

**The Elizabeth Fry Society of Manitoba, Canada**  
**“A Canadian Perceptive on Addressing the Overrepresentation of Indigenous Women and Girls in the Canadian Criminal Justice System”**

National Indigenous Courts Conference, Mildura – September 4-7, 2007

*This session will provide an overview of the Elizabeth Fry of Manitoba (EFS Manitoba) and the Canadian Association of Elizabeth Fry Societies (CAEFS), women’s organizations that have been working with and on behalf of criminalized women and girls for decades, promoting their human rights, fair treatment, alternatives to incarceration, and supportive community reintegration. These organizations encourage bolder steps when examining productive and responsible means of encouraging community responses to address criminal justice matters from coast to coast. Margaret Marin, Executive Director of EFS Manitoba, will discuss EFS Manitoba’s service and advocacy with and on behalf of Aboriginal women and girls, who are overrepresented in the criminal justice system and among women prisoners, as opposed to being released on bail or under supervision in the community. There is clearly a need to address the fact that escalating numbers of women in prison is plainly linked to the lack of health, education, and social services. The session will provide an opportunity to exchange information, experiences and views about the impact of criminal justice interventions on Aboriginal women and girls in Canada, including those intended to adopt Aboriginal approaches.*

Tansi (Hello) and Meegwetch (Thank you) to the Australasian Institute of Judicial Administration (AIJA) and all those involved for organizing this conference that will focus on Aboriginal (Indigenous) people as those convicted of crime and victims of crime, Aboriginal justice officers and communities. I also want to honour and acknowledge the women who have the lived experience about which I presume to speak, and whom I urge to unite and hold us accountable for all we say and do, not just here, but in our daily work and lives, especially when we try to describe or represent their realities.

I acknowledge the Aboriginal people, in whose Traditional territory we have been invited onto for this conference. I am a Cree woman from the Opaskwayak Cree Nation (OCN) in Northern Manitoba, Canada. I am a 3rd generation survivor of the Residential school system to which our family is re-gaining the loss of language and culture.

Today, I am honoured to have this opportunity to discuss the important issues faced by Aboriginal women and girls, to openly discuss how the colonization of Aboriginal peoples has directly resulted in the overrepresentation of Aboriginal women and youth in the criminal justice system, and to discuss policy solutions to these injustices.

### **The Context of Colonization**

*“In law, with law, and through law, Canada has imposed a colonial system of government and justice upon our people without due regard to our treaty and Aboriginal rights. We respect law that is fair and just, but we cannot be faulted for denouncing those laws that degrade our humanity and rights as distinct peoples.”* Ovide Mercredi, Berens River First Nation (former Grand Chief of the Assembly of First Nations), quoted in the Aboriginal Justice Inquiry Report (1991).

Colonization usually begins with one population, the colonizers, seeking to develop its wealth. While wealth can be defined in numerous ways, most frequently wealth refers to economic power. In order to develop their wealth, individuals of the colonizing populations seek to acquire such commodities as spices, furs, cloth, minerals, land, and labour (Gosek, Pompana & Hart, 2006, p. 56). In my history, it was the fur trade which began the colonizations of my ancestors, through British men of the Hudson Bay Company.

Today, we continue to be effected by colonization as an on-going reality, through residential schools, the massive apprehension of Aboriginal children through child protection, and through imprisonment of Aboriginal people.

