

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

**Submission of Women's Legal Education and Action Fund
on Proposed Cross-Gender Staffing at the New Regional
Institutions for Federally-Sentenced Women**

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INTRODUCTION

1. This brief will address the equality issues for women which arise from the decision of the Correctional Service of Canada ("CSC") to allow men to be hired as "front-line" staff in the new regional facilities for federally-sentenced women. In analyzing the issue of cross-gender staffing, this brief will focus primarily on federally sentenced women's rights to equality and security of the person as guaranteed under sections 15 and 7 of the Charter.

HISTORICAL PERSPECTIVE

2. Prior to 1989, CSC permitted men to hold the position of Unit Manager and at perimeter posts at the Prison for Women. The Unit Manager position was largely administrative, but on occasion Unit Managers made tours of the institution and met with inmates either in their office, or less frequently while doing rounds. Men working as guards in perimeter posts were only brought into the living units in the case of an emergency.

The Matter of M. King under the *Public Service Employment Act* (Decision of L. Robinson, 89-21-PEN-11, July 18, 1989) at p. 3

3. Following the 1989 decision in the Matter of M. King, *supra*, men were permitted to hold the position of Correctional Supervisor at the Prison for Women. The role of a Correctional Supervisor is to supervise Correctional Officers and manage the prison's programmes rather than become involved in situations on a "hands-on" basis.

The Matter of M. King, *supra* at p. 21

4. Current policy at the Prison for Women is that male guards work as Correctional Supervisors, or they work in control posts. They do not work in the housing units (ranges). Men have never staffed women's living areas.

Evidence of Irving Kulik, Vol. 2, p. 171, l. 27-p. 172, l. 18

PROPOSED STAFFING AT NEW REGIONAL FACILITIES

5. At the new regional facilities for federally sentenced women, staff roles will be different than the Prison for Women. The organizational structure will be flatter, and consist of the following levels: Warden and Associate Warden; Team Leaders; and Primary Workers.

Evidence of Irving Kulik, Vol. 2, p. 159, l. 22-p. 160, l. 3; p. 160, l. 23-p. 161, l. 21

6. The Primary Workers will be in charge of the facility. The approach to delivery of services will be more holistic, in that each Primary Worker will be responsible for several functions for particular inmates, including security, operations, case management and program delivery. Team leaders will be responsible for groups of Primary Workers and quality control of case management work.

Evidence of Irving Kulik, Vol. 2, p. 160, ll. 3-22

7. Corrections Canada is allowing men to apply for the position of Primary Worker and Team Leader in the new regional facilities. The position of Primary Worker, consistent with the holistic approach, will involve working in the housing units. Irving Kulik, Deputy

Commissioner for the Ontario Region, testified that Corrections Canada is permitting men to apply for these jobs for two reasons: First, because the *Public Service Employment Act* does not permit sex-based discrimination; second, because they believe that it is not best from a correctional point of view to isolate women totally from men for a long period of time.

Evidence of Irving Kulik, Vol. 2, p. 173, ll. 15-28; p. 175, ll. 2-7

8. According to Irving Kulik, CSC surveyed 68 federally-sentenced women at the Prison for Women, Burnaby and a number of provincial facilities. The survey concluded that the majority of the women were in favour of cross-gender staffing (i.e. the ability of men to go into the housing units). However, the response from women living in those institutions that do not currently have men present (Burnaby and Prison for Women) was "more negative vis-a-vis cross-gender staffing."

Evidence of Irving Kulik, Vol. 2, p. 173, l. 29-p. 174, l. 13

9. The only report of the results of the survey is found in a report prepared by the CSC Federally Sentenced Women Initiative, dated February 28, 1995, entitled "Cross-Gender Staffing in FSW Facilities". The information provided is very vague. Particulars as to how this "survey" was conducted, including the format of the questions asked, have not been provided.

Only three paragraphs in the CSC report deal with the survey:

FSWPC [Federally-Sentenced Women Program Committee] consulted 68 FSW [Federally-Sentenced Women] in correctional facilities across the country. This included the Prison for Women, Halifax Correctional Centre (Nova Scotia), Stephenville Correctional Centre (Newfoundland), Maison Tanguay (Quebec), Portage Correctional Centre (Manitoba), Pine Grove Correctional Centre (Saskatchewan), Saskatchewan Penitentiary, Fort Saskatchewan (Alberta) and the Burnaby Correctional Centre for Women (British Columbia).

The majority of the women consulted indicated that their concerns with cross-gender staffing for the Primary Worker positions could be mitigated. FSW stressed that staff must respect their dignity and privacy and proposed that specific procedures be adopted to protect their privacy such as: staff members must announce their presence in the living units; no male staff be permitted in the washrooms and shower areas, unless there is an emergency; no male staff perform frisk searches (this is already CSC policy); FSW to have the choice of being assigned a man or woman Primary Worker; and, all staff receive training, related to women's issues.

Of those women who had strong objections, most were in facilities that do not have front-line male staff (e.g. Prison for Women, Burnaby). [emphasis added]

Although this description of the survey provides little detail, it is clear that even women who did not object to cross-gender staffing premised that opinion on the right to choose whether to have a male or female primary worker.

CSC Federally Sentenced Women Initiative, "Cross-Gender Staffing in FSW Facilities", dated February 28, 1995 at pp. 2-3

10. According to Irving Kulik, Corrections Canada proposes two safeguards to protect federally sentenced women concerned about cross-gender staffing. First, it will have a very tight selection process to make sure that men who apply are sensitive to women's needs including issues of abuse are able to work in a women's environment. Second, to protect the privacy of inmates, an announcement will be made before a man enters the housing unit.

Evidence of Irving Kulik, Vol. 2, p. 174, l. 14-p. 175, l. 1

11. Presentations made by Corrections Canada during Phase II were less clear on the question of whether or not announcements would always be made before male staff enter the living units. Privacy concessions have been made in the toilet/shower areas. In the regular living units the

toilets are private. In the reinforced/enhanced units modesty barriers will be available so that only the hands and feet of the inmates are visible.

IMPACT OF CROSS-GENDER STAFFING ON FEDERALLY SENTENCED WOMEN

12. LEAF submits that the impact on federally-sentenced women of cross-gender staffing will be severe. In particular, it will compound the existing power imbalance in gender relations in our society.

