

**TWO SPIRIT INDIGENOUS OFFENDERS IN THE CORRECTIONAL SERVICE OF
CANADA: CULTURAL RECLAMATION AND NEED FOR A HEALING APPROACH
TO POLICIES AND PROGRAMS**

by

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Abstract

Two Spirit is an Indigenous identity that is gender variant and includes the interrelatedness of all aspects of identity including sexuality, gender, culture, community and spirituality.

Colonization has profoundly (and adversely) impacted Indigenous identities, including those who self-identify as Two Spirit. To date, there has been limited academic research on Two Spirit identity. More specifically, research to address the social epidemic of Indigenous peoples who are overrepresented in the criminal justice system and federally incarcerated in Canadian prisons does not yet adequately consider the unique identity and needs of Two Spirit individuals. Even the Truth and Reconciliation Commission provides only a singular passing reference to Two Spirit persons in its summary report. In this paper, the author argues that Two Spirit identities have been largely excluded from the overall Correctional Service of Canada (CSC) profile within policies, programs and institutional infrastructure. In view of the 2016 introduction of Bill C-16: An Act to Amend the Canadian Human Rights Act and the Criminal Code protecting gender identity and expression as prohibited grounds of discrimination, the author focuses on the need for greater inclusion of the Two Spirit identity within the CSC policies and programs. Existing human rights protections now include supports for the rights of gender identity and expression, sexual orientation, and biological sex beyond the current policy framework. Indeed, human rights protections have expanded to create space for the CSC to recognize and include gender fluid identities and expressions for Two Spirit offenders. A main conclusion and recommendation is that the existing binary gender (male/female) framework built on heteronormativity must be challenged and evolve to develop an educated incarceration approach for Two Spirit offenders.

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Dedications

My work is dedicated to Robin Loyie, whose perseverance through a life of adversity and mistaken identity was the foundational inspiration for my research, writing and personal growth as I journeyed on this path to shed light on such an important and understudied identity issue.

This paper is dedicated to my mother, Caroline Buckshot, who is a woman of selfless compassion, unconditional love, and inspiration to both myself and incarcerated offenders who know her work as a respected Elder and CSC community member. Also, to my late sister Alicia Caldwell, who was always there to encourage me as I grew up to always be proud of who I am.

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Acronyms

- i. Lesbian, Gay, Bisexual, Two Spirit Plus (LGBT2S+)
- ii. Correctional Service of Canada (CSC)
- iii. Positive Space Initiative (PSI)
- iv. United Nations (UN)
- v. Fraser Valley Institution (FVI)
- vi. Canadian Human Rights Act (CHRA)
- vii. Canadian Charter of Rights and Freedoms (Charter)
- viii. Corrections and Conditional Release Act (CCRA)
- ix. Office of the Correctional Investigator (OCI)
- x. Truth and Reconciliation Commission (TRC)
- xi. Commissioner's Directive (CD)
- xii. Integrated Correctional Program Model (ICPM)
- xiii. Sex Offender Integrated Correctional Program Model (SOICPM)
- xiv. Aboriginal Integrated Correctional Program Model (AICPM)
- xv. Women Offender Correctional Program (WOCP)
- xvi. Criminal Risk Index (CRI)

Introduction

My name is Andrew Caldwell. I am status Algonquin (Anishinaabe) First Nations from the Kitigan Zibi Anishinabeg reserve located in Maniwaki, Quebec. My Anishinaabe name is Wa-Wa-Ti-In-In-Ne which means Northern Lights Man. With respect to my gender identity and my sexual orientation, I am Two Spirit. Although my peers experience me as androgynous at times, my gender expression leans towards the normative range of a cis-gender male. I prefer the pronouns he, him, they, their and she within the Lesbian, Gay, Bisexual, Two Spirit + (LGBT2S+) community. As the author of this paper, the *Indian Act* (1985) has impacted my life on many levels. As a status Indian First Nations person I am a registered “male” band member in the Indian registry and that is the primary binary (male/ female) identifier legally assigned to me. For this paper, I use the terms Aboriginal and Indigenous interchangeably. Aboriginal persons in Canada are legally defined as Indian (First Nations), Inuit, and Metis. First Nations persons are further defined as having or not having status in relation to being legally registered as an “Indian” under the *Indian Act* (1985) and subject to the regulation of the *Act*. Importantly, the *Indian Act* (1985), as a colonial, Christian, patriarchal and heteronormative law, does not recognize non-binary gender identities.

My Kokomis (Algonquin grandmother) was sent to the Spanish Residential School in Ontario and was directly impacted by colonization. She died at a young age in a car accident and her children were raised in foster homes; my mother, who raised me, was one of those children. My mother and her siblings grew up not knowing about their Algonquin culture or spirituality because my Kokomis was forbidden to speak her language or practice her culture by the residential school. My mother shares the stories she remembers about her mother being a Medicine Woman.

She shared that my Kokomis used traditional medicines from the earth to heal physical and emotional wounds.

My mother raised my sister and me on her own. As a child, I recall seeing her being oppressed and discriminated against and oppressed because she looked Aboriginal due to the darkness of her skin and her long black hair. She cleaned houses, waited on tables, and did her best to raise us as a single parent. As a result of her childhood in the foster care system, and in view of her mother being a residential school survivor, she did not have parenting skills; however, she was very supportive of my development as a child. I did not know if I was a boy or girl, but I knew I was attracted to other males. I knew that I was different from others; it was a struggle. My mother allowed me to be who I was. She supported my love for the pop star Madonna and would celebrate the moments when I would dance and sing to Madonna's music and videos. I had long hair as a child and was flamboyant and it was embraced. My late sister was also very supportive of my development and celebrated who I was.

My father, who is of Scottish decent, worked for the Canadian Air Forces and lived predominantly on military bases. My parents divorced when I was an infant and my father was largely absent from my life. One year, my father took my sister and me for a summer. He did not agree with the fact that I would play with Barbie's or with how I looked with my long hair and gender fluid attire. He made me go to the barber shop with him and had the barber cut all of my hair off into a buzz cut. I was forced to conform to being a "boy." Throughout my school years, I struggled with my gender identity and gender expression. I have been subjected to homophobia, transphobia, and racism. My mother, sister, and I moved out to Vancouver when I was 18. During this time, I wanted to be a film actor. I enrolled in an acting school and enjoyed it very much. However, I was afraid of excelling because of my low self-esteem at the time and got caught up in

the gay night life in Vancouver where I was drinking a lot. I struggled with alcoholism and my mother encouraged me to go to a 30-day Wilp Si'Satxw which is an Aboriginal treatment/healing centre in Kitwanga, British Columbia (BC). I realized my life was going nowhere on the path I had been on, so I made the decision to attend the healing centre. It was at Wilp Si'Satxw where a female Elder told me that if I did not deal with who I was, in terms of my gender identity and sexual orientation, then things would get worse for me. The Elder informed me that I was "Two Spirit," which meant I was given male and female energy. She told me that this was a sacred gift, because I could understand, and mediate between, both genders. As gifts from the Creator, the Elder told me that it was important to continue on my healing journey in order to embrace the gift of having two spirits. After that moment I remember feeling at ease and grounded.

