The Human Rights of Girls in the Criminal Justice System of British Columbia:

Realities and Remedies

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Introduction

Little attention is paid to girls[1] in discussions about human rights. At both the domestic and international levels, girls tend be subsumed within the categories "women" or "children". This conceptual and practical oversight has resulted in the marginalisation of this vulnerable and has failed to recognise how their unique challenges impact their survival and dignity.

The distinct status of girls has been notably sidelined in their experiences with the criminal justice system. Because they represent a limited population as compared to their male counterparts, little attention has been paid to the impacts that this system has on their lives and how they are treated by it. Despite limited quantitative evidence as to the various impacts that the criminal justice system has on girls, a number of academics and non profit advocacy groups working with girls, have pieced together a picture of their interactions with the criminal justice system in British Columbia (BC), and what this paints is a troubling picture of human rights violations, abuse, paternalism and discrimination.

Beginning with an understanding of the link between human rights and criminal justice, this paper traces the experiences of girls with the criminal justice system through the lens of human rights, and assesses the mechanisms available to girls to address these violations. Ultimately, while remedies are available in British Columbia per se, they are mired by limitations that particularly impact girls. Hence, institutions and society must recognise that girls are a distinct group in need of protection and that systemic, behavioural, attitudinal and policy changes are needed to ensure the safety and dignity of some of the most vulnerable members of society.

The Link Between Human Rights And Criminal Justice

As part of this analysis, note should be made of the link between the protection of human rights and people in the criminal justice system. It is important to emphasise that person who has committed a crime, does not automatically lose their human rights nor is the criminal justice system and correctional services free to undermine or abuse their rights.

[1] For the purpose of youth justice services in British Columbia, girls are defined as females ages 12-17, However in broader contexts such as international human rights law, girls are defined as females under the age of 19.

As Louise Arbour has noted:

> "*Reliance on the Rule of Law for the governance of citizens' interactions with each other and with the State has a particular connotation in the general criminal law context. Not only does it reflect ideals of liberty, equality and fairness, but it expresses the fear of arbitrariness in the imposition of punishment. This concept is reflected in an old legal maxim: nullum crimen sine lege, nulla poena sine lege: there can be no crime, nor punishment, without law."*[2]

Given this observation on the primacy of the rule of law, those public figures who are responsible for administering the criminal justice system including police, probation officers, prison guards and judges, are all bound not only by the laws that dictate appropriate conduct in their profession, but as public officers they are also bound by the various human rights codes of Canada and the *Canadian Charter of Rights and Freedoms (Charter)*[3], all of which require respect for the fundamental freedoms and human rights of individuals.

Ensuring respect for human rights is especially important in the context of prison and youth custody where there is greater opportunity for rights to be abused. Being in prison may deprive an inmate of their right to liberty but does not deprive them of other rights, so any infringement can only be justified if it is necessary to giving effect to their sentence. As a result, "*When a right has been granted by law, it is no less important that such right be respected because the person entitled to it is a prisoner*."[4]

In addition, it is generally accepted at the international level that a set of minimum standards should apply to imprisonment to ensure that inmates are treated humanely and that their dignity is maintained. The standards are contained in the *United Nations Standard Minimum Rules for the Treatment of Prisoners*[5]. While Canada is not obliged to conform to these guidelines per se, they are nevertheless accepted as international norms and minimum standards from which states should not deviate.

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[2] Louise Arbour, "*Commission of Inquiry into certain events at the Prison for Women in Kingston*". Public Works and Government Services Canada, 1996. http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm

[3] *Canadian Charter of Rights and Freedoms* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

[4] Louise Arbour, "*Commission of Inquiry into certain events at the Prison for Women in Kingston*". Public Works and Government Services Canada, 1996. http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm

[5] *Standard Minimum Rules for the Treatment of Prisoners*. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. http://www.unhchr.ch/html/menu3/b/h_comp34.htm.

Affirming the universality of human rights is necessary to countering public perceptions that once people are charged with a crime and incarcerated, they are no longer deserving of basic human rights. This perception has been most recently and most disturbingly demonstrated in the military commissions and prisons of Guantanamo Bay where the violations of people's most basic rights, including those of a child, have been accepted[6].

This issue of public perception was poignantly recorded by Elizabeth Comak who recorded reactions to the 1994 telecast of the abuses against women in the Kingston Federal Penitentiary on the Canadian news show *The National*.[7] Emails posted on *The National's* discussion site in response to the segment revealed the public discourse that generally prevails around prisoners and in this case female prisoners:

" *while I can see how some of the pictures shown could be disturbing to some viewers, I am more disturbed at your handling of the story...these women were not ordinary citizens...They are in a correctional facility because they are CONVICTED FELONS, not Sunday school teachers*"

"*Myself, I would see nothing wrong with the guard beating these inmates every once in a while! After all they lost their rights when they committed their crimes in the first place*."

"Don't give me the bleeding heart crap. This is what has screwed up society. These women created their own situation-let them deal with the fallout".[8]

What these accounts affirm is the troubling tendency of the public to assume that once a person has broken a law, especially criminal law, they no longer deserve human rights protection. This is a disturbing and dangerous path to tread, particularly when you consider the vulnerabilities of women and girls, and sets the background for understanding how important it is to understand how the human rights of girls are impacted by their interactions with the criminal justice system.

[6] Omar Khadr, a Canadian citizen who has been held in Guantanamo Bay for 6 years was captured at the age of 15 and was therefore a child as defined under the UN *Convention on the Rights of the Child.* General Assembly resolution 44/25 of 20 November 1989. Article 1. http://www.unhchr.ch/html/menu3/b/k2crc.htm

[7] On April 26, 1994 a video camera captured grainy black-and-white images of an all-male Institutional Emergency Response Team (IERT) storming the cells of sleeping inmates at now closed Kingston Women's Prison. The men shackled the women, forced them to the floor and stripped them naked. They did this one woman at a time, stopping periodically for meals and breaks. This video was widely televised and led to the creation of a commission headed by Louise Arbour to look into those events and conditions of women in the prison in general.

[8] Gillian Balfour and Elizabeth Cormack eds., *Criminalizing women: gender and (in)justice in neo-liberal times*. (Black Point, N.S. : Fernwood, 2006). Pg. 50.

Why Girls?

