CHAPTER 1

The Canadian Criminal Justice System and Women

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LEARNING OUTCOMES

After reading this chapter, you should be able to:

- Understand the organization of policing in Canada and how policing is interconnected with the court and correctional systems.
- Understand the organization of the courts in Canada and describe the purpose of some of the specialty courts available.
- Describe the history of women's incarceration in Canada.
- Explain what led to the closing of the Prison for Women and the construction of regional federal facilities for women.
- List and appreciate the importance of the five guiding principles in the Creating Choices report.
- Understand that, statistically, women make up a very small proportion of those who commit crimes and are charged, convicted, and sentenced to jail or prison.
- Define the term "criminalized."

CHAPTER OUTLINE

Introduction

The criminal justice system in Canada comprises three interconnected agencies: the police, the courts, and the correctional system. A woman who comes into conflict with the law will interact with many individuals from each of these agencies, not all of whom will treat her with respect and dignity. Unfortunately, in the criminal justice system—as in our broader society—girls and women are sometimes the targets of abuses of power.

This chapter provides a brief description of the criminal justice system in Canada and a basic understanding of the structure and organization of the various agencies within it. A cursory overview of the types of police agencies is followed by a brief introduction to the court system. A detailed account of the history of the correctional system's treatment of women illustrates how the needs of criminalized women have historically taken a back seat to the needs of their male counterparts. The end of the chapter serves as an introduction to women who are criminalized, who are victims of crime, and who work in the field of criminal justice.

Policing

In Canada, policing occurs at three levels of government: federal, provincial or territorial, and municipal. In addition, numerous Indigenous communities have their own police services. For 2018–2019, expenditures related to all levels of policing in Canada totalled $15.7 billion. Salaries made up the largest proportion of costs, accounting for 65 percent of expenditures, while benefits accounted for 16 percent and other expenditures totalled 19 percent. Police costs were up 1 percent from the previous year and had been on the increase since 1996–1997. In total, 68,718 police officers were employed across Canada in 2019, representing a rate of 183 officers per 100,000 Canadians (Conor et al., 2020).

Federal Policing

Canada's federal police service is the Royal Canadian Mounted Police (RCMP). The RCMP is responsible not only for enforcing federal statutes but also for providing a variety of resources across the country, including forensic analysis, identification services, the Canadian Police College, and the Canadian Police Information Centre (CPIC). The *Royal Canadian Mounted Police Act* governs the organization of the RCMP. Accordingly, the RCMP is led by a commissioner who reports to the Minister of Public Safety Canada. The RCMP is organized into four regions—Atlantic, Central, Northwestern, and Pacific—each operating under the direction of a deputy commissioner. Other deputy commissioners are assigned to head up operations and integration, national police services, and corporate management and comptrollership. In addition to the headquarters located in Ottawa, the RCMP is further organized into 15 divisions, most of which correspond to provincial or territorial boundaries. As of April 1, 2021, a total of 30,558 people worked in the RCMP. Of those employees, 8,307 people were public servants and 3,087 were civilian members. Constables were the largest group of employees, totalling 11,970 people (RCMP, 2021).

Provincial and Territorial Policing

Canada has three provincial police services: the Ontario Provincial Police (OPP), Sûreté du Québec, and the Royal Newfoundland Constabulary. Provincial police services are concerned with the enforcement of the *Criminal Code* and provincial statutes in areas where no municipal force exists. It is not unusual for police boundaries to overlap. For example, in the city of North Bay, Ontario, a municipal police force (the North Bay Police Service) is responsible for policing in the city of North Bay, while the OPP patrols the highways that pass through the city. In areas of Canada that do not have a provincial or territorial police service, the RCMP is contracted to provide this service.

Municipal Policing

Officers who are employed to conduct policing at the municipal level enforce the *Criminal Code*, various provincial statutes, and municipal bylaws. Some municipalities operate their own policing force; others cooperate with a neighbouring municipality to provide police services to both areas or contract the work to either a provincial police service or the RCMP (Reitano, 2006).

Areas of Canada that do not have municipal policing include Nunavut, Yukon, the Northwest Territories, and Newfoundland and Labrador. The RCMP polices Nunavut, Yukon, and the Northwest Territories (Conor et al., 2020). The provincial police force in Newfoundland and Labrador provides municipal police services to the three regions of St. John's, Corner Brook, and Labrador West, while the rest of the province contracts the RCMP to provide municipal and rural policing services (Conor et al., 2020).

Indigenous Policing

In June 1991, the First Nations Policing Policy (FNPP) was introduced by the federal government (Public Safety Canada [PSC], 2016). The purpose of the FNPP is to "provide First Nations across Canada with access to police services that are professional, effective, culturally appropriate, and accountable to the communities they serve" (PSC, 2016, para. 1). With the support of Canada's lead department for public safety, Public Safety Canada, Indigenous communities work with provincial, territorial, and federal governments to establish tripartite policing agreements that meet the needs of the communities they serve.

The Courts

The system of Canadian courts is "complex" (Canada, Department of Justice, 2021a) and can be difficult to understand. This complexity stems from the four levels of courts and various types of courts that exist in Canada. Very briefly, provincial and territorial courts deal with most cases. These are the "lowest" courts in the system. Next up the ladder are the provincial and territorial superior courts, where appeals from the provincial and territorial courts are heard, as are cases involving the most serious crimes. At the same level as the provincial and territorial superior courts is the Federal Court. This court has jurisdiction over matters in the federal domain. At the third level are the provincial and territorial courts of appeal and the Federal Court of Appeal. And last, the highest court in Canada is the Supreme Court of Canada (Canada, Department of Justice, 2021b).

Provincial and Territorial Courts

Every province and territory in Canada has a provincial or territorial court. However, Nunavut has the Nunavut Court of Justice, which acts as both the territorial court and superior trial court for the territory and is Canada's only single-level trial court (Canada, Department of Justice, 2021b). Although their names may differ, the roles and functions of these courts are the same: they hear cases that involve provincial, territorial, or federal laws, which compose the majority of criminal cases that come before the courts. These courts deal with criminal offences, crimes committed by young people, matters of family law (except divorce), regulatory offences, traffic violations, and claims involving money. Also, all preliminary inquiries are held in provincial or territorial courts to determine whether a serious criminal case has sufficient evidence to warrant a full trial.

Specialty Courts

Specialty courts also exist at the level of the provincial and territorial courts. To reduce the number of cases and backlogs in the court system, specialty courts were created to hear cases specific to one class of offence. The goal of these specialized courts was to divert some people away from the criminal justice system and to provide specialized support for those coming into conflict with the law. For example, Toronto's Drug Treatment Court (DTC) was established in 1998 to hear cases involving non-violent criminalized people who have come into conflict with the law as a result of their drug addiction (Canada, Department of Justice, 2021b). For people who qualify, their drug addiction can be addressed through the option of treatment combined with judicial supervision. Other specialty courts include youth courts and domestic violence courts (Canada, Department of Justice, 2021b). Table 1.1 provides some examples of specialized courts that have been established in Canada.

TABLE 1.1 Examples of Specialty Courts in Canada

Court Type	Description	Location	Year Est.
Drug Treatment Court	For those who commit offences because of their drug use. A collaborative and integrated approach is used between judges, prosecution and defence lawyers, community corrections, and health and social service agencies to help people to overcome their substance abuse and reduce any harms that are caused by addiction.	Vancouver, British Columbia	2001
Domestic Violence Court	For those who are part of a crime that involves domestic violence. A collaborative and therapeutic approach is used where information and services are coordinated. Service providers attend the domestic violence court and facilitate access to information and services for both the victims and perpetrators of domestic violence.	Duncan, British Columbia	2009
Gladue Court	For Indigenous people who have come into conflict with the law. The goal is to incorporate Indigenous values, principles, and conceptions of justice into the processes and proceedings of the Court. The Court participants (judges, Crown, duty counsel) are trained in Gladue, and there are Indigenous court workers who are also specifically trained to work with the accused during the proceedings.	Toronto, Ontario	2001
Mental Health Court	For those who come into conflict with the law in part because of their mental health issues. A therapeutic model is emphasized, and a dedicated prosecutor, duty counsel, Legal Aid resource person, mental health worker, and psychiatrist all work to ensure that a collaborative and healing approach is used.	Edmonton, Alberta	2018
Wellness Court	For those who have issues related to mental illness, substance abuse, or gambling. A team of professionals assists in problem solving and helps to treat the issues that have contributed to the person's conflict with the law.	Dartmouth, Nova Scotia	2009

Provincial and Territorial Superior Courts

All provinces and territories have their own superior courts, and although their names may differ, their roles are generally the same (except for Nunavut, where the Nunavut Court of Justice is concerned with both superior court and territorial court matters). These superior courts have "inherent jurisdiction" at the superior court level, which means they can hear any cases in any area unless the case is specifically limited to a different level of court (Canada, Department of Justice, 2021b). These courts try the most serious civil and criminal cases, including those that involve large sums of money and cases of divorce. Provincial and territorial superior courts can have special divisions, such as the family division, and also serve as the court of first appeal (Canada, Department of Justice, 2021b).

