

Prisons: The International Response to Poverty, Abuse & Mental Illness
Presented at the Monash University Conference – June 21, 2005 - Prato, Italy

*Presented by
Kim Pate, B.A., B.Ed. (P.D.P.P.), LL.B., M.Sc. (in progress)
Executive Director of the Canadian Association of Elizabeth Fry Societies
Past President of the National Associations Active in Criminal Justice
A feminist lawyer and teacher by training, Kim is an advocate,
activist and ally of women and girls in prison in Canada. She has worked with and
on behalf of marginalized, criminalized and imprisoned youth, men and women for more than two decades.*

Abstract:

This address will provide an overview of some of the issues and trends related to the context and challenges of working with and on behalf of women prisoners. In addition to exploring the current trends toward the increased criminalization of women, especially poor and racialized women, as well as those classified as having mental and cognitive disabilities, Kim will discuss the historical and global tendency to further such oppression in 'correctional' settings. This session will highlight issues related to the appropriation of feminist theory and language, the resulting impact on women's abilities to survive criminalization after being over-classified and cognitively programmed in high security prison settings, as well as the particular issues related to the increased criminalization of women who experience violence. In addition, Kim will highlight some of the policy and law reform initiatives that have been advocated by equality-seeking women's groups in Canada and internationally.

Thank you to Rosemary and Monash University for inviting us to this conference in beautiful Italy! I think it is important to be here despite having to be spurred on by an Australian ally and friend who does have the lived experience of imprisonment, and despite finding the title of the conference problematic –positioning criminalized and imprisoned women as 'other' than us, allows us to distance ourselves and label some women as the object of our attention, forever defined by sometimes as few as one named breach of the law.

For too many of us doing this work, even if our lived experience includes oppression, our presence here is testament to the fact that we have transitioned into a position of privilege that separates us from the women who are the subject and object of our work and this conference. This makes it all the more important that we work with every fibre of our being to challenge oppressive language, practices and institutions.

Our non-governmental organization is an association of 25 grassroots members across Canada who work with women and girls in the justice system, everything from early intervention and community-based social services to prison aftercare. As one of two staff in our national office, I am responsible for policy and law reform activities. To do this, we participate in research, court actions, human rights reviews, commissions of inquiry, coronial inquests, parliamentary legislative reviews, in addition to meeting with individuals and organized groups of women in and from prison and working directly with and on behalf of women with the lived experiences. It is a tremendous privilege and responsibility.

So, to begin with, I want to honour and acknowledge the women who are with us or at home who have the lived experience about which we presume to speak. I urge you to unite and together to

challenge and hold us accountable for all we say and do, not just here, but in our daily work and lives, especially when we try to describe or represent your realities.

Indeed, it is with regret that I am here, alone, in the absence of the women with the lived experience of criminalization. Under the guise of security concerns, too many women are not permitted the necessary access to travel and voice their concerns. Moreover, advocates and allies are also increasingly being silenced with threats of criminal charges and law suits. As a lawyer, I am well aware that the deep pockets of government could drive us easily into the ground as an organization. And, believe me, this threat gets held over the heads of most of us who dare to challenge their authority.

Given the urgency we all feel, or should feel, about the increased criminalization of women and girls worldwide, my hope is that we will truly engage and work to correct what is fundamentally flawed and wrong about current attempts to reform and correct or change individual and/or groups of women, when it is increasingly the laws and policies within which we all work that are increasingly coming in to conflict with the lived realities of people, especially poor, racialized, and disabled women.

We have no choice but to challenge our pre-conceptions and therefore our approaches, responsibilities, language – in short, everything, about how we are working and envisioning the future.

Women are the fastest growing prison population world wide and this is not accidental. In Canada, we recognize that the now globalized destruction of social safety nets – from social and health services to economic and education standards, and availability is resulting in the increased abandonment of the most vulnerable, marginalized and oppressed. It is for this reason that our organization is abolitionist in orientation, and we demand not equality with men in and from prison, but substantive equality for all women. It is simply not acceptable that laws and policies are increasingly in conflict with peoples' lives, resulting in the virtual inevitability of criminalization, pathologizing, homelessness and even death.