Put simply, girls experience the world differently than women, men and boys. They have different struggles, concerns and vulnerabilities. "*Girls confront problems unique to their sex: notably sexual abuse, sexual assault, dating and male violence, depression, unplanned pregnancy, and adolescent motherhood*". [9]

As adolescents, girls are in transition. They are questioning their identities and are caught between childhood and the countervailing expectation that they should be more mature and take responsibility for their actions. Girls are also forced to negotiate contradictory messages. On the one hand they are highly sexualized, yet they are expected to maintain their purity. Young girls are expected to be sexually innocent, yet media present young girls as sexual beings. There is supposed to be a public concern about child poverty and its ramifications, but girls who are forced to live on the streets because they are poor are blamed for making a bad lifestyle choice. [10]

Girls are also vulnerable to violence everywhere: in their homes, schools, group homes, the streets, squats, and in social service and criminal justice systems. Caretakers, parents, intimate partners, people in positions of authority (police, teachers, social workers), and their peers perpetrate violence.[11] Many girls run away when they do not receive support from their families or communities and studies have shown that young Aboriginal women are forced to flee from communities that refuse to address violence.[12] Many of these young women end up living on the streets in places such as the downtown east side of Vancouver where they are more vulnerable to violence[13].

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[9] Meda Chesney-Lind and Lisa Pasko, *The Female Offender: Girls, Women, and Crime.* Second Edition. (Thousand Oaks: Sage Publications, 2003).

[10] Nancy Janovicek, *Reducing Crime and Victimization: A Service Providers' Report.* April 2001. The FREDA Centre for Research on Violence against Women and Children. Simon Fraser University, Vancouver BC. http://www.vancouver.sfu.ca/freda/articles/spreport.htm

[11] Ibid.

[12] Carol LaPrairie, "*Seen But Not Heard: Native People in the Inner City*". Ottawa: Department of Justice, 1994.

[13] Service providers who work with vulnerable girls have noted the following: "When I was working in [an eastern city], I said to a kid, "Why are you on the street as opposed to home?" ... And she kind of looked at me and she said, "Well you know, I was guaranteed that I'd get beat up every night at home. I might be beat up a couple of times a week on the street." ... So she was safer on the street... And she came from a two-parent home where there were other siblings at home. I don't think that her story is odd. I think it's fairly representative. SP: "I was just thinking of a young girl that I know that, while at home, was sexually assaulted every night by her father. And her way of putting that out was well, "When I'm on the street, at least I get something for it." Cited in: Nancy Janovicek *Reducing Crime and Victimization: A Service Providers' Report.* April 2001. The FREDA Centre for Research on Violence against Women and Children. Simon Fraser University, Vancouver BC. http://www.vancouver.sfu.ca/freda/articles/spreport.htm

Canadian girls are victims in 84% of reported cases of sexual abuse, in 60% of reported cases of physical abuse, and in 52% of reported cases of neglect.[14] In addition, 96% of girls in custody in BC report having experienced physical and/or sexual abuse with 63% reporting sexual abuse specifically. More girls in custody have been sexually abused (58%), than girls in school (13%).[15]

Given the above realities of the lives of girls, and particularly the most marginalised, it is easy to understand how some who may not be able to cope, end up engaged with the criminal justice system. Girls are outsiders because of their age and gender and are not given authority or respect. Their problems are minimized as self-absorbed and frivolous[16] and as such they have been accorded little attention. This is why we need to focus on them to better understand their experiences with the criminal justice system.

How do Girls Experience the Criminal Justice System?

While there may be overlap in the social characteristics of boys and girls who are involved in the criminal justice system such as low levels of education, extensive family disruption, histories of alcohol and substance abuse, and high rates of attempted suicide and depression, girls nevertheless maintain their own unique characteristics and experiences which warrant different attention when trying to understand how and why they may hold different human rights concerns than their male counterparts.

Girl offenders are generally ignored and their problems are largely unaddressed by a system that is designed around and remains focussed on the male offender. While the fact that there are few female young offenders in Canada is positive, it also means that little attention is paid to them.

This reality means that the experiences of girls in the criminal justice system are not well documented. Nevertheless, based on the literature reviewed including reports resulting from direct consultations with

[14] Thomlinson, B., M. Stephens, J.W. Cunes & R.M. Grinnell, "Characteristics of Canadian Male and Female Child Sexual Abuse Victims." *Journal of Child & Youth Care*, Special Issue (1991): 65-76. http://www.vancouver.sfu.ca/freda/articles/spreport.htm.
[15] A. Murphy, M. Chittenden & The McCreary Centre Society, "Time Out II: A Profile of BC Youth in Custody. Vancouver, BC. The McCreary Centre Society". (Vancouver: The McCreary Centre Society, 2005). Pg.18.
[16] Sherrie A. Inness, *Running For their Lives: Girls, Cultural Identity, and Stories of Survival*. (Oxford: Rowman & Littlefield, 2000).

girls held by advocacy groups[17] it is clear that girls experiences a variety of human rights violations in their interactions with the criminal justice system.

The following are the four key ways in which instances of violations against girls have been perpetrated.

Paternalistic and Punitive Sentencing

Youth in Canada and in particular girls, frequently receive sentences that are much longer and more punitive than those given to adults who commit similar offenses. For example, 58% of youth sent to custody for a charge of theft under 5,000 dollars in 1999 were sentenced to longer than one month in prison, whereas only 38% of adults charged with the same crime received a sentence greater than a month[18].

Judges also use criminal sanctions and incarceration as a means of ensuring treatment of young female offenders for perceived psychological and social problems that they would not sentence boys for. The youth justice system views girls to be in greater need of protection than their male counterparts, and employs discretionary powers to control female behaviour. For example, girls are more likely to be detained "for their own protection" on the basis of non criminal administrative offences such as breach of bail, probation conditions, and failure to appear in court and Reitsma-Street (1991) argues that the Canadian judicial system continues to patrol the sexual and moral boundaries of female youth through the imposition of these status-type offences.[19] The tendency to incarcerate young women for non-compliance charges is related to our society's desire to control or limit the behaviour or freedom of young women 'for their own good' or for their protection[20].

The reliance on custodial dispositions for nonviolent and non-serious offences committed by girls is cited as evidence demonstrating that females continue to receive paternalistic and punitive forms of justice as compared to their male counterparts. The overrepresentation of young women in custody for

[17] The Vancouver Based group Justice For Girls is non profit organisation that advocates for girls in prison and over a ten year period of their existence have collected qualitative information based on their advocacy activities, court monitoring and visitations and consultations with girls in detention. www.justiceforgirls.org.

[18] Amber Richelle Dean, "Locking Them Up to Keep Them Safe: Criminalized Girls In British Columbia". (Vancouver: Justice for Girls, 2005). Pg. 3.

[19] Raymond R. Corrado, Candice Odgers, and Irwin M. Cohen, "The incarceration of female young offenders: protection for whom?" (April 2000) 42.2 Canadian Journal of Criminology 189.

