



# Human Rights in Action

A Handbook for Women  
in Provincial Jails in Ontario

Canadian Association of Elizabeth Fry Societies

## **Human Rights in Action:**

A Handbook for Women for Women in Provincial Jails in Ontario

*The opinions expressed in this publication are those of the authors and do not necessarily reflect the views of the Ministry of Community Safety and Correctional Services or its employees. The Ministry and its employees do not warrant the accuracy of any information contained in this publication.*

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Author: Canadian Association of Elizabeth Fry Societies (CAEFS)

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Canadian Association of Elizabeth Fry Societies (CAEFS)  
701 - 151 Slater Street  
Ottawa, ON K1P 5H3  
CANADA

Email: [admin@caefs.ca](mailto:admin@caefs.ca)

Web site: [www.caefs.ca](http://www.caefs.ca)

Editing and Proofing: Kim Pate

Cover Design: Naira Santana

Layout Design: Tony Di Iorio

Illustrations: Jorge Vargas

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The Human Rights Training Manual is designed to assist women in and from prison to advocate on behalf of themselves and their peers.

### The Provincial HRIA Project

This manual is similar in format to the one we use for our federal initiative. That manual was drafted by a group of law students and women who are or were federally sentenced prisoners. This one is geared to women in provincial jails, using the relevant Ontario provincial legislation and correctional policies.

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

If you have any suggestions, comments or questions, please contact:

**The Elizabeth Fry Societies of Ontario**  
c/o CAEFS  
#701 – 151 Slater Street  
Ottawa, ON  
K1P 5H3

-----  
Call Collect to  
1-647-236-4560





# PART I: INTRODUCTION

## The Law in Canada

### ***What is the rule of law?***

The rule of law is an underlying principle in our society. It means that everyone is equal before the law and that every person in Canada must act in accordance with the law. This idea is guaranteed in our Constitution.

The Constitution dictates, among other things, what kinds of laws can be legally made in Canada and the provinces. The *Charter of Rights and Freedoms* is part of the Constitution, and is supposed to guarantee that our laws protect the values and freedoms of our society. In other words, the *Charter* should protect our right to be treated equally regardless of our sex, race, religion, age, mental or physical abilities, or sexual orientation.<sup>1</sup>

### ***Who makes the laws?***

Laws can be federal, meaning that they apply to everyone in Canada, or provincial, meaning they only apply to the people in that province or territory.

There are two ways that law is made in Canada.

- By a Government (federal, provincial, municipal/cities).
- By a Court (also known as common law or case law).

For both the federal and provincial/territorial governments, elected representatives make the law. In the courts, judges make the laws. The federal government appoints judges. This is why it is important that all citizens – especially prisoners – exercise their right to vote. Everyone should have her or his say in shaping the law in Ontario and in Canada.

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<sup>1</sup> Reference re: Secession of Quebec [1998] 2 SCR 217 at para 32.

It can be confusing that different laws apply federally and provincially. The federal and provincial governments have split up different areas over which they have jurisdiction. So, while federal laws, like the *Charter* and laws about Aboriginal issues, divorce and criminal law are made by the federal government, many of the laws that will affect you are provincial laws that only apply to people living in Ontario, such as laws about provincial jails, remand centres, human rights, family law, health care, education and municipal matters.

## The Law in Ontario

Provincial governments run provincial jails and the federal government runs the federal penitentiaries. If your sentence is for two years or more, then you will most likely<sup>2</sup> be incarcerated in a federal institution and come under federal laws, but if your sentence is under 2 years, you will be in a provincial jail. Since this manual relates to provincial institutions in Ontario, a lot of the laws discussed will be the law of Ontario. 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.

What laws apply to you can be especially important if you are serving a federal sentence. If you are in a provincial jail, but serving a federal sentence, then for the time that you are in the provincial jail, the laws of Ontario will apply to you.<sup>3</sup> However, once (or if) you are transferred to a federal institution, then it will be the Correctional Service of Canada who is running the prison, and therefore the federal laws governing prison administration apply. Some provincial laws, like those dealing with child custody, will still apply to you. The provincial and federal laws around prisons seem quite similar on paper, but the actual implementation of the policies can vary a lot, so it is very important that you are familiar with the laws that apply to your situation.

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<sup>2</sup> Some provinces allow federal prisoners to stay in provincial jails to serve their sentences, especially where the closest federal prison may be in another province or territory. This is not the case in Ontario.

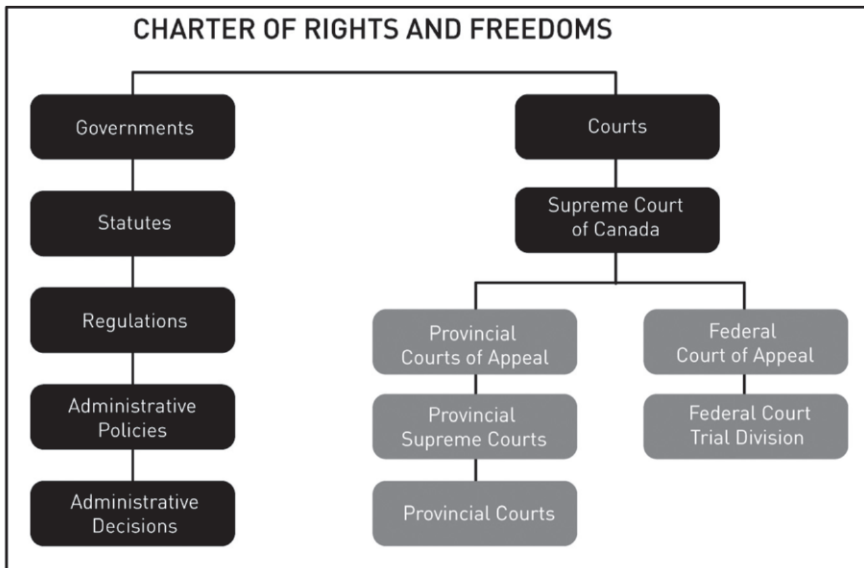
<sup>3</sup> If you are in a provincial jail on a temporary hold (e.g. for court proceedings), the Correctional Service of Canada may negotiate with the province to provide restrictions or freedoms on an individualized basis. This is rare and usually only done when they are requesting (and willing to pay for) additional restrictive measures for particular prisoners they consider dangerous.

### ***How does the law work?***

Everyone is supposed to follow the law, including governments and the courts. It is important to know that there is a chain of command to the law. This means that every law made has to be consistent with the laws that are made by the court or group above it.

In the courts, a judge’s decision on a new type of case or issue sets a new standard. This is called a precedent. All the courts below the one where the precedent is set are supposed to follow the decision in similar cases. So, for example, if the Court of Appeal of Ontario makes a decision, all of the other courts in the province have to then follow that decision. Decisions from the Supreme Court of Canada apply to all provinces and territories.

**The following chart illustrates the order in the rule of law hierarchy:**



### ***Statutes***

Statutes are also known as laws or legislation. They may be called *Codes* or *Acts*. For example, the *Criminal Code of Canada* is the statute that defines what actions we consider to be criminal in Canada. A statute is a law that is made by government: either by the federal government, a provincial, or a territorial government.

Statutes specify that you have certain rights. They also allow restrictions to be placed on people serving prison sentences. Understanding what the laws say about your rights and what Corrections can and can't do in these areas can help you know which rights are protected.

The *Corrections and Conditional Release Act (CCRA)* governs the administration of prisons federally. This *Act* also governs some areas of provincial corrections.

While there are some federal statutes that will affect you, the majority are provincial. For example, the *Ministry of Correctional Services Act*<sup>4</sup> is made by the government of Ontario and is designed for the operation of prisons in this province. Other statutes that may affect you are the *Mental Health Act*<sup>5</sup> or the *Human Rights Code*<sup>6</sup>. Throughout this manual, there will be reference to specific laws that apply to certain areas of corrections.

### **Regulations**

Regulations go with statutes to give more details about how the law will operate. They often go by the same name as the law that they work with. They help to interpret laws. Ontario corrections regulations set out important guidelines on things like searches, segregation and parole. Like the *Ministry of Correctional Services Act*, these regulations contain provisions that protect your rights (e.g. health care) and rules about how corrections can restrict your liberty (e.g. transfers and penalties for not following rules).

### **Policy**

Policies flow from legislation and regulations. They are the rules and procedures set up by government ministries to implement the laws, so they must be consistent with the law. The Ministry of Community Safety and Correctional Services uses policies to interpret the statutes and set out the agency's purpose and powers. They are usually concrete rules that spell out how they will follow the law. Some examples of policies that regulate you while you're in prison are rules about when and how corrections can use segregation and complaint procedures.

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<sup>4</sup> *Ministry of Correctional Services Act*, RSO 1990, c M 22 [hereinafter cited as: *Ministry of Correctional Services Act*].

<sup>5</sup> *Mental Health Act*, RSO 1990, c M 7 [hereinafter cited as: *Mental Health Act*].

<sup>6</sup> *Human Rights Code*, RSO 1990, c H 19 [hereinafter cited as: *Human Rights Code*].

In addition, other provincial government ministries, such as Community and Social Services, will also have policies and procedures that may be relevant to you and/or your children while you are serving your sentence in or out of prison.

