

Canadian Association of Elizabeth Fry Societies:

*Submission to the Human Rights Committee in
Advance of the Committee's Development of the
List of Issues Prior to the Reporting for Canada's
7th Periodic Review*



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The Canadian Association of Elizabeth Fry Societies

The Canadian Association of Elizabeth Fry Societies (CAEFS) is a national organization that advocates alongside criminalized women, trans, non-binary, and Two Spirit people – particularly those who are federally incarcerated. CAEFS is comprised of 24 self-governing, community-based Elizabeth Fry Societies located across Canada and a National office in Ottawa – in the unceded and unsurrendered territory of the Algonquin Nation. CAEFS advocates for stronger and more well-resourced communities and supportive services / interventions that interrupt cycles of violence and criminalization. CAEFS actively monitors and reports on the conditions of confinement inside federal prisons designated for women and is regularly in contact with the people incarcerated therein.

CAEFS is concerned with Canada's insufficient implementation of the International Covenant on Civil and Political Rights (ICCPR). This submission, included as part of Canada's seventh period report of its implementation of the ICCPR, will offer CAEFS' perspective on the ways in which Canada has failed to uphold its commitment to the protection and preservation of the human rights standards guaranteed by the ICCPR.

Specifically, CAEFS will discuss the following as they relate to the Articles presented in the ICCPR:

- the over-representation and over-classification of Indigenous and Black prisoners;
- methods of solitary confinement (notably Structured Intervention Units or SIUs);
- sexual assaults within federal institutions designated for women; and
- physical, mental, dental care access in federal institutions designated for women.

We note that this submission could be devoted entirely to the human rights violations that have occurred in the prisons designated for women during the COVID-19 pandemic; however, many of these rights violations are exacerbations of what federally incarcerated people were experiencing long before March 2020. With this in mind, we close our discussion with a brief overview of how the COVID-19 pandemic has intensified the unmitigated human rights violations experienced by those CAEFS' works with over this past year.

Finally, it is our contention that no amount of reform within the existing system of criminalization and punishment will ever completely align with the human rights standards guaranteed by the ICCPR. We believe that there are more just and effective forms of accountability that do not continue to perpetuate harm against our community's most vulnerable members. Canada must invest in upstream interventions that create strong, well-resourced communities. The over-representation of Indigenous and Black people in prisons, of people with mental illnesses in prisons, of poor people in prisons, of people who have experienced abuse in prisons is evidence that Canada punishes those who experience social inequities rather than seeking to right the inequities themselves. Because people in prison matter, and because their rights are entrenched, CAEFS makes the following recommendations within the existing framework of criminalization and punishment, while urging the United Nations (UN) to consider more transformative approaches to justice.

To begin, we contextualize antecedents to the victimization, criminalization and incarceration experienced by the people CAEFS works alongside.

Antecedents to victimization and criminalization

The Canadian justice system criminalizes conditions and circumstances experienced by its most vulnerable and marginalized populations every day, including poverty, homelessness, trauma, abuse, and mental illness. The act of criminalization converts survival behaviours into criminal offenses, and subsequently reduces whole people into the singular identity of 'criminal'. Women (especially Indigenous or Black women) along with trans, non-binary and Two Spirit people, are subjected to intersectional social inequities that serve to make them vulnerable to victimization and criminalization. Most of the incarcerated individuals CAEFS works with are convicted of crimes which are principally motivated by economic factors of survival. For example, the leading causes of crime for people serving in federal prisons designated for women are theft over \$5,000 (23.9%), theft under \$5,000 (37.2%), fraud (32.7%), and trafficking of stolen goods (21.1%).¹ The gender pay gap (women making on average \$4.13 less per hour than a male counterpart) and gendered poverty are systemic issues which reduce women's ability to achieve or maintain economic independence and increase their chances of victimization and criminalization.² Women are also much more likely to reduce their paid work hours to meet unpaid caregiving responsibilities.³ Indigenous, Black, people of colour, trans, non-binary, and Two Spirit people face additional systemic barriers to economic stability, such as racist, transphobic, and homophobic attitudes which prohibit their inclusion in the workforce or eliminate access to necessary social or health services. While little research on poverty rates amongst 2SLGBTQQIA exists; the 2016 Canadian Census revealed the staggering percentages of marginalized women who qualify as low-income: Indigenous women and girls with registered treaty status (32.3%), racialized women and girls (21.2%), and single mothers (30.4%).⁴ It is evidenced by the incarceration rates amongst these groups of marginalized women that desperate acts of survival made necessary by complex webs of social inequity have become entrenched as criminal offences under Canadian law.

Women and gender diverse people convicted of violent crimes are often survivors of gender-based oppression and violence. Gender-based violence occurs across all racial, religious, cultural, and socioeconomic backgrounds, but certain groups are particularly vulnerable to this type of violent victimization. In Canada, Indigenous women and girls, 2SLGBTQQIA, women with disabilities, and women living in rural and remote regions are at greater risk of violence.⁵ First Nations, Métis, and Inuit women are nearly seven times more likely to be victims of homicide than non-Indigenous women.⁶ 60%

¹ Statistics Canada, 2018. "Women in Canada. A Gender-Based Statistical Report". Retrieved from: <https://www150.statcan.gc.ca/n1/pub/89-503-x/89-503-x2015001-eng.htm>

² Canadian Women's Foundation, 2021. "The Facts about Women and Poverty in Canada". Retrieved from: <https://canadianwomen.org/the-facts/womens-poverty/>

³ Ibid.

⁴ Ibid.

⁵ Government of Canada, 2018. "Key statistics on gender-based violence in Canada". Retrieved from: <https://women-gender-equality.canada.ca/en/gender-based-violence-knowledge-centre/about-gender-based-violence.html#statistics>.

⁶ Ibid.

of women living with intellectual and/or physical disabilities have experienced some form of violence.⁷ Unfortunately, no national statistics exist for gender-based violence experienced by Two Spirit, trans, queer, questioning, intersex, and asexual Canadians; however, evidence confirms these populations experience a high rate of violent victimization.⁸ That the groups who are most often victimized are also the most often criminalized demonstrates a propensity by the state to over-police and under-protect the most marginalized groups in our communities.

The concept of being both over-policed and under-protected is especially true for Indigenous people in Canada. Canada's history of violence against Indigenous peoples is built into its current government structure and political systems. Residential schools, the Sixties Scoop, the Indian Act -- these government policies and actions have led to the disenfranchisement of so many Indigenous peoples and to their subsequent over-incarceration and over-representation in federal institutions. When compared to the non-Indigenous population, Indigenous people in Canada are more likely to experience poverty, homelessness, physical, emotional, or sexual abuse, to be victims of violent crimes, and to be incarcerated. Once incarcerated, Indigenous prisoners are also more likely to experience systemic discrimination, such as being over classified, disproportionately placed in solitary confinement, and to serve a higher proportion of their sentences before being granted parole.⁹ In addition to this systemic discrimination, Indigenous people often experience racism from the Correctional Service of Canada (CSC) employees - a recurring issue for the Indigenous people CAEFS works with.

