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Marginalized: The Aboriginal  
Women's experience in  
Federal Corrections  
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**Marginalized: The Aboriginal Women's experience in Federal  
Corrections**

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*“... I think when people start recognizing that there are reasons why we end up here, we weren’t born like this. We weren’t born to come to jail. It is everything that took place within our lives, all the struggles we have endured, all the hardships we have traveled. It all comes down to this. This is where we end up.”*

RCAP, Bridging the Cultural Divide,  
Bev Auger, Prison for Women, March 31, 1993, at 141.



## Introduction

The story of how so many Aboriginal women came to be locked up within federal penitentiaries is a story filled with a long history of dislocation and isolation, racism, brutal violence as well as enduring a constant state of poverty beyond poor.

The aforementioned factors combined have culminated into the current crisis of highly disproportionate rates of Aboriginal women in the Canadian Federal Corrections system. The current state of over-representation is nothing short of a crisis; that being said it has been a crisis for quite some time now<sup>1</sup> with reports from as far back as the 1980s identifying the issue and predicting that the numbers would only increase. Given the current state of the system, absent immediate change, the outlook is bleak for Aboriginal women, their families and communities.

Aboriginal peoples<sup>2</sup> account for 4% of the Canadian population;<sup>3</sup> however, within the federal corrections population, Aboriginal peoples comprise 20% of the total incarcerated offender population.<sup>4</sup>

The over-representation is even more pronounced in terms of Aboriginal women incarceration rates: As of April 2010, Aboriginal women accounted for 32.6% of the total female offender population,<sup>5</sup> this means that one out of every three women federally incarcerated is of Aboriginal descent.

The rates at which Aboriginal women are incarcerated have been on the rise for quite some time. Over the past 10 years, the representation of Aboriginal women has increased by nearly 90%; as such they represent the fastest growing offender population.<sup>6</sup>

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<sup>1</sup> Aboriginal women are over-represented in federal and provincial correctional institutions at an even higher rate than Aboriginal males and they have been for some time. The Elizabeth Fry Society conducted a study in 1982 that showed 71% of Manitoba female inmates were Aboriginal. In 1988 the percentage of incarcerated Aboriginal females rose to 85%. See Elizabeth Fry Society, presentation to Aboriginal Justice Inquiry hearings, Winnipeg, 16 November 1988; See also, *Report of the Aboriginal Justice Inquiry of Manitoba*, Volume 1: The Justice System and Aboriginal People (Winnipeg: 1991), [hereinafter: *Aboriginal Justice Inquiry*]; Chapter 13, The Sentencing of Aboriginal Women; Task Force on Federally Sentenced Women, *Creating Choices: The Report of the Task Force on Federally Sentenced Women*, Ottawa, CSC, 1990; Canada, *Report of the Royal Commission on Aboriginal Peoples: Bridging the Cultural Divide* (Ottawa: Supply and Services Canada) at 28-33; John H. Hylton, "Financing Aboriginal Justice Systems," in *Continuing Poundmaker and Riel's Quest*, Presentations made at a Conference on Aboriginal Peoples and Justice, comp. Richard Gosse, James Youngblood Henderson and Roger Carter (Saskatoon: Purich Publishing, 1994) at 155;

<sup>2</sup> The Term "Aboriginal peoples" within this report refers to First Nations (status and non-status Indians), Inuit and Métis peoples.

<sup>3</sup> Statistics Canada, *Aboriginal Peoples in Canada, 2006 Census*. 3.8% of the Canadian population identify as Aboriginal, meaning that they identify as First Nation, Métis or Inuit. online: <http://www12.statcan.ca/census-recensement/2006/dp-pd/hlt/97-558/pages/page.cfm?Lang=E&Geo=PR&Code=01&Table=3&Data=Count&Sex=1&StartRec=1&Sort=2&Display=Page>.

<sup>4</sup> Correctional Service Canada. *Accountability Framework, Year-End Report 2009/2010, Aboriginal Initiatives* at 18. [*Accountability Framework 2009/2010*] Aboriginal offenders make up 20.64 per cent of the total offender population incarcerated.

<sup>5</sup> *Ibid.* at 18.

<sup>6</sup> Public Safety Canada. *Corrections and Conditional Release Statistical Overview*, 2010. "The number of incarcerated Aboriginal women increased steadily from 88 in 2000-01 to 164 in 2009-10, an increase of 86.4% in the last ten years. The increase for incarcerated Aboriginal men was 25.7% for the same period, increasing from 2,092 to 2,629. See also Office of the Correctional Investigator. *Annual Report of the office of the Correctional Investigator, 2009-2010*. Ottawa: Minister of Public Works and Government Services Canada 2010 at 49 [OCI 2009-2010].

Furthermore, there is no indication of any anticipated decline. As of April 2010, there were 164 Aboriginal women serving federal sentences.

Aboriginal women in federal penitentiaries tend to be younger than their non-Aboriginal counterparts. The Aboriginal female offender profile when compared to that of the non-Aboriginal female indicates that there is an age gap of 5 years and 4 months, meaning that the average age of the Aboriginal female inmate is 34 years old.<sup>7</sup> Overall, Aboriginal people have a higher representation in the 21-40 year old age group than non-Aboriginal offenders<sup>8</sup> and the trend is even more pronounced in regard to Aboriginal female offenders - 39% of the total Aboriginal female offender population are within this age group.<sup>9</sup> Furthermore, the face of the new offender population in terms of Aboriginal people is younger than those Aboriginal persons already incarcerated.<sup>10</sup>

Given that Aboriginal peoples are the fastest growing population within Canada<sup>11</sup> and that the projected demographics indicate that the over-representation of Aboriginal peoples in the criminal justice system will only continue to grow, aggressive action must be taken now to address the issues of Aboriginal women in federal corrections.

However, it is highly unlikely that the issues of such a marginalized population will receive the attention and resources necessary to even begin to address the multitude of issues. Absent political will, fundamental change will not occur within the system. Furthermore, given the political climate of late, there is no indication that effective change for Aboriginal women in Corrections will occur anytime soon.

The Federal Government's "Tough on Crime Agenda" does nothing to ameliorate the disproportionate rates at which Aboriginal peoples are incarcerated - quite the opposite, in terms of Aboriginal peoples' over-representation within the justice system, the federal government's current plan will only serve to further increase the numbers and worsen the already staggering injustice experienced by Aboriginal peoples as a whole.<sup>12</sup>

### Aboriginal Women a History of Dislocation and Isolation:

Aboriginal peoples have a long history of dislocation spanning over 500 years since the arrival of the first European settlers. The Europeans asserted their political sovereignty over the Aboriginal nations claiming title to their lands by way of legal doctrine: The

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<sup>7</sup> *Accountability Framework, Year-End Report 2009/2010*, at 19.

<sup>8</sup> *Ibid.* at 20.

<sup>9</sup> *Ibid.* at 19.

<sup>10</sup> *Ibid.* at 19. The data included within the *Accountability Framework, Year-End Report 2009/2010* was not broken down by gender. There is a note regarding the statistics of the new offender population that it is expected that future reports will be gender specific.

<sup>11</sup> See Indian and Northern Affairs Canada, *Aboriginal Population Demographic and Socio Economic Portrait*, available online: <[http://dsp-psd.pwgsc.gc.ca/collections/collection\\_2010/aic-inac/R3-109-2009-eng.pdf](http://dsp-psd.pwgsc.gc.ca/collections/collection_2010/aic-inac/R3-109-2009-eng.pdf)>.

<sup>12</sup> Paula Mallea, "The Fear Factor, *Stephen Harper's Tough on Crime Agenda*" November 2010 Canadian Centre for Policy Alternatives at 16, 21, 35, available on line at: <http://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2010/11/Tough%20on%20Crime.pdf>

Doctrine of Discovery, originally limited to terra nullius, a Latin term which means “land belonging to no one”.

To serve their interests and support their claim over the Aboriginal lands, the Europeans expanded the Latin term to include lands that were not in the possession of “civilized peoples” or were not being used in a “civilized manner”, civilized according to European worldview.<sup>13</sup>

Aboriginal identity is often inextricably linked to the land. As such, being forced from their traditional lands<sup>14</sup> and relocated to meager reserve lands created a disconnection from identity.

The isolation from Aboriginal lands was just the beginning in a long series of government policies focused on civilization, assimilation and eradication of Aboriginal identity. With the forced imposition of the Eurocentric worldview, Aboriginal women were marginalized not only within the European society but also within their own communities as for many, their traditional roles and places within Indigenous societies were uprooted and they in turn were displaced.<sup>15</sup>

Of all the assaults committed against Aboriginal peoples, perhaps the greatest assault to Aboriginal identity has been the Residential School System.<sup>16</sup> The legacy of harms committed continue to be felt today across generations.

The Residential School System predates Confederation it was originally run by several church entities and subsequently embraced by the federal government who assumed control over the schools in the 1890s.

The schools operated for a period of over 100 years with the last school closing in the mid-90s. Thousands of children of Indian, Métis and Inuit ancestry were forced to attend the schools. Children were removed from their families and communities, often times by use of force and/or threat of incarceration if the parents failed to comply. For the Inuit peoples, the threat of cutting off their Northern Allowance was often used in order to ensure compliance.<sup>17</sup>

The children’s collective and individual identity was attacked. Children were told that they as a people were worthless. They were prohibited from practicing their spiritual

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<sup>13</sup> Canada, *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, vol. 1 (Ottawa: Supply and Services Canada) at 43.

<sup>14</sup> Traditional lands includes lands which Aboriginal peoples occupied by way of habitation, use of the land for hunting, fishing, trapping, gathering food medicines and all other traditional means and spiritual significance.

<sup>15</sup> See *Aboriginal Justice Inquiry*, Chapter 13, The Sentencing of Aboriginal Women. See also Canada, *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, vol 4 (Ottawa: Supply and Services Canada) Chapter 2, *Women’s Perspectives*, 7-49; See also Monture Angus, Patricia. 1999. “Women and Risk: Aboriginal Women, Colonialism and Corrections Practice,” *Canadian Woman Studies Journal*. Vol. 19: 24-9.

<sup>16</sup> The Residential School system included the forced attendance of Indian Métis and Inuit children.

<sup>17</sup> See Legacy of Hope Foundation, *We were so far away – the Inuit Experience of Residential Schools*. For the Inuit peoples, the transition from living a traditional nomadic life to one of forced assimilation was abrupt and aggressive as the Residential School system was introduced in Northern Canada as recently as the 1950s. A series of events including the RCMP’s massive killing of sled dogs, forced Inuit peoples to become dependent on the Northern Allowance in order to survive.

ceremonies and forced to renounce their traditions and adopt the ways of the European, not only in language and dress but in every manner of being.<sup>18</sup>

In some instances, children's names were changed, sometimes in place of a name they were identified by only a number. The children were often times treated as worthless, less than human, causing irreparable harms to self-worth and dignity and the harms did not end there. In isolation the children were most vulnerable to predators, persons who inflicted physical, sexual, emotional and psychological abuse.

The affects of the Residential School system have been intergenerational, its legacy has been one of violence including: physical, sexual, mental and emotional abuse; alcoholism, drug and solvent abuse; extreme poverty; low education rates; high unemployment rates; loss of identity; high suicide rates; loss of parenting skills with a high number of Aboriginal children in the child welfare system;<sup>19</sup> and gross over-representation in the criminal justice system.<sup>20</sup>

Government policies and laws that specifically discriminated against First Nations women have further compounded the attack on Aboriginal women's identity and self-worth. The *Indian Act* registration provisions are an example of such policies and law.

Prior to 1985, First Nations women were stripped of their Indian Status pursuant to the registration provisions of the *Indian Act* upon marriage to a non-Status Indian or a non-Indian. While a First Nations man who married a non-status Indian woman retained his status and bestowed Indian status on his wife regardless of ancestry. The discriminatory provision of the *Act* was only amended in 1985 with the passage of Bill C-31. Women who previously lost their status or were denied status as the Indian lineage flowed through their maternal side were then able to register pursuant to section 6(1)(c) of the *Indian Act*. However, their children were registered under 6(2) of the *Act*, thereby limiting their ability to pass status entitlement to their grandchildren.<sup>21</sup>

These are but two examples of the ways in which the *Indian Act* has oppressed and further marginalized Aboriginal women. There remain other legal issues unresolved regarding the constitutionality of the registration provisions of the *Act*.<sup>22</sup> By and large, the *Indian Act* registration provisions have created issues of dislocation and isolation for First Nations women. Many Aboriginal women have been forced to leave

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<sup>18</sup> See the Aboriginal Justice Inquiry, chapter 13, *The Attack on Aboriginal Culture*.

<sup>19</sup> Aboriginal children account for 5% of the child population in Canada and yet account for as much as 40% of the children in the child welfare system. This is three times higher than the number of children who were in Residential School at its height. See Blackstock, C. (2003). First Nations child and family services: Restoring peace and harmony in First Nations communities. In Kathleen Kufeldt and Brad McKenzie (Eds.) *Child Welfare: Connecting Research Policy and Practice* (pp. 331-343). Waterloo: Wilfrid Laurier University Press.

<sup>20</sup> See *From Truth to Reconciliation, Transforming the legacy of the Residential Schools*, Aboriginal healing Foundation, Research Series, online: <<http://www.ahf.ca/publications/research-series>>. See also Addictive Behaviours among Aboriginal People in Canada, Aboriginal Healing Foundation, Research Series, online: <<http://www.ahf.ca/publications/research-series>>

<sup>21</sup> See *McIvor v. The Registrar, Indian and Northern Affairs Canada*, [2009] B.C.J. No. 669. On April 6, 2009, the British Columbia Court of Appeal held that section 6 of the *Indian Act* infringes Ms. McIvor and her son's right to equality under section 15 of the *Charter* and that the infringement was not justified by section 1 of the *Charter*. The Court of Appeal suspended the declaration of invalidity allowing Canada time to amend the *Indian Act*.

<sup>22</sup> The issue of unstated paternity remains unresolved. See *Gehl v. Canada (Attorney General)*, [2002] O.J. No. 3393.

their families and communities relocating to urban settings. The challenges of living in an urban setting are many including contending with systemic barriers to housing and employment needs. Lack of social supports and isolation from culture and family are other issues that may contribute greatly to an Aboriginal woman's health and quality of life in an urban setting.

For some Aboriginal women, it is the legacy of the Residential School system that has forced them to leave their home communities in search of a better life for themselves and their children. However, once in the city they may find themselves contending not only with the issues that forced them to leave (such as domestic violence and poverty) but also racial discrimination and issues of isolation and dislocation.

Whether they arrive from an urban or rural community, the collective experience of Aboriginal women prior to their entry into the Federal Corrections system is one that is fraught with many social injustices. An Aboriginal woman at the Kingston Prison for Women described the unique circumstances of Aboriginal women as follows:

The critical difference is racism. We are born to it and spend our lives facing it. Racism lies at the root of our life experiences. The effect is violence, violence against us, and in turn our own violence.<sup>23</sup>

Racism and discrimination against Aboriginal women is not only degrading but it is also dangerous. Emma LaRocque, a Métis woman and professor of Native Studies at the University of Manitoba, wrote to the Aboriginal Justice Inquiry about the dangers associated with stereotyping Aboriginal women:

The portrayal of the squaw is one of the most degraded, most despised and most dehumanized anywhere in the world. The 'squaw' is the female counterpart to the Indian male 'savage' and as such she has no human face; she is lustful, immoral, unfeeling and dirty. Such grotesque dehumanization has rendered all Native women and girls vulnerable to gross physical, psychological and sexual violence...I believe that there is a direct relationship between these horrible racist/sexist stereotypes and violence against Native women and girls. I believe, for example, that Helen Betty Osborne was murdered in 1972 by four young men from The Pas because these youths grew up with twisted notions of "Indian girls" as "squaws"...Osborne's attempts to fight off these men's sexual advances challenged their racist expectations that an "Indian squaw" should show subservience ... [causing] the whites to go into a rage and proceed to brutalize the victim.<sup>24</sup>

Aboriginal women are 3.5 times more likely than non-Aboriginal women to be victims of violence and for Aboriginal women between the ages of 25 and 44 they are five times more likely to die as a result of violence. Violence against Aboriginal women in the home is prevalent as Aboriginal women are approximately 3.5 times more likely to

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<sup>23</sup> Fran Sugar and Lana Fox, *Survey of Federally Sentenced Aboriginal Women in the Community* (Ottawa: Native Women's Association of Canada, 1990), p. 18. See also the *Aboriginal Justice Inquiry*, chapter 13.

