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Chair

Mrs. Karen Vecchio

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• (1530)

[English]

The Chair (Mrs. Karen Vecchio (Elgin—Middlesex—London, CPC)): Good afternoon, everybody, and welcome to the 88th meeting of the Standing Committee on the Status of Women.

Today's meeting is in public, just as a reminder. Today, we're going to continue our study of indigenous women in the federal justice and correctional systems.

We are pleased to be joined, via video conference from Kingston, by Kathy Ferreira, who is the director at Queen's Prison Law Clinic.

I'm going to pass it over for one moment to Ms. Damoff, who would like to introduce some folks.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you very much, Chair.

I have the privilege of having two students from Brock University with us today. They're part of Women in House at Brock. There's Melanie and Jen who are joining us, and they've been through the public safety committee this morning, and now they're quite excited to be sitting at the status of women committee this afternoon. I just wanted to extend a warm welcome.

The Chair: Welcome. I hope you enjoy today's session.

Ms. Ferreira, you have the floor for seven to nine minutes.

Ms. Kathryn Ferreira (Director, Queen's Prison Law Clinic): Thank you.

The Queen's Prison Law Clinic is a not-for-profit corporation funded by Legal Aid Ontario to assist federally incarcerated prisoners. Given our geographical location, the clinic assists male prisoners in the eight federal penitentiaries in the Kingston area. We used to provide services to women prisoners at P4W, Prison for Women, and the Isabel McNeil House, when those were open. The Office of the Correctional Investigator and the Canadian Association of Elizabeth Fry Societies have done much to shine a light on the plight of female prisoners, particularly indigenous prisoners, and I draw from their reports and findings.

Senator Kim Pate is a community member on our board of directors. As the committee is aware, she is an expert on issues related to women in prison, including indigenous women prisoners.

In terms of the committee's look at indigenous women's access to and treatment in the justice system, the ongoing over-incarceration of aboriginal peoples, and in particular indigenous women, is a form of

systemic discrimination within the Canadian criminal justice system and is part of the colonial legacy in Canada. The violence experienced by indigenous children in residential schools continues in a cycle of intergenerational trauma.

The federal government continued with the cultural genocide of aboriginal peoples through the child welfare system. Too many children were removed from their homes and placed in non-indigenous care, often without the consent or knowledge of their families. I am referring, of course, to the sixties scoop. The ongoing forced separation of indigenous children from their families is now referred to as the "millennium scoop", and approximately 48% of all children in state care today are indigenous.

The average annual income of an indigenous woman is 19.3% below the low-income cut-off. The employment rate for indigenous women is only 38% on the reserve and 51% off the reserve. Approximately 36% of indigenous women live in poverty. Poverty and inadequate housing contribute to systemic racism, dislocation, and violence against indigenous women.

The rate of physical and sexual violence against indigenous women is two and a half times higher than the rate against non-indigenous women. The lives of indigenous women and girls are devalued. The same discriminatory attitudes that exacerbate the crisis of missing and murdered women also contribute to the criminalization and incarceration of indigenous women. Indigenous women are more likely to experience police discrimination, including racial profiling and over-policing, than either non-indigenous women or indigenous men.

In terms of incarceration rates and penalties imposed on indigenous women, non-violent property and drug offences represent the majority of crimes for which women are convicted. The serious violent crimes for which women are convicted must be appropriately contextualized. Overwhelmingly, the actions of women in these contexts are defensive or otherwise reactive to violence that's directed at them, their children, or a third party. Eighty-five per cent of federally sentenced women have a history of physical abuse, while 68% have a history of sexual abuse. This rate increases to 91% for indigenous women.

Two-thirds of federally sentenced women are mothers and have primary child care responsibilities. Separation from their children, and the inability to deal with problems surrounding the separation, are major anxieties for women in prison.

Between 2007 and 2016, while the overall federal prison population increased by less than 5%, the indigenous prison population increased by 39%. For the last three decades there has been an increase every single year in the federal incarceration rate for indigenous people. Indigenous people make up less than 5% of the Canadian population, and yet 37.6% of the federal women inmate population is indigenous.

Women in prison, and in particular indigenous women, are the fastest-growing population in Canadian corrections. In the 10-year period between 2007-08 to 2016-17, the number of indigenous women inmates grew 60%. These are astonishing numbers, as the committee is aware.

● (1535)

In terms of the treatment of indigenous women within the federal corrections system, they are more likely to be in max. The custody rating scale, which is a tool used by Correctional Service Canada to assess initial security, fails to identify, reflect, or accommodate the needs, capacities, and circumstances of women and/or racialized groups. As a result, indigenous women are given unnecessarily high security classifications. Indigenous women represent 37% of all women behind bars, but they make up 50% of the maximum security population, and they present with unique, culturally based needs. Women who are overclassified as maximum security are isolated in segregated living units, called secure units, and are not eligible to participate in work release programs, community release programs, or other supportive programming designed to enhance their chances of community integration.

The Office of the Correctional Investigator also found a general absence of meaningful employment for women on these units.

Women with mental health issues are more likely to be placed in maximum security because of institutional adjustment issues, not because of public safety.

Also, anyone serving time for murder is automatically placed in maximum security for a minimum of two years, even in cases of overwhelming evidence that they were responding to violence and are unlikely to be a risk to anyone else.

Half of the women who received life sentences between 2005 and 2015 were indigenous.

Women in maximum security, as opposed to men in maximum security, are also subject to an illegal level classification, a further classification within maximum security that further restricts their movements within the secure unit.

Women in federal penitentiaries are also released later in their sentence, and they're more likely to be returned to prison due to suspension or revocation of their parole. Indigenous women are more likely than non-indigenous women to be denied parole, and to have served a longer portion of their sentence in custody once they are granted parole. They're also more likely to have their parole revoked for technical reasons.

The Auditor General's report, "Preparing Indigenous Offenders for Release", tabled in Parliament November 29, 2016, independently corroborates many areas of concern that were identified by the Office of the Correctional Investigator. In 2015-16, most indigenous

prisoners were released from custody at their statutory release date, which is two-thirds of their sentence. It is important to note this is a legislated release, not a form of parole. Of those who are released on statutory release, 79% were released into the community directly from maximum or medium security institutions, without benefit of a graduated and structured return to the community. Parole grant rates were much lower for indigenous than non-indigenous offenders, and only 12% of indigenous prisoners actually had their cases prepared for a parole hearing once they were eligible.

In terms of the committee looking for recommendations on how to improve the indigenous woman's experience within the federal justice and correctional systems, I would urge the committee to not focus on improving services in the prison or building more healing lodge-style prisons; rather, the focus should be on the negotiation of individualized community-based and directed section 29, section 81, and section 84 agreements for individual indigenous women. These are releases that are pursuant to the governing legislation, the Corrections and Conditional Release Act.

As the Office of the Correctional Investigator notes, section 81 and section 84 releases are chronically underfunded and under-utilized in federal corrections. Section 81 allows for indigenous communities to oversee the care and custody of indigenous prisoners who would otherwise be in a federal prison. Section 84 allows an aboriginal community to propose a plan for an interested and consenting aboriginal parolee's release and reintegration into the community. The manner in which CSC has developed policies for these releases has frustrated the legislative intent and has a particularly negative impact on indigenous women.

● (1540)

Resources should be provided to indigenous communities to sponsor women into their communities, rural or urban, on or off the reserve. There have been increased numbers of section 84 agreements on paper, but most are the halfway houses versus the individualized contracts with indigenous communities. This would allow for greater aboriginal control over matters that affect them.

Importantly, women with serious mental health needs should get the treatment that they require and that the legislation envisions, not in a prison, but in a section 29 transfer to a hospital to access provincial mental health services. CSC, Correctional Service of Canada, is unable to manage these cases because their apparent security concerns will always trump treatment.

The Office of the Correctional Investigator's 2016 annual report contained a review of complex cases in the secure unit, the maximum security unit. That office recommended that specialized complex case funding should not be used as an alternative to seeking placement in an external treatment facility.

The Chair: Thank you very much.

I'm going to cut you off now, if you don't mind. I recognize that you have multiple pages still, and we do have some information here as well. We're going to pass it over for questioning so that each member gets an opportunity.

We're going to start with a former member Karen Ludwig for seven minutes.

Ms. Karen Ludwig (New Brunswick Southwest, Lib.): Thank you, Madam Chair.

Thank you, Ms. Ferreira, for your excellent presentation. I tried to take as many notes as I could, but you had so much great information that I think I'm going to have to go back and read the transcript.

First, in terms of the trends you recognized in your presentation, is the trend of the high levels of indigenous women being incarcerated fairly consistent across the country and in all regions of Canada? Are there particular areas per capita that would be higher?

• (1545)

Ms. Kathryn Ferreira: I'm not familiar with how that is spread out across Canada.

I don't have that information, I'm sorry.

