



COUNCIL OF ELIZABETH FRY SOCIETIES OF ONTARIO

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Ministry of the Solicitor General

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Re: Council of Elizabeth Fry Societies of Ontario Feedback on Proposed Updated Regulatory Framework Under the *Ministry of Correctional Services Act (MCSA)* For Strip Searches of People in Custody in Ontario's Adult Correctional Institutions

This letter follows the Council of Elizabeth Fry Society of Ontario's (CEFSO) review of the proposed amendments to Regulation 778 under the Ministry of Correctional Services Act, 1990, related to strip searches.

Although not invited to facilitated sessions, we appreciate the opportunity to provide feedback to the proposed amendments to Regulation 778 regarding strip searches for people in custody in Ontario's adult correctional institutions, inclusive to the harmful impacts of the use of strip searching on prisoners.

For decades, the practice of strip searching – described by the Supreme Court of Canada as 'inherently humiliating and degrading' – has been widely criticized. Strip searches are not only unnecessary and ineffective, but put prisoners' and visitors' rights under the Canadian Charter of Rights and Freedoms, as well as rights protected under international law, at risk. Strip searches are trauma inducing, violent and damaging to relationships between correctional staff and incarcerated people.

CEFSO makes the following recommendations for policy reform relating to strip searching and contraband:

1) Define strip searching and prohibit the practise as defined in all provincial institutions for both prisoners and visitors: CEFSO recommends that strip searching be defined as "a search requiring the removal of any article of clothing", and prohibit such form of search in Ontario's adult correctional institutions.

Although CEFSO agrees in the importance of adequately defining the practice of strip searching in correction institutions, we believe it should be defined and prohibited in practice. It should be noted that SolGen's current policy on strip searches mandates and requires strip searches to be used in particular circumstances including but not exclusive to: on admission or return to the institution, whenever there is reasonable cause to believe the prisoner is carrying contraband

within, into or out of the institution, when admitted to segregation or special need units, prior and or leaving an open visiting area, etc. In addition, institutions have at times relied on mandatory routine strip searching outside of the policy parameters. Routine strip searches, whether random or mandatory, leave no room for individual assessments that consider a woman's mental health concerns or history of trauma.

Although strip searches have been archaically defined in policy as “a necessary correctional practice to maintain facility security”, CEFSSO has not seen evidence that related legislation, policy and practice to strip searching meet this objective. Furthermore, there is no clear guiding policy or practice on how strip searches are conducted on gender diverse, non-binary or Two Spirit prisoners.

Given the harmful impacts of strip searches, and available tools, alternate search methods and technology, CEFSSO recommends an end to the practice of strip searching for women and gender diverse individuals.

It is well documented that women and gender diverse people, particularly those who have experienced sexual violence, experience being strip searched as a sexual assault. In *R v Golden* (2001), the Supreme Court of Canada noted:

“Strip searches are thus inherently humiliating and degrading for detainees regardless of the manner in which they are carried out and for this reason they cannot be carried out simply as a matter of routine policy.”¹

Perhaps unsurprisingly then, some prisoners choose to opt out of their program participation, visits, etc., sometimes entirely and sometimes only during their menstrual cycle (given the degrading manner in which searches are carried out for people who are menstruating). This decision to opt out of visits and outings impacts prisoners' already precarious community supports and puts their successful reintegration at risk.

CEFSSO is calling attention to how the power structures inherent to the institutions make those held inside as well as those visiting the institution incredibly vulnerable to sexual coercion and violence. The Office of the Correctional Investigators 2020 investigation, “A Culture of Silence: National Investigation into Sexual Coercion and Violence in Federal Corrections”, found that the most marginalized people are often most frequently targeted for sexual violence behind bars, particularly: women; individuals who identify as, or are perceived to be, lesbian, gay, bisexual, or, transgender; and people with histories of trauma and mental illness.²

Guiding principles for addressing the regulatory changes to 778 as it relates to strip searches have been defined as “informed by evidence and best practices, respect human rights and dignity, and protect staff and people in custody, and ensure security of institutions”. As the evidence is weak in proving any holding of safety and security from the outcome of strip searches, the blatant infraction of respecting one's dignity in performing strip searching, and the evidentiary traumatic experience that strip search cause on those they are imposed upon, CEFSSO believes reforming

¹ [1] *R v Golden*, 2001 SCC 83, para 90.

² [2] Office of the Correctional Investigator, Annual Report 2019-2020, pp 22-49, available online: <https://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20192020-eng.pdf>

the practice is strip searches will not align with the foundation guiding principles for the regulatory changes themselves. It is the long-standing position of CEFESO that strip searching practices should be abolished in all correctional institutions in the province of Ontario.

