**FEMINIST PENAL IDEOLOGY & CORRECTIONAL
PRACTICE:
THE IMPACT OF *CREATING CHOICES*, THE TASK
FORCE ON FEDERALLY SENTENCED WOMEN**

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**A thesis submitted to
The Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the Degree of**

Master of Arts

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Submitted by

Michelle Budak, B.A. Hons.

**in partial fulfilment of the requirements for
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ABSTRACT

This thesis examines some of the theoretical and substantive issues associated with women's federal prisons in Canada. Specifically, this dissertation focuses upon the impact and subsequent limitations of the current 'women-centred' model of corrections proposed in *Creating Choices*, the Report of the Task Force on Federally Sentenced Women. This model obscures the oppressive quality of incarceration, and fails to challenge the traditional model of prisons. In addition, this thesis highlights the danger of the uncritical embrace of feminist ideals and the danger in the appropriation and redefinition of feminist penal ideology by the state. While *Creating Choices* did indicate that feminist penal ideology can permeate the traditional correctional regime, the reliance upon the use of prisons, and a model designed within the traditional penal regime, served only to implicitly and explicitly reinforce a traditional model of corrections. Therefore, *Creating Choices* failed to offer a radical model of prisons for women because it left the wider institutional framework unquestioned.

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THE WAY WE SEE THE PROBLEM, IS THE PROBLEM

- ALBERT EINSTEIN

WORDS TO LIVE BY ...

IT IS AN AMAZING FEELING TO FINALLY HAVE THIS THESIS COMPLETED, AND THERE ARE SO MANY PEOPLE WHO HAD A HAND IN HELPING ME ALONG THE WAY.

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*"THE MASTER'S TOOLS WILL NEVER DISMANTLE THE
MASTER'S HOUSE"*

- AUDRE LORDE

*"IF YOU HAVE COME HERE TO HELP ME
YOU ARE WASTING YOUR TIME.
BUT IF YOU HAVE COME HERE BECAUSE YOUR
LIBERATION
IS BOUND UP WITH MINE,
THEN LET US WORK TOGETHER"*

- LILLA WATSON

CHAPTER ONE: INTRODUCTION

Within the past decade, Canada has experienced dramatic changes to the model of corrections for federally sentenced women. Historically, Canada had one prison for federally sentenced women, the Prison for Women (P4W) in Kingston, Ontario. Since its opening in 1934, there were numerous criticisms of the prison, and various reports and commissions provided support for the closure of the prison and the movement of federally sentenced women closer to their homes. In 1990, the Task Force on Federally Sentenced Women published a report entitled *Creating Choices*, and helped make possible what so many before it had failed to do: close P4W. The Report of the Task Force represented to so many how feminist penal ideology could be used to transform correctional practice, and improve the situation for federally sentenced women. Because of this report, we witnessed remarkable changes during the 1990's and in early 2000, including the building of four regional federal prisons, the opening of an Aboriginal healing lodge, and the long awaited closure of P4W.

It has been 12 years since the publication of *Creating Choices* and much has happened during this time. The final closure of P4W represents a good time to reflect upon the impact *Creating Choices* has had upon the lives of federally sentenced women, and upon the model of corrections for women in Canada. It appeared that that this 'new' model of corrections offered hope and provided for significant changes regarding federally sentenced women who have historically been ignored because of their small numbers. In fact, *Creating Choices* has been touted as an innovative solution and international model for women corrections around the world. However, both the theoretical underpinnings and operational outcomes of the Report need to be examined in greater detail before success is claimed. The impact of

'feminizing' female corrections has wide-reaching consequences, and the potential for obscuring the harsh nature of incarceration. Such a result could ultimately backfire upon the 'good intentions' of those involved in the Task Force.

A brief look at the work here would perhaps lead one to believe that this is simply a critique of *Creating Choices*. However, the intent and significance of this work is to highlight the impact that feminism has had upon correctional policy, and more specifically the impact it has had upon the lives of federally sentenced women. While the outcome of *Creating Choices* strayed significantly from its original form, it did indicate that feminist penal ideology could permeate the traditional correctional regime. However, the appropriation of feminist ideology by the Correctional Service of Canada (CSC) also pointed to the danger of trying to work within this traditional regime, which has served only to implicitly and explicitly reinforce a traditional model of corrections.

Feminist Penal Ideology

Perhaps the most difficult aspect of this work has been to define feminist penal ideology. Prison reform regarding women prisoners appears to have been influenced by three particular types of feminist thought: maternal or social theory, formal equality theory and substantive equality theory.¹ These feminist rhetorics have led primarily to two strategies when dealing with women prisoners: 1) to treat men and women equally in corrections and policy; and 2) to treat them differently in a semi-separate atmosphere.²

The maternal or social approach played a major role in the early reformation of women's prison. Organizations such as the Elizabeth Fry Society initially relied upon this

¹ Hannah-Moffat, Kelly (1994). "Unintended consequences of feminism and prison reform." *Forum on Corrections Research* 6(1): 1-6 at 1.

² *Ibid.*

approach, which concentrated upon the deplorable conditions within women's prisons. Primarily this approach argues that women require equal but different treatment under the law, and thus the focus of the arguments is on prison conditions, programs, and claims that prisons should be based on rehabilitation not punishment.³ Reformers within this approach were successful in having new prisons for women built, and were responsible in having them governed by matrons.

Formal equality theory was influenced by a liberal feminist ideology, and within the correctional atmosphere this translated into calls for equal rights and equal treatment for male and female prisoners.⁴ This movement gained ground in the 1970s when feminists began to argue for gender-neutral correctional policies. Hannah-Moffat contends that the success of these reforms cannot be easily measured, but that numerous reports adopted this liberal feminist rhetoric and advocated that female and male prisoners be treated equally.⁵ Hannah-Moffat argues that, "those pursuing equal rights also failed to recognize that the standard by which equality is measured is based on a male norm. Thus, women's programs are brought up to par with men's programs, instead of being designed at the outset to meet the needs of women."⁶

In light of this problem, the more recent arguments, including those made by members of the *Creating Choices* Task Force, have been based on a substantive equality theory. This theory focuses upon situational diversity - that is, male and female prisoners are different and need to be treated differently in all aspects of corrections including programs, services and facilities.⁷ As seen within *Creating Choices*, this approach supports the need to

³ *Ibid.*, at 2.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*, at 3.

⁷ *Ibid.*

'empower' women prisoners, and is based on the assumption that previous correctional models have ignored women's reality. This approach has been responsible for supporting the need for a 'women-centred' approach to corrections. The assumption is that women respond differently to incarceration than their male counterparts, and that correctional practice and policies need to be redefined to accommodate these different experiences.⁸

As will be argued, substantive equality theory within *Creating Choices* was an excellent example of how feminist theory was able to influence correctional policy. However, *Creating Choices* is also an excellent example of how feminist theory can be appropriated by the state and used to justify the continued existence of prisons. Hannah-Moffat acknowledges that there is tension between feminist, political, administrative and institutional agendas. These tensions:

...are reflected in the inconsistent application of feminist ideas and can be attributed to the incompatibility of the goals and responsibilities of often well-intentioned correctional administrators ... more often than not, the needs of prisoners are compromised for the sake of security and managerial concerns ... a reform can be systematically undermined by managerial and other pragmatic goals. The result is a compromised version of the original reform.⁹

However, if these tensions can be balanced, feminists have the ability to play a crucial role in the reformation of the prison system in Canada and elsewhere.

Methodology

To analyze the impact of feminist penal ideology and the Task Force on Federally Sentenced Women upon the current state of federal corrections for women in Canada, I relied upon secondary data analysis. The published report of the Task Force, and its various research publications, were used as my primary source to understand the recommendations

⁸ *Ibid.*

⁹ *Ibid.*, at 4.

of *Creating Choices*. Various academic and advocate literature was used to assess the impact of *Creating Choices* from both a theoretical and operational view. To balance these arguments, literature and research from the Correctional Service of Canada were used.

A significant limitation of the research is the lack of the voices of federally sentenced women, and those that work directly with them. While due primarily to time constraints (as well as financial constraints) it is understood that this omission does leave a gap in the research, and provides a driving force for future direction in research.

Overview

This thesis focuses upon the theoretical and systemic concerns regarding *Creating Choices*. However, I begin with a general discussion of prisons. Therefore, the following chapter, Chapter Two, explores the origin of federal prisons in Canada, as well as engaging in a critical discussion of the various justifications and subsequent failure of the prison. I explore the theories proposed by Michel Foucault and Nils Christie, in an attempt to introduce the reader to a critical analysis of prisons.

Chapter Three is a brief history of federally sentenced women in Canada, beginning in 1835, and following the various Commissions, Reports, and Task Forces as they relate to federally sentenced women up until 1988, the year prior to *Creating Choices*, The Report of the Task Force on Federally Sentenced Women. This chapter highlights the major criticisms and recommendations focusing upon federally sentenced women, and provides a detailed background into the creation of P4W, and the history of federal prisons for women up until *Creating Choices*.

Chapter Four focuses specifically upon *Creating Choices*. The first half of the chapter provides a background to the Report, and details the 'women-centred' philosophy which

provided the basis for the Task Force, and also discusses the recommendations of the Task Force. The second half of Chapter Four is a critical analysis of the theoretical underpinnings of *Creating Choices*. The critical analysis focuses upon the various theoretical and discursive changes to women corrections that the Task Force utilized. In opposition to the Task Force's good intentions, I argue that these changes served only to obscure the harsh nature of imprisonment and failed to depart from the traditional concept of punishment, ultimately providing further justification to a traditional model of corrections.

Finally, Chapter Five explores the operational outcomes of the Task Force by exploring the operational plan and actual outcome when the Correctional Service of Canada attempted to implement a feminist vision of corrections. This chapter examines the various issues and problems associated with implementing the 'new' model of corrections for women. Essentially this chapter details how the CSC was able to appropriate a feminist vision for change, to ultimately strengthen the prison regime. While there is an understanding that the situation for some federally sentenced women was changed for the better, the operational result of *Creating Choices* resulted in some unforeseen consequences. Finally Chapter Six will be a discussion of the various findings of this research and provides direction for future research.

CHAPTER TWO: THE JUSTIFICATIONS AND SUBSEQUENT FAILURE OF PRISONS

Although the prison is a relatively a new phenomenon, it has come to be a dominate method of punishment in Canada and other Western countries. With the rise of the number and use of prisons, it is important to consider their theoretical and discursive underpinnings, if only to determine their effectiveness. While this thesis is focused upon federally sentenced women in Canada and their federal prisons, this first chapter will begin by exploring the various justifications and argued failures of the prison. In Canada, we have just completed the construction of several new prisons, and because of this, it is important to understand the basis of the prison before one either supports or challenges such construction.

This chapter will begin by briefly discussing the origins of the prison in Canada to provide a basic understanding of the beginnings of the prison system in Canada, as well as the social and political events of the time. I will then examine the questions raised by the philosopher Michel Foucault in an attempt to understand the meanings of punishment, and the reasons behind the perpetuation and growth of the prison. In addition to this, the claims that prisons are justified because they accomplish the purposes of retribution, deterrence, incapacitation, and/or rehabilitation will be explored. It will be argued that these four justifications are myths that provide a false legitimization to the prison system. Also, I will consider how the prison system has been a failure. Primarily, this will include a discussion of the immense cost of our prison system, and the arbitrary nature of our prison numbers. Finally, I will conclude with a discussion of how prison has become a method for controlling the disenfranchised.

THE ORIGIN OF THE PRISON IN CANADA

The introduction of the first prison in North America can be dated back to 1789, when the Philadelphia Quakers introduced the penitentiary as a more humane alternative to the harsh punishments of the time.¹⁰ Within Canada however, the origin of the prison can be dated back to 1835 with the building of the men's prison, Kingston Penitentiary, in Kingston, Ontario. Kingston penitentiary operated as a provincial prison until the *British North American Act* (BNA) of 1867 established a federal-provincial separation of powers for justice.¹¹ In addition, the *Penitentiary Act* of 1868 brought several other prisons into federal jurisdiction creating a federal penitentiary system in Canada.¹²

There are conflicting interpretations concerning the events precipitating the construction of Kingston penitentiary in Canada. Theorists such as Bellomo argued that the construction of the prison paralleled an increase in crime coupled with overcrowding in local jails in the 1830's.¹³ However, in opposition, Beattie argued that during the 1830's and 1840's, serious crime was not widespread, but rather that Canadians *perceived* crime to be a more serious problem than it actually was.¹⁴ Considerable public discussion centred upon the seriousness of crime, trials appeared regularly in newspapers, and discussions of penal philosophy and corporal punishment were echoed in the press.¹⁵ Ekstedt and Griffiths argued that, "...regardless of the actual extent of criminal behaviour, it is clear that the

¹⁰ Correctional Service of Canada (1999). *Penitentiaries in Canada*. Ottawa: Correctional Service of Canada at 1.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Ekstedt, John & Curt T. Griffiths (1988). *Corrections in Canada: Policy and Practice 2nd ed.* Toronto: Butterworths at 29.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

perceptions of Upper Canadians contributed to a major change in penal practice in this country”.¹⁶

The building of a penitentiary in Canada also paralleled significant social and political changes within Canadian society. Between 1820 and 1850, the class structure of Canada changed considerably, leaving a society that ranged from wealthy landowners, farmers, and merchants to landless labourers. Not surprisingly, social and political turmoil ensued.¹⁷ The prison thus became the main weapon to ensure order and stability, and became one of the primary defense mechanisms against crime and disorder. It was argued that the criminal offender belonged to a ‘dangerous class’, and constituted a threat to the stability of Canadian society:

The country was racked by deep economic crisis and successive waves of popular unrest (which took the form of land occupations and tax revolts) that posed a serious threat to the new State. A system of incarceration, combined with armed repression, assured bourgeois control of the country as a whole.¹⁸

Additionally, the origins of the prison are also linked to concerns with economic effectiveness, wherein the prison had the promises of being economically viable. Regardless, the main principles with which the prison was built, and those that still exist today, were the “...expiation of crime, the deterrence of potential crime, the protection of society, and the reformation of the convict”.¹⁹

In Canada, the recommendation for a new prison to be built was first visited in 1826 because the system at the time was criticized for various reasons, including the uselessness of fines due to the offenders differential ability to pay; the rare use of capital punishment; the overcrowding and lack of classification of prisoners at local jails; that corporal punishment

¹⁶ *Ibid.*, at 30.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, at 35.

¹⁹ *Ibid.*

was improper and degrading; and that banishment was both unenforceable and ineffective.²⁰ Kingston prison itself was modeled by the Auburn system in operation at the state prison in Auburn, New York at the time. Following this model, Kingston penitentiary separated offenders on the basis of sex and type of offense, and in order to maintain discipline and a strict silent system, prisoners were forbidden to "... exchange looks, wink, laugh, nod, or gesticulate, or to make any use of signs except such as are necessary to explain their wants..."²¹

One of the unique attributes of Canada's prison system is the provincial-federal separation of powers in matters of justice. This is defined by the 'two-year' rule, through which prisoners sentenced to two years or longer fall under the jurisdiction of the federal government, and those prisoners who are sentenced to two years less a day are under provincial responsibility. However, all prisons were to remain under provincial jurisdiction, until an unexplained last minute change to the BNA Act occurred that placed penitentiaries under federal jurisdiction.²² There are numerous explanations for this change including a commitment to strengthening the powers of the central government, and also the consideration that the federal government may be the only one with the resources to house long-term prisoners.²³ However, it has also been argued:

Those prisoners who received a sentence of less than two years were probably regarded as ordinary people who needed a lesson while those who received longer sentences were seen as criminals whom it was necessary to separate from ordinary people. This assumption is supported by the terminology used in the British North American Act where the federal institutions are 'penitentiaries' while the provincial institutions are called 'reformatory prisons'.²⁴

²⁰ *Ibid.*, at 32.

²¹ *Ibid.*, at 36.

²² *Ibid.*, at 47.

²³ *Ibid.*

²⁴ *Ibid.*

The reasons for the creation of a federal penitentiary system in Canada, are the basic tenets that justify the prison today. As such, it is necessary to explore the fallacies within the very basis of the prison in Canada.

THE FOUCAULDIAN TAKE

The philosopher Michel Foucault explored the genealogy of the prison in his book *Discipline and Punish: The Birth of the Prison*.²⁵ Although by no means a strict historical account of the birth of prisons, Foucault addresses many questions that surround the movement from corporal punishment to the advent of prison as one of the primary methods of social control in Western civilization. In particular, Foucault examines questions surrounding the movement from punishment being focused on the body during the use of corporal punishment, to the focus on the 'soul' in imprisonment. He also questions how the prison became a dominant method of punishment, which is in opposition to its original humanitarian intentions. Finally, he deals with the idea that prison may be re-producing delinquency, and that this failure of the prison system may actually be responsible for its perpetuation. Foucault is the focus here because, while there are many other authors who deal with issues of crime, justice and the prison, Foucault offers the most unique perspective on the evolution of the prison. Additionally, Foucault is useful to feminist analysis because he provides an important focus on power, that permeates all aspects of life.

With the advent of the prison, medieval practice moved from revenge to punishment. That is, torture and execution, such as the gruesome 'drawing and quartering' of Damians so vividly described by Foucault, disappeared in favour of the high walls of a

²⁵ Foucault, Michel (1977). *Discipline and Punish: The Birth of the Prison*. Trans. Alan Sheridan. New York: Vintage Books. I acknowledge that the wide meaning of my use of the term 'punishment', in the following section may be considered problematic, particularly as a description for 'sanctions'.

prison. But more complex than a simple move in method, the creation of the prison system had a direct effect upon the visibility and acceptance of punishment. The disappearance of punishment as a public and violent spectacle which centered on the infliction of pain to the body, gave way to the emergence of a 'surveillance of the soul', where punishment instead became hidden and concealed. That is:

...the theatrical and spectacular aspect of punishment was suppressed and reversed: not rituals of dismemberment but the brooding presence of high prison walls would be the modern manifestation of punishment. Punishment became abstract, not immediate; it would deter by being certain, not horrible. A second major axis of change: the body was no longer central. Bodies would no longer be hurt, but were simply the means of access to the judicial person and his rights, which were to be suspended. The objective was not the body but the soul, so that motives were as important as actions, if not more so. Punishment, accordingly, would not efface that crime but transform the (actual or potential) criminal.²⁶

The shift from punishment of the body to punishment of the soul had a profound impact upon the way in which punishment was seen. It was no longer about violence, but rather about intervention. As Foucault argued, incarceration was the humanitarian alternative to corporal punishment:

This need for punishment without torture was first formulated as a cry from the heart or from outraged nature. In the worst of murderers, there is one thing, at least, to be respected when one punishes: his 'humanity'.²⁷

The central aim of the 'ancien' regime of punishment had been the infliction of unbearable pains. But with the adoption of imprisonment as the main penalty, punishment became the deprivation of liberty and the suspension of civil rights. Thus, the move to imprisonment involved the elimination of physical 'pain' from punishment.²⁸ The rationale of punishment then became the production or creation of socially useful individuals.

²⁶ Cooper, Barry (1981). *Michel Foucault: an introduction to the study of his thought*. New York: The Edwin Mellen Press at 82.

²⁷ Foucault (1975) *supra* note 25 at 74.

²⁸ Cousins, Mark and Athar Hassain (1984). *Michel Foucault*. London: MacMillan Education LTD at 170.

It was not, however, the intention of reformers that the prison should become a dominant method of punishment. Rather, imprisonment was supposed to be one of many punishments, to match one of many crimes. But within a few short decades imprisonment became a widely used penalty for crimes.²⁹ Foucault's response to this unforeseen consequence of the prison is essential to the understanding of the persistence of the prison system. Foucault argues that if prisons were introduced as a corrective to deviance, then on such terms they have been an expensive failure. But, this supposed failure might actually be a part of their function. He asserts that such institutions have positive value because they provide for their own survival. Prisons continue to produce delinquency and illegalities rather than eliminate them, which is functional to the continued existence of the criminal justice system and, ultimately, the prison.

Thus, the failure itself is an important reason for the perpetuation of the prison. The value of prison does not lie in its ability to eliminate crime, but in producing a class of delinquents who are not outside the law but under the control of it.³⁰ The prison reproduces delinquency, but it is a delinquency that is detectable and controllable. The prison fabricates delinquents and it often receives those whom it discharged earlier. Here Foucault adds that the prison also fabricates delinquents in an epistemological sense: it was the corrective and reformatory project embodied in the prison which led to the construction of the criminal behind the crime and the attempts to institute a network of links between him and his crimes – and, hence the notion of delinquency. The courts hand over to the prison the candidates for reform and correction, and the prison in turn introduces the notion of delinquency into

²⁹ Geertz, Clifford (1994). "Stir Crazy: Review of *Discipline and Punish: The Birth of the Prison*" pg. 300-308 in Barry Smart (ed.), *Michel Foucault: Critical Assessment Volume IV*. New York: Routledge at 304.

³⁰ Cousins and Hassain *supra* note 28 at 196.

the judicial process.³¹ As such, the failures of the prison arise out of the very techniques that were meant to correct and reform.

If Foucault is correct, then we will have delinquency as long as we have prisons. Additionally, if the function of prisons is to create a group of identifiable 'offenders', then other justifications for the use of prisons are misguided. And yet we cling to the idea that prisons and our criminal justice system deliver value as a method of deterrence, retribution, incapacitation and rehabilitation. In the next section these four claims will be deconstructed, and revealed to be what they truly are: myths.

THE MYTHS OF PRISON JUSTIFICATIONS

The Myth of 'Retribution'

The traditional rationale for prisons is the concept of *retribution* or 'just desserts'. This rationale contends that crime is wrong because it has disturbed the order of society and that matters can be set right only by an equivalent wrong done to the offender.³² That is, when an offender is punished, society is not trying to reform him or her, or deter others. The punishment imposed is simply concerned with correcting a wrong that occurred in the past.

Retribution differs from all other theories of punishment in one respect: its effectiveness cannot, and need not, be measured because it is not intended to 'work' *per se*.³³ That is, there is no intention that the act of retribution will have an effect on crime committed in the future by this or other offenders. It is simply a method by which the

³¹ *Ibid.*, at 195.

³² Jenkins, Philip (1984). *Crime and Justice*. Monterey: Brooks at 144.

³³ *Ibid.*, at 148.

victim's urge for revenge is satisfied, and done so in a manner that allows the state to put the victim in the background.

The immediate effect of retribution cannot be contested. Both the victim and society are often satisfied as long as the punishment is severe. However, for retribution to remain effective, often the punishment must become increasingly more severe.³⁴ Retribution also implies that there exists a proportionality between the crime and the punishment. That is, that there exists the ability to fulfill an 'eye for an eye'. However, how can this be decided, and by whom?

The concept of retribution as punishment might be acceptable if it simply meant setting limits; however, punishment used within our retributive justice system means causing pain for the sake of hurting.³⁵ Nonetheless, this is perhaps the one stated goal of prisons that has been successful. It has succeeded in causing pain to those who have caused pain to others. However, this serves no other function but the infliction of pain. The only logical outcome of this infliction of pain and retribution is a cycle of violence.

The Myth of 'Deterrence'

Another justification for prisons is that of *deterrence*. Punishment is intended to deter on two levels, the general and the specific. Specific deterrence contends that some form of punishment will teach the individual offender that his or her actions are not tolerated, as well as preventing him or her from committing additional crimes upon their release from prison.³⁶ The theory of general deterrence applies to society at large who assumes that

³⁴ Knopp, Fay Honey et al. (1976). *Instead of Prisons: A Handbook for Abolitionists*. Syracuse: Prison Research Education Project at 53.

³⁵ Morris, Ruth (1995). *Penal Abolition: the practical choice*. Toronto: Canadian Scholar's Press at 30.

³⁶ Knopp et al *supra* note 34 at 44.

crimes are prevented by the threat of negative consequences to those who commit crimes.³⁷

At the same time the threat of punishment works to deter those from committing the same crimes. Punishment in this light is seen as being 'useful', and therefore the 'usefulness' of deterrence is realized through the deterrence of future crimes.

It is obvious that those incarcerated are prevented from committing crimes within 'law-abiding' society while being held inside a prison, however it is less obvious that they are deterred from committing crimes upon their release. Recidivism rates between 40 to 85 per cent seem indicative that deterrence is a failure.³⁸ Also, it is difficult to determine the extent with which members of the larger society refrain from crime due to the possibility that punishment may occur. Most decisions to commit crime are often far more complex, and arise out of feelings of violence or need.³⁹

The logic behind deterrence itself is flawed. First, the theory of deterrence assumes that it is acceptable to use a person as a 'means to an end', without regard to their own value as a human being. Second, it is misleading to assume that the 'larger society' will be aware of and influenced by the sentence of another person. Most sentences are not reported, and many people do not evaluate sentencing trends to test their chances of being punished for a crime.⁴⁰ Finally, of the crimes that are committed, few result in arrests, and even fewer result in a sentence and conviction.

For deterrence to work it seems logical that punishments of crimes should be swift and consistent, as well as known to the general public. Within the Canadian criminal justice system it appears that this is not the case. Court decisions could take many years, and the decisions of these cases are often not widely known unless the case garners media attention. .

³⁷ *Ibid.*

³⁸ Morris *supra* note 35 at 26.

³⁹ Knopp et al. *supra* note 34 at 45; Morris *supra* note 35 at 27.

⁴⁰ Morris *supra* note 35 at 27.

Fundamentally however, the usefulness of deterrence comes down to one question: does society have the right to punish one person in order to deter another? And who has the right to answer this question?