There are many reasons why I am writing this major paper on the Two Spirit identity in my capacity as a Master's degree Criminology/Criminal Justice student and as a Correctional Service of Canada (CSC) Aboriginal Correctional Program Officer at Fraser Valley Institution (FVI). When I was an undergraduate student at Douglas College, a former student approached me on a break and inspired me to do so, given that there was a lack of research and that it would make an interesting paper and provide important contribution to the existing literature. I remember back in the 1990's, my friends and I would frequent a pub called the Duffrin (which no longer exists) before the night clubs. There were many Two Spirit/Transgender (Trans) LGBT+ Indigenous individuals at the Duffrin. It was a place where we could meet one another, celebrate our identities, and dance the night away with no judgement. Around midnight, I remember seeing some of the Two Spirit/Trans Indigenous sex trade workers come in. They were stunning and had intense energy in terms of their charisma. Many of them were stand offish and did not want to connect with some of us. I suppose it may have been shame or embarrassment that they felt from working

the streets, or perhaps it was a protective device. I remember asking some of them which tribes or nations they came from. They shared that they were excluded from their tribes because of who they were as Two Spirit people. Arguably as a result of Canada's lengthy colonial history including the imposition of the *Indian Act* (1985), their peoples did not agree with their sexual identities or gender identities/gender expressions.

I began my career with Correctional Service of Canada (CSC) in December 2009 when I was hired as an Aboriginal Liaison Officer at Mountain Institution. It was a culture shock having lived in the West End of Vancouver in the LGBT2S+ community for so long, and then moving to the Fraser Valley. I had never worked in a prison before, so it was a transition. I recall the Aboriginal offenders saying to me, "Be who you are, and you will be okay." I am under the impression that they were implying that they knew I was not the typical "straight," "macho," "male" which seemed to be the norm in that environment. I also recall hearing the offenders use the term "two spirit," which I was impressed by. There were a few Aboriginal inmates that identified with this term and they seemed to be embraced by the other inmates. There was one Indigenous inmate in particular, who I remembered struggling with finding resources for his sexual orientation and claimed to be mis-gendered, in the sense that binary and heteronormative values and attitudes were imposed on this individual by his parole officer. Some of the resources entailed seeking an Elder who could assist with the traditional teachings of Two Spirit and contextual supports to address the homophobia and transphobia he experienced when in custody. He (they) were transferred to another institution and tragically ended up dying by suicide, ostensibly due to homophobia and transphobia perpetuated by another Aboriginal offender (Office of the Chief Coroner of British Columbia, 2014).

In 2014, the CSC embraced and implemented the Positive Space Initiative (PSI) as a means of being more inclusive of LGBT2S+ staff and allies. PSI is a grassroots initiative and the CSC was the first federal department to embrace it (Correctional Service of Canada, 2018a). The training is intended to create “Champions” in the workplace for LGBT2S+ staff – and for working with offenders who identify as such. The training is three hours long. Areas that are covered are varied, but not exhaustive. There is a brief discussion on the global situation with LGBT2S+ in terms of how many countries by means of their laws and policies continue to forbid and execute persons with these identities. PSI introduces the United Nations (UN) Free and Equal Campaign to display how the UN is involved in supporting LGBT2S+ around the globe (United Nations Human Rights Office of the High Commissioner, n.d.). PSI highlights the fact that Canada is one of the leading countries in terms of supporting LGBT2S+, and that their laws and policies generally support these rights. Gender identity, gender expression, sexual orientation, and biological sex are explored as a means to break through the binary system and heteronormativity. Sex, gender identity, gender expression and sexual orientation can be experienced/viewed as continuums. Sex can be generally determined by biological disparities between males and females based on their genitalia (Shrage, 2012, p. 44). There is no commonly agreed definition of sexual orientation, gender identity and expression. Gender identity and expression “...refer[s] to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms” (Erni, 2013, p.136). Sexual orientation is about an individual’s sexual and/or emotional attraction. This may or may not be directed at another individual(s). There are many sexual identities in addition to heterosexual,

bisexual, and homosexual, and it is a constantly evolving concept. In PSI training, assumptions and biases are challenged with respect to gender identity and sexual orientation. Pronouns are introduced to educate the participants on their importance in terms of self-identification and inclusivity. There is an LGBT2S+ competency exercise where participants learn various terms of the acronym that are non-exhaustive. There is a Positive Space Champion Support Model introduced for Champions to learn how to demonstrate support and build resources for the LGBT2S+ staff and allies. PSI is a contextual support for LGBT2S+ staff to reach out to if they are struggling in the workplace or have family members that are struggling with their gender and/or sexual identity and to assist inmates by having staff who are trained in gender-diversity. Since the implementation of PSI, the EXCOM (corporate executives) group from National Headquarters in Ottawa have become Positive Space Champions and have formed a Positive Space Network. In Fall 2017, my co-facilitator and I trained the majority of the Wardens and Deputy-Wardens in the Pacific Region on PSI. This included a presentation on the global and Canadian situation of LGBTQ2S+, including laws and policies; a discussion on gender identity and expression, as well as biological sex and sexual orientation that challenges heteronormativity and the binary system; pronouns were introduced as a means to respectfully address an individual's gender identity and expression; the LGBTQ2S+ acronym was taught in a non-exhaustive format; and, finally, there was a support model introduced to assist the staff in familiarizing themselves with current resources and contextual supports. This training resulted in senior management becoming Positive Space Champions (Canada School of Public Service, n.d.).

By permitting areas of safe space, CSC is acknowledging that there is a deeply rooted problem whereby homophobia, transphobia, and biphobia have gone unchallenged. The concept of sacred space has not existed long enough to produce a positive impact into the workplace. I was

amazed when I received the training to see that it was inclusive and an open environment. For the very first time, I ‘came out’ in the workplace and announced my gender identity and sexual orientation as being Two Spirit in the training. The National Lead for the CSC PSI, Andrea Markowski approached me after the training. Markowski asked me if I could create a presentation on Two Spirit given there was a need to train CSC Elders in the Prairie Region. As a former Warden, she shared that offenders at Okimaw Ohci Healing Lodge who self-identified as Two Spirit were struggling with not having their needs met by some of the Elders. She shared that, because of colonization and the residential school systems, the Elders were often not open to offenders that were gender variant or attracted to the same sex or pansexual. In other words, some of the Elders were displaying homophobia, transphobia, and biphobia as a result of colonization and assimilationist policies (*Indian Act*, residential schools). I was honoured to be asked to create a presentation on Two Spirit.

In late 2016, my presentation was approved by the Aboriginal Initiatives Directive - National Headquarters. In spring 2017, I presented for my first time at Bowden Institution and in Edmonton for CSC staff and Elders. I received complicated questions from many of the Cree Elders who attended residential schools. For example, one of the questions was, “So I went to a residential school and the man who molested me was feminine. Would that make him gay and transgendered?” A statement I received from a Cree female Elder was, “I am supportive of inmates being gay or trans, but if one of my granddaughters are that way, I would disown them.” Some of the Elders displayed resistance when discussing the Two Spirit identity, as well as gender identity, gender expression, and sexual orientation. This can be traced to their experiences in the Residential School system where not only was their language, culture, and land taken from them, but they were forced to conform into a Christian, patriarchal, heteronormative, binary system where

homosexuality was seen as a sin. As the residential school survivors and the Truth and Reconciliation Commission (2015) have so clearly documented, sexual abuse occurred in these schools and with some of the employees as well.

In this paper, I will make the side-argument that colonization and assimilation policies, including Residential Schools, have distorted the traditional views and sacred practices of the Two Spirit identities. It is through my presentation on the Two Spirit identity that I am facilitating dialogue to decolonize of Western views and to build respectful relationships amongst Indigenous LGBT2S+ individuals and communities. I have had the opportunity to deliver my presentation for correctional program officers at Pacific Institution in 2017; for public servants at the 2017 and 2018 National Public Service Week at the Vancouver Public Library; for the interventions staff at Matsqui Institution in 2018; for staff at FVI in 2018; for Pacific Regional Program Officers in 2018; and for inmates in August 2018. For this last session, the Deputy Warden asked me there personally, as there were negative interpersonal dynamics between the cis-gender inmates and trans and non-binary inmates. I had some of the trans inmates and allies help deliver the LGBT2S+ competency workshop as part of the presentation. I am scheduled to deliver in May 2019 in the Maritimes at their Regional Headquarters to staff and June 2019 at Okimaw Ohci Healing Lodge to both staff and offenders.

