

## Behind Bars in Canada

On an average day in 2008/09, 157,000 adults were under the supervision of correctional services agencies in Canada. On any given day, there were approximately 37,200 adult prisoners in custody. Canada imprisoned its adult population at the rate of 141 per 100,000 adults. Conditional sentencing was introduced in 1996 to provide judges with the option of allowing eligible provincial and territorial adults, sentenced to a jail term of less than two years, to serve their sentence in the community with conditions. With judges opting for Conditional Sentences in a growing number of cases, the number of prisoners sentenced to custody has decreased. However the use of remand (awaiting trial) has increased by over 80% in the last decade and temporary detention (ie: immigration holds) has increased by 30%. Since 2005 non-sentenced prisoners have outnumbered sentenced prisoners in the provincial jails. 25% of admissions to remand are not for criminal offences, but for breach of conditions and failure to appear.

Youth make up 8% of Canada's total population. On any given day in 2008/09 there were 1,880 youth aged 12 to 17 in custody; 899 in secure custody and 981 held on remand. The incarceration rate is 7 per 10,000 youth population. The YCJA gives the courts the discretion to impose adult sentences on youth and has extended the group of youth who can receive adult sentences to include 14 year olds.

### THE COST OF INCARCERATION

Correctional service expenditures for 2008-09 were \$3.9 billion. The cost to the public;

- Federal male prisoner:
  - \$118,000 per prisoner/per year
  - \$323 per/prisoner/per day
- Federal female prisoner:
  - \$175,000 to \$250,000 per prisoner/per yr
- Provincial sentenced/remand prisoner:
  - \$162 per prisoner/per day

The costs of alternatives such as probation, bail supervision and community supervision are one-eighth the cost of incarceration. 14% of the correctional budget was used for community supervision while 71% of the budget was used to keep prisoners in custody. Once you add the costs of policing and courts the justice budget is over \$15 billion a year.

While the Correctional Service does not control admissions to penitentiaries, it does have a constitutional and statutory obligation to manage sentences in a culturally responsive and non-discriminatory manner. The areas of concern associated with Aboriginal Corrections go far beyond over-representation and require focusing on what happens to Aboriginal prisoners while in the care and custody of the Correctional Service.

**Section 81** of the Corrections and Conditional Release Act provides for the custody of an Aboriginal prisoner to be transferred to an Aboriginal Community in a non-institutional setting. In the almost twenty years since the enactment of the CCRA the CSC has only concluded agreements for 108 Section 81 beds and many of them remain empty. While CSC operates 156 beds in Healing Lodges, this is not the same as what is provided for in Section 81. There are currently no stand-alone Section 81 facilities for women.

**Section 84** provides for parole release to an Aboriginal community. Section 84 releases to the community have been limited. Over-classification, segregation and the accompanying lack of access to programming means that Aboriginal prisoners are disproportionately impacted in their inability to obtain conditional release (parole) as they may not have been able to carry out their correctional plan.

Proportionally, more Aboriginal prisoners are first released into the community on statutory release or at warrant/sentence expiry than are non-Aboriginal prisoners.

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## Behind Bars In Canada

## The Costs of Incarceration

## Aboriginal Prisoners First Nations, Inuit, Metis

## Sections 81 & 84 Gladue Principles

## Aboriginal Prisoners First Nations, Inuit, Metis

There are a disproportionate number of Aboriginal people in federal / provincial prisons and in youth detention centres. The incarceration rate for aboriginal adults is 1,024 per 100,000 compared to a national incarceration rate of 141 per 100,000. The number of imprisoned Aboriginal women has increased by 90% in the past decade, they represent the fastest growing prisoner population under federal jurisdiction.



The 1988 Taskforce on Aboriginal Peoples in Federal Corrections found that:

Aboriginal prisoners:

- are less likely to receive temporary absences or parole,
- serve more time before parole is granted,
- are more likely to have their parole revoked than non-native prisoners.

Twenty years, and countless inquiries later, these findings have not changed. Due to Euro-centric models of classification rating scales, aboriginal prisoners are more likely to be classified as a higher security risk, and therefore spend more of their time in maximum security prisons than non-aboriginals convicted of the same offence. 46% of all federally sentenced women classified as maximum security are Aboriginal.

## GLADUE PRINCIPLES

*Gladue* considerations arise from subsection 718.2(e) of the *Criminal Code* which provides that in addition to the general principles of sentencing that a court imposing a sentence shall also take into consideration the following principles:

“All available sanctions or options other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.”

This section of the *Criminal Code* was introduced in 1995, arising from concerns about the overuse of incarceration as a means of addressing crime, particularly as it applied to Aboriginal peoples. Parliament recognized that the overrepresentation of Aboriginal offenders in prisons was systemic, race related, and that the mainstream justice system was contributing to the problem. In the 1999 case *R. v. Gladue*, the Supreme Court recognized that there are mitigating social factors and historical circumstances that should be considered when sentencing Aboriginal offenders. This “social history” includes dislocation, disadvantage, assimilation and discrimination.

Subsequent case law has indicated that *Gladue* principles are supposed to be engaged whenever a decision-maker is dealing with the liberty of an Aboriginal person at any stage of the justice system and is not only limited to the sentencing process. This would include classification and reclassification to security levels, penitentiary placement, transfers, segregation decisions and parole.

Even though it's been ten years since *Gladue* became law; as of April 2009, CSC indicated that regions are only offering sporadic training across Canada to ‘raise awareness’ of the *Gladue* decision amongst their staff. This lack of implementation on the part of CSC may well account for the continued over-representation of Aboriginal peoples in prison.



### Aboriginal Adults:

- 3 % of adult population in Canada
- 18% of federal prisoner population
- 20% of provincial prisoner population
- 19% of remand prisoner population
- 20% of conditional sentences
- 32% of female prisoner population
- 30% of female provincial prisoners

*Statistics vary from region to region:*

- in Saskatchewan Aboriginal adults make up 79% of the total prisoner population versus 14.9% of the provincial population
- Manitoba 71% prisoner population vs. 15.5%
- BC 25% prisoner population vs. 4.8%

### Aboriginal Youth:

- 6% of youth population in Canada
- 25% of total male youth admissions to remand
- 34% of total male youth prisoner population
- 34% of total female youth admissions to remand
- 44% of total female youth prisoner population

In response to the over-representation of Aboriginal youth in custody the Youth Criminal Justice Act (YCJA) calls for special considerations when dealing with Aboriginal Youth in the justice system. In the year following the April 2003 implementation of the YCJA the overall number of youth in custody declined by nearly one-half. However, the proportion of Aboriginal youth in both sentenced custody and remand increased in that period and continues to increase today.