



Native Women's
Association of Canada

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L'Association des  
femmes autochtones  
du Canada

# CSC Healing Lodges and Section 81 Healing Lodges Policy Backgrounder

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# INTRODUCTION AND BACKGROUND

*"No amount of tinkering with prisons can heal the before prison lives of the Aboriginal women who live or have lived within their walls. Prison cannot remedy the problem of poverty on reserves. It cannot deal with immediate or historical memories of the genocide that Europeans worked upon our people. It cannot remedy violence, alcohol abuse, sexual assault during childhood, rape, and other violence Aboriginal women experience at the hands of men. Prison cannot heal the past abuse of foster homes, or the indifference and racism of Canada's justice system in its dealing with Aboriginal people. However, the treatment of Aboriginal women within prisons can begin to recognize that these things are the realities of the lives that Aboriginal women prisoners have led. By understanding this, we can begin to make changes that will promote healing instead of rage."*

**- Survey of Federally Sentenced Aboriginal Women, NWAC, 1990<sup>1</sup>**

The Native Women's Association of Canada (NWAC) is a National Indigenous Organization representing the political voice of Indigenous women, girls, and gender-diverse people in Canada. Incorporated in 1974, NWAC works to advance the social, political, and cultural well-being and equality of Indigenous women through advocacy, education, research and policy. NWAC recognizes Indigenous women in the broadest sense, and is inclusive of status and non-status First Nations, Métis, Inuit, self-identified Indigenous people, on and off-reserve, Two-Spirited and gender-diverse folks, and others who consider themselves to be included under NWAC's mandate.

The Native Women's Association of Canada has long advocated for the rights of victimized, marginalized, and criminalized Indigenous women, including those within the federal prison system. These women's experiences of incarceration and institutional violence cannot be separated from the experience of colonialism and the colonial policies that continue to erase and oppress them.

Indigenous women are over-represented in the prison system, accounting for 39% of all federally-sentenced women in Canada.<sup>2</sup> They are also more likely than non-Indigenous women to be classified as medium

<sup>1</sup> Native Women's Association of Canada. (1990). Survey of Federally Sentenced Aboriginal Women in the Community.

<sup>2</sup> Native Women's Association of Canada. (2017). Indigenous Women in Solitary Confinement: Policy Background.

and maximum-security risks,<sup>3</sup> with Indigenous women currently making up 50% of maximum-security placements for women.<sup>4</sup> Indigenous women also represent 50% of all federal segregation placements in women's prisons.<sup>5</sup> These statistics clearly demonstrate that the Canadian justice system is not responding to the unique needs and circumstances of Indigenous women who come into conflict with the law.

Indigenous women require the most support but are often disproportionately disciplined within the federal prison system. As a result, they present with higher levels of need in the areas of personal and emotional development, substance abuse, employment, and marital and family problems.<sup>6</sup> Indigenous women in federal prisons are generally younger than non-Indigenous prisoners, have less formal education, and higher rates of unemployment.<sup>7</sup> They are more likely to have been living in poverty, to have previous contact with the

<sup>3</sup> CSC, Corrections and Conditional Release 2015 Annual Report: Statistical Overview (Ottawa: Public Safety Canada, 2016) at 54-55.

<sup>4</sup> Office of the Correctional Investigator. (2017). Annual Report of the Office of the Correctional Investigator 2016-2017, at 59.

<sup>5</sup> Office of the Correctional Investigator. (2016). Annual Report of the Office of the Correctional Investigator 2015-2016 at 62.

<sup>6</sup> Correctional Service of Canada. (2014). Aboriginal Women: Profile and Changing Population, at 11.

<sup>7</sup> Correctional Service of Canada. (2015). Aboriginal Women: An Overview of the Correctional Process from Admission to Warrant Expiry at 1.

criminal justice system, and to receive longer prison sentences than non-Indigenous women.<sup>8</sup> Indigenous women are additionally over-classified as maximum-security and are considered to present a higher risk of committing another crime.<sup>9</sup> Finally, they are less likely to be granted parole and less likely to succeed with the conditions of their release.<sup>10</sup>

The Canadian Association of Elizabeth Fry Societies (CAEFS) has noted that “women’s crimes absolutely need to be placed in their context. If it’s a violent crime, there is often resistive violence. Often, there is abuse that has led to the crime.”<sup>11</sup> Indigenous women are also more likely to experience severe forms of gender-based and domestic violence. It is the legacy of colonization that has created the conditions by which Indigenous women are disproportionately represented as victims of severe, gender-based and domestic violence. However, these same conditions have also resulted in the increased representation of Indigenous women as perpetrators of violence. According to data from 2014, most Indigenous women convicted of homicide were convicted of killing an intimate partner or family member.<sup>12</sup> In research confirmed by CSC, it was found that women who have committed violent offences are often survivors of violence themselves, a finding that is particularly relevant for Indigenous women.<sup>13</sup> It is their specific lived experiences of colonial patriarchy, intergenerational trauma, and state violence that have resulted in their over-representation as both victims and perpetrators of violence and their consequential involvement with the criminal justice system.

<sup>8</sup> Ibid at 2.

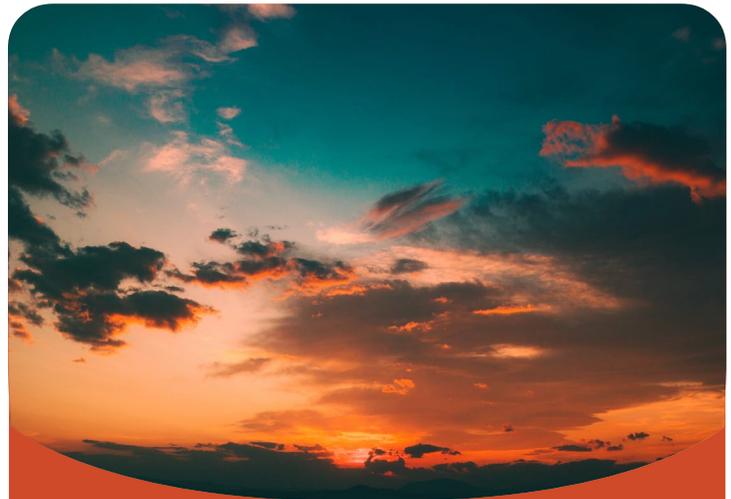
<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Canada, Parliament, House of Commons, Standing Committee on the Status of Women, Minutes of Proceeding and Evidence, 42nd Parl, 1st Sess, No 86 (2 February 2018).

<sup>12</sup> Statistics Canada. (2014). Women in Canada: A Gender-based Statistical Report – Women and the Criminal Justice System.

<sup>13</sup> Correctional Service of Canada. (2007). Women and Violence: Theory, Risk, and Treatment Implications, at 18.



## Glossary

**ASH:** Aboriginal Social History

**CAEFS:** Canadian Association of Elizabeth Fry Societies

**CCRA:** Corrections and Conditional Release Act

**CRS:** Custody Rating Scale

**CSC:** Correctional Service of Canada

**CCRA:** Corrections and Conditional Release Act

**NWAC:** Native Women’s Association of Canada

**CCRA:** Corrections and Conditional Release Act

**OAG:** Office of the Auditor General

**OCI:** Office of the Correctional Investigator

**RCAP:** Royal Commission on Aboriginal Peoples

**TRC:** Truth and Reconciliation Commission

**UNDRIP:** United Nations Declaration on the Rights of Indigenous Peoples

# THE CORRECTIONS AND CONDITIONAL RELEASE ACT & CSC OBLIGATIONS

"If the history of women's imprisonment is one of neglect and indifference, it will come as no surprise that the history of Aboriginal women's imprisonment is an exaggeration of the same."

**- The Honorable Justice Louise Arbour, Commission of Inquiry into Certain Events at the Kingston Prison for Women**

The Corrections and Conditional Release Act (CCRA)<sup>15</sup> is the legislative framework for the Correctional Service of Canada (CSC) and includes a number of additional regulations and directives for the prison "to exercise reasonable, safe, secure, and humane control."<sup>16</sup> As a piece of legislation, the CCRA outlines prison administrative processes and various CSC obligations to prisoners. Section 81 allows interested federal prisoners to be transferred to an Indigenous community to serve their sentence if the community consents. The CCRA defines Indigenous communities as "a First Nation, tribal council, band, community, organization or other group with a predominantly Aboriginal leadership."<sup>17</sup> While s.81 of the CCRA refers specifically to Indigenous community-based facilities, agreements, and Healing Lodges, sections 79-84 refer to provisions intended to reduce the over-representation of Indigenous people in prison generally. As of this writing, Bill C-83, An Act to amend the Corrections and Conditional Release Act, has received royal assent and could potentially change which Indigenous groups and organizations can apply for agreements under s.81 of the CCRA.

## Previously, Section 81 of the CCRA read:

1. Subsection 81 (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.
2. Subsection 81 (2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender.
3. Subsection 81 (3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community.

## Bill C-83 has made the following changes to Section 81 of the CCRA:

4. Subsection 81 (1) of the Act is amended by replacing "aboriginal community" and "aboriginal offenders" with "Indigenous governing body or any Indigenous organization" and "Indigenous offenders", respectively.
5. Subsection 81 (2) of the Act is amended by replacing "non-aboriginal offender" with "non-Indigenous offender".
6. Subsection 81 (3) of the Act is amended by replacing "aboriginal community" with "appropriate Indigenous authority".

<sup>14</sup> Canada, Privy Council Office, Commission of Inquiry into Certain Events at the Prison for Women in Kingston (Ottawa: Privy Council Office, 1996).

<sup>15</sup> Corrections and Conditional Release Act, R.S.C. 1992, c. 20.

<sup>16</sup> Correctional Service of Canada. (2013). Acts, Regulations, and Policy.

<sup>17</sup> Supra note 15.

The Correctional Service of Canada has agreed with the findings of the Office of the Correctional Investigator<sup>18</sup>, the Office of the Auditor General (OAG),<sup>19</sup> as well as many other criminal justice and advocacy groups<sup>20</sup>, that Indigenous women benefit from greater access to gender-based, culturally-appropriate programming in prisons.<sup>21</sup> In their Fall, 2017 report to Parliament, the OAG stated that "few Indigenous women offenders had access to culturally specific correctional programs or interventions because of limited availability."<sup>22</sup> This limited availability is worsened by the frequent delays in assigning programming and the fact that available programs are often inadequate or inappropriate.<sup>23</sup> This has significant implications for Indigenous women as problems with program delivery can delay parole eligibility and negatively impact community re-integration.

In May 2018, the House of Commons Standing Committee on the Status of Women shared their Report "A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Correctional Systems" which contained 96 recommendations to the federal government on how it can help improve Indigenous women's experiences in the federal justice system as well as their treatment in the federal correctional system. This report found a critical need for improved access for culturally-relevant and safe programs and procedures and received the support of the Minister of Public Safety and Emergency Preparedness and the Minister of Justice and Attorney General of Canada in a co-signed response from the Government of Canada.

