



The Failure of Creating Choices

The need for binding oversight of the Correctional Service of Canada,
from the co-creators of Creating Choices

May 3rd 2022

Table of Contents

Executive Summary.....	3
Introduction.....	4
A Brief History of Prisons Designated for Women in Canada	5
CAEFS as Co-Creators of Creating Choices and Unique Advocacy Approach.....	7
CAEFS Regional Advocacy—What We Do.....	7
Regional Advocacy Letters	8
A Recent Summary Snapshot: CAEFS Regional Advocacy Letters from 2015 to 2020.....	9
Regional Breakdown	12
Access and Oversight: The COVID-19 Pandemic as Case Study	12
The Limited Role of External Oversight, and Need for Imminent Systemic Transformation.....	13
United Nations’ Optional Protocol to the Convention against Torture	14
Recommendations: Systemic Transformation Through Access to Justice	15
Conclusion.....	15

The Failure of Creating Choices

The need for binding oversight of the Correctional Service of Canada, from the co-creators of Creating Choices

Executive Summary

This report was prompted by the Office of the Correctional Investigator's (OCI) 2020-2021 review of penitentiaries designated for women in Canada in its annual report, which recognizes and draws attention to the [*Creating Choices: The Report of the Task Force on Federally Sentenced Women \(Creating Choices\)*](#).¹

This report, *The Failure of Creating Choices*, contextualizes the historical and present significance of the Canadian Association of Elizabeth Fry Societies (CAEFS) in relation to the history of *Creating Choices*. It also highlights the body of existing evidence that both supports and expands upon the findings of the OCI's review, all of which illustrates that women and gender-diverse people continue to be failed and harmed in Canadian penitentiaries.

A review of the breadth of historical and current efforts undertaken by task forces, commissions, and oversight agencies such as the OCI and CAEFS that address the failings of prisons for women, highlights a systemic gap in our oversight: calls for change have not been acted upon. As such, this report calls for immediate action to be taken to create structures of binding authority that will ensure that the evidence and recommendations put forward by these oversight offices, commissions, and task forces lead to the transformative outcomes that the system so desperately needs:

1. The ratification of United Nations' Optional Protocol to the Convention against Torture (OPCAT).
2. Binding legislation that requires CSC to act on recommendations made by external oversight offices and commissions.
3. The creation a federal funding stream for legal clinics that serve people in federal prison. There are limited existing legal clinics who require increased funding, as well as a need for additional clinics to respond to the volume of incarcerated people who do not presently have access to justice.

Introduction

April 2020 marked the 30-year anniversary of a seminal document for prisons designated for women in Canada, [*Creating Choices: The Report of the Task Force on Federally Sentenced Women \(Creating Choices\)*](#).² The report identified key issues that women in prison faced and recommended principles which, if implemented, offered a blueprint for incarceration that was meant to be community-centred, non-punitive, and responsive to the needs of criminalized people. This new model of incarceration was intended to resolve the violence, harms, and unlawful treatment that women and gender-diverse people had long been subjected to in prisons designated for women.

On February 10, 2022, marking the anniversary of this seminal report, the Office of the Correctional Investigator (OCI) released a review of “Women’s Corrections” in Canada. The OCI report revisits *Creating Choices*, and focuses on nine overarching issues outlined in the original report, considering them in the context of today’s federal prisons designated for women: (1) The Prison for Women is not adequate; (2) Prison for Women is over secure; (3) Programming is poor; (4) Women are isolated from their families; (5) The needs of Francophone women are not met; (6) The needs of Aboriginal women are not met; (7) Responsibility for federally sentenced women must be broadened; (8) Women need to be better integrated into the community; (9) Incarceration does not promote rehabilitation.

The OCI’s report makes clear that not only have the original issues that *Creating Choices* sought to resolve not been addressed but, in myriad ways, the conditions experienced by federally incarcerated women and gender-diverse people have continually worsened.

[The 2020-2021 OCI report](#)³ confirms what CAEFS—and anyone who has been incarcerated in a federal prison designated for women—has long known: the principles of *Creating Choices* (empowerment, meaningful and responsible choices, respect and dignity, a supportive environment, and shared responsibilities) were never fully implemented.⁴

In Canada, being sentenced to a term in prison is the intended sanction—any further punishment is not contemplated under the law. However, what exists now is a [system in crisis](#)⁵; a system plagued by [structural racism so severe that a unified all-party call has been put forward to address and end it](#)⁶; a system characterized by custodial services that fall short and produce harm; a system that incarcerates many of Canada’s most disadvantaged populations; a system whose practices [amount to torture](#)⁷, as several OCI reports continue to demonstrate.