Courts of Appeal

Appeals from decisions rendered at the provincial, territorial, or superior courts are heard at the courts of appeal, where a number of judges (usually three) hear the cases as a panel. The courts of appeal also address constitutional questions raised in relation to individuals, government agencies, or the government (Canada, Department of Justice, 2021b).

Federal Courts

The Federal Court of Appeal and the Federal Court were created by an act of Parliament and are basically superior courts that have civil jurisdiction (Canada, Department of Justice, 2021c). However, the jurisdiction of these courts is limited as they are permitted to deal only with matters specified in federal statutes. This authority differs from that of the provincial and territorial superior courts, which have jurisdiction in all areas except where it is excluded by statute.

Specialized federal courts have also been established by the federal government to help the court system operate in an efficient and effective manner. For example, the Tax Court of Canada deals with matters pertaining to federal tax and revenue legislation. If a taxpayer exhausts all options under the *Income Tax Act*, then any dispute between the taxpayer (that is, an individual or a company) and the federal government will be dealt with at the Tax Court of Canada (Canada, Department of Justice, 2021c).

The Supreme Court of Canada

The final court of appeal is the Supreme Court of Canada, which has authority over all private and public law in Canada. This court has jurisdiction over matters in all areas of the law, including criminal and civil law, constitutional law, and administrative law. The Supreme Court comprises a chief justice and eight judges. The judges, three of whom must be from Quebec as specified in the *Supreme Court Act*, are appointed by the federal government. In addition to the Quebec judges, traditionally one judge is appointed from the Maritimes, two from the West, and three from Ontario (Canada, Department of Justice, 2021c). The Supreme Court hears "as of right" appeals when a provincial or territorial appeal court has overturned an acquittal from a trial court, or when dissent about a question of law occurs at a provincial or territorial court of appeal. In addition, subcommittees of the Court can refer cases involving legal issues that hold a particular relevance and cases of public importance to the Supreme Court (Goff, 2008).

The longest serving Chief Justice of the Supreme Court, the Honourable Beverley McLachlin, was also the first woman to take on that role. She retired in 2017 after holding the position for 17 years.

The Correctional System

The correctional system in Canada is divided into one federal service, the Correctional Service of Canada (CSC), and 13 provincial and territorial services (see Table 1.2).

TABLE 1.2 Ministries Responsible for Provincial and Territorial Corrections

Province or Territory	Ministry Responsible for Corrections
British Columbia	Ministry of Public Safety and Solicitor General
Alberta	Ministry of Justice and Solicitor General
Saskatchewan	Ministry of Justice and Attorney General
Manitoba	Manitoba Justice
Ontario	Ministry of the Solicitor General
Quebec	Ministère de la Sécurité publique
New Brunswick	Department of Justice and Public Safety
Nova Scotia	Department of Justice Correctional Services
PEI	Department of Justice and Public Safety
Newfoundland & Labrador	Department of Justice and Public Safety
Nunavut	Department of Justice
Northwest Territories	Department of Justice
Yukon	Department of Justice

Pre-Confederation Corrections

In 1849, member of provincial Parliament (MPP) George Brown submitted the *First Report of the Commissioners Appointed to Inquire into and Report upon the Conduct, Economy, Discipline, and Management of the Provincial Penitentiary*, later known as the Brown commission report. This report was primarily a scathing condemnation of the warden of Kingston Penitentiary, Henry Smith, and of the abusive practices that were all too common at the penitentiary. The Brown commission report (Canada, Commission Appointed to Inquire, 1849) detailed the horrific living conditions endured by both male and female inmates. The prison food was abominable, the cells were reported to be overrun with bugs, and the inmates suffered from brutalities inflicted by staff. The women's area, located in the basement, was described in the following manner:

> The cells of the female Convicts are built of pine; have been many years in use, and are small apartments, with little ventilation. There seems no doubt that the cells have been overrun with vermin, and that the women suffered frightfully from them for years. (Canada, Commission Appointed to Inquire, 1849, p. 136)

The Brown commission report included descriptions of all manner of punishments inflicted upon the women at the Kingston Penitentiary. A detailed account of what happened to inmate Charlotte Reveille serves as a disturbing reminder of the atrocities that can occur in a civilized society. The length of her sentence is not entirely clear, but it was noted that although her sentence expired on February 14, 1849, she was kept incarcerated for longer because the warden and inspectors did not want to discharge her during "this inclement season." Charlotte Reveille was imprisoned longer than her sentence because of the weather!

According to the warden's punishment ledger, during Reveille's stay at the Kingston Penitentiary, between July 11, 1846, and October 7, 1847, she was punished on no fewer than 50 occasions for a range of behaviours, including but not limited to using bad language, refusing to walk, refusing to wear shoes, tearing blankets, enacting "great violence" and abuse, and cursing the matron. Her punishments, as listed in the warden's ledger, included confinement to her cell for 48 hours, being placed in a dark cell for 24 hours, being placed in a box on bread and water, and being given six lashes with rawhide. Reportedly not included in the ledger was the order by inspectors on April 5, 1847, for "Charlotte Reveille to be gagged, whenever it might be necessary to reduce her to silence" (Canada, Commission Appointed to Inquire, 1849, p. 206).

Charlotte Reveille's case was thoroughly investigated by the Brown commission, which concluded that although Reveille arrived at the penitentiary in poor health and with a "predisposition to insanity," her condition was very likely worsened by the extreme punishments that she received (Canada, Commission Appointed to Inquire, 1849, p. 208). The Brown commission believed that this flogging of a woman was not an isolated incident at the penitentiary and that female inmates as young as 12 years of age had been flogged. The Brown commission report viewed punishing women in this manner as "utterly indefensible" (Canada, Commission Appointed to Inquire, 1849, p. 190).

The Brown commission found Warden Smith guilty of all charges levelled against him, including cruelty, financial impropriety, neglect of duty, falsifying records, and general mismanagement of the institution. As a result, the commission recommended Smith's immediate and permanent removal from the position of warden at the Kingston Penitentiary. Another recommendation specific to the needs of women was that "a suitable building must, however, be erected before any reform can be attempted with success" (Canada, Commission Appointed to Inquire, p. 296).

The results of the Brown commission report are critical in the history of women's incarceration in Canada. Table 1.3 lists some of the commissions, reports, and key events related to women's corrections in Canada.

TABLE 1.3 Women's Corrections in Canada—Timeline of Commissions, Reports, and Key Events

Commission/Report/Event	Year	Main Recommendation/Description/Exact Date
Brown commission report	1849	Build a separate unit to house women at Kingston Penitentiary.
MacDonell report	1914	Build a separate prison for the women.
Biggar report	1921	Amend the *Penitentiary Act* to allow women to be incarcerated in their own prison.
Nickle report	1921	Women should not be housed in a male facility.
Prison for Women (P4W) construction began.	1925	
P4W open to all women.	1934	All remaining women from Kingston Penitentiary were transferred to P4W.
Archambault report	1938	Close P4W and arrange for women to be put in provincial jails.
Gibson report	1947	Move the women to provincial jails and turn P4W into a men's facility.
Fauteux report	1956	Keep one central women's institution for reasons of economy.
Canadian Corrections Association brief	1968	Prisons for women must be designed with the special needs of women in mind.
Ouimet report	1969	Establish regional facilities to be shared by federal and provincial governments and appoint a woman to a position of leadership and responsibility with respect to women's corrections.
Clark report	1977	Establish regional secure institutions for women who need a high security setting while other women would be housed in provincial facilities. An alternative approach was that provincial governments would assume responsibility for all women offenders.
Subcommittee on the Penitentiary System	1977	P4W described as "unfit for bears, much less women."
Joint Committee to Study Alternatives	1978	Keep one secure, central facility for women and maximize exchange of service agreements with the provinces.
Needham report	1978	Close P4W.
Task Force on Federally Sentenced Women (TFFWS) Creating Choices report	1990	Close P4W and build five regional facilities and a healing lodge in the Prairies.
April 22nd incident at P4W	1994	April 22, 1994
The Fifth Estate airs video of cell extractions.	1995	February 21, 1995
Arbour commission report	1996	Report released April 1996. CSC showed a "disturbing lack of commitment to the ideals of justice."
Nancy Stableforth is appointed the first Deputy Commissioner for Women.	1996	June 21, 1996
P4W is closed.	2000	May 8, 2000

Provincial Corrections

An examination of the history of women's prisons in Canada suggests that public recognition of the plight of women prisoners has waxed and waned over the years. A pattern of collective ignorance about the state of women's incarceration has often been followed by a surge of interest expressed as outrage over the conditions of their imprisonment. Despite considerable improvements over the last century to the physical state of women's prisons, criticisms are still being levelled against the provincial and federal governments responsible for the care of incarcerated women. To fully appreciate the current state of women's corrections in Canada, the history of its development must be known.

