



## **Prisoners' Legal Services**

A Project of the West Coast Prison Justice Society

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### **Brief to the House of Commons Committee on the Status of Women Decarceration of Indigenous Women through Self-Determination**

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Prisoners' Legal Services (PLS) provides legal aid to federal and provincial prisoners in British Columbia on issues that affect their liberty rights under s. 7 of the *Charter*, as well as on some health care and human rights issues. In the past year, we have assisted prisoners with 2,462 legal issues including conditions of confinement, solitary confinement, parole and involuntary transfers to higher levels of security.

Thank you very much for this opportunity to provide written submissions to this Committee, and thank you for initiating this study on Indigenous women in the federal justice and correctional systems.

#### **Prisoners' voices**

On November 28, 2017, PLS met with some of the Indigenous women in the maximum and medium security units of the Fraser Valley Institution for Women (FVI).

On the day of our visit, all of the women in maximum security were Indigenous. They told us the design of the units meant there are too few women to interact with (the maximum security units hold approximately six women on two sides), which makes them feel isolated and leads to conflicts. One prisoner said: "Officers look at you like you're in a zoo. You are not treated like a human being." The maximum security units are behind glass walls with the officers on the other side of the glass. Prisoners commented that the officers do not interact with them except for security purposes.

Indigenous women in both maximum and medium security talked about a lack of trust between Indigenous prisoners and staff. Many felt that officers did not understand the difference in upbringing of most Indigenous prisoners. They feel there is a lot of racism and discrimination against them by officers. One woman said: "We build relationships with each other, and they accuse us of being in a gang when we're not. They separate people who had bonded and supported each other." The women we spoke with gave examples of Indigenous prisoners being transferred to maximum security for less serious allegations than white prisoners.

The Indigenous women we spoke with also felt that staff do not really apply Aboriginal Social History and that *Gladue* factors are used against them in their security classifications.

The women felt there were not enough Indigenous programs at FVI. They reported that there is only one Elder who is stretched too thin. They feel it is not possible to deal with their trauma and abuse at FVI and that programs just open up wounds and make it more difficult to function in the security-driven environment. “That isn’t healing”, one woman said. They spoke of many Indigenous women staying in prison until their statutory release dates and feeling set up to fail in the community without enough support or healing. They said they need more one-on-one trauma and abuse counseling with mental health professionals from the outside.

One woman said that they need more Indigenous run healing lodges. She said “the Okimaw Ohci healing lodge in Saskatchewan is great. Sixty percent of the staff are Aboriginal and they understand what it’s like to be on reserve. People who work here aren’t sensitive to that. They tell us to get over it.”

Many of the women we spoke with talked about needing more access to their kids and families, and connections with their homes and bands. Many talked about not having enough money to even be able to phone home. They talked about the barriers to having visits if family members have historic criminal records, and not being approved for temporary absences home because home is too far. The women also felt they had too few educational opportunities for job skills training beyond grade 12.

### **Historical context**

The over-representation of Indigenous prisoners, and most significantly, women Indigenous prisoners, is in large part a result of the multi-generational trauma Canada inflicted on Indigenous people through over 100 years of residential schools. With the Truth and Reconciliation Commission’s report<sup>i</sup>, Canada has finally acknowledged the genocide we committed against Indigenous people by forcibly taking children away from families to remote locations and subjecting them to programs designed to destroy their pride and self-respect. Canada is also responsible for taking land and resources from First Nations and then denying sufficient resources for Indigenous communities to be able to provide for themselves.

### **Current context**

Despite the legal requirement that *Gladue* factors, or Aboriginal Social History, be considered by sentencing courts, the Correctional Service Canada (CSC) and the Parole Board, Indigenous people, and especially Indigenous women, are imprisoned more and at higher levels of security and for longer portions of their sentences than other Canadians.<sup>ii</sup>

The over representation of Indigenous people in prison is a continuation of the genocidal practice of residential schools – it continues to separate parents from their children and it fails to create an environment of trust and respect where healing might be possible. As noted in *Creating Choices*<sup>iii</sup>, mothers may have been the only significant person in their children’s lives, and many children will be placed in foster care when a mother is put in prison.

In her paper *Women in Prison: Liberty, Equality, and Thinking Outside the Bars*, Professor Debra Parkes cites research demonstrating the negative impact of incarceration of women on communities. Her paper notes that women are often primary care givers to children, and studies show that women’s imprisonment has negative outcomes for children.<sup>iv</sup>

## Security Classification and trauma

CSC is required by s. 18 of the *Corrections and Conditional Release Regulations* (CCRR) to classify prisoners to minimum, medium or maximum security according to three criteria – escape risk, risk to public safety and the degree of supervision and control required within the penitentiary. This third factor is known as the “institutional adjustment” rating within CSC. As evidenced by the statistics, Indigenous women tend to be classified to higher levels of security – often due to a high score under the “institutional adjustment” criteria under the CCRR. In PLS’ experience, this rating can be highly subjective and include factors such as staff’s perception of the individual’s attitude.

