



# **Federally Sentenced Aboriginal Women Offenders**

## **An Issue Paper**

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## Background

Aboriginal women are over represented within the Canadian correctional system. Less than 2% of the population of Canada consists of Aboriginal women; however they make up 32% of the population of women who are serving time in the federal prison system.<sup>1</sup>

Women generally and Aboriginal women in particular do not have access to adequate programs or services while they are in the federal prison system. A majority of programming offered in the federal correctional system is not geared towards the needs of women for reintegration into Canadian society nor is it culturally appropriate for Aboriginal prisoners.

The Auditor General reported in 2003 that studies conducted by government commissions and parliamentary committees consistently raised concerns about the following correctional practices:

- The incarceration of women at a distance from their families;
- The quality of rehabilitation programs available to women in corrections facilities, and;
- The incarceration of women prisoners in facilities with higher security levels than would be required by the assessment of their individual risk.

These factors are associated with less successful transition of women back into society following the completion of their sentences.

The Canadian courts, Canadian legislators, the Canadian Human Rights Commission and the United Nations have recognized that this over representation of Aboriginal women in the Canadian penal system must be addressed. A series of Acts provide legal avenues to facilitate change, including the *Criminal Code of Canada*, the *Corrections and Conditional Release Act* (CCRA) and the *Charter of Rights and Freedoms*.

The Aboriginal community has also been provided in law with a right to provide custody and treatment of both male and female Aboriginal prisoners for long-term supervision, or in the short term for supervision, parole or after-care services or programming. Section 81 of the CCRA includes provisions that enable the transfer of an Aboriginal offender to the Aboriginal community in a non-institutional setting where supervision, treatment and programming are provided by community members on a 24 hour basis. Other arrangements are also possible under this section, including the transfer of an individual to another treatment facility in an urban centre, or to a spiritual or healing lodge.<sup>2</sup> Although

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<sup>1</sup> [www.csc-scc.gc.ca](http://www.csc-scc.gc.ca)

<sup>2</sup> CSC, 2006, Understanding restorative justice practice within the Aboriginal context.

this provision is available, information provided on the CSC website indicates that only 5 agreements under section 81 have been signed: it is unclear how many, if any, have involved Aboriginal women.<sup>3</sup>

## Current Conditions

The Canadian Human Rights Commission and the Correctional Investigator have identified a number of instances of systemic discrimination in relation to the treatment of Aboriginal women by the Correctional Service of Canada.<sup>4</sup> One is the manner in which they are classified. Aboriginal women are more likely to be classified as maximum security prisoners than are other women: fifty percent of the women in prisons who are classified at this level are Aboriginal. This classification issue continues in spite of the fact that the government agreed in 1990 to discontinue the use of security rating scales, in part because they had not been validated for Aboriginal women.<sup>5</sup>

Aboriginal women also form the majority of the women 'placed on the management protocol', a new super maximum designation that NWAC and others have identified as illegal. Aboriginal women are more likely to be housed in a facility that has a higher security rating than is for their personal assessed level of risk. This means that Aboriginal women face unnecessary restrictions on their ability to access programs and services while incarcerated.

The lack of appropriate facilities near to their homes means that many Aboriginal women prisoners continue to be faced with long-term geographic separation from their children, families and communities. Aboriginal women prisoners may be housed in the men's federal psychiatric centre/prison in Saskatoon or the segregated maximum security units in the regional prisons for women with little access to services or common areas. Serving time in a men's prison not only puts these women at risk for male violence, but also denies them equal access to programs and services. This is a violation of their sexual and racial equality rights as guaranteed under the *Canadian Charter of Rights and Freedoms*. In addition to the systemic discrimination, Aboriginal women may also experience discrimination within the correctional facilities from staff.

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<sup>3</sup> CSC, no date, Aboriginal Initiatives Directorate, *Facts and Figures*.

<sup>4</sup> Arbour, Justice Louise, Commissioner. 1996. Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Ottawa: Solicitor General; Canadian Human Rights Commission (CHRC). 2003. *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Canadian Human Rights Commission; United Nations Human Rights Committee (UNHRC). 2005. *Concluding Observations of the Human Rights Committee in Relation to the Report Submitted by Canada Under Article 40 of the International Covenant on Civil and Political Rights*. Geneva: United Nations Human Rights Committee 85<sup>th</sup> Session.

<sup>5</sup> Monture, P. 2006: *Confronting Power: Aboriginal Women and Justice Reform*

## Conclusion

The correctional service system continues to fail to meet the needs of Aboriginal women. Numerous reports have identified the areas where improvements can and should be made, as well as the policies, programs and practices that would result in improved outcomes for Aboriginal women.

Although these policies and practices have been identified, they are not being implemented. The barriers to their implementation include cultural, racial and gendered discrimination, and decision making based on cost factors or budget considerations rather than on the human rights of Aboriginal women offenders.

## Recommendations

1. That the Correctional Service of Canada implement the existing legal requirement that the use of the least restrictive measures consistent with the safe and successful integration of individuals into the community, including, but not restricted to, removal of the detention provisions and reinforcement of statutory release as a vital component of the conditional release process;
2. That the Correctional Service of Canada re-visit the governance structure of women's corrections and separate it from men's corrections; in the alternative, that all wardens responsible for the prisons for women report directly to the Deputy Commissioner for Women;
3. That in the interests of breathing life into the provisions of sections 77 and 80 of the Corrections and Conditional Release Act (CCRA), the Deputy Commissioner for Women be responsible to a governance body to be comprised minimally of individuals representing:
  - a) Federally sentenced women, at least two who are currently "serving prisoners", elected from the chairs of the Prisoners' Committees of the prisons for women and the Okimaw Ohci Healing Lodge, and two who are formerly imprisoned federally sentenced women and representatives of self organized former prisoners, such as Strength in Sisterhood (SIS);
  - b) the Office of the Correctional Investigator;
  - c) the Native Women's Association of Canada;
  - d) the Canadian Association of Elizabeth Fry Societies;
  - e) at least two organizations representing racialized and immigrant women's community(ies); and

- f) the union(s) representing correctional officers/CSC employees.
- 4. That only women be permitted to work in front line correctional officer positions in the prisons for women.
- 5. That the 'Management Protocol' currently imposed on federally sentenced women be recognized as contravening the provisions of the Charter and the CCRA and therefore be abolished immediately.
  - a) That all third level grievances be reviewed by the body recommended in #3 above; and
  - b) That every national investigation into matters arising at the prisons for women include at least one representative from a list of independent investigators generated by the body recommended in #3 above.
- 6. That, as an interim step until #3, 5, and 7 are implemented, those functions be developed in consultations with a working group of six women, two each from CAEFS, NWAC and SIS.
- 7. That federally sentenced women continue to have access to the only true minimum security prison for women, the Isabel McNeill House in Kingston, and that additional minimum security facilities be created in each region to serve federally sentenced women.

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