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

Some power to make decisions is designated to individuals at the administrative level. In terms of decisions made concerning some prison-related matters, the authorized decision-maker can be:

- local (usually the superintendent or her/his designate);
- regional (often the Director of Correctional Services); or,
- provincial (Minister of Community Safety and Correctional Services).

Parole Boards and Human Rights Tribunals are examples of administrative bodies that are supposed to be independent of the prison administration.

### ***Case Law or Common Law***

The law we've discussed so far is government made law, such as statutes, regulations and policies. Courts make laws too. They come in the form of case law. Case law comes from judges' decisions or judgments. When a judge makes a decision in a case – particularly on some issue that hasn't been in the courts before – the decision is called a precedent. This means that when the same issue is involved in cases that come later, the judge is supposed to rule in the same way the earlier judge did.

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

### ***International Treaties***

Treaties are international agreements that are signed (ratified) by various countries. Countries that sign international treaties – especially with the United Nations – are then expected to apply them in their own countries. The courts don't have to follow treaties, but when Canada signs and ratifies a treaty, it means that Canada is saying it supports what the treaty stands for, so Canadian laws and policies should not

contradict such treaties. For example, the fact that Canada signed 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 that treaty.

## Which laws most affect women in prison?

### ***Charter of Rights and Freedoms***

The *Charter*<sup>7</sup> is the highest law in Canada. It has been the law since 1982. Every law in Canada must follow the principles laid out in it. No government law, regulation, policy, or administrative decision, nor any court decision (federal or provincial), can contradict your *Charter* rights. Sections of the *Charter* that are particularly relevant to prisoners are listed below.

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

- freedom of conscience and religion;
- freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- freedom of peaceful assembly; and
- 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:

- to be informed promptly of the reasons thereof;
- to retain and instruct counsel without delay and to be informed of that right; and,

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<sup>7</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [hereinafter cited as: *Charter of Rights and Freedoms*].

- 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, sexual orientation, sex, age or mental or physical disability.

### ***Human Rights Code***

As mentioned before, another important piece of statutory law is the Ontario *Human Rights Code*.<sup>8</sup> The Ontario *Human Rights Code* lists 15 ways in which it protects people in Ontario from discrimination. They are: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex (including pregnancy), sexual orientation, disability, age, marital status (including same sex partners), family status, receipt of public assistance (in accommodations)<sup>9</sup> and criminal record (in employment only).<sup>10</sup>

If you feel that any of these rights are being infringed, you can file a complaint with the Ontario Human Rights Tribunal. They are a body set up to investigate complaints and promote equality in Ontario.

Information on how to file a complaint can be found in the remedies section of this manual.

### ***International Treaties***

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

- the *Universal Declaration of Human Rights*;<sup>11</sup>
- the *United Nations Convention Against Torture*;<sup>12</sup>

<sup>8</sup> *Human Rights Code*, RSO 1990, c H19, [hereinafter referred to as the *Human Rights Code*].

<sup>9</sup> *Human Rights Code*, s 2(1).

<sup>10</sup> *Human Rights Code*, s 5(1).

<sup>11</sup> *Universal Declaration of Human Rights*, 10 December 1948, GA Res 217A (III), UN Doc A/810 (1948).

<sup>12</sup> *United Nations Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*, 1465 UNTS 85.



- the *United Nations International Covenant on Civil and Political Rights*;<sup>13</sup> and
- the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.<sup>14</sup>

### **Reports/Commissions**

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

Many of these reports apply to women who are federally sentenced, such as the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (otherwise known as the *Arbour Commission*), 1996,<sup>15</sup> and *Protecting their Rights: Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, by the Canadian Human Rights Commission.<sup>16</sup> Since the federal system is generally considered to have better programs and services than any of the provincial or territorial jails, there is no doubt that the provincial and territorial human rights authorities would find human rights violations in the area of gender, race and disability in every jail that houses remanded and provincially sentenced women.

The Ontario Ombuds Office is a governmental body that does independent investigations of complaints. They publish annual reports that highlight problems in our prison systems and make important recommendations. In the past, they have noted that the rights of provincially sentenced prisoners are violated in Ontario, by overcrowded cells, inappropriate staff conduct, and poor health and living conditions.<sup>17</sup>

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<sup>13</sup> *International Covenant on Civil and Political Rights* 19 December 1966, 999 UNTS.

<sup>14</sup> *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 13, 19 ILM 33 (entered into force 3 September 1981).

<sup>15</sup> *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, (Ottawa: Public Works and Government Services Canada, 1996) [Hereinafter cited as *Arbour Commission*].

<sup>16</sup> Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review in Correctional Services for Federally Sentenced Women* (Ottawa: Canadian Human Rights Commission, December 2003) [hereinafter cited as: CHRC Report].

<sup>17</sup> Refer to *Conditions in Ontario Provincial Prisons: A Troubling Picture*, <[www.johnhoward.ca](http://www.johnhoward.ca)>.

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

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

You can challenge an unfair law or policy through a *Charter* challenge. The Supreme Court of Canada may ultimately decide the case. Prisoners have launched *Charter* challenges using section 7, but there may be room for challenges using other sections of the *Charter*, specifically 12 and 15.

There are other ways – at lower levels – that you can challenge unfair laws, regulations, policies and decisions that affect you. These are outlined at the end of this booklet in the section on “Remedies” (see Part VI).





## PART II: ARRIVING IN PRISON

### The Intake Assessment Process

#### *What happens after I am sentenced?*

If you are ordered remanded in custody to await your trial or sentencing, you will be treated as a maximum-

security prisoner, because the remand order means that the judge/system considers you to be an escape risk.

Once you are sentenced on all your charges, Ministry staff will meet with you and prepare a 'classification report'. This report determines where you will be serving your sentence. They will talk to you about where you should serve your sentence and what security level they will classify you as, minimum, medium, or maximum. Your classification will determine which programs you will be able to access and will therefore influence plans for your release.<sup>18</sup>

In special cases, you may be able to remain at the jail or detention center for program purposes instead of being transferred to another institution. If you have specific personal, cultural, religious or program needs, you should mention them during your intake assessment.

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<sup>18</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual* (Classification, February 2007) p 170.

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

According to the policy of the Ministry of Community Safety and Correctional Services (MCSCS), the following factors are taken into consideration when deciding in which institution you will be placed:

- Security risk/classification;
- Programming;
- Custodial needs;
- Placement in least intrusive level of security relative to risk/need;
- Special needs;
- Cultural and linguistic needs.<sup>19</sup>

Prison placement for remand usually depends upon where you are from and where you will have to go to court. Women will usually be held on remand in the jail that is closest to the court in which they are appearing.

After sentencing and classification, Ontario corrections transfers most women to the Vanier Centre in Milton. Corrections maintains that women should serve their sentences at Vanier because they have more program options for women at there than in the other provincial jails or lock-ups. Due to the large number of women who are also remanded to Vanier from the greater Toronto and southern Ontario region; however, Vanier rarely has the space to house all of the provincially sentenced women from across the province.

Some women prefer to stay closer to their home areas, particularly if they get regular visits and/or telephone calls. This is especially true for women who are from the north, and is part of the rationale used by Corrections for its decision to open the new Thunder Bay Women's Centre, a jail that they reclaimed from the Ministry of Children and Youth.<sup>20</sup> Overcrowding and deaths of women in and from the women's unit of the Thunder Bay jail also preceded this decision.

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<sup>19</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual* (PLACEMENT, February 2007) p 170.

<sup>20</sup> Information obtained by telephone conversation with the manager of the Female Offender Program, Ontario Ministry of Community Safety and Correctional Services.

Sometimes people are moved around the province because the prisons are over-crowded, because some programs are only offered in one or two prisons, or because of other administrative issues.<sup>21</sup>

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

You will be asked to provide a lot of information. Your initial classification assessment is made up of a wide array of reports and forms that are to be completed by different people. For example, you will receive a medical examination as soon as you are admitted into the institution.<sup>22</sup>

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

It is important to understand that you do not need to answer any questions asked during the intake process,<sup>23</sup> either about yourself or your family and community supports. Some laws concerning the Canadian right to privacy apply to prisoners, so you must decide for yourself how much you want to cooperate.

On one hand, you need to be aware that your conduct during assessment may be used as a factor in determining your classification. Declining to answer questions may have a negative effect on this. On the other hand, you need to keep in mind that the people who interview you for their reports don't have to keep information you provide during the intake process confidential. In fact, some of this information may be used against you.<sup>24</sup>

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. There are some circumstances in which it may be desirable to exercise your right not to cooperate.

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. The

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<sup>21</sup> Ministry of Community Safety and Correctional Services Web Site <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>22</sup> *Ministry of Correctional Services Act*, RRO 1990, Reg 778, s 4(2) [hereinafter cited as *Ministry of Correctional Services Regulations*].

<sup>23</sup> *R v Starr*, [2001] MJ No 174 (No obligation to speak; no privilege).

<sup>24</sup> *R v Starr*, [2001] MJ No 174.

Ministry of Community Safety and Correctional Service (MCSCS) may still proceed even if you refuse to cooperate. However, if your lawyer has advised you not to participate, 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.