In addition to OCI reports, several landmark reviews, reports, and commissions throughout the history of prisons designated for women in Canada have been aimed at trying to solve the host of issues facing federally incarcerated women and gender-diverse people. Recently, these have included *The Final Report of the Truth and Reconciliation Commission of Canada: Honouring the Truth, Reconciling for the Future*⁸, as well as the *Final Report, the Standing Senate Committee on Human Rights’ report, Human Rights of Federally Sentenced Persons*.⁹ A paltry number of the recommendations from any of these reports have

been acted upon or meaningfully implemented. Additionally, bodies of evidence continue to demonstrate that every attempt to add therapeutic interventions—such as Cognitive and Dialectical Behavioural Therapy—in prison settings fail.^{10,11,12} That these vast and comprehensive attempts at change by legislators, scholars, and advocates have had few positive results points us to an obvious conclusion, and one that has been documented by numerous experts for decades: prisons are inherently inhumane and cannot be reformed.^{13,14} And that, until such a time when prisons can be abolished, there must be binding authority to ensure that they operate within the law.

We can no longer spend our energy looking for the means to make prisons more effective. Three decades ago, *Creating Choices* recognized the social causes of incarceration. Its principles, which will be explored further below, were intended to create community-centred responses that provided meaningful opportunity to resolve the economic and social determinants of criminalization and incarceration. This has not been realized for the thousands of women and gender-diverse people who have been federally incarcerated in the 32 years since *Creating Choices*. We have failed them.

We must take up a dual pronged approach of both the abolition of these harmful institutions while ensuring that the people who are currently incarcerated in them are not left without meaningful pathways towards effective advocacy and lawful treatment.

A Brief History of Prisons Designated for Women in Canada

[According to the Correctional Service of Canada](#)¹⁵, the first time that a woman was federally incarcerated in Canada was in 1835. For almost a hundred years after, federally incarcerated women were held in a separate wing in prisons designated for men, until the Prison for Women (P4W) was opened in 1934.

From 1934 to 1995, the only federal prison for women in Canada was P4W, a maximum-security prison in Kingston, Ontario. P4W has often been described as “unfit for bears,” let alone people, and the first call for P4Ws closure came in 1938—a mere four years after it opened.¹⁶

In 1990, “[a]fter years of administrative neglect, public apathy, vacillating policies and inadequate resources”¹⁷ came the release of *Creating Choices: Report of the Task Force on Federally Sentenced Women*.

When writing on the Task Force, Justice Louise Arbour, who has played a critical role in working to uphold the rights of federally incarcerated women, stated the following:

[The Task Force] was unlike any previous government body on prison reform in Canada and elsewhere. The Steering Committee of the Task Force was co-chaired by the Executive Director of the Canadian Association of Elizabeth Fry Societies (CAEFS) and a Deputy Commissioner of the Correctional Service of Canada. The majority of the Task Force members were women, and many of the participants were Aboriginal women. The members came from a variety of backgrounds: some had served federal sentences; some were community advocates; and others were public

servants and researchers. The Task Force reiterated the findings of previous governmental and non-governmental reports on the Prison for Women: that it was over-secure; erroneously based on a male model of corrections; that women prisoners were geographically dislocated and isolated from their families; that the programs did not meet the needs of prisoners serving a life sentence, or Francophone, or Aboriginal women; and that there were few community or institutional links.

The report concluded that the Prison for Women should be closed, and in its place, five smaller, regional prisons, including a Healing Lodge, should be built across the country. It also urged that a new, women-centred correctional philosophy should govern the operation of these prisons. The reforms recommended in *Creating Choices* were accepted by the federal government and so were the principles upon which the proposals for reform rested. These principles called for empowerment, meaningful and responsible choices, respect and dignity, a supportive environment, and shared responsibilities.¹⁸

It took until 1994 for the closure of Kingston's P4W to finally be announced.

In April 1994, what was described as "a brief but violent physical confrontation"¹⁹ took place between six incarcerated people at the Prison for Women and a number of the Correctional Service of Canada (CSC) staff. The six incarcerated people were immediately placed in the Segregation Unit at the P4W and were then transferred to the Kingston Penitentiary (a prison designated for men) and held in their medical unit.

