

**The Tip of the Discrimination Iceberg:
Barriers to Disclosure of the Abuse and Mistreatment of Federally Sentenced Women**

**A Submission by the Women's Legal Education and Action Fund (LEAF)
to the Canadian Human Rights Commission
in Relation to their Special Report
Addressing the Treatment of Women Serving Federal Terms of Imprisonment**

May 2003

Introduction¹

[I]t takes vigilance and courage, both individual and collective, to ensure that human rights are protected at those points where they become most vulnerable. Within Canada, that vulnerability is nowhere more evident than inside penitentiaries.²

In our submission on “Rethinking the Treatment of Federally Sentenced Women in a Substantive Equality Context”, we referred briefly to systemic factors that make it exceedingly difficult for women in prison to disclose practices or incidents of abuse or mistreatment occurring in the prison setting.³ While the issue of barriers to disclosure of abuse was only peripherally related to the substantive equality analysis that was the focus of our main submission, these barriers are necessarily an issue of central concern in the context of an investigation and special report such as the one the Commission is embarked on in relation to the situation of federally sentenced women. Because of the underlying significance, as well as the subtle complexity of this issue, we wanted to take the opportunity presented by this review to address the issue more fully.

The complexity of disclosure in this context relates not only to the many factors that would inhibit women from coming forward with their stories but also to information that in isolation or when taken out of context may appear benign, but when examined through a substantive equality lens and in context is recognizable as part of a pattern of systemic discrimination. Those who are seeking the information need to be sensitive to these more subtle discrimination/equality issues in their investigation, as do those who analyze the information once it is gathered.

We recognize that disclosure issues are matters with which the Commission is extremely familiar; they are integral to the basic work of the Commission. However, we believe that the barriers to disclosure experienced by federally sentenced women are so acute as to warrant specific attention. Given the nature of the prison setting and the already seriously disadvantaged status of most of the women who are sent to prison, federally sentenced women are a complexly disadvantaged group. In this context, patterns and practices of discrimination may be particularly difficult to ascertain. This special report process affords a unique opportunity to raise these complicated disclosure issues in a non-adversarial forum so as to facilitate their fuller investigation and to promote discussion and dialogue on these matters.

A key component of the Commission’s report will be the evidence of how federally sentenced women are actually being treated in and by the prison. On the surface, this would seem to be a simple matter of information and data gathering. However, the specific subject of this review seriously complicates the gathering of information and data, as well as the interpretation of the information and data that is collected. The extreme power imbalance in operation in the prison

¹This submission was prepared for LEAF by Diana Majury in conjunction with the National Legal Committee of LEAF.

² Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons* (Vancouver: Douglas & McIntyre, 2002) p. 614.

³LEAF, “Rethinking the Treatment of Federally Sentenced Women in a Substantive Equality Context”, submission to the Canadian Human Rights Commission, 2003 at pp. 9-11.

setting, the unsatisfactory handling of previous complaints, the continuing failure to remedy ongoing problems and the omnipresent specter of retribution, combined with the personal histories, extreme vulnerability and the perceived lack of credibility of federally sentenced women are at the same time a major part of the problem under investigation and a major impediment to getting at the problem under investigation.

Insights into individual and systemic barriers to disclosure in other areas, including human rights generally and in relation to issues of violence against women, are helpful in thinking about the barriers experienced by federally sentenced women. The prison context would greatly exacerbate the problems encountered in these other settings, as well as create its own unique inhibiting factors.

Barriers in the Human Rights Context

The invocation of antidiscrimination law does not enable the victim to overcome power differentials in situations where she or he is pitted against the more powerful opponent. The bonds of victimhood are reinforced rather than broken by the intervention of legal discourse.⁴

The Commission is well aware of the manifold problems that inhibit the filing of human rights complaints generally and the ways in which legal assumptions, as well as the complaints process, deter those who have been discriminated against from coming forward with their stories. It is recognized that the complaints brought to human rights commissions represent only the tip of the discrimination iceberg.⁵ While an investigation/review of the type being conducted by the Commission into the treatment of federally sentenced women is intended to circumvent some of these problems, the process is nonetheless dependent on the stories of mistreatment and abuse being told. But the different process does not necessarily make the telling of those stories any more likely or the information gathering any easier. The inhibiting factors simply resurface at a different level and in different ways. One cannot assume that issues of disclosure have been addressed simply because the information is being actively solicited or that victims of discrimination will necessarily be any more willing to tell their story to a human rights investigator than to a prison official.

