

**Commission of Inquiry into  
Certain Events at the Prison for Women in Kingston**

**Submission of Women's Legal Education and  
Action Fund on Federally Sentenced Aboriginal  
Women and The Healing Lodge**

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## FEDERALLY SENTENCED ABORIGINAL WOMEN AND THE HEALING LODGE

In this brief the Women's Legal Education and Action Fund (LEAF) will address the particular issues concerning federally sentenced Aboriginal women and specifically those issues concerning the Healing Lodge located on the Nekanee First Nation near Maple Creek, Saskatchewan.

### Introduction

Aboriginal women and their children suffer tremendously as victims in contemporary Canadian society. They are the victims of racism, sexism and unconscionable levels of domestic violence.<sup>1</sup>

The Aboriginal Justice Inquiry of Manitoba began their Chapter on Aboriginal Women with the above statement. The statement is indicative of the issues confronting Aboriginal women across Canada today.

The number of Aboriginal women swept into the criminal justice system is also a reflection of the damage inflicted by mainstream Canadian society and by the Aboriginal community itself.

An Elizabeth Fry Society study done in 1982 showed that 71% of Manitoba female inmates were Aboriginal. In 1988 the percentage of incarcerated Aboriginal females were 85%. ... Regrettably, the

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<sup>1</sup> Report of the Aboriginal Justice Inquiry of Manitoba, Queen's Printer, Winnipeg, V. 1, p. 475.

situation at Portage is not unique. In Saskatchewan, it has been estimated that treaty Indian women are 131 times more likely to be incarcerated than non-Aboriginal women, while Metis women are 28 times more likely to be incarcerated.<sup>2</sup>

As of October 1995, there were 322 women serving federal sentences, 61 (20%) of whom were Aboriginal.<sup>3</sup>

Study upon study and researchers have documented the statistics concerning Aboriginal people and specifically women in conflict with the law.<sup>4</sup> However, the information has not been utilized in any concrete form to design preventative or diversionary programs. Nor have the federal and provincial corrections departments responded in any tangible manner to assist Aboriginal women in correctional institutions. Programming in both levels of institutions are either non-existent or designed for the male prison population. They were not designed for women, much less Aboriginal women.

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<sup>2</sup> Supra n. 1, p. 498.

<sup>3</sup> LEAF, Submission of the Women's Legal Education and Action Fund on the Classification of Federally Sentenced Women: The need for alternatives to incarceration for federally sentenced women and the need for a Separate Correctional Service for Federally Sentenced Women p. 1.

<sup>4</sup> LaPrairie, Carole; Some Issues in Aboriginal Justice Research: The case of Aboriginal women in Canada, Women and Criminal Justice, Vol. 1, p. 81.

### **Historical and current issues affecting Aboriginal women**

The question usually posed by non-native Canadians and by many Aboriginal community members is why are there higher numbers for Aboriginal people? The Aboriginal Justice Inquiry and other commissions have explored the matter. The response to the question is complex. The Aboriginal Justice Inquiry of Manitoba report is an 800 page volume.

There is no single comprehensive response. Rather, the issue involves a myriad of factors impacting upon Aboriginal people. A primary factor is colonialism. Another is racism engendered especially regarding Aboriginal people in Canada.

### **Colonialism**

Colonialism enabled the governments of Canada and the provinces to initiate racist programs and policies which relayed the message that it was acceptable to treat Aboriginal people as less deserving of the benefits Canadian society offered to its "white" citizens. Aboriginal people and their communities were marginalized and forgotten as many reserve lands allotted to the Aboriginal people were isolated, unproductive, and far from economic centres.

Beyond the marginalization, the federal government was also implementing policies and programs designed to de-culturalize and assimilate Aboriginal peoples. Aboriginal people were to aspire to the ideal of attaining the characteristics of or

becoming indistinguishable from a non-native/white person. There was no other ideal to be attained. Colonialism was manifest in many ways including residential schools, the suppression of Aboriginal religious traditions and the Indian Act. This in turn, led to violence against women and for many women, the need to flee from their communities.