This incident, and CSC's brutal response, would become the basis of [The Commission of Inquiry into Certain Events at the Prison for Women in Kingston](#)²⁰, which noted that:

In broader terms, the response of the Correctional Service to the incidents which took place at the Prison for Women on April 22, 1994, and the many months that followed, is difficult to reconcile with the spirit of *Creating Choices* which was concurrently animating its entire strategy for dealing with women offenders. Nearly every step that was taken in response to this incident was at odds with the intent of the new initiatives.²¹

P4W closed for good in 2000. In the meantime, five new regional prisons and a healing lodge were being built or had already opened. This prison regionalization is, perhaps, the only aspect of *Creating Choices* that was ever fully implemented and, even then, not in the way the Task Force had intended.

Today—despite some variations due to the COVID-19 pandemic—the number of people in prisons designated for women in Canada is at all-time high and [nearly 50% of them are Indigenous](#)²². As the OCI's report explains, the challenges facing those incarcerated are the same, if not worse, than their counterparts 30 years ago.

CAEFS as Co-Creators of Creating Choices and Unique Advocacy Approach

The Canadian Association of Elizabeth Fry Societies (CAEFS) was established in 1978. Since its inception, CAEFS has worked to advocate for and with federally incarcerated women and gender-diverse people, including at the Prison Designated for Women (P4W) in Kingston and so CAEFS is uniquely situated to understand and report on what is happening inside federal prisons designated for women across Canada.

The past president of CAEFS' board of directors co-chaired the *Creating Choices* Task Force and the Executive Director of CAEFS co-chaired the steering committee. Despite the encouraging recommendations of *Creating Choices*, its promises were quickly eroded. By June 1993, frustrated that the Task Force's hard work had been in vain, CAEFS passed a resolution with regard to its position on prison abolition. The resolution recognized that prisons have consistently failed and are unable to effectively assist in rehabilitation. Additionally, the resolution stated that the only function of prisons appears to be punitive and pointed to the high rate of recidivism as evidence that the goal of general deterrence does not work. Finally, it stated that CAEFS supported the abolition of prisons and the development of alternative and humane solutions. Around this time, CAEFS became actively involved in advocacy at the Prison for Women in Kingston—in order to ensure that while people continued to be imprisoned, that their rights were being upheld.

As prisons were regionalized, our advocacy approach shifted and CAEFS regional advocacy program was established in order to meet the growing demand for support and rights-based interventions for federally incarcerated people in prisons designated for women across the country. At the beginning, there was one advocate per region. However, over time, and in order to respond to the need for more support, the regional teams were developed. Now, more than 20 years later, CAEFS regional advocacy teams continue this critical work. Although numbers fluctuate, today, regional advocacy teams are comprised of over 30 people, including CAEFS staff, local Elizabeth Fry staff, and volunteers from the broader community.

Our work takes seriously what was recognized as the “central conundrum” by members of the *Creating Choices* task force: “Members believe that society must move towards the long-term goal of creating and using community-based, restorative justice options, and an alternative Aboriginal justice system. Yet, the Task Force also concluded that substantial and significant changes must be made immediately in the environment of federally sentenced women.”²³ As such, CAEFS' advocacy is dual-purpose: improve, to the extent possible, the experiences of incarcerated women and gender-diverse people while working towards the abolition of prisons.

CAEFS REGIONAL ADVOCACY—WHAT WE DO

While the Office of the Correctional Investigator serves the integral purpose of providing oversight of the entire federal prison system, CAEFS advocacy utilizes a feminist rights-based approach to provide advocacy that aligns with the original intent and philosophy of *Creating Choices*. Our approach focuses on federally incarcerated women and gender-diverse people and upholds the mandates of several federal

ministries by recognizing that, in order to create substantive equality, unique attention and approaches are needed to respond to incarcerated equity-deserving groups.

CAEFS' regional advocates are organized into five regional advocacy teams: Atlantic, Quebec, Ontario, Prairies, and Pacific. The teams make regular advocacy visits to the federal prison designated for women and/or psychiatric centre in their region. Each team aims to visit the prison in their region once a month, on average. During the COVID-19 pandemic, we have been limited in our access to the prisons and have instead been reliant on individuals calling our toll-free advocacy lines.

When advocacy teams go into the prisons, they meet with individuals, heads of peer-led committees, and living-unit representatives. Through these meetings they work alongside incarcerated people to develop mutual understandings of issues related to conditions of confinement and other key concerns facing the prison populations. Advocacy teams are especially attuned to human rights violations and strive to foster legal and rights-based literacy among imprisoned populations. Our approach—rooted in intersectional feminist and anti-oppression analyses—is unique in the Canadian carceral context.

