



Standing Senate Committee on Human Rights

The Honourable Salma Ataullahjan, *Chair*

The Honourable Wanda Elaine Thomas Bernard, *Deputy Chair*

The Honourable Nancy J. Hartling, *Deputy Chair*

# Human Rights of Federally- Sentenced Persons



JUNE 2021



SENATE | SÉNAT  
CANADA

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## THE COMMITTEE MEMBERSHIP

The Honourable Senator Salma Ataullahjan, *Chair*

The Honourable Senator Wanda Elaine Thomas Bernard, *Deputy Chair*

The Honourable Senator Nancy J. Hartling, *Deputy Chair*

### **The Honourable Senators**

Yvonne Boyer

Yonah Martin

Marie-Françoise Mégie

Thanh Hai Ngo

Kim Pate

Scott Tannas

### ***Ex-officio members of the committee:***

The Honourable Senator Marc Gold, P.C. (or Raymonde Gagné)

The Honourable Senator Donald Plett (or Yonah Martin)

### ***Senators who participated in the study during the First Session of the Forty-second Parliament:***

The Honourable Senators Andreychuk, Ataullahjan, Bernard, Boisvenu, Bovey, Boyer, Brazeau, Cordy, Cormier, Eaton, Fraser, Hartling, Hubley, Kutcher, Maltais, Martin, McPhedran, Munson, Ngo, Omidvar, Pate, Petitclerc, Plett, Poirier, Simons, Unger, Wells, and White

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## ORDERS OF REFERENCE

Extract from the *Journals of the Senate* of Tuesday, March 30, 2021:

With leave of the Senate,

The Honourable Senator Woo moved, seconded by the Honourable Senators Gold, P.C., Plett, Tannas and Cordy,

That each standing committee be authorized to examine and report on issues relating to its respective mandate as set out in the relevant subsection of rule 12-7 and to submit its final report on its study under this order no later than June 23, 2021.

The question being put on the motion, it was adopted.

*Interim Clerk of the Senate*  
Gérald Lafrenière

Extract from the *Journals of the Senate* of Tuesday, April 20, 2021:

With leave of the Senate,

The Honourable Senator Ataullahjan moved, seconded by the Honourable Senator Martin:

That the papers and evidence received and taken and work accomplished by the Standing Senate Committee on Human Rights during the First Session of the Forty-second Parliament as part of its study of issues related to human rights and, inter alia, the machinery of government dealing with Canada's international and national human rights obligations, as well as its study of issues relating to the human rights of prisoners in the correctional system, be referred to the committee for the purposes of its work as authorized by the Senate on March 30, 2021.

The question being put on the motion, it was adopted.

*Interim Clerk of the Senate*  
Gérald Lafrenière

## ORDERS OF REFERENCE

### First Session of the Forty-second Parliament

Extract from the *Journals of the Senate*, Thursday, December 15, 2016:

The Honourable Senator Munson moved, seconded by the Honourable Senator Cordy:

That the Standing Senate Committee on Human Rights be authorized to examine and report issues relating to the human rights of prisoners in the correctional system, with emphasis on the federal system, and with reference to both national and international law and standards, as well as to examine the situation of vulnerable or disadvantaged groups in federal prisons, including indigenous people, visible minorities, women and those with mental health concerns;

That the committee submit its final report no later than October 31, 2017, and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

After debate,

The question being put on the motion, it was adopted.

Charles Robert  
Clerk of the Senate

Extract from the *Journals of the Senate*, Thursday, October 19, 2017:

The Honourable Senator Munson moved, seconded by the Honourable Senator Tardif:

That, notwithstanding the order of the Senate adopted on Thursday, December 15, 2016, the date for the final report of the Standing Senate Committee on Human Rights in relation to its study on prisoners in the correctional system be extended from October 31, 2017 to October 31, 2018.

The question being put on the motion, it was adopted.

Nicole Proulx  
Clerk of the Senate

Extract from the *Journals of the Senate*, Tuesday, October 23, 2018:

The Honourable Senator Bernard moved, seconded by the Honourable Senator Smith:

That, notwithstanding the order of the Senate adopted on Thursday, December 15, 2016, the date for the final report of the Standing Senate Committee on Human Rights in relation to its study on prisoners in the correctional system be extended from October 31, 2018 to September 30, 2019.

The question being put on the motion, it was adopted.

Richard Denis  
Clerk of the Senate

## LIST OF REPORT RECOMMENDATIONS

### Recommendation 1

That the Government of Canada take all steps necessary to implement, without delay, the Truth and Reconciliation Commission *Calls to Action* relating to the overrepresentation of Indigenous Peoples in the federal correctional system, notably:

- Call to Action 30, which calls on the Government of Canada to commit to eliminating the overrepresentation of Indigenous Peoples in custody by 2025, and to issue detailed annual reports on this effort;
- Call to Action 32, which calls on the Government of Canada to amend the *Criminal Code* to allow trial judges to depart from mandatory minimum sentences and restrictions on the use of conditional sentences; and
- Call to Action 34, which calls on the Government of Canada to undertake reforms to the criminal justice system to better address the needs of federally-sentenced persons with Fetal Alcohol Spectrum Disorder (FASD), including:
  - providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD;
  - enacting statutory exemptions from mandatory minimum sentences of imprisonment for federally-sentenced persons affected by FASD;

- **providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community; and**
- **adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.**

#### **Recommendation 2**

**That the Government of Canada work with Indigenous communities, provinces and territories to develop a strategy designed to prevent the overincarceration of Indigenous Peoples, particularly those with intellectual disabilities and mental health issues, and that takes into account the unique and intersecting sociohistorical factors that are closely linked to and exacerbate their mental health issues.**

#### **Recommendation 3**

**That the Government of Canada work with civil society organizations, communities, provinces and territories to develop targeted strategies, in addition to economic, educational and social programs to address the root causes of the overrepresentation of Black persons in the federal correctional system, including systemic racism and historical discrimination. Such strategies could include the creation of a guaranteed minimum income program.**

#### **Recommendation 4**

**That the Government of Canada, in consultation with relevant interest groups, provinces and territories, develop targeted strategies, including economic, educational and social programs designed to address the root causes of women's incarceration, with particular attention to Indigenous women and those with disabling mental health issues.**

### **Recommendation 5**

**That the Correctional Service of Canada, in consultation with internal and external stakeholders and experts, develop a strategy that respects the rights of all federally-sentenced persons, irrespective of security classification, have equal access to effective correctional programming to ensure their successful reintegration into society.**

### **Recommendation 6**

**That the Correctional Service of Canada initially classify all federally-sentenced women as minimum security and that in keeping with the recommendations of the 1990 report, *Creating Choices: The Report of the Task Force on Federally Sentenced Women* and the 1996 Commission of Inquiry into certain events at the Prison for Women in Kingston, it work with independent experts and civil society organizations to develop a rights-based security re-assessment tool that recognizes the complex needs of federally-sentenced women to ensure they are not unnecessarily and arbitrarily overrepresented in higher security classifications.**

### **Recommendation 7**

**That the Correctional Service of Canada ensure that parole officers have all the information required, particularly in relation to federally-sentenced Indigenous Peoples, to conduct intake assessments and penitentiary placement decisions that take into account the sociohistorical backgrounds of federally-sentenced persons as well as their sex, gender, race and ethnicity.**

### **Recommendation 8**

**That the Correctional Service of Canada work with independent experts to ensure the Custody Rating Scale places more weight on the context within which crimes were committed, attaches more weight to dynamic risk factors and accounts for the unique experiences of marginalized and vulnerable groups with a view to developing clear rights-based guidelines on the use of this tool. In addition, the Custody Rating Scale should be applied uniformly and consistently across the country.**

### **Recommendation 9**

**That the Correctional Service of Canada repeal its policy obligating federally-sentenced persons convicted of homicide to serve a minimum of two years in maximum security.**

### **Recommendation 10**

**That the Government of Canada amend the Criminal Code of Canada to allow judges the discretion to not impose mandatory minimum penalties, and that the Department of Justice Canada undertake a comprehensive review of mandatory minimum penalties with a view to determining which should be revised or repealed.**

### **Recommendation 11**

**That the Correctional Service of Canada work with relevant interest groups and independent experts to ensure correctional plans focus on support and accommodation and availability of programs and services to address the unique experiences and reintegration challenges of marginalized and vulnerable groups, and that programming is made effective and available to all federally-sentenced persons.**

### **Recommendation 12**

**That the Correctional Service of Canada facilitate, and eliminate all barriers inhibiting, the exercise and practice of religious and spiritual beliefs in federal penitentiaries. The Correctional Service of Canada should ensure correctional officers respectfully handle religious items and articles such as Medicine Bundles.**

### **Recommendation 13**

**That the Correctional Service of Canada reduce the cost of room and board and the cost for accessing the telephone. The Correctional Service of Canada should also review the cost of living in federal penitentiaries, as well as the cost of preparing for release and increase the salaries of federally-sentenced persons accordingly.**



#### **Recommendation 14**

**That the Correctional Service of Canada provide federally-sentenced persons' committees with the opportunity to manage canteen as well as shopping for effects and/or reinstate outside shopping as a work placement for federally-sentenced persons classified as minimum security.**

#### **Recommendation 15**

**That the Correctional Service of Canada provide federally-sentenced persons with food that adequately meets their dietary needs both in terms of quality and quantity, and ensure that specialized diets for religious, cultural, medical or ethical reasons are respected.**

#### **Recommendation 16**

**That the Correctional Service of Canada make available hygiene products that reflect the needs of federally-sentenced Black and other racialized persons and ensure that these products are affordable.**

#### **Recommendation 17**

**That the Correctional Service of Canada recognize the important role families and communities of support can play in the rehabilitation and reintegration of federally-sentenced persons, including by:**

- **facilitating their involvement in the correctional process;**
- **ensuring that family visits are not cancelled as a punitive measure even when federally-sentenced persons are placed in structured intervention units;**
- **making every effort to avoid cancelling family visits for security reasons that are out of the federally-sentenced person's control, including lockdowns; accelerating efforts to roll out family visits via electronic and video conference options and ensure that its policies make clear that video conferences are not a substitute for in-person family visits; and**

- reviewing its use ion scanners and all risk threat assessment related to the use of ion scanners in order to ensure appropriate procedures are followed and that discriminatory patterns are assessed and redressed so that human rights as enumerated in the *Canadian Charter of Rights and Freedoms* are not breached.

#### **Recommendation 18**

**That the Correctional Service of Canada facilitate parenting via section 81 agreements for federally-sentenced Indigenous Peoples and non-Indigenous persons, in addition to providing full access to the Mother-Child Program by working with the provinces and territories to eliminate barriers preventing federally-sentenced women from accessing Mother-Child Programming.**

#### **Recommendation 19**

**That the Correctional Service of Canada increase its use of section 81 of the *Corrections and Conditional Release Act* with a view to ensuring that federally-sentenced persons, particularly federally-sentenced Indigenous women and men, are able to build and/or maintain ties with their families, communities and culture.**

#### **Recommendation 20**

**That the Correctional Service of Canada work with the provinces, territories, medical associations and professional governing and licensing bodies to ensure professional standards are adhered to and doctors are available in federal penitentiaries on a full-time basis and registered nurses on a 24-hour basis.**

#### **Recommendation 21**

**That the Correctional Service of Canada establish a policy to ensure that only medical professionals have the authority to determine whether a federally-sentenced person requires medical attention.**

#### **Recommendation 22**

**That the Correctional Service of Canada increase the provision of dental care in federal penitentiaries to reflect the needs of federally-sentenced persons, with an emphasis on preventative dental care.**

### **Recommendation 23**

**That the Correctional Service of Canada increase efforts to develop more contracts with provinces and territories to establish alternatives to federal correctional facilities for aging federally-sentenced persons and those with acute medical conditions as well as mental health issues pursuant to section 29 of the Corrections and Conditional Release Act.**

### **Recommendation 24**

**That the Correctional Service of Canada provide additional rights-based training to correctional staff to ensure they are sensitive to the complex needs of aging, as well as physically and mentally ill federally-sentenced population. The Correctional Service of Canada should also make federal correctional facilities more accessible for federally-sentenced persons with mobility issues.**

### **Recommendation 25**

**That the Correctional Service of Canada implement the following measures to ensure federally-sentenced persons with mental health issues receive appropriate support:**

- **conduct a culturally appropriate mental health assessment of all federally-sentenced persons entering the federal correctional system within 30 days of admission;**
- **ensure that mental health beds are contracted in psychiatric facilities pursuant to section 29 of the *Corrections and Conditional Release Act*;**
- **ensure that mental health professionals are available in every federal penitentiary on a 24-hour basis and that they are the first responders to all mental health crises.**

### **Recommendation 26**

**That the Correctional Service of Canada implement a holistic approach to mental health by:**

- **providing all employees, as a condition of employment, with appropriate mental health and mental health crisis intervention training that is consistent with their vocational role. Further, the Correctional Service of Canada shall establish appropriate standards for training, ensure that all trainees demonstrate that they have met the standard and that ongoing evaluations of the quality, quantity and outcomes of the training be conducted and used to inform annual improvement of the training; and**
- **evaluating the Peer Offender Prevention Service program at Stony Mountain Institution with a view to expanding it nationally to federal penitentiaries of all security levels.**

### **Recommendation 27**

**That the Correctional Service of Canada ensure that federally-sentenced persons with mental health issues, or whom exhibit behaviours that may indicate a mental health issue, who are placed in structured intervention units are evaluated within 24 hours of their placement by a recognized mental health care professional.**

### **Recommendation 28**

**That the Correctional Service of Canada expand its use of section 29 agreements and contract the development/provision of mental health services and beds in provincial psychiatric hospitals to provide adequate mental health services for federally-sentenced persons.**

### **Recommendation 29**

**That the Correctional Service of Canada work with independent academics, lawyers, representatives of civil society organizations and other experts on corrections to:**

- **review the application of its use of force policies by correctional officers, with a view to reducing use of force incidents and addressing the disconnect between the policies and their application;**
- **review and enhance training to correctional officers on the use of force, with a focus on reducing the disproportionate use of force against federally-sentenced Indigenous Peoples, Black persons and persons with mental health issues, and that it regularly monitor the results of this training and adjust as necessary; and**
- **develop employment incentives and commendations for correctional officers and other staff that incentivize interventions that de-escalate conflict and result in no use of force by individuals and on penitentiary-wide bases.**

### **Recommendation 30**

**That the Correctional Service of Canada reverse its policy allowing correctional officers to carry inflammatory agents on their person and provide additional training on the proper and restricted use of inflammatory agents and de-escalation strategies as alternatives to the use of force.**

### **Recommendation 31**

**That the Correctional Service of Canada, in consultation with internal and external stakeholders and experts, develop and implement robust, effective and rights-based oversight and accountability mechanisms for use of force incidents to ensure that correctional staff who use disproportionate force are held accountable.**

### **Recommendation 32**

**That the Correctional Service of Canada seriously consider the use of body-worn cameras for correctional officers to promote transparency and accountability.**

### **Recommendation 33**

**That the Correctional Service of Canada ensure that Structured Intervention Units adhere to the most recent court decisions and respect Canada’s human rights obligations and international commitments, including by:**

- **eliminating the use of solitary confinement for all federally-sentenced persons;**
- **taking into account the different needs and experiences of particular groups, including LGBTQI2-S persons and women;**
- **eliminating solitary confinement in excess of 15 days;**
- **providing meaningful human contact and continued access to programming as well as 24-hour access to health and mental health services; and**
- **establishing judicial oversight to review all Structured Intervention Unit placements and decisions.**

### **Recommendation 34**

**That the Correctional Service of Canada immediately end the use of separation by any name with youth, women and those with disabling mental health issues, and implement mental health assessments and judicial oversight to eliminate the overrepresentation of federally-sentenced Indigenous Peoples, Black persons, other racialized persons and persons with mental health issues in Structured Intervention Units.**

### **Recommendation 35**

**That the Correctional Service of Canada urgently take all necessary measures to implement and promote a human rights culture within the federal correctional system, including by:**

- **enforcing a zero-tolerance policy with regards to mistreatment and abuse of federally-sentenced persons by correctional staff and contracted employees and other service providers;**
- **enhancing harassment prevention and resolution training among managers and staff;**
- **fostering a healthy and human rights promoting work environment where staff can report abuse without fear of reprisal; and**
- **responding promptly and effectively to mistreatment complaints from staff and federally-sentenced persons by other staff or federally-sentenced persons.**

### **Recommendation 36**

**That the Correctional Service of Canada improve its training for correctional personnel regarding human rights standards and principles of equality and non-discrimination, including in relation to race, sex, sexual orientation, gender identity and expression, and mental health.**

### **Recommendation 37**

**That the Correctional Service of Canada provide educational outreach for federally-sentenced persons regarding human rights standards and principles of equality and non-discrimination, including in relation to race, sex, sexual orientation, gender identity and expression, and mental health.**

### **Recommendation 38**

**That the Correctional Service of Canada ensure that the access to justice rights of federally-sentenced persons are respected and upheld, including by:**

- **responding to and resolving the backlog of grievances filed by federally-sentenced persons, and ensuring the rapid resolution and redress of all future grievances;**
- **establishing an independent review process for grievances filed by federally-sentenced persons to eliminate the risk of reprisals by implicated staff and ensure confidence in the grievance process;**
- **properly educating its employees with respect to the rights of incarcerated persons and informing them of the Service's commitment to seeing that these rights are respected and enforced, in keeping with the Arbour Commission recommendations. As a result, conduct human rights training for federally-sentenced persons and staff similar to that provided for regional advocates by the Canadian Association of Elizabeth Fry Societies; and**
- **incorporating an external review process to assess and remedy the gaps between law and policies regarding access to justice rights and the application of these laws and policies.**

### **Recommendation 39**

**That the Department of Justice, in keeping with the recommendation made by the Arbour Commission, examine legislative mechanisms by which to create sanctions for correctional interference with the integrity of a sentence and that such sanctions provide that if illegalities, gross mismanagement or unfairness in the administration of a sentence renders the sentence harsher than that imposed by the court:**

- **In the case of a non-mandatory sentence, a reduction of the period of imprisonment be granted, to reflect that the**



**punishment administered was more punitive than the one intended, should a court so find; and**

- **In the case of a mandatory sentence, the same factors be considered as militating towards earlier release.**

#### **Recommendation 40**

**That the Correctional Service of Canada provide federally-sentenced persons with internet access for secondary and post-secondary programming, as well as the guidance, resources and educational courses and programs they need to fulfil their career objectives, which should be included in and supported by correctional plans. The Correctional Service Canada should also work with universities and other post-secondary institutions to develop courses for federally-sentenced persons modeled after the Walls to Bridges program and deliver these courses in federal correctional facilities across the country.**

#### **Recommendation 41**

**That the Correctional Service of Canada work with CORCAN and community-based businesses and organizations to develop a broader range of programs, training, employment and volunteer opportunities for federally-sentenced persons to increase availability of, and opportunities for, internships and paid work experience in federal correctional facilities with updated wages.**

#### **Recommendation 42**

**That the Correctional Service of Canada work with CORCAN, local businesses, community partners and other stakeholders to reopen and expand penitentiary farms in federal correctional facilities across the country and consider a therapeutic model in conjunction with community partners.**

#### **Recommendation 43**

**That the Breakaway program be funded by the Correctional Service of Canada and expanded nationally and made available to federally-sentenced persons in all penitentiaries, particularly maximum security penitentiaries, and to federally-sentenced persons who are not serving a life sentence.**

**Recommendation 44**

**That the Correctional Service of Canada conduct a Gender-Based Analysis Plus of its funding allocations for correctional programming to ensure that all correctional programming reflects the needs and desires of federally-sentenced persons.**

**Recommendation 45**

**That the Correctional Service of Canada ensure that all federally-sentenced deaf and hard of hearing persons are able to access correctional programming through appropriate access to relevant medical devices and reliable interpretation services.**

**Recommendation 46**

**That the Correctional Service of Canada work with independent experts and civil society organizations involved in the rehabilitation and community integration of federally-sentenced Black persons and otherwise racialized persons to develop and fund correctional programming and integration opportunities as are available pursuant to sections 29, 81 and 84 of the *Corrections and Conditional Release Act*.**

**Recommendation 47**

**That the Correctional Service of Canada support the work of civil society organizations and facilitate their access to federal correctional facilities to provide vital programming and connection to the community, especially for vulnerable and marginalized groups.**

**Recommendation 48**

**That the Correctional Service of Canada work with Indigenous communities, Elders, civil society organizations and other stakeholders involved in the rehabilitation and reintegration of federally-sentenced Indigenous Peoples to develop culturally relevant programming that reflects the individual protocols of the region and ensure, where possible, timely access to this programming as well as other types of CSC programming that are beneficial for reintegration, such as CORCAN.**

**Recommendation 49**

**That the Correctional Service of Canada increase the number of spaces in the Pathways program to ensure all eligible federally-sentenced Indigenous Peoples may participate, as appropriate.**

**Recommendation 50**

**That the Correctional Service of Canada provide parole officers involved in the development of correctional plans the appropriate training and resources to ensure federally-sentenced Indigenous peoples are able to take full advantage of the Pathways program.**

**Recommendation 51**

**That the Correctional Service of Canada increase the number of section 81 agreements by raising awareness of this section and guiding communities through the process as well as funding the establishment of individualized options as well as group Healing Lodges.**

**Recommendation 52**

**That the Correctional Service of Canada provide federally-sentenced Indigenous Peoples with access to Elders from their regions in accordance with established Indigenous protocols, while prioritizing the employment of Indigenous Peoples from the land on which Correctional Service of Canada Healing Lodges are located to work in these facilities.**

**Recommendation 53**

**That the Correctional Service of Canada, in consultation with internal and external stakeholders and experts, modernize programming for women to meet the diverse and complex needs of this population.**

**Recommendation 54**

**That the Correctional Service of Canada consult federally-sentenced women on the types of employment they hope to obtain upon release and provide access to CORCAN opportunities and community-based vocational training that reflects their interests.**

**Recommendation 55**

**That recognizing the histories of abuse of federally sentenced women, the resulting negative impact on the mental health of women and deleterious impact on prisoner-staff relationships, as well as the negligible contribution to the safety and security of penitentiaries, the Correctional Service of Canada cease the use of routine strip searching of federally sentenced women.**

**Recommendation 56**

**That the Correctional Service of Canada ensure consistent and transparent application of its security protocols so that the access of civil society organizations working with federally-sentenced persons is facilitated to federal penitentiaries and their important work is not only continued but enhanced.**

**Recommendation 57**

**That the Correctional Service of Canada ensure that federally-sentenced persons are prepared for parole hearings when they are first eligible for conditional release. This preparation should include ensuring timely access and funding for programs, and wraparound and proactive community integration plans. The preparation should also include an improved planning process, periodical review and correction of errors in federally-sentenced persons' files, and educational outreach on the parole application process.**

**Recommendation 58**

**That the Parole Board of Canada conduct a review to assess whether the use of videoconferencing for parole board hearings hinders a federally-sentenced person's chances of obtaining parole, and if so, to limit this practice to the extent that doing so is beneficial for federally-sentenced persons.**

**Recommendation 59**

**That the Parole Board of Canada and the Correctional Service of Canada conduct a review to examine barriers to conditional release for federally-sentenced persons with mental health issues and develop a strategy to address the findings of this review.**

**Recommendation 60**

**That the Parole Board of Canada implement without delay its plans to develop a culturally relevant gender-informed decision-making process for parole hearings.**

**Recommendation 61**

**That the Correctional Service of Canada and the Parole Board of Canada develop and implement a strategy to reduce barriers to early release for federally-sentenced Black persons, which should include a review of the Secure Threat Group designation policy and its disproportionate application to Indigenous Peoples and racialized groups.**

**Recommendation 62**

**That the Correctional Service of Canada take all necessary steps to eliminate barriers to federally-sentenced Indigenous Peoples' access to early release, including by ensuring timely access to culturally specific and gender appropriate correctional programs and providing educational outreach on the parole application process and the culturally specific parole hearings available to them.**

**Recommendation 63**

**That the Parole Board of Canada conduct a rights-based review of the training it provides to Parole Board members regarding hearings with federally-sentenced Indigenous Peoples to assess the effectiveness of this training, and address any gaps identified by this review.**

**Recommendation 64**

**That the Correctional Service of Canada increase the use of section 84 releases by raising awareness of this section among federally-sentenced Indigenous Peoples, Indigenous communities, and parole officers, including educational outreach programs on how to prepare a section 84 release plan.**

**Recommendation 65**

**That the Correctional Service of Canada expand the application of section 84 releases to other vulnerable and marginalized groups, including federally-sentenced Black persons, LGBTQI2S and the ill and aging population.**

**Recommendation 66**

**That the Correctional Service of Canada substantially increase funding for civil society groups and reallocate resources to community corrections to address the growing population of federally-sentenced persons under community supervision and associated issues, including limited space in community-based residential facilities, unmanageable caseloads for community parole officers, and access to community-based programming.**

**Recommendation 67**

**That the Correctional Service of Canada consult with community parole officers and civil society groups with a view to ensuring they have sufficient resources to assist federally-sentenced persons in their reintegration.**

**Recommendation 68**

**That the Correctional Service of Canada, in collaboration with provincial, territorial, municipal and community partners, ensure that federally-sentenced persons ahead of their release have identification, medication, housing, employment and other necessities to increase chances of successful reintegration.**

**Recommendation 69**

**That Public Safety Canada reduce the wait periods and eliminate the cost and application requirements of the record suspension/pardon process to increase the availability of this service without discrimination on the basis of means.**

**Recommendation 70**

**That the Correctional Service of Canada implement a human rights-based approach in all its policies, programs and practices that accounts for the complex and unique needs of the diverse groups that are vulnerable and marginalized in our society and the federal correctional system.**

**Recommendation 71**

**That the Correctional Service of Canada and other relevant government departments respond to the committee's recommendations in this report without delay.**

## ABSTRACT

*On 15 December 2016 the Senate of Canada adopted an Order of Reference requesting the Standing Senate Committee on Human Rights to study the human rights of federally-sentenced persons. Over the course of two years, the committee visited federal penitentiaries in every region. It held 30 public meetings and gathered testimony from 155 witnesses including federally-sentenced persons. This report outlines the committee's findings, conclusions, and recommendations to improve human rights in Canada's federal correctional system.*

## INTRODUCTION

Federal correctional facilities are frequently hidden from sight. They operate behind barbed wire fences and concrete walls. They are designed to keep people in, but their security protocols often keep people out as well. These conditions allow the Correctional Service of Canada (CSC) to operate with limited external scrutiny and oversight. Once incarcerated, federally-sentenced persons, who comprise some of the most disadvantaged people in our society, rely and depend on the CSC to respect and safeguard their rights. Nonetheless, since the 1970s to present day, reports by the Correctional Investigator, parliamentary committees, inquests, and commissions of inquiry have underscored the CSC's inability to meet this obligation (see Appendix A).

With this in mind, the Standing Senate Committee on Human Rights (the committee) sought to understand why violations of human rights within the federal correctional system continue to be reported. On 15 December 2016, the Senate adopted the following Order of Reference:

That the Standing Senate Committee on Human Rights be authorized to examine and report issues relating to the human rights of prisoners in the correctional system, with emphasis on the federal system, and with reference to both national and international law and standards, as well as to examine the



situation of vulnerable or disadvantaged groups in federal prisons, including Indigenous people, visible minorities, women and those with mental health concerns.<sup>1</sup>

From the outset, the committee wishes to underscore that the bulk of the information in this report was gathered between February 2017 and May 2019. The committee was intent on tabling the report in June 2019, but circumstances beyond its control prevented it from doing so. Members of the committee were particularly disappointed for the many federally-sentenced persons who were anxiously waiting for this report to shed light on the injustices and human rights infringements that they regularly face.

While the committee is aware that there have been many changes in the correctional system since 2019, its ability to meet and study these important developments has been strictly limited over the past two years. As such, more recent information in this report focuses only on prioritized areas of concern. In particular, the committee has included information on the impact of the COVID-19 pandemic on federal penitentiaries where relevant, as well as information on the implementation of structured intervention units (SIUs) in light of 2019 amendments to the *Corrections and Conditional Release Act* (CCRA) following the adoption of Bill C-83 – An Act to amend the Corrections and Conditional Release Act and another Act.<sup>2</sup>

The committee also acknowledges that federal corrections can be a divisive topic. Criminality is a complex social problem. Some argue that penalties do not reflect the severity of criminal acts and that the criminal justice system does not appropriately account for victimization. Others maintain that the criminal justice system does not place enough emphasis on rehabilitation and alternatives to incarceration. Irrespective of one's side on this debate, federally-sentenced persons are human beings – they do not lose their humanity because they are incarcerated. In fact, in accepting responsibility for their actions, federally-sentenced persons who met with the committee during site visits always had one simple request: that their rights and

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<sup>1</sup> Senate, *Journals*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 15 December 2016, p. 1185.

<sup>2</sup> *Corrections and Conditional Release Act*, S.C. 1992, c. 20 [CCRA]; *An Act to amend the Corrections and Conditional Release Act and another Act*, S.C. 2019, c.27.

dignity be respected. Furthermore, our communities do not benefit from dehumanizing them. This basic principle is enshrined in the federal correctional system's mandate, which is to make our communities safer through the safe and humane custody of federally-sentenced persons. Thus, the CSC has an obligation, and an interest, to respect and protect the human rights of federally-sentenced persons.

## **A. Federal Correctional System and Terminology**

The CSC is responsible for the federal correctional system, which oversees those who have been sentenced by a court to two or more years. Persons who receive shorter sentences, as well as youth under 18, are managed by the correctional systems of the provinces and territories.

The CSC's authority and responsibilities flow from the CCRA as well as the *Corrections and Conditional Release Regulations* (CCRR) (discussed in more detail in Chapter 1). It should be noted that the Acts use the term "inmate" to refer to those confined to federal penitentiaries. The term "offender" refers to both inmates and to sentenced individuals outside the penitentiary who are on various forms of release. The committee has chosen not to use these terms in order to acknowledge how such language dehumanizes and stigmatizes those who are incarcerated and sanitizes violations of their human rights, and to focus squarely on federally-sentenced persons as individuals who have constitutional and international human rights protections. The term "prisoner," commonly used in international human rights standards, is generally the preferred term for those serving sentences, but is understood by some to refer to someone held in a provincial correctional facility.<sup>3</sup>

## **B. Methodology**

The committee began its study on the human rights of federally-sentenced persons on 1 February 2017. Evidence was gathered during site visits to federal correctional facilities, through written submissions, as well as in public and private meetings.

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<sup>3</sup> See: [\*Prisons and Reformatories Act\*](#).

In total, the committee visited 28 federal penitentiaries including healing lodges, community correctional centres (CCCs), psychiatric centres and correctional facilities for federally-sentenced women. In addition, the committee visited two provincial mental health centres. It also held 30 public hearings in Ottawa and across the country, receiving testimony from 155 witnesses including:

- two current federally-sentenced persons,
- 12 former federally-sentenced persons,
- seven representatives from the CSC,
- four representatives from the Parole Board of Canada,
- the Correctional Investigator,
- the Auditor General of Canada,
- the Canadian Human Rights Commission,
- 19 academics,
- three unions representing CSC employees,
- two professional associations in addition to numerous doctors and lawyers as individuals,
- three Indigenous leaders and
- representatives from approximately 41 civil society groups advocating on behalf of federally-sentenced women, sexual minorities, Indigenous Peoples, Black persons, and persons with mental health issues, among others.

All testimony received during public hearing was recorded, transcribed, and translated.<sup>4</sup> In addition to witness testimony, the committee also received many written submissions.

## 1. Site Visits

Under section 93(1) of the CCRR, members of the House of Commons, the Senate or a judge cannot be refused access to a federal penitentiary unless the visit poses an undue risk to the individual and the institution and that that risk cannot be mitigated. To gain a first-hand understanding of the realities faced by those residing and working in the federal correctional system, the committee exercised this privilege and visited federal penitentiaries across the country. Though the committee was unable to visit all federal penitentiaries, it made an effort to visit correctional facilities that reflected the composition of the federally incarcerated population. As such the committee visited correctional facilities in each region, of various security levels, for persons of different sexes and where there were higher proportions of marginalized and vulnerable groups.

Visits to federal correctional facilities were organized by the CSC. They generally followed a similar format: committee members were welcomed by a CSC official at the institution. Subsequently, the committee was escorted to a board room to meet with the administration or various “inmate committees.” Inmate committees comprise federally-sentenced persons within correctional facilities that were elected by their peers to represent their concerns to wardens or other members of the institution. Most correctional facilities had inmate committees representing different groups (e.g. Indigenous inmate committee, Black inmate committee, etc.).

Following meetings with the administration or inmate committees, the committee would tour the correctional facility. During these tours the committee made a point to visit the outdoor spaces, individual cells, the Indigenous corrections unit (where applicable), the physiological and psychological health units, and the administrative segregation wing. At each location, the committee took the opportunity to talk with

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<sup>4</sup> See: Senate of Canada, *Standing Senate Committee on Human Rights – Studies and Bills*, under the heading “Study on the issues relating to the human rights of prisoners in the correctional system.”

federally-sentenced persons. The committee also met with federally-sentenced persons who had requested to meet with the committee through mail correspondence. If the committee started the visit with the inmate committee it would normally conclude with a meeting with the administration. This was the committee's preferred format, but at some institutions, the administration insisted on meeting first.

The committee also held private meetings with dozens of current and former correctional officers, parole officers and other CSC staff. These meetings were held in private because it was requested by the participants. Some were uncomfortable with presenting in public hearings, while others were still employed by the CSC and feared retaliation. While testimony gathered during private meetings was important and helped inform the committee, it is presented sparingly and without identifying information in this report given its sensitive nature. With this in mind, the committee acknowledges that some of the evidence presented in this report regarding the human rights of federally-sentenced persons could not be verified. Nevertheless, the committee underscores that federally-sentenced persons and staff shared comparable experiences and stories at each penitentiary the committee visited. The objective of this report is to ensure that their voices are heard.

In addition to domestic site visits, the committee intended to visit correctional facilities in Scotland and Norway to gain a better understanding of how these countries are paving the way in terms of correctional standards. The objective was to bring back best practices and incorporate those learnings in the committee recommendations to the CSC. The Senate Standing Committee on Internal Economy, Budgets and Administration, however, refused the committee's application.

### **C. History and Context**

This report is one in a long history of reports, inquiries and investigations into the human rights of incarcerated persons, the recommendations, and findings of which are still relevant to federal corrections today. Appendix A contains a non-exhaustive list of these reports. The protection and promotion of the human rights of incarcerated persons were first seriously explored in the 1970s, after violence erupted in penitentiaries across the country due to increasing frustration among

federally-sentenced persons regarding “unresolved grievances, transfers, harassment and provocation.”<sup>5</sup> Following these developments, the House of Commons Subcommittee on the Penitentiary System in Canada, chaired by Mark MacGuigan, was tasked with reviewing the federal penitentiary system. The 1977 MacGuigan Report found that federal penitentiaries were failing to rehabilitate federally-sentenced persons and protect the public. According to the report, the culture within federal penitentiaries favoured a complete disregard of the human rights of federally-sentenced persons.<sup>6</sup> The MacGuigan Report was influential in shifting correctional philosophy from its focus on punishment to one of rehabilitation through programming, treatment and vocational training. Many of the report’s recommendations, including the appointment of independent chairpersons to adjudicate serious disciplinary matters, would end up being implemented.<sup>7</sup>

In 1992, the *Corrections and Conditional Release Act* (CCRA) replaced the *Penitentiary Act* and codified into legislation many of the advances made in previous decades regarding the human rights of incarcerated persons.<sup>8</sup> These included two landmark Supreme Court cases: *Martineau v. Matsqui Institutional Disciplinary Board*, which established a duty to act fairly when making decisions concerning the rights of incarcerated persons,<sup>9</sup> and *R. v. Solosky*, which confirmed that “a person confined to prison maintains all of his civil rights, other than those expressly or impliedly taken away from him by law.”<sup>10</sup> The adoption of the *Canadian Charter of Rights and Freedoms* in 1982 also had a significant impact on the development of the rights-based CCRA.<sup>11</sup> The CCRA also established the Office of the Correctional Investigator (OCI), an ombudsman tasked with monitoring, investigating and reporting on issues concerning federally-sentenced persons and making recommendations to the CSC. Despite these advances in law and policy, reports continued to emerge finding significant problems in the provision of services and

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<sup>5</sup> House of Commons, Standing Committee on Justice and Legal Affairs, Sub-Committee on the Penitentiary System in Canada, *Report to Parliament*, 2<sup>nd</sup> Session, 30<sup>th</sup> Parliament, 1977 [MacGuigan Report], p. 5. See also: Correctional Service of Canada [CSC], “[1960-1979: An era of innovation](#),” *Corrections in Canada: a historical timeline*.

<sup>6</sup> MacGuigan Report.

<sup>7</sup> Office of the Correctional Investigator [OCI], *Annual Report 2007-2008*, 26 June 2008.

<sup>8</sup> CSC, *50 Years of Human Rights Developments in Federal Corrections*, August 1998.

<sup>9</sup> *Martineau v. Matsqui Disciplinary Bd.*, [1980] 1 S.C.R. 602.

<sup>10</sup> *Solosky v. The Queen*, [1980] 1 S.C.R. 821, p. 823.

<sup>11</sup> CSC, *50 Years of Human Rights Developments in Federal Corrections*, August 1998.

programming to federally-sentenced persons, especially federally-sentenced women and Indigenous Peoples.<sup>12</sup>

## D. The Present

As will be discussed in this report, the committee heard and observed during its study that many of the failings and issues identified in other reports of the past decades, including the MacGuigan Report from 1977, still persist today in Canada's federal penitentiaries despite advances in correctional law and policy. These include but are not limited to:

- a broken and ineffective internal grievance system;
- the geographic dislocation of federally-sentenced women, particularly federally-sentenced Indigenous women, from their families and communities given the small number of penitentiaries for women;
- ongoing overrepresentation of Indigenous Peoples in federal corrections, stemming from the intergenerational legacy of the residential school system and colonialism;
- prolonged and indefinite solitary confinement leading to psychological and physical harm;
- a culture of secrecy and retaliation within the CSC that prevents incarcerated persons and staff from coming forward with complaints;
- lack of access to effective and culturally appropriate work opportunities and programming;
- over-classification of federally-sentenced women in maximum security;
- conditions in the facilities that are not conducive to rehabilitation;

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<sup>12</sup> See Appendix A.

- inadequate access to essential services such as health care, dental care, and mental health care;
- insufficient admission to gradual and structured release; and
- systemic and targeted discrimination against racialized persons, women, persons with disabilities and lesbian, gay, bisexual, transgender, questioning, intersex, and Two-Spirit (LGBTQI2S) individuals, among other vulnerable and marginalized groups.

The committee underscores that fully and effectively addressing these longstanding issues is critical to ensure the protection of the human rights of federally-sentenced persons. In addition, responses to these issues must consider the diverse realities and disadvantages that characterize the federally-sentenced population. Throughout the committee’s study, witnesses emphasized that federally-sentenced persons in penitentiaries, particularly those from vulnerable and marginalized groups, face serious societal challenges rooted in structural inequalities and discrimination. These risk factors, combined with inadequate access to social supports and related services, are at the core of excessive criminalization and overincarceration.<sup>13</sup> These “pathways to incarceration” are briefly expanded on below, and explored further in Appendix B to this report.

## **E. The Federally Incarcerated Population and Pathways to Incarceration**

In 2018-19 the CSC was responsible for an average of 23,464 federally-sentenced persons. Of those 14,149 were in a federal penitentiary while 9,315 were supervised in the community (parole).<sup>14</sup> Almost half of this population is serving less than a

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<sup>13</sup> Standing Senate Committee on Human Rights [RIDR], *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec); RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa; Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law; Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre); RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia; Claire McNeil, Lawyer, Dalhousie Legal Aid Service, as an Individual; Vince Calderhead, Lawyer, Pink Larkin, as an Individual); RIDR, *Evidence*, 26 March 2018 (Hon. Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia, as an Individual); RIDR, *Evidence*, 7 August 2018 (Chris Hay, Executive Director, John Howard Society of Alberta).

<sup>14</sup> Public Safety Canada, *2019 Corrections and Conditional Release Statistical Overview*.



five-year sentence.<sup>15</sup> The median age upon admission to federal corrections in 2018-19 was 34 years old.<sup>16</sup> Of those within correctional facilities, 24.4% are over the age of 50. The demographical breakdown of federally-sentenced persons is as follows:

- Caucasian: 54.2%
- Indigenous: 25.2%
- Black: 7.2%
- Other: 6.9%
- Asian: 5.3%
- Hispanic: 1.1%

Though federally-sentenced Indigenous persons represent 25.2% of the federally-sentenced population, 70.5% of those individuals are in a federal penitentiary compared to 56.9% of other federally-sentenced persons. Federally-sentenced women represent approximately 6% of the total federally-sentenced population.<sup>17</sup> However 42% of women in federal custody are Indigenous.<sup>18</sup> These numbers indicate that federally-sentenced Indigenous persons are grossly overrepresented in the federal correctional system as they only account for 5% of the Canadian population.<sup>19</sup>

Throughout its study, the committee also learned that federally-sentenced persons faced a myriad of challenges before their incarceration. Defining characteristics among this population include: poverty, homelessness, trauma, abuse, mental health issues, substance addiction as well as low education. Those from marginalized and

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<sup>15</sup> Public Safety Canada, [2019 Corrections and Conditional Release Statistical Overview](#).

<sup>16</sup> Public Safety Canada, [2019 Corrections and Conditional Release Statistical Overview](#).

<sup>17</sup> CSC, "[Statistics and research on women offenders](#)," 16 May 2019.

<sup>18</sup> OCI, [Annual Report 2019-2020](#).

<sup>19</sup> OCI, [Annual Report 2019-2020](#).

vulnerable populations, whose challenges are amplified by systemic racism and discrimination, such as Indigenous Peoples and Black persons, are disproportionately incarcerated. For many federally-sentenced persons, imprisonment exacerbates those challenges.

In the case of those with mental health issues, the committee learned that 30% of federally-sentenced persons and 50% of federally-sentenced women have mental health disorders, far exceeding rates in the general population.<sup>20</sup> The overrepresentation of those with mental health issues in Canada's penitentiaries is particularly concerning given that federal penitentiaries are "uniquely poor places to treat people that have mental illness"<sup>21</sup> and penitentiaries are not an appropriate or effective alternative to community-based health care facilities. After conducting site visits to federal penitentiaries across the country, and meeting with numerous federally-sentenced persons with mental health issues, the committee agrees with this assessment.

The overrepresentation of Indigenous Peoples in the federal correctional system is particularly alarming. According to the OCI, the number of federally-sentenced Indigenous Peoples increased by 42.8% between March 2009 and March 2018, compared to a less than 1% overall growth of the federally-sentenced population during the same period. The number of federally-sentenced Indigenous women during this period increased by 60%.<sup>22</sup> The final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls found that many "Indigenous women are criminalized for protecting themselves or their children against violence; that is, they are criminalized for the very thing the justice system is supposed to protect them against."<sup>23</sup> Witnesses also referred to the conclusions of the final report of the Truth and Reconciliation Commission (TRC), which shed light on the overrepresentation of Indigenous Peoples in federal and provincial penitentiaries and the link between this reality and the intergenerational legacy of the residential

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<sup>20</sup> CSC, *National Prevalence of Mental Disorders among Incoming Federally-Sentenced Men*, February 2015; CSC, *Prevalence of mental disorder among federal women offenders: Intake and in-custody*, October 2018.

<sup>21</sup> RIDR, *Evidence*, 1 November 2017 (Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre).

<sup>22</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

<sup>23</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Vol. 1a, p. 626.

school system. This legacy includes “poverty, addiction, abuse, racism, family violence, mental health, child welfare involvement, loss of culture, and an absence of parenting skills.”<sup>24</sup> The report found that not only are Indigenous Peoples overrepresented, but they are more likely to be sentenced to prison than non-Indigenous people, indicating systemic bias in the justice system.<sup>25</sup>

As such, the committee recommends:

### **Recommendation 1**

**That the Government of Canada take all steps necessary to implement, without delay, the Truth and Reconciliation Commission *Calls to Action* relating to the overrepresentation of Indigenous Peoples in the federal correctional system, notably:**

- **Call to Action 30, which calls on the Government of Canada to commit to eliminating the overrepresentation of Indigenous Peoples in custody by 2025, and to issue detailed annual reports on this effort;**
- **Call to Action 32, which calls on the Government of Canada to amend the *Criminal Code* to allow trial judges to depart from mandatory minimum sentences and restrictions on the use of conditional sentences; and**
- **Call to Action 34, which calls on the Government of Canada to undertake reforms to the criminal justice system to better address the needs of federally-sentenced persons with Fetal Alcohol Spectrum Disorder (FASD), including:**

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<sup>24</sup>Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The Legacy*, Volume 5 of *The Final Report of the Truth and Reconciliation Commission of Canada*, 2015, p. 222.

<sup>25</sup> RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer); Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The Legacy*, Volume 5 of the Final Report. See also National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Vol. 1a.

- **providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD;**
- **enacting statutory exemptions from mandatory minimum sentences of imprisonment for federally-sentenced persons affected by FASD;**
- **providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community; and**
- **adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.**

## Recommendation 2

**That the Government of Canada work with Indigenous communities, provinces and territories to develop a strategy designed to prevent the overincarceration of Indigenous Peoples, particularly those with intellectual disabilities and mental health issues, and that takes into account the unique and intersecting sociohistorical factors that are closely linked to and exacerbate their mental health issues.**

Black persons are also overrepresented in federal corrections, accounting for 8.6% of the federally-sentenced population while representing only 3.5% of the Canadian population.<sup>26</sup> Between 2002 and 2012, the number of federally-sentenced Black persons increased by 75%, while the number of white federally-sentenced persons decreased by 10%.<sup>27</sup> Although the number of federally-sentenced Black persons has since decreased by 9%, the overall federally-sentenced population has also

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<sup>26</sup> OCI, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, February 2014; Statistics Canada, *Canada's Black population: Growing in number and diversity*, 6 February 2019.

<sup>27</sup> OCI, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, February 2014.

decreased by 6.3% since 2012.<sup>28</sup> Similarly to federally-sentenced Indigenous Peoples, witnesses pointed to a history of systemic and targeted discrimination in the justice system and in society as reasons behind the overrepresentation of Black persons.

As such, the committee recommends:

### Recommendation 3

**That the Government of Canada work with civil society organizations, communities, provinces and territories to develop targeted strategies, in addition to economic, educational and social programs to address the root causes of the overrepresentation of Black persons in the federal correctional system, including systemic racism and historical discrimination. Such strategies could include the creation of a guaranteed minimum income program.**

In the case of federally-sentenced women, targeted strategies are required to address the unique root causes of incarceration for this diverse and dichotomous group. Federally-sentenced women are more likely than federally-sentenced men to have experienced physical and sexual abuse and are twice as likely to have a serious mental health diagnosis.<sup>29</sup> Most federally-sentenced women are serving sentences for non-violent offences, including drug-related offences.<sup>30</sup> While the male federally-sentenced population has continued to decline over the last decade, the number of federally-sentenced women has increased by nearly 30% - from 534 to 2008 to 684 in 2018.<sup>31</sup> As stated above, Indigenous women make up 3% of the overall population but account for 42% of the female federally-sentenced population in custody. In the Prairie region, the proportion of federally-sentenced Indigenous women jumps to

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<sup>28</sup> Ivan Zinger, Correctional Investigator, [Letter to the Chair of RIDR](#) (Re: Follow-up to 8 February 2017 testimony), 2 March 2017.

<sup>29</sup> Chris Cowie, Executive Director, Community Justice Initiatives, "Presentation to the Senate of Canada Standing Committee on Human Rights," 8 February 2017; OCI, [Annual Report of the Office of the Correctional Investigator 2014-2015](#), 26 June 2015.

<sup>30</sup> OCI, [Annual Report of the Office of the Correctional Investigator 2014-2015](#), 26 June 2015.

<sup>31</sup> OCI, [Office of the Correctional Investigator Annual Report 2017-2018](#), 29 June 2018.

66%.<sup>32</sup> The number of federally-sentenced Indigenous women has increased by 60% in the last ten years, compared to 29.7% of women in prison generally.<sup>33</sup> Clearly, any approach to prevent the incarceration of women must include strategies to address the unique needs and circumstances of Indigenous women.

#### **Recommendation 4**

**That the Government of Canada, in consultation with relevant interest groups, provinces and territories, develop targeted strategies, including economic, educational and social programs designed to address the root causes of women’s incarceration, with particular attention to Indigenous women and those with disabling mental health issues.**

While the focus of this report is on the human rights of federally-sentenced persons, understanding the root causes of their incarceration is key to responding to the unique needs of this diverse population in the form of services, programming, release planning and the provision of alternatives to imprisonment. In addition, by addressing these root causes and reducing the current rate of incarceration, the benefits to society at large are innumerable.

#### **F. The Committee’s Report**

The committee thanks all witnesses who shared their valuable testimony, expertise and lived experiences throughout the course of this study, particularly the many federally-sentenced persons who openly shared their truths in person and in writing. We hope that this report accurately and respectfully presents their important and diverse perspectives that are too often disregarded.

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<sup>32</sup> Office of the Correctional Investigator, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

<sup>33</sup> Office of the Correctional Investigator, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018; OCI, *Office of the Correctional Investigator Annual Report 2016-2017*, 28 June 2017.

The committee notes that while it was conducting its research, several key developments occurred with respect to administrative segregation.<sup>34</sup> In 2017 and 2018, respectively, the Ontario Superior Court of Justice and the Supreme Court of British Columbia found the administrative segregation provisions in the CCRA to be unconstitutional.<sup>35</sup> Both decisions were upheld on appeal in 2019.<sup>36</sup> In response, the Government of Canada tabled Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, on 16 October 2018.<sup>37</sup> The bill received royal assent on 21 June 2019.<sup>38</sup> The new law aims to address the concerns raised by the court decisions by replacing administrative segregation with “structured intervention units.”<sup>39</sup> Administrative segregation, these cases and the new legislation will be explored in further detail in Chapter 4 of this report.

The aim of this report is to strengthen the respect for human rights at all levels of the federal correctional system, with a focus on vulnerable and marginalized groups. The committee's 71 recommendations are based on the testimony received and what the committee observed and heard during site visits, committee hearings and private meetings. These recommendations touch on security classification, conditions of confinement, provision of health care, correctional programming, treatment of federally-sentenced persons, and preparation for release, among other areas.

The report is divided in six chapters. After a discussion of the human rights framework in federal corrections (Chapter 1), it follows the trajectory of a person going through the federal correctional process. Chapter 2, *Entering the Correctional System*, provides an overview of the security classification process, which is the gateway to correctional programming. Chapter 3, *Conditions of Confinement*, lays out

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<sup>34</sup> Administrative segregation refers to the separation of a federally-sentenced person from the general population and is a security, rather than a disciplinary, decision: CSC, *Commissioner's Directive 709 – Administrative Segregation; Corrections and Conditional Release Act*, S.C. 1992, c. 20 [CCRA], s. 31(1). See also Chapter 5 of this report.

<sup>35</sup> *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491 [CCLA v. Canada]; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62 [BCCLA v. Canada].

<sup>36</sup> *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 5.

<sup>37</sup> Public Safety Canada, “*New Bill: An Act to amend the Corrections and Conditional Release Act and another Act*,” News release, 16 October 2018.

<sup>38</sup> Senate, *Debates*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 21 June 2019, p. 8845.

<sup>39</sup> Public Safety Canada, “*New Bill: An Act to amend the Corrections and Conditional Release Act and another Act*,” News release, 16 October 2018.

the living conditions in federal penitentiaries, including quality and quantity of food, access to hygiene products as well as respect for cultural practices and family visits. This chapter contains a discussion on the quality of health care in federal correctional facilities for both physical and mental health needs. Chapter 4, *Treatment of Federally-Sentenced Persons*, provides information on the use of force, administrative segregation, SIUs, and issues relating to mistreatment, discrimination, and access to justice. Chapter 5, *Correctional Programming*, underscores challenges with the quality and timely delivery of correctional programming. Chapter 6, *The Road to Reintegration*, discusses the barriers to conditional release faced by federally-sentenced persons and the issues they encounter upon returning to their communities. Finally, the report concludes with the committee's closing thoughts and reiterates the recommendations provided throughout the report.



## CHAPTER 1 – HUMAN RIGHTS AND THE LEGAL FRAMEWORK FOR FEDERAL CORRECTIONS

The committee heard that the human rights of federally-sentenced persons are too often disregarded and sometimes violated despite protections under Canada’s human rights and legal framework. As explained by Catherine Latimer, the Executive Director of the John Howard Society of Canada,

It is set in law that prisoners have charter rights and residual liberty interests that cannot be eroded except in compliance with fundamental principles of justice. Many prisoners have fought hard to secure voting rights, due process rights, and other human rights in the courts, but hard-won judicial victories and codified rights in the charter do not translate into prisoners having their rights in practice. Individual rights may be seen as contrary to efficient management and security. Prison is not a rights-affirming culture. Rights without remedies are no rights at all.<sup>40</sup>

The committee met with numerous persons serving federal sentences. Many were unaware that they retain many of the same rights enjoyed by all Canadians. For this reason, the committee lays out the human rights and legal framework intended to protect federally-sentenced persons in this section.

The *Canadian Charter of Rights and Freedoms* (Charter), the *Canadian Human Rights Act* (CHRA) and the CCRA protect the human rights of federally-sentenced persons and enshrine the obligations of government actors to uphold these rights.<sup>41</sup> The

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<sup>40</sup> Standing Senate Committee on Human Rights, *Evidence*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session [RIDR, *Evidence*], 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>41</sup> *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.) [Charter]; *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [CHRA]. Other legislation that may affect the rights of federally-sentenced persons include: the *Canadian Multiculturalism Act*, R.S.C., 1985, c. 24 (4<sup>th</sup> Supp.); the *Official Languages Act*, R.S.C., 1985, c. 31 (4<sup>th</sup> Supp.); the *Privacy Act*, R.S.C., 1985, c. P-21; and the *Access to Information Act*, R.S.C., 1985, c. A-1.

rights of federally-sentenced persons have also been affirmed by the Supreme Court of Canada. Additionally, Canada's international human rights obligations and non-binding international human rights standards can be used to interpret and understand the content of Charter rights and other Canadian legislation.<sup>42</sup>

The Supreme Court of Canada has recognized that the criminal justice system's sentencing framework is tied to society's acceptance of the person being sentenced as a person with rights and responsibilities.<sup>43</sup> In Canada, judges must sentence people convicted of criminal offences in a way that reflects the gravity of the offence and the degree of responsibility of the person who committed the crime.<sup>44</sup>

The *Criminal Code of Canada* specifies that a criminal sentence serves six basic objectives: denunciation of unlawful conduct and the harm done to victims; deterrence of the sentenced person and others; separation of the sentenced person from society where necessary; rehabilitation; reparation of harm done to the community; promotion of a sense of responsibility by the sentenced person; and acknowledgement of the harm done to victims and the community.<sup>45</sup>

The Supreme Court of Canada has recognized "the principle that prison should be used as a sanction of last resort" and observed that although "imprisonment is intended to serve the traditional sentencing goals of separation, deterrence, denunciation, and rehabilitation, there is widespread consensus that imprisonment has not been successful in achieving some of these goals."<sup>46</sup> Nevertheless, it remains a common sentence for those convicted of crimes. As elaborated by the Supreme Court:

Overincarceration is a long-standing problem that has been many times publicly acknowledged but never addressed in a systematic manner by Parliament. In recent years, compared to other countries, sentences of imprisonment in Canada have increased at an alarming rate. The 1996

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<sup>42</sup> Ibid.

<sup>43</sup> *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68 [*Sauvé*], para. 47, per McLachlin C.J.C..

<sup>44</sup> *Criminal Code*, R.S.C., 1985, c. C-46 [*Criminal Code*], s. 718.1.

<sup>45</sup> *Criminal Code*, s. 718.

<sup>46</sup> *Criminal Code*, s. 718.2(e); *R. v. Gladue*, [1999] 1 S.C.R. 688 [*Gladue*], para. 57.

sentencing reforms embodied in Part XXIII, and s. 718.2(e) in particular, must be understood as a reaction to the overuse of prison as a sanction, and must accordingly be given appropriate force as remedial provisions.<sup>47</sup>

Once an individual is convicted and sentenced, that person is considered to be “under warrant.” With respect to federally-sentenced persons, the Supreme Court has stressed that “*Charter* rights are not a matter of privilege or merit, but a function of membership in the Canadian polity that cannot lightly be cast aside.”<sup>48</sup> These rights include, amongst others:

- the right to life, liberty and security of the person and the right not to be deprived of these rights except in accordance with the principles of fundamental justice;<sup>49</sup>
- the right to be secure against unreasonable search or seizure;<sup>50</sup>
- the right not to be subject to any cruel and unusual treatment or punishment;<sup>51</sup>
- the right to freedom of conscience and religion, freedom of thought, belief, opinion and expression;<sup>52</sup>
- the right to vote;<sup>53</sup> and
- the right to equality before and under the law, and the right not to be discriminated against on certain grounds, including race, national or ethnic origin, colour, religion, sex, age, mental or physical disability, sexual orientation.<sup>54</sup>

The Supreme Court has held that *Charter* rights, including those of federally-sentenced persons, may only be limited in order to “achieve a

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<sup>47</sup> Ibid.

<sup>48</sup> *Sauvé*, para. 14.

<sup>49</sup> *Charter*, s. 7.

<sup>50</sup> *Charter*, s. 8.

<sup>51</sup> *Charter*, s. 12.

<sup>52</sup> *Charter*, s. 2(a), (b).

<sup>53</sup> *Charter*, s. 3.

<sup>54</sup> *Charter*, s. 15(1); Government of Canada, *Guide to the Canadian Charter of Rights and Freedoms*.

constitutionally valid purpose or objective.”<sup>55</sup> The means to achieve this objective must be “reasonable and demonstrably justified.”<sup>56</sup> The second part of this test requires a rational connection between any infringement on the Charter rights of federally-sentenced persons and the government’s stated objective; the minimal impairment on the enjoyment of the right; and proportionality between the infringement and the benefit achieved.<sup>57</sup> The Supreme Court has recognized that while “[c]ertain rights are justifiably limited for penal reasons, including aspects of the rights to liberty, security of the person, mobility, and security against search and seizure,” the “denial of constitutional rights” is not simply a tool that can be used for punishment.<sup>58</sup>

In addition, under the Charter, sentences must not be arbitrary and must serve a valid criminal law purpose. The Supreme Court has indicated that the “[a]bsence of arbitrariness requires that punishment be tailored to the acts and circumstances of the individual.”<sup>59</sup> It has recognized criminal law purposes such as deterrence, rehabilitation, retribution and denunciation. These terms carry particular meanings in the criminal law context, which can often give rise to misconceptions of what constitutes a valid criminal law purpose. For example, the Supreme Court has recognized, based on empirical evidence, that harsher sentences in the form of mandatory minimum penalties do not achieve deterrence.<sup>60</sup> The Supreme Court similarly specifies that “retribution” is closely related to denunciation and “[r]etribution in a criminal context, by contrast [to vengeance], represents an objective, reasoned and measured determination of an appropriate punishment.”<sup>61</sup> Both denunciation and retribution must reflect the individual’s “moral culpability ... and his or her circumstances.”<sup>62</sup> Where the individual is Indigenous, this exercise must involve considering the unique and different circumstances of Indigenous

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<sup>55</sup> *R. v. Oakes*, [1986] 1 S.C.R. 103 [*Oakes*]; *Sauvé*, para. 7.

<sup>56</sup> *Oakes*.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Sauvé*, paras. 46, 47.

<sup>59</sup> *Ibid.*, para. 48.

<sup>60</sup> *R. v. Nur*, 2015 SCC 15, para. 114.

<sup>61</sup> *R. v. M. (C.A.)*, [1996] 1 S.C.R., para. 80.

<sup>62</sup> *Sauvé*, para. 50.

Peoples, including Canada's legacy of colonialism.<sup>63</sup> If a limitation on Charter rights is to be justifiable, it must meet these constitutional criteria.

The Supreme Court has stressed that just sanctions must also be non-discriminatory.<sup>64</sup> If government conduct widens the gap between a historically disadvantaged group and the rest of society instead of narrowing it, then the conduct is discriminatory.<sup>65</sup>

Individuals incarcerated in federal penitentiaries have a right to protection from discriminatory practices in accordance with the CHRA. Section 3 of the CHRA prohibits discrimination by federal employers and service providers based on the following grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.<sup>66</sup>

As the Canadian Human Rights Commission (CHRC) has pointed out, this means that federally-sentenced persons:

have the right not to be discriminated against or harassed because, for example, they are Aboriginal or have cognitive limitations. Federally-sentenced women and men have the right to correctional services that respond appropriately to the different factors that led to their criminality and that respect their needs and differences.<sup>67</sup>

The Federal Court has held that the CSC has "a duty to accommodate the particular needs of a person with a disability, unless doing so would cause undue hardship."<sup>68</sup>

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<sup>63</sup> *Gladue*, *R. v. Ipeelee*, 2012 SCC 13 [*Ipeelee*].

<sup>64</sup> *Ipeelee*, para. 68.

