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June 10, 2007

Mr. Robert Sampson
Chair, CSC Review Panel
c/o Ms Lynn Garrow,
Head, Secretariat, CSC Review Panel
Suite 1210, 427 Laurier Avenue,
Ottawa, Ontario, K1A 1M3

Dear Mr. Sampson:

Re: CSC Review Panel Consultation

Please find enclosed the submission of the Canadian Association of Elizabeth Fry Societies (CAEFS) to the CSC Review Panel. Our submission includes some of the key recommendations that our research demonstrates could remedy some of the outstanding areas of concern and assist you in providing advice to the Minister vis-à-vis the categories outlined in your Terms of Reference. Accordingly, we welcome the opportunity to meet with you to further discuss the matters under review.

We believe Canada has an opportunity to maintain its position of international leadership by addressing issues pertaining to women's imprisonment and correctional oversight. Pursuant to the provisions of section 77 of the *Corrections and Conditional Release Act*, our organization is the primary group with whom the Correctional Service of Canada is mandated to consult. Women are the fastest growing prison population although the growth in their rate of imprisonment is not matched by a comparable increase in crime commission rates. CAEFS has been documenting and attempting to address these issues for a number of years.

While we realize that the breadth of your mandate, and your tight time frames make it difficult for you to meet with all groups making submissions, we wish to reiterate our offer to meet with you and your Panel colleagues. In addition, please do not hesitate to contact us should you have any questions regarding our submissions, or if you desire any additional information.

Sincerely,

for
Lucie Joncas
President
Canadian Association of Elizabeth Fry Societies

Enclosure

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Submission

of the

Canadian Association of Elizabeth Fry Societies

to the

CSC Review Panel

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Submission of the

Canadian Association of Elizabeth Fry Societies

to the CSC Review Panel

A. Terms of Reference of the CSC Review Panel

According to the Departmental announcement of your panel, you are mandated to provide the Minister of Public Safety with an independent assessment of CSC's contributions to public safety, and advice on a number of areas. CAEFS has considerable experience and expertise pertaining to marginalized, victimized, criminalized and imprisoned women. We will provide our input to the Panel vis-à-vis the following areas of your mandate.

1. The availability and effectiveness of rehabilitation programming and support mechanisms in institutions and in the community post release, including the impact on recidivism and any legal framework issues;

2. The availability and effectiveness of programs and services for Aboriginal women;

3. Review the recommendations made in the report *Moving Forward with Women's Corrections*;

4. The availability and effectiveness of mental health programs and services in institutions and in communities;

5. The availability and effectiveness of work programs;

6. The initial placement of prisoners convicted of first and second degree murder;

7. CSC's ability to deal with parole violations, and with frivolous and vexatious grievances;

8. CSC's plans to enhance services for and support to victims. CSC's efficiency in delivering on its public safety mandate – identifying barriers and opportunities for savings including through physical plant re-alignment and infrastructure renewal;

9. CSC's operational priorities, strategies and plans as defined in its business plan, including current challenges with respect to safety and security in institutions, including those related to reducing the use of drugs and violence;

10. CSC's capacity to deliver, including its capacity to address infrastructure rust out, maintain basic safety and security in institutions and communities, meet its basic policy and legal obligations; and adapt to what has been described as, 'the changing offender profile'.

We will discuss these issues by grouping them into the categories identified below.

B. Overview of the Contribution of CAEFS to CSC's Priorities

The Canadian Association of Elizabeth Fry Societies (CAEFS) is the primary organization with whom the Correctional Service of Canada has a legislatively mandated[1] responsibility to work on the issues pertaining to women serving two or more years.

CAEFS was originally conceived of in 1969 and was incorporated as a national voluntary non-profit organization in 1978. Today there are 26 member societies across Canada. Both volunteer and paid staff are involved in governance as well as program and service delivery throughout the association. Programs and services are developed at the grassroots level, in accordance with the needs of the community and range from early intervention and crime prevention activities, to pre and post release work with criminalized and imprisoned women and girls. At the national level, CAEFS focuses on law and policy reform initiatives, informed by its membership and those women with the lived experiences of marginalization, victimization, criminalization and imprisonment.

Last year, 31 volunteers devoted 6,073 hours of work to the CAEFS' office. This supplemented the labour of CAEFS' two staff members. In our 26 member societies, more than 1,500 community-based volunteers devoted approximately 110,000 hours to working within our network. At the local, regional and national levels, Elizabeth Fry staff and volunteers are working longer hours to meet increasing service demands. Paradoxically, however, most of the membership has also been forced to increasingly rely upon an underpaid part-time and volunteer work force.

