



## **Sexual Coercion and Violence in Prisons Designated for Women**

**Prepared by the Canadian Association of Elizabeth Fry Societies  
Submitted to the House of Commons Standing Committee on Public Safety and National Security**

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## EXECUTIVE SUMMARY

The Canadian Association of Elizabeth Fry Societies (CAEFS) is a national non-profit that monitors the conditions of confinement in federal prisons designated for women, and advocates for the people incarcerated there.

Building on the Office of the Correctional Investigators national investigation “*A Culture of Silence: National Investigation into Sexual Coercion and Violence in Federal Corrections*”, CAEFS puts forward findings on the prevalence of sexual coercion and violence in Canadian federal prisons designated for women.

Specifically, CAEFS affirms the OCI’s findings that women; individuals who identify as, or are perceived to be, lesbian, gay, bisexual or transgender; and people with histories of trauma and mental illness are most frequently the target of sexual coercion and violence.<sup>1</sup>

CAEFS also identifies a critically under examined aspect of sexual violence and coercion in prisons: the violence perpetuated by Correctional Service of Canada (CSC) staff. Given the inherent power imbalances in a prison, these incidents of sexual coercion and violence are under reported. When they are reported, CSC does not systematically document them. As the OCI wrote, CSC’s response has indicated an “organizational indifference” and a lack of leadership. In addition to the illegal incidents of sexual violence and coercion, incarcerated people are often subjected to strip-searches. Strip searches – whether routine or otherwise – are experienced as violent and have adverse effects on incarcerated people’s wellbeing. Strip searches have not been proved to be effective preventing the introduction of contraband into prisons.

### CAEFS recommends:

- 1) **End the practice of strip searching in all federal prisons:** Given the harmful impacts of strip searches on prisoners, CAEFS recommends an end to the practice of strip searching. While an end to this practice should eventually be prescribed in legislation, policy reform can precede eventual legislative reform through directives from National Headquarters or the Minister of Public Safety instructing institutional heads to use alternative interventions.
- 2) **Access to external counselling and treatment:** Given the lasting emotional and psychological impacts of sexual violence experiences, CAEFS recommends that incarcerated people be able to readily access free, community-equivalent, confidential counseling and treatment options for trauma and abuse that are independent and external to CSC.

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<sup>1</sup> Office of the Correctional Investigator, Annual Report 2019-2020, pp 22-49, available online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20192020-eng.pdf> [OCI Annual Report 2019-2020].



- 3) **Increase in oversight and accountability measure of and for CSC:** CAEFS recommends the implementation of increased oversight and accountability measure of and for CSC to ensure that incarcerated people in CSC's care are protected against future sexual violence. This would include implementing a system for documenting and recording incidents of sexual violence and coercion.
- 4) **Launching an Independent Public Inquiry:** An Independent public inquiry that focuses specifically on the issue of staff-to-prisoner sexual coercion, violence and abuse - including the state sanctioned sexual violence experienced by those subjected to strip searches - is necessary to understand the full scope of the issue and to prevent the harm from continuing.

## FINDINGS FROM THE OFFICE OF THE CORRECTIONAL INVESTIGATOR

In October 2020, the OCI released their annual report, which included a national investigation into sexual coercion and sexual violence in federal corrections entitled: "*A Culture of Silence*". CAEFS welcomed the OCI's initiative in taking the first ever systemic examination of the issue of sexual coercion and violence in Canadian federal prisons. CAEFS agrees with the OCI that Canada is behind when it comes to addressing sexual violence behind bars.

As one of the most under-reported types of crimes in Canada, sexual coercion and violence "has notoriously existed in the shadows of society,"<sup>2</sup> and sexual violence is even less likely to be reported in a prison environment. As the OCI writes:

[I]ncarcerated individuals face a myriad of disincentives for reporting experiences of sexual violence. Many are afraid to report, fearing retaliation, retribution or re-victimization by the perpetrators, be it other inmates or staff. Furthermore, they face the risk of not being believed, being ridiculed, or even punished for reporting coerced sex.<sup>3</sup>

The OCI investigation also found that marginalized people are often most frequently targeted for sexual violence behind bars, particularly: women; individuals who identify as, or are perceived to be, lesbian, gay, bisexual, or, transgender; people with histories of trauma and abuse, and people with a mental illness.<sup>4</sup>

Most women, non-binary, trans, and Two Spirit people in federal prisons designated for women are survivors of trauma and abuse.<sup>5</sup> CSC have themselves acknowledged that "[c]ompared to the average Canadian,

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<sup>2</sup> OCI Annual Report 2019-2020, p 23: among the general Canadian population, it is estimated that only 5% of sexual assaults are reported to police.

<sup>3</sup> *Ibid.*

<sup>4</sup> OCI Annual Report 2019-2020, p 24.