Ms. Karen Ludwig: I represent a riding in eastern Canada, and I was just wondering if there was any difference, for example, between the east, the west, or the north on that.

You also mentioned, Ms. Ferreira, cultural-based needs. Would you please expand on that?

Ms. Kathryn Ferreira: The Correctional Service of Canada makes an attempt to understand the social history of aboriginal prisoners when making any decisions respecting aboriginal prisoners. I think it's an issue that they try to consider factors, but then they're unclear how those factors should impact their decision-making. For example, before placing a prisoner in segregation, they are supposed to consider cultural factors and social history, and they do. They at least make a cursory attempt to do that, but it is my position—and my position is particularly with respect to my experience with male aboriginal prisoners—that it fails to have any impact on their final decision.

Understanding what those factors are, for example, what home life they're coming from, what sort of intergenerational trauma they have experienced, their economic experience, any family member involved with the residential school system, any impact with respect to the child welfare system, their employment history and their economic history, whether they were on or off the reserve, what sort of dislocation they have experienced, what sort of violence they have experienced.... All of these factors play a role in terms of the indigenous person we have in front of us. The system is struggling to deal with it appropriately, clearly, given the numbers.

Ms. Karen Ludwig: You also mentioned police discrimination. This committee, in the past year, has studied mandatory training for judges. I'm wondering if you could elaborate or recommend.... Is there a need for mandatory training for federal jurisdictions, for example, the RCMP, regarding more tolerance or more understanding of indigenous women?

Ms. Kathryn Ferreira: Obviously, more understanding and more awareness is always important. In general, my position would be that having the aboriginal communities have more control over the care and custody of their own people would foster a respect from policing, and from the criminal justice system in general, that is surely lacking based on the numbers that we're seeing. Too many women are being placed in prisons instead of having alternative possibilities considered. Once in prison, too many women are being kept in secure confinement, and not being released on parole. It's a societal problem, and I think it really does begin with the communities themselves having that care and custody back and having the level of autonomy that all parties involved in the criminal justice system would have to respect.

Ms. Karen Ludwig: This is very much a macro question. When we look at our federal departments and ministries and decisions that are made regarding policies, what is the impact that you see or that you can explain regarding colonialism and the fact that so very few people who are making some really important decisions historically have been indigenous people?

• (1550)

Ms. Kathryn Ferreira: If I understand the question correctly, I think certainly that the aboriginal people being left out of decision-making that has directly affected them, the place where they live, how they're going to earn their income, what laws they answer to.... There's been a history of violence, I think is a good way to describe it, and dislocation and systemic racism that continue. There's a tendency to think that it is improving, but the numbers that we are looking at tell us that it is not improving. Again, particularly my experience is with the Correctional Service Canada once the person is in prison. The way things currently are, once in prison, we continue to struggle and they continue to struggle. Despite the Corrections and Conditional Release Act being in place for several decades now and having those sections, like section 81-type transfers, where the care and custody can be given back to the aboriginal community, and section 84, where a parole release can be facilitated for an aboriginal person, which is in mandatory language, those aren't being acted on.

Ms. Karen Ludwig: If I could just ask about the Parole Board of Canada, as well, do you have any figures or any kind of percentage of how many people who sit on parole boards and make the decisions upon the releases and recommendations actually have an indigenous background?

Ms. Kathryn Ferreira: I don't actually have that figure. In my experience, from doing this work intensively since 2003, I am aware that there was one member who was aboriginal in the Ontario region. That may not be the sum total. It's possible. I think there have been some new appointments to the parole board, and I think they are trying to have that cultural awareness that they need. Maybe we're going to see some improvements.

Ms. Karen Ludwig: Thank you very much.

The Chair: We're going to now move over to Stephanie Kusie for seven minutes.

Mrs. Stephanie Kusie (Calgary Midnapore, CPC): Thank you, Madam Chair.

I think a theme that we are consistently seeing here is that of self-government and self-determination for indigenous people. Self-determination is a Conservative principle, so I'd just like to start by saying that.

Kathryn, something that really strikes me is how you mentioned that among those who had committed violent crimes, it was often in self-defence. In your opinion, should this, and how could this, be recognized and compensated for in sentencing?

Ms. Kathryn Ferreira: My experience, if I can just be clear with the committee again, is primarily after the person has been sentenced. I would say to the committee that it's all about risk once the person has been sentenced and when the parole board is deciding on release, if we're talking about release or a section 81-type release back to the care and custody of the aboriginal community.

If the violence is because of a reaction to violence, either to the person herself or to their child or to a third party, it becomes very contextual. It is not a risk to society in general; it is a very specific type of risk in a specific type of context. There's a lot of healing that could go on in terms of that back in the aboriginal community. Murder is a very serious offence, obviously, but the context needs to be considered for every person, both at the time of sentencing and once in the federal system. It's incredibly important to consider.

• (1555)

Mrs. Stephanie Kusie: I agree. I think about what I would do to defend my family and my children. I would do just about anything.

You mentioned that sections 81 and 84 should be further used. I'm wondering how this compares to the healing lodges, which you suggested moving away from. Can you see a model whereby we transfer the healing lodges to the indigenous communities, or they create their own healing lodges, or do you advocate for the complete abolition of them? We have heard a lot of testimony that speaks to the positive use of these healing lodges. Perhaps in your opinion they're a transition, an intermediary between the historical incarceration system and rehabilitation, if you will, within the society.

What sort of transition do you see happening between the healing lodges, sections 81 and 84? Is there a place for the healing lodges within sections 81 and 84? Perhaps you could make mention of the potential evolution of rehabilitation for these offenders.

Ms. Kathryn Ferreira: My concern would be that while clearly a healing lodge is better than a person being in prison, often there is still a great deal of CSC control over these places, as well as rules and restrictions, and they become very defined by the Correctional Service. Based on the number of years that we have had these provisions in place, I would say they don't go far enough. There aren't enough of those. They've had time to make those sections of the legislation available, and they haven't done a good job with that. Just in terms of where I see it going, again, I think having Correctional Service less involved and the aboriginal community more involved is something that must be explored, because it's not

working the way things currently are, and there's been time to make it work.

Mrs. Stephanie Kusie: I always feel there is the risk of appropriation, which we're hearing about so much in our society and in our culture at this time, but given the significant changes that are going on internally in indigenous culture at this time, in terms of reconciliation and dealing with the outcomes of the residential schools—we as Conservatives always look for prevention, but again I believe this goes back to how for indigenous individuals it must be intrinsic, and it must be through self-determination—what, in your opinion, is the role of government in this process? Do we have a role, and if so, how can we assist and walk alongside them as they go through these incredible times of healing and transformation?

Ms. Kathryn Ferreira: I think the government obviously has to play a role, but perhaps it's a matter that could be helped by judicial oversight in terms of reducing these numbers, having these mechanisms come to fruition, and having the autonomy go back to the aboriginal communities. I do see a role for judicial oversight to make sure that these things are happening.

Justice Arbour spoke about a remedial option for prisoners where conditions of confinement amount to correctional interference in their lawful sanction and renders their sentence in need of remediation. This is particularly true for indigenous—

• (1600)

The Chair: Kathryn, I'm going to have to cut you off because we have more questions coming from around the floor. We're going to take the document that you prepared and sent to the clerk and have it translated, and we'll make sure it is distributed to all of the members.

All the opening statements with all that great information will be given out to all of the members.

I'm going to pass this on to Sheila Malcolmson for seven minutes.

Ms. Sheila Malcolmson (Nanaimo—Ladysmith, NDP): Thank you, Chair, and thank you to the Queen's Prison Law Clinic for your work. It's good to have your testimony today.

This committee received a referral on a bill about sexual assault training for judges. I was really happy that the NDP was able to get the committee's support to amend the bill to include in the development of training for judges a mandatory requirement to have women's groups consulted, those that have on-the-ground experience, and to have survivors of sexual assault consulted. Some really high-profile and terrible examples suggested that the bench needed more training in this area.

We had one particular quote from Nneka MacGregor, who is the executive director of the Women's Centre for Social Justice. She said that we “must include the voices of those individuals who have lived” through the justice system “because it's [their] experience that's actually going to change the perception and the understanding”.

This bill is stuck in the Senate right now, so it hasn't actually been implemented. Can you talk a bit about the importance of those voices on the ground to influence how judges understand their responsibility and do their work, and then to have that training influence their sentencing?

Ms. Kathryn Ferreira: Without that kind of input, I think we're trying to imagine what something is instead of getting a real opportunity to examine what something is like and what a particular individual has gone through. I think it's critical. I think the importance of hearing it first-hand would make all the difference.

I apologize if I'm not fully grasping what the question is, but I definitely agree that the importance of hearing from someone who has that first-hand experience is critical.

Ms. Sheila Malcolmson: Second, I imagine that access to legal aid has a big impact on the work you're doing?