- Residential Schools

The deconstruction of Aboriginal people included the infamous residential schools. Only recently has it been recognized, and documented, that the residential schools were places where Aboriginal children experienced abuse in many forms: physical, emotional and sexual abuse.<sup>5</sup>

As early as 1857, it was government policy to “civilize” and “Christianize” Aboriginal people to the end that they would abandon their distinctive culture, social, political and spiritual traditions and assimilate Anglo-Canadian values.<sup>6</sup>

The residential school system was premised on the belief that removing Aboriginal children from the “disruptive” influence of their parents and community traditions was the only way to “civilize” aboriginal people. Separated from their families for nine to ten months a year in over an eight year period, Aboriginal children were not only instructed

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<sup>5</sup> Supra, p. 478.

<sup>6</sup> Indian Act, S.C. 1884, c. 27, ss. 10 and 74(7); Indian Act, S.C. 1886, c. 43, s. 138; Indian Act, R.S.C. 1951, c. 29, ss. 113-122; Davin, Report on Industrial and Residential Schools for Indians and Halfbreeds, Ottawa: 14 March 1879, PABC RG 10 Vol. 6001 File 1-1-1, Part 1.

in “every aspect of European life, from dress and behaviour to religion and language,” but also taught to devalue their social, political and spiritual traditions.<sup>7</sup>

Punished for speaking their language and either abused by persons in positions of trust and power or witness to such abuse, children who attended residential schools developed a number of survival strategies. As a way of coping with the trauma of their experience, some adopted silence and isolation well into adulthood; some ran away only to be forcibly returned.<sup>8</sup>

- **Religious Suppression**

The churches as institutions were instrumental in the process as they operated the residential schools for the most part. The churches re-modeled the students on the white male ideal and the society engendered by it. Beyond the schools, the churches were also busy in the communities, with a similar agenda for adults. Implicit in the ideal was the second class citizenship of Aboriginal women. It is a value assimilated by Aboriginal societies.

Throughout North America, for centuries before and after the arrival of

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<sup>7</sup> Aboriginal Justice Inquiry, Vol. 1, at 62-68, 478, 512-515; Assembly of First Nations, Breaking the Silence: An Interpretive Study of Residential School Impact and Healing as Illustrated by the Stories of First Nations Individuals, 1994 at 1-16, 167.

<sup>8</sup> Breaking the Silence, *supra*, at 87, 93; Haig-Brown, C. Resistance & Renewal: Surviving the Indian Residential School, Vancouver: Tillacum Library, (1988) at 88-103.

Europeans, lesbians and gay men ("two spirited people") were recognized as valuable members of Aboriginal communities.<sup>9</sup> While the responsibilities varied among tribal groups, two spirited people were often called upon to perform specific important religious, social, healing, and artistic roles. Colonizing influences, especially missionaries, Indian agents, residential schools and legislation that prohibited both traditional Aboriginal culture and same sex sexual expression, suppressed the emergence and recognition of two spirited people. Aboriginal people adopted the attitude of Europeans and became ashamed of these members of their communities. The result has been not only the loss (or deep repression) of important aspects of Aboriginal culture, but also significant homophobia against two spirited people in Aboriginal communities.

- **Indian Act Membership**

Aboriginal women's second class was enhanced through the legislative enactment of the discriminatory section within the Indian Act membership clause.<sup>10</sup> It stated that upon marriage to a non-native, an Aboriginal woman would lose her legal status as an Indian. She forfeited her legal rights as an Indian person and could not reside in the community nor could she own property on the reserve's community lands. The male

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<sup>9</sup> See Walter Williams, The Spirit and the Flesh: Sexual Diversity in American Indian Culture (Beacon Press, Boston, 1992) and Will Roscoe (ed.), Living the Spirit: A Gay American Indian Anthology (St. Martin's Press, New York, 1988).

<sup>10</sup> Issac, Thomas, Aboriginal Law: Cases, Materials and Commentary, Purich Publishing, Saskatoon, 1995, p. 405.



Aboriginal, on the other hand, could confer status upon his non-native spouse. The non-native spouse was eligible for all services and benefits being provided to an Indian person.

