

CHAPTER 7

Corrections Practices and Reform Initiatives

LEARNING OUTCOMES

After reading this chapter, you should be able to:

- Understand the extent to which Indigenous people are over-incarcerated in Canada.
- Understand current criminal justice practices and corrections outcomes for Indigenous offenders, including youth and women.
- Define the scope and purpose of the *Corrections and Conditional Release Act*.
- Identify the most common Indigenous approaches to treating offenders.
- Understand the role that Elders play in the rehabilitation of offenders.
- Identify various options for improving correctional outcomes for Indigenous offenders and their communities.

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Introduction

Many of the efforts being made to achieve justice for Indigenous Peoples in Canada are directed toward the avoidance of prison. This is because incarceration has proved to be largely ineffective in deterring crime, can make outcomes worse, leads to more Indigenous gang activity, and breaks family and community bonds. But, as the percentage of Indigenous people incarcerated in Canadian federal prisons increased between 2000 and 2021 (see Figure 7.1), it must at the same time be recognized that Indigenous persons will continue to be housed in Canadian prisons in alarming numbers for the foreseeable future.

Indigenous inmates are overrepresented in segregation; are more likely to be classified as high needs and high risk; are released at later points in their sentences; and are more likely to serve full sentences, to have their conditional release revoked, and to have had a previous youth or adult sentence.¹ The factors that contribute to this over-incarceration are well known and have been described in previous chapters: substance

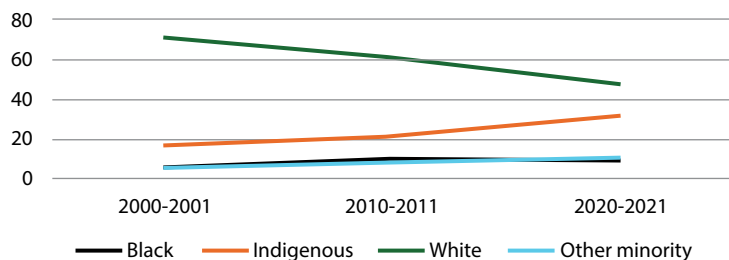
¹ Emile Therien, “The National Shame of Aboriginal Incarceration,” *The Globe and Mail* (20 July 2011), online: <<https://www.theglobeandmail.com/opinion/the-national-shame-of-aboriginal-incarceration/article587566/>>.

abuse; low levels of education, employment, and income; substandard housing and health care; the cultural and psychological scars of colonialism; and the intergenerational trauma created by residential schools and other racist policies.²

These inmates will continue to have very significant needs that need to be addressed if any sort of rehabilitation is to be achieved. It is in the interests of both Indigenous and non-Indigenous people, and Canadian society as a whole, to see this tragic situation improve. Correctional programming therefore presents an opportunity for Indigenous legal orders to make themselves felt within a fundamentally Western institution of justice: provincial and federal prison.

One of the key themes of the calls to action listed in the 2015 report of the Truth and Reconciliation Commission is the need to address the chronic over-incarceration—and related problems—that have resulted from Canada’s longstanding approach to Indigenous criminal justice. Among the 18 calls to action relating to questions of justice, one of them (number 30) states:

FIGURE 7.1 Percent of Federal Prison Population by Race, 2000-2021



Sources: Scot Wortley & Kanika Samuels-Wortley, *Race, Crime and Justice in Canada: Issues and Strategies* (Toronto: Emond, 2025). The data used in Figure 7.1 were compiled from the following sources: Howard Sapers, *Annual Report of the Office of the Correctional Investigator 2012-2013* (Ottawa: Her Majesty the Queen in Right of Canada, 2013), online (pdf): <https://publications.gc.ca/collections/collection_2013/bec-oci/PS100-2013-eng.pdf>; Department of Justice, “State of the Criminal Justice System Dashboard” (last modified 11 June 2024), online: <<https://justice.canada.ca/socjs-esjp/en>>.

We call upon federal, provincial, and territorial governments to commit to eliminating the over-representation of Indigenous people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.³

As we will see in this chapter, such steps include promoting the teachings of Elders who enter prisons with the goal of helping Indigenous inmates toward rehabilitation and arrival at a better place spiritually, mentally, and socially, both while they remain in prison and once they are released. Canadian law places substantial limitations on the space available for Elders’ teachings to make themselves felt.

Healing Indigenous People in Prison

The realities of high Indigenous crime rates, recidivism after serving sentences, and the psychological damage done to Indigenous communities and individuals are linked to the adverse effects of colonialism. After interviewing Indigenous Elders and Indigenous inmates, James Waldram, a medical anthropology professor at the University of Saskatchewan, observed:

2 Linda Mussell, “Intergenerational Imprisonment: Resistance and Resilience in Indigenous Communities” (2020) 33 *J L & Social Policy* 15, DOI: <10.60082/0829-3929.1396>.

3 Truth and Reconciliation Commission of Canada, *Calls to Action* (Winnipeg: Truth and Reconciliation Commission, 2015) at 3, online (pdf): <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf>.

Emotionally, the scars are evident. Some men have talked of hate and bitterness. Others expressed profound sadness. They spoke of an inability as adults to love their own families and to trust people. And they demonstrated profound difficulty establishing positive identities for themselves.

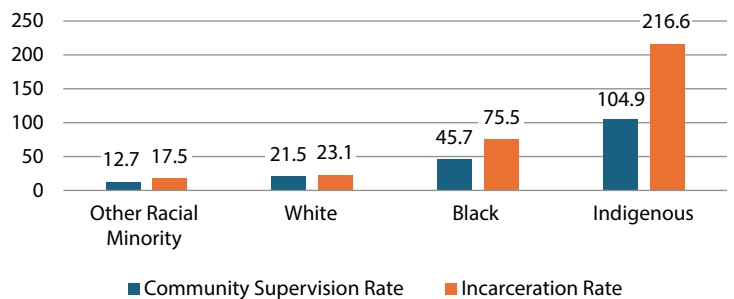
Trauma ... operates at community, societal, and cultural levels. ... Current psychopathology, and other problems experienced by Aboriginal inmates, must therefore be seen as the product of events and circumstances operating at four levels: the individual, the community, the society, and the culture. Rehabilitative programs which ignore this fact, for instance, by focusing only on the individual, will not likely be successful.⁴

One purpose of this chapter is to provide a brief overview of the current situation for Indigenous Peoples who are involved with the Canadian corrections system. As Box 7.1 shows, the statistics are extremely troubling. Another purpose is to establish how Indigenous-specific programming offers an improvement over standardized correctional programming. This includes the need to identify the barriers that the Canadian prison system places on Indigenous-specific programming and to propose alternatives.

Indigenous Prison Populations: An Overview

Former Assembly of First Nations National Chief Shawn Atleo observed that “[First Nations] children are more likely to go to jail than to graduate from high school.”⁵ This statement speaks volumes about the continued marginalization of Indigenous people in Canada. Indigenous people are hugely overrepresented in the correctional system, making up over 31 percent of federally sentenced offenders but only about 5 percent of Canada’s adult population. A similar ten-fold statistical difference can be seen in Figure 7.2, with Indigenous people being incarcerated at a rate of over 216 per 100,000, compared to 23 per 100,000 for white Canadians. Among Indigenous men in federal custody, 69 percent identify as First Nations, 25 percent as Métis, and 5 percent as Inuit.⁶

FIGURE 7.2 Incarceration and Community Supervision Rates (per 100,000) by Race, 2021



Sources: Scot Wortley & Kanika Samuels-Wortley, *Race, Crime and Justice in Canada: Issues and Strategies* (Toronto: Emond, 2025). The data used in Figure 7.2 were compiled from the following sources: Department of Justice, “State of the Criminal Justice System Dashboard” (last modified 11 June 2024), online: <<https://justice.canada.ca/socjs-esjp/en>>; Statistics Canada, *Census Profile, 2021 Census of Population—Profile Table*, Catalogue No 98-316-X2021001 (Ottawa: Statistics Canada, November 2023), online: <<https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/details/page.cfm?Lang=E&SearchText=canada&DGUIDlist=2021A000011124&GENDERlist=1,2,3&STATISTIClist=1,4&HEADERlist=0>>.

4 James Waldram, *The Way of the Pipe: Aboriginal Spirituality and Symbolic Healing in Canadian Prisons* (Toronto: University of Toronto Press, 1997) at 68.

5 Therien, *supra* note 1 at para 1.

6 Shanna Farrell MacDonald, *Profile of Aboriginal Men Offenders: Custody and Supervision Snapshots*, Research Report R-321 (Ottawa: Correctional Service of Canada, 2014) at 6, online (pdf): <https://madgic.library.carleton.ca/deposit/govt/ca_fed/csc_profileaboriginalmen_2014.pdf>.

BOX 7.1

Correctional Outcomes for Indigenous Offenders

Despite comprising approximately 5 percent of Canada's total population, Indigenous people make up over 20 percent of those offenders under community supervision and nearly a third of all those in federal corrections (see Figure 7.2).

The Office of the Correctional Investigator (OCI) is empowered by the **Corrections and Conditional Release Act**⁷ to serve as an independent ombudsman for individuals who are in custody or under supervision of the Correctional Service of Canada, to investigate complaints, and to address issues of policy and procedure. In its 2021–22 annual report authored by Dr Ivan Zinger, the OCI presented the following sobering statistics:

- Indigenous individuals represent 38 percent of people in maximum security.
- After release from prison, Indigenous men have the highest rates of **recidivism** of any group, at 65 percent for any reoffence. Rates are as high as 70 percent in the prairie provinces.
- Indigenous individuals are overrepresented in use-of-force incidents, accounting for 39 percent of such incidents over the last 5 years.
- Nearly 50 percent of individuals in structured intervention units (formerly called “segregation”) are Indigenous.
- Indigenous offenders are disproportionately involved in self-injurious behaviour. They represent 40 percent of attempted suicides over the last 10 years and 83 percent of all incarcerated individuals whose death occurred by suicide in 2020–21.
- The proportion of Indigenous individuals affiliated with security threat groups (which includes biker gangs, Indigenous gangs, white supremacy groups, traditional organized crime members, terrorist cells, etc.) is 22 percent.
- **Statutory release** after serving two thirds of a sentence continues to be the most likely type of release for Indigenous individuals; however, this proportion has decreased over the past 14 years. In 2008–9, it was 80.5 percent, and in 2021–22, it was 75 percent.
- More Indigenous individuals are entering the correctional system at a younger age.

Source: Adapted from Office of the Correctional Investigator, *Annual Report: 2021-2022* (Ottawa: Her Majesty the Queen in Right of Canada, 2022), online (pdf): <<https://oci-bec.gc.ca/sites/default/files/2023-06/annrpt20212022-eng.pdf>>.