13. This imbalance of power will be felt most acutely by those inmates who have suffered physical, sexual and/or psychological abuse at the hands of men.

(a) Federally-Sentenced Women and Abuse

14. Studies of federally-sentenced women at the Prison for Women and at provincial facilities indicate that the majority of inmates are survivors of physical or sexual abuse. In a 1990 study, Margaret Shaw found that overall, 68% of federally sentenced women interviewed (both at the Prison for Women and at provincial institutions) reported having been physically abused at some stage in their lives. The percentage was higher for inmates at the Prison for Women (71%) than for inmates in provincial institutions (63%). A total of 53% of women reported having been sexually abused at some stage in their lives. Again, the numbers were higher at the Prison for Women (56%), than at provincial institutions (49%). Overall, 82% of women at the Prison for Women and 72% of women in provincial institutions reported physical or sexual abuse.

Shaw, M., Rodgers, K., Blanchette, J., Hatten, T., Seto Thomas, L., Tamarack, L., Survey of Federally Sentenced Women: Report to the Task Force of Federally Sentenced Women on the Prison Survey. Ministry of the Solicitor General (Ottawa). User Report No. 1991-4 at pp. 28-30
Creating Choices *supra* at p. 51
Kendall, K., Literature Review of Therapeutic Services for Women in Prison, prepared for Corrections Canada, August 1993 at pp. 15-16

15. The statistics regarding sexual and physical abuse suffered by native inmates are higher than for non-native inmates. 90% of native inmates reported physical abuse, compared to 61% of non-native inmates. 61% of native inmates reported sexual abuse, compared to 50% of non-native inmates.

Shaw, M. et al, Survey of Federally Sentenced Women: Report to the Task Force of Federally Sentenced Women on the Prison Survey, *supra* at pp. 28-30
Creating Choices *supra* at p. 51
Kendall, K., Literature Review of Therapeutic Services for Women in Prison, *supra* at pp. 15-16

16. In Jan Heney's study conducted at P4W, 74% of self-injuring women Jan Heney studied at the Prison for Women disclosed histories of childhood abuse. Heney cautioned that that figure should be considered conservative.

Heney, J., Report on Self-Injurious Behaviour in the Kingston Prison for Women. Correctional Service of Canada (1990) at p. 17

17. There is also evidence of sexual abuse of women inmates by male staff, although it has not been the subject of extensive study. In Ontario, sexual abuse of women inmates by male guards in provincial prisons for women has been reported. As well, criminal charges involving allegations of sexual abuse of young women inmates in the Grandview School for Girls are

currently before the courts in Ontario. There have been reports of sexual abuse of inmates occurring inside prisons in the United States.

"Pilkey refuses calls to resign", Globe & Mail, July 17, 1992 at p. A3

"Who is watching the watchers?", Globe & Mail, February 17, 1995 at p. A26

"Sex 'bought' favours at reform school", Toronto Star, January 2, 1992 at pp. A1, A8

"Decision on abuse study delayed", Toronto Star, April 11, 1992 at p. A25

"Riddle of 5 deaths at Grandview home", Toronto Star, April 18, 1992 at pp. A1, A10
Kendall, supra at pp. 25-26

18. Lesbian inmates may be singled out for sexual abuse in order to break down their sexual identity. The 1994 Amnesty International report Breaking the Silence: Human Rights Violations Based on Sexual Orientation states at p. 3:

. . . a woman in prison may be raped [by a prison guard] not only because she is female, but because she is known to be a lesbian, and the action is specifically targeted at breaking down her sexual identity.

Amnesty International USA, Breaking the Silence: Human Rights Violations Based on Sexual Orientation (Amnesty International Publications, New York: 1994), at p. 3

19. The psychological trauma of sexual and physical abuse can affect every aspect of a woman's life, including the learning of basic literacy skills. In the non-prison context victims of violence may have difficulties in attending programs and concentrating in the classroom. Women with histories of violence at the hands of men may have trouble interacting with male teachers or authority figures. Mary Belenky et al., in a study of women's approaches to learning, wrote of particular problems experienced by women who were victims of sexual abuse:

Some women indicated to us that their sexual history made them cautious around male professors, confused about 'what was really going on,' and consequently conflicted about receiving praise [citation omitted]. Often the denial and silence that had been imposed upon them in the incestuous relationship carried over into present interactions with teachers who had power over them.

As one woman observed, 'My whole response to praise, my sense of what I can achieve and how I should achieve it is all wrapped up in my past [experience of incest]. I know it has affected my relationships with men and male professors. Maybe there are things in the professional relationship that ought not to be there.'

Creating Choices, *supra* at p. 103

Belenky, M., Clinchy, B., Goldberger, N., Tarule, J., Women's Ways of Knowing: The Development of Self, Voice, and Mind, Basic Books (New York: 1986) at pp. 58-60

Brookes, A.L., Feminist Pedagogy: An Autobiographical Approach, Fernwood Publishing (Halifax: 1992) at pp. 22-23, 28, 34-37, 56-58, 97-100, 147-53

Kendall, *supra* at pp. 55-60

(b) Implications of Cross-Gender Staffing

20. LEAF submits that task forces, the Canadian Human Rights Commission, caselaw and academic research have recognized the negative implications of employing male guards to work in close proximity to incarcerated women.

(i) The Task Force on Federally-Sentenced Women

21. In 1990, the Task Force on Federally Sentenced Women recommended against hiring male staff as the primary support for women in their day to day living situation. The Task Force stated that to do so "would be counterproductive to the encouragement of increased self-esteem and independence. In addition, the hiring of male staff for such positions could interfere with the healing process for those who have survived physical, sexual and/or psychological abuse." The Task Force further found that the presence of women staff in key positions assisted in teaching inmates strength and self-esteem, by giving them the opportunity to observe these characteristics in other women.