In her article, *Victims in the Shadow of the Law*, Kristin Bumiller explores some of the reasons why victims of human rights violations are unlikely to complain of the mistreatment they have experienced. Her empirical study is grounded in a critique of the model of legal protection on which contemporary anti-discrimination policies are based:

The model of legal protection assumes that those who have suffered harms will

⁴Kristin Bumiller, "Victims in the Shadow of the Law: A Critique of the Model of Legal Protection" (1987) 12 *Signs* 421 at p. 438.

⁵ William Bogart and Neil Vidmar, "Problems and Experience with the Ontario Civil Justice System: An Empirical Assessment" in Alan Hutchinson (ed.), *Access to Civil Justice* (Toronto: Carswell, 1990) 1.

recognize their injuries and invoke the protective measures of law. Since most antidiscrimination laws rely primarily on victims to identify violations, report them to public authorities, and participate in enforcement proceedings, these laws tacitly assume that such behavior is reasonably unproblematic. In other words, because protective laws place responsibility on the victim to perceive and report violations, they assume that those in the protected class can and will accept these burdens.⁶

To the contrary, disclosure of discriminatory treatment or incidents was extremely problematic for the women interviewed in Bumiller's study, none of whom had chosen to accept the burden of disclosure. The interview subjects were identified through a household survey on the incidence of civil disputes in which questions relating to discrimination formed a minor part. The reasons for not coming forward with their discrimination complaints articulated by the women who were interviewed in this study are applicable to a prison setting where the disincentives would be even more strongly felt. The subjects interviewed and Bumiller's analysis provide valuable insights into the likely unwillingness of women in prison to disclose mistreatment in that context.

According to Bumiller, the asymmetrical power relations that characterize most discrimination conflicts can give rise to the perception of the perpetrator as an all powerful tyrant who controls through fear and simplification of reality. "Tyrants are not legitimate rulers; yet within these demoralized bonds the illegitimacy of the rulers sustains rather than defeats them. The image of tyrant transforms the exchange between the perpetrator and victim into a situation where the perpetrator controls and the victim transgresses."⁷ Once the relationship is thus polarized and rendered static in the eyes of the "victim", complaint is seen as not only useless but dangerous. "Since the expression of anger is unacceptable in bureaucratic settings, there are no minor infractions within normal ranges of behavior; there is only rebellion and submission. The victims of discrimination, therefore, perceive their own reactions to injustice as explosive and extreme."⁸

In this situation, the victim exerts the only power that she perceives that she has – power over herself – by containing her emotions and remaining silent. "These rationalizations about the desirability of control may stifle the expression of injustice in any form."⁹ Further, victims feared a complaint would provoke hostility. Given the existing power imbalance, the invocation of the law was seen as potentially aggravating their situation. Extreme forms of these polarized power dynamics are present in the prison setting.

Bumiller describes an ethic of survival that guided the actions of many of the victims of discrimination interviewed. From this view point, discrimination is seen as inevitable, something to be coped with and minimized. While it is not possible to avoid the discrimination, it is possible to avoid the label of "victim." Victims are seen as powerless, ineffectual, defeated. To accept the negative label of victim is to succumb to the discrimination, to be that which is done to you, rather than to resist it. There is a sense of pride and inner strength to be taken from

⁶ Supra note 4 at p. 422.

⁷ Ibid at p. 429.

⁸ Ibid.