Corrections and Conditional Release Act (CCRA)

statute providing comprehensive rules for federal penitentiaries, which house offenders serving sentences of two years or more; Act includes criteria for granting parole, temporary supervised absences, and inmate discipline

recidivism

measure of how many offenders reoffend following completion of their previous justice intervention, whether a prison term, probation, a restorative justice program, or other measures to address behaviour

Overrepresentation also occurs at the provincial level, where 26 percent of those in custody and 24 percent of those under community supervision are Indigenous people.⁸ There is every indication, based on the youthful demographics of the growing Indigenous population, that this overrepresentation will get worse, not better, over time. Furthermore, the number of Indigenous inmates grew by 50 percent in the decade from 2005 to 2015, while the overall increase in the general prison population was 10 percent. And in the decade since, the proportion of the prison population that is Indigenous has only continued to rise (see Figure 7.1). Indigenous incarceration rates vary from region to region, but are particularly high in the prairie provinces, where they represent almost 50 percent of all inmates.⁹

The Correctional Service of Canada (CSC) has developed programs intended to target the needs of specific groups of Indigenous offenders, such as Inuit sex offenders, violent female offenders, and substance abusers. The CSC has attempted to offer

7 SC 1992, c 20 [CCRA].

8 Statistics Canada, *Adult Correctional Statistics in Canada, 2014/15*, by Julie Reitano, Catalogue No 85-002-X (Ottawa: Statistics Canada, March 2016), online (pdf): <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2016001/article/14318-eng.pdf?st=CTFb5luD>> [archived].

9 Howard Sapers, *Annual Report of the Office of the Correctional Investigator 2015–2016* (Ottawa: Her Majesty the Queen in Right of Canada, 2016), online (pdf): <<https://oci-bec.gc.ca/sites/default/files/2023-06/annrpt20152016-eng.pdf>>.

culturally sensitive programming, while at the same time adhering to its stated principles of effective correctional treatment. It also established ten Aboriginal healing lodges across Canada, which are either operated by the CSC and its staff or funded by the CSC and managed by community partner organizations.¹⁰

The first healing lodge for female offenders (Okimaw Ohci Healing Lodge) was opened in Maple Creek, Saskatchewan in 1995, and the first healing lodge for male offenders (Pê Sâkâstêw Centre) was opened in Maskwacis, Alberta in 1997. These facilities are staffed primarily by Indigenous people and are geared to minimum- and medium-security female offenders and minimum-security male offenders, respectively. In 2003, the CSC established an Aboriginal Corrections Continuum of Care model, which includes Elders and Indigenous correctional staff, hoping to address the needs of Indigenous offenders.



The Okimaw Ohci Healing Lodge in Maple Creek, Saskatchewan was the first healing lodge created for Indigenous female offenders. Pictured is Clare McNab, former *Kikawinaw* (Cree for “mother”) of the Lodge.

Indigenous Women in Canada’s Prisons

Indigenous women continue to be overrepresented across provincial, territorial, and federal correctional facilities (see Figure 7.3). They represent almost half of the federal women prison population, despite being only 5 percent of the Canadian general population. Among women as a whole, from all backgrounds, the percentage being admitted to federal corrections programs has been slowly increasing in recent decades, and the rate of admission to provincial/territorial sentenced custody for Indigenous women is slightly higher than the rate for Indigenous men, with Indigenous women representing the fastest-growing segment of the federal offender population.¹¹

Incarcerated women face a host of stressors associated with their lives, both inside and outside the prison walls. Although many cope adequately, some turn to strategies that have worked for them in the past but are ultimately problematic, such as drinking and using drugs, eating disorders, self-injury, and attempts at suicide. Aside from possibly causing serious injury or death, these behaviours may lead to correctional sanctions (e.g., being placed in segregation for intoxication). Many women in prison are mothers and often the primary caregivers for their children, which presents an additional obvious source of stress. In some cases, the children have been made wards of the court, effectively eliminating any future contact with their mothers. When children

statutory release

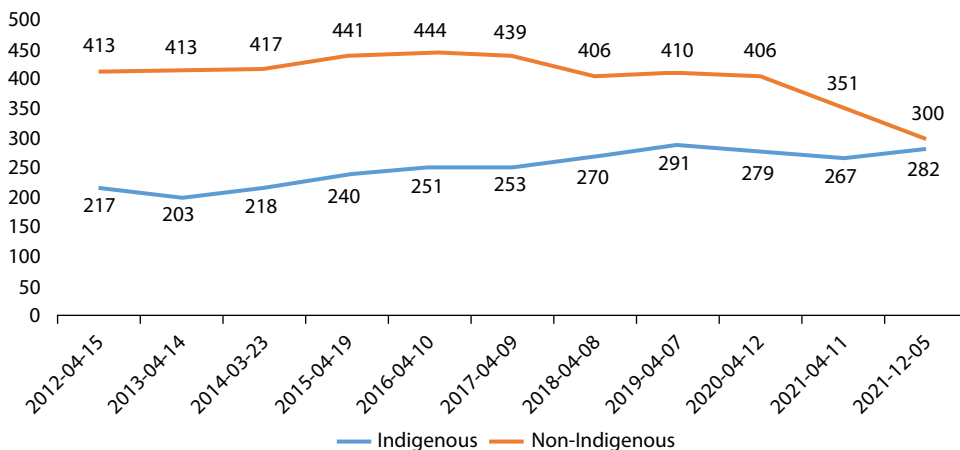
by law, an offender must be released after two-thirds of their sentence has been served, with exceptions for those still deemed to be a risk to the public

10 Correctional Service of Canada, “Indigenous Healing Lodges” (last modified 22 March 2021), online: <<https://www.canada.ca/en/correctional-service/programs/offenders/indigenous-corrections/healing-lodges.html>>.

11 Janelle Beaudette, Madelon Cheverie & Renée Gobeil, *Aboriginal Women: Profile and Changing Population*, Research Report R-341 (Ottawa: Correctional Service of Canada, 2014), online (pdf): <<https://www.publicsafety.gc.ca/lbrr/archives/cn97053071-eng.pdf>>.

themselves start having trouble with the law, mothers in prison may face a double dose of guilt for “not being there” for their children and for “setting a bad example.”

FIGURE 7.3 Federally Sentenced Women in Custody Since 2012



Source: Office of the Correctional Investigator, “Proportion of Indigenous Women in Federal Custody Nears 50%” (17 December 2021), online: <<https://oci-bec.gc.ca/en/content/proportion-indigenous-women-federal-custody-nears-50>>.

In the 1990s, five new regional correctional facilities were built across Canada, replacing the notorious federal Prison for Women in Kingston, Ontario, which officially closed in 2000. At the time the new regional facilities were opened, they were unable to accommodate the needs of maximum-security women; however, most of the regional women’s institutions can now accommodate maximum-security women in secure units.

Few would disagree that societal issues such as classism, sexism, and racism have affected who becomes criminalized in Canada. Generally, it is a subset of women—those most negatively affected by these issues in our society—who become criminalized.

Indigenous Youth and the Corrections System

Canada’s *Youth Criminal Justice Act*,¹² the 2003 federal law governing youth crime, is based on the ideals of rehabilitating and reintegrating young people into society, diverting them from the formal system when feasible, and holding them accountable for the consequences of their actions in meaningful ways. The YCJA mandates diversion from the criminal justice system for first-time and minor offences. The Act also requires consideration of risk factors rooted in the legacies of colonialism that continue to shape Indigenous youth involvement with the criminal justice system. Judges, police, and prosecutors are obliged to consider these factors, and sentences should be consistent with the goals of rehabilitation and reintegration into the community rather than punishment and incapacitation. The Act also encourages police and prosecutors to consider community-based responses to youth offending through alternative measures for non-violent offences, or sanctions such as family conferencing, apologies, counseling, or restitution. Courts are encouraged to employ proportionate sentencing, taking

Youth Criminal Justice Act (YCJA)

federal law that applies to people aged 12 to 18 years; governs the youth justice system

¹² SC 2002, c 1 [YCJA].

into account a young person's background in determining the gravity of an offence as well as the degree of responsibility of the offender.

Racial disparities can be observed in terms of access to services (or lack thereof) and overrepresentation in formal institutions, such as prisons and child welfare systems. Similarly, the challenges of poverty and economic vulnerability remain a disproportionate burden on minority children, particularly Black and Indigenous children. Studies of Indigenous children in conflict with the law in settler colonial societies like Australia, New Zealand, the United States, and Canada have all demonstrated that these youth are overrepresented in the criminal justice system and also struggle with trauma; mental and physical illness; addictions; poverty; learning deficits; and challenges associated with colonialism, including racism, homophobia, and marginalization.¹³

Since 2003, there has been a decrease in the overall number of Indigenous and non-Indigenous youth receiving prison sentences in Canada. However, despite the YCJA's emphasis on alternative and culturally appropriate sentencing, Indigenous young people continue to be overrepresented in sentenced or remand custody and are more likely to be sentenced to probation compared to non-Indigenous youth.¹⁴ Indigenous youth make up 8 percent of Canada's population, and in 2002–3 they accounted for 16 percent of admissions to the youth correctional system, but by 2016–17 they made up 46 percent of admissions.¹⁵ These youth are also more likely to have involvement with the child welfare system, especially foster care placement.¹⁶

Researchers who have examined the impact of the YCJA on Indigenous youth concluded that their overrepresentation can be understood in terms of discriminatory practices, overpolicing, and the links between family problems and foster care placements.¹⁷ Their study found that compared to their non-Indigenous counterparts, Indigenous youth are less likely to receive diversion and more likely to be arrested, refused bail, remanded in custody, and sentenced to detention, but not always because of their behaviour.¹⁸ For instance, a person can be granted bail before a trial or resolution to their case, allowing them to stay in the community while the case is in the legal system. If they are not granted bail, they are placed in pre-trial detention until their case is resolved. Although section 28.1 of the YCJA states that detention should not be used as a substitute for appropriate child protection, mental health, or other social

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- 13 Karen Soldatic et al, "Social and Emotional Wellbeing of Indigenous Gender and Sexuality Diverse Youth: Mapping the Evidence" (2021) 24:4 *Culture, Health & Sexuality* 564, DOI: <10.1080/13691058.2021.1873421>.
- 14 Isaac Heo, "The Misinformed Versus the Misunderstood" (2019) 9:1 *Western Journal of Legal Studies*, DOI: <10.5206/uwojls.v9i1.6639>.
- 15 Stephanie A Wiley, Helene Love & Kelin A Emmett, "Indigenous Over-Representation in Canada's Youth Correctional System: An Assessment of Regional Variability" (2020) 62:2 *Can J Criminology* 22, DOI: <10.3138/cjccj.2019-0049>.
- 16 Erika Y Rojas & Heather M Gretton, "Background, Offence Characteristics, and Criminal Outcomes of Aboriginal Youth Who Sexually Offend: A Closer Look at Aboriginal Youth Intervention Needs" (2007) 19:3 *Sexual Abuse* 257, DOI: <10.1177/107906320701900306>.
- 17 Raymond R Corrado, Sarah Kuehn & Irina Margaritescu, "Policy Issues Regarding the Overrepresentation of Incarcerated Aboriginal Young Offenders in a Canadian Context" (2014) 14:1 *Youth Justice* 40, DOI: <10.1177/1473225413520361>.
- 18 Chris Cunneen, "Criminology, Human Rights and Indigenous Peoples" in S Parmentier & EGM Weitekamp, eds, *Crime and Human Rights* (Bingley, UK: Emerald Group Publishing Information, 2007) 239.

measures, in many cases there is no home or other place to go if youth are released on bail. This problem is especially acute for Indigenous youth, given the ruling in *R v Gladue*¹⁹ that judges consider the unique systemic and background circumstances that might have played a part in bringing an offender before the courts.²⁰ However, Gladue Report writers are not available in all provinces and territories, and many communities lack treatment facilities and skilled staff to implement extrajudicial measures.