<sup>24</sup> Emma LaRocque, written presentation to the Aboriginal Justice Inquiry hearings, 5 February 1990.

experience some form of spousal violence than non-Aboriginal women. Aboriginal women (54%) are more likely than non-Aboriginal women (37%) to report the most severe forms of spousal violence, such as being beaten, choked, threatened with a gun or knife, or sexually assaulted. Furthermore, Approximately 75% of survivors of sexual assault in Aboriginal communities are young women under 18 years of age. Approximately 50% of these girls are under the age of 14 and approximately 25% are under the age of 7.<sup>25</sup>

Aboriginal women have been marginalized significantly by the impact of colonization and the Residential School system. Government policies that have impoverished Aboriginal communities have left Aboriginal female children and women vulnerable to exploitation and violence. Furthermore, racism and discrimination have denied the dignity and self-worth of Aboriginal women allowing them to fall prey to violent acts perpetrated against them by men. Therefore, it stands to reason that the needs of Aboriginal women in federal corrections are many as their collective and individual circumstances have dictated such.

Corrections has the challenge of addressing the multitude of needs in a culturally and gender appropriate manner. However, to date, the experience of Aboriginal women in federal penitentiaries has been a continuation of the marginalization experienced for generations. Issues of isolation and dislocation are commonplace for Aboriginal women across the continuum of federal corrections. Aboriginal women find themselves overrepresented in higher security classifications; overrepresented in Management Protocol status (explained on page 42); they are frequently denied access to culturally and gender appropriate programming and as a group they are underrepresented in terms of parole eligibility.

The following information is based on available statistics and data analysis, reports, as well as interviews with staff at various sectors of Correctional Service Canada (CSC), Parole Board of Canada (PBC) and the Office of the Correctional Investigator (OCI).

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<sup>25</sup> See Amnesty International. (2004). *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada*. Ottawa, ON: Amnesty International. B.C. Government. (2005). *Researched to Death: B.C. Aboriginal Women and Violence*. B.C. Women's Hospital and Health Centre. Brzozowski, J., Taylor-Butts, A., Johnson, S. (2006). *Victimization and Offending Among the Aboriginal Population in Canada*. Ottawa, ON: Canadian Centre for Justice Statistics. Ipsos Reid. (2006). *Aboriginal Women and Family Violence*. Ottawa, ON: Indian and Northern Affairs Canada. METRAC. (2001). *Statistics Sheet: Sexual Assault*. Toronto, ON: METRAC. Statistics Canada. (2008). *Aboriginal and non-Aboriginal Victims of Homicide in Canada, by Sex and Accused-victim Relationship, 1997-2004*. Ottawa, ON: Statistics Canada. Statistics Canada. (2006). *Measuring Violence Against Women Statistical Trends 2006*. Ottawa, ON: Statistics Canada. The Roads to End Violence. *Fact Sheet*. Gander, NL: The Roads to End Violence.

## Criminogenic Factors

*Even though we are in prison, we are human and there are reasons why we ended up in prison, and a lot of it goes back to our upbringing, our abusive backgrounds, lack of traditional teachings because our communities are so deep into alcoholism that even they have lost their traditional way of life, their values...*

RCAP, Bridging the Cultural Divide,  
Bev Auger, Prison for Women, March 31, 1993, at 141.

For many Aboriginal women, the circumstances which resulted in their involvement in the criminal justice system is comprised of a complex set of collective and individual life circumstances marked with violence and poverty.

Therefore, upon entering federal correctional institutions, many Aboriginal women present with a range of programming needs including culturally appropriate and gender appropriate programming regarding life skills; parenting skills; education; employment; alcohol and substance abuse; anger management; and spiritual programming. In addition, a number of Aboriginal women may present with a need for mental health care and treatment.

In terms of research focusing on the specific needs of Aboriginal women offenders there is limited statistical data available. The information available typically examines the needs of Aboriginal women as a subset part of a larger group making the connection by either race or gender. That being said, CSC's Research Branch prepared a report in 2004 titled: *A Needs Assessment of Federal Aboriginal Women Offenders*<sup>26</sup> which examined the programming needs of Aboriginal women while incarcerated and post-release.<sup>27</sup> The Report found that overall, over two-thirds (69%) of Aboriginal women were rated at a high needs level for programming, 29% were rated at a moderate needs level for programming and only 2% were rated at a level of low need.<sup>28</sup>

In terms of specific needs identified upon admissions, the Report found that Aboriginal Women demonstrated a high need in the areas of personal/emotional orientation, substance abuse and employment.<sup>29</sup> The same was true of their needs upon release into the community as the Report found that Aboriginal women continued to demonstrate a high need for supports in the areas of personal/emotional orientation, substance abuse and employment.<sup>30</sup>

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<sup>26</sup> Correctional Service Canada. Research Branch, Amey Bell, Shelly Trevethan and Nicole Allegri. *A Needs Assessment of Federal Aboriginal Women Offenders*, 2004 [*Needs Assessment of Federal Aboriginal Women Offenders*].

<sup>27</sup> Three sources of data were used for the assessment: 1) data extracted from the Offender Management System; 2) interviews with incarcerated Aboriginal women and 3) interviews conducted with a small sample of Aboriginal women serving time in the community.

<sup>28</sup> *Needs Assessment of Federal Aboriginal Women Offenders* at 28.

<sup>29</sup> *Ibid.* at 28-29.

<sup>30</sup> *Ibid.* at 32.

In terms of accessing programs while incarcerated to address the high need area of personal/emotional orientation, the Report found that over three-quarters, 76% of the Aboriginal women participated in programs relating to mental health while an additional 27% accessed psychological and counselling services.<sup>31</sup>

For Aboriginal women, the mental health programming and services will require in many cases, services which not only address the individual trauma but systemic issues including intergenerational trauma.<sup>32</sup> Focusing only on the individual experiences will result in the collective trauma experience being overlooked. To do so would be to ignore the profound impact of the trauma experienced collectively<sup>33</sup> by colonization, Residential School and oppressive laws and policies.<sup>34</sup>

With regard to substance abuse issues, 60% of the women had participated in substance abuse programs and in terms of employment-related needs over three quarters (78%) participated in educational programming and institutional work programs while 53% participated in vocational programs.<sup>35</sup>

The Report also found that a number of the participants accessed Aboriginal-specific programming. Approximately one third of the participants, 32% participated in Aboriginal specific anger management while 27 % participated in Aboriginal specific substance abuse programming and 25% participated in Aboriginal specific parenting programming.<sup>36</sup>

For Aboriginal women participating in programming which is culturally appropriate and gender specific delivered by an Aboriginal facilitator may affect greater results in terms of their engagement and responsiveness.<sup>37</sup>

With regard to accessing programming, the 2009-2010 figures from the Aboriginal Initiatives Directorate indicate that during the sampling period no Inuit women were receiving programming and that Métis women were participating in only Aboriginal specific programming. The average wait time for a Métis woman to enter into said programming was 264 days. For a First Nations woman participating in Aboriginal specific programming, the length of wait was 238 days from the date of admission.

With regard to accessing non-Aboriginal specific programming First Nations women entered their first program approximately 341 days into their term. A difference of 11

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<sup>31</sup> *Ibid.* at 30.

<sup>32</sup> See Bombay, A., Kim Mathesons, Hymie Anisman, *Intergenerational Trauma: Covergence of Multiple Processes among First Nations peoples in Canada*, Journal of Aboriginal Health, November 2009, National Aboriginal Health Organization. Traumatic events cause severe psychological and physical toll on survivors and the ramifications are often endured for decades. The ramifications include emotional scarring and a diminished standard of living. Some of the behavioural disturbances associated with traumatic experiences include but are not limited to depression, anxiety, posttraumatic stress disorder, and substance abuse disorder. At the collective level the effects of trauma experienced are often transmitted across generations.

<sup>33</sup> *Ibid.*

<sup>34</sup> See Introduction, *Aboriginal Women a history of Dislocation and Isolation* at 5-11.

<sup>35</sup> *Needs Assessment of Federal Aboriginal Women Offenders* at 30.

<sup>36</sup> *Needs Assessment of Federal Aboriginal Women Offenders* at 31.

<sup>37</sup> See Heckbert, D., & Turkington, D. (2001). *Turning points: A study of the factors related to the successful reintegration of Aboriginal offenders*. Research Report R-112. Ottawa, ON: Correctional Service of Canada.

days compared to their non-Aboriginal counterparts who received their first programming 330 days into their sentence.<sup>38</sup> During this time, 75 Aboriginal women were enrolled in non-continuous programs while 183 Aboriginal women were enrolled in continuous programs.<sup>39</sup>

In the 2009-2010 period, the average sentence length served behind bars for an Aboriginal woman was 3.52 years.<sup>40</sup> The majority of all Aboriginal female offenders are serving a sentence in the range of two to five years (68.06%).<sup>41</sup> In terms of new Aboriginal female admissions the majority in 2010, 83.13% were sentenced to the two-five year range.<sup>42</sup> As such, the need to begin programming for rehabilitative purposes is immediate upon admission to federal corrections.

Collectively, Aboriginal persons represent 23.48% of all positive program completions during the 2009-2010 period.<sup>43</sup>

Information regarding the numbers for specific programming Aboriginal women were enrolled in and/or completed was not contained within the 2009-2010 Year End Report.

The programming needs of Aboriginal women expand beyond the three core areas of personal/emotional orientation, substance abuse and employment. The CSC 2004 Report's findings identified problem areas regarding poor stress management; impulsiveness and poor conflict resolution skills. With regard to the area of family and childhood, many of the women had endured childhood dysfunction and in adulthood had unstable relationships and difficulty with communications within their family.<sup>44</sup> Given the lengthy and traumatic history of Aboriginal peoples within Canada, and particularly the experience of Aboriginal women within that history,<sup>45</sup> the findings of the study are not at all surprising.

The Aboriginal female offender profile is younger than that of her non-Aboriginal counterparts. According to the *Accountability Framework Report 2009/2010* the average age of an Aboriginal female inmate is 34 years old.<sup>46</sup> Overall, Aboriginal people have a higher representation in the 21-40 year old age group than non-Aboriginal offenders<sup>47</sup> the trend is even more pronounced in regard to Aboriginal female offenders where 39% of the total Aboriginal female offender population are within this age group.<sup>48</sup>

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<sup>38</sup> *Accountability Framework 2009/2010* at 48. Note that the data is limited to inmates who are serving 4 years or less and includes only those offenders who scored MOD or HIGH on their SIR or for those with no SIR a score of MED or MAX on the CRS.

<sup>39</sup> *Accountability Framework 2009/2010* at 49. Note that data was not defined between Aboriginal and non-Aboriginal programming for enrolment figures.

<sup>40</sup> *Accountability Framework Report 2009/2010* at 21.

<sup>41</sup> *Ibid.* at 21.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Accountability Framework 2009/2010* at 49-50.

<sup>44</sup> *Ibid.* at 28-29.

<sup>45</sup> See Introduction, *Aboriginal Women a History of Dislocation and Isolation* at 5-11.

<sup>46</sup> *Accountability Framework Report 2009/2010* at 19.

<sup>47</sup> *Ibid.* at 20.

<sup>48</sup> *Ibid.* at 19.

Furthermore, the face of the new offender population in terms of Aboriginal people is younger than those Aboriginal persons already incarcerated and new non-Aboriginal offender admissions.<sup>49</sup> According to the *Corrections and Conditional Release Statistical Overview, 2010*, 50.9% of the new admissions of Aboriginal offenders were under the age of 30, compared to 37.8% of the non-Aboriginal offenders. The median age of Aboriginal persons on admissions is 29 years old compared to the median age of 33 years old for non-Aboriginal persons.<sup>50</sup>

The figures for the 2009-2010 Accountability Framework Report regarding Aboriginal women create a profile of an Aboriginal female offender not unlike that described in the CSC Report of 2004, *A Needs Assessment of Federal Aboriginal Women Offenders*. There the researchers provided a one-day snapshot of the Aboriginal women profile on March 1, 2004. The information was taken from the Offender Management System of CSC. On that date, 105 Aboriginal women were then serving federal sentences in penitentiaries. The information provided the following:

- Aboriginal women incarcerated are younger;<sup>51</sup>
- Aboriginal women offenders are generally not married but single;<sup>52</sup>
- Generally, Aboriginal women are incarcerated for serious offences;<sup>53</sup>
- Aboriginal female offenders tend to have a low level of education;<sup>54</sup>
- Aboriginal female offenders have low employment levels;<sup>55</sup>
- Aboriginal women in federal penitentiaries have a more extensive criminal history including youth convictions, previous adult convictions (provincial and/or federal) and previous community supervisions;<sup>56</sup>
- Aboriginal female offenders tend to have a history of past breaches and failures to comply with conditional release terms and/or community sanctions;<sup>57</sup> and
- Aboriginal women have a high need for programming.<sup>58</sup>

Several years later, the profile remains un-changed; the only difference is that the numbers have increased. At the time of the survey, Aboriginal women accounted for 27% of the female incarcerated population,<sup>59</sup> at present they account for 32.6% of the female offender population which translates into 1 of every 3 women incarcerated is an

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<sup>49</sup> *Ibid.* at 19. The data included within the 2009/2010 Report was not broken down by gender. There is a note regarding the statistics of the new offender population that it is expected that future reports will be gender specific.

<sup>50</sup> Public Safety Canada. *Corrections and Conditional Release Statistical Overview, 2010* at 43.

<sup>51</sup> *Accountability Framework Report 2009/2010* at 23.

<sup>52</sup> *Ibid.* at 20-23.

<sup>53</sup> *Ibid.* at 20.

<sup>54</sup> *Ibid.* at 23.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.* at 21-22.

<sup>57</sup> *Ibid.* at 21.

<sup>58</sup> *Ibid.* at 32.

<sup>59</sup> *Needs Assessment of Federal Aboriginal Women Offenders*, at 1.

Aboriginal woman.<sup>60</sup> For Corrections that means that the demand is high to provide culturally and gender appropriate programming that addresses the systemic and individual criminogenic factors contributing Aboriginal women's involvement in the criminal justice system.

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<sup>60</sup> *Accountability Framework Report 2009/2010* at 18.

## Programming

“...I definitely think that being as Aboriginal women, we definitely need to have programs directly regarding our spirituality, our culture, and our traditions and the beliefs that we carry with us.”

Unnamed Aboriginal woman quoted in the  
*Needs Assessment of Federal Aboriginal  
Women Offenders* at 31.

In order to optimize effectiveness, the programming delivered within CSC must be culturally and gender appropriate. Within the 2009 report prepared for the Office of the Correctional Investigator [OCI] by Michelle Mann, *Good Intentions Disappointing Results: A Progress Report on Federal Aboriginal Corrections* [hereinafter the *Mann Report*]<sup>61</sup> CSC was heavily criticized for failing to ensure that Aboriginal offenders, particularly Aboriginal female offenders, were provided with sufficient access to culturally appropriate programming and services.<sup>62</sup> Mann identified issues relating to delays in the national implementation of Aboriginal core programming, shortages in trained staff to deliver culturally appropriate programs and insufficient links to Aboriginal communities upon release.<sup>63</sup>

Sections 77 and 80 of the *Corrections and Conditional Release Act* (CCRA) stipulate that CSC must provide programming that is gender specific and Aboriginal culturally appropriate. CSC’s Strategic Plan for Aboriginal Corrections 2006-2011 [hereinafter the “Strategic Plan”] is consistent with the provisions of the CCRA as the Strategic Plan places emphasis on such matters; however, there continues to be delays in the follow through of such commitments.

CSC has identified as a strategic priority the need to enhance capacities to provide effective interventions for Aboriginal offenders and has made promises to bridge the gap in outcomes between Aboriginal and non-Aboriginal prisoners.<sup>64</sup> To this effect, CSC developed the plan with three main objectives. The objectives of the plan are as follow: 1) to develop culturally appropriate interventions that address the specific criminogenic needs of First Nations, Métis and Inuit offenders;<sup>65</sup> 2) to enhance collaboration;<sup>66</sup> and 3) to address systemic barriers internally and increase CSC cultural competence.<sup>67</sup>

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<sup>61</sup> Mann, Michelle. *Good Intentions Disappointing Results: A Progress Report on Federal Aboriginal Corrections*. Ottawa: Office of the Correctional Investigator, 2009 [Mann Report].

<sup>62</sup> *Ibid.* at 13-15.

<sup>63</sup> *Ibid.* at 13.

<sup>64</sup> *Accountability Framework Report 2009/2010* at 3.

<sup>65</sup> Correctional Service Canada. *Strategic Plan for Aboriginal Corrections 2006-2011* at 9 and 16 [Strategic Plan for Aboriginal Corrections]. To meet objective 1, CSC developed the Continuum of Care Model which strives to integrate Aboriginal culture and spirituality through the course of Corrections’ operations from intake to the reintegration process. The initiatives include enhancing the delivery of Aboriginal programming to meet the specific criminogenic needs; expansion of Pathways healing units, to implement the Healing Lodge Action Plan and to develop a strategy to address the needs of Northern offenders including the Inuit Offender population.

Over the course of the past few years some progress has been made. However, in terms of bridging the gaps in outcomes for Aboriginal women in Federal Corrections, there is much work that needs to be done specifically in implementation of culturally appropriate interventions and addressing systemic barriers.