Part of the strength of our federation is the freedom to meet the needs of our communities in unique and effective ways. As an Association, CAEFS develops policies and positions and acts on common interests affecting women. For example, our activities include:

- the development of CAEFS' policies and positions on national criminal justice legislative and policy initiatives;

- development and dissemination of CAEFS' materials and materials distributed by CAEFS (e.g. information generated and/or circulated by the Ministry of Public Safety and Emergency Preparedness, CSC, NPB, et cetera) to clientele, membership and community;

- partnerships and liaison with governmental and non-governmental social justice, health, community and crime prevention groups;

- affiliations and partnerships with international, national, regional, provincial and local Aboriginal, women's and social justice groups;

[1] Pursuant to s. 77 of the *Corrections and Conditional Release Act.*

- public, academic, media, legal and judicial education;

- identification of prospective initiatives and issues for CAEFS;

- with a long term view to promoting legislative, policy and program reform and development, follow-up to previous voluntary sector initiatives that intersect with crime prevention, restorative justice, juvenile and criminal justice, social service and health systems for victimized and criminalized women who have been the subject of such interventions, by legislators, policy-makers, practitioners, academics and lawyers.

Integral to the effectiveness of the Portfolio of the Minister of Public Safety and Emergency Preparedness is consultation and collaboration with national voluntary organizations active in the areas within its mandate. The mission, mandate, objectives and activities of CAEFS are directly related to the objectives and activities of the Portfolio of the Ministry and CAEFS is most directly involved in activities related to the work of the Correctional Service of Canada vis-à-vis women serving sentences of two years and more.

Although crime rates and the imprisonment of men have declined in recent years, women remain the fastest growing prison population in Canada and elsewhere in the developed world. There are currently approximately 1000 women serving federal prison sentences of more than two years. As representatives of the Canadian public, CAEFS devotes considerable time and energy to ensuring that the needs, interests and concerns of criminalized women are met in humane and women-centred, community-based settings. It is our belief that this increases the likelihood that our communities will be more inclusive of, and therefore safer for, all citizens.

We also encourage the development by other partners in the community of complementary programs and services, in addition to urging systemic reviews of women's cases, such as the battered women's defence, human rights review and mental health projects.

The work of CAEFS continues to accord with the overall direction outlined by the Department in the *Report on Plans and Priorities* tabled by the Minister of Public Safety and Emergency Preparedness, the Treasury Board of Canada, as well as the recommendations of the Federal/Provincial/Territorial Ministers responsible for justice, as outlined in the *Corrections Population Report: Fourth Edition* (September 2000). We also continue to clearly meet the criteria described in the Joint *Accord Between the Government of Canada and the Voluntary Sector* (2001), and the Four Principles for Review of NVO Funding developed by the Treasury Board.

CAEFS and our 26 member Elizabeth Fry Societies speak with and on behalf of marginalized, victimized, criminalized and imprisoned women in Canada to:

- enhance our ability to work with the government and other voluntary organizations in consultation and partnership to develop policies and law reform envisioned by the Department and articulated in the Departmental documents;

- address human rights and Charter violations experienced by all federally sentenced women, particularly Aboriginal and other racialized women, as well as women with mental health and intellectual disabilities;

- continue efforts to implement the recommendations made by the United Nations Human Rights Committee in 2005, the Canadian Human Rights Commission (CHRC) in 2003, and Madam Justice Arbour in 1996, following the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, in addition to more general support and advocacy for federally sentenced women in the regional prisons, thereby attempting to provide the advice contemplated in sections 77 and 80 of the *Corrections and Conditional Release Act (CCRA)*;

- increase our abilities to interact with and educate the public and media in terms of awareness and education on these issues and issues around public safety and crime prevention;

- increase our opportunities to interact and collaborate with other equality-seeking women's, Aboriginal and justice groups to ensure that they are aware of the interests of criminalized women and girls and to ensure their participation in the evolution of the criminal and social justice systems in Canada;

- increase our opportunities to interact with, educate and collaborate with government, correctional authorities and the public to develop legislative and policy responses to the government's implementation of existing laws and policies in accordance with the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* and the *Corrections and Conditional Release Act (CCRA);* and

- enhance the abilities, skills and opportunities for the government, correctional and paroling authorities and the public in general, to develop legislative and policy responses to encourage greater use of community-based administrative, sentencing and release options for women who are at risk of being, or who have already been, criminalized; continue to develop valid community-based opportunities and choices for women and girls; and, encourage the development and maintenance of communities of support based upon the preservation of individual and collective dignity, equality and respect.