Youth who are involved in the child welfare system as well as the criminal justice system are often referred to as “crossover” and are more likely to require special health and education needs.²¹ A large British Columbia study following more than 50,000 children over a 10-year period found that almost three-quarters of youth involved with the youth justice system have been reported to exhibit behavioural and serious mental health problems compared to 2 percent of the youth population.²² A Manitoba study estimated that almost half of youth who had out-of-home child family services care also had criminal charges, and that Indigenous children were overrepresented among that group.²³

Thus, the experiences of **crossover youth** go beyond their association with the criminal justice and child welfare systems, but also imply the involvement of factors such as racism, sexism, poverty, and mental health challenges.²⁴

crossover youth

youth involved in both the child welfare and criminal justice systems

Canadian Correctional Law

There are several legal and procedural aspects that define or feed into Canada’s correctional system. Along with the federal corrections system, overseen by the CSC, there are also parallel provincial systems (sentences of less than two years are served in provincial prisons). The *Canadian Charter of Rights and Freedoms*²⁵ guarantees for all Canadians several fundamental freedoms (discussed in Chapter 3), as well as civil, legal, and equality rights. Additionally, section 9 specifies that a person is “not to be arbitrarily detained or imprisoned.” Several other rights for those being arrested or detained are laid out in section 10.

The *Criminal Code* states what constitutes and defines a criminal offence Canada, and also details various court procedures relating to trials, appeals, sentencing, and

19 1999 CanLII 679 (SCC).

20 John Howard Society Ontario, *Unequal Justice: Experiences and Outcomes of Young People in Ontario’s Youth Bail System* (Ontario: JHSO, 2020), online (pdf): <<https://johnhoward.on.ca/wp-content/uploads/2021/03/Unequal-Justice-Report-Final.pdf>>.

21 Susan Baidawi & Rosemary Sheehan, “Crossover” Children in the Youth Justice and Child Protection Systems (London, UK: Routledge, 2019).

22 British Columbia Representative for Children and Youth & Office of the Provincial Health Officer, *Kids, Crime and Care: Health and Well-Being of Children in Care—Youth Justice Experiences and Outcomes* (Victoria: BCRCY & Office of the Provincial Health Officer, 2009), online (pdf): <<https://rcybc.ca/wp-content/uploads/2020/11/Youth-Justice-Joint-Rpt-FINAL-.pdf>>.

23 Marni Brownell et al, “The Overlap Between the Child Welfare and Youth Justice Systems in Manitoba, Canada” (2018) 3:4 International Journal of Population Data Science, DOI: <[10.23889/ijpds.v3i4.636](https://doi.org/10.23889/ijpds.v3i4.636)>.

24 Susan Baidawi, Nina Papalia & Rebecca Featherston, “Gender Differences in the Maltreatment–Youth Offending Relationship: A Scoping Review” (2023) 24:2 Trauma, Violence & Abuse 1140, DOI: <[10.1177/15248380211052106](https://doi.org/10.1177/15248380211052106)>.

25 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

mental health factors, to name a few. Along with the YCJA described above, which applies to Canadians under 18 years of age, there is also the *Corrections and Conditional Release Act*, enacted in 1992, which provides the legal framework of Canadian corrections policies and procedures.

Types of Release

The CCRA requires that all offenders be considered for some form of conditional release prior to completing their sentence. However, release is not always granted to eligible offenders. Note that conditional release doesn't shorten a sentence, it merely means the sentence is to be completed in the community, under specific conditions. The Parole Board of Canada (PBC) must assess an offender's risk when they become eligible for a release (except for a statutory release), as it balances reintegration efforts with the "protection of society."²⁶

There are different types of conditional release:

- Temporary absence: Usually the first type of release an offender may be granted, and may be escorted or unescorted. Temporary absence may be granted so that an offender can receive medical treatment, see their family, attend counselling, or work on community service projects.
- Day parole: Prepares an offender for release on full parole or statutory release and allows participation in community events.
- Full parole: The offender serves the remainder of their sentence in the community, reporting regularly to a parole supervisor.
- Statutory release: The automatic release of federal inmates after serving two-thirds of their sentence. This is not the same as parole (the decision is not made by the PBC), but like parole, statutory release carries conditions, and it also may be denied, or revoked in some cases.²⁷

The Corrections and Conditional Release Act

The CCRA was the first piece of legislation to give Indigenous people some involvement in the development of services, policies, and programs in corrections, as well as to ensure that the correctional environment provided opportunities for Indigenous spirituality and cultural practices. Section 4 of the CCRA outlines the principles that guide decisions to release offenders. Subsection 4(g) stipulates that "correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, aboriginal peoples, persons requiring mental health care and other groups."

Introduced in 1995, Commissioner's Directive 702 outlined the CSC's policy to accommodate Indigenous cultural and spiritual practices within federal prisons. The use of ceremonial medicines (sweetgrass, sage, cedar, and tobacco); ceremonial and personal spiritual objects (such as medicine bags, smudge bowls, and feathers);

26 *Ibid.* Section 3.1 states that "the protection of society is the paramount consideration"; s 4(c) states that parole should use "the least restrictive measures consistent with protection of society."

27 Parole Board of Canada, "Fact Sheet—Types of Release" (last modified 22 January 2024), online: <<https://www.canada.ca/en/parole-board/corporate/publications-and-forms/types-of-release-fact-sheet.html>>.

traditional foods; and the practice of potlatches, sweat lodge, and pipe ceremonies are all covered under this directive.

And so, while Canadian correctional law does accommodate initiatives intended to address the particular needs of Indigenous inmates, it remains questionable whether, in practice, they actually meet the needs of Indigenous inmates. Section 80 of the CCRA requires the CSC to “provide programs designed particularly to address the needs of aboriginal offenders.” (See Box 7.2.) There is a mandate to treat substance abuse or offer skills training with programs that are imbued with Indigenous cultural values.

BOX 7.2

Indigenous Offenders in the Corrections and Conditional Release Act

The CCRA, which has been refined with various updates since it came into force, has several sections (79 through 84) that are explicitly devoted to Indigenous offenders:

Indigenous Offenders Definitions

79 In sections 79.1 to 84.1,

correctional services means services or programs for offenders, including their care, custody and supervision.

Indigenous governing body means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Indigenous organization means an organization with predominately Indigenous leadership.

Indigenous peoples of Canada has the meaning assigned by the definition *aboriginal peoples of Canada* in subsection 35(2) of the *Constitution Act, 1982*.

Factors to be considered

79.1(1) In making decisions under this Act affecting an Indigenous offender, the Service shall take the following into consideration:

- (a) systemic and background factors affecting Indigenous peoples of Canada;
- (b) systemic and background factors that have contributed to the overrepresentation of Indigenous persons in the criminal justice system and that may have contributed to the offender’s involvement in the criminal justice system; and
- (c) the Indigenous culture and identity of the offender, including his or her family and adoption history.

Exception—risk assessment

(2) The factors described in paragraphs (1)(a) to (c) are not to be taken into consideration for decisions respecting

the assessment of the risk posed by an Indigenous offender unless those factors could decrease the level of risk.

Programs

80 Without limiting the generality of section 76, the Service shall provide programs designed particularly to address the needs of Indigenous offenders.

Agreements

81(1) The Minister, or a person authorized by the Minister, may enter into an agreement with an Indigenous governing body or any Indigenous organization for the provision of correctional services to Indigenous offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

Scope of agreement

(2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-Indigenous offender.

Placement of offender

(3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an appropriate Indigenous authority, with the consent of the offender and of the appropriate Indigenous authority.

Advisory committees

82(1) The Service shall establish a national Indigenous advisory committee, and may establish regional and local Indigenous advisory committees, which shall provide advice to the Service on the provision of correctional services to Indigenous offenders.

Committees to consult

(2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with Indigenous communities, Indigenous governing bodies, Indigenous organizations and other appropriate persons with knowledge of Indigenous matters.

Spiritual leaders and elders

83(1) For greater certainty, Indigenous spirituality and Indigenous spiritual leaders and elders have the same status as other religions and other religious leaders.

Advice

(1.1) If the Service considers it appropriate in the circumstance, it shall seek advice from an Indigenous spiritual leader or elder when providing correctional services to an Indigenous inmate, particularly in matters of mental health and behaviour.

Obligation

(2) The Service shall take all reasonable steps to make available to Indigenous inmates the services of an Indigenous spiritual leader or elder after consultation with

- (a) the national Indigenous advisory committee established under section 82; and
- (b) the appropriate regional and local Indigenous advisory committees.

Release into Indigenous community

84 If an inmate expresses an interest in being released into an Indigenous community, the Service shall, with the inmate's consent, give the community's Indigenous governing body

- (a) adequate notice of the inmate's parole review or their statutory release date, as the case may be; and
- (b) an opportunity to propose a plan for the inmate's release and integration into that community.

Plans—long-term supervision

84.1 If an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an Indigenous community, the Service shall, with the offender's consent, give the community's Indigenous governing body

- (a) adequate notice of the order; and
- (b) an opportunity to propose a plan for the offender's release on supervision, and integration, into that community.

A similar CSC mandate encourages the participation by inmates in traditional spiritual practices, such as smudging and sweat lodge ceremonies—things that many Indigenous people may not have been closely familiar with prior to incarceration. Often delivered by Elders (see the profile of Art Solomon in Box 7.5, later in this chapter) or other respected members of an Indigenous community, these approaches are seen by the CSC as a way to address what is seen as a key underlying factor of Indigenous criminality: the fact that many offenders had become disconnected from their cultural heritage and identity.²⁸

Security Classifications

A key problem for Indigenous offenders has been the constant and inflexible application of standard security classification assessments to those coming into the federal penitentiary system—a system that lacks sufficient nuance to account for the different circumstances and needs of Indigenous inmates.

The initial assessment of an offender arriving at a federal penitentiary is based on the **Custody Ratings Scale**. Those who receive a high score as a security risk will be directed toward incarceration in a maximum-security institution. The ratings are based on several factors, including age at the time of the offence, length of the sentence they have received, the nature and severity of their offence, and the extent of the person's prior convictions. Under this system, Indigenous offenders are more likely to be classified as higher risk.

Studies have found that Indigenous offenders were classified as medium- or maximum-security risks significantly more often than non-Indigenous offenders.²⁹

Custody Ratings Scale

classification tool used by CSC at the beginning of an offender's sentence to determine the appropriate security level

28 Waldram, *supra* note 4 at 83.

29 Andrew Welsh & James RP Ogloff, "Full Parole and the Aboriginal Experience: Accounting for the Racial Discrepancies in Release Rates" (2000) 42:4 Can J Criminology 469 at 479, DOI: <10.3138/cjcrim.42.4.469>.

