

# Protection against Discriminatory Policies and Practices

**Follow-Up Response**  
**The Standing Senate Committee on Human Rights (RIDR)**  
**Regarding Human Rights of Prisoners in the Correctional System**  
**February 27, 2019 RIDR Committee Meeting**

## Follow-up Questions

1. *It was mentioned that CSC practices and policies do not discriminate:*

*a. How does CSC ensure that their practices and policies aren't discriminatory? Is there any consultation with professionals and practitioners in developing best practices and policies? Are offenders consulted in anyway?*

The Correctional Service of Canada (CSC) operates under the rule of law and in particular, within a legislative framework that includes the *Corrections and Conditional Release Act (CCRA)*, *Charter of Rights and Freedoms* and the *Canadian Human Rights Act*. CSC's legislative framework ensures the protection of all persons against discriminatory policies and practices. Specifically, section 4(g) of the CCRA affirms the guiding principle that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, Indigenous peoples, persons requiring mental health care, and other groups. CSC has also developed gender, cultural and trauma-informed correctional policies, interventions, services and training opportunities designed specifically to consider the social, economic, and cultural factors of the offender population.

During the policy development process, CSC ensures that policies are aligned with its legislative framework and that meaningful consultation occurs at various stages of the policy development process with internal and external stakeholders including offenders. Section 74 of the CCRA mandates CSC to provide inmates the opportunity to provide input into decisions of the Service that affect the inmate population as a whole, or that affect a group within the inmate population, with the exception of decisions relating to security matters. In addition, Section 77 of the CCRA requires CSC to consult regularly with women's groups, persons with expertise on working with women offenders, and other persons, as appropriate, regarding women offenders. Section 82 of the CCRA requires the Service to establish a National Aboriginal Advisory committee and other committees to provide advice on the provision of correctional services to Indigenous offenders. As well, CSC Legal Services is consulted during the creation and revision of national policies to ensure compliance and alignment with the spirit of applicable legislation and current jurisprudence. It is also worth noting that the Canadian Human Rights Commission is being engaged as part of the consultative process for the policies being amended following the coming-into-force of Bill C-16.

During the development of policies and programs, CSC uses tools such as GBA+ to consider gender and diversity issues. GBA+ is an analytical approach that assists in assessing how diverse groups of women, men and gender-diverse people may experience policies, programs and initiatives. The "plus" in GBA+ acknowledges that the gender-based analysis goes beyond biological (sex) and socio-cultural (gender) differences. GBA+ considers many other identity factors, such as race, ethnicity, religion, age, and mental or physical disability. Examples of GBA+ processes include using data disaggregated by sex, gender and other intersecting identity factors in performance analysis, and identifying any impacts of the program on diverse groups of people, with a view to adjusting these initiatives to make them more inclusive.

An Internal Audit Report, released in October 2017, examined various aspects of CSC's policy development process, including the engagement of stakeholders in the policy development process. The Audit confirmed that key stakeholders are identified and engaged at the appropriate time, and