⁹ Ibid at p. 430.

escaping “the trap of victimhood” and persevering without complaint or deference. The ethic of survival is premised on its own code of honour in which silence and endurance are highly prized. The act of survival exacts a major toll which cannot even be acknowledged. For those who adhere to the ethic of survival, “[t]he prospect of legal intervention heightened a sense of powerlessness and produced a fear of loss of control.”¹⁰ Such an ethic of survival would be a familiar strategy for many federally sentenced women.

In the context of an investigation into potential human rights violations, silence or denial of mistreatment cannot be taken at face value. Disavowing responses may be a function of differential power dynamics and indicative of more extreme or pervasive forms of abuse. In addition, the relationship between the interviewee and the person seeking the information will influence the response. The prison setting would significantly magnify the reasons given by the interviewees in Bumiller’s study for not complaining of the discrimination they had experienced. Other sources of information need to be assessed based on whether they would tend to exacerbate or diminish these inhibiting factors. For example, information told to Elizabeth Fry workers would likely be less subject to distorting inhibitions than information provided to prison officials or even a one time investigator. Historical and contextual factors need to be considered in assessing the significance of what has been said and what might have been left unsaid. For the purposes of this report, we suggest that previous complaints by and inquiries into the treatment of federally sentenced women in Canada, as well as the submissions in this process from other groups, particularly those from Strength in Sisterhood (SIS) and the Canadian Association of Elizabeth Fry Societies (CAEFS), provide ample evidence for the conclusion that the data and information that has been gathered from women inmates in the course of this review represent only the tip of the abuse/ mistreatment iceberg.

Processing the Evidence

It is arguable, I think, that this complicated process of evaluating incidents and events in light of the unequal social relations and institutionalized discrimination that is pervasive in Canadian society is often misunderstood, misinterpreted or misrepresented as “bias” in a legal system that unfortunately, has only begun to value and promote a diversity of perspectives within its own ranks.¹¹

The evidence produced in this process may require much reading between the lines and digging beneath the surface. The initial starting point, assumptions and perspectives of those who review and analyze the information and data gathered will be extremely important factors in this review process. For example a starting premise that allegations of mistreatment and abuse need to be proven is not a neutral starting position. It is premised on an assumption that there is no

¹⁰ Ibid at p. 436.

¹¹Brenna Bhandar, “R. v. R.D.S.: A Summary” (1998) 1 *Canadian Journal of Women and the Law* 163 at p.170.

problem, an assumption that favours the party against whom the allegations are made. In some situations this may be the appropriate starting point, but with respect to this report such an assumption would further tip the balance against a group already operating from a seriously disadvantaged position. With respect to this report, a starting position that assumed no problem exists would be both ahistorical and decontextualized, discounting the historical and contextual evidence that strongly indicates the likelihood that the abuse and mistreatment of federally sentenced women have continued. The process for this report needs to take this history and context into account by starting from the assumption that the complaint is legitimate.

The data and evidence gathered for this report must be reviewed with an understanding of and sensitivity to the asymmetrical power relations in operation and the seriously disadvantaged status of the women who are the subject of this report. The reading and analysis of the data must be informed by a sophisticated understanding of how that power imbalance and the women's disadvantaged status might skew the information gleaned. This would include, for example, the kinds of inhibiting factors discussed in the previous section.

Donna Young, in her report on the Handling of Race Discrimination Complaints at the Ontario Human Rights Commission, outlines a number of assumptions that underlie commission investigations and reports and impede proper treatment of race complaints by the Commission.¹² As Young herself points out, the assumptions that she exposes are not unique to race complaints; they reflect general biases prevalent in society. The issues she raises require serious consideration in relation to federally sentenced women with respect to whom these types of assumptions may have an even stronger distorting impact.

