

The 2015 Wilson Moot Problem

Claudette Tinio on her own behalf and as litigation guardian of Lily Tinio v. Canada (Attorney General)

Claudette Tinio is currently serving a four-year prison sentence for assault with a weapon at Maplehurst Women's Penitentiary, a minimum-security prison located near Milton, Ontario. Lily Tinio is Claudette's one-year-old daughter.

The federal government recently announced significant reforms to the Correctional Service of Canada's Mother-Child Program, which allows certain female federal prisoners to keep their young children with them in prison while they serve their sentences, under a number of conditions. Shortly before Claudette began serving her sentence, and while she was pregnant with Lily, the Minister of Public Safety and Emergency Preparedness directed that women incarcerated for violent offences, such as Claudette, would no longer be eligible to participate in the Mother-Child Program.

The terms of the Mother-Child Program, as it existed immediately prior to the reform, are set out in a Directive of the Commissioner of the Correctional Service of Canada, which is attached as Exhibit "A" (the "Commissioner's Directive").¹ Pursuant to the Minister's direction, the Commissioner amended the Directive to add section 18.1, under the heading "Eligibility":

18.1 Women convicted of any crime of violence, regardless of whether the crime involved a child, are not eligible to participate in the program.

As a result, Claudette was not eligible to enroll in the Mother-Child Program. In October 2013, she brought an application before the Federal Court of Canada, on behalf of herself and Lily, seeking declarations that:

- a) Claudette's exclusion from the Mother-Child Program infringes her rights under section 15 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*");
- b) Claudette's exclusion from the Mother-Child Program infringes Lily's rights under section 15 of the *Charter*;
- c) Claudette's exclusion from the Mother-Child Program infringes her rights under section 7 of the *Charter*; and
- d) the infringements of sections 7 and 15 are not saved by section 1 of the *Charter*.

¹ For the purposes of the Wilson Moot, the Annexes and Forms to the Commissioner's Directive have been excluded from the Exhibit. Mooters should not refer to the Annexes or Forms in their arguments.

Claudette also sought an order in the nature of *mandamus* that the Institutional Head of Maplehurst enroll her in the Mother-Child Program.

Claudette's application was heard before Justice Michael Lazier in February 2014. Justice Lazier made the following findings of fact on the application:

1. Claudette was 30 years old at the time of the hearing of the application. She was born and grew up in Winnipeg. She is of Filipina descent. Her mother, who passed away when Claudette was 21, immigrated to Canada as a nanny through the Live-In Caregiver Program. Claudette has never known her father or any of her paternal relatives.

2. Claudette has a half-sister, Emily Tinio, who is four years older than her. Claudette's mother and Emily's father were married but divorced two years before Claudette was born. Emily and Claudette were raised together by their mother and have always enjoyed a close relationship.

3. Emily lives in Calgary with her common law partner and their three children, who are all under the age of 10. Emily works part-time as a nurse; her common-law husband, Mike, is currently employed as a machine operator with an oil company operating near Fort McMurray. Mike spends one weekend a month with his family and stays in Fort McMurray the remainder of the time.

4. In high school, Claudette became involved with a tough crowd and began drinking, smoking marijuana, and becoming involved in petty crimes such as vandalism and shoplifting. Claudette's mother was overwhelmed trying to discipline her and often struck her or locked her out of the house, forcing her to seek shelter with friends and boyfriends, and occasionally, to sleep in a neighbourhood park.

5. When she was 17, Claudette was diagnosed as having bipolar disorder. She was able to attend some counseling arranged by her high school's social worker but was unable to afford the medications that were recommended by her family physician.

6. By her early 20s, Claudette was drinking heavily and regularly using harder drugs including cocaine and crystal meth. Although she occasionally was able to secure full- or part-time employment, Claudette frequently quit or was dismissed from jobs for reasons largely related to her drug use. She increasingly resorted to illegal means to support her habits, including theft, prostitution, and dealing in various drugs.

7. During this period, Claudette was charged with a number of offences, disposed of as follows:

- a. Age 22 (2005): possession of marijuana and cocaine. Claudette entered a diversion program that led to the withdrawal of these charges in exchange for community service and her participation in a drug counseling program.
- b. Age 24 (2007): communication for the purposes of prostitution and resisting arrest. Claudette received a conditional discharge.
- c. Age 25 (2008): theft under \$5000 (three counts) and assault. Claudette received a six-month suspended sentence.
- d. Age 26 (2009): possession of methamphetamine for the purposes of trafficking. Claudette served a one-year sentence in a provincial prison near Brandon.

8. While serving her sentence for the trafficking charge, Claudette was able to stop using drugs and participated in counseling and education programs offered by the prison. She was also able to take mood stabilizing medication to treat her bipolar disorder.

9. When Claudette was released from prison in 2010, she returned to Winnipeg and was determined to leave her old life behind. Unfortunately, Claudette faced a number of obstacles. Her criminal record made it difficult to secure housing and employment. Her mother had passed away and Emily was living in Calgary, leaving Claudette with few close supports. She stopped taking mood stabilizers. Claudette began attending Alcoholics Anonymous meetings and aside from a few brief lapses, was largely successful in staying sober. However, she found herself socializing from time to time with her old friends, many of whom were still involved with drugs and crime.

10. In December 2012, Claudette was visited by an acquaintance, Rachel, who was still involved in the drug ring that was connected to Claudette's trafficking conviction. Rachel told Claudette that she needed her help moving a significant quantity of cocaine to Calgary for sale and demanded that Claudette take the drugs with her in her vehicle the next time she travelled to see Emily. Claudette refused, but Rachel insisted that Claudette still owed money to another dealer in the ring and could eliminate her debt by completing the delivery. Claudette and Rachel argued, which led to a physical altercation. After Rachel punched Claudette in the face and shoved her into the wall, Claudette struck Rachel in the head with a telephone in her living room.

11. A neighbor called the police to report a disturbance. When the police arrived, Rachel was unconscious and Claudette was arrested and charged with assault with a weapon. She was released on bail pending trial.

12. In February 2013, Claudette learned that she was pregnant by a man that she had been seeing casually. When she told him about the pregnancy, he urged her to terminate it and told her in no uncertain terms that he was unable to support a child financially and had no intention of being involved in the child's life. As a result, the relationship ended. Despite knowing that she was potentially facing a custodial sentence for assaulting Rachel, Claudette decided to keep the baby. Her lawyer told her about the Mother-Child Program and explained that she would have to make an application to participate, if and when she received a federal prison sentence.

13. In April 2013, the Vancouver Tribune published a story that revealed that Kathy Olsen, a high-profile offender who pleaded guilty to four counts of manslaughter for her role in assisting her then-husband rape and murder several young women involved in the sex trade, had been permitted to enroll in the Mother-Child Program and to keep the couple's child with her during her incarceration. The existence of the Mother-Child Program had not previously been widely publicized, but after the Tribune's story ran, several victims' rights organizations began pressing the government to cancel or significantly reform the program.

14. A month after the Tribune story was published, Mason Jennings, the federal Minister of Public Safety and Emergency Preparedness, announced that the government would promulgate reforms to the Mother-Child Program to make all prisoners convicted of violent crimes ineligible to participate. At the press conference, Minister Jennings referred to the Olsen case and also stated:

This government promised the Canadian people that we would put an end to Club Fed, and we are living up to that promise. I think most Canadians were shocked to learn that women convicted of serious crimes of violence are allowed to keep their children and raise them in prison. The purpose of prisons is to punish offenders, and that does not mean paying for violent offenders to have the privilege of raising their children while they serve their sentences.

15. In response to a question from a member of the press gallery, Minister Jennings also stated: "Look, prisons are just not appropriate places for children. Being raised in a penitentiary by a person convicted of a violent crime is no way to assure the safety and development of a child."

16. The Mother-Child Program has existed in some form since 1999; the existing Commissioner's Directive (save for the newly-introduced section 18.1) has been in effect since 2003.

17. The government did not conduct any study or risk assessment of the Mother-Child Program before making the decision to exclude violent offenders.

18. At trial in July 2013, Claudette's defence of self-defence was rejected by the trial judge. Claudette was convicted of assault with a weapon and sentenced to four years in prison. She did not pursue any appeal as to conviction or sentence, as her lawyer advised her that an appeal would likely be unsuccessful. Claudette surrendered and began serving her sentence at Maplehurst in August 2013. Due to overcrowding, she was not able to serve her sentence in a facility near Winnipeg or Calgary.

19. As a result of the reforms, Claudette was ineligible for the Mother-Baby Program and did not apply to participate. She gave birth to Lily in October 2013 while incarcerated at Maplehurst. Lily was apprehended within 12 hours and turned over to Emily's care in Calgary, where she has remained since.