Ms. Kathryn Ferreira: I'm not sure I understand the question.

Ms. Sheila Malcolmson: Access to legal aid is something that your clinic deals with a lot, I would imagine.

Ms. Kathryn Ferreira: We're funded by legal aid—

Ms. Sheila Malcolmson: Okay.

I'm going to ask you some questions on recommendations that the United Nations Committee on the Elimination of Discrimination against Women made for Canada in 2016. They recommended that Canada:

(a) Increase funding for civil legal aid, and specifically earmark funds for civil law legal aid in the Canada Social Transfer in order to ensure that women have access to...legal aid in all jurisdictions, in particular women victims of violence, indigenous women and women with disabilities; (b) Review criteria applied in income tests for eligibility to ensure access to civil legal aid, especially in areas of family law, to all women without sufficient means;

In your work since this 2016 report, have you seen any significant changes in funding or access to adequate legal aid? I'm thinking particularly of the federal jurisdiction, but it could be in any, and in particular for indigenous women.

Ms. Kathryn Ferreira: I can only speak about my experience. I'm not more familiar than that. We have a sister clinic; we're co-located, that helps. It's a family law clinic, because family law is often an underfunded area of legal aid. Our sister clinic is now involved in providing services. I don't have statistics on how many women are accessing such services versus men's access to the services, but obviously enough resources going into legal aid for people in situations where they don't have the resources is incredibly important. I think legal aid struggles with which areas to fund, but obviously indigenous women, family-law-type matters, etc., are in need of funding for sure.

• (1605)

Ms. Sheila Malcolmson: In your experience, did it get better in the last three years? The last two years?

Ms. Kathryn Ferreira: I don't feel qualified to answer that. I'm sorry.

Ms. Sheila Malcolmson: All right. This government has made a lot of commitments around implementation of the Truth and Reconciliation Commission: Calls to Action. Quite a few of them apply directly to indigenous women's access to the justice system. Call to action number 32 is that the federal government amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences. This is a 2015 call to action from the TRC. Have you seen that change in your experience?

Ms. Kathryn Ferreira: Certainly I think the mandatory minimums have been looked at again. Exactly where that is in the status of those minimums, I'm not sure. I'm sorry, we don't practise criminal law, so I'm not....

Ms. Sheila Malcolmson: In your work are you experiencing clients affected by fetal alcohol syndrome?

Ms. Kathryn Ferreira: Yes.

Ms. Sheila Malcolmson: One of the other calls to action was undertaking reforms to better provide community resources and powers for courts to ensure that fetal alcohol syndrome is properly diagnosed, that community supports are in place for those with fetal alcohol syndrome, and that parole resources maximize the ability of people with FASD to live in the community. Have you seen improvements over the last three years in that regard?

The Chair: Just a very short answer, please.

Ms. Kathryn Ferreira: Not too much, no.

Ms. Sheila Malcolmson: Thank you very much.

The Chair: We're now going to move to Eva Nassif for her seven minutes.

[Translation]

Mrs. Eva Nassif (Vimy, Lib.): Thank you, Madam Chair.

First, I would like to mention that we have two students in the room today, Charnpreet Saini and Alexandra Osman. They are in the women in House program at Brock University. Welcome.

Ms. Ferreira, I would also like to thank you for your presentation today before the committee.

You mentioned that the rate of 12% of indigenous women offenders who request parole is much lower compared to non-indigenous women. Could you please explain why this is?

[English]

Ms. Kathryn Ferreira: Based on my experience, the lower rates and the materials out there are because many indigenous women are kept in maximum security, which limits their access to programming that would address risks for reoffence. This definitely impacts on whether or not they are deemed to be good candidates for parole. They don't have the resources in maximum security that might otherwise be available to them. When that happens, they are stuck in that situation if they're not able to access lower security.

Further, their release plans are not being investigated properly by Correctional Services, for example, if they wanted to access a section 84 parole release. The process to do that is outlined in Correctional Services policy statements, and it's very complicated. Risk and institutional progress and release planning are all factors in parole grants, and because of those circumstances, indigenous women would have much lower opportunities for parole.

●(1610)

[Translation]

Mrs. Eva Nassif: Based on section 84, how could we increase the proportion of women offenders who have access to parole?

[English]

Ms. Kathryn Ferreira: It is a mandatory section in the act. The act uses mandatory language. I think there needs to be oversight of the Correctional Service to ensure that those processes become much more straightforward, that they become much more emphasized, and that they are put into action.

It does involve resources. They're not putting the funds into the resources that are necessary to move these things forward. They're not doing it on their own. There has to be some sort of oversight of that process.

[Translation]

Mrs. Eva Nassif: Do you think fewer women would be incarcerated if they had greater access to legal aid?

[English]

Ms. Kathryn Ferreira: I think access to legal representation is always important. I certainly won't dispute that, but I think it's a much bigger problem than that.

[Translation]

Mrs. Eva Nassif: Could you also explain how your organization serves incarcerated indigenous women? How do you help these women?

[English]

Ms. Kathryn Ferreira: We provide assistance to male prisoners, actually. We deal with male aboriginal prisoners as well, obviously. They're also overrepresented. We currently don't provide assistance to female prisoners because of our geographical location.

[Translation]

Mrs. Eva Nassif: How could your organization help incarcerated indigenous women if they asked it for help?

[English]

Ms. Kathryn Ferreira: Certainly, the problem for women indigenous prisoners is much greater than it is for men. There is much more maximum security for women. They are much more secure units in maximum security for women than they are for men.

Again, having more legal resources for indigenous women would help them, I'm sure. I think that the legislation is there. The way to assist these indigenous people already exists. In my opinion, it's just not being used. It is under the control of the Correctional Service. They have not done a successful job with it. As I've been mentioning, it requires more oversight.

Mrs. Eva Nassif: I have one minute.

[Translation]

Could you comment on the drafting of Gladue reports? We have heard that there aren't enough writers, but also that many of the people who write these reports are not indigenous.

Is there a standardized training process for this in Canada.

●(1615)

[English]

Ms. Kathryn Ferreira: I believe that for decision-making within the Correctional Service, there are a lot of references to Gladue factors and paying attention to Gladue factors.

As was mentioned earlier to the committee, I think these factors are considered, as they have to be, for every Correctional Service decision that is made for these prisoners. The parole board considers them as well. However, the problem is that we haven't done a good job on how these factors impact the final decision.

For example, we're supposed to be considering the Gladue factors in parole decisions, but I'm not sure that the consideration of these factors is having a direct impact on the decision that is being made.

The Chair: Thank you so much.

We're now going to go on to our second round. We're going to start for five minutes with Rachael Harder.

Ms. Rachael Harder (Lethbridge, CPC): Thank you so much for being with us today.

I think for the most part I'm wishing to focus more on the side of prevention than post-incarceration. I believe there are many things we can do post-incarceration, but I have to ask the question, why do we have the problem to begin with? Are there actions that can be taken by the government, by aboriginal communities, by the general public? Are there actions that can be taken in order to facilitate the empowerment of aboriginal women to help in whatever way possible? Even if that means no action, then let's do that. Are there places where maybe there are actually too many hands on deck and more space needs to be given to aboriginal communities themselves? There are different factors involved there so I want to talk about that.

My first question has to do with the fact that many of these aboriginal women, and witnesses have argued that even the majority of these aboriginal women who end up in correctional facilities, have been victimized themselves. They have been abused or various things have taken place in their lifetimes. That said, I'm wondering if you can talk a bit about what that looks like from your view. When you have individuals come in—and I understand that you work largely with men—what would your observation be in terms of the victimization of those who are incarcerated within our system?

Ms. Kathryn Ferreira: In terms of their responses to that victimization, is that what you mean?

Ms. Rachael Harder: Yes, what does that do to them? What impact does that have?

Ms. Kathryn Ferreira: In terms of the prisoners we deal with, which is the male population, it looks like a lot of trust issues for anyone who's involved in the current system because the system has not assisted them. There are often mental health concerns that aren't being appropriately addressed. Even the processes that are explained to them can be very foreign to them. There's a sense that these people are in need and their needs aren't being addressed. Within the federal system there are a lot of mental health concerns. Aboriginal people are often quite fragile and take a lot of time trusting.

Ms. Rachael Harder: What are the main factors that lead an aboriginal woman to commit a crime?

Ms. Kathryn Ferreira: I can only speak to the things that I have mentioned, which is the intergenerational trauma, the abuse, the violence that they are subject to, which I'm sure is a lot about the economic state that they're facing. They're obviously particularly vulnerable in light of all of the factors that they're experiencing in terms of employment, concerns with policing, poverty, inadequate housing. I don't mean to speak for these women because I can't do that. I think those things are certainly impacting their actions.

• (1620)

Ms. Rachael Harder: Bottom line, if money has to go towards prevention or towards post-incarceration, where should it go?