It is only since 1985 with the passage of Bill C-31 that the discriminatory provisions of the Indian Act were repealed and women were re-instated as members of their First Nations. However Bill C-31 did not address other discriminatory results flowing from the membership section. Aboriginal men and their non-native spouses could confer full legal status as Indians onto their half-blood children. They, in turn, were legally regarded as full-blooded Indians and could confer status on their children even though they might marry a non-native spouse. The converse is not true for Aboriginal women who married non-native spouses. Their ability to confer status is impaired in that their children must marry a status Indian spouse in order to confer status.

Beyond the legal re-instatement of Aboriginal women into their First Nations membership list, the women also face discrimination in returning to their communities, a fact that many First Nations communities are not willing to acknowledge.

The legal discrimination against Aboriginal women created another myth: that the Indian Act provisions were a reflection of First Nations' culture. This is a complete distortion of the cultural values of most Aboriginal Nations, as prior to and long after contact, Aboriginal women had an equal partnership in the survival and maintenance of

First Nations societies. One gender was not valued above the other. Yet, Aboriginal Nations are at a point today where the male gender is seen as superior and occupy virtually all leadership positions within Aboriginal communities and their political organizations.

With the evolution of Aboriginal societies subscribing to the supremacy of the male confirmed continually by the larger Canadian society and government in particular, the oppression of women has escalated to proportions that the majority of Aboriginal communities are unwilling to acknowledge.

- **Violence**

Aboriginal women and children are particularly vulnerable to male sexual violence. As many as eight out of ten Aboriginal women have been sexually abused or assaulted in their lives, usually on more than one occasion. The breakdown of family structures caused by the residential school system as well as the modeling of corporal discipline, has been directly linked with violence against women in Aboriginal communities.<sup>11</sup>

Aboriginal women are also highly vulnerable to sexual violence perpetrated by white men steeped in degrading and dehumanizing stereotypes of "Indians". As Professor Emma LaRocque has said:

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<sup>11</sup> Ontario Native Women's Association, Breaking Free: A Proposal for Change to Aboriginal Family Violence (December, 1989); A.C. Hamilton and C.M. Sinclair, Report of the Aboriginal Justice Inquiry of Manitoba, Vol. 1: The Justice System and Aboriginal People (1991) at 478, 481-2.

The portrayal of the squaw is one of the most degraded, most despised and most dehumanized anywhere in the world. The 'squaw' is the female counterpart to the Indian male 'savage' and as such she has no human face; she is lustful, immoral, unfeeling and dirty. Such grotesque dehumanization has rendered all Native women and girls vulnerable to gross physical, psychological and sexual violence. ... I believe, for example, that Helen Betty Osborne was murdered in 1972 by four young men from The Pas because these youths grew up with twisted notions of 'Indian girls' as 'squaws.' ... Osborne's attempts to fight off these men's sexual advances challenged their racist expectations that an 'Indian squaw' should show subservience ... [causing] the whites ... to go into a rage and proceed to humiliate the victim.

...

It is evident that the men who abducted Osborne believed that young Aboriginal women were objects with no human value beyond sexual gratification.<sup>12</sup>

- **Aboriginal women flee from communities**

Other factors adding to the problem is that with the marginalization of Aboriginal communities, rare opportunities exist for economic development or employment. Reserve communities are no longer practising time-honored occupations associated with hunting, trapping and fishing. Aboriginal communities were also fundamentally altered by the advent of welfare and the lifestyle associated with it.

"In particular, account must be taken of the breakdown of traditional Native roles and values and the loss of power and status represented by Native people

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<sup>12</sup> Excerpt from written brief of Emma LaRocque to Aboriginal Justice Inquiry Report of Manitoba, supra at 479; Aboriginal Justice Inquiry Report of Manitoba, Queen's Printer, Winnipeg, Vol. 2, The Deaths of Helen Betty Osborne and John Joseph Harper at 52.

especially Native Men. ... Indian men come to experience severe role strain. The disparity between the desired roles and the availability and achievable roles was so great as to produce tension, anxiety, frustration and anger to which different men reacted in different ways."<sup>13</sup>

Carole LaPrairie suggests a hypothesis for Aboriginal women's involvement in violent crimes. Seventy percent (70%) of Aboriginal women are committed for violent offences (including attempted murder, wounding, assault and manslaughter). She proposes that if an Aboriginal woman's experience is one of violence, it may be that Aboriginal women retaliate in self-defense.

