

FEDERAL COURT

B E T W E E N:

CANADIAN WOMEN'S SEX-BASED RIGHTS

Plaintiff/Moving Party

-and-

HIS MAJESTY THE KING

Defendant/Responding Party

**MOTION RECORD
(MOTION FOR PUBLIC INTEREST STANDING)
MOVING PARTY**

CHARTER ADVOCATES CANADA

[REDACTED]

Chris Fleury, LSO #67485L

[REDACTED]

Allison Pejovic, LSA #24411

[REDACTED]

James Manson, LSO #54963K

[REDACTED]

**Counsel for the Plaintiff /
Moving Party**

ATTORNEY GENERAL OF CANADA

Department of Justice Canada

[REDACTED]

Monmi Goswami

[REDACTED]

Oliver Backman

[REDACTED]

**Counsel for the Defendant /
Responding Party**

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Court File No. T-1146-25

FEDERAL COURT

B E T W E E N:

CANADIAN WOMEN'S SEX-BASED RIGHTS

Plaintiff

and

HIS MAJESTY THE KING

Defendant

NOTICE OF MOTION

TAKE NOTICE THAT the plaintiff will make a motion to the Federal Court on March 3, 2026 at 10:00 am, [REDACTED]

THE MOTION IS FOR:

1. an Order granting the plaintiff public interest standing to commence and maintain this proceeding.

THE GROUNDS FOR THE MOTION ARE:

1. This action was commenced by the plaintiff Canadian Women's Sex-Based Rights ("**CAWSBAR**") by way of a statement of claim filed April 7, 2025 (the "**Claim**").
2. The Claim alleges that the practice of placing and transferring trans-identified male inmates into federal correctional facilities traditionally reserved for women has caused incarcerated women a series of serious harms.
3. The Claim further alleges that Commissioner's Directive 100: *Gender Diverse Offenders* ("**CD-100**"), which specifically authorizes such placements and transfers,

violates the rights of female inmates under sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* and sections 1(a), 1(b) and 2(b) of the *Canadian Bill of Rights*.

4. The Claim raises a serious and justiciable issue, namely: the significant harms to female inmates caused by the placement and transfer of trans-identifying male inmates within women's prisons, and the resulting breach of female inmates' legal and constitutional rights.
5. From 2019 to the present day CAWSBAR has worked to preserve the sex-based rights and protections of women and girls across Canada. CAWSBAR advocates for women's sex-based rights and protections in the context of prisons, washrooms and changing rooms, sporting competitions, and other venues traditionally reserved for biological females.
6. CAWSBAR, by way of its advocacy work on behalf of biological women, including female federal inmates, has a real stake and a genuine interest in the issues raised.
7. The proposed litigation is a reasonable and effective way to bring the issue before the Court.
8. CAWSBAR has the the resources, expertise, and ability to present to the Court a sufficiently concrete and well-developed factual setting.
9. Charter Advocates Canada ("**CAC**") is a Civil Society Organization, dedicated to providing *pro bono* legal services to the public, and is providing legal support to CAWSBAR. CAC has the financial and legal resources to assist CAWSBAR in advancing this proceeding. Further, CAC has prioritized this matter and will continue

to allocate all resources necessary to ensure that it is advanced in a fulsome and expeditious manner.

10. The marginalized status of female inmates, as well as their incarceration which presents separate practical obstacles, makes it difficult or impossible for an individual inmate to bring a similar proceeding. As a result, there is no other viable alternative method of proceeding.

11. Individual female inmates, whose interests might be more directly affected by CD-100 than the plaintiff, would not be negatively impacted by granting standing to CAWSBAR.

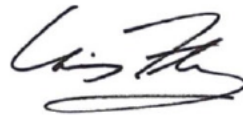
12. Rule 50(1) of the *Federal Courts Rules* permits this motion to be adjudicated by an Associate Judge of the Federal Court.

13. Rules 50(1), 358-368 and 385(1) of the *Federal Courts Rules*.

14. Such further and other grounds that counsel may advise, and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the affidavit of Heather Mason; and
2. the affidavit of Marty Moore.

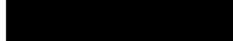


December 5, 2025

CHARTER ADVOCATES CANADA



Christopher Fleury



[REDACTED]

Allison Pejovic

[REDACTED]

James Manson

[REDACTED]

Counsel for the plaintiff

TO:

ATTORNEY GENERAL OF CANADA

Department of Justice Canada

[REDACTED]

Monmi Goswami

[REDACTED]

Oliver Backman

[REDACTED]

Counsel for the defendant

FEDERAL COURT

B E T W E E N:

CANADIAN WOMEN'S SEX-BASED RIGHTS

Plaintiff

and

HIS MAJESTY THE KING

Defendant

AFFIDAVIT OF HEATHER MASON

I, Heather Mason, of [REDACTED] AFFIRM THAT:

Introduction

1. I have personal knowledge of the evidence sworn to in this affidavit. Where such knowledge is based on information or belief, I have set out the source of such information or belief and believe it to be true.
2. The plaintiff Canadian Women's Sex-Based Rights ("**CAWSBAR**") was founded in 2019 as an unincorporated association of women who support sex-based rights. I was a founding member and a member of the steering committee.
3. In June of 2024 CAWSBAR was formally incorporated as a non-profit corporation. Attached as **Exhibit "A"** is a copy of CAWSBAR's Certificate of Incorporation. I am one of five listed directors of the corporation. I serve as the Chair of the Board of Directors and have done so since June of 2024.
4. In this affidavit I will outline my own lived experience in the criminal justice system, recount my own advocacy prior to co-founding CAWSBAR and detail CAWSBAR's

work with particular reference to its advocacy for incarcerated women. I will also address CAWSBAR's capacity to bring this claim and my knowledge of whether there is any other viable alternative method of proceeding.

My Lived Experience

5. In addition to my role as CAWSBAR's Chair of its Board of Directors, I have lived experience in the criminal justice system and with many of the issues raised in this action.
6. My involvement in the criminal justice system began in 2014 and ended following my release from custody from the Grand Valley Institution for Women ("GVI") in 2018. I was convicted of a number of criminal offences throughout that period, primarily related to the possession of illegal drugs and failing to comply with release documents and probation orders. Attached as **Exhibit "B"** is copy of my Criminal Record provided to me by the Royal Canadian Mounted Police.
7. As noted in my criminal record, I was convicted multiple times between 2014 and 2016. Each respective custodial sentence was less than two years meaning that I served my time in provincial correctional institutions. Following my final conviction in 2017, I received a sentence of 784 days and was therefore transferred to the GVI, which is a federally institution.
8. The driving force behind my involvement in the criminal justice system was my previous fentanyl addiction. I have not consumed fentanyl since the days following my final conviction in 2017. I have remained abstinent from all illegal drugs since that date.

9. I first became aware that male inmates were being transferred to women's correctional facilities in the year 2015 while incarcerated in a provincial jail. While being strip searched, a biological male inmate who identified as a woman was located in the cell next to the cell in which the search was being conducted. As the guards were moving the male inmate, he peeked into my cell to look at me naked. I was shocked and horrified that this was allowed to happen.
10. As mentioned above, my only incarceration in a federal facility (GVI) occurred in 2017-2018, which was around the time that Correctional Service Canada's ("CSC") policies began allowing for the transfer of pre-operative trans-identifying male inmates into female institutions. Prior to the passing of Bill C-16, very few trans-identifying male inmates were transferred to women's federal correctional facilities. Those who did were required to undergo surgery to remove their genitals prior to the transfer being authorized.
11. While I was incarcerated at GVI, I was aware of one trans-identifying male who was also serving time at that institution, namely [REDACTED] would frequently make derogatory comments toward me and other female inmates. I recall that he would frequently say, "I might be a woman from the waist down, but I'll always be a man from the waist up," and, "I'll always think like a man." I also became aware from other inmates that [REDACTED] had forced himself upon several female inmates and had been sent to segregation as a result. Again, I was shocked and horrified that trans-identified male inmates were able to serve their time in a women's prison.

12. This lived experience in the criminal justice system, and particularly my experience with trans-identified male inmates has motivated me to undertake the activism outlined below and informs, in part, CAWSBAR's focus on advocating for the sex-based rights of incarcerated women.

My Own Advocacy Prior to Founding CAWSBAR

13. Following my release from GVI in 2018, I began volunteer work with the Canadian Association of Elizabeth Fry Societies ("**CAEFS**"). I was motivated to do this volunteer work after CAEFS workers and volunteers supported me in my transition from GVI back into the community. They helped me integrate back into society. I really cared about the organization and believed that they did excellent work advocating for women in custody.
14. My volunteer work included speaking on panel discussions regarding strip searches. I spoke on three such panels. It also included relatively menial tasks such as assisting with bingo fund raisers and manually processing re-occurring credit card payments.
15. My opposition to the transfer of trans-identifying male inmates into female prisons frequently put me at odds with CAEFS staff, volunteers and leadership.
16. This tension ultimately came to a head at the CAEFS' 2019 annual general meeting held May 31 - June 2. At the meeting a formerly incarcerated woman spoke about her experience of being sexually harassed and victimized by a trans-identifying male inmate and CSC's dismissal of her complaints as "bigotry". Rather than being met with support by attendees, she was met with silence. After she left the room in tears the silence was broken by a buzz of comments from conference attendees:

“I'm sorry for what happened to her, but you don't need a vagina to be a woman,” and, “I am concerned about the transphobia in this room.” That day CAEFS adopted a blanket position of “inclusion” that, among other things, meant supporting the transfer of trans-identifying males into women's prisons. A letter documenting these events was eventually sent to the CAEFS Board of Directors on June 2, 2021, signed by 21 formerly incarcerated women including myself. A copy of that letter is attached as **Exhibit “C”**.

17. I ultimately resigned from my volunteer position at CAEFS in November of 2019, in large part due to my disagreement with its policy supporting the transfer of trans-identifying male inmates into women's prisons.

Overview of CAWSBAR's Mission and Activities

18. CAWSBAR was founded in December of 2019.
19. Since its founding CAWSBAR's mission has been to preserve the traditional sex-based rights and protections of women and girls across Canada. CAWSBAR advocates for women's sex-based rights and protections in the context of venues traditionally reserved for biological females including: homeless shelters and hostels; change rooms/locker rooms; washrooms; rape relief and domestic violence shelters; custodial institutions; sporting divisions; shared rooms in hospitals and university/college dorms; extracurricular groups (e.g. Girl Guides); academic scholarships and grants; positions on committees; conferences, seminars and retreats; lesbian resources and events; housing co-ops; music and art festivals; and university/college women's centres.

20. CAWSBAR's overall philosophy is summarized in a position statement available on its website: <https://www.cawsbar.ca/position-statement>. A copy of that position statement is attached as **Exhibit "D"**.
21. CAWSBAR has several thousand supporters across Canada drawn from diverse backgrounds. CAWSBAR actively engages with both its supports, and Canadians at large, as follows:
- a. CAWSBAR publishes a newsletter on its website which has 1158 subscribers.
 - b. Since 2024 CAWSBAR has held an annual conference which coincides with International Women's Day. These have been held in Toronto (2024) and Calgary (2025). The 2026 conference will be held in Montreal.
 - c. CAWSBAR has an active social media account on "X" [formerly known as twitter] which has 18,000 followers as of the date this affidavit is sworn. We frequently post updates about our activities and news we believe that our followers will be interested in. We hold weekly X "spaces" where members and guests discuss a range of issues relating to our mission.
 - d. CAWSBAR has an active social media account on Facebook with 2785 followers as of the date of swearing this affidavit. We frequently post updates about our activities and news we believe that our followers will be interested in.
 - e. In addition to myself, CAWSBAR has many spokeswomen who frequently appear on podcasts and in the media to discuss issues related to CAWSBAR's mandate and women's sex-based rights. The past and present spokeswomen are: [REDACTED]
- [REDACTED] The spokeswomen typically speak about issues

unique to their interests and background. For example, [REDACTED] is a competitive powerlifter who speaks about fairness in sports. [REDACTED] is a nurse facing disciplinary proceedings by her professional regulator for her public statements that there are only two genders. She regularly speaks on that issue. My own conduct as a spokeswoman is detailed further below.

22. CAWSBAR also has a network of approximately 200 women whom we term “associates”. They have been vetted by CAWSBAR. They provide conceptual input to the organization and receive insider information as to CAWSBAR’s activities and advocacy.
23. CAWSBAR is a signatory to the Women's Human Rights Campaign's Declaration on Women's Sex-Based Rights along with over 350 international women's organizations.
24. CAWSBAR has also participated in and supported a number of international actions which align with its mission. These include: “Save Women’s Sports” (Atlanta, 2022); “Let Women Speak” (Belfast and Dublin 2023); “Women’s Declaration International - USA, Gender Abolition Protest” (Philadelphia, 2023); No Self ID In Germany (German Embassy, Ottawa, 2024); Women’s Declaration International - USA, National Convention, (Indianapolis Indiana, September 2025). Participation means sending a representative or in some cases simply lending our name and logo to be used in promotional materials.

CAWSBAR’s Advocacy for Female Inmates

25. Since its founding in 2019 CAWSBAR has advocated for the sex-based rights of incarcerated female inmates.

26. We have held regular protests on this issue outside of prisons, courthouses, and parliament. Attached as **Exhibit “E”** is a chart summarizing the numerous protests that we have organized. Attached as **Exhibit “F”** is a picture of our protest outside of Correctional Service Canada's Central Ontario District Women's Supervision Unit in Toronto on October 29, 2025.
27. In addition to the protests, we organized a number of “banner drops” in 2023. The banner drops involve hanging a large banner along a highway overpass with messages like “no males in women’s jails.” We did this five times including in Toronto (2023); Ottawa (March, 2023); and Calgary (March, June and September, 2023). Attached as **Exhibit “G”** is a picture of our banner drop in Calgary in September 2023.
28. Since 2019 I have regularly appeared on podcasts and news programs on behalf of CAWSBAR to speak about the issue of trans-identified male inmates being transferred to women’s prisons and the resulting harms. Attached as **Exhibit “H”** is a chart summarizing these appearances particularizing the host, the video title, and the website URL where the video can be accessed.
29. Since 2019 I have also written regularly on behalf of CAWSBAR about the issue of trans-identified male inmates being transferred to women’s prisons and the resulting harms. Attached as **Exhibit “I”** is a chart summarizing my writings.
30. On June 22, 2021, I submitted a written brief to the Standing Committee on Public Safety and National Security of the House of Commons of Canada. Attached as **Exhibit “J”** is a copy of the submitted brief.

31. As a result of CAWSBAR's advocacy and my own lived experience, I am in regular contact with past and present female inmates. I receive an average of one call per week from female inmates who have concerns about the transfer of trans-identified male inmates into their institution. I speak with them about their concerns and possible remedies such as the grievance procedure.
32. In addition to speaking with inmates I have obtained documentary evidence including: documents in the possession of CSC and the Parole Board of Canada via access to information and privacy requests; and conducting a survey of incarcerated women about their interactions with trans-identified male inmates.

Capacity to Bring the Claim

33. CAWSBAR's advocacy and my own lived experience give CAWSBAR a unique set of resources, expertise and ability which will assist us in bringing this claim and seeing it through to completion.
34. I anticipate that we will be able to present to the Court a sufficiently concrete and well-developed factual setting. For example, I have given my legal counsel the contact information of the inmates that I have been in contact with. I understand that they have now taken dozens of statements from female inmates, many of which detail the harms which are alleged in this lawsuit.
35. While CAWSBAR collects donations in support of its work, we do not have the means to commence and maintain a claim of this nature on our own. Nor do I or any of our members have the legal training to argue a case like this in court ourselves. For this reason, I was glad to be put in touch with Charter Advocates

Canada (“CAC”), which has agreed to take CAWSBAR on as a client in this matter on a pro bono basis.

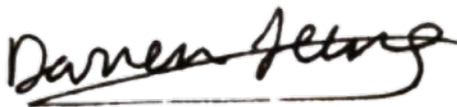
36. I have reviewed the Affidavit of Marty Moore submitted in support of CAWSBAR’s motion for public interest standing. I am satisfied that with the benefit of assistance and representation from my lawyers at CAC (i.e. Christopher Fleury, James Manson, Allison Pejovic and Darren Leung), CAWSBAR will be able to see this matter to resolution.

No Viable Alternative Method of Proceeding

37. Inmates being held in custody are subject to a number of policies and procedures which limit their ability to interact with other inmates and the outside world more generally. For example, one cannot simply pick up the phone and call an inmate incarcerated at GVI. One must first be put on a call list of approved numbers which involves speaking with a correctional officer at the institution. One must then wait to receive a call from the inmate at the institution. This procedure makes it practically impossible for an individual inmate to have the regular contact with incarcerated inmates from across Canada that I have had over the last 5 years.
38. While an inmate would be able to speak with other inmates within their own institution, they would not have access to inmates in other security classifications. For example, if an inmate was classified as medium security, they would not be able to speak with inmates in maximum security unless or until their security classification was changed.
39. For these reasons, it would be impossible for an incarcerated female inmate to marshal the necessary evidence to bring a lawsuit of this nature.

40. In addition, most of the female inmates that I have spoken with have expressed a fear of reprisal from the correctional institution if they were to speak out or even file an institutional grievance. They worry that they will be labelled as discriminatory or a “transphobe” and that speaking out about the issue of sex-based rights may impact their ability to obtain parole when the time comes.
41. While there are other non-profit organizations that have historically advocated on behalf of incarcerated women, these organizations do not take a sex-based rights approach and largely support the transfer of trans-identified male inmates into women’s prisons.
42. As a result of the above, I believe that CAWSBAR is the only viable plaintiff to bring this proceeding and pursue the issues raised in the statement of claim.
43. I am not aware of any other individuals or organizations who have or who are contemplating bringing a similar proceeding.