20. In her affidavit in support of her application, Claudette stated:

Emily has brought Lily to visit me at Maplehurst four times since she was born. I wish desperately that they could come more often, but I understand that it is a long way for Emily to travel and that she has to arrange care for her other children to do so. When I see Lily, and talk to her and play with her, even just for a few hours, I am so happy and so filled with hope. When she leaves, I am usually depressed for weeks. It is like she is being ripped out of my arms all over again. I am scared that Lily will not remember me when I get out. I don't know how I am ever going to make it up to her, these years that we have lost. When I think about my own daughter not knowing me, not knowing why I am not there to play with her, to hug her, to care for her, I cannot stop crying.

21. Emily's affidavit evidence was that she was doing her best with Lily and believed that she was generally a happy and healthy child, although she is usually tearful and upset following visits with Claudette. Emily stated that she was prepared to continue to care for Lily as long as Claudette is incarcerated, as there are no other relatives or friends who would be able to do so, and Emily and Claudette are both determined that Lily should not be placed in foster care. However, Emily often feels overwhelmed physically, emotionally, and financially, raising a total of four children with her common-law partner away most of the time.

22. An expert affidavit from Dr. Courtney Tegame, a psychologist specializing in female prisoners, was admitted into evidence. Dr. Tegame's evidence was that:

a. As a general rule, female prisoner populations are much less violent than male prisoner populations. While not non-existent, there are also far fewer problems with contraband (including drugs and weapons) in minimum- and medium-security women's prisons than in their male counterparts.

b. A child's early emotional attachment to his or her caregiver(s) is crucially important to his or her development. Secure attachment promotes healthy brain functioning, social development, and emotional security. Children who do not develop secure bonds with a caregiver are at a higher risk of intellectual deficits, behavioural issues, and mental health problems. The crucial period for the formation of such bonds is between the ages of one and twenty-four months.

c. Female prisoners who are able to participate in mother-child programs generally appear to improve in confidence and self-esteem over the course of their participation, and are more likely to avail themselves of other educational and personal development programs offered by the prison.

d. The forced separation of a child from her mother is virtually always a traumatic event for a mother; the trauma is exacerbated in women with mental health or addiction issues.

e. A mother who is separated from her child during incarceration is more likely than other prisoners to be depressed. She will also face considerable difficulties in re-establishing a mother-child bond upon release, even if the child is returned to her care. These difficulties are particularly acute if the child has bonded with another caregiver.

f. There are a handful of studies that suggest that female prisoners who are permitted to keep their children in prison while they serve their sentences are less likely to re-offend.

g. Most European countries have some form of a mother-child program that allows female prisoners to keep their children with them in prison for some period of time; there are various conditions, terms, and limitations to these programs across

different countries. Dr. Tegame is not aware of any other country that excludes all prisoners convicted of violent offences from participation in such programs, although some countries do not permit women convicted of the most serious offences of violence (generally murder, attempted murder, aggravated assault, sexual assault, and similar offences) to enroll.

23. On cross-examination on her affidavit, Dr. Tegame conceded that overall, there is little academic research on prisoner mother-child programs and that her opinions were drawn from a relatively limited body of work.

24. Dr. Tegame also agreed that mother-child programs are generally unavailable in the United States. In her view, this reflected a lack of institutional resources in prisons as well as much more punitive attitudes towards prisoners on the part of both the public and lawmakers.

25. The government relied on the affidavit of Nishant Patel, a senior administrator at Maplehurst with over fifteen years of experience in the Canadian correctional system. Mr. Patel's evidence was that:

a. Prior to the promulgation of section 18.1 of the Commissioner's Directive, an average of 75 women were enrolled in the Mother-Child Program across Canada at any given time. Approximately 45% of these women would now fall within the scope of section 18.1 and would be ineligible to participate in the program.

b. Where a prisoner's application to enroll in the Mother-Child Program is refused, there are several possibilities for the child's care during the mother's incarceration. It is often possible for the child to be cared for by her other parent or by other relatives or friends. Where there is no such suitable placement, the child would be apprehended by the provincial child welfare authorities and would likely be placed into foster care.

c. In Mr. Patel's view, there were risks to the children living in prison through the Mother-Child Program, including the presence of other violent offenders, the presence of mentally ill or drug-addicted prisoners, and the presence of contraband. Anecdotally, some prison guards have expressed their concerns about these risks and about their ability to ensure the safety of children residing in prison.

d. He was aware of approximately two security incidents over the last 28 months preceding his affidavit involving disturbances in Canadian federal prisons (across the country) involving women enrolled in the Mother-Child Program. One involved violence between prisoners and one involved possession of contraband by a mother enrolled in the program. Neither resulted in any physical injury to a child. The case involving contraband possession resulted in the mother's removal from the Mother-Child Program.

e. The participation of a mother-child pair in the Mother-Child Program costs the federal government approximately \$35,000 per year over and above the costs of incarcerating the mother alone.

26. There was no dispute among the parties that breastfeeding is superior to formula feeding for babies in their first year. This is due both to the beneficial health effects of breast milk as compared to formula and the emotional bond that develops between mother and baby during breastfeeding. The Canadian Paediatric Society recommends exclusive breastfeeding for the first six months of life and the continuation of breastfeeding (together with other food sources) for up to 18 months after that.

27. Where a mother is not enrolled in the Mother-Child Program but wants to provide breast milk to her baby, prison authorities will generally facilitate the storage and transportation of the mother's breast milk to the baby's caregivers. In Claudette's case, this was not possible because of the distance between Maplehurst and Emily's home in Calgary.

28. While there was some dispute regarding the precise numbers cited by competing witnesses from various studies, the Attorney General accepted that racialized women (particularly aboriginal women), women suffering from mental illnesses, and women who have issues with substance abuse are significantly over-represented in Canadian prisons compared with the general population. Such women are more likely to be serving time for violent offences than Caucasian women and women without mental health or substance abuse issues.

29. The rehabilitative needs of offenders are assessed upon entering custody. From 2008-2013, approximately 85% of female offenders were assessed as having needs relating to substance use. 70% were assessed as requiring assistance with social or emotional difficulties. 60% were assessed as having needs relating to family or marital issues. With respect to the latter, both Dr. Tegame and Mr. Patel agreed that female prisoners were much more likely to

have been victims of abuse by family members or romantic partners than women in the general population.

30. Many female offenders, particularly those convicted of violent offences, have lower levels of education. Approximately 50% of female prisoners in Canada did not complete secondary school, as opposed to approximately 15% of the general population.

Justice Lazier allowed the application in March 2014, holding in part:

I do not agree with the Attorney General that the distinction drawn by section 18.1 of the Commissioner's Directive is based solely on Ms. Tinio's status as a violent offender. Rather, Ms. Tinio's exclusion from the Mother-Child program discriminates against both her and Lily on the grounds of gender, race, ethnicity, and Ms. Tinio's case, also on the ground of disability. This reform has nothing to do with the actual needs, abilities, or circumstances of either Claudette or Lily Tinio and nothing whatsoever to do with the best interests of the child—only with furthering the government's "tough on crime" agenda. As a result of this finding, I need not decide, in connection with Lily's *Charter* claim, whether "family status" is an analogous ground under section 15 of the *Charter*.

I further find that section 18.1 of the Directive infringes Claudette's right to security of the person in a manner that is both overbroad and grossly disproportionate.

Assuming without deciding that the government's objectives in reforming the Mother-Child Program are pressing and substantial, the infringements cannot be justified under section 1 of the *Charter*. The deleterious effects associated with such a severe restriction of the program clearly outweigh any minimal gains in the deterrence and denunciation of violent crimes, and are not minimally impairing. My conclusions in this regard are supported by the evidence adduced by the applicants of mother-child programs in other jurisdictions, none of which are as broad or restrictive as the reforms introduced by the Canadian government.

In September 2014, the Federal Court of Appeal allowed the Attorney General's appeal. Writing for herself and Justice Norman Tilde, Justice Sabrina Chan wrote:

I accept that there are cases where discrimination only becomes apparent when one considers overlapping and intersecting grounds that give rise to disadvantage. However, the respondents' reliance on a combination of virtually every enumerated ground to make out a claim in this case is so tortured as to empty section 15 of the *Charter* of any meaningful limitation. The distinction made by section 18.1 of the Commissioner's Directive is unambiguously based on Ms. Tinio's status as a violent offender. Whether or not it amounts to good policy is a matter for the executive and legislative branches of government, not the judiciary—however, it does not amount to a distinction based on an enumerated ground. I also cannot accede to the respondents' arguments that

“prisoner status” is an analogous ground for the purposes of section 15 of the *Charter*.

It therefore follows that Lily’s section 15 claim, insofar as it is based on gender, race, and ethnicity must fail as well. “Family status” in the broad sense advocated by counsel on behalf of Lily has not been affirmed as an analogous ground under section 15, and I decline to do so in this case.

I respectfully cannot agree with the application judge’s findings regarding overbreadth and gross disproportionality. The government is entitled to deference in the manner that it chooses to address complex social issues such as this. This policy no doubt has serious implications for Ms. Tinio, but it relates clearly to the state’s objectives and is not so disproportionate as to offend basic norms. The fact that other governments have chosen different measures to address the challenges presented by the incarceration of mothers does not inexorably lead to the conclusion that the measures chosen by the Canadian government offend the principles of fundamental justice.

