



SENATE | SÉNAT
CANADA

INTERIM REPORT – STUDY ON THE HUMAN RIGHTS OF FEDERALLY-SENTENCED PERSONS: THE MOST BASIC HUMAN RIGHT IS TO BE TREATED AS A HUMAN BEING (1 FEBRUARY 2017-26 MARCH 2018)

Interim Report of the Standing Senate Committee on Human Rights

The Honourable Wanda Elaine Thomas Bernard, *Chair*
The Honourable Salma Ataullahjan, *Deputy Chair*
The Honourable Jane Cordy, *Deputy Chair*

February 2019



SENATE | SÉNAT
CANADA

For more information please contact us:

By email: RIDR@sen.parl.gc.ca

By mail: The Standing Senate on Human Rights
Senate, Ottawa, Ontario, Canada, K1A 0A4

This report can be downloaded at: www.sencanada.ca

The Senate is on Twitter: @SenateCA

Follow the committee using the hashtag #RIDR

Ce rapport est également offert en français.

TABLE OF CONTENTS

TABLE OF CONTENTS	3
THE COMMITTEE MEMBERSHIP.....	5
ORDER OF REFERENCE.....	6
EXECUTIVE SUMMARY	8
INTRODUCTION.....	11
HUMAN RIGHTS AND THE LEGAL FRAMEWORK FOR FEDERAL CORRECTIONS. 13	
Human Rights Protections under the <i>Corrections and Conditional Release Act</i>	17
OVERARCHING CONCERNS	20
The Pipeline to Prison	20
Overarching Human Rights Concerns for those in the Federal Correctional System.....	21
Specific Concerns.....	22
EQUALITY AND NON-DISCRIMINATION	32
Demographics of the Federal Correctional Population	32
Federally-sentenced Women	34
Non-Discrimination in the Provision of Correctional Services	35
Federally-sentenced Black Persons.....	43
Heterogeneity of the Black Population in the Federal Correctional System	44
Systemic Racism.....	44
Non-Discrimination in the Provision of Correctional Services	46
Federally-sentenced Indigenous Peoples	50
Consideration of the Unique History and Circumstances of Indigenous Peoples.....	51
Non-Discrimination in the Provision of Correctional Services	52
Reducing the Over-Incarceration of Indigenous Peoples	54
Mental Health.....	56
Non-Discrimination in the Provision of Correctional Services	58
Recovery-Oriented Approaches to Mental Health	60
ACCESS TO JUSTICE	63
ANALYSIS OF GAPS IN THE COMMITTEE’S STUDY.....	65

The Situation of Other Vulnerable and Marginalized Groups..... 65
Access to Justice and Segregation 66
Rehabilitation and Reintegration 67
CLOSING THOUGHTS 68
WITNESSES 69
FACT FINDING VISITS 75

THE COMMITTEE MEMBERSHIP

The Honourable Wanda Elaine Thomas Bernard, *Chair*
The Honourable Salma Ataullahjan, *Deputy Chair*
The Honourable Jane Cordy, *Deputy Chair*

The Honourable Senators

Yvonne Boyer
Patrick Brazeau
Nancy Hartling
Thanh Hai Ngo
Kim Pate
Donald Neil Plett

Ex-officio members of the committee:

The Honourable Senator Peter Harder, P.C. (or Diane Bellemare)(or Grant Mitchell); Larry Smith (or Yonah Martin); Joseph Day (or Terry Mercer); Yuen Pau Woo (or Raymonde Saint-Germain)

Other Senators who have participated in the study:

The Honourable Senators Andreychuk, Beyak, Bovey, Coyle, Eaton, Forest-Niesing, Fraser, Hubley, Maltais, Martin, McPhedran, Munson, Oh, Omidvar, Poirier, Simons and Unger

Parliamentary Information and Research Services, Library of Parliament:

Erin Shaw (February 2017 to August 2018)
Jean-Philippe Duguay (February 2017 to present)
Alexandra Smith (August 2018 to present)

Senate Committees Directorate:

Barbara Reynolds, Clerk of the Committee (November 2018 to present)
Joëlle Nadeau, Clerk of the Committee (March 2018 to October 2018)
Mark Palmer, Clerk of the Committee (February 2017 to February 2018)
Elda Donnelly, Administrative Assistant

Senate Communications Directorate:

Síofra McAllister, Communications Officer, Committees

ORDER OF REFERENCE

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

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

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

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

After debate,

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

Charles Robert
Clerk of the Senate

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

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

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

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

Nicole Proulx
Clerk of the Senate

ORDER OF REFERENCE

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

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

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

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

Richard Denis
Clerk of the Senate

EXECUTIVE SUMMARY

Federal correctional facilities are ominous structures. They are frequently located in remote areas, surrounded by tall concrete walls and barbed wire fences; some are equipped with watch towers. Even as a visitor, entering a federal penitentiary can be an intimidating experience. Names must be provided ahead of time. Electronic devices are prohibited. The reception area is occupied by several correctional officers, detection dogs as well as metal and drug detectors.

The security features inherent to federal correctional facilities are designed to keep people in as much as they are to keep people out. As a result, the management of the federally-sentenced population is largely conducted away from public scrutiny. Invisible to the general population, federally-sentenced persons are often forgotten.

Compounding their isolation from the outside world, federally-sentenced persons are dependent on the Correctional Service of Canada (CSC) for all their basic needs, including food, hygiene products, clothing and medical care. They also rely on the CSC to provide a safe environment so that they can follow their correctional programming and ultimately successfully reintegrate in society. Importantly, the CSC is responsible for ensuring that the human rights of federally-sentenced persons are respected. This obligation is spelled out in the *Corrections and Conditional Release Act* (CCRA), which is one of the primary sources of law governing the day-to-day operations of federal corrections.

Nonetheless, the CSC has been criticized in numerous public reports for failing to meet its obligations to federally-sentenced persons, including its responsibility to uphold their human rights. It is with this in mind that the Standing Senate Committee on Human Rights (the committee) decided to study the issue of respect for the human rights of federally-sentenced persons in the federal correctional system.

On 15 December 2016, the Senate adopted an order of reference authorizing the committee to examine and report on issues relating to the human rights of prisoners in the federal correctional system with reference to both national and international law and standards as well as the situation of vulnerable or disadvantaged groups, including Indigenous, black and racialized persons, women and those with mental health concerns.

This interim report covers the 1 February 2017 to 26 March 2018 period of the committee's study. During this timeframe, the committee held 22 meetings, hearing testimony from 92 witnesses including former federally-sentenced persons, federal correctional officials, Agents of Parliament, Indigenous organizations, academics, lawyers, civil society and union representatives. The committee also travelled to penitentiaries in Ontario, Quebec and Atlantic Canada to gain a firsthand understanding of the experiences of those who live and work behind their walls. During these visits the committee met with countless federally-sentenced persons.

Throughout its study, the committee has become aware of a wide range of challenges faced by federally-sentenced persons. The committee was troubled by the frequency and consistency with which these issues were raised. The stories shared by federally-sentenced persons were similar from one institution to the next and from one region to another. The committee heard that access to healthcare is inadequate, admission to gradual and structured release is insufficient, correctional programming is deficient, conditions of

confinement are poor, access to remedial measures is lacking and quality and quantity of food is severely substandard.

One overarching theme was that CSC policies often discriminate against Indigeneity, race, gender, disability, mental health, ethnicity, religion, age, language, sexual orientation and gender identity. An important consequence of discriminatory policies is that federally-sentenced persons, especially those who are women, Indigenous, Black and racialized, have difficulty accessing culturally relevant rehabilitative programming. Without access to these programs, federally-sentenced persons are ill-prepared to reintegrate in their communities, which places them at a higher risk of reoffending. Tackling this issue is particularly urgent for federally-sentenced Indigenous and Black persons who are significantly overrepresented in the correctional system.

The committee notes that the CSC has made efforts to develop programming specific for federally-sentenced Indigenous peoples. These programs, however, are not readily accessible to all federally-sentenced Indigenous persons. Moreover, the committee was informed that the CSC underutilizes its policies intended to respond to the spiritual and cultural needs of federally-sentenced Indigenous persons and to facilitate their release into their communities.

Security reasons were frequently cited by the CSC as a justification for discriminatory policies or behaviours. The committee is aware that violence in correctional facilities is not uncommon and that correctional officers are at risk. The committee is also aware that individuals in federal penitentiaries have committed a crime serious enough to be charged with an indictable offence. That said, the committee is focussing its study on the human rights of federally-sentenced persons. Irrespective of the actions that have lead them into the criminal justice system, they are human beings with rights that must be protected in this context. It is important to remember that people are sent to prison *as* punishment, not *for* punishment. The objective of the correctional system, as enumerated in the CCRA, is to make society safer by preparing federally-sentenced persons for a successful reintegration. Most federally-sentenced persons with whom the committee met during its visits to federal correctional facilities acknowledged responsibility for their actions and wanted to use their time away from society to focus on rehabilitation.

The aim of this interim report is to provide an update on the committee's findings between 1 February 2017 to 26 March 2018. Many federally-sentenced persons informed the committee that they have been following the study on the Cable Public Affairs Channel and are anxious to read the report. While the committee is eager to give their concerns a voice, it has not yet completed its study. Thus, this interim report does not include recommendations for the Government of Canada. Instead, it identifies gaps the committee will endeavour to fill as it prepares its final report. In particular, the committee will aim to obtain more information on marginalized and vulnerable groups, international standards, solitary confinement, access to justice as well as rehabilitation and reintegration.

The report is divided in four parts. First it lays out the legal framework under which the Canadian correctional system operates. It then provides an overview of the circumstances that lead to the criminalization of individuals as well as the overarching human rights concerns of those in the system. The report continues with testimony the committee heard related to the right to equality and non-discrimination. It concludes with a gaps analysis.

The rights of all human beings must be respected, regardless of who they are. A rights-based approach to corrections in Canada is vital to ensure that our criminal justice system is fair, equal and effective. The committee looks forward to tabling its final report with recommendations for the Government of Canada following completion of its study.

INTRODUCTION

People who are imprisoned are separated from society. They are placed behind concrete walls, barbed wire fencing and steel doors. Security measures designed to prevent people from leaving also inhibit people from visiting. They are unseen by the general population and too often forgotten. Those imprisoned in federal penitentiaries are dependent on the Correctional Service of Canada (CSC) for basic necessities like food, clothing, medical care, and the safeguarding of their human rights.

The CSC, however, has been criticized in numerous public reports for failing to uphold the human rights of federally-sentenced persons. With this in mind, the Standing Senate Committee on Human Rights (the committee) decided to study the issue of respect for the human rights of federally-sentenced persons in the federal correctional system.

The Senate adopted the following Order of Reference on 15 December 2016:

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

This interim report provides a snapshot of the committee's study from 1 February 2017 to 26 March 2018. It compiles the evidence that the committee has heard, the correspondence it has received, as well as the information that it has gathered during its fact-

Scope of Interim Report

Period covered: 1 February 2017 to 26 March 2018

Number of meetings: 22

Number of witnesses: 92, including former federally-sentenced persons, federal correctional officials, Agents of Parliament, Indigenous organizations, academics, lawyers, civil society and union representatives.

Number of prisons visited: 15

Regions covered: Ontario, Quebec and Atlantic Canada

finding visits to federal penitentiaries, a community correctional centre (CCC) and a healing lodge. The committee wishes to thank the current and former federally-sentenced individuals and groups who have participated in this study. This report aims to give voice to their concerns.

From 1 February 2017 to 26 March 2018, the committee held 22 meetings as part of its study, hearing testimony from 92 witnesses including former federally-sentenced persons, federal correctional officials, Agents of Parliament, Indigenous organizations, academics, lawyers, civil society and union representatives. The committee also travelled to various penitentiaries in Ontario, Quebec and Atlantic Canada to gain a firsthand understanding of the experiences of those who live and work behind their walls. During these visits the committee met with countless federally-sentenced persons.

Over the course of its study, the committee has become aware of a wide range of human rights concerns in the federal correctional system. For the purpose of this interim report, however, the committee primarily focuses on issues relating to equality rights and non-discrimination.

This interim report provides an overview of the evidence the committee has heard and received. Its objective is to identify topics about which the committee intends to gather more evidence before it concludes its study and makes recommendations to the Government of Canada. The report begins by outlining the legal framework under which the Canadian correctional system operates. It then summarizes testimony the committee heard related to the right to equality and non-discrimination, and underscores areas where the study could benefit from additional information moving forward.

The committee wants to stress that the interim report is only a precursor to the final report. The final report will expand on some of the themes outlined in the interim report and present other findings. It will also include information received in letters sent to the committee by federally-sentenced persons and cover issues raised in subsequent visits to the Pacific and Prairie regions. The final report will also include concrete recommendations to the Government of Canada.

HUMAN RIGHTS AND THE LEGAL FRAMEWORK FOR FEDERAL CORRECTIONS

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

It is set in law that prisoners have charter rights and residual liberty interests that cannot be eroded except in compliance with fundamental principles of justice. Many prisoners have fought hard to secure voting rights, due process rights, and other human rights in the courts, but hard-won judicial victories and codified rights in the charter do not translate into prisoners having their rights in practice. Individual rights may be seen as contrary to efficient management and security. Prison is not a rights-affirming culture. Rights without remedies are no rights at all.¹

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

The *Canadian Charter of Rights and Freedoms* (Charter), the *Canadian Human Rights Act* (CHRA) and the *Corrections and Conditional Release Act* (CCRA) protect the human rights of federally-sentenced persons and enshrine the obligations of government actors to uphold these rights.² The rights of federally-sentenced persons have also been affirmed by the Supreme Court of Canada.

A Note on Terminology

The *Corrections and Conditional Release Act* uses the term "inmate" to refer to those confined to federal penitentiaries. The term "offender" refers to both inmates and to sentenced individuals outside the penitentiary who are on various forms of release. The committee has chosen not to use these terms in order to acknowledge how such language dehumanizes those who are incarcerated and sanitizes violations of their human rights, and to focus squarely on federally-sentenced persons as individuals who have constitutional and international human rights protections.

The term "prisoner," commonly used in international human rights standards, is generally the preferred term for those serving sentences, but is understood by some to refer to someone held in a provincial correctional facility.

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

² *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.) [Charter]; *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [CHRA]; *Corrections and Conditional Release Act*, S.C. 1992, c. 20 [CCRA].

Additionally, Canada's international human rights obligations and non-binding international human rights standards can be used to interpret and understand the content of Charter rights and other Canadian legislation.³

The Supreme Court of Canada has recognized that the criminal justice system's sentencing framework is tied to society's acceptance of the person being sentenced as a person with rights and responsibilities.⁴ In Canada, judges must sentence people convicted of criminal offences in a way that reflects the gravity of the offence and the degree of responsibility of the person who committed the crime.⁵

The *Criminal Code of Canada* specifies that a criminal sentence serves six basic objectives: denunciation of unlawful conduct and the harm done to victims; deterrence of the sentenced person and others; separation of the sentenced person from society where necessary; rehabilitation; reparation of harm done to the community; promotion of a sense of responsibility by the sentenced person; and acknowledgement of the harm done to victims and the community.⁶

The Supreme Court of Canada has recognized "the principle that prison should be used as a sanction of last resort" and observed that although "imprisonment is intended to serve the traditional sentencing goals of separation, deterrence, denunciation, and rehabilitation, there is widespread consensus that imprisonment has not been successful in achieving some of these goals."⁷ Nevertheless, it remains a common sentence for those convicted of crimes. As elaborated by the Supreme Court:

Overincarceration is a long-standing problem that has been many times publicly acknowledged but never addressed in a systematic manner by Parliament. In recent years, compared to other countries, sentences of imprisonment in Canada have increased at an alarming rate. The 1996 sentencing reforms embodied in Part XXIII, and s. 718.2(e) in particular, must be understood as a reaction to the overuse of prison as a sanction, and must accordingly be given appropriate force as remedial provisions.⁸

Once an individual is convicted and sentenced, that person is considered to be "under warrant." It falls to the CSC to administer the sentence. With respect to federally-sentenced persons, the Supreme Court has stressed that "Charter rights are not a matter of privilege or merit, but a function of membership in the Canadian polity that cannot lightly be cast aside."⁹ These rights include, amongst others:

- the right to life, liberty and security of the person and the right not to be deprived of these rights except in accordance with the principles of fundamental justice;¹⁰

³ Ibid.

⁴ *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68 [*Sauvé*], para. 47, per McLachlin C.J.C..

⁵ *Criminal Code*, R.S.C., 1985, c. C-46 [*Criminal Code*], s. 718.1.

⁶ *Criminal Code*, s. 718.

⁷ *Criminal Code*, s. 718.2(e); *R. v. Gladue*, [1999] 1 S.C.R. 688 [*Gladue*], para. 57.

⁸ Ibid.

⁹ *Sauvé*, para. 14.

¹⁰ *Charter*, s. 7.

- the right to be secure against unreasonable search or seizure;¹¹
- the right not to be subject to any cruel and unusual treatment or punishment;¹²
- the right to freedom of conscience and religion, freedom of thought, belief, opinion and expression;¹³
- the right to vote;¹⁴ and
- the right to equality before and under the law, and the right not to be discriminated against on certain grounds, including race, national or ethnic origin, colour, religion, sex, age, mental or physical disability, sexual orientation.¹⁵

The Supreme Court has held that Charter rights, including those of federally-sentenced persons, may only be limited in order to “achieve a constitutionally valid purpose or objective.”¹⁶ The means to achieve this objective must be “reasonable and demonstrably justified.”¹⁷ The second part of this test requires a rational connection between any infringement on the Charter rights of federally-sentenced persons and the government’s stated objective; the minimal impairment on the enjoyment of the right; and proportionality between the infringement and the benefit achieved.¹⁸ The Supreme Court has recognized that while “[c]ertain rights are justifiably limited for penal reasons, including aspects of the rights to liberty, security of the person, mobility, and security against search and seizure,” the “denial of constitutional rights” is not simply a tool that can be used for punishment.¹⁹ The Court has also said that it is “doubtful” whether the complete loss of a constitutional right for the entire class of federally-sentenced persons would ever be constitutional.²⁰

In addition, under the Charter, sentences must not be arbitrary and must serve a valid criminal law purpose. The Supreme Court has indicated that the “[a]bsence of arbitrariness requires that punishment be tailored to the acts and circumstances of the individual.”²¹ It has recognized criminal law purposes such as deterrence, rehabilitation, retribution and denunciation. These terms carry particular meanings in the criminal law context, which can often give rise to misconceptions of what constitutes a valid criminal law purpose. For example, the Supreme Court has recognized, based on empirical evidence, that harsher sentences in the form of mandatory minimum penalties do not achieve deterrence.²² The Supreme Court similarly specifies that “retribution” is closely related to denunciation and “[r]etribution in a criminal context, by contrast [to vengeance], represents an objective, reasoned and measured determination of an appropriate punishment.”²³ Both denunciation and retribution must reflect the individual’s “moral culpability ... and his or her

11 [Charter](#), s. 8.

12 [Charter](#), s. 12.