Young argues that there is, in effect, a presumption of innocence that operates to skew the investigatory process in favour of the respondent. This presumption is often coupled with an assumption that the complainant lacks objectivity. Complainants are described as overly sensitive, excitable and lacking credibility. This leads to the further assumption that incidents described by complainants should not be believed in the absence of corroboration. In relation to this issue, Young points out why the fact a race discrimination complaint is not supported, or is even denied, by other people of colour should not be taken to mean that the incident did not occur or that the complainant's interpretation of it is exaggerated or wrong. Young explains that lack of support from those in a similar situation may stem from a number of different reasons:

Aside from the genuine belief that there has been no discrimination, minority employees may not be prepared to support a complaint of race discrimination for fear of losing their jobs, or retaliation and harassment from employees and employer, of not fitting in, etc.. Therefore, their evidence must be examined and weighed against a complainant's evidence with these concerns in mind.¹³

The assumption that Young describes as perhaps the most damaging pattern which arises from the assumption of a respondent's "innocence" is that "meaning can be discerned in isolation from

¹² Donna Young, The Handling of Race Discrimination Complaints at the Ontario Human Rights Commission, memo to the anti-racism committee dated October 23, 1992.

¹³ Ibid at p. 12.

the societal and historical context.”¹⁴ This was discussed at the beginning of this section in relation to the need to start this review process with the assumption that the allegations raised are legitimate. But the issue is relevant for the entire review and report writing process. History and context provide meaning for acts, behaviours and words that might otherwise appear innocuous or incomprehensible. Similarly, in the absence of historical understanding, reactions may seem out of proportion to the gravity of the mistreatment.

The assumption that “employee misconduct is always the fault of the employee, and never the result of management practices” derives from a focus on individual actions rather than systemic problems.¹⁵ Young lists a series of harassing behaviours that employers engage in – “over-supervising and over-scrutinizing an employee’s performance; using excessive documentation or none at all; using arbitrary hiring and promotion practices; restricting overtime; engaging in uneven disciplinary measures.”¹⁶ Employees develop strategies in resistance to these practices that take such forms as rudeness, poor work performance, lateness, passivity. The employee’s response is then used retroactively to justify the employer’s behaviours and the employee is seen as the one at fault. It is not difficult to translate these practices into their counterparts in the prison setting and to recognize the potential for a similar pattern of resistance to mistreatment becoming the rationale for the mistreatment.

The last assumption that Young discusses is that “complainants often exaggerate the harm done.”¹⁷ This is particularly acute when the abuse is less explicit or less tangible. Practices that may cumulatively have a devastating impact or may, in context, be much more harsh than they appear can thus be discounted or even denied.

The distorting assumptions that Young explained in her report can surface in slightly different guises with respect to assumptions about bias and objectivity. Legal scholars refer to the “double standard that appears to have emerged in the area of bias” whereby bias is attributed to members of disadvantaged groups simply based on their membership in that group.¹⁸ For example, female adjudicators and racialized adjudicators are assumed to identify inappropriately with the women or similarly racialized people who come before them. Rather than recognized as sources of insight and expertise, experience and specialized study related to one’s own group are seen as distortions that undermine credibility and impartiality. Similar negative assumptions undermine the work of advocates and organizations who work with disadvantaged groups. Advocacy and support groups have specialized training and experience that, in relation to a less politicized issue, would be highly regarded. Instead expertise is discounted as bias and understanding is discounted as sympathy. Unique opportunities for obtaining fuller and richer information are rejected.

Within a racist and sexist social framework, racism and sexism masquerade as “common sense.” Discriminatory statements by white able-bodied, heterosexual

¹⁴ Ibid at p. 13.

¹⁵ Ibid at p. 22.

¹⁶ Ibid at p. 23.

¹⁷ Ibid at p. 25.

¹⁸ Constance Backhouse, “Bias in Canadian Law: A Lopsided Precipice” (1998) 1 *Canadian Journal of Women and the Law* 170 at p.181.

males pass for “normality.” When anti-racist activists, feminists, disability advocates, and gay men and lesbians try to explain their own sense of reality, their statements appear unconventional, aberrant, askew.¹⁹

“[I]mpartiality is not predicated on neutrality.”²⁰ It would be a mistake to conflate the two. Neutrality can contain its own distortions and non-neutrality can provide unique insight. Information provided by those who are cloaked with the mantle of neutrality (often inappropriately equated with impartiality) by virtue of their position or membership in the dominant group must be investigated with the same rigour applied to information provided by those labeled non-neutral. Neither group should be subjected to assumptions of bias or of uncritical support.