In dissent, Justice Joanna George largely adopted the reasoning of Justice Lazier in the court below.

Claudette and Lily have been granted leave to appeal the Federal Court of Appeal’s judgment to the High Court of the Dominion of Canada, which has stated the following constitutional questions:

1. Does section 18.1 of the Commissioner’s Directive infringe Claudette Tinio’s rights under subsection 15(1) of the *Charter*?
2. Does section 18.1 of the Commissioner’s Directive infringe Lily Tinio’s rights under subsection 15(1) of the *Charter*?
3. Does section 18.1 of the Commissioner’s Directive infringe Claudette Tinio’s rights under section 7 of the *Charter*?
4. If the answers to any of questions 1, 2, or 3 is “yes,” is the infringement demonstrably justified in a free and democratic society under section 1 of the *Charter*?²

The High Court has not asked the parties to make submissions on the issue of remedy. In the Federal Court, the Attorney General agreed that if the application were allowed, Maplehurst would process Claudette’s application to enroll in the Mother-Child Program without regard to section 18.1 of the Commissioner’s Directive.

² Note that the High Court of the Dominion of Canada will not consider any facts other than those found by Justice Lazier.

EXHIBIT “A”



**COMMISSIONER'S
DIRECTIVE**

768

**DIRECTIVE DU
COMMISSAIRE**

**INSTITUTIONAL
MOTHER-CHILD PROGRAM**

**PROGRAMME MÈRE-ENFANT EN
ÉTABLISSEMENT**

Issued under the authority of the
Commissioner of the Correctional Service of Canada

Publiée en vertu de l'autorité de la commissaire
du Service correctionnel du Canada

2003-02-27



COMMISSIONER'S DIRECTIVE DIRECTIVE DU COMMISSAIRE

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INSTITUTIONAL MOTHER-CHILD PROGRAM

PROGRAMME MÈRE-ENFANT EN ÉTABLISSEMENT

POLICY OBJECTIVES

1. To provide a supportive environment that fosters and promotes stability and continuity for the mother-child relationship.
2. To detail operational practices required to implement, maintain and monitor the Mother-Child Program.

PRE-EMINENT CONSIDERATION

3. **The best interests of the child** shall be the pre-eminent consideration in **all** decisions relating to participation in the Mother-Child Program. The best interests of the child include ensuring the safety and security as well as the physical, emotional and spiritual well-being of the child.

AUTHORITY

4. *Corrections and Conditional Release Act*, sections 76 and 77.

CROSS-REFERENCES

5. Cross-references include:

Commissioner's Directive and Guidelines 335 – Fleet Vehicles;
Commissioner's Directive 566-7 – Searching of Inmates;
Commissioner's Directive 566-9 – Searching of Cells, Vehicles and Other Areas of the Institution;

Commissioner's Directive 730 – Inmate Program Assignment and Payments.

DEFINITIONS

6. "Mother" means biological or adoptive mother, legal guardian or step-mother.
7. The Mother-Child Program has two levels of participation.

OBJECTIFS DE LA POLITIQUE

1. Créer un milieu favorisant le maintien et le développement de la relation mère-enfant.
2. Exposer en détail les pratiques opérationnelles nécessaires pour la mise en œuvre, le maintien et le suivi du Programme mère-enfant.

CONSIDÉRATION PRÉDOMINANTE

3. **Le meilleur intérêt de l'enfant**, y compris la sécurité et le bien-être physique, affectif et spirituel de celui-ci, est le premier critère dont il faut tenir compte dans **toutes** les décisions touchant la participation au Programme mère-enfant.

INSTRUMENT HABILITANT

4. Les articles 76 et 77 de la *Loi sur le système correctionnel et la mise en liberté sous condition*.

RENOIS

5. Les renvois comprennent les documents suivants :

Directive du commissaire et les Lignes de conduite n° 335 sur le parc automobile;
Directive du commissaire n° 566-7, intitulée « Fouille des détenus »;
Directive du commissaire n° 566-9, intitulée « Fouille de cellules, de véhicules et d'autres secteurs de l'établissement »;
Directive du commissaire n° 730, intitulée « Affectation aux programmes et paiements aux détenus ».

DÉFINITIONS

6. Le terme « mère » s'entend de la mère biologique ou adoptive, la tutrice légale ou la belle-mère.
7. On distingue deux niveaux de participation au Programme mère-enfant.



- a. Full-time residency means the child lives with the mother in the institution on a full-time basis.
- b. Part-time residency means the child does not live with the mother on a full-time basis. This can include, but is not limited to, weekends, holidays, school vacations.

ACCOMMODATION

- 8. Inmate accommodation (single occupancy) shall have priority over the Mother-Child Program in both the long and short term.

RESPONSIBILITIES – INSTITUTION

Institutional Head

- 9. The Institutional Head shall:
 - a. be the decision-maker with respect to program participation and program termination. This shall also include an assessment of the accommodation needs of the population;
 - b. develop partnerships with community services or agencies that can provide opportunities for the children to participate in age-appropriate activities and programs on or off-site;
 - c. establish an internal mechanism for staff to inform the Institutional Head should child abuse or neglect be suspected;
 - d. on a regular basis, invite representatives from recognized community services or agencies (and/or the institutional Program Coordinator), to provide assistance and information to inmates and staff and provide continuity into the community for the mother when she is released. These representatives may include but are not limited to public health care nurses, pre- and post-natal counselling, breast-feeding, nutrition specialists and mother-to-mother mentoring programs; and
 - e. report to the Deputy Commissioner for Women any other situations that involve the well-being of the child or impact on the

- a. Cohabitation à temps plein : l'enfant vit à temps plein avec sa mère dans l'établissement.
- b. Cohabitation à temps partiel : l'enfant ne vit pas avec sa mère à temps plein. Il peut s'agir notamment des fins de semaine, des jours fériés et des vacances scolaires.

LOGEMENT

- 8. Le logement des détenues (dans des cellules en occupation simple) doit passer avant le Programme mère-enfant, et ce, à court et à long terme.

RESPONSABILITÉS – ÉTABLISSEMENT

Directrice ou directeur de l'établissement

- 9. La directrice ou le directeur de l'établissement assume les responsabilités suivantes :
 - a. prendre les décisions pour ce qui est de la participation au programme ou de la cessation de ce dernier (ce qui inclut l'évaluation des besoins de logement de la population);
 - b. établir des partenariats avec des services ou des organismes communautaires qui peuvent offrir aux enfants des occasions de participer, sur place ou à l'extérieur, à des activités et à des programmes conçus à leur intention;
 - c. mettre au point un mécanisme visant à faire en sorte que le personnel informe la directrice ou le directeur de l'établissement s'il soupçonne des mauvais traitements ou de la négligence;
 - d. inviter régulièrement des représentants de services ou d'organismes communautaires reconnus ou la (le) coordonnatrice(teur) du programme de l'établissement à fournir de l'aide et des renseignements aux détenues et aux membres du personnel, et faire le suivi auprès de la mère lorsqu'elle sera mise en liberté (il peut s'agir d'infirmières spécialisées en santé communautaire, et les services peuvent comprendre du counseling avant et après la naissance, des conseils quant à l'allaitement et à la nutrition et un encadrement par une autre mère);
 - e. présenter à la sous-commissaire pour les femmes des rapports sur toute autre situation concernant le bien-être des enfants ou les répercussions sur



program.

le programme.

10. The Institutional Head shall ensure:

10. La directrice ou le directeur de l'établissement doit s'assurer :

- a. that the child welfare authorities are informed in writing of the application for each child to reside in the institution and that their written assessment of whether program participation is in the best interests of the child is requested and documented;
- b. that if the child welfare authorities are unable to provide such an assessment, this will be provided by a child care specialist or a child psychologist;
- c. the child's safety and security by ensuring:
 - i. the physical environment and equipment is adequate and safe (this includes conducting searches of supplies before they are distributed),
 - ii. that safety reviews of equipment and materials are conducted prior to their distribution as per the Health Canada Guidelines (see Annex A of this CD for the addresses of the regional Health Canada offices),
 - iii. that procedures for inmate movement are developed,
 - iv. that house rules for the units housing mothers and their children are established and posted (this shall be done in consultation with the mothers and the other inmates in the units);

- a. que les autorités compétentes en matière de protection de l'enfance sont informées par écrit de toute requête portant sur le logement éventuel d'un enfant dans l'établissement, qu'on leur demande de rédiger un rapport d'évaluation établissant s'il est dans le meilleur intérêt de l'enfant de participer au programme et que cette demande est consignée;
- b. que l'on demande à un spécialiste des soins aux enfants ou à un psychologue pour enfants de faire une évaluation si les autorités compétentes en matière de protection de l'enfance ne sont pas en mesure de fournir un tel rapport;
- c. de la sécurité et de la protection de l'enfant, c'est-à-dire :
 - i. veiller à ce que le milieu physique et le matériel soient adéquats et sécuritaires (y compris vérifier les fournitures avant de les distribuer),
 - ii. soumettre à des contrôles de sécurité le matériel et les objets avant que ceux-ci soient distribués, conformément aux lignes directrices de Santé Canada (voir l'annexe A de la présente directive pour connaître l'adresse des bureaux régionaux de Santé Canada),
 - iii. veiller à ce que des procédures soient élaborées concernant les déplacements des détenues,
 - iv. établir, de concert avec les participantes au programme et les autres résidentes concernées, des règles applicables aux unités accueillant les mères et leurs enfants, puis les afficher;