13 [Charter](#), s. 2(a), (b).

14 [Charter](#), s. 3.

15 [Charter](#), s. 15(1); Government of Canada, [Guide to the Canadian Charter of Rights and Freedoms](#).

16 [R. v. Oakes](#), [1986] 1 S.C.R. 103 [Oakes]; [Sauvé](#), para. 7.

17 [Oakes](#).

18 [Ibid.](#)

19 [Sauvé](#), paras. 46, 47.

20 [Ibid.](#)

21 [Ibid.](#), para. 48.

22 [R. v. Nur](#), 2015 SCC 15, para. 114.

23 [R. v. M. \(C.A.\)](#), [1996] 1 S.C.R., para. 80.

circumstances.”²⁴ Where the individual is Indigenous, this exercise must involve considering the unique and different circumstances of Indigenous Peoples, including Canada’s legacy of colonialism.²⁵ If a limitation on Charter rights is to be justifiable, it must meet these constitutional criteria.

The Supreme Court has stressed that just sanctions must also be non-discriminatory.²⁶ If government conduct widens the gap between a historically disadvantaged group and the rest of society instead of narrowing it, then the conduct is discriminatory.²⁷

Individuals incarcerated in federal penitentiaries also have a right to protection from discriminatory practices in accordance with the CHRA. Section 3 of the CHRA prohibits discrimination by federal employers and service providers based on the following grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.²⁸

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

have the right not to be discriminated against or harassed because, for example, they are Aboriginal or have cognitive limitations. Federally-sentenced women and men have the right to correctional services that respond appropriately to the different factors that led to their criminality and that respect their needs and differences.²⁹

The Federal Court has held that the CSC also has “a duty to accommodate the particular needs of a person with a disability, unless doing so would cause undue hardship.”³⁰

The *Privacy Act* also provides some protections against the disclosure of federally-sentenced persons’ personal information. The correctional context, however, will often permit a relatively broader scope for disclosure. In particular, private information about federally-sentenced persons may be disclosed to various outside bodies if it is “relevant to release decision-making or ... supervision or surveillance.”³¹

²⁴ *Sauvé*, para. 50.

²⁵ *Gladue*; *R. v. Ipeelee*, 2012 SCC 13 [*Ipeelee*].

²⁶ *Ipeelee*, para. 68.

²⁷ *Quebec (Attorney General) v. A.*, 2013 SCC 5, para. 332.

²⁸ CHRA, s. 3(1).

²⁹ Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, 2003, p. 13.

³⁰ See, e.g., *Macdonald v. Canada (Attorney General)*, 2017 FC 1028, para. 29.

³¹ RIDR, *Evidence*, 7 February 2018 (Daniel Therrien, Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada); CCRA, s. 25.

Human Rights Protections under the *Corrections and Conditional Release Act*

The CCRA and the *Corrections and Conditional Release Regulations* are the main sources of law governing the day-to-day operation of federal corrections.³² Commissioner's Directives, the CSC's guidelines, and other internal policy documents play an important role in determining the interpretation and application of this legal framework.

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

Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission, pointed out that the CCRA "reflects and embodies human rights obligations."³³ The purpose clause of the CCRA states that the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by:

- (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
- (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.³⁴

The "paramount consideration" in the corrections process is "the protection of society."³⁵

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

- (c) the Service uses measures that are consistent with the protection of society, staff members and offenders and that are limited to only what is necessary and proportionate to attain the purposes of this Act;
- (d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;

...

³² Ibid.

³³ RIDR, *Evidence*, 14 June 2017 (Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission).

³⁴ CCRA, s. 3.

³⁵ Ibid., s. 3.1.

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

(g) correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, aboriginal peoples, persons requiring mental health care and other groups.³⁶

The Supreme Court has recently held that section 4(g) of the CCRA “mandates the CSC to pursue substantive equality” for these groups, including a requirement to “ensure that its practices, however neutral they may appear to be, do not discriminate against Indigenous persons.”³⁷

The CCRA includes provisions prohibiting the application of restraints as punishment, and prohibiting cruel, inhumane or degrading treatment or punishment.³⁸ It also requires living and working conditions for those incarcerated (and staff) that are “safe, healthful and free of practices that undermine a person’s sense of personal dignity.”³⁹

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

- Section 29(b) permits federally-sentenced persons to be transferred to provincial hospitals in accordance with any federal-provincial agreements for such transfers.
- Section 77 requires the CSC to provide programs “designed particularly to address the needs of female offenders” and to consult regularly with civil society.⁴⁰
- Section 80 states that the CSC “shall provide programs designed particularly to address the needs of aboriginal offenders.”
- Section 81 allows the CSC to enter into agreements with “aboriginal communities” allowing for transfers of individuals serving a sentence in a penitentiary into the care and custody of an Indigenous community. Agreements may apply to both federally sentenced Indigenous Peoples and to federally-sentenced persons who are not Indigenous.⁴¹
- Section 84 gives Indigenous communities the opportunity to develop release and reintegration plans for federally incarcerated persons into their respective communities.

³⁶ Ibid., s. 4.

³⁷ Ewert, paras. 54, 55, 65.

³⁸ CCRA, ss. 68-69.

³⁹ Ibid., s. 70.

⁴⁰ Specifically, the CSC must consult with “appropriate women’s groups” and “other appropriate persons or groups” with expertise on, and experience in working with, incarcerated women.

⁴¹ For the purposes of sections 80 to 84, “aboriginal means Indian, Inuit or Métis.” The term “aboriginal community” means “a first nation, tribal council, band, community, organization or other group with a predominantly aboriginal leadership.” (CCRA, s. 79).

- Section 87 requires the CSC to consider a federally-sentenced person's state of health and health care needs in all decisions relating to that person's "placement, transfer, administrative segregation and disciplinary matters" as well as in the preparation of the individual for release and in their supervision.

The committee also considered the situation of Black individuals serving federal sentences, as well as that of other racialized persons.⁴² The *Canadian Multiculturalism Act* illustrates the CSC's obligations regarding racialized federally-sentenced persons. Those obligations include:

- promoting policies, programs and practices that enhance the ability of people from all communities and origins to contribute to Canada and which also enhance understanding and respect for diversity;
- being sensitive and responsive to the multicultural reality of Canada and to collect statistical data to develop culturally responsive programs;
- ensuring equal opportunities for employment and advancement for people from all origins.⁴³

⁴² The *Corrections and Conditional Release Regulations*, ss. 100 - 101 and [Commissioner's Directive 767, Ethnocultural Offenders: Services and Interventions](#) provide the framework for the CSC's provision of services to "ethnocultural offenders."

⁴³ [Canadian Multiculturalism Act](#), R.S.C., 1985, c. 24, s. 3(2).

OVERARCHING CONCERNS

The Pipeline to Prison

A number of witnesses stressed that the best way to uphold the human rights of federally-sentenced persons is to take steps to keep people from ending up in penitentiaries in the first place. In particular, the committee heard that structural inequalities and discrimination at the root of criminalization and over-incarceration must be addressed on a long-term basis as part of any serious attempt to truly protect and address human rights violations in the federal correctional system.⁴⁴

Witnesses told the committee that experience with the child welfare system and experiences, both in childhood and later life, of poverty, homelessness, trauma and abuse, drug and alcohol addiction, coupled with a lack of access to adequate social support and related services in the community, are pervasive amongst federally-sentenced persons.⁴⁵ Inter-generational trauma, systemic racism and discrimination multiply the disadvantages experienced by Indigenous, Black Canadians and other racialized persons before and after they are criminalized.⁴⁶

Witnesses specifically mentioned residential schools, the Sixties Scoop, assimilation, community fragmentation and racial profiling as examples of racist policies and state actions that have led to disenfranchisement and higher incarceration rates for Indigenous and racialized communities. Consequently, these higher incarceration rates perpetuate this cycle of marginalization, especially among mothers of dependent children.⁴⁷ Witnesses

⁴⁴ See, e.g.: RIDR, *Evidence*, 1 March 2017 (Akwasí Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto); RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec); RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa); RIDR, *Evidence*, 8 February 2018 (Winston LaRose, President and Member, Jane-Finch Concerned Citizens Organization and Regional Ethnocultural Advisory Committee); RIDR, *Evidence*, 14 February 2018 (Natalie Charles, former provincial prisoner); RIDR, *Evidence*, 21 March 2018 (Claire McNeil, Lawyer, Dalhousie Legal Aid Service; Vince Calderhead, Lawyer).

⁴⁵ RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec); RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa; Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law; Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre); RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia; Claire McNeil, Lawyer, Dalhousie Legal Aid Service; Vince Calderhead, Lawyer); RIDR, *Evidence*, 26 March 2018 (Hon. Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia).

⁴⁶ RIDR, *Evidence*, 31 May 2017 (Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples; Michelle Mann-Rempel, Lawyer/Consultant, as an individual); RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations); RIDR, *Evidence*, 31 January 2018 (Anne-Marie Hourigan, Retired Judge of the Ontario Court of Justice and Director, Board of Directors, Mental Health Commission of Canada); RIDR, *Evidence*, 21 March 2018 (Emma Halpern); RIDR, *Evidence*, 26 March 2018 (Theresa Halfkenny, Chair, Atlantic Region, Correctional Services Canada, Regional Ethnocultural Advisory Committee; El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University; Heather Finn-Vincent, Parole Officer, Correctional Services Canada, as an individual).

⁴⁷ RIDR, *Evidence*, 18 May 2017 (Will Prosper, DESTA Black Youth Network); RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an individual); RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations; Amanda George, As an individual).

argued that both the provincial and federal levels of government should devote greater resources to support marginalized, victimized and impoverished children and youth, as well as women and their families.⁴⁸

The committee also heard evidence that individuals with complex mental health issues, particularly post-traumatic stress, personality or behavioural disorders and intellectual and physical disabilities were not adequately treated before or during their incarceration, or while they were on conditional release.⁴⁹

Former Provincial Court Judge Anne-Marie Hourigan told the committee that:

many of the people appearing before the court did not need to end up there. Countless young people who regularly appeared before me had simply fallen through the cracks in our mental health, education and social welfare systems. I saw that they might have avoided the criminal justice system if they had had access to appropriate mental health services and supports at key points in their life, before they got into serious legal trouble.⁵⁰

These observations were echoed by the mental health professionals that the committee encountered during its site visits.

During its fact-finding trips to correctional facilities, senators met with many individuals, who discussed the tragic results of systemic inequality and discrimination. Witnesses who shared these views underscored the inappropriateness of incarceration, particularly in circumstances where mental health issues remain unidentified and untreated, as a response to individuals whose criminalization is connected to underlying trauma, abuse or disability.

Overarching Human Rights Concerns for those in the Federal Correctional System

Over the course of its study, the committee has heard that the CSC struggles to fulfill its mandate and provide correctional services in a manner that is consistent with its human rights obligations. In particular, witnesses and federally-sentenced persons have argued that the effect of many CSC policies is to discriminate against individuals on the basis of

⁴⁸ See, e.g., RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations).

⁴⁹ RIDR, *Evidence*, 4 October 2017 (Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, as an individual); RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa; Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law; Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre); RIDR, *Evidence*, 21 March 2018 (Fred Sanford, Vice President, John Howard Society of Nova Scotia; Emma Halpern); RIDR, *Evidence*, 26 March 2018 (Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Dalhousie University).

⁵⁰ RIDR, *Evidence*, 31 January 2018 (Anne-Marie Hourigan, Retired Judge of the Ontario Court of Justice and Director, Board of Directors, Mental Health Commission of Canada).

Indigeneity, race, gender, disability, mental health status, ethnicity, religion, age, language, sexual orientation and gender identity.⁵¹

Marie-Claude Landry, Chief Commissioner of the Canadian Human Rights Commission, identified three major factors that lead to discrimination within penitentiaries:

- “An organizational culture that sees ... support and services as privileges instead of rights.”
- “[A] lack of training and resources which mean that many vulnerable groups are at the mercy of individual experience and discretion.”
- “Inadequate facilities or policies that fail to consider ... individual needs ... whether it be related to disability, sex or religion, to name a few.”⁵²

Additionally, the committee was informed that the lack of judicial oversight over correctional decision making, especially as it relates to the use of administrative segregation, exacerbates discrimination and arbitrariness as there is no accountability for correctional decision makers.⁵³ Federally-sentenced persons also told the committee that accessing complaint mechanisms was not worth the effort because of lengthy delays and retaliation they face by correctional officers, which often worsen their situation. In fact, the committee heard from some federally-sentenced persons that they had to submit their grievance directly to a CSC employee, who could be the person against whom they were making the complaint. These issues deter the reporting of grievances. As stated by Catherine Latimer, “Prison is not a rights-affirming culture. Rights without remedies are no rights at all.”⁵⁴

Specific Concerns

Witnesses and federally-sentenced persons have pointed to arbitrary and unpredictable decision-making; an absence of timely and effective remedies; unreasonable restrictions on access to counsel and the failure of the CSC staff to respect confidentiality in spaces reserved for phone calls to counsel; lack of timely and effective rehabilitative programming and community reintegration generally; inadequate health and dental care; poor and at

⁵¹ See: RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada); RIDR, *Evidence*, 14 June 2017 (Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission); RIDR, *Evidence*, 3 May 2017; RIDR, *Evidence*, 6 December 2017 (Michael Ferguson and Carol McCalla, Office of the Auditor General of Canada); RIDR, *Evidence*, 4 October 2017 (Mary E. Campbell, Janet Sue Hamilton and Nancy Wrenshall); RIDR, *Evidence*, 21 March 2018 (Claire McNeil, Lawyer, Dalhousie Legal Aid Service, Dalhousie University); RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa).

⁵² RIDR, *Evidence*, 14 June 2017 (Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission).

⁵³ RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada); RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies)

⁵⁴ RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada).

times unsanitary conditions of confinement, including inadequate food and access to personal hygiene products; and very serious human rights violations in the context of administrative and disciplinary segregation.

The CSC's approach to security was reflected in Jason Godin's testimony when he informed the committee that the "first priority as correctional officers is the public safety and security of Canadians. That's the number one mandate."⁵⁵ The committee is aware that correctional officers work in a dangerous environment where violence is not uncommon.⁵⁶ However, some witnesses argued that the CSC has relied upon a very narrow concept of security which inadvertently limits human rights and consequently restricts the rehabilitative and reintegration prospects of federally-sentenced persons.⁵⁷

Respect for human rights and security considerations is a false conundrum, yet this theme has been prevalent throughout the committee's study. In the regions visited by the committee as part of its fact-finding for this study, federally-sentenced persons themselves, and other interlocutors, have expressed serious human rights concerns.

Poor conditions of confinement

During its visits, the committee was frequently dismayed by the living conditions in federal penitentiaries. Cells were often dark, stuffy, and cold in the winter. Some empty cells were unclean, with human feces, blood and mold clearly visible. In every penitentiary the committee visited where individuals did not cook their own food on site, senators were informed that the food is of poor quality and is often served cold or overcooked. Senators also heard that portion sizes are inadequate and do not meet the needs of fully grown adults. The timing of food delivery is also questionable. Dinner is served at 4:00 p.m. before the guards' shift rotation. To supplement their diet, federally-sentenced persons told the committee that they relied on overpriced canteen food with their already meager salaries. For prisoners lucky enough to obtain work within the penitentiary, the most that can be earned is \$6.90 per day "before the 30 per cent deduction for lodging, food and telephone."⁵⁸ Ruth Gagnon, Director General of the Elizabeth Fry Society of Quebec, told the committee, however, that in general, "people earn \$4, \$4.50 and \$5, no more" before the deductions.⁵⁹

While visiting prisons, the committee heard from many federally-sentenced persons that a recent change to the CSC's purchasing system requires them to buy clothing, shoes and other items not supplied by the CSC through a catalogue. All items purchased through the catalogue come from one supplier. With no way to shop for better prices, federally-sentenced persons are forced to pay exorbitant prices. For instance, a pair of Levi's 550 Relaxed Fit Jeans costs \$100.49 through the catalogue or \$69.99 at clothing retailer

⁵⁵ RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

⁵⁶ Ibid.

⁵⁷ See, e.g.: RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociological Studies, University of Toronto); RIDR, *Evidence*, 4 October 2017 (Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, as an individual).

⁵⁸ RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec); Correctional Service of Canada, "[Offender Program Assignments and Inmate Payments](#)," *Commissioner's Directive 730*.

⁵⁹ Ibid.

Mark's.⁶⁰ To put things in perspective, at \$6.90 per day (minus 30% for room and board), it takes a federally-sentenced person 20 days to save for a pair of Levi's. Of course, these calculations do not include other necessary expenses that delay the purchase of those items, including canteen food (to supplement inadequate diet), undergarments and hygiene products.

Lack of access to justice and the rule of law

The committee is also gravely concerned by consistent reports, from across the regions visited and across different penitentiaries for men and women, that individual staff members from the CSC take retaliatory action against federally-sentenced persons who exercise their right under the CCRA to file grievances or make complaints when they believe their rights have been violated. Federally-sentenced persons with whom the committee has communicated consistently indicated that there were no repercussions for staff who retaliated against those who filed grievances. In some instances, grievances took years to resolve. The resulting climate of intimidation and fear creates a significant barrier to access to justice for federally-sentenced persons and facilitates violations of their Charter and human rights.

An example of this climate was on open display at one of the penitentiaries the committee visited. There, correctional officers conducting a job action related to the renegotiation of their collective agreement had placed a protest sticker on a box intended to receive anonymous complaints from federally-sentenced persons. In and of itself, this type of protest may not appear to be problematic. However, the sticker in question showed a correctional officer in full riot gear above a caption that read: "Correctional officers never start the fights... but we always finish them."

In addition, Sean Ellacott informed the committee that at certain penitentiaries, prison authorities appeared to obstruct access to counsel by failing to advise federally-sentenced persons of lawyers' visits.⁶¹

Inadequate, inappropriate programming not delivered in a timely fashion

The CCRA requires the CSC to "provide a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community."⁶² Properly planned correctional programs are intended to support rehabilitation and community reintegration and thereby go a long way to reduce the risk of recidivism and also enhance community safety. At the very least, completion of programming is required before federally-sentenced individuals can cascade down to lower security levels and apply for parole or other forms of conditional release.⁶³ Those in maximum security and solitary confinement, however, reported experiencing additional barriers to accessing programming, which impedes their ability to work towards early release and community

⁶⁰ Mark's, *Levi's 505 Relaxed Fit*.

⁶¹ RIDR, *Evidence*, 15 May 2017 (Sean Ellacott, Director, Prison Law Clinic, Faculty of Law, Queen's University).

⁶² CCRA, s. 76.

⁶³ RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociolegal Studies, University of Toronto, As an Individual).

programming.⁶⁴ According to witnesses, this paradox disproportionately affects federally-sentenced women, Indigenous and Black persons as well as federally-sentenced persons with mental health issues, as they are overrepresented in maximum security and solitary confinement. Committee members met with numerous individuals in maximum security and solitary confinement. Most expressed feelings of despair and hopelessness.