The Myth of 'Incapacitation'

Incapacitation is another justification for the use of prisons that purports to protect society from 'criminals'. At the most basic level, removing a criminal from society ensures that he or she will no longer be a source of trouble or danger. When no other justification for punishment is acceptable, at least it can be said that criminals are prevented from further harming the public. While this may be true, prisons are often used simply as warehouses where the 'undesirables' are kept until release.

The prison does not contain the most dangerous individuals, and until recently crimes such as theft, robbery, and property damage were considered more serious offences than rape or sexual assault. Prisons simply protect society from the very small percentage of offenders who are caught and convicted. And by far, we are in more danger from someone we know, than an anonymous figure who appears to impose some type of threat, and therefore should be behind bars.

Finally, as will be discussed further, what type of threat is someone locked up for five or ten or twenty years most likely to pose upon release? Prisons engender hostility and rage amongst those who are kept behind its walls. However, society is pacified with the claim that prisons protect them, while in reality their everyday lives are hampered through their fear of crime and potential victimization. It is a fear that relies upon an 'image' of who is and is not criminal. But our society is prevalent with crime. In fact, through minor theft, tax evasion, assault and fraud, many people may be repeat offenders who remain completely

undetected. As will be discussed further, prisons may warehouse criminals, but only certain segments of society are being labeled as criminal.

The Myth of 'Rehabilitation'

Finally, the most recent justification for prisons and punishment is *rehabilitation*. This stems from the belief that criminal behaviour reflects flaws or weaknesses within the individual.⁴¹ The concept of rehabilitation seemed an attractive option for justifying the use of imprisonment for many years. Not only is society being protected, but criminals are being 'rehabilitated' into becoming productive members of society.⁴² However, the primary purpose of prison is not to rehabilitate, but rather to control and to punish.

As discussed above, prisons were conceived as the kinder, more humane alternative to corporal punishment. They were promised as a setting where 'salvation' could be reached and introspection would produce repentance. The history of the prison itself set the groundwork for individualized treatment.⁴³ However, the prison is a coercive, retributive environment, and it has been widely documented that this environment is not conducive to any type of rehabilitation.⁴⁴

Rehabilitation within the prison environment has been critiqued as a contradiction in terms. While such programs may work for some people, the ability to help someone in a dehumanizing atmosphere seems impossible. Prisons are totalitarian institutions which control every aspect of a prisoner's life, while destroying any link he/she has to the outside

⁴¹ Faith, Karlene (1993). *Unruly Women: The Politics of Confinement and Resistance*. Vancouver: Press Gang Publishers at 125

⁴² Jenkins *supra* note 32 at 169.

⁴³ Knopp et al. *supra* note 34 at 45.

⁴⁴ Mathiesen, Thomas (1990). *Prison on Trial*. London: Sage; Clemmer, D (1940). *The Prison Community*. New York: Holt, Reinhart & Winston; Robinson, J. & G. Smith. "The Effectiveness of Correctional Programs". *Crime & Delinquency* 17(67); Greenburg, D.F. (ed.) (1977). *Corrections & Punishment*. Beverly Hills: Sage; Trasler, G (1976). "Reflections upon the Use of Custody." *Howard Journal* (6).

world. Efforts at 'rehabilitating' and thus reintegrating this person back into 'normal' society seem hopeless under such circumstances. It also seems counter-productive that the same case managers who provide 'treatment' are also responsible for providing discipline.

Additionally, many treatment programs within prisons are linked to one's chances for release. How helpful can programs be when one's freedom is dependent upon it? This element of coercion almost removes any benefits of rehabilitation that can be realized. A lack of interest in treatment programs becomes indicative of a prisoner's 'uncooperative' nature and a 'lack of remorse' for the crime committed. The result is that a prisoner's ability to conform becomes determinative of rehabilitation and therefore his/her acceptability for release.

The attempt at rehabilitation within an environment which causes damage itself seems counter-productive. The primary purpose of prisons is to punish and to control. This purpose will remain until prisons no longer exist. This is not to argue that rehabilitation or treatment does not work. But simply that it will not work in a retributive, coercive environment, something that prisons can never cease to be.

THE FAILURE OF THE PRISON

Prisons are small totalitarian societies⁴⁵ which claim, as argued above, to not only benefit society but also produce socially useful individuals who would otherwise be a danger. However, in reality, our prisons are overflowing, and crime still increases.⁴⁶ Also, as Foucault argued, we often see the same people over and over. It seems that prison is an apparent failure. Yet, although "we are aware of all the inconveniences of prison, and that it

⁴⁵ Faith *supra* note 41 at 151.

⁴⁶ Virgo, Sabina (1996). "The Criminalization of Poverty" pp. 47-60 in Elihu Rosenblatt (ed.). *Criminal Injustice: Confronting the Prison Crisis*. Boston: South End Press at 49.

is dangerous when it is not useless...one cannot 'see' how to replace it. It is the detestable solution, which one seems unable to do without."⁴⁷

On what levels have prisons failed? First I would argue that the cost of our prison system is excessive. Currently, in North America, the cost of imprisonment is more than the cost of education.⁴⁸ Secondly, as discussed above, prisons may simply be a warehouse where delinquency is produced. Further, the size of our prison population has been taken to indicate the amount of crime that is being committed. It can be argued, however, that the size of the prison population is a normative question, and that the prison population is an arbitrary number. Finally, if we look more closely at our prison population, perhaps prison is nothing more than a method of social control whereby certain 'dangerous classes' are controlled. All of these comments, which will be discussed further in this chapter, raise questions about our system of 'justice'.

The Expensive Prison

The cost of prisons anywhere in the world is excessive. Currently, the Correctional Service of Canada, which is responsible for our federal prison system, spends approximately 1.3 billion dollars annually on salaries, expenditures and operating costs.⁴⁹ However, if the costs of policing, courts, provincial prisons, alternatives to prisons such as parole, probation, and statutory release are included, the costs of the Canadian criminal justice system exceeds 10 billion dollars per year.⁵⁰ Additionally, the cost of the criminal justice system increases immensely if one includes the cost of building more prisons. Certainly, if "you compute in

⁴⁷ Foucault *supra* note 25 at 232.

⁴⁸ Virgo *supra* note 46 at 49.

⁴⁹ Correctional Service of Canada (2001). *Basic Facts about Federal Corrections*. Ottawa: Solicitor General Canada.

⁵⁰ Morris *supra* note 35 at 5-6.

the higher failure rate of prisons, they become one of today's most amazing dollars-down-the-drain investments."⁵¹

Currently, it costs approximately 66 thousand dollars per year to incarcerate one male federal offender and 110 thousand dollars per year to incarcerate one female federal offender. This is compared with the 17 thousand dollars it costs to release these same prisoners on parole or statutory release.⁵² Despite these costs, in 2001, Canada incarcerates at a rate of 118 per 100,000, which is fourth when compared to most industrialized countries.⁵³ Further, the number of federal prisoners is increasing at a slightly faster rate than the Canadian population.⁵⁴ Therefore, if our prison population is on the increase, so are the costs of incarceration.

The Production of Delinquency

As argued above, the prison is useful to the extent that it produces delinquency. Foucault argued that, "prisons do not diminish the crime rate...[because]...detention causes recidivism..."⁵⁵ ultimately providing for their own survival. While prisons produce delinquency, it is this manifestation that is responsible for the continued existence of the criminal justice system and ultimately the prison. As has been noted, prisons are the only system that thrives on its own failure.⁵⁶

⁵¹ *Ibid.*

⁵² *Basic Facts about Federal Corrections* *supra* note 49.

⁵³ *Ibid.* Canada is fourth following the United States, which incarcerates at a rate of 699 per 100,000, New Zealand which incarcerates at a rate 149 per 100,000, and England and Wales which incarcerates at a rate of 124 per 100,000. Canada's rates are down from a former rate of incarceration of 129 per 100,000, which at the time, was second only to United States rate of 645 per 100,000. Solicitor General Canada (1998). *Corrections Population Growth: Second Progress Report*. Ottawa: Solicitor General Canada at 79.

⁵⁴ *Ibid.*, at 80.

⁵⁵ Foucault, Michel (1984). *The Foucault Reader*. Paul Rabinow (ed.). New York: Pantheon at 231.

⁵⁶ Morris *supra* note 35 at 21.

Foucault poignantly stated:

For the observation that prison fails to eliminate crime, one should perhaps substitute the hypothesis that prison has succeeded extremely well in producing delinquency, a specific type, a politically or economically less dangerous – and on occasion, usable – form of illegality; in producing delinquents, in an apparently marginal but in fact centrally supervised milieu; in producing the delinquent as a pathologized subject. The success of the prison, in the struggles around the law and illegalities, has been to specify a ‘delinquency’.⁵⁷

The prison has failed to reduce delinquency, and in doing so it has actually perpetuated criminal activity, which indicates that the prison is a failure. However, it is this failure that has been responsible for the continued reliance on the criminal justice system.

The Size of the Prison Population: Indicative or Normative?

Another question that surrounds the prison industry concerns the size of a prison population: what does the size in any given country really mean? Traditionally prison figures have been seen as an indication of the crime situation of a country. This perspective is most in tune with the Western system, where it is perceived that the criminal begins the process of criminalization, and the judiciary reacts. Thus, an increase in imprisonment is seen as indicating that crime has increased, while a downward trend indicates that the crime situation has changed for the better.⁵⁸ But what if this interpretation were incorrect? How would that affect the ‘necessary’ place that prisons hold in our society?

In a 1931 book written by Margaret Wilson (the wife of a prison governor), she stated:

I kept on inquiring diligently, without ceasing, into the real reasons for shutting men inside prisons. And the shattering discovery was that there is no acceptable reason for shutting four-fifths of the present prisoners in prisons – and none for letting the other fifth out. Not only is there no reason for doing it, but there is no excuse for doing it. I had supposed in my thoughtlessness that prisons exist because there are

⁵⁷ Foucault *supra* note 25 at 277.

⁵⁸ Christie, Nils (1993). *Crime Control as Industry*. New York: Routledge.

criminals. I began to see that there are criminals largely because there are prisons.⁵⁹

The concept that there are criminals because there are prisons challenges the notion that prisons are a useful method of crime control. That is, if prisons were simply a method of crime control, then the opposite would be true – we would need prisons because of criminals. However, Margaret Wilson believed that we needed criminals because we had prisons to fill.

One way of looking at crime is to perceive it as some sort of basic phenomenon where certain acts are inherently criminal. That is, they are so wrong that they define themselves as criminal acts, such as murder. But if this were the case, then there would be limitations on what crime is, and this is not the case. Christie argued:

...acts are not, they *become*. So also with crime. Crime does not exist. Crime is created. First there are acts. Then follows a long process of giving meaning to those acts. Social distance is of particular importance. Distance increases the tendency to give certain acts the meaning of being crime, and the persons...meaning of being criminals.⁶⁰

Our current social system has “changed into one where there are fewer restraints against perceiving even minor transgressions of laws as crimes and their actors as criminals.”⁶¹ Therefore, the traditional view where increases in imprisonment represent an increase in criminal activity may be too narrow a perspective. It is not in harmony with the current situation where we have an unlimited reservoir of acts which can be defined as crimes.⁶² Christie goes further to state:

This new situation, with an unlimited reservoir of acts which can be defined as crimes, also creates unlimited possibilities for warfare against all sorts of unwanted acts. With a living tradition from the period where natural crimes were the only ones, combined with an unlimited reservoir of what can be seen as crimes in modern times, the ground

⁵⁹ Wilson, Margaret (1931) in Dunbaugh, Frank (1991). “Where Should the Movement Move?” Paper presented to the Fifth International Conference on Penal Abolition, Bloomington, IN.

⁶⁰ Christie *supra* note 58 at 23.

⁶¹ *Ibid.*

⁶² *Ibid.*, at 26.

has been prepared. The crime control market is waiting for its entrepreneurs.”⁶³

The size of our prison population is a normative question. The numbers are arbitrary and crime control has become an industry well suited for growth. Christie eloquently states that, “wealth everywhere is unequally distributed. So is access to paid work. Both problems contain potentialities for unrest. The crime control industry is suited for coping with both.”⁶⁴ The numbers of our prison population are arbitrary because the crime control industry has no lack of ‘raw-material’ because crime is in an endless supply.

And it is growing. The prison is an industry and as Christie argues:

Only rarely will those working in or for any industry say that now, just now, the size is about right. Now we are big enough, we are well established, we do not want any further growth. An urge for expansion is built into industrial thinking, if for no other reason than to forestall being swallowed up by competitors. The crime control industry is no exception. But this is an industry with particular advantages...there are so few natural enemies around.⁶⁵

The numbers of our prison population are not indicative of crime within our country. The size is our choice, not our destiny. Christie argues:

In our present situation, so extraordinarily well suited for growth, it is particularly important to realize that the size of the prison population is a normative question. We are both free and obliged to choose. Limits to the growth of the prison industry have to be man-made. We are in a situation with an urgent need for a serious discussion of how large the system of formal control can be allowed to grow...the size of the prison population is a result of decisions. We are free to choose...Crime control is an industry. But industries have to be balanced.⁶⁶

So if what we label criminal is arbitrary, and the population of our prisons is also arbitrary, and if all of this occurs by choice, where does that leave us? Perhaps, as easily as it has become the model for crime control, it could as easily cease to be of use.

⁶³ *Ibid.*, at 24.

⁶⁴ *Ibid.*, at 13.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*, at 14-15.

The Disenfranchised

Consequently, if prisons are full because we choose to label acts criminal, then it follows that the crimes we choose to label fulfill some sort of societal need. That is, prisons and crime become a way to criminalize those we feel should be under some type of social control. The unlimited reservoir of acts which can be defined as criminal can be put to various uses. Is it a coincidence that in all Western countries, prisons are over-populated with minorities, Aboriginals in Australia, First Nations People in Canada, and African Americans in the United States? Prisons control the 'dangerous', and the question then becomes who are we trying to control, and whom have we labeled dangerous?

The criminal justice system is over-populated with those who are economically or socially disenfranchised. For example, there is currently an over-representation of First Nations men and women in our federal prisons. Aboriginal people represent 15 percent of the federal prisoner population in Canada, even though they only represent approximately 3 percent of the general population.⁶⁷ Further, the proportion of Aboriginal people is greater in prison (17.2 %) than under supervision within the community (11.7 %).⁶⁸ Finally, in September 2000-2001, 23 percent of women and 18 percent of men in federal prisons were Aboriginal.⁶⁹

As mentioned before, Christie stated that not only is wealth everywhere unequally distributed, so is access to paid work. He also argued that both of these problems can be dealt with by the crime control industry. Unemployment does not imply a lack of work, but rather a lack of paid work. This, as Christie argues, is an organizational problem, one with

⁶⁷ *Basic Facts about Federal Corrections supra* note 49.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

severe social consequences.⁷⁰ This leaves us with a 'surplus' population, the 'empty hands', those outside production. They have been a problem since the earliest stages of industrialization.

Prison became the method for control of this dangerous population.⁷¹ This 'war', as Christie defines it, became one that was in harmony with the welfare model:

One element of welfare is to care for people, care for them even against their own wishes, and also to protect the vulnerable against the dangers in life. This can easily lead to coercive treatment of those regarded as in need, and to harsh penal measures against those regarded as a danger to the rest of the population.⁷²

This model strengthens the control of the state over the potentially 'dangerous' classes, the unemployed and the homeless. It became a war against the people conceived to be the "least useful and potentially most dangerous parts of the population".⁷³ Christie referred to them as 'social junk' because they exemplify everything that is not quite right in the 'social fabric', and as such they are a constant source of potential unrest.⁷⁴

They become tempting for penal intervention:

The increased unemployment is reflected in an increased quota of people on skid row. Poverty has again become visible. The homeless and the unemployed are out in the streets. They hang around everywhere, dirty, abusive, provocative in their non-usefulness...Hiding places in slums and dark corners have been replaced by heated arcades leading into glittering shopping paradises. Of course, homeless and/or unemployed persons also seek these public alternatives to the places of work and homes they are barred from. And as an equal matter of course they are met with agitated demands to get them out of sight and out of mind...And now these categories are even more suited for penal action...The illegality creates a clear-cut difference between "them" and "us".⁷⁵

⁷⁰ Christie *supra* note 58 at 60.

⁷¹ Christie argued that the war against drugs provided the perfect method of dealing with the surplus population. However valid, this analogy is far too simplistic, thus I will use Christie's arguments in a much broader context.

⁷² Christie *supra* note 58 at 65.

⁷³ *Ibid.*, at 69.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, at 68.

These people are socially distant and create disgust and fear. They are in a highly vulnerable position, and thus become 'raw-material' for the crime control industry.

The failure of prisons becomes useful. Not only does it create a source of identifiable delinquents, but it also provides a method to rid ourselves of those who show us everything that is wrong with our society: the homeless, the drug-users, and the disenfranchised. As previously argued, prisons are not a method of crime control, they are a method of social control. That is, the prison has become our way of removing those who are perceived as dangerous, the disenfranchised population who appear to impose some type of threat. So we incarcerate them, and this becomes the rationale of the prison system. But, it is a counter-productive move. Irwin argued:

So we have a growing underclass menacing us. We are responding by placing larger and larger numbers of them in prison, holding them, and then after they have been further alienated and socially crippled, releasing them back into our midst... We have created this category of disreputable rabble, tried to control it by imprisoning its members. Now we have completely desocialized them and given them the added stigma of having been in prison. And you think this is going to make us safer?⁷⁶

Once incarcerated, our prisoners are completely desocialized and further alienated from society. Yet we respond by placing more and more of our disenfranchised populations in the prison. Upon release, they have lost many of their ties with friends and family, and have become institutionalized to the extent that they may be unable to cope without the strict rules that operated while they were in prison. And yet this alienation they experience is supposed to rehabilitate them so that they can function in society as law-abiding citizens. The entire process is seemingly illogical. The prison is supposed to make us 'safer' and them 'better', by removing all sense of self and belonging.

⁷⁶ Irwin, John (1996). "The March of Folly". *The Prison Journal* 76 (4): 498-494 at 492.

CONCLUSION

The prison marked an innovative shift from punishing the body to punishing the soul, and regardless of its outcomes, it was meant to be a humanitarian intervention. However, while punishments appeared to lose some of their intensity, it did so at the cost of greater intervention, and increased invisibility of punishment. This increased invisibility of punishment led to an increased acceptance of punishment, which to maintain its legitimacy had to continually increase the severity of its punishments. The result of this, was/is longer, harsher punishments, which continue to increase.

It was not the intention of early reformers that the prison should become one of the dominant methods of punishment. Rather, it was their intention that there be a variety of punishments to match a variety of criminal activities. However, shortly after its inception, the prison system expanded, and its use has increased across the Western world ever since. The prison, which was deemed responsible for controlling delinquency, became rather a method for creating it. Many of those who had been criminalized, were repeatedly put through the system. If we analyze prisons without an assumption that they are a method of social control it appears that the purpose of the prison is to continue support for the criminal justice system as a whole. That is, the failure of prisons to reduce delinquency and crime, is actually responsible for its increased and continued use.

Justified by claims that the prison performs the functions of retribution, deterrence, incapacitation and rehabilitation, it has gained even more dominance as a method of crime control. However, analyzed on the simplest of terms, these 'goals' of prisons are filled with internal fallacies. Mathiesen argued that the prison is a "giant standing on clay soil."⁷⁷ That

⁷⁷ Mathiesen, Thomas (2000). "Towards the 21st Century: Abolition – An Impossible Dream?" pp. 333-353 in W Gordon West and Ruth Morris (eds.). *The Case For Penal Abolition*. Toronto: Canadian Scholars Press at 339.

is, the prison is a seemingly solid system with very poor underpinnings. "The Achilles heel, the clay soil, of the prison is its total irrationality in terms of its own stated goals."⁷⁸

Above all, the prison is an expensive failure. It produces rather than reduces crime, and it does so at an enormous financial cost. Also, while the numbers of our prison population are perceived as indicators of criminal activity, it has been argued that these numbers are arbitrary. That is, our prison population is an indicator of the amount of activity we have chosen to label criminal. Further our prison population consists mostly of those people who appear to impose some type of social threat. That is, the people who are outside of production, the disenfranchised who remind us of everything that is wrong with our society. We remove these unwanted people by placing greater and greater numbers of them behind prison walls. We alienate, institutionalize and desocialize them for the benefit of greater society.

In spite of the apparent problems with the prison system, Canada has set the ground to build five more federal prisons for federally sentenced women. However, before we explore this development, it necessary to understand the history behind the federal prison system for women in Canada.

⁷⁸ *Ibid.*

CHAPTER THREE: THE HISTORY OF CANADA'S FEDERAL PRISONS FOR WOMEN (1835 – 1989)

Prisons were constructed in the 19th century parallel to the gradual reduction and eventual elimination of capital punishment in most Western countries. Theoretically, prisons were seen as the humanitarian alternative to punishments of torture and, as argued in Chapter Two, prisons signified a change from punishment of the body to punishment of the soul. But, the history of punishment for female offenders in Canada “reveals a fascinating mixture of neglect, outright barbarism, and well-meaning paternalism.”⁷⁹ It was apparent from the very beginning that women prisoners would be housed in any manner that suited the administration of the larger male prison population. As such, the history of women’s prisons in Canada is one of neglect and inequality. And as a result of their small numbers, women prisoners in Canada were often viewed as an ‘inconvenience’.

The following chapter provides an introduction to the history of federally sentenced women, beginning in the early years when women prisoners served their sentences within the walls of the men’s Kingston Penitentiary. From this period onward, women prisoners were the subject of numerous commissions, studies and reports.⁸⁰ As will be detailed, one

⁷⁹ Cooper, Sheelagh (Dunn) (1987). “The Evolution of the Federal Women’s Prison” pp. 127-144 in Adelburg, Ellen and Claudia Currie (eds.). *Too Few to Count: Canadian Women in Conflict with the Law*. Vancouver: Press Gang Publishers at 127.

⁸⁰ These include: *Report of the Royal Commission to Inquire and then Report upon the Conduct, Economy, Discipline and Management of the Provincial Penitentiary* (1849), (Brown Commission); *Annual Report of the Directors of Penitentiaries* (1868), (Ottawa: King’s Printer); *Report of the Royal Commission on Penitentiaries* (1914), (MacDonnell Report); *Report on the State and Management of the Female Prison at Kingston Penitentiary* (1921), (Ottawa, King’s Printer); *Report of the Committee Appointed by the Right Honourable JC Doherty, Minister of Justice to Advise Upon the Revision of the Penitentiary Regulations and the Penitentiary Act* (1921), (Briggar, Nickle and Draper Report); *Report of the Royal Commission to Investigate the Penal System in Canada* (1938), (Archambault Commission); *Report of the General RB Gibson Regarding the Penitentiary System in Canada* (1947), (Ottawa: King’s Printer); *Committee Appointed to Inquire into the Principles and Procedures Followed in the Remission Service of the Department of Justice* (1956), (Fauteux Report); *Report of the Canadian Committee on Corrections* (1969),

such report was responsible for the creation of a completely separate institution for women, the Prison for Women in Kingston (popularly called P4W). Since its construction, at least thirteen reports have recommended its closure. This chapter will examine the history of P4W, specifically looking at the various commissions and reports up to 1989, the year prior to *Creating Choices*, the Report of the Task Force on Federally Sentenced Women.

THE EARLY YEARS

In the early part of the nineteenth century women offenders were housed in separate units in the men's Kingston Penitentiary in Kingston, Ontario. Kingston Penitentiary had been built in 1835, and it was shortly after its construction that the first two women were sentenced to imprisonment. Mary Ingram from Toronto was sentenced to one year for accessory to larceny, and Mary Anne Lane from Midland arrived later that year to serve one year for grand larceny.⁸¹ In these early years, women prisoners were convicted primarily of drunkenness, theft and prostitution, and were literally hidden away under abominable conditions in the attic of the men's prisons. The primary task of these women prisoners at the time was to make and mend the bedding and clothing of the male prisoners. Cooper argued "it was clear from the beginning that, because of their small numbers, women would

(Ouimet Report); *Royal Commission on the Status of Women in Canada* (1970), (Ottawa); *Report of the National Advisory Committee on the Female Offender* (1977), (Clarke Report); *Report of the Subcommittee on the Penitentiary System in Canada* (1977), (MacGuigan Report); *Report of the Joint Committee to Study the Alternatives for the Housing of the Federal Female Offender* (1978), (Chinnery Report); *Report of the National Planning Committee on the Female Offender* (1978), (Needham Report); Jackson, Michael (1988). *Justice Behind the Walls: A Report of the Canadian Bar Association Committee on Imprisonment and Release*. British Columbia Law School: Canadian Bar Association; *Standing Committee on Justice and Solicitor General on its Review of Sentencing, Conditional Release and Related Aspects of Corrections* (1988), (Daubney Report). The majority of these reports will be discussed within this chapter.

⁸¹ Cooper *supra* note 79 at 129.

be confined wherever and in whatever manner that best served the administration of the larger male population.”⁸²

Criticism in the 1840s, including a public outcry against the flogging of the women and children inside Kingston Penitentiary, led to the first royal commission in 1848, popularly called the Brown Commission. This investigation criticized the prison for its mismanagement of prisoners, in particular women and children. The report confirmed severe abuses, the neglect of women prisoners, and a general lack of accountability on behalf of prison administrators.⁸³ The Commission found wide use of corporal punishment for such behaviour as bad language, refusing to wear shoes, and insulting staff members.⁸⁴

The Brown Commission recommended numerous changes, including the building of a new, separate unit for women prisoners inside the walls of Kingston Penitentiary. This was spurred by the recognition of the living conditions women prisoners were subjected to:

The sleeping cells were frightfully over-run with bugs, especially in the spring of 1846; the women used to sweep them out with a broom. It was so very bad, that on one occasion it was suggested to the warden to let the women sleep in the day room and [the matron] would sit up all night with them, and be responsible for them; the warden would not consent. The women suffered very much, their bodies were blistered with the bugs; and they often tore themselves with scratching.⁸⁵

The Brown Commission provided the impetus toward change that was only partly realized in the following decade. In 1851, penitentiary legislation was changed to include a reduction and regulation of the severity of punishment, as well as the removal of mentally ill women to the lunatic asylum of Upper Canada.⁸⁶ However, the recommendation to build a

⁸² *Ibid.*, at 129.