### ***What is the Correctional Plan?***

The Correctional Plan is a document that outlines the goals MCSCS sets for you, as well as the programs you must complete and the location where your sentence will be served.

## Security Classification

### ***What is classification?***

Classification is the security rating assigned to prisoners to distinguish them according to their needs and perceived risk to society. In Ontario, it is broken down according to the *Ministry of Correctional Services Act (MCSA)*.<sup>25</sup> The MCSA only defines medium and maximum-security levels. Maximum security means that restrictions are constantly placed on the liberty of prisoners with use of physical barriers and close staff supervision. Medium security means less stringent restrictions than maximum security.<sup>26</sup> There is no real minimum-security level.

All but two of the Ontario provincial institutions holding women are considered maximum-security jails, correctional centers or detention centers.<sup>27</sup>

According to MCSCS, classification is a continuous process that starts when you are admitted into a prison and continues until your sentence is over. The assessment process you will go through is largely aimed at determining the likelihood that you will re-offend when released, or how likely you are to attempt to escape, and what risk you might pose to the community if you were released or escaped to the community on the date they assess you.

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<sup>25</sup> *Ministry of Correctional Services Act*, s 14.2.

<sup>26</sup> *Ministry of Correctional Services Act*, s 14.2.

<sup>27</sup> Information obtained by telephone conversation with the manager of the Female Offender Program, Ontario Ministry of Community Safety and Correctional Services.

### ***What information is used to determine classification?***

Classification is a two-step process. First, at assessment, Ministry staff will review all of the documents available about you, including information from:

- Canadian Police Information Centre (CPIC);
- Crown briefs;
- Police records;
- Royal Canadian Mounted Police (RCMP) Finger Print Services records;
- Previous correctional records;
- Pre-sentence/disposition reports;
- Judicial reasons for the sentence;
- Clinical reports (i.e. medical, psychological, psychiatric assessments or reports);
- Administrative summaries;
- Release summary from the last known institution (if there was one);
- In the case of a parole revocation, the original classification document.<sup>28</sup>

The second step in the classification process is to be administered the Level of Service Inventory – Ontario Revision [LSI-OR]. Corrections staff use the LSI-OR to assess you according to the following criteria:

**Sentence Information:** circumstances and nature of the offence in relation to which you were convicted (that is, what the court says happened), court recommendations, length of service, and victim impact statements;

**Criminal History:** criminal record; records of the system’s identification of your ‘criminal associations’, nature and extent of former convictions (previous level one charges, suicide attempts, predatory sexual behaviour),<sup>29</sup> charges (even if withdrawn or from when you were a youth); outstanding charges, probation/parole history;

**Institutional History:** program/work participation; adjustment to prison and other institutional behaviour; institutional charges, especially if

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<sup>28</sup> Ministry of Community Safety and Correctional Services Web Site <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>29</sup> Ministry of Community Safety and Correctional Services Web Site <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.



there are any ‘assaultive’ behaviours towards other prisoners or staff; self-injurious or suicidal behaviour; possession/use of contraband (including tobacco); protective custody or other special needs;

**Personal History:** place of residence; community ties; employment pattern; domestic stability, including whether you have been identified as the victim or perpetrator of ‘domestic’ assault, and information regarding your family members and their social, educational and criminal justice histories; medical/psychiatric history;

**Other Factors:** immigration status; judicial recommendations; identified security needs of the community, other prisoners and/or institutional staff; motivation and agreement to participate in a treatment program<sup>30</sup>; past behaviour, such as a perceived propensity toward aggressive behaviour, escape risk, protective custody needs; and notoriety.<sup>31</sup>

Ontario correctional authorities consider the LSI-OR a tool to guide them in the way they carry out a woman’s sentence.<sup>32</sup> The higher you score on the LSI-OR, the greater the chances that you will be placed on a higher security classification. The LSI is a case management tool that was deemed to be invalid for women at the federal level where it was developed because it was considered discriminatory and ineffective. Ontario has since revised it and now uses it again.

When the LSI was used with federally sentenced women, it was ruled that the classification process is discriminatory because it essentially penalized women for existing disadvantages. Factors that you might not have much control over, such as where you live or grew up, how much money or education you or your family have, whether members of your family have a criminal record, can be used against you.

You are not supposed to receive more punitive treatment because of your race or mental health issues. Women, especially poor women, racialized women – particularly Aboriginal women, and women with

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<sup>30</sup> If you are awaiting a trial or an appeal, your lawyer may discourage you from participating in psychological, psychiatric or other testing or programming. If this is the case, ask your lawyer to send something in writing to the prison director, so that it is clear that your legal team does not want you participating. This is to help ensure that this is not held against you and/or interpreted as a refusal to take responsibility or rehabilitate yourself.

<sup>31</sup> Ministry of Community Safety and Correctional Services Web Site <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>32</sup> Information obtained by telephone conversation with the manager of the Female Offender Program, Ontario Ministry of Community Safety and Correctional Services.

mental health issues, often score higher on the LSI-OR. This means that they are often classified as higher security because of things that are hard or impossible to change and therefore treated in a discriminatory and more punitive manner than the law allows.<sup>33</sup>

There is growing concern, both in Canada and internationally, about the over-incarceration and subsequent over-classification of Aboriginal people— especially Indigenous women. For instance, the UN Human Rights Committee has expressed “concern about the situation of women prisoners, in particular Aboriginal women”.<sup>34</sup> This concern was expressed after the UN heard about how federally sentenced women were treated. The situation is even worse for provincially sentenced women.

According to the *Charter*,<sup>35</sup> it is unlawful to discriminate against a person based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Since your sex, race, and your mental or physical disability can result in a higher (more secure) classification, we<sup>36</sup> argue that this classification procedure is discriminatory.

Finally, the argument has been made that it is inappropriate for corrections to penalize you for having certain characteristics like substance abuse problems, or literacy problems. Instead, these characteristics should be seen as an entitlement to assistance. In other words, instead of having these factors increase your security classification (which they often will); they should be signs that you are entitled to have help overcoming them.<sup>37</sup>

There is ongoing debate about the relevance and legality of a number of the ways in which the Correctional Services Canada and many provincial and territorial correctional services assess and apply security classifications to women. The Canadian Human Rights Commission,

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<sup>33</sup> *Charter of Rights and Freedoms*.

<sup>34</sup> *Concluding Observations of the Human Rights Committee: Canada*, CCPROR, 85th Sess., UN Doc CCPR/C/CAN/CO/5 (2006) at para 18.

<sup>35</sup> *Charter of Rights and Freedoms; 10<sup>th</sup> Anniversary of the Arbour Commission Report*.

<sup>36</sup> Kelly Hannah-Moffat & Margaret Shaw, *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada* (Ottawa: Status of Women Canada, 2001).

<sup>37</sup> Kelly Hannah-Moffat & Margaret Shaw, *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada* (Ottawa: Status of Women Canada, 2001).

United Nations Human Rights Committee, CAEFS, NWAC, and the Correctional Investigator have all expressed concerns about the discriminatory nature of the process. The provincial assessment process relies heavily on the models developed by CSC. Therefore, since the federal correctional system, especially the one designed for women, is considered to be one of, if not, the best in the world, the Ontario classification system for provincially sentenced women is also discriminatory.

The provincial Ministry advises that a woman with a long record, who might score high on the LSI-OR, could still be classified as a medium security prisoner if her institutional behaviour is judged as “good”. Since 70% of the women in Vanier, the women’s section of the Milton ‘super jail’, are reported as “known to staff”, the subjective assessments of staff will also be relevant to classification decisions. This is also true in other provincial jails.<sup>38</sup>

Women who are classified and therefore housed in medium security areas of provincial jails, can have access to the program areas on their units, and should be allowed to attend recreation in the gym and the outside track on a daily basis. They should not be locked in their cells, but should be allowed to access them throughout the day. If the women on the medium security living units are also sentenced, they are permitted to apply for work serving and clearing food trays, or cleaning the institution or grounds.

The only factors that result in an automatic classification of a woman as a maximum-security prisoner are:

- if she is a federally sentenced woman awaiting transfer;
- she has a history of assaulting staff;
- she is subject to a removal order for deportation.

Those classified as maximum-security prisoners are supposed to have their classification status reviewed every 2 weeks for possible transfer to a medium security unit.<sup>39</sup> If you are denied information about such procedures, you should let your local Elizabeth Fry representative know and contact the Ombuds office.

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<sup>38</sup> Information obtained by telephone conversation with the manager of the Female Offender Program, Ontario Ministry of Community Safety and Correctional Services.

<sup>39</sup> *Inmate Informational Guide for Adult Institutions*, p 2.

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

If you feel your classification is inappropriate, you can put in a request for review to the Superintendent. If this doesn't resolve it, you can write to the Regional Director.<sup>40</sup>

In addition, the formal provincial complaint process is as follows: Any remand or sentenced person may make a verbal or written complaint to any staff member, manager or the Superintendent about classification [or any other matter of concern]. You must also have confidential access to the Ontario Human Rights Tribunal or the Ombuds Office.<sup>41</sup>

## Programs

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

All programs are supposed to be designed to address your needs and assist you with successful reintegration into the community

There are three streams for the delivery of Core Programs:

- Life Skills
- Rehabilitative Programs
- Literacy/Numeracy Programs<sup>42</sup>

The Ministry of Corrections indicates that it offers the following programs for women<sup>43</sup>:

- anger and aggression control;
- anti-criminal thinking programs (Change is Choice);
- assertiveness training;
- communication skills;
- communicable disease education;
- domestic violence groups;
- education programs;

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<sup>40</sup> Information obtained by telephone conversation with the manager of the Female Offender Program, Ontario Ministry of Community Safety and Correctional Services.