Prior to the opening of Toronto's Andrew Mercer Ontario Reformatory for Females in 1880, women sentenced to incarceration in Ontario were housed in local jails alongside male prisoners (Strange, 1985). Their accommodations in these facilities were abusive at their worst and mediocre at their best. In small facilities, women were sometimes locked up with men. In larger jails, separate cells were sometimes reserved for women; however, these cells were reported to be overcrowded (Strange, 1985). In a review of women's prisons from 1874 to 1901, Strange noted that an increase of approximately 6 percent over the previous year in the number of females sent to jail in 1878 was seen as evidence by then Ontario Prison Inspector J.W. Langmuir that a separate women's prison was needed.

The Mercer reformatory was designed and built at a time when Canadian society was willing to entertain two ideological viewpoints: (1) that prisons should focus on reformation not punishment; and (2) that men and women were so distinct in nature that their correctional experiences should also reflect this "differentness" (Strange, 1985).

Langmuir, in his lobbying of Ontario legislators, looked to the United States for examples of how a separate women's reformatory could be instituted in the social climate of the day. Central to this proposal was the assertion that an all-female staff at such a facility could provide the "maternal reform" that would enable those incarcerated to become respectable women. In both the United States and Canada, some members of the moralistic middle class believed that "fallen" women could be reformed by the maternal qualities of these middle-class moral guardians (Strange, 1985). Langmuir's vision was never fully realized, as the history of the Mercer reformatory can attest (Strange, 1985). The ideological axiom of reform over punishment received only weak support from Ontarians, and the obstacles to the application of such a "maternal reform" in a prison setting were considered insurmountable (Strange, 1985).

Strange (1985) points out that around the time the Mercer facility was being planned, several economic benefits were associated with a separate reformatory for women. Among these benefits was an expectation that a women's facility would be far less expensive to operate than a men's jail because women were seen as being less dangerous and the associated security costs would therefore be lower. In addition, the women's reformatory was expected to contribute in kind to the government coffers through the inmates' work activities, such as laundry and sewing. Another cost saving associated with a women's reformatory would come in the form of staff wages. An all-female staff could be paid less than a staff of men, which was customary at the time (Strange, 1985).

It should be noted that, ultimately, the establishment of the Andrew Mercer Ontario Reformatory for Females was not based on any type of intense public pressure for reform but instead resulted from some effective lobbying by Langmuir, who convinced the provincial government to earmark $90,000 from the estate of Andrew Mercer to build the reformatory (Strange, 1985).

Provincial and territorial facilities across Canada incarcerate women who, for the most part, are serving sentences of no longer than two years less a day. However, some federally sentenced women serving longer sentences are incarcerated in provincial facilities because of treatment needs or family circumstances. Within the Canadian penal system, an agreement between a

province or territory and the federal government that allows for the incarceration of provincial or territorial inmates in federal institutions or vice versa is known as an **exchange of service agreement (ESA)**.

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Since 1973, ESAs have been in place between federal corrections and some provincial correctional services to enable federally sentenced women to serve their time closer to home (Correctional Service of Canada [CSC], 1990). For example, in Quebec, prior to the building of a regional federal facility in Joliette, the Tanguay Agreement allowed federally sentenced francophone women to remain in Quebec. The 1982 Tanguay Agreement marked the first time the Correctional Service of Canada purchased guaranteed accommodation from a province, which, in this case, cost approximately $1 million in capital contribution for five years with an option to purchase an additional five years (CSC, 1990).

ESAs have also been in place between the CSC and various psychiatric institutions across Canada to meet the needs of those with specific mental health issues. For example, the Institut national de psychiatrie légale Philippe-Pinel provides federal inmates with psychiatric care when the individual is referred by a federal institution (CSC, 1990).

Federal Corrections: The Early Years

Historically, the federal correctional system has been at a loss for how to deal with criminalized women. With the passing of the *British North America Act* (the BNA Act) in 1867 and the creation of a federal dominion, the "establishment, maintenance, and management of penitentiaries" came under federal jurisdiction as outlined in section 91, item 28 (*Constitution Act, 1867*). Kingston Penitentiary and several existing penitentiaries in the Maritimes came under this new federal jurisdiction (*Constitution Act, 1867*, 1867; Hayman, 2006).

As is the case today, at the time of Confederation, Canada incarcerated significantly fewer females than males. The *First Annual Report of the Directors of Penitentiaries for the Year 1868* indicated that 67 women were incarcerated as of December 31, 1867. Of those, 3 women were incarcerated in the Halifax Penitentiary, 1 in Saint John, and 63 in Kingston Penitentiary (Canada, Directors of the Penitentiaries, 1870).

Although 29 women were being held at the Rockwood Asylum on January 1, 1868, none appears to have been a "convict lunatic." According to the warden's report for Kingston Penitentiary, only 20 male "convict lunatics" housed at Rockwood were on the penitentiary's register (Canada, Directors of the Penitentiaries, 1870).

Interestingly, women incarcerated in the federal penitentiaries at that time composed the same proportion of federal incarcerates as they do today. At the end of 1867, women accounted for approximately 6.75 percent of federal incarcerates (that is 67 women versus 925 men) and in 2018–2020 approximately 7.45 percent of all federally incarcerated persons in Canada were female (Malakieh, 2020).

In the *First Annual Report of the Directors of Penitentiaries for the Year 1868*, the directors of the three federal penitentiaries in Kingston, Saint John, and Halifax as well as the Rockwood Lunatic Asylum in Kingston made brief mention of the women under their control (Canada, Directors of the Penitentiaries, 1870). The medical superintendent of the Rockwood asylum, Dr. John R. Dickson, afforded more detail in his report to the analysis of expenditures for the year 1868 than to the state of its inhabitants (Canada, Directors of the Penitentiaries, 1870).

Similarly scarce reporting of the condition or state of women inmates was reported by the directors of the Halifax and Saint John penitentiaries. The matron at the Halifax Penitentiary, Mary McGregor, noted that she was "happy to report that everything, in connection with the female department of this institution, is going on quietly and satisfactorily" (Canada, Directors of the Penitentiaries, 1870, p. 47). McGregor also expressed her exuberance concerning the behaviour of the women incarcerated in the Halifax Penitentiary when she stated, "I am happy to say that

none of the women have needed, or received, punishment" (Canada, Directors of the Penitentiaries, 1870, p. 47). The language of the day is indicative of the attitude held toward the rights—or lack thereof—of women incarcerated in Canada around the time of Confederation.

In comparison with the other directors who filed reports for 1868, the director of the Kingston Penitentiary wrote the most detailed account of the state of the women's conditions of incarceration. The author of the report, Director Donald MacDonell, devoted a separate one-page section, "Remarks on the State of the Female Prison," to the situation of the incarcerated women. He included comments on the cleanliness and neatness of the facility, which was located in the basement. Although he noted that the basement was "very extensive," he did report that "a proper and convenient prison, for the female convicts, is much required" (Canada, Directors of the Penitentiaries, 1870, p. 22). This statement can be interpreted as one of the earliest recommendations at a federal level for the need to establish a women's federal prison. The matron of the female prison at Kingston Penitentiary, Belinda Plees, provided more detail concerning the makeup of the female inmate population. She concluded that the slight increase in the number of incident reports that year was "due to there being two or three exceedingly bad and turbulent women, who take delight in disturbing the prison" (Canada, Directors of the Penitentiaries, 1870, p. 22).

Unfortunately, this kind of sentiment was echoed more than a century later, when a National Board of Investigation reported on the incident that had occurred at the Prison for Women (P4W) on April 22, 1994. According to the Commission of Inquiry into Certain Events at the Prison for Women (also known as the Arbour inquiry), the Board of Investigation report was deficient from a factual point of view because it downplayed the inadequate correctional response to the incident by overemphasizing the dangerousness of the women involved. The "April 22nd incident at P4W," as it became known, and the commission of inquiry that followed will be discussed in further detail later.

With respect to the *First Annual Report of the Directors of Penitentiaries for the Year 1868*, the comment that can perhaps best provide a glimpse of how incarcerated women were viewed in the latter half of the 19th century comes from the director of Kingston Penitentiary, Donald MacDonell:

> The poor creatures, who are sent here, are generally of the unfortunate classes and of the worst temperaments. They are, here, taught the usefulness of labor, and those, well disposed, are allowed to learn the working of the sewing machine, so that, on their release, they may be enabled to obtain a livelihood. (Canada, Directors of the Penitentiaries, 1870, p. 22)

By 1914, the women at Kingston Penitentiary were being housed in a building separate from the rest of the population of the penitentiary. In their report (known familiarly as the MacDonell report), the Royal Commission on Penitentiaries noted that although the women at Kingston Penitentiary were being kept in a "new and suitable" building, the establishment of a separate prison would be desirable in that "the interests of all concerned would be best served if these few inmates were transferred to an institution for women" (Canada, Royal Commission on Penitentiaries, 1914, p. 9). The MacDonell report also mentioned the possibility that arrangements could be established with the provinces for the custody of the federally incarcerated women.

