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Correctional Service
Canada

Service correctionnel
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SAFETY, RESPECT
AND DIGNITY
FOR ALL

LA SÉCURITÉ,
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ET LE RESPECT
POUR TOUS

The Cross-Gender Monitoring Project: CSC's Response to the Third and Final Annual Report

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INTRODUCTION

The Correctional Service of Canada (CSC) launched the Cross-Gender Monitor Project in 1998 in response to recommendation 5(f) to (j) of the March 1996 *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (Arbour Report):

5(f) I recommend that a woman be appointed to monitor and report annually for the next three years following the opening of each new regional facility, to the Deputy Commissioner for Women, on the implementation of the cross-gender staffing policy in the living units of the new institutions, and on related issues, including the effectiveness of the extension of the sexual harassment policy to the protection of inmates;

5(g) I recommend that the Monitor be independent from the Correctional Service;

5(h) I recommend that the Monitor have access to inmates and staff on a confidential basis, and that her mandate be to assess that system, rather than the individuals, and to make recommendations accordingly;

5(i) I recommend that the annual report of the Monitor be made public, along with a description of any corrective measure taken by the Correctional Service to redress problems identified;

5(j) I recommend that the Deputy Commissioner for Women be required, after three years, to provide recommendations to the Commissioner as to the desirability of continuing the cross-gender staffing policy of the Correctional Service in light of the reports of the Monitor, and to put forward alternative options, if need be.

The independent Monitor named to study the application of cross-gender staffing conducted her work over three consecutive years. The third and final report entitled *The Cross-Gender Monitoring Project - Federally Sentenced Women's Facilities - Third and Final Annual Report* was received in 2001. CSC immediately initiated an internal and external consultation on the recommendations.

Almost simultaneously with the completion of the Monitor's final report, the Canadian Human Rights Commission (CHRC) commenced its work in response to the March 2001 complaint laid by the Canadian Association of Elizabeth Fry Societies (CAEFS) and National Women's Association of Canada (NWAC) and supported by a number of other non-governmental organizations (NGO). In a letter dated September 14, 2001, the CHRC advised the CSC Commissioner that it had made a decision to take action in response to the complaint:

Rather than proceeding with formal complaints, the Commission has decided to conduct a broad based systemic review and issue a special report addressing the treatment of women serving federal terms of imprisonment. The report will draw from a variety of sources, including work done by CSC, and will serve to address the issues raised by the various organizations in a non-litigious manner.

The CHRC subsequently provided CSC [and the complainants] with the issues it intended to investigate as part of its systemic review. Their intended scope of work encompassed the issue of men as frontline workers as well as an extensive research and consultation process. Consequently, CSC postponed its official response to the final report of the Cross-Gender Monitor. However, throughout the CHRC review, CSC continued to work on areas of concern for women's corrections identified in the final report as well as on actions in response to recommendations for women's corrections contained in the April 2003 report of the Auditor General [Chapter Four – Reintegration of Women Offenders] and the November 2003 26th Report of the Standing Committee on Public Accounts. In particular, there is a

significant overlap in the areas of concern addressed by the CHRC and those addressed by the Monitor. As will be clearly visible from this response, the CSC response to the CHRC recommendations is also in large part the response to the Cross-Gender Monitor final report.

The CSC wishes to thank the Cross-Gender Monitor for her work in identifying and providing a thoughtful analysis to several issues subsequently re-examined in the CHRC systemic review. Like all the reports on women offenders, both pre- and post-*Creating Choices*, the Monitor's report reflects a strong commitment to ensuring that women's corrections in Canada continues to evolve within a frame that respects the law, the right of women offenders to be protected from discrimination and contributes to public safety. CSC wishes to assure the public, staff, women offenders and stakeholders that it is committed to strengthening its gender- and rights-based analysis required to meet the challenge of designing and delivering effective corrections for women offenders.

RECOMMENDATIONS 1 TO 4

RECOMMENDATION 1

It is recommended that males should not be permitted to be frontline Primary Workers. This would include not being permitted to act in a security function with respect to living and segregation units, cell extraction teams regardless of time of day, and escorts of any kind.