Regional advocates work closely with their incarcerated counterparts: peer advocates. The CAEFS peer advocate program trains and supports individuals in prison to fulfill many of the same functions as regional advocates. Part of this training is based on CAEFS' widely circulated *Human Rights in Action* handbook, a rights-based resource designed to give federally incarcerated women and gender-diverse people the tools and resources to defend and advocate for their rights while they are in prison. After advocates meet with individuals and identify issues, they meet with the warden and other prison administrators to address issues.

Ensuring that people in prison have a robust understanding of the law, rights, and redress systems promotes healthy dialogue and productive conflict resolution between frontline staff and incarcerated people.²⁴ CAEFS' approach has been explicitly recognized as essential. In 2008, the wardens across prisons designated for women were directed by Correctional Service of Canada (CSC) National Headquarters that CAEFS should be given “the broadest access possible”²⁵ to the prisons designated for women. This broad access allows us to conduct our work in a meaningful way that supports the mandates of The Ministries of Public Safety, Justice, and Women and Gender Equality and Youth.

REGIONAL ADVOCACY LETTERS

The ongoing advocacy work is documented through CAEFS' regional advocacy letters. The letters are written by each team following their meeting. These letters are sent to the warden, the Office of the Correctional Investigator, the Canadian Human Rights Commission, the Citizen's Advisory Committee, and key Senators. These letters, and the concerns raised therein, not only inform CAEFS' direction and systemic actions, but provide real-time access to the scope of issues in prisons designated for women to key policy-makers and stakeholders.

A Recent Summary Snapshot: CAEFS Regional Advocacy Letters from 2015 to 2020

Many of the issues documented by the Office of the Correctional Investigator in their review of *Creating Choices* have also been documented through CAEFS' regional advocacy program for years. Moreover, currently and formerly incarcerated people, advocates, family members of people inside, scholars, community organizations, the Senate, and others have long been working to bring many of the issues documented in the OCI's most recent report to light. That none of these issues are new does not undermine the necessity of the OCI's recent report, but rather it emphasizes that the mistreatment of women and gender-diverse people in prisons is persistent and systemically entrenched—and that this is well known to CSC and to the federal government.

Recently, CAEFS examined 136 regional advocacy letters written between 2015 and 2020. The letters highlight many of the issues highlighted in the OCI's recent report. These letters show that, among other concerns:

- CSC continues to have chronic problems with providing healthcare to incarcerated women and gender-diverse people. This area of concern was raised in more than one out of every two letters.
- Issues facing Indigenous people in federal prisons designated for women were raised in almost a third of all letters and in more than 40% of letters in Institutions in Western Canada.
- Over-classification of security risk is a recurring problem that exacerbates existing mental health crises in Canadian prisons.
- While COVID-19 was an unpredictable public health challenge, letters have repeatedly raised concerns about CSC's infectious disease protocol as far back as 2015.

Below, we have included more in-depth summaries of the issues raised pertaining to Healthcare, Secure Unit/Maximum Security Conditions, Mental Health, and Discrimination Against Indigenous Women and Gender-Diverse People. Comparing these letters to the issues reported on in the OCI's review, you will see many overlapping concerns.

Healthcare

Our analysis of the regional advocacy letters confirmed that there are chronic, ongoing issues in CSC's delivery of healthcare to incarcerated women and gender-diverse people. The letters detail a consistent pattern of significant wait times and lack of access to necessary care and procedures, which have harmful and sometimes deadly effects on incarcerated people.

Despite section 86(1) of the CCRA requiring that CSC "provide every inmate with (a) essential healthcare; and (b) reasonable access to non-essential healthcare," CAEFS advocates noted a recurring prioritization of security and administrative convenience over the health of prisoners.

Letters report:

- CSC staff withholding pain medication due to concerns about prisoners trading opioids;

- Years-long wait times for specialists, while prisoners wait with severe diagnoses;
- Standing policies of denying medication on suspicion that prisoners are not taking it as prescribed despite frequent complaints of unclear or absent medication directions;
- CSC negligence in responding to urgent and unprofessional medical staff conduct, including performing procedures without patient consent; and
- Lengthy dental care waitlists, while dental solutions are limited to pain management and tooth extraction.

Regional Advocates frequently reminded CSC of their statutory obligation. Advocates have repeatedly called on CSC officials to take the concerns of incarcerated people seriously. Fundamental changes to CSC policies and practices in the delivery of healthcare are needed—the lives of people in prison depend on it.

