposed transfer of a group of women in 1997 to Kingston Penitentiary was stopped only after a court action was initiated by the affected prisoners. CAEFS intervened in this action. After losing an appeal to the Ontario Court of Appeal of a preliminary motion, CSC decided not to pursue the transfer, and thus terminated the court action.

The living conditions to which women are subjected in men's prisons are harsh, punitive and restrictive. At Springhill Institution, the Regional Reception Centre at Ste. Anne-des-Plaines, the Saskatchewan Penitentiary in Prince Albert, and the Regional Psychiatric Centre in Saskatoon, federally sentenced women are confined in very restricted units and have either very limited or no access to recreation areas and work areas enjoyed by the men in the general populations of the prisons. In addition to living in such segregated conditions, the women are offered very little programming of any kind, and have no access to meaningful employment or vocational skills acquisition. They are kept in virtual isolation, with the population of the units generally ranging from 1 to 12 women.

A significant number of the federally sentenced women have been transferred to men's prisons because they are identified by CSC as having mental health needs. A range in a men's prison is clearly not a therapeutic environment in which to treat mental health problems. Furthermore, CAEFS believes that the imposition of harsh conditions of confinement on prisoners who have a mental disability infringes the s. 15 equality provision of the ***Charter***, by imposing a burden on them by reason of their disability. Accordingly, given CSC's historical and current practice of confining women in oppressive conditions in men's prisons, CAEFS believes it is essential that a provision be included in the ***CCRA*** which specifically prohibits the incarceration of women in federal penitentiaries for men.

B. Security Classification

Recommendation #2: **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.**

Section 30 of the ***CCRA*** provides that each prisoner must be assigned a security classification in accordance with the Regulations. In assessing the security classification level of prisoners, section 17 of the Regulations requires CSC to consider the potential of escape, the level of risk to the community should the prisoner escape, and the level of supervision and control the prisoner requires while in the penitentiary. Currently, with the exception of the Ontario and Pacific regions, federally sentenced women who are classified as maximum security prisoners are incarcerated in segregated units or ranges in men's prisons.

In addition to directly impacting a prisoner's institutional placement, security classification is taken into account in many other institutional and community integration decisions, particularly in respect of access to temporary absence integration passes and work releases. Most importantly, security classification is a significant consideration for conditional release decisions by the National Parole Board (NPB). In fact, NPB policy generally requires that prisoners should achieve the lowest level of security classification before being released into the community.

CAEFS' has a two-fold concern with the impact on federally sentenced women of the security classification process outlined in s. 30 of the ***CCRA***. First of all, it is CAEFS' position that all federally sentenced women who are confined in federal prisons should be in the new regional prisons. Practically speaking, the main reason for assigning a security classification to prisoners is to place them in a prison with the appropriate security level. If all women are confined in the regional prisons, it is unnecessary for them to be assigned a security level.

Secondly, it has been repeatedly recognized that the current criteria used to assign a security level to prisoners results in the over classification of women. This is especially true for Aboriginal women, who are disproportionately classified as maximum security prisoners. Indeed, although CSC will occasionally reduce the percentages, most of the time, forty to fifty percent of federally sentenced women who are classified as maximum security are Aboriginal, even though Aboriginal women represent approximately 19% of the total population of federally sentenced women and only 1-2% of Canada's population overall.

Indeed, during the Task Force and before the Arbour Commission, the CSC itself indicated that the current classification system, designed for men, did not apply to federally sentenced women. Moreover, and in any event, all federally sentenced women should be housed in the regional women's prisons. The Supreme Court of Canada has held in applying the equality provisions of the ***Canadian Charter of Rights and Freedoms***, that men and women receiving the same treatment does not necessarily mean that they receive equal treatment. Rather, in some situations, same treatment can result in inequality, where the legislation which may be neutral on its face, has an adverse impact on members of disadvantaged groups. Please refer

to Appendix I for additional details regarding our concerns about the discriminatory facets of CSC's current classification procedures.