- d. that staff receive training from representatives of community services or agencies or the institutional Program Coordinator on:
 - i. parenting and child safety issues,
 - ii. appropriate intervention techniques when child abuse or neglect is suspected;
 - e. that all program volunteers who assist the mothers and their children have been screened to ensure they would not pose a danger to the children;
 - f. that staff and/or volunteers who transport children in either a CSC or private vehicle are authorized to do so;
 - g. that appropriate child seats are in any vehicle used to transport children (if operated by employees, contractors or volunteers), that the seats are properly secured and are in compliance with provincial highway traffic legislation;
 - h. that any incident outlined in the Standard Operating Practices on Reporting and Recording of Security Information, when the child's safety or health may be compromised, is reported as per the appropriate timeframes and to the appropriate individuals; and
 - i. that application forms for health care cards, child tax credits, etc. are available.
- d. que les membres du personnel reçoivent de la formation des représentants de services ou d'organismes communautaires ou de la (du) coordonatrice(teur) du programme de l'établissement sur les aspects suivants :
 - i. les questions touchant les compétences parentales et la sécurité des enfants,
 - ii. les techniques d'intervention adéquates lorsque de la négligence ou des mauvais traitements sont soupçonnés;
 - e. que l'on vérifie les antécédents de tous les bénévoles qui aideront les mères et les enfants afin d'être sûr que ces personnes ne présenteront pas de danger pour les enfants;
 - f. que les membres du personnel et les bénévoles qui utilisent un véhicule du SCC ou un véhicule privé pour transporter les enfants sont autorisés à le faire;
 - g. que les véhicules utilisés pour transporter les enfants (s'ils sont conduits par des employés, des entrepreneurs ou des bénévoles) sont munis d'un siège d'auto pour enfant bien installé et conforme au code de la route;
 - h. que tout incident indiqué dans les Instructions permanentes portant sur la transmission et la consignation de renseignements sur la sécurité, qui pourrait compromettre la sécurité ou la santé de l'enfant, est signalé dans les meilleurs délais à la personne compétente;
 - i. que les formulaires servant notamment à obtenir des cartes d'assurance-maladie et des crédits d'impôt sont mis à la disposition des mères.

Staff

- 11. Except in situations where the child may be at risk of abuse or neglect, staff shall encourage and support the inmate in her parenting role in a non-intrusive/non-interventionist manner.
- 12. Under the guidance of the Team Leader or Program Director, the Primary Worker shall:

Personnel

- 11. Sauf dans les situations où l'enfant risque d'être victime de mauvais traitements ou de négligence, le personnel encouragera et aidera la détenue à assumer son rôle de parent, avec discrétion.
- 12. Sous la direction du chef d'équipe ou du (de la) directeur(trice) de programme, l'intervenant(e) de première ligne assume les responsabilités suivantes :



- a. initiate the assessment process when the mother applies to participate in the Mother-Child Program;
 - b. assist the mother to develop the plans required for the Annexes to the Parenting Agreement;
 - c. monitor the mother's adherence to her Parenting Agreement (should any serious breach of the Parenting Agreement occur, staff shall immediately advise the chair of the Program Board or the Institutional Head); and
 - d. monitor the ongoing relationship between the mother and her child, the adjustment and well-being of the child and the dynamics within the units housing the mothers and their children.
13. At no time shall staff take a child home with them. In emergency situations only, staff may look after a child within the institution until the alternate caregiver, volunteer or inmate babysitter is available.

- a. sur réception d'une demande de participation au Programme mère-enfant, amorcer le processus d'évaluation;
 - b. aider la détenue à élaborer les plans prévus dans les annexes de l'Accord avec la mère;
 - c. s'assurer que chaque détenue respecte les conditions établies dans l'Accord avec la mère (le personnel doit immédiatement informer la présidente ou le président du Comité des programmes ou la directrice ou le directeur de l'établissement de tout manquement à cet accord);
 - d. surveiller l'évolution des rapports mère-enfant, l'adaptation et le bien-être de l'enfant, ainsi que la dynamique qui existe dans les unités accueillant les mères et leurs enfants.
13. Les membres du personnel ne sont autorisés en aucun temps à emmener un enfant chez eux. En cas d'urgence, ils peuvent veiller sur un enfant dans l'établissement jusqu'à ce que la personne désignée pour s'en occuper à la place de la détenue, une bénévole ou une gardienne détenue soit disponible.

Program Board

14. The Program Board shall:
- a. coordinate the assessment process and determine whether participation is in the best interests of the child;
 - b. make recommendations to the Institutional Head on program participation;
 - c. conduct case reviews to ensure program participation is still in the best interests of the child (see paragraphs 38-39); and
 - d. re-evaluate the mother's participation in the program if she fails to abide by the terms and conditions of the Parenting Agreement.

Comité des programmes

14. Le Comité des programmes est chargé :
- a. de coordonner le processus d'évaluation et de déterminer si la participation au programme est dans le meilleur intérêt de l'enfant;
 - b. de faire des recommandations à la directrice ou au directeur de l'établissement quant à la participation au programme;
 - c. de procéder à l'examen des cas pour s'assurer que la participation au programme est toujours dans le meilleur intérêt de l'enfant (voir les paragraphes 38 et 39);
 - d. de réévaluer la participation de la mère au programme à la suite d'un manquement aux conditions établies dans l'Accord avec la mère.



DUTY TO REPORT TO THE CHILD WELFARE AUTHORITIES

15. Staff members shall immediately report any suspected child abuse and/or neglect to the Institutional Head who shall normally inform the local child welfare and police authorities.

EQUIPMENT AND MATERIALS

16. Essential and age-appropriate equipment and materials required for the safety, health and development of the child shall be provided by the institution. Provision of additional equipment and materials is the mother's responsibility.

PROGRAM ELIGIBILITY

17. Only women inmates classified as minimum or medium security and who are housed in institutions that offer the program are eligible to participate.

18. Women convicted of a crime involving a child are not eligible to participate in the program unless a psychiatric assessment, completed by a psychiatrist selected by the Institutional Head (after consultation with the child welfare authorities), determines that the inmate does not represent a danger to her child.

Children Eligibility

19. The upper age limit of the child for full-time residency is four years (at the fourth birthday).

20. The upper age limit of the child for part-time residency is twelve years of age (at the thirteenth birthday).

21. Alternate age limits may be considered; however, the request and rationale must be presented in writing and must be approved by the Deputy Commissioner for Women and the Regional Deputy Commissioner.

OBLIGATION DE FAIRE RAPPORT AUX AUTOTIRÉS COMPÉTENTES EN MATIÈRE DE PROTECTION DE L'ENFANCE

15. Les membres du personnel doivent immédiatement signaler tout indice de négligence ou de mauvais traitement à la directrice ou au directeur de l'établissement, qui en informe normalement les autorités compétentes en matière de protection de l'enfance et le service de police.

MATÉRIEL ET ARTICLES

16. L'établissement fournit le matériel et les articles essentiels à la sécurité, la santé et le développement de l'enfant, compte tenu de son âge. Il incombe à la mère de fournir le matériel et les articles supplémentaires.

ADMISSIBILITÉ AU PROGRAMME

17. Seules les détenues classées au niveau de sécurité minimale ou moyenne et incarcérées dans un établissement offrant le Programme mère-enfant y sont admissibles.

18. Une femme condamnée pour une infraction contre un enfant n'est pas admissible au programme tant qu'une évaluation, effectuée par un psychiatre choisi par la directrice ou le directeur de l'établissement (après consultation des autorités compétentes en matière de protection de l'enfance), n'aura pas établi que la détenue ne présente pas un danger pour son enfant.

Admissibilité des enfants

19. L'âge maximal pour la cohabitation à temps plein est fixé à quatre ans (au moment du quatrième anniversaire).

20. L'âge maximal pour la cohabitation à temps partiel est fixé à douze ans (au moment du treizième anniversaire).

21. Une dérogation à ces limites d'âge peut être envisagée, mais la demande énonçant le motif doit être faite par écrit et approuvée par la sous-commissaire pour les femmes et le sous-commissaire régional.