Nevertheless, many federally-sentenced persons and union representatives felt that the CSC's mandatory programs are not appropriately tailored to individual needs. Instead, most individuals are required to complete the same one-size-fits-all program. Only programming for individuals convicted of a sexual offence and Indigenous programming is delivered separately. As a result, much of the programming is at best repetitive and at worst irrelevant to many individuals. This was especially evident for federally-sentenced women, Indigenous, Black and ethnocultural persons, as many expressed concerns that programming is designed for federally-sentenced white males and does not reflect their rehabilitative needs.⁶⁵

Moreover, since the nature of an individual's conviction can make them a target for violence from others – sexual offences, for example – those who could benefit from certain aspects of a program may hesitate to participate actively, thus reducing any benefit from the program. During its site visits, the committee heard from several federally-sentenced persons that they were denied access to programming for various reasons including capacity, staffing and security classification, sentence duration and what seemed to be overly rigid entry requirements. Many expressed they felt unprepared for their imminent release and desperately wanted to access programming to help them successfully reintegrate into society. The committee was also informed that those returning to the penitentiary were not permitted to re-enter programs they had already accessed during a previous sentence.

Additionally, many men and women expressed a desire to use their time in prison to engage in educational upgrading, including post-secondary education and vocational training. With the exception of CORCAN jobs that are available in some of the prisons, even after very long sentences, most leave prison with no more skills than when they entered.

Insufficient access to gradual and structured release

Witnesses agreed that a gradual and structured release supports successful reintegration.⁶⁶ The Auditor General stressed that the CSC is failing to prepare federally-sentenced persons

⁶⁴ RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada; Diana Majury, President, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 1 March 2017 (Akwas Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto); RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada).

⁶⁵ RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an individual); RIDR, *Evidence*, 18 October 2017 (Maxcine Telfer, Director General, and Aundre Green-Telfer, Managing Director, Ethnocultural Programs and Services, Audmax Inc.).

⁶⁶ RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada); RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociological Studies, University of Toronto, As an Individual); RIDR, *Evidence*, 5 April 2017 (Anita Desai); RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada).

for release in a timely manner and that these failures have a disproportionate impact on women, Indigenous Peoples and Black individuals.⁶⁷ A number of federally-sentenced persons with whom the committee met during its site visits felt they did not have the skills or support necessary to successfully reintegrate into the community. These concerns were particularly acute amongst women, Indigenous and Black persons and are discussed in more detail below.

A number of witnesses were also concerned about the difficulty that federally-sentenced persons have in accessing mechanisms that will allow them to reintegrate gradually, like escorted and unescorted temporary absences, day parole and full parole. Federally-sentenced persons also told senators that escorted temporary absences are routinely cancelled at the last minute due to policy changes that require security staff to provide some or all of the escorts previously provided by volunteer CSC-trained citizen escorts and cause staffing shortages. Some witnesses suggested that the inadequate preparation of federally-sentenced persons for release is the outcome of the CSC's undue focus on security risks while individuals are under warrant. Other interlocutors indicated that staffing cuts had increased parole officer caseloads to unmanageable levels, making it exceptionally difficult for a parole officer to spend adequate time ensuring that individuals are prepared for release at the earliest opportunity.⁶⁸

Witnesses argued that the CSC's failure to effectively resource strategies for gradual release are likely to have a long-term negative effect on communities because the vast majority of federally-sentenced persons will eventually find themselves back in the community.⁶⁹ More needs to be invested in community- versus correctionally administered educational and vocational programs to avoid recidivism upon release. The message was clear: either invest in correctional programming both within the institution and the community now or pay more for incarceration later.⁷⁰

Witnesses also suggested ways that this situation could be improved. Several witnesses urged the Government of Canada to provide more support and better access to community organizations that work with federally-sentenced individuals. Anita Desai, Executive Director of the St. Leonard's Society, for example, stressed the need for more effective support from the CSC for community reintegration and suggested that the role of the non-governmental sector should be recognized in the CCRA.⁷¹ The committee notes that

⁶⁷ RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada).

⁶⁸ RIDR, *Evidence*, 15 May 2017 (Catherine Latimer; Sean Ellacott); RIDR, *Evidence*, 5 April 2017 (Anita Desai); RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociolegal Studies, University of Toronto, as an Individual).

⁶⁹ RIDR, *Evidence*, 1 February 2017 (Catherine Latimer, Executive Director, John Howard Society of Canada); RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociolegal Studies, University of Toronto, As an Individual); RIDR, *Evidence*, 5 April 2017 (Anita Desai); RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada).

⁷⁰ RIDR, *Evidence*, 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law; Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa); RIDR, *Evidence*, 8 February 2018 (Sophia Brown Ramsay, Vice-Chair and Manager, Community Development, Black Community Action Network of Peel, Regional Ethnocultural Advisory Committee).

⁷¹ RIDR, *Evidence*, 5 April 2017 (Anita Desai).

Quebec's correctional legislation specifically references the role of civil society organizations,⁷² a model that Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec, indicated allows non-profit organizations to be involved in reintegration.⁷³ The committee notes that the wording in Quebec's legislation is stronger than the more generic wording of sections 77 and 80 of the CCRA.⁷⁴

Ms. Desai also argued that more relevant correctional programming could be delivered by expanding peer-mentoring in-reach programs in penitentiaries and in community corrections that employ individuals with lived imprisonment experience. In her view, such programs represent "a cost-effective approach that enhances reintegration and rehabilitative processes and can be used to enhance the capacity of prisoners to support themselves, as well as their capacity to support others."⁷⁵ Overall, many witnesses argued that too many people are spending too much time in penitentiaries, at great cost to the taxpayer and with negligible benefit to public safety.

Inadequate health care

The committee's study has highlighted the complex relationships between physical and mental health, and between health and disability – both within penitentiaries and in community corrections. Some witnesses informed the committee that the correctional environment can create or amplify physiological and psychological issues. Indeed, persons with mental health needs are overrepresented in the federal correctional system (see the subsection of this report, *Mental Health*) and those with physiological issues are on the rise.⁷⁶

Law professor Adeline Iftene informed the committee that within penitentiaries:

[t]here is a chronic lack of specialists, with very long waiting times to see somebody. There are many penitentiaries that do not have 24/7 nurses available and the reply to emergency care is very problematic. There is a significant limit in the number of escorts that exist in a penitentiary who can take an individual to their community medical appointments. Therefore, many [federally-sentenced persons] are not able to see the outside doctors because they do not have an escort. Their access to medication is restricted because of the lack of drugs available in the drug formulary. Many of these drugs are of inadequate quality or they are not able to address some of the illnesses, particularly chronic pain.⁷⁷

Similar problems have also been brought to the committee's attention by federally-sentenced persons across Canada.

⁷² *An Act Respecting the Québec Correctional System*, c. S-40.1, ss. 110 – 115.

⁷³ RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

⁷⁴ Ibid.; CCRA, ss. 77 and 80; see also *An Act Respecting the Québec Correctional System*, c. S-40.1, ss. 110 – 115.

⁷⁵ RIDR, *Evidence*, 5 April 2017 (Anita Desai).

⁷⁶ RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada); RIDR, *Evidence*, 26 March 2018 (Adeline Iftene); RIDR, *Evidence*, 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law).

⁷⁷ RIDR, *Evidence*, 26 March 2018 (Adeline Iftene).

These systemic problems disproportionately affect the growing population of federally-sentenced persons over the age of 50, a group that has high rates of mental, terminal and chronic illness. Many older individuals with disabilities that decreased their mobility have been “placed in institutions where there were stairs and no working elevators. They had to walk long distances between buildings, in record time, under threat of punishment if they were late. They had to stand outside in the cold for an hour every morning to pick up their lifesaving medication.”⁷⁸ Medical supplies needed for managing chronic conditions, like extra pillows and blankets, braces, and heating pads, are prohibited in some penitentiaries.⁷⁹ Concerns were also raised about the adequacy of food for individuals on medically restricted diets, for example, those with Type 2 diabetes.⁸⁰ The committee heard similar concerns during its site visits. Senators were also told of months-long waiting times for routine repairs to be made to wheelchairs and inadequate, restricted or irregular access to elevators for individuals with limited mobility.

Witnesses identified end of life care as another concern for federally-sentenced persons, and indicated that there were very few halfway houses that were equipped to handle the health care needs of palliative patients.⁸¹ Adeline Iftene also debated the validity of consent to medically assisted dying given by federally-incarcerated persons, since the CSC’s policies do not require the conditional release of terminally ill individuals before they make the decision to request a medically assisted death.⁸² In other words, terminally-ill federally-sentenced persons are faced with two choices: live out the rest of their days in a penitentiary, with “no systemic access to palliative care,” or undergo medically assisted death.⁸³ Ms. Iftene explained:

The request for assistance in dying takes place in prison. The assessment takes place in prison. Only the actual procedure, the one syringe that they get, takes place in a community hospital. I believe this calls into question the validity of the consent of somebody who opted for assisted dying when the other options were isolation and lack of proper medication in an institution unable to attend to their health care needs.⁸⁴

Moreover, criteria for conditional release focus on the completion of correctional programs and release planning and are not flexible enough to account for decreased risk based on age, disease or physical incapacity.⁸⁵

Individuals with chronic illnesses, such as those with mental health needs, are also more likely to be subject to disciplinary action and placed in administrative segregation.⁸⁶ The CCRA states that the “purpose of administrative segregation is to maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with

78 Ibid.

79 Ibid.

80 RIDR, *Evidence*, 15 May 2017 (Sean Ellacott).

81 Ibid.

82 RIDR, *Evidence*, 26 March 2018 (Adeline Iftene); Office of the Correctional Investigator, *Annual Report 2016-2017*, pp. 18 – 20.

83 RIDR, *Evidence*, 26 March 2018 (Adeline Iftene).

84 Ibid.

85 Ibid.

86 Ibid.

other inmates.”⁸⁷ The CSC interprets the CCRA broadly. As mentioned by Jason Godin, the National President for the Union of Correctional Officers, administrative segregation is used “to separate an inmate from general population for a multitude of reasons, such as preventing inmate-on-inmate assaults, inmate-on-staff assaults, self-harming inmates that need direct observation, disciplinary cases and those inmates that seek protection for numerous reasons.”⁸⁸ People placed in administrative segregation are often removed from the general population and isolated in a cell for 23 hours a day with limited contact with other human beings or access to programming. In his 2016-2017 report, the Correctional Investigator refers to administrative segregation as solitary confinement.⁸⁹

The Revised United Nations Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules) define solitary confinement as the “confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.”⁹⁰

It is widely accepted that solitary confinement can have long term, irreversible and negative effects, especially when it is used in excess of 15 days. For those with mental health issues, the effects of segregation can be amplified and irreparable. As stated by Archibald Kaiser, professor of psychiatry:

Obviously, there is a universal chorus of opinion that this is damaging to persons who are already vulnerable and that even for persons who don’t appear to be mentally unwell that the use of solitary confinement will virtually guarantee a deterioration of their mental and social functioning.⁹¹

In addition, older federally-sentenced persons who are particularly vulnerable to abuse may be placed in protective custody or in mental health units, in what amounts to segregated conditions, which isolates them and can have negative effects on their health, social relationships and their ability to access health care.⁹²

Federally-sentenced persons also provided the committee with disturbing personal accounts of health and dental care services, most often involving doctors or dentists hired by the CSC on contract. On the other hand, some federally-sentenced persons had a more positive view of certain mental health nurses and clinical social workers with whom they were in contact but felt that they had inadequate access to these professionals, especially outside of normal business hours. In other words, a mental health crisis should occur between 9:00 a.m. to 5:00 p.m., Monday to Friday in order for the affected individual to receive help. Overall, the committee has heard many examples of how security concerns of staff routinely trump health – especially mental health – needs of prisoners.

⁸⁷ CCRA, s. 31(1).

⁸⁸ RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

⁸⁹ Ivan Zinger, *Annual Report of the Correctional Investigator 2016-2017*, Office of the Correctional Investigator.

⁹⁰ United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*.

⁹¹ RIDR, *Evidence*, 26 March 2018 (Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Dalhousie University).

⁹² RIDR, *Evidence*, 26 March 2018 (Adeline Iftene).

The committee heard that many medications with which prisoners enter the penitentiaries are changed or terminated by the prison's medical practitioners.⁹³ The committee was also told that federally-sentenced persons are released with a very limited supply of medication and no prescriptions for renewal. This is so even where anti-psychotic medication has been prescribed. Obtaining prescriptions for such medications can be extremely challenging, especially for individuals with a history of substance abuse.⁹⁴ This is further complicated by the fact that many federally-sentenced persons are released from penitentiaries without provincial health cards and lack the supporting identification and financial means necessary to obtain them.⁹⁵

To begin addressing some of the problems with prison health care, several witnesses suggested transferring federally-sentenced persons from penitentiaries to provincial health care facilities.⁹⁶ As many witnesses pointed out, this is not a novel idea. Section 29 of the CCRA enables the CSC to transfer federally-sentenced persons in its custody to provincial health care facilities.⁹⁷ The advantage of such agreements is to move federally-sentenced persons away from the CSC's inadequate health care services into facilities equipped and staffed to provide appropriate and desperately needed care.⁹⁸

Anita Desai urged federal and provincial governments to cooperate to improve the delivery of health care services for federal prisoners and in community-based residential facilities, as well as the adoption of innovative approaches to manage a growing population of older federally sentenced persons.⁹⁹ Adeline Iftene suggested creating a new system of compassionate release under the CCRA that would be designed to deal with the complex needs of aging prisoners, including those who are serving life sentences.¹⁰⁰ Other witnesses proposed the adoption of innovative approaches to manage a growing population of older federally sentenced persons.¹⁰¹

Corrections and Conditional Release Act

Transfers

29. The Commissioner may authorize the transfer of a person who is sentenced, transferred or committed to a penitentiary to ...

(b) a provincial correctional facility or hospital in accordance with an agreement entered into under paragraph 16 (1) (a) and any applicable regulations.

⁹³ RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada)

⁹⁴ RIDR, *Evidence*, 15 May 2017 (Julie Langan).

⁹⁵ See: CSC, *Evaluation of CSC's Health Services*, File 394-2-96, March 2017.

⁹⁶ RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies).

⁹⁷ Ibid.; RIDR, *Evidence*, 14 June 2017 (Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission); RIDR, *Evidence*, 21 March 2018 (Emma Halpern); CCRS, s. 29 (16).

⁹⁸ RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies).

⁹⁹ RIDR, *Evidence*, 5 April 2017 (Anita Desai).

¹⁰⁰ RIDR, *Evidence*, 26 March 2018 (Adeline Iftene).

¹⁰¹ RIDR, *Evidence*, 5 April 2017 (Anita Desai).

The committee recalls that the CSC has a statutory obligation to provide federally-sentenced persons with essential health care that conforms to professionally accepted standards. It must take a federally-sentenced person's state of health and health care needs into consideration in all decisions affecting that person.¹⁰² Canada also has an international obligation to ensure medical service and medical attention in the event of sickness and an obligation to provide equality of opportunity for people to enjoy the highest attainable level of health.¹⁰³ The non-binding Nelson Mandela Rules, which synthesize the human rights standards applicable in a prison context and were commended by witnesses, specify that "[p]risoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status."¹⁰⁴

¹⁰² CCRA, ss. 86, 87(a).

¹⁰³ *International Covenant on Economic, Social and Cultural Rights*, art. 12(1), 12(2)(d).

¹⁰⁴ United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Rule 24.

EQUALITY AND NON-DISCRIMINATION

In the committee's study it became clear that the situation of federally-sentenced persons belonging to vulnerable and marginalized groups has to be examined closely. In particular, the committee has heard evidence about the situation of federally-sentenced women, individuals who identify as Indigenous or Black and other racialized persons, as well as those with mental health concerns. This section provides a brief overview of the evidence presented to the committee with respect to the experiences of these groups in the federal correctional system.

Demographics of the Federal Correctional Population

The CSC reported that it was responsible for 22,872 federally-sentenced persons during the fiscal year 2015–2016. Of those, 14,639 were in federal penitentiaries while 8,233 were under community supervision.¹⁰⁵ According to the Office of the Correctional Investigator's *Annual Report 2016-17*,

- 26.4% of the incarcerated population is made up of federally-sentenced Indigenous persons;¹⁰⁶
- 8.6% of the incarcerated population is made up of federally-sentenced Black persons;¹⁰⁷
- 4.7% of the total incarcerated population is made up of federally-sentenced women;¹⁰⁸
- 37.6% of federally-sentenced women in penitentiaries are Indigenous;¹⁰⁹ and
- 5.6% of federally-sentenced women in penitentiaries are Black.¹¹⁰

Key Concepts: Equality and Discrimination

Formal Equality refers to identical treatment of individuals who are similarly situated. It does not take into account whether identical treatment may have different effects on different groups, or attempt to remedy historic disadvantages.

Substantive Equality is concerned with the ultimate impact of a law, program, service or other measure on those to whom it applies. Substantive equality takes full account of systemic social, political, economic and historic disadvantages that affect different groups of people. Recognizing that identical treatment may, in some cases, result in serious inequality, it allows distinctions in treatment in some contexts to accommodate differences.

Discrimination "is an action or a decision that treats a person or a group negatively for reasons such as their race, age or disability."

(Canadian Human Rights Commission, "What is Discrimination?")

¹⁰⁵ CSC, *CSC Statistics – Key facts and figures*.

¹⁰⁶ Office of the Correctional Investigator [OCI], *Annual Report of the Office of the Correctional Investigator 2016-2017*.

¹⁰⁷ Ibid.

¹⁰⁸ The percentage is based on the number for the total population provided by the CSC and the total number of federally sentenced women provided in the OCI's annual report.

¹⁰⁹ OCI, *Annual Report of the Office of the Correctional Investigator 2016-2017*.

¹¹⁰ Ibid.

Louise Bradley, President and CEO of the Mental Health Commission of Canada, told the committee that “as many as 80% of federally sentenced persons have a substance abuse problem.”¹¹¹

The CSC determines security classification levels (e.g., minimum, medium, or maximum security) using the Custody Rating Scale. All individuals in federal penitentiaries are assessed using this scale when they are first institutionalized. The scale was designed in the late 1980s and was nationally implemented in 1991.¹¹² Witnesses emphasized that the sample of individuals used to develop the Custody Rating Scale was predominantly composed of white males. Witnesses also expressed serious concerns regarding the accuracy of its results for women, Indigenous Peoples, Black persons or other racialized groups and the existence of systemic discrimination in the classification process.¹¹³

Without a reliable classification tool, witnesses informed the committee that some groups will be consistently and systemically placed at too high a security level and assigned correctional programs they do not need. This negatively affects their preparation for parole. The CSC has recognized that problems exist when the tool is applied to women and has considered possibilities for reform. Unfortunately, it has not taken steps to modify the scale “to consider uniquely the risks of women.”¹¹⁴

Kelly Hannah-Moffat emphasized that the CSC’s security classification and categorization processes do not take contextual factors into account, which is particularly important where gendered forms of violence are involved.¹¹⁵ For instance, she stated that “having participated in any type of violent relationship, as was the case with self-injury or having a mental health issue,” would seem to escalate an individual’s perceived potential for violence in the future according to the classification process, adding that the empirical basis for such assessments was unclear.¹¹⁶ Ms. Hannah-Moffat added that security assessments were also often devoid of context. For example, a woman could be considered to have aggressive behaviour for striking a person with whom she was in a violent relationship and who was physically threatening towards her.¹¹⁷ She also stressed that similar issues exist with respect to security classifications for Indigenous and racialized individuals. As a result, women, particularly Indigenous and racialized women, are ending up in unduly harsh and restrictive conditions even though many would not consider them to be security risks. The committee witnessed this first-hand during site visits.