This victimization and criminalization, premised on strategies and legacies of colonial oppression, is also extended to Black communities in Canada. Colonial oppression is currently manifested as anti-Black actions by the Canadian government and its representatives. Black communities are racially profiled, surveilled, and over-policed.¹⁰ This increased presence of police and security authorities in Indigenous and Black communities' results in artificially elevated incarceration rates and a general overrepresentation of people of colour in Canada's criminal justice system.¹¹

⁷ Canadian Women's Foundation, 2014. "The Facts About Gender-based Violence". Retrieved from: <https://canadianwomen.org/the-facts/gender-based-violence/>

⁸ "Key statistics on gender-based violence in Canada".

⁹ Office of the Correctional Investigator (OCI), 2020. "Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge". Retrieved from: [https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx#:~:text=Correctional%20Investigator%20Issues%20Statement%20and%20Challenge,-For%20Immediate%20Release&text=In%20fact%2C%20since%20April%202010,13.7%25%20\(or%201%2C549\)](https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx#:~:text=Correctional%20Investigator%20Issues%20Statement%20and%20Challenge,-For%20Immediate%20Release&text=In%20fact%2C%20since%20April%202010,13.7%25%20(or%201%2C549))

¹⁰ Canadian Human Rights Commission (CHRC), 2018. "Submission to the Committee against Torture on the Occasion of its Consideration of Canada's 7th Periodic Report", pg. 10.

¹¹ Ibid.

The over-representation and over-classification of Indigenous and Black prisoners in federal institutions designated for women (Articles 1,2, 14, 26,27)

Background

CAEFS acknowledges that systemic racism and colonial policies impact various racialized communities in Canada; however, this section examines the human rights violations experienced solely by Indigenous and Black prisoners in federal institutions designated for women.

Indigenous and Black prisoners continue to report on the racist attitudes and policies of CSC and its staff. Not only are Indigenous and Black women more likely to be federally sentenced, but they are also more likely to receive a higher security classification once sentenced. An incredible 50% of the individuals isolated in the oppressive conditions of maximum security and segregation in prisons designated for women in Canada are Indigenous.¹² During an advocacy visit to Fraser Valley Institute in British Columbia in May 2018, CAEFS' advocacy team observed that 100% of the women in the secure unit were Indigenous.

In 2020, Canada reached a historic high for its percentage of Indigenous people behind bars.¹³ While the issue of over-representation and the over-classification of Indigenous people is well documented and publicized through national media, the fact remains that this issue has yet to be addressed through concrete and significant action. Neither the Canadian government nor CSC have made meaningful progress into addressing the root causes of criminalization and incarceration for Indigenous and Black women. The complex intersections affecting these marginalized groups of people are as prevalent in 2021 as they were thirty years ago. Black and Indigenous communities are still over-policed and over-surveilled due to socioeconomic issues like poverty and inadequate access to services that are rooted in colonial and gender-based oppression.¹⁴

Prior recommendations from the United Nations Human Rights Committee to Canada

The UN's Human Rights Committee (HRC) has made several recommendations to Canada concerning its failure to offer Indigenous people, especially women, the civil and political rights guaranteed by the ICCPR. HRC's most recent recommendations are found in sections 12, 13, and 17 of its list of issues in relation to the sixth periodic report of Canada's implementation of the ICCPR. A summary of these recommendations can be found below:

- 1) Section 12 calls for legislative action regarding the issue of domestic violence against Indigenous women. HRC implores Canada to create proper channels for redress and protection of Indigenous survivors of domestic violence and ensure perpetrators are prosecuted and appropriately punished.¹⁵

¹² Native Women's Association of Canada, 2017. "Indigenous Women in Solitary Confinement". Retrieved from: <<https://www.nwac.ca/wp-content/uploads/2017/07/NWAC-Indigenous-Women-in-Solitary-ConfinementAug-22.pdf>>

¹³ "Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge".

¹⁴ "Submission to the Committee against Torture on the Occasion of its Consideration of Canada's 7th Periodic Report", pg. 10.

¹⁵ United Nations (UN) International Covenant on Civil and Political Rights (ICCPR), 2015. "Human Rights Committee List of issues in relation to the sixth periodic report of Canada, 2014-2015", pg. 3.

- 2) Section 13 requests clear updated reports on the progress made in the cases of missing and murdered Indigenous women discussed in British Columbia's 2013 inquiry report. HRC further requests for Canada to provide "disaggregated data on the number of investigations, prosecutions, convictions and sanctions imposed in cases of disappearances and murders of Aboriginal women and girls."¹⁶
- 3) In Section 17, HRC requests information on the disproportionately high rates of Indigenous persons, including women, deprived of their liberty in Canadian federal and provincial prisons. Moreover, Canada is required to provide HRC with information regarding the effective implementation of alternatives to imprisonment as set forth in subsection 717(1) of the Criminal Code and disaggregated data on Indigenous prisoners who serve their sentences in their communities as set forth in subsection 718.2(e) and section 742.1 of the Criminal Code.¹⁷

Both the Truth and Reconciliation Commission of Canada (TRC) and the National Inquiry on Missing and Murdered Indigenous Women and Girls (MMIWG), which has now expanded its mandate to include Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual (2SLGBTQQA) people, have published reports on two separate crises affecting Indigenous people in Canada. The TRC published a 12-volume report on the history of residential schools, the inter-generational trauma that occurred as a result of these schools, and 94 Calls to Action for the federal government to redress the legacy of residential schools and advance reconciliation. To date, many of TRC's calls to action have been left unanswered. Of note are the following calls to action that address the experiences of Indigenous people, especially women, who are incarcerated:

- 1) "30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so."¹⁸
- 2) "32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences."¹⁹
- 3) "34. We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD)."²⁰
- 4) "38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade."²¹

MMIWG has a separate section of its reporting dedicated entirely to "Calls to Justice" on behalf of indigenous women, girls and 2SLGBTQQA people. This section includes many calls to action relevant to

¹⁶ "Human Rights Committee List of issues in relation to the sixth periodic report of Canada, 2014-2015", pg. 3.

¹⁷ Ibid.

¹⁸ Truth and Reconciliation Commission of Canada, 2015. "Truth and Reconciliation Commission of Canada: Calls to Action", pg.3.

¹⁹ Ibid.

²⁰ Ibid, 4.