Secure Unit/Maximum Security Conditions

Regional Advocacy letters document recurring problems in Maximum and Secure Units in institutions across the country. Incarcerated women and gender-diverse people in Secure/Max report a chronic lack of access to:

- Programming and employment;
- Gym, library, and other areas accessible to the general population;
- Recreational opportunities, with some prisoners only given one hour of recreation time a day;
- Nutritional food;
- Medical care and mental health supports, despite the fact individuals in maximum security often require increased care; and
- Lawyers, legislation, and Correctional Directives.

Further, letters document overcrowding issues in the Secure Units in every single institution across the country. This is a direct result of over-classification of security risk and the “two-year rule,” an illegal practice of keeping prisoners whose index offences are considered serious in the Secure Unit, regardless of their actual risk.

These issues create a cyclical dynamic whereby people in the Secure Unit experience depression, isolation, and marginalization. These issues result in reactive behaviours, which according to CSC’s classification system, require them to remain in the Secure Unit.

In CAEFS’ view, the conditions in Maximum (or Secure) Units across the country constitute a state of unlawful form of solitary confinement and Regional Advocates have repeatedly called upon CSC to decrease the population of their Secure Units through changes in classification, the discontinuing illegal practices like the “two-year rule,” and methods of decarceration which already exist in legislation. Despite this, some prisons designated for women within this period have seen the number of people held in Secure Units increase. The two-year rule also remains an off-the-books practice at CSC.

Mental Health

Advocacy letters document frequent problems in CSC's legislated delivery of mental health supports. Reported problems include:

- Chronically delayed or non-existent access to mental healthcare;
- Irregular and inconsistent visits from psychologists and psychiatrists;
- Recurrent instances of self-injury and attempted suicide;
- Regular stoppages of ADHD medication on weekends;
- Traumatizing practices of strip searching, while failing to provide trauma counselling; and
- CSC staff ignoring reports that prisoners are suicidal.

Incarceration demonstrably increases the likelihood of negative mental health outcomes. The problems documented in CAEFS advocacy letters are not specific to any one prison and, in our view, reveal a mental health crisis in corrections. A crisis that is innate to the experience of incarceration and perpetuated by wholly inadequate mental healthcare. Regional Advocates regularly notified CSC of gaps in their mental health support system and of individuals who require urgent attention. However, as our advocacy letters document, CSC's failure to address the mental health crises in federal institutions designated for women is ongoing and urgent.

Discrimination Against Indigenous Women and Gender-Diverse People

Indigenous women are the fastest growing prison population in Canada. Recently, the Office of the Correctional Investigator found that almost [50% of the prison population in Canadian prisons designated for women are Indigenous](#). In some of the prisons designated for women, we observed even higher levels of overincarceration, particularly in the Prairies. Despite the problem of overincarceration being well documented, CSC's policies continue to overclassify, neglect, and discriminate against Indigenous women.

Advocacy letters over the last five years reveal:

- Frequent gaps in access to Indigenous culturally appropriate programming and Elders at all institutions;
- Over-representation of Indigenous women, non-binary and Two Spirit people in maximum security due to over-classification;
- Reports of up to 100% of segregation/Structured Intervention Units being occupied by Indigenous prisoners;
- Complaints of discrimination and excessive uses of force against Indigenous prisoners;
- Policies of denying spiritual escorted temporary absences to Indigenous prisoners; and
- Lack of mental health supports to Indigenous prisoners with acute and sometimes fatal mental health issues.

Regional advocates frequently called on CSC to operationalize the calls to action of the Truth and Reconciliation Commission of Canada and the National Inquiry into Missing and Murdered Indigenous

Women and Girls. Further, they advocated for CSC to use its powers under s. 81 and 84 of the CCRA to create nation-to-nation agreements to release Indigenous prisoners into Indigenous communities.

REGIONAL BREAKDOWN

We also analyzed our Regional Advocacy Letters within the context of the five regions of the country we serve—the Pacific, Prairies, Ontario, Quebec, and Atlantic regions. While trends were mostly consistent across the country, there were some significant regional anomalies:

Acute Indigenous Overincarceration (especially in the West)

Issues affecting Indigenous Prisoners were raised in 40% of letters in the Prairie region and 43% of letters in the Pacific region. Comparatively, it was raised in under a third of letters in Ontario and the Atlantic Region. Indigenous issues are a priority to all our local Elizabeth Fry Societies, however, evidently, these issues are most frequently occurring in the Western provinces where recent data reports that the overincarceration of Indigenous women and gender-diverse people is most severe.