RECOMMENDATION 2

It is recommended that all persons working in a facility for Federally Sentenced Women, including regional treatment centres and community correctional centres, be screened and undergo women-centred training to ensure appropriate attitudes, knowledge and experience. The women-centred training should be at least ten days in addition to core training. Screening should include checks for criminal convictions of a sexual nature.

RECOMMENDATION 3

It is recommended that sufficient funds be allocated for effective screening, as well as initial and ongoing women-centred training, and be permanently provided and completely protected for each facility housing Federally Sentenced Women.

RECOMMENDATION 4

It is recommended that elevated risk positions either be filled by females only or changes should be instituted, such that, women are never alone with a male worker in an unobservable area. In addition, a review of all positions should be undertaken by the office of the Deputy Commissioner for Women Offenders to determine if any positions or contracts should be female only. Any such exemption should be directly related to elevated risk of sexual misconduct against Federally Sentenced Women.

Background:

These first four recommendations are all related and will be considered as one for the purpose of response.

When the final report was received in 2001, CSC commenced its review of the recommendations with particular focus on recommendation 1, given its potential impact on the management of women's institutions.

CSC conducted extensive external and internal consultations and approximately five hundred responses were received, including the results of surveys of women offenders conducted independently by the inmate committees. As well, a CSC / Union of Canadian Correctional Officers (UCCO) working group conducted interviews at the women's institutions and collected data to assess the impact of men frontline workers on operational practices.

On the recommendation to discontinue the practice of cross-gender staffing, the majority disagreed with the Cross-Gender Monitor's recommendation that men should not be permitted to be frontline workers in women's institutions.

CSC also initiated a number of activities over the years of the Cross-Gender Monitor's work to improve the staffing and training process for women's institutions:

- In May 2000, the Service updated the Women-Centred Training Program (WCTP) to ensure continued integrity and adherence to the *National Operational Protocol*.
- In February 2001, CSC created a primary worker (PW) deployment process enabling the Service to ensure correctional officers II wishing to deploy into PW positions have the background, skills and abilities necessary to work in a women-centered environment.
- In March 2001, CSC revised its selection process to both increase efficiency and standardize operational practices in hiring PW.
- In 2002, the Assistant Team Leader Selection Process was developed and implemented.

The revised WCTP is a national training standard and, as such, is considered mandatory training. As well, in February 2004, CSC took action to establish dedicated resources to ensure corporate compliance with the National Training Standards. The Director General, Learning and Development has been designated by Executive Committee as the spending authority for the training envelope and reports regularly to Executive Committee on compliance with the National Training Standards.

It should be noted that all CSC external staffing processes require a criminal records check. This is also a requirement for all contractors who, to fulfill the terms of their contract, are in contact with offenders.

The CSC survey results on the employment of men are consistent with both the results of the Cross-Gender Monitor and the results of the interviews conducted by the CHRC during the research for their Report, *Protecting Their Rights* (pages 41-43; 2003).

As described in its report, in addition to the interviews and consultations, the CHRC conducted a human rights analysis, using the three part test, on the employment of men in frontline positions and it concluded

that “the Correctional Service of Canada must vigorously pursue other alternatives before impairing the employment rights of men in such a fashion”(p. 43). Having reached this conclusion, the CHRC focused its recommendations in this area on the *National Operational Protocol – Frontline Staffing* and on the application of the WCTP (recommendation 5 (a) to (d)).

Response:

CSC accepts the CHRC’s conclusion that it is appropriate at this time for CSC to maintain its cross-gender staffing processes.

Further, as referenced in response to recommendation 5 of the CHRC report, CSC will focus continued attention on compliance with policy and practices related to staffing and training in women’s institutions.

RECOMMENDATIONS 5, 8 AND 9

RECOMMENDATION 5

As for minimum standards, the following are required in order to increase the credibility of and effectiveness of the handling of sexual misconduct allegations.