The main purpose of this paper is to critically examine the Correctional Service of Canada's (CSC) policies and programs for gender diversity, and in particular for the Two Spirit offender. In this paper, I will argue that there currently are a lack of specific policies and programs in place for the Two Spirit offender within the CSC. Historically, the CSC policies, programs, and assessment tools have been gender binary (male/female) and the main "gender concern" within federal corrections has been cross-gender staffing protocols. This gap in policy needs to be

addressed to ensure the CSC is fully compliant with *Bill C-16: An Act to Amend the Canadian Human Rights Act* (2016) and the *Canadian Criminal Code* (1985) to recognize gender identity and expression as prohibited grounds of discrimination. Importantly, the CSC is bound by the provision of the *Canadian Human Rights Act* (1985; *CHRA*). Presumably the federal legal recognition of gender identity and expression as prohibited grounds of discrimination will also extend to guaranteed equality rights under the *Canadian Charter of Rights and Freedoms* (1982), which the CSC is also bound to abide to. I will argue there is a need for the CSC to further develop Indigenous gender diverse and non-heteronormative policies and programs.

The data for this paper were gathered through a literature review and by analyzing existing CSC policies and programs in relation to Indigenous persons and gender diversity. There are various limitations associated with this paper and especially an absence of empirical research on the experiences of Indigenous Two Spirit prisoners in Canada. Much of the research that exists is specific to Indigenous offenders *or* to sexually and gender prisoners. The Two Spirit identity is incredibly diverse, given the many tribes on turtle island; this presents another limitation to the clarity of this paper. Though Indigenous Queer Activism is discussed briefly, as it does not fully encapsulate the Two Spirit identity, it is not fully explored.

The Overrepresentation of Indigenous People in Federal Prisons

The term Indian, First Nations (including status and non-status), Aboriginal, and Indigenous are colonial terms that refer to the first peoples of Turtle Island or what is now called North America. The term “Aboriginal” is constitutionally defined as including Indian, Inuit, and Metis persons (Monchalin, 2016, p. 2). In relation to the CSC policies, the term “Aboriginal” is similarly defined under Section 79 of the *Corrections and Conditional Release Act* (1992; *CCRA*). Monchalin (2016) reports that Statistics Canada “estimated that 1,400,685 people had Indigenous

identity, comprising 4.3 percent of the total Canadian population” (pp. 8-9). More specifically, Statistics Canada (2013) indicate there are over 600 First Nations (Indian) Bands in Canada that include Matsqui First Nations in British Columbia, Blue Quills First Nations in Alberta, and the Kitigan Zibi Anishinabeg in Quebec to name a few. Amongst these Bands or Nations there are very different cultural and spiritual practices and beliefs. For example, the Matsqui First Nations who are Coast Salish practice the longhouse traditions, and the Blue Quills First Nations who are Cree and the Algonquins from Kitigan Zibi Anishinabeg both practice the sweat-lodge ceremony. Additionally, there are many different languages and dialects amongst the 600 Bands that reflect this enormous cultural diversity. Within Canada, the Indigenous population is recognized as one of the youngest fastest growing population groups in relation to persons who self-identify as having “Aboriginal” heritage, which has important implications for ongoing high rates of over-incarceration.

In view of Canada’s very troublesome colonial history and assimilation policies it is perhaps not surprising that the overrepresentation of Aboriginal peoples that are federally incarcerated continues at an alarming rate. According to the 2012-2013 annual report of the Office of the Correctional Investigator (2013; OCI), some of the reasons for exceptionally high rates of federally sentenced and incarcerated Indigenous men and women who are federally incarcerated include being subject to colonization and the residential school system, or the residual and multi-generational residential school, which the TRC concluded was a form of cultural genocide; high rates of state imposed child apprehension and experience in the foster care system; family or community fragmentation, including substandard housing, and high levels of substance abuse, criminal victimization, and suicide in some communities; lack of educational, employment and business opportunities; low levels of education; high levels of poverty, unemployment and

dependence on state funding; involvement in Aboriginal gangs; and loss of cultural/spiritual identity as a direct result of colonization.

The OCI, the federal Ombudsman office for federally sentenced inmates, indicates that there is a high rate of federally sentenced Aboriginal offenders, especially in the Ontario and Prairie regions. For example, Aboriginal offenders make up 45.8% of the offenders in the Prairie Region prisons (Office of the Correctional Investigator, 2013, p.23).

A report of the Standing Committee on Public Safety and National Security indicates that, since 2005, the rates of Indigenous persons who are federally incarcerated has increased by 47.4%, while the overall rates of incarceration have only increased by 17.5% (House of Commons of Canada, 2018). The highest rates of increase have been for Indigenous female offenders where the federally sentenced female population has risen by 66% (House of Commons of Canada, 2018). Given a large and increasing number of Indigenous men and women who are federally incarcerated, it can be inferred that at least some of these individuals are likely to self-identify as Two Spirit persons since, at any given time, there are approximately 3,500 Indigenous individuals in prison (OCI, 2013, p. 31). However, there is little research on this due to the CSC being heteronormative and binary.

The OCI reports that there are poor conditions in the prison system. In fact, the Ontario and Prairie Regions are beyond their maximum capacities which has resulted in major challenges in terms of managing the rising number of inmates. To manage these challenges, there have been a major influx in interregional and involuntary transfers. This has resulted in poor conditions such as double bunking and prolong segregation, which bring up legal issues that include “due process and fairness considerations” (OCI, 2013, p. 22). In fact, Indigenous persons who are federally sentenced generally face harsher prison conditions than their non-Indigenous counterparts. For

example, the OCI has repeatedly found that Indigenous prisoners are over-represented in maximum security prison populations, segregation placements, institutional security incidents and self-injurious behaviour and are less likely to be granted early forms of release and more likely to be revoked once released (OCI, 2013, 2017). Indigenous inmates are also over-represented in institutional deaths. For example, the Correctional Service of Canada (2017a) annual reports on deaths on custody indicates that the percentage of Indigenous offenders that died in custody was 18%. Of this percentage, three of these deaths were a result of suicide (Correctional Service of Canada, 2017a).

In these and other respects, the Canadian government has launched investigations into human rights of federally sentenced prisoners in [2017-2018], and in relation to Indigenous prisoners under the authority of the CSC (OCI, 2017). In terms of Two Spirit offenders, while the OCI has been especially attentive to Indigenous prisoners and ethnocultural diversity in federal prisons as part of its mandate, it appears to have so far devoted less attention to sexual orientation and gender identity and expression, especially on the intersections between Indigeneity and ethnocultural identity and sexual and gender diversity.

Two Spirit

In terms of gender diversity, the acronym LGBTQ+ can be defined as Lesbian, Gay, Bisexual, Trans, Queer. There are numerous versions of the acronym, or “the alphabet soup” as some reference it. Most often, you will see LGBT, LGBTI, LGBTQ, or LGBTQ2S. Sometimes you will see an * or + to denote greater diversity. Within the acronym, there are many variants of gender identity and expression. For example, there are individuals who may identify as gender-fluid – having both genders (male/ female) – or as non-binary where an individual does not identify with either gender. The acronym is not meant to be exhaustive as the community is diverse and

our understanding of sexual orientation, gender identity and expression is evolving. A part of this community is “2S” which can be defined as Two Spirit.

