

# **HUMAN RIGHTS IN ACTION**

## **A Handbook for Women in Provincial Jails in British Columbia**

CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES  
WEST COAST PRISON JUSTICE SOCIETY

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# Preface

This manual was produced for use in the prison advocacy training part of the Human Rights in Action (HRIA) project.

The HRIA project is dedicated to ensuring that the human rights of all prisoners are protected, especially those of women prisoners who are racialized and those with disabling mental health issues. The HRIA project vision is to increase our success in keeping and returning women to the community. The three groups involved in developing the project are also committed to working to decrease the use of prison and to developing release strategies for those who are currently incarcerated.

All of the project's work is aimed at achieving substantive equality of women in and from prison. We work to address the inter-sectional, multi-dimensional oppression of women, and specific issues relevant to Aboriginal women.

The project is also about enabling women to survive criminalization and prison by reinforcing their own, pre-existing capacities and strengths. Our aim is to support individual women in and from jail to:

- create advocacy teams made up of current prisoners, ex-prisoners, and community people;

- have women out of jail as quickly as possible;
- enable all women to stay out of prison once they are released;
- participate in coalitions that support human rights principles and goals at the local, regional, and national levels.

The Human Rights Training Manual is meant to assist you to become a self and peer advocate. The idea is to ensure that those whose rights are interfered with have support to address discriminatory treatment, in addition to identifying and addressing areas that require systemic advocacy.

## **A BRIEF HISTORY OF THE HUMAN RIGHTS IN ACTION PROJECT**

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

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 calling 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 collaborate on efforts to ensure the implementation of the CHRC recommendations and on longer term commitments to social justice, decarceration and de-institutionalization. CAEFS also sought and obtained resources that enabled it to work collaboratively with the Native Women's Association of Canada (NWAC) and Strength in Sisterhood (SIS) to further the human rights of women prisoners. The Human Rights in Action Project was developed to provide practical tools and training for women inside to work with the support of allies on the outside to address advocacy issues in the prisons for women, as well as the urgent need to develop community release options for all women, especially Aboriginal women exiting federal prisons.

Throughout 2007 and 2008, the HRIA program was presented at eight federal prisons throughout Canada where women are serving federal prison sentences. While the prison officials only expected a handful of women to participate in each session, we were overwhelmed by the positive response. Over half of the population of each of the prisons came out to learn about their rights and how to better advocate for themselves and their peers. Many women suggested that the program be offered to women in and from provincial prisons as well. So, the project has been developed to be piloted in six different provinces and territories, in the hopes that women who are provincially sentenced can benefit from the training to better advocate for their own rights. Supporters and advocates will also receive training at each of the pilot sites.

## THE AUTHORS

This manual is a “work in progress.” The first draft of the provincial manuals was prepared by a law student at the University of Ottawa under the supervision and guidance of the Canadian Association of Elizabeth Fry Societies (CAEFS). It is largely based on the federal manual which was created by a group of law students at the University of Ottawa and women who are or were federally sentenced prisoners.

If you have any suggestions, comments or questions, please contact Kim at CAEFS. Call 1-800-637-4606 (toll free) or 613-238-2422 (collect). You can also write to us at:

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# Part I: Introduction

## **THE LAW IN BRITISH COLUMBIA**

### *The Rule of Law and the Constitution of Canada*

The rule of law is an underlying principle in our society. It means that no one is above the law and the law applies to everyone. This idea is guaranteed in our Constitution.

The Constitution is the supreme law in Canada. All laws in Canada must comply with the Constitution. The *Charter of Rights and Freedoms* is part of the Constitution, and is intended to guarantee that our laws protect the values and freedoms of our society. Section 15 of the *Charter* is meant to protect our right to be treated equally before and under the law regardless of our race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

### *Who makes the laws?*

There are two sources of law in Canada. Laws are made by governments (federal, provincial, and municipal) and, in a different way, by the courts. (For more on the kind of law the courts make, see the section on “case law” later in this chapter). Federal laws apply to all of Canada. Provincial laws apply only within the province that enacts them.

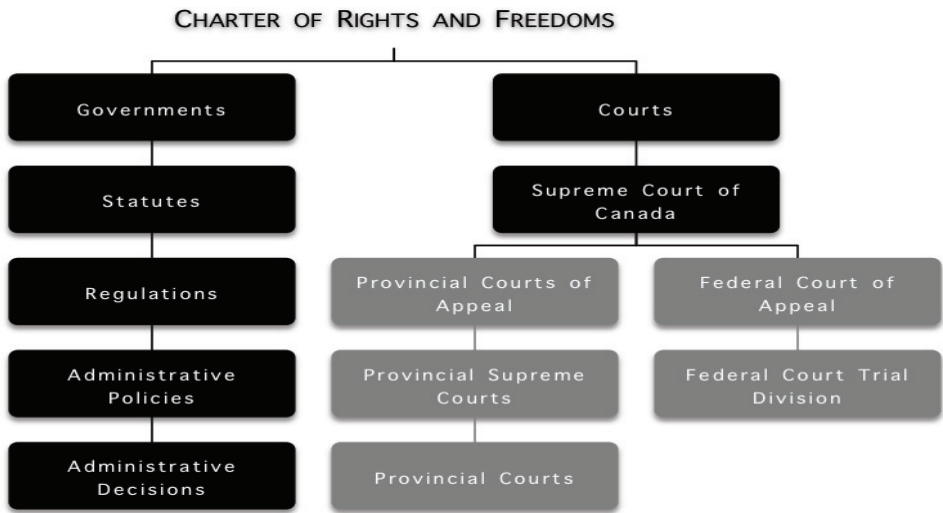
For example, the *Criminal Code of Canada* is a federal law. The *Correction Act* and the British Columbia *Human Rights Code* are provincial laws that apply only in British Columbia. Many of the laws that will affect you are provincial laws of British Columbia.

In both federal and provincial governments, representatives elected by citizens make the law. In the courts, judges make the law. Judges are appointed by government. This is why it is important that all citizens - including prisoners - exercise their right to vote. Everyone should have her or his say in shaping the law in British Columbia and in Canada.

Provincial governments run provincial jails and the federal government runs the federal penitentiaries. If your sentence is over two years, you will most likely be incarcerated in a federal institution which follows federal laws, but if your sentence is under two years, you will be in a provincial jail. Since this manual relates to a provincial institution, a lot of the laws discussed will be the law of British Columbia. Still, there are some federal laws, such as the *Charter*, that apply to everyone, regardless of whether they are in a provincial or federal institution.

*How does the law work?*

Laws are meant to be consistent with each other. For example, all laws in Canada must comply with the *Charter*; regulations must be consistent with the statutes they are made under; and lower court judges must make decisions that are consistent with the decisions of higher courts. The following chart illustrates the order in the rule of law hierarchy:



# SOURCES OF LAWS THAT AFFECT WOMEN IN PRISON:

## LAWS FROM GOVERNMENT

### *Charter of Rights and Freedoms*

The *Charter of Rights and Freedoms* is the part of the Canadian Constitution that protects the rights of Canadians from government action and policies. Every law and government action or policy in Canada must comply with the *Charter*.

Some sections of the *Charter* that are particularly relevant to you as a prisoner 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.

**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.

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

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

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

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay and to be informed of that right; and
- (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

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

**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.

When a policy or law is challenged using the *Charter* it is called a “*Charter* challenge.” While *Charter* challenges have most often been undertaken by prisoners using section 7, prisoners may also challenge government law, policy or action under sections 12 and 15 of the *Charter*.

## *Statutes*

A statute is a provincial or federal formal written law that is voted on and passed by the legislature. Statutes are also called *Acts* or legislation.

The British Columbia *Correction Act*<sup>1</sup> is the statute that governs provincial prisoners in British Columbia. It sets out how prisons in British Columbia are to be administered, and provides the authority for the government to establish regulations under the *Correction Act*.

Another British Columbia statute that applies to provincial prisoners is the *Human Rights Code*.<sup>2</sup> The *Human Rights Code* guarantees that no one in British Columbia shall be discriminated against based on her race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or in some circumstances, age. If you feel that any of these rights are being infringed, you can file a complaint with the British Columbia Human Rights Tribunal, a body set up to investigate complaints and promote equality. Information on how to file a complaint can be found in the remedies section.

## *Regulations*

Regulations are laws made by government as authorized under statute. Regulations set out the concrete rules of how the statutes apply in reality.

The most important regulations for you are the *Correction Act Regulation (CAR)*.<sup>3</sup> The regulations set out important guidelines on things like discipline, searches and segregation. These regulations contain both provisions which protect your rights (i.e. complaints and appeals) and rules about how

<sup>1</sup> *Correction Act*, SBC 2004, c. 46 (CA).

<sup>2</sup> *Human Rights Code*, R.S.B.C. 1996, c. 210

<sup>3</sup> *Correction Act Regulation*, BC Reg. 58/2005 (CAR).

BC Corrections can restrict your liberty (e.g., administrative segregation and discipline). It also sets out some of the basic rights of prisoners in relation to their confinement.

## *Policy*

Policies are rules and procedures to provide guidance on how to fulfill obligations and make decisions. Policies must be in accordance with statutes and regulations. Policies are not legally binding. Some policies affect you while you're in prison are:

- Adult Custody Policy – BC Corrections Branch, and
- Adult Custody Division Health Care Services Manual – BC Corrections Branch.

Some power to make decisions is designated to individuals at the administrative level. Usually the decision maker is the “person in charge” or the warden of the institution. In some cases the decision maker is the provincial director of correctional centres in BC.

Policy is also made by administrative bodies. For example, the Ministry of Public Safety and Solicitor General has established the Investigation and Standards Office, which is an independent body responsible for investigating complaints involving the administration of the Correction Act. The Investigation and Standards Office is supposed to be independent of the prison administration.

## **SOURCES OF LAWS THAT AFFECT WOMEN IN PRISON: LAWS FROM COURTS**

### *Case Law*

The law we've discussed so far is government law. 'Case law' is another kind of law. Case law comes from judge's decisions or judgments. When a judge makes a decision in a case – particularly on some issue that has not yet been before the courts – 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. If a higher court rules on an issue, lower courts must comply with the precedent. This means that if the Supreme Court of Canada makes a decision, all the lower courts must follow it. The court hierarchy is shown in the chart above.

## International Treaties

Treaties are international agreements that are signed on to by various countries. Countries that sign them are then expected to implement what they have agreed to. The courts do not have to follow treaties, but when Canada signs and ratifies a treaty, that can be used to show what Canada is saying to the rest of the world about the laws and rights the government supports. For example, the fact that Canada is a signatory to the *UN Standard Minimum Rules for the Treatment of Prisoners* should mean that Canadian prisoners are treated in accordance with the standards set out in this treaty.

Other examples of treaties that Canada has signed that relate to women in prison are the:

- *Universal Declaration of Human Rights*,<sup>4</sup>
- *United Nations Convention Against Torture*,<sup>5</sup>
- *United Nations International Covenant on Civil and Political Rights*,<sup>6</sup> and
- *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*.<sup>7</sup>

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

Yes. It is always best to try to challenge unfair decision, policies and laws at the lowest level possible. The ways to challenge decisions that affect you are outlined at the end of this booklet in the section on “remedies” (See Part VI). Your challenge may be resolved by institutional staff, or, if you are not successful at lower levels, you may decide to bring your challenge to court.

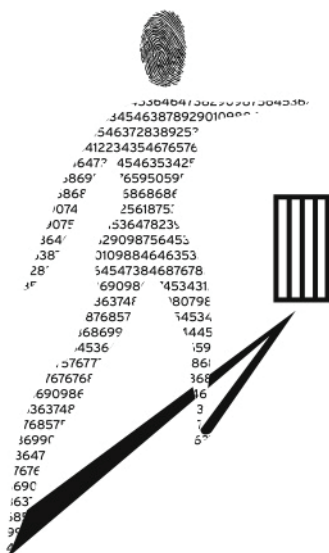
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<sup>4</sup> *Universal Declaration of Human Rights*, 10 December 1948, Res. 217 A (III).

<sup>5</sup> *United Nations Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* 1465 U.N.T.S 85; 8 C.F.R. § 208.18.

<sup>6</sup> *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).

<sup>7</sup> *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.



## Part II: Arriving in Prison

### THE INTAKE ASSESSMENT PROCESS

*What happens after I am sentenced?*

When you are sentenced, you will be brought to a provincial jail, where your initial assessment takes place. First, you will need to submit to an identification process that includes a photograph being taken of you, and you providing identifying information about yourself.<sup>8</sup>

You will undergo an initial classification as soon as possible after you have been sentenced. This initial security classification will determine your security level and programming.<sup>9</sup> A report will be written that will provide your information, initial classification and suggestions for planning.<sup>10</sup> You will also undergo a Risk/Needs Assessment (RNA) which is intended to help to classify your security level and develop a case plan.<sup>11</sup>

According to the Ministry of Public Safety and Solicitor General, the fol-

<sup>8</sup> CAR s. 8(2).

<sup>9</sup> Adult Custody Policy, 4.1.3(1).

<sup>10</sup> Adult Custody Policy, 4.1.3(2).

<sup>11</sup> Adult Custody Policy, 4.6.1(1).

lowing factors are taken into consideration when preparing your sentence management plan:

- Correctional history;
- Criminal history;
- Family concerns;
- Education and work record; and
- Individual needs identified in the risk/needs assessment.<sup>12</sup>

When you are sentenced to custody, the correctional centre records officer will provide you with information on how much remission can be earned on the sentence and when release may occur if the maximum remission is earned.<sup>13</sup>

### *What information will I be asked to provide?*

You will be asked for a lot of information. When you are first admitted to jail, you will need to provide basic information, such as your name; date and place of birth; height and weight; and distinguishing marks (birthmarks, scars and tattoos).<sup>14</sup> Your initial assessment is made up of a wide array of forms and reports, which are to be completed by different people. For example, you will be asked to undergo a medical assessment.<sup>15</sup>

It is important that you be aware that when mental health professionals see you to make assessments (as opposed to seeing you to provide treatment) the information they have about you is not considered confidential (go to the section on health care for more information concerning your rights as a patient in prison). Under some circumstances, this information can legally be distributed to certain people far beyond the prison walls.

### *What information do I have to provide?*

You must provide your name, date and place of birth, height and weight, distinguishing marks and correctional service number. You do not need to answer other questions asked during the intake process,<sup>16</sup> either about yourself or your family and community supports. Information you provide can be used against you. You must decide for yourself how much you want to cooperate.

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<sup>12</sup> Minister of Public Safety and Solicitor General: [www.pssg.gov.bc.ca](http://www.pssg.gov.bc.ca).

<sup>13</sup> Minister of Public Safety and Solicitor General: [www.pssg.gov.bc.ca](http://www.pssg.gov.bc.ca).

<sup>14</sup> CAR s. 8(2)(b).

<sup>15</sup> CAR s. 39(1).

<sup>16</sup> *R. v. Starr*, [2001] M.J. No. 174. (No obligation to speak; no privilege).

On one hand, you need to be aware that your conduct during assessment may be used as a factor in determining your classification, and declining to answer questions may have a negative effect on this (For example, policy lists ‘being evasive’<sup>17</sup> as part of the reasons for being placed in secure custody, at least initially). On the other hand, you need to keep in mind that the people who interview you for their reports do not have to keep any information you provide during the intake process confidential. There are some circumstances in which it may be desirable to exercise your right not to answer certain questions.

For example, if you are awaiting an appeal, your lawyer might advise you not to participate in supplementary assessments (for instance, a Psychological Assessment) until after your appeal is decided. BC Corrections may still proceed even if you refuse to cooperate. However, if your lawyer has advised you against participating, tell that to the person writing the report and request that this be clearly and prominently noted at the beginning of the document. If, on the contrary, 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.

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

## CASE MANAGEMENT PLAN

The case management plan is a document that outlines the goals BC Corrections sets for you, as well as the programs you may participate in and the location where your sentence will be served.<sup>18</sup> This plan must be developed within three weeks of the beginning of your sentence if you have been sentenced to more than 90 days.<sup>19</sup> BC Corrections states that the principles of case management are: that the level of security, control and supervision of prisoners should correspond to their risk level; programs and services should correspond to prisoners’ needs and conduct; and resources are aimed at higher risk/needs cases.<sup>20</sup>

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<sup>17</sup> Adult Custody Policy, 4.5.3(4).

<sup>18</sup> Minister of Public Safety and Solicitor General: [www.pssg.gov.bc.ca](http://www.pssg.gov.bc.ca).

<sup>19</sup> Adult Custody Policy, 4.1.4(9).

<sup>20</sup> Adult Custody Policy, 4.6.12(1).

You will be assigned a case manager, who plays an important role for you. Your case manager is responsible for ensuring that you are enrolled in core programs and activities that most closely correspond to your needs; monitoring your progress and behavioural change; completing your needs assessment, and developing your case management plan; and assisting you in your rehabilitation.<sup>21</sup> She must also ensure that all the information about your program and activity involvement, progress and behaviour are kept current in your file.<sup>22</sup> This information will be considered when you apply for things like temporary absences.

Your case management plan will outline the following:

- Training and work opportunities that might be suitable;
- Areas where counselling should be provided;
- Support that may be required for release planning; and
- Dates when actions or reviews are to be initiated.<sup>23</sup>

*Is the process the same for Aboriginal women?*

The process is generally the same for Aboriginal women. However, if a Gladue report was done as part of your sentencing proceedings, the information from it can also be used in the assessment and classification process.