- a) that no process internal to CSC, even with outside advisory review, be used to handle inmate sexual misconduct accusations against non-inmates, including allegations against staff, contract workers and volunteers;**
- b) that conflict resolution or mediation not be used for sexual misconduct allegations;**
- c) that inmate sexual misconduct allegations be investigated and dealt with completely outside of the facility where the alleged incident occurred;**
- d) that any process incorporate an approach for complaints by Aboriginal women inmates that recognizes their vulnerability to persons in positions of trust and authority within their own culture as well as outside it;**
- e) that policies and procedures for fact finding/investigations be based on principles of due process and fairness, and should be clearly articulated. There should be a formal process for a “paper trail”, which must include a way of tracking each step from the initial allegation to its resolution. Privacy and access to information legislation and regulations must be fully incorporated in such policies and procedures;**
- f) that both parties have the right to an assistant of their choosing;**
- g) that police must be called in to investigate allegations that could constitute a criminal offence; if the woman inmate complainant does not want to proceed, other mechanisms for investigation must be open to her.**
- h) that CSC is clearly responsible for protecting the complainant from the respondent or from reprisals, including suspending the respondent with pay or reassigning such that contact between the complainant and the respondent is not possible;**

- i) that those investigating such allegations be free of conflict of interest concerns, and have training in or knowledge of investigating sexual misconduct allegations, and informed about sexual abuse/misconduct, criminal justice and corrections;
- j) that there be fully resourced independent monitoring or auditing of whatever approach is selected;
- k) Federally Sentenced Women should have access to independent funded assistance in submitting the initial allegation and throughout the process. This assistance could be provided by community organizations such as Elizabeth Fry Societies, aboriginal organizations, victim service organizations; and,
- l) Federally Sentenced Women and those working in the women's facilities, as well as regional and national headquarters, are provided with ongoing information and education as to the new approach taken to sexual misconduct allegations.

RECOMMENDATION 8

In the event that the federal government opt for continuing to handle allegations of sexual misconduct made by Federally Sentenced Women within the Correctional Service of Canada, it is recommended that any boards of investigation be composed of a majority of community representatives who have expertise in sexual abuse/misconduct.

RECOMMENDATION 9

As recommended in our First and Second Annual Reports, it is recommended that CSC develop a sexual harassment policy that clearly prohibits sexual harassment of inmates by staff. This policy must clearly articulate whatever option for handling of such complaints is chosen.

Background:

These three recommendations all focus on harassment, with specific reference to sexual harassment, and will be considered as one for the purpose of response.

The CHRC noted in their report, *Protecting Their Rights*, that in their interviews with women offenders, incidents of harassment were brought to their attention but that harassment is not widespread. They concluded however that "even isolated incidents warrant attention. Harassment is particularly devastating for women with histories of abuse." The CHRC did not distinguish between types of harassment. To ensure continued movement on the concerns around harassment, the CHRC recommended strengthening operational safeguards through action on the *National Operational Protocol*. As well, the CHRC made a recommendation concerning CSC's harassment policy (recommendation 14).

CSC is committed to providing a workplace that is free of harassment and discriminatory behaviour. To that end, CSC has established a program of anti-harassment training for all staff. As well, mechanisms, both internal and external (such as the police) are in place to investigate charges by offenders of harassment of any type by staff, contract workers and volunteers.

It should be noted that allegations of behaviour that may fall under the *Criminal Code* are immediately referred to the police for investigation. If the police subsequently advise there is insufficient evidence to

lay a criminal charge but the allegations are believed to be founded, CSC will take internal action under its policy. While the institution will call the police, a woman offender has the right to refuse to be interviewed once they arrive at the institution.

Response:

CSC issued Policy Bulletin 146 - *Harassment* and Policy Clarification - *Investigation of Harassment Complaints by Offenders* in June 2003 (Policy Bulletin 146 on harassment has been revised and republished under number 186). It is CSC's general practice to allow complainants and respondents to be accompanied by a support person of their choosing during meetings and interviews relating to their complaint whether it is a complaint under the grievance system or a complaint to the Office of the Correctional Investigator, etc. The harassment policies can be accessed through the CSC website at www.csc-scc.gc.ca.

Further, as referenced in the CSC action plan in response to CHRC recommendation 14, CSC will undertake a number of actions to strengthen offender and staff awareness of harassment issues and investigation processes.

RECOMMENDATION 6

RECOMMENDATION 6

It is recommended that the Corrections and Conditional Release Act (CCRA) be amended at the earliest opportunity to create an arm's length body that would handle allegations of sexual misconduct and other serious allegations by inmates such as physical assault.