Different Indigenous nations have their own variations of the term Two Spirit, but terms that have historically been used to describe similar traits embodied by Two Spirits include gender variance, specialized work roles, same-sex attraction and spiritual identity. The creation of the term “two-spirited” is attributed to Albert McLeod, who proposed its use during the Third Annual Inter-tribal Native American, First Nations, Gay and Lesbian American Conference, held in Winnipeg in 1990. The term is a translation of the Anishinaabemowin term *niizh manidoowag*, Two Spirits (Lougheed, 2016, p. 59). Two Spirit is an English term that can be defined as an Indigenous identity that is gender variant, of same-sex attraction, and of spiritual and cultural roles. Hunt (2016) asserts, “[m]any of these are difficult to translate into English because they describe identities which are at once about one’s role in a spiritual and cultural system, as well as expressive of gender identity and/or sexuality” (p. 7). Therefore, the definition of Two Spirit does not neatly fit into Eurocentric categories of gender identity and gender expression as they vary by tribe or nation.

Alex Wilson (1996) is a Cree Two Spirit academic. Wilson (1996) defines the meaning of Two Spirit identity as “...the interrelatedness of all aspects of identity, including sexuality, gender, culture, community, and spirituality” (pp. 304-305). Wilson (1996) asserts that there are “...over five hundred Nations (tribes) in the United States and Canada,” that are very diverse which includes having their own worldview (p. 305). Many of these tribes have similar worldviews that are holistic and have developed their own understanding of theology through the eyes of their culture; however, the meaning of Two-Spirit identity differs from one Indigenous culture to another; therefore, the meaning of Two-Spirit is complex and local or nation-specific.

It is important to note that the Indigenous worldview differs from the western worldview. For instance, the Indigenous worldview is seen through a holistic lens whereas the western worldview is stratified. In terms of the Two Spirit identity, this creates a major boundary within CSC since it is based on a patriarchal Euro-centric worldviews mostly run by western philosophies. Some of these boundaries are being addressed by the CSC Aboriginal staff such as Aboriginal Liaison Officers, Aboriginal Correctional Program Officers, CSC Elders, as well as Sections 81 and 84 agreements and the principles of Gladue (Aboriginal Social History). However, some of the Aboriginal staff, including the Elders, and especially those who have been colonized and/ or culturally dispossessed, are not necessarily equipped with knowledge of the Two Spirit identity, which likely would make it difficult for Aboriginal staff and Elders within the CSC to work effectively with these individuals.

Colonialism

Before the European settlers arrived, the Indigenous peoples of Canada lived resiliently and according to Indigenous cultural norms and practices, placing an emphasis on family, community, and equality. Stirbys (2008) describes that “[i]n many First Nations cultures, the ‘social makeup [was] based on equality and respect towards all life, including that of the sexes’; in some languages, there are no words that can be translated ‘to describe genders as in the case of he/she’” (Stirbys, 2008, p. 140). Many Indigenous languages may not always use a binary language system when defining gender. As Stirbys (2008) describes, “Gender equality was not an issue during pre-contact eras because each person was valued and held an important role within the community” (p. 140). Many tribes placed an emphasis on equality and not on gender. In fact, the Micmac were non-binary in terms of how they viewed gender. As Stirby’s (2008, p.140) describes: “For example, the Micmac language ‘does not distinguish between male/female; the distinction is

between animate/inanimate.” Similarly, in the Cree language nouns are of either two classifications – “animate or inanimate” that are non-binary (Okimasis, 1999, p. 7). This worldview was inclusive of everyone in the community, including that of the Two Spirit identity. Hunt (2016) tells us that the role of Two Spirit identities were important within their communities as they worked in harmony with cisgender and heterosexual individuals as a means of maintaining their sociopolitical legal systems, including cultural and spiritual reconciliation (p. 7). Colonization had a profound impact on Indigenous women and men where their roles differed from the European worldviews given that they were patriarchal, Christian and heteronormative.

Post-settlement, Indigenous women were labelled a derogatory term by the Europeans. This term was called “Squaw” which is derived from “iskwew” that means “a woman” (Okimasis, 1999, p. 7). This negative term was imposed by the Europeans onto Indigenous women, which held them in subordination. This changed their traditional roles as clan mothers and their matriarchal system. Bruchac (1999) states “The word ‘squaw’ – ‘esqua,’ ‘squa,’ ‘skwa,’ ‘skew,’ and other variants - traditionally means the totality of being female, not just the female anatomy. The word has been interpreted by modern activists as a slanderous assault against Native American women” (p. 1). Like “Squaw”, the term “Berdache” – which was an English term – was imposed onto male and female Two Spirit persons by European settlers to subordinate them. Europeans would sexualize the Two Spirit individuals by labelling them in the same way as they would label other “exotic” non-binary, gender-fluid, intersexed, androgynous, same-sex attraction, or individuals who were dressed as the opposite sex, etc. Originally, the term “berdache,” stems from the French “bardache,” the Spanish “bardaxa” or “bardaje,” and the Italian “berdasia” that implies a sexualized young slave (Smithers, 2014, p. 631). When the Europeans came over to Turtle Island (North America) they imposed their binary and heteronormative systems onto Indigenous peoples.

It did not make sense to them when they observed a cis-gender male dressed as a man from the top of his body and dressed as women from the waist down or a cis-gender or intersex woman dressed as a man. What was once seen as an accepted contributing person within the culture became identified with a negative term.

As the European settlers established themselves on what is now Canada, there was a need to formalize systemic laws and policies to colonize the Indigenous peoples in view of contestation over Indigenous lands. This time period was calculating and discriminatory. It was evident that the Indigenous peoples were persuaded into enfranchisement and victimized by Euro-centric policies that were imposed to control their lives. It can be argued that it was and remains a means of ‘cultural genocide’ that has no legal meaning. The *Indian Act* (1985) had a profound impact on Indigenous peoples, their worldviews, and their ways of life. The Act controlled every aspect of Indigenous peoples’ lives; this included ownership of their land, identity, and removal of their children to residential schools. Despite the government’s good intentions, these were the early stages of assimilation. Children that were forced to attend the residential schools were not only forbidden to speak their language or practice their culture but were also forced to assimilate into the binary system. Indigenous females were stereotyped and treated in brutally inhumane ways; they were treated as squaws, as being vulnerable and disposable. Gender non-conforming males were being sexualized as berdache. The *Indian Act* (1985) is fundamentally Christian and patriarchal as well as heteronormative whereby any person that did not conform was oppressed. Cameron (2005) states, “The dehumanization suffered by our elders and our communities in the residential schools has had an intergenerational effect on Aboriginal communities, and especially on two-spirited members of the community. The association of two-spiritedness with sin, and the erasure/ denial of their very existence is the dominant culture/ colonizer speaking with voices of

our elders” (pp. 124-125). The derogatory terms “berdache” and “squaw” were brought into the residential schools and amplified by the colonizers, which has stripped away the Two Spirit identity via cultural genocide.

The Canadian state has defined Indigeneity through the colonial tool of the *Indian Act* (1985). Section 5(1) of the *Indian Act* states, “There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act” (p. 5). This colonial law continued the binary dissection of indigenous identity which had a negative impact on the identity of Two Spirit people, as well as gender and sexuality. This binary dissection does not allow space for an individual to identify with a different gender than the sex they were assigned with at birth under the *Indian Act* (1985). Hunt (2016) states, “Colonial processes, which continue today, imposed new social norms and legal rights which altered Aboriginal gender roles and understandings of sexuality” (p. 9). This new system of government created disharmony and isolation, which adversely impacted Indigenous peoples assigned to reservation life and acculturation as well as cultural genocide and absorption into the state. The Two Spirit identity was impacted by this in that Indigenous cultural and spiritual ways of life were outlawed by the Canadian government.