For some Aboriginal women, emigration to urban centres is an opportunity to flee the violence and oppression. The opportunity is, however, negated by the experience of the women in urban areas. The majority of Aboriginal women do not have the education nor the skills to secure employment, a basic need to survive in an urban area. Discrimination is also a factor in the high unemployment rate for Aboriginal women. No or rare employment requires women to survive on social assistance or welfare. A welfare lifestyle is not conducive towards positive life experiences and when alcohol or substance abuse is included, the potential for conflict with the legal system is enhanced. As the Aboriginal Justice Inquiry report suggests, the mere fact you are an Aboriginal in the city, especially in the core area, places you at higher risk to be scrutinized by the

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<sup>13</sup> LaPrairie, Carole, *Some Issues in Aboriginal Justice Research: The case of Aboriginal Women in Canada*, *Women & Criminal Justice*, Vol. 1, 1989, p. 86.

police and to be charged with offences.<sup>14</sup>

Drawing on the work of Sharon McIvor, Karlene Faith has said that "the women most often sent to prisons are those who have left their rural reserve for cities where they land on the street and drift further away from their culture through the exigencies of survival strategies."<sup>15</sup>

Education, as mentioned previously, was viewed by ancestors of present day Aboriginal people as an invaluable resource for adapting to life after the advent of non-native people into Indian lands. The tool was utilized in a manner never foreseen by the ancestors, and is even now viewed with ambiguity.

Many Aboriginal people value education and have identified it as one of the highest priorities for Indian communities since the late 1960's. Yet, thirty-five years later, the statistics for drop-out rates are among the highest in the country for Aboriginal students. The rates are estimated from 80-90% at the high school level. The rates appear to be even higher for Aboriginal women.

Little education translates into few opportunities for employment. Unemployment rates for Aboriginal people are usually much higher than those of non-natives.

There has been little research confirming the reasons why the Aboriginal

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<sup>14</sup> Supra, p. 595.

<sup>15</sup> Faith, Karlene, Unruly Women; The Politics of Confinement, Resistance, Press Gang Publishers, Vancouver, 1993, p. 202

community is in conflict with the justice system at such high rates. However when one reviews the factors impacting upon Aboriginal people; racism, isolation, marginalization and deconstruction of Aboriginal culture, one can only surmise that a people in crisis will respond negatively to a foreign justice system which has sought to suppress them.

Aboriginal women live daily with the general factors encountered by Aboriginal people but also must deal with the sexism inherent in the larger and their own communities. For federally sentenced Aboriginal women, there is the further stigma of being offenders. Aboriginal communities tend to experience difficulty in supporting women offenders and have rejected or ignored the women. The essential community services a woman may require in adjusting to post-prison life may not be readily available.

- **Motherhood**

A critical consideration for many Aboriginal women is their role as a mother. The Aboriginal birth rate in Manitoba is "twice as high as the non Indian birth rate"<sup>16</sup> and maybe generalized to Canada. The other important factor related to population statistics is that the age distribution is much different than the non-Indian population. In Manitoba, 38% of the population is under 15 years old.<sup>17</sup> The corresponding figure for

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<sup>16</sup> Supra, p. 11.

<sup>17</sup> Supra, p. 93.

the non-Indian population is 22%.<sup>18</sup>

With regard to family composition, Aboriginal families are more likely to be single-parent units with the majority of the heads of families being female. In Manitoba, the Aboriginal single parent rate as of 1991 was 36%.<sup>19</sup>

Aboriginal women who have children and who are in conflict with the justice system must deal with what do with the children? The children are left without a mother and their future is jeopardized. The optimum for the children is to be taken into care by close family members. However, a large number of children are taken into care by child welfare agencies; in Manitoba, 32% of the children in care of child welfare agencies are Aboriginal children.<sup>20</sup> However a positive note to be made is that the majority of Aboriginal children in care, have, since the establishment of Aboriginal Protective Agencies in the 1980s, been protected by these agencies, especially in Manitoba. But, no matter who is in charge of the children, the family is still broken up when the mother is in jail.