This system undermines an inmate's chances of accessing appropriate correctional programming and parole on their way to reintegration. For Indigenous women offenders, the numbers are stark: according to Karen Vecchio's *Call to Action* report, they make up 50 percent of the female population in maximum-security facilities.³⁰ The effects of this are described by the Canadian Human Rights Commission:

Among the hardships imposed by this are the fact that maximum security inmates, unlike their minimum and medium security counterparts, are not eligible to participate in work-release programs, community release programs or other supportive programming designed to enhance their chances of reintegration. In fact, half of all maximum security women are now being released directly from maximum security incarceration into the community after serving two-thirds of their sentence, without the benefit of preparatory programming.³¹

On a regular basis, offenders in medium- or maximum-security institutions may be considered for **reclassification**. Security reclassification using the Security Reclassification Scale may also occur sooner for an Indigenous offender after the completion of certain programs. The factors considered in reclassification strongly emphasize previous behaviour as part of the inmate's institutional history, along with any prior escape history, such as:

reclassification

process by which a medium- or maximum-security offender has their security level reassessed

- history of any known violence, include violent community incidents;
- dangerous offender designation under the *Criminal Code*;
- the inmate's social, criminal and, where applicable, youth offender history;
- the nature and gravity of their offences, whether weapons were involved, and the harm done to the victim;
- evidence of family violence;
- alcohol and drug use;
- affiliations with criminal organizations/gangs;
- affiliation with a terrorist organization or radicalized group;
- whether the inmate meets the criteria of being a high-profile offender; and
- notoriety likely to invoke a negative reaction from the public, victim(s), or police and/or to receive significant media coverage (sensational crime, major sexual or drug offence, terrorism, affiliation with organized crime, etc.).³²

In the case of Indigenous offenders, these factors are to be considered within the context of their "Indigenous social history," which means consideration must be given

30 Karen Vecchio, *A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Correctional Systems* (Ottawa: House of Commons, Report of the Standing Committee on the Status of Women, 2018) at 84, 95, online (pdf): <https://publications.gc.ca/collections/collection_2018/parl/xc71-1/XC71-1-1-421-13-eng.pdf>.

31 Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (Ottawa: Canadian Human Rights Commission, 2003) at 28, online (pdf): <<https://www.chrc-ccdp.gc.ca/sites/default/files/fswen.pdf>>.

32 Correctional Service of Canada, *Commissioner's Directive 710-6: Review of Inmate Security Classification* (Ottawa: Correctional Service of Canada, 2018) under "Public Safety Risk," online: <<https://www.canada.ca/en/correctional-service/corporate/acts-regulations-policy/commissioners-directives/710-6.html>>.

to the intergenerational trauma caused by the residential school system, the colonial dispossession of Indigenous Peoples and the resulting poverty, the disproportionate apprehensions of Indigenous children by social workers, and other factors known to contribute to Indigenous over-incarceration.

Static and Dynamic Factors

Both the Custody Rating Scale and the Security Reclassification Scale contain a mixture of static and dynamic factors. **Static factors** are those that remain unchanged over time, typically linked to past criminal behaviour and disciplinary measures. These factors could include one's age at the time of an offence and the severity of the present sentence being served.³³ **Dynamic factors**, such as close contact with antisocial peers or drug and alcohol abuse, can potentially be changed over time with effective treatment.³⁴

It is worth noting that the Security Reclassification Scale considers reclassification reviews for Indigenous inmates following completion of or during participation in correctional programs, with criteria requiring an evaluation of an inmate "within the context of their Aboriginal social history." Meanwhile, the Public Safety Rating evaluation, although it does emphasize static factors such as one's history of criminal or violent behaviour, also attempts to temper that with a consideration of dynamic progress on the part of the offender. The concern remains, however, that static factors lead to a form of systemic disadvantage and discrimination with respect to Indigenous inmates.

Public Safety Rating

Another element in the assessment of offenders is a **Public Safety Rating**, which leads to an inmate being placed in one of three categories of risk to public safety.

Those inmates with *low ratings* do not have histories that involve violence, or if they do, they have demonstrated significant progress in addressing the dynamic factors that contributed to the criminal behaviour and are considered unlikely to reoffend violently. A *moderate rating* is given to inmates whose criminal histories involve violence, but who have demonstrated some progress in addressing those dynamic factors that contributed to the violent behaviour as well as a willingness to continue addressing them. Inmates with a violent criminal history who have shown neither progress in dealing with their dynamic factors nor a willingness to address them are considered to be a risk to the public and are given a *high rating*.³⁵

Studies of Indigenous offenders have found that they consistently score significantly higher than non-Indigenous offenders on most risk factors:

static factors

risk factors for criminal behaviour that remain unchanged over time, such as experiences of childhood abuse or age at time of offending

dynamic factors

factors that may be altered with effective treatment, such as substance abuse or associating with antisocial or criminal peers

Public Safety Rating

system for assessing offenders' potential for violent reoffending

33 Correctional Service of Canada, "Security Classification and Penitentiary Placement—Annex B: Custody Rating Scale" (last modified 15 January 2015), online: <<https://www.canada.ca/en/correctional-service/corporate/acts-regulations-policy/commissioners-directives/705-7.html#annexB>>.

34 Tanya Rugge, *Risk Assessment of Male Aboriginal Offenders: A 2006 Perspective* (Ottawa: Public Safety and Emergency Preparedness Canada, 2006) at i-ii, online (pdf): <<https://publications.gc.ca/collections/Collection/PS3-1-2006-1E.pdf>>.

35 *Ibid* at 6.

On average, Indigenous offenders are younger; have lengthier criminal histories, particularly early onset; and report more negative childhood histories. In adulthood, Indigenous offenders are rated as higher need in the domain of family and/or marital problems, education/employment, and substance abuse. ... Indigenous offenders have also been found to have higher recidivism rates than do non-Indigenous offenders.³⁶

These realities have repercussions for security classification. The *2015 Annual Report of the Correctional Investigator* found that Indigenous inmates scored higher on having histories of substance abuse and addictions, having been incarcerated for previous violent offences, and having served youth or adult sentences,³⁷ and they are recommended for placement in maximum-security institutions at a higher rate than non-Indigenous inmates.³⁸

It is worth noting that research has cast doubt on the usefulness of criminal history in predicting the risk of Indigenous women in being involved in incidents within a corrections facility.³⁹ The same study looked at Security Risk Scores and found no correlation with the rate of involvement in such incidents. Despite this, Indigenous women are more likely to be placed into higher security correctional settings, even though their history cannot be seen as a predictor of their risk of harming others.⁴⁰

Critics of the security classification system assert that it does not sufficiently account for the social context that leads a great many Indigenous people into criminal behaviour. Law professor Jena McGill points out that Indigenous women endure discrimination, poverty, and victimization at a highly disproportionate rate, and adds:

The “one-size-fits-all” classification system employed by the CSC denies the complexity of Aboriginal women’s lives by attempting to dissect them into discrete categories for the purposes of “needs classification,” and problematically rejects any kind of contextual consideration of the impact that the systemic marginalization experienced by Aboriginal women in Canadian society is likely to have on their social histories.⁴¹

Critics have pointed to the paradox that those offenders who have **criminogenic** needs that must be addressed through correctional programming are instead burdened by higher risk ratings and therefore unable to access the necessary programming.⁴²

The security classification system has tried to account for Indigenous difference in its application to risk assessments (see Box 7.3). There remain concerns tied to its ongoing

criminogenic

describes factors that cause or facilitate criminal behaviour

36 Leticia Gutierrez, Leslie Maaik Helmus & R Karl Hanson, “What We Know and Don’t Know About Risk Assessment with Offenders of Indigenous Heritage” (2016) 3:2 *Journal of Threat Assessment and Management* 97 at 99, DOI: <10.1037/tam0000064>.

37 Howard Sapers, *Annual Report of the Office of the Correctional Investigator 2014–2015* (Ottawa: Her Majesty the Queen in Right of Canada, 2015), online (pdf): <<https://oci-bec.gc.ca/en/media/46>>.

38 John-Patrick Moore, *First Nations, Metis, Inuit and Non-Aboriginal Offenders: A Comparative Profile* (Ottawa: Correctional Service of Canada, Research Branch, 2003) at 19.

39 Cheryl Webster & Anthony Doob, “Classification Without Validity or Equity: An Empirical Examination of the Custody Rating Scale for Federally Sentenced Women Offenders in Canada” (2004) 46:4 *Can J Criminology* 395.

40 *Ibid* at 401-2.

41 Jena McGill, “An Institutional Suicide Machine: Discrimination Against Federally Sentenced Aboriginal Women in Canada” (2008) 2:1 *Race & Ethnicity* 89 at 98.

42 Joane Martel, Renée Brassard & Mylène Jaccoud, “When Two Worlds Collide: Aboriginal Risk Management in Canadian Corrections” (2011) 51:2 *Brit J Criminology* 235 at 241.

reliance on static factors, largely in the form of lengthier prior criminal histories for Indigenous inmates. And even the dynamic factors are apparently being applied in ways that manifest systemic discrimination against Indigenous inmates, and Indigenous women in particular.

BOX 7.3

Ewert v Canada

In the 2018 decision of *Ewert v Canada*,⁴³ the Supreme Court of Canada recognized that inordinately harsh applications of security classification systems to Indigenous inmates can contribute to Indigenous over-incarceration. Specifically, the Court found that the CSC's use of certain psychological risk assessment tools (including the Hare Psychopathy Checklist—Revised) in an Indigenous offender's psychological evaluation violated the offender's "right to life, liberty and security of the person" (s 7 of the *Canadian Charter of Rights and Freedoms*).

Jeffrey Ewert, who is Métis, argued that these measures were not reliable for Indigenous persons on account of the cultural bias of the tests. This decision has called into question the validity of the use of non-Indigenous risk assessment tools on Indigenous offenders.

The Court upheld the constitutionality of the security classification system but recognized that its application of those factors without the most complete and recent information available risked an overestimation of risk for Indigenous offenders who have lengthier criminal records and greater social instabilities in their lives. And overestimation of risk in turn results in higher security classifications, unnecessary denials of parole, and loss of access to rehabilitative programming.⁴⁴ The *Spirit Matters* report (see also Box 7.4) admonishes the CSC to

seek ways of allowing those Healing Lodges to determine which offenders would benefit from the lodge's healing approach, regardless of their security classification, without jeopardizing the facility's physical and healing environment.⁴⁵

The evidence discussed above suggests that if Indigenous-specific programming is not implemented and financed to the extent that it needs to be, negative correctional outcomes for Indigenous inmates will, therefore, become more likely. At best, this means there will be no reduction in the rate of Indigenous incarceration rates; at worst, it means that over-incarceration rates will continue to rise. The evidence, in part, depends on links between program completion rates and correctional outcomes, and previous sections of Vecchio's *Call to Action* report have set out that Indigenous inmates are more likely to participate in and complete Indigenous-specific programming compared to mainstream programming.⁴⁶

Witnesses told the Standing Committee on the Status of Women that the CSC needs to review its culturally sensitive programming to ensure that it addresses the need to provide trauma-informed care with a focus on healing, reconciling relationships, and teaching traditional languages and cultural practices, while also emphasizing accountability among Indigenous inmates, encouraging them to take responsibility for their actions and to heal.⁴⁷

43 2018 SCC 30.