As the federal government has stated their support of the objectives of the Report's 96 recommendations, it is imperative they act on that support and find opportunities to improve the system for Indigenous women. From providing additional funding for harm reduction programs in federal institutions and Healing Lodges to abolishing harmful practices like strip searching, there are many opportunities for CSC to address the systemic issues impacting Indigenous women in their facilities.

CSC's policies are expected to comply with the organizational mandate of rehabilitation and reintegration,<sup>24</sup> while also fulfilling certain commitments in the context of Indigenous corrections. CSC's approach to Indigenous corrections includes "providing effective interventions for First Nations, Métis, and Inuit offenders and integrating Indigenous views of justice and reconciliation."<sup>25</sup>

**This mandate also states that,**

*"CSC is responsible for the safe and secure custody of women offenders serving sentences of two years or more, and for preparing them for successful reintegration into the community upon release. It must also adopt programs and policies that are responsive to the unique needs of women offenders, including Indigenous women."<sup>26</sup>*

CSC has a clear obligation to reflect the needs of Indigenous prisoners in prison design, programming, and administration.

<sup>18</sup> Supra note 4.

<sup>19</sup> Office of the Auditor General. (2017). Report to the Standing Committee on Public Accounts – Preparing Indigenous Offenders for Release, at 8.

<sup>20</sup> Canadian Association of Elizabeth Fry Societies. (2013). Indigenous Women Fact Sheet.

<sup>21</sup> Correctional Service of Canada. (2002). An Examination of Healing Lodges for Federal Offenders in Canada.

<sup>22</sup> Office of the Auditor General. (2017). Reports of the Auditor General of Canada to the Parliament of Canada - Preparing Women Offenders for Release, at 6.

<sup>23</sup> Ibid at 8.

<sup>24</sup> Supra note 15.

<sup>25</sup> Correctional Service of Canada. (2017). Indigenous Corrections.

<sup>26</sup> Supra note 24 at 1.



# CANADA'S OBLIGATIONS TO INDIGENOUS PEOPLES

"All Aboriginal and First Nations citizens are in conflict with the law. We are First Peoples with an inherent right to exercise our own systems of justice and the values these systems represent. The issue of Aboriginal women and the criminal justice system is merely the most blatant example of the oppression of First Nations People under a system of laws to which we have never consented."

- **Aboriginal Women's Caucus, 1989**<sup>27</sup>

## The Truth and Reconciliation Commission's Calls to Action<sup>28</sup>

The Truth and Reconciliation (TRC) Calls to Action on justice reinforce the need for culturally-appropriate alternatives to incarceration and community-based Healing Lodges. These calls to action are in recognition of the relationship between colonization and the over-representation of Indigenous people in conflict with the law. The provisions of the TRC that relate to the criminal justice system state:

30. We call upon the federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so;
31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of the offending;

32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences;
34. We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder;
35. We call upon the federal government to eliminate barriers to the creation of additional Aboriginal Healing Lodges within the federal correctional system.
36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experiences of having been sexually abused.

Despite the Government of Canada's commitment to implementing the recommendations of the TRC, including the call to reduce barriers for s.81 Healing Lodges, the Office of the Auditor General reported that "offenders who participated in Healing Lodge programs had very low rates of reoffending upon release, yet Correctional Service of Canada had not examined ways to provide greater access to more Indigenous offenders."<sup>29</sup> Barriers to the creation of s.81 Healing Lodges, as well as many of the barriers Indigenous women face in their attempts to access these Healing Lodges, are largely the result of CSC policy. *These same policies can be changed to facilitate greater availability and access.*

<sup>27</sup> Correctional Service of Canada. (1990). *Creating Choices: The Report of the Task Force on Federally Sentences Women – Chapter II The Voices of Aboriginal Peoples.*

<sup>28</sup> Truth and Reconciliation Commission of Canada. (2015). *Truth and Reconciliation Commission of Canada: Calls to Action.*

<sup>29</sup> *Supra* note 21 at 8.

## The United Nations Declaration on the Rights of Indigenous Peoples<sup>30</sup>

Much of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) outlines the rights of all Indigenous peoples to access justice, safety, and culture, irrespective of whether they are in prison. UNDRIP also contains various provisions that are relevant to Indigenous women prisoners who may be serving their time in an Indigenous community.

### Article 2

- ◇ Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their Indigenous origin or identity.

### Article 3

- ◇ Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

### Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person

### Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

<sup>30</sup> UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295



## Article 19

- ◆ States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them

## Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of Indigenous elders, **women**, youth, children and persons with disabilities.

## Article 23

- ◆ Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

## Article 34

- ◆ Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

## Article 38

States, in consultation and cooperation with Indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

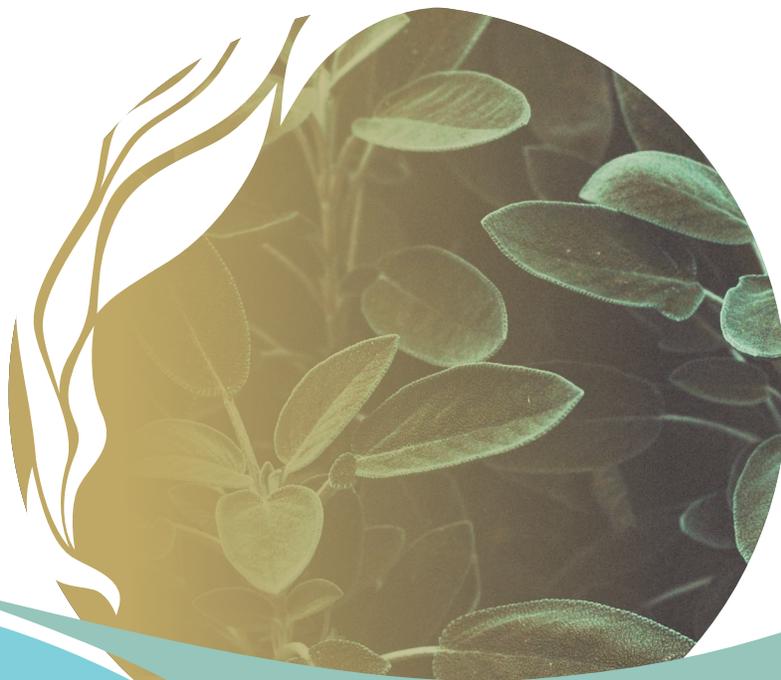
## In addition to the articles above, UNDRIP is guided by principles that include:

- ◆ Reaffirming that Indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind;
- ◆ Acknowledging that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests;
- ◆ Recognizing that the situation of Indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.<sup>31</sup>

Both the TRC and UNDRIP emphasize principles of self-determination, non-discrimination, and cultural recognition for both individuals and communities. Meaningful government action to reduce barriers for community-based alternatives to incarceration, including s.81 Healing Lodges and non-facility based agreements must be premised on these same principles.

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<sup>31</sup> Ibid.





# HEALING LODGES

“Racism is a systematic barrier which operates in prisons merely as a reflection and extension of the greater and dominant society. The reality is that racism has established a situation where Aboriginal women serving federal sentences can only be further harmed.”

- **Creating Choices, the Report of the Task Force on Federally Sentenced Women, 1990**<sup>32</sup>

The initial conception of the Healing Lodge was introduced by Alma Brooks<sup>33</sup> at the 1989 Aboriginal Women’s Caucus meeting where she represented her home community of Tobique First Nation in New Brunswick. In her initial address, she spoke of “a place without bars, a medicine lodge, where people could heal instead of being imprisoned.”<sup>34</sup> For her, the current system of punishment through imprisonment was not working. At a 1991 meeting of the Healing Lodge Sub-Committee, she stated “in the prisons are brothers, fathers, sisters, and mothers with feelings of anger and pain. Prison does not work. . . There has to be something else.”<sup>35</sup> The Native Sisterhood, an Indigenous women’s group at the former Prison for Women in Kingston, Ontario envisioned that Elders, children, and family would all be involved in the cultural teachings and that these teachings would come from all nations.<sup>36</sup>

<sup>32</sup> Correctional Service of Canada. (1990). *Creating Choices: The Report of the Task Force on Federally Sentenced Women*.

<sup>33</sup> Public Safety Canada. (1992). *Healing Lodge Location Announcement* at 27.

<sup>34</sup> Native Women’s Association of Canada. (1993). *Aboriginal Women’s Healing Lodge*, at 12

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

The Task Force on Federally-Sentenced Women was also established in 1989 with the mandate to “examine the correctional management of federally-sentenced women from the commencement of sentence to the date of warrant expiry and to develop a plan which would guide and direct the process in a manner that would be responsive to the unique and special needs of this group.”<sup>37</sup> The Task Force found that Indigenous women were over-represented in federal prisons through a process of systemic discrimination and reasserted the importance of bringing women closer to their families, culture, and home communities.<sup>38</sup>

<sup>37</sup> *Ibid* at 14.

<sup>38</sup> *Ibid.*

**In a 1990 press release, NWAC stated that,**

*"We are strongly recommending, and have been supported by the Task Force, the creation of an Aboriginal Healing Lodge. . . This Aboriginal Healing Lodge will be premised on Aboriginal philosophy and principles, calls for the involvement of Aboriginal people at the grassroots level. The Healing Lodge will be designed, developed, and implemented by Aboriginal women."<sup>39</sup>*

The Task Force concluded their final report with a recommendation that a Healing Lodge be established for federally-sentenced women and that "the Correctional Service of Canada with the support of communities, has the responsibility to create the environment that empowers federally-sentenced women to make meaningful and responsible choices in order that they may live with dignity and respect."<sup>40</sup> The report stated that "the connection of the Lodge to an Aboriginal community will be essential to its survival," and that, "the development of the Lodge will draw on the expertise of Aboriginal women."<sup>41</sup> The implementation of the Healing Lodge vision was an acknowledgement by CSC that traditional prison programs and interventions were failing Indigenous women and that gender-based, culturally-appropriate responses to this failure were necessary. The Task Force on Federally-Sentenced Women reported that "Aboriginal women have a strong and uniform plea that their cultural and spiritual backgrounds be recognized and accepted, and that all aspects of their treatment within the prison and on release in the community reflect this recognition."<sup>42</sup> The acceptance of the concept and the construction of Okimaw Ohci in 1995 were comprehensive responses to this plea.

In 1993, the Royal Commission on Aboriginal Peoples (RCAP), in their report *Aboriginal Peoples and the Justice System*, concluded that "the criminal justice system has failed the Aboriginal people of Canada," and that "the principle reason for this crushing failure is the fundamentally different world view between European Canadians and Aboriginal peoples with respect to such elemental issues as the substantive content of justice and the process for achieving justice."<sup>43</sup> The final RCAP report recommended the development of community-based Healing Lodges to provide prison services in a culturally-appropriate way.<sup>44</sup> The widespread support for the creation of a Healing Lodge for federally-sentenced women by RCAP and the Task Force on Federally-Sentenced Women, as well as many Indigenous women and communities clearly demonstrated the necessity of such a facility.