Ms. Kathryn Ferreira: That's a very difficult question, as I'm sure you realize. Over-incarceration is epidemic, so not directing resources to address that current problem is very concerning, but at the same time, you're right, the systemic issues that are leading to the incarceration are problematic as well.

I guess I have to speak for the women who are currently incarcerated and facing very dire situations, so based on—

The Chair: Sorry, we're now going to move on to Pam Damoff for five minutes.

Ms. Pam Damoff: Thank you, Chair.

Thank you very much to our witness here with us today.

I want to expand a little bit on a question that Ms. Ludwig brought up. As the federal government, we can't mandate municipal police forces to have education, but the RCMP does fall within our mandate and, obviously, for a number of women, that is the police force they will come in contact with.

I'm wondering about two things: one, expanded education for police officers before these women get to the courts; and two, we heard from the parole officers that recruitment of indigenous parole officers needs to go into reserve.

Do you think that looking at innovative ways to recruit more indigenous people to go into the RCMP would be advantageous for women who do come in contact with the law?

Ms. Kathryn Ferreira: That answer would have to be "certainly". Increased representation of indigenous people on the police force must be a positive in terms of impacting on the culture that indigenous women would be experiencing, so directing resources toward that innovation would be an important venture for certain.

Ms. Pam Damoff: Okay, and the education as well...?

Ms. Kathryn Ferreira: I would never say no to education. The problem is that, if education hasn't assisted.... Again I can only go back to the thing I know best, which is the Correctional Service of Canada, and there has been lots of education, and the changes have not been happening.

Ms. Pam Damoff: I only have three minutes left.

We've talked a lot about intergenerational trauma and fetal alcohol syndrome. Should the federal government commit more funding

toward mental health services for young people on reserve as they are growing up?

Ms. Kathryn Ferreira: I can't imagine how that wouldn't be a necessary thing.

Ms. Pam Damoff: The other thing is the number of children in foster care. We know it is a crisis. Our minister has just recently made an announcement around that to try to come up with a solution to keep these kids in the community. She was telling us some tragic stories about women who have lost their children. It's tragic for both the women and the kids.

I think I know the answer, but I agree that it needs to be a priority for us to deal with the foster care crisis. Would that have a positive impact for keeping women out of Corrections in the first place?

• (1625)

Ms. Kathryn Ferreira: I think that is undisputed, that it's very necessary, and addressing these sorts of really huge issues with resources must lead to a positive impact on the incarceration rate.

Ms. Pam Damoff: On mandatory minimums, when I was in Edmonton recently, I talked to some women who got caught in the mandatory minimum sentencing, so because of that.... Had the sentencing been different, because of the nature of their crime, they may not have been sent away for as long as they were.

For other than the most egregious of crimes, do you think the government should remove mandatory minimums and go back to when judges had the ability to sentence in the past?

Ms. Kathryn Ferreira: Absolutely.

Ms. Pam Damoff: Okay.

Since indigenous women are more likely to plead guilty when they get to trial, would expanding our funding for legal aid be a good thing for these women?

Ms. Kathryn Ferreira: Adequate legal representation or positive legal representation for women who are being charged with serious offences? For certain, yes.

Ms. Pam Damoff: I only have 10 seconds, so thank you very much for your work. I think that's what I will end on. We really appreciate what you're doing there.

The Chair: We have time for one more question, so we're going to pass that over to Stephanie Kusie.

Mrs. Stephanie Kusie: Thank you, Madam Chair.

We've talked a lot today again about self-determination, and about solutions being intrinsic to the indigenous people themselves. With that, I wanted to touch again on Gladue reporting. In your opinion, is Gladue reporting helpful in compensating for the history and cultural context of indigenous persons and what has brought them to the point of sentencing and incarceration?

Ms. Kathryn Ferreira: I think Gladue reporting is very necessary. The problem is, it's not translating into any kind of positive solution on sentencing or on decisions that are made after sentencing. People are talking about it and there's lots of consideration of it, but clearly, given the numbers we're talking about, it's not translating into positive decisions for aboriginal people.

The Chair: Excellent.

Thank you very much, and thank you for joining us today and providing your testimony. We'll find it very, very helpful.

We're now going to suspend for two minutes, so that we can switch up our panels.

•(1625) _____ (Pause) _____

•(1630)

The Chair: We're going to come back to meeting 88 of the Standing Committee on the Status of Women. Thanks for the notes.

We're going to be joined now by two video conferences. By video conference from Vancouver, we're going to have Debra Parkes, professor and chair in feminist legal studies, Peter A. Allard School of Law, University of British Columbia; and also by video conference, we have, from Saskatoon, Eric Michael, executive director of Willow Cree Healing Lodge, Prairie Region.

I'm going to turn the floor over to Ms. Parkes.

You have seven minutes.

Professor Debra Parkes (Professor and Chair in Feminist Legal Studies, Peter A. Allard School of Law, University of British Columbia, As an Individual): Thank you for the opportunity to meet with you today.

I've been researching issues associated with women's imprisonment for the past 20 years, and the alarming rise in the incarceration of indigenous women is an urgent issue for Canada. I commend the committee for studying and working to address it.

I know that the committee has heard from other witnesses about the fact that indigenous women represent the fastest growing prison population in Canada; they do harder time than other prisoners; they are more likely to be in maximum security, put in segregation, restrained, and subjected to force; and they are less likely to get parole.

At the same time, it's useful to keep in mind the fact that the sharp line the law likes to draw between victim and offender utterly breaks down when we look at the situation of indigenous women who are in prisons across this country. These are the same women who are going missing and being murdered in alarming numbers.

I'm going to spend my short time today on three issues and discuss solutions to those issues.

The first is the disproportionate impact of mandatory minimum sentences on indigenous women, including, most problematically and often not discussed, the mandatory minimum life sentence and parole ineligibility period for murder.

Second, I'm going to talk about some of the ways that section 718.2(e) of the Criminal Code—the Gladue analysis meant to reduce their incarceration—is not benefiting or effectively being applied to indigenous women.

Third, I'll address the urgent need for community release options for indigenous women, and correctional policy and planning oriented toward community release.

First, with respect to the mandatory life sentence and mandatory parole ineligibility periods for murder, everyone convicted of murder in Canada gets the mandatory life sentence and mandatory period of parole ineligibility of at least 10 years for murder and 25 years for first-degree murder. During the last decade, Parliament has amended the Criminal Code to allow parole ineligibility periods to be made consecutive to one another and has abolished an important opportunity for early parole review, the so-called “faint-hope clause”.

Indigenous women are vastly overrepresented among those sentenced to life. From 2005 to 2015, 44% of women sentenced to life or an indeterminate sentence were indigenous. A closer review of each year in this range reveals a particularly grim picture. From 2008 to 2009, four of the six women sentenced to life were indigenous. From 2012 to 2013, six of the seven women sentenced to life were indigenous.

I'll talk in a moment about the particular ways that mandatory sentences are unnecessary, costly, and disproportionate, particularly for indigenous women, but it's important first to step back and understand at the outset that while murder is obviously the most serious offence in our Criminal Code, research has shown that policy-makers often overestimate punitive desires among the public for long prison sentences. In fact, members of the public, when properly informed, are actually less punitively minded than what you may expect.

Specific to the mandatory life sentence for murder, in a 2010 study in England and Wales involving over 1,000 public participants, two-thirds of those who participated concluded that a life sentence was not an appropriate penalty in the majority of the homicide situations they were presented with. There's a huge range of situations that we often don't think of when we think about our law of murder.

Canada is increasingly an outlier among developed countries in the area of sentencing for murder. Only 11 of 42 European Union member states impose mandatory life sentences. I could talk about that, but I'll skip over those numbers to tell you that we are an outlier, other than when you look at the United States.

Mandatory minimum sentences disproportionately impact women and particularly indigenous women. Women are disproportionately impacted when sentencing judges are unable to consider the implications of removing mothers, many of whom are sole caregivers, from their children and family. The removal of the ability for judges to consider lower levels of culpability—for instance, being a party to a spouse's offences or acting in relation to an offence against oneself or one's child, which is often the case for homicide cases involving women—disproportionately impacts women, and indigenous women in particular.

Mandatory minimum sentences encourage wrongful guilty pleas, which are an important factor contributing to wrongful convictions. We have seen this in relation to child homicide cases and cases involving battered women in Canada in the past two decades.

Research suggests that indigenous people are less likely than other accused to benefit from the exercise of prosecutorial discretion to proceed with a mandatory sentence or not. Indigenous people tend to be overcharged and plead guilty at higher rates than non-indigenous people.

Mandatory minimum sentencing undermines section 718.2(e) of the Criminal Code, which is aimed at reducing the over-incarceration of indigenous people. It is at odds with the proportionality principle and interferes with a judge's ability to take circumstances into account.