Women/Prisoner's Committees in the Atlantic

Regional Advocates in the Atlantic region reported concerns regarding the Women's Committee in 35% of letters—more than double the frequency in any other region. This over-representation in the region likely stems from repeated difficulties that the women and gender-diverse people held in the Maximum Security Unit of Nova Institution have had in accessing the Women's Committee over the years. Issues with the functioning of these peer led committees, which are legislated to be an active part in institutional decision-making by including the voices of incarcerated people in key aspects of their lives, points to a systemic undermining of the prospect of due process in penitentiaries.

Increased Staff Conduct Reports in Ontario

In the Ontario region, Regional Advocates reported concerns about CSC Staff Conduct in 55% of letters compared to other regions where roughly 30-40% of letters touched on this area of concern. While the precise cause of this regional trend is unclear, the increased reports of assault, abuse, and discrimination from CSC staff in Ontario are certainly concerning. CAEFS releases ongoing in-depth analysis of top areas of concern identified in our advocacy letters.

ACCESS AND OVERSIGHT: THE COVID-19 PANDEMIC AS CASE STUDY

Issues pertaining to the treatment of incarcerated people and CSC oversight have become even more acute during the COVID-19 pandemic. The network of CSC partners, community volunteers, and prisoner advocate organizations that have long been integral to the functioning of the prison system have been unable to enter prisons designated for women. The result is less oversight and more harm in prisons than ever before documented. CAEFS has repeatedly requested access to continue in-person access, yet, since March 2020, we have not been able to conduct regular advocacy visits. Instead, on the handful of occasions CAEFS has been permitted to enter the prisons designated for women since the pandemic,

advocates are often told that they must be accompanied by a CSC escort. The increased surveillance did undermine our ability to effectively do our work and support the public mandates our work fulfills.

While CAEFS quickly pivoted to utilizing our toll-free phone lines to connect with incarcerated people, we know that there are issues we are not hearing about and people whom we are not hearing from. Without access to the prisons designated for women to monitor conditions of confinement and meet face-to-face with the people incarcerated there, we know that people are falling through the cracks and that conditions are deteriorating.

Locking out access to agencies such as CAEFS has been justified by the Correctional Service of Canada (CSC) under the exceptionality of the pandemic, and for a long time, this “exceptionality” felt aligned with how the rest of Canada was responding to the pandemic. However, 2022 marks our entering the third year of the pandemic, and exceptionality must give way to interventions that are effective, evidence-based, aligned with Canada’s community response, and within the correctional systems legal purpose and principles. CSC has not responded to the pandemic in sustainable manners. CSC has insisted on the ongoing suspension of vital evidence and rights-based components of prison: from visits with family, to access to rehabilitative programs, to access to gradual release (one of the most effective tools Canada has to lower recidivism).

Importantly, the rest of Canadian society has utilized effective public health strategies to facilitate the ongoing delivery of services. BC Corrections provides an excellent example of how, even within our country, some prisons systems have found ways to safely maintain service delivery amidst the pandemic. BC Corrections, whose healthcare system is, notably, regulated by provincial health bodies (unlike the CSC who provide their own healthcare system) have experienced far less infection rates whilst maintaining key community programs that support the people in their provincial prisons.

Unlike British Columbia’s provincial correctional system, BC’s federal prisons have been among the most impacted nationally by pandemic outbreaks, leading even Canada’s federal union of prison guards to protest the lack of rapid testing kits utilized by the CSC.²⁶ The CSC’s response to the pandemic provides a devastating, yet insightful, case study into the need for binding implementation of recommendations by oversight offices.

The Limited Role of External Oversight, and Need for Imminent Systemic Transformation

First and foremost, CAEFS advocates against the incarceration and criminalization of women and gender-diverse people. However, while prisons exist, we advocate for the rights and fair treatment of people within them. We do this while recognizing the limitations of this approach: that any intervention attempted within the prison system will at some point become co-opted, eroded, and used to harm people.

While there are people in prison, we feel that it is incumbent upon us to work simultaneously towards both effective oversight and systemic transformation. As it stands, federal prisons wield incredible powers over people’s lives and liberty in a variety of ways that are beyond the purview and intention of the law. Loss of

liberty is the punishment for crime, yet current conditions of incarceration punish well beyond the loss of liberty: penitentiary conditions are creating irreversible damage to impacted individuals and communities. Federally incarcerated people have significantly reduced lifespans from the general population.

Penitentiaries produce trauma, isolate individuals, break familial [relationships](#)²⁷, [produce and exacerbate chronic illness](#) that has led to a lower lifespan for federally incarcerated people²⁸, produce [ongoing colonial violence](#), and [kill people](#).