According to CSC, Healing Lodges "are meant to aid Aboriginal offenders in their successful reintegration by using traditional healing methods, specifically, holistic and culturally-appropriate programming."<sup>45</sup> There are currently two types of Healing Lodges within the CSC framework including CSC-run facilities and facilities run under a s.81 CCRA agreement. Facilities operated by CSC are similar to minimum or medium-security prisons but focus on traditional Indigenous knowledge and practices. Section 81 facilities are those run and administered by Indigenous communities through an agreement with CSC to provide correctional services. For federally-sentenced Indigenous women in Canada there are two Healing Lodges. Okimaw Ohci is a CSC-run facility on the Nekaneet First Nation near Maple Creek, Saskatchewan while the Buffalo Sage Wellness Centre operates under a s.81 agreement in Edmonton, Alberta. Okimaw Ohci was the first Healing Lodge in Canada, opening in 1995.<sup>46</sup> The intention for Okimaw Ohci was for CSC to eventually transfer control of the facility to the local Indigenous community, but this effort never materialized and the Healing Lodge remains under CSC authority.

<sup>39</sup> Ibid at 16.

<sup>40</sup> Supra note 34. .

<sup>41</sup> Ibid.

<sup>42</sup> Corporate Advisor Aboriginal Programming, Correctional Service of Canada. (1995). *The Role of Healing in Aboriginal Justice*, at 15.

<sup>43</sup> Royal Commission on Aboriginal Peoples. (1993). *Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues.*

<sup>44</sup> Supra note 23 at 3.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

Recently, two additional facilities have signed Section 81 agreements. In July 2019, it was announced that the Thunder Woman Healing Lodge in Scarborough, Ontario will offer culturally-relevant and safe supports in their 24-bed Healing Lodge, with an additional 12 temporary apartments available for transitional housing and will also operate a small store at the facility where women can gain valuable work experience. Additionally, in September 2019, a Section 81 Healing Lodge in Manitoba was announced. The Eagle Women's Lodge in Winnipeg is the first available in its province, allowing Indigenous women to serve their sentences closer to home and can accommodate up to 30 people, including offender's children. These two Section 81s represent progress and hope for healing for Indigenous women as they navigate through the justice system.



## OKIMAW OHCI: POTENTIAL FOR S.81 HEALING LODGES GOES UNREALIZED

"It started out with... smudging, prayer... I liked the wholeness and the medicine wheel part of it, that was for a good Aboriginal culture that I had lost and missed... That was the best care as we were going through emotional work, our medicine men and women coming with the mind and mental and emotional and helping us in our ways."

- Linda, *Stories from the Front*, 2013

Okimaw Ohci was the first Healing Lodge in Canada and was officially opened in November, 1995. After receiving applications from many Indigenous communities, the Healing Lodge was ultimately built on the Nekaneet First Nation near Maple Creek, Saskatchewan. Presently, both Indigenous and non-Indigenous women with a minimum or medium-security classification are able to access the Healing Lodge if they are able to demonstrate their commitment to Indigenous culture and their "healing path," the rehabilitative component of their correctional plan.<sup>47</sup> CSC still maintains the admission criteria, transfer eligibility, and definition of successful rehabilitation for Healing Lodge prisoners, meaning that although Okimaw Ohci was designed to support Indigenous conceptions of healing, ultimate control of the Healing Lodge still rests with the colonial authority of CSC.

<sup>47</sup> Correctional Service of Canada. (2017). CCRA Section 81: Transfers.



Okimaw Ohci was intended to be designed, structured, and governed according to Indigenous principles and perspectives, with the Nekaneet First Nation providing local knowledge and guidance. According to CSC, the Healing Lodge is based on the principles of empowerment, respect and dignity, supportive environments, meaningful and responsible choices, and shared responsibility, as outlined by the Task Force on Federally-Sentenced Women.<sup>48</sup> The goal of the Healing Lodge was to provide healing to Indigenous prisoners through connection with nature, participation in traditional ceremonies, and conversation with Elders.<sup>49</sup>

The architecture of Okimaw Ohci was also built to reflect Indigenous beliefs and culture, largely the First Nations culture of the local community. The colours of the buildings are vivid, especially compared to the grey stone and cement that characterize the five other regional women's prisons and the former Prison for Women in Kingston, Ontario. There is little visible security and no external fences, meaning women have access to the land outside of the Healing Lodge, a striking difference from other existing prisons.<sup>50</sup>

The Task Force on Federally-Sentenced Women clearly stated that connection to an Aboriginal community was "essential for the Healing Lodge's survival."<sup>51</sup> Additionally, the Report of the Healing Lodge Planning Committee also reinforced the need for the placement of the Healing Lodge to be on appropriate lands, near pure, naturally running water, with the support of a nearby Aboriginal community.<sup>52</sup> These criteria were determined by the committee to be critical for the Healing Lodge vision and each was met by the Nekaneet First Nation, the land on which Okimaw Ohci was eventually built.

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<sup>48</sup> Correctional Service of Canada. (2017). Okimaw Ohci Healing Lodge for Aboriginal Women.

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<sup>49</sup> Ashley Elizabeth Hyatt, "Healing Through Culture for Incarcerated Aboriginal People" (2013) 8:2 The First Peoples Child and Family Review, at 44

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<sup>50</sup> Stephanie Hayman, *Imprisoning Our Sisters*, (Montreal: McGill-Queen's University Press, 2006) at 216.

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<sup>51</sup> *Supra* note 34 at 115.

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<sup>52</sup> *Supra* note 35 at 29.

However, Indigenous groups and advocacy organizations felt “as though they were helping to provide a system of punishment for Aboriginal women that had no cultural foundation in Aboriginal practices,”<sup>53</sup> but felt such a responsibility to the Indigenous women prisoners that they could not reject the Healing Lodge on that principle.<sup>54</sup> In the attempt to encourage Indigenous influence these groups advocated that the Nekaneet First Nation and its Elders be fully involved, that Aboriginal staff needed to be employed by the Lodge, and that “Aboriginal governance needed to be maintained, with the result that CSC could not be the ultimate philosophical influence, even though it remained the paymaster.”<sup>55</sup>

The Nekaneet First Nation understood that the Healing Lodge remained part of the colonial legal and bureaucratic structure that governed the federal prison system.<sup>56</sup> For the community, the construction of the Healing Lodge and its operation by CSC was a transitory step as the Lodge progressed towards a greater degree of community ownership and operation.<sup>57</sup> CSC’s original intent was to transfer control of Okimaw Ohci to the local community, but negotiations were unsuccessful and CSC maintains administration of the facility.<sup>58</sup>

CSC-run Healing Lodges have also increasingly become more secure environments compared to s.81 facilities, with a greater focus on rule enforcement and risk management.<sup>59</sup> In a CSC survey, recommendations on the operation of Healing Lodges from the staff of federal prisons included removing internet access and enhanced prisoner monitoring, demonstrating the tendency of federal correctional staff to prioritize institutional security measures at the expense of prisoner well-being.<sup>60</sup>

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<sup>53</sup> Supra note 53 at 211.

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<sup>54</sup> Ibid at 201.

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<sup>55</sup> Ibid at 211.

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<sup>56</sup> Patricia Monture-Angus, “Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women,” in Kelly Hannah-Moffat and Margaret Shaw, *An Ideal Prison: Critical Essays on Women’s Imprisonment in Canada* (Winnipeg: Fernwood Publishing, 2000) 52 at 53.

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<sup>57</sup> Ibid.

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<sup>58</sup> Margaret Boyce, *Lock Down Power: Challenging Carceral Recognition Politics Through an Analysis of the Okimaw Ohci Healing Lodge* (Master of Arts, McMaster University, 2015 at 16.

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<sup>59</sup> Supra note 23 at 47.

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<sup>60</sup> Ibid.

This is problematic because, while prisoners report more positive relationships with CSC-run Healing Lodge staff than those in CSC prisons, many of these employees were former correctional officers in the federal prison system. CSC prisons are structured environments that track prisoners throughout their sentence and CSC-run Healing Lodges tend to follow this approach. Conversely, for most s.81 facilities, prisoners are permitted to be on the land as long they stay within the grounds of the Lodge.<sup>61</sup> The consistent focus of CSC-run Healing Lodges on security rejects the fundamental purpose of the Healing Lodges in that, they are beneficial precisely because they are not CSC prisons.

## Carceral Recognition Politics

There is some conflict with respect to the incorporation of traditional knowledge and Indigenous cultural practices into the federal prison system, including Healing Lodges. Some academics and Indigenous communities feel as though this is an extension of colonial oppression as a form of “carceral recognition.”<sup>62</sup> Carceral recognition is a process whereby CSC has appropriated the principles of Indigenous, feminist, and abolitionist politics and principles as a means of renewing, yet simultaneously obscuring the settler-colonial relationship and generating new forms of marginalization within the prison.<sup>63</sup> This dynamic continues to privilege state control and authority while continuing to shield the system from criticism. The late Mohawk activist and academic Patricia Monture-Angus argued that “[The] process of creating Aboriginal-specific programs does not require the actors in the system to question the status quo or how systemic constructions of race and culture affect behavior.”<sup>64</sup> Introducing Indigenous culture into a carceral environment does not automatically make it a place of healing. A culturally-appropriate prison is still a prison.

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<sup>61</sup> Ibid at 51.

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<sup>62</sup> Supra note 61 at 4.

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<sup>63</sup> Ibid.

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<sup>64</sup> Supra note 45 at 111.

In refusing to extend control of the Healing Lodges to local Indigenous communities, as was the case with Okimaw Ohci and the Nekaneet First Nation,<sup>65</sup> CSC maintains authority over the institutions that were intended for Indigenous community control and ownership. Through the process of carceral recognition, Healing Lodges are “particularly situated to offer the types of concessions that quell dissent, and thus, naturalize the presence of the penal system.”<sup>66</sup> In this way, the creation of Healing Lodges is an attempt by government to reconcile the demands of a colonized, imprisoned population within the unchanged structure of the Canadian settler state. Despite the recognition of ‘Indigenous difference’ within the prison system, carceral recognition is a process that effectively serves to limit the realm of Indigenous governance and self-determination.

## BUFFALO SAGE WELLNESS HOUSE

“It is racism, past in our memories and present in our surroundings, that negates non-Native attempts to reconstruct our lives. Existing programs cannot reach us, cannot surmount the barriers of mistrust that racism has built. It is only Aboriginal people who can design and deliver programs that will address our needs and that we can trust. It is only Aboriginal people who can truly know and understand our experience. It is only Aboriginal people who can instill pride and self-esteem lost through the destructive experience of racism. We cry out for a meaningful healing process that will have real impact on our lives, but the objectives and implementation of this healing process must be premised on our need, the need to heal and walk in balance.”<sup>70</sup>

- Survey of Federally Sentenced Aboriginal Women, NWAC, 1990<sup>70</sup>

<sup>65</sup> Supra note 61 at 16.

<sup>66</sup> Ibid at 14.