SWORN REMOTELY by videoconference by)
 Heather Mason at [REDACTED])
 [REDACTED],)
 before me at the City of Toronto,)
 in the Province of Ontario,)
 on the 5th day of December, 2025)
 in accordance with O. Reg 431/20.)



DARREN LEUNG
LSO #87938Q
Barrister & Solicitor



HEATHER MASON

This is Exhibit "A" referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A handwritten signature in black ink, appearing to read "Darren J. King". The signature is written in a cursive style with a horizontal line underneath it.

A Commissioner etc.



Certificate of Incorporation

Canada Not-for-profit Corporations Act

Certificat de constitution

*Loi canadienne sur les organisations à but non
lucratif*

Canadian Women's Sex-Based Rights

Corporate name / Dénomination de l'organisation

1612314-7

Corporation number / Numéro de
l'organisation

I HEREBY CERTIFY that the above-named corporation, the articles of incorporation of which are attached, is incorporated under the *Canada Not-for-profit Corporations Act*.

JE CERTIFIE que l'organisation susmentionnée, dont les statuts constitutifs sont joints, est constituée en vertu de la *Loi canadienne sur les organisations à but non lucratif*.

Hantz Prosper

Director / Directeur

2024-06-13

Date of Incorporation (YYYY-MM-DD)
Date de constitution (AAAA-MM-JJ)



Form 4001
Articles of Incorporation
Canada Not-for-profit Corporations
Act (NFP Act)

Formulaire 4001
Statuts constitutifs
Loi canadienne sur les
organisations à but non lucratif
(Loi BNL)

- 1 Corporate name
Dénomination de l'organisation
Canadian Women's Sex-Based Rights
- 2 The province or territory in Canada where the registered office is situated
La province ou le territoire au Canada où est maintenu le siège
ON
- 3 Minimum and maximum number of directors
Nombres minimal et maximal d'administrateurs
Min. 1 Max. 10
- 4 Statement of the purpose of the corporation
Déclaration d'intention de l'organisation
Our mission is to promote and protect Canadian women's sex-based rights.
- 5 Restrictions on the activities that the corporation may carry on, if any
Limites imposées aux activités de l'organisation, le cas échéant
None
- 6 The classes, or regional or other groups, of members that the corporation is authorized to establish
Les catégories, groupes régionaux ou autres groupes de membres que l'organisation est autorisée à établir
See attached schedule / Voir l'annexe ci-jointe
- 7 Statement regarding the distribution of property remaining on liquidation
Déclaration relative à la répartition du reliquat des biens lors de la liquidation
See attached schedule / Voir l'annexe ci-jointe
- 8 Additional provisions, if any
Dispositions supplémentaires, le cas échéant
None
- 9 **Declaration:** I hereby certify that I am an incorporator of the corporation.
Déclaration : J'atteste que je suis un fondateur de l'organisation.

Name(s) - Nom(s)

Original Signed by - Original signé par

Heather Mason

Heather Mason

Heather Mason

A person who makes, or assists in making, a false or misleading statement is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both (subsection 262(2) of the NFP Act).

La personne qui fait une déclaration fautive ou trompeuse, ou qui aide une personne à faire une telle déclaration, commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 \$ et un emprisonnement maximal de six mois ou l'une de ces peines (paragraphe 262(2) de la Loi BNL).

You are providing information required by the NFP Act. Note that both the NFP Act and the *Privacy Act* allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049.

Vous fournissez des renseignements exigés par la Loi BNL. Il est à noter que la Loi BNL et la *Loi sur les renseignements personnels* permettent que de tels renseignements soient divulgués au public. Ils seront stockés dans la banque de renseignements personnels numéro IC/PPU-049.

Schedule / Annexe
Classes of Members / Catégories de membres

The Corporation is authorized to establish one class of members. Each member shall be entitled to receive notice of, attend and vote at all meetings of the members of the Corporation.

Schedule / Annexe

Distribution of Property on Liquidation / Répartition du reliquat des biens lors de la liquidation

The Corporation will distribute all additional assets and property upon liquidation to another public benefit corporation with similar purposes to its own, or to a Canadian body corporate that is a registered charity under the Income Tax Act (Canada) with similar purposes to its own.

Schedule / Annexe

Directors of the corporation / Administrateurs de l'organisation

Heather Mason

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This is Exhibit “**B**” referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A Commissioner etc.

This is Exhibit "C" referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A Commissioner etc.

June 2, 2021

By Email

OPEN LETTER

TO: The Canadian Association of Elizabeth Fry Societies



Dear CAEFS Executive Director and Members of the Board of Directors,

In May 2019, your organization, the Canadian Association of Elizabeth Fry Societies (CAEFS), held its annual conference. Women with lived prison experience were invited to attend this conference, though the majority of attendees did not have histories of criminalization. At your Annual General Meeting of the board, one of our sisters, with the support of a select few members, decided to speak. Despite the risks of unearthing one of the worst parts of her incarceration, she told the story of her traumas and sexual harassment while in prison. She explained that a male incarcerated with her in the mental health wing, a male pedophile with hundreds of girl victims, began targeting and victimizing her, and she was particularly triggered due to her past traumas. She explained how the Correctional Service of Canada (CSC) had dismissed her complaints, threatened to isolate her, and labelled her calls for help as bigotry.

In a room of more than 60 women, our sister was met with total silence. Our sister was ushered from the room in tears. Once she was out of the room, the silence was broken by a buzz of comments: "I'm sorry for what happened to her, but you don't need a vagina to be a woman;" and "I am concerned about the transphobia in this room." Of course, transphobia is not a generalized "in the room" kind of airborne contagion, and we can only assume that she was referring to our sister as "the transphobia." The conversation reverted to all of the reasons that trans-women required the full support of the Elizabeth Fry Societies and CAEFS, as though our sister had not spoken at all. That day CAEFS adopted a blanket position of trans inclusion that, among other things, would come to mean supporting the transfer of any transgender identifying males from men's prisons to women's prisons.

"It's easy to pass policy that doesn't affect you."

~ Our sister

For a time after the 2019 CAEFS conference we hoped that CAEFS' lack of concern around transferring male-bodied individuals to women's prisons was due in part to a lack of information. We assumed that CAEFS might have dismissed our sister's story as bigotry because there was a lack of data around the transfers to women's prisons. Since that time, however, CAEFS and EFRY staff have repeatedly silenced criminalized women's reports, questions and input when they challenge CAEFS' transgender position – a position that was decided on by a large majority of women *without* experiences of criminalization.

"Nothing about us without us."

We, the criminalized women you purport to represent, are writing to you now to address how you have silenced us and ignored the urgent threats of violence to criminalized women and girls – threats which you have refused to acknowledge or address in favour of popular politics. Some of us have put questions and comments to you about these threats, only to have them instantly deleted from the chat sections of your webinars. Some of us have reached out in letters to inform you about sexual assault in the prisons and have received no response. Some of us have been dismissed by you as "TERFs." Some of us have entrusted you with our traumas, traumas which you have ignored, denied, or dismissed. We write to you now collectively as a group of women each with lived prison experience, and each with concerns about this situation and reports about how CAEFS has been neglecting us and our sisters inside.

Each one of us who writes to you now has witnessed severe and harmful issues with the numerous and increasing male transfers to the women's prisons. We know there are many more of us still who are too afraid to speak up. Every one of us knows a woman who has either been harassed, sexually harassed, assaulted, or sexually assaulted by a male transfer to a women's prison. For some of us, that woman *is* us.

We have friends, our sisters inside, who are currently struggling with harassment from male transfers. We have friends, other sisters inside who have been sexually assaulted by male transfers, some over extended periods of time. And we have friends, our sisters on release, who are currently struggling with harassment and assaults in halfway houses. We think back to the situation for women in the 1930s when a tunnel was built between P4W and Kingston Penitentiary so that women could be carried underground, to be sexually abused by male prisoners. What has changed? The tunnel is now ideological, and all it takes is a transfer.

Each one of us supports the rights of transgender people to live free from violence. A life free from violence is the fight we continue to wage for ourselves and for our sisters inside. We understand it all too well. We know that today's issues around male transfers did not exist in the same way before men began exploiting the self-identification policy. And while we cannot support the placement of any male people in women's prisons (including guards), we feel that trans-women should have their own, separate accommodation, outside of any women's prison, and one that is uniquely equipped to meet their needs – needs which are different from our own.

Some of us, and many of our sisters with lived experience, have been silenced, not only by male abusers but then again by CSC and by your organization. We know women inside and others who are out, who have been told both by CSC and by CAEFS that *any* complaint against a transgender person is transphobia. Knowing your position, many of our sisters inside are silent about ongoing abuses for fear that EFRYs and CAEFS will withdraw the only halfway house support available to them; contracts without which they cannot be granted parole. It is clear that you do not believe us and that you do not believe women.

CAEFS has repeatedly denied any knowledge of the violence against us. You deny being aware of the upcoming criminal trial against one transgender identifying male who committed multiple sexual assaults while in a women's prison. We have heard these reports, and so many others. If *you* have *not*, then you have not been listening to our sisters inside.

While you have been hosting conferences to teach your staff and others to complete, support and *ensure* transfer requests from the men's prisons, our sisters inside are being sexually assaulted by the male transfers aided by your efforts. Transgender self-identification is automatically believed without question while you continue to deny the violence against women that is taking place. The damage done by neglecting, dismissing, and negating women's accounts of violence, especially sexual violence, cannot be understated – we should never be made to suffer in silence and shame on top of the violence we have already endured.

At CAEFS, again and again, you talk of all of the vulnerabilities of criminalized women and girls. You say you are feminist and cite statistics easily because these statistics are not about you – they are about us. You list the ways we have histories of victimization and abandonment, but you do not listen to us, to the aftermath of our traumas. The aftermath is messy. It is uncomfortable. It isn't politically convenient. When you don't listen to us, you can't meaningfully connect the dots from our histories to our present. And you can't represent us or our interests.

We are here to tell you now - every one of us, and so many of our sisters inside, inherently understands that the presence of males in a prison that is already damaging and oppressive is triggering for us. We *are* the women with severe histories of trauma, most often at the hands of men. Some of us and our sisters inside were and have been unable to complete programming for fear of being triggered by the presence of males. We understand how these males will take advantage of the system to hold power over us. We know these men too well already.

For 25 years, CAEFS was under the leadership of [REDACTED] who visited with us and our sisters. She sat with us, listened to us, and hugged us. She meaningfully connected the dots, and in return we entrusted her with our histories – histories which we knew she would bring with her to every fight against our oppressors.

Today that trust is gone. When we and our sisters have tried to entrust you with our histories and our experiences you have silenced us, covering up our accounts with your own narrative of trans-inclusion. For decades CSC, too, has tossed women into systems made for men. In this 'new' fight for inclusion, we have once again been excluded.

The issues that are happening to imprisoned and criminalized women are personal to us and personal to our sisters. We understand that a number of CAEFS staff have family members who are transgender and that their personal sentiments around this issue may be informing CAEFS' denial of the violence happening to women inside. As CAEFS members, if you cannot value the experiences and the voices of the women you say you represent, opting instead to prioritize

your own personal issues, then you are in no position to be leaders. You are not in any position to represent criminalized women and girls.

At this point, the rift between CAEFS and criminalized women is vast. We urge you to take urgent action to listen and learn from the women you presume to “co-conspir[e]” with. We urge you to do what is necessary to reach out to women inside who are now largely without feminist supports because your positions and your politics have taken sides against them, blanket denying their accounts of violence and labelling them transphobic. We urge you to join the urgent push for an investigation into the issue of male-bodied transfers to women's prisons and to ban all male-bodied individuals from women's prisons. Lastly, if you cannot adequately represent us, then we urge you to recognize your privilege, your lack of expertise and step down from the positions you hold over us.

Sincerely,

Heather Mason

[Redacted]

[Redacted]

*Anonymous

*Anonymous

[Redacted signature block]

cc: [Redacted] *Chair, The Standing Senate Committee on Human Rights*

[Redacted]

[Redacted] *Correctional Investigator of Canada, Office of the Correctional Investigator*

[Redacted]

[Redacted] *Chief Commissioner, Canadian Human Rights Commission*

[Redacted]

[Redacted] *Deputy Commissioner for Women, Correctional Service Canada*

[Redacted]

[Redacted] *Minister of Public Safety and Emergency Preparedness,*

[Redacted]

[Redacted] *Shadow Minister for Public Safety and Emergency Preparedness,*

[Redacted]

**Some women have participated anonymously for fear of repercussions.*

This is Exhibit “D” referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A Commissioner etc.

Position Statement

caWsbar asserts that:

1. Sex -- as distinct from gender -- is a material, biological reality;
2. There are **only** two sexes – female and male;
3. Disorders of Sex Development (DSD, sometimes referred to as intersex) exist, but people with DSD are either **female** or **male**;
4. Humans cannot change their sex; scientific evidence demonstrates that the sex chromosomes within our DNA are present in every one of our cells and are immutable;
5. Gender identity and expression, which have yet to be defined in Canadian law, are culturally-based, stereotypical degrees of "masculinity" and "femininity" (e.g., men like hockey, women like fashion);
6. All Canadians are free to express and present themselves as they wish; however, the concept of "gender identity and expression" does not negate the material, biological reality of women and girls;
7. Women's and girls' sex-based rights to bodily privacy, dignity, fairness and security are enshrined in the Canadian Charter of Rights and Freedoms, in which sex is a protected characteristic;
8. Canadian women's sex-based Charter protections are based upon the fact that females have historically been -- and still are -- disadvantaged and vulnerable due to their distinct biological reality;
9. Therefore, women's and girls' sex-based Charter rights must be **strongly** asserted and preserved in public policy, and must take precedence over any concept of gender;
10. The inclusion of **males** in the definition of "woman" under federal and provincial Human Rights legislation (i.e., gender self-identification) is regressive, unfair and perilous for Canadian women and girls.

We will no longer stand by and watch the hard-won rights and protections of Canadian women and girls be eroded through a confusion of sex with "gender identity or expression."

Moving forward, we demand that spaces and resources previously used only by women and girls continue to be sex-segregated.

Such spaces and resources include (but are not limited to):

- homeless shelters and hostels
- change rooms/locker rooms

- washrooms
- rape relief and domestic violence shelters
- prisons
- sporting divisions
- shared rooms in hospitals and university/college dorms
- extracurricular groups (e.g., Girl Guides)
- academic scholarships and grants
- positions on committees
- conferences, seminars and retreats
- lesbian resources and events
- housing co-ops
- music and art festivals
- university/college women's centres

In order to meet our vision, caWsbar intends to take action in ways that protect such sex-based spaces, using our collective voices to demand that women's and girls' Charter rights be both recognized and defended.

Through non-violent resistance, caWsbar will utilize various means to achieve our goals, including increasing public awareness and education through press releases and public talks, increasing political pressure through letter writing and organized protests, as well as legal challenges.

Changing the definition of sex to a statement of self-declaration makes the word a subjective opinion, rather than a simple, verifiable fact.

Jo Bartosch

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- What You Can Do
- Glossary
- Media
- Contact us



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This is Exhibit “E” referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A Commissioner etc.

Summary of CAWSBAR Protests

No.	Date	Location	Address	City/Province
1	2021-03-06	Grand Valley Institute for Women	1575 Homer Watson Blvd	Kitchener, ON
2	2021-03-20	Grand Valley Institute for Women	1575 Homer Watson Blvd	Kitchener, ON
3	2021-06-26	Grand Valley Institute for Women	1575 Homer Watson Blvd	Kitchener, ON
4	2021-08-22	Fraser Valley Institute for Women	33344 King Road	Abbotsford, BC
5	2021-09-18	Fraser Valley Institute for Women	33344 King Road	Abbotsford, BC
6	2021-09-18	Edmonton Institute for Women	11151 178 Street NW	Edmonton, AB
7	2021-09-18	Grand Valley Institute for Women	1575 Homer Watson Blvd	Kitchener, ON
8	2021-09-18	Joliette Institute for Women	400 Rue Marsolais	Joilette, QB
9	2021-09-18	Nova Institution for Women	180 James Street	Truro, NS
10	2021-09-18	Ottawa Courthouse	161 Elgin Street	Ottawa, ON
11	2021-10-30	Parliament Hill	Wellington Street	Ottawa, ON
12	2022-03-06	Olympic Plaza	228 8 Ave SE	Calgary, AB
13	2022-03-06	Edmonton Institute for Women	11151 178 Street NW	Edmonton, AB
14	2022-03-06	Fraser Valley Institute for Women	33344 King Road	Abbotsford, BC
15	2022-03-06	Grand Valley Institute for Women	1575 Homer Watson Blvd	Kitchener, ON
16	2022-03-06	Ottawa Courthouse	161 Elgin Street	Ottawa, ON
17	2022-03-06	Quinte Consolidated Courthouse	15 Bridge Street West	Belleville, ON
18	2022-06-12	Ottawa Courthouse	161 Elgin Street	Ottawa, ON
19	2022-10-29	Correctional Service Canada's Central Ontario District Women's Supervision Unit	415 Yonge Street	Toronto, ON
20	2023-06-10	Correctional Service Canada's Central Ontario District Women's Supervision Unit	415 Yonge Street	Toronto, ON

21	2023-09-23	Fraser Valley Institute for Women	33344 King Road	Abbotsford, BC
22	2023-09-23	Fred Thomas Park	400 Wyandotte Street	Windsor, ON
23	2024-03-09	Correctional Service Canada's Central Ontario District Women's Supervision Unit	415 Yonge Street	Toronto, ON
24	2024-09-21	Correctional Service Canada's Central Ontario District Women's Supervision Unit	415 Yonge Street	Toronto, ON
25	2025-03-09	Max Bell Theatre	220 9 Ave SE	Calgary, AB

This is Exhibit "F" referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A Commissioner etc.