### **The Elizabeth Fry Society of Manitoba: Service and Advocacy**

Firstly, I would like to talk about the Elizabeth Fry Society of Manitoba. We have been working with and on behalf of criminalized women and girls for over 20 years, promoting their human rights, fair treatment, alternatives to incarceration, and supportive community reintegration. Manitoba is one of Canada's 10 provinces. It is the easternmost of the three Prairie Provinces (Manitoba, Alberta and Saskatchewan). Its capital and largest city (containing over one half the provincial populations (around 700,000)) is Winnipeg. Manitoba population as of April 1, 2007 is approximately 1,182,921. Aboriginal women are vastly over-represented in Manitoba jails, a reality that is rooted in the on-going effects of colonization. In a one-day snapshot of women in provincial custody on September 6, 2000, 73% were Aboriginal (whereas the 2001 Canadian census states that approximately 15% of Manitobans are Aboriginal - 9.9% identifying as First Nations and 5.2% as Métis). As will be discussed further below, the overrepresentation of Aboriginal women among Manitoba and Canadian prison populations is increasing at an even faster rate than for Aboriginal men.

EFS Manitoba is a member of the Canadian Association of Elizabeth Fry Societies (CAEFS), an association of self-governing, community-based of 26 Elizabeth Fry Societies through out Canada that work with and for women and girls in the justice system, particularly those who are, or may be, criminalized. Each Elizabeth Fry Society is unique in the programs they offer such as whether an agency will run a half house to the diversity of programs they offer, all EFRY societies advocate the beliefs, principles and positions that guide CAEFS. EFS Manitoba works in partnership with a number of other community-based organizations, including Aboriginal organizations, women's groups, mental health advocacy groups, and others, to provide advocacy and support to women who are imprisoned and reintegrating to their communities.

Some of the programs the Elizabeth Fry Society of Manitoba offers include:

There is a huge need for safe and affordable housing for marginalized and criminalized women and their children in Manitoba. Furthermore, there is no women-only release facility (or "halfway house") for women in the province. In an effort to begin to address

this need, EFS Manitoba operates two Housing Units that provide emergency transitional housing upon release from both provincial and federal correctional institutions. EFS staff assist women in securing support and resources for healing, recovery and reintegration. Operation of these suites is largely unfunded, although EFS Manitoba currently receives short-term grant funding for a Community Liaison Worker to assist women with their search for safe and affordable housing.

The Provincial Reintegration Coordinator empowers women who have been incarcerated and marginalized to articulate their concerns and needs in a healthy way and to live successfully in the community through one-on-one counseling, pre-release planning and advocacy. She works to connect women to community groups and service providers that are available and needed by the women for a safe and successful reintegration into the community; and reduce recidivism and further engagement with the criminal justice system by assisting women to build the skills and access the supports they need in the community. (This position is staffed by an Aboriginal woman)

Wonderful Me Program is designed to address the needs of women who are in conflict or at risk of being in conflict with the law. This program addresses the issues of self-care, self-esteem and healthy communication skills. (Our program works from an Aboriginal paradigm. We ensure the program offers sweats at the beginning and end of the program, feasting the star blankets, teachings of the star blankets and many other Aboriginal crafts, dream catchers, making drums and tipi.)

A Shoplifting Program explores the underlying reasons and causes why women and girls shoplift, commit fraud, breaches of trust or other similar offences. The program examines the underlying issues affecting the women who commit such offences. The participant is empowered with skills to keep them from re-offending.

Mino-Bimosewin/Me (Ojibwa) Tho Ta Mon (Cree) (Good Path). This Gang Intervention program is a new 2 (two) year project that provides assistance to Aboriginal young women and girls who are involved or who are at risk to be involved in gang activities and to leave the gang lifestyle. The program, which is staffed by Aboriginal women, works to reduce the number of Aboriginal young women and girls involved in the criminal justice system. EFS Manitoba uses the Four Doorways model (based on Traditional teachings) of providing service to Aboriginal young women and girls between 12-17 years. The Eastern and Southern doorways represents new beginnings, engaging and the start of the healing journey for participants. These stages include referrals to meet the health, mental, physical and spiritual needs of the young women and girls. The Western doorway is the start of the journey inward, including developing inner vision that will include life skills, anger/emotional management and examining what they need to be safe in order to exit the gang life. The Northern doorway represents wisdom for the Aboriginal young women and girls and involves programs that support a new way of life such as education.