²¹ Ibid.

the present submission, including sections 14.1 to 14.13 which specifically address CSC. The following excerpts deal solely with issues of over-classification of Indigenous women by CSC:

- 1) 14.3 We call upon CSC to immediately rescind the maximum-security classification that disproportionately limits federally sentenced Indigenous women classified at that level from accessing services, supports, and programs required to facilitate their safe and timely reintegration.²²
- 2) 14.4 We call upon CSC to evaluate, update, and develop security classification scales and tools that are sensitive to the nuances of Indigenous backgrounds and realities.²³

The over-representation and over-classification of Indigenous and Black prisoners

The Government of Canada has been presented with statistics of over-representation and over-classification of Indigenous peoples for decades. Most recently, in 2020 the Office of the Correctional Investigator (OCI) released a statement on the historic proportion of Indigenous prisoners in federal and provincial/territorial institutions across the country. While First Nation, Inuit and Métis peoples account for 5% of the general Canadian population, they represent 30% of all federally sentenced prisoners.²⁴ This trend is even starker for Indigenous women, who account for 42% of all federally sentenced female prisoners and 26% of women supervised in communities.²⁵ The current trend noted by Correctional Officer Dr. Ivan Zinger is that Indigenous prisoner populations are increasing (+43.3% since April 2010) while non-Indigenous incarcerated populations are decreasing (-13.7% for that same time period), resulting in an “Indigenization” of Canada’s correctional system.²⁶ Similarly, since 2010 the rate of incarceration for federally sentenced Indigenous women has increased by 73.2%.²⁷

In recent years, Black people have also experienced an increased rate of incarceration.²⁸ From 2005-2015, the Black population in federal institutions increased by 69%.²⁹ According to the CHRC’s 2018 submission to the Committee against Torture, the UN Working Group of Experts on persons of African descent expressed extreme concern with the over-representation of Black individuals in Canadian prisons.³⁰ Black individuals make up a small percentage of the Canadian population, approximately 2.9%, yet they account for 8.6% of the federally incarcerated population.

CSC’s classification system perpetuates the justice system’s racist practices through its over-classification of Indigenous and Black prisoners. The classification tool used by CSC to assess women’s security levels when they first enter the prison, known as the Custody Rating Scale (CRS), was developed in the late eighties, and implemented in the early nineties, and was based on a sample of white male

²² The National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), 2019. “Reclaiming Power & Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls”, pg. 27.

²³ Ibid.

²⁴ “Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge”.

²⁵ OCI, “2018-2019 Annual Report”, pg. 106.

²⁶ “Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge”.

²⁷ “2018-2019 Annual Report”, pg. 106.

²⁸ OCI, 2020. “2019-2020 Annual Report”, pg. 20.

²⁹ The Standing Senate on Human Rights, 2019. “Interim Report- Study on the Human Rights of Federally-sentenced Persons: The Most Basic Human Right is to be Treated as a Human Being”, pg. 43.

³⁰ “Submission to the Committee against Torture on the Occasion of its Consideration of Canada’s 7th Periodic Report”, pg. 10.

prisoners.³¹ CSC's own research has documented that the CRS does not accurately assess the so-called risks posed by women prisoners. In 2003, the CHRC confirmed this finding in its report entitled "Protecting Their Rights." They determined that CSC's classification scheme discriminates against women on the basis of sex, race and disability, and that most Indigenous women are over-classified and therefore unable to access programming, recreational and other services, and conditional release.³²

To date, CSC has made no changes to the CRS or the way it is used on women; unsurprisingly, women, and particularly Indigenous and Black women, continue to be over-classified. A 2017 report of the Auditor General found that CSC frequently overrode the results of this faulty tool, but instead of overriding the test in favour of moderate security outcomes, staff placed twice as many women prisoners in higher levels of security than the test recommended.³³ In other words, the issue of over-classification is not solely the product of a discriminatory tool; it owes a great debt to discriminatory attitudes among correctional staff as well. In fact, in 2017, the Supreme Court of Canada recognized that Indigenous women are among the most vulnerable to discrimination within corrections.³⁴

Related UN recommendations

As previously mentioned, in October of 2016 the UN Working Group of Experts on persons of African descent observed that racial profiling is "endemic in the strategies and practices used by law enforcement" in Canada and that the use of "carding" and street checks disproportionately affects people of African descent.³⁵

Recommendations regarding the over-representation and over-classification of Indigenous and Black women in Canada are made in both the Committee on the Elimination of Racial Discrimination's concluding observations on the combined 21st to 23rd periodic reports of Canada (2017) and the Committee against Torture's concluding observations on the seventh periodic report of Canada (2018).

In the 2017 report on Canada's implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, section 15 is dedicated to recommendations specific to "Racial profiling and disproportionate incarceration".³⁶ Subsequently, s.16 (a,b,c,d,e,f) and s.18(a,b) discuss Canada's failures to prevent discrimination within its carceral system. Recommendations from the aforementioned sections include, but are not limited to:

- "Implement the United Nations Declaration on the Rights of Indigenous Peoples, and adopt a legislative framework to implement the Convention — including a national action plan, reform

³¹ CSC, 2018. "Commissioner's Directive (CD) 705-7: Security Classification and Penitentiary Placement."

³² CHRC, 2003. "Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women". Retrieved online: <https://www.chrccdp.gc.ca/eng/content/protecting-their-rightssystemic-review-human-rights-correctional-servicesfederally>.

³³ Office of the Auditor General of Canada, 2017. "Fall Reports of the Auditor General of Canada to the Parliament of Canada, Report 5—Preparing Women Offenders for Release—Correctional Service Canada". Retrieved online: https://www.oagbvg.gc.ca/internet/English/parl_oag_201711_05_e_42670.html

³⁴ 307 Ewert v Canada, 2018 SCC 30, at para. 54. Retrieved from: Canada without Poverty, Chair in Indigenous Governance, and FAFIA, 2019. "National Action Plan to End Violence against Indigenous Women and Girls: The Time is Now", pg. 6.

³⁵ "Submission to the Committee Against Torture on the Occasion of its Consideration of Canada's 7th Periodic Review", pg. 10.

³⁶ UN International Convention on the Elimination of All Forms of Racial Discrimination, 2017. "Committee on the Elimination of Racial Discrimination concluding observations on the combined 21st to 23rd periodic reports of Canada", s 15.

of national laws, policies and regulations to bring them into compliance with the Declaration, and annual public reporting;”³⁷

- “Make it mandatory to collect and analyse data at the federal, provincial and territorial levels on random stops by law enforcement officers, including on the ethnicity of the persons stopped, the reason for the stop, and whether the stop resulted in an arrest, prosecution and conviction, and report publicly on this data at regular intervals;”³⁸ and
- “Address the root causes of overrepresentation of African-Canadians and indigenous peoples at all levels of the justice system, from arrest to incarceration, such as by eliminating poverty, providing better social services, re-examining drug policies, preventing racially biased sentencing through training of judges, and providing evidence-based alternatives to incarceration for non-violent drug users, and fully implement the recommendations of the Truth and Reconciliation Commission on this topic, in order to reduce the incarceration of African-Canadians and indigenous peoples;”³⁹

The 2018 Committee against Torture report makes recommendations based on Canada’s systemic issues of gender-based violence and oppression, particularly in the case of Indigenous women and girls.⁴⁰ As previously noted, gender-based violence and oppression have a direct link to victimization and criminalization and are therefore important to the material covered in this section. Furthermore, s.13(d) specifically speaks to Canada’s obligation to address the over-representation of Indigenous peoples and other minority groups in prisons and its underlying causes.⁴¹ The Committee acknowledges the MMIWG reports, but “remains seriously concerned about the continued and consistent reports of disproportionate levels of violence against members of this group overall.”⁴²

CAEFS’ recommended questions

- How will Canada rectify the issue of over-surveilling/over-policing of Indigenous and Black communities?
- How will Canada address the issue of security over-classification of Indigenous and Black women and gender diverse people in federal institutions designated for women?