*Does the prison have to provide me with any information during the initial intake process?*

Once you arrive at prison, you should be given reasonable access to the following information:

- The legislation that will affect you in prison (i.e. the Correction Act and Regulations),
- Information about the daily routine of the prison,
- Information about rules and what happens if you breach those rules,
- How to file a complaint and how to ask for review a disciplinary hearing decision, and
- How to apply for temporary absence and parole.<sup>24</sup>

If you have trouble understanding this information, then the warden has to make sure that you get help to understand the material.<sup>25</sup>

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<sup>21</sup> Adult Custody Policy, 4.6.14(1).

<sup>22</sup> Adult Custody Policy, 4.6.14(2).

<sup>23</sup> Minister of Public Safety and Solicitor General: [www.pssg.gov.bc.ca](http://www.pssg.gov.bc.ca).

<sup>24</sup> CAR s. 5(1).

<sup>25</sup> CAR s. 5(2).

## *Is there other information I should receive automatically?*

Yes. A lot of the information that you receive will be important to make sure that you get back into the community as soon as possible.

If you are serving a sentence that is more than six months, then you should receive a copy of the sentence calculation.<sup>26</sup> This includes the date that you are eligible for early release if you earn the maximum amount of remission possible. Try to keep this document in a place you will not lose it while, at the same time, you have easy access to it. You should also receive:

- Information on earning remission,<sup>27</sup>
- The policy on temporary absences,<sup>28</sup>
- Information concerning conditional release, eligibility and application procedures provided by the National Parole Board,<sup>29</sup>
- Written notice that telecommunications, other than to privileged parties, may be monitored,<sup>30</sup> and
- Your Case Management Plan.<sup>31</sup>

Your Case Management Plan identifies the programs and activities that are considered suited to your needs. Your progress will be measured by how much of your case management plan you have completed and how well you have done, so it is VERY important. For example, when it comes time to start your release plans, your case management officer will usually only support you in your applications for conditional releases if you are making progress completing your plan. The Parole Board will also look closely at this same factor in deciding whether or not to grant your release applications. This is true even if your failure to complete a program is because there was not enough room for you to take the program or because it was delayed or cancelled.

It is very important that the information upon which the Case Management Plan is based is accurate, and that any disagreement over, or concern with, the intake assessment and resulting Case Management Plan is voiced and recorded as early as possible.

BC Corrections has the right to prioritize who will be scheduled to take

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<sup>26</sup> Adult Custody Policy, 3.7.24.

<sup>27</sup> Adult Custody Policy, 3.9.3.

<sup>28</sup> CAR, s. 5(1)(d)(iii).

<sup>29</sup> Adult Custody Policy, 6.6.1.

<sup>30</sup> Adult Custody Policy, 7.8.10.

<sup>31</sup> Adult Custody Policy, 4.1.4(9).

what programs and when, according to staff assessment of prisoners' needs. This is stated in BC Corrections' own policies, and has also been recognized in case law.<sup>32</sup> This may mean long delays for people found to be of lower need overall, or for those serving longer sentences. You may also be "screened out" of a program (not allowed to take it) by the person who delivers a program, but this does not mean it will be removed from your Case Management Plan. A memo will be added to your file noting the program deliverer's reasons for not accepting you into the program.

The interviews and assessments that go into your Case Management Plan are generally conducted without an assistant, unless you need someone there to help you understand the process.<sup>33</sup> So, if you have trouble understanding English or need other assistance, then you should make sure that you have a support person there to help you.

### *What kind of programs will I have to take?*

According to the *Correction Act Regulation*, the prison must establish programs for prisoners, including religious and recreational programs.<sup>34</sup> These programs should be designed to improve your education or training, and help with reintegration back into the community.

Examples of programs currently offered by BC Corrections include:

- Substance Abuse Management Program
- Violence Prevention Program
- Respectful Relationships Program<sup>35</sup>

Core Programs in Development:

- Relapse prevention for sex offenders;
- Educational upgrading;
- Living skills; and
- Cognitive skills.<sup>36</sup>

You must participate in programs directed by the warden unless you are excused by a health care professional, it is a religious program that you choose

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<sup>32</sup> Adult Custody Policy, 4.6.13; *Ennis v. Canada*, [2003] F.C.J. No. 633. (Right to prioritize).

<sup>33</sup> Adult Custody Policy, 4.4.2(7).

<sup>34</sup> *CAR*, s. 38(1).

<sup>35</sup> Minister of Public Safety and Solicitor General: [www.pssg.gov.bc.ca](http://www.pssg.gov.bc.ca).

<sup>36</sup> Minister of Public Safety and Solicitor General: [www.pssg.gov.bc.ca](http://www.pssg.gov.bc.ca).

not to participate in, or it is a work program, you are on remand or under immigration detention and you have not consented to the work assignment.<sup>37</sup>

### *Are there programs for Aboriginal women?*

There are not any programs that are listed specifically for Aboriginal women, however certain programs may be developed under the listing of ‘Religious Programs and Practices.’<sup>38</sup> For example, the warden may permit the use of religious objects for ceremonial purposes, as long as those objects do not threaten the security or safety of the prison.<sup>39</sup> Accepted objects include: sweetgrass; sage; ceremonial pipes (used by recognized pipe carriers); ceremonial blankets; eagle feathers; sea shells; and medicine bag that contains herbs (remains sealed at all times).<sup>40</sup>

## SECURITY CLASSIFICATION

### *What is classification?*

Classification is the security rating BC Corrections assigns to prisoners to distinguish them according to their needs and perceived risk to society. Classification is meant to assign prisoners the lowest level of security that the individual case permits, while giving access to health care, education, work activities, social programs and recreation programs.<sup>41</sup> The categories of classification include secure, medium and open.<sup>42</sup>

Your initial classification is determined by the ‘inmate classification assessment’ (ICA). The assessment process you will go through is largely aimed at determining the security required based on an assessment of things like your escape risk and public safety risks.

Presently, the Alouette Correctional Centre for Women has both open custody and medium custody units, the Surrey Pretrial Services Centre has a secure unit for women and holds remand women prisoners, and the Prince George Regional Correctional Centre holds both medium and secure custody women prisoners.

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<sup>37</sup> CAR, s. 38(3).

<sup>38</sup> Adult Custody Policy, 10.6.

<sup>39</sup> Adult Custody Policy, 10.6.6(2).

<sup>40</sup> Adult Custody Policy, 10.6.6(3).

<sup>41</sup> Adult Custody Policy, 4.2.8.

<sup>42</sup> Adult Custody Policy, 4.5.1.

## *What factors are used to determine classification?*

Classification assessments are usually based on the following information:

- Pre-sentence reports;
- Judicial reasons for sentence (i.e. reasons the judge gave when you were sentenced);
- Police reports;
- Psychiatric/Psychological reports; and
- Correctional documentation such as CPIC and institutional files.<sup>43</sup>

## *How is my classification level decided?*

You will have an interview with a classification officer, in which you will go over the information listed above.<sup>44</sup> The classification officer must explain the classification and placement process, including the available options, key dates, the criteria used in making classification decisions, the role that you can play as well as the right to appeal classification and placement decisions.<sup>45</sup> She will then write a report that will include information about your sentence, court history, personal and family history, medical concerns, education, etc. In the report will be a sentence plan that shows the classification decision, and the criteria considered and case management recommendations.<sup>46</sup>

You will be classified based on the classification officer's assessment of your risk factors and needs and how these impact on their assessment of your institutional adjustment, risk to escape, as well as your risk to public safety.<sup>47</sup>

There are serious concerns about the potential for application of the criteria to be discriminatory based on sex, race or ethnic origin (in the case of Aboriginal women, who tend to be over-classified). There have been legal challenges on the issue of whether the criteria are discriminatory, and this area of law continues to develop.

There is growing concern both in Canada and internationally about the over-incarceration, and subsequent over-classification, of Aboriginal people – especially women. For instance, the UN Human Rights Committee has

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<sup>43</sup> Adult Custody Policy, 4.4.1.

<sup>44</sup> Adult Custody Policy, 4.4.2.

<sup>45</sup> Adult Custody Policy, 4.4.2(4).

<sup>46</sup> Adult Custody Policy, 4.4.3.

<sup>47</sup> Adult Custody Policy, 4.5.3-5 and 4.1.3.

expressed “concern about the situation of women prisoners, in particular Aboriginal women”.<sup>48</sup>

According to the *Charter*,<sup>49</sup> as discussed in Part I, it is prohibited to discriminate based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Because your mental or physical disability can result in a higher classification, you could also argue that this classification procedure is discriminatory, depending on your circumstances.

### *How is a prison placement decision made?*

Your security classification determines the conditions under which you will serve your sentence. You should be classified to a centre that will provide the security level necessary and that will provide the programs you need and that are identified on your warrant of committal.<sup>50</sup> Unless you are assigned to special programs that prevent it, you should be assigned to a jail as close to your home as your security level and bed space provide.<sup>51</sup>

### *How else does my security classification affect me?*

Having a lower security classification will make it easier to get conditional release, to access community resources, to get work placements and to access programs.

### *Can my classification be appealed or changed?*

Yes. You have the right to appeal your classification to the warden.<sup>52</sup> If you are not happy with the warden’s decision, you can make a complaint to the Investigation and Standards Office. You can also ask to be reclassified. A classification review or file review can be started either by you or by the prison staff.<sup>53</sup> If you request to be reclassified then you must give a written explanation of why your classification should be reviewed. Your case manager will add comments and forward your request to the classification officer within 5 working days from the time of receipt.<sup>54</sup> The classification

<sup>48</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, CCPROR, 85th Sess., UN Doc. CCPR/C/CAN/CO/5 (2006) at para. 18.

<sup>49</sup> *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11 [*Charter*].

<sup>50</sup> Adult Custody Policy, 4.4.4(5).

<sup>51</sup> Adult Custody Policy, 4.5.2(1).

<sup>52</sup> Adult Custody Policy, 4.5.11(4); *CAR*, s. 37(1).

<sup>53</sup> Adult Custody Policy, 4.5.7(3).

<sup>54</sup> Adult Custody Policy, 4.5.7(4).

officer then has 10 working days to review your file and conduct an interview if necessary.<sup>55</sup>

If the complaint procedures are exhausted without a satisfactory resolution, you may be able to pursue judicial review of the decision in court (See section on Remedies).

## MOTHERS IN PRISON

Many women in prison are mothers. Being away from your children is difficult at any time. Being away from your children because you are in prison is especially difficult, not least because of the potential barriers to living with, visiting, or speaking with your children. You may also be dealing with fear of the difficulties there could be, and too often are, involved in regaining custody of your children after your release from prison.

This section reviews your rights as a mother in prison but, before getting to that, it also explains some of the legal concepts involved in the law regarding the custody and care of children more generally.

### *Definitions*

#### WHAT IS CUSTODY?

Many people think of custody as simply determining with which parent a child will live. In fact, the most common situation for separated parents is joint custody, with the children being mostly resident with one parent. Custody refers to the rights and responsibilities you have as a parent. It involves the right to make important decisions about your child, such as education, medical treatment, religion and where the child will live, as well as the physical care, control, and upbringing of a child. The person the child lives with will usually have sole custody, or joint custody with primary residence.

#### WHAT IS GUARDIANSHIP?

Guardianship refers to the rights and duties for the care of the child. The person with custody has the right to make the important decisions as referred to above, but if another person has guardianship rights, they must be consulted or involved in making those decisions.

#### WHAT IS ACCESS?

Access is the right to visit or be visited by your child. Access is a right grant-

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<sup>55</sup> Adult Custody Policy 4.5.7(5).

ed by courts when parents separate or divorce and in child protection cases. The court order will often set out specific times when the parent with access will be able to see the child. This is called “specific access”. The court can also order telephone access, which can be very important if it is hard for the parent to visit the child in person.

#### 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 must be someone else present at all times during the visit. Sometimes supervised access can take place at a supervised access centre, which is a place set up a bit like a child care centre, and staffed with people to supervise the visits. The court can also designate specific people to be supervisors. In child protection cases, it may be required that the visits take place in the presence of a specific person and/or at a specific location. If the parties can agree on suggested supervisors, the judge is likely to agree to appoint that person or people.

#### WHAT IS CHILD PROTECTION?

Child protection in BC is the responsibility of the Ministry for Children and Families. That Ministry has the responsibility of making sure children are safe. If they feel that children are at risk of physical, emotional or sexual abuse, or neglect, they can apply to the court for either a supervision or a custody order. With a supervision order, the child remains with the parent but under certain conditions. With a custody order, the children are placed “in care”, either foster care or the care of family or friends who the Ministry trusts to look after them. All these arrangements have to be reviewed by a judge.

#### WHAT ARE “THE BEST INTERESTS OF THE CHILD”?

The “best interests of the child” (BIOC) is the key test used by the courts and child protection authorities for any legal matter involving children. It can even override parents’ *Charter* rights, such as their right to freedom of expression and their right to freedom of movement.

The BIOC test in child protection matters is defined in British Columbia’s *Child, Family and Community Services Act*.

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

- (a) The child’s safety;
- (b) The child’s physical and emotional needs and level of development;

- (c) The importance of continuity of care;
- (d) The quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
- (e) The child's cultural, racial, linguistic and religious heritage;
- (f) The child's views; and,
- (g) The effect on the child if there is any delay in the decision.

Also, if the child is Aboriginal, the importance of preserving the child's cultural identity must be considered in determining the child's best interests. There is a similar test set out in the *Family Relations Act*, section 24 which applies to disputes over custody and access where the Ministry for Children and Families is not involved.

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

Whether you have the right to see your child will depend on a variety of factors. 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.

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.

The Ministry of Children and Family Development has the authority to limit your contact with your child if they think it is in the child's best interests. The Director must apply to the court if they believe your children need to be taken into foster care and must notify you of the date, time and place of the application. As part of their application, they can apply to limit or eliminate your access to your children. The Director may also apply for a protective intervention order to limit contact between a child and another person, including a parent, if they have reasonable grounds to believe that contact would cause the child to be in need of protection. To do so they must inform the person of the date, time and place of the court hearing. The court can order protective invention which stops a person from contacting or trying to contact the child for a period of up to 6 months.

There have been other cases in which parents have been denied access to their children apparently largely because they are in prison. It is very difficult to predict how a judge will decide, but as you will know, some judges are not very sympathetic to mothers in prison. In one case, a provincial

prison director decided to suspend all contact visits for a parent because of a general concern about drugs and weapons being smuggled into a prison.

Still, it is important to know that in deciding a plan for a child, including custody and access, the Ministry 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 them.

Whether your access is being limited by the child protection authorities or the prison authorities, you may also 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 found that this was because she was a flight risk and was in a secure custody unit. This might leave room for other women who are not considered flight risks and who are not in a secure unit to make a similar argument. The Supreme Court of Canada has certainly recognized that apprehension of child can interfere with the parents' right to security of the person under the *Charter*.

The Alouette Correctional Centre for Women had a program that allowed mothers of new-born babies to keep their babies with them in prison. That program was cancelled in April, 2008. That decision is currently being challenged in the BC Supreme Court.

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

If you do not have custody, guardianship or access, you may not have any ability to make such decisions. If you have access, or, even better, 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 children, meaning that you and the father or another parental figure 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's father are still in a relationship, then you automatically have the right to make decisions about your child, unless the child's father has obtained a court order saying that you no longer have custody.

Even though you are in prison, you might still be able to apply for joint custody if your spouse or another family member has custody of your child. Unfortunately, too many parents are not able to maintain custody of their children while they are in prison. In order to apply for joint custody, you will need to file court documents either in Provincial or Supreme Court. It is important to get legal advice before you decide on a course of action or start proceedings.

### *Does my child have rights?*

The rights of children in care are set out in section 70 of the *Child, Family and Community Service Act*:

70 (1) Children in care have the following rights:

- (a) To be fed, clothed and nurtured according to community standards and to be given the same quality of care as other children in the placement;
- (b) to be informed about their plans of care;
- (c) to be consulted and to express their views, according to their abilities, about significant decisions affecting them;
- (d) to reasonable privacy and to possession of their personal belongings;
- (e) to be free from corporal punishment;
- (f) to be informed of the standard of behaviour expected by their caregivers and of the consequences of not meeting their caregivers' expectations;
- (g) to receive medical and dental care when required;
- (h) to participate in social and recreational activities if available and appropriate and according to their abilities and interests;
- (i) to receive the religious instruction and to participate in the religious activities of their choice;
- (j) to receive guidance and encouragement to maintain their cultural heritage;
- (k) to be provided with an interpreter if language or disability is a barrier to consulting with them on decisions affecting their custody or care;
- (l) to privacy during discussions with members of their families;
- (m) to privacy during discussions with a lawyer, the representative or a person employed or retained by the representative under the Representative for Children and Youth Act, the Ombud-

- sperson, a member of the Legislative Assembly or a member of Parliament;
- (n) to be informed about and to be assisted in contacting the representative under the Representative for Children and Youth Act, or the Ombudsperson;
- (o) to be informed of their rights, and the procedures available to enforcing them.

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.”

The Supreme Court of Canada has also recognized that keeping a child from his or her parents infringes the child’s section 7 *Charter* right to security of the person, and must only be done in accordance with the principles of fundamental justice. 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 section 7 rights.

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

Anyone may apply for custody of or access to a child, although some people are more likely than others to be successful. Generally the mother and/or father of the child will have custody of the child. Custody can also be set out in a written agreement. This means that you can arrange for someone, such as a family member, to have custody of your child. Such agreements can be filed in court, but are always subject to review by the judge. The over-riding factor is always the best interests of the child.