C. Segregation

1. Definition of Segregation

Recommendation #3: **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.**

The purpose of administrative segregation is to keep prisoners from associating with the general prisoner population. Although its purpose is set out in s. 31 of the ***CCRA***, administrative segregation is nowhere defined in the ***CCRA***. It is implied in s. 31 that segregation is an environment which restricts association; however, the degree of restriction and the conditions of confinement are not articulated. The lack of definition of administrative segregation has resulted in the establishment of ranges which are segregated from the general population of the prisons, but which are not called administrative segregation. The unfortunate consequence of this approach is that the statutory means to review a prisoner's segregated status, as laid out in ss. 33-34 of the ***CCRA,*** is not engaged.

Confinement in administrative segregation is an especially onerous form of confinement. It limits association with other prisoners, restricts movement within the penitentiary, especially program and work areas and provides few if any program opportunities. Access to outdoor exercise areas is also reduced to one hour a day. Such restrictions have been characterised as a "prison within a prison". As a result, such severe restrictions on prisoners' residual liberty interest(s) must be justified in accordance with the statutory criteria for placement in segregation (s. 31).

The ***CCRA*** itself acknowledges the necessity of controls over the use of administrative segregation by providing for a statutory review of segregated status. Section 73 confers a statutory entitlement on prisoners to associate with each other, which can be denied only if the statutory criteria for removal from the general population in s. 31 is applied. In fact s. 73 stipulates that, "Inmates are entitled to reasonable opportunities to assemble peacefully and associate with other inmates within the penitentiary, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons".

In the Saskatchewan Penitentiary, approximately 12 women are currently confined in a separate unit. This unit has 5 small ranges. Women are kept in groups of 2, 3 or 4 on separate ranges and do not associate. One woman is often confined on a range by herself. CSC does not consider these conditions to be administrative segregation. Consequently, the segregation review provisions of the ***CCRA*** are not applied.

It is, of course, impossible to regularly deliver programs or provide any meaningful work to prisoners living in those conditions. CAEFS believes that under the ***CCRA***, a small group of women living in a separate unit of a men's prison and kept separate from each other in small groups of 2 or 3 cannot be considered living in the general population of that prison. They must therefore be recognized as living in segregated units in the men's prisons.

2. Review of Segregated Status

Recommendation #4: **Sections 33 and 34 of the *CCRA* ought to be amended to provide for either two segregation review models proposed by the Arbour Commission.**

Sections 33 and 34 of the ***CCRA*** provide a statutory mechanism to monitor the involuntary administrative segregation of prisoners. However, our experience has been that this mechanism has been completely inadequate to ensure compliance by CSC with the statutory criteria for placing prisoners in administrative segregation. This was also the conclusion reached by Madam Justice Arbour during the Commission of Inquiry. Based on the evidence she heard, including evidence from the Correctional Investigator that, in the "vast majority" of cases, Arbour found that prisoners were not in segregation in accordance with the statutory criteria. Moreover she indicated that:

"In terms of general correctional issues, the facts of this inquiry have revealed a disturbing lack of commitment to the ideals of justice on the part of the Correctional Service. I firmly believe that increased judicial supervision is required. The two areas in which the Service has been the most delinquent are the management of segregation and the administration of the grievance process. In both areas, the deficiencies that the facts have revealed were serious and detrimental to prisoners in every respect, including in undermining their rehabilitative prospects. There is nothing to suggest that the Service is either willing or able to reform without judicial guidance and control" (p. 198).

Because of the misuse of segregation by CSC, Madam Justice Arbour concluded that after prisoners have been segregated for a specific length of time, a review of the prisoner's segregated status should be conducted by decision makers who are independent of CSC. She proposed two models, both of which would require an amendment to the ***CCRA***.

In response to those recommendations of the Arbour Commission, CSC set up a Segregation Review Task Force. As part of their work, the Task Force considered the possibility of using independent decision makers to review the use of segregation. All except 3 of the 20 Task Force members were CSC employees or former employees. After initially rejecting the notion, all CSC members of the Task Force ended up supporting outside scrutiny of the use of segregation. All 3 non-CSC participants favoured it. During the Task Force, a consultation with persons from agencies outside CSC was held. All of the participants in the consultation favoured independent adjudicators/decision makers.

The first model proposed by the Arbour Commission was one that included the stipulation that CSC must seek authorization from the court to prolong any period of segregation in excess of 30 continuous days, or in excess of 60 aggregate days in one year. The alternative model proposed by the Arbour Commission would involve a five-day review by an independent adjudicator, likely a lawyer, of all segregation decisions. The independent adjudicator would also be required to provide reasons for any decision to maintain a prisoner's segregated status. Further segregation reviews would have to be conducted every 30 days by a different independent adjudicator.

