

Presentation to:

**The House of Commons Standing Committee on
the Status of Women**

**Native Courtworker and Counselling Association
Of British Columbia (NCCABC)**



Darlene Shackelly, Executive Director

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**Vancouver, BC
3:30 pm to 4:30 pm, EST or PST?**

TALKING POINTS

Introduction

I would like to begin by expressing my appreciation and that of the Board of Directors and staff of the NCCABC for this opportunity to address the Honourable Members of The House of Commons Standing Committee on the Status of Women on matters of urgent importance to our agency and those we serve.

I also wish to acknowledge the Coast Salish people on whose Un-ceded Traditional Territory we are meeting today, specifically; the Squamish, Musqueam and T+sleil-Waututh Nations.

Talking Point 1 – We know the extent of the problem

We are encouraged by your efforts to better understand the causes and consequences for the significant increase in Indigenous women’s incarceration rates and over-representation in the justice system, as well as the stark realities surrounding their access to appropriate legal services and treatment within the federal corrections system.

There is a strong business case for investing in early intervention, diversion and prevention programs that help families, communities and individuals address problems at a much earlier stage in their lives, before the removal from family members or when incarceration is deemed necessary. We trust you will revisit and advocate for shifting current and future investments from areas that currently delay and deny justice for our people, such as prisons, solitary confinement, and court processes that provide little or no defence for Indigenous women, to alternative areas that provide the opportunity for positive outcomes for Indigenous people.

The NCCABC is a provincial organization with a 44-year history of providing services to Indigenous peoples in conflict with the law. This includes referring Indigenous accused to appropriate legal resources as well as to relevant social, education, employment, health, Indigenous community and other resources that may help to address underlying causes.

Of the organization’s sixty (60) staff, thirty (30) are in the ‘flagship’ Native Courtworker Program covering approximately 70% of the courthouses throughout the province of British Columbia. Native Courtworkers focus on ensuring that Indigenous people involved

in the criminal justice system receive the assistance they need to fully understand their rights and responsibilities as they navigate the criminal justice process. Native Courtworkers actively serve as a “bridge” between criminal justice officials and Indigenous people and communities, by promoting communication and understanding and breaking down the many barriers to justice experienced by Indigenous people.

Thirty other staff are in programs and positions providing drug and alcohol counselling and detoxification, family and youth advocacy, Indigenous resource and case work, plus administrative and senior management. In addition, the NCCABC serves as the agreed upon host and support secretariat for the BC Aboriginal Justice Council (<http://nccabc.ca/bc-aboriginal-justice-council/>).

The NCCABC believes from our experience and the experiences of the Indigenous people we serve that lack of justice for Indigenous people and the focus on punishment in the criminal courts of Canada are matters of growing concern to all Canadians. An Indigenous lens on the justice system is vitally necessary to effectively address Indigenous people’s painful experience with the mainstream justice system that damages whole families and communities, as well as the growing and massive disproportion of women being incarcerated in the Federal Justice system.

The Supreme Court, in R. v. Pelee, expressed their concern about these unacceptable outcomes in 2012:

“The figures are stark...and reveal what may fairly be termed a crisis. It arises...from bias against aboriginal people and from an unfortunate institutional approach that is more inclined to refuse bail and to impose more and longer prison terms for aboriginal offenders. The drastic overrepresentation of Aboriginal people in the criminal justice system... reveals a sad and pressing social problem.”

Supreme Court, R. v. Pelee. 2012

Talking Point 2 – We know the current justice bureaucracy cannot implement the changes that threaten it

NCCABC submits that there are consistent and ongoing policies and practices in the federal criminal justice system that: 1) contribute to the over-representation of Indigenous women’s incarceration rates and penalties; 2) inhibit access to legal services, and; 3)

promote unequitable services towards Indigenous women while in the criminal justice system. Indigenous women are most affected by the widespread systemic discrimination and failures in the justice and child welfare systems that lead to the disproportionate numbers of incarcerated Indigenous women.

There are four significant failures that must be addressed as a priority to reduce the Federal incarceration rates of Indigenous women: 1) the early intersection of Indigenous people with the Child Welfare system; 2) the criminalization of medical conditions; 3) not addressing the victimization and degradation Indigenous women face in our society before they are accused, and; 4) the continuing cycle of injustice for children with incarcerated mothers (parents).