If a biological parent’s new partner (step-parent) has developed a bond with a child and helped with parental responsibilities, he or she may apply to the court. If the court decides that he or she acted “in the place of a parent,” that person could also have a good chance of getting custody or access. Other family members, especially grandparents and aunts, or even close family friends, can also be given custody or access if it is considered by the judge to be in the best interests of the child and the nature of the relationship with the child.

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

The best interests of the child will be the most important consideration. The factors a court will consider in deciding if someone should be granted custody of your child(ren) in BC are set out in section 24 of the *Family Relations Act*. Please note that if you are considering 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 in their home.

The judge will consider different factors in applying section 24, including the person's willingness to facilitate the child's involvement with the parents, as long as the judge believes the relationship is a healthy one for the child.

## *What role might a child protection agency (CPA) play?*

Child protection agencies are supposed to provide support to families, and to care for children when their parents are unwilling or unable to do so in a safe and healthy way. 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 (CPA) might apprehend your child when you go to prison. They may place your child with a family member, or if no family member is available or willing to care for your child, a CPA may place your child in a foster home. Children and youth in care are also placed in group homes and specialized residential facilities.

## *What if my child is Aboriginal?*

The extent to which a child's Aboriginal heritage is considered in family and child protection law varies between provinces and territories. BC's family laws specify that Aboriginal people should be involved in the planning and delivery of services to Aboriginal families and their children. Services must be sensitive to the needs and the cultural, racial and religious heritage of those receiving the services. More importantly, when determining the best interests of the child, the importance of preserving your child's cultural identity must be considered.

If your child is found to be in need of care, then the director has to try to place your child with their family within their Aboriginal community,

or with another Aboriginal family. They must notify a representative from your child's Aboriginal community, band, council or tribal organization. That representative then has the right to receive all records and information, speak at the child's protection hearing, call witnesses, participate in any mediation and propose a plan of support for the child. If you do not want the Ministry to involve the Aboriginal community, you must let the ministry social worker know as soon as possible.

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

Section 7 of the *Canadian Charter of Rights and Freedoms* guarantees parents the right to a fair hearing when the state is seeking custody of their children. In some cases, this will mean legal aid to cover a lawyer for your hearing. Whether or not you will have the right to have free legal assistance will depend on the details of what has happened to you and your children. (Refer to the protecting your rights section for more information on Legal Aid.)

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.

### *What happens if my child is found to be "in need of care"?*

If your child is found to be in need of protection, then the child will be removed from his or her home. The Ministry has a few different options for what to do. They can either order that the child be returned or remain in the custody of the parent under supervision for a period of up to 6 months; that the child be placed under custody of another person, other than a parent, under supervision; that the child remain or be placed in the custody of Child and Family Services for a specified period of time; or that the child be placed in continuing custody of the director.

The child's best interest is the number one priority in deciding where he or she will live. The director has to pursue the least disruptive measure. That means they have to give priority to the child staying with a relative, or to stay in the same community so that they can maintain their family and friends and stay at the same school. Your child will retain a lot of rights, including the right to be fed, clothed and cared for according to community standards, to be informed about their plan of care, and to be able to express their views where appropriate.

## *What is a supervision order?*

A court may order that a child in need of protection can be adequately protected by a supervision order. That means the child stays in the home, but the child protection agency will supervise that parent or other person responsible for the child. In applying for a supervision order, the director must present a written report that includes the reasons for making the application and an interim plan of care for the child. You must be informed of the date, place and time of the hearing. The order will set out a number of conditions the caregiver must follow, including accessing services, refraining from drug and/or alcohol use and other conditions related to caring for the child. Supervision orders in British Columbia will last for a specified time, up to 6 months, but can be reviewed and extended.

## *What is ‘temporary custody’ in child welfare situations?*

If a child is taken out of his or her home and the child protections agency cannot find a family member with whom to place the child, the agency may take the child into temporary custody. The Director may also apply for continuing custody, although this is rarely applied for immediately after removal but only after the child has been in care for a period of time. Ministry custody orders are sometimes called Crown wardship or temporary or permanent care orders.

If your child is taken into care, you must be informed as soon as possible. You should also get notice in writing that tells you the reasons that your child has been removed. The agency must also prepare an interim plan of care that includes the child’s current living arrangement; whether or not the child’s views have been considered; whether or not the parents have been involved in developing the plan; the director’s recommendations about care and supervision of the child; and if the child is Aboriginal, the steps to be taken to preserve the child’s Aboriginal identity.

Temporary orders can last for different periods of time, depending on the age of the child. Temporary custody orders cannot exceed 3 months if the child is under 5 years old, 6 months if the child is between 5 and 12 years old, and 12 months if the child is over 12. These times can be extended up to 12 months, 18 months and 24 months. Under a temporary order, the Minister should still consider the wishes of the child and the parent.

If a child is placed in care permanently, then all of the parental rights and

responsibilities are given to the agency. This is called a continuing custody order, and means that the child is then under Crown wardship and may be put up for adoption. Continuing custody orders end either when the child turns 19 years old, is adopted, marries or the court cancels the order. If a child is in continuing care, then a parent can still get access, as long as it fits with the child's plan of care, and is in the child's best interests.

### *Are child protection orders final?*

There is little that is truly final in cases involving children. Family court orders can often be varied. It is more difficult to vary child protection orders, however. You can appeal an order within 30 days of when the order is made (unless you apply to get the time limit extended). You can appeal an order by filing a notice of appeal to the Supreme Court of BC, and you should definitely consider

getting a lawyer to help you file the papers. The order will still be in force until the hearing, at which point the Court can either confirm the order, set it aside, vary it, or order a new hearing.

If your circumstances have changed significantly following the making of a continuing custody order, you can apply to have it set aside. This is only possible if the order is still in effect, for example if the child has not been adopted. This is done in Provincial Court and sometimes, if there is enough of a change in circumstances, the Ministry will go along with your application.

### *What can I do to apply for custody of, or access to, my child?*

Legal aid may be available, and it can cover custody and access applications. If you cannot obtain a lawyer, you may be able to get help in court from duty counsel at the courthouse. Some complicating factors include the fact that you must apply for access in the jurisdiction where your child lives. Appearing in court may also be difficult, but for some hearings, you might be able to arrange to participate in a hearing by telephone.

If your child is in continuing custody (permanent care), you can still apply for access. You will need to file a notice for a hearing on the director, the people who have been given custody and the child if they are over 12 years old. The court may give you access if it thinks that it is in the child's best interests and it is consistent with what your child wants.

Filling out the forms yourself may be time-consuming and difficult. If you do not have a lawyer, you might want to ask someone you trust to help you fill out the forms. There are several organizations in BC that might be able to help you. Most of these organizations provide free legal advice and support, but might not be able to represent you in court.

The following organizations might be useful to contact:

**Western Canada Society to Access Justice**

**Tel:** 604-878-7400 (Lower Mainland)

**Toll Free:** 1-877-762-6664 (anywhere else in BC)

**Salvation Army BC Pro Bono Program**

**Tel:** (604) 694-6647

**Law Students' Legal Aid Program**

**Tel:** (604) 822-5791

**Native Court Workers (if you are Aboriginal)**

**Toll Free:** 1-877-771-9444

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, available free of charge at many courthouses. If you have a lawyer, you can ask her or him to ask the judge to issue a court order to bring you from prison to the hearing. Not all judges will do this, but some will.

*What sort of things should I tell the judge if I apply for custody or access to my child while I am in prison?*

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

1. Were you your child'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.)?
2. How was your child doing under your care (was he or she healthy, doing well in school, happy with his or her friends, supported by your family)?
3. The fact that you are in prison may be a factor the judge considers.

Judges do not see many applications from prisoners, so you need to focus on the bond between you and your child and how that is sufficiently important to you and your child that it be maintained, so that judge can justify having a child visit a prison.

### *What if I am pregnant while in prison?*

If you are pregnant, then you should receive accommodation for pre- and post-natal care. The policy does not specify whether the necessary exams should take place in or out of prison. This is also a right you have under section 23 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners*.

### *What if I give birth while in prison?*

You should not be shackled while you give birth. The Ministry of Public Safety and Solicitor General no longer allows women to have their babies in prison with them.<sup>56</sup> The Ministry claims that the program to allow women to keep their babies while in prison was shut down due to safety reasons. The legal challenge to that Ministry decision, which is now in BC Supreme Court, will argue that not allowing women to bond with their new born babies not only punishes women but also punishes babies. This may be a violation of the rights of children that are protected under international law and the *Charter*.

You should still request to have your baby with you during your sentence, and let the CAEFS Regional Advocate know, as CAEFS will support you in your attempts to retain custody of your baby. You should also call **Prisoners' Legal Services** at **604-853-8712** for assistance. You may request to be added as a plaintiff to the legal challenge to the cancellation of the mother-baby program at ACCW. If you are at another prison, your rights may still be affected by what happens in the ACCW case.

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

Some children do have regular visits with their parents in prison. As long as there is no court order saying that you may not have access to your child, then your child should be able to visit you. How often you have visits usually depends on how far away your child lives, and whether there is someone willing to bring them to visit you.

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<sup>56</sup> Prison Justice: [http://www.prisonjustice.ca/starkravenarticles/babies\\_jail\\_0808.html](http://www.prisonjustice.ca/starkravenarticles/babies_jail_0808.html).

## *What is the parenting skills program?*

A Parenting Skills program does not appear in BC Corrections' information on core programs currently in use.<sup>57</sup> If you do not have a parenting skills program in your prison, you may want to request that one be put in place - or that you be allowed to attend a community-based program through a series of Temporary Absences.

## **IMMIGRATION**

If you were not born in Canada, you may not be a Canadian citizen. This could be true, even if your parents are citizens, or if you moved to this country as an infant. Depending on your immigration status, you may be affected differently in terms of being detained in a jail.

If you are in jail because you are going to be deported, it is important to speak to a lawyer who specializes in immigration right away!

## *What is a citizen?*

A citizen is someone who was born in Canada, someone who has one parent who was born in Canada, or someone who becomes a citizen. A citizen is subject to all laws in Canada and is also protected by all of them. As a citizen, you have more rights in Canada than if you are not a citizen. But, if you are not a citizen, there are still special rights that should be protected.

## *How do I become a Canadian citizen?*

There are 3 steps to becoming a Canadian citizen. You must apply to be a citizen, take a citizenship test, and participate in a citizenship ceremony. In order to be eligible to apply, you must meet the following criteria:

- You must be 18 or older (you can apply on behalf of a child under 18 if you are that child's legal guardian);
- You must have permanent resident status;
- You must have lived in Canada for at least 3 years;
- You must have a good enough knowledge of either the French or English language; and,
- You must have an understanding of Canada's history, values, institutions, and symbols (this is what the citizenship test is about).<sup>58</sup>

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<sup>57</sup> Minister of Public Safety and Solicitor General: [www.pssg.gov.bc.ca](http://www.pssg.gov.bc.ca).

<sup>58</sup> Citizenship and Immigration Canada web site: [www.cic.gc.ca](http://www.cic.gc.ca).

## *What kinds of restrictions are there on eligibility?*

You cannot become a citizen if you:

- Have been convicted of a criminal offence in the three years before you apply;
- Are currently charged with a criminal offence;
- Are in prison, on parole, or on probation;
- Have been ordered by Canadian officials to leave Canada (called a “removal order”);
- Are under investigation, charged or convicted with a war crime or crime against humanity; or
- Have had your citizenship taken away in the past 5 years.

Time on probation, parole or in jail does not count as residence.

## *What is a foreign national?*

A foreign national is a person who is not a Canadian citizen or a permanent resident. Foreign nationals must apply for and receive a visa before entering Canada.<sup>59</sup> If you are a foreign national, you can become a permanent resident if you are issued an immigration visa. When you apply, the things that are examined are:

- If you have a family member who is already a citizen or permanent resident;<sup>60</sup>
- If you have the financial resources to be economically self sufficient;<sup>61</sup> or,
- If you are a refugee.<sup>62</sup>

Foreign nationals do not have a right to enter Canada, only permanent residents and citizens have that right.<sup>63</sup> This means that you can be denied entry to Canada or deported from Canada if you are a foreign national. A foreign national or refugee can be sponsored by someone who is already a permanent resident, by a citizen, or by a group of people or an organization. It is important to know though, that, even though you have a sponsor, you still may be denied.

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<sup>59</sup> *Immigration and Refugee Protection Act*, section 11(1).

<sup>60</sup> *Immigration and Refugee Protection Act*, section 12(1).

<sup>61</sup> *Immigration and Refugee Protection Act*, section 12(2).

<sup>62</sup> *Immigration and Refugee Protection Act*, section 12(3).

<sup>63</sup> *Immigration and Refugee Protection Act*, section 19.

## *What is a permanent resident?*

A permanent resident is someone who has applied and obtained the designation of permanent resident.<sup>64</sup> This designation is a step closer to citizen. In order to apply for citizenship, you must be a permanent resident. Permanent residents can receive most social benefits that Canadian citizens receive, including health care coverage. They can also work, study or live anywhere in Canada. Most importantly, permanent residents are entitled to protection under Canadian laws and the Charter.

A permanent resident must pay taxes in Canada, but cannot vote or hold office. If you have been convicted of a serious crime, you could have your status as a permanent resident taken away and you could be subject to a removal order.

## *How do I become a permanent resident?*

In order to become a permanent resident, you must apply. Quebec has a separate category for applying. If you are not applying in Quebec, you can apply in any one of 6 categories, each with its own set of requirements:

- Skilled workers and professionals
- Canadian experience
- Self-employed people
- Provincial nominees
- Family sponsorship<sup>65</sup>

As part of the application process, you must submit to an examination on request, which can include a test, a question and answer session, a search, and even a medical exam.<sup>66</sup>

You may be required to submit to an interview with an immigration officer to determine if you qualify to become a permanent resident.<sup>67</sup>

It can be quite expensive to apply to be a permanent resident, starting at \$475 for a single adult person. Applying for dependant children under age 22 is an additional \$150 per child. You may also be required to undergo medical

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<sup>64</sup> Citizenship and Immigration Canada web site: [www.cic.gc.ca](http://www.cic.gc.ca).

<sup>65</sup> Citizenship and Immigration Canada web site: [www.cic.gc.ca](http://www.cic.gc.ca).

<sup>66</sup> *Immigration and Refugee Protection Act*, section 16.

<sup>67</sup> *Immigration and Refugee Protection Act*, section 18(1).

examinations, for which you will have to pay. If you are granted permanent resident status, you should be given a card that indicates that status.<sup>68</sup>

### *For what reasons might I be issued a removal order?*

You can be issued a removal order if you are considered “inadmissible” for any reason. If you have committed a crime,<sup>69</sup> if you have failed to fulfil the requirements of permanent residency, if you are very ill and are considered dangerous to public safety for that reason,<sup>70</sup> or cannot support yourself financially,<sup>71</sup> you may be considered inadmissible.

If this happens, an immigration officer must prepare a report setting out the relevant facts and send it to the Ministry for review.<sup>72</sup> If the report is founded, the Ministry will refer it to the Immigration Division where they will hold an admissibility hearing.<sup>73</sup> After the hearing, the Immigration Division can either grant permanent residence status, authorize your entry to Canada for further examination, or issue a removal order.<sup>74</sup> When a removal order comes into force, you will lose your permanent resident’s status.

### *Can a removal order be overturned?*

A removal order is void if it goes against an order of a judge.<sup>75</sup> It is put on hold if you are sentenced to a term of imprisonment until your incarceration is finished.<sup>76</sup>

You can appeal any decision of Immigration Canada, including a removal order,<sup>77</sup> by appealing to the Immigration Appeal Division. You cannot appeal a finding of inadmissibility on the basis of human rights violations or serious crimes however.<sup>78</sup>

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<sup>68</sup> *Immigration and Refugee Protection Act*, section 31(1).

<sup>69</sup> *Immigration and Refugee Protection Act*, section 36 & 37.

<sup>70</sup> *Immigration and Refugee Protection Act*, section 38.

<sup>71</sup> *Immigration and Refugee Protection Act*, section 39.

<sup>72</sup> *Immigration and Refugee Protection Act*, section 44(1).

<sup>73</sup> *Immigration and Refugee Protection Act*, section 44(2).

<sup>74</sup> *Immigration and Refugee Protection Act*, section 45.

<sup>75</sup> *Immigration and Refugee Protection Act*, section 50(a).

<sup>76</sup> *Immigration and Refugee Protection Act*, section 50(b).

<sup>77</sup> *Immigration and Refugee Protection Act*, section 63(2).

<sup>78</sup> *Immigration and Refugee Protection Act*, section 64(1) and 64(2).

After considering the appeal of a decision, the Immigration Appeal Division will either:

- (a) allow the appeal;
- (b) stay the removal order; or,
- (c) dismiss the appeal, meaning you will be removed.<sup>79</sup>

If you do not qualify for permanent residence status, or if you have been issued a removal order, you can apply to the Minister of Citizenship and Immigration to review the decision. The Minister has the authority to waive requirements or to grant exceptions on humanitarian or compassionate grounds<sup>80</sup> or for public policy considerations.<sup>81</sup> This is rare and the Minister is only able to do this if all fees are paid in full.<sup>82</sup>

*What if I am not happy with the Appeal Division decision?*

You can apply for judicial review to have the courts review the reasons you were found to be inadmissible and/or subject to a removal order.<sup>83</sup>

*Can I be detained if I am not a citizen?*

According to the Immigration and Refugee Protection Act, if you are a permanent resident or a foreign national, you can be detained where:

- Canadian authorities have reasonable and probable grounds to believe that you are inadmissible to the country;
- Where it is believed you will be a danger to the public;
- Where there is reasonable grounds to believe you will not appear for your hearing; or,
- Where it is believed you have committed a crime or human rights violation.<sup>84</sup>

If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division.<sup>85</sup>

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<sup>79</sup> *Immigration and Refugee Protection Act*, section 66.