Task Force on Federally Sentenced Women, Creating Choices: The Report of the Task Force on Federally Sentenced Women, Correctional Service of Canada (Ottawa: 1990) at pp. 106-07

(ii) Nova Scotia's Committee on Provincially Incarcerated Women

22. Similarly, Nova Scotia's Solicitor General's Special Committee on Provincially Incarcerated Women also specifically recommended against cross-gender staffing:

A key element in the creation of a safe environment is the provision of appropriate care givers. Throughout the process of the Committee's work, issues of women only staff versus cross gendering came up again and again. In the study requested by the Committee of Dr. Judith Mills, (see Appendix "C" [sic "D"]) it was emphasized that, while cross gendering might provide a more "normal" environment and greater fairness in staffing policies, the presence of men in positions of control over women who have been victimized was a real barrier to healing, and while it might provide an opportunity for women to see caring males in positions of authority, it perpetuated the inequality of relationships and contributed to women's view of themselves as submissive to male power. Mills says:

Women who are incarcerated comprise an especially vulnerable group. It is known that a significant number, likely the majority, are survivors of childhood trauma. Furthermore, they are at a time in their lives in which there is tremendous upheaval; they are far from their families and home; they are subjected to tremendous upheaval; they are subjected to significant restrictions and exposure to public scrutiny of the most basic day to day functions; many are coping with substance withdrawal. In short, they are women in crisis. In this setting, it is important to provide caregivers and security personnel who are viewed by the women incarcerated as least threatening and intrusive; and most understanding and responsive to their needs. In my opinion, the current research findings and the experiences of myself and other local women physicians and therapists indicate that a **'women only' staffing policy for those involved in the care of incarcerated women is crucial.**

Proponents of cross gender staffing of correctional facilities espouse the theory that, in the case of incarcerated women, exposure to male staff helps the women gain a more positive sense of the men's capacity to be humane and helpful. This is an

ineffective way of trying to address a problem which is the result of internalized violence. A central dimension of the self-identity of a woman who has been sexually abused or battered is that of low self-esteem. It is through understanding her victimization and learning to honour her coping strategies and to replace the harmful ones with more life-affirming techniques, that a survivor develops a solid core of self-love. From there, and with the attendant self-protective skills, she can make her own decisions about who in her world is trustworthy and lovable. In terms of role models, she is much more likely to benefit from exposure to women who have been where she has been and who have subsequently learned to forgive, love and honour themselves.

Women do not live in a 'women only' world; we recognize this. However, before women survivors of abuse can deal with men in their world, and enter into healthy relationships based on mutual respect, they must have a safe environment in which to heal from trauma, and then face men on a more equal playing field. For this reasons, we feel that the value of caring male role models is greater in the community context, where they are not necessarily in positions of power over the incarcerated women, and where she has some degree of choice whether and at what level to interact with them. [emphasis in original]

Solicitor General's Special Committee on Provincially Incarcerated Women, Blueprint for Change: Report of the Solicitor General's Special Committee on Provincially Incarcerated Women, Province of Nova Scotia (1992) at pp. 53-54 and Appendix 'D'

(iii) The Canadian Human Rights Commission

23. In its 1994 Annual Report, the Canadian Human Rights Commission expressed concern about proposed cross-gender staffing at the new regional facilities for federally-sentenced women:

We are pleased to report that construction has begun on four of those facilities, but we are concerned about the decision of the Correctional Service of Canada to permit male employees to work in front-line positions in them. This decision violates UN rules for the treatment of prisoners that were endorsed by Canada in 1980; it also seems to us to increase the chances for various kinds of discriminatory behaviour.

Canadian Human Rights Commission, Annual Report 1994, at pp. 55-56

(iv) Caselaw

24. In the Matter of M. King, Mary Cassidy, then Warden of the Prison for Women, and Dr. Julie Darke, an expert in the area of psychology (particularly in the area of sexual abuse), gave evidence of the harmful effects of cross-gender staffing on federally sentenced women. That evidence was accepted by the Appeal Board. Ms Cassidy testified that approximately 90% of inmates at the Prison for Women had been physically or sexually abused by men, and as a result suffered from low self-esteem and feelings of guilt. In her opinion, federally sentenced women would respond negatively to men in positions of authority, since they would have fears of being vulnerable to abuse, especially at night. Ms Cassidy believed that there was a need to create an environment of healing before federally sentenced women were exposed to a "normal" environment (i.e., with men present). Ms Cassidy also expressed concern that male correctional officers might not be as empathetic to the problems of a federally sentenced woman.

The Matter of M. King, *supra* at pp. 6-7, 23

25. Dr. Darke estimated that 90% of federally sentenced women at the Prison for Women had been sexually or physically abused. In her opinion, it was potentially very problematic to have males in the living units. Concerns about the use of male guards were based on issues of power and trust. Childhood abuse involved a betrayal of trust and the child had no control or power over what took place. Federally sentenced women also had very little power, and the feeling of lack of power would increase if men were allowed in the living units. It was common for federally sentenced women to experience a great deal of fear at night, because their abuse had often occurred at night. In Dr. Darke's opinion, if men patrolled the living units at night, it would lead to increased nightmares and fear, anger directed at other federally sentenced

women, and increased self-mutilation among inmates who tended to self-mutilate. Dr. Darke was of the opinion that federally sentenced women needed time-out to rehabilitate, and this was provided in an environment which was free from the threat of being abused by men. She was of the opinion that as a group women were more skilled at dealing with tensions and were more empathetic than men. Therefore, the presence of female Correctional Officers at male institutions had a calming, stabilizing effect. However, if men were brought into the Prison for Women this would be counter-therapeutic. The Board accepted the evidence of Mary Cassidy and Dr. Darke that female inmates may react negatively to certain tasks being performed by males in the living units. However, the Board found that these tasks were not required as part of the position at issue in that case.

The Matter of M. King under the *Public Service Employment Act* (Decision of L. Robinson, 89-21-PEN-11, July 18, 1989) at pp. 8-9, 23

(v) Research

26. Shoshona Pollack, a psychologist at the Prison for Women, summarizes research about the long-term psychological effects of sexual and physical violence as follows:

"Over the past decade, researchers and clinicians have outlined the long-term effects of childhood sexual abuse, the effects of violence on the battered woman, and the psychological trauma resulting from sexual and physical violence in general. Among the most common repercussions are an impaired sense of safety and personal boundaries, feelings of overwhelming powerlessness and immobility, difficulties with trust and self-hatred."

She argues that prison intensifies these effects:

"Prison intensifies the psychological effects of being subjected (as a child or as an adult) to sexual or physical assault. The controlled and punitive setting replicates the dynamics of any abusive relationship where the victim is without power or dignity."