The mother loses contact with her children and historically Corrections Services Canada has not prioritized or even identified maintenance of mother-child relationships as important. There have been few programs designed to support familial relationships

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<sup>18</sup> Supra, p. 93.

<sup>19</sup> Supra, p. 93.

<sup>20</sup> Supra, p. 10.

in the institutions.

Most federally sentenced Aboriginal women are too far removed to even attempt family visits. Beyond distance, there are the financial considerations. A woman in prison is hard pressed to access funds for family visits.

### The Healing Lodge

The issue is what should the federal government, Corrections Services Canada, do to attempt to address the myriad of barriers encountered by Aboriginal women?

For all women, the establishment of regional centres for federally sentenced women is a significant improvement over the present central facility in Kingston. Further, the building of the Healing Lodge in Maple Creek, Saskatchewan is a tremendous step forward for Aboriginal women sentenced to a federal institution.

The Healing Lodge and its Advisory committee comprised of representatives from many Aboriginal communities should be hailed as a model for other institutions to use. The Healing Lodge's operation from an Aboriginal perspective is exciting.

With regard to the five principles identified by Corrections Services Canada regarding institutional objectives, it is commendable that Corrections Canada has adopted the principles tabled by the Task Force on Federally Sentenced Women. These five principles are:

1. Empowerment: the process through which women gain insight into their



situation, identify their strengths and are supported and challenged to take positive action to gain control of their lives.

2. Meaningful and responsible choices: choices relating to women's needs, past experiences, culture, values, spirituality, abilities and skills as well as their future must be provided.
3. Respect and dignity: mutual respect is required among offenders, staff and between the two.
4. Supportive environment: an environment that is supportive and positive in the following aspects: socio-political, physical, emotional/psychological, spiritual and financial can encourage self-esteem, empowerment, dignity and respect for self and others.
5. Shared responsibility: all levels of government, corrections, volunteer organizations, businesses, private sector services and the community have a role in the development of support systems and continuity of services for federally sentenced women.<sup>21</sup>

The key for Corrections Services Canada is to ensure that the principles are reflected in the programming offered and that the staff providing the programs further the principles outlined.

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<sup>21</sup> Correctional Services Canada, Correctional Program Strategy for Federally Sentenced Women, July, 1994., Morin, Sky Blue, Correctional Program Strategy for Federally Sentenced Women: Programming at the Healing Lodge, 1995.

A primary concern with reference to federally sentenced Aboriginal women is the effective implementation of all of the principles in programming and in the operation of correctional centres. The administration of the Healing Lodge with the guidance of the Advisory Committee has been an effective method of ensuring that the principles are fulfilled and the needs of federally sentenced Aboriginal women are addressed. This is the first time in the history of Corrections Services Canada that such an advancement has been made with reference to Aboriginal women.

The Healing Lodge's location on a First Nation's sacred lands is an opportunity for Aboriginal women to be close to such lands. The Lodge's management and expertise in establishing links with the local community can provide guidance to other regional correctional centres. One of the strengths of the Healing Lodge is its Aboriginal staff, of whom some are from the immediate and surrounding communities. Establishing shared responsibility should be easier.

The essential programs as dictated by Corrections Services Canada's guidelines will be offered at the Healing Lodge from an Aboriginal perspective. This is a wonderful beginning. More promise also exists in the innovation that the Centre is seeking to provide in its programs.

The required programs are Living Skills Programs which deal with problem-solving skills and critical reasoning. A Parenting complement is included. Much of the research regarding federally sentenced women is that this is an identified priority. For Aboriginal

women, offering courses from an Aboriginal perspective is critical. From the documentation available regarding this aspect, the Healing Lodge is planning to provide the course from an Aboriginal perspective. The Healing Lodge should also seek to provide, if the women indicate a wish to do so, opportunities for further study in early childhood education at a university or college level. Again, the goal would be for such study to be from an Aboriginal perspective.