ASSESSMENT PROCESS FOR PROGRAM PARTICIPATION

22. Inmates must meet all eligibility requirements to be considered for acceptance into the Mother-Child Program.
23. Inmates wishing to participate in the Mother-Child Program shall complete an application form. This includes women giving birth while incarcerated.
24. Following receipt of the mother's application, the Program Board (and the Elder where appropriate), shall complete an assessment report for participation in the Mother-Child Program. It shall include the information outlined in Annex C of this CD as well as the following:
 - a. age of the child (unless the mother is currently pregnant);
 - b. verification of custody status. When there is ongoing custody litigation, decisions regarding program admission shall be deferred until there is a final resolution to the litigation. If litigation is initiated after program participation begins, the child may remain with the mother unless the child is legally required to reside with someone else or if the Institutional Head decides that continued participation is not in the best interests of the child;
 - c. the written assessment completed by the child welfare authorities or child care specialist, which shall address at a minimum:
 - i. the degree of disruption to the child should she/he be removed from her/his present environment,
 - ii. the mother's ability to parent (if she is a new mother, the assessment should take this into consideration),
 - iii. her relationship with this child and her other children, if applicable,

PROCESSUS D'ÉVALUATION EN VUE DE LA PARTICIPATION AU PROGRAMME

22. Les détenues doivent répondre à tous les critères d'admissibilité pour faire l'objet d'une évaluation en vue d'une participation au Programme mère-enfant.
23. Les détenues qui souhaitent participer au Programme mère-enfant, y compris celles qui accouchent pendant leur incarcération, doivent remplir un formulaire de demande.
24. Suivant la réception de la demande de la mère, le Comité des programmes et, le cas échéant, l'Aînée préparent un rapport d'évaluation en vue de sa participation éventuelle au Programme mère-enfant. Ce rapport doit inclure les renseignements figurant à l'annexe C de la présente directive ainsi que les suivants :
 - a. l'âge de l'enfant (sauf si la mère est présentement enceinte);
 - b. le nom de la personne qui a la garde de l'enfant (en cas de litige à ce sujet, il faut attendre que le tribunal se soit prononcé pour prendre une décision relativement à l'admission au programme et, si le litige survient après le début de la participation au programme, l'enfant peut rester avec la mère, à moins qu'il soit légalement tenu de demeurer avec une autre personne ou que la directrice ou le directeur de l'établissement détermine que la participation n'est pas dans le meilleur intérêt de l'enfant);
 - c. un rapport d'évaluation rédigé par les autorités compétentes en matière de protection de l'enfance ou par un spécialiste des soins aux enfants, et faisant tout au moins état des aspects suivants :
 - i. le degré de perturbation qui sera occasionnée à l'enfant si celui-ci est retiré de son milieu actuel,
 - ii. la capacité de la mère d'être un parent (si la détenue est une nouvelle mère, il faudra en tenir compte au cours de l'évaluation),
 - iii. sa relation avec l'enfant en question et avec ses autres enfants, le cas échéant,



- iv. the child's behavioural, medical, and mental health history (following receipt of the consent of the legal guardian or parent),
- v. where feasible, the wishes of the child; and
- d. a community assessment with the child's current caregiver completed by CSC staff (if required).

- iv. les antécédents de l'enfant en matière de comportement et de santé physique et mentale (il faut préalablement obtenir le consentement du tuteur légal ou d'un parent),
- v. si possible, le désir de l'enfant quant à sa participation au programme;
- d. une enquête communautaire effectuée par le personnel du SCC en collaboration avec la personne qui prend actuellement soin de l'enfant (si nécessaire).

25. Based on this assessment, the Program Board (and the Elder where appropriate) shall recommend to the Institutional Head whether it is in the best interests of the child to participate in the program.

25. Selon les résultats de l'évaluation, le Comité des programmes et, le cas échéant, l'Aînée feront des recommandations à la directrice ou au directeur de l'établissement quant à savoir s'il est dans le meilleur intérêt de l'enfant de participer au programme.

CHILD WELFARE AUTHORITIES

- 26. Child welfare authorities shall be consulted to assist in the assessment of the best interests of the child. Authorities shall be asked for a written assessment and all correspondence shall be documented.
- 27. In the event the child welfare authorities do not provide a written assessment, CSC shall contract with a child care specialist or a child psychologist to complete the assessment.
- 28. Written assessments shall address the information specified in paragraph 24.

AUTORITÉS COMPÉTENTES EN MATIÈRE DE PROTECTION DE L'ENFANCE

- 26. Il faut faire appel à l'expertise des autorités compétentes en matière de protection de l'enfance pour déterminer ce qui est le mieux pour l'enfant. Il faut leur demander de rédiger un rapport d'évaluation, et toute la correspondance doit être consignée.
- 27. Lorsque les autorités compétentes ne peuvent fournir un rapport d'évaluation par écrit, le SCC doit passer un contrat avec un spécialiste des soins aux enfants ou avec un psychologue pour enfants afin que celui-ci fasse une évaluation.
- 28. Le rapport d'évaluation par écrit doit contenir les renseignements visés au paragraphe 24.

NOTIFICATION TO THE INMATE

- 29. The mother shall be provided with written notification of the Institutional Head's decision to accept, refuse or terminate program participation. The notification shall include detailed reasons for the decision, which is grievable.
- 30. When the decision is made to refuse admission to the program or terminate participation, the mother shall be provided with the reasons for the decision, in writing, within three (3) working days. Where applicable, the date when the mother may re-apply to participate in the program shall be provided.

AVIS AUX DÉTENUÉS

- 29. La détenue doit être avisée par écrit de toute décision prise par la directrice ou le directeur de l'établissement qui l'admet au programme, s'oppose à sa participation ou y met fin. L'avis doit expliquer en détail les motifs de la décision, laquelle peut faire l'objet d'un grief.
- 30. Les détenues doivent être avisées par écrit des motifs de toute décision de refuser l'admission ou de mettre fin au programme, dans les trois (3) jours ouvrables suivant la prise de décision. Le cas échéant, la date à laquelle la détenue peut présenter une autre demande de participation au programme doit être fournie.



PARENTING AGREEMENT

31. The Parenting Agreement and its Annexes set out the terms and conditions of the program. The mother must abide by these terms and conditions.
32. Women must sign the Parenting Agreement and its Annexes to be accepted into the program. The mother shall be provided with a signed copy of the Parenting Agreement.
33. The mother shall be given the opportunity to consult with legal counsel at her own expense prior to signing this agreement.
34. Based on the assessment process, the Program Board may recommend additional conditions to the Parenting Agreement. These conditions shall be approved by the Institutional Head.

FORMS

35. All forms shall be signed by the mother and witnessed. Any modifications shall also be signed by the mother and witnessed.
36. The forms required for the program are listed in Annex D of this CD and can be found on the Infonet.

CORRECTIONAL PLANS

37. The Mother-Child Program, while not directly addressing an inmate's criminogenic factors, does help to prepare the inmate for community reintegration on release. As such, the program shall be included in the Correctional Plan.

CASE REVIEWS

38. In addition to ongoing monitoring, the case of each mother and child participating in the program shall be reviewed by the Program Board after one month and then every six months to ensure that program participation continues to be in the best interests of the child. Reviews can also take place at other intervals should staff believe it necessary. Any changes to program participation shall be reflected in the Parenting Agreement. The review criteria include:

ACCORD AVEC LA MÈRE

31. L'Accord avec la mère et ses annexes établissent les conditions du programme que la mère doit respecter.
32. La détenue doit signer l'Accord avec la mère et ses annexes pour pouvoir participer au programme. Il faut ensuite lui remettre une copie de ce document.
33. Avant de signer cet accord, la détenue doit avoir la possibilité de consulter un avocat à ses frais.
34. Selon les résultats de l'évaluation du cas, le Comité des programmes peut recommander des conditions supplémentaires à l'Accord avec la mère. Ces conditions doivent être approuvées par la directrice ou le directeur de l'établissement.

FORMULAIRES

35. Tous les formulaires, y compris les modifications qui y sont apportées, doivent être signés par la mère devant témoin.
36. Les formulaires ayant trait au programme sont énumérés à l'annexe D de la présente directive et disponibles dans l'Infonet.

PLANS CORRECTIONNELS

37. Même s'il ne vise pas directement à régler les problèmes liés aux facteurs criminogènes de la détenue, le Programme mère-enfant aide à préparer celle-ci en vue de sa réinsertion sociale. Par conséquent, la participation au programme devrait être prévue dans le plan correctionnel.

EXAMEN DES CAS

38. Outre la surveillance continue, le cas de chaque détenue et de son enfant participant au programme doit être examiné par le Comité des programmes au bout d'un mois et ensuite tous les six mois, afin de s'assurer que la participation est toujours dans le meilleur intérêt de l'enfant. Des examens peuvent avoir lieu à d'autres intervalles si le personnel le juge nécessaire. Tout changement relatif à la participation au programme doit être consigné dans l'Accord avec la mère. Les critères d'examen comprennent les points suivants :



- a. how the mother responds to the child's needs;
 - b. whether the mother attends to the child's needs in a timely manner (e.g. diaper changes, feeding, clothing changes, bathing, comforting, general hygiene);
 - c. whether the mother spends quality time with the child (playing, reading, physical contact, talking); and
 - d. whether the mother responds to the child's behaviour appropriately.
39. The mother shall ensure that her Parenting Agreement is kept up to date. Amendments to this agreement shall be made in a timely manner.
- a. comment la mère répond aux besoins de l'enfant;
 - b. si la mère satisfait les besoins de l'enfant au bon moment (p. ex., changement des couches, alimentation, changement des vêtements, bain, réconfort et hygiène générale);
 - c. si la mère offre une présence de qualité à l'enfant (jeu, lecture, contact physique, dialogue);
 - d. si la mère réagit adéquatement au comportement de l'enfant.
39. La mère doit veiller à ce que l'Accord qu'elle a signé soit tenu à jour. Les modifications doivent être apportées dans les meilleurs délais.