• (1635)

that brings me to the second issue, which is paragraph 718.2(e) of the Criminal Code and the Gladue analysis meant to reduce the over-incarceration of indigenous people and the fact that it's not effectively benefiting indigenous women.

Why do I say that? The whole purpose of a Gladue analysis is to understand the social context of an indigenous person's involvement with the criminal justice system, the way that their experience connects to what we know about systemic discrimination, and the impact of colonization. The second purpose is to identify ways to get indigenous people out of prison and into the community where the results are going to be more positive.

However, Gladue factors—and these are social history factors—are, in effect, used against indigenous women in the context of risk assessment decisions at all levels of the criminal justice system—bail, sentencing, correctional placement and planning, security classification, parole, and other correctional decision-making. The fact that indigenous women have often experienced extreme trauma, poverty, substance use, and other forms of marginalization is used as evidence that they need more correctional intervention and more time in prison. Their needs are equated with risk, and this means more time in prison, even though we know prison is not necessary for public safety in the vast majority of cases, and it does not work well for indigenous women.

That connects to my third point, which is the urgent need for more community release options for indigenous women, and correctional policy and planning oriented toward community release. This is not, I should say, for the most part a problem with the law.

The law is generally set up to facilitate community release. The restrictions on the availability of conditional sentences that have been enacted in recent years, and on limits on the Criminal Code availability of conditional sentences should be repealed, in my view. I can talk more about that in questions, but with respect to the Corrections and Conditional Release Act the principles and legislative provisions are there. Sections 81 and 84 in particular—and I think other witnesses have spoken about these provisions—are meant to transfer resources to indigenous communities, both urban and reserve, to host community members there, to support their reintegration in a way that benefits the whole community and broader society.

• (1640)

The Chair: Ms. Parkes, I'm going to cut you off so that there will be lots of time for questions. Thank you very much.

I'm now going to move over to our second panellist. I would like to welcome Eric Michael.

You have seven minutes.

Mr. Eric Michael (Executive Director, Willow Cree Healing Lodge, Prairie Region, Correctional Service of Canada): Good afternoon. *Bonjour. Tansi.*

With great respect I approach this opportunity to appear before the honourable members of this committee. The work of this committee is vital, and I feel privileged to contribute to your study.

I am the executive director of Willow Cree Healing Lodge, a Correctional Service Canada-operated healing lodge for indigenous offenders. I am a member of the Beardsy's & Okemasis' Cree Nation on Treaty 6 territory, the indigenous community in which Willow Cree Healing Lodge is situated.

My comments today will centre on my experience working in a men's healing lodge facility for nearly 15 years, and the contributions that healing lodges collectively provide toward the mandate of indigenous corrections.

One of the CSC's key priorities is to provide effective, culturally appropriate interventions and reintegration support for first nations, Métis, and Inuit offenders. Healing lodges are a fundamental element of delivering on this priority as they provide culturally focused interventions, programming, and services. Healing lodges are minimum or multi-level facilities, which can be operated by CSC in co-operation with an indigenous community or run by the indigenous community under section 81 of the Corrections and Conditional Release Act.

The purpose of a healing lodge is to aid indigenous offenders in their successful reintegration by using traditional healing methods, specifically holistic and culturally appropriate programming. The first CSC healing lodge to operate in Canada, beginning in 1995, was the Okimaw Ohci Healing Lodge for Aboriginal Women on the Nekaneet First Nation in Saskatchewan. This healing lodge paved the way for other indigenous communities to embark on a journey that would revolutionize how the Canadian corrections system engages indigenous communities.

Commencing operations in 2004, Willow Cree Healing Lodge is the most recent CSC-operated healing lodge. CSC entered into a memorandum of agreement with the Beardy's & Okemasis' Cree Nation to ensure that the community provides guidance, support, and assistance to the healing lodge. I meet regularly with a board of directors to ensure that the management and operation of the healing lodge accomplishes its mandate within a restorative model of justice. We ensure respect for the cultural and spiritual vision, values, and traditions of the indigenous community. The healing lodge engages the local Beardy's & Okemasis' Elders Council and the Citizen Advisory Committee to ensure community input, collaboration, and consultation.

Healing lodges occupy a fundamental role in providing indigenous spiritual services through access to indigenous elders. Emphasis is placed on spiritual leadership. Staff and community members act as role models. Programs are delivered in a context of community interaction, and focus on preparing an offender for his or her eventual release. Elder involvement in the delivery of the correctional programs is fundamental as they contribute culturally relevant teachings and ceremonies.

It has been my pleasure to work with the passionate correctional professionals in healing lodges dedicated to the vision of healing. Many offenders who come to the women's and men's healing lodges are seeking a path forward. They come with the dream of creating a better life for themselves. They come hoping for personal transformation and healing from the ravaging impact of personal trauma, and the way that trauma has played out in their lives.

The healing journey from the indigenous world view will challenge you spiritually, emotionally, physically, and mentally. The healing journey requires honesty, humility, and courage. It is a journey where those things that torment the soul are confronted with the spirit of a warrior to restore wellness, heal relationships, rebuild one's sense of dignity, and create a healthy path moving forward.

Healing lodges are intended to be places of transformative power as indigenous ceremonies provide an outlet for cultural and spiritual renewal. The healing lodge aspires to achieve the spirit of *wahkohtowin*, a Cree spiritual law that encourages all living things to come together in a spirit of kinship. *Wahkohtowin* means "everything is related" and identifies the sacred obligations we have to one another, recognizing the social history experienced by indigenous peoples disrupted the roles, values, and traditions of the indigenous family. We call a resident of Willow Cree Healing Lodge a *nicisan*, an indigenous word from the Cree people meaning brother or relative. This reference signifies the healing lodge commitment to restore the kinship ties to the community for each *nicisan*, to ignite their sense of belonging to the greater purpose and to support their effort to overcome the stigma that comes with incarceration.

During the last five years, Willow Cree Healing Lodge has been privileged to collaborate with our CSC partners, the Beardy's & Okemasis' Cree Nation, the local town of Duck Lake, and community stakeholders on a worthwhile initiative.

•(1645)

In 2013, Willow Cree Healing Lodge entered into a partnership with the first nations and Habitat for Humanity in order to provide training and meaningful work release to the offenders. The offenders

provided the labour to construct five Habitat for Humanity homes, one per year, in the community of Duck Lake, Saskatchewan.

The offenders participated in a construction worker preparation certificate program offered through a community college. They received on-the-job training during temporary absences to the construction site and were mentored by a journeyman carpenter.

Willow Cree Healing Lodge recently completed the fifth home and witnessed each home awarded to a deserving and grateful family in need. The spiritual principle of kinship has become more integrated into the lives of the offenders who participated in this initiative, and it was an integral part of the offenders' personal transformative process as they offered their time, energy, and skill to a benevolent endeavour. I witnessed indigenous and non-indigenous people, CSC offenders, and community citizens working side by side toward a common goal as they helped families in need.

The example I provide is just one that illustrates the many ways that healing lodges strive to achieve the spirit of *wahkohtowin*, to honour the vision of healing, and to support the successful reintegration of indigenous offenders. The healing lodges are full of potential and are an essential component of fostering healthy relationships and a constructive dialogue with indigenous communities.

I thank you, and I welcome any questions you may have.

The Chair: Thank you for your opening statements.

We're now going to move to Pam Damoff for seven minutes.

Ms. Pam Damoff: Thanks to both our witnesses for being here today.

My first question is for Mr. Michael.

I've heard that work release is the best pathway for success for someone who is in an institution. If they have a successful work release, it bodes well for when they are released from the healing lodge or the prison. But I also heard that there are real barriers to getting the paperwork done for that, so there can be challenges when an employer says, "Yes, we'll take an offender to come in and work", but it can take a very long time to work its way up the chain.

Do you think it would be beneficial to remove some of the paperwork process in order to make sure you can match the offender with a work release placement more quickly?

Mr. Eric Michael: I definitely think that any opportunities that will facilitate that gradual reintegration into the community for offenders are extremely beneficial. Work release is definitely one avenue to accomplish that and give them an opportunity to gain very important work-related skills so that when they're released into the community they're ready to undertake an opportunity to provide for themselves and to contribute back to the community in a healthy way. Anything that could facilitate that process more effectively I think is of great advantage to the men and women we work with in terms of facilitating that effective reintegration into the community.

Ms. Pam Damoff: Thank you.

Ms. Parkes, I have a question for you. You talked a lot about the mandatory minimums. I like to think that being tough on crime would actually be getting rid of mandatory minimums, so rather than sending a woman to a maximum security institution where she may be exposed to gangs and drugs, the effort would be better spent in providing her with services and programs, and then, in fact, when she is released she would be more likely to be a productive member of society.

Do you think that's a fairly accurate description, that we're actually creating criminals sometimes when we're sending them off to a maximum security prison?