Despite CAEFS' monthly dialogue with wardens and our monthly letters, issues continue to be repeated at both individual and systemic levels. Inherent to the persistence of the problems in prisons designated for women is that CSC is not bound to act upon the recommendations of external bodies, including the Office of the Correctional Investigator.

The Office of the Correctional Investigator, established in 1992, is mandated as an Ombudsman for federally incarcerated people. As the OCI describes, "The primary function of the Office is to investigate and bring resolution to individual offender complaints. The Office as well, has a responsibility to review and make recommendations on the Correctional Service's policies and procedures associated with the areas of individual complaints to ensure that systemic areas of concern are identified and appropriately addressed."²⁹ The OCI receives and responds to over 5,000 complaints from incarcerated people every year and makes regularly scheduled visits to each federal prison, meeting with committees, groups, and individuals. Importantly, the legislation provides that CSC the authority to make any relevant recommendations towards the resolution of complaints and systemic issues. Yet, despite being the only legislated oversight agency for federal incarceration, the OCI's recommendations have no binding authority on the CSC.

The well-documented chronic inaction on the part of CSC to address pressing issues leads to a clear solution: the need for binding oversight and a systemic transformation of Canada's responses to crime and criminalization.

UNITED NATIONS' OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

In consideration of the above stated, we stand with the OCI in their call for the ratification of United Nations' Optional Protocol to the Convention against Torture (OPCAT). As the OCI describes, "Countries who ratify the OPCAT are required to adhere to human rights obligations under international law for those in places of detention, and replace the secrecy traditionally associated with places where liberties are curtailed with openness, transparency, and accountability."³⁰

The ratification and implementation of OPCAT would, as the OCI explains, "add a layer to correctional oversight. In the case of federal corrections, a system of regular penitentiary inspections conducted at the national (NPM) level and internationally by the UN Subcommittee on the Prevention of Torture (SPT), with both bodies focused on prevention, would best complement the roles and responsibilities of [the OCI], which is largely complaint-driven."³¹ CAEFS agrees.

RECOMMENDATIONS: SYSTEMIC TRANSFORMATION THROUGH ACCESS TO JUSTICE

While prisons exist, CAEFS asserts that people who are incarcerated have largely been denied access to justice and continue to be denied so throughout their incarceration. To increase substantive equality and access to justice for the myriad marginalized communities who form the bulk of Canada's federal prison population, we recommend the following actions:

1. Ratification of United Nations' Optional Protocol to the Convention against Torture (OPCAT).
2. Binding legislation that requires CSC to act on recommendations made by external oversight offices and commissions.
3. Government funded legal clinics: we recommend the creation a federal funding stream for legal clinics that serve people in federal prison. This funding could go towards supporting existing legal clinics and help to seed new ones.

Conclusion

What Louise Arbour wrote in the *Commission into the Inquiry of Certain events at the Prison for Women* in 1996, remains true today: when it comes to prisons designated for women, "The Rule of Law is absent, although rules are everywhere." The OCI's newest report makes clear that Correctional Service of Canada has demonstrated time and time again that they are unable to meet the needs of women and gender-diverse people.

The continuous identification of CSC's chronic problems within the prisons designated for women by both the OCI and CAEFS have not spurred substantial change, and the consequences for federally incarcerated women and gender-diverse people have been devastating. Even in 1990, in *Creating Choices*, the members notes that "Despite the consistency in the findings and recommendations of task forces and commissions in Canada concerned with federally sentenced women, the needs of women serving federal sentences are not adequately or appropriately met, and their experiences of imprisonment are not well understood."³² This must be addressed. Everything and everyone within the purview of the CSC are seen solely through a lens of risk and threat. It, unsurprisingly, follows that the proclaimed Canadian priorities of care, effective public health, decolonization, equality, and fair treatment have historically been and remain unattainable in penitentiaries designated for women. As we work to divest from systems of punishment that harm individuals and fail to consider or remedy systemic inequities, CAEFS calls upon the government to put in place oversight mechanisms with the legislative power to ensure that CSC is responsive to the recommendations of the OCI and is operating within Canadian law as well as international standards such as OPCAT.

We believe that by enhancing the oversight powers of the OCI, ratifying OPCAT, and by fully utilizing evidence-based approaches, such as CAEFS relational advocacy model, we can create systems that are rooted in care, transformative change, and justice.