<sup>65</sup> *Quebec (Attorney General) v. A.*, 2013 SCC 5, para. 332.

<sup>66</sup> CHRA, s. 3(1).

<sup>67</sup> Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, 2003, p. 13.

<sup>68</sup> See, e.g., *Macdonald v. Canada (Attorney General)*, 2017 FC 1028, para. 29.

The *Privacy Act* also provides some protections against the disclosure of federally-sentenced persons' personal information. The correctional context, however, will often permit a relatively broader scope for disclosure. In particular, private information about federally-sentenced persons may be disclosed to various outside bodies if it is "relevant to release decision-making or ... supervision or surveillance."<sup>69</sup>

### **A. Human Rights Protections under the *Corrections and Conditional Release Act***

The CCRA and the *Corrections and Conditional Release Regulations* are the main sources of law governing the day-to-day operation of federal corrections.<sup>70</sup> Commissioner's Directives, the CSC's policy directives, and other internal policy documents play an important role in determining the interpretation and application of this legal framework.

The CCRA mandates and governs matters such as correctional plans, placement and transfer, security classification, SIUs, search and seizure, living conditions, programming, health care, grievance and complaint procedures, and various forms of release. The CCRA, its associated regulations and the CSC's policies must be understood within the above human rights framework.

Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission, pointed out that the CCRA "reflects and embodies human rights obligations."<sup>71</sup> The purpose clause of the CCRA states that the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by:

- (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

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<sup>69</sup> Standing Senate Committee on Human Rights, *Evidence*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session [RIDR, *Evidence*], 7 February 2018 (Daniel Therrien, Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada); CCRA, s. 25.

<sup>70</sup> *Ibid.*

<sup>71</sup> Standing Senate Committee on Human Rights, *Evidence*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session [RIDR, *Evidence*], 14 June 2017 (Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission).

(b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.<sup>72</sup>

The “paramount consideration” in the corrections process is “the protection of society.”<sup>73</sup>

The CCRA sets out a series of principles that guide the CSC. Principles related most closely to the protection of human rights within the federal correctional system include:

(c) the Service uses the least restrictive measures consistent with the protection of society, staff members and offenders;

(d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;

...

(f) correctional decisions are made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

(g) correctional policies, programs and practices respect gender, ethnic, cultural, religious and linguistic differences, sexual orientation and gender identity and expression, and are responsive to the special needs of women, Indigenous persons, visible minorities, persons requiring mental health care and other groups.<sup>74</sup>

The Supreme Court has recently held that section 4(g) of the CCRA “mandates the CSC to pursue substantive equality” for these groups, including a requirement to

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<sup>72</sup> CCRA, s. 3.

<sup>73</sup> Ibid., s. 3.1.

<sup>74</sup> Ibid., s. 4.

“ensure that its practices, however neutral they may appear to be, do not discriminate against Indigenous Peoples.”<sup>75</sup>

The CCRA includes provisions prohibiting the application of restraints as punishment, and prohibiting cruel, inhumane or degrading treatment or punishment.<sup>76</sup> It requires living and working conditions for those incarcerated (and staff) that are “safe, healthful and free of practices that undermine a person’s sense of personal dignity.”<sup>77</sup>

Separation from society is the penalty. Any action that further interferes or infringes liberty interests is either not allowed; or, is permitted, through legislation and policy. In those instances, federally-sentenced persons are usually entitled to receive notice and written notification.

In addition, the CCRA contains several provisions related to the situation of particularly vulnerable or marginalized groups. Of these, the committee would like to highlight the following:

- Section 29(a) permits federally-sentenced persons to be transferred to provincial hospitals, including any mental health facility, in accordance with any federal-provincial agreements for such transfers.
- Section 77 requires the CSC to provide programs “designed particularly to address the needs of female offenders” and to consult regularly with civil society.<sup>78</sup>
- Section 80 states that the CSC “shall provide programs designed particularly to address the needs of Indigenous offenders.”

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<sup>75</sup> *Ewert*, paras. 54, 55, 65.

<sup>76</sup> CCRA, ss. 68-69.

<sup>77</sup> *Ibid.*, s. 70.

<sup>78</sup> Specifically, the CSC must consult with “appropriate women’s groups” and “other appropriate persons or groups” with expertise on, and experience in working with, incarcerated women.



- Section 81 allows the CSC to enter into agreements with “an Indigenous governing body or any Indigenous organization” allowing for transfers of individuals serving a sentence in a penitentiary into the care and custody of an Indigenous community. Agreements may apply to both federally-sentenced Indigenous Peoples and to federally-sentenced persons who are not Indigenous.
- Section 84 gives Indigenous communities the opportunity to develop release and reintegration plans for federally incarcerated persons into their respective communities.
- Section 87 requires the CSC to consider a federally-sentenced person’s state of health and health care needs in all decisions relating to that person’s “placement, transfer, confinement in a structured intervention unit and disciplinary matters” as well as in the preparation of the individual for release and in their supervision.

The committee considered the situation of Black individuals serving federal sentences, and of other racialized persons.<sup>79</sup> The *Canadian Multiculturalism Act* illustrates the CSC’s obligations regarding racialized federally-sentenced persons. Those obligations include:

- promoting policies, programs and practices that enhance the ability of people from all communities and origins to contribute to Canada which enhance understanding and respect for diversity;
- being sensitive and responsive to the multicultural reality of Canada and to collect statistical data to develop culturally responsive programs;

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<sup>79</sup> The *Corrections and Conditional Release Regulations*, ss. 100 - 101 and [Commissioner’s Directive 767, Ethnocultural Offenders: Services and Interventions](#) provide the framework for the CSC’s provision of services to “ethnocultural offenders.”

- ensuring equal opportunities for employment and advancement for people from all origins.<sup>80</sup>

## B. International Protections

As mentioned above, Canada’s international human rights obligations and non-binding international human rights standards can be used to interpret and understand the content of Charter rights and other Canadian legislation. Some of the more widely-cited international instruments related to the human rights of prisoners include the *International Covenant on Civil and Political Rights* (ICCPR),<sup>81</sup> the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)<sup>82</sup> and the *United Nations Standard Minimum Rules for the Treatment of Prisoners*.<sup>83</sup>

### 1. *International Covenant on Civil and Political Rights*

Canada acceded to the ICCPR in 1976. In addition to the basic human rights protected in the ICCPR which apply to all human beings, whether in detention or not, Article 10 requires that all imprisoned persons be “treated with humanity and with respect for the inherent dignity of the human person.” Article 10 provides that the key aim of the penitentiary system “shall be [the] reformation and social rehabilitation” of prisoners.

### 2. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Canada acceded to the CAT in 1987. The CAT prohibits torture, either physical or mental, inflicted by or at the direction of a public official under any circumstances.

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<sup>80</sup> *Canadian Multiculturalism Act*, R.S.C., 1985, c. 24, s. 3(2).

<sup>81</sup> UN Office of the High Commissioner for Human Rights [OHCHR], *International Covenant on Civil and Political Rights*, entered into force 23 March 1976.

<sup>82</sup> OHCHR, *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, entered into force 26 June 1987.

<sup>83</sup> United Nations Office on Drugs and Crime [UNODC], *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, 2015 [Mandela Rules].

Article 10 requires States Parties to ensure that personnel involved in the custody and treatment of imprisoned individuals receive training regarding the prohibition against torture. States Parties must systematically review their arrangements regarding the custody and treatment of imprisoned persons with a view to preventing any cases of torture.

Canada has not ratified the Optional Protocol to the CAT, which provides for independent inspections of penitentiaries. In a 2021 written response to the committee, the Correctional Investigator recommended that the Government of Canada immediately sign the Optional Protocol and ratify it within four years.<sup>84</sup>

### **3. United Nations *Standard Minimum Rules for the Treatment of Prisoners***

While there is no binding international treaty that focuses exclusively on the human rights of prisoners, several non-binding international instruments provide for standards regarding the treatment of prisoners and the conditions of confinement. These include the United Nations (UN) *Standard Minimum Rules for the Treatment of Prisoners* (SMRs), which were first adopted by the UN Economic and Social Council in 1957. Canada did not endorse or commit to implementing the SMRs until the Fifth UN Congress in 1975. Since then, however, the Government of Canada reports that it has taken the SMRs into account when drafting correctional policy and legislation.<sup>85</sup>

The UN General Assembly, which includes Canada, unanimously adopted a revised version of the SMRs, known as the *Nelson Mandela Rules* (the Mandela Rules), in 2015.<sup>86</sup> Rule 1 of the Mandela Rules states that “all persons shall be treated with the respect due to their inherent dignity and value as human beings.” In addition to covering the basic rights of prisoners, such as the right to be free from discrimination, the Mandela Rules set minimum standards in such areas as prisoner

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<sup>84</sup> Ivan Zinger, Correctional Investigator, Letter to the Chair of RIDR, 14 May 2021.

<sup>85</sup> CSC, *United Nations Standard Minimum Rules For the Treatment of Prisoners 1975*.

<sup>86</sup> Mandela Rules. See also: RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada); Standing Senate Committee on Human Rights, *Evidence*, 42nd Parliament, 1st Session [RIDR, *Evidence*], 21 March 2018 (Claire McNeil, Lawyer, Dalhousie Legal Aid Service, Dalhousie University, as an Individual); Standing Senate Committee on Human Rights, *Evidence*, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session [RIDR, *Evidence*], 26 March 2018 (Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Dalhousie University, as an Individual).

file management, accommodation, clothing, food, healthcare services, use of force, contact with friends and family, and solitary confinement.<sup>87</sup> Member states are encouraged to not only meet but exceed these standards, in accordance with their domestic legal frameworks.

#### **4. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)**

The United Nations *Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* (Bangkok Rules) were unanimously adopted by the UN General Assembly in December 2010. These rules were developed to “complement and supplement” the SMRs in recognition of the distinct needs and realities of women prisoners and the need to address these differences in a system historically designed for men.<sup>88</sup> The Bangkok Rules provide guidance on issues including gender-specific health care services, gender-sensitive risk assessment and classification of prisoners, personal hygiene for women prisoners, and pregnant women, breastfeeding mothers and mothers with children in prison. Under the Bangkok Rules, strip and cavity searches are to be carried out by female staff and only if necessary. Every effort must be taken to keep pregnant women and women with small children out of prison. Children who accompany their mothers to prison must be fully provided for by the penitentiary, and not treated like prisoners.<sup>89</sup>

Other non-binding international human rights instruments on the topic of the human rights of adult prisoners include the [UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#) (1988) and the [UN Basic Principles for the Treatment of Prisoners](#) (1990).

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<sup>87</sup> The Mandela Rules prohibit solitary confinement in excess of 15 consecutive days. The issue of solitary confinement in Canada, including Canada’s adherence to the Mandela Rules in this regard, is discussed in more detail in Chapter 5.

<sup>88</sup> United Nations Office on Drugs and Crime, [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(The Bangkok Rules\)](#), 2010 [Bangkok Rules]. See also: RIDR, [Evidence](#), 7 June 2017 (Debbie Kilroy, as an Individual); RIDR, [Evidence](#), 4 October 2017 (Nancy Wrenshall, as an Individual).

<sup>89</sup> Bangkok Rules.

## 5. United Nations *Declaration on the Rights of Indigenous Peoples*

As a crucial human rights instrument, the committee wishes to highlight witness testimony that has underscored the importance of implementing the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP):

It is important that the committee highlight the importance of implementing the UN declaration, since it is a crucial human rights instrument. We support the view of Paul Joffe, lead counsel to the Cree, that the UN declaration is the most comprehensive, universal, international human rights instrument that explicitly addresses the rights of indigenous people. It elaborates on the economic, social, cultural, political, spiritual and environmental rights of indigenous people. The human rights committees called on Canada to improve its prison conditions, reduce overcrowding, segregation, the treatment of prisoners with mental health issues. The fact that Canada has a poor record is not in keeping with how Canadians view themselves.<sup>90</sup>

For the sake of reconciliation and to help protect the human rights of Indigenous communities and federally-sentenced persons, the committee acknowledges that the implementation of the UNDRIP would require the Government of Canada and the CSC to engage with Indigenous Peoples before putting in place legislation and programs that impact them.

As an organization, the Assembly of First Nations would fall back to some of the overarching principles and standards in human rights law, such as the United Nations Declaration on the Rights of Indigenous Peoples. It talks about there being consultation for any legislation or programs that deal with Aboriginal or indigenous people. If Correctional Service Canada is engaging in a process to amend their rules, their regulations or their processes, there should be some measure of consultation with indigenous communities and the First Nations leadership. That should be a minimal standard.<sup>91</sup>

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<sup>90</sup> RIDR, *Evidence*, 31 May 2017 (Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples).

<sup>91</sup> RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations).

The idea that all incarcerated persons have human rights is internationally recognized and codified in Canadian law and policy. The committee learned over the course of its study, however, that the application of, and respect for, these laws and policies are inconsistent, and federally-sentenced persons face significant difficulty in seeking remedies for the denial of their rights.

## CHAPTER 2 – ENTERING THE FEDERAL CORRECTIONAL SYSTEM

After sentencing for an indictable offence, federally-sentenced persons are transferred into the CSC's custody, and a risk assessment is conducted to identify characteristics linked to recidivism.<sup>92</sup> The results of this assessment are used to establish the security classification and correctional plan for federally-sentenced persons.<sup>93</sup>

### A. Security Classification

The security classification determines the level of security of the penitentiary to which federally-sentenced persons will be assigned.<sup>94</sup> In Canada, there are four levels of security penitentiaries: minimum, medium, maximum and the Special Handling Unit (super maximum). Multilevel penitentiaries contain more than one level of security. The higher the level of security, the more movement within the penitentiary is constrained, which results in fewer privileges and opportunities for programming aimed at reintegration.<sup>95</sup> It should be noted that all federal penitentiaries for women in Canada are multilevel security. During site visits, federally-sentenced women in minimum security often told the committee that they were not given the same privileges or access to programming typically available in minimum security correctional facilities because they were in multilevel penitentiaries. Federally-sentenced women in minimum security reported that they were treated

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<sup>92</sup> CSC, *The correctional process*.

<sup>93</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual); CSC, *CD 705-7 – Security Classification and Penitentiary Placement*.

<sup>94</sup> CSC, *CD 705-7 - Security Classification and Penitentiary Placement*.

<sup>95</sup> RIDR, *Evidence*, 7 August 2018 (Lisa Neve, as an Individual); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

like federally-sentenced persons in medium or maximum-security penitentiaries, which have more restrictions.

Testimony and site visits made it clear that the initial security classification is crucial to informing the experience, rehabilitation and reintegration of federally-sentenced persons.<sup>96</sup> As explained by Kelly Hannah-Moffatt, Vice-President, Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto:

Security classification is really important because it is a bit of a gateway in terms of access to programs and services in the institution, the ability to take those programs and services and have a significant impact on decisions about readiness for release or preparedness for release, and the ability to access secure programs that lead up to the eventual outcome of being released from the institution.<sup>97</sup>

Witnesses who appeared before the committee and with whom the committee met with during site visits stressed the importance of good programming for those who are incarcerated and of parole to increase chances of a successful reintegration into society upon release.<sup>98</sup> However, because fewer programs are available in medium and maximum-security facilities, groups in these facilities have less of a chance for a successful reintegration or obtaining early release.<sup>99</sup> Not only are those labelled higher security risks ill-prepared for reintegration, they also serve longer sentences.<sup>100</sup>

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<sup>96</sup> RIDR, [Evidence](#), 7 August 2018 (Lisa Neve, as an Individual); RIDR, [Evidence](#), 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge, Deputy Warden, Bowden Institution, CSC, as an Individual); RIDR, [Evidence](#), 11 August 2018 (Wendy Bariteau, as an Individual).

<sup>97</sup> RIDR, [Evidence](#), 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>98</sup> RIDR, [Evidence](#), 7 August 2018 (Lisa Neve, as an Individual); RIDR, [Evidence](#), 7 August 2018 (Anoush Newman, Chair, Correction Service Canada, Regional Ethnocultural Advisory Committee); RIDR, [Evidence](#), 6 February 2019 (Stan Stapleton, National President, Union of Safety and Justice Employees); RIDR, [Evidence](#), 6 February 2019 (Rick Sauvé, Facilitator, Breakaway).

<sup>99</sup> RIDR, [Evidence](#), 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual); RIDR, [Evidence](#), 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>100</sup> RIDR, [Evidence](#), 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); CCRA, [s. 3\(b\)](#).



While the committee recognizes that the CSC may be limited by available resources, it believes successful reintegration into society is a critical function that should be prioritized. Reintegration is core to the CSC's mandate. Successfully rehabilitated federally-sentenced persons equal safer communities. As such, the committee recommends:

## Recommendation 5

**That the Correctional Service of Canada, in consultation with internal and external stakeholders and experts, develop a strategy that respects the rights of all federally-sentenced persons, irrespective of security classification, have equal access to effective correctional programming to ensure their successful reintegration into society.**

### 1. Custody Rating Scale

Despite the importance of the initial security classification, numerous witnesses informed the committee that the CSC's classification system is flawed.<sup>101</sup>

Marginalized and vulnerable groups are overrepresented in medium-maximum security penitentiaries, especially federally-sentenced Indigenous Peoples (see table 1), federally-sentenced women, federally-sentenced Black persons and federally-sentenced persons with mental health issues.<sup>102</sup>

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<sup>101</sup> RIDR, *Evidence*, 30 January 2019 (Jennifer Metcalfe, Executive Director, Prisoners' Legal Services, West Coast Prison Justice Society); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual); RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 15 May 2017 (Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University, as an Individual).

<sup>102</sup> RIDR, *Evidence*, 30 January 2019 (Jennifer Metcalfe, Executive Director, Prisoners' Legal Services, West Coast Prison Justice Society); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual); RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 11 August 2018 (Gillian Gough, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

**Table 1 – Security classification: Number of federally-sentenced Indigenous Peoples and federally-sentenced persons (2017)**

Security classification	Federally sentenced Indigenous Peoples	Federally-sentenced persons
Minimum	650 (18.3%)	2,270 (24.3%)
Medium	2,257 (63.5%)	5,745 (61.6%)
Maximum	650 (18.3%)	1,309 (14.0%)

Source: Information compiled by authors using information gathered from CSC, [2017 Corrections and Conditional Release Statistical Overview](#).

Some witnesses attributed issues with the security classification to the Custody Rating Scale (CRS).<sup>103</sup> The CRS is an actuarial tool used by the CSC to establish the level of security of federally-sentenced persons.<sup>104</sup> Using various factors (see table 2), the CRS establishes two ratings: an “institutional adjustment rating” and a “security risk rating”.<sup>105</sup> The scores of the institutional adjustment rating and the security risk rating are then calculated separately by the Offender Management System, which

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<sup>103</sup> RIDR, [Evidence](#), 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge, Deputy Warden, Bowden Institution, CSC, as an Individual); RIDR, [Evidence](#), 30 January 2019 (Jennifer Metcalfe, Executive Director, Prisoner’s Legal Services, West Coast Prison Justice Society); RIDR, [Evidence](#), 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, [Evidence](#), 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

<sup>104</sup> RIDR, [Evidence](#), 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociological Studies, University of Toronto, as an Individual).

<sup>105</sup> CSC, [CD 705-07 – Security Classification and Penitentiary Placement](#); CSC, [CD 705-6 – Correctional Planning and Criminal Profile](#).

provides the security classification.<sup>106</sup> Anne Kelly, Commissioner of the CSC explained that when federally-sentenced persons

are admitted to federal custody, we apply those tools. The tools we use have been validated for both women and Indigenous offenders. In terms of the security reclassification tool, there's one that's specific to women. The tool basically gives us a rating, and then that informs the parole officer's assessment and a security classification is assigned. We wouldn't start all women as minimum security. As I said, we have actuarial tools that help us determine at what level they should be assigned. Then, based on their participation in programs and on the correctional plan, we obviously do security classification reviews and then women can move from one level to the next.<sup>107</sup>

It was also argued by Dr. Hannah-Moffatt that the process lacked transparency.<sup>108</sup> She stated: "A whole bunch of information comes into a box and gets calculated. It's not quite clear what weight any particular factor makes... There is very little transparency and clarity on how we're sure what happened in that black box."<sup>109</sup>

A number of witnesses were critical of CSC for relying on static risk factors its lack of consideration for different cultural groups, and its inconsistent application of designations across the country, and that design of CRS omits any consideration of diversity.<sup>110</sup> The criticism included concerns about the CSC instituting a policy

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<sup>106</sup> CSC, *CD 705-07 – Security Classification and Penitentiary Placement*.

<sup>107</sup> RIDR, *Evidence*, 27 February 2019 (Anne Kelly, Commissioner, CSC).

<sup>108</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>109</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>110</sup> RIDR, *Evidence*, 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge, Deputy Warden, Bowden Institution, CSC, as an Individual); RIDR, *Evidence*, 30 January 2019 (Jennifer Metcalfe, Executive Director, Prisoner's Legal Services, West Coast Prison Justice Society); RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

overriding the CRS for federally-sentenced persons convicted of homicide.<sup>111</sup> The following sections review witness testimony with respect to these concerns.

**Table 2 – Custody Rating Scale factors considered**

Institutional Adjustment Rating	Security Risk Rating
<ol style="list-style-type: none"> <li>1. History of involvement in institutional incidents</li> <li>2. Escape history</li> <li>3. Street stability<sup>112</sup></li> <li>4. Alcohol/drug use</li> <li>5. Age (At time of arrest)</li> </ol>	<ol style="list-style-type: none"> <li>1. Number of prior convictions</li> <li>2. Most severe outstanding charge</li> <li>3. Severity of current offence</li> <li>4. Sentence length</li> <li>5. Street stability</li> <li>6. Prior parole and/or statutory releases (mandatory supervision)</li> <li>7. Age at the time of first federal admission</li> </ol>

Source: Table compiled by authors using information gathered from CSC, [CD 705-07 – Security Classification and Penitentiary Placement](#).

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<sup>111</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>112</sup> Street stability refers to the evaluation of a federally-sentenced person’s “level of functioning in the community as it relates to socially and legally acceptable norms.” See: CSC, [CD 705-07 – Security Classification and Penitentiary Placement](#).

### a. Static vs. Dynamic Risk Factors

The committee heard testimony that the CRS is over-reliant on static risk factors and should instead place more emphasis on dynamic risk factors.<sup>113</sup> Static risk factors refer to information from federally-sentenced persons' history that cannot be changed regardless of a federally-sentenced person's progress within the correctional system.<sup>114</sup> These factors include their previous involvement in institutional incidents, escape history, age at the time of arrest and number of prior convictions. Dynamic risk factors, on the other hand, refer to information that can change through intervention or over time, such as alcohol and drug use as well as street stability.<sup>115</sup> Based on the factors laid out in CD 705-07 (see Table 2) it appears that nine of the twelve risk factors used to determine security classifications through the CRS are based on static information.<sup>116</sup>

Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University, explained that the CSC is strict in using these static measures:

a lot of these are based on static factors, so they can't change. The person's score really can't change because the dynamics, which are the changeable factors — you can improve your education; you can reduce your addiction, the level to which you are addicted to things; you do attenuate, according to the literature, in terms of your violence as you grow older. All things change, but a lot of the actuarials [*sic*] don't change...<sup>117</sup>

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<sup>113</sup> RIDR, *Evidence*, 15 May 2017 (Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University, as an Individual); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>114</sup> RIDR, *Evidence*, 15 May 2017 (Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University, as an Individual).

<sup>115</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>116</sup> RIDR, *Evidence*, 21 March 2018 (Claire McNeil, Lawyer, Dalhousie Legal Aid Service, Dalhousie University; Vince Calderhead, Lawyer, Pink Larkin, as an Individual); RIDR, *Evidence*, 15 May 2017 (Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University, as an Individual); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual); RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

<sup>117</sup> RIDR, *Evidence*, 15 May 2017 (Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University, as an Individual).

Another criticism against the use of static risk factors to determine security classification is that they lack “understanding or appreciation for context.”<sup>118</sup> As Dr. Hannah-Moffatt stated, in some instances, women who were survivors of domestic violence were being flagged as potentially violent because they were defending themselves during the incident that led to their incarceration. Similarly, people who self-harmed are sometimes identified as violent because no distinction is made between self-inflicted violence and violence toward others.<sup>119</sup> She explained that:

Having participated in any type of violent relationship, as was the case with self-injury or having a mental health issue, would seem to escalate your potential for violence in the future. It’s very unclear to me what the empirical basis for some of those issues were. They were often devoid of context. When you read the information you can see somebody struck somebody as they came toward them with a lit cigarette or something else that was going to burn them, or their actions were such that they were fighting. Because you have somebody before you who is a prisoner convicted of an offence, those are seen as acts of aggression which then escalates the perception of you as having a future risk of being violent.<sup>120</sup>

The committee reiterates that the advantage of using dynamic risk factors is that these factors can be mitigated through programming and other kinds of interventions. They take into account improvements made by federally-sentenced persons as well as life circumstances.

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<sup>118</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>119</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>120</sup> *Ibid.*

## b. Design of Custody Rating Scale Omits Consideration of Diversity

The CRS was designed in the late 1980s and was implemented nationally in 1991.<sup>121</sup> The CRS was developed using a sample of predominantly white males, which can be problematic to evaluate the security classification of a diverse population that includes federally-sentenced Indigenous Peoples, federally-sentenced women, federally-sentenced Black persons and federally-sentenced persons with mental health issues. The overrepresentation of these groups in higher security penitentiaries are potentially illustrative of the problematic outcomes that can arise from the CRS.<sup>122</sup>

In relation to federally-sentenced Indigenous Peoples, the Auditor General of Canada (Auditor General) told the committee that the CRS “didn’t consider the unique needs of indigenous offenders as required” by law.<sup>123</sup> “More than three quarters of Indigenous offenders were sent to medium- or maximum-security penitentiaries upon admission and were referred to a rehabilitation program. These were at significantly higher levels than non-Indigenous offenders.”<sup>124</sup> In the Auditor General’s assessment, part of the problem is that the CSC, in its application of the CRS, does not adequately consider Indigenous social history factors.<sup>125</sup> The Auditor General found that the CSC was not sufficiently collecting information related to these factors even though it would have been available since the time of sentencing.<sup>126</sup>

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<sup>121</sup> Brian A. Grant and Fred Luciani, “[Security Classification Using the Custody Rating Scale](#)”, *Research Branch of the Correctional Service of Canada*, February 1998, p. 1.

<sup>122</sup> RIDR, [Evidence](#), 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual); RIDR, [Evidence](#), 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>123</sup> RIDR, [Evidence](#), 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>124</sup> RIDR, [Evidence](#), 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>125</sup> RIDR, [Evidence](#), 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>126</sup> RIDR, [Evidence](#), 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

In 2003, the Canadian Human Rights Commission (CHRC) raised concerns with how the CRS evaluated the security classification for federally-sentenced women.<sup>127</sup> The committee was made aware of at least two studies that had been conducted for the CSC by independent researchers to evaluate the effectiveness of the CRS, following the CHRC findings.<sup>128</sup> The committee was told that both studies found that the CRS was inadequate to make an appropriate security classification determination for federally-sentenced women.<sup>129</sup> In one study, the authors recommended that the CRS be rebuilt from the ground up. In the other, the authors recommended that all federally-sentenced women start at minimum security.<sup>130</sup> It should be noted that concerns that federally-sentenced women are placed in higher security classification than they should is not novel. The 1990 report, *Creating Choices: The Report of the Task Force on Federally Sentenced Women* (Creating Choices), found that women were being overclassified because the system in use at the time was flawed. It stated that a new approach was required to better address the needs of federally-sentenced women. In its report, the Task Force explained that initially, it

supported the concept of woman-based criteria for classification as suggested by previous studies but ultimately came to the conclusion that assessment to gain better understanding of a woman's needs and experiences is more appropriate than classification. This conclusion is based on the Task Force perception that classification maintains the focus on security and on assigning a security rating for the women. Assessment, on the other hand, looks at the whole spectrum of women's needs from a holistic perspective, including needs relating to programming, spirituality, mental and physical health, family,

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<sup>127</sup> Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Serviced for Federally Sentenced Women* (see Chapter 4 – Human Rights in the Assessment and Classification of Need and Risk).

<sup>128</sup> RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>129</sup> RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada); RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>130</sup> RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual). RIDR, *Evidence*, 30 January 2019 (Ivan Zinger, Correctional Investigator of Canada, OCI).



culture and release plans. Through this assessment, staff can then respond to the constellation of needs by appropriate support and intervention strategies which also consider the protection of society and the reduction of risk.<sup>131</sup>

The committee notes that the CSC has since developed a security reclassification tool specifically for federally-sentenced women. The committee also acknowledges that most federally-sentenced women start at minimum security: “51 per cent that are initially classified as minimum security, and the remaining 45 per cent are medium security, with fewer than 5 per cent starting at maximum security.”<sup>132</sup> Nonetheless, the committee underscores that there remains a significant number of federally-sentenced women in medium security. The committee believes that the CSC’s approach to security classification for federally-sentenced women should be consistent and reflect that they present a lower security risk. The committee also believes federally-sentenced women should start in minimum security to benefit from correctional programming immediately upon entering the correctional system.

As such, the committee recommends:

### **Recommendation 6**

**That the Correctional Service of Canada initially classify all federally-sentenced women as minimum security and that in keeping with the recommendations of the 1990 report, *Creating Choices: The Report of the Task Force on Federally Sentenced Women* and the 1996 Commission of Inquiry into certain events at the Prison for Women in Kingston, it work with independent experts and civil society organizations to develop a rights-based security re-assessment tool that recognizes the complex needs of federal-sentenced women to ensure they are not unnecessarily and arbitrarily overrepresented in higher security classifications.**

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<sup>131</sup> CSC, *Creating Choices: The Report of the Task Force on Federally Sentenced Women*, April 1990.

<sup>132</sup> RIDR, *Evidence*, 27 February 2019 (Kelley Blanchette, Deputy Commissioner for Women, CSC).

## Recommendation 7

**That the Correctional Service of Canada ensure that parole officers have all the information required, particularly in relation to federally-sentenced Indigenous Peoples, to conduct intake assessments and penitentiary placement decisions that take into account the sociohistorical backgrounds of federally-sentenced persons as well as their sex, gender, race and ethnicity.**

### c. Inconsistent Application of Classifications across the Country

While the CRS is an actuarial tool, the committee was informed that parole officers are responsible for interpreting how the obtained information applies to each risk factor before assigning a value. Though parole officers are guided by a standardized form, Dr. Hannah-Moffatt's research found "considerable inconsistency in terms of how those things were interpreted and applied across institutions and even across officers within the same institution."<sup>133</sup>

The committee was informed that correctional staff are given a certain amount of flexibility to override the CRS.<sup>134</sup> Carol McCalla, Principal, Office of the Auditor General of Canada, stated that around 30% of the CRS's initial classifications were overridden by staff during the audited period.<sup>135</sup> Though she pointed out that the sheer number of overrides was problematic, the audit also found that most overrides yielded better results than CRS, which underscores another underlying problem.<sup>136</sup> Dr. Hannah-Moffatt, however, cautioned that "people are reluctant to change risk assessments, particularly if they will lead to a lower classification level. They're not equipped to understand the dynamics between the different contexts of offences. Nor do they feel they have the autonomy to make those kinds of decisions."<sup>137</sup>

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<sup>133</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>134</sup> RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

<sup>135</sup> RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

<sup>136</sup> RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

<sup>137</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

As such, the committee recommends:

## Recommendation 8

**That the Correctional Service of Canada work with independent experts to ensure the Custody Rating Scale places more weight on the context within which crimes were committed, attaches more weight to dynamic risk factors and accounts for the unique experiences of marginalized and vulnerable groups with a view to developing clear rights-based guidelines on the use of this tool. In addition, the Custody Rating Scale should be applied uniformly and consistently across the country.**

## 2. Two-year Rule

Some witnesses were critical of the “two-year rule”, which refers to a policy requiring those convicted of a homicide be automatically classified as maximum security for a period of two years.<sup>138</sup> Dr. Hannah-Moffatt explained that not only is the two-year rule devoid of context, it ignores the CRS altogether. While she was critical of the CRS, she underscored that the two-year rule gives those convicted of homicide no chance of being placed at a lower security level, which impedes the rehabilitation and reintegration objectives of the CCRA.<sup>139</sup> She argued that the rule is particularly unfair to federally-sentenced women who have been convicted of homicide, and that “there are gender issues with respect to homicide. There are very different elements of women who commit homicides than there are others. None of those things get taken into consideration. There’s no nuance. There is no holistic

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<sup>138</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual); RIDR, *Evidence*, 4 October 2018 (John Hutton, Executive Director, John Howard Society of Manitoba); RIDR, *Evidence*, 4 October 2017 (Nancy Wrenshall, as an Individual); RIDR, *Evidence*, 20 February 2019 (Ajay Pandhi, Vice President, Canadian Association of Social Workers); RIDR, *Evidence*, 4 October 2017 (Mary E. Campbell, Sentencing and Corrections Expert, Former Director General, Corrections and Conditional Release, Public Safety Canada, as an Individual); RIDR, *Evidence*, 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law).

<sup>139</sup> RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

understanding of the individual, his or her needs, and of how we plan forward for those things.”<sup>140</sup>

Additionally, Howard Sapers, Former Correctional Investigator of Canada, questioned whether the two-year rule aligned with the principle of least restrictive measure under section 4(c) of the CCRA. Mr. Sapers explained that:

The legal framework for doing that requires that, first, legality be in place; so, no punishment outside the law. The administration of a sentence should not add to the punishment imposed by the court. And the companion to that principle is that it’s important to only use the least restrictive measure. The state only has legitimate authority to intervene the least amount necessary. So in this case, an example would be we have prisons that are designated minimum security, medium security, maximum security. The presumption is that you only administer the sentence with the least restriction. If it’s safe in minimum security, that’s where the person should be. This requires careful assessment, et cetera.<sup>141</sup>

As such, the committee recommends:

### Recommendation 9

**That the Correctional Service of Canada repeal its policy obligating federally-sentenced persons convicted of homicide to serve a minimum of two years in maximum security.**

### 3. Mandatory Minimum Penalties

Mandatory minimum penalties (MMPs), which can be “described as a jail sentence where the minimum length of time for a conviction of a specific crime has been set

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<sup>140</sup> Ibid.

<sup>141</sup> RIDR, [Evidence](#), 30 January 2019 (Howard Sapers, Former Correctional Investigator of Canada, as an Individual).

by Parliament,” were criticized by several witnesses.<sup>142</sup> An important concern was that the imposition of a minimum penalty removes judicial discretion from sentencing.<sup>143</sup> As a result, factors (e.g. Indigeneity and mental health) that could be used to recommend sentences of less than two years or community-based alternatives can no longer be considered by the sentencing judge for crimes for which a minimum penalty is prescribed.<sup>144</sup> The committee was informed that this can be particularly problematic when Indigenous people are being sentenced, as *Gladue* factors<sup>145</sup> cannot be used effectively.<sup>146</sup>

The committee notes that the Truth and Reconciliation Commission of Canada (TRC) recognized the harm of MMPs on Indigenous Peoples and communities. In its Call to Action 32, the TRC called on “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.”<sup>147</sup>

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<sup>142</sup> Department of Justice, *Research at a Glance – Mandatory Minimum Penalties*; RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 1 March 2017 (Akwas Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual); RIDR, *Evidence*, 8 February 2018 (Chris Cowie, Executive Director, Community Justice Initiatives); RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia); RIDR, *Evidence*, 1 November 2017 (Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre); RIDR, *Evidence*, 4 October 2017 (Mary E. Campbell, Sentencing and Corrections Expert, Former Director General, Corrections and Conditional Release, Public Safety Canada, as an Individual); Zilla Jones, Defence Counsel (*Jones Law Office*) as an Individual, 4 October 2018; RIDR, *Evidence*, 4 October 2018 (Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, as an Individual); RIDR, *Evidence*, 20 February 2019 (Fred Phelps, Executive Director, Canadian Association of Social Workers).

<sup>143</sup> RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 1 November 2017 (Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre); RIDR, *Evidence*, 4 October 2018 (Zilla Jones, Defence Counsel, Jones Law Office, as an Individual).

<sup>144</sup> RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 1 November 2017 (Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre).

<sup>145</sup> “Section 718.2(e) of the *Criminal Code*, as well as the Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 688 have stated that Judges should account for these considerations when making sentencing decisions. Gladue asks judges to apply a method of analysis that recognizes the adverse background cultural impact factors that many Aboriginals face. In a Gladue analysis these factors, if present in their personal history, work to mitigate or reduce the culpability of offenders. Judges are then asked to consider all reasonable alternatives to jail in light of this. Such an analysis, then, is more likely to lead to a restorative justice remedy being used either in place of a jail sentence or combined with a reduced term.” See: Justice Education Society, *Gladue and Aboriginal Sentencing*.

<sup>146</sup> RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual).

<sup>147</sup> Truth and Reconciliation Commission of Canada, *Calls to Action*, 2012.

As the committee agrees with witnesses and the TRC Call to Action, it recommends that:

### **Recommendation 10**

**That the Government of Canada amend the Criminal Code of Canada to allow judges the discretion to not impose mandatory minimum penalties, and that the Department of Justice Canada undertake a comprehensive review of mandatory minimum penalties with a view to determining which should be revised or repealed.**

## **B. Correctional Plan**

A correctional plan is developed for each federally-sentenced person, and functions as a plan to work toward reintegration while they are in the CSC's custody. It is established at the beginning of the sentence and draws on information gathered for the security classification. It evaluates the needs of federally-sentenced persons in the following eight areas: education, employment, marital/family history, associates, substance abuse, community function, personal/emotional orientation and attitude.<sup>148</sup> The correctional plan is reviewed periodically to assess the progress of federally-sentenced persons.

Dr. Hannah-Moffatt was critical of the CSC's use of risk factors to establish a federally-sentenced person's correctional plan. She pointed out that there is

a lot of slippage that goes on with the system at the very beginning point when we're assessing somebody to be thinking about risk versus need. We talk about needs as if they're risks. By framing issues such as mental health or personal emotional problems or certain trauma issues as dynamic risk factors, what ends up happening is that we don't treat them sufficiently as needs, and

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<sup>148</sup> CSC, *Correctional Plan: Purpose and Content*.

we get into a mantra of security and intervention as opposed to one of support and accommodation.<sup>149</sup>

During site visits the committee was informed that federally-sentenced persons in maximum security are having difficulty, or are unable to, follow their correctional plan because of a lack of access to programming.<sup>150</sup> Given the importance that the CSC ascribes to the correctional plan, the committee is of the view that all federally-sentenced persons, regardless of their security classification, should be able to work on their correctional plan, especially if it is used to gauge their readiness for release.

As such, the committee recommends:

### **Recommendation 11**

**That the Correctional Service of Canada work with relevant interest groups and independent experts to ensure correctional plans focus on support and accommodation and availability of programs and services to address the unique experiences and reintegration challenges of marginalized and vulnerable groups, and that programming is made effective and available to all federally-sentenced persons.**

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<sup>149</sup> RIDR, [Evidence](#), 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>150</sup> RIDR, [Evidence](#), 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); RIDR, [Evidence](#), 7 August 2018 (Lisa Neve, as an Individual); RIDR, [Evidence](#), 11 August 2018 (Renee Acoby, as an Individual); RIDR, [Evidence](#), 11 August 2018 (Gillian Gough, Regional Advocate, Canadian Association of Elizabeth Fry Societies); RIDR, [Evidence](#), 6 February 2019 (Zya Brown, Founder, Think Twice).

## CHAPTER 3 – CARE AND CUSTODY

As federally-sentenced persons lose their liberty, they become dependent on the CSC for all basic necessities. The institution controls what and when they eat; when they can sleep and shower; what hygiene products they have access to; when they may be physically active; what type of clothing they wear; the extent to which they can practice their religion; whether and when they can have family visits, and which family members may visit.<sup>151</sup> As stated by the Correctional Investigator, all movements and actions by federally-sentenced persons in federal correctional facilities are heavily regulated and are subject to “correctional power and authority.”<sup>152</sup>

While some restrictions are an expected reality of incarceration, the observations made by the committee have informed their concerns that the wellbeing and rehabilitative needs of federally-sentenced persons are considered secondary to security constraints and budgetary concerns. During site visits and committee meetings, the committee heard stories of federally-sentenced persons within the CSC’s custody being deprived of some of their most basic needs. The conditions of confinement the committee witnessed in some of Canada’s federal penitentiaries were harsh. The committee was particularly concerned by conditions in correctional facilities, the salaries of federally-sentenced persons<sup>153</sup>, the quality and quantity of food, access to hygiene products, access to family visits and community supports as well as the lack of availability of health care, including physical, mental, dental and pharmacare services.

The committee notes that some of the challenges it observed with respect to living conditions between 2017 and 2019 have amplified the spread of COVID-19 within federal penitentiaries or have been made worse by the pandemic. For instance, federally-sentenced persons reported a lack of access to hygiene products, which are

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<sup>151</sup> RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

<sup>152</sup> Ibid.

<sup>153</sup> Federally-sentenced persons can earn a salary during their incarceration by working in the penitentiary. The salary is discussed in more detail in subsection C – *Salaries, Cost of Living and the Catalogue*.



essential for preventing the spread of COVID-19. As stated in the Correctional Investigator's latest update on COVID-19 in federal penitentiaries, "maintaining hygiene and sanitation behind bars can be challenging at the best of times."<sup>154</sup>

Likewise, federally-sentenced persons expressed serious concerns with the quantity and quality of health services within federal penitentiaries, which is critical for the treatment of federally-sentenced persons who have been infected. The committee was also informed that family visits – essential to both mental health and the reintegration process – have been severely impacted by the CSC's measures to prevent the spread of COVID-19.

### **A. Living Conditions in Correctional Facilities**

The committee conducted visits to federal penitentiaries in Canada's five regions: Ontario, Quebec, Atlantic Canada, the Pacific, and the Prairies. In total, the committee visited 28 federal penitentiaries including healing lodges, community correctional centres (CCC's), psychiatric centres and correctional facilities for federally-sentenced women (see table 3). The committee also visited two provincial mental health centres.

Committee members witnessed poor living conditions in federal penitentiaries. While the federal correctional facilities visited by the committee varied in age and design, they shared some similarities. Cells were often dark, stuffy, and cold in the winter and very hot in the summer. Some empty cells were not clean, with human feces, blood, and mold clearly visible on the walls. The facilities are designed to prioritize security; however, this design does not facilitate rehabilitation. Maximum security units were particularly grim, as federally-sentenced persons spent much of their time isolated in their cells or pods, which often appeared dirty and cramped.

While penitentiaries shared many similarities, some of the challenges were amplified in older penitentiaries. Two of Canada's oldest federal penitentiaries, still in operation today, were built in the late 1800s: Stony Mountain Institution (1877) and Dorchester Penitentiary (1880). Federally-sentenced persons informed the

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<sup>154</sup> Ivan Zinger, Correctional Investigator, Letter to the Chair of RIDR, 3 May 2021.

committee that the CSC was struggling to modernize these institutions to meet modern day demands. During site visits, federally-sentenced persons raised important concerns about air and water quality.

**Table 3 – Penitentiaries Visited by the Senate Committee on Human Rights**

Ontario	Quebec	Atlantic Canada	Pacific	Prairies
<ul style="list-style-type: none"> <li>• Brockville Mental Health Centre <b>(provincial)</b></li> <li>• Joyceville Institution</li> <li>• Bath Institution</li> <li>• Millhaven Institution</li> <li>• Collins Bay Institution</li> <li>• Keele Community Correctional Centre</li> <li>• Grand Valley Institution for Women</li> </ul>	<ul style="list-style-type: none"> <li>• Joliette Institution for Women</li> <li>• Waseskun Healing Centre</li> <li>• Sainte-Anne-des-Plaines Regional Reception Center and Regional Mental Health Centre</li> </ul>	<ul style="list-style-type: none"> <li>• East Coast Forensic Hospital, Nova Scotia <b>(provincial)</b></li> <li>• Nova Institution for Women, Nova Scotia</li> <li>• Springhill Institution, Nova Scotia</li> <li>• Atlantic Institution, New Brunswick</li> <li>• Dorchester Penitentiary, New Brunswick</li> <li>• Shepody Healing Centre, New Brunswick</li> </ul>	<ul style="list-style-type: none"> <li>• Stan Daniels Healing Centre</li> <li>• Edmonton Institution</li> <li>• Edmonton Institution for Women</li> <li>• Buffalo Sage Wellness House</li> <li>• Fraser Valley Institution for Women</li> <li>• Kwikwèxwelhp Healing Village</li> <li>• Kent Institution</li> <li>• Pacific Institution and Regional Treatment Centre</li> <li>• Mission Institution</li> </ul>	<ul style="list-style-type: none"> <li>• Saskatchewan Penitentiary</li> <li>• Saskatchewan Regional Psychiatric Centre</li> <li>• Prince Albert Grand Council Spiritual Healing Lodge</li> <li>• Okimaw Ohci Healing Lodge</li> <li>• Stony Mountain Institution</li> </ul>

As mentioned above, the penitentiaries visited by the committee often appeared dark and dirty. The committee heard federally-sentenced persons remark during site visits that the penitentiary was the cleanest it had been in years. This was due to the extensive cleaning schedules of federally-sentenced persons that had been enforced in the weeks leading up to the visits.<sup>155</sup> For example, during one site visit, the committee met with a federally-sentenced woman tasked with painting the segregation range. She told the committee that it had desperately needed to be painted for years, but that it suddenly became an urgent matter when the penitentiary was informed of the committee's visit. It is positive that the cleaning and painting took place, but this should be done regularly and not just done because a Senate committee is visiting.

The committee noticed that many federal correctional facilities lacked green space accessible to federally-sentenced persons for outdoor activities. In many facilities, the "outdoor" space available to federally-sentenced persons were locations within the penitentiary that just did not have a roof. The ground would only have little grass or was concrete. The concrete walls of the institution surrounded the "outdoor" space. In some instances, additional fencing was added, within the space surrounded by concrete walls, to limit interactions between federally-sentenced persons. Outdoor time in these spaces amounted to walking in a circle for the duration of the allocated time. In the committee's view, these narrow spaces are not conducive to exercise and do not constitute adequate natural environments that federally-sentenced persons should have access to for recreational time.

The physical space within which federally-sentenced persons reside during their incarceration is evidently designed only for security purposes. Concrete walls and barbed wire fencing were defining features of most federal penitentiaries. Numerous security checkpoints restricted outside access. While the committee recognizes that the CSC has a security mandate, it also has a mandate to rehabilitate federally-sentenced persons and prepare them for reintegration into society.

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<sup>155</sup> RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies).

The committee did not see these important objectives reflected in the design of the federal penitentiaries they visited.

## **B. Religious and Cultural Practices**

During site visits, the committee was informed by federally-sentenced persons that limited spaces within the penitentiary were designated for the exercise of religious beliefs and that the available spaces favoured dominant religions. The committee heard from federally-sentenced persons that CSC personnel are given discretion to determine the extent to which federally-sentenced persons are permitted to practice their religion. The committee was informed that federally-sentenced persons from different faiths, including Muslims and Sikhs, experience difficulties. At one of the penitentiaries visited by the committee, for instance, a federally-sentenced woman informed the committee that the penitentiary's chaplain made her prove she was of a certain religious faith before he helped her obtain the necessary items to exercise her Charter protected right to freedom of religion. The committee heard a story of one woman requesting her religious scripture and after a long wait, only portions of her religious scripture were offered to her in the form of a stapled photocopy. During site visits, the committee also heard that federally-sentenced persons who follow Islam had difficulty accessing the Quran or in some cases were refused access. In a similar vein, the committee was informed that federally-sentenced Indigenous Peoples are frequently prevented from participating in smudging ceremonies<sup>156</sup> for arbitrary reasons or told that the penitentiary does not have appropriate access to an Elder. Federally-sentenced Indigenous Peoples with whom the committee spoke were deeply concerned that their Medicine Bundles, which contain sacred medicines and other spiritual items given to them by Elders, are frequently searched by staff for no reason and sometimes destroyed in the process.

It is imperative that federally-sentenced persons be able to practice their religion. The committee shares the opinion of federally-sentenced persons and several

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<sup>156</sup> Smudging is a cultural ceremony practiced by a wide variety of Indigenous Peoples in Canada and other parts of the world. Although practices differ, smudging is used for medicinal and practical purposes as well as for spiritual ceremonies. The practice generally involves prayer and the burning of sacred medicines, such as sweetgrass, cedar, sage and tobacco. See: The Canadian Encyclopedia, [Smudging](#).

witnesses that in addition to being a Charter-protected right, faith and culture can play an important role in rehabilitation and reintegration.<sup>157</sup> The committee met with a number of formerly incarcerated persons who had successfully reintegrated in society after federally-sentenced persons who attributed part of their success to their faith.<sup>158</sup>

As such, the committee recommends:

### Recommendation 12

**That the Correctional Service of Canada facilitate, and eliminate all barriers inhibiting, the exercise and practice of religious and spiritual beliefs in federal penitentiaries. The Correctional Service of Canada should ensure correctional officers respectfully handle religious items and articles such as Medicine Bundles.**

## C. Salaries, Cost of Living and the Catalogue

Federally-sentenced persons may be employed within federal correctional facilities and earn a salary. During every site visit, the committee was informed by federally-sentenced persons that this salary was not enough to cover the cost of living in a federal penitentiary. The most that can be earned is \$6.90 per day; in general, however, the committee was told that “people earn \$4, \$4.50 and \$5, no more.”<sup>159</sup> From those amounts, 30% is deducted for room and board and an additional 8% to access the telephone<sup>160</sup> and additional fees are deducted for television cable services in federal penitentiaries. During site visits, the committee learned that some federally-sentenced persons pay to access telephone services but are prohibited from using them. Although CSC policies provide for an exemption<sup>161</sup>

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<sup>157</sup> Rod Friesen citation should be: RIDR, *Evidence*, 8 February 2018 (Rod Friesen, Coordinator, Restorative Justice Program, Mennonite Central Committee Canada).

<sup>158</sup> RIDR, *Evidence*, 26 March 2018 (Reverend Mark Colley, Word in Action Ministry International).

<sup>159</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

<sup>160</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec); CSC, “*Offender Program Assignments and Inmate Payments*,” *Commissioner’s Directive 730*.

<sup>161</sup> CSC, *CD 860 – Offender’s Money*.

from the room and board deduction, the exception is infrequently used.<sup>162</sup> These findings were concerning because federally-sentenced persons must rely on their remaining income, to purchase supplementary food and clothing items, including jeans and underwear, through a catalogue that comes from one supplier that has an exclusive contract with the CSC. With no way to shop for better prices, federally-sentenced persons are forced to pay exorbitant prices for these items. A pair of Levi's 550 Relaxed Fit Jeans, for instance, costs \$100.49 through the catalogue, in comparison to \$69.99 at clothing retailer Mark's.<sup>163</sup> At \$6.90 per day (minus 30% for room and board), it would take a federally-sentenced person 20 days of work to save for a pair of Levi's jeans. In addition, if items are out of stock, federally-sentenced persons are often supplied with substitute items of inferior quality or incorrect sizes. It is virtually impossible to return or obtain refunds for items even in such circumstances.

As federally-sentenced persons struggle to afford basic items, they are unable to save enough money to support themselves or their families upon their reintegration. The committee believes that the cost for room and board as well as the cost for using the telephone should be eliminated.

As such, the committee recommends:

### **Recommendation 13**

**That the Correctional Service of Canada reduce the cost of room and board and the cost for accessing the telephone. The Correctional Service of Canada should also review the cost of living in federal penitentiaries, as well as the cost of preparing for release and increase the salaries of federally-sentenced persons accordingly.**

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<sup>162</sup> Information provided by federally sentenced men and confirmed by managers during site visit to Mission Institution minimum.

<sup>163</sup> Mark's, [\*Levi's 505 Relaxed Fit\*](#).

## Recommendation 14

**That the Correctional Service of Canada provide federally-sentenced persons' committees with the opportunity to manage canteen as well as shopping for effects and/or reinstate outside shopping as a work placement for federally-sentenced persons classified as minimum security.**

### D. Quality and Quantity of Food

In every penitentiary the committee visited where federally-sentenced persons were not permitted to prepare their own food, the committee heard complaints regarding the quality and quantity of the food being served. Federally-sentenced persons attributed the problem to the elimination of prison farms and the introduction of the “cook-chill” process. Through the Cook Chill program, meals are cooked, bagged and rapidly chilled to extend their shelf life.

In 2014, the CSC revamped its food delivery policies. Instead of preparing food within the penitentiary (also providing federally-sentenced persons with work), it switched to a centralized preparation, distribution and delivery model.<sup>164</sup> The CSC identified institutions in every region that prepare food for all penitentiaries within a designated area. The food is prepared en masse by federally-sentenced persons in industrial kitchens. Once it is prepared, it is quickly chilled and stored until it is distributed to other penitentiaries where it is reheated for consumption. The meals the committee witnessed being prepared were reminiscent of frozen dinners, both in size and appearance.

According to the CSC, the cook-chill model allows it to streamline its food delivery, provide a national menu and offer federally-sentenced persons an opportunity to work in industrial kitchens. The measure has also resulted in significant cost savings.<sup>165</sup> The committee, however, was informed during site visits that the benefits do not outweigh the costs – by centralizing cooking, the CSC concentrated kitchen employment in one penitentiary and eliminated it from all others, resulting in overall

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<sup>164</sup> CSC, *Modernizing Food Service at CSC*.

<sup>165</sup> CSC, *Modernizing Food Service at CSC*.

job losses. Additionally, the committee questions whether experience in industrial food preparation is as transferable in society as experience working in a kitchen. Moreover, when the CSC eliminated farms, federally-sentenced persons lost not only access to fresh food but also valuable work experience in the farming sector.

Federally-sentenced persons on the cook-chill diet told the committee that they are always hungry. Senators were informed that the food is of poor quality and is often served cold or overcooked. The committee heard that portion sizes are inadequate and do not meet the needs of fully-grown adults. The timing of food delivery is also questionable. Their last meal of the day is served at 4:00 P.M. before the guards' shift rotation, and lights out is at 10:00 P.M. Though federally-sentenced persons were sometimes provided a banana to hold them over, the committee was told about, and witnessed, bananas so green they could not be eaten for several days. In addition to much food wastage because many consider the food inedible, the committee is concerned that this cost saving measure is having the opposite effect on federally-sentenced persons' already meager salaries. To supplement their diet, federally-sentenced persons told the committee that they relied on overpriced canteen food which generally consisted of processed snacks like chips, chocolates and ramen noodles.

Senators were informed that the CSC is struggling to serve those who require a specialized diet for medical, religious, cultural, or ethical reasons. Federally-sentenced persons whose needs are seldom met include people with colitis, Type 2 diabetes, those who require kosher or halal prepared meals as well as vegetarians and vegans.<sup>166</sup> During a site visit the committee was told that the vegan substitute for a pasta dish that contained meat was a small plate of vegetables with hummus. The committee heard that CSC personnel, unqualified for this purpose, were making judgment calls on the dietary restrictions of federally-sentenced persons. During site visits some federally-sentenced persons told the committee their medically prescribed diet had been terminated because they were allegedly observed eating something that was not considered part of their diet.

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<sup>166</sup> RIDR, *Evidence*, 11 August 2018 (Seamus Heffernan, Manager, Office of Jati Sidhu, M.P. for Mission—Matsqui—Fraser Canyon, as an Individual).



It should be noted that the CSC recently conducted an audit of food services within federal correctional facilities. Its concerns with respect to food services in federal correctional facilities were similar to those of the committee. The audit reported that:

- The lack of consistent oversight surrounding key areas of food services has led to an increased risk of not complying with legislative requirements...
- The national menu, although analyzed for nutritional content, did not meet the Canada Food Guide on six of the 28 days of the menu cycle;
- The Food Service Information Management System (FSIMS) was not consistently used to manage special diets, leading to a higher risk of violations of special diet requirements;
- Inventory management practices, including the proper reception of goods was not occurring at all sites;
- Kitchens were not consistently implementing the Quality Assurance Program designed by Food Services in order to minimize the likelihood of food contamination; and
- Staff are not completing training as required by the National Training Standards (NTS), which could increase the risk of not producing the food in a healthy and safe manner.<sup>167</sup>

The audit also found that the lack of clarity and guidelines lead to significant food wastage. It reported that

it was not clear how to reheat servings in order to minimize waste and how to handle leftovers. The audit noted all sites reheated 100% of their product for each meal despite the fact that 100% of the population rarely arrives for each meal. This resulted in a significant amount of leftover product. The audit also

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<sup>167</sup> CSC, [Audit of Food Services](#), January 2019.

noted it was not clear how sites are to handle these leftovers as the auditors observed various approaches to leftovers with each site believing they were following the SOP [Standard Operating Procedure]. Most sites served the leftovers either cold or heated depending on their own interpretation of the guidance, but one site interpreted the guidance to require all leftovers be thrown away after each meal. At this site, approximately one third of total production was needlessly thrown away at the end of the meal.<sup>168</sup>

As federally-sentenced persons raised concerns with the quantity and quality of food repeatedly across the country it became evident that this issue affected all aspects of their lives. It is not enough for the CSC to provide the minimum requirement of calories in a day. It must also consider portions that are appropriate to the individual as well as the nutritional density of the food served. It is important that federally-sentenced persons have access to meals according to their medical, religious and ethical requirements. The CSC must recognize that a lapse in an otherwise restrictive diet does not constitute a forfeiture of that diet.

As such, the committee recommends:

### **Recommendation 15**

**That the Correctional Service of Canada provide federally-sentenced persons with food that adequately meets their dietary needs both in terms of quality and quantity, and ensure that specialized diets for religious, cultural, medical, or ethical reasons are respected.**

## **E. Access to Hygiene Products**

According to section 83(2) of the CCRA, the CSC is responsible for ensuring that federally-sentenced persons are provided with all necessary toiletries for personal health and cleanliness. The CSC states that it fulfils this requirement by providing a

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<sup>168</sup> Correctional Service of Canada, *Audit of Food Services*, January 2019.

\$4 credit per payment period for the purchase of these products through the penitentiary's canteen.<sup>169</sup> While this arrangement may work for the general population, the committee was informed that it is not appropriate for all federally-sentenced persons.

During site visits, federally-sentenced Black persons informed the committee that the hygiene products available are drying out their skin, causing itchiness and discomfort. Additionally, federally-sentenced Black women told the committee the only available shampoo makes their hair fall out. The majority of federally-sentenced Black women with whom the committee met during site visits told Senators that they were unsuccessful in having appropriate beauty products added to canteen lists or in having adequate quantities of these products stocked, despite the availability of similar products for non-Black women. Again, this was an issue the committee heard about in institutions across the country.

Though some were able to purchase more appropriate hygiene and beauty products through CSC staff members, they could only afford the smaller formats at a much higher price point. In the committee's view, these gestures of CSC staff are only a temporary solution to this systemic problem. Federally-sentenced Black persons should not be forced to use the little money they earn to purchase products that are appropriate for their needs, while the rest of the population has access to appropriate hygiene products at the CSC's expense.

As such, the committee recommends:

### **Recommendation 16**

**That the Correctional Service of Canada make available hygiene products that reflect the needs of federally-sentenced Black and other racialized persons and ensure that these products are affordable.**

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<sup>169</sup> CSC, *CD 890 – Inmate Owned Canteens*.

## F. Access to Family and Other Loved Ones

A dimension of incarceration that is seldom mentioned is its impact on the families left behind. Margaret Holland, Ontario Co-ordinator, Visitor Resources Centres, Canadian Families and Corrections Network observed that families are “not even seen as part of the scenario.”<sup>170</sup> A comment she frequently receives is: “I had no idea that families were affected by crime.”<sup>171</sup>

The impact of incarceration on families left behind can be catastrophic. The family unit, with a parent, sibling or child now gone, is broken.<sup>172</sup> Struggling families must survive with smaller incomes and fewer resources. The incarcerated parent can no longer contribute to the cost of their children’s education. In some instances, they become dependent on their spouse, causing additional stress.<sup>173</sup> Children of single parents with no extended family are forced into the child welfare system, which comes with its own perils.<sup>174</sup>

The committee was informed that the impact of incarceration is especially difficult on families with a federally-sentenced mother. As one witness simply stated, there is an important difference “between dad rejoining a family and mom starting up the family where she left off.”<sup>175</sup> Chris Cowie, Executive Director, Community Justice Initiatives, explained:

Let me mention another thing that is a little unique to women who are incarcerated. When males move into prison, let’s say they are somebody in a family, and oftentimes they are, whatever is over here in terms of family and whatever is not great but more or less stays intact. When he comes out at some other point in time, again, it is not great. He has to deal with all of the

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<sup>170</sup> RIDR, *Evidence*, 15 May 2017 (Margaret Holland, Ontario Co-ordinator, Visitor Resource Centres, Canadian Families and Corrections Network).

<sup>171</sup> Ibid.

<sup>172</sup> RIDR, *Evidence*, 8 February 2018 (Winston LaRose, President and Member, Jane- Finch Concerned Citizens Organization and Regional Ethnocultural Advisory Committee); RIDR, *Evidence*, 26 March 2018 (El Jones, Nancy’s Chair in Women’s Studies, Mount Saint Vincent University, As an Individual).