As party of Mino-Bimosewin/Me Tho Ta Mon, an Aboriginal Spiritual Care Worker will ensure that Aboriginal young women and girls, as well as their families, have access to

and develop a calendar of events, Ceremonies, use of Traditional Medicine, as well as referrals to Elders, Pipe Carriers and healers while in custody and in the community. Finally, an Aboriginal Community Health Nurse ensures that the health needs of the Aboriginal young women and girls are met.

Advocacy: EFS Manitoba also provides on-going advocacy work of an individual and systemic nature. For individual advocacy, our staff contact lawyers for the women, advocate with housing and social assistance, and other government departments.

We have also been involved in systemic advocacy in recent years. Five and a half years ago, EFS Manitoba filed two human rights complaints with the Manitoba Human Rights Commission about the treatment and conditions faced by women incarcerated at the Portage Correctional Centre (PCC), the only women's jail in Manitoba. In 1991, the groundbreaking Aboriginal Justice Inquiry of Manitoba had recommended that PCC be closed because it was completely inadequate for anyone, and totally unproductive for Aboriginal women. Yet the jail remains open and is filled with mostly Aboriginal women.

The basis of the EFS Manitoba Human Rights complaints was that women experience discrimination on the basis of sex, race, and disability, due to the location and facilities at Portage Correctional Centre (PCC), as well as the lack of attention to their needs and circumstances, including those as Aboriginal women and mothers. In short, due to their small numbers relative to men, and despite the fact that they generally pose a low risk to the community, women have generally been a "correctional afterthought."

After a lengthy investigation, the Human Rights Commission found merit in the complaints and referred the parties to mediation. A series of productive discussions with Manitoba Justice recently resulted in a settlement of the complaints which includes a number of important aspects to improve the situation of criminalized women, such as:

- commitment by Manitoba Justice to work with the Human Rights Commission to develop and deliver human rights training for all staff and prisoners, to integrate human rights training at all levels of Corrections, and to ensure that accountability for human rights compliance is part of managerial accountability in Corrections;
- establishment of a Women's Program Advisory Committee to be co-chaired by EFS Manitoba and Manitoba Justice, which will bring together community groups to provide input on women-centered and culturally-appropriate programs and services at all existing and proposed correctional facilities for women. This body will provide an important mechanism for accountability and dialogue with the community;
- positive changes made at PCC such as hiring an Aboriginal cultural worker, providing free tampons to women, funding a small-scale literacy program, providing better telephone access, and enhancing computer access and training; and

- a commitment to future initiatives, including addressing the increased demand for Aboriginal spiritual and cultural services, abuse and trauma counseling, library and recreation enhancements, and regular reviews of standing orders.

This complaint and the progress made through mediation is a first for Canada. A number of Elizabeth Fry Societies across the country will likely follow our lead to pursue human rights complaints in their provinces. It is also important to note that this human rights settlement is just one means by which we continue to advocate for the rights of criminalized women and girls. In particular, we are working with local and national partners to oppose the unproductive “law and order agenda” that sees increasing numbers of women incarcerated, at great fiscal and social cost to Canadians, and does not deliver on the promise of community safety.

Another systemic advocacy project is one that has been conducted jointly by EFS Manitoba and the University of Manitoba. We have just completed a study of prisoners’ rights and access to justice mechanisms in Manitoba. Recommendations for independent accountability and oversight of certain aspects of corrections in Manitoba were made in the Aboriginal Justice Inquiry over 15 years ago. Until we conducted this research, there had been little discussion of the access to justice needs of provincially-sentenced prisoners. This community-based participatory research (which included interviews with 21 women who had been incarcerated in Manitoba’s women’s jail) provided an opportunity to bring the voices of prisoners into public and policy debates over allocation of legal aid and other government resources, as well as accountability and oversight of prisons. Their voices highlight the need for greater awareness of rights, effective first-instance procedures, and increased confidence in the fairness of any review mechanisms which, it seems, will only come through developing models of oversight and accountability that are truly independent of corrections. We concluded that the small number of women prisoners, relative to men, provides an opportunity to pilot new models of oversight and accountability, provision of legal aid, and community supports to learn what will result in better access to justice in this context.