The 2015-2016 Annual Report of the Correctional Investigator of Canada reports that over half of Indigenous women prisoners who were the subject of a file review reported having attended or having a family member who attended residential schools. Two-thirds of their parents had substance abuse issues and 48% had been removed from their family homes. Almost all had experienced trauma including sexual and physical abuse, and almost all had substance misuse problems.<sup>v</sup>

It is not surprising that Indigenous women tend to have high institutional adjustment ratings, given that their imprisonment by Canada is an extension of the genocidal policies of residential schools. It would be next to impossible for them to have a low rating for institutional adjustment in a security driven prison environment that perpetuates violence, and does not achieve the foundation of trust and respect that is necessary for healing. It is significant that all of the women who have been declared dangerous offenders in Canada are Indigenous, and their designation is generally based on violent offences that have happened since they were imprisoned, not in the community. It is also significant that very few Indigenous women achieve minimum security, which would allow them to access the only Aboriginal healing lodge for women in Canada.<sup>vi</sup>

Trauma affects mental health and behaviour. Classifying prisoners to higher levels of security based on institutional adjustment problems, results in prisoners who have suffered high rates of personal and intergenerational trauma being denied the supports they need to heal. The test for security classification should be amended to ensure that prisoners who have experienced trauma or have high mental health needs have more access to resources that would facilitate healing, such as mental health services and a non-punitive, culturally appropriate environment.

## **Gladue Factors**

In our clients’ experiences, *Gladue* factors are included in CSC’s risk assessments as lip service, and appear to have no impact on security classification decisions, other than as a factor that increases security risk.

Professor Parkes notes in her above referenced paper:

Risk assessment and security classification tools translate needs (experiences of trauma and abuse, mental health, addictions, perceived deficits in parenting and relationships) into risk factors that have gendered impacts for women generally and lead, in particular, to disproportionately higher security classification for Indigenous women...

[W]ithout knowledge of the lived experience of incarceration for Indigenous women, and in the context of a punishment-focused sentencing system where “*Gladue* factors” such as experiences

of abuse, poverty, and addiction can be converted into risk factors favouring a more stringent sentence, Indigenous women often do not receive any meaningful benefit from the promise of *Gladue*".<sup>vii</sup>

In the recent BC Supreme Court decision *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62, Justice Leask found that "CSC has not done a good job of using Aboriginal social history to reduce the impact of administrative segregation on Aboriginal inmates. There is a box to be ticked on a form and it is ticked. Meaningful results have not followed."<sup>viii</sup> He directs CSC to establish more Healing Lodges that are available to prisoners who are rated to a higher security classification than minimum security.<sup>ix</sup>

## Moving forward

*Creating Choices* notes that the Indigenous people consulted by the Task Force "stressed that the concept of punishment is alien to the Aboriginal culture. The focus on restoration of harm and finding direction through teachings and spirituality in traditional culture is diametrically different from the punitive models" of western culture.<sup>x</sup> As stated by an Indigenous woman parolee in *Creating Choices*, "How can we be healed by those who symbolize the worst experiences of our past?"<sup>xi</sup>

Section 81 of the *Corrections and Conditional Release Act* (CCRA) provides for agreements to be made between the Minister of Public Safety and Emergency Preparedness and Indigenous communities for the provision of correctional services to Indigenous people and for payment to provide these services. Section 84 of the CCRA provides for the release of Indigenous prisoners on parole or statutory release to Aboriginal communities.

In 2012, Prisoners' Legal Services received a grant to hire an Aboriginal Legal Advocate to assist prisoners in accessing s. 81 and 84 agreements. We found at that time there were no Indigenous-run healing lodges in BC, and no one in the Pacific Region had been transferred to serve part of their sentence in an Aboriginal community or halfway house.

The Truth and Reconciliation report states that reconciliation "requires that the paternalistic and racist foundations of the residential schools system be rejected as the basis for an ongoing relationship."<sup>xii</sup> It acknowledges the intergenerational trauma experienced by Indigenous people who have been victim of the residential school system, and recommends that we address the resulting dramatic overrepresentation of Indigenous people in Canada's prisons by providing "sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending".<sup>xiii</sup> The report recommends that the federal government eliminate barriers to the creation of additional Aboriginal healing lodges and work with Aboriginal communities to provide culturally relevant services to prisoners.<sup>xiv</sup>

Prisoners' Legal Services calls on government to engage with First Nations and Indigenous organizations so that they may achieve self-determination in the administration of criminal justice. The federal government of Canada should ensure that First Nations and Indigenous organizations have the resources to provide wrap-around community services so that Indigenous women have the support to heal from trauma and avoid contact with the criminal justice system.