INMATE BABYSITTERS

40. The inmate babysitters proposed by the mother must be approved by the Program Board and shall meet the following criteria:
- a. inmate babysitters must participate in or have completed the Parenting Skills Program and a first aid course;
 - b. women who have been convicted of crimes against children (under the age of 18 years) shall not be eligible to be babysitters; and
 - c. inmate babysitters shall sign the appropriate forms.

HEALTH CARE FOR CHILDREN IN THE PROGRAM

41. All routine health care for the child shall normally be provided by community health care agencies outside of the institution, unless alternate arrangements are made (see Annex B of the Parenting Agreement). Day-to-day assistance may be provided by the institutional Health Care Services if the resources are available.

DÉTENUES SERVANT DE GARDIENNES

40. Les détenues qui conviennent avec la mère d'être gardiennes de l'enfant de celle-ci doivent être acceptées par le Comité des programmes et satisfaire aux critères suivants :
- a. ces gardiennes doivent participer au Programme d'acquisition des compétences familiales et parentales et suivre un cours de secourisme, ou les avoir terminés;
 - b. les femmes reconnues coupables de crimes contre des enfants (moins de 18 ans) ne peuvent agir comme gardiennes;
 - c. les détenues qui acceptent d'être gardiennes doivent signer les formulaires appropriés.

SOINS DE SANTÉ PRODIGUÉS AUX ENFANTS PARTICIPANT AU PROGRAMME

41. D'ordinaire, tous les soins de santé communément reçus par les enfants sont dispensés par des organismes de santé locaux à l'extérieur de l'établissement, à moins que d'autres dispositions soient prises (voir l'annexe B de l'Accord avec la mère). Les Services de santé de l'établissement peuvent fournir une aide quotidienne si les ressources nécessaires sont disponibles.



42. Staff shall provide assistance to the child in medical emergencies.
43. Whenever more frequent check-ups are necessary, the mother shall have every opportunity to arrange for these visits.
44. The mother's consent is required for health care intervention for her child (see Annex B of the Parenting Agreement).
45. Staff shall provide mothers who are unable to leave the institution with the opportunity to discuss their child's health with the health care professional by telephone and to sign a consent form for treatment for their child, if it is required.
46. If the mother's condition renders her incapable of making a decision, the alternate caregiver named in Annex B of the Parenting Agreement shall be contacted to intervene. If staff are unable to communicate with the alternate caregiver, the child welfare authorities shall be contacted. CSC staff cannot provide authorization.
42. Le personnel doit donner à l'enfant les soins médicaux nécessaires dans des situations d'urgence.
43. Lorsqu'un enfant a besoin d'autres consultations médicales, il faut fournir à la mère la possibilité de faire examiner son enfant.
44. Le cas échéant, il appartient à la mère de consentir à une intervention médicale requise pour l'enfant (voir l'annexe B de l'Accord avec la mère).
45. Lorsque la mère ne peut quitter le pénitencier, le personnel de l'établissement doit lui donner la possibilité de discuter de l'état de son enfant par téléphone avec un professionnel de la santé et de signer un formulaire de consentement pour faire soigner son enfant, si nécessaire.
46. Si la mère n'est pas en mesure de prendre une décision, il faut faire appel à la personne qui s'occupe de l'enfant à sa place et dont le nom figure à l'annexe B de l'Accord avec la mère. Si le personnel ne peut la joindre, il doit communiquer avec les autorités compétentes en matière de protection de l'enfance. Le personnel du SCC ne peut fournir l'autorisation nécessaire.

FORMAL COUNTS

47. The children's presence in the institution shall be verified at each of the four formal visual counts of inmates.
48. During security rounds (as part of their ongoing monitoring) staff shall verify the child's status if they have reasonable grounds to believe the child's health or well-being is compromised.

IDENTIFICATION CARDS

49. The Service shall provide a photo identity card for the child. Cards shall be replaced annually. For infants under 2 years of age, the cards shall be replaced every six months. A copy of the child's picture shall be kept on the mother's institutional file.
50. The card shall include a physical description and the date of birth of the child, the name and telephone number of the institution, as well as an emergency telephone number if different from above.

DÉNOMBREMENTS OFFICIELS

47. Il faut vérifier si les enfants sont présents dans l'établissement lors de chacun des quatre dénombrements visuels officiels.
48. Lors des rondes effectuées dans le cadre de la surveillance continue, le personnel doit vérifier l'état des enfants s'il a des motifs raisonnables de croire que leur santé ou leur bien-être sont menacés.

CARTE D'IDENTITÉ

49. Le SCC doit produire une carte d'identité avec photo pour l'enfant. Toutes les cartes sont remplacées annuellement. Dans le cas des enfants de moins de deux ans, les cartes sont remplacées tous les six mois. Une copie de la photo de l'enfant est conservée dans le dossier de l'établissement portant sur la mère.
50. La carte doit donner une description physique de l'enfant, sa date de naissance, le nom et le numéro de téléphone de l'établissement ainsi qu'un numéro de téléphone en cas d'urgence s'il est différent du précédent.



CHILDREN'S PERSONAL EFFECTS

51. Children's personal effects shall be considered separate from the mother's in terms of institutional limits and dollar value. The dollar value of a child's personal effects (not including furniture) shall not exceed \$500.

CHILD MONETARY ASSISTANCE

52. All monies received for child care expenses shall be deposited into the inmate savings account.
53. Expenditures that the mother makes directly for her child shall not be included in the calculation of the annual permitted expenditures of the inmate mother for herself.
54. Goods and equipment received for the child shall not be considered as gifts or parcels for the mother; however, they shall be subject to both a safety review and search.

SEARCHES OF CHILDREN PARTICIPATING IN THE PROGRAM

55. Frisk searches and strip searches of children in the program are **not** permitted under any circumstances. Only non-intrusive searches (i.e., no physical contact – see Annex B of this CD) and searches of areas/rooms are permitted. A "non-intrusive search" means:
- a. a search of a non-intrusive nature of the clothed body by technical means, in the prescribed manner (see paragraph 56); and
 - b. a search of personal possessions, including clothing, that the person may be carrying, and any coat or jacket that the person has been requested to remove.
56. A non-intrusive search shall be carried out by means of a hand-held scanner, a walk-through scanner whereby the person being searched is required to walk through a metal detector scanner, or any similar non-intrusive device.

EFFETS PERSONNELS DE L'ENFANT

51. Les effets personnels de l'enfant doivent être considérés comme distincts de ceux de la mère pour ce qui est des limites imposées par l'établissement en la matière et de leur valeur pécuniaire. La valeur des effets personnels d'un enfant ne doit pas excéder 500 \$ (meubles non compris).

AIDE FINANCIÈRE POUR L'ENFANT

52. Tous les fonds reçus pour les frais liés à la garde d'un enfant doivent être déposés dans le compte d'épargne de la détenue.
53. Les dépenses que la mère engage directement pour l'enfant n'entrent pas en ligne de compte dans le calcul des dépenses annuelles qu'elle peut faire pour elle-même.
54. Les biens et les articles que la mère reçoit pour l'enfant ne sont pas considérés comme des cadeaux ou des colis pour elle-même. Ils doivent cependant faire l'objet d'un contrôle de sécurité et d'une fouille.

FOUILLES D'ENFANTS PARTICIPANT AU PROGRAMME

55. Les fouilles par palpation et les fouilles à nu des enfants participant au programme **ne** sont **pas** permises. Seules les fouilles discrètes (c.-à-d. sans contact physique – voir l'annexe B de la présente directive) et les fouilles de secteurs et de pièces sont permises. Une « fouille discrète » signifie :
- a. une fouille du corps vêtu effectuée, en la forme réglementaire, par des moyens techniques (voir le paragraphe 56);
 - b. complétée de l'inspection de la veste ou du manteau que l'on a demandé à l'intéressé d'enlever et des autres effets qu'il a en sa possession.
56. La fouille discrète s'effectue au moyen d'un détecteur portatif, d'un portique de détection de métaux dans lequel doit passer la personne visée par la fouille, ou de tout autre dispositif discret semblable.



57. Staff shall carry out searches with the utmost discretion and consideration for the impact on the child, and with sensitivity to the child's gender and age.

Consent

58. To participate in the Mother-Child Program, the mother must sign Annex F of the Parenting Agreement, whereby she acknowledges that her child and her child's room and contents may be subject to searches as described in paragraphs 62-66.

59. The mother shall normally be present when her child is searched. If the mother cannot be present, the reason for her absence shall be documented.