AILS ON

415



SINGLE SEX PRISONS

TRUDEAU ERASED WOMEN

GOVERNMENT SCANDAL, MEDIA COVER-UP

WOMAN IS NOT A COSTUME

SINGLE SEX PRISONS

WOMAN FACT, NOT FANTASY

SINGLE SEX PRISONS

SAME SHIT DIFFERENT CENTURY

SINGLE SEX PRISONS

WHY ARE MEN IN WOMEN'S PRISONS?

BILL C-16 PUT MALE FENDERS IN WOMEN'S PRISONS

GENDER SELF-ID HARMS WOMEN

NO MEN IN WOMEN'S PRISONS

WOMEN CAGED WITH VIOLENT MEN

WOMEN CAGED WITH RAPISTS

TRUDEAU PUT RAPISTS IN WOMEN'S PRISONS SHIELDS

WHY ARE MALES IN WOMEN'S JAILS? #RepealB1C16

SEX NOT GENDER

CRUEL AND UNUSUAL PUNISHMENT

DO NOT BELONG HERE

This is Exhibit "G" referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A Commissioner etc.



CRUEL AND
UNUSUAL
PUNISHMENT

PENAL
NOT
PENITENTIARY
INSTITUTION

NO MALES
IN
WOMEN'S
JAILS

This is Exhibit “H” referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A Commissioner etc.

Summary of Heather Mason's Publications

No.	Date	Document	Publisher/Platform	Title	Online URL
1	2019-12-05	Article	Women are Human	<i>The alarm has been sounded, who's going to respond?</i>	https://www.womenarehuman.com/the-alarm-has-been-sounded-whos-going-to-respond/
2	2021-05-24	Letter	Maine State Legislature	<i>Untitled</i>	https://legislature.maine.gov/testimony/resources/CJPS20210518Mason132664243382187374.pdf
3	2021-06-22	Brief	The Standing Committee on Public Safety and National Security, House of Commons	<i>Brief submitted by Heather Mason on the Current situation in federal prisons in relation to reports of sexual coercion and violence in federal prisons</i>	https://www.ourcommons.ca/Content/Committee/432/SECU/Brief/BR11468302/br-external/MasonHeather-e.pdf
4	2022-04-21	Article based on Interview	Fresh Magazine	<i>Pursuit 365 Day 111: Heather Mason</i>	https://freshmag.ca/pursuit-365-day-111-heather-mason/
5	2023-10-10	Chapter in Book	Women's Declaration International	<i>Women's Rights, Gender Wrongs: the global impact of gender-identity ideology</i>	Not available online
6	2024-06-22	Submission to the Federal Government	CAWSBAR	<i>Submission to the Employment Equity Act Review Task Force: The Importance of Clearly Defining Women Within The Employment Equity Act</i>	https://www.cawsbar.ca/post/submission-to-the-employment-equity-act-review-task-force-the-importance-of-clearly-defining-women

7	2023-02	Forward in Publication	Macdonald Laurier Institute/ Jo Phoenix	<i>Rights and Wrongs</i>	https://macdonaldlaurier.ca/wp-content/uploads/2023/02/20230117_Rights_and_wrongs_Phoenix_PAPER_FWeb.pdf
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This is Exhibit "I" referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A Commissioner etc.

Summary of Heather Mason's Media Appearances

No.	Date	Host	Video Title	Online URL
1	2019-12-09	Megan Murphy	Heather Mason on the transferring of males into women's prisons in Canada	https://www.youtube.com/watch?v=GrxdLN8-gs
2	2020-02-11	The Progressive Radio Network	The Infectious Myth - Gender Self-ID and Prisons with Heather Mason	https://www.youtube.com/watch?v=6tQizt9kNeE
3	2020-02-15	Women's Liberation Radio News	Women's Prisons: What are they *really* like WLRN Video	https://www.youtube.com/watch?v=sxGqpn2Is4o
4	2020-05-27	Megan Murphy	Women's Spaces and Places - Sports, Prisons, and Shelters	https://www.youtube.com/watch?v=oY3PE6gxmCk
5	2020-08-28	Jennifer Chavez, Women's Liberation Front	Women Speak! Should Men be Allowed in Women's Prisons?	https://www.youtube.com/watch?v=pl9wbaCJXKE
6	2021-03-20	Gender Critical Story Hour with Amy & Esme	Ep. 6 - Prison Protest with Heather Mason and Madeline Riversong	https://www.podbean.com/media/share/dir-wmytc-d7ef2df
7	2021-04-03	Women's Declaration International (WDI)	Women in Prison: Heather Mason founding member of CaWsbar Canada FQT 03 April 2021	https://www.youtube.com/watch?v=SyN47rJeL5w
8	2021-04-03	Women's Declaration International (WDI)	Feminist Question Time - 3 April 2021: Women in Prison Canada, Australia & UK + a report from France	https://www.youtube.com/watch?v=ABJWfTI3pJQ
9	2021-04-13	Laoise Ui Aodha de Brun, The Countess Conversations	Mixed Sex Prisons #1 - Rhona Hotchkiss, Gearoid O Loinsigh and Heather Mason	https://www.youtube.com/watch?v=PFxrojXJol4
10	2021-06-29	Women's Liberation Radio News	Protest at Grand Valley Institution for Women	https://www.youtube.com/watch?v=xGrUeJAYRqE&t=383s
12	2022-01-11	Tweetstreet Occupied Scotland	TS47 Heather Mason Keep Prisons Single Sex	https://www.youtube.com/watch?v=JGXemY23mco

13	2022-01-23	Stuart Parker Dot CA	Cocktail Hour with Stuart Parker S02E02 Heather Mason/Dry	https://creators.spotify.com/pod/profile/stuart-parker6/episodes/Cocktail-Hour-with-Stuart-Parker---S02E01-Heather-MasonDry-e1dbhj0
14	2022-01-25	Benjamin A Boyce	Pandemic Impacts: Canadian Prisons with Heather Mason	https://www.youtube.com/watch?v=pPnpLULKk6o
15	2022-01-28	Lindsay Platoshyn, Distorted Linds	Gender Ideology Destroying Women's Prisons with Heather Mason - Life Through a Distorted Linds	https://www.youtube.com/watch?v=2xhZm9f8t4
16	2022-03-06	WDI Quebec	Entretien avec Heather Mason	https://www.youtube.com/watch?v=QEGPEjZ2-kQ
17	2022-04-07	Gender Critical Story Hour with Amy & Esme	Ep. 10 - Heather Mason and Linda Blade	https://www.podbean.com/media/share/dir-72cqa-1382bfe6
18	2022-05-04	The Giggle Podcast	The Giggle Podcast - Episode 6 - Heather Mason	https://www.youtube.com/watch?v=ACzpezMEFw
19	2022-08-30	The Marc Patrone Show	Fake Polls Smearing Convoy, Trans Violence in Women's Prisons, & Trudeau Govt Energy Fail	https://music.amazon.com/podcasts/252a55e3-5686-41cc-aae2-a0eec334800d/episodes/f5478f24-cce4-4530-98f9-f99e6e54b293/the-marc-patrone-show-the-marc-patrone-show---august-30-2022---fake-polls-smearing-convoy-trans-violence-in-women's-prisons-trudeau-government-energy-fail
20	2022-11-11	Make More Noise	Wombs with a View - Prison Special	https://www.youtube.com/watch?v=qXDm0_om0jg
21	2023-03-02	The Democracy Fund	Protecting Women's Spaces In the Age of Transgenderism	https://www.thedemocracyfund.ca/protecting-women-spaces-in-the-age-of-transgenderism

22	2023-06-13	David Menzies, Rebel News	Protests erupt against policy allowing violent biological male sex offenders in women's shelters	https://www.youtube.com/watch?v=Vr3lKIPLw2U
23	2023-09-11	Allie Beth Stuckey	Former Prisoner on the Dangers of Men in Women's Prisons Guest Heather Mason Ep 870	https://www.youtube.com/watch?v=CbKnqW7bJjY
24	2023-11-23	Harrison Faulknee, Juno News	SCANDAL: Violent men wreaking havoc inside women's prisons	https://www.youtube.com/watch?v=4LiU_D1Dz2w
25	2023-11-23	Rebel News	Rebel News LIVE! Calgary 2023: Heather Mason	https://www.youtube.com/watch?v=5uN0o5piFps
26	2023-11-27	Tanya Granic Allen (Counterpoint)	Disturbing Stories Coming out of Women's Prisons Since Biological Men Started Transferring	https://www.youtube.com/watch?v=po3mCC8bsFU
27	2024-02-16	Gillian Robinson, Off the Rails	Heather Mason on men in Women's Prisons	https://www.youtube.com/watch?v=XtQZga2x-o0
28	2024-03-17	CAWSBAR	Reality Based Women Unite! 2024 Real talk on International Women's Day organized by CaWsbar	https://www.youtube.com/watch?v=VYLTR2NvDCc&t=4479s
29	2024-03-20	Rebel News	It is dangerous': Activist addresses concerns about allowing males in female prisons	https://www.rebelnews.com/_it_is_dangerous_activist_addresses_concerns_on_allowing_male_inmates_in_female_prisons
30	2024-03-23	North American Angst	Untitled	https://x.com/i/spaces/1eaKbgRaLVnGX/peek
31	2024-09-15	Ash, The Broadcast	Do Men Belong in Women's Prisons?	https://www.youtube.com/watch?v=AqMDZnZjbrY
32	2025-03-23	CAWSBAR	Reality Based Women Unite 2025 exclusive replay for attendees	https://www.youtube.com/watch?v=FTFpQfXC-mY
33	2025-04-15	Tanya Granic Allen (Counterpoint)	Is there a safe space to wrestle with women's rights and transgender rights?	https://www.youtube.com/watch?v=j4pD7YJg8Lo
34	2025-05-09	Reduxx	Untitled	https://x.com/ReduxxMag/status/1920976750315552976

35	2025-09-21	Jeremy Borg, Western Standard	Advocacy group says "trans woman" in women's prison is endangering female inmates	https://www.youtube.com/watch?v=Ym7aK20mR-I
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This is Exhibit "J" referred to in the Affidavit
of HEATHER MASON Sworn/Affirmed before me at

[REDACTED]

[REDACTED] this 5th day of December, 2025.

A Commissioner etc.

June 22, 2021

To The Standing Committee on Public Safety and National Security

Re: Brief submitted by Heather Mason on the Current situation in federal prisons in relation to reports of sexual coercion and violence in federal prisons

Dear Parliamentarians,

I, Heather Mason, have prepared the following briefing document to be submitted to the Standing Committee on Public Safety and National Security as you investigate matters relating to the federal incarceration of women. What follows is an overview of the fallout of the Bill C-16 gender identity legislation and the standard of self-identification in the context of women's prisons. I have included examples of specific incidents. My brief pertains to the grave and harmful violence and ongoing threats of violence currently taking place in the federal prisons for women. I submit this brief as an individual and ask that you consider the information contained herewith fully and independent of any politically motivated assumptions that would dismiss these reports without review, debate or scrutiny.

My Vested Interest & Expertise

In 2019 a formerly federally imprisoned woman spoke at an annual meeting of a national prison advocacy organization. This woman spoke about repeated sexual harassment by a transgender individual, ██████████,¹ who had been transferred to a women's prison. She explained that the harassment took place while she was being monitored for severe mental health concerns. She explained that it deeply aggravated her condition, that she was triggered with Post Traumatic Stress Disorder symptoms arising from her childhood trauma and that she became suicidal. Her disclosure of sexual harassment was urgently met with accusations of transphobia, and just as disclosures of violence against women are often met with disbelief, her experience was dismissed.

As a formerly federally imprisoned woman, I witnessed how my sister was silenced. Having struggled with addiction driven by abusive childhood experiences myself, I both understood the ways that my sister was triggered by her experience and knew of other similar stories of sexual harassment in prison, including my own. For two years, I have been dedicated to reaching out to criminalized women in order to discover if these incidences were happening in isolation or if other women were suffering alone. Since that time, I have also been assisting criminalized women as a feminist advocate with the organization Strength In SISTERhood (SIS). Through SIS, I have worked on a variety of other systemic issues affecting women in prison, including segregation, strip-searching and conditions of confinement during the pandemic. As a formerly imprisoned woman, I have a sincere vested interest in the policy frameworks and systems that affected me and now affect my sisters inside.

¹ Formerly ██████████ convicted of the child sexual abuse of at least 60 children, listed at page 11, Schedule A,

Throughout the last two years, I have spoken to a number of women who have reported to me the experiences they had in prison or the events they witnessed. Below I have included some of these accounts. As an individual, I do not have established or free access to the women in prison² and have reached out to women through my personal circle, through friends, or otherwise. The majority of the reports I have described below are local. These accounts are by no means comprehensive as I am only one woman. In addition, there is a lack of data and a lack of disclosure by the Correctional Service of Canada from which a more adequate investigation could take place. In this way, the reports below should not be weighted according to their frequency but should be taken as indicators that these events are happening to women inside.

Distinguishing Between Transgenderism and Exploitation

The issue of transgender transfers from male prisons to women's prisons became particularly significant and severe in recent years, with CSC's approval of transfer requests absent any evaluation standard. Women have reported to me that since the implementation of Bill C-16 and the broad standard of self-identification, issues of assault and harassment³ that previously existed with some transgender individuals became notably more severe and more frequent. In addition, women have reported to me that since the higher frequency of transfers (both pre-and post-operative individuals), women have experienced frequent issues of sexual assault, sexual harassment, stalking, sexually transmitted diseases, negative impacts to programming, negative emotional impacts, increased issues with drugs, and increased issues of fear of retaliation.

That women have reported such an extreme increase in the abuses they have suffered by transferred transgender individuals suggests that the issue of transfers to women's prisons is not an issue of transgender rights and is instead an issue around the entitlement criteria for transgender transfer to women's prisons.

An entitlement standard of self-identification removes any scrutiny from the transfer process. Without any scrutiny, verification, question or safeguards, this policy operates as an honour system and blindly accepts that any transgender entitlement claim by a male prisoner must be a truthful one. A transfer request in the context of self-identification by male prisoners then accepts the following as truth in all cases:

1. The individual is transgender until a time when the individual states that the individual is not;
2. As a transgender individual, the individual definitively faces a situation of discrimination and/or harm; and
3. Approval of a transfer request to a women's prison will provide adequate protection from the (assumed) situation of discrimination or harm (entitlement).
4. No alternative motive exists around the individual's self-identification and transfer request.

² The Canadian Association of Elizabeth Fry Societies (CAEFS) has unique access to the women's prisons. They are the only organization with this access.

³ Specific incidences are reported below at pages 3-5, paragraphs I-XII.

In fact, a male prisoner exploiting this policy would be at no cost for declaring transgenderism, would undergo no credibility assessment for the truth of his declaration or the extent of the discrimination he faces, and would automatically stand to gain access to the entitlements.

The issue then is not that transgender identifying individuals should or should not be entitled to transfer. The issue is the potential for this policy to be easily exploited by dishonesty which goes unchecked indefinitely. As I will demonstrate in the subsequent sections, it has been the case that even when males have committed grievous violent and sexually violent harms to women and girls, they have been granted transfers to women's prisons and halfway houses.

In addition, there are no mechanisms to prevent ongoing harm against the women imprisoned with the transferred transgender individuals. For incarcerated transgender individuals who have gone on to commit deplorable abuses against women inside, no formal reprimand exists to remove them from their victim pool. The reprimand *is* incarceration with their victim pool. Their self-identified transgender status will ensure their entitlement to placement in a women's prison regardless of their charges or convictions and without any mechanisms to challenge their self-identification. For example, one woman's abuser, a transgender individual (formerly ██████████ ██████████) ⁴ imprisoned with her throughout 2019, will be tried for rape in the fall of 2021. Even if he is convicted, there is no way to both isolate this individual from his victim pool and honour his transgender entitlement to placement in the women's prison. ⁵

Immediate Threats to Women In Prison

Since approximately 2019, women in and from the federal prisons have, either directly to me or publicly, reported the following incidences pertaining to transgender individuals ⁶ who have been transferred from a men's prison to a women's prison:

- I. **Rape:** At least three women have reported that while imprisoned in a women's prison or in a halfway house, they were raped by a transgender individual.
 - a. One of these women has reported that she was raped on a regular basis for an extended period of time. A criminal proceeding against the accused, ██████████ (formerly ██████████) will commence in the fall of 2021. In addition, this woman has reported that she has faced significant pressure to recant so that the charges may be withdrawn. One of the people applying this pressure has been a lawyer from the Public Prosecution Service of Canada.
- II. **Sexual assault other than rape:** At least three women have reported that they experienced unwanted sexual touching by a transgender individual while imprisoned.

⁴ The specific incident is reported below at page 3, paragraphs I & Ia).

⁵ It should be noted that prior to self-identifying as transgender, ██████████ convictions did not include abuses against women or girls.

⁶ All references to "transgender individuals" that follow in this section are references to transgender individuals transferred from a men's prison to a women's prison or women's halfway house with the exception of 1 transgender man referenced on page 5.