<sup>173</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

<sup>174</sup> RIDR, *Evidence*, 4 October 2017 (Nancy Wrenshall, as an Individual).

<sup>175</sup> Ibid.

issues that have happened to him and his reduced ability to be able to get along. However, it's there. It's there to reintegrate back into.

When you put a woman out of that equation, the whole thing explodes. You end up with children that go oftentimes to multiple places. Sometimes the siblings themselves are split up, and one of them is with grandma and another one is with an aunt or an uncle. Sometimes they're in child welfare. Whatever man she happened to be with usually exits the scene. There are other things with family breakup.<sup>176</sup>

Most incarcerated women are mothers of dependant children. This is particularly true for federally-sentenced Indigenous women.<sup>177</sup> As mentioned above, the children of federally-sentenced women who were the sole providers often end up in the child welfare system. As children in the welfare system are more likely to interact with the criminal justice system, this perpetuates the cycle of incarceration, particularly for Indigenous Peoples.

It is important to note that connection to families of federally-sentenced persons can have a considerable impact on correctional outcomes. Families can be a significant source of stability and motivation during incarceration and an important anchor in the community. Carol McCalla, Principal, Office of the Auditor General of Canada told the committee that family support is one of the factors that protect against recidivism.<sup>178</sup> Nurturing family connections should be considered part of the CSC's rehabilitation mandate. The committee, however, was informed that numerous barriers prevent families from connecting and communicating with their loved ones within federal penitentiaries. The geographic location of federal penitentiaries, the cancellation of family visits and the limited means of communication were frequently cited obstacles.<sup>179</sup> In the 2017-18 annual report of the OCI, it was reported that visitation was one of the areas of concern frequently identified by

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<sup>176</sup> RIDR, *Evidence*, 8 February 2018 (Chris Cowie, Executive Director, Community Justice Initiatives).

<sup>177</sup> RIDR, *Evidence*, 7 June 2017 (Debbie Kilroy, as an Individual).

<sup>178</sup> RIDR, *Evidence*, 25 October 2017 (Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic).

<sup>179</sup> RIDR, *Evidence*, 15 May 2017 (Margaret Holland, Ontario Co-ordinator, Visitor Resource Centres, Canadian Families and Corrections Network); RIDR, *Evidence*, 4 October 2018 (Zilla Jones, Defence Counsel, Jones Law Office, as an Individual); RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker Elizabeth Fry Society of Manitoba); RIDR, *Evidence*, 21 March 2018 (Emma Halpern).

federally-sentenced persons. The OCI reported that visits represented 3.66% (214) of complaints by federally-sentenced men, 2.76% (35) by federally-sentenced Indigenous Peoples and 3.04% (17) for federally-sentenced women.<sup>180</sup>

In a 2021 submission to the committee, the OCI stated that access to family visit privileges have been severely impacted by measures implemented to curb the spread of COVID-19. He reported that as of “January 22, 2021, only eight of 60 facilities listed on CSC’s public website were accepting in-person visits.”<sup>181</sup>

## 1. Family Visits

Federally-sentenced persons are permitted to receive visits from family members. Depending on their security level and security status, three types are possible: non-contact visits, contact visits and private family visits (PFVs).<sup>182</sup>

- **Non-contact visits** are the most restrictive. Federally-sentenced persons are in separate rooms and can only see their visitors through a thick glass or plexiglass wall and communicate through a telephone or vent. Correctional officers are in each room to supervise both visitors and federally-sentenced persons.
- **Contact visits** are held in an open area of the penitentiary designated for this purpose. More than one federally-sentenced person is in the same space with their visitors. These visits are supervised by a number of correctional officers.
- **PFVs** are held in house-like structures within the penitentiary. They normally contain a living room, kitchen, and multiple bedrooms. They are designed to accommodate federally-sentenced persons and their families for more than one night. Visitors may bring food to stock the refrigerator. These visits are unsupervised. It should be noted that penitentiaries have limited access to PFVs due to supply and demand.

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<sup>180</sup> OCI, *Annual Report 2017-2018*.

<sup>181</sup> Ivan Zinger, Correctional Investigator, Letter to the Chair of RIDR, 3 May 2021.

<sup>182</sup> RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies).

The committee was informed that PFVs “are extremely important for family connection.”<sup>183</sup> During site visits, many federally-sentenced persons told the committee they were counting down the days to their next family visit, especially if they were able to obtain permission for a PFV. These types of visits, however, are difficult to access, as spaces are limited and wait times are long. According to numbers provided to the committee by the OCI, access to PFVs has been in significant decline since 2013-2014 (see table 4).

**Table 4 – Access to Private Family Visits from fiscal year 2009-2010 to 2018-2019**

	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019
<b>Atlantic</b>	266	328	283	306	331	280	246	257	186	213
<b>Quebec</b>	2,327	2,175	2,236	2,081	2,187	2,082	1,847	1,624	1,268	1,306
<b>Ontario</b>	1,560	1,694	1,638	1,878	1,924	1,657	1,643	1,692	1,463	1,351
<b>Prairies</b>	808	927	994	889	873	863	800	742	718	728
<b>Pacific</b>	857	861	834	889	880	700	670	615	597	565
<b>National</b>	5,818	5,985	5,985	6,043	6,195	5,582	5,206	4,930	4,232	4,163

During the committee’s site visit to Joyceville Institution, witnesses told the committee they did not have access to PFVs because Joyceville Institution is a reception centre, which is intended to house federally-sentenced persons temporarily until their security classification has been determined. The committee was informed by federally-sentenced persons, during the site visit, that they had been there for two years and were still waiting for their security classification.

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<sup>183</sup> RIDR, *Evidence*, 15 May 2017 (Margaret Holland, Ontario Co-ordinator, Visitor Resource Centres, Canadian Families and Corrections Network).

### a. Cancellation of Visits

The committee was informed that visits are frequently cancelled. During site visits, the committee was told that the impact of cancellations is especially hard on federally-sentenced women and federally-sentenced Indigenous Peoples. There are only seven penitentiaries for women across Canada – one in each region, plus three healing lodges: the Okimaw Ohci Healing Lodge healing lodge on the Nekaneet First Nation in Saskatchewan, the Buffalo Sage Wellness House in Edmonton, Alberta, and Eagle Women’s Lodge in Winnipeg, Manitoba. Many families travel long distances to visit their loved ones. It is not uncommon for families to take time off from work and stay in a hotel or a PFV, if one is available. Because visits can be financially and logistically taxing for many families, for many federally-sentenced persons the visits are infrequent. When visits are cancelled, families who travelled long distances are unable to reschedule them because taking additional time off work and travel-related expenses are prohibitive. Frequently cited reasons for cancelling visitation included discipline, lockdowns, or perceived security risk. The cancellation of family visits can be devastating for families and demoralizing for federally-sentenced persons. As explained by Zilla Jones, Defence Counsel, Jones Law Office:

This is terrifying for women who are facing the prospect of a federal sentence because most families do not have the means to visit Edmonton. It is heartbreaking to see female clients receive sentences and to see them, their families and children all in court sobbing as the judge walks out of the courtroom. Sometimes they are too depressed to take full advantage of programming in custody because of the loss of their families, so deep is their grief.<sup>184</sup>

Many federally-sentenced women and Indigenous Peoples are from communities far away from the penitentiaries where they are serving their sentence. For some of their families, traveling to visit them is impossible. The committee was informed that federally-sentenced Indigenous women are doubly disadvantaged in this regard. Not only may they be from remote locations, but there are fewer federal penitentiaries

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<sup>184</sup> RIDR, *Evidence*, 4 October 2018 (Zilla Jones, Defence Counsel, Jones Law Office, as an Individual).



for federally-sentenced women. This is particularly problematic for federally-sentenced Indigenous women in healing lodges, as there are only three .

### (i) Discipline

Section 34 of the CCRA allows the CSC to place federally-sentenced persons in SIUs involuntarily if they pose a threat to the security of the penitentiary, or if they could interfere with an investigation or if being in the general population is a threat to their safety. Similar criteria applied for placement into administrative segregation under former section 31 of the CCRA (see Chapter 4 for more information on administrative segregation and SIUs). Previous section 44(1)(f) of the CCRA (repealed by Bill C-83) allowed the CSC to cancel visits if a federally-sentenced person was segregated for a serious disciplinary offence. While the CSC informed the committee that family visits were still allowed during administrative segregation placements, this was disputed during site visits by federally-sentenced persons.<sup>185</sup>

Alia Pierini, a former federally-sentenced woman and Regional Advocate for the Canadian Association of Elizabeth Fry Societies informed the committee:

If I was placed in segregation and my family had already planned to come down, I didn't get those visits with them. I had my three-year-old son at one point get denied access because of me. He ran up to the fence, crying and telling me, "It's okay, mom. I'll see you when you get out." You don't have family visits. I had to have private family visits because of the length. Those are revoked as soon as you get a charge and then you have to reapply for these family visits. It's draining.<sup>186</sup>

Cancelling family visits for disciplinary purposes is unacceptable. In addition to interfering with the freedom rights of children and other family members to associate with their incarcerated loved one, the committee believes it serves no rehabilitative purpose and hinders reintegration. The CSC considers community support as critical to successful post incarceration community integration, so it must

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<sup>185</sup> RIDR, *Evidence*, 1 February 2017 (Larry Motiuk, Assistant Commissioner, Policy, CSC).

<sup>186</sup> RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

consider the impact this may have on a federally-sentenced person’s rehabilitation as well as the emotional and financial toll it has on their families.

**(ii) Lockdowns**

According to CD 568-1, lockdowns are a “non-routine situation which results in full suspension of all activities/privileges and the inmates are locked in their cells on a non-individualized basis.”<sup>187</sup> The committee was informed that lockdowns occur regularly. Correctional officers stated that while they may occur because of staff shortages or other institutional reasons, along with exceptional searches, they are also imposed when it is suspected that contraband has been brought into the penitentiary or a weapon has been reported. Federally-sentenced persons, however, informed the committee that they were arbitrary and often unnecessary. Statistics from the OCI indicate that complaints to his office regarding lockdowns have fluctuated between 2014 and 2018. The committee was also informed in 2021 that lockdowns were frequently used in 2020-2021 to stop the spread of COVID-19 in federal penitentiaries.

**Table 5 – Number of Complaints on Lockdowns received by the Office of the Correctional Investigator from 2014-15 to 2017-18**

Reporting year	Number of complaints related to lockdowns
2017-2018	55
2016-2017	79
2015-2016	65
2014-2015	48

During lockdowns, all federally-sentenced persons are sequestered to their cells for its duration. The committee heard that lockdowns can be very taxing on federally-sentenced persons. In some instances, the committee was informed that federally-sentenced persons are deprived from showering and participating in their reintegration programming. Privileges, including family visits, are suspended. Some

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<sup>187</sup> CSC, [CD 568-1 – Recording and Reporting of Security Incidents](#).

federally-sentenced persons reported that the isolating conditions of confinement during lockdowns resemble those experienced in administrative segregation. Lockdowns are a disciplinary measure for all federally-sentenced persons regardless of their relation or proximity to the incident that may have prompted it. Catherine Latimer, Executive Director, John Howard Society of Canada explained that lockdowns can be devastating for federally-sentenced persons. She stated that

Lockdowns are a very serious issue. There's not a very serious review as to why lockdowns have been put into place and why they have lasted for as long as they have. They're very trying on individuals. Prisoners have told me that it is more damaging to them to be on a lockdown than it is to be in an administrative segregation unit. So I think the impact of the lockdowns is not to be underestimated. I think those need to be seriously looked at.<sup>188</sup>

The OCI shared similar views in its 2021 COVID-19 status update, underscoring the potential impact of cumulative, restrictive and extended lockdowns on the physical and psychological health of federally-sentenced persons. He noted that the “measures that have been adopted to contain or control active prison outbreaks – near total cellular isolation, fresh air exercise once every two or three days, 20 minutes of out of cell time every other day to shower or use the telephone – are exceptionally difficult.”<sup>189</sup>

The committee observed a lockdown during a site visit. It is concerned that the policy allowing for lockdowns and exceptional searches is overbroad and can lead to overuse. Moreover, the committee shares the view that the CSC should find solutions to ensure that visits, in particular family visits, not be obstructed during lockdowns whenever possible.

### **(iii) Perceived security risk**

Upon arriving at federal penitentiaries, visitors can be subjected to various types of security protocols including metal detectors, detection dogs, ion scanners, frisk

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<sup>188</sup> RIDR, *Evidence*, 6 February 2019 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>189</sup> OCI, “Third COVID-19 Status Update,” 23 February 2021, p. 22.

searches and strip searches.<sup>190</sup> At any point in time during the security screening process, the CSC may refuse to allow the visitor to see his or her loved one. The committee understands that certain security measures are necessary to protect the safety of visitors, federally-sentenced persons and correctional staff. The committee, however, is concerned that some of the CSC's security measures prevent family members who do not pose a security threat from visiting incarcerated loved ones.

Numerous witnesses, for instance, informed the committee that the ion scanners are overly sensitive and detect traces of narcotics on people who have never used illicit drugs.<sup>191</sup> Once the ion scanner has made a detection, the repercussions can be severe. As Katheryn Wabegijig, wife of a federally-sentenced person, explained:

I was actually picked up on an ion scanner in 2011, and that directly affected our applications for PFVs, which we still have not had. This has been since 2009, since I've been visiting him. That ion scanner is actually a point that's brought up to him every single time that we apply for a PFV. It was LSD, and there is absolutely no way that I would have that.<sup>192</sup>

Ms. Jones added that the problem with ion scanners especially disadvantages Black women. She stated that they were highly inaccurate generally and explained that:

They are completely inaccurate for opioids and cocaine. There are all kinds of studies on this. You can get hit for like road salt, hand sanitizer. Then mothers will hit on the scanner and they are not provided any opportunity to advocate for themselves. Mothers have offered to be strip searched out of desperation

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<sup>190</sup> CSC, *CD 559 – Visits*; CSC, *CD 566-8 – Searching of Staff and Visitors*.

<sup>191</sup> RIDR, *Evidence*, 26 March 2018 (El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, as an Individual); RIDR, *Evidence*, 15 May 2017 (Katheryn Wabegijig, as an Individual); RIDR, *Evidence*, 20 February 2019 (Dianne Grenier, Lawyer, Partner of former prisoner, as an Individual); RIDR, *Evidence*, 15 May 2017 (Julie Langan, as an Individual); RIDR, *Evidence*, 15 May 2017 (Katheryn Wabegijig, as an Individual); RIDR, *Evidence*, 15 May 2017 (Margaret Holland, Ontario Co-ordinator, Visitor Resource Centres Canadian Families and Corrections Network).

<sup>192</sup> RIDR, *Evidence*, 15 May 2017 (Katheryn Wabegijig, as an Individual).

to see their children and have been turned down. This again is particularly applied to Black mothers who are seen as particularly criminalized.<sup>193</sup>

Ms. Holland informed the committee that many of the calls her organization receives are from distressed family members whose visits have been cancelled because of a detection on the ion scanner. She told the committee that the ion scanners detect whether an individual's belongings have come into contact with a substance, not necessarily whether the individual was in possession of the substance. Ms. Holland stressed that this is an important distinction. She explained that simply handling money that had traces of narcotics can set off the ion scanner.<sup>194</sup> She told the committee that guards have said to her, "[d]on't put your ID down on the counter because I don't know what else has been there. I can't scan your ID if it's on the counter."<sup>195</sup>

In its 2016-2017 annual report, the OCI found that ion scanners were yielding a high frequency of false positive results. The OCI stated that:

Upon reviewing 3,532 incident reports involving visitors from February 2015 to April 2017, the Office found that approximately 25% of these incidents showed a positive hit on the ion scanner over the threshold limit. The refusal rates for visits due to positive ion scanner tests were about 18%, indicating that there is a need to review the use of these devices in federal corrections, as well as the TRA process that is employed in denying visitor access. Moreover, the introduction of ion scanners has failed to have any significant impact on the rate of positive random urinalysis drug testing results. The rate has remained stable (between 5.6% and 6.3%) despite significant investments in new detection (e.g. drug dogs) and surveillance technologies designed to stop drugs from entering federal institutions.<sup>196</sup>

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<sup>193</sup> RIDR, *Evidence*, 26 March 2018 (El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, as an Individual).

<sup>194</sup> RIDR, *Evidence*, 15 May 2017 (Margaret Holland, Ontario Co-ordinator, Visitor Resource Centres Canadian Families and Corrections Network).

<sup>195</sup> RIDR, *Evidence*, 15 May 2017 (Margaret Holland, Ontario Co-ordinator, Visitor Resource Centres Canadian Families and Corrections Network).

<sup>196</sup> OCI, *Annual Report of the Office of the Correctional Investigator 2016-2017*.

The committee is concerned that the CSC does not follow its own guidelines when conducting security interventions. For instance, during most site visits, neither staff nor federally-sentenced persons could accurately describe the risk threat assessment procedure which CSC staff are expected to follow before determining whether to refuse a visit or require that a visit be conducted as a security or “glass” visit.

The committee is also concerned that security measures dissuade federally-sentenced persons from participating in family visits, particularly federally-sentenced women. During site visits to federal correctional facilities for women, many witnesses told the committee they were strip searched after visits. As many are survivors of sexual violence, federally-sentenced women found the security protocol violating. Some opted to forgo visits altogether.<sup>197</sup> As Ashley Pankiw, Provincial Reintegration Worker, Elizabeth Fry Society of Manitoba explained:

When women in custody have visits with loved ones, they are always followed by a dehumanizing, sexually forceful triggering of sexual assault in the form of an invasive strip search. Many women find this a deterrent to connect with the healthy supports in the form of attending visits.<sup>198</sup>

## 2. Other Methods of Communication

Federally-sentenced persons are able to communicate with their families using the telephone. Telephone use is guided by *CD 085 – Correspondence And Telephone Communication*, which states that the policy objective of allowing telephone use and correspondence is “to encourage inmates to maintain and develop family and community ties through written correspondence and telephone communication, consistent with the principle of protection of the public, staff members and offenders.”<sup>199</sup> The policy states that “telephone communication is a part of the overall program of reintegration into the community, similar to visits and temporary absences.”<sup>200</sup> Moreover, federally-sentenced persons need access to the telephone

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<sup>197</sup> RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada; Diana Majury, President, Canadian Association of Elizabeth Fry Societies).

<sup>198</sup> RIDR, *Evidence*, 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker Elizabeth Fry Society of Manitoba).

<sup>199</sup> CSC, *CD 085 – Correspondence And Telephone Communication*.

<sup>200</sup> Ibid.

to communicate with legal counsel. Considering the importance of telephone use, the committee is concerned that federally-sentenced persons must pay 8% of their salary to access it.<sup>201</sup>

It was suggested by a witness and several federally-sentenced persons that the CSC allow federally-sentenced persons to communicate with the outside world via videoconferencing.<sup>202</sup> During its site visit to Nova Institution for Women in February 2018, although the committee was not able to obtain or otherwise confirm its existence, the CSC informed the committee that it was completing a pilot project for videoconferencing with the hope of rolling it out to all federal-penitentiaries. During its site visits to Manitoba and Saskatchewan in September that year, the committee noted that none of the penitentiaries were set up for videoconferencing.

The committee agrees with witnesses that limited computer access for electronic and videoconferencing would be an important step to improve communication between federally-sentenced persons and their loved ones. It would be especially beneficial in penitentiaries for federally-sentenced women, many of whom are far from their homes and communities.

The committee takes note that the CSC augmented videoconferencing capabilities since the start of the COVID-19 pandemic, which has not only included additional videoconferencing capacity across the country, but increased bandwidth and hours of use as well. The committee was informed in a 2021 submission that the CSC had increased its video visitation kiosks from 57 before the COVID-19 pandemic to 102, with a daily average of 223 video visitations.<sup>203</sup> While the committee believes this is a step in the right direction, the committee agrees with the OCI that “virtual visits are no substitute for the real thing.”<sup>204</sup>

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<sup>201</sup> CSC, *CD 860 – Offender’s Money*.

<sup>202</sup> RIDR, *Evidence*, 18 May 2017 (Kim Parisé, Coordinator, Relais Famille).

<sup>203</sup> RIDR, Briefs, CSC, “Submission to the Senate Standing Committee on Human Rights,” Brief submitted to the committee, 6 May 2021.

<sup>204</sup> OCI, “Third COVID-19 Status Update,” 23 February 2021, p. 14.

### 3. Mother-Child Program

The committee was informed that separating mothers from their children can be traumatizing for both the child and the mother, especially when the child is a newborn.<sup>205</sup> Indeed, the committee met with federally-sentenced women who had been separated from their children because of their incarceration. Shame and regret were commonly expressed emotions among them. The committee questions the justice in separating mothers from their child – especially if the child is subsequently placed in the child welfare system.

The committee notes that the CSC has a Mother-Child program, which allows mothers with children under the age of four to live with their children in the penitentiary.<sup>206</sup> The program is intended to provide a “supportive environment that promotes stability and continuity for the mother-child relationship.”<sup>207</sup> The committee was informed, however, that spaces are limited and the approval process is stringent. Many mothers are unable to access it.<sup>208</sup>

The committee heard stories of mothers whose children were taken from them because they breached penitentiary rules. For instance, Renee Acoby, a former federally-incarcerated woman now on conditional release, shared the following story with the committee:

... the way that they had removed my daughter from me was we went into a lockdown at the healing lodge. A few days had passed. Six guards came into my room with a camera when we were just getting ready for bed and told me that they were going to take her from me because they got information that

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<sup>205</sup> RIDR, *Evidence*, 7 June 2017 (Debbie Kilroy, As an Individual); RIDR, *Evidence*, 11 August 2018 (Renee Acoby, as an Individual). RIDR, *Evidence*, 8 March 2017 (Bonnie Brayton, National Executive Director, DisAbled Women's Network of Canada); RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies).

<sup>206</sup> CSC, *CD 768 – Institutional Mother-Child Program*; RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia).

<sup>207</sup> CSC, *CD 768 – Institutional Mother-Child Program*.

<sup>208</sup> RIDR, *Evidence*, 21 March 2018 (Emma Halpern).



about 14 of us were in a condition other than normal. I actually wouldn't let them take her from me for about 20 minutes.

Then they had told me that they were going to let me see her the next day because I had been breastfeeding. So the next morning when I asked if I could go up, they told me that we had to attend a morning circle first at 10:00. When I went to the morning circle, I was only in there for five minutes, and one of the staff members asked me to come out. When I went to the daycare where they let me see her, on the way up, they told me that I had five minutes to spend with her because they were sending her out to my sister. Other mothers that had been there, who had relapsed, were given different alternatives, like either a healing circle, a talking circle or something. Their child wasn't removed from them.

So they did that with me, and I was kind of in shock. We were still in a lockdown when they took my child out of the lodge to send her to my sister in Winnipeg, but nobody told me that I could get her back. Nobody really tried to talk to me. They just put the rest of us still on lockdown.<sup>209</sup>

Though the committee was informed that the CSC does not track the number of federally-sentenced women who are mothers, Chris Cowie, Executive Director, Community Justice Initiatives submitted a paper to the committee which stated that 66% are mothers who were separated from their children.<sup>210</sup> Every effort should be made to help mothers stay connected with their children even when they are incarcerated. The committee believes the CSC should consider community-based options such as section 81 releases for mothers wherever possible and make the Mother-Child Program more accessible for all mothers and their children. As stated by Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec,

The advantage of sentences that are served in the community, whether pursuant to a probation order or a suspended sentence, is that this prevents the person from being separated from her children or family. It also prevents

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<sup>209</sup> RIDR, *Evidence*, 11 August 2018 (Renee Acoby, as an Individual).

<sup>210</sup> Chris Cowie, Executive Director, Community Justice Initiatives, "Presentation to the Senate of Canada Standing Committee on Human Rights," 8 February 2017.

them from losing their apartments and jobs. It allows them to stay in the community and to at least work to maintain their assets.<sup>211</sup>

Federally-sentenced Indigenous women should receive special consideration given their overrepresentation in the federal correctional system and their sociocultural history.

Families play an integral role in the reintegration process. They not only help maintain a community connection, but also function as an important source of motivation during incarceration and a source of stability upon return. The CSC should make every effort to conserve family relations, which should be as valued as programming geared towards reintegration.

The committee is of the view that arbitrarily cancelling family visits is unacceptable. As mentioned above, the committee is of the view that the CSC should make greater use of the Mother-Child Program and community-based options such as section 81 releases. The CSC should put more effort into facilitating family connections. The committee is of the opinion that this component of the correctional process falls within CSC's reintegration and security mandates. As stated by Ms. Holland, by "assisting families, children, and in building healthy connections, we are supporting safer communities."<sup>212</sup>

As such, the committee recommends:

### **Recommendation 17**

**That the Correctional Service of Canada recognize the important role families and communities of support can play in the rehabilitation and reintegration of federally-sentenced persons, including by:**

- **facilitating their involvement in the correctional process;**

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<sup>211</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

<sup>212</sup> RIDR, *Evidence*, 15 May 2017 (Margaret Holland, Ontario Co-ordinator, Visitor Resource Centres, Canadian Families and Corrections Network).

- **ensuring that family visits are not cancelled as a punitive measure even when federally-sentenced persons are placed in structured intervention units;**
- **making every effort to avoid cancelling family visits for security reasons that are out of the federally-sentenced person's control, including lockdowns; accelerating efforts to roll out family visits via electronic and video conference options and ensure that its policies make clear that video conferences are not a substitute for in-person family visits; and**
- **reviewing its use ion scanners and all risk threat assessment related to the use of ion scanners in order to ensure appropriate procedures are followed and that discriminatory patterns are assessed and redressed so that human rights as enumerated in the *Canadian Charter of Rights and Freedoms* are not breached.**

#### **Recommendation 18**

**That the Correctional Service of Canada facilitate parenting via section 81 agreements for federally-sentenced Indigenous Peoples and non-Indigenous persons, in addition to providing full access to the Mother-Child Program by working with the provinces and territories to eliminate barriers preventing federally-sentenced women from accessing Mother-Child Programming.**

## G. Section 81 of the CCRA

Section 81 of the CCRA allows the CSC to enter into agreements with Indigenous communities to transfer individuals serving a sentence in a federal penitentiary into the community's care and custody. Considering the impact incarceration has on families left behind, the history of colonization, the Sixties Scoop and the continuing overrepresentation of Indigenous children in the child welfare system – among other unique factors – the committee believes that the CSC should make greater use of section 81 of the CCRA. In this way, the CSC could make a significant contribution to ending the vicious cycle of criminalizing federally-sentenced Indigenous Peoples and disenfranchising their communities. The increased use of section 81 could go a long way to help federally-sentenced Indigenous women maintain ties with families, keep the family unit intact and facilitate reintegration. The provisions could also be implemented for other marginalized groups such as members of the Black and LGBTQ2S+ communities.

### Corrections and Conditional Release Act

#### **Agreements**

**81 (1)** The Minister, or a person authorized by the Minister, may enter into an agreement with an Indigenous governing body or any Indigenous organization for the provision of correctional services to Indigenous offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

#### **Scope of agreement**

**(2)** Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-Indigenous offender.

#### **Placement of offender**

**(3)** In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an appropriate Indigenous authority, with the consent of the offender and of the appropriate Indigenous authority.

As such, the committee recommends:

### Recommendation 19

**That the Correctional Service of Canada increase its use of section 81 of the *Corrections and Conditional Release Act* with a view to ensuring that federally-sentenced persons, particularly federally-sentenced Indigenous women and men, are able to build and/or maintain ties with their families, communities and culture**

## H. Access to Appropriate Health Services

When federally-sentenced persons enter the federal correctional system, they must forfeit all government-issued identification, including their provincial medical cards. As they fall under the CSC's responsibility, they depend on the CSC to provide healthcare services for physiological and mental health issues. The CSC has a legal obligation to provide these services. Section 86(1) of the CCRA states that the CSC must provide federally-sentenced persons with "essential health care" (defined as medical care, dental care and mental health care, provided by registered health care professionals or by persons acting under the supervision of registered health care professionals) and "reasonable access to non-essential health care."<sup>213</sup>

Canada has an international obligation to ensure medical service and medical attention in the event of sickness and an obligation to provide equality of opportunity for people to enjoy the highest attainable level of health.<sup>214</sup> The Mandela Rules specify that "[p]risoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status."<sup>215</sup>

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<sup>213</sup> CCRA, s. 86.1(a)(b); RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

<sup>214</sup> OHCHR, *International Covenant on Economic, Social and Cultural Rights*, art. 12(1), 12(2)(d).

<sup>215</sup> UNODC, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Rule 24.

The CSC told the committee that federal correctional facilities and “mental health services in treatment centres are fully accredited and delivered by health care professionals who are registered or licensed in Canada...”<sup>216</sup> Indeed, during site visits, the committee met with nurses, pharmacists, social workers, psychologists and psychiatrists.

During meetings with health care professionals as well as with federally-sentenced persons during site visits, the committee was informed that the CSC is struggling to deliver appropriate health services in a timely manner.<sup>217</sup>

The committee heard that medical needs are going unmet or are inappropriately dealt with.<sup>218</sup> Some penitentiaries lack the appropriate resources required for the provision of health care. The committee was informed that doctors, psychiatrists, and dentists are only contracted to work a restricted number of times weekly or monthly.<sup>219</sup>

Because they are only available on a limited basis, these health professionals are unable to meet the needs of the incarcerated population.<sup>220</sup> During site visits, the committee was told by federally-sentenced persons that they are frustrated by the health coverage in federal correctional facilities. The committee heard stories from witnesses and federally-sentenced persons of CSC staff withholding health care for punitive reasons. In its most recent 2021 COVID-19 status report, for instance, the

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<sup>216</sup> RIDR, [Evidence](#), 1 February 2017 (Anne Kelly, Senior Deputy Commissioner, CSC).

<sup>217</sup> RIDR, [Evidence](#), 4 October 2018 (Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, as an Individual); RIDR, [Evidence](#), 7 August 2018 (Chris Hay, Executive Director, John Howard Society of Alberta); RIDR, [Evidence](#), 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual); RIDR, [Evidence](#), 26 March 2018 (Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Dalhousie University); RIDR, [Evidence](#), 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN); RIDR, [Evidence](#), 7 August 2018 (Toni Sinclair, Executive Director, Elizabeth Fry Society of Edmonton, as an Individual); RIDR, [Evidence](#), 11 August 2018 (Jennifer Metcalfe, Executive Director, Prisoner’s Legal Services, West Coast Prison Justice Society); RIDR, [Evidence](#), 11 August 2018 (Gillian Gough, Regional Advocate, Canadian Association of Elizabeth Fry Societies); RIDR, [Evidence](#), 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker Elizabeth Fry Society of Manitoba).

<sup>218</sup> RIDR, [Evidence](#), 7 August 2018 (Toni Sinclair, Executive Director, Elizabeth Fry Society of Edmonton, as an Individual).

<sup>219</sup> RIDR, [Evidence](#), 20 February 2019 (Mitch Taillon, President, Canadian Dental Association).

<sup>220</sup> RIDR, [Evidence](#), 4 October 2018 (Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, as an Individual).

Correctional Investigator reported that one of the major complaints to his office was that access to health services was restricted during lockdowns.<sup>221</sup>

In another example, during a public hearing, Toni Sinclair, Executive Director, Elizabeth Fry Society of Edmonton, shared the story of a federally-sentenced woman she was visiting in a federal penitentiary:

One of the women — I'm sorry this is disturbing — but when I saw her a few weeks ago, she said, "Toni, look," and she actually popped her bone out of her arm. Like, it is completely broken. And then when we bring it up to the warden, he says, "Oh, you mean the woman who tried to escape and fell and broke her arm?" As if to say because they didn't like her behaviour that that somehow equated with not giving her adequate health care.<sup>222</sup>

The deficiency in health services within correctional facilities is a serious concern. The population within the CSC's custody is one with high needs. As explained by Catherine Latimer, Executive Director, John Howard Society of Canada, the health needs of federally-sentenced persons "are often complex and include a higher than average incidence and prevalence of infectious diseases and mental illness."<sup>223</sup> A submission to the committee by the Canadian HIV/AIDS Legal Network stated that figures released by the CSC in 2010 indicated "a rate of HIV and HCV [Hepatitis C] among prisoners of 4.6% and 31% respectively, or 15 and 39 times the prevalence in the wider community. Even higher rates of HIV (11.7%) and HCV infection (49.1%) were reported for Indigenous women in prison."<sup>224</sup>

Delays in providing health services can have serious negative effects and long-term consequences for federally-sentenced persons. Denise Edwards, a former federally-sentenced woman, informed the committee that during her time at Grand Valley Institution for Women she was never diagnosed with Graves' disease despite showing clear signs. It was only when she was released that she finally received a

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<sup>221</sup> OCI, "Third COVID-19 Status Update," 23 February 2021, p. 12.

<sup>222</sup> RIDR, *Evidence*, 7 August 2018 (Toni Sinclair, Executive Director, Elizabeth Fry Society of Edmonton, as an Individual).

<sup>223</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>224</sup> RIDR, *Brief - Canadian HIV/AIDS Legal Network*, June 2017.

diagnosis and the help she desperately needed. Ms. Edwards recounted the following:

I kept going back to the clinic, and then they finally sent me to a specialist at Sunnybrook. I saw the doctor twice. He was very professional. He never really made eye contact with me. He would just tell me my blood counts. He looked at me one day. He put his pen down. He said, “Why did you let it get to this point?” I asked the doctor what he was talking about. He said, “Why would you suffer yourself? You have Graves’ disease. This is a progression. You just don’t get Graves’ Disease overnight.”<sup>225</sup>

The committee was deeply concerned to hear that medical services are sometimes treated as a privilege, not a right.<sup>226</sup> In one case, the committee was informed that the CSC withheld food required for a specialized medical diet as a punitive measure, which some say contributed to the death of a federally-sentenced Indigenous woman, Kinew James.<sup>227</sup> According to Gillian Gough, Regional Advocate, Canadian Association of Elizabeth Fry Societies,

CAEFS and E. Fry Saskatchewan strongly believe that Kinew James’ conditions of confinement — spending upwards of six years locked in a segregation cell for 23 hours a day, and spending almost the rest of her time in segregation-like maximum security conditions, her very limited control over her diet and her mental health issues — resulted in her being unable to manage her diabetes and caused her death.<sup>228</sup>

The committee learned how federally-sentenced persons are particularly vulnerable as they depend on the CSC to meet all of their health care needs. When those needs are not taken seriously, the repercussions can be disastrous. Access to health care is not a privilege; it’s a right.

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<sup>225</sup> RIDR, *Evidence*, 14 February 2018 (Denise Edwards, Former Federal Prisoner, as an Individual).

<sup>226</sup> RIDR, *Evidence*, 7 August 2018 (Chris Hay, Executive Director, John Howard Society of Alberta).

<sup>227</sup> RIDR, *Evidence*, 11 August 2018 (Seamus Heffernan, Manager, Office of Jati Sidhu, M.P. for Mission—Matsqui—Fraser Canyon, as an Individual).

<sup>228</sup> RIDR, *Evidence*, 11 August 2018 (Gillian Gough, Regional Advocate, Canadian Association of Elizabeth Fry Societies).



As such, the committee recommends:

### **Recommendation 20**

**That the Correctional Service of Canada work with the provinces, territories, medical associations and professional governing and licensing bodies to ensure professional standards are adhered to and doctors are available in federal penitentiaries on a full-time basis and registered nurses on a 24-hour basis.**

### **Recommendation 21**

**That the Correctional Service of Canada establish a policy to ensure that only medical professionals have the authority to determine whether a federally-sentenced person requires medical attention.**

Witnesses also stressed the impact of deficient health services on dental health, the health of the aging population and for those with poor mental health.

## **1. Dental Health**

Dental health is an important component of overall health. As Mitch Taillon, President, Canadian Dental Association stated, “the mouth is very important for all kinds of things, but if you can’t eat and if you can’t eat comfortably, the rest of your health deteriorates quickly: mental health, physical health, general health.”<sup>229</sup>

Despite the high rate of oral health issues among federally-sentenced persons, the committee heard that the availability of dental health care in federal penitentiaries has been declining. Visits from dentists have been reduced from two to three times per week to just once a month.<sup>230</sup>

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<sup>229</sup> RIDR, *Evidence*, 11 August 2018 (Mitch Taillon, President, Canadian Dental Association).

<sup>230</sup> *Ibid.*

At almost every penitentiary visited by the committee, federally-sentenced persons raised serious issues with the quality and availability of dental care. Many informed the committee they were living with a serious dental health issue that made it difficult to eat and sleep. Because their issue was not considered urgent, or they were too far down the priority list, they had not been able to see a dentist. The committee was informed that the most common solution to dental health issues is tooth removal. As one witness stated:

dental care, that's a complete joke as well. We're seeing waits of eight, nine months for adequate dental care, and then when they see the dentist, they're getting entire mouths full of teeth pulled. That's their solution. And then if they come, they have gaping wounds in their mouths because of inadequate dental care all along...<sup>231</sup>

Mr. Taillon explained that the majority of services authorized by CSC are emergency services, such as tooth extractions and draining of infections. Preventive services like tooth cleanings require special authorization. Moreover, he told the committee that because dentists are only available on a very limited basis, they are unable to offer services that necessitate a great deal of follow up care.<sup>232</sup>

The committee agrees with witnesses that access to dental care within federal penitentiaries is imperative. Federally-sentenced persons should not suffer from oral hygiene issues because only urgent care is available on a priority basis. Lack of dental care can result in deteriorating overall health.

As such, the committee recommends:

## Recommendation 22

**That the Correctional Service of Canada increase the provision of dental care in federal penitentiaries to reflect the needs of federally-sentenced persons, with an emphasis on preventative dental care.**

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<sup>231</sup> RIDR, *Evidence*, 7 August 2018 (Toni Sinclair, Executive Director, Elizabeth Fry Society of Edmonton, as an Individual).

<sup>232</sup> RIDR, *Evidence*, 11 August 2018 (Mitch Taillon, President, Canadian Dental Association).

## 2. Federally-Sentenced Persons Over the Age of 50

Federally-sentenced persons over the age of 50 are especially vulnerable to the impacts of sub-standard medical health services. As stated by Sean Ellacott, “[a]ge wears differently on a federal inmate. Closing in on 50 tends to be kind of older. They live a different life.”<sup>233</sup> Indeed, in its February 2021 COVID-19 status update, the OCI reported that the four federally-sentenced persons to have died from COVID-19 in CSC custody were over the age of 50.<sup>234</sup>

During the committee’s study, witnesses reported that federally-sentenced persons over the age of 50 are creating an important challenge for the CSC. Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, explained that “there are layers of vulnerability among this group. It is not only that they are old, but they have some of the highest rates of mental illness, terminal illness, chronic illness, and many of them are Aboriginal.”<sup>235</sup> Professor Iftene also informed the committee that the population of federally-sentenced persons over the age of 50 is one of that fastest growing segments of the population within the CSC’s custody. Their number has doubled in the last decade to 25% of the federally-sentenced population.<sup>236</sup>

Despite this population’s growth and complex needs, witnesses questioned the CSC’s preparedness to meet those needs. Professor Iftene, who has conducted significant research in this area, stated that within federal correctional facilities, there

is a chronic lack of specialists, with very long waiting times to see somebody. There are many penitentiaries that do not have 24/7 nurses available and the reply to emergency care is very problematic. There is a significant limit in the number of escorts that exist in a penitentiary who can take an individual to their community medical appointments. Therefore, many of them are not able

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<sup>233</sup> RIDR, *Evidence*, 15 May 2017 (Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University, as an Individual).

<sup>234</sup> OCI, “Third COVID-19 Status Update,” 23 February 2021, p. 8.

<sup>235</sup> RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual).

<sup>236</sup> *Ibid.*

to see the outside doctors because they do not have an escort. Their access to medication is restricted because of the lack of drugs available in the drug formulary. Many of these drugs are of inadequate quality or they are not able to address some of the illnesses, particularly chronic pain.<sup>237</sup>

The committee was informed that the infrastructure of correctional facilities is unaccommodating for this population, which is especially difficult for those with mobility issues. In a written brief submitted to the committee, Professor Iftene reported that in a survey of federally-sentenced persons over the age of 50, 54% of participants reported having mobility issues that interfered with their daily activities, including walking (37%), climbing stairs (37%) and getting in and out of bed (17%).<sup>238</sup> Moreover, she found that “just over 6% of participants received regular help with their mobility issues, and this help was always from a peer assigned as a caregiver.”<sup>239</sup>

It should be noted that in 2019 the OCI and the CHRC prepared a joint report on the aging population of federally-sentenced persons entitled *Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody*. In their investigation, the OCI and the CHRC found a number of barriers and/or infrastructure limitations in federal penitentiaries that limited accessibility for federally-sentenced persons with mobility difficulties. These included:

- cells occupied by individuals using a wheelchair where the wheelchair was not able to pass through the cell door;
- doors to buildings without an accessibility button; accessible shower stalls often have a lip making it difficult for those using a mobility device to safely access the shower;

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<sup>237</sup> RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual).

<sup>238</sup> Adelina Iftene, “[Written Evidence Submitted for the Standing Committee on Human Rights](#)”, Brief submitted to the committee, 26 March 2018.

<sup>239</sup> Adelina Iftene, “[Written Evidence Submitted for the Standing Committee on Human Rights](#)”, Brief submitted to the committee, 26 March 2018.

- accessible showers without a seat, slip mat or a handheld shower mechanism (one individual fell in the shower while investigators were interviewing and remained there for 20 minutes as there was no emergency button in the shower);
- private family visiting units that are not accessible;
- uneven and broken walkways around the exterior of buildings;
- inclines into housing units and buildings that appeared quite steep;
- lips on entryways to buildings;
- cells without in-cell emergency call buttons;
- kitchen counters that are too high for wheelchair access; and
- health care units lacked wheelchair accessible washrooms and waiting areas requiring older individuals to line up outside regardless of weather conditions.<sup>240</sup>

Mobility challenges are a serious concern. Some federally-sentenced persons have been “placed in institutions where there were stairs and no working elevators. They must walk long distances between buildings, in record time, under threat of punishment if they were late. They have to stand outside in the cold for an hour every morning to pick up their lifesaving medication.”<sup>241</sup> Medical supplies needed for managing chronic conditions, like extra pillows and blankets, braces, and heating pads, are prohibited in some penitentiaries.<sup>242</sup> Concerns were also raised about the adequacy of food for the aging federally-sentenced population on medically

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<sup>240</sup> OCI and the Canadian Human Rights Commission, *Aging and Dying in Prison - An Investigation into the Experiences of Older Individuals in Federal Custody*, 28 February 2019, pp. 36-37.

<sup>241</sup> RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual).

<sup>242</sup> RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual).

restricted diets, for example, those with Type 2 diabetes.<sup>243</sup> During site visits, Senators were told of months-long waiting times for routine repairs to be made to wheelchairs and inadequate, restricted or irregular access to elevators for individuals with limited mobility.

Witnesses identified end-of-life care as another concern for federally-sentenced persons, and indicated that there were very few halfway houses that were equipped to handle the health care needs of palliative patients.<sup>244</sup> Professor Iftene also debated the validity of consent to medically assisted dying given by federally-incarcerated persons, since the CSC's policies do not require the conditional release of terminally ill individuals before they make the decision to request a medically assisted death.<sup>245</sup> In other words, terminally ill federally-sentenced persons are faced with two choices: live out the rest of their days in a penitentiary, with “no systemic access to palliative care,” or undergo medically assisted death.<sup>246</sup> Professor Iftene explained:

The request for assistance in dying takes place in prison. The assessment takes place in prison. Only the actual procedure, the one syringe that they get, takes place in a community hospital. I believe this calls into question the validity of the consent of somebody who opted for assisted dying when the other options were isolation and lack of proper medication in an institution unable to attend to their health care needs.<sup>247</sup>

Moreover, criteria for conditional release focus on the completion of correctional programs and release planning and are not flexible enough to account for decreased risk based on age, disease or physical incapacity.<sup>248</sup>

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<sup>243</sup> RIDR, *Evidence*, 15 May 2017 (Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University, as an Individual).

<sup>244</sup> RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual).

<sup>245</sup> RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual); OCI, *Annual Report 2016-2017*, pp. 18 – 20.

<sup>246</sup> RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual).

<sup>247</sup> Ibid.

<sup>248</sup> Ibid.

As the population of aging federally-sentenced persons is growing, it is imperative that the CSC take measures to address their complex needs. The CSC must also determine the feasibility of caring for this population within federal correctional facilities.

As such, the committee recommends:

### **Recommendation 23**

**That the Correctional Service of Canada increase efforts to develop more contracts with provinces and territories to establish alternatives to federal correctional facilities for aging federally-sentenced persons and those with acute medical conditions as well as mental health issues pursuant to section 29 of the Corrections and Conditional Release Act.**

### **Recommendation 24**

**That the Correctional Service of Canada provide additional rights-based training to correctional staff to ensure they are sensitive to the complex needs of aging, as well as physically and mentally ill federally-sentenced population. The Correctional Service of Canada should also make federal correctional facilities more accessible for federally-sentenced persons with mobility issues.**

## **3. Mental Health Issues**

Another population seriously affected by the quality and availability of medical care in federal penitentiaries are those with mental health issues.<sup>249</sup> Witnesses – including

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<sup>249</sup> The committee acknowledges that the terminology “mental health issues” may not satisfy some in the mental health profession. The committee, however, adopted this terminology for three reasons: it was consistent with witness testimony, it captures both diagnosed and undiagnosed mental health issues and it better reflects person-centred language that respects the experiences of individuals, which the committee agreed was important in the context of a report on human rights. For more information on appropriate mental health terminology see Appendix D.

officials from the CSC and correctional officers – consistently mentioned that persons with mental health issues are one of the most vulnerable populations within correctional facilities. The population of federally-sentenced persons with mental health issues within CSC’s custody is growing. According to Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia, mental health issues within penitentiaries are “three times higher than the general population.”<sup>250</sup>

Two studies were conducted by the CSC to better understand the prevalence of mental health issues among incoming federally-sentenced men and incoming federally-sentenced women in 2015 and 2018 respectively. The study on federally-sentenced men found that, within the sample, 70% of federally-sentenced “met criteria for at least one mental disorder.”<sup>251</sup> Likewise, the study on federally-sentenced women found “that more than three-quarters of women inmates had a lifetime or current mental disorder and at least two-thirds of the women reported symptoms consistent with a co-occurring mental disorder with alcohol/substance use or borderline or antisocial personality disorder.”<sup>252</sup>

Additionally, the committee was informed that the growing population of federally-sentenced individuals over the age of 50 also has some of the highest rates of mental illness.<sup>253</sup> While the numbers are overwhelming, the committee learned that they may be conservative estimates – a significant number of federally-sentenced persons suffer from undiagnosed mental health issues.<sup>254</sup> Michelle Mann-Rempel, lawyer, stated that if “we take an expansive definition of mental health, then I think the percentage of offenders presenting with mental health issues is probably staggering.”<sup>255</sup> The committee was also informed that 80%

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<sup>250</sup> RIDR, *Evidence*, 26 March 2018 (Hon. Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia).

<sup>251</sup> CSC, *National Prevalence of Mental Disorders among Incoming Federally-Sentenced Men*.

<sup>252</sup> CSC, *Prevalence of mental disorder among federal women offenders: Intake and in-custody*.

<sup>253</sup> RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual).

<sup>254</sup> RIDR, *Evidence*, 26 March 2018 (Hon. Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia);

RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual).

<sup>255</sup> RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual).



of people in the correctional system suffer from substance addiction, which is strongly linked to mental health and trauma.<sup>256</sup>

Witnesses informed the committee that the mental health issues of federally-sentenced persons are often intersecting. For instance, Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada, stated that “having a mental illness can make a person more likely to abuse drugs, or a person’s drug problems can trigger mental illness. Either way, these are frequent conditions among inmates in Canadian prisons. Research reveals that 38% of incoming males meet the criteria for both a current mental disorder and one of a substance use disorder.”<sup>257</sup>

Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law, explained that “individuals who get into the criminal justice system often suffer from mental health issues, including mood disorders, depression, anxiety, substance use disorders and psychotic disorders... We see a number of individuals with intellectual disabilities and autism spectrum disorders.”<sup>258</sup> The committee also heard that many federally-sentenced persons have traumatic brain injuries and others live with fetal alcohol spectrum disorder.<sup>259</sup> Further, incarceration itself can exacerbate mental health issues or give rise to other mental health issues.<sup>260</sup>

#### **a. Addressing Mental Health Issues**

The CSC informed the committee that it has been making efforts to address the needs of its population with mental health issues by “remodeling” its mental health

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<sup>256</sup> RIDR, [Evidence](#), 11 August 2018 (Jennifer Metcalfe, Executive Director, Prisoner’s Legal Services, West Coast Prison Justice Society).

<sup>257</sup> RIDR, [Evidence](#), 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

<sup>258</sup> RIDR, [Evidence](#), 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law).

<sup>259</sup> RIDR, [Evidence](#), 8 February 2018 (Halina (Lin) Haag, PhD Student, Faculty of Social Work, Wilfrid Laurier University and Researcher, Acquired Brain Injury Research Lab, University of Toronto, as an Individual).

<sup>260</sup> RIDR, [Evidence](#), 21 March 2018 (Fred Sanford, Vice President, John Howard Society of Nova Scotia); RIDR, [Evidence](#), 14 June 2017 (Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission); RIDR, [Evidence](#), 5 April 2017 (Rick Sauvé, Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard’s Society of Canada); RIDR, [Evidence](#), 11 August 2018 (Jennifer Metcalfe, Executive Director, Prisoner’s Legal Services, West Coast Prison Justice Society).

strategy to more closely align with the World Health Organization’s recommendations on mental health services.<sup>261</sup> According to Jennifer Wheatley, Assistant Commissioner, Health Services, CSC, the CSC’s approach has allowed it to expand its intermediate care.<sup>262</sup>

During visits to penitentiaries, committee members observed the use of segregation, separation and isolation of federally-sentenced persons occurring by other names, including “medical observation” or “mental health observation.”

The CSC provides intermediate care for mental health issues through its regional treatment centres (RTCs).<sup>263</sup> There are a total of five RTCs across the country with about 700 beds.<sup>264</sup> The CSC told the committee that RTCs are intended to provide a more therapeutic environment than hospitalized settings.<sup>265</sup> In addition to expanding intermediate care, the CSC informed the committee that it has been “providing mental health training tailored to various frontline groups, including primary workers and correctional officers, and implementing policies and oversight mechanisms to prevent inmate suicide and self-injury.”<sup>266</sup> The Correctional Investigator suggested that these efforts may partially explain certain reductions in admissions to administrative segregation prior to the coming into force of Bill C-83.<sup>267</sup>

Nonetheless, the committee also heard that federally-sentenced persons with mental health issues are struggling to access RTCs.<sup>268</sup> Janet-Sue Hamilton, retired warden, Edmonton Institution for Women, explained that RTCs only accept those with specific conditions: “If a woman has gone into a mental illness crisis, if they’re

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<sup>261</sup> RIDR, [Evidence](#), 1 February 2017 (Jennifer Wheatley, Assistant Commissioner, Health Services, CSC).

<sup>262</sup> RIDR, [Evidence](#), 1 February 2017 (Jennifer Wheatley, Assistant Commissioner, Health Services, Correctional Service Canada).

<sup>263</sup> RIDR, [Evidence](#), 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

<sup>264</sup> RIDR, [Evidence](#), 8 February 2017 (Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada).

<sup>265</sup> RIDR, [Evidence](#), 11 August 2018 (Jennifer Metcalfe, Executive Director, Prisoner’s Legal Services, West Coast Prison Justice Society).

<sup>266</sup> RIDR, [Evidence](#), 1 February 2017 (Anne Kelly, Senior Deputy Commissioner, Correctional Services of Canada).

<sup>267</sup> RIDR, [Evidence](#), 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI); RIDR, [Evidence](#), 11 August 2018 (Jennifer Metcalfe, Executive Director, Prisoner’s Legal Services, West Coast Prison Justice Society).

<sup>268</sup> RIDR, [Evidence](#), 11 August 2018 (Jennifer Metcalfe, Executive Director, Prisoner’s Legal Services, West Coast Prison Justice Society).

not certified as psychotic, schizophrenic or manic depressive, you can't send them there. It was very hard to get them to agree to take an offender from our site unless they met that diagnosis."<sup>269</sup> Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, told the committee that because there is only one RTC per region, in some instances federally-sentenced women refuse treatment for fear of being away from their families.<sup>270</sup>

The committee visited all five RTCs. It noted important differences between RTCs and other federal penitentiaries, such as the visible presence of health care professionals and an emphasis on therapy. One penitentiary was even conducting therapy sessions with the help of therapy dogs. The committee noted, however, that RTCs are federal penitentiaries and operate like them: security measures trump therapeutic needs. The Correctional Investigator echoed this observation when he noted that even in RTCs, "the first responders are almost invariably correctional officers."<sup>271</sup> He added that the "response should be a therapeutic one. It should be led by health care professionals. These individuals are patients first. Yes, they're prisoners as well, but they're patients first."<sup>272</sup> This sentiment was shared by other witnesses.<sup>273</sup>

The security response to mental health crises in RTCs is a sharp contrast to interventions in provincial psychiatric hospitals. The committee visited two provincial psychiatric hospitals: the Brockville Mental Health Centre and the East Coast Forensic Hospital. There, committee members were told by unarmed security personnel, some dressed in scrubs, that they heavily rely on verbal interventions and seldom use physical restraints with their patients. Efforts are concerted on "talking down" the behaviour as opposed to the individual. The committee learned that in rare instances when segregation is required, patients are not left alone, and rewards are granted for changes in behaviour.

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<sup>269</sup> RIDR, [Evidence](#), 4 October 2017 (Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, as an Individual).

<sup>270</sup> RIDR, [Evidence](#), 4 October 2018 (Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, as an Individual).

<sup>271</sup> RIDR, [Evidence](#), 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

<sup>272</sup> RIDR, [Evidence](#), 8 February 2017 (Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada).

<sup>273</sup> RIDR, [Evidence](#), 4 October 2018 (Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, as an Individual).

It is also important to note that to increase its capacity for intermediate mental health care in RTCs, the CSC cut mental health programming in certain penitentiaries. The Correctional Investigator stated that the CSC “shut down two-thirds of their psychiatric beds” across the country.<sup>274</sup> The CSC acknowledged there are significant gaps, especially for men requiring intermediate mental health care outside of RTCs and for women in maximum security.<sup>275</sup> The Auditor General was also critical of mental health support for federally-sentenced women. He summarized the challenges as follows:

We found that CSC did not have sufficient capacity to deliver the mental health services that women offenders needed. Mental health teams were not fully staffed across the women’s institutions, and its one psychiatric hospital operated at or near full capacity over the past two years. CSC has not yet secured additional beds within community psychiatric hospitals to address identified shortfalls.

We also found that CSC used cells on its segregation range to monitor women offenders at risk of self-injury or suicide, without 24-hour access to clinical treatment or support.<sup>276</sup>

It should be noted, however, that in a submission to the committee, the CSC stated that:

New funding from Budget 2017 and Bill C-83 [An Act to amend the Corrections and Conditional Release Act and another Act] has and will continue to bring improvements to close this gap. CSC will monitor the needs of this population as services are expanded through the new funding and will reassess, what, if any, residual gap remains once all new services are in place. Consistent with community models for health care, it is anticipated that the emphasis on early

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<sup>274</sup> RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

<sup>275</sup> RIDR, *Evidence*, 1 February 2017 (Jennifer Wheatley, Assistant Commissioner, Health Services, CSC).

<sup>276</sup> RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

identification and treatment of mental illness, a focus of Bill C-83, will improve the health outcomes for this population.

In Budget 2017 and Budget 2018, funding was provided to establish intermediate care for maximum-security women. Staffing processes are now being finalized to fill the remaining new positions. Once in place, these services will close the gap for maximum-security women who require this level of care.<sup>277</sup>

In federal penitentiaries intended for the general population, correctional officers are primarily responsible for managing mental health crises when an incident occurs outside regular business hours.<sup>278</sup> According to Jason Godin, National President, UCCO-SACC-CSN, however, correctional officers are not appropriately trained for mental health interventions or to identify mental health issues. He told the committee that in

2014-15, correctional officers conducted over 2,000 medical interventions with inmates. Many of those interventions were related to mental illness, and although this work is part of our mandate, we don't have all the skills of health care professionals; yet we are expected to perform this role with limited training.<sup>279</sup>

In another appearance, Mr. Godin stressed the need for access to health care professionals 24-hours a day.<sup>280</sup> Mr. Godin also discussed the consequences of failing to have health care and other infrastructure in place:

As we've seen in the past, difficulties effectively managing diverse populations due to lack of appropriate infrastructure can quickly turn tragic. The cases of Ashley Smith and Marlene Carter highlight the difficulties of supervising inmates with severe mental disorders and the consequences that can occur

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<sup>277</sup> RIDR, *Brief – Correctional Service of Canada*, 27 February 2019.

<sup>278</sup> RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>279</sup> RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>280</sup> RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

when existing policy and infrastructure fail to meet the needs of inmates and the staff who supervise them.<sup>281</sup>

As the inquest into the homicide death of Ashley Smith at GVI in 2017 underscored, the management of federally-sentenced persons with mental health issues is left in the hands of untrained personnel, and mental health needs are sometimes mislabelled and dealt with as behavioural issues.<sup>282</sup> Bonnie Brayton, National Executive Director of DisAbled Women's Network of Canada highlighted the danger of untrained personnel, stating “we must educate prison staff about different types of disabilities and how they affect or impact behaviour, and ensure that what happened to Ashley Smith never happens again.”<sup>283</sup> The committee was told that mental health issues and behavioural issues are sometimes confused.<sup>284</sup> Individuals with FASD, for instance, may display behaviours that are at odds with the correctional environment, making them more vulnerable to other federally-sentenced persons and more likely to be subject to disciplinary actions.<sup>285</sup> Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program reported to the committee that people with FASD who are incarcerated

become preyed upon in jail by predators posing as friends, who talk them into further criminal activity. They can experience sensory overload with all the issues, including noise, overcrowding and excessive stimulation, leading to outbursts and other negative behaviours. The goal of jail is to have the prisoner learn from their consequences so that they don't repeat their mistake. Yet we know individuals with FASD largely do not learn from consequences and repeat their mistakes over and over.<sup>286</sup>

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<sup>281</sup> RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>282</sup> RIDR, *Evidence*, 14 June 2017 (Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission; Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission).

<sup>283</sup> RIDR, *Evidence*, 8 March 2017 (Bonnie Brayton, National Executive Director, DisAbled Women's Network of Canada).

<sup>284</sup> RIDR, *Evidence*, 4 October 2017 (Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, as an Individual); RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa).

<sup>285</sup> RIDR, *Evidence*, 4 October 2017 (Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, as an Individual).

<sup>286</sup> RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa).

In a correctional setting, where correctional officers prioritize security, response to behavioural challenges can be swift and severe and include the use of force (described further in Chapter 5). These responses can be particularly dire for federally-sentenced persons with mental health issues, as their condition may worsen. Fiona Keith, Legal Counsel, Canadian Human Rights Commission, told the committee that

The lack of mental health services and supports in those instances is all the more difficult because it begins a spiral. They act out; their mental health is deteriorating; they attract responses; their security classification increases; they may end up in segregation; they may commit offences in institutions; their sentence balloons. They may have been admitted for 6 years but end up serving 15, 19 or 21 years. When I give these figures, I'm thinking of actual files that I've read that I'm not at liberty to share with you in terms of the names of the individuals. It's a vicious downward spiral and only results in negative outcomes for many of these offenders.<sup>287</sup>

During a site visit to Stony Mountain Institution, the committee took note of the Peer Offender Prevention Service program allowing federally-sentenced persons to provide peer support services to other federally-sentenced persons in times of mental health crises. Those providing support are available 24 hours a day, 7 days a week. They are provided with salary and training from outside community organizations. The committee was informed that the advantage of this program is that federally-sentenced persons providing support can provide the empathy to those in difficulty that others cannot. The committee was told that in 2017, the seven federally-sentenced persons providing support conducted 4000 interventions.

Witnesses also emphasized that federally-sentenced persons with mental health issues are being placed in administrative segregation at an alarming rate.

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<sup>287</sup> RIDR, *Evidence*, 14 June 2017 (Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission).

