

## Aboriginal Women

**Profile of an Aboriginal Woman Prisoner** (according to information posted on the web site of the Correctional Service of Canada (CSC))

CSC describes the 'average' Aboriginal woman in a federal penitentiary as: 27 years old, with a limited education (usually grade nine), is unemployed or under-employed, and the sole-support mother to two or three children. She is usually unemployed at the time of she is arrested.<sup>1</sup>

She has often left home at an early age to escape violence. She may be forced to sell her body because she needs money and is unable to obtain a job. She is likely to have been subjected to racism, stereotyping and discrimination because of her race and color. However, her experience on the streets becomes violent as she continues to experience sexual, emotional and physical abuse. She is likely to become involved in an abusive relationship. There are usually children born from this relationship and the social, emotional and economic struggle continues. The cycle of an unhealthy family continues.

- In 2001, the Aboriginal population of about 1,066,500 represented 3.4% of Canada's total population. (This figure, based on results of the 2001 Census, has been adjusted upwards to take into account factors such as net undercoverage.)<sup>1</sup>
- In 2001, there were just under a half a million Aboriginal women and girls in Canada. Together, these Aboriginal women made up 3% of the total population of women and girls in Canada that year.<sup>2</sup>
- The Aboriginal population is growing much more rapidly than the rest of the population of women and girls in Canada. In the period from 1996 to 2001, the number of Aboriginal women and girls rose by 22%, compared to a 4% growth rate in the non-Aboriginal population of women and girls.
- The Correctional Investigator found that the Correctional Service of Canada (CSC) routinely classifies First Nations, Métis and Inuit women as higher security risks than non-Aboriginal women in prison; Aboriginal women are released later in their sentences than other prisoners; and they are more likely to have their conditional release revoked for technical reasons than non-Aboriginal parolees. Aboriginal prisoners oftendo not receive timely access to rehabilitative programming and services that would help them return to their community<sup>3</sup>
- In 2003-2004, 41% of non-Aboriginal prisoners were serving their sentences on conditional release in the community, only 31% of those on conditional release were Aboriginal.
- There are fundamental differences between non-Aboriginal Canadian conceptions of justice and Aboriginal conceptions of justice. The Canadian justice system is essentially experienced by its Aboriginal population as a foreign and inappropriate system for the resolution of conflict in Aboriginal communities.

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<sup>1</sup> Canada's Aboriginal Population in 2017. *The Daily*. Statistics Canada. Tuesday, June 28, 2005.

<sup>2</sup> *Women in Canada: A Gender-based Statistical Report* by Statistics Canada, 2006.

<sup>3</sup> *Report Finds Evidence of Systemic Discrimination Against Aboriginal Inmates in Canada's Prisons*. Office of the Correctional Investigator. October 16, 2006.

- The cultural differences in the Aboriginal and non-Aboriginal notions of justice leads to the misunderstanding of the actions and reactions of Aboriginal people in the courtroom. Judges and juries misunderstand their words, demeanor and body language, which can negatively impact their sentencing. To require people to act in ways contrary to their most basic beliefs and their ingrained rules of behaviour not only is an infringement of their rights – it is a deeply discriminatory act.
- The over-representation of Aboriginal people within the Canadian criminal justice system is indisputably the most egregious example of the racist legacy of colonization.
- In his most recent Annual Report, the Correctional Investigator found that Aboriginal people were incarcerated at a rate of 1024 per 100 000 versus 117 per 100,000 for non-Aboriginal people.<sup>4</sup>

### **Criminalization of Aboriginal Women**

- The impact of discriminatory practices is felt even more by Aboriginal women, who are more over-represented than Aboriginal men in the criminal justice system. There is a higher proportion of Aboriginal women serving federal sentences in prison, as opposed to being released on bail or under supervision in the community, than there is for non-Aboriginal women.
- Aboriginal women are over-represented in the federal correctional system, representing only 2% of women in Canada and 29% of women in federal prisons in July, 2003. In July, 2003, 60% of Aboriginal women serving federal sentences were in prison.
- Aboriginal youth are over-represented among criminalized young people, and this discriminatory pattern is expected to continue. Research shows that Aboriginal youth are criminalized and jailed at earlier ages and for longer periods of time than non-Aboriginal young people. Within the criminal justice system, Aboriginal youth experience a lack of access and availability of legal counsel and community based resources and services.
- The Correctional Service of Canada does not meet its statutory obligation to ensure the rights of Aboriginal offenders to effective assistance in reintegrating into the community.<sup>5</sup>
- The Correctional Service's own statistics confirm that the situation of Aboriginal offenders is deteriorating in many areas that the Correctional Service could positively influence. That includes significant delays in timely and safe reintegration into the community; under-representation in minimum-security institutions and over-representation in maximum-security institutions and administrative segregation; limited use of legislative provisions designed to enhance Aboriginal reintegration; and a high ratio of detention referrals.<sup>6</sup>
- The situation of Aboriginal women in terms of security classification and timely conditional release is even more problematic.<sup>7</sup>

