

**Canadian Association of Elizabeth Fry Societies:**  
*Submission to the Committee Against Torture in Advance of the  
Committee's Development of the List of Issues Prior to the  
Reporting for Canada's 8<sup>th</sup> Periodic Review*



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## The Canadian Association of Elizabeth Fry Societies

The Canadian Association of Elizabeth Fry Societies (CAEFS) is a national organization that advocates alongside criminalized women, trans, non-binary, and Two Spirit people – particularly those who are federally incarcerated. CAEFS is comprised of 24 self-governing, community-based Elizabeth Fry Societies located across Canada and a National office in Ottawa – in the unceded and unsurrendered territory of the Algonquin Nation. CAEFS actively monitors and reports on the conditions of confinement inside federal prisons designated for women and is regularly in contact with the people incarcerated therein, while advocating for stronger and more well-resourced communities and supportive services/interventions that interrupt cycles of violence and criminalization.

Canada ratified the United Nation (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) in 1987.<sup>1</sup> The CAT is foundational to the creation of subsequent auxiliary prisoner/detainee human rights laws, such as the UN Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules) and UN Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offender (The Bangkok Rules). The CAT is particularly important to CAEFS' work as it guarantees human rights protections which are not subject to state derogation. No exceptional state circumstance, such as war, natural disaster, or global pandemic, can be invoked as justification for torture.<sup>2</sup> This submission, included as part of Canada's eighth periodic report of its implementation of the CAT, will offer CAEFS' perspective on the ways in which Canada has failed to uphold its commitment to the CAT by sanctioning violence against those incarcerated in federal prisons designated for women.

Specifically, CAEFS will discuss the following as they relate to the Articles presented in the CAT:

- sexual violence and coercion within federal prisons designated for women;
- Structured Intervention Units; and
- the treatment of prisoners with mental health disabilities.

We note that this submission could be devoted entirely to the human rights violations that have occurred in the prisons designated for women during the COVID-19 pandemic; but we recognize that many of these rights violations were not the result of the pandemic, rather they are exacerbations of what federally incarcerated people were experiencing long before March 2020.

Finally, it is our contention that no amount of reform within the existing system of criminalization and punishment will ever completely eliminate the institutionalized practice of torture or other cruel treatment in Canada. We believe that there are more just and effective forms of accountability that do not continue to perpetuate harm against our community's most vulnerable members. Canada must invest in upstream interventions that create strong, well-resourced communities. In that people in prison retain their human rights, CAEFS makes the following recommendations within the existing framework of criminalization and punishment, while urging the UN to consider more transformative approaches to justice.

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<sup>1</sup> United Nations (UN) Treaty Body Database. "Reporting Status for Canada". Retrieved from: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=CAN&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=CAN&Lang=EN)

<sup>2</sup> UN, 1984. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", Article 2 (2).

## Sexual violence and coercion within federal prisons designated for women

### Background

Prisons are inherently violent. The power imbalance that exists between prison staff and those incarcerated cultivates a culture of silence and shame, where sexual coercion and violence are underreported and under-documented. 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>3</sup> With prisons existing on the fringes of society both geographically and in the social conscious, these spaces compound the historically ascribed deterrents of sexual violence reporting. As the Office of the Correctional Investigator (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>4</sup>

In their 2019-2020 Annual Report, the OCI published a national investigation into the sexual violence and coercion experienced by prisoners in federal corrections. The investigation entitled: “A Culture of Silence”, 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>5</sup>

The sexual violence perpetrated by Correctional Service Canada (CSC) staff not only intentionally targets marginalized groups, but it also re-victimizes and re-traumatizes those with existing histories of sexual and physical abuse. In 2015, it was reported that close to 70% of federally sentenced women have histories of sexual abuse, while 86% report to have experienced physical abuse at some point in their lives.<sup>6</sup> For Indigenous women, non-binary, trans, or Two Spirit people, this reality of violent victimization is exacerbated. CSC’s own research revealed that nearly all Indigenous women serving federal sentences (as many as 91%) have experienced physical or sexual abuse.<sup>7</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>8</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, which will often land the individual in segregation.

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<sup>3</sup> Office of the Correctional Investigator (OCI), 2020. “2019-2020 Annual Report”, pg. 23: among the general Canadian population, it is estimated that only 5% of sexual assaults are reported to police.

<sup>4</sup> Ibid, 23.

<sup>5</sup> Ibid.

<sup>6</sup> OCI, 2015. “2014-2015 Annual Report”, pg.3.

<sup>7</sup> Correctional Service Canada (CSC), 2014. “Social Histories of Aboriginal Women Offenders, Emerging Research Results” as cited in: Annual Report of the Office of the Correctional Investigator 2015-2016, pg. 43.

<sup>8</sup> OCI, 2019. “Annual Report 2018-2019”, pg. 119.

## **Strip searching as sexual assault**

In federal prisons, routine and non-routine strip searches are conducted under the premise of preventing the introduction of contraband (drugs or weapons) into an institution, yet there is little evidence demonstrating that strip searches meet this objective. What is well documented is 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>9</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>10</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.