### Pathways Units for Aboriginal Women

The Pathways Unit program was introduced in 2000 initially as a pilot project. The purpose of the Pathways Unit is to establish an environment for Aboriginal offenders who choose to follow a more traditional path of healing including counselling with Elders, participating in Aboriginal ceremonies and connecting with Aboriginal culture.<sup>68</sup> The Pathways Units are ranges contained within Federal Institutions. Up until a few years ago there were no Pathways Units available for women. At present, there are two Pathways Units for Aboriginal women to apply to, both of which are located in the western region: 1) Edmonton Institution for Women and 2) the Fraser Valley Community Correctional Centre in British Columbia, which only became operational within the past year.

The Nova Institution in Truro, Nova Scotia has made efforts to offer programming similar to the Pathways programming by way of an Aboriginal Program Officer and an Elder; however due to the low number of participants, the Institution has not received a Pathways Unit designation.<sup>69</sup>

The disadvantage that Aboriginal women face in the eastern region was documented in the *Glube Report*. There the Committee heard that Aboriginal women's programming is often interrupted where their numbers are lower unlike in the western region where the institutions tend to accommodate Aboriginal programming particularly in relation to ceremonies.<sup>70</sup>

With the Aboriginal Strategy it is anticipated that a number of new Pathways Units will emerge across the country, the bulk of which will be at men's medium security institutions. For Aboriginal women, there is an anticipated increase in Pathways ranges from the current number of two that exist. Although at the time of this report it was unknown how many ranges will emerge and where such ranges would be located.<sup>71</sup>

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<sup>66</sup> *Strategic Plan for Aboriginal Corrections* at 17. CSC states that it will better collaborate and coordinate within its own structure as well as with the Department of Public Safety, other levels of government, Aboriginal organizations and stakeholders.

<sup>67</sup> *Strategic Plan for Aboriginal Corrections* at 17. CSC undertakes to increase the awareness and representation of Aboriginal cultures by identifying and monitoring systemic barriers to Aboriginal inmates and to develop cultural competence throughout CSC.

<sup>68</sup> *Strategic Plan for Aboriginal Corrections*. See also Correctional Service Canada. Let's Talk, The Path to Personal Growth and Healing, vol. 31, no. 1, online: <http://www.csc-scc.gc.ca/text/pblct/lt-en/2006/31-1/6-eng.shtml>.

<sup>69</sup> Pathways Units require 20 or more participants.

<sup>70</sup> Moving Forward with Women's Corrections in the Correctional Service of Canada, *The Expert Committee of the Ten Year Status Report on Women's Corrections 1996-2006*. [The *Glube Report*].

<sup>71</sup> At the time of the report there were a number new proposed Pathways Units awaiting formal approval, majority of the proposals were for Units at medium security facilities.

The location of additional Pathways Units for Aboriginal women is significant in terms of addressing isolation and dislocation issues. For Aboriginal women who are incarcerated, the existing stress of being separated from family and community can be further exasperated when they do not have access to culturally appropriate programming such as the Pathways Units which allows them the option of pursuing a more traditional healing path with increased access to Elders and ceremonies. Such accessibility to culturally appropriate programming and counseling could enhance their chances of being granted parole and for a successful re-entry into the community.

### Healing Lodge Action Plan

A part of the Strategic Plan for Aboriginal Corrections is to implement the Healing Lodge Action Plan. Currently there are 8 healing lodges available for men to apply to; however no healing lodges have been created for Aboriginal women pursuant to section 81 of the *Corrections and Conditional Release Act*, (CCRA)<sup>72</sup> despite the fact that the legislation has allowed for the creation of such for 19 years or that reports have recommended that CSC establish such healing lodges for women.<sup>73</sup>

That being said, since 1995 the Okimaw Ohci Healing Lodge, which is a CSC operated facility, has been offering a range of culturally appropriate programming for Aboriginal women.<sup>74</sup> The Lodge is located within Cree Territory on the Necaneet First Nation, a small community located approximately 150 km outside of Medicine Hat, Alberta.<sup>75</sup>

Okimaw Ohci has both single and family living units that have accommodated children in the past. The approach at Okimaw Ohci is one that advances a sense of community and strives to help and support Aboriginal women on their healing path. This is illustrated in the following quote from a woman at Okimaw Ohci, as quoted in the Glube Report:

I have never been incarcerated before. The first two months I didn't open up. I had issues with trust. I can change it now. I can change it for my children. I have good access to Elders. Staff are caring. I need more in the area of anger and emotions.

Okimaw Ohci is a multiple level security facility, which can accommodate approximately 30 women at a time. However, it does not accept women who are at a maximum classification level.

As mentioned previously, Okimaw Ohci is not a section 81 Healing Lodge; however, as of March 2011, CSC advised that there are plans to open a section 81 Women's Healing Lodge in Alberta. At present, Native Counselling Services of Alberta (NCSA) operates the Stan Daniels Healing Lodge, a section 81 Lodge for men, the proposal is to have NCSA operate a section 81 Healing Lodge for Women who are at a minimum and

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<sup>72</sup> *Corrections and Conditional Release Act*, SC 1992, c-20.

<sup>73</sup> See *The Glube Report* at 8 and Office of the Auditor General of Canada. *Report of the Auditor General of Canada*. Ottawa: Minister of Public Works and Government Services Canada, 2003.

<sup>74</sup> *Ibid.* at 18.

<sup>75</sup> Correctional Service Canada. *Institutional Profile*, available on line: <http://www.csc-scc.gc.ca/text/facilit/institutprofiles/okima-eng.shtml>

medium security level. However, pending Commissioner approval, it is unknown when such facility will be operational.

In addition, to establishing a section 81 Healing Lodge for women in the west, CSC advises that there are also plans to create one in the eastern region. The proposed facility would be located in Waseskun, Quebec, which is approximately 1 hour outside of Montreal. There is already a men's section 81 Healing Lodge at the site. CSC plans on using the same management for the women's healing lodge as that of the men's healing lodge. The proposed women's facility would be located on a separate property and would include section 84 beds<sup>76</sup> which would allow for women who are on parole to apply as well as women who are at a minimum and medium security classification.

### Integrated Core Programming

In addition to the recent development and implementation of two Pathways Units for women, CSC has been delivering some programs developed specifically to meet the needs of Aboriginal women. The programs include a Family Life Improvement Program, a violence prevention program called Spirit of the Warrior Program and an Aboriginal Women's Maintenance Program.

In 2009, CSC hired a National Trainer to internally develop new integrated core programming specifically for Aboriginal Women. CSC advises that the new program is a holistic design based on the premise of the Medicine Wheel to address the physical, mental, emotional and spiritual needs of the participant. The program will be a full-time Elder assisted program with a facilitator. The facilitator and Elder will work together to integrate Aboriginal teachings into the programming. The particular ceremonies in the program will depend on the Elder's teachings and the territory in which the institution is situated.

According to CSC, the new programming will have a different approach from previous programming in that it will focus on goals and objectives and how to obtain them. The new programming will be comprised of three different programs: an Aboriginal women's Engagement Program, a Moderate Intensity Program and a High Intensity Program.

The Engagement Program will serve as an introduction to culture, identity and traditional teachings spanning over the course of 15 sessions. The Moderate Intensity Program will include 57 sessions, two-and-a-half hours each. CSC advises that women who are classified as a "moderate risk" to re-offend will be able to enroll for this program before the end of the 2012 fiscal year. Both the Engagement and Moderate Intensity Program were introduced as pilot projects at the Okimaw Ohci Healing Lodge in 2010.

CSC advises that mainstream techniques are incorporated into the programming, teaching the women to talk and compromise in some instances. Instruction to compromise could prove to be detrimental in the context of Aboriginal women and healing as Aboriginal

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<sup>76</sup> Section 84 of the CCRA allows inmates who are applying for parole the opportunity to apply for a release into an Aboriginal community.

women have long since been forced to compromise through oppression on the basis of race and gender.

CSC advises that a High Intensity Program for women classified at a “high risk” to re-offend is still in the process of being developed. The program will span over 50 sessions and it will have the same four themes based on the premise of the Medicine Wheel; however the content will be more in depth and delivered in small groups of approximately 6 women at a time. As the program is still under development a proposed implementation date for the High Intensity Program was unknown at the time of this report.

The new integrated core programming for Aboriginal women has been developed in consultation with the National Aboriginal Advisory Committee to the Commissioner. The Committee is comprised exclusively of CSC staff, mostly high level employees and one Elder. That being said, the Committee may benefit from some perspectives outside of government at the Aboriginal community level working outside of Corrections. The Committee’s terms of reference are being reviewed and new terms will be released in June 2011, whether such terms will allow for external participation was unknown at the time of this report.

#### Women’s Module on Intervention (WMI)

In 2009, CSC introduced the Women’s Module on Intervention (WMI) specifically for women in secure units. The programming is offered at five sites. The WMI consists of 10 non-Aboriginal modules and five Aboriginal modules. CSC advises that the new program was developed as an effort to try to change the prison programming culture to a more supportive based approach rather than control based.

Aboriginal women participate in the non-Aboriginal specific modules; however where the programming is specific to their culture and experiences as Aboriginal women, the participants may opt to take such Aboriginal specific modules.

The Aboriginal modules are delivered with the assistance of an Elder and cover topics such as: who are Aboriginal peoples within Canada; Aboriginal trauma; Aboriginal healing and spirituality; developing a healing plan and apologies. The non-Aboriginal modules consist of a self-management module (healing plan, linear western approach); self-regulation (impulsivity, decision making); emotion management; thoughts and beliefs (values); relationships; trauma (understanding personal trauma) substance abuse; spirituality and building a healthier community.

There is a maximum of six participants at a time for the WMI. The introduction of the WMI is a step towards providing culturally and gender appropriate programming for Aboriginal women in secure units. Given its recent implementation, at the time of this report there were no results measuring program success available.

## Maintenance Program

In 2005, the Native Counselling Services of Alberta was awarded the contract to deliver the Maintenance Program. However as part of CSC's move to internally develop the integrated core programming for Aboriginal women, the national trainer at CSC has developed a new Maintenance Program – the Aboriginal Self-Management Program.

Female participants begin the program while still incarcerated and continue post-release in the community, but only if they're released in one of two locations across the country: Edmonton or Winnipeg.

The Maintenance Program is currently offered at Fraser Valley Community Correctional Centre, Edmonton Institution for Women; Grand Valley Institution; Joliette Institution and Nova Institution. CSC advises that the numbers are low at Nova, however the program is offered without regional funding through the Native Inmate Liaison Officer and an Elder.

As indicated above, at the present time there are only 2 sites that offer the post-release program. The Edmonton program is delivered at a parole office while the Winnipeg program is delivered at a half-way house. CSC advises that establishing the Maintenance Program has had its challenges. In the Eastern Region, the challenge is with the few numbers of potential participants. While in the Western region, the challenges are resource based. The resources in the West tend to be dedicated to men; there are frequent staff turn-over rates; and there is difficulty in finding Elders who are willing to take on the work. As a result, Aboriginal women are further disadvantaged as many of them will not have access to the Maintenance Program. Without proper support services available, the women are less likely to have a successful reintegration into the community and their risk to re-offend is elevated.

## Programming needs of the Inuit female offender population

A component of CSC's Strategic Plan for Aboriginal Corrections is the development of a strategy to address the needs of northern offenders including the Inuit offender population. CSC advises that the Quebec Region has developed partnerships with 15 Inuit organizations to assist with the needs of Inuit offenders. Furthermore, CSC advises that the Ontario region has a Memorandum of Understanding between CSC and the Government of Nunavut for enhanced collaboration in Corrections including some shared services and shared space.

With regard to meeting the unique needs of Inuit female offenders, CSC advises that there is currently no Inuit women specific programming offered nor are there any plans currently underway to develop such programming.

At the present time, the only Inuit specific programming available is the Tupiq sex offender program.<sup>77</sup> The lack of Inuit specific programming is problematic for Inuit offenders who are already so isolated from their families, community and culture. The lack of culturally and gender appropriate programming for Inuit women does nothing to increase their chances for parole nor does it enhance their opportunity for a successful reintegration into the community. To offer Aboriginal programming that focuses on First Nations and Métis culture and spirituality may not be suitable for Inuit women as the teachings may be inconsistent with the beliefs and practices of the Inuit people who are a distinct people within the Aboriginal peoples of Canada.

CSC may be challenged by the development and delivery of programming specific to meet the needs of Inuit women given the low numbers. In 2009-2010, Inuit women accounted for .03% of the inmate population, translating into a total of 7 Inuit women in Federal Corrections during that period.<sup>78</sup> That being said, if the women were placed in a central location program delivery would be possible along with access to Inuit Elders; thereby addressing in some ways the issues of isolation and dislocation from community and culture. The effect of which could be increased opportunities for parole eligibility and a higher chance of successful community reintegration.

### Education and Employment Programs

The emphasis in Corrections programming over the past 10 years has been placed on substance abuse and violence relapse prevention<sup>79</sup> while educational and employment programming has been made a secondary priority. Within the rehabilitative context, it is vital to address the underlying factors contributing to criminal conduct; however it is also necessary to prepare individuals for their return to the community with a marketable skill set to gain and maintain employment which also contributes to reducing recidivism rates.

In 2007, the CSC Review Panel heard submissions from the Congress of Aboriginal Peoples (CAP) regarding CSC programming. CAP's submissions identified a gap in employment and vocational programming for Aboriginal offenders. As such, they urged CSC to create programming that is responsive to the unique circumstances of Aboriginal peoples:

“...work programs must address the unique needs of Aboriginal offenders and must consider the types of employment that might be available to them in the communities to which they may be released.”<sup>80</sup>

The communities that Aboriginal peoples are returning to whether urban or rural pose a myriad of challenges. Census data shows that many Aboriginal people are migrating to

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<sup>77</sup> Tupiq is a high intensity treatment program based on social learning. Participants receive 255 hours of treatment over a 16 week period to address sexually abusive behaviour within a holistic framework. See Correctional Service Canada, “The Tupiq program, Inuit community development in an institutional program,” online: <<http://www.csc-csc.gc.ca/text/pblct/forum/e143/e143k-eng.shtml>>.

<sup>78</sup> *Accountability Framework 2009/2010* at 18.

<sup>79</sup> Correctional Service Canada. *A Roadmap to Public Safety*, Report of the Correctional Service of Canada Review Panel. Ottawa: Minister of Public Works and Government Services Canada, 2007, at 46 [*A Roadmap to Public Safety*].

<sup>80</sup> “Brief to the Panel Review of CSC Operational Priorities, Strategies and Plans,” Congress of Aboriginal Peoples, May 2007, page 7. See *A Roadmap to Public Safety*, 2007, at 47-48.

urban centres where they contend with issues of social marginalization and systemic barriers to employment. Furthermore, an Aboriginal woman who has a federal conviction must contend with yet another barrier to obtaining employment.

In the context of a rural community, Aboriginal peoples must contend with the socio-economic disadvantages of life in a remote community including struggling to have their most basic needs met such as clean drinking water and adequate housing. In addition to the stress associated with poverty and violence, employment opportunities are different and often times limited when compared to those available in an urban setting.

The Review Panel heard that overall Aboriginal peoples' employment needs were going unmet. This gap in services was even more pronounced for Aboriginal women who are further disadvantaged on the basis of gender. The Canadian Human Rights Commission (CHRC) addressed the Panel speaking to the unmet vocational needs of women offenders:

In 1996, the Arbour Report recommended that priority be given to work programs that have a vocational training component. However, in 2003, the Auditor General in her report on the reintegration of women offenders found that there are few vocational programs available to women offenders and that women offenders have minimal access to meaningful work opportunities while incarcerated.<sup>81</sup>

The CHRC's submissions were echoed by that of the Canadian Association of Elizabeth Fry Societies who advised that women offenders employment needs were not only neglected within the institutions but that their needs were further neglected upon re-entry into the community as there are insufficient accommodation and support services available.<sup>82</sup>

In order to address the deficit in employment programming for Aboriginal offenders, the Review Panel recommended a strategy be developed and implemented which links Corrections and other federal government departments. The Panel held that connecting employment strategies for Aboriginal offenders with federal government economic growth initiatives is a critical step to ensure that Aboriginal offenders are prepared for and have employment opportunities available to them in their communities.<sup>83</sup> The Panel emphasized the significance of collaboration when it stated:

Successful Aboriginal employment initiatives can only be realized if CSC works in close cooperation with federal government departments and is an integral part of the government's initiatives to identify Aboriginal solutions by Aboriginal communities.<sup>84</sup>

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<sup>81</sup> "The Canadian Human Rights Commission's Submission to the Correctional Service of Canada Review Panel," June 11, 2007, page 10. See *A Roadmap to Public Safety*, 2007, 48.