¹¹¹ RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

¹¹² Brian A. Grant and Fred Luciani, “[Security Classification Using the Custody Rating Scale](#)” *Research Branch of the Correctional Service of Canada*, February 1998, p. 1.

¹¹³ RIDR, *Evidence*, 1 March 2017 (Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociolegal Studies, University of Toronto, As an Individual); RIDR, *Evidence*, 25 October 2017 (Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic); RIDR, *Evidence*, 3 May 2017 and RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

¹¹⁴ RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada); CSC, [An Examination of a Reweighted Custody Weighting Scale for Women](#), Publication No. R-289, February 2014.

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

¹¹⁶ Ibid.

¹¹⁷ Ibid.

Recently, in a case brought by a federally-sentenced Métis man, the Supreme Court of Canada held that the CSC breached its obligation under section 24(1) of the CCRA to take all reasonable steps to ensure that any information about a federally-sentenced person is as accurate as possible because it had relied on five psychological and actuarial risk assessment tools that had not been scientifically validated for use in respect of Indigenous Peoples.¹¹⁸ The Court stated that the CSC had long been aware of the possibility that these tools exhibited cultural bias, but failed to undertake the research necessary to confirm their validity and continued using them in respect of federally-sentenced Indigenous Peoples.¹¹⁹

For similar reasons, some witnesses also criticized the CSC's use of the risk assessment tool to evaluate federally-sentenced women. Savannah Gentile, the Director of Advocacy and Legal Issues for the Canadian Association of Elizabeth Fry Societies, echoed a recommendation made by Moira A. Law in a report to the CSC in 2007 that recommended that all women begin at minimum security.¹²⁰ As Ms. Gentile explained:

The idea was to give them something to lose. Women are not a security risk, by and large. In fact, the majority of women in prison are there for non-violent property-related and poverty-related offences. They are not a risk to the community and they are, even by CSC's own tools, largely classified as such.¹²¹

Federally-sentenced Women

Federally-sentenced women are a complex, heterogeneous group. Their diversity not only stems from their racial and ethnic backgrounds, but also from their age, sexuality, socioeconomic class and gender identities.¹²² Moreover, it is estimated that up to two thirds of federally-sentenced women suffer from mental health issues, most have experienced violence and abuse and a large number have drug dependency problems.¹²³ It was also mentioned that the circumstances in which women are criminalized and imprisoned are much different than those of their male counterparts (e.g. compared to their male counterparts, federally-sentenced women are twice as likely to have a serious mental health diagnosis and twice as likely to be serving a sentence for drug-related offences).¹²⁴ For these reasons, policies and programming that address the distinct and diverse needs of federally-sentenced women are essential for women's rehabilitation.¹²⁵

¹¹⁸ Ewert.

¹¹⁹ Ibid.

¹²⁰ RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies)

¹²¹ Ibid.

¹²² RIDR, *Evidence*, 8 March 2017 (Sarah Turnbull, Lecturer in Criminology, School of Law, University of London, as an individual).

¹²³ RIDR, *Evidence*, 1 February 2017 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada).

¹²⁴ RIDR, *Evidence*, 8 March 2017 (Sarah Turnbull, Lecturer in Criminology, School of Law, University of London, as an individual); Howard Sapers, *Annual Report of the Office of the Correctional Investigator 2014-2015*, Office of the Correctional Investigator.

¹²⁵ RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec).

Non-Discrimination in the Provision of Correctional Services

Anne Kelly, then Senior Deputy Commissioner of the CSC, told the committee that the CSC has adopted:

a holistic, research-based, women-centred approach for managing the rehabilitation of women offenders. We have developed correctional environments and interventions that are gender, culturally and trauma informed. We have implemented services and training opportunities designed specifically for women offenders. We strive to provide a safe and supportive environment that fosters opportunities. Our approach is to empower women to live with dignity and respect, and to help women offenders rebuild their lives as law-abiding citizens while creating safer communities for all Canadians.¹²⁶

A number of witnesses, however, informed the committee that little progress has been made since the construction of women-only prisons in the mid-1990s. Alia Pierini, a woman who served time in the federal system, stated that while she was incarcerated, “nothing specific was given to women.”¹²⁷ She also indicated that she has not seen any improvement during the time that she has worked as a regional advocate for the Canadian Association of Elizabeth Fry Societies. Ruth Gagnon argued that any progress that was made pursuant to *Creating Choices*, the recommendations of the Task Force on Federally Sentenced Women, has since been negated by increasing the security levels of those penitentiaries.¹²⁸

Corrections and Conditional Release Act

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.

¹²⁶ RIDR, *Evidence*, 1 February 2017 (Anne Kelly, Senior Deputy Commissioner, Correctional Services of Canada).

¹²⁷ RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

¹²⁸ RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General (Elizabeth Fry Society of Quebec)).

Federally-sentenced women expressed concerns about the relevance and quality of programming, as well as access to programs. As the Auditor General told the committee, however, the “Correctional Service of Canada did not provide women ... with the rehabilitation programs they needed when they needed them.”¹²⁹ While access to programming is also an issue for the male population, the committee was informed that women, and particularly Indigenous women, are disproportionately affected because the Custody Rating Scale inappropriately identifies many women as high risk. As a result, they are placed in higher security facilities, where living conditions are harsher, family visits are less frequent, and programming is scarce. Again, these barriers impede the ability of federally-sentenced women to access parole or other forms of conditional release and successfully reintegrate.

Emma Halpern, Executive Director of the Elizabeth Fry Society of Mainland Nova Scotia, explained that even in the community, inadequate programming and support create significant obstacles to successful reintegration for federally-sentenced women. For example, she said that day parole and full parole are rarely available in women’s home communities in Atlantic Canada because the only half-way houses are located in urban centres.¹³⁰ A letter received by the committee from federally-sentenced women at the Grand Valley Institution for Women in Kitchener who have been granted day parole raises similar issues. A number of women who have been granted day parole remain imprisoned because they have not been able to secure a space in overcrowded women’s community-based residential facilities. Although the CCRA permits the Parole Board of Canada to impose residency conditions requiring those on day parole to return each night to a location other than a community-based residential facility, the women argue that in practice, other residency options are not developed or made available to them.

Moreover, according to Ms. Halpern, the community resources and supports for women coming out of federal penitentiaries in Atlantic Canada are inadequate: some women wait almost a year for a mental health appointment, and many weeks to get into drug addiction and detox programs. Women released at their statutory release date may have nowhere to go and end up homeless. This does nothing to help these women reintegrate. She argued that women who are marginalized, including those seeking to reintegrate into the community after serving time in the federal correctional system, need “wraparound services, mentorship and community-led navigation,” including trauma counselling, mental health services, addictions treatment, good access to health care, safe and secure housing, and access to employment.¹³¹

Witnesses also pointed out to the committee that federally-sentenced Indigenous, Black and other racialized women face even greater barriers to the enjoyment of their human rights than do other women. Specialized services for Indigenous women are frequently limited and under-resourced. In addition, the only section 81 and 84 options currently being made available to women are in two healing lodges for women in the Prairies (one is a CSC-run penitentiary; the other is contracted out to a community not-for-profit agency). Some beds in community-based residential facilities are funded pursuant to section 84, but no individualized contracts have been negotiated, even though 37.6% of federally-

¹²⁹ RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

¹³⁰ RIDR, *Evidence*, 21 March 2018 (Emma Halpern).

¹³¹ Ibid.

sentenced women are Indigenous. This is a missed opportunity. Healing lodge correctional facilities, with programming designed around Indigenous values, traditions and beliefs, are often a step in the right direction, but the lack of implementation of section 81 and 84 agreements in northern, remote, as well as some urban communities interferes with the tremendous rehabilitative potential of these options, particularly for federally-sentenced Indigenous persons.¹³²

It should be noted, however, that CSC policy has limited section 81 agreements to communities that agree to build larger institutional structures. The CSC has only concluded one agreement for transfer of federally-sentenced women into the care and custody of an Indigenous community under section 81 of the CCRA, in Edmonton, Alberta. There are no existing agreements of this nature between the CSC and Indigenous communities east of this region, and the committee has not been apprised of any efforts to increase the number of these agreements.¹³³ Anecdotal information received during site visits indicates that at least some individual members of the Parole Board of Canada appear to be entirely unaware of the existence of section 84 of the CCRA, a companion provision to section 81, which provides for the release of individuals to Indigenous communities. Using these provisions of the CCRA with their full legislative intent would facilitate the development of community-based, individualized or small group alternatives to prisons that would provide better options for Indigenous prisoners, in particular, and reduce incarceration rates overall.¹³⁴

Culturally relevant programming for Black women seems to be extremely limited, based on information provided by witnesses and federally-sentenced persons. Information gathered during site visits indicates that providing culturally-relevant programming and support for women from other racialized groups appears to be almost non-existent in some regions. For instance, when the committee asked about East Asian prisoners in one correctional facility, CSC personnel appeared perplexed.

During the committee's site visits, Black women told Senators that the CSC's standard issue hygiene products made their hair fall out and dried their skin; they were also unsuccessful in having appropriate discretionary beauty products added to canteen lists or in having adequate quantities of these products stocked, despite the availability of similar products for white women. Women told senators that correctional staff in parts of the country without significant Indigenous populations arbitrarily denied them access to culturally relevant items, such as beads, that are widely available in other regions, and that Elder services in such areas are highly valued but inadequately staffed and resourced.

However, federally-sentenced women repeatedly noted that CSC staff members who shared their cultural or racial heritage were able to contribute, at least to some degree, to finding temporary solutions to these systemic problems. In more than one region, senators also heard shocking stories of outright racism towards Black, Indigenous and other

¹³² OCI, *Annual Report 2016-2017*. One healing lodge is located in Edmonton, Alberta and the other is located on the Nekaneet First Nation, near Maple Creek, Saskatchewan: Correctional Service of Canada, *Correctional Service Canada Healing Lodges*.

¹³³ CSC, "Follow-Up Response, The Senate Standing Committee on Human Rights (RIDR) Regarding Human Rights of Prisoners in the Federal Correctional System, Wednesday 1 February 2017," [CSC Follow-up response, 2017].

¹³⁴ RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations); RIDR, *Evidence*, 21 March 2018 (Claire McNeil, Lawyer, Dalhousie Legal Aid Service; Vince Calderhead, Lawyer).

racialized individuals who work or are incarcerated in federal penitentiaries, including overtly racist comments and harassment by CSC staff, failures by staff to react to racist taunts from other staff or prisoners, as well as the arbitrary denial of religious and spiritual items necessary for racialized members of minority faiths to practice their religion.

Vocational Training and Education

Witnesses and federally-sentenced persons also expressed concern about the relevance and accessibility of the CSC's employability programs, particularly CORCAN. CORCAN is a Special Operating Agency¹³⁵ within the CSC. According to the CSC, it:

offers employment training and employability skills to offenders in correctional institutions, to support rehabilitation and help lower rates of reoffending. ... As a key rehabilitation program for CSC, CORCAN uses on-the-job training to help offenders develop and practise essential employment skills. CORCAN also offers third party-certified vocational training in areas where the labour market is growing, including construction, trades and entrepreneurship training. Through CORCAN, offenders can get valuable on-the-job training that prepares them for jobs in trades such as carpentry, cabinet making, mechanic, electronic, welding, and auto repair.¹³⁶

CORCAN shops in some penitentiaries for men offer training and professional certifications in a variety of trades; however, women's CORCAN shops focus primarily on textiles and laundry.¹³⁷ Therefore, in comparison to men, federally-sentenced women have less access to skilled vocational training through CORCAN in sectors where the labour market is growing and salaries are higher. Carol McCalla, Principal, Office of the Auditor General, reinforced this view when she told the committee that the Office of the Auditor General ended its assessment of CORCAN in women's prisons when it found that only 29 federally-sentenced women had participated in the program.¹³⁸ Overall, for both men and women, there is relatively little training in prison that adequately prepares them for employment upon release.¹³⁹

At the Joliette Institution for Women, the senators were troubled that federally-sentenced women were employed in the CORCAN shop to sew men's underwear for distribution in CSC penitentiaries. As the Correctional Investigator has pointed out, these are "gendered, stereotyped jobs."¹⁴⁰ Indeed, during certain site visits, some individual CSC staff members

¹³⁵ "Special Operating Agencies are operational organizations which have a degree of autonomy within existing departmental structures, but which remain accountable to the deputy minister." (Betty Rogers, *Special Operating Agencies: Human Resources Management Issues*, Canadian Centre for Management Development, Minister of Supply and Services Canada, 1996.)

¹³⁶ CSC, *CORCAN – Employment and Employability*.

¹³⁷ OCI, *Annual Report 2016-2017*.

¹³⁸ RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

¹³⁹ Ibid.; RIDR, *Evidence*, 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law); RIDR, *Evidence*, 26 March 2018 (Theresa Halfkenny, Chair, Atlantic Region, Correctional Services of Canada, Regional Ethnocultural Advisory Committee).

¹⁴⁰ OCI, *Annual Report 2016-2017*.

expressed the view that there is insufficient interest among women regarding skilled trades training. By contrast, federally-sentenced women specifically expressed interest to senators in learning about opportunities in these sectors and hearing from women tradespeople about their training and experiences.

The CSC requires federally-sentenced persons who have not completed high school to attend school during their sentence. It covers the costs of education up to the end of high school, but offers no financial support for post-secondary studies (including CEGEP courses in Quebec). Educational institutions and private organizations offer a very limited number of bursaries for which federally-sentenced women are eligible. Individuals in federal penitentiaries may only take post-secondary paper-based correspondence courses, since they do not have Internet access.¹⁴¹ Consequently, there are few opportunities for individuals to upgrade their skills.

The committee received a brief which supported the value of education in prison generally. It contained the following statements:

- Involvement in Correctional Education decreases recidivism by approximately 20-30%.
- Involvement in Post-Secondary Education decreases recidivism by about 45-75%.
- Completing a Post-Secondary program decreases recidivism by up to 50-100%.
- Correctional Services Canada's own evaluation of its educational programs found \$6.37 in direct savings for every \$1 spent on education.
- Participants in Education programs generally have fewer disciplinary problems, fewer infractions, more positive relationships with other [federally sentenced persons] ... and staff, and can act as a 'calming influence'.
- Children of [those] ... who take part in Education programs report more motivation to succeed in school.
- Participants in Education demonstrate improved employability and earning potential.
- Participants in Education programs show improvements in overall mental health.¹⁴²

The committee learned about an innovative program named "Walls to Bridges" at Grand Valley Institution for Women. For the first time since university courses were terminated for federally-sentenced women at the now closed Kingston Prison for Women (P4W) in 1992, the program offers federally-sentenced women the opportunity to take Wilfred Laurier University courses within the penitentiary, alongside university students from the community. The program appears to be popular and successful in supporting

¹⁴¹ "Acheron College," Grand Valley Institution for Women, brochure provided to Committee during site visit.

¹⁴² Correctional Service of Canada, "Impact of Correctional Education," presentation provided to the Committee by Peter Stuart, Acheron College, Grand Valley Institution for Women.

reintegration.¹⁴³ The committee was informed by women at the Grand Valley Institution for Women that space is limited. Acquiring funding to pay tuition fees also presents an insurmountable obstacle for many. Moreover, since federally-sentenced women (and men) do not have access to the Internet, completing assignments and coursework can be difficult. Although it appears that the program could be strengthened in a number of ways, the committee believes that it could provide a starting point as a model for other regions. The committee also believes the CSC should provide prisoners with computer and limited Internet access for the purposes of maintaining familial and community support and integration options, as well as for educational – particularly post-secondary – and vocational training.

Domestic Violence, Trauma and Abuse

The committee also heard that the justice and correctional systems struggle to deal appropriately with women who have been victims of domestic violence, childhood abuse or other forms of trauma. For example, Nancy Wrenshall, a former warden at the CSC's women's penitentiaries, told the committee that women who kill their abusive partners tend to receive harsher sentences, including mandatory periods at higher security, than men who kill their female intimate partners. She also stated that in her experience, federally-sentenced women were sometimes denied parole based on discriminatory and uninformed understandings of the nature of domestic violence.¹⁴⁴ Ms. Hannah-Moffatt explained that the decision to classify women at higher security levels and deny parole stems from problematic assumptions in classification tools, for example, that having been in an abusive relationship is predictive of future violence for victims of abuse.¹⁴⁵

Halina Haag, Researcher, Acquired Brain Injury Research Lab, University of Toronto, told the committee that many federally-sentenced women have experienced domestic violence, and women who have experienced domestic violence are known to be at higher risk for traumatic brain injuries.¹⁴⁶ Traumatic brain injuries have the potential to affect the ability of an individual to comply with directions and adjust to institutional routines, or to successfully complete correctional programming.¹⁴⁷ Although the committee was informed during site visits that penitentiaries have some ability to treat and accommodate women with traumatic brain injuries where such injuries are diagnosed, the CSC does not appear to screen for such pre-existing injuries as a matter of routine, nor do penitentiaries appear to offer long-term treatment or accommodation for this form of disability in a systematic way.

Emma Halpern told the committee that “[t]he women we work with have tremendous amounts of trauma in their lives from their childhood and ongoing and are not receiving

¹⁴³ RIDR, *Evidence*, 8 February 2018 (Halina (Lin) Haag, PhD Student, Faculty of Social Work, Wilfrid Laurier University and Researcher, Acquired Brain Injury Research Lab, University of Toronto, As an Individual).

¹⁴⁴ RIDR, *Evidence*, 4 October 2017 (Nancy Wrenshall, as an individual).

¹⁴⁵ RIDR, *Evidence*, 4 October 2017 (Kelly Hannah-Moffatt, Vice-President Human Resources & Equity and Professor of Criminology and Sociological Studies, University of Toronto, as an Individual).

¹⁴⁶ RIDR, *Evidence*, 8 February 2018 (Halina (Lin) Haag, Researcher, Acquired Brain Injury Research Lab, University of Toronto, As an Individual); RIDR, *Evidence*, 8 March 2017 (Bonnie Brayton, National Executive Director, Disabled Women's Network of Canada).