## **Instances of sexual violence and coercion perpetrated by CSC staff**

CAEFS has been made aware through its regional advocacy of numerous incidents of CSC employees engaging in sexual coercion or violence against incarcerated people.<sup>11</sup> Since 2015, these incidents have included: sexual harassment and inappropriate behaviour on the part of CSC staff; sexual assaults wherein the survivor was discouraged from disclosing details of the incidents; 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> demeaning and intrusive strip searches following returns from work releases, family visits, Escorted Temporary Absences (ETAs), and Unescorted Temporary Absences (UTAs); and men CSC officers watching women using the toilet in their cells.<sup>13</sup>

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<sup>9</sup> *R v Golden*, 2001 SCC 83, para 90.

<sup>10</sup> *Ibid.*

<sup>11</sup> Canadian Association of Elizabeth Fry Societies (CAEFS), 2021. “Sexual Coercion and Violence in Prisons Designated for Women”, pg. 5.

<sup>12</sup> CBC News, 17 June 2019. “15-month sentence for healing lodge worker convicted of sexual assault”. Retrieved from: <https://www.cbc.ca/news/canada/saskatchewan/healing-lodge-worker-sexual-assault-15-months-1.5178783>.

<sup>13</sup> “Sexual Coercion and Violence in Prisons Designated for Women”, pg. 6.

The issue of sexual coercion and violence in federal prisons received public attention in 2020 after two CSC Correctional Officers were charged with sexual assault. In May of 2020, a former Correctional Officer at the Nova Institution for Women (Nova), Nova Scotia, was arrested and charged with six counts of sexual assault, six counts of breach of trust, and one count of trying to procure sexual service -- all related to his work at the Institution.<sup>14</sup> Exactly two months later, in July of 2020, another Correctional Officer at the Grand Valley Institution (GVI), a federal institution designated for women in Ontario, was arrested and charged with one count of sexual assault against a prisoner, a crime that took place four years earlier in 2016.<sup>15</sup> These two sexual assault cases against Correctional Officers indicate several realities about the prison system in Canada: (1) the presence of a culture of fear and potential retribution cultivated by CSC staff against prisoners; (2) the lack of proper CSC mechanisms through which to report sexual abuse or misconduct; and (3) the pervasiveness of sexual violence against people incarcerated in prisons designated for women.

These cases should be understood as two examples of abuses that occur every day in prison, not as isolated or uncommon incidents. The uniqueness of these cases can be found in the fact that the concerns of the people who came forward were acted upon and that the people who caused harm were held accountable in some way.

### **Relevant CSC policies and directives**

Canadian federal prisons, like most oppressive and punitive systems, have mechanisms in place to systemically obscure the reporting process and de-legitimize allegations of sexual violence. CSC's institutionalized culture of silence is further exacerbated by its limited appetite for conceiving or enforcing policies concerning sexual assault by a CSC employee. At present, there are only two documents that provide guidance to CSC staff on how to respond to a prisoner's report of sexual misconduct or assault. "What to Do if an Inmate is Sexually Assaulted"<sup>16</sup> is a one-page document located in the Health Services section of CSC's internal website, and "Sexually Transmitted Infections Guidelines- Appendix 7: Response to Alleged Sexual Assault"<sup>17</sup> is a document that is almost exclusively available to Health Services staff. These documents are buried in a place - CSC's Health Services policy suite - that is simply not readily available or accessible to all CSC staff.

Sections 48, 49, and 53 of the Corrections and Conditional Release Act (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;”<sup>18</sup>

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<sup>14</sup> CAEFS News release, May 2020. “Former Correctional Officer at the Nova Institution for Women Arrested on Charges of Sexual Assault Against Prisoners”.

<sup>15</sup> Ibid.

<sup>16</sup> “Findings: Examination of CSC Policies, Procedures & Research on SCV” cited from OCI 2019-2020 Annual Report, pg. 29.

<sup>17</sup> Ibid.

<sup>18</sup> Government of Canada, 1992. “Corrections and Conditional Release Act (CCRA)”, s 48.

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); and traveling to and from the Minimum-Security Unit to the main compound.

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 (GVI).<sup>19</sup> Mandatory 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. 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>20</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 (TAs) and work releases.

At present, Canada does not require CSC to provide any data or statistics regarding sexual violence in their federal prisons. There are no academic reviews, reports, studies, or inquiries mandated to examine the pervasiveness of sexual assault in Canadian prisons.<sup>21</sup> As a result, there is no national strategy to combat sexual coercion or violence in Canadian federal or provincial prisons, and no duty to report incidents of sexual violence by CSC or its staff to an external body.

### **Related UN recommendations**

In the concluding observations on the seventh periodic report of Canada made in 2018 by the UN’s Committee against Torture, the Committee states that Canada should address its issues with gender-based violence by providing mandatory training on the prosecution of gender-based violence to all justice officials and law enforcement personnel and continue awareness-raising campaigns on all forms of violence against women, especially against indigenous women and girls.<sup>22</sup> Strip searching is also addressed in the Committee’s 2018

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<sup>19</sup> “Sexual Coercion and Violence in Prisons Designated for Women”, pg. 10.