### **Justice for Aboriginal Women?**

Today we are here to discuss solutions to the overrepresentation of Aboriginal women and girls in the criminal justice system. In Canada, there is a higher proportion of Aboriginal women serving federal and provincial sentences of incarceration, as opposed to being released on bail or under supervision in the community.

We can start by evaluating the escalating numbers of Aboriginal women in prison that is clearly linked to structural barriers in Euro-Canadian society. These structural barriers were the outcome of cultural and structural colonization of Aboriginal peoples, and the ongoing failure of the Canadian federal and provincial governments to provide health, education, social services, and self-determination to Aboriginal peoples

For too many of us doing this work, even if our lived experience includes oppression, our presence here is testament to the fact that we have transitioned into a position of privilege that separates us from the women and girls who are the subject and object of our work. This makes it all the more important that we work with every fiber of our being to challenge oppressive language, practices and institutions. Every one of you here can be part of addressing these issues, personally and professionally.

Aboriginal people in Canada face a variety and range of issues. The issues may differ between Aboriginal peoples living in rural communities and in urban centers and other countries. (For example, the *Indian Act*, which has been imposed on Aboriginal peoples through federal law, has divided and discriminated against us.)

Since there is seldom enough money to meet the continually growing needs of the people, many Aboriginal communities are forced to over-spend in order to meet the basic human needs of the community. The result over the many decades has been an increase of debt, and in some situations mismanagement and third world like conditions. This has deepened the cycle of poverty and violence experienced by Aboriginal people and communities.

Violence against Aboriginal women in particular can be traced back to colonialism. Many Aboriginal communities were matriarchal or semi-matriarchal before colonization imposed patriarchal religious, economic and political institutions upon them. Aboriginal women face both racism and sexism as a result, being seen not just as Aboriginal people and not just as women but as Aboriginal women, commonly objectified and dehumanized in racist and sexist stereotypes that put these women at risk of physical, emotional and sexual violence.

While Aboriginal people are over-policed in that they are arrested and detained under circumstances in which non-Aboriginal people may not, they are also under-policed in that they often receive fewer preventive and supportive police services.

There have been some efforts to address discrimination and oppression of Aboriginal people; however, many Aboriginal people living in urban centers and on reserve are unable to benefit from them. The population of Aboriginal people living in urban centers has steadily increased over the last two decades, many living in extreme poverty. However, the realities of the effects of poverty, such as limited employment opportunities and work experience under-education, violence against women and children, and lack of safe and affordable housing have created many barriers to Aboriginal success. The negative effects of assimilation policies have resulted in a set of barriers which will require many types of resources to address.

The overrepresentation of Aboriginal people in Canadian prisons and jails is common knowledge, but it is less well-known that the overrepresentation is growing at a greater rate for women than for men. Among federally sentenced women prisoners (those serving two years or more), over 30% of the population is Aboriginal.

Yet, Aboriginal people make up only 4% of the Canadian population. In my home province of Manitoba, the proportion of Aboriginal women in provincial jails (under two year sentences) is over 75%.

Aboriginal people are more often denied bail, spend more time in pre-trial detention, are more likely to be charged with multiple offences, and are two times as likely to be incarcerated as non-Aboriginal people. Aboriginal women are more likely to be overrepresented in higher security institutions than non-Aboriginal women. They are also more likely to be detained longer in their sentence before being released on parole.

Women and girls constitute the fastest growing population in prison world-wide, particularly the poor, the racialized, and the mentally and intellectually disabled. Those who have historically experienced colonial oppression, the child welfare system, residential schools, the juvenile 'justice' system, and the adult 'corrections' systems are most highly reflected in this group. People have been transferred from treatment programs, health programs, and welfare programs literally onto the street. The only system that cannot turn them away is the criminal justice system. Therefore, poor, racialized, mentally and intellectually disabled people are criminalized.