[20] Amber Richelle Dean, "Locking Them Up to Keep Them Safe: Criminalized Girls In British Columbia". (Vancouver: Justice for Girls, 2005). Pg. 3.

non compliance and administrative breaches and child-welfare type concerns (such as child neglect) are key indicators of systemic bias in the criminal justice system.[21]

In addition, when a girl is sentenced to probation or given a conditional sentence to be served in the community, she is given a number of conditions (such as no contact orders, no go areas, curfews and mandatory school attendance) that do not account for her particular situation and personal challenges, and which makes it virtually impossible for her to comply. The *Youth Criminal Justice Act (YCJA)*[22] gives broad license to the courts to order youth on probation to comply with a number of required conditions as well as "any other conditions set out in the order that the youth justice court considers appropriate, including conditions for securing the young person's good conduct and for preventing the young person from repeating the offence or committing other offences."[23] This means that a judge can apply conditions whether or not they are related to the crime that a girl is charged with.

The conditions given to girls are frequently more than those given to any other group of offenders (including adults) and seem to have more to do with controlling their behaviour in the interest of her "safety" than with protecting the public. Added to this is that the suggestions on what type of conditions a girl should be subject to are often devised by their probation officers, social workers and lawyers with little consultation with the girl on what conditions she is likely to be able to fulfill. One study found that probation officers recommend a custodial sentence based on the need to protect society from female youth only 4.5% of the time.[24]

The cyclical results of this are not hard to imagine. Once a girl is given a set of conditions that she cannot reasonably fulfill, she is set up for failure and finds herself once again in front of the court for breaching those conditions that were unrealistic in the first place.

Given the high rate of self harm by females in prison in B.C. (28% of incarcerated girls reported deliberately cutting or injuring themselves in custody, and 18% reported attempting suicide while in

[21] Canadian Association of Elizabeth Fry Societies. http://www.vancouver.sfu.ca/freda/articles/stat2.htm.
[22] *Youth Criminal Justice Act*, S.C. 2002, c. 1
[23] *Youth Criminal Justice Act*, S.C. 2002, c. 1. S. 55.2.h.
[24] Raymond Corrado, Candice Odgers & Irwin Cohen, "The Incarceration of Female Young Offenders: Protection for Whom?" Thomas Fleming, Patricia O'Reilly and Barry Clark, Eds. *Youth InJustice: Canadian Perspectives* 2nd Edition.(Toronto: Canadian Scholars' Press Inc, 2001) pg. 423-442.

custody), [25]it seems unlikely that overly punitive sentences and incarceration for "their safety" will prevent young women from causing themselves harm.

Discrimination in the Execution of Justice by Agents[26] of the Criminal Justice System

The rights of girls are also violated by the various agents of the criminal justice system. For example, police harassment of girls that are living on the streets is prevalent because a number of activities they need to survive are criminalised. For example, panhandling makes girls vulnerable not only to harassment from passers-by, but also to police brutality.

Police and doctors also blame girls on the street for their predicaments because they assume the girls have chosen a dangerous lifestyle and must live with the consequence of that choice. Girls on the streets are treated as though they abdicated their rights when they became part of the street community.[27] During a Justice For Girls outreach session at the Burnaby Youth Custody Centre, one young woman reported that she had been driven far away from her Downtown Eastside home by police and then left to make her way home on a cold night with inadequate clothing and no money[28].

In addition, police and the criminal justice system fail to adequately respond to male violence against girls in any meaningful way, and instead criminalize the girls who experience such violence in the interests of trying to keep them 'safe.'[29] Male violence, including sexual abuse, physical assault, and psychological torment, pushes Canadian girls out of their family homes.

As the United Nations Special Rapporteur on Adequate Housing, Miloon Kothari, recently pointed out "*Studies from both Canada and the United States identify sexual abuse in the family home as one major*

[25] McCreary Centre Society, "Time Out: A Profile of BC Youth in Custody". (Vancouver: McCreary, 2001).
[26] For the purposes of this paper, "agent" describes the group of people that administer justice and which include the police, probation officers, judges, lawyers, case workers etc.
[27] Nancy Janovicek, *Reducing Crime and Victimization: A Service Providers' Report.* April 2001. The FREDA Centre for Research on Violence against Women and Children. Simon Fraser University, Vancouver BC. http://www.vancouver.sfu.ca/freda/articles/spreport.htm
[28] Amber Richelle Dean, "Locking Them Up to Keep Them Safe: Criminalized Girls In British Columbia". (Vancouver: Justice for Girls, 2005). Pg. 21.
[29] Ibid. Pg. 12.

contributing reason for homelessness among girls.[30]" When girls attempt to escape male violence within the family home, Canadian state authorities including police tend to respond in a discriminatory manner by sending girls back into their family homes where the abuser remains, sometimes remove girls from their family homes/communities to be placed in unsafe and/or inadequate government homes/youth shelters, and rarely remove the abusive adult male from the family home or pursue criminal prosecution against him.[31]

Small towns and rural communities usually do not have custodial facilities to deal with female young offenders so they are often sent out of their communities, and to many this uprooting is as traumatic as the sentence itself.[32] Girls have reported mistreatment during transfers and during stay in city cells, indicating that they are frequently shackled during transport from rural or city cells to detention or court even though most are charged with non compliance and not criminal offences. Sheriffs have been reported to use other tactics to degrade the prisoners, such as turning up or down the heat in the back of the paddy wagon. Girls have also reported that one particular Sheriff regularly trips girls while they attempt to get in and out of the van or walk in shackles[33].

Young women consistently report that the treatment they receive in the city and rural cells is frequently inhumane and undignified. For example, the cell is monitored by camera (and frequently by male guards) so there is no privacy when a girl needs to use the facilities or change her clothes. Frequently, young women report that they are denied basic necessities in city cells, such as the opportunity to wash, shower or brush their teeth. Even when requested, young women report that they are often denied feminine hygiene products such as tampons and pads. One young woman reported being told to just "use toilet paper" when she requested menstrual products[34].

[30] Miloon Kothari, Economic, Social and Cultural Rights: Women and adequate housing, Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination (2006), page 20 paragraph 76.

[31] Justice For Girls. Submission to the United Nations Committee on Economic, Social and Cultural Rights at its' 5th periodic review of Canada. March 2006. Paragraph 26.

[32] Michelle Clarke and Sally Smith, "Canada's Female Young Offenders: Isolated and Ignored". Section 15 Equality in the Criminal Justice System and the Workplace: fact or fantasy? Seventh Biennial Conference of the Winnipeg National Association of Women and the Law (Winnipeg: NAWL, February 1987).

[33] Amber Richelle Dean, "Locking Them Up to Keep Them Safe: Criminalized Girls In British Columbia". (Vancouver: Justice for Girls, 2005). Pg. 33.

[34] Ibid. Pg. 30.