<sup>5</sup> Office of the Correctional Investigator, Annual Report 2018-2019, p 119, available online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20182019-eng.pdf> [OCI Annual Report 2018-2019].





women offenders: have a higher incidence of substance abuse and mental health problems [and] are more likely to have a history of physical and/or sexual abuse”.<sup>6</sup>

Furthermore, in 2015, the Office of the Correctional Investigator indicated that: “close to 70% of federally sentenced women report histories of sexual abuse and 86% have been physically abused at some point in their life. Their life histories of trauma cannot easily be separated from their conflict with the law.”<sup>7</sup> This reality is exacerbated for Indigenous women, non-binary and Two Spirit people. CSC’s own research has revealed that nearly all Indigenous women serving federal sentences (as many as 91%) have experienced physical or sexual abuse.<sup>8</sup>

Survivors of sexual abuse are also generally at risk of further sexual violence and abuse. As noted by the OCI in their 2018-2019 Annual Report, “[r]ather than reducing the effects of traumatic exposure, prisons often reproduce traumatic events and exacerbate symptoms of previous trauma.”<sup>9</sup> Sexual misconduct and violence from CSC staff may trigger flashbacks, aggression, and post-traumatic stress for many prisoners. Experiences of sexual violence can also result in the triggering of self-injurious and/or other defensive or reactive actions.

The OCI makes clear recommendations to begin addressing the pervasive issue of sexual coercion and violence inside federal prisons, yet these recommendations were not accepted by the Minister of Public Safety. This lack of commitment to meaningful action demonstrates an ongoing apathy to the seriousness of the harm caused - what the OCI describes as “organizational indifference” and a lack of leadership. There is an urgent and overdue need for action, particularly given CSC’s obligation under the *Correctional and Conditional Release Act* to provide “safe and humane custody and supervision” of incarcerated people.<sup>10</sup>

## THE PERPETUATION OF SEXUAL VIOLENCE AND COERCION BY CSC STAFF

While the OCI’s investigation includes some anecdotal evidence around incidents of sexual violence and coercion involving CSC staff - including “inappropriate relationships between officers and inmates, officers watching women undress through the slots, staff using sexually derogatory terms to refer to inmates, as well as flirting and sexual harassment”<sup>11</sup> - data on these incidents is largely absent from the OCI investigation.

CAEFS has been made aware of numerous other incidents of CSC employees engaging in sexual coercion or violence against incarcerated people. Since 2015, these incidents have included:

<sup>6</sup> Correctional Service Canada, “Women offenders”, available online: <https://www.csc-scc.gc.ca/publications/005007-3012-en.shtml>.

<sup>7</sup> Office of the Correctional Investigator Annual Report 2014-2015, p 3, available online: <https://www.oci-bec.gc.ca/cnl/rpt/pdf/annrpt/annrpt20142015-eng.pdf>

<sup>8</sup> Correctional Service Canada, Social Histories of Aboriginal Women Offenders, Emerging Research Results – ERR 14-7 (May 2014), as cited in: Annual Report of the Office of the Correctional Investigator 2015-2016, p 43, available online: <https://www.oci-bec.gc.ca/cnl/rpt/pdf/annrpt/annrpt20152016-eng.pdf>.

<sup>9</sup> OCI Annual Report 2018-2019, p 119.

<sup>10</sup> *Corrections and Conditional Release Act* (S.C. 1992, c. 20), s 3(a) [CCRA].

<sup>11</sup> OCI Annual Report 2019-2020, p 48.



- Unwelcomed comments of a sexual nature from male CSC staff;
- Sexualized looks and comments from CSC staff;
- Sexual harassment and inappropriate behaviour on the part of CSC staff;
- Sexual assaults wherein the survivor was discouraged from disclosing details of the incidents;
- Demeaning and intrusive strip searches following returns from work releases, family visits, Escorted Temporary Absences (ETAs), and Unescorted Temporary Absences (UTAs);
- Men CSC officers watching women using the toilet in their cells;
- CSC staff accompanying women and gender diverse people to doctor's appointments and insisting on watching their entire examination. On some occasions CSC staff refused to leave the room, even after a physician requested them to do so;
- Sexual assault where the survivor did not report the incident for 8 months for fear that reporting would impact an upcoming parole hearing;<sup>12</sup>
- Men CSC staff present during strip searches and participating in the strip search of women.

These are some examples of incidents that CAEFS has reported on in the last 6 years through our regional advocacy work. However, we are unable to provide a clearer picture of sexual violence and coercion perpetrated by CSC staff in the federal prisons designated for women because further accurate and comprehensive data is not collected or shared by CSC on this matter.

CAEFS is also aware of two ongoing cases against Correctional Officers for charges of sexual assault, of which the most well-known is a case that originated at the Nova Institution for Women (Nova). In 2019, CAEFS and Elizabeth Fry Societies in the Atlantic region heard from a group of women incarcerated at Nova that they had been sexually assaulted by a CSC Correctional Officer, and that CSC had failed to respond to these reported abuses. Instead, CSC ignored the women who came forward and/or transferred them to other institution. The women were also made to apologize to the person who abused them.<sup>13</sup> In May 2020, this Correctional Officer (who has since left CSC) was arrested and charged with 6 counts of sexual assault, 6 counts of breach of trust, and 1 count of trying to procure sexual service - all related to his work at Nova.