A Separate Federal Prison for Women

In 1921, the Report of the Committee Appointed by the Rt. Hon. C.J. Doherty, Minister of Justice, to Advise upon the Revision of the Penitentiary Regulations and the Amendment of the Penitentiary Act (the Biggar report) recommended that section 63 of the *Penitentiary Act* be

amended to include a provision for women to be incarcerated in facilities separate from men's institutions. The Biggar report noted that the *Penitentiary Act,* as it was written, did not allow for women to be housed in a separate penitentiary, but permitted them to be kept only in a separate ward of a men's penitentiary (Canada, Committee Appointed to Advise, 1921). The Biggar report also noted that "one of the recognized elements of imprisonment is the deprivation of the convict of opportunities for association with the opposite sex" and that housing men and women within the same penitentiary would bring "this deprivation constantly to the minds of both male and female convicts" (Canada, Committee Appointed to Advise, 1921, p. 19). For this reason, the committee recommended that section 63 of the *Penitentiary Act* be amended to allow the possibility for women to be incarcerated in a separate institution.

In 1921, the Nickle report was the first to specifically address the needs of federally incarcerated women (Canada, Commission on the State and Management of the Female Prison, 1921). In the report, Nickle described the accommodations and daily lives of the women incarcerated at the Kingston Penitentiary and commented on the behaviour of some women. One of the major concerns of the commission was that housing women within a male prison contributed to inappropriate behaviour that could be avoided if women were held in a separate locale. Nickle painted the picture of a hapless female, a victim of her own pathological biochemistry, unable to control her insatiable urges:

> Without doubt some of the women, more particularly at certain periods, are thrown into a violent state of sexual excitement by the mere sight of the men, more often by their being or working contiguously to the female quarters and my attention was called to one instance of this group of cases where a sedative had to be given to soothe desire. (Canada, Commission on the State and Management of the Female Prison, 1921, p. 3)

The report also expressed concern that by housing the women in a male facility, the women were being placed at risk and their vulnerabilities could be exploited by both male inmates and staff. In addition, it was noted that some male staff were fearful of accusations by the women, which could have dire consequences:

> As a matter of fact to-day the male staff, from the warden down, view with apprehension the administration of the Female Prison. While the disclosures of the past year have shown how unscrupulous officers have taken unfair advantage of opportunities for flirtations, improprieties and indecencies that presented themselves, yet it can be truthfully contradicted that many decent officers are fearful, knowing that a few designing and crafty women might ruin a well-earned reputation. (Canada, Commission on the State and Management of the Female Prison, 1921, p. 5)

The Prison for Women

As a result of the Nickle report, construction began on the new P4W in Kingston, Ontario in May 1925 (Hayman, 2006) and was completed in 1932. At that time, considerable rioting had taken place at Kingston Penitentiary, damaging an area that housed some male inmates (Hayman, 2006). As a result, some men were transferred temporarily to the new P4W building in 1932 (Hayman, 2006). Finally, in January 1934, after the men had been removed, all the women who had been housed in Kingston Penitentiary were transferred to the newly built, separate prison (Canada, Royal Commission to Investigate the Penal System, 1938). Four years after P4W in Kingston opened its doors, a royal commission recommended that it be closed (Canada, Royal Commission to Investigate the Penal System, 1938).

The Prison for Women (P4W) in Kingston, Ontario.

Early Reports and Commissions on the Prison for Women (1938–1956)

The Report of the Royal Commission to Investigate the Penal System of Canada, chaired by Justice Joseph Archambault, included recommendations specific to female inmates in Canada (Canada, Royal Commission to Investigate the Penal System, 1938). The Archambault report highlighted the relatively small number of females compared with males in the federal correctional system. The new women's prison was designed to hold a maximum of 100 inmates, but in the decade prior to the Archambault report, the average daily population of incarcerated women was approximately 37 (Canada, Royal Commission to Investigate the Penal System, 1938). During that ten-year period (1928–1937), the highest population of female inmates (51 women) occurred in 1932, and the lowest population (26 women) was seen in 1936.

In the chapter entitled "Women Prisoners," the Archambault report noted that women made up only 1 percent of all federal inmates (Canada, Royal Commission to Investigate the Penal System, 1938). Furthermore, the authors asserted that most women were "of the occasional or accidental offender class" and were "not a custodial problem" (p. 147). As such, the authors recommended the women could be as effectively housed in reformatories as they could in a penitentiary. According to the Archambault report:

> There is no justification for the erection and maintenance of a costly penitentiary for women alone, nor is it desirable that they should be confined, either in the same institution as men, or in one central institution far from their place of residence and their friends and relations. (Canada, Royal Commission to Investigate the Penal System, 1938, p. 148)

According to the Archambault commission's conclusions and recommendations, the authors clearly did not perceive a need to build a separate women's prison in Kingston, Ontario. The report stressed the pecuniary savings from no longer incurring the operating expenses associated

with P4W or having to transport women from the eastern and western provinces to Kingston. The commission recommended that P4W be closed and arrangements be made with provincial authorities to provide custody for those federally sentenced women (Canada, Royal Commission to Investigate the Penal System, 1938). In 1947, the Gibson report echoed this sentiment with recommendations that P4W be converted from a women's institution to a male facility for classification and segregation of offenders (Canada, Department of Justice, 1947).

Most reports written on P4W recommended that it be closed and other arrangements made to meet the needs of women sentenced to federal terms of incarceration. One of the few reports that did not recommend the closure of P4W was the Fauteux report of 1956, which acknowledged that the geographic isolation of women from the East and West Coasts was unfortunate and the consequent lack of support from family and friends in their home communities was also undesirable. However, the authors of the Fauteux report concluded that the existence of one central institution for women was preferable for treatment delivery. Because of their small numbers, keeping the women in one facility would allow for economical service delivery that could take the form of an intensified treatment program (Canada, Committee Appointed to Inquire, 1956). This sentiment was not echoed in future reports.

Reports and Commissions Recommending the Closure of the Prison for Women (1968–1978)

In 1968, the Canadian Criminology and Corrections Association published its "Brief on the Woman Offender," a report prepared for the Royal Commission on the Status of Women, which addressed three key items specific to criminalized women. The first item dealt with the criminal acts most often committed by women, the second focused on problems experienced by women in conflict with the law at various stages of the justice process, and the third concerned the existing detention facilities for women. The authors of the brief sought recommendations specific to the needs of criminalized women. Of particular interest was their recommendation that staff working with women receive training specific to working with women in prison. Additionally, the authors recommended that women's prisons be designed with the special needs of criminalized women in mind and that a variety of women's prisons be built to accommodate them. According to the brief, "prisons for women should not be patterned on male institutions but rather be planned on the basis of the special needs of women" (Canadian Criminology and Corrections Association, 1968, p. 42).

In 1969, the report of the Canadian Committee on Corrections (also known as the Ouimet report) identified a host of problems associated with having most federal female inmates serving their sentences at one prison. At the time of the Ouimet report, some women from the West (described as being drug addicted) had been incarcerated at Matsqui Institution in British Columbia. However, women from the rest of Canada were being sent to the Kingston P4W. The Ouimet report identified issues related to geographic separation, lack of French-language programming, and the incarceration in one facility of women who differed with respect to "age, degree of criminal sophistication and emotional stability" (Canadian Committee on Corrections, 1969, p. 400).

The report's recommendations specific to women included the suggestion that the federal government consider purchasing the services of provincial government facilities in the larger provinces and the establishment of regional services that could serve the needs of both the federal and provincial regional governments. Clearly, the continued use of one central federal prison in Kingston was not fully supported by the report.

The Ouimet report also recommended that the federal government "appoint a suitably qualified woman to a position of senior responsibility and leadership in relation to correctional treatment of the woman offender in Canada" (Canadian Committee on Corrections, 1969, p. 403). Interestingly, the establishment of the position of Deputy Commissioner for Women did not

occur until recommended by the Arbour inquiry (Canada, Commission of Inquiry, 1996), after which Nancy Stableforth, in 1996, became the first person to hold this position (CSC, 2008).

In 1974, seven individuals were appointed to the National Advisory Committee on the Female Offender; in 1977, they produced a report on their findings, known as the Clark report. The committee, which included representatives from stakeholder groups, such as the Elizabeth Fry Society and the National Parole Board, was tasked to:

> study the needs of federal female offenders and to make specific recommendations to the Commissioner of Penitentiaries and the Executive Director of the National Parole Service regarding the development of a comprehensive plan to provide adequate institutional and community services appropriate to her unique program and security needs. (Canada, National Advisory Committee on the Female Offender, 1977, p. 9)

The committee members chose not to limit themselves to only *federal* female offenders but also concerned themselves with the realities faced by *all* female offenders in Canada. At the time the Clark report was written, women composed just less than 2 percent of all federal incarcerates in Canada. The percentage of provincially incarcerated women was higher, at about 7 percent (Canada, National Advisory Committee on the Female Offender, 1977). Like many previous reports, the National Advisory Committee recommended that P4W be closed. The committee members even went so far as to state their opinion that P4W should be closed "within three years from publication of this report" (Canada, National Advisory Committee on the Female Offender, 1977, p. 30). Clearly this did not happen.