Due to colonialism, the Two Spirit identity was denied from many Indigenous communities. In fact, the traditional teachings of the Two Spirit identity have been lost in many communities because of colonialism. This, in turn, has generated much debate amongst Indigenous activists and academics. Wilson (1996), for example, states that “academics argue over whether or not two-spirit people had a ‘special’ role or were special people in Native societies. In my community, the act of declaring some people special threatens to separate them from their

community and creates an imbalance. Traditionally, two-spirit people were simply a part of the entire community; as we reclaim our identity with this name, we are returning to our communities” (p. 305). Colonialism has eliminated a lot of oral traditional teachings on the Two Spirit identity in many tribes, which has created much debate and dialogue regarding what this identity looked like before European contact and what it should look like post-contact. It is important to decolonize the Two Spirit identity so it can reclaim its traditional role within the Indigenous communities. Various Indigenous activists and scholars are now working towards this reclamation. In the balance of this paper, I argue that the CSC should be attentive to this resurgence of interest in reclaiming the Two Spirit identity in relation to the work it is doing to ensure the needs of Indigenous offenders are being met and in relation to responding to *Bill C-16: An Act to amend the Canadian Human Rights Act and the Criminal Code*, adding gender identity and gender expression as prohibited grounds of discrimination under the *Canadian Human Rights Act* and the enhanced (aggravated hate/bias) sentencing provisions of the *Criminal Code*.

Changing the Landscape

There is a changing legal landscape for Canada and its federal agencies, like the Correctional Service of Canada, to redress its colonial legacy towards Indigenous peoples and to ensure and protect the equality and non-discrimination rights of gender minorities. Not only is Canada a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, 2007, recognizing the rights of Indigenous peoples (signed in 2009), it has signaled its intention to implement the TRCs 2015 Calls to Action to redress the harms created by residential schools, and it has enacted federal legislation to protect gender identity and expression rights (*Bill C-16: An Act to Amend the Canadian Human Rights Act and the Criminal Code*, 2016). In particular, constructive action on addressing a colonial legacy can help close the diversity gaps within the

CSC through application of reconciliation as articulated by the Truth and Reconciliation Commission of Canada (2015; TRC). The TRC summary report and ‘calls to action’ were released in 2015. As stated in the TRC report, the objective is to “redress the legacy of residential schools” and advance the process of reconciliation in the areas of child welfare, language, culture, health and justice through 94 calls to action for all levels of government (TRC, 2015, p. 191). Although the TRC does not specifically address the needs of Two Spirit offenders in its Calls to Action, arguably the needs of Two Spirit offenders can be read into its Justice Calls to Action such as those ensuring cultural competency training for justice officials (Calls to Action 27 and 28), eliminating the over-incarceration of Indigenous persons (Call to Action 30), providing culturally relevant services to Indigenous inmates (Call to Action 36), and providing more supports for Aboriginal programming (call to Action 37). Certainly, the TRC recognized the importance of Two Spirit identity as part of the work of the Committee by co-organizing with EGALE Canada a forum on the impacts of residential schools for Two Spirit community members and actions to support their healing and reconciliation (2015, p.33).

On June 15, 2017, Bill C-16 was introduced to amend the *Canadian Human Rights Act* and the *Criminal Code*. This new bill makes it so that discriminating on the grounds of gender identity and expression is prohibited. Ever since the implementation of Bill C-16, the CSC has been struggling to come to terms with how this new law can be implemented. An interim policy bulletin was published in December 13, 2017 applying to all CSC staff indicating some of the changes regarding this new bill (Correctional Service of Canada, 2017b). In particular, the CSC directed that an offender who identifies with another gender would be appropriately placed at an institution that would fit their gender identity and expression needs regardless of their autonomy (sex) and to address them as their preferred pronouns. This new law has created challenges for the CSC on

many levels. As per the Interim Policy Bulletin 584, some of the Commissioner Directives (CD) that would be affected were from operations and security, interventions, and health care (Correctional Service of Canada, 2017b). Correctional Managers and Correctional Officers need to be trained in working with trans offenders and how they handle their clothing entitlements [CD 352] and accommodations [CD 550]. They would need to establish a trans offender protocol when conducting searches [CD 566-7] and urinalysis testing [CD 566-10]. Operations staff require training when assessing personal property [CD 566-12] of trans offenders and how they would employ use of force [CD 567-1] when required. Correctional Managers and Primary Workers need to update staff protocol [CD 577] when working with trans offenders in the women's institutions (see, e.g. Yeun & Berra, 2017).

The bulletin also indicated that some of the interventions policies would be affected. The managers of assessment interventions and institutional parole officers need to be trained in how they would conduct and assess a trans offender at the intake phase [CD 705-3], security classification and penitentiary placement [CD 705-7], and transfer of inmates [CD 710-2]. The Parole Officer Supervisors and Community Parole Officers also need to be trained in how to conduct and manage a trans offender's post-community assessment reports [CD 705] and placement in a CSC community facility or half-way house. The bulletin also refers to working with Aboriginal offenders with CD 702. It also indicates that Health Care policies would be impacted in terms of how the CSC would medically treat a trans offender [CD 800], how they would respond in a medical crisis [CD 843], and how they can assess and support gender reassignment surgery [CD 800-5]. All of these changes are likely to affect how the CSC staff will manage gender diverse and Two Spirit offenders and highlight the importance of proper Indigenous cultural understandings and the importance of training. Yet, there has been a lack of

mandatory training for staff on Bill C-16 and its application with respect to gender identity and expression. Here it is important to note that the CSC Policy Bulletin evidently "... does not address training to support the proposed policy changes" (Yeun & Berra, 2017, p.5).

Further, the bulletin does not refer to any changes to CD 726 on correctional programs (Correctional Service of Canada, 2017b). The CSC programs fail to address the needs for the Two Spirit offender as these programs are primarily binary and heteronormative. This presents challenges for offenders who identify as trans, non-binary, intersex, gender fluid, and Two Spirit.

The CSC has two types of core correctional programming for offenders. One is the Integrated Correctional Program Model (ICPM) which is "designed to address all the identified criminogenic needs for male offenders who meet the criteria for a correctional program in a single, multi-target, moderate or high intensity. The entire intervention includes primers, motivational modules to address responsivity issues, the multi-target program, institutional or community maintenance, as well as the community program for offenders released to the community who had not participated in a program while incarcerated" (Correctional Service of Canada, 2014a, p. 1). Within the ICPM, there are two other streams that offenders may take given their risk, need, and responsivity such as Sex Offender Integrated Correctional Program Model (SOICPM) or the Aboriginal Integrated Correctional Program Model (AICPM) (Correctional Service of Canada, 2014b). Having delivered all three streams there is no reference to trans-identified, non-binary, or gender-fluid offenders. The AICPM has one session in the high intensity (Correctional Service of Canada, 2016) that speaks briefly to the Two Spirit identity. However, there has been no official training in this area for the facilitators or the program Elders when they deliver this session. Although the AICPM speaks briefly to the Two Spirit identity, the majority of all of the ICPM, including SO ICPM and AICPM, appear to be heteronormative and binary.

The other program is for women offenders, which is called the Women Offender Correctional Program (WOCP) (Correctional Service of Canada, 2014c). Like the ICPM, this program is also designed to identify offender's risk factors, needs, and responsivity issues, as well as having two other streams that include the Sex Offender Women Offender Correctional Program (SOWOCP) and the Aboriginal Women Offender Correctional Program (AWOCP) (Correctional Service of Canada, 2014c).