Pollack, S. (1994) "Opening the Window on a Very Dark Day: A Program Evaluation of the Peer Support Team at the Kingston Prison for Women" Forum on Corrections Research 6(1) 36 at 37

27. Mary Eaton, Head of the Department of Sociology at St. Mary's College (Middlesex), studied the effect of the use of male guards in Holloway Prison (England). Prior to 1986, men had only been posted at prison gates. In 1986, male guards began working in positions where they had direct control of women inmates. Eaton writes:

If the situation in Holloway, described by Posen (1988), is replicated elsewhere, then many women prisoners have already experienced violence from men, including rape, before they reach prison. The presence of men reiterates a model of coercive control with which they are already familiar. Thus the addition of gender as a factor in dominance reinforces a lesson that has implications beyond the concern for good order within the institution. It reveals and reinforces patterns of authority, based on gender divisions, which are found throughout society.

Eaton, Mary, Women After Prison, Open University Press (Buckingham: 1993) at pp. 33-35

28. Linda Zupan, of the Department of Criminal Justice at Northern Michigan University studied the reaction of female inmates to male guards. She found that the reaction was generally favourable, and that many inmates preferred male guards to female guards. However, her research did not explain why women inmates expressed this preference. She theorized that the cause might be (although further study was needed) stereotypical attitudes held by women inmates. The socialization of many female inmates may preclude their acceptance of women in traditionally male roles. However, women inmates expressed a preference for discussing personal problems with female correctional officers.

Zupan, Linda, "Men Guarding Women: An Analysis of the Employment of Male Correction Officers in Prisons for Women", (1992) 20 Journal of Criminal Justice 297 at pp. 304-08

29. Zupan gives us a sample of the comments made by the inmates in expressing their problems with female officers. These quotes, it is submitted, point to an environment where traditional views on gender relations and power are reinforced rather than re-examined.

"The ladies obey the male. Women [correction officers] are jealous of inmates."

"Men are dominant and women are used to being told what to do by men and they do it. Women [officers] tell them what to do and inmates buck it."

Zupan, supra at 305

30. Zupan also points out that many of the inmates sampled ascribed "less than noble motives to male officers taking jobs in a prison for women. Almost 20% of inmates believed that male officers took the job for sexual reasons."

Zupan, supra at 306

31. In a survey study conducted by Geoffrey Alpert and Ben M. Crouch responses were analyzed to the question "Would you like to supervise (for prisoners, to be supervised by) the opposite sex?" Two significant response patterns were noted.

"The first was that female prisoners were about evenly split on about whether they would like to be guarded by males, with a slight preference for this arrangement. Female prisoners did not report strong opposition to the **general** presence of male officers. The second important pattern was that 61% of the male officers did not want to supervise female prisoners."

The authors therefore conclude that:

"Taken together, these responses indicate that female prisoners and male officers are by far the least desirous cross-gender guarding arrangements."

Alpert, Geoffrey and Crouch, Ben, "Cross-Gender Supervision, Personal Privacy and Institutional Security - Perceptions of Jail Inmates and Staff" (1991) 18 Criminal Justice and Behaviour 304 at 308-309

32. Both studies found that inmates of both sexes strongly opposed cross-gender supervision of prisoners in private functions.

Zupan, supra at 306

Alpert and Crouch, supra at 309-310

33. LEAF submits that the presence of male officers may prevent female officers from being able to develop a different method of interacting with the inmates. Beth Glover Reed points out how the pattern and interactions of groups with more power tend to dominate over that of groups with less power when the two are together.

"Usually, when men and women interact - even without taking into account the historical and other factors described earlier - men's language and interaction patterns predominate. This is the case in most types of interactions between members of a group that have more status and power than members with less status. These dynamics have been documented between women and men within small groups (eg. Martin and Shanahan 1985) and in organizations (eg. Fernandez)."

Reed, Beth Glover (1987) "Developing Women - Sensitive Drug Dependence Treatment Services: Why So Difficult?" Journal of Psychoactive Drugs: 19(2): 151 at 154

34. Proponents of cross-gender staffing claim that it "normalizes" the prison environment. LEAF submits that "normalization" is a misleading term because it replicates and reinforces injury to women in our current sex-unequal society. Given the unique power imbalances in the guard-inmate relationship, as well as the preponderance of abuse histories among federally-

sentenced women, LEAF submits that the prison setting may require measures which do not replicate those in the outside, "normal" society.

35. For Aboriginal women, "normalization" can become a vehicle for compounding the sexism inherent in "normal" society with the racism that is also so rampant in that society.

THE EMPLOYMENT OF MEN AS PRIMARY WORKERS AND THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

SECTION 7: SECURITY OF THE PERSON

36. LEAF submits that the use of male guards as primary workers in the new regional institutions for federally-sentenced women would violate women inmates' security of the person in a manner not in accordance with the principles of fundamental justice.

37. Section 7 of the Charter provides that:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

38. The Supreme Court of Canada has held that state-imposed psychological trauma violates the right to security of the person guaranteed by s. 7 of the *Charter*. Dickson C.J.C. (Lamer J., as he then was, concurring) held in R. v. Morgentaler at p. 56:

The case law leads me to the conclusion that state interference with bodily integrity and serious state-imposed psychological stress, at least in the criminal law context, constitute a breach of security of the person.

Beetz J. (Estey J. concurring) and Wilson J. reached the same conclusion.

R. v. Morgentaler, [1988] 1 S.C.R. 30 at p. 53-56 per Dickson C.J.C.; at pp. 103-05 per Beetz J.; at p. 173 per Wilson J.

39. As a result of the prevalence of histories of sexual or physical abuse at the hands of men among federally-sentenced women, cross-gender staffing will cause serious emotional stress for those women. Cross-gender staffing will interfere with women's ability to heal from the histories of abuse.