For example, by creating criminally low welfare or social assistance rates, renaming it as work fare, and even placing lifetime bans on receipt of state resources, many poor people are immediately relegated to the criminalized underclass. It is incontrovertible at this stage, that since the 1996 elimination of the Canada Assistance Plan, we have witnessed in Canada the shredding of our social safety net. There are no provinces where social assistance rates are actually adequate to support the poor. In order to survive, most people, especially poor mothers who are the sole supports of their families, are required to obtain income by means that would be considered fraudulent if welfare authorities become aware of it.

Some such behaviour is also considered criminal in and of itself. For example, if a woman sells her body at the end of the month to make her rent or feed her children, she may face the possibility of a “communicating for the purpose of prostitution” or ‘living off the avails of prostitution” charges. Similarly, if she agrees to carry a package across the border, across the country, or across town, she may also face trafficking, importation or other similar sorts of charges. In addition, if she fails to report any additional income received, including debts owed to them (only people on welfare are required to declare debts and then have them counted as

income), then she may also face fraud charge(s) as a result of investigations by welfare workers into such activities.

Rather than resulting in the criminalization of the poor for welfare fraud and the like, if we were truly interested in encouraging people to be “pro-social” and “mindful” of others, criminally low welfare rates should result in the criminalization of those who craft, those who pass, and those who enforce the laws and policies, **not** those subjected to them. If empowerment was more than rhetoric in most prisons, anti-poverty advocacy would be at the core of any programming initiatives.

Women are now being bashed by those with state authority and resources, as well as by their partners. Rather than address the misogynist backlash, women are being induced and encouraged to abandon any hope that the rule of law and civil society can or will take responsibility for holding individual men or the state accountable. Increasingly, when they seek the protection of the state, they are likely to find themselves facing criminal charges after they call the police. Think of the difference if such a call also resulted in an automatic linkage to feminist anti-violence organizers and advocates versus counter charges and criminalization.

In Canada and Australia, Aboriginal women continue to suffer the shameful and devastating impact of colonization. From residential school, to child welfare seizure, to juvenile and adult detention; Aboriginal women and girls are vastly over-represented in state controlled institutions. Indeed, even as we work to deinstitutionalize and decarcerate, we are fearful that "treatment" will be the next colonial control of choice.

We all know that women are not the cause of the greatest real or perceived risks to others yet we continue to perpetuate the myth by focusing on risk assessments and correctional programs, when it is those responsible for and/or complicit in the destruction of our social safety nets who are in the greatest need of correction. Just as the people had to examine their own actions, inaction and tacit complicity following the genocidal results of German policies and practices in the 1920s through the 1940s, those who fail to address these matters will be faced with the reality that they too could be directly impacted implicitly and possibly explicitly, depending upon their personal, economical and professional circumstances. It is simply not acceptable to merely hide our heads in the sand or re-arrange the proverbial deck chairs on the Titanic as the system becomes more overwhelmed and sinks.

We must instead have the courage and tenacity to challenge the continued creation of laws and policies that effectively criminalize poverty, disabilities and the victims of genocidal legacies of colonization, and then developing classification, assessment and correction tools that pretend that the individual members of those very groups of people who are grabbed, sucked or thrown into the criminal and correctional systems are there because of their planned, voluntary and criminally intended actions?

In the United Kingdom, noted policy leaders such as Pat Carlen and the Howard League are amongst those calling for decarceration and social (re)investment. In the United States, there is

the laudable legacy of Jerry Miller's decarceration of juvenile corrections in Massachusetts, and now, he and many others calling for penal abolition. I commend Angela Davis' very digestible latest book, *Are Prisons Obsolete?* Indeed, many others besides Angela have also characterized the push to criminalize the most dispossessed as the present manifestation of enslavement of the most vulnerable and dispossessed. We must resist this trend to control by criminalization and imprisonment, those most marginalized as a consequence of their race, ability, class and gender. We must therefore also examine our fundamental beliefs and notions of whose interests and biases are privileged by our criminal and regulatory laws and social, economic, health and educational policies.

