

Nicholas Dinardo v. Correctional Service Canada
Complaint to the Canadian Human Rights Commission
August 19, 2021

I am a Two-Spirit and transfeminine person in the custody of Correctional Service Canada (CSC). My pronouns are she/her and they/them. I am currently at Port Cartier Institution, a maximum security prison designated for men in Quebec. My complaint is against CSC, which has discriminated against me on the basis of my gender identity, my Indigenous identity and my mental health disabilities.

In July 2020, I filed a complaint to the CHRC focusing on how CSC fails to address my mental health needs and responds to my emotional distress with violence and isolation, which then exacerbates my suffering. Those experiences are ongoing, and the distress I feel as a result is compounded by the additional violence, harassment, indignity and lack of safety I have experienced more recently as a result of my gender identity and my placement in institutions designated for men. I do not have space to detail all of those experiences here, but I have highlighted examples below, focusing on those that are explicitly tied to my gender identity. Even when it is not clear that the violence against me is because I am Two-Spirit and transfeminine, these experiences still contribute to a profoundly unsafe environment where I am frequently in emotional distress and always have to be on guard for danger from men.

Background

I am Cree from the Piapot First Nation in SK and I was born in BC. My family are survivors of residential schools. I am also Jewish. I have a history of childhood trauma and abuse, including sexual abuse.

I have continued to experience extensive trauma and violence during my time in federal custody. I have been isolated a lot, including in segregation, Structured Intervention Units (SIUs), observation cells on suicide watch and on maximum security units. Guards (mostly male guards) have used force against me a lot. I have mental health disabilities, including post-traumatic stress disorder, and have tried to kill myself many times.

I have always felt feminine, from as early as I can remember. I was not able to live my life freely as a young person, and I took on a hyper-masculine role in public to protect myself.

During my first prison sentence, an Indigenous program facilitator taught me about Two-Spirit identity, and I have identified that way ever since. Two-Spirit is a modern term, but gender diverse people have historically been recognized and respected in Indigenous cultures and nations.

Complaint

Not being able to live freely and safely in my gender identity is a consequence of colonization and genocide against Indigenous peoples. Recently, CSC wrote that they are seeking “specialists in gender identity disorder” to “support” me, but my gender and culture are not a mental disorder.

Harassment and violence in institutions designated for men

I came out as Two-Spirit to CSC around July 2020, while I was at Kent Institution (Kent). Within hours of coming out to my parole officer, a guard began mocking me about my gender. Since then, I have faced harassment and violence from both correctional staff and other prisoners. CSC keeps transferring me to different maximum security institutions designated for men, where I am unsafe and wind up in isolation. I have asked CSC to refer to me in conversation using male pronouns as long as I am in institutions designated for men to protect my safety, but staff have repeatedly failed to maintain my confidentiality, making me a target for further harassment and violence.

For example, after I was transferred from Kent to Atlantic Institution (Atlantic) in September 2020, I was placed on what was supposed to be a mental health unit, but the unit manager would antagonize and insult me and put my life in danger. I remember him asking me about my gender and sexuality within earshot of other prisoners and staff, and that after that other prisoners started calling me “tranny” and guards would laugh and join in. Other staff at Atlantic also mocked me for my gender identity and called me transphobic slurs, and one threatened me.

A prisoner on my range started sexually harassing and soliciting me. After the unit manager made comments in front of other prisoners about me contacting the RCMP to “rat” people out (I had requested to call the police about staff misconduct and excessive force), the prisoner who had been sexually harassing me attacked me, stabbing me in the chest and arm. After that, I was placed in the SIU. I stayed in my cell a lot because I didn’t trust the guards.

I stayed in the SIU until approximately March 1, 2021, when I was transferred briefly to the Shepody Healing Centre (Shepody) before going back to the SIU at Atlantic. Shepody was an extremely traumatic environment. Guards pepper sprayed me and then cut my sweater off my body, leaving my torso exposed. I kept cutting myself and staff strapped me down in Pinel restraints. One of the guards who was assigned to watch me began antagonizing me, accusing me of lying about being transgender. I had been sent there for a gender identity assessment, and at one point a mental health clinician came to my door and began discussing it out in the open, where other prisoners could hear. After that, someone offered me canteen in exchange for oral sex, and another prisoner called me transphobic slurs and threatened to kill me.

Prisoners at Atlantic also called me “tranny” and told my parole officer they would “get” me. I spent months in the SIU. Just before I was transferred out of the institution, guards told other prisoners I was transgender and they began throwing feces and urine under my door, trying to smash my window, and calling me a “tranny”. Guards halfheartedly told them to stop.