In July 2020, a CSC Officer at the Grand Valley Institution (GVI) was arrested and charged with 1 count of sexual assault against a prisoner for an incident that occurred in 2016.<sup>14</sup> Few details about this case have been made public. Many incarcerated people have reported to CAEFS that they feel that they are often disbelieved by CSC administration when they bring their experiences forward, instead choosing to trust the CSC staff. Given that most incidents of sexualized violence or coercion are rarely witnessed by others – and that these reports are not systematically tracked – it is challenging to know the magnitude of the problem. Indeed, in "A Culture of Silence" the OCI found that CSC

<sup>12</sup> CBC News (17 June 2019) "15-month sentence for healing lodge worker convicted of sexual assault," available online: <https://www.cbc.ca/news/canada/saskatchewan/healing-lodge-worker-sexual-assault-15-months-1.5178783>.

<sup>13</sup> CAEFS, News Release, May 2020: *Former Correctional Officer at the Nova Institution for Women Arrested on Charges of Sexual Assault Against Prisoners*, available online: <https://www.caefs.ca/raising-awareness>.

<sup>14</sup> CAEFS, News Release, July 2020: *Correctional Officer at the Grand Valley Institution Arrested for Sexual Assault Against Prisoner*, available online: <https://www.caefs.ca/raising-awareness>.





“does not publicly report on this problem, does not collect, record or track statistics and has never conducted research in this area. It is largely by virtue of this silence and organizational indifference that there are considerable gaps in the Service’s approach to detecting, tracking, responding to, investigating, and preventing sexual coercion and violence”<sup>15</sup> The OCI’s findings affirms CAEFS position that has shown considerable indifference towards prisoners’ experiences of sexual violence from CSC staff.

In addition to not being believed and/ or ignored, incarcerated people who disclose sexual violence or coercion also risk retaliation from staff. The inherent power imbalance between a correctional officer and a prisoner cannot be overstated. During COVID-19 personal visits have also been prohibited and access to external accountability mechanisms have been significantly reduced. As a result, there is less CSC oversight than ever, making prisoners even more vulnerable to abuse.

## STRIP SEARCHES AS SEXUAL ASSAULT

In federal prisons, routine and non-routine strip searches are conducted under the premise of preventing the introduction of contraband into an institution, yet there is little evidence demonstrating that strip searches meet this objective. What is well documented that strip searches are traumatizing and harmful. The Supreme Court of Canada has even described the practice of strip searching as “inherently humiliating and degrading”.<sup>16</sup> For women, non-binary, trans, and Two Spirit people - particularly those who have experienced sexual violence - strip searches are experienced as an act of sexualized violence. This was affirmed by the Supreme Court of Canada in *R v. Golden* (2001):

Strip searches are thus inherently humiliating and degrading for detainees regardless of the manner in which they are carried out and for this reason they cannot be carried out simply as a matter of routine policy. The adjectives used by individuals to describe their experience of being strip searched give some sense of how a strip search, even one that is carried out in a reasonable manner, can affect detainees: “humiliating”, “degrading”, “demeaning”, “upsetting”, and “devastating” [...] Some commentators have gone as far as to describe strip searches as “visual rape” [...] Women and minorities in particular may have a real fear of strip searches and may experience such a search as equivalent to a sexual assault.<sup>17</sup>

In this way, strip searches are not only unnecessary and ineffective, but put prisoners’ rights under the Canadian Charter of Rights and Freedoms, as well as rights protected under international law, at risk. Although the court *Golden* was addressing the issue of strip searches that are incident to arrest, and proceeded to set out requirements and guidelines for constitutional strip searches incident to arrests, CAEFS would stress that the physical, emotional and psychological impacts of strip searches on women, non-binary, trans and Two-Spirit people are the same in a prison setting.

<sup>15</sup> OCI Annual Report 2019-2020, p iii.

<sup>16</sup> *R v Golden*, 2001 SCC 83, para 90.

<sup>17</sup> *R v Golden*, 2001 SCC 83, para 90.





An overwhelming number of women, non-binary, trans and Two-Spirit people serving federal sentences have experienced abuse prior to their incarceration - including sexual violence - and carry with them extensive histories of trauma. Moreover, sexual trauma is recognized as a significant determinant of young women's criminalization and is commonplace among incarcerated women. CSC itself has acknowledged that, compared to the average Canadian, women and gender diverse people in prison are more likely to have histories of sexual abuse.<sup>18</sup>

### Legislative Framework & Guidelines for Strip Searching

Sections 48, 49, and 53 of the CCRA, with guidance from Commissioner's Directive (CD) 566-7, provide the legislative framework that allows strip searches to take place in prisons. According to s. 48(1) of the CCRA, "a staff member of the same sex as the inmate may conduct a routine strip search of an inmate, without individualized suspicion,

- (a) in the prescribed circumstances in situations in which the inmate has been in a place where there was a likelihood of access to contraband that is capable of being hidden on or in the body; or
- (b) when the inmate is entering or leaving a structured intervention unit."<sup>19</sup>

In practice, this can mean that strip searches occur after:

- escorted temporary absences (for example, seeking medical treatment);
- unescorted temporary absences (for example, going home to visit family);
- work release;
- after personal visits within the prison (supervised or unsupervised);
- traveling to and from the Minimum Security Unit to the main compound.