Both the ICPM and WOCP are presumably heteronormative and binary where language is not consistently gender neutral. This would present a challenge for Program Officers who are not necessarily trained or sensitive to the trans offender population. The Two Spirit offender population, as previously discussed, is arguably least represented, due to the confusion of its unique identity and place within correctional programs and Indigenous communities.

CSC Policies

In contrast to gender diversity, the CSC has instituted numerous policies and programs to address the specific needs of Indigenous offenders. For example, is bound by the *Canadian Charter of Rights and Freedoms* (1982), the *CHRA* (1985), the *CCRA* (1992), and the *Corrections and Conditions Release Regulations* (2015). Principle 4(g) of the *CCRA* directs that the CSC will respect cultural, ethnic, and gender diversities in relation to correctional interventions, operations, and functions, as well as will be compliant to offenders with specific needs (*CCRA*, 1992, p. 6). Section 80 enables the CSC to adhere to the specific needs of the aboriginal offender in relation to programs, so long as they do not interfere with section 76 (*CCRA*, 1992, p. 42). Section 81 enables the CSC to work with indigenous communities that support aboriginal offenders that are nearing parole, in order to reintegrate them back into the community (*CCRA*, 1992, p. 43). Section 86

enables the CSC to provide health care initiatives for the aboriginal offender, so that they can achieve successful reintegration into the community (CCRA, 1992, p. 44).

Under section 81 of the CCRA, the CSC has created five healing lodges (two in Alberta, one in Saskatchewan, one in Manitoba, and one in Quebec) for Indigenous offenders. They are designed to provide Indigenous offenders an opportunity to bring them back to their cultural and spiritual beliefs as well as ceremonial practices. These lodges are holistic in nature and are staffed with Aboriginal Liaison Officers, Elders, and Aboriginal Correctional Program Officers. There are currently nine healing lodges in Canada that are located in British Columbia, Alberta, Saskatchewan, Manitoba, and Quebec. The other four are managed by the CSC and are located in British Columbia, Alberta, and two in Saskatchewan (Correctional Service of Canada, 2018b). Indigenous correctional programming is mandatory at these lodges for an offender whose risk is rated as moderate or low. It can be argued that the Two Spirit identity is excluded from these healing lodges given that the Indigenous programs are binary gender (male/female) biased and heteronormative. This is evident as stated in the introduction; the Elders at the healing lodge were homophobic and transphobic with the offenders who identified as Two Spirit or same-sex attraction.

Another issue in CSC is that Western epistemology is imposed on the Aboriginal people, as well as for the Two Spirit offender. As stated above, there is a distinction between Western worldviews and Aboriginal worldviews. For example, Western worldviews are primarily linear whereas Aboriginal worldviews are circular. “Linear thinking is hierarchical, often seeing the world as organized in a progressive ladder of worth and time as a movement toward ever-better states of reality. This linear thought process is widely held to compromise much of current Western society’s thinking” (Monchalin, 2016, p. 27). This linear thinking is used to assess risk for the

Indigenous offender which presents an issue in that non-Indigenous tools are applied. Brassard, JacCoud and Joane (2011) state:

“Herein lays the second contradiction of risk-based aboriginal offender management. Upon entry into the criminal justice apparatus, aboriginal offenders, like every other offender, are assessed at various stages of the system either for pre-sentencing or sentencing purposes, or to determine institutional placement, program needs as well as the threat offenders are deemed to pose to the community. At that particular end of the risk-assessment process, one’s aboriginality is taken as a risk marker to be tended to. So far, the Canadian criminal justice apparatus has understood tending to aboriginal risk markers as meaning the Indigenization of its policies, programmers and institutions in an effort to provide opportunities to practice and revitalize aboriginal offenders’ cultural traditions and customs, thereby allegedly contributing to their successful reintegration into the community. In other words, as the outcome of risk assessments frequently points to high overrepresentation and high recidivism rates for aboriginal offenders, culturally sensitive reintegration programming aims at reducing these recidivism rates, hereby also lowering aboriginal overrepresentation.” (pp. 235-236).

This in turn, has led to a legal issue that CSC faced in the case of *Ewert v. Canada* (2018). Mr. Jeffery G. Ewert is an Aboriginal offender who challenged CSC’s Western actuarial tools used to assess offenders in relation to their level of risk, as well as Dr. Robert Hare’s Psychopathy Checklist (PCL-R). The trial judge found that CSC’s assessment tools presented cultural biases that held no validity when applied to the Aboriginal offender. The judge also found that when the assessment tools have had an oppositional impact on the Aboriginal offender, they have been placed in higher levels of security classification and denials of their release. The case referenced

the fact that CSC has been aware that their actuarial tools have been systemically racist, and gender biased but have not made effort into addressing these gaps. The risk factors of offenders are calculated by western actuarial tools. Though these actuarial tools are meant to serve public safety and risk analysis, the Ewert Case challenged that these actuarial tools have no bearing on Indigenous populations since no research has been done involving that demographic. Currently, CSC has created a new actuarial tool entitled Criminal Risk Index (CRI) that attempts cultural neutrality when assessing risk for all offenders. However, cultural neutrality is different than total inclusivity. The CSC's CRI, while attempting cultural neutrality, is likely not assessed for gender and sexuality bias.

Gap Analysis

Interim policy bulletin 584 (on Bill C-16) makes a reference to CD 702 on Aboriginal offenders; however, CD 702 has not made any reference to the Two Spirit identity or trans offenders or staff since the bulletin came out (Correctional Service of Canada, 2013, 2017b). The majority of this policy has not been updated since 2013, which is prior to the release of the TRC (2015) final report and its endorsement of the *UN Declaration of Indigenous peoples* (The United Nations General Assembly, 2007), as well as before Bill C-16 (2016). CD 702 presents problems in terms of how Two Spirit offenders are intertwined within this policy given that its interpretation is conducted primarily by majority non-indigenous managers in the correctional facilities and community settings. Further, western culture, such as the binary gender system, is imposed onto indigenous offenders and staff. For example, CD 702 entails various aspects of indigenous life, where non-indigenous managers make decisions on the planning of special events, determining ceremonial foods and spiritual items which are allowed into the institution, and who is allowed to attend indigenous cultural events (Correctional Service of Canada, 2013). Of note, CD 702

assumes the binary gender system (male/female) onto Indigenous people and imposes certain protocols and procedures when it comes to the sweat-lodge ceremony. For example, in CD 702, “Cross-gender protocol” is described as follows:

“...when Elders/Spiritual Advisors are conducting ceremonies with offenders of the opposite gender, they will have helpers of the same gender as the offender, in accordance with the protocol of each Elder/Spiritual Advisor. For instance, when a male Elder/Spiritual Advisor performs a ceremony for female offenders, there should always be a female helper (who is not an offender) or female staff in attendance. Ceremonies will not be performed alone by Elders/Spiritual Advisors to offenders of the opposite gender” (Correctional Service of Canada, 2013).