<sup>80</sup> *Immigration and Refugee Protection Act*, section 25(1).

<sup>81</sup> *Immigration and Refugee Protection Act*, section 25.2(1).

<sup>82</sup> *Immigration and Refugee Protection Act*, section 25(2).

<sup>83</sup> *Immigration and Refugee Protection Act*, section 72.

<sup>84</sup> *Immigration and Refugee Protection Act*, section 55(1) and 55(2). This can be done with or without a warrant and can happen whether you already live in Canada, or if you are just entering the country.

<sup>85</sup> *Immigration and Refugee Protection Act*, section 55(4).

### *What are my rights on detention if I am not a citizen?*

You have the right to contact your consulate upon admission to any Canadian institution and you should be advised of this right. There should also be a review within 48 hours of your detention, as well as a follow up within 7 days, and a follow up review every 30 days thereafter.<sup>86</sup>

### *What if I am serving a criminal sentence but I'm not a citizen?*

If you were charged, convicted and sentenced, you may be considered “inadmissible” as a permanent resident and so you could be subject to a removal order once your sentence has been served.<sup>87</sup>

Although they are rarely granted, you might also be able to apply for a humanitarian exemption in advance of the issuance of a deportation order.

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<sup>86</sup> *Immigration and Refugee Protection Act*, section 57.

<sup>87</sup> *Immigration and Refugee Protection Act*, section 59.





## Part III:

# Protecting Your Rights

While many things in prison will restrict your freedom, you maintain certain rights and privileges inside. It is important to know the difference between rights and privileges. A right is a legal entitlement which every prisoner should be allowed to have. Withholding someone's right is against the law, and there are remedies that can be used to force that right to be provided. Privileges, on the other hand, are not guaranteed, and may be earned through various criteria. For example, a temporary absence is not guaranteed, and may be granted based on your behaviour or other factors. BC Corrections staff has more discretion to limit privileges, but they still should not be taken away arbitrarily.

The *Correction Act Regulation* lists a number of “privileges” that should really be listed as rights. For example, you have the right to:

- Regular meals;
- Daily exercise of at least one hour, outside if possible;
- Clothing, a mattress and bedding;
- Access to reading materials;
- Reasonable access to the mail and telephone;
- Postage for all privileged communications (i.e. to lawyers, the war-

- den and most government officials);
- Postage for up to 7 other letters a week;
- Personal visits;
- Health care;
- Wash or shower at least once a day; and
- Toiletry items needed for health and cleanliness.<sup>88</sup>

You have a number of very important rights. The following section will look at a number of rights that you have in prison and discuss how you can make sure these rights are respected.

## CONFIDENTIALITY AND ACCESS TO INFORMATION

Your personal information is very important in prison. Information in your file is part of your classification, and plays a big role in things like applications for various forms of conditional release. It can therefore be very important to know what is in your file and make sure that there are no errors. The *Freedom of Information and Protection of Privacy Act (FOIPPA)*<sup>89</sup> protects your rights involving confidentiality, accuracy of, and access to information.

*Is the confidentiality of information BC Corrections collects about me protected by law?*

The *FOIPPA* requires public bodies to use personal information only in accordance with the Act, including “for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose”.<sup>90</sup> A “consistent purpose” means that the use must have a reasonable and direct connection to the purpose and be necessary to perform a statutory duty or for operating a legally authorized program.<sup>91</sup>

As briefly discussed with respect to assessments in the last section, there are limits on your right to privacy in the prison context. For example, psychological and psychiatric reports, even though based on information that would normally be protected in a patient/doctor relationship, can be disclosed to authorized individuals including Crown counsel, the National

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<sup>88</sup> *CAR*, s. 2(1).

<sup>89</sup> R.S.B.C. 1996, C. 165.

<sup>90</sup> *FOIPPA*, s. 32(a).

<sup>91</sup> *FOIPPA*, s. 34(1).

Parole Board or probation officers, to protect the public or the prisoner.<sup>92</sup> Remember that you are not obligated provide certain information during assessments. If you do not provide information, classification will nevertheless be carried out without your participation based on available documents from your file, court or police information.<sup>93</sup>

All staff must preserve the privacy of prisoners and any knowledge that they obtain during the course of their employment, except as required by their professional duties or by law.<sup>94</sup>

### *How do I find out what BC Corrections has in my file?*

Because BC Corrections is a provincially-regulated government body, you have the right to access your personal information under the *FOIPPA*.<sup>95</sup> Your request must be in writing and must provide enough detail to allow BC Corrections to identify the record you are requesting. Make your request to the BC Corrections Branch. If someone is making the request for you, you must provide proof that you have given that person the authority to make the request on your behalf.<sup>96</sup>

You can use the “Request For Access to Records Form” to make your request, which can be downloaded from the Office of the Information and Privacy Commissioner for BC website. You can also contact the Commissioner’s office at:

**Office of the Information and Privacy Commissioner British Columbia**  
PO Box 9038, Stn. Prov. Govt.  
Victoria, BC V8W 9A4

**Toll Free Vancouver:** (604) 660-2421 **Fax:** (250) 387-1696

**Toll Free Elsewhere:** 1-800-663-7867 (request a transfer to: (250) 387-5629)

You should receive a reply to your request within 30 days of the receipt of your request.<sup>97</sup> This deadline may be extended if you either have not provided enough information for them to locate the record, or if a large number of records have been requested, or if the commissioner agrees that it’s fair and

<sup>92</sup> Adult Custody Policy, 9.11.

<sup>93</sup> Adult Custody Policy, 4.4.1.

<sup>94</sup> Adult Custody Policy, 7.5.2(3).

<sup>95</sup> *FOIPPA*, s. 4(1).

<sup>96</sup> *FOIPPA*, s. 5.

<sup>97</sup> *FOIPPA*, s. 7(1).

reasonable to extend the deadline.<sup>98</sup> If the deadline is extended, then you should be notified and told the reason for the extension, when a response can be expected and how you can complain about the extension.<sup>99</sup>

Your response should tell you whether or not you are entitled to access the record, and if so, when, where and how access will be given.<sup>100</sup> If your request is refused, then you should be told the reasons for the refusal and the part of the Act on which the refusal is based, the name and contact information of the BC Corrections employee who can answer your questions, and how to ask for a review.<sup>101</sup>

### *What types of information can be withheld from me?*

Public bodies don't have to disclose certain information for a number of reasons, including if they feel it could be harmful to law enforcement. For example, if BC Corrections feels that giving you information about yourself would harm the effectiveness of investigative techniques, reveal the identity of a confidential source of law enforcement information, endanger someone's life or safety, deprive a person of the right to a fair trial, facilitate escape or an offence, or harm the security of any property or system, then it may withhold that information.<sup>102</sup>

A correctional institution may also deny an individual access to personal information if it could reasonably be expected to harm the proper custody or supervision of that person.<sup>103</sup>

Personal information can also be refused if it could reasonably be expected to threaten anyone's safety or health or interfere with public safety.<sup>104</sup>

A public body must refuse access to personal information if it would unreasonably invade a third party's personal privacy.<sup>105</sup>

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<sup>98</sup> FOIPPA, s. 10.

<sup>99</sup> FOIPPA, s. 10(3).

<sup>100</sup> FOIPPA, s. 8(1)(a) and (b).

<sup>101</sup> FOIPPA, s. 8(1)(c).

<sup>102</sup> FOIPPA, s. 15(1).

<sup>103</sup> FOIPPA, s. 15(2)(c).

<sup>104</sup> FOIPPA, s. 19.

<sup>105</sup> FOIPPA, s. 22.

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

BC Corrections is required to “make every reasonable effort” to make sure that personal information about you is accurate and complete if that will be used to make decisions that directly affect you.<sup>106</sup>

If you believe there is an error or omission in your file, you are entitled to ask for a correction.<sup>107</sup> On correcting the information, BC Corrections has to notify any other public body or third party to whom the information was given in the past year.<sup>108</sup> If your request for the change is refused, you are entitled to have a notation attached to your file outlining the change you believe should have been made.<sup>109</sup>

## *How can I make a complaint about information or privacy?*

If BC Corrections refuses to provide you with the information you have requested from them, or withholds information that you think should have been provided, you can ask the BC Information and Privacy Commissioner to review the decision.

Requests for review must be made in writing within 30 working days of when you receive the BC Corrections decision. Include your original request to BC Corrections and its response. The Information and Privacy Commissioner’s website includes a form for requesting a review of a decision to refuse release of information.

If you have a complaint about the way BC Corrections collects, uses, discloses, retains or keeps your personal information, you should complain to BC Corrections directly. If you are not happy with the response you receive from BC Corrections, you can make a complaint to the Information and Privacy Commissioner. There is a form available for making complaints on the Commissioner’s website.

Your complaint or request for review of a decision can be sent to the Information and Privacy Commissioner at the address above.

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<sup>106</sup> FOIPPA, s. 28.

<sup>107</sup> FOIPPA, s. 29(1).

<sup>108</sup> FOIPPA, s. 29(3).

<sup>109</sup> FOIPPA, s. 29(2).

## *Under what circumstances can information be released to police and victims?*

In some situations, BC Corrections can release information about you to the police and your victims.

BC Corrections can release information about you to the police if there is a court authorization, legislated authority to do so, or reason to believe there is a risk to public safety.<sup>110</sup> Police are also contacted and information may be provided if a prisoner is alleged to have committed a criminal offence or escaped custody.<sup>111</sup>

Victims may receive notifications of your admission, transfers, release, end of sentence, parole applications, parole results and court dates.<sup>112</sup>

## *Are my conversations and mail confidential?*

Certain communications, called ‘privileged communications’, are supposed to be confidential. People with whom you share privileged communication include the assistant deputy minister; provincial director of BC Corrections; the Ombudsman; an immigration officer; and your lawyer.<sup>113</sup> These calls are not supposed to be monitored or recorded, but sometimes they are.

Any other communications by telephone or other electronic means can be recorded.<sup>114</sup> However, your phone conversations should not be listened to, and mail should not be monitored or recorded unless an authorized person has a belief, on reasonable grounds, that you are involved in illegal activities; harassing or causing harm to others; or participating in an activity that could jeopardize the management, operation or security of the prison<sup>115</sup> (communication can also be monitored to the extent necessary to maintain or repair the recording system).<sup>116</sup> Mail can be intercepted and examined to determine if the mail contains contraband.<sup>117</sup>

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<sup>110</sup> Adult Custody Policy, 7.8.16.

<sup>111</sup> Adult Custody Policy, 1.20.7 and 2.5.4(6).

<sup>112</sup> Adult Custody Policy, 4.14.3.

<sup>113</sup> CAR, s.13.

<sup>114</sup> CAR, s. 14(2).

<sup>115</sup> CAR, s. 14(3) and (5).

<sup>116</sup> CAR, s. 14(3)(b).

<sup>117</sup> CAR, s. 14(4).

# THE RIGHT TO COUNSEL (LEGAL ASSISTANCE)

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

Section 7 of the *Charter* guarantees your right not to be deprived of liberty except in accordance with the principles of fundamental justice. In the prison context, this means that you have a right to counsel if it is necessary to adequately present your case and your “residual liberty” is at stake.<sup>118</sup>

Even though you are in prison, case law recognizes that you still have “residual liberty” rights. Your residual liberty is at stake when you might face segregation as a result of a disciplinary charge, when you are placed in administrative segregation or when you are transferred to higher security prison.<sup>119</sup>

BC Corrections policy states: “Inmates are permitted to consult in private with their legal counsel during reasonable hours.” You are also permitted access to the courts for any reasonable purpose.<sup>120</sup>

BC Corrections policy confirms the right to consult with a lawyer and seek legal representation for disciplinary charges.<sup>121</sup>

If you are denied your right to consult with a lawyer, or if you have a lawyer and are asked to proceed with a disciplinary hearing without your lawyer present, ask for an adjournment and state for the record that you object to proceeding without legal assistance. This decision can be appealed to the Investigation and Standards Office. Call Prisoners’ Legal Services right away if you would like assistance.

## *Prisoners’ Legal Services*

You can call Prisoners’ Legal Services if you need legal assistance with a liberty issue, such as:

- Segregation,
- Disciplinary hearing,
- Parole suspension, or
- Sentence calculation.

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<sup>118</sup> *Howard v. Presiding Officer of the Inmate Disciplinary Court of Stony Mountain Institution*, [1984] 2 F.C. 642 (F.C.A.).

<sup>119</sup> Adult Custody Policy, 10.11(2).

<sup>120</sup> Adult Custody Policy, 10.11(1).

<sup>121</sup> Adult Custody Policy, 1.20.8(7).

Before you contact Prisoners' Legal Services, you must call the Legal Services Society Call Centre at 604-681-9736 for a referral.

Prisoners' Legal Services may provide you with summary advice on how to represent yourself, or it may provide you with written representation. In limited circumstances Prisoners' Legal Services may be able to appoint a lawyer to represent you at a hearing.

If you are requesting legal assistance relating to a disciplinary charge, make sure you have the notice of the charge with you when you call.

### *Legal Services Society*

For non-prison related legal issues, including criminal matters, you can call the Legal Services Society (Legal Aid) for assistance at 604-681-9736. The Legal Services Society also has legal information available on its web site: [www.lss.bc.ca](http://www.lss.bc.ca).

You will need to have all of your financial and court information handy when you phone the Legal Services Society. To take your application, Call Centre staff will ask you for complete information about your legal problem, income, savings, and assets. You will need to provide proof of the financial information you give by fax or by mail to the closest office. You might want to get your local Elizabeth Fry Society or someone you trust to help with this paperwork.

In order to qualify for a legal aid lawyer to represent you, your net household income and assets must be at or below the Legal Services Society's financial guidelines. These guidelines apply to all types of cases, including appeals. Your net monthly income must be below the amount for your household size in the table on the next page.

According to the Legal Services Society web site, the chart is a guide to financial eligibility. Only a trained intake assistant can determine your eligibility for legal aid. To find out if you qualify for a legal aid lawyer, it's best to call or have someone go into a legal aid office for you.<sup>122</sup>

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<sup>122</sup> Legal Law Services web site: [www.lss.bc.ca](http://www.lss.bc.ca).

HOUSEHOLD SIZE	NET MONTHLY INCOME
1	\$ 1,400
2	\$ 1,950
3	\$ 2,500
4	\$ 3,050
5	\$ 3,600
6	\$ 4,160
7 or more	\$ 4,715

If an intake legal assistant tells you that you are not financially eligible for legal aid or that your case is not covered by legal aid, you can request a review of this decision. Ask the intake legal assistant who refused your application to provide you with a “Legal Aid Application—Refused” form and return it to intake staff, or send it to:

**Eligibility Complaints Coordinator**

Vancouver Regional Centre  
400 – 510 Burrard Street  
Vancouver, BC V6C 3A8

The Legal Services Society used to provide free legal advice over the telephone through the LawLINE. However, this service is discontinued as of March 31, 2010. Information is now provided on the Legal Services Society website, but prisoners will not be able to directly access LawLINE information.

### *Lawyer Referral Service*

If you need help to find a lawyer to hire on your own for any reason, you can call the Lawyer Referral Service. The operator will give you the name and telephone number of a lawyer who practices in the area of law you need help with. When you call the lawyer, tell them you were referred to them by the Lawyer Referral Service and you can have a half-hour consultation for \$25 (plus tax). You can call the Lawyer Referral Service toll free at 1.800.663.1919.

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

What you and your lawyer say to each other during visits cannot legally be monitored. These conversations are considered ‘privileged’<sup>123</sup> meaning that they should not be monitored. Likewise, mail that goes in or out and is be-

<sup>123</sup> CAR, s. 13(h).

tween you and your lawyer should not be read but it may be intercepted by an authorized person to look for contraband.<sup>124</sup>

You also have a right to confidential phone calls with your lawyer, but you might have difficulty accessing the designated phone line on which these privileged calls should take place. If you call your lawyer on a non-designated line, state at the beginning of the call that it is a privileged legal call and must not be monitored. Be aware that BC provincial institutions have been known to violate the law and monitor privileged legal telephone calls.

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

If you are being denied access to legal assistance, you can file a complaint with the warden or the Investigation and Standards Office in writing. You can also write to the BC Ombud's office. If your denial of legal assistance affected a liberty right, call Prisoners' Legal Services. If a criminal proceeding was affected, talk to your criminal lawyer. For more information on how to file a complaint please refer to the Remedies chapter.

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

If you have a concern about your lawyer's actions or lack of actions, it is best to first talk to your lawyer or your lawyer's firm. If your concern cannot be resolved, you can make a complaint to the Law Society of British Columbia.

The Law Society is an independent governing body for lawyers in British Columbia. It accepts complaints about lawyers' conduct and competence. To make a complaint to the Law Society about a lawyer, you can fill out a form (available on the Law Society website) or write a letter including the following information:

- Your name, address and telephone number,
- The lawyer's name,
- The nature and details of the complaint,
- Any attempts you have made to resolve the problem,
- The outcome you are requesting, and
- Copies of any relevant documents.

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<sup>124</sup> CAR, s. 14(4).