-
- ¹ Correctional Service of Canada (1990). *Creating Choices: The Report of the Task Force on Federally Sentenced Women*. <https://www.csc-scc.gc.ca/women/092/002002-0001-en.pdf>
- ² Ibid.
- ³ Office of the Correctional Investigator (2021). *Annual Report 2020-2021*. <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20202021-eng.pdf>
- ⁴ Hannah-Moffat, K. (2001). *Punishment in Disguise. Penal Governance and Federal Imprisonment of Women in Canada*. Toronto: University of Toronto Press.
- ⁵ Mochama, V. (2018). "Treatment of Women in Prison is a Human Rights Travesty." *Toronto Star*. <https://www.thestar.com/opinion/star-columnists/2018/01/04/treatment-of-women-in-canadian-prisons-a-human-rights-travesty.html>
- ⁶ Cardoso, T. & Dickson J. (2020). "Fight Against Systemic Racism Wins All Party Support." *Globe and Mail*. <https://www.theglobeandmail.com/canada/article-committee-mps-support-push-to-study-systemic-prison-racism/>
- ⁷ Press, J. (2021). "Excessive isolation in Canada's prisons amounts to torture, criminologists report." CTV. <https://www.ctvnews.ca/canada/excessive-isolation-in-canada-s-prisons-amounts-to-torture-criminologists-report-1.5322432>
- ⁸ Truth and Reconciliation Commission of Canada (2015). *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. https://publications.gc.ca/collections/collection_2015/trc/IR4-7-2015-eng.pdf
- ⁹ Standing Senate Committee on Human Rights (2021). *Human Rights of Federally Sentenced Persons*. https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf
- ¹⁰ Pollack, S. (2005). "Taming The Shrew: Regulating Prisoners Through Women-Centered Mental Health Programming." *Critical Criminology*, 13, pp. 71–87.
- ¹¹ Hannah-Moffat, K. (2002). "Creating choices: Reflecting on choices." In P. Carlen (ed.), *Women and Punishment. The Struggle for Justice*. Cullompton, Devon: Willan, pp. 199–219.
- ¹² Kendall, K. (1994). "Therapy behind prison walls: A contradiction in terms?" *Prison Service Journal*, 96 (November), pp. 2–11.
- ¹³ Pollack, S. (2009). "You Can't Have it Both Ways': Punishment and Treatment of Imprisoned Women." *Journal of Progressive Human Services*, 20, pp. 112–128. Taylor & Francis Group, LLC.
- ¹⁴ Kilty, J. M. (2012). "It's like they don't want you to get better': Psy control of women in the carceral context." *Feminism & Psychology*, 22(2), pp. 162–182. <https://doi.org/10.1177/0959353512439188>
- ¹⁵ Correctional Service of Canada (2022). *The Closing of the Prison for Women in Kingston July 6, 2000. Women in Prison in Canada: The Early Years*. <https://www.csc-scc.gc.ca/text/pblct/brochurep4w/2-eng.shtml>
- ¹⁶ Canada (1996). *Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Report*. Ottawa: Public Works and Government Services Canada (Cat. No. JS42-73/1996E). Commissioner: The Honourable Louise Arbour. https://publications.gc.ca/collections/collection_2017/bcp-pco/JS42-73-1996-eng.pdf
- ¹⁷ Ibid., p. 23.
- ¹⁸ Ibid., p. 23.
- ¹⁹ Ibid., p. 25.
- ²⁰ Ibid.
- ²¹ Ibid., p. 24 .
- ²² Office of the Correctional Investigator (2022). *Proportion of Indigenous Women in Federal Custody Nears 50%: Correctional Investigator Issues Statement*. <https://www.oci-bec.gc.ca/cnt/comm/press/press20211217-eng.aspx>
- ²³ *Creating Choices*, pp. 58-59.
- ²⁴ Research into grievances.
- ²⁵ Head, Don (2015). Written correspondence to CAEFS from CSC Commissioner.
- ²⁶ UCCO (2022). News Release. <https://ucco-sacco-csn.ca/assets/uploads/2022/02/News-release-UCCO-SACC-CSN-PACIFIC-EN.pdf>
- ²⁷ Legge, C. (n.d). "Prison relationships face serious challenges, but can be a source of support after release." CBC. <https://www.cbc.ca/documentarychannel/features/prison-relationships-face-serious-challenges-but-can-be-a-source-of-support>
- ²⁸ Iftene, A. (2019). *Punished for aging: Vulnerability, rights, and access to justice in Canadian penitentiaries*. Toronto: University of Toronto Press.
- ²⁹ Office of the Correctional Investigator (2013). *Roles and Responsibilities*. <https://www.oci-bec.gc.ca/cnt/roles-eng.aspx>
- ³⁰ *OCI Annual Report 2020-2021*, p. 73.
- ³¹ Ibid., p. 79.
- ³² *Creating Choices*, p. 47.