<sup>41</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy & Procedural Manual* (Core Programs, November 2008) p 535.

<sup>42</sup> Ministry of Community Safety and Correctional Services Web Site <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>43</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy & Procedural Manual* (Religion and Spirituality, February, 2007) p 555.

- employment skills;
- rehabilitative work experience programs;
- job-readiness training;
- life management skills;
- literacy/numeracy programs;
- parenting skills;
- partner abuse program;
- sex offender programs;
- sexual abuse counselling;
- stress management training;
- substance abuse groups;
- victim awareness; and,
- work/industrial programs.

***How do I get access to these programs?***

For sentenced prisoners, a risk/needs analysis is conducted during the assessment/classification process, which is used to determine the program requirements for individual prisoners. Your Correctional Plan will provide a list of programs that you are required to complete. You can also ask a correctional officer or a member of the program staff at your institution for information on the available programs. If you want to change the program you are in, you can put in a request to talk to the program staff who will inform you where you should send the request. If there is a local Elizabeth Fry representative who is regularly at the prison, you may also wish to seek her assistance.

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

MCSCS policies state that particular programs are supposed to be designed to address the needs of Aboriginal people in prison.<sup>44</sup> Traditional social, cultural and spiritual programs<sup>45</sup> are available and include the following cultural ceremonies: smudging ceremonies, healing ceremonies, medicine bags or pouches, feasts, fasting, sweat lodge ceremonies, healing circles, pipe ceremonies, and access to an Aboriginal spiritual leader or Elder or Healer upon request during a

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<sup>44</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy & Procedural Manual* (Religion and Spirituality, February, 2007) p 555.

<sup>45</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy & Procedural Manual* (Religion and Spirituality, February, 2007) p 555.

visit.<sup>46</sup> To get access to these programs, put in a request to see the Chaplain or Native Prisoner Liaison Officer. The Chaplain or Native Prisoner Liaison Officer can call an Elder or Friendship Center for you and can help you get spiritual items.<sup>47</sup>

## Mothers in Prison

### **Introduction**

Many women in prison are mothers, the majority of whom were sole supports for their children before they were imprisoned. Being away from your children is difficult at any time. Being away from your children because you are in prison is especially difficult. In addition to the separation, prison also can make it difficult, sometimes impossible, to visit or speak with your children. You may also be dealing with fear of the difficulties there could be, and too often are, with getting your children back after your release from prison.

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

In Ontario, the laws that deal with child custody and access include:

- *Child and Family Services Act*,<sup>48</sup>
- *Children's Law Reform Act*.<sup>49</sup>

### **What is custody?**

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

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<sup>46</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy & Procedural Manual* (Religion and Spirituality, February, 2007) p 556.

<sup>47</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy & Procedural Manual* (Religion and Spirituality, February, 2007) p 556.

<sup>48</sup> *Child and Family Services Act*, RSO 1990, c C 11 [hereinafter cited as: *Child and Family Services Act*].

<sup>49</sup> *Children's Law Reform Act*, RSO 1990, c C 12 [hereinafter cited as: *Children's Law Reform Act*].

***What is access?***

Access is the right to visit or be visited by your child, and the right to be given important information about your child's health, education, and welfare. Access is a right granted by courts when parents separate or divorce, but also 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. Sometimes courts will order telephone access if it is hard for a parent to see a 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 will 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 who supervise the visits. Other times, a social worker or a family member may be designated by the judge to be the one supervising the visit if parents and other parties involved, such as a child protection agency, are not able to agree on someone.

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

In most provinces, anyone may apply for custody or access of a child, although some people are more likely than others to be successful. Most judges will assume that both biological parents are equally entitled to custody of a child, so a parent is most likely to be granted custody or access.

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 they acted "in the place of a parent," that person could also have a good chance of getting custody or access. 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.

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

The best interests of the child will be the most important consideration. The factors a court might consider in deciding if someone should be granted custody of your child(ren) are in the *Child and Family Services Act*.

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.

***What are “the best interests of the child”?***

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

The BIOC test is defined in section 37(3) of Ontario’s *Child and Family Services Act*.<sup>50</sup> Factors to be considered in determining the best interests of the child include:

- the love, affection and emotional ties between the child and,
- each person entitled to or claiming custody of or access to the child,
- other members of the child’s family who reside with the child, and
- persons involved in the child’s care and upbringing;
- the child’s views and preferences, if they can reasonably be ascertained;
- the length of time the child has lived in a stable home environment;
- the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;
- any plans proposed for the child’s care and upbringing;
- the permanence and stability of the family unit with which it is proposed that the child will live;
- the ability of each person applying for custody of or access to the child to act as a parent; and,
- the relationship by blood or through an adoption order between the child and each person who is a party to the application.

The BIOC test has been interpreted to consider factors like:

- The ability of the proposed caregiver to provide for your child, including their physical health;

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<sup>50</sup> *Child and Family Services Act*, s 37(3).



- The stability of the people and their environment;
- Whether or not they have a spouse, and if so, how that spouse feels about bringing your child into their home;
- Whether that person is already dealing with difficult issues that might interfere with their ability to care for your child.<sup>51</sup>

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

Child protection is an area of the law where the government takes over the care of children found by a court to be at risk of abuse or neglect. Each province and territory has its own child protection laws. The laws in the province or territory where the child(ren) live are the ones that apply. The laws are pretty similar, but there may be some different procedures in child protection and general custody and access applications. The name of the child protection body may also vary depending on the province/territory. In Ontario, the Children's Aid Society is the body responsible for child protection services. They are governed by the *Child and Family Services Act*. There are 53 Children's Aid Societies across Ontario. The Ontario Ministry of Children and Youth Services funds and monitors Children's Aid Societies.

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

Child protection agencies are supposed to provide support to families, and to care for children when their parents are unable to do so. If you are a single parent and you do not have a family member who could apply for custody of your child, a child protection agency (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, they may place your child in a foster home.

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

*In need of protection* is a term defined in section 37(2) of the *Child and Family Services Act*. The person who is the child(ren)'s caregiver is usually the parent but sometimes it is another person who has custody of the child(ren).

The following is the list of situations where a child(ren) can be legally determined to be in need of protection:

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<sup>51</sup> *Newfoundland (Director of Child, Youth and Family Services, St. John's Region) v NB*, [2001] NJ No 74.

- When a child has been physically or sexually harmed by his or her caregiver;
- When a child is at risk of being physically or sexually harmed by his or her caregiver;
- When a child has suffered emotional harm from his or her caregiver and shows signs of this by serious:
  - Anxiety, depression, delayed development, aggressive or self-destructive behaviour;
- When a child needs medical treatment to cure, prevent or alleviate harm, and the and his or her caregiver cannot or will not provide or consent to that treatment;
- When a child suffers from a mental, emotional or developmental condition that could impair the child if it isn't remedied and the caregiver cannot or will not provide or consent to treatment;
- If the child's caregiver dies or is unable to provide care for the child for any other reason (such as going to jail);
- If the child repeatedly harms someone or causes serious damage to property because of the caregiver's inability to properly supervise the child;
- If the child kills someone or causes serious damage to property and needs treatment to prevent it from happening again and the person with care of the child cannot or will not consent to the treatment;
- If the caregiver consents.<sup>52</sup>

A social worker can determine that a child is in need of protection for any of the above reasons and can apprehend (take away) a child from his or her caregiver.<sup>53</sup> When a social worker does this, the Children's Aid Society is required to bring the matter before the court to determine whether or not the child is actually in need of protection.<sup>54</sup>

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

If a judge finds that your child is in need of protection, the court will decide who gets custody of your child. The court will make one of the following "child protection orders":

- Supervision order;

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<sup>52</sup> *Child and Family Services Act*, s 37(2).

<sup>53</sup> *Child and Family Services Act*, s 40(7).

<sup>54</sup> *Child and Family Services Act*, s 33(5)(b).

- Society Wardship;
- Crown Wardship;
- Consecutive orders of Society Wardship and Supervision.<sup>55</sup>

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

In short, no, not all child protection orders are final. The only permanent child protection order is “Crown wardship”. Temporary orders are supervision orders and society wardship. The court must consider placing the child(ren) with family members or community members who are close to the child(ren) before it can make an order for society wardship or Crown wardship.<sup>56</sup>

### ***How do temporary child protection orders work?***

- **Supervision Order**

A court may order that an individual (the child’s caregiver, or another family member) has custody of a child, but that a child protection agency will supervise that parent or other person. Supervision orders usually last between 3 and 12 months.

