NATIVE WOMEN'S ASSOCIATION OF CANADA

L'ASSOCIATION DES FEMMES AUTOCHTONES DU CANADA

House of Commons Committee on the Status of Women
Indigenous Women in the Federal Justice and Correctional Systems, February 2018

The Native Women's Association of Canada has long advocated for the rights of victimized, marginalized, and criminalized Indigenous women, including those within the federal correctional system. Much of this work has centered around the lived experiences of Indigenous women including their overrepresentation in prisons as well as the socio-economic conditions that underscore this overrepresentation.

Specifically, NWAC's policy priorities related to Indigenous women in the federal criminal justice systems include:

1. The need to abolish the practice of segregation;
2. The need to meaningfully engage Sections 81 and 84 of the *Corrections and Conditional Release Act*[1] so that they are better able to fulfill their legislative intent; and
3. The need for community-based, trauma-informed, culturally-appropriate alternatives to incarceration for Indigenous women.

While the over-incarceration of Indigenous women has been a significant area of advocacy and policy work for NWAC, it is not the only area of the justice system where Indigenous women are over-represented.

In Canada, Indigenous women are more likely to be involuntarily segregated and face longer segregation placements than non-Indigenous women.[2] Presently, Indigenous women make up 50% of federal segregation placements.[3] Prisoners may be, "isolated from others for months and even years on administrative grounds."[4]

While the overall number of segregation placements is declining[5], specialized units with similar restrictions are being used to the same effect.[6] It is segregation by another name. Indigenous women continue to experience lengthy periods of solitary confinement, defined instead as modified movement, clinical seclusion, and structured or enhanced supervision. This shift in

---

[1] *Corrections and Conditional Release Act,* RS C 1992, c 20. Retrieved from: <http://www.laws-lois.justice.gc.ca/eng/acts/C-44.6/FullText.html>
[2] Office of the Correctional Investigator, *Annual Report 2016-2017,* (28 June 2017) at 41.
[3] Native Women's Association of Canada, Indigenous Women in Solitary Confinement: Policy Backgrounder (2017), online: Native Women's Association of Canada < https://www.nwac.ca/wp-content/uploads/2017/07/NWAC-Indigenous-Women-in-Solitary-Confinement-Aug-22.pdf>
[4] *Ibid* at 5.
[5] *Supra* note 2.
[6] *Ibid* at 42.

vocabulary does not necessarily mean a change to the conditions of confinement and women may still spend up to 23 hours per day in isolation.[7]

The severe psychological and emotional harms of segregation are established and recognized at a domestic and international level. The United Nations defines solitary confinement in excess of 15 days as torture[8] while Canadian courts in Ontario[9] and British Columbia[10] have recently ruled the practice discriminatory and unconstitutional.

Segregation is a particularly cruel practice for women with histories of trauma, abuse, and mental health issues, an area in which Indigenous women are also over-represented. Their specific lived experiences of colonial patriarchy, intergenerational trauma, and state violence make them particularly vulnerable to the harmful effects of isolation.[11]

CSC guidelines exclude prisoners with a, "serious mental illness with significant impairment," and prisoners who are actively self-harming from segregation. However, the standard for serious mental illness is a clinical judgement and must include the presentation of symptoms resulting in significant impairment in functioning."[12] This definition does nothing to protect women with histories of mental illness or those experiencing a lesser degree of symptoms, for whom segregation may be equally detrimental. Prohibiting the use of segregation for prisoners who are actively self-harming is an acknowledgement that the practice should not be used to manage mental health crises, but does nothing to address the fact that segregation itself is often the cause of escalating self-harm behaviours.[13]

It is for these reasons that the Native Women's Association of Canada calls for a complete end to the practice of solitary confinement by any name and of any duration.

S.81 of the *CCRA* was intended to allow for Indigenous communities to oversee the care and custody of Indigenous prisoners but its potential for Indigenous women has yet to be fully realized.