As noted in the discussion on sentencing and custody, girls involved in the criminal justice system provide almost no input into their sentencing. This lack of input persists despite the fact that the right to provide input and be heard is a key principal of the United Nations *Convention on the Rights of the Child (CRC)*[35], and despite a recommendation from the Ombudsman of British Columbia in 1994 that the right of youth to be heard must be ensured in youth custody centres throughout the province[36].

One of the most startling abuses that girls have suffered at the hands of agents of the criminal justice system was at the hands of former BC provincial court judge David William Ramsay, who was charged with sexual assault causing bodily harm, purchasing sex from women under the age of 18 and breach of trust.[37]

Ramsay was accused of using his position as a judge to prey on Aboriginal girls between the ages of 12 and 16 who had appeared before him in court. Having access to their personal backgrounds and psychiatric histories, and using promises of light sentences if the girls "didn't tell anyone," he coerced and forced them to perform sexual acts for him which often turned violent.

On one occasion, he brutally attacked and raped a girl he had picked up for sex when she suggested he use a condom. She later attempted to regain custody of her son, and found that the judge hearing the case was Ramsay himself. In another case, a 13-year-old girl in the sex trade describes how an encounter with Ramsay turned violent, and that as she fled from him, he threatened to have her killed if she told anyone, saying "you don't know who I know." Another girl, fourteen, whose case was being heard by Ramsay, was paid four to six times for a sexual act and promised a lighter sentence if she wouldn't tell.

He received a seven year sentence and died while serving his sentence.[38] In addition to a conviction against Ramsay, the investigation also led police to probe the actions of two RCMP officers who were once stationed in the city for also being involved with underage girls.[39]

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[35] *Convention on the Rights of the Child* Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990. Article 12.2.

[36] Amber Richelle Dean, "Locking Them Up to Keep Them Safe: Criminalized Girls In British Columbia". (Vancouver: Justice for Girls, 2005). Pg. 4.

[37] *R. v. Ramsay*, 2004 BCSC 756.

[38] Dave Milne, "Links between Judge Ramsay, RCMP and Child Predation in our Justice System" Canadian Press, Friday May 20, 2005. http://hazel8500.wordpress.com/2006/06/01/links-between-judge-ramsey-rcmp-and-child-predation-in-our-justice-system/ Accessed: 6th December 2008.

While this case demonstrates the most egregious violations, it nevertheless confirms the unique vulnerabilities of girls, especially those involved in the justice system. All of the accounts above demonstrate that the violations against girls are undeniably linked to their gender and age and these vulnerabilities in turn result in violations and abuses at the hands of agents of criminal justice that differ significantly from boys.

Discrimination within the Custodial Institution

"It is a well known fact that women face discrimination and human rights abuses in the prison system, so it should be no surprise that girls do too".

-(Louise Arbour)

When girls are put into prison, they frequently experience violence and unjust treatment, and are often denied the rights that they are entitled to under the *Charter,* the *CRC*, and other provincial, national and international legislation and treaties.

Although the *CRC*[40] and the *Youth Criminal Justice Act* (*YCJA*)[41] stipulate the need to 'respect the offender`s gender,' girls are nevertheless put at risk against through co-educational incarceration and cross-gender monitoring in youth prisons.[42]

For example, male guards frequently monitor girls on their living units and in vulnerable situations, such as when girls are showering. A senior staff member at one youth jail has confirmed that it is policy for both male and female staff to pat down female prisoners. Several girls have expressed discomfort with this practice or have indicated that they felt the "pat down" they received from a male guard was inappropriate. An understanding of the effects of routine strip searches and pat-downs, particularly for

[39] Paul Strickland. "RCMP awaiting lawsuit from former local constable". Prince George Citizen. Thursday, 18 September 2008. http://www.princegeorgecitizen.com/20080918152206/local/news/rcmp-awaiting-lawsuit-from-former-local-constable.html Accessed: 6th December 2008.

[40] Article 37c.

[41] *Youth Criminal Justice Act*, S.C. 2002, c. 1. S. 3 (1)(c)(iv)

[42] It is interesting to note at this juncture that the provincial *Youth Justice Act*, S.B.C. 2003, c. 85 which addresses issues related to sentences, probation officers, transporting youth, custody, and custody programmes does not mention the word "gender" nor does it mention "girl" or "female" anywhere in its text.

young women with a prior history of sexual abuse, would be useful to understanding the full impact of this practice.[43]

In addition, being a part of an institution whose policies and practices are designed around the needs of boys, girls experience gendered based discrimination in the provision of many of these services. For examples, programmes for girls are frequently based on gendered stereotypes such as sewing and cooking. Girls also experience gender discrimination when it comes to obtaining basic needs such as appropriate underwear and feminine hygiene items[44]. In some instances, females reported they could not participate in outings because there were no female staff available to accompany them. Work programs have also been cancelled because there were not enough female staff available to transport girls to the jobs, although a successful challenge in the Prince George Youth Custody Services has overcome a gender barrier preventing females from participating in the forestry program.[45]

Overall, studies show that girls in custody experience greater distress, more incidence of attempted suicide and self harm than boys in custody[46] and it is likely that this is exacerbated by the lack of stimulation in the form of relevant and useful programming and by the limited accommodation for their particular needs.

Before concluding, it is important to recognise that all of these abuses faced by girls disproportionately impact Aboriginal girls, who are overrepresented in the criminal justice system. While the scope of this paper does not address the circumstances of Aboriginal girls in particular, the numbers are worth noting: The proportion of Aboriginal youth in custody dramatically exceeds their numbers in the general population: 47% of youth in custody said they were Aboriginal in 2004. By comparison, just 8% of youth in B.C., and 4% of the total B.C. population, are Aboriginal."[47]

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[43] Amber Richelle Dean, "Locking Them Up to Keep Them Safe: Criminalized Girls In British Columbia". (Vancouver: Justice for Girls, 2005). Pg. 35.

[44] In the McReary consultation girls noted that they wanted to be able to wear their own underwear as opposed to the current practice which was all dirty underwear is collected and washed as a whole then redistributed randomly to the residents. They also noted that Not to be forced to play sports with the guys or told to mow the lawn "like you are pushing a shopping cart." Females also said that some male staff are too embarrassed to get them tampons so they wait for another staff member to do it. The McCreary Centre Society, " Voices from the Inside: Next Steps with Youth in Custody" (Vancouver: The McCreary Centre Society, 2007). Pg. 19.

[45] Ibid. Pg. 20.

[46] Ibid.

[47] A. Murphy, M. Chittenden & The McCreary Centre Society, "Time Out II: A Profile of BC Youth in Custody. Vancouver, BC. The McCreary Centre Society". (Vancouver: The McCreary Centre Society, 2005) Pg. 40.