<sup>82</sup> "Submission of the Canadian Association of Elizabeth Fry Societies to the CSC Review Panel," June 10, 2007, page 13. See *A Roadmap to Public Safety*, 2007, 48.

<sup>83</sup> *A Roadmap to Public Safety* at 74.

<sup>84</sup> *A Roadmap to Public Safety* at 74.

It is unknown whether CSC adopted the Review Panel's recommendation as efforts to confirm such information were not received at the time of this report. That being said, three years after the Panel's Report, Aboriginal offenders continue to have a high rate of education and employment needs: 74.2% of all Aboriginal offenders in 2009-2010, identified employment and education needs. At a rate of 79.7%, First Nations women were the group who identified at intake the greatest need for education and employment programming.<sup>85</sup>

In January 2010, the Women Offender Sector (WOS) implemented the National Employment Strategy for Women. In support of the strategy, WOS and CORCAN implemented the 2009-2011 action plans.<sup>86</sup>

Over the 2009-2010 fiscal year, the WOS provided each of the women offender institutions with resources to deliver and enhance employment opportunities for women. Programming included: delivery of the National Employability Skills program, Social Integration Program and Guiding Circles, a program created specifically for Aboriginal women.<sup>87</sup>

The results will be monitored by CORCAN quarterly. At the time of this report, the results were not made public. The latest results available regarding employment programming can be found in CORCAN's 2008-2009 Annual Report, which indicates that 141 female inmates worked at CORCAN shops.<sup>88</sup>

In addition to the work programs, CORCAN also offers third-party certified vocational training. CORCAN works in partnership with community colleges and industrial organizations offering a range of certification programs.

Certificates earned in 2008-09 included, but were not limited to, basic food safety, workplace hazardous materials, information systems, safe start pre-employment, first aid, construction skills, forest fire fighting, and construction safety. Female offenders as a group earned a total of 620 certificates. Aboriginal women earned over 30% of the certificates issued to female offenders that year, for a total of 196 certificates.

The vocational certificates are a step in the right direction in terms of improving employment opportunities for Aboriginal women. In order to best meet the employment and education needs of Aboriginal female offenders, CSC ought to develop and implement a strategy as recommended by the Review Panel that facilitates linkages between CSC and outside government departments and non-government Aboriginal and mainstream social agencies. Aboriginal women offenders require employment and educational programming that addresses their unique circumstances not only while they are incarcerated but also after their release. To facilitate a successful re-entry into the

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<sup>85</sup> *Strategic Framework 2009/2010* at 10.

<sup>86</sup> *Strategic Framework 2009/2010* at 14.

<sup>87</sup> *Accountability Framework 2009/2010* at 14-15.

<sup>88</sup> Correctional Service Canada. CORCAN Annual Reports 2008-2009 "Canadian Values at Work" on line: <http://www.csc-scc.gc.ca/text/prgrm/corcan/pblct/ar/08-09/ar-eng.shtml>. Note there was no breakdown of how many of the 141 women who worked in CORCAN shops were Aboriginal women.

community and to reduce the rate of recidivism, Aboriginal women require access to support services that address all of their needs including occupational needs.

### Mother-Child Program and Aboriginal Women

The Mother-Child Program established in 2001, which allows some women to keep their young children with them while incarcerated underwent significant policy changes in 2008 when then Minister of Public Safety, Stockwell Day, announced that participant eligibility for the program will exclude women who have been convicted of serious crimes involving violence, children, or crimes of a sexual nature.

Furthermore, additional changes included the reduction in age of part-time children participants from 12 years old to 6 years old and imposed additional requirements from Child and Family Services prior to program admission.

The impact of the policy changes resulted in a significant decline in program participation. According to Howard Sapers, the Correctional Investigator of Canada, prior to 2008, the program could have as many as two dozen women participating across the country at any one time.<sup>89</sup> As of March 2011, according to CSC there was only one participant in the program, a woman at Quebec's Joliette Institution. There are currently no Aboriginal women or Aboriginal children participating in the program.

The changes implemented in 2008 may have served to further isolate Aboriginal women from their families and Aboriginal children from their mothers. Given the traumatic history of government policies enacted to remove Aboriginal children from their families<sup>90</sup> and the child welfare system's involvement in such policies, this policy could have a particularly harsh impact on the Aboriginal community.

The fact that Aboriginal women are over-represented in terms of violent offences disproportionately disqualifies many of them from applying to the Mother-Child Program. Furthermore, of those Aboriginal women who are eligible to apply, the additional requirement of child welfare services involvement will likely deter many given the troubled history and current over-representation of Aboriginal children in the child welfare system. Aboriginal children currently make up 40% of all children in care while comprising only 5% of the child population in Canada.<sup>91</sup> For all of the aforementioned reasons, a great deal of distrust and suspicion of child welfare services exists within the Aboriginal community.

Associated travel cost is another deterrent for Aboriginal participation. CSC offers no assistance to the family to bring the child to the program. This is a financial burden that many Aboriginal families simply cannot afford particularly given the great distance many would have to travel between their home community and the correctional institution. The

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<sup>89</sup> Montreal Gazette, "Feds have sheltered prison-mother program: Advocates" November 30, 2010, online: <http://www.montrealgazette.com/life/Feds+have+sheltered+prison+mother+program+Advocates/3908005/story.html>.

<sup>90</sup> Such as the Residential School System and the 60's Scoop.

<sup>91</sup> See Blackstock, C., "Why Addressing the Over-Representation of First Nations Children in Requires a New Theoretical Approach", *Journal of Social Work Values and Ethics*, Fall 2009 vol 6, #3.

distance is even further for many Inuit women as there are only 6 facilities for federally sentenced women across the country, none of which are located in the north.

The policy does not define what a “serious crime involving violence” is, as such, program entry is at the discretion of the institutional warden. In terms of consistency with granting program entry, this could be problematic. CSC has already identified an issue with capacity as the spaces originally designated for the program have since been converted into living units for the inmates.<sup>92</sup> That being said, program longevity is not likely to occur. Furthermore, given the current policy restrictions and admissions criteria, it is highly unlikely that there will be an increase in Aboriginal women participation in the Mother-Child program.

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<sup>92</sup> *Supra.* 96.

## Classification

*There is no accidental relationship between our convictions for violent offences, and our histories as victims. As victims we carry the burden of our memories: of pain inflicted on us, of violence done before our eyes to those we loved, of rape, of sexual assaults, of beatings, of death. For us, violence begets violence: our contained hatred and rage concentrated in an explosion that has left us with yet more memories to scar and mark us.*

Aboriginal Justice Inquiry <sup>93</sup>

### Security Classification

The security classification tool used by CSC is the Custody Rating Scale (CRS), a tool designed for, and tested on a predominantly white male population.<sup>94</sup> The tool is first applied upon entering a facility during the Offender Intake Assessment process to determine the classification (minimum, medium or maximum) and placement of the individual.<sup>95</sup> The tool may be applied again to the individual throughout the course of their sentence to re-evaluate their security level.<sup>96</sup>

The scale assesses a number of factors including employment, marital status, family situation, associates, social interaction, substance abuse, community functioning, personal and emotional orientation and attitude.<sup>97</sup> During the Offender Intake Assessment process “risk factors” are assessed based on the seriousness of the current offence as well as the individual’s criminal history.<sup>98</sup> The scale may be re-applied during a person’s sentence on the basis of “Institutional Adjustment.” For example, the scale may be applied to an inmate as a result of behaviour that is deemed to be disruptive within the prison, including incidents of self-harm or suicide attempts<sup>99</sup> which typically will result in a raised security level. A higher classification level means limited or no access to core programs which impacts parole eligibility and success for re-entry into the community.

Overall, Aboriginal inmates are consistently over-classified resulting in a disparity between Aboriginal offenders and non-Aboriginal offenders’ placement in minimum

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<sup>93</sup> Aboriginal Justice Inquiry quoting Fran Sugar and Lana Fox, *Survey of Federally Sentenced Aboriginal Women in the Community* (Ottawa: Native Women’s Association of Canada, 1990) at 8.

<sup>94</sup> Campbell, A. (2004) *Federal Sentenced Women and Security Classification*, available on line: [http://www.prisonjustice.ca/politics/security\\_classification.pdf](http://www.prisonjustice.ca/politics/security_classification.pdf) [*“Federal Sentenced Women and Security Classification”*] at 2.

<sup>95</sup> Commissioner’s Direction 705-7, “Security Classification and Penitentiary Placement” 2010-02-10 available on line: < <http://www.csc-scc.gc.ca/text/plcy/cdshtm/705-7-cd-eng.shtml> > [CD 705-7]

<sup>96</sup> *Federal Sentenced Women and Security Classification* at 2. See also *A Needs Assessment of Federal Aboriginal Women Offenders* at 2.

<sup>97</sup> CD 705-7.

<sup>98</sup> *Federal Sentenced Women and Security Classification* at 2 and s. 17 of the CCRA.

<sup>99</sup> *Federal Sentenced Women and Security Classification* at 3.

security institutions. Aboriginal offenders are placed in minimum security institutions at only half the rate of their non-Aboriginal counterparts.<sup>100</sup>

The disparity is even more pronounced in terms of Aboriginal women. As of September 31, 2007, Aboriginal women made up 45% of the women classified at a maximum security designation; 44% of the medium-security population and only 18% of those women at a minimum security classification.<sup>101</sup>

The scale fails to take into account any cultural or gender specific issues, as such Aboriginal women are at a double disadvantage on the basis of race and gender. Aboriginal women are pre-disposed to a higher classification due to a number of systemic and historical factors which contribute to their life circumstances and experiences. Professor Patricia Monture-Angus commented on this aspect of systemic discrimination when she wrote:

Both dislocation and disconnection are the result of colonial experiences such as child welfare apprehensions, residential schools and registration systems established under the Indian Act. Dislocation and disconnection remain predominant experiences of those who live within correctional institutions in Canada. The refusal of Aboriginal women to trust the "helping" services of the prison becomes one more strike against them. They are then seen as uncooperative. They are kept at a high security classification and denied parole.<sup>102</sup>

The scale is applied on an individual basis as such it fails to take in account the collective experiences of Aboriginal peoples such as the Residential School System, the 60s scoop,<sup>103</sup> and discriminatory government policies and laws,<sup>104</sup> all of which have contributed to the gross over-representation of Aboriginal peoples within the criminal justice system.

For Aboriginal women, the collective context is all the more relevant, as they have been even further marginalized than their male counterparts, within their communities due to the affects of colonization. Within her paper "*Women and Risk: Aboriginal Women, Colonialism and Corrections Practice*," Professor Patricia Monture-Angus, writes about

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<sup>100</sup> Office of the Correctional Investigator. Annual Report of the office of the Correctional Investigator 2007-2008. Ottawa: minister of Public Works and Government Services Canada, 2008, online: <http://www.oci-bec.gc.ca/rpt/pdf/annrpt/annrpt20072008-eng.pdf> at 33 [OCI Report 2007-2008].

<sup>101</sup> *Ibid.* at 33.

<sup>102</sup> Patricia Monture-Angus, "Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women," in Kelly Hannah-Moffatt and Margaret Shaw, eds., *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada* (Halifax, 2000), p. 56 [Aboriginal Women and Correctional Practice].

<sup>103</sup> The 60s Scoop refers to the adoption of First Nations and Métis children in Canada between the 1960s and mid-1980s. Majority of the adoptions took place in the 1960s. In many instances, children were scooped from their homes and communities without the knowledge or consent of families or the community. The removal of the children was based on colonial assumptions that Aboriginal peoples are inferior and unable to provide for their children. See Kimelman, Judge E.C. (1985). *No quiet place: Review committee on Indian and Metis adoption and placements*. Manitoba Community Services. Many First Nations people believe that the forced removal was a deliberate act of genocide. See Sinclair, Judge M., Phillips, D. & Bala, N. (1991). *Aboriginal Child Welfare in Canada*. Bala, J., Hornick, J.P. & Vogl, R. (1991). *Canadian Child Welfare Law: Children, Families and the State*. Toronto: Thompson Educational Publishing. 171-194.

<sup>104</sup> See Introduction, *Aboriginal Women a History of Dislocation and Isolation*.

the devastating affects that centuries of oppression have had on Aboriginal women, a part of which has resulted in far less social supports for Aboriginal women than non-Aboriginal women.<sup>105</sup> Less access to social supports can contribute to initiation and continued involvement in the criminal justice system.

With regard to the individualized approach of the classification scale, Professor Monture-Angus writes:

These risk scales are all individualized instruments. This must be seen as a significant and central problem for applying these instruments to Aboriginal people (male or female). This individualizing of risk absolutely fails to take into account the impact of colonial oppression on the lives of Aboriginal men and women. Equally, **the colonial oppression has not only had a devastating impact on individuals but concurrently on our communities and nations. This impact cannot be artificially pulled apart as the impact on the individual and the impact on the community are interconnected.**<sup>106</sup> [emphasis added]

Without adequately taking into account all of the contributing factors which led to the Aboriginal woman's involvement in the criminal justice system, a scale or any similar approach which fails to appreciate the correlation between an Aboriginal woman's life circumstances, from both a collective and individual perspective, will only serve to be an extension of the current discriminatory practice applied.

The current risk management criteria when applied in the context of an Aboriginal community, reveals a middle-class bias to those who are motivated to work within their community as a number of the criteria focus is on employment, substance abuse history and community functioning.<sup>107</sup> Many Aboriginal offenders come from communities that are contending with the effects of centuries of colonization as such they are not fully functioning healthy communities.<sup>108</sup> As such, applying a normative social construct approach to assess risk fails to take into consideration the impact of colonization and obscures the results.<sup>109</sup> Therefore it follows to reason that an alternative approach that takes into account the systemic issues faced by Aboriginal women and their unique life circumstances must be adopted when conducting any type of risk assessment.

The results of the scale may be further obscured by cultural perceptions of Aboriginal people held by correctional staff administering the assessment. In the report, *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women*,<sup>110</sup> the authors identified racism as a real concern in how the scale is administered in a subjective manner. The authors concluded: "Given that

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<sup>105</sup> Monture Angus, Patricia. 1999. "Women and Risk: Aboriginal Women, Colonialism and Corrections Practice," *Canadian Woman Studies Journal*. Vol. 19: 24-9 [Women and Risk].

<sup>106</sup> *Ibid.*

<sup>107</sup> Department of Justice, *Six Degrees from Liberation, Legal Needs of Women in Criminal and other matters* Online: < [http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03\\_la20-rr03\\_aj20/p11.html#foot160](http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la20-rr03_aj20/p11.html#foot160)>.

<sup>108</sup> *Aboriginal Women and Correctional Practice* at 57.

<sup>109</sup> *Supra* note 114.

<sup>110</sup> Hannah-Moffatt, Kelly, and Margaret Shaw. *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada*. Ottawa: Status of Women Canada, 2001.

Aboriginal women represent less than one percent of Canada's population, the racism of the assessment and classification tools is clear."<sup>111</sup>

Concerns regarding the use of the classification scale on Aboriginal women have long since been raised from as far back as the 1990s.<sup>112</sup> In 2009, within the Report prepared for the OCI by Michelle Mann, *Good Intentions Disappointing Results: A Progress Report on Federal Aboriginal Corrections*, CSC advised that an initial security classification tool that was to take into consideration issues specific to Aboriginal women was underway as a pilot project at four institutions.<sup>113</sup>

In February 2011, CSC advised that the project expected to last until the fall of 2011 had since been completed. The results, CSC advises were not good, essentially they ended up with almost the same assessment tool already in use. At the time of this report, CSC advised that a plan to move forward was yet to be developed.

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<sup>111</sup> *Ibid.* at 51.

<sup>112</sup> See Canada. *Commissioner of Inquiry into Certain Events at the Prison for Women in Kingston*. Ottawa: Public Works and Government Services Canada, 1996. [Arbour Report]

<sup>113</sup> *Mann Report*.

## Management Protocol

Management Protocol was first introduced in 2003 as part of the Secure Unit Operational Plan. The Protocol is not a classification designation nor does it originate from a Commissioner's Directive,<sup>114</sup> nonetheless the status has been applied over the past several years, almost exclusively to manage high needs/high risk Aboriginal women offenders.

The Protocol is a "super maximum designation"<sup>115</sup> that a female inmate may be elevated to after her involvement in an incident that has either caused serious harm to others or may have jeopardized other persons and she is deemed to be unmanageable in the regular maximum security population.<sup>116</sup>

The security driven approach of the Management Protocol status is strikingly similar to the Special Handling Unit (SHU) for men<sup>117</sup> and in some regards it is even more regimented than the SHU. The woman's movement and human interactions are so intensely controlled that in order for her to leave the secure unit she is required to be accompanied by three staff members and will typically have physical constraints applied to her in the form of handcuffs and leg irons.<sup>118</sup>

The affect of the isolation could be particularly harmful to the mental health and well being of women on Management Protocol. For a woman within the initial phases of the status, the isolation from human interaction is even more restricted as there is no contact with other female inmates permitted for months at a time.<sup>119</sup> The time on Management Protocol is measured not by days but rather in months.<sup>120</sup>

The use of such a restrictive approach does nothing to further a woman's rehabilitative progress as women on Management Protocol are denied access to programming and leisure activities.<sup>121</sup> The OCI has criticized the use of the Protocol, Howard Sapers, Correctional Investigator of Canada stated in the 2008-2009 OCI Report:

I have very serious concerns about the impact of this form of harsh and punitive confinement on the mental health and emotional well-being of these women. They need intervention and treatment, not deprivation. I think most Canadians would agree that in the 21st century there must be safer and more humane ways for our correctional system to assist a handful of high-needs women offenders.