Barriers in Relation to Violence Against Women

Feminist efforts to expose, challenge, and eliminate direct, indirect, and systemic inequality in the substantive, evidentiary, and procedural laws proscribing sexual offences and in the enforcement and application of those laws have not only been consistently resisted by police, lawyers, judges, and juries, but have consistently generated backlash against those responsible for and/or supportive of such egalitarian change.²¹

Federally sentenced women are vulnerable in magnified ways to all of the barriers discussed above that inhibit people from raising discrimination complaints. Many federally sentenced women are also vulnerable in magnified ways to all of the barriers that inhibit women from disclosing abuse or violence against them. This is because large numbers of federally sentenced women have histories of abuse that have effectively ingrained these inhibitors. In addition, prison abuse can take the form of violence against women and trigger these same issues. In our main submission, LEAF discussed the barriers to disclosure experienced by victims of violence against women and how they would be significantly magnified for federally sentenced women. That section from our main submission is excerpted and included here in slightly revised form because it is central to this discussion.

There has been extensive study and documentation of factors that inhibit abused women from coming forward with their stories of abuse and mistreatment.²² Women are treated as themselves

¹⁹ Ibid.

²⁰ Audrey Kobayashi, “Do Minority Judges make a Difference?” (1998) 1 *Canadian Journal of Women and the Law* 199 at p. 206.

²¹ Sheila McIntyre et al, “Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law” (2000) 20 *Canadian Woman Studies* 72 at p. 72.

²² Ibid. These include stories of sexual assault, domestic abuse and sexual harassment, the inadequacy of services to assist women who have been abused and the sometimes demeaning and degrading response of authorities to initial attempts to tell the story.

under suspicion and on trial throughout the process. Enforcement of the law by police, prosecutors and the courts has been minimal and erratic.²³ Complainants are subjected to brutal invasive questioning, unnecessary and demeaning incursions into their privacy, and investigative procedures uniquely applied to victims of crimes of violence against women. Investigations often do not proceed to completion or charges are dropped. When police respond to “domestic situations” and lay charges, these charges are often withdrawn or stayed.²⁴ The results of a trial are uncertain and frequently extremely damaging to the complainant. False assumptions about women’s motives and stereotypes about women’s sexuality infect the whole process and lead to women not being believed. Women in prison are similarly stereotyped as liars and trouble makers; no doubt many women in prison make the decision not to come forward with complaints based on the expectation that they would not be believed. Many federally sentenced women have long histories of abuse and have learned first hand of the need to remain silent.

It is well documented and generally recognized that women in Canada chronically underreport and understate the abuse and mistreatment they experience. The knowledge of how difficult it is to proceed with a complaint and the perceived futility of putting oneself through such a negative process is well known among women and acts as a major inhibiting factor. The issues and problems of coming forward with one’s story of abuse or mistreatment or with a complaint are hugely exacerbated for women who are under state control and who experience mistreatment at the hands of the state. In this context, any complaints or disclosures of abuse made by federally sentenced women must be taken very seriously, investigated with sensitivity, and understood as likely to reflect at best one tenth of the abuse/problems that are occurring.²⁵

Allegations of abuse are complicated and compromised when they occur in institutional settings. The greater the control by the institution over those who are “institutionalized”, the greater the complications and potential for compromise. Related to the power and credibility imbalances that are so heightened in a prison setting, is the fact that the allegations of abuse are often made against those who are responsible for, or at the very least participate in, the making and keeping of records relating to the complainant. In addition, the institution itself has a vested interest in how incidents and responses are recorded. Records tend to have a significance and credibility of their own, somehow divorced from their creator and the context of their creation, which is extremely problematic in these situations. Attempts to invoke institutional records against abuse

²³ Jennifer Koshan, “Sounds of Silence: The Public/Private Dichotomy, Violence and Aboriginal Women” in Susan Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law and Public Policy* (Toronto: University of Toronto Press, 1997) 87 at p. 90.