<sup>67</sup> Supra note 1.

The Buffalo Sage Wellness House, in partnership with Native Counselling Services of Alberta, was established in 2011 under s.81 of the CCRA and is located in Edmonton, Alberta.<sup>68</sup> Buffalo Sage is a community residential facility that currently provides 28 beds for minimum-security women.<sup>69</sup> At Buffalo Sage, women are able to participate in supervised day trips, day parole, full parole and receive community-led, trauma-informed, gender-based programs and services.

According to the Native Counselling Services of Alberta, in order to be eligible for a s.81 transfer to Buffalo Sage women must meet the following criteria:

1. Must be minimum security;
2. Must have a low probability of escape;
3. Must have a low risk to public safety;
4. Follow the Aboriginal culture by working with the Elders and participating in ceremonies;
5. Have an Elder Review on file;
6. Should be living on the Pathways Unit at the sending institution and if not on Pathways, should be working closely with the Elders and attending ceremonies;
7. Completed core correctional programming.<sup>70</sup>

At Buffalo Sage, women are able to participate in sweatlodges, powwows, and sundance ceremonies, as well as having access to the Cree Elder who lives at the facility during the week. Women have much more freedom at Buffalo Sage than at other prisons, including CSC-run Healing Lodges. They have the keys to their own rooms, are allowed cell phones, and when they are not working through programs or out on day parole, they are able to cook, sew, paint, and watch TV.<sup>71</sup> Art made by former prisoners, including dreamcatchers, sewn blankets, and painted masks, decorate many of the walls.

<sup>68</sup> Correctional Service of Canada. (2013). CSC’s Response to the Office of the Correctional Investigator’s Report entitled “Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act,” at 4.

<sup>69</sup> Correctional Service of Canada. (4 January 2018). Buffalo Sage Wellness House: Relationship Between All Things

<sup>70</sup> Native Counselling Services of Alberta. (n.d.) Buffalo Sage Wellness House.

<sup>71</sup> Kieran Leavitt, “Inside Canada’s one-of-a-kind Indigenous Prison for Women,” The Toronto Star (15 July 2018).

The importance of art and culture is also reflected in the programming that is available, such as the Spirit of a Warrior program in which women are asked to paint masks that express their emotions. The Spirit of a Warrior program was designed to address anger and rage but also teaches women about residential schools, the 60's Scoop, and the impacts of intergenerational trauma on their own lives.<sup>72</sup> The Executive Director of Buffalo Sage, Claire Carefoot, states that, in addition to the Indigenous healing programs, "we provide parenting courses, money management courses, grief and loss programs, and we have a tutor come in once a week to help the women with upgrading their education. We watch the women come in here and they are usually hurting and very distrustful and we watch them blossom after a few weeks."<sup>73</sup>

Unlike other Healing Lodges which are located on a First Nations reserve, Buffalo Sage is located in an urban setting in downtown Edmonton, which staff say also has advantages for the women. The facility is close to public transit, opportunities for employment, as well as the University of Alberta and the Northern Alberta Institute of Technology where women can pursue education or additional employment skills.<sup>74</sup> For some women, visits with children and family are easier to facilitate in an urban centre, as families do not have to travel to a more remote reserve community. The Office of the Correctional Investigator has noted that many Indigenous prisoners are being increasingly released into urban centers rather than Indigenous reserve communities, highlighting the need for s.81 Healing Lodges or non-facility-based s.81 agreements in these areas to support Indigenous women transitioning from life in a federal prison to life in a large city.<sup>75</sup>

Buffalo Sage is limited by its current funding level and the need to negotiate and renew funding agreements every five years.<sup>76</sup> A report completed by CSC on Buffalo Sage noted the need for additional funding to expand services, pay for teachers, and develop accommodations to permit private family visits.<sup>77</sup> There is also a consistent waiting list for entry to Buffalo Sage. As of July, 2018 there are 14 women waiting for a spot in the 28-bed facility.<sup>78</sup> Providing additional funding in a way that is consistent and sustainable would allow Buffalo Sage to expand bed capacity and reduce the number of women on the waiting list.



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<sup>72</sup> Ibid.

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<sup>73</sup> Supra note 72.

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<sup>74</sup> Ibid.

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<sup>75</sup> Office of the Correctional Investigator. (2012). Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act at 11.

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<sup>76</sup> Ibid at 20.

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<sup>77</sup> Correctional Service of Canada. (2015). Buffalo Sage Wellness House (BSWH) Section 81 Healing Lodge Process Review.

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<sup>78</sup> Supra note 74.



# CSC HEALING LODGES AND SECTION 81 HEALING LODGES

Currently, Buffalo Sage, the only existing s.81 facility for women, exclusively accepts those with a minimum-security classification while Okimaw Ohci accepts both minimum and medium-security women. While Healing Lodges for federally-sentenced women are limited to minimum and medium-security prisoners, this was neither the intent of Parliament nor the Healing Lodge Planning Committee.

### The Committee had initially stated that,

*The vast majority of federally-sentenced women present a low risk to the community and the Healing Lodge will be designed and operated with that knowledge in mind. The Healing Lodge will however, accommodate women of all security needs, including those very few women who require some enhanced support. . . They do not pose a significant risk to society, rather they are more at risk of self-injury.<sup>82</sup>*

Clearly, there was an acknowledgement that the Healing Lodge was valuable to all Indigenous women prisoners regardless of security classification.



*“For Aboriginal women, prison is an extension of life on the outside, and because of this it is impossible for us to heal there. In ways that are different from the world outside, but are nevertheless continuous within it, prisons offer more white authority that is sexist, racist, and violent. . . Physicians, psychiatrists, and psychologists are typically white and male. How can we be healed by those who symbolize the worst experiences of our past?”*

**- Survey of Federally Sentenced Aboriginal Women, NWAC, 1990<sup>83</sup>**

CSC and s.81 Healing Lodges have a similar intent and purpose, but are operationalized, governed, and administered in different ways. CSC-run Healing Lodges focus on traditional Indigenous knowledge and practices but are considered to be CSC facilities and maintain similar characteristics, policies, and procedures as CSC federal prisons.<sup>81</sup>

<sup>80</sup> Supra note 1

<sup>81</sup> Supra note 23 at 19.

<sup>79</sup> Supra note 35 at 12.



s.81 agreements, including community-based Healing Lodges and non-facility based s.81 agreements, operate under a contract between an Indigenous community and CSC for the care and custody of Indigenous prisoners. While designed for Indigenous prisoners, s.81 transfers are not restricted and non-Indigenous prisoners may apply as long as they can demonstrate a commitment or interest in following traditional healing methods.<sup>82</sup>

### According to CSC,

*Section 81 supports a wide spectrum of custodial or service delivery arrangements for the care and custody of Aboriginal offenders. It contemplates that an offender could be transferred to the care and custody of an Aboriginal community at any time during his or her sentence, from the date of sentencing to the date of warrant expiry. This can involve the supervision of offenders in such cases as day parole, full parole, or statutory release.<sup>86</sup>*

The services that can be provided under s.81 include, but are not limited to:

1. The transfer of an individual to his or her community;
2. Multiple offender transfer to communities or community facility or facilities;
3. Operation of a Healing Lodge;
4. Operation of an urban-based program or facility for Aboriginal offenders (e.g. electric monitoring, group home, or halfway house);
5. Delivery of a full range of correctional or healing programs in an Aboriginal community, rural, or urban centre;
6. Community supervision (in some cases CSC will provide assistance in this area depending on the s.81 agreement).<sup>84</sup>

<sup>82</sup> Ibid at 25.

<sup>83</sup> Correctional Service of Canada. (2015). Enhancing the Role of Aboriginal Communities Booklet: Aboriginal Alternatives to Incarceration and Aboriginal Parole Supervision – Sections 81 and 84 of the Corrections and Conditional Release Act.

<sup>84</sup> Correctional Service of Canada. (2010). Negotiation, Implementation and Management of CCRA Section 81 Agreements.

Section 81 allows for a wide variety of agreements between CSC and Indigenous communities, not only the administration of a formal Healing Lodge. This allows communities that may not otherwise have the capacity and resources to establish community-based alternatives to incarceration for Indigenous prisoners.

Healing Lodges actively promote access to Indigenous cultural practices, traditions, and ceremonies, while federal prisons appear to passively accept them as legislative obligations related to religion and spirituality. Section 81 Healing Lodges give prisoners the opportunity to go into the community on work release, to attend programs, or to use community facilities. Those who participate in the Healing Lodge programs cite “connection with community resources and establishing support networks, as well as reducing anxiety associated with accessing the community following release.”<sup>85</sup> Prisoners also cite the level of Elder involvement and participation in the Healing Lodges as an effective support, a benefit that CSC also acknowledges has contributed to a decrease in recidivism.<sup>86</sup>

This is in contrast to the conditions that many of the women were experiencing before coming to the Healing Lodge from a federal prison, where there can be infrequent access to Elders, medicines, and ceremony.<sup>87</sup> Despite the fact that CSC considers tobacco and ignition sources authorized items for spiritual and religious practices, Elders have reported having their ceremonial items searched by correctional staff upon entry to the prison.<sup>88</sup> Also, many cultural and spiritual practices take place in nature, something that Elders have struggled to adapt inside the prison walls.<sup>89</sup> Although not bound by all of CSC’s policies, s.81 facilities are expected to maintain programs, services, and standards that are comparable to CSC,<sup>90</sup> even though they may be inconsistent with Indigenous healing practices.<sup>91</sup>

<sup>85</sup> Supra note 23 at 65.

<sup>86</sup> Ibid at 5.

<sup>87</sup> Supra note 61 at 22.

<sup>88</sup> Supra note 52.

<sup>89</sup> Ibid.

<sup>90</sup> Supra note 78 at 17.

<sup>91</sup> Ibid at 21.

Investing in s.81 community-based Healing Lodges has benefits not only prisoners, but for communities as well. CSC has found that “reciprocal relationships between Healing Lodges and the community help offenders gain valuable skills to prepare for community living and provide the community with economic and social benefits.”<sup>92</sup> Through the use of temporary absences or day parole, prisoners participate in community services such as maintenance of public areas, participation in community events, and educational community work.<sup>93</sup> They also have the opportunity to participate in community-based cultural activities such as harvesting medicines, participating in sweat ceremonies, maintaining sacred fires, and sharing in community feasts.<sup>94</sup> Healing Lodges additionally provide employment for community members but many also volunteer as escorts for prisoner absences and participate in cultural ceremonies and activities on Healing Lodge grounds.<sup>95</sup>

## Experiences with Healing Lodges

Indigenous women themselves also find value in the Healing Lodges and many achieve a great deal of healing and personal growth while serving their time.