- **Society Wardship**

The court may order that the child be placed in the care of the Children’s Aid Society for a period of no longer than 12 months. They are not supposed to last for longer than 6 months, but with the Director’s approval it may be extended to no more than 12 months for children under 6 and no more than 24 months for children 6 years of age or older.<sup>57</sup>

- **Orders of Society Wardship Followed by Supervision Orders**

Sometimes the court will order that the child be placed with the Children’s Aid Society for a while and then placed back with his or her caregiver under the supervision of the Children’s Aid Society.

### ***How do permanent child protection orders (Crown ward) work?***

The court may decide to grant Crown wardship with or without access. If an order is made and parental access is denied, then parents will not

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<sup>55</sup> *Child and Family Services Act*, s 57(1).

<sup>56</sup> *Child and Family Services Act*, s 57(4).

<sup>57</sup> *Child and Family Services Act*, ss 29(5) & 29(6).

be allowed to communicate with the child until the order expires. Crown wardship orders expire when a child turns 18 or marries, or the child protection agency seeks a status review.<sup>58</sup> If a child is placed in care permanently under Crown wardship, that child may be put up for adoption.<sup>59</sup>

There is little that is truly final in cases involving children. Court orders can usually be varied. It is more difficult to vary child protection orders, however. The supervision and wardship orders discussed above may be appealed.

An appeal may be the only way for a parent to change a Crown wardship order.<sup>60</sup>

### ***What can I do to apply for access to my child?***

Legal aid may be available, and it can cover access applications. If you cannot obtain a private 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 a spring order or participate in a hearing by telephone.

If you are applying for access and you don't have a lawyer, the forms you need to apply may be downloaded over the internet,<sup>61</sup> as several provinces<sup>62</sup> have made them available online. Although you may not be able to access the information directly yourself, you can ask your supports in the community, or your case management team to download and print the information for you.

The forms can be found on line at:  
[www.ontariocourtforms.on.ca/english/family/](http://www.ontariocourtforms.on.ca/english/family/)

The forms are numbered according to their function. Some of the forms that you might need are outlined in the following table. There are other

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<sup>58</sup> *Child and Family Services Act*, s 71(1).

<sup>59</sup> *Child and Family Services Act*, s 141.1.

<sup>60</sup> *Child and Family Services Act*, s 69(1).

<sup>61</sup> Ministry of the Attorney General Web Site:  
<<http://www.attorneygeneral.jus.gov.on.ca/english/forms/>>.

<sup>62</sup> Legal Aid Ontario Web Site: <<http://www.legalaid.on.ca/en/info/forms.asp>>.

forms besides these with a variety of functions. These are the ones most useful in child custody and access situations.

FORM	FUNCTION
8	Application – this is used to begin a proceeding. If someone has custody of your child and you want access, you can use this form. If you are the primary caregiver of your child and you are separating from someone, you can use this form to ask the court for custody of your child. If you are asking for custody or access, you must include an affidavit - see Form 35.1 below.
10	Answer – to be used to respond to another person’s application to the court for custody of your child. You use this form to ask for the application to be dismissed, or you can use it to also ask for custody or access to your child. When you use this form, you must also include an affidavit - see Form 35.1 below.
33B.1	Answer and Plan of Care – used in cases where your child has been apprehended by the CAS and you want to dispute that and put forward a plan to keep your child.
35.1	Affidavit in Support of Claim for Custody or Access – this is where you include important information about your request.

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. 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 have her or him 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 access to my child(ren) while I am in prison?***

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

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

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

This is the sort of information that should be included in your affidavit.

### ***What if I am pregnant while in prison?***<sup>63</sup>

To meet higher calorie and nutrient needs, pregnant women will receive, in addition to the regular menu, additional milk (total one litre per day) and a night snack of whole-wheat bread, peanut butter or cheese, and fresh fruit.

After consultation with the health care department, pregnant women should also receive a prenatal vitamin and mineral supplement. If you are pregnant, you should receive pre-natal and post-natal care. This is a right you have under section 23 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners*.

Substance use during pregnancy cannot be used as a reason to prevent you from being released at the earliest possible release date.<sup>64</sup>

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

You have the right to give birth outside of the prison. You have the right to be transferred to an outside medical facility to give birth. You should not be shackled while you give birth.

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<sup>63</sup> Management of Prenatal and Postnatal Care Policies (December, 2013)

<sup>64</sup> *Winnipeg Child and Family Services (Northwest Area) v G (DF)*, [1997] 3 SCR 925.

Once the baby is born, the child is put in the care of family or placed with child welfare services. Ontario does not have a mother-baby program, so you are not permitted to keep your baby with you in prison. The British Columbia Supreme Court recently ruled that it was unconstitutional for the B.C. government to cancel a mother-baby program allowing newborn babies to stay with their mothers in prison.<sup>65</sup> This decision may be appealed and unfortunately does not currently affect the situation in Ontario.

You should notify a health care practitioner immediately if you are:

- saturating more than a pad an hour or are experiencing pain with the postpartum bleeding;
- passing clots larger than a golf ball or you are passing clots after two weeks postpartum;
- experiencing symptoms of postpartum depression for longer than a week; or,
- experiencing severe symptoms of postpartum depression.

### ***What if I want to feed my child breast milk?***

Should you choose to breastfeed, you should provide your own sterile breast pump or rent one from a hospital or supply store. A process for prick-up and delivery of the breast milk will have to be negotiated with the institution and your family or community supports. If accommodations are not being made for you to pump milk for your baby, you can ask your lawyer to go to court to fight for your baby's right to receive your breast milk. You should tell your lawyer that she can argue that this is in the 'best interests of the child'.

You should also be supported whether you choose to express your milk or not. The institution may recommend that you wrap your breasts tightly with a tensor bandage for 24 to 48 hours and to avoid hot showers, loose clothing, or unnecessary direct stimulation of your breasts. You cannot be punished for not following this procedure.

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

The extent to which a child's Aboriginal heritage is considered in child protection varies between provinces and territories. In Ontario, the law says that unless there is substantial reason to place a child elsewhere,

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<sup>65</sup> *Inglis et al v British Columbia (The Minister of Public Safety)*, 2013 BCSC 2309.

the court must place him or her with a member of his or her extended family, with a member of her or his native community or band, or else in the home of another Aboriginal family.<sup>66</sup>

Although the least intrusive means are kept in mind when considering the best interests of the child, Aboriginal children are too often still placed with non-Aboriginal families.<sup>67</sup> Children's Aid Societies who have Aboriginal children in their custody are supposed to regularly consult with the band or community that the child(ren) is from.<sup>68</sup>

### ***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 which province or territory you live in and the details of what has happened to you and your children.<sup>69</sup>

Even if you do not receive a legal aid certificate to find your own lawyer, you will likely be able to get assistance from duty counsel for many of the hearings you will have to attend. Most courthouses in Ontario have a Family Law Information Centre (FLIC) where you can get information about child protection proceedings.

You may need to make a formal request to the director or warden of the prison and the judge reviewing your family matter for you to be in court. If you have a lawyer, s/he can do this for you. If you do not have a lawyer, you can do this yourself. Make sure that all of your requests are in writing and that you request a written response or confirmation.

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

Some children 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, your child should be able to visit you. For children under 16 years the decision to grant a visit is at the discretion of the Superintendent. A child under 16 may be allowed access to visit if she is accompanied by an adult or given permission by the Superintendent to visit the mother

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<sup>66</sup> *Child and Family Services Act*, s 57(5).

<sup>67</sup> *Child and Family Services Act*, s 61(2).

<sup>68</sup> *Child and Family Services Act*, s 213.

<sup>69</sup> *New Brunswick (Minister of Health and Community Services) v G (J) [JG]*, [1999] SCJ No 47.



alone, without security staff.<sup>70</sup> How often you have visits usually depends on how far away your child lives, and whether someone is willing to bring them to visit you.

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 under extreme conditions, such as a father who was able to have telephone access with his children even though he was in jail for killing their mother.<sup>71</sup>

There have been cases where parents have been denied access to their children, apparently largely because they are in prison.<sup>72</sup> It is difficult to predict how a court will decide, although a judge shouldn't be unsympathetic to mothers just because they are in prison.

In one case, a provincial prison director suspended visits to a parent because of a general concern about drug and weapons being smuggled into the prison where she was in custody.<sup>73</sup> In another case, a woman argued that being kept from her newborn was cruel and unusual punishment under section 12 of the *Charter*. The judge disagreed. He found that she should be denied access because she was classified as a flight risk and was isolated in a secure custody unit.<sup>74</sup>

This might leave room for women who are not considered flight risks or who are not in a secure unit to make a similar argument. The Supreme Court of Canada has certainly recognized that apprehension of child(ren) can interfere with the best interests of the child(ren) as well as the parents' right to security of the person under the *Charter*.<sup>75</sup>

### ***What happens if my child comes to visit me?***

Visits take place under staff supervision. Space in the visiting room is provided on a first come first serve basis. Where contact visits are permitted, the prisoner and the visitor will be allowed to embrace and kiss at the beginning and end of the visit and hold hands during the

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<sup>70</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual (Visiting, November 2007)*, p 528.

<sup>71</sup> *Anderson v Daley*, [2006] SJ No 447.

<sup>72</sup> *Family and Children's Services of Lunenburg County v TLS*, [1999] NSJ No 434.

<sup>73</sup> *KL v LT*, [2005] SJ No 52.