	<p>feedback from key stakeholders is reviewed for inclusion in policies. As well, CSC policy instruments are aligned with CSC’s legislative framework, e.g. the CCRA, the <i>Corrections and Conditional Release Regulations (CCRR)</i>, the <i>Charter of Rights and Freedoms</i>, and the <i>Canadian Human Rights Act</i>. As part of CSC’s policy development process, CSC Legal Services is consulted during the creation and revision of national policies to ensure compliance and alignment with the spirit of applicable legislation and current jurisprudence.</p> <p>The audit also found that CSC excels in the area of undertaking consultations with a broad range of stakeholders, who have multiple points of view, and that this facilitates innovative policy development. CSC routinely conducts formal external consultations on policy (as applicable) with a broad group of stakeholders such as inmate committees, Citizen’s Advisory Committees, unions, the Office of the Correctional Investigator, the Canadian Association of Elizabeth Fry Societies, and the John Howard Society of Canada. In addition, there are opportunities for staff at all levels to provide input through formal internal consultations.</p>
<p>b) <i>Is there any way to measure the effects of CSC’s policies and practices to address the concerns of discrimination?</i></p>	<p>CSC’s Evaluation, Audit and Research Branch works to systematically and objectively measure and assess initiatives, policies and programs in order to inform decision-making, ensure accountability, and encourage innovation. Overall, through evaluations, audits and research projects, CSC is able to examine and measure gender, diversity concerns and discriminatory practices. As an example, in an upcoming evaluation of Offender Case Management, CSC will incorporate GBA+ throughout the various stages of this project, i.e. data collection and data analysis. The result of this should determine if discriminatory practices are occurring based upon race, religion, age, sex, disability, physical and mental health, etc., in the case management process for offenders.</p> <p>CSC’s Research Branch has conducted extensive research into the area of offender security classification reviews in order to examine gender and diversity concerns. Security classification reviews occur throughout the period of incarceration to ensure that offenders are placed at security levels that are appropriate to the offender’s risk of institutional misconduct, including threat to public safety posed by escapes from custody. The Security Reclassification Scale for Women (SRSW) is an objective, gender-informed, and research-based classification instrument that was developed as other tools did not consider gender or diversity in their assessment. It is used, in conjunction with professional judgement, to determine a woman’s security level after initial classification. CSC research conducted in 2018 found the SRSW to be a reliable and valid security classification tool for both Indigenous and non-Indigenous women.</p> <p>Further, a 2017 CSC research study that assessed the Aboriginal Women Offender Correctional Programs (AWOCP) indicated that AWOCP was successful in improving participants’ skills and attitudes. Results of the study showed that women who completed all of their required program assignments were more likely to receive discretionary release than statutory release, while the majority of non-completers and partial program completers were more likely to receive statutory release. Further, with respect to the impact of the program on correctional outcomes in the community, results indicated significantly lower rates of returns to custody among full program completers compared with non-completers after controlling for outcome-related factors such as motivation, risk, age, criminogenic need, responsivity, and number of additional correctional programs completed.</p> <p>In June 2011, CSC published <i>the Effectiveness of Correctional Programs with Diverse Offenders: A Meta-Analytic Study</i><sup>1</sup>.</p>

<sup>1</sup>Usher, A. & Stewart, L. (2011). The effectiveness of correctional programs with diverse offenders: A meta-analytic study. Research Report R 246. Ottawa, ON, Correctional Service of Canada

	<p>This research was conducted to investigate whether cognitive-behavioural treatment is appropriate for individuals from a wide range of ethnic and cultural backgrounds. The results revealed that:</p> <ul style="list-style-type: none"> <li>○ overall, all ethnic groups showed a decreased likelihood of recidivism after participating in correctional programs<sup>2</sup>;</li> <li>○ CSC’s correctional programs are equally effective across a broad range of ethnic groups, insofar as offenders who participate in programs are less likely to recidivate than non-participants, regardless of ethnic background<sup>3</sup>;</li> <li>○ in general, ethnocultural offenders face lower re-admittance rates<sup>4</sup> compared to their caucasian counterparts, are assessed as lower risk; have less extensive criminal histories; fewer previous failures on community supervision, segregation placements, escapes and conditional release; and are accordingly less “entrenched” in criminal lifestyle<sup>5</sup>.</li> </ul> <p>Overall, it was found that all ethnic groups showed decreased likelihood of recidivism after participating in correctional programs.</p>
<p><i>c.) Can you provide examples of how CSC ensures that the practices and policies put in place aren’t discriminatory, as well as being racially and culturally sensitive?</i></p>	<p>CSC has a number of formal and informal mechanisms in place to help ensure that its policies and practices are both racially and culturally sensitive. While some of these mechanisms are driven by legislation, others have been proactively adopted by CSC to ensure that the distinct needs of ethnocultural offenders are considered at every stage of the correctional process. Mechanisms include such things as policy consultation and engaging ethnocultural communities in service design and delivery.</p> <p><b>Ethnocultural Offenders</b></p> <p>CSC recognizes that the growth of the ethnocultural offender population represents an emerging issue within federal corrections, and that offenders who identify as belonging to specific ethnocultural groups often have distinct needs based on race, ethnicity, culture and/or language. To effectively address the needs of ethnocultural offenders, CSC has implemented a number of unique interventions and services. Interventions, services, and activities are in place to:</p> <ul style="list-style-type: none"> <li>○ help offenders value their culture;</li> <li>○ emphasize the value of culture in the social transformation process;</li> <li>○ enable them to think critically about the experience and effects of marginalization and stereotyping; and</li> <li>○ support offenders who do not speak either of Canada’s official languages.</li> </ul> <p>CSC has a national policy framework in place, specifically, Commissioner’s Directive 767 <i>Ethnocultural Offenders</i> - to guide staff in addressing the</p>