### A woman who spent less than a year at Okimaw Ohci said of her experience,

*To be around Native teachings and the care and love from the Elders and just the whole setting, being that it is a Healing Lodge and specifically made for Aboriginal women. And I got to know the history of why that Lodge was being built, because of Native women being incarcerated in Kingston, and I learned all about women being imprisoned, so far away, it was the only prison in Canada. Like say if I had a decade or so before, that's where I would have been. And I probably would have been hanging from a rope, along with all the other women. Truly.<sup>99</sup>*

### She continues,

*I felt I always had a deep yearning for my own people. But while I was there, I respected and cherished these moments. I still care for those Elders that brought me under their wing, especially in the deep darkest times of my life, through my crime and through my losses. I think I had a great privilege.<sup>100</sup>*

Women may have differing experiences while serving their time at a Healing Lodge, experiences that may have been more positive or negative and there are still many issues to be worked out for both CSC and s.81 Healing Lodges. However, the creation of Healing Lodges themselves represents a positive development in CSC policy, one that is more responsive to the needs of Indigenous women and is centered on culture and community. Much more qualitative research is needed on the experiences of Healing Lodges for Indigenous women who are federally-sentenced or formerly incarcerated.

<sup>92</sup> Supra note 23 at 64.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid at 65.

<sup>96</sup> Supra note 49 at 72.

<sup>97</sup> Ibid.



# BARRIERS TO HEALING LODGES FOR INDIGENOUS WOMEN

## Healing Lodge Programming

Healing Lodges were created with a focus on Indigenous spirituality, ceremony, and traditional teachings. For many women, having programming with this perspective and focus is important as they “couldn’t comprehend or understand any other way.”<sup>98</sup>

Healing Lodge programs are predominately First Nations-based and are connected to the First Nations culture of the land on which the facility is built.<sup>99</sup> For example, Okimaw Ohci was built on the Nekaneeet First Nation, and community members were involved in the design, implementation, and administration of the facility. This provides a degree of community ownership and investment but may not be culturally-appropriate for all prisoners. CSC policy and the guiding principles of UNDRIP outline a distinctions-based approach to the rights of Indigenous peoples, rather than a pan-Indigenous view that does not consider the particular differences between communities. In their approach to Indigenous corrections, CSC states that it is “committed to providing effective interventions for First Nations, Métis, and Inuit offenders”<sup>100</sup> yet continues to deny women such necessary interventions, like access to culturally-appropriate programs and services. Women often wait months for culturally-appropriate programming to become available, if it is available at all.<sup>101</sup> In this way, a transfer to a CSC or s.81 Healing Lodge may be considered an effective intervention as it allows women to access programs, services, and activities that are culturally-appropriate and more immersive than what is available on the Pathways ranges or the other Indigenous programs of federal prisons.

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<sup>98</sup> Ibid at 69.

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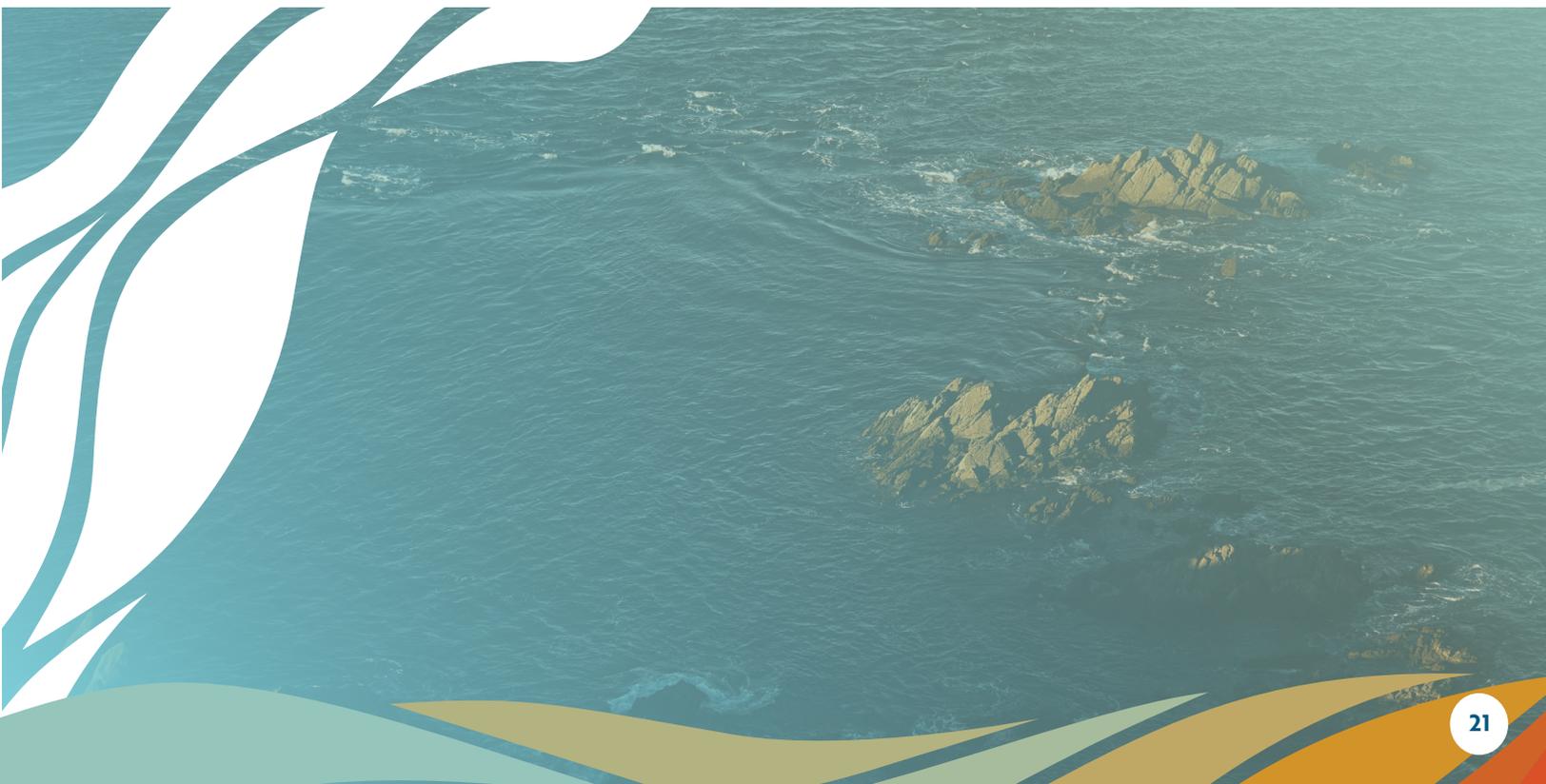
<sup>99</sup> Supra note 23 at 51.

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<sup>100</sup> Supra note 27.

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<sup>101</sup> Supra note 21 at 7.



In a 2002 report, CSC states that “efforts should be made to either aid the lodges in providing access to Métis and Inuit Elders, programs, and ceremonies that reflect these cultures or look into entering into agreements with organizations that represent these groups for future Healing Lodges.”<sup>102</sup> The needs of Métis and Inuit women are often cast aside in favor of First Nations based programs as First Nations women represent the largest population of federally-sentenced Indigenous women.<sup>103</sup> However, not all First Nations communities follow the same practices, teachings, and traditions, meaning that even if the focus on First Nations programming is intended to reflect the needs of the largest number of prisoners, it may still be inappropriate and exclusionary. This reality supports the creation of smaller s.81 facilities or non-facility-based s.81 agreements that may be maintained for specific populations within smaller communities, including Métis and Inuit women.

## Misapplication of Aboriginal Social History

Aboriginal social history is CSC’s interpretation of the Supreme Court’s judgement in the case of *R v. Gladue*.<sup>104</sup> The factors considered within Aboriginal social histories are frequently referred to as Gladue factors. However, Aboriginal social history factors are often not applied properly or with consistency. Rather than responding to the systemic and background factors that underpin the needs of federally-sentenced Indigenous women, CSC over-classifies their level of risk.

The Office of the Auditor General has found that Indigenous prisoners were more likely to be classified at higher security levels “due to the fact that CSC’s assessment tools did not address the specific needs of Indigenous offenders or consider their Aboriginal social history.”<sup>105</sup> *R v. Gladue* focused on the sentencing principle outlined in section 718.2(e) of the *Canadian Criminal Code* which states that “all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be

considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.”<sup>106</sup>

The *Gladue* case clarified this provision by requiring the court to consider and be responsive to “the unique systemic or background factors which have played a part in bringing the particular Aboriginal offender before the courts,”<sup>107</sup> and contextualized this by noting that the impacts of colonization include “low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation.”<sup>108</sup> However, despite the decision of the court in *Gladue*, many Indigenous women have not received *Gladue* reports during their sentencing process.

**In discussing the inadequacy of correctional programming, one Indigenous woman notes that such programs do not sufficiently address the underlying causes of criminalization for women;**

*One of the things that the Elder touched on was the Gladue report. And she was really upset to find out that for most of the Aboriginal women who were at [Fraser Valley Institution], that was never brought up in trial. . . They never really asked to the extent of why we committed our crimes and the lifestyle that we lived before that led up to the crime. Or even life further back, like childhood, right. What brought us to drug addiction, to committing these crimes that put us in jail. . . They never take any time or effort into finding out what was really going on for us.<sup>112</sup>*

The ongoing legacy of residential schools and the effects of intergenerational trauma include increased rates of addiction, abuse, family violence, mental health issues, child welfare involvement,

<sup>102</sup> Supra note 23 at 52.

<sup>103</sup> Supra note 6 at 4.

<sup>104</sup> Supra note 80.

<sup>105</sup> Supra note 21 at 14.

<sup>106</sup> Criminal Code, RSC 1985, c-46, s319.

<sup>107</sup> *R v Gladue*, 1999 SCC, [1999] 1 SCR 688 at para 66.

<sup>108</sup> *Ibid* at para 67.

<sup>109</sup> Supra note 49 at 57.

fetal alcohol spectrum disorder, and the absence of traditional parenting methods.<sup>110</sup> Indigenous women experience the legacies of colonization in ways that are both gendered and racialized, through the residential school era, the 60s scoop, the *Indian Act*, and continuing child welfare apprehensions. As a result of these and many other effects of colonization, Indigenous women face the loss of their status, culture, language, access to land, children, and family ties.