⁸³ Arbour, The Honourable Louise (1996). *Commission of Inquiry into Certain Events at the P4W in Kingston (The Arbour Commission)*. Ottawa: Public Works and Government Services Canada at 239.

⁸⁴ Cooper *supra* note 79 at 131.

⁸⁵ The Brown Commission *supra* note 80 at 34.

⁸⁶ Cooper *supra* note 79 at 132.

separate unit for women prisoners was not implemented. This resulted in the shuffling of women from one inadequate location inside the men's prison to another.

However, by the 1860's, the numbers of women prisoners became too great for the 'temporary' location that was set up for them in 1846. The location, which now housed approximately 26 women prisoners⁸⁷, had become far too cramped, where some women were forced to sleep in the corridor due to lack of available cells. This prompted the Warden to ask for the building of a women's prison outside the walls of the men's prison, but this demand was denied. By the year 1881, the number of women prisoners in Kingston penitentiary had dropped to 15.⁸⁸

Regrettably, no action was taken and conditions for the women prisoners remained poor. In addition, productive activity for the women was also in short supply, limited to typically 'female' pursuits, such as the manufacture of inmate clothing and other needlework activity including the making of aprons, bonnets, pillowcases and socks.⁸⁹

In 1889, Inspector James G. Moylan, referring to the women's area of Kingston Penitentiary, stated as follows: "I have always considered this portion of the penitentiary unfit for the use that is made of it. Apart from its objectionable proximity to the male prison, the cells being underground in a gloomy and dismal compartment is sufficient cause for recommending change."⁹⁰ However, no changes to the women's situation were made until 1909 when a partial remedy was decided upon: a new, separate prison for women would be constructed, but still within the walls of Kingston Penitentiary.

⁸⁷ *Ibid.*, at 131

⁸⁸ Correctional Service Canada (2000). *The Closing of Prison for Women in Kingston*. Ottawa: Solicitor General Canada.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

It was in 1913, sixty-five years after the first recommendation, that a separate unit for women prisoners was erected. There were 32 single-occupancy cells and two double sick-bay cells. However in 1914, the Royal Commission on Penitentiaries, prompted the re-examination of the entire penal system.⁹¹ With regards to women, it recommended that they be turned over to provincial jurisdiction, in order that women could be placed closer to their homes. This was seen as 'retrogressive' by the prison administration largely because the new facility had recently been created for women.⁹²

In 1921, the Nickle Commission was appointed to investigate the management of the female prison. At this time there were approximately 27 women prisoners who occupied Kingston Prison.⁹³ This Report was historically significant since it was the first report commissioned to look exclusively at the situation of women prisoners. The investigation appears to have been prompted by allegations concerning "undue sexual familiarity between the male deputy warden of the institution and the female inmates," although these suspicions were not substantiated in the Report.⁹⁴ The Nickle Report recommended numerous changes, and expressed concern over a range of other problems within the prison. It demanded that the women's pay be increased to provide an incentive for their work. The Report also recommended that the antiquated laundry equipment be replaced by modern electric washing equipment. It objected strongly to the fact that prisoners were forced to do the personal laundry of staff.

Additionally, the Nickle Report expressed concern over a range of other issues, including the cold concrete floor, the walls in need of painting, that women were released with minimal resources in garments identifiable as prison clothes, that the women were kept

⁹¹ *Report of the Royal Commission on Penitentiaries* (1914) *supra* note 80.

⁹² Cooper *supra* note 79 at 133.

⁹³ *The Closing of Prison for Women in Kingston* *supra* note 88.

⁹⁴ Cooper *supra* note 79 at 133.

in their cells for too long, and that they should have their own library, and receive instructions of reading.⁹⁵

The thrust of the Nickle Commission was that women prisoners should be housed in completely separate and isolated prisons, away from both male prisoners and male guards.⁹⁶ Reverting to the popular belief at the time, the Nickle Report relied on the idea that women who were criminal were sexually maladjusted, and that their deviance originated in their sexuality. As such, Nickle's views are not surprising:

Without doubt the women, more particularly at certain periods, are thrown into a violent state of sexual excitement by the mere sight of men...and my attention was called to one instance of this group of cases where a sedative had to be given to soothe desire...as a matter of fact, today the male staff, from the warden down, view with apprehension the administration of the female prison...any decent officers are fearful, knowing that a few designing, crafty women might ruin a well-earned reputation."⁹⁷

In spite of such views, the Nickle Report appeared to improve conditions in the female section of the penitentiary. Unfortunately, the Report failed to recognize the importance of proximity to one's home and community as part of the reintegration process upon release from prison. As such, the recommendation was made to build a separate facility outside the walls of the men's prison. This recommendation was historically significant since it provided the impetus to build the present Prison for Women (P4W), and subsequently removed the pressure to house women prisoners in provincial jurisdictions closer to their homes and families.

⁹⁵ The Nickle Commission *supra* note 80.

⁹⁶ Arbour *supra* note 83 at 240.

⁹⁷ Cooper *supra* note 79 at 135.

THE PRISON FOR WOMEN (P4W)

On the recommendation of the Nickle Commission, the construction of a separate facility for women prisoners outside the walls of Kingston penitentiary began in 1925 and was completed in 1934. During this time, the population of women prisoners ranged from 27 women prisoners to a high of 46 women prisoners.⁹⁸ The Prison for Women (P4W) was, and presently is, located across the road from its male counterpart, and since its inception there have been numerous commissions and reports criticizing its existence. The Prison for Women is surrounded by a sixteen-foot wall topped with ten feet of woven wire fabric and barbed wire, as well as electric lights placed at 100 foot intervals. The only aspect of the building that distinguished its appearance from its male counterpart was the absence of guard towers, which provided the rationale for the fencing.⁹⁹ The prison itself had the capacity to house 100 women prisoners, although there were only 34 women imprisoned within Kingston Penitentiary when the new Prison for Women opened.¹⁰⁰

At the time, the construction of a separate prison for women was seen as a viable and necessary solution to the dilemma of federally sentenced women. However, as we shall see, numerous reports have indicated since the opening of P4W, that the isolation of the women has led to their further marginalization and discrimination.¹⁰¹ Cooper argued:

The prisoners were all confined in cells, and they no longer had outside windows as had been the case in the old prison. There was no recreation ground within the enclosure, no provision for outdoor exercise or recreation of any kind, and no educational facilities for the female prisoners...Although the women now had their own institution, its operation was not independent. Rather, the inmates retained their "afterthought" status under a system in which the management of the prison continued to be one of the tasks of the warden of the Kingston Penitentiary...With the opening of the new prison, all federal female offenders were gathered in Kingston in order to increase the cost-effectiveness of the operation. This meant the system

⁹⁸ The Archambault Commission *supra* note 80 at 313.

⁹⁹ Cooper *supra* note 79 at 137.

¹⁰⁰ The Archambault Commission *supra* note 80.

¹⁰¹ Arbour *supra* note 83 at 240.

which had once allowed for a modicum of decentralization was now obsolete.¹⁰²

The 1930s & 1940s

In 1938, when the Prison for Women population was at a low of approximately 29 women prisoners¹⁰³, a Royal Commission investigating the penal system encountered what it called “inferior conditions” at the new institution for women. Although only four years after the opening of P4W, this Commission, named the Archambault Commission, recommended the closure of the institution, and reiterated the 1914 recommendation that the women should be returned to their home provinces.

The Archambault Commission criticized numerous aspects of the institution, the first being the cost of the construction of the institution, which it considered “an expenditure wholly unwarranted for an institution of this character.”¹⁰⁴ Additionally, the commissioners found that the construction of the institution was unnecessary for women prisoners, and the boundary and grounds were in a disgraceful condition.¹⁰⁵

The strongest recommendation from the report was that the number of prisoners confined in Kingston Penitentiary did not justify the erection of a new women’s prison, and that its further existence was unjustified.¹⁰⁶ The Archambault Commission contended that women would be better off staying within their home provinces which, in addition to allowing these women visitations from their family, would also reduce the cost of transporting prisoners from the east and west. In addition to stressing the limitations of one central facility for federally sentenced women, the report also stressed the absence of

¹⁰² Cooper *supra* note 79 at 137.

¹⁰³ The Archambault Commission *supra* note 80 at 313.

¹⁰⁴ *Ibid.*, at 312.

¹⁰⁵ *Ibid.*, at 314.

¹⁰⁶ *Ibid.*, at 316.

meaningful work, and the inadequacy of existing programs.¹⁰⁷ Finally, the report also argued that women as prisoners were not a custodial problem. Despite the strength of the recommendations and the Commission's 'disgust' with the current state of P4W, no significant changes to the state of federally sentenced women were realized.

The 1950s & 1960s

The years of 1951 to 1952 saw some changes within the walls of Prison for Women for the then 121 women prisoners.¹⁰⁸ The library was expanded, typing classes were offered, a beauty parlor was completed, and activities such as knitting and embroidery were encouraged.¹⁰⁹ These changes, however, were largely cosmetic, and the thrust of the Archambault Commission that the Prison for Women was an unnecessary institution was ignored. Throughout these years, P4W never operated at more than seventy five percent capacity until the 1950s when the incarceration of the Doukhobor protesters from British Columbia, as well as increasing numbers of drug offenders, saw a vast increase in the number of incarcerated women.¹¹⁰ Rather than strengthening the push to close P4W and move the women back to their home provinces, the increased numbers prompted prison officials to expand the prison by fifty beds in 1960. Despite the fact that many of Archambault's recommendations were ignored, the Commission paved the way for a lengthy trail of commissions, studies and recommendations.

¹⁰⁷ Arbour *supra* note 83 at 242.

¹⁰⁸ *The Closing of Prison for Women in Kingston* *supra* note 88.

¹⁰⁹ *Ibid.*

¹¹⁰ Cooper *supra* note 79 at 139. The Doukhobors are members of a Russian religious sect who emigrated to Canada in the late 1890's, first to what would become Saskatchewan and then to Southern British Columbia. Their beliefs led to many conflicts with the Canadian authorities. For more information please visit <http://www.ualberta.ca/~jrak/doukhobors.html>.

In 1956, the Fauteux Commission¹¹¹ also examined the operations at the Prison for Women for the then 82 women prisoners, but within the context of the treatment and classification of prisoners. The Commission emphasized the need for better access to health care, and an improvement to vocational and educational training, which was not being offered to women prisoners because of their small numbers. Unlike the Archambault Commission, this report was in favour of maintaining one central facility for women, citing that their small numbers and static population provided an advantage to correctional planning. The Commission stated:

...it has been represented that it is difficult, if not impossible, with the small group that is at any time ordinarily confined in the Women's Prison in Kingston, to provide a suitable variety of medical, educational and vocational treatment. It appears to us, however, that this institution, with a relatively small and comparatively static population, is precisely the kind of institution where the various forms of treatment mentioned above could most readily be carried on.¹¹²

In 1968, when the women's prison population at P4W was only 75 women, the Ouimet Committee¹¹³ was established to look at corrections in Canada and its final report reiterated what had been said many times since the inception of P4W: the arrangement of sending all federally sentenced women to one institution created many problems. The Committee argued that the woman's separation from her family caused hardships to the prisoner while she was incarcerated and made pre-release planning difficult. Additionally, the problem of the lack of French-language programs was two-fold. First, the lack of such programs made Quebec courts reluctant to impose a sentence of two years or more and, second, the small population at P4W made operating two programs, one in English and one in French, impractical. The final issue with one central facility for women identified by the Ouimet Report was that the population was made up of a wide range of prisoners in terms

¹¹¹ The Fauteux Commission *supra* note 80.

¹¹² *Ibid.*, at 41.

¹¹³ The Ouimet Committee *supra* note 80.

of age, criminal history, and emotional stability. Ideally, these prisoners should be housed in separate facilities, rather than in one central location.¹¹⁴

The Committee proposed the decentralization of the federal population of women prisoners and asked that women sentenced to federal time be allowed to serve their term within the institutions of their home province.¹¹⁵ This resulted in the *Federal-Provincial Exchange of Services Agreements* (ESA) that allowed federally sentenced women to serve their time in provincial institutions. These agreements allow the reciprocal exchange of offenders between federal and provincial jurisdictions. The transfer of a federal prisoner to a provincial prison is strictly voluntary and based upon a woman's needs to be close to her family and/or her needs for specific programs or services. Additionally, once a prisoner is transferred to a provincial jurisdiction she is subject to all the statutes, regulations and rules applicable in the receiving jurisdiction. That is, once transferred the woman essentially becomes a 'provincial' prisoner.¹¹⁶

The 1970s

Shortly after the release of the Ouimet Report, the *Royal Commission on the Status of Women in Canada*¹¹⁷ outlined several barriers facing women with regards to equitable treatment. This Commission marked a fundamental shift in thinking about women and their right to equality. Specifically with regards to federal corrections, the Commission made

¹¹⁴ *Ibid.*, at 400.

¹¹⁵ *Ibid.*, at 401.

¹¹⁶ For more detailed information on Exchange of Services Agreements, or other interjurisdictional agreements please see the *Commissioner's Directive – Interjurisdictional Agreements (CD 540)* (2000). Ottawa: Correctional Service of Canada.

¹¹⁷ *The Royal Commission on the Status of Women in Canada* *supra* note 80.

numerous criticisms and recommendations for changes. One criticism was the lack of adequate services for the treatment of women offenders.¹¹⁸ The Commission stated:

...programmes and services for women in prison in the correctional institutions in Canada are very limited. In the prison for women at Kingston...the only vocational courses available...were commercial, home economics and hairdressing, which lead only to jobs traditionally considered "female occupations". Classes in basic academic subjects are also organized...In contrast, men in all federal prisons at the same time were offered 64 full-time courses providing training in 29 trades or occupations...¹¹⁹

The Commission also argued that programmes offered in provincial institutions did not provide a better alternative. The turnover rate at provincial institutions was too high, and federal prisons offered a greater opportunity to provide vocational training. The Commission contended that it was essential to offer an offender further education and/or training, and that female offenders have the same need for this as men. As such, women prisoners should be given the opportunity to train for the labour market for positions that are not only in traditional female occupations.¹²⁰

Additionally, the Commission repeated what had been said in the Ouimet Report, that federally sentenced women posed few custodial problems, and further argued that this should allow for reduced security requirements in the Prison for Women.¹²¹ The Commission recommended that federally sentenced women be offered more "flexible and imaginative programmes aimed at rehabilitation of women offenders."¹²² They called for 'appropriate' living quarters in small 'open' institutions that are integrated with the neighbouring communities as much as possible. The Commission also requested that programmes and services, such as education and vocational training, be adapted to the needs

¹¹⁸ *Ibid.*, at 378.

¹¹⁹ *Ibid.*, at 383.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*, at 378.

¹²² *Ibid.*, at 383.

of women offenders. The Commission also requested personnel who were specifically trained to work with female offenders be employed.¹²³ Finally, the Commission, similar to the Archambault Commission of 1938, recommended that P4W be closed.

In 1974, in recognition of the desperate need for changes in regard to the now 154 federally sentenced women, the Solicitor General Canada commissioned another report (known as the Clarke Report).¹²⁴ This Report, published in 1977, was established specifically to determine the future of federally sentenced women, and to make recommendations for suitable and adequate institutional and community services. The Clarke Report recognized the uniqueness of women's offending. That is, women do not tend to commit crimes against another person, but rather they commit offences that are considered 'nuisance activities' such as theft, prostitution, breaking and entering, and drug-related offences.¹²⁵ These offences are often nonviolent in nature. The Clarke Report also documented the 'special needs' of women prisoners such as a low self-image, weak family ties, and a tendency to self-mutilate.¹²⁶ Additionally, women usually do not receive prison sentences until they have had a number of offences, and during this period there are limited community-based alternatives for women in conflict with the law. Therefore, by the time a women receives a prison sentence, "a great number are severely damaged."¹²⁷

The report also acknowledged that because of the small number of women in custody, segregation had been viewed as impractical. As such, there was a heterogeneous

¹²³ *Ibid.*, at 383-84.

¹²⁴ The Clarke Report *supra* note 80.

¹²⁵ A sampling in mid-April, 1977, of the federal female inmates reflects the character of crime by women. 75 percent of their crimes did not involve violence; 35 percent are drug-related. The detailed breakdown of the 140 inmates in the Prison for Women on April 14, 1977 is as follows: Murder, 9; manslaughter, 12; sex, 1; wounding, 1; assault, 2; robbery, 22; break and enter, 7; prison breach, 4; theft, 4; possession of stolen goods, 3; fraud, 17; kidnapping or abduction, 2; possession of offensive weapons, 1; narcotics, 49; other, 6. The MacGuigan Report *supra* note 80 at 135.

¹²⁶ The Clarke Report *supra* note 80 at 14.

¹²⁷ *Ibid.*

and possibly problematic composition of prisoners. That is, the prisoner population was comprised of women of varying sentence lengths, the mentally ill, the mentally handicapped, those who are violent and disruptive, the institutionalized, as well of women from different cultures who speak different languages.¹²⁸

The Committee's central concern was, like many before it, the geographic dislocation of prisoners living far from their families and communities. The Report argued that one central facility removed women from their families and communities, caused a women to lose her civil rights if she lives outside the province in which civil action was being taken¹²⁹, and made it difficult to plan for releases which involve community resources. The Clarke Report also reiterated what had been argued by the *Royal Commission on the Status of Women*, that the transferring of women offenders to provincial jurisdictions caused many problems. Primarily, the Report argued that the facilities and programs within provincial institutions are not designed for long-term prisoners; there is great variation in standards among provincial institutions; no mechanism exists to follow up on what is happening with transferred prisoners; there is no existing process for individuals to launch grievances; and provinces may refuse to take or keep a prisoner against her wishes.¹³⁰ The Report also criticized the lack of programs, inadequate classification of prisoners, the lack of Francophone and Aboriginal services, the alienation of staff, and finally, the outdated architectural structure of P4W.¹³¹ All of this led again to a recommendation that Prison for Women should be closed, and that this "should be done as soon as possible".¹³²

¹²⁸ *Ibid.*

¹²⁹ for example, matters of divorce, custody or property claims.

¹³⁰ The Clarke Report *supra* note 80 at 24.

¹³¹ *Ibid.*, at 19-20.

¹³² *Ibid.*, at 30.

Also in 1977, the MacGuigan Report¹³³ documented its antipathy with the federal system of corrections for women. The report argued:

One area in which women have equality in Canada – without trying – is in the national system of punishment. The nominal equality translates itself into injustice. But let the injustice fail to be absolute, the equality translates itself into outright discrimination when it comes time to provide constructive positives – recreation, programs, basic facilities and space – for women.¹³⁴

The report continued to criticize the outdated structure of P4W, supporting the argument that existed since the Archambault Report: the Prison for Women should be phased out. The prison was described as “unfit for bears, much less women”.¹³⁵ The Report further argued, “in light of today’s advanced sociological knowledge... [P4W] is obsolete in every respect – in design, in programs and in the handling of people sent there”.¹³⁶ The Report also questioned the use of maximum security design and programming in light of the reality that many women in Prison for Women were medium or minimum security level. Finally, the report argued that because of their small numbers, women in P4W were also deprived of Community Correctional Centres and Community Release Centres, an essential service of reform and transition to society.¹³⁷

In 1978, when the women’s prison population reached an all-time high of 210¹³⁸, the Chinnery Report¹³⁹ was established in response to the Clarke Report to investigate the available options for federally sentenced women. The committee argued that although they were not in favour of building any new institutions for women, P4W in its current state could not meet the security or programme needs of female prisoners.¹⁴⁰ The Chinnery

¹³³ The MacGuigan Report *supra* note 80.

¹³⁴ *Ibid.*, at 134.

¹³⁵ *Ibid.*, at 135.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*, at 136.

¹³⁸ *The Closing of Prison for Women in Kingston supra* note 88.

¹³⁹ The Chinnery Report *supra* note 80.

¹⁴⁰ *Ibid.*, at 1-2.

Report, although calling for the closing of P4W, was in favour of a centrally located facility with a fair degree of security. They listed numerous facilities already in existence to be considered for this institution prior to the building of a new institution. In light of this recommendation, the Committee also stressed that the Federal-Provincial Exchange of Services Agreements continue to be used, and in fact be expanded.

As a result of these recommendations, the Exchange of Services Agreement allowed Francophone women to reside in Maison Tanguay, a provincial institution with French programming.¹⁴¹ While this improved the conditions for some women, the conditions changed very little for the large number of women who remained at P4W.

The 1980s

It was not until 1981 that any more efforts were made. It was then that the Canadian Human Rights Commission rendered a judgment in response to a complaint lodged by Women of Justice, an Ottawa-based group which was concerned with the situation of female offenders. Women of Justice filed a complaint on behalf of the prisoners within P4W, arguing "the conditions in the Prison for Women reflected systemic discrimination in a correctional system which designed its activities to meet the needs of men, and considered women as an after-thought."¹⁴² The complaint alleged sexual discrimination on the part of the Correctional Service of Canada in its treatment of women.¹⁴³

The complaint included the charges that women serving federal sentences were subjected to a lack of educational, vocational, social and recreational programs; a lack of

¹⁴¹ Arbour *supra* note 83 at 244.

¹⁴² Berzins, Lorraine and Brigid Hayes (1987). "The Diaries of Two Change Agents" pp. 163-179 in Adelberg, Ellen and Claudia Currie (eds.). *Too Few To Count: Canadian Women in Conflict with the Law*. Vancouver: Press Gang Publishers at 171.

¹⁴³ *Ibid.*

employment and pay opportunities; no range of security classification; poor facilities; inadequate medical and psychiatric services; and the over-representation of male prison administrators and senior managers.¹⁴⁴ After a seventeen month investigation, the Human Rights Commission upheld all but two of the eleven allegations.¹⁴⁵ It stated "that federal female offenders were discriminated against on the basis of sex, and that in virtually all programs and facility areas, the treatment of federal women inmates was inferior to that of men".¹⁴⁶

Rather than order remedies, the case was sent into conciliation so that Women for Justice and the Correctional Service of Canada (CSC) could negotiate remedial action.¹⁴⁷ The CSC conducted interviews with every inmate asking for her needs in education, vocational and counseling programs, but there was little follow-up. Brigid Hayes, one member of Women for Justice stated about the changes to P4W:

A new activities building was opened, but it was under-used. Word processors were brought in, but to teach keyboarding, not programming. And to bring things into line with the men, the women were told to remove personal possessions from the walls... At the only meeting arranged by the Human Rights Commission with prison officials during the conciliation process, we were asked to propose suitable remedies... we wanted to see long term changes and new tools developed to work with women, while the CSC only seemed interested in cosmetic alterations.¹⁴⁸

While Women for Justice could claim victory since the Human Rights Commission did uphold their charges, the majority of changes of P4W were cosmetic, while others were far from radical, and the issues of geographic dislocation and security classification were not addressed. It did, however, result in the opening of a multi-purpose vocational training school offering woodworking, industrial sewing and some other production operations such

¹⁴⁴ *Ibid.*, at 172.

¹⁴⁵ The charge that few senior policy makers with the Correctional Service of Canada were women was considered outside its jurisdiction; and although it was noted that the majority of administrators were men, the complaint was dismissed.

¹⁴⁶ Cooper *supra* note 79 at 139.

¹⁴⁷ Berzins and Hayes *supra* note 142 at 173.

¹⁴⁸ *Ibid.*

as name tag production. Also, vocational training was available in auto mechanics and carpentry at Collins Bay Institution (a men's medium security institution) for women who met the security requirements. Finally, there was a security matrix system introduced at P4W.

These changes were viewed by Women for Justice and by women prisoners as inadequate. Only a handful of women qualified for the programs available at the men's institution; the name tag production was devoted to the engraving of correctional staff identification tags; and the woodworking program only provided a Grade 10 certificate. Additionally, while the security matrix system resulted in women being classified at their appropriate security level, with the result that only 15 percent were classified as maximum security risks, the rules and regulations governing daily lives of prisoners continued to be determined by reference to maximum security requirements.¹⁴⁹

By 1988 the problems associated with one centralized institution for women and the Correctional Service of Canada's inability to find a solution were once again addressed, this time by the Canadian Bar Association.¹⁵⁰ The Report reiterated what had been said in the numerous Commissions and Reports prior to its own: that P4W was unsuitable for the tasks of custody and rehabilitation of women prisoners.

The Canadian Bar Association criticized the prison administration for 'phasing out' the protective custody unit¹⁵¹ at P4W, which saw the forced integration of protective custody prisoners into the general population. The argument was that this policy of forced integration, which the Prisoners Committee protested, increased the levels of tension and

¹⁴⁹ Jackson *supra* note 80 at 286.