<sup>74</sup> *Turner v Burnaby Correctional Centre for Women* (1994), 24 WCB (2d) 250.

<sup>75</sup> *Winnipeg Child and Family Services v KLW*, [2000] 2 SCR 519.

visit. All other forms of contact are prohibited and can be grounds for termination of the visit. However, such contact restrictions do not apply to small children. According to Ontario corrections policy, the Superintendent may authorize a search of any visitor and vehicle on the correctional institution property.<sup>76</sup>

### ***When can visiting privileges be denied?***

Visits may be stopped or denied in the following situations:

- If the visitor appears to be under the influence of a substance;
- If there is not enough space available;
- The prisoner or visitor refuses to submit to search procedures;
- The visitor refuses or fails to produce acceptable personal identification or presents false identification;
- The prisoner or visitor breaks institution rules;
- The child(ren) disturb others in the visiting area;
- The visitor or child(ren) exhibit conduct or behaviour that disrupts the visiting program or threatens the security, safety and good order of the institution;
- Where there is an order restraining contact between the prisoner and visitor;
- When the prisoner refuses the visit.<sup>77</sup>

Many women in prison have histories of sexual abuse. The strip-searching procedures routinely used in prisons can be extremely traumatizing. Some women refuse visits, rather than allowing themselves to be routinely subjected to strip searches. If this is because of the invasiveness of the searches prior to or following a visit, the validity of these approaches may need to be examined and possibly challenged via a complaint to the institutional head and/or the Ombuds office. While there is no guarantee that the procedure will be changed, in some prisons, exceptions to the strip search policies have been made.

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

If you don't have access, you may not be able to make such decisions. If you have custody, and sometimes when you have access, you are able to make decisions about your child's health, education, and well

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<sup>76</sup> Ministry of Correctional Services Act, s 23.1.

<sup>77</sup> Ministry of Community Safety and Correctional Services, Adult Institutions Policy and Procedures Manual (Visiting, November 2007), p 527.

being. If you have joint custody of children, meaning that you and the father or another parental figure share legal custody of the child(ren), you will both have some ability to make decisions about your child(ren), even if the child(ren) only lives with one parent. If you and the child(ren)'s father are in a relationship, you automatically have the right to make decisions about your child, unless the father has obtained a court order saying that you don't have custody.

Even when 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. Sadly, many parents are unable to maintain custody of their child(ren) while they are in prison. If you are due in Family Court for proceedings regarding your child(ren), let the judge know (yourself or via somebody else) that s/he can assist you to attend at court by issuing an order that you be temporarily removed from the prison – this is often referred to as a 'spring' order – for the purpose of allowing you to appear in court.<sup>78</sup>

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

The short answer is, yes. Your child has a right of access to you in order to maintain his or her bond with you. Our *Charter* protects this right. Article 9 of the *United Nations Convention on the Rights of the Child* says that a "child who is separated from one or both parents [can] maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."<sup>79</sup>

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.<sup>80</sup> This means that if you believe that your child is being kept from you for arbitrary or unfair reasons, you might be able to work with your child's caregiver to argue that your lack of access to the child violates his or her section 7 rights.

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<sup>78</sup> *Courts of Justice Act*, O Reg 114/99 Family Law Rules, s 23(10) [hereinafter cited as: *Family Law Rules*].

<sup>79</sup> *United Nations Convention on the Rights of the Child*, 20 November 1989, 112 UNTS 44/25, at Article 9.

<sup>80</sup> *New Brunswick (Minister of Health and Community Services) v G (J) [JG]*, [1999] SCJ No 47.

## PART III: IMMIGRATION

### Immigration Resources

#### ***Where can I get help with my Immigration Issue?***

The Refugee Law Office can represent people at detention reviews at the Immigration Holding Centre in the Toronto area, the Toronto West Detention Centre, and the Vanier Centre for Women, and in Lindsay at the Central East Correctional Centre. To qualify for this service, you must be financially eligible for legal aid but you do not need to apply for a legal aid certificate. You do not have to be applying for refugee status.

If you have questions about immigration detention, you can contact the Refugee Law Office at 416-977-8111 or by calling 1-800-668-8258. They accept collect calls from detention centres.

### Immigration System Overview

#### ***What is a Citizen?***

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, your detention may be different. 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!**

The law treats all citizens, no matter how they acquired citizenship, in the same way.<sup>81</sup> As a citizen, you have more rights in Canada. But even if you are not a citizen, you *still* have rights that should be protected.

#### **You Qualify for Citizenship by birth if:**

- You were born in Canada after February 14, 1977;<sup>82</sup>

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<sup>81</sup> *Citizenship Act*, RSC 1985, c C-29, s 6.

<sup>82</sup> *Citizenship Act*, RSC 1985, c C-29, s 3(1)(a).

- If you were a Canadian citizens born in Canada after December 31, 1946 and immediately before February 15, 1977;<sup>83</sup>
- If you were adopted by a citizen;<sup>84</sup>
- If you're a British subject born in Canada prior to January 1, 1947;<sup>85</sup>
- If you're born of a Canadian parent outside Canada after February 14, 1977;<sup>86</sup>
- If you were born outside Canada of a Canadian father or mother after December 31, 1946 and before February 15, 1977;<sup>87</sup> or
- British subjects born outside Canada to a Canadian father or single mother before January 1, 1947.<sup>88</sup>

### **Citizenship by Naturalization:**

The Citizenship Act states that you are a citizen if you have been granted or received the right to citizenship. This process is known as "naturalization".<sup>89</sup>

### **You Qualify for Citizenship by naturalization if:**

- You are a permanent resident who has resided in Canada for three of the past four years;
- You were born outside Canada to a Canadian married woman prior to February 14, 1977;
- You were a former citizen with subsequent permanent residence and residence in Canada for one year;
- You were granted citizenship on the basis of five years' permanent residence under the Canadian Citizenship Act;<sup>90</sup>

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<sup>83</sup> *Citizenship Act*, RSC 1985, c C-29, s 3(1)(d).

<sup>84</sup> *Citizenship Act*, RSC 1985, c C-29, s 3(1)(c.1).

<sup>85</sup> *Citizenship Act*, RSC 1985, c C-29, s 3(1)(d).

<sup>86</sup> *Citizenship Act*, RSC 1985, c C-29, s 3(1)(b). Note that second-generation application is required before age 28.

<sup>87</sup> Birth registration and second-generation application are required before age 28. As a result of the decision of the Supreme Court of Canada in *Benner v Canada (Secretary of State)*, [1997] 1 SCR 358, [1997] SCJ No 26 (SCC), there is no longer any distinction regarding the rights to citizenship based on birth between December 31, 1946 and February 15, 1977 to a Canadian mother or father.

<sup>88</sup> A declaration is required for minors. However, pursuant to *Benner v Canada*, there is no longer any distinction in the application of the law regardless of the marital status of the mother at the time of birth.

<sup>89</sup> *Citizenship Act*, RSC 1985, c C-29, s 3(1)(c).

<sup>90</sup> *Citizenship Act*, RSC 1946, c 15.

- You are a British subject issued certificates of naturalization under previous legislation;
- You are a British subject, landed and living in Canada for five years prior to January 1, 1947;
- You are a British subject, who had their domicile in Canada for 20 years prior to January 1, 1947; or,
- You are a woman who had a claim to citizenship by reason of marriage prior to January 1, 1947.

### **Residency requirement:**

You must meet a three-part test to meet the residency requirement for naturalization

- You must have been lawfully admitted to Canada as a permanent resident;
- You must have not stopped being a permanent resident;
- Within the four years immediately before the date of the application, you must have collected at least three years of residence in Canada.<sup>91</sup>

### **Calculation of requisite three-year residency requirement:**

The time that you were a resident in Canada before your lawful admission for permanent residence is calculated as one-half day for every full day of residence. This includes persons in Canada with visitor's status or without any status at all, like a refugee claimant who remains in Canada during the refugee determination process.<sup>92</sup>

Residence in Canada while under probation or in jail cannot be counted towards the required residency period.<sup>93</sup>

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

There are 3 steps to becoming a Canadian citizen. You must apply to become a citizen, take a citizenship test, and participate in a citizenship ceremony.<sup>94</sup> In order to be eligible to apply, you must meet the following criteria:

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<sup>91</sup> Government of Canada, Citizenship and Immigration web site. Online: <<http://www.cic.gc.ca/english/information/applications/guides/CIT0002ETOC.asp>>.

<sup>92</sup> *Citizenship Act*, RSC 1985, c C-29, s 5(1)(c)(i).

<sup>93</sup> *Citizenship Act*, RSC 1985, c C-29, s 21.

<sup>94</sup> Citizenship Regulations, SOR/93-246, s 17.