¹⁴⁷ RIDR, *Evidence*, 8 February 2018 (Halina Haag).

the supports that they need to be able to be successful, in order to work and to be in our communities.”¹⁴⁸ It became evident during fact-finding visits that the CSC’s programming and mental health services are not directed at addressing the underlying trauma, such as childhood sexual abuse or domestic violence, which often directly contributes to women’s criminalization. The CSC claims to have some capacity to provide mental health supports in relation to these issues, but these seem to be predicated on the issues being raised specifically by federally-sentenced women. Some federally-sentenced men who had underlying psychological conditions like post-traumatic stress disorder or who had been the victims of childhood sexual abuse also indicated to the committee that they received no long-term treatment or counselling to deal with underlying trauma that resulted in criminalization.

Family Visits

Maintaining family connections is an important component of community integration.¹⁴⁹ While families of federally-incarcerated persons are able to visit penitentiaries, the process for family members to gain access to their loved ones was described to the committee as “intimidating,” “humiliating and demeaning.”¹⁵⁰ The committee heard that the intensity of screening, the difficulty of obtaining information about their security status, and the lack of information about how families can advocate for themselves have reduced the number of families visiting federal penitentiaries.¹⁵¹ Visits can be cancelled for various reasons including security (e.g., institutional lock down), because of a segregation placement, as a punitive measure or due to staffing shortages. As one witness stated:

At the end of the day I didn't see my son for the last year of my incarceration because of the denial of my visits. That would have been imperative to my reintegration. A huge part of my plan was obviously getting out and being a parent. I feel that I did not have adequate time and visits with my son. Especially in segregation I never got one visit. There were days when I didn't get phone calls home to call my son.¹⁵²

One witness expressed the view that the cancellation of family visits and prohibitions on visiting children for security reasons disproportionately affect federally-sentenced Black women, in part because of racist and sexist stereotypes that result in them being perceived to be more threatening and higher risk.¹⁵³

Federally-sentenced women told senators that escorted temporary absences for the purpose of visiting children, who already have very limited contact with their incarcerated

¹⁴⁸ RIDR, *Evidence*, 21 March 2018 (Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia).

¹⁴⁹ RIDR, *Evidence*, 15 May 2017 (Margaret Holland, Canadian Families and Corrections Network, Ontario Co-ordinator, Visitor Resource Centres).

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

¹⁵³ RIDR, *Evidence*, 26 March 2018 (El Jones, Nancy’s Chair in Women’s Studies, Mount Saint Vincent University, as an individual).

parent, are regularly cancelled due to staffing shortages. In some penitentiaries, senators were told of restrictions on the number of family members who could attend special events. Women did not believe there was any flexibility with regard to these restrictions, nor did they perceive that unique individual circumstances could be taken into account. Cancellation and limitations on family visits, particularly visits with children, was also one of the most common concerns raised by men that senators spoke with in federal penitentiaries.

The failure of the CSC to ensure regular family visits appears to have a greater detrimental impact on federally-sentenced women, who are more likely to have been sole caregivers for their children prior to entering the correctional system. Women, however, do not receive the same level of family support as men. The smaller number of women's institutions means that many federally-sentenced women are located far away from their families, resulting in fewer visits and a loss of connection. In this context, witnesses suggested that the CSC needs to do more to support incarcerated women in maintaining family ties. This is especially the case for federally-sentenced Indigenous women who are more likely to be placed in maximum security and therefore most affected by restrictions on family visitations.

The CSC should recognize the importance of the mother-child bond and the negative effects of separating children from their mothers. As stated by Debbie Kilroy, "[f]orced separation as a result of imprisonment traumatizes women and their children.... Children with parents in prison experience significant trauma and poor social outcomes," which may include ending up in the child welfare system, the prison system, or both.¹⁵⁴ Useful first steps could include removing barriers to mother-child programming and family visits to the greatest extent possible, and taking action to ensure that penitentiaries are adequately staffed in order to avoid the cancellation of Escorted Temporary Absences in all but the most exceptional circumstances.¹⁵⁵ With regards to federally-sentenced Indigenous women, the CSC could increase the use of section 81 and 84 transfers to Indigenous communities and make such contractual arrangements more accessible to families of federally-sentenced Indigenous women.

During its visit to the Nova Institution for Women in Truro, Nova Scotia, the committee was encouraged to learn that the CSC was planning a trial allowing video visitations with family members from their homes. This is a step in the right direction provided it is used to increase contact and does not result in fewer in-person visits. Also, pilots of families using video chat software on their own computers or smartphones are preferable to those requiring children to travel to community parole offices for video conferences. The committee will be monitoring in anticipation that such additional video access visitation will be available soon in all federal penitentiaries.

¹⁵⁴ RIDR, *Evidence*, 7 June 2017 (Debbie Kilroy, As an Individual).

¹⁵⁵ RIDR, *Evidence*, 18 May 2017 (Kim Parisé, Coordinator, Relais Famille); RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 4 October 2017 (Nancy Wrenshall, as an individual).

Volunteers

Given that women tend to have less family support than men during and following periods of federal incarceration, civil society organizations can play a very important role in their reintegration.¹⁵⁶ For instance, Chris Cowie, Executive Director of the Community Justice Initiatives, explained that through his organization's STRIDE program at Grand Valley Institution for Women in Kitchener-Waterloo, volunteers provide support to 260 federally-sentenced women within and outside the prison walls. He explained that volunteers begin their work within the prison and continue providing support once the federally-sentenced women are released in the Kitchener-Waterloo region. These volunteers, he said, often become the primary support network for the women released into the community.¹⁵⁷

The committee is concerned, however, that new security clearance rules and procedures for volunteers in penitentiaries are negatively impacting the ability of civil society organizations to provide services within penitentiaries.¹⁵⁸ During site visits, the CSC provided no evidence beyond hypothetical possibilities of the need for more stringent security and credit checks now required of volunteers. These policies are resulting in further limitation of federally-sentenced prisoners to community integration options. Diminished access by civil society groups could have a disproportionate impact on federally-sentenced women. The committee observes that this disproportionate impact is likely to be even greater with respect to the recruitment of volunteers who support Indigenous and Black women. Based on written submissions, witness testimony and information gathered during site visits, it appears that civil society organizations and community volunteers already struggle to provide support to federally-sentenced persons in the face of limited resources and time constraints; additional barriers only further reduce the support offered.

Federally-sentenced Black Persons

Between 2005 and 2015, the Black population in federal penitentiaries increased by 69%.¹⁵⁹ In 2017, Black people comprised 8.6% of the total incarcerated population in federal penitentiaries. A large percentage of these individuals are under the age of 30; in 2013, the figure was 50% compared to 31% for the general federally incarcerated population.¹⁶⁰ The largest proportions of incarcerated Black individuals were in Ontario, Quebec and the Atlantic regions. The Office of the Correctional Investigator informed the

¹⁵⁶ RIDR, *Evidence*, 8 February 2018 (Julie Thompson, Director, Community Relations, Community Justice Initiatives; Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); Letter to Don Head, Commissioner of the Correctional Service of Canada from Joint Effort, 14 December 2017, copied to the Standing Senate Committee on Human Rights.

¹⁵⁷ RIDR, *Evidence*, , 8 February 2018 (Chris Cowie, Executive Director, Community Justice Initiatives).

¹⁵⁸ RIDR, *Evidence*, 8 February 2018 (Julie Thompson, Director, Community Relations, Community Justice Initiatives).

¹⁵⁹ OCI, *Annual Report of the Office of the Correctional Investigator 2014-2015*.

¹⁶⁰ OCI, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, 2013.

committee that Black people were over-represented at maximum security levels, in segregation admissions and in use of force incidents.¹⁶¹

Heterogeneity of the Black Population in the Federal Correctional System

One witness explained that the subgroup “federally-sentenced Black persons” is composed of “communities that have lived in Canada for centuries, established immigrants groups from the Caribbean, as well as more recent immigrants from continental Africa.”¹⁶² In 2017, almost one quarter of incarcerated Black women were foreign nationals who could expect to be deported when their sentences were completed.¹⁶³ Each group within this population may have different needs. For instance, El Jones, Nancy’s Chair in Women’s Studies, Mount Saint Vincent University, explained that:

African Nova Scotians form a distinct population in Canada and must be recognized as a specific cultural group that is not simply lumped in with African Canadians as a whole. The specific history in this province of enslavement, of liberated slave settlements, of segregation, and of marginalization has particularly deprived our communities and contributed to the high rate of incarceration and criminalization of African Nova Scotian men and women.¹⁶⁴

The CSC uses the term “Ethnocultural offender” to refer to any non-Indigenous federally sentenced person “who has specific needs based on race, language or culture and who has a desire to preserve his/her cultural identity and practices.”¹⁶⁵ Witnesses pointed out that by categorizing such a broad range of federally-sentenced persons under the so-called “Ethnocultural offender” umbrella, the CSC ignores the vast differences within this categorization and the complexities of each sub-group. According to Mr. Owusu-Bempah, the use of this catch-all term results in a lack of culturally relevant programming: “[CSC] lump[s] together very different groups of people with very different experiences, past and present” in programming designated for “ethnocultural offenders.”¹⁶⁶ This challenge was particularly striking in some of the prisons the committee visited in Ontario, where rates of federally-sentenced Black persons are highest.

Systemic Racism

Many witnesses stressed that poverty and systemic racism contribute to disproportionate rates of incarceration for people from Black communities across Canada. Witnesses

¹⁶¹ [Letter from the Correctional Investigator to Senator Jim Munson, Chair of the Standing Senate Committee on Human Rights](#), 2 March 2017, p. 2.

¹⁶² RIDR, [Evidence](#), 1 March 2017 (Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, As an Individual).

¹⁶³ [Letter from the Correctional Investigator to Senator Jim Munson, Chair of the Standing Senate Committee on Human Rights](#), 2 March 2017, p. 3.

¹⁶⁴ RIDR, [Evidence](#), 26 March 2018 (El Jones).

¹⁶⁵ Correctional Service Canada, [“Ethnocultural Offenders: Services and Interventions,” Commissioner’s Directive 767](#).

¹⁶⁶ RIDR, [Evidence](#), 1 March 2017 (Akwasi Owusu-Bempah).

emphasized the need to address the root causes of over-incarceration within the Black community by devising early interventions for at risk Black children and youth; culturally appropriate mental health interventions; and, most importantly, recognizing and confronting systemic racism within Canadian society.¹⁶⁷ As El Jones stated:

When youth have no opportunities and when the trauma that is built up in these communities for generations results in people becoming criminalized, then we say, "Prison is the place for you to go because you can access programs there." They should not have to be accessing them in prison. They should be available in their schools and in their communities.¹⁶⁸

The committee wishes to draw attention to the fact that it has heard personal stories of racism and discrimination from almost every Black individual with whom it has had contact during its fact-finding visits. This includes persons serving sentences and those administering them. Discrimination was often based on multiple, intersecting identity factors like gender, race, language and ethnic origin. These experiences transcend the correctional environment and condition the way Black people in Canada experience the world. As one witness stated, "one aspect of anti-Black racism in the prison system is that it is not only applied to prisoners but also to Black communities, families and advocates."¹⁶⁹ Another told the committee that they would need to live a year in her skin to fully understand her testimony.¹⁷⁰

The Correctional Investigator indicated to the committee that the CSC has not addressed the systemic issues related to racism and discrimination against federally-sentenced Black persons that the OCI documented in a 2013 report.¹⁷¹ These include:

- "The prison unemployment rate in 2012–13 in federal correctional facilities was 1.5%; however, for Black inmates this rate was much higher at 7%."
- "Between 2007/08 and 2011/12, the number of disciplinary charges incurred by Black inmates increased by 59% despite the fact that the number of disciplinary charges laid over the same time period decreased by 7%."
- "Over the 5 year period [2007/08 and 2011/12], Black inmates were consistently over-represented in categories of charges

¹⁶⁷ See, e.g.: RIDR, *Evidence*, 1 March 2017 (Akwasí Owusu-Bempah); RIDR, *Evidence*, 18 May 2017 (Will Prosper, DESTA Black Youth Network); RIDR, *Evidence*, 18 October 2017 (Maxcine Telfer, Director General, Audmax Inc.); RIDR, *Evidence*, 8 February 2018 (Winston LaRose, President and Member, Jane-Finch Concerned Citizens Organization and Regional Ethnocultural Advisory Committee); RIDR, *Evidence*, 25 October 2017 (Robert Wright); RIDR, *Evidence*, 26 March 2018 (Theresa Halfkenny, Chair, Atlantic Region, Correctional Services of Canada, Regional Ethnocultural Advisory Committee).

¹⁶⁸ RIDR, *Evidence*, 26 March 2018 (El Jones).

¹⁶⁹ Ibid.

¹⁷⁰ RIDR, *Evidence*, 14 February 2018 (Denise Edwards, Former Federal Prisoner, as an individual).

¹⁷¹ [Letter from the Correctional Investigator to Senator Jim Munson, Chair of the Standing Senate Committee on Human Rights](#), 2 March 2017.

that could be considered discretionary or requiring judgment on the part of correctional officers.”¹⁷²

Non-Discrimination in the Provision of Correctional Services

A number of expert witnesses stressed the importance of culturally relevant programming and culturally-appropriate mental health care for federally-sentenced Black persons and emphasized that the failure to provide such services disproportionately disadvantaged federally-sentenced Black persons.¹⁷³

During fact-finding visits, the committee met with a number of federally-sentenced Black persons who expressed discouragement at the quality and level of culturally appropriate programming. In her presentation to the committee, EI Jones read a statement prepared by a person serving time in a federal correctional facility that explained some of the gaps. This statement accurately reflects what the committee heard from federally-sentenced Black persons and others during site visits in different regions of the country:

... I have been incarcerated for almost seven years. If I cut that time in half, I find myself back in the high court of Nova Scotia for my sentencing hearing. What I remember vividly is what the Supreme Court Justice explained was the reason behind sending me to a federal facility. This was the only place that provided programming adequate to jump start and assist me with rehabilitation. Six prisons, three provinces, and two security levels later, I have yet to encounter this programming.

That is not to say I have not completed programs. I finished every program recommended to me and more, but “adequate” is not the word that comes to mind when I assess their relevance to my rehabilitation. I use the term “relevant” because the strategies taught in these programs are not geared for people who look like I do. My assumption is that the people who designed these programs do not live in communities like ours and did not spend enough time in one to understand the dynamics; fatherless homes, motherless homes, parentless homes. Hence, the lack of visible positive role

¹⁷² [Letter from the Correctional Investigator to Senator Jim Munson, Chair of the Standing Senate Committee on Human Rights](#), 2 March 2017; Correctional Investigator of Canada, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, 2013.

¹⁷³ RIDR, *Evidence*, 18 October 2017 (Maxcine Telfer, Director General, and Aundre Green-Telfer, Managing Director, Ethnocultural Programs and Services, Audmax Inc.; Roderick Brereton, Director, Founder, Urban Rez Solutions and Farley Flex, Director, Founder, Urban Rez Solutions); RIDR, *Evidence*, 25 October 2017 (Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic; Robert Wright, as an individual; Luketa M'Pindou, Executive Director, Alliance Jeunesse-Famille de l'Alberta Society); RIDR, *Evidence*, 18 May 2017 (Pharaoh Hamid Freeman, Executive Director, DESTA Black Youth Network and Will Prosper, DESTA Black Youth Network); RIDR, *Evidence*, 8 February 2018 (Winston LaRose, President and Member, Jane-Finch Concerned Citizens Organization and Regional Ethnocultural Advisory Committee; Sophia Brown Ramsay, Vice-Chair and Manager, Community Development, Black Community Action Network of Peel, Regional Ethnocultural Advisory Committee); RIDR, *Evidence*, 14 February 2018 (Natalie Charles, Former Provincial Prisoner, as an individual); RIDR, *Evidence*, 26 March 2018 (Theresa Halfkenny; El Jones) .

models. Or it could be plain old poverty, which then leads to drug trafficking, drug abuse, and possibly gun violence, all serious issues that are not daily occurrences in most neighbourhoods. How can someone who has never encountered these challenges successful [sic] design ways to address them?

Through my federal travels, I have met many parole officers, program instructors, and other staff with similar jobs. I believe that for the most part they fall into one of three categories: the obstructionist; the negligent; and the reluctantly helpful.

The obstructionist seems to purposely place hurdles in front of Black inmates attempting to make progress. That may be difficult to comprehend, but it happens every morning and evening in every CSC facility.

Second, the most populated category, the negligent. These are those who turn a blind eye to the obstructionist. They refuse to acknowledge that issues may exist, or that improvement in certain areas is desirable. My question to this group - does your silence make you complicit in the actions of the obstructionist?

Last, we have reluctant helpers. Sometimes they can be helpful and appear receptive to the idea that there are legitimate concerns. But they are unwilling to push the progressive envelope too far. I believe the blame for that lies with those in the first two categories. What professional wants to be the first colleague to go against the grain, i.e. their peers?

At bottom, not only is the programming inadequate, those appointed to facilitate these programs do not seem to have been selected with our best interests in mind. I make a conscious effort to better myself on a daily basis and these are my experiences.

Unfortunately, we do not all have the same drive and initiative. What are the odds of rehabilitation for those who need the help but who are waiting for help to be brought to them?...¹⁷⁴

El Jones also drew attention to numerous concerns based on her own interviews with federally-sentenced Black persons. She stated that federally-sentenced Black persons do not have access to spiritual advisers, instructors and teachers who "look like them."¹⁷⁵ She also stated that they have more difficulty obtaining employment within the penitentiary and that the disciplinary system in the prison unfairly targets Black prisoners.¹⁷⁶

¹⁷⁴ RIDR, *Evidence*, 26 March 2018 (El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, as an individual).

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

Theresa Halfkenny, Chair, Atlantic Region, CSC, Regional Ethnocultural Advisory committee, also summarized some of the concerns raised in her discussions with federally-sentenced Black and racialized persons for the benefit of the committee:

Health, hair and hygiene products are inappropriate for their needs. Hygiene products that are available at the canteen are very expensive and not the skin products to meet their need. Correctional programs need to have the cultural component for learning; the need for diversity for those individuals doing the training. The presence of more diversity among employees, such as program instructors, health department, and in some areas correctional officers. Statements that because of prejudice among staff members they feel this results in stereotypes, offensive comments, racism, derogatory comments and at time gestures. They spoke of how they feel very disrespected.

Food is an issue as well for ethnocultural offenders, especially those with a religious orientation. Ethnocultural offenders continue to ask about working at CORCAN. It would appear they do not get an opportunity to gain skills that will benefit them when returning to their communities for employment. There is a need for an Ethnocultural Liaison Officer at each institution. One Liaison Officer for five institutions does not meet the need they have. It is felt this person could be part of the CSC's workforce on a full-time basis.¹⁷⁷

She also stressed that racialized individuals serving time in federal penitentiaries have difficulty accessing cultural activities and organizing activities for outside groups that are culturally relevant to them.¹⁷⁸ From witnesses and other interlocutors based in Quebec and in Alberta, the committee heard that federally-sentenced Black people from Francophone and Anglophone linguistic minority communities are doubly disadvantaged. Minority language status can also create additional hurdles and prejudices when relevant community groups attempt to gain access to these penitentiaries.¹⁷⁹ In the Atlantic region, for instance, one individual serving a federal sentence informed the committee that Francophones are told to speak English and are prevented from organizing cultural events. In Nova Scotia, the committee was told that many people have both Black and Indigenous heritage, and that these individuals often feel forced to choose between different aspects of their identity when in the federal correctional system.¹⁸⁰

The committee also learned about some local actions that have the potential to make a positive impact on upholding the human rights of federally-sentenced Black persons if applied more systematically across the country. An organization from the Toronto area, for example, informed the committee that its individualized approach to help federally-

¹⁷⁷ RIDR, *Evidence*, 26 March 2018 (Theresa Halfkenny).