According to s. 49(3) of the CCRA, a non-routine strip search may occur when a staff member:

- (a) believes on reasonable grounds that an inmate is carrying contraband or carrying evidence relating to a disciplinary or criminal offence, and that a strip search is necessary to find the contraband or evidence, and
- (b) satisfies the institutional head that there are reasonable grounds to so believe,
- (c) a staff member of the same sex as the inmate may conduct a strip search of the inmate.<sup>20</sup>

Section 53 of the CCRA also states that the Institutional head may authorize a frisk search or strip search of all prisoners "where the Institutional Head is satisfied that there are reasonable grounds to believe that (a) there exists, because of contraband, a clear and substantial danger to human life or safety or to the security

<sup>18</sup> Correctional Service Canada, "Women offenders", available online: <https://www.csc-scc.gc.ca/publications/005007-3012-en.shtml>.

<sup>19</sup> CCRA, s 48.

<sup>20</sup> CCRA s 49(3).







of the penitentiary, and (b) a frisk search or strip search of all the inmates in the penitentiary or any part thereof is necessary in order to seize the contraband and avert the danger.”<sup>21</sup>

As such, strip searching in federal prisons for women can be routine or non-routine – but neither routine or non-routine strip searches are required as the language in the CCRA is permissive rather than prescriptive giving authority to institutional heads to choose less invasive methods.

### Legal and Legislative Concerns

Given that strip searches are by far the most restrictive measure, choosing a less restrictive intervention is not only less harmful, but a requirement according to the Principles that guide CSC, as outlined in the CCRA. The OCI has also found that “[b]y definition a random strip search is beyond the reach of any legal or constitutional standard of suspicion, reasonableness or necessity.”<sup>22</sup>

CSC has a positive obligation under the CCRA to provide ‘safe and humane custody and supervision’ of incarcerated people and to be sensitive to the unique needs of Indigenous people, women, and those with mental health issues.<sup>23</sup> The use of strip-searching ensures that CSC cannot and will not meet either of these obligations, nor does it align with the spirit of Creating Choices - a 1990 CSC Task Force mandated to examine ‘correctional management’ of federally sentenced women. Creating Choices stressed that prisons designated for women should not be security-driven, but should instead focus on more supportive and dynamic interventions.<sup>24</sup> Importantly, strip searching is also not the least restrictive measure, which is required in implementing correctional policy under the CCRA,<sup>25</sup> nor can it “be considered a trauma-informed gender-responsive best practice”.<sup>26</sup>

Instead, the use of strip searching reflects CSC’s historic approach to women prisoners aptly summarized by Justice Arbour in her 1996 report: “From the beginning, the welfare of women prisoners was secondary to that of the larger male population”. Substantive equality demands a different approach for women, non-binary, trans and Two-Spirit people; this was the driving force behind Creating Choices, which, along with Justice Arbour’s report, discourages the use of strip searching for women.

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<sup>21</sup> CCRA s 53.

<sup>22</sup> OCI Annual Report 2018-2019, p 119.

<sup>23</sup> CCRA, s 3(a).

<sup>24</sup> As discussed in OCI Annual Report 2018-2019, p 119.

<sup>25</sup> CCRA, s 4(c): “the Service uses the least restrictive measures consistent with the protection of society, staff members and offenders”.

<sup>26</sup> OCI Annual Report 2018-2019, p 117.



Most recently, the Calls for Justice from the 2019 Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls include recommendations for CSC and “call upon Correctional Service Canada to eliminate the practice of strip-searches” (Call for Justice 14.13).<sup>27</sup>

Strip searches also put at risk a person’s rights under the Canadian Charter of Rights and Freedoms, namely their section 7 rights to life, liberty and security of the person, and their section 12 right to not be subjected to any cruel and unusual treatment or punishment.

The use of strip searching is also addressed in of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Rules 50, 51, and 52(1) have been included at the end of this document, for reference). Rule 52(1) specifically stresses that strip searches **should be undertaken only if absolutely necessary** (Rules 50-52 have been included in the Annex, for reference).

Furthermore, the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) also deal with strip searches.<sup>28</sup> Rule 20 highlights the harmful psychological and possible physical impact of invasive body searches and advocates for alternatives, while Rule 19 stresses that special sensitivity should be demonstrated in the case of women prisoners as the experience “may be extremely distressing and traumatizing if they have been victims of sexual abuse in the past”<sup>29</sup> Rules 19 and 20 have been included in the annex, for reference.

Canada is a signatory to both these sets of Rules, which provide minimum standards that are applicable throughout the world. As a country that is comparatively advanced in the just treatment of its prisoners, Canada should not be struggling to meet these minimum standards. In fact, we should be much farther ahead.

## Randomized Mandatory Strip Searches

Of particular concern is the use of mandatory randomized strip searching, which have been utilized by some federal prisons for women, including the Grand Valley Institution. Randomized strip searching is operationalized through a tool that randomly assigns strip searches to a third of the population upon return from visits or outings. In its 2018-2019 Annual Report, the OCI explained that:

“In September 2018, direction from CSC’s Women Offender Sector was provided to all Wardens of women institutions regarding the implementation of a “random calculator” to conduct strip searches.

<sup>27</sup> *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) “Calls for Justice” at p 198, online:

[https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls\\_for\\_Justice.pdf?fbclid=IwAR0yVRw8LNQX4nLnOcRKB7qQd1wCYMybSO6LpRpy18M\\_4Lp3NswEI2WEMg](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf?fbclid=IwAR0yVRw8LNQX4nLnOcRKB7qQd1wCYMybSO6LpRpy18M_4Lp3NswEI2WEMg).