The essential feature of both of the models proposed by the Arbour Commission is the independence of the adjudicator. The adjudicator would therefore also be the individual who makes the decision to continue the deprivation of the prisoner's residual liberty within the confines of the prison.

3. Conditions of Confinement in Administrative Segregation

Recommendation #5: **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.

Too many prisoners are confined in administrative segregation for several weeks, months, even years. Prisoners in administrative segregation are distinguished in the ***CCRA*** from those who are in punitive dissociation (ie. those for whom segregation is imposed as the penalty for an institutional offence). Pursuant to s. 44, the maximum period of punitive segregation that may be imposed as a penalty is 30 days.

Prisoners may be placed in administrative segregation on either a voluntary or involuntary basis as a result of a determination that they cannot be integrated into the general population. Those prisoners who have cooperated with police or prison investigations frequently seek to be voluntarily segregated for their own protection. CAEFS' maintains that s. 33 confinements in administrative segregation must not be arbitrary. Rather, such confinement must be justified on a legal basis in accordance with statutory legal criteria.

Statutory limits on the use of segregation are necessary because of the harshness of the conditions of confinement. Madam Justice Arbour described the effects of administrative segregation as follows:

"A number of studies have noted the additional impact of the treatment of inmates while in segregation. These include negative interactions with staff, frequent violation of the rules and regulations governing detention in segregation, and the uncertainty of release for inmates held in administrative segregation. The findings I made earlier support the conclusion that prolonged segregation is a devastating experience, particularly when its duration is unknown at the outset and when the inmate feels that she has little control over it" (p. 187).

Section 37 stipulates that prisoners who are subjected to administrative segregation must be provided with the same rights, privileges and conditions of confinement as those who are imprisoned in the general population of a prison. The only exceptions in terms of access to such entitlements involve those activities which can be enjoyed only in association with other prisoners, or which cannot reasonably be provided based on the constraints of the physical area, or because of "security requirements".

The term, "security requirements", is not defined in the ***CCRA.*** It is a vague concept which is prone to arbitrary interpretation and application. For instance, "security requirements" have been used to deny prisoners in administrative segregation such fundamental entitlements as their rights to counsel and recreation (ie. one hour of outdoor recreation/exercise per day). The most usual "security requirement" cited by prison administrators is staff shortage which result in a lack of available staff to provide supervision in the prison (ie. for recreation) or in the community (ie. for escorts). As such, CAEFS submits that "security requirements" as a concept is too vague and provides no articulable standard against which the restriction of prisoners' entitlements can be measured.

Furthermore, despite the legal requirement that CSC must provide prisoners with access to the same entitlements as those enjoyed by the general population, the physical design of segregation areas makes it almost impossible in practice. As a result, access to such entitlements are generally not provided to, much less exercised by, prisoners. This is true even for administrative segregation areas which have been constructed since the enactment of the ***CCRA***. In the new women's prisons, for example, there are no program areas, gymnasiums, recreation areas, workshops or classrooms in the "enhanced" segregation units. Prisoners in administrative segregation therefore spend most of the time isolated in their cells. This is obviously contrary to the intention of Parliament when it enacted s. 37, as the section plainly aims as much as possible to preserve for segregated prisoners the entitlements of the general population.

D. <u>Exchange of Services Agreements</u>

Recommendation #6: **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.**

Pursuant to s. 16 of the ***CCRA***, the federal government has the authority to negotiate exchange of services agreements (ESAs) with provinces, whereby the federal government may contract with provinces to confine federally sentenced prisoners in provincial jails. Prior to the opening of the new regional prisons for women, approximately one half of federally sentenced women were incarcerated in provincial jails pursuant to ESAs.

When P4W was the only federal women's prison, the ESAs provided additional prison beds required to accommodate federally sentenced women. In addition, they provided opportunities for some federally sentenced women to remain closer to their children and other family and/or community supports. In Québec, the ESA permitted Francophone women to have access to French language services and programs. Although local provincial jails generally had limited program and employment opportunities, women who chose to remain in provincial jails tended to be of the view that the maintenance of family ties as well as the increased likelihood of successful reintegration occasioned by more limited dislocation from their communities and families outweighed such deficits. Although the federal government paid for the beds, the provinces generally had the right to refuse to house women however.