How Does a Rights Framework Apply to Girls' Experiences in the Criminal Justice System?

It is a fundamental principle of human rights theory that rights are based on a reciprocal relationship: Where there is a right, there is a corresponding duty. On the basis of the above accounts of the experiences of girls and in view of the current human rights legislative framework in BC and Canada[48], the rights that should be accorded to these girls would be protection from discrimination on the basis of sex, age and race.[49] The detrimental impact of the various policies, mechanisms and agents of the criminal justice system, are either a result of direct discrimination because of their sex, age and race or disproportionately impact them in a negative way, based on these same characteristics.

Having established that girls are rights holders, there is need to consider the duty holder.

In BC, youth justice services have been under the jurisdiction of the Ministry of Children and Family Development (MCFD) since 1997.[50] They are responsible for the provision of youth justice services including the provision of probation officers. They are also responsible for providing supervision and case management of youth on bail, peace bonds, probation, intensive support and supervision program orders, supervision in the community, conditional supervision, and reintegration leave from a youth custody centre and have direct responsibility for managing the three youth custody units and their support programmes in Victoria, Burnaby and Prince George[51].

In the provision of these services, Youth Justice Services acknowledge that they are guided by the following[52]:

[48] Human rights legislation in Canada is based on theories of negative rights. A Negative right is a right not to be subjected to an action of another human being, or group of people, such as a state, usually in the form of abuse or coercion. A positive right is a right to be provided with something through the action of another person or the state. In theory a negative right proscribes or forbids certain actions, while a positive right prescribes or requires certain actions which It does not invoke positive obligations on private or public actors to provide positive rights.

[49] Given the over-representation of Aboriginal girls and the exceptionally high degree of targeting they experience and argument can be made for discrimination on the basis of race, but for the purposes of this paper, will not be analysed.

[50] The Ministry of Children and Family Development provides programs and services for youths aged 12 to 17 who have committed criminal offences. http://www.mcf.gov.bc.ca/youth_justice/..

[51] The Ministry of Children and Family Development. http://www.mcf.gov.bc.ca/youth_justice/custody.htm.

[52] The Ministry of Children and Family Development. http://www.mcf.gov.bc.ca/youth_justice/policy.htm

1. The Federal *Youth Criminal Justice Act (YCJA)*, and in general, the principles set out in section 3 of the Act;
2. The provincial *Youth Justice Act*;
3. The *Ministry Vision Statement, Mission, Principles and Role and Mandate*;
4. *United Nations Convention on the Rights of the Child*; and
5. *Canadian Charter of Rights and Freedoms*.

In addition, they are bound by the British Columbia *Human Rights Code (BCHRC)*[53] as a public institution providing services to the public and for the purposes of their interactions with girls in the criminal justice system, would also be subject the *Convention on the Elimination of Discrimination Against Women (CEDAW)*[54]. Some of the key human rights provisions of these documents include: *BCHRC* Section 8(1)[55]; *Charter* Section 15(1)[56]; *CRC* Articles 2, 12, 19 and 37[57] and CEDAW Article 2[58]. Even though it is not human rights legislation, the *YCJA* also contains important principles that reinforce these rights, such as ensuring gender sensitivity and to use custody as a last resort.

[53] *Human Rights Code*, R.S.B.C. 1996, c. 210.

[54] Canada was one of the first countries to ratify CEDAW in 1981. CEDAW is an essential component of the UN human rights regime as it is the only UN human rights Convention that brings together in a single treaty human rights standards for women and girls in public and private life.

[55] **8 (1)** A person must not, without a bona fide and reasonable justification,
(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public
because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons.

[56] **15(1)** 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.

[57] **2(1).** States Parties shall respect and ensure the rights ....without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
12(2). .... the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child....
19: States Parties shall take all appropriate ... measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.....
37 (b) ....No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child ..... and shall be used only as a measure of last resort and for the shortest appropriate period of time;

[58] **2:** States Parties condemn discrimination against women in all its forms...and, to this end, undertake:
(b) To adopt appropriate legislative and other measures.... prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

This policy and legislative framework confirms that MCFD maintains a number of human rights obligations in respect to youth and girls, including the obligation not to discriminate on the basis of age, race or gender.

What is the Recourse for Violations of the Human Rights of Girls in the Criminal Justice System in BC?

Effective redress is critical to human rights compliance. Human rights mean little if they are not respected. It is in the interests of everyone concerned — police, judges, lawyers, probation officers, custody staff, inmates and society — if safeguarding human rights are available and strengthened.

Internal Complaint Mechanism

Currently, if a young person in custody has a complaint about any aspect of the custody centre, they are required to follow the following steps in submitting a complaint:

1. *Discuss the concern with the staff member involved in a calm, respectful manner and at an appropriate time.*

2. *If the matter is not resolved, request to discuss the issue with the on duty Person in Charge. If this does not resolve the issue, ask for a complaint form from a staff member.*

3. *Submit the complaint form to the staff member that the complaint was first discussed with. The form will be forwarded to the Director.*

4. *If not satisfied with the Director's response, youth may speak to the Inspector of Youth Justice Programs or the Ombudsman's Office (both work outside the centre[59]).*

In a consultation with youth in all three custody centres in BC, youth spoke of staff members refusing to give out complaint forms; of being mocked for submitting a complaint; of never hearing back on formal complaints; and of experiencing repercussions if they submitted complaints. The over arching belief was that "nothing ever happens" when they hand in a complaint form and that "staff stick up for each other so why bother?"[60]

[59] The McCreary Centre Society, " Voices from the Inside: Next Steps with Youth in Custody" (Vancouver: The McCreary Centre Society, 2007). Pg. 15.

[60] Other observations made by youth included: "We complain but staff harass you and punish you by locking you down if you do, and when you hear back on the complaint, it is too late and you've done your lock down time." "Staff should be more professional, when they know you are going to complain they mock you to try to dissuade you: 'oh we've got a complaint form writer here — you wrote a complaint against my friend, we can play that game.'" "[Person in Charge] and fellow staff take each others' side and don't listen to our complaints. I haven't complained because [Person in Charge] will be on staff's side."

While youth are able to call the Inspector of Youth Justice Programs or the provincial Ombudsman's Office[61] any time they have a complaint and without having to submit a complaint form first[62], this neglects to recognise that this is an unfair burden to put the onus on them the young people, to make sure their complaint is heard.[63] Given the repercussions of the internal complaint mechanism identified above, it is unlikely that young person in custody is likely to have the confidence to bring a compliant outside of the custodial facility. In addition, one must wonder what kind of support is provided for young people to mount such a complaint and how this affects the likelihood of them doing so. In the case of the Burnaby Youth Custody Centre, girls have access to advocates through the local Elizabeth Fry Society, but this arrangement is highly problematic given that the Society is funded by MCFD who are the very people responsible for the management of the custodial facility and against whom the girls would be lodging the complaint. This dual role of the MCFD seriously undermines the efficacy and independence of this complaints process.