As such, the committee recommends:

### **Recommendation 25**

**That the Correctional Service of Canada implement the following measures to ensure federally-sentenced persons with mental health issues receive appropriate support:**

- **conduct a culturally appropriate mental health assessment of all federally-sentenced persons entering the federal correctional system within 30 days of admission;**
- **ensure that mental health beds are contracted in psychiatric facilities pursuant to section 29 of the *Corrections and Conditional Release Act*;**
- **ensure that mental health professionals are available in every federal penitentiary on a 24-hour basis and that they are the first responders to all mental health crises.**

### **Recommendation 26**

**That the Correctional Service of Canada implement a holistic approach to mental health by:**

- **providing all employees, as a condition of employment, with appropriate mental health and mental health crisis intervention training that is consistent with their vocational role. Further, the Correctional Service of Canada shall establish appropriate standards for training, ensure that all trainees demonstrate that they have met the standard and that ongoing evaluations of the quality, quantity and outcomes of the training be conducted and used to inform annual improvement of the training; and**



- **evaluating the Peer Offender Prevention Service program at Stony Mountain Institution with a view to expanding it nationally to federal penitentiaries of all security levels.**

## **Recommendation 27**

**That the Correctional Service of Canada ensure that federally-sentenced persons with mental health issues, or whom exhibit behaviours that may indicate a mental health issue, who are placed in structured intervention units are evaluated within 24 hours of their placement by a recognized mental health care professional.**

### **b. Section 29 of the CCRA – Transfer Agreements for The Provision of Mental Health Services**

The CSC's ability to fulfil its obligation to provide federally-sentenced persons with "essential health care" was questioned. Whether it is constrained by budget limitations, security considerations or other reasons, the bottom line is that the physiological and mental health issues of many federally-sentenced persons are not being met. This is deeply troubling. The correctional component of the criminal justice system is not intended to make people less healthy and more troubled than before their incarceration. The objective is to reduce their chances of being criminalized in the future by ensuring they can support themselves and become productive members of society upon release. Physiological and mental health is an important part of this effort. It may even have contributed to the federally-sentenced person's interactions with the criminal justice system in the first place.

Because the CSC is struggling, or outright failing in some instances, to provide adequate healthcare, witnesses suggested that it may be time for the CSC to increase use of section 29 of the CCRA.<sup>288</sup> This section enables the CSC to transfer

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<sup>288</sup> RIDR, *Evidence*, 4 October 2018 (Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, as an Individual).

federally-sentenced persons in its custody to provincial health care facilities.<sup>289</sup> Indeed, the provincial psychiatric facilities the committee visited had Memorandums of Understanding (MOU) with the CSC to provide mental health support to a limited number of federally-sentenced persons. In a submission to the committee, the CSC stated that it is in the process of securing an MOU with the Institut Philippe-Pinel, which will include 12 beds for women and 3 for men. One of the advantages of such agreements is they move federally-sentenced persons away from the CSC's inadequate health care services into facilities equipped and staffed to provide appropriate and desperately needed care.<sup>290</sup> Another advantage, particularly for federally-sentenced women, is that the greater number of provincial hospitals means they could be relocated in a penitentiary closer to their homes, therefore closer to their families.<sup>291</sup>

As such, the committee recommends:

### **Recommendation 28**

**That the Correctional Service of Canada expand its use of section 29 agreements and contract the development/provision of mental health services and beds in provincial psychiatric hospitals to provide adequate mental health services for federally-sentenced persons.**

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<sup>289</sup> RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 14 June 2017 (Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission); RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia); RIDR, *Evidence*, 14 June 2017 (Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission); CCRS, s. 29 (16).

<sup>290</sup> RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies).

<sup>291</sup> RIDR, *Evidence*, 14 June 2017 (Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission).

## CHAPTER 4 – THE USE OF DISCRETION IN THE TREATMENT OF FEDERALLY-SENTENCED PERSONS

Over the course of this study, the committee heard stories of mistreatment of federally-sentenced persons, including the use of force and the overuse of segregation – particularly for women, persons with mental health issues, Indigenous Peoples and Black persons. The committee also heard stories about discriminatory conduct by correctional officers.<sup>292</sup> In a written submission to the committee, the CSC maintained that its policies are non-discriminatory, and are developed with due consideration for the diverse federally-sentenced population and in consultation with internal and external stakeholders.<sup>293</sup> The CSC cited an internal audit conducted in 2017 which found that the CSC adequately identifies and engages with stakeholders in the policy development process, and that CSC’s policy instruments are in line with legal human rights requirements.<sup>294</sup> Furthermore, the CSC told the committee that it provides robust human rights training to its correctional officers.<sup>295</sup> The committee heard, however, that discrimination and mistreatment still occur in federal penitentiaries due to the depth and breadth of CSC’s discretionary authority which allows for arbitrary, subjective or biased application of relevant law and policy. As explained by former federally-sentenced person Eddie Rouse:

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<sup>292</sup> RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada; Diana Majury, President, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI); RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada; Lawrence DaSilva, Former Federal Prisoner, John Howard Society of Canada); RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations); RIDR, *Evidence*, 14 June 2017 (Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission); RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada); RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 4 October 2018 (Ryan Steven Beardy, Former Inmate, Political Science Student, University of Winnipeg, Board of Directors, John Howard Society, as an Individual); RIDR, *Evidence*, 30 January 2019 (Howard Sapers, former Correctional Investigator of Canada, as an Individual); RIDR, *Evidence*, 6 February 2019 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>293</sup> RIDR, Briefs, Correctional Service of Canada Follow-Up Response, 16 April 2019.

<sup>294</sup> RIDR, Briefs, Correctional Service of Canada Follow-Up Response, 16 April 2019.

<sup>295</sup> RIDR, Briefs, *Human Rights in Correctional Officer Training Continuum*, submitted by CSC, 16 July 2019.

There has been, on a constant basis, a lack of consistency across the country in applying the CSC rules or the CCRA. The Commissioner's Directives, because they flow down from Ottawa, they're very vague. They go to the region and the region reinterprets them, and then they go to the individual institution. Everybody has got a chance to reinterpret them the way they want to, and there's no consistency from one institution to another.<sup>296</sup>

The committee has also been informed that federally-sentenced persons are not the only ones subject to discriminatory and arbitrary application of the rules – correctional staff shared similar stories. Those federally-sentenced persons and correctional staff who are vocal about their mistreatment often face retribution in the form of intimidation and retaliation. This contributes to a pervasive culture of silence among federally-sentenced persons where mistreatment and discrimination is permitted.

This chapter provides an overview of the testimony received regarding the mistreatment of federally-sentenced persons and correctional staff, beginning with a discussion on the use of force in federal penitentiaries.

## A. Use of Force

Commissioner's Directive 567-1 – *Use of Force* defines "use of force" as: any action by staff, on or off of institutional property, that is intended to obtain cooperation and gain control by using one or more of the following measures:

- a. non-routine use of restraint equipment
- b. physical handling (not including assistive or therapeutic touch)
- c. a chemical or inflammatory agent is intentionally aimed at an individual or dispensed to gain compliance
- d. use of batons, impact munitions, or other intermediary weapons
- e. display and/or use of firearms.<sup>297</sup>

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<sup>296</sup> RIDR, *Evidence*, 11 August 2018 (Eddie Rouse, as an Individual).

<sup>297</sup> CSC, *CD 567-1 – Use of Force*.

The policy states that any use of force must “be limited to only what is necessary and proportionate to manage the incident.”<sup>298</sup> A necessary and proportionate intervention is described as:

taking into account the reasonable need for maintaining certain operational routines, if the threat may be safely managed without a use of force, then force is unnecessary. The amount of force used must also be the minimally necessary force (proportionate) to safely manage the threat. The concept of necessary and proportionate also applies to health interventions.<sup>299</sup>

Jason Godin, National President, UCCO-SACC-CSN, explained to the committee that correctional officers only employ use of force measures as a matter of last resort.<sup>300</sup>

Between October 2016 and February 2018, the Correctional Investigator recorded 1,914 use of force incidents. Of these, 46% involved the use of pepper spray.<sup>301</sup> Catherine Latimer explained that incidences of pepper spray use have gone up in recent years “because correctional officers can now carry it on their belts. They used to have to go to a central part to get the pepper spray.”<sup>302</sup> During site visits, the committee also noted the prevalence of pepper spray. Mr. Godin informed the committee that correctional officers are responding to changes in the populations and environments of federal penitentiaries, which require a heightened security response.<sup>303</sup> He stated:

In recent years, the offender population has been increasingly characterized by offenders with extensive histories of violence and violent crimes, previous youth and adult convictions, affiliations with gangs and organized crime, serious substance abuse histories and problems, serious mental health disorders, and higher rates of infection with Hepatitis C and HIV.

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<sup>298</sup> CSC, *CD 567-1 – Use of Force*.

<sup>299</sup> CSC, *CD 567-1 – Use of Force*.

<sup>300</sup> RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>301</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*.

<sup>302</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>303</sup> RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

Although the numbers of incidents have not increased significantly, these numbers do not tell the true story in terms of the intensity of violence of the incidents that occurs in the institutions. In the past, inmates would take great care to hide from correctional officers an assault or an attempt to murder a fellow inmate. That is no longer the case. Increasingly, officers report inmates are launching brazen attacks with no effort at all to shield their violence. Those trend lines are clear and continue to demonstrate a more intensive need for security in federal penitentiaries.<sup>304</sup>

In his second appearance before the committee, Mr. Godin noted that assaults against correctional officers are also on the rise, particularly in RTCs across Canada.<sup>305</sup>

Nonetheless, use of force against federally-sentenced persons was frequently brought to the committee's attention, especially as it relates to the use of inflammatory agents.<sup>306</sup> While the committee recognizes that correctional officers need to use reasonable force in high-risk situations, it is concerned about the use of force when other less harmful responses could be employed.

The committee was alarmed to learn that force is disproportionately used against federally-sentenced Indigenous Peoples, federally-sentenced Black persons and federally-sentenced persons with mental health issues.<sup>307</sup> Adding to these issues is the lack of accountability and oversight of use of force incidents. As stated in the Correctional Investigator's most recent annual report, "only 5% of all use of force interventions are subject to a 'random' review at the national level. There is simply

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<sup>304</sup> RIDR, [Evidence](#), 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>305</sup> RIDR, [Evidence](#), 20 March 2018 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>306</sup> RIDR, [Evidence](#), 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada); RIDR, [Evidence](#), 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

<sup>307</sup> RIDR, [Evidence](#), 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI); Ivan Zinger, Correctional Investigator, [Letter to the Chair of RIDR](#) (Re: Follow-up to 8 February 2017 testimony), 2 March 2017; RIDR, [Evidence](#), 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, [Evidence](#), 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations); RIDR, [Evidence](#), 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

no guarantee that even the most egregious use of force interventions make their way up to the national level.”<sup>308</sup>

## 1. Discrimination in the Use of Force

Several witnesses, including the Correctional Investigator, reported that federally-sentenced Indigenous Peoples are disproportionately involved in use of force incidents.<sup>309</sup> In reflection of this reality, the OCI reports that 47% of use of force incidents between October 2016 and February 2018 involved at least one federally-sentenced Indigenous person. Further, the Prairie Region, where the vast majority of federally-sentenced Indigenous Peoples are incarcerated, accounted for the largest proportion of use of force incidents (33.4% or 641 incidents).<sup>310</sup>

During site visits, committee members heard from federally-sentenced Black persons that they are also disproportionately involved in use of force incidents. The Correctional Investigator reported that in 2016-2017, federally-sentenced Black persons represented 10.6% of federally-sentenced persons involved in a use of force incident, while composing only 8.6% of the population of federally-sentenced persons.<sup>311</sup>

Use of force incidents are also prevalent among federally-sentenced persons with mental health issues.<sup>312</sup> The Correctional Investigator noted that in 2015-2016, 54% of use of force incidents involving a federally-sentenced person engaged in self-injury included the use of pepper spray.<sup>313</sup> His office’s 2017-2018 report found that 41% of the use of force incidents reported between October 2016 and February 2018 involved at least one federally-sentenced person with documented mental health

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<sup>308</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*.

<sup>309</sup> RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI); RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations); RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

<sup>310</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

<sup>311</sup> Ivan Zinger, Correctional Investigator, *Letter to the Chair of RIDR* (Re: Follow-up to 8 February 2017 testimony), 2 March 2017.

<sup>312</sup> RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI); RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

<sup>313</sup> RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).



issues, and 13.6% involved self-injuries. Further, the most use of force incidents during this period occurred at the RTC in Saskatoon.<sup>314</sup> According to the Correctional Investigator: “Such responses cannot be considered desirable or appropriate from a therapeutic or human rights perspective. Some significantly mentally ill offenders simply do not belong, nor can they be safely or humanely managed, in a federal correctional facility.”<sup>315</sup>

Some witnesses drew on the case of Matthew Ryan Hines (see text box: *Use of Force Gone Wrong – The Case of Matthew Hines*) to illustrate the tragic impact of excessive use of force against federally-sentenced persons with mental health issues. Mr. Hines died at the age of 33 following a use of force incident at Dorchester Penitentiary on 26 May 2015. The incident began when Mr. Hines, who “had some mental health issues,” refused orders to return to his cell.<sup>316</sup> According to the OCI report, *Fatal Response: An Investigation into the Preventable Death of Matthew Ryan Hines*, correctional officers used disproportionate force to restrain Mr. Hines, followed by excessive use of pepper spray directly to his face, and ignored signs of medical distress.<sup>317</sup>

Ms. Latimer noted that “from [her] perspective, they had him under control long before they stopped with the use of force.”<sup>318</sup> Witnesses agreed that the incident demonstrated the need for better training for correctional officers regarding the use of force, including the appropriate use of inflammatory agents such as pepper spray, as well as the need for enhanced transparency and accountability following such incidents.<sup>319</sup> While the CSC has enacted several reforms in response to this case, the Correctional Investigator has found that they have yet to be effectively “ingrained or entrenched” within CSC’s operations.<sup>320</sup>

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<sup>314</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

<sup>315</sup> RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

<sup>316</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>317</sup> OCI, *Fatal Response: An Investigation into the Preventable Death of Matthew Ryan Hines – Final Report*, 15 February 2017.

<sup>318</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>319</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada; Lawrence DaSilva, Former Federal Prisoner, John Howard Society of Canada).

<sup>320</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.



### **Use of Force Gone Wrong – The Case of Matthew Hines**

In May 2015, Matthew Ryan Hines died under federal custody while serving a five-year sentence at the Dorchester Penitentiary in New Brunswick. His death came under media and public scrutiny after details of the fatal incident emerged. According to reports, Mr. Hines died at the hands of correctional staff after excessive force was unnecessarily applied against him without discernible provocation. Before the incident, Mr. Hines experienced a number of psychotic episodes that required treatment. He frequently sought and used health care within the penitentiary. During his incarceration, he was admitted twice to the Atlantic Region's RTC. Additionally, he was admitted to an outside hospital on two occasions for "symptoms of ongoing psychosis/seizures."<sup>321</sup> His condition was well documented and known to correctional staff.

The incident was most recently detailed in a February 2017 special report by the Correctional Investigator entitled *Fatal response: An Investigation into the Preventable Death of Matthew Ryan Hines*. The Correctional Investigator reported that the entire incident lasted one hour and ten minutes, from first contact with correctional officers until the time of death. During this time, Mr. Hines was beaten, dragged around the penitentiary from behind in handcuffs and pepper sprayed numerous times at close range. The ordeal came to an end when correctional staff physically moved Mr. Hines in the decontamination shower, while handcuffed, with his shirt over his face. His compromised position caused him to fall backwards, landing on his back with his head propped up against the wall. With the shirt still covering Mr. Hines' face, the water was turned on. After correctional staff stopped the water to remove the shirt from his face, Mr. Hines experienced his first of several seizures/convulsions. Throughout the incident, Mr. Hines pled with correctional staff to stop. According to the Correctional Investigator, his "last known recorded words from the locked shower stall where he is lying on the floor and handcuffed behind his back are

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<sup>321</sup> OCI, *Fatal Response: An Investigation into the Preventable Death of Matthew Ryan Hines – Final Report*, 15 February 2017, p. 10.

‘please, I’m begging you.’”<sup>322</sup> The correctional staff responded by turning on the water once more.

The CSC medical staff that were eventually called to respond did not conduct vital sign assessments or administer life-saving treatment. Mr. Hines was unresponsive when the paramedics arrived. He died on the way to the hospital. The report completed for the Chief Coroner’s Office of New Brunswick concluded that Mr. Hines appeared to have died of asphyxiation resulting from “extensive pulmonary edema following the administration of pepper spray.”<sup>323</sup>

As such, the committee recommends:

### **Recommendation 29**

**That the Correctional Service of Canada work with independent academics, lawyers, representatives of civil society organizations and other experts on corrections to:**

- **review the application of its use of force policies by correctional officers, with a view to reducing use of force incidents and addressing the disconnect between the policies and their application;**
- **review and enhance training to correctional officers on the use of force, with a focus on reducing the disproportionate use of force against federally-sentenced Indigenous Peoples, Black persons and persons with mental health issues, and that it regularly monitor the results of this training and adjust as necessary; and**

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<sup>322</sup> Office of the Correctional Investigator, *Fatal Response: An Investigation into the Preventable Death of Matthew Ryan Hines – Final Report*, 15 February 2017, p. 6.

<sup>323</sup> *Ibid*, p. 11.

- **develop employment incentives and commendations for correctional officers and other staff that incentivize interventions that de-escalate conflict and result in no use of force by individuals and on penitentiary-wide bases.**

### **Recommendation 30**

**That the Correctional Service of Canada reverse its policy allowing correctional officers to carry inflammatory agents on their person and provide additional training on the proper and restricted use of inflammatory agents and de-escalation strategies as alternatives to the use of force.**

## **2. The Need for Enhanced Oversight and Accountability**

To ensure that use of force incidents are necessary and proportionate, CD 567-1 requires correctional officers and their supervisors to document incidents in a report and to use a video recorder during the incident. The use of video cameras was criticized by UCCO and other witnesses, for different reasons enumerated below.

Mr. Godin stated that that video footage of an incident often misrepresents the actions of correctional officers. He explained that:

Although we watch a videotape where the outcome looks like it's very horrific to the public, no one realizes that there have already been about 20 to 30 minutes, maybe an hour, of conversation before it gets to that point. One thing I hear from my members, and often hear in incidents — and I've seen everything from having to use lethal force to use of force — often, when you talk to the officers, they will say, "Jason, we tried everything. We tried to talk the person down. We made every effort we possibly could."<sup>324</sup>

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<sup>324</sup> RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

Some witnesses, on the other hand, made the case that the challenge is not with video recordings but how they are deployed. During site visits, the committee heard that correctional officers do not have video recorders with them at all times. When an incident occurs, correctional officers must retrieve the camera and make their way to the incident. According to witnesses, many use of force incidents go unrecorded or the recordings have issues.<sup>325</sup> In his most recent annual report, the Correctional Investigator pointed out that the “CSC identified compliance issues related to the use of a camera” in 62.4% of use of force incidents reported between October 2016 and February 2018.<sup>326</sup>

The committee was also informed by a number of federally-sentenced persons that even when a use of force incident is recorded, the video recording/file goes missing whenever it is requested by those federally-sentenced persons who were involved in the incident. As a result, they are unable to challenge whether the force used against them was necessary and proportionate.<sup>327</sup>

These issues raise serious concerns about the CSC’s ability to effectively monitor and respond to use of force incidents. Some witnesses suggested that more robust oversight and accountability mechanisms particularly to review use of force incidents are required. As stated by Ms. Latimer, “[c]orrectional officers are peace officers, so they are able to use force and they are able to use lethal force, but there needs to be a legislative framework and accountability models around the use of that kind of force.”<sup>328</sup>

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<sup>325</sup> RIDR, *Evidence*, 6 February 2019 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>326</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

<sup>327</sup> RIDR, *Evidence*, 15 May 2017 (Lawrence DaSilva, Former Federal Prisoner, John Howard Society of Canada).

<sup>328</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

As such, the committee recommends:

### **Recommendation 31**

**That the Correctional Service of Canada, in consultation with internal and external stakeholders and experts, develop and implement robust, effective and rights-based oversight and accountability mechanisms for use of force incidents to ensure that correctional staff who use disproportionate force are held accountable.**

### **Recommendation 32**

**That the Correctional Service of Canada seriously consider the use of body-worn cameras for correctional officers to promote transparency and accountability.**

## **B. Segregation of Federally-Sentenced Persons**

When the committee began its study, a major issue within the federal correctional system that was playing out before the public, in the media and the courts was the CSC's use of administrative segregation. At the time, the CCRA referred to administrative segregation as "the separation of an inmate to prevent association with other inmates, when specific legal requirements are met, other than pursuant to a disciplinary decision."<sup>329</sup> The purpose of administrative segregation was "to maintain the security of the penitentiary or the safety of any person."<sup>330</sup> Administrative segregation was not intended to be a disciplinary measure. Because of court challenges and a promise by the Government of Canada to reform administrative segregation, the committee chose not to reflect on this issue in its interim report.

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<sup>329</sup> CSC, *Commissioner's Directive 709 – Administrative Segregation*.

<sup>330</sup> CCRA, s. 31(1).

Since then, however, the courts have made judgments on the CSC's use of administrative segregation. In response, the Government of Canada introduced Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, on 16 October 2018. Among other measures, Bill C-83 replaced administrative segregation with SIUs. Bill C-83 received Royal Assent on 21 June 2019, with sections pertaining to SIUs coming into force on 30 November 2019.

This section will review the court challenges, the new legislation and the issues that were raised with respect to administrative segregation and SIUs during the committee's study. It also provides an update on SIUs based on evidence the committee received in 2021.

Not long after the committee began this study, both the Ontario Superior Court of Justice (ONSC) and the Supreme Court of British Columbia (BCSC) found the administrative segregation provisions in the CCRA to be unconstitutional in *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491 (*CCLA v. Canada*) and *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62 (*BCCLA v. Canada*).<sup>331</sup> Both courts agreed that administrative segregation infringed federally-sentenced persons' right to liberty and security of the person (as guaranteed by section 7 of the Charter). Further, this infringement was not in accordance with the principles of fundamental justice as the review process for administrative segregation decisions was procedurally unfair due to the lack of independent review for such decisions. The BCSC also found that the administrative segregation regime contravened section 15 of the Charter – equality before and under law and equal protection and benefit of law – because of its disproportionate impact on federally-sentenced Indigenous Peoples and persons with mental health issues.

In 2019, the Ontario Court of Appeal upheld the lower court's decision in *CCLA v. Canada* and also found that administrative segregation that lasts more than 15 days amounts to cruel and unusual treatment and thus breaches section 12 of the

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<sup>331</sup> *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491 [*CCLA v. Canada*]; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62 [*BCCLA v. Canada*].

Charter.<sup>332</sup> Later that year, the British Columbia Court of Appeal upheld the lower court's ruling in *BCCLA v. Canada* that the administrative segregation provisions of the CCRA violated section 7 of the Charter. However, the appeals court did not agree with the lower court that the provisions violated section 15, as the discrimination is found in the application of the CCRA and not the provisions themselves.<sup>333</sup>

In response to these court decisions, the federal government tabled Bill C-83 on 16 October 2018. The new law amends the CCRA to replace administrative segregation with SIUs and to “provide the necessary resources and expertise to address the safety and security risks of inmates who cannot be managed safely within the mainstream inmate population.”<sup>334</sup> It requires that federally-sentenced persons in SIUs be given the opportunity to spend time outside their cells, including to interact with others and attend programs (subject to exceptions and the discretion of federal penitentiary administrators). The law also provides that the CSC monitor the health of federally-sentenced persons in SIUs on an ongoing basis.

Commissioner Kelly explained that although SIUs will be located in the exact same locations as current segregation units, they will apparently be different from segregation as they are to be staffed with more “program officers, parole officer, social clinical workers and occupational therapists.”<sup>335</sup> These staff members would conduct regular visits to ensure those in SIUs receive regular human interaction and “get out of their cell more often.”<sup>336</sup> According to a submission by the CSC, interventions would begin the day following the transfer of a federally-sentenced person to an SIU. CSC asserts that the frequency of these interventions will vary from once per week to daily depending on the federally-sentenced person's needs. A registered health care professional would engage in a clinical encounter with each federally-sentenced person in an SIU on a daily basis.<sup>337</sup>

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<sup>332</sup> *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243.

<sup>333</sup> *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228.

<sup>334</sup> Public Safety Canada, “[New Bill: An Act to amend the Corrections and Conditional Release Act and another Act](#),” News release, 16 October 2018.

<sup>335</sup> RIDR, *Evidence*, 27 February 2019 (Anne Kelly, Commissioner, CSC).

<sup>336</sup> RIDR, *Evidence*, 27 February 2019 (Anne Kelly, Commissioner, CSC).

<sup>337</sup> RIDR, Briefs, Correctional Service of Canada Follow-Up Response, 16 April 2019.

In June 2019, former Minister of Public Safety Ralph Goodale announced that his department was developing a regulatory package that would support the implementation of the new law “by establishing processes to provide procedural fairness to inmates, clarify roles and responsibilities and ensure an open and transparent approach to decision-making.” In a May 2021 submission to the committee, the CSC reported that SIUs are in place at 15 sites across the country.<sup>338</sup>

During the committee’s study, several class action lawsuits were also brought forward challenging the constitutionality of administrative segregation. In *Brazeau v. Attorney General (Canada)*, 2019 ONSC 1888, and *Reddock v. Canada*, 2019 ONSC 5053, Justice Perrell – the trial judge in both cases – decided in favour of the plaintiffs and determined that the administrative segregation provisions of the CCRA violated sections 7 and 12 of the Charter. Justice Perrell ordered the Government of Canada to pay \$20 million in damages to the plaintiffs in both lawsuits, who consisted of current and former federally-sentenced persons who had been subject to administrative segregation.<sup>339</sup>

## 1. Issues with Administrative Segregation Pre-Bill C-83

Before Bill C-83 received royal assent, apparently abolishing administrative segregation, witnesses expressed many concerns regarding this practice in federal penitentiaries. The committee is sharing this testimony to demonstrate all the issues with administrative segregation that the new system of SIUs must address. Witnesses told the committee that federally sentenced persons placed in administrative segregation were often removed from the general population and isolated in a cell for 23 hours a day with limited human contact or access to programming. Though federally-sentenced persons in administrative segregation were “to be released... at the earliest appropriate time,”<sup>340</sup> the CCRA did not limit duration of segregation placements. The legislation did not provide for external or independent oversight of administrative segregation placements.

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<sup>338</sup> RIDR, Briefs, CSC, “Submission to the Senate Standing Committee on Human Rights,” Brief submitted to the committee, 6 May 2021.

<sup>339</sup> *Brazeau v. Attorney General (Canada)*, 2019 ONSC 1888.

<sup>340</sup> CCRA, s. 31(2).



As the Correctional Investigator pointed out, the legislation had remained unchanged in this regard since its enactment in 1992 despite repeated calls for independent scrutiny of decisions to place or maintain a federally-sentenced person in segregation. For example, Louise Arbour recommended judicial supervision of segregation decisions and time limits on administrative segregation in the 1996 *Commission of Inquiry into certain events at the Prison for Women in Kingston*.<sup>341</sup> In the report, Commissioner Arbour stated: “the most objectionable feature of administrative segregation... is its indeterminate, prolonged duration, which often does not conform to the legal standards.”<sup>342</sup> Several other internal and external reports following Arbour’s report also recommended independent review of administrative segregation decisions.<sup>343</sup> In 2013, the jury in the Coroner’s Inquest Touching the Death of Ashley Smith recommended time limits on administrative segregation in addition to independent review.<sup>344</sup>

Commissioner Kelly told the committee that in recent years, the CSC had continued to make changes to its administrative segregation policies resulting in “the consistent decline of the population in segregation.”<sup>345</sup> Figures by the OCI indicated that the number of segregation admissions had been trending down, from 8,318 in 2013-2014 to 5,457 in 2017-2018. The average length of stay in segregation had also declined, from 35.4 days in 2013-2014 to 22.3 days in 2017-2018.<sup>346</sup> The committee notes, however, that during site visits it observed areas of penitentiaries that, while not formally labelled as segregation units, exhibited conditions of segregation. These areas included maximum security units, particularly in women’s penitentiaries.<sup>347</sup>

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<sup>341</sup> RIDR, *Evidence*, 30 January 2019 (Ivan Zinger, Correctional Investigator of Canada, OCI); Solicitor General of Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, Commissioner: The Honourable Louise Arbour, 1996.

<sup>342</sup> Solicitor General of Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, Commissioner: The Honourable Louise Arbour, 1996, p. 105.

<sup>343</sup> See, e.g.: Public Safety Canada, *Task Force Reviewing Administrative Segregation*, 1997; House of Commons Subcommittee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights, *A Work in Progress: The Corrections and Conditional Release Act*, Third Report, 2<sup>nd</sup> Session, 32<sup>nd</sup> Parliament, May 2000.

<sup>344</sup> CSC, *Coroner’s Inquest Touching the Death of Ashley Smith*, 19 December 2013.

<sup>345</sup> RIDR, *Evidence*, 1 February 2017 (Anne Kelly, Senior Deputy Commissioner, CSC).

<sup>346</sup> OCI, *Administrative Segregation in Federal Corrections: Current Population and Trends*, 13 January 2019.

<sup>347</sup> RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies).

During its study, the committee learned about the many issues associated with administrative segregation, including conditions amounting to solitary confinement, permanent negative psychological effects, and the overrepresentation of certain marginalized and vulnerable groups.

### a. Solitary Confinement

Several witnesses, including the Correctional Investigator, emphasized to the committee that the administrative segregation regime amounted to solitary confinement as defined by the Mandela Rules: “the confinement of prisoners for 22 hours or more a day without meaningful human contact.”<sup>348</sup> The Mandela Rules prohibit indefinite or prolonged solitary confinement, i.e. solitary confinement that exceeds 15 consecutive days.<sup>349</sup> However, the CSC maintained that administrative segregation in Canada was not solitary confinement as defined by the Mandela Rules.<sup>350</sup> Mr. Godin also told the committee that “there is no such thing as solitary confinement in our country.”<sup>351</sup> Representatives from the CSC and Mr. Godin pointed to the fact that federally-sentenced persons in administrative segregation had regular contact with staff, including doctors and psychologists, which they maintained amounted to “meaningful human contact.”<sup>352</sup> On the other hand, Ryan Steven Beardy, political science student and former federally-sentenced person, told the committee that the CSC was “hiding behind terminology. [...] In the inmate culture, all the inmates know it’s solitary confinement. They call it the hole. Nobody uses administrative segregation. It’s a Justice word. It’s a corrections word.”<sup>353</sup>

The ONSC and BCSC in their respective decisions on administrative segregation found that administrative segregation constituted solitary confinement as defined in the Mandela Rules. Both courts determined that federally-sentenced persons in administrative segregation were confined for 22 hours a day and had limited daily

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<sup>348</sup> RIDR, *Evidence*, 30 January 2019 (Ivan Zinger, Correctional Investigator of Canada, OCI).

<sup>349</sup> Mandela Rules, Rule 44.

<sup>350</sup> CSC, *Coroner’s Inquest Touching the Death of Ashley Smith*, 19 December 2013.

<sup>351</sup> RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>352</sup> RIDR, *Evidence*, 1 February 2017 (Larry Motiuk, Assistant Commissioner, Policy, CSC); RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>353</sup> RIDR, *Evidence*, 4 October 2018 (Ryan Steven Beardy, Former Inmate, Political Science Student, University of Winnipeg, Board of Directors, John Howard Society, as an Individual).

contact with CSC staff that did not amount to “meaningful human contact.”<sup>354</sup> These rulings were upheld on appeal.

The committee met with a number of individuals in administrative segregation during site visits who had experienced a lack of human contact. During site visits, committee members sometimes heard federally-sentenced persons screaming and banging on the walls, desperate for human interaction. During one visit, a federally-sentenced person in administrative segregation was so desperate to get out that he flooded the entire segregation range. Others yelled and screamed, while still others engaged in significant self-harm.

The committee also heard of federally-sentenced persons languishing in segregation for periods far beyond the 15 days permitted by the Mandela Rules. The Correctional Investigator reported that as of 13 January 2019, 4% of the population in segregation had spent more than 120 days in segregation. One federally-sentenced person had been in segregation for 570 days.<sup>355</sup>

#### **b. A Band-Aid Solution**

Mr. Godin stated that administrative segregation was a necessary tool for correctional officers to maintain order within federal penitentiaries. He stated that it was used for “preventing inmate-on-inmate assaults, inmate-on-staff assaults, self-harming inmates that need direct observation, disciplinary cases and those inmates that seek protection for numerous reasons.”<sup>356</sup>

The committee was informed that “the use of administrative segregation [was] paramount in keeping staff and inmates safe inside the walls.”<sup>357</sup> Mr. Godin stated that in some cases, federally-sentenced persons requested to be placed in segregation for their own safety. He also noted that in the same period that

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<sup>354</sup> *CCLA v. Canada*, 2017 ONSC 491, paras. 38-46; *BCCLA v. Canada*, 2018 BCSC 62, para. 137.

<sup>355</sup> OCI, *Administrative Segregation in Federal Corrections: Current Population and Trends*, 13 January 2019.

<sup>356</sup> RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>357</sup> RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

segregation was in decline in federal penitentiaries, violent incidents, including assaults on staff, were on the rise.<sup>358</sup>

On the other hand, Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission, stated that correctional staff used administrative segregation as a “crutch” and “Band-Aid solution” to deal with difficult situations, rather than focusing on addressing and rectifying the reasons behind the need to separate certain incarcerated individuals from their peers.<sup>359</sup> Diana Majury, President of the Canadian Association of Elizabeth Fry Societies (CAEFS), agreed, calling segregation “an avoidance strategy” that “does not address the problem” and “inevitably makes it worse.”<sup>360</sup> Nancy Wrenshall told the committee that during her time as warden of Fraser Valley Institution for Women, the penitentiary did not have segregation units. This required correctional staff to “work through the issues” with the women, “be innovative and think of other ways for discipline.”<sup>361</sup>

### c. Psychological Effects

The committee also learned that administrative segregation, i.e. solitary confinement, could have long term, irreversible and negative psychological effects. According to Archibald Kaiser, professor of law and psychiatry, “the use of solitary confinement will virtually guarantee a deterioration in... mental and social functioning” even for persons who do not have pre-existing mental health issues.<sup>362</sup> Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada, stated that federally-sentenced persons in solitary confinement are at significantly higher risk of self-harm.<sup>363</sup>

The courts have also found that the psychological impacts of solitary confinement can be devastating and can occur as early as within the first two days of isolation. In

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<sup>358</sup> RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>359</sup> RIDR, *Evidence*, 14 June 2017 (Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission).

<sup>360</sup> RIDR, *Evidence*, 1 February 2017 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies).

<sup>361</sup> RIDR, *Evidence*, 4 October 2017 (Nancy Wrenshall, as an Individual).

<sup>362</sup> RIDR, *Evidence*, 26 March 2018 (Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Dalhousie University).

<sup>363</sup> RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

*CCLA v. Canada*, the ONSC concluded that, based upon expert testimony and a review of the literature, the psychological effects of solitary confinement include “sensory deprivation, isolation, sleeplessness, anger, elevated levels of hopelessness, [and] the development of previously undetected psychiatric symptoms, including depression and suicidal ideation.”<sup>364</sup> The ONSC also accepted evidence that the harmful effects of sensory deprivation caused by solitary confinement could occur as early as 48 hours after segregation; that solitary confinement for more than 15 days poses a serious risk of permanent psychological harm; and that solitary confinement can alter brain activity and result in symptoms within seven days.<sup>365</sup> Furthermore, the negative effects of prolonged segregation are “foreseeable and expected” and “may not be observable.”<sup>366</sup>

Similarly, the BCSC in *BCCLA v. Canada* found that solitary confinement poses a significant risk of serious and possibly permanent psychological harm, including “anxiety, withdrawal, hypersensitivity, cognitive dysfunction, hallucinations, loss of control, irritability, aggression, rage, paranoia, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behaviour.”<sup>367</sup> These risks are intensified in the case of federally-sentenced persons with mental illness.<sup>368</sup> The ONSC in *Brazeau* came to the same conclusions regarding the psychological effects of segregation.<sup>369</sup>

Recounting her experience to the committee, former federally-sentenced person Alia Pierini stated:

I spiralled into a depression, which I still struggle with today. I found myself placed in segregation for months and months at a time. Segregation was a dark place for me. No one should ever have to experience that. It was the first place and the only time in my life where I have ever contemplated taking my

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<sup>364</sup> *CCLA v. Canada*, 2017 ONSC 7491, para. 92.

<sup>365</sup> *Ibid.*, paras. 123-126.

<sup>366</sup> *Ibid.*, paras. 240-241.

<sup>367</sup> *BCCLA v. Canada*, 2018 BCSC 62, para. 247.

<sup>368</sup> *Ibid.*

<sup>369</sup> *Brazeau v. Attorney General (Canada)*, 2019 ONSC 1888.

own life. No one should ever have to feel like dying is better than living, let alone be left for weeks in a cell with their dark thoughts.<sup>370</sup>

Mr. Beardy stated:

The culture of fear of solitary confinement exists among inmates because we understand that once you're exposed you're different. I saw the difference first hand where inmates would be plucked from general population, thrown into solitary confinement and when they came back were not the same.<sup>371</sup>

These were just some of the many stories the committee heard that demonstrated the very damaging impacts of prolonged solitary confinement.

#### **d. Access to Services**

Access to services while in administrative segregation was another issue frequently raised by witnesses. Larry Motiuk, Assistant Commissioner for Policy at the CSC, stated that federally-sentenced persons in administrative segregation had access to advocacy groups, counsellors, approved visits from family and friends, and telephone calls. He also stated that they could have entertainment equipment and gaming devices in their cells as well as receive full access to their personal effects after five days. According to Mr. Motiuk, CSC tried "to maintain the same conditions of confinement that they would experience in the general population."<sup>372</sup>

However, when the committee visited federally-sentenced persons throughout the country they witnessed an alternate reality. When the committee asked other witnesses, including current and former federally-sentenced persons, if they had meaningful access to the services cited by Mr. Motiuk, they disagreed. Mr. DaSilva and Ms. Pierini stated that while in segregation, they only had brief check-up visits

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<sup>370</sup> RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

<sup>371</sup> RIDR, *Evidence*, 4 October 2018 (Ryan Steven Beardy, Former Inmate, Political Science Student, University of Winnipeg, Board of Directors, John Howard Society, as an Individual).

<sup>372</sup> RIDR, *Evidence*, 1 February 2017 (Larry Motiuk, Assistant Commissioner, Policy, CSC).

from health care staff. Both denied being granted access to visits from family and friends while in segregation.<sup>373</sup>

During site visits, the committee was also concerned to hear from staff and federally-sentenced persons in administrative segregation that they did not have access to rehabilitative programming essential for conditional release.<sup>374</sup> For these federally-sentenced persons, not only was administrative segregation depriving them from the benefits of peer supports, it also hindered their ability to follow and meet the expectations of their correctional plan.

The committee learned that access to recreational time was also severely limited in segregation. Federally-sentenced persons in segregation were allowed to use recreational areas at set times, and always alone. As these spaces were outdoors, they were not often accessible and therefore infrequently used during winter months. The committee was concerned that federally-sentenced persons could spend long periods in administrative segregation without access to basic services that they desperately needed and to which they are legally entitled.

#### **e. Overrepresentation of Federally-Sentenced Indigenous Peoples and Black Persons**

According to statistics from the OCI, federally-sentenced Indigenous Peoples and Black persons were overrepresented in administrative segregation.

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<sup>373</sup> RIDR, [Evidence](#), 1 February 2017 (Lawrence DaSilva, Former Federal Prisoner, John Howard Society of Canada; Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

<sup>374</sup> See also: RIDR, [Evidence](#), 4 October 2017 (Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, as an Individual); RIDR, [Evidence](#), 30 January 2019 (Ivan Zinger, Correctional Investigator of Canada, OCI).

**Table 6 - Segregation Population by Race as of 13 January 2019**

	Total	% of Segregated Population
Indigenous	160	39.4%
Black	38	9.4%
White	166	40.9%
Other	42	10.3%
Total	406	

Source: OCI, *Administrative Segregation in Federal Corrections: Current Population and Trends*, 13 January 2019.

As indicated in the table above, federally-sentenced Indigenous Peoples represented 39.4% of the 406 federally-sentenced persons in administrative segregation as of 13 January 2019 while comprising 28% of the total federally-sentenced population.<sup>375</sup> Stuart Wuttke, General Counsel, Assembly of First Nations, stated that in addition to being overrepresented in segregation, federally-sentenced Indigenous Peoples spent 16% more time in segregation than other federally-sentenced persons.<sup>376</sup>

The Correctional Investigator noted that factors accounting for the overrepresentation of Indigenous Peoples in administrative segregation included a lack of culturally appropriate and timely programs and services to Indigenous Peoples. Further,

When Indigenous people come into federal corrections, they typically have higher needs, and those needs are not matched with the level of intervention that is required. For example, they come into the system more affiliated with

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<sup>375</sup> OCI, *Administrative Segregation in Federal Corrections: Current Population and Trends*, 13 January 2019.

<sup>376</sup> RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations).



gangs. They often come into the system with higher prevalence of addiction and mental health issues.<sup>377</sup>

Federally-sentenced Black persons were also overrepresented in segregation. As of 13 January 2019, federally-sentenced Black persons comprised 9.4% of those in administrative segregation compared to 8.4% of the total federally-sentenced population.<sup>378</sup> Dr. Owusu-Bempah provided further details regarding the overrepresentation of federally-sentenced Black persons in segregation:

Between March 31, 2005, and March 31, 2015, as the Black prison population in federal custody increased by 77.5 per cent, the number of Black inmates sent to solitary confinement increased by 104 per cent. So this increase in the use of administrative segregation is outpacing the already alarming growth in the Black prison population overall. Over the same 10-year period, the number of Caucasian inmates decreased by 12.3 per cent.<sup>379</sup>

Former Correctional Investigator Howard Sapers attributed the overrepresentation of Indigenous Peoples and Black persons in administrative segregation to “systemic bias in the implementation of correctional practice,” explaining: “There is bias in the way these policies are implemented. Part of the reason there’s bias is that the populations that are disadvantaged in the community [are also] disadvantage[d in] correctional institutions. It follows them. It’s not distinct.”<sup>380</sup>

#### **f. Overrepresentation of Federally-Sentenced Persons with Mental Health Issues**

Rule 45 of the Mandela Rules prohibits the use of solitary confinement in the case of prisoners with mental health issues. CD 709 on administrative segregation stated that federally-sentenced persons “with a serious mental illness with significant impairment” or “actively engaging in self-injury which is deemed likely to result in serious harm or at elevated or imminent risk for suicide” were inadmissible to

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<sup>377</sup> RIDR, *Evidence*, 30 January 2019 (Ivan Zinger, Correctional Investigator of Canada).

<sup>378</sup> OCI, *Administrative Segregation in Federal Corrections: Current Population and Trends*, 13 January 2019.

<sup>379</sup> RIDR, *Evidence*, 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual).

<sup>380</sup> RIDR, *Evidence*, 30 January 2019 (Howard Sapers, former Correctional Investigator of Canada, as an Individual).

administrative segregation.<sup>381</sup> “Serious mental illness with significant impairment” was defined as:

[the] presentation of symptoms associated with psychotic, major depressive and bipolar disorders resulting in significant impairment in functioning. Assessment of mental disorder and level of impairment is a clinical judgement and determined by a registered health care professional. Significant impairment may be characterized by severe impairment in mood, reality testing, communication or judgement, behaviour that is influenced by delusions or hallucinations, inability to maintain personal hygiene and serious impairment in social and interpersonal interactions. This group includes inmates who are certified in accordance with the relevant provincial/territorial legislation.<sup>382</sup>

Despite this directive and the prohibition of this practice in the Mandela Rules, witnesses noted that federally-sentenced persons with mental health issues continued to be placed in administrative segregation. Allison Fenske, Attorney with Legal Aid Manitoba, told the committee that the CSC’s definition of “serious mental illness with significant impairment” was too narrow and as a result, CD 709 failed to truly protect all federally-sentenced persons with mental health issues from segregation.<sup>383</sup>

The committee heard that federally-sentenced persons with mental health issues were not only being admitted to administrative segregation, but in greater numbers than the general population.<sup>384</sup> Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia, stated that segregation was “used as a default for those who are considered difficult to manage. In my experience, those who are deemed difficult are those who have significant mental health issues, and

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<sup>381</sup> CSC, *CD 709 – Administrative Segregation*.

<sup>382</sup> CSC, *CD 709 – Administrative Segregation*.

<sup>383</sup> RIDR, *Evidence*, 4 October 2018 (Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba).

<sup>384</sup> RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffat, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual); RIDR, *Evidence*, 21 March 2018 (Claire McNeil, Lawyer, Dalhousie Legal Aid Service, Dalhousie University, as an Individual); RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, as an Individual).

segregation dramatically worsens most mental health conditions.”<sup>385</sup> The committee was informed that administrative segregation and other forms of segregation are a common response to mental health crises such as self-injurious behaviour.<sup>386</sup>

Further, those with mental health issues were typically held longer in administrative segregation. As stated by Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre:

The problem is that when you get into institutions like our prisons, the guards have certain duties to do. What happens is that when people are causing trouble, often because they have a mental illness, they get put into segregation or put in the back ward. If they don't make any more noise, they're left there. They often are neglected, stay there and get worse, rather than get the treatment they need.<sup>387</sup>

The committee also heard that federally-sentenced persons in solitary confinement did not have meaningful contact with health care workers, including psychologists, despite the negative impacts of segregation on mental health. For example, former federally-sentenced person Alia Pierini stated that her interactions with such services were all through the food slot of her cell door:

From my experience personally I feel that they do their rounds just to cover what they are supposed to do. Yes, the health care comes. Yes, if you want an elder they'll come. However, all this connection is between a food slot. You are sitting at a metal door and peering through a slot trying to connect with either your psychologist or health care person.<sup>388</sup>

Jennifer Metcalfe, Executive Director, Prisoner's Legal Services, West Coast Prison Justice Society, informed the committee that federally-sentenced person Joey had a similar experience:

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<sup>385</sup> RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia).

<sup>386</sup> RIDR, *Evidence*, 11 August 2018 (Gillian Gough, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

<sup>387</sup> RIDR, *Evidence*, 1 November 2017 (Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre).

<sup>388</sup> RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

In either observation or segregation, Joey has very little meaningful human contact. Meetings with health care professionals are generally through the cell door and last only a few minutes. He says officers and nurses are rude. They refuse to address his concerns or give their names. He says they treat him like a dog or a child. When he asks for his care plan, all he is told is that he needs to take baby steps. He reports that officers insult him, they laugh at him and raise their voices. He says all officers and nurses do is threaten him with gas and Pinel restraints over and over again. For the most part, the only time Joey speaks to staff is to ask for pain medication or legal calls. He does not trust CSC staff, including medical and mental health staff.<sup>389</sup>

Evidence submitted during the *BCCLA v. Canada* trial also indicated that interactions with psychologists typically occurred through the food slot of their cell door. In addition, the court heard that psychologists only visited segregation units once a week at most due to heavy caseloads.<sup>390</sup> When psychological services were offered, they were often declined due to the lack of privacy, as other federally-sentenced persons in the unit could hear everything that was said.<sup>391</sup> On the basis of this evidence, Justice Leask in the BCSC decision stated he was “not persuaded that, in practice, the mental health care actually provided is sufficient to address the risk of psychological harm that arises from segregation.”<sup>392</sup>

In fact, several witnesses told the committee that there are no benefits to isolating federally-sentenced persons with mental health issues and that it may in fact amplify those issues.<sup>393</sup> Regarding Joey’s experience, Ms. Metcalfe stated:

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<sup>389</sup> RIDR, *Evidence*, 11 August 2018 (Jennifer Metcalfe, Executive Director, Prisoner’s Legal Services, West Coast Prison Justice Society).

<sup>390</sup> *BCCLA v. Canada*, 2018 BCSC 62, para. 291.

<sup>391</sup> *Ibid.*, paras. 285-306.

<sup>392</sup> *Ibid.*, para. 303.

<sup>393</sup> RIDR, *Evidence*, 31 January 2018 (Anne-Marie Hourigan, Retired Judge of the Ontario Court of Justice and Director, Board of Directors, Mental Health Commission of Canada); RIDR, *Evidence*, 11 August 2018 (Gillian Gough, Regional Advocate, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker, Elizabeth Fry Society of Manitoba; John Hutton, Executive Director, John Howard Society of Manitoba; Ryan Steven Beardy, Former inmate, Political Science Student, University of Winnipeg, Board of Directors, John Howard Society, as an Individual).

When Joey self-harms, the Correctional Service of Canada puts him in an observation cell where he is isolated and often further deprived of all of his belongings, including his clothes, anything to occupy his mind, like television, radio, books or drawing materials. He's an artist. He describes his mattress as blanket thin on the concrete floor. He is provided only finger food called "bag feed." Cells are often very cold or very hot, and the lights are on 24 hours a day. He can't sleep and his body aches. His cell is often filthy and contaminated with chemical agents, so his skin burns. An officer sits outside his cell with a canister of pepper spray and does not speak to him.<sup>394</sup>

At every penitentiary the committee visited it made a point of visiting the segregation range. In most penitentiaries, a number of cells within that range were occupied. Many of those in the segregation cells were transparent about their mental health needs and how they were not being met. The committee heard stories of people taking drastic measures such as flooding cells, throwing fecal matter or self-injuring simply to get attention. Since behaviour determined the duration of administrative segregation placements, the committee heard that such cries for help only served to prolong administrative segregation placements, in addition to often attracting new criminal charges that result in lengthier cumulative sentences – all of which exacerbate mental health issues. To illustrate this point, Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, shared the following story:

Devon first came into federal custody in 2005, already having been diagnosed with schizophrenia and depression and having been hospitalized for lengthy periods of time around those illnesses. This was all known to the Correctional Service Canada, and yet addressing these mental health concerns was not a feature of correctional planning for Devon.

Instead, Devon's time in custody over three federal sentences was really a revolving door in and out of solitary confinement. In some years he spent more time in solitary than out. In one instance, he spent 294 consecutive days

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<sup>394</sup> RIDR, *Evidence*, 11 August 2018 (Jennifer Metcalfe, Executive Director, Prisoner's Legal Services, West Coast Prison Justice Society).

in solitary confinement. The only reason he was released was because his sentence expired.

Leading up to Devon's last placement in solitary, he had been off his medication for approximately six months and was experiencing symptoms of acute psychosis. Only his psychiatrists and a mental health nurse knew this. None of the other correctional staff were made aware.

While he was experiencing these psychotic symptoms, Devon assaulted a nurse and was immediately returned to solitary confinement. The mental health nurse who had been treating Devon had concerns that he was paranoid, psychotic, and that his behaviour was unpredictable; but these concerns were not communicated more widely. Correctional officers reviewing Devon's placement in solitary noted no concerns with his continued placement in solitary. They even said that there were no concerns noted by the psychology department. Evidence suggested that Devon's actions were treated as a security threat, as opposed to a symptom of a larger mental health crisis. On November 23, 2013, nearly two weeks after being parked in solitary, Devon died by suicide, using his own shoelace to hang himself in his cell.<sup>395</sup>

Throughout its study the committee heard tragic stories like that of Devon's. Unfortunately, these stories are not an uncommon feature of administrative segregation. Even research conducted by the CSC has revealed that self-injurious behaviour is likelier to occur in segregation (45.1% vs. 21.6% in the general population). Though its research found that suicides are less likely to occur in segregation (21.6% vs. 60% in the general population), it identified segregation as a possible precipitating factor in almost 10% of suicides that occurred in the general population.<sup>396</sup> The Correctional Investigator stated:

All we know is that the research is categorical: the rate of mental health issues in segregation is significantly higher than in the general prison population.

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<sup>395</sup> RIDR, *Evidence*, 4 October 2018 (Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, as an Individual).

<sup>396</sup> CSC, "[A Comparative Review of Suicide and Self-Injury: Investigative Reports in a Canadian Federal Correctional Population](#)," May 2010, p. 12.

Therefore, it is well known that mental health issues can cause conflicts with other inmates or with the administration of the penitentiary and lead to segregation. I don't think you will find any statistics on that, unless you do it manually.

One of the studies we did contains three years of data on suicide. Fourteen of the 30 suicides that took place in that period occurred in administrative segregation, which is unlikely because administrative segregation is the most safest and most supervised place in the entire penitentiary. The majority of people who died by suicide had identified mental health issues.<sup>397</sup>

Mr. Godin told the committee that alternatives to segregation for mentally ill federally-sentenced persons are necessary. He emphasized the importance of hiring more health care professionals to ensure that responses to mental health incidents are appropriate and the need to reduce overreliance on segregation.<sup>398</sup>

The committee also reiterates the calls of several witnesses that the CSC increase its use of section 29 of the CCRA to transfer federally-sentenced persons with mental health issues to provincial health care facilities.<sup>399</sup>

#### **g. Impact on LGBTQI2-S Federally-Sentenced Persons**

According to witnesses, lesbian, gay, transgender, queer, intersex and 2 spirit (LGBTQI2-S) federally-sentenced persons are especially vulnerable to violence. As a result, they could have been placed in administrative segregation for their own safety, and sometimes at their request. The committee heard from federally-sentenced persons that incarcerated people who are transgender feel obligated to hide their identity for their own safety. In her testimony to the committee regarding transgender persons in federal penitentiaries, Marcella Daye,

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<sup>397</sup> RIDR, *Evidence*, 30 January 2019 (Ivan Zinger, Correctional Investigator of Canada, OCI).

<sup>398</sup> RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>399</sup> RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 14 June 2017 (Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission; Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission); RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia); RIDR, *Evidence*, 4 October 2018 (Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba, as an Individual).



Senior Policy Advisor, CHRC, noted that using administrative segregation to keep this population safe was an inadequate response:

When all you have is a hammer, every problem looks like a nail. I would echo many of the comments you've heard on the use of segregation and isolation tactics, especially in the methodology being used for trans prisoners to keep them safe. If that is the only tool that CSC has to keep trans prisoners safe, it is simply not adequate. It provides additional psychological and physical detrimental effects, and a best practice needs to examine other methods to keep trans folks safe.<sup>400</sup>

Professor Kyle Kirkup endorsed the use of sections 81 and 84 of the CCRA to accommodate the needs of federally-sentenced transgender persons.<sup>401</sup>

#### **h. Federally-sentenced Women in Segregation**

Federally-sentenced women experience segregation in ways different from federally sentenced men. During her appearance before the committee on 27 February 2019, Commissioner Kelly told the committee that there were no women in segregation on that day.<sup>402</sup> Several women's penitentiaries had eliminated segregation units altogether. Witnesses from CAEFS, however, stated that the maximum security and mental health monitoring facilities for women amount to de facto segregation.<sup>403</sup> As explained by Ms. Halpern:

Women in maximum security are subject to very restrictive punitive conditions differently than men and are isolated from the general population on small, highly monitored pods. Women are generally imprisoned in these pods for up

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<sup>400</sup> RIDR, *Evidence*, 30 January 2019 (Marcella Daye, Senior Policy Advisor, Canadian Human Rights Commission).

<sup>401</sup> RIDR, *Evidence*, 30 January 2019 (Kyle Kirkup, Assistant Professor, Faculty of Law, University of Ottawa).

<sup>402</sup> RIDR, *Evidence*, 27 February 2019 (Anne Kelly, Commissioner, CSC).

<sup>403</sup> RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia); RIDR, *Evidence*, 11 August 2018 (Gillian Gough, Regional Advocate, Canadian Association of Elizabeth Fry Societies).



to 23 hours a day. This is a form of segregation, and women can spend years in this setting.<sup>404</sup>

The committee confirms that it witnessed this de facto segregation in the women’s maximum-security penitentiaries it visited. Given that federally-sentenced Indigenous women are significantly overrepresented in maximum security, Savannah Gentile, Director, Advocacy and Legal Issues at CAEFS stated that they consequently “have less access to culturally appropriate programming and services to which they are entitled under the law.”<sup>405</sup> CAEFS calls for the elimination of maximum security for women as in their view, it amounts to solitary confinement. The committee is concerned that substituting administrative segregation for SIUs will not address this challenge. Maximum security pods will continue to be a form of segregation. Representatives from the CSC told the committee that the CSC is considering establishing “enhanced support houses” for women with “increased interventions from parole officers and program officers” that would serve as alternatives to SIUs in medium and minimum-security penitentiaries. Maximum security penitentiaries for women would use the SIU model for safety reasons.<sup>406</sup> It was unclear from the CSC’s testimony whether federally-sentenced women in these support houses would still be segregated from the general population, however.

## 2. Structured Intervention Units: An Adequate Solution?

Before Bill C-83 became law, witnesses questioned whether the proposed SIUs constituted segregation by another name.<sup>407</sup> Ms. Majury stated: “SIUs are to serve the same purpose as segregation. There is nothing new in the bill relating to the SIUs that could not now be done with administrative segregation, so really there is no difference.”<sup>408</sup> In particular, witnesses doubted the ability of Bill C-83 to eliminate the

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<sup>404</sup> RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia).

<sup>405</sup> RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies).

<sup>406</sup> RIDR, *Evidence*, 27 February 2019 (Anne Kelly, Commissioner, CSC; Kelley Blanchette, Deputy Commissioner for Women, CSC).

<sup>407</sup> RIDR, *Evidence*, 30 January 2019 (Howard Sapers, former Correctional Investigator of Canada, as an Individual); RIDR, *Evidence*, 6 February 2019 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>408</sup> RIDR, *Evidence*, 6 February 2019 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies).

prolonged use of segregation as the legislation does not prescribe any limits on the amount of time spent in an SIU.<sup>409</sup> The CSC confirmed in a submission that federally-sentenced persons could be placed in SIUs indefinitely due to this lack of time limits, but stated that the intention is to transfer them out “as soon as the risk posed either by or to the inmate can be mitigated.”<sup>410</sup> Despite these concerns, representatives from the CSC maintained that SIUs serve a different purpose than segregation because they are “focused on interventions.”<sup>411</sup>

While the CSC stated that the new legislation marks a significant shift from previous practices, the Correctional Investigator noted that:

there is nothing in Bill C-83 dealing specifically with [SIUs] that could not be done already. More time out of cells, providing more programs, interventions and services, providing adequate access to mental health services, and allowing meaningful human contact for segregated inmates can all be done right now. So why legislate something that the CSC has the discretion to do right now?<sup>412</sup>

Furthermore, Ms. Majury told the committee that the “slight improvement of four rather than two hours out of the cell” as outlined in the legislation “will not mitigate the devastating mental health effects of 20 hours of segregation.”<sup>413</sup> She also took issue with the fact that the legislation does not provide any guidance on what constitutes “meaningful human contact,” remarking that the “CSC has a seriously minimalist interpretation of each of these words.”<sup>414</sup> In addition, the amendments to the CCRA lack “procedural safeguards such as right to counsel and oral hearings.”<sup>415</sup> Ms. Latimer stated that “incredible oversight” is needed to ensure that SIUs lead to

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<sup>409</sup> RIDR, *Evidence*, 6 February 2019 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies; Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>410</sup> RIDR, Briefs, Correctional Service of Canada Follow-Up Response, 16 April 2019.

<sup>411</sup> RIDR, *Evidence*, 27 February 2019 (Alain Tousignant, Senior Deputy Commissioner, CSC).

<sup>412</sup> RIDR, *Evidence*, 30 January 2019 (Ivan Zinger, Correctional Investigator of Canada, OCI).

<sup>413</sup> RIDR, *Evidence*, 6 February 2019 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies).

<sup>414</sup> RIDR, *Evidence*, 6 February 2019 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies).

<sup>415</sup> RIDR, *Evidence*, 6 February 2019 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies).

“transformative change” and do not result in “simply being a name change” from administrative segregation.<sup>416</sup>

Commissioner Kelly stated that both correctional officers and “interventionists” – program officers, parole officers, social clinic workers and occupational therapists – will be hired to staff the SIUs. She told the committee that interventionists are the “key” to the SIU framework, whereas correctional officers will ensure the safety and security of staff and the environment.<sup>417</sup> The Correctional Investigator, however, informed the committee that the bulk of the resources allocated towards the implementation of SIUs will be for more correctional officers. Mr. Zinger questioned the prioritization of more security over alternatives to institutional corrections, such as section 29 transfers for federally-sentenced persons with mental health issues.<sup>418</sup> Ms. Latimer and Ms. Majury agreed that an emphasis on alternatives to segregation, including supervision in the community, is missing from the new SIU framework.<sup>419</sup>

Mr. Godin, on the other hand, emphasized the need for increased staffing and training for staff to ensure a smooth transition from segregation to SIUs. He predicted an increase in violent incidents, including assaults on staff, if the CSC does not have resources to properly implement the new system. According to Mr. Godin:

By eliminating disciplinary and administrative segregation, the ability to maintain control over diverse populations will be significantly impacted. [UCCO] accept[s] that an overreliance on segregation as a disciplinary consequence may lead to negative outcomes. However, there are instances where swift and immediate responses to dangerous behaviour is a necessary option.<sup>420</sup>

While changes such as longer time spent out of their cells for those in SIUs are “well intended,” he maintained that these measures “are not feasible under current

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<sup>416</sup> RIDR, *Evidence*, 6 February 2019 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>417</sup> RIDR, *Evidence*, 27 February 2019 (Anne Kelly, Commissioner, CSC).

<sup>418</sup> RIDR, *Evidence*, 30 January 2019 (Ivan Zinger, Correctional Investigator of Canada, OCI).