And we know that women's attempts to cope with their situation and with unjust laws are criminalized. For example, if a woman sells her body at the end of the month to make her rent or feed her children, she may face the possibility of "communicating for the purpose of prostitution" or 'living off the avails of prostitution" charges. Similarly, if she agrees to carry a package across the border, across the country, or across town, she may also face trafficking, importation or other similar sorts of charges. In addition, if she fails to report any additional income received, including loans or debts owed (only people on welfare are required to declare debts and then have them counted as income), then she could also face fraud charge(s) and potentially be cut off from social assistance for life.

Rather than criminalize women for welfare fraud, society would be better served to education and empowering women. Unfortunately our society reacts by increasing the number of laws that criminalize women and their means of coping.

If we truly empowered women by providing them with access to community resources and partnerships that would increase their opportunities to take responsibility for advocating for themselves. In partnership with the Native Women's Association of Canada and Strength in Sisterhood (a self-established organization of women in and from prison), CAEFS held the first in Canada "Human Rights in Action" training sessions for federally sentenced women, which provide training for peer and community advocates and works on practical strategies to return Aboriginal women to their communities.

We are here today to talk about solutions to the overrepresentation of Aboriginal women (and men) among those incarcerated in Canada and Australia. Based on our many years of collective work with and on behalf of criminalized Aboriginal women and girls across Canada, we have seen that attempts to bring Aboriginal perspectives,

approaches and practices into the criminal justice system are often co-opted, under-resourced, and ultimately fail to address the needs of the women with and on behalf of whom we work. One example that I will discuss briefly is an attempt to develop a “healing lodge,” as an alternative to traditional prisons, for federally sentenced Aboriginal women.

This federal women’s prison, the Okimaw Ohci Healing Lodge, is one of the eight Canadian federal prisons designated for women currently serving a sentence of two years or more. The Lodge is owned and operated by the federal government under the legislative mandate of the Corrections and Conditional Release Act (*CCRA section 81*). The Healing Lodge was meant to represent a new correctional approach to incarceration for Aboriginal federally sentenced women. The Lodge is on the territory of the Nekaneet First Nation in Southwestern Saskatchewan.

The introduction of Aboriginal paradigms of programming rather than Eurocentric based programs was initially seen as positive. Since the construction of the Lodge 12 years ago, we have witnessed the appropriation of Aboriginal ideas and have unfortunately observed the translation of progressive ideas and goals into newer tools of oppression. Unfortunately, Aboriginal language and cultural practices are used to try to help cloak the very real and ongoing problems of prisons. Meanwhile, the numbers of Aboriginal women who are criminalized continues to sky rocket. When the Lodge was built, approximately 15% of women serving 2+ years were Aboriginal. Now, they represent 1/3 of the federal jail population and 40-60% of the women classified as maximum security prisoners.

There are major problems with how the Lodge has developed, despite the best intentions of some very committed Aboriginal women who have worked in CSC and the community to try to make it work, but in the end, it has underscored the reality that a prison is a prison and even when it is cloaked in Aboriginal ‘culture’, it is still fundamentally a jail. Patricia Monture-Angus, a Mohawk woman and currently Professor of Sociology at the University of Saskatchewan, was one of the Aboriginal women involved with the Task Force on Federally Sentenced Women in the early 1990s who originally advocated for the development of the Lodge. However, she has since written persuasively about the failure of the Lodge to depart from a correctional model, and to implement the Elders’ vision and principles (Monture-Angus 2000).

Some Aboriginal justice programs based on an Aboriginal conflict resolution model have proven to be more effective in Aboriginal communities such as those based on the four principals of caring, sharing, honesty, and respect, and emphasizing resolution and healing over punitive measures. The degree of success of such programs is very much dependent upon the health and capacity of the communities in which such approaches exist.