It seems quite ludicrous that we continue to pretend that telling women and girls not to take drugs to dull the pain of abuse, hunger or other devastation, or tell them that they must stop the behaviour that allowed them to survive poverty, abuse, disabilities, et cetera, in the face of no current options, nor future prospects of adequate – if any -- income, housing, medical, educational or other supports. Surely we recognize the folly of releasing women and girls to the street with little more than psycho-social, cognitive-behavioural skills or drug abstinence programming, along with the implicit judgment that they are in control of and therefore responsible for their situations, including their own criminalization. We must reject and resist such notions.

As I mentioned earlier, in Canada, in 1996, the federal government eliminated the Canada Assistance Plan and therefore the essential nature of Canadian standards of social, medical and educational resourcing. We have now experienced the same sorts of cuts and knee-jerk band aid responses as the United States – all of which presume criminality and perpetuate the problems of the past, be they crime prevention, homelessness, restorative justice or other responses.

Imagine the results if we instead decided to ensure that every prisoner learned about the history of the use of criminal law to colonize Aboriginal peoples to separate them from their land and culture, the criminalization of the indigent and homeless through laws prohibiting vagrancy and night walking, while simultaneously failing to condemn the abuse of power and force by police and prison personnel, the neglect of institutionalized persons, the allowance of certain people to hoard essential goods, make excess profits, irresponsibly and negligently handle toxic cargo, crimes against social harmony, economic and/or even governmental order. What would the system look like if we prosecuted and sentenced people for lying while running for office, wrongful use or access to government power and public resources?

Imagine further if we truly empowered women by providing them with access to community resources and partnerships that would increase their opportunities to take responsibility for advocating for themselves and for resisting their continued subjugation. For those of you not familiar with those values, they are the ones deemed fundamental to the future of women's corrections in Canada and articulated in *Creating Choices*, the Report of the Task Force on Federally Sentenced Women. How much more helpful would it be if we encouraged women to develop advocacy skills and practice the resistance strategies that will increasingly determine their survival?! Certainly this has been our experience with women in Canada. Especially since the human rights review, we are directly experiencing the benefits of sharing resources and authority with women in and from prison.

Prisons are not and can not be treatment or healing centres. Despite attempts to inject supports, rehabilitative and even treatment programs in prisons, they remain, what they were originally designed to be, places designed to punish and hide away from the rest of the community those who we decide are the scapegoats for society's ills. We pretty them up and take away the obvious bars and put in reinforced concrete and inches thick glass and busy ourselves pretending how nice and unprison-like the new prisons are, but we are not fooling those we allow to be locked up there.

We consider it the responsibility of all of us to refuse to collude. In Canada, increasing numbers of professionals and academics are recognizing the need to challenge corrections. Unfortunately, too many who are contracted by corrections or whose research feeds or depends upon access to the prisons are actually willing to step up to the plate. As more have been reticent to be the handmaidens of our correctional systems, Canada has gone looking for some of you. Canadian correctional authorities are grasping for assistance in the United Kingdom, the United States, and elsewhere. Some of you are being hired to participate in our system, absent the involvement of women with the lived experience, their allies and advocates, or even academics with recognized expertise in our own country. The resulting programs, investigative services, research and pseudo-evaluations of human rights abuses and discrimination are being undertaken with inadequate appreciation of the legislative scope or history of resistance that sparks our bureaucrats to seek new uninformed international contacts to buttress their crumbling castle of rhetoric in ever more feeble attempts to undermine the mounting case against the continued use of imprisonment for women in Canada.

But, you might well ask, is Canada not the best in the world, as our million dollar promotional campaigns broadcast internationally? Perhaps, but if so, then we should all be quick to recognize this as an indictment of the height of the proverbial bar ...

What, you might also ask, would we suggest in the alternative? Rather than slavish adherence to the current "program and imprisonment approaches", our Canadian and international equality-seeking partners favour more individualized and self-directed approaches, whereby resources are allocated in direct proportion and relation to the needs identified by federally sentenced women and corrections.

Such a model would more likely increase the investment of imprisoned women themselves in the services with which they engage, as they would be directing the application of resources to assist themselves. It would also be likely to improve the records of respective correctional services in terms of human and fiscal reintegration success, a reality that would no doubt be of interest to those in prison, the keepers of the keys and the general public alike. At the very least, resources would be much better spent if they were allocated according to the constellation of needs that are assessed or determined to exist for each woman, so that each woman may develop and avail herself of the very individualized practical services and supports which she desires and requires in order to successfully integrate into her community of choice.