C. Issues Requiring Attention

1. Two Year Rule

On February 23, 2001, the Correctional Service issued *Policy Bulletin No. 107*, which specified that all federally sentenced prisoners serving a minimum life sentence for first or second degree murder be classified as maximum security for at least the first two years of their federal incarceration. Like the United Nations, the Canadian Human Rights Commission, the Office of the Correctional Investigator, the Canadian Bar Association and the John Howard Society, CAEFS considers this CSC policy illegal and have recommended that it be rescinded

immediately. As the Canadian Human Rights Commission concluded in its special report into the treatment of federally sentenced women in 2003-2004, the policy adds, "a retributive element to the carrying out of the sentence [that] is not rationally related to the legitimate purpose of assessing risk. It is in fact contrary to the intent of both the *Corrections and Conditional Release Act* and the *Canadian Human Rights Act.*" The Commission recommended that the Correctional Service immediately revoke its two-year policy.

In the face of a number of pending legal actions, in September of 2005, the Correctional Service amended its two-year policy to allow wardens to exercise their discretion to override the rating produced by the Custody Rating Scale. Until the confusion caused in prisons by the Minister's announcement last fall that he did not agree with this amendment, the 2005 policy amendment had helped to remedy some of the most problematic violations of the rights of women, youth and Aboriginal prisoners impacted by the policy, but, it did not alter its legality. Moreover, the Minister's comments have raised concerns amongst wardens that have interfered with their exercise of their mandate. Accordingly, we recommend that the Correctional Service immediately rescind the two year rule and ensure that all federally sentenced prisoners are assessed in accordance with the law and regulations, such that their individual needs and issue areas are identified and appropriately addressed throughout their sentences.

2. Discriminatory Treatment

In 1996, when issuing her report following the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston,* Madam Justice Louise Arbour reminded us that,

> *"One must resist the temptation to trivialize the infringement of prisoners' rights as either an insignificant infringement of rights, or as an infringement of the rights of people who do not deserve any better. When a right has been granted by law, it is no less important that such right be respected because the person entitled to it is a prisoner."*

On International Women's Day, March 8, 2001, CAEFS, together with the Native Women's Association of Canada (NWAC), and with the support of the Canadian Bar Association (CBA), the National Association of Women and the Law and 24 other equality-seeking groups in Canada wrote to the Chief Commissioner of the Canadian Human Rights Commission (CHRC) to urge the Commission 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. The areas of concern raised then persist today. They are:

a) Discrimination on the Basis of Sex

Discrimination on the basis of sex affects all women throughout the system as it pertains to contravention of several of the prohibited grounds articulated in s. 3(1) of the *Canadian Human Rights Act.* This discrimination affects the way women are classified, the kind of programs and treatment they receive and the timely manner in which they are released back into the

community. The situation facing Canadian women prisoners has been well documented in a series of reports. [2]

b) Discrimination on the Basis of Race

Discrimination on the basis of race that is the particular experience of Aboriginal and other racialized women. Aboriginal women approximately one third of the total population of federally sentenced women, yet they are less than 3% of the population of Canada. The over representation is all the more pronounced among prisoners classified as maximum security, where Aboriginal women usually represent approximately 50% of the maximum security population. As well, Aboriginal women are 14% less likely to be released into the community on conditional release than are non-Aboriginal women.[3]

c) Discrimination on the Basis of Disability

Discrimination on the basis of disability is experienced by federally sentenced women with intellectual and mental disabilities. A lack of appropriate placement options and treatment programs, re-training, classification as maximum security inmates, contributes to worsening the situation for the growing number of women with disabilities now in Canadian prisons, where those with the most disabling challenges tend to be further isolated in segregation units.[4] Furthermore, Canadian prisons, like their US counterparts, are rapidly becoming "dumping grounds" for the mentally ill in lieu of community-based support and treatment programs.[5]

The complaint to the Canadian Human Rights Commission launched by CAEFS, the Native Women's Association of Canada and other national and international equality seeking groups, focused on the systemic discrimination experienced by federally sentenced women. As the United Nations has since verified, the facts associated with the sheer numbers of women serving federal sentences, their demographics, particularly those with respect to race and disability, presented a prima facie case of discrimination. Accordingly, the onus falls on the Government of Canada, including the Correctional Service of Canada, to address and redress the discriminatory patterns evidenced by their own data and research.

d) Classification and Segregated Maximum Security Units

CSC is striving to make progress in meeting the needs of women prisoners, in gender and culturally sensitive ways, in order to keep them in the least restrictive environment as possible.

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[2] See: Justice Louise Arbour. *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Available at: http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm; Report of the Auditor General of Canada, 2003. Available at: http://www.oagbvg.gc.ca/domino/reports.nsf/html/20030404ce.html/$file/20030404ce.pdf

[3] See: Annual Reports of the Correctional Investigator (1999 – 2006). Available at: http://www.oci-bec.gc.ca/reports_e.asp; Submission of Native Women's Association of Canada to the CHRC. Available at: http://www.elizabethfry.ca/submissn/nwac/1.htm

[4] See: Submission of the DisAbled Women's Network of Canada to the CHRS. Available at: http://www.elizabethfry.ca/submissn/dawn/1.htm

[5] See: *Special Report on US Prisons* by Human Rights Watch International. Available at: http://www.hrw.org/press/2003/10/us102203.htm

However, the problems with over classifying Aboriginal women have not been addressed and little has been done to reduce the population of maximum security Aboriginal women.