¹⁷⁸ Ibid.

¹⁷⁹ RIDR, *Evidence*, 18 May 2017 (Pharaoh Hamid Freeman, Executive Director, DESTA Black Youth Network); RIDR, *Evidence*, 25 October 2017 (Luketa M'Pindou, Executive Director, Alliance Jeunesse-Famille de l'Alberta Society).

¹⁸⁰ RIDR, *Evidence*, 26 March 2018 (El Jones).

sentenced Black persons has made a positive impact. Roderick Brereton, Director, Founder, Urban Rez Solutions explained:

We look at their skills, interests and personality traits, and then we're able to help those people with finding their "true calling," or areas of intersection or intersectionality, to be able to participate meaningfully within society. Obviously there's a lot of handholding, because institutionalization does make you even more marginalized. But in terms of reintegration, we found that allowing people to bring their expertise and tapping into that is very beneficial for all elements of society.

In doing so, we've worked with several offenders. To this point and to this day the offenders, no matter how long they spent with us, have not actually gone back into the institutions. There's very low recidivism in that regard. Again, in terms of having them be able to weigh in, we find it very beneficial. Again, there are new skill sets, values and ethics often that they have not learned within the institutions that they are now putting into play within the community.¹⁸¹

Witnesses told the committee, however, that the CSC will need to make special efforts to find and work with such groups. The African Canadian Legal Clinic told the committee that it "is willing to help facilitate the implementation of community-based wraparound services and supports for Black federal inmates."¹⁸² These supports could include "employment and job readiness training, substance use counselling, family counselling, housing supports, and general life-skills rehabilitative programming."¹⁸³ Smaller, grassroots organizations will need dedicated support, including financial support, from different levels of government in order to meaningfully support federally-sentenced Black persons.¹⁸⁴

The CSC has informed the committee of ad hoc efforts to support federally-sentenced Black persons. One such effort is the Black Social History Pilot being operated at the Keele Community Correctional Centre. This pilot project aims to adapt some of the approaches used in relation to Indigenous Peoples for federally-sentenced Black persons. The goal is to better understand the unique circumstances of federally-sentenced Black individuals and to use this information to provide individualized and culturally relevant correctional services. While these efforts offer some hope and a step in the right direction, the committee is cautious that the CSC's correctional approaches to Indigenous Peoples have been strained as correctional practices seldom reflect legislative intent and correctional policies.

¹⁸¹ RIDR, *Evidence*, 18 October 2017 (Roderick Brereton, Director, Founder, Urban Rez Solutions and Farley Flex, Director, Founder, Urban Rez Solutions).

¹⁸² RIDR, *Evidence*, 25 October 2017 (Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic).

¹⁸³ African Canadian Legal Clinic, "Improving the Human Rights of Canadian Prisoners," 25 October 2017.

¹⁸⁴ RIDR, *Evidence*, 8 February 2018 (Sophia Brown Ramsay, Vice-Chair and Manager, Community Development, Black Community Action Network of Peel, Regional Ethnocultural Advisory Committee); RIDR, *Evidence*, 18 October 2017 (Aundre Green-Telfer, Managing Director, Ethnocultural Programs and Services, Audmax Inc).

A regional committee of the CSC in the Atlantic region is examining the overrepresentation of federally-sentenced Black persons.¹⁸⁵ This group aims to review quantitative data around reintegration results, to ensure services recognize culture as an important part of assessment and rehabilitation, to enhance community engagement to assist federally-sentenced persons, and to improve release planning and successful reintegration. It has also explored the possibility of examining the social history of federally-sentenced Black persons when making recommendations related to individual federally-sentenced persons, and examined possibilities for increasing staff diversity and building cultural competence amongst White staff.¹⁸⁶

However, the committee was also told that many of these ideas have been discussed for close to twenty years, but despite recommendations and reports from various sources, there has been little real change. Theresa Halfkenny suggested that amendments to the CCRA are necessary to require the CSC to provide services designed particularly to address the needs of so-called “ethnocultural offenders,” including federally-sentenced Black persons, and to consult regularly with those who have expertise about such individuals.¹⁸⁷ As mentioned above, however, the committee notes that such tools are already in place for Indigenous Peoples but have not been used to their full potential by the CSC. Perhaps it is time to consider oversight mechanisms to ensure the CSC is following the law as it was intended to be followed.

Federally-sentenced Indigenous Peoples

Stuart Wuttke, General Counsel, Assembly of First Nations, told the committee that “First Nations citizens are being incarcerated at an ever-increasing rate, given longer jail sentences and subject to harsher punishment in Canadian prisons.”¹⁸⁸ He drew the committee’s attention to the following facts:

Indigenous offenders are more likely to be placed in segregation, accounting for 31 per cent of the cases. Once in isolation, they spend 16 per cent more time there. They account for 45 per cent of all self-harm incidents. Nine in 10 Aboriginal or indigenous offenders are held to the expiry of their sentence versus two thirds of the non-indigenous inmate population. They are more likely to be restrained in prison, to be involved in use of force incidents, to receive institutional charges and to die in prison.¹⁸⁹

¹⁸⁵ RIDR, *Evidence*, 26 March 2018 (Heather Finn-Vincent, Parole Officer, Correctional Services Canada, as an individual).

¹⁸⁶ RIDR, *Evidence*, 18 October 2017 (Maxcine Telfer, Director General, and Aundre Green-Telfer, Managing Director, Ethnocultural Programs and Services, Audmax Inc.); RIDR, *Evidence*, 26 March 2018 (Heather Finn-Vincent, Parole Officer, Correctional Services Canada, as an individual). See also the evidence of El Jones on the same date, discussing racism experienced by Black CSC staff.

¹⁸⁷ RIDR, *Evidence*, 26 March 2018 (Theresa Halfkenny).

¹⁸⁸ RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations).

¹⁸⁹ Ibid.; RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an individual).

Drilling down, it is apparent that Indigenous women “are overrepresented as victims of violent crime and as offenders.”¹⁹⁰ Indigenous women represent approximately 3% of the total female population of Canada, but 37.6% of the federal women inmate population.¹⁹¹

The Supreme Court recently observed that “[n]umerous government commissions and reports, as well as decisions of this Court, have recognized that discrimination experienced by Indigenous persons, whether as a result of overtly racist attitudes or culturally inappropriate practices, extends to all parts of the criminal justice system, including the prison system.”¹⁹²

Consideration of the Unique History and Circumstances of Indigenous Peoples

Mr. Wuttke reminded the committee of the Supreme Court’s decision in *R. v. Gladue*, which states:

The unbalanced ratio of imprisonment for aboriginal offenders flows from a number of sources, including poverty, substance abuse, lack of education, and the lack of employment opportunities for aboriginal people. It also arises from bias against aboriginal people and from an unfortunate institutional approach that is more inclined to refuse bail and to impose more and longer prison terms for aboriginal offenders.¹⁹³

Other root causes include colonialism and forced assimilation, including residential schools, the “Sixties Scoop,”¹⁹⁴ ongoing child welfare involvement and the trajectory from child welfare to juvenile and adult prisons, and the lack of recognition for treaty rights, amongst other concerns. Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples, put the situation bluntly:

Even to a distant observer, there is something wrong with the criminal justice system that imprisons [I]ndigenous peoples to such high levels. Over-representation of [I]ndigenous peoples in the Canadian correctional system raises the issues of procedural fairness and substantive justice including just and equitable remedies for violations of human rights.¹⁹⁵

¹⁹⁰ Statistics Canada, “[Study: Women in Canada: Women and the Criminal Justice System](#),” *The Daily*, 6 June 2017.

¹⁹¹ Julie Reitano, “Adult correctional statistics in Canada, 2015/2016,” *Juristat*, Statistics Canada Statistics Canada, 1 March 2017, p. 5; Statistics Canada, “[Study: Women in Canada: Women and the Criminal Justice System](#),” *The Daily*, 6 June 2017; OCI, *Annual Report 2016-2017*..

¹⁹² *Ewert*, para. 57.

¹⁹³ *Gladue*, para. 65.

¹⁹⁴ The “Sixties Scoop” refers to several decades of state-sanctioned removal of Indigenous children from their families by child protection authorities and subsequent adoption by white families in order to destroy the children’s Indigenous identity.

¹⁹⁵ RIDR, *Evidence*, 31 May 2017 (Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples).

In *Ewert v. Canada*, the Supreme Court applied *Gladue* in the correctional context and explicitly recognized that the CCRA requires the CSC to account “for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views.”¹⁹⁶ Specifically, the Court held that the CCRA requires the CSC to:

ensure that its policies and programs are appropriate for Indigenous offenders and responsive to their needs and circumstances, including needs and circumstances that differ from those of non-Indigenous offender populations. For the correctional system, like the criminal justice system as a whole, to operate fairly and effectively, those administering it must abandon the assumption that all offenders can be treated fairly by being treated the same way.¹⁹⁷

The evidence heard by the committee, as well as the input it has received from federally-sentenced Indigenous persons during its site visits and in correspondence support the Court’s statement that despite the incorporation of these legislative provisions into the CCRA almost 20 years ago, “there is nothing to suggest that the situation [for Indigenous Peoples] has improved in the realm of corrections.”¹⁹⁸

Non-Discrimination in the Provision of Correctional Services

As noted above, the CSC’s custody rating scale is problematic when applied to Indigenous persons. The Auditor General of Canada (Auditor General) told the committee:

Corrections Canada used the Custody Rating Scale to determine an offender’s security level and need for a rehabilitation program. We found that this tool didn’t consider the unique needs of [I]ndigenous offenders as

Corrections and Conditional Release Act

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.

¹⁹⁶ *Ewert*, para. 58, referencing sections 4(g), and 80 – 84 of the CCRA.

¹⁹⁷ *Ibid.*, para. 59.

¹⁹⁸ *Ibid.*, para. 60.

required. More than three quarters of [I]ndigenous offenders were sent to medium- or maximum-security institutions upon admission and were referred to a rehabilitation program. These were at significantly higher levels than non-indigenous offenders. Once at higher levels of security, few offenders were assessed for a possible move to a lower level before release, even after they completed their rehabilitation programs.¹⁹⁹

Furthermore, the CSC does not typically receive all of the information needed to properly assess the security classification for federally-sentenced Indigenous people; social history (Gladue) reports are often missing, for example.²⁰⁰

The committee met with a number of federally-sentenced Indigenous persons participating in the Pathways program, which aims to reduce recidivism within this population by providing culturally relevant programs and services within the institution and in the community. While those participating spoke positively of the program, it is not widely available. Many federally-sentenced Indigenous persons are missing out on a program that was described as life changing by many staff and some prisoners. Their experience does not only apply to the Pathways program, but other programming intended for federally-sentenced Indigenous persons as well. As explained by the Auditor General, federally-sentenced Indigenous persons do not receive access to programming quickly enough to complete them in time to be eligible for release as early as possible. In addition, federally-sentenced Indigenous persons do not routinely have their security status reassessed after completing each program to determine whether their security level could be reduced. Remaining at higher security levels reduces the likelihood of obtaining parole. In addition, the full range of specialized programming for federally-sentenced Indigenous Peoples is not available in all regions.²⁰¹

Moreover, Indigenous Elder services are insufficient in some locations and inaccessible in others. During site visits, a number of federally-sentenced Indigenous Peoples told the committee that the Elders selected by the CSC were not always recognized as Elders in the community and were not always helpful. Even where federally-sentenced Indigenous Peoples are able to participate in some ceremonies, they are limited and even where there may be some options, prisoners are not being adequately accommodated. During site visits for instance, the committee members were informed that smudging and sweat lodge ceremonies were either forbidden or arbitrarily cancelled.

¹⁹⁹ RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

²⁰⁰ RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an individual).

²⁰¹ RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada).

Although the Parole Board of Canada has trained its members in the application of Indigenous social history factors and permits Elder-assisted hearings,²⁰² Indigenous Peoples in federal custody are often not as well prepared for parole hearings as non-Indigenous individuals. This often results in Indigenous Peoples not having the same opportunity to be considered for parole at an early stage. In 2016–2017, only 12% had their cases prepared for a parole hearing at their first eligibility date.²⁰³ As a result, Indigenous Peoples are more likely than non-Indigenous people to be incarcerated until their statutory release date.²⁰⁴

These failures in program delivery combined with fewer opportunities for rehabilitation and reintegration than non-Indigenous peers have a direct impact on the over-representation of Indigenous Peoples in the federal correctional system. The disparity between the CSC's release preparation for federally-sentenced Indigenous and non-Indigenous people means that Indigenous Peoples face harsher confinement because they spend more time incarcerated and tend to be imprisoned at higher security levels. In addition, they also have fewer opportunities for rehabilitation and reintegration than their non-Indigenous peers.

Nonetheless, despite the clear human rights issues that arise when considering the situation of federally-sentenced Indigenous Peoples and the fact that these problems have been recognized for years, little progress has been made. Multiple witnesses argued that the CSC has failed to take adequate steps to address the problem.²⁰⁵

Release to aboriginal community

84 If an inmate expresses an interest in being released into an aboriginal community, the Service shall, with the inmate's consent, give the aboriginal community

(a) adequate notice of the inmate's parole review or their statutory release date, as the case may be; and

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

Reducing the Over-Incarceration of Indigenous Peoples

Sections 81 and 84 of the CCRA were specifically designed to address the over-representation of Indigenous Peoples in the federal correctional system.²⁰⁶ These sections

²⁰² RIDR, *Evidence*, 5 April 2017 (Suzanne Brisebois, Director General, Policy & Operations, Parole Board of Canada).

²⁰³ OCI, *Annual Report of the Office of the Correctional Investigator 2016-2017*.

²⁰⁴ Office of the Auditor General of Canada, 2016 Fall Reports of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada*, para. 3.25.

²⁰⁵ RIDR, *Evidence*, 4 October 2017 (Mary E. Campbell, Sentencing and Corrections Expert, Former Director General, Corrections and Conditional Release, Public Safety Canada, as an individual; Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, as an individual); RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an individual; Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples); RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada).

²⁰⁶ CCRA, ss. 81 and 84.

enable Indigenous communities to play a key role in the rehabilitation and reintegration of federally-sentenced persons. In the spring of 2017, the committee visited the Waseskun Healing Centre in Saint-Alphonse-Rodriguez, Quebec. Waseskun operates under a section 81 agreement. On the committee's visit, federally-sentenced Indigenous Peoples spoke highly of their experience at Waseskun. Some informed the committee that if it was not for their time at Waseskun, they would never have reconnected with their Indigenous roots. For many, this connection was an integral part of their path towards healing.

However, Indigenous healing lodges are not available in all regions of the country. The evidence before the committee also indicates that the potential benefit of sections 81 and 84 has been unduly and inappropriately restricted by the CSC's policies.²⁰⁷ Despite the absence of any legislative requirement to limit the access of prisoners to healing lodges, access is currently limited to men classified at a minimum-security level and to women classified at minimum and occasionally medium security levels. As a result, the majority of Indigenous men and women are ineligible to serve parts of their sentences at a healing lodge. Indigenous women are also more likely than non-Indigenous women to be classified at maximum security, limiting their ability to benefit from a healing lodge environment. These institutional barriers, coupled with limited spaces, means the vast majority of federally-sentenced Indigenous Peoples are unable to benefit from sections 81 and 84 of the CCRA.

It should also be noted that sections 81 and 84 are supposed to be discussed with federally-sentenced persons during intake as part of their correctional release plan. Nonetheless, many of the Indigenous individuals incarcerated in federal penitentiaries with whom the committee met had never been informed of sections 81 and 84. They were surprised to find out that a gradual release supported by Indigenous customs and teachings was an option for them. Many agreed that this could be beneficial for their rehabilitation and reintegration and preferable to trying to access such options in existing institutional settings.

The committee heard that the CSC has failed to consider ways that Indigenous communities could take over the care and custody of higher security individuals. It has also neglected to design healing lodge or Pathways-type programs that would meet the rehabilitative needs of higher security individuals.²⁰⁸ In addition, the evidence heard by the committee is consistent with the Correctional Investigator's finding that healing lodges operated by Indigenous communities are under-resourced compared to those operated by the CSC.

The committee also underscores that section 81 of the CCRA allows the CSC to enter into an agreement with an Indigenous community for the provision of correctional services. The CCRA does not state that those services must be provided in a prison-like structure. Nonetheless, the CSC appears to favour section 81 agreements with communities that have the resources to build healing lodges with features that resemble those of

²⁰⁷ RIDR, *Evidence*, 7 June 2017 (Stuart Wuttke, General Counsel, Assembly of First Nations); RIDR, *Evidence*, 21 March 2018 (Claire McNeil, Lawyer, Dalhousie Legal Aid Service; Vince Calderhead, Lawyer).

²⁰⁸ RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel, Lawyer/Consultant, as an individual; Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples); RIDR, *Evidence*, 3 May 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); CCRA, ss. 81 and 84.

penitentiaries. Evidently, this may be a barrier for some Indigenous communities, as well as to the ability of prisoners to reintegrate.

The committee was pleased to learn that the CSC is planning to make greater use of section 84 agreements,²⁰⁹ which enables Indigenous communities to supervise the conditional release of federally-sentenced Indigenous Peoples. However, the Office of the Auditor General told the committee that the use of these agreements is “still very limited.”²¹⁰ Information received from the CSC also indicates that there is no funding associated with such agreements,²¹¹ and most are currently being administered as enhanced community residential facility beds in existing halfway houses. This contributes to the difficulty of expanding the use of these agreements, especially with respect to the release of higher security and higher risk individuals into Indigenous communities.

Mental Health

Witnesses – including officials from the CSC and correctional officers – consistently mentioned that persons with mental health issues are one of the most vulnerable populations within correctional facilities. A significant portion of the federally-incarcerated population has mental health concerns. Estimates indicate that approximately 30% of federally-incarcerated men require psychological or psychiatric services. As noted above, up to two thirds of all federally-incarcerated women have identified mental health needs.²¹² The growing population of federally-sentenced individuals over the age of 50 also have some of the highest rates of mental illness.²¹³ Additionally, the committee was informed that a significant number of federally-sentenced persons suffer from undiagnosed mental health issues.²¹⁴

The vulnerability of federally-sentenced persons with mental health concerns can be exacerbated and amplified by the CSC’s policies, the institutional environment, and the level of training and resources available to front-line staff.²¹⁵ According to witnesses, the CSC is not equipped to address the complex and varying needs of this population. During a site visit, for instance, a psychologist informed the committee that 24-hour mental health services are not provided. As a result, when a mental health crisis occurs after working hours, correctional officers are called on to take action. Because correctional officers do not have the training and experience of mental health professionals, their response is often to

²⁰⁹ RIDR, *Evidence*, 3 May 2017 and RIDR, *Evidence*, 6 December 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

²¹⁰ RIDR, *Evidence*, 3 May 2017 (Carol McCalla, Principal, Office of the Auditor General of Canada).