<sup>419</sup> RIDR, *Evidence*, 6 February 2019 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies; Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>420</sup> RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

staffing and infrastructure models.”<sup>421</sup> He noted that it remains unclear whether segregation units will be closed or repurposed as SIUs. In addition, he stated that while UCCO welcomes the law’s recognition of the importance of health care services in the SIU framework, it falls short of specifically allocating 24-hour-a-day health care services. As a result, correctional officers will continue to be the first responders outside of business hours, despite, in UCCO’s view, not being adequately trained in responding to mental health crises.<sup>422</sup>

#### **a. Implementation of Structured Intervention Units**

In its 2021 submission to the committee, the CSC stated that “SIUs are part of a historic transformation of the federal correctional system that is fundamentally different from the previous model.”<sup>423</sup> To illustrate this point, it underscored that compared to the previous regime, federally-sentenced persons in SIUs have greater access to programs and other services, can spend more time out of their cells and can more frequently have interpersonal interactions. The CSC also noted that it conducts Indigenous Social History reviews before SIU admissions to ensure that the needs of federally-sentenced Indigenous Peoples in SIUs continue to be addressed. This includes continued access to Elders/spiritual advisors as well as opportunities to engage in spiritual and cultural activities.

The CSC also stated that it is working to address concerns regarding the implementation of SIUs. With respect to federally-sentenced persons in SIUs not getting their full allotment of time out of their cell, for instance, the CSC stated that it is working to provide more options including “the use of therapy dogs, workshops, art, social activities, and increased access to video visitation and telephone to connect with loved ones and community supports.”<sup>424</sup> The CSC also underscored that there are fewer federally-sentenced persons in SIUs than there were in administrative segregation.<sup>425</sup>

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<sup>421</sup> RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>422</sup> RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

<sup>423</sup> RIDR, Briefs, CSC, “Submission to the Senate Standing Committee on Human Rights,” Brief submitted to the committee, 6 May 2021.

<sup>424</sup> RIDR, Briefs, CSC, “Submission to the Senate Standing Committee on Human Rights,” Brief submitted to the committee, 6 May 2021.

<sup>425</sup> *Ibid.*

However, in their 2021 submissions, the OCI and Anthony Doob, Professor Emeritus, University of Toronto, shared a very different perspective from that of the CSC with respect to SIUs. They informed the committee that concerns previously raised by witnesses regarding the implementation of SIUs were well founded. The Correctional Investigator, for example, stated that “the available information suggests that SIUs are routinely not compliant with the law” and that “the current legislative framework for SIUs has failed to prevent the creation and use of segregation-like conditions.”<sup>426</sup>

Specifically, the available data indicates that some federally-sentenced persons in SIUs continue to experience conditions that amount to solitary confinement. In a brief submitted to the committee, Professor Doob, who served as chair of the Structured Intervention Unit – Implementation Advisory Panel and has been conducting research on the implementation of SIUs, reported that federally-sentenced persons in these units are experiencing many of the same issues that were experienced under administrative segregation. In his submission to the committee, for example, he shared that:

- many federally-sentenced persons are placed in SIUs for more than two months, often without the required four hours of time outside of their cell each day, nor with the minimum two hours of interaction with others.
- 28.4% of the SIU stays qualify as solitary confinement as defined by the Mandela Rules.
- 9.9% of stays exceeded 15 days, constituting indefinite or prolonged solitary confinement.<sup>427</sup>

Moreover, Professor Doob reported that some of these concerning practices are more pronounced in particular regions. He estimated that 40.6% of SIU stays in

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<sup>426</sup> Ivan Zinger, Correctional Investigator, Letter to the Chair of RIDR, 3 May 2021.

<sup>427</sup> RIDR, Briefs, Anthony Doob, “Submission to the Senate Standing Committee on Human Rights,” Brief submitted to the committee, 30 April 2021.

Quebec would be considered solitary confinement, while 19.5% of SIU stays in the Pacific region constituted indefinite or prolonged solitary confinement.<sup>428</sup>

In a brief submitted to the committee, the CSC explained that federally-sentenced persons in SIUs frequently chose not to leave their cells for the minimum periods for by the CCRA. It noted that Independent External Decision Makers (IEDMs)<sup>429</sup> have reviewed more than 1,400 cases in which time outside of one's cell was at issue:

In 81% of these cases, the IEDM has concluded that CSC has taken all reasonable steps to provide the opportunities and encourage the inmate to use the opportunities. In the remaining 19%, the IEDMs have made recommendations to CSC. Once the recommendations from an IEDM are received, CSC has 7 days to respond.<sup>430</sup>

The Correctional Investigator also noted that some practices and confinement conditions other than SIUs may also violate humane standards of custody and are subject to little or no external oversight. These highly restrictive environments include dry cells, medical isolation units, voluntary limited association ranges, therapeutic ranges, protective custody, psychological or mental health observation (e.g. suicide watch), and secure (maximum security) units for women.<sup>431</sup> The committee remains concerned about the existence of segregation-like conditions for any federally-sentenced person, whether in SIUs or elsewhere in federal institutions.

## **b. Oversight of Structured Intervention Units**

In 2019, two external oversight entities were put in place to monitor the implementation of SIUs: the Structured Intervention Unit – Implementation Advisory Panel (the SIU-IAP) and IEDMs (provided for under new section 37.6 of the CCRA).

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<sup>428</sup> Ibid.

<sup>429</sup> Independent External Decision Makers (IEDM) provide oversight related to an inmate's conditions and duration of confinement in an SIU and review cases. See below for further discussion. See also: Public Safety Canada, *Structured Intervention Units*.

<sup>430</sup> RIDR, Briefs, CSC, "Submission to the Senate Standing Committee on Human Rights," Brief submitted to the committee, 6 May 2021.

<sup>431</sup> Ivan Zinger, Correctional Investigator, Letter to the Chair of RIDR, 3 May 2021.

### **(i) Structured Intervention Unit – Implementation Advisory Panel**

On 6 September 2019, the Minister of Public Safety Canada established the SIU-IAP, which was tasked with monitoring and assessing “the progress of SIU implementation, ensure greater transparency, and identify and report on any challenges.”<sup>432</sup> At the same time, the minister appointed Professor Doob as chair of the SIU-IAP.

In a brief submitted to the committee in May 2021, Professor Doob explained that the SIU-IAP experienced operational difficulties from its inception. He reported that the CSC “did not cooperate with the panel” by providing sufficient access to information. Professor Doob also noted that the SIU-IAP is no longer operational since the expiration of its members’ terms, including that of the chair. In a written response submitted to the committee, Commissioner Kelly noted that the SIU-IAP’s “mandate expired in September 2020,” but that the government is “committed to the external oversight of SIU implementation and looks forward to making an announcement soon regarding the re-establishment of the SIU Implementation Advisory Panel.”<sup>433</sup>

Despite the expiration of his term as chair, Professor Doob has continued in an unofficial oversight role, on a voluntary basis, with Professor Jane Sprott, using administrative data shared by the CSC, a situation the committee views as less than ideal. The committee believes that external oversight mechanisms – including the SIU-IAP – are critical for the successful implementation of SIUs and the ongoing protection of the human rights of federally-sentenced persons.

### **(ii) Independent External Decision Makers**

In contrast to the SIU-IAP, IEDMs are mandated by the CCRA to provide ongoing oversight of a federally-sentenced person’s conditions and duration of confinement in an SIU. For example, IEDMs are responsible for reviewing cases in which a

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<sup>432</sup> Public Safety Canada, “Government appoints expert Advisory Panel to monitor new correctional system,” 6 September 2019.

<sup>433</sup> Anne Kelly, Commissioner, CSC, “Response to Standing Committee on Human Rights,” 18 May 2021.



federally-sentenced person in an SIU has consistently not spent the minimum four hours a day outside of their cell or the minimum of two hours of interaction with others.<sup>434</sup> IEDMs also have the power to make binding decisions to remove a federally-sentenced person from an SIU under certain circumstances, and may publish information related to their determinations.

In a written response submitted to the committee, Commissioner Kelly highlighted that IEDMs work at arms-length from the CSC and are “comprised of lawyers, professors, and researchers with experience and knowledge in the fields of criminal justice, mental health, vulnerable populations, human rights, and administrative law.”<sup>435</sup> She also noted that “IEDMs have signaled their intention to produce a report describing the important work they do, including the functioning of IEDMs during their first year of work.”<sup>436</sup>

However, in a report submitted to the committee, the Correctional Investigator expressed concern about the transparency of the IEDM oversight process, noting that:

it is unclear whether and how CSC responds to the recommendations of [IEDMs]. Despite provisions under section 37.77 of the CCRA that authorize the publication of information by an IEDMs, there has not been any public reporting on the activities of this oversight mechanism.<sup>437</sup>

In a subsequent written response to the committee, the Correctional Investigator further highlighted the importance of external oversight, and suggested that decisions with respect to placements and stays in SIUs should be subject to either judicial review or “full hearings before Independent Adjudicators with access to lawyers.”<sup>438</sup>

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<sup>434</sup> CCRA, s. 37.83.

<sup>435</sup> Anne Kelly, Commissioner, CSC, “Response to Standing Committee on Human Rights,” 18 May 2021.

<sup>436</sup> Anne Kelly, Commissioner, CSC, “Response to Standing Committee on Human Rights,” 18 May 2021.

<sup>437</sup> Ivan Zinger, Correctional Investigator, Letter to the Chair of RIDR, 3 May 2021.

<sup>438</sup> Ivan Zinger, Correctional Investigator, Letter to the Chair of RIDR, 14 May 2021.



Professor Doob echoed these concerns in a response submitted to the committee, noting the importance of transparency, clarity, and accountability in the oversight process. He further stated:

I see the accountability problem in SIUs as relating to the structures and procedures currently in place. The problems we identified do not relate to the quality of the IEDMs who were chose. Hence it would not be sufficient simply to change the identity of the decision makers. It is possible that some groups – e.g. judges – would not tolerate the circumstances in which IEDMs have been required to make their decisions, but the structure of the independent oversight of SIUs must be addressed. This involves much more than just a review of who performs the external oversight.<sup>439</sup>

The final oversight entity relevant to SIUs is the OCI, which has a broad mandate that includes investigating individual complaints. Given the importance of external oversight to SIU implementation and to the human rights of federally-sentenced persons in general, the committee was troubled to learn that the OCI has been unable to physically visit any institutions since March 2020 because of measures imposed to prevent the spread of COVID-19.<sup>440</sup>

In the implementation of SIUs, our committee firmly agrees with witnesses and the courts that the CSC must avoid perpetuating the many problems associated with segregation outlined in this chapter, including detrimental psychological effects and the overrepresentation of certain vulnerable and marginalized groups. Canada must honour its constitutional obligations and international commitments and cease all practice of prolonged and indefinite solitary confinement.

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<sup>439</sup> Anthony Doob, “15 May 2021 reply to a question from Senator Pate.”

<sup>440</sup> Ivan Zinger, Correctional Investigator, Letter to the Chair of RIDR, 3 May 2021.

As such, the committee recommends:

### **Recommendation 33**

**That the Correctional Service of Canada ensure that Structured Intervention Units adhere to the most recent court decisions and respect Canada's human rights obligations and international commitments, including by:**

- **eliminating the use of solitary confinement for all federally-sentenced persons;**
- **taking into account the different needs and experiences of particular groups, including LGBTQI2-S persons and women;**
- **eliminating solitary confinement in excess of 15 days;**
- **providing meaningful human contact and continued access to programming as well as 24-hour access to health and mental health services; and**
- **establishing judicial oversight to review all Structured Intervention Unit placements and decisions.**

### **Recommendation 34**

**That the Correctional Service of Canada immediately end the use of separation by any name with youth, women and those with disabling mental health issues, and implement mental health assessments and judicial oversight to eliminate the overrepresentation of federally-sentenced Indigenous Peoples, Black persons, other racialized persons and persons with mental health issues in Structured Intervention Units.**

### C. Mistreatment, Discrimination, and a Culture of Silence

During the committee's study, senators frequently heard stories of the mistreatment and discrimination that federally-sentenced persons face from correctional staff.<sup>441</sup> Private meetings with current and former correctional staff revealed that discrimination and mistreatment against staff by other staff is also an issue in federal penitentiaries. As stated in the introduction to this report, these accounts from federally-sentenced persons and staff were not verified with the administration of the CSC in order to protect those who shared their stories from retribution. Furthermore, statistics on complaints made internally or to the OCI or CHRC may be an underestimation of the problem given that many federally-sentenced persons avoid filing grievances because the process is ineffective and they fear intimidation and retaliation.<sup>442</sup> The problems with the grievance system are described in further detail in Section E: Access to Justice. The large number of such stories in addition to corroborating witness testimony and previous reports by the OCI and others lead the committee to conclude that mistreatment of, and discrimination against, federally-sentenced persons and staff is a continuing problem in the federal correctional system.

In a submission, the CSC stated that correctional officers receive robust human rights training and are aware of the Mandela Rules, the Charter and the human rights provisions of the CCRA, among other relevant laws and policies. Further, during training correctional officers "learn how specific laws and policies govern how they conduct their work and the importance of respecting the rule of law in the performance of their duties."<sup>443</sup> While the committee is encouraged that correctional officers receive such training, it is concerned by the wide range of testimony pointing to ongoing discrimination in federal correctional facilities.

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<sup>441</sup> RIDR, *Evidence*, 8 February 2018 (Chris Cowie, Executive Director, Community Justice Initiatives); RIDR, *Evidence*, 14 February 2018 (Natalie Charles, Former Provincial Prisoner, as an Individual); RIDR, *Evidence*, 7 August 2018 (Toni Sinclair, Executive Director, Elizabeth Fry Society of Edmonton, as an Individual).

<sup>442</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec); RIDR, *Evidence*, 26 March 2018 (El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, as an Individual).

<sup>443</sup> RIDR, Briefs, *Human Rights in Correctional Officer Training Continuum*, submitted by CSC, 16 July 2019.

In the 1996 report of the Commission of Inquiry into certain events at the Prison for Women in Kingston, Commissioner Louise Arbour noted a “defensive culture... within the Correctional Service”<sup>444</sup> Over two decades later, it appears that this problem persists in federal corrections. Indeed, during the committee’s study, the President of the Union of Canadian Correctional Officers (UCCO), Jason Godin, sent a letter to the Minister of Public Safety condemning comments made by members of this committee on the mistreatment and discrimination against federally-sentenced persons that they had observed during site visits as “insulting and inflammatory” (see Appendix C). Similar concerns regarding a culture of secrecy and intimidation among correctional staff were highlighted in the Ashley Smith inquest in 2014<sup>445</sup> as well as a 2017 report commissioned by the CSC following allegations of sexual harassment in Edmonton Institution.<sup>446</sup> The committee acknowledges that the CSC has taken steps to address these issues in recent years,<sup>447</sup> but the accounts it collected from federally-sentenced persons and staff indicate that more must be done.

## 1. Mistreatment

Select accounts from federally-sentenced persons reveal the extent of mistreatment by correctional staff in federal penitentiaries across Canada. The committee was told that some correctional officers try to provoke a reaction out of federally-sentenced persons, and when they finally succeed, punish them for insubordination. Federally-sentenced persons recounted being sworn at, pushed and generally disrespected by correctional officers. In several penitentiaries, federally-sentenced persons told senators of how some correctional officers provoke conflict between federally-sentenced persons by spreading inciteful rumours. The Correctional

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<sup>444</sup> Solicitor General of Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, Commissioner: The Honourable Louise Arbour, 1996, p. 174.

<sup>445</sup> Donovan Vincent, “[Ashley Smith inquest: Ex-investigator slams ‘culture of intimidation’ at Saskatoon prison](#),” *The Star*, 17 April 2013.

<sup>446</sup> Marion Warnica, “[Edmonton Institution runs on ‘culture of fear’ and intimidation, report finds](#),” *CBC News*, 22 June 2017.

<sup>447</sup> CSC, *Response to the Coroner’s Inquest Touching the Death of Ashley Smith*, December 2014; CSC, “[Update on Edmonton Institution](#),” News release, 18 January 2018.

Investigator also noted similar stories of provocation on the part of correctional officers in a 2017 report.<sup>448</sup>

Ms. Latimer also reported on other maltreatment by correctional officers:

Prisoner accounts of double dooring which traps incompatible prisoners in confined spaces raise the spectre of deliberate cruelty and risk of harm to others. Also worthy of investigation are the allegations that some prisoners in psychiatric distress are being told to go ahead and kill themselves. Prisons are harsh environments but prisoners vulnerable due to power imbalances should not be treated with cruelty.<sup>449</sup>

While the committee heard that most correctional officers do not participate in these activities, it also heard that they rarely step in to stop them. According to current and former correctional staff with whom the committee met, guards that are friendly with federally-sentenced persons can be ostracized from their colleagues. Former correctional staff, including two former wardens on the record, stated that staff refrain from coming forward when they see harassment or abuse to avoid potential reprisal from their colleagues.<sup>450</sup> According to a recent survey cited by the Correctional Investigator, correctional staff are twice as likely to be harassed by their colleagues or supervisors than by federally-sentenced persons. The same survey found that 31% of CSC staff had experienced harassment in the previous two years compared to 19% of the rest of the public service.<sup>451</sup> The committee agrees with the Correctional Investigator that “if staff disrespect, humiliate or disabuse each other one can only imagine how they might treat prisoners.”<sup>452</sup> As such, the committee recommends:

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<sup>448</sup> OCI, *Missed Opportunities: The Experience of Young Adults Incarcerated in Federal Penitentiaries – Final Report*, 31 August 2017. According to the Correctional Investigator, one respondent stated that “Staff make borderline comments, rude and unnecessary. They seem to go out of their way to make a problem where there isn’t one.”

<sup>449</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>450</sup> RIDR, *Evidence*, 4 October 2017 (Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, as an Individual; Nancy Wrenshall, as an Individual).

<sup>451</sup> RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

<sup>452</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

## Recommendation 35

**That the Correctional Service of Canada urgently take all necessary measures to implement and promote a human rights culture within the federal correctional system, including by:**

- **enforcing a zero-tolerance policy with regards to mistreatment and abuse of federally-sentenced persons by correctional staff and contracted employees and other service providers;**
- **enhancing harassment prevention and resolution training among managers and staff;**
- **fostering a healthy and human rights promoting work environment where staff can report abuse without fear of reprisal; and**
- **responding promptly and effectively to mistreatment complaints from staff and federally-sentenced persons by other staff or federally-sentenced persons.**

### **D. Discrimination, including Racism and Sexism**

Witness testimony combined with site visits made clear that federally-sentenced persons from vulnerable and marginalized groups often face mistreatment on account of their race, ethnicity, sex, sexual orientation, gender identity or religion. Since 2014, the OCI has received 64 complaints from federally-sentenced persons regarding discrimination.<sup>453</sup> The Canadian Human Rights Commission reported that between 2012 and 2017, it received 203 complaints involving discrimination on the

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<sup>453</sup> OCI, [\*Annual Report of the Office of the Correctional Investigator 2014-2015\*](#), 26 June 2015; OCI, [\*Annual Report of the Office of the Correctional Investigator 2015-2016\*](#), 30 June 2016; OCI, [\*Annual Report of the Office of the Correctional Investigator 2016-2017\*](#), 28 June 2017; OCI, [\*Annual Report of the Office of the Correctional Investigator 2017-2018\*](#), 29 June 2018.

basis of disability, Indigeneity, and religion, among other grounds.<sup>454</sup> Several of these complaints included allegations of harassment by correctional staff against federally-sentenced persons.<sup>455</sup>

Federally-sentenced Indigenous Peoples, Black persons, and other racialized persons in federal penitentiaries across Canada told the committee that some correctional staff and other federally-sentenced persons use racial slurs to taunt and humiliate them. They also reported that federally-sentenced persons using racist language are not always reprimanded by staff. The committee heard from several federally-sentenced persons at one penitentiary that a correctional officer would use racial slurs over the intercom when referring to federally-sentenced Black persons. Others reported that if they congregate with other members of their race, correctional staff may accuse them of participating in gang-related activities – something that does not happen to their white peers. Those who protest racism perpetrated against them report being penalized, while the perpetrators do not face consequences.

Several witnesses concurred that “prejudice among staff members” exists in federal penitentiaries, perpetuating “stereotypes, offensive comments, racism, derogatory comments and at time gestures” against federally-sentenced persons of colour.<sup>456</sup> The OC’s report, *A Case Study on Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, stated that federally-sentenced Black men “described being labelled a ‘gang member’, a ‘trouble maker,’ a ‘drug dealer’ and/or a ‘womanizer.’”<sup>457</sup> This was corroborated by many CSC staff. Some federally-

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<sup>454</sup> RIDR, *Evidence*, 14 June 2017 (Tabatha Tranquilla, Senior Policy Advisor, Policy, Research and International Division, Canadian Human Rights Commission).

<sup>455</sup> RIDR, *Evidence*, 14 June 2017 (Tabatha Tranquilla, Senior Policy Advisor, Policy, Research and International Division, Canadian Human Rights Commission).

<sup>456</sup> RIDR, *Evidence*, 26 March 2018 (Theresa Halfkenny, Chair, Atlantic Region, CSC, Regional Ethnocultural Advisory Committee); , RIDR, *Evidence*, 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual); RIDR, *Evidence*, 4 October 2018 (Alexa Potashnik, President and Founder, Black Space Winnipeg).

<sup>457</sup> OCI, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, 28 February 2014.

sentenced Black persons also reported being ignored by staff and ridiculed for having an accent.<sup>458</sup>

The committee heard that some LGBTQI-2S federally-sentenced persons are targeted by other federally-sentenced persons and staff because of their sexual orientation or gender identity. For example, federally-sentenced transgender persons told senators that some staff deliberately use the wrong pronouns to refer to them. Aaron Devor, Professor and Chair in Transgender Studies, University of Victoria, reported hearing from federally-sentenced transgender persons whose change in gender was not taken seriously by staff, stating that “they’re ridiculed and not dealt with in a serious and dignified way.”<sup>459</sup> Federally-sentenced transgender persons are also more vulnerable to violent attacks, including sexual violence, perpetrated by other federally-sentenced persons.<sup>460</sup> The CHRC told the committee that it has received numerous complaints from federally-sentenced transgender persons being held in penitentiaries for men alleging discrimination based on gender identity or expression, including discriminatory placement, unwarranted denial of sex reassignment surgery and other medical care, searches and urinalysis testing by guards of the opposite gender, and lack of private shower and toilet facilities, which can provoke further discrimination.<sup>461</sup> As of 2017, the CSC now requires that federally-sentenced persons be placed according to their gender identity, if that is their preference, unless there are overriding health or safety concerns which cannot be resolved.<sup>462</sup> Previously, federally-sentenced transgender persons were placed in a penitentiary that corresponded with their sex assigned at birth or genitalia.<sup>463</sup> The committee heard there is much more to be done to protect federally-sentenced transgender persons, as many federally-sentenced transgender persons still choose

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<sup>458</sup> OCI, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, 28 February 2014. See also: RIDR, *Evidence*, 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual).

<sup>459</sup> RIDR, *Evidence*, 11 August 2018 (Aaron Devor, Founder and Inaugural Chair in Transgender Studies, Founder and Academic Director of the Transgender Archives, Professor of Sociology, University of Victoria, as an Individual).

<sup>460</sup> RIDR, *Evidence*, 11 August 2018 (Aaron Devor, Founder and Inaugural Chair in Transgender Studies, Founder and Academic Director of the Transgender Archives, Professor of Sociology, University of Victoria, as an Individual).

<sup>461</sup> RIDR, Letter to RIDR from CHRC, 18 April 2019.

<sup>462</sup> CSC, *Interim Policy Bulletin 584*.

<sup>463</sup> CSC, *Guidelines – Gender Dysphoria*.



not to be incarcerated in the penitentiary that affirms their gender identity due to safety issues.

Federally-sentenced persons with mental health issues are another group that faces frequent discrimination. Ms. Latimer gave testimony about the treatment that mentally-ill individuals receive in federal correctional facilities. She said that federally-sentenced persons in the Millhaven RTC “indicated that if they were feeling suicidal and they mentioned it to one of the guards, the guards would say, ‘Go ahead and commit suicide; it’ll be one less person for us to look after.’”<sup>464</sup> As she pointed out, “counselling suicide is a criminal offence,”<sup>465</sup> and such conduct falls far below the standard of professionalism expected. The committee heard similar accounts during its own discussions with federally-sentenced persons and staff in various penitentiaries in different regions of the country, confirming that these are not isolated incidents. In addition, the committee heard that in some penitentiaries, guards facilitated and provoked violence and abuse towards federally-sentenced persons who were elderly, mentally ill, and subject to mobility limitations by other federally-sentenced persons.

The committee also heard about the discrimination faced by federally sentenced women and their unique experience with practices carried out in penitentiaries. For example, Ashley Pankiw, Provincial Reintegration Worker, Elizabeth Fry Society of Manitoba, illustrated the devastating effects of routine strip searches on incarcerated women:

when considering the personal histories of trauma, neglect, abuse and violence of the women in custody, to further subjugate them to regular strip searches is a conscious revictimization of a vulnerable population. Strip searches being conducted by correctional officers of the same sex in an effort to be less uncomfortable is a discriminatory assumption based on heteronormative values and norms. It is an example of policy and the resulting

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<sup>464</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>465</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

treatment of prisoners being governed by bigoted ideas about gender, sex, sexual orientation and sexual preference.<sup>466</sup>

Women often forgo family visits to avoid mandatory strip searches. Witnesses also told the committee that routine strip searches prevent women from participating in work release programs or temporary absences, even to see their children, negatively affecting their rehabilitation and reintegration efforts.<sup>467</sup> Many federally-sentenced women told the committee during site visits that routine strip searches are traumatizing, degrading and humiliating. The committee notes that, according to the Mandela Rules, strip searches should be undertaken “only if absolutely necessary” and not used as a matter of routine.<sup>468</sup>

The committee learned that correctional staff from vulnerable and marginalized groups also face discrimination and harassment from their colleagues. Senators met with former female correctional officers who experienced sexual harassment from federally-sentenced persons and from their colleagues. The committee also heard from racialized correctional staff who had been targets of racism from colleagues and federally-sentenced persons during their time working at federal penitentiaries. A key element that can perpetuate discriminatory behaviour in federal penitentiaries is a lack of diversity among staff, which the committee noticed in several penitentiaries. Data submitted by the CSC indicates that 10.7% of institutional staff are Indigenous, and 9% are “visible minorities.”<sup>469</sup> The committee emphasizes the importance of ensuring diversity when hiring staff so that the unique needs of the diverse population of federal penitentiaries, including staff, are understood and met.

Mr. Godin stated that most discrimination complaints are anecdotal and unfounded, and stressed that “the last thing a correctional officer wants in a unit or institution is discrimination.”<sup>470</sup> The committee accepts that most federally-sentenced persons

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<sup>466</sup> RIDR, *Evidence*, 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker Elizabeth Fry Society of Manitoba). See also: RIDR, *Evidence*, 7 June 2017 (Debbie Kilroy and Amanda George, as individuals).

<sup>467</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec); RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 6 February 2019 (Catherine Latimer, Executive Director, John Howard Society of Canada).

<sup>468</sup> Mandela Rules, Rule 52.

<sup>469</sup> RIDR, Briefs, Submission by the CSC, 3 May 2019.

<sup>470</sup> RIDR, *Evidence*, 20 March 2019 (Jason Godin, National President, UCCO-SACC-CSN).

and former staff that the committee spoke with on these issues emphasized that only a small number of staff engaged in discriminatory conduct. Nonetheless, as the committee heard stories of harassment and maltreatment during its visits to each of the federal penitentiaries visited across Canada, it became clear that the issue requires immediate attention and action.

As such, the committee recommends:

### **Recommendation 36**

**That the Correctional Service of Canada improve its training for correctional personnel regarding human rights standards and principles of equality and non-discrimination, including in relation to race, sex, sexual orientation, gender identity and expression, and mental health.**

### **Recommendation 37**

**That the Correctional Service of Canada provide educational outreach for federally-sentenced persons regarding human rights standards and principles of equality and non-discrimination, including in relation to race, sex, sexual orientation, gender identity and expression, and mental health.**

## **E. Access to Justice**

Many witnesses spoke about the barriers faced by federally-sentenced persons who pursue reporting human rights violations. In every federal penitentiary the committee visited, federally-sentenced persons told the committee that the grievance system is flawed and does not work. Most had given up trying to use it because of lengthy wait times and they fear potential retaliation from staff. Complaints and grievances are processed internally by the CSC.<sup>471</sup> The Correctional

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<sup>471</sup> CCRA, ss. 90 – 91.2 set out the grievance process. More detail is found in CCRR, ss. 74 – 82, [CD 081- Offender Complaints and Grievances](#), and CSC's guidelines on the "[Offender Complaint and Grievance Process](#)." Written complaints may be made to the supervisor of the staff member whose actions are being grieved. An initial grievance is

Investigator told the committee that the CSC promotes the informal resolution of issues over filing formal grievances.<sup>472</sup> Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec, also explained that the grievance process

is not an independent process. If a correctional officer mistreated an inmate and the inmate files a grievance, it will be evaluated by the officer's colleague. So we often say that the federal grievance process is somewhat incestuous because it is not really independent. In general, inmates have the impression that grievances are absolutely useless, because in any case the person who will evaluate the grievance will be a work colleague of the person concerned. So that is really a problem.<sup>473</sup>

Witnesses stated that the grievance system is severely backlogged and as a result, grievances take too long to be resolved if addressed at all. The committee also heard that federally-sentenced persons can face intimidation and retaliation for filing grievances or even for inquiring with correctional staff about filing grievances. According to witnesses, reprisals could take various forms including harassment, destruction of property, loss of privileges, interference with correspondence, visits and programming, neglect of responsibilities, excessive use of force, and delays in completion of paperwork as well as lack of support for access to programs and conditional release. These types of reprisals were discussed in some detail by El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, who indicated that retaliation can also come in very subtle ways, such as being labelled as a "troublemaker" on the range or being continually targeted for disciplinary action based on the arbitrary exercise of discretion.<sup>474</sup> Federally-sentenced persons consistently indicated that there were no repercussions for staff who retaliated against those who filed grievances. The committee heard that correctional staff could sometimes also face reprisals from colleagues if they assisted federally-sentenced persons in filing grievances.

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submitted to the Institutional Head or District Director (for grievances related to parole). A final grievance is submitted to the Commissioner of the CSC.

<sup>472</sup> RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

<sup>473</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

<sup>474</sup> RIDR, *Evidence*, 26 March 2018 (El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, as an Individual).

The committee saw an example of this flawed process at one of the penitentiaries they visited. There was a sticker on the box accessible to federally-sentenced persons to submit anonymous complaints. This was a protest sticker from correctional officers who had conducted a job action related to the renegotiation of their collective agreement. This sticker placed on the box showed an image of a correctional officer in full riot gear above a caption that read: “Correctional officers never start the fights... but we always finish them.”

Escalating grievances to the courts or to an independent body such as the CHRC, the Office of the Privacy Commissioner or the OCI can be very difficult due to practical restrictions on access to lawyers (including cost and institutional routines), lack of understanding on how to escalate complaints, and very restricted access to computers and a total lack of access to the Internet. Senators noted at several penitentiaries that the legal resources available in the libraries are extremely outdated. Similarly, the committee was informed that federally-sentenced persons do not always have timely access to the most up-to-date Commissioner’s Directives. Federally-sentenced persons at one penitentiary told the committee that legal clinics rarely, if ever visited to help them with complaints. Indeed, as we neared the end of the study, West Coast Justice Prison Legal Services, the only legal clinic that provides legal services in segregation, was advised that they would no longer be permitted access to the segregation unit at Kent. The rationale eventually provided by the CSC was that: “the clinics had been terminated to accommodate a recent decision from the B.C. Court of Appeal that compels federal penitentiaries to grant extra time outdoors to segregated inmates and open new units for federally-sentenced persons who need to be moved from segregation for legal reasons.”<sup>475</sup>

The lack of legal resources available for federally-sentenced persons is in contravention of CD 084 on Inmates’ Access to Legal Assistance and the Police, which requires the CSC to ensure that federally-sentenced persons are “made aware of the

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<sup>475</sup>Patrick White, “B.C. prison cancels legal clinics for segregated inmates despite court order,” The Globe and Mail, 7 March 2019.

existence of appropriate legal and regulatory documents and are guaranteed reasonable access to them.”<sup>476</sup>

A number of individuals with whom the committee met during site visits informed senators that correctional staff impeded their ability to contact their lawyers privately. In one instance, the individual was only permitted to make phone calls between 8:00 p.m. and 12:00 a.m., well outside his lawyer’s working hours. CD 085 on Correspondence and Telephone Communication requires that such calls be provided “during normal business hours.”<sup>477</sup> Another individual told the committee that the space for calls in the segregation range was also used for interviews and meetings and did not allow for private or confidential communication, making it impossible to communicate with his lawyer in private at times and thereby interfering with the Charter protected right to counsel. The committee learned from a number of individuals in different jurisdictions that their phone calls were monitored by the CSC, including those with their lawyers. Correspondence to the committee has also been opened by the CSC. CD 085 states that communication with legal representatives and members of the Senate, among other groups, is privileged and confidential. CD 084 requires wardens to ensure that federally-sentenced persons are permitted “confidential visits, written and telephone communication with legal counsel, the courts and their agents.”<sup>478</sup>

The problems enumerated above with access to justice are amplified for federally-sentenced persons with disabilities. For example, the committee learned that federally-sentenced persons who are deaf or hard of hearing face major barriers in communicating with parole officers, lawyers and correctional officers. According to the Canadian Association of the Deaf, the CSC provides limited or no training to staff on communicating with this vulnerable population.<sup>479</sup>

All of these barriers potentially infringe on federally-sentenced persons’ constitutional right to access to justice, as recognized by the Supreme Court of

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<sup>476</sup> CSC, *CD 084 – Inmates’ Access to Legal Assistance And The Police*.

<sup>477</sup> CSC, *CD 085 – Correspondence And Telephone Communication*.

<sup>478</sup> CSC, *CD 084 – Inmates’ Access to Legal Assistance And The Police*.

<sup>479</sup> Canadian Association of the Deaf, *Administration of Justice: The Experiences of Deaf, DeafBlind, and Deaf People with Additional Disabilities in Accessing the Justice System*, 25 April 2018.

Canada.<sup>480</sup> These barriers appear to be in direct contravention of not only the law but also CSC policy. The committee reiterates the words of Ms. Latimer: “Rights without remedies are no rights at all.”<sup>481</sup>

As such, the committee recommends:

### **Recommendation 38**

**That the Correctional Service of Canada ensure that the access to justice rights of federally-sentenced persons are respected and upheld, including by:**

- **responding to and resolving the backlog of grievances filed by federally-sentenced persons, and ensuring the rapid resolution and redress of all future grievances;**
- **establishing an independent review process for grievances filed by federally-sentenced persons to eliminate the risk of reprisals by implicated staff and ensure confidence in the grievance process;**
- **properly educating its employees with respect to the rights of incarcerated persons and informing them of the Service’s commitment to seeing that these rights are respected and enforced, in keeping with the Arbour Commission recommendations. As a result, conduct human rights training for federally-sentenced persons and staff similar to that provided for regional advocates by the Canadian Association of Elizabeth Fry Societies; and**
- **incorporating an external review process to assess and remedy the gaps between law and policies regarding access to justice rights and the application of these laws and policies.**

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<sup>480</sup> *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59.

<sup>481</sup> RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

### **Recommendation 39**

**That the Department of Justice, in keeping with the recommendation made by the Arbour Commission, examine legislative mechanisms by which to create sanctions for correctional interference with the integrity of a sentence and that such sanctions provide that if illegalities, gross mismanagement or unfairness in the administration of a sentence renders the sentence harsher than that imposed by the court:**

- **In the case of a non-mandatory sentence, a reduction of the period of imprisonment be granted, to reflect that the punishment administered was more punitive than the one intended, should a court so find; and**
- **In the case of a mandatory sentence, the same factors be considered as militating towards earlier release.**



## CHAPTER 5 – REHABILITATION AND REINTEGRATION PROGRAMMING

Correctional programming is one of the core functions of the federal correctional system. Section 3 of the CCRA states that federal corrections must “contribute to the maintenance of a just, peaceful and safe society...” by assisting in the rehabilitation of federally-sentenced persons through the provision of programming in penitentiaries or the community.<sup>482</sup> Section 76 of the CCRA states that the provision of programming within correctional facilities is the CSC’s responsibility.<sup>483</sup> Correctional programming is defined under CD-726 as “a structured intervention that targets empirically-validated factors directly linked to offenders’ criminal behaviour, in order to reduce reoffending.”<sup>484</sup> It also states that the purpose of the CD on correctional programming is to

maximize correctional programs effectiveness, to ensure integrity in program management and delivery, and to ensure that correctional programs respect gender, ethnic, cultural and linguistic differences, and are responsive to the special needs of women, Aboriginal offenders, offenders requiring mental health care and other groups.<sup>485</sup>

Correctional programming that targets risk factors can contribute to gradual, structured release and it can play an important role in reducing recidivism and making communities safer.<sup>486</sup> In a submission to the committee, the CSC stated that

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<sup>482</sup> CCRA, s. 3.

<sup>483</sup> CCRA, s. 76.

<sup>484</sup> CSC, *CD 726 – Correctional Programs*.

<sup>485</sup> Commissioner’s Directives, *CD 726 – Correctional Programs*.

<sup>486</sup> RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada); RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociological Studies, University of Toronto, as an Individual); RIDR, *Evidence*, 5 April 2017 (Anita Desai, Executive Director, St. Leonard’s Society of Canada); RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada,

its last internal evaluation, conducted in 2009, “revealed that overall, participation in correctional programs resulted in a greater likelihood of conditional release, reductions in readmissions, and a lower likelihood of reoffending.”<sup>487</sup>

The committee also heard that programming can serve an important psychological purpose as it distracts federally-sentenced persons from the penitentiaries’ mundane routine.<sup>488</sup> Ms. Anderson stated that “[p]rograms are essential in a correctional sector if we want people to become less violent and to move the men in different trains of thought. Otherwise, they are stuck in little areas being bored. Aggression can appear, and tempers can flare.”<sup>489</sup>

The CSC told the committee that it takes its mandate to deliver programming to federally-sentenced persons seriously.<sup>490</sup> Anne Kelly, who was at the time Senior Deputy Commissioner of the CSC, explained that

CSC has developed correctional programs that are empirically based, structured interventions which contribute to reducing reoffending by targeting factors known to be directly related to criminal behaviour. CSC offers a broad range of correctional programs to offenders both in institutions and in the community to ensure the continuity of care and interventions and increased public safety.<sup>491</sup>

The committee was informed that correctional programming is delivered by “certified correctional program officers who have successfully completed the

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Office of the Auditor General of Canada); RIDR, *Evidence*, 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker, Elizabeth Fry Society of Manitoba).

<sup>487</sup> CSC, “[Follow-Up Response, The Senate Standing Committee on Human Rights \(RIDR\) Regarding Human Rights of Prisoners in the Federal Correctional System, February 27, 2019 Appearance](#)” [Follow-Up Response – Questions regarding CSC Programming], Written response submitted to the committee, 16 April 2019.

<sup>488</sup> RIDR, *Evidence*, 4 October 2018 (Dianne Anderson, Coordinator, Restorative Ministry, Roman Catholic Diocese of Saskatoon).

<sup>489</sup> RIDR, *Evidence*, 4 October 2018 (Dianne Anderson, Coordinator, Restorative Ministry, Roman Catholic Diocese of Saskatoon).

<sup>490</sup> RIDR, *Evidence*, 1 February 2017 (Anne Kelly, Senior Deputy Commissioner, CSC).

<sup>491</sup> RIDR, *Evidence*, 1 February 2017 (Anne Kelly, Senior Deputy Commissioner, Correctional Services of Canada).

required training.”<sup>492</sup> Correctional programming may be developed internally or externally.<sup>493</sup> CD 726-1 states that correctional programming development will:

- a) be based on empirically validated models of behavioural change
- b) address factors that have been empirically demonstrated to be linked to criminal behaviour
- c) employ methods that have been consistently effective with offenders in reducing re offending
- d) provide offenders with skills to reduce re-offending and to encourage successful reintegration
- e) include methods that are responsive to each offender’s specific responsivity factors, such as the needs of women, Aboriginal offenders, offenders requiring mental health care and other groups
- f) have an intensity and continuum of care related to the level of risk
- g) employ methods to maintain participant performance
- h) includes a process for ongoing monitoring and evaluation.<sup>494</sup>

In its May 2021 submission, the CSC informed the committee that despite the ongoing COVID-19 pandemic, it has resumed programming “with new health and safety measures in place,” prioritizing federally-sentenced persons who are high risk and those approaching their release date.<sup>495</sup> The CSC also reported that it “has

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<sup>492</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019.

<sup>493</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019.

<sup>494</sup> CSC, *CD 726-1 – National Correctional Program Standards*.

<sup>495</sup> RIDR, Briefs, CSC, “Submission to the Senate Standing Committee on Human Rights,” Brief submitted to the committee, 6 May 2021.

promoted alternative program delivery methods such as the use of video conferencing.”<sup>496</sup>

In its last update on COVID-19 in federal penitentiaries, however, the OCI reported that even though federally-sentenced persons are obligated to stay within their cohorts to avoid mixing, they are required to stay three meters apart during programming – even within the same cohort. As noted by the OCI, this seemingly arbitrary distance, which is insisted upon by the union, differs from Health Canada’s two-meter recommendation or safe physical distancing. As space for programming is already limited, the effect of this measure has been prohibitive. As the OCI explained:

Under normal circumstances, a Correctional Program Officer would deliver correctional programming to ten to twelve participants and a teacher would have a class size of twelve to fifteen students. A limited amount of programming space means that only so many programs can run at any one time and the size of these spaces means that groups must be small to ensure the three-metre distancing. COVID-19 measures have meant that programming group sizes have generally been reduced to three to five individuals. At best, the Office estimates that correctional programming and education classes are running at 30%-50% capacity. Several institutions reported smaller group size (2-3 participants) and of the twenty-one reporting institutions, nearly three-quarters ran at least one correctional program with only one participant. One institution was running nearly half of its correctional programs with only one participant.<sup>497</sup>

From 2017-2019, witnesses who appeared before the committee agreed on the importance of correctional programming to facilitate gradual and structured release from the federal correctional system. Many, however, also questioned its availability

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<sup>496</sup> RIDR, Briefs, CSC, “Submission to the Senate Standing Committee on Human Rights,” Brief submitted to the committee, 6 May 2021.

<sup>497</sup> OCI, “Third COVID-19 Status Update,” 23 February 2021, p. 18.

and quality.<sup>498</sup> Rwubinder Dhanu, Lawyer, Dhanu Dhaliwal Law Group, South Asian Bar Association of British Columbia argued that “basic human rights in prison must include a real right to secure proper programming and be provided with a realistic and effective opportunity to effect change.”<sup>499</sup> As Dianne Anderson, Coordinator, Restorative Ministry, Roman Catholic Diocese of Saskatoon, stated, “[w]e all want the same thing. Whether you are a Conservative or a Liberal, a judge or a criminal, a victim or a visitor, we want the people in prison to come out better people, better citizens, better parents. This can’t happen when programs aren’t offered.”<sup>500</sup>

During site visits the committee met with numerous federally-sentenced persons who were participating in correctional programming. Their main objective was to successfully reintegrate in their communities by becoming productive members of society and avoiding recidivism. Their hope was that correctional programming would give them the tools they need to achieve these objectives. The committee heard about the many barriers to accessing correctional programming underscored by Agents of Parliament, academics, correctional staff, civil society organizations as well as former and current federally-sentenced persons. The challenges they highlighted touched on virtually every aspect of programming including educational programming and vocational training, the delivery of correctional programming (Integrated Correctional Program Model) as well as access to correctional programming. The committee notes that these challenges are compounded for marginalized and vulnerable groups.

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<sup>498</sup> RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada); RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociolegal Studies, University of Toronto, as an Individual); RIDR, *Evidence*, 5 April 2017 (Anita Desai, Executive Director, St. Leonard’s Society of Canada); RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker, Elizabeth Fry Society of Manitoba).

<sup>499</sup> RIDR, *Evidence*, 4 October 2018 (Dianne Anderson, Coordinator, Restorative Ministry, Roman Catholic Diocese of Saskatoon).

<sup>500</sup> RIDR, *Evidence*, 4 October 2018 (Dianne Anderson, Coordinator, Restorative Ministry, Roman Catholic Diocese of Saskatoon).

## A. Educational Programming and Vocational Training

On average, federally-sentenced persons have a lower educational attainment than the general population. As such, education is a critical component of reintegration.<sup>501</sup> As stated by Emma Halpern, “education is a very positive way to help to support reintegration and address recidivism because certainly, education can help to connect [with] the community and provide some of the needed supports around employment...”<sup>502</sup> A brief submitted to the committee by the CSC stated that:

- Involvement in Correctional Education decreases recidivism by approximately 20–30%.
- Involvement in Post-Secondary Education decreases recidivism by about 45–75%.
- Completing a Post-Secondary program decreases recidivism by up to 50–100%.
- Correctional Services Canada’s own evaluation of its educational programs found \$6.37 in direct savings for every \$1 spent on education.
- Participants in Education programs generally have fewer disciplinary problems, fewer infractions, more positive relationships with other [federally sentenced persons] ... and staff, and can act as a ‘calming influence’.
- Children of [those] ... who take part in Education programs report more motivation to succeed in school.

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<sup>501</sup> RIDR, *Evidence*, 30 January 2019 (Howard Sapers, Former Correctional Investigator of Canada, as an Individual); RIDR, *Evidence*, 20 February 2019 (Ajay Pandhi, Vice President, Canadian Association of Social Workers).

<sup>502</sup> RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia).

- Participants in education demonstrate improved employability and earning potential.
- Participants in Education programs show improvements in overall mental health.<sup>503</sup>

As such, the CSC makes educational programming mandatory for all federally-sentenced persons with less than a grade 12 education, or its provincial equivalent.<sup>504</sup> Many of the federally-sentenced persons with whom the committee met during site visits were enrolled in an education program or had obtained their high school diploma (or provincial equivalent) in the federal correctional system. Many federally-sentenced persons were eager to take part in educational programs but expressed their disappointment in the lack of availability of vocational and post-secondary options.

The committee agrees with the CSC that education is an important component of the reintegration process. For many federally-sentenced persons, obtaining meaningful employment upon release is a priority, forming an integral part of their reintegration plan. A number of federally-sentenced persons with whom the committee met experienced barriers accessing higher education and vocational training opportunities. Many federally-sentenced persons voiced anxiety about their prospects of obtaining meaningful work due to limited educational opportunities in federal penitentiaries. The committee shares this concern. Institutional barriers should not be preventing federally-sentenced persons from accessing opportunities that could increase their chances of a successful reintegration.

## 1. Higher Education

The committee was informed that federally-sentenced persons can access post-secondary education at their own expense through mail correspondence.<sup>505</sup>

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<sup>503</sup>CSC, "Impact of Correctional Education," presentation provided to the Committee by Peter Stuart, Acheron College, Grand Valley Institution for Women.

<sup>504</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019; CSC, [Education Programs](#).

<sup>505</sup> See CSC, [CD 720 – Education and Services for Inmates](#) and CSC, [CD 720-1 – Guidelines for Education Programs](#).

Most federally-sentenced persons, however, told senators that this is not a viable option. The CSC does not provide Internet access, even for educational purposes, which creates a significant barrier to accessing university or college courses only offered online, which is the case with the majority of courses offered by distance.<sup>506</sup> Wendy Bariteau, a former federally-sentenced woman, explained that:

Distance education is also unavailable, usually, because with technology nowadays, every distance education is on the Internet. Since we're not allowed the Internet, it is very rare that you can find a course that actually has books. So 20 years ago, you could probably get a doctorate in federal prison, and in 2018 you can't even get a high school diploma by distance anymore. When it comes to education in the CSC system, we have gone backwards instead of going forward.<sup>507</sup>

The provision of university courses by the CSC was terminated in the early 1990s. Moreover, federally-sentenced persons do not earn enough money within federal correctional facilities to pay for post-secondary education in addition to their other obligations (room and board, telephone, medication, supplementary food items, clothing, etc.). Rick Sauvé, Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada, explained how these costs can be prohibitive to higher educational attainment:

the cost factor for prisoners, because they have to pay room and board and they have to now pay for over-the-counter medication... They don't have the funds to do that. As to a lot of the education programs that were taking place... Now, men and women serving time don't have that kind of disposable income. I've seen prisoners coming back into the community with \$80 after being in prison for decades.<sup>508</sup>

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<sup>506</sup> RIDR, *Evidence*, 11 August 2018 (Wendy Bariteau, as an Individual).

<sup>507</sup> RIDR, *Evidence*, 11 August 2018 (Wendy Bariteau, as an Individual).

<sup>508</sup> RIDR, *Evidence*, 5 April 2017 (Rick Sauvé, Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada).



CD 720-1 states that federally-sentenced persons may “request a referral to the Post-Secondary Education Program when they meet the academic prerequisites.”<sup>509</sup> The academic prerequisites may be obtained through the Post-Secondary Prerequisite Program when federally-sentenced persons have identified the “courses that they require in order to pursue post-secondary studies, vocational programs or employment opportunities.”<sup>510</sup> The committee was told, however, that the CSC is failing to help federally-sentenced persons identify and take the courses that reflect their career interests. Aundre Green-Telfer, Managing Director, Ethnocultural Programs and Services, Audmax Inc. explained that

it is not the fact that they can’t finish high school in the institutions. They can, and they are given the resources to do so. However, they don’t have guidance with respect to the courses they need to be taking.

...

Most of them don’t have the math or the prerequisites to do some kind of trade or post-secondary at the university level.<sup>511</sup>

#### **a. Walls to Bridges**

The committee learned about a program named “Walls to Bridges” at Grand Valley Institution for Women. This program enables federally-sentenced women to enroll in university classes at Wilfred Laurier University within the penitentiary, alongside university students from the community. The classes take place in the penitentiary. The program appears to be popular and successful in supporting reintegration.<sup>512</sup>

The committee met with a former federally-sentenced woman who had participated in the Walls to Bridges program. She told the committee that since her release she had been enrolled part-time at the University of Toronto and “was recently

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<sup>509</sup> CSC, *CD 720 – Education and Services for Inmates*.

<sup>510</sup> CSC, *CD 720 – Education and Services for Inmates*.

<sup>511</sup> RIDR, *Evidence*, 18 October 2017 (Aundre Green-Telfer, Managing Director, Ethnocultural Programs and Services, Audmax Inc.).

<sup>512</sup> RIDR, *Evidence*, 8 February 2018 (Halina (Lin) Haag, PhD Student, Faculty of Social Work, Wilfrid Laurier University and Researcher, Acquired Brain Injury Research Lab, University of Toronto, as an Individual).

presented with an award from the Bank of Montreal for [her] exceptional achievement of successfully completing the bridging program with top grades.”<sup>513</sup> The committee received positive reviews on the efficacy of the Walls to Bridges program, however they heard that the spaces available to federally-sentenced persons are very limited. Acquiring funds to pay tuition fees presents an insurmountable obstacle for many. Since federally-sentenced persons do not have access to the Internet, completing assignments and coursework can be difficult. Although it appears that the program could be strengthened in a number of ways, the committee believes that it could provide a starting point as a model for other regions. The committee also believes the CSC should provide federally-sentenced persons participating in Walls to Bridges and other educational programs with access to a computer and limited supervised Internet for research purposes on resource databases. Not only would this provide adequate resources to complete the educational programming, computer navigation skills would be essential for career preparation aiding in reintegration.

As such, the committee recommends:

#### **Recommendation 40**

**That the Correctional Service of Canada provide federally-sentenced persons with internet access for secondary and post-secondary programming, as well as the guidance, resources and educational courses and programs they need to fulfil their career objectives, which should be included in and supported by correctional plans. The Correctional Service Canada should also work with universities and other post-secondary institutions to develop courses for federally-sentenced persons modeled after the Walls to Bridges program and deliver these courses in federal correctional facilities across the country.**

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<sup>513</sup> RIDR, *Evidence*, 14 February 2018 (Denise Edwards, Former Federal Prisoner, as an Individual).

## 2. Vocational Training

Employment is another essential part of reintegration.<sup>514</sup> CD 735 - Employment and Employability Program provides a policy framework to give federally-sentenced persons “opportunities to develop employability skills and acquire employment experience in preparation for reintegration into society.”<sup>515</sup> The policy provides for the vocational training opportunities through CORCAN.

CORCAN is a Special Operating Agency<sup>516</sup> within the CSC. According to the CSC, it:

offers employment training and employability skills to offenders in correctional institutions, to support rehabilitation and help lower rates of reoffending. ... As a key rehabilitation program for CSC, CORCAN uses on-the-job training to help offenders develop and practise essential employment skills. CORCAN also offers third party-certified vocational training in areas where the labour market is growing, including construction, trades and entrepreneurship training.<sup>517</sup>

CORCAN shops in some penitentiaries offer training and professional certifications in a variety of trades including cooking, carpentry, welding, heavy machinery as well as textiles and laundry.<sup>518</sup> Ms. Kelly, Commissioner, CSC, informed the committee that:

In fiscal year 2017-18, there were almost 15,000 certificates earned. They are broken down by over 9,100 certificates by non-Indigenous men, almost 1,300 for non-Indigenous women, 3,400 for Indigenous men and almost 700 for Indigenous women. There are employment coordinators, staff and contractors that also assist offenders when they are released under community

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<sup>514</sup> RIDR, *Evidence*, 20 February 2019 (Ajay Pandhi, Vice President, Canadian Association of Social Workers).

<sup>515</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019; CSC, *CD 735 – Employment and Employability Program*.

<sup>516</sup> “Special Operating Agencies are operational organizations which have a degree of autonomy within existing departmental structures, but which remain accountable to the deputy minister.” (Betty Rogers, *Special Operating Agencies: Human Resources Management Issues*, Canadian Centre for Management Development, Minister of Supply and Services Canada, 1996).

<sup>517</sup> CSC, *CORCAN – Employment and Employability*.

<sup>518</sup> OCI, *Annual Report 2016-2017*.

supervision, and they helped 2,667 participate in community job placements. There is a lot of work done through CORCAN in jobs for offenders.

The other thing is, in 2017, we received money. It was mostly for CORCAN initiatives for Indigenous offenders to set up community industries in both Edmonton and Saskatoon so offenders could learn basic construction skills and then be able to apply what they have learned when they are released to the community.<sup>519</sup>

CORCAN is an important program that facilitates reintegration by increasing employability. The federally-sentenced persons with whom the committee met that were participating in CORCAN expressed a sense of fulfilment and confidence in their ability to reintegrate as a result of this program. During site visits, however, the committee was informed that many federally-sentenced persons were unable to participate in CORCAN because spaces were very limited and highly sought-after.

The committee was informed that fewer CORCAN hours and jobs are available than there used to be. At one penitentiary, for instance, federally sentenced-persons participating in a welding program could earn experience hours in the penitentiary that counted towards their apprenticeship hours upon release. Because of limited hours, however, many federally-sentenced persons were leaving the penitentiary without the requisite hours to be employed.

Considering how many federally-sentenced persons are determined to find employment upon release and workforce shortages in some areas, Dr. Owusu-Bempah wondered why the CSC is “not taking a sub-population of individuals who likely have low levels of educational attainment and low sets of employment-related skills, and other areas where we have shortages of people, to fill those gaps where we rely on immigration for higher- and lower-skilled occupations? Why are we not creating programming within institutions to allow individuals to get jobs on the back end of their stay?”<sup>520</sup>

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<sup>519</sup> RIDR, *Evidence*, 27 February 2019 (Anne Kelly, Commissioner, CSC).

<sup>520</sup> RIDR, *Evidence*, 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual).

As such, the committee recommends:

#### **Recommendation 41**

**That the Correctional Service of Canada work with CORCAN and community-based businesses and organizations to develop a broader range of programs, training, employment and volunteer opportunities for federally-sentenced persons to increase availability of, and opportunities for, internships and paid work experience in federal correctional facilities with updated wages**

The committee heard from many witnesses about penitentiary farms, which was a successful CORCAN program in the past that had been terminated.

##### **a. Penitentiary Farms**

CORCAN used to operate penitentiary farms in six federal correctional facilities across Canada until their closure in 2008.<sup>521</sup> During site visits, many federally-sentenced persons informed the committee that the closure of prison farms was a significant loss for their rehabilitation, reintegration and quality of life within correctional facilities. In addition to providing penitentiaries with fresh dairy, produce and meat, the farms also provided federally-sentenced persons with life skills and work experience in various fields including farm management and agriculture. Some witnesses stressed the benefits of penitentiary farms for federally-sentenced persons and the communities in which they were located. For instance, Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University, explained that Collins Bay was particularly beneficial. He stated:

that farm in particular was probably the most financially rewarding farm in terms of what it could produce for CSC. And that's not even counting the intrinsic benefits, the job training benefits, which I think some people have felt as though, if you weren't going into farming, then how could that be good job

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<sup>521</sup> CSC, [Release of Results of CSC Penitentiary Farms Public Consultation](#); CSC, [Reopening of CORCAN farm operations](#).

training? But I think that overlooks the essence of farming, which is really problem-solving, and animal husbandry, carpentry and everything else. I had numerous clients back in private practice who were on the farm for extended periods of time. I never heard anything that wasn't glowing in terms of its impact on them.<sup>522</sup>

Budget 2018, announced \$4.3 million “over five years to support the reopening of the CSC penitentiary farm operations at Joyceville and Collins Bay Institutions in Kingston, Ontario.”<sup>523</sup> Ms. Kelly told the committee that the federally-sentenced persons at Collins Bay Institution are currently working on the management of the land and are expecting some cattle to arrive in the spring. When both farms are open, the CSC anticipates that between 40 and 60 direct jobs will have been created.<sup>524</sup>

According to a submission by the CSC, “penitentiary farms will include a variety of different farming related activities, including land management, crop production, bee-keeping, beef stocker, dairy cattle, and dairy goats.”<sup>525</sup> Products derived from framing activities will either be used internally or sold by CORCAN to companies in Canada. With respect to animals farmed for meat, the CSC stated that it does not slaughter animals. It explained that the

abattoir located at Joyceville Institution is leased to a private business which operates this facility. A small number of inmates are involved in an industry training program working at the location. They are registered with the Ontario Ministry of Trades and are earning hours toward a retail meat cutter apprenticeship.<sup>526</sup>

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<sup>522</sup> RIDR, [Evidence](#), 15 May 2017 (Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen’s University, as an Individual).

<sup>523</sup> CSC, [Reopening of CORCAN farm operations](#).

<sup>524</sup> RIDR, [Evidence](#), 27 February 2019 (Anne Kelly, Commissioner, CSC).

<sup>525</sup> CSC, [“Follow-Up Response, The Senate Standing Committee on Human Rights \(RIDR\) Regarding Human Rights of Prisoners in the Federal Correctional System,”](#) received 4 July 2019.

<sup>526</sup> CSC, [“Follow-Up Response, The Senate Standing Committee on Human Rights \(RIDR\) Regarding Human Rights of Prisoners in the Federal Correctional System,”](#) received 4 July 2019.

The committee is encouraged that progress is being made in the reopening of the penitentiary farms at Joyceville and Collins Bay Institutions in Kingston, Ontario, and recommends the farms in other regions be reopened in collaboration with their respective community stakeholders.

As such, the committee recommends:

### Recommendation 42

**That the Correctional Service of Canada work with CORCAN, local businesses, community partners and other stakeholders to reopen and expand penitentiary farms in federal correctional facilities across the country and consider a therapeutic model in conjunction with community partners.**

### 3. Integrated Correctional Program Model

The committee was informed that in recent years the CSC introduced the Integrated Correctional Program Model (ICPM), which is designed to address multiple risk factors that contribute to criminality by combining a host of correctional programs.<sup>527</sup> The programs offered through the ICPM are divided in three streams: multi-target programs, the Aboriginal multi-target program and sex offender programs. Under each stream, various programs are offered that range in intensity from ‘moderate’ to ‘high.’ The CSC explains that through the ICPM, federally-sentenced persons “learn to understand the risk factors that are linked to their criminal behaviour. They learn to use the skills they gain from the program in challenging or stressful situations.”<sup>528</sup>

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<sup>527</sup> CSC, *Integrated Correctional Program Model*; RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society); RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 11 August 2018 (Rubinder Dhanu, Lawyer, Dhanu Dhaliwal Law Group, South Asian Bar Association of British Columbia); RIDR, *Evidence*, 6 February 2019 (Stan Stapleton, National President, Union of Safety and Justice Employees).

<sup>528</sup> CSC, *Integrated Correctional Program Model*.

In a submission to the committee, the CSC states that research conducted on the ICPM found that:

- The ICPM is more efficient than the traditional cadre of correctional programs with respect to time between admission to the first program and time required to complete all correctional programs to meet offenders' needs.
- Offenders participating in ICPM were significantly less likely to have incurred an institutional charge, and incurred fewer charges, compared to offenders participating in the traditional cadre of programs.
- Taking into account overall decreases in discretionary release rates, a significantly higher percentage of offenders in the ICPM were granted discretionary release as compared to offenders participating in the traditional cadre of programs.
- Trends suggested more positive results for ICPM participants being returned to custody for any reason as compared to the traditional cadre of programs.
- Offenders who participated in the moderate intensity ICPM program were significantly less likely to return to custody for a new offence as compared to offenders who participated in moderate intensity programs in the traditional cadre of programs.<sup>529</sup>

Despite these apparent advantages, numerous witnesses and federally-sentenced persons questioned the approach of combining multiple programs.<sup>530</sup> They argued that by generalizing programming, the CSC does not accurately target risk factors.<sup>531</sup>

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<sup>529</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019.