Because of the male-based classification tools in use, women are being over classified, and there are too many women classified as maximum security prisoners. Men and women are assessed with the same tool despite the fact that they pose different security risks.[6] In fact, CSC and National Parole Board (NPB) records indicate that less than half of 1% (i.e. 0.39%) of federally sentenced women released into the community recidivate for violent offences, thus suggesting that there is actually no need for an assessment of women based on risk.

The classification tool actually punishes women prisoners who already experience disadvantages due to their life experiences and backgrounds. Women are found to pose a greater risk and are classified as higher security if they have been victims of domestic violence, if they have had a "childhood that lacks family ties", if they have a history of low employment, or low education, if they are unattached to a community, or their residence is "poorly maintained", if they have "inappropriate sexual habits" or inappropriate sexual preferences, or are from a "problematic religion".

Instead of accurately identifying factors associated with a level of security risk an individual can pose, these criteria actually only reveal discriminatory biases of CSC policy. This classist, heterosexist and racist classification system disadvantages women and in particular women from the most marginalized groups. This approach results in unnecessary harm and suffering to women prisoners, the placement of women in overly secure facilities, too often segregation, and a lack of needed programs.

Dealing with women classified as maximum security prisoners is a challenge that CSC is not dealing with effectively. Many of the women classified are Aboriginal and/or they suffer from mental health problems. Maximum security units do not serve their needs and are actually more likely to aggravate existing problems. These units are segregated units that have their own small prison yards and program space. Generally the women are confined to their very small pods within the new segregated maximum security units. CSC has constructed more maximum units than were required to accommodate the number of women classified as maximum security prisoners. As discussed briefly above, the number also increased due to CSC's decision to mandate that all people convicted of murder as maximum security prisoners for at least the first two years of their sentence.[7]

The CHRC confirmed that most women classified as maximum security prisoners were not classified as maximum security because they were considered dangerous when they entered prison. Most are classified as maximum because they are considered to have 'institutional adjustment' problems. Unfortunately, despite this reality, the *Secure Unit Operation Plan* focuses

[6] The Canadian Human Rights Commission, Protecting *Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women.* Ottawa, 2003.

[7] Canadian Association of Elizabeth Fry Societies. *CAEFS' Submission 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 May 2003* (online). Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005].

more on controlling often hypothetical security risks than on constructively meeting the needs of prisoners.[8] This needlessly results in women being placed in isolation and in segregation units, which too often leads to severe mental suffering that the United Nations and Amnesty International has identified as being experienced by the women as a form of torture.[9]

In addition, women with mental health problems are being housed in increasingly restrictive environments called Structured Living Environments (SLE). When women refuse to receive treatment or participate in programming in these units, they are often reclassified as maximum security and sent to a regional maximum unit. "Extra control and supervision can not be supported under the guise of "treatment."…a prisoner has the right to refuse treatment."[10] The Disabled Women's Network (DAWN) supports that by sending a woman to prison because of a conviction for an offence related to her mental health problem, forcing her into treatment, and classifying her as maximum security and therefore isolating her from the rest of the prison, recreates an environment exactly like that of a non-voluntary mental institution or asylum.[11] Placing women in maximum security conditions because they choose to exercise their right to refuse treatment and/or not participate in treatment is an abuse of power that results in yet more women needlessly suffering from the condition of segregation units.

Furthermore, the new regional facilities are having difficulties accommodating the women being classified as maximum security prisoners.[12] Correctional Services of Canada is not adequately addressing the over-classification of women by changing their classification tools and methods, despite the emergence of this clear theme in all relevant reports and recommendations. As the Prison for Women in Kingston was being closed, many maximum security women were sent to male institutions as a temporary measure. Despite the fact that male institutions are inappropriate for women prisoners, women are still being housed in the Regional Psychiatric Centre in Saskatoon. The placement of women, especially women with mental health issues, in male institutions is inappropriate and is a form of segregation that no doubt can cause severe mental suffering.

DAWN and the National Association of Women and the Law (NAWL) have condemned the placement of Federally Sentenced Women (FSW) in men's prisons, particularly concerning women with mental health problems. This is because of the restricted movement in the institutions, little available space for confidential meetings, and a lack of programming of any kind. This can adversely affect a women's attempt to successfully complete her sentence. As a recent case exemplifies, these units have also increased the likelihood that prison becomes a risk factor for women.