The form or letter should be sent to:

**The Law Society of BC**

Professional Conduct Department  
845 Cambie St.  
Vancouver, BC V6B 4Z9

**Tel:** (604) 669-2533

**Toll Free:** 1-800-903-5300 (in BC)

**Fax:** (604) 605-5399

**TTY:** (604) 443-5700

**Web Site:** [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca) **E-mail:** [professionalconduct@lsbc.org](mailto:professionalconduct@lsbc.org)

If you have any questions or need help writing your complaint, you can contact the Law Society at: 1-800-903-5300. The Law Society's Professional Conduct Department does not charge for its services and you do not need to retain a lawyer to represent you. Keep in mind that when you send a complaint, it will be shown to your lawyer. If the Society decides to undergo an investigation, then the Society will ask the lawyer for a response.

*What outcomes are available?*

If the Law Society accepts your complaint for investigation, it can decide to: dismiss the complaint; refer the matter to the Practice Standards Committee; or refer the matter to the Discipline Committee.<sup>125</sup> The Discipline Committee can hold a formal hearing, which may lead to a reprimand, fine, suspension or disbarment.<sup>126</sup> The Law Society cannot order compensation as a remedy to a complaint.

*Is the process confidential?*

Although information collected in the investigation of a complaint is generally confidential, information will be shared with the lawyer you are complaining about, the Law Society may talk to third parties with relevant information about the issues raised in your complaint, and the information may be subject to a Freedom of Information request by anyone whose interests are affected by your complaint.

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<sup>125</sup> BC Law Society web site: [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca).

<sup>126</sup> BC Law Society web site: [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca).

# HEALTH CARE

*Will I have access to health care services while I am in prison?*

The following health care must be provided by qualified health care professionals to all prisoners:

- First aid;
- Emergency care;
- Primary care;
- Around-the-clock nursing care; and
- Isolation care.<sup>127</sup>

BC Corrections also provides essential dental services where there is serious disease or injury that could be cured or alleviated, or there is a potential for harm if you do not get the care.<sup>128</sup>

If you require health services that cannot be accommodated by the institution the warden should make arrangements to have you transferred to a facility where such care is available.<sup>129</sup>

*Who pays for my health care expenses?*

In BC provincial prisons, the BC government covers the expenses associated with essential services. This includes dental service, if it is considered essential.<sup>130</sup> However, Corrections will not provide extensive dental services prior to release if you can be treated after you are released.<sup>131</sup>

*How do I obtain health care services?*

You can make confidential requests for health care services, which are forwarded to health care professionals without the intervention of correctional staff.<sup>132</sup>

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<sup>127</sup> Adult Custody Policy, 9.1.3.

<sup>128</sup> Adult Custody Policy, 9.5.1.

<sup>129</sup> Adult Custody Policy, 9.1.15(2).

<sup>130</sup> Adult Custody Policy, 9.5.3.

<sup>131</sup> Adult Custody Policy, 9.5.3(2).

<sup>132</sup> Adult Custody Policy, 9.1.16. See also: *Health Care (Consent) and Care Facility Admission Act*, s. 4(a)(c)(d), and 5, and 12.1.

## *Do I have to accept medical treatment?*

Medical staff need your consent in order to give you any examination, procedure, or treatment.<sup>133</sup> According to section 6 of the *Health Care (Consent) and Care Facility Admission Act*<sup>134</sup> an adult consents to health care if:

- (a) the consent relates to the proposed health care,
- (b) the consent is given voluntarily,
- (c) the consent is not obtained by fraud or misrepresentation,
- (d) the adult is capable of making a decision about whether to give or refuse consent to the proposed health care,
- (e) the health care provider gives the adult the information a reasonable person would require to understand the proposed health care and to make a decision, including information about:
  - (i) the condition for which the health care is proposed,
  - (ii) the nature of the proposed health care,
  - (iii) the risks and benefits of the proposed health care that a reasonable person would expect to be told about, and
  - (iv) alternative courses of health care, and
- (f) the adult has an opportunity to ask questions and receive answers about the proposed health care.<sup>135</sup>

## *What right do I have to confidentiality in relation to my health services?*

Ministry health care staff collects information about your personal health from the information that they obtain from you with your consent.<sup>136</sup> Information obtained during treatment is confidential.<sup>137</sup> There may be some exceptions where the information is necessary for the safe management for the security of prisoners or staff.<sup>138</sup> Your health care records are kept separate from your correctional records. Only Correctional Health Care Professionals have access to health care files and records.<sup>139</sup> If you feel that your rights have been violated you can file a complaint with the Information and Privacy Commissioner.

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<sup>133</sup> Adult Custody Policy 9.3.1.

<sup>134</sup> R.S.B.C. 1996 C. 181.

<sup>135</sup> *Health Care (Consent) and Care Facility Admission Act*, s. 6. See also: Policy, 9.1.13 (1).

<sup>136</sup> *Personal Information Protection Act*, s. 6(1)(2)(a).

<sup>137</sup> Adult Custody Policy, 9.1.6.

<sup>138</sup> Adult Custody Policy, 9.1.6.

<sup>139</sup> Adult Custody Policy, 9.1.5.

If you have a disability that requires accommodation by the institution, you will need to make the institution aware of your accommodation needs to have them met.

### *What if I have a complaint about a health care worker?*

The fastest way to have a health care issue resolved is to try to have your problem addressed by health care staff at the institution. If your problem is not resolved, you can make a complaint to the Investigation and Standards Office. Mark your complaint as a “Health Care Complaint”. If your problem is urgent, mark it as such. The Investigation and Standards Office will likely address your issue quickly if it is an urgent health care issue.

All health care professionals (doctors, nurses, 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 codes of conduct are being followed. So, if you have a complaint about a health care professional, you can also file a complaint with the regulatory body of the person’s profession.

You can file a complaint about a specific act by a health care worker, or you can complain about an omission (something that did not happen). So, if you have been denied treatment for something, or have not received proper care, you can file a complaint to one of the regulatory bodies. See below for detailed information on how to file a complaint against a health care professional. This process can take a very long time.

If your complaint has to do with institutional staff not allowing you access to the health care department, your complaint should be made to the warden, and if that does not resolve your problem, to the Investigation and Standards Office.

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

If you have a concern about a specific doctor, nurse, psychologist or psychiatrist, you can also make a complaint to the professional regulatory body that the health care provider is registered with. The purpose of professional regulatory bodies is to ensure that the public is protected by requiring health care professionals to act professionally and ethically in accordance with specific codes of conduct.

A regulatory body may recommend that a physician change aspects of their practice, issue remedial advice or reprimands or restrict a physician's ability to practice medicine. They do not usually give a successful complainant monetary compensation.

It can take a long time for complaints to be resolved through professional regulatory bodies.

## COMPLAINTS ABOUT DOCTORS

Complaints about doctors can be made to the College of Physicians and Surgeons of British Columbia by filling out and submitting an official Complaint Form or by writing a letter. Complaint letters must be in writing (typed or hand-written) and signed and may be delivered by hand, mail or fax. In the letter, you must include a "Consent Form" which gives the College permission to access files in order to investigate the complaint.

There is no specific time limit to file a complaint, but it is best to file your complaint as soon as you can.

Your complaint should include:

- Your name, address, telephone number and date of birth;
- The name(s) of the physician(s) of concern and any other physicians involved in this matter;
- A description of the incident in as much detail as possible;
- The date of the incident;
- Any hospitals attended during the period of the complaint; and
- Your signature.

Your complaint should be sent to:

**College of Physicians and Surgeons of BC**

Complaints Department

400-858 Beatty St

Vancouver BC V6B 1C1

**Tel:** (604) 733-7758

**Fax:** (604) 733-3503

There is no cost associated with bringing a complaint to the College of Physicians and Surgeons.

## *The Complaint Process*

You will receive a letter informing you that the process has begun. If you want to provide any other information you should forward it to the College as quickly as possible.

The College may request copies of your medical record from the physician, from a hospital or other health care institution, or may seek the opinion of an expert.

Once the College has all the information it needs, it will be reviewed by one of the College's staff physicians, who will summarize the complaint and provide that summary along with all relevant documents to the College's Inquiry Committee.

The Inquiry Committee reviews and discusses all of the information pertinent to your complaint. The College tries to resolve complaints within 120 days, but the process can take longer.

Upon completion of the investigation, you (and the physician(s) involved) will receive a written explanation of the College's review and opinion in response to your complaint. This explanation will include a summary of the physician's response, a description of other information considered, and an opinion, along with reasons for that opinion.

## *Disciplinary hearings*

The Inquiry Committee may refer your complaint to the Discipline Committee for a hearing. You must be given at least 14 days notice of the hearing date and you may attend the hearing, but you are not a party to the hearing. You may be called to give evidence at the hearing.

## *Confidentiality*

The College does not reveal the names of any complainant, except to the physician(s) involved. While results and findings of complaints are often published as examples to remind physicians about standards of conduct and behaviour, an individual's name is never released. A physician's name is only revealed if formal disciplinary action is taken.

## *Complaints about Psychiatrists*

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 doctors.

## **COMPLAINTS ABOUT PSYCHOLOGISTS**

Complaints about psychologists are handled by the College of Psychologists of British Columbia. All complaints must be made in writing and signed. Provide as much information as possible, including:

- your name and address;
- the name of the psychologist;
- the reason you are complaining;
- any details of the complaint, including dates, times and locations; and,
- any supporting documents you might have.

Complaints can be sent to:

### **College of Psychologists of British Columbia**

#404, 1755 West Broadway  
Vancouver, BC V6J 4S5

**Tel:** (604) 736-6164

**Toll Free:** 1-800-665-0979

## *The complaint process*

When the College receives a complaint, it is forwarded to the Inquiry Committee. It has the option of dismissing the complaint and taking no action if the complaint is not serious enough. They can also choose an informal resolution, which means that they will try to resolve the issue between you and the psychologist without having a formal investigation.

The next option is called “consensual resolution”, which is an alternative to a hearing where you may reach an agreement with the psychologist which will require him or her to either do or stop doing certain activities. You will receive a written summary of a consensual resolution.

The last option is a citation, meaning that the psychologist will go through a hearing to decide what should happen. You will also be given notice of this decision.

### *Disciplinary hearings*

A hearing by the Discipline Committee is in many ways like a trial, and includes the calling of evidence, witnesses, and cross-examination. You may be required to attend as a witness and give evidence under oath or affirmation.

If the College proves its allegations, the Discipline Committee may take action against a psychologist by reprimanding the psychologist, imposing limits on the psychologist's practice, suspending or canceling registration or fining the psychologist.

## **COMPLAINTS ABOUT NURSES**

Complaints about nurses can be addressed to the College of Registered Nurses of British Columbia. There is no time limit for when you have to submit a complaint. However, the sooner a complaint is received, the easier it will be to collect the necessary documents for the complaint. Complaints should fall into one of the following categories: unethical behaviour; incompetence; impaired practice; or lack of fitness to practice.

Include the following in your complaint:

- The name of the registered nurse;
- Where he or she works;
- The date(s) when the practice concerns arose;
- Information regarding how you have tried to resolve your concern(s) to date (for example, have you brought your concern to the attention of the nurse's manager?); and
- The name and contact information of the manager.

### **College of Registered Nurses of British Columbia**

2855 Arbutus Street  
Vancouver, BC V6J 3Y8

**Tel:** (604) 736-7331

**Toll Free:** 1-800-565-6505 ext 202

**Fax:** (604) 738-2272

## *The complaint process*

The College of Nurses has two different processes that it uses to resolve complaints. The first is informal, and is called Consensual Complaint Resolution (“CCR”). This is a collaborative rather than punitive process, and remediation is pursued whenever possible. If necessary, a College staff member will negotiate a legally binding agreement as a corrective measure. Most complaints are resolved this way.

If a solution cannot be negotiated using the CCR Process, the Inquiry Committee may direct the registrar to issue a citation for an investigation and inquiry. During this phase, information is collected from witnesses and the Inquiry Committee prepares a report. The nurse against whom the complaint is filed is then given the opportunity to respond to the report. The Inquiry Committee reviews the above information and determines the appropriate course of action.

If the Inquiry Committee is unsuccessful in resolving the issue, it may refer the matter to the Discipline Committee for a formal. Disciplinary hearings are more formal, and result in the information in the complaint being made public. If the Discipline Committee decides that the allegations are substantiated, it may issue a reprimand, impose conditions on registration or issue a suspension or termination of registration.

Regardless of which process is used, the goal of the complaint process is to ensure that a nurse who is incompetent or unethical does not return to practice until he or she is safe to practice. The approach is not necessarily meant to punish nurses, but to solve the problem to make sure that patients receive the best possible nursing care.

## *Appeals*

If you are not satisfied with a response from the Inquiry Committee of the College of Physicians and Surgeons, Psychologists or Nurses, you have the right to submit the matter to the Health Professions Review Board for further evaluation and review of the College’s actions and conclusions. You must make the request within 30 days of receiving notification of the decision.

The Health Professions Review Board may confirm the disposition of the Inquiry Committee, direct the Inquiry Committee to make a disposition

or send the matter back to the Inquiry Committee for reconsideration with directions (*Health Professions Act*, R.S.B.C. 1996 Chapter 183 s. 50.6(8)).

## HUMAN RIGHTS

Because the BC Corrections Branch is a provincially-regulated service provider, it is subject to the BC *Human Rights Code*.<sup>140</sup> This means that if have been harassed or discriminated against on a human rights ground, you can make a complaint to the BC Human Rights Tribunal.

The purposes of the BC *Human Rights Code* include promoting equality, dignity and respect in BC society, preventing discrimination prohibited by the Code and providing remedies for people who have been discriminated against contrary to the Code.

The Tribunal does this by accepting meritorious human rights complaints and when warranted, providing opportunities for settlement of disputes or holding hearings into allegations of discrimination.

### *What is discrimination?*

Discrimination is different and negative treatment of an individual or group of people on the basis of a prohibited ground of discrimination. The grounds of discrimination under the BC *Human Rights Code* that affect prisoners are: race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation.

In the prison context, discrimination may involve the denial, without a reasonable justification, of an accommodation, service or facility customarily available to other prisoners on the basis of a ground of discrimination.<sup>141</sup>

For example, if you require the use of a wheelchair and your request for a cell that your wheelchair will fit in was denied, that would likely be found to be discriminatory. Another example might be a staff member using a racial slur against you that hurts your feelings.

If you think you were the victim of discrimination, you can file a complaint with the BC Human Rights Tribunal.

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<sup>140</sup> R.S.B.C., 1996, c. 210.

<sup>141</sup> *Human Rights Code*, s. 8.

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

You have 6 months from the date of the incident you are complaining about to file a BC human rights complaint.<sup>142</sup> If your complaint is based on a series of incidents, then it should be filed within 6 months of the last incident.<sup>143</sup> If you are past the 6 month point, your complaint can still be accepted if the Tribunal decides that it is in the public interest to accept it and there will not be any prejudice to anyone else because of the delay.<sup>144</sup>

## *What should the complaint include?*

To file a complaint, you need to fill out the Tribunal's Complaint Form. You can get it by contacting the tribunal by phone, or by having someone download it for you from the Tribunal's website ([http://www.bchrt.bc.ca/forms/pdf/Form\\_1\\_Complaint\\_Form.pdf](http://www.bchrt.bc.ca/forms/pdf/Form_1_Complaint_Form.pdf)).

You should include the following information on your complaint form:

- Who you are;
- Who you are complaining against;
- What happened and when;
- What ground of discrimination you experienced (i.e. race, age, etc.).

It is important to give as much detail as possible, and try to tell exactly what people said or did. The Tribunal recommends that you use quotation marks ("") to show what you said, and to be sure that you link what happened clearly to the ground of discrimination.

The Tribunal will offer you the opportunity to participate in early settlement. This is a meeting in which you sit down with the person you are filing the complaint against and a mediator to try to reach agreement on a solution. You can call Prisoners' Legal Services for advice or assistance with mediation. You should be aware that while settlement can help to come to a quicker resolution, it is completely voluntary, and you do not have to participate.

## *Are complaints confidential?*

The tribunal's proceedings are public. Information contained in the complaint can be available to the public in tribunal decisions and at hearings.

<sup>142</sup> *Human Rights Code*, s. 22(1).

<sup>143</sup> *Human Rights Code*, s. 22(2).

<sup>144</sup> *Human Rights Code*, s. 22(3).

The tribunal also allows public access to portions of complaint files three months before the dates set for hearing.<sup>145</sup>

You can ask the tribunal not to allow public access to the complaint file, or to hear certain information at a hearing in private. However, you must be able to show that your privacy interests are greater than the public interest in an open human rights process.<sup>146</sup>

### *Can a Tribunal decision be appealed?*

If you disagree with a tribunal decision, you may ask the BC Supreme Court to judicially review the tribunal's decision.<sup>147</sup> You may need legal assistance with your judicial review.

### *What if I need help filing my complaint?*

If you would like legal advice or assistance in filing a human rights complaint, you can contact the following organizations:

#### **Prisoners' Legal Services**

**Tel:** (604) 853-8712

**Fax:** (604) 853-1038

#### **BC Human Rights Clinic**

Vancouver Region

Suite 1202-510 West Hastings St.

Vancouver, BC V6B 1L8

**Tel:** (604) 689-8474

**Toll Free:** 1-877-689-8474

**Fax:** (604) 689-7511

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

The *BC Human Rights Code* prohibits retaliation against a complainant because you have filed a human rights complaint.<sup>148</sup> If you do suffer from re-

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<sup>145</sup> BC Human Rights Tribunal Rules of Practice and Procedure, Rule 6(3).