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<sup>4</sup> Women in Canada: A Gender-based Statistical Report by Statistics Canada, 2006.

<sup>5</sup> *Annual Report of the Correctional Investigator*. 2006.

<sup>6</sup> *Annual Report of the Correctional Investigator*. 2006.

<sup>7</sup> *Annual Report of the Correctional Investigator*. 2006.

- Aboriginal women and girls are vastly over-represented in state institutions and continue to suffer the shameful and devastating impact of colonization; from residential school, to child welfare seizure, to juvenile and adult detention and current trends now indicate that “treatment” will be the next colonial control of choice.
- Aboriginal women are over-represented in the maximum security prison population, making up 46% of maximum security federally sentenced women, 35% of the medium security population and 23% of minimum security women in 2003. The Custody Rating Scale is used for the security classification of federally sentenced women, but it was designed for men not women, and results in unnecessarily high security classifications, particularly for Aboriginal women. This results in ineligibility for programming intended to prepare the women for eventual release and to increase their chances of success. Aboriginal women classified at maximum security are also denied access to the support of the Healing Lodge.
- Aboriginal people are over-represented in the correctional system due in large part to discrimination against Aboriginal people in the justice system through its procedures but also because the Criminal Code targets the poor through the prohibition of acts like vagrancy, public intoxication and stealing. Aboriginal people are over-represented among the poor in Canada. The justice system and education system, which may have been used to improve their social conditions are biased against them.
- *The Final Report: Task Force on Aboriginal Peoples in Federal Corrections* in 1988 found that Aboriginal prisoners were less likely to be granted temporary absences and parole, were granted parole later in their sentence, were more likely to have their parole suspended or revoked and were more likely to be classified at a higher security level. Unfortunately, this is as true today as it was nearly 20 years ago.<sup>8</sup>
- The Correctional Service of Canada statistics confirm that correctional outcomes for Aboriginal offenders are not improving in many areas that the Correctional Service can positively influence.<sup>9</sup>

## Social Conditions and Justice

- Aboriginal peoples have experienced the most entrenched racial discrimination of any group in Canada. Discrimination against Aboriginal people has been a central policy of Canadian governments since Confederation.
- In the past, legislation regarding the registration of Indian people treated women and men differently. Prior to 1985, under certain provisions in the *Indian Act*, women classified as ‘status Indian’, who married non-status men (Aboriginal or non-Aboriginal) lost their status, and as a result, their First Nation (band) membership. As well, these women could no longer pass status on to their children.<sup>10</sup>
- The opposite was true for First Nations men. Non-status women (Aboriginal or non-Aboriginal) who married status Indian men were automatically conferred Indian status. Changes were made to the *Indian Act* in 1985 through Bill C-31, which allowed many women and their children to reclaim their ‘Indian’

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<sup>8</sup> The Final Report: Task Force on Aboriginal Peoples in Federal Corrections. 1988. *Annual Report of the Correctional Investigator*. 2006.

<sup>9</sup> *Annual Report of the Correctional Investigator*. 2006.

<sup>10</sup> *Women in Canada: A Gender-Based Statistical Report* by Statistics Canada. 2006.

status, and, in some cases, their First Nation (band) membership. Others who had voluntarily or involuntarily lost their Indian status through other provisions of the *Indian Act* could also apply to have their status restored.<sup>11</sup>