With the exception of some women from Newfoundland and all federally sentenced women in British Columbia, women serving sentences of two years or more are now incarcerated in the federal prison system. When Newfoundland joined Canada in 1949, the province reserved the right to house federally sentenced prisoners in provincial jails in exchange for federal per diem payments. As a result, unless women request otherwise or the provincial authorities find the women too challenging to maintain in their provincial prison in Clarenville, women may serve their federal sentences in Newfoundland. The evisceration of health and social services in the province over the past decade has occasioned a dramatic increase in the criminalization of women with significant mental health and capacity disabilities. Given the challenges such women pose in terms of accommodating their needs in prison, it should come as no surprise that the province has chosen to not retain them.

In direct contrast, by virtue of its ESA, the government of British Columbia is responsible for the detention of all women serving federal as well as provincial terms of imprisonment. B.C. negotiated this agreement ten years ago, at the same time as they were replacing an old provincial women's jail. As such, the federal government invested in the construction of the Burnaby Correctional Centre for Women (BCCW) as opposed to a regional federal women's prison. Accordingly, although the Solicitor General of the day and the current Commissioner of Corrections made a commitment to ensure that federally sentenced women in/from B.C. would enjoy the same rights and entitlements of their counterparts in the new regional prisons, there is a significant group of federally sentenced women who oppose the arrangement which has been imposed upon them due to the lack of a federal prison for women in CSC's Pacific region.

Pursuant to a s. 16(2) of the ***CCRA,*** the correctional law which applies to federal prisoners within a provincial jail are those of the province in which the jail is situated. Therefore, the provisions of the ***CCRA*** which provide such legal protections as access to programs, conditions of confinement, and the grievance procedure, for example, do not apply to federally sentenced women in BCCW. In addition, as a consequence of s. 167(2)(b), the Correctional Investigator has no jurisdiction to investigate complaints from federally sentenced women in BCCW. As such, federally sentenced women in the Pacific region are denied the protection of the ***CCRA*** and do not have access to the same correctional redress mechanisms that are available to other federally sentenced women prisoners.

Paradoxically, federally sentenced women serving life sentences in B.C. remain under the jurisdiction of the National Parole Board (NPB). They must therefore satisfy the board's national policies in terms of programs, etcetera, in order to qualify for release. This poses serious problems for such women when they are in provincial jails which are not geared to meet the program needs of prisoners serving sentences of longer than two years.

Because CAEFS recognizes the legitimate interest of federally sentenced women who wish to remain close to their families, we believe that s. 16 agreements should continue to be available to enable them to serve their sentence in provincial jails if they make that choice. However, because in so doing, they must relinquish their entitlements under the ***CCRA***, CAEFS believes that the confinement of federally sentenced women in provincial jails should occur only on a voluntary basis.

E. Consultations with Women's Groups

Recommendation #7:	**Sub-section 77(b) of the *CCRA* should be repealed and replaced by a new s. 77(b) that establishes a National Women's Advisory Committee, chaired by 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.**

Historically, the particular needs and circumstances of certain groups of prisoners have not been recognized by CSC. For women, this has resulted in both the delivery of inappropriate programs to them, as well as the denial of opportunities which are available to men. By virtue of such sections as 4(h), 77, 80 and 151(3) of the ***CCRA,*** Parliament has demonstrated its commitment to rectify our history of discriminatory practices and policies by requiring CSC to work in concert with women's groups, such as CAEFS, to address the need to design programs and policies to meet the requirements of women and Aboriginal prisoners.

Section 77 of the ***CCRA*** requires that CSC consult regularly about programs with women's groups and other appropriate persons and groups with some expertise and experience in working with federally sentenced women. In addition, in order to ensure the continuation of the partnership which was prerequisite and fundamental to its work and achievements, the Task Force on Federally Sentenced Women recommended the development of a national committee, inclusive of non-governmental representatives, to oversee the implementation of the recommendations of the Task Force. CSC chose instead to develop a National Implementation Committee devoid of external representation.