Prof. Debra Parkes: Certainly that is what the evidence shows, the reality, especially in the women's prisons.

It's really wonderful to hear about these opportunities around Habitat for Humanity and work release and that sort of thing, but I was just at Fraser Valley Institution twice in the last month and a half, which is the women's federal prison here. In the minimum house, the women do not have access to work release—virtually none of them. It's available on paper, but not actually happening.

To your question, yes, if you have a majority of indigenous women being warehoused in maximum security prisons where they're in these segregated units within the institution, which is what is happening—and it's not all that's happening, there are certainly good programs here and there—as you know, there is just no meaningful opportunity for intervention: trauma counselling, vocational training, education. There is some of that, again, but not nearly enough, so it's actually counterproductive to their reintegration.

What I was getting at at the end of my remarks is that because indigenous women are assessed with so many needs and so many deficits and so many things that they need to address, their correctional plan has this long list of things that they're not actually able to address. Their parole has to be delayed, they waive it in alarming numbers, they even waive the women's opportunity to go for parole because they're simply not getting that in the institution.

If we were to spend even some significant amount of those dollars in more community release options, more work release, more of that, we would have much better results, I think.

• (1650)

Ms. Pam Damoff: I heard from a parole officer about the lack of supports in the community when indigenous offenders are released. Quite often there's no housing and no employment, so someone who is going to a homeless shelter falls into a negative path. The supports that many people get from family and friends are simply not available. Family ties may have been broken, or they may have left the reserve at a young age to live in an urban setting, but those supports aren't there.

Do you feel that these supports are essential for success upon release?

Prof. Debra Parkes: Yes, they are. There are mechanisms already in the existing legislation to provide for them. Section 84 of the Corrections and Conditional Release Act provides for the opportunity for urban or reserve communities to provide community release

options for their members. Sometimes they can't go back to the reserve community, for the reasons you've identified and others, but there are many places within urban centres, which is where most of the people go upon release, to which we could be transferring resources.

You can't do it without resources; it's simply setting people up to fail. We know about the lack of affordable housing, and we know about the issues that even people who aren't dealing with a criminal record, release, and time spent in prison face, but these women have additional challenges.

Yes, resources need to be there. We know that it costs more than \$200,000 to incarcerate a woman in federal prison each year, and more for maximum security. Where are the resources to rebalance this situation to provide for the section 84 release plans on a much more creative and flexible basis than we're doing? There are a few happening right now, but they're mostly happening for existing halfway houses. Their beds are limited. We need more release resources along the lines of what you're suggesting.

Ms. Pam Damoff: Mr. Michael, you've had a long career in corrections. If you were to give us a couple of your top recommendations to put in place to deal with the overrepresentation of indigenous women, what would they be, very quickly?

Mr. Eric Michael: One would be to continue to enhance the dialogue with indigenous communities. In many cases, indigenous communities have the answers to some of these issues. Whatever we can do to continue to facilitate dialogue with those communities and invite their ideas and their perspectives on ways we can address these very pressing issues would be an ideal thing to continue to pursue.

Ms. Pam Damoff: Thank you very much.

The Chair: We're now going to move over, for seven minutes, to Rachael Harder.

Ms. Rachael Harder: Ms. Parkes, can you clarify what kind of crime a person would have to commit in order to receive a mandatory sentence?

Prof. Debra Parkes: I don't know what the most up-to-date numbers are, but there are on the order of 75 mandatory sentences in the Criminal Code. There are all kinds, ranging from drug offences to violent offences and that sort of thing.

I was talking about the mandatory life sentence for murder, so we are talking about intentional homicide, which includes, as I said, party liability situations and a whole range of different scenarios.

• (1655)

Ms. Rachael Harder: Thank you.

My next question is to Mr. Michael.

Mr. Michael, can you answer this for me: what would be the average cost for an inmate for one year within the healing lodge?

Mr. Eric Michael: I don't have an accurate figure with me, but this is definitely something we can follow up on to provide a cost breakdown for you. I wish I had it with me, but I do not.

Ms. Rachael Harder: Thank you very much. It would be helpful for us, just for comparison's sake. We know what it is in a federal prison, so to be able to compare it would be excellent.

Thank you.

Mr. Eric Michael: Okay.

Ms. Rachael Harder: At this committee we've heard a lot about the benefits of a social impact bond. If I were to describe it very quickly, it would be basically that the government gives money to an organization or an initiative on the basis that the organization will be able to provide some sort of headway forward or benefit for the money being invested. It's very results-oriented. The results are measured after the money is given. Then, when it's shown to be an effective program or effective initiative, often further money is awarded as well.

A number of initiatives have been taken across the country on the prevention side to make sure that aboriginal women are provided with the supports they need in order to live empowered lives. I'm wondering whether something like this could work within the context of a healing lodge.

Mr. Eric Michael: I think it's worth further investigation. I don't know enough about social impact bonds to answer very knowledgeably on it, but it's worth taking a closer look at, I would say.

Ms. Rachael Harder: The bottom line is, I'm wondering whether it would be worthwhile in your estimation. Would it be worthwhile for an increased amount of money, let's say, to make its way to healing lodges and community initiatives rather than going further into the correctional system?

Mr. Eric Michael: Any additional resources would be of great benefit to healing lodges, to any indigenous organizations that have a vested interest in supporting the reintegration of indigenous offenders. I definitely see the value in that.

Ms. Rachael Harder: You talked about a work program, members of the community along with those who are in the healing lodges working together and building homes. Would there be other examples of work initiatives or community initiatives where members and those within the healing lodges are working side by side for a collective benefit?

Mr. Eric Michael: I would say, yes, there are. I can speak specifically about Willow Cree Healing Lodge. We have engaged the Beardy's & Okemasis Cree Nation and the surrounding community in terms of community service opportunities. Our indigenous offenders at our facility, the Nîcisânak, actually go out and provide community service support in different areas as well. These are opportunities that they have to actually give back in a positive way to the community, again, practising the traditional value system of sharing and kinship.

There are many opportunities, I believe, that the other healing lodges engage in, which are unique to their specific circumstances

and the relationships they've built with their community stakeholders. So, yes.

Ms. Rachael Harder: Would you be able to give some specific examples of those projects?

Mr. Eric Michael: For instance, we've assisted with different opportunities, even helping to serve the elders in our community. We have a number of elders in the first nation there and they need help from time to time with different things. We've gone out and supported and helped those elders. We have even had an opportunity to actually provide support with a renovation that was needed somewhere, again, applying the construction trade training that they received.

These are other opportunities that we've taken advantage of as well.

Ms. Rachael Harder: That's really great, and when you talk about going out and doing construction, are we talking about women being involved in those initiatives, not just men?

• (1700)

Mr. Eric Michael: I can only speak for my healing lodge and at this point it has just been our healing lodge involved in that as far as I know. Like I said, each healing lodge is pursuing other initiatives as well, based on their community partnerships and the relationships they have within their own communities.

Ms. Rachael Harder: And your healing lodge is just men then? Or is it men and women?

Mr. Eric Michael: Yes, we are just for men.

Ms. Rachael Harder: Okay, thank you. That's an important clarification.

Can you talk a little bit about the importance of the aboriginal community being involved in the post-incarceration process, and coming onside with individuals who have been incarcerated, and helping them get back on their feet and integrated and living empowered and productive lives?

Mr. Eric Michael: I think the key to the success of the healing lodge is that we have a base of volunteers. We have volunteers who come to the healing lodge to support their reintegration. They come to provide citizen escort support, volunteer support. Those individuals are directly involved with bringing them out in the community during a temporary absence. They role model for them what healthy community living is all about, and then they facilitate that connection back to the community, again, through the temporary absence process. That's just one way. There are other ways as well but that's certainly one way that we see that engagement happening.

The Chair: Thank you so much.

We're now going to move on to Sheila Malcolmson for seven minutes.

Ms. Sheila Malcolmson: Thank you, Chair.

Thank you to both the witnesses. I'm going to focus my questions on our UBC witness, Debra Parkes.

We're trying to track implementation of the Truth and Reconciliation Commission recommendations, which were quite clear about indigenous access to justice. I'm looking at the Truth and Reconciliation Commission call to action number 42.

We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Canada in November 2012.

In your experience, has there been progress in those areas since 2015 when the calls to action were released?

Prof. Debra Parkes: Unfortunately, not much, when you look at least with respect to indigenous women and look at Corrections' initiatives or government initiatives related to indigenous justice that would address the over-incarceration of indigenous women.

Certainly, there are—and Mr. Michael spoke to it—many indigenous communities that are revitalizing their indigenous justice practices, and there are a lot of great things happening at the grassroots level.