<sup>28</sup> UN General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)* : note / by the Secretariat, 6 October 2010, A/C.3/65/L.5, Rules 19 and 20.

<sup>29</sup> UN General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)* : note / by the Secretariat, 6 October 2010, A/C.3/65/L.5, Rule 19.





The random strip search calculator was set at default of a 1:3 ratio. It was implemented as a means to standardize the random assignment of routine strip-searches.

In more direct terms, the use of a random calculator for strip-searching at women offender institutions acknowledges that there was little consistency across sites in terms of the frequency, purpose or requirements of strip-searching. Though concerning in itself, in practice the new strip search protocol could mean more routine strip searches at women offender institutions.”<sup>30</sup>

People in maximum security reported to CAEFS Regional Advocates that they were subject to a routine strip-search nearly every time they returned from attending programs in general population. Similarly, those in minimum security have advised that they were strip-searched regularly upon returning from temporary absences (TA's) and work releases.

### **Additional Impacts of Strip Searches on Prisoners**

**Strip searching impacts timely parole:** Given that strip searching is routinely required when going to or returning from temporary absences it is perhaps unsurprisingly that some prisoners choose to opt out of their temporary absences. Some people may choose to forgo their temporary absences entirely and others only during their menstrual cycle as a result of the degrading manner in which searches are carried out for people who are menstruating. This decision to opt out of visits and outings impacts prisoners' ability to successfully pursue their correctional plans and undermines their chances of parole and successful reintegration at their earliest possible dates.

**Strip searching triggers self-injurious behaviour:** Given that strip searches are often experienced as sexual assault, they may also result in the triggering of self-injurious. Self-injurious behaviour can lead to use of force and time spent in segregation, including Structure Intervention Units or under mental health monitoring.

**Strip Searching undermines positive rapport between staff and prisoners:** Staff in prisons designated for women have indicated to CAEFS that they would prefer not to have to conduct strip searches because it interferes with their ability to work with prisoners in constructive ways.<sup>31</sup>

### **Effectiveness and Utility of Strip Searches**

In 2017, the Standing Senate Committee on Human Rights heard evidence regarding issues relating to the human rights of prisoners in the correctional system. Two of the expert witnesses were Amanda George and Debbie Kilroy

<sup>30</sup> OCI Report 2018-2019, p 117.

<sup>31</sup> Kim Pate, "When strip searches are sexual assaults" (October 14, 2011) The Hill Times.





from Sisters Inside – an Australian organization which advocates for the collective human rights of women and girls in prison. As part of her evidence, Amanda George stated: “[strip searches] have been around for a long, long time, but prisons have changed. There is much more visual surveillance of people in visits and of people going through into prisons. Strip-searches don't find contraband. All of the freedom of information requests we have done have indicated that”.<sup>32</sup>

George also spoke of a conversation she had with the then-deputy warden at Nova Institution for Women in Nova Scotia in 2004, who noted that all deputy wardens in women’s prisons in Canada had decided that “we must stop the use of routine strip searches.”<sup>33</sup> George elaborated stating that:

“These were the wardens of women's prisons who said that these strip-searches don't do anything positive. They interfere with our relationship with women inside. If we're to have any sort of reasonable relationship, strip-searches completely annul that. They don't find contraband and we don't need them anymore. What happened with that?”

Notably, George also described a pilot project on strip searches that was conducted in the state of Victoria, Australia in 2002. As part of the pilot, the State decided to reduce the number of strip searches in the women’s prison by one third (from 21,000/year to 14,000/year) to determine if it would have an impact on the number of positive drug urine tests or the amount of contraband found. The impacts of the pilot project were telling: not only was the same amount of contraband found (4 items total), but there was a 40% reduction in the number of positive urine tests. Less strip searches, less drug use or self-medicating.<sup>34</sup>

## RECOMMENDATIONS AND REMEDIES

### Increased Oversight and Accountability Measures

The most recent investigation from the OCI shows that CSC lacks an overall strategy that is specifically geared to the prevention of sexual violence and abuse in prisons. The high number of incidents of sexual violence and assaults against prisoners – including violence perpetrated by CSC staff on prisoners and the degrading practice of routine strip searches – is demonstrative of a failure on behalf of CSC to provide adequate and effective safeguards to ensure that the safety, dignity and wellbeing of prisoners is protected.

As discussed above, these incidents are not isolated events, but rather are connected to larger systemic issues related to power dynamics and the toxic CSC staff culture within prisons. As has been the case with many damaging situations

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<sup>32</sup>Proceedings of the Standing Senate Committee on Human Rights, Issue No. 19 – Evidence – June 7, 2017, 42nd Parliament, 1st Session (December 3, 2015 - September 11, 2019), online: <https://sencanada.ca/en/Content/Sen/Committee/421/RIDR/19ev-53404-e>.

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*





involving Canadian institutions over the years, wherever there are vulnerable people who are institutionalized, there is a high risk of them being harmed. In the case of CSC, the harm is intensified by existing cultures of disbelief.