The duty for the courts to reflect on these systemic and background factors directs them to consider the negative impacts of social policy and legislation on Indigenous peoples, including the individual, their family, and their community. CSC attempted to integrate *Gladue* principles by considering the impact of Aboriginal social histories. Adapted and defined within CSC policy, Aboriginal social histories are intended to guide administrative decision-making with respect to Indigenous prisoners.<sup>111</sup> However, despite the integration of *Gladue* in CSC assessments, rates of imprisonment for Indigenous women have continued to increase. The OCI has reported that “there remains insufficient and uneven application of *Gladue* social history considerations in correctional decision-making” and that investigators often find “little explanation of how *Gladue* factors were actually considered, incorporated or applied to [these] decisions.”<sup>112</sup> The OAG has similarly found that, “CSC did not provide staff with sufficient guidance and training on how to consider an offender’s Aboriginal social history in case management decisions,” and that, “staff did not document their consideration of an offender’s Aboriginal social history in their assessments for conditional release.”<sup>113</sup>

## The Effects of Security Classifications

There are also many other areas where CSC continues to ignore how gender and culture may serve to limit the ability of Indigenous women to access alternatives to incarceration. For example, the Custody Rating Scale (CRS), the tool used by CSC to determine a minimum, medium, or

maximum-security classification, discriminates against Indigenous women on the basis of both culture and gender precisely because it does not consider the history of colonization or its gendered impacts.<sup>114</sup> The CRS was designed, tested, and validated on a population that was largely made up of white, male prisoners.<sup>115</sup> This is problematic as studies have shown, and CSC reports affirm, that risks and needs related to criminality are vastly different between men and women.<sup>116</sup> Indigenous women in particular have specific lived experiences and histories of trauma, abuse, and violence that are not properly contextualized by an objective, actuarial tool. Indeed, “[the CRS] serves as a way to pathologize and actuarialize complex social phenomena and history into simplified correctional categories.”<sup>117</sup> In a Joint Submission to the United Nations Special Rapporteur on the Rights of Indigenous People, various advocacy groups for women and prisoners reinforced the fact that “the unique needs of Aboriginal women cannot be assessed or addressed via tools of calculation and categorization which, by their nature, govern offenders as members of statistical distributions rather than as unique cases.”<sup>118</sup>

<sup>110</sup> R. v. Sharma, 2018 ONSC 1141, 44 C.R. (7th) 341 citing Final Report of the Truth and Reconciliation Commission of Canada 59 at p. 222 of Vol. 5.

<sup>111</sup> Correctional Service of Canada. (2014). *Aboriginal Social History and Corrections Violence and Aggression Symposium*, at 12.

<sup>112</sup> *Supra* note 5 at 45.

<sup>113</sup> *Supra* note 21 at 16.

<sup>114</sup> Carmen K. Cheung, Renu J. Mandhane, Kim Pate, Teresa Edwards, Bonnie L. Brayton, & Cheryl Milne. (2013). *Rights Violations Associated with Canada’s Treatment of Federally-Sentenced Indigenous Women – Submission to the United Nations Special Rapporteur on the Rights of Indigenous Peoples*.

<sup>115</sup> *Supra* note 24 at 2.

<sup>116</sup> *Supra* note 117.

<sup>117</sup> Jean-Phillipe Crete. *A Disciplined Healing: The New Language of Indigenous Imprisonment in Canada* (Master of Arts, Carleton University, 2013) at 92.

<sup>118</sup> *Supra* note 117.



Women in maximum-security or segregation units already have limited access to programs, meaningful social interactions, and cultural activities but often present with the highest levels of programming need.<sup>119</sup>

**According to Ivan Zinger, the Correctional Investigator of Canada,**

*We have many individuals who are classified in maximum-security because they have significant mental health issues. . . People are being put into a higher classification than needed, rather than into a therapeutic environment where trauma-informed therapy is provided, where sustained addiction issues are being addressed, and where mental health issues and cultural needs are being looked after.<sup>123</sup>*

**This sentiment was also echoed by Veronique Picard, Justice Coordinator at Quebec Native Women Inc. who said that,**

*Indigenous women with higher security classifications and who clearly have more complex or greater needs have no access to programming of that kind. It is counterproductive to isolate those women and not provide them with the support they need. The resources are available. Their quality may be open for debate, but they must be used to their full potential.<sup>124</sup>*

While Healing Lodges for federally-sentenced women are currently limited to minimum and medium-security prisoners, this was neither the intent of Parliament nor the Healing Lodge Planning Committee.<sup>120</sup> The minimum-security classification requirement means that the women who may benefit the most from the Healing Lodge environment are denied access because of their perceived security risk, as determined by a classification tool that is both discriminatory and ineffective.

<sup>119</sup> Supra note 30.

<sup>120</sup> Canada, Parliament, House of Commons, Standing Committee on Public Safety and National Security, Minutes of Proceeding and Evidence, 42nd Parl, 1st Sess, No 0915 (23 November 2017).

The effect of such discriminatory classification tools has been the disproportionate representation of Indigenous women in maximum-security units. Presently, Indigenous women account for 50% of maximum-security placements for women.<sup>121</sup> This is troubling as the existing Healing Lodges for women do not accept maximum-security prisoners. Okimaw Ohci accepts both minimum and medium-security prisoners while Buffalo Sage, the only s.81 facility for women, accepts those with a minimum-security classification. In fact, “when [CSC] first opened [Buffalo Sage], initially no Indigenous women were qualified to go there. None of them had low enough security. None of them had access to the types of programs. In fact, they had to be reclassified in order to get Indigenous women there.”<sup>122</sup>

In regards to the provision outlined in section 718.2(e) the Criminal Code that requires the court to consider all available sanctions other than imprisonment for Indigenous people, the Minister of Justice claimed that “What [government] was trying to do, particularly having regard to the initiatives in the Aboriginal communities to achieve community justice, is to encourage courts to look at alternatives where its consistent with the protection of the public – alternatives to jail – and not simply resort to that easy answer in every case.”<sup>123</sup> This is reaffirmed by the Office of the Auditor General in their finding that “to be most effective, higher-intensity correctional programs should be targeted at offenders at higher risk of reoffending.”<sup>124</sup> The Office of the Correctional Investigator has also noted that “all s.81 facilities are designated minimum-security, yet Indigenous prisoners are predominately classified and released from medium or maximum-security institutions. Consequently, the dedicated facilities designed to assist Indigenous offenders to safely and successfully return to the community do not necessarily operate as intended or at capacity.”<sup>125</sup>

<sup>121</sup> Canada, Parliament, House of Commons, Standing Committee on the Status of Women, Minutes of Proceeding and Evidence, 42nd Parl, 1st Sess, No. 083 (7 December 2017).

<sup>122</sup> Supra note 35 at 12.

<sup>123</sup> Supra note 4.

<sup>124</sup> Supra note 123.

<sup>125</sup> Supra note 110 at para 47.

Finally, Healing Lodges are only available for federally-sentenced women in the Prairie region, with Okimaw Ohci located in Saskatchewan and Buffalo Sage in Alberta. This means that women outside of this area must transfer farther away from their families and home communities in order to access them. There are currently no CSC or s.81 Healing Lodges for women in the Pacific, Ontario, Quebec, or Atlantic regions.<sup>126</sup> Government support and funding for the creation of additional s.81 Healing Lodges and non-facility based agreements may help to remedy this inequity.

## BARRIERS TO SECTION 81 IMPLEMENTATION

### CSC's Prioritization of Institutional Programs

The Correctional Service of Canada appears purposefully disinterested in the creation of new s.81 agreements, preferring instead to direct resources towards institutional Indigenous programs and services such as the Pathways initiatives.<sup>127</sup> Pathways is part of the CSC Continuum of Care that allows for increased communication with Elders, greater access to ceremony, and greater ability to practice traditional cultural practices within the prison rather than in the community. While Pathways is an important initiative, it cannot replace the creation of community-based s.81 agreements and Healing Lodges.

Despite asserting that Healing Lodges are integral to CSC's Aboriginal Continuum of Care,<sup>128</sup> CSC also maintains that Pathways and other similar programs have been prioritized to ensure that "offenders have support throughout their sentence, not only when they are placed in a Healing Lodge."<sup>129</sup>

<sup>126</sup> Supra note 24 at 7.

<sup>127</sup> Supra note 4 at 51.

<sup>128</sup> Supra note 78 at 19.

<sup>129</sup> Supra note 71.

Pathways ranges are only available at three of the five women's prisons and can accommodate a limited number of women.<sup>130</sup> This means that despite CSC's claim that Pathways have been prioritized to support women outside of the Healing Lodge, the fact remains that many Indigenous women are still unable to access them.

<sup>130</sup> Supra note 23 at 29.

While Pathways is an Indigenous specific program, and many women find value in it, prioritizing institutional programming is problematic as it limits resources for other, more effective interventions.

**According to Ivan Zinger, the Correctional Investigator of Canada,**

*The problem is with s.81. . . [is] that it was never implemented as it was designed. I think it falls short and the investments have all been for institutional corrections, which is directed by the Correctional Service of Canada and isn't responsive, in my view, to the needs of Aboriginal offenders.<sup>136</sup>*

When such initiatives are prioritized over community-based alternatives, the money allocated to fund these programs remains within CSC rather than local communities, limiting the potential for greater non-institutional supports and services.

Further, Pathways ranges operate within the same institutional framework of the prison that has marginalized the needs of Indigenous women. The racist attitudes that characterize much of the prison experience for these women extends to these Indigenous spaces as well. One woman recalls having to file a grievance after male guards would perform bed checks at night without any female guards present and another that would mutter racist slurs under his breath as he exited the Pathways house.

**She recalls,**

*But for the guard situation you could tell that a lot of the men guards that had been working there were, I don't know how to say it, basically they just looked down upon women. So it's like sometimes you'd get comments. . . and stuff like that from this one guard, he was pretty brutal. And I told the Elder, and like nothing really came about it. . . I think he got suspended with pay for like two months.<sup>137</sup>*

Despite the fact that Pathways is not available at<sup>132</sup> all five women's prisons in Canada, CSC seems to maintain that their focus on Pathways and other institutional Indigenous programs takes priority over the creation of new Healing Lodges to ensure that prisoners in all regions have access to culturally-appropriate programs and services. CSC also maintains that Healing Lodges may not be practical in many areas due to the low population of Indigenous prisoners from the area, as is the case for Métis and Inuit women.<sup>133</sup> However, s.81 allows for the creation of non-facility based s.81 agreements as an alternative to formal Healing Lodges. The fifth recommendation of Spirit Matters, a 2012 report by the OCI, states that "CSC should re-examine the use of non-facility-based section 81 agreements as an alternative to a formal Healing Lodge, particularly in those communities or regions where the number of Aboriginal offenders may not warrant a facility."<sup>134</sup> S.81 includes a mechanism that resolves the very issue CSC has presented as a barrier to its implementation.

<sup>132</sup> Supra note 24 at 12.

<sup>133</sup> Standing Committee on Public Safety and National Security. (2018). Indigenous People in the Federal Correctional System – Report of the Standing Committee on Public Safety and National Security, at 15.

<sup>134</sup> Supra note 49 at 56.

<sup>131</sup> Supra note 71.



## Challenges and Funding Differences

A significant difference between CSC-operated and s.81 Healing Lodges is the level of funding, with CSC facilities receiving a greater portion of available resources. In 2009-2010, the allocation of funds for CSC-run Healing Lodges was \$21,555,037 while the expenditure for s.81 Healing Lodges was just \$4,819,479. There are currently four CSC-run Healing Lodges and five s.81 Healing Lodges, meaning that funding is heavily skewed in CSC's favour.<sup>135</sup> The approximate cost of keeping a prisoner in a CSC-operated Healing Lodge is \$113,450 per year while the comparable cost per prisoner for s.81 agreements and facilities is \$70,845, a cost that is higher for women than men.<sup>136</sup> Given that correctional outcomes and recidivism rates appear to be statistically similar between CSC and s.81 Healing Lodges,<sup>137</sup> community-based facilities operated by community members appears to be a more cost-effective, culturally-appropriate way in which to provide correctional programs and services.