- You must be 18 or older but you can apply on behalf of a child under 18 if you are that child’s legal guardian<sup>95</sup>; and
- You must have permanent resident status; and
- You must have lived in Canada for at least 3 years; and
- You must have some understanding of either the French or English language<sup>96</sup>; and
- You must have an understanding of Canada’s history, values, institutions, and symbols.<sup>97</sup>

### ***What could stop me from becoming a citizen?***

You cannot become a citizen if you are:

- On probation, on parole, in custody, charged with or on trial in Canada for an indictable offence within three years of your application for citizenship<sup>98</sup>;
- Under investigation or convicted for crimes under the Crimes Against Humanity and War Crimes Act<sup>99</sup>;
- Have been ordered by Canadian officials to leave Canada (called a “removal order”)<sup>100</sup>;
- Have had your citizenship taken away in the past 5 years; or,
- If you are deemed to constitute a threat to national security or part of organized criminal activity.<sup>101</sup> However, a declaration that you shall not be granted citizenship stops having effect two years after it was made.<sup>102</sup>

### ***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>103</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:

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<sup>95</sup> *Citizenship Act*, RSC 1985, c C-29, s 5(2).

<sup>96</sup> *Citizenship Act*, RSC 1985, c C-29, s 5(1)(d).

<sup>97</sup> *Citizenship Regulations*, SOR/93-246, s 15(1).

<sup>98</sup> *Citizenship Act*, RSC 1985, c C-29, s 22 (1).

<sup>99</sup> *Citizenship Act*, RSC 1985, c C-29, s 22 (1)(c)-(d).

<sup>100</sup> *Citizenship Act*, RSC 1985, c C-29, s 5(1)(f).

<sup>101</sup> *Citizenship Act*, RSC 1985, c C-29, ss 19-20.

<sup>102</sup> *Citizenship Act*, RSC 1985, c C-29, s 20(3).

<sup>103</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 11(1).

- If you have a family member who is already a citizen or permanent resident;<sup>104</sup>
- If you have the financial ability to be financially self-sufficient;<sup>105</sup>
- If you are a refugee.<sup>106</sup>

Foreign nationals do not have a right to enter Canada, only permanent residents and citizens have that right.<sup>107</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 that, even though you have a sponsor, you may still be denied entry.<sup>108</sup>

### ***What is a Permanent Resident?***

A permanent resident is someone who has applied and received the title of permanent resident.<sup>109</sup> This title is a step closer to citizenship. 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*. 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.<sup>110</sup>

### ***How do I Become a Permanent Resident?***

In order to become a permanent resident, you must apply through Citizenship and Immigration Canada for a visa. There are three broad categories of permanent residents:

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<sup>104</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 12(1).

<sup>105</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 12(2).

<sup>106</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 12(3).

<sup>107</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 19.

<sup>108</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 13(1); see also *Immigration and Refugee Protection Regulations* SOR/2002-227, s 140.3(1).

<sup>109</sup> *Citizenship and Immigration Canada* web site. Online: [www.cic.gc.ca](http://www.cic.gc.ca).

<sup>110</sup> *Citizenship and Immigration Canada* web site. Online: [www.cic.gc.ca](http://www.cic.gc.ca).



1. The family class – which facilitates the reunion in Canada of Canadian citizens and permanent residents with their close relatives from outside Canada.
2. The economic class – which is chosen for its financial contribution.
3. The refugee class – which upholds Canada’s humanitarian tradition of helping people.

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 a medical exam.<sup>111</sup> You may also be required to have an interview with an immigration officer to determine if you qualify to become a permanent resident.<sup>112</sup>

It can be expensive to apply to be a permanent resident, starting at \$475 for a single adult person. Applications for dependent children under age 22 cost an extra \$150 per child.<sup>113</sup> You may also have to pay for medical examinations.<sup>114</sup> If you are granted permanent resident status, you will be given a certificate that shows that status.<sup>115</sup> In order to keep your permanent resident status, you must live in Canada for two years out of each five-year period.<sup>116</sup>

### ***How Could I Lose My Permanent Resident Status?***

You lose your permanent resident status in the following ways:

1. Upon becoming a Canadian citizen<sup>117</sup>;
2. Upon a final determination outside of Canada that you did not comply with the residence requirements<sup>118</sup>; or,
3. If a removal order is made against you.<sup>119</sup>

If an officer has determined that you have lost your permanent resident status, you will have a right to appeal to the Immigration Appeal

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<sup>111</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 16(1)-(2).

<sup>112</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 18(1).

<sup>113</sup> *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 295.

<sup>114</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 16(2)(b); (CAN) *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 29.

<sup>115</sup> *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 295.

<sup>116</sup> *Immigration and Refugee Protection Act*, c 27, s 28.

<sup>117</sup> *Immigration and Refugee Protection Act*, c 27, s 46(a).

<sup>118</sup> *Immigration and Refugee Protection Act*, c 27, s 46(b).

<sup>119</sup> *Immigration and Refugee Protection Act*, c 27, s 44(2), 46(c).

Division of the Immigration and Refugee Board. You would only lose your status when the Division dismisses the appeal.<sup>120</sup>

### ***What is a detention? What does it mean to be detained?***

Detention means taking away a person's freedom to walk away, and in this case, it means keeping a person at a facility. There are several reasons why a person may be detained.

### **Entering Canada**

If you have just entered Canada, you may be detained for an examination if there are reasonable grounds to suspect that you cannot be accepted into Canada for security reasons, criminal reasons, or on grounds regarding violations of international and human rights.<sup>121</sup>

### **Living in Canada**

If you are living in Canada, you may only be detained without a warrant if there are reasonable grounds to believe that you are inadmissible, a danger to the public, unlikely to appear at an examination/hearing regarding your immigration status, or if your identity is in question.<sup>122</sup>

## **Immigration Hold**

### ***What is Immigration Hold?***

Officers of the Canada Border Services Agency (CBSA) are authorized to arrest permanent residents and foreign nationals who have, or who may have, breached the *Immigration Act*. You may be detained if it is believed that you pose a danger to the public, if your identity is not known, or if there is reason to believe that you will not appear for immigration proceedings.<sup>123</sup>

### ***Where will I be Sent?***

After your arrest, you may be detained at a provincial correctional facility, or at one of the minimum-security immigration detention centres in Montréal or Toronto. The Canada Border Services Agency also has a facility in Vancouver for detentions of less than 72 hours. The vast majority of immigration detention occurs in the Canada Border

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<sup>120</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 49.

<sup>121</sup> *Immigration and Refugee Protection Act*, SC 2001, s 55(3).

<sup>122</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 55(2)(a)-(b).

<sup>123</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 55(1).

Services Agency (CBSA) facility or the Toronto Immigration Holding Centre (TIHC). Some people detained are also imprisoned in Provincial Detention Facilities in the Greater Toronto Area. Many women are held at the Vanier Centre for Women.<sup>124</sup>

### ***What Happens to my Personal Belongings?***

Upon arrival, you will need to give your personal effects, including cell phone, luggage, jewellery, money, medication, and all other items in your possession, to security personnel for storage and safe keeping.<sup>125</sup> You may be able to access your belongings upon request to security personnel. Dangerous objects such as knives and other objects that may be used as weapons and could endanger personal safety will be taken away.<sup>126</sup>

### ***What Information Must I Provide?***

You do not have to provide any information if you do not want to. However, if you do not provide information during the interview process, this may determine whether or not you remain in detention in some cases.<sup>127</sup> If your identity cannot be determined, you can be kept in detention until your identity is verified.<sup>128</sup>

### ***Will I get Regular Meals?***

You will be provided with three meals a day.<sup>129</sup> If you are on any medical diet or have any special needs with regard to food, you should submit a request about these needs immediately. Arrangements can be made to meet your medical dietary needs.<sup>130</sup>

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<sup>124</sup> No One is Illegal web site, *Toronto Statement on Detentions and Security Designations*. Online: <<http://toronto.nooneisillegal.org/securitydesignations>>.

<sup>125</sup> Canada Border Services Agency, *Information for People Detained Under the Immigration and Refugee Protection Act, SC 2001, c 27*, p 4.

<sup>126</sup> Canada Border Services Agency, *Information for People Detained Under the Immigration and Refugee Protection Act, SC 2001, c 27*, p 4.

<sup>127</sup> *Immigration and Refugee Protection Act, SC 2001, c 27, s 174(2)*.

<sup>128</sup> *Immigration and Refugee Protection Regulations, SOR/2002-227, s 247*.

<sup>129</sup> Canada Border Services Agency, *Information for People Detained Under the Immigration and Refugee Act*, p. 4.

<sup>130</sup> Canada Border Services Agency, *Information for People Detained Under the Immigration and Refugee Act*, p 4.

## Criminal Offences & Immigration Hold

### ***Will I have to Serve the Remainder of my Criminal Sentence?***

If a warrant is issued for your arrest or detention and you are a permanent resident or foreign national who is detained, the person in charge of the institution you are in will be required to deliver you to Canada Border Services at the end of the period of incarceration.<sup>131</sup> If a removal order has been issued, the removal order will be put on hold until you have served your sentence.<sup>132</sup> When you have finished serving your sentence, an order will be made to have you released to the Canada Border Services Agency.<sup>133</sup>

### ***What Rights do I have while in Immigration Hold?***

You have the right to:

- Be informed about the reason(s) for your detention; and
- Be informed about the right to be represented by a lawyer; and
- Be put in contact with a representative of your country's embassy or consulate; and
- Be assisted by an interpreter if you do not understand or speak the language in which immigration proceedings are being conducted (English or French); and
- You have the right to access to medical services; and
- If you are detained you can have visits from family members, friends and community groups, use the telephone, and receive mail.<sup>134</sup>

## Right to a Lawyer While in Immigration Hold

### **Once Detained**

If you are detained or taken to a detention facility before completion of the examination, you should be given access to a lawyer.<sup>135</sup> You also must be given a reasonable opportunity to exercise your right to a

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<sup>131</sup> Citizenship and Immigration Canada, *Enforcement Manual 20*, s 5.2 p 7.