Individual complaint to the BC Human Rights Tribunal(BCHRT)

The Canadian Human Rights Commission has noted that as service providers, those who are responsible for administering correctional and custody services must accommodate individual needs and differences relating to prohibited grounds of discrimination[64]. As an extension of this, a person who experienced discrimination in this context should be able to access redress. In BC, the main way to address issues of discrimination is through human rights legislation and the BC Human Rights Tribunal (BCHRT).

The *BCHRC* which the BCHRT implements, does not permit complaints of age discrimination for people under 19 and over 65, which eliminates the possibility that a girl (who as we will recall are those under the age of 18 for the purposes of the youth justice system) from bringing this complaint.

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[61] The Ombudsman's Office of BC gives priority to complaints about services to youth, including youth in custody. Ombudsman staff regularly visit the province's three youth custody centres as part of the Ombudsman's mandate to ensure fair treatment by public agencies. When the Ombudsman's Office investigates complaints from youth we look to ensure that the youth was treated fairly. We focus on the way decisions are made including whether the youth had an opportunity to be heard, was provided with reasons for a decision, and was provided with information about any appeals or opportunities for review. We also look to ensure that the public agency complied with the laws that govern it and with its own policies and procedures. http://www.ombud.gov.bc.ca/resources/reports/Ombudsman%20investigation%20leads%20to%20improvements.pdf accessed 29th November 2008

[62] The McCreary Centre Society, " Voices from the Inside: Next Steps with Youth in Custody" (Vancouver: The McCreary Centre Society, 2007). Pg. 15.

[63] Ibid.

[64] Canadian Human Rights Commission Submission to Parliament: "Protecting Their Rights A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women". http://www.chrc-ccdp.ca/legislation_policies/preface-en.asp

Hence there remain two possibilities: to make a complaint of discrimination on the basis of sex and discrimination on the basis of race.

Applied to the context of girls in the youth criminal justice system, an attempt to bring an individual human rights complaint under the BCHRT has two main advantages. First, the BCHRT is theoretically less costly than going to court and this is particularly important in view of cuts in legal aid and the court challenges programme. Secondly, the BCHRT allows direct access[65] which would theoretically make the complaint process quicker than the court system.

On the other hand, there are limitations to this model when applied to the circumstances of these girls. First, girls experience discrimination from a number of parties who are not necessarily under the one jurisdictional authority (i.e. police, judges, probation officers, guards, etc). Hence, there may be difficulties in trying to identify a single party against which to make the complaint and to identify who is most likely to be held accountable.

In addition, some of the perpetrators of the discrimination such as police and judges are an intimidating group of people against whom to bring a human rights complaint and it is highly unlikely that girls in the criminal justice system, who are arguably the most vulnerable members of society, would be willing be to even identify that what they experience is discrimination let alone bring a complaint.

Despite provision s. 21(4)(b) of the *BCHRC* which allows an individual or group to file a complaint on behalf of others[66], girls involved with the criminal justice system are in particularly vulnerable positions, with limited support and resources and are unlikely to come forward with an individual complaint. As noted in the case of Burnaby Youth Custody services, they may also not have access to advocates and advocacy services that are independent from government and other agents responsible for administering the services that are causing the discrimination.

[65] Advocates of the "direct access" model argue that the benefits are that it eliminates the gate-keeping function of the commission and provides claimants and respondents with an automatic right to a hearing of the merits of a complaint before a tribunal which means everyone "has their day in court".

[66] Section 21(4)(b) states: (1) Any person or group of persons that alleges that a person has contravened this Code may file a complaint with the tribunal in a form satisfactory to the tribunal.(4) Subject to subsection (5), a complaint under subsection (1) may be filed on behalf of

(a) another person, or

(b) a group or class of persons whether or not the person filing the complaint is a member of that group or class.

Despite the above limitations, it is worth going through the analysis of a possible individual complaint brought by a girl. Given the limitations of the human rights system in BC, the claim that would most likely succeed, would be a claim against the MCFD for a failure of the duty to accommodate (s. 8(1)) in the provision of services for girls in the youth justice services programme as well as in custody. While this type of claim would not entirely incorporate the violations conducted by all agents of the justice system, it would nevertheless attempt to hold the MCFD accountable for the discriminatory impact that its services have on girls.

Based on the case for establishing proof in human rights cases, the *Meiorin*[67] test applies to all claims for discrimination under the *BCHRC* and MCFD as a public institution providing services to public is required to accommodate the characteristics of affected groups within their standards which in this case are girls in the criminal justice system.

The *Meorin* test requires the individual complainant to establish that the standards of the MCFD are prima facie discriminatory. Given the accounts above and the fact that many of the services being provided by youth justice services are clearly designed for and around the needs of boys, this part of the test is likely to be successful.

If the BCHRT were to accept that prima facie discrimination exists, MCFD would have to prove that the discriminatory standards they have adopted in the provision of their services have a bona fide and reasonable justification. They would have to prove that:

1. MCFD adopted the standards for a purpose or goal rationally connected to the function being performed;
2. MCFD adopted the standards in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal; and
3. the standard is reasonably necessary to accomplish its purpose or goal, because the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost.

[67] *British Columbia (Public Service Employee Relations Comm.) v. B.C.G.E.U.*, [1999] 3 S.C.R. 3, 35 C.H.R.R. D/257 (*Meiorin*)

The principle of accommodation in the human rights context ensures that each person is assessed according to his or her own personal characteristics and abilities. Failure to accommodate may be shown by evidence that the standard was set arbitrarily, or that individual assessment was unreasonably refused, or in some other way.

MCFD would likely pass the first two elements of the test, but may have difficulties in justifying the third. It is possible they would argue that given the limited number of girls in the criminal justice system, it would require undue hardship in the form of costs to the MCFD and the public, to ensure that they are provided necessary services such as all female guards, non gendered programmes, accommodation in city cells and transport etc. While there is no precise legal definition of undue hardship, case law demonstrates that the standard is high and must be evaluated on a case by case basis.

Cases such as *Merorin* and *Grismer*[68] which have dealt with the issue of accommodation have noted that while costs are a significant issue for consideration, one must be wary of putting too low a value on accommodation and have emphasised the importance of providing more that other than anecdotal or 'impressionistic' evidence[69] in establishing undue hardship.

Given the trends in the case law, if the MCFD were not able to provide sufficient evidence that the hardship would be undue, there would be a good case for the BCHRT to find that girls should be accommodated in a non discriminatory manner.