<sup>2</sup> Effectiveness of Correctional Programs with Diverse Offenders: A Meta-Analytic Study (CSC, 2011)

<sup>3</sup> Effectiveness of Correctional Programs with Diverse Offenders: A Meta-Analytic Study (CSC, 2011)

<sup>4</sup> Within 2 years of warrant expiry

<sup>5</sup> Trevethan & Rastin, 2004

correctional needs of ethnocultural offenders. Furthermore, CSC recently implemented an Ethnocultural Offender Resource Toolkit, and has made it available to all staff. The toolkit includes a number of helpful materials, including cultural competency literature, tips and strategies, a continuum of care, and community-based resources.

CSC provides support and services to offenders of all religious backgrounds, consistent with the requirements set forth in the CCRA and the *Canadian Charter of Rights and Freedoms*. For example, CSC's Food Services ensures that all inmates are provided with meals that meet dietary requirements based on religion or conscience.

CSC also works closely with community stakeholder groups to address issues relevant to the ethnocultural offender population. To this end, CSC has established a number of community-based ethnocultural advisory committees to ensure that the needs of ethnocultural offenders are considered throughout the correctional process. In particular, the National Ethnocultural Advisory Committee provides advice on the provision of services and interventions for ethnocultural offenders, and plays an integral role in the delivery of culturally responsive interventions. Active in all Regions, Regional Ethnocultural Advisory Committees work closely with regional CSC staff, community agencies and ethnocultural site coordinators to ensure effective service delivery in institutions and in the community.

Relative to offender employment and employability, the policy and procedural framework for these programs take into consideration specialized needs of various population profiles, including Indigenous and women offenders. Some examples include:

- using Aboriginal Skills and Employment Training (ASET) agreement holders to identify community organizations that provide a gender and cultural responsiveness review of the soft skills program and, subsequently, the development of a curriculum that is responsive to the needs of various populations (2018-ongoing); and,
- consulting with the National Elder's Working Group, National and Regional Ethnocultural Committees, as well as the National, Regional and local Citizen's Advisory Committees on a regular basis and incorporating feedback into updated or new initiatives related to employment programs.

**Women Offenders**

Women offenders comprise a small and unique subset of the total federal offender population, who have diverse needs that may impact their response to interventions and reintegration. The Service has developed a correctional environment and implemented several interventions, services and training opportunities designed specifically for women offenders that address these factors.

CSC is mandated by the CCRA to provide correctional programs that respect gender, ethnic, cultural, and linguistic differences and are responsive to the special needs of women, Indigenous peoples, persons requiring mental health care, and other groups. Specific programs and interventions for women offenders consider their social, economic, and cultural situation in society; the importance of relationships in their lives; their unique pathways into crime; and their more prevalent experiences of trauma, victimization, mental health problems, low self-esteem, and parenting responsibilities, relative

to men.

Evidence to date suggests that programs for women offenders achieve positive results when they are both gender- and trauma-informed, and sensitive to women's unique needs. Women offenders who complete these programs have shown improvements in several indicators and have reduced rates of re-offending.