Programs for survivors of abuse or trauma is equally critical for Aboriginals due to the high numbers of Aboriginal women experiencing violence in their lives. The Healing Lodge is committed to providing its programming from an Aboriginal perspective. Once the Lodge has completed a year's programming, there should be opportunities to review program structure and processes as the program could be invaluable for other federally sentenced Aboriginal women in the other regional centres.

With regard to the educational-skill development area; a valuable opportunity exists for Aboriginal women. It must be reiterated that the provision of such programs from an Aboriginal perspective is critical. The perspective may be integrated within existing curricula and an Aboriginal instructor utilized in the provision of the program.

For many First Nations or Aboriginal women, educational opportunities have been minimal. It may be that some programming must be provided to emphasize the value of academic education for Aboriginal women. The concept would be for a pre-education unit reflecting on the benefits of a high school education, a college degree or university

work. Much pain is associated with educational institutions for many Aboriginal people and those designing the program should review the history of education for Aboriginal people and how or what is the value of education to Aboriginal communities and the people.

The Healing Lodge's plans in this area are at the forefront and their experience will be beneficial for other regional centres. Educational and employment skills are fundamental; to be able to gain employment skills, most people must obtain a minimum degree of competence - a high school diploma.

With reference to substance abuse programs, this is an area where Aboriginal people have gained expertise. The Healing Lodge is utilizing those organizations which have invested resources in using a model approach for Aboriginal peoples. It would be most beneficial that such programs be revised with the intent to meet the women's needs. At times, Aboriginal treatment programs were oriented towards the Aboriginal male. The Healing Lodge must be diligent in ensuring this does not occur in their programming.

### **Other Regional Correctional Centres**

Section 80 of The Corrections and Conditional Release Act enacted in November of 1992 states that "the Service shall provide programs designed particularly to address the needs of Aboriginal offenders."

The Healing Lodge is an example of how the Correctional System can positively respond to a need identified within the system. However, for a variety of reasons, not all federally sentenced Aboriginal women will be able to go to the Healing Lodge.

The challenge is to ensure that all federally sentenced Aboriginal women have access to such programming. For the provision of programs by all the other regional correctional centres LEAF submits that it is critical that each centre establish an Aboriginal Advisory Committee to provide direction to the Wardens and the Correctional Centres.

The advisory committees will be an essential resource for the Correctional Centres as local Aboriginal community organizations have usually established extensive community networks and can provide references or assist in program development. It is important that local First Nations and their cultures be respected and their expertise honored, along with that of the Aboriginal women in the centres.

The utilization of local community groups is important as there have been instances where Aboriginal groups were able to initiate high quality programs within correctional centres. Yet, in at least one situation when contract renewals were discussed, the contracts were tendered and a non-native organization captured the contract. An opportunity was again lost to provide programming for Aboriginal women from an Aboriginal perspective. The program's value for the Aboriginal women is the Aboriginal perspective taught by an Aboriginal resource person.

### Shared Responsibility

With regard to the five principles that Corrections Services Canada has adopted in its operational objectives, a potential issue in reference mainly to the Healing Lodge and other centres is the fifth principle. The principle mandates the inclusion of different communities in the development and continuity of services for federally sentenced women. The problem with sharing responsibilities with "outside" resources is that resources and staff must be invested to ensure that people do share responsibility. In this situation, it would be Corrections Services Canada's responsibility to ensure the communication links are established and maintained. Too often Correctional Services Canada's interest has been only in its internal organization and yet the clients must eventually be released into the community.

For Aboriginal communities, shared responsibility will be difficult due to limited financial resources. There is also the lack of knowledge and support for women in correctional centres. However, an opportunity exists to interconnect with Aboriginal communities and to begin a mutual education process. Other regional correctional centres should attempt to prioritize the hiring of Aboriginal Corrections Officers to assist in the establishment of bridges with Aboriginal communities. Beyond the facilitation of links with the community, more officers within the centres would also assist the Aboriginal federally sentenced women in achieving success within the corrections system. The recommendation for more correctional officers of Aboriginal descent has been

submitted numerous times by Aboriginal women to commissions and Corrections Services Canada.

With regard to the other principles in reference to the Healing Lodge, it must be noted that from the planning process that the Lodge has instituted; the principles are reflected in all aspects of its operation and programming. The Lodge's administrator must be diligent in ensuring that the Lodge prioritizes those principles in its daily operations.