60. At the time of the search, mothers must consent to their child being searched. Consent shall normally be in writing; however, if the mother cannot be present for the search, her consent may be verbal (see form entitled "Consent to the Search of a Child Participating in the Mother-Child Program").

61. If the mother refuses to permit a search, her participation in the program shall be immediately re-evaluated as per paragraph 68.

Conducting Searches

62. A staff member may conduct a routine non-intrusive search of a child in the program when the child is entering or leaving the institution.

63. A staff member may conduct a non-intrusive search of a child in the program when the staff member suspects on reasonable grounds that the child is carrying contraband or other evidence of an offence under section 45 of the CCRA.

64. The person who conducts a search shall prepare and submit a post-search report to the Institutional Head, or a staff member designated by the Institutional Head, as soon as practicable where:

57. Le personnel doit toujours faire preuve de la plus grande discrétion et de la plus grande attention aux réactions d'un enfant qui subit une fouille et procéder avec respect à l'égard du sexe et de l'âge de l'enfant.

Consentement

58. Pour participer au Programme mère-enfant, la détenue doit apposer sa signature à l'annexe F de l'Accord avec la mère. Elle consent ainsi à ce que son enfant, la chambre de ce dernier et son contenu puissent faire l'objet des fouilles prévues aux paragraphes 62 à 66.

59. La mère doit normalement être présente à toutes les fouilles subies par son enfant. Toutefois, si elle est dans l'impossibilité d'assister à la fouille, le motif de son absence doit être consigné.

60. La mère doit consentir à la fouille de son enfant au moment où celle-ci est menée. Le consentement est normalement fourni par écrit; cependant, si la mère ne peut être présente au moment de la fouille, elle peut y consentir verbalement (voir le formulaire intitulé « Consentement à la fouille d'un enfant participant au Programme mère-enfant »).

61. Si la mère refuse d'autoriser une fouille, sa participation au programme sera immédiatement réévaluée conformément au paragraphe 68.

Exécution des fouilles

62. Un membre du personnel peut procéder à des fouilles discrètes ordinaires des enfants participant au programme, au moment où ces derniers entrent à l'établissement ou lorsqu'ils en sortent.

63. L'agent qui a des motifs raisonnables de croire qu'un enfant a en sa possession un objet interdit ou un élément de preuve relatif à la perpétration d'une infraction visée à l'article 45 de la LSCMLC peut le soumettre à une fouille discrète.

64. La personne qui a effectué une fouille doit rédiger un rapport et le présenter aussitôt que possible à la directrice ou au directeur de l'établissement ou au membre du personnel désigné par la directrice ou le directeur :



- a. the search is a non-routine search; or
- b. the staff member or other authorized person seizes an item in the course of the search.

- a. lorsqu'il s'agit d'une fouille non courante; ou
- b. lorsque le membre du personnel ou la personne autorisée saisit un objet pendant la fouille.

Room Searches

- 65. A staff member may conduct routine, non-routine and emergency searches of a child's room and its contents in accordance with the CCRR and Standard Operating Practices on Searches of Cells, Vehicles and Other Areas.
- 66. The mother shall be present when her child's possessions or room are searched. If the mother is not able to be present, a member of the Inmate Committee shall witness the search.

Fouilles de la chambre

- 65. Conformément au RSCMLC et aux Instructions permanents sur les fouilles des cellules, des véhicules et d'autres locaux, un membre du personnel peut soumettre la chambre de l'enfant et son contenu à des fouilles ordinaires, des fouilles non courantes et des fouilles en cas d'urgence.
- 66. La mère doit être présente lorsque les effets personnels ou la chambre de son enfant font l'objet d'une fouille. Si elle ne peut y être, un membre du Comité des détenues sera présent.

Contraband

- 67. If drugs or contraband are found on a child participating in the program, or in the child's room or its contents, the Program Board shall re-evaluate the participation of that child's mother in the program and make recommendations to the Institutional Head. The re-evaluation may result in the decision by the Institutional Head to terminate the program for the individual mother and her child.

Objets interdits

- 67. Si l'on trouve de la drogue ou un objet interdit sur l'enfant, dans sa chambre ou dans ses effets personnels, le Comité des programmes doit réévaluer la participation de la mère au programme et présenter des recommandations à la directrice ou au directeur de l'établissement. Cette réévaluation peut inciter la directrice ou le directeur à mettre fin à la participation de la mère et de l'enfant au programme.

TERMINATION OF THE PROGRAM

- 68. The Program Board shall immediately re-evaluate the mother's participation in the program whenever there is a serious breach of the terms of the Parenting Agreement or whenever it is clear that the mother is unable to cope with having her child in the institution. The Program Board will immediately notify the Institutional Head of the re-evaluation and recommendations. The Institutional Head may decide to:
 - a. allow program participation to continue; or
 - b. accommodate the child outside the institution on a temporary basis, in accordance with the arrangements in the Contingency Plan (Annex D of the Parenting Agreement), with participation resuming when the situation has stabilized; or

CESSATION DE LA PARTICIPATION AU PROGRAMME

- 68. En cas de manquement grave aux conditions de l'Accord avec la mère ou s'il ne fait aucun doute que la mère est incapable de s'occuper de son enfant en établissement, le Comité des programmes réévalue immédiatement la participation de la détenue au Programme mère-enfant. Il en informe aussitôt la directrice ou le directeur de l'établissement et lui présente ses recommandations. La directrice ou le directeur peut alors décider :
 - a. d'autoriser la détenue à poursuivre le programme; ou
 - b. d'envoyer temporairement l'enfant à l'extérieur de l'établissement, conformément aux arrangements prévus dans le Plan d'urgence (annexe D de l'Accord avec la mère), et d'autoriser la mère à poursuivre le programme une fois que la situation s'est stabilisée; ou



- c. terminate program participation and remove the child from the institution.
69. The Institutional Head may also terminate the program at the request of the child, or when the child has failed to adjust to the program and/or where it is deemed in the best interests of the child. This decision shall be made based on the recommendation of the Program Board and following consultation with local child welfare authorities.

Institutional Program Termination

70. If drugs or contraband are found in the institution or if any situation arises which the Institutional Head believes may jeopardize the safety of the child or children, she/he may terminate the program for an individual participant, for certain participants or for all participants. Written notification of the decision shall be provided to all affected participants.
- a. The Contingency Plans (Annex D of the Parenting Agreement) for placement of the child or children outside the institution shall be implemented immediately.
- b. In the event that the program is terminated for all participants, reinstatement of the program shall be at the discretion of the Institutional Head.
71. Notwithstanding paragraphs 68-70, the Institutional Head may exercise discretion in removing the child from the institution when circumstances warrant a re-evaluation of the case and until a final decision is made.
72. When the Institutional Head decides to terminate program participation and remove the child from the institution, staff shall immediately reassess the risk posed by the inmate to herself and to others in order to determine specific interventions that may be required to manage the situation.

- c. de mettre fin à la participation au programme et de faire sortir l'enfant de l'établissement.
69. La directrice ou le directeur de l'établissement peut mettre fin au programme si l'enfant en fait la demande, s'il ne s'adapte pas à ses nouvelles conditions de vie ou si son retrait du programme est dans son meilleur intérêt. Cette décision est prise sur recommandation du Comité des programmes et après consultation des autorités compétentes en matière de protection de l'enfance.

Interruption du programme en établissement

70. Si l'on trouve de la drogue ou des objets interdits dans l'établissement ou si, de l'avis de la directrice ou du directeur de l'établissement, des circonstances particulières risquent de menacer la sécurité des enfants, elle ou il peut suspendre le programme pour les participantes concernées ou pour toutes les participantes. Les détenues touchées doivent recevoir un avis écrit à cet effet.
- a. Le Plan d'urgence (annexe D de l'Accord avec la mère) prévoyant le placement de l'enfant ou des enfants à l'extérieur de l'établissement est alors immédiatement mis à exécution.
- b. Si le programme est interrompu pour toutes les participantes, il incombe à la directrice ou au directeur de l'établissement de décider s'il y a lieu ou non de reprendre le programme.
71. Par dérogation aux paragraphes 68 à 70, la directrice ou le directeur de l'établissement peut, lorsque les circonstances le justifient, exercer son pouvoir discrétionnaire pour retirer l'enfant de l'établissement jusqu'à ce que le cas soit réévalué et qu'une décision finale soit prise.
72. Lorsque la directrice ou le directeur de l'établissement décide de mettre fin à un programme et de faire sortir l'enfant du pénitencier, le personnel doit immédiatement réévaluer le risque que présente la détenue pour elle-même et les autres, afin de déterminer les mesures particulières à prendre pour gérer la situation.



Re-Application Following Termination

- 73. A mother whose participation in the program has been terminated may re-apply for admission into the program. The timeframe to re-apply shall be decided at the time of termination and shall not normally exceed six months.
- 74. For women in the part-time program, re-evaluation of participation shall be completed prior to the next scheduled visit.
- 75. If termination was the result of an infraction or incident on the part of the inmate, these issues shall be resolved before the mother may re-apply.
- 76. The full assessment process will be required for re-admission to the program.