<sup>530</sup> RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society); RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 11 August 2018 (Rubinder Dhanu, Lawyer, Dhanu Dhaliwal Law Group, South Asian Bar Association of British Columbia); RIDR, *Evidence*, 7 August 2018 (Lisa Neve, as an Individual); RIDR, *Evidence*, 6 February 2019 (Stan Stapleton, National President, Union of Safety and Justice Employees).

<sup>531</sup> RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society); RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 11 August 2018 (Rubinder



As Catherine Latimer explained, “[i]t becomes more and more formulaic and a variety of programs they had were being compressed into a single program.”<sup>532</sup> The CSC has “a certain template for the programs they deliver but they don’t necessarily match up with the individual needs of the people who are there and who are actually kind of keen to try and make some progress and put their lives back together.”<sup>533</sup> One witness stated:

ICPM provides the same type of programming to every offender regardless of the issues that they have, regardless of their background. For those involved with gangs, corrections will go and identify certain targets that these individuals should meet, such as, “Well, you should stop your association with gangs,” or “You should get drug and alcohol counselling.” However, the options and targets that are given, the program that is given, are very generic and of little real utility, according to what I’m hearing from my clients.<sup>534</sup>

During site visits some federally-sentenced persons informed the committee they were reluctant to fully participate in programs offered in group settings. Federally-sentenced persons convicted of a sexual offence, for example, may hesitate to participate actively in a group setting. Similarly, federally-sentenced women who have been victims of sexual violence may be uncomfortable sharing their stories with the whole group. For some federally-sentenced persons to fully benefit from correctional programming, it needs to reflect their individual needs.

While the committee recognizes that the ICPM was designed to ensure federally-sentenced persons are able to access correctional programming in a timely manner, the witnesses indicated that the quality is not adequate. Lisa Neve told the committee that this was an important contrast to how programming used to be delivered. She told the committee that the previous way that the program was delivered

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Dhanu, Lawyer, Dhanu Dhaliwal Law Group, South Asian Bar Association of British Columbia); RIDR, *Evidence*, 6 February 2019 (Stan Stapleton, National President, Union of Safety and Justice Employees).

<sup>532</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society).

<sup>533</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society).

<sup>534</sup> RIDR, *Evidence*, 11 August 2018 (Rubinder Dhanu, Lawyer, Dhanu Dhaliwal Law Group, South Asian Bar Association of British Columbia).

was amazing. People who committed crimes for years and took this course found out how detrimental it was to other people. It was really effective. I think that if they had more things that applied to you—like saying, “Oh, if you take this program, it would be good for this.” It has to be things that apply to you, that are part of your crime pattern or part of your history. If it’s addiction, they should have addiction courses, instead of just having this blanket effect, “Oh, we’ll do life skills and teach you how to live.” Well, I’m doing life in prison, so what do I need to live for? I think that they have to teach you things that apply to your life and that affect you and make your sentence work with you not against you. You can say, “I walked out of prison and I knew I was never going back,” and that takes a long time and a lot of work.<sup>535</sup>

#### 4. Security Threat Group

Federally-sentenced persons who are suspected of being part of a gang or associated with one have the label Security Threat Group (STG) added to their file.<sup>536</sup> Once the STG label has been assigned, federally-sentenced persons told the committee it is very difficult to have it removed. Not only do they have to go through a number of institutional steps, but the CSC must also confirm with law enforcement agencies that the individual is no longer a person of concern. Even after obtaining agreement from the CSC and law enforcement that the label no longer applies, it remains on the federally-sentenced person’s file as “inactive” rather than being removed completely.<sup>537</sup> The committee was told that the CSC does not have a program to help federally-sentenced persons exit gangs or programming geared to help federally-sentenced persons have the STG status removed from their record. During site visits, the committee learned about the dangers federally-sentenced persons face when trying to leave a gang. Rubinder Dhanu explained that

[t]here are two primary problems. First, we have a prison culture where it is taboo to approach correctional officers for assistance, even if one wishes to

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<sup>535</sup> RIDR, *Evidence*, 7 August 2018 (Lisa Neve, as an Individual).

<sup>536</sup> RIDR, *Evidence*, 6 February 2019 (Philip Atkins, Participant, Breakaway).

<sup>537</sup> RIDR, *Evidence*, 6 February 2019 (Philip Atkins, Participant, Breakaway).

seek assistance to break out of this type of lifestyle. If other inmates see that you are too friendly with correctional staff, your safety, well-being and even your life may be in jeopardy. So it's not always the case that these individuals don't want to break free. It is often the case, or at least sometimes the case, that they fear to break free. Instead, what happens is that prisoners and inmates are conditioned by the prevailing prison culture to rely upon other gang members for the help, support and guidance they need in an institutional setting, and obviously that support does not include leaving gang life.<sup>538</sup>

The committee heard about an effective program that supports federally-sentenced persons to unaffiliate from gangs. "Breakaway" in the Ontario Region is funded by the St. Leonard's Society and helps "lifers"<sup>539</sup> break away from gang culture within federal penitentiaries.<sup>540</sup> Breakaway is a volunteer-driven peer-based program.<sup>541</sup> Rick Sauvé, who helped start the program, explained:

When I was coming back in through PeerLife, there were some young Black prisoners who said: "We know you were in a motorcycle club. How did you break away from that lifestyle? How did you get away from it?" They wanted to become involved in their own rehabilitation. That's how we came up with the idea of Breakaway.

We had very few resources to do it. In fact, I think I'm the only one that's doing this in the Ontario region. What I've been doing is going into different institutions. I get permission from the warden. The wardens are supportive to allow me to come in to do this. Then I put the word out and guys sign up. It's a voluntary thing. We're starting a third group here now. We just started on Monday.

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<sup>538</sup> RIDR, *Evidence*, 11 August 2018 (Rubinder Dhanu, Lawyer, Dhanu Dhaliwal Law Group, South Asian Bar Association of British Columbia).

<sup>539</sup> Federally-sentenced persons with a life sentence.

<sup>540</sup> RIDR, *Evidence*, 6 February 2019 (Rick Sauvé, Facilitator, Breakaway); St. Leonard Society of Canada, *PeerLife: A Collaborative Network*.

<sup>541</sup> RIDR, *Evidence*, 6 February 2019 (Rick Sauvé, Facilitator, Breakaway; Leon Boswell, Participant, Breakaway; RIDR, Philip Atkins, Participant, Breakaway).

The guys who have gone through the group are the ambassadors for the group. That's why we came up with the idea. The three of us here talked about setting up peer support because they can influence younger prisoners coming in so they can break away from that lifestyle as well.

It's hard to get resources to do it. The prisons are spread out across Ontario. There's a need for it. When we were doing the groups, we had guys coming up and knocking on the door and saying, "Hey, can I get into this group?" There really is nothing in place to assist guys who fall under the STG, the Security Threat Group label.

I learned so much from the guys in the group that they are so genuine and want to change their lives. When I come in here, I see thousands and thousands of hours of wasted opportunities. I see the positive impact that the guys who go through the program have in working with other prisoners, especially the younger prisoners, that they could be a positive influence on that.<sup>542</sup>

Although the committee was pleased that this program is experiencing success. It was disappointed to learn that it has not been funded by the CSC, despite the fact that it would cost relatively little to provide the Breakaway program throughout Canada.<sup>543</sup> In a cost estimate prepared by the Parliamentary Budget Officer on the cost of implementing Bill C-83, the cost of instituting the Breakaway program annually was estimated to be \$200,000.<sup>544</sup>

As such the committee recommends,

### **Recommendation 43**

**That the Breakaway program be funded by the Correctional Service of Canada and expanded nationally and made available to federally-sentenced**

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<sup>542</sup> RIDR, *Evidence*, 6 February 2019 (Rick Sauvé, Facilitator, Breakaway).

<sup>543</sup> RIDR, *Evidence*, 6 February 2019 (Rick Sauvé, Facilitator, Breakaway).

<sup>544</sup> Office of the Parliamentary Budget Officer, *Cost Estimate for Implementing Structured Intervention Units as set out in Bill C-83 and Related Proposals*, News Release, 25 April 2019.

**persons in all penitentiaries, particularly maximum-security penitentiaries, and to federally-sentenced persons who are not serving a life sentence.**

## **B. Funding Priorities and Programming**

Some witnesses also argued that funding priorities need to change to address the underlying issues causing program delivery challenges.<sup>545</sup> For instance, Fred Sanford, Vice President, John Howard Society of Nova Scotia, explained that the CSC is bolstering its security infrastructure at the cost of programming:

Funding streams for Correctional Services have also changed since the increased emphasis on tough-on-crime. Although the overall costs for funding Correctional Services have increased, the majority of funding is directed towards security investments. Funding for anything other than security, such as core programs, mental health services, harm reduction initiatives and education and employment initiatives appear to be less of a priority during a tough-on-crime era.

In Nova Scotia, from 2012 to 2017, gross expenditures increased by approximately \$11.1 million, or 19 per cent, despite admissions to facilities not rising significantly. The bulk of this funding has been directed towards increased staffing and security initiatives.<sup>546</sup>

Similarly, Daryl Churney, Executive Director General, Parole Board of Canada, indicated that only a small portion of the CSC's overall budget is dedicated to correctional programming.<sup>547</sup>

In a brief submitted to the committee, the CSC explained that not including Offender Case Management, programming (Community Engagement, Chaplaincy, Elder Services, Correctional Program Readiness, Correctional Programs, Correctional

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<sup>545</sup> RIDR, *Evidence*, 21 March 2018 (Fred Sanford, Vice President, John Howard Society of Nova Scotia); RIDR, *Evidence*, 27 February 2019 (Daryl Churney, Executive Director General, Parole Board of Canada).

<sup>546</sup> RIDR, *Evidence*, 21 March 2018 (Fred Sanford, Vice President, John Howard Society of Nova Scotia).

<sup>547</sup> RIDR, *Evidence*, 27 February 2019 (Daryl Churney, Executive Director General, Parole Board of Canada).

Program Maintenance, Offender Education, CORCAN Employment and Employability and Social Programs) accounts for 8.7% of the CSC’s budget.<sup>548</sup> The CSC also provided the following table of aggregated data:

**Table 7 – Programming cost (in \$ millions) provided by the CSC**

	<b>Operating</b>	<b>Grants &amp; Contributions</b>	<b>Capital</b>	<b>Total</b>	<b>Percentage of Total Budget</b>
Custody	\$1,390.80	\$0.10	\$148.20	\$1,539.10	63.0%
Correctional Interventions					
P8 (Offender Case Management)	\$227.30	\$0.00	\$0.00	\$227.30	9.3%
P9-P17 (all other programs under CR2)	\$191.50	\$0.00	\$21.80	\$213.30	8.7%
Community Supervision	\$162.60	\$0.00	\$0	\$162.60	6.7%
Internal Services	\$282.50	\$0.00	\$19.20	\$301.70	12.3%
<b>Main total Estimates</b>	<b>\$2,254.70</b>	<b>\$0.10</b>	<b>\$189.20</b>	<b>\$2,444.00</b>	<b>100.0%</b>

Source: Information taken from a brief submitted to the committee by the CSC. See CSC, [Follow-Up Response – Questions regarding CSC Programming](#), Written response submitted to the committee, 16 April 2019.

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<sup>548</sup> CSC, “Follow-Up Response – Questions regarding CSC Programming”, Written response submitted to the committee, 16 April 2019.

On the other hand, Mr. Churney indicated that the CSC may be delivering some programs to federally-sentenced persons who do not need it, which may negatively affect reintegration. He stated that the

CSC's own research has demonstrated that about 40 per cent of the federal inmate population is low risk. We know the research has said that if you over-program with low-risk people, you're often doing more harm than good.

We have to, as a system, be more considerate about where we expend resources and focus those resources on people who are high risk and high need and do less with the low-risk people to move them more expeditiously through the system. I think that would be helpful.<sup>549</sup>

As such, the committee recommends:

#### **Recommendation 44**

**That the Correctional Service of Canada conduct a Gender-Based Analysis Plus of its funding allocations for correctional programming to ensure that all correctional programming reflects the needs and desires of federally-sentenced persons.**

### **C. Programming for Marginalized or Vulnerable Groups**

Section 4(g) of the CCRA states that “correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, aboriginal peoples, persons requiring mental health care and other groups.”<sup>550</sup> Throughout the study however, the committee heard that the challenges regarding correctional programming experienced by the general population are amplified for federally-sentenced racialized and Black persons, federally-sentenced Indigenous Peoples, federally-sentenced women, and

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<sup>549</sup> RIDR, *Evidence*, 27 February 2019 (Daryl Churney, Executive Director General, Parole Board of Canada).

<sup>550</sup> CCRA, s. 4.

federally-sentenced persons with disabilities. As mentioned in previous chapters of this report, these populations are marginalized in the correctional system and the area of correctional programming is no exception to this rule, where such individuals experience issues of timeliness, quality and relevance, as discussed below.

## 1. Federally-Sentenced Persons Who are Deaf and Hard of Hearing

The evidence the committee received on the challenges federally-sentenced persons who are deaf and hard of hearing encounter when accessing and completing correctional programming is indicative of the barriers faced by federally-sentenced persons with disabilities as a whole. Section 27(4) of the CCRA requires the CSC to provide the assistance of an interpreter to federally-sentenced persons who do not have the capacity to understand at least one of Canada’s official languages for the purpose of hearings and understanding materials provided to them. The CHRC informed the committee that under the CHRA, as a federal service provider, the CSC has an obligation to accommodate federally-sentenced persons with disabilities “up to the point of undue hardship, and to assess and address their needs.”<sup>551</sup> The CHRC added that this responsibility is

bolstered by section 4(g) of the CCRA, which requires CSC to ensure that correctional programs, policies and practices respect differences and respond to the special needs of [federally-sentenced persons] including those related to prohibited grounds of discrimination. CSC must ensure that respect for differences related to prohibited grounds of discrimination is reflected in the design and delivery of correctional services (including correctional policies, programs, practices and facilities). Based on case law from the Supreme Court of Canada, it is clear that CSC has an obligation to not only be aware of differences between [federally-sentenced persons] related to prohibited grounds of discrimination but also “build conceptions of equality” into correctional services as far as reasonably possible... CSC bears the burden of demonstrating undue hardship.<sup>552</sup>

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<sup>551</sup> Canadian Human Rights Commission, “Canadian Human Rights Commission – Submission”, Brief submitted to the committee, 8 April 2019.

<sup>552</sup> Canadian Human Rights Commission, “Canadian Human Rights Commission – Submission”, Brief submitted to the committee, 8 April 2019.



CDs 700, 726-2, 720 and 720-1 state that the CSC must provide correctional programming, including educational programming, that respects and responds to federally-sentenced persons requiring mental health care and those with physical disabilities.<sup>553</sup> In a submission to the committee, the CSC stated that it “has developed policies, guidelines, training, resources, and programs to ensure that correctional and educational programs are responsive to the special needs of [federally-sentenced persons].”<sup>554</sup>

Regarding federally-sentenced deaf persons, the CSC stated that it provides ongoing training and evaluations for personnel that work with this population, including program officers and teachers. The CSC informed the committee that it supplements the training with their “Responsivity and Resource Kits,” which help staff members who work with federally-sentenced persons address their specific needs in correctional and educational programming. The kits also provide “theoretical and detailed practical information on how to work with [federally-sentenced persons] with special needs or who require special consideration in the program context.”<sup>555</sup> The CSC’s submission also explained that federally-sentenced persons

whose needs cannot be accommodated in the traditional Adult Basic Education program and/or national correctional programs can be referred to Adapted Adult Basic Education Programs and/or adapted correctional programs. These programs cover the same concepts as national programs, but at a slower pace with more time given to the consolidation of knowledge and skills and more opportunity to individualize the program content to specific needs.<sup>556</sup>

The committee was informed that federally-sentenced deaf persons are struggling to access correctional programming. The CHRC informed the committee that it has

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<sup>553</sup> CSC, [CD 700 – Correctional Interventions](#); CSC, [CD 720 – Education Programs and Services for Inmates](#), CSC, [CD 720-1 – Guidelines for Educations Programs](#) and [CD 726-2 – National Correctional Program Referral Guidelines](#).

<sup>554</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019.

<sup>555</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019.

<sup>556</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019.

received a number of complaints in this regard.<sup>557</sup> As a result, a survey commissioned by the Canadian Association of the Deaf found that federally-sentenced deaf persons are less likely to achieve successful correctional outcomes because they face barriers in accessing correctional programming. On a practical level, according to the submission, one respondent to the survey stated that interpretation services are difficult to access, which impedes their ability to “access programs and that then leads to them being denied parole.”<sup>558</sup> It should be noted that another respondent stated that services for federally-sentenced deaf people varied from one region to another. Having served time in Alberta and Ontario, the respondent stated that in Ontario access to correctional programming through interpreting services were offered regularly and consistently.<sup>559</sup>

As such, the committee recommends:

#### **Recommendation 45**

**That the Correctional Service of Canada ensure that all federally-sentenced deaf and hard of hearing persons are able to access correctional programming through appropriate access to relevant medical devices and reliable interpretation services.**

## **2. Federally-Sentenced Racialized Persons**

The rising population of federally-sentenced racialized persons presents an emerging challenge for the CSC, who has responded to this changing dynamics by implementing a number of interventions, services and activities tailored to racialized groups to: “help [federally-sentenced persons] value their culture; emphasize the value of culture in the social transformation process; enable them to think critically about the experience and effects of marginalization and stereotyping; and support

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<sup>557</sup> Canadian Human Rights Commission, “Canadian Human Rights Commission – Submission”, Brief submitted to the committee, 8 April 2019.

<sup>558</sup> Canadian Association of the Deaf, “[Administration of Justice: The Experiences of Deaf, DeafBlind, and Deaf People with Additional Disabilities in Accessing the Justice System](#)”, Brief submitted to the committee, 28 March 2019.

<sup>559</sup> Canadian Association of the Deaf, “[Administration of Justice: The Experiences of Deaf, DeafBlind, and Deaf People with Additional Disabilities in Accessing the Justice System](#)”, Brief submitted to the committee, 28 March 2019.

[federally-sentenced persons] who do not speak either of Canada’s official languages.”<sup>560</sup>

CD 767-Ethnocultural Offenders: Services and Interventions lays out a number of responsibilities for various CSC managers to ensure that federally-sentenced racialized persons have access to culturally relevant programming and services.<sup>561</sup> The policy also requires the CSC to obtain advice on the delivery of programming and services aimed at federally-sentenced racialized persons from the National Ethnocultural Advisory Committee (NEAC) and Regional Ethnocultural Advisory Committees (REAC).<sup>562</sup>

The NEAC is composed of the chair and vice-chair of each REAC and provides advice to the CSC Commissioner. REACs are composed of “volunteers who have years of experience working in multicultural settings, specializing in areas such as policing, employment, community development, conflict resolution, entrepreneurship, ministerial and education.”<sup>563</sup> They provide advice to the regional deputy commissioner in their region.<sup>564</sup>

Anoush Newman, Chair of a Regional Ethnocultural Advisory Committee explained that REACs assist in the rehabilitation of federally-sentenced persons by providing information and resources that help them maintain their cultural and spiritual practices, foster or develop community connections and support their reintegration in the community.<sup>565</sup>

In a brief submitted to the committee, the CSC stated that research it conducted on federally-sentenced racialized persons found that these populations had better

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<sup>560</sup> CSC, “[Protection against Discriminatory Policies and Practices](#)”, Written response submitted to the committee, 16 April 2019.

<sup>561</sup> RIDR, [Evidence](#), 7 August 2018 (Anoush Newman, Chair, CSC, Regional Ethnocultural Advisory Committee); CSC, [CD 767 - Ethnocultural Offenders: Services and Interventions](#).

<sup>562</sup> CSC, [National and Regional Ethnocultural Advisory Committees](#).

<sup>563</sup> RIDR, [Evidence](#), 26 March 2018 (Theresa Halfkenny, Chair, Atlantic Region, CSC, Regional Ethnocultural Advisory Committee).

<sup>564</sup> CSC, [National and Regional Ethnocultural Advisory Committees](#).

<sup>565</sup> RIDR, [Evidence](#), 7 August 2018 (Anoush Newman, Chair, CSC, Regional Ethnocultural Advisory Committee).

correctional outcomes than non-racialized federally-sentenced persons. The brief contained the following points:

- overall, all ethnic groups showed a decreased likelihood of recidivism after participating in correctional programs;
- CSC's correctional programs are equally effective across a broad range of ethnic groups, insofar as offenders who participate in programs are less likely to recidivate than non-participants, regardless of ethnic background;
- in general, ethnocultural offenders face lower readmittance rates compared to their Caucasian counterparts, are assessed as lower risk; have less extensive criminal histories; fewer previous failures on community supervision, segregation placements, escapes and conditional release; and are accordingly less "entrenched" in criminal lifestyle.

Overall, it was found that all ethnic groups showed decreased likelihood of recidivism after participating in correctional programs.<sup>566</sup>

Despite their better correctional outcomes, federally-sentenced racialized persons as well as civil society groups informed the committee that their programming needs are going unmet. Sherman Chan, Co-Chair, Regional Ethnocultural Advisory Committee of the Pacific Region stated that the CSC should:

- increase consultations with REAC and NEAC;
- increase recruitment of culturally diverse staff across all CSC departments;
- create a specific ethnocultural position at each institution and strengthen relationships with ethnocultural groups and communities;

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<sup>566</sup> CSC, "[Protection against Discriminatory Policies and Practices](#)", Written response submitted to the committee, 16 April 2019.

- engage in research that would clarify cultural impacts and provide improved cultural programs in the offender’s language both in and out of prison; and
- work with individual communities to assist them in understanding how the CSC manages, involving them in developing supportive interventions for offenders when they return to the community.<sup>567</sup>

Another issue that was consistently brought to the committee’s attention during site visits was that federally-sentenced racialized persons do not feel represented in those delivering the programming. Many informed the committee that program providers are not well trained and informed of the needs of federally-sentenced racialized persons.<sup>568</sup> Witnesses told the committee that sometimes the lack of cultural awareness fueled unnecessary conflict between federally-sentenced racialized persons and instructors. In the case of federally-sentenced Black women for instance, Denise Edwards explained how these conflicts transpired:

In programming, sometimes we would suck our teeth. They would see that as being disrespectful. We called certain women miss because that’s how we grew up. If we called certain facilitators or officers miss, other ones would see it as a dis. But it wasn’t a dis. Sometimes some people were more humanistic towards us, so we gave them extra respect. We would not be disrespectful, but some people saw it as disrespectful because we didn’t want to share something with them. However, because our experiences are totally different, our world is different and they didn’t want to hear about our world, we had no supports, in other words.

...

If we have a problem, it’s hard to go to a person who doesn’t understand that problem, because they’re going to give you some sort of explanation that they

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<sup>567</sup> RIDR, *Evidence*, 11 August 2018 (Sherman Chan, Co-Chair, Pacific Region, CSC, Regional Ethnocultural Advisory Committee).

<sup>568</sup> RIDR, *Evidence*, 14 February 2018 (Denise Edwards, Former Federal Prisoner, as an Individual); RIDR, *Evidence*, 5 April 2017 (Anita Desai, Executive Director, St. Leonard’s Society of Canada); RIDR, *Evidence*, 18 October 2017 (Maxcine Telfer, Director General, Ethnocultural Programs and Services, Audmax Inc.).

took from out of a book; some sort of a remedy that's not going to work for you. We learnt that, so we became our own sisters. We became a community, but we were a community within.<sup>569</sup>

The CSC uses the term “Ethnocultural offender” to refer to any non-Indigenous federally-sentenced person “who has specific needs based on race, language or culture and who has a desire to preserve his/her cultural identity and practices.”<sup>570</sup> Witnesses pointed out that by categorizing such a broad range of federally-sentenced persons under the so-called “Ethnocultural offender” umbrella, the CSC ignores the vast differences within this categorization and the complexities of each sub-group. Dr. Owusu-Bempah reported that the use of this catch-all term results in a lack of culturally relevant programming. He stated that the “[CSC] lump[s] together very different groups of people with very different experiences, past and present” in programming designated for “ethnocultural offenders.”<sup>571</sup>

For some communities, language is another barrier to accessing programming. Rubinder Dhanu explained that incarcerated first-generation South Asians

often face significant cultural and linguistic barriers, yet there's no programming made available to them in a language that they would actually understand. My clients inform me that they have sat through programming as a part of their correctional plan, in order to pass their correctional plan, but they actually gain nothing from the programming itself because they did not have an adequate comprehension of English. As a result, they lose out on the programming meant to assist with their rehabilitation that other prisoners benefit from, and society loses out because the underlying issue that landed them in jail in the first place is not addressed. There's a need for programming in Punjabi or other South Asian languages, and more South Asian language-speaking officers.<sup>572</sup>

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<sup>569</sup> RIDR, *Evidence*, 14 February 2018 (Denise Edwards, Former Federal Prisoner, as an Individual).

<sup>570</sup> CSC, *CD 767 – Ethnocultural Offenders: Services and Interventions*.

<sup>571</sup> RIDR, *Evidence*, 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual).

<sup>572</sup> RIDR, *Evidence*, 11 August 2018 (Rubinder Dhanu, Lawyer, Dhanu Dhaliwal Law Group, South Asian Bar Association of British Columbia).

The committee reiterates the need for individualized programming that reflects distinct risk factors that contributed to criminality as well as the cultural needs of federally-sentenced racialized persons. Theresa Halfkenny stated that “[c]orrectional programs need to have the cultural component for learning; the need for diversity for those individuals doing the training. The presence of more diversity among employees, such as program instructors, health department, and in some areas correctional officers.”<sup>573</sup> As stated by Rubinder Dhanu: “Human rights... encompass equal rights. However, treating everyone the same does not necessarily mean they’re being treated equally.”<sup>574</sup>

### a. Federally-Sentenced Black Persons

Federally-sentenced Black persons are disproportionately affected by the lack of cultural awareness and relevant programming, due to their overrepresentation in the federal-correctional system and in higher security institutions.<sup>575</sup> As explained by Dr. Owusu-Bempah, part of the problem is that the CSC does not recognize the diversity within the federally-sentenced Black population and treats it as a homogenous group. He explained that this population is composed of Black persons from “communities that have lived in Canada for centuries, established immigrant groups from the Caribbean, as well as more recent immigrants from continental Africa.”<sup>576</sup> Each group within this population may have different needs from one another since those “who speak different languages, have different religions and very different past and present experiences, from those who have immigrated from relatively prosperous countries to those fleeing conflict and violence.”<sup>577</sup> For instance, El Jones, explained that:

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<sup>573</sup> RIDR, *Evidence*, 26 March 2018 (Theresa Halfkenny, Chair, Atlantic Region, CSC, Regional Ethnocultural Advisory Committee).

<sup>574</sup> RIDR, *Evidence*, 11 August 2018 (Rubinder Dhanu, Lawyer, Dhanu Dhaliwal Law Group, South Asian Bar Association of British Columbia).

<sup>575</sup> RIDR, *Evidence*, 26 March 2018 (El Jones, Nancy’s Chair in Women’s Studies, Mount Saint Vincent University, as an Individual); RIDR, *Evidence*, 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual); RIDR, *Evidence*, 6 February 2019 (Zya Brown, Founder, Think Twice); RIDR, *Evidence*, 4 October 2018 (Alexa Potashnik, President and Founder, Black Space Winnipeg, as an Individual).

<sup>576</sup> RIDR, *Evidence*, 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual).

<sup>577</sup> RIDR, *Evidence*, 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual).



African Nova Scotians form a distinct population in Canada and must be recognized as a specific cultural group that is not simply lumped in with African Canadians as a whole. The specific history in this province of enslavement, of liberated slave settlements, of segregation, and of marginalization has particularly deprived our communities and contributed to the high rate of incarceration and criminalization of African Nova Scotian men and women.<sup>578</sup>

Witnesses stressed that these differences must be taken into account by the CSC to maximize the effectiveness of correctional programming.<sup>579</sup>

The committee met with a number of federally-sentenced Black persons during site visits who were discouraged by the quality and availability of culturally appropriate programming. The committee heard that the lack of culturally appropriate programming perpetuates the cycle of criminalization and the systemic discrimination against Black Canadians.<sup>580</sup> In a letter submitted to the committee, a federally-sentenced Black person explained:

As you are aware in the GTA, the violence with young black men is out of control. The amount of shootings and killing is turning into an epidemic, primarily the GTA. This violence will continue to happen unless you start urban black ethno-cultural programming at the penitentiary level. The programs in place at the federal level does not consider the identities of ethno-cultural and particular black offenders. These programs in place have no bearing on the upbringing and the segregation of black people in the low income and impoverished areas but most of all the addiction to anti-social activities and behaviours. In laymen terms there are young black men and other

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<sup>578</sup> RIDR, [Evidence](#), 26 March 2018 (El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, as an Individual).

<sup>579</sup> RIDR, [Evidence](#), 1 March 2017 (Akwasí Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual); RIDR, [Evidence](#), 26 March 2018 (El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, as an Individual); RIDR, [Evidence](#), 1 March 2017 (Akwasí Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual). RIDR, [Evidence](#), 6 February 2019 (Zya Brown, Founder, Think Twice); RIDR, [Evidence](#), 4 October 2018 (Alexa Potashnik, President and Founder, Black Space Winnipeg, as an Individual).

<sup>580</sup> RIDR, [Evidence](#), 26 March 2018 (El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, as an Individual).



ethno-cultural men that are addicted to the hustle. These young men are taking out of society for five to ten years and then they are later put back in their previous neighbourhoods where they must have to carry a gun because if they don't they could possibly lose their life. The cycle will always continue because the problem is that the young kids who were 8 to 10 years old at the time that these young men were incarcerated are now taking over the gangs. In my opinion if you don't start proper run ethno-cultural programming in CSC, you are not protecting the community and neighbourhoods where all this violence is taking place.<sup>581</sup>

During site visits, the committee was made aware that the CSC does not provide programming to help federally-sentenced persons exit gangs. This is particularly concerning for federally-sentenced Black persons who are disproportionately labelled as belonging to a gang and have the STG label added to their files. In a brief submitted to the committee, Zya Brown, Founder, Think Twice, explained that the lack of programming for gang involvement may be contributing to the gang problem within penitentiaries and in communities. She stated that some young people come into the penitentiary gang-involved and leave gang-involved because there are no programs to address gang involvement. Many young people also come to the penitentiary not gang-involved and leave as a member of a gang. Approximately one half of all gang members in penitentiaries were thought to be unaffiliated with a gang when they were admitted to the penitentiary. Those that leave penitentiaries as gang members contribute to increased gun and gang violence in the community.<sup>582</sup>

The committee heard many stories from federally-sentenced Black persons about instances of blatant anti-Black racism against federally-sentenced Black persons and Black correctional officers. Some of these instances include being called derogatory names, not having work opportunities available to them, being assumed to be gang affiliated for wearing a do-rag or being seen in a group of other federally-sentenced Black persons.

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<sup>581</sup> Extract from a letter submitted to the committee by a federally-sentenced Black persons.

<sup>582</sup> Think Twice, "[The Human Rights of Prisoners in the Correctional System](#)", Brief submitted to the committee, 6 February 2019.

The committee was encouraged to hear about efforts being made in the Central Ontario District to address the needs of federally-sentenced Black persons. These include a pilot program named the *Black Offender Social History Project*, which “takes social history factors into consideration when working with black offenders,” as well as workshops on “Building Resilience and Mental Toughness for African Canadian Inmates.”<sup>583</sup> The committee would like to see such programs move beyond the piloting stage. The committee would also like to see such programs in other parts of the country.

As such, the committee recommends:

#### **Recommendation 46**

**That the Correctional Service of Canada work with independent experts and civil society organizations involved in the rehabilitation and community integration of federally-sentenced Black persons and otherwise racialized persons to develop and fund correctional programming and integration opportunities as are available pursuant to sections 29, 81 and 84 of the *Corrections and Conditional Release Act*.**

##### **(i) Cultural Activities/Civil Society**

The committee met with a number of organizations that work to fill the cultural gap for federally-sentenced Black persons within penitentiaries.<sup>584</sup> These are primarily non-profit volunteer-based organizations. Recognizing the importance of maintaining a community connection for the reintegration process, these organizations offer a broad range of programs and services for federally-sentenced Black persons, both within penitentiaries and their communities. This includes career counselling, cultural education, music, story sharing and theatre.

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<sup>583</sup> CSC, *Briefing Package Keels and Grand Valley Institution*.

<sup>584</sup> Think Twice, “[The Human Rights of Prisoners in the Correctional System](#)”, Brief submitted to the committee, 6 February 2019; RIDR, *Evidence*, 25 October 2017 ([Tamara Thomas, Policy and Research, Lawyer, African Canadian Legal Clinic](#)); RIDR, *Evidence*, 4 October 2018 (Alexa Potashnik, President and Founder, Black Space Winnipeg, as an Individual); RIDR, *Evidence*, 18 October 2017 (Roderick Brereton, Director, Founder, Urban Rez Solutions; Farley Flex, Director, Founder, Urban Rez Solutions).

The African Canadian Legal Clinic for instance, explained that it

operates a host of social programs designed to service Ontario’s Black community. Of particular importance is its Employment Skills Job Readiness Program, or ESJRP, which was implemented as a pilot project in 2014-15 in Maplehurst and the Toronto South Detention Centre. This program teaches essential employability and life skills and connects its graduates to paid apprenticeships and employment with union partners and private employers. The pilot program achieved an 88 per cent success rate, and that is defined as those individuals who secured employment, secured a paid apprenticeship or were streamlined into pre-apprenticeship training.<sup>585</sup>

Similarly, Zya Brown informed the committee that her organization, Think 2Wice, offers “about five different programs” to federally-sentenced Black persons within the penitentiaries, including “a spiritual program, a theatre program, and leadership and mentorship program.”<sup>586</sup>

Civil society groups, informed the committee that access to federal penitentiaries is sporadic and varies from one correctional facility to the next.<sup>587</sup>

At some of the penitentiaries the committee visited, federally-sentenced Black persons told the committee that the CSC will not allow civil society groups to access the penitentiary for Black History Month. The committee was also told by federally-sentenced Black persons that they have less access to cultural activities than other populations. Restrictions on their activities come in many forms. In some instances, the required funds are not released on time. For others, the approval for the cultural activity is granted at the last minute, leaving the group scrambling to organize the event. As one federally-sentenced Black person pointed out during a site visit, organizing an event at the last minute with limited access to the telephone and no access to the Internet is impossible. The committee was informed that it is even more difficult i in communities with a relatively small Black population.<sup>588</sup>

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<sup>585</sup> RIDR, *Evidence*, 25 October 2017 (Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic).

<sup>586</sup> RIDR, *Evidence*, 6 February 2019 (Zya Brown, Founder, Think 2Wice).

<sup>587</sup> RIDR, *Evidence*, 6 February 2019 (Zya Brown, Founder, Think 2Wice).

<sup>588</sup> RIDR, *Evidence*, 4 October 2018 (Alexa Potashnik, President and Founder, Black Space Winnipeg, as an Individual).

The committee heard that access to culturally relevant programming is essential to appropriately address the risk factors that contributed to the criminal behaviour. Culturally relevant programming may help address some issues relating to structural racism. As stated by Tamara Thomas, Policy and Research, Lawyer, African Canadian Legal Clinic:

The institutional over-incarceration of Black bodies aggravates the stigma that Black people are criminally inclined and deserving of less respect and more fear than their fellow Canadians. Cultural programming can help reduce the stigma and break the cycle of re-incarceration resulting in negative socioeconomic outcomes. It will provide Black prisoners with the equal rights and opportunities they are currently not afforded.<sup>589</sup>

The committee agrees that the CSC should invest in the creation of culturally diverse and relevant programming for federally-sentenced Black persons. The committee believes this could help interrupt the cycle of disenfranchisement that contributes to the overcriminalization and overincarceration of this group.

As such, the committee recommends:

#### **Recommendation 47**

**That the Correctional Service of Canada support the work of civil society organizations and facilitate their access to federal correctional facilities to provide vital programming and connection to the community, especially for vulnerable and marginalized groups.**

#### **b. Federally-Sentenced Indigenous Peoples**

Federally-sentenced Indigenous Peoples are severely overrepresented in the federal correctional system due to a long history of systemic racism and disenfranchisement

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<sup>589</sup> RIDR, *Evidence*, 25 October 2017 (Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic).

in Canada.<sup>590</sup> It is imperative that the CSC disrupts this cycle by addressing the needs of federally-sentenced Indigenous Peoples through timely access to relevant programming.<sup>591</sup> Section 4(g) of the CCRA states that correctional programs must respect Indigenous Peoples and section 80 of the CCRA states that the CSC must provide programming that specifically addresses the needs of federally-sentenced Indigenous Peoples.<sup>592</sup>

Since 2003, the CSC has been applying the Aboriginal Correction Continuum of Care model (Continuum of Care) to address the needs of federally-sentenced Indigenous Peoples, by ensuring that culturally appropriate interventions are available.<sup>593</sup>

According to the CSC, the Continuum of Care model begins at intake and forms part of the correctional plan.<sup>594</sup> In addition to having an approach for federally-sentenced Indigenous Peoples, the CSC explained that it also developed a specific approach for federally-sentenced Indigenous women. In a brief submitted to the committee, the CSC explained that its approach is

holistic and founded on the principles identified in the 1990 *Creating Choices* report, the 1997 *National Strategy on Aboriginal Corrections*, and the *Strategic Plan for Aboriginal Corrections*. *Creating Choices* specifically advocated for the creation of a healing lodge for Indigenous women offenders that would focus on traditional healing practices in a culturally relevant environment.

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<sup>590</sup> RIDR, [Evidence](#), 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge, Deputy Warden, Bowden Institution, CSC, as an Individual); RIDR, [Evidence](#), 4 October 2018 (Dianne Anderson, Coordinator, Restorative Ministry, Roman Catholic Diocese of Saskatoon); RIDR, [Evidence](#), 4 October 2018 (Annetta Armstrong, Executive Director, Indigenous Women’s Healing Centre); RIDR, [Evidence](#), 4 October 2018 (Ryan Steven Beardy, Former inmate, Political Science Student, University of Winnipeg, Board of Directors, John Howard Society, as an Individual); RIDR, [Evidence](#), 30 January 2019 (Ivan Zinger, Correctional Investigator of Canada, OCI).

<sup>591</sup> RIDR, [Evidence](#), 6 December 2017 ([Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada](#)); RIDR, [Evidence](#), 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge, Deputy Warden, Bowden Institution, CSC, as an Individual); RIDR, [Evidence](#), 4 October 2018 (Dianne Anderson, Coordinator, Restorative Ministry, Roman Catholic Diocese of Saskatoon; Annetta Armstrong, Executive Director, Indigenous Women’s Healing Centre; Ryan Steven Beardy, Former inmate, Political Science Student, University of Winnipeg, Board of Directors, John Howard Society, as an Individual); RIDR, [Evidence](#), 6 February 2019 (Peggy Shaughnessy, Founder, WhitePath Consulting).

<sup>592</sup> RIDR, [Evidence](#), 6 February 2019 (Peggy Shaughnessy, Founder, WhitePath Consulting); CCRA, s. 80.

<sup>593</sup> CSC, [Indigenous corrections](#); CSC, [Strategic Plan for Aboriginal Corrections](#); CSC, [CD 702 – Aboriginal Offenders](#).

<sup>594</sup> CSC, [Indigenous corrections](#); CSC, [Strategic Plan for Aboriginal Corrections](#); CSC, [CD 702 – Aboriginal Offenders](#).

Indigenous Healing Lodges are correctional institutions that use Indigenous values, traditions and beliefs in all services and programs for offenders. The Healing Lodges use Indigenous concepts of justice and reconciliation. Programs include guidance and support from Elders and Indigenous communities. There are currently nine Healing Lodges across Canada funded and/or operated by CSC.<sup>595</sup>

The committee was informed that federally-sentenced Indigenous Peoples who participate in culturally relevant programming increase their chances of successful reintegration compared to those in general programming. Even research conducted for the CSC indicated that one of the major factors that contributes to the successful reintegration of federally-sentenced Indigenous Peoples is “their participation in spiritual and cultural activities, as well as, programs (preferably delivered by Aboriginal people) and the support they received from family and community.”<sup>596</sup>

During its visits to correctional facilities and site visits, the committee met a number of federally-sentenced Indigenous Peoples who stated they had lost touch with their culture. Some were taken from their homes at an early age and placed into the child welfare system, where they were never taught about their ancestry and heritage. The committee learned of the rehabilitative and reintegration benefits of reconnecting with one’s culture, particularly for the Indigenous population. Chantell Barker, Community Justice Development Coordinator, Southern Chiefs’ Organization explained:

I’ve learned through my experience in CAP programing. I’ve seen epiphanies in people and the power of learning one’s identity. I’ve seen how they realized they were just contributing to the same cycles of colonization and I didn’t even know it. The majority of our people don’t know the history, and so they fall into the trap of normalizing the social conditions they see around them.<sup>597</sup>

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<sup>595</sup> CSC, “[Protection against Discriminatory Policies and Practices](#)”, Written response submitted to the committee, 16 April 2019.

<sup>596</sup> CSC, [Strategic Plan for Aboriginal Corrections](#).

<sup>597</sup> RIDR, [Evidence](#), 4 October 2018 (Chantell Barker, Community Justice Development Coordinator, Southern Chiefs’ Organization).

During site visits, the committee met with a number of federally-sentenced Indigenous Peoples participating in programming specifically aimed at their needs.

These programs include “Return to Spirit,”

a five-day program that helps Indigenous people to heal from residential school trauma. The first 2.5 days focus on their personal stories of trauma and abuse. The second half is a journey of acceptance and healing. This program really works. It helps the men to see how their past experiences, whether with their parents, grandparents or in foster care, has affected their future.<sup>598</sup>

The committee was informed that access to programming relevant to federally-sentenced Indigenous Peoples is inconsistent across the country.<sup>599</sup> Most are concentrated in the Prairie region where the majority of federally-sentenced Indigenous Peoples are incarcerated. The Office of the Auditor General told the committee that there, specific programming for federally-sentenced Indigenous Peoples was as accessible as programming for non-indigenous federally-sentenced persons.<sup>600</sup> Sue Coatham, Parole Officer Supervisor, Calgary Area Parole Office noted that even within the same regions, availability and consistency of programming for federally-sentenced Indigenous Peoples could vary.<sup>601</sup>

In other regions, federally-sentenced Indigenous Peoples told the committee they experienced difficulty accessing Indigenous programming. Ms. McCalla explained that the:

CSC’s main challenge is in other regions where indigenous offenders make up smaller proportions of the population, and there we found that they were unable to provide access to their correctional programs in a timely manner. Not every indigenous offender would necessarily opt to take the indigenous

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<sup>598</sup> RIDR, *Evidence*, 4 October 2018 (Dianne Anderson, Coordinator, Restorative Ministry, Roman Catholic Diocese of Saskatoon).

<sup>599</sup> RIDR, *Evidence*, 7 August 2018 (Sue Coatham, Parole Officer Supervisor, Calgary Area Parole Office, CSC).

<sup>600</sup> RIDR, *Evidence*, 3 May 2017 and RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

<sup>601</sup> RIDR, *Evidence*, 7 August 2018 (Sue Coatham, Parole Officer Supervisor, Calgary Area Parole Office, CSC).



offender program, but we found that in regions with small numbers of indigenous offenders, the indigenous offenders that had been working with an elder and had a healing plan in their correctional plan were not taking the indigenous programs, and we would expect that they would have.

We also found that more than half of the indigenous offenders were taking the indigenous programs, but they weren't able to access them and, as a result, only a quarter of them were able to complete their programs by the time they were first eligible for parole. That's a significantly lower rate than non-indigenous offenders.<sup>602</sup>

The committee was informed that even when programming is available, it is not always provided in a timely manner. To have a chance at early release, some federally-sentenced Indigenous Peoples choose non-culturally specific programming because it starts earlier.<sup>603</sup> Though federally-sentenced Indigenous Peoples can access certain rehabilitation and reintegration programs, the committee was also concerned to learn during site visits that they had difficulty accessing vocational training and CORCAN.

Some witnesses also explained that programming for federally-sentenced Indigenous Peoples does not recognize the heterogeneity of this population. Julyda Lagimodiere, Minister of Justice, Manitoba Metis Federation explained that in 2004, the CSC and the Manitoba Metis Federation and Métis National Council conducted an assessment of the needs of federally-sentenced Métis. They found that the

needs of Métis offenders revealed that upon intake Métis offenders demonstrated need for programming in several criminogenic domains, including personal and emotional states, substance abuse, employability and separation from criminal associates. Although Métis offenders who participated in programming within the institution found it to be useful, it was not clear whether the programs met the cultural or spiritual needs of Métis

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<sup>602</sup> RIDR, [Evidence](#), 3 May 2017 and RIDR, [Evidence](#), 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

<sup>603</sup> RIDR, [Evidence](#), 3 May 2017 and RIDR, [Evidence](#), 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).



offenders. Although the programs target criminogenic needs identified at intake, Métis offenders may not fully respond to the programs unless they are given in an appropriate cultural context and in a way that is meaningful to the lives of Métis offenders. When asked to identify specific needs, Métis offenders indicated personal concerns that they had with employment, anger, finances, substance abuse and self-esteem. Métis offenders indicated that their needs were different from those of other Indigenous and non-Indigenous offenders.<sup>604</sup>

The committee notes that the CSC has had some success with its programming for Indigenous Peoples. Many federally-sentenced Indigenous Peoples spoke positively of the Pathways program and healing lodges.

As such the committee recommends:

#### **Recommendation 48**

**That the Correctional Service of Canada work with Indigenous communities, Elders, civil society organizations and other stakeholders involved in the rehabilitation and reintegration of federally-sentenced Indigenous Peoples to develop culturally relevant programming that reflects the individual protocols of the region and ensure, where possible, timely access to this programming as well as other types of CSC programming that are beneficial for reintegration, such as CORCAN.**

#### **(ii) Pathways**

Pathways is an initiative within federal penitentiaries “devoted to providing a healing and traditional environment for offenders dedicated to following an Aboriginal healing path.”<sup>605</sup> Pathways is part of the Continuum of Care. According to the CSC,

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<sup>604</sup> RIDR, *Evidence*, 7 August 2018 (Lisa Neve, as an Individual); RIDR, *Evidence*, 4 October 2018 (Julyda Lagimodiere, Minister of Justice, Manitoba Metis Federation).

<sup>605</sup> CSC, *CD 702 - Aboriginal Offenders*.

Pathways is an Elder-driven intensive healing initiative, which reinforces a traditional Aboriginal way of life through more intensive one-to-one counselling, increased ceremonial access, and an increased ability to follow a more traditional Aboriginal healing path consistent with Aboriginal traditional values and beliefs. Only offenders who have already made a serious commitment to pursue their healing journey, and who have worked significantly with Elders to address areas of healing, are to be placed on a Pathways Initiative. The Elder services, programming and interventions provided in this environment are intensive and directed to individuals' personal healing. The services available must be above and beyond the services that CSC is required to make available to all Aboriginal offenders.<sup>606</sup>

At some medium security penitentiaries, entire ranges/units are dedicated to Pathways. One of the Pathways units visited by the committee resembled a college dormitory with a shared kitchen and living room. In this unit, federally-sentenced Indigenous Peoples shared the responsibility for cleaning as well as purchasing and preparing food. In other penitentiaries, however, the section of the penitentiary dedicated to Pathways was a cell range that was indistinguishable from the cell ranges dedicated to the general population.

Federally-sentenced Indigenous Peoples in Pathways have demonstrated that they are dedicated to their healing path and committed to living a traditional Indigenous lifestyle. The committee was informed by federally-sentenced persons participating in Pathways of the tremendous difference this program has had on their lives. During a site visit, a participant informed the committee that without assistance from this program, he would have never been able to reconnect with his culture.

The committee heard that only a few spaces were available in this program even though Indigenous Peoples make up a large segment of the population of federally-sentenced persons, particularly in the Prairie Region. One witness also reported that there are disagreements on the teachings with respect to how the units are run, explaining:

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<sup>606</sup> CSC, [\*CD 702 - Aboriginal Offenders\*](#).

Say you're in a Pathways unit. There are certain conditions you have to follow in the Pathways unit. And a lot of the Pathways units that are run inside prison are—there's a lot of inter-fighting. There's not a whole lot of agreement about the way the unit should be run. There are different teachings. So I think it's kind of chaotic in that way.<sup>607</sup>

The committee heard that Pathways is having a positive impact on the lives of federally-sentenced Indigenous Peoples. There are concerns raised in Chapter 2 of the report that federally-sentenced Indigenous Peoples are overrepresented in the federal correctional system which can be attributed to systemic racism relating to Canada's history of colonialization. The committee noted that they heard some federally-sentenced Indigenous Peoples are only given an opportunity to reconnect with their cultures upon incarceration.

As such, the committee recommends:

#### **Recommendation 49**

**That the Correctional Service of Canada increase the number of spaces in the Pathways program to ensure all eligible federally-sentenced Indigenous Peoples may participate, as appropriate.**

#### **Recommendation 50**

**That the Correctional Service of Canada provide parole officers involved in the development of correctional plans the appropriate training and resources to ensure federally-sentenced Indigenous peoples are able to take full advantage of the Pathways program.**

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<sup>607</sup> RIDR, *Evidence*, 11 August 2018 (Renee Acoby, as an Individual).

**c. Healing Lodges and Section 81 of the Corrections and Conditional Release Act**

The Aboriginal Advisory Circle for the Task Force on Federally Sentenced Women initiated the first vision for the development of community-based healing lodges for federally-sentenced persons. Currently, healing lodges operate as minimum or multi-level security facilities where Indigenous values, traditions and beliefs are used to design programs for federally-sentenced Indigenous Peoples.<sup>608</sup> There are two types of healing lodges: those funded and operated by the CSC and those funded by the CSC but managed by Indigenous community partner organizations. In the second case, community partner organizations sign an agreement with the CSC under section 81 of the CCRA.<sup>609</sup> The latter are often referred to as section 81 healing lodges.

Healing lodges for federally-sentenced Indigenous men are minimum security penitentiaries while those for federally-sentenced Indigenous women are multilevel, originally designed to accommodate all security levels and including a segregation “Safe Lodge”, they currently house federally-sentenced persons classified as minimum and medium security. As indicated in the table below, there are a total of 10 healing lodges across Canada.

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<sup>608</sup> CSC, *CD 702 - Aboriginal Offenders*; CSC, *Correctional Service of Canada Healing Lodges*.

<sup>609</sup> CSC, *Correctional Service of Canada Healing Lodges*.

**Table 8 – Healing Lodges in Canada**

Healing Lodge	Population Served	Location	Managed By
Okimaw Ohci Healing Lodge	Women	Maple Creek, Saskatchewan	CSC
Pê Sâkâstêw Centre	Men	Maskwacis, Alberta	CSC
Kwikwèxwelhp Healing Village	Men	Harrison Mills, British Columbia	CSC
Willow Cree Healing Lodge	Men	Duck Lake, Saskatchewan	CSC
Stan Daniels Healing Centre	Men	Edmonton, Alberta	Section 81 - Native Counseling Services of Alberta
Waseskun Healing Centre	Men	St-Alphonse-Rodriguez, Quebec	Section 81 - Waseskun Healing Centre
O-Chi-Chak-Ko-Sipi Healing Lodge	Men	Crane River, Manitoba	Section 81 - O-Chi-Chak-Ko-Sipi First Nation
Buffalo Sage Wellness House	Women	Edmonton, Alberta	Section 81 - Native Counselling Services of Alberta
Prince Albert Grand Council Spiritual Healing Lodge	Men	Wahpeton First Nation, Saskatchewan	Section 81 - Prince Albert Grand Council
Eagle Women’s Lodge	Women	Winnipeg, Manitoba	Section 81 – Indigenous Women’s Healing Centre Inc.

Source: CSC, *Indigenous healing lodges*.

The committee visited five healing lodges during its study: Okimaw Ohci Healing Lodge, Stan Daniels Healing Centre, Waseskun Healing Centre, Buffalo Sage Wellness House and the Prince Albert Grand Council Spiritual Healing Lodge.

During these visits, federally-sentenced Indigenous Peoples informed the committee how these facilities have had a positive impact on their lives. They spoke of the benefits of living in an environment and participating in programming tailored to their needs. Many explained that their experience in the healing lodge has not only helped them to reconnect with their culture and come to terms with their past but has also shown them a way forward.

At site visits to section 81 healing lodges, the committee was informed of the difficulties Indigenous communities experienced in opening healing lodges in their communities. Many highlighted that the bureaucratic process was difficult to navigate, and that once section 81 facilities were open, funding from the CSC was inconsistent and inadequate.

Some witnesses were also concerned that the healing lodges operated by the CSC are not hiring personnel from Indigenous communities. Though Indigenous communities were assured that this was supposed to be a temporary arrangement until qualified staff could be hired from the Indigenous community, the CSC was not providing training nor were they encouraging people from the community to apply for positions. Clare McNab, Former Warden of Okimaw Ohci Healing Lodge and former Deputy Warden of Bowden Institution explained that:

we had different community members working with us at each site. And what we were reviewing, each of the healing lodges started with a memorandum of agreement and a memorandum of understanding. The memorandum of understanding was with Indian Affairs at that time and actually the Solicitor General. And then the memorandum of agreements were between CSC and the local community. So we were reviewing both of those documents and looking at how the various articles of the memorandums had been followed through.

And we did one for each site. For Okimaw Ohci, Willow Cree, and Pê Sâkâstêw. And in all cases we found probably that both sides hadn't lived up to their agreements. Okimaw Ohci was the first one signed in 1995. So they've been in operation close to 25 years. It's a 25-year agreement. So 22, 23 years, and they'll be looking to renegotiate that agreement shortly. Some of the clauses

in the agreements were, for example, that CSC would hire people from the local community, and it was supposed to be 50 per cent from the local community, 100 per cent Aboriginal. So what we found, the only one that was close was Willow Cree, and that's at Beardy's First Nation just north of Saskatoon. They were at, I don't know, 60, 70 per cent local people, and actually very close to 100 per cent Aboriginal.<sup>610</sup>

Another challenge is that healing lodges are not available in all regions and there are few healing lodges for federally-sentenced Indigenous women.<sup>611</sup> As a result, most federally-sentenced Indigenous Peoples are not able to access healing lodges.

It should also be noted that the CSC has limited section 81 agreements with communities that agree to build larger institutional structures. The CSC has only concluded one agreement for transfer of federally-sentenced women into the care and custody of an Indigenous community under section 81 of the CCRA, in Edmonton, Alberta. There are no existing agreements of this nature between the CSC and Indigenous communities east of this region, and the committee has not been apprised of any efforts to increase the number of these agreements.<sup>612</sup> The committee believes that using these provisions of the CCRA with their full legislative intent would facilitate the development of community-based, individualized or small group alternatives to penitentiaries that would provide better options for federally-sentenced Indigenous Peoples, in particular, and reduce incarceration rates overall.<sup>613</sup>

Most healing lodges are located in remote areas. As a result, the committee was informed that federally-sentenced persons in healing lodges have difficulty accessing Escorted Temporary Absences (ETAs) and Unescorted Temporary Absences (UTAs),

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<sup>610</sup> RIDR, *Evidence*, 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge, Deputy Warden, Bowden Institution, CSC, as an Individual).

<sup>611</sup> RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>612</sup> CSC, "Follow-Up Response, The Senate Standing Committee on Human Rights (RIDR) Regarding Human Rights of Prisoners in the Federal Correctional System, Wednesday 1 February 2017", Written response submitted to the committee.

<sup>613</sup> RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations); RIDR, *Evidence*, 21 March 2018 (Claire McNeil, Lawyer, Dalhousie Legal Aid Service; Vince Calderhead, Lawyer).

which are types of conditional releases that allow federally-sentenced persons to leave on a temporary basis for a number of reasons including job placements (see Chapter 7).<sup>614</sup> Temporary absences can be very important for a federally-sentenced person's rehabilitation and reintegration. Sue Coatham explained that at Okimaw Ohci "they struggled with trying to get work releases for the women. They've had varying successes over the years to get them out or to go to the meetings or something to have them leave the institution exactly like what we're talking about."<sup>615</sup>

Some witnesses informed the committee in 2018 that because there were only two healing lodges for women with less than 80 beds total, they were experiencing overcrowding.<sup>616</sup> Ms. Coatham suggested that the CSC should increase use of section 81—especially for federally-sentenced Indigenous women:

Could we do more? We definitely have to do more in terms of accommodations. There are not enough. I have seen wait lists for I can't tell you how long, and I went through facilities that are ready to close their doors. And now we have all these people that have been finally granted and are sitting in the institution because they don't have a bed.<sup>617</sup>

The committee also heard that the security environment at some healing lodges has been changing over the years. Clare McNab reported that

[a]t Okimaw Ohci when I was there, when they first started the healing lodge, there was no obvious security, no static security. And over the years, it has just been piled on more and more. And so they put a gate halfway down the hill to stop people from coming up. They put in cameras all over. Now when you go in, it looks like the same as everywhere else, like the airport. You have to walk through scanners. You have to do all this stuff. And I see that everywhere.

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<sup>614</sup> RIDR, *Evidence*, 7 August 2018 (Sue Coatham, Parole Officer Supervisor, Calgary Area Parole Office, CSC).

<sup>615</sup> RIDR, *Evidence*, 7 August 2018 (Sue Coatham, Parole Officer Supervisor, Calgary Area Parole Office, CSC).

<sup>616</sup> RIDR, *Evidence*, 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge, Deputy Warden, Bowden Institution, CSC, as an Individual); CSC, *Correctional Service Canada Healing Lodges*.

<sup>617</sup> RIDR, *Evidence*, 7 August 2018 (Sue Coatham, Parole Officer Supervisor, Calgary Area Parole Office, CSC).



Now, I know that we do have issues with drug interdiction, with drugs coming into prison, but I think there's no logic behind it.

Okimaw Ohci has 160 acres out in the middle of nowhere. They're not going to walk through the front door if they're bringing in drugs. They're going to throw them in the trees somewhere and somebody's going to find them. But we have all this evidence of security. But that's what is a real struggle. And even now would I have a louder voice? I don't think I would.<sup>618</sup>

Federally-sentenced women with whom the committee met at Okimaw Ohci also reported that security measures had increased in recent years.

As such, the committee recommends:

### **Recommendation 51**

**That the Correctional Service of Canada increase the number of section 81 agreements by raising awareness of this section and guiding communities through the process as well as funding the establishment of individualized options as well as group Healing Lodges.**

### **Recommendation 52**

**That the Correctional Service of Canada provide federally-sentenced Indigenous Peoples with access to Elders from their regions in accordance with established Indigenous protocols, while prioritizing the employment of Indigenous Peoples from the land on which Correctional Service of Canada Healing Lodges are located to work in these facilities.**

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<sup>618</sup> RIDR, *Evidence*, 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge, Deputy Warden, Bowden Institution, CSC, as an Individual).

### 3. Federally-Sentenced Women

Federally-sentenced women are a complex, heterogeneous group. Their diversity not only stems from their racial and ethnic backgrounds, but also from their age, sexual orientation, socioeconomic class and gender identities.<sup>619</sup> As previously mentioned in this report, federally-sentenced women are more likely to suffer from mental health issues, have experienced violence and abuse, and have related drug dependency problems than their male counterparts.<sup>620</sup> In addition, the crimes and motivations that landed women in federal penitentiaries are much different than those of men. For these reasons, witnesses stressed the importance of programming that addresses the distinct and diverse needs of federally-sentenced women.

Sections 76 and 77 of the CCRA state that the CSC must provide a range of programs designed to address the needs of federally-sentenced women and contribute to their successful reintegration into the community.<sup>621</sup> The CSC told the committee that it fulfils these obligations and that it recognizes the distinct and diverse needs of federally-sentenced women. Ms. Kelly explained that the CSC has adopted a

holistic, research-based, women-centred approach for managing the rehabilitation of women offenders. We have developed correctional environments and interventions that are gender, culturally and trauma informed. We have implemented services and training opportunities designed specifically for women offenders. We strive to provide a safe and supportive environment that fosters opportunities. Our approach is to empower women to live with dignity and respect, and to help women offenders rebuild their lives as law-abiding citizens while creating safer communities for all Canadians.<sup>622</sup>

The CSC also informed the committee that its programs for federally-sentenced women consider “their social, economic, and cultural situation in society; the importance of relationships in their lives; their unique pathways into crime; and their

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<sup>619</sup> RIDR, *Evidence*, 8 March 2017 (Sarah Turnbull, Lecturer in Criminology, School of Law, University of London, as an Individual); CSC, “Practices and Programs”, Brief submitted to the committee.

<sup>620</sup> RIDR, *Evidence*, 1 February 2017 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies).

<sup>621</sup> CCRA, ss. 76-77.