- III. **Sexual harassment:** Several women have reported that while imprisoned, they were the subject of sexual harassment by a transgender individual. These reports described any one or multiple of the following behaviours, occurring repeatedly over time:
- stalking, including following women to the bathroom and showers.
 - stalking, including following women to the bathroom and showers, remaining directly outside of private stalls and making inappropriate or aggressive sexually suggestive comments.
 - grooming behaviours and/or sexist or sexual comments about women's physical appearance or behaviours.
 - a. One of these women reported that while in the mother-child program, two transgender individuals with convictions for pedophilia, ██████████ and ██████████ would loiter near her and her child, making sexist and inappropriate antagonizing comments.
- IV. **Harassment:** Several women have reported that while imprisoned, they were the subject of harassment by a transgender individual. These reports described any one or multiple of the following behaviours, repeatedly occurring over time: verbal threats, yelling, ridicule, name-calling, and defamation.
- V. **Assault:** Several women have reported that while imprisoned, they were the subject of one or multiple physical assaults by a transgender individual.
- a. One of these women reported that the force with which the transgender individual hit her overpowered her far beyond what women are typically capable of. This woman additionally reported that she could not report the assault for fear of reprisal as well as for fear of receiving an institutional charge and being reprimanded for actions that were not her own.
- VI. **Drugs:** Several women have reported that while imprisoned, they witnessed issues around transgender individuals bringing drugs into the institution, gaining access to drugs within the institution, and distributing drugs to multiple vulnerable women. Each of these accounts noted that these issues around the supply, access and distribution of drugs happened to much greater extents than is normal or may happen in the women's prisons. Each of these accounts noted that transgender individuals were seldom caught or reprimanded for these issues.
- a. One of these women witnessed a transgender individual supply a very young woman with fentanyl. Although this woman had no previous history of hard drug use, the transgender individual assisted her in taking fentanyl with a syringe for the first time.
- VII. **Reneging on former declarations of transgenderism:** Several women have reported that, while imprisoned, they witnessed a transgender individual declare to one or multiple others that he was, in fact, a man, and he was not transgender.
- VIII. **Exhibitionism:** Several women have reported that while imprisoned, transgender individuals exposed their genitalia to them, and in many instances, to other women around them as well.

- IX. **Impunity:** Several women have reported that, while imprisoned, they witnessed transgender individuals break the rules without any response or reprimand from correctional staff, including the known distributing of drugs, the known ingestion of drugs, the known threatening of women with assault or murder, and failing to stand for count among other things.
- a. One of these women recounted witnessing a transgender individual publicly having heterosexual sex with a woman in the gym, a common area, without interference from staff.
 - b. Two of these women expressed that because these transgender individuals received these "benefits" and were (perceived to be) untouchable by correctional staff, women perceived them to hold even more power over them and were additionally afraid of reporting abuses or grieving to correctional staff for fear of being dismissed and for fear of retaliation.
- X. **Sexually transmitted diseases:** Several women expressed that while imprisoned, the prison began newly providing the morning-after pill and treatments for sexually transmitted diseases, including HIV.
- XI. **Impacts to programming:** At least one woman reported that while imprisoned, she either had difficulty with or discontinued programming due to the triggering impacts of participating in group programs aimed at the healing of childhood sexual trauma while a transgender pedophile was also participating.
- XII. **Negative emotional impacts:** Several women have reported that while imprisoned, they suffered negative emotional impacts related to being imprisoned with transgender individuals, particularly those with violent and sexual crimes against women and children. Negative impacts included chronic and acute incitement of symptoms of Post-Traumatic Stress Disorder, flashbacks, anxiety, anger, depression, hopelessness, and suicidality, among others. For some of these women, these impacts have been ongoing.

In addition, in 2020, a federally incarcerated man reported to me that, prior to 2019, he witnessed another man incarcerated with him, (then) ██████████ (now ██████████⁷), assemble a group of men in order to "teach" them how to self-identify as female, utilize the correctional grievance system to obtain transgender rights entitlements, and request and successfully obtain a transfer to a women's prison. It was reported to me that these "lessons" took place just prior to ██████████ own transfer to a woman's prison. It is also worth noting that after being transferred to maximum security in the women's prison, this individual elected to transfer back to the men's prison despite former claims of violence there.

In addition, in approximately 2020, a formerly incarcerated woman who was then working with criminalized women and girls reported receiving a verbal rape threat while assisting a criminalized transgender male. Although she reported the threat to her organization's management personnel, she was discredited, received a great deal of scrutiny and shaming comments alleging that she was transphobic, and could not remain at her employment due to the

⁷ Formerly ██████████ convicted of child rape and murder, listed at page 11, Schedule A, 10).

harassment she faced from colleagues and her employer. She reported feeling ostracized and harassed by members of the organization.

In addition, in or around 2018, one transgender man in a women's prison had repeatedly requested to be transferred to a men's prison. CSC denied these requests due to the inevitable safety concerns of placing a biological female in a men's prison. The acknowledgement that a biologically female individual would be at severe and certain risk of harm (very likely rape and sexual violence) in a men's prison is inherently at odds with the placement of men, many with proven histories of violence against women and girls, in women's prisons.

In addition, in or around 2017, it was reported to the Deputy Commissioner for Women that many of the transgender individuals interviewed in men's prisons had **no** desire to transfer to women's prisons as they did not have significant concerns for their safety or equal treatment. Gay men, however, have long been the targets of harassment, ridicule and violence in prison, and CSC has failed to provide them with a transfer policy or alternative accommodations, nor have they addressed the issues of violence in the men's prisons. The exploitability of the standard of self-identification does a disservice to genuine transgender women in men's prisons who should have their unique needs, needs that are different from women's needs, met by CSC in a responsive way.

Males with Misogynistic Violence Incarcerated in Women's Prisons

A number of women have reported to me that there have been issues with transgender individuals who do not have convictions for violence or sexual violence against women and children.⁸ What is even more shocking is the high frequency of approved transfers from transgender individuals *with* convictions against women and children since the implementation of the transgender self-identification standard. Women have reported repeated abuses from transgender individuals with convictions for femicide, sexual assault, pedophilia and severe assaults that targeted women or children. In many cases, a transferred transgender individual has had convictions related to more than 1 murder or sexual assault of a woman or child in a way that reveals a pattern of targeted abuse against these groups.

In some cases, a transgender individual was known to have had between 2 and 10 or hundreds of victims from these groups. For example, ██████████ (formerly ██████████ a convicted pedophile, was known to have had at least 60 child victims⁹. One woman reported to me that he sexually harassed her while she was imprisoned with him in the Structured Intervention Unit meant to address her acute mental health needs.¹⁰ She reported that this severely aggravated her mental health deterioration, and she continues to endure detrimentally negative impacts today. Another woman reported to me that this same individual sexually assaulted her while she was imprisoned with him.¹¹

⁸ In this case I am specifically referencing men with convictions against any children and not only female children as many women have reported negative emotional impacts from having been imprisoned with pedophiles. Women report being triggered by pedophiles regardless of their specific victim pools.

⁹ Formerly ██████████ convicted of the child sexual abuse of at least 60 children, listed at page 11, Schedule A, 2).

¹⁰ The specific incident is included in reports above at page 4, paragraphs III & III.a.

¹¹ The specific incident is included in reports above at page 3, paragraph II.

Since approximately 2016, news and various other sources have reported on at least 58 individuals in men's prisons who have self-identified as transgender. Many of these individuals have appalling crimes of assault, sexual violence, and murder against women and children. Although CSC does not readily provide data to oversee trends related to the individuals transferred to the women's prisons, you will see on page 11 (Schedule A) that I have compiled information regarding the convictions of transgender identifying individuals from reports from women inside, from news sources, and from various other sources. Those with violence against women or children are highlighted. Without transparency or data disclosure from CSC, the information in Schedule A is most certainly a considerable underestimate of the number of transferred individuals with convictions against women and children.

Other Repercussions

When compared with men, women in prison have unique histories and unique pathways to criminalization. At least 68% of federally imprisoned women have a history of sexual assault, and at least 86% of them have been physically abused.¹² The majority of women are federally incarcerated for survival and trauma-related crimes such as property and drug-related issues.¹³ Where violent crime is reported, statistics often fail to capture a large portion of women who act in self-defence in ways that are not recognized by archaic self-defence legislation, legislation that has never accounted for women's differences. This context is particularly important when we consider that Indigenous women represent less than 4% of the general population¹⁴ but represent 49% of women accused of homicide; nearly twice the proportion of indigenous men accused of homicide respective to the female and male populations.¹⁵ For these reasons, among many others, women's "risk" is less than that of federally incarcerated men.¹⁶

Women's unique pathways and histories provide a critical context for the establishment of real solutions to women's criminalization. Although there is overall very little data and a reluctance to collect data about transferred transgender individuals in prison, transgender individuals coming from the men's side have vastly different pathways to criminalization than women. The transfer of transgender individuals to women's prisons obscures these differences in a number of ways.

Although security in the women's prisons arguably does not operate differently enough from the men's prisons,¹⁷ the transfer of males with higher risk is accommodated by CSC with male-specific security interventions which are more restrictive, more brutal, and more equipped than they have typically been in the women's prisons. Women have long rejected this kind of militant "management." In particular, Indigenous women have long been characterized as having problematic "institutional adjustment" in these kinds of conditions¹⁸ as they reject colonial structures that have historically restricted and "managed" Indigenous people in horrifically brutal

¹² Annual Report of the Office of the Correctional Investigator 2014-2015, <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20142015-eng.aspx>

¹³ Statistics Canada, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00001-eng.htm>

¹⁴ Statistics Canada, <https://www150.statcan.gc.ca/n1/pub/89-503-x/2010001/article/11442-eng.htm>

¹⁵ Statistics Canada, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00001-eng.htm>

¹⁶ Struthers-Montford & Hannah-Moffat, 2020; & CSC, A Comprehensive Study of Recidivism Rates among Canadian Federal Prisoners, <https://www.csc-scc.gc.ca/research/err-19-02-en.shtml>

¹⁷ The Task Force on Federally Sentenced Women, <https://www.csc-scc.gc.ca/women/092/002002-0001-en.pdf>

¹⁸ Blanchette et al., 2002, https://publications.gc.ca/collections/collection_2010/scc-csc/PS83-3-127-eng.pdf

ways. As security measures in the multi-level prisons for women increase, women's health, mental health and trauma reactions will also increase.

Women's unique pathways and histories are equally obscured with the absorption of transferred transgender individuals' statistics. Transgender individuals' convictions for violence, extreme violence, and sexual violence against women and girls do not exist and do not exist the same way among criminalized women. For example, women are almost never found to be Dangerous Offenders (DO) and the one woman who has been designated a DO has a dramatically different life and conviction history from a typical male DO. In fact, this Indigenous woman was designated a DO due to CSC's assessment of her institutional adjustment.

This aggregation of data is particularly problematic when we consider how small the female prison population is relative to the male population. For example, incorporating the extreme violence and sexual violence committed by ██████████ ██████████,²⁰ ██████████ ██████████ ██████████ into women's statistical profiles creates a false narrative of women's pathways to crime. Given that data such as this is so integrally incorporated into risk measures at sentencing, at federal prison intake, into security classification, into reclassification, into programming and at parole, the repercussions of skewing women's data in this way will be severe. This is more alarming when we consider that the standard of self-identification for transfer requests is relatively new and that transgender transfer requests are likely to increase as time goes on.

As I have enumerated, the consequences of transferring transgender individuals to women's prisons are many. Be that the data regarding transfers have not been publicly disclosed, nor has it been properly analyzed, there are undoubtedly many more consequences than we now realize. Consequences like those I have described, such as sexual harassment, negative emotional and mental health reactions, and barriers to programming, will inevitably continue to interact and accumulate, causing severe harm to female prisoners.

Political Blindness, CAEFS & Resources for Women

In 2019 a formerly federally imprisoned woman spoke at an annual meeting for the Canadian Association of Elizabeth Fry Societies (CAEFS). CAEFS is an organization mandated to represent the interests of criminalized women and girls, and yet when this woman disclosed abuses by a transgender transfer, ██████████²³ to a room of over 60 women, her abuse was dismissed with accusations of transphobia. Having witnessed this and the aftermath for my sister, I began my own investigation into the issue of transgender transfers to women's prisons.

In my investigations, I have found that not only was my sister's experience with transgender transfers only a drop in the bucket, but her experience of being silenced and dismissed as transphobic was equally common. On June 2, 2021 a group of more than 20 criminalized women

¹⁹ Formerly ██████████ convicted of the child sexual abuse of at least 60 children, listed at page 11, Schedule A, 2).

²⁰ Formerly ██████████, charged with the rape of a female prisoner, listed at page 11, Schedule A 15).

²¹ Formerly ██████████ convicted of child rape and murder, listed at page 11, Schedule A, 10).

²² Formerly ██████████ convicted of the rape of a child under 1yr old, listed at page 11, Schedule A, 3).

²³ Formerly ██████████ convicted of the child sexual abuse of at least 60 children, listed at page 11, Schedule A, 2).

came together to address how CAEFS has been silencing their reports of victimization, their requests for help, and their insights from inside.²⁴ CAEFS, in their response,²⁵ did not accept that our letter constituted reports of abuses. They cited no knowledge of any complaints from women inside (and no knowledge of the upcoming rape trial) despite my sister's disclosure in 2019, despite a letter from myself on April 7, 2021, and despite concerns raised by the Office of the Correctional Investigator in 2019.²⁶

Because the Charter recognizes women as a disadvantaged sex class, the human rights legislation is not the foremost authority on a competing rights situation such as this. Despite this, CAEFS equally cited their adoption of the *Canadian Human Rights Act (CHRA)* standard of protected grounds, as well as complaints of violence "in prison" from "gender-diverse", and yet they have not received any complaint from women regarding their experiences with transferred transgender individuals. In fact, CAEFS has repeatedly neglected or denied allegations against transgender individuals, dismissing them as transphobic.

Women from prison have had their accounts of violence dismissed²⁷ by prison staff, organizations, and politicians alike who seek to uphold an image of absolute support for the transgender community. Because of this, it is taken for granted either that transferred transgender individuals *cannot* be the culprits of violence against women *because* of their self-identification and transgender status (in spite of the fact that many have histories of unimaginable violence to women and children), or that the violence they commit against women is constituted isolated incidences which are unimportant relative to upholding the commitment to transgender rights. In either case, women's accounts of violence are not being believed. As a historically oppressed group, violence against women such as this is part of a larger systemic problem of misogyny.

The Office of the Correctional Investigator (OCI) has labelled the issues of sexual coercion and violence in prison, "the most underreported types of crimes",²⁸ as "a culture of silence."²⁹ The culture of silence, or rape culture, that prevents women from speaking out against guards and staff, and male violence generally, now equally encompasses women's experiences around transferred transgender individuals. If even one woman has reported an experience of sexual violence, it can be assumed that there are nine others who have not.³⁰ Women who have experienced violence from transferred transgender individuals are now largely without supports, without recourse and without *any* surety of security from targeted sexism and sexual violence because any disclosure of violence is treated as transphobia. This silencing has, in many cases,

²⁴ Letter to CAEFS from We the Criminalized Women, dated June 2, 2021, <https://rapereliefshelter.bc.ca/open-letter-to-caefs-from-criminalized-women/>

²⁵ Letter to We the Criminalized Women from CAEFS, dated June 4, 2021, https://ac935091-bf76-4969-8249-ae3a107fca23.filesusr.com/ugd/d2d30e_a5eeb2ec0c744ad397887e54d89e1c8a.pdf

²⁶ Office of the Correctional Investigator Annual Report 2018-2019, <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20182019-eng.aspx#s7>

²⁷ Women's accounts of violence should be considered in the historical context of women's subjugation and silencing, a context that is still very much prominent today and that equally affects this issue (as I have detailed throughout).

²⁸ Office of the Correctional Investigator, <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20192020-eng.aspx#s11>

²⁹ Ibid.

³⁰ I have personally received reports of 3 incidences of rape in a women's prison by a transferred transgender individual. The specific incidences are detailed on page 3, at paragraph I.

stopped women from ever reporting their experiences as they are already reluctant to do so due to the shame around sexual assault, sexual harassment and reporting in prison generally.

As corrections, other governing bodies and advocacy organizations have taken direction from the *CHRA* and Parliament's intention, any direction to take women's concerns, complaints, and reports of violence seriously must be top-down, starting with Parliament. The next section provides recommendations for Parliament that will begin to address the issues of violence against women in prison.

Recommendations

1. CSC should immediately halt the transfer of any transgender individuals from men's prisons to women's prisons.
2. Transgender individuals with histories of violence toward women or children who have already been transferred from a men's prison to a women's prison should be immediately moved to an accommodation other than a women's prison.
3. Transfer criteria for transgender individuals should be developed in consultation with transgender groups and organizations. These transfer criteria should ensure that transgender individuals who meet the criteria be provided with a transfer to an accommodation other than a women's prison and one that is specifically designed to meet the unique needs of transgender people.
4. Independent feminist supports of women's choosing should be provided to all women inside in order to foster the trust and support required to allow women to disclose any experiences of violence. Women should be allowed access to these supports either in person or by telephone, or both on a regular basis.
5. Prison population statistics should be registered according to prisoners' sex at birth, or two new categories of statistics should be established for transgender women and transgender men respectively.

I am happy to address any questions.

Sincerely,

Heather Mason

Schedule A. Table of Incarcerated Transgender Individuals

Individuals with histories of violence against women or children are highlighted.