1. The early intersection of Indigenous people with the Child Protection system.

Entry into the federal justice system starts more often than not in the Child Protection system (as a victim/outcome), and violence and trauma is perpetrated on young girls while in that system. Mary Ellen Turpel-Lafond, former BC Representative for Children and Youth, conveys the grim fact that Indigenous girls are nearly twice as likely to experience sexual violence as other girls within the care of the Ministry. She reports that Indigenous girls represented 25 per cent of the total children in care between 2011 and 2014, but they made up 61 per cent of children who experienced sexual violence by government mandated care providers. “One-third of incidents were perpetrated by another child or youth in the same placement, while one-quarter involved foster parents — ‘a shocking breach of trust,’” the report said (<http://globalnews.ca/news/2982059/sexual-violence-in-care-disturbing-b-c-advocate/>).

Further, family disruption through the Child Protection system is the entry point for many Indigenous women and girls into federal corrections institutions.

2. The criminalization of medical conditions.

Unmet health needs are criminalized. There is a high prevalence of individuals with FASD involved in the justice system, and this number appears to be rising (Public Health and

Safety Agency Canada, 2010; Roach & Bailey, 2009). This applies not only to FASD, but also to Addiction, Trauma and Mental Health issues.

Almost 80% of women involved in the Canadian justice system meet the criteria for some current mental disorder. When Anti-social Personality Disorder and alcohol and substance use disorders are not considered, rates still remain very high at 67%. In terms of specific disorders, the highest prevalence rates were for alcohol and substance use disorders (lifetime) and for current anxiety disorders. Within anxiety disorders, Post Traumatic Stress Disorder (PTSD) had the highest prevalence rate, with nearly a third of women (33%) assessed as meeting the criteria. In addition, almost half the women meet criteria for APD. Co-morbidity diagnoses were common; half of the women in custody have a mental disorder in combination with APD.

3. Not seeing Indigenous women first as victims before they are accused.

The disproportionate rates of violence against Indigenous girls and women in Canada cannot be understated. Indigenous women are 3.5 times more likely than non-Indigenous women to be victims of violence and Indigenous women between the ages of 25 and 44 are five times more likely to die as a result of violence. Indigenous females reported experiencing violent victimization at a rate 2.7 times higher than that reported by non-Indigenous females.

There is a direct correlation between violence perpetrated against Indigenous women and violence perpetrated by Indigenous women. This is evidenced by the rate of Indigenous females accused of homicide, which is 31 times higher than their non-Indigenous counterparts (4.33 per 100,000 population compared with 0.14 per 100,000 population). The fact that Indigenous women made up less than five per cent of the total female population in Canada in 2015 yet accounted for more than one-third of female admissions to federal and provincial/territorial custody in 2014-15 also indicates a link between victimization and incarceration. One out of every three women federally incarcerated is of Aboriginal descent.

What we must gather from this naked truth is that Indigenous women are almost always victims of crime first, and that not seeing them in that light will only exacerbate the stigma and discrimination that often leads to incarceration and that furthermore, they must face when incarcerated. It is only through addressing victimization and the root causes (colonized practices, poverty, lack of opportunity, removal of children, systemic racism, police/justice personnel biases) that we can legitimately address the incarceration rates and penalties imposed. Early intervention, family and women's support services including mental health wellness, child care, life skills, education and training need to be the focus to build strong capable communities that support and honour our women.

4. The continuing cycle of injustice for children with incarcerated mothers (parents).

The cycle continues for the next generation with incarcerated mothers. Indigenous women in federal penitentiaries tend to be younger than their non-Indigenous counterparts. Many of them are mothers.

The reality for incarcerated Indigenous parents is bleak—according to a pilot study of formerly incarcerated Indigenous adults in the Prairies, the majority experienced government apprehension of their children (M. Bennett, 2015). As a Maclean's article so aptly stated in a February 2016 article, "Canada's prisons are the 'new residential schools'" (<http://www.macleans.ca/news/canada/canadas-prisons-are-the-new-residential-schools/>). A study by a Master's degree student at SFU in 2010 identifies the grim reality that "incarceration is a distinct form of parental separation" (Linda Mussell, "Kids on the Outside: Policy Options for Youth with Incarcerated Parents in British Columbia", 2010). This only magnifies the immense hurdles that Indigenous mothers, as well as their families, face upon their release from prison.