What I'm not seeing, and maybe you'll see this from other witnesses, and I would love it if that is true.... In terms of what I've seen in my own work here in B.C. in Fraser Valley and in Manitoba, when I worked there in recent years, is that there's just very little going on in terms of transferring meaningful resources to those communities to have justice initiatives that would involve, for example, bringing people out of prison or sentencing people, particularly indigenous women, in ways that would be community-led.

I think there's much work that could be done. There are some communities that want to do that, but with very few exceptions, it's not been the focus. There's all the money in the world for Corrections, unfortunately. In my view “unfortunately”, because there's a missed opportunity there to transfer some of those resources to community.

Ms. Sheila Malcolmson: I'm elected in British Columbia, and we see this there especially, but throughout the country, indigenous organizations are transforming the child welfare system, or in many cases making great progress. We still have a Big Brother kind of government approach that's not necessarily removing the barriers to those successes and not getting out of the way.

Last week we heard testimony from the Native Women's Association of Canada, and their quite powerful quote was, “... Canada's colonial history has created a real climate and a culture of distrust where...indigenous women see that this is not a justice system that represents them.”

This theme was picked up in your paper, just published this month, I think, the discussion document called, “Toward Abolishing the Mandatory Life Sentence and Parole Ineligibility Periods for Murder”. My fantastic staff tell me that you wrote that some indigenous women would take plea bargains with the crown instead of defending their cases to the court because of their lack of trust in the justice system, and that can lead to longer, harsher sentencing.

Can you share your observations on that?

● (1705)

Prof. Debra Parkes: Yes. There is significant evidence of this now, and you saw this in the aboriginal justice inquiry report back in 1991. You've seen it in the Judge Lynn Ratushny report into the self-defence review after we had a case in the Supreme Court that changed the law of self-defence to recognize that women might be killing their abusive partners in self-defence, and that sort of thing.

You started to see that, because of the mandatory life sentence for murder, that is a very powerful tool in the hands of the prosecutors. Indigenous people are more likely—indigenous women in particular—to plead guilty to manslaughter or even to second-degree murder to take the lowest possible sentence that they can get with the plea bargain, even when they have very valid, strong defences. Professor Elizabeth Sheehy at the University of Ottawa has documented this in a number of cases.

It goes to lack of trust in the justice system. It goes to concerns about not wanting to put their kids on the stand in cases where it involves a spousal relationship and a homicide in that context. I've heard very many times from women who are incarcerated that they pleaded guilty because they didn't want to have their kids be witnesses in the trial. There are all kinds of reasons why mothers, women, have different pressures on them to plead guilty.

The evidence is pretty clear now that our mandatory sentencing regime for murder has a disproportionate impact on women in that way. I think the trust issue is part of it, and there are a number of other factors as well.

Ms. Sheila Malcolmson: The report last year or two years ago from UNCEDAW, the Commission to End Discrimination Against Women, called particularly for support for indigenous women and for increased funding from Canada for civil legal aid, specifically earmarking funds for civil law legal aid in the Canada social transfer in order to ensure that women have access to adequate legal aid in all jurisdictions, particularly women victims of violence, indigenous women, and women with disabilities. Have you seen evidence of an increase in access to legal aid for these women?

Prof. Debra Parkes: No, in fact. There are constitutional requirements for certain levels of criminal legal aid, but what you see for women is that they often have family law matters involving custody and access issues, and they've experienced violence, so the amount of federal money that's going to legal aid has not kept pace with the need nationally. The vast majority is being borne by the provinces, and the recommendations from that committee and others have been that the federal government needs to reinvest in legal aid, including civil legal aid, which is disproportionately needed by women.

It's mostly left to the provinces. In British Columbia, for example, as you probably know, legal aid was cut deeply in 2002 by the provincial government. We haven't recovered from that. It has created a huge access-to-justice gap for women in British Columbia, and in other provinces as well. The criminal legal aid is still funded because of constitutional requirements, but there are huge issues with the lack of adequate criminal legal aid, and certainly I would just add that for prison law, there is almost no funding in those provinces for legal aid.

The Chair: Ms. Parkes, thank you very much.

We are now going to move on for our next seven minutes with Bernadette Jordan.

Mrs. Bernadette Jordan (South Shore—St. Margarets, Lib.): Thank you, Chair, and thank you to the witnesses for appearing today.

Mr. Michael, I'm going to start with you. We've heard a lot about the success that healing lodges have. I come from the east coast, where there is no ability for people to access a healing lodge. Do you know of any other programming or any ability for people to take part in a culturally appropriate healing ceremony or way forward through incarceration, outside of a healing lodge?

Mr. Eric Michael: CSC institutions have had indigenous elders work within them for a number of years now, and I know CSC institutions also have pathways units that prepare indigenous offenders for that gradual reintegration. Willow Cree Healing Lodge, for instance, receives indigenous offenders from pathways units as well. They're often prepared very well within the pathways units.

So yes, I understand there are CSC institutions that have pathways units, where they're offered an opportunity to engage in indigenous ceremonies and cultural practices under the guidance of traditional indigenous elders.

• (1710)

Mrs. Bernadette Jordan: One of the things I thought was very interesting in your presentation is you talked about meaningful training and the on-the-job construction training that people who are part of the healing lodge have taken part in. Do you see that as integral to the reintegration and their success when they leave the healing lodge?

Mr. Eric Michael: Yes, I do. It is very important. Our healing lodge, for instance, has witnessed tremendous success with that particular initiative, and it's an initiative we can continue to build upon, as well.

The socio-economic disadvantages that indigenous people face are pretty profound. A lot of the men who come into the system and are incarcerated need that additional support and help to prepare them for release through employability skills and training.

Mrs. Bernadette Jordan: I thought it was interesting that you have an ability to have people mentored by a journeyman carpenter, working in an environment building homes as a community through Habitat for Humanity.

One of the things we've heard is that women are actually given work experience in things like making underwear for men in the prison system, or flower arranging. It's not exactly what may be meaningful work whenever they leave the institution, and it won't

really help them reintegrate, so thank you for pointing out that men actually have access to something a bit more fruitful than the women do.

I'm going to go to Ms. Parkes now, for the next question. You mentioned three things—the mandatory minimum sentences, the community release options, and the Gladue analysis—as your three main asks, for lack of a better word. I understand the mandatory minimum and the community release options, but the Gladue analysis.... Are you talking about scrapping that completely? We've heard that there's been lack of access to Gladue writers, and that because of the backlog, the reports are not done the way they should be done and are therefore becoming more of a hindrance than what they set out to do.

I guess I'd like you to just expand a little on the Gladue analysis, please.

Prof. Debra Parkes: I'm absolutely not saying to scrap it. In fact, we should make it meaningful. The problem that has happened with respect to sentencing, bail, and all the correctional decision-making.... The question of risk—risk to reoffend and criminogenic risk—is the ultimate question that decision-makers are focusing on. When you pile up those social history factors in the way that.... The Gladue analysis is meant to do something different. It's meant to show the context and the person, and how we can do something different with this person, and how we can take a different path. But often it has this other impact.

What I think it means is reorienting our thinking. It goes to the question of community release options and correctional planning that for indigenous women to get access to parole in a timely way—as they are entitled to under the law—we need to have the training at the correctional level, the orientation, and essentially the incentives, encouragement, and focus in the staffing, to be really focused on how you can get this person to that place, instead of asking what the barriers are. There are lots of good people doing this work. It's not that. It's just that the resources and focus are not really there on community release. It is always an afterthought to asking, "What is the risk? What is the community? What is the public safety issue?"

Obviously we have to be balancing that, but if you look, for example, at how parole is operating in this country, it's not operating in the way the legislation has set out. The most recent study that I saw shows that you only get parole if Corrections is supporting your application. In the most recent study, only 2% of people got parole without explicit support from the CSC staff. That's why indigenous women are waiving it. They're not getting that support, and they don't get timely access to the programs to address all of the needs that have been identified. That's why parole is not operating to assist them, and that's why they're going all the way to statutory release or, in some cases, all the way to warrant expiry, which is not good for public safety or their reintegration.

● (1715)

Mrs. Bernadette Jordan: I want to go back to this Gladue analysis and the Gladue reports. We are hearing that there's a backlog and that people don't have time to write them properly. We know what your recommendation would be with regard to mandatory minimums and community release options, but with regard to Gladue, would your recommendation be to develop it more or restructure it? Obviously we shouldn't scrap it. How do we make it work?

Prof. Debra Parkes: We should have more resources into Gladue reports because Gladue reports that are done with a focus on what Gladue has intended with respect to what can work for a person are actually quite helpful. In most of the provinces, though, Gladue reports are folded into the pre-sentence report, which is focused on risk, again. In most of the provinces across the country, instead of having a Gladue stand-alone report that is done with this focus on what can work for a person, what creative things we can do, where we can allocate those resources, and what we can do differently.... It's not happening for the most part. It's done in the risk model through the pre-sentence report.

Thank you for asking me to clarify that.