²⁴ Dianne Martin and Janet Mosher, “Unkept Promises: Experiences of Immigrant Women with the Neo-Criminalization of Wife Abuse” (1995) 8 *Canadian Journal of Women and the Law* 3.

²⁵ This estimate is based on estimations extrapolated from reports by non-incarcerated women. It is no doubt a serious underestimate for women who are required to report to the institution that they see as responsible for the abuse. See Panel on Violence Against Women, *Changing the Landscape: Ending Violence – Achieving Equality* (Ottawa: Minister of Supply and Services, 1993).

complainants have been a source of much litigation and lobbying.²⁶ In the context of a review such as this one, institutional records must be looked at very critically, keeping in the forefront their potential self serving functions.

Disclosure Barriers Specific to the Prison Setting

[B]y far the most troubling aspect of the responses to these grievances [filed prior to the incidents that gave rise to the Arbour Inquiry], which raised important issues of fundamental inmate rights, was the number of times in which the responses failed to deal properly with the substance of the issues raised. In some cases, the responses failed to appreciate the legal significance of the issues raised by the inmates. In some cases, the responses indicated a failure to properly ascertain the underlying facts. In many instances, one was left with the impression that an inmate's version of events was treated as inherently unreliable, and that to grant a grievance was seen as admitting defeat on the part of the Correctional Service.²⁷

The history of prisoners' rights in Canada has been a history "not [of] the conferring of special entitlements so much as simply the prevention of abuse."²⁸ Rights have been an alien concept in the prison context and what we would now clearly label as abusive or inappropriate practices were simply the institutional norm. A major part of the history of prisoners' rights has been the gradual, piecemeal, ad hoc uncovering of the individual, institutional and systemic abuses to which prison inmates have been and are subjected. Historically, prisons and what went on in prisons were completely shielded from public scrutiny. Prisoners were thought to have forfeited their rights through the commission of the crime for which they were convicted; they were locked away in prisons without any oversight of the treatment they received in the institution on the assumption that, whatever happened to them, they got what they deserved. There were no mechanisms for complaint or for raising issues about treatment. "Complaining" would have been considered totally inappropriate by both prison staff and inmates and as well the risk of retribution against the complainer would have been extremely high. As has been extensively documented through inquiries and investigations, complaining would only have made the situation worse. In the history of Canadian prisons, prison "riots" and the resultant inquiries have been the primary mechanisms by which the intolerable conditions under which inmates were forced to live were brought to light.²⁹ This historical legacy that is so inimical to raising

²⁶Karen Busby, "Discriminatory Uses of Personal Records in Sexual Violence Cases" (1997) 9 *Canadian Journal of Women and the Law* 148.

²⁷Louise Arbour, Commissioner, *Commission of Inquiry into Certain Events at The Prison for Women* (Ottawa: Public Works and Government Services Canada, 1996) at p.151

²⁸ Mary Campbell, "Revolution and Counter-Revolution in Canadian Prisoners' Rights" [1996] 2 *Canadian Criminal Law Review* 285 at p. 286.

²⁹ See Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons* (

issues of abuse and mistreatment continues to haunt the prison system in Canada today.

There has been a lengthy history of inquiries, reports and recommendations for change ever since the first prison for federally sentenced women was built. But change has been extremely slow. While the creation of the regional facilities was a major change, it has not proven to have led to substantive change. The underlying systemic problems that gave rise to this review process, as well as previous reviews and inquiries, have not been substantively addressed. Some improved policies and procedures have been put in place but compliance is frequently erratic or non-existent. Some new policies give rise to immediate change but, as the instigating pressure or scrutiny dissipates, practices revert and the problems recur.³⁰ This divergence between policy and practice has been noted in numerous inquiries and reports. Given this background, federally sentenced women have little reason to trust state authorities or to think that coming forward with their stories will have any positive impact.