40. Similar concerns were recognized by the majority of the U.S. 9th Circuit Court of Appeals in Jordan v. Gardner. That case considered the constitutionality of cross-gender clothed-body searches of female inmates. While LEAF appreciates that cross-gender searches of federally-sentenced women are not being proposed, LEAF submits that the court's analysis in Jordan v. Gardner is relevant to cross-gender staffing in general. The majority of the Court held that the cross-gender searches violated the 8th Amendment right to be free from cruel and unusual punishment. The basis for the ruling was that 85% of the women in the prison had histories of physical or sexual abuse. Expert evidence described the psychological fragility of and disorders found in abused women. The cross-gender searches had the result of revictimizing the women, resulting in symptoms of post-traumatic stress disorder. The Court also found that differences in gender socialization led to differences in the experiences of men and women with regard to sexuality. The majority of the Court found that the cross-gender searches inflicted

pain on inmates and that cross-gendering was not required for security reasons. The Court found that cross-gendered clothed body searches do not ensure equal employment opportunities for male guards. The majority of the Court found that the search policy was imposed with "deliberate indifference" for the pain caused to the inmates, and as such was cruel and unusual punishment.

Jordan v. Gardner, 986 F.2d 1521 at pp. 1523, 1525-31 (9th Cir. 1993)

41. The dignity and worth of the human person underlie all of the rights guaranteed in the *Charter*. In R. v. Oakes, Chief Justice Dickson held at p. 136:

A second contextual element of interpretation of s. 1 is provided by the words "free and democratic society". Inclusion of these words as the final standard of justification for limits on rights and freedoms refers the Court to the very purpose for which the *Charter* was originally entrenched in the Constitution: Canadian society is to be free and democratic. The Court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society. The underlying values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the *Charter* and the ultimate standard against which a limit on a right or freedom must be shown, despite its effect, to be reasonable and demonstrably justified. [emphasis added]

Cory J. held at p. 49 of Hill v. Church of Scientology:

. . . the innate dignity of the individual, [is] a concept which underlies all the *Charter* rights. [emphasis added]

R. v. Morgentaler, *supra* at pp. 173-74, *per* Wilson J.

R. v. Oakes, [1986] 1 S.C.R. 106 at pp. 119-20, 136 *per* Dickson C.J.C.

Re B.C. Motor Vehicle Act, [1985] 2 S.C.R. 486 at p. 512 *per* Lamer J. (as he then was)

Hill v. Church of Scientology (unreported, July 20, 1995, Docket No. 24216, S.C.C.) at p. 49 *per* Cory J.

Creating Choices, *supra* chapter 10, "Principles for Change" at pp. 123-32

42. It is submitted that decisions made by state officials which offend human dignity and self-respect violate security of the person. Treating federally sentenced women with dignity requires respecting their particular needs, vulnerabilities, perceptions and concerns. As previously discussed, many of these special needs of federally-sentenced women arise out of histories of sexual or physical abuse by men. It is submitted that in the context of federally-sentenced women, s. 7 requires respect for the needs of these women in questions of staffing, procedures and other aspects of custody. It requires conditions of custody that will allow women to heal, and take steps to rehabilitate themselves. It is submitted that given the large numbers of women with histories of sexual or physical abuse at the hands of men, s. 7 of the *Charter* requires that primary workers with federally-sentenced women inmates be female.

43. It is submitted that the extent to which security of the person will be infringed by employing male Primary Workers is not in accordance with the principles of fundamental justice. In R. v. Heywood, Cory J., writing for the majority, considered overbreadth as a principle of fundamental justice under s. 7 of the *Charter*. He held at p. 208:

Overbreadth analysis looks at the means chosen by the state in relation to its purpose. In considering whether a legislative provision is overbroad, a court must ask the question: are those means necessary to achieve the state objective? If the state, in pursuing a legitimate objective, uses means which are broader than is necessary to accomplish that objective, the principles of fundamental justice will be violated because the individual's rights will have been limited for no reason.[emphasis added]

Thus, in considering cross-gender staffing, it is submitted that the appropriate question is whether from a correctional perspective it is necessary. While some psychological stress and loss of dignity is unavoidable in any sentence of imprisonment, the additional state-imposed

psychological stress and loss of dignity caused by the use of male guards is not necessary. The employment of male guards as front line staff serves no security or rehabilitative purpose. To the extent that there is a possible infringement of men's equality rights by limiting their employment in this fashion (which is not conceded), it is submitted that that is properly considered not under the principles of fundamental justice, but under s. 1 of the Charter. Under section 1 the onus properly lies with the state to justify a limit on the rights of women inmates. Furthermore, it is submitted that this is not a case which involves balancing the state interest against the individual interest under the principles of fundamental justice. Rather, it involves the competing claims of individual interests (section 7 rights of women inmates and equality rights of men), which should be balanced under section 1.

R. v. Heywood (1994), 24 C.R.R. (2d) 189 at p. 208 per Cory J. (S.C.C.)

S. 15 OF THE CHARTER: EQUALITY

44. LEAF submits that employing men as Primary Workers in the new regional facilities violates the equality rights of federally sentenced women housed in those facilities.

45. Section 15 of the Charter provides that:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups

including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

46. The purpose of the guarantee of equality in s. 15 of the *Charter* is to promote "a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration." Section 15 "recognizes and cherishes the innate human dignity of every individual."

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at p. 171, per McIntyre J.

Egan and Nesbitt v. Canada (unreported, May 25, 1995, Docket No. 23636, S.C.C.) at p. 9 per Cory and Iacobucci JJ. (dissenting in the result, but not on this issue), at pp. 5-7 per L'Heureux-Dube J.

47. In defining an approach to the interpretation of s. 15(1) of the *Charter*, the Supreme Court of Canada has held that the objective of the equality guarantee is not to provide "same treatment" for individuals, but to remedy social disadvantage. The purpose of s. 15(1) is not to eliminate all distinctions in treatment, but only discriminatory distinctions. A distinction in treatment of an individual or group based on personal characteristics is discriminatory only if it has the effect of imposing "burdens, obligations, or disadvantages on such individuals or groups not imposed upon others, or withholds or limits access to opportunities, benefits, and advantages available to other members of society."

Andrews v. Law Society of British Columbia, supra at pp. 164-76, per McIntyre J.; at pp. 152-54, per Wilson J.

R. v. Turpin, [1989] 1 S.C.R. 1296 at pp. 1331-32

Egan and Nesbitt v. The Queen, supra at pp. 10, 33-34, per Cory and Iacobucci JJ.

48. The Supreme Court of Canada as explicitly recognized that "same treatment" may in fact exacerbate social disadvantage. In many cases, inequality will only be remedied by a recognition that groups socially, politically and/or economically unequal may require different treatment in order to achieve equality of results.