²¹¹ CSC Follow-up response, 2017.

²¹² RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada); RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); see also RIDR, *Evidence*, 1 February 2017 (Diana Majury, President, Canadian Association of Elizabeth Fry Societies).

²¹³ RIDR, *Evidence*, 26 March 2018 (Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University).

²¹⁴ RIDR, *Evidence*, 26 March 2018 (Hon. Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia);

²¹⁵ RIDR, *Evidence*, 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law); RIDR, *Evidence*, 14 June 2017 (Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission); RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada).

place the individual in administrative segregation. This is especially problematic because behaviour determines the duration of administrative segregation. As mentioned earlier, segregation can exacerbate or amplify mental health issues. Therefore, it is likely that behaviours deemed problematic will be aggravated, resulting in prolonged stays in administrative segregation that further worsen mental health issues.²¹⁶

It should be noted that the prolonged use of administrative segregation by the CSC has been reported and criticized by a number of investigative bodies. In recent years, it has also been the subject of several lawsuits against the CSC. Notably, in January 2018, the Supreme Court of British Columbia ruled that prolonged segregation (solitary confinement in excess of 15 days) is a violation of section 7 of the Charter for all federally-sentenced persons and a violation of section 15 for persons with mental health issues and Indigenous Peoples, but that the harmful effects of segregation can begin almost immediately. The judge suspended his decision for 12 months to give the government time to draft new legislation in line with the ruling.²¹⁷ The federal government filed to appeal the decision in February 2018.²¹⁸

Likewise, the Correctional Investigator told the committee that more than half of the use-of-force incidents involving federally-sentenced persons trying to injure themselves were “managed by way of an inflammatory agent, typically pepper spray,” which “cannot be considered desirable or appropriate from a therapeutic or human rights perspective.”²¹⁹ Catherine Latimer, Executive Director of the John Howard Society, took issue with the accountability processes that the CSC uses when such inappropriate responses to mental health issues have tragic results. Unlike use of force incidents by police that result in death, such incidents by correctional officers are still investigated internally. Ms. Latimer remarked, “[t]hese guys are investigating themselves, and they’re coming up with answers like, ‘[w]e need more training.’”²²⁰

She also gave disturbing testimony about the treatment that mentally-ill individuals receive in men’s federal correctional facilities. She said that prisoners in the Regional Treatment Centre at Millhaven “indicated that if they were feeling suicidal and they mentioned it to one of the guards, the guards would say, ‘Go ahead and commit suicide; it’ll be one less person for us to look after.’”²²¹ As she pointed out, “counselling suicide is a criminal offence,” and such conduct falls far below the standard of professionalism expected. Unfortunately, the committee heard similarly shocking accounts during its own discussions with federally-sentenced men and women in various institutions in different regions of the country, confirming that these cannot be considered isolated incidents. In addition, the committee heard that in some institutions, guards facilitated and provoked violence and abuse towards federally-sentenced persons who were elderly, racialized, mentally ill and subject to mobility limitations by other prisoners.

²¹⁶ RIDR, *Evidence*, 21 March 2018 (Emma Halpern); RIDR, *Evidence*, 26 March 2018 (Adeline Iftene).

²¹⁷ *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62.

²¹⁸ “Rights groups will fight to uphold B.C. Supreme Court decision on indefinite solitary confinement,” *CBC News*, 19 June 2018.

²¹⁹ RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada).

²²⁰ RIDR, *Evidence*, 15 May 2017 (Catherine Latimer).

²²¹ *Ibid.*

Non-Discrimination in the Provision of Correctional Services

Witnesses stressed that in addition to the Charter's equality guarantees, Canada has more expansive and detailed non-discrimination obligations under international law that are specifically designed to protect the rights of those with psychosocial disabilities and ensure they are full members of the community. These rights extend from the prevention of and protection from violence and abuse, to encompass rights to participate in decision-making, the obligation to conduct public education and raise awareness about the needs of prisoners with disabilities, and obligations around specialized staff training. The use of seclusion and restraints for those affected by mental illness and intellectual disability in healthcare settings is also a matter of concern under international law.²²²

Some witnesses suggested that the Government of Canada ought to take steps to make these international human rights directly enforceable in Canadian law, which would give imprisoned individuals a tool to assert their human rights.²²³ Witnesses also called for an end to the use of segregation, especially for federally-sentenced persons with mental issues or at the very least, judicial oversight of administrative segregation decisions.²²⁴

First-person accounts of abuse, neglect, lack of treatment and discrimination relayed during site visits indicate that there is much work to be done before Canada lives up to its international commitments to federally-sentenced persons with mental illnesses. Unfortunately, witnesses also stressed that community resources to support individuals with mental health concerns are lacking. So critical are these gaps that sometimes, the criminal justice system erroneously appears to be an individual's best hope of receiving treatment.²²⁵

Intermediate Mental Health Care

The CSC itself has identified gaps in the provision of appropriate mental health care for individuals who have trouble functioning in the normal institutional environment, but whose needs are not acute (called intermediate care).²²⁶

Highlighting the need for better and more comprehensive intermediate mental health care, Nancy Lockwood, Program Manager at Citizen Advocacy Ottawa, discussed some of the problems that individuals with Fetal Alcohol Syndrome Disorder (FASD) encounter in penitentiaries. They are vulnerable to predators. They may experience sensory overload which makes them prone to outbursts and negative behaviours. They largely do not learn from previous mistakes and have difficulty understanding the rules of social interaction. People diagnosed with FASD also have difficulty with organization and time management,

²²² RIDR, *Evidence*, 26 March 2018 (Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Dalhousie University). See the [Convention on the Rights of Persons with Disabilities](#), the [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), and the [Mandela Rules](#).

²²³ RIDR, *Evidence*, 21 March 2018 (Claire McNeil, Lawyer, Dalhousie Legal Aid Service; Vince Calderhead, Lawyer).

²²⁴ RIDR, *Evidence*, 21 March 2018 (Emma Halpern).

²²⁵ RIDR, *Evidence*, 21 March 2018 (Fred Sanford, Vice President, John Howard Society of Nova Scotia).

²²⁶ RIDR, *Evidence*, 1 February 2017 (Jennifer Wheatley, Assistant Commissioner, Health Services, Correctional Service Canada).

meaning they often do not arrive on time—or at all—for probation appointments.²²⁷ She argued for the development of “alternatives to incarceration such as supervised residential settings and work placements; probation orders that accommodate brain impairments and therapeutic ... models that emphasize changing the environment not the person.”²²⁸

The evidence before the committee indicates that federally-sentenced persons with other types of brain impairments, as well as those with intellectual disabilities, may share some of the same problems. The committee notes that in order to accommodate these disabilities and prevent discrimination, specialized screening, programming and staff training were suggested.²²⁹ Some witnesses also stressed that penitentiaries are not an appropriate place to help those with mental health issues. As stated by Mr. Sanford, “research has shown that mental health issues cannot be successfully treated in prison.”²³⁰ Many witnesses suggested that the CSC increase use of section 29 of the CCRA and move federally-sentenced persons with mental health issues into community psychiatric or forensic facilities where appropriate care can be provided in an environment focused on healing and recovery rather than security.²³¹

Mental Health of Federally-Sentenced Women and Indigenous Peoples

Concerns were also raised by witnesses about the inadequacy of mental health care services for federally-sentenced women.²³² The Auditor General provided the committee with a good summary of the problems:

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

We also found that CSC used cells on its segregation range to monitor women offenders at risk of self-injury or suicide, without 24-hour access to clinical treatment or support.²³³

²²⁷ RIDR, *Evidence*, 1 November 2017 (Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa).

²²⁸ Ibid.

²²⁹ RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

²³⁰ RIDR, *Evidence*, 21 March 2018 (Fred Sanford, Vice President, John Howard Society of Nova Scotia).

²³¹ RIDR, *Evidence*, 8 February 2018 (Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies); RIDR, *Evidence*, 21 March 2018 (Emma Halpern); RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

²³² RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada); RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

²³³ RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada).

Witnesses also emphasized that Indigenous mental health care in corrections requires a specialized approach. Issues may include substance abuse, residential school trauma, self-harm, depression and anxiety, suicide, and secondary disabilities from FASD.²³⁴ Indigenous women “account for 70% of self-injury incidents amongst federally-sentenced female inmates.”²³⁵

The committee was told that correctional staff – including mental health staff – need to be able to place the mental health concerns of federally-sentenced Indigenous Peoples in the context of their experiences of colonization and forced assimilation, as well as the personal background factors that led to their criminalization. These background factors can include “poverty and homelessness, low rates of education and employment, historical disadvantage, geographic and social isolation, family breakdown, and loss of culture and identity.”²³⁶ Witnesses told the committee that culturally relevant, community-based approaches and alternatives for treatment should be adopted.²³⁷ In light of the disproportionate use of administrative segregation against federally-sentenced Indigenous Peoples, the committee stresses the dangers of administrative segregation against this vulnerable population and calls for judicial oversight of this security protocol to manage and reduce its use.

Recovery-Oriented Approaches to Mental Health

The committee heard that the mental health care services available through the CSC aim to address immediate problems that arise in the context of incarceration; addressing previous trauma is not the main focus.²³⁸ The committee notes that, by contrast, the Brockville Mental Health Centre provides specifically tailored mental health programming to provincially sentenced men who have suffered such trauma. Similarly, the East Coast Forensic Hospital in Nova Scotia focuses on a therapeutic approach to incarceration, which takes into account the individual’s medical and social history. The Waseskun Healing Lodge also offers programs to assist Indigenous men to deal with trauma – including the inter-generational trauma flowing from Indigenous Peoples’ experiences of colonization – and to understand the relationship between their experiences and their criminal behaviour.

Pre-incarceration trauma and abuse experienced by many federally-sentenced persons appear to influence who comes to the attention of police and courts and subsequently the custody and control of correctional authorities. The committee is concerned that institution-based mental health services do not appear to focus on helping federally-sentenced persons recover from these types of trauma, including experiences such as childhood sexual and physical abuse, or adult domestic or sexual violence. The committee is cognizant, however, that it has little information on the content of correctional programming for specific types of offences, but the limited material available does not permit an exploration, much less treatment of, prior trauma.

²³⁴ RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel).

²³⁵ RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

²³⁶ RIDR, *Evidence*, 31 May 2017 (Michelle Mann-Rempel).

²³⁷ Ibid.

²³⁸ RIDR, *Evidence*, 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law).

There is a chronic lack of psychiatrists to deliver treatment (vs. assessment or reports) in federal correctional institutions²³⁹ and during some site visits, interlocutors indicated that the CSC has difficulty recruiting and training sufficient numbers of mental health nurses. The committee heard that in the past, incarcerated people having mental health crises were often managed by isolating them in administrative segregation cells.²⁴⁰ Correctional officers still feel that they have few alternatives and lack the type of specialized training needed to de-escalate situations involving individuals with mental health problems. They have called repeatedly for health care staff to be available in institutions 24 hours a day, seven days a week.²⁴¹

Several witnesses told the committee that a security-focused approach to managing problematic behaviour caused by mental illness often exacerbates and amplifies mental health issues, resulting in prolonged segregation or longer times at higher-security levels because the individual's behaviour is not improving. The committee notes that despite a new Commissioner's Directive designed to bar the admission to segregation of "inmates with a serious mental illness with significant impairment" and "inmates actively engaging in self-injury which is deemed likely to result in serious bodily harm or at elevated or imminent risk for suicide" (amongst other reforms),²⁴² committee members met with prisoners in segregated units as a result of precisely these issues. Unfortunately, the use of static security measures rather than therapeutic interventions and dynamic security approaches persists and very few transfers to community-based mental health facilities are utilized, despite the existence of the option pursuant to section 29 of the CCRA.

Effective rehabilitation and treatment strategies for federally-sentenced persons with mental health problems need to incorporate and acknowledge the human rights of the federally-sentenced person, as well as the human rights of others, according to Dr. J. Paul Fedoroff, an expert in treating sexual offenders with intellectual disabilities.²⁴³ Louise Bradley, from the Mental Health Commission of Canada, argued for the use of recovery-oriented care for federally-sentenced persons, to be delivered as part of "integrated mental health strategies that consider the psychological health and safety of both employees and inmates."²⁴⁴ Recovery, in Ms. Bradley's words, "is a process in which people living with mental health problems and illnesses are actively engaged in their own journey of well-

²³⁹ RIDR, 26 March 2018 (Adeline Iftene).

²⁴⁰ RIDR, *Evidence*, 8 February 2017 (Jason Godin, National President, UCCO-SACC-CSN).

²⁴¹ Ibid.

²⁴² CSC, *Commissioner's Directive 709, Administrative Segregation*, 1 August 2017. "Serious mental illness with significant impairment" is defined in the Directive as:

presentation of symptoms associated with psychotic, major depressive and bipolar disorders resulting in significant impairment in functioning. Assessment of mental disorder and level of impairment is a clinical judgement and determined by a registered health care professional. Significant impairment may be characterized by severe impairment in mood, reality testing, communication or judgement, behavior that is influenced by delusions or hallucinations, inability to maintain personal hygiene and serious impairment in social and interpersonal interactions. This group includes inmates who are certified in accordance with the relevant provincial/territorial legislation.

²⁴³ RIDR, *Evidence*, 1 November 2017 (Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre).

²⁴⁴ RIDR, *Evidence*, 31 January 2018 (Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada).

being.”²⁴⁵ These strategies, she said, “should consider occupational health and safety systems, training, education, prevention, promotion, early intervention and reintegration.”²⁴⁶

Witnesses also stressed the need for a greater investment in mental health care for people before they find themselves enmeshed in the criminal justice system. Such investments, they said, could help to reduce the over-representation of the mentally ill in federal custody.²⁴⁷

Community-based Treatment Options

As mentioned above, many witnesses were of the opinion that the CSC should direct more resources for those with mental health issues to community-based correctional services and secure forensic hospitals. The committee observed stark differences between the medically-led approach to forensic mental health at the Brockville Mental Health Centre as well as the East Coast Forensic Hospital, and the security-focused approach to mental health in correctional institutions. Section 29(b) of the CCRA provides an avenue through which arrangements could be made for federally incarcerated persons to be transferred to provincial health care facilities; to date, however, the CSC does not appear to have maximized the potential use of this provision.²⁴⁸ A number of witnesses suggested that a provincial forensic hospital environment, where medical personnel take the lead in dealing with problematic behaviour, would be more effective, less expensive and better align with Canada’s human rights obligations. Unfortunately, the CSC appears to be moving the other way; the Shepody Healing Centre at Dorchester penitentiary, for example, provides forensic mental health services to provincial patients. However, that was the same institution where the committee heard about security concerns trumping mental health issues and therapeutic approaches and where men spoke about being encouraged by staff to victimize vulnerable prisoners, including those with mental health issues.

Many prisoners and mental health professionals in prisons and the community spoke about the need to invest in preventative and restorative community-based mental health services and approaches in order to interrupt what has been called the use of prisons as modern-day asylums.²⁴⁹

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Ibid.; RIDR, *Evidence*, 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law).

²⁴⁸ CCRA section 29 transfers require that an agreement exist under section 16(1)(a), which states:

Agreements with provinces

16 (1) The Minister may, with the approval of the Governor in Council, enter into an agreement with the government of a province for

(a) the confinement in provincial correctional facilities or hospitals in that province of persons sentenced, committed or transferred to penitentiary.

²⁴⁹ RIDR, *Evidence*, 1 November 2017 (Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law).

ACCESS TO JUSTICE

A number of witnesses also highlighted to the committee that federally-sentenced persons had very limited access to legal aid, resulting in difficulty accessing timely and effective remedies for alleged human rights violations.²⁵⁰ Complaints and grievances are dealt with internally by the CSC, although a grievor may request that an outside review board, made up of two members of the community, review their initial grievance submission.²⁵¹ It can be very difficult for federally-sentenced persons to bring cases to the courts or to make complaints to independent bodies such as the Canadian Human Rights Commission or the Office of the Privacy Commissioner, in part due to practical restrictions on access to lawyers (including cost and institutional routines), as well as very restricted access to computers and a total lack of access to the Internet. Where individuals seek remedies through internal processes, getting a response at all can sometimes take years. The committee also heard that individuals making grievances were intimidated by staff. As a result, many do not view the CSC grievance process as a viable or effective means of remedying breaches of the law or policy, nor as an avenue to protect their rights.

A number of individuals with whom the committee met during site visits informed Senators that correctional staff impeded their ability to contact their lawyers privately. In one instance, the individual was only permitted to make phone calls between 8:00 p.m. and 12:00 a.m., well outside his lawyer's working hours. Another individual told the committee that the space for calls in the segregation range was often utilized for other activities (e.g. programming and schooling), making it impossible to communicate with his lawyer at times. The committee was also shocked to learn from a number of individuals in different jurisdictions that their phone calls were being monitored by the CSC, even those with their lawyers. The committee notes that even correspondence to the committee has been opened, despite the fact that it is also privileged.

The committee also heard that incorrect information often finds its way into correctional files.²⁵² When this happens, federally-sentenced persons have difficulty accessing and correcting these mistakes. The lack of access, and the possible presence of incorrect or misleading information, can negatively affect their chances for parole.²⁵³

During site visits, the committee was told by federally-incarcerated persons that they often experienced reprisals for accessing the complaint and grievance processes under the CCRA, or for speaking out about human rights issues. Staff members confirmed that they discourage the use of the grievances system, preferring to settle things informally. The

²⁵⁰ RIDR, *Evidence*, 21 March 2018 (Claire McNeil and Vince Calderhead); RIDR, *Evidence*, 15 May 2017 (Sean Ellacott).

²⁵¹ CCRA, ss. 90 – 91.2 set out the grievance process. More detail is found in CCRR, ss. 74 – 82, [Commissioner's Directive 081](#), "Offender Complaints and Grievances" and CSC's guidelines on the "[Offender Complaint and Grievance Process](#)." Written complaints may be made to the supervisor of the staff member whose actions are being grieved. An initial grievance is submitted to the Institutional Head or District Director (for grievances related to parole). A final grievance is submitted to the Commissioner of the CSC.

²⁵² RIDR, *Evidence*, 15 May 2017 (Catherine Latimer).

²⁵³ RIDR, *Evidence*, 5 April 2017 (Rick Sauv , Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada); RIDR, *Evidence*, 5 April 2017 (Anita Desai, Executive Director, St. Leonard's Society of Canada).

lack of procedural fairness in segregation decision-making was also highlighted by witnesses.²⁵⁴ According to witnesses, reprisals could take various forms including harassment, destruction of property, loss of privileges, interference with correspondence, visits and programming, neglect of responsibilities and excessive use of force. These types of reprisals were discussed in some detail by El Jones, who indicated that retaliation can also come in very subtle ways, such as being labelled as a “troublemaker” on the range or being continually targeted for disciplinary action based on the arbitrary exercise of discretion.²⁵⁵

In fact, the committee was informed that a number of federally-incarcerated persons refused to meet with the committee for fear of reprisal. The committee was very concerned to find that this fear extended to communications with senators during site visits. In this context, it was particularly disturbing that at certain institutions, correctional staff surreptitiously listened to the committee’s confidential meetings with federally-sentenced persons, despite the committee’s (at times repeated) requests for privacy.