When this understandable lack of faith in processes of inquiry or promises of reform is viewed in conjunction with the conditions under which federally sentenced women live when in prison, it is amazing that any woman would come forward to tell of abuse or mistreatment experienced in that setting or to provide any information. These are women whose entire lives are subject to state control and who have very little power while they remain in federal institutions. An inquiry such as this one being conducted by the Canadian Human Rights Commission may offer them little, if any, hope for change. For federally sentenced women, the Commission might be seen as simply another government body seeking information that will ultimately be turned against federally sentenced women in some pernicious way.

For its inmates, prison is an isolated and self contained world with its own codes of conduct. Federally sentenced women participate in a culture that frowns upon disclosure as weakness and betrayal and regards silence as strength and integrity. The disclosures that are made are likely the canaries in the prison mine, warning of serious problems that need to be resolved. Those federally sentenced women who are willing to come forward to tell their stories of mistreatment may reflect extremes of despair, in the sense of feeling that things are so bad they cannot get worse, or of desperation, in the sense that conditions are so intolerable that one cannot ignore any opportunity to try to improve them, even if it appears futile. Those federally sentenced women who are managing to survive, in the face of ongoing abuse and mistreatment, may understandably be choosing to remain silent. They may thus avoid retaliation or the pain and resulting despair that follow upon false hopes raised through disclosure that ultimately is ignored or denied or results in no perceptible change. It is important that this review and ensuing report not further contribute to that despair.

Conclusion

As a corrective measure to redress the lack of consciousness of

Vancouver: Douglas & McIntyre, 2002) chapter 3.

³⁰See for example, Thérèse Lajeunesse and Associates, *The Cross Gender Monitoring Project Third and Final Annual Report* (September 30, 2000).

individual rights and the ineffectiveness of internal mechanisms designed to ensure legal compliance in the Correctional Services, I believe that it is imperative that a just and effective sanction be developed to offer an adequate redress for the infringement of prisoners' rights, as well as to encourage compliance....

Respect for the individual rights of prisoners will remain illusory unless a mechanism is developed to bring home to the Correctional Service the serious consequences of interfering with the integrity of a sentence by mismanaging it.³¹

What the preceding discussion clearly demonstrates is that the more vulnerable a person is the less likely they are to disclose any abuse and mistreatment they are experiencing. Relatedly, the likelihood of disclosure decreases exponentially in relation to the control and power that the person doing the abuse has over the person being abused. Gender, race and disability stereotypes and power imbalances, combined with individual histories of abuse and with the extreme asymmetrical power relations that characterize the prison setting render federally sentenced women among the most vulnerable groups in our society. These same factors combine to cover up patterns of discrimination and systemic inequality. We cannot expect that these women will come forward with their stories of individual or institutional abuse or mistreatment, even to people who in good faith want to address the problems. There are too many barriers to disclosure and the barriers are too formidable.

In the absence of full disclosure, it is extremely difficult to uncover what is happening and to what extent. One has to extrapolate from the information that is available. However, in relation to the issues being raised in the context of this review and report, there actually is considerable information available. Past inquiries, reviews and reports have repeatedly and consistently documented the abuses and mistreatment to which federally sentenced women have been and are subjected.³² In the submission from SIS, the Commission has the benefit of hearing from women who have directly experienced the issues that are under investigation here. The submissions from CAEFS and NWAC and DAWN provide information and analysis from those who are expert in dealing in the issues of vulnerability and systemic power imbalances, and in overcoming some of the barriers to disclosure. Because of their extensive experience and expertise, these groups are more likely to get fuller and more accurate disclosures and to be better able to interpret and extrapolate from the data that they do have.

All of the evidence received by the Commission in this process has to be assessed and weighed in light of the barriers to disclosure outlined in this submission.

³¹ Supra note 26 at p.182-3.

³²As listed and discussed in Canadian Human Rights Commission, *Consultation Paper for the Special Report on the Situation of Federally Sentenced Women* (January 2003).