For example, some Friendship Centres provide services to prevent people from entering or re-entering the criminal justice system. The Dauphin Friendship Centre in Dauphin, Manitoba, provides services to

youth to help divert them from the criminal justice system. The Prince George Native Friendship Centre at one time provided community re-integration programs to former prisoners – they bought pizza shops and hired former prisoners to work at them to address the difficulty of finding employment upon release with a criminal record.

First Nations and Indigenous organizations should be resourced to administer Indigenous courts based on restorative justice, and to ensure that there are community alternatives to incarceration at sentencing.

First Nations and Indigenous community organizations should be resourced to be able to provide healing lodges by and for Indigenous people, under s. 81 of the CCRA, regardless of security level, so that no Indigenous person should be required to set foot in a federal prison again. There should be funding and support to ensure that there are community resources to allow Indigenous prisoners to be released to Indigenous communities on parole or statutory release under s. 84 of the CCRA, and there should be resources to ensure support is there for Indigenous people after the end of their sentences.

In order to ensure that Canada does not continue its legacy of genocide against Indigenous people, our government needs to work with First Nations and Indigenous community based organizations to ensure they have the resources to achieve self-determination in the area of criminal justice. Canada should never again participate in the separation of Indigenous families and communities and the violence that is inherent in its imprisonment of Indigenous women and men in federal prisons.

## **Recommendations**

Prisoners' Legal Services makes the following recommends:

1. That the federal government engage with First Nations and Indigenous organizations so that they may achieve self-determination in the administration of criminal justice.
2. The federal government of Canada should ensure that First Nations and Indigenous organizations have the resources to provide wrap-around community services so that Indigenous people have the support they need to heal from trauma and avoid contact with the criminal justice system.
3. First Nations and Indigenous organizations should be resourced to administer Indigenous courts based on restorative justice, and to ensure that there are community alternatives to incarceration at sentencing.
4. First Nations and Indigenous community organizations should be resourced to be able to provide healing lodges by and for Indigenous people, under s. 81 of the CCRA, regardless of security level.
5. First Nations and Indigenous community organizations should be funded and supported to ensure that there are community resources to allow Indigenous prisoners to be released to Indigenous communities on parole or statutory release under s. 84 of the CCRA.
6. First Nations and Indigenous community organization should be resourced to ensure support is there for Indigenous people after the end of their sentences.

7. The test for security classification under s. 18 of the *Corrections and Conditional Release Regulations* should be amended to eliminate institutional adjustment as a criteria for a higher classification level, and to ensure that prisoners who have experienced trauma or have high mental health needs have more access to resources that would facilitate healing, such as mental health services and a non-punitive, culturally appropriate environment.
8. CSC should be required to develop new culturally appropriate assessment tools founded on the *Gladue* principles and should provide better training on the application of *Gladue* factors.
9. Indigenous prisoners should be provided with more educational and employment opportunities.
10. Prisoner pay rates should be increased so that Indigenous prisoners can afford to maintain personal and telephone contact with their children, families and communities.

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<sup>i</sup> Truth and Reconciliation Commission of Canada, *Final Report of the Truth and Reconciliation Commission of Canada, Summary: Honouring the Truth, Reconciling for the Future*, 2015 (Winnipeg), (*"Truth and Reconciliation Report"*).

<sup>ii</sup> Correctional Investigator of Canada, *Annual Report: Office of the Correctional Investigator, 2016-2017*, (Ottawa), pages 48-51 and 59.

<sup>iii</sup> Task Force on Federally Sentenced Women, *Creating Choices: The Report of the Task Force on Federally Sentenced Women*, 1990 (Ottawa) (*"Creating Choices"*). Online: <http://www.csc-scc.gc.ca/women/toce-eng.shtml>.

<sup>iv</sup> Debra Parkes, "Women in Prison: Liberty, Equality, and Thinking Outside the Bars", 12 J.L. & Equal. 127 (2016) (*"Parkes"*) at 138-139.

<sup>v</sup> Correctional Investigator of Canada, *Annual Report of the Office of the Correctional Investigator, 2015-2016*, (Ottawa), page 43.

<sup>vi</sup> Parkes at 153 and 139-140.

<sup>vii</sup> Parkes at 144 and 147.

<sup>viii</sup> *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62 (*"BCCLA v. Canada"*) at paragraph 483.

<sup>ix</sup> *BCCLA v. Canada* at paragraph 490.

<sup>x</sup> *Creating Choices*, page 110.

<sup>xi</sup> *Creating Choices*, page 10.

<sup>xii</sup> *Truth and Reconciliation Report* at vi.

<sup>xiii</sup> *Truth and Reconciliation Report*, at 173.

<sup>xiv</sup> *Truth and Reconciliation Report*, at 176-177.