Two years after the tabling of *Creating Choices,* the Report of the Task Force, s. 77 reiterated and reinforced the need for CAEFS direct involvement in the development of women's corrections in Canada. Moreover, during the 1995 Commission of Inquiry and in her 1996 report, Madam Justice Arbour demonstrated the need for the involvement of federally sentenced women and their advocates in the development of policies, programs and practices for the new women's prisons. Life has yet to be breathed in to these provisions.

In practice, these provisions have occasioned regular meetings between the Deputy Commissioner for Women and the Executive Director of CAEFS and other groups to discuss issues as they arise. Also, twice since the enactment of the ***CCRA***, CSC has met with selected women's groups to consult them about specific issues identified by CSC. In addition, Minister Scott convened a consultation with women's groups during his tenure as the Solicitor General of Canada. Please refer to Appendix II for a copy of correspondence outlining current issues of concern to women's groups in relation to the mandate of the Solicitor General.

By contrast, as a consequence of the specific provisions in s. 82 of the ***CCRA,*** a National Aboriginal Advisory Committee was established. The legislated mandate of the National Aboriginal Advisory Committee is to "provide advice to the Service on the provision of correctional services to Aboriginal offenders." This more formal structure differs from the ad hoc process established for women under s. 77. The structure promotes continuity and consistency amongst its participants, who work together to identify issues and develop positions with and for CSC. Furthermore, the mandate of the National Aboriginal Advisory Committee covers a broad range of "correctional services", contrary to the rather narrow focus on "programs" articulated by s . 77 for consultations with women's groups. Also, the National Aboriginal Advisory Committee initiates issues, rather than limit its role and value by merely responding to issues raised by CSC.

CAEFS and other women's groups and individuals have developed expertise and experience in issues relating to the incarceration and conditional release of women. They are well able to identify the manner in which federally sentenced women continue to face multiple disadvantages within the correctional system. A few examples of current pressing issues include:

a) Mental Health and Classification - Women who are identified as having mental health needs are increasingly classified as high security prisoners and/or imprisoned in segregated units in men's prisons. CSC claims to have insufficient resources to implement more dynamic and human resource rich approaches, yet millions of dollars have been spent on the conversion to segregated women's units of ranges in men's prisons.

b) Minimum Security - Excessive static security measures imposed upon minimum security women violate their equality rights. Women must live behind fences surrounding the perimeter of the prisons, while minimum security men have no such physical security structure defining their boundaries.

c) Employment and Training Options - There is a clear lack of vocational and employment opportunities for women.

d) Community Release - Women have more limited access to conditional release options across the country. Only three provinces have women-only halfway houses.

These are but a few of the examples that highlight the need for the same kind of national advisory committee as that which has been established to address issues pertaining to Aboriginal prisoners.

F. Agreements with Aboriginal Communities

Recommendation #8:	**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.**

Sections 79, 81 and 84 of the ***CCRA*** provide a progressive approach to the provision of correctional services for Aboriginal prisoners. They authorize CSC to transfer the care and custody of Aboriginal prisoners to Aboriginal communities, which are broadly defined as a "first nation, tribal council, band, community, agency or other group with a predominately aboriginal leadership." In addition, the ***CCRA*** ensures that Aboriginal communities are given the opportunity to propose parole plans for prisoners who wish to integrate into those communities upon their release.

CAEFS believes that similar entitlements should be enacted to provide the opportunity for federally sentenced women to serve their sentences in a facility or with such organizations as drug treatment facilities or transition houses, which provide services to women. Release on day parole to an organization in the community is especially important for federally sentenced women because there are only five women-only halfway houses in Canada. In the regions that do not have women's halfway houses, such as the Prairie and Atlantic regions, women generally end up having to be released to halfway house or Community Correctional Centres for men. This option is not appropriate for the many federally sentenced women who have experienced physical and/or sexual abuse by men, and who cannot feel safe in such residential situations.

Because of the lack of available space in halfway houses, many women who are eligible for day parole are being released to men's resources or choose to stay in prison. The opportunity to be released on day parole to a facility or organization which provides services to women would have the added benefit of putting women in touch with other services in the community they may require to successfully integrate into the community.