2) Address the root causes of using illicit substances: CEFESO recommends that the Ministry of the Solicitor General addresses the root causes of illicit substance use (i.e. contraband) by ensuring access to external mental health, harm reduction, addictions, and trauma supports.

An overwhelming number of women and gender-diverse people who are incarcerated have experienced abuse prior to their incarceration - including sexual violence - and carry with them extensive histories of trauma. By extension, this is also true of the family members of those who are incarcerated. This is emphasized in a recent report prepared for the Canadian Association of Elizabeth Fry Societies on the topic of Reproductive Justice. "Sexual trauma is recognized as a significant determinant of young women's criminalisation (Saar, Epstein, Rosenthal & Vafa, 2014; Simkins, Hirsh, Horvat, & Moss, 2004). As Dirks (2004) describes, the early experience of sexual abuse so commonplace among incarcerated women contributes to high risk of developing a weak sense of self and enduring feelings of shame, leading to vulnerability to victimization in adulthood. Prison is non-rehabilitative and a site for further trauma."³

Correctional Service Canada has also acknowledged that "compared to the average Canadian, women offenders: have a higher incidence of substance abuse and mental health problems [and] are more likely to have a history of physical and/or sexual abuse."⁴

3. Introduce alternative measures to reduce introduction of toxic drug supply to institutions: There are currently no policies or practises designed to reduce the introduction of contraband into the institution by staff of the institutions. Implementing even basic search measures for staff of the institutions could have a significant impact. The lack of political will to require staff to submit to any form of security measures when entering institutions, while at the same time subjecting incarcerated persons to extremely harmful strip searches speaks to the extreme power imbalance and toxic culture within our correctional environment.

4. Remove policy "loopholes" that allow for permitted breaches of the policy's intention in the name of operational requirements or Superintendent's discretion: Current policy describes the requirements for gendered approaches to strip searching with specific caveats for how, and who shall conduct searches, but then introduces opportunities to skirt the policy due to unavailability of staff of the same gender in urgent situations.

Current policy also allows Superintendents the discretion to create Standing Orders for routine strip searching in addition to policy. As previously stated, the Supreme Court of Canada has indicated strip searching should never occur as a matter of routine practice due to their inherent humiliation and degrading nature¹.

³ [3] Martha J. Paynter, Reproductive (In)Justice in Canadian Federal Prisons for Women, Final Report for the 2019-2020 Reproductive Justice Workshop Project, Canadian Association of Elizabeth Fry Societies, p 17 [to be released in January 2021]. 8 Correctional Service Canada, "Women offenders", available online: <https://www.csc-scc.gc.ca/publications/005007-3012-en.shtml>

⁴ [4] Correctional Service Canada, Statistic and Research on Women Offenders, Date modified: 2019-05-16, available online: <https://www.csc-scc.gc.ca/women/002002-0008-en.shtml>

Operational Policy relating to searches must be clear and free of discretion to prevent abuses of power or intentional/negligent harm towards those who are incarcerated.

Summary Commentary

CEFSA has witnessed that SolGen demonstrates a general lack of care for the wellbeing of women and gender diverse people incarcerated in institutions across Ontario by using strip searches as a tool for pseudo security – most times in circumstances that do not warrant dependence on such a drastic, violent and degrading practice.

Correctional institutions designated for adults across the province are equipped with less invasive tools, strategies, search methods and technology all of which address safety and security and remove the need to perform strip searches entirely. As such, CEFSA restates its recommendations to define strip searching as a search requiring the removal of any article of clothing, end the practice of strip searches, and address the root causes of using illicit substances in all Ontario's adult correctional institutions.

Yours sincerely,

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Meaghan Chambers, Vice President

Council of Elizabeth Fry Societies of Ontario

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Jillian Barrington, President –Canadian Association of Elizabeth Fry Societies

Karen Ellis, Deputy Solicitor General, Correctional Services

References

[1] 9 R v Golden, 2001 SCC 83, para 90.

[2] Office of the Correctional Investigator, Annual Report 2019-2020, pp 22-49, available online: <https://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20192020-eng.pdf>

[3] Martha J. Paynter, Reproductive (In)Justice in Canadian Federal Prisons for Women, Final Report for the 2019-2020 Reproductive Justice Workshop Project, Canadian Association of Elizabeth Fry Societies, p 17 [to be released in January 2021]. 8 Correctional Service Canada, "Women offenders", available online: <https://www.csc-scc.gc.ca/publications/005007-3012-en.shtml>

[4] Correctional Service Canada, Statistic and Research on Women Offenders, Date modified: 2019-05-16, available online: <https://www.csc-scc.gc.ca/women/002002-0008-en.shtml>