### **Equality and Federally Sentenced Aboriginal Women**

The following issues are being reviewed with the anticipation that Corrections Canada address the matters prior to a suit, either generally by federally sentenced women or by federally sentenced Aboriginal women.

As LEAF has argued before in Conway v. R., "The state has a constitutional obligation to respect and protect the dignity of the socially powerless within the confines of the Charter. L.E.A.F. submits that the obligation is imposed by a number of Charter provisions, including ss. 7, 8 and 15. L.E.A.F. submits that prisoners are a powerless group in society and therefore have such a claim on the state."<sup>22</sup>

The submission by L.E.A.F. is particularly apt in reviewing equality issues and federally sentenced women and in particular for federally sentenced Aboriginal women.

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<sup>22</sup> Factum, Women's Legal Education and Action fund, Intervener; Conway v. R., p. 8.

### Transferring to the Healing Lodge

1) A potential matter for litigation is with regard to those federally sentenced Aboriginal women who are unable to transfer to the Healing Lodge, due to either lack of space or geographical location. The Healing Lodge also appears to be restricting itself to medium and minimum classified inmates. The issue would be for the access to similar programs designed for the Healing Lodge, in the other regional institutions.

“The objective of the equality guarantees is not to provide the ‘same treatment’ for individuals but to remedy social disadvantage. The purpose of s.15(1) is not to eliminate all distinctions but only discriminatory distinctions. A distinction is discriminatory only if it functions to cause or reinforce social disadvantage.” Andrews v. Law Society of B.C. at 165-176, per McIntyre, p. 152-154, per Wilson, J.<sup>23</sup>

Aboriginal women as a social class are particularly able to provide documentation which proves their disadvantaged status in Canadian and Aboriginal societies. Further, that federally sentenced Aboriginal women enter the penal system with their disadvantaged status and should be provided with the opportunity to access programs which are specifically designed to meet the needs of Aboriginal women. If Aboriginal women are not allowed to access those programs, CSC is perpetuating the disadvantages that Aboriginal women have experienced.

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<sup>23</sup> Factum. LEAF; Re: Philip Conway v. R.; p. 10.; Andrews v. Law Society of B.C.[1989] 1 S.C.R., p.165-176.



## 2) Security Classification Procedures

As we noted in our brief in security classification, the existing security classification process is modeled upon the white male prison population. Authors, like Margaret Shaw have noted that the present system does not address the special needs of women. The present system is inapplicable to the characteristics and needs of Aboriginal women due to the non-consideration of differing societal and cultural values.

The argument noted for the provision of services for all Aboriginal women in federal institutions is applicable. The disadvantaged status of Aboriginal women within the existing prison population can be substantiated.

The existing classification system is discriminatory towards Aboriginal women because the factors considered when assigning security levels are the inmate's social, criminal and young offender history. For the majority of Aboriginal women, their socialization and cultural values are not the norms expressed by Canadian society and are inapplicable to Aboriginal women. For instance,

A cultural imperative, or rule of behaviour, is a cultural value that dictates the actions and reactions of Aboriginal people to given situations. For instance, in general, Aboriginal people are non-confrontational. Aboriginal people usually will seek to resolve disputes or to make their opinions known to others in ways that avoid direct confrontation. Confrontation violates one of several Aboriginal cultural rules of behaviour that deem the preservation of harmony paramount, rather than personal satisfaction or gain.

While such cultural differences between Aboriginal people and non-Aboriginal people have been noticed and remarked upon by various non-Aboriginal writers for hundreds of years, few people have tried to explore and explain these

differences in terms understandable to the general population. Instead, these differences have been explained away in terms of handy stereotypes and vague generalizations, to the detriment of real understanding. The justice system has been no less insensitive and ignorant of these differences than other sectors of society.<sup>24</sup>

There is also consideration of the inmate's performance and behaviour while incarcerated. The observations are usually provided by non-Native Corrections officers who have little concept of the behaviour models acceptable by Aboriginal societies. In the past, Aboriginal women have been penalized for non-conventional behaviour in prison. Aboriginal women have been penalized in the past for non-participation in institutional programs. Most often, the Aboriginal women did not participate because the program held little or no relevance for Aboriginal women.<sup>25</sup>

The security classification process is particularly important for Aboriginal women due to the present policy guiding the Healing Lodge regarding the security levels it appears to be willing to prioritize. At this time, it seems that the minimum or medium security classifications would allow speedier transfers.