The National Advisory Committee identified many of the same concerns regarding P4W that had been identified in previous reports: women were housed too far from their homes, release planning was problematic, the physical building was unsuitable, the needs of French-speaking women were not being met, and protection was inadequate for those who were viewed as being "less criminally sophisticated" than other inhabitants of the prison (Canada, National Advisory Committee on the Female Offender, 1977, p. 19).

The Clark report outlined two approaches that could be followed to "decentralize" the incarceration of federally sentenced women. The first plan was similar to the one proposed by the Ouimet report (Canadian Committee on Corrections, 1969) in which the federal government would remain jurisdictionally responsible for the women who had been sentenced federally, but women who did not require a high-security setting could be incarcerated in provincial institutions through the purchase of services from provincial facilities. This plan also recommended the establishment of regional facilities for women who required a more secure setting. Conversely, provincial governments could purchase services from the federal government for provincially sentenced women who required a more secure facility. The second plan involved the provincial governments assuming responsibility for all women incarcerated in their respective areas, irrespective of the length of incarceration.

The National Advisory Committee Report (Canada, National Advisory Committee on the Female Offender, 1977) outlined the pros and cons associated with both plans. Of note, yet another report was recommending the closure of P4W, a step that would not occur for decades.

The Clark report was evaluated by the Advisory Council on the Status of Women in the fall of 1977 (Rosen, 1977). In this evaluation, the Clark report was criticized for taking a "soft-line approach" and not presenting much original content (Rosen, 1977, p. 41). According to Rosen, the Clark report did "more harm than good" because by recommending the closure of P4W, the future of the facility remained uncertain, making it more difficult to attract both new staff and the funding needed for capital projects (p. 42). As a result, the prison would effectively be placed in a state of inertia with respect to future development (Rosen, 1977).

That same year, a report to Parliament was made by the Subcommittee on the Penitentiary System in Canada (Canada, Subcommittee on the Penitentiary System, 1977). In the report's

section on female inmates, the authors noted that female inmates experienced "outright discrimination" in the lack of "recreation, programs, basic facilities and space" available to them (p. 134). The authors further pointed out that from their examination of the kinds of offences most often committed by women and women's institutional behaviour, women clearly did not need to be incarcerated in what amounted to an "1835-style of maximum-security institution" (p. 134). It is in this report that we find the much-referenced description of P4W as "unfit for bears, much less women" (p. 135). The report to Parliament summed up P4W in Kingston as being "obsolete in every respect—in design, in programs and in the handling of the people sent there" (p. 135).

In 1978, a joint committee studied the various alternatives for housing women who had been sentenced to federal time (Canada, Joint Committee to Study Alternatives, 1978). The committee consisted of representatives from the Elizabeth Fry Society, both federal and provincial correctional services, and the Prison for Women Citizen Advisory Committee. The joint committee considered options identified in previous reports and options they saw as potentially feasible. Interestingly, the joint committee was in favour of at least one secure, centrally located facility for women. Although the committee noted the importance of maximizing ESAs with provincial corrections and making optimal use of community-based facilities, its support for the maintenance of a central facility was counter to the recommendations of previous reports (the Archambault, Ouimet, and Clark reports, for example).

In 1978, the Needham report (Canada, National Planning Committee, 1978) further evaluated the plans that had been proposed in the Clark report. The Clark report's Plan 2 (the provincial custodianship of federally incarcerated women) was not supported by Needham because of the lack of unanimity from the provinces (Canada, National Planning Committee, 1978). If one province did not agree with being responsible for housing federally sentenced women, then the plan could not work. The Clark report's Plan 1 involved building regional facilities for women who required a secure setting and transferring federally sentenced women who did not require a secure setting to provincial facilities. However, the recommendations of the Needham report included the need for at least one regional facility in the East and one in the West, and emphasized the importance of community-based residences for the women (Canada, National Planning Committee, 1978). Although the Needham report supported regionalization, it did not comment on the feasibility of establishing secure facilities in all regions across Canada. However, the report clearly stated that the financial considerations concerning regionalization needed further study. And, like their predecessors, the authors echoed the recommendation that P4W be closed (Canada, National Planning Committee, 1978).

What Do You Think?

Why did it take so long to close P4W? Can you think of any arguments in favour of or against establishing one central maximum-security institution for women while maintaining regional minimum- and medium-security facilities for women?

Creating Choices

The mandate of the Task Force on Federally Sentenced Women (TFFSW) was to assess the correctional management of women sentenced to federal prison in Canada, from the beginning of their sentences to the date of their warrants' expiry. Included in the mandate was the need to develop a strategic plan to guide and direct this process while respecting the needs specific to this group of women (Canada, TFFSW, 1990). In an innovative fashion, the TFFSW was co-chaired by the CSC and the Canadian Association of Elizabeth Fry Societies, who took a women-centred

approach to their work. The members of the TFFSW were thus able to gain considerable insight because the experiences of women were valued throughout the process of the investigation.

As was the case in numerous previous reports, the TFFSW, in its report titled *Creating Choices*, found that the needs of federally sentenced women were not being met. The report noted that the building itself was inadequate, the women were being incarcerated in an over-secure setting, the available programming was poor, the women were geographically isolated from their families, and the needs of francophone and Indigenous women were not being met (Canada, TFFSW, 1990). The TFFSW recommended that the Kingston P4W be closed and the women be moved to five regional facilities to be operated across Canada by the CSC. In addition, the report recommended a **healing lodge** be built in the Prairies to meet the unique needs of Indigenous women who were sentenced federally, by offering services and programs that reflect Indigenous culture, beliefs, and traditions. See Box 1.1 for a summary of a case that brought attention to who serves their time at the Okimaw Ohci healing lodge.

healing lodge
A facility designed to meet the needs of criminalized Indigenous individuals by offering services and programs that reflect Indigenous culture, beliefs, and traditions.

BOX 1.1 » Case Study: Terri-Lynn McClintic's Controversial Transfer to a Healing Lodge

On April 8, 2009, an eight-year-old girl named Victoria Stafford was reported missing. Investigation into her disappearance led to the discovery of surveillance camera video footage that showed her walking with an adult female, later identified as Terri-Lynn McClintic (Richmond, 2009). McClintic was ultimately charged and convicted of first-degree murder and sentenced to life in prison (Quan, 2010). In a separate trial, Michael Rafferty was convicted of first-degree murder, sexual assault, and kidnapping, and subsequently sentenced to life (Richmond, 2012).

Nearly ten years after the killing, Terri-Lynn McClintic was in the news again. She had been transferred from Grand Valley Institution for Women in Kitchener, Ontario to the Okimaw Ohci Healing Lodge, located on the Nekaneet First Nation near Maple Creek, Saskatchewan. In response to hearing that one of his daughter's killers had been transferred from a medium-security prison to a minimum/medium-security facility without fences, Rodney Stafford organized a protest at the Parliament in Ottawa to bring attention to this transfer. According to a Facebook post used for the organization of the protest, the plan was to "peacefully protest the reduced security levels being given to the worst of the worst, including one of Tori Stafford's killers, Terri-Lynne McClintic" (Richmond, 2018b, para. 19).

The transfer of McClintic to the healing lodge and the resultant political controversy "led to Public Safety Minister Ralph Goodale implementing changes to Canada's policy surrounding female inmates" (Aiello, 2018, para. 14). As a result of the new rules around prisoner transfers, those serving long sentences in federal prisons will find it difficult to transfer to Indigenous healing lodges (Richmond, 2018a). They will be eligible to transfer to healing lodges only if they are preparing for release, which usually occurs after they have completed programs, often in the final third of their sentence (Richmond, 2018). In addition, CSC will need to determine how close the individual is to being eligible for unescorted temporary absences and will also need to consider the prisoner's behaviour prior to transfer to a healing lodge (Richmond, 2018).

McClintic was transferred from the Healing Lodge to the Edmonton Institution for Women (Aiello, 2018) and later returned to Grand Valley Institution for Women ("Court Application to Review," 2019).

Discussion Questions

1. Do you agree with the decision made by the Liberal government to limit placement in a healing lodge to the final phase of an individual's sentence when they are planning for release?
2. Is it fair that women serving a long sentence are no longer eligible to transfer to the healing lodge, even if they require a minimum- or medium-security facility?
3. Should transfer to a healing lodge be restricted to women who identify as Indigenous? Why or why not?

Five Principles in the Creating Choices Report

Five principles were outlined in the Creating Choices report (see Box 1.2) to guide the CSC in implementing changes and developing programming or policies concerning federally incarcerated women. Hannah-Moffat (2001) was critical of the way the "CSC's cooption of the feminist politics of difference and empowerment" occurred in relation to the implementation of the TFFSW report (p. 161).[1] By following the five principles, the CSC hoped to move closer to what had been described as a community-based ideal that recognized the importance of, and was sensitive to, the diversity in Canadian communities.

