



**CONSIDERATIONS RELEVANT TO BILL C 40: AN ACT TO AMEND THE  
CRIMINAL CODE, TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER  
ACTS, AND TO REPEAL A REGULATION (MISCARRIAGES OF JUSTICE ACT/  
DAVID AND JOYCE MILGAARD'S LAW)**

Submitted to the

**STANDING SENATE COMMITTEE ON CONSTITUTIONAL AND LEGAL AFFAIRS**

On

**2024-10-29**

By the

**CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES (CAEFS)<sup>1</sup>**

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<sup>1</sup> Nyki Kish, *Associate Executive Director*, CAEFS, and PhD Candidate at the University of Victoria, and Emilie Coyle, *Executive Director*, CAEFS, are the primary authors of this brief, with support from a number of individuals within CAEFS network who have present wrongful conviction claims and are invested in this legislation. We would like to recognize the contributions of not just these strong women, but of all of the people we work with whose lives and realities inform the information within this brief, for whom we do this work.



CAEFS strongly supports the immediate passing of Bill C-40 without further amendment. In this brief we offer our organizational expertise and context, support evidence that has been heard before the Senate Committee on Constitutional and Legal Affairs study thus far, and emphasize the transformational potential of Bill C-40.

### **Organizational Background and Connection to Bill C-40**

Since 1978, the Canadian Association of Elizabeth Fry Societies (CAEFS) has been the prominent national organization supporting criminalized women and gender-diverse people at all stages of legal-system involvement in Canada: pre, during, and post incarceration<sup>2</sup>. CAEFS national office staff composition is comprised of lawyers, researchers, and legal advocates, some with lived experience of criminalization. Our organization historically and presently plays a vital role in both understanding and responding to the criminalization and incarceration of women in Canada. CAEFS work occurs through a number of manners, including a responsibility to represent the interests of criminalized women and gender-diverse people, and to amplify their voices and bring their experiences to national audiences to inform systemic change through legislative and policy direction.

At the heart of our work is a program which monitors the conditions of confinement in penitentiaries designated for women and provides training for individuals to become employed as CAEFS Peer Advocates during their incarceration. Through this work, we interact daily with federally sentenced women in Canada, including those who are living with unresolved wrongful conditions. We understand their suffering, their exclusion, and their barriers. These individuals are not only wrongfully convicted people, but they are also parents, siblings, cousins, children, friends, and beyond, and they do not feel hope under the present regime; They largely have come to believe their wrongful convictions are impossible to overcome. Many of these individuals are First Nations, Métis, and Inuit Peoples.

This scope of work and mandate has informed our engagement with Bill C-40. The unique barriers that women and gender-diverse people face related to wrongful convictions has led to Bill C-40 becoming a key priority for our organization. CAEFS contributed to the bill's development, providing a brief and testimony before the House of Commons Standing Committee on Justice and Human Rights<sup>3</sup> which led to the adoption of an amendment to the bill that will alleviate the current intense punishment that wrongfully convicted people face following their convictions.

### **CAEFS Support and Supplementary Context into Evidence Heard Before the Committee Thus Far**

In testimony provided on October 23<sup>rd</sup>, 2024, Minister of Justice Arif Virani reinforced that since 2002, when Canada's wrongful conviction legislation was last updated, there has not been one woman whose conviction has been overturned. We underscore that not only are women unable to have their wrongful convictions overturned, but as our original brief submitted to the House of Commons details, women are at elevated risk of being wrongfully convicted in the first place.

Our work in penitentiaries designated for women and close relationships with people within them provides us significant insight into both the factors associated with wrongful convictions for women in Canada, as well as insight into the aftermath people face in redressing wrongful convictions. From this place of expertise, CAEFS agrees with the Minister of Justice's framings that Bill C-40 has the capacity to address the dearth of women who have been able to have wrongful convictions overturned. We agree with the previous Justice Minister's testimony that the legislation should, can, and will evolve over time. Bill C-

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<sup>2</sup> caefs.ca

<sup>3</sup> [HOC-JUST-Committee-Brief\\_-C-40\\_-Canadian-Association-of-Elizabeth-Fry-Societies-1.pdf](#)

40 offers a significant new framework that can then be incrementally improved over time, addressing longstanding deficits in Canada's present wrongful conviction regime.