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[8] The Canadian Human Right Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa, 2003.
[9] Anmesty International. *The State of the World's Human Rights* London, 2007.
[10] DisAbled Women's Network of Canada. *Federally Sentenced Women with mental Disabilities: A Dark Corner in Canadian Human rights February 2003,* Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005].
[11] Ibid.
[12] National Association of Women and the Law (NAWL) - *Federally Sentenced Women: Canada's Breach of Fiduciary Duty and Failure to Adhere to International Obligations 2003***,** Available: http://www.elizabethfry.ca/caefs.e.htm. [June 2005].

e) Prison as a Risk Factor

On May 10, 2007, our Executive Director testified on behalf of a woman whom we have known for approximately 15 years. Like so many of the women currently isolated in the segregated maximum security units, she served many more years inside than the relatively short penitentiary term to which she was originally sentenced. She was abused in custody as a child, and the treatment of her by the CSC when she was at the Prison for Women – chained to chairs and beds, among other human rights and Charter abuses – contributed to the assessment by Madam Justice Arbour of the need for independent and judicial oversight of CSC.

After being released at warrant expiry, this woman lived in the community for more than two years. Contrary to the predictions of CSC, she did not commit a serious violent offence upon her release. In fact, she had her own apartment, a community of support and a part-time job. So well was she feeling, that she attempted to abandon her medication. Unfortunately, this led to her experiencing some paranoid delusions that resulted in several suicidal situations and self-initiated police intervention. When, on one particular occasion, the psychiatric unit would not admit her, the police reluctantly charged her with possession of a weapon for a dangerous purpose.

On the basis of her record and CSC's previous assessment of her risk, the Crown argued that she should be sentenced to a federal term of imprisonment. We worked with those conducting the psychiatric and psychological assessment. In his assessment for the court, the psychiatrist identified prison as the most significant risk factor for this woman. Similarly, my testimony reinforced the reality that none of the incidents involving violence were committed outside of prison. Although she also breached her bail conditions twice, largely as a result of diminishing social services, this woman was sentenced to a 6 month conditional sentence and 12 months probation.

f) UK Inspectorate

In response to the report of the United Kingdom (UK) Inspectorate [of prisons], CSC chose to focus on the issues they raised with respect to tensions and bullying in the prisons. Despite the spin placed on the information by CSC whereby they focus primarily upon the behaviour of the women – absent the context of the prison setting and role of staff, most of what the Inspectorate reported was not new. In fact, they reiterate a number of the key concerns made by previous investigations, commissions and audits. Unfortunately, they tend to gloss over or not address at all those issues that would require an understanding of the context, legislative framework and history of involvement of groups like ours, the Native Women's Association of Canada (NWAC) and the Office of the Correctional Investigator. In addition, their focus on some of the safety issues raised by the women is not contextualized in terms of the significance of the impact and interplay of the prison environment, staff attitudes and practices and other situational factors, such as the timing of the visits.

The Inspectorate itself acknowledges that their work did not constitute a response to the Canadian Human Rights Commission (CHRC) recommendations. In addition, their findings echo the feedback received from the Arbour Commission, the Auditor General, the Public Accounts Committee, the CHRC, CAEFS, and the Correctional Investigator. They also acknowledge that

they have no expertise to assess the situation of 1/3 of the federally sentenced women; namely, the Aboriginal women. Accordingly, these issues raises additional questions as to the rationale for CSC expending in excess of half a million dollars to engage their services.

g) Challenges that Persist

The Canadian Human Rights Commission found that, while CSC has made some progress in developing a system specifically for women, systemic human rights problems persist, particularly with regard to Aboriginal women, other racialized women and women with disabilities. The CHRC report set out the following guiding principles to ensure that the treatment of federally sentenced women is consistent with human rights laws.

• Federal women prisoners have a right not to be discriminated against and a right to correctional services as effective as those received by men.

• Equality must be based on the real needs and identities of women in prison, not on stereotypes or generalizations.

• The duty of CSC is to promote and protect the human rights of women; this includes accounting for some of the reasons women are criminalized, their life experiences and their unique rehabilitation needs.

The report identified systemic barriers to full equality and put forward 19 recommendations for action related to:

1. risk and need assessment;
2. safe and humane custody and supervision;
3. rehabilitation and reintegration programming; and
4. mechanisms for redress.

D. Additional Ongoing Concerns

1. <u>Effective Interventions in Prison and Safe Transition to the Community</u>

Since the opening of the new regional prisons for women and the Okimaw Ohci Healing Lodge, the situations of women classified as medium security prisoners has generally improved, whereas the circumstances of women classified as minimum and maximum security prisoners has not. In addition, a security classification process appropriate to women has yet to be finalized.