¹⁵⁰ *Ibid.*

¹⁵¹ Prisoners require protective custody by virtue of the nature of their offence, their role as informants or because of difficulties they have encountered with particular prisoners. There are several institutions for men which have been designed specifically for prisoners requiring protection.

violence among prisoners, and resulted in increased punitive measures against general population prisoners and in some of the 'protection' prisoners being locked in segregation.¹⁵²

The report also criticized the Federal-Provincial Exchange of Services Agreements, which, while avoiding the massive dislocating effects of a transfer to P4W, gave rise to numerous other problems. The Association argued that the vocational programs available in provincial institutions were geared toward short-term offenders, and offered few prospects to those serving longer sentences.¹⁵³ The educational programs offered in provincial institutions were focused on basic literacy and some upgrading, but unlike some male federal prisons, they did not offer higher education or university course work.¹⁵⁴

The reality was that a woman serving a long sentence in a provincial institution had even less educational and vocational opportunities than those available to women at P4W. The Association recognized, however, that for most women prisoners, especially those with close family ties and children, remaining in provincial institutions was still the 'lesser of two evils'.¹⁵⁵

The Canadian Bar Association recommendations reiterated what had been argued since 1938. That is, in addition to the Association's recommendation that women prisoners have access to community resources offered by women's groups, it also argued that legislation be introduced to "compel the closure of P4W in a timely way."¹⁵⁶

Also in 1988, the Daubney Committee¹⁵⁷ argued that a large portion of the women's prison population was over-classified because the Prison for Women was constructed as a maximum security building supported by maximum security staffing and services. The

¹⁵² Jackson *supra* note 80 at 287.

¹⁵³ *Ibid.*, at 292.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*, at 293.

¹⁵⁶ *Ibid.*, at 297.

¹⁵⁷ The Daubney Report *supra* note 80.

Committee contended that many women were subjected to a much higher security level than was required. It was noted that this resulted in women again being treated unequally when compared to men. Women prisoners who were classified at either a medium or minimum - security level, were not afforded the same opportunities as male prisoners with the same classification, because regardless of classification all women in P4W were subjected to maximum security programming.¹⁵⁸

The Daubney Report also acknowledged the lack of the opportunity to 'cascade' women offenders. By this, it was meant that male offenders often had the opportunity to gradually lower their security classifications and experience different program options. The inability to 'cascade' women prisoners was yet another disadvantage of one central facility for women offenders.¹⁵⁹

CONCLUSION

From 1835 to 1934 women prisoners were housed within the walls of the Kingston Penitentiary for men. During this period, the women were kept in at least three different locations, and in each case the moves were made because the occupied location was needed for male prisoners. It has always been the case that women prisoners were considered a 'correctional afterthought', despite the numerous Commissions and Reports that sought to bring attention to the problems facing women prisoners.

Prison for Women opened its doors in 1934, and only four years after this date the Archambault Commission recommended the prison's closure, stressing the need for women to be returned to their home provinces where they could be near their families and communities. Despite this initial recommendation, the following Commissions and Reports

¹⁵⁸ *Ibid.*

¹⁵⁹ Arbour *supra* note 83 at 246.

over the next 50 years continued to recommend the closure of the prison and the return of women prisoners to their home provinces without success. One result of the various Commissions was the creation of the Federal-Provincial Exchange of Services Agreements, which allowed some women to return to their home provinces and be closer to their families. But provincial institutions were not equipped with the programs needed for the long-term offender, and thus were considered only a 'lesser of two evils'.

The history of P4W is plagued by a long trail of recommendations that support the closure of P4W. Aside from recommendations of closure, it was also noted that the women within P4W were not in need of such high security measures. Numerous studies indicated that women prisoners did not pose a custodial problem, and the use of P4W resulted in the over-classification of many women prisoners, putting them yet again at a disadvantage to their male counterparts. In addition, it was continuously argued that the medical, educational and vocational programs at P4W were lacking, while there was also intense criticism over the archaic architectural design of the prison.

From almost the very beginning, it was argued that P4W should be closed and the women housed there should be moved to their home provinces. Yet, it was not until the year 2000 that the Prison for Women finally shut its doors. The final task force entitled *Creating Choices*, the Task Force on Federally Sentenced Women, which will be the focus of the next chapter, recommended the closure of P4W and the opening of several regional federal facilities for women in 1990. Ten years later, the regional facilities are open and P4W is closed.

The intense neglect of women prisoners should be surprising because rather than being a correctional afterthought, the small number of women prisoners should have been seen as an advantage, an 'experimental' group, that could indicate what we could do with

prisoners if there were only a few. But Canada's history of federally sentenced women is one of discrimination. However, with the knowledge that P4W is closed and women are now located in their home provinces, the question remains: is their history of neglect is over?

CHAPTER FOUR: CREATING CHOICES, THE REPORT OF THE TASK FORCE ON FEDERALLY SENTENCED WOMEN

In 1990 the government published a remarkable report entitled *Creating Choices*.¹⁶⁰ This was the report of the Task Force on Federally Sentenced Women, and it was seen as a first in terms of establishing a new philosophy toward the governance of federally sentenced women. The Task Force revolutionized women's corrections by developing a 'women-centred' model of prisons. The Task Force, with a unique composition, was co-chaired by representatives from the Correctional Service of Canada (CSC) and the Canadian Association of Elizabeth Fry Societies (CAEFS).¹⁶¹ Two-thirds of the Task Force members were women. Two of these women had served federal sentences, and more than half of the members were from non-government and/or voluntary organizations.¹⁶² No previous government inquiry into women's prisons had included representatives from so many volunteer organizations, Aboriginal or Minority groups, and certainly not women who had personal experience of prison.

There were a number of struggles and sacrifices experienced by the Task Force members to produce a common vision for change. The end result was a recommendation for the closure of P4W, and the construction of four new regional women-centred facilities, and one Aboriginal healing lodge. It has been almost 12 years since the release of the Report on the Task Force on Federally Sentenced Women, and this Report is still the focus of much

¹⁶⁰ Task Force on Federally Sentenced Women (1990), *Creating Choices*. Ottawa: Minister of Supply and Services Canada.

¹⁶¹ The Task Force was a joint initiative between CSC and CAEFS where each organization had one member as a co-chair in both the Working Group and Steering Committee. This is seen as unique because the Task Forces' normally completed by CSC are internally driven, and external representatives are normally included in a consultative capacity.

¹⁶² Hannah-Moffat, Kelly (1995). "Feminine Fortresses: Women-centred Prisons?" *The Prison Journal*. 75(2): 135-161 at 137.

admiration as well as criticism. The mandate was 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 will guide and direct the process in a manner that is responsive to the unique and special needs of this group.”¹⁶³ This chapter will explore the Task Force from its development to its end, examining why the Task Force was needed, its intentions, and also what the Task Force was ultimately responsible for.

While being responsible for changing the conception of federal corrections for women and federal prisons for women in Canada, the Report has not gone without scrutiny. As such, the second half of this chapter will entail a feminist critique of *Creating Choices* from a theoretical perspective. The arguments will discuss various issues surrounding the failure of the Task Force to challenge the traditional conceptualization of punishment. This includes obscuring the idea of ‘imprisonment’; creating a false dichotomy between male and female prisons; essentializing ‘women’; using the term ‘empowerment’; and finally discussing both staffing and classification issues. It is important to stress that this critique is focused upon the theory and language of *Creating Choices*, while Chapter Five will explore the result of *Creating Choices* in practice.

PART A: *CREATING CHOICES*

RE-VISITING HISTORY AND THE CALL FOR ACTION

For more than 50 years, advocates had been arguing for the closure of the Prison for Women (P4W) and for programs that accommodate the needs of Federally Sentenced Women (FSW). Tragic conditions and overt discrimination had been a source of frustration for advocates, researchers, bureaucrats and feminists since the Prison for Women opened its

¹⁶³ *Creating Choices* supra note 160.

doors in 1934, and arguably a source of tension since the first woman was sentenced to federal time in the late 1830's.¹⁶⁴ As previously discussed, these concerns have led to a large number of task forces, commissions and recommendations calling for the closure of P4W. Each report has reiterated the claims of the others, citing similar concerns about sexism, the absence of programming (institutional and community), geographic dislocation, over-classification, cultural insensitivity on the part of Aboriginal Women, language requirements supporting only English-speaking prisoners, and limited space, ventilation, and privacy.

The last major report, *Creating Choices*, appears to have presented a way to break the cycle of apathy and neglect. Although the content of *Creating Choices* is similar to that of previous reports, "the organization, philosophy, and aftermath of this report marks a fundamental shift in thinking and responding to women in prison."¹⁶⁵ The Task Force itself was the consequence of immense social and political pressure on the government by reformers, feminists, Aboriginal organizations, and the media. These groups, combined with sensational tragedies at the Prison for Women, exposed both the prison and the government to increased public scrutiny.

One of the main incentives behind the creation of the Task Force was the increased number of suicides by women imprisoned at P4W, and the resulting inability to deny the horrid conditions in which these women were forced to live. The Task Force itself began with the claim the "pain is often the precursor to change."¹⁶⁶ Specifically, the suicides of two federally sentenced women, Sandy Sayer and Pat Bear, during the life of the Task Force amplified the need to change the situation of federally sentenced women, and spurred the request for the need of something 'new' in federal prisons for women.

¹⁶⁴ A detailed description of the history of Federally Sentenced Women can be found in Chapter Three of this dissertation.

¹⁶⁵ Hannah-Moffat *supra* note 162.

¹⁶⁶ *Creating Choices supra* note 160 in Preface

Additionally, C.B.C.'s *Fifth Estate* expose in 1995, five years after the Report was published, put pressure on the CSC to fulfill the requests of the Task Force.¹⁶⁷ This was perhaps one of the most sensational media exposes on the Prison for Women. *Fifth Estate* graphically showed the events of what has been referred to as the 'April Incidents' and what resulted in the *Commission of Inquiry into Certain Events at the Prison for Women at Kingston, Ontario*¹⁶⁸, where men, as part of an emergency response team were involved in the strip-search and shackling of women prisoners against prison policy. These two events, the suicides and the 'April incidents' made it apparent to the government and the public what advocates had been arguing for over 100 years: something had to be done about the situation of federally sentenced women.

Additional factors also played a part in providing a unique political climate that supported the decision to take action on the problem with federally sentenced women. One factor that played a part was that feminist analyses of the problem had gained credibility. Women's groups stressed that issues of poverty, racism, wife battering and sexual abuse were centrally linked to women's crimes. Also, the founding of the Aboriginal Women's Caucus whose mandate is to speak on behalf of Aboriginal women in conflict with the law was seen as a structural articulation of the link between the demand for Aboriginal people to have more control over justice for their people and corrections.

More specifically, Human Rights complaints, such as the one that alleged sexual discrimination against the Correctional Service of Canada for their treatment of women prisoners (discussed in Chapter Three), emphasized the inequalities and injustices experienced by federally sentenced women and demanded action to address these issues. Another factor playing a crucial role affecting the air of change around federal corrections

¹⁶⁷ C.B.C. Television (February 21, 1995). *Fifth Estate*.

¹⁶⁸ Arbour *supra* note 83.

for women was Commissioner Ole Ingstrup's new mandate that included the objective that stated that there was a need to ensure that the needs of federally sentenced women were met. The series of surrounding trends and events in the correctional system, broader societal support, and increased government reception to a new idea of women's corrections provided the right political climate to create the atmosphere to move toward a new model of corrections for women.

THE PHILOSOPHY & RESEARCH OF *CREATING CHOICES*

As mentioned earlier the composition of the Task Force was one unlike any before. The collection of government and non-government employees, volunteers, women, Aboriginal women, and federally sentenced women promised a unique perspective on the plight of federally sentenced women in Canada. The creation of the Task force began with the appointment of Ole Ingstrup as the Commissioner of the Correctional Service of Canada in the late 1980's. Both CSC and CAEFS attempted to push changes in women's corrections, and after failed attempts to have a Royal Commission, CAEFS finally agreed to the idea of a Task Force.¹⁶⁹

The Task Force did have issues from the very beginning, including a debate over language. CAEFS wanted to use the term 'federally sentenced women' over CSC's term 'federal female offender'. The debate over language led to the withdrawal of CAEFS' offer to be in a partnership with CSC for the Task Force.¹⁷⁰ After the deal fell through, the CAEFS board wrote a letter to the Solicitor General informing him of the issues, and in a subsequent meeting, a deal was reached which led to the joint Task Force between CSC and

¹⁶⁹ MacDonald, Marnie (1999). *Women's Imprisonment in Canada: A Shifting Paradigm?* M.A. Thesis, Department of Law, Carleton University at 55-56.

¹⁷⁰ *Ibid.* at 58.

CAEFS. The Task Force had two components: a Working Group and a Steering Committee. As previously mentioned, each group was co-chaired by a CSC and CAEFS employee.¹⁷¹

In addition to its unique composition, the Task Force also appeared to offer a unique philosophy for women's corrections. Many of the Task Force members adhered to a feminist perspective and a passionate commitment to change. As such, the Report states that it also adhered to a feminist philosophy and also acknowledged the plight of Aboriginal prisoners. The philosophy of *Creating Choices* is based on a 'women-centred' model of research and corrections, that is, to incorporate changes in the way federally sentenced women were governed in a way that acknowledged their unique situation.

To realize this, the Task Force members believed that their knowledge base should be as multidimensional as possible, and to achieve this the Task Force commissioned five research projects. The first project, coordinated by Margaret Shaw, involved individual interviews with federally sentenced women in prison and on parole or mandatory supervision in the community.¹⁷² The intention of this research was to provide the Task Force with as much first-hand information as possible about federally sentenced women, and also to gain a better understanding of the background of women who were, at the time, serving federal sentences.¹⁷³ Information was gathered through interviews conducted with 84 percent of all federally sentenced women, and various information was gathered including histories of abuse, number of women with children, education and employment histories,

¹⁷¹ The Working Group, which conducted the daily work, was co-chaired by Jane Miller Ashton (Director of the Native and Female Offender Programs, CSC) and Felicity Hawthorn (Past President, CAEFS). The Steering Committee provided the overall direction to the Working Group and was co-chaired by Bonnie Diamond (then Executive Director, CAEFS) and James Phelps (Deputy Commissioner, Correctional Programs and Operations, CSC). The latter two were also responsible for negotiating the initial deal between CAEFS and CSC.

¹⁷² Shaw, Margaret (1989). *Survey of Federally Sentenced Women: Interim Report*. Ottawa: Solicitor General Canada.

¹⁷³ *Creating Choices* *supra* note 160 in The Voice of Research.

and various other types of information that “helped increase the sensitivity of Task Force members to the women’s realities”.¹⁷⁴

The second research project was a similar study conducted with federally sentenced Aboriginal women in the community.¹⁷⁵ The purpose of this research was to provide a voice to Aboriginal women when the Task Force pointed to the lack of the views of Aboriginal women in the community. Interviews were conducted with 39 Aboriginal women who had been through the Canadian prison system.¹⁷⁶ The research was non-directive in nature, and allowed for the women’s life stories to speak for themselves.

The third project, also completed by Margaret Shaw, was a historical account of the imprisonment of women in Canada and internationally.¹⁷⁷ The fourth research project was intended to provide an updated report and analysis of programs, services and opportunities available to address the special needs of women serving long-term sentences.¹⁷⁸ Finally, the fifth research project provided an inventory of institutional programs available to federally sentenced women, throughout provincial/territorial and federal institutions.¹⁷⁹

Additional research was used to gain a better understanding of the realities of federally sentenced women. As such, emphasis was placed on including research that contained interviews with federally sentenced women, and the research was based “on the conviction that to create realistic and meaningful solutions for federally sentenced women in Canada, Task Force members, policy makers, advocates and frontline workers need a clear

¹⁷⁴ *Ibid.*

¹⁷⁵ Sugar, Fran and Lana Fox (1989). *Survey of Federally Sentenced Aboriginal Women in the Community*. Ottawa.

¹⁷⁶ *Creating Choices supra* note 160 in *The Voice of Research*

¹⁷⁷ Shaw, Margaret (1989). *The Federal Female Offender: Report on a Preliminary Study*. Correctional Service of Canada: Ottawa.

¹⁷⁸ Axon, Lee (1989). *Model and Exemplary Programs fro Female Inmates: An International Review, Volume One*. Correctional Service of Canada: Ottawa.

¹⁷⁹ Evans, Maureen (1989). *A Survey of Institutional Programs Available to Federally Sentenced Women*. Prepared for the Task Force on Federally Sentenced Women: Ottawa.

recognition of the unique features of the Canadian situation...and good information about the women's experiences of imprisonment..."¹⁸⁰

To fulfill this need, 170 federally sentenced women were interviewed.¹⁸¹ The data gathered showed that these women tend to come from disadvantaged backgrounds, and that federally sentenced Aboriginal women were more disadvantaged as a group than the general population of non-Aboriginal women serving federal sentences.¹⁸² Surprisingly, the data showed that 39 percent of the population were serving sentences for murder or manslaughter, 27 percent for robbery and other minor violent offenses, and 33 percent for non-violent offenses. Additionally, 41 percent of federally sentenced women were first-time offenders, and 50 percent had never been in prison before.¹⁸³

The research went more in-depth than categorizing their criminal offenses. The research investigated what federally sentenced women saw as their 'needs'. One of the major issues addressed was the need to have more control over their physical and mental health.¹⁸⁴ The women expressed a strong need for better access to health care, for the choice to seek second opinions concerning their health, and for the chance to select a doctor or alternate health practitioner.¹⁸⁵ The women also expressed a desire to have contact with their children, regardless of age, and to have visits with their families. Additionally, the women interviewed stressed the need for access to counseling that was not a condition of parole. The research

¹⁸⁰ *Creating Choices* *supra* note 160 in *The Voice of Research*

¹⁸¹ *Ibid.* This was out of a possible 203 women serving federal sentences in prison. Of the women interviewed 39 were Aboriginal, 33 were French-Canadian, and 68 were serving their time in provincial institutions. The women ranged in age from 19 to 75.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

also found that 80 percent of the women interviewed said they had been either physically or sexually abused.¹⁸⁶

The Task Force found that effective programs for drug and alcohol abuse were stated as a need. Sixty-nine percent of the women interviewed stated that drug and/or alcohol abuse had played a major part in their offense, and while acknowledging that treatment programs are available, the claim by the women was that they did not reflect their reality and appeared superficial.¹⁸⁷ Additional needs included reducing language and cultural barriers, and gaining access to marketable skills for work with identifiable qualifications and certificates. Finally, Aboriginal women identified a need for Aboriginal programming to be more readily available.¹⁸⁸

Many of these needs identified by federally sentenced women in *Creating Choices* have been reiterated throughout the long history of Task Forces, Commissions and Reports. The Task Force claims that historically the problem has been narrowly articulated as the problem of federally sentenced women in corrections, and has been defined even more narrowly as the problem of managing federally sentenced women at the Prison for Women.¹⁸⁹ However, this approach ignores the social context of women's reality:

This narrow definition of the problem also mitigates against a holistic understanding of women's experiences and needs an understanding which encompasses physical, emotional, psychological, spiritual and material needs, as well as the need for relationships and connectedness to family and others. If needs are not understood in the context of past, present and future life experiences, if a woman is not seen and treated as a "total person", programs and policies designed for federally sentenced women will continue to be inadequate and dehumanizing.¹⁹⁰

¹⁸⁶ *Ibid.* 68 percent claimed physical abuse, while 54 percent spoke of being sexually abused. A history of abuse was higher among women in P4W than those in provincial institutions. 82 percent of the women in P4W had been abused, and 72 percent of women in provincial institutions spoke of abuse. Among Aboriginal women, 90 percent said they had been physically abused during their lives.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Creating Choices* *supra* note 160 in Understanding the Problem.

¹⁹⁰ *Ibid.*

Against this backdrop the Task Force began its work of making recommendations based upon its research and learning from past experiences.

‘WOMEN-CENTRED’ PRINCIPLES FOR CHANGE

The Task Force relied on five major principles which reflect the core values of the Mission of the Correctional Service of Canada. These principles are empowerment, meaningful and responsible choices, respect and dignity, supportive environment, and shared responsibility, and point to a longer-term goal, which provides for a system that is ‘women-centred’. This goal “...looks toward social change which will reduce inequities in the ways people are treated, and the crimes which stem from these inequities...”¹⁹¹ However, the Task Force recognized the need to create choices *now* to reflect the experiences and meet the needs of women, and to create choices *now* which will reduce harmful actions in the future, while recognizing that legislative restrictions and societal attitudes prevented them from achieving the ‘ideal’.¹⁹² The aim was to create principles encouraging the evolution of this process.

Principle #1: Empowerment

Within *Creating Choices* the idea of empowerment is directly linked with the structural inequities experienced by women in prison.¹⁹³ The Task Force stated that these inequities which are experienced by all women, are experienced even more acutely by federally sentenced women, and again more so by federally sentenced Aboriginal women. As a result, federally sentenced women have little self-esteem and a limited ability to direct their own lives. The Task Force further stated that, “research and the words of federally sentenced

¹⁹¹ *Creating Choices supra* note 160 in *Using the Wisdom to Build the Future*.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

women have repeatedly stressed the connections between women's involvement in the criminal justice system and the inequities, hardships and suffering experienced by women in our society."¹⁹⁴

The high levels of abuse against women in our country, and the increased inequities and abuse experienced by Aboriginal women create attitudes, barriers and suffering which are the consequences of sexism and racism, and erode the self-esteem of women in general.¹⁹⁵ In addition to this, federally sentenced women are typically among those women who experience this sexism and racism, and are often "poorly educated, unemployed and have survived physical and/or sexual abuse".¹⁹⁶ The need for 'empowerment' is required because low self-esteem reduces a woman's ability to cope. According to the Report this increases self-destructive behaviour, and can contribute to violence against others. As such:

...low self-esteem reduces a person's ability to plan for the future, to take responsibility for her actions, and to believe that she can make meaningful choices...Conversely, increased self-esteem augments the ability to accept and express responsibility for oneself, promotes strength and good self-esteem, creating a constructive cycle of empowerment.¹⁹⁷

The Task Force locates the disempowerment of women in two areas: in the structural arrangement of the larger society and within the woman herself, with emphasis placed on the latter.¹⁹⁸

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ Hannah-Moffat *supra* note 162 at 139.

Principle #2: Meaningful and Responsible Choices

In order for women to have control over their lives, which will raise self-esteem and provide empowerment, women need meaningful options that will allow them to make responsible choices.¹⁹⁹ These choices need to relate to:

...their [women] needs and must make sense in terms of their past experiences, their culture, their morality, their spirituality, their abilities or skills and their future realities or possibilities. Meaningful and responsible choices can be provided only within a flexible environment which can accommodate the fluctuating and disparate need of federally sentenced women.²⁰⁰

The need for increased choices flows directly from the principle of empowerment.

Women's dependence upon other people, financial assistance and/or alcohol or drugs limits the availability and opportunity to make choices. Thus, women need to be able to experience the success of making responsible choices, and through such experience will gain control over their lives.

The Task Force, and arguably those before it, recognized federally sentenced women's lack of options, in terms of programs, medical care, and even diet. The argument is that if meaningful choices are provided within the prison, it will provide a more realistic environment in which to foster self-sufficiency and responsibility.²⁰¹ Therefore, prison can become a time to prepare for release.

Principle #3: Respect and Dignity

The third guiding principle for women-centredness is the need for mutual respect among and between prisoners and staff, and that this is a necessary step for women to take responsibility for their lives. This principle is based upon the observation that behaviour in

¹⁹⁹ *Creating Choices supra* note 160 in *Using the Wisdom to Build the Future*.

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

prison is strongly guided by the way prisoners are treated; that is "...if people are treated with respect and dignity they will be more likely to act responsibly."²⁰² It was argued that the rules in the Prison for Women were humiliating and contributed to the women's sense of powerlessness. Under these conditions, it appears that there was little or no respect and dignity given to federally sentenced women, and thus no real attempt to understand and respond appropriately to their needs.²⁰³ The principle of respect and dignity can help move away from the previous method of treating women in a child-like way.

Principle #4: Supportive Environment

The fourth principle is based on a compilation of a number of environments including political, physical, financial, emotional/psychological and spiritual.²⁰⁴ The idea is that a "positive lifestyle which can encourage self-esteem, empowerment, dignity and respect for self and others so necessary to live a productive, meaningful life, can only be created in an environment in which all aspects of the environment are positive and mutually supportive."²⁰⁵ The environments in which federally sentenced women often live are inadequate physically, psychologically and spiritually. Women in prison:

...have...little access to fresh air, to light, to adequate nutrition, to social interactions based on dignity and respect, to ongoing relationships with those important to them outside the institution and spiritual and cultural practices and experiences. They are denied the privacy, quiet, dignity and safety which are so integral to an adequate quality of life. In the community, how much or how little assistance, advice and advocacy a woman receives can determine whether she will integrate in a functional or a dysfunctional way with her environment.²⁰⁶

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

The notion of a supportive environment is closely linked to the objective of empowerment, and indicates that, “through the interdependent nature of all aspects of the environment that equality of programming and security can be achieved.”²⁰⁷ That is, it is not enough to ensure ‘sameness’ of treatment but rather to ensure a sensitivity to the needs and experiences which ensure “equality in terms of meaningful outcome, taking all aspects of environment into account, [becoming] the obvious basis for equality.”²⁰⁸

Principle #5: Shared Responsibility

The final principle outlined in *Creating Choices* is Shared Responsibility, which emphasizes the responsibility of the prisoner, the government, and the community. This encompasses a holistic approach which requires federally sentenced women to take responsibility for their past, present and future actions. Further, to make sound choices, the women must be supported by a “coordinated and comprehensive effort involving all elements of society.”²⁰⁹ The principle is said to be important because:

The holistic programming and multifaceted opportunities which support an environment in which women can become empowered, can only be built on a foundation of responsibility among a broad range of community members. Currently, because the Correctional Service of Canada has legal obligations for federally sentenced women, responsibility for federal women is too often narrowly assigned to correctional systems.²¹⁰

Further, this narrow view of correctional responsibility encourages a narrow view of programming and residential options, and thus federally sentenced women are denied the

²⁰⁷ Hannah-Moffat *supra* note 162 at 140.