<sup>20</sup> “2018-2019 Annual Report”, pg. 117.

<sup>21</sup> The Royal Society of Canada (RSC), 2021. “Correctional Services During and Beyond COVID-19”, pg. 18.

<sup>22</sup> UN, 2018. “Concluding observations on the seventh periodic report of Canada”, s 49(c).

concluding observations. The Committee expressed concern over the reported arbitrary practices of abusive strip searches and body cavity searches performed by CSC personnel.<sup>23</sup> The Committee also insisted that Canada must:

“Ensure that body searches of persons deprived of their liberty are performed in a manner that respects the inmate’s dignity. Invasive body searches should be conducted only when absolutely necessary and should be performed in private by an appropriately trained staff member of the same sex as the inmate. Search and admission procedures for visitors should not be degrading and should be subject, at a minimum, to the same rules as those applied to inmates”.<sup>24</sup>

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). Rule 52(1) specifically stresses that strip searches should be undertaken only if absolutely necessary. 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. 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>25</sup> 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- we should be much farther ahead.

#### **CAEFS’ recommendations to federal government**

- 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.
- Given the lasting motional 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.
- 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.

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<sup>23</sup> UN, 2018. “Concluding observations on the seventh periodic report of Canada”, s 12.

<sup>24</sup> Ibid, s 13(h).

<sup>25</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.

- CAEFS recommends 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.
- Follow through with the recommendations outlined in the National Action Plan to end gender-based violence.

## **Structured Intervention Units**

### **Structured Intervention Units background**

The segregation regime in Canada was replaced by Structured Intervention Units (SIUs) through amendment Bill C-83 to the CCRA in December of 2019. This amendment was ratified after two court challenges determined that the practice of administrative segregation in Canadian federal prisons under the CCRA was unconstitutional.<sup>26</sup> According to the court rulings, administrative segregation violated sections 7 (The right to life, liberty and security of person), 12 (The right not to be subjected to any cruel and unusual treatment or punishment) and 15 (The right to equality before and under law and equal protection and benefit of law) of the Canadian Charter of Rights and Freedoms, part one of Canada's Constitution Act of 1982.<sup>27</sup>

CAEFS asserts that the practice of segregation in the prison system is ongoing and largely unchanged; it is just being called by another name.

### **Solitary confinement from CAEFS' perspective**

Since the changes to the CCRA through Bill C-83, CAEFS has observed through its advocacy at all six federal prisons designated for women that the unconstitutional practice of segregation, often colloquially referred to as solitary confinement, is ongoing. SIUs are being used to circumvent the illegality of administrative segregation practices and prisoners are still experiencing the same human rights violations as they were prior to the court rulings of 2019. The committees established to review SIU placements, such as the SIU Review Committee and the Independent External Decision Makers, have not been properly equipped to complete their mandates and therefore, have been rendered ineffective.<sup>28</sup>

In addition to the SIU model, there are also other methods of solitary confinement practiced by CSC, such as dry-celling and observation cells, which do not fall under the SIU legislation and are therefore not subject to the same regulations. CAEFS has an ongoing human rights complaint against CSC, alleging CSC discriminates against federally sentenced women on the grounds of sex, race, and mental health. The complaint specifically targets

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<sup>26</sup> British Columbia Civil Liberties Association (BCCLA) v. Canada (Attorney General), 2018 BCSC 62 (17 January 2018), and Canadian Civil Liberties Association (CCLA) v. Canada (Attorney General), 2019 ONCA 243 (28 March 2019).

<sup>27</sup> British Columbia Civil Liberties Association, 2021. "Justice, not torture: challenging solitary confinement in Canadian prisons". Retrieved from: <https://bccla.org/our-work/solitary-confinement/>

<sup>28</sup> Senate Canada, 2019. "The Standing Senate Committee on Social Affairs, Science and Technology: Evidence". Retrieved from: <https://sencanada.ca/en/Content/SEN/Committee/421/soci/54775-e>

CSC's excessive use of segregation in cases impacting Indigenous people and people with mental health disabilities in the federal prisons designated for women.<sup>29</sup> CAEFS is also involved in a supportive role with the ongoing case of Ms. Adams, a woman with complex mental health needs who was dry celled for 16 consecutive days. Ms. Adams' case will be discussed in more detail in the mental health section of this submission.