Systemic Complaint to the BC Human Rights Tribunal

Given the limitations of the individual complaint model and the unlikelihood that an individual girl would come forward, a systemic complaint is another possible form of redress. The systemic complaint could address the fact that the criminal justice system as a whole, and not just the services provided by the MCFD, is perpetuating and reinforcing persistent patterns of inequality amongst girls involved in the criminal justice system. This would potentially remedy the limitations of the individual complaint process and to bring under one umbrella all of the ways in which discrimination is manifested at the various stages of the process and by the various agents of the criminal justice system.

[68] *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights),* [1999] 3 S.C.R. 868 (*Grismer*).
[69] *Merorin,* Para 79.

However, there are two main and interrelated challenges in BC to mounting a systemic discrinaitnion case. The first challenge is the limitation of the BCHRT itself. In 2003 BC eliminated its human rights Commission[70] and moved to a direct access model tribunal. This means that discrimination has become a matter of individual complaints only, and these complaints are an entirely private matter between individual complainants and respondents rather than a challenge to society at large.

This change resulted in the elimination of a number of public interest issues related to discrimination including the human rights Commission's ability to deal with systemic discrimination, to initiate complaints, or to join complaints as a party in order to argue—on behalf of the broader public interest––for interpretations of law that will eliminate discrimination[71]. Under the previous *BCHRC*, when the Commission received a complaint, it could require the production of documents, correspondence or records, and could make inquiries of any person in writing or orally in order to investigate a complaint.[72] If any person refused to comply with requests made in the course of an investigation, the Commission could apply to the B.C. Supreme Court for an order requiring the person to comply with the demand. However, all investigative powers have now been stripped from the *BCHRC*.

As a result, the system has become more legalistic, individualistic and there is no guaranteed help for a complainant. Without the support of a Commission many people are likely to have to resort to representing themselves or being represented by a lay person or inexperienced lawyer which undermines their participation in the process.

This leads into the second issue, which is the magnitude of the submission that needs to be put together to make a systemic argument. Cases such as *Moore*[73] and *Radek* [74]have required an extraordinary amount of human and financial resources to accumulate information, witnesses, statistics, legal and social research and legal assistance to put the case together in a way that would stand to muster and that would parallel the quality and depth of work that could be done by a Commission. In the absence of a Commission, the production of systemic discrimination cases is left to individuals and advocacy

[70] Bill 53 – 2002 Human Rights Code Amendment Act, 2002.
[71] *Human Rights Code*, R.S.B.C., c.210. ss.21(2), 21(3).
[72] *Human Rights Code*, R.S.B.C., c.210, s. 24.
[73] *Moore v. B.C. (Ministry of Education) and School District No. 44*, 2005 BCHRT 580.
[74] *Radek v. Henderson Development (Canada) and Securiguard Services (No. 3),* 2005 BCHRT 302.

groups, both of which have inherently limited resources. Expecting non-profit agencies to intervene while functioning on limited and dwindling resources is unrealistic and expecting an individual to take on this task is next to impossible, particularly in relation to girls who are either in custody or in a situation of social and economic disadvantage that has resulted in their interactions with the criminal justice system.

Section 15 Argument under the Canadian Charter of Rights and Freedoms

The final mechanism available for addressing a human rights complaint would be through *Charter* litigation. The claim to be made is that the provision of services and the exercise of statutory authority over the administration of criminal justice system by the BC government and MCFD in particular, disproportionately discriminates against girls on the basis of sex and this violates s. 15 of the *Charter*[75].

For s. 15 of the *Charter* to come into operation for a claim, the alleged inequality must be one made by "law". The most obvious form of law for this purpose is a statute or regulation and in this case would refer to the guiding legislation that relates to youth criminal justice including the *YCJA*, the *Youth Justice Act* and the other policies and legislation related to administering youth justice. However, if the analysis were limited to law per se, the government could easily circumvent the *Charter*. Hence, the advantage of being able to mount a *Charter* challenge for the girls in question is that they can challenge not only the limited legislation but also policies and programmes implemented in areas such as custody, programme provision, sentencing, transfers etc. Another benefit of pursuing a *Charter* challenge is that s. 15 prohibits both direct and systemic discrimination. This means that a law that is neutral on its face may operate in a discriminatory fashion and if it does, it may do so in systemic way.[76]

A challenge to government action under s. 15 of the *Charter* also includes exercise by government of a statutory power or discretion.[77] If this were not the case, it would be inconsistent if equality "before and under the law" and "equal protection and equal benefit of the law" did not include the way in which a law was interpreted and enforced by those charged with its operation. It will often be this process of interpretation and enforcement that determines the impact that a law has on the lives of those who

[75] 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, age or mental or physical disability. Under section 15, equality is expressed in four different ways: equality before the law, equality under the law, equal protection of the law and equal benefit of the law.
[76] *Vriend v. Alberta*, [1998] 1 S.C.R. 493; *Eldridge v. British Columbia (Attorney General),* [1997] 3 S.C.R. 624.
[77] *RWDSU v. Dolphin Delivery Ltd.,* [1986] 2 S.C.R. 573.

come within its scope[78]. Again, the benefits to the case of girls is that it provides for arguing accountability to a much broader group of agents and practices of the criminal justice system, beyond the MCFD and its provision of services.

Finally, the Supreme Court of Canada has held that in interpreting the *Charter*, it should be guided by Canada's obligations under international human rights law.[79] This principle increases the human rights responsibilities on the part of government toward these girls by requiring that obligations under *CEDAW* and the *CRC* be included in assessing the situation of girls and the degree of protection they should be afforded.

When looking at the specific circumstances of girls and their interactions with the criminal justice system, a *Charter* challenge provides much broader platform for demonstrating that discrimination on the basis of sex exists not only in the confines of the wording of a law or policy itself, but in the way that various agents of the criminal justice use their discretion in exercising the law. In addition, it allows for consideration for broader accountability beyond the Ministry directly responsible for youth justice, to include other members of society that administer the criminal law.

The analysis under s. 15(1) in application to girls in the criminal justice system could proceed as follows.

First, the claimant(s) would show that the law, program or activity imposes differential treatment between them and another group of people with whom they can legitimately compare in arguments for equality. In this case, it would have to be demonstrated that the policies and practices of the government and other criminal justice agents impact boys and girls differently. This could include evidence of harsher sentences and probation conditions for girls, lack of programmes in custody, treatment and services provided in the city cells and during transfers etc.

Second, the claimant would have to demonstrate that this differentiation is based on one or more of the enumerated or analogous grounds. In the case of the girls, their discrimination clearly fits into the enumerated ground of sex.