44 *Ibid* at para 65.

45 Sapers, Box 7.4 sources, at 30.

46 Vecchio, *supra* note 30 at 101-2.

47 *Ibid* at 97-98.

Indigenous Approaches

Access to Indigenous-Specific Programming in Prisons

It has long been the case that the CSC, with a current annual budget of nearly \$3 billion,⁴⁸ has allocated only a fraction of its resources to the delivery of core program services—that is, all services available in federal penitentiaries, whether generic or Indigenous specific.⁴⁹ Former Correctional Investigator of Canada Howard Sapers indicated that, in light of this fact, it was hardly surprising that many Indigenous inmates had no access to culturally specific programs that could help them progress toward release.⁵⁰

The Canadian Senate’s Standing Committee on Human Rights (Human Rights Committee) heard from the Auditor General in 2020 that in the prairie provinces, Indigenous-specific programming was typically as accessible for Indigenous offenders as general programming was for non-Indigenous offenders, but that this sort of programming was offered inconsistently in other regions. Areas of the country with fewer inmates often saw that although more than half of Indigenous inmates were registering for Indigenous-specific programs, many were unable to access them because of infrequent program delivery. As a result, only a quarter of eligible Indigenous inmates were able to complete these programs by the time they were eligible for their first parole hearings. The Human Rights Committee noted, however, that in these regions, inmates had been working with Indigenous Elders and a healing plan but often decided not to take Indigenous-specific programs offered by CSC.⁵¹ The Human Rights Committee also heard that programming is not always offered in a timely fashion, with the result that Indigenous offenders often enroll in general CSC programming for lack of alternatives.⁵²

Similarly, the Standing Committee on the Status of Women (Status of Women Committee) heard testimony that one reason for the lack of availability in certain regions is that programs will not even be offered if there are only a handful of inmates in an institution who are eligible for a program—for example, where there are only two or three Indigenous women eligible for culturally appropriate programming.⁵³ Additionally, the Status of Women Committee heard from Savannah Gentile that the prospect of mandatory strip searches when returning from escorted temporary absences or work releases was a serious disincentive for Indigenous women to participate in programming. The

48 Statista, “Total Annual Operating Expenditures for Adult Federal, Provincial and Territorial Correctional Services in Canada in Fiscal Years 2001 to 2022” (September 2023), online: <<https://www.statista.com/statistics/561239/annual-operating-expenditures-adult-federal-provincial-territorial-correctional-services-canada/>>.

49 Canada, *Debates of the Senate*, 39-2, vol 144, No 36 (27 February 2008) at 857, online (pdf): <http://publications.gc.ca/collections/collection_2017/sen/Y3-392-36-eng.pdf>.

50 Office of the Correctional Investigator, “Speaking Notes for Mr. Howard Sapers, Correctional Investigator of Canada, Appearance Before the Standing Senate Committee on Legal and Constitutional Affairs” (14 February 2008), online: <<https://www.oci-bec.gc.ca/cnt/comm/sp-all/sp-all20080214-eng.aspx>> (offline as of August 2024).

51 Salma Attaullajhan, Wanda Elaine Thomas Bernard & Nancy J Hartling, *Human Rights of Federal Sentenced Persons* (Ottawa: Standing Senate Committee on Human Rights, 2021) at 223-24, online (pdf): <https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf>.

52 *Ibid* at 224; Vecchio, *supra* note 30 at 103.

53 Vecchio, *ibid* at 102-3.

paradox is that the practice often replicates the very traumas that Indigenous women are trying to heal from.⁵⁴

The Status of Women Committee also heard that CSC paperwork creates an onerous burden on Indigenous Elders, who want to focus on their spiritual relationships with their inmates.⁵⁵ Felice Yuen described to the Committee how reporting requirements can indirectly pit the Elder in an adversarial dynamic against the inmates they are trying to help:

When I was conducting my research in Grand Valley Institution, I witnessed deep relationships and connections between the women and the spiritual adviser. She was referred to as “Grandmother” by the women in the prison A grandmother doesn’t take notes; a grandmother doesn’t report what you say and do to authorities. As women told me, “Grandmother loves and cares for us”, and that is what made a difference for them.⁵⁶

The Status of Women Committee, paraphrasing testimony from the Correctional Investigator of Canada, added the following assessment:

The Correctional Service has still not developed tools to assess how culturally specific interventions for [I]ndigenous offenders, such as [E]lder services, healing lodges, Pathways, and partnership with community groups and organizations, contribute to safe and successful reintegration.⁵⁷

BOX 7.4

Spirit Matters Revisited

In 2012, then Correctional Investigator of Canada (CIC) Howard Sapers released a widely discussed report entitled *Spirit Matters*, which helped sound the alarm about the extent of Indigenous over-incarceration in Canadian prisons and the need to take steps to address it. The report also included ten recommendations.

In 2023, Sapers’ successor as CIC, Ivan Zinger, released an update report, entitled *Ten Years Since Spirit Matters: A Roadmap for the Reform of Indigenous Corrections in Canada*. The report’s blunt conclusion states:

[I]t is clearer than ever that components of CSC’s Indigenous Continuum of Care (i.e., Healing Lodges, Pathways, and Elders) are not working as intended, and that more of

the same will do little to address the underlying issues. It has become abundantly clear that a sea change is required at the institutional, structural, cultural, and even philosophical levels of federal corrections, in order to recast the role the Service has been playing in perpetuating over-representation, to instead contributing to its resolution.

Sources: Howard Sapers, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: Office of the Correctional Investigator, 2012), online (pdf): <<https://oci-bec.gc.ca/sites/default/files/2024-01/oth-aut20121022-eng.pdf>>; Ivan Zinger, *Ten Years Since Spirit Matters: A Roadmap for the Reform of Indigenous Corrections in Canada* (Ottawa: His Majesty the King in Right of Canada, as represented by the Minister of Public Safety, 2023) at 135, online (pdf): <<https://oci-bec.gc.ca/sites/default/files/2023-10/Spirit%20Matters%20EN%20C3%94%C3%87%C3%B4%20Web.pdf>>.

Cultural Legitimacy

Evidence suggests that most, but not necessarily all, Indigenous inmates have a preference for Indigenous-specific programming when it is available. A self-evaluation report by the CSC received feedback from its staff members and found that 73 percent believed

54 *Ibid* at 95.

55 *Ibid* at 106.

56 *Ibid* at 106.

57 *Ibid* at 103.

that Indigenous offenders always chose Indigenous-specific programming over mainstream programming when the former was available. Staff were also asked for reasons why when an Indigenous offender did not participate in Indigenous-specific programming: 78 percent indicated a lack of identification with Indigenous culture on the part of an Indigenous offender, 65 percent indicated Indigenous-specific programs were not being offered frequently enough, and 39 percent indicated program unavailability.⁵⁸

According to a 2019 CSC evaluation, Indigenous offenders who complete an Indigenous-specific program have tended to evaluate its effects and methods positively.⁵⁹ The feedback on the presence of an Indigenous Elder during programming is particularly positive. The evaluation also noted that many offenders praised the Elders' personal characteristics (e.g., caring, non-judgmental, genuine), which "helped to create an emotional connection and a positive group atmosphere."⁶⁰

It should be noted that perception is not always positive. The Status of Women Committee heard from multiple witnesses that some Indigenous women offenders actually question the legitimacy of Indigenous-specific programming offered within prisons, as the programs are developed by and offered within what remain fundamentally colonial institutions. Another question is that the inclusion of cultural and spiritual elements may be token inclusions of content, while the lens of the rehabilitative programming remains fundamentally Western in its orientation. Another concern was a tendency to deliver content programs with a pan-Indigenous emphasis, without adequately accounting for significant differences in culture and belief that can exist between different Indigenous societies.⁶¹

Elders

Many offenders have found that Elders play a crucial role in achieving successful Indigenous-specific programming. An Elder typically brings with them decades of experience within their communities "as a spiritual adviser, a medicine healer, maybe a pipe carrier, a sweat lodge runner."⁶² Chas Coutlee, an Indigenous woman and former inmate, described her experiences with an Elder as follows:

[Elder Holy Cow] believed in me, and I noticed that women who wanted to participate in ceremonies would refrain from drug consumption as a way to be respectful. This is the first time I recognized culture as a powerful and effective tool for recovery. ... Elder Holy Cow helped me put a piece back into my healing that I didn't know I was missing. I carried shame for being an [I]ndigenous woman. Elder Holy Cow showed me positive role modelling, and this helped remove my shame.⁶³

With an Indigenous inmate, an Elder can form a relationship in which they serve as both spiritual guide and therapeutic healer. Elders carry great spiritual and cultural

58 Correctional Service of Canada, *Evaluation Report: Evaluation of Correctional Reintegration Programs* (Ottawa: Correctional Service of Canada, 2019) at 83, online (pdf): <<https://www.canada.ca/content/dam/csc-scc/migration/005/009/092/005009-0003-en.pdf>>.

59 *Ibid* at 107-8.

60 *Ibid* at 108.

61 Vecchio, *supra* note 30 at 101-2.

62 *Ibid* at 105.

63 *Ibid* at 106.

authority within Indigenous communities, but they are often likely to have had some similar life experiences of their own, which can help build a rapport with an inmate and create trust. The Elder may choose different methods of healing, which can include:

- helping an inmate come to understand that they exist within a much broader historical context of racism, colonialism, and trauma handed down from previous generations, and showing how these factors have affected them;
- providing a source of compassion and sympathy that an inmate may have been lacking as they try to build self-esteem;
- instructing the inmate on their relationships with their families, communities, ancestral spirits, and the natural world, leading to better mental and spiritual health, and not harming others; and
- engaging inmates with the healing process through talking circles, pipe ceremonies, or sweat lodges.⁶⁴

While Elders may perform different roles in different Indigenous nations, most nations have a particular place for Elders (see Box 7.5, below). However, it should be noted that Elders really are not analogous to religious leaders, as that term is understood in the West. The role of Elders and Indigenous practices are properly seen as *sui generis*—they are unique to Indigenous people. (See also the discussion of *sui generis* treaties in Chapter 1.) The *sui generis* nature of Indigenous cultural practices and beliefs is not really understood in the dominant legal system, which continues to confer legitimacy on those practices only to the extent that analogies with current Western practices can be found. The requirement that requests for accommodation fit into a Western paradigm is a violation of Indigenous traditions.