This presents a problem in that this protocol does not consider other genders such as trans, non-binary, gender fluid, or Two Spirit identifying peoples. Another issue in CD 702 is the CSC’s policy on the definition of cultural competence and practice. For instance, CD 702 states: “Cultural competence: ability of individuals and systems to respond respectfully and effectively to people of all cultures, classes, races, faiths and ethnic backgrounds in a manner that recognizes, affirms, and values the cultural differences and similarities, the worth of individuals, families and communities and protects and preserves the dignity of each” (Correctional Service of Canada, 2013). This is problematic because it is typically people outside of a specific Indigenous nation and culture determining what is acceptable and not acceptable for Indigenous ceremonies and ways of life, as well as for the Two Spirit identity. Cultural competence is an ambiguous concept and is difficult to define. Alizadeh & Chavan (2016) state: “It has been widely suggested that cultural competence is an individual’s core requirement for working effectively with culturally diverse people. However, there is no consensus regarding the definition or the components of this concept

and there is a dearth of empirical proof indicating the benefits of cultural competence” (p. 117). This suggests that it is not a one size fits all and to take into consideration that there are many Indigenous tribes in Canada such as the Coast Salish, Haida Gwaii, Dene, Cree, Anishinabek, Micmac, Inuit, etc. that include cultural and spiritual differences. Therefore, CD 702 presents ethical issues in its interpretation in many capacities such as maximum, medium, and minimum-security sites, as well as community corrections. Cultural competency is a difficult concept to teach given the many Indigenous tribes in Canada which include different concepts of the Two Spirit identity within various communities.

Recommendations

The CSC has a lot of work to do to ensure it fully complies with the changes brought on by Bill C-16. Historically, the CSC has operated on the basis of European and heteronormative policies and practices. In particular, it has operated on the basis of gender binaries (male/female) and its main “gender consideration” has been cross-gender staffing. Bill C-16 will require the CSC to make major changes to ensure that the human rights of “inmates with gender considerations” are upheld.

There is limited stress on the importance of developing an educated incarceration approach to Two Spirit offenders. Currently, the lack of change continues the same history and experiences of oppressed Indigenous identities leading to their over-representation within the criminal justice system. One specific recommendation moving forward is that the CSC should integrate Trans theory and Queer theory into its training so that its staff understand the lived experience and needs of gender diverse and Two Spirit communities, and to understand sexual and gender identities across the spectrum (see, e.g., Brzuzy & Nagoshi, 2010; Rumens, 2016;).

Incorporating queer theory challenges heteronormativity and binary systems that continue to dominate the workplace. To improve in this area, human resources development within the CSC should be more inclusive of incorporating LGBTQ2S+ and must reconstruct how hiring practices recruit in terms of non-heteronormative staff to challenge the binary system. Understanding culturally diverse queer theory is crucial when working with LGBTQ2S+ identified offenders. Given that gender is a complex topic to tackle, incorporating trans theory would challenge biases and discriminations that are in place; essentially, the understanding of trans theory would challenge transphobia. Queer theory and Trans theory do not necessarily speak to the Two Spirit identity; therefore, training in culturally relevant Indigenous-led Two Spirit Queer theory for CSC staff and new recruits, as well as refresher training, would assist with an understanding of the Two Spirit offenders.

Currently, “men’s programs” (ICPM, SO ICPM, AICPM) are being delivered at men’s institutions and “women’s programs” (WOCP, AWOCPP) are being delivered at women’s institutions (Correctional Service of Canada, 2014c). This is confirmation that the programs are binary. As a second recommendation, it would be helpful to use gender neutral pronouns in these programs, as well as to modify the sessions to fit the needs for trans or non-binary offenders, as well as Two Spirit offenders to make it more effective. The CSC should incorporate inclusive programs that do not exclude and alienate individuals further (see also the Yeun & Berra, 2017 recommendations on the gendered lists of the personal property of offenders).

Implementing grassroots programs, such as the Positive Space Initiative (PSI), is a positive step forward for the CSC to introduce a discussion of the LGBTQ2S+ identities and to create allies within the organization. However, the CSC has not yet made the Positive Space Initiative as a

National Training Standard. In terms of implementing recommended solutions, Positive Space Initiatives should be deemed as a National Training Standard for the CSC. This would not only help with assisting staff in understanding the many identities of LGBTQ2S+, but would challenge heteronormativity and the binary system. The Two Spirit identity is discussed in the PSI training. Furthermore, there is a need for Indigenous-developed and Indigenous-led training in order to decolonize Western worldviews in relation to Indigenous LGBTQ2S+ individuals and communities. The importance of Indigenous-led training is supported by Recommendation 14 of the OCI Annual Report for 2017-18 which indicates:

“...that CSC spending, budget and resource allocation should better reflect the proportion of Indigenous people serving a federal sentence. Over the next decade, re-allocation of resources and delegation of control to Indigenous communities should be the stated goals of CSC’s contribution to reaching the TRC’s ‘calls to action’” (OCI, 2017, p. 66).

Though the above recommendation is a step in the right direction, there remains much research ahead in relation to the Two Spirit individuals that are federally incarcerated. This means that some of the allocation of resources may not be distributed efficiently among Indigenous offenders, given the diversity amongst this group. Therefore, I recommend that there is a need for more research about the Two Spirit offender and their experiences in the prison system; there is a need to collect data on and track Two Spirit inmates while also ensuring their privacy. Two Spirit staff should be engaged in, not only leadership, but a part of specific policies, programs, and fiscal priorities within the CSC.

The CSC’s CD’s examined above focused on operations, interventions, and health care within the CSC in response to the implementation of Bill C-16. However, these CD’s are not up to date with Bill C-16. Given that there has been a lack of training on Bill C-16 with respect to

gender identity and expression, it is important for the CSC to create a think-tank committee to assist with the implementation of this policy that includes, not only heterosexual and cis-gender individuals, but also gender-fluid, intersex, non-binary, bisexual, pansexual, Two Spirit. In addition to this, there is a need to update CD 702, specifically, to include the Two Spirit offender in relation to their needs and cultural and spiritual identity.

Even though CSC has tried to develop a new actuarial tool for all offenders, I argue that it will not be effective because it is linear and western. In relation to the Two Spirit offender, the CSC's risk assessments are linear and have not been adapted to function in evidence-based reforms. In other words, a new model that is holistic and results-based would assist in the correctional plan outlined for Two Spirit offenders. It would be helpful for Two Spirit people to be involved in creating this new model when assessing risk.

More research is required by the CSC into the Two Spirit identity within the Indigenous offender population. CD 702 – Aboriginal Offenders is cross-referenced under the other CD's when referring to gender identity and expression. However, there is nothing in CD 702 that specifically references the Two Spirit offender. Therefore, CD 702 needs to be updated to include this Indigenous identity of Two Spirit.

Conclusion

This paper examined the CSC's policies and programs for gender diversity, and in particular the Two Spirit offender. On June 17, 2017, Bill C-16 was passed in order to prohibit discrimination against gender identity and expression. The CSC delivered a bulletin to all employees December 13, 2017 referring to many CD's that referred to operations, interventions, and health care. However, it was found that many of these CD's are not fully compliant with the law. Indigenous history was examined to show that the Two Spirit identity was excluded from

their communities as a result of Euro-centric colonization. Because of this, knowledge of the Two Spirit identity has been mistaken and confused, as well as subordinated. This has translated into legislative policies, such as the Indian Act (1985) that uses the binary gender (male/female) system. The social epidemic of the overrepresentation of Aboriginal people who are federally incarcerated does not consider the unique identity of the Two Spirit individual; therefore, it is impossible to present accurate numbers on this particular demographic. The need for the CSC to further develop Indigenous gender diverse and non-heteronormative policies and programs was examined by scanning a number of different CSC policies and programs. Queer theory and Trans theory were discussed as a means to address some of the knowledge gaps within the CSC. PSI was considered as necessary to implement as a National Training Standard for the CSC staff, including and Indigenous-led Two Spirit presentation, in order to decolonize Western worldviews and build respectful relationships amongst Indigenous LGBTQ2S+ individuals and communities within federal prisons. I recommended that a think-tank committee be established by the CSC, which includes other gender and sexual identities, and especially persons with lived experience as Two Spirit prisoners, with the implementation of Bill C-16. I also recommended that a specific CD be implemented which speaks directly to the Two Spirit offender. Finally, as my paper shows, there is a pressing need for more research on the Two Spirit identity within the CSC and the Indigenous communities.