### **Relevant CSC policies and directives**

These court challenges, and the resulting changes to the CCRA, clarified the Charter protections required to uphold the rights of prisoners placed in isolation. The CCRA now stipulates that:

- 1) any isolation amounting to solitary confinement be strictly limited to 15 days;
- 2) the placement in isolation be reviewed after five working days by an independent arbiter or a body with the power to order the release of the prisoner, such as a SIU Review Committee or Independent External Decision Makers;
- 3) mentally ill persons be protected from any form of extreme isolation; and
- 4) the Commissioner of CSC has the power to designate any areas of the prisons as SIUs.<sup>30</sup>

In addition to the provisions mentioned above, Bill C-83 requires CSC to provide four hours of out-of-cell time every day between 7.00 a.m. and 10 p.m.<sup>31</sup> CSC must also provide the prisoner with an opportunity for meaningful human contact and an opportunity to participate in the programs and services that respond to their specific needs and the risks associated with the prisoner.<sup>32</sup> In CD 711: Structured Intervention Units, "meaningful human contact" is described as "the opportunity for human interaction with others that is conducive to building rapport, social networks or strengthening bonds with family or other supports".<sup>33</sup> It should be noted that CSC staff do not qualify as "meaningful human contact" due to the inherent power imbalance between staff and prisoners, and role of staff to discipline and suppress the prison population.<sup>34</sup>

Alternative methods of solitary confinement practiced by CSC such as observation cells, dry-celling, restrictive movement routines, lockdowns, and maximum-security pods fall outside the jurisdiction of the SIU model. This gap in regulation also indicates a lack of institutional oversight and accountability regarding these practices of removing prisoners from the general population and isolating them for indefinite and unregulated periods of time.

Maximum security pods (secure units or 'max pods') are a clear example of CSC's prioritization of convenience over the physical and mental wellbeing of prisoners within the context of solitary confinement. The only

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<sup>29</sup> "The Standing Senate Committee on Social Affairs, Science and Technology: Evidence".

<sup>30</sup> CCRA, s 32(1).

<sup>31</sup> Ibid, s 36(1)(a).

<sup>32</sup> Parliament of Canada, 2019. "Legislative Summary of Bill C-83: An Act to amend the Corrections and Conditional Release Act and another Act". Retrieved from:

[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/LegislativeSummaries/421C83E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/421C83E)

<sup>33</sup> CSC, 2019. "CD 711: Structured Intervention Units, Annex A Cross-References and Definitions".

<sup>34</sup> CAEFS' BY ANY OTHER NAME: A 15 Day Spotlight on Solitary Confinement in Canada, 2020. "What is Meaningful Human Contact", quoted from Dr. Idil Abdillahi, Assistant Professor at Ryerson University School of Social Work.

difference between max pods and solitary confinement is that max pods have access to a larger yard area for one hour a day, and a small common area shared with three to five other women. Women classified as maximum security are confined to those cells and that small common area, which contains a TV, couch, table, fridge, and washing machine, often for 23 hours a day.<sup>35</sup> When there is a lockdown, often a daily occurrence due to the pandemic, women and gender diverse people in the secure units are confined entirely to their cells and are denied access to programs, school, mental health supports and sometimes even showers.<sup>36</sup> In Canada, all prisoners sentence to life in federal prisons designated for women spend their first two-years of institutionalization in max pods. This is not a sentence or security requirement, but rather a chosen practice by CSC.

### **Preliminary research on early-stage SIU implementation**

Preliminary studies on the administration of the SIU model in federal institutions in Canada have shown its ineffectiveness as a substantially different alternative to segregation. In 2019, Public Safety Canada established an SIU Implementation Advisory Panel to examine the early stages of SIU implementation in Canada. This panel was forced to dissolve after one year due to CSC's refusal to provide the requested SIU-specific data.<sup>37</sup> At the request of Public Safety Canada, one panel member continued the study and co-authored Canada's first study on early-stage SIU implementation, "Understanding the Operation of Correctional Service Canada's Structured Intervention Units: Some Preliminary Findings". This report was done using an administrative dataset of 1,666 incidents involving men, women, and gender diverse prisoners sent to SIUs.<sup>38</sup> The findings most relevant to CAEFS and the women and gender diverse people it serves are:

- 1) Only 5.7% of recorded SIU incidents achieved 4-hours outside of the cell every day. Roughly 6% missed up to 20% of their mandatory four hours outside of cell. The majority (66.3%) missed their four hours outside of their cell in over three-quarters of their time spent in an SIU. Roughly 39% did not receive 4 hours outside of the cell every day for the entirety of their stay.<sup>39</sup>
- 2) 2.3% of the SIU stays (39 person-stays in all) in the SIUs involved women. Thirty-two of these 39 women (or 82%) were placed in SIUs in one institution: Edmonton Institution for Women (EIFW).<sup>40</sup>
- 3) 51% of the person-stays in the SIUs are for 15 days or fewer, with the remaining 49% being distributed between 16 and 291 days, which marks the end of the study.

### **Related UN recommendations**

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<sup>35</sup> CAEFS, 2019. "2018-2019 Annual General Report", pg. 23.