Formerly named	New name	Convictions	Source	Status
		First Degree Murder	Montreal Gazette	Federal Prisoner - Won transfer CSC is appealing it. CSC won and transfer denied. Had surgery and is at Joliette.
		Serial Pedophile	National Post	Federal is on a Long Term Supervision Order Halfway House in B.C.
		Child killer and baby rapist Dangerous Offender	The Star	Federal prisoner- Fraser Valley for women. Prostituted himself to other male prisoners, developed a drug addiction in prison. Threatened to kill a female guard, found with a homemade knife. Mutilated his own genitalia. Meets criteria for psychopathy and severe borderline personality disorder
		Sex offender	The Star - 27/05/2018	Federal prisoner-Transfer denied for federal. Was in Vanier for women for provincial
		Murder	BC Local News	In Provincial Alouette Correctional Centre for Women fighting extradition.
		First Degree Murder	The Star	Federal Prisoner -Fraser Valley for women.
		Manslaughter x2	Barrie Today	Federal prisoner - Grand Valley for women.
		Robbery	Cloverdale Reporter	Incarcerated at Surrey Pre-trial and then started identifying as a woman.
		Fraud, Robbery, stolen prop, uttering death threats 10 bank robberies	Globe & Mail CanLii	Provincial - Alouette Correctional Centre for Women Deceased
		First Degree Murder/Rape on a child	CBC Women's Prison Network	Federal Prisoner - Kent to Fraser Valley – elected to return to Kent. Fought another trans women at Kent and got shipped to Sask pen. Reported to have been giving groups of men lessons on how to self-identify as transgender and request transfer to a women's prison.
		14.5 years for bank robbery 2nd or 3rd time federal offender		Federal Prisoner- Fraser Valley Engaged (broken up) to Michael Williams. Rumored to have impregnated a female prisoner. Is dating a woman in FVI. She is not pregnant
		Second Degree Murder x2	National Post	Federal Prisoner - Grand Valley to Toronto halfway house - back in GVI. Harassment of multiple women there.
		Beat his ex with a tire iron	CBC	Federal prisoner was at Fraser Valley for women and is out.
		Second Degree Murder Armed Robbery	CBC	Federal prisoner - Grand Valley for women (died last year). 45 years behind bars. Sexually harassed many women.
		Armed Robbery Bank robber 3th time federal offender	globe and mail	Federal prisoner - Grand Valley and Edmonton. Spent 2 decades in male prisons. Sells hormones, has heterosexual sex with the women, was put in segregation over a HIV scare on compound, sexual assault

				charge. Told my friend not to call him a woman on the street. Currently on release at a halfway house. Warrant expires Feb 2021. Will be tried for rape in fall 2021.
		Sex crimes	London Free Press	South West Detention Windsor, Ontario (provincial) I don't know where he is now
		Second Degree Murder	A Gender Variance	Federal prisoner - Fraser Valley for women Rumours they died but cant confirm that
		Second Degree Murder	The Star	Federal prisoner - Was at Stony Mountain I don't know if they transferred to a women's prison or not Killed a female in a home robbery
		Murder/ Sexual assault Dangerous Offender	Vancouver Sun	Federal prisoner.
		Robbery, Assault w weapon, Forcible confinement, Dangerous Offender Sexual predator	The Peterborough Exam	Federal prisoner.
		Murder?		Federal prisoner - Stoney Mountain – Rumoured he doesn't want to transfer.
		First Degree Murder/Rape	The Globe and Mail	Federal prisoner - Saskatchewan pen - Rumoured he doesn't want to transfer.
		Sexual predator	MSN News	Federal prisoner - Edmonton - he is out and a high risk to reoffend. Was in with men not women.
		Sexual Assault	The Star	Provincial - Quebec
		Rape, Sexual Assaults, Robbery, Uttering threats	Calgary Sun	Federal prisoner - Alberta -psych Dangerous offender.
		Hamilton Locke Street Vandalism	CBC	Vanier for women (provincial) is out
		Second Degree Murder	Ottawa Citizen	Federal - Quebec - is out and living as a woman - Butcher of Gatineau
		Pedophila & rape Dangerous offender	Child Molester Database	Federal.
		Sexual assault & sexual interference	Global News	From London, On. Held at Vanier for women. I believe he got off charges
		Manslaughter	Toronto Sun	Is out and living in Toronto I think on bail for appeal possibly - wants to transfer.
		Sexual Assault	The Chronicle Herald	5 month conditional sentence and 18 months probation. Nova Scotia
		Child Sex Offender	Women Are Human	Surrey British Columbia
		Weapons Assault Predator	Washington Examiner	Langley British Columbia
		Manslaughter Beat an old woman to death	CBC Winnipeg	Federal - Spent 10 years in male prisons.
		Second Degree Murder	CBC	Federal prisoner - Is a lifer and did 9 years in Drumheller and was transferred to Edmonton

		CBC	for women. Then went to the healing lodge where he sexually assaulted a prisoner and is now transferred back to Edmonton for women.
	Second Degree Murder		Federal prisoner - Fraser Valley - is in his 40's - Sask or Manitoba. Long sentence he was out and now back.
	Second Degree Murder		Federal prisoner - Fraser Valley - in late 60's. Either Brian or Brandon possibly last name White if not Armstrong.
	Repeat Sex Offender Dangerous Offender	tvanouvelles	Federal prisoner - The SHU for a long time, then Stony Mountain and got beat up then transferred to Sask pen. Just got transferred from Sask pen to Millhaven on September 23, 2020. Wants to transfer to women's prison
	Robbery, weapons, kidnapping	Global News	Federal prisoner - In Grand Valley was transferred from Joliette. He says he is a "hermaphrodite." Has been in and out for decades. 4th time federal prisoner. Women report issues with drugs & harassment.
	Unknown		Federal prisoner - At RTC (Pacific Institution) dating Mark Luke in RTC.
	Unknown		Federal prisoner - At RTC Pacific
	Unknown	Cape Breton	Federal - Nova Institute for women on hormones wants to have sex change. Rumoured to have impregnated a female prisoner who had twins.
	Aggravated Assault		Federal prisoner - 25 year old at Grand Valley.
	Pedophile Child pornography	Guelph Mercury Tribune	Federal prisoner - Was 45 in 2019 and is from Guelph, Ontario. Found guilty in 2019 and started identifying as a woman just before sentencing. Was on probation for similar charges at the time of the offence. 9 years. Is not at GVI
	Possession & making child pornography available	CanLii	3 years house arrest Alberta
	Assaults, indecent act, breaches, molesting a person	CanLii	Secure Treatment Unit 34 years old.
	Break and Enter Possession of Stolen Property Theft of a Motor Vehicle Trafficking in Stolen Property Breach	CanLii	Located in Alberta.
	Drug related	CanLii	Located in Alberta.
	Unknown	CanLii	Ontario - Provincial

Arson with disregard for human life	CanLii	Grew up in Toronto. Repeatedly found to be unfit.
Robbery, assault w weapon, failure to comply		Is wanted by Victoria B.C., Crime Stoppers on March 16, 2021, and is identified as a female and 38 years old.
Assault with a weapon, assault, break and enter, possession of stolen goods, and the possession of drugs for trafficking, along with uttering threats, multiple breaches of probation and minor thefts.	Canlii Infotel	Provincial Surrey Pretrial
Rape, assault, malicious damage, trespassing, theft, possession of narcotics and marijuana, breaking and entering, and assault causing bodily harm	CanLii	On January 26, 1976, was committed to Oak Ridge after perpetrating a violent rape when he was a 20-year old male. He was discharged on February 23, 1979, and then returned from January 1981 until July 1984. Diagnosed with psychopathy in combination with gender identity issues and paraphilias. Changed his name around 2002.
Unknown		At EIFW
Second Degree Murder	CanLii	BC In 2012 sentenced to life imprisonment without eligibility for parole for 12 years
Sexually assaulted daughter over a period of time	CanLii	Time of the offences, identified as male. The appellant now self-identifies as female and will be referred to as she/her where the context requires. Alberta.
assault causing bodily harm	CanLii	Unknown.
Dangerous Offender several sex offenses	News 1130	In Edmonton men's prison in max trying to get a transfer to a women's prison. Human rights claim & CAEFS and Efry are reportedly helping him.

FEDERAL COURT

B E T W E E N:

CANADIAN WOMEN'S SEX-BASED RIGHTS

Plaintiff

and

HIS MAJESTY THE KING

Defendant

AFFIDAVIT OF MARTY MOORE

I, Marty Moore, [REDACTED], in the Province of Alberta, SWEAR THAT:

1. I have personal knowledge of the evidence sworn to in this affidavit. Where such knowledge is based on information or belief, I have set out the source of such information or belief and believe it to be true.
2. I am the Litigation Director of Charter Advocates Canada ("**CAC**"), which is providing legal representation to the plaintiff in this matter.
3. I swear this affidavit in support of the plaintiff's motion seeking an order granting it public interest standing commence and maintain this litigation.
4. CAC is a federal not-for-profit corporation and a charity registered with the Canada Revenue Agency.
5. CAC is registered with the Law Society of Ontario as a Civil Society Organization to provide *pro bono* legal services to the public.

6. As set out in its Certificate of Amendment, dated December 15, 2023 (Certificate of Amendment attached as **Exhibit “A”**), CAC’s relevant purposes are as follows:

To uphold the enforcement of the Constitution of Canada and other existing laws of Canada and the provinces and territories thereof, as they relate to constitutional freedoms, civil rights, human rights, and other protections under the Constitution of Canada, by facilitating legal advice and representation before government, administrative tribunals, and the courts, where there is need.

7. In pursuit of these purposes, CAC has eight lawyers working full time on dozens of cases at all levels of court across Canada, including in the Federal Courts. CAC’s lawyers possess decades of experience in litigation and constitutional law. As needed, CAC consults with other lawyers and experts to give advice on its cases.
8. Given the significance of this matter, CAC has assigned four lawyers to its carriage, namely: Christopher Fleury, James Manson, Allison Pejovic and Darren Leung.
9. Christopher Fleury was called to the Bar of Ontario in 2015. He has appeared at all levels of court in Ontario and Nova Scotia, as well as the Federal Court and the Federal Court of Appeal. He practiced civil and criminal litigation from 2015 until January of 2023 when he focused his practice exclusively on constitutional and public law litigation.
10. James Manson was called to the Bar of Ontario in June 2008. He has appeared before superior and appellate courts across the country, including the Federal Court and the Federal Court of Appeal. He practiced civil and commercial litigation

from 2008 until 2022 when he focused his practice exclusively on constitutional and public law litigation.

11. Allison Pejovic was called to the Bar of Manitoba in 2004, the Bar of Ontario in 2009, and the Bar of Alberta in 2022. She received a Master of Law from the University of Toronto in 2009. She has appeared in courts across the country at both the superior and appellate levels, including the Federal Court and Federal Court of Appeal. She has experience as a litigator in both private practice and with Manitoba Justice, where she worked on constitutional matters.
12. Darren Leung has been employed by CAC since being called to the Bar of Ontario in 2023. He has appeared before all levels of court in Ontario and has exclusively focused on constitutional and administrative law matters.
13. CAC receives grant funding to carry on its charitable activities described above. CAC has the financial and legal resources to advance this application on behalf of the plaintiff. Given the public importance of this application, CAC has placed significant priority on this matter and will continue to allocate all resources necessary to ensure that it is advanced in a fulsome and expeditious manner, including the funding of expert reports and other disbursements, as may be required during the course of litigation.

SWORN REMOTELY by videoconference by)
Marty Moore at [REDACTED])
[REDACTED])
before me at the City of Toronto,)
in the Province of Ontario,)
on the 4th day of December, 2025)
in accordance with O. Reg 431/20.)



DARREN LEUNG
LSO#87938Q
Barrister & Solicitor



MARTY MOORE

This is Exhibit "A", referred to in the
Affidavit of Marty Moore
Sworn before me at Toronto on this 4th
day of December, 2025

A handwritten signature in black ink, appearing to read "Darren J. King". The signature is written in a cursive style with a horizontal line underneath it.

A Commissioner etc.



Certificate of Amendment

Canada Not-for-profit Corporations Act

Certificat de modification

*Loi canadienne sur les organisations à but non
lucratif*

Charter Advocates Canada

Corporate name / Dénomination de l'organisation

1451705-9

Corporation number / Numéro de
l'organisation

I HEREBY CERTIFY that the articles of the above-named corporation are amended under section 201 of the *Canada Not-for-profit Corporations Act*, as set out in the attached articles of amendment.

JE CERTIFIE que les statuts de l'organisation susmentionnée sont modifiés aux termes de l'article 201 de la *Loi canadienne sur les organisations à but non lucratif*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes.

Hantz Prosper

Director / Directeur

2023-12-15

Date of amendment (YYYY-MM-DD)
Date de modification (AAAA-MM-JJ)



Form 4004
Articles of Amendment
*Canada Not-for-profit Corporations
Act*

Formulaire 4004
Clauses modificatrices
*Loi canadienne sur les organisations à
but non lucratif*

1 Current corporate name
Dénomination actuelle de l'organisation
Charter Advocates Canada

2 Corporation number
Numéro d'organisation
1451705-9

3 The articles are amended as follows:
Les statuts sont modifiés comme suit :

See attached schedule / Voir l'annexe ci-jointe

4 Declaration: I hereby certify that I am a director or an authorized officer of the corporation.
Déclaration : J'atteste que je suis un administrateur ou un dirigeant autorisé de l'organisation.

Original signed by / Original signé par
Marty Moore
Marty Moore

A person who makes, or assists in making, a false or misleading statement is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both (subsection 262(2) of the Canada Not-for-profit Corporations Act (NFP Act)).

La personne qui fait une déclaration fautive ou trompeuse, ou qui aide une personne à faire une telle déclaration, commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 \$ et un emprisonnement maximal de six mois ou l'une de ces peines (paragraphe 262(2) de la Loi canadienne sur les organisations à but non lucratif (Loi BNL)).

You are providing information required by the NFP Act. Note that both the NFP Act and the Privacy Act allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049

Vous fournissez des renseignements exigés par la Loi BNL. Il est à noter que la Loi BNL et la Loi sur les renseignements personnels permettent que de tels renseignements soient divulgués au public. Ils seront stockés dans la banque de renseignements personnels numéro IC/PPU-049.

Schedule / Annexe
Amendment Schedules / Annexes - Modification

The statement of purposes contained in the Corporation's Certificate and Articles of Incorporation dated November 9, 2022 and in the Corporation's Certificate and Articles of Amendment dated March 20, 2023 are deleted in their entirety and replaced with the following:

1. To uphold the enforcement of the Constitution of Canada and other existing laws of Canada and the provinces and territories thereof, as they relate to constitutional freedoms, civil rights, human rights, and other protections under the Constitution of Canada, by facilitating legal advice and representation before government, administrative tribunals, and the courts, where there is need.
2. To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to qualified donees as defined in subsection 149.1(1) of the Income Tax Act (Canada).

FEDERAL COURT

B E T W E E N:

CANADIAN WOMEN'S SEX-BASED RIGHTS

Plaintiff/Moving Party

-and-

HIS MAJESTY THE KING

Defendant/Responding Party

WRITTEN REPRESENTATIONS

(MOTION FOR PUBLIC INTEREST STANDING)

MOVING PARTY

CHARTER ADVOCATES CANADA

[REDACTED]

Chris Fleury, LSO #67485L

[REDACTED]

Allison Pejovic, LSA #24411

[REDACTED]

James Manson, LSO #54963K

[REDACTED]

**Counsel for the Plaintiff /
Moving Party**

ATTORNEY GENERAL OF CANADA

Department of Justice Canada

[REDACTED]

Monmi Goswami

[REDACTED]

Oliver Backman

[REDACTED]

**Counsel for the Defendant /
Responding Party**

PART I – FACTS

A. Overview of the Proceeding

1. The plaintiff, Canadian Women’s Sex-Based Rights (“**CAWSBAR**”), brings this motion for public interest standing.

2. The proceeding was commenced by statement of claim dated April 7, 2025 (the “**Claim**”).¹ At the heart of the Claim is Commissioner’s Directive 100 (“**CD-100**”), a directive which permits the placement and transfer of trans-identifying male inmates—including those with intact male genitalia—into federal women’s prisons. The Claim alleges that this policy exposes female inmates to significant risks of mental, physical, and sexual harm, including sexual assault, harassment, intimidation, and loss of privacy. The Claim asserts that female inmates, many of whom are already disproportionately vulnerable due to past trauma, Indigenous identity, or mental health challenges, are further placed in danger through forced confinement with male inmates who often have histories of physical and sexual violence.

3. CAWSBAR argues that CD-100 violates sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms*, as well as sections 1(a), 1(b), and 2(b) of the *Canadian Bill of Rights*, by depriving female inmates of security of the person, subjecting them to cruel and unusual treatment, and imposing discriminatory burdens based on sex. The Claim seeks declarations that CD-100 is unconstitutional and of no force or effect, in whole or in part, and, in the alternative, requests that the policy be construed in a manner consistent with the *Bill of Rights*.

¹ *Statement of Claim*, Motion Record of the Moving Party, TAB 5.

4. The action is at an early stage. The defendant has not filed a statement of defence.
5. In addition to the plaintiff's motion for public interest standing, the defendant has brought a motion to strike the Claim pursuant to Rule 221 of the *Federal Courts Rules*. The two preliminary motions are scheduled to proceed consecutively on March 3, 2026.

B. Evidence on the Motion

6. In support of its motion for public interest standing the plaintiff has filed the affidavits of Ms. Heather Mason and Mr. Marty Moore. The defendant has chosen not to cross-examine either affiant.