<sup>622</sup> RIDR, *Evidence*, 1 February 2017 (Anne Kelly, Senior Deputy Commissioner, Correctional Services of Canada).

more prevalent experiences of trauma, victimization, mental health problems, low self-esteem, and parenting responsibilities, relative to men.”<sup>623</sup>

A number of witnesses, however, reported that little progress by way of programming for women has been made since the construction of women-only prisons in the early 1990s. Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec argued that the progress that was made has since been negated by increasing the security level of those penitentiaries.<sup>624</sup> When asked whether she was able to access programming for women during her time in federal penitentiaries, Alia Pierini stated that “nothing specific was given to women. We were still using programs that were developed by men... Personally and even as a regional advocate I don’t see any specifically women-based programs at all in the prisons.”<sup>625</sup>

The committee was informed that programming designed to facilitate reintegration, such as vocational training, was inadequate for women. For instance, at the Joliette Institution for Women, the senators were troubled to learn that federally-sentenced women were employed in the CORCAN shop to sew men’s underwear for distribution in CSC penitentiaries. As the Correctional Investigator and the CHRC have pointed out, these are “gendered, stereotyped jobs.”<sup>626</sup> During certain site visits, some CSC staff members expressed the view that there is insufficient interest among women regarding skilled trades training, such as those available in men’s penitentiaries. However, the senators heard from many federally-sentenced women who were interested in learning about available opportunities and hearing from women tradespeople about their training and experiences.

Ms. Gagnon also explained that institutional barriers often prevent or discourage women from participating in other types of vocational programs.<sup>627</sup> For example, many federally-sentenced women were victims of a sexual assault, thus, some feared being stripped searched following an escorted temporary absence making

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<sup>623</sup> CSC, “[Protection against Discriminatory Policies and Practices](#)”, Written response submitted to the committee, 16 April 2019.

<sup>624</sup> RIDR, [Evidence](#), 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

<sup>625</sup> RIDR, [Evidence](#), 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

<sup>626</sup> OCI, [Annual Report 2016-2017](#).

<sup>627</sup> RIDR, [Evidence](#), 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

employment opportunities outside the penitentiary less accessible. One witness from Australia informed the committee that in the state of Victoria, Australia, a pilot project was initiated with the aim of eliminating strip searches from the women's penitentiary. The project revealed that despite reducing strip searches by one third, no less contraband had been detected, raising important questions on the effectiveness of strip searches.<sup>628</sup> Ms. George advised the committee of a 2004 proposal to eliminate routine strip searches of women that was made by the deputy wardens responsible for security in the federal penitentiaries for women but rejected by the CSC at the Commissioner's level.<sup>629</sup>

Ms. McCalla told the committee that the Office of the Auditor General ended its assessment of CORCAN in women's prisons when it found that only 29 federally-sentenced women had participated in the program.<sup>630</sup>

As such, the committee recommends:

### **Recommendation 53**

**That the Correctional Service of Canada, in consultation with internal and external stakeholders and experts, modernize programming for women to meet the diverse and complex needs of this population.**

### **Recommendation 54**

**That the Correctional Service of Canada consult federally-sentenced women on the types of employment they hope to obtain upon release and provide access to CORCAN opportunities and community-based vocational training that reflects their interests.**

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<sup>628</sup> RIDR, *Evidence*, 7 June 2017 (Amanda George, as an Individual).

<sup>629</sup> RIDR, *Evidence*, 7 June 2017 (Amanda George, as an Individual).

<sup>630</sup> RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

## Recommendation 55

**That recognizing the histories of abuse of federally sentenced women, the resulting negative impact on the mental health of women and deleterious impact on prisoner-staff relationships, as well as the negligible contribution to the safety and security of penitentiaries, the Correctional Service of Canada cease the use of routine strip searching of federally sentenced women.**

### a. Civil Society

As mentioned previously in this chapter, section 77 of the CCRA states the CSC must provide programming that addresses the needs of federally-sentenced women. It also states that to achieve this end, the CSC must consult regularly with women's groups and other appropriate persons or groups.<sup>631</sup> Given that women tend to have less family support than men during and following periods of federal incarceration, civil society organizations can play a very important role in their reintegration.<sup>632</sup> For instance, Chris Cowie, Executive Director of Community Justice Initiatives, explained that through his organization's STRIDE program at Grand Valley Institution for Women in Kitchener-Waterloo, volunteers provide support to 260 federally-sentenced women within and outside the penitentiary walls. He explained that volunteers begin their work within the penitentiary and continue providing support once the federally-sentenced women are released in the Kitchener-Waterloo region. These volunteers, he said, often become the primary support network for the women released into the community.<sup>633</sup> Ashley Pankiw, Provincial Reintegration Worker Elizabeth Fry Society of Manitoba emphasized that this transitory role played by civil society organizations could help to reduce recidivism.<sup>634</sup>

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<sup>631</sup> CCRA, ss. 76-77.

<sup>632</sup> RIDR, *Evidence*, 8 February 2018 (Julie Thompson, Director, Community Relations, Community Justice Initiatives; Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); Letter to Don Head, Commissioner of the CSC from Joint Effort, 14 December 2017, copied to the Standing Senate Committee on Human Rights.

<sup>633</sup> RIDR, *Evidence*, 8 February 2018 (Chris Cowie, Executive Director, Community Justice Initiatives).

<sup>634</sup> RIDR, *Evidence*, 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker Elizabeth Fry Society of Manitoba).

Despite the important role civil society organizations can play in the reintegration process, the committee was informed that the CSC has been decreasing their involvement in the development of programming for federally-sentenced women. Julie Thompson, Director, Community Relations, Community Justice Initiatives explained:

The substance abuse programming, sexual abuse programming and all sorts of other programming that happened for women inside were supposed to be delivered by members of the community, by organizations in the community. That was part of the idea of Creating Choices. Systematically, over the last 20 years, that has all but disappeared. We have correctional staff facilitating those programs, which does a lot to reduce their impact. Also it causes isolation. There's a lot that happens in that isolation that is not something to be proud of. It creates a system where the worst is expected of women. When people are treated to the worst, then some people respond by behaving to that worst.<sup>635</sup>

The committee also heard that the CSC is creating barriers to make penitentiaries more difficult for these organizations to access and work with federally-sentenced persons. For instance, the CSC established new security clearance rules and procedures for volunteers in 2014 to align with the Treasury Board of Canada Secretariat, Standard on Security Screening.<sup>636</sup> Witnesses stated that the new standard has negatively impacted the ability of civil society organizations to provide services within penitentiaries.<sup>637</sup> During site visits, the CSC provided no evidence beyond hypothetical possibilities of the need for more stringent security and credit checks now required of volunteers, for which volunteers must absorb the cost. These policies are resulting in further limitation of community integration options for federally-sentenced persons. Diminished access by civil society groups could have a disproportionate impact on federally-sentenced women. The committee observes that this disproportionate impact is likely to be even greater with respect to the recruitment of volunteers who support Indigenous and Black persons. Based on written sub-

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<sup>635</sup> RIDR, *Evidence*, 8 February 2018 (Julie Thompson, Director, Community Relations, Community Justice Initiatives).

<sup>636</sup> RIDR, Briefs, Submission by the CSC, 3 May 2019.

<sup>637</sup> RIDR, *Evidence*, 8 February 2018 (Julie Thompson, Director, Community Relations, Community Justice Initiatives).

missions, witness testimony and information gathered during site visits, it appears that civil society organizations and community volunteers already struggle to provide support to federally-sentenced persons in the face of limited resources and time constraints; additional barriers only further reduce the valuable support offered.

As such, the committee recommends:

### **Recommendation 56**

**That the Correctional Service of Canada ensure consistent and transparent application of its security protocols so that the access of civil society organizations working with federally-sentenced persons is facilitated to federal penitentiaries and their important work is not only continued but enhanced.**

## CHAPTER 6 – THE ROAD TO REINTEGRATION

The final step in the federal correctional process is reintegration into the community. Numerous actors play a role in preparing for and supporting a federally-sentenced person's reintegration, including the CSC, the Parole Board of Canada (the Parole Board), civil society groups and family members. As explained in Chapter 6, witnesses noted serious deficiencies with regards to preparing federally-sentenced persons for release, which impact not only the person being released but also the communities in which they will reside. As explained by Chris Hay, Executive Director, John Howard Society of Alberta:

So if you go to jail for seven years, how do you think you're coming out? Not only socially, behaviourally. If you didn't have the support set up and a good integration plan or a good release plan — we say we're doing release planning. We're not doing release planning the way we should be. So we're going to leave someone who maybe has a mental issue, addiction issues, who is homeless because they've been in jail for seven years, is gang affiliated now because that's what happened when they went through the prison, and we release them to their own devices, and then we kind of complain when recidivism happens, when they commit crimes again.

And I think, why are we complaining? What outcome did you actually expect to achieve? What did you think was going to happen? That leads to the statement or the saying that prison is a revolving door.<sup>638</sup>

The following chapter outlines the types of release available to federally-sentenced persons; the role of the Parole Board, parole officers and community partners in release and reintegration; and barriers to reintegration.

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<sup>638</sup> RIDR, *Evidence*, 7 August 2018 (Chris Hay, Executive Director, John Howard Society of Alberta).



## A. Types of Release

The CCRA prescribes several types of release from federal penitentiaries, including temporary absences, full parole, day parole, statutory release and warrant expiry (see table 6).<sup>639</sup> Courts may also impose supervised release on a federally-sentenced person’s sentence. For example, section 753 of the *Criminal Code* allows a court to impose a long-term supervision order on a sentence for individuals designated as “dangerous offenders.” The period of long-term supervision by the CSC, which may not last longer than ten years, would commence after the federally-sentenced person has served all sentences for the offences for which he or she has been convicted.<sup>640</sup>

**Table 9 – Types of Release from Federal Penitentiaries**

<b>Escorted temporary absence</b>	The federally-sentenced person, either alone or as a member of a group, leaves the penitentiary accompanied by one or more escorting officers. The duration of the ETA is limited, except for medical absences. ETAs may be granted at any time during a federally-sentenced person’s sentence.
<b>Unescorted temporary absence</b>	The federally-sentenced person leaves the penitentiary for a limited time and unaccompanied by CSC staff. To be eligible for a UTA, a federally-sentenced person cannot be in maximum security and must have served at least six months of the sentence (with different requirements for those serving life or indeterminate sentences).
<b>Work release</b>	A structured program of release, established for a set duration, involving work or community service outside the penitentiary. This type of release is supervised by a CSC staff member. The same rules regarding eligibility for a UTA apply to work release eligibility.

<sup>639</sup> CCRA, ss. 127-129; CSC, *Types of Release*.

<sup>640</sup> *Criminal Code*, s. 753. See also: CSC, *CD 719 - Long-Term Supervision Orders*.

<b>Day parole</b>	Federally-sentenced persons on day parole reside in a community-based residential facility, also known as a halfway house, unless otherwise authorized by the Parole Board. While on day parole, they are expected to participate in community-based activities in preparation for full parole or statutory release.
<b>Full parole</b>	Federally-sentenced persons on full parole serve part of their sentence under supervision in the community under specific conditions. Full parole normally follows successful completion of day parole. Federally-sentenced persons on full parole typically reside in a private residence.
<b>Statutory Release</b>	Those who were not successful in their applications for parole or did not apply for parole are generally released after completing two-thirds of their sentence (with exceptions for those serving life or indeterminate sentences). This form of release is known as “statutory release” as it is mandated by the CCRA and not decided by the Parole Board. Federally-sentenced persons on statutory release are subject to similar conditions as those on full parole, such as reporting to a parole officer and remaining within a prescribed geographic area until the expiration of their full sentence. It should be noted that if the Parole Board determines that a federally-sentenced person poses a threat to society it may issue a detention order, which keeps that person in a correctional facility after the statutory release date.
<b>Warrant Expiry</b>	The final type of release is release on expiry of sentence (or warrant expiry). Unlike the other types of release, it is not conditional and is required when a federally-sentenced person has served the entire sentence. In other words, the federally-sentenced person is released back into the community with no supervision or designated community supports. This type of release applies to federally-sentenced persons who were

	considered too dangerous to return to the community under statutory release, or who chose to stay in the penitentiary until the end of their sentences.
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Source: CSC, *Types of Release*.

## B. The Parole Board

The Parole Board is an independent administrative tribunal that operates at arms-length from the Government of Canada.<sup>641</sup> Parole Board members are appointed by the Governor General on advice of the federal cabinet.<sup>642</sup> Jennifer Oades, Chairperson of the Parole Board, told the committee that the Parole Board has made “huge progress” in recent years in appointing diverse members and becoming “more reflective of the communities [it] serve[s].”<sup>643</sup> Of the 79 board members, 54% are women, 9% are Indigenous and 6% are non-Indigenous racialized persons.<sup>644</sup> The Parole Board is responsible for

facilitating, as appropriate, the timely reintegration of offenders back into the community as law-abiding citizens on temporary absences, day parole and full parole releases. In addition, the parole board can impose conditions on statutory release and long-term supervision orders, as well as terminate or revoke statutory release. Upon referral by CSC, in exceptional circumstances, the parole board may also order that an offender be held in custody or detained until warrant expiry date.<sup>645</sup>

Additionally, the Parole Board is responsible for record suspensions, sometimes known as pardons. Since the enactment of the *Expungement of Historically Unjust Convictions Act* on 21 June 2018, the Parole Board is also responsible for expungements, or the destruction or permanent removal of judicial records for historically unjust convictions.<sup>646</sup>

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<sup>641</sup> Government of Canada, *Parole Board of Canada*.

<sup>642</sup> RIDR, *Evidence*, 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

<sup>643</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

<sup>644</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

<sup>645</sup> RIDR, *Evidence*, 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

<sup>646</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

The CCRA requires that the protection of society is the “paramount consideration” in all Parole Board decisions.<sup>647</sup> The Parole Board may grant a temporary absence or parole if the federally-sentenced person “will not, by reoffending, present an undue risk to society” upon release.<sup>648</sup> According to Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada,

the board has developed a highly structured risk assessment framework that grounds all of its decisions in a sound analysis of risk-relevant information. When conducting reviews, board members assess risk by considering and weighing relevant components of this framework. These components include the offender's criminal and conditional release history, nature and gravity of the offence, institutional behaviours, program participation, release plan, as well as any other case-specific factors. Board members also consider information provided by victims, including formal victim statements.<sup>649</sup>

The CCRA also requires the Parole Board to develop policies and processes that are sensitive to the circumstances of federally-sentenced Indigenous Peoples.<sup>650</sup>

Ms. Brisebois informed the committee that Board members consider the unique factors affecting federally-sentenced Indigenous Peoples on account of their social history. As explained in more detail later in this chapter, the Parole Board also provides Elder-Assisted Hearings and Community-Assisted Hearings, “which are responsive to the cultural values and traditions of Indigenous Peoples but involve the same rigorous risk assessment.”<sup>651</sup> She further explained that Board members receive specialized training on handling hearings with federally-sentenced Indigenous Peoples. The Parole Board also has an advisory committee that provides strategic advice on ways it can improve its interactions with federally-sentenced Indigenous Peoples and Indigenous community members that appear before it.<sup>652</sup>

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<sup>647</sup> CCRA, s. 100.1.

<sup>648</sup> CCRA, s. 102 and s. 116(1).

<sup>649</sup> RIDR, *Evidence*, 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

<sup>650</sup> Government of Canada, *Parole Board – Indigenous Initiatives*.

<sup>651</sup> RIDR, *Evidence*, 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

<sup>652</sup> RIDR, *Evidence*, 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

### C. Access to Early Release

Witnesses told the committee that numerous barriers prevent federally-sentenced persons from obtaining early release, despite the CSC's assertion that "gradual, supervised release" is "essential" for a federally-sentenced person's successful reintegration.<sup>653</sup> The committee also heard from several federally-sentenced persons during site visits that they had difficulty being granted temporary absences despite being eligible. They told the committee that a lack of work or community service opportunities as well as available staff to escort them when needed prevented them from taking advantage of this important step in the reintegration process. Sue Coatham, Parole Officer Supervisor, told the committee that the CSC often struggles to get work releases for federally-sentenced persons, particularly for facilities that are isolated like Okimaw Ohci Healing Lodge.<sup>654</sup> The committee also heard during site visits that ETAs and UTAs are often cancelled at the last minute, usually because of staff shortages.<sup>655</sup>

Regarding day parole and full parole, Professor Doob told the committee that "very few people... are actually released on parole early enough for it to make much difference. [...] People may be released on parole, but they are released increasingly close to [their statutory release date]."<sup>656</sup> According to Professor Doob, the criteria for granting parole are overly rigid and unnecessarily limits the number of federally-sentenced persons released on parole.<sup>657</sup> Indeed, other witnesses told the committee that many federally-sentenced persons are "actually fairly low risk"<sup>658</sup> and "could be easily managed in the community."<sup>659</sup> Michael Ferguson, Auditor General of Canada, told the committee that a 2015 audit revealed that 80% of

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<sup>653</sup> CSC, *Community Corrections*.

<sup>654</sup> RIDR, *Evidence*, 7 August 2018 (Sue Coatham, Parole Officer Supervisor, Calgary Area Parole Office, CSC).

<sup>655</sup> See also: RIDR, *Evidence*, 26 March 2018 (Heather Finn-Vincent, Parole Officer, Correctional Services Canada, as an Individual).

<sup>656</sup> RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>657</sup> RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>658</sup> RIDR, *Evidence*, 4 October 2017 (Mary E. Campbell, Sentencing and Corrections Expert, Former Director General, Corrections and Conditional Release, Public Safety Canada, as an Individual).

<sup>659</sup> RIDR, *Evidence*, 5 April 2017 (Rick Sauvé, Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada).

federally-sentenced men remained in custody past their first parole eligibility date and that most were released directly into the community from medium- and maximum-security penitentiaries. As a result, the majority of federally-sentenced men “had less time to benefit from a gradual and structured release into the community to support their successful reintegration.”<sup>660</sup>

Using data from the *2017 Corrections and Conditional Release Statistical Overview* by Public Safety Canada (see table 7), Professor Doob stated that day parole and full parole continue to be out of reach for many federally-sentenced persons, despite their reintegrative and rehabilitative benefits.<sup>661</sup> This data indicates that the majority of all releases from federal penitentiaries in 2016-17 were at statutory release, at 64.4%.<sup>662</sup> Professor Doob argued that denying federally-sentenced persons parole is negative not only from a reintegration standpoint but also an economic one, as it costs on average three times less to supervise federally-sentenced persons in the community than holding them in custody.<sup>663</sup>

**Table 10 – Percentage of Federally-Sentenced Persons Granted Parole for Fiscal Year 2016-17**

	Day Parole	Full Parole
Federally-sentenced men	69.3%	25.7%
Federally-sentenced women	83.4%	39.8%
Total	77.9%	35.1%

Source: Public Safety Canada, *2017 Corrections and Conditional Release Statistical Overview*, p. 83.

<sup>660</sup> RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>661</sup> RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociological Studies, University of Toronto, as an Individual).

<sup>662</sup> Public Safety Canada, *2017 Corrections and Conditional Release Statistical Overview*, p. 79.

<sup>663</sup> RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociological Studies, University of Toronto, as an Individual).

The most common reason for parole denials or delays is timely access to correctional programming.<sup>664</sup> In a submission to the committee, the CSC confirmed that federally-sentenced persons who have completed correctional programming are more likely to be granted early release, as it is an important factor in predicting risk of recidivism.<sup>665</sup>

In a 2021 submission, the CSC informed the committee that during the COVID-19 pandemic, it has been collaborating with the Parole Board of Canada “to ensure efficient and effective case preparation and conditional release reviews” to safely release federally-sentenced persons “that do not pose an undue risk to society including those who are elderly or have an underlying medical condition.”<sup>666</sup> Indeed, the CSC reported that between 1 March 2020 and 25 April 2021, there has been a decline of 1,588 (11.2%) federally-sentenced persons in federal penitentiaries. The CSC attributed the reduction to both its effects and fewer admissions from the provinces and territories.<sup>667</sup>

While the OCI acknowledges that the number of federally-sentenced persons in federal correctional facilities is at its lowest point in a decade, the Correctional Investigator notes that much of the reduction is due to fewer warrant of committal admissions and declining revocations over the course of the pandemic. He explained that

For much of the pandemic, courts across the country have not been sitting or have significantly reduced their caseloads. More than any other factor, the decline in the inmate population is attributable to reductions in sentencing and admissions rather than to any increase in the release of inmates.<sup>668</sup>

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<sup>664</sup> RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>665</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019.

<sup>666</sup> RIDR, Briefs, CSC, “Submission to the Senate Standing Committee on Human Rights,” Brief submitted to the committee, 6 May 2021.

<sup>667</sup> RIDR, Briefs, CSC, “Submission to the Senate Standing Committee on Human Rights,” Brief submitted to the committee, 6 May 2021.

<sup>668</sup> OCI, “Third COVID-19 Status Update,” 23 February 2021, p. 9.



The OCI also underscored that the rate of population declines in federal penitentiaries. For the non-Indigenous population of federally-sentenced persons is twice the rate of the federally-sentenced Indigenous Peoples population (14.4% vs. 7.6%).<sup>669</sup>

Between 2017 and 2019, the committee heard that a significant number of federally-sentenced persons were not applying for parole. Suzanne Brisebois reported that in 2016, 709 federally-sentenced persons withdrew their applications for day parole and 4,144 waived their full parole review hearings.<sup>670</sup> Although federally-sentenced persons may delay their parole hearings for a variety of reasons, some witnesses argued one of the primary reasons is that the CSC does not adequately prepare federally-sentenced persons for the parole process. A federally-sentenced person who is denied parole is required to wait a period of time before reapplying. Feeling intimidated by the process, a federally-sentenced person may decide to delay the parole hearing rather than risk being denied parole because he or she was unprepared.<sup>671</sup>

To help with this challenge, Ms. Oades, explained that the Parole Board recently started an “in-reach program” where Parole Board staff go in to federal penitentiaries to explain the process to federally-sentenced persons. Previously, the Parole Board relied on CSC staff in penitentiaries, including parole officers, to share this information with federally-sentenced persons, but noted that the level of preparation was lacking.<sup>672</sup>

Federally-sentenced persons may also refuse to apply for parole as they assume the effort would be futile and their application rejected, based on previous experience and the experience of their peers. Rick Sauvé told the committee that Parole Board members rely heavily on a federally-sentenced person’s correctional files to make early release decisions. In his experience, it is not uncommon for the files to contain

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<sup>669</sup> OCI, “Third COVID-19 Status Update,” 23 February 2021, p. 10.

<sup>670</sup> RIDR, *Evidence*, 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

<sup>671</sup> RIDR, *Evidence*, 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada; Rick Sauvé, Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard’s Society of Canada); RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

<sup>672</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).



inaccuracies based on prejudices or assumptions made by staff that are difficult to have changed on their files. What's more, many federally-sentenced persons may have difficulty reading and understanding the information in their files, so they only become aware of inaccurate information during their parole hearing.<sup>673</sup>

The committee learned that parole hearings typically last one to two hours, and Parole Board members have several hearings in one day. Given their busy schedules, Mr. Sauv  told the committee that they usually only read the federally-sentenced person's file the day before the hearing.<sup>674</sup> Perhaps in response to this excessive workload, the Parole Board convenes roughly 40% of parole hearings by videoconference, where Parole Board members are not physically present in the penitentiary.<sup>675</sup> Mr. Sauv  called this change

a mistake because there is so much more in communication than language. I've sat through so many of the hearings where you're watching the video screen, and it is jumping or the sound breaks up, and it's just too difficult, and especially in some cultures, it's so foreign.<sup>676</sup>

Ms. Brisebois noted that the use of videoconferencing is "assessed case by case" and is avoided in hearings that require interpreters and cases involving federally-sentenced Indigenous Peoples.<sup>677</sup> The committee questions whether videoconferencing should be used at all in a process that decides whether a federally-sentenced person remains in or leaves a penitentiary.

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<sup>673</sup> RIDR, [Evidence](#), 5 April 2017 (Rick Sauv , Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada).

<sup>674</sup> RIDR, [Evidence](#), 5 April 2017 (Rick Sauv , Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada).

<sup>675</sup> RIDR, [Evidence](#), 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

<sup>676</sup> RIDR, [Evidence](#), 5 April 2017 (Rick Sauv , Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada).

<sup>677</sup> RIDR, [Evidence](#), 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

As such, the committee recommends:

### **Recommendation 57**

**That the Correctional Service of Canada ensure that federally-sentenced persons are prepared for parole hearings when they are first eligible for conditional release. This preparation should include ensuring timely access and funding for programs, and wraparound and proactive community integration plans. The preparation should also include an improved planning process, periodical review and correction of errors in federally-sentenced persons' files, and educational outreach on the parole application process.**

### **Recommendation 58**

**That the Parole Board of Canada conduct a review to assess whether the use of videoconferencing for parole board hearings hinders a federally-sentenced person's chances of obtaining parole, and if so, to limit this practice to the extent that doing so is beneficial for federally-sentenced persons.**

## **1. Accommodation of Vulnerable and Marginalized Groups**

In particular, witnesses brought up issues regarding accommodating marginalized and vulnerable groups in preparation for, and during, parole hearings. The CCRA requires the Parole Board to “respect gender, ethnic, cultural and linguistic differences and to be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements.”<sup>678</sup> As an example of this accommodation, the committee was told that deaf persons (and others who cannot communicate in either official language) are entitled to an interpreter during parole hearings upon request. The Parole Board has held 18 hearings with sign language interpreters since 2014.<sup>679</sup> Factors affecting vulnerable and marginalized groups' access to early release are explored below.

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<sup>678</sup> CCRA, s. 151(3).

<sup>679</sup> Parole Board of Canada, “[Information for Standing Senate Committee on Human Rights from the Parole Board of Canada](#)”, Written response submitted to the committee, 16 April 2019.

**a. Federally-Sentenced Persons with Mental Health Issues**

With regards to federally-sentenced persons with mental health issues, Michelle Van De Bogart, Regional Director General, Prairies Region, Parole Board of Canada informed the committee that the Parole Board provides ongoing training to board members on assessing preparedness for release and appropriate interviewing techniques when the applicant has mental health issues.<sup>680</sup> Ms. Oades stated that, for federally-sentenced persons with mental health issues, the Parole Board avoids holding hearings by videoconference.<sup>681</sup> According to Ms. Brisebois, their access to early release is more difficult to ascertain statistically

because an offender’s mental health status isn’t necessarily shared with the board unless it’s applicable to the release decision and the release itself, and, in some cases, the mental health issues may be transitory. So we don’t have statistics specifically regarding mental health, how many offenders with mental health issues do see the board versus don’t see the board or are revoked or successful because we don’t have the ability to track those offenders as clearly as we would with an offender who self-identifies as indigenous.<sup>682</sup>

Despite this lack of data, the committee is of the view that the numerous issues affecting federally-sentenced persons with mental health issues – including lack of access to treatment, overrepresentation in administrative segregation, higher security classification levels and lower participation in programming and employment – undoubtedly contribute to their performance during parole reviews and affect their access to conditional release.

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<sup>680</sup> RIDR, [Evidence](#), 5 April 2017 (Michelle Van De Bogart, Regional Director General, Prairies Region, Parole Board of Canada).

<sup>681</sup> RIDR, [Evidence](#), 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

<sup>682</sup> RIDR, [Evidence](#), 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

As such, the committee recommends:

### **Recommendation 59**

**That the Parole Board of Canada and the Correctional Service of Canada conduct a review to examine barriers to conditional release for federally-sentenced persons with mental health issues and develop a strategy to address the findings of this review.**

#### **b. Federally-Sentenced Women**

In the case of federally-sentenced women, the committee learned that parole hearings are run the same way for women as they are for men, despite the different reasons women are sentenced to incarceration and the higher rates of mental health issues and histories of trauma and abuse. Ms. Oades told the committee that the Parole Board is prioritizing being “more responsive to the needs of women offenders” and “exploring ways to introduce gender-informed decision-making as part of [the Parole Board’s] conditional release decision-making process in an effort to contribute to improved outcomes.”<sup>683</sup> The committee welcomes these efforts and looks forward to seeing their outcome.

As such, the committee recommends:

### **Recommendation 60**

**That the Parole Board of Canada implement without delay its plans to develop a culturally relevant gender-informed decision-making process for parole hearings.**

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<sup>683</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

### c. Federally-Sentenced Black Persons

Federally-sentenced Black persons face unique challenges accessing early release. For example, they are twice as likely to be labelled as gang-affiliated compared to the general federally-sentenced population, which can affect their chances at parole.<sup>684</sup> As mentioned in other chapters, federally-sentenced persons associated with gangs are designated as belonging to a STG.<sup>685</sup> Some federally-sentenced Black persons told the committee that they only received the STG designation because of the neighbourhoods they came from, and not because they were actually members of a gang. Additionally, they stated that it was extremely difficult if not impossible to have the designation removed from their files.<sup>686</sup> Mr. Sauvé explained that he was not designated STG when he began his life sentence 41 years ago and has been on full parole for 24 years. However, the STG status was recently introduced on his file and he was labelled as “inactive” even though the bike club/gang he belonged to no longer exists.<sup>687</sup> According to the CSC, an “inactive” designation refers to “a key player, a member, or an associate who is not currently engaged or participating in the activities of a security threat group.”<sup>688</sup> Mr. Sauvé’s parole officer has not informed him how he can remove the STG label from his file.<sup>689</sup> Ms. Oades told the committee that an inactive STG designation should have no bearing on a parole decision (although an active one would).<sup>690</sup> However, the committee is concerned that federally-sentenced Black persons are inaccurately designated as STG and unable to have the designation removed, affecting their access to programming as well as early release.

As the table below indicates, federally-sentenced Black persons are also less likely to be released on early parole compared to the general population.

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<sup>684</sup> OCI, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, 2013.

<sup>685</sup> CSC, *CD 568-3: Identification and Management of Security Threat Groups*.

<sup>686</sup> RIDR, *Evidence*, 6 February 2019 (Philip Atkins, Participant, Breakaway; Leon Boswell, Participant, Breakaway).

<sup>687</sup> RIDR, *Evidence*, 6 February 2019 (Rick Sauvé, Facilitator, Breakaway).

<sup>688</sup> CSC, *CD 568-3: Identification and Management of Security Threat Groups*.

<sup>689</sup> RIDR, *Evidence*, 6 February 2019 (Rick Sauvé, Facilitator, Breakaway).

<sup>690</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

**Table 11: Federal Releases by Race in Fiscal Year 2018-2019**

Release Type	Black	Indigenous	Asian	White	Other*	Total
Statutory Release	45%	56%	26%	41%	36%	44%
Day Parole	37%	33%	44%	41%	41%	38%
Full Parole	16%	8%	29%	17%	22%	15%

\* “Other” includes federally-sentenced persons who do not self-identify, as well as those who self-identify as Arab/West Asian, Latin American, Multiracial/Ethnic, Oceania, East Indian, Filipino, Hispanic, Other and Unable to Specify.

Source: RIDR, Briefs, Submission by the Parole Board of Canada, 3 May 2019.

In fiscal year 2017-2018 federally-sentenced Black persons waived their full parole hearings in 45% of cases, the second highest waive rate after federally-sentenced Indigenous Peoples at 57%. Federally-sentenced white persons waived their full parole in 39% of cases, by comparison. The committee believes that this data represents the impacts of the issues in federal penitentiaries affecting federally-sentenced Black persons as enumerated in this report, including: lack of access to culturally specific programs and interventions, overrepresentation in segregation, and severe underemployment relative to the general population. Addressing these issues is essential to increasing access to early release among this population.

As such, the committee recommends:

**Recommendation 61**

**That the Correctional Service of Canada and the Parole Board of Canada develop and implement a strategy to reduce barriers to early release for federally-sentenced Black persons, which should include a review of the Secure Threat Group designation policy and its disproportionate application to Indigenous Peoples and racialized groups.**

**d. Federally-Sentenced Indigenous Peoples**

The data is clear that federally-sentenced Indigenous Peoples are significantly less likely to be granted day or full parole than the general population (see table 8). In addition, those who are granted parole are more likely to have served a longer proportion of their sentence in custody than non-Indigenous federal-sentenced persons. The following table demonstrates the disparity between federally-sentenced Indigenous Peoples and non-Indigenous federal-sentenced persons regarding access to early release.

**Table 12: Access to Early Release for Federally-Sentenced Indigenous Peoples in 2016-2017**

	<b>Indigenous</b>	<b>Non-Indigenous</b>
Percentage of successful applicants for day parole	73.7%	78.9%
Proportion of sentence served before being released on day parole	40.8%	36.2%
Percentage of successful applicants for full parole	24.8%	37%
Proportion of sentence served before being released on full parole	49%	45.3%

Source: Public Safety Canada, *2017 Corrections and Conditional Release Statistical Overview*, pp. 86 and 92.

Federally-sentenced Indigenous Peoples are also more likely to be released on statutory release than the non-Indigenous population – in 2018-19, 56% of releases

of Indigenous Peoples were at statutory release compared to 40% of releases for non-Indigenous persons.<sup>691</sup> Mr. Ferguson told the committee that his office found 79% of the federally-sentenced Indigenous Peoples released at statutory release in 2015-16 entered the community directly from maximum- or medium-security penitentiaries, “limiting their ability to benefit from a gradual release supporting successful reintegration.”<sup>692</sup> This issue is directly linked to the overrepresentation of Indigenous Peoples in maximum- and medium-security, as outlined in Chapter 3 of this report, which affects their ability to receive programming, and subsequently their access to early release.<sup>693</sup>

The 2016 report of the Auditor General of Canada, *Preparing Indigenous Offenders for Release*, sheds light on the reasons for federally-sentenced Indigenous Peoples being disproportionately denied access to early release. As explained by Mr. Ferguson in his testimony to the committee, these reasons include lack of timely access to culturally specific programming and interventions. His office found that the CSC prepares federally-sentenced Indigenous Peoples for early release less often than their counterparts “and when they did, it was later in their sentence.”<sup>694</sup> The Auditor General found that the CSC “did not adequately consider Aboriginal social history factors in their case management decisions.”<sup>695</sup>

Witnesses told the committee that there needs to be an emphasis on providing culturally sensitive parole hearings. The Parole Board offers Elder-Assisted and Community-Assisted Hearings for federally-sentenced Indigenous Peoples to provide “culturally responsive” alternatives to the standard hearing format. In an Elder-Assisted Hearing, an Elder provides Parole Board members with information about the specific cultural and traditions of the applicant’s community, as well as general information about Indigenous cultures, experiences, and traditions.

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<sup>691</sup> RIDR, Briefs, Submission by the Parole Board of Canada, 3 May 2019.

<sup>692</sup> Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada*, 2016 Fall Reports of the Auditor General of Canada.

<sup>693</sup> RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>694</sup> RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

<sup>695</sup> Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada*, 2016 Fall Reports of the Auditor General of Canada.



The Elder can also provide guidance to the applicant. Community-Assisted Hearings are part of the section 84 release process (described below) and allow community members to participate in the hearing and explain their proposed plan for the applicant's conditional release and reintegration into the community. An Elder also participates in these hearings. Interested applicants must apply in advance for either of these hearings.<sup>696</sup>

Sarah Turnbull, Lecturer in Criminology, School of Law, University of London reported that most federally-sentenced Indigenous women she surveyed were unaware of these culturally sensitive options for parole hearings. She observed that many Indigenous women "had a lot of concerns about what the parole process was going to be like."<sup>697</sup> She questioned whether budgetary reasons deterred the CSC from proactively presenting Elder-Assisted and Community-Assisted Hearings as options to federally-sentenced Indigenous Peoples, given these hearings are "more time-consuming and expensive."<sup>698</sup> During her research, she observed non-Indigenous Parole Board members encountering communication barriers with federally-sentenced Indigenous Peoples due to cultural and linguistic (both verbal and non-verbal) differences. These barriers, she argued, often led to unfavourable parole decisions for Indigenous applicants.<sup>699</sup>

Ultimately, federally-sentenced Indigenous Peoples are more likely to waive their parole hearings. Ms. Oades stated "the sad part of this story is the board doesn't see very many of them."<sup>700</sup> In fiscal year 2018-2019 federally-sentenced Indigenous Peoples waived their full parole hearings in 57% of cases, compared to 38% of cases involving non-Indigenous federally-sentenced persons.<sup>701</sup> The Auditor General also found that of the 1,066 federally-sentenced Indigenous Peoples released in 2015-16, 83% had waived or postponed their parole hearings. The most often-cited reason for

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<sup>696</sup> Parole Board of Canada, *Elder-Assisted and Community-Assisted Hearings*.

<sup>697</sup> RIDR, *Evidence*, 8 March 2017 (Sarah Turnbull, Lecturer in Criminology, School of Law, University of London, as an Individual).

<sup>698</sup> RIDR, *Evidence*, 8 March 2017 (Sarah Turnbull, Lecturer in Criminology, School of Law, University of London, as an Individual).

<sup>699</sup> RIDR, *Evidence*, 8 March 2017 (Sarah Turnbull, Lecturer in Criminology, School of Law, University of London, as an Individual).

<sup>700</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

<sup>701</sup> RIDR, Briefs, Submission by the Parole Board of Canada, 3 May 2019.

waiving or postponing a hearing was the inability to complete a correctional program by their parole eligibility date.<sup>702</sup> Ms. Oades told the committee that the Parole Board is not clear on why so many federally-sentenced Indigenous Peoples reject their parole hearing, but said the board is “looking into it.”<sup>703</sup> From her experience, she attributed this issue to the fact that

they don't feel they're ready or they feel intimidated by coming before the board. They figure they will get a negative answer. As the law currently states, if you get a negative response from the Parole Board, there is a waiting time. It's not set in stone. In some ways, I think it is. You have to wait a certain amount of time before you can reapply again. If you have a relatively short sentence, I think people who feel they haven't done their programming, they're intimidated, they're not going to go to the board on their first try because if they don't get it they will have to wait maybe a year until they can reapply again. I think that's part of it.<sup>704</sup>

Ms. Oades informed the committee that since her appointment as Chairperson in January 2018, the Parole Board has prioritized strengthening its “responsiveness to the needs of Indigenous Peoples” and “working to ensure that Indigenous offenders, Indigenous victims and Indigenous communities are aware of their rights with respect to conditional release and that there are no systemic barriers to their participation in it.”<sup>705</sup> For example, the Parole Board has increased in-reach in federal penitentiaries specifically targeting federally-sentenced Indigenous Peoples with the aim of informing them about the parole process and increasing the likelihood that they would apply for, and obtain, parole. According to Daryl Churney, Executive Director General of the Parole Board, these in-reach events consist of

meeting with Indigenous persons who are incarcerated, parole officers and correctional management. These kinds of things help to educate them about what to expect in a parole hearing, what kinds of questions the person is likely

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<sup>702</sup> Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada*, 2016 Fall Reports of the Auditor General of Canada.

<sup>703</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

<sup>704</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

<sup>705</sup> RIDR, *Evidence*, 27 February 2019 (Jennifer Oades, Chairperson, Parole Board of Canada).

to encounter and how the parole hearing will unfold to try to reduce that level of anxiety before the person gets to the room.<sup>706</sup>

Public Safety Canada also reports that the number of parole hearings in 2016-2017 with an Indigenous Cultural Advisor (e.g., an Elder or a member of the parole applicant's community) increased by 49.3%, from 404 in 2015-2016 to 603 in 2016-2017. Public Safety associates this increase with the in-reach events conducted by the Parole Board. Of the parole hearings with federally-sentenced Indigenous Peoples in 2016-2017, 43.5% were held with an Indigenous Cultural Advisor.<sup>707</sup> While these improvements are promising, the committee underlines that more must be done to address the unique barriers to early release encountered by Indigenous Peoples.

As such, the committee recommends:

### **Recommendation 62**

**That the Correctional Service of Canada take all necessary steps to eliminate barriers to federally-sentenced Indigenous Peoples' access to early release, including by ensuring timely access to culturally specific and gender appropriate correctional programs and providing educational outreach on the parole application process and the culturally specific parole hearings available to them.**

### **Recommendation 63**

**That the Parole Board of Canada conduct a rights-based review of the training it provides to Parole Board members regarding hearings with federally-sentenced Indigenous Peoples to assess the effectiveness of this training, and address any gaps identified by this review.**

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<sup>706</sup> RIDR, *Evidence*, 27 February 2019 (Daryl Churney, Executive Director General, Parole Board of Canada).

<sup>707</sup> Public Safety Canada, *2017 Corrections and Conditional Release Statistical Overview*, p. 87.

**(i) Section 84 Releases**

Section 84 of the CCRA gives Indigenous communities the opportunity to develop release and reintegration plans for federally-sentenced persons into their respective communities. Section 84 states that the CSC must give the community adequate notice of the federally-sentenced person's parole review or their statutory release date (as the case may be), as well as an opportunity to propose a plan for the federally-sentenced person's release and integration into that community.<sup>708</sup> A number of witnesses suggested that section 84 releases can help to reverse the trend of federally-sentenced Indigenous Peoples being disproportionately denied access to early release and increasing the likelihood of their successful reintegration.<sup>709</sup> According to the OCI:

Section 84 of the CCRA was intended, in part, as a response to long-standing criticisms of the Canadian correctional system by Aboriginal communities and organizations. Consultations as part of the 1988 Task Force on Aboriginal People in Federal Corrections, among others, heard that offenders were being released into communities without notice, without communities knowing what had happened to the offender while incarcerated and without the ability to propose conditions that the community felt were important to ensure its safety. As a result, Aboriginal

**Corrections and Conditional  
Release Act**

**Release to an aboriginal community**

**84** If an inmate expresses an interest in being released into an Indigenous community, the Service shall, with the inmate's consent, give the Indigenous community's governing body

**(a)** adequate notice of the inmate's parole review or their statutory release date, as the case may be; and

**(b)** an opportunity to propose a plan for the inmate's release and integration into that community.

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<sup>708</sup> CCRA, s. 84.

<sup>709</sup> RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia); RIDR, *Evidence*, 27 February 2019 (Anne Kelly, Commissioner, CSC).

communities were not able to present a plan to support the successful release and reintegration of the offender or to have the ability to hold an offender accountable to that plan.

The original intent of Section 84 was to enhance the information provided to the National Parole Board (now Parole Board of Canada) and to give authority and voice to Aboriginal communities in preparing a release plan.<sup>710</sup>

According to the Auditor General, 274 federally-sentenced Indigenous Peoples were released with a section 84 release plan in 2015-16, up from 143 in 2011-12. The Auditor General found that federally-sentenced Indigenous Peoples with section 84 release plans were twice as likely to be granted parole as non-section 84 participants. They were also slightly more likely to successfully complete their supervision in the community – 40% compared to 37% of those without a section 84 plan.<sup>711</sup>

Nevertheless, Ms. Halpern noted that this option is “significantly underutilized” despite its proven reintegrative benefits.<sup>712</sup> The Auditor General noted that “parole officers had received little guidance or training on how to prepare a section 84 release plan, potentially limiting its further use.”<sup>713</sup> Witnesses also told the committee that many Indigenous communities and federally-sentenced Indigenous Peoples are unfamiliar with section 84 releases.<sup>714</sup> In illustration of this point, Ms. Mann-Rempel shared the following example with the committee:

I just coincidentally sat in on a Parole Board hearing at Collins Bay at least four or five years ago where there was a community that for the very first time was actually stepping up and saying, “We want to supervise this individual.” It was a reserve community. It got adjourned. It got put over because basically no

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<sup>710</sup> OCI, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*, 22 October 2012.

<sup>711</sup> Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada*, 2016 Fall Reports of the Auditor General of Canada.

<sup>712</sup> RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia).

<sup>713</sup> Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada*, 2016 Fall Reports of the Auditor General of Canada.

<sup>714</sup> RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 11 August 2018 (Renee Acoby, as an Individual).

one knew what to put before the Parole Board. No one knew what the Parole Board would be looking for from the community. So the Parole Board, in fairness, was asking: Do you have programs in the community? What's the approach going to be? Is it a band council thing? Is there a band council resolution? So it was adjourned in order for them to try and put that together, but it seems to me that that should be something that communities can readily access before there's a hearing. Maybe if they are put on notice that this person is coming up for parole and whether or not they want some involvement and what would that look like.<sup>715</sup>

Ms. Acoby also shared that the CSC policies and requirements regarding section 84 can be overwhelming for communities.<sup>716</sup> According to Commissioner Kelly, the CSC aims to rectify this problem by implementing Aboriginal Intervention Centres (AICs), which start the conditional release planning process with federally-sentenced Indigenous Peoples "right at intake" and inform them of their release options. Ms. Kelly stated that "Aboriginal community development officers" form part of the AICs and help federally-sentenced Indigenous Peoples gain faster access to programming and release planning.<sup>717</sup>

The committee also heard that some Indigenous communities are reluctant to participate in the release plan of a federally-sentenced Indigenous person. Communities may lack the capacity and resources to support the reintegration of a federally-sentenced person. They also may oppose welcoming a federally-sentenced person back into their community, particularly if those affected by the person's crime still reside in the community.<sup>718</sup> The committee believes that more must be done to raise awareness in Indigenous communities both of the process and the benefits of section 84 releases.

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<sup>715</sup> RIDR, [Evidence](#), 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual).

<sup>716</sup> RIDR, [Evidence](#), 11 August 2018 (Renee Acoby, as an Individual).

<sup>717</sup> RIDR, [Evidence](#), 27 February 2019 (Anne Kelly, Commissioner, CSC).

<sup>718</sup> RIDR, [Evidence](#), 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, [Evidence](#), 11 August 2018 (Renee Acoby, as an Individual); RIDR, [Evidence](#), 27 February 2019 (Daryl Churney, Executive Director General, Parole Board of Canada).

As such, the committee recommends:

#### **Recommendation 64**

**That the Correctional Service of Canada increase the use of section 84 releases by raising awareness of this section among federally-sentenced Indigenous Peoples, Indigenous communities, and parole officers, including educational outreach programs on how to prepare a section 84 release plan.**

Finally, some witnesses suggested that section 84 releases should be expanded to other federally-sentenced groups, especially to federally-sentenced Black persons. As explained by Ms. Thomas, such an expansion would “present an opportunity for African Canadians to benefit from culturally specific, community-based correctional initiatives.”<sup>719</sup> Additionally, it would “allow for the incremental decarceration of Black prisoners, allowing them to serve a component of their sentence in the community with both active support from social service providers and training programs directed toward cultivating their true potential.”<sup>720</sup> Ms. Desai also advocated for the expansion of section 84 releases to federally-sentenced aging and elderly people, particularly those who are low risk, in order to meet their health care needs and reduce strain on the correctional system.<sup>721</sup> The committee agrees that expanding the application of section 84 releases could be beneficial in ensuring more vulnerable and marginalized groups in the federal correctional system have access to early release and the reintegrative benefits it provides.

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<sup>719</sup> RIDR, *Evidence*, 25 October 2017 (Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic).

<sup>720</sup> RIDR, *Evidence*, 25 October 2017 (Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic).

<sup>721</sup> RIDR, *Evidence*, 5 April 2017 (Anita Desai, Executive Director, St. Leonard’s Society of Canada).



As such, the committee recommends:

### Recommendation 65

**That the Correctional Service of Canada expand the application of section 84 releases to other vulnerable and marginalized groups, including federally-sentenced Black persons, LGBTQI2S and the ill and aging population.**

### D. Community Corrections

Those released on conditional release (day parole, full parole, statutory release or a long-term supervision order) are under the purview of community corrections. According to the CSC, community corrections consists of three elements: gradually releasing federally-sentenced persons, ensuring that they do not present a threat to anyone, and helping them adjust to life in the community.<sup>722</sup>

The CSC states that community corrections are “essential because offenders are more likely to become law-abiding citizens if they participate in a program of gradual, supervised release.”<sup>723</sup> As of April 2018, approximately 9,100 federally-sentenced persons – almost 40% of the federally-sentenced population – were supervised in the community. This number increased by 17% since 2013-14, while the total federally-sentenced population remained stable. According to the Auditor General, the number of federally-sentenced persons under community supervision is expected to keep rising. The CSC spent \$160 million, or 6% of its overall spending, on community corrections in 2017-18.<sup>724</sup>

Those under CSC supervision in the community may reside in “community-based residential facilities,” depending on the conditions of their parole, statutory release or long-term supervision order. These consist of Community Correctional Centres

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<sup>722</sup> CSC, *Community Corrections*.

<sup>723</sup> CSC, *Community Corrections*.

<sup>724</sup> Office of the Auditor General of Canada, *Report 6 – Community Supervision – Correctional Service Canada*, 2018 Fall Reports of the Auditor General to the Parliament of Canada.



(CCCs) and Community Residential Facilities (CRFs). CCCs are operated by the CSC and provide housing for federally-sentenced persons on day parole, work release and UTAs. There are 14 CCCs across Canada. CRFs are owned and operated by non-governmental organizations that sign contracts with the CSC. They typically house federally-sentenced persons on day parole. The CSC has approximately 200 contracts with CRFs across Canada.<sup>725</sup>

Witnesses told the committee that despite the reintegrative and economic benefits of community corrections, CCCs and CRFs do not receive enough resources and support from the CSC. As explained by Stan Stapleton, National President, Union of Safety and Justice Employees (USJE),

... access to supervised housing and halfway houses is totally insufficient, especially when it comes to community correctional centres, which houses [sic] the highest-risk and highest-need offenders. This means that offenders are often warehoused in institutions as they wait for a bed in the community.<sup>726</sup>

The Auditor General confirmed this in his 2018 report on community supervision, which found that many federally-sentenced persons granted conditional release with residency requirements had to wait long periods in custody for a CCC or CRF placement. Further, despite having reached capacity at many community-based residential facilities and forecasting an increase in federally-sentenced persons requiring these facilities, the Auditor General reported that the CSC had no long-term plan to address this problem. The Auditor General also found that the average wait time for a federally-sentenced person from the day he or she was granted day parole to the day he or she was released on day parole was 37 days in 2017-18, an increase from 13 days in 2014-15. The number of federally-sentenced persons who waited more than two months for a community placement jumped from 29 to 257 during this period. In addition, many were not placed in their requested communities due to lack of space, further hindering their reintegration efforts.<sup>727</sup>

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<sup>725</sup> CSC, *Community-Based Residential Facilities*.

<sup>726</sup> RIDR, *Evidence*, 6 February 2019 (Stan Stapleton, National President, Union of Safety and Justice Employees).

<sup>727</sup> Office of the Auditor General of Canada, *Report 6 – Community Supervision – Correctional Service Canada*, 2018 Fall Reports of the Auditor General to the Parliament of Canada.

During its visit to Keele CCC in Toronto, the committee also heard from federally-sentenced persons residing there about the shortage of rooms. Most men double bunked while one room held three. The committee observed that the facility is in need of repair and heard that some of the rooms are poorly heated during the winter. Residents also told the committee that various essential supports, such as social workers and psychologists, were overworked and rarely available.

The severe lack of resources and support from the CSC for community corrections was a common refrain among witnesses. Mr. Stapleton told the committee that “[c]ommunity supports, including [...] elders or substance abuse supports, are not funded by the CSC and many offenders fall through the cracks.”<sup>728</sup> This lack of funding affects not only federally-sentenced persons and their reintegration efforts, but also parole officers and community organizations seeking to help these individuals reintegrate. Nancy Peckford, Special Advisor to USJE, told the committee that for community parole officers, “the pressures... are very real now. There hasn’t been a meaningful recalibration that enables community parole officers to act in the best interests of those being released and reintegrated.”<sup>729</sup> The committee heard that the caseloads of parole officers are becoming unmanageable as the number of federally-sentenced persons on conditional release is increasing. The shortage in parole officers is compounded by the fact that many go on leave due to overwork and stress, while the federally-sentenced persons in their caseload are left without a dedicated supervisor. Mr. Stapleton said that the CSC has not allocated any additional funding to address these challenges.<sup>730</sup>

The committee was informed that parole officers are struggling to properly supervise federally-sentenced persons in the community, which not only negatively affects federally-sentenced persons on parole but also jeopardizes community safety. In his 2018 report on community supervision, the Auditor General reported that parole officers did not sufficiently meet with federally-sentenced persons under their

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<sup>728</sup> RIDR, *Evidence*, 6 February 2019 (Stan Stapleton, National President, Union of Safety and Justice Employees).

<sup>729</sup> RIDR, *Evidence*, 6 February 2019 (Nancy Peckford, Special Advisor, Union of Safety and Justice Employees).

<sup>730</sup> RIDR, *Evidence*, 6 February 2019 (Stan Stapleton, National President, Union of Safety and Justice Employees).

supervision to manage risk and monitor compliance with conditions imposed by the Parole Board.<sup>731</sup>

Parole officers face significant barriers to providing federally-sentenced persons the programming and support they require. As explained by Ms. Peckford,

When you hear parole officers having to beg, borrow and steal from community partners to get someone into an employment program or to facilitate access to an elder, something very basic, to get things like ID, which I'm sure you're very familiar with, obviously those are not conditions under which the offender or, I think, employees of CSC should be operating.<sup>732</sup>

Ms. Peckford also stated that despite the efforts of community parole officers to seek collaboration with provincial, municipal or Indigenous partners to deliver community programming, the CSC typically only allows the CSC-funded programs and views other programs funded by different entities as “add-ons.”<sup>733</sup> The CSC confirmed in a submission to the committee that its “correctional programs are the priority within the CSC’s facilities and the community” because it knows its programs are research-based and it is better able to monitor their effectiveness.<sup>734</sup> The committee questions the effectiveness of this approach, however, if the CSC is struggling to provide sufficient programming for all federally-sentenced persons in the community.<sup>735</sup>

The committee heard first-hand from witnesses as well as current and former federally-sentenced persons how the shortage of parole officers affects their reintegration in the community. Ms. Latimer recounted how a federally-sentenced person’s parole was revoked after his parole officer failed to file the paperwork

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<sup>731</sup> Office of the Auditor General of Canada, *Report 6 – Community Supervision – Correctional Service Canada*, 2018 Fall Reports of the Auditor General to the Parliament of Canada.

<sup>732</sup> RIDR, *Evidence*, 6 February 2019 (Nancy Peckford, Special Advisor, Union of Safety and Justice Employees).

<sup>733</sup> RIDR, *Evidence*, 6 February 2019 (Nancy Peckford, Special Advisor, Union of Safety and Justice Employees).

<sup>734</sup> CSC, Follow-Up Response – Questions regarding CSC Programming, Written response submitted to the committee, 16 April 2019.

<sup>735</sup> RIDR, *Evidence*, 6 February 2019 (Stan Stapleton, National President, Union of Safety and Justice Employees; Nancy Peckford, Special Advisor, Union of Safety and Justice Employees).

required to extend it on time.<sup>736</sup> The committee heard similar stories of unavailable and overworked community parole officers during its visit to Keele CCC.

Community organizations working to help federally-sentenced persons in their reintegration efforts are also severely affected by the lack of CSC funding for community corrections. The importance of community organizations in reintegration should not be overlooked. As stated by Mr. Churney,

I think the role of our voluntary sector partners is critical — organizations like the John Howard Society and the Elizabeth Fry Society. All of those folks who do community aftercare really are our partners. Sometimes they get viewed as stakeholders, people who are somehow just interested, but we really do see them as partners in our process. They are typically the organizations to which we entrust the care of these individuals once they've been released from prison.<sup>737</sup>

He stated that many of these community partners receive core funding from the CSC “but that level of funding has generally been consistent for about 20 years or so. They do a phenomenal job on a very small budget.”<sup>738</sup> Many organizations the committee met with explained that they struggle to provide programs and other support in the community. Will Prosper of the DESTA Black Youth Network stated:

We are also facing the problem that we are all living in precarious jobs.... Even we are struggling at the end of the day, so we're not as efficient as we should be. It's hard to say, but it's what we call a system in crisis. That's what we are facing.<sup>739</sup>

Representatives from community organizations also stressed the importance of establishing a connection with federally-sentenced persons inside the penitentiary before they are released into the community. Amanda George explained that involving community partners early in a person's sentence is beneficial because

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<sup>736</sup> RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society).

<sup>737</sup> RIDR, *Evidence*, 27 February 2019 (Daryl Churney, Executive Director General, Parole Board of Canada).

<sup>738</sup> RIDR, *Evidence*, 27 February 2019 (Daryl Churney, Executive Director General, Parole Board of Canada).

<sup>739</sup> RIDR, *Evidence*, 18 May 2017 (Will Prosper, DESTA Black Youth Network).

“when people get out they’re working with a worker who they don’t have to explain everything to, because that worker has been into the prison and knows what it’s like in there. It’s a much safer way of re-entering society when you have somebody who has walked with you for a while inside.”<sup>740</sup> Mr. Churney stated that despite these benefits,

... the system may not always do a really good job of including those community partners in release planning and preparation and bringing them into the person’s sentence as early as possible so that those release plans are prepared and so the system knows what the plan looks like for the community. Where will this person reside? What programs and resources are required in the community to support this person?<sup>741</sup>

Given that the majority of federally-sentenced persons spend at least a third of their sentence in the community, effective supervision in the community is critical. The committee believes that more must be done to support the reintegration of federally-sentenced persons in the community, including by ensuring parole officers and community organizations have the resources they need. Effective community corrections are not only essential for the reintegration of federally-sentenced persons, but also for the safety of the Canadian public.

As such, the committee recommends:

### **Recommendation 66**

**That the Correctional Service of Canada substantially increase funding for civil society groups and reallocate resources to community corrections to address the growing population of federally-sentenced persons under community supervision and associated issues, including limited space in community-based residential facilities, unmanageable caseloads for community parole officers, and access to community-based programming.**

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<sup>740</sup> RIDR, *Evidence*, 7 June 2017 (Amanda George, as an Individual).

<sup>741</sup> RIDR, *Evidence*, 27 February 2019 (Daryl Churney, Executive Director General, Parole Board of Canada).

## Recommendation 67

**That the Correctional Service of Canada consult with community parole officers and civil society groups with a view to ensuring they have sufficient resources to assist federally-sentenced persons in their reintegration.**

### E. Making the Transition

Reintegration is a long and difficult process. Making the transition to a life beyond the penitentiary and community supervision can be a particularly daunting task. Witnesses told the committee of the difficulties federally-sentenced persons encounter finding a place to live and employment. As explained by Katharina Maier, Assistant Professor, Criminal Justice, University of Winnipeg,

when you're looking at barriers to re-entry, just the shock of coming back from prison is huge for people who reflect back on the first day they are coming out and the first few weeks and months after, re-establishing your connection with your family and friends, finding housing, looking for a job and dealing with stigma. Even finding ID was one of the main challenges that people talked about in my research.<sup>742</sup>

The barriers to obtaining housing are numerous for former federally-sentenced persons, particularly for those with low income, mental health issues or substance abuse issues.<sup>743</sup> Some may find themselves homeless and without medication upon release.<sup>744</sup> While many federally-sentenced persons require subsidized housing, the committee heard about the “tremendous wait times” for such housing and the many requirements to obtain it, including proof of income, up-to-date tax filings, and identification.<sup>745</sup> Ms. George underscored the importance of housing for the reintegration of federally-sentenced persons:

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<sup>742</sup> RIDR, *Evidence*, 4 October 2018 (Katharina Maier, Assistant Professor, Criminal Justice, University of Winnipeg, as an Individual).

<sup>743</sup> RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>744</sup> RIDR, *Evidence*, 6 February 2019 (Stan Stapleton, National President, Union of Safety and Justice Employees).

<sup>745</sup> RIDR, *Evidence*, 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker Elizabeth Fry Society of Manitoba).

Research that the Australian Housing and Urban Research Institute did show that when people left prison, if they didn't move in the first nine months of prison or only moved once, they had a 78 per cent chance of staying out of prison. However, once they moved twice or more, that reduced to a 41 per cent chance of not going back to prison. Housing is the crux. Without housing, you can't get a job. Without housing, you can't get your children back. Without housing, life is hell. The best thing we can do for people is to provide safe, secure and supported housing.<sup>746</sup>

Some witnesses called for additional housing support for former federally-sentenced persons, such as transitional housing as they search for a more permanent home. Connecting federally-sentenced persons with a housing support worker before they are released was also suggested.<sup>747</sup>

The committee also heard that income security would greatly facilitate the reintegration of federally-sentenced persons. Speaking for federally-sentenced women, Debbie Kilroy stated:

Support for women leaving prison could also be achieved through a guaranteed and universal minimum income. This is an issue that I strongly support and recommend the committee seriously considers.<sup>748</sup>

The committee reiterates its call in Recommendation 5 for the establishment of a guaranteed minimum income program.

Another key barrier to reintegration for federally-sentenced persons is finding employment. As with housing, this barrier can be particularly pronounced for those living with mental health issues and substance abuse issues. In addition, many federally-sentenced persons, particularly federally-sentenced Indigenous Peoples and Black persons, are returning to communities with fewer employment

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<sup>746</sup> RIDR, *Evidence*, 7 June 2017 (Amanda George, as an Individual).

<sup>747</sup> RIDR, *Evidence*, 4 October 2018 (Ashley Pankiw, Provincial Reintegration Worker Elizabeth Fry Society of Manitoba; Annetta Armstrong, Executive Director, Indigenous Women's Healing Centre).