[78] *Stoffman v. Vancouver General Hospital*, [1990] 3 S.C.R. 483.
[79] *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391, 2007 SCC 27.

Third, the claimant would have to establish that the differentiation amounts to a form of discrimination that has the effect of demeaning the claimant's human dignity.[80] Based on the accounts provided by girls and in view of their particularly vulnerable status, there would be strong case that their interactions with the criminal justice system impact their dignity, especially given that these abuses also take place when their liberty has been taken away from them in the form of custody both in city cells and in youth custody services or when they are at their most vulnerable, for those girls who are living on the streets.

S.15 claims can fail unless the comparison to the "comparator group" is legally relevant. In the case of girls, it is unlikely that a court would question the validity of their comparator group which would be boys of the same age bracket who are also involved in the criminal justice system and who are subject to the same actions, laws and policies.

Once the case is made for a violation, the public authority in question is given the opportunity to argue whether the discriminatory practice and the violation of the *Charter* can be justified under s. 1.[81] Much like the analysis in BC human rights context around undue hardship, it would be a difficult argument for the government to make that treating girls the same way as boys without consideration for their difference based on sex, and allowing them to suffer the many violations that have been assessed above, is justified in a fair and free society.

While there are a number of ways that human rights complaints can attempt to be addressed by girls in BC, there are limitations to all of the models. One of the overriding concerns is the particular vulnerability of girls engaged in the criminal justice system and how this affects the likelihood of them even acknowledging that what they have experienced is a human rights violation let alone having the confidence and access to people who can assist them to navigate the legal system to make a complaint. Their powerlessness and abuse at the hands of some of the most powerful members of society (ie police, guards, judges etc) are exacerbated by the contradiction that the mechanisms for seeking redress for human rights violations are modelled to protect the collective rights of particular groups who are listed in the enumerated grounds, but the legal mechanisms are set up for individual complaints.

[80] *Law v. Canada (Minister of Employment and Immigration),* [1999] 1 S.C.R. 497.
[81] The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Because they represent a small percentage of the population involved in the youth criminal justice system, their demands for accommodation and non discrimination may continue to be unheeded on the basis that the amount of resources required to accommodate them cannot be justified.

Conclusion

Recognizing the different experiences of girls in their interactions with the criminal justice system is not enough to protect their human rights or achieve equality, particularly given the weaknesses of the redress systems in BC. Differences experienced by girls must lead to changes in how the justice system is designed, how policies are developed, and how practices are implemented as they relate to girls. The public interest in doing so will not only result in treating girls fairly, but also enhancing public safety.

The general public has to be made aware that the interactions between girls and the criminal justice system stem most commonly from the social and personal problems they face, including stark levels of abuse and male violence. Until we deal with the reasons behind their behaviour we will be unable to assist them once they enter the legal system. So few females are charged in comparison with the number of males, that it is hard to convince people to spend time, money and energy on them. [82]

Nevertheless, substantial changes in social attitudes and structural inequalities are also urgently needed: instead of investing significant economic resources into forcible means of protection or behaviour change, we need to begin to directly address the circumstances that compromise girls' safety (such as substance abuse and sexual exploitation) and invest in programs and supports that facilitate girls' development.[83]

Finally and for purely pragmatic reasons, if evidence indicates that involvement in the criminal justice system as a youth increases the likelihood that a person will be continue to be engaged in the system in to their adult years, there is a strong argument for trying to assist girls as early as possible to prevent the potential cycle of crime and incarceration. Because they represent such a small number in the youth

[82] Michelle Clarke and Sally Smith, "Canada's Female Young Offenders: Isolated and Ignored". Section 15 Equality in the Criminal Justice System and the Workplace: fact or fantasy? Seventh Biennial Conference of the Winnipeg National Association of Women and the Law (Winnipeg: NAWL, February 1987).

[83] Amber Richelle Dean, "Locking Them Up to Keep Them Safe: Criminalized Girls In British Columbia". (Vancouver: Justice for Girls, 2005).

justice system, this provides stronger reasons that they be assisted and alternatives found to using punitive measures and incarceration to deal with their unique circumstances and experiences.

Appendix A: Letter from Youth Custody

Stacey[84]

Girls in youth custody centers have too much to deal with. Most females from the ages twelve to eighteen come in and out of youth custody centers at least once or twice in their lives. They have past problems and present problems to deal with. Doesn't matter if you come from the best of homes or not there are always these problems.

One of the problems girls deal with is stereotyping. Just because we are in jail we are known as whores, dirty girls, sleazy, prostitutes, and junkies. Let's get one thing straight, not all of us are like that. Some of us have made bad choices in life. We've made mistakes that most of us regret. But we learn from them. Most of us are really nice girls if you give us a chance. We have the potential to do more and to be somebody.

People don't realize what most of us go through in our lives. There are quite a few of us who have been sexually assaulted or harassed, beat by our boyfriends, have lived on the streets or in and out of group or foster homes, and have been physically and emotionally abused. When you meet us, you can't tell if we have gone through that or not. You don't know what we are like. Most staff and residents just judge from the way we look, walk or talk. They seem to think just because we are female residents we are sexual objects and the boy's harass us or staff keeps a close eye on us.

A lot of us have attitude because of the way that we are treated and of the way we grew up. What people don't realize is it's an act. A play in which, we are the leading actress. I for example act like a really big snobby bitch. I try to make myself out as a tough girl, who doesn't care, has way too much attitude, and feel I have to prove that I am better then everyone. But really underneath, I'm super sensitive, I cry easy, I'm very insecure and self-conscious, and care too much about what people think of me. So I play what I call the Tough Girl Syndrome. But deep inside I am a very hurt little girl. I look for love and attention from the wrong people. I act like I'm better then people when I know that I'm not. But it's a game I'm stuck playing.

Some other problems I have had in custody are; not enough female programs. If they had more counseling for girls like myself, with the Tough Girl Syndrome, then most of us could deal with our past history and present problems. We could get more heartache out of our system and move on with life. If we weren't judged by staff for the way we are then most of us would lose our attitudes. If we weren't judged for who we talked to, who we date, who our friends are most of us would lose our attitudes. It's hard for most of us to be in a center for long periods of time and not feel attention or feel wanted. That's why the dating starts. If staff could see from our point of view mabey they would understand better. If they could learn that we are not perfect and that we have bad day's too things would be easier. If they could accept us for the way we are and look for the good, not always trying to correct us we could grow from there. If you really realize the situation and give us the chance you will see that deep underneath our masks, we're like sun flower seeds struggling to grow.

[84] From the Prince George Youth Custody Centre Website: http://members.netbistro.com/pgycc/youth_talk/ytstacey.html Accessed 29th November 2008.