Andrews v. Law Society of British Columbia, *supra* at pp. 169, 171, *per* McIntyre J.
Conway v. Canada, *supra* at p. 877, *per* LaForest J.

49. LEAF submits that the equality guarantees in ss. 15(1) and (2) serve the same purpose, namely the promotion of substantive, not formal, equality. LEAF submits that s. 15(2) must always be considered together with s. 15(1), both in examining the substantive content of equality and other *Charter* rights and in applying equality values to an assessment of the application of s. 1 in any case to which a *Charter* challenge arises in connection with programmes designed to promote the equality of members of disadvantaged groups.

50. LEAF submits that the promotion of equality includes, and may require, the adoption of positive measures. Positive measures have been recognized as essential components of a public policy directed towards the amelioration of the social and economic inequality of disadvantaged groups in our society.

Action de Travail des Femmes v. Canadian National Railway Co., [1987] 1 S.C.R. 1114
at p. 1139

51. LEAF submits that positive measures aimed at remedying social disadvantage are integral to *Charter* equality guarantees. As such, positive ameliorative measures contemplated by s.

15(2) should not be treated as contingent favours which are to be fitted around or subordinated to other *Charter* rights.

52. Women justifiably fear sexual violence at the hands of men, particularly those in positions of power. Justice LaForest, writing for the Supreme Court in Conway v. Canada, recognized this concern:

The reality of the relationship between the sexes is such that the historical trend of violence perpetrated by men against women is not matched by a comparable trend pursuant to which men are victims and women the aggressors.

Such sexual violence involves a whole spectrum of behaviour, from sexual harassment (verbal or physical), to sexual assault.

Stanko, E., Intimate Intrusions: Women's Experience of Male Violence, Routledge & Kegan Paul (London and New York: 1985) at pp. 1-5, 70-82
Kelly, L., Surviving Sexual Violence, University of Minnesota Press (Minneapolis: 1988) at pp. 74-96
Creating Choices, *supra* at p. 125
Solicitor General Canada, Canadian Urban Victimization Study: Female Victims of Crime, Bulletin 4 (1985)
M.(K.) v. M.(H.), [1992] 3 S.C.R. 6 at p. 17 *per* LaForest J.
Conway v. Canada, [1993] 2 S.C.R. 872 at p. 877
R. v. Biddle (1993), 84 C.C.C. (3d) 430 at p. 444 (Ont. C.A.)

53. The imbalance of power resulting from the authority which male guards would have over federally-sentenced women compounds the normal imbalance of power produced by gender relations in our society.

Janzen v. Platy Enterprises Ltd., [1989] 1 S.C.R. 1252 at pp. 1281, 1284-1285 *per* Dickson C.J.C. (example of power imbalance in employer-employee relationship)
Conway v. Canada, *supra* at p. 877, *per* LaForest J.
Norberg v. Wynrib, [1992] 2 S.C.R. 226 at pp. 253-56 *per* LaForest J. (example of power imbalance in doctor-patient relationship)

54. Women's bodies and female nudity are sexualized in our society in a manner and degree which is not paralleled for men.

Wolf, N., The Beauty Myth, Vintage Books (Toronto: 1991) at pp. 153-54
hooks, b., Black Looks: Race and Representation, South End Press (Boston: 1992) at pp. 61-77

55. Federally sentenced women experience disadvantage because of their gender, and the fact that they are incarcerated. Compounding this is the fact that many federally sentenced women are also disadvantaged because of their race, aboriginal status, socio-economic status and/or disability.

56. It is submitted that s. 15 requires that CSC treat federally sentenced women in a way that recognizes the reality of their lives and experiences. A significant experience for the majority of federally-sentenced women is sexual or physical abuse at the hands of men. The Canadian Panel on violence against women found that 96 percent of perpetrators of child sexual abuse were men, and that all physical assaults on adult women in intimate relationships were perpetrated by men. This is particularly significant in considering Aboriginal women who, in addition to being victims of racism and sexism, are victims of "unconscionable levels of domestic violence". Such histories of abuse are based on membership in a disadvantaged group(s), even though not every single inmate is a victim of such abuse.

Brooks v. Canada Safeway Ltd., [1989] 1 S.C.R. 1219 at pp. 1241-50 per Dickson C.J.C.

R. v. Lavallee, [1990] 1 S.C.R. 852 at pp. 874-75 per Wilson J.

Canadian panel on Violence Against Women, Changing the Landscape: Ending Violence - Achieving Equality, Final Report, Supply and Services Canada, 1993 at pp. 8-9
Aboriginal Justice Inquiry of Manitoba, Vol. I, p. 475

S. 15(2) of the Charter

57. LEAF submits that the Supreme Court of Canada, in giving meaning to s. 15(1) and s. 15 as a whole, has suggested that s. 15(2) functions both as an interpretive principle for s. 15(1) equality rights and as a "saving provision" in certain circumstances in which equality-promoting measures may *prima facie* violate s. 15(1).

Andrews v. Law Society of British Columbia, *supra* at pp. 171, 175-76, 182, *per* McIntyre J.

Bayefsky, A., Eberts, M., Equality Rights and the Canadian Charter of Rights and Freedoms, Carswell (Toronto: 1985) at pp. 216-17

58. It is submitted that a requirement that primary workers be female is justified under s. 15(2) of the *Charter* to ameliorate the conditions of female inmates.

59. LEAF submits that the social meaning of cross-gender staffing is different and more threatening for women than for men.

60. LEAF submits that women prisoners have an interest in being free of cross-gender staffing which does not relate solely to privacy concerns, but to a compelling interest in security of the person in the context of a sex unequal society, compounded by the power dynamics and power imbalance inherent in a correctional environment.

61. LEAF submits that, if examined from this perspective, any difference in cross-gender staffing between women inmates and men inmates should be immediately recognizable as a

positive measure aimed at reducing the substantive disadvantage of women prisoners. Women guards have an overall positive effect in institutions for men. Male guards have a negative effect on the female population.

62. It is conceded that the requirement that primary workers in the new regional institutions for federally-sentenced women are women will limit employment opportunities of male correctional staff to the extent that they are not permitted to hold that position. It is submitted that a requirement that only women be employed as primary workers at the new regional facilities for federally-sentenced women does not violate s. 15(1) of the *Charter*, because it has as its object the amelioration of the conditions federally sentenced women, a disadvantaged group, and is thus permitted under s. 15(2) of the *Charter*.