CAEFS’ recommendations

- There is an urgent need for the decarceration of Indigenous women. The lack of available community release options is not as much due to the legislation as it is to policy decisions which have compromised the effect of the legislation. The Corrections and Conditional Release Act (CCRA) is set up to facilitate community release. The intent of sections 81 and 84 of the CCRA was to afford Indigenous communities’ greater control over matters affecting them.

³⁷ “Committee on the Elimination of Racial Discrimination concluding observations on the combined 21st to 23rd periodic reports of Canada”, s 18(b).

³⁸ Ibid, s 16(b).

³⁹ Ibid, s 16(d).

⁴⁰ UN International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2018.

“Committee against Torture concluding observations on the seventh periodic report of Canada”, s 49(a) to (f).

⁴¹ Ibid, s 13(d).

⁴² Ibid, s 48.

- Abolish mandatory minimum sentences and parole ineligibility periods as they disproportionately impact Indigenous and Black women. Mandatory minimum sentences deny judges the ability to consider lower levels of culpability, for example, in instances where an accused is party to a spouse's offence or where the accused was acting in relation to an offence against oneself or one's child.
- Conduct a National Inquiry into anti-Black and anti-people of colour policing tactics in Canada.

Solitary confinement (Articles 7,9,10, 26)

Structured Intervention Units background

The segregation regime in Canada was replaced by Structured Intervention Units (SIUs) through amendment Bill C-83 to the CCRA, in December of 2019. This amendment was ratified after two court challenges determined that the practice of administrative segregation in Canadian federal prisons under the CCRA was unconstitutional.⁴³ According to the court rulings, administrative segregation violated sections 7 (The right to life, liberty and security of person), 12 (The right not to be subjected to any cruel and unusual treatment or punishment) and 15 (The right to equality before and under law and equal protection and benefit of law) of the Canadian Charter of Rights and Freedoms, part one of Canada's Constitution Act of 1982.⁴⁴

CAEFS asserts that the practice of segregation in the prison system is ongoing and largely unchanged; it is just being called by another name.

Relevant CSC policies and directives

These court challenges, and the resulting changes to the CCRA, clarified the Charter protections required to uphold the rights of prisoners placed in isolation. The CCRA now stipulates that:

- 1) any isolation amounting to solitary confinement be strictly limited to 15 days;
- 1) the placement in isolation be reviewed after five working days by an independent arbiter or a body with the power to order the release of the prisoner, such as a SIU Review Committee or Independent External Decision Makers;
- 2) mentally ill persons be protected from any form of extreme isolation; and
- 3) the Commissioner of CSC has the power to designate any areas of the prisons as SIUs.⁴⁵

In addition to the provisions mentioned above, Bill C-83 requires CSC to provide four hours of out-of-cell time every day between 7.00 a.m. and 10 p.m.⁴⁶ CSC must also provide the prisoner with an opportunity for meaningful human contact and an opportunity to participate in the programs and services that

⁴³ British Columbia Civil Liberties Association (BCCLA) v. Canada (Attorney General), 2018 BCSC 62 (17 January 2018), and Canadian Civil Liberties Association (CCLA) v. Canada (Attorney General), 2019 ONCA 243 (28 March 2019).

⁴⁴ British Columbia Civil Liberties Association, 2021. "Justice, not torture: challenging solitary confinement in Canadian prisons". Retrieved from: <https://bccla.org/our-work/solitary-confinement/>

⁴⁵ CCRA, s 32(1).

⁴⁶ Ibid, s 36(1)(a).

respond to their specific needs and the risks associated with the prisoner.⁴⁷ In Commissioner’s Directive (CD) 711: Structured Intervention Units, “meaningful human contact” is described as “the opportunity for human interaction with others that is conducive to building rapport, social networks or strengthening bonds with family or other supports”.⁴⁸

CAEFS does not subscribe to the belief that the new provisions to the CCRA have ended the regime of segregation, and instead calls for the abolition of all forms of segregation as oppressive, punitive, and inhumane practices.

Preliminary research on early-stage SIU implementation

Preliminary studies on the administration of the SIU model in federal institutions in Canada have shown its ineffectiveness as a deterrent to the use of segregation. In 2019, Public Safety Canada established an SIU Implementation Advisory Panel to examine the early stages of SIU implementation in Canada. This panel was forced to dissolve after one year due to CSC’s refusal to provide the requested SIU-specific data.⁴⁹ At the request of Public Safety Canada, one panel member continued the study and co-authored Canada’s first study on early-stage SIU implementation, “Understanding the Operation of Correctional Service Canada’s Structured Intervention Units: Some Preliminary Findings”. This report was done using an administrative dataset of 1,666 incidents involving men, women, and gender diverse prisoners sent to SIUs.⁵⁰ The findings most relevant to CAEFS and the women and gender diverse people it serves are listed below:

- 1) Only 5.7% of recorded SIU incidents achieved 4-hours outside of the cell every day. Roughly 6% missed up to 20% of their mandatory four hours outside of cell. The majority (66.3%) missed their four hours outside of their cell in over three-quarters of their time spent in an SIU. Roughly 39% did not receive 4 hours outside of the cell every day for the entirety of their stay.⁵¹
- 2) 2.3% of the SIU stays (39 person-stays in all) in the SIUs involved women. Thirty-two of these 39 women (or 82%) were placed in SIUs in one institution: Edmonton Institution for Women (EIFW).⁵²
- 3) 51% of the person-stays in the SIUs are for 15 days or fewer, with the remaining 49% being distributed between 16 and 291 days, which marks the end of the study.

Other methods of solitary confinement practiced in Canada

Although this section focuses primarily on the use of SIUs as an unconstitutional practice of solitary confinement, CSC also employs a myriad of other segregation methods to isolate prisoners for unregulated periods of time. The alternative segregation methods of observation cells, CSC Treatment

⁴⁷ Parliament of Canada, 2019. “Legislative Summary of Bill C-83: An Act to amend the Corrections and Conditional Release Act and another Act”. Retrieved from:

https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/421C83E

⁴⁸ CSC, 2019. “CD 711: Structured Intervention Units, Annex A Cross-References and Definitions”.

⁴⁹ Anthony N. Doob and Jane B. Sprott, 2020. “Understanding the Operation of Correctional Service Canada’s Structured Intervention Units: Some Preliminary Findings”, pg. 6.

⁵⁰ Ibid, 8.

⁵¹ Ibid, 18.

⁵² Ibid, 21.

Centres, lockdowns, dry cells, and maximum-security pods will be briefly discussed in the following section.