An Aboriginal conflict resolution model alone cannot heal a community where the majority of the members are struggling with the impact of colonization like substance abuse, violence against women and children and inadequate community, social, health and financial resources. Unfortunately, however, such approaches are often promoted as cure-all and what our communities really need is self governance in a context where

all members of the community have the resources, supports and autonomy to address issues and remedy wrongs.

The Correctional Service of Canada and some provincial justice officials maintain that they have spent an inordinate amount of resources, time and energy attempting to meet the needs of women prisoners. We do not dispute this; however, the reality is that little of substance has truly changed, largely because they have persisted in trying to adapt male programs to women prisoners. In addition, the practical realities of the limited number of community release options for women, combined with the seeming precedence given to avoiding any possible risk, the lack of financial resources and community support, rather than utilizing least restrictive approaches, as well as delays in paperwork in the prisons, are resulting in increased numbers of women exiting prison without the support and gradual integration process mandated by the *Corrections and Conditional Release Act*, the relevant legislation governing the imprisonment of those serving prison sentences of two years or more. This is especially true of Aboriginal women and those with mental health issues.

Indeed, we should question who benefits from the billion dollar correctional services industry and why? Instead of accepting band-aid attempts to patch up our increasingly shredded social safety net with well-intentioned but ineffective national or provincial initiatives aimed at 'crime prevention' and 'homelessness', we must demand fundamentally different constructive approaches that do not presume the most dispossessed people are all potential criminals or that homelessness is a "choice" selected from a broad menu of options and opportunities.

Given the urgency we all feel, or should feel, about the increased criminalization of women and girls worldwide, my hope is that we will truly engage and work to correct what is fundamentally flawed and inaccurate. Current attempts to reform, correct or change individual and/or groups of women, when it is increasingly the number of laws which come into conflict with the realities of people, especially poor, racialized, and disabled women. (e.g., criminalizing pan handling and completely inadequate social assistance rates that make it impossible to survive.)

In addition, many women face the reality that, when they exit prison, they are most likely to have difficulty accessing social services, health services, employment, and educational opportunities. We frequently have to deal with women being refused tenancy, employment, and even social and mental health services as a result of the criminal label that they carry. Regrettably, in many contexts, these inhumane and disrespectful interventions are not considered illegal and are not protected by human rights instruments or the *Canadian Charter of Rights and Freedoms*.

To reiterate, women are the fastest growing prison population world wide and this is not accidental. In Canada, we recognize that the now globalized destruction of social safety nets – from social and health services to economic and education standards, not to mention availability, is resulting in the increased abandonment of the most vulnerable, marginalized and oppressed. Therefore our agency strongly opposes imprisonment.

Despite the best intentions of many who have worked to make it so, prisons are not and can not be treated as healing centres. Prisons continue to punish and hide “criminals” away from the rest of the community. The long term effects of incarceration are more than what society will ever understand. We need to continue our work to ensure that we are a strong voice for those who at times can not speak out for themselves.

Meegwetch

### Bibliography

Canadian Human Rights Commission. 2003. *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: CHRC.

Hamilton, Alvin and Murray Sinclair, Commissioners. 1991. *Report of the Aboriginal Justice Inquiry of Manitoba*. Winnipeg: Queen’s Printer.  
<http://www.ajic.mb.ca/volume.html>

Monture-Angus, Patricia. 2000. “Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women,” in Kelly Hannah-Moffatt & Margaret Shaw, *An Ideal Prison? Critical Essays on Women’s Imprisonment in Canada*. Halifax: Fernwood Publishing.

Monture-Angus, Patricia. 2002. “The Lived Experience of Discrimination: Aboriginal Women Who are Federally Sentenced.” Ottawa: Canadian Association of Elizabeth Fry Societies. <http://www.elizabethfry.ca/submissn/aborigin/1.htm>