It should also be noted that fear of reprisal in the federal correctional system was not only raised by federally-sentenced persons. In confidential meetings with current and former correctional officers, the committee learned that they too feared retribution from their coworkers for reporting inappropriate or unacceptable behaviour by other correctional officers directed at them, other staff or prisoners. During these meetings, the committee was also told that correctional officers are admonished by other correctional officers for being too friendly with prisoners. Behaviours deemed too friendly included helping prisoners file grievances.

²⁵⁴ RIDR, *Evidence*, 14 June 2017 (Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission); RIDR, *Evidence*, 15 May 2017 (Sean Ellacott, LL.B., Director, Prison Law Clinic, Faculty of Law, Queen's University, As an Individual).

²⁵⁵ RIDR, *Evidence*, 26 March 2018 (El Jones).

ANALYSIS OF GAPS IN THE COMMITTEE'S STUDY

Moving forward, the committee recognizes that it needs to travel more broadly within Canada to understand regional concerns and variations in the federal correctional system. While experiences in Ontario, Quebec and the Maritimes are illustrative, the most pressing human rights concerns in the Prairies and in British Columbia may be very different. In particular, the committee has only visited three federal correctional facilities for federally-sentenced women: the Joliette Institution for Women in Joliette, Quebec, the Grand Valley Institution for Women in Kitchener, Ontario and Nova Institute for Women in Truro, Nova Scotia. There are only five women's institutions, and two healing lodges, across the country (one for each region). The committee hopes to visit the other women's correctional facilities to get a better appreciation for regional variations, including variations in the demographics of the institutions and regional best practices or particular challenges. The committee also hopes to have the opportunity to visit other provincial and federal correctional mental health facilities to learn about regional variations and different models of care delivery. The committee wants to receive more information about physiological health and health care in the federal correctional system. Furthermore, the committee only visited one healing lodge, the Waseskun Healing Centre in Quebec. To gain a better understanding of the programming offered in healing lodges, visits to others, including the CSC-managed facilities, would add value to the committee's study.

The committee also notes that it lacks detailed testimony about international human rights standards and their application in Canadian penitentiaries. In particular, the committee would benefit from receiving information related to the Nelson Mandela and Bangkok Rules, which set out international standards for men and women's prisons respectively; Canada's proposed accession to the *Optional Protocol to the Convention Against Torture*, which would require the creation of a national independent prison inspection body (or bodies); and the *United Nations Declaration on the Rights of Indigenous Peoples*. The committee believes that examples of comparative best practices from foreign jurisdictions would greatly enhance its ability to make recommendations to the Government of Canada.

The Situation of Other Vulnerable and Marginalized Groups

The committee also wants to receive more information regarding the situation of federally-sentenced persons belonging to other marginalized and disadvantaged groups, including:

- those with physical and intellectual disabilities,
- those with autism spectrum disorder and acquired brain injuries,
- those living with HIV/AIDS,
- those over the age of 50,
- those who identify as lesbian, gay, bisexual, transgender, intersex or 2 Spirited (LGBTQI2S),
- refugees and non-citizens,

- members of official language minority communities, and
- racialized individuals who are not Black.

Access to Justice and Segregation

Access to justice in the broad sense is another gap in the committee's study. The committee has heard little about what effective remedies might look like for allegedly arbitrary or unlawful decision-making, discipline, segregation, use of force, search and seizure, complaints about conditions of confinement, and privacy and access to information, amongst other things. Further contributions from incarcerated persons, academics, and legal experts will add value to the committee's study and help it develop concrete and actionable recommendations for the Government of Canada.

The committee has not yet studied the use of administrative or disciplinary segregation (solitary confinement) in federal institutions in detail. The continued use of solitary confinement in the federal correctional system, and the circumstances and length of time for which it may be used, are matters of the utmost importance from a human rights perspective. In some circumstances, solitary confinement can amount to no less than torture, both physically and psychologically. As one formerly-incarcerated woman explained:

I found myself placed in segregation for months and months at a time. Segregation was a dark place for me. No one should ever have to experience that. It was the first place and the only time in my life where I have ever contemplated taking my own life. No one should ever have to feel like dying is better than living, let alone be left for weeks in a cell with their dark thoughts.²⁵⁶

The Superior Courts of Ontario and British Columbia have recently found that the current regime for administrative segregation violates the Charter rights of federally-sentenced persons.²⁵⁷ The Government of Canada has also brought forward proposals for legislative change at the federal level.²⁵⁸ The committee is especially interested in alternatives to solitary confinement and best practices for reducing and eliminating its use. The committee will also review the manner in which maximum security units for women operate as segregated units within penitentiaries for women, as well as the increased use of lockdowns and limited movement throughout the system, as discussed by the OCI. The committee will also examine work being undertaken in other jurisdictions.

²⁵⁶ RIDR, *Evidence*, 1 February 2017 (Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies).

²⁵⁷ *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62.

²⁵⁸ See: *Bill C-56: An Act to amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act*, 42nd Parliament, 1st Session.

Rehabilitation and Reintegration

A number of witnesses and other interlocutors argued that the CSC should develop ways for federally-sentenced persons to have secure access to some Internet-based resources, like educational programming and communications tools to stay in touch with family or other approved contacts. However, the committee has not yet had a chance to further investigate this important topic.

Witnesses, including academics and civil society organizations, informed the committee of the general lack of resources devoted to helping federally-sentenced persons once they have been released back in the community.²⁵⁹ The committee was also told that the shortage of resources in this area exacerbates the difficulties experienced by many formerly incarcerated persons in post-carceral community integration. These problems are particularly acute in rural areas, and were raised a number of times during the committee's fact-finding trip to the Maritimes. The committee looks forward to receiving more testimony on how federally-sentenced persons can be better supported in their communities to reduce over-incarceration and promote successful reintegration. In particular, it would like to learn more about the innovative approach that Quebec has taken by embedding a role for civil society directly in its corrections legislation.²⁶⁰

With respect to community-based corrections for vulnerable and disadvantaged groups, the committee would like to gather additional information about the way that sections 81 and 84 of the CCRA could be used more effectively to reduce over-incarceration of Indigenous Peoples and provide more appropriate, community-based correctional programming. In addition, the committee may benefit from more information about Indigenous women's experiences of incarceration and international standards related to the rights of Indigenous Peoples in the correctional system.

²⁵⁹ See, e.g.: RIDR, *Evidence*, 5 April 2017 (Anita Desai, Executive Director, St. Leonard's Society of Canada; Rick Sauvé, Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada); RIDR, *Evidence*, 25 October 2017 (Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic).

²⁶⁰ RIDR, *Evidence*, 18 May 2017 (Ruth Gagnon, Director General (Elizabeth Fry Society of Quebec); RIDR, *Evidence*, 5 April 2017 (Anita Desai, Executive Director, St. Leonard's Society of Canada); Quebec, *Act Respecting the Québec Correctional System*, c. S-40.1, ss. 110 – 115.

CLOSING THOUGHTS

Although the committee is not yet ready to make recommendations to the Government of Canada, it wishes to emphasize that over the course of its study, the committee and individual Senators have heard a number of disturbing allegations of overt, intentional racism, sexism, homophobia and discrimination on the basis of multiple identity factors such as health, mental health, age, sex, sexuality, gender, race, ethnicity and Indigeneity from different sources and with respect to different correctional institutions across different regions of the country. Racist and discriminatory behaviour has been directed towards federally-sentenced persons by CSC staff and parole officers, as well as other federally-sentenced persons in situations where CSC staff apparently observed the interactions but took no remedial action. The committee is equally concerned about intimidation of prisoners and staff. This type of behaviour is unlawful and absolutely unacceptable. The committee is dismayed that it needs to draw attention to the fact that such behaviour cannot be tolerated from public employees or individuals incarcerated in federal institutions.

The committee also wishes to stress how much it values and appreciates its conversations and correspondence with federally-sentenced persons across Canada. The committee is deeply concerned by the level of frustration expressed by federally-sentenced individuals across the country, who often expressed feeling demeaned, humiliated and ignored in a system that does not take their rights seriously and continually prioritizes institutional and security interests above their needs.

As the Correctional Investigator told the committee,

[e]very aspect of a prisoner's life, from whether or when they have visits or telephone calls with family and friends, to when they may access services and programming, to whether and how they may practice their religion, even when they eat and sleep, is heavily regulated, subject always to correctional power and authority.

...

Safe custody and humane treatment behind bars can only be achieved through the recognition that corrections is in the human rights business.²⁶¹

To conclude, the committee wishes to emphasize once again the importance of taking a rights-based approach to the problem of criminal justice and corrections in Canada. As stated by Mr. Beaudin, "[w]e live in Canada, this is 2017, and I believe we can be a better country in terms of how we treat our people. They are human beings."²⁶² The committee looks forward to tabling its final report with recommendations for the Government of Canada.

²⁶¹ RIDR, *Evidence*, 8 February 2017 (Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada).

²⁶² RIDR, *Evidence*, 31 May 2017 (Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples).

WITNESSES

Wednesday, February 1, 2017

Anne Kelly, Senior Deputy Commissioner, Correctional Service Canada

Kelley Blanchette, Deputy Commissioner for Women, Correctional Service Canada

Larry Motiuk, Assistant Commissioner, Policy, Correctional Service Canada

Jennifer Wheatley, Assistant Commissioner, Health Services, Correctional Service Canada

Catherine Latimer, Executive Director, John Howard Society of Canada

Lawrence DaSilva, Former Federal Prisoner, John Howard Society of Canada

Diana Majury, President, Canadian Association of Elizabeth Fry Societies

Alia Pierini, Regional Advocate, Canadian Association of Elizabeth Fry Societies

Wednesday, February 8, 2017

Ivan Zinger, Correctional Investigator, Office of the Correctional Investigator of Canada

Jason Godin, National President, UCCO-SACC-CSN

Éric Thibault, National Vice-President, UCCO-SACC-CSN

Marie-Josée Prévaille, Local President, Joliette Institution, UCCO-SACC-CSN

Wednesday, March 1, 2017

Anthony Doob, Professor Emeritus of Criminology, Centre for Criminology and Sociological Studies, University of Toronto, As an individual

Akwasi Owusu-Bempah, Assistant Professor, Department of Sociology, University of Toronto, As an individual

Wednesday, March 8, 2017

Sarah Turnbull, Lecturer in Criminology, School of Law, University of London, As an individual

Bonnie Brayton, National Executive Director, DisAbled Women's Network of Canada

Wednesday, April 5, 2017

Suzanne Brisebois, Director General, Policy and Operations, Parole Board of Canada

Michelle Van De Bogart, Regional Director General, Prairies Region, Parole Board of Canada

Anita Desai, Executive Director, St. Leonard's Society of Canada

Rick Sauv , Lifeline In-Reach Worker, Collaborative Lifeline Program, St. Leonard's Society of Canada

Wednesday, May 3, 2017

Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada

Carol McCalla, Principal, Office of the Auditor General of Canada

Justin Pich , Associate Professor, Department of Criminology, University of Ottawa, As an Individual

Teneisha Green, Masters Student, Department of Criminology, University of Ottawa, As an Individual

Jasmine H bert, Masters Student, Department of Criminology, University of Ottawa, As an Individual

Ana Kovacic, Masters Student, Department of Criminology, University of Ottawa, As an Individual

Monday, May 15, 2017 (Kingston, ON)

Margaret Holland, Ontario Co-ordinator, Visitor Resource Centres, Canadian Families and Corrections Network

Catherine Latimer, Executive Director, John Howard Society of Canada

Lawrencre DaSilva, Former Federal Prisoner, John Howard Society of Canada

Sean Ellacott, LL.B., Director, Prison Law Clinic, Faculty of Law, Queen's University, as an individual

Julie Langan, As an individual

Katheryn Wabegijig, As an individual

Wednesday, May 18, 2017 (Montreal, QC)

Isabelle Parent, President of the Board of Directors, Relais Famille

Kim Parisé, Coordinator, Relais Famille

Will Propser, DESTA Black Youth Network

Pharoah Hamid Freeman, Executive Director, DESTA Black Youth Network

Ruth Gagnon, Director General, Elizabeth Fry Society of Quebec

Rene Callahan-St John, As an Individual

Maggie Smith, As an Individual

Parker Finley, As an Individual

Wednesday, May 31, 2017

Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples

Shane Partridge, As an Individual

Michelle Mann-Rempel, Lawyer, As an Individual

Wednesday, June 7, 2017

Debbie Kilroy, As an Individual

Amanda George, As an Individual

Stuart Wutke, General Counsel, Assembly of First Nations

Wednesday, June 14, 2017

Marie-Claude Landry, Chief Commissioner, Canadian Human Rights Commission

Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission

Tabatha Tranquilla, Senior Policy Advisor, Policy, Research and International Division, Canadian Human Rights Commission

Marcella Daye, Senior Policy Advisor, Policy, Research and International Division, Canadian Human Rights Commission

Wednesday, October 4, 2017

Nancy Wrenshall, As an Individual

Mary E. Campbell, Sentencing and Corrections Expert (Former Director General, Corrections and Conditional Release, Public Safety Canada), As an Individual

Janet-Sue Hamilton, Retired, Warden, Edmonton Institution for Women, As an Individual

Kelly Hannah-Moffatt, Vice-President, Human Resources & Equity and Professor of Criminology and Sociological Studies, University of Toronto, As an Individual

Wednesday, October 18, 2017

Maxcine Telfer, Director General, Audmax Inc.

Audre Green-Telfer, Managing Director, Ethnocultural Programs and Services, Audmax Inc.

Farley Flex, Director, Founder, Urban Rez Solutions

Roderick Brereton, Director, Founder, Urban Rez Solutions

Wednesday, October 25, 2017

Tamara Thomas, Policy and Research Lawyer, African Canadian Legal Clinic

Matthew Boissonneault, Research Student, African Canadian Legal Clinic

Robert Wright, As an Individual

Luketa M’Pindou, Executive Director, Alliance Jeunesse-Famille de l’Alberta Society

Jacques Kanku, Project coordinator, Afro-Canadian Center of Wellness and Prevention of Alberta

Wednesday, November 1, 2017

Nancy Lockwood, Program Manager, Fetal Alcohol Resource Program, Citizen Advocacy Ottawa

Dr. J. Paul Fedoroff, Director, Sexual Behaviours Clinic, Royal Ottawa Mental Health Centre

Dr. Brad Booth, Vice President, Canadian Academy of Psychiatry and the Law

Wednesday, December 6, 2017

Michael Ferguson, Auditor General of Canada, Office of the Auditor General of Canada

Carol McCalla, Principal, Office of the Auditor General of Canada

Wednesday, January 31, 2018

Louise Bradley, President and Chief Executive Officer, Mental Health Commission of Canada

Anne-Marie Hourigan, Director, Board of Directors of Mental Health Commission of Canada and Retired Judge of the Ontario Court of Justice

Wednesday, February 7, 2018

Daniel Therrien, Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada

Erin Courtland, Policy and Research Analyst, Office of the Privacy Commissioner of Canada

Sofia Scichilone, Manager, Investigations, Office of the Privacy Commissioner of Canada

Wednesday, February 8, 2018 (Kitchener-Waterloo, ON)

Sophia Brown Ramsay, Vice-Chair and Manager, Community Development, Black Community Action Network of Peel, Regional Ethnocultural Advisory Committee

Ambreen Jamil, Intern, Black Community Action Network of Peel

Tamera Boothe, Intern, Black Community Action Network of Peel

Winston LaRose, President and Member, Jane-Finch Concerned Citizens Organization and Regional Ethnocultural Advisory Committee

Chris Cowie, Executive Director, Community Justice Initiatives

Julie Thompson, Director, Community Relations, Community Justice Initiatives

Savannah Gentile, Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies

Rod Friesen, Coordinator, Restorative Justice Program, Mennonite Central Committee Canada

Halina (Lin) Haag, Researcher, Acquired Brain Injury Research Lab, University of Toronto, As an individual

Wednesday, February 14, 2018

Denise Edwards, Former Federal Prisoner, As an Individual

Natalie Charles, Former Provincial Prisoner, As an Individual

Wednesday, March 21, 2018

Emma Halpern, Executive Director, Elizabeth Fry Society of Mainland Nova Scotia

Fred Sanford, Vice President, John Howard Society of Nova Scotia

Claire McNeil, Lawyer, Dalhousie Legal Aid Service, Dalhousie University, As an Individual

Vince Calderhead, Lawyer, Pink Larkin, As an Individual

Wednesday, March 26, 2018 (Cherrybrook, NS)

Theresa Halfkenny, Chair, Atlantic Region, Regional Ethnocultural Advisory Committee, Correctional Service Canada

Reverend Mark Colley, Word in Action Ministry International

El Jones, Nancy's Chair in Women's Studies, Mount Saint Vincent University, As an Individual

Archibald Kaiser, Professor, Schulich School of Law and Department of Psychiatry, Dalhousie University, As an Individual

Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University, As an Individual

The Honourable Pamela Williams, Chief Judge, Provincial and Family Courts of Nova Scotia, As an Individual

Heather Finn-Vincent, Parole Officer, Correctional Service Canada, As an Individual

Treena Smith, As an Individual

Ifo Ikede, As an Individual

Bernadette Hamilton-Reid, As an Individual

FACT FINDING VISITS

Monday, May 15, 2017

Brockville Mental Health Institution (Brockville, ON)

Joyceville Institution (Kingston, ON)

Tuesday, May 16, 2017

Bath Institution (Bath, ON)

Millhaven Institution (Bath, ON)

Wednesday, May 17, 2017

Collins Bay Institution (Kingston, ON)

Thursday, May 18, 2017

Joliette Institution for Women (Joliette, QC)

Waseskun Healing Center (Saint-Alphonse-Rodriguez, QC)

Friday, May 19, 2017

Regional Reception Centre (Sainte-Anne-des-Plaines, QC)

Thursday, February 8, 2018

Keele Community Correctional Centre (Toronto, ON)

Friday, February 9, 2018

Grand Valley Institution for Women (Kitchener, ON)

Monday, March 26, 2018

East Coast Forensic Hospital (Halifax, NS)

Tuesday, March 27, 2018

Nova Institution for Women (Truro, NS)

Springhill Institution (Springhill, NS)

Wednesday, March 28, 2018

Atlantic Institution (Renous, NB)

Thursday, March 29, 2018

Dorchester Penitentiary (Dorchester, NB)

Shepody Healing Centre (Dorchester, NB)



SENATE | SÉNAT
CANADA

sencanada.ca





SENATE | SÉNAT
CANADA

Imprimé par le service des impressions du Sénat /
Printed by Senate Printing Service

sencanada.ca