63. Article 53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, to which Canada is a signatory, supports the argument that primary workers should be female. Article 53 provides as follows:

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys for that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions set aside for women.

64. The Supreme Court of Canada has frequently relied on international human rights law to interpret the Charter. In PSAC v. Canada, in his dissenting reasons, Dickson C.J.C. states that:

[The] various sources of international human rights law - declarations, convenents, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms - must, in my opinion, be relevant and persuasive sources for interpretation of the Charter's provisions.

PSAC v. Canada, [1987] 1 S.C.R. 313 at p. 348

65. Writing for the majority in Slaight Communications, Dickson C.J.C. refers to the International Covenant on Economic, Social and Cultural Rights and cites with approval his earlier statement in his minority judgment in PSAC v. Canada:

The content of Canada's international human rights obligations is, in my view, an important indicator of the meaning of "full benefit of the *Charter's* protection". I believe that the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.

Slaight Communications Inc. v. Davidson, [1989] 1 S.C.R. 1038 at p. 1056

See also: R. v. Keegstra, [1990] 3 S.C.R. 697 at pp. 750-55

R. v. Brydges, [1990] 1 S.C.R. 190 at pp. 214-15

66. The decision of the Supreme Court of Canada in Conway v. Canada, supra is distinguishable from the issues raised by cross-gender staffing at women's prisons. The Court in that case only ruled on frisk searched performed on male inmates by female guards. LaForest J., writing for the Court, expressly suggested that the situation of male guards supervising female inmates might be different. LaForest J. wrote at p. 877:

The jurisprudence in this Court is clear: equality does not necessarily connote identical treatment and, in fact, different treatment may be called for in certain

cases to promote equality. Given the historical, biological and sociological differences between men and women, equality does not demand that practices which are forbidden where male officers guard female inmates must also be banned where female officers guard male inmates. The reality of the relationship between the sexes is such that the historical trend of violence perpetrated by men against women is not matched by a comparable trend pursuant to which men are victims and women the aggressors. Biologically, a frisk search or surveillance of a man's chest area conducted by a female guard does not implicate the same concerns as the same practice by a male guard in relation to a female inmate. Moreover, women generally occupy a disadvantaged position in society in relation to men. Viewed in this light, it becomes clear that the effect of cross-gender searching is different and more threatening for women than for men.

Conway v. Canada, *supra* at p. 877

67. The American decision in Forts v. Ward, that cross-gender staffing in the living units of a female correctional facility does not violate right to privacy, is also distinguishable from the proposed use of males as Primary Workers in the new regional facilities for federally sentenced women. In Forts v. Ward, the only argument made on behalf of the inmates was their constitutional right to privacy. There was no issue raised with respect to high rates of sexual and physical abuse among the female inmate population. Nor was any issue raised with respect to the equality rights of the female inmates.

Forts v. Ward, 621 F.2d 1210 (2d Cir. 1980)

The Public Service Employment Act

68. S. 12(3) of the *Public Service Employment Act*, R.S.C. 1985, c. P-33, provides, that the Public Service Commission shall not discriminate on the basis of, *inter alia*, sex, in prescribing

or applying selection standards for employment. S. 12(4) provides that s. 12(3) does not apply where the selection standards constitute a *bona fide* occupational requirement having regard to the nature of the duties of any position. LEAF submits that the requirement of being female to work as a primary worker in the new regional facilities for federally-sentenced women is a *bona fide* occupational requirement.

69. In Alberta v. Central Alberta Dairy Pool, Wilson J. approved the definition of *bona fide* occupational qualification set out by the Supreme Court of Canada in Ontario Human Rights Commission v. Etobicoke (in that case the Court was considering a mandatory retirement requirement for firefighters).

To be a *bona fide* occupational qualification and requirement a limitation, such as a mandatory retirement age, must be imposed honestly, in good faith, and in the sincerely held belief that such limitation is imposed in the interests of the adequate performance of the work involved with all reasonable dispatch, safety and economy, and not for ulterior or extraneous reasons aimed at objectives which could defeat the purpose of the Code. In addition it must be related in an objective sense to the performance of the employment concerned, in that it is reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his fellow employees and the general public.

Wilson J. also held that *bona fide* occupational qualification has the same meaning as *bona fide* occupational requirement.

Alberta v. Central Alberta Dairy Pool, [1990] 2 S.C.R. 489 at pp. 502-03, 512-18

70. It is submitted that CSC must fulfil its mandate to deliver correctional services to federally sentenced women in a manner which does not violate their rights under the *Charter*. LEAF submits that the used of males as primary workers would violate the ss. 7 and 15 *Charter*

rights of federally-sentenced women in a way which would not be justified under s. 1 of the *Charter*. Because the use of male guards would violate the *Charter* rights of federally-sentenced women, being female is a *bona fide* occupational requirement of the position of primary worker.

71. The proposed use of males as Primary Workers is distinguishable from the situation in the appeal of M. King under the *Public Service Employment Act* (Decision of L. Robinson, -89-21-PEN-11, July 18, 1989). In that case the position at issue was "Correctional Supervisor". The Board found that the position of "Correctional Supervisor" was "to supervise Correctional Officers and manage the prison's programs rather than become involved in situations on a 'hands-on' basis." (at p. 21). The Board accepted the evidence of Mary Cassidy (then Warden of the prison for Women), and Dr. J. Darke, an expert in psychology in the field of sexual abuse, that female inmates may react negatively to certain tasks being performed by males in the living units (this evidence is described at pp. 6-9). However, the Board found that these tasks were not part of the position at issue (at p.23). That is not the situation with the position of "Primary Worker". Primary Workers will be in the living units on a daily basis.

SECTION 1 OF THE CHARTER

72. It is submitted that any violation of the equality rights of men who might wish to be considered for the position of Primary Worker in the new Federal Institutions for Women is justified under s. 1 of the *Charter*.

73. Section 1 of the Charter provides that:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Preliminary Observations About Section 1

74. The s. 1 analysis should be applied more flexibly where, instead of a contest between the individual and the state as "singular antagonist", the case involves mediating the claims of different groups.