<sup>36</sup> British Columbia Civil Liberties Association, CAEFS, Canadian Civil Liberties Association, Canadian Prison Law Association, Dalhousie University, Prisoners' Legal Services, and John Howard Society of Canada, 2021. "Re: Open Letter: COVID-19 in Canadian Federal Prisons", pg. 3. Retrieved from: <https://www.caefs.ca/raising-awareness>

<sup>37</sup> Anthony N. Doob and Jane B. Sprott, 2020. "Understanding the Operation of Correctional Service Canada's Structured Intervention Units: Some Preliminary Findings", pg. 6.

<sup>38</sup> Ibid, 8.

<sup>39</sup> Ibid, 18.

<sup>40</sup> Ibid, 21.

In the Committee Against Torture's 2018 report, the Committee advised Canada on its obligation to ensure all persons arrested or detained are afforded, by law and in practice, all fundamental legal safeguards against torture from the very outset of their deprivation of liberty.<sup>41</sup> The Committee also requested the establishment of an independent mechanism for addressing complaints of torture and ill-treatment in all places of deprivation of liberty, and to provide statistical data, disaggregated by sex, age, ethnic origin or nationality and place of detention, on complaints of torture and ill-treatment.<sup>42</sup> Canada is further obligated by The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) to use solitary confinement in exceptional cases as a last resort, for the shortest amount of time possible, and for the solitary confinement to last no longer than 15 consecutive days.<sup>43</sup> The Committee against Torture draws specific attention to section 45(2) of the Nelson Mandela Rules. This section states that "solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures."<sup>44</sup>

### **CAEFS' recommendations to federal government**

- The practice of segregation should be abolished altogether, including the use of solitary confinement, maximum security units ('max pods'), mental health monitoring, and all other forms of isolation and separation from the general prison population that carry similarly detrimental effects.
- While working to eliminate segregation, Canada should ensure access to correctional plan programming and culturally-relevant programming during segregation placement.

### **Mental health disabilities in prisons designated for women**

#### **Background**

The lack of accessible social services for individuals with mental health disabilities in their communities create what has been dubbed "the revolving door syndrome"- where homelessness and mental illness are both the leading causes of incarceration, and the leading causes of re-incarceration once released.<sup>45</sup> Homelessness, which disproportionately affects nearly one quarter of all Canadians living with mental health disabilities, is a major contributor to criminalization.<sup>46</sup> A 2019 study on the interactions between police and people who experience mental illness and homelessness in Toronto found that persons who were not housed or who were partly

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<sup>41</sup> "Committee against Torture concluding observations on the seventh periodic report of Canada", s 11.

<sup>42</sup> "Committee against Torture concluding observations on the seventh periodic report of Canada", s 5.

<sup>43</sup> UN General Assembly, "United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules): Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)]", Rule 44.

<sup>44</sup> Ibid, Rule 45(2).

<sup>45</sup> CAEFS, Chair of Indigenous Governance, and Feminist Alliance for International Action, 2017. "Discrimination against Indigenous and Racialized Women in Canada Report to the Committee on the Elimination of Racial Discrimination on the Occasion of the Committee's twenty-first to twenty-third Periodic Review of Canada", pg. 59.

<sup>46</sup> Statistics Canada, 2014. "Violent victimization of Canadians with mental health-related disabilities". Retrieved from: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54977-eng.htm>

housed had significantly higher chances of having any police interaction than persons who were housed.<sup>47</sup> The authors of the 2019 study noted that these interactions with police resulted in charges laid against the individual for administration of justice, activities of living, mental health assessments, non-violent crimes, violent crimes, victimization, and suicidality.<sup>48</sup> The study also synthesized the compounded risk of criminalization for homeless individuals with mental health disabilities by stating “...if mental illness and homelessness each independently increase the risk of police interaction, persons who experience both mental illness and homelessness may face a synergistically increased risk of police interaction.”<sup>49</sup> The study illustrates the punishing and re-punishing of women and gender diverse people with mental health disabilities by not providing adequate supports or services to mitigate criminalization.

Given the compounded risk of criminalization for individuals living with mental health disabilities and their subsequent incarceration, it becomes clear why there are higher rates of people with mental health disabilities in the prison population when compared with the general Canadian population.<sup>50</sup> Anti-social personality disorder, borderline personality disorder, high rates of substance and alcohol use, Fetal Alcohol Syndrome Disorder (FASD), and brain injuries are a few of the many mental health disabilities recorded in Canadian federal prisons.<sup>51</sup> The Royal Society of Canada’s 2021 report, “Correctional Services During and Beyond COVID”, cites a 2018 study of 154 women incarcerated in six CSC operated facilities. The study found that 80% of women in custody “meet the criteria for a current mental disorder, including high rates of alcohol and substance dependence, antisocial personality disorder and borderline personality disorder”.<sup>52</sup> In addition, colonialism and discriminatory government policies have both created and exacerbated mental health inequities for Indigenous peoples and their communities. In 2019, the OCI reported that 92% of federally incarcerated Indigenous women suffer from moderate to high substance abuse needs and 97% had a diagnosed mental health disorder.<sup>53</sup>

While these statistics and studies only scratch the surface of the mental health care complications affecting incarcerated populations in Canada, they do provide insight into the complex health care needs of this demographic.