If a prisoner is deemed to be at moderate to high risk of attempting suicide, the warden can authorize their placement in an observation cell.⁵³ Observation cells are similar to SIUs, but they have windows in the door to permit continuing observation by CSC staff, and lights which are kept on 24 hours a day. There is currently no way to challenge a placement in an observation cell, nor is there any external review process for such a placement. Rules governing required amount of time outside the cell or opportunities for meaningful human contact do not apply in the same way to confinement in observation cells as they do to SIUs.

Under the CCRA and CD 711, CSC is obligated to provide varying degrees of essential and non-essential physical, mental, and dental health care to prisoners.⁵⁴ CSC has five Treatment Centres (although only two of the five accept women) that offer acute and chronic mental health care to prisoners who require in-patient treatment due to severe mental illness.⁵⁵ If a prisoner is sent to a CSC Treatment Centre, they may be placed in a “quiet room” or be isolated for long periods. Again, this type of confinement is not regulated like SIUs are, particularly in terms of time limits, external review or opportunities to challenge the placement.

Wardens at federal prisons regularly order lockdowns for periods that can range from hours to weeks. During lockdowns, prisoners may be allowed out of their cell for only short periods of time to take a shower or make a phone call. In more extreme situations, they may not be allowed out at all. The reasoning for lockdowns can vary widely, from searches (for drugs or weapons) to staff shortages, as well as construction work, and other operational or administrative reasons. There is no law or CD clearly allowing wardens the power to lock down a prison, which also means that lockdowns are not regulated in any way. Like many other alternative segregation methods, there are no time limits or mechanisms for prisoners to challenge their imposition.

In a ‘dry cell’, lights are kept on at all hours of the day and night. If the warden has reasonable grounds to believe that a prisoner has ingested drugs or weapons or is carrying either in a body cavity, the warden may request for the prisoner in question to be “dry-celled” for as many days as the warden thinks is necessary.⁵⁶ According to CSC, in a dry cell, you must be visited at least once every day by a registered health care professional.⁵⁷ This is especially problematic for prisoners with vaginas, as there is no way for the ingested drugs or weapons to be expelled without intervention.

Secure units are isolated from the general prison population and contain maximum security cells (or ‘max pods’). The only difference between max pods and solitary confinement is that max pods have access to a larger yard area for one hour a day, and a small common area shared with three to five other women. Women classified as maximum security are confined to those cells and that small common

⁵³ CSC, 2017. “CD 843: Interventions to Preserve Life and Prevent Serious Bodily Harm”.

⁵⁴ CCRA, s 85.

⁵⁵ CSC 2011. “Audit of Regional Treatment Centres and the Regional Psychiatric Centre”.

⁵⁶ CSC, 2015. “CD 566-7: Searching of Inmates”.

⁵⁷ CCRA, 51(1).

area, which contains a TV, couch, table, fridge, and washing machine, often for 23 hours a day. When there is a lockdown, often a daily occurrence due to the pandemic, women in the secure units are confined entirely to their cells and are denied access to programs, school, mental health supports and sometimes even showers. In Canada, all prisoners sentenced to life in federal institutions designated for women spend their first two-years of institutionalization in max pods. This is not a sentence or security requirement, but rather a chosen practice by CSC.

It should be noted that while in max pods, or in any other type of solitary confinement, prisoners have limited access to mandatory programming. This inability to access timely programming can delay completion of CSC's correctional plan, and can prolong time spent in prison. Solitary confinement is detrimental to every aspect of a prisoners' life.

Solitary confinement from CAEFS' perspective

Since the changes to the CCRA through Bill C-83, CAEFS has observed through its cross-country advocacy at the six federal institutions designated for women that the unconstitutional practice of segregation, often colloquially referred to as solitary confinement, is ongoing. SIUs are being used to circumvent the illegality of administrative segregation practices and prisoners are still experiencing the same human rights violations as they were prior to the court rulings of 2019. The committees established to review SIU placements, such as the SIU Review Committee and the Independent External Decision Makers, have not been properly equipped to complete their mandates and therefore, have been rendered ineffective.⁵⁸

CAEFS is currently involved in two separate charges against CSC for inappropriate and traumatic use of solitary confinement. CAEFS has an ongoing human rights complaint against CSC, alleging CSC discriminates against federally sentenced women on the grounds of sex, race, and mental health. The complaint specifically targets CSC's excessive use of segregation in cases impacting Indigenous people and people with mental illnesses in the federal prisons designated for women.⁵⁹

CAEFS is also involved in a supportive role with the ongoing case of Ms. Adams, a woman who was accused by CSC officers of bringing drugs into NOVA. Following this accusation, Ms. Adams was held in segregation ("dry cell") under direct 24/7 lighted observation, and denied human contact, meaningful access to a lawyer, and private use of toilet facilities for 16 days. Ms. Adams lives with debilitating mental illness connected to a history of childhood trauma. The prison's mental health team raised concerns that the dry cell procedure would significantly exacerbate Ms. Adams's prior mental health challenges; these concerns were ignored. After CSC repeatedly failed to substantiate their assertion that drugs were present in and would be imminently expelled from Ms. Adams' vagina, Ms. Adams, with the help of CAEFS' lawyers, set out to challenge the law (s. 52(b) of the Corrections and Conditional Release Act) that gave prison management the authority to hold her in a dry cell for an indefinite period.

Given the evidence of solitary confinement's continued practice in Canadian federal institutions designated for women, CAEFS stands by the elimination of all forms of segregation, including the

⁵⁸ Senate Canada, 2019. "The Standing Senate Committee on Social Affairs, Science and Technology: Evidence". Retrieved from: <https://sencanada.ca/en/Content/SEN/Committee/421/soci/54775-e>

⁵⁹ Ibid.

method of ‘dry-celling’ experienced by Ms. Adams. SIUs perpetuate the inhumane and unconstitutional practice of solitary confinement. While alternate forms of segregation, such as dry-celling, fall outside the jurisdiction of the SIU model and remain unregulated. Whether solitary confinement is called a structured intervention unit; an observation cell; a lockdown; dry celling; a restrictive movement routine; or a maximum-security pod- it is still a violation of human rights and jeopardizes the security and wellbeing.

Related UN recommendations

In the concluding observations on the seventh periodic report of Canada made in December 2018 by the UN’s Committee against Torture, the Committee advised Canada on its obligation to ensure all persons arrested or detained are afforded, by law and in practice, all fundamental legal safeguards against torture from the very outset of their deprivation of liberty.⁶⁰ The Committee also requested the establishment of an independent mechanism for addressing complaints of torture and ill-treatment in all places of deprivation of liberty, and to provide statistical data, disaggregated by sex, age, ethnic origin or nationality and place of detention, on complaints of torture and ill-treatment.⁶¹ Canada is further obligated by The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) to use solitary confinement in exceptional cases as a last resort, for the shortest amount of time possible, and for the solitary confinement to last no longer than 15 consecutive days.⁶² The Committee against Torture draws specific attention to section 45(2) of the Nelson Mandela Rules. This section states that “solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.”⁶³

CAEFS’ recommended questions

- How do the alternative methods of segregation differ from the unconstitutional practice of solitary confinement?
- Given the evidence found in preliminary SIU implementation research and CAEFS’ and other organizations’ advocacy, will Canada abolish all forms of segregation?