BOX 7.5

Profile: Art Solomon



Art Solomon (1913-1997) was an Ojibwe Elder. Born in Killarney, Ontario, his formal education at an Indian residential school was limited to grade 6, but later in his life he received honorary degrees from Queen's, Laurentian, and Concordia universities. His citation from Concordia reads, in part:

He has been educated through his study of the traditional culture, spirituality and way of life of Native people, and through his work as a builder of roads, a miner, a lumberjack, a carpenter, a craftsman. He is a fourth degree Midewiwin, a great achievement within the spiritual teachings of the [Ojibwe] people. He has shared his knowledge and experience freely and openly, with inspiring generosity of time and energy and resources. He has been a guide and organizer working with mining unions, Native craft guilds, the Canadian Alliance in Solidarity with Native People, the American Indian Movement, the Native Studies programme at Laurentian University,

64 Waldram, *supra* note 4 at 85-96. For other works with similar themes, see Emily R Brault, *Sweating in the Joint: Personal and Cultural Renewal and Healing Through Sweat Lodge Practice by Native Americans in Prison* (PhD Thesis, Vanderbilt University, 2005), online (pdf): <<https://ir.vanderbilt.edu/bitstream/handle/1803/12767/entiresubmit.doc.pdf?sequence=1&isAllowed=y>>; Lee Irwin, "Walking the Line: Pipe and Sweat Ceremonies in Prison" (2006) 9:3 *Nova Religio* 39, DOI: <[10.1525/nr.2006.9.3.039](https://doi.org/10.1525/nr.2006.9.3.039)>.

Native Brotherhoods and Sisterhoods in federal and provincial prisons, the World Council of Religion and Peace, the World Council of Indigenous Peoples and the federal and provincial governments.

...

Art Solomon continues to travel around the world, sharing his message with churches, Amnesty International, Project Ploughshares, the National Film Board and countless organizations and individuals, young and old, men and women, Native and non-Native. His life, his work and his teachings continue to inspire us all to think, to understand and to act.⁶⁵

In the 1970s, Art began working with incarcerated Indigenous men and women in provincial and federal prisons. At that time, the issue of the overrepresentation of Indigenous people in prison, while well understood within the community, was not seen as an issue by the corrections system, the justice system generally, or the broader Canadian public.

Art experienced a great deal of resistance when he tried to enter the jails to meet with inmates. For the most

part, corrections officials did not recognize Indigenous Elders as having any particular status within the system. To overcome this resistance, Art pointed out that other spiritual leaders such as priests, rabbis, and imams had access to their people in jail, so he as an Indigenous Elder should have the same rights. This argument was usually successful.

But the difficulty with this line of reasoning was that it required Indigenous cultural practices to be explicitly linked to a Western analogue. Without a tie to a Western concept, those in positions of authority could not properly comprehend his request.

In his book *Songs for the People: Teachings on the Natural Way*,⁶⁶ Art describes Aboriginal society prior to the arrival of Europeans:

We were not perfect, but we had no jails, we had no taxes ... no wine and no beer, no old peoples' homes, no children's aid society, we had no crisis centres. We had a philosophy of life based on the Creator. We had our humanity.⁶⁷

Assessing Culturally Appropriate Programming

If a program is properly implemented and made available to Indigenous inmates, research shows that it can be successful. A review of the statistics for recidivism clearly shows they can be effective,⁶⁸ with far lower recidivism rates among those who had participated in sweat lodges or regular meetings with Elders than those who were non-participants.⁶⁹

In addition to carceral settings, there has also been evidence of success in halfway houses. The Stan Daniels Centre in Edmonton has at times enjoyed a recidivism rate as low as 3.5 percent.⁷⁰ Studies of recidivism suggest that the model for Indigenous healing lodges used in Canada could serve as a template for use in the United States.⁷¹

Other evidence is anecdotal, as numerous Indigenous inmates have confirmed in interviews for qualitative studies, with many stating that connecting (or reconnecting)

65 See Gail Valaskakis, "Honorary Degree Citation—Arthur Solomon" (June 1992), online: <<https://www.concordia.ca/offices/archives/honorary-degree-recipients/1992/06/arthur-solomon.html>>.

66 (Toronto: NC Press, 1990).

67 *Ibid* at 70.

68 Raymond Sioui & Jacques Thibault, *The Relevance of a Cultural Adaptation of the Reintegration Potential Reassessment Scale (RPRS)* (Ottawa: Correctional Service of Canada, Research Branch, 2001) at 17; Joseph C Johnston, *Aboriginal Offender Survey: Case Files and Interview Sample*, Research Report R-61 (Ottawa: Correctional Service of Canada, 1997).

69 Sioui & Thibault, *ibid* at 43.

70 Marianne O Neilsen, "Canadian Aboriginal Healing Lodges: A Model for the United States?" (2003) 83:1 *The Prison Journal* 67 at 81, DOI: <[10.1177/0032885502250394](https://doi.org/10.1177/0032885502250394)>.

71 *Ibid*.

with one's Indigenous spirituality can lead to healing, improved self-esteem, and the development of a lifestyle that makes it possible to reintegrate into society.⁷²

It is an unfortunate reality that quite often, Indigenous offenders do not have their first positive contacts with their culture until they are incarcerated. Odessa Marchand told a House of Commons Committee: "I didn't grow up with my culture, and when I went into federal prison, I found my culture."⁷³

Improvements in the prison environment can lead to positive results. At the Stoney Mountain Institution in Manitoba, the Ma Mawi program, which is intended for Indigenous inmates with histories of domestic violence, issues are approached with a lengthy series of spiritual ceremonies, healing, and educational elements that are divided into four themes, representing the four quarters of the medicine wheel (see Figure 7.4).⁷⁴

Pathways Program

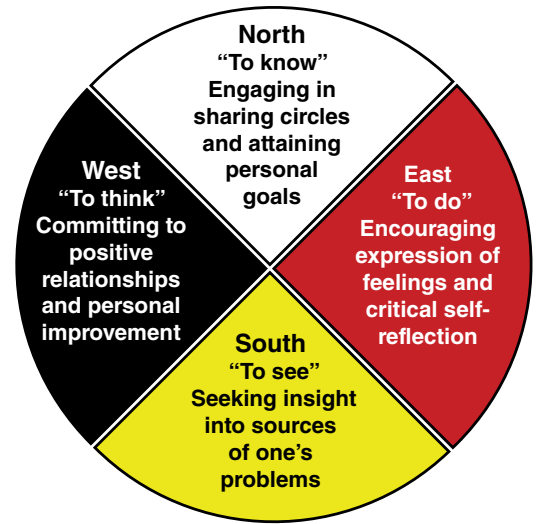
An initiative called Pathways makes up part of the CSC's Continuum of Care. This program, which also uses the medicine wheel, is an Elder-driven intensive healing initiative that

reinforces a traditional Aboriginal way of life through more intensive one-to-one counselling, increased ceremonial access, and an increased ability to follow a more traditional Aboriginal healing path consistent with Aboriginal traditional values and beliefs. Only offenders who have already made a serious commitment to pursue their healing journey, and who have worked significantly with Elders to address areas of healing, are to be placed on a Pathways Initiative.⁷⁵

Living arrangements for Pathways programs vary, with some medium-security institutions having entire sections or ranges set aside for it. Inmates are responsible for maintaining their own rooms and the common areas, and they purchase and prepare their own food.⁷⁶ Pathways in maximum-security institutions are no different from the cell ranges dedicated to the general prison population.⁷⁷ The Standing Committee noted that, during a site visit, "a participant informed the committee that without assistance from this program, he would have never been able to reconnect with his culture."⁷⁸

Not all is positive with respect to Pathways, though. Space is limited, and there can be intense disagreements over which teachings should be used and how to run the Pathways units.⁷⁹ Nonetheless, Pathways appears to be having a positive impact on the

FIGURE 7.4 Medicine Wheel



Source: Text adapted from Zellerer, *supra* note 74 at 180-81.

72 Theresa Howell, "Stories of Transformation: Aboriginal Offenders' Journey from Prison to Community" (2016) 40:1 *American Indian Culture & Research Journal* 101, DOI: <10.17953/aicrj.40.1.howell>.

73 Vecchio, *supra* note 30 at 100.

74 Evelyn Zellerer, "Culturally Competent Programs: The First Family Violence Program for Aboriginal Men in Prison" (2003) 83:2 *The Prison Journal* 171.

75 Attaullajhan et al, *supra* note 51 at 225-26.

76 *Ibid* at 226.

77 *Ibid* at 226.

78 *Ibid* at 226.

79 *Ibid* at 226-27.

lives of Indigenous inmates in federal prisons, and it has been recommended that the CSC expand the program.⁸⁰

Healing Lodges

Several witnesses appearing before the Status of Women Committee stated that healing lodges perform excellent work, with Indigenous staff who serve as positive role models and are dedicated to the healing of inmates. A CSC representative told the committee that Indigenous women who participate in healing lodges have very low rates of reoffending upon release.⁸¹ Parole Board of Canada member Claire Carefoot, referring to a woman who was housed at the Buffalo Sage Wellness House, observed:

We have many successes. We have a woman who was nationally known for her violence. Everyone in this room would know her name if I were to tell you. Several years ago she spent six years at Buffalo Sage Wellness House. She's in university right now and is going to be a lawyer. We have a woman who's a manager of a Tim Horton's. That maybe doesn't sound like a wonderful career for some people in this room, but believe me, for her it's a major step.⁸²

A review of healing lodges found further statistical evidence of their value, with 60 percent of Indigenous men completing programs in CSC lodges, while only 33 percent did so in minimum-security institutions. Correctional staff also noted significantly improved self-esteem, accountability, and respect for others among inmates who had successfully completed this program. Success was also noted when it came to examining several risk factors that the CSC identified as tied with the probability of recidivism.⁸³

Problems with Healing Lodges

There have historically been concerns that section 81 lodges (those operated by an Indigenous community through an agreement based on section 81 of the CCRA) do not receive the amount support and resources they need, resulting in poor staff retention and training, as well as inadequate programming to meet inmates' needs.⁸⁴ The *Spirit Matters* report also noted the repercussions of insufficient funding:

Chronic under-funding of Section 81 Healing Lodges means that they are unable to provide comparable CSC wages or unionized job security. As a result, many Healing Lodge staff seek employment with CSC, where salaries can be 50% higher for similar work. It is estimated that it costs approximately \$34,000 to train a Healing Lodge employee to CSC requirements, but the Lodge operators receive no recognition or compensation for that expense.⁸⁵

The problems have continued, and perhaps have even worsened, up to the present day. The Human Rights Committee heard that the CSC has frustrated the purpose of

⁸⁰ *Ibid* at 227.

⁸¹ Vecchio, *supra* note 30 at 110.

⁸² *Ibid* at 117.

⁸³ Eugenia Didenko & Bernard Marquis, *Evaluation Report: Strategic Plan for Aboriginal Corrections* (Ottawa: Correctional Service of Canada, Evaluation Branch, Policy Sector, 2011) at 57, 70, online (pdf): <https://publications.gc.ca/collections/collection_2013/scc-csc/PS84-38-1-2011-eng.pdf>.