Background:

External redress bodies in place are the Office of the Correctional Investigator and the CHRC.

As well, offenders have access to the courts. CSC's Commissioner's Directive 084- *Inmates' Access to Legal Assistance and the Police* and subsections 97(1), (2) and (3) of the *Corrections and Conditional Release Regulations* serve to ensure that inmates are provided with reasonable access to legal counsel.

Criminal harassment, assault and sexual assault are criminal offences; allegations of such acts are referred to the police for investigation.

Response:

The recommendation for independent redress will be considered in the context of the review of independent redress pursuant to recommendation 19 of the CHRC report.

RECOMMENDATION 7

RECOMMENDATION 7

That the CCRA be amended to require that the Correctional Investigator report directly to Parliament; that the monitoring or audit responsibilities be recognized and properly resourced by providing sufficient funds for at least two full time staff dedicated to Federally Sentenced Women.

Background:

The Government believes the mandate of the Correctional Investigator is extremely important and, hence, has provided the office with increased funding in recent years.

Response:

The reporting relationship of the Correctional Investigator will be considered in the context of the review of independent redress pursuant to recommendation 19 of the CHRC report.

RECOMMENDATION 10

RECOMMENDATION 10

That, in addition to the strengthening of the Correctional Investigator's (C.I.) capacity to monitor allegations of sexual misconduct recommended above, the long-standing recommendation from Creating Choices to create an independent National Advisory Committee should be implemented.

Background:

CSC has continuously and regularly consulted with a broad number of partner organizations, agencies, government departments and community groups throughout the evolution of women offender corrections.

As the complaint submission to the CHRC and the subsequent consultations conducted by the CHRC demonstrate, there are a multiplicity of groups and individuals with expertise in women's issues as well as one agency, CAEFS, which focuses exclusively on women in conflict with the law. Given its focus, CSC meets regularly at all levels with CAEFS and its member societies. In addition, CSC has strengthened the Citizens' Advisory Committees (CAC), and ensured linkages between the CAC for women's institutions and the Deputy Commissioner for Women (DCW). As well, periodic consultation takes place with the Heads of Corrections Women Offender Subcommittee and the National Aboriginal Advisory Committee.

In addition, wardens of the women's institutions have established their local and regional consultative processes and fora.

Response:

CSC will continue its current practice of: issue-specific consultations with groups and individuals with expertise in the issues under review; periodic broad-based national consultations with a wide range of

stakeholders; ongoing interface with the women's institutions' CAC; and, regular interaction at the national and local level with CAEFS and its member societies.

RECOMMENDATION 11

RECOMMENDATION 11

While CSC is establishing such a committee, undertaking the necessary steps to implement a female only front line worker policy, and undertaking legislative amendments, an independent monitor should be empowered to carry on the work of this monitoring project for one year.

Background:

The Cross-Gender Monitor submitted her final report in winter 2001. In March 2001, the CHRC received a submission from CAEFS with the support of a number of NGO requesting that the CHRC investigate the treatment of women offenders.

The CHRC agreed to do so. As the concerns submitted included the employment of men as frontline workers, the CHRC review de facto became an independent review of correctional service delivery for women offenders.

The CHRC conclusions and recommendations addressing the issue of the employment of men are covered primarily under recommendations 5 and 14 of the CHRC report.

Under recommendation 5(d), the CHRC recommended an external evaluation of the *National Operational Protocol*, which the CHRC deemed a critical safeguard in balancing the rights of men with respect to employment and the rights of women offenders not to be discriminated against in correctional services related to custody.

Response:

CSC will conduct an independent evaluation in fiscal year 2007-2008.

Acronym Legend

CAC:	Citizens' Advisory Committee
CAEFS:	Canadian Association of Elizabeth Fry Societies
CHRC:	Canadian Human Rights Commission
CSC:	Correctional Service of Canada
DCW:	Deputy Commissioner for Women
NGO:	Non-Governmental Organizations
NWAC:	National Women's Association of Canada
PW	Primary Worker
UCCO	Union of Canadian Correctional Officers
WCTP	Women-Centred Training Program