Particularly in light of the tremendous benefit experienced from the rich exchange occasioned by the involvement of women's equality seeking, Aboriginal and social justice groups, including

women with the lived experience of imprisonment, in our coalition work around the human rights review that resulted in the January 28, 2004 release of by the Canadian Human Rights Commission of a report entitled, *Protecting their Rights: A Systemic Review of Human rights in Correctional Services for Federally Sentenced Women*, CAEFS must continue to promote their full involvement in all future policy and program development activities. In keeping with our commitment to anti-oppressive and substantive equality approaches, we obtained resources for and privileged the voices of those with the lived experiences. This led to significant procedural and substantive changes. Those of you interested in purchasing the resulting MP3 can see me after this session or access some of the material via our web site. Suffice it to say that the impact on our organization has been profound and it has strengthened our partnerships and our abilities to work collaboratively, combining incredible enthusiasm, energy and very limited resources.

Although the Correctional Service of Canada maintains that they have spent an inordinate amount of resources, time and energy attempting to meet the needs of women prisoners, the reality is that much of this ‘wheel spinning’ – has occurred largely because they have persisted in trying to adapt male programs to women prisoners. Currently, with the exception of a peer advocacy process that women are seeking but we have not yet been granted permission to facilitate, no services or programs in our prisons are specifically designed with, by and/or at the request of women in prison.

In addition, the practical realities of the limited number of community release options for women, combined to the seeming precedence given to avoiding any possible risk, rather than utilizing least restrictive approaches, as well as delays in paperwork in the prisons, are resulting in increased numbers of women exiting prison without the support and gradual integration process mandated by our corrections legislation. This is especially true of Aboriginal women and those with mental health issues.

Many academics and lawyers have reported that women’s services need to be developed in conjunction with community-based, women-directed services, if there is to be any hope of them being successful. The development of “capacity-based models of assessing the risk that community release poses to women prisoners” hold the greatest promise for the future.

Paradoxically, however, one of the key programs of choice in Canada billed as the answer to a wide range of mental health and cognitive disabilities is the Dialectical Behaviour Therapy (DBT) model, purchased from the United States and adapted for use in the women’s prisons. The use of DBT exposes very clearly the tyranny that is possible when ultimate power and control is cloaked in benevolent language and professed intent, absent real resourcing and addressing of concrete needs. Do not hear me as suggesting that our correctional services consciously intend to induce dependence, but the very nature of imprisonment is such that it directly interferes with and impairs the ability of individuals, especially women, to survive the sorts of untenable situations to which they may be forced to return upon their release from prison.

Albeit from an economical perspective, it is clear that the Auditor General of Canada and the all party Public Accounts Committee had similar concerns regarding the lack of effectiveness of

interventions that are currently provided for federally sentenced women. CAEFS and other groups continue to reiterate the primacy of the need for much more concrete and long lasting practical interventions to assist women in meeting their basic needs, particularly those related to accommodation, employment, training/education and personal supports, as a prerequisite to other more individualistic, psycho-social and behavioural types of interventions.

The presumption that inadequate welfare, unemployment, mental health and other health services, educational and vocational opportunities, et cetera, are in any manner within the control of women prisoners, or other members of vulnerable groups for that matter, is ludicrous at best. Worse still, it is these sorts of presumptions and judgments that also influence the manner in which staff interact with women, and which serves to reinforce the inability of CSC to understand, much less address, the very real life circumstances of the women in prison.

Many women with histories of abuse carry such labels as Fetal Alcohol Syndrome (FAS) or Fetal Alcohol Effect (FAE), as well as “borderline personality”, “psychotic”, “schizophrenic”, et cetera. There is no doubt that too many women are entering the federal prisons with significant needs. Prisons are ill equipped to meet many of their cognitive and mental health needs. The result is that women with mental and cognitive disabilities are difficult for the prisons to manage, so they tend to be confined in the most isolated conditions, often in segregation. Such conditions of confinement only serve to exacerbate pre-existing and/or create new mental health issues. Certainly, extensive periods of isolation and the consequent sensory deprivation tend to create additional mental health issues for many women prisoners.