On March 31, 2009, four of the five women on Management Protocol were Aboriginal women, while the fifth woman was a member of a visible minority.<sup>122</sup> As of March 2011,

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<sup>114</sup> OCI Annual Report 2008-2009.

<sup>115</sup> NWAC, Federally Sentenced Aboriginal Offenders, prepared for the National Aboriginal Women's Summit June 20-22, 2007, Corner Brook NL. Online: <http://www.laa.gov.nl.ca/laa/naws/pdf/nwac-federally.pdf>

<sup>116</sup> OCI Annual Report 2008-2009.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

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

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

all of the women on Management Protocol were Aboriginal women. Since it's inception in 2003, only two women have worked their way off of Management Protocol.

In 2009, the OCI recommended that the Management Protocol be rescinded immediately pending an external review.<sup>123</sup> In response to the recommendation, CSC advised that it was reviewing the strategy with a view to move away from Management Protocol. Whether CSC will move toward an approach that is inclusive of Aboriginal culture and strive to address the needs of these women in a holistic manner rather than the punitive approach used to date, is unknown.

What is known is that as of March 2011, the Management Protocol was still in effect with four Aboriginal women at this designation. At the time of this report, a recommendation was before the Deputy Commissioner on Women that the Management Protocol be abolished. The recommendation was based on consultations conducted by the Women Offender Sector.

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<sup>123</sup> *Ibid.*

## Self Injury and Mental Health Issues

Commissioner's Directive 843 defines self-injury as the deliberate harm of one's body without conscious suicidal intent.<sup>124</sup>

A more fulsome definition may be found on the Canadian Mental Health Association's website, which defines self-injury as "deliberate acts that cause harm to one's body, mind and spirit."<sup>125</sup> Examples of self-injury may include but are not limited to: cutting the skin with a razor blade or shards of glass, hitting one's self, scratching, hair pulling or inserting objects into one's body.<sup>126</sup> Persons who self-injure are usually seeking a form of relief from psychological pain, loneliness, depression, anger or in some cases an absence of feeling; furthermore, some persons self-injure in order to punish themselves.<sup>127</sup>

The issue of self-injury has been a known concern to CSC for some time. In 1990, the Task Force on Federally Sentenced Women recognized within the report, *Creating Choices, The Report of the Task Force on Federally Sentenced Women* (hereinafter "*Creating Choices*")<sup>128</sup> that "there is an urgent need to provide appropriate mental health services oriented to the specific needs of federally sentenced women."<sup>129</sup>

Within *Creating Choices*, the Task Force referred to the research study conducted by Jan Heney, the *Report on Self-Injurious Behaviour in the Kingston Prison for Women* [hereinafter "*Report on Self-Injurious Behaviour*"] whose findings regarding self-injury stressed the strong need for proactive mental health services. Within the *Report on Self-Injurious Behaviour*, Heney found that nearly 60% of the then 44 women interviewed had engaged in self-injury behaviour and of that percentage, often times the behaviour was a symptom of distress relating to childhood sexual abuse.<sup>130</sup>

The research of Heney is analogous to the findings of the Mental Health Survey commissioned by CSC the year previously (1989) which held that "a number of mental health problems experienced by federally sentenced women can be linked directly to past experiences of early and/or continued sexual abuse, physical abuse and sexual assault".<sup>131</sup>

Over the past two decades since *Creating Choices*, the provision of mental health services specifically tailored for women, let alone Aboriginal women, has not progressed

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<sup>124</sup> Commissioner's Directive 843 is currently under revision.

<sup>125</sup> Canadian Mental Health Association, What is Self-Injury, available on line:

[http://www.cmha.ca/bins/content\\_page.asp?cid=3-1036](http://www.cmha.ca/bins/content_page.asp?cid=3-1036)

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> Task Force on Federally Sentenced Women. *Creating Choices, The Report of the Task Force on Federally Sentenced Women*. Ottawa: CSC 1990 [*Creating Choices*].

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.* See Heney, Jan: "Report on Self-Injurious Behaviour in the Kingston Prison for Women", submitted to the Correctional Services of Canada, Ottawa, Canada, January, 1990 [hereinafter "Report on Self-Injurious Behaviour"].

<sup>131</sup> Correctional Service of Canada, Research Branch, "Mental Health Survey of Federally Sentenced Female Offenders at Prison for Women, Preliminary Report," Ottawa, Canada, November 1989 ["Mental Health Survey of Federally Sentenced Female Offenders"].

to the point of achieving the aspirations laid out by the Task Force. Perhaps this was most evident with the tragic death of Ashley Smith.<sup>132</sup>

In terms of self-injury, the OCI Report 2008-2009, indicated that incidents of self-injury are rising. This is particularly true for Aboriginal women who as a group accounted for 78.2% of the female self-harm incidents.<sup>133</sup>

Self-harm incidents or attempts to self-injury impact the security classification of an individual. Women are more likely to have their classification increased on the basis of "Institutional Adjustment."<sup>134</sup>

Self-harm incidents are considered to be institutional incidents,<sup>135</sup> although the largest risk of harm posed is to the individual by the individual. Nevertheless, the category increases the level of security based on the amount of institutional resources required to manage an inmate.<sup>136</sup> As such, self-harm incidents often result in an increased security level which impacts access to programming and limits human interaction.

The Office of the Correctional Investigator has criticized CSC's approach to self-harm incidents, emphasizing that self-injury behaviour needs to be treated as a mental health issue:

It is my view that the issue of self-harming in prisons needs to be understood and treated first and foremost as a mental health issue, and not predominantly or exclusively as a security or behavioural problem (for instance, it should not be labelled as "acting out" or "attention-seeking" behaviour). In too many instances, self-harm incidents result in a use of force that is at times disproportionate to the risk presented, inconsistent with the "least restrictive" principle or inappropriate from a clinical perspective. In some instances, the use of force actually escalates an already difficult and distressing medical or mental health emergency.<sup>137</sup>

In terms of gaining an understanding of the issue of self-harming in prisons, CSC, recently conducted a research project, the preliminary results from the *Women's Self-Injurious Behaviour Study*,<sup>138</sup> indicate that of the 150 participants, 60% had attempted suicide and/or an incident of self-injury.<sup>139</sup> Of the participants, 37% of were Aboriginal

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<sup>132</sup> Ashley Smith, who had suffered from mental health issues died in custody on October 19, 2007. She had been in federal custody for nearly a year at the time of her death. During her federal incarceration she was transferred 17 times. Most of her time was spent in a barren segregation cell, often wearing only a gown and shackles. See the Office of the Correctional Investigator Report: "A Preventable Death" June 20, 2008, available on line: <http://www.oci-bec.gc.ca/rpt/oth-aut/oth-aut20080620-eng.aspx>

<sup>133</sup> *Accountability Framework 2009/2010* at 10.

<sup>134</sup> *Federally Sentenced Women and Security Classification*.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

<sup>137</sup> OCI Report 2008-2009.

<sup>138</sup> Correctional Service Canada, Jenelle Power, *Women's Self-Injurious Behaviour Study*, July 2010, available online: <http://www.csc-scc.gc.ca/text/rsrch/smmrs/err/err10-1/docs/err10-1-eng.pdf>.

<sup>139</sup> *Ibid.*

women, which is a figure comparable to the percentage of Aboriginal women in federal corrections.<sup>140</sup>

According to the preliminary findings of the study, 33% of the participants had self-injured prior to and while in a federal penitentiary.<sup>141</sup> Based on the data, the inferences drawn by the researcher include a finding that majority of the women engaged in self-injurious behaviour prior to entering federal corrections and that women offenders may be at an increased risk of engaging in self-injurious behaviour and suicide attempts prior to their serving time in a federal corrections institution.<sup>142</sup>

The preliminary findings of CSC's latest report regarding self-injurious behaviour are in line with the previous reports on the subject – that there is a correlation between the self-injurious behaviour engaged in while in the penitentiary and the trauma experienced prior to entering the system.<sup>143</sup> All the more reason to adopt a strategy supported by *Creating Choices*, which surrounds the individual with support rather than isolation and segregation; thereby placing the emphasis on mental health services which serve to prevent and treat self-injurious behaviours.

Within the OCI Report 2008-2009, four recommendations were made specifically with regard to self-injury:

- The development of a national strategy for managing chronic self-harming behaviours and incidents. The strategy should include a protocol detailing in clear terms the national, regional and institutional authorities and accountabilities. In addition to staff training requirements regarding the early identification of self-injurious behaviour;<sup>144</sup>
- Regarding persons who chronically self-injury, the implementation of clinical management plans that include prevention, intervention and treatment measures;<sup>145</sup>
- Develop an inventory of "best practices" in the treatment and prevention of self-harm. The information should be distributed widely throughout CSC<sup>146</sup>; and
- The creation of specialized and dedicated units regionally to manage chronically self-injurious persons.<sup>147</sup>

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<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*

<sup>143</sup> See *Mental Health Survey of Federally Sentenced Female Offenders*, *supra* note 138 and Report on Self-Injurious Behaviour, *supra* note 137.

<sup>144</sup> OCI Report 2008-2009, Recommendation 5.

<sup>145</sup> OCI Report 2008-2009, Recommendation 6.

<sup>146</sup> OCI Report 2008-2009, Recommendation 7.

<sup>147</sup> OCI Report 2008-2009, Recommendation 8.

To date, CSC has not adopted the recommendations of the OCI nor does there appear to be a forthcoming change in approach to self-injury with emphasis placed on treatment rather than a security approach. That being said, at the time of this report, the Commissioner's Directive 843 is currently under review with no indication of when it will be released or what if any changes will be made.

Over the years, various reports have raised the issue of inadequate mental health services for federal inmates. Reports such as the OCI's 2005-2006 Report, the *Glube Report*,<sup>148</sup> and the Canada Review Panel's Report of 2007,<sup>149</sup> all raised concerns regarding the delivery of mental health services within Corrections.

The 2004 CSC Report, *A Needs Assessment of Federal Aboriginal Women Offenders*<sup>150</sup> identified that upon admissions and upon release Aboriginal women have a high need for programming in the area of personal/emotional orientation.<sup>151</sup> While incarcerated, the Report found that over three-quarters, 76% of the Aboriginal women participated in programs relating to mental health while an additional 27% accessed psychological and counselling services.<sup>152</sup>

Five years later, the demand remains high as approximately 379 Aboriginal persons<sup>153</sup> were receiving Institutional Mental Health Initiative (IMHI)<sup>154</sup> services. With so many people, Aboriginal and non-Aboriginal persons accessing mental health services, is CSC able to provide adequate mental health programming? Within the *Glube Report*, the Committee identified the issue of insufficient financial and human resources to fully implement the strategy: "It has been suggested that CSC would need \$50 to \$60 million operating dollars annually and approximately 500 additional staff working along the continuum to fully realize its ambitions."<sup>155</sup> Given the financial and human constraints, the strategy has not been fully implemented to date.

The delivery of mental health services in Corrections is reactive at best,<sup>156</sup> due to the constraints of the system as stated by Mr. Robert Sampson, Chair of the Correctional Service of Canada Review Panel in the 2007 Report:

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<sup>148</sup> The *Glube Report*.

<sup>149</sup> *A Roadmap to Strengthening Public Safety*.

<sup>150</sup> *Needs Assessment of Federal Aboriginal Women Offenders*.

<sup>151</sup> *Ibid.* at 28-29.

<sup>152</sup> *Ibid.* at 30.

<sup>153</sup> *Framework 2009/2010* at 56. Note the numbers may be an underestimate as the tracking database was not fully operational in all institutions until April 2010. Also the information provided was not gender specific.

<sup>154</sup> The IMHI launched in 2007 is one of the components of CSC's overall Mental Health Strategy to deliver quality mental health services. IMHI teams work with the offender during their incarceration and create linkages with Community Mental Health Initiative teams, to ensure that a continuum of mental health care is provided through to their release back into the community. Online: < <http://www.csc-scc.gc.ca/text/pblct/qf/29-eng.shtml> >.

<sup>155</sup> *Needs Assessment of Federal Aboriginal Women Offenders* at 30.

<sup>156</sup> At times the mental health services within Corrections are unable to adequately meet the needs of the individual for a myriad of reasons. See *A Preventable Death*, *supra* note 139, the OCI Report regarding the death of Ashley Smith, June 2008. There the OCI found that Ms. Smith's access to appropriate care was severely limited: "She received only cursory mental health assessment, care and treatment. This was due to the lack of mental health resources in federal Corrections as a whole, and the lack of specialized treatment options available for women with specialized needs in particular..."

Most penitentiaries have a limited number of psychologists on staff, and mental health care is usually limited to crisis intervention and suicide prevention. The primary and intermediate mental health care provided to offenders is insufficient. Offenders with mental health problems usually do not receive appropriate treatment unless their needs reach crisis levels. Many are segregated for protection because of their inability to cope in regular penitentiary settings, and therefore they have limited access to programming or treatment.<sup>157</sup>

In the case of Ashley Smith, the lack of sufficient access to appropriate mental health supports and the over-reliance on segregation resulted in the tragic loss of a young woman's life.<sup>158</sup>

### Mental Health and CSC's over-reliance on Segregation:

Aboriginal women tend to be segregated more frequently and for longer periods of time than non-Aboriginal female offenders.<sup>159</sup> In 2003, the Canadian Human Rights Commission reported that one Aboriginal woman had been held in segregation for 567 days.<sup>160</sup> In 2006, another Aboriginal woman is reported to have spent the majority of her sentence in isolation, for over 1500 days she was classified as being in segregation.<sup>161</sup>

Research has shown that women are affected differently by segregation than men.<sup>162</sup> Segregation can have a profoundly negative impact on the individual and it may jeopardize the safety and well being of the person by exacerbating distress, particularly for individuals with a history of physical or sexual abuse.<sup>163</sup> Given the fact that Aboriginal women are reported to have suffered high incidence rates of physical and sexual abuse<sup>164</sup> and that they are self-harming at exceedingly high rates, it follows that they are particularly vulnerable to the negative impacts of segregation. Harmful impacts that could detrimentally affect their mental well-being, as some research has indicated extensive periods of isolation can trigger the onset of mental illness.<sup>165</sup>

Of prolonged segregation, Justice Louise Arbour stated within the Report of the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*,<sup>166</sup> that:

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<sup>157</sup> *A Roadmap to Strengthening Public Safety* at 55.

<sup>158</sup> See *A Preventable Death*, supra note 139.

<sup>159</sup> Canadian Association of Elizabeth Fry Societies, (2006). *10<sup>th</sup> Anniversary of the Arbour Commission Report*, online: <http://www.elizabethfry.ca/abr10e.pdf>, at 4; see also Martel, J. (2000). "Women in the "hole:" The unquestioned practice of segregation" in Kelly Hannah-Moffatt and Margaret Shaw, eds., *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing at 130.

<sup>160</sup> *Ibid.* See also Canadian Human Rights Commission. *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: CHRC, 2003 [Protecting Their Rights].

<sup>161</sup> *Ibid.* at 4.

<sup>162</sup> Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report. Ottawa, Public Works and Government Services Canada, 1996. (Cat. No. JS42-73/1996E).

<sup>163</sup> *Protecting their Rights* supra note 167.

<sup>164</sup> According to a 1990 Survey, among federally incarcerated Aboriginal women, 90% reported physical abuse and 61% reported sexual abuse, see Shaw, M. (1990). *Survey of Federally Sentenced Women*, Corrections Research and Policy Development Branch of the Ministry of the Solicitor General of Canada.

<sup>165</sup> Haney, C. (2009, January). "The Social Psychology of isolation: "Why Solitary Confinement is Psychological Harmful." *Prison Service Journal*, 181, at 14.

<sup>166</sup> *Ibid.*

“...prolonged segregation is a devastating experience, particularly when its duration is unknown at the outset and when the inmate feels that she has little control over it.”

The adverse effects of isolation can even further exasperate a person’s already compromised mental health. Women who emerge from prolonged periods of isolation in segregation units will often struggle with the adverse effects for some time after their re-integration into the inmate population and in some instances beyond the term of their sentence.<sup>167</sup>

Trends have emerged within Canada that indicates prisons are becoming the default placement for persons with mental health issues in lieu of community based support and treatment programs.<sup>168</sup> The current state within Corrections regarding mental health issues is impacted directly by what is occurring outside of the institutional walls – specifically the closures of mental health facilities and a lack of funding for community resources.<sup>169</sup> Persons with mental health issues require proper medical care including diagnosis, intervention and treatment before they come into conflict with the law. However, this does not occur often enough and persons with varying degrees of mental health issues end up in federal penitentiaries.