<sup>146</sup> BC Human Rights Tribunal Rules of Practice and Procedure, Rule 6(5).

<sup>147</sup> BC Human Rights Tribunal Rules of Practice and Procedure, Rule 39(1).

<sup>148</sup> *Human Rights Code*, s. 43.

taliation after filing a complaint, contact the Canadian Association of Elizabeth Fry Societies or Prisoners' Legal Services immediately.

*Where do I send the complaint?*

**BC Human Rights Tribunal**

1170 – 605 Robson Street  
Vancouver, BC V6B 5J3

**Tel:** (604) 775-2000

**Toll Free:** 1-888-440-8844

**Fax:** (604) 775-2020

**TTY:** (604) 775-2021





## Part IV: Restrictive Measures

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

### **SEGREGATION**

*What is segregation?*

If you are segregated, you are separated from the general prison population and put in a segregation cell for 23 hours per day.

Because women classified as maximum security prisoners are generally housed in a separate wing of the women's or men's penitentiaries, they experience many of the same conditions that a prisoner locked in segregation encounters. For this reason, it is currently being argued that the procedures and rights outlined below should apply just as much to women classified as

maximum security prisoners as they do to those in “segregation.” In fact, CAEFS (Canadian Association of Elizabeth Fry Societies) and others consider all of the women in such units to be in a segregated form of prison.

### *What is the purpose of segregation?*

The purpose of segregation is to keep you from associating with the general prison population in order to ensure the security of the institution and safety of the staff and prisoners, including you.<sup>149</sup> That being said, women in segregation have a right to be treated in a safe and humane manner and to be subject to the least restraint necessary.

Segregation is an extreme measure and should only be used when it is believed there are no other reasonable alternatives. Because of its severity, correctional staff have a duty to return segregated women to the general population at the earliest possible time.

### *For what reasons can I be put in segregation?*

There are two main types of segregation – **administrative** and **disciplinary**.

#### ADMINISTRATIVE SEGREGATION

Administrative segregation is preventative in nature and can be either voluntary or involuntary.

You can be placed in administrative segregation if there are reasonable grounds to believe that:

- you are endangering yourself (or are likely to);
- you are endangering another person (or are likely to);
- you are jeopardizing the management, operation, or security of the prison;
- you would be at risk of serious harm if you were not put in segregation (or would likely be at such risk);
- you should be confined for medical reasons; or
- you suffer from a mental illness.<sup>150</sup>

You can also be placed in administrative segregation if there are reasonable grounds to suspect that you have contraband hidden in your body.<sup>151</sup>

The other situation where you can be placed in segregation is if the warden

<sup>149</sup> CAR, s. 17-20.

<sup>150</sup> CAR, s. 17(1)(a).

<sup>151</sup> CAR, s. 17(1)(c).

has requested an examination of your mental condition under the *Mental Health Act*.<sup>152</sup> However, if within 5 days of being placed in segregation for an examination you have not been transferred to a mental health facility, then you must be released from segregation.<sup>153</sup>

The warden of the correctional centre has a duty to advise you in writing, within 24 hours of being placed in segregation, of the reason for your separate confinement.<sup>154</sup>

If you have been placed in involuntarily administrative segregation under section 17 of the *CAR*, you must be released within 72 hours<sup>155</sup> unless the warden extends your segregation under section 18 of the *CAR* for one or more periods of no longer than 15 days each.<sup>156</sup>

If your segregation is extended, you must be given, in writing, the reason for being put in segregation, the length of time that you will be in segregation and the reason for that length of time.<sup>157</sup> Once you have these reasons, you can make submissions to the warden about why you should be released from segregation, or why the length of time in segregation should be shorter. The warden can either confirm the extension (keeping you in segregation), keep you in for a shorter time, or cancel the extension<sup>158</sup> and will give you their reasons for doing so in writing.<sup>159</sup> Keep in mind that when you are in segregation, the warden can have you released at any time.<sup>160</sup>

**Voluntary segregation** happens when you request to be confined separately.<sup>161</sup> You and the person in charge (the warden) must agree that you would be at risk of serious harm if you are not put in segregation.<sup>162</sup> The warden must then confirm this agreement in writing.<sup>163</sup> If you are placed in segregation voluntarily, then you can request in writing that the warden review your segregation.<sup>164</sup>

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<sup>152</sup> *CAR*, s. 17(1)(b).

<sup>153</sup> *CAR*, s. 17(3).

<sup>154</sup> *CAR*, s. 17(4) and s. 24(2).

<sup>155</sup> *CAR*, s. 17(2).

<sup>156</sup> *CAR*, s. 18(1).

<sup>157</sup> *CAR*, s. 18(3)(a).

<sup>158</sup> *CAR*, s. 18(4).

<sup>159</sup> *CAR*, s. 18(5).

<sup>160</sup> *CAR*, s. 20.

<sup>161</sup> *CAR*, s. 19.

<sup>162</sup> *CAR*, s. 19(1).

<sup>163</sup> *CAR*, s. 19(2).

<sup>164</sup> *CAR*, s. 19(3).

## DISCIPLINARY SEGREGATION

If you are found guilty of a disciplinary offence, a possible sanction is placement in segregation.<sup>165</sup>

The maximum amount of segregation imposed is 15 days for less serious offences and 30 days for more serious offences.<sup>166</sup> If you are convicted of more than one offence, the total number of days in a row that you can be segregated as punishment is 45.<sup>167</sup> If you are segregated pending your hearing, the time spent in segregation up to your hearing must be subtracted from your punishment.<sup>168</sup>

You can also be segregated if you are charged with a disciplinary offence until the conclusion of your hearing, if the warden believes on reasonable grounds that you are likely to endanger yourself or another person, you are likely to jeopardize the management, operation or security of the prison, or if it is necessary to preserve evidence. The decision to segregate you pending your hearing must be reviewed every 24 hours and if the circumstances that led to your segregation no longer exist, you must be released from segregation.<sup>169</sup>

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

If you feel that your rights in segregation have been violated, you can call Prisoners' Legal Services for legal advice and assistance in making a complaint. You can also contact the CAEFS information line at 1.800.637.4606.

A written complaint can be made to the warden. When you make a complaint, staff should forward it to the warden, who within 7 days of receiving the complaint must investigate it and notify you in writing of the results of the investigation as soon as practicable.<sup>170</sup> If you do not receive a response within 7 days, or you are not satisfied with the response you receive, you may contact the Investigation and Standards Office (ISO). The ISO is an independent body of the Ministry of Public Safety and Solicitor General and Ministry of Attorney General.

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<sup>165</sup> CAR, s. 27(1)(d).

<sup>166</sup> CAR, s. 27(2).

<sup>167</sup> CAR, s. 27(3)(a).

<sup>168</sup> CAR, s. 27(3)(b).

<sup>169</sup> CAR, s. 24.

<sup>170</sup> CAR, s. 37(1).

The Investigation and Standards Office can be reached at:

**Investigation and Standards Office**

PO Box 9270

STN PROV GOVT

Victoria, BC V8W 9J7

**Tel:** 250 387-5948

**Fax:** 250 356-9875

**Web site:** [www.pssg.gov.bc.ca](http://www.pssg.gov.bc.ca)

A court is unlikely to grant you a remedy if you have not gone through the internal remedy procedure first.

## TRANSFERS

*What do I need to know about transfers?*

Transfers can be made for sentence management or administrative reasons.<sup>171</sup>

The reasons for sentence management transfers may include assessment and classification, to facilitate family contact, or access to programs, resources, legal services and police.<sup>172</sup>

The reasons for administrative transfers may include overcrowding, court appearances, protection of other prisoners or staff, prevention of self-harm or escape, public safety, medical treatment or assessment, and prisoner management problems related to behavior.<sup>173</sup>

When you are transferred between correctional systems, BC Corrections and the transferring center is responsible for personal effects. If these items are lost and cannot be produced on transfer, BC Corrections should compensate you.<sup>174</sup>

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<sup>171</sup> Adult Custody Policy, 4.9.2.

<sup>172</sup> Adult Custody Policy, 4.9.4.

<sup>173</sup> Adult Custody Policy, 4.9.5.

<sup>174</sup> Adult Custody Policy, 3.5.7.

## *Can I ask to be transferred to another institution?*

Yes, you can put in a request to be transferred to another institution. As noted above, the only provincial prisons that house women are the Alouette Correctional Centre for Women (open and medium custody), the Surrey Pretrial Services Centre (remand and secure custody), and the Prince George Regional Correctional Centre (medium and secure custody).

If you are asking to be transferred to lower security, you will also need to ask to be reclassified. Your request must be in writing and you should provide the reasons of why your classification should be different from when you were first classified.

You can also ask to be transferred to another province, by filling out an application (form #7709) detailing the reason for the request which will be reviewed by the classification officer.<sup>175</sup> The application is forwarded for a decision to the warden and then the program analyst, BC Corrections, where it is sent to the appropriate jurisdiction.<sup>176</sup> If the transfer is approved the program analyst notifies the warden who will make arrangements for your transfer.<sup>177</sup> If a transfer is denied you must be provided with reasons and the classification officer should inform you of the complaint procedure.<sup>178</sup>

Make sure to include the following information in your application:

- Name;
- Correctional center where you are being held;
- Your principal residence;
- Reason for a transfer;
- Other pertinent information; and
- Sentence calculation information, including offences committed, sentence imposed, dates of sentence, probable discharge date, and information affecting discharge date.

## *Can I oppose a transfer?*

BC Corrections has broad discretion to transfer prisoners, and for transfers that do not involve an increase in security level, you do not have the right to make submissions, to have submissions considered or to receive reasons for the decision to move you. But you do have the right to have your concerns

<sup>175</sup> Adult Custody Policy, 4.19.2(1).

<sup>176</sup> Adult Custody Policy, 4.19.2(2).

<sup>177</sup> Adult Custody Policy, 4.19.3.

<sup>178</sup> Adult Custody Policy, 4.5.11.

addressed under section 4 of the *CAR*, and this section would apply to a decision to transfer you.

If you are to be transferred to higher security, the *Charter* provides you a right to procedural fairness. You should be given an opportunity to make submissions, to have them considered and to reasons for your transfer.

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

If you need assistance with a transfer, you can call Prisoners' Legal Services or the CAEFS information line at 1.800.637.4606.

## **DISCIPLINARY CHARGES**

*What are disciplinary offences?*

Section 21(1) of the *CAR* sets out disciplinary offences. Some of these are: disobeying a direction of a staff member, entering an area of the correctional centre you are not authorized to enter without permission, entering a cell or living unit not assigned to you without permission, damaging property, stealing, possessing property that does not belong to you without permission of the owner, fighting, assaulting or threatening another person, taking an intoxicant and failing to provide a urine sample.<sup>179</sup> Other prohibited activities include: engaging in horseplay or roughhousing, tattooing or piercing your body, attempting to obtain contraband, gambling and helping another prisoner to do any of the prohibited acts.<sup>180</sup>

You must be informed of the rules governing the conduct of prisoners and breach of the rules.<sup>181</sup> This information should be made reasonably available to you and if you are unable to understand the material the person in charge must make reasonable efforts to provide you with assistance to understand the material.<sup>182</sup>

*What happens if I break a rule?*

If a staff member believes that you have broken (or are breaking) a rule, they must inform you of what rule was breached and what the breach consisted

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<sup>179</sup> *CAR*, s. 21(1).

<sup>180</sup> *CAR*, s. 21(1) and (2).

<sup>181</sup> *CAR*, s. 5(1)(d)(i).

<sup>182</sup> *CAR*, s. 5(1) and (2).

of. If the circumstances allow, the staff person must stop you from breaking the rule, give you an opportunity to stop or to resolve the issue with the person affected by your action.<sup>183</sup> Staff also have an obligation under the regulations to make reasonable attempts to address concerns raised by prisoners.<sup>184</sup>

If the matter cannot be resolved, the staff person must file a report with the warden setting out the rule that was broken, the circumstances and the action taken to resolve the matter.<sup>185</sup> Once the person in charge receives this report, they will decide whether to order a disciplinary hearing.<sup>186</sup>

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

If you commit a serious offence, the police may be informed. Generally, the police will only be informed when a serious offence has been committed that clearly contravenes a Canadian law. If you may be facing criminal charges, it may be best not to say anything at your institutional disciplinary hearing, because anything you say can be used against you in your criminal trial.

### *What is a disciplinary hearing?*

A disciplinary hearing is a formal hearing presided over by a staff member who has not been involved in the incident or the filing of the allegation.<sup>187</sup> This hearing is meant to find out whether you in fact broke the rule and what the appropriate punishment will be.

If the person in charge decides to convene a disciplinary hearing, then you must be given notice, in writing. It must include the rule that you are alleged to have broken, the circumstances surrounding the breach, and the proposed date and time of the hearing.<sup>188</sup>

It is possible that you will be moved into segregation until the disciplinary hearing is over.<sup>189</sup> This will happen if the warden has reasonable grounds to believe that either: you are likely to endanger yourself or someone else; you are likely to jeopardize the management, security or operations of the

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<sup>183</sup> CAR, s. 22(1).

<sup>184</sup> CAR, s. 4.

<sup>185</sup> CAR, s. 22(2).

<sup>186</sup> CAR, s. 22(3).

<sup>187</sup> CAR, s. 25.

<sup>188</sup> CAR, s. 23.

<sup>189</sup> CAR, s. 24(1).

prison; or, it is necessary to preserve evidence for the disciplinary hearing.<sup>190</sup> If you are put in segregation, the person in charge must review the order every 24 hours.<sup>191</sup> If any of the conditions listed above no longer apply, you must be released.<sup>192</sup>

If a disciplinary hearing is ordered, it should take place within 72 hours (3 days) of the time of the order to convene the hearing.<sup>193</sup>

You have the right to attend the hearing and your hearing must be adjourned if you are not there, unless you have chosen not to attend, your presence would jeopardize the safety of a person at that hearing, or you are causing a serious disruption to the hearing.<sup>194</sup>

The hearing is like an informal trial – evidence can be called and you can tell your side of the story. The institution must prove that you committed the offence based on evidence presented at the hearing. You can ask that the institution's evidence against you be presented before you are asked to respond to it. If there is no evidence or not enough evidence presented to prove that you are guilty, you can argue that you should be found not guilty. You also have the right to call witnesses to dispute the institution's evidence against you.

If you would like legal advice or assistance with your disciplinary hearing, call Prisoners' Legal Services at 604-853-8712. In some cases, you may qualify for a lawyer to represent you at your hearing.

### *Possible penalties*

If you are found to have breached a rule, then the person presiding over the disciplinary hearing can impose one or more of the following penalties:

- A warning or reprimand;
- A temporary or permanent restriction on activities or programs;
- Confinement in a cell, on and off, for no longer than 192 hours;
- Segregation for no more than 30 days;
- Extra duties, for no more than 12 hours;
- Forfeiture of earned remission of no more than 60 days.<sup>195</sup>

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<sup>190</sup> CAR, s. 24(1).

<sup>191</sup> CAR, s. 24(2).

<sup>192</sup> CAR, s. 24(3).

<sup>193</sup> CAR, s. 26(1).

<sup>194</sup> CAR, s. 26(3).

<sup>195</sup> CAR, s. 27(1).

You must be given written reasons of the decision and the penalty imposed.<sup>196</sup>

You can apply to the decision maker to reduce or suspend the penalty imposed, with or without conditions. The decision maker must give you a decision and reasons in writing within 14 days. If you do not comply with a condition, the warden may order a disciplinary hearing about the failure to comply with the condition and if the decision maker finds you failed to comply with a condition, the original penalty will be re-imposed.<sup>197</sup>

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

You can appeal a finding of guilt or the penalty imposed to the Investigation and Standards Office. Your appeal must be in writing and must be submitted within 7 days of the decision.<sup>198</sup>

Call Prisoners' Legal Services at 604-853-8712 if you would like help with your appeal.

The Investigation and Standards Office can confirm the decision and penalty, substitute a different penalty, or rescind the decision and penalty and either direct that your record reflect the rescission or send the matter back for another hearing.<sup>199</sup>

If a new hearing is ordered, then a different decision maker will be appointed to hear the evidence and make a decision.<sup>200</sup>

## **SEARCHES**

### *What kinds of searches can be performed on prisoners?*

#### **A FRISK SEARCH**

This is a search of the person by patting down the outside of your clothes with hands or a hand-held screening device. A frisk search can include a search of personal possessions, including clothing, that you are carrying or wearing.<sup>201</sup>

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<sup>196</sup> CAR, s. 28.

<sup>197</sup> CAR, s. 27(4), (5) and (6).

<sup>198</sup> CAR, s. 29(1).

<sup>199</sup> CAR, s. 29(4).

<sup>200</sup> CAR s. 29(5).

<sup>201</sup> CAR, s. 10(1).