Upon release a mother has a criminal record. If the children were removed at the time of arrest with no prior involvement with the Ministry, the Ministry has their own process and protocols for returning the children with no regard given to the rights of the family. This could be experienced as an extended consequence of incarceration even after doing the time. There is no assistance for reintegration with the family, no transition period, whereas

the process should be started while the mother is still incarcerated, with at least access to phone/video calls with the children to keep that connection.

Talking Point 3 – We know what helps and where investment must go

Our front-line Native Courtworkers work to eradicate systemic failures every day. The following are but a few observations of how Indigenous women are denied access to justice:

1. Lack of access to Legal Aid
2. Lack of funding for Gladue Reports and Late Documents
3. Lack of Cultural Safety
4. Lack of community and family connection
5. Insufficient resources and services for women and children
6. Mental Health and Substance Use barriers
7. Poverty and Transportation barriers
8. Lack of child care
9. Lack of supportive women's Community Programs that provide education and skills to address peer culture issues that are obstacles to success
10. Lack of programs for men to address their role in the solution
11. Lack of Indigenous-led support services for high risk, imprisoned and paroled Indigenous women to support reentry into the community

Overall the system needs to work differently when an Indigenous person enters the federal corrections process. For example, most families cannot get rides or afford gas to drive to the institutions for visits, do not know how to navigate the system to set up a visit, or are so far away that a visit is not an option and telephone calls only happen if the women have money to call home. The other option for phone calls is access to a credit card to open a calling account, which is required even just to leave messages. However, many families don't have a credit card.

Technology systems needs to be instituted to keep families connected. The use of E-solutions, Skype for example, especially for children and family's connections to support who live so far away where visitation may not be an option needs to be available.

NCCABC supports many mothers and grandmothers to have visits with their youth while incarcerated, including assisting them with getting the proper ID and providing rides. The system is not family friendly so many families will go months or years without contact.

Another example of how the system must change: An Indigenous woman should have access to a full physical and mental health assessment upon entering the system, and the institution should have gathered enough information to have a good idea of her current mental health or any disabilities (FASD, Schizophrenia, Bipolar etc.) as well as a Gladue report that speaks to her family history, development, lifestyle and trauma (PTSD).

Finally, there is at best minimal access to culture or Elder mentorship for incarcerated Indigenous women. The institutions need to address the fact that Indigenous people rely on access to their culture while incarcerated. For many, this is their only way to ground themselves and stay connected physically, emotionally, mentally and spiritually.

Talking Point 4 – We need a new approach to planning implementing and overseeing the changes required

This is what we know:

- Mental health and disability need to be acknowledged and individual plans need to be made so that incarceration leads to release and not extended sentencing.
- Gladue, Trauma and Assessments need to be addressed and completed.
- Incarcerated Indigenous women need access to family, community and cultural connection through family visits, calls, Elder mentors, cultural practices and ceremonies.
- And mothers shouldn't have to navigate the Ministry process to get their children back after doing time.

This is what we need to know going forward to expedite efforts to bring about the necessary changes:

- Existing Indigenous led services, gaps in services, and opportunities to collaborate
- Number of Indigenous women (and men) in Federal institutions in BC who have children and access to children (possibly in the care of the Ministry)

- Number of parents in Federal institutions in BC who were in the care of MCFD as children/youth
- Current government policy around children/parent connection for incarcerated parents

Talking Point 5 – We recommend joint Indigenous Government panel to develop the investment strategy and implementation plan.

We submit the following recommendation for addressing these issues that our people have brought forward.

Recommendations

Invest in AN INDIGENOUS WOMEN’S JUSTICE PANEL TO DEVELOP A FIVE-YEAR PLAN AND A FEDERAL INVESTMENT STRATEGY TO ADDRESS:

- Indigenous holistic service care for early intervention, diversion and prevention;
- Sentencing and alternatives to incarceration;
- Intensive supports for incarcerated Indigenous women;
- Culturally relevant supports for successful reintegration with family and community.

We further recommend that there be policy provision for and program implementation of health and justice integrated services.

NCCABC advocates for shifting current and future investments from areas that delay and deny justice for our women to alternative areas that provide the opportunity for positive outcomes for all Indigenous people.

Thank you for giving me this opportunity to share with you our understanding of current realities for Indigenous women and the federal justice system, and our vision for holistic approaches to the provision of justice.