CSC is not equipped to adequately care for persons with mental health issues due to a lack of resources. Instead, CSC has developed an over reliance on segregation for handling persons with mental health needs rather than providing treatment and care. This over-reliance has already resulted in the loss of one young woman’s life<sup>170</sup> and such practices must end before more lives are lost.

Offenders with mental health issues require proper medical diagnosis, care and treatment as opposed to segregation and isolation, which may serve to only exasperate the symptoms. CSC would better serve their mandate<sup>171</sup> by adopting an approach to self-injury as recommended by the *Creating Choices* report and the OCI Report of 2008-2009. Such an approach would provide support services to the offender by way of prevention, intervention and treatment measures. Furthermore, CSC staff would have clear direction on how to manage self-harming behaviour and incidents. In terms of improving the overall delivery of mental health services within CSC, more financial and human resources are required to fully implement the Institutional Mental Health Initiative

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<sup>167</sup> *Women in the hole supra* note 166.

<sup>168</sup> For information regarding the American trends see *Broward's Mental Health Court: An Innovative Approach to the Mentally Disabled in the Criminal Justice System?* Honourable Ginger Lerner-Wren, Presiding Judge, Broward Mental Health Court, Florida, [Online] Available: <http://www.ncsc.dni.us/KMO/Projects/Trends/99-00/articles/MntlHlth.htm>. And for Canadian examples of the trends See Canadian Association of Elizabeth Fry Societies’ Annual Report – 2000 and see Submissions of the Disabled Women’s Network of Canada and the Special Report on US prisons by Human Rights Watch International, 2003. Online: <http://www.elizabethfry.ca/submissn/dawn/1.htm>.

<sup>169</sup> *Ibid.* at 23 and see Correctional Service Canada: *The 2002 Mental Health Strategy for Women Offenders* which identified that one out of every four women at admission presented a mental health issue, an increase of 67% since 1997.

<sup>170</sup> See *A Preventable Death supra* note 139.

<sup>171</sup> Part of CSC’s mandate is to provide care to inmates and the provision of programs that will assist with rehabilitation and successful reintegration into the community. Segregation prevents participation in programming to assist with the rehabilitation process.

(IMHI) strategy.<sup>172</sup> The current state of delivery of mental health services as reactive<sup>173</sup> does nothing to further CSC'S mandate.

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<sup>172</sup> *Needs Assessment of Federal Aboriginal Women Offenders* at 30.

<sup>173</sup> At times the mental health services within Corrections are unable to adequately meet the needs of the individual for a myriad of reasons. See *A Preventable Death* supra note 139, the OCI Report regarding the death of Ashley Smith, June 2008, there the OCI found that Ms. Smith's access to appropriate care was severely limited. "She received only cursory mental health assessment, care and treatment. This was due to the lack of mental health

## Fetal Alcohol Spectrum Disorder (FASD)

Fetal Alcohol Spectrum Disorder (FASD) is a general term that describes the range of neurological and behavioural challenges that may affect a person if the person's birth mother drank alcohol while she was pregnant.<sup>174</sup> FASD is a major cause of preventable birth defects and the leading known cause of developmental disability in Canada.<sup>175</sup>

Disabilities of FASD may include symptoms such as impaired mental functioning, memory problems, impaired judgment, inability to control impulse behaviour, inability to understand the consequences of their actions and an inability to modify behaviour control.<sup>176</sup> A lack of access to proper community supports may mean that the behaviour associated with FASD results in individuals frequently coming into conflict with the law.<sup>177</sup>

The criminal justice system is based on the assumption that normative behaviours mean that an individual acts of their own volition and learns the consequences of such behaviours when they are caught or others are arrested and convicted of committing criminal offences. However, in terms of persons with FASD, such normative assumptions and the principles of general deterrence and denunciation are not understood.

In terms of the impact on Aboriginal women in corrections, the issue of FASD is not an "Aboriginal issue." The author is unaware of any study that has established that FASD occurs at a higher rate of incidence and prevalence in the Aboriginal community. Nor is the author aware of any studies that have examined the non-Aboriginal Canadian population for incidence and prevalence. As such, no comparator group exists.<sup>178</sup>

FASD is an issue that affects Canadian society as a whole. That is not to say that Aboriginal women are insulated from the issue, only that they, just as the rest of the population are impacted by FASD. That being said, within the 2007 Report of the CSC Review Panel, *A Roadmap to Strengthening Public Safety*, the Committee identified it as an Aboriginal issue when it stated:

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<sup>174</sup> Health Canada, FASD, on line: <http://www.hc-sc.gc.ca/hl-vs/iyh-vsv/diseases-maladies/fasd-etcaf-eng.php>

<sup>175</sup> Public Health Agency of Canada, Fetal Alcohol Spectrum Disorder, on line: <http://www.phac-aspc.gc.ca/hp-ps/dca-dea/prog-ini/fasd-etcaf/index-eng.php>.

<sup>176</sup> *Ibid.*

<sup>177</sup> See Streissguth, A., & Kanter, J. (1997). *The challenge of fetal alcohol syndrome: Overcoming secondary disabilities*. Seattle, WA: University of Washington Press.

Streissguth, A.P., Barr, H.M., Kogan, J., & Bookstein, F.L. (1997). Primary and secondary disabilities in fetal alcohol syndrome, in Streissguth, A., & Kanter, J. (eds.), *The challenge of fetal alcohol syndrome: Overcoming secondary disabilities*. Seattle, WA: University of Washington Press; Boland, F.J., Burrill, R., Duwyn, M., & Karp, J. (1998). *Fetal alcohol syndrome: Implications for Correctional Service*. Research Report R-71. Ottawa, ON: Boland, F., Duwyn, M., & Serin, R. (2000). Fetal alcohol syndrome: Understanding its impact. *Forum on Corrections Research*, 12(1), 16 -18.

<sup>178</sup> See *Fetal Alcohol Syndrome Among Aboriginal People in Canada: Review and Analysis of the Intergenerational Links to Residential Schools*, The Aboriginal Healing Foundation Research Series, 2003 at 93-100.

The Panel recommends that particular attention should be given to the impact of the effects of Fetal Alcohol Spectrum Disorder (FASD), **particularly for Aboriginal offenders.**<sup>179</sup> [emphasis added]

The author is unaware of a study which examined the incidence and prevalence at which FASD impacts the Aboriginal offender population. Furthermore, identifying FASD as an Aboriginal issue alone reinforces stereotypical assumptions of Aboriginal peoples.

Despite the aforementioned recommendation that particular attention should be given to the effects of FASD, nothing has been done to date. There remains no training for CSC staff working with individuals with FASD and there is no specific programming offered for persons with FASD in federal corrections.

The lack of staff training and understanding regarding FASD and its implications in terms of cognitive and behavioural deficits has a direct impact on security classifications and the use of management protocol status for individuals with FASD. Without adequate training and awareness, staff may classify persons with FASD at a higher security level or status, thereby restricting their interaction with others and access to programming.

In terms of programming, CSC must create programming specific to meet the needs of persons with FASD. In order to optimize effectiveness, such programming will require it to be both culturally and gender appropriate.

The need for programming and additional supports required to adequately assist persons with FASD is a need that will span the entire term of a prison sentence and post release. General programming provided such as life skills, employment training and substance abuse programming will need to be FASD specific.

For an Aboriginal woman diagnosed with FASD, returning home will likely pose a greater challenge than their non-Aboriginal counterparts as many Aboriginal communities will lack the infrastructure to support the specific needs of Aboriginal women with FASD.

The only progress to date is in relation to diagnosis of FASD. CSC has developed an FASD assessment scale and plans to pilot test it at the Nova Institute. However the testing has been delayed as concerns were raised on how the testing would proceed and on whom the scale would be applied. At the time of the report, confirmation as to when the pilot project would commence was unknown.

Although CSC has made some progress in terms of the development of an FASD diagnostic tool, training for staff regarding the cognitive and behavioural deficits must take place in concert with programming for persons with FASD. Failure to accommodate persons with FASD may be considered a discriminatory practice. In the context of an Aboriginal female offender diagnosed with FASD, the discrimination could arguably be intersectional on the basis of race, gender and disability. Therefore, it would be in the

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<sup>179</sup> *A Roadmap to Strengthening Public Safety*, at 90, 102 and 105, available online: <http://www.publicsafety.gc.ca/csc-scc/cscprprt-eng.pdf>

best interest of CSC to develop and implement training regarding FASD and programming specifically for persons with FASD across the Corrections continuum.

## ***Gladue* and Corrections**

Section 718.2(e) was among the significant amendments to the *Criminal Code of Canada* in 1996, Parliament having recognized the gross over-representation of Aboriginal peoples in the criminal justice system codified the sentencing regime emphasizing that consideration of available alternatives to imprisonment ought to be given with special attention the circumstances of Aboriginal offenders.

Then Minister of Justice, Allan Rock said of the amendment: “[T]he reason we referred specifically there to Aboriginal persons is that they are sadly overrepresented in the prison populations of Canada.”<sup>180</sup>

At the time of the amendments, Aboriginal people represented 3.7% of Canada’s population and 16% of all persons sentenced to a correctional institution.<sup>181</sup> This over-representation in Parliament’s view warranted action.

In 1999, three years after Parliament enacted the sentencing provisions, the Supreme Court of Canada had their first opportunity to interpret section 718.2(e) by way of the case *R. v. Gladue* [1999] 1. S.C.R. 688<sup>182</sup> [hereinafter *Gladue*].

The appellant, Jamie Tanis Gladue, a woman of Cree and Métis ancestry, like many other Aboriginal women in federal penitentiaries, was convicted of a violent offence. Ms. Gladue was convicted of Manslaughter, the deceased was her common law husband Reuben Beaver whom she lived with since 1993. She was sentenced to three years imprisonment.

Ms. Gladue appealed the conviction all the way to the Supreme Court. The Court held that section 718.2(e) is more than simply a re-affirmation of existing sentencing principles.<sup>183</sup> The remedial component of the provision consists not only in the fact that it codifies a principle of sentencing, but moreover in its direction to sentencing judges to undertake the process of sentencing Aboriginal offenders differently to endeavour to achieve a truly fit and proper sentence in each particular case.<sup>184</sup>

In interpreting section 718.2(e), the Court held that it applies to all Aboriginal persons wherever they reside, whether on or off-reserve, in a large city or a rural area. In defining the relevant Aboriginal community for the purpose of achieving an effective sentence, the term "community" must be defined broadly to include any network of support and interaction that might be available, including one in an urban centre.

At the same time the residence of the Aboriginal offender that lacks any network of support does not relieve the sentencing judge of the obligation to try to find an alternative to imprisonment.

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<sup>180</sup> November 1994, House of Commons, Statement then Bill C-41.

<sup>181</sup> Canadian Centre for Justice Statistics, 1995-1996.

<sup>182</sup> *R. v. Gladue* [1999] 1. S.C.R. 688

<sup>183</sup> *Gladue* at 33.

<sup>184</sup> *Gladue* at para. 78-79.

Subsequent case law expanded the principles enunciated in *Gladue* to apply whenever an Aboriginal person's liberty is at issue.<sup>185</sup> In the context of corrections, CSC has instructed staff by way of Commissioner's Directive (CD) 705-7, to take into consideration the *Gladue* principles when assessing the security classification and placement of Aboriginal offenders.

CD 705-7 at section 51 states: "*staff will be sensitive to the spirit and intent of the Gladue decision.*" How CSC staff are actually interpreting and applying this statement is unknown as there has been no further direction, training or over-sight from CSC headquarters on how to interpret and apply the "spirit and intent" of *Gladue* in the context of Corrections.

To date, the CD doesn't appear to have had any mitigating effect on Aboriginal offender classification as there has been no remarkable decline in the number of Aboriginal offenders classified at higher security levels nor has there been a visible increase in Aboriginal offenders qualifying for early release and parole eligibility. Moreover, quite the opposite appears to be true as we've seen a steady increase in the number of Aboriginal offenders placed at higher security classification and an increase in the number of Aboriginal offenders remaining in custody until their Statutory Release Date.<sup>186</sup>

In terms of staff training, only as recently as February 2011, did CSC provide some training on *Gladue*. Two sessions were held at National Headquarters to a very limited number of staff. CSC advises that each training session took place over the course of an afternoon, participants included some Ottawa staff based out of headquarters and front line staff who will be participating in an upcoming pilot project at the Fraser Valley Community Correctional Centre [Fraser Valley].

Michelle Mann, a consultant and author of the 2009 OCI Report: *Good Intentions, Disappointing Results*, delivered the training. The front line staff included employees from both the men's and women's corrections at Fraser Valley and was comprised mostly of Case Managers. The Case Managers are responsible for supervising parole officers, the front line workers responsible for applying section 51 of CD 705-07. The pilot project will be underway within the next fiscal year at Fraser Valley.

Aside from the *Gladue* training for the pilot project CSC is currently not providing any direction, training or supervision regarding the interpretation and application of *Gladue* within the Corrections context. In order to achieve a substantial decline in the over-classification of Aboriginal women and to increase their numbers in parole eligibility, CSC must devote adequate resources to properly train staff on how to apply the *Gladue* principles and to provide the necessary over-sight to ensure compliance including data tracking and evaluation. Failure to dedicate sufficient resources will result in a failure to comply with the application of *Gladue* within corrections.

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<sup>185</sup> See *R. v. Sim* (2005), 78 O.R. (3d) 183 (ONCA) [Sim]. *R. v. Jensen*, 2005, Docket C37975 [R. v. Jensen]. *Frontenac Ventures Corporation v. Ardoch Algonquin First Nation*, 2008 ONCA 534 [Frontenac Ventures].

<sup>186</sup> *Mann Report*.

## Parole

Within the continuum of institutional corrections, the parole hearing is an end point. The decision making process of determining parole eligibility is dependent upon the individual's rehabilitation progress over the course of their sentence. However, for many Aboriginal offenders the parole hearing is not an end point to their time behind bars as Aboriginal people are less likely to be granted day or full parole<sup>187</sup> and more likely to be released into the community at Statutory Release date or the Warrant Expiry date.<sup>188</sup>

According to the Accountability Framework Year End report 2009/2010, over 75% of all Aboriginal offenders remain incarcerated until their Statutory Release date<sup>189</sup> this is over 10% higher than their non-Aboriginal counterparts.<sup>190</sup> Moreover, Aboriginal offenders account for 33.42% of the total overall detentions past their statutory release date, which is disproportionate to the population profile they represent.<sup>191</sup>

In terms of day parole, Aboriginal offenders applications are granted at a rate of 16.58% compared to their non-Aboriginal counterparts who are granted day parole more frequently as their applications are successful with an approval rate of over 28%.<sup>192</sup>

With regard to full parole, only 1.2% of Aboriginal offenders were released on full parole in the 2009-2010 period compared to 3.8% of non-Aboriginal offenders.

The OCI has observed an overall increase in the number of women offenders who are released on Statutory Release date, as well as an increase in the number of waivers and postponements of Parole hearings, the trend is most pronounced in terms of Aboriginal women.<sup>193</sup> The disproportionate rate at which Aboriginal women are returning to their communities at a later date speaks to a number of problems within corrections. Within the 2009 OCI Report, *Good Intentions, Disappointing Results*, Michelle Mann cited a number of contributing factors for such disproportionate rates:

Systemic discrimination, culturally laden notions of accountability, over-classification, over-segregation, and a lack of availability of Aboriginal specific programs while incarcerated may all play a role in the granting of parole to Aboriginal offenders.<sup>194</sup>

In addition to the aforementioned factors, the lack of gender appropriate programming in an Aboriginal cultural context is another contributing factor to parole ineligibility for Aboriginal women.

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<sup>187</sup> *Ibid.* at 43.

<sup>188</sup> *Ibid.*

<sup>189</sup> Statutory Release entitles most offenders to serve the final third of their sentence in the community.

<sup>190</sup> *Accountability Framework 200/2010*. Aboriginal offenders remain incarcerated until their Statutory Release date at a rate of 76.99% there is a gap of over 10.74% between Aboriginal offenders and non-Aboriginal offenders. The gap is most pronounced for Inuit offenders who were only granted day parole at 18.9% and 78.4% of Inuit offenders are held until their Statutory Release date.

<sup>191</sup> *Ibid.* Aboriginal offenders represented 20.4% of offenders.

<sup>192</sup> *Accountability Framework 200/2010*.

<sup>193</sup> Office of the Correctional Investigator. *Annual Report 2009-2010*. Ottawa: Minister of Public Works and Government Services Canada, 2008.