⁸⁴ Nicole Crutcher & Shelley Trevethan, "An Examination of Healing Lodges for Aboriginal Offenders in Canada" (2002) 14:3 *Forum on Corrections Research* 52.

⁸⁵ Sapers, Box 7.4 sources list, at 4, para viii.

section 81 “by diverting funding from section 81, that is, agreements based in community, to prison-based interventions like pathways units that currently exist within many of the prisons.”⁸⁶ Opening new section 81 lodges in Indigenous communities also entails a lengthy bureaucratic process that can be difficult to navigate.

Another concern is that CSC-controlled lodges have not consistently hired staff from Indigenous communities, nor have they provided training or encouraged people from Indigenous communities to apply. That meant that they often did not hire Indigenous staff despite being in operation for at least 20 years, despite long-ago assurances that the shortfall of Indigenous staff was only meant to be temporary, and despite agreements that most or all of the staff were to be Indigenous. Claire McNab, former warden of Okimaw Ohci Healing Lodge and former deputy warden of Bowden Institution, indicated that only Willow Cree Healing Lodge at Beardy’s First Nation was the exception to that trend.⁸⁷

The problems with funding and staffing are interrelated. Section 81 lodges are funded by five-year agreements. The short duration of the agreements means funding insecurity and incapacity to meet unexpected expenses, such as facility repairs. Funding insecurity has also meant lower staff salaries, which, in turn, means higher turnover and staff leaving for better-paying positions with the CSC.⁸⁸ The problems identified in the *Spirit Matters* report continue.

Healing lodges for Indigenous female inmates often face issues with overcrowding and long waiting lists for placements.⁸⁹ Many female inmates are unwilling to relocate to a lodge that may be far away from their families or communities, and they may not be able to enter a lodge if they have anything higher than a minimum-security classification. The paradoxical result is that spots in healing lodges for Indigenous women are frequently given to non-Indigenous female inmates. Former Senator Kim Pate indicated with respect to when the Buffalo Sage Wellness House first opened: “initially no [I]ndigenous women were qualified to go there. None of them had low enough security. ... In fact, they had to be reclassified in order to get [I]ndigenous women there.”⁹⁰

There are also shortages of mental health resources in federal penitentiaries, including those needed to respond to severe conditions.⁹¹ Along with chronic funding shortfalls, critics have also pointed out that the CSC has been unable to manage complex mental health cases because security concerns are prioritized over treatment measures.⁹²

Parole

One of the central goals of programming within corrections institutions is to adequately prepare inmates to be granted parole, and there are correctional directives aimed at considering Indigenous offenders’ personal circumstances and finding alternatives to lengthy prison terms. The CCRA lists the criteria for granting parole in section 102:

86 Vecchio, *supra* note 30 at 115-16.

87 Attaullajhan et al, *supra* note 51 at 230-31.

88 Vecchio, *supra* note 30 at 116-17.

89 Attaullajhan et al, *supra* note 51 at 232.

90 Vecchio, *supra* note 30 at 111.

91 *Ibid* at 128.

92 *Ibid* at 129.

102 The Board or a provincial parole board may grant parole to an offender if, in its opinion,

(a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and

(b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.

The *Policy Manual* of the Parole Board of Canada mandates that other considerations are to be factored into the decision; specifically:

Board members will consider any systemic and background factors that may have contributed to the offender's involvement in the criminal justice system, in particular when reviewing the case of an Indigenous or Black offender.⁹³

Indigenous inmates may apply for parole under sections 84 and 84.1 of the CCRA, usually with a plan in place with an Indigenous community that will include supervision and steps to re-integrate the parolee into the community. Indigenous Elders may also be present to assist the Parole Board in making its decisions,⁹⁴ and accommodations are sometimes made to allow parole hearings to occur in the Indigenous community itself (known as “releasing circles”), giving the local community a voice in this process.

Once parole has been granted, most offenders will typically begin with a move to a **halfway house**, which is a residential correctional facility that sets conditions under which one may leave the premises. This is an important transitional step in their progress, allowing for a gradual return to a community. While residing at the halfway house, they are often able to continue with the specialized programs they had been participating in while in prison.⁹⁵

halfway house

group home facility, often within a larger community, serving as an interim residence for offenders before fully independent living

Issues with the Parole Process

Indigenous offenders also suffer systemic discrimination and other problems with respect to parole. It is apparent that the Custody Ratings Scale continues to play a role even beyond security classification and that it has a tangible effect on parole decisions as well. D'arcy Leitch's research involves data, provided to him by the executive director of the Office of the Correctional Investigator, that shows a correlation between security classification and parole rates.⁹⁶

These outcomes would appear to stem from the overall structure of the system. The official website of the Parole Board of Canada makes it clear that it is an independent adjudicator that operates at arm's length from the government of Canada, including the CSC.⁹⁷ Yet the fact remains that the CSC exercises a great deal of control over the

⁹³ Parole Board of Canada, *Decision-Making Policy Manual for Board Members*, 3rd ed, No 3 (Ottawa: Parole Board of Canada, 2024), s 2.1, online (pdf): <<https://www.canada.ca/en/parole-board/corporate/publications-and-forms/decision-making-policy-manual-for-board-members.html>>.

⁹⁴ *Ibid.*, s 9.1.1.5-10.

⁹⁵ John Howard Society of Alberta, *Halfway House: Executive Summary* (Edmonton: John Howard Society of Alberta, 2001).

⁹⁶ D'Arcy Leitch, “The Constitutionality of Classification: Indigenous Overrepresentation and Security Policy in Federal Penitentiaries” (2018) 41:2 *Dalhousie LJ* 411 at 418.

⁹⁷ Parole Board of Canada, “Services and Information” (last modified 13 August 2024), online: <<https://www.canada.ca/en/parole-board.html>>.

information that is included in an offender's file and what is presented to the Parole Board during an application for parole. A 2016 report of the Auditor General notes:

CSC cannot control the number of offenders admitted to its penitentiaries. However, it can influence the length of time that an offender remains in custody, and at what security levels, by providing correctional programs and interventions designed to reduce the offender's risk to public safety. Rehabilitation efforts while an offender is in custody can also reduce the likelihood that the individual will reoffend after release and be returned into custody.

CSC assesses whether an offender would be a good candidate for conditional release and provides the assessment information, along with a recommendation, to the Parole Board. Considerations include the offender's assessed risk to reoffend and the extent to which that risk can be managed in the community. The Parole Board decides whether to grant parole to an offender and sets the conditions of his or her release.⁹⁸

The report also found that 69 percent of 1,066 Indigenous inmates released during the 2015–16 year were granted statutory release instead of being paroled.⁹⁹

Even after release, there may be concerns about the lack of available services that can assist Indigenous parolees with effective reintegration. Another study found that Indigenous parolees often faced a lack of adequate housing or racist discrimination from prospective landlords. They were therefore vulnerable to residential instability, which increased their risk of reoffending. The study stresses the need for increased community supports so that Indigenous parolees can find adequate housing.¹⁰⁰

These vulnerabilities were made worse by the fact that years spent in incarceration meant they had no credit history or references for seeking employment,¹⁰¹ and they often had issues because they lacked proper government identification.¹⁰²

An exacerbating factor is that sometimes Indigenous women return to Indigenous communities that lack the services they need to assist in their healing and reintegration, particularly mental health services.¹⁰³ Vicki Chartrand indicated to the Status of Women Committee that the Parole Board sometimes decides not to grant parole when it is aware that it may be releasing an Indigenous woman into a setting that not only lacks the appropriate supports and services, but also is itself impoverished and struggling with crime and safety, increasing the risk that the parolee may reoffend. That, in turn, encourages lower parole rates.¹⁰⁴

Another concern may be that members of the Parole Board, notwithstanding officially stated policies and directives, may lack sufficient knowledge and understanding of issues of particular concern to Indigenous communities, Indigenous social history, and the social reasons behind Indigenous over-incarceration. A Parole Board representative did tell the Status of Women Committee that board members received “Indigenous

98 Auditor General of Canada, *Fall 2016 Reports of the Auditor General, Report 3: “Preparing Indigenous Offenders for Release”* (Ottawa: Auditor General of Canada, 2016) at 3.16, 3.17, online (pdf): <https://publications.gc.ca/collections/collection_2016/bvg-oag/FA1-2016-2-2-eng.pdf>.

99 *Ibid* at 3.19.

100 Jason D Brown et al, “Housing for Aboriginal Ex-Offenders in the Urban Core” (2008) 7:2 *Qualitative Social Work* 238, DOI: <10.1177/1473325008089>.

101 Vecchio, *supra* note 30 at 152–54.

102 *Ibid* at 153.

103 *Ibid* at 154.

104 *Ibid* at 150.

cultural awareness training.” Other witnesses told the committee that the training itself needed to be improved.¹⁰⁵ The 2016 report of the Auditor General adds:

We also found that the training provided to parole officers on how to apply offenders’ Aboriginal social history in case management decisions was limited. For example, most of CSC’s 1,300 parole officers were given two days of training on Aboriginal social history in 2013. Since then, 57 newly hired parole officers have been provided about six hours of training on Aboriginal social history during their orientation. CSC has recognized the need to include more comprehensive training on Aboriginal social history in its case management training programs.¹⁰⁶

The *Spirit Matters* report pointed out that the application of section 84 of the CCRA (which is meant to facilitate parole for conditional release for Indigenous offenders) was often poor, and the provision has been underutilized.¹⁰⁷ Howard Sapers identified several issues that needed to be addressed:

- There are only 12 Aboriginal Community Development officers who are employed to develop bridges between Indigenous communities and Indigenous inmates. These officers face excessive caseloads that often cause them to lose focus on an Indigenous inmate’s individual needs.
- The process involved with applying for a section 84 release has become very cumbersome and lengthy, requiring at least 25 tasks for completion.
- Indigenous communities are often not compensated by the CSC for the costs of programming or for monitoring or transporting an offender. This leads to resource deficiencies in the implementation of section 84 release plans.
- The validity of programs and services under section 84 release plans, and whether they adequately address an offender’s needs, are decided by the CSC and not Indigenous communities themselves. This is viewed as patronizing by many Indigenous people and communities.¹⁰⁸

For many Indigenous offenders, a prison sentence results in them becoming more fully entrenched in gang culture. Addressing these issues, both during incarceration and as offenders are released, is an important consideration (see Box 7.6).

BOX 7.6

Indigenous Gangs and Parole

Indigenous gangs exist in significantly large numbers in Canada, and these numbers are expected to increase. They continue to represent real threats to safety and security for both other inmates and correctional officers. The Criminal Intelligence Service of Canada states that these gangs

emerged in federal penitentiaries for protection purposes but now engage in extensive criminal activities both in and outside of prisons.¹⁰⁹ In many maximum-security facilities, Indigenous gang members will intimidate and assault other inmates as they seek to dominate the drug

¹⁰⁵ *Ibid* at 151.

¹⁰⁶ Auditor General of Canada, *supra* note 98 at 3.105.

¹⁰⁷ Sapers, Box 7.4 sources, at 24.