G. Federally Sentenced Women with Mental Health Care Needs

Recommendation #9: **Section 87 of the *CCRA* should be amended to prohibit its application in any manner that might disadvantage prisoners with mental disabilities.**

Section 87 of the ***CCRA*** provides that a prisoner's state of health and health care needs, which includes mental health care pursuant to s. 85, must be taken into consideration in all decisions which affect her/him. This includes decisions regarding prisoner transfers, placements in administrative segregation, as well as the delivery of programs and release-preparation. Unfortunately, s. 87 has been applied to federally sentenced women who are identified as having mental health needs in a manner which further disadvantages them.

Approximately half of the group of women who were slated for transfer to Kingston Penitentiary before that decision was reversed by CSC in December 1997 were women with mental health needs. These women are now effectively kept in administrative segregation at the Prison for Women. In addition, women who are identified as having mental health and capacity needs are also currently incarcerated at Springhill Institution, a penitentiary for men in the Atlantic Region, and at the Regional Psychiatric Centre in Saskatoon, a high security prison and psychiatric hospital for men in the Prairie Region.

CSC's approach to those women it has identified as having mental health needs has been to isolate them from the general population of women prisoners and confine them in oppressive and dehumanizing conditions in men's prisons. Their freedom within those institutions is severely restricted and few programs, if any, are available to them. CAEFS believes that the proper institutional response for these women is to permit them to serve their sentences in the regional prisons for women, while providing them with the extra institutional and community-based therapeutic support they require.

In a 1996 study prepared for CSC, Dr. Margo Rivera assessed the 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 in order to be integrated into the general population of the regional prisons. A living unit in the regional prisons could be set aside, with more structured supervision and counsellors qualified to deliver therapeutic programs. Such an approach, which could address mental health care needs, while at the same time maximizing women's access to the same entitlements afforded the rest of the prison population, is the kind of response CAEFS believes is mandated by s. 87.

Section 87 should be interpreted as a remedial section rather than a justification to subject the most vulnerable of federally sentenced women to the harshest treatment. The isolation of women with mental health needs in segregated conditions in men's prisons or in the Prison for Women in Kingston is contrary to the objectives of the ***CCRA*** to promote rehabilitation and reintegration into the community, not to mention the expectation that correctional policies and programs will demonstrate sensitivity to special needs (per ss. 3, 4(h), and 86). Current corrections approaches also infringe the equality provisions of the ***Canadian Charter of Rights and Freedoms***, which prohibits the imposition of additional burdens on members of disadvantaged groups. Mental disability is enumerated as a prohibited ground of discrimination in s. 15 of the ***Charter***.

H. Treatment Demonstration Programs

Recommendation #10: **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.**

Section 88 of the ***CCRA*** permits prisoners to participate in "treatment demonstration programs" which have been approved as ethically and clinically sound by a committee independent of the CSC, provided the prisoner voluntarily consents to do so. It has recently come to light that federally sentenced women at Prison for Women participated in experimental drug treatment during the 1960's and 70's, and that some of them continue to suffer adverse effects from that treatment. Because many prisoners serving sentences are suffering from life threatening diseases, such as AIDS and Hepatitis C, some prisoners do wish to be included in treatment demonstration programs

Given the profound power imbalance between CSC and prisoners, however, genuine voluntary consent by prisoners is often difficult to assess. Furthermore, such power imbalances are compounded by the additional dependence that tends to be inherent to the doctor-patient relationship. Prisoners might very well believe that their refusal to participate in treatment demonstration programs might have a negative impact upon their relationship with CSC, which, in turn, might negatively impact their access to correctional and pre-release programs. Indeed, this is a current complaint of federally sentenced women who are being recruited for new psychological treatment programs that require a minimum number of participants to be piloted. This concern could be reduced if members of the public were also recruited to participate in the same program(s).

I. Accelerated Parole Review

Recommendation #11: **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.**

Section 125(3) of the ***CCRA*** provides that prisoners serving their first penitentiary sentence, other than those specifically excluded by virtue of the offence of which they were convicted, must be released on full parole unless the National Parole Board (NPB) is satisfied that s/he will commit an offence involving violence prior to the expiration of the sentence. Section 125(3) requires the NPB to base its decision on a number of factors, including the social history of the prisoner.

The social history category encompasses such factors as poverty, educational level, work record, cultural background and race. A prisoner's social history cannot be directly linked to the likelihood of the commission of violent offences. Nevertheless, the use of social characteristics to predict violent offending feeds discriminatory stereotypes and mythical assumptions about the disproportionate propensities of marginalized persons to commit criminal offences.