### **CAEFS’ perspective**

Women and gender diverse people with mental health disabilities deserve to be treated with dignity, respect, and compassion. From CAEFS’ perspective, patient-focused and trauma-informed mental healthcare cannot be provided in Canada’s current carceral system. CSC has received numerous complaints, both officially through their internal grievance processes, and through our regional advocacy programs, which highlight the

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<sup>47</sup> Fiona G. Kouyoumdjian, Ri Wang, Cilia Mejia-Lancheros, Akwasi Owusu-Bempah, Rosane Nisenbaum, Patricia O’Campo, Vicky Stergiopoulos, and Stephen W. Hwang, 2019. “Interactions between Police and Persons Who Experience Homelessness and Mental Illness in Toronto, Canada: Findings from a Prospective Study” in *The Canadian Journal of Psychiatry*.

<sup>48</sup> “Interactions between Police and Persons Who Experience Homelessness and Mental Illness in Toronto, Canada: Findings from a Prospective Study” in *The Canadian Journal of Psychiatry*.

<sup>49</sup> Ibid.

<sup>50</sup> “Correctional Services During and Beyond COVID”, pg.12.

<sup>51</sup> Ibid, 2, 13.

<sup>52</sup> Ibid, 12.

<sup>53</sup> “2018-2019 Annual Report”, pg. 106.

problematic nature of CSC's mental healthcare delivery. The OCI reported in their 2019-2020 Annual Report that the most frequently cited complaint for every federal prison demographic (total population, women, Indigenous) is health care.<sup>54</sup> Similarly, in 2019-2020, almost 50% of all CAEFS regional advocacy letters discussed issues related to mental health care.<sup>55</sup> The concerns most frequently raised by those inside were: prisoners reporting that their mental health is deteriorating, but not taken seriously or receiving the support needed; individuals being repeatedly placed in segregation because the conditions in maximum security exacerbate their documented mental health issues; and the use of force and/or security escorts in certain situations.<sup>56</sup>

As detailed above, CAEFS asserts that segregation amounts to torture in federal prisons designated for women. This statement is especially true for individuals with mental health disabilities. It has been widely accepted that any segregation exacerbates pre-existing mental health disabilities and causes undue and long-lasting harm to the individual.<sup>57</sup> Segregation has been known to cause and intensify anxiety, difficulties thinking, disturbances in thought content, problems with impulse control, cognitive impairment (i.e., concentration, memory, hallucinations) and emotional impairment (feelings of hopelessness, depression, rage, self-destructiveness and self-harm).<sup>58</sup> In 2017, the Auditor General stated that:

“...CSC did not have sufficient capacity to deliver the mental health services that women offenders needed<sup>59</sup>...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.”<sup>60</sup>

In Canada, there have been several inquests into the deaths of federally incarcerated individuals with mental health disabilities. Ashley Smith, who was only 19 years old at the time of her death, was found unresponsive while on suicide watch (meaning under the supervision of five CSC guards 24/7)<sup>61</sup> at GVI in 2007. Although, Smith had been previously diagnosed with borderline personality disorder, she was never adequately assessed or treated by CSC.<sup>62</sup> The only ‘treatment’ Smith received while at GVI was being placed in segregation for extended periods of time with inadequate clothing.<sup>63</sup> Smith’s death led to a Coroner’s Inquest and a subsequent list of 104 Jury recommendations to CSC regarding their mental healthcare delivery. The recommendations included: that female prisoners with serious mental health issues, and/or self-injurious behaviours serve their federal terms of imprisonment in a federally-operated treatment facility, not a security-focused, prison-like

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<sup>54</sup> “2019-2020 Annual Report”, pg. 101.

<sup>55</sup> CAEFS, 2020. “2019-2020 Annual Report”, pg. 13.

<sup>56</sup> CAEFS, “2019-2020 Annual Report”, pg. 13.

<sup>57</sup> Canadian Civil Liberties Association, 2020. “Fighting Solitary Confinement”. Retrieved from: <https://ccla.org/solitary-confinement-3/>

<sup>58</sup> Ibid.

<sup>59</sup> 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).

<sup>60</sup> RIDR, *Evidence*, 6 December 2017 (Michael Ferguson, Auditor General of Canada).

<sup>61</sup> University of Toronto, 2013. “Rights Violations Associated with Canada’s Treatment of Federally-Sentenced Women with Mental Health Issues: Submission to the Working Group on Universal Periodic Review to assist in its review of Canada, 16th Sess. (April 22-May 3, 2013)”, pg. 3.

<sup>62</sup> Ibid, 2.