<sup>194</sup> *Mann Report*.

In an effort to address systemic discrimination, among the objectives of CSC's Aboriginal Strategy is to increase awareness and representation of Aboriginal culture. As of March 31, 2010, there were over 18,000 CSC employees, 7.97% of the employees were of Aboriginal ancestry. According the Accountability Framework 2009/2010, only 67 employees have taken the Aboriginal Perceptions Training.<sup>195</sup>

Given the high number of Aboriginal offenders in Corrections, it would assist greatly in meeting the aforementioned objective if CSC staff were required to participate in Aboriginal Perceptions training rather than offering it only as a discretionary course. Furthermore, such mandatory participation would serve as a step towards addressing discrimination against Aboriginal peoples.

With regard to the Parole Board of Canada, (PBC) Parole Board members receive training regarding Aboriginal peoples specific to the region in which they are serving. PBC advises that the training of board members begins with introductory training and continues over the course of the Parole Board member's tenure.

The decision making process of the Parole Board requires members to take into consideration a number of factors including the nature of the offence; the individual's criminal history; social issues; mental health issues; relationships; employment; victim input; opinions from Elders, judges, police officers and other professionals, as well as the individual's behaviour while incarcerated.

### Parole Board of Canada and Gladue

In terms of Aboriginal offenders PBC must also apply the *Gladue* principles in their analysis of parole eligibility. Despite this requirement, Parole Board members only recently received their first training on how to apply the *Gladue* principles. In February 2011, PBC staff delivered training as a single component, lasting approximately one hour at this year's annual board member training.

From an operational perspective, the board members must rely on the documentation provided to them at the hearing for their analysis and application of the *Gladue* principles as parole applicants are typically not represented by legal counsel. As such, the material presented will be comprised mostly of information collected and prepared by CSC parole officers. The documentation may include a Pre-Sentence Report prepared by a parole officer for the purpose of sentencing along with the individual's criminal record and other external and CSC internal reports regarding the individual's behaviour.

As mentioned previously, CSC has not provided any direction or national training to parole officers on how to interpret and apply the *Gladue* principles within the context of corrections. Therefore, it is highly unlikely that the information necessary to conduct a fulsome *Gladue* analysis and application will be available for the Parole Board members.

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<sup>195</sup> CSC advises that Aboriginal Perceptions Training includes substantive information regarding the history of Aboriginal peoples as well as cultural information.

The courts have held that the *Gladue* principles are invoked whenever an Aboriginal person's liberty is at stake including within the context of parole eligibility.<sup>196</sup> As such, parole board members are obligated by law to apply *Gladue* when assessing an Aboriginal offender's application for release. In order to better assist the members in the decision making process, it would serve well to have *Gladue* Reports prepared specifically for the purpose of parole eligibility.

*Gladue* Reports are prepared post-conviction of an Aboriginal person for sentencing purposes. The reports provide an overview of the life circumstances of the accused identifying systemic and individual factors contributing to the individual's involvement with the criminal justice system. Where appropriate, the reports provide sentencing judges with recommendations for consideration that are alternatives to imprisonment tailored to meet the needs of the Aboriginal person before the court. Furthermore, the recommendations are well-constructed plans developed with the objective of addressing criminogenic factors to reduce the risk of re-offending.

The *Gladue* Reports are not only informative but also educational in terms of Aboriginal peoples' collective history, culture, spirituality and socio-economic matters, all of which contribute to the individual Aboriginal person's criminal conduct. The reports are substantially distinguishable from pre-sentence reports prepared by parole officers in content and in the manner in which the information is gathered as the reports are prepared by Aboriginal people employed outside of the formal justice system.

The format utilized for *Gladue* Reports prepared for sentencing could be adapted for the purpose of a parole hearing. Such reports could cover not only the life circumstances of the Aboriginal offender before their conviction but also their circumstances within the institution. Such information would be helpful in conducting a *Gladue* analysis as it could provide an opportunity for insight into such matters as the cultural and gender appropriateness of program availability within corrections. That being said, it would be integral that the reports be prepared by Aboriginal persons not employed by CSC. Furthermore, for other reasons more associated with impartiality, such reports should not be prepared by staff directly employed by PBC.

### Section 84 Release and Aboriginal Women

The PBC is also responsible for hearing section 84 applications. Section 84 of the CCRA provides that where an individual expresses an interest in applying for a parole release into an Aboriginal community, CSC must provide the community with notice of the application and an opportunity to participate by submitting a release plan. The term community within the context of section 84 allows for a broad interpretation including an urban Aboriginal community comprised of social service providers.

Section 84 has been in effect for 19 years, however it has been drastically under utilized.<sup>197</sup> As noted in the *Glube* Report, CSC cannot solve the problem alone.

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<sup>196</sup> See *R. v. Jensen, R. v. Platinex and Frontenac Ventures*, *supra* note 192.

<sup>197</sup> House of Commons. 26<sup>th</sup> Report of the Standing Committee on Public Accounts. Ottawa: House of Commons, 2004 and Office of the Auditor General of Canada. Report of the Auditor General of Canada.

Collaboration with Aboriginal communities, other government departments<sup>198</sup> as well as Aboriginal and mainstream social agencies is necessary to increase the use of section 84. Collaboration will allow for an opportunity to share existing resources and create inroads for Aboriginal women to have better opportunities for community reintegration.

In 2007, the Corrections Review Panel recommended that CSC conduct an examination of its initiatives to increase awareness and use of section 84.<sup>199</sup> However, during the 2009-2010 period, only one Aboriginal woman completed a section 84 release, the release was for day parole.<sup>200</sup> According to the Corrections Review Panel, at the time the Aboriginal Community Development Officers (ACDO) had “been successfully increasing community engagement in correctional planning, release decision making and community supervision, in accordance with section 84 of the CCRA.”<sup>201</sup>

Perhaps that is partially true as in 2009-2010, 639 Aboriginal offenders expressed an interest in section 84 applications<sup>202</sup> with 52 applications approved (48 by Aboriginal men, 2 non-Aboriginal men, 1 Aboriginal woman and 1 non-Aboriginal woman).<sup>203</sup> However, in terms of Aboriginal women and section 84 releases the numbers have actually declined from the year previously, which indicate that 4 Aboriginal women completed a section 84 release during the 2008-2009 period. That being said, the Mann Report identified fluctuation of section 84 release plans over the course of a three-year period: “...in fiscal year 05-06, 226 release plans were completed compared to a drop to 51 in 06-07 and 161 in 07-08. It remains unclear why there has been such variability in these numbers over the past three years.”<sup>204</sup> The inference drawn from such inconsistency is that the implementation of section 84 is inefficient.<sup>205</sup>

The facilitation of section 84 agreements falls to the responsibility of the ACDOs across the country. The ACDOs are responsible for coordinating release plans between the offender and the Aboriginal community.<sup>206</sup> A part of which includes providing information regarding the process to Aboriginal inmates and Aboriginal communities. According to the *Mann Report* in 2009, planning kits were produced and widely distributed among institutions and communities. Despite this distribution of information, the desired effect has yet to be seen.

As indicated at the beginning of this section, parole eligibility is at the end of the continuum of corrections. In order to increase the number of section 84 releases more action than simply dissemination of information needs to occur. CSC’s over reliance on security classification and reclassification tools, which are arguably gender and culturally

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<sup>198</sup> The *Glube Report*.

<sup>199</sup> CSC. *A Roadmap to Strengthening Public Safety*.

<sup>200</sup> *A Roadmap to Strengthening Public Safety* at 54.

<sup>201</sup> *A Roadmap to Strengthening Public Safety* at 88.

<sup>202</sup> *Accountability Framework 2009/2010* at 55. Note that it does not explain what “expressed an interest” means nor do the current statistics indicate how many of those persons interested in a s. 84 release were Aboriginal women.

<sup>203</sup> *Accountability Framework 2009/2010* at 54-55. Note that there were no Inuit offenders who participated in a s. 84 release although 35 Inuit offenders expressed an interest.

<sup>204</sup> *Mann Report* at 22.

<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.*

inappropriate for Aboriginal women, must end and an alternative means of assessment must be identified and implemented for Aboriginal women.

To further assist with parole eligibility, Aboriginal women must have access to culturally and gender appropriate programming. Furthermore, to increase the number of section 84 releases for Aboriginal women, CSC must collaborate with other federal departments, Aboriginal communities as well as Aboriginal and mainstream social service providers to share resources and to build the necessary bridges to facilitate a successful community reintegration. Lastly, the Parole Board must consistently apply the *Gladue* principles at every hearing of an Aboriginal applicant. The cumulative effect of such a multi-faceted approach would likely result in a steady increase in section 84 releases for Aboriginal women.

### Parole Revocations

Within the 2009-2010 period, Aboriginal offenders accounted for 13.7% of the supervised population and yet accounted for 24% of all revocations.<sup>207</sup> Furthermore, 49.5% of supervised Aboriginal offenders are revoked compared to 24.3% of supervised non-Aboriginal offenders<sup>208</sup>

For many Aboriginal women, returning home may mean re-entry into a challenging environment filled with numerous stressors. There may be limited or non-existent resources locally available to provide services to address an array of socio-economic needs,<sup>209</sup> addictions issues, child-care needs, emotional and psychological needs as well as health care. The lack of adequate support services may contribute to an already stressful environment and may manifest into self-destructive behaviour resulting in parole revocation.

Therefore, the better prepared an Aboriginal woman is for her release including preparation of a detailed release plan identifying needs and community resources, the better her chances of a successful re-integration into the community. As such, a *Gladue* Report prepared for the purpose of a parole hearing would greatly assist in facilitating a successful re-entry into the community; thereby reducing the chance of parole revocation.

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<sup>207</sup> *Accountability Framework 2009/2010* at 12. Note that the information was not broken down in terms of gender specificity.

<sup>208</sup> *Accountability Framework 2009/2010* at 12. Note that the information was not broken down in terms of gender specificity.

<sup>209</sup> For example, lack of adequate affordable housing, clean drinking water, lack of social assistance, lack of employment opportunities, lack of educational resources, lack of child care and parenting programming services.

## Synopsis

The current state of over-representation of Aboriginal women in Federal Corrections is nothing short of a crisis. As of April 2010, Aboriginal women accounted for 32.6% of the total female offender population,<sup>210</sup> this means that 1 out of every 3 women federally incarcerated is of Aboriginal descent.

Over the past 10 years, the representation of Aboriginal women in Federal Corrections has increased by nearly 90% as such they represent the fastest growing offender population.<sup>211</sup> Moreover, there is no indication of any anticipated decline.

Aboriginal women have been marginalized significantly by the impact of colonization, the Residential School system and oppressive government policies and laws. Government policies that have impoverished Aboriginal communities have left Aboriginal female children and Aboriginal women vulnerable to exploitation and violence. Furthermore, racism and discrimination have denied the dignity and self-worth of Aboriginal women, allowing them to fall prey to violent acts perpetrated against them by men.

Therefore, it stands to reason that the needs of Aboriginal women in Federal Corrections are many as their collective and individual circumstances have dictated such. CSC has the challenge of addressing the multitude of needs in a culturally and gender appropriate manner. However, to date, the experience of Aboriginal women in Federal penitentiaries has been a continuation of the marginalization experienced by generations of Aboriginal women.

Issues of isolation and dislocation are commonplace for Aboriginal women across the continuum of Federal Corrections. Aboriginal women find themselves overrepresented in higher security classifications; overrepresented in Management Protocol status; they are frequently denied access to culturally and gender appropriate programming and as a group they are underrepresented in terms of parole eligibility.

The Aboriginal female offender profile is younger than her non-Aboriginal counterpart.<sup>212</sup> She is serving time for a serious offence, typically a violent offence.<sup>213</sup> She has an extensive criminal history,<sup>214</sup> a low level of employment experience and limited education<sup>215</sup> and she presents with a high need for programming.<sup>216</sup>

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<sup>210</sup> *Accountability Framework 2009/2010* at 18.

<sup>211</sup> Public Safety Canada. *Corrections and Conditional Release Statistical Overview*, 2010: See also the Annual Report of the Office of the Correctional Investigator, 2009-2010 at 49.

<sup>212</sup> *Accountability Framework Report 2009/2010* at 23.

<sup>213</sup> *Accountability Framework Report 2009/2010* 20.

<sup>214</sup> *Accountability Framework Report 2009/2010* at 21-22.

<sup>215</sup> *Accountability Framework Report 2009/2010* at 23.

<sup>216</sup> *Accountability Framework Report 2009/2010* at 32.

In 2009-2010, the average period of time that a First Nations woman had to wait before starting Aboriginal specific programming, was 238 days from the date of admission. The wait for non-Aboriginal specific programming was approximately 341 days.<sup>217</sup>

In contrast, the average sentence length served behind bars for an Aboriginal woman during the same time period was 3.52 years.<sup>218</sup> The majority of all Aboriginal female offenders are serving a sentence in the range of two to five years (68.06%).<sup>219</sup> As such, the need to begin programming for rehabilitative purposes is immediate upon admission to Federal Corrections.

Sections 77 and 80 of the CCRA stipulate that CSC must provide programming that is gender specific and Aboriginal culturally appropriate. CSC's Strategic Plan for Aboriginal Corrections 2006-2011 is consistent with the provisions of the CCRA as the plan places emphasis on such matters; however, there continues to be delays in the follow through of such commitments.

In terms of programming advancements for Aboriginal women, at present, there are two Pathways Units for Aboriginal women to apply to: 1) Edmonton Institution for Women and 2) the Fraser Valley Community Correctional Centre in British Columbia, which only became operational within the past year.<sup>220</sup>

CSC has plans to expand the number of Pathways Units for Aboriginal women. The location of additional Pathways Units for Aboriginal women is significant in terms of addressing isolation and dislocation issues. For Aboriginal women who are incarcerated, the existing stress of being separated from family and community can be further exasperated when they do not have access to culturally appropriate programming such as the Pathways Units which allows them the option of pursuing a more traditional healing path with increased access to Elders and ceremonies. Such accessibility to culturally appropriate programming and counselling could enhance their chances of being granted parole and for a successful re-entry into the community.

To date, no healing lodges have been created for Aboriginal women pursuant to section 81 of the *Corrections and Conditional Release Act*, despite the fact that the legislation has allowed for the creation of such for 19 years or that reports have recommended that CSC establish such healing lodges for women.<sup>221</sup>

Plans are underway to establish section 81 Healing Lodges for women at minimum and medium security classification. The Lodges will be located in the eastern and western regions: Edmonton, Alberta and Waseskun, Quebec. The proposed women's facility in

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<sup>217</sup> *Accountability Framework Report 2009/2010* at 48. Note that the data is limited to inmates who are serving 4 years or less and includes only those offenders who scored MOD or HIGH on their SIR or for those with no SIR a score of MED or MAX on the CRS.

<sup>218</sup> *Accountability Framework Report 2009/2010* at 21.

<sup>219</sup> *Ibid.* at 21.

<sup>220</sup> Pathways Units require 20 or more participants.

<sup>221</sup> See The *Glube Report* and the Office of the Auditor General of Canada. *Report of the Auditor General of Canada* 2003.

Waseskun would include section 84 beds<sup>222</sup> which would allow women who are on parole to apply to the lodge.

Two years ago, CSC hired a National Trainer to internally develop new integrated core programming specifically for Aboriginal Women. CSC advises that the new program is a holistic design based on the premise of the Medicine Wheel to address the physical, mental, emotional and spiritual needs of the participant. The program will be a full-time Elder assisted program with a facilitator. The new programming will be comprised of three different programs: an Aboriginal women's Engagement Program, a Moderate Intensity Program and a High Intensity Program.

In 2009, CSC introduced the Women's Module on Intervention (WMI) specifically for women in secure units. The programming is offered at five sites. The WMI consists of 10 non-Aboriginal modules and five Aboriginal modules. CSC advises that the new program was developed as an effort to try to change the prison programming culture to a more supportive based approach rather than control based.

The Aboriginal modules are delivered with the assistance of an Elder. Aboriginal women participate in both of the programming but where the programming is specific to their culture and experiences as Aboriginal women, the participants may opt to take such Aboriginal specific modules.

In preparation for their re-entry into the community, CSC offers the Maintenance Program. The program is currently offered at five of the institutions. The women begin the program while still incarcerated and continue, where possible post-release. At the present time there are only 2 sites that offer the post-release program: Edmonton and Winnipeg. As a result, Aboriginal women are further disadvantaged as many of them will not have access to the Maintenance Program. Without proper support services available, the women are less likely to have a successful reintegration into the community and their risk to re-offend is elevated.

The emphasis in Corrections programming over the past 10 years has been placed on substance abuse and violence relapse prevention<sup>223</sup> while educational and employment programming has been made a secondary priority. The Corrections Review Panel recognized in 2007 that there is a deficit in employment programming for Aboriginal offenders.