## A SCREENING SEARCH

This is a search of a clothed person conducted either visually or with the use of a screening device, including drug detection dog, ion scanner, and walk-through or hand-held metal detector.<sup>202</sup>

## A STRIP SEARCH

This is a visual inspection of you when you are undressed, with no physical contact.<sup>203</sup> During the course of a strip search, the staff member may require you to open your mouth, show her the soles of your feet, open your hands and arms, and may run her hands through your hair. As well, she may require you to bend over to allow for a visual inspection of body cavities.<sup>204</sup>

Strip searches must be conducted and observed by someone of the same gender as the person being searched, unless the warden has reasonable grounds to believe that a delay would result in danger to human life or safety. A strip search must be done in as private an area as the circumstances allow and as quickly as the circumstances allow.<sup>205</sup>

If you are being strip searched, then the person doing the search should inform you of the reason for the search, and then explain how a strip search is conducted, if the circumstances allow.<sup>206</sup>

## *When can I be searched?*

When you first enter the jail (or return from a temporary absence) a guard will search you and any of your personal possessions, including clothing, that you may be carrying or wearing.<sup>207</sup>

Staff can conduct periodic searches of you and your personal possessions, including clothing, as well as your cell, for the purpose of detecting contraband.<sup>208</sup> They can also conduct a search if they have reasonable grounds to believe that you have contraband.<sup>209</sup>

You can be strip searched only in the following circumstances:

- (a) on admission, entry, transfer or return to corrections;

<sup>202</sup> CAR, s. 10(1).

<sup>203</sup> CAR, s. 11(1).

<sup>204</sup> CAR, s. 11(1)(a); Adult Custody Policy, 1.15.4.

<sup>205</sup> CAR, s. 11(3) and (4).

<sup>206</sup> CAR, s. 11(2).

<sup>207</sup> Correction Act, s. 13(1).

<sup>208</sup> Correction Act, s. 13(2).

<sup>209</sup> Correction Act, s. 13(3).

- (b) on entry to or return from a cell in the segregation unit;
- (c) on return from a visit, work or program area in the correctional centre if the you could have had access to an item that is contraband and that may be hidden on or in your body;<sup>210</sup> and,
- (d) if there are reasonable grounds to believe that you may be in possession of contraband or evidence of an offence of bringing contraband into an institution or trespassing on the grounds of a correctional centre (in this case, staff must reasonably believe a strip search is necessary and have authorization from the warden, unless it would cause delay that would put someone in danger or evidence would be lost).<sup>211</sup>

The authorized person who conducts the strip search must complete a written report and submit it to the warden.<sup>212</sup>

### *What if I refuse to be searched?*

If you refuse a lawful demand for a search staff will advise you of the consequences of your refusal.<sup>213</sup> The warden could place you in separate confinement if he or she thinks you may have contraband hidden in your body.<sup>214</sup> Force may only be used against you when the risk of not searching would place the officer or others at risk and if other less intrusive measures have been exhausted or rejected as impractical.<sup>215</sup>

### *Do I have to submit to a urine test?*

A urinalysis can be ordered at any time if there are reasonable grounds to believe that you have taken intoxicants, or if urinalysis is required for participation in a temporary absence, work program, voluntary treatment program or conditional release.<sup>216</sup>

If you are asked for a urine sample, you must be informed of the demand and the consequences of not complying with it.<sup>217</sup> The person who takes the

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<sup>210</sup> CAR, s. 12(1)(a), (b) and (c).

<sup>211</sup> CAR, s. 12(2)(a-c).

<sup>212</sup> CAR, s. 12(4).

<sup>213</sup> Adult Custody Policy, 1.15.7(1).

<sup>214</sup> Adult Custody Policy, 1.22.3(1).

<sup>215</sup> Adult Custody Policy, 1.15.7(2).

<sup>216</sup> Correction Act, s. 20(1).

<sup>217</sup> Correction Act, s. 20(2)(a).

sample must be the same gender as you,<sup>218</sup> and she has to give you up to 2 hours from the demand for you to provide a sample.<sup>219</sup>

### *Can my cell be searched?*

The BC *Correction Act* states that an authorized person without individualized suspicion may conduct periodic searches of any personal possessions, including clothing, that you may be carrying or wearing, and your cell and its contents.<sup>220</sup> An authorized person may also conduct a search if they believe on reasonable grounds that you may be in possession of contraband or evidence relating to an offence under section 17(1) of the BC *Correction Act*. In these circumstances they may search your cell and its contents, including any personal possessions, clothing, that you may be carrying or wearing.

### *Can prison staff search visitors?*

Prison staff can also conduct routine searches of a visitor entering or leaving prison, including their personal possessions and clothing.<sup>221</sup> If your visitor refuses to be searched, then the staff may prohibit a contact visit, and authorize a non-contact visit instead. They may also ask the visitor to leave immediately. A search can also happen if they suspect that the visitor is carrying contraband.<sup>222</sup> This search can include a strip search, as long as the visitor consents.<sup>223</sup> The same rules will apply to a strip search of a visitor as they would to a prisoner.

Vehicles on the property can be searched. Staff can also be searched.<sup>224</sup>

### *Can prison staff seize something found in a search?*

A member of the prison staff can seize an object or substance if they believe that the substance is contraband or is evidence relating to a contraband offence under section 17(1).<sup>225</sup>

If a staff member does seize an item during a search, she must make a re-

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<sup>218</sup> CAR, s. 16(1)(a).

<sup>219</sup> CAR, s. 16(1)(d).

<sup>220</sup> *Correction Act*, s. 13(2)(b).

<sup>221</sup> *Correction Act*, s. 14(1).

<sup>222</sup> *Correction Act*, s. 14(4).

<sup>223</sup> *Correction Act*, s. 14(5).

<sup>224</sup> *Correction Act*, s. 15.

<sup>225</sup> *Correction Act*, s. 18(1).

cord of the item and put it in a secure place in the jail.<sup>226</sup> The item must be returned to you if:

- the item is not in the control of the person in charge of the correctional centre;
- the item is not contraband or evidence; or,
- there is no dispute over who owns it.<sup>227</sup>

If the item is something that is contraband inside but is lawful outside of the prison, a few different things might happen. You will either receive the item when you leave the jail, or you will be given 30 days to make arrangements for what you want to do with the item.<sup>228</sup> The item can also be disposed if it's likely to spoil, or is unsafe.<sup>229</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. You may contact a lawyer, CAEFS, Prisoners' Legal Services or make a complaint to the warden and then the Investigation and Standards Office.

## USE OF FORCE

*When can force be used against me?*

Corrections staff may use a reasonable degree of force against you to:

- (a) prevent injury or death;
- (b) prevent property damage;
- (c) prevent escaping; or
- (d) maintain custody and control of a prisoner.<sup>230</sup>

A device used to physically restrain a prisoner should not be used for more than 4 continuous hours<sup>231</sup> unless:

- its use is authorized by the warden who believes on reasonable grounds that it is necessary for the safety of the prisoner or for the safety of another person and other means of control of the prisoner

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<sup>226</sup> *Correction Act*, s. 18(2).

<sup>227</sup> *Correction Act*, s. 18(4).

<sup>228</sup> *Correction Act*, s. 18(5)(a) and (b).

<sup>229</sup> *Correction Act*, s. 18 (5)(c).

<sup>230</sup> *Correction Act*, s. 12(1).

<sup>231</sup> *CAR*, s. 9(2).

- have been exhausted or are not reasonable in the circumstances;<sup>232</sup> or,
- its use is authorized by the warden and the prisoner is on an escorted absence from the correctional centre.<sup>233</sup>

The warden may not authorize the use of a physical restraint device for more than 16 continuous hours without the approval of the provincial director.<sup>234</sup>

The person in charge must review the condition of the prisoner with the provincial director every 12 hours following the approval of the provincial director while the physical restraint device is being used.<sup>235</sup> The provincial director can at any time revoke his or her approval.<sup>236</sup>

### *What can I do if my 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. You may contact a lawyer, CAEFS, Prisoners' Legal Services or make a complaint to the warden and then the Investigation and Standards Office.

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<sup>232</sup> CAR, s. 9(3).

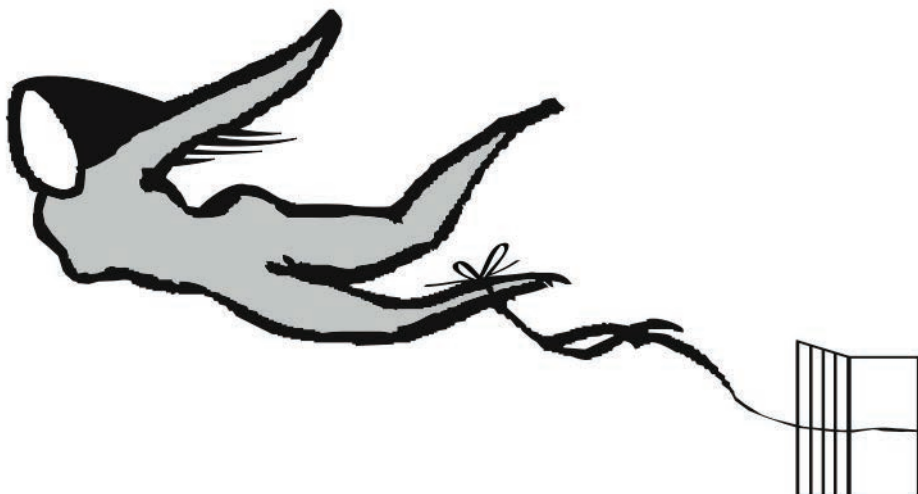
<sup>233</sup> CAR, s. 9(2)(b).

<sup>234</sup> CAR, s. 9(4).

<sup>235</sup> CAR, s. 9(5).

<sup>236</sup> CAR, s. 9(6).





## Part V: Early Release

This part of the manual will cover some of the issues related to releases from jail before the end of your provincial sentence. This section does not apply to those women who are remanded in provincial jails while they await trial or sentencing.

There are two kinds of early release – earned remission and conditional release. If you are released before the end of your sentence because you have earned remission, you are a free woman upon your release. If you are released conditionally (on parole or on a temporary absence), you are still under supervision while in the community until the end of your sentence.

If you are granted full parole, you will lose your earned remission. You will be under community supervision until the end of your sentence. If the National Parole Board decides you have broken a condition of parole, you can be returned to prison without the remission that you previously earned.

If you are on a temporary absence or on day parole, you can also earn remission to shorten your sentence.

## EARNED REMISSION

### *What is earned remission?*

You can have the length of your sentence reduced by “earning remission” for good behaviour. Your performance in the prison will be appraised, and earned remission will be decided on the basis of how well you have followed the rules, how much you have participated in programs (except for religious programs)<sup>237</sup> and how well you have co-operated with others in those activities.<sup>238</sup>

You are still eligible for earned remission if you are in segregation, on a temporary absence or in the hospital.<sup>239</sup>

### *How is earned remission calculated?*

Earned remission is calculated on the basis of one day’s earned remission for each full two days that are served.<sup>240</sup> So, for good performance, you can earn up to 15 days a month off of your sentence, for fair performance you can earn between 8 and 14 days, and for poor performance, between 0 and 7 days.<sup>241</sup> Remission awards are credited at the end of the month.<sup>242</sup>

### *Can earned remission be appealed?*

If your full earned remission is not credited, then you must be notified and given reasons in writing. If you are not satisfied with the decision, then you can apply in writing to the warden for a review of the decision. You have 7 days to submit your appeal. The warden then has 7 days to review the assessor’s decision, and either confirm the credit, increase the number of days credited or reduce the number of days credited. You should receive written reasons for any review of the decision.<sup>243</sup>

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<sup>237</sup> CAR, s. 32.

<sup>238</sup> Adult Custody Policy, 3.9.6(3).

<sup>239</sup> Adult Custody Policy, 3.9.9.

<sup>240</sup> CAR, s. 34(2)(a).

<sup>241</sup> CAR, s. 34(2)(c).

<sup>242</sup> Adult Custody Policy, 3.9.7(5).

<sup>243</sup> CAR, s. 35.

# CONDITIONAL RELEASE

## *What is Conditional Release?*

Conditional release is any authorized absence from a prison during the term of a prison sentence. It allows prisoners to continue to serve their sentences in the community. Absences can range from brief hospital visits to being permitted to leave prison and complete your term of imprisonment by reporting to a parole officer while living in the community.

## What are the types of conditional releases?

There are essentially four types of conditional release available to women serving provincial sentences in BC. They are:

- Temporary Absences (which includes escorted and unescorted absences);
- Work Release;
- Day Parole; and,
- Full Parole.

Applications for temporary absences or work releases should be made to the warden. Applications for day or full parole should be made to the National Parole Board.

## *When am I eligible for the various conditional releases?*

You are eligible for day parole at 1/6 of your sentence and for full parole at 1/3 of your sentence.<sup>244</sup>

The warden can grant temporary absences or work releases at any time during your sentence.<sup>245</sup>

## *When should I begin preparing for various conditional releases?*

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 prison. This will also be important if disciplinary charges are ever filed against you or incorrect information is inserted in your file. Keep track of every-

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<sup>244</sup> Corrections and Conditional Release Act, s. 115(c), 119(d) and 120(1).

<sup>245</sup> Adult Custody Policy, 5.1.1 and 5.1.2.

thing you do: courses, programs, work reports, education, evaluations, community supports, volunteer projects (i.e. planning and organizing an event).

Always keep a paper copy of all your documents including correspondence concerning your release applications (i.e. request for information from schools, half-way houses, employers, child care arrangements), and any documents or notices presented to you by BC Corrections staff regarding your prisoner record, any correspondence with your lawyer, the National Parole Board (NPB) or other agency working on your behalf.

Keep all of your documents and records in a safe place. If there is no safe place for you to keep documents, ask your lawyer or local Elizabeth Fry worker to keep copies for you.

Do I have to apply for conditional releases or are they automatically considered?

You must apply for conditional releases such as temporary absences, work releases, and parole review.

## **TYPES OF CONDITIONAL RELEASE**

### TEMPORARY ABSENCES

#### *What is a Temporary Absence (TA)?*

Temporary Absences (TAs) allow you to be absent from prison, with or without an escort, for up to 60 days at a time. TAs may be granted to allow you to access services and programs in the community that you might not be able to access in the jail. You will be required to abide by conditions during your absence.<sup>246</sup> The prison rules apply during your absence.<sup>247</sup>

If you are granted an escorted absence, you will have another person with you, such as a representative from a correctional social service agency, a volunteer or a BC Corrections Branch chaplain.<sup>248</sup>

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<sup>246</sup> Adult Custody Policy, 5.1.

<sup>247</sup> *Correction Act*, s. 22(6).

<sup>248</sup> Adult Custody Policy, 5.2.12(3).

## *For what purposes can TAs be granted?*

TAs can be granted either for medical, educational or humanitarian reasons, or to assist in your rehabilitation or reintegration into the community.<sup>249</sup>

**Medical absences** can be granted for both emergency and non-emergency reasons, including dental, psychiatric or psychological treatment. Both emergency and non-emergency TA's may be granted for an unlimited period.<sup>250</sup>

**Educational absences** are available if you have an open custody classification in order to attend a recognized educational, vocational or training program.<sup>251</sup>

**Employment absences** may be granted to participate in an approved co-operative work program, and can be for specified periods or may be permitted on a daily basis.<sup>252</sup>

**Rehabilitative absences** may be granted in order to receive counselling or therapy, or to participate in community service.<sup>253</sup>

**Humanitarian absence** may be for approved institutional program initiatives, approved family contact, spiritual or religious programs, recreational programs or social gatherings. These absences will be granted only if you are deemed to have actively participated in programs and have good behaviour.<sup>254</sup>

Humanitarian absences may also be granted for compassionate reasons (such as family illness or to attend a funeral).<sup>255</sup>

## *How long is a TA?*

Usually, temporary absences can be authorized for a period of time no more than 60 days. However, they can be reviewed and re-assessed and it is possible that they can be extended for one or more periods of 60 days.<sup>256</sup> If it is

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<sup>249</sup> *Correction Act*, s. 22(1).

<sup>250</sup> Adult Custody Policy, 5.2.3, 5.2.4.

<sup>251</sup> Adult Custody Policy, 5.2.6(2).

<sup>252</sup> Adult Custody Policy, 5.2.7(2-4).

<sup>253</sup> Adult Custody Policy, 5.2.8(1).

<sup>254</sup> Adult Custody Policy, 5.2.9(2).

<sup>255</sup> Adult Custody Policy, 5.2.9(1).

<sup>256</sup> *Correction Act*, s. 22(2).

for medical reasons, then the temporary absence can be for an unlimited amount of time.<sup>257</sup>

### *How do I apply for a temporary absence?*

You can apply for a temporary absence at any time during your sentence.<sup>258</sup> You must put in a temporary absence application, which will include a proposed temporary absence plan that points to a specific reason for the absence (i.e. to participate in a particular program). Information that will be used to make the decision includes: your application, your pre-sentence report, an institutional report and classification report, as well as input from case management.<sup>259</sup> You will also have a community assessment if your absence will be unescorted and overnight.<sup>260</sup>

Your application should be processed and completed within 25 days of the receipt of the application, unless your absence requires a community assessment, which take more time.<sup>261</sup>

### *What criteria are used to grant a TA?*

According to BC Correction's policy, the main criteria for deciding to grant a temporary absence are (in order of priority): public safety, risk assessment, likelihood of escape or non-compliance, and institutional classification.<sup>262</sup> Your behaviour and support in the community are also assessed,<sup>263</sup> as well as your 'institutional performance'.<sup>264</sup>

### *Can temporary absences be cancelled?*

Your temporary absence can be suspended, cancelled or revoked, either before or after the absence has started if:

- one of the conditions of the absence has been broken or cancellation is necessary to prevent a breach of a condition;
- the grounds for allowing the absence have changed or no longer exist; or

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<sup>257</sup> *Correction Act*, s. 22(3).

<sup>258</sup> Adult Custody Policy, 5.1.1(2).

<sup>259</sup> Adult Custody Policy, 5.4.14.

<sup>260</sup> Adult Custody Policy, 5.3.1(4).

<sup>261</sup> Adult Custody Policy, 5.3.1(6).