BOX 1.2 » Five Principles Guiding the CSC

Principle #1: Empowerment

> The inequities and reduced life choices encountered by women generally in our society, and experienced even more acutely by many federally sentenced women, have left these women little self esteem [*sic*] and little belief in their power to direct their lives. As a result, they feel disempowered, unable to help create or make choices, unable to help create a more rewarding, productive future, even if realistic choices are presented to them. This problem is exacerbated by the racism experienced by Aboriginal women. (Canada, TFFSW, 1990, p. 78)

Principle #2: Meaningful and Responsible Choices

> In order to have a sense of control over their lives which will raise self-esteem and empowerment, women need meaningful options which allow them to make responsible choices. These choices must relate to their 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 needs of federally sentenced women. (Canada, TFFSW, 1990, p. 79)

Principle #3: Respect and Dignity

> This principle is based on the assumption that mutuality of respect is needed among prisoners, among staff and between prisoners and staff if women are to gain the self-respect and respect for others necessary to take responsibility for their futures. This principle is also based on the recognition that respect, in accordance with one of the guiding principles of the Mission Statement for the Correctional Service of Canada, "will accommodate, within the boundaries of the law, the cultural and religious needs of individuals and minority groups." Spiritual needs, as well as cultural identity and practices, will be acknowledged as an integral part of the whole person, a part that cannot be ignored in seeking to rehabilitate and aid in the healing process of the body, mind and spirit. And this principle is based on the observation that behaviour among prisoners is strongly influenced by the way they are treated; that if people are treated with respect and dignity they will be more likely to act responsibly. Respect is related to the four principles of the Aboriginal way of life: kindness, honesty, sharing and strength. (Canada, TFFSW, 1990, p. 80)

Principle #4: Supportive Environment

> Environment can best be understood in terms of a constellation of many types of environments … political, physical, financial, emotional/psychological and spiritual, especially for Aboriginal women. A positive lifestyle which can encourage the 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 environment are positive and mutually supportive. (Canada, TFFSW, 1990, p. 81)

Principle #5: Shared Responsibility

> Governments at all levels, corrections workers, voluntary sector services, businesses, private sector services and community members generally must take responsibility as interrelated parts of society. This is essential in order to foster the independence and self-reliance among federally sentenced women which will allow them to take responsibility for their past, present and future actions. To make these sound choices, women must be supported by a coordinated and comprehensive effort involving all elements in society. This, as Aboriginal teachings instruct us, is a holistic approach. (Canada, TFFSW, 1990, p. 81)

Discussion Questions

These five guiding principles were written more than 30 years ago. Is there evidence that these principles are being adhered to by CSC? Take a look at the CSC website for a sample of programs currently available for federally incarcerated women. Can you identify aspects of the programs that illustrate the five principles? Are there examples where aspects of these programs do not adhere to the five guiding principles?

The Arbour inquiry noted that on the heels of the Creating Choices report, and while the plans for the new regional facilities (including the hiring of staff) were under way, the CSC and P4W came under public scrutiny for the regressive manner with which some women were treated as a result of what was to become known as the April 22nd incident.[2] See Box 1.3 for a description of how Joey Twins was treated that day and how her perseverance led to the *Gladue* principles being extended to parole board decision-making.

BOX 1.3 » Case Study: Joey Twins

In December 2020, on International Human Rights Day, the Correctional Investigator of Canada announced that Ms Joey Twins was going to be the recipient of the 2020 Ed McIsaac Human Rights in Corrections Award.

Ms Twins was born in 1958, and her lived experiences include the tragic repercussions of the residential school and child welfare systems (OCI, 2020; *Twins v Canada* (Attorney General), 2016 FC 537). She is "a Cree Twin Spirit woman from Treaty 6 Territory whose spirit name is Redstone Woman Who Walks With Fire. She is a knowledge keeper, singer and hand drummer, prison advocate, Land Defender, Water Protector, advocate for the homeless, and motivational speaker" (P4W Memorial Collective, 2020, para. 4). Ms Twins always maintained her innocence and stated that she was wrongfully convicted of second-degree murder in 1979 because of systemic racism (Maru, 2018; *Twins v Canada*, 2016).

In 1979, at the age of 21, Ms Twins was incarcerated at the infamous P4W (*Twins v Canada*, 2016). She spent many years there and in other prisons, where she observed and experienced abuses, trauma, and human rights violations (OCI, 2020). She received her first release (day parole) in 2013, after 34 years of being incarcerated (*Twins v Canada*, 2016).

While incarcerated at P4W, Ms Twins was involved in the riot that took place in 1994, an event that she said occurred because she and others were upset about CSC taking a woman who was self-injurious to segregation instead of getting her the help that she needed (Maru, 2018). As a result of her involvement, Ms Twins was strip searched and held in segregation (Monteiro, 2019).

Her perseverance in defending her rights led to a precedent-setting legal challenge, and *Gladue* principles are now extended to parole board decision-making (OCI, 2020). As a result of the *Twins v Canada* (2016) decision and another parole hearing, Ms Twins was again released. She notes that "her life's purpose is to identify and stop injustices against Indigenous people" (Maru, 2018).

Discussion Question

The application of *Gladue* principles to parole board decision-making is a significant development for Indigenous people who appear before the Parole Board of Canada. What are some additional criminal justice–related processes where *Gladue* principles could be applied?

Regional Facilities

As a result of the Arbour inquiry's strong criticism of the CSC for permitting operations that did not respect the rule of law (Canada, Commission of Inquiry, 1996), the CSC mission statement was amended to include the rule of law:

> The Correctional Service of Canada (CSC), as part of the criminal justice system and respecting the rule of law, contributes to public safety by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control. (CSC, 2012)

By the early to mid-1990s, planning was under way to build regional facilities and a healing lodge, although the final locations of the regional facilities differed from the original recommendations of the TFFSW working group (Hayman, 2006). The new regional facilities[3] eventually included Grand Valley Institution for Women in Kitchener, Ontario; Nova Institution for Women in Truro, Nova Scotia; Joliette Institution in Joliette, Quebec; Edmonton Institution for Women in Edmonton, Alberta; and the Okimaw Ohci Healing Lodge in Maple Creek, Saskatchewan.

All the new regional facilities included cottage-style accommodations for the women, where each woman could have her own room. Communal kitchens, laundry areas, bathrooms, living rooms, and dining rooms were included in the plans for the cottages. The idea was to make the new prisons seem closer to the norms of community living (Hayman, 2006). An important feature of the new regional facilities was that they did not have a permanent correctional officer post in the living units. The correctional officers, now called primary workers, patrolled the living units periodically throughout their shifts. Now, however, all multi-level facilities that accommodate women deemed maximum security have a secure unit that does not operate like the cottage unit and always has security personnel present.

Men who have a maximum security classification are usually held in larger institutions, many much older than the regional women's facilities. For example, Stony Mountain Institution, which is located 24 kilometres north of Winnipeg, first opened in 1877 (CSC, 2021). The institution has a capacity of 96 maximum-security men, 484 medium-security men, and, in the minimum-security section located adjacent to the medium/maximum-security building, 217 minimum-security men (CSC, 2021). The minimum-security section is similar to those of the regional women's facilities in the sense that they have residential-style, small-group accommodation houses (CSC, 2021). However, the medium-security section of Stony Mountain consists of a dome-style facility that allows for direct observation of the cell ranges. This is quite different from what federally sentenced women with a medium-security rating experience at the regional facilities. Those men with a maximum-security rating live in a range-style unit where correctional staff can directly observe the cell ranges (CSC, 2021).

Federally sentenced women from the West Coast of Canada were able to remain in British Columbia under an ESA between the CSC and the province of British Columbia. The women were able to serve their sentences at the provincially run facility for women, the Burnaby Correctional Centre for Women (BCCW). When the BCCW closed in 2004 (CSC, 2021), the federal government decided to redesign the Sumas Community Correctional Centre for the women and renamed it the Fraser Valley Institution (FVI). Like other federal facilities for women, FVI

consists of cottage-style living units for women requiring minimum- and medium-security facilities and a secure unit for women requiring maximum-security facilities.

Institutional profiles for facilities holding federally sentenced women across Canada are available on the website for the Correctional Service of Canada (2021). According to the website, all facilities, except for the healing lodge, are considered multi-level facilities that accommodate criminalized women classified as minimum, medium, or maximum security. The Okimaw Ohci Healing Lodge is classified as a minimum- and medium-security facility with a capacity of 60 beds. The Buffalo Sage Wellness House in Edmonton also houses women classified as minimum or medium security. Both healing lodges are geared toward women who identify as Indigenous. See Table 1.4 for statistics of the inmate populations and a brief overview of these facilities.