A.G. Quebec v. Irwin Toy, [1989] 1 S.C.R. 927 at pp. 993-94

75. This case involves balancing the *Charter* claims of federally-sentenced women against the claims of male guards. Therefore, the analysis requires a more flexible approach.

The Test Under Section 1

76. For a limit of a Charter right to be reasonable and demonstrably justified in a free and democratic society, the objective must be pressing and substantial, and the means employed must be proportional to the objective. The proportionality test requires that (i) the means adopted be rationally connected to the objective; (ii) the means minimally impair the right; and (iii) there is a proportionality between the effects and the means chosen.

R. v. Oakes, *supra*

(a) Pressing and Substantial Objective

77. Women serving federal sentences are a particularly vulnerable group. Many are multiply disadvantaged (on the basis of race, aboriginal status, socio-economic status and/or disability). They are removed from their homes and families. It is in this context of vulnerability that the s. 1 analysis must take place.

78. The objective of protecting federally-sentenced women from a violation of their own ss. 7 and 15 rights under the Charter, and the harm that would result from such a violation, is a pressing and substantial objective.

(b) Proportionality of the Means

(i) Rational Connection

79. Requiring that Primary Workers in the new regional facilities be women is rationally connected to the objective of preventing the violation of the Charter rights of women inmates. As is discussed in paragraphs 34-65, above, a requirement that Primary Workers be women will prevent the ss. 7 and 15 Charter rights of federally sentenced women from being violated.

(ii) Minimal Impairment

80. It is submitted that the means employed to protect the Charter rights of federally-sentenced women are minimally intrusive. Men would be excluded only from those positions necessary to achieve the objective of protecting the rights of federally-sentenced women. Men would be excluded only from positions which involve working in the living units of institutions

for federally-sentenced women. Men would be able to work in other positions in institutions for federally-sentenced women, which did not involve working in the living units.

81. Alternate means for protecting the rights of women inmates which have been suggested by CSC do not meet the objective of protecting those rights. With respect to the proposed safeguards for women inmates (a tight selection process and training, as well as an announcement before men enter the living units), it is submitted that these safeguards are inadequate. The issue is not only whether male staff would act inappropriately. The perception of women inmates is also important. The relationship between inmates and guards is inherently coercive, and involves a power imbalance. Particularly for women with the histories of physical and/or sexual abuse common among federally sentenced women, the power imbalance and experiences of coercion are accentuated when the persons in charge are men.

82. It is further submitted that an announcement before males enter the living units (assuming this could be effectively enforced) only responds to concerns about privacy. It does not respond to concerns regarding equality rights or security of the person.

(iii) Proportionality Between Effects and Objective

83. The final branch of the section 1 analysis requires an assessment of the proportionality between the effects of the measures which are responsible for limiting the Charter right, and the objective which has been identified as pressing and substantial.

R. v. Oakes, supra at pp. 139-40

84. It is submitted that given the extreme vulnerability of federally sentenced women, their rights to equality and security of the person outweigh the minimal limit on access to employment for male guards. Furthermore, because women make up a very small percentage of all prisoners serving federal sentences, the number of correctional jobs involved in their custody is a very small percentage of all federal corrections jobs. Therefore, the impact on employment opportunities for men in the correctional system will be small.

IS THERE A PLACE FOR MEN IN A WOMEN'S PRISON?

85. It has been argued that having men in a women's prison offers the opportunity for women to be exposed to positive role models. The same argument has been made about the use of male therapists for women who have been abused by men. Jan Heney, a social worker at the Prison for Women, deals with that argument as follows:

"I believe the prison was also wise in hiring female psychologists. Although some argue that male therapists provide positive male role models for women who have been abused by men, my experience has been that positive male role models are useful only in the post-recovery period. In the recovery stage, it is much more important to provide positive female role models. Women who have been abused by men have been given the message that to be female is to be powerless. The misuse of authority by male abusers teaches those abused to respond to males in a submissive and often fearful way. Regardless of the sensitivity of a male therapist, it is often difficult for an abused woman to relate to him in a way that preserves her adult status."

Heney, Jan (1990) Report of Self-Injurious Behaviour in the Kingston Prison for Women: Ottawa, Correctional Service of Canada at page 27

86. It is submitted by LEAF that the same argument applies to the use of males as primary workers in the new correctional facilities.

87. LEAF recognizes that to isolate women totally from men for long periods of time is not appropriate. LEAF is not suggesting that this should happen. LEAF is only submitting that the new regional facilities should not employ men in front-line positions where women have no choice about interacting with them in every aspect of their lives.

SEXUAL HARASSMENT

88. It is submitted that women have a constitutional right to be free from sexual harassment. Women's right to be free from sexual harassment is also protected by provincial and federal human rights legislation.

Janzen v. Platy, supra

89. Sexual harassment is a prevalent problem in any environment in which men and women are together. In a survey cited by the Supreme Court of Canada in Janzen v. Platy, 49 percent of women stated that they had experienced sexual harassment.

Janzen v. Platy, supra at pp. 1284-85

90. There is anecdotal evidence of sexual harassment of inmates at the Prison for Women.

91. Sexual harassment is demeaning and an affront to the human dignity of those who are victims of it.

Janzen v. Platy, supra at p. 1284

92. Victims of sexual harassment in the workplace often do not complain because they feel nothing will be done, they will be ridiculed, or they will face reprisals in the hierarchical structure of the work environment, such as increased workloads, unwarranted reprimands or poor personnel reports. It is submitted that concerns about fear of reporting are exacerbated in the prison environment, where the power imbalance between inmates and guards is worse than between employees and employers. In addition, employees who are victims of sexual harassment are free to leave their jobs (although, it is recognized that this may entail serious financial consequences); women inmates do not have the option to leave the prison.

Backhouse, C. and Cohen, L., The Secret Oppression: Sexual Harassment of Working Women, Macmillan of Canada (Toronto: 1978) at pp. 39-42

93. CSC has developed no sexual harassment policies for the new regional institutions for federally-sentenced women. LEAF submits that to meet concerns about sexual harassment, sexual harassment policies must be put in place in all regional facilities which include the involvement of outside agencies in the handling and determination of these complaints. The involvement of outside agencies is important because the power imbalance between federally-sentenced women and correctional staff makes women afraid to complain within the correctional system. In addition, outside agencies such as sexual assault centres are able to bring expertise in the area of sexual harassment.

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