To address this pervasive problem, CSC should be held to a heightened standard of accountability in this area of prisons management. CAEFS therefore recommends the implementation of increased oversight of CSC. CAEFS recognizes that the OCI is one such existing mechanism of CSC oversight. However, when it comes to the delicate issue of sexual violence, assaults and the harmful impacts of strip searches, CAEFS is concerned that the OCI's powers are not sufficient to address the complex issue of sexual violence perpetrated by CSC staff on prisoners.

There is also the issue of the current response procedures and police intervention in incidents of sexualized violence in prisons designated for women. According to section 2 of CD 577 – Staff Protocol in Women Offender Institutions, the Institutional Head must ensure that:

- a. any allegation of harassment or sexual misconduct is immediately reviewed to determine how to proceed. As soon as possible, the Institutional Head must inform the Assistant Deputy Commissioner, Institutional Operations, who is responsible for informing the Regional Deputy Commissioner and the Deputy Commissioner for Women of the allegations
- b. any allegation of sexual misconduct is referred to the local police force of jurisdiction, without delay, for review and investigation.<sup>35</sup>

It has been CAEFS' experience that prisoners often do not trust police or the abilities of police to intervene in delicate matters such as sexual violence. There is therefore a risk that women, non-binary, trans and Two-Spirit people who have experienced sexual violence or harassment on the part of a CSC staff will be hesitant to report the incident.

Thus, CAEFS recommends that an alternative forum for oversight and accountability be put in place in order to address the delicate and egregious issue of staff perpetrated sexual violence.

### **An Independent Public Inquiry**

For several years, it has been CAEFS' experience that CSC has been unable or unwilling to seriously address the systemic problems related to abuse of power and sexualized violence within prisons designated for women, including keeping data related to this form of violence. An independent public inquiry that focuses specifically on the issue of staff to prisoner sexual coercion and violence - including the state sanctioned sexual violence experienced by those subjected to strip searches - is necessary to understand the full scope of the issue and to prevent the harm from continuing.

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<sup>35</sup> Commissioner's Directive Number 577 "Staff Protocol in Women Offender Institutions" (in effect 2019-07-22), available online: <https://www.csc-scc.gc.ca/acts-and-regulations/577-cd-en.shtml>.





Given the number of assaults that have occurred in prisons designated for women across the country, as well as the likelihood that many more incidents of sexualized violence, coercion and abuse have and continue to take place in the shadows, we see sexual assault against prisoners as a systemic issue of national importance that must be addressed.

Should an Independent Public Inquiry be launched, CAEFS would support an approach that focuses less on recommendations, but rather one that would plot a course to change the ways the current system in federal prisons designated for women fails to address and mitigate the prevalence of sexual violence, coercion and abuse.

### Access to External Resources and Support

Experiences of sexual violence have lasting emotional and psychological impacts on women, non-binary, trans, and Two-Spirit people in prison. Given what is already known about the prevalence of sexual violence and sexual coercion in prisons – and how grossly underreported these incidents are - it is crucial that a survivor of violence have access to appropriate services to heal from lasting trauma. Research also suggests that where trauma-informed practices are implemented, prisons have seen a substantial decrease in institutional violence and mental-health related incidents such as suicide attempts.<sup>36</sup> Although CSC offers access to mental health nurses, psychiatrists, counselling, and support from Elders and Chaplains, CAEFS has found that these services are often inadequate.

CAEFS is also concerned about the limitations and complexities associated with the ‘dual loyalty’ of health care professionals who are required to show deference to both the rules governing their profession, as well as those of their employer (CSC), which can at times pose competing and conflicting priorities. This issue of ‘dual loyalty’ was examined in a 2018 publication by Prisoners’ Legal Services (PLS) entitled “Proposed guidelines for medical professionals working in CSC: Compliance with the *Mandela Rules*”.<sup>37</sup> In this report, PLS stresses that ““medical staff cannot perform tasks with “complete loyalty” to their prisoner patients while they are employed or contracted by CSC.”<sup>38</sup> It can thus become difficult or impossible for health care professionals employed by CSC to resist undue influence or submitting to the pressures to follow CSC directions and policies. This in turn risks impacting the quality of care they can provided, in situations where CSC operations are prioritized over a patient’s best interests.<sup>39</sup> For instance, the Canadian Medical Association’s 2004 *Code of Ethics* is intended to empower medical professionals to “consider first the well-being of the patient.”<sup>40</sup> And yet, in the prison context, there is a danger that health care professionals “accommodate their medical skills to the limitations imposed on them by adjust[ing] standards of practice to institutional constraints.”<sup>41</sup>

<sup>36</sup> OCI Annual Report 2018-2019, p 120.

<sup>37</sup> Prisoners’ Legal Services, “Proposed guidelines for medical professionals working in CSC: Compliance with the *Mandela Rules*” (2018), available online: <https://prisonjustice.org/wp-content/uploads/2018/10/Proposed-guidelines-for-medical-professionals-working-in-CSC.pdf> [PLS Report, 2018].

<sup>38</sup> PLS Report, 2018, p 4.

<sup>39</sup> PLS Report, 2018, p 2.

<sup>40</sup> Canadian Medical Association, 2004, *Code of Ethics, Fundamental Responsibilities*, para 1.