²⁰⁸ *Creating Choices supra* note 160 in *Using the Wisdom to Build the Future*.

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

opportunity to exercise self-determination which would allow them to take responsibility for their lives. As such, federally sentenced women must be integrated into their community.²¹¹ Therefore, all levels of government, business, voluntary sector and private sector groups must accept the responsibility to develop, implement, monitor and evaluate correctional options.

According to correctional administrators, “these principles of women-centredness have been extended beyond *Creating Choices* to guide future institutional approaches and planning for female offenders.”²¹² This set the argument for a fundamental change to the way federally sentenced women’s facilities would be run and staffed. Ultimately, these principles became the driving force upon which the Task Force made its recommendations.

THE RECOMMENDATIONS OF *CREATING CHOICES*

The Task Force struggled with the challenge of how to translate the long-term goal of social change and balance this with the goal to implement concrete changes that would create real choices for federally sentenced women now. Ultimately, the Task Force settled with a plan to change the immediate future, a plan that they felt was a significant step toward fulfilling the long-term vision.²¹³ The recommended plan aimed to strengthen relationships

²¹¹ *Ibid.*

²¹² Hannah-Moffat *supra* note 162 at 141.

²¹³ *Creating Choices supra* note 160 in Vision for Change. The Task Force used a “touchstone” for their recommended plan. The “touchstone” was an ‘evaluation’ tool to ensure that the plan aided the move toward the long-term goal. This consisted of four questions. (a) Does this initiative, policy or program create choices for federally sentenced women as articulated in our driving principles for change? (b) How closely does this initiative, program or policy mirror caring responses for women in the community, including Aboriginal and other ethnic communities? (c) Does this initiative ensure that women are treated with respect and dignity? Does it empower women to take responsibility for their lives? (d) Does it “speak the truth and let the truth be heard?” These questions made it apparent to the Task Force that no individual change or program could create choices built upon the principles. It became obvious that a holistic approach was required.

among government and various communities, and also embodied the principles of empowerment, meaningful choices, respect and dignity, supportive environment and shared responsibility. As a holistic approach, the plan was to be viewed as a single recommendation without the ability to isolate any of its parts.

These recommendations included the closure of the Prison for Women; the construction of regional facilities and an Aboriginal healing lodge; the development of women-centred programs including survivors of abuse and mother-child programming; and the establishment of a community strategy to expand and strengthen residential and non-residential programs and services for women offenders who are on conditional release.

The Regional Facilities

The Task Force recommended, in conjunction with the closing of P4W, the construction of five Regional Women's Facilities across Canada. The facilities were to be located in or near Halifax, Montreal, central/south-western Ontario, Edmonton, and the lower mainland of British Columbia. In addition to the regional facilities, a Healing Lodge for federally sentenced Aboriginal women would be established in a Prairie location.²¹⁴

The design of the new facilities was to incorporate all environmental factors believed to promote a healthy lifestyle, including natural light, fresh air, colour, space, privacy, and access to land.²¹⁵ The intention was that federally sentenced women would initially go to the

²¹⁴ A detailed description of the Aboriginal Healing Lodge in conjunction with a description of the Regional Facilities is beyond the scope and length of this dissertation. I feel a separate paper is needed to provide for a proper discussion of the Healing Lodge, and as such, it will only be referred to briefly, and unfortunately, not discussed in any great detail.

²¹⁵ *Creating Choices* supra note 160 in Vision for Change.

facility in the region where they were convicted and sentenced, but additional provisions for transfers to other facilities for personal reasons or program access would be allowed.²¹⁶

There would be a central core building where administration offices, group and program space, as well as space for spiritual gathering would be located. The living area would consist of several 'cottages' on the property. The Task Force recognized that the size of each regional facility would vary. This was primarily for two reasons: one, the size of the facility would reflect the current numbers of federally sentenced women in prison, and second, the effective implementation of community strategies should reduce the need of these facilities.²¹⁷

The number of staff required for each cottage would also vary and be determined depending on the dynamic nature of the prisoners within each 'cottage'. Additionally, some residences may be designated for special purposes, such as housing a group of women dealing with substance abuse issues, or for women nearing the end of their sentences who require a high level of independent functioning.²¹⁸

Staff would be required to have knowledge that makes them sensitive to the needs of federally sentenced women. Training should focus upon "counseling, communications and negotiation skills, and will also include training focused on sexism, sexual orientation, racism, Aboriginal traditions, spirituality...issues relating to power and class."²¹⁹ Staff would be responsible for identifying problems, providing support and developing intervention techniques for women in crisis.

To provide women with the chance to take responsibility for their choices, prisoners would be encouraged to develop a personal plan with their primary support worker in

²¹⁶ A provision will exist wherein Aboriginal women may choose to go directly to the Healing Lodge.

²¹⁷ *Creating Choice supra* note 160 in *Vision for Change*.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

conjunction with an external community representative. This plan was intended to identify the woman's needs, and the resources available to her in the facility and the surrounding community.²²⁰ Once the assessment period was complete, and the woman would be ready to implement her plan, she would move to another cottage or the Healing Lodge.

Women-Centred Programming

Each facility was intended to be program driven and would address: individual and group counseling; health care; mental health facilities; addiction programs; family visiting; mother-child programs; spirituality and religion; Aboriginal programs; education; vocational training; recreational/leisure; and, volunteer involvement.²²¹ If appropriate programs were available in the community, the facility would be encouraged not to offer duplicate programs, but rather allow women to use the existing community resources.

In addition to her primary support worker, each woman would have a community worker to act as her primary link between herself and her community. The intention was to have the community worker be the link between the federally sentenced woman and her family and friends, and community resources. Regional Advisory Councils would also be created to evaluate existing programs and services, and identify gaps within these programs and services. The intention was that the regional facilities would be dynamic and continue to meet the needs of the changing population. They would also act as an educational tool for their communities, so that the regional facilities and the women would be seen as an integral part of that community.²²²

²²⁰ *Ibid.*

²²¹ *Ibid.*

²²² *Ibid.*

Community Strategy

The Task Force recommended numerous community strategies be available to women upon their release from the regional facilities. These included Community Release Centres, Halfway Houses, Aboriginal Centres, Satellite Units, Home Placements, Addictions Treatment Centres, among others. Community Release Centres, which were intended to be residential, would be developed by community groups, and other interested agencies. The locations, structure and services offered would vary and represent the need of the federally sentenced women they serve.²²³ There would be varying levels of structure and staffing and they would also allow for the women to continue working on their individual plans.

Halfway Houses would be located based on regional needs. However, at a minimum there would be 12 located at various locations within Canada.²²⁴ Again, size would vary depending on needs, and they would be run by community agencies through contracts with the Correctional Service of Canada. They would be available to women on any form of release and some would allow for women to live with their children.²²⁵ Aboriginal Centres would also be made available in areas where Aboriginal communities and groups identified a need and support. These would be organized by Aboriginal groups or communities through contracts with the Correctional Service of Canada.

Independently maintained apartments (Satellite Units) would be provided for women on community release who can handle a high degree of independence. These would be located according to need and would be directly established with an existing Community

²²³ *Ibid.*

²²⁴ *Ibid.* They would be in Halifax, Newfoundland, Montreal and at least one other Quebec location, northern Ontario, central/southern Ontario, Winnipeg, Saskatchewan, Edmonton, Calgary, Vancouver and northern British Columbia.

²²⁵ *Creating Choices supra* note 160 in *Vision for Change*.

Release Centre.²²⁶ Addiction Treatment Centres would be run by community agencies contracted through CSC. Being both women-centred or based on Aboriginal traditions, these would be available to women who would like to follow-up on treatment they received while in a regional facility.²²⁷

Additional community resources for women who are not in conflict with the law could be used for federally sentenced women.²²⁸ These could include centres that deal with family violence, housing with other people not in conflict with the law (i.e., students), specialized accommodation for women who wish to reestablish relationships with their children, or home placements. The Task Force anticipated that this dynamic approach would foster structure and care for women with special needs as well as providing a unique environment for growth and development.

The Task Force recommended that the Correctional Service of Canada take action immediately establishing the total plan without losing any of the principles, premises or spirit with which the plan was created. While the good intentions of those behind the Task Force should not be underestimated, prior to the operationalization of *Creating Choices*, there were numerous criticisms focused upon the ideology and theory that it was based upon. The arguments, mentioned earlier, focused upon the dangers of creating a 'women-centred' model of corrections in the fear that this would obscure the oppressive nature of incarceration and leave the traditional conceptualization of imprisonment fundamentally unchallenged. As such, the next section will deal with these issues, and ask the question: was *Creating Choices* the answer?

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ *Ibid.*

PART B: WAS *CREATING CHOICES* THE ANSWER?

Creating Choices was a unique and promising perspective to the unchanging and deplorable treatment of federally sentenced women in Canada. Under the claim of 'women-centred', the Task Force appeared to offer a viable alternative solution to maintaining the Prison for Women in Kingston. From the outset, the Task Force was unlike any that had occurred before it, from its co-chairs to the composition of both its working group and steering committee. Its philosophy appeared dramatically different from previous reports, and many who had been arguing for the acknowledgment of the plight of federally sentenced women gave a sigh of relief and asked the question, 'will something finally be done to help our federally sentenced women?'

It is clear that the intention of the Task Force members was to take a unique perspective and offer new solutions for federally sentenced women in Canada. However, both those within the Task Force itself, as well as outside critics recognized problems within the philosophy of *Creating Choices*, and ultimately the Task Force faced external criticism and internal conflict over many decisions, including the decision to build more prisons. As such, this section will engage in a theoretical critique of *Creating Choices*. The criticisms examined in this chapter will focus upon the theory and language used within *Creating Choices* and not focus upon the operational achievements of the Task Force.²²⁹ Within this section it will be argued that the Task Force failed to challenge the traditional conceptualization of punishment and obscured the idea of 'imprisonment' with a type of feminized social control talk.²³⁰ I will also argue there was/is a false dichotomy established between male and female

²²⁹ The operational outcomes of *Creating Choices* will be covered in Chapter Five.

²³⁰ A definition of the term 'social control talk' is best found in Stanley Cohen (1985). *Visions of Social Control*. Oxford: Polity. Cohen describes social control talk as a way in which our language functions to allow indefensible forms of control to look more defensible, one method of which is substituting mild or

prison regimes. Further, I will argue that *Creating Choices* essentialized the term of 'women', I will discuss the problems with using the term of 'empowerment', and finally, I will discuss both the classification and staffing issues that arose in *Creating Choices*.

The Failure to Challenge the 'Traditional' Conceptualization of Punishment

It is apparent that those involved in the work of the Task Force were attempting to create a new and revolutionary model of federal corrections for women in Canada. While intentions may be good, the Task Force recommendations to close P4W and open up five regional prisons have not gone without scrutiny, even by those directly involved.²³¹ Both the recommendation for more prisons and the 'euphemisms' for the new prisons failed to challenge the traditional concept of the prison and punishment. While I am not arguing that the Task Force was wrong in recommending closure for P4W, I do think there are dangers with the recommendation to build more prisons.

The Task Force claimed to be developing a new correctional approach for women, and attempted to move beyond previous approaches for federally sentenced women.²³² It also stated that all of its principles for change pointed to a longer-term goal of social change whereby "harm done to people will be repaired in a creative, supportive, *non-incarcerative* way"²³³ (emphasis added). However, by acknowledging that legislative restrictions and societal attitudes prevented them from achieving the 'ideal', they justified their need to build

vague expressions for harsh or blunt ones (276). Examples of this will be provided within the thesis. 'Feminized social control talk' is a term taken from Kelly Hannah-Moffat (*supra* note 162).

²³¹ One curious aspect of the support for the building of new regional prisons, was that it was supported by the Canadian Association of Elizabeth Fry societies, which has historically supported the abolition of prisons.

²³² *Creating Choices supra* note 160.

²³³ *Ibid.*

more prisons. As such, the Task Force failed to provide any questioning of the centrality and legitimacy of punishment and imprisonment.

Further, the recommendation to build more prisons is in direct opposition to supporting this long-term goal of non-incarcerative solutions. The move to build more prisons for women has led to an expansion of the federal prison system for women in Canada. Additionally, it has been argued that this move to build a new regime for women prisoners may affect judicial attitudes and sentencing patterns. Historically, judges have been generally reluctant to sentence women to federal time since there was only one institution for women.²³⁴ It was stated, "judges have publicly indicated that the conditions at the Prison for Women are deplorable, and, as a result, they are reluctant to issue sentences of two years or more."²³⁵ However, with the proposed changes in *Creating Choices* there was a fear that there may be an increased number of women sentenced to federal time who previously would have received a lesser sentence.

Fundamentally, the advocacy of women-centred prisons failed to challenge the use of prisons. As argued by Hannah-Moffat, the restructuring of a prison regime to reflect a feminine approach to justice, and the uncritical embrace of feminist ideals, contributes the production of a 'feminized social control talk' whereby the penal regime, and to some extent the incarceration of women, is reinforced.²³⁶ In spite of criticisms by many feminists that a 'woman's' law or criminal justice system is questionable, there remains a commitment to and a belief in the reconstruction of women's prisons. The result of this 'belief' is a

²³⁴ Hannah-Moffat, Kelly (1991). "Creating Choices or Repeating History: Canadian Female Offenders and Correctional Reform." *Social Justice*. 18 (3): 184-202 at 197.

²³⁵ *Ibid.*

²³⁶ Hannah-Moffat *supra* note 162 at 148-149.

decontextualization of women's prisons and thus a separation of women's prisons from the wider criminal justice system.²³⁷

This separation of a 'woman's' prison from the penal regime leaves the wider institutional framework of imprisonment unchallenged. Hannah-Moffat strongly argued:

The reform of women's prisons emphasizes a shift in the content of the regime without challenging the wider system of sanctioning. The sanction of imprisonment remains at the extreme end of the carceral continuum in a retributive system of justice. The women-centred prison ironically uses the same structures, institutions, relations, and values that have created the initial problem to resolve the more general problem of women's incarceration. Reform in certain institutional contexts will be influenced by the structure of the institution. Given the implicit and explicit relations of power in prisons, reforms that occur in these institutions retain disciplinary and repressive components irrespective of their discursive construction. The new forms of power that emerge and coexist with the old disciplinary regimes must be questioned and analyzed for their impact. It should not be assumed that the relations of power in the new women-centred prison are any less problematic.²³⁸

Ultimately, this leads us to question whether any 'well-intentioned' reform can ever challenge or alter the uneven relations of power while attempting to make this challenge from within the institutional regime. While it appeared there was a 'radical' change to women's imprisonment within *Creating Choices*, this change was only a discursive change and not a real challenge to the legitimacy of the penal regime for women.

For example, the regional prisons for women were described in *Creating Choices* as moving from an "...institution to [a] home-like accommodation..." these would provide a "...home-like atmosphere with small cottage units...".²³⁹ After the release of *Creating Choices* the term 'cottages' was adopted to describe the new regional prisons in almost all contexts. This euphemism succeeded only in obscuring the reality of women prisoners. Regardless of

²³⁷ *Ibid.*

²³⁸ Hannah-Moffat *supra* note 162 at 149.

²³⁹ *Creating Choices supra* note 160.

what they are popularly called, the 'cottages' are nonetheless institutional regimes whose purpose is to house prisoners.

Similarly, the title of correctional officer/prison guard²⁴⁰ was changed to 'primary support worker' within the women-centred model of corrections. This substitution of a mild or vague expression in place of the harsh term of 'prison guard' serves only to obscure the harsh and blunt realities of prison life. Through these discursive changes, prison life for women appears kind and gentle, purged of all suffering and misery, and punishment is no longer 'intended' to be painful.

Through the recommendation of the Task Force to build more prisons, and through its feminized social control talk, the Task Force worked against its own long-term goals, and re-formed and ultimately strengthened the penal regime. The Task Force also failed to alter women's imprisonment in any fundamental way, and thus the sanctioning of women offenders continues to rely heavily upon the imprisonment of women.

Male v. Female Prison Regimes: The Establishment of a False Dichotomy

The idea of a women-centred model of corrections establishes a false distinction between a women-centred and male-centred model of corrections. The women-centred regime is to be juxtaposed to its male counterpart whose focus is upon security, discipline and control. Thus, the women-centred approach is characterized as caring, empowering, supportive, respectful, and meaningful.²⁴¹ As such, "this split reproduces and reinforces

²⁴⁰ The issues arising out of the problem with the staffing from *Creating Choices* will be discussed later in this chapter.

²⁴¹ Hannah-Moffat *supra* note 162 at 146.

normative standards of femininity in the correctional discourse. This dualism does not adequately reflect the diversity or complexity of either women's or men's prisons."²⁴²

The apparent caring, therapeutic and supportive atmosphere in a 'women-centred' prison denies the existence of similar relations in men's prisons. Also, as mentioned earlier, this view of women-centred prisons tends to minimize and obscure the oppressive nature of the penal regime. The assumption then becomes that women-centred punishment will be 'less oppressive' than subjecting women to the male counterpart.²⁴³ Further, there is also the assumption that the ideals of women-centred regimes are applicable to all women.²⁴⁴

The feminization of the penal regime for women does not remove the oppressive and punitive aspects, particularly when we consider that those subjected to these regimes are involuntary. As discussed in Chapter Two, and suggested by many others, the idea of therapy within prison is a contradiction in terms.²⁴⁵ This contradiction occurs when the Correctional Service of Canada's main priority is to protect the public, not heal the offender. Therefore, therapy is often aligned with control and security, and thus the women who are believed to be violent and dangerous are often defined as needing more structure and more intensive therapeutic programming.²⁴⁶

Hannah-Moffat argues that, "...if we have learned anything from correctional histories, we will be cautious when embracing ideological shifts away from punishment and toward healing and treatment in prison settings."²⁴⁷ The Task Force has embraced therapeutic notions of healing and holistic regimes without questioning. Again, against their

²⁴² *Ibid.*

²⁴³ *Ibid.*, at 147.

²⁴⁴ Hannah-Moffat, Kelly (2001). *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada*. Toronto: University of Toronto Press at 195.

²⁴⁵ Kendall, K (1993). *Program Evaluation of Therapeutic Services at the Prison for Women*. Ottawa: Correctional Service of Canada. Also please see page 8 of chapter 1 for a more in depth discussion of rehabilitation with the prison.

²⁴⁶ Hannah-Moffat *supra* note 244 at 196.

²⁴⁷ *Ibid.*

own intentions, those involved in the Task Force failed to challenge the use of prisons. Ultimately, this has created a situation whereby “the women-centred approach implicitly assumes that while ‘male models of corrections’ are not suitable for women, prisons are suitable as long as they are based on a feminist vision of justice, punishment, and care.”²⁴⁸

As argued earlier, the feminizing of penal regimes legitimates the incarceration of women. Thus, the Task Force has not offered a viable alternative by simply changing the content of a penal regime to reflect women-centred ideals, because this leaves the wider institutional framework unchallenged. And this may have resulted in creating ‘more of the same’.

The Essentialism of ‘Woman’

The members of the Task Force seemed unconcerned with the assumption that women prisoners have more in common with other women than they do with male prisoners. The Task Force stressed the commonalities shared by women as a disempowered and marginalized group. While this assumption does acknowledge some similarities among imprisoned women, it ignores important distinctions of race, class and sexual orientation. Further, arguing that all women are the same obscures wider relations of power, and gives priority to gender over all other factors. The result is that the essentialism of women supports the notion that there is a monolithic ‘women’s experience’ that can be described independently of other facets of experience. As long as feminists, or others, choose to make these types of arguments, women will always be required to choose pieces of themselves in order to present a wholeness.²⁴⁹

²⁴⁸ *Ibid.*, at 196-197.

²⁴⁹ Harris, Angela (1997). “Race and Essentialism in Feminist Legal Theory” pg. 11 – 18 in Adrienne Katherine Wing (ed.) *Critical Race Feminism*. New York: New York University Press at 12.

The effect of essentialism ultimately fragments women's lives, and reduces the lives of people who experience multiple forms of oppressions into addition problems. That is, there is a universal experience of 'woman' and then additional facets such as a race, are simply additions to the equation. Therefore, a woman who is black will always have her experience fragmented before being subjected to analysis. The use of essentialism is often prevalent in feminist literature, and apparent within the Task Force. It can be argued that essentialism is pervasive for three main reasons. First, it is intellectually convenient, and to a certain extent "cognitively ingrained".²⁵⁰ Secondly, essentialism provides certain emotional and political payoffs.²⁵¹ And finally, it often appears to provide the only alternative to previous popular views.

The creation of the 'essential' woman denies the experience of all women. Primarily, in the pursuit of the essential woman, a women's experience is removed from all context of colour and social circumstance, and issues of race are bracketed as belonging to a separate discourse. Further, Harris argues that by removing issues of 'race', feminists have resulted only in removing women of colour. Thus, white women now become the epitome of 'women'.²⁵² The result then is that women of colour, for example, "become white women, only more so."²⁵³

Described as 'nuance theory', Harris argues that by being sensitive to the notion that different women have different experiences, one can offer generalizations about 'all women' while qualifying statements to include the subtle nuances of experience that 'different' women add to the mix. That is, there is an assumption made of the 'commonality' of all women, and differences become a matter of 'context' or 'magnitude'. The problem becomes

²⁵⁰ *Ibid.* at 11.

²⁵¹ *Ibid.*

²⁵² *Ibid.*, at 13.

²⁵³ *Ibid.* at 14.

that white women quietly become the norm, and other women, such as Native women, become 'different'.²⁵⁴ However, being Native is more than a 'context' or 'magnitude' of being a woman.

In relation to the Task Force, the experience of women in prison is much more than a microcosm of the experience of all women. The construction of women in *Creating Choices* as no different from other women, or as having more in common with other women than male prisoners, denies both the involuntary and unique aspects of the experience of incarceration.²⁵⁵ Further, an emphasis on the commonalities of women results in an insensitivity to the differences among women, and the experience of women prisoners is trivialized.²⁵⁶

This lack of attention to differences can, and has, led to false assumptions that "...if women are employed as guards, run programs, or administer prisons, [then] women will be better cared for."²⁵⁷ Again, the language of women-centredness denies other forms of oppression such as race and class, and this hegemony of analytical categories such as 'women' are informed by white middle-class sensibilities.²⁵⁸

Creating Choices did place increased emphasis upon the situation of Aboriginal women, a necessary discussion because Aboriginal women are over-represented in Canadian prisons. However, this concentration on Native women denies, or overlooks, the needs and experiences of other minority women. Further, when the Task Force discussed Aboriginal issues, they used the term 'Aboriginal' as if it were a homogenous group when in fact there is a great deal of diversity among Native women, and Native women prisoners. Similar to the

²⁵⁴ *Ibid.*

²⁵⁵ Hannah-Moffat *supra* note 244 at 191.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*, at 192.

concept that women guards or administrators will result in better treatment for women prisoners, there was the assumption that having Aboriginal elders to provide various functions for Aboriginal prisoners would be beneficial. While not denying the positives that can arise from this, it is premature to believe that a non-Cree woman, for example, will be comfortable with a Cree elder. Additionally, there are profound differences that exist between staff and prisoners that may override any cultural similarities.²⁵⁹ Hannah-Moffat argued that the “unequal and disciplinary relations of power between guards and prisoners can and likely will override any cultural identification.”²⁶⁰

This argument is not to discourage gender and culturally specific initiatives, but rather to expose that there needs to be a fuller understanding of gender and racial oppressions because the narrative within the Task Force implies that the category of ‘woman’ is homogenous and unitary, and facets such as Aboriginal become a matter of context or magnitude. Thus we can see the nuance argument that while women prisons are women plus prison, aboriginal women prisoners become further decontextualized into women prisoners plus race. Therefore, women-centred regimes remain problematic because they obscure relations of power among women and “assume that the oppression of women prisoners is narrowly linked to gender discrimination.”²⁶¹

The Problem of ‘Empowerment’

Creating Choices adopted the view that imprisoned women need to be ‘empowered’, and able to make meaningful and responsible choices within a supportive environment.

Empowerment for feminists was defined by Hannah-Moffat as:

²⁵⁹ A further discussion of staffing issues within the Task Force will be discussed in detail later within this chapter.

²⁶⁰ Hannah-Moffat *supra* note 244 at 192.

²⁶¹ *Ibid.*, at 194.

...empowerment (ideologically, politically, and economically) has been traditionally embraced as a way of transforming the lives of women by limiting gender oppression. The language of empowerment emerging out of social movements has provided a base for many reform efforts. Empowerment strategies have been used by many activists to reorganize relations of power and effect organizational and policy changes.²⁶²

While not ignoring the 'good intentions' of those on the Task Force, it is ironic that prisons, which have never succeeded in providing a suitable therapeutic environment, are now being used to empower women.²⁶³ Additionally, there is a vast difference between feminist understandings of empowerment, and the use of the same term by Corrections Canada. For the Correctional Service of Canada empowerment is individualized and clearly linked to responsibility and self-esteem.²⁶⁴ That is, an emphasis on empowerment "suggests a greater reliance on self-governing, making links between the aspirations of individual prisoners and those of government, and contributes to the formation of prudent subjects prepared to take responsibility for their actions."²⁶⁵ The notion of responsibility within empowerment allows it to combine and co-exist with the pre-defined goals of the Correctional Service of Canada. So while empowerment acknowledges the need of women to make choices, those within the Task Force did not anticipate that empowerment would be redefined and compromised when integrated into the existing penal regime. The practical problem of this attempt to integrate empowerment into the women-centred model of corrections is of course whether prisons can be designed to empower prisoners.