<sup>132</sup> *Immigration and Refugee Protection Act*, s 50(b).

<sup>133</sup> Citizenship and Immigration Canada, *Enforcement Manual 20*, s 52 p 7.

<sup>134</sup> Citizenship and Immigration Canada, *Enforcement Manual 20*, s 5.15.

<sup>135</sup> *Huang v Canada (Minister of Citizenship and Immigration)*, [2002] FCI No 182, [2002] 3 FC 266.

lawyer.<sup>136</sup> If you are denied access to a lawyer, any removal order made against you may be set aside.<sup>137</sup>

If you are going before the Board or the Minister for any reason, you may have a lawyer represent you.<sup>138</sup> Legal Aid may be available if you are either a foreign national, or a refugee.<sup>139</sup> If you do not qualify for legal aid and choose to retain a lawyer, you will have to pay for the lawyer yourself.<sup>140</sup>

### ***Telephone Calls While in Immigration Hold***

If you are applying for refugee status, or are a refugee, although it is not a right, you should be given the telephone number and an opportunity to call the local United Nations High Commissioner for Refugees (UNHCR) representative, or a local organization that provides assistance to refugees. You should also be given access to the telephone to make calls to family members, or your lawyer.<sup>141</sup>

### ***Am I entitled to the information that is being used to detain me?***

Generally, you are entitled to information about yourself and the reasons you are being detained.<sup>142</sup> However, the information that is being used for your removal order or to detain you can be kept from you if the judge feels that, if the information was released, it would pose a threat to national security or put someone else in danger.<sup>143</sup>

### ***Do I have rights to healthcare?***

You have rights to medical services, like access to doctors and nurses, if you require medical attention. If you require medical attention “after hours”, this is provided for you as well.<sup>144</sup>

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<sup>136</sup> *Liv Canada (Minister of Citizenship and Immigration)*, [2007] FCJ No 1215, 2007 FC 941, (FC).

<sup>137</sup> *Liv Canada (Minister of Citizenship and Immigration)*, [2007] FCJ No 1215, 2007 FC 941, (FC).

<sup>138</sup> Canada Border Services Agency, *Information for People Detained Under the Immigration and Refugee Protection Act, SC 2001, c 27*, p 2.

<sup>139</sup> Canada Border Services Agency, *Information for People Detained Under the Immigration and Refugee Protection Act, SC 2001, c 27*, p 2.

<sup>140</sup> *Immigration and Refugee Protection Act, SC 2001, c 27*, s 167.

<sup>141</sup> Citizenship and Immigration Canada, *Enforcement Manual 20*, s 5.16, p 17.

<sup>142</sup> *Immigration and Refugee Protection Act, SC 2001, c 27*, s 83(c).

<sup>143</sup> *Immigration and Refugee Protection Act, SC 2001, c 27*, s 83, (c), (d), (e), (i); Charkaoui.

<sup>144</sup> Canada Border Services Agency web site. *Fact Sheet*. Online: <<http://www.cbsa-asfc.gc.ca/media/facts-faits/121-eng.html>>.

## Mothers in Immigration Hold

### ***My children are not Canadian Citizens. What will happen to them?***

- **Detention as a last resort:**

Special considerations apply to detention of minors. Generally, minor children can only be detained as a measure of last resort, and the best interests of the child are considered.<sup>145</sup> The question of establishing identity does not apply to minors.<sup>146</sup> Also, the regulations specify that the following must be considered for the detention of children who are less than 18 years old:

1. Availability of alternative arrangements with local child care agencies or child protection services;
2. Anticipated length of detention;
3. Risk of continued control by the human smugglers or traffickers who brought the children to Canada;
4. Type of detention facility envisaged and the conditions of detention;
5. Whether the detention facility allows for the segregation of the child from adult detainees who are not the parent of or the adult legally responsible for the child; and
6. Availability of services in the detention facility, including education, counseling and recreation.<sup>147</sup>

## Detention Review and Immigration Hold

### ***What is a Detention Review?***

Detention review means the Immigration authorities must examine the reasons for keeping you detained.

### ***How long can I be held in immigration on hold if I am facing a removal order, but not a security certificate?***

- **Initial Review:** This must be done within 48 hours after you have been detained, and again within 7 days. This is to determine if there are reasons to continue to detain you. Reasons to continue to detain you include:

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<sup>145</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 55.

<sup>146</sup> *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 247(2).

<sup>147</sup> Citizenship and Immigration Canada, *Enforcement Manual 20*, s 5.10, p 13-14.

- If it is believed that you will be unlikely to appear for an examination, hearing or removal; or
- If it is believed that you are a danger to the public; or
- If you are inadmissible for security reasons or for violating human rights; or
- Your identity cannot be established.

The Immigration and Refugee Board will conduct the review.<sup>148</sup>

- **Further review:** The Immigration Division must review the reasons for your continued detention at least once during the seven days following the 48-hour review, and at least once during each 30-day period following each previous review.<sup>149</sup>

You can request that the Immigration Division review your detention before the expiry of the seven-day or 30-day period, if you can set out new facts that justify an early review of your detention.<sup>150</sup> Indefinite detention is unlawful. The longer you are detained, the more important it becomes to consider alternatives to detention.<sup>151</sup>

## Security Certificates

### ***What is a Security Certificate?***

A security certificate allows the government to detain and deport non-citizens living in Canada. If you are a permanent resident named in a security certificate, the Minister of Public Safety may issue a warrant for your arrest and detention “if they have reasonable grounds to believe that” you are “a danger to national security or to the safety of any person”, or if it is believed that you are “unlikely to appear at a proceeding or for removal”.<sup>152</sup>

<sup>148</sup> Immigration and Refugee Board of Canada, *Detention Review Process*.

<sup>149</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 57(2).

<sup>150</sup> Immigration Division Rules, SOR/2002-229, r 9(1). Under r 9(2).

<sup>151</sup> *Mahjoub (Re)*, [2009] FCJ No 1453, 355 FTR 94 (FC).

<sup>152</sup> Citizenship and Immigration Canada, *Enforcement Manual 20*, s 5.17, p 17.

## ***How long can I be held in Immigration Hold if I am facing a Security Certificate?***

- **Initial Review:**

A detention review must happen within 48 hours after you have been detained on a security certificate to determine whether or not immigration authorities may continue to keep you detained.<sup>153</sup>

- **Further review:**

After this initial detention review, your detention must be reviewed again within 6 months to determine whether or not the certificate is reasonable.<sup>154</sup> If the certificate is determined to be reasonable, you may apply for review of your detention after six months has passed since the previous review.<sup>155</sup>

If you have not been removed from Canada within 120 days of the security certificate being found reasonable, then you may apply to the Federal Court for a release from detention.<sup>156</sup> The court must consider your application, and decide whether or not to release you from detention.<sup>157</sup> The Judge can either order that your detention is to be continued or order or confirm your release on any conditions that she considers to be appropriate.<sup>158</sup>

You are entitled to a lawyer and to a summary of your case after it has been reviewed and signed by the Minister of Public Safety and the Minister of Immigration and Citizenship, and reviewed again by a federal court. While you may be detained, you are entitled to a special advocate that must be provided to you. The special advocate will be chosen for you by a judge upon your request,<sup>159</sup> from a list of people determined by the Minister of Justice.<sup>160</sup> The special advocate must protect your interests pursuant to the *Immigration and Refugee Protection Act*<sup>161</sup>. The advocate's role is to protect your interests when information is heard regarding your case when you are not there, and

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<sup>153</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 56.

<sup>154</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 82.

<sup>155</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 82.

<sup>156</sup> Citizenship and Immigration Canada, *Enforcement Manual* 20.

<sup>157</sup> Citizenship and Immigration Canada, *Enforcement Manual* 20.

<sup>158</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 82.

<sup>159</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 83(1.2).

<sup>160</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 85.

<sup>161</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 85.1(1.).



in the absence of the public.<sup>162</sup> You are also free to leave Canada at any time and return to your country of origin.<sup>163</sup>

## Releases

### ***How can I be released from detention?***

After the review, a member of the Immigration Division of the Immigration and Refugee Board [IRB] will either order that you continue to be detained or that you be released from detention. The IRB may impose conditions on your release.<sup>164</sup> You can be released from custody either with conditions, or without conditions.<sup>165</sup>

### ***What are conditions?***

The Act gives the officer ordering release from detention the power to impose conditions.<sup>166</sup> They may require that someone put up a “bond” (money), as a way to guarantee that you will return when required. An officer or member, during a detention review, must assess if the person who gave the bond is capable of controlling your actions.<sup>167</sup> These conditions are imposed so that the person posting the bond or deposit will be sufficiently at risk economically to take an interest in seeing that you comply with the conditions of release, including appearing for removal.<sup>168</sup> Generally, the money (from a security deