

# **Standing Committee on the Status of Women**

*Women and Justice Roundtable: December 9, 2004*

**Submitted by:**

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## **The Canadian Association of Elizabeth Fry Societies (CAEFS)**

CAEFS is an association of 25 self-governing, community-based Elizabeth Fry Societies that work with and for women and girls in the justice system, particularly those who are, or may be, criminalized. Together, Elizabeth Fry Societies develop and advocate the beliefs, principles and positions that guide CAEFS. The association exists to ensure substantive equality in the delivery and development of services and programs through public education, research, legislative and administrative reform, regionally, nationally and internationally.

### **Context for this Submission**

Women are the fastest growing prison population world wide. Canada is no exception. In Canada, the number of women in prison for more than two years has almost doubled over the past decade. Most of this increase has occurred in our three Prairie provinces, and four Atlantic provinces, where there have as much as a 300% increase in the number of women serving prison terms of two years or more.

Aboriginal women account for most of the increase in the Prairies. Black women and women with cognitive and mental disabilities make up the majority of the explosion in the east. Although First Nations women account for approximately 1% of the population overall, they are approximately 24% of federally sentenced women and generally account for 50% of the women classified as maximum security prisoners. The “War on Drugs”, evisceration of health and other social support services, “gender-neutral” zero tolerance policies, and mandatory minimum sentences have contributed significantly to this phenomenon.

There are three particularly noteworthy concerns that arise from women’s increased incarceration. First, we have seen increased feminization and criminalization of poverty. Most single parents are women, the majority of whom live below the poverty line. As social programs have been dismantled, women, especially sole support mothers, have been faced with the reality of having to make ends meet within the context of a shrinking social welfare system.

In order to survive and support their families with insufficient resources, many have either worked under the table, prostituted themselves, and, occasionally, some have even carried packages across international borders for money. Such survival approaches all too often, have resulted in the criminalization of too many women for fraud, soliciting for the purposes of prostitution, trafficking and/or importation charges.

Second, increased criminalization has particularly detrimental effects for racialized groups. For example, Aboriginal women continue to suffer the shameful and devastating

impact of colonization. From residential school, to child welfare seizure, to juvenile and adult detention; Aboriginal women and girls are vastly over-represented in institutions under state control. Indeed, even as we work to deinstitutionalize and decarcerate, we are fearful that "treatment" will be the next colonial control of choice.

Third, women have increasingly been punished by the state for their attempts to leave abusive situations. In terms of the rate at which women are charged, however, there has been a 7% decrease overall in the number of women charged with criminal offences in Canada. In particular, we have seen a decrease in the number of violent crimes committed by women, although we have also seen increased numbers of women being charged in situations where they have sought state assistance to protect them from violence. The vicious backlash by police and prosecutorial authorities against initiatives to address male violence against women is a significant contributing factor to women's criminalization and the increasing numbers of women in prison.

Finally, we know that increased numbers of young women with mental and cognitive disabilities, women who used to fill psychiatric and mental health facilities, are now being criminalized. Progressive trends of the past to de-institutionalize those with cognitive and mental disabilities have been subverted by resource depletion, attitudes and policies occasioned by the heightened deficit concerns of the last decade. The result is that more and more people are literally being dumped into the streets or our jails, as the criminal justice system is the only one that cannot refuse people access.

The reflex of corrections to develop mental health service in prisons is only serving to exacerbate the trend to increasingly criminalize women with mental and cognitive disabilities. Developing such services in prisons at a time when they are increasingly non-existent in the community is resulting in more women receiving federal sentences because there will be a presumption that there is an ability to access services in prison that are not available in community settings.

## **Recommendation 1: Increase Support for Social Assistance, Health Care, and Education**

In 1996, the federal government significantly changed and eliminated national standards for social services, health services, and education. This meant that the provincial governments were no longer required to ensure that monies provided to the provinces by the federal government from federal tax revenues be prioritized to provide social services, health services and education services. This devolution of autonomy to the provinces was coupled with significant cuts to transfers for social assistance, health, and education.

This move provided an opportunity for the provinces to have free reign in how they spent public money. In most provinces in Canada, this now means that welfare rates and other social services, as well as health, especially mental health services, and educational services have been brutally slashed. The results are that increasing numbers of people are literally dropping through the increasingly drafty social safety net, while others are being scooped up and criminalized, resulting in ensnarement in the ever-stickier social control network of our criminal justice system. It is the most expensive and punitive, yet least effective, means of addressing social issues.

At the same time as we are seeing the retreat of the state, in terms of the provision of support services, we are seeing the incredible intrusion of the state in terms of increased security and control interventions. The result is increased criminalization of those who are most marginalized. This has a profound impact upon the inherent inequalities of women and girls, especially those who are poor, racialized and who have mental health issues.

Women who are sole-support mothers who fear that they will face the street, death, or jail because of the impact of the new policies, and are consequently concerned about the future of their children have contacted us. Some women have even indicated that they believe that they should voluntarily surrender their children to the state before they are cut off of assistance, so that their children may be certain to have access to adequate food, housing, and clothing via child welfare resources.

We know the increasing numbers of women in prison is clearly linked to the evisceration of health, education, and social services. We also know that the cycle intensifies in times of economic downturn. It is very clear where we are sending the people who are experiencing the worst in the downturn in the economy and social trends. Jails are our most comprehensive homelessness initiative.

Prisons should not continue to be the accepted fallback response to the evisceration of social and health services. They cannot be seen as an adequate substitute for inadequate social assistance, housing or community-based mental health resources. We believe this speaks directly to the need for clear and concerted decarceration strategies, as well as the

need for newly developed and redeveloped linkages between provincial, territorial, and federal social service, education, health, and other support services.

- 1. We therefore recommend that the federal government increase its transfers to the provincial government to support health, education, and most importantly, social assistance.**
- 2. We also recommend that the Committee urge the federal government to exercise its spending power in accordance with Canadian human rights and Charter protections by introducing national standards (recognizing flexible federalism) regarding the provision of social programs, as well as health and educational services. The continued off-loading of responsibility for the marginalized, without the requisite resources to address the growing needs, will only result in increased reliance on our criminal justice system.**

## **Recommendation 2: Support the Direct Needs of Previously Incarcerated Women upon Release, and of Incarcerated Women in Anticipation of Release**

Currently, there are approximately 810 women serving federal sentences (2 years or more). Of these, about 48% are incarcerated and about 52% are serving the remainder of their sentences in the community under various forms of conditional release (day parole, full parole, or statutory release). However, with respect to the Aboriginal women population (172), further challenges remain as almost 60% (103) of Aboriginal women are incarcerated compared to just over 40% (72) who are in the community.

In addition, too many women stay in prison long past all their eligibility dates. Moreover, the prisons are ill-equipped to deal with the many challenges of reintegrating women into their communities after imprisonment. More often, they actually make such pre-existing challenges worse. Poverty, as well as the compounding discriminatory factors of racism, class bias and the stigma of being labeled a “criminal”, makes it increasingly difficult for women to integrate into the community.

Funding is overwhelmingly devoted to the use of imprisonment. The Canadian Human Rights Commission recently issued a report calling for significant changes within the criminal justice system, particularly as they impact women, especially Aboriginal women and women with mental health issues. In addition, as the Auditor General, the all-party Parliamentary Public Accounts Committee, and the Canadian Human Rights Commission recommendations pointed out in reports that came out over the past two years, the Correctional Service of Canada spends many millions of dollars to operate the women’s prisons, and a comparable pittance funding releasing options for women exiting prison. I

Women need additional support both in prison, and when they are released. Current training, educational and therapeutic programs do not meet the needs of the women in Canada’s prisons. Although it is clear the programs are not comparable in quantity, quality or variety to those provided to sentenced men, it is not useful to make simple comparisons between programs for men and programs for women. Instead, the particular needs and interests of women prisoners must be examined to ensure substantial equality, and allow women prisoners to progress toward a successful reintegration into society.

Programs that should prepare women for meaningful work are virtually non-existent. In many cases, the emphasis is on traditional “female” skills, such as cooking, cleaning, and sewing. Where promising programs do exist, enrollment is often very limited or the equipment and training skills taught are outdated. Limited access to job training and educational programs directly interferes with the ability of women to meet the terms of their “correctional treatment plan”. As a result, women frequently experience delays in obtaining all forms of conditional supervised and structured release into the community on parole.

For women with disabilities, there are even fewer training programs geared to their needs. Access to therapeutic counseling is very limited, especially for those with the greatest need, most of whom spend most of their time in virtual isolation in the segregated maximum-security units. Moreover, there is a coercive nature to the therapeutic treatment offered. Aboriginal women have limited access to programs and services of any kind, let alone programs that meet their cultural needs.

Federally sentenced women have the right to have ready access to programs and services designed by, with and for them. Such programs must also be supported and delivered by women staff and volunteers who have adequate training and understanding to deliver same.

The second step is to ensure that women in prison have the necessary support when they return to their communities. To be successfully rehabilitated and returned and integrated into their communities, Aboriginal federally sentenced women must have access to programs that are created and facilitated by people from their cultural communities.

Aboriginal women are not a single homogenous group. Aboriginal federally sentenced women are First Nations, Metis and Inuit and come from different clans and regions. Geographic isolation denies them access to their communities and families, which prevents many Aboriginal women in prison from receiving the support and assistance they desire and require. Via the Okimaw Ohci Healing Lodge, the Correctional Service of Canada has attempted to provide limited services for Aboriginal women prisoners, but very few of the Aboriginal federally sentenced women have access to the Lodge and no women classified as maximum security prisoners are permitted any access at all.