Bibliography

- Alizadeh, S. & Chavan, M. (2016). Cultural competence dimensions and outcomes: A systematic review of the literature. *Health and Social Care in the Community*, 24(6), 117–130. doi: 10.1111/hsc.12293q
- Brassard, E., JacCoud, M., & Joane, M. (2011). When two worlds collide: Aboriginal risk management. *The British Journal of Criminology*, 51(2), 235-255. doi: 10.1093/bjc/azr003
- Bruchac, M. (1999, November). *Reclaiming the word "Squaw" in the name of the ancestors*. [Editorial]. Retrieved from <http://www.nativeweb.org/pages/legal/squaw.html>
- Bruzuzy, S. & Nagoshi, J.L. (2010). Transgender theory: Embodying research and practice. *Journal of Women & Social Work*, 25(4), 431-443. doi: 10.1177/0886109910384068
- Cameron, M. (2005). Two-spirited Aboriginal people: Continuing Cultural Appropriation by Non-Aboriginal society. *Canadian Women Studies*, 24, 2/3, pp. 123-128. Retrieved from <https://cws.journals.yorku.ca/index.php/cws/article/view/6129/5317>
- Canada School of Public Service. (n.d.). *Two spirit: cultural reclamation and positive space*. Retrieved from <https://www.cspc-efpc.gc.ca/events/crps/index-eng.aspx>
- Correctional Service of Canada. (2013). *Commissioner's directive 702: Aboriginal offenders*. Retrieved from <https://www.csc-scc.gc.ca/005/006/702-cd-eng.shtml>
- Correctional Service of Canada. (2014a). *Outcomes of Federal Aboriginal offenders in correctional programs: Follow-up from the ICPM evaluation*. Retrieved from <https://www.csc-scc.gc.ca/005/008/092/005008-0328-eng.pdf>
- Correctional Service of Canada (2014b). *Integrated Correctional Program Model*. Retrieved from <https://www.csc-scc.gc.ca/correctional-process/002001-2011-eng.shtml>

- Correctional Service of Canada. (2014c). *Correctional programs*. Retrieved from <https://www.csc-scc.gc.ca/correctional-process/002001-2001-eng.shtml#s2>
- Correctional Service of Canada. (2016). Aboriginal ICPM High Intensity (Version 11) Module 4, Session 17. Unpublished internal document.
- Correctional Service of Canada. (2017a). *Annual report on deaths in custody 2015-2016*. Retrieved from <https://www.csc-scc.gc.ca/research/092/005008-3010-en.pdf>
- Correctional Service of Canada. (2017b). *Interim policy bulletin 584: Bill C-16 (gender identity or expression)*. Retrieved from <https://www.csc-scc.gc.ca/policy-and-legislation/584-pb-en.shtml>
- Correctional Service of Canada. (2018a). *Positive space*. Retrieved from <https://ite-ene.ca/en/features/positive-space>
- Correctional Service of Canada. (2018b). *Correctional Service Canada healing lodges*. Retrieved from <https://www.csc-scc.gc.ca/aboriginal/002003-2000-eng.shtml>
- Erni, J.N. (2013). Legitimizing transphobia: The legal disavowal of transgender rights in prison. *Cultural Studies*, 27(1), 136-159. doi:10.1080/09502386.2012.722305
- House of Commons Canada. (2018). *Indigenous people in the Federal correctional system: Report of the Standing Committee on Public Safety and National Security*, 1st Session, 42nd Parliament. Retrieved from http://publications.gc.ca/collections/collection_2018/parl/x76-1/XC76-1-1-421-22-eng.pdf
- Hunt, S. (2016). *An introduction to the health of Two Spirit people: Historical, contemporary and emergent issues*. Retrieved from National Collaborating Centre for Aboriginal Health website: <https://www.ccsa-nccah.ca/docs/emerging/RPT-HealthTwoSpirit-Hunt-EN.pdf>

- Lougheed, B. (2016). Cool things in the collection: The Two-Spirited collection. *University of Manitoba Archives*, 80, 59-61. Retrieved from <https://www.digitaltransgenderarchive.net/downloads/w3763689t>
- Monchalin, L. (2016). *The Colonial problem: An Indigenous perspective on crime and injustice in Canada*. Toronto, ON: University of Toronto Press.
- Office of the Chief Coroner of British Columbia. (2014). *Inquest into the death of Richard Darcy Bertrand*. (File No.: 2012:0228:0091).
- Office of the Correctional Investigator. (2013). *Annual report of the Office of the Correctional Investigator 2012-2013*. Retrieved from <http://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20122013-eng.pdf>
- Office of the Correctional Investigator. (2017). *Annual report of the Office of the Correctional Investigator 2017-2018*. Retrieved from <http://www.ocibec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>
- Okimasis, J. L. (1999). *Cree language of the plains*. Regina, SK: University of Regina Press.
- Rumens, N. (2016). Queering Lesbian, Gay, Bisexual and Transgender identities in human resource development and management education contexts. *Management Learning*, 48(2), 227-242.
- Shrage, L. (2012). Anatomy is not destiny: Sexual orientation and gender variance. *Review Journal of Political Philosophy*, 10, 41-58.
- Smithers, G.D. (2014). Cherokee “Two Spirits”: Gender, ritual, and spirituality in the Native south. *Early American Studies*, 12(3), 626-651. Retrieved from <https://teachingcommons.lakeheadu.ca/sites/default/files/inline-files/smithers%202014%20cherokee%20two%20spirits.pdf>

Statistics Canada. (2013). *Aboriginal peoples in Canada: First Nations people, Metis, and Inuit national household survey, 2011* (No. 99-011-X2011001). Retrieved from

<https://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/99-011-x2011001-eng.cfm>

Stirbys, C.D. (2008). Gender-based analysis and differing worldviews. *Canadian Woman Studies*, 26(3,4), 38-145. Retrieved from

<https://cws.journals.yorku.ca/index.php/cws/article/viewFile/22123/20777>

Truth and Reconciliation Commission of Canada. (2015). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. Retrieved from Government of Canada website:

http://publications.gc.ca/collections/collection_2015/trc/IR4-7-2015-eng.pdf

United Nations Human Rights Office of the High Commissioner. (n.d.). *United Nations Free and Equal Campaign*. Retrieved from <https://www.unfe.org/about/>

Wilson, A. (1996). How we find ourselves: Identity development and Two-Spirit people. *Harvard Educational Review*, 17(2), 303-317.

Yeun, B & Berra, L. (June 13, 2017). *Re: Trans inmates policy*. Retrieved from Canadian Bar Association: <https://www.cba.org/CMSPages/GetFile.aspx?guid=6c6f76b4-b5d0-4092-a04a-1f12e4302cfa>

Jurisprudence

Bill C-16, *An Act to Amend the Canadian Human Rights Act*, 1st Session, 42nd Parliament, 2016. *Canadian Charter of Rights and Freedoms*, s 7, Part I of the Constitution Act, 1982, being schedule B to the Canada Act 1982 (UK), 1982, c11.

Canadian Human Rights Act, RSC 1985, c H-6.

Corrections and Conditional Release Act. S.C. 1992, c. 20.

Corrections and Conditional Release Regulations, SOR/92-620 2015.

Criminal Code, RSC 1985, c. C - 46.

Ewert v. Canada, 2018 SCC 30, [2018] 2 S.C.R. 165.

Indian Act, R.S.C., 1985, c. 1-5.

The United Nations General Assembly. (2007). *Declaration on the Rights of Indigenous Peoples*.

Retrieved from https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf