



# Human Rights in Action

A Handbook for Women  
in Provincial Jails in Nova Scotia

# **HUMAN RIGHTS IN ACTION**

*A Handbook for Women in  
Provincial Jails in Nova Scotia*

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**Canadian Association of Elizabeth Fry Societies**

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# PREFACE

This manual was created as part of the Human Rights in Action (HRIA) work of the Canadian Association of Elizabeth Fry Societies, with the assistance of Dalhousie's Pro Bono Students and Status of Women Canada funding.

The goal of the HRIA project is to protect the human rights of all prisoners, especially the rights of racialized women prisoners and those with disabling mental health issues. The groups involved in this project are committed to decreasing the use of prisons and to developing release strategies for those who are currently incarcerated.

This handbook's use of language is intentional and reflects the philosophy of the Elizabeth Fry Societies. For example, we do not employ the term: 'reformatory', as prisons do not 'reform' the individual. We do not employ the term 'inmate' or 'offender'. The continual use of the term '*offender*' justifies everything done to an inmate in the name of the law. Yet '*offender*' describes a person who commits an offence—a current transgression, one that is occurring at a specific time. Charged with an offence, the person is tried, and if convicted becomes a prisoner. The offence has already happened. It is in the past. The prisoner in prison is not offending. She has already offended. She may have "offended" once and may never "offend" again, but utilizing the label "*offender*" permits an ongoing and static reference justifying brutalization and degradation (euphemistically referred to as "*treatment of the offender*") and enables the continuum of power distinction.

Instead, we employ the term 'prisoner', as this describes a person locked into a cage or cell within a facility not of one's choice and whose quality of existence therein depends upon the keeper(s).

We want to assist women to survive criminalization and jail by strengthening their abilities. Our aim is to support individual women in jail and after release to:

- create advocacy teams made up of current prisoners, ex-prisoners, and community supports;
- get out of jail as quickly as possible;
- stay out of jail once they are released;
- participate in systemic and issue-specific coalitions that support human rights principles and goals at the local, regional, and national levels.

This handbook will assist women to advocate for themselves and/or for their peers. It will also assist you to advocate with and on behalf of women in the provincial jail system. The idea is to ensure that those whose rights are violated have support to address discriminatory treatment, and to identify and address areas that require systemic advocacy.

## **A Brief History of the Human Rights in Action Project**

On March 8, 2001, CAEFS, Native Women's Association of Canada (NWAC), Strength in Sisterhood (SIS), and 24 other national and international women's, Aboriginal and justice groups formed a coalition that urged the Canadian Human Rights Commission (CHRC) to conduct a broad-based systemic review of the federal government's discriminatory treatment of women who are criminalized and imprisoned.

Nearly three years later, the Commission issued a special report entitled, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. The CHRC Report made nineteen recommendations that call for far-reaching changes with respect to the manner in which the Correctional Service of Canada (CSC) might work to alleviate the systemic discrimination experienced by women serving sentences of two years or more.

CAEFS and other coalition partners continued to work together on efforts to ensure the implementation of the CHRC recommendations and on long-term commitments to social justice, decarceration, and deinstitutionalization. CAEFS sought and obtained resources that enabled it to work collaboratively with NWAC and SIS to further the human rights of women prisoners. The Human Rights in Action (HRIA) project was developed to provide practical tools and training for women inside to work with support of allies on the outside. The HRIA project will address advocacy issues in the jails for women and develop community release options for women.

From 2006 through 2009, the HRIA project was initiated in 8 federal prisons throughout Canada where women are serving prison sentences of two years or more. In each prison, we were very pleased to welcome the majority of the women as participants in the rights orientation and training sessions. Many also continue to work at advocating for their rights and continue to push for additional supports and opportunities to better advocate for themselves and their peers.

Many women also suggested that the program be offered to women in and from provincial jails. As a result, we are now piloting provincial human rights handbooks in British Columbia, Saskatchewan, Ontario, Quebec, New Brunswick and Nova Scotia, in the hopes that women who are provincially sentenced can also benefit from the training and experience opportunities to better advocate for their rights. Supporters and advocates are also being trained in each of the pilot sites.

# The Provincial HRIA Project

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This manual is similar in format to the one we used for our federal initiative. That manual was originally drafted by a group of law students working with CAEFS and women who are or were serving federal prison sentences. This one is geared to women in provincial jails, using the relevant Nova Scotia provincial legislation and correctional policies.

In drafting this manual, there were a lot of places on the internet where people could access more information. We know that while you are inside, it won't be possible to access the internet, but wherever possible, we have included website addresses, so that your family, friends and advocates can access the website and assist you. Also, when you have access to the internet in the community, you can visit those sites on your own.

If you have any suggestions, comments or questions, please contact CAEFS, Mainland Elizabeth Fry, or Elizabeth Fry Cape Breton.

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*Please note that the content of this handbook is primarily based on law, regulation and policy that can be subject to frequent updates and changes. If, while reading this book, you become aware of information, references or citations that are incorrect, please contact the authors at your local Elizabeth Fry Society.*

# How to Use This Handbook

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This handbook is intended to give you information about the laws, regulations and policies that apply in provincial correctional facilities in Nova Scotia (Corrections law and policy).

Unfortunately, staff do not always follow Corrections law and policy.

**Knowing what the Corrections law and policy says about your situation is the first step towards claiming your rights while in jail.**

**If you are denied what you are entitled to under Corrections law and policy, you can take legal steps to assert your rights. For instance, you may be able to file a Complaint using the jail's internal Complaint process (see Part VI). However, in some situations, a Complaint will not fix the problem. This may be the case where the policies or procedures used by Correctional authorities in making decisions about you are themselves unfair or illegal.**

**If you feel a policy, procedure, or decision is degrading, humiliating or otherwise violates your rights, you should look at the 'Remedies' section (PART VI) to determine how best to challenge it.**

In **Part One (Introduction)** we provide you with some basic information about the Canadian legal system.

In **Part Two (Arriving in Jail)**, **Three (Access to Health Care)**, **Four (Restrictive Measures)** and **Five (Conditional Release)**, we review the government laws, regulations and policies that set the rules that apply to you while you are incarcerated. In these sections we also review how to bring a Complaint under the corrections policy, as well as other types of complaints.

In the final section, **Part Six (Remedies)**, we look at other ways of claiming your rights. You will find information about legal aid and finding a lawyer in Nova Scotia, as well as information about the Nova Scotia Office of the Ombudsman (Ombuds Office), the Nova Scotia Human Rights Commission, the Freedom of Information and Privacy Commissioner, and the Nova Scotia Supreme Court.

# PART I

## INTRODUCTION: THE LAW IN CANADA

This section outlines Canada's legal system.

It is essential to understand your rights and responsibilities under the law in order to better protect yourself from violation.

### **The Canadian Constitution: The Supreme Law of Canada<sup>1</sup>**

The *Constitution* is the supreme law of Canada. It outlines the powers of the different levels and branches of government and also sets out your rights and freedoms in the *Charter*. (The *Charter* will be discussed at length later on in this chapter.)

#### ***Who gets to decide the law: Government of Canada or the provincial government?***

Laws can be federal or provincial. Federal laws apply throughout Canada. Provincial laws only apply within that specific province or territory. The *Canadian Constitution* sets out whether the Government of Canada or the provincial government gets to decide the law in relation to each topic. The *Charter of Rights and Freedoms* sets out your rights and freedoms in the *Constitution*.

The authority to make laws is divided between the federal government (also referred to as the Parliament of Canada) and the provinces and territories. Laws made by Parliament apply throughout all of Canada. The federal government makes laws about issues that impact all of Canada, for example national defence, immigration, criminal law, divorce, and money. They also are responsible for Aboriginal matters.

The provinces have power to write laws about issues of a local or private nature within the provinces. Many of the laws impacting your experience in jail are provincial laws. Provinces make laws about the administration of justice, meaning they make laws about how the police and the courts maintain the peace within a province. They also make laws about hospitals and the provision of health care, as well as about education, family law, provincial jails, and the private rights of persons.

Aboriginal peoples in Canada have a unique relationship with government. Some examples are Indian bands with authority over reserve lands, and self-governments with powers including those stemming from agreements made with the federal and provincial or territorial governments.

## ***Which laws apply to you?***

**Provincial governments run provincial jails.** The federal government runs the federal penitentiaries. If your sentence is two years or more, you will most likely be incarcerated in a federal institution<sup>2</sup>. **If your sentence is under two years, you will be in a provincial jail.** This manual is about Nova Scotia institutions so many of the laws and policies discussed will be specific to Nova Scotia.

What laws apply to you can be especially important if you are serving a federal sentence. If you are in a provincial jail but serving a federal sentence, Nova Scotia's laws apply to you. If you are transferred to a federal institution, which is managed by the Correctional Service of Canada (CSC), federal laws about jail administration apply.

If you are in a provincial jail on a temporary hold (e.g. for court proceedings), the CSC may negotiate with the province to either further restrict you or provide you more freedoms on an individual basis. The CSC makes the requests and pays for more restrictive measures for prisoners they consider dangerous.

Some provincial laws, like those dealing with child custody, will apply to you whether you are in a provincial or federal institution. The provincial and federal laws around prisons seem quite similar on paper, but the actual implementation of the policies can vary a lot, so it is important that you are familiar with the laws that apply to *your situation*.

## ***Your rights as set out by The Charter of Rights and Freedoms***

The *Charter* is part of the *Constitution*, the highest law in Canada. Its goal is to protect the political and civil rights of people in Canada from the policies and actions of all levels of government. Every law in Canada must follow the principles laid out in it. No government law, regulation, policy, or administrative decision, nor any court decision, should take away your *Charter* rights. When your rights are limited by the law or by other government action, it is up to government to demonstrate that those limits are justified and consistent with the values of "a free and democratic society".

Sections of the *Charter* that are particularly relevant to prisoners are:

**Section 2:** Everyone has the following fundamental freedoms:

- a. freedom of conscience and religion;
- b. freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c. freedom of peaceful assembly; and
- d. freedom of association.

This section means that you have the right to practice your own beliefs or religion; express yourself and your opinions; the right to meet in groups peacefully; and the right to belong to any group or organization, without government interference. Like all rights, they are not absolute. You cannot use these rights as an entitlement to cause harm to others.

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

This right means that the government cannot physically harm you or take away your life (or quality of life) or freedom, unless this is done in a manner that is fundamentally just and fair. This means that the state cannot take away your liberty for a significant amount of time without a fair judicial process. 'Fair judicial process' refers to things such as a judge without bias, having a lawyer to represent you and your interests, and being given the opportunity to fully defend yourself against charges.

**Section 8:** Everyone has the right to be secure against unreasonable search or seizure.

This right means that a government official, such as a police officer, cannot search you or your property, or seize your property, without a valid reason.

**Section 9:** Everyone has the right not to be arbitrarily detained or imprisoned.

This right means that you cannot be held against your will or imprisoned by a government official, such as a police officer, without a valid reason.

**Section 10:** Everyone has the right on arrest or detention:

to be informed promptly of the reasons thereof;  
to retain and instruct counsel without delay and to be informed of that right; and  
to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

This section grants you the right, once you have been arrested or detained, to be told why; to be given the opportunity to speak with and get advice from a lawyer



promptly; and to have the reasons for your detention assessed according to the law to determine if they are reasonable. If the arrest or detention was not lawful, this section grants you the right to be released.

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

This right means that a government official, such as a police officer or jail guard, cannot treat you inhumanely by subjecting you to treatment such as torture.

**Section 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.

This section means that government officials cannot discriminate against you or treat you unfairly solely because you are a particular race, sex, colour, or other characteristic that courts have identified as analogous to those listed above (e.g., sexual orientation, marital status).

## **Different sources of law: where the laws come from**

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### ***Introduction: Where do laws come from?***

There are two main sources of power (both will be explained throughout the rest of this chapter) that allow laws to be made:

**Governments:** two types of law

- statutes
- regulations: Policies are made in order to flesh out the regulations in more detail. **You can challenge policies that are inconsistent with the regulations or statute. Policies do not hold the same power as law.**<sup>3</sup>

**Judges:** common law

The *Constitution of Canada*, as described above, is the highest law in Canada. All laws made by government, and all decisions made by public authorities (such as correctional staff) must follow the law as set out by the *Constitution* (including the *Charter*). Judge-made law must be developed in a way that is consistent with *Charter* rights, and government cannot rely on judge-made law that is inconsistent with the *Charter*.

# The Chain of Command

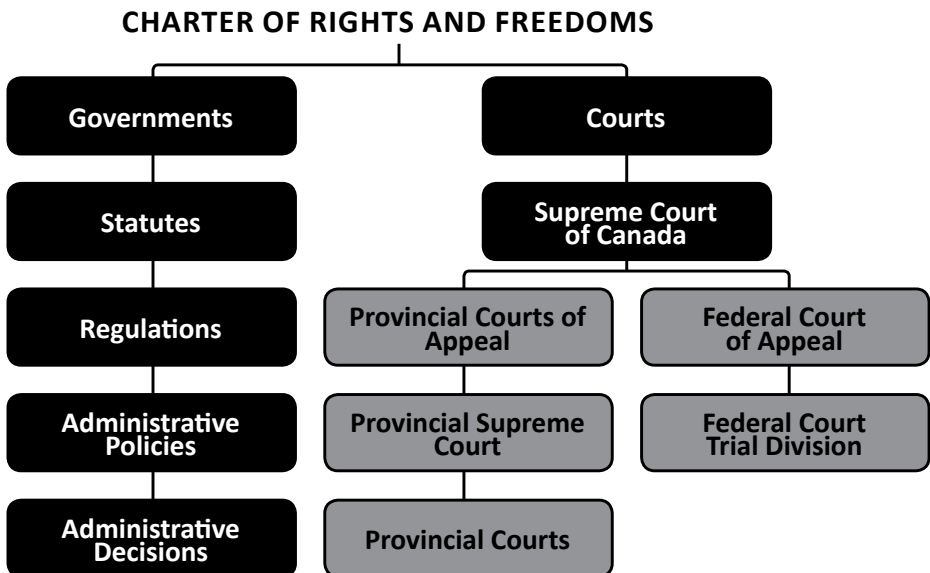
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It is important to know that there is a chain of command to the law. This means that every law has to be consistent with the laws that are made by the court or group above it. As explained above, the *Constitution of Canada* is the highest law in Canada. All laws made by government and judges must follow the law as set out by the *Constitution*. Everyone, including governments and the courts, must answer to the law.

It is important to understand the role discretion plays in interpreting and applying the laws. Discretion is the ability to decide what action should be taken in a particular situation. For instance, judges have some discretion (or flexibility) in how they decide to interpret the laws. Correctional authorities also often have some discretion in deciding exactly when or how a law or policy should be applied. However, there are always limits to discretion, such as those set by the *Constitution* and *Charter*.

When a judge makes a decision on a new type of case or issue, the decision sets a new standard. This is called a precedent. All the courts below the one in which that precedent is set are supposed to follow the precedent set by the higher court. This means that the lower courts must make the same decision in similar cases. If the Nova Scotia Court of Appeal made a decision, all the other courts in the province have to then follow that decision. Decisions from the Supreme Court of Canada apply to all provinces and territories.

The following chart illustrates the order in the hierarchy:



# Laws Made By Government<sup>4</sup>

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## **Statutes**

Statutes are laws or legislation and are made by the federal, provincial or territorial government. They may be called Codes or Acts. Statutes specify that you have certain rights. They also allow restrictions to be placed on people serving jail sentences.

Through Parliament, Canada's federal government enacts laws that operate throughout all of Canada. Each province in Canada has its own legislature to create laws to deal with local matters, as well as municipalities that have been given their own law-making power.

Laws made by these bodies are called legislation or statutes. When these law-making bodies (Parliament, or the provincial legislatures, municipalities) pass a statute, it ranks above judge-made law in the legal hierarchy discussed above.

The *Criminal Code of Canada*<sup>5</sup> is the statute that defines what actions or behaviours are considered to be criminal in Canada. The *Corrections and Conditional Release Act* (CCRA)<sup>6</sup> governs the administration of prisons federally. This Act also governs some areas of provincial corrections.

While there are some federal statutes that will affect you, the majority are provincial. The Nova Scotia ***Correctional Services Act***<sup>7</sup> is made by the government of Nova Scotia and is designed specifically for the operation of jails in this province.

Next to the *Charter*, the ***Correctional Services Act*** is probably the most important statute for you to know. It specifies that you have certain rights, but also permits certain restrictions on people who are serving jail sentences. Understanding what the ***Correctional Services Act*** says about your rights in these various areas can help you ensure that your rights are protected. **If the Corrections policies do not match up with what is said in the *Correctional Services Act* (or *Correctional Services Regulations*), you can challenge these policies by looking to the options available to you in the Remedies section, (PART VI).**

Other statutes that may affect you are the ***Children and Family Services Act***<sup>8</sup> or the ***Nova Scotia Human Rights Act***<sup>9</sup>. The *Nova Scotia Human Rights Act* lists ways in which it protects people in Nova Scotia from discrimination. These grounds are the following: age, race, colour, religion, creed, sex, sexual orientation, gender identity, gender expression, physical disability or mental disability, an irrational fear of contracting an illness or disease, ethnicity, national or aboriginal status, family status, marital status, source of income, political belief, affiliation or activity, or any association with any individual or group of individuals who share any listed characteristic.

If you feel that any of these rights are being infringed, you can file a complaint with the Nova Scotia Human Rights Commission. They are a body set up to investigate complaints and promote equality in Nova Scotia. Information on how to file a complaint can be found in the remedies section of this manual.

## ***Regulations***

Regulations go together with statutes and give more details about how the statute law will be applied. They help to interpret laws and set out important guidelines on things like searches, close confinement and parole. The most important regulations for you are the ***Correctional Services Regulations***<sup>10</sup>. These regulations contain provisions that protect your rights (e.g. health care) and rules about how corrections can restrict your liberty (e.g. transfers, disciplinary processes, sanctions).

## ***Policy***

Much of this handbook will explain the policies of Nova Scotia Department of Corrections that apply to you. **Knowing what the Corrections policy says about your situation is the first step towards claiming your rights while in prison. If you are denied what you are entitled to under Corrections policy you can file a Complaint. However, if the policies or the complaint procedures used are unfair or illegal, a Complaint will not fix this problem. If you feel a policy/policies are degrading, humiliating or violate your rights, you can look at the ‘Remedies’ section (PART VI) to find other ways of claiming your rights.**

**You can challenge policies that are inconsistent with the regulations or statute. Policies do not hold the same power as law.**<sup>11</sup> Policies are developed from legislation and regulations. They are the rules and procedures set up by government ministries to help them know how to implement the laws. They are usually rules that spell out how they will follow the law.

For example, the Nova Scotia Department of Public Safety uses policies to interpret the statutes and set out the department’s purpose and powers. *Nova Scotia’s Correctional Services Policy & Procedures* will also apply to you while you’re in jail.<sup>12</sup> The policies must follow from the statute and regulations, meaning if the policies contradict the statute or regulation, they should be challenged.

## ***Administrative Policies and Decisions***

Some power to make decisions is designated to individuals at the administrative level. The person/ position authorized to make decisions about terms of jail-related matters is either:

- Local (usually the superintendent or her/his designate),
- Regional (often the Director of Correctional Services), or
- Provincial (the Minister of Justice).

## ***Judge-Made Law: Case Law or Common Law***

The law we've discussed so far is made by the government, such as statutes, regulations and policies. Courts also make laws, in the form of case law. Case law comes from judges' decisions or judgments. When a judge makes a decision in a case the decision is called a precedent. This means that when the same issue is involved in cases that come later, the judge is supposed to rule in the same way the earlier judge did.

There is a hierarchy of courts in Canada. This is shown in the chart on the **page 21**. The higher the court, the more likely it is that other courts will follow the precedent. This means that if the Supreme Court of Canada makes a decision, all the lower courts are supposed to follow it.

"Although under common law, Canadian judges follow earlier decisions in cases dealing with similar issues, government-made laws have priority and judges must follow these first."<sup>13</sup>

## **The structure of Canada's court system**

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Powers over the court system have been divided by the *Constitution* between the federal and the provincial governments, and also divided by what issues they decide.

The different kinds of courts are:

### **Federal:**

- Supreme Court of Canada
- Federal Court of Appeal
- Federal Court
- Specialized federal courts (e.g., Tax Court of Canada and Court Martial Appeal Court of Canada)

### **Provincial:**

- provincial courts of appeal
- provincial superior courts
- provincial courts

In addition to these courts, administrative tribunals are set up to deal with conflicts involving administrative rules and regulations.

### **The Supreme Court of Canada:**

The Supreme Court is Canada's (SCC) final court of appeal, which means that it is the highest level of court. The SCC's judgments are final.

### Federal Courts:

The Federal Court hears cases in areas such as intellectual property and maritime law. The Federal Court of Appeal reviews the judgements of these courts.

### The Provincial Superior Courts

The Nova Scotia Supreme Court is the top level of courts in this province. These courts are classified as either trial level or appeal level. Trial level courts hear civil and criminal cases and have the power to grant divorces. The appeal level courts hear civil and criminal appeals from the superior trial court.

### The Provincial Courts

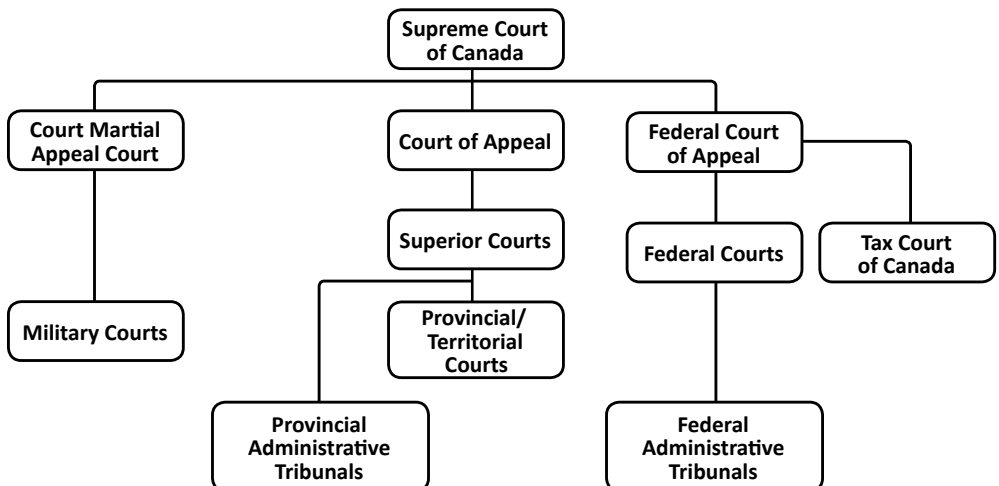
Provincial and territorial courts deal with most of the cases that enter the court system, such as provincial offence matters and most criminal cases. These courts sometimes include specialized courts, for example, youth courts, and family courts.

### Administrative Boards and Tribunals

Many conflicts about administrative rules and regulations are dealt with outside of court, through administrative boards and tribunals. Tribunals hear evidence and make decisions similar to courts, but are not formally included in the court system, and the disputes are not heard by judges. Instead, the decision-makers may be experts in the area dealt with by the tribunal (ex. human rights law, immigration law, etc.). Administrative boards and tribunals were made in order for conflicts to be solved more swiftly and less expensively. The procedure of these administrative boards is usually less complex and less formal than in the court system.

Depending on the legislation that created the tribunal or board, its decisions may be subject to review by the courts in order to make sure the procedures are fair. This process of appeal is called judicial review.

## CANADA'S COURT SYSTEM



## **What is the structure of Nova Scotia's court system?**<sup>14</sup>

In Nova Scotia there are different levels of court that handle different legal issues.

Small Claim Court handles civil matters in cases where a person is suing, or being sued, for \$25,000 or less.

The Provincial Court hears most of the criminal cases in Nova Scotia, but it does not have authority to try very serious criminal charges, for example murder.

The Family Court: In all locations in Nova Scotia, other than Cape Breton and the Halifax Regional Municipality, the Family Court handles most family law issues with the exception of division of property and divorce. Division of property and divorce are handled by the Supreme Court of Nova Scotia.

The Probate Court handles issues of wills and estate.

Nova Scotia Supreme Court hears the serious criminal cases containing jury trials as well as most civil law suits where the dispute involves more than \$25,000. Other than in Cape Breton and Halifax Regional Municipality, the Supreme Court also handles divorce and division of property.

The Supreme Court (Family Division) in Cape Breton and Halifax Regional Municipality handles all matters of family law including division of property and divorce.

The Nova Scotia Court of Appeal is central in deciding the law of Nova Scotia. Appeals of judgments from lower courts in the province are dealt with by the Court of Appeal.

## **International Law**

Treaties are international agreements that are signed and/or ratified by various countries. Countries that ratify international — especially UN — instruments, are then expected to implement them in their own countries. When Canada ratifies a treaty, it means that Canada commits itself to the obligations set out in the treaty. However, a treaty is not enforceable in Canada unless it has been incorporated into domestic law. That said, Canadian laws and policies must be interpreted in a way that is consistent with Canada's international obligations.

This is true not only of international treaties but also other international human rights instruments (such as UN declarations). For example, the fact that Canada has historically endorsed the *Standard Minimum Rules for the Treatment of Prisoners* (recently revised and renamed the *Nelson Mandela Rules*<sup>15</sup>) should mean that Canadian prisoners are treated in accordance with the standards set out in that document.

Some treaties that Canada has signed that relate to women in prison include:

- *The Universal Declaration of Human Rights*<sup>16</sup>;
- *The Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment*<sup>17</sup>;
- *The International Covenant on Civil and Political Rights*<sup>18</sup>; and
- *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.<sup>19</sup>
- *International Covenant on Economic Social and Cultural Rights*<sup>20</sup>
- *Convention on the Rights of the Child*<sup>21</sup>

In addition to the *Mandela Rules* (noted above), a recent UN process has produced the *Bangkok Rules*<sup>22</sup>, which specifically address women's imprisonment. The *Bangkok Rules* provide important guidance on the rights of women in prison, including rights to equitable access to health care and community-based supports for transitioning back to the community. Rule 6 states that women prisons should receive a comprehensive screening to determine a range of health care needs. This includes the presence of sexually transmitted diseases, mental health care needs, reproductive health history of the woman, any existence of drug dependency, and sexual abuse or other forms of violence that may have been suffered prior to admission.<sup>23</sup>

## Reports/Commissions

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In addition to the various legal documents related to the rights of prisoners, there have been a number of reports and inquiries in Canada related to the treatment of women in prison.

Many of these reports apply to women who are federally sentenced, such as the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*<sup>24</sup> and the *Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*.<sup>25</sup>

Although the findings from these reports do not result in binding law, the recommendations may influence courts and practices by altering policies.

## Can I challenge an unfair law, policy, or decision?

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Much of this handbook will explain the policies of Nova Scotia Department of Corrections that apply to you. Unfortunately, the rights that you are guaranteed on paper may be different than the way you experience them in real life. This project aims to close that gap, help you know your rights, and also provide the tools to claim those rights. **Knowing what the Corrections policy says about your situation is the first step towards claiming your rights while in prison. If you are denied what you are entitled to under Corrections policy you can file a Complaint. However, if the policies or the complaint procedures used are unfair or illegal, a**



**Complaint will not fix this problem. If you feel a policy/ policies are degrading, humiliating or violate your rights, you can look at the ‘Remedies’ section (PART VI) to find other ways of claiming your rights.**

**You can challenge policies that are inconsistent with the regulations or statutes that the policy was made to ‘flesh out’. Policies do not hold the same power as does the law.<sup>26</sup>**

There are many ways that you can challenge unfair laws or policies. Two main ways to complain when your rights have been violated:

**Internal Complaint:** If staff has not been following the proper policy of Nova Scotia Department of Corrections, as explained in this book, make an internal complaint through the Corrections complaint process.

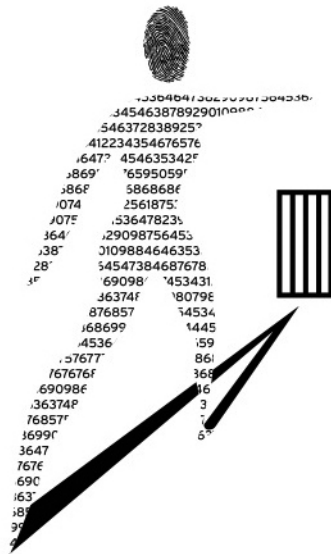
**External Complaint:** Help from outside the prison, such as legal aid, the Ombuds office, the Nova Scotia Human Rights Commission, or the Court system. You have made an internal complaint and it failed (about either not following policy, or the policy itself being unfair). Even if you have not made an internal complaint as you are either unable or uncomfortable with doing so, but you feel your rights have been violated in some way.

A variety of the ways to make a challenge are outlined at the end of this booklet in the section on “Protecting Your Rights” (see page 45). For example, good places to start in terms of reaching out to someone to explain your situation are:

- **Elizabeth Fry Societies:** see pg. 103 for contact information
- **Office of the Ombudsman:** see pg. 48 for explanation and contact information.
- **Human Rights Commission:** see pg. 97 for explanation and contact information
- **Habeas Corpus application:** see pg. 99 for explanation
- **Judicial Review:** see pg. 98 for explanation

Alternatively, you can do this through a *Charter* challenge. The case could ultimately be decided by the Supreme Court of Canada. Prisoners have launched *Charter* challenges using section 7 of the *Charter* in the past. There may be room for challenges using other sections of the *Charter*, specifically 12 and 15.

# PART II — ARRIVING IN JAIL: THE INTAKE ASSESSMENT PROCESS AND SECURITY CLASSIFICATION



## Admission to a Correctional Facility

### ***Orientation and Assessment Program***

When you first enter custody of a correctional facility, you will receive an orientation/ introduction. Orientation is a process used to explain to you how the jail works. The orientation program will include, among other things, learning about the facility's rules, disciplinary system, programs, activities, services and daily routines. <sup>27</sup>

Assessment processes will be used to gather information about your security classification, your level of risk, your needs, and your health. These processes are also used to address any possible reintegration strategies moving forward. <sup>28</sup>

This assessment will include the following: an intake interview, a health assessment, a risk and needs assessment, a classification assessment, and a security risk assessment. <sup>29</sup>

Once you have finished the orientation and assessment program, the facility review board will consider all relevant information and determine where you should be placed in the jail (i.e. which unit).<sup>30</sup>

Women will always be housed separately from men.<sup>31</sup>

## ***What is a Security Risk Assessment?***

It is the policy of Correctional Services to use ‘security risk assessment tool’ for assessments, known as an “Institutional Security Assessment” (ISA).<sup>32</sup>

The ISA involves an interview with members of the correctional staff. You will be asked a series of questions in eleven areas. Each area is scored individually and your answers will determine your score and the level of security risk you are assigned for your time in jail.<sup>33</sup>

The purpose of your security risk assessment is to help determine if you might pose a threat to the facility, staff, other women, or yourself. This includes your potential for dangerous behaviour such as assaults on other women or staff, and your risk of escape etc. Your security assessment is also used to determine your risk level while being escorted during a temporary absence, and to help identify security considerations when approving you for participation in programming and work assignments, and eligibility to participate in temporary absences, among other things.<sup>34</sup>

Your security assessment score can be changed by the officer-in-charge. This means that your score can be moved upwards or downwards based on the officer’s discretion (‘discretion’ is explained in the chapter “introduction to the law in Canada”, at page 13). If your score is changed, the officer-in-charge must put his/her reasons clearly stated on your ISA form.<sup>35</sup>

## ***What is a Risk/Needs Assessment?***

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It is the policy of Correctional Services to assess you by using a risk and needs assessment tool known as the “Level of Service/Case Management Inventory” (LS/CMI).<sup>36</sup>

The LS/CMI also involves an interview where you will be asked a series of questions in eight areas. Each area is scored individually and **your answers will determine your score, and will determine what level of risk you are assigned.**<sup>37</sup>

Risk factors are things that are said to be connected to your involvement in criminal activity, including:

- your personality,
- the ways you behave (i.e. how you speak and act generally),
- your family situation,
- your educational and employment performance, and
- the people that you associate with.<sup>38</sup>

Need factors are risk factors that can be changed and, if changed, can reduce the chances of future criminal activity.<sup>39</sup>

The purpose of your risk and needs assessment is to figure out the things that led to your conviction/ imprisonment, and then to make a plan that will help lower your chances of being involved in crime. This is known as a Case Management Plan. A Case Management Plan is a document that outlines the goals that Correctional Services set for you, and the programs available in jail that might help you meet those goals. Your Case Management Plan can change over time.

Your risk and needs assessment will also be used to figure out whether you should have your level of custody reduced or whether you should be granted temporary absence. It will also help determine the level of supervision your probation officer will have over you when you leave jail.<sup>40</sup>

## **What Information do I Have to Provide During These Assessments?**

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It is important to understand that you do not need to answer any questions asked during the intake process<sup>41</sup>, either about yourself or your family. **You must decide for yourself how much you want to cooperate and give information about yourself.**

**On one hand, be aware that the way you act in the assessment may be used as a factor in determining your classification.** Refusing to answer questions may have a negative effect on this. For example, if you refuse to cooperate or are seen as being difficult, it may be used as an excuse to keep you in a setting with higher security.

**On the other hand, keep in mind that the information you tell the interviewers during the intake process is not kept confidential.** In fact, some of this information may be used against you.<sup>42</sup>

**There are some circumstances when it makes sense to exercise your right not to cooperate.** For example, if you are waiting for an appeal, your lawyer might tell you not to participate in 'supplementary assessments' such as psychological assessments, until after your appeal is done. Corrections may still proceed even if you refuse to cooperate. If your lawyer has advised you against cooperating with

the assessment, tell that to the person writing the report. Also request that they write clearly at the start of the report that you have told them your lawyer said not to participate in this assessment. If, on the other hand, your lawyer advises you to undergo the assessment, you should also tell that to your interviewer and ask her to put that information at the top of her report.

**Be aware that any information you share about things you have done in the past can be used against you, even if you were not convicted of a crime in relation to these actions.** In some cases, depending upon the seriousness of the behaviour, such disclosures have led to further investigation, charges, convictions, and imprisonment.

## What Will Happen to my Personal Property When I Arrive In Jail?

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Upon admission to a correctional facility, you are required to surrender all of your things to the staff person who is admitting you. None of your personal property can be removed from the correctional facility without your consent, or an appropriate court order. Where it is necessary for staff to destroy your property, you must be informed as soon as possible.<sup>43</sup>

You are allowed to keep your wedding ring, body rings that cannot be removed, and any other things that have been approved by the superintendent based on humanitarian, medical, or religious/cultural reasons.<sup>44</sup>

## Entitlements and Privileges

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You have certain entitlements and privileges once you have been admitted to a correctional facility. *Privileges* can be limited for disciplinary purposes, while *entitlements* can only be limited for safety purposes.<sup>45</sup>

Some of these entitlements and privileges include:

### **Meals**

You are entitled to **three meals on each week day and two meals, including a brunch, on each weekend day and each holiday.**<sup>46</sup> Your security status will determine where meals are served. **Food is not to be withheld as a form of punishment or offered as a reward.**<sup>47</sup>

**You can be provided special diets for religious, cultural or health reasons** if the superintendent decides it is reasonable to do so.<sup>48</sup>

If you are requesting a special diet for therapeutic/health reasons, such as weight loss or allergies, you should do so during your initial health assessment (see “Health Assessments Upon Admission to a Correctional Facility”).<sup>49</sup>

If you do not make a request for a special diet during this initial assessment, you must fill out a Health Care Request Form and speak to a nurse. Health care staff will assess you and decide if the special diet should be ordered. The special diet must then be approved by the superintendent.<sup>50</sup>

Religious/cultural diets must be approved in writing by the superintendent and recommended by the chaplain.

## ***Recreation***

**You are *entitled* to at least thirty minutes a day for outdoor exercise.** However, the superintendent may deny you access to outdoor exercise if the weather conditions make it unsafe, if you are actively trying to escape, if you pose an immediate threat to the security of the correctional facility, or if you pose an immediate physical threat to the safety of other women in the facility, or correctional staff.<sup>51</sup> **A superintendent who denies you access to outdoor exercise must advise you of the reasons for the denial and prepare a written report detailing the reasons for the denial.**<sup>52</sup>

The privilege of participating in other recreational activities may be taken away for disciplinary purposes. This does not apply to your thirty minutes of outdoor exercise. **Outdoor exercise cannot be taken away for disciplinary reasons since it is an entitlement, not a privilege.**<sup>53</sup>

## ***Access to a Library***

**You must be allowed library privileges at least once a week for the purpose of selecting and exchanging reading material,** unless you have had this *privilege* taken away for disciplinary reasons.<sup>54</sup>

## ***Toiletries, Clothing and Laundry***

**Every woman admitted to an adult facility must be issued necessary toiletry items.** These toiletry items include: soap, shampoo, a toothbrush, toothpaste, a comb or hair pick, feminine hygiene products, and approved religious and cultural items. Following admission, you are responsible for purchasing additional personal hygiene items from the facility canteen. If you do not have money to purchase additional personal hygiene items you may submit a request for additional correctional facility issued personal hygiene items.<sup>55</sup>

All women are to wear the official correctional facility clothing. Clothing issued to you upon admission to a correctional facility, at a minimum, must include:

- Two pairs of pants
- Two t-shirts
- Two shirts
- Four new underwear
- Four new bras
- Three pairs of socks
- One pair of sneakers
- One laundry bag<sup>56</sup>

You must be given access to laundry facilities, or have your clothes laundered, at a minimum of twice weekly.<sup>57</sup>

## ***Visits***

**If it is concluded that the safety and security of the correctional facility will not be put at risk, the superintendent must permit you to have visitors.**<sup>58</sup> Only those individuals included in your “approved visitor list” will be permitted access to the facility. This list will be in your orientation/assessment program when you are first admitted in to a correctional facility.<sup>59</sup> An approved visitor can only visit a correctional facility in the hours listed in the policies and procedures.<sup>60</sup>

If a superintendent thinks that a visit is “not in your best interests”, the best interests of the correctional facility, or the best interests of the visitor, the superintendent can deny the visitor entry to the correctional facility.<sup>61</sup>

**Even if your visiting privileges are being limited for disciplinary reasons, you must be allowed visits with the following people:** a spiritual advisor, a lawyer, a representative of the Office of the Ombudsman, a representative of the Human Rights Commission, or an individual approved by the superintendent.<sup>62</sup>

## ***Issues Affecting Communication***

**You must be provided access to mail and written correspondence, as well as access to telephone communication.**<sup>63</sup>

Your communications (telephone, video or electronic) may be recorded at any time. Before recording your communication, the superintendent must tell you ahead of time that the communication will be recorded. This could be achieved through a recorded announcement played at the beginning of the communication, or even by sign posted near the communication device.<sup>64</sup>

A superintendent may also restrict, intercept, or monitor your communications in some situations. If your communication has been restricted, intercepted, or monitored, the superintendent must inform you in writing as soon as possible and explain why they did this.<sup>65</sup>

**Your communications with any of the following people cannot be restricted, intercepted, monitored, or recorded:** a lawyer, a representative of the Office of the Ombudsman, a representative of the Human Rights Commission, the Nova Scotia Police Complaints Commissioner, and the Nova Scotia Civilian Director of the Serious Incident Response Team.<sup>66</sup>

## ***What is the Procedure for Making a Phone Call***

Synergy Prisoner Phone Solutions Inc. provides telephone service to the provincial jails in Nova Scotia. There are two ways that you can place a call:

- a. collect calling, and;
- b. prepaid calling.

*Collect calling* is where the person you are calling accepts and pays for the call; *prepaid calling* is where you or the recipient of the call can prepay for the call by setting up an account. Prepaid options include calls prepaid from your telephone account, calls prepaid by the person receiving the call or calls paid for by the called party's credit card at the time of the call.

Funds can be deposited into your telephone account with cash, a bank debit card, Moneygram deposit at any Canada Post location, or a credit card. The following payment options are available:

- At all adult correctional facilities within Nova Scotia—credit card, or cash deposit;
- Toll-Free Customer Service (1-866-713-4761)—credit card deposit;
- Website ([www.telmate.ca](http://www.telmate.ca))—credit card deposit; and
- Canada Post—Moneygram—cash, bank debit card, credit card deposit.<sup>68</sup>

Telephone calls can be made between 8:00 a.m. and 9:45 p.m. seven days a week.

## **Issues Affecting Correspondence**

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The superintendent can inspect all correspondence coming into or going out of a correctional facility, including:

- parcels;
- written material; and
- material stored by electronic media.<sup>69</sup>

The superintendent cannot inspect the correspondence between you and any of the following people:

- a lawyer;
- a member of the Legislative Assembly of Nova Scotia;
- a member of the Parliament of Canada;
- the Deputy Minister of the Department of Justice or the Executive Director (Assistant Deputy Minister) or a director of the Correctional Services Division;
- NS Police Complaints Commissioner;
- NS Civilian Director SIRT;



- a representative of the Office of the Ombudsman;
- a representative of the Human Rights Commission;
- an inspector designated under the Act;
- the Nova Scotia Police Complaints Commissioner;
- the Nova Scotia Civilian Director of the Serious Incident Response Team.<sup>70</sup>

If you are being penalized by having your communications or correspondence privileges restricted, you are still allowed to send and receive letters from, and communicate with, the following people:

- your spiritual advisor;
- your lawyer;
- a representative of the Office of the Ombudsman;
- a representative of the Human Rights Commission; and
- any individual approved by the superintendent.<sup>71</sup>

## Access to Programs

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### ***Who has Access to Programs?***

Every woman should have access to programs at a correctional facility.<sup>72</sup>

It is the superintendent's responsibility to maintain a schedule of regularly provided programs, and to ensure that you are informed of the availability of these programs.<sup>73</sup>

You should be provided with gender specific programs that identify and address your emotional, behavioural, social, spiritual, developmental and physical needs.

### ***What are the Different Categories of Programs?***

Correctional services offers three levels of programs:

#### **1. Psycho-Educational Programs**

These programs are meant to teach you about basic awareness and relapse prevention skills. The goal is to motivate you to join related intensive programs that will help you make changes in your life.<sup>74</sup>

#### **2. Academic/Knowledge Based Programs**

These programs are delivered by licensed teachers or correctional staff who have received literacy/tutor training.<sup>75</sup> These educational programs are meant to teach you new skills, improve your employability, and to assist you in get into post-secondary community educational programs at the end of your sentence.<sup>76</sup>

### 3. Clinically Supported Behaviour Management Programs

These programs offer more approaches to behaviour modification, and are run by professional clinical staff.<sup>77</sup>

## What are the Core Programs Offered at the Central Nova Scotia Correctional Facility?

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Some of the core programs offered at the Central Nova Scotia Correctional Facility includes the following:

**Beyond Trauma:** An 11 session, gender specific program that focuses on the impact of trauma and teaching wellness.

**Substance Abuse Management (SAM):** A 12 session program to help manage and reduce substance abuse and to help connect with community resources for when you leave jail.

**Options to Anger:** An introductory anger management program that looks at the root causes of anger and teaches coping skills.

**Educational Programs:** There is a licensed teacher who will develop individualized assessment plan for those who participate. This program could involve literacy support, GED prep etc.<sup>78</sup>

You can lose the privilege of taking part in programs.<sup>79</sup>

You can also be disciplined for disrupting programs.<sup>80</sup>

A complete record of your program participation, program completion, personal progress, and refusal to participate in programs will be kept in your Case Management Plan.<sup>81</sup>

Participation in certain programs may be suggested to you based on your risk and needs assessment.

# Mothers in Jail

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## ***Introduction***

Many women in jail are mothers, the majority of whom were the only care-taker for their children before they were imprisoned. Being away from your children is difficult at any time. Being away from your children because you are in jail is especially difficult. In addition to the separation, jail can also make it difficult (or impossible) to visit or speak with your children. Understandably, you may also be afraid of the difficulties you might experience while trying to get custody of your children after your release from jail.

This section reviews your rights as a mother in jail and explains some of the general legal concepts involved in the law regarding the custody and care of children.

In Nova Scotia, the laws that deal with child custody and access issues are: The ***Children and Family Services Act*** (and its Regulations);<sup>82</sup> and ***Maintenance and Custody Act***.<sup>83</sup>

## ***Practical tips for planning for your children when your lawyer tells you that you may get time: make a plan***

- 1a. If you have custody of your child, make alternate care arrangements for your child: decide upon an alternate caregiver — someone who you trust to look after the best interests of your children: options
  - the other parent — if it's in the child's *best interests* (see definition of 'best interest of the child' on page 37)
  - if the other parent is not available/appropriate caregiver, someone else you know — family member, friend
    - make a written guardianship agreement for the time you are imprisoned
- 1b. If you don't have someone to care for your child:
  - you can create a temporary care agreement with the Department of Community Services — Child Protection Services (under s. 17 of ***Children and Family Services Act***)<sup>84</sup>. It can be for up to 6 months, and can be extended for another 6 months if needed. The Department of Community Services will provide financial assistance to foster placement: monthly payments to help with the basic costs of caring for the child. The payment is intended to cover the food, laundry, clothing, allowance, school supplies, recreational activities and child care and special requirements such as prescription and non-prescription medications, glasses and other necessities.

2. If there is a custody or access hearing for custody of your child taking place, **you are entitled to attend these proceedings and also entitled to have a lawyer in these proceedings.** This is provided by Section 7 of the Canadian *Charter of Rights and Freedoms*.<sup>85</sup> (For more information see ‘what rights do I have at a custody or access hearing’ page 40.)
3. **Financial support for your children while you are incarcerated**
  - The Canada child tax benefit (CCTB) is a tax-free monthly payment made to eligible families to help them with the cost of raising children under 18 years of age:
    - in order for the temporary guardian of your child to access this payment, they must re-apply for these benefits. This application must include proof that they are the current primary care giver of the child.
4. Links to more information about child custody and maintenance:
  - [www.nsfamilylaw.ca/custody-access/information-about-custody-and-access](http://www.nsfamilylaw.ca/custody-access/information-about-custody-and-access)
  - [www.legalinfo.org/family-law/common-law-relationships.html](http://www.legalinfo.org/family-law/common-law-relationships.html)

### ***What is custody?***

Many people think of custody as simply determining which parent a child will live with. Custody is more than that. Although children often do spend most of their time with the parent who has custody, custody also involves the right to make important decisions about your child, such as about his/ her physical care, control, and upbringing.

### ***What is access?***

Access is the right to visit or be visited by your child, and the right to be given important information about your child’s health, education, and welfare. Access is a right granted by courts when parents separate or divorce, and also in child protection cases. The court order will often set out specific times when the parent with access is allowed to see the child. Sometimes courts will order telephone access if it is hard for a parent to see a child in person.

It is important to remember that access is the right of both the parent and the child. As much as you have the right to spend time with your child, your child has the right to spend time with you.

## ***What is supervised access?***

If a court grants a parent supervised access, it means that the parent will be able to see the child, but there will be someone else present at all times during the visit. Sometimes supervised access can take place at a supervised access center, which is a place set up a similar to a child care center, and staffed with people to supervise the visits. Other times, a social worker or a family member may be designated as the supervisor by a court, if parents and the other parties involved, such as a child protection agency, can agree.

## ***Who may apply for custody or access of a child?***

In most provinces, anyone may apply for custody or access of a child, although some people are more likely than others to be successful. It is often assumed that parents will have joint custody of a child<sup>86</sup>, so a parent is most likely to be granted custody or access. The most important factor in all matters involving children is the *Best Interests of the Child (BIOC)*.

If a biological parent's new partner (the step-parent) has developed a bond with a child and helped with parental responsibilities, s/he may also apply to the court. If the court decides that they acted "in the place of a parent," that person may also have a good chance of getting custody or access. If the judge thinks it is in the best interests of the child, family members, especially grandparents and aunts, or even close family friends, can also be given custody or access.

## ***What will a court consider when deciding if a proposed caregiver should be granted custody of my child?***

The best interests of the child is the most important factor. The things a court might consider in deciding if someone should be granted custody of your child(ren) include:

- a. their willingness to accept responsibility for the care and custody of your child;
- b. their ability to provide for your child, including their physical health (if you are thinking about having an aging parent or grandparent take care of your child while you are inside, a court may check into their ability to handle the physical requirements of caring for your child);
- c. the stability of the people and their environment;
- d. whether they have a spouse, and if so, how that spouse feels about bringing your child into their home;
- e. whether that person is already dealing with difficult issues that might interfere with their ability to care for your child.<sup>88</sup>

## ***What are the best interests of the child?***

The *best interests of the child (BIOC)* is the test used by child protection authorities and the courts to help resolve any legal matter involving children. It has even been used to override parents' *Charter* rights, such as their right to freedom of expression and their right to freedom of movement.

The BIOC test is defined in section 3 of the ***Children and Family Services Act***.

Factors to be considered in determining the best interests of the child include:

- a. the importance for the child's development of a positive relationship with a parent, guardian or other relatives and a secure place as a member of a family;
- b. the child's relationships with relatives;
- c. the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- d. the bonding that exists between the child and the child's parent or guardian;
- e. the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- f. the child's physical, mental and emotional level of development;
- g. the child's cultural, racial and linguistic heritage;
- h. the religious faith, if any, in which the child is being raised;
- i. the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- j. the child's views and wishes, if they can be reasonably ascertained
- k. the effect on the child of delay in the disposition of the case;
- l. the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;
- m. the degree of risk, if any, that justified the finding that the child is in need of protective services;
- n. any other relevant circumstances.<sup>89</sup>

## ***What is child protection?***

Child protection is an area of the law where the government takes over the care of children who are found by a court to be at risk of abuse or neglect. Each province and territory has its own child protection laws.

In Nova Scotia, the Department of Community Services is the government body that manages child protection. They are required to investigate allegations of child abuse, and they are required to provide care for children who have been found to be "in need of protection".

There are 20 offices that deal with child protection in Nova Scotia.

**NS Department of Community Services**  
**P. O. Box 696**  
**Halifax, Nova Scotia B3J 2T7**  
**1-877-424-1177**

### ***How can my child be found in need of protection?***

According to the law in Nova Scotia, some examples of when a child can be determined to need protection are:<sup>90</sup>

- if the child is without adequate care, supervision or control;
- the child is physically or sexually abused;
- s/he is living in a situation where there is domestic violence; or
- is living in unfit or improper circumstances.<sup>91</sup>

The Department of Community Services can conduct an investigation to decide whether the security or development of the child is in danger.<sup>92</sup> If they decide that the child is at risk, then the child may be placed under protective care. This means that the child could end up either under supervision, in a foster home, or in permanent care of the state.

### ***What role might a child protection agency play?***

Child protection agencies are supposed to provide support to families, and to care for children when their parents are unable to do so. If you are a single parent and you do not have a family member who could apply for custody of your child, a child protection agency might take your child when you go to jail. They may place your child with a family member, or if no family member is available or willing to care for your child, they may place your child in a foster home.

If there is an investigation involving your child, the Department of Community Services may stay involved with your family through a supervision order, or may take your child if your child is thought to be in need of protection.

**If your child is taken into care, the Department of Community Services is always required to argue their case before the court as to why this is the best decision.**

If the court does not agree with their decision, the judge will order that your child should be returned to you or to a family member whom you have designated.

### ***What is a supervisory order?***

A court may order that an individual take custody of a child, and that a child protection agency will supervise that parent or other person responsible for the child. Supervision orders in Nova Scotia can last up to 12 months. They may also be reviewed and extended.

## ***What happens if my child is found to be “in need of protection”?***

If the child protection agency takes (apprehends) your child, they have to make a court application to have the court decide if your child is in need of protection, or return your child to you within 5 days.<sup>95</sup> The court will hold a hearing about the reasons why your child was apprehended within 5 business days of your child being placed in care.<sup>96</sup>

If, at a protection or disposition hearing, your child is found to be in need of protection, then the court will decide who gets custody of your child. The Minister is required to make sure that your child is cared for, and may place them in another home or in the care of child protective services.<sup>97</sup> If the court orders that a child become a temporary ward of the child protection agency, the order cannot last for more than twelve to eighteen months without a review, so each case of temporary care is reviewed at least once during that period.<sup>98</sup>

## ***What happens if your child is taken out of his or her home and into custody of Child Protection Services?***

If a child is taken out of his or her home and the child protection agency cannot find a family member with whom to place the child, the agency may take the child into custody (sometimes called protective care). This may be temporary or permanent.

**If your child is taken into care, you should be informed immediately of what action has been taken.**<sup>99</sup> Within 5 days of removing your child, the agency should either return the child to your care or make an agreement with you (and/or another parent of the child) as to what needs to be done with the child or, the agency can apply to the court to make another order<sup>100</sup>

Temporary orders last up to 6 months, but can be reviewed and extended.<sup>101</sup> Under a temporary order, the Minister should still consider the wishes of the child and the parent.<sup>102</sup>

If a child is placed in care permanently, then all your rights and responsibilities as a parent stop, and those rights and responsibilities are given to the child protection agency.<sup>103</sup> The child may be put up for adoption.<sup>104</sup> Parents are supposed to be given ‘reasonable access’ to their children unless a court order specifies that you cannot have reasonable access.<sup>105</sup> If an order does specify that you cannot have reasonable access, then you will not be allowed to communicate with the child until the child turns 18, or marries, or the child protection agency gets the order reviewed.<sup>106</sup>



## ***Are child protection orders final?***

Not much is final in cases involving children. Court orders can usually be changed/ varied. But, it is difficult to change child protection orders. **You can appeal orders or decisions about protective care to the Nova Scotia Court of Appeal if you apply for the appeal within 30 days after the order was made.**<sup>107</sup> The order will still be valid/in force until the hearing, at which point, the Court can affirm, end, or change the order.

An appeal may be the only way for a parent to change a custody order.

## ***What rights do I have at a custody or access hearing?***

Section 7 of the Canadian *Charter of Rights and Freedoms*<sup>108</sup> guarantees parents the right to a fair hearing when the state is seeking custody of their children. **This includes the right to a lawyer in CFSA proceedings where the child is being removed from your care.** In some cases, this will mean legal aid will provide you with a lawyer for your hearing. Whether or not you will have the right to have free legal assistance will depend on your financial situation, as well as the details of what has happened to you and your children.<sup>109</sup>

Even if you do not receive a legal aid certificate to find your own lawyer, you will likely be able to **get assistance from duty counsel** for many of the hearings you will have to attend.

When applying for custody or access to your child, you must apply to the court in the province/ jurisdiction where your child lives.

**You have the right to attend court in person in CFSA proceedings where the child is being removed from your care.** The Court or your lawyer should prepare an Order to allow you to attend. The *Charter* also entitles you to attend.

## ***Once I am in jail, do I still have the right to see my child?***

Whether or not you have the right to see your child will depend on a few things. Courts can order that parents should have no access to their children. All decisions are made according to the judge's interpretation of the best interests of the child. Still, there are examples of prisoners maintaining access even under extreme conditions, such as a father who was able to maintain telephone access with his children even though he was in jail for killing their mother.<sup>110</sup>

Child protection agencies have the authority to limit your contact with your child if they think it is in the child's best interests. A judge, acting on behalf of an agency, is allowed to prohibit any person (including a parent) from visiting, writing to, telephoning or otherwise contacting the child.<sup>111</sup>

There have been cases in which parents have been denied access to their children largely because they are in jail.<sup>112</sup> It is difficult to predict how a judge will decide, and as you will know, sometimes judges are not very sympathetic to mothers in jail. However, depending on your situation, it may be very important both to you and to your child to maintain contact/ access while you are in prison. The Court in *Inglis* recognized your right to do so, as long as it is in the *best interest of your child*.<sup>113</sup>

Usually, your visits will not be interfered with unless you or your visitors are suspected of doing something wrong. But, in more than one case, a provincial jail director decided to suspend all contact visits for a parent because of a general concern about drug and weapons being smuggled into a jail and the courts did not interfere with the jail's decision.<sup>114</sup>

It is important to know that in deciding a plan for a child, including custody and access, the Minister should consider the wishes of the child and the parent. Therefore, it is important to **make sure that you and your child make your wishes known in deciding what happens**. Also, Canada has an international obligation under the *United Nations Convention on the Rights of the Child* to give parents an opportunity to participate and make their views known if a child is being separated from his or her parents.<sup>115</sup>

**You may be able to use laws, such as the *Charter*, to argue that you should have access to your child.** For example, in one case, a woman argued that being kept from her newborn amounted to cruel and unusual punishment under section 12 of the *Charter*. Sadly, she lost the case, but the judge said that this was because she was a flight risk and was in a secure custody unit.<sup>116</sup> This might leave room for other women who are not considered flight risks and who are not in a secure unit to be successful while making a similar argument. The Supreme Court of Canada has recognized that apprehension of a child can interfere with the parents' right to security of the person under s.7 of the *Charter*.<sup>117</sup> In a case where the provincial government shut down a mother-baby program at a correctional centre, the Supreme Court of Canada recognized that that closure was contrary to mothers' and babies' right to security of person and to equality under s.7 and s. 15 of the *Charter*.<sup>118</sup> This means that you may be able to use these sections to argue that it is in the *best interests of your child* and your constitutional right as a mother to have access to your child.

Another *Charter* argument that could be useful is the section 2(d) right of freedom of association. You could argue that you have the right to associate with your children, and that limiting your ability to interact with them is an interference with your *Charter* rights. Remember that children have a right to access their parents. Your child can argue that his/her rights are being interfered with if they are not allowed to see you.

## ***What sort of things should I tell the judge if I apply for access to my child(ren) while I am in jail?***

The judge will be making decisions according to his or her interpretation of the *best interests of your child(ren)*, so **you will need to argue that it is in your child(ren)'s best interests to stay in touch with you**. Important information for the judge to know includes things like:

- Were you your child(ren)'s primary caregiver (were you a single parent or did you do most of the parenting, including emotional and financial support and tasks like feeding, clothing, bathing, etc)?
- How was your child doing under your care (was s/he healthy, doing well in school, happy with his or her friends, supported by your family)?

The fact that you are in jail may bias the judge, as they do not see many applications from prisoners, so you need to **focus on the bond between you and your child(ren)** and how it is sufficiently important to you and your child(ren) that it be maintained.

## ***Can my child come to visit me in jail?***

Some children do have regular visits with their parents in jail. As long as there is no court order saying that you may not have access to your child(ren), then your child(ren) should be able to visit you. Special requests will need to be made in order to ensure you are able to have contact visits with your child. How often you have visits usually depends on how far your child(ren) are able to travel for the visits, and whether there is someone willing to bring them to visit you.

## ***Should I participate in the parenting skills program?***

While you should never feel that the fact that you are in jail means that you are an inadequate mother, there may be benefits to taking a parenting skills program offered by Nova Scotia Department of Corrections.<sup>119</sup> For one, many judges may have a bias, however unfair, against parents in jail. If you want to apply for access or custody of your child(ren), it may help if you can show the judge that you have taken a parenting course. Also, such programs often involve visitation with children, so this might be an additional way to see your child(ren) more frequently.

If there is no parenting skills program in the jail where you are being held, you may want to request that one be put in place.

## ***Do I still have the right to make important decisions about my child?***

If you do not have access, you may not have any ability to make such decisions. If you do have access, and certainly if you have custody, you may be able to make important decisions about your child's health, education, and well-being.

If you have joint custody of child(ren), meaning that you and the other parent share legal custody of the children, you will both have some ability to make decisions about your child(ren), even if the child(ren) only lives with one parent. If you and the child(ren)'s other parent are still in a relationship, then you automatically have the right to make decisions about your child because it is presumed that you have joint-custody, unless the child's other parent has obtained a court order saying that you no longer have custody.

Even though you are in jail, if your spouse or another family member has custody of your child, you might still be able to apply for joint custody. Unfortunately, many parents are not able to maintain custody of their child(ren) while they are in jail.

### ***Does my child have rights?***

The short answer is, yes. For example, your child has a right of access to you in order to maintain his or her bond with you. The ***Children and Family Services Act*** says that a child's wishes are part of the *best interests* of a child.<sup>120</sup> A child has the right to have her or his wishes heard directly. S/he also is entitled to have a spokesperson to speak on his/her behalf.<sup>121</sup> This is a right that is also protected by our *Charter*.

Article 7 of the *United Nations Convention on the Rights of the Child* says that a child has the right to know and be cared for by his or her parents. In the event that a child is separated from one or both parents, Article 9 says that the child can "maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."<sup>122</sup>

The Supreme Court of Canada has also recognized that keeping a child from his or her parents infringes the child's right to security of the person, and must only be done in accordance with the principles of fundamental justice.<sup>123</sup> This means that if you believe that your child is being kept from you for arbitrary or unfair reasons, you might be able to work with your child's caregiver to argue that your lack of access to the child violates his or her rights pursuant to section 7 of the *Canadian Charter of Rights and Freedoms*.

### ***What if my child is Aboriginal?***

The extent to which a child's Aboriginal heritage is considered in child protection matters varies between provinces and territories. In Nova Scotia, aboriginal children are subject to the Mi'kmaq Family and Children Services.<sup>124</sup> Maintenance of aboriginal culture may be considered part of what is in the best interests of the child. You may also be able to use aboriginality as a factor in support of an equality argument under s. 15 of the *Charter* against depriving women and their children of custody and access.



# PART III: PROTECTING YOUR RIGHTS



While many things in jail will restrict your freedom, you still maintain certain rights and privileges inside. **It is important to know the difference between rights and privileges:**

- A right is a legal entitlement which cannot be taken away from you, regardless of whether or not you are in jail. Withholding someone's right without a clear justification in law is against the law; and, there are remedies that may be used to ensure that rights are respected.
- Privileges, on the other hand, usually have to be earned in jail and are not guaranteed. For example, a temporary absence is not guaranteed and may be granted based on your behaviour or other factors. Corrections staff often can decide to grant or limit privileges, but they still should not be taken away for random or arbitrary reasons.

You have a number of very important rights. The following section will look at some of the rights you have in jail and discuss how you can make sure these rights are respected. When your rights are violated, look to the Remedies section to address the violation (PART V).

## Confidentiality and Access to Information

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Your personal information is very important in jail as it will impact many parts of your experience while incarcerated and released. Information in your file plays a big role in things like classification, programming and the success (or not) of applications for various forms of conditional release. It is therefore important to **know what is in your file and make sure that if you find any errors, you try to correct them.**

Your rights to protect your personal information are in the *Freedom of Information and Protection of Privacy Act*.<sup>125</sup>

### Is the information Corrections collects about me considered confidential by law?

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The ***Correctional Services Regulations*** make sure that **your information is confidential**. Corrections staff, volunteers (including students), and assistant probation officers must keep all the information they acquire confidential.<sup>126</sup> Staff members of Nova Scotia Department of Corrections are required to sign an oath, saying in writing that they will keep all of your information confidential.<sup>127</sup>

But, there are limits on your right to confidentiality. For example, if you are the cause of a major incident within the jail your information will be revealed to the general public and/or to the media.<sup>128</sup> According to the Nova Scotia Government major incidents include<sup>129</sup>:

- A major disturbance at a correctional facility (a disturbance of four or more persons in custody, over a protracted period of 60 minutes or longer, and (a) necessitating the hold or call back of staff or (b) exceeding the resource capacity of the facility, and requiring emergency police services to respond to the identified threat);
- Major disruptions of day-to-day activities in a correctional facility or Justice Centre/Court (including major power outages or loss of telephone service) where it has been determined that there is a threat to public safety;
- Purposeful damage to a correctional facility, Justice Centre/Court, Department of Justice office or Department vehicle estimated to be worth more than \$5,000;
- A motor vehicle accident that happens while transporting a person(s) in custody resulting in an emergency medical response at the scene or inpatient hospitalization;
- Assault committed by a person in custody against another person within a correctional facility, while in the custody of Sheriff Services, or while in court resulting in serious injury that requires inpatient hospitalization;
- Escape from custody including escape from Sheriff Services, escape from correctional facilities and escape from escorted temporary absences;

- Wrongful release of a person from custody before the end of his or her sentence or remand;
- Seizure of explosives or firearms at a correctional facility or Justice Centre/ Court;
- A hostage taking;
- A bomb threat;
- Major seizure of drugs at a correctional facility;
- Closure of a correctional facility to the public as a result of a health concern (e.g., flu outbreak); and
- The death of a person while in custody.

### ***Is my health information considered confidential by law?***

Yes. The *Code of Ethics* for the College of Physicians and Surgeons of Nova Scotia says that health professionals “protect the personal health information” of patients.<sup>130</sup> However, your information will not be kept confidential when they have reasonable grounds to believe there is a “significant risk of substantial harm” to yourself or to others. If those circumstances arise, the health professional has to “take all reasonable steps to inform” you that the “usual requirements for confidentiality will be breached.”<sup>131</sup>

### ***Do I have the right to know what information Corrections has in my file?***

**You have the right to have access to information in files they keep on you.**<sup>132</sup>

You have the right, like any other citizen of Nova Scotia, to use the *Freedom of Information and Protection of Privacy Act* (FOIPOP) to access any of your personal information.<sup>133</sup> Using the Act can be more complicated and time-consuming than simply dealing with staff at the jail but you are still entitled to use it.

### ***How do I access my own information through FOIPOP?***

**You have the right to access all of the information Corrections has about you, including your personal health information.** To access your own information, you must **file a request in writing** specifying the subject matter of the request to the relevant person or group.

If you are not comfortable seeking the assistance of staff to access your information, then **you may request assistance from the Elizabeth Fry staff or the Ombuds office.** You should receive a response acknowledging your request for information, and whether it will be provided within 30 calendar days.<sup>134</sup>

If you receive the response that you will not be granted access to the information, **you have 60 days after receiving the response to apply for the decision to be reviewed by the Review Officer.**



The Ombuds can help ensure that the government is following their policy/ legal obligations in terms of you accessing your information. Complaints about accessing your information can be made to the Ombuds Office in writing, by fax, over the phone, via e-mail, or in person. If you wish to make your complaint in person, we recommend that you call first to ensure someone will be available in the office to help you. You can contact the Ombuds Office at:

**Office of the Ombudsman**

5670 Spring Garden Road, Suite 700  
P.O. Box 2152  
Halifax, NS B3J 3B7

Telephone: 902-424-6780  
Toll-free: 1-800-670-1111  
Fax: 902-424-6675  
E-mail: ombudsman@gov.ns.ca

You can find a number of forms which may be used for procedures under the *Freedom of Information and Protection of Privacy Act* online at [www.foipop.ns.ca/](http://www.foipop.ns.ca/) forms. These forms are not needed to request access or a review, but you might find them helpful.

***Can any information be withheld from me?***

According to the *Freedom of Information and Protection of Privacy Act* (and other policies)<sup>135</sup> information can be denied for a variety of reasons. For example, information can be withheld if:

- It would disclose someone else’s confidential information;<sup>136</sup>
- It could reasonably be expected to threaten your safety or mental or physical health, or that of another person;<sup>137</sup>
- It would be detrimental to ‘the proper custody, control or supervision’ of someone who has been sentenced;<sup>138</sup>
- It would reveal information gathered by the police in the course of an investigation.<sup>139</sup>

***What if some of the information about me is wrong?***

If you think the information in your file is wrong, you should do your best to make sure it gets corrected. You are not allowed to alter information contained in your file, but you should tell the Superintendent, in writing, of the mistake. The Superintendent should then either correct the mistake; or, if she disagrees, note the objection in your file.

***Are my conversations and mail confidential?***

Some of your conversations and mail are confidential and some are not. Certain communications, called ‘privileged communications,’ are confidential. People with whom you share privileged communication include: <sup>140</sup>

- a lawyer;
- a member of the Legislative Assembly of Nova Scotia;
- a member of the Parliament of Canada;
- the Deputy Minister of the Department of Justice or the Executive Director

- (Assistant Deputy Minister) or a director of the Correctional Services Division;
- NS Police Complaints Commissioner;
- NS Civilian Director SIRT;
- a representative of the Office of the Ombudsman;
- a representative of the Human Rights Commission;
- an inspector designated under the Act;
- the Nova Scotia Police Complaints Commissioner; and
- the Nova Scotia Civilian Director of the Serious Incident Response Team.<sup>141</sup>

These calls are not allowed to be monitored or recorded.

Any other communications can be monitored or recorded in accordance with regulation and policy.<sup>142</sup> Staff may review non-privileged incoming and outgoing mail to ensure it doesn't jeopardize security, contain threats, aid in committing further offences, contain contraband or pose a risk to public safety.<sup>143</sup>

## **The Right to Counsel (Legal Assistance)**

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### ***Do I have a right to a lawyer while I am in jail?***

**You have a right to legal assistance in the following circumstances** (also known as right to counsel). You are entitled to be informed of this right anytime you are:<sup>144</sup>

- Arrested;
- Detained; or,
- Charged with an offence.

**You are always entitled to communicate with your lawyer while in jail free from restriction and free from monitoring.**<sup>145</sup> You are entitled to talk to your lawyer without anyone being able to hear or record what you are saying.

**You also have the right to be provided with information about legal aid services.**

### ***Are my communications with my lawyer private?***

**Yes.**<sup>146</sup> What you and your lawyer say to each other during visits cannot legally be monitored. Likewise, mail that goes in or out and is between you and your lawyer should not be read. You also have a right to confidential phone calls with your lawyer, but there are certain limits placed on your access to the designated phone line on which these calls take place.<sup>147</sup>

While all communication between you and your lawyer are supposed to be confidential, there is no guarantee that calls made on the phone systems will not be monitored.

## ***When would I use my right to legal assistance?***

There are numerous circumstances in which it is in your interest to exercise your right to counsel. **You should try to speak to a lawyer right away if you are:**

- Placed in close confinement;
- About to be transferred involuntarily to another institution;
- Have just arrived at another institution after an involuntary transfer;
- If you have a parole hearing; or,
- If you are charged with a serious disciplinary offence, either institutional (by the jail), or outside charges (by the police).

## ***Can you be denied the right to counsel?***

**Nobody, including the Superintendent, can interfere with your right to legal counsel.** This right is protected by section 10(b) of the Canadian *Charter of Rights and Freedoms*. You must immediately be given the opportunity to have a confidential phone call to your lawyer, unless there is an emergency that must be dealt with (i.e. a medical emergency), in which case you may have to wait until the emergency is under control.<sup>148</sup>

Unfortunately, the right to counsel, especially regarding incidents that take place in jail, continues to be interfered with in Canada.<sup>149</sup> While the *Arbour Commission* went as far as to recommend that some form of sanction be placed on those who fail to comply with a prisoner's right to counsel, the recommendation has not been implemented. For this reason, **you must be aware of and exercise your right to counsel.** Also, prison staff must also be aware of their duties regarding this important right.

## **Legal Aid**

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The right to counsel is protected by the *Charter*. If you need a lawyer and can't afford one, you may be able to get a legal aid lawyer to represent you on a range of legal matters.

If you are denied Legal Aid, that decision can be appealed. If you cannot otherwise obtain a lawyer, you may be able to get help from duty counsel at the courthouse.

For information about exercising your right to Legal Aid, see '*Getting Legal Aid*' in the Remedies section, PART VI.

# Health Care

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## General

### ***Who is Responsible for the Delivery of Health Services in Jail?***

The delivery of health services to women in custody is the responsibility of the Minister of Health. The health care services that are provided must include medical services, mental health services, and dental services.<sup>150</sup>

## Medical Services

### ***Do I Have Health Coverage?***

If you are a Canadian citizen and also a resident of Nova Scotia, you are entitled to medical services that are covered by Nova Scotia Medical Services Insurance (MSI). If you are the resident of another province, other than Quebec, but have been imprisoned in Nova Scotia, you will be covered by your home province's medical insurance program.<sup>151</sup>

Upon admission to a correctional facility, you will be asked to provide a current Nova Scotia Health Card.<sup>152</sup> If you do not have a current Nova Scotia Health Card, you will be required to produce a birth certificate or citizenship card so that a health card can be issued to you.<sup>153</sup> A social worker will be available to help you fill out the documents required to apply for a health card.<sup>154</sup>

If you refuse to provide the information necessary for MSI registration, the incident may be documented on a level II disciplinary report, and the resulting administrative costs will be taken from your account.<sup>155</sup> Without a valid health card, you may have trouble accessing non-emergency health care services, such as an elective surgery.<sup>156</sup>

### ***Uninsured Health Services***

Not all medical services are covered by MSI. Uninsured health services are not covered by MSI. If you require medical services that are not covered by MSI, you must get written approval from the superintendent. You will be required to pay all costs for these uninsured medical services. You are also required to provide written consent for the treatment with the understanding that you will be paying for the total cost of the non-insured medical service.<sup>157</sup> Health care providers must advise you of the medical services that are not covered by MSI.<sup>158</sup>

The services that are not covered by MSI include:

- Excisions of benign growth unless recognized as a pre-malignant condition;
- Removal of wax from ear;
- Removal of warts including papillomata, keratose, nevi, and moles, unless there is a clinical suspicion of skin cancer;
- Routine vision care from the 10th — 65th birthday;
- Second and subsequent ultrasound exam in uncomplicated pregnancy;
- Surgical assistance for cataract surgery and insertion of lens, except for women who require cataract surgery associated with glaucoma, vitreoretinal surgery, and corneal transplantation;
- Eye examinations, except for examination required for medical reasons and those that are ordered by an Optometrist for persons under 9 years of age and over 65 years of age, once every two years;
- Acupuncture;
- Annual or periodic complete physicals where no disease or symptoms are present;
- Eye glasses and hearing aids are not covered;
- Trusses, crutches, surgical appliances, wheelchairs and prosthetic appliances, except those that are insured under the MSI Prosthetic Services Program;
- Cosmetic surgery (removal of tattoos, varicose veins, liposuction, etc.); and
- Medical/Legal services (correspondence for legal purposes or court appearances as witnesses).<sup>159</sup>

### ***Health Assessments upon Admission to a Correctional Facility***

Upon admission to a correctional facility, you will be required to meet with a nurse and complete an “Admission Health Information Form”.<sup>160</sup> You should be told by the person completing the “Admission Health Information Form” about who the information will be given to and where the information will be stored.<sup>161</sup>

Filling out this form is part of your initial health assessment.<sup>162</sup> The nurse will complete the assessment to determine if you have any serious or chronic physiological, emotional, or mental conditions. **If you have symptoms of mental illness then you are supposed to be seen as soon as possible by the physician.** Also, if you have a history of mental disorders, the doctor can refer you to a psychiatric consult as part of your assessment.

If you indicate “yes” to conditions listed on the “Admission Health Information Form” as potential infection control concerns, you will be isolated until cleared by a health services professional, such as a nurse or a physician.<sup>163</sup> (Refer to section on “Infection Control”)

## ***Are My Medical Records Confidential?***

Your medical information and records are confidential and cannot legally be shared or disclosed outside the institution unless you authorize the disclosure. However, within the institution, health care staff are allowed to share specific health information with correctional staff if it is needed to help with your care. The health care staff have to tell you what information they are sharing with correctional staff.<sup>164</sup>

Correctional staff are also allowed to obtain and document important health information as specified on the “Admission Health Information Form” so that they can address immediate medical conditions, and identify potential infection control concerns etc.<sup>165</sup>

## ***Access to Health Care Services***

When you are admitted to a correctional facility the admitting officer must tell you how you can access health care services.<sup>166</sup> You may obtain access to health care services by putting in a request slip and request that staff file a written report about your injury/illness. Staff may make verbal requests in urgent situations.

The main times that you will access health services are:

- When you admitted to the jail;
- When you are in segregation;  
When you report an injury or illness; and
- When a staff member notices that you are injured or ill, and files an accident/ injury report.<sup>167</sup>

The Central Nova Scotia Correctional Facility has 24 hour on-site health care providers at the health clinic.<sup>168</sup> However, this does not mean that you will always have access to a doctor. At the Central Nova Scotia Correctional Facility the doctor is only on site for 3 hours, twice a week. Nurses are available the rest of the time, and after hours, from 11pm-7am, there will be a paramedic working on site.<sup>169</sup> At the Central Nova Scotia Correctional Facility, a woman doctor will be available on Wednesdays if you prefer to be seen by a physician of the same sex.<sup>170</sup>

You are entitled to reasonable access to these health care providers. Part of this “reasonable access” is that correctional staff must tell health care providers when you have an urgent need or issue requiring immediate medical attention.<sup>171</sup>

Because access to doctors is limited, and because the health clinic is not equipped to provide emergency care, referrals to outside medical agencies may be made on your behalf, if health care staff think it is needed. Correctional Services will arrange for you to be transported to these outside medical referrals.<sup>172</sup>

## ***What happens if I refuse treatment?***

**You do not have to accept medical treatment.**<sup>173</sup> Before you receive medical treatment, health workers must ensure that you are consenting to the treatment. You can ask questions about your treatment, what risks are involved, and if there are any other options. If you are unconscious, staff can provide you with treatment if it is an emergency and your life is at risk.

The nurse or doctor should explain to you the consequence of refusing treatment. If you refuse medical treatment, then you will be asked to complete a *Refusal of Medical Treatment Form*. If you refuse to sign the form, the staff will complete the form.<sup>174</sup>

## ***What if I Require Medication?***

### **General**

The Central Zone of the Nova Scotia Health Authority is responsible for the distribution of medication in Nova Scotia's provincial prisons.<sup>175</sup> This means that while you are in custody you are not allowed to use or keep any of the medication that you received before being admitted to a correctional facility.<sup>176</sup> Any medication that you bring with you to a correctional facility will be processed by admitting staff and listed on your Personal Property Declaration Form.<sup>177</sup>

**If you need medication, you should mention this when you are first assessed by health care staff.** Any required medication must be re-ordered by the doctor who is responsible for the correctional facility.<sup>178</sup> They will do this after they confirm that you had a valid prescription before you were admitted to a correctional facility.<sup>179</sup>

The Central Zone of the Nova Scotia Health Authority only prescribes certain medications listed on their "Prisoner Health Formulary". Because of this, they might prescribe you different medication than you are used to.<sup>180</sup> If you are not responding well to the medication that has been prescribed to you, fill out a Health Care Request Form and speak with the doctor.

Any prescription or non-prescription medications that were not issued by staff will be considered contraband.<sup>181</sup> The ***Correctional Services Act*** states that everyone who possesses contraband in a correctional facility is guilty of an offence.<sup>182</sup>

If you are caught "cheeking", hoarding, trading or using medication for a reason other than the prescribed reason then health care, staff may decide to wean you off that particular medication. Weaning will be completed within a few days, up to a maximum of four weeks. Furthermore, if you are caught possessing medications that are not on your list of prescribed medications, health care staff may decide to review your prescribed medications<sup>183</sup> and you may also be subject to criminal or disciplinary charges related to possession of contraband.

## ***Over the Counter Medications, Vitamins and Dietary Supplements***

Prisoner Health Services will not provide you with over the counter medications, vitamins, or dietary supplements unless the particular product is recommended to you by a physician for a diagnosed medical condition.<sup>184</sup>

If you require over the counter medications, vitamins or dietary supplements, you must complete a “Health Care Request Form” in order to see a health care staff member. When health care staff receive the completed form, they will interview and assess you. If health care staff decides that you require an assessment by a General Practitioner, you will be placed on the General Practitioner list. After your assessment and diagnosis, the General Practitioner will complete a “Capital Health Physician Order Sheet” with a complete order for the required over the counter medication, vitamins, or dietary supplement.<sup>185</sup>

### ***Benzodiazepine Restriction***

Benzodiazepine is commonly prescribed to treat anxiety, insomnia, agitation, seizures, muscle spasms, or alcohol withdrawal. The Central Zone of the Nova Scotia Health Authority’s “Prisoner Health Formulary” limits the number and list of medications that will be available to you. The types of benzodiazepines that are available for use in correctional facilities are Diazepam and Clonazepam.

If you have a valid prescription for benzodiazepine medication, correctional facility health care staff should contact the on-call physician when you are first admitted. The physician will decide if you require this medication and, if so, will provide a medication order for an equal amount of Diazepam or Clonazepam.<sup>186</sup> If you are used to taking a different type of benzodiazepine, make sure you talk to health care staff about how Diazepam or Clonazepam will affect you differently.

### ***Methadone Administration***

If you are admitted to the Central Nova Scotia Department of Corrections Facility and you are currently taking Methadone, you will have your prescribed regime adjusted and maintained while in custody.

Before you can participate in the Methadone Program, you must read and sign the “Methadone Treatment Plan”.<sup>187</sup> You should be informed that any breach of the agreement will result in your Methadone treatment being stopped. There is no appeal process for the discontinuation of Methadone as a result of a clear breach of the treatment agreement.<sup>188</sup>

It is also very important to know that the Prisoner Health Unit will not start Methadone treatment if you have not already been prescribed a treatment regime before you were admitted to a correctional facility. The Prisoner Health Unit only



continues and maintains Methadone treatment that has already been started in the community. In order to continue your treatment you will need to be assessed by health care staff.<sup>189</sup>

The maximum dose of Methadone that can be distributed to you is 120mg/day, except in very rare situations. If your normal dose of methadone is more than 120mg/day, a formula will be applied to determine the proper amount that you should be given. If that number is more than 120mg/day then you will be weaned down to 120mg/day over time. If you are serving time on weekends or if you are serving an intermittent sentence, you should be given your full dose of Methadone without the formula adjustment.<sup>190</sup>

If you are accepted to the correctional facility Methadone Program, health care staff will get a urine sample from you for drug screening and to determine baseline vital signs. While you are under the care of the health care unit team, health care staff may also get random urine samples for drug screening on a monthly basis.<sup>191</sup>

### ***Allergies/ Epipen Administration for Severe Allergic Reaction***

Health care staff must communicate in writing to the jail's dietician all of your food allergies. Your allergies will also be recorded in the "allergy space" on the "Medication Record Sheet" in red ink to alert the people giving out medication.

If you are allergic to bee stings, correctional staff will be alerted. Clearly written instructions should be given by health care staff to correctional staff for how to deal with these types of allergic reactions.<sup>192</sup>

Epipens should be stored and maintained in readily accessible locations throughout your correctional facility. Ask correctional staff where these locations are. If you are at risk for a severe allergic reaction and are out on a conditional release, Epipens should be carried by the staff who are escorting you.<sup>193</sup>

### ***What If I Have Specific Dietary Needs?***

Your dietary needs are to be assessed upon admission to a correctional facility. If it is needed, health care staff will complete a dietary referral and will forward it to Corrections Dietary. (See "*Prisoner Entitlements and Privileges: Meals*").

### ***Infection Control***

If you present signs and symptoms of an infectious disease, as described on the Admission Health Information Form, you will be isolated in order to prevent the spread of suspected disease until you are cleared by health care staff.<sup>194</sup>

## **Work Program Exemptions**

If you are taking part in a work program and feel unable to work because you feel sick, you will need to be assessed by health care staff. If you are given a work exemption, it will stay in effect until you are reassessed by health care staff, or until the date indicated on the "Work Program Exemption Form".<sup>195</sup>

In order to get an exemption from a work program, you must complete the Central Nova Scotia Correctional Facility Health Care Request Form/Prisoner Health Care Complaint Form. When the physician receives the form, they will assess your health and give the results to the charge nurse. The charge nurse will then tell the correctional supervisor if you are unfit to work. Health care staff will then complete the Work Program Exemption Form, which will excuse you from the scheduled work.<sup>196</sup>

## **Pregnancies**

If you are pregnant while in custody, you should let health care staff know. Pregnant women at the Central Nova Scotia Correctional Facility will have access to a Doula, through the Chebucto Family Centre.<sup>197</sup> A Doula is a woman from the community who is trained to support you throughout labour and delivery, as well as in the weeks before and after birth.<sup>198</sup> If you go into labour while in custody, you will be transferred to a hospital to give birth. After giving birth, you will be discharged by the hospital (usually within 3 days) and returned to prison.<sup>199</sup> The person designated to do so will then take custody of your child (see "*Mothers In Jail*").

## **Mental Health Services**

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### ***How Can I Receive Mental Health Treatment?***

If you are showing signs and symptoms of serious mental health issues, you will be assessed by psychiatric services. Following the assessment you may be referred to the Mentally Ill Prisoner Unit (MIOU) for treatment.<sup>200</sup> The MIOU is located within the East Coast Forensic Hospital (ECFH), which is attached to the Central Nova Scotia Correctional Facility. The MIOU is classified as both a prison and a hospital. Because it is classified as a hospital, health care staff are, *in some circumstances*, allowed to force medications on you, according to the *Involuntary Treatment Act*.<sup>201</sup> The East Coast Forensic Hospital is designated as a psychiatric facility under the *Involuntary Psychiatric Treatment Act*. This means that a person may be involuntarily admitted and/or treated **only** if they are found to have a mental disorder, to be incapable of making decisions about their own treatment,<sup>202</sup> and either to pose a risk of serious harm to self or others or to be facing likely physical or mental deterioration without treatment. You cannot be forcibly treated (except in very rare cases of emergency) unless health authorities have established (and can prove) that you lack capacity to make those decisions yourself.<sup>203</sup>

If you have been identified as having serious mental health issues, Prisoner Health Services are supposed to provide you with access to after hours and weekend emergency mental health services.<sup>204</sup>

If you are demonstrating mental health issues after hours or on weekends, a Correctional Officer will bring you to the Prisoner Health Care Unit for an assessment. A health care provider, such as a nurse, will assess you and then contact the General Practitioner who is on call. The General Practitioner will then assess the need for emergency psychiatric referral. If the Practitioner thinks you need an Emergency Psychiatric Assessment, the on-call psychiatrist will be contacted. The psychiatrist may contact the MIOU if an urgent consultation is necessary, at which point you may be admitted to the MIOU.<sup>205</sup>

If you are thought to be at risk of hurting yourself, a health care provider may place you on suicide watch.<sup>206</sup>

### ***Suicide Watch***

Health care providers will assess you and provide you with treatment if you are on special watch and deemed at risk of suicide.<sup>207</sup> If you have been identified by health care providers as being suicidal, you will be placed on suicide watch until you are further assessed by a psychiatrist. The psychiatrist, in consultation with a mental health nurse, will determine whether or not the suicide watch will continue.<sup>208</sup>

When you are put on suicide watch, you will be given a “suicide gown” to wear and a “suicide blanket” to sleep with.<sup>209</sup> You will also be given a mattress, but this can be taken away from you if staff believe you may use it to harm yourself.<sup>210</sup> If your mattress is taken away, you will be given a “suicide mattress”.<sup>211</sup>

### ***Dental Services***

You will be given access to dental services in order to relieve pain and control infections.<sup>212</sup> You can request dental services using the *Prisoner Health Dental Request Form*.<sup>213</sup>

Health care providers will assess you and document their findings in the health record before submitting the dental request form. If the Central Nova Scotia Correctional Facility dentist determines that you require a referral to a specialist, they will get pre-approval from the Manager before the treatment takes place.<sup>214</sup>

Emergency dental services include treatment for the following:

- Abscesses;
- To reduce or control infection;
- Toothache;

- Tooth extraction; and
- Temporary filling to alleviate dental pain.

### ***What if I have a complaint about lack of access to or quality of health care?***

All health care professionals (doctors, nurses, dentists, psychiatrists, etc) have an obligation to act professionally and ethically. Each profession has its own regulatory body, which protects the public by making sure that these codes of conduct are being followed. If you have a complaint about someone involved in health care you can file a complaint with the institution you are in.<sup>215</sup> You can also file a complaint with the regulatory body of the person's profession. Since this is the responsibility of the province, you will be looking to Nova Scotia regulatory bodies.<sup>216</sup> Their contact information is in this section of the handbook.

You can file a complaint about a specific act by a health care worker (something they *did*), or you can complain about an omission (something they *didn't* do that should have been done). If you haven't been able to get treatment for something, or haven't received proper care from a professional, or if they are treating you unethically, you can file a complaint to one of the regulatory bodies.

Whenever you want to file a complaint, it is important to write down all important information about what happened. Your complaint should include things like dates, times, who was involved, and what happened.

### ***What will happen if I file a complaint?***

Once you have filed your complaint you may have to explain your complaint to a panel of people making the decision about whether the complaint is valid. The purpose of regulatory bodies is to monitor and regulate professionals, not to compensate people who have experienced the misconduct or incompetence. So even if your complaint is valid, you will not receive any money. However, the professional will be penalized for what s/he has done. Possible outcomes include fines for the health care provider, training courses, having to have a woman in the room at all times, or being suspended from working for a period of time. In very serious cases, the person might have his/her ability to continue to practice terminated. In all cases, remember to carefully document all relevant incidents.

Even though you will not get compensated personally, filing a complaint with a regulatory body can be a very useful tool in making sure that what- ever happened to you stops, and does not happen to anyone else. It is important to make sure that health care workers act professionally and ethically, and ensure that you are treated with respect.

## Doctors

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If you have a complaint about a doctor, you can file it with the College of Physicians and Surgeons of Nova Scotia. The Canadian Medical Association's *Code of Ethics* says that doctors must take reasonable steps to avoid harm to the patient, not discriminate against any patients, respect the right of a patient to accept or reject any medical treatment, and protect the personal health information of the patient.

You can begin a complaint to the College by filing a complaint form.<sup>217</sup> College staff can help you to prepare the complaint. Once a complaint is received, the College forwards a copy to the physician, requesting a response. The College arranges for additional information, such as hospital records or records from other physicians, to be obtained.

Put as much information as you can in your complaint, including:

- your name;
- the name of the physician;
- any dates, times, and/or locations where the behaviour complained about took place;
- any supporting documents you might have (which may include medical records).

### **College of Physicians and Surgeons of Nova Scotia**

Suite 5005 – 7071 Bayers Road  
Halifax, Nova Scotia, Canada B3L 2C2  
E-mail: [info@cpsns.ns.ca](mailto:info@cpsns.ns.ca)  
Phone: 902-422-5823  
Toll-Free: 1-877-282-7767  
Fax: 902-422-7476

### **Investigations Department**

Fax: 902-422-5271

The College will investigate the complaint, and present the evidence to its Complaints Investigation Committee. This Committee will then review the material and make a decision. It is made up of four physicians and one member of the public. It can recommend: no further action; counselling or a reprimand. If it is serious enough, they can refer the complaint to the Hearing Committee.

In a hearing, evidence is given/taken under oath, there must be full disclosure of documents and the opportunity to cross-examine witnesses. In the end, the Hearing Committee makes a finding on the guilt or innocence of the physician.

The Committee has the authority to impose one or more of the following orders: revocation of license; suspension of license; fine; or, reprimand. Various conditions may also be imposed. Physicians have the right to appeal any order from Council, to the Court of Appeal.

## Psychiatrists

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Psychiatrists are also regulated by the College of Physicians and Surgeons. If you have a complaint about a psychiatrist, you can file a complaint using the same process as you would for physicians.

## Nurses

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Complaints against a nurse can be sent to the College of Registered Nurses of Nova Scotia. A complaint must be in writing and signed. It can be about the nurse's conduct, actions, competence, character, fitness, health, or ability. You should include<sup>218</sup>:

- your name;
- the name of the nurse(s);
- details of the alleged misconduct, including dates, times and locations;
- any other supporting documents.

### **CEO Sue Smith**

#### **College of Registered Nurses of Nova Scotia**

4005-7071 Bayers Road

Halifax, NS B3L 2C2

Email: [conduct@crnns.ca](mailto:conduct@crnns.ca)

Telephone: 902.491.9744 (1.800.565.9744) ext. 232

When you file a complaint, Professional Conduct Services (PCS) will decide whether to investigate. If they decide to investigate, you will be given the name of the investigator and the nurse will be sent a copy of the complaint. He or she will be invited to respond. PCS will look at the written evidence and decide to either: dismiss the complaint or refer it to the Complaints Committee. If the complaint implies a serious health issue about the nurse, it will be sent to Fitness and Practice.

These committees decide what will happen to the nurse(s). They can either dismiss the complaint, order that conditions be imposed on the nurse, or they may order a reprimand, fine, or any other order that it sees fit. In the alternative, either Committee may dismiss the complaint.

# Psychologists

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If you have a complaint against a psychologist, you can file it with the Nova Scotia Board of Examiners in Psychology (NSBEP). The required complaint form can be obtained by contacting the NSBEP.

**The Registrar (*Please mark your envelope: Complaint Issue*)**

Nova Scotia Board of Examiners in Psychology  
Suite 455, 5991 Spring Garden Road  
Halifax, NS B3H 1Y6  
Telephone: (902) 423-2238

Once you've filed your complaint, the registrar will notify the psychologist named of the complaint (provided you signed the release that is mailed to you with the complaint form), who can submit a response, including any explanations or representations. The investigation committee will investigate the matter, and their decision be given in writing to the Registrar.

The Committee is responsible for evaluating the merits of any complaint brought against a licensed member. If the Committee determines that there are sufficient grounds to initiate proceedings against a member, the matter shall be referred to a formal hearing.

The formal hearing will assess the validity of allegations of professional misconduct or incompetence against any member and to determine the remedy where it finds the member has committed an act of professional misconduct or has demonstrated incompetence.

# PART IV: RESTRICTIVE MEASURES



Beyond the obvious restrictions on your rights and liberties that prison necessarily imposes, there are ways your rights and/or liberties can be further restricted. This section outlines some of those, and begins to suggest what you can do to protect yourself and your peers.

## Use of Force

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Correctional staff must restrict the use of force to that which is necessary to carry out their duties, and any use of force must be reasonable.<sup>219</sup> Corrections staff may use force in order to:

- Maintain custody and control over you, e.g. to prevent you from escaping;
- Maintain order and control of a correctional facility, e.g. if you attempt to assault a staff member or another woman;
- Prevent you from committing self-destructive behaviour, e.g. if you are trying to harm themselves or others;
- Conduct a search, e.g. for the search and seizure of contraband;
- Prevent the destruction of property, e.g. if a prisoner is attempting to break something.



**If force is used, it still has to be reasonable in the circumstances.** Whenever force is used against you or another prisoner, the staff must file a report with the superintendent. The superintendent must then review the report to determine if the force was reasonably necessary.<sup>221</sup> **If you make an allegation of excessive use of force by a staff member, the staff must commence an immediate investigation.**<sup>222</sup>

## Close Confinement

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### ***What is close confinement?***

Close confinement is also known as “segregation”, “the hole” and “solitary confinement”. **Close confinement is a status, not just a place.** If you are placed into close confinement, you are separated from the general prison population and isolated in a cell. Your freedom inside the prison is restricted. Segregated prisoners do not have the same level of access to the rest of the prison, programs, yard, gym, etc.

In a recent decision, the Supreme Court of Nova Scotia ruled that **any individual who is kept in his or her cell for twenty-three hours a day should be considered to be in “close confinement”, regardless of whether he or she is moved to a special “segregation cell”.**<sup>223</sup> In that case, federal prisoners kept in their cells for 23 hours a day made successful *habeas corpus* applications because they had been denied proper review procedures and/or reasonable justification for their placement in close confinement.

While that decision dealt specifically with federal prisoners on remand, women in maximum security and women on remand may argue, similarly, that they are subject to “close confinement” in order to challenge their treatment by way of *habeas corpus* (see chapter 5), or to seek other remedies described in chapter 5. That is, if you are kept in a cell for 23 hours a day, whether or not it is specified as a segregation cell - and regardless of whether you are on remand — a court may recognize these conditions as amounting to “close confinement” and on that basis inquire into whether there is adequate legal justification or procedural protections for such severe treatment.

### ***What is the purpose of close confinement?***

The purpose of close confinement is to keep you from associating with the general jail population. Jail authorities justify such close confinement by arguing that it is necessary in order to ensure the security of the institution and/or the safety of the staff and other women. Sometimes you might be placed in close confinement because institutional staff believe you are at risk of self-injury, suicide, or that other women pose a risk to you.

Regardless, **women in close confinement have a right to be treated in a safe and humane manner and be subject to the least restrictive measures possible. Close confinement is an extreme measure and should only be used when there are no other reasonable alternatives.**<sup>224</sup>

Because of its severity, correctional staff have a duty to return women in close confinement to the general population at the earliest possible time.<sup>225</sup> Section 7 of the *Charter* places a “least restrictive intervention” principle onto the interpretation of correctional law and policy.<sup>226</sup>

## ***When can I be placed in close confinement?***

### **Disciplinary versus administrative close confinement**

You can be placed in close confinement for a variety of different reasons. Some of these are administrative reasons, meaning that they have to do with the running of the jail. Administrative close confinement is frequently used for the protection of yourself or others. You could alternatively be placed in close confinement for disciplinary reasons (as a punishment).

You may be placed in **administrative** close confinement for the following reasons:

- If, in the opinion of the superintendent, you are in need of protection<sup>227</sup>; this might include if you are seen to be at risk of self-harm.
- If, in the opinion of the superintendent, you must be placed in close confinement in order to protect the security of the correctional institution or the safety of others.<sup>228</sup>
- If you request to be placed in close confinement.<sup>229</sup>

You may be placed in **disciplinary** close confinement for some of the following reasons:

- If it is alleged that you have broken one of the rules in the regulations;
- Some examples of misconduct include: assaults or threats to assault another person, and smuggling and/or possession of contraband.<sup>230</sup>

## ***Are there any other reasons I could be placed in close confinement?***

According to the law in Nova Scotia, you can also be placed in close confinement if you have received a disciplinary ‘penalty’ of close confinement.<sup>231</sup> You may also be ‘dry celled’ on suspicion of hiding contraband in your body. In a dry cell, everything you eat and excrete is monitored by jail staff and often by video as well.<sup>232</sup>

Staff are only allowed to dry-cell you if they have reasonable suspicion that you have contraband hidden in your body. **Staff are not allowed to dry-cell you for punishment.** If this has happened to you, please see the *Remedies* section on page 84.

## ***How long can I spend in close confinement?***

### **Disciplinary Close Confinement**

If you are in disciplinary close confinement, the maximum period you can spend in close confinement is determined by the level of infraction:

- For level one infractions, the maximum is three hours;
- for level two, it is seven days; and
- for level three, it is 10 days.

If you are placed in close confinement as a result of being found to have committed misconduct, you may be placed in close confinement for no more than 10 days, unless the Director, Correctional Services, approves further confinement up to 15 days.<sup>234</sup> After that, a further continuous period of close confinement is prohibited unless approved by the Executive Director (or someone who has been delegated this power by the Executive Director).<sup>235</sup>

### **Administrative Close Confinement**

According to Correctional policy, you can be put in administrative close confinement for an undefined period of time.<sup>236</sup> However, this conflicts with international standards: see, e.g., *Mandela Rules* 43-45. It also may conflict with the *Charter* right to the “least restriction on liberty” compatible with lawful government purposes.

Regardless of whether you are in close confinement for administrative or disciplinary purposes, **the superintendent must review your case after 24 hours to determine whether or not close confinement should be continued.**<sup>237</sup> **After that, the superintendent must continue to review close confinement every five days.**<sup>238</sup> **The superintendent must request permission from the Executive Director for continuation of close confinement beyond 15 days.**<sup>239</sup> You should ask staff, the deputy superintendent or the superintendent to see these documents.

## ***What procedures must be followed, and what rights do I have while in close confinement/ segregation?***

### **For both administrative and disciplinary close confinement**

- Because close confinement is such an extreme and restrictive measure, there are numerous rules governing its use.
- When you are admitted to segregation, you will be searched and given clean clothes.<sup>240</sup>
- You should receive at least 30 minutes each day outside of your cell for recreation and exercise. If you are denied this exercise you are entitled to written reasons for the denial.<sup>241</sup>
- You should be permitted to shower.<sup>242</sup>
- You can receive and send letters, although your writing materials will usually be removed when you’re finished writing.<sup>243</sup>

- Even if you are not under self-harm watch, administration may implement a “no sharps” behaviour management strategy, which must be reviewed daily.<sup>244</sup>

While you are placed in close confinement, your visiting privileges will be suspended. Your visitors should be notified of the suspension by the shift supervisor.

- **You always retain the right to contact your lawyer, whether or not you are in close confinement. You should not be denied access to your lawyer while in close confinement.**<sup>245</sup>
- **If you have medical concerns, you must receive timely medical attention even if the jail demands that you remain in close confinement.** If a health professional is on duty, she is required to visit you daily.<sup>246</sup>

### **Rights specific to being placed in administrative segregation**

- Your placement in administrative segregation must be approved by the captain or unit supervisor.<sup>247</sup>
- If you are being placed in segregation for non-disciplinary reasons, you still should be provided with clothing and amenities, meals, exercise, library access, ability to see the superintendent upon request, and in certain circumstances canteen and personal visits.<sup>248</sup>

### **Things staff must do when placing you in administrative segregation:**

- Correctional Services staff must notify the captain or unit supervisor if they think you require administrative segregation;
- Correctional Services staff must document on an information report the reasons they are requesting you be placed in administrative segregation. These reasons must be forwarded to the unit supervisor or captain and also placed in your file.<sup>249</sup>

### ***What can I do if my rights have been violated?***

Ordinarily, where you suspect your rights have been violated, you must use the internal complaint process in place at the jail before you consider taking the matter to court. In other words, a court is unlikely to grant you a remedy if you have not gone through the internal remedy procedure first.

However, placement in close confinement, and/or a change to your security level resulting in more restrictive conditions may be challenged by way of a *Habeas Corpus* application without the need to first make an internal complaint. This is the case where you can establish that the internal complaints process does not offer an “adequate alternative remedy” to a court-based *habeas corpus* challenge. In addition, where institutional conditions present a serious or urgent threat to your health or well being (for instance, in a case where prisoners in a Temporary Detention Unit were regularly exposed to extreme cold temperatures in winter), a court may allow you to pursue your rights on judicial review, without the need to exhaust the internal complaints process first. (See the section on *Remedies* for more information.)

If you wish to explore the options for asserting your rights, there are a number of steps you can take for help:

1. Contact your lawyer if you have retained one.
2. If you do not have a lawyer and there are charges pending, you should put in a request to see Legal Aid.
3. Notify the Ombuds Office to inform them of any suspected violation of your rights.
4. Contact the CAEFS Nova Scotia information line at 1-844-379-7624, or Elizabeth Fry Societies of Mainland Nova Scotia at (902) 454-5041 or Cape Breton at (902) 539-6165.

## Transfers

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### ***What do I need to know about transfers?***

You can be transferred to another correctional institution for a number of reasons including the following: if there are too many people at your current institution; for security; for health care purposes; for humanitarian or rehabilitative purposes; or because of a relationship with a staff member.<sup>251</sup> You can also be transferred to a hospital or psychiatric facility for treatment.<sup>252</sup>

If you are transferred to a hospital or psychiatric facility, you are still considered to be in custody. The time that you spend there will be counted the same way it would if you were in jail. **You do have the right to refuse treatment unless you have been deemed incapable of making treatment decisions because you are unable to understand and appreciate the information relevant to the decision.**

### ***What kinds of transfers are there and can I object to a decision to transfer me involuntarily?***

All types of transfers fit into one of three categories — voluntary, involuntary, and emergency. However, there are a number of factors that further subdivide transfers into two basic categories. The law takes some of the differences into account, and sometimes different rules can apply to these.

**Voluntary transfers:** Transfers that are initiated by you when you request to be moved to a different jail, usually in another region but, in some cases, even in another country of which you are a citizen.

**International transfers:** These transfers are not the same as extraditions or deportations. They are an example of a type of voluntary transfer to which a distinct set of legal rules apply. You will likely need legal, consular and/or government assistance in order to apply for this type of transfer.

## ***What can I do if my rights are violated?***

**You have the right to receive in writing from the institutional head the appropriate complaint procedure related to transfers.** It is important that you use this complaint process if you feel the decision is wrong.

Ordinarily, a court is unlikely to grant a remedy to you if you have not exhausted the institution's internal remedy procedure first. However, if you are facing transfer to a higher security environment, more restrictive of your liberty, then you may be able to challenge this by way of a *habeas corpus* application without exhausting the internal complaints process first. (See *PART V*)

### **Other steps for help:**

Notify the Ombuds Office (1-888-465-1100) and inform them of the violation. Contact the CAEFS Nova Scotia information line at 1-844-379-7624, or Elizabeth Fry Societies of Mainland Nova Scotia at (902) 454-5041 or Cape Breton at (902) 539-6165.

## **Disciplinary Charges**

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### ***What is the purpose of the disciplinary system?***

The disciplinary system is in place as a tool for the jail administration to ensure order, security and effectiveness.<sup>253</sup> According to Correctional services, the disciplinary system is designed to make sure your behaviour meets reasonable expectations of the correctional facility, to encourage personal growth and to impact your behaviour and development.<sup>254</sup>

Staff must try to deal reasonably with a situation before charges are laid for misconduct. But, they are legally allowed to take more severe disciplinary action if they consider the misconduct to be serious enough.<sup>255</sup>

### ***What are disciplinary offences?***

In Nova Scotia, offences are listed in the ***Correctional Services Regulations***.<sup>256</sup> They include, amongst others:

- bribery;
- gambling;
- assaults; and
- contraband.

Offences are categorized into three levels by their seriousness and the degree of responsibility.<sup>257</sup>

- **Level One** offences are neither serious nor malicious.
- **Level Two** offences are intentional.

- **Level Three** offences show blatant disregard for security, rules or property and often amount to offences under the *Criminal Code*.<sup>258</sup>

For example, a contraband offence can range from possession of more than the allotted amount of food (Level One) to selling weapons or drugs (Level Three).<sup>259</sup> Even if an offence is criminal, it still may be subject to disciplinary action.<sup>260</sup>

## ***What happens if I am charged with an infraction or misconduct?***

After every alleged breach of rule, a disciplinary report must be filed and **you have a right to get a copy of this disciplinary report that should explain which rule you are charged with breaching.**<sup>261</sup> This information can only be withheld from you if there is good reason to believe the information will jeopardize safety or disrupt the running of the correctional facility.<sup>262</sup> Also, **you cannot be penalized for any misconduct in the correctional facility other than by the superintendent in accordance with the *Correctional Services Act and Regulations*.**<sup>263</sup>

### **If you are charged with an offence (Level Two or Level Three), you:**

1. Must be informed by the Superintendent of the nature of the charge and then conduct a hearing to decide whether or not you committed the infraction or misconduct with which you are charged.<sup>264</sup>
2. The matter will be referred to the disciplinary adjudicator, the deputy superintendent.<sup>265</sup>
3. An adjudicator will then hear your case where you have the opportunity to explain your actions.
  - a. Your case should be heard within 24 hours, when possible.<sup>266</sup> Where the investigation and adjudication cannot be done within 24 hours, and you are being held in close confinement, the period of your close confinement might be extended.<sup>267</sup>
  - b. You have the right to be present at all stages of the hearing.<sup>268</sup> You may be denied this right where there are reasonable grounds to believe that your presence would threaten the safety of someone present at the hearing. Moreover, you may be removed from the hearing if your presence is deemed disruptive.<sup>269</sup> You must be given written reasons for a decision to exclude you from the hearing.<sup>270</sup> You should demand such reasons. Exclusion from your hearing is a very serious limitation on your basic rights and should only occur on the clearest of justifications.
  - c. The following procedures must apply when conducting your adjudication hearing<sup>271</sup>:
    - i. the charge(s) must be read to you and the adjudicator must take the action necessary to ensure you understand the charge(s)
    - ii. a guilty or not guilty plea must be entered on the charge(s). When you plead not guilty, all evidence pertaining to the incident must be presented, allowing you to make a statement,

call a witness, and cross examine a witness (unless cross examination is deemed a threat to the safety of the witness or disruptive to institutional security or order).

4. **If you plead ‘not guilty’**, the adjudicator may postpone the hearing until the reporting staff or other witnesses are interviewed and based on the review, it will make a determination about your guilt.
  - a. The adjudicator (the deputy superintendent)<sup>272</sup> must make a determination as to your guilt or innocence based on all evidence presented, measured by the standard of “a balance of probability”. This standard means “more likely than not”.<sup>273</sup>
5. **If you plead ‘guilty’** to an institutional charge, the adjudicator (the deputy superintendent) must take all relevant information, both verbal and written, into account and decide what your disciplinary penalty will be based on the circumstances of the offence and your background character.<sup>274</sup>
6. **If you plead ‘guilty’** to an institutional charge, the adjudicator (the deputy superintendent) must take all relevant information, both verbal and written, into account and decide what your disciplinary penalty will be based on the circumstances of the offence and your background character. If you are found guilty, the adjudicator (the deputy superintendent) will make recommendations to the superintendent concerning your penalty.<sup>275</sup>
7. All decisions of the adjudicator and the reasons for the decisions must be recorded and include<sup>276</sup>:
  - a. summary of details of the hearing
  - b. suggested penalties to be imposed by the superintendent
8. If you plead guilty or are found guilty, the adjudicator must proceed to make an appropriate disposition or disciplinary penalty based on the circumstances of the offence and your background and character.<sup>277</sup> Review and approval of recommendations made by the adjudicator is restricted to the superintendent.<sup>278</sup> This means that only the superintendent can make the final decision about your penalty.



## ***Disciplinary Penalties***

**The range of penalties that can be imposed include:**

Withdrawal of privileges, such as <sup>279</sup>

- recreation (but **the right to exercise outside for at least 30 minutes per day is not a privilege, but a right, and cannot be taken away from you**)
- canteen
- visits (see s.95(3) CSR)
- telephone calls (but **the right to telephone calls with: your spiritual advisor, your lawyer, a representative of the Office of the Ombudsman, a representative of the Human Rights Commission, is not a privilege, but a right, and cannot be taken away from you.**)
- correspondence
- Performance of work
- Close confinement <sup>280</sup>
  - you may be placed in close confinement for no longer than 10 days. After that, special authorization for further confinement up to 15 days must be obtained from the Director of Correctional Services. Close confinement beyond 15 days can only occur with further approval of the Executive Director or his/her delegate;
  - you may be placed in room confinement in your dormitory or cell, or designated segregation areas;
  - if you have already been in close confinement prior to the adjudication, you must have those days counted towards any close confinement penalty imposed by the adjudicator;
  - All requests for extensions of close confinement up to and/or beyond 15 days must be accompanied by copies of the 24 hour and five-day reviews.<sup>281</sup>
- **Restorative justice:** <sup>282</sup>
  - this can include paying to repair the damage you have caused, a letter of apology, and written recognition of your inappropriate actions and a plan for change.
- Forfeiture of remission <sup>283</sup>
- Assignment of extra work duties that are not a part of the regular routine<sup>284</sup>
- Having to pay for damages to facility or property of staff or other women that resulted from misconduct. Payment can come from your trust account.<sup>285</sup>

**Limits on withdrawal of privileges following disciplinary adjudication:**<sup>286</sup>

- under Level I, the loss of privileges must not exceed three hours
- under Level II, the loss of privileges must not exceed five days
- under Level III, the loss of privileges must not exceed ten days for adult prisoners and seven days for youth
- usually only one disciplinary charge will be laid against you for a single incident of rule-breaking.

## ***Will the police be involved in my charge?***

If you are alleged to have committed a serious offence, such as an action that is defined as criminal by the *Criminal Code of Canada*, then police may be called and a Crown prosecutor may proceed with ‘outside’ charges against you. If police do become involved, the decision to proceed with an internal disciplinary charge may be delayed in order to allow the police time to investigate. You may also be segregated while the investigation is being completed.

If you are charged in court with committing an offence within the institution, even if you are already serving a provincial sentence, you may also be considered a remand prisoner until your court appearances are finished in relation to the new charge.

## ***How can I appeal the outcome of a hearing?***

**When a penalty is imposed, you have 10 business days to write to the superintendent to request a review of the penalty.** To do so, you require form 5.04.00—A (speak to an officer about beginning the process).<sup>287</sup> If the penalty was imposed by the superintendent, then an appeal can be written to the Executive Director.<sup>288</sup> The Superintendent or the Executive Director will have 10 business days to submit a response.

### **Reasons for an appeal must include one or more of the following:**

- The decision was not made in accordance with regulations, policies or procedures.
- The penalty is disproportionate to the misconduct committed.
- The penalty consists of a forfeiture of currently accumulated remission days. (This means that some of your early release days that you have earned have been taken away; you may argue, for instance, that this was an inappropriate penalty, disproportionate to the misconduct).
- There is an error in the report.
- There are facts that if it had been known, would modify the decision.<sup>289</sup>

## ***Temporary Disciplinary Measures***

**Correctional staff** may enforce, change or withdraw temporary measures to address situations where you/ others in jail are thought to have broken a rule or regulation.<sup>290</sup> According to Correctional Services, these temporary measures are used to teach self-control.<sup>291</sup>

Temporary measures which may be taken when you breach a rule are:<sup>292</sup>

- a. verbal warnings (these will only be used to address Level 1 misconduct);
- b. written warnings (these will only be used to address Level 1 misconduct);
- c. temporary removal of any or all privileges for up to three hours;
- d. cell or room confinement for up to three hours.

An ADSO, unit supervisor, OIC or Captain may, as a response to Level II or III report of conduct:<sup>293</sup>

- a. revoke or modify a temporary measure;
- b. impose another temporary measure;
- c. pending the outcome of the disciplinary investigation, lengthen the time you are placed in close confinement, including in segregation if the allegation is of a serious nature.

**Your rights in relation to temporary disciplinary measures taken against you:**

- a. At the time the temporary measure is enforced, you must be informed by the correctional staff of the rule you are being charged with breaching.<sup>294</sup>
- b. Staff must record the relevant incident and their response in a disciplinary report.<sup>295</sup>
- c. Any changes to your temporary measure punishment must also be documented on the disciplinary report.<sup>296</sup>
- d. Any extension in room or cell close confinement, including segregation, must be reviewed.<sup>297</sup>
- e. If you have reached or are likely to reach the usual or maximum close confinement penalty prior to an adjudication, you should be released from close confinement prior to the adjudication and the disciplinary report updated accordingly.<sup>298</sup>

## Searches

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### *What is a search?*

There are several different kinds of searches of your body: <sup>299</sup>

**A Frisk Search:** A hand search of a clothed person where the hands of the staff member are run over the clothing of the person.

**A Hand-Held Detector Search:** A search of a clothed person where an approved hand held detector (portable scanning device) is run over the person in close proximity without touching the person. The search technique for the hand held detector is the same as the frisk search.

**A Pat Search:** A hand search of a clothed person where the hands of the staff member are run over the clothing of the person. The person is required to raise, lower, and open outer garments to permit visual inspection, and the person is required to open their mouth, run their fingers through their own hair, display the soles of the feet, and present open hands.

**A Strip Search:** A visual inspection of your naked body. During the course of a strip search, the staff member may also require you to open your mouth, show

her the soles of your feet, open your hands and arms, and allow her to run her hands through your hair. As well, she may require you to lift your breasts and bend over to allow for a visual inspection of your anal and vaginal area. **Your rights in relation to strip searches:** A strip search can only be performed in a private area out of sight of everyone except the woman staff member performing the search and one other staff member who acts as a witness. Men cannot search women. During a strip search, the witness should only be observing the staff member, if they can see you, they should be women.<sup>300</sup>

Strip searches must avoid undue embarrassment or humiliation and must be recorded.

**A Body Cavity Search:** An examination of the rectal and vaginal body cavities.

**Your rights in relation to body cavity searches:** Body cavity searches can only be undertaken by a qualified medical practitioner acting under a court order.<sup>302</sup>

### ***When and how can I be searched?***

Before your first search, **staff owe to you an explanation of search policies and procedures**, which includes an instructional video.<sup>303</sup> You are initially strip searched when you enter a provincial jail.<sup>304</sup> You will also usually be required to shower and you will be given institutional clothing to wear.<sup>305</sup>

Routine searches without individualized suspicion can be undertaken in prescribed circumstances. These must be limited to what is reasonably required for safety and security purposes. **It can only include strip searches if there is reasonable suspicion that you had likely access to contraband that can be hidden on the body.**<sup>306</sup>

Any authorized staff member is allowed to approve a search at any time after the initial strip search, **if s/he has reasonable grounds to believe you are hiding contraband, weapons or evidence to an offence on your person or in your belongings.**<sup>307</sup>

### ***Who can search me?***

**Only woman staff are allowed to search woman prisoners.**<sup>308</sup> All searches require another staff member to be present as a witness, except in emergency situations.

Correctional policies state that you should not be searched by a person of the opposite sex except for in a few special circumstances. One example is where the person conducting the search is an authorized health professional. The only other instance where someone from the opposite sex can search you is if the officer suspects, on reasonable grounds, that you have contraband that is dangerous or harmful and that there is no time to get someone of the same sex to search you.

## ***Can jail staff search everyone?***

An authorized staff member can allow a search of any staff member, officer or visitor, and any of their property that is on the premises, if s/he has reasonable grounds to believe that that person is carrying evidence relating to the commission of an offence or attempting to bring an unauthorized substance into the jail.<sup>309</sup> That means that if someone is visiting you, that there is a possibility that they could be searched.<sup>310</sup>

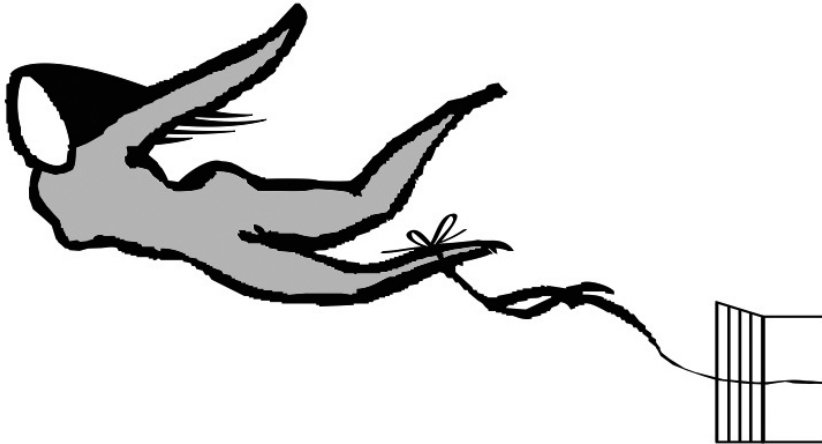
You should ensure that your visitors also know search procedures, in case they are asked to be searched prior to a visit. If the superintendent decides to search your visitor(s), they are not required to submit to it. **Visitors may refuse any search.** You should ensure they know, however, that if they do not agree to a search, the visit will likely be denied.<sup>311</sup>

## ***What should you do if your rights have been violated?***

The same advice that applies to violations of rights with respect to issues discussed earlier in the manual applies to this issue. Steps you can take for help:

- Contact a lawyer;
- Contact CAEFS; or
- Contact the Ombuds Office.

# PART V: CONDITIONAL RELEASE



## Overview

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### *What is Conditional Release?*

There is a lot to know about getting back into the community after you have been released. This part of the manual will cover some of the issues related to releases from jail after you have served part of your provincial sentence. **This section does not apply to those women who are remanded in provincial jails while they await trial or sentencing.**

Conditional release is any absence from jail during the term of a jail sentence. Absences can range from brief emergency hospital visits to being permitted to leave jail and complete your term of imprisonment by reporting to a parole officer while living in your own community. Temporary absences are intended to help your rehabilitation and reintegration into society.

While much of the discussion so far may seem geared towards trying to make sure your rights are not violated in jail, everyone working on this project is interested in assisting women to get out as soon as possible with their rights respected and spirits intact.

## ***Temporary Absences***

A temporary absence is the commonly used term for a “conditional release”, granted to a person in custody. A temporary absence is required whenever you leave the grounds of a correctional facility for a specified time.<sup>312</sup> Temporary absences may be escorted or unescorted. An escorted temporary absence will include as a condition that one or more peace officers accompany you during the absence. An unescorted temporary absence is where no escorting staff accompanies you during the release.<sup>313</sup> If you are on an unescorted temporary absence you may be required to check in with a parole officer periodically.<sup>314</sup>

### ***Are There Conditions Attached to a Temporary Absence?***

If you are approved for a temporary absence, there will be a number of conditions that you will have to follow while you are off-site. You will receive a temporary absence certificate, which you must read and sign to acknowledge the understanding and acceptance of these conditions.<sup>315</sup>

### ***Can a Temporary Absence be Cancelled?***

Temporary absences can be revoked or suspended when the conditions outlined on your certificate are breached.<sup>316</sup> If this happens, you will have to return to jail immediately. If you do not go back to jail immediately, correctional authorities can issue a warrant of committal, which is an order to have you arrested and returned to jail.<sup>317</sup> If you think that you were complying with the conditions, you should file an appeal saying so.<sup>318</sup> This could lead to an investigation. If the investigation finds that you have not violated any of the conditions of your temporary absence, then the absence may be re-instated.

Your temporary absence can also be taken away if the grounds for authorizing the absence have changed or no longer exist, or if the case has been reassessed based on information that could not reasonably have been provided when the absence was authorized.<sup>319</sup>

Your temporary absence can also be suspended for disciplinary reasons. In that case, the temporary absence can be taken away as a result of a misconduct, infraction or further charges. The temporary absence can be given back to you if you are found not guilty of the disciplinary charge, or it can be given back to you with stricter conditions.<sup>320</sup>

## ***Types of Temporary Absences and Eligibility Requirements***

Facility staff should provide you with relevant information, including information on the types of leaves available, the applications process, and eligibility criteria.<sup>321</sup>

The three types of temporary absences are for:

1. Rehabilitative purposes;
2. Humanitarian purposes; and
3. Medical purposes.<sup>322</sup>

Aside from meeting the eligibility requirements for each type of temporary absence, to get a temporary absence, your sentence must be for less than two years. **If you are being held under the *Immigration Act*, if you are on remand, or if you are serving a federal sentence within a provincial jail, you are not eligible to apply for temporary absence.**<sup>323</sup>

### **Rehabilitative Releases**

Rehabilitative temporary absences are supposed to help your reintegration into the community through participation in program opportunities such as education, employment, volunteer work, or addiction treatment.<sup>324</sup> To be eligible for a rehabilitative temporary absence, you must have served at least 1/3 of your sentence.<sup>325</sup>

### **Humanitarian Releases**

Humanitarian temporary absences are meant to give you the opportunity to strengthen personal or family relationships, to participate in events to assist with your reintegration into the community, or to help with difficult or emergency situations within your immediate family, such as a death or serious illness. You are eligible to apply for a humanitarian temporary absence at any time during your sentence if the purpose is to attend to special or emergency situations within your immediate family.<sup>327</sup>

### **Medical Releases**

A medical temporary absence is available when it is necessary for you to be released from a correctional facility in order to maintain your physical or mental health if the correctional facility cannot provide the required treatment.<sup>328</sup> You are eligible for medical temporary absences at any time during your sentence.<sup>329</sup> Unless the temporary medical release is for an elective medical procedure, you are not required to complete a written application for medical releases.<sup>330</sup>



## ***How Long Can a Temporary Absence Be?***

There are many types of authorized temporary absences in Nova Scotia.<sup>331</sup> They are:

- **A Portion of a Day:** permitting you to be away from the jail for up to 24 hours;
- **Daily:** requires you to return to the jail each day;
- **Continuous Days:** require you to have a place to stay outside the jail
- **60 Days:** is the maximum limit for humanitarian or rehabilitative temporary absence.<sup>332</sup> However, the absence can be renewed indefinitely.
- **Unlimited/Medical:** permits you to be absent for medical reasons. The release is for an unlimited period.<sup>333</sup>

## ***How do I Apply for Temporary Absence?***

Once you are eligible for a temporary absence, you will still need to submit an application in order to be considered. When applying for a temporary absence, you must complete your own application using the approved *Temporary Absence Request Form*. Correctional facility staff or probation officers will provide assistance in completing the form where required.<sup>334</sup>

Your application for a temporary release must be in writing and must state:

- the reason for the application;
- the length of time requested for the temporary absence;
- the expected start date;
- where you intend to go or stay during the temporary absence; and
- any other information that the superintendent may require.<sup>335</sup>

Applications should normally be made at least three weeks prior to the requested start date for the temporary absence; however these processing deadlines can be shortened in exceptional circumstances.<sup>336</sup> Where a temporary absence is requested for emergency humanitarian purposes, such as a funeral of an immediate family member, the application process will be accelerated so that a decision will be available within 24 hours of the application.<sup>337</sup>

Your application for temporary absence will be presented to the unit review board along with other information, such as your history of previous incarceration, the assessment of your general behaviour and attitude, your risk assessment etc.<sup>338</sup>

**You must be given the chance to make your own presentation to the unit review board to explain why you should get the absence.**<sup>339</sup>

## ***What Are My Options If I Am Denied Temporary Absence?***

The person in charge of temporary absences has the ability to refuse your application.

**If you are refused temporary absence, you have the right to appeal the decision to the Executive Director.** The appeal must be in writing, must state the reasons for the

appeal, and must be forwarded to the Executive Director no later than 10 business days after the date that you receive the decision. After receiving the appeal, the Executive Director has 10 business days to notify you in writing of their decision.<sup>340</sup>

## **Earned Remission**

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### ***What is Earned Remission?***

Earned remission is a way to shorten your sentence through good behaviour and participation in programs.

### ***How Does Earned Remission Work?***

You should be credited with 15 days of remission for your sentence for every month that you spend in custody.<sup>341</sup> This time will be given based on your obeying jail rules and conditions governing temporary absence and by actively participating in programs, which are designed to promote rehabilitation and reintegration.<sup>342</sup> The first credit of earned remission should be made no later than the end of the month after you arrive at the jail, and then at intervals of no more than three months.<sup>343</sup>

This means that based on the amount of remission that you have earned, you can be released from jail before the expiration of your sentence.<sup>344</sup>

### ***Can I Lose Earned Remission?***

You can lose your remission in a number of ways. You can lose remission as a penalty for a disciplinary charge. You can lose your remission in whole or in part for breaking a rule in the jail.<sup>345</sup> The institutional head (i.e. the Superintendent) or the parole board can re-credit your remission.<sup>346</sup> If you lose some or all of your earned remission, the superintendent must inform you of the amount of remission lost and your new release date. **You have the right to appeal any disciplinary charge that leads to a loss of remission.**<sup>348</sup>

### ***When Should I Begin Preparing for Conditional Release?***

**Start preparing for conditional release from the first day of your sentence.**

**Document the things you do and issues that arise during your time in jail.**

This will also be important if disciplinary charges are ever filed against you or if incorrect information is inserted in your file. Keep track of everything you do: courses, programs, work reports, education, evaluations, community supports, volunteer projects (i.e. making and donating things to community-based charities or events, planning and organizing an event or speaker).

Always keep a paper copy of all your documents, including:

- correspondence about your release applications (i.e. requests for information from schools, half-way houses, employers, child care arrangements);
- any documents or notices presented to you by correctional staff about your prisoner record; and
- any correspondence with your lawyer, the Ombuds Office or other agency working on your behalf.

**When in doubt, keep the document.**

Keep all of your documents and records in a safe place. However, you will be subject to cell searches on occasion. If you are afraid that some things might get ‘damaged or accidentally destroyed’ during cell tosses, you might want to consider sending your documents to a person that you trust outside of jail to keep them for you.<sup>349</sup>

***Can I appeal a decision relating to a temporary absence?***

**If you are not satisfied with a decision on your temporary absence application (whether to deny, suspend, or revoke temporary release, or to impose conditions you believe are unnecessarily restrictive), you can appeal to the Executive Director or a designated staff member.**<sup>350</sup> Their decision is final. You only have 10 business days to appeal a decision starting from the time you receive it. The Director then has 10 business days to notify you and the superintendent in writing of their decision.<sup>351</sup>

# PART VI: REMEDIES



## Introduction

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This handbook is intended to give you information about the laws, regulations and policies that apply in provincial correctional facilities in Nova Scotia (“Corrections law and policy”). Unfortunately, staff do not always follow Corrections law and policy.

**Knowing what the Corrections law and policy says about your situation is the first step towards claiming your rights while in jail. If you are denied what you are entitled to under Corrections law and policy, you can take legal steps to assert your rights. For instance, you may be able to file a Complaint using the jail’s internal Complaint process (see Part VI). However, in some situations, a Complaint will not fix the problem. This may be the case where the policies or procedures used by Correctional authorities in making decisions about you are themselves unfair or illegal. If you feel a policy, procedure, or decision is degrading, humiliating or otherwise violates your rights, or if Correctional authorities have made a decision that you think is wrong or unfair, you need to consider how best to assert your rights. This section provides information to assist you in doing that.**

The main topics in this section include information about:

- The Complaints Process;
- Judicial Review;
- Complaints to the Ombuds Office;
- Complaints to the Nova Scotia Human Rights Commission;
- Complaints to the Freedom of Information and Privacy Commissioner.

## The Remedies

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There is no guarantee that these remedies will work, but **trying these remedies and reaching out for help is your best chance.**

### ***What are remedies?***

Remedies are solutions to problems. There are a number of different remedies (and different routes to remedies) available to you. These include:

- a. making a request for something that you are not getting;
- b. Filing a complaint or grievance;
- c. filing a complaint to the Nova Scotia Human Rights Commission;
- d. filing a complaint with the Ombuds Office;
- e. attempting to have your case reviewed by a Court; or
- f. filing a complaint with various regulatory bodies for issues concerning professionals such as doctors, nurses, psychiatrists, psychologists or lawyers, as discussed previously in the section “*Protecting your Rights,*” page 45.

While this chapter briefly covers the entire range of ways that you can seek a solution to a problem, the chapter focuses on filing complaints, the most accessible way of attempting to solve an issue. We explain:

- a. How to file a complaint;
- b. the different types of complaints available to you; and
- c. the information that you should include in the complaint.

### ***What can I do if I feel I am being treated badly?***

**Though you are in jail, you still have all of the rights that you had before incarceration,** except those that need to be restricted in order to enforce your sentence (for example, liberty).

**You have the right to complain when you feel you have been badly treated and to seek solutions/ remedies for actions and decisions made by jail staff that you feel are unfair.** This could mean anything from being denied your allotted hour of yard time to being physically assaulted by a staff member, to being denied dish soap.

## ***What is a problem that I can try to solve/ remedy?***

Any decision or action by a staff member that is illegal, or hurts your dignity, may be a problem. Any decision or action that denies your rights or further restricts your liberty is almost definitely a problem. Here are some examples:

- Poor treatment by a staff member;
- Denial of your rec/ yard time;
- Denial of access to your documents;
- Denial of telephone calls, especially if it is to your lawyer;
- Jail placement;
- Mistake(s) in your file(s) or report(s);
- New (higher) security classification;
- Reduction of your visiting rights;
- Disciplinary charge(s);
- Being dry-celled as punishment;
- Not being allowed to see a medical practitioner — for mental and/ or physical health (nurse, doctor, dentist);
- Not being given items that you need to be clean and healthy (toothpaste, soap, shampoo, hair brush, dish soap);
- Not being given medication when you need it;
- Not being given access to your child;
- Placement in administrative close confinement; or,
- Involuntary transfer.

**There are many that are not on this list. If it is not on this list, it still can be a problem you should address.**

There are a number of ways to have your voice heard. For instance, **you ALWAYS have the following rights:**

- The right to file a complaint regarding an action or decision of a staff member without fear of retaliation or other negative consequences;<sup>352</sup>  
The right to legal assistance and reasonable access to reading materials about the law;
- The right to a fair hearing protected by procedural safeguards including;<sup>353</sup>
- The right to notice of a hearing or a case;
- The right to a hearing, be it oral or written;
- The right to counsel regarding “serious matters,” particularly matters in which a decision against you could mean any further restrictions on your liberty, such as loss of earned remission or close confinement;
- The right to know the case against you and present a defense;
- The right to cross-examine witnesses if there is a hearing against you (except in very rare cases where authorities can establish a serious risk to witness or institutional security);
- The right to reasons for decisions affecting your significant interests;
- The right to review and challenge inaccuracies in your file;

- The right to make a complaint to the Freedom of Information and Privacy Commissioner;
- The right to make a complaint to the Nova Scotia Human Rights Commission;
- The right to make a complaint to the Ombuds Office.

**Document everything.** In order to make sure that all these rights (listed above) are protected, it is important that you keep careful records of any incidents you might wish to bring up, and of any and all ways and times that you try to solve your problems. If you have an interaction with a staff member that upsets you, write it down and include the date and time that it happens. If you make a request to a staff member, do the same.

If you file a complaint, keep a copy of it for your records. If you receive any written documentation from jail staff, Corrections, an outside organization, the Nova Scotia Human Rights Commission, the Courts, or anybody else — keep it in as safe a place as possible. This will help solve your problem. You may also want to give copies of your paperwork to someone outside of the jail if you think the papers are not safe inside.

### ***Why should I seek a solution to my problem?***

One reason to seek a remedy for your problem is that if it works you will get an immediate improvement in your personal situation. **You have a right to be treated with respect and dignity. One of the best ways to keep your rights is to exercise them.**

**If you are confused about how to advocate for your rights, contact your local or national Elizabeth Fry Society** (contact info at page 103).

**You may be able to get assistance from a Legal Aid lawyer** (it is always a good idea to reach out for help in case there are resources available to you).

### ***Getting Legal Aid***

Nova Scotia Legal Aid is a government service set up to provide legal advice, information, and in some cases representation, for all Nova Scotians. **Even if you do not qualify for a lawyer, you will still be given information or advice.**

Determining whether or not you qualify for a lawyer is a three-part test:<sup>354</sup>

1. Is the applicant for Legal Aid financially eligible to receive Legal Aid?
2. Does Legal Aid work within the area of law in which you need help?
3. Is there legal merit?

#### **Is the applicant financially eligible?**

You are considered financially eligible if you qualify for benefits from Income

Assistance, or if paying for a lawyer would otherwise reduce your income to the level of qualifying for Income Assistance.

### **Does Legal Aid provide representation in that area of law?**

Legal Aid provides representation for family, criminal, and social justice issues. For example, criminal legal aid is available where the applicant is charged with an offence for which there is a reasonable likelihood that a conviction would result in a sentence of custody or imprisonment.

### **Is there legal merit?**

In deciding whether you meet this requirement, the Legal Aid Commission has flexibility in their judgement. You will explain why you need legal help in the application form.

Most of the court forms that you need in any legal matter can be found and downloaded from the internet. Although you personally will not be able to access the information if you are in jail, you can ask your case management team or an Elizabeth Fry support worker to download and print the information for you. A list of forms can be found at: [www.novascotia.ca/just/Court\\_Services/forms.asp](http://www.novascotia.ca/just/Court_Services/forms.asp)

**In regards to a family law matter**, the forms you need depend the location of you and your child(ren) as well as on the specific court you are applying with.

**You may have to complete an affidavit.** An affidavit is a statement you make about your situation. An affidavit for custody or access must include:

- your name and that of any other parent;
- where you and your children lived;
- where you are living now;
- the nature (never lived together, common law or married) of your relationship with the other parent;
- the length of your relationship with the other parent;
- the date you separated from the other parent (if you separated);
- the full names, dates of birth and ages of all of your children; and
- the reasons that it is in the children's best interests for you to have custody and/or access.
- You should include any other relevant information, such as when you entered the jail and when you are scheduled to be released.

Filling out the forms yourself may be confusing or difficult. If you do not have a lawyer, you might want to ask someone you trust to help you fill out the forms.

**You might also be able to get some support from the Legal Information Society of Nova Scotia.** While they cannot offer legal advice, they can give you legal information that might help. They can be reached at:



**Legal Information Society of Nova Scotia**  
**5523 B Young Street**  
**Halifax, NS B3K 1Z7**  
**Tel: (902) 455-3135**  
**Website: [www.legalinfo.org](http://www.legalinfo.org)**

If you have a court date and are able to go to the courthouse, **you may be able to get help from duty counsel lawyers**. Duty counsel lawyers are available free of charge at many court houses. If you have a lawyer, you can ask her or him to ask the judge to issue a court order to bring you from jail to the hearing. Not all judges will do this, but some will.

### ***How do I apply for Legal Aid?***

In order to get legal aid, you will need to contact the Legal Aid office in your area to get the Application form. The phone numbers for these are listed below.

When you apply, you must provide financial information such as monthly income, monthly expense, and any debts or assets (for example, a car) that you possess. Eligibility is determined based on your assets, liabilities, income, and expenses. If you have a spouse, her/his financial situation will also be considered. Consideration is also given to the number of dependents you have. Even if you are eligible for Legal Aid, you may still be required to make some financial contribution to the cost of legal services.<sup>355</sup>

There are five ways to apply:

1. In person at the regional Legal Aid office that is nearest to the area where your case is being heard.
2. In person at any Legal Aid office, to complete an application and have it sent on to the office which will actually deal with the issue. (For example, if you live in Halifax but the court matter is in Truro).
3. By faxing your application directly to the Legal Aid Office.
4. By regular mail.
5. By email, using the online application form.

#### **Nova Scotia Legal Aid**

2830 Agricola Street  
Halifax, NS B3K 4E4  
Telephone: 902-420-3450  
Toll Free: 1-866-420-3450  
Fax: 902-420-2873

#### **Legal Aid Offices and Numbers:**

- **Amherst:** (902) 667-7544
- **Annapolis Royal:** (902) 532-2311
- **Antigonish:** (902) 863-3350

- **Bridgewater:** (902) 543-4658
- **Liverpool:** (902) 354-3215
- **Dartmouth:** (902) 420-8815
- **Halifax:** (902) 420-6583
- **Kentville:** (902) 679-6110
- **New Glasgow:** (902) 755-7020
- **Port Hawkesbury:** (902) 625-4047
- **Sydney:** (902) 563-2295
- **Truro:** (902) 893-5920
- **Windsor:** (902) 798-8397
- **Yarmouth:** (902) 742-7827

### ***What can I do if my rights with respect to legal counsel are infringed?***

If you are being denied rights to which you are entitled, you can file a complaint. For more information on how and when to **file a complaint**, please refer to the Remedies chapter. You should also let the Ombuds Office know about this.

### ***What can I do if I have a complaint about my lawyer?***

If you have a complaint about your lawyer — for instance, you believe that they are either incompetent, have overcharged, or have engaged in misconduct, you may **file a complaint with the Director of Professional Responsibility of the Nova Scotia Barrister’s Society**. You do this by first calling the complaint intake line, **(902) 422-1491**. Then you will send in a completed complaint form as well as any accompanying documents.<sup>356</sup> The Director will investigate the complaint, and send details of the complaint to the lawyer, who will be asked to respond with an explanation of what happened. If staff cannot resolve your complaint, s/he may either dismiss it or refer it to the Complaints Committee. If the Committee finds that the complaint is valid, they may order disciplinary sanctions against the lawyer.

Examples of complaints that have been considered by the Complaints Committee include:

- Failure to keep the client reasonably informed;
- Failure to answer reasonable requests from the client for information;
- Unexplained failure to respond to the client’s telephone calls;
- Withholding information from the client or misleading the client;
- Failure to make every effort to provide prompt service to the client; and
- Failure to follow the client’s instructions.

The Law Society can award funds to those who have lost money to a lawyer’s misappropriation or theft.<sup>357</sup> Filing a complaint can be very useful to ensure that you receive the standard of legal service to which you are entitled.

## ***File a complaint within the jail***

While legal assistance is always of value when deciding how best to assert your rights, some pathways to asserting your rights do not require a lawyer. This is true, for instance, of the complaints procedure available within the jail. When you use the complaint procedure successfully, you strengthen the fact that there is a need for the formal complaints procedure and you also show that the procedure can work. If, on the other hand, you cannot get a problem resolved through the complaint procedure, you are still documenting that something is going wrong, and therefore helping to build the argument that alternatives are needed. **You can help to maintain or even advance your rights simply by exercising them.**

Filing complaints can have an impact on the justice system as a whole and help other imprisoned women. Complaints document your concerns and the concerns of others, which in turn may help organizations fight for your rights and hold jails accountable for the way they treat you.

If you feel that you have received unjust treatment, then you can make a complaint. This way you give the Superintendent the opportunity to address the complaint.<sup>358</sup>

However, before filing a formal complaint, you should consider how you might resolve the problem informally - for example, through discussing it with the appropriate staff member(s). Corrections law states that your complaint may be rejected because you made “no effort to resolve the matter” before making the complaint.<sup>359</sup>

You may also write to the Ombuds Office at any time, whether or not you have used the internal complaint procedure, and especially if you are not happy with the outcome of your complaint. See their contact information at page 93.

## ***How long do I have to file a complaint?***

You must submit a signed and dated complaint form (Form 5.04.00 — A) to the superintendent. Corrections policy states that this must be done within 10 days of the action or incident about which you are filing the complaint.<sup>360</sup>

However, that 10-day time limit is not stated in the law or regulations. You should meet the time limit if at all possible. But, if you have good reasons for a delay beyond 10 days, you should go ahead and make the complaint and give the reasons for the delay.

For instance, if you were ill, or if you were intimidated by correctional staff or others, or if you simply did not know that the incident in question affected your rights and so presented a basis for a complaint, you should state these reasons for not filing the complaint earlier. You might argue in addition that correctional officials cannot

“fetter their discretion” by rigidly applying the time limit stated in the policy, without any room for responding to individual circumstances. That is, such a rigid insistence on a time limit stated only in policy (which is not, as such, law) would arguably be contrary to the purposes of the statute, including the purpose of establishing a fair and accessible way of airing and resolving prisoners’ complaints.

## ***What should I include in my complaint?***

Before writing your complaint, spend some time thinking about what you want to say and why you’ve decided to take this course of action.

In order to write an effective complaint, there are a number of important questions you should consider:

### ***Why?***

*What do you want to get out of it? Examples:*

- A decision reversed?
- A service you are being denied?
- Information?
- Creation of a record?

### ***Who?***

*Whose action/inaction do you want to complain about?*

Is the problem something that N.S. Corrections can fix (is it in their jurisdiction)?

Examples of things not in the jail’s jurisdiction include:

- how a doctor is treating you (see the section on complaints about health care);
- a decision of the parole board; or,
- the actions of a contract worker who doesn’t work for Corrections (eg. a sheriff, an E Fry worker).

### ***What?***

*What is the issue?*

If the issue involves discrimination (based on race, religion, gender, ethnic origin, age, sexual orientation, disability, etc.) make that clear. This will alert Corrections to the fact that your complaint involves the *Nova Scotia Human Rights Act*.

*What are the facts?*

- Do not make them up or try to fill in missing facts.
- Keep careful records! This will allow you to give detailed and accurate facts, such as dates and times.

*What are your opinions?*

- Be clear that your opinion is based on your own view of the situation and is not a ‘fact’.
- Ask yourself if other people were to look at the facts of the situation, is it

possible they would have a different opinion than yours?

*What is the relevant law or policy?*

- Find out if there is a law that is relevant to your issue (from the **Correctional Services Act**), is there a regulation, or policy that applies?
- Was there a breach of this law, regulation, or policy?

*What way do you want Corrections to respond to your complaint?*

- What outcome would you like to achieve?

**Even if you don't have all of the information above, still submit the complaint.**

### ***What happens next?***

A designated staff member who receives a complaint must acknowledge the complaint in writing no later than 5 business days after the date it is received.<sup>361</sup> The designated staff member or Superintendent may, upon receiving your complaint, schedule an investigation, and should advise you, in writing, of their actions and decision in relation to your complaint.<sup>362</sup> This should occur within 10 business days of filing the complaint.<sup>363</sup>

If you are unhappy with the response to your complaint, you may submit an appeal, in writing, to the Executive Director within 10 days of receiving the response.<sup>364</sup> The Executive Director then has 10 days to notify you and the Superintendent of their decision in the matter.<sup>365</sup> If you are unhappy with the decision on appeal, you may consider (and, ideally, discuss with a lawyer) the possibility of judicial review (see below).

## **File a complaint with the Ombuds Office**

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### ***What is the Ombuds Office?***

The Ombudsperson is an officer of the government of Nova Scotia, but operates independently from government. They are not advocates. Their role is to ensure that government agencies, such as corrections, follow the law and are run fairly.

The Ombudsperson can look into complaints received from the public if they believe that a government agency has acted unfairly. The Ombudsperson can investigate a decision or recommendation made by Corrections (or a Corrections staff member), an act done or omitted by Corrections or a procedure done by Corrections.<sup>366</sup> So, if you feel that a particular procedure is unfair, you can ask the Ombuds office to conduct an investigation.

## ***How can the Ombuds Office help me?***

The Ombuds office has a variety of ways to help:

- They can advise you of what steps to take. You may wish to contact the Ombuds office if you have concerns about your FOIPOP application. (See page 47 for more information on FOIPOP.)
- They can investigate complaints of specific events, but they can also review legislation and policies to see if they are being followed and if they are fair.
- They can also look at government's decisions and actions to see if they are fair, reasonable and legal.
- The Ombudsperson can recommend that the government make certain changes (but they cannot order them to do so).

The Ombuds Office may refuse to investigate a complaint and can stop an investigation at any time.<sup>367</sup> Some reasons they might refuse an investigation include the following: there is another way to appeal<sup>368</sup>; the event giving rise to the complaint happened more than a year earlier<sup>369</sup>; the person writing does not have enough personal interest in the subject matter.<sup>370</sup>

It is therefore important to make sure that you file a complaint as quickly as possible. Any correspondence that you have with the Ombuds Office is not supposed to be opened and read by the staff.

## ***How do I make a complaint?***

A complaint can be made to the Ombuds office in writing, by fax, over the phone, by e-mail, or in person. The complaint form is available online.<sup>371</sup> Outline in as much detail as possible, what has happened to you, what you feel is unfair, and what you would like the Ombuds office to do about it.

## ***Is my complaint confidential?***

Complaints from prisoners are supposed to remain confidential.

## ***How do I contact the Ombuds Office?***

You can write or call the Ombuds Office at:

### **Office of the Ombudsman**

5670 Spring Garden Road, Suite 700

P.O. Box 2152

Halifax, NS B3J 3B7

Telephone: 902-424-6780

Toll-free: 1-800-670-1111

Fax: 902-424-6675

E-mail: ombudsman@gov.ns.ca

# File a complaint with the Nova Scotia Human Rights Commission

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## ***Why would I file a human rights complaint?***

The government of Nova Scotia runs and regulates provincial jails and must obey the *Nova Scotia Human Rights Act*. This means that if your grievance or complaint involves discrimination, you can file a complaint with the Nova Scotia Human Rights Commission (NSHRC).

## ***What is discrimination?***

According to the *Nova Scotia Human Rights Act*, discrimination is unfair treatment based on any of the following grounds:

- a. age,
- b. race,
- c. colour,
- d. religion,
- e. creed,
- f. sex,
- g. sexual orientation,
- h. gender identity,
- i. gender expression,
- j. physical or mental disability,
- k. an irrational fear of contracting an illness or disease,
- l. ethnic national or aboriginal origin,
- m. family status,
- n. marital status,
- o. source of income,
- p. political belief,
- q. affiliation or activity,
- r. an association with another individual or class of individuals covered under protected grounds.<sup>372</sup>

You cannot be denied something in jail or treated differently because of the characteristics or “grounds” mentioned above, such as gender, race and disability. Discrimination can be direct and/ or systemic.

**Direct Discrimination**<sup>373</sup>: This happens when an individual or group is treated differently in a negative way based on characteristics related to the prohibited grounds of discrimination, such as gender, race and disability. This kind of discrimination is usually easy to identify. For example, when a guard uses a racial slur or when a policy singles out prisoners with disabilities that is direct discrimination.

**Systemic Discrimination**<sup>374</sup>: This is the creation, perpetuation or reinforcement of persistent patterns of inequality among disadvantaged groups. It is usually the result of seemingly neutral laws, policies, procedures, practices or organizational structures. Systemic discrimination tends to be harder to observe. For example, if every prisoner is allotted 1 hour of yard time per day, but the yard is not wheelchair accessible, that is systemic discrimination.

If you think you were the victim of either direct or systemic discrimination, you can file a human rights complaint with the Nova Scotia Human Rights Commission.

### ***Can I file a Human Rights Complaint?***

If you are in Nova Scotia Department of Corrections, then you can file a Human Rights Complaint under the *Nova Scotia Human Rights Act*.

The discrimination must take place in respect to one of the grounds listed on page 94.

### ***How long do I have to file a Human Rights Complaint?***

You have one year from the incident to file a Human Rights complaint, although in some cases, the deadline may be extended.<sup>375</sup>

### ***How do I file a human rights complaint?***

The first thing to do is contact the Human Rights Commission. They will listen to your complaint, and help you to decide what to do next. Their contact information is on page 97.

**When filing a complaint, it is important to include as much information as possible. This is another reason to document things very carefully!**

Things that are particularly important include:

- The name of the staff member about whom you are complaining;
- The date(s) and location(s) of where and when you experienced the discrimination;
- Description of the event(s), as detailed as possible;
- The ground(s) of discrimination (i.e. race, gender, sexual orientation, and the other grounds listed above);
- The discriminatory action/ practice and an explanation of how the treatment you received is discriminatory.



## ***What happens next?***

Once you submit your complaint, it is reviewed by the Human Rights Commission. If the complaint is valid, the Commission will investigate it. They will gather evidence, and might interview you and any other people involved. A report will be written, and the Commission will decide whether to dismiss the complaint, ask for further settlement or recommend that the Minister appoint a Board of Inquiry.

A Board of Inquiry is an independent tribunal that operates separately from the Commission. The Board of Inquiry holds a public hearing of the evidence to hear everyone's side of the story. The Board must issue a decision within six months of the conclusion of the hearing, unless they receive approval for more time from the Chief Judge of the Provincial Court.<sup>376</sup> They may either dismiss the complaint or order a remedy, such as accommodation, reimbursement, or apology.

Decisions of the Commission about whether to dismiss a complaint or refer it to a Board of Inquiry are reviewable in the Nova Scotia Supreme Court, while decisions of the Board of Inquiry on the merits of a complaint may be appealed to the Nova Scotia Court of Appeal on a question of law.<sup>377</sup> Alternatively, you may ask the Ombuds office to review the process used by the Commission to investigate the complaint.

## ***What will I get if my complaint is successful?***

Filing a human rights complaint is different than suing someone in court, and is also different from filing a complaint with a regulatory body like the College of Physicians and Surgeons (see the Health Care section at page 51). When you sue someone, there is a chance that you can receive damages, or money to compensate for what happened.

The Human Rights Commission may encourage a settlement of your case, (which may include a financial component in some circumstances). A Human Rights Board of Inquiry may award financial compensation to you if you win your case, only if it thinks that a financial award is the right response to the problem. It can also order other remedies that can help<sup>378</sup>. For example, a Board of Inquiry might order:

- a. that the discriminatory practice be changed,
- b. that the guard offer you an apology, or
- c. that Correctional authorities better accommodate your needs based on the ground of discrimination.<sup>379</sup>

So, while disciplinary complaints against a nurse or doctor serve mostly to penalize that person rather than compensate you, the Human Rights Commission looks to solve the problem and come up with a solution that addresses your needs.

## ***Are complaints confidential?***

The Commission attempts to preserve confidentiality during the complaint process. However, if the Commission decides to refer a complaint to the Board of Inquiry, the hearings of evidence are public and therefore will no longer be fully confidential. <sup>380</sup>

## ***Do I need to worry about retaliation?***

According to the Commission, **it is illegal for someone to retaliate against a person who has filed a complaint.**<sup>381</sup> Therefore, if you do suffer from retaliation after filing a complaint, you should tell the Commission about it.

## ***Where do I send the complaint?***

### **Nova Scotia Human Rights Commission**

#### **Street Address:**

Park Lane Terraces  
3rd Floor  
5657 Spring Garden Road  
Halifax, NS

#### **Mailing Address:**

PO Box 2221  
Halifax, NS  
B3J 3C4  
Tel. 902-424-4111  
Fax 902-424-0596

#### **Sydney office:**

Provincial Building  
360 Prince Street  
Sydney, NS B1P 5L1  
Tel. 902-563-2142  
Fax 902-563-5613

#### **Digby office:**

Provincial Building  
84 Warwick St.  
PO Box 1029  
Digby, NS B0V 1A0  
Tel. 902-245-4791  
Fax 902-245-7103

## Apply for judicial review<sup>382</sup>

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Decisions of administrative bodies such as board and tribunals, and other public authorities such as NS Corrections, can be judicially reviewed in court.

One form of judicial review is based in the *Charter of Rights and Freedoms* (discussed in Chapter 1). This means challenging a law, policy or decision on the basis that it has breached your *Charter* rights — for instance, the right to liberty, equality, freedom of association, or the right to be free from cruel and unusual punishment. *Charter* claims are typically complicated (both procedurally and in terms of the arguments involved), and so they require the assistance of a lawyer. However, *Charter* rights are also our most fundamental rights. Therefore, the possibility of a *Charter* claim should not be overlooked, even where you are serving a relatively short provincial sentence. Increasingly, prisoners are looking to class actions as an efficient way to bring *Charter* challenges to Correctional laws, policies and conditions that they argue breach their *Charter* rights.

Another, more common form of judicial review is administrative law-based judicial review. This type of judicial review is limited to a determination of whether a given decision or policy is in compliance with the law, including judge-made legal principles requiring public authorities to be reasonable and fair. Administrative law judicial review is usually based on the information that was before the decision maker — it is not a re-hearing of your issue. Like *Charter*-based judicial review, it can be complicated and difficult to pursue without the assistance of a lawyer.

**The purpose of administrative law based judicial review is to make sure that any board, tribunal, or decision making body, has obeyed the law in reaching its conclusions.** For example, if you are unhappy with the decision of the Disciplinary Review Board, and have exhausted the internal processes of appeal to other authorities within the correctional system, you may have the opportunity to have a court judicially review the decision. The court usually makes decisions about whether the board, tribunal, or decision making body actually had the authority to make the decision it made (i.e. jurisdiction) and/ or whether the board, tribunal, or decision making body used their authority properly, both in terms of substantive reasonableness and procedural fairness. There is some possibility you may bring *Charter* arguments into administrative law based judicial review. For instance you may argue that a decision-maker was unreasonable because of a failure to appreciate the seriousness of the *Charter* values or *Charter*-protected interests affected by the decision.

Administrative law-based judicial review of a decision of a board, tribunal, or other decision making body is not an opportunity to re-argue or to improve the argument that you made before. Instead, it is for the court to decide if the board, tribunal, or decision making body made a mistake about the law or used an unfair process in your case. If you are successful in establishing unreasonableness or unfairness, the court will often simply set aside the decision and send it back to

correctional authorities for redetermination in light of the Court's reasons. Because it is complicated, if it is possible, you should retain legal advice before starting your application for judicial review. For more information contact Legal Aid (see page 86 for contact information) or Elizabeth Fry (see page 103 for contact information.)

## **Apply for *habeas corpus***

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### ***What is it?***

*Habeas corpus* is a Latin term that means roughly 'to bring the body forward' [out of the alleged illegal detention]. The right of *habeas corpus* existed before the *Constitution* or even the Magna Carta of 1215. It is a powerful tool for challenging the legality of detention (or "deprivation of liberty"). It is a special form of judicial review that is now explicitly protected in the *Charter of Rights and Freedoms*, which also guarantees the right to liberty, freedom of expression and religion, and the right not to be subject to cruel and unusual punishment, among other rights.

An application for *habeas corpus* can be brought on behalf of any detained person to show cause for detention. If you have been unlawfully detained, you may be released. Moreover, if your liberty has been unlawfully restricted beyond the ordinary restrictions attaching to your sentence, *habeas corpus* may be used to fight those further restrictions.

After many cases with unfavourable results, in 2005 the Supreme Court of Canada finally ruled that prisoners (including federal prisoners) can choose to challenge the legality of their detention in a provincial superior court by way of an application for *habeas corpus*, rather than having to pursue ordinary judicial review processes, which take longer and place more hurdles before applicants (for federal prisoners, this would be in the federal court).<sup>383</sup> Most importantly, in contrast to the general discretion of courts to refuse to hear applications for judicial review — for instance, because of a failure to exhaust alternative remedies — the Court said that a provincial superior court should hear an application for *habeas corpus* when requested to do so, unless it falls into one of two very narrow categories.

These are:

1. where the legislature has put in place "a complete, comprehensive and expert procedure" that "provides for a review at least as broad as that available by way of *habeas corpus* and no less advantageous" or
2. in matters where an appeal court has authority "to correct the errors of a lower court and order release of the applicant if need be". In 2005, the Supreme Court of Canada specifically held that the federal prison complaints process was not as broad or advantageous as *habeas* for dealing with alleged liberty infringements; therefore, federal prisoners alleging deprivation of liberty could obtain near-immediate decisions on their *habeas* applications, instead of having to pursue lengthy appeals of internal complaints (and then, potentially, judicial review).

In short, the basic idea of *habeas corpus* is that personal freedom — and in particular, freedom from arbitrary detention — is important. It is so important that, if you can make a good enough argument, a hearing on the legality of your detention takes precedence over everything else a court is doing. Your case will be heard as soon as possible (typically a hearing is held within a week). If your detention is determined to be unlawful, you will be immediately released from the unlawful detention.

You may wish to make an application for *habeas corpus* if you are unlawfully placed in close confinement. As well, you may wish to consider an application if you are unfairly being classified as higher security, or being transferred to a penitentiary with a higher security rating.

If you wish to make an application for *habeas corpus*, it is important that you immediately contact your lawyer if you have one. If you do not have counsel, you should contact Legal Aid about the possibility of attaining their services. That said, prisoners often prepare *habeas corpus* applications themselves, and have sometimes been successful in their applications.

### ***Who can use it?***

Any person under detention may require the court to review the legality of the detention by filing a *Notice for Habeas Corpus* [attached below].

### ***When can I use it?***

Applications can be made at any time. Simply give your application to the superintendent or other responsible party and they are required by law to forward it to the court.

### ***What happens when I use it?***

As noted, the law places heavy emphasis on protecting the liberty of the individual. The application for *habeas corpus* takes precedence over all other judicial procedures. In short, you can jump the line.

Once a motion is filed, the court must immediately set a date for a review of your detention.

If the motion is heard, the Attorney General of the relevant jurisdiction (Canada or Nova Scotia) will be automatically called upon to defend the detention.

The party detaining you is required to bring you before a competent court unless the judge decides otherwise considering unnecessary delay, expense or inconvenience. If they do not, they may be subject to a charge of “contempt of court”.

The court has broad discretion in a habeas proceeding. It can compel the production of any document relevant to the detention. It can also require any witness to testify.

To be successful in a habeas application, you must first establish that you have been detained (or deprived of liberty), and moreover that there is “a legitimate ground upon which to question” the legality of that detention. Any evidence that the detention was unreasonable, or procedurally unfair, will assist. If you succeed at this first stage, then it is government’s turn to try to demonstrate that the detention was legal (i.e., reasonable and fair). If it does not demonstrate this, then your habeas application has been successful.

For instance, say you have been placed in close confinement after a disciplinary hearing in which you were not given a chance to review the charges or evidence against you. Depending on the circumstances, this raises a legitimate ground for questioning the procedural fairness of the hearing. Government will then be expected to justify the process, or to establish its legality, despite the apparent procedural unfairness. Alternatively, say the decision to place you in close confinement was made in a way that failed to take account of key evidence or arguments. This is potentially a form of substantive illegality, or unreasonableness, again presenting a legitimate basis for a habeas application. In response, government may try to establish that it did (implicitly) take account of the evidence or argument in question. In both cases, you have a chance of succeeding in your habeas application.

### ***What if the judge accepts the application?***

The remedy on a successful *habeas corpus* application is an order that the illegal deprivation of liberty cease. For instance, the judge can order that your security classification be reduced and/or that you be released from close confinement. Moreover, a *habeas corpus* claim may be combined with a *Charter* claim, potentially giving rise to *Charter* remedies (which often take the form of a declaration of rights, and may in rare cases include monetary damages).

### ***What if the judge refuses the application?***

Any denied application for *habeas corpus* can be appealed to the Nova Scotia Court of Appeal. These appeals should also be expedited. You can’t apply to the same judge or court. If there is no new ground for an application or the detention has already been determined to be legal, you could be accused of abusing the judicial process. In such a case, you might be ordered to pay costs (i.e., to cover part of the government’s legal fees).

## ***How do I apply?***

To apply for *habeas corpus*, you must file a *Notice for Habeas Corpus* using Nova Scotia Civil Procedure Form 7.12 [form included at end of document]. The *Notice of Habeas Corpus* must

1. Be dated and signed by you, your lawyer or an agent approved by a judge
2. Unless you can't get the information, include all of the following
  - c. the name and place of detention;
  - d. The names of, or offices held by, individuals holding you for the government;
  - e. any reasons given to you for the detention;
  - f. information about what prevents you from leaving the place of detention;
  - g. the request for *habeas corpus*;
  - h. the grounds on which the applicant contends that the detention is illegal;
  - i. a statement that you have told the chief court clerk (the prothonotary) how to get in contact with you and the government

## ***Special Considerations***

### **What if I am detained under IRPA?**

Persons may be detained under the *Immigration and Refugee Protection Act* [IRPA] for a variety of reasons. Past court decisions have held that “in immigration matters, where a complete, comprehensive and expert statutory scheme provides for a review that is at least as broad as and no less advantageous than *habeas corpus*, *habeas corpus* is precluded.” Recently however, the Ontario Court of Appeal has held that where immigration detainees are arguing that their detention “has become illegal because of its length and the uncertainty of its continued duration,”<sup>384</sup> they should be able to exercise their *Charter* right to *habeas corpus*. In such cases, immigration detainees “have the right to choose whether to have their detention-related issues heard in the Federal Court through judicial review of the [Immigration Detention] decisions, or in the Superior Court through *habeas corpus* applications.”

Because it is complicated, if it is possible, you should retain legal advice before starting your application for judicial review. For more information contact Legal Aid (see page 86 for contact information) or Elizabeth Fry (see page 103 for contact information.)

## **Call the Canadian Association of Elizabeth Fry Societies, a lawyer or another advocacy group**

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CAEFS is an association of self-governing, community-based Elizabeth Fry Societies that work with and for women and girls in the justice system, particularly those who are, or may be, criminalized. Together, Elizabeth Fry Societies develop and advocate the beliefs, principles and positions that guide CAEFS. The association exists to ensure substantive equality in the delivery and development of services and programs through public education, research, legislative and administrative reform, regionally, nationally and internationally.

### **CONTACT INFORMATION:**

#### **Mainland Elizabeth Fry Society**

Address: 1 Tulip Street, Dartmouth, NS

Tel: (902) 454-5041

E-mail: [ed@efrymns.ca](mailto:ed@efrymns.ca)

Website: [www.efrymns.ca](http://www.efrymns.ca)

#### **Elizabeth Fry Cape Breton**

Address: 16 C. Levatte Crescent, Sydney, NS

Tel: (902) 539-6165

E-mail: [efrycb@eastlink.ca](mailto:efrycb@eastlink.ca)

Fax: (902) 539-1683

#### **CAEFS**

Tel: (613) 238-2422 (collect)

Toll free: 1-800-637-4606

E-mail: [caefs@web.ca](mailto:caefs@web.ca)

Website: [www.elizabethfry.ca](http://www.elizabethfry.ca)





# APPENDIX A:



Between:  
[complete heading as required by Rule 82 – Administration of Civil Proceedings]

\_\_\_\_\_  
[name] Applicant

and

\_\_\_\_\_  
[name] Respondent

**Notice for *Habeas Corpus***

**Applicant is detained**

The applicant is detained at \_\_\_\_\_  
[name and address].

The applicant is detained by \_\_\_\_\_  
[name and title].

The applicant is detained \_\_\_\_\_  
[because.../without reasons having been given].

It is impossible for the applicant to leave detention because \_\_\_\_\_  
[reasons].

**Applicant requests review**

The applicant says the detention is illegal.

The applicant requests an order directing the respondent, and any other person who has control of the applicant and receives notice of the order, to bring the applicant and all documents relating to the detention before the court.

**Grounds for review**

The applicant says the detention is illegal because:

- 1.
- 2.
- 3.

**Contacting applicant**

The prothonotary has been informed of all means of communications with the applicant. The authority or persons detaining the applicant may be contacted at the place of detention, and through other addresses, telephone numbers, fax numbers, email addresses given to the prothonotary.

**Signature**

Signed \_\_\_\_\_, 20 \_\_\_\_\_  
Signature of applicant

Print name:

[or]

Signature of counsel

[name] as counsel

for [name]

[or]

\_\_\_\_\_  
\_\_\_\_\_

Signature of agent approved by judge  
[name] as approved agent for  
[name]

**Prothonotary's certificate**

I certify that this notice for *habeas corpus* was filed with the court on  
\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Prothonotary

# ENDNOTES

1. Ontario Women's Justice Network, [www.owjn.org/owjn\\_2009/legal-information/aboriginal-law/77](http://www.owjn.org/owjn_2009/legal-information/aboriginal-law/77)
2. Some provinces allow federal prisoners to stay in provincial jails to serve their sentences, especially where the closest federal prison may be in another province or territory
3. **Stewart v. Nova Scotia** (Social Assistance Appeal Board) 2001 NSSC 65.
4. This section was informed by: Canadian Lawyers.Ca, "An introduction to Canadian Law", [www.canadian-lawyers.ca/Legal-Help-and-Resources/An-Introduction-to-Canadian-Law.html#five](http://www.canadian-lawyers.ca/Legal-Help-and-Resources/An-Introduction-to-Canadian-Law.html#five)
5. R.S.C. 1985, c. C-46 [hereinafter cited as: Criminal Code].
6. S.C. 1992, c. 20.
7. S.N.S. 1989, c. 37 [hereinafter cited as: Correctional Services Act].
8. S.N.S. 1990, c. 5 [hereinafter cited as: Children and Family Services Act].
9. R.S.N.S. 1989, c. C-214 [hereinafter cited as: NS Human Rights Act].
10. N.S. Reg. 99/2006 [hereinafter cited as: Correctional Services Regulations].
11. **Stewart v. Nova Scotia (Social Assistance Appeal Board)** 2001 NSSC 65.
12. Nova Scotia Public Safety, Correctional Services Policy & Procedures.
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14. LISNS, "Courts and Court forms", [www.legalinfo.org/legal-help-the-legal-system/courts-ns.html#1](http://www.legalinfo.org/legal-help-the-legal-system/courts-ns.html#1)
15. United Nations, Standard Minimum Rules for the Treatment of Prisoners, adopted by the General Assembly on 17 December 2015 [www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_24/resolutions/L6\\_Rev1/ECN152015\\_L6Rev1\\_e\\_V1503585.pdf](http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf)
16. **Universal Declaration of Human Rights**, 10 December 1948, Res. 217 A (III).
17. **United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** 1465 U.N.T.S 85; 8 C.F.R. § 208.18.
18. International Covenant on Civil and Political Rights 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976, accession by Canada 19 May 1976).
19. **United Nations Convention on the Elimination of All Forms of Discrimination Against Women**, 18 December 1979, entry into force 3 September 1981 in accordance with article 27(1), Res. 34/180.
20. **International Covenant on Economic Social and Cultural Rights**, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27
21. **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,
22. **UN Economic and Social Council (ECOSOC)**, UN Economic and Social Council Resolution 2010/16: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offender Prisoners (the Bangkok Rules), 22 July 2010, E/RES/2010/16, available at: [www.refworld.org/docid/4d92e5392.html](http://www.refworld.org/docid/4d92e5392.html) [accessed 30 August 2016]
23. **UN Economic and Social Council (ECOSOC)**, UN Economic and Social Council Resolution 2010/16: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offender Prisoners (the Bangkok Rules), 22 July 2010, E/RES/2010/16, available at: [www.refworld.org/docid/4d92e5392.html](http://www.refworld.org/docid/4d92e5392.html) [accessed 30 August 2016]
24. **Commission of Inquiry into Certain Events at the Prison for Women in Kingston**, (Ottawa: Public Works and Government Services Canada, 1996) [hereinafter cited as: Arbour Commission
25. **Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women**, (Ottawa: Canadian Human Rights Commission, December 2003) [hereinafter cited as: CHRC Report].
26. **Stewart v. Nova Scotia (Social Assistance Appeal Board)** 2001 NSSC 65.

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28. **Correctional Services Policy and Procedures**, “Orientation and Assessment—Adult Custody” (1.2)
29. **Correctional Services Regulations**, s. 45(2).
30. **Correctional Services Policy and Procedures**, “Orientation and Assessment—Adult Custody” (3.2)
31. Correctional Services Act, s. 41(1)
32. **Correctional Services Policy and Procedures**, “Security Risk Assessment—Institutional Security Assessment” (1.1-1.2)
33. **Correctional Services Policy and Procedures**, “Security Risk Assessment—Institutional Security Assessment” (4.2-4.3)
34. **Correctional Services Policy and Procedures**, “Security Risk Assessment—Institutional Security Assessment” (3.1)
35. **Correctional Services Policy and Procedures**, “Security Risk Assessment—Institutional Security Assessment” (5)
36. **Correctional Services Policy and Procedures**, “Risk and Needs Assessments—General” (1.1-1.2)
37. **Correctional Services Policy and Procedures**, “Level of Service/Case Management Inventory—(LS/CMI)” (2)
38. **Correctional Services Policy and Procedures**, “Risk & Needs Assessments—General” (3.2)
39. **Correctional Services Policy and Procedures**, “Risk & Needs Assessments—General” (3.3)
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41. **R. v. Starr**, [2001] M.J. No. 174 [No obligation to speak; no privilege].
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43. **Correctional Services Policy and Procedures**, “Adult Prisoner Personal Property” (4.1, 4.7, 4.11)
44. **Correctional Services Policy and Procedures**, “Adult Prisoner Personal Property” (7.1)
45. **Correctional Services Regulations**, s. 95(1)(a)
46. **Correctional Services Regulations**, s. 55
47. **Correctional Services Policy and Procedures**, “Menu Planning and Food Service” (3.6)
48. **Correctional Services Act**, s. 58(2). For bases on which to argue that special diets are an entitlement, not a privilege, see Chapter VI, “Nova Scotia Human Rights Commission” and sections 15 and 2(a) of the **Charter of Rights and Freedoms** (above).
49. **Correctional Services Policy and Procedures**, “Menu Planning and Food Service” (6.1)
50. **Correctional Services Policy and Procedures**, “Menu Planning and Food Service” (7.1)
51. **Correctional Services Act**, s. 57
52. **Correctional Services Regulations**, s. 56
53. **Correctional Services Policy and Procedures**, “Disciplinary Penalties” (5.1)
54. **Correctional Services Regulations**, s. 57
55. **Correctional Services Policy and Procedures**, “Clothing, Amenities, Bedding and Towels” (4.1-4.3)
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57. **Correctional Services Regulations**, s. 54(4)
58. **Correctional Services Act**, s. 54(1)
59. **Correctional Services Policy and Procedures**, “Orientation and Assessment—Adult Custody” (3.1.13)
60. **Correctional Services Regulations**, s. 37
61. **Correctional Services Regulations**, s. 40(1)
62. **Correctional Services Policy and Procedures**, “Prisoner Entitlements” (9.1)
63. **Correctional Services Policy and Procedures**, “Prisoner Communication” (1.1)
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66. **Correctional Services Regulations**, s. 59(1)
67. Nova Scotia Department of Justice, “Prisoner Telephone System Frequently Asked Questions”
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69. **Correctional Services Act**, s. 56
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71. **Correctional Services Regulations**, s. 95(3)
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73. *Correctional Services Policy and Procedures*, “Programs: General” (3.1-3.3)
74. *Correctional Services Policy and Procedures*, “Programs: General” (2.2)
75. *Correctional Services Policy and Procedures*, “Programs: General” (2.3)
76. *Correctional Services Policy and Procedures*, “Prisoner Education: Adult Prisoners” (2.1)
77. *Correctional Services Policy and Procedures*, “Programs: General” (2.4)
78. Lori Bower, Manager of Prisoner Programs, May 26, 2016
79. *Correctional Services Policy and Procedures*, “Prisoner Entitlements” (6.1)
80. *Correctional Services Policy and Procedures*, “Breach of Rules and Disciplinary Reports” (Appendix A, Section (o))
81. *Correctional Services Policy and Procedures*, “Programs: General” (3.4)
82. *Children and Family Services Act*, RSNS, 1990, c.5
83. *Maintenance and Custody Act*, RSNS, 1989, c.160.
84. The *Children and Family Services Act*, RSNS, 1990, c.5, s.17
85. Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11, s.7.
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88. *Newfoundland (Director of Child, Youth and Family Services, St. John’s Region) v. N.B.*, [2001] N.J. No. 74.
89. *Children and Family Services Act*, RSNS 1990, c 5, s. 3(2).
90. *Children and Family Services Act*, RSNS 1990, c 5, s. 22(2).
91. *Children and Family Services Act*, RSNS 1990, c 5, s. 22(2).
92. *Children and Family Services Act*, RSNS 1990, c 5, s. 9(d).
93. *Children and Family Services Act*, RSNS 1990, c 5, s. 43(4).
94. *Children and Family Services Act*, RSNS 1990, c 5 s. 46(1), 46(4)(c).
95. *Children and Family Services Act*, RSNS 1990, c 5 s. 39.
96. *Children and Family Services Act*, RSNS 1990, c 5, s. 39.
97. *Children and Family Services Act*, RSNS 1990, c 5, s. 47(5).
98. *Children and Family Services Act*, RSNS 1990, c 5, s. 45(1).
99. *Children and Family Services Act*, RSNS 1990, c 5, s. 33(2).
100. *Children and Family Services Act*, RSNS 1990, c 5, s. 33, 35.
101. *Children and Family Services Act*, RSNS 1990, c 5, s. 17.
102. *Children and Family Services Act*, RSNS 1990, c 5, s 41(4).
103. *Children and Family Services Act*, RSNS 1990, c 5, s. 47(1).
104. *Children and Family Services Act*, RSNS 1990, c 5, s. 47(2) (?)
105. *Children and Family Services Act*, RSNS 1990, c 5, s. 47(2).
106. *Children and Family Services Act*, RSNS 1990, c 5, s. 48.
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109. *Nova Scotia (Minister of Health and Community Services) v. G. (J.) [J.G.]*, [1999] S.C.J. No. 47.
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111. *Children and Family Services Act*, RSNS 1990, c 5, s. 30(2).
112. *Family and Children’s Services of Lunenburg County v. T.L.S.*, [1999] N.S.J. No. 434.
113. *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309.
114. *K.L. v. L.T.*, [2005] S.J. No. 52.
115. *United Nations Convention on the Rights of the Child*, article 9(2).
116. *Turner v. Burnaby Correctional Centre for Women (1994)*, 24 W.C.B. (2d) 250.
117. *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519.
118. *Inglis v Ministry of Public Safety and Solicitor General of BC*, [2013] B.C.J. 2708.
119. *Correctional Services Policy and Procedure*, “Nova Scotia Public Safety” (31.04.08)
120. *Children and Family Services Act*, RSNS 1990, c 5, s. 3(2)(j).
121. *Children and Family Services Act*, RSNS 1990, c 5, s. 37.
122. *United Nations Convention on the Rights of the Child*, 20 November 1989, 112 U.N.T.S. 44 at 25, at Article 9.
123. *Nova Scotia (Minister of Health and Community Services) v. G. (J.) [J.G.]*, [1999] S.C.J. No. 47.
124. *Children and Family Services Act*, RSNS 1990, c 5, s. 36(3).
125. SNS 1993, c. 5 [hereinafter cited as: *Freedom of Information and Protection of Privacy Act*].