For feminists, empowerment is embraced as a way of transforming the structure of societal power relations that allow women to make choices and regain control of their

²⁶² Hannah-Moffat *supra* note 162 at 155.

²⁶³ This discussion will come up again in chapter four when I discuss CSC's inability to operationalize 'empowerment' in a meaningful way.

²⁶⁴ Hannah-Moffat *supra* note 162 at 156.

²⁶⁵ Hannah-Moffat, Kelly (2000). "Re-forming the Prison: Rethinking out Ideals" pg. 30 – 40 in Kelly Hannah-Moffat & Margaret Shaw (eds.). *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing at 31.

lives.²⁶⁶ However, there are difficulties when this is put within the structure of the penal system. As argued earlier, a women-centred model of corrections feminizes penal discourse, but fails to challenge relations of power in prisons. Therefore, a discourse of empowerment will not radically alter the prison system, but rather add a new dimension wherein women's crimes are decontextualized and "they are expected to assume sole responsibility for their reform and offending."²⁶⁷ It is here that the discourse of empowerment becomes problematic, because this strategy makes the prisoner responsible for her own rehabilitation.

Within *Creating Choices* and the penal system for women in Canada, the choices women are empowered to make are limited to those deemed by the administration, and not necessarily the women, to be meaningful and responsible.²⁶⁸ Additionally, as discussed in Chapter Two, the choice to participate in offered programs is linked to improved chances for release. Now, through the institutionalization of empowerment, not only is her participation still linked to chances for parole but now she is also responsible to "monitor and control her own risk-generating behaviour."²⁶⁹

Ultimately, the empowerment discourse within the women-centred regime is about 'responsibilizing' the prisoner, and not empowerment as defined by those who wrote *Creating Choices*. Hannah-Moffat argued:

In this respect, models of self-help and responsibility ultimately *re-legitimate* the prison and the continued reliance on discipline. In effect, an "empowering-responsibilizing strategy" leaves the prison and the central state generally more powerful than before, with an extended capacity for action and influence.²⁷⁰

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*, at 32.

²⁶⁸ *Ibid.*, at 33.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

As mentioned earlier, this is not to discount the 'good intentions' of those involved in the Task Force, but rather to draw attention to the inability to create radical change from within the existing penal regime.

Finally, the use of an empowerment discourse that 'responsibilizes' the prisoner, is that we are left with some women who will be defined as 'unempowerable'. This can be seen as a reconfiguration of the previous 'reformable' and 'unreformable' prisoner.²⁷¹ That is, women who do not fit the category of empowerable will be deemed unresponsive to the new women-centred regime of imprisonment. If this is the case, then what will the Correctional Service of Canada do with these 'unempowerable' women?

Staffing & Classification Issues

The Task Force proposed changes not only to the structure of the prisons themselves but also to both the staffing and classification models for women prisoners. These proposed changes were made with the women's best interests in mind, however, like with everything else, those proposals 'good intentions' fail when put into correctional practice.

The staffing model for *Creating Choices* required that all staff within the prison be sensitive to the issues that face federally sentenced women and be responsive to their needs.²⁷² All staff must undergo training in "...counseling, communications and negotiation skills..." and staff will be responsible for "...identifying problems, providing support, and developing and utilizing effective intervention techniques for women who are in crisis."²⁷³ The staffing model proposed requires a dual function for all staff within the women-centred

²⁷¹ *Ibid.*, at 34.

²⁷² *Creating Choices* *supra* note 160 in Vision for Change.

²⁷³ *Ibid.*

prison. The same staff responsible for identifying problems is also the same staff responsible for providing support.

It is questionable the degree to which the relationship between prisoners and guards can be fundamentally altered. Institutional staff is expected to engage in “meaningful, respectful, and supportive relations with the prisoners.”²⁷⁴ However, to classify guards differently does not alter the relationships within the prison. It is questionable how ‘meaningful, respectful, and supportive relations’ are to be developed between guards and prisoners when guards are still responsible to perform such duties as strip searches, opening women’s mail, monitoring their relations with others inside and outside of the institution, and at times providing punishment for institutional infractions.²⁷⁵

The women-centred model has only downplayed the oppressive and coercive powers that guards hold. To re-name them ‘primary support workers’ and require them to be sensitive to the needs of women does not alter the unequal power relations between these two groups. The use of female guards, as discussed earlier, may alleviate some tension between guards and prisoners, but it is unlikely gender identification will over-ride the unequal power relations.

One of the main problems at Prison for Women was over-classification. However, within *Creating Choices*, the issues of security and classification were not adequately dealt with. The assumption made by the Task Force was that each regional facility would be able to adapt to different levels of security needs. However, as Hannah-Moffat acknowledged, a similar mistake was made when the Prison for Women was constructed in 1934.²⁷⁶ *Creating*

²⁷⁴ Hannah-Moffat *supra* note 244 at 194.

²⁷⁵ *Ibid.*

²⁷⁶ Hannah-Moffat *supra* note 234 at 196.

Choices emphasized that concentration should be placed upon women with low to medium security risks, and recommended the use of dynamic security methods. In consultation with other parties, including federally sentenced women, the Task Force came to the conclusion that the women should be not be 'risk/security' but rather 'risk/support'.²⁷⁷ The Task Force recommended that the prisons not be security driven but rather they should have supportive and dynamic intervention where static security measures are used to the least extent possible.²⁷⁸ While the Task Force did recognize the difficulty of creating this situation within a 'traditional' correctional environment, it is unlikely that this rhetoric would ever be fully integrated into correctional practice.

Additionally, the Task Force favoured the development of a women-centred and culturally relevant assessment classification system over the previous male-orientated system. Rather than focusing classification on a security rating, it should look at the whole spectrum of a woman's needs from a holistic perspective, including needs relating to programming, spirituality, mental and physical health, family, culture and release plans. This will allow staff to better respond to the needs of federally sentenced women.²⁷⁹ This is based on an assumption that security classification is not productive for women prisoners and that it is not conducive to rehabilitation. However, this view is problematic from a correctional perspective and the fact remains that any alterations of women's imprisonment are still being made within the prevailing correctional regime. Therefore it is unlikely that imprisonment modeled within a 'traditional' correctional framework will remove its dependence upon security classification. Additionally, there are likely to be complications with this approach

²⁷⁷ *Creating Choices* supra note 160 in Issues and Dilemmas.

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

when applied to 'high-need' or 'high-risk' prisoners, especially when corrections paramount concern is the protection of society.

CONCLUSION

I hesitate to give the impression that *Creating Choices* was a failure. It did succeed in attempting to alter the situation of federally sentenced women in Canada, but theoretically it failed to fundamentally question the use of imprisonment in our society. By doing so, is it possible that the Task Force did more harm to women prisoners than otherwise? It is questionable to what extent tinkering with this institution, and attempting to alter the prison within a traditional penal regime, would result in something different. From a theoretical perspective it appears that such changes may only alter the way the prison is perceived. The danger arises when these changes alter the 'appearance' of the prison, without addressing any of the underlying issues. This results in obscuring the punitive reality of the prison. I argue that *Creating Choices* did just that, and by doing so, provided further justification for the use of prison as a method of discipline.

There were many dangers with the way the Task Force proceeded with their attempt to alter women's imprisonment. However, in light of the many problems with P4W, we must also consider if these changes were a necessary step to better the experience of imprisonment for women now. In other words, was it necessary for the Task Force to structure their arguments this way in order to achieve a change for women prisoners considering the current political climate?

While the theoretical failures of *Creating Choices* are very important, perhaps another focus should be how the recommendations of the Task Force were operationalized. That is, regardless of the theoretical failures, were the lives of women's prisoners positively affected

by the work of the Task Force. And was the feminist rhetoric of the Task Force maintained when *Creating Choices* was put into practice? . The following chapter will explore how the Correctional Service of Canada made use of the Task Force's recommendations.

CHAPTER FIVE: *CREATING CHOICES* IN PRACTICE: RE-DEFINING THE FEMINIST VISION

It has been 12 years since the publication of *Creating Choices* in 1990. The recommendations of the Task Force to close the Prison for Women and construct four regional prisons and an Aboriginal Healing Lodge were endorsed by the government of Canada. The regional prisons are now built and in use, and the Prison for Women closed its doors permanently in the summer of 2000. Although it appears that the major recommendations of the Task Force were implemented, a deeper look into women's prisons is needed before the assumption is made that the recommendations followed the philosophy of *Creating Choices*. In fact, it is possible that the way in which the ideals of *Creating Choices* were operationalized is proof of how a correctional bureaucracy is able to re-define, re-interpret, and appropriate feminist visions for change. As discussed in Chapter Three, such 'benevolent' ideals can make improvements, however, they also serve to obscure the power imbalances and punitive context of imprisonment.

This chapter will explore the politics involved in the acceptance and operational planning of the recommendations of the Task Force, and the resulting regional prisons. Through the operationalization of the 'new' regime for federally sentenced women, some issues became apparent. These issues will be discussed in further detail and include the increased security placed upon the regional prisons, the placement of maximum security women in isolated units of men's prisons, and the increasing numbers of incarcerated federally sentenced women. The ultimate question focuses on whether, despite any problems with the operationalization of *Creating Choices*, and despite any problems highlighted with the theory of the Task Force, the outcome resulted in a better situation for women prisoners?

RECAP: THE RECOMMENDATIONS OF THE TASK FORCE

Prior to moving on, it is important to re-visit the main recommendations of the Task Force. The first recommendation, and one that had been proposed since 1934, was the closure of the Prison for Women (P4W) in Kingston, Ontario. The Task Force also recommended the creation of five regional facilities for federally sentenced women, and the establishment of a Healing Lodge in the Prairies for federally sentenced Aboriginal women. In addition to the prisons, the Task Force recommended the development of a community release strategy which would expand and strengthen residential and non-residential programs for federally sentenced women on release. Also, the Task Force recommended the development of women-centred programs, including survivors of abuse and mother-child programming.²⁸⁰

These recommendations were intended to solve the many problems that had plagued Canada's federally sentenced women since the opening of P4W in 1934, and arguably many years prior. These include, although not exclusively, the discrimination against women prisoners (because of their small numbers), their over-classification, lack of access to programs, and their geographic dislocation. The recommendations of *Creating Choices* were an attempt to finally deal with these problems and create a new and innovative model of corrections for women in Canada.

CSC's OPERATIONAL PLAN

The operational plan outlined by the Correctional Service of Canada (CSC) was premised on an ongoing commitment to achieve equality for women and Aboriginal people,

²⁸⁰ A detailed description of the recommendations of *Creating Choices* can be found in Part A of Chapter Four.

one that was equally rooted in the Mission of CSC.²⁸¹ To achieve this, CSC dedicated an overall vision to the philosophy, the staff, the operational approaches, and the management model of the new prisons. Therefore, the regional facilities would be governed by several objectives. These included a correctional model that is:

- based upon progressive human management principles;
- is program-driven; provides an environment free of racism, classism, and sexism;
- provides an environment which encourages women to take ownership of their personal plans and lives;
- creates a positive internal community;
- creates an environment which supports a woman's choice to take an active parenting role; provides an environment which creates real choices; facilitates conditional release at the earliest possible time²⁸²;
- and maintains community based resources and participation.²⁸³

As discussed in Chapter Four, women serving federal sentence are intended to be housed in the region in which they were convicted and sentenced, and that all regional facilities women accommodate women of all security levels. In addition, the operational plan stated that each facility was to be managed by a director or warden, and the actual

²⁸¹ The Correctional Service of Canada's Mission: The Correctional Service of Canada, as part of the criminal justice system and respecting the rule of law, contributes to the protection of society by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and human control. Internet available at www.csc-scc.gc.ca.

²⁸² Conditional Release includes Full Parole, Day Parole and Statutory Release. Full parole allows an offender to serve part of a prison sentence in the community. The offender is placed under supervision and is required to abide by conditions designed to reduce the risk of re-offending and to foster reintegration into the community. The offender must report regularly to a parole supervisor. Day parole allows the offender to participate in on-going community-based activities. The offender usually resides in a prison or community residence. Day parole is granted in order to prepare an offender for full parole and statutory release. Statutory release requires that federally sentenced offenders serve the final third of their sentence in the community under supervision and conditions similar to those on Full Parole. Offenders serving indeterminate or life sentences are not eligible. Offenders on this release are prisoners who either did not apply for, or were denied full parole. *Basic Facts about Corrections in Canada* supra note 49.

²⁸³ Correctional Service of Canada (1992). *Regional Facilities for Federally Sentenced Women Operational Plan*. Ottawa: Construction Policy and Services/National Implementation Committee, Correctional Service of Canada.

number of staff would vary with the size of the facility. The plan was based upon the current level of incarceration at that time (using 1991 data), and since it was not anticipated that there would be any significant changes in the population profile of federally sentenced women, the plan was based upon the demographic information of the then 317 incarcerated women.²⁸⁴ CSC stated in its operational plan that this model for corrections “reflects a holistic, yet realistic approach to operations.”²⁸⁵

The CSC decided upon the construction of four prisons (in addition to an Aboriginal Healing Lodge), one in each of the Atlantic, Quebec, Ontario and Prairie regions. At the time of *Creating Choices*, a new provincial facility, the Burnaby Correctional Centre for Women (BCCW), was already under construction. Therefore, it was agreed that women from the province of British Columbia would be housed at BCCW under an Exchange of Services Agreement, as long as the prison adhered to the underlying principles embodied within *Creating Choices*. It was anticipated that the Atlantic region would house 30 women, the Quebec region would house approximately 76 women, the Ontario region would house 70 women, and the Prairie region would house 58 women. An additional 30 women would be housed within the Aboriginal Healing Lodge in Saskatchewan.

According to the operational plan, the prisons were to be managed in a non-hierarchical manner. It was expected that both formal and informal mechanisms would exist to allow both staff and prisoners a high level of participation in any decision making processes which impact the women. However, it is questionable to what degree this can be achieved. In addition, each facility would be autonomous and operate independently from the other regional prisons. However, operational liaisons, such as prisoner transfers would exist, and it is anticipated that the facilities would actively share information on programs

²⁸⁴ *Ibid.*, at 7 – 11.

²⁸⁵ *Ibid.*, at 11.

and staff training to ensure consistency. In line with the recommendations of the Task Force, the staffing model was based on an interactive, team approach. Each position would allow for a degree of flexibility to create a dynamic atmosphere. Also, the women prisoners would be encouraged to make use of existing community resources such as health, education and personal development services. The CSC acknowledged that approximately 50 percent of the women would be eligible for unescorted temporary absences²⁸⁶, and 35 percent could actively participate in these community resources. Additionally, it was anticipated that some of the programs within the prison would be open to the community.

The operational plan acknowledged that women serving federal sentences were 'high-need' as opposed to 'high-risk', and therefore the regional prisons were to be program-driven, as opposed to security-driven. As such, the program rationale was based on three criteria.²⁸⁷ First, federally sentenced women will live in a way that mirrors life in the community. Second, the women will be encouraged to make informed decisions about their living conditions and future plans. Finally, all relationships between people (staff, federally sentenced women, volunteers, contract staff) are based upon effective communication.

To achieve this, the correctional model adopted was one where women take responsibility for themselves. Each prison (referred to as 'house' or 'cottage' by CSC) was to house no more than 8 women. Women would have their own bedroom (capable of accommodating small children) that they could personalize. Women would be responsible for preparing their own meals (either individually or as a house). The women would do their own laundry, and cleaning of the house would be a shared responsibility between prisoners.

²⁸⁶ An unescorted temporary absence (UTA) is a release, of a limited duration, for medical, administrative, community service, family contact, personal development for rehabilitative purposes, or compassionate reasons, including parental responsibilities. Likewise, an escorted temporary absence (ETA) is a situation where an offender, either alone or as a member of a group, leaves the institution accompanied by one or several officers. *Basic Facts about Corrections in Canada* *supra* note 49.

²⁸⁷ *Regional Facilities for FSW Operational Plan* *supra* note 283 at 20.

This was a dramatic shift from the environment at Prison for Women. The intention is that this community living style would enable women to take control of their daily lives and encourage them to work together as a community.²⁸⁸

The operational philosophy was based upon various elements of correctional programs intended to empower federally sentenced women. As such, this process:

...acknowledges and holds FSW accountable for their actions, but also recognizes that actions occur within a social context. Women's crimes are closely related to their marginalized status...so programs and services must be holistic and address the social context of women's lives and target those areas which have contributed to their criminal behaviour. An understanding of the relationship between their actions and the circumstances of their lives allows women to gain control over their lives and make pro-social choices. As the reasons for their criminal activity become clearer, personal accountability grows. With appropriate support and resources, women can reconcile their past histories and make positive, self-determined choices, free from criminal activity. This will reduce the likelihood of re-offending.²⁸⁹

To achieve this end, five women-centred principles were adopted by CSC.²⁹⁰ These principles selectively incorporate the feminist analysis and ideals that were outlined in *Creating Choices*. The first is the principle of 'contextual analysis'. Based on the assumption that women's lives are contextualized within social, economic and political environments, their personal problems should therefore not be individualized, but rather understood in relations the surrounding context. The second principle is 'cooperation' whereby each participant is respected and valued as an expert on her own life. This principle is based on a non-hierarchical correctional model, however prisoners have limited input into the decisions that shape their incarceration, so it is seemingly impossible to create this model in a prison setting. Third is the principle of 'challenging', whereby the interaction between women and the facilitator is supportive, encouraging, empathetic, accepting, challenging and non-

²⁸⁸ Correctional Service of Canada (2000). *The Transformation of Federal Corrections for Women: Towards Creating Choices*. Ottawa: Communications and Consultation Sector, CSC at 2.

²⁸⁹ Correctional Service of Canada (1994). *Correctional Program Strategy for Federally Sentenced Women*. Ottawa: Federally Sentenced Women Program, Correctional Service of Canada at 6.

²⁹⁰ *Ibid.*

confrontational. This principle is rather vague, however it appears that it is the staff's role to 'challenge' the life choices of incarcerated women. Most likely, these 'challenges' are informed by an 'ideal' life experience, one which unlikely mirrors the lives of many women prisoners.

'Connection' is the next principle where women are encouraged to learn from one another. Finally, the last principle is 'agency', where women are recognized as active agents rather than passive victims. So while they are accountable for their actions, all actions are understood in relation to the context in which they occur. The issue of agency within a correctional regime is complex. On one hand, it can create an active agent who is capable of making choices and changing her situation, in effect empowering the prisoner. On the other hand, CSC's concept of agency is rooted in making the prisoner accountable for her offences, and responsible for her rehabilitation. This idea of 'responsibilizing' the prisoner through the correctional re-definition of empowerment was discussed in Chapter Four. Ultimately, the prisoner becomes responsible for managing her own risk-generating behaviour.

In addition to the houses discussed above, each facility will have an enhanced security unit (ESU). It was within CSC's operational plan that the first mention was made of such units. It was argued that approximately 10 percent of federally sentenced women are an escape risk or a risk to others. The operational plan established that these women would need to be placed in the ESU, with the hope that such placement would be temporary. While the operational philosophy of the enhanced security units was not intended to differ from the other facilities, there would be continuous monitoring by staff, and an intensive therapeutic counseling role required.²⁹¹

²⁹¹ *Regional Facilities for FSW Operational Plan supra* note 283 at 29.

Both the Task Force, and the operational plan acknowledged that the prisons are intended to be program-driven, as opposed to security-driven. As such, while the security model outlined by CSC is based on ensuring the safety of the public, the security measures required at the regional prisons are intended to be dynamic and directed toward the low-risk/low security needs of the majority of the women. Movement within each house would not be restricted, and security operations should support such movement rather than hinder it. There would be no protective custody areas or women identified as being in protective custody. The security model for site boundary was based on detection of unlawful entry or exit, and not based upon containment. As such, the perimeter of the prison should be well integrated with the neighbourhood, and not maintain an institutional appearance. As such, there may be wooden fences, but no weapons, guard towers or gatehouses.²⁹²

The operational model identified by CSC appears to follow closely with the recommendations of the Task Force. But while the 'cottages' mirror those defined within the Task Force report, the building of enhanced security units and a lack of attention to community release options opened the doors to altering the vision of *Creating Choices*. Also, as will be discussed in the next section, during the operationalization of *Creating Choices* a number of incidents occurred which resulted in many changes to the original vision of the Task Force. The Correctional Service of Canada returned to relying on a more traditional correctional model, ensuring that the philosophy embodied within *Creating Choices* will likely never be fully realized.

²⁹² *Ibid.*, at 52.

THE POLITICS OF ACCEPTANCE

When the recommendations of *Creating Choices* were accepted, the government allocated fifty million dollars towards implementation. While the main recommendations by the Task Force were accepted, CSC rejected the proposed implementation process. The volunteer sector, most noticeably CAEFS, was excluded from the National Implementation Committee. They were not consulted or informed of crucial decisions regarding the facilities, including the selection of sites for the new prisons.²⁹³ These events, which excluded those outside government, ultimately led to the withdrawal of support from CAEFS because it felt that in operationalizing *Creating Choices*, the Implementation Committee had veered considerably from the original vision of the document. In a press release in 1997, CAEFS noted that even though Canada had touted the Task Force report internationally as a progressive correctional reform, the principles and approaches envisioned by the Task Force were “in serious danger of never being implemented”.²⁹⁴

Rather than relying on the expertise of organizations such as CAEFS, the Correctional Service of Canada sought the advice of outside ‘experts’ whom had limited experience in Canadian women’s corrections. By and large, feminists, activists, and federally sentenced women, have been excluded from the process of designing the penal regime for women, and as a result the possibilities for change may have been restricted. By limiting the involvement of non-government participants in the planning of the new regional prisons, it appears CSC has reverted back to a traditional correctional model.

²⁹³ Hannah-Moffat, Kelly & Margaret Shaw (2000). “Introduction: Prisons for Women – Theory, Reform, Ideals” pg. 11 – 27 in Kelly Hannah-Moffat & Margaret Shaw (eds.). *An Ideal Prison? Critical Essays on Women’s Imprisonment in Canada*. Halifax: Fernwood Publishing at 22.

²⁹⁴ Hannah-Moffat *supra* note 244 at 146.

Some of the changes that occurred to affect the outcome of the regional facilities include:

...the governments [failure] to provide funds for the development of community services, seen by *Creating Choices* as a crucial aspect of the new regional facilities. Other subsequent changes included alterations in the architectural plans for the facilities themselves, with the development of secure facilities, the erection of fences and, in at least one prison, the elimination of certain key components, such as the daycare center or the gymnasium. These decisions were made by the government on a variety of grounds including cost, public pressure from local citizens living near the proposed sites, considerations of employment and job creation, and perhaps, in the aftermath of the withdrawal of CAEFS, the desire to locate far away from local Elizabeth Fry Societies.²⁹⁵

CSC opened five regional facilities between 1995 and 1997. The Okimaw Ohci Aboriginal Healing Lodge was opened in August of 1995 in Maple Creek, Saskatchewan with a capacity for 28 women. In October of 1995, the Nova institution was opened in Truro, Nova Scotia, with a capacity for 24 women. The Edmonton Institution for Women (EIFW) in Edmonton, Alberta, opened in November of 1995 with a capacity for 53 women. Grand Valley Institution (GVI) in Kitchener, Ontario, opened in January 1997 with a capacity for 72 women. Finally, Joliette Institution opened in Joliette, Quebec, also in 1997, with a capacity for 81 women.

While both the Task Force document and the operational plan by CSC supported a physical design for the prisons that indicated a lower concern with security, various incidents occurred that resulted in a change to the initial vision. Public outcries emerged over the location of the new prisons, where local residents developed powerful campaigns to prevent the prisons from being built near them.²⁹⁶ According to Hannah-Moffat, this public anger

²⁹⁵ Hannah-Moffat & Shaw *supra* note 293.at 22 – 23.

²⁹⁶ In large part, this anger was fuelled by publicity surrounding the arrests and trials of Paul Bernardo and Karla Homolka.

was also fuelled by resentment based on the public's perception that prisoners would be offered facilities that those living outside of prisons did not have.²⁹⁷

The 'April incidents' of 1994, discussed earlier, which resulted in the *Commission of Inquiry into Certain Events at the Prison for Women at Kingston, Ontario*²⁹⁸ also added to the public's growing fear and outrage. The events at P4W involved a fight between six prisoners and a number of guards, six of whom were injured, which resulted in a chain of actions including the segregation of the prisoners, continued disturbances by those prisoners, the well-publicized excessive use of force against women prisoners, the involvement of male emergency response team in the strip-searching and shackling of women, and the women's lack of access to counsel.

During the inquiry, CSC introduced their latest plans for the new prisons, which arguably were affected by the recent events at P4W. CAEFS argued that, "these are the same plans that [they] had repeatedly challenged as mere configurations of current correctional practices...[CAEFS] believes that CSC is reluctant to relinquish the vestiges of models designed to deal predominately with the men in their prisons."²⁹⁹

The opening of Edmonton Institution for Women (EIFW), the Nova Institution, and the Healing Lodge in 1995 coincided with a dramatic change in the political climate, one that varied considerably from the time when *Creating Choices* was published. Both the political and penal climate in Canada had been influenced by an increasing emphasis on 'law and order', and the regional facilities, with the exception of the Healing Lodge, were under

²⁹⁷ Hannah-Moffat & Shaw *supra* note 293 at 23.