Evidence of Heather Mason

7. Ms. Mason is the Chair of CAWSBAR's volunteer Board of Directors.²
8. CAWSBAR was founded in 2019 as an unincorporated association of women supporting sex-based rights. In June 2024 it was incorporated as a non-profit corporation, with Ms. Mason serving as one of five directors and as Chair of the Board since incorporation.³
9. Since its founding, and continuing to the present day, CAWSBAR's mission is to preserve sex-based rights and protections for women and girls across Canada. CAWSBAR advocates for women's rights in the context of venues traditionally reserved for biological females including correctional institutions, shelters, locker rooms, sporting divisions, hospital wards, university dormitories, and other sex-segregated spaces.⁴

² *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at para 2.

³ *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at paras 2-3 and 18.

⁴ *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at para 19.

10. CAWSBAR's philosophy is outlined in a position statement that is attached to Ms. Mason's affidavit as Exhibit D. Overall it contends that, while Canadians are free to express themselves as they wish, sex is a material biological reality that cannot be changed. Women's and girls' sex-based rights must be clearly recognized and preserved, taking precedence over any understanding of gender identity or expression that conflicts with biological sex.⁵

11. CAWSBAR has several thousand supporters and engages the public through multiple mediums. It publishes a newsletter with 1,158 subscribers; holds annual conferences in major Canadian cities; maintains active accounts on X (18,000 followers) and Facebook (2,785 followers); and features spokeswomen from across Canada who speak on issues related to CAWSBAR's mission. It also maintains a vetted network of about 200 "associates" who provide input and receive updates on activities. CAWSBAR is a signatory to an international declaration on women's sex-based rights and participates in international advocacy events.⁶

12. Since its founding, CAWSBAR has consistently advocated for the rights of incarcerated women. It has held numerous protests outside prisons and government buildings and organized banner drops in cities across Canada to raise awareness about the transfer of trans inmates into women's prisons. Ms. Mason has been active in media on behalf of CAWSBAR, appearing regularly on podcasts and news programs to discuss the issue. She has also authored multiple writings on the topic including the submission

⁵ *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at para 20 and Exhibit D.

⁶ *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at paras 21-24.

of a written brief to the House of Commons Standing Committee on Public Safety and National Security.⁷

13. Ms. Mason regularly receives calls from past and current female inmates regarding their concerns about the transfer of transgender inmates into their institutions. She speaks with them about their concerns and possible remedies such as the institutional grievance procedure.⁸

14. In addition to serving as CAWSBAR's Board Chair, Ms. Mason has lived experience in the criminal justice system, including as a federally incarcerated inmate. This occurred between 2014 and 2018. Ms. Mason's convictions were primarily related to the possession of illegal drugs and breaches of release conditions. She served multiple short sentences in provincial institutions between 2014 to 2016. Following her final conviction, she received a 784-day sentence that resulted in her transfer to the Grand Valley Institution for Women ("GVI"), a federal women's prison. She notes that fentanyl addiction had driven her involvement in crime, but that she has remained abstinent from illegal drugs since 2017.⁹

15. In 2015, while incarcerated in a provincial facility, Ms. Mason first became aware that biological male inmates were being transferred into women's correctional environments. She recounts an incident in which a male inmate looked into her cell while she was being strip-searched. During her federal incarceration at GVI, which coincided with the implementation of CD-100's predecessor policy, she became aware of a

⁷ *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at paras 25-30.

⁸ *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at para 31.

⁹ *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at paras 5-8.

trans-identifying male inmate in that institution. The inmate made derogatory statements and, according to information from other inmates, had forced himself upon several female inmates. These experiences motivated her later advocacy.¹⁰

16. Ms. Mason's affidavit speaks to CAWSBAR's capacity to bring the Claim. She explains that CAWSBAR is uniquely positioned to assist in presenting a concrete factual record. She has provided her counsel with contact information for many inmates, and she understands that counsel have taken statements from dozens of women, many of which detail the harms alleged in the Claim. Although CAWSBAR accepts donations, it lacks the resources to independently commence and maintain a claim of this nature. She therefore welcomed the pro bono representation offered by her counsel Charter Advocates Canada ("**CAC**"). Ms. Mason is confident that CAC will be able to represent CAWSBAR effectively throughout the proceeding.¹¹

17. Ms. Mason's affidavit also speaks to the significant barriers that prevent individual female inmates from bringing similar litigation themselves. Communication restrictions—including the need for pre-approved phone lists and institutional delays—make it unfeasible for an inmate to maintain regular contact with inmates across Canada. Inmates are also separated by security classifications, limiting their ability to share information among inmates in a different classification. These constraints make it practically impossible for an individual inmate to gather the evidence needed to support similar

¹⁰ *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at paras 9-12.

¹¹ *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at paras 33-36.

litigation. Many inmates also fear reprisals, including being labelled discriminatory and thereby jeopardizing their chances of parole.¹²

Evidence of Marty Moore

18. Mr. Moore is the Litigation Director of CAC. His affidavit provides evidence about CAC's structure, resources, and role in representing the plaintiff.

19. Mr. Moore states that CAC is a federal not-for-profit corporation and a registered charity. It is registered with the Law Society of Ontario as a Civil Society Organization authorized to provide pro bono legal services. He attaches CAC's Certificate of Amendment, which sets out CAC's purposes, including upholding the Constitution of Canada and other laws as they relate to constitutional freedoms, civil rights, human rights, and other constitutional protections, by facilitating legal representation before government bodies, tribunals and courts when needed.¹³

20. CAC has eight full-time lawyers working on dozens of cases at trial and appellate courts across Canada, including the Federal Courts. These lawyers have decades of combined experience in litigation and constitutional law. Given the significance of this matter, four lawyers have been assigned to its carriage.¹⁴

21. Mr. Moore confirms that CAC receives grant funding to support its charitable activities and that it possesses the financial and legal resources to advance the Claim on behalf of the plaintiff. He states that CAC has prioritized this matter due to its public

¹² *Affidavit of Heather Mason*, Motion Record of the Moving Party, TAB 2, at paras 37-40.

¹³ *Affidavit of Marty Moore*, Motion Record of the Moving Party, TAB 3, at paras 5-6.

¹⁴ *Affidavit of Marty Moore*, Motion Record of the Moving Party, TAB 3, at paras 8-12.

importance and will commit the necessary resources, including funding expert reports and disbursements as required.¹⁵

PART II – POINTS IN ISSUE

22. There is only one issue for the Court’s determination on this motion: whether the plaintiff ought to be granted public interest standing.

PART III – SUBMISSIONS

A. The Governing Framework

23. Before turning to the applicants’ substantive arguments in support of the relief claimed on this motion, it is useful to review the law of public interest standing.

24. The leading authority on public interest standing is *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society (Downtown Eastside)*.¹⁶ The Supreme Court of Canada (“SCC”) articulated a flexible, purposive framework for granting such standing. This test was refined and reaffirmed in *British Columbia (Attorney General) v. Council of Canadians with Disabilities (“Council of Canadians”)*,¹⁷ emphasizing the test’s discretionary nature and alignment with broader constitutional principles.

25. In *Downtown Eastside*, the SCC unified and clarified earlier jurisprudence in favour of a purposive, discretionary approach. Writing for a unanimous Court, Justice Cromwell explained: “*The decision to grant or refuse standing involves the careful exercise of*

¹⁵ *Affidavit of Marty Moore*, Motion Record of the Moving Party, TAB 3, at para 13.

¹⁶ *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, [2012 SCC 45](#), [\[2012\] 2 SCR 524](#) [*Downtown Eastside*].

¹⁷ *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, [2022 SCC 27](#), [\[2022\] 1 SCR 794](#) [*Council of Canadians*].

*judicial discretion through the weighing of the three factors (serious justiciable issue, the nature of the plaintiff's interest, and other reasonable and effective means)."*¹⁸ He emphasized that these factors "*should not be viewed as items on a checklist or as technical requirements. Instead, the factors should be seen as interrelated considerations to be weighed cumulatively, not individually, and in light of their purposes.*"¹⁹ The "purposes", as Cromwell J. outlined, are threefold:

- i. efficiently allocating scarce judicial resources and screening out 'busybody' litigants;
- ii. ensuring that courts have the benefit of the contending points of view of those most directly affected by the issues; and
- iii. ensuring that courts play their proper role within our democratic system of government.²⁰

These purposes align with the broader principles of legality—ensuring state action "*conform to the Constitution and statutory authority*" and "*practical and effective ways to challenge the legality of state action*"²¹—and access to justice. In *Council of Canadians* Chief Justice Wagner further emphasized that "*legality and access to justice are woven throughout the history of public interest standing.*"²²

26. As this Court recently confirmed in *MacKinnon v. Canada (Attorney General)*, the modern test for public interest requires the court to consider and cumulatively weigh three factors:

¹⁸ *Downtown Eastside*, at para [35](#).

¹⁹ *Ibid.*, at para [36](#).

²⁰ *Ibid.*, at para [25](#).

²¹ *Ibid.*, at para [31](#).

²² *Council of Canadians*, at para [37](#).

- A. whether the case raises a serious justiciable issue;
- B. whether the party bringing the action has a genuine interest in the matter;
and
- C. whether the proposed suit is a reasonable and effective means of bringing the case to court.²³

27. In exercising its discretion, a court must cumulatively assess and weigh these three factors purposively and with regard to the circumstances. Each factor is to be applied in a flexible and generous manner that best serves the purposes described above.²⁴

Serious Justiciable Issue

28. An issue is serious if it is “far from frivolous” and reveals at least one serious issue as to the validity of the legislation. It is not necessary to examine each and every claim made by the plaintiff. “*Once it becomes clear that the statement of claim reveals at least one serious issue, it will usually be unnecessary to minutely examine every pleaded claim.*”²⁵

29. Courts do not examine the merits of the claim, other than in a “*preliminary manner*”.²⁶

30. Recently in *Parkdale Community Legal Services v. Canada*, a *Charter* challenge to the *Canadian Human Rights Act*’s cap on monetary damages, the defendant (His

²³ *MacKinnon v. Canada (Attorney General)*, [2025 FC 422](#), at paras [114-141](#). See also: *Parkdale Community Legal Services v. Canada*, [2025 FC 912](#), at paras [49-77](#); *Prince Edward Island Fishermen’s Association Ltd. v. Canada (Attorney General)*, [2025 FC 737](#), at paras [33-37](#); and *Toth v. Canada (Mental Health and Addictions)*, [2025 FCA 119](#), at paras [24-35](#).

²⁴ *Council of Canadians*, paras [28-29](#).

²⁵ *Downtown Eastside*, at para [42](#).

²⁶ *Ibid.*

Majesty the King) acknowledged that “*the constitutionality of legislation is always a serious issue*”.²⁷ [emphasis added]

31. Justiciability ensures the issue is suitable for judicial determination, avoiding political questions or those beyond the Court’s institutional capacity. As Cromwell J. noted, “*the premise of our discretionary approach to public interest standing is that the proceedings raise a justiciable question, that is, a question that is appropriate for judicial determination. This concern engages consideration of the nature of the issue and the institutional capacity of the courts to address it.*”²⁸

Genuine Interest

32. Plaintiffs or applicants must demonstrate a “*real stake in the proceedings or [be] engaged with the issues they raise.*”²⁹ In examining the plaintiff’s reputation, continuing interest and link with the claim, the Court must assess its “*engagement, so as to ensure an economical use of scarce judicial resources.*”³⁰ This factor screens out mere “busybodies” and ensures engagement.

33. Chief Justice Wagner, for a unanimous Court in *Council of Canadians*, upheld public interest standing for the Council of Canadians with Disabilities (CCD) challenging certain provisions of British Columbia’s mental health legislation which permitted physicians to administer psychiatric treatment to involuntary patients with mental disabilities without their consent. The Court noted that CCD's genuine interest stemmed from its long track record: “*CCD has a long history of engagement in social, legal, and*

²⁷ *Parkdale Community Legal Services v. Canada*, [2025 FC 912](#), at para [54](#).

²⁸ *Ibid.*, at para [30](#).

²⁹ *Downtown Eastside*, at para [43](#).

³⁰ *Ibid.*

policy reform initiatives... CCD has participated as a plaintiff or as an intervener in other cases relating to human rights and equality issues under the Charter, all of which have involved the rights of people with disabilities."³¹

34. The Court further rejected the Attorney General's argument that CCD's overall focus was broader than the issues in raised in the proceeding: "*This argument misses the point: a plaintiff seeking public interest standing has never been required to show that its interests are precisely as narrow as the litigation it seeks to bring. Instead, it must demonstrate a 'link with the claim' and an 'interest in the issues.'*"³² [Emphasis in Original]

A Reasonable and Effective Means of Bringing the Issue to Court

35. The third factor in the test for public interest standing requires courts to assess whether, in all the circumstances, the proposed proceeding is a reasonable and effective means of bringing the issue before the court. This factor is the most flexible and context-dependent element of the three-factor framework. The Court in *Downtown Eastside* emphasized its purposive application:

...courts should consider whether the proposed action is an economical use of judicial resources, whether the issues are presented in a context suitable for judicial determination in an adversarial setting and whether permitting the proposed action to go forward will serve the purpose of upholding the principle of legality. A flexible, discretionary approach is called for in assessing the effect of these considerations on the ultimate decision to grant or to refuse standing.³³

36. The third factor demands a pragmatic evaluation of alternatives and efficiencies, weighed cumulatively with the others. This ensures standing advances access to justice

³¹ *Council of Canadians*, at para [101](#).

³² *Ibid.*, at [102](#); citing *Downtown Eastside*, at para [43](#).

³³ *Downtown Eastside*, at para [50](#).

for marginalized groups while avoiding resource depletion or immunization of unconstitutional acts from review. The Court in *Downtown Eastside* stressed flexibility:

A flexible, discretionary approach is called for in assessing the effect of these considerations on the ultimate decision to grant or to refuse standing. There is no binary, yes or no, test possible. Whether a means of proceeding is reasonable, whether it is effective and whether it will serve the purpose of upholding the legality of government action is a matter of degree and must be considered in light of realistic alternatives in all of the circumstances.³⁴

37. The SCC has provided a non-exhaustive list of “interrelated matters” to guide this assessment.³⁵ The relevant considerations are outlined below.

The Plaintiff's Capacity to Bring the Claim Forward

38. Courts evaluate whether the plaintiff has the resources, expertise, and ability to present a “sufficiently concrete and well-developed factual setting.”³⁶ The Court in *Council of Canadians* expanded on this, noting that it is context-specific: “What suffices to show that a sufficiently concrete and well-developed factual setting will be forthcoming at trial? The answer to this question necessarily depends on the circumstances, including (i) the stage of litigation at which standing is challenged, and (ii) the nature of the case and the issues before the court.”³⁷ Further, evidence requirements will vary:

Some cases may not be heavily dependent on individual facts—where, for example, the claim can be argued largely on the face of the legislation. In such cases, an absence of concrete evidence at the pleadings stage may not be fatal to a claim for standing. Where a case turns to a greater extent on individual facts, however, an evidentiary basis will weigh more heavily in the balance, even at a preliminary stage of the proceedings.³⁸

³⁴ *Downtown Eastside*, at para 50.

³⁵ *Ibid.*, at para 51; and refined in *Council of Canadians*.

³⁶ *Ibid.*

³⁷ *Council of Canadians*, at para 71.

³⁸ *Ibid.*

Whether the Case is of Public Interest

39. The proceeding must transcend the interests of those most directly affected, promoting access to justice for disadvantaged groups. The Court in *Downtown Eastside* explained: “Courts should take into account that one of the ideas that animates public interest litigation is that it may provide access to justice for disadvantaged persons whose legal rights are affected.”³⁹

Whether There Are Realistic Alternative Means:

40. Courts must assess if other avenues (e.g., directly affected litigants or parallel proceedings) would be more efficient or suitable. The Court in *Downtown Eastside* cautioned against rigidity holding that the existence of potential plaintiffs or of parallel litigation, while relevant, “is not necessarily a sufficient basis for denying standing.”⁴⁰ The Court must consider efficiency, the adversarial context, and the plaintiff’s individual perspective.⁴¹ In *Downtown Eastside* criminal prosecutions were one potential means by which to challenge the legislation at issue. But this alternative was found to be unpredictable and ineffective. Individual defendants were unlikely to effectively marshal the necessary evidence in support of a broader constitutional challenge.⁴²

The Potential Impact of the Proceedings on the Rights of Others

41. Courts must also weigh prejudice to more directly affected parties. For example, the Court should consider “What impact, if any, will the proceedings have on the rights of others who are equally or more directly affected? ... Could ‘the failure of a diffuse

³⁹ *Downtown Eastside*, at para [51](#).

⁴⁰ *Council of Canadians*, at para [63](#).

⁴¹ *Ibid.*, at para [51](#).

⁴² *Ibid.*, at para [69](#).

*challenge’ prejudice subsequent challenges by parties with specific and factually established complaints?”*⁴³

Cumulative Weighing

42. Overall, “*the goal, in every case, is to strike a meaningful balance between the purposes that favour granting standing and those that favour limiting it.*”⁴⁴ “*Each factor is to be ‘weighed... in light of the underlying purposes of limiting standing and applied in a flexible and generous manner that best serves those underlying purposes.*”⁴⁵

B. The Principles Applied

The Claim Raises Serious Justiciable Issues

43. The issues raised in this proceeding are serious on their face and greatly exceed the “far from frivolous” standard as articulated by the SCC in *Downtown Eastside and Council of Canadians*.

44. The Claim challenges the constitutional validity of a federal corrections policy—CD-100—that governs the placement of trans-identifying inmates within federal correctional institutions.

45. The claim alleges that the policy of placing and transferring trans-identifying male inmates—including those with intact male genitalia—into federal women’s prisons exposes female inmates to significant mental, physical, and sexual harm. The Claim contends that CD-100 violates sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms*, as well as sections 1(a), 1(b), and 2(b) of the *Canadian Bill of Rights*, by

⁴³ *Ibid.*, at para [51](#).