Ironically, the reflex of prison authorities to develop mental health services in prisons, is only serving to magnify the trend to increasingly criminalize women with mental and cognitive disabilities. Developing such services in prisons at a time when they are increasingly non-existent in the community is already resulting in more women being sent to prison in the hopes that it will allow them to access services in prison that are not available in community settings. We are not interested in continuing to replicate what Human Rights Watch documented in the US in 2003 – that is, that more people with mental health issues are in prison than in mental health facilities.

Others far more learned than I, such as Drs. Shoshana Pollack and Kathy Kendall, have provided excellent critiques of current approaches to attempts to provide therapy in prison. Given the reality that other basic supports are prerequisite, it is our view that it is ethically and morally inappropriate to invest in such dependency inducing approaches more likely to perpetuate, rather than address, any challenges to their reintegration potential.

Women who are encouraged to abandon previous survival strategies in favour of new “thinking” strategies, may in fact be set up to not only fail miserably at surviving upon release into the community, but they may also be encouraged to feel worse about their inability to survive, absent any contextual analysis of the social and economic realities they face. As one woman so articulately and succinctly summarized recently:

You used to help us get work and find places to live so we wouldn't be fuck-ups,

Then, you stopped that and gave us programs to help us feel better about being

fuck-ups,

Now, you teach us that it is our decision to do what to do, so we feel worse about ourselves and totally responsible for being fuck-ups...

Who benefits from this? Not us, we're still fuck-ups ... But where would all of you be if we weren't here to give you jobs to do?

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

Consider for a moment the long term consequences of feeding children breakfast or lunch or helping supplement a pregnant woman's diet, or providing shelters for those escaping violence, the street, et cetera. By continuing to provide such support as afterthoughts, we are feeding the notion that not everyone is entitled to be adequately housed, clothed, fed and provided with opportunities to be part of --whether by contributing to or benefiting from -- communities of support.

Imagine the results if we instead insisted that every person was entitled to adequate income, shelter and support to reach their highest human potential for contributing to the community. It is not impossible and it has been done, but it does require that we rethink what we are doing.

Imagine for a moment how different life would be and what our if chose to focus our energies on sharing resources, authority and power and instead, condemned the abuse of power and force by police and prison personnel, the neglect of institutionalized persons, the allowance of certain people to hoard essential goods, make excess profits, irresponsibly and negligently handle toxic cargo, crimes against social harmony, economic and/or even governmental order. What would the system look like if we prosecuted and sentenced people for lying while running for office, wrongful use or access to government power and public resources? You get the picture...it is no accident who is criminalized.

Crime is a theory.

Name any behaviour and we will be able to identify times when it is considered legal and times when it is not. Law and criminalization are theories and choices made by those who we give as well as those who take power.

Who among us does not already acknowledge that jails are not the shelters battered women need, that they are not treatment centres, that they are not an appropriate substitution for adequate and affordable housing, education or skills development. We know who is and is not in prison – with few exceptions (mostly involving women of course) the wealthy and most privileged are not jailed. Crime is a theory defined, monitored and enforced for specific identifiable purposes.

Rather than personalizing the various legal, human rights and social justice struggles and uprisings of prisoners, we are hopeful that increasingly, all will recognize that it is always in our collective interest when the oppressed resist and challenge their oppression. Increasing prisoner access to the justice and equality occasioned by social inclusion will benefit all of us and all of our communities of interest.

We encourage you to join the growing world-wide political, economic and social coalition to de-institutionalize. We urge you to heed the words of Louise Arbour, who headed the most significant inquiry into Canadian correctional approaches to women, former justice of our Supreme Court and current UN High Commissioner for Human Rights. She talked about the importance of ensuring all people experience freedom from want as a basic human right.

And, as Lilla Watson, an Aboriginal woman in Australia has stressed, we need to work together to correct current injustice. I will conclude with her words, shared with me almost 14 years ago by a woman inside.

*If you have come here to help me,
you are wasting our time.
If you have come here because your liberation is bound up with mine,
then let us work together.*