<sup>41</sup> PLS Report, 2018, p 3, citing Jörg Pont, DM, Heino Stöver, PhD, & Hans Wolff, MD, MPH, “Resolving Ethical Conflicts in Practice and Research: Dual Loyalty in Prison Health Care” *American Journal of Public Health* (March 2012).





Many prisoners have also expressed to CAEFS and PLS that they do not trust health care providers employed by CSC,<sup>42</sup> and worry about confidentiality. It has been CAEFS' experience that someone who has experienced abuse will often struggle with the ability to trust others with their story or their healing. In prisons, this is compounded by the existing power dynamics between CSC staff and prisoners, as well as a negative CSC staff culture (i.e. bullying, harassment, lack of staff sensitivity to the specific needs of women, non-binary, trans and Two-Spirit people, failure to intervene in assaults, sexual misconduct etc.). Over and over, CAEFS has documented how this toxic prison environment amplifies distrust and hostility between prisoners and CSC staff.<sup>43</sup> This is particularly so in the case of survivors who have experienced sexualized violence at the hands of a CSC staff, where prisoners face the risk of not being believed by institutional management or fear being further targeted, ridiculed or punished for reporting an incident. As a result, many survivors do not speak of incidents of sexual violence, nor are they reported.

CAEFS sees an important gap in adequate mental health service provision when the only health professionals or support people available to survivors of sexual violence are also employed by CSC, with existing obligations to their employer that may threaten the confidentiality of information divulged by the prisoner in confidence. The added pressure that comes with divulging an incident of violence committed by a CSC staff, to someone *hired by CSC*, highlights the crucial need for survivors of trauma and abuse to be able to access counseling and treatment options that are independent and external to CSC.

Health care workers, counsellors, Elders, Chaplains and those tasked with providing physical and mental health supports to prisoners should exclusively act as caregivers who provide free, community-equivalent, and confidential care, independent of CSC and loyal only to the patients themselves. This is affirmed by Rule 25(2) of the Mandela Rules, which stipulates that "health-care services shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence."<sup>44</sup> In light of the 'dual loyalty' conflict facing health professionals working in federal prisons, as well as the heightened sensitivity required when supporting a survivor of sexual violence, CAEFS echoes PLS' recommendations that "Canada partner with the provincial ministries of health to provide truly independent health services to federal prisoners."<sup>45</sup>

For Indigenous prisoners, these services must also be culturally relevant and independent of CSC. This is affirmed through Call to Action 36 from the Truth and Reconciliation Commission of Canada's Final 94 Calls to Action:

36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.<sup>46</sup>

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<sup>42</sup> PLS Report, 2018, p 2.

<sup>43</sup> CAEFS Annual Report 2019-2020, p 12, available online: [https://ac935091-bf76-4969-8249-ae3a107fca23.filesusr.com/ugd/d2d30e\\_a4e5b3fcc4684de0910ed453fa77de3e.pdf](https://ac935091-bf76-4969-8249-ae3a107fca23.filesusr.com/ugd/d2d30e_a4e5b3fcc4684de0910ed453fa77de3e.pdf).

<sup>44</sup> UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* : resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175, rule 25(2).

<sup>45</sup> PLS Report, 2018, p 2.

<sup>46</sup> Truth and Reconciliation Commission, *Calls to Action*, Call to Action 36, online: [http://trc.ca/assets/pdf/Calls\\_to\\_Action\\_English2.pdf](http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf)





## Recommendations – A Summary

The lack of protection measures and oversight of CSC, combined with the existing vulnerabilities and histories of trauma experienced by women, non-binary, trans and Two Spirit People in prison amplifies the egregiousness of the threat of sexual violence in federal prisons designated for women.

Based on our experience working with those most impacted by sexual violence and coercion, **CAEFS makes the following recommendations:**

- 1. End the practice of strip searching in all federal prisons:** Given the harmful impacts of strip searches on prisoners, CAEFS recommends an end to the practice of strip searching. While an end to this practice should eventually be prescribed in legislation, policy reform can precede eventual legislative reform through directives from National Headquarters or the Minister of Public Safety instructing institutional heads to use alternative interventions.
- 2. Access to external counselling and treatment:** Given the lasting emotional and psychological impacts of sexual violence experiences, CAEFS recommends that incarcerated people be able to readily access free, community-equivalent, confidential counseling and treatment options for trauma and abuse that are independent and external to CSC.
- 3. Increase in oversight and accountability measure of and for CSC:** CAEFS recommends the implementation of increased oversight and accountability measure of and for CSC to ensure that incarcerated people in CSC's care are protected against future sexual violence. This would include implementing a system for documenting and recording incidents of sexual violence and coercion.
- 4. An Independent Public Inquiry:** An independent public inquiry that focuses specifically on the issue of staff-to-prisoner sexual coercion, violence and abuse - including the state sanctioned sexual violence experienced by those subjected to strip searches - is necessary to understand the full scope of the issue and to prevent the harm from continuing.

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## ANNEX

### CD 566-7, Annex D – Guidelines for Strip Searching Women

CD 566-7, Annex D provides the following guidelines for strip searching women:





“In the case of routine strip searches, the visual inspection of the **naked body** of the compliant woman inmate will normally be conducted in a **two-step process**.