- The colonization of Aboriginal people continues today, not only as a consequence of the *Indian Act*, land thefts, residential schools, but also as a result of child welfare, social services, health, education and economic policies. The Canadian Government administers policies aiming to control virtually every aspect of Aboriginal life. Education has been used as a tool for the cultural assimilation of Aboriginal Canadians in the past, and continues to be culturally biased. The material taught in Canadian schools focuses on the culture, history and reality of non-Aboriginal Canadians, and while Aboriginal people no longer attend residential schools many are still forced to leave their communities in order to attend high school.
- In 2001, there was a gap of about 15 percentage points between the post-secondary educational attainment of Aboriginal Canadians and non-Aboriginal Canadians.
- The justice system has played a major role in the creation of poor social conditions in Aboriginal communities today. It has failed to provide them with protection against oppression and has instead been a tool of this oppression through the denial of Aboriginal land claims, the imposition of residential schools, the separation of families through child welfare practices, and the denial of Aboriginal control over their own communities. This has resulted in social disruption in the community and widespread poverty.
- Aboriginal housing is indisputably the Canadian government's constitutional responsibility and fiduciary duty based on treaty agreements. However, 43% of on-reserve housing were inadequate and in need of repair in 1999-2000, without fully operational bathrooms, central heating, and clean water. There is also a problem with overcrowding and the spread of infectious diseases, with an estimated 30,000 more dwellings needed on reserves. This human rights violation has been highlighted United Nations human rights committees and the Canadian Human Rights Commission.
- The gap between the employment rates of Aboriginal and non-Aboriginal women was particularly large in the 15 to 24 age group in which 35% of Aboriginal women, versus 57% of non-Aboriginal women, were employed.<sup>12</sup>
- Unemployment rates among women and girls Aboriginal labour force participants are twice those of their non-Aboriginal counterparts. In 2001, 17% of Aboriginal women in the labour force were unemployed, compared with a rate of 7% for non-Aboriginal women.<sup>13</sup>
- The incomes of Aboriginal women in Canada tend to be relatively low. In 2000, the median income of Aboriginal women was \$12,300, about \$5,000 less than the figure for non-Aboriginal women who had a median income of \$17,300 that year.<sup>14</sup>
- On average, however, Aboriginal women in Canadian urban centers are unable to earn enough money to meet their own needs, much less support a family. In the 1996 census, the average annual income of Aboriginal women with status living off-reserve was \$5,500 less than that of non-Indigenous women

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<sup>11</sup> *Women in Canada: A Gender-Based Statistical Report* by Statistics Canada. 2006.

<sup>12</sup> *Women in Canada: A Gender-Based Statistical Report* by Statistics Canada. 2006.

<sup>13</sup> *Women in Canada: A Gender-Based Statistical Report* by Statistics Canada. 2006

<sup>14</sup> *Women in Canada: A Gender-Based Statistical Report* by Statistics Canada. 2006

and substantially less than the amount Statistics Canada estimated people living in a large Canadian city would have needed to provide food, shelter and clothing for themselves.

- Homelessness and inadequate shelter are believed to be widespread problems facing Indigenous families in all settings.<sup>15</sup>
- In 2001-2002, only 56% of on-reserve housing was deemed adequate. This proportion then decreased to 53% in 2002-2003.
- In 1999-2000 43% of on-reserve households were receiving social assistance (32000 out of 74000).
- The average number of Aboriginal social assistance recipients per month increased by 2.6% between 1998-1999 and 2002-2003.
- “Historically, the justice system has discriminated against Aboriginal people by providing legal sanction for their oppression. The oppression of previous generations forced Aboriginal people into their current state of social and economic distress. Now, a seemingly neutral justice system discriminates against current generations of Aboriginal people by applying laws which have an adverse impact on people of lower socio-economic status. This is no less racial discrimination; it is merely “laundered” racial discrimination.... To change this situation will require a real commitment to ending social inequality in Canadian society ...”

## Violence

- In 2004, Amnesty International released a report titled: “Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada”. The report includes stories about Canada’s missing and murdered Aboriginal women, and concludes: **“In every instance, Canadian authorities could and should have done more to ensure the safety of these women and girls.”**
- Violence against women, and certainly violence against Aboriginal women, is rarely understood as a human rights issue. To the extent that governments, media and the general public do consider concerns about violence against women, it is more frequent for it to be described as a criminal concern or a social issue. It is both of those things of course. But it is also very much a human rights issue. Women have the right to be safe and free from violence. Indigenous women have the right to be safe and free from violence. When a woman is targeted for violence because of her gender or because of her Indigenous identity, her fundamental rights have been abused. And when she is not offered an adequate level of protection by state authorities because of her gender or because of her Indigenous identity, those rights have been violated.<sup>16</sup>
- Results of the 2004 General Social Survey suggest that violence in marriages and common-law unions is a reality that many Aboriginal women face. Indeed, 24% of Aboriginal women, three times the figure among their non-Aboriginal counterparts (8%), experienced spousal violence from either a current or previous marital or common-law partner in five-year period prior to the survey. At the same time, 18% of Aboriginal men reported being victims of some form of spousal abuse.<sup>17</sup>

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<sup>15</sup> *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada.* Amnesty International. 2004.