These issues were first identified as problematic by the Task Force on Federally Sentenced Women in 1990 and further commented on by Justice Arbour in 1996. There remain significant barriers to the safe reintegration of women from prison into the community. These include the overall lack of access to programming specifically designed to meet the needs of women. As well, there is insufficient meaningful employment and employability programming, and inadequate accommodation and support for women upon their release into the community.

Access to programs in the segregated maximum security units in each of the prisons for women also remains problematic. Moreover, only one true minimum-security prison for women exists, which after ensuring it was under-utilized, CSC has spent the last several years trying to close – despite the existence of no comparable alternative for women.

2. Effective Interventions for Aboriginal Women

Systemic barriers and limited opportunities persist for Aboriginal women to reintegrate in a timely fashion into their home communities, as evidenced by the disproportionate number of Aboriginal prisoners who are not released when they are eligible to commence their community reintegration process. Most disturbing as a statistic is the over-representation of Aboriginal women classified as maximum security prisoners – the figure was 46% when the Canadian Human Rights Commission (CHRC) did their review.

The maximum security units are full in all but the newly opened Fraser Valley prison. Also, last year, CSC contracted with two women to review the cases of women segregated in the Edmonton Institution for Women. Since both are unfamiliar with the current law and the history of correctional responses to the women in the 'max' units, stakeholders (per s. 77 of the CCRA) are concerned that this initiative may further entrench current practices.

Segregation is only supposed to be used for specific safety and security reasons and it is supposed to be an exceptional measure.[13] In 2002-2003, however, CSC reported that there were 375 federally sentenced women in prison, and that there were 265 admissions of women to segregation the same year. Aboriginal women tend to be segregated more often and for longer periods of time. As of 2003, the CHRC reported that an Aboriginal woman had been in segregation for 567 days. That woman spent a significant part of 2005 unconscious and on life support, as a result of her 'treatment' within a segregated prison mental health unit.

Another young Aboriginal woman who is currently segregated has spent most of her sentence in isolation, more than 1500 days of which are classified as segregation by CSC. In January of 2006, after spitting in the presence of staff [no spittle made contact with any staff member] this young woman was not only charged with assault, but reports being encouraged by staff to plead guilty to assaulting a correctional officer, without the benefit of legal advice. After her guilty plea, and without the benefit of the context of the guilty plea, this woman was sentenced to an additional six months in prison.

Louise Arbour expressed that the worst aspect of segregation is that the prisoner has no idea how long they will be there, and no assurances that her health needs will be addressed. She wrote that "the findings that 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."[14] She also recognized that women are affected

[13] Canada, Fourth Report to the United Nations Human Rights Committee.

[14] Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report. Ottawa, Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: the Honourable Louise Arbour).

differently than men by segregation. The use of segregation interferes with the rehabilitation process, in addition to jeopardizing safety and mental health by exacerbating distress, especially for those with histories of physical and/or sexual abuse.[15]

E. Remedies for Violations of Rights

Canada has committed to abide by the provisions of a number of international agreements. One such agreement is the United Nations International Covenant on Civil and Political Rights. This Covenant reinforces the expectation that is also implicit in our *Canadian Charter of Rights and Freedoms* and the *Corrections and Conditional Release Act*, in that it requires that effective remedies be provided for persons whose rights have been violated.[16] This provision calls for every person to have their claims of human rights violations heard by a competent administrative, judicial or legislative authority. This is a right that is denied to women in federal prisons.

The Service's governance structure remains inconsistent with that recommended by Justice Arbour to ensure the development of an effective "separate stream" for women's Corrections. Currently the CSC provides for an internal grievance process that is available to federally sentenced prisoners who feel that CSC has violated their civil and political rights. From our perspective, it is problematic that the Panel has been asked to look at 'frivolous and vexatious grievances', when the most significant issue related to the grievance system vis-à-vis women is the reality that report after report has made the case that meaningful, independent accountability and oversight of women's prisons is urgently needed.

The grievance procedure was criticized by Louise Arbour following the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston.* Unfortunately, most women prisoners still have little faith in the likelihood of achieving success by utilizing the existing grievance and complaint systems within the Correctional Service of Canada. Their experience is that time frames are often not adhered to, complaints and grievances are too rarely upheld, and the perspective of staff usually determines the manner in which the grievance/complaint will be "resolved".

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

[15] The Canadian Human Rights Commission, "Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women". Ottawa, 2003.
[16] See the third paragraph of Article 2 of the Covenant.