<sup>262</sup> Adult Custody Policy, 5.4.2.

<sup>263</sup> Adult Custody Policy, 5.4.8.

<sup>264</sup> Adult Custody Policy, 5.4.9.

- your application has been reassessed, based on information that was not available when the absence was authorized.<sup>265</sup>

If your absence is suspended, cancelled or revoked, and you are outside of the prison, it is possible a warrant will be issued to ensure that you are brought back to the prison. You can be arrested on reasonable grounds that a warrant is in force.<sup>266</sup>

If your absence is denied, suspended or revoked, you must be given reasons, in writing, within 72 hours.<sup>267</sup> You may appeal the decision to the next level (i.e. the warden or provincial director) and he or she must reply within 10 calendar days of receiving the appeal.<sup>268</sup>

## WORK PROGRAMS

### *What is work release?*

A work program is a structure program of release of specified duration for work or community service outside the prison, under the supervision of BC Corrections. Work release can be an important step towards re-integration back in the community. Money that you earn from working can be used to support any dependents that you might have or can go towards other expenses that are seen to be in your best interests.<sup>269</sup>

## PAROLE

The purpose of parole is to contribute to the maintenance of a just, peaceful and safety society, and to assist prisoners in their rehabilitation and reintegration into the community.<sup>270</sup>

### *What is full parole?*

Full parole is a conditional release from custody granted to you to complete your prison sentence in the community.

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<sup>265</sup> *Correction Act*, s. 22.1(1).

<sup>266</sup> *Correction Act*, s. 22.1(2) and (3).

<sup>267</sup> Adult Custody Policy, 5.5.2.

<sup>268</sup> Adult Custody Policy, 5.5.3.

<sup>269</sup> *Correction Act*, s. 25(4).

<sup>270</sup> Adult Custody Policy, 6.1.1.

## *What is day parole?*

Day parole is a form of conditional release granted to prisoners that allows them to serve a portion of a sentence in the community.<sup>271</sup> On day parole, you are required to return to an authorized half-way house or treatment centre at the end of each day.<sup>272</sup>

## *Parole by Exception*

Parole by Exception can be granted before your parole eligibility date if you are terminally ill, if your mental or physical health would suffer serious damage if you were to remain in prison, if continued confinement would be an excessive hardship that could not have been foreseen at sentencing, or if there is an extradition order against you.<sup>273</sup>

## *Who grants parole?*

Parole is decided by the National Parole Board (NPB)<sup>274</sup> (Before April 2007, parole in BC was the responsibility of the BC Parole Board). The NPB is a tribunal made up of Board members, and has the authority to grant, deny, cancel, terminate or revoke day parole and full parole.<sup>275</sup> Board members assess each case individually, and base their assessment of risk on your criminal history, institutional behaviour, programs and your release plan.

## *When am I eligible for parole?*

If you are serving a sentence of more than 6 months, you can apply for parole.<sup>276</sup>

Day parole may be granted when you have served 1/6 of your sentence. When you are on day parole, you continue to earn remission. When you reach your probable discharge date (PDD) you will be finished your sentence.

Full parole may be granted when you have served 1/3 of your sentence. On full parole, you do not continue to earn remission. If your parole is revoked, the remission that you previously earned will likely be taken away.

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<sup>271</sup> Adult Custody Policy, 6.5.1(1).

<sup>272</sup> Adult Custody Policy, 3.7.2(6).

<sup>273</sup> Adult Custody Policy, 6.4.3.

<sup>274</sup> Adult Custody Policy, 6.1.3, 6.1.4.

<sup>275</sup> National Parole Board: [www.npb-cnrc.gc.ca](http://www.npb-cnrc.gc.ca).

<sup>276</sup> *Corrections and Conditional Release Act*, s. 119(2) and s. 123(3.1).

If you have multiple sentences or have received additional convictions, then your eligibility will be re-calculated to be one-third of the total sentence.<sup>277</sup>

The National Parole Board is not required to review an application for parole made in the last 2 months of your sentence, and can take up to 6 months from when your parole application was received to review it.<sup>278</sup>

Because of the time limits, and because you can earn up to 15 days of remission each month, it may not be of much benefit to apply for parole unless you are serving a sentence of over one year.<sup>279</sup> But the NPB may hear your application before the time limits required by law, so you have nothing to lose by putting in an application.

### *When should I apply for parole?*

Because the National Parole Board can take 6 months to review your application after it is received, you should apply for parole as soon as you arrive in prison.

If you are sentenced for one year, your day parole eligibility date will be after you have served 2 months of your sentence, and your full parole eligibility date will be after you have served 4 months of your sentence. If you apply for parole right away, the National Parole Board is still not required to review your application until well after your parole eligibility dates.

Even if your sentence is for two years less a day, and you apply for parole right away, the National Parole Board is not required to consider your application until two months after your day parole eligibility date (four months).

If you have applied for parole and you would like to wait to complete a program before you have your hearing, you can ask the National Parole Board to postpone your hearing.

### *How do I apply for parole?*

Information concerning conditional release, eligibility and application procedures that is provided by the National Parole Board is posted within each

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<sup>277</sup> Adult Custody Policy, 6.5.6(1).

<sup>278</sup> *Corrections and Conditional Release Regulations*, s. 157(2) and s. 158(2).

<sup>279</sup> West Coast Prison Justice Society “Prisoners’ Legal Rights” August 2008, p. 26.

centre. Written copies of this information must be provided to you following your admission to the correctional facility.<sup>280</sup>

You will need to prepare a conditional release plan to provide to the National Parole Board in support of your application.<sup>281</sup> Staff may help you in filling out your application for parole.<sup>282</sup> The conditional release coordinator is responsible for assisting prisoners to complete parole applications and for forwarding applications to the appropriate person.<sup>283</sup>

### *What happens next?*

When your application for parole is received, you will be assigned to a Correctional Service of Canada (CSC) community parole officer. The community parole officer will prepare your case and provide it to the National Parole Board no later than three months from the date you applied.<sup>284</sup>

The community parole officer will meet with you to discuss your release plans and then develop a supervision plan for your release in the community. This plan may include living in a halfway house, participating in programs, seeing a psychologist and maintaining employment. The community parole officer will prepare a report for the National Parole Board and recommend whether you should be granted release and whether any special conditions are necessary and reasonable to protect society and facilitate your re-entry into the community.<sup>285</sup>

You will be provided with all relevant information considered by the National Parole Board at least 15 days before your hearing.<sup>286</sup>

### *What happens at a parole hearing?*

You will have a parole hearing, where information will be presented to the National Parole Board, including your application, custody report, classification reports, community assessment, pre-sentence report and written submissions from the victim.<sup>287</sup>

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<sup>280</sup> Adult Custody Policy, 6.6.1.

<sup>281</sup> Adult Custody Policy, 6.6.2(3).

<sup>282</sup> Adult Custody Policy, 6.6.2(4).

<sup>283</sup> Adult Custody Policy, 6.6.3.

<sup>284</sup> National Parole Board: [www.npb-cnrc.gc.ca](http://www.npb-cnrc.gc.ca).

<sup>285</sup> National Parole Board: [www.npb-cnrc.gc.ca](http://www.npb-cnrc.gc.ca).

<sup>286</sup> Adult Custody Policy, 6.6.8(1).

<sup>287</sup> Adult Custody Policy, 6.6.4.

You should be prepared to answer the following questions at your parole hearing:

- Why did you commit the offence(s) for which you have been sentenced?
- What do you understand about your offence (addictions, triggers, crime cycle)?
- What have you done to address the factors that are associated with your offending?
- How will your release plan manage your risk to offend?<sup>288</sup>

Victims may be allowed to attend the hearing as observers.<sup>289</sup>

Once a decision is reached, the National Parole Board must give you its decision and written reasons.<sup>290</sup>

### *Elder Assisted Hearings*

If you are an Aboriginal person, you can ask for an Aboriginal Hearing in which an Elder or Aboriginal Advisor participates in the hearing.

The Elder or Advisor can provide the National Parole Board with information about the cultural traditions of your nation, as well as information about Aboriginal cultures, experiences and traditions in general.

If you would like an Elder Assisted hearing, fill out the Request for an Aboriginal Hearing form and submit it to your community parole officer.

### *Can I appeal a decision by the National Parole Board?*

If you are not happy with the decision of the Parole Board, you have 60 days from the date of the decision to appeal to the National Parole Board Appeal Division in Ottawa.<sup>291</sup>

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<sup>288</sup> National Parole Board: [www.npb-cnrc.gc.ca](http://www.npb-cnrc.gc.ca)

<sup>289</sup> Adult Custody Policy, 6.3.4(1).

<sup>290</sup> Adult Custody Policy, 6.7.1.

<sup>291</sup> Adult Custody Policy, 6.15; National Parole Board: [www.npb-cnrc.gc.ca](http://www.npb-cnrc.gc.ca).





## Part VI: Remedies

### INTRODUCTION

This section provides details concerning the steps you can take to protect your rights if they are not respected. References to this section have appeared throughout this manual. The main topics in this section include:

- Institutional Complaints;
- Complaints to the Investigation and Standards Office;
- Complaints to the BC Human Rights Tribunal;
- Complaints to the Privacy Commissioner; and,
- Judicial Reviews.

#### *What are remedies?*

Remedies are solutions to problems you may face while in prison. There are a variety of ways to seek these solutions. These include making a request for something you are not getting, filing a complaint with the correctional centre, filing a complaint with the Investigation and Standards Office, filing a complaint to the BC Human Rights Tribunal, filing a complaint with the Privacy Commissioner, or attempting to have your case reviewed in Court.

While this chapter briefly covers the entire range of ways that you can seek a solution to a problem, the basis to any challenge is a complaint. Here we discuss how to file a complaint, the different types of complaints available to you and the information that you should include in your complaint.

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

As discussed in the Introduction chapter, as a woman in prison you retain all of the rights that you enjoyed before incarceration, except those that need to be restricted in order to enforce your sentence.

These rights include the ability to make a complaint when you feel you have been treated badly and to seek remedies for actions and decisions made by prison authorities that you feel are unfair.

Document everything. In order to ensure that all the above rights are protected, it is essential that you keep careful records of the time and dates of any incidents and the attempts you make to try to resolve your problems.

Keep a copy of any written requests you make and ask the staff person to sign and date your copy to show when and who you submitted it to. If you file a complaint, keep a copy of it for your records and ask the staff person to sign and date your copy.

If you receive any written documentation from prison staff, the Investigation and Standards Office, an outside organization, the BC Human Rights Tribunal, the Courts, or anybody else – keep it in as safe a place as possible! This will be very helpful in bringing your complaint forward toward resolution. You may also want to give copies of your paperwork to someone outside of the prison.

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

Perhaps the most obvious reason to seek a remedy for your problem is that success will mean an immediate improvement in your personal situation. However, there are a number of other reasons that may be just as important or, ultimately, even more so.

Perhaps one of the most important reasons to file a complaint is that now you have that right, especially since generations of prisoners before you had

no such law to protect them. You also have a right to be treated with respect and dignity and the right to validation when someone treats you otherwise. However, history shows that rights can be lost as well as gained, and that one of the best ways to keep your rights is to exercise them.

When you use the complaint procedure successfully, you reinforce the notion that there is a need for the formal procedure and you also demonstrate that the procedure can work. If, on the other hand, you cannot get a problem resolved through the complaint procedure, you still document that something is going wrong, and therefore help to build the argument that other alternatives are needed. In short, 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 allow organizations representing women like you to collect statistics that reflect the realities of women's experiences inside. These statistics help organizations fight for improved conditions for prisoners. The statistics may also serve as a tool for documenting institutional accountability<sup>292</sup> and create penalties for correctional interference with the integrity of your sentence.<sup>293</sup>

## REQUESTS

*When would I make a request?*

Making a request for something you need is often the first step in solving your problem. Hopefully, your request will be granted and your problem will be solved right away.

Unless you are asking for something routine, always make your requests in writing and keep a copy. Ask the staff person to whom you submit your request to sign your copy. If your request is not granted, you will have the basis to make a complaint, and you will have evidence of when you made your request and who you gave it to.

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<sup>292</sup> For example, in 1997, the Working Group on Human Rights examined the ability of the Correctional Service of Canada to monitor its compliance with Canada's domestic and international human rights obligations, and developed a strategic model for evaluating human rights performance.

<sup>293</sup> This was recommended by Justice Arbour in *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*.

The *Correction Act Regulation* states that staff must make reasonable attempts to address concerns raised by prisoners,<sup>294</sup> meaning that they should make efforts to discuss and resolve problems before they are pursued through the formal complaint process.

## COMPLAINT PROCESS

*When would I make a complaint to the warden?*

You can make a complaint to the warden if a request you have made was not granted or was not answered in a reasonable period of time. You might also decide to make a complaint to the warden if you are unhappy with an action or a decision by a staff member.

Complaints should be in writing. You can submit your complaint to any staff person who must give it to the warden without undue delay.<sup>295</sup> Again, you should keep a copy and ask the staff person to sign and date your copy.

The warden must investigate your complaint within 7 days of receiving it and provide you with a written response as soon as practicable.<sup>296</sup>

*When would I make a complaint to the Investigation and Standards Office?*

If you are not satisfied with the warden's response to your complaint, you can make a written complaint to the Investigation and Standards Office. The Investigation and Standards Office can make a recommendation to the warden about your complaint, but there is no legal requirement that the warden follow the recommendation. Staff must forward your complaint to the Investigation and Standards Office without delay.<sup>297</sup>

### **Investigation and Standards Office**

PO Box 9279

STN PROV GOVT

Victoria, BC V8W 9J7

**Tel:** (250) 387-5948

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<sup>294</sup> *CAR*, s. 4

<sup>295</sup> *CAR*, s. 37(1).

<sup>296</sup> *CAR*, s. 37(2).

<sup>297</sup> Adult Custody Policy, 7.7.2.(4). See also: *Correction Act*, s. 28.

## *When would I make a complaint to another body?*

Depending on the nature of your problem, you may also make a complaint to the other organizations referred to in this manual, such as the BC Human Rights Tribunal or the regulatory bodies of medical professionals.

## *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 grievance, there are a number of important questions you should consider:

### 1) WHO?

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

This sometimes determines the level at which you should file your grievance.

Remember that examples of things that are not in the jail's jurisdiction include:

- a decision of the parole board; and,
- medical decisions of health care professionals.

### 2) 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 may involve the BC Human Rights Code protections.

#### **What are the facts?**

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

#### **What is the relevant law or policy?**

Find a relevant law (for example, a section of the *Correction Act*), regulation, or policy that applies to your case.

- Was there a breach of a law, regulation or policy?
- What "corrective action" do you want the Corrections to take?
- What outcome would you like to achieve?
- What solution would make you happy?

### 3) WHY?

#### **What remedy do you want to result from your complaint?**

Do you want a decision reversed? Do you want access to a service you are being denied? Information?

Your complaint must be made in writing. It should include any information about attempts you have already made to resolve the issue.<sup>298</sup>

## **OTHER OPTIONS**

*What if my complaint is not upheld? What can I do if I am not satisfied with the decision?*

If you are not satisfied with the decision made about your complaint, you may have other options. You can call Prisoners' Legal Services for advice at 604-853-8712. Depending on the nature of your complaint, the following may be options for you to pursue.

### APPLY FOR JUDICIAL REVIEW

Decisions of administrative bodies, including BC Corrections, can be judicially reviewed in court. A judicial review is limited to a determination of whether the decision was in compliance with the law or reasonable. It is usually based on the information that was before the decision maker – it is not a re-hearing of your issue. Judicial review can be complicated and difficult to pursue without the assistance of a lawyer.

### APPLY FOR HABEAS CORPUS

An application for *habeas corpus* can be made to court if you have suffered an unlawful deprivation of liberty. This includes if you are unlawfully kept in segregation, or if you have been transferred to a higher level of security, your rights to procedural fairness have been violated.

If you wish to make an application for habeas corpus, it is important that you immediately contact a lawyer or Prisoners' Legal Services. You may also contact the CAEFS' information line at 1.800.637.4606 for advice.

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<sup>298</sup> Adult Custody Policy, 7.7.2.(3). See also: *Correction Act*, s. 37(1),

## GETTING LEGAL HELP

The following organizations may be able to provide legal information, advice or assistance.

### **Canadian Association of Elizabeth Fry Societies**

#701, 151 Slater Street  
Ottawa, ON K1P 5H3

**Tel:** 613-238-2422

**Toll Free:** 1-800-637-4606

**Fax:** 613-232-7130

**E-mail:** caefs@web.ca

**Web Site:** [www.elizabethfry.ca](http://www.elizabethfry.ca)

### **Prisoners' Legal Services**

**Tel:** 604-853-8712

**Fax:** 604-853-1038

### **The Law Centre**

Third Floor 1221 Broad Street  
Victoria, BC V8W 2A4

**Tel:** (250) 385-1221

**Fax:** (250) 385-1226

### **UBC Law Students' Legal Advice Program**

Room 158, 1822 East Mall  
Faculty of Law  
University of British Columbia  
Vancouver, BC V6T 1Z1

**Tel:** (604) 822-5791

### **Western Canada Society to Access Justice**

**Tel:** (604) 878-7400

**Fax:** (604) 324-1515

**Web site:** [www.accessjustice.ca](http://www.accessjustice.ca)

This manual was produced by the Canadian Association of Elizabeth Fry Societies with the assistance of Prisoners' Legal Services.

This publication contains general information only and does not constitute legal advice. Each situation is unique. The law can also change. If you have a legal problem, contact a lawyer.