The Chair: Excellent. Thank you so much.

We're now going to start on our second round, and we're going to have Stephanie Kusie for five minutes.

Mrs. Stephanie Kusie: Thank you, Madam Chair.

Ms. Parkes, I'll start with you.

The three items that you mentioned—the mandatory minimum sentences, section 718, and the community release options—all seem to point to me towards self-determination and self-governance, a theme that we've seen quite significantly in the last few weeks of testimony.

In your opinion, what would be the ideal processes for both sentencing and rehabilitation? It's a two-part question. In addition to the ideal processes, what would be the evolution of where we are now in the corrections system to get to that ideal? For example, historically we've seen women in what was the historic incarceration system, and we've moved to healing lodges, and now the evolution of the process seems to be towards community release options. In your opinion, what is ideal, and what does that process of evolution look like, please?

Prof. Debra Parkes: That's a great question.

I have just one point of clarification. For the most part, women do not have access to healing lodges. The vast majority of women do not have access to healing lodges.

There is one CSC-operated healing lodge for women, Okimaw Ohci. Then there is one section 81 contracted healing lodge that has women, as far as I know. Mr. Michael may know a little more.

A start would be actually making that a meaningful option for women, but as I said, the tools are there in the legislation, so section 81 and section 84 of the Corrections and Conditional Release Act provide all the legislative tools we need. It says in those sections that if a person is under sentence, or if a person is on community release

or eligible for community release on parole, that the indigenous communities, whether it's a reserve community or an urban community that is more an amalgam of different resource organizations, can put together a plan, funded with federal dollars, that would allow that person to be in the community. That's the way forward. You actually don't even need legislative change.

So another part of the process would be to adequately fund that and let people know.... I was at Fraser Valley Institution recently, as I mentioned, and sat with a group of women lifers. All but one were indigenous and they didn't know about the opportunity for section 84 releases to their communities. One woman had actually gone out and done that research and was trying to make it happen but didn't have much in the way of support to do it, so that's one thing.

In terms of sentencing, we should reorient our sentencing, get rid of mandatory sentences for the most part, and reinsert the opportunity for judicial discretion to depart from them. Even if you were to consider them presumptive sentences, certainly for women there are lots of reasons why they don't actually address their situations. There is a need for that tailored response. That would be a start for those two things.

I don't know if I've answered your question or if there was another part to it that I've missed.

Mrs. Stephanie Kusie: No, you have. It was with regard to the ideal and then to the evolution. You have touched upon both of those in referencing the existing legislation, which is all to say that, again, it goes back to self-determination. What's intrinsic—if I ask for a glass of water, it's because I want and need a glass of water. Thank you for that.

Mr. Michael, I'll go to you next.

Have you had the opportunity to visit a female healing lodge?

● (1720)

Mr. Eric Michael: Yes, I have. I had the opportunity to visit both the Okimaw Ohci Healing Lodge in Maple Creek, Saskatchewan, Nekaneet First Nation, as well as the section 81 healing lodge, Buffalo Sage Wellness House, which is in Edmonton, Alberta, and is operated through the Native Counselling Services of Alberta. I have visited both of those, yes.

Mrs. Stephanie Kusie: What were the most remarkable differences that you saw between the female healing lodges and, in your particular case, the Willow Cree Healing Lodge? What were their fundamental differences in terms of the culture, how things were run?

Mr. Eric Michael: Obviously there is specific programming within those healing lodges geared toward the needs of the indigenous women there, but the model is quite similar in that the focus is on cultural interventions and holistic programming. In terms of that, there are very strong parallels there between what a men's healing lodge does and what a woman's healing lodge does. It's all about, speaking collectively, what healing lodges try to accomplish, which is to help indigenous men and women to heal, to overcome trauma in their lives, and to re-enter the community in a healthy and positive way. That is accomplished, again, through the restorative model of justice. Their approaches are very similar, but in the women's healing lodges, there is programming geared specifically to their needs.

The Chair: Excellent. Thank you very much.

We're now going to move over to Karen Ludwig for the final round of questions.

Ms. Karen Ludwig: Thank you both for your testimonies this afternoon. They were quite gripping. I'm not usually on this committee, so I found this really interesting to listen to.

The previous witness from Queen's Prison Law Clinic talked about police discrimination. This afternoon one of you talked about judicial discretion. What about police discretion? We've talked previously in this committee about mandatory training for judges. I would like to have your input on mandatory training for police services, and also on the need for advocates for these indigenous women as they go before the system, through the system.

I'll start with Ms. Parkes.

Prof. Debra Parkes: That's a really important question. This is the kind of thing you're seeing in the missing and murdered indigenous women inquiry as well. There's real overlap. As I mentioned, it's many of the same women whom you see in the criminal justice system who have been missing and murdered.

There is significant evidence now, however, about the extent to which indigenous communities and indigenous women are both over- and under-policed. When we talk about discrimination in policing, what we're talking about is the reality that certain communities are under more surveillance, especially if you're in an urban centre. I lived in Winnipeg for 15 years, and in certain areas of the city where there are many indigenous people, there's lots of policing.

There is also lots of evidence that when indigenous women on reserve or even in urban centres call the police for help, they are more likely to be charged themselves, in a "dual charge" or countercharge situation, when they are calling in a situation of abuse.

Now, obviously there are some cases in which those charges are appropriate; I'm not saying they're never appropriate. These are, however, the issues that you see: indigenous women are more likely to be charged in those situations; they're more likely to get a higher charge; and we see that because of the lack of actual protection from police, they sometimes don't even want to call the police, and so they'll take matters into their own hands. We see that too in cases involving indigenous women.

I know that some police forces are engaged in various kinds of training—I don't think it's the case that it is not going on—but

certainly there's much more work to do to build trust in order for women to feel they are safe in those situations. There's certainly much more work to do there.

Ms. Karen Ludwig: Thank you.

I have another question as well for Mr. Michael about the healing lodges.

Is there any difference, in terms of participation or outcomes, for indigenous women who live in rural rather than urban communities and as compared with women who are from the reserves or who live off the reserves—or even compared with men, because I know that most of your experience has been with men?

● (1725)

Mr. Eric Michael: Yes, my experience has been with men.

When you grow up in an urban centre you're more removed from the cultural connection. I think that's where healing lodges come into play. They're very important, because they help a person, especially a person growing up in an urban centre, reconnect with their culture and with the traditional value system, as they work with indigenous elders. It is here that they have a very important role to play: in helping these men and women to reconnect with their culture, revitalize themselves spiritually, revitalize their culture. I think that's the very important role that we play.

Ms. Karen Ludwig: May I also ask whether, in the holistic approach, the families are involved? If a woman or a man is at the healing lodge, is his or her family involved with the healing lodge as well? If you're doing this great work, which sounds wonderful, making transformational changes of those at the healing lodge, but it's not holistically bringing in other members of their family, sociologically you would think it would be very difficult to continue the really good work that has been accomplished.

Mr. Eric Michael: Yes, they are involved; that's correct.

Obviously families have an opportunity to come to visit: we have a visiting program. We also have what's called a private family visiting opportunity, whereby they can come onto the property and spend some time with their family in a closed environment. As well, of course, there are opportunities to engage in family contact through temporary absences as well.

The healing lodge is thus very much engaged in trying to help facilitate the connection back to their own families and to help the families to heal in that way as well.

Ms. Karen Ludwig: Thank you.

I'm just wondering if either one of you might be able to comment on the highly televised case this past year of the woman who had been sexually assaulted but was incarcerated while she was waiting for the trial. It was an indigenous woman.

Prof. Debra Parkes: Yes. That was in Alberta.

An inquiry is ongoing into the conduct of the crown there. It was a crown decision to have her incarcerated, and she was brought to court in the same van as the man who is alleged to have assaulted her. There were huge issues associated with that.

It gets a bit at your earlier question about the need for training at all levels of the justice system and about the assumptions that are made about indigenous women as dangerous, as violent, as women we need to be protected from, and about not understanding that in this case the woman was not in fact the accused at all, but was the witness. There are deeply ingrained assumptions, I think, about those women.

The Chair: I would really like to thank our guest panellists today. I'd like to thank Debra Parkes and Eric Michael for joining us and giving their testimony. We do appreciate it.

Before we end today's meeting, I have advised both of the chairs and I want to notify you that next week there will not be a sitting day on Friday. There has been some discussion around other committees, and some other committees have decided to postpone their meeting.

We're looking at the fact that we only had committee business next week, so we're going to tag that onto the 27th. We'll take half an hour for committee business prior to starting our women and economics report.

On Tuesday, we'll be meeting, of course. We will have two panels with three witnesses each. So we'll see you next Tuesday.

Go ahead.

Ms. Sheila Malcolmson: Did you say Tuesday and Thursday we are not meeting?

The Chair: No, next Thursday we're not meeting.

The meeting is adjourned.

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