⁴⁴ *Ibid.*, at para [30](#).

⁴⁵ *Ibid.*, at para [29](#); citing *Downtown Eastside*, at para [20](#).

depriving female inmates of security of the person, subjecting them to cruel and unusual treatment, and imposing discriminatory burdens based on sex.

46. The Claim seeks declarations that CD-100 is unconstitutional and of no force or effect and, in the alternative, requests that the policy be construed in a manner consistent with the *Bill of Rights*.

47. The claim raises well-recognized constitutional issues, directly engaging the most coercive type of state action: the conditions of institutional detention. Constitutional challenges, including those invoking sections 7, 12 and 15 of the *Charter*, fall squarely within the core mandate of the courts and constitute quintessentially serious subject matter.

48. These issues are fit for judicial resolution and are well within the Court's institutional capacity. This Court regularly assesses the risks and dangers associated with inmate transfers, primarily in the context of discrimination complaints made by trans-identifying inmates. For example, in *Kavanagh v. Canada (Attorney General)*, the Canadian Human Rights Tribunal ultimately refused to order such transfers, concluding CSC had legitimate safety reasons not to house "pre-operative" trans-identifying inmates in women's prisons. These reasons included physical and psychological risks to female inmates. It is noteworthy that this evidence was established by CSC's own experts, two of whom were psychiatrists with expertise in the field of Gender Identity Disorder, who

opposed such transfers.⁴⁶ The Tribunal's decision in *Kavanagh* was upheld by this Court on judicial review⁴⁷ and has not been overturned.⁴⁸

49. The fact that CD-100 runs contrary to previous determinations of this Court only makes the issues raised more serious.

CAWSBAR Has a Genuine Interest in the Proceeding

50. The plaintiff has a real stake in the proceedings and is engaged with the issues raised. The plaintiff has filed affidavit evidence documenting its engagement with the issues, as described above. It is noteworthy that the defendant chose not to cross-examine the affiants on the contents of their affidavits. There is no reason for this Court not to accept the totality of the plaintiff's evidence presented in support of this motion.

51. CAWSBAR's mandate expressly includes advocacy for incarcerated women and the protection of their safety, dignity, and equality rights within federal correctional institutions. This institutional mission shows that CAWSBAR is an organization whose core objectives directly intersect with the constitutional questions at issue.

52. CAWSBAR has a history of concrete, consistent, and targeted advocacy concerning the placement of trans-identifying male inmates in women's prisons. The affidavit of Ms. Mason details years of CAWSBAR-organized protests outside women's institutions, banner drops, public education campaigns, policy submissions, and extensive public commentary on the harms female inmates report experiencing under

⁴⁶ *Kavanagh v. Canada (Attorney General)*, [2001 CanLII 8496](#) (CHRT).

⁴⁷ *Canada (Attorney General) v. Canada (Human Rights Commission)*, [2003 FCT 89](#).

⁴⁸ The plaintiff acknowledges that cases brought after the implementation of CD-100 have found the denial of similar transfers to be discriminatory. That finding was based in large part on the Attorney General not leading expert evidence of harm that was present in *Kavanagh*. See for example: *Boulachanis v. Canada (AG)*, [2019 FC 456](#).

CD-100. These activities demonstrate sustained engagement with the precise issues raised in the litigation, evidencing that CAWSBAR's concern is neither abstract nor opportunistic, but deeply embedded in its work.

53. CAWSBAR's extensive network, public engagement channels, and collaborative relationships demonstrate its capacity and authentic investment in pursuing this litigation. Ms. Mason's affidavit describes thousands of supporters across Canada, an active social media presence, frequent media participation, annual conferences, and the maintenance of a vetted associate network—each of which shows CAWSBAR's genuine, long-standing commitment to advancing women's sex-based rights, including the rights of female inmates. These activities, combined with CAWSBAR's history of documenting harms, gathering evidence, and engaging directly with those affected, place the organization in a uniquely informed position.

54. Finally, CAWSBAR's genuine interest is also grounded in the lived experience and expertise of its leadership, particularly Ms. Mason, who serves as Chair of the Board of Directors. As a formerly incarcerated woman who personally witnessed and experienced the harms associated with the transfer of trans-identifying male inmates into women's prisons, she provides CAWSBAR with first-hand, experience-based insight into the real-world consequences of the impugned directive. Her ongoing contact with incarcerated women—whom she supports, advises, and from whom she regularly receives reports of harm—ensures that CAWSBAR's advocacy is informed by the lived realities of the very population whose rights are at stake. This connection to affected individuals reinforces the organization's bona fide commitment to addressing these issues.

55. This depth of involvement satisfies the *Downtown Eastside* requirement that a public interest litigant possess a real stake and sincere concern in the matter, rather than merely a theoretical or ideological interest.

The Claim is Reasonable Way to Bring the Matter Before the Court

Capacity to Bring the Claim Forward

56. The plaintiff has the resources, expertise, and ability to present a sufficiently concrete and well-developed factual setting.

57. Heather Mason's affidavit establishes first-hand carceral experience, sustained advocacy on the precise issues in dispute, ongoing contact with incarcerated women nationwide, and document gathering (including ATIP materials and a survey of incarcerated women). She details that counsel have obtained dozens of statements from female inmates describing concrete harms, which will help furnish the Court with a "*sufficiently concrete and well-developed factual setting.*"

58. CAWSBAR is represented by CAC which is registered with the Law Society of Ontario as a Civil Society Organization and provides *pro bono* legal services to the public. Mr. Moore states in his affidavit that CAC has assigned four lawyers to the carriage of this matter and has the financial and legal resources to advance the Claim on the plaintiff's behalf. Further, "*CAC has placed significant priority on this matter and will continue to allocate all resources necessary to ensure that it is advanced in a fulsome and expeditious manner, including the funding of expert reports and other disbursements, as may be required during the course of litigation.*"⁴⁹

⁴⁹ *Affidavit of Marty Moore*, Motion Record of the Moving Party, TAB 5, at para 13.

59. Virtually identical evidence of Mr. Moore was accepted by this Court in *MacKinnon v. Canada (Attorney General)*. The applicants in that case were found to have capacity to bring the claim forward, in part because of Mr. Moore’s evidence.⁵⁰ The applicants were in turn granted public interest standing.

60. Mr. Moore’s affidavit evidence was also considered by the Supreme Court of Nova Scotia in *Milburn v. Nova Scotia (Attorney General)*. The respondent objected to the admissibility of Mr. Moore’s affidavit filed in support of a motion for public interest standing. The Court accepted Mr. Moore’s evidence finding that “*evidence that the matter is being handled by senior and experienced counsel, with appropriate funding, is clearly admissible and helpful evidence.*”⁵¹ The Court ultimately found that the applicants had satisfied all three branches of the test in *Downtown Eastside* and were therefore granted public interest standing.

61. Finally, where this proceeding is in its earliest stages, and a full evidentiary record is not available, a measure of latitude should be granted to the plaintiff in regard to its perceived ability to present concrete and well-developed factual setting.

Whether This Case is of the Public Interest

62. This litigation raises issues that transcend private interests: the legality and constitutionality of a federal corrections directive that governs inmate placements and transfers nationwide. CD-100 directly affects a vulnerable, marginalized population—incarcerated women—whose ability to seek legal redress from the courts is systematically constrained. The Statement of Claim pleads that CD-100 exposes female inmates to

⁵⁰ *MacKinnon v. Canada (Attorney General)*, [2025 FC 422](#) at paras [135-137](#).

⁵¹ *Milburn v. Nova Scotia (Attorney General)*, [2025 NSSC 320](#) at para [24](#).

serious harms including sexual assault, harassment, physical violence, privacy invasions, and dignity harms, undermining programming (including trauma-healing and mother-child initiatives) and frustrating rehabilitative objectives. These are issues of broad societal concern.

Whether there are realistic alternative means

63. The plaintiff is not aware of any existing or proposed litigation which raises issues or seeks remedies similar to those raised in the Claim. Realistically alternative means of raising these issues and remedies is entirely hypothetical.

64. Ms. Mason's affidavit details that female inmates face structural obstacles to commencing litigation: limited and restricted communications, fear of institutional reprisal, and concerns that complaints will be dismissed as "transphobic" and could negatively affect parole prospects. Those conditions inhibit disclosure, evidence-gathering, and sustained participation as named plaintiffs. A diffuse, organization-led challenge is the only practical means to bring a challenge of the legality of CD-100 before the Court.

65. This is consistent with the SCC's guidance that the presence of hypothetical directly affected litigants does not, by itself, defeat a motion for public interest standing where practical realities make those alternatives ineffective or unpredictable.⁵² In circumstances similar to this case, the SCC in *Downtown Eastside* considered that individual potential litigants feared loss of privacy and safety and increased violence. They also faced significant practical hurdles in prosecuting a major constitutional lawsuit including communicating with their counsel and providing timely and appropriate

⁵² *Downtown Eastside*, at paras [67-72](#).

instructions.⁵³ The SCC ultimately found that the chambers judge erred by giving inappropriate weight to the existence of both hypothetical and actual parallel litigation.

66. Finally, an order granting the plaintiff's public interest standing in this case will promote access to justice by advocating for the marginalized group of female inmates who do not have the practical means or the expertise to advance such a proceeding themselves. In these circumstances, granting CAWSBAR standing avoids immunizing a contested federal policy from review and aligns with the SCC's purposive approach to the third factor.

Potential Impact of the Proceedings on the Rights of Others

67. Proceeding with CAWSBAR's action poses no undue prejudice to other more directly affected individuals. The claim seeks declaratory relief regarding CD-100. Such relief is a balanced mechanism that benefits all stakeholders by clarifying rights and operational constraints without foreclosing individualized remedies in future cases. Nothing in the pleadings would bar incarcerated women or CSC from advancing fact-specific positions in later proceedings. Rather, a constitutional ruling here will provide legal clarity that will inform any future cases.

Cumulative Weighing

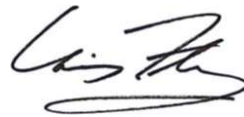
68. CAWSBAR has satisfied all three branches of the test in *Downtown Eastside* and should therefore be granted public interest standing. To find otherwise would be to immunize a government directive from judicial assessment and constitutional accountability. The plaintiff has presented a practical and effective way to challenge the legality of the federal government's placement and transfer of biological male inmates

⁵³ *Ibid.*, at para [71](#).

into women's prisons. This proceeding is consistent with the principle of access to justice where it challenges the constitutionality of a regulatory regime on behalf female inmates; a marginalized group who are disproportionately vulnerable due to past trauma, Indigenous identity, and mental health challenges.

PART IV – ORDER SOUGHT

69. The plaintiff seeks: an Order granting the plaintiff public interest standing.



January 21, 2025

Christopher Fleury
Allison Pejovic
James Manson

Counsel for the plaintiff

PART V – LIST OF THE AUTHORITIES TO BE REFERRED TO

Jurisprudence

1. *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, [2022] 1 SCR 794
2. *Boulachanis v. Canada (AG)*, 2019 FC 456
3. *Canada (Attorney General) v. Canada (Human Rights Commission)*, 2003 FCT 89
4. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 SCR 524
5. *Kavanagh v. Canada (Attorney General)*, 2001 CanLII 8496 (CHRT)
6. *Parkdale Community Legal Services v. Canada*, 2025 FC 912
7. *Prince Edward Island Fishermen’s Association Ltd. v. Canada (Attorney General)*, 2025 FC 737
8. *MacKinnon v. Canada (Attorney General)*, 2025 FC 422
9. *Milburn v. Nova Scotia (Attorney General)*, 2025 NSSC 320
10. *Toth v. Canada (Mental Health and Addictions)*, 2025 FCA 119



FEDERAL COURT

CANADIAN WOMEN'S SEX-BASED RIGHTS

Plaintiff

and

HIS MAJESTY THE KING

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: April 7, 2025

Issued by: _____

Address of
local office: [REDACTED]

TO: **ATTORNEY GENERAL OF CANADA**
Department of Justice Canada

[REDACTED]

CLAIM

SUMMARY

1. This claim concerns the legally and constitutionally protected rights of all Canadian Female Inmates incarcerated in Federal Institutions, and in particular, their right to be protected from mental, physical and sexual abuse by Trans-identifying Male Inmates with whom they are forcibly confined. The Plaintiff, Canadian Women’s Sex-Based Rights (“CAWSBAR”), pleads that such forced confinement has caused, and will continue to cause, serious harm to Female Inmates.

2. The practice of transferring/placing Male inmates into Female Prisons is authorized by a directive of the Commissioner of Corrections, namely Commissioner’s Directive 100: *Gender Diverse Offenders* (“CD-100”). CAWSBAR contends that CD-100 clearly and directly violates the rights of Female Inmates under sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) and is not saved by section 1. CAWSBAR also contends that these policies are in breach of Female Inmates’ rights under sections 1(a), 1(b) and 2(b) of the *Canadian Bill of Rights*.

3. The capitalized defined terms used in this Statement of Claim are set out in the annexed Schedule “A”.

THE PARTIES

4. CAWSBAR is a federally incorporated non-profit organization. Since 2019, CAWSBAR has worked to preserve the sex-based rights and protections of women and girls across Canada. Among other activities, CAWSBAR advocates for women’s sex-based rights and protections in the context of prisons, washrooms and changing rooms, sporting competitions, and other venues traditionally reserved for Biological Females.

5. The Defendant, his Majesty the King (“**Canada**”), is named in these proceedings pursuant to the provisions of sections 17 and 48 of the *Federal Courts Act* and the accompanying schedule. Canada funds and administers Correctional Services Canada (“**CSC**”), which is the federal government body that administers Federal Institutions, including Women’s Prisons. CSC has a duty to ensure the safe and humane custody and supervision of Inmates and to assist in their rehabilitation and their reintegration into the community. CSC is and was, at all material times, responsible for the oversight, funding and management of the governmental servants, employees, agents, and contractors who operate the Federal Institutions.

6. As of the current date, CSC administers six Women’s Prisons which are as follows:

- i. Fraser Valley Institution (33344 King Road, Abbotsford, British Columbia);
- ii. Edmonton Institution for Women (11151-178th Street, Edmonton, Alberta);
- iii. Okimaw Ohci Healing Lodge (located on the Nekanee First Nation, near Maple Creek, Saskatchewan);
- iv. Grand Valley Institution for Women (1575 Homer Watson Boulevard, Kitchener, Ontario);
- v. Joliette Institution (400 Marsolais Street, Joliette, Quebec); and
- vi. Nova Institution for Women (180 James Street, Truro, Nova Scotia).

PUBLIC INTEREST STANDING

7. CAWSBAR proposes to conduct this proceeding as a public interest litigant. CAWSBAR meets the test for public interest standing and thus has standing to commence and maintain this proceeding. CAWSBAR raises a serious and justiciable issue, namely: the significant harms to Female Inmates caused by the placement and transfer of Trans-identifying Male Inmates within

Women's Prisons, and the resulting breach of Female Inmates' legal and constitutional rights. CAWSBAR, by way of its advocacy work on behalf of women including Female Inmates, has a real stake and a genuine interest in the issues raised.

8. The proposed litigation is a reasonable and effective way to bring the issue before the Court. CAWSBAR has the capacity, resources, and expertise to litigate this claim. There is no other viable alternative method of proceeding. Further, as a result of the marginalized status of Female Inmates as described herein, as well as their incarceration which presents separate practical obstacles, it is difficult or impossible for an individual Female Inmate to bring such a proceeding.

BACKGROUND

The Differences Between Male and Female Inmates

9. When compared with Male Inmates, Female Inmates exhibit distinct behavioural patterns leading to, and during, their incarceration. These differences are primarily a result of innate biological and resultant psychological differences between Men and Women.

10. These differences manifest themselves in a variety of ways including, but not limited to:

- i. Female Inmates are substantially less likely than Male Inmates to have been convicted of serious violent crimes;
- ii. Female Inmates are less likely than Male Inmates to be repeat violent offenders;
- iii. Female Inmates are substantially less likely to have been convicted of a sexual offence;
and,
- iv. Female Inmates are on average shorter, smaller, and physically weaker than Male Inmates.

11. As a result of these differences, Female Inmates represent less of a physical danger to both other inmates and to correctional officers / staff than Male Inmates.

12. CSC's policies, and in particular the historical sex segregation of Federal Institutions, have long recognized the physical and psychological differences between Men and Women and that they are incompatible when incarcerated together.

Female Inmates as a Marginalized and Vulnerable Group

13. Female Inmates are a marginalized and vulnerable group. They have historically, and in the present day, faced significant challenges in achieving their full and equal participation in Canadian society, even upon their release from custody. These challenges include, but are not limited to: poverty, unemployment, under-education, and lack of familial supports.

14. Female Inmates account for a small minority of all persons housed in Federal Institutions. The population of Female Inmates is itself made up of a disproportionate number of members of further marginalized and disadvantaged groups. In particular, aboriginal Women are greatly over-represented among Female Inmates.

15. Female Inmates are significantly more likely than Women in general, or Male Inmates, to have been the victim of physical, sexual or psychological abuse. This abuse is suffered primarily at the hands of Men.

16. Female Inmates are significantly more likely than Women in general, or Male Inmates, to have experienced, or to currently experience, mental health problems including serious mental illness. This is further aggravated by the lack of mental health care resources available in Federal Institutions.

Trans-identifying Male Inmates

17. A sentence of two years or longer is required for a person to qualify for a federal prison sentence in Canada. Serious criminal activity and/or a lengthy criminal record is required in order to qualify for such a sentence. For this reason, Trans-identifying Male Inmates housed in Federal Institutions are *not* reflective of the general population of Trans persons in Canada.

