



Summary of Findings

Cruel, Inhuman and Degrading?

Canada's treatment of federally-sentenced women with mental health issues



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Addressing the criminalization and warehousing in penitentiaries of those who suffer from mental illness is not simply a public health issue, it's a human rights issue.

Ivan Zinger
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SUMMARY OF FINDINGS

Ashley Smith was 19-years-old when she died in the segregation unit at Grand Valley Institution for Women in October 2007. She died by asphyxiation after tying a ligature around her neck. Under direct orders from management, correctional staff did not intervene to save her life. Instead, they watched her die alone in her segregation cell, far away from her family and community supports.

Since her youth, Ms. Smith had displayed difficult behaviour stemming from mental health issues. While in federal custody, Ms. Smith's mental health issues and associated behavioural issues were "treated" through excessive periods of segregation. She was also transferred between federal penitentiaries across the country 17 times during her 11 month stay.

Ms. Smith's death was a direct result of the interaction between her mental health issues and the prison environment, and the failure of the Correctional Service of Canada (CSC) to respond appropriately to her mental health needs. In his report on the incident, the federal prison ombudsperson found that: "Ms. Smith's death was the result of individual failures that occurred in combination with much larger systemic issues within ill-functioning and under-resourced correctional and mental health systems."¹

Ms. Smith's problems were extreme but not unique. Our research indicates that at least one in three FSW suffers from a mental health issue and nearly half have engaged in self-harm. As of 2009, Canada's prison ombudsperson declared that mental health is "perhaps the most pressing issue" facing federal corrections today.²

Nor has Ms. Smith's death substantively changed the way correctional authorities deal with FSW with mental health issues. Our research indicates that Canada's treatment of FSW is characterized by the following:

¹ Office of the Correctional Investigator, *A Preventable Death*, (Ottawa: Office of the Correctional Investigator, 2008).

² Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator, 2008-2009* (Ottawa: Office of the Correctional Investigator, 2009)

- **A mental health strategy that is overly focused on assessment rather than treatment, under-resourced,** blind to FSW's past histories of abuse, and inaccessible or inappropriate for women in solitary confinement;
- **Security classification tools that over-classify FSW with mental health issues** and Aboriginal women such that they are housed in more secure environments than required to manage their risk;
- **Management of FSW with serious mental health issues through excessive periods of administrative segregation and unlimited institutional transfers** to prisons far away from family and community supports, all without mandatory judicial oversight; and
- **Staff authorization to use of force against women with serious mental health issues without regard for their underlying health issues.**

We find that Canada's treatment of FSW with mental health issues violates its obligations under international law:

- **Violation of the right to health:** The lack of available and appropriate mental health care resources for FSW is a breach of their right to health. CSC's disproportionate use of segregation and institutional transfers to deal with FSW with serious mental health issues, and associated disruptions in treatment and exacerbation of symptoms, also violate the right to health.
- **Discrimination:** CSC's approach to security classification discriminates against women with mental health issues, especially those who are Aboriginal. CSC has not created a risk assessment tool that is appropriate for women, properly distinguishes between needs and risks, and addresses the over-classification of Aboriginal women as maximum security.
- **Unlawful deprivation of liberty and security of person:** The over-reliance on administrative segregation and institutional transfers to deal with FSW who exhibit behavioral issues due to serious mental health issues is discriminatory and an unlawful deprivation of FSW's residual liberty. Canada's policies related to use of force violate the right to security of person because CSC staff are not appropriately trained to manage FSW with mental health issues without resort to force.
- **Violation of the right to access justice:** The absence of legislatively-mandated judicial review of prolonged administrative segregation and repeated institutional transfers is a violation the right to access justice.
- **Cruel, inhuman and degrading treatment:** Prolonged segregation of FSW with serious mental health issues violates the right to freedom from cruel, inhuman and degrading treatment. Use of force against FSW with serious mental health issues

without due regard to their underlying conditions may also constitute cruel, inhuman and degrading treatment.

- **Violation of the right to information:** CSC's failure to provide the IHRP with information that could be used to assess Canada's human rights compliance despite repeated requests for the same is a violation of international law. This is especially serious given that there are no other means to access this data.