CAEFS’ recommendations

- The practice of segregation should be abolished altogether, including the use of solitary confinement, maximum security units (and “max pods”), mental health monitoring, and all other forms of isolation and separation from the general prison population that carry similarly detrimental effects.
- While working to eliminate segregation, Canada should ensure access to correctional plan programming and culturally-relevant programming during segregation placement.

⁶⁰ “Committee against Torture concluding observations on the seventh periodic report of Canada”, s 11.

⁶¹ Ibid, s 5.

⁶² Ibid, s 4.

⁶³ Ibid.

Sexual Assault (Articles 7,9,10)

Background

For years, CAEFS has been calling attention to how power structures within prisons make the people incarcerated therein incredibly vulnerable to abuse by CSC employees. This is particularly concerning for incarcerated women, trans, non-binary, and Two Spirit people. Many of these people have experienced abuse, including sexual abuse, prior to their prison sentences, and many likewise have extensive histories of trauma, which are deepened and furthered through the experience of incarceration. CSC has failed in its obligation to provide for the security and humane treatment of prisoners, and furthermore has failed to create an environment that is supportive of survivors or conducive to reporting instances of staff-perpetuated sexual violence.⁶⁴ These failures have produced an institutionalized culture of silence among prisoners and complicity or indifference on behalf of CSC and their staff.

The issue of sexual coercion and violence in federal prisons received public attention in 2020 after two CSC Correctional Officers were charged with sexual assault. In May of 2020, a former Correctional Officer at the Nova Institution for Women was arrested and charged with six counts of sexual assault, six counts of breach of trust, and one count of trying to procure sexual service -- all related to his work at the Institution.⁶⁵ Exactly two months later, in July of 2020, another Correctional Officer at the Grand Valley Institution (GVI), a federal institution designated for women, was arrested and charged with one count of sexual assault against a prisoner, a crime that took place four years earlier in 2016.⁶⁶ These two sexual assault cases against Correctional Officers indicate several realities about the prison system in Canada: (1) the presence of a culture of fear and potential retribution cultivated by CSC staff against prisoners; (2) the lack of proper CSC mechanisms through which to report sexual abuse or misconduct; and (3) the pervasiveness of sexual violence against incarcerated women.⁶⁷

These cases should be understood as two examples of abuses that occur every day in prison, not as isolated or uncommon incidents. The uniqueness of these cases can be found in the fact that the concerns of the people who came forward were acted upon and that the people who caused harm were held accountable in some way.

Indeed, CAEFS advocates have been made aware of and documented multiple allegations of sexual violence involving CSC staff. These incidents have included unwelcome comments of a sexual nature; overtly sexualized looks from CSC staff members; sexual assault incidents where the survivor was discouraged from disclosing details to investigators; demeaning and intrusive strip searches; and inappropriate viewing of prisoners by CSC staff while prisoners are using the toilet in their own cells.

Over the course of 2019-2020, CAEFS' regional advocates reported cases of injustice regarding CSC culture 18 times. The issues raised by people in the prisons designated for women include bullying,

⁶⁴ CCRA, s 3(a).

⁶⁵ CAEFS News release, May 2020. "Former Correctional Officer at the Nova Institution for Women Arrested on Charges of Sexual Assault Against Prisoners."

⁶⁶ Ibid.

⁶⁷ Ibid.

harassment, assault (including sexual assault perpetrated by CSC staff), failure to intervene in assaults, and lack of staff sensitivity to specific needs of women, trans, non-binary, and Two Spirit people.

CSC relevant policies and directives

The deliberate protection of individuals with histories of trauma or abuse, individuals perceived as being 2SLGBTQIA, individuals with physical or mental disabilities, and women is crucial as marginalized prison populations are often the populations most likely to experience sexual violence⁶⁸. CSC's institutionalized culture of silence is further exacerbated by its limited appetite for conceiving or enforcing policies concerning sexual assault by a CSC employee. People in prison can be silenced more easily than those outside of prisons: silencing can be accomplished actively - through discouraging or intimidating witnesses - or passively - through poor documentation and report tracking over time. This indifference toward sexual violence in prisons is explicit in CSC's lack of cohesive policies, procedures or Commissioner's Directives concerning sexual assault perpetrated by employees. At present, there are only two documents that provide guidance to CSC staff on how to respond to a prisoner's report of sexual misconduct or assault. "What to Do if an Inmate is Sexually Assaulted" is a one-page document located in the Health Services section of CSC's internal website, and "Sexually Transmitted Infections Guidelines- Appendix 7: Response to Alleged Sexual Assault" is a document that is almost exclusively available to Health Services staff. These documents are buried in a place - CSC's Health Services policy suite - that is simply not readily available or accessible to all CSC staff.

Strip searching is a CCRA sanctioned form of sexual violence that occurs inside federal institutions designated for women. Strip searching was described by the Supreme Court in 2001 as being "inherently humiliating and degrading" and "one of the most extreme exercises of police power".⁶⁹ Two decades later, and strip searches are still widely practiced across all six of Canada's federal institutions designated for women. Sections 48, 49, and 53 of the CCRA, with guidance from CD 566-7, provide the legislative framework that allows strip searches to take place in prisons. A strip search consists of coercing an individual into removing all their clothing, bending over, spreading open their buttocks, and removing their tampon for a genitalia and bodily orifices inspection. CAEFS asserts that strip searches in these federal institutions amounts to government-sponsored sexual assault. 95% of federally sentenced women and gender diverse individuals have histories of physical and/or sexual victimization.⁷⁰ Forcing an already vulnerable demographic to relive past traumas through government-sponsored physical coercion is inhumane.

At present, Canada does not require CSC to provide any data or statistics regarding sexual violence in their federal institutions. There are no academic reviews, reports, studies, or inquiries mandated to examine the pervasiveness of sexual assault in Canadian institutions.⁷¹ As a result, there is no national

⁶⁸ "2019- 2020 Annual Report", pg. 24.

⁶⁹ Canadian Civil Liberties Association, 2020. "Fighting Against Unnecessary, Unconstitutional Strip Searches". Retrieved from: <https://ccla.org/strip-searches/>

⁷⁰ The Royal Society of Canada (RSC), 2021. "Correctional Services During and Beyond COVID-19", pg. 18.

⁷¹ Ibid.

strategy to combat sexual coercion or violence in Canadian federal or provincial institutions, and no duty to report incidents of sexual violence by CSC or its staff to an external body.