²⁹⁸ Arbour *supra* note 83.

²⁹⁹ Canadian Association of Elizabeth Fry Societies (date unknown). *Recent Issues Impacting Women's Imprisonment in Canada*. Ottawa: CAEFS.

intense media scrutiny.³⁰⁰ The opening of the EIFW in November 1995 in particular was a critical event in a long series of events, which affected the vision of the regional facilities.

Construction on this facility was not yet completed when the first women was transferred to the prison from P4W. In the first four months that EIFW was open, prisoners were moved from the Prison for Women, from the Regional Psychiatric Centre (where Prairie women had been housed since 1994), and from the Alberta provincial prisons, who had chosen to no longer house federal women inmates. About half of the women, most of whom were classified as maximum security, experienced serious adjustment problems to the new surroundings and the community living approach.³⁰¹ Numerous incidents occurred including self-injurious behaviour, the apparent suicide of one prisoner, as well as several escapes. The escapes led to increased public concern about the possible risks posed by federally sentenced women, even though during the escapes no crimes were committed, no one was hurt, and the last three prisoners were recaptured within minutes. Although the Edmonton City Council had actively solicited the new prisons, the local community, especially after the escapes, became largely hostile.³⁰²

In May 1996, following a period of intense political pressure, EIFW closed its doors temporarily so that its security measures could be upgraded. Maximum and medium security prisoners were transferred to provincial prisons. Later that month it became officially known that the suicide of prisoner Denise Fayant in February 1996 was actually a murder. This discovery obscured the fact that the decision to close EIFW was made prior to this

³⁰⁰ Hayman, Stephanie (2000). "Prison Reform and Incorporation: Lessons from Britain and Canada" pg. 41 – 51 in Kelly Hannah-Moffat & Margaret Shaw (eds.). *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing at 44.

³⁰¹ Watson, Lisa & Jan Fox (1997). "Edmonton Institute for Women: then and now". *Let's Talk* 22(5): 13 – 14 at 13.

³⁰² Hayman *supra* note 300 at 44.

discovery. Subsequently, public perception became such that the prison closure was linked to violence.³⁰³

As a consequence of the events at EIFW, particularly the escapes, all the new prisons, with the exception of the Healing Lodge, had their visible security measures increased, “signaling that *all* the imprisoned women were potentially dangerous”.³⁰⁴

However, making this assumption ignores:

...that the EIFW was unfinished when the first women arrived; that the design of the building did not provide adequately for the large number of maximum-security women who were sent there during the first months; that the cottage-style living demanded very different skills of the women from those developed at P4W; and that the staff were largely new to the CSC, had extremely high expectations, were often confounded and distressed by the unexpected behaviour of the women and were sometimes inconsistent in their responses.³⁰⁵

CAEFS also reported that women at EIFW were subjected to routine strip searches after every visit with someone from outside the prison, as well as after visits with fellow prisoners in their cottages, without any just or reasonable cause in violation of the *Corrections and Conditional Release Act (CCRA)*.³⁰⁶ In addition, minimum security women being escorted into the community were being handcuffed, and at times shackled if accompanied by medium security women. The temporary closure of EIFW, and the concurrent decision to increase visible security at all the new regional prisons ensured that the model proposed by *Creating Choices*, and even those proposed in the operational plan were never fully realized.

AFTER EIFW: The Placement of Maximum Security Women

The events at EIFW affected all the regional prisons in regard to perimeter security. However, in addition to this, women classified as maximum security were no longer housed

³⁰³ *Ibid.*

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.*

³⁰⁶ *Recent Issues Affecting Women's Imprisonment in Canada supra* note 299 at 4.

in any regional facility, but rather they were housed in separate units in men's institutions and, until its closure, at the Prison for Women. These women became what was discussed in Chapter Four, the 'unempowerable'. CAEFS observed that the doubling of the enhanced security units at each prison, and the lack of input from those invested in the vision of *Creating Choices*, resulted in CSC's response "to repeat its history of resorting to static inhumane security mechanisms in the face of its own inability to implement innovative dynamic new correctional philosophy and approaches."³⁰⁷ However, despite the good intentions of the Task Force, it can be argued that *Creating Choices* largely avoided the fact that women can be violent. It may have been premature to assume that all levels of security can be housed in one institution through dynamic mechanisms in a traditional correctional environment, a mistake clearly learned by P4W. Nancy Stableforth, the Deputy Commissioner for Women wrote:

In retrospect, it should not have been a surprise that one model didn't fit all and was not effective for all women offenders. Clearly, women offenders are no more of a homogeneous group than any other population grouping based on a broad definition, whether the defining criterion is offender, ethnicity, gender, age etc. The challenge of the report recommendations was to find appropriate alternative strategies for this heterogeneous group.³⁰⁸

The result was that maximum security women were barred from all regional facilities despite the fact that *Creating Choices* had envisaged that all federally sentenced women would be housed in the regional prisons.

The placement of women classified as maximum security was the focus of much criticism and outrage from advocacy groups and the Correctional Investigator³⁰⁹. The

³⁰⁷ *Ibid.* at 10.

³⁰⁸ Stableforth, Nancy (1999). "Effective corrections for women offenders". *Forum* 11(3): 3 – 5 at 4.

³⁰⁹ The Correctional Investigator acts as an Ombudsman to federal offenders. It operates independent of the Correctional Service of Canada, and reports annually to the Solicitor General. Investigations are conducted when a prisoner lodges a complaint, at the request of the Minister, or of its own accord. More information available at www.oci-bec.gc.ca.

Correctional Investigator wrote in its annual report that the carceral placement of women prisoners in male prisons was “inappropriate”. Further, it argued that such placements:

...were discriminatory and that regardless of the accommodations made it was in reality a form of segregation. The women were not only removed from association with the general population of the institution they were housed in, they were as well segregated from the broader general population of the women’s regional facilities. I argued that this form of segregation, based on security classification and mental health status placed these women, in terms of their conditions of confinement, at a considerable disadvantage to that of the male offender population.³¹⁰

CAEFS acknowledged that the behaviour of some women makes it difficult for them to integrate into the general prison population in a manner that is safe for themselves and others. However, women placed in the wings of men’s prisons are experiencing significant difficulties in accessing the services and programs that would enable them to address their needs. Consequently, women are not able to complete their correctional plans, much less cascade into the regional prisons and community integration.³¹¹ CAEFS also argued that it is quite clear that separate maximum security units are making eventual integration into the community more difficult, and that there is increased tension in the isolated maximum security units.³¹²

The movement of women into men’s prisons was intended to be a temporary placement. However, it was not until 1999, three years after the women’s placement, that the issue was re-visited by CSC. In September of 1999, Solicitor General Lawrence MacAuley announced the ‘Intensive Intervention Strategy’. The intention of this strategy was to create secure units and structured living environment houses at the existing regional

³¹⁰ The Correctional Investigator. *Annual Report of the Correctional Investigator 2000-2001*. Ottawa: Correctional Investigator Canada at 35.

³¹¹ Canadian Association of Elizabeth Fry Societies (2000). *Position of the Canadian Association of Elizabeth Fry Societies (CAEFS) Regarding the Classification and Carceral Placement of Women Classified as Maximum Security Prisoners*. Ottawa: CAEFS at 8.

³¹² *Ibid.*

prisons. The Strategy consists of expanding and upgrading the existing enhanced unit at each regional prison, so that the external walls and windows of the redesigned units will provide the required security and each will have their own secure outside courtyard.³¹³ Also, new structured living environment houses were also to be constructed at each regional prison. It is intended that these houses will accommodate women, classified as medium and minimum security with special needs and/or mental health problems who require 24 hour staff support and supervision in daily living.³¹⁴ This strategy will cost an estimated 17 million dollars for the upgrades and construction, as well as additional annual operating costs. During the original construction of the regional facilities, the Correctional Service of Canada pushed for increased savings, including the removal of some aspects of the original plan.³¹⁵ In addition, CSC failed to provide funds for community development, yet finances were found to increase security and double the enhanced unit at each regional facility. The target date announced for full implementation, and the removal of women from men's facilities was intended to be September 2001. However, the current date provided is now the Spring of 2002.

In light of CSC's inability to meet its original target date, the Correctional Investigator argued that the continuing situation remains totally unacceptable:

These units in male penitentiaries were neither intended nor resourced to manage high risk, high need women offenders. The Service [CSC] has never established a staffing formula for these units, the staff were not initially selected with regard to established criteria for working with women offenders and specific training on the management of high risk, high need women offenders has been limited.³¹⁶

³¹³ Correctional Service of Canada (1999). *Intensive Intervention Strategy: Background*. Ottawa: Correctional Service of Canada.

³¹⁴ *Ibid.*

³¹⁵ Hayman *supra* note 300 at 43.

³¹⁶ *Annual Report of the Correctional Investigator 2000-2001 supra* note 310 at 35.

In accordance with this, CAEFS launched a Human Rights complaint against the Correctional Service of Canada for its unfair treatment of federally sentenced women in March 2001. The complaint was made on the grounds that “the manner in which the women prisoners are treated is discriminatory, as it contravenes several of the prohibited grounds articulated in s. 3(1) of the *Canadian Human Rights Act*”.³¹⁷ In its claim CAEFS stated it was concerned about the discrimination of women prisoners on the basis of sex, especially those housed in segregated maximum security units in men’s prisons.³¹⁸

The discriminatory treatment of maximum security prisoners was not experienced in isolation. The intention of the Task Force, and apparently also the intention of the Implementation Committee, was not to repeat the situation that occurred at P4W, where all women were subject to maximum security. The regional prisons were intended to be run as minimum security institutions regardless of their multi-level status. However, in light of the problems that occurred at EIFW, all security at all regional prisons was increased. The result is that women classified as minimum and medium, and eventually maximum security prisoners, are now subject to the same perimeter security.³¹⁹

This situation in the regional prisons creates a significant distinction between the treatment of men and women prisoners. The design of the regional prisons was supported by research and international experience which revealed that women prisoners in general pose minimal risk to the safety of the public.³²⁰ Minimum security men live in prisons without fences, and it cannot be argued that minimum security women have higher security needs than minimum security men. A recurring historical criticism of P4W was that all

³¹⁷ Pate, Kim (2001). Letter to the Canadian Human Rights Commission re: Complaint Regarding the Discriminatory Treatment of Federally Sentenced Women by the Government of Canada. Ottawa: CAEFS.

³¹⁸ *Ibid.*

³¹⁹ *Position of CAEFS ... supra* note 311 at 6.

³²⁰ *Ibid.*, at 7.

women were subjected to high security measures regardless of their classification.

Unfortunately, this situation has now been replicated in the 'new' regional prisons.

THE BURNABY CORRECTIONAL CENTRE FOR WOMEN (BCCW)

As mentioned earlier the National Implementation Committee decided to not build a prison in the Pacific region because BCCW was already under construction when *Creating Choices* was released. It was agreed that British Columbia would maintain an Exchange of Services Agreement, as long as the prison incorporated the ideals built found in the Task Force report. However, BCCW, which opened in 1991, contradicts the recommendations of the Task Force not only architecturally, but also for its placement in an isolated, semi-rural setting, far from many community resources.³²¹

BCCW has been described as a mixture of "...19th century prison architecture and 21st century advanced technology".³²² The prison, intended to be a medium security facility, falls into a similar trap that occurred at the other regional prisons, and one that historically created vast problems at P4W. Due to the architectural design and the high-level security systems, and because of the variation of the security classification of the women housed there, all women are subject to maximum security restrictions regardless of their security classification. There is extensive surveillance throughout the prison and no design to allow for even a modicum of 'normal' daily living recommended by the Task Force. Also, in opposition to both the Task Force and the operational plan, the prison has secure units for protective custody. Similar to a traditional prison, and not even remotely following the recommendations of the Task Force or operational plan, the prison is surrounded by high

³²¹ Faith *supra* note 41 at 142.

³²² *Ibid.*, at 145.

stone walls, chainlink fences, and elaborate security networks creating what some have called an “electronic fortress”.³²³

The security at BCCW, in opposition to both international research and recommendations, is unnecessary because very few of the women at the prison represent a threat to anyone. In fact, at any given time “...one-third [of the women] are on remand, awaiting court appearances, which may or may not result in incarcerative sentences. Public taxes are thus supporting a mammoth, high security institution for a substantial body of women who are not even yet officially ‘criminals’”.³²⁴

Additionally, CAEFS has argued that federally sentence women imprisoned at BCCW are done so in violation of the *CCRA*. One of their many arguments is that BCCW does not provide the required range of programs for federally sentenced women necessary to address their needs and contribute to their successful community reintegration. Federally sentenced women have been delayed in being admitted to programs because provincial prisoners serving short sentences have been given priority access to programs to allow them access these programs prior to their release.³²⁵ Also, meaningful vocational and employment skills, so necessary for federally sentenced women, are not generally developed for provincial prisoners because their short terms of imprisonment usually limit the potential for them to be able to benefit from them.³²⁶ As such, these necessary programs for federally sentence women are not available to those federally sentenced women serving their time at BCCW.

³²³ *Ibid.*, at 147.

³²⁴ *Ibid.*, at 149.

³²⁵ Canadian Association of Elizabeth Fry Societies (2000). *Position of the Canadian Association of Elizabeth Fry Societies (CAEFS) Regarding the Exchange of Services Agreement (ESA) Between the Correctional Services of Canada (CSC) and the Government of British Columbia*. Ottawa: CAEFS at 3.

³²⁶ *Ibid.*

SINCE *CREATING CHOICES*: The Increasing Incarceration of Federally Sentenced Women

One of the fears resulting from *Creating Choices* was that building more prisons and creating 'nicer' accommodations for federally sentenced women would increase the number of women sentenced to federal time. It was argued that judges had previously showed leniency towards women because of the deplorable conditions at P4W, and thus sentenced women to provincial terms. It was also argued in Chapter Two that the size of our prison population is a normative question. That is, we needed criminals because we had prisons to fill. Of course there was a lot of concern that creating more places to house federally sentenced women would potentially result in more federally sentenced women. It has only been 7 years since the first regional prison was opened, and as such we can only begin to explore the trends surrounding this concern. While it is early to predict a long-term growth trend, the numbers themselves are very telling.

At the time of the operational plan (1991), there were 317 federally sentenced incarcerated women. By 1999, this number had increased to 354 incarcerated women, with the most significant increase in the Prairie region.³²⁷ Most of these women (85.9 percent) had never previously served a federal sentence.³²⁸ The population in the Atlantic, Quebec and the Prairies has increased, while decreasing in Ontario and the Pacific regions, most likely a result of the building of the regional prison and the closure of P4W.³²⁹ Grand Valley Institution had the greatest number of prisoners with 72, followed closely by EIFW with 69 and Joliette with 60.³³⁰ The majority of women, (294 or 93%), are serving their sentences

³²⁷ Correctional Service of Canada (2000). *Statistical Overview – Women Offenders*. Ottawa: Women Offender Sector, Correctional Service of Canada at 9. In the year 2000-2001 the number of incarcerated federally sentenced women had increased to 384. *Basic Facts* *supra* note 49.

³²⁸ *Transformation of Federal Corrections for Women: Towards Creating Choices* *supra* note 263 at 7.

³²⁹ *Statistical Overview – Women Offenders* *supra* note 327 at 9.

³³⁰ *Ibid.*

classified as minimum or medium security, while the remainder (23 or 7%), are classified as maximum security.³³¹ From 1995 to 1999, the overall population of incarcerated women has increased from 329 prisoners to 355. In addition, the proportion and number of Aboriginal women serving a federal sentence has increased from 52 (16%) in 1995 to 81 (23%) in 1999.³³² Before drawing any premature conclusions to this data, a more in-depth analysis is required.

In an examination of federal incarceration trends from 1994 to 1999, a study completed by CSC acknowledged that the population of women prisoners has increased. In this study, researchers examined both the trends in police reports to examine if more charges are being laid against women, as well as the conviction and sentencing patterns of adult women in criminal court, to see if the cause of the recent growth in federally sentenced women can be better understood. As will be explained in more detail, this report found that the number of adult women charged had decreased. It also found that the number of women sentenced to a provincial prison term (2 years less a day) had also decreased, while the number of women sentenced to federal time (2 years or more) had increased significantly (170 % or 55 cases in 1994-95 to 148 cases in 1998-99).³³³ This suggests, what has been feared all along, that judges are sentencing women to longer sentences.

An examination of police charges, as well as the Uniform Crime Reporting survey, indicated that the overall number of cases involving adult women that police have charged has declined, thus confirming a downward trend.³³⁴ Between 1994 and 1998, the total

³³¹ *Ibid.*, at 10.

³³² *Ibid.*, at 12.

³³³ Boe, Roger, Cindy Lee Olah and Colette Cousineau (2000). *Federal Imprisonment Trends for Women: 1994-95 to 1998-99*. Ottawa: Research Branch, Correctional Service of Canada. The number of Warrant of Committal Admissions for women also increased from 181 in 1996-97 to 231 in 2000-01. This represents a 27.6 % increase. Solicitor General Canada (2001). *Corrections & Conditional Release Statistical Overview*. Ottawa: Solicitor General at 44.

³³⁴ Boe et al. *supra* note 333 at 4-5.

number of women charged with criminal offences has fallen by 7 percent (approximately 6, 300 cases).³³⁵ However, the crimes included in this analysis cannot be indicative of being 'at risk' for federal sentences. Thus a further analysis of crimes which are more likely to result in a federal prison term was needed. The researchers focused upon 'major crimes' typical of women offenders, including homicide, attempted murder, robbery, major assaults (i.e., aggravated, where a weapon was used, which caused bodily harm etc.) and major drug crimes (trafficking/importation). The findings indicate that charges for violent crimes are down since 1994, and that charges for major drug crimes have increased since that time period.³³⁶ Overall, between 1994 and 1998, fewer adult women were charged by police, and of the women charged fewer were charged for major violent crimes. From this, one can conclude that the increase in federal prison terms for women is not likely due to an increase in the number of charges laid by police.

Considering the outcome that fewer women are being charged for serious crimes, the next logical step is to examine the sentencing patterns of adult women, and question if more women are being sentenced to prison. The data indicated that since 1994, cases involving adult women being processed through the courts has decreased by about 9 percent.³³⁷ The data also indicated a consistent decrease in the number of cases receiving prison sentences under two years. However, the number of cases sentenced to a federal term has increased by 170 percent (from 55 to 148 cases between 1994 and 1999).³³⁸

³³⁵ *Ibid.*, at 5. The crimes included for criminal offences are all Criminal Code offences and all Trafficking and Drug offences.

³³⁶ *Ibid.*, at 6.

³³⁷ *Ibid.*, at 7.

³³⁸ *Ibid.*, at 10.

Regionally, the data indicate that the three regions with long established facilities for federally sentenced women (Quebec, Ontario and the Pacific region)³³⁹ have shown a decline in the numbers of admissions, while the Prairies and Atlantic region, with new federal prisons, have shown a significant increase in the number of admissions.³⁴⁰ In the Atlantic region (where the Nova Institution is located), no significant increases were experienced until 1998-99, when the number of women sentenced to federal time jumped from 5 to 25 cases.³⁴¹ The Quebec region, where the Joliette prison opened in 1997, experienced a steady increase from 1994 to 1998 of 16 to 37 women sentenced to federal time. In Ontario, the number of women who received a federal term nearly doubled between 1994-95 to 1995-96 (20 to 40 cases), and then stabilized at around 40 cases per year.³⁴² While the Grand Valley Institution opened in 1997, it was not until the summer of 2001 that P4W was permanently closed. In the Prairie region between 1997-98 and 1998-99 a large increase was observed, where women sentenced to federal time increased in number from 23 to 59.³⁴³ While there is a weak association between the opening of the Regional facilities and the increase of federal sentences, the researchers stated:

It has been suggested that adult provincial/territorial court judges may take into account the availability of the “new” federal facilities for women when considering their sentence. There may be less reluctance on the part of provincial/territorial court judges to impose a federal sentences where previously they imposed a sentence of “2 years less a day” or under, for example, now that a new federal women institution is located in their region. This indicates a view that judges were previously reluctant to sentence a woman to a federal sentence, if it had to be served out of province, and a reluctance to send women to the Prison for Women.³⁴⁴

³³⁹ Quebec housed federally sentenced women at Maison Tanguay (a provincial prison under an Exchange of Services Agreement), and now houses federally sentenced women at Joliette. Ontario housed federally sentenced women at P4W and now at the Grand Valley Institution. Pacific region housed women at BCCW.

³⁴⁰ Boe et al *supra* note 333 at 18.

³⁴¹ *Ibid.*

³⁴² *Ibid.*, at 19.

³⁴³ *Ibid.*

³⁴⁴ *Ibid.*, at 20.

Overall, since 1994, there has been a decrease in the number of charges and convictions for women, but an increase in the number of convictions resulting in longer sentences. It appears that the courts are using the opportunity of the opening of the new federal women's prisons in their regions to impose a federal sentence in cases where before there may have been greater hesitation. There may be less reluctance on the part of judges to impose a federal sentence now that there exists an alternative to P4W, particularly one that is new and closer to home.³⁴⁵

The steady increase in women sentenced to federal time has prompted CSC to consider increasing accommodation at the regional prisons. And if the trends are indicative of judges' increasing comfort with sending women to the 'new' prisons in their own region, this trend is unlikely to stop. The building of additional cells/beds will likely only spur on an increase in the numbers of women sentenced, thus it would be beneficial to maintain the current facilities, and not expand the facilities of federally sentenced women.

12 YEARS AFTER *CREATING CHOICES*: WHERE ARE WE NOW?

The transformation from the recommendations of *Creating Choices* to the operationalization of the regional prisons was one that was not simple. While there is no doubt that the regional prisons are more aesthetically pleasing and perhaps allow for a more comfortable living atmosphere for federally sentenced women, has the transformation of federal corrections for women in Canada resulted in anything dramatically different from the situation at P4W? Currently within CSC, *Creating Choices* is not an operational document, but a 'philosophy statement'. With the replication of many problems that persisted at P4W, it has been argued by many that *Creating Choices* "promoted an unachievable ideal ... while the

³⁴⁵ *Ibid.*, at 23.

benevolent rhetoric of empowerment and healing embodied in *Creating Choices* has permeated correctional discourses, the more sinister and punitive disciplinary reality of 'corrections' persists".³⁴⁶

On the surface, Canada appears to be at the cutting edge of women's corrections with its 'new' women-centred regime. However, many problems persist, and CSC maintains "...that while 'most' women will benefit from the new regime at the regional facilities, it also acknowledges that it is 'on a learning curve' and that there are growing pains associated with any new regime".³⁴⁷ In fact, CSC now contends that many of the ideals embodied within the Task Force document are not easily operationalized and are perhaps too ambitious. As a result, the implementation process has been characterized by exclusions and redefinitions of the original meaning of women-centred corrections.

Creating Choices was an attempt to alter women's imprisonment in Canada for the better. It attempted to alter the historical pattern of neglect, which resulted in discrimination towards federally sentenced women who were seen as an 'inconvenience'. It attempted to create a regime made for women, rather than one made for men but slightly altered for women. While the report of the Task Force had many theoretical and ideological problems, it still managed to do what so many before them had failed to do: close the Prison for Women. But the end result was the building of more prisons, a resulting increase in the number of women sentenced to federal terms, and a failure to eradicate the problems that had so long plagued federally sentenced women. Critics argue that the end result has been the problems of P4W replicated five-fold.

One of the biggest and most common problems with P4W was the geographic dislocation of many women resulting from having only one centralized facility for federal

³⁴⁶ Hannah-Moffat *supra* note 244 at 177.

³⁴⁷ *Ibid.*, at 185.

prisoners. However, this problem cannot be easily solved in a geographically large country, by only five regional prisons.³⁴⁸ Many women are still not within visiting proximity of their families. The situation is also problematic for Aboriginal women, who must choose between staying in their own region or transferring to the Healing Lodge.

Women classified as medium or minimum security, who comprise the majority of federally sentenced women (93%) are still in far more secure conditions than those available to equivalent male federal prisoners.³⁴⁹ This is seen as a direct result of both CSC's inability to learn how to deal differently with 'at-risk' prisoners, and the Task Force's lack of attention to violent women. Certainly for those women who are classified as maximum security and/or with mental health problems, and who have been housed in isolation within men's institutions, conditions have been arguably worse than they were at P4W. These women who have not yet been incorporated into the regional prisons have been the justification for three security 'enhancements'. In 1994 it was for their benefit that the enhanced security units were expanded; in 1996 security fences, razor wire, and infrared cameras were installed. Currently, prior to the placement of women who are still housed in men's prison, CSC has yet another security enhancement to complete. All of this is being done for women who do not even live within the newly fortified walls. Conditions for women in the Pacific region who are housed in BCCW are certainly in worse conditions than at P4W, where all women are housed in a high-tech maximum security prison. Additionally, there is still no community-release action plan, much less the provision of actual resources promised by CSC.

In short, there were many unintended consequences as a result of the work of the Task Force. It also "painfully clear that the CSC was ill-equipped to implement

³⁴⁸ Faith *supra* note 41 at 144.