In order to address the deficit the Review Panel recommended a strategy be developed and implemented which links CSC and other federal government departments. The Panel held that connecting employment strategies for Aboriginal offenders with federal government economic growth initiatives is a critical step to ensure that Aboriginal offenders are prepared for and have employment opportunities available to them in their communities.<sup>224</sup>

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<sup>222</sup> Section 84 of the CCRA allows inmates who are applying for parole the opportunity to apply for a release into an Aboriginal community.

<sup>223</sup> *A Roadmap to Public Safety* at 46.

<sup>224</sup> *Ibid.* at 74.

Three years after the Review Panel's Report, Aboriginal offenders continue to have a high rate of education and employment needs, for the 2009-2010 period, 74.2% of all Aboriginal offenders identified employment and education needs. At a rate of 79.7%, First Nations women were the group who identified at intake the greatest need for education and employment programming.<sup>225</sup>

In addition to the core programming available, CSC offers the Mother-Child Program, established in 2001 it allows some women to keep their young children with them while incarcerated. In 2008, the program underwent significant policy changes excluding women who have been convicted of serious crimes involving violence, children, or crimes of a sexual nature and imposed additional requirements from Child and Family Services prior to program admission.

The changes implemented in 2008 may have served to further isolate Aboriginal women from their families and Aboriginal children from their mothers. The fact that Aboriginal women are over-represented in terms of violent offences disproportionately disqualifies many of them from applying to the Mother-Child Program. Furthermore, of those Aboriginal women who are eligible to apply, the additional requirement of child welfare services involvement will likely deter many given the troubled history and current over-representation of Aboriginal children in the child welfare system.<sup>226</sup> In addition, the financial costs associated with participation are often too much for Aboriginal families to afford given the distance between the penitentiaries and their home communities, particularly so for Inuit female offenders. Therefore, this policy change may have a particularly harsh impact on the Aboriginal community.

Over the course of the past few years some progress has been made in relation to the objectives set out in CSC's Strategic Plan for Aboriginal Corrections. However, in terms of bridging the gaps in outcomes for Aboriginal women, there is much work that needs to be done specifically in implementation of culturally appropriate interventions and addressing systemic barriers.

The security classification tool used by CSC is an example of a systemic barrier for Aboriginal women in Corrections. The Custody Rating Scale, a tool designed for, and tested on a predominantly white male population<sup>227</sup> is first applied upon entering CSC institutions during the Offender Intake Assessment process to determine the classification (minimum, medium or maximum) and placement of the individual.<sup>228</sup> The tool may be applied again to the individual throughout the course of their sentence to re-evaluate their security level.<sup>229</sup>

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<sup>225</sup> *Strategic Framework 2009/2010* at 10.

<sup>226</sup> See Blackstock, C., "Why Addressing the Over-Representation of First Nations Children in Requires a New Theoretical Approach", *Journal of Social Work Values and Ethics*, Fall 2009 vol 6, #3.

<sup>227</sup> *Federal Sentenced Women and Security Classification* at 2.

<sup>228</sup> Commissioner's Direction 705-7.

<sup>229</sup> *Federal Sentenced Women and Security Classification* at 2. See also *A Needs Assessment of Federal Aboriginal Women Offenders* 2004 at 2.

The scale fails to take into account any cultural or gender specific issues, as such Aboriginal women are at a double disadvantage on the basis of race and gender. Furthermore, the scale is applied on an individual basis as such it fails to take in account the collective experiences of Aboriginal peoples such as the Residential School System, the 60s scoop,<sup>230</sup> and discriminatory government policies and laws,<sup>231</sup> all of which have contributed to the gross over-representation of Aboriginal peoples within the criminal justice system.

For Aboriginal women, the collective context is all the more relevant, as they have been even further marginalized than their male counterparts, within their communities due to the affects of colonization. The devastating affect that centuries of oppression have had on Aboriginal women has resulted in far less social supports than non-Aboriginal women.<sup>232</sup> Less access to social supports can contribute to initiation and continued involvement in the criminal justice system.

Furthermore, the current risk management criteria when applied in the context of an Aboriginal community, reveals a middle-class bias to those who are motivated to work within their community as a number of the criteria focus is on employment, substance abuse history and community functioning.<sup>233</sup> Many Aboriginal offenders come from communities that are contending with the effects of centuries of colonization as such they are not fully functioning healthy communities.<sup>234</sup> Applying a normative social construct approach to assess risk fails to take into consideration the impact of colonization and obscures the results.<sup>235</sup> Therefore it follows to reason that an alternative approach that takes into account the systemic issues faced by Aboriginal women and their unique life circumstances must be adopted when conducting any type of risk assessment.

In February 2011, CSC advised that the recent project to construct a new assessment scale that was gender and culturally appropriate concluded with less than desirable results. At the time of this report, CSC advised that a plan to move forward was yet to be developed.

In addition to the classification designations, over the past several years, CSC applies a status known as Management Protocol. The Protocol is a “super maximum designation”<sup>236</sup> that a female inmate may be elevated to after her involvement in an incident that has either caused serious harm to others or which may have jeopardized other persons and she is deemed to be unmanageable in the regular maximum security population.<sup>237</sup>

The status has been applied over the past several years, almost exclusively to manage high needs/high risk Aboriginal women offenders. It has been criticized by the OCI who

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<sup>230</sup> *Supra* note 110.

<sup>231</sup> See Introduction, *Aboriginal Women a History of Dislocation and Isolation*.

<sup>232</sup> *Women and Risk*.

<sup>233</sup> *Supra* note 114.

<sup>234</sup> *Supra* note 109.

<sup>235</sup> *Supra* note 114.

<sup>236</sup> *Supra* note 122.

<sup>237</sup> OCI Annual Report 2008-2009.

raised concerns about the emotional and mental impact of this harsh and punitive form of confinement.

As of March 2011, all four of the women on Management Protocol were Aboriginal women. Since its inception, only two women have worked their way off of Management Protocol.

At the time of this report, a recommendation was before the Deputy Commissioner on Women that the Management Protocol be abolished.

In 2008-2009, the OCI reported that incidents of self-injury were rising. This is particularly true for Aboriginal women who as a group accounted for 78.2% of the female self-harm incidents in 2009-2010.<sup>238</sup>

Self-harm incidents or attempts to self-injure impact the security classification of an individual. Women are more likely to have their classification increased on the basis of "Institutional Adjustment."<sup>239</sup>

Within the OCI Report 2008-2009, recommendations were made regarding the development of a national strategy on self-injury, including training for managing chronic self-harming behaviours and incidents;<sup>240</sup> the implementation of clinical management plans that include prevention, intervention and treatment measures;<sup>241</sup> development of an inventory of "best practices" in the treatment and prevention of self-harm distributed throughout CSC;<sup>242</sup> and the creation of specialized and dedicated units regionally to manage chronically self-injurious persons.<sup>243</sup>

To date, CSC has not adopted the recommendations of the OCI nor does there appear to be a forthcoming change in how to approach self-injury with emphasis on treatment.

In terms of the overall delivery of mental health services, CSC is ill equipped to meet the demands. In order to improve the delivery of mental health services within CSC, more financial and human resources are required to fully implement the IMHI strategy.<sup>244</sup> At present the delivery of mental health services within CSC is reactive at best.<sup>245</sup> There is an over-reliance on segregation to handle persons with mental health issues rather than to provide care and treatment. Such over-reliance is dangerous and has already resulted in the death of one young woman, Ashley Smith.

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<sup>238</sup> *Accountability Framework 2009/2010* Aboriginal Initiatives at 10.

<sup>239</sup> *Federally Sentenced Women and Security Classification*.

<sup>240</sup> OCI Report 2008-2009, Recommendation 5.

<sup>241</sup> OCI Report 2008-2009, Recommendation 6.

<sup>242</sup> OCI Report 2008-2009, Recommendation 7.

<sup>243</sup> OCI Report 2008-2009, Recommendation 8.

<sup>244</sup> *Needs Assessment of Federal Aboriginal Women Offenders* at 30.

<sup>245</sup> At times the mental health services within Corrections are unable to adequately meet the needs of the individual for a myriad of reasons. See *A Preventable Death*, *supra* note 139.

In terms of health related matters, Fetal Alcohol Spectrum Disorder (FASD) is an issue within CSC that has received minimal attention. Disabilities of FASD may include symptoms such as impaired mental functioning, memory problems, impaired judgment, inability to control impulse behaviour, inability to understand the consequences of their actions and an inability to modify behaviour control.<sup>246</sup> A lack of access to proper community supports may mean that the behaviour associated with FASD results in individuals frequently coming into conflict with the law<sup>247</sup> and sentenced to federal penitentiaries.

CSC has done nothing to address the needs of offenders affected by FASD. There remains no training nor is there any programming offered for persons with FASD in Federal Corrections.

The lack of staff training and understanding regarding FASD and its implications in terms of cognitive and behavioural deficits has a direct impact on security classifications and the use of management protocol status for individuals with FASD. Without adequate training and awareness, staff may classify persons with FASD at a higher security level or status, thereby restricting their interaction with others and access to programming.

In terms of programming, CSC must create programming specific to meet the needs of persons with FASD. In order to optimize effectiveness, such programming will require it to be both culturally and gender appropriate. The need for programming and additional supports required to adequately assist persons with FASD is a need that will span the entire term of a prison sentence and post release.

Subsequent case law expanded the principles first enunciated in *Gladue* in 1999, to apply whenever an Aboriginal person's liberty is at issue.<sup>248</sup> In the context of corrections, CSC has instructed staff by way of CD 705-7, to take into consideration the *Gladue* principles when assessing the security classification and placement of Aboriginal offenders.

CD 705-7 at section 51 states: "*staff will be sensitive to the spirit and intent of the Gladue decision.*" How CSC staff are actually interpreting and applying this statement is unknown as there has been no direction, training or over-sight from CSC headquarters on how to interpret and apply the "spirit and intent" of *Gladue* in the context of Corrections.

Furthermore, the CD doesn't appear to have had any mitigating effect on Aboriginal offender classification as there has been no remarkable decline in the number of Aboriginal offenders classified at higher security levels nor has there been a visible increase in Aboriginal offenders qualifying for early release and parole eligibility. Moreover, quite the opposite appears to be true as we have seen a steady increase in the number of Aboriginal offenders placed at higher security classification and an increase in

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<sup>246</sup> *Supra* note 153.

<sup>247</sup> *Supra* note 154.

<sup>248</sup> See *R. v. Jensen, R. v. Platinex and Frontenac Ventures*, *supra* note 192.

the number of Aboriginal offenders remaining in custody until their Statutory Release Date.<sup>249</sup>

Aside from limited *Gladue* training for a pilot project commencing the next fiscal year, CSC is currently not providing any direction, training or supervision regarding the interpretation and application of *Gladue* within the Corrections context. In order to affect a decrease in over-classification of Aboriginal women and to increase their numbers in parole eligibility, CSC must devote adequate resources to properly train staff on how to apply the *Gladue* principles and to provide the necessary over-sight to ensure compliance including data tracking and evaluation. Failure to dedicate sufficient resources will result in a failure to comply with the application of *Gladue* within corrections.

Within the continuum of corrections, the parole hearing is an end point. The decision making process of determining parole eligibility is dependent upon the individual's rehabilitation progress over the course of their sentence. However, for many Aboriginal offenders the parole hearing is not an end point to their time behind bars as Aboriginal people are less likely to be granted day or full parole<sup>250</sup> and more likely to be released into the community at Statutory Release date or the Warrant Expiry date.<sup>251</sup>

In terms of Aboriginal offenders, PBC must apply the *Gladue* principles in their analysis of parole eligibility. Despite this requirement, Parole Board members only recently received training on how to apply the *Gladue* principles, in February 2011.

From an operational perspective, the board members must rely on the documentation provided to them at the hearing for their analysis and application of the *Gladue* principles as parole applicants are typically not represented by legal counsel. As such, the material presented will be comprised mostly of information collected and prepared by CSC parole officers. As mentioned previously, CSC has not provided any direction or national training to parole officers on how to interpret and apply the *Gladue* principles within the context of corrections. Therefore, it is highly unlikely that the information necessary to conduct a fulsome *Gladue* analysis and application will be available for the Parole Board members.

In order to better assist the members in the decision making process, it would serve well to have *Gladue* Reports prepared specifically for the purpose of parole eligibility.

The format utilized for *Gladue* Reports prepared for sentencing could be adapted for the purpose of a parole hearing. Such reports could cover not only the life circumstances of the Aboriginal offender before their conviction but also their circumstances within the institution. Such information would be helpful in conducting a *Gladue* analysis as it could provide an opportunity for insight into such matters as the cultural and gender appropriateness of program availability within corrections. Furthermore, the *Gladue* Report prepared for the purpose of a parole hearing would greatly assist in facilitating a successful re-entry into the community; thereby reducing the chance of parole revocation.

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<sup>249</sup> *Mann Report*.

<sup>250</sup> *Ibid.* at 43.

<sup>251</sup> *Ibid.*

Section 84 has been in effect for 19 years; however it has been drastically under utilized.<sup>252</sup> Only 1 Aboriginal woman received a section 84 release in the 2009-2010 period.

In order to increase the number of section 84 releases more action than simply dissemination of information needs to occur. CSC's over reliance on security classification and reclassification tools, which are arguably gender and culturally inappropriate for Aboriginal women must end and an alternative means of assessment must be identified and implemented for Aboriginal women. Aboriginal women must have access to culturally and gender appropriate programming. Furthermore, CSC must collaborate to share resources and to build the necessary bridges to facilitate a successful community reintegration. And lastly, the Parole Board must consistently apply the *Gladue* principles at every hearing of an Aboriginal applicant. The cumulative effect of such a multi-faceted approach would likely result in a steady increase in section 84 releases for Aboriginal women.

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<sup>252</sup> House of Commons. 26<sup>th</sup> Report of the Standing Committee on Public Accounts. Ottawa: House of Commons, 2004 and Office of the Auditor General of Canada. Report of the Auditor General of Canada.

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*R. v. Jensen*, 2005, Docket C37975 (ONCA).

See *R. v. Sim* (2005), 78 O.R. (3d) 183 (ONCA).

### Legislation

*Corrections and Conditional Release Act*, SC 1992, c.20

### Principles that guide the Service

**4.** The principles that shall guide the Service in achieving the purpose referred to in section 3 are

(h) that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and 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;

Programs for offenders generally

**76.** The Service shall provide a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community.

Programs for female offenders

**77.** Without limiting the generality of section 76, the Service shall

(a) provide programs designed particularly to address the needs of female offenders; and

(b) consult regularly about programs for female offenders with

(i) appropriate women's groups, and

(ii) other appropriate persons and groups

with expertise on, and experience in working with, female offenders.

Programs

**80.** Without limiting the generality of section 76, the Service shall provide programs designed particularly to address the needs of aboriginal offenders.

## Agreements

**81.** (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal 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-aboriginal 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 aboriginal community, with the consent of the offender and of the aboriginal community.

1992, c. 20, s. 81; 1995, c. 42, s. 21(F).

## Advisory committees

**82.** (1) The Service shall establish a National Aboriginal Advisory Committee, and may establish regional and local aboriginal advisory committees, which shall provide advice to the Service on the provision of correctional services to aboriginal offenders.

### Committees to consult

(2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with aboriginal communities and other appropriate persons with knowledge of aboriginal matters.

### Spiritual leaders and elders

**83.** (1) For greater certainty, aboriginal spirituality and aboriginal spiritual leaders and elders have the same status as other religions and other religious leaders.

### Idem

(2) The Service shall take all reasonable steps to make available to aboriginal inmates the services of an aboriginal spiritual leader or elder after consultation with  
(a) the National Aboriginal Advisory Committee mentioned in section 82; and  
(b) the appropriate regional and local aboriginal advisory committees, if such committees have been established pursuant to that section.

### Parole plans

**84.** Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community

(a) adequate notice of the inmate's parole application; and

(b) an opportunity to propose a plan for the inmate's release to, and integration into, the aboriginal community.

### Plans with respect to long-term supervision

**84.1** Where an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an aboriginal community, the Service shall, if the offender consents, give the aboriginal community

(a) adequate notice of the order; and

(b) an opportunity to propose a plan for the offender's release on supervision, and integration, into the aboriginal community.

1997, c. 17, s. 15.

### **Criminal Code of Canada**

**718.2** A court that imposes a sentence shall also take into consideration the following principles:

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

### **Commissioner's Directive 705-7**

51. In determining the security classification of Aboriginal offenders, staff will be sensitive to the spirit and intent of the Gladue decision and will take into consideration the following factors:

1. history of dislocation such as residential school experience or family history of residential school experience;
2. unemployment due to a lack of opportunity or options;
3. lack or irrelevance of education;
4. history of substance abuse;
5. history of systemic and direct discrimination;
6. history of previous experience involving restorative/community based sanctions;
7. history of participation in Aboriginal traditional teachings, ceremonies and activities;
8. history of living on or off reserves.

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