¹⁰⁸ *Ibid* at 24-25.

¹⁰⁹ Criminal Intelligence Services Canada, *2003 Annual Report on Organized Crime in Canada* (Ottawa: Government of Canada, 2003) at 5.

trade in the facility, and they have also been known to attack prison guards.¹¹⁰

Corrections officials often try to segregate gangs in an effort to keep members of an Indigenous gang apart from each other or from members of rival Indigenous gangs. A Public Safety Canada report explained the shortcomings of this strategy:

The next stage in the process is the segregation of known gang members. Gang members are isolated in units of their own and kept separate from other rival gangs. There are several problems with this approach. First and foremost, it is an attempt at “accommodation” to the gang phenomena and does not directly deal with the root causes of the problem. When we segregate gangs, we are essentially throwing our hands up in despair and saying that the only way that we can control the situation is by trying to “manage” them by monitoring their movement and activities and making sure they do not interact with other gangs. This approach puts an onerous strain on correctional officers who have to be vigilant in keeping track of which group members are where at what time. Secondly, this approach leads to increased tensions within institutions as gang members, encouraged in their agitation and animosity through segregation, search for opportunities to threaten and intimidate rival gang members (through glass windows, doors, open access areas).¹¹¹

However, strong-arm tactics may not always be the most effective approach, and some specialized programs for gang members that emphasize rehabilitation, conciliation, or cognitive behavioural therapy have shown promise.¹¹² What’s more, the costs of successfully treating a gang member are far less than the costs of housing a person in prison facility for a lengthy sentence, in terms of both dollars spent and the general public good.¹¹³

Other programs, which emphasize a former gang member’s Indigenous culture, have had success. The Ojijiita Pimatiswin Kinamatawin program in Manitoba teaches participants various building trades. They do not necessarily need to dissociate completely with fellow gang members, but they must desist from any criminal activities themselves during the program.¹¹⁴

Some Indigenous inmates assert that gang affiliation is not a static situation and that they are willing to break from a prison gang and seek healing. However, the “gang member” label will stay with them, in spite of whatever positive steps they may achieve. Without a better rating in their security classification, the inmate may not be able to seek healing with an Elder or access other resources. Having a more flexible approach—one that accounted for the desire and commitment of a gang member to break free from that lifestyle—would help inmates receive the support they need.¹¹⁵

Ways Forward

Indigenous-specific programming presents an opportunity for Indigenous legal orders to improve the lives of the many Indigenous persons housed in prisons through the teachings of the Elders. But Canadian law continues to mount significant obstacles against a fuller realization of the potential of Indigenous-specific programming.

110 “Who’s Running the Joint: Prison Guards Say Native Gangs Are Booming Under the Soft Regime at the Edmonton Max,” *Alberta Report* (16 August 1999) at 18-19.

111 Jana Grekul & Patti LaBoucane-Benson, *An Investigation into the Formation and Recruitment Processes of Aboriginal Gangs in Western Canada* (Ottawa: Public Safety Canada, Aboriginal Corrections Policy Unit, 2006) at 59, online (pdf): <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/brgnl-gngs-nvstgtn-2006/brgnl-gngs-nvstgtn-2006-eng.pdf>>.

112 Chantal Di Placido et al, “Treatment of Gang Members Can Reduce Recidivism and Institutional Misconduct” (2006) 30:1 *Law & Human Behavior* 93 at 108, DOI: <10.1007/s10979-006-9003-6>. This study was conducted with reference to standardized programming that was accessible to both Indigenous and non-Indigenous gang members.

113 *Ibid* at 109.

114 Lawrence Deane, Denis C Bracken & Larry Morrisette, “Desistance Within an Urban Aboriginal Gang” (2007) 54:2 *The Journal of Community and Criminal Justice* 125 at 128, DOI: <10.1177/0264550507077231>.

115 Ovide Mercredi, *Aboriginal Gangs: A Report to the Correctional Service of Canada on Aboriginal Youth Gang Members in the Federal Corrections System* (Ottawa: Correctional Service of Canada, 2000) at 17.

The security classification system is itself a significant source of constraint. There are at least a couple of alternative approaches to addressing institutional security that also aspire to remedy the systemic discrimination that is latent in standard risk predictor instruments. Among these alternatives is a classification scale designed specifically for Indigenous offenders that would address at least some of the concerns raised earlier in this chapter by various observers. Such a scale might have little, if any, focus on static factors, such as an inmate's criminal history, choosing instead to emphasize the specific correctional and rehabilitation needs of that person and to give due weight to progress that they make toward their goals.

The Security Reclassification Scale for Women presents an option that considers nine key areas of assessment, factoring in elements such as motivation, maintaining regular positive family contact, and avoiding involvement in incidents at their institution. Note that this approach de-emphasizes the sorts of static factors that helped lead to their original criminal behaviour, and there is premium put on progress and non-aggressive behaviour.

Evidence suggests that Indigenous spiritual healing can be effective in treating problematic behaviour and can generally improve conditions within institutions, so it seems that there is every reason to pursue an Indigenous-specific classification scale. In the *Ewert* case, the Supreme Court advised the CSC that it must assess its tools and methods, and determine how best to apply them to Indigenous inmates.¹¹⁶ Such a scale would emphasize recent behaviour, accepting responsibility, and showing progress in treatment, and it could downplay or even eliminate static factors relating to a person's past criminal behaviour.

Other alternatives can involve finding ways to address problematic behaviour that do not affect the person's security classification. The Stan Daniels Healing Centre in Alberta, for example, is known for its strict rules, which include nightly curfews, no drugs, and keeping the place clean.¹¹⁷ However, this mindset is counterbalanced

by policies based in Aboriginal practices, so that, for example, rule breaking and inter-resident conflict are dealt with by a "sharing circle," a form of case conferencing, rather than a disciplinary hearing. Instead of receiving a fine, being put in segregation, or being sent back to the correctional institution, they may have to make an apology in front of a general meeting of the residents or make restitution by cutting wood for a sweat or by creating a piece of artwork dealing with forgiveness.¹¹⁸

It is apparent that there remains a lack of commitment to investing in Indigenous specific-programming and healing lodges that could meet the needs of Indigenous inmates across Canada. But the alternative, as this chapter has noted, means keeping Indigenous inmates warehoused in a system that costs vastly more public money than these options in the long run and exacts a huge toll in human suffering and wasted potential. This is a case where spending effectively to address issues in the present will lead to significant savings in the future.

¹¹⁶ *Ewert*, *supra* note 43 at para 67.

¹¹⁷ Neilsen, *supra* note 70 at 75.

¹¹⁸ *Ibid.*

CHAPTER SUMMARY

A lot of the dialogue around Indigenous over-incarceration has focused on alternatives like preventative programming and Indigenous justice practices that resemble restorative justice. But prison itself presents an additional opportunity to address problems. An Indigenous inmate who goes through their sentence of imprisonment without any programming or receives only generic correctional programming that does not adequately address their needs as an Indigenous person is likely to be released at the end of their sentence without having addressed their trauma and behavioural problems. Chances are that the Indigenous inmate may be even more of a danger and risk, as there is plenty of evidence showing that the experience of incarceration makes inmates even more prone to criminal behaviour.

The hope is that Indigenous-specific cultural programming, under the guidance of Indigenous Elders, can provide substantial healing to Indigenous inmates, increase their self-esteem and their self-worth as Indigenous persons, and address their behavioural problems. This offers a chance for their lives to be turned in more positive directions, both during their remaining time in prison and after release. But there are numerous problems that consistently result in few Indigenous inmates being able to access the programming they need.

A very significant problem is the security classification system for federal penitentiaries. Indigenous programming is either restricted to, or more readily available in, minimum-security institutions. Maximum- and medium-security institutions often have restrictions on what inmates can do and how much time they can spend outside their individual cells (typically three hours a day in a medium-security institution, and often none in a maximum-security institution).¹¹⁹ That can make delivering Indigenous programming in a group setting very difficult. But the security classification system penalizes Indigenous inmates for having lengthier prior criminal records than their non-Indigenous counterparts. The Gladue factors that have been referred to in other chapters are also viewed as risk factors in the security classification system. The result is that most Indigenous inmates wind up in maximum- and medium-security institutions, with few, if any, opportunities to access the Indigenous programming they need.

There are other problems as well. Few communities make use of community-led parole plans, as the processes for applying for a plan are complicated and burdensome. Availability and funding for Indigenous programming varies from one institution to the next, with some institutions not having any Indigenous programming at all. Programming, even when available, is often reduced to pan-Indigenous teachings that reduce Indigenous cultures to a monolith that may not have meaning for all participants. There are a limited number of Indigenous healing lodges that serve as halfway houses for Indigenous parolees, and each has limited space. Staff in Indigenous healing lodges are underpaid and often leave for mainstream institutions that pay better.

It is troubling that Canada is not doing more to address these problems, as there is considerable empirical evidence that Indigenous programming results in considerable

119 Mark Gollom, "Why Even the 'Worst of the Worst' Criminals Get Transferred to Medium-Security Prisons," *CBC News* (13 December 2018), online: <<https://www.cbc.ca/news/canada/stafford-rafferty-medium-security-1.4942529>>.

progress, with Indigenous inmates taking more positive directions in their lives and being far less likely to reoffend after release. Greater investment in Indigenous programs may mean greater resource expenditures in the short term, but can ultimately result in immense resource savings by lessening the need to house Indigenous Peoples in prisons year after year.

KEY TERMS

<i>Corrections and Conditional Release Act</i> (CCRA), 190	Custody Ratings Scale, 197	recidivism, 190
criminogenic, 200	dynamic factors, 199	reclassification, 198
crossover youth, 194	halfway house, 210	static factors, 199
	Public Safety Rating, 199	statutory release, 191
		<i>Youth Criminal Justice Act</i> (YCJA), 192

DISCUSSION QUESTIONS

1. How have Canadian governments' sentencing and corrections policies influenced the crisis of incarceration that faces Indigenous communities today?
2. What benefits can Elders provide in treating Indigenous offenders? How does this approach differ from that of typical Canadian corrections practices?
3. Consider the difference between static and dynamic risk factors. What are the best ways to account for these factors when treating an offender, whether in Canadian carceral facilities or Indigenous settings?
4. Would implementing these suggestions for correctional programming put the public at risk by enabling greater numbers of Indigenous offenders to obtain parole?

ADDITIONAL RESOURCES

Documentary

Robert S Adams (director), *Urban Elder* (National Film Board of Canada, 1997), online: <https://www.nfb.ca/film/urban_elder/>.

Websites

Correctional Service of Canada, "Continuum of Care Model for Aboriginal Corrections" (last modified 16 September 2013), online: <<https://oci-bec.gc.ca/en/topic/first-nations#TOC12>>.

Indigenous Watchdog, "Aboriginal Healing Lodges" (22 October 2012), online: <<https://www.indigenouwatchdog.org/update/aboriginal-healing-lodges/>>.

The Ma Mawi Wi Chi Itata Centre in Manitoba: <<https://www.mamawi.com/>>.