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

As such, the concern about frivolous or vexatious grievances is not one that we have ever been advised by CSC emanates from any of the prisons for women. In fact, the opposite is true, in that many women are reluctant to launch complaints. This is consistent with Madam Justice Arbour's finding that CSC could not be expected to process complaints against themselves because of their inability to accept responsibility for what happens within the institutions.[17] According to the Office of the Correctional Investigator, the power imbalance between prisoners and CSC/prison staff are a key cause of the ineffectiveness and inefficiencies of the current complaint mechanisms.[18]

This power imbalance is amplified for women from traditionally marginalized groups such as racialized women, Aboriginal women, women with disabilities, and women who are lesbian. There are other explanations for the weakness and ineffectiveness of the current grievance procedure system. Women are rarely adequately informed about their right to grieve, and even when they are fully aware of the right, they are most usually discouraged from utilizing the grievance process.

Often women will not pursue a grievance because of a perceived or real threat that doing so might cause correctional staff to be an increased risk to them. For example, in order to implicitly or explicitly discourage women from lodging grievances, women in prison report instances where they are advised or encouraged to consider how grievances might affect their family contact visits, their community release planning process, their security classification and other aspects of their ability to progress through the correctional setting during their sentence.[19]

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[17] Canada. Commission of Inquiry into Certain Events at the Prison for Women in Kingston. *Report*. Ottawa: Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).

[18] Office of Correctional Investigator. *Correctional Investigator's Response to the Canadian Human Rights Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women January 2004* (online). Available: http://www.oci-bec.gc.ca/reports/OCIResponse_CHRC_e.asp. [June 2005]

[19] This is documented in the pending court action related to the CSC's attempts to close the only minimum security prison for women. Women were advised that failure to follow the direction of staff might result in a subsequent withdrawal of support for their community release plans, which could cause significant interference with structured and supportive future community reintegration; similar issues were also documented during the CHRC human rights review process, by the Canadian Association of Elizabeth Fry Societies – refer to *CAEFS' Response to the Canadian Human Right Commission's Consultation Paper for the Special Report on the Situation of Federally Sentenced Women 2003.* Available on line at http://www.elizabethfry.ca/caefs_e.htm.

Historically, CSC has confirmed that grievances rarely come to the attention of the national leadership, without the assistance of an external support person or groups and that most complaints and grievances are cleared and considered 'resolved' by staff. In many cases the complaint is given to the staff member it is against or to the person who made the decision which is being grieved. This is unfair, unethical and illegal.

It has been communicated to women in both overt and subtle ways that if they complete the process they will experience an unpleasant outcome. When we raise such concerns, it basically comes down to the women's word against that of the staff. CAEFS has seen and is aware of situations at every prison for women, where prisoners have been pressured to either not file a complaint or grievance; or, if they have already filed, to withdraw it.

As the Women's Legal Action and Education Fund (LEAF) have pointed out, there is a presumption of staff innocence that skews the investigative process in favour of the respondent. This is coupled with an assumption that complainants are overly sensitive, overly excited and lack credibility.[20] What is perhaps most disturbing in this area, is that the Cross-Gender Monitor found that the grievance process was being used to route allegations of sexual misconduct against staff. It is inappropriate to be using the grievance process, which is ineffective and time consuming, to process complaints that deserve immediate attention and resolution.[21]

Federally sentenced women who are located in provincial facilities due to the Exchange of Services Agreements (ESAs) between the federal government and provincial governments do not even have access to the grievance process. This is because CSC does not require that the *Corrections and Conditional Release Act (CCRA)* apply to the conditions of confinement to which women are subjected pursuant to ESAs and/or Memoranda of Understanding (MOU) with provincial correctional and health authorities. Most provincial corrections and mental health legislation do not have adequate grievances provisions.

In his Annual Reports, the Correctional Investigator continues to document the failure of the Correctional Service of Canada to implement key recommendations of Madam Justice Arbour's 1996 *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. Over the years the Correctional Service repeatedly claimed that it took "decisive action on all [of Justice Arbour's] 87 recommendations/sub recommendations, with few exceptions." But subsequent significant inquiries, commissions, and reports, for the most part have repeated many of Justice Arbour's key 1996 recommendations.

As a consequence of the inaction, the Office of the Correctional Investigator recommended that in May of 2006 the Minister appoint an Expert Committee to publicly report on the progress detailed in the Service's response on the advancement of human rights, fairness and equity issues since Madam Justice Arbour's report of 1996 the Committee's report to be provided to the Minister by October 2006. CSC did appoint a Committee, but unfortunately they reported to the

[20] Women's Legal Education and Action Fund (LEAF). *The Tip of the Iceberg: Barriers to Disclosure of the Abuse and Mistreatment of Federally Sentenced Women May 2003* (online). Available on line at: http://www.elizabethfry.ca/caefs_e.htm

[21] Correctional Service of Canada. *Cross Gender Monitoring Project: Third and Final Annual Report 2000* (online). Available on line at: http://www.csc-scc.gc.ca/text/prgrm/fsw/gender3/toc_e.shtml.