Bill C-40, through its capacity to provide outreach and education to individuals and institutions, through its ability to provide legal funding support and reintegration support to individuals, through the structure of the commission itself, and through the establishment of a victim support coordinator will be life changing for many. This bill has many mechanisms within it that can build a proactive and systemic approach to addressing wrongful convictions.

The present mass incarceration of Indigenous women is inextricably enmeshed with the unique barriers women and gender-diverse people face related to wrongful convictions. As over half of people in penitentiaries designated for women are Indigenous, Bill C-40 will play a direct and key role in structurally combatting systemic racism, both by increasing Canada's capacity to respond to innocence claims, and by the structure of the commission itself, which will hold expertise and sensitivities to individuals' intersecting cultural, social and demographic contexts.

CAEFS also fully endorses the evidence submitted to you by the Innocence Project of the University of British Columbia's Peter A. Allard School of Law, which addresses a number of substantive issues and similarly supports the passing of Bill C-40 in its present state.

### **The Current Regime Leaves Women and Gender Diverse People Hopeless**

Women and gender-diverse people are at elevated risk of becoming wrongfully convicted in the first place. Once convicted, we witness the hyper-responsibilization of women that occurs through prison processes which directly and coercively pressure women take ownership of situations that they are not responsible for. It is our experience that most women do not advance innocence claims, troublingly, even when they are in fact not responsible for a crime. Overwhelmingly, the people we work with in the prisons designated for women want to move forward with their lives and want to return to their communities and families at the earliest possible times. Penitentiaries designated for women are simply not filled with people who maintain their innocence, yet the few who persistently do suffer uniquely in prison, as do their loved ones in the community.

Through our efforts to make incarcerated women and gender-diverse people aware of their legal and human rights, we witness barriers to justice unfold in action as most people express to us that they feel that using the law is beyond their reach, a barrier that is often compounded by deep mistrusts for legal systems. Women and gender-diverse people in prison have very little access to law, computers, and have no access to the internet, making self- advocacy to redress wrongful convictions almost impossible. Federally sentenced women and gender-diverse people are also overwhelmingly from socio-economically disadvantaged families and communities, further decreasing their likelihood of having community resources to support in the redress of their wrongful convictions. We can also attest to the fact that many women and gender-diverse people who become incarcerated also have learning and disability considerations and have lower literacy levels and less formal education than the general public.

The present state of access to justice for wrongfully convicted women is grim, almost as grim as the present context of incarceration for women in Canada. Given that the life expectancy of people who experience long term incarceration in Canada is reduced by 20 years from the general population<sup>4</sup>, and that women who maintain innocence are less likely to be released on parole, unresolved wrongful convictions are quite literally taking the lives of innocent women. That over 50 percent of federally

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<sup>4</sup> See Adelina Iftene's 2021 Publication, *Punished for Aging*.

sentenced women are Indigenous is both a symptom of lack of access to justice in Canada, and a key factor which adds to the weight of the need for this legislation to pass.

### **CAEFS Encourages the Passing of Bill C-40 Without Further Amendment**

Without further amendment, Bill C-40 will become law. As Minister of Justice Arif Virani notes in his October 23<sup>rd</sup> testimony, there has already been funding committed for the new commission through Budget 2021, and his office will prioritize the implementation of the bill. Bill C-40 is well contemplated, feasible, and holds capacity to systemically transform Canada's longstanding impractical and inaccessible approach to addressing wrongful convictions.

The passing of Bill C-40 will constitute a transformational and historic moment for the advancement of equity for women and gender-diverse people, and especially so for Indigenous women and gender-diverse people. For our organization and network, Bill C-40 provides sound and urgently needed legislation. It advances tangible changes that can begin to resolve, for many, the compounding psychological, emotional and physical harms that are produced by being wrongfully convicted and locked behind prison bars.

## Appendix

1. CAEFS Brief to the Standing Committee on Justice and Human Rights, House of Commons  
**HOC-JUST-Committee-Brief\_-C-40\_-Canadian-Association-of-Elizabeth-Fry-Societies-1.pdf**