<sup>63</sup> “Rights Violations Associated with Canada’s Treatment of Federally-Sentenced Women with Mental Health Issues: Submission to the Working Group on Universal Periodic Review to assist in its review of Canada, 16th Sess. (April 22-May 3, 2013)”, pg. 3.

environment<sup>64</sup>; that, in accordance with the Recommendations of the United Nations Special Rapporteur's 2011 Interim Report on Solitary Confinement, indefinite solitary confinement should be abolished<sup>65</sup>; and that therapeutic interventions are to be individualized to the needs of female prisoners considering her self-identified needs, regardless of their security classification, status; or placement.<sup>66</sup> In spite of Ashley Smith's preventable death, and the recommendations from the 2013 Coroner's Inquest, CSC continues to use the practice of segregation through placing prisoners with mental disabilities in SIUs or medical observation.

CAEFS is also involved in a supportive role with the ongoing case of Ms. Adams, a woman who was accused by CSC officers of bringing drugs into Nova Institution for Women in Truro, Nova Scotia. Following this accusation, Ms. Adams was held in segregation ("dry cell") under direct 24/7 lighted observation, and denied human contact, meaningful access to a lawyer, and private use of toilet facilities for 16 days. Ms. Adams lives with debilitating mental illness connected to a history of childhood trauma. The prison's mental health team raised concerns that the dry cell procedure would significantly exacerbate Ms. Adams's prior mental health challenges; these concerns were ignored. After CSC repeatedly failed to substantiate their assertion that drugs were present in and would be imminently expelled from Ms. Adams' vagina, Ms. Adams, with the help of CAEFS' lawyers, set out to challenge the law (s. 52(b) of the Corrections and Conditional Release Act) that gave prison management the authority to hold her in a dry cell for an indefinite period.

### **CSC relevant policies and directives**

Prisoners with mental health disabilities face a myriad of challenges once federally sentenced. The Custody Rating Scale (CRS) used by CSC to determine security classification levels was implemented in the 1990s based on a sample of white male prisoners.<sup>67</sup> This scale does not consider the unique experiences of women, gender diverse people, Indigenous women, Two Spirited people, or those living with mental health disabilities. The ineffectiveness of this scale can result in the over-classification of individuals with mental health disabilities, which can not only hinder their access to programming and services but can also prolong their institutionalization. Negative mental health assessments can also be used by CSC to further delay parole and security re-classification.

Under the CCRA and CD 711: Health Services, CSC is obligated to provide varying degrees of essential and non-essential physical, mental, and dental health care to prisoners.<sup>68</sup> CSC has five Treatment Centres (although only two of the five accept women) that offer acute and chronic mental health care to prisoners who require in-patient treatment due to severe mental illness.<sup>69</sup> Also of note, is that the centres which offer acute mental

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<sup>64</sup> Dr. John Carlisle, 2013. "Coroner's Inquest Touching the Death of Ashley Smith" Jury recommendation # 15. Retrieved from: <https://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml>

<sup>65</sup> Ibid, Jury recommendation #27.

<sup>66</sup> Ibid, Jury recommendation #4(a).

<sup>67</sup> Globe and Mail, 2021. "Inmate risk assessment tool still in use 16 years after report raises concerns about bias against women". Retrieved from: <https://www.theglobeandmail.com/canada/article-inmate-risk-assessment-tool-still-in-use-16-years-after-report-calls/>

<sup>68</sup> CCRA, s 85.

<sup>69</sup> CSC 2011. "Audit of Regional Treatment Centres and the Regional Psychiatric Centre".

health care to people in federal prisons designated for women are often at or near full capacity.<sup>70</sup> If a prisoner is sent to a CSC Treatment Centre, they may be placed in a “quiet room” or be isolated for long periods of time.

CD 843: Interventions to Preserve Life and Prevent Serious Bodily Harm details the policy surrounding use of force as a last resort on prisoners who are self-injurious, are suicidal, or have a serious mental illness with a significant impairment to preserve life and prevent serious bodily harm, while also maintaining their dignity in a safe and secure environment.<sup>71</sup> The use of force against federally sentenced prisoners with mental health disabilities is documented in the OCI annual reports. Between 2017-2018, 39.6% of all reported uses of force were used against people with mental health disabilities.<sup>72</sup> In addition to this, 13.6% of all uses of force were against persons engaging in self-injurious behaviour.<sup>73</sup> These percentages increase in 2018-2019, where 45.2% of reported uses of force were against persons with mental health disabilities, with an additional 15.7% uses of force against persons engaging in self-injurious behaviour.<sup>74</sup> In the 2021 report by the Senate Human Rights Committee on the Human Rights of Federally Sentenced Persons, Dr. Ivan Zinger, of the OCI, is quoted as saying in response to use of force on prisoners with mental health disabilities: “Such responses cannot be considered desirable or appropriate from a therapeutic or human rights perspective. Some significantly mentally ill offenders simply do not belong, nor can they be safely or humanely managed, in a federal correctional facility.”<sup>75</sup> CAEFS asserts that no people with mental health disabilities should be incarcerated.