Related UN recommendations

In the Committee against Torture’s 2018 observations report, the Committee acknowledges the 2016 National Inquiry into Missing and Murdered Indigenous Women and Girls; however, it expresses concern and disappointment over Canada’s lack of information on the number of investigations, prosecutions, convictions and sentences imposed in cases of gender-based violence, particularly those involving missing or murdered Indigenous women and girls.⁷² The Committee also reiterates its concern for the disproportionate rates of murder and violence experienced by this demographic. The Committee recommends Canada ensure all cases of gender-based violence, especially against Indigenous women and girls, are thoroughly investigated, perpetrators persecuted and punished appropriately, and both victims and families receive redress, including but not limited to, compensation.⁷³ Furthermore, the Committee against Torture highlights the recommendations made in section 24 of the 2016 observations report by the Committee on the Elimination of Discrimination against Women.⁷⁴ Given that almost half of the population in prisons designated for women are Indigenous, incarcerated Indigenous women must be included in these investigations and efforts to end gender-based violence against Indigenous women.

CAEFS’ recommended questions

- How will Canada protect incarcerated women, trans, non-binary, and Two Spirit people from gender-based sexual violence perpetrated by CSC employees in Canadian federal institutions?
- How will the Canadian government hold CSC accountable to section 3(a) of the CCRA?⁷⁵
- When will Canada implement calls to justice from MMIWG report?

CAEFS’ recommendations

- End the practice of strip searching in all federal prisons: Given the harmful impacts of strip searches on prisoners, CAEFS recommends an end to the practice of strip searching. While an end to this practice should eventually be prescribed in legislation, policy reform can precede eventual legislative reform through directives from National Headquarters or the Minister of Public Safety instructing institutional heads to use alternative interventions.
- Give access to external counselling and treatment: Given the lasting emotional and psychological impacts of sexual violence experiences, CAEFS recommends that incarcerated people be able to readily access free, community-equivalent, confidential counseling and treatment options for trauma and abuse that are independent and external to CSC.
- Increase oversight and accountability measures of and for CSC: CAEFS recommends the implementation of increased oversight and accountability measure of and for CSC to ensure that

⁷² “Committee against Torture Concluding observations on the seventh periodic report of Canada”, s 49.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ This section enshrines in law the safe and humane treatment of prisoners.

incarcerated people in CSC's care are protected against future sexual violence. This would include implementing a system for documenting and recording incidents of sexual violence and coercion.

- Launch an Independent Public Inquiry: An independent public inquiry that focuses specifically on the issue of staff-to-prisoner sexual coercion, violence and abuse - including the state sanctioned sexual violence experienced by those subjected to strip searches - is necessary to understand the full scope of the issue and to prevent the harm from continuing.
- Follow through with the recommendations outlined in the National Action Plan to end gender-based violence.

Physical, mental, and dental care access (Articles 7, 9, 10, 14, 26)

Background

CSC is not fulfilling its physical, mental, and dental health care obligations to people in federal prisons designated for women. Due to a multitude of contributing factors including, but not limited to, experiences of poverty, inter-generational trauma, family dysfunction, and access to basic amenities, such as clean water and shelter; incarcerated women and gender diverse people are more likely when compared to the general Canadian population to have underlying or untreated physical or mental health issues. These issues can range from substance dependence to neurological disorders or intellectual disabilities, to broader physical health issues such as diabetes.⁷⁶ In a 2018 study of 154 women incarcerated in six CSC operated facilities, 80% of women in custody “meet the criteria for a current mental disorder, including high rates of alcohol and substance dependence, antisocial personality disorder and borderline personality disorder”.⁷⁷ In addition, colonialism and discriminatory government policies have both created and exacerbated health inequities for Indigenous peoples and their communities. In 2019, the OCI reported that 92% of federally incarcerated Indigenous women suffer from moderate to high substance abuse needs and 97% had a diagnosed mental health disorder.⁷⁸ While these statistics only scratch the surface of the physical, mental and health care complications affecting incarcerated populations in Canada, they do provide insight into the complex health care needs of this demographic.

Physical, mental, and dental care from a CAEFS' perspective

Access to adequate physical, mental, and dental care was CAEFS' most reported issue by women and gender diverse people inside federal institutions designated for women in 2020. In 2019-2020 alone, 66% of all regional advocate letters discussed health and dental care issues raised by the people CAEFS works with inside these institutions.⁷⁹ Many of the concerns raised focused on prisoners' lack of access

⁷⁶ “Correctional Services During and Beyond COVID-19”, pg. 11.

⁷⁷ Ibid, 12.

⁷⁸ “2018-2019 Annual Report”, pg. 106.

⁷⁹ CAEFS, 2020. “2019-2020 Annual Report”, pg. 6.

to personal health records, medication or unexpected changes to medication, menstrual products, personal hygiene products, testing (specifically Hepatitis C testing), and access to dental and health appointments.⁸⁰ Women reported being on health care specialist waitlists for months, only to miss their appointment the day of due to lack of notice (sometimes only five or 10 minutes) by CSC.⁸¹

One of the most pervasive health concerns expressed by federally incarcerated women and gender diverse people was access to adequate dental care. Women from several of CSC's federal institutions reported negligent and unprofessional conduct from the dentist.⁸² The complaints included accounts of the dentist slicing women's tongues with their instruments; failing to obtain consent prior to pulling teeth; and asking women inappropriate, personal questions while under the dentist's care.⁸³ Below is an excerpt from a letter written by CAEFS regional advocates to the EIFW warden:

"Our concerns regarding dental care at EIFW are twofold. Firstly, we are concerned that there is such a delay to see the dentist, even in crisis situations. Secondly, we are horrified to hear of a recent incident that took place at the dental practice of your institutional dentist. The actions of your dentist, as described to us, were violent and hugely unethical, causing physical and emotional harm to the victimized woman".⁸⁴

Relevant CSC policies and directives

The above quote captures CSC's systemic inability to provide the health care services guaranteed by sections 85,86, and 87 of the CCRA, and CD 800 on Health Services. According to section 85 of the CCRA, CSC must provide essential services to incarcerated women and gender diverse people by registered or licensed health care professionals, or by people supervised by registered or licensed health care professionals.⁸⁵ CSC must provide screening, referral, and treatment under the following categories of care: emergency (life-endangering); urgent (likely to deteriorate to an emergency); mental health; and acute and preventative dental.⁸⁶ CSC's obligations under the CCRA also include supporting the professional autonomy and the clinical independence of the health care professional and their freedom to exercise their professional judgement; supporting the health care professional in promoting patient-centered care and patient advocacy in accordance with their professional codes of ethics; and promoting decision-making that is based on the appropriate medical care, dental care, and mental health care criteria.⁸⁷

Reproductive (In)Justice in Canadian Federal Prisons for Women

Reproductive health is a critical issue facing women and gender diverse individuals in Canadian federal institutions designated for women. It has a significant influence on personal wellbeing and should be

⁸⁰ CAEFS, 2020. "2019-2020 Annual Report", pg. 6.

⁸¹ Ibid.

⁸² CAEFS, 2019. "Regional Advocacy Letter, September 3, 2019".

⁸³ Ibid.

⁸⁴ CAEFS, 2019. "Regional Advocacy Letter, April 18, 2019".

⁸⁵ CSC, 2015. "CD 800: Health Services".

⁸⁶ Ibid, s 6.