Correctional outcomes and recidivism rates are also more positive for women released from both CSC and s.81 Healing Lodges than from federal prisons.<sup>138</sup> By continuing to direct money and resources to institutional Indigenous programs rather than Healing Lodges, the government is essentially spending more money per prisoner to achieve results that are less effective. Investments in community-based alternatives to federal incarceration are necessary to reflect evidence-based best practices for Indigenous women in the prison system. The Office of the Correctional Investigator affirms this by stating that "CSC must move beyond its current approach, which prioritizes penitentiary-based interventions over community-based alternatives."<sup>139</sup>

The lack of adequate funding for s.81 is also compounded by a lack of stable funding, as s.81 facilities operate under five-year funding agreements that hinder the implementation of long-term plans, programs, and strategies.<sup>140</sup>

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<sup>135</sup> Supra note 71.

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<sup>136</sup> Supra note 78 at 34.

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<sup>137</sup> Correctional Service of Canada. (2016). Correctional Service of Canada Healing Lodges.

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<sup>138</sup> Supra note 78 at 20.

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<sup>139</sup> Correctional Service of Canada. (2011). Evaluation Report: Strategic Plan for Aboriginal Corrections – Chapter One: Aboriginal Healing Lodges, at 69.

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<sup>140</sup> Ibid.

Further, the funding structure continually increases the demands placed on s.81 facilities but does not alleviate the financial burden of those demands. For example, s.81 Healing Lodges must train their staff to CSC standards with competencies in offender supervision, awareness of CSC procedures, and financial reporting. The cost of this training is estimated to be \$34,000 but s.81 facilities do not receive direct compensation for that investment.<sup>141</sup>

This funding differential has significant implications for the ability of community-based facilities to adequately provide for their employees. The salaries at CSC Healing Lodges can be upwards of \$30,000 more per year than s.81 facilities in addition to the benefits of unionized job security.<sup>142</sup> This has resulted in high rates of resignations and subsequent new hires within s.81 Healing Lodges. Issues related to the cost of training for s.81 employees are further compounded by the high rates of staff turnover. The lack of adequate funding has limited the ability of s.81 Healing Lodges to provide for both prisoners and staff. The provision of additional funding for programs, staffing, and infrastructure would greatly benefit the ability of community-based Healing Lodges to fulfill their purpose and intent.

## Community Awareness and Acceptance

CSC further maintains that the establishment of a s.81 agreement is a very lengthy process that must also consider community support and capacity.<sup>143</sup> In their response to Sprit Matters, CSC goes to great lengths to describe the wealth of Indigenous programming they have made available, including the necessary community supports to implement s.81.<sup>144</sup> However, while CSC often cites a lack of community interest as a barrier to the creation of new s.81 agreements,<sup>145</sup> communities frequently cite a lack of information and support on the procedures for s.81 implementation.<sup>146</sup> According to CSC, any implementation of s.81, including the use of non-facility based s.81 agreements, requires the interest, involvement, and consent of an Indigenous community and that information is generally provided to communities who express such an interest.<sup>147</sup> Independent Senator Kim Pate has stated that, in her view “part of the reason we haven’t seen full implementation of those provisions. . . is that over the last couple of decades. . . very few [I] ndigenous communities have even known about those provisions, and if they did, they were told that they had to build institutions in order to implement them.”<sup>148</sup>

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<sup>141</sup> Supra note 78 at 32.

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<sup>142</sup> Ibid at 20.

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<sup>143</sup> Ibid at 21

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<sup>144</sup> Ibid at 20.

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<sup>145</sup> Supra note 71 at 5.

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<sup>146</sup> Ibid at 4.

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<sup>147</sup> Ibid at 7.

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<sup>148</sup> Supra note 23 at 45.



Given that many communities already feel there is not enough communication from CSC about the option and implementation of a community-based Healing Lodge, there is also limited information provided on the range of options available under s.81. Non-facility-based s.81 agreements may be an appropriate alternative to traditional prisons, CSC-run Healing Lodges, and s.81 Healing Lodges for communities with less capacity and fewer resources. Further, the lack of community resources to support a s.81 facility can be at least partially alleviated by reducing the funding differential between CSC and s.81 Healing Lodges.

Another barrier to the implementation of s.81 agreements and Healing Lodges is community acceptance. Many communities express serious concern about violent prisoners returning to the community.<sup>149</sup> Respect for Indigenous self-determination also means respecting the right of the community to refuse community-based alternatives to incarceration. Additionally, if a community is already struggling to provide for community members in terms of housing, education, food security, or other issues, it may be difficult to justify the allocation of resources for those returning from prison.<sup>150</sup>

However, community acceptance related to the return of potentially violent prisoners may also be resolved through an education initiative on women's criminalization. Women who commit violent crime often do so as a form of resistive violence, as a response to abuse or a form of self-defense.

**Kathryn Ferreira, the Director of the Queen's Prison Law Clinic, has also echoed this statement,**

*If the violence is because of a reaction to violence, either to the person herself or to their child or a third party, it becomes very contextual. It is not a risk to society in general; it is a very specific type of risk in a very specific type of context.<sup>156</sup>*

According to CSC's Strategic Plan for Aboriginal Corrections, one of the initial goals for the Healing Lodges was to achieve, "greater awareness and acceptance of Healing Lodges within Aboriginal communities."<sup>152</sup> Therefore, if CSC presents community acceptance as a barrier to the creation of additional s.81 Healing Lodges, it is because they have failed to provide information to communities or take adequate steps to foster community acceptance.

Community acceptance may be a legitimate barrier to the creation of s.81 agreements in certain areas, but there are many communities that see value of having a local Healing Lodge. For example, before the location of Okimaw Ohci was finalized, the Healing Lodge Planning Committee heard from 47 communities that expressed interest and ultimately received 23 completed submissions to consider.<sup>153</sup> Additionally, s.81 Healing Lodges have more flexibility in that, they can be urban or rural, house smaller numbers of prisoners, and are not bound by the same security or infrastructure requirements of traditional CSC prisons. Identifying and removing barriers to the creation of s.81 Healing Lodges may additionally help to facilitate community acceptance and involvement.

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<sup>151</sup> Supra note 23 at 21.

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<sup>152</sup> Ibid at 54.

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<sup>153</sup> Canada, Parliament, House of Commons, Standing Committee on the Status of Women, Minutes of Proceeding and Evidence, 42nd Parl, 1st Sess, No 088 (8 February 2018).

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<sup>149</sup> Supra note 71 at 7.

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<sup>150</sup> Supra note 123.



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## ADDITIONAL CONSIDERATIONS

### **Institutional Healing: Obscuring the Systemic Causes of Indigenous Women's' Criminalization**

It is the historical nature of colonization and not its continuing legacy that is the target of institutional healing. Though the creation of Healing Lodges is considered a progressive reform, the institutionalization of healing that has been the result has compromised the ability of the Lodges to provide that healing by obscuring the true causes of Indigenous over-representation in prison.<sup>154</sup> Criminalized women require material supports in areas such as housing, education, employment, and family violence, but CSC mandates individual healing as the principal metric of successful rehabilitation. Thus, prisoners are meant to heal from the past harms of colonization and not its reverberating impacts, thus relieving the federal justice and prison systems of relevant accountability for continuing injustices.<sup>155</sup> Further, it "naturalize[s] healing as the ideal narrative to traditional incarceration,"<sup>156</sup> which is simply a veiled progression of the same colonial politics that have created the conditions of Indigenous over-representation.

Federal prisons have typically denied or repressed Indigenous culture and spirituality, making the shift towards community-based healing extremely important and necessary for rehabilitation to be meaningful. However, "since the inception of penal incarceration, the punitive function of the prison has been veiled by governmental, professional, or reforming claims that prisons – especially women's prisons – are or could be, for something other than punishment."<sup>157</sup> By continuing to use the CSC definition of healing as the primary measure of correctional success, CSC has compromised the purpose and intent of the Healing Lodges. The carceral reality of the prison system is simultaneously obscured through this emphasis on healing. The prisoner remains the subject of the disciplinary regime of the prison but must behave in a way that aligns with the dominant understanding of Indigeneity, as defined by CSC.<sup>158</sup> This effectively means that healing must be expressed in a specific way in order to be perceived as legitimate.<sup>159</sup> Within the Healing Lodge, "the ability to function and heal in a normal and Aboriginal way becomes the overarching goal for Indigenous prisoners attempting to progress through their custodial sentence to reach eventual release."<sup>160</sup> In this way, enforced healing undermines the principles of empowerment, respect and dignity, supportive environments, meaningful and responsible choices, and shared responsibility, as outlined by the Task Force on Federally Sentenced Women.<sup>161</sup>

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<sup>154</sup> Supra note 142 at 8.

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<sup>155</sup> Supra note 35 at 30.

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<sup>156</sup> Supra note 61 at 20.

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<sup>157</sup> Ibid at 21.

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<sup>158</sup> Ibid at 24.

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<sup>159</sup> Pat Carlen, "Carceral Clawback: The Case of Women's Imprisonment in Canada" (2002) 4:1 Punishment and Society

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<sup>160</sup> Supra note 120 at 106.

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<sup>161</sup> Ibid at 107.



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## NEW LEGISLATION AND REGULATIONS

### **Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act<sup>162</sup>**

Bill C-83 was tabled in Parliament on October 16, 2018. As of this writing, Bill C-83 has received royal assent and the Minister of Public Safety and Emergency Preparedness, the Honourable Ralph Goodale, has stated that by November 2019 it is anticipated that the necessary infrastructure changes and staff hiring for implementation will be complete. This legislation puts an end to the practice of solitary confinement in Canada, defined by the United Nations as spending 22 hours per day in isolation. Under Bill C-83, prisoners will instead spend 20 hours per day inside their cells within newly established Structured Intervention Units, a structure that prison advocates argue is simply a reconfiguration of the current practice of segregation.<sup>163</sup> The legislation itself does not make meaningful changes to the practice or conditions of segregation, provide sufficient external or judicial oversight, or define time limits for the use of the Structured Intervention Units. Indigenous women currently account for 50% of federal segregation placements in women's prisons.<sup>164</sup> Under this legislation, Indigenous women may simply shift from being over-represented in administrative and disciplinary segregation placements to being over-represented in the newly established Structured Intervention Units. Women in these units will supposedly have greater access to programs, services, and supports, though how this will be meaningfully implemented remains unclear.

**Under s. 79.1 of Bill C-83, the legislation states that decisions made under this Act, which will affect an Indigenous prisoner must consider:**

- a. Systemic and background factors affecting Indigenous peoples of Canada;
- b. Systemic and background factors that have contributed to the over-representation of Indigenous persons in the criminal justice system and that may have contributed to the offender's involvement in the criminal justice system and;
- c. The Indigenous culture and identity of the offender.