MANAGEMENT OF EMERGENCIES

- 77. The institutional Contingency Plans shall include options to address the presence of children in an institutional emergency. In any emergency, **the safety of the child is paramount.**
- 78. If children are present in the unit where pre-planned force is to be used, every effort shall be made to remove the children from the area or to isolate them prior to the start of the intervention.
- 79. In the event that a child is in an area with an inmate who is unwilling to let the child leave the area, the situation shall be treated as a hostage taking. As long as the child is unharmed, conflict resolution and negotiation are to be used for as long as is necessary before any physical intervention is considered.

CONTINUITY

- 80. Community support networks shall be established at the beginning of the mother's participation in the institutional program to ensure that support (including financial considerations) continues throughout her incarceration and when she is on conditional release.

Nouvelle demande d'admission après une interruption

- 73. Les détenues dont la participation au programme a été interrompue peuvent présenter une nouvelle demande d'admission. Le délai à observer avant une nouvelle demande est fixé lors de la cessation de la participation et ne doit normalement pas excéder six mois.
- 74. Dans le cas des détenues participant au programme à temps partiel, il faut réévaluer la participation avant le prochain séjour prévu.
- 75. Lorsque la cessation du programme est due à un écart de conduite ou à un incident dont la détenue est responsable, les problèmes ayant entraîné le départ de l'enfant doivent être réglés avant que la mère puisse présenter une nouvelle demande.
- 76. Tout le processus d'évaluation devra être suivi pour une nouvelle admission au programme.

GESTION DES SITUATIONS D'URGENCE

- 77. Les plans d'urgence de l'établissement doivent comprendre des mesures tenant compte de la présence des enfants. Dans une situation d'urgence, **la sécurité de l'enfant doit être la principale préoccupation.**
- 78. Si des enfants se trouvent dans l'unité où on prévoit avoir recours à la force, il faut déployer tous les efforts possibles pour les faire sortir de cet endroit ou les amener à l'écart avant que l'intervention débute.
- 79. Lorsqu'un enfant se trouve dans une pièce avec une détenue qui refuse de le laisser partir, la situation est considérée comme une prise d'otage. Tant que l'enfant est sain et sauf, il faut négocier et tenter de résoudre le conflit aussi longtemps que c'est nécessaire avant de songer à intervenir physiquement.

CONTINUITÉ

- 80. Il faut établir des réseaux d'appui dans la collectivité lorsque la mère commence à participer au programme de sorte qu'elle bénéficie d'un appui (y compris pour des besoins financiers) tout au long de son incarcération et lorsqu'elle sera en liberté sous condition.



81. Release planning shall include a review of the financial, social, residential and other supports required for the mother and child to continue to live together.

PASSAGE OF THE CHILD FROM THE INSTITUTION TO THE COMMUNITY

- 82. Prior to a full-time resident child's fourth birthday, the Transition Plan (Annex E of the Parenting Agreement) shall be implemented. This shall be done in collaboration with the mother, the child's new caregiver, the Institutional Head and the child welfare authorities, if appropriate.
- 83. The transition of the child from the institution to a new home shall be as gradual as possible in order to minimize the disruption of an abrupt separation.
- 84. The new caregiver shall confirm in writing that she/he agrees to care for the child under the circumstances outlined in the Transition Plan (Annex E of the Parenting Agreement).
- 85. In emergency situations, where the Contingency Plan (Annex D of the Parenting Agreement) has been activated, or where the program participation has been terminated, every effort shall be made to facilitate the child's transition to the community.

Full-Time Residency Participants Leaving the Institution

- 86. For mothers moving from the institution to a community-based residential facility, CSC staff shall make every effort to ensure that social and financial supports are in place prior to departure.
- 87. Prior to the arrival of the mother, the community-based residential facility shall be fully informed of the participant's progress in the Mother-Child Program and the assistance she requires.

81. La planification de la mise en liberté doit comprendre un examen de l'appui nécessaire (c'est-à-dire aide financière, services sociaux, logement et autre soutien) pour que la mère et l'enfant continuent de vivre ensemble.

PASSAGE DE L'ÉTABLISSEMENT À UN NOUVEAU FOYER

- 82. Avant le quatrième anniversaire d'un enfant en cohabitation à temps plein, il faut mettre en oeuvre le Plan de transition (annexe E de l'Accord avec la mère) en collaboration avec la mère, la personne qui s'occupera de l'enfant, la directrice ou le directeur de l'établissement et les autorités compétentes en matière de protection de l'enfance, le cas échéant.
- 83. Le passage de l'établissement à un nouveau foyer doit se faire le plus graduellement possible, de façon à réduire au minimum le traumatisme causé par la séparation.
- 84. La personne qui s'occupera de l'enfant à la place de la mère doit confirmer par écrit qu'elle accepte les conditions énoncées dans le Plan de transition (annexe E de l'Accord avec la mère).
- 85. Dans une situation d'urgence, lorsque le Plan d'urgence (annexe D de l'Accord avec la mère) est mis à exécution ou que le programme est interrompu, il faut déployer tous les efforts possibles pour faciliter la transition de l'enfant de l'établissement à la collectivité.

Participant en cohabitation à temps plein qui quittent l'établissement

- 86. Le personnel du SCC doit faire toutes les démarches possibles afin que les mères qui quitteront le pénitencier pour s'installer dans un établissement résidentiel communautaire bénéficient d'un appui social et financier, avant leur départ.
- 87. Avant d'accueillir la mère, le personnel de l'établissement résidentiel communautaire doit être pleinement au courant des progrès accomplis par la participante au Programme mère-enfant et de l'aide dont elle a besoin.



RESPONSIBILITIES – COMMUNITY

- 88. The District Director shall ensure that standards and accountability mechanisms are in place to:
 - a. allow women on conditional release to have their children with them in appropriate community-based residential facilities; and
 - b. ensure the safety and security of children housed with their mother.
- 89. The community Parole Officer shall assist the mother to develop and maintain links to the appropriate social service networks in the community.

DEATH OF A CHILD IN THE PROGRAM

- 90. The Commissioner may appoint a board of inquiry to investigate the death of any child participating in the program, as per section 20 of the CCRA.
- 91. Wherever possible, the Service shall respect the wishes of the mother regarding religious services and removal of the child's personal effects from the institution.
- 92. Where required, the Service may advance to the mother, funds for reasonable funeral costs including burial and the installation of a grave marker. However, the mother shall reimburse the costs for the funeral assumed by the Service at a frequency agreed to by the mother and the Institutional Head.

PROGRAM EVALUATION

- 93. On the last day of each month, the Institutional Head shall provide the Deputy Commissioner for Women with the information requested on the Mother-Child Program – Monthly Report.

RESPONSABILITÉS – COLLECTIVITÉ

- 88. La directrice ou le directeur de district doit veiller à ce que des normes et des mécanismes de responsabilité soient établis :
 - a. pour permettre aux femmes mises en liberté sous condition d'habiter avec leurs enfants dans des établissements résidentiels communautaires adéquats;
 - b. pour assurer la sécurité et la protection des enfants qui logent avec leur mère.
- 89. L'agent(e) de libération conditionnelle dans la collectivité doit aider la mère à entretenir des liens avec les réseaux de services sociaux appropriés dans la collectivité.

DÉCÈS D'UN ENFANT PARTICIPANT AU PROGRAMME

- 90. Conformément à l'article 20 de la LSCMLC, le commissaire peut charger une commission d'enquêter sur les circonstances entourant le décès de tout enfant participant au programme.
- 91. Dans la mesure du possible, le SCC respectera les désirs de la mère en ce qui a trait à un service religieux et au retrait des effets personnels de l'enfant de l'établissement.
- 92. Le cas échéant, le SCC peut avancer à la mère les fonds requis pour couvrir les frais d'obsèques raisonnables, y compris l'inhumation et l'installation d'une pierre tombale. Toutefois, la mère remboursera les coûts assumés par le SCC pour les obsèques selon un échéancier convenu entre elle et la directrice ou le directeur de l'établissement.

ÉVALUATION DU PROGRAMME

- 93. Le dernier jour de chaque mois, la directrice ou le directeur de l'établissement doit fournir à la sous-commissaire pour les femmes les renseignements demandés sur le formulaire « Programme mère-enfant – Rapport mensuel ».



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94. The Deputy Commissioner for Women, in consultation with the Assistant Commissioner of Performance Assurance and with the Institutional Heads and/or District Directors shall be responsible for conducting periodic program evaluations.

94. La sous-commissaire pour les femmes, de concert avec le commissaire adjoint de l'Évaluation du rendement et les directrices ou directeurs d'établissement ou de district, est chargée de procéder périodiquement à l'évaluation du programme.

FINANCIAL CONSIDERATIONS

ASPECTS FINANCIERS

95. All operational and capital costs incurred for the program shall be documented by the institution.

95. L'établissement doit consigner tous les coûts de fonctionnement et les coûts en capital engagés par le SCC pour ce programme.

Commissioner,

La Commissaire,

Original signed by / Original signé par :

Lucie McClung