⁸⁷ CCRA, s 86.1 (a) to (c).

examined with attention to sex and gender, as well as intersecting factors such as Indigenous identity.⁸⁸ Historically, research on the reproductive health of incarcerated women, trans, non-binary, and Two Spirit people in Canada has been extremely limited. However, since the 2017 findings of the External Review of Tubal Ligation in the Saskatoon Health Region, the topic of reproductive rights of vulnerable populations has received newfound public attention and interest. The External Review was prompted by media reports in 2015 of forced sterilization of Indigenous women in the Saskatoon Health region. At present, at least 100 women have joined in class action lawsuits for damages stemming from the experience across several provinces.⁸⁹

The report, “Reproductive (In)Justice in Canadian Federal Prisons for Women”, prepared by Martha J. Paynter RN PhD(c) for CAEFS in 2020, was commissioned to complement the findings of the 2017 review. The External Review findings neglect to include testimonies from incarcerated women and gender diverse people who may not have known how or have had access to communication pathways to contribute their stories to the review or to join the class. To rectify the omission of federally incarcerated people and their experiences from the original review, Paynter conducted trauma-informed workshops on reproductive justice in five of Canada’s federal institutions designated for women. The workshops touched on a variety of topics, including but not limited to sterilization, separation from children, pregnancy, assisted reproduction, menstruation, trans health, and violence in prisons. The workshops exposed the incompatibility of reproductive justice with the disproportionate rates of Indigenous women in federal institutions designated for women and the separation of incarcerated mothers/parents from their children. The workshops also revealed how little information is available to federally sentenced women and gender diverse individuals regarding their human rights and the institutional obligations of CSC, and moreover, the Canadian government.

It was ascertained through the report that incarceration and Reproductive Justice are fundamentally irreconcilable as incarceration separates families, breaks bonds, alienates, and destroys connection. CAEFS asserts that ending Incarceration is the path to Reproductive Justice. The report, *Reproductive (In)Justice in Canadian Federal Prisons for Women* is available on the CAEFS’ website.⁹⁰

Related UN recommendations

The Committee on the Elimination of All Forms of Racial Discrimination recommended Canada “abolish the use of segregation for inmates with mental or intellectual impairments.”⁹¹ The Committee also expressed concern for the high incarceration rates of minorities who have mental or intellectual impairments.⁹² Currently, Canada nor CSC have made efforts to incorporate these recommendations into their implementation of the ICCPR or related UN Covenants.

In the 2018 Committee against Torture report, the Committee recommended that Canada ensure the effective and independent monitoring and reporting system for mental health institutions, which would

⁸⁸ Martha J. Paynter RN PhD(c) prepared for CAEFS, 2021. “Reproductive (In)Justice in Canadian Federal Prisons for Women”, pg. 13.

⁸⁹ “Reproductive (In)Justice in Canadian Federal Prisons for Women”, pg.7.

⁹⁰ <https://www.caefs.ca/defending-prisoners>

⁹¹ “International Convention on the Elimination of All Forms of Racial Discrimination”, s 16(h).

⁹² Ibid, s 15.

include the two federal psychiatric centres for women and gender diverse prisoners operated by CSC.⁹³ Regarding medical services to prisoners, particularly prisoners with psychological disabilities, the Committee recommended Canada improve its gender and age-specific medical services.⁹⁴

CAEFS' suggested questions

- How will the Canadian government ensure federally sentenced women, trans, non-binary, and Two Spirit people have access to reproductive health education and services?
- How can patient-centered care performed by autonomous health care professionals be reconciled with CSC's role as healthcare employer?
- How have the disproportionate number of COVID-19 cases in federal prisons impacted discussions on the need for decarceration and alternative sentencing options?

CAEFS' recommendations

- Adopt the Mandela Rules into the Corrections and Conditional Release Act to bring health and health services to the forefront of federal legislation governing corrections.
- Require healthcare professionals and healthcare services to be hired through the Canadian department of health instead of contracted directly through CSC. Currently, healthcare professionals are employed through CSC. This creates an employee-employer relationship with limited external oversight and transparency.
- The practice of segregation should be abolished from federal institutions designated for women. Conditions of segregation have severe and lasting effects on those with psychological disabilities and are known to exacerbate pre-existing health conditions.

The COVID-19 pandemic and its impact in federal prisons designated for women

The COVID-19 pandemic has impacted the conditions of confinement for incarcerated people in innumerable and unprecedented ways. Prior to the pandemic, CAEFS' regional advocates had access to federal institutions designated for women on a semi-regular basis. These visits offered those inside the opportunity to be seen and heard, and the opportunity to disclose instances of maltreatment or abuse, which for fear of retribution by CSC officers would otherwise go unreported. Since CSC suspended visits from the public into the prisons on March 14th, 2020, CAEFS' in-person monitoring program has been suspended. Instead, CAEFS relies primarily on phone calls to its regional and national toll-free numbers from the women and gender diverse people in these six institutions. CAEFS' regional advocates and National Office receive dozens of phone calls daily regarding the abhorrent conditions of confinement experienced by the people they work with. These conditions include, but are not limited to, the following:

⁹³ "International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", s 12(a).

⁹⁴ Ibid, s 12(f).

1. adapted movement schedule, such as only being allowed out of their living units or pods for less than an hour a day;
2. the use of “cell restriction” (being confined to one’s room) for reasons that were reportedly not communicated to the general population;
3. limited access to health care staff, including for prenatal concerns, and a lack of onsite doctors;
4. the suspension of all programming and visits, including cultural supports and access to Elders’;
5. the reported use of Structured Intervention Units to isolate prisoners who were showing symptoms; and
6. reduced access to legal counsel.

The above conditions, which only provide a snapshot into the incarceration experience during COVID-19, violate both the Corrections and Conditional Release Act (CCRA) and Articles 1,7,9, 10(1), and 21 of the ICCPR. In an April 2020 statement made by the Human Rights Committee (HRC) regarding the implementation of the ICCPR in connection with COVID-19 pandemic and Article 4 of the Covenant (the ability of State Parties to derogate certain responsibilities during public emergencies). The HRC concluded that State Parties cannot deviate from the non-derogable provisions of the Covenant, including Article 7 on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, or of medical or scientific experimentation without consent.⁹⁵ The HRC further concluded that:

“States parties may not derogate from their duty to treat all persons, including persons deprived of their liberty, with humanity and respect for their human dignity, and must pay special attention to the adequacy of health conditions and health services in places of incarceration, and also to the rights of individuals in situations of confinement...”⁹⁶

These unlawful conditions are further compounded by the very real fear of becoming ill and not receiving the same level of care as those outside of prison. Moreover, the impacts of the virus, given the underlying health comorbidities of incarcerated populations, and of being in a congregated, highly transmissible environment, were warranted concerns expressed by the people CAEFS works with.

⁹⁵ UN ICCPR, 2020. “Human Rights Committee Statement on derogations from the Covenant in connection with the COVID-19 pandemic”.

⁹⁶ Ibid.