Many Indigenous women are unable to access s.81 beds and Healing Lodges due to their minimum-security classification requirement. NWAC recently argued before the Supreme Court of Canada that Indigenous women are unfairly and discriminatorily classified as higher risk prisoners, creating a significant barrier to access. The *CCRA* does not place limitations on the security classification for s.81 Healing Lodge prisoners, and CSC initially hoped that s.81 agreements would eventually be available to all prisoners, regardless of classification.

Also complicating access is the fact that only two Healing Lodges exist for Indigenous women. Okimaw Ohci is located on the Nekaneet First Nation in Saskatchewan and the Buffalo Sage

---

[7] Sue Delanoy, "More work needed regarding women in prison segregation" *Regina Leader-Post* (16 January 2018), online: Regina Leader-Post < http://leaderpost.com/opinion/columnists/more-work-needed-regarding-women-in-prison-segregation>.
[8] Special Rapporteur of the Human Rights Council, *Torture and other cruel, inhuman or degrading treatment or punishment*, GA, 66 Sess, (2011) at 21. Retrieved from: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.
[9] *Corporation of Canadian Civil Liberties Association v. Her Majesty the Queen,* 2017 ONSC 7491 (CanLii).
[10] *British Columbia Civil Liberties Association v. Canada (Attorney Genera*l), 2018 BCSC 62.
[11] *Supra* at note 2.
[12] Correctional Service of Canada Commissioners Directive 709, (1 August 2017). Retrieved from: http://www.csc-scc.gc.ca/politiques-et-lois/709-cd-eng.shtml#
[13] *Supra* at note 2.

Wellness House is located in Edmonton, Alberta, meaning that women outside of these areas have to transfer farther away from their families and communities in order to access them. There are no Healing Lodges for women in the Pacific, Ontario, Quebec, or Atlantic regions. Government support and funding for the creation of additional s.81 Healing Lodges may help to remedy this inequity.

While S.84 was intended to support Indigenous communities and engage them in the reintegration plans for Indigenous prisoners, those supports are often not adequately realized. Communities may not have enough knowledge of s.84 to implement it successfully or lack the resources that Indigenous women may need to meet the conditions on their release. Building resources and capacity supports entire communities as well as the women returning to them.[14]

There must also be a degree of community ownership and self-determination in the development of reintegration plans. First Nations, Metis, and Inuit communities are better able to meet the social, spiritual, and cultural needs of criminalized Indigenous women, especially when release plans are made in consultation with the women themselves.

For Indigenous women, there is also a significant relationship between poverty and addiction and between addiction and criminalization. Given that the majority of incarcerated Indigenous women have an identified need for substance abuse treatment, the demand for trauma-informed, culturally-appropriate programming is high. Rather than the community, it is the federal prison system that comes to hold the promise of therapeutic support for criminalized Indigenous women.

"Colonialism has created the climate of distrust where [Indigenous] people see that this is not a system of justice which equally represents them."[15] Some women feel that the cultural programming available in prison represents yet another form of colonialism. This is because the programs are largely designed by the Canadian government and administered by non-Indigenous staff. There is also the reality that many of these programs present a homogenized view of Indigenous cultures, failing to recognize that teachings and practices relevant to some communities may be non-existent in others.[16] Acknowledging the differences between First Nations, Metis, and Inuit women, as well as the distinct identities within these groups, creates a greater knowledge base for the creation and implementation of relevant and effective programs for Indigenous women.

Ensuring that responses are culturally-appropriate and designed in collaboration with Indigenous women, leadership, and communities is essential.

---

[14] Kyle Garnett, Christine A. Walsh, & Dorothy Badry, "Section 84 – Corrections and Conditional Release Act: Recommendation for Reform" (2013) 11 Pimatisiwin 315.

[15] Patricia Monture-Angus, *The lived experience of discrimination: Aboriginal women who are federally sentenced* (2002), at 7, online: Canadian Association of Elizabeth Fry Societies < http://www.caefs.ca/wp-content/uploads/2013/04/The-Lived-Experience-of-Discrimination-Aboriginal-Women-Who-are-Federally-Sentenced-The-Law-Duties-and-Rights.pdf>.

[16] Ashley Elizabeth Hyatt, "Healing Through Culture for Incarcerated Aboriginal People" (2013) 8 First People's Child and Family Review at 49.