³⁴⁹ *Statistical Overview – Women Offenders supra* note 327 at 10.

recommendations that were predicated upon an understanding that the Task Force partnership of corrections and the Aboriginal and feminist communities would persist throughout the implementation period".³⁵⁰ It is also indicative of how difficult it is to change the correctional culture. However, there is no doubt that many women prisoners felt that the closure of the Prison for Women and the movement of women closer to their homes were important and worthwhile goals.³⁵¹

The regional prisons have placed many women relatively closer to their homes, and they have provided a 'nicer' living atmosphere, but the women-centred empowerment model endorsed by the Task Force has never been fully realized. Increased security measures, the placement of the regional prisons far from city centers, the lack of community development models, and the restriction of maximum security women from the prisons, to name a few, has ensured that the model was never properly implemented. As such, there is apprehension about the willingness and ability of CSC to institute the necessary reforms to address the needs and challenges of federally sentenced women. CAEFS argued that the "...sort of inconsistent and misguided application of the 'new philosophy' articulated in [*Creating Choices*] has allowed problems ... to mushroom and explode, as well as [allow] the regression of women's imprisonment..."³⁵²

The vast increase in federally sentenced women since 1994 has led CSC to contemplate the building of additional cells. However, both activists and researchers have argued that this is unnecessary.³⁵³ Rather, the development of community integration

³⁵⁰ Faith, Karlene and Kim Pate (2000). *Personal and Political Musings on Activism: A Two-Way Interview*" pg. 136 – 147 in Kelly Hannah-Moffat & Margaret Shaw (eds.). *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing at 142.

³⁵¹ *Ibid.*

³⁵² Canadian Association of Elizabeth Fry Societies (1997). *Annual Report 1996-1997*. Ottawa: Canadian Association of Elizabeth Fry Societies at 10.

³⁵³ Boe et al *supra* note 333; Canadian Association of Elizabeth Fry Societies (2000). *Annual Report 2000*. Ottawa: Canadian Association of Elizabeth Fry Societies.

resources should be a more appropriate focus. The focus should be placed on changing the situation for minimum security women, rather than increasing the security of all women because of a few. The result is that CSC has resorted to traditional methods of correctional treatment, rather than attempting to break the boundaries of imprisonment. CAEFS wrote in their Annual Report:

...nearly ten years after the completion of the work of the Task Force on Federally Sentenced Women issued its report, *Creating Choices*, we still await CSC's articulation and action plan for a national strategy for the provision of community release or supervision options for federally sentenced women. With the exception of a halfway house in the Greater Vancouver area, a few private home placements in Edmonton, and the purchase of two beds in E. Fry Saskatchewan's provincially funded house there are still virtually no women-only day parole options for federally sentenced women west of central Ontario. Regrettably, there is also one less halfway house in Ontario, as the EFS of Ottawa was forced to close their house due to insufficiency of funding to finance the beds for FSW. As such, there are now only three Elizabeth Fry and one Salvation Army halfway houses for women in Ontario. There is one in Quebec, but not one in Eastern Ontario. CAEFS continues to urge CSC to develop a clear national community integration strategy and standards for federally sentenced women (FSW).³⁵⁴

Ultimately, against its intentions, the language of *Creating Choices* was appropriated and redefined in such a way as to justify the use of prison as a method of crime control for women. The feminist analysis might have permeated correctional discourses, but the traditional correctional model of prisons prevailed. The feminist penal discourse appears to have served only to obscure the oppressive nature of incarceration, and create 'prettier' and 'nicer' prisons in which more and more women live. The appropriation of feminist discourses by CSC and their concurrent lack of attention to community alternatives have served only to strengthen the prison regime. While some women have benefited from this 'new' regime, the result viewed in its entirety cannot be seen as an advancement for women prisoners. *Creating Choices* called not just for new buildings but a fundamental change in the way the facilities should be run, a change we have not yet seen.

³⁵⁴ *Annual Report 2000 supra* note 353.

CHAPTER SIX: DISCUSSION

Summary

In Chapter Two, it was stated that the prison was a 'giant standing on clay soil'. That is, the prison is a seemingly solid system with very poor underpinnings, and the clay soil of the prison is its total irrationality in terms of its own stated goals.³⁵⁵ It was shown that the claims that the prison is beneficial in terms of retribution, deterrence, incapacitation, and rehabilitation were problematic. It was also argued that the prison failed to reduce delinquency, and in fact may be responsible for the production of delinquency and therefore the continued reliance upon the criminal justice system. More specifically, the prison is a system which thrives on its own failure. The failure of the prison to reduce delinquency and recidivism is responsible for its continued existence. Along with the large number of acts which can be labeled 'criminal' and a large group of 'disenfranchised' people, this allows for an industry that is well suited growth. And grow it has!

The 'failure' of the prison needs to be considered when one examines the expansion of the penal regime for federally sentenced women in Canada. The history of federally sentenced women was discussed in Chapter Three, and outlined a story of neglect for the women's prison population that was often seen as an 'inconvenience'. From the beginning, women prisoners were housed in any manner that suited the administration of the larger male prison population. Numerous criticisms of the manner in which women were housed has been documented in the large number of commissions and various task forces created to examine the penal system in Canada. These reports detail the neglect of women prisoners,

³⁵⁵ Mathiesen *supra* note 77 at 339.

often describing horrid living conditions, and poor programming, and was often full of 'well-meaning paternalism'. In 1921, the Nickle Report, in light of the belief that women's criminality was linked to sexual maladjustment, argued that women should be housed in completely separate and isolated units from both male prisoners and male guards. While the rationality of this argument can be questioned, the Nickle Report was nonetheless responsible for providing the impetus towards the creation of the Prison for Women (P4W).

In 1934, the Prison for Women opened its doors for 'business' and only four years following this, the Archambault Commission recommended its closure and the return of women to their home provinces, citing 'inferior conditions'. The Archambault Commission claimed that the construction of this institution was unwarranted due to the small numbers of women prisoners, and the fact that the prison and its grounds were disgraceful. Over the next 5 decades, numerous reports and commissions reiterated what the Archambault Commission had stated in 1938. First, that the need for such a large facility was unnecessary. But more importantly, that one central institution of women was unacceptable because it served only to remove women from their home provinces and separate them from their family and friends, making reintegration more difficult. These Reports also detailed the poor living conditions, lack of acceptable programming, educational and vocational opportunities, over-classification of women prisoners, language requirements benefiting English-speaking prisoners only, cultural insensitivity, and the failure of provincial Exchange of Services Agreements to support long-term offenders.

But while these problems had been documented for numerous years, the results of these reports resulted in no more than minor tinkering with the system and aesthetic changes to P4W. In the late 1980s, however, the political and social climate in Canada changed slightly which allowed for a small window of opportunity. Not only did feminist analyses of

the problem of 'criminal women' gain credibility, but there was also the creation of an Aboriginal Women's Caucus to speak on behalf of Aboriginal women in conflict with the law. These changes coupled with Corrections Commissioner Ole Ingstrup's new mandate to include the need to ensure that the needs of federally sentenced women were met, provided for the atmosphere to explore a new model of corrections for women.

In 1990, the Report on the Task Force of Federally Sentenced Women, *Creating Choices*, was published. This report detailed an innovative and new method of corrections for federally sentence women in Canada. Endorsed by the government, this report was touted as an international model for female corrections. While making numerous recommendations, this Task Force was, in part, responsible for finally closing P4W. In addition to this, the Task Force supported the building of four new 'women-centred' prisons, the building of an Aboriginal Healing Lodge, the introduction of 'women-centred' programming, and the expansion of community alternatives for women.

While not underestimating the good intentions of those involved in the Task Force, there were many problems with the theoretical basis for many of its recommendations. Primarily, the language of *Creating Choices* obscured the harsh reality of punishment, ultimately failed to depart from a traditional model of corrections, and re-formed and strengthened the penal regime. The move towards a 'women-centred' model of corrections served only to establish a false dichotomy between male and female correctional regimes. Not only is this split responsible for reinforcing normative standards of femininity, it also supports the belief that while male models of corrections are unsuitable for women, prisons are suitable as long as they are based upon a feminist vision of justice, punishment, and care. This philosophy leaves the wider institutional framework unchallenged.

Additionally, the Report of the Task Force was based upon the assumption that women prisoners have more in common with other women than they do with male prisoners. The assumption of the 'essential' woman ignores important distinctions of race, class and sexual orientation. Aspects of race, for example, become a context or magnitude of what it means to be a 'woman'. The result is that white women quietly become the norm, and arguments based upon the commonalities of women obscure the power relations among women, and wrongly assumes that the category of 'woman' is homogeneous and unitary.

The Task Force also supported the need for women prisoners to be 'empowered'. While not disagreeing that these women need to be empowered, it is ironic that prisons, which have never succeeded in providing a suitable therapeutic environment, are now to be used to empower women. In addition, the definition of empowerment between feminists and the Correctional Service of Canada (CSC) differs fundamentally. While empowerment for feminists is embraced as a way to transform the structure of societal power relations that allow women to make choices and regain control of their lives, for CSC the will to empower is individualized. This definition 'responsibilizes' the prisoner and makes her responsible for monitoring her own risk-generating behaviour.

Ultimately, the theory behind *Creating Choices* is fundamentally flawed. The change to a 'women-centred' model of corrections serves only to obscure the harsh reality of imprisonment, and failed to question the use of imprisonment in our society. By failing to do so, the Task Force is responsible for providing a further legitimation to an already growing system, which serves only to perpetuate the need for the criminal justice system.

In practice, *Creating Choices* lost any benefits that could have been salvaged from this new model of corrections. The appropriation of the feminist vision for change by CSC guaranteed that the model of corrections envisioned by the Task Force would never be fully

realized. The inability of CSC to implement an innovative model of corrections, the removal of feminist voices from the Implementation Committee, the regression to a more law and order based political climate in Canada during the 1990s, the outcry of the public against the building of prisons within their community, the poor introduction of federally sentenced women into the regional prisons and their resulting inability to quickly adapt to a new model of living, all resulted in fundamental changes to the plan outlined by the Task Force. The result was the removal of maximum security women from the regional prisons, the upgrade of static security measures at all regional prisons, and the failure to provide funds for community resources, altering the vision of *Creating Choices* permanently.

Perhaps more pressing however, is the increase of federally sentenced women in Canada since the opening of the regional prisons. One major criticism of prisons is that the more prison space made available for prisoners, the more offenders are sentenced to prison terms. This realization coupled with 'newer', 'nicer' prisons for women was feared to lead to an increase in the number of federally sentenced women. Historically, judges were not sentencing women to federal terms because of the poor conditions at P4W. Now, however, with the new women-centred prisons, this is no longer the case. One study detailed that while women are being charged less, the number of women being sentenced to federal time increased significantly from 1994 to 1999.³⁵⁶ This increase may be indicative of less reluctance on the part of judges to sentence women to federal time.

On the surface, Canada appears to be on the cutting edge of correctional reform for federally sentenced women. However, through internal fallacies within the Task Force Report and CSC's inability to implement a radically different model of corrections, the result has been the obscuring of the harsh nature of imprisonment, and further justification for a

³⁵⁶ Boe et al. *supra* note 333.

system that thrives on its own failure. While *Creating Choices* may have improved the conditions for some women, its objective to alter the model of corrections for women was never realized.

Female Penal Ideology & Correctional Practice: Directions for Future Research

While no one can claim that *Creating Choices* achieved its objectives, the efforts of the members of the Task Force were not in vain. They represent the impact that feminist penal ideology can have upon correctional reform and policies. Although the outcome of the Report of the Task Force was not 'ideal', it did indicate that feminist penal ideology can permeate the traditional correctional regime.

However, the failure of the Task Force can be directly linked to its reliance upon the use of prisons. The construction of the regional prisons is a simple replacement for P4W, rather than a genuine alternative to the traditional model of corrections. As argued above and demonstrated historically, as long as there are available institutions, judges will send people to them. When beds are no longer available, further institutions for women will be built. Faith argued that "...nothing short of a radical readjustment in 'correctional' thinking will break this cycle, and the underlying problems of female 'offenders' will remain unaddressed except on the most superficial levels".³⁵⁷

The failure of the Task Force can also be located in its inability to challenge the traditional correctional regime. The use of a women-centred model, as argued previously, served only to obscure the punitive nature of corrections and provide a further legitimization for the use of prisons, particularly for women. That is, it justified that as long as prisons are modeled by feminist visions of justice, they are suitable as a method of crime control.

³⁵⁷ Faith *supra* note 41 at 145.

However, a feminist model of prisons has as many internal fallacies as the basic tenets prison have always had. They are a simple justification for a system that is seemingly illogical.

What *Creating Choices* did indicate was that feminist analyses of problems regarding women prisoners can permeate traditional correctional boundaries, but that feminists must maintain more control over the implementation of the recommendations, and maintain a distance from the tradition penal regime because the prison ultimately absorbs and controls any good intentions. The traditional correctional regime was long criticized because of the system's failure to address women's interests, yet the same system was expected to play a central role in the empowerment and healing of women in the model outlined within *Creating Choices*

The centrality of the prison is a common and unquestioned presence in correctional reform. Hannah-Moffat argued that:

We need to think more deeply about how and why we punish, and question our deeply ingrained assumptions about prisons and their potential for reform. Future reform initiatives should reflect more deeply on the history of well-intentioned penal reforms. Rather than engaging in projects that 're-form' the prison, we need to decentre the prison. While prisons cannot be ignored, they are not the solution.³⁵⁸

As indicated by *Creating Choices*, there are questions surrounding the ability of well-intentioned reformers to fundamentally alter the power relations around prisons. Certainly it was not the intention of those on the Task Force to provide further legitimation to the penal regime for women. In spite of feminist efforts to reform the prison system, the traditional model of corrections prevailed. The failure to implement the radical ideals within *Creating Choices* and to fundamentally restructure the prison system for women in Canada is a systemic problem, not an individual problem.³⁵⁹ The correctional system was able to co-opt, re-define and re-interpret the model within *Creating Choices* to fulfill its own objectives.

³⁵⁸ Hannah-Moffat *supra* note 244 at 199.

³⁵⁹ *Ibid.*, at 198.

Perhaps, if the money to build the regional prisons and the additional funds provided to increase security had been used to support the other elements of *Creating Choices*, such as the community strategy, the outcome of this project could have been dramatically different.

What this indicates is that feminist penal reform must be fully aware of the dangers of relying upon a traditional penal regime by which to make radical changes. Feminists must acknowledge that prisons are growth industries, and future research and recommendations must avoid the net-widening damage caused by the proliferation of prisons. Finally, feminists must recognize the danger in having their vision co-opted which results in the *appearance* of change without addressing any of the underlying issues. Certainly we must never forget that, “the governance of women by women can be as problematic as the governance of women by men, especially when the relations among the ‘keepers’ and the ‘kept’ are shaped by the institutional dynamics of imprisonment”.³⁶⁰

³⁶⁰ *Ibid.*, at 18.

BIBLIOGRAPHY

- Annual Report of the Directors of Penitentiaries* (1868), (Ottawa: King's Printer).
- Arbour, The Honourable Louise (1996). *Commission of Inquiry into Certain Events at the P4W in Kingston (The Arbour Commission)*. Ottawa: Public Works and Government Services Canada.
- Axon, Lee (1989). *Model and Exemplary Programs fro Female Inmates: An International Review, Volume One*. Correctional Service of Canada: Ottawa.
- Berzins, Lorraine and Brigid Hayes (1987). "The Diaries of Two Change Agents" pg. 163-179 in Ellen Adelburg and Claudia Currie (eds.). *Too Few To Count: Canadian Women in Conflict with the Law*. Vancouver: Press Gang Publishers.
- Boe, Roger, Cindy Lee Olah and Colette Cousineau (2000). *Federal Imprisonment Trends for Women: 1994-95 to 1998-99*. Ottawa: Research Branch, Correctional Service of Canada.
- Canadian Association of Elizabeth Fry Societies (1997). *Annual Report 1996-1997*. Ottawa: Canadian Association of Elizabeth Fry Societies at10.
- (2000). *Annual Report 2000*. Ottawa: Canadian Association of Elizabeth Fry Societies.
- (2000). *Position of the Canadian Association of Elizabeth Fry Societies (CAEFS) Regarding the Classification and Carceral Placement of Women Classified as Maximum Security Prisoners*. Ottawa: Canadian Association of Elizabeth Fry Societies.
- (2000). *Position of the Canadian Association of Elizabeth Fry Societies (CAEFS) Regarding the Exchange of Services Agreement (ESA) Between the Correctional Services of Canada (CSC) and the Government of British Columbia*. Ottawa: Canadian Association of Elizabeth Fry Societies.
- (date unknown). *Recent Issues Impacting Women's Imprisonment in Canada*. Ottawa: CAEFS.
- C.B.C. Television (February 21, 1995). *Fifth Estate*.
- Christie, Nils (1993). *Crime Control as Industry*. New York: Routeledge.
- Clemmer, D (1940). *The Prison Community*. New York: Holt, Reinhart & Winston.
- Cohen, Stanley (1985). *Visions of Social Control*. Oxford: Polity.
- Committee Appointed to Inquire into the Principles and Procedures Followed in the Remission Service of the Department of Justice* (1956), (Fauteux Report).
- Cooper, Barry (1981). *Michel Foucault: an introduction to the study of his thought*. New York: The Edwin Mellen Press.

Cooper, Sheelagh (Dunn) (1987). "The Evolution of the Federal Women's Prison" pp. 127-144 in Adelburg, Ellen and Claudia Currie (eds.). *Too Few to Count: Canadian Women in Conflict with the Law*. Vancouver: Press Gang Publishers.

The Correctional Investigator (2001). *Annual Report of the Correctional Investigator 2000-2001*. Ottawa: Correctional Investigator Canada.

Correctional Service of Canada (1992). *Regional Facilities for Federally Sentenced Women Operational Plan*. Ottawa: Construction Policy and Services/National Implementation Committee, Correctional Service of Canada.

--- (1994). *Correctional Program Strategy for Federally Sentenced Women*. Ottawa: Federally Sentenced Women Program, Correctional Service of Canada.

--- (1999). *Basic Facts about Federal Corrections*. Ottawa: Correctional Service of Canada.

--- (1999). *Intensive Intervention Strategy: Backgrounder*. Ottawa: Correctional Service of Canada.

--- (1999). *Penitentiaries in Canada*. Ottawa: Correctional Service of Canada.

--- (2000). *The Closing of Prison for Women in Kingston*. Ottawa: Solicitor General Canada.

--- (2000). *Commissioner's Directive – Interjurisdictional Agreements (CD 540)*. Ottawa: Correctional Service of Canada.

--- (2000). *Statistical Overview – Women Offenders*. Ottawa: Women Offender Sector, Correctional Service of Canada.

--- (2000). *The Transformation of Federal Corrections for Women: Towards Creating Choices*. Ottawa: Communications and Consultation Sector, Correctional Service of Canada.

--- (2001). *Basic Facts about Federal Corrections*. Ottawa: Correctional Service of Canada.

Cousins, Mark and Athar Hassain (1984). *Michel Foucault*. London: MacMillan Education LTD.

Ekstedt, John & Curt T. Griffiths (1988). *Corrections in Canada: Policy and Practice 2nd ed.* Toronto: Butterworths.

Evans, Maureen (1989). *A Survey of Institutional Programs Available to Federally Sentenced Women*. Prepared for the Task Force on Federally Sentenced Women: Ottawa.

Faith, Karlene (1993). *Unruly Women: The Politics of Confinement and Resistance*. Vancouver: Press Gang Publishers

Faith, Karlene and Kim Pate (2000). *Personal and Political Musings on Activism: A Two-Way Interview* pg. 136 – 147 in Kelly Hannah-Moffat & Margaret Shaw (eds.). *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing

Foucault, Michel (1977). *Discipline and Punish: The Birth of the Prison*. Trans. Alan Sheridan. New York: Vintage Books.

--- (1984). *The Foucault Reader*. Paul Rabinow (ed.). New York: Pantheon.

Geertz, Clifford (1994). "Stir Crazy: Review of *Discipline and Punish: The Birth of the Prison*" pg. 300-308 in Barry Smart (ed.). *Michel Foucault: Critical Assessment Volume IV*. New York: Routledge.

Greenburg, D.F. (ed.) (1977). *Corrections & Punishment*. Beverly Hills: Sage.

Hannah-Moffat, Kelly (1991). "Creating Choices or Repeating History: Canadian Female Offenders and Correctional Reform." *Social Justice*. 18 (3): 184-202.

--- (1994). "Unintended consequences of feminism and prison reform." *Forum on Corrections Research* 6(1): 1-6

--- (1995). "Feminine Fortresses: Women-centred Prisons?" *The Prison Journal*. 75(2): 135-161.

--- (2000). "Re-forming the Prison: Rethinking out Ideals" pg. 30 – 40 in Kelly Hannah-Moffat & Margaret Shaw (eds.). *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing.

--- (2001). *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada*. Toronto: University of Toronto Press.

Hannah-Moffat, Kelly & Margaret Shaw (2000). "Introduction: Prisons for Women – Theory, Reform, Ideals" pg. 11 – 27 in Kelly Hannah-Moffat & Margaret Shaw (eds.). *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing.

Harris, Angela (1997). "Race and Essentialism in Feminist Legal Theory" pg. 11 – 18 in Adrien Katherine Wing (ed.). *Critical Race Feminism*. New York: New York University Press.

Hayman, Stephanie (2000). "Prison Reform and Incorporation: Lessons from Britain and Canada" pg. 41 – 51 in Kelly Hannah-Moffat & Margaret Shaw (eds.). *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada*. Halifax: Fernwood Publishing.

Irwin, John (1996). "The March of Folly". *The Prison Journal* 76 (4): 498-494.

Jackson, Michael (1988). *Justice Behind the Walls: A Report of the Canadian Bar Association Committee on Imprisonment and Release*. British Columbia Law School: Canadian Bar Association.

Jenkins, Philip (1984). *Crime and Justice*. Monterey: Brooks.

Kendall, K (1993). *Program Evaluation of Therapeutic Services at the Prison for Women*. Ottawa: Correctional Service of Canada.

Knopp, Fay Honey et al. (1976). *Instead of Prisons: A Handbook for Abolitionists*. Syracuse: Prison Research Education Project.

MacDonald, Marnie (1999). *Women's Imprisonment in Canada: A Shifting Paradigm?* M.A. Thesis, Department of Law, Carleton University.

Mathiesen, Thomas (1990). *Prison on Trial*. London: Sage.

--- (2000). "Towards the 21st Century: Abolition – An Impossible Dream?" pg. 333-353 in W Gordon West and Ruth Morris (eds.). *The Case For Penal Abolition*. Toronto: Canadian Scholars Press.

Morris, Ruth (1995). *Penal Abolition: the practical choice*. Toronto: Canadian Scholar's Press.

Pate, Kim (2001). Letter to the Canadian Human Rights Commission re: Complaint Regarding the Discriminatory Treatment of Federally Sentenced Women by the Government of Canada. Ottawa: CAEFS.

Report of the Canadian Committee on Corrections (1969), (Ouimet Report).

Report of the Committee Appointed by the Right Honourable JC Doherty, Minister of Justice to Advise Upon the Revision of the Penitentiary Regulations and the Penitentiary Act (1921), (Briggar, Nickle and Draper Report)

Report of the General RB Gibson Regarding the Penitentiary System in Canada (1947), (Ottawa: King's Printer).

Report of the Joint Committee to Study the Alternatives for the Housing of the Federal Female Offender(1978), (Chinnery Report).

Report of the National Advisory Committee on the Female Offender (1977), (Clarke Report).

Report of the National Planning Committee on the Female Offender(1978), (Needham Report).

Report of the Royal Commission to Inquire and then Report upon the Conduct, Economy, Discipline and Management of the Provincial Penitentiary (1849), (Brown Commission).

Report of the Royal Commission to Investigate the Penal System in Canada (1938), (Archambault Commission).

Report of the Royal Commission on Penitentiaries (1914), (MacDonnell Report).

Report of the Subcommittee on the Penitentiary System in Canada (1977), (MacGuigan Report)

Report on the State and Management of the Female Prison at Kingston Penitentiary (1921), (Ottawa, King's Printer)

Robinson, J. & G. Smith. "The Effectiveness of Correctional Programs". *Crime & Delinquency* 17(67).

Royal Commission on the Status of Women in Canada (1970), (Ottawa).

Shaw, Margaret (1989). *The Federal Female Offender: Report on a Preliminary Study*. Correctional Service of Canada: Ottawa.

--- (1989). *Survey of Federally Sentenced Women: Interim Report*. Ottawa: Solicitor General Canada.

Solicitor General Canada (1998). *Corrections Population Growth: Second Progress Report*. Ottawa: Solicitor General Canada

--- (2001). *Corrections & Conditional Release Statistical Overview*. Ottawa: Solicitor General at 44.

Stableforth, Nancy (1999). "Effective corrections for women offenders". *Forum* 11(3): 3 – 5.

Standing Committee on Justice and Solicitor General on its Review of Sentencing, Conditional Release and Related Aspects of Corrections (1988), (Daubney Report).

Sugar, Fran and Lana Fox (1989). *Survey of Federally Sentenced Aboriginal Women in the Community*. Ottawa.

Task Force on Federally Sentenced Women (1990). *Creating Choices*. Ottawa: Minister of Supply and Services Canada.

Trasler, G (1976). "Reflections upon the Use of Custody." *Howard Journal* (6).

Virgo, Sabina (1996). "The Criminalization of Poverty" pg. 47-60 in Elihu Rosenblatt (ed.). *Criminal Injustice: Confronting the Prison Crisis*. Boston: South End Press.

Watson, Lisa & Jan Fox (1997). "Edmonton Institute for Women: then and now". *Let's Talk* 22(5): 13 – 14.

Wilson, Margaret (1931) in Dunbaugh, Frank (1991). "Where Should the Movement Move?" Paper presented to the Fifth International Conference on Penal Abolition, Bloomington, IN.