Section 3(b) of the CCRA lists reintegration into the community and the provision of programs in penitentiaries and in the community as central to CSC’s purpose.<sup>76</sup> However, women and gender diverse people with mental health disabilities are often excluded from reintegration programs due to lack of learning accommodations. In the OCI’s 2019-2020 report, CSC teachers and vocational instructors reported that the majority of students live with disabilities or barriers which impede learning, such as attention deficit hyperactivity disorder, language, substance abuse or a mental health issue.<sup>77</sup> CD 735 on Employment and Employability Program also requires that physical and mental health be taken into account in the administration of CSC’s employment and employability programs.<sup>78</sup> Teachers and vocational concluded that in spite funding by CSC on a regional level, and CCRA and CD 735 requirements, there are few resources in place to accommodate aspiring learners.<sup>79</sup> As of June 2020, when the OCI’s 2019-2020 report was made public, CSC’s “...current complement of learning opportunities does not and cannot provide effective rehabilitation or reintegration, particularly given the current lack of focus, outmoded technological capacity and limited resource allocation.”<sup>80</sup> This is further evidence for CAEFS that incarceration is not the remedy for treating people with mental health disabilities.

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<sup>70</sup> 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).

<sup>71</sup> CSC, 2017. “CD 843: Interventions to Preserve Life and Prevent Serious Bodily Harm”.

<sup>72</sup> “2018-2019 Annual Report”, pg. 44.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> Standing Senate Committee on Human Rights, 2021. “Human Rights of Federally-Sentenced Persons”, pg. 136.

<sup>76</sup> “2019-2020 Annual Report”, pg. 85.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> “2019-2020 Annual Report”, pg. 85.

<sup>80</sup> *Ibid.*

## Related UN recommendations

The concluding observations on the seventh periodic report of Canada's implementation of CAT listed several concerns about Canada's treatment of prisoners with mental health disabilities. The Committee acknowledged Canada's increased funding for mental health issues in prisons; however, it reiterated its concerns on the excessive use of means of restraint on prisoners with mental health disabilities.<sup>81</sup> The Committee also declared that "...correctional institutions lack the appropriate capacity, resources and infrastructure to manage serious mental health conditions, a problem that is particularly acute in women's institutions (arts. 11 and 16)."<sup>82</sup>

The Mandela Rules specifically address the mental health of prisoners in Rules 25 and 109. Rule 25 states that every prison should provide health-care services that evaluate, protect, and improve the physical and mental health of prisoners, in particular prisoners with special health care needs or health issues, such as mental health disabilities, that could hamper their rehabilitation.<sup>83</sup> Rule 109 states that prisoners who are later [post conviction and sentencing] diagnosed with severe mental disabilities whereby being in prison would exacerbate their condition, prisons should make arrangements to transfer the prisoner to a mental health facility as soon as possible.<sup>84</sup>

The Bangkok Rules provide a comprehensive overview of the international standards for the mental health treatment of women prisoners. Rules 10, 12, 13, 16, 35, and 41 all speak to the treatment of women prisoners with mental health disabilities; however, Rules 10, 12, and 41 are particularly notable. These rules entitle all women prisoners to treatment and care equivalent to that of community standards for their gender specific health-care needs;<sup>85</sup> that treatment should be individualized and aim to address the reasons that provoke distress, depression, as well as psychiatric problems, based on an integrated and holistic approach of counselling, psychosocial support and medication, if necessary;<sup>86</sup> and that those with mental health-care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.<sup>87</sup> Finally, the Bangkok Rules state: "Since a large proportion of women have mental health-care needs, are drug and/or alcohol dependent, suffer from the trauma of domestic violence or sexual abuse, diverting them to a suitable gender appropriate treatment programme would address their needs much more effectively than the harsh environment of prisons."<sup>88</sup>

## CAEFS' recommendations to the federal government

- Increase income security, health, and educational measures such as income assistance, adequate housing, and community supports for women with mental health issues to address the reality that

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<sup>81</sup> "Committee against Torture concluding observations on the seventh periodic report of Canada", s 12.

<sup>82</sup> Ibid.

<sup>83</sup> "The Nelson Mandela Rules", Rule 25.

<sup>84</sup> Ibid, Rule 109.

<sup>85</sup> "The Mandela Rules", Rule 10.

<sup>86</sup> Ibid, Rule 12.

<sup>87</sup> Ibid, Rule 41(d).

<sup>88</sup> "The Bangkok Rules", part III.

women are being criminalized and incarcerated because of poverty, previous abuse, social disadvantage, racialization, and disabling mental health and intellectual capacity issues.<sup>89</sup>

- Develop and implement new protocols to decarcerate women and gender diverse people with disabling mental health issues.<sup>90</sup>

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<sup>89</sup> CAEFS' contribution to: "Reply to Issues 2, 3, 16 & 18: Indigenous women and Women in Detention Report to the Committee on the Elimination of Discrimination against Women on the Occasion of the Committee's Eighth and Ninth Periodic Review of Canada 2016", authored by CAEFS, Chair of Indigenous Governance, Ryerson University, and Feminist Alliance for International Action, pg. 15. Retrieved from: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT\\_CEDAW\\_NGO\\_CAN\\_25420\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGO_CAN_25420_E.pdf)

<sup>90</sup> Ibid.