- 1. We recommend that the federal government support the Correctional Service of Canada to develop a risk assessment model that recognizes the increasing risk that legislation, policies, and practices pose to the ability of women to successfully live in their communities. Such a model would necessarily focus upon the provision of requisite resources in accordance with the constellation of needs identified by and for women prisoners, such that the risk posed to their successful integration into the community may be effectively eliminated.**
- 2. We recommend that the federal government provide sufficient funding for each woman so that sufficient resources are available for her when she returns to her community.**
- 3. We recommend that the federal government enhance their spending on non-carceral criminal sanctions including such options as probation, suspended sentences, attendance centres, educational and vocational programming or training, therapeutic and self-help services, neighbourhood and community**

**service, restitution, compensation, mediation, as well as the variety of alternative forms of residentially-based treatment and community supervision options -- from halfway or quarter way houses to supported independent living and satellite housing projects.**

- 4. We recommend that the federal government introduce a public awareness program that would encourage MPs, judges, and the public to gain access and exposure to women's prisons, with a view to providing an opportunity for women in prisons to engage in public education to dispel myths with respect to the realities of the role, conditions and impact of prisoners and prisons.**



### **Recommendation 3: Enhance External Oversight Mechanisms**

There have been repeated calls for correctional accountability that have gone unheeded. These calls for accountability were reinforced by Madam Justice Louise Arbour in her 1996 report and were reiterated this year by the Canadian Human Rights Commission. Indeed, the Office of the Correctional Investigator, the Task Force on Federally Sentenced Women and many previous reports and Commissions of Inquiry, not to mention the reports of the Auditor General and the Parliamentary Committee on Justice and Human Rights [as it then was] and the Public Accounts Committee, have called for increased accountability within corrections and between the Correctional Service of Canada and other external bodies.

CAEFS strongly supports the Canadian Human Rights Commission's proposal for independent monitoring and accountability mechanisms. Now, more than ever, we see that many recognize the vital need for an independent body to monitor the adherence to principles of justice, fairness and the rule of law by the Correctional Service of Canada.

- 1. We recommend that the federal government fund an Inspector of women's prisons, not complaint-driven, but mandated to enter women's prisons and monitor and report on adherence [or lack thereof] to Charter, human rights, and Canada's international obligations. That inspector should be charged with reporting publicly to Parliament. The inspector should have the power to refer matters to court for judicial review in accordance with the recommendation in the Arbour Report for judicial review where correctional 'treatment' amounts to correctional interference with a sentence, to the CHRC for tribunal review of human rights violations, and to the Office of the Correctional Investigator. The Inspector of Women's Prisons should be governed by a National Women's Governance Committee, co-chaired by Strength in Sisterhood (SIS), the Native Women's Association of Canada (NWAC) and the Canadian Association of Elizabeth Fry Societies (CAEFS), to provide advice to the Inspector and monitor the provision of correctional services to federally sentenced women in accordance with domestic law and international agreements; Sub-section 77(b) of the CCRA should be repealed and replaced by a new s. 77(b) that establishes the Inspector of Women's Prisons and a National Women's Governance Committee.**

#### **Recommendation 4: Establish a Prisoner Court Challenge Fund**

Many reports have chronicled the need for increased independent and judicial oversight of corrections. Overall cuts to legal aid resources have only exacerbated the challenges for federally sentenced women who attempt to access resources in order to protect their human rights and/or address violations of human, Charter and *Corrections and Conditional Release Act* (CCRA) protected rights and entitlements. At a minimum, adequate legal aid coverage is required throughout the country and legal clinics should be established specifically for prisoners, preferably staffed by experienced lawyers, as opposed to reliance upon student-staffed clinics alone.

- 1. We recommend that the federal government fund a program similar to the Court Challenges Fund for prisoners, such that the Prisoner Challenge Program funds may be accessed by those who are in prison and who may otherwise not be able to avail themselves of legal representation and assistance in order to ensure that their rights and entitlements are realized. This fund would promote the access of women in prison to legal aid services to address issues related to their conditions of imprisonment and conditional release.**

#### **Recommendation 5: Compensate Federally Sentenced Women for Breaches of Fiduciary Duty**

Pursuant to the issues raised by Professor Patricia Monture-Angus in her research for CAEFS, the federal government's breach of its fiduciary obligations to federally sentenced women, particularly Aboriginal women and women with disabilities, creates an obvious need for financial compensation. (See the brief of Patricia Monture-Angus at [http://www.elizabethfry.ca/caefs\\_e.htm](http://www.elizabethfry.ca/caefs_e.htm))

- 1. We urge the federal government to establish a fund similar to the type established for victim compensation schemes to enable women prisoners and former prisoners to access compensation. Access to legal counsel and other advocacy assistance would also be imperative to a successful compensation strategy.**