Commissioner only and, like the UK Inspectorate, did not seem to have sufficient time, context or mandate to identify and address some of the most insidious and invidious issues. We remain hopeful that this Panel will show a renewed interest in addressing the issues that are key to remedying the ongoing discriminatory treatment of women prisoners.

The cornerstone of any oversight strategy must be accessible and effective judicial review for illegalities and rights violations, including the remedial sanction proposed by Justice Arbour. [22] Justice Arbour also underscored the reality that there are a relatively small number of federally sentenced women, and that they generally pose an extremely low risk to public safety. She urged the government to recognize this as an opportunity to pilot innovative programs and initiatives,[23] to reduce the number of women who are incarcerated in federal prisons, for as Justice Arbour suggested, to do so would "free the resources necessary to ensure that those who are imprisoned are treated in accordance with the law."[24]

F. Conclusion and Recommendations

The urgency of the need for CSC to adhere to the fundamental principles and implement the most progressive programming and conditional release components of the *Corrections and Conditional Release Act* situation has most recently found voice in the Concluding Observations of the United Nations Human Rights Committee reviewing Canada's compliance with the International Covenant on Civil and Political Rights. The Committee called upon Canada to implement the recommendations of the Canadian Human Rights Commission (2003) and, in particular, to establish external redress and adjudication processes for prisoners (UNHRC 2005). Article 26 of the UNHRC report required that Canada report back within one year on how it plans to implement those recommendations. This reporting has not yet occurred, although a number of non-governmental organizations, including ours, will be submitting reports on the Canadian situation.

In order to continue to ensure that Canada maintains an international reputation as a country committed to respecting human rights and upholding the law, we recommend that the CSC Review Panel make the following recommendations.

1. ***That the Correctional Service of Canada promote its purpose of contributing to the maintenance of a just , peaceful and safe society by supervising federal sentences of imprisonment imposed by courts via the safe, humane and rehabilitative custody and***

[22] In making her recommendation for judicial oversight to remedy interference with the integrity of the sentence, Justice Arbour addressed the concern that such a remedy would be an undue burden on an already stretched court system, Justice Arbour noted that any additional burden "would only be so in relation to the Correctional Service's non-compliance with the law" (at p. 184), pointing out that there are ways to control frivolous litigation, should such a problem arise.
[23] Ibid. p.229.
[24] Canada. Commission of Inquiry into Certain Events at the Prison for Women in Kingston. *Report*. Ottawa: Public Works and Government Services Canada, 1996, pp. 184-5. (Cat. No. JS42-73/1996E). (Commissioner: The Honourable Louise Arbour).

community supervision of individual.

2. ***That the Correctional Service of Canada immediately rescind the two year rule and ensure that all federally sentenced prisoners are assessed in accordance with the law and regulations, such that their individual needs and issue areas are identified and appropriately addressed throughout their sentences.***

3. ***That the Correctional Service of Canada promote the use of the least restrictive measures consistent with the safe and successful integration of individuals into the community, including, but not restricted to, removal of the detention provisions and reinforcement of statutory release as a vital component of the conditional release process.***

4. ***That the Correctional Service of Canada revisit the governance structure of women's corrections and separate it from men's corrections; in the alternative, that all wardens responsible for the prisons for women report directly to the Deputy Commissioner for Women.***

5. ***That in the interests of breathing life into the provisions of sections 77 and 80 of the Corrections and Conditional Release Act (CCRA), the Deputy Commissioner for Women be responsible to a governance body to be comprised minimally of individuals representing:***

    a) federally sentenced women, at least two who are currently "serving prisoners", elected from the chairs of the Prisoners' Committees of the prisons for women and the Okimaw Ohci Healing Lodge, and two who are formerly imprisoned federally sentenced women and representatives of self organized Former prisoners, such as Strength in Sisterhood (SIS);
    b) the Office of the Correctional Investigator;
    c) the Native Women's Association of Canada;
    d) the Canadian Association of Elizabeth Fry Societies;
    e) at least two organizations representing racialized and immigrant women's community(ies);
    f) the union(s) representing correctional officers/CSC employees.

6. ***That only women be permitted to work in front line correctional officer positions in the prisons for women.***

7. ***That the 'Management Protocol' currently imposed on federally sentenced women be recognized as contravening the provisions of the Charter and the CCRA and therefore be abolished immediately.***

8. ***a) That all third level grievances be reviewed by the body recommended in #5 above.***

    b) That every national investigation into matters arising at the prisons for women include at least one representative from a list of independent investigators generated by the body recommended in #5 above.

9. ***That, as an interim step until #5, 7, and 8 are implemented, those functions be developed in consultations with a working group of six women, two each from CAEFS, NWAC and SIS.***

10. ***That federally sentenced women continue to have access to the only true minimum security prison for women, the Isabel McNeill House in Kingston.***

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