<sup>16</sup> *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada.* Amnesty International. 2004.

<sup>17</sup> *Women in Canada: A Gender-Based Statistical Report* by Statistics Canada. 2006.

- Aboriginal women are much more likely to have been sexually and/or physically abused than non-Aboriginal women, and are eight times more likely to be killed by a spouse. “The victimization of federally sentenced Aboriginal women prisoners includes sexual and physical assault, emotional and psychological abuse prior to their imprisonment. There are numerous historical abuses suffered as a result of residential and mission schools, foster care and adoption, the lack of equal access to training and employment not to mention the societal oppression experienced generationally, resulting in internalized oppression.”<sup>18</sup>
- Violence against Aboriginal women in particular can be traced back to colonization. Many Aboriginal communities were matriarchal or semi-matriarchal before colonization imposed patriarchal religious, economic and political institutions upon them. Aboriginal women face both racism and sexism as a result, being seen not just as Aboriginals and not just as women but as Aboriginal women, commonly objectified and dehumanized in racist and sexist stereotypes that make these women at risk of physical, emotional and sexual violence.
- Aboriginal women are also twice as likely as other women to experience emotional abuse from either a current or previous marital or common-law partner. In the five-year period prior to the survey, 36% of Aboriginal women, compared with 17% of their non-Aboriginal counterparts, reported experiencing emotional abuse from a partner.<sup>19</sup>
- Before contact, Aboriginal women were in a position of honour, seen as being closest to Mother Earth and Creation. With colonization, they were stripped of their position and structures were destroyed. Discrimination based both on the sex and race of Aboriginal women is manifested in the response or lack of response of law enforcement to violence against these women.
- While Aboriginal people are over-policed, in that they are arrested and detained under circumstances in which non-Aboriginal people may not be, they are also under-policed in that they are not available for preventive and supportive police services.
- In a tragic example of police unresponsiveness, in February 2000, Corinne McKeowen and Doreen Leclair were stabbed to death after five desperate calls for help were ignored by police.
- The over-representation of Aboriginal women in the criminal justice system is linked to their victimization, which is rooted in colonization and is perpetuated by current state practices. Aboriginal women may be charged when they are reacting to abuse or when they are reacting to the poor social conditions relative to the multiple discrimination they experience.

## **Health**

- Canadian laws have been used to oppress the traditional ceremonies and methods Aboriginal people have employed to deal with personal issues and pressures. Until recently, many were prohibited by law and even now that they are considered legal they are denigrated by some. This has had a significantly negative impact on the well-being of Aboriginal people today.
- The prevalence of AIDS in the Aboriginal population has steadily increased in the last ten years. In 2002, Aboriginal peoples accounted for 6% to 12% of new HIV infections in Canada, compared with

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<sup>18</sup>*New Federal Policies Affecting Women's Equality: Reality Check*. Canadian Research Institute for the Advancement of Women. 2006.

<sup>19</sup>*Women in Canada: A Gender-Based Statistical Report* by Statistics Canada. 2006

9% in 1999. Aboriginal people account for around 17-26% of new HIV infections.

- Rates of diabetes are also considerably higher for those off reserve than for the total Canadian population. In 2001, 7% of the women and girls Aboriginal off reserve population aged 15 and over had been diagnosed with diabetes, compared with 3% of the total population of women and girls. Health Canada has raised diabetes as a significant concern for the Aboriginal population because of “early onset, greater severity at diagnosis, high rates of complications, lack of accessible services, increasing trends, and increasing prevalence of risk factors for a population already at risk.”<sup>20</sup>
- In 2000 and 2001, the proportion of reported AIDS cases among Aboriginal persons decreased to 7.9% and 5.3% respectively; however an increase was seen in the first six months of 2002, where Aboriginal persons accounted for 14.1 % of the total reported AIDS cases where ethnicity was known. This trend will be monitored closely to see if it is confirmed when data for the full year are available.<sup>21</sup>

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<sup>20</sup> *Women in Canada: A Gender-Based Statistical Report* by Statistics Canada. 2006

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