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<sup>162</sup> Ibid at 106.

<sup>163</sup> Correctional Service of Canada. (2017). Okimaw Ohci Healing Lodge for Aboriginal Women.

<sup>164</sup> Supra note 18.

CSC's obligation to advance substantive equality and correctional outcomes for Indigenous women prisoners underscores the importance of using the Gladue principles to assess and respond to their needs, not their risks. However, CSC conflates risk with need, even though the systemic and background factors clarified in Gladue are intended to be mitigating. The new legislation must ensure that every decision affecting federally-sentenced Indigenous women and the gendered impacts of their systemic and background factors are considered and used only to assess their needs.

Another notable difference concerns community release planning, s.81 agreements, and Healing Lodges. Bill C-83 changes the contractual language of s.81 agreements from "Aboriginal community" to "Indigenous governing body" or "appropriate Indigenous authority." "Indigenous governing body," is defined as a council, government, or other entity that is authorized to act on behalf of an Indigenous group, community, or people that hold rights recognized and affirmed by section 35 of the 1982 Constitution Act.<sup>165</sup> These changes are noted under s.80 of Bill C-83.<sup>166</sup> While the process of providing information and the information itself would remain the same, including an adequate notice of order and opportunity to propose plans for transfer or release, the shift away from community consultation to consultation with recognized Indigenous authorities may limit meaningful community input. Senator Kim Pate has noted that the change in language may limit the community release options available to Indigenous prisoners. She has stated that "Many of those inside. . . those from urban communities, may not have a community of origin with a governing body," and that "this change would prevent, for example, Indigenous grassroots groups from being able to apply directly to support an individual in the community."<sup>167</sup> In this way, Bill C-83 may be another manner in which the government justifies investing money into expanding CSC resources rather than community-based options and alternatives to incarceration. This is similar to the way institutional Pathways programs are prioritized over s.81 Healing Lodges for Indigenous prisoners.

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<sup>165</sup> Canadian Association of Elizabeth Fry Societies, Press Release, "Goodbye Seg, Hello Separation: Bill C-83 on October 16, 2018 (2018).

<sup>166</sup> Supra note 5.

<sup>167</sup> Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

While the legislation may change before it receives royal assent and becomes law, NWAC will continue to monitor these changes and advocate on behalf of federally-sentenced Indigenous women across Canada.

## Additional Restrictions on Healing Lodge Transfers

The Federal Minister for Public Safety and Emergency Preparedness, the Honorable Ralph Goodale, released a press statement in November, 2018 announcing a new transfer policy that restricts medium-security women from transferring to facilities without a directly controlled perimeter.<sup>168</sup> This transfer policy would limit access to Okimaw Ohci, which does not have a directly controlled perimeter. It is important to note that Okimaw Ohci is the only Healing Lodge that is available to medium-security women. Further, these new restrictions only apply to women seeking a Healing Lodge transfer. No such restrictions exist for men's Healing Lodges.<sup>169</sup> These changes were a response to the public outrage over the transfer of Terri-Lynne McClintic to the Okimaw Ohci Healing Lodge. McClintic was sentenced to life in prison without the possibility of parole for 25 years for her part in the 2009 murder of 8 year-old Tori Stafford.

In deciding whether to allow an imprisoned woman's transfer to a healing lodge, CSC will now consider the length of the sentence, including the amount of time remaining until a woman is eligible for an Unescorted Temporary Absence (UTA) to determine eligibility for a Healing Lodge transfer.<sup>170</sup> Under the CCRA, determinations for UTA eligibility are based on a minimum amount of time that must be served prior to eligibility, which may differ depending on the length and type of the sentence.<sup>171</sup> According to CSC Commissioner's Directive 710-3, which sets out requirements for how CSC must administer UTAs,

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<sup>168</sup> Supra note 18.

<sup>169</sup> Chantelle Bellrichard, "Proposed changes to Corrections Act could narrow community release options for Indigenous people, says senator," CBC News (27 October 2018).

<sup>170</sup> Office of the Minister of Public Safety and Emergency Preparedness, Media Relations Public Safety Canada, Statement by Minister Goodale on the Correctional Service of Canada's Review of Offender Transfers on November 7, 2018 (2018).

<sup>171</sup> Canadian Association of Elizabeth Fry Societies, Press Release, "Reconciliation in Action: New Barriers to Accessing Indigenous Healing Lodge on November 8, 2018 (2018).

prisoners who are classified as maximum-security are not eligible.<sup>172</sup> This is of significant concern given the disproportionate representation of Indigenous women in maximum-security units and the restrictions these women already face.

Additionally, there is a new requirement that women serving long-term sentences be at least in the “preparation for release” stage of their correctional plan in order to be eligible for a Healing Lodge transfer, meaning Indigenous women serving life sentences will not be able to access the culturally-appropriate and gender-based programs to which they are entitled under the legislation.<sup>173</sup> For those serving longer or indeterminate sentences, institutional behavior will also be considered.

**According to the Canadian Association of Elizabeth Fry Societies,**

*Institutional behavior and charges are inconsistently applied and predominantly driven by subjective factors. The fact that they are now to be considered as essential information in evaluation a transfer request further restricts Indigenous women from accessing the one institution that was conceived, implemented, and executed for exactly their use.<sup>179</sup>*

The experience of marginalization that Indigenous women face was the driving force behind the implementation of Healing Lodges in the prison system. Yet, CSC continues to perpetuate this marginalization by framing Indigenous women as uncooperative and undeserving of access to the very spaces that were created to remedy that inequity.<sup>175</sup> While Okimaw Ohci remains under the authority of CSC, its creation was the result of grassroots activism and advocacy by Indigenous women. By denying Indigenous women access to existing Healing Lodges,

the government is continuing its legacy of settler colonial violence and is failing to meet its obligations under the CCRA, UNDRIP, and the TRC Calls to Action. Since the public response to McClintic’s transfer, she has been moved from Okimaw Ohci to the Edmonton Institution for Women, a multi-level prison for women in neighboring Alberta.<sup>176</sup> While there are issues concerning McClintic’s move to Okimaw Ohci, most notably that the local First Nations community did not have any input on her transfer, reactionary responses to exceptional cases should not be the basis for widespread policy change.<sup>177</sup> These new restrictions will only serve as additional barriers for Indigenous women to access those programs, supports, and services that were specifically intended to meet their needs.



<sup>172</sup> Rachel Aiello, “Goodale tightening restrictions on inmate transfers to healing lodges,” CTV News (7 November 2018). Retrieved from: <<https://www.ctvnews.ca/politics/goodale-tightening-restrictions-on-inmate-transfers-to-healing-lodges-1.4167122>>

<sup>173</sup> Supra note 15.

<sup>174</sup> Correctional Service of Canada. (2016). Commissioner’s Directive 710-3: Temporary Absences. Retrieved from the CSC website: <<http://www.csc-scc.gc.ca/lois-et-reglements/710-3-cd-eng.shtml>>

<sup>175</sup> Supra note 174.

<sup>176</sup> Ibid.

<sup>177</sup> Public Safety Canada & the Wesley Group. (2012). Marginalized: The Aboriginal Women’s Experience in Federal Corrections at 24.



# CONCLUSION AND RECOMMENDATIONS

Healing Lodges, whether operated by CSC or Indigenous communities, must prioritize the physical, emotional, cultural, and spiritual well-being of the women in their care. Indigenous women are vastly over-represented in the Canadian prison system, particularly in the number of maximum-security and segregation placements. Healing Lodges were conceived of in recognition of the fact that traditional prisons, especially the former Prison for Women, were not responding to the needs of federally-sentenced Indigenous women. Okimaw Ohci, the first Healing Lodge in Canada, was a comprehensive response to this systemic failure. The marginalization and criminalization of Indigenous women has been a significant feature of colonization and any attempt to address this inequity must be based on principles of respect, dignity, non-discrimination, and self-determination.

Section 81 of the CCRA was intended to allow Indigenous communities to oversee the care and custody of Indigenous prisoners, but its potential for Indigenous women has not been fully realized. Many of these women are unable to access s.81 beds due to the minimum-security requirement of the only s.81 facility for women, the Buffalo Sage Wellness House. The CCRA itself does not place limitations on security classifications for Healing Lodge prisoners and addressing this barrier by challenging the discriminatory tools that determine security classifications would serve to bring s.81 more in line with its legislative intent.

CSC has acknowledged and affirmed within their own reports the benefit of gender-based, culturally-appropriate programs and services for Indigenous prisoners, but has continued to prioritize institutional initiatives, like Pathways, over community-based alternatives to federal incarceration. Despite the fact that Healing Lodges result in more positive correctional outcomes and facilitate better community re-integration, there has been little effort to establish additional facilities, whether operated by CSC or maintained under a s.81 agreement with an Indigenous community. Identified barriers to the creation of community-based Healing Lodges and other configurations of s.81, as well as barriers that prevent Indigenous women from accessing such facilities, must be addressed if Healing Lodges are to fulfill their true intent and purpose.



## The Native Women's Association of Canada recommends:

- ◆ That additional research be undertaken via grassroots consultation to enhance localized understandings of s.81 and discuss methods by which to strengthen and engender its potential for federally-sentenced Indigenous women.
  - ◆ That Canada meet its obligations under the TRC Calls to Action, UNDRIP, and the CCRA in order to address the over-representation of Indigenous women in custody.
  - ◆ That CSC prioritize the creation of additional s.81 agreements, Healing Lodges, and other community-based alternatives to incarceration rather than institutional Indigenous programs.
  - ◆ That CSC facilitate community awareness of s.81 in all of its configurations and provide financial, technical, and social supports to communities that express interest in and provide consent to the creation of a community-based s.81 agreement or Healing Lodge.
  - ◆ That CSC address the inequitable funding differential between CSC and s.81 Healing Lodges and provide more stability in funding by removing the five-year limit for s.81 contribution agreements.
  - ◆ That CSC work to establish s.81 agreements, Healing Lodges, and other community-based alternatives to incarceration for Métis and Inuit women prisoners to ensure they are able to access the same level of culturally-appropriate programs and services as First Nations women.
  - ◆ That CSC work to establish s.81 agreements, Healing Lodges, and other community-based alternatives to incarceration in the Atlantic, Quebec, Ontario, and Pacific regions so that Indigenous women from outside of the Prairie region are able to access them and remain closer to their families and home communities.
  - ◆ That CSC review both the Custody Rating Scale and the minimum and medium-security requirements of CSC-run Healing Lodges to address the over-classification of Indigenous women and allow them greater access to the culturally-appropriate alternatives to federal incarceration that were intended for them.
  - ◆ That Canada commit to transformative change in the federal and correctional justice systems and act on its stated support of the 96 recommendations provided in the House of Commons Standing Committee on the Status of Women Report, "A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Correctional Systems" and commit to expanding access to culturally-relevant services to inmates on issues such as substance abuse, family and domestic violence and overcoming the experience of being sexually abused.
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