<sup>748</sup> RIDR, *Evidence*, 7 June 2017 (Debbie Kilroy, as an Individual).



opportunities.<sup>749</sup> Federally-sentenced women seeking reunification with their children are under additional pressure to find housing and employment to satisfy child welfare and to support their family.<sup>750</sup> Former federally-sentenced persons' lives continue to be impacted by their criminal record even after gaining employment. Ms. Edwards told the committee how one employer withheld her pay, and when she objected, the employer threatened to call her parole officer.<sup>751</sup>

The difficulties inherent in obtaining housing and employment are made worse by the fact that most landlords and employers require criminal record checks as a condition of tenancy or employment. Regarding her personal experience, Ms. Charles stated:

In terms of employment, that's a nightmare. That's a nightmare all on its own, because every employment application asks if you're bondable. Every employment application asks if you're been convicted of a criminal offence. Are you going to lie? To be honest with you, I have. That's half the jobs that I get. Because if I don't lie on the application, I'm not going to get the job, so I lie.<sup>752</sup>

Former federally-sentenced persons may apply for a record suspension (formerly known as a pardon) 10 years after they have completed their sentence and paid any fines associated with their conviction. Those who have been convicted of sexual offences against children or who have been convicted of more than three offences for which they received a sentence of two years or more are ineligible for record suspensions, subject to certain exceptions. The Parole Board is responsible for granting, denying and revoking record suspensions.<sup>753</sup> It is important to note that record suspensions do not erase criminal convictions, but set them aside.<sup>754</sup> The

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<sup>749</sup> RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociolegal Studies, University of Toronto, as an Individual).

<sup>750</sup> RIDR, *Evidence*, 7 June 2017 (Amanda George, as an Individual); RIDR, *Evidence*, 8 February 2018 (Chris Cowie, Executive Director, Community Justice Initiatives).

<sup>751</sup> RIDR, *Evidence*, 14 February 2018 (Denise Edwards, Former Federal Prisoner, as an Individual).

<sup>752</sup> RIDR, *Evidence*, 14 February 2018 (Natalie Charles, Former Provincial Prisoner, as an Individual).

<sup>753</sup> *Criminal Records Act*, R.S.C., 1985, c. C-47.

<sup>754</sup> Government of Canada, *What is a record suspension?*



CHRA and various provincial human rights laws prohibit discrimination based on a conviction for which a record suspension has been ordered.<sup>755</sup>

Despite human rights protections, in 2017 Ms. Latimer explained that the cost of applying for a record suspension – at \$631, increased in 2012 from \$150 – prevents many former federally-sentenced persons from benefiting.<sup>756</sup> The Committee notes that this fee was further increased to \$657.77 on 31 March 2021.<sup>757</sup> Ms. Charles, who has gone through the record suspension application process, told the committee that the application fee is just one of the costs; she also had to pay for several other documents to support her application, including a fingerprint check and a criminal record check. In addition, she invested significant time in understanding the process, filling out forms and traveling from one agency to the next to obtain the requested information.<sup>758</sup> Ms. Latimer stated that record suspensions should no longer require costly applications but “should work as an application of law that as soon as a requisite crime-free period has passed, automatically those spent records and the people who have them should be given human rights protection to no longer be discriminated against on the basis of those criminal records.”<sup>759</sup>

While a federally-sentenced person’s time in a correctional facility and under community supervision may end, the effects of this period in their lives stays with them forever. The committee underscores that any approach to safeguarding and promoting the human rights of federally-sentenced persons must be cognizant of this important fact.

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<sup>755</sup> See, e.g.: CHRA, s. 3(1).

<sup>756</sup> RIDR, *Evidence*, 15 May 2017 (Catherine Latimer, Executive Director, John Howard Society).

<sup>757</sup> Parole Board of Canada, “[March 31, 2021 - Record Suspension Application Fee Increase \(Service Fees Act\)](#).”

<sup>758</sup> RIDR, *Evidence*, 14 February 2018 (Natalie Charles, Former Provincial Prisoner, as an Individual).

<sup>759</sup> RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society).

As such, the committee recommends:

**Recommendation 68**

**That the Correctional Service of Canada, in collaboration with provincial, territorial, municipal and community partners, ensure that federally-sentenced persons ahead of their release have identification, medication, housing, employment and other necessities to increase chances of successful reintegration.**

**Recommendation 69**

**That Public Safety Canada reduce the wait periods and eliminate the cost and application requirements of the record suspension/pardon process to increase the availability of this service without discrimination on the basis of means.**

## CONCLUSION

The federal correctional system is intended to make our communities safer through the safe custody and humane treatment of federally-sentenced persons and by providing vital access to correctional programming that is timely and meets the rehabilitation and reintegration needs of the diverse and complex population within it. Without the right balance of these elements, the correctional system fails federally-sentenced persons and our communities. It is imperative that, upon release from federal custody, federally-sentenced persons are equipped with the tools to face what awaits them on the outside. Not only will they encounter the same challenges that brought them to the criminal justice system, they also carry the additional burden of having served time in a federal penitentiary. It is only by overcoming these obstacles that federally-sentenced persons can successfully reintegrate into the community and avoid recidivism.

A human rights-based approach that accounts for the complex and unique needs of the diverse groups that are vulnerable and marginalized in our society and the federal correctional system is required. It is imperative that the federal correctional system recognize that sociohistorical factors play a significant role in the criminalization of individuals, especially those from vulnerable and marginalized groups who are more susceptible to criminalization due to systemic discrimination, intergenerational trauma, and other experiences associated with their unique identity. The federal correctional system is contributing to the vicious cycle of discrimination and marginalization by failing to acknowledge or address their experiences. The committee underscores that the overrepresentation of federally-sentenced Indigenous Peoples, Black persons and those with significant mental health issues in the federal correctional system requires immediate attention.

A human rights-based approach in every dimension of the federal correctional system is required to achieve a balance between safe custody, rehabilitation, and reintegration. Human rights should not be lost at the expense of security. Budgetary considerations should not impede timely access to culturally appropriate correctional programming. All federally-sentenced persons, regardless of their health, mental

health, age, sex, sexual orientation, gender, race, ethnicity, and Indigeneity should have access to gradual and structured release. Security and programming should not be considered as dichotomous elements of the correctional system. Programming should be considered complementary to the correctional system's long-term goal of making our communities safer.

The committee recommends a human rights-based approach be used in any changes made in order to create a shift in the correctional environment. The CSC must be committed to eliminating racism, sexism, transphobia, homophobia, ableism, and other forms of discrimination. These changes will benefit not only federally-sentenced persons but also society at large. By recognizing incarcerated persons' humanity and the unique needs of marginalized and vulnerable groups, federally-sentenced persons will be better prepared for release and more likely to avoid recidivism.

The committee is making the 71 recommendations in this report based on this approach. The recommendations were developed to make our communities safer by creating a federal correctional system that is more equitable for federally-sentenced persons who are Indigenous, Black, racialized, women, LGBTQI2-S, those with disabilities, health issues, and mental health issues and addictions.

The committee emphasizes the great value of the countless conversations and correspondence with federally-sentenced persons across Canada whose willingness to share very personal stories was greatly appreciated and beneficial to the study. The committee is deeply concerned by the level of frustration, hopelessness and despair expressed by federally-sentenced individuals across the country, who often indicated feeling demeaned and ignored by a system that continually prioritizes institutional and security interests over their basic human rights. The committee notes that all federally-sentenced persons with whom it met freely accepted responsibility for their incarceration; their only request was to be treated as human beings while they served their sentences.

As the Correctional Investigator told the committee,

[e]very aspect of a prisoner's life, from whether or when they have visits or telephone calls with family and friends, to when they may access services and

programming, to whether and how they may practice their religion, even when they eat and sleep, is heavily regulated, subject always to correctional power and authority.

...

Safe custody and humane treatment behind bars can only be achieved through the recognition that corrections is in the human rights business.<sup>760</sup>

A rights-based approach to the problems highlighted in this report is the only way forward to improve Canada's federal correctional system.

As such, the committee recommends:

#### **Recommendation 70**

**That the Correctional Service of Canada implement a human rights-based approach in all its policies, programs and practices that accounts for the complex and unique needs of the diverse groups that are vulnerable and marginalized in our society and the federal correctional system.**

#### **Recommendation 71**

**That the Correctional Service of Canada and other relevant government departments respond to the committee's recommendations in this report without delay.**

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<sup>760</sup> RIDR, [Evidence](#), 8 February 2017 (Ivan Zinger, Correctional Investigator, OCI).

## WITNESSES

### First Session of the Forty-second Parliament

#### Wednesday, February 1, 2017

Anne Kelly, Senior Deputy Commissioner, Correctional Service Canada

Kelley Blanchette, Deputy Commissioner for Women, Correctional Service Canada

Larry Motiuk, Assistant Commissioner, Policy, Correctional Service Canada

Jennifer Wheatley, Assistant Commissioner, Health Services, Correctional Service Canada

Catherine Latimer, Executive Director, John Howard Society of Canada

Lawrence DaSilva, Former Federal Prisoner, John Howard Society of Canada

Diana Majury, President, Canadian Association of Elizabeth Fry Societies

Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies

#### Wednesday, February 8, 2017

Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada

Jason Godin, National President, UCCO-SACC-CSN

**Wednesday, March 1, 2017**

Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociological Studies, University of Toronto, As an Individual

Dr. Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, As an Individual

**Wednesday, March 8, 2017**

Sarah Turnbull, Lecturer in Criminology, School of Law, University of London, As an Individual

Bonnie Brayton, National Executive Director, DisAbled Women's Network of Canada

**Wednesday, April 5, 2017**

Suzanne Brisebois, Director General, Policy and Operations, Parole Board of Canada

Michelle Van De Bogart, Regional Director General, Prairies Region, Parole Board of Canada

Anita Desai, Executive Director, St. Leonard's Society of Canada

Rick Sauvé, Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada

**Wednesday, May 3, 2017**

Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada

Carol McCalla, Principal, Office of the Auditor General of Canada

Justin Piché, Associate Professor, Department of Criminology, University of Ottawa, As an Individual

Teneisha Green, Master's Student, Department of Criminology, University of Ottawa, As an Individual

Jasmine Hébert, Master's Student, Department of Criminology, University of Ottawa, As an Individual

Ana Kovacic, Master's Student, Department of Criminology, University of Ottawa, As an Individual

**Monday, May 15, 2017 (Kingston, ON)**

Margaret Holland, Ontario Co-ordinator, Visitor Resource Centres, Canadian Families and Corrections Network

Catherine Latimer, Executive Director, John Howard Society of Canada

Lawrence DaSilva, Former Federal Prisoner, John Howard Society of Canada

Sean Ellacott, LL.B., Director, Prison Law Clinic, Faculty of Law, Queen's University, As an Individual

Julie Langan, As an Individual

Katheryn Wabegijig, As an Individual

**Wednesday, May 18, 2017 (Montreal, QC)**

Isabelle Parent, President of the Board of Directors, Relais Famille

Kim Parisé, Coordinator, Relais Famille

Will Propser, DESTA Black Youth Network



Pharaoh Hamid Freeman, Executive Director, DESTA Black Youth Network

Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec

Rene Callahan-St John, As an Individual

Maggie Smith, As an Individual

Parker Finley, As an Individual

**Wednesday, May 31, 2017**

Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples

Shane Partridge, As an Individual

Michelle Mann-Rempel, Lawyer/Consultant, As an Individual

**Wednesday, June 7, 2017**

Debbie Kilroy, As an Individual

Amanda George, As an Individual

Stuart Wuttke, General Counsel, Assembly of First Nations

**Wednesday, June 14, 2017**

Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission

Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission

Tabatha Tranquilla, Senior Policy Advisor, Policy, Research and International Division, Canadian Human Rights Commission

Marcella Daye, Senior Policy Advisor, Policy, Research and International Division, Canadian Human Rights Commission

**Wednesday, October 4, 2017**

Nancy Wrenshall, As an Individual

Mary E. Campbell, Sentencing and Corrections Expert (Former Director General, Corrections and Conditional Release, Public Safety Canada), As an Individual

Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, As an Individual

Dr. Kelly Hannah-Moffatt, Vice-President, Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, As an Individual

**Wednesday, October 18, 2017**

Maxcine Telfer, Director General, Audmax Inc.

Aundre Green-Telfer, Managing Director, Ethnocultural Programs and Services, Audmax Inc.

Farley Flex, Director, Founder, Urban Rez Solutions

Roderick Brereton, Director, Founder, Urban Rez Solutions

**Wednesday, October 25, 2017**

Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic

Matthew Boissonneault, Research Student, African Canadian Legal Clinic

Robert Wright, As an Individual

Luketa M’Pindou, Executive Director, Alliance Jeunesse-Famille de l’Alberta Society

Jacques Kanku, Project Coordinator, Afro-Canadian Center of Wellness and Prevention of Alberta

**Wednesday, November 1, 2017**

Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa

Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre

Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law

**Wednesday, December 6, 2017**

Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada

Carol McCalla, Principal, Office of the Auditor General of Canada

**Wednesday, January 31, 2018**

Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada

Anne-Marie Hourigan, Retired Judge of the Ontario Court of Justice and Director, Board of Directors, Mental Health Commission of Canada

**Wednesday, February 7, 2018**

Daniel Therrien, Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada

Erin Courtland, Policy and Research Analyst, Office of the Privacy Commissioner of Canada

Sofia Scichilone, Manager, Investigations, Office of the Privacy Commissioner of Canada

**Thursday, February 8, 2018 (Kitchener-Waterloo, ON)**

Sophia Brown Ramsay, Vice-Chair and Manager, Community Development, Black Community Action, Network of Peel, Regional Ethnocultural Advisory Committee

Ambreen Jamil, Intern, Black Community Action Network of Peel

Tamera Boothe, Intern, Black Community Action Network of Peel

Winston LaRose, President and Member, Jane-Finch Concerned Citizens Organization and Regional Ethnocultural Advisory Committee

Chris Cowie, Executive Director, Community Justice Initiatives

Julie Thompson, Director, Community Relations, Community Justice Initiatives

Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies

Rod Friesen, Coordinator, Restorative Justice Program, Mennonite Central Committee Canada

Halina (Lin) Haag, PhD Student, Faculty of Social Work, Wilfred Laurier University and Researcher, Acquired Brain Injury Research Lab, University of Toronto., As an individual

**Wednesday, February 14, 2018**

Denise Edwards, Former Federal Prisoner, As an Individual

Natalie Charles, Former Provincial Prisoner, As an Individual

Theresa Halfkenny, Chair, Atlantic Region for Correctional Services Canada, Regional Ethnocultural Advisory Committeeç

**Wednesday, March 21, 2018**

Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia

Fred Sanford, Vice President, John Howard Society of Nova Scotia

Claire McNeil, Lawyer, Dalhousie Legal Aid Service, Dalhousie University, As an individual

Vince Calderhead, Lawyer, Pink Larkin, As an Individual

**Wednesday, March 26, 2018 (Cherry Brook, NS)**

Theresa Halfkenny, Chair, Atlantic Region, Correctional Service Canada, Regional Ethnocultural Advisory Committee

Reverend Mark Colley, Word in Action Ministry International

El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, As an Individual

Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Dalhousie University, As an Individual

Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, As an Individual

The Honourable Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia, As an Individual

Heather Finn-Vincent, Parole Officer, Correctional Service Canada, As an Individual

Treena Smith, As an Individual

Ifo Ikede, As an Individual

Bernadette Hamilton-Reid, As an Individual

**Tuesday, August 7, 2018 (Edmonton)**

Lisa Neve, As an individual

Clare McNab, Retired, Warden of Okimaw Ohci Healing Lodge and former Deputy Warden of Bowden Institution, Correctional Service Canada, As an Individual

Toni Sinclair, As an Individual

Travis Dugas, As an Individual

Chris Hay, Executive Director, John Howard Society of Alberta

Anoush Newman, Correctional Service Canada Regional Ethnocultural Advisory Committee

Maria Morales, Correctional Service Canada Regional Ethnocultural Advisory Committee

Sue Coatham, Parole Officer Supervisor, Calgary Area Parole Office, Correctional Service Canada

Arthur Noskey, Grand Chief, Treaty 8 First Nations of Alberta

**Saturday, August 11, 2018 (Abbotsford)**

Wendy Bariteau, As an Individual

Renee Acoby, As an Individual

Aaron Devor, Founder and Inaugural Chair in Transgender Studies; Founder and Academic Director of the Transgender Archives; Professor of Sociology, University of Victoria, As an Individual

Seamus Heffernan, Manager, Office of Jati Sidhu, M.P. for Mission—Matsqui—Fraser Canyon, As an Individual

Kenneth Peterson, As an individual

Eddie Rouse, As an Individual

Marian Zadra, As an Individual

Alia Pierini, As an Individual

Jennifer Metcalfe, Prisoners' Legal Services, West Coast Prison Justice Society

Siu Man (Sherman) Chan, Co-Chair, Correctional Service Canada Regional Ethnocultural Advisory Committee

Dylan Cohen, B.C. Child and Youth Advocacy Coalition

Rubinder Dhanu, Lawyer, Dhanu Dhaliwal Law Group, South Asian Bar Association of British Columbia

Alison Granger-Brown, Independent Co-Investigator, Collaborating Centre for Prison Health and Education

Gillian Gough, Regional Advocate, Canadian Association of Elizabeth Fry Societies

**Thursday, October 4, 2018 (Winnipeg)**

John Hutton, Executive Director, John Howard Society of Manitoba

David Feick, Executive Director, The Micah Mission

Dianne Anderson, Coordinator, Restorative Ministry, Roman Catholic Diocese of Saskatoon

Ashley Pankiw, Provincial Reintegration Worker, Elizabeth Fry Society of Manitoba

Annetta Armstrong, Executive Director, Indigenous Women's Healing Centre

Julyda Lagimodiere, Minister of Justice, Manitoba Metis Federation

Chantell Barker, Community Justice Development Coordinator, Southern Chiefs' Organization

Ryan Steven Beardy, Former Inmate; Political Science Student, University of Winnipeg; Board of Directors, John Howard Society, As an Individual

Katharina Maier, Assistant Professor, Criminal Justice, University of Winnipeg, As an Individual

Jason Demers, Lecturer, Department of English, University of Regina, As an Individual

Serena Hicke, As an Individual



Alexa Potashnik, President and Founder, Black Space Winnipeg

Zilla Jones, Defence Counsel, Jones Law Office

Allison Fenske, Attorney, Public Interest Law Centre, Legal Aid Manitoba

**Wednesday, January 30, 2019**

Ivan Zinger, Correctional Investigator of Canada, Office of the Correctional Investigator

Marie-France Kingsley, Executive Director, Office of the Correctional Investigator

Howard Sapers, Former Correctional Investigator of Canada, As an Individual

Sheila Osborne-Brown, Senior Legal Counsel, Canadian Human Rights Commission

Marcella Daye, Senior Policy Advisor, Canadian Human Rights Commission

Kyle Kirkup, Assistant Professor, Faculty of Law, University of Ottawa, As an Individual

Jennifer Metcalfe, Executive Director, Prisoners' Legal Services, West Coast Prison Justice Society

**Wednesday, February 6, 2019**

Diana Majury, President, Canadian Association of Elizabeth Fry Societies

Catherine Latimer, Executive Director, John Howard Society of Canada

Peggy Shaughnessy, Founder, WhitePath Consulting

Debi Daviau, President, Professional Institute of the Public Service of Canada

Éric Massey, PIPSC Steward, Professional Institute of the Public Service of Canada

Stan Stapleton, National President, Union of Safety and Justice Employees

Nancy Peckford, Special Advisor, Union of Safety and Justice Employees

Zya Brown, Founder, Think Twice

Jafari Fraser, Facilitator, Think Twice

Rick Sauvé, Facilitator, Breakaway

Leon Boswell, Participant, Breakaway

Philip Atkins, Participant, Breakaway

**Wednesday, February 20, 2019**

Mitch Taillon, President, Canadian Dental Association

Ajay Pandhi, Vice President, Canadian Association of Social Workers

Fred Phelps, Executive Director, Canadian Association of Social Workers

Dianne Grenier, Lawyer and partner of a former prisoner, As an individual

**Wednesday, February 27, 2019**

Anne Kelly, Commissioner, Correctional Service Canada

Alain Tousignant, Senior Deputy Commissioner, Correctional Service Canada

Jennifer Wheatley, Assistant Commissioner, Health Services, Correctional Service Canada

Larry Motiuk, Assistant Commissioner, Policy, Correctional Service Canada

Kelley Blanchette, Deputy Commissioner for Women, Correctional Service Canada

Jennifer Oades, Chairperson, Parole Board of Canada

Daryl Churney, Executive Director General, Parole Board of Canada

Michelle Van De Bogart, Regional Director General, Ontario Region, Parole Board of Canada

**Wednesday, March 20, 2019**

Jason Godin, National President, UCCO-SACC-CSN

Éric Thibault, National Vice-President, UCCO-SACC-CSN

## **SUBMISSIONS**

### **Second Session of the Forty-third Parliament**

Anthony N. Doob, Professor Emeritus of Criminology, Centre for Criminology & Sociolegal Studies, University of Toronto, As an Individual

Anne Kelly, Commissioner, Correctional Service of Canada

Ivan Zinger, Correctional Investigator of Canada, Office of the Correctional Investigator

## First Session of the Forty-second Parliament

Mary E. Campbell, As an Individual

Diana Majury, President, Canadian Association of Elizabeth Fry Societies

Anne Kelly, Commissioner, Correctional Service Canada

Shoshana Pollack, Coordinator, Walls to Bridges Program

Rob McDonnell, The Royal

Colin Cameron, The Royal

Akhtar Atif, As an Individual

Sandra Ka Hon, Canadian HIV/AIDS Legal Network

Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, As an Individual

Naiomi Mettalic, Assistant Professor, Dalhousie University, As an Individual

Jason Demers, Lecturer, University of Regina, As an Individual

Jennifer Metcalfe, Executive Director, West Coast Prison Justice Society

George Myette, National Executive Director, 7<sup>th</sup> Step Society of Canada

Ajay Pandhi, Vice President, Canadian Association of Social Workers

Canadian Hard of Hearing Association

Canadian Association of the Deaf

Ivan Zinger, Correctional Investigator of Canada, Office of the Correctional Investigator

Canadian Human Rights Commission

Parole Board of Canada

Correctional Service Canada

Sara Martin-Mills, Founder and Director, Growing Hope Farms, As an Individual

Nora Demnati, Lawyer, Simao Lacroix s.e.n.c.r.l., As an Individual

Marie-Claude Lacroix, Lawyer, Simao Lacroix s.e.n.c.r.l., As an Individual

UCCO-SACC-CSN

Canadian Friends Service Committee (Quakers)

Zya Brown, Founder, Think2wice

Shoshana Pollack, Coordinator, Walls to Bridges

## FACT FINDING VISITS

### First Session of the Forty-second Parliament

#### **Monday, May 15, 2017**

Brockville Mental Health Institution (Brockville, ON)

Joyceville Institution (Kingston, ON)

#### **Tuesday, May 16, 2017**

Bath Institution (Bath, ON)

Millhaven Institution (Bath, ON)

#### **Wednesday, May 17, 2017**

Collins Bay Institution (Kingston, ON)

#### **Thursday, May 18, 2017**

Joliette Institution for Women (Joliette, QC)

Waseskun Healing Center (Saint-Alphonse-Rodriguez, QC)

**Friday, May 19, 2017**

Regional Reception Centre (Sainte-Anne-des-Plaines, QC)

**Thursday, February 8, 2018**

Keele Community Correctional Centre (Toronto, ON)

**Friday, February 9, 2018**

Grand Valley Institution for Women (Kitchener, ON)

**Monday, March 26, 2018**

East Coast Forensic Hospital (Halifax, NS)

**Tuesday, March 27, 2018**

Nova Institution for Women (Truro, NS)

Springhill Institution (Springhill, NS)

**Wednesday, March 28, 2018**

Atlantic Institution (Renous, NB)

**Thursday, March 29, 2018**

Dorchester Penitentiary (Dorchester, NB)

Shepody Healing Centre (Dorchester, NB)

## Appendix A: List of reports relating to the human rights of federally-sentenced persons

Correctional Service of Canada, Audit of Interception of Inmate Communications (2021).

Sprott, J., Doob, A. and Iftene, A., Do Independent External Decision Makers Ensure that An Inmate's Confinement in a Structured Intervention Unit Is to End as Soon as Possible? (2021).

Sprott, J. and Doob, A., Solitary Confinement, Torture, and Canada's Structured Intervention Units (2021).

Office of the Correctional Investigator, COVID-19 Third Status Update (2021).

Sprott, J. and Doob, A., Understanding the Operation of Correctional Service Canada's Structured Intervention Units: Some Preliminary Findings (2020).

Office of the Correctional Investigator, COVID-19 Status Update (2020).

Standing Senate Committee on Social Affairs, Science and Technology, 35<sup>th</sup> Report, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament (2019) (Bill C-83).

Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019), Vol 1, Chapter 8 Confronting Oppression – Right to Justice.

Correctional Service of Canada, Audit of Food Services (2019).

Parliamentary Budget Office, Cost Estimate for Implementing Structured Intervention Units as set out in Bill C-83 and Related Proposals (2019).

2019 Fall Report of the Auditor General of Canada to the Parliament of Canada, Report 1—Respect in the Workplace (2019).

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## Appendix B: Pathways to Incarceration

Throughout its study, the committee met with numerous federally-sentenced persons who have had many tragic life experiences. Witnesses told the committee that experiences with the child welfare and youth justice systems, poverty, homelessness, trauma and abuse, and drug and alcohol addiction are common among this population.<sup>761</sup> On average, federally-sentenced persons have less education than the general population. According to the CSC, approximately 75% of persons admitted to federal custody on their first sentence do not have a high school diploma; by contrast, roughly 80% of the general public has at least a high school education.<sup>762</sup> The committee heard that federally-sentenced persons in penitentiaries, particularly those from vulnerable and marginalized groups, face serious societal challenges rooted in structural inequalities and discrimination. The committee was informed that these risk factors, combined with inadequate access to social supports and related services, are at the core of excessive criminalization and overincarceration.<sup>763</sup>

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<sup>761</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec); RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa; Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law; Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre); RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia; Claire McNeil, Lawyer, Dalhousie Legal Aid Service, as an Individual; Vince Calderhead, Lawyer, as an Individual); RIDR, *Evidence*, 26 March 2018 (Hon. Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia, as an Individual); RIDR, *Evidence*, 7 August 2018 (Chris Hay, Executive Director, John Howard Society of Alberta).

<sup>762</sup> CSC, *Evaluation of CSC's Education Programs and Services*, February 2015; Statistics Canada, "[Chapter A: The output of educational institutions and the impact of learning](#)" in *Education Indicators in Canada: An International Perspective, 2018*, no. 81-604-X, 11 December 2018.

<sup>763</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec); RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa; Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law; Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre); RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia; Claire McNeil, Lawyer, Dalhousie Legal Aid Service, as an Individual; Vince Calderhead, Lawyer, Pink Larkin, as an Individual); RIDR, *Evidence*, 26 March 2018 (Hon. Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia, as an Individual); RIDR, *Evidence*, 7 August 2018 (Chris Hay, Executive Director, John Howard Society of Alberta).



The committee heard that income security is an important social determinant of health that plays a determining role in protecting persons from factors that too often lead to the criminal justice system:

I'd like to consider the many factors that protect a person from criminal justice involvement: opportunity for quality education, employment and income security; a stable culturally appropriate home in a supportive and loving environment; access to health care and support services; consistent nutritious food and drinking water, to name a few.<sup>764</sup>

Yes, from our perspective, the Canadian Association of Social Workers has adopted a position of universal basic income as advancing a floor for all Canadians to stand on. That's one of the fundamental social determinants of health. We certainly want to afford that to you, as well.<sup>765</sup>

The benefits of a guaranteed liveable income, particularly for young people, was also underscored:

The research consistently points to the equivalent of a guaranteed annual income for youth from care, and we have seen really big successes when we look at the communities that are provided support, mostly youth that are accessing post-secondary. But there are huge cost savings when you look at health and the criminal justice system and education, and all of these other components, when we commit to the lives of youth in care after the age of majority.<sup>766</sup>

As marginalized and vulnerable groups are disproportionately affected by structural inequalities, risk factors are amplified as they are frequently overlapping and intersecting. For example, witnesses stated that the social, economic, racial and gender disadvantages faced by LGBTQI2-S individuals in society can increase their

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<sup>764</sup> RIDR, [Evidence](#), 20 February 2019 (Ajay Pandhi, Vice President, Canadian Association of Social Workers).

<sup>765</sup> RIDR, [Evidence](#), 20 February 2019 (Fred Phelps, Executive Director, Canadian Association of Social Workers).

<sup>766</sup> RIDR, [Evidence](#), 11 August 2018 (Dylan Cohen, B.C. Child and Youth Advocacy Coalition).

chances of incarceration.<sup>767</sup> The Canadian Association of the Deaf informed the committee that deaf individuals face many challenges that may lead to their interaction with the justice system, including general discrimination, lack of access to education, underemployment, and susceptibility to mental health issues.<sup>768</sup>

Witnesses explained those with mental health issues in general are at higher risk of incarceration. The committee heard about, and witnessed during site visits, the overrepresentation of Indigenous Peoples and Black persons in federal penitentiaries, which is directly linked to long histories of colonialism, inter-generational trauma, systemic racism, and discrimination. Finally, witnesses stressed that the risk factors leading women to federal penitentiaries are distinct from those affecting men, and these factors must be addressed separately. These issues are discussed below.

## A. The Prevalence of Mental Health Issues among the Federally-Sentenced Persons

The mental health issues of Canadians are a growing concern. According to the Government of Canada, one in three Canadians will experience mental illness in their lifetime.<sup>769</sup> Yet, only 7.2% of Canada's healthcare budget is dedicated to mental health.<sup>770</sup> According to witnesses, the inadequate availability of treatment and support services is contributing to the overincarceration of persons with mental health issues.<sup>771</sup> The committee was informed that 30% of federally-sentenced

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<sup>767</sup> RIDR, *Evidence*, 18 May 2017 (Parker Finley, as an Individual); RIDR, *Evidence*, 30 January 2019 (Marcella Daye, Senior Policy Advisor, Canadian Human Rights Commission); RIDR, Briefs, Letter to RIDR from CHRC, 18 April 2019.

<sup>768</sup> Canadian Association of the Deaf, *Administration of Justice: The Experiences of Deaf, DeafBlind, and Deaf People with Additional Disabilities in Accessing the Justice System*, 25 April 2018.

<sup>769</sup> The Government of Canada defines mental illness as follows: "Mental illness is the reduced ability for a person to function effectively over a prolonged period of time because of significant levels of distress; changes in thinking, mood or behaviour; feelings of isolation, loneliness and sadness the feeling of being disconnected from people and activities." See: Government of Canada, *About mental illness*.

<sup>770</sup> Canadian Mental Health Association, *Mental Health in the Balance: Ending the Health Care Disparity in Canada*, 14 September 2018.

<sup>771</sup> RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada; Anne-Marie Hourigan, Retired Judge of the Ontario Court of Justice and Director, Board of Directors, Mental Health Commission of Canada); RIDR, *Evidence*, 21 March 2018 (Fred Sanford, Vice President, John Howard Society of Nova Scotia).

persons and 50% of federally-sentenced women have mental health disorders, far exceeding rates in the general population.<sup>772</sup>

Certain individuals with mental health issues are at greater risk of incarceration as their illness, when left untreated, causes them to behave in such a way that increases their chances of coming into contact with the legal system. For instance, Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, explained that people with Fetal Alcohol Spectrum Disorder (FASD) are particularly vulnerable to involvement in the criminal justice system due to several factors, including “impulsivity, difficulty learning from consequences... [and] challenges with social interactions.”<sup>773</sup> These challenges can make it difficult too to maintain employment, which can lead to criminalization through factors associated with poverty and economic disparity.

Similarly, in the context of traumatic brain injuries, Halina Haag, Researcher, Acquired Brain Injury Research Lab, University of Toronto explained that:

In terms of attention deficits, you might find someone who has difficulty in focusing on a task or responding to directions. In terms of memory deficits, it could affect their understanding or remembering of rules or directions. In terms of impulse control, they may engage in negative behaviours as a result of the injury rather than an active choice to act out or be violent. Misinterpretation on the part of questioning staff is quite possible. Behaviours that they might see as being difficult or deliberately defiant may just be a brain injury being a brain injury.<sup>774</sup>

Despite the well-known challenges faced by persons with mental health issues, the committee was informed by several former and current federally-sentenced persons that community supports are so deficient that they did not receive a diagnosis or

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<sup>772</sup> CSC, *National Prevalence of Mental Disorders among Incoming Federally-Sentenced Men*, February 2015; CSC, *Prevalence of mental disorder among federal women offenders: Intake and in-custody*, October 2018.

<sup>773</sup> RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa).

<sup>774</sup> RIDR, *Evidence*, 8 February 2018 (Halina (Lin) Haag, PhD Student, Faculty of Social Work, Wilfrid Laurier University and Researcher, Acquired Brain Injury Research Lab, University of Toronto, as an Individual).

treatment for their mental health issues until they were incarcerated, usually once they were transferred to psychiatric hospitals.<sup>775</sup> Former Provincial Court Judge Anne-Marie Hourigan told the committee that

many of the people appearing before the court did not need to end up there. Countless young people who regularly appeared before me had simply fallen through the cracks in our mental health, education and social welfare systems. I saw that they might have avoided the criminal justice system if they had had access to appropriate mental health services and supports at key points in their life, before they got into serious legal trouble.<sup>776</sup>

These same issues regarding lack of access to treatment apply to the many federally-sentenced persons with substance abuse issues and addictions. Access to mental health and substance abuse treatment outside penitentiaries is limited due to the cost of treatment, long waiting lists to see mental health and addiction professionals, and the lack of services in more remote areas.<sup>777</sup> Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia, shared the experience of one of her clients to illustrate the impact of these issues:

Last week I was working very closely with a woman who has struggled for many years with addiction, and she's looking for treatment. We spent 50 minutes on the phone with a mental health crisis line trying to get her some support before we had to hang up. There are so few services available. We couldn't even get her into a detox program in the hospital in any immediate way. We are waiting weeks for an appointment. So it is a lack of community resources.<sup>778</sup>

The fact that individuals with mental health issues, including addiction issues, are not receiving diagnosis and treatment until they are already criminalized and imprisoned

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<sup>775</sup> RIDR, *Evidence*, 7 August 2018 (Lisa Neve, as an Individual).

<sup>776</sup> RIDR, *Evidence*, 31 January 2018 (Anne-Marie Hourigan, Retired Judge of the Ontario Court of Justice and Director, Board of Directors, Mental Health Commission of Canada).

<sup>777</sup> RIDR, *Evidence*, 3 May 2017 (Justin Piché, Associate Professor, Department of Criminology, University of Ottawa, as an Individual); RIDR, *Evidence*, 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law).

<sup>778</sup> RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia).

is particularly concerning given that federal penitentiaries are “uniquely poor places to treat people that have mental illness.”<sup>779</sup> and penitentiaries are not an appropriate or effective alternative to community-based health care facilities. After conducting site visits to federal penitentiaries across the country, and meeting with numerous federally-sentenced persons with mental health issues, the committee agrees with this assessment. This issue is explored further in Chapter 4.

Many witnesses stressed that more resources are needed at the community level to divert people with mental health issues away from the criminal justice system. Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre, stated that “[i]f they can go to other treatment programs so that they can either be prevented from committing crimes or get treatment that actually is more effective in changing their criminal behaviour into pro-social behaviour, that would be great.”<sup>780</sup> Likewise, Ms. Hourigan told the committee that mental health intervention needs to happen as early as possible in a person’s life. She called for enhanced awareness among educators and parents on mental health indicators and resources available to them.<sup>781</sup>

The committee is concerned that individuals who require treatment for their mental health issues are instead being funnelled into the federal correctional system. It is clear that more resources should be invested at the community level to help persons with mental health issues to ensure they do not end up in the criminal justice system. The justice system, and in particular penitentiaries should not be a replacement for the lack of mental health resources in our communities.

## **B. Federally-Sentenced Indigenous Peoples**

The committee echoes the words of several witnesses that the proportion of federally-sentenced Indigenous Peoples is “disturbing”<sup>782</sup> and “fundamentally

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<sup>779</sup> RIDR, *Evidence*, 1 November 2017 (J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre).

<sup>780</sup> Ibid

<sup>781</sup> RIDR, *Evidence*, 31 January 2018 (Anne-Marie Hourigan, Retired Judge of the Ontario Court of Justice and Director, Board of Directors, Mental Health Commission of Canada).

<sup>782</sup> RIDR, *Evidence*, 7 August 2018 (Chris Hay, Executive Director, John Howard Society of Alberta).

wrong.”<sup>783</sup> The Correctional Investigator reports that Indigenous Peoples comprise 30% of the total federal in-custody population compared to 5% of the Canadian population.<sup>784</sup> The situation is far worse for federally-sentenced Indigenous women, who comprise 42% of incarcerated women in Canada. According to the Correctional Investigator, the number of federally-sentenced Indigenous Peoples increased by 42.8% between March 2009 and March 2018, compared to a less than 1% overall growth of the federally-sentenced population during the same period. The number of federally-sentenced Indigenous women during this period increased by 60%.<sup>785</sup>

Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples, put the situation bluntly:

Even to a distant observer, there is something wrong with the criminal justice system that imprisons [I]ndigenous peoples to such high levels. Overrepresentation of [I]ndigenous peoples in the Canadian correctional system raises the issues of procedural fairness and substantive justice including just and equitable remedies for violations of human rights.<sup>786</sup>

The committee noted the overrepresentation of Indigenous Peoples during its visits to federal penitentiaries in the Prairie region. CSC statistics indicate that in Manitoba, 59% of the federally-sentenced population is Indigenous. In Saskatchewan, the proportion of federally-sentenced Indigenous Peoples sits at a disturbing 76%.<sup>787</sup> By comparison, Indigenous Peoples comprise 18% of the population of Manitoba, and 16.3% of the population of Saskatchewan.<sup>788</sup>

Unique sociohistorical factors are at the root of overrepresentation of Indigenous Peoples in federal penitentiaries. These factors include Canada’s history of colonialism and forced assimilation, including the residential school system, the

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<sup>783</sup> RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations).

<sup>784</sup> OCI, *Annual Report 2019-2020*.

<sup>785</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

<sup>786</sup> RIDR, *Evidence*, 31 May 2017 (Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples).

<sup>787</sup> CSC, *Aboriginal Offender Statistics*, August 2013.

<sup>788</sup> Statistics Canada, “[Province of Manitoba](#)” and “[Province of Saskatchewan](#)” in *Focus on Geography Series, 2016 Census*.

"Sixties Scoop" and ongoing child welfare apprehensions.<sup>789</sup> As outlined in the 2015 report of the Truth and Reconciliation Commission, the legacy of the residential school system and other historic injustices against Indigenous Peoples has resulted in widespread and continuing intergenerational trauma, leading to higher incidences of poverty, lower education, substance abuse, criminalization, loss of connection with family or community, increased rates of suicide, and child welfare involvement, among other impacts.<sup>790</sup> Witnesses described the disturbing trajectory of institutionalization prevalent among Indigenous Peoples, from the residential school system to the child welfare system to the juvenile and adult corrections system.<sup>791</sup>

Overrepresentation is also caused by “issues of cultural difference and systemic discrimination within the criminal justice system and in society at large.”<sup>792</sup> Stuart Wuttke, General Counsel, Assembly of First Nations, told the committee that from his experience as an Indigenous person and lawyer, and according to research, Indigenous Peoples are more likely to be charged, convicted and sentenced to incarceration – for longer periods – than non-Indigenous people for the same offence.<sup>793</sup> This is in spite of section 718.2(e) of the *Criminal Code* (Gladue Principles), which requires judges to take into account “all available sanctions, other than imprisonment... with particular attention to the circumstances of Aboriginal offenders”<sup>794</sup> when determining an individual’s sentence.

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<sup>789</sup> The “Sixties Scoop” refers to several decades of state-sanctioned removal of Indigenous children from their families by child protection authorities and subsequent adoption by white families in order to destroy the children’s Indigenous identity.

<sup>790</sup> Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The Legacy*, Volume 5 of *The Final Report of the Truth and Reconciliation Commission of Canada*, 2015. See also: RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations); RIDR, *Evidence*, 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge and former Deputy Warden, Bowden Institution, CSC, as an Individual; Arthur Noskey, Grand Chief, Treaty 8 First Nations of Alberta).

<sup>791</sup> RIDR, *Evidence*, 31 May 2017 (Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples; Michelle Mann-Rempel, Lawyer/Consultant, as an Individual); RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations); RIDR, *Evidence*, 7 August 2018 (Clare McNab, Retired, Warden, Okimaw Ohci Healing Lodge and former Deputy Warden, Bowden Institution, CSC, as an Individual); RIDR, *Evidence*, 4 October 2018 (Ryan Steven Beardy, Former Inmate, Political Science Student, University of Winnipeg, Board of Directors, John Howard Society, as an Individual).

<sup>792</sup> RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual).

<sup>793</sup> RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations).

<sup>794</sup> *Criminal Code*, s. 718.2(e).



While mental health issues contribute to incarceration for all individuals, the committee heard that the prevalence of mental health issues among federally-sentenced Indigenous Peoples can be directly linked to intergenerational trauma stemming from historic and systemic injustices such as the residential school system. As explained by Michelle Mann-Rempel, lawyer, and consultant:

... Indigenous mental health in corrections may be closely interconnected with the history of colonization and assimilation, often resulting in disenfranchisement, community fragmentation and breakdown. Indian residential school syndrome has been recognized as a unique, culturally specific type of post-traumatic stress disorder.<sup>795</sup>

These unique mental health issues include a particularly high prevalence of FASD among federally-sentenced Indigenous Peoples.<sup>796</sup> As explained by the Truth and Reconciliation Commission, intergenerational trauma caused by the residential school system and other historical injustices have led to higher rates of alcohol addiction among Indigenous Peoples, resulting in increased instances of FASD.<sup>797</sup>

The committee noted the prevalence of Indigenous gangs in some facilities it visited, particularly in the Prairie region. Again, unique factors regarding the experience of Indigenous Peoples often lead Indigenous youth to join these gangs. Shane Partridge spoke of the vulnerability to affiliation and criminalization of Indigenous youth moving from remote communities to cities like Saskatoon:

They know nobody. They get involved with sort of the wrong crowd and get wound up in drugs, alcohol and violence. These gangs prey on these kids coming in because they are these squeaky clean kids that have no record. They aren't being watched.<sup>798</sup>

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<sup>795</sup> RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an Individual).

<sup>796</sup> RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program).

<sup>797</sup> Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The Legacy*, Volume 5 of *The Final Report of the Truth and Reconciliation Commission of Canada*, 2015.

<sup>798</sup> RIDR, *Evidence*, 31 May 2017 (Shane Partridge, as an Individual).



Witness testimony and conversations with federally-sentenced Indigenous Peoples confirmed to the committee that the overrepresentation of Indigenous Peoples in federal corrections is unacceptable. Despite the urgency of this issue, the Correctional Investigator notes that “[l]ittle practical progress has been made on the TRC’s *‘Calls to Action’* impacting federal corrections.”<sup>799</sup> The committee agrees with Mr. Wuttke that “Canada cannot continue to hold itself as an international flag bearer for human rights”<sup>800</sup> as Indigenous Peoples continue to be incarcerated at alarmingly disproportionate rates.

### C. Federally-Sentenced Black Persons

Black persons account for 8.6% of the federally-sentenced population while representing only 3.5% of the Canadian population.<sup>801</sup> The committee was appalled to learn that between 2002 and 2012, the number of federally-sentenced Black persons increased by 75%, while the number of white federally-sentenced persons decreased by 10%.<sup>802</sup> Although the number of federally-sentenced Black persons has since decreased by 9%, the overall federally-sentenced population has also decreased by 6.3% since 2012.<sup>803</sup> The overincarceration of Black individuals perpetuates the cycle of marginalization, further entrenching issues linked to systemic racism. As stated by Dr. Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto:

The increasing concentration of imprisonment amongst Blacks and Aboriginals is further troubling because of the impact that this has on the communities they are drawn from. We have ample evidence from the United States of these negative consequences. These range from adverse health and mental health effects to deteriorating educational employment outcomes, as well as a general reduction of community safety. And this impacts not only the

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<sup>799</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

<sup>800</sup> RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations).

<sup>801</sup> OCI, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, February 2014; Statistics Canada, *Canada’s Black population: Growing in number and diversity*, 6 February 2019.

<sup>802</sup> OCI, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, February 2014.

<sup>803</sup> Ivan Zinger, Correctional Investigator, *Letter to the Chair of RIDR* (Re: Follow-up to 8 February 2017 testimony), 2 March 2017.

individuals, of course, that are being incarcerated, but their children, families and the social networks they are drawn from.<sup>804</sup>

Witnesses explained that systemic racism and the structural inequalities that stem from it are at the root of overincarceration of Black persons in Canada. As explained by Farley Flex, Director, Urban Rez Solutions, systemic racism is distinct from overt anti-Black racism, but is just as dangerous:

Most people who participate in systemic racism are not even aware that they are. Awareness really becomes the first step to mitigating the issue. We have to ensure that folks are aware they're actually contributing to systemic racism through their normal behaviours. Until the incumbents in charge of the institutions and the issues that we're addressing are aware of that, made aware of that, trained and their brains are unwashed, literally, to understand what equity actually means and what fairness actually is and so on and so forth, it will be a futile issue to address and go down the list of issues to claim that we're resolving and using terms like that, because it does, in fact, start with the system itself.<sup>805</sup>

Within this context, the committee was informed that Black persons are disproportionately targeted by law enforcement, charged with offences and sentenced to incarceration.<sup>806</sup> For example, Black persons are more likely to be arrested and incarcerated for minor drug possession.<sup>807</sup> As noted by witnesses, significant racial profiling has been documented in cities across Canada, including Winnipeg, Toronto and Montreal.<sup>808</sup> Will Prosper of the DESTA Black Youth Network

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<sup>804</sup> RIDR, [Evidence](#), 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual).

<sup>805</sup> RIDR, [Evidence](#), 18 October 2017 (Farley Flex, Director, Founder, Urban Rez Solutions).

<sup>806</sup> RIDR, [Evidence](#), 4 October 2018 (Alexa Potashnik, President and Founder, Black Space Winnipeg).

<sup>807</sup> RIDR, [Evidence](#), 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual).

<sup>808</sup> RIDR, [Evidence](#), 18 May 2017 (Will Prosper, DESTA Black Youth Network); RIDR, [Evidence](#), 4 October 2018 (Alexa Potashnik, President and Founder, Black Space Winnipeg); RIDR, [Evidence](#), 5 December 2018 (Robyn Maynard, Author of *Policing Black Lives: State Violence in Canada from Slavery to the Present*); RIDR, [Evidence](#), 6 February 2019 (Zya Brown, Founder, Think Twice; Jafari Fraser, Facilitator, Think Twice).

told the committee that “carding”<sup>809</sup> of Black persons in Montreal North rose 126% following the establishment of an anti-gang police force in the area. Discriminatory carding practices can be “catastrophic” for Black communities as those whose information is unjustly in police databases may struggle to obtain jobs that require a security clearance, for example, employment as a police officer.<sup>810</sup>

When these interactions with the justice system occur at a young age, the effects can be devastating. Dr. Owusu-Bempah explained:

We also want to consider the fact that especially among boys, if you make it to adulthood as a boy and don't engage in some kind of delinquent and criminal conduct, you're a minority. It's who's being targeted by the police and thinking about who we saddle with a criminal record or who we bring into the formal criminal justice system, even from a young age.

A well-established and growing body of literature shows that people who have contact with the formal justice system and are processed, even if they are given some form of diversion, are more likely to offend later in life. This will change a little bit now, but when we target people for minor cannabis possession, something that large proportions of the population do, we increase their chances that they're going to run into problems with the law again later on in their lives. So with regard to prevention, I think we need to seriously think about who we are sending away and why we're sending people away.<sup>811</sup>

Witnesses spoke of the poverty as well as lack of employment, education and social supports that often affect Black communities in Canada. Robyn Maynard, author of *Policing Black Lives: State Violence in Canada from Slavery to the Present*, illustrated to the committee how these systemic injustices affect Black children:

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<sup>809</sup> “Carding” refers to the stopping, questioning and documenting of individuals when no particular offence is being investigated. The information collected becomes part of police databases. See: Jim Rankin, “[Known to police: Toronto police stop and document black and brown people far more than whites](#),” *Toronto Star*, 9 March 2012.

<sup>810</sup> RIDR, *Evidence*, 18 May 2017 (Will Prosper, DESTA Black Youth Network).

<sup>811</sup> RIDR, *Evidence*, 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, as an Individual).

We can continue to see the devaluation of Black children in the present day, where only a few years ago we saw a young Black 6-year-old girl handcuffed in her school; where Black youth are in care in Ontario at a rate five times higher than that of other youth; where Black youth in Toronto make up 8 per cent of the youth population, but 40 per cent of youth in care, and 65 per cent in other cities. In Montreal, Black English-speaking youth are one third of those held in youth protection. We know that Black children in care are kept longer and reunited less frequently with their families.

We can see as well the long-standing devaluation and the lack of protection for Black children today in schools across the country. In Canada's largest school board, the Toronto District School Board, almost half of the children expelled between 2011 and 2016 were Black. In Halifax, where Black youth make up 8 per cent of the student body, they accounted for 23 per cent of suspensions between 2015 and 2016.

A recent study by the American Psychological Association shows us that Black children continue to be seen as less innocent, as older than they are and as less worthy of protection. This is something that, as a society, needs to be, as I said, unconscionable.<sup>812</sup>

Witnesses stressed that these injustices are leading to the disproportionate criminalization of Black Canadians.<sup>813</sup> Dr. Owusu-Bempah stated that Black people (in addition to Indigenous Peoples) have been "disproportionately affected by the erosion of social welfare programs, leaving many more of them in marginalized positions."<sup>814</sup> He continued:

Blacks have been disproportionately affected or targeted by the increased punitivism that Canada experienced over much of the past decade. Indeed the growth in the Black prison population has coincided with increased public and media debate about guns and gangs, the emergence of anti-gang initiatives

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<sup>812</sup> RIDR, *Evidence*, 5 December 2018 (Robyn Maynard, Author of *Policing Black Lives: State Violence in Canada from Slavery to the Present*).

<sup>813</sup> Ibid.

<sup>814</sup> Ibid.

that target neighbourhoods with substantial numbers of Black residents. So, too, has Canada's war on drugs disproportionately targeted Black and Aboriginal people.<sup>815</sup>

Through the testimony heard by the committee, many witnesses emphasized that the overrepresentation of Black persons in federal corrections requires urgent attention. As witnesses have indicated, the focus must change from over-policing and over-criminalizing the Black community to providing the supports it needs. Discrimination in the justice system against Black persons must also be addressed.

#### **D. Federally-Sentenced Women**

While the male federally-sentenced population has continued to decline over the last decade, the number of federally-sentenced women has increased by nearly 30% — from 534 to 2008 to 684 in 2018.<sup>816</sup> As stated above, Indigenous women make up 3% of the overall population but account for 42% of the female federally-sentenced population. In the Prairie region, the proportion of federally-sentenced Indigenous women jumps to 66%.<sup>817</sup> The number of federally-sentenced Indigenous women has increased by 60% in the last ten years, compared to 29.7% of the women in prison generally.<sup>818</sup> Clearly, any approach to prevent the incarceration of women must include strategies to address the unique needs and circumstances of Indigenous women.

According to witnesses, risk factors leading women to incarceration are distinct to those affecting the incarceration of men. Community Justice Initiatives shared the following data regarding federally-sentenced women:

- 86% have experienced physical abuse and 68% have experienced sexual abuse;
- 79% don't have a high school diploma;

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<sup>815</sup> Ibid.

<sup>816</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

<sup>817</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018.

<sup>818</sup> OCI, *Office of the Correctional Investigator Annual Report 2017-2018*, 29 June 2018; OCI, *Office of the Correctional Investigator Annual Report 2016-2017*, 28 June 2017.

- 78% were unemployed at the time of their admission to prison;
- 66% are mothers struggling with being separated from their children.<sup>819</sup>

Children of women in penitentiaries are more likely to end up in state care than the children of men. Indeed, Nelson Mandela freed women with children under the age of 12 years when he was President of South Africa.<sup>820</sup>

According to former Correctional Investigator Howard Sapers, federally-sentenced women are twice as likely as federally-sentenced men to be serving a sentence for drug-related offences, and more likely to be serving shorter sentences.<sup>821</sup> Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec highlighted in particular the prevalence of “extreme poverty” among the federally-sentenced women she encounters, and emphasized that such poverty “is fertile ground for the growth of [further] social problems.”<sup>822</sup>

Compared to federally-sentenced men, federally-sentenced women are twice as likely to have a serious mental health diagnosis.<sup>823</sup> The prevalence of mental health disorders among federally-sentenced women is four times higher than among women in the general population.<sup>824</sup> A recent CSC study determined that “more than three-quarters of women inmates had a lifetime or current mental disorder and at least two thirds of the women reported symptoms consistent with a co-occurring mental disorder with alcohol/substance use or borderline or antisocial personality disorder.”<sup>825</sup> The study found that Indigenous women have the highest prevalence of mental disorder, particularly serious mental disorders.<sup>826</sup>

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<sup>819</sup> Chris Cowie, Executive Director, Community Justice Initiatives, “Presentation to the Senate of Canada Standing Committee on Human Rights,” 8 February 2017.

<sup>820</sup> RIDR, *Evidence*, 7 June 2017 (Debbie Kilroy, as an Individual).

<sup>821</sup> OCI, *Annual Report of the Office of the Correctional Investigator 2014-2015*, 26 June 2015.

<sup>822</sup> RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

<sup>823</sup> OCI, *Annual Report of the Office of the Correctional Investigator 2014-2015*, 26 June 2015.

<sup>824</sup> CSC, *National Prevalence of Mental Disorders among Incoming Federally-Sentenced Men*, February 2015; CSC, *Prevalence of mental disorder among federal women offenders: Intake and in-custody*, October 2018.

<sup>825</sup> CSC, *Prevalence of mental disorder among federal women offenders: Intake and in-custody*, October 2018.

<sup>826</sup> Ibid.

According to Halina Haag, Researcher, Acquired Brain Injury Research Lab, University of Toronto, a significant proportion of federally-sentenced women experienced traumatic brain injuries before incarceration. Domestic violence is a common cause of traumatic brain injuries in women.<sup>827</sup> As will be discussed in more detail in Chapter 4, traumatic brain injuries can cause negative and even violent behaviour. Nonetheless, the condition is rarely diagnosed or treated.<sup>828</sup> Ms. Brayton pointed to the prevalence of childhood sexual abuse among federally-sentenced women, and the potential impacts these violations may have on women's incarceration.<sup>829</sup>

The dramatic rise in the number of federally-sentenced women indicates that more preventative strategies that address the unique needs and circumstances of women, particularly those of Indigenous women, must be developed.

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<sup>827</sup> RIDR, *Evidence*, 8 February 2018 (Halina (Lin) Haag, PhD Student, Faculty of Social Work, Wilfrid Laurier University and Researcher, Acquired Brain Injury Research Lab, University of Toronto, as an Individual).

<sup>828</sup> RIDR, *Evidence*, 8 February 2018 (Halina (Lin) Haag, PhD Student, Faculty of Social Work, Wilfrid Laurier University and Researcher, Acquired Brain Injury Research Lab, University of Toronto, as an Individual).

<sup>829</sup> RIDR, *Evidence*, 8 March 2017 (Bonnie Brayton, National Executive Director, DisAbled Women's Network of Canada).



## Appendix C: Letter from the Union of Canadian Correctional Officers 26 July 2018



BY EMAIL

July 26, 2018

Honorable Ralph Goodale  
Minister of Public Safety and Emergency Preparedness  
House of Commons  
Ottawa, Ontario K1A 0A6  
[ralph.goodale@parl.gc.ca](mailto:ralph.goodale@parl.gc.ca)

### OBJECT: INAPPROPRIATE COMMENTS

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Dear Minister:

We would like to bring to your attention the inflammatory and insulting comments put forward by several members of the Standing Senate Committee on Human Rights. Here is an excerpt:

*How many more prisons are about to erupt like the Saskatchewan Penitentiary did last year? How many staff harassment and assault claims will there be from other prisons besides Edmonton? How many sadistic fight clubs are being run in men's prisons throughout the country? If staff are treating each other in such cruel and callous ways, how likely is it that the human rights of prisoners are being respected, much less upheld?*

*We saw posters advertising the role of the Correctional Investigator, the Ombudsman office for federal prisoners ... they usually looked new and as though they were freshly posted, yet virtually every prisoner expressed frustration with their inability to grieve or receive remedial action for correctional breaches of policy, much less law. The recounting of instances of racism, violent uses of force and breaches of law and policy were frightening. The fact that some staff incite racist violence and attitudes, in addition to encouraging younger prisoners to prey upon those who are older or who have intellectual and/or mental health issues, was at once appalling and frightening.*

<https://sencanada.ca/en/sencaplus/opinion/warning-signs-in-prisons-senators-bernard-cordy-hartling-and-pate/>



## Report on The Human Rights of Federally-Sentenced Persons

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We find these comments completely unacceptable coming from a government that promotes respectful workplaces within federal government departments and those federal public servants working within them.

These comments only serve as to degrade the work of thousands of dedicated professionals working in Correctional Services, including correctional officers. These comments are even more troubling as these men and women have one of the most challenging roles to play under the public safety umbrella, which is that of public safety for Canadians and successful reintegration of offenders into Canadian society. These perceptions present a false image of Corrections and belong where they originate from, Hollywood movies.

We do not believe these insulting comments serve the best interests of Canadians or the public service at large. We are without a doubt a model for most of the world on what good correctional practices and policy should be and the departmental statistics support that.

We ask that you, as Public Safety Minister, address these comments with your Senate colleagues for what they are: counterproductive and derogatory. These comments have no place or purpose within the Federal Public Service, regardless of whether they are coming from elected, appointed or front-line Public Servants.

Thank you for your attention and action on this matter.

Kind regards,



Jason Godin  
National President  
UCCO-SACC-CSN

JG/lt

c.c.: Justin Trudeau, Prime Minister

Honourable John McKay, Pierre-Paul Hus, Matthew Dubé, Blaine Calkins, Julie Dabrusin, Pam Damoff, Peter Fragiskatos, Mark Holland, Glen Motz, Michel Picard, Sven Spengemann, members of the Standing Committee on Public Safety and National Security

Wanda Thomas Bernard, Jane Cordy, Nancy Hartling and Kim Pate, Senators

Sabina Saini, Deputy Director of Policy and Legislative Affairs

Anne Kelly, Interim Commissioner of Corrections

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## **Appendix D: Terminology on Mental Health**

The following is a Briefing Note that was prepared by the Chair of the committee (First Session, Forty-second Parliament), the Honourable Wanda Thomas Bernard, on the terminology adopted in the report with respect to mental health in the federal correctional system.

**Senator Wanda Thomas Bernard  
RIDR Briefing Note: Language Related to Mental Health**

Human Rights Framework for Mental Health:

The report on federally-sentenced persons is being framed from a human rights perspective, therefore, it is important that the language used in the report aligns with human rights frameworks related to mental health. In 1991, the UN General Assembly adopted the *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* which establishes the rights of people with mental illnesses and standards that mental health systems should meet (UNGA, 1991). The document uses the term “mental illness” while the term “mental disorder” is not used once.

Terminology used by Associations and Organizations:

**1) American Psychiatric Association (APA):** In a news release titled *Words Matter: Reporting on Mental Health Conditions* (APA, 2019), the Association encouraged the use of respectful and person-centered language when discussing and writing about mental health, stating: “the words you use to write about mental health are very important and can help reduce stigma around mental illness if carefully chosen. Focus on the person, not the condition” (APA, 2019, para. 5).

Although the APA does use the term “disorder” when referring to individuals who have been diagnosed with a specific condition in the DSM, other terms are used when referring generally to mental health. These include: “mental illness”, “mental health condition” and “mental health challenges”.

**2) The Canadian Mental Health Association** also adopts the term “mental illness” when referring to mental health generally, and uses “disorder” when referring to a specific condition (CMHA, n.d.). CMHA acknowledges that using medical language may or may not be useful to individuals, stating “Some people don’t see the name of a diagnosis as an important part of their journey, while others prefer the medical terms to describe the illness” (CMHA, n.d. para. 4).

**3) The Mental Health Commission of Canada (MHCC)** published *The Mental Health Strategy for Canada* in 2012 as mandated by the Government of Canada in 2007. The Commission recognizes that mental health and well-being is “the result of a complex mix of social, economic, psychological, biological and genetic factors” (MHCC, 2012, p. 15). Therefore MHCC has chosen to use the phrase “people living with mental health problems and illnesses” (instead of “mental disorders”) to encompass the various factors and experiences that impact mental well-being.

**4) Correctional Service of Canada’s Mental Health Strategy for Corrections in Canada** adopts the terminology used by the MHCC. The *Strategy* states “the definition of mental health problems and/or mental illnesses is drawn from the MHCC” (CSC, n.d., p.23). The report also includes the terms “mental health issues”, “mental health needs” and “mental health concerns”.

**5) The Centre for Addiction and Mental Health (CAMH)** published the article *Mental Illness and the Prison System* (CAMH, n.d.), in which the phrases “people with mental illness” and “people with mental health problems” are used.

## Report on The Human Rights of Federally-Sentenced Persons

### Conclusion:

Using person-centered language that respects the experiences of individuals is an important aspect of discussing and writing about mental health. None of the federally-sentenced individuals used the term “mental disorders” when discussing their mental health. This indicates that the report should use other terminology when referring to the mental health of prisoners.

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