TABLE 1.4 Comparison of Canadian Facilities for Federally Sentenced Women

Institution	Year Opened	Average Count (Jan.–July 2016)* by Security Level of Housing			Population Average Count Jan.–July, 2016*	Maximum Capacity†
		Minimum	Minimum or Medium	Maximum		
Fraser Valley Institution	2004	13	60	10	83	112
Edmonton Institution for Women	1995	35	103	20	158	167
Okimaw Ohci Healing Lodge	1995	–	47	–	47	60
Grand Valley Institution for Women	1997	35	139	15	189	215
Joliette Institution for Women	1997	–	100	13	113	132
Nova Institution for Women	1995	8	54	10	72	99
Buffalo Sage Wellness House	2011	15	–	–	15	28‡
Regional Psychiatric Centre (Prairies)	1978	–	–	–	15	204§
TOTAL		106	503	68	692	813

*Source: Data obtained through an *Access to Information Act* request by D.S. Tavcer (July 20, 2016). Note that it was not possible in all cases to determine separate counts for minimum- and medium-security criminalized women. If the maximum capacity estimates on the CSC website are correct, then one can assume that most of the institutions are near maximum capacity.

†Source: Correctional Service of Canada. (2021). *Institutional profiles*. https://www.csc-scc.gc.ca/institutions/index-en.shtml

‡Source: Correctional Service of Canada. (2018, January 4). *Buffalo Sage Wellness House: Relationships between all things*. Let's Talk Express. https://lte-ene.ca/en/buffalo-sage-wellness-house-relationships-between-all-things

§Note: RPC houses males and females. Capacity not included in total as number of women's beds unknown.

The Creating Choices report was vague regarding how the principles of change could be implemented in the new regional facilities (Hayman, 2006). The report stressed the need for "dynamic security," as opposed to "**static security**"—that is, the preferable mode of security should be more interactive and focused on establishing relationships between staff and the incarcerated women rather than relying on physical security features (cameras, fences, alarms, etc.) to control those incarcerated in a prison. The Creating Choices report also had a discernible tendency to avoid acknowledging that women could be violent. Although the report suggested that approximately 5 percent of women might need a more secure setting, the report was not forthright in suggesting how a more secure setting could be implemented. The authors of the report characterized the majority of federally incarcerated women as "high needs" in terms of the interventions they would require and "low risk" in terms of their security status.

static security
The reliance on physical security measures (cameras, fencing, alarms, etc.) to control those incarcerated in a prison.

The CSC sought to address some of the recommendations of the Creating Choices report through various interventions, including those considered core programs. The primary thrust of these programs is usually to have the participants address their perceived inadequacies through the acquisition of a skill set. The treatment or intervention often takes a cognitive-behavioural approach. In this way, the woman is seen to be making "responsible choices" to take part in her own rehabilitation.

The various strategies employed by the CSC in the treatment of women have been subjected to numerous criticisms (Hannah-Moffat & Shaw, 2000; Maidment, 2006; Pollack & Kendall, 2005). Others have pointed out that although the 2004 Program Strategy for Women Offenders clings to the notion of the voluntary aspect of the interventions and the need for informed consent, in reality, the woman's participation will likely be neither voluntary nor undertaken with informed consent (Hayman, 2006). A core program is an area that a woman "should" address while incarcerated, even if she does not agree. In practice, an incarcerated woman is faced with only the appearance of choice. She can choose not to participate in a core program that has been included (possibly against her wishes) in her correctional plan; however, the parole board might take great interest in her decision not to participate and interpret the woman's rejection negatively.

Some have pointed out how the TFFSW report effectively "glossed over the difficult issues" (Hayman, 2006, p. 241). The language used in the Creating Choices report sometimes obscured the fact that they were talking about imprisonment (Hayman, 2006). By focusing on the language of victimization, the TFFSW essentially constructed an "image of the homogeneous federally sentenced woman" (Hayman, 2006, p. 241). Accordingly, the federally incarcerated female became "idealized" so that all future plans, as put forth in Creating Choices, would "fit" this idealized fiction. For this reason, the new regional facilities were destined to be designed to accommodate women deemed low-risk, in a cottage-style environment where correctional staff patrolled the living units but were not stationed there. As Hayman (2006) pointed out, the approach taken by the TFFSW "inadvertently set federally sentenced women up for failure once they transferred to the new prisons" (p. 242). Because the women were diverse and did not fit the ideal image set up for them in the Creating Choices report, they did not fit into the new prisons.

Both the Edmonton and Nova institutions experienced incidents soon after they opened; in both cases, the finger of blame was squarely pointed at the inmates rather than structural or organizational issues. Hayman (2006) questioned this assignment of blame, contending that by failing to identify the women as prisoners, the TFFSW report's "linguistic obfuscation" had "obscured the reality of their situation" (p. 242). In addition, Hayman holds the CSC to blame because the authorities allowed the Edmonton prison to be opened prior to its physical completion and transferred a disproportionately large number of maximum-security women to an enhanced unit that could not adequately house them.

Crime Statistics and Criminalized Women

Each summer, the Canadian Centre for Justice Statistics publishes Canadian crime statistics for the previous year. In 2019, the national crime rate increased by 7 percent from the previous year; however it was still 9 percent lower than in 2009 (Moreau et al., 2020). The crime rate peaked in the early 1990s and was on the decline until approximately 2015, when it started to increase.

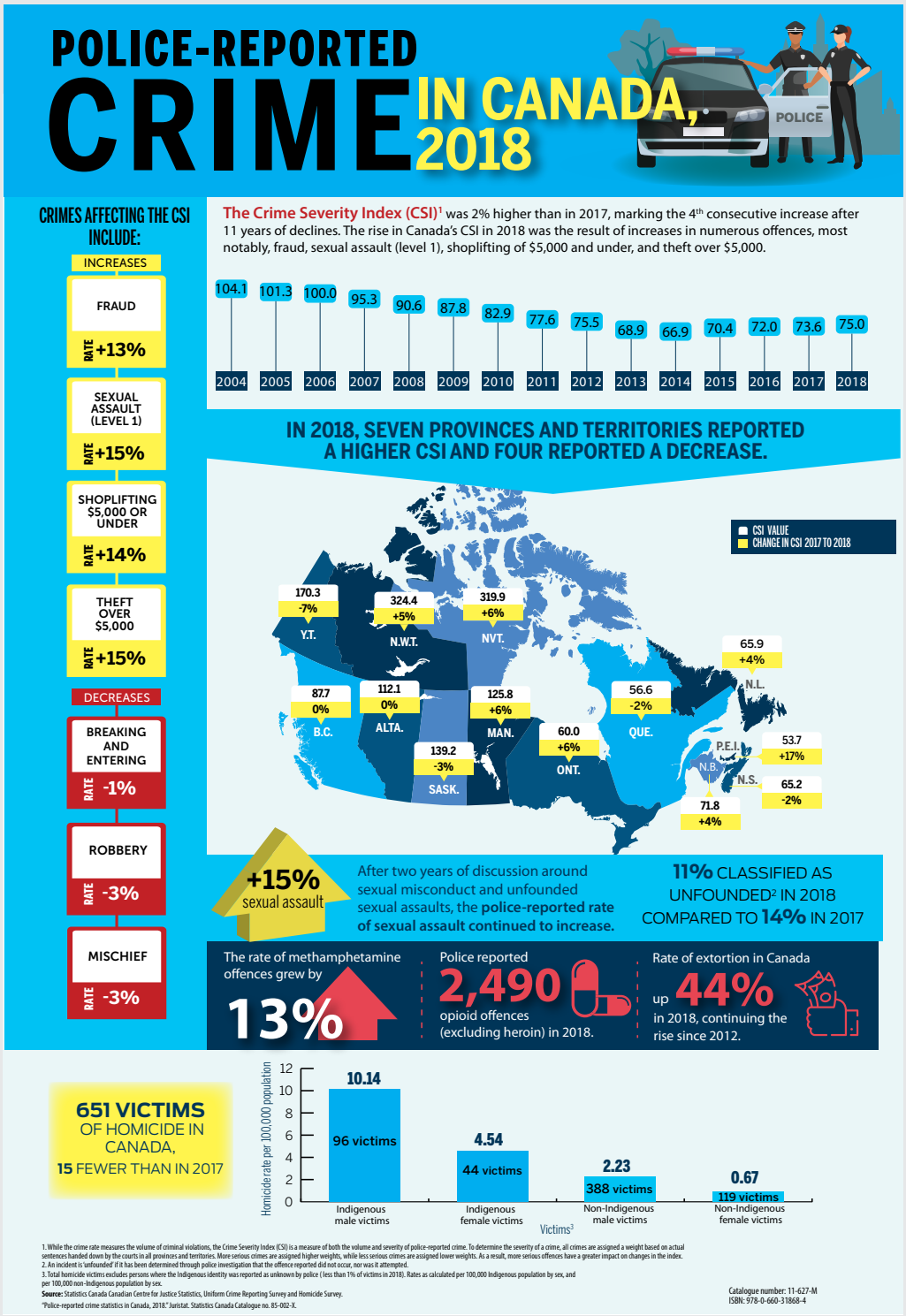
Although the crime rate now is lower than in the early 1990s, the Canadian criminal justice system spending continues to grow. For example, the CSC's expenditures amounted to $2.65 billion in 2019–2020 and were estimated to be $2.79 billion for 2021–2022 (Government of Canada, 2021). In addition to the crime rate, Statistics Canada publishes information on the Crime Severity Index (CSI), which is a measure of the severity and the volume of crime reported to police in Canada. Although the CSI does not report data on the accused by sex, it is nonetheless interesting to see the trends in the CSI. Figure 1.1 illustrates this, including the overrepresentation of Indigenous men and women among victims of homicide.