18. In general, Trans-identifying Male Inmates exhibit the behavioural disposition of their biological sex rather than that of their chosen gender. For example, Trans-identifying Male Inmates often display levels of aggression and violence that are more likely to correspond with Male Inmates as opposed to Female Inmates.

19. While the majority of Female Inmates are heterosexual and attracted to Men, the majority of Trans-identifying Male Inmates are sexually attracted to Women, or to both Men and Women.

20. Trans-identifying Male Inmates are significantly more likely to have been convicted of a sexual offence than either Female Inmates or Male Inmates.

21. The number of individuals identifying as Trans has increased significantly in recent years, both in Federal Institutions and in the Canadian population more generally. Due to the relatively small population of Female Inmates, the transfer of even a small number of Trans-identifying Male Inmates into Women's prisons has had a disproportionate impact, as described in further detail herein.

THE TRANSFER OF MALE INMATES TO FEMALE INSTITUTIONS

Legislative Framework

22. Prior to the year 2017, transfers or penitentiary placements were based solely on inmates' genitalia. A Trans-identifying Male Inmate could only be transferred to a Women's Prison if he completed what was then termed "sex reassignment surgery". CSC did not permit transfers of pre-operative Male Inmates identifying as Trans into Women's Prisons under any circumstances. CSC determined that the identified risks to Female Inmates in this situation were too high.

23. In October of 2016, the Canadian Parliament passed Bill C-16 (*An Act to Amend the Canadian Human Rights Act and the Criminal Code*). The Bill became law on June 19, 2017. Bill C-16 amended the *Canadian Human Rights Act* to include gender identity and gender expression as prohibited grounds of discrimination.

24. Section 4(g) of CSC's governing legislation, the *Corrections and Conditional Release Act* ("**CCRA**") was also amended. Respect for "gender identity and expression" was added to its Guiding Principles. Section 4 (g) of the *CCRA* now provides that:

correctional policies, programs and practices respect gender, ethnic, cultural, religious and linguistic differences, sexual orientation and gender identity and expression, and are responsive to the special needs of women, Indigenous persons, visible minorities, persons requiring mental health care and other groups.

25. The purpose of the *CCRA*, as laid out in section 3 of that act, is to:

contribute to the maintenance of a just, peaceful and safe society by:

(a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

(b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.”

26. Following the amendment of section 4 of the *CCRA*, CSC published Interim Policy Bulletin 584 (Gender Identity or Expression) (“**IPB 584**”). IPB 584 permitted, for the first time in Canadian history, the transfer of Trans-identifying Male Inmates with fully intact Male genitalia into Women’s Prisons.

27. In May of 2022, IPB 584 was replaced by CD-100. CD-100 overrides other policies found in Commissioner’s Directives or guidelines and sets official direction relating to all Trans inmates. The purpose of CD-100, as described in the directive is as follows:

To provide direction on procedural changes that reflect the Correctional Service of Canada’s (CSC’s) commitment to meeting the needs of its gender diverse offender population in ways that respect their human rights and ensure their safety and dignity as well as the safety of others in the institutions and community

28. CD-100 creates a presumption that Trans Inmates will be placed according to their “gender identity or expression” so long as there are not “overriding health or safety concerns that cannot be resolved”. Section 36 of CD-100 reads as follows:

After completing the intake assessment process, offenders will be placed according to their gender identity or expression in a men’s or a women’s institution, if that is their preference, regardless of their sex (i.e., anatomy) or the gender/sex marker on their identification documents. In the event there are overriding health or safety concerns that cannot be resolved, the offender will be placed in a site that better aligns with their current sex (i.e., anatomy).

29. CD-100 defines the phrase “*overriding health or safety concerns*” as “*matters, substantiated through evidence or information, which would jeopardize the health or safety of the gender diverse offender, other offenders, staff, or members of the public.*”

Risks Involved with The Current Practice

30. A standard of self-identification removes scrutiny from the transfer process. It does not adequately respond to the risk that Male offenders have taken and will continue to take advantage of CD-100 to gain access to vulnerable Women.

31. Trans-identifying Male Inmates with convictions for sexual offences and/or other serious violent crimes toward women and girls have been granted transfers to Women’s Prisons.

32. A Male Inmate seeking to exploit CD-100 and gain access to vulnerable Women bears no cost of falsely declaring a Trans identity. In particular, section 49 of CD-100 states that:

In the event the request is denied or the offender withdraws their application, their security classification will remain unchanged and will not be impacted by the results of the [Security Reclassification Scale / Security Reclassification Scale for Women], which might have changed their security classification.

33. The risks created by transferring a Trans-identifying Male Inmate to a Female Prison are not eliminated or alleviated by drugs (hormones) and/or surgery. Hormone therapy does not guarantee that the Trans-identifying Male Inmate with male genitalia will not have erectile capacity. Neither penectomy (surgical removal of the penis) nor gonadectomy (surgical removal of the testes) change other characteristics indicative of Male criminality including aggression and potential for violence.

34. Trans-identifying Male Inmates are frequently housed in the Structured Living Environment (“SLE”) of Female Prisons. The SLE houses Female Inmates with psychiatric illnesses, emotional disorders and mental disabilities who are at an even greater risk of the harms described herein.

35. Once the transfer to a Women’s Prison is made, it is very rare for CSC to involuntarily transfer the Trans-identifying Male Inmate back to a Federal Institution for Men, no matter the nature of the misconduct and/or crime(s) perpetrated on Female Inmates. Even after such a removal from a Women’s Prison following criminal activity or serious misconduct, CSC has and will transfer the Trans-identifying Male Inmate back to a Women’s Prison.

HARMS TO FEMALE OFFENDERS

Unique Context of The Carceral Setting

36. The impact of the transfer and placement of Trans-identifying Male Inmates in Women’s Prisons is aggravated by Female Inmates’ vulnerable status as described above, and particularly their past experiences of abuse at the hands of Men.

37. Further, incarceration presents a unique context where Female Inmates are forced to live, for extended periods of time, in very close quarters with individuals who are anatomically and biologically of the opposite Sex. Leaving is not an option should the situation become intolerable for the Female Inmate.

Rape and Sexual Assault

38. Female Inmates have been sexually assaulted by Trans-identifying Male Inmates both with and without male genitalia. In addition to the inherent trauma and harm associated with such

incidents, Female Inmates are also exposed to increased risks of pregnancy and sexually transmitted infections.

Sexual Harassment

39. Female Inmates have experienced sexual harassment from Trans-identifying Male Inmates. This includes, but is not limited to: stalking, including following women to the bathroom and showers; remaining directly outside of private stalls; making sexually inappropriate, aggressive, and/or sexually suggestive comments; and grooming behaviours.

Assault

40. Female Inmates have been physically assaulted by Trans-identifying Male Inmates. Trans-identifying Male Inmates are physically larger and stronger than the average Female Inmate. The force generated during an assault by a Trans-identifying Male Inmate is far beyond what a Woman is typically capable of. The average Female Inmate is easily overpowered by the average Trans-identifying Male Inmate.

Harassment

41. Female Inmates have experienced harassment from Trans-identifying Male Inmates. This includes, but is not limited to verbal threats, yelling, ridicule including name-calling, and defamation.

Physical Impacts

42. As a result of the harms described above, Female Inmates have suffered bruising, contusions, and cuts resulting in bleeding.

Psychological Impacts

43. As a result of the placement of Trans-identifying Male Inmates in Women's Prisons, Female Inmates have experienced Post-Traumatic Stress Disorder, flashbacks of stressful, violent, and/or emotionally disturbing events involving men, anxiety, anger, depression, and hopelessness.

44. Female Inmates who are housed with Trans-identifying Male Inmates suffer from a loss of privacy and dignity knowing that a Biological Male can see them in a state of undress.

Impact on Programming

45. Women's Prisons provide group-based psychological programs for the purpose of healing childhood sexual trauma. Once placed or transferred into a Female Prison, Trans-identifying Male Inmates with convictions for sexual offences or violent offences involving women and children are permitted access to such programs. This causes, and will continue to cause, many Female Inmates to experience serious difficulty in participating in such programs, or to avoid them altogether. This undermines the efficacy of the programs and, in turn, the rehabilitative nature of a custodial sentence.

46. Women's Prisons also permit mothers of young children to reside with their children while in custody. This ameliorative program, known as the Mother-Child Program, is meant to assist mothers in maintaining the natural maternal bond as between the mother and her child. At least one Trans-Identified Male Inmate who has convictions for violent sexual offences involving an infant was housed in or near the Mother-Child Program in a Women's Prison. The presence of this Trans-Identified Male Inmate near mothers and children caused the Female Inmates serious psychological harm as well as fear for the safety of their children. This undermines the efficacy of the Mother-Child Program and, in turn, the rehabilitative nature of a custodial sentence.

Further Consequences for Expressing Concerns

47. Female Inmates are reluctant to speak out or complain about the harms caused by Trans-identifying Male Inmates. Complaints are often viewed by correctional officers and staff as harassment, intolerance, and/or “transphobia”. Female Inmates do not speak out for fear of an entry on their institutional record which will eventually be considered by the Parole Board of Canada, and which could impact the decision to grant or not grant parole.

Limited Information and Further Particulars

48. As a public interest litigant, the Plaintiff’s knowledge and pleadings are based primarily on information provided by current and former Female Inmates. The great majority of information and documentation regarding harms to Female Inmates is solely in the possession, power, and control of CSC.

49. CAWSBAR relies on such further particulars of harm as may be discovered throughout the course of this action.

CHARTER BREACHES

Section 7

50. Section 7 of the *Charter* provides: *Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*

51. The transfer of Trans-identifying Male Inmates into Women’s Prisons has deprived Female Inmates of their right to security of the person. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim.

52. CD-100's rules regarding the placement and transfer of Trans-identifying Male Inmates into Women's Prisons are overly broad and therefore contrary to the principles of fundamental justice. Such placements and transfers extend beyond what is necessary to achieve CD-100's purpose and in doing so create a vast array of unnecessary harms for Female Inmates, as described herein.

53. Further and in the alternative, CD-100 is arbitrary where it permits serious harms for Female Inmates without furthering its purpose of meeting the needs of its gender diverse offender population in ways that respect their human rights and ensure their safety and dignity. In particular, Women's Prisons are designed and managed by CSC in ways that are responsive to carceral, rehabilitative and other needs that are specific to Women. The needs of Trans-identifying Males Inmates are not met, or are inadequately met, in this environment.

54. Further and in the alternative, CD-100 creates a vast array of unacceptable harms for Female Inmates, as described herein, which are grossly disproportionate to CD-100's purpose, and therefore contrary to principles of fundamental justice.

55. Further and in the alternative, CD-100's placement and transfer of Trans-identifying Male Inmates into Women's Prisons is contrary to such principles of fundamental justice as will be advised prior to trial.

Section 12

56. Section 12 of the *Charter* states: *Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.*

57. The placement and transfer of Trans-Identified Male Inmates in Women's Prisons has a significant impact on Female Inmates' liberty and security interests and is therefore punishment.

58. The placement and transfer of Trans-Identified Male Inmates in Women's Prisons is intrinsically incompatible with Female inmates' human dignity. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim.

Section 15

59. Section 15 of the *Charter* provides that:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

60. The placement and transfer of Trans-Identified Male Inmates into Women's Prisons creates a distinction based on sex. While Male Inmates are regularly transferred to Women's Prisons, the reverse does not occur. In the alternative, the transfer of Female Inmates to Male Prisons is extraordinarily rare.

61. The placement and transfer of Trans-Identified Male Inmates into Women's Prisons imposes a burden and denies benefits to Female Inmates in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim. The exposure of Female Inmates to such harms and risks of harm also undermines their rehabilitative efforts, as well as the duty of CSC to contribute to such rehabilitative efforts. As a result, Female Inmates receive less benefit from the rehabilitative aspects of a custodial sentence. This intern reinforces, perpetuates and exacerbates the disadvantages Female Inmates face as described in paragraphs 13-16 of this claim.

Section 28

62. The Plaintiff further pleads and relies upon section 28 of the *Charter* which provides that: *Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.* This interpretative provision applies to each of the sections of the *Charter* cited above.

Section 1

63. The infringements of Female Inmates' section 7, 12 and 15 *Charter* rights are not reasonable limits prescribed by law and cannot be demonstrably justified in a free and democratic society, in accordance with section 1 of the *Charter*.

BREACHES OF THE CANADIAN BILL OF RIGHTS

Section 1(a) and (b)

64. Section 1(a) and (b) of the *Canadian Bill of Rights* (“**CBR**”) states:

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;

65. The transfer of Trans-identifying Male Inmates into Women's Prisons has deprived Female Inmates of their right to security of person. In this regard the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim.

66. The placement and transfer of Trans-Identified Male Inmates into Women's Prisons creates a distinction based on sex. While Male Inmates are regularly transferred to Women's Prisons, the reverse does not occur. In the alternative, the transfer of Female Inmates to Male Prisons is extraordinarily rare.

67. The placement and transfer of Trans-Identified Male Inmates into Women's Prisons imposes a burden and denies benefits to Female Inmates in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim. The exposure of Female Inmates to such harms and risks of harm also undermines their rehabilitative efforts, as well as the duty of CSC to contribute to such rehabilitative efforts. As a result, Female Inmates receive less benefit from the rehabilitative aspects of a custodial sentence. This in turn reinforces, perpetuates and exacerbates the disadvantages Female Inmates face as described in paragraphs 13-16 of this claim.

Section 2(b)

68. Section 2(b) of the *CBR* states:

Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to:

(b) impose or authorize the imposition of cruel and unusual punishment;

69. The placement and transfer of Trans-Identified Male Inmates in Women's Prisons has a significant impact on Female Inmates' liberty and security interests and is therefore punishment.

70. The placement and transfer of Trans-Identified Male Inmates in Women's Prisons is intrinsically incompatible with Female inmates' human dignity. In this regard, the Plaintiff pleads and relies upon the harms described in paragraphs 36-49 of this Statement of Claim.

RELIEF SOUGHT

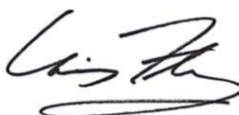
71. CAWSBAR seeks the following relief:

- i. a declaration that it has public interest standing to commence and maintain this proceeding;
- ii. a declaration pursuant to section 52(1) of the *Constitution Act, 1982* or section 24(1) of the *Charter* that CD-100 violates the section 7, 12, and 15 *Charter* protected rights of Female Inmates, as described herein, by its policy of allowing Trans-identifying Male Inmates into Female Prisons, and that it is therefore void and of no force or effect;
- iii. in the alternative, a declaration pursuant to section 52(1) of the *Constitution Act, 1982* or section 24(1) of the *Charter* that CD-100 violates the section 7, 12, and 15 *Charter* protected rights of Female Inmates, as described herein, by its policy of allowing Trans-identifying Male Inmates with fully intact male genitalia into Female Prisons, and that it is therefore void and of no force or effect;
- iv. a declaration that CD-100 be construed and applied as not to authorize infringements of Female Inmates' rights and freedoms under the *Canadian Bill of Rights*; and
- v. such further and other relief as this Honourable Court may deem just.

72. CAWSBAR does not seek costs, whether successful or not.

73. Where this matter is being brought in the public interest and regarding a subject of national importance, the Plaintiff pleads that costs ought not be awarded against it, even if it is unsuccessful.

74. CAWSBAR proposes that this action be tried at Toronto Ontario.



April 7, 2025

CHARTER ADVOCATES CANADA

[Redacted]
[Redacted]

Chris Fleury, LSO #67485L

[Redacted]
[Redacted]

Allison Pejovic, LSA #24411

[Redacted]
[Redacted]

James Manson, LSO #54963K

[Redacted]
[Redacted]

Counsel for the Plaintiff

SCHEDULE “A”

In this Statement of Claim, the following capitalized terms have the following meanings, including singular or plural usage as the context requires:

- i. “**Canada**” means the Defendant, the Attorney General of Canada.
- ii. “**CAWSBAR**” means the Plaintiff, Canadian Women’s Sex Based Rights.
- iii. “**CSC**” means the Correctional Service of Canada.
- iv. “**CD 100**” means Commissioners Directive 100: *Gender diverse offenders*.
- v. “**Female**” or “**Biological Female**” means of or denoting the sex that can bear offspring or produce eggs, distinguished biologically by the production of gametes (ova) that can be fertilized by male gametes.
- vi. “**Female Inmate**” means a Female who is or was serving a criminal sentence in a Women’s Prison.
- vii. “**Gender**” means a person’s perception of themselves in relation to Biological Sex, as well as a range of other identities that do not correspond to the Male/Female Sex binary.
- viii. “**Male**” or “**Biological Male**” means of or denoting the Sex that produces small, typically motile gametes, especially spermatozoa, with which a Female may be fertilized or inseminated to produce offspring.
- ix. “**Male Inmate**” means a Male who is or was serving a criminal sentence in a Federal Institution.
- x. “**Man**” means an adult Male.

- xi. **“Prison”** means a correctional institution in Canada which is funded and administered by CSC.
- xii. **“Sex”** or **“Biological Sex”** means either of the two main categories (Male and Female) by which humans are distinguished on the basis of their reproductive functions, as observed at or prior to birth.
- xiii. **“SLE”** means Structured Living Environment, a living unit within Women’s Prisons providing mental health care for minimum and medium security inmates.
- xiv. **“Trans”** or **“Trans-identifying”** means a person who identifies with a Gender that does not correspond with their Biological Sex.
- xv. **“Women’s Prisons”** means a Federal Institution that has historically been reserved solely for Female Inmates.
- xvi. **“Woman”** means an adult Female.