In summer 2018, CSC completed implementation of an Aboriginal Intervention Centre (AIC) model for women offender institutions. The AIC model for five women's institutions ensures timely access to correctional programs, and to existing Aboriginal Corrections Continuum of Care interventions such as Pathways and Elder services. The AIC model also ensures timely access to support by Aboriginal Community Development Officers and Aboriginal Community Liaison Officers. CSC has also broadened the pool of available Aboriginal Women Offender Correctional Program facilitators in order to expedite inmate completion of Indigenous correctional programs. Programs and interventions will be more closely integrated and aligned with case management to strengthen the potential for successful reintegration of Indigenous women offenders, while increasing the participation of Indigenous communities in the care and custody of Indigenous women offenders.

The Aboriginal Women's Pathways Continuum is part of CSC's Continuum of Care. It provides opportunities for Indigenous women at maximum, medium, and minimum security levels to engage in intensive healing interventions supported by Elders through ceremony, teachings, circles, and cultural activities. Following a review of Pathways, it was identified that Indigenous women are able to access Pathways in a timely manner at three of the women's sites, including participation of women inmates at all three security levels. At the other two women's institutions, where Pathways Initiatives do not currently exist, Indigenous women have increased one to one access to Elders and follow, if desired, a more intensive healing path. Additionally, CSC also provides minimum and medium security accommodations in a culturally relevant environment at the Okimaw Ohci Healing Lodge in Maple Creek, Saskatchewan, for women who follow an Indigenous healing path.

#### **Indigenous Offenders**

CSC is mandated to provide correctional programs that meet the specific needs of offenders. These programs must respect the gender, ethnic, cultural, and linguistic differences and are responsive to the special needs of offenders, including women, Indigenous peoples, persons requiring mental health care, and other groups. CSC programs include: correctional programs, cultural, spiritual and social programs, education, employment, and vocational programs as well as mental health interventions.

CSC's approach to working with Indigenous peoples is holistic and founded on the principles identified in the 1990 *Creating Choices* report, the 1997 *National Strategy on Aboriginal Corrections*, and the *Strategic Plan for Aboriginal Corrections*. *Creating Choices* specifically advocated for the creation of a healing lodge for Indigenous women offenders that would focus on traditional healing practices in a culturally relevant environment. Indigenous Healing Lodges are correctional institutions that use Indigenous values, traditions and beliefs in all services and programs for offenders. The Healing Lodges use Indigenous concepts of justice and reconciliation. Programs include guidance and support from Elders and Indigenous communities. There are currently nine Healing Lodges across Canada funded and/or operated by CSC.

In 2005, CSC adopted the principles endorsed in the Supreme Court decision *R. v. Gladue* and introduced the consideration of Aboriginal social history in decision making. This entails consideration of the historical background factors that have negatively impacted Indigenous offenders directly or indirectly, and their collective and individual history in decision-making, and mandates of culturally/restorative correctional options.

As with women’s sites, CSC has implemented seven AICs at men’s institutions. AICs are intended for Indigenous offenders, particularly those with shorter sentences who, at intake, will begin Indigenous programming work with an Elder, and initiate a section 84 release plan, if appropriate.

**Inmates with Gender Considerations**

CSC recognizes that some federal offenders may have gender-related accommodation needs. CSC is committed to ensuring an inclusive and respectful environment, including ensuring that inmates with gender considerations are treated with dignity and afforded the same protections as others. Bill C-16, *An Act to amend the Canadian Human Rights Act and the Criminal Code*, which came into force on June 19, 2017, added “gender identity or expression” to the list of prohibited grounds of discrimination under the *Canadian Human Rights Act*. Bill C-16 requires CSC to accommodate offenders according to their gender identity or gender expression, including institutional placement, regardless of whether they undergo medical interventions (e.g., sex reassignment) and regardless of the gender or sex marker on their identity documents. In exceptional cases, health or safety concerns (for the offender or for others) preclude accommodating institutional placement requests. Nonetheless, an individualized protocol will still be developed, in collaboration with the offender, to meet their gender-related accommodation needs with respect to strip searching, use of chosen name or pronoun, referral to correctional programs, and so on. In December 2017, CSC promulgated the Interim Policy Bulletin on Gender Identity or Expression. This interim policy document outlines the high-level principles and changes to operational practice, and overrides any direction currently found in individual CSC policies.