Of particular concern to CAEFS is the inclusion of "social history" as a factor which is seen as somehow indicating a propensity for violence. Please refer to Appendix I for further elucidation of this issue. In short, federally sentenced women as a group have experienced greater social disadvantage even than men prisoners. In order to avoid exacerbating that disadvantage, CAEFS believes that s. 125(3) should be amended by deleting social history from the factors to be considered by the NPB.

J. The Correctional Investigator

Recommendation #12:	**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.**
Recommendation #13:	**The *CCRA* should be amended so as to direct the Correctional Investigator to report directly to Parliament.**

Section 178 of the ***CCRA*** authorizes the Correctional Investigator, after conducting an investigation, to make a recommendation to the Commissioner of Corrections or the Chairperson of the National Parole Board. Such a recommendation may be based upon a CSC or NPB breach of law or policy, a decision based on an unreasonable, unjust, oppressive or improperly discriminatory law or a decision which is based on a mistake of fact or law. Section 179(2) provides that CSC and the NPB are not bound to follow any recommendation made by the Correctional Investigator. CAEFS believes that, as a minimum, those recommendations which identify a breach of the law should be binding on the CSC and NPB.

Madam Justice Arbour found that a culture of disregard for its legal obligations pervades CSC (pp. 46, 57, 94, 105). Also, it is a reality that breaches of the law by CSC are almost impossible for prisoners to redress on their own. In addition, legal aid plans in most areas of the country do not provide legal aid for any prison related matters. Furthermore, the grievance system is an internal process which has not proven effective to address this issue, either because CSC does not generally acknowledge or recognize breaches of statutory obligation, and/or because CSC views most such breaches as somehow justified. For example, the Arbour Commission found that grievances with respect to clearly illegal conditions of confinement were routinely dismissed.

In order to protect the rights of prisoners and ensure compliance with the law, s. 179(3) should be amended to require that the Commissioner of Corrections and the Chairperson of the NPB are bound to act on a finding or recommendation by the Correctional Investigator with respect to a breach of the law. CAEFS also recommends that the ***CCRA*** be amended to direct that the Correctional Investigator report directly to Parliament.

K. Correctional Interference with the Integrity of the Sentence

Recommendation #14: **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.**

In its Inquiry into the 1994 incidents at Prison for Women, the Arbour Commission found flagrant and serious breaches of the ***CCRA*** and the ***Charter*** which resulted in women prisoners being held in conditions of confinement which were illegal and oppressive. In fact, after hearing many CSC witnesses and examining policy and operational documentation, the Commission concluded that the only realistic manner in which CSC's disregard for the law could be redressed was by the provision of a remedy for prisoners whose sentences had effectively been altered as a result of CSC's failure to administer the prison sentence in accordance with the law. Madam Justice Arbour articulated the issue as follows:

"Ultimately, I believe that there is little hope that the Rule of Law will implant itself within the correctional culture without assistance and control from Parliament and the courts. As a corrective measure to redress the lack of consciousness of individual rights and the ineffectiveness of internal mechanisms designed to ensure legal compliance within the Correctional Service, I believe it is imperative that a just and effective sanction be developed to offer an adequate redress for the infringement of prisoners' rights" (p. 182).

The Arbour Commission proposed that a prisoner whose sentence was illegally or unfairly administered or grossly mismanaged should be entitled to apply to a court for a reduction in the length of the sentence. Prisoners serving a mandatory minimum sentence, in turn, should be entitled to apply to the court for a declaration that the illegality or unfairness in the administration of the sentence must be taken into account by the NPB as a factor weighing in favour of release when the prisoner's application for conditional release is considered. This proposal is based on the principle that the sentencing judge imposes a federal sentence which s/he expects will be administered in accordance with the law, both with respect to its duration and the conditions of incarceration.

CAEFS believes that the Arbour Commission's findings with respect to CSC's blatant disregard for the law, particularly CSC's own statutory mandate, must be redressed. CAEFS recommends that the ***CCRA*** be amended to include a new provision which entitles prisoners to apply to the court for a reduction of a fixed term sentence or, if the sentence is a mandatory minimum, a declaration that the sentence was illegally or unfairly administered.

IV. Reference Materials

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