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127. **Correctional Services Regulations**, s 12.
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130. Canadian Medical Association, CMA Code of Ethics, Ottawa: CMA, 2004, s 31 [CMA].
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132. **Correctional Services Policy and Procedure**, “4.06.00—access and disclosure of information—Requests for File Access from Prisoners” (1.1, 2.2, 3.2).
133. **Correctional Services Policy and Procedure**, “4.01.00—Access and disclosure of information—Freedom of Information & Protection of Privacy Act” (3.1).
134. **Correctional Services Policy and Procedure**, “4.03.00—Access and disclosure of information—office of the ombudsman” (4.1).
135. **Correctional Services Policy and Procedures**, “4.03.00—Access and disclosure of information—Requests for File Access from Prisoners” (3.2)
136. **Freedom of Information and Protection of Privacy Act**, section 20.
137. **Freedom of Information and Protection of Privacy Act**, section 18.
138. **Freedom of Information and Protection of Privacy Act**, section 13.
139. **Freedom of Information and Protection of Privacy Act**, section 18.
140. **Correctional Services Regulations**, s.61(1)
141. **Correctional Services Regulations**, s. 61(1)
142. **Correctional Services Act**, s. 55 and 56
143. **Correctional Services Policy and Procedures**, “37.14.00—general facility operations—Prisoner Communication” (3.3)
144. Charter, section 10(b).
145. **Correctional Services Regulations**, s 59(1); **Correctional Services Act** s.55.
146. **Correctional Services Regulations**, s.61(1)
147. **Correctional Services Act**, s. 55 and 56
148. Email from Sean Kelly to Emma Halpern, Mon, Jul 18, 2016 at 4:02 PM
149. Letters regarding right to counsel; written by Kim Pate to RPC (November 6, 2006) and FVI (April 28, 2006).
150. **Correctional Services Policy and Procedures**, “Access to Health Care” (1.3)
151. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “Health Coverage—Nova Scotia Medical Services Insurance” (Policy: 1-2)
152. **Correctional Services Policy and Procedures**, “Health Coverage—Nova Scotia Medical Services Insurance” (2.1)
153. **Correctional Services Policy and Procedures**, “Health Coverage—Nova Scotia Medical Services Insurance” (3.2)
154. Ken Bowes, Health Service Manager at the Central Zone of the Nova Scotia Health Authority, June 9, 2016
155. **Correctional Services Policy and Procedures**, “Health Coverage—Nova Scotia Medical Services Insurance” (3.4)
156. Ken Bowes, Health Service Manager at the Central Zone of the Nova Scotia Health Authority, June 9, 2016
157. **Correctional Services Policy and Procedures**, “Health Coverage—Nova Scotia Medical Services Insurance” (4)
158. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “Health Coverage—Nova Scotia Medical Services Insurance” (Guidelines: 8.1)
159. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “Health Coverage—Nova Scotia Medical Services Insurance” (Table 1)
160. **Correctional Services Policy and Procedures**, “Admission Health Information” (1.1)
161. **Correctional Services Policy and Procedures**, “Admission Health Information” (3.1)
162. **Correctional Services Regulations**, s. 45(2)(b)
163. **Correctional Services Policy and Procedures**, “Admission Health Information” (3.7)

164. **Correctional Services Policy and Procedures**, “Communicating Prisoner Health Information to Correctional Staff” (1.1)
165. **Correctional Services Policy and Procedures**, “Admission Health Information” (2.1)
166. **Correctional Services Policy and Procedures**, “Health Care—Admission Health Information” (3.2)
167. **Correctional Services Act**, Section 29
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169. Ken Bowes, Health Service Manager at the Central Zone of the Nova Scotia Health Authority, June 9, 2016
170. Ken Bowes, Health Service Manager at the Central Zone of the Nova Scotia Health Authority, June 9, 2016
171. **Correctional Services Policy and Procedures**, “Access to Health Care” (2.1-2.2)
172. **Correctional Services Policy and Procedures**, “Access to Health Care” (3.1-3.3)
173. **Health Care (Consent) and Care Facility (Admission) Act** [RSBC 1996] C 181, part 1.
174. **Correctional Services Policy and Procedures**, “Access to Health Care” (4)
175. **Correctional Services Policy and Procedures**, “Medication Distribution” (1.1)
176. **Capital Health Medication Manual Policy and Procedure**, “Patients Own Medication” (1)
177. **Correctional Services Policy and Procedures**, “Adult Prisoner Personal Property” (5.1)
178. **Correctional Services Policy and Procedures**, “Admission to a Correctional Facility” (16.2)
179. Ken Bowes, Health Service Manager at the Central Zone of the Nova Scotia Health Authority, June 9, 2016
180. **Capital Health Medication Manual Policy and Procedure**, “Benzodiazepine Restriction—Prisoner Health Services Formulary” (Policy: 1-2)
181. **Correctional Services Policy and Procedures**, “Contraband” (4.1.4)
182. **Correctional Services Act**, s. 53(1)
183. **Capital Health Medication Manual Policy and Procedure**, “Diversion and Trading or Abuse of Prescribed Medication” (Policy: 1-3)
184. **Capital Health Medication Manual Policy and Procedure**, “Over the Counter Medications, Vitamins and Dietary Supplements in Prisoner Health Services” (Policy: 1)
185. **Capital Health Medication Manual Policy and Procedure**, “Over the Counter Medications, Vitamins and Dietary Supplements in Prisoner Health Services” (Procedure: 1-2)
186. **Capital Health Medication Manual Policy and Procedure**, “Benzodiazepine Restriction—Prisoner Health Services Formulary” (Procedure: 1-2)
187. **Capital Health Medication Manual Policy and Procedure**, “Methadone Administration—Prisoner Health Services” (Policy: 1-2)
188. **Capital Health Medication Manual Policy and Procedure**, “Methadone Administration—Prisoner Health Services” (Procedure: 1.2)
189. **Capital Health Medication Manual Policy and Procedure**, “Methadone Administration—Prisoner Health Services” (Methadone Prescribing and Dosing: note)
190. **Capital Health Medication Manual Policy and Procedure**, “Methadone Administration—Prisoner Health Services” (Methadone Prescribing and Dosing: 2.2-2.6)
191. **Capital Health Medication Manual Policy and Procedure**, “Methadone Administration—Prisoner Health Services” (Methadone Prescribing and Dosing: 3.3)
192. **Correctional Services Policy and Procedures**, “Communicating Prisoner Health Information to Correctional Staff” (3.1-3.4)
193. **Correctional Services Policy and Procedures**, “Epipen Administration for Severe Allergic Reaction” (3.1, 3.2)
194. **Correctional Services Policy and Procedures**, “Infection Control” (1.1)
195. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “Work Program Exemptions” (Policy: 1-3)
196. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “Work Program Exemptions” (Procedure: 1-4)
197. Ken Bowes, Health Service Manager at the Central Zone of the Nova Scotia Health Authority, June 9, 2016
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201. Ken Bowes, Health Service Manager at the Central Zone of the Nova Scotia Health Authority, **An Act Respecting Involuntary Psychiatric Treatment**, RSNS 2005 c.42, s. 17-18.
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204. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “After Hours and Weekend Access to Emergency Mental Health Services for CNSCF” (Policy: 1)
205. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “After Hours and Weekend Access to Emergency Mental Health Services for CNSCF” (Procedure: 1-5)
206. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “After Hours and Weekend Access to Emergency Mental Health Services for CNSCF” (Procedure: 2.4)
207. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “Suicide Watch—Prisoner Health Services” (Policy: 1-2)
208. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “Suicide Watch—Prisoner Health Services” (Procedure)
209. **Capital Health Interdisciplinary Clinical Manual Policy and Procedure**, “Suicide Watch—Prisoner Health Services” (Procedure)
210. Ken Bowes, Health Service Manager at the Central Zone of the Nova Scotia Health Authority, June 9, 2016
211. Email from Sean Kelly to Emma Halpern, Mon, Jul 18, 2016 at 4:02 PM
212. **Nova Scotia Health Authority Mental Health and Addictions Manual Policy and Procedure**, “Dental Services—Prisoner Health Services” (Policy)
213. **Nova Scotia Health Authority Mental Health and Addictions Manual Policy and Procedure**, “Dental Services—Prisoner Health Services” (Procedure: 1)
214. **Nova Scotia Health Authority Mental Health and Addictions Manual Policy and Procedure**, “Dental Services—Prisoner Health Services” (Procedure: 2, 5)
215. **Correctional Services Policy and Procedures**, “5.04.00—Investigation, Inspection and Audits—Prisoner Complaint Process” (1.2)
216. **Correctional Services Act**, s 25 and 26; **Correctional Services Policy and Procedures**, s “46.00.00—Health Care—Access to Health Care” (1.1)
217. College of Physicians and Surgeons of Nova Scotia, <https://www.cpsns.ns.ca/Portals/0/PDFcomplaints/Complaint%20Form.pdf>
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219. **Correctional Services Regulations**, s 14(i).
220. **Correctional Services Act**, 2005, c 37, s 43.
221. **Correctional Services Regulations**, s 82.
222. **Correctional Services Act**, 2005, c 37, s 3.1.3.
223. **Gogan v. Nova Scotia (Attorney General)**, 2015 NSSC 360 .
224. **Standard Minimum Rules for the Treatment of Prisoner (The Mandela Rules)** E/ CN.15/2015/L.6/Rev.1, rule 3.
225. **Standard Minimum Rules for the Treatment of Prisoner (The Mandela Rules)** E/ CN.15/2015/L.6/Rev.1, rule 3.sp;
226. **Canadian Charter of Rights and Freedoms, Canada Act 1982 (UK)**, 1982, c 11. **Constitution Act**, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.
227. **Correctional Services Act**, 2005, c 37, s.74(a).
228. **Correctional Services Act**, 2005, c 37, s. 74(b).
229. **Correctional Services Act**, 2005, c 37, s. 74(d).
230. **Correctional Services Act**, 2005, c 37, s. 74(c).
231. **Correctional Services Regulations**, s. 95(1)(c), 95(1)(d).
232. **Correctional Services Regulations**, s. 69.
233. **Correctional Services Policy and Procedures**, “Disciplinary Close Confinement” (1.2)

234. **Correctional Services Policy and Procedures**, “Disciplinary Penalties” (8.3.1)
235. **Correctional Services Regulations**, section 80(4) & **Correctional Services Policy and Procedures**, “Disciplinary Penalties” (8.3.2)
236. **Correctional Services Policy and Procedures**, “43.02.00—segregation—administrative close confinement—discontinuing administrative close confinement” (7.1)
237. **Correctional Services Regulations**, s. 80(1).
238. **Correctional Services Regulations**, s. 80(3).
239. **Correctional Services Regulations**, s. 80(4).
240. **Correctional Services Regulations**, s. 54,
241. **Correctional Services Act**, s.57 & Regulations, s. 81.
242. **Standard Minimum Rules for the Treatment of Prisoner (The Mandela Rules)** E/ CN.15/2015/L.6/Rev.1, rule 18
243. Correspondence with Sean Kelly e-mail, Director of Correctional Services Nova Scotia
244. **Correctional Services Policy and Procedure**, “43.00.00 —Segregation —Close Confinement” (6).
245. **Correctional Services Regulations**, s. 95(3)(b).
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247. **Correctional Services Policy and Procedure**, “43.02.00—Segregation— Administrative Close Confinement” (5)
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250. **Gates v. Canada (Attorney General)**, 2007 FC 1058 (CanLII), <[www.canlii.ca/t/1t8q6](http://www.canlii.ca/t/1t8q6)>
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252. **Correctional Services Act**, s. 30.
253. **Correctional Services Regulations**, s 85; **Correctional Services Policy and Procedure**, “42.00.00— Correctional Facilities—General” (1.2).
254. **Correctional Services Policy and Procedure**, “42.00.00—prisoner disciplinary system— General” (1).
255. **Idziak v. Canada (Minister of Justice)**, [1992] 3 S.C.R. 631.
256. **Correctional Services Regulations**, s 86.
257. **Correctional Services Regulations**, s. 95(2); **Correctional Services Policy and Procedures**, “42.00.00 prisoner disciplinary system—general” (6).
258. **NS Adult Prisoner Handbook\_EN** (p. 22).
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260. **Correctional Services Regulations**, s. 92.
261. **Correctional Services Regulations**, s. 90; **Correctional Services Policy and Procedures**, “prisoner disciplinary system—breach of rules and disciplinary reports” (6.1).
262. **Correctional Services Policy and Procedures**, “prisoner disciplinary system— breach of rules and disciplinary reports” (6.2).
263. **Correctional Services Policy and Procedures**, “42.00.00— prisoner disciplinary system— general” (9); **Correctional Services Act**, s.70(1); **Correctional Services Regulations**, s. 95(1).
264. **Correctional Services Act**, s. 69; **Correctional Services Regulations**, s. 9.
265. **Correctional Services Policy and Procedure**, “prisoner disciplinary system—breach of rules and disciplinary reports” (6.1).
266. **Correctional Services Policy and Procedure**, “prisoner disciplinary system—breach of rules and disciplinary reports” (6.1).
267. **Correctional Services Policy and Procedure**, “prisoner disciplinary system—disciplinary adjudication” (5.2).
268. **Correctional Services Policy and Procedure**, “prisoner disciplinary system—disciplinary adjudication” (5.5).
269. **Correctional Services Regulations**, s.93, 94.
270. **Correctional Services Policy and Procedure**, “prisoner disciplinary system—disciplinary adjudication” (5.5)

271. ***Correctional Services Policy and Procedure***, “prisoner disciplinary system—disciplinary adjudication” (5.3). And see ***Correctional Services Regulations***, ss.93&94.
272. ***Correctional Services Policy and Procedure***, “42.04.00— prisoner disciplinary system—disciplinary adjudication” (4.1)
273. ***Correctional Services Policy and Procedure***, “42.04.00 —prisoner disciplinary system—disciplinary adjudication” (5.6).
274. ***Correctional Services Policy and Procedure***, “prisoner disciplinary system—disciplinary adjudication” (5.5)
275. ***Correctional Services Policy and Procedure***, “42.04.00—prisoner disciplinary system —Disciplinary Review Board” (5).
276. ***Correctional Services Policy and Procedure***, “42.04.00—prisoner disciplinary system— breach of rules and disciplinary reports” (5.7.1-5.7.2).
277. ***Correctional Services Policy and Procedure***, “42.04.00—prisoner disciplinary system— breach of rules and disciplinary reports” (5.8, 5.9).
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279. ***Correctional Services Policy and Procedure***, “42.05.00— prisoner disciplinary system—disciplinary penalties” (5.1.1-5.1.3).
280. ***Correctional Services Policy and Procedure***, “42.05.00— prisoner disciplinary system—disciplinary penalties” (8.1-8.4).
281. ***Correctional Services Policy and Procedure***, “42.05.00—prisoner disciplinary system—disciplinary penalties” (8.4)
282. ***Correctional Services Policy and Procedure***, “42.05.00—prisoner disciplinary system—disciplinary penalties” (8.1).
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284. ***Correctional Services Policy and Procedure***, “42.05.00— prisoner disciplinary system—disciplinary penalties” (5.2).
285. ***Correctional Services Policy and Procedure***, “42.05.00—prisoner disciplinary system—disciplinary penalties” (7.2)
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287. ***Correctional Services Policy and Procedure***, “42.08.00—Prisoner Disciplinary System—Disciplinary Penalty Appeal Process” (3).
288. ***Correctional Services Regulations***, s. 98, 99.
289. ***Correctional Services Regulations***, s. 99.
290. ***Correctional Services Policy and Procedure***, “42.03.00—prisoner disciplinary system—temporary measures” (1).
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292. ***Correctional Services Policy and Procedure***, “42.03.00—prisoner disciplinary system—temporary measures” (4.2.1-4.2.4).
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295. ***Correctional Services Policy and Procedures***, “42.03.00—prisoner disciplinary system—temporary measures” (4.4).
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297. ***Correctional Services Policy and Procedures***, “42.03.00—prisoner disciplinary system—temporary measures” (5.3).
298. ***Correctional Services Policy and Procedure***, “42.03.00—prisoner disciplinary system—temporary measures” (5.4).
299. ***Correctional Services Policy and Procedure***, “39.01.00—searches and contraband—Searches of Prisoners, Staff and Visitors” (3).

300. **Correctional Services Policy and Procedure**, “39.01.00—Searches and Contraband—Searches of Prisoners, Staff and Visitors” (5.9).
301. **Correctional Services Regulations**, s. 67, 68.
302. **Correctional Services Act**, s 64(2); **Correctional Services Policy and Procedure**, “39.01.00—Searches and Contraband—Searches of Prisoners, Staff and Visitors”(3.7).
303. **Correctional Services Policy and Procedure**, “39.02.00—Searches and Contraband —Admission and Discharge Searches” (4.5).
304. **Correctional Services Policy and Procedure**, “39.02.00—Searches and Contraband—Admission and Discharge Searches” (4.8).
305. **Correctional Services Act**, s. 49(a).
306. **Correctional Services Act**, s 61.
307. **Correctional Services Act**, s. 62.
308. **Correctional Services Policy and Procedure**, “39.01.00—Searches and Contraband—Searches of Prisoners, Staff and Visitors” (5.5); **Correctional Services Act** s. 63.
309. **Correctional Services Act**, s. 62.
310. **Correctional Services Regulations**, s. 34.
311. **Correctional Services Policy and Procedure**, “39.01.00—Searches and Contraband—Searches of Prisoners, Staff and Visitors” (7).
312. **Correctional Services Policy and Procedures**, “Temporary Absences—Legislative Authority” (1-2)
313. **Correctional Services Policy and Procedures**, “Temporary Absences—Supervision” (2)
314. **Correctional Services Act**, s 35(b).
315. **Correctional Services Policy and Procedures**, “Temporary Absences—Certificates” (1)
316. **Correctional Services Policy and Procedures**, “Temporary Absences—Suspensions and Revocations” (3-4)
317. **Correctional Services Act**, s 84. **Correctional Services Regulations**, s 106.
318. **Correctional Services Act**, s 81, **Correctional Services Regulations**, s.107.
319. **Correctional Services Act**, s 78. Policy, s 2.4 “Temporary Absences – Suspensions and Revocations” (723).
320. **Correctional Services Act**, s 78. Policy, s 2.4 “Temporary Absences – Suspensions and Revocations” (723).
321. **Correctional Services Policy and Procedures**, “Temporary Absences—Guiding Principles” (3.2.1)
322. **Correctional Services Policy and Procedures**, “Temporary Absences—Types and Duration” (1.1)
323. **Correctional Services Policy and Procedures**, “Temporary Absences—Eligibility” (2.1)
324. **Correctional Services Policy and Procedures**, “Temporary Absences—Types and Duration” (2.1)
325. **Correctional Services Policy and Procedures**, “Temporary Absences—Eligibility” (4.1)
326. **Correctional Services Policy and Procedures**, “Temporary Absences—Types and Duration” (2.2)
327. **Correctional Services Policy and Procedures**, “Temporary Absences—Eligibility” (5)
328. **Correctional Services Policy and Procedures**, “Temporary Absences—Types and Duration” (2.4)
329. **Correctional Services Policy and Procedures**, “Temporary Absences—Eligibility” (6)
330. **Correctional Services Policy and Procedures**, “Temporary Absences—Medical” (2.2)
331. Policy, s 3 “Temporary Absences – Types and Duration” (694).
332. **Correctional Services Act**, s 102. **Prisons and Reformatories Act**, s. 7.4(1).
333. Policy, s 3.2 “Temporary Absences – Types and Duration” (694).
334. **Correctional Services Policy and Procedures**, “Temporary Absences—Application Process” (2)
335. **Correctional Services Regulations**, s. 101
336. **Correctional Services Policy and Procedures**, “Temporary Absences—Application Process” (3.1)
337. **Correctional Services Policy and Procedures**, “Temporary Absences—Application Process” (3.3)
338. **Correctional Services Policy and Procedures**, “Temporary Absences—Application Process” (4.2)
339. **Correctional Services Policy and Procedures**, “Temporary Absences—Application Process” (4.3)
340. **Correctional Services Regulations**, s. 107
341. **Correctional Services Act**, s 76.
342. **Correctional Services Regulations**, s. 107
343. **Correctional Services Regulations**, s. 107
344. **Correctional Services Regulations**, s. 107
345. **Correctional Services Regulations**, s 95(1)(f).
346. **Correctional Services Regulations**, s 95(1)(f).

347. **Correctional Services Regulations**, s. 96(2)
348. **Correctional Services Regulations**, s 99(1)(c).
349. This person might need to be a family member so you can give them to him or her during contact visits. If due to disciplinary charges, you are no longer able to have contact visits (or if you are generally having difficulty getting the documents out of the prison), argue that this person is who you have chosen to help assist and represent you at your parole hearings and therefore needs to have access to the documents.
350. **Correctional Services Act**, s. 81.
351. **Correctional Services Regulations**, s 107.
352. **Correctional Services Policy and Procedure**, “5.04.00—Investigation, Inspection and Audits—Prisoner Complaint Process” (1-8).
353. See Chapter 1.
354. ‘Do I Qualify?’, Legal Aid Nova Scotia, [www.legalaid.ca/qualify.php](http://www.legalaid.ca/qualify.php);
355. Legal Aid Nova Scotia Website: < [www.legalaid.ca/](http://www.legalaid.ca/)>.
356. Nova Scotia Barrister Society, [www.nsbbs.org/complaint-form](http://www.nsbbs.org/complaint-form)
357. Nova Scotia Barrister Society, [www.nsbbs.org/for\\_the\\_public/client\\_compensation\\_fund](http://www.nsbbs.org/for_the_public/client_compensation_fund)
358. **Correctional Services Act**, s 24; **Correctional Services Regulations**, s 27.
359. **Correctional Services Regulations**, s 28(1)(c).
360. **Correctional Services Policy and Procedure**, “Investigation, Inspection and Audits—Prisoner Complaint Process” (4.1).
361. **Correctional Services Regulations**, s 26
362. **Correctional Services Policy and Procedure**, “5.04.00—Investigation, Inspection and Audits—Prisoner Complaint Process” (4.4).
363. **Correctional Services Policy and Procedure**, “5.04.00—Investigation, Inspection and Audits—Prisoner Complaint Process” (4.4); **Correctional Services Regulations**, s 29.
364. **Correctional Services Regulations**, s 30(2).
365. **Correctional Services Regulations**, s 30(3).
366. **Ombudsman Act**, s. 11(1).
367. **Ombudsman Act**, section 14(1).
368. **Ombudsman Act**, section 14(1)(a).
369. **Ombudsman Act**, section 14(1)(d).
370. **Ombudsman Act**, section 14(1)(e).
371. Nova Scotia Office of the Ombudsman, [www.novascotia.ca/ombu/publications/ComplaintForm.pdf](http://www.novascotia.ca/ombu/publications/ComplaintForm.pdf)
372. **NS Human Rights Act**, s. 5(1).
373. CHRC Report.
374. CHRC Report.
375. **NS Human Rights Act**, s 29(2), 29(3).
376. **NS Human Rights Act**, s 34A
377. **NS Human Rights Act**, s 36.
378. **NS Human Rights Act**, s 34(8).
379. **NS Human Rights Act**, s 41.
380. **NS Human Rights Act**, s 34.
381. **NS Human Rights Act**, s 11.
382. All information in the following section is from: Human Rights Legal Support Centre, “An Applicant’s Guide to Judicial Review”, [www.hrlsc.on.ca/en/publications-resources/information-sheets-guides/applicants-guide-judicial-review](http://www.hrlsc.on.ca/en/publications-resources/information-sheets-guides/applicants-guide-judicial-review)
383. **May v. Ferndale Institution**, [2005] 3 S.C.R. 809.
384. **Chaudhary v. Canada (Public Safety and Emergency Preparedness)**, 2015 ONCA 700 (CanLII), <[www.canlii.ca/t/glp6s](http://www.canlii.ca/t/glp6s)>

# NOTES