I was transferred to Port Cartier Institution (Port Cartier) on May 25, 2021, despite the assessment of my proposed transfer indicating that accommodating my gender and mental health needs would be a challenge and that the likelihood I would wind up in the SIU was “high.”

I feel extremely unsafe at Port Cartier. I have been isolated since I arrived, first in COVID quarantine, then on a “voluntary limited association” range (where I was only out for one hour per day) and now in the SIU. Guards at Port Cartier have repeatedly used violent force against me, including one incident on May 30, 2021 when they broke my arm. Guards sing sexual songs, like “Pretty Woman”, while they walk me down the range. Recently, other prisoners told me that guards talk about me in French, which I don’t understand, and that they outed me as trans and called me “faggot”. I have not showered in more than two months because I am afraid of what guards might do to me while I am in such a vulnerable state. I have declined opportunities for medical care and chances to come out of my cell because I do not feel safe.

Lack of dignity

My dignity is regularly undermined in CSC custody. I have been repeatedly frisk searched by male guards, including after I changed my protocol to say female guards should search me. In the almost three months I have been at Port Cartier, I have not gotten women’s clothing that fits. As a result, I have been wearing the same pants, which are stained with blood and have pepper spray on them, for months. I try to wash them as best I can in my sink.

When I was at Shepody in March 2021, guards took me to the hospital because I was vomiting blood and passed out from cutting myself and swallowing razor blades. The guard who searched me for the escort felt all the way up my leg and grabbed my penis. Then he told me if I tried to “make a move” I would be shot. I think this was the same guard who antagonized me when I was in Pinel restraints. I stayed at the hospital for about two days, and all of the guards with me were men, even though my protocol said medical escorts should include female officers. At one point when I went to use the washroom, guards decided I had spent long enough on the toilet and stood there, watching me. They were all men and this was extremely degrading. Another time, when I was back at Atlantic, I was in emotional distress and guards burst in while I was half-naked and sitting on the toilet, which was extremely humiliating. They started hitting me in the face with a shield when I tried to move, and threatened to beat me if I kept hitting my panic button. One called me a “fucking tranny” and said I wasn’t a woman.

Denial of gender-appropriate institution and gender-appropriate programming

I have made repeated requests to transfer to a safer environment, such as an institution designated for women, in order to feel safer and more able to express myself as Two Spirit and female, but CSC has denied these requests. Instead, CSC is preparing to transfer me to another maximum security institution designated for men. This would be my fourth institution for men within the last year.

In denying my requests, CSC does not demonstrate I would present safety and security concerns that cannot be resolved, as required by Interim Policy Bulletin 584, or that CSC has attempted to accommodate me to the point of undue hardship, as required by the *Canadian Human Rights Act*. CSC has acknowledged that I do not have a pattern of violence against women but nevertheless concludes that I pose an unmanageable risk to other women. In making its decisions, CSC entirely fails to consider or even acknowledge the risks to my safety and wellbeing in institutions designated for men or that I have been repeatedly sexually harassed and victimized by men, nor does it consider the vulnerability of trans and gender-diverse people in prison more generally. When I grieved one of these decisions, CSC concluded that putting me in the SIU was an adequate way to keep me safe.

CSC states that it considered my “Indigenous Social History” in coming to decisions about my placement. However, the decisions do not even mention Two-Spirit being an Indigenous concept, much less contemplate how considering my Indigenous identity in decision-making means considering how I can live safely and with dignity as a Two-Spirit person.

It took nearly a year for CSC to simply facilitate my speaking to a counsellor I found on my own who works specifically with LGBTQ+ survivors of residential schools.

CSC also writes that I should complete correctional programs designed for men, and that I cannot take programs designed for women because those programs “are created in a holistic, gender, cultural, and trauma-informed manner”. Like other incarcerated women, I have also experienced gender-based oppression and violence. CSC does not explain how programs for men are appropriate for my gender, my culture, or my history of trauma.

Ongoing discrimination

As a result of policies that do not adequately protect the safety and dignity of gender-diverse prisoners and a culture of abuse and antagonism by staff, I am profoundly unsafe. I have repeatedly self-harmed because of the distress I feel. The trauma and victimization I have experienced in my life is repeatedly compounded, and any mental health or spiritual care I receive is regularly undermined by the realities of my living environment. The thought of having to live as a man, in the hyper-masculine environment of prisons designated for men, makes me feel hopeless and suicidal.