Women make up a small percentage of those who come into conflict with the law. When considering the population of federal criminalized people in Canada, approximately 7.45 percent are female (Malakieh, 2020). In 1997, an estimated 3 percent of those federally incarcerated were female (DeKeseredy, 2000). Interestingly, the jump in the percentage of women's admissions seems to have coincided with the opening of the regional facilities for women. Some may speculate that the increase in federal sentences for women (as a proportion of all those sentenced to federal time) may be reflective of judges' perceptions that the new regional facilities for women offered improved rehabilitative services from what had been available at P4W. Thus, when judges had the option to choose either a federal or a provincial (or territorial) sentence, they may have leaned toward a federal sentence.

Similar to the statistics for federally sentenced women, relatively few women have been sentenced provincially or territorially compared with their male counterparts. Almost 15 percent of overall admissions to provincial/territorial custody are women (Malakieh, 2020). The percentage of women being sentenced provincially has increased since 1978 (when data were first available), from approximately 5 percent in 1978 to 15 percent in 2015 (Reitano, 2016; Statistics Canada, 2007). Although the data have not always shown linear growth year to year, the overall trend shows a steady increase in the percentage of women incarcerated provincially and territorially from 1978 to 2015. More recently, this trend appears to have levelled off. The most recent statistics for 2018–2019 indicate that 14.7 percent of those admitted to adult custody (sentenced custody, on remand,[4] and temporary detention) were women (Malakieh, 2020).

As will be discussed in Chapter 2, crime is predominantly a male endeavour. The statistics on those who attend Canada's adult courts can yield information regarding the kinds of offences that women are accused of committing. About one third (31.7 percent) of women who appear before the courts in Canada are there for property offences, just under a quarter (22.7 percent) are there for crimes against the person, and one fifth (20.5 percent) are there to face charges related to the administration of justice (Statistics Canada, 2020).

FIGURE 1.1 Police-Reported Crime in Canada, 2018



Source: Statistics Canada, 2021.

Objective and Organization of This Book

The main objective of this textbook is to provide the reader with a thorough picture of women and the criminal justice system in Canada. The book is divided into four parts.

Part I: Overview of Women and the Canadian Criminal Justice System

The first four chapters in Part I of the book examine the Canadian criminal justice system and provide an overview of the women criminalized within this system.

criminalized
A term that describes behaviour that has been criminally sanctioned by law (e.g., through an arrest, a charge, or a prison sentence).

We are choosing to use the term "**criminalized**" wherever possible throughout the text instead of the term "offender" because the latter is a pejorative label that effectively defines the person by their law-breaking behaviour, while "criminalized" requires us to acknowledge that societal factors can influence law-breaking behaviours and ultimately result in a person being found guilty of a crime. Much like in the addictions field where someone who suffers from an addiction is no longer referred to as an "addict" but rather as a "person with an addiction," we are choosing not to refer to those who have come into conflict with the law as "offenders" but rather, as "criminalized" people.

Chapter 2 discusses the theoretical underpinning of offending and victimization. After reading Chapter 3, you should have a better understanding of the legacy of colonialism, its effects on generations of Indigenous peoples, and how this has contributed to the overrepresentation of Indigenous women in Canadian jails and prisons today. Chapter 4 discusses how racialized women (including Indigenous women) who are criminalized experience racism that is often compounded with the classism and sexism faced by most women who have come into conflict with the law.

Part II: Criminalized Women in Canada

In Part II of this text, you will be introduced to the case of Yvonne Johnson, an Indigenous woman whose life experiences led to her conviction for murder and how she spent 17 years imprisoned before her application for day parole was approved. In the chapters that follow, you will read about other criminalized Canadian women and learn more about their backgrounds and the factors that may have contributed to their criminalization. In addition, a separate chapter on female youth will focus on the nature and extent of youth crime, a history of how young women have been treated by the justice system, and the challenges that are unique to criminalized youth. Chapter 7 focuses on criminalized women who have committed violent offences and describes what the latest research tells us about women who commit crimes like homicide and sexual assault. Chapter 8 will conclude this section with an analysis of correctional assessment, mental health, and treatment approaches and the focus on community reintegration.

Part III: Victimization and Criminalization

In this part, we will begin analyzing how women have been victimized by the criminal justice system in Canada. As you will see in Chapters 9 and 10, criminalized women in Canada represent some of the most marginalized members of our society. Incarcerated women experience mental disorders at much higher rates than have been found in the general population. A high proportion of these women also experienced abuse as children and adults and have been targeted for physical, sexual, and emotional violence. Many share histories of alcohol and substance abuse, limited education, and few marketable employment skills. The chapter on missing and murdered Indigenous women and girls of Canada should also generate some questions in your mind as to how and why Canadian society has been so slow to react to this very real crisis.

Part IV: Women Working in the Canadian Criminal Justice System

As you will see in Chapters 11, 12, and 13, women are employed in all aspects of the criminal justice system. More women are police officers today than at any previous point in history. The number of women entering law schools equals or, in some cases, even exceeds the number of men. Women are employed in jobs in probation and parole, as well as provincial, territorial, and federal corrections. Some women have risen to positions of leadership and power within these various organizations, are involved in high-level policy decision-making, and will contribute to shaping the future of the criminal justice system in Canada. However, while progress has been made, it is important to remember that women's representation in the different fields is by no means equal to that of men. While women, as a group, have made great strides in policing, the courts, and corrections, many still face hurdles and may not receive the same opportunities to excel as men do.

In Part IV of the text, you will also read about how beliefs about gender roles and various job models interact to slot women into the "less important" jobs based on misguided stereotypes about women's commitment to their jobs. You will learn why more women than men leave the law profession, and how women's career development and paths in legal fields differ from those of men, with fewer women lawyers achieving partnership and more women working in relatively marginal positions in private firms or working in the public sector. After reading these final chapters you will be well acquainted with the harassment and abuse that women face when working in the field of corrections and how women face higher levels of work–home conflict. While women have come a long way since first being permitted to attend law school, don a police uniform, or carry a skeleton key, there are still organizational and systemic barriers and sexist attitudes that must be overcome if women are ever to truly attain parity with men in these arenas.

SUMMARY

The Canadian criminal justice system consists of three broad agencies: the police, the courts, and the correctional system. Policing in Canada is organized into Indigenous, federal, provincial, and municipal police services. The courts in Canada operate in a hierarchical manner, with specialty courts that deal with specific types of crime or serve individuals whose crimes may be related to mental disorders or addiction.

The early history of corrections in Canada is replete with examples of abuses endured by those deemed to be criminal. The plight of criminalized women in Canada has been compounded by the tendency of correctional services to treat women as an afterthought.

Over the years, many commissions recommended the closure of Canada's infamous P4W. The Creating Choices report emphasized the need to develop new programming for women and operate new regional facilities according to five guiding principles: empowerment, meaningful and responsible choices, respect and dignity, supportive environment, and shared responsibility.

Statistically, women make up a very small percentage of those who are charged with crimes, and an even smaller percentage of those who end up in provincial jails (approximately 15 percent) or federal prisons (approximately 7.5 percent). We prefer to use the term "criminalized" rather than "offender" when we refer to people in conflict with the law. The term "criminalized" recognizes that law-breaking behaviours may be influenced by societal factors that can contribute to a person being found guilty of a crime.

NOTES

1. For a comprehensive history of women's penal governance in Canada, see *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada* (Hannah-Moffat, 2001).
2. See Chapter 5 for a detailed description of the April 22nd incident.
3. In March 2004, the Fraser Valley Institution for Women became the sixth regional federal institution for women in Canada.
4. Being on remand refers to being held in a detention centre while awaiting an appearance in court or a transfer to another institution.

REVIEW QUESTIONS

Short-Answer Questions

1. Outline the three broad agencies in the criminal justice system in Canada. What is the function of each, and how do they relate to one another?
2. What are the five guiding principles outlined in Creating Choices? Pick two of the principles and explain what they are and how they are operationalized in women's prisons today.
3. What does the term "criminalized" mean? Can you think of other situations in which people are no longer referred to using a label like "offender" but are acknowledged to be people first?

Discussion Questions

1. What are the advantages of having multiple regional federal correctional institutions for women? What are the disadvantages? Are there any advantages to having just one federal correctional facility for women in Canada?
2. Why do you think so few women, relative to men, are convicted of crimes in Canada?
3. If you were the minister of public safety, what would you do to improve the lives of criminalized women who are incarcerated in Canada?

ADDITIONAL RESOURCES

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