There are a number of federally sentenced Aboriginal women classified as maximum and it appears that the Healing Lodge is not prepared to house these women. The option for Aboriginal women is to try to be classified to a lower level. It would seem that the opportunity to be reclassified would be possible under a more appropriate

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<sup>24</sup> *Supra*, p. 30.

<sup>25</sup> Native Women's Association of Canada - Task Force Report, 1990, p. 11, 13.

process which takes into account differing societal and cultural values of Aboriginal women.

### Conclusion

Aboriginal women have and continue to experience numerous barriers in seeking to reclaim their place within the Aboriginal and larger Canadian society. Federally sentenced Aboriginal women as well as those who are provincially sentenced, are the most challenged in their efforts. As Aboriginal women, they have experienced the disadvantages and hardship in their own communities and many have fled either to escape the hardship or to seek a "better life". With hope they move to urban centres seeking a new enhanced lifestyle through employment or educational and training opportunities. For many Aboriginal women, the hope soon transforms into despair. Many are unable to find employment or to access opportunities for skill development and must come to rely upon social assistance. With a minimal or non-existent support system in the city or town; stress becomes intolerable. The potential for conflict with the law is increased and eventually there is conflict. An Aboriginal woman enters jail. She must leave her children usually in the care of a child welfare agency.

In the correctional institution, an Aboriginal woman cannot access or is unable to select appropriate programs to assist in her personal development. Programs which might provide her with the required tools to live a positive lifestyle once she is released

from the prison. If there are programs available, the content is irrelevant to her experience as an Aboriginal woman in her own society or the larger society. Added to the experience in prison, an Aboriginal woman has most often forfeited her role as a mother and grandmother. Upon release, an Aboriginal woman has access to little or no programming to assist her in adapting to the world on the outside. She has little support from the Aboriginal community as it has not prioritized programs for offenders and for re-establishing community participation.

The establishment of the Healing Lodge in Saskatchewan is a milestone for federally sentenced Aboriginal women. The expectations for the Lodge are impossibly high at the moment, however if the Lodge meets just one of its objective of providing programs from an Aboriginal perspective, this is a marked advancement from the situation before. The Lodge has much to accomplish with its proposed programming and if it can equip federally sentenced Aboriginal women in the manner that the Lodge expects, Aboriginal women will be prepared to meet the future with enhanced skills for survival.

With regard to equality for Aboriginal women, it is important that the women, who for whatever reason are unable to transfer to the Healing Lodge and are in the other regional centres be provided with programming from an Aboriginal perspective. The programs will enable the women to be more successful in acquiring the skills necessary to survive on the outside.

The other matter with regard to equality for federally sentenced Aboriginal women is that of classification procedures. Many federally sentenced Aboriginal women will be unable to transfer to the Healing Lodge due to their security classification. New procedures which account for differing cultural and social values with appropriate benchmarks for success would enable Aboriginal women to be declassified in most instances. Once classified to a lower risk level, federally sentenced Aboriginal women will be able to access programs sensitive to their needs and experiences either at the Healing Lodge or in the other regional centres.

Equality of participation within the Aboriginal communities is a far more distant goal. For some Aboriginal women the process has been instituted, however, the issue is not simply one of equality of women. The process of reclaiming equal participation in Aboriginal communities is complex. As previously mentioned, the majority of Aboriginal communities have accepted the concept of the superiority of the male gender as an integral component of their society's cultural values. Aboriginal societies have been under siege for the past two hundred years from Canadian society. The demand for change by Aboriginal women is viewed as another factor to be resisted. The resistance is couched under the guise of protecting the traditions and practises of Aboriginal culture. For Aboriginal women to regain their equal status within the Aboriginal communities, there must be a reclamation or re-examination of each community's history and cultural values. Few Aboriginal communities have begun the journey.

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