In the first step, the woman inmate being searched will be asked to remove all clothing that covers the upper torso, and a visual inspection of the body will occur. Once this area is searched, a shirt/top (either her own or institutional issue) will be provided to her to put on. In the second step, the woman inmate will then be asked to remove all clothing that covers the lower half of her body. Once this area has been visually inspected, she will be given clothing to cover her lower body (her own or institutional issue).

Although the visual inspection of the naked body is being completed in two steps, it is in keeping with the legislation that governs this practice. Specifically, **section 46** of the CCRA **requires a visual inspection of the naked body** in the **prescribed manner**.

The prescribed manner is outlined in **section 45** of the Regulations whereby a visual inspection of the person by a staff member, in the course of which inspection the person being searched will undress completely in front of the staff. There is no requirement to be completely undressed all at once during the strip search as long as the woman has in fact been undressed completely during the process.

In the case of a woman being provided with a security garment, clothing will not be returned after each step given the potential risk for self-injury. The security garment should be provided immediately following the strip search.

In all cases of strip searches, the woman being searched may be required to open her mouth, display the soles of her feet, run her fingers through her hair, present open hands and arms, bend over or otherwise enable the staff member to perform the visual inspection.

A privacy barrier must normally be employed when conducting a strip search.

Strip search of women inmates must be conducted in accordance with CD 577 ' Staff Protocol in Women Offender Institutions.

### **CD 566-7, Annex F – Guidelines for Strip Searching Trans People**

CD 566-7, Annex F provides the following guidelines for searching trans people:<sup>47</sup>

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<sup>47</sup> Commissioner's Directive Number 566-7 "Searching of Offenders" (in effect 2015-07-02), available online: <https://www.csc-scc.gc.ca/acts-and-regulations/566-7-cd-eng.shtml>



This annex will assist institutions in developing protocols for the searching of transgender inmates. A sample protocol is included for reference.

Searches will be conducted in a manner consistent with the CCRA. The procedures of this CD also consider the privacy and dignity of the individual being searched.

Given the above, where an offender has been diagnosed with gender identity disorder in accordance with **CD 800 - Health Services**, the searching of transgender inmates, especially strip searching, will take into consideration the mixed gender physiology of those individuals.

To respect the dignity of the inmate, individualized protocols for searching will be put in place through consultation with the inmate.

#### *Sample Protocol*

#### **Searching Protocol of Transgender Inmates**

Note: The direction offered below is specific to pat-downs and security searches individualized for one male to female transsexual inmate residing in a men's institution.

Inmate X has been spoken to regarding being searched (e.g. pat-downs, strip searches). Inmate X has indicated he is aware of his options and wants to have the pat-down search completed as it would be on any other inmate in the institution. With regard to a strip search, again Inmate X has indicated he is aware of his options but wants the strip search completed as soon as possible as normally done in the institution.

With the above consultation and understanding in place, male or female officers completing a pat-down search with respect to Inmate X will complete a thorough search by dealing with the bra as any other article of clothing. The bra line will be searched moving up from the bottom around the bra line to the top and down the middle between the breasts. Have Inmate X pull the bra away from the body so any contraband will fall out.

With respect to a strip search, male officers will ask Inmate X if he accepts that the search be completed by male officers. If so, the male officers will complete the search. If Inmate X has concerns, then a pat-down search will occur followed by male officers completing the search of the lower body leaving the top clothed, allowing the inmate to dress. The inmate will be fully observed at all times during the turnover to female officers. The female officers will then complete the search of the upper body leaving the lower body clothed.



## United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) – A/RES/70/175:

- **Rule 50:** “... Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.”
- **Rule 51:** Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner’s privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.
- **Rule 52 (1):** Intrusive searches, including strip and body cavity searches, **should be undertaken only if absolutely necessary.** Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.

## United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) – A/C.3/65/L.5:

- **Rule 20:** Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches
- **Rule 19:** Article 17 of the International Covenant on Civil and Political Rights guarantees all persons’ right to privacy. The Human Rights Committee, in its General Comment 16 on Article 17 stated that “[s]o far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex” (see HRI/GEN/1/Rev.3, part I). This rule underlines that, in accordance with the Human Rights Committee, General Comment referred to above, male members of staff should never be involved in the personal searches of women prisoners including pat down and frisk searches. All searches of women should be carried out by women. The searches referred to in this rule, which should be carried out by women staff include visual strip searches, but different rules apply to invasive or body cavity searches in the case of both male and women prisoners, as explained below. A strip search refers to the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person’s private areas, namely genitals, buttocks, breasts or undergarments. This definition distinguishes strip searches from more intrusive body cavity searches, which involve a physical inspection of the detainee’s genital or anal regions. Where permitted at all, internal (body cavity) searches and strip searches should only be carried out if absolutely and legally necessary, and never on a routine basis. No prisoner – regardless of gender – should be humiliated or be required to strip completely during a search. Such searches can be carried out by exposing parts of the body only in turn to protect, to the extent possible, the dignity of the individual being searched. **Special sensitivity should be demonstrated in the case of women, however, because they are likely to feel the humiliation of undergoing intimate searches particularly. The experience may be extremely distressing and traumatising if they have been victims of sexual abuse**



**in the past.** All searches, but strip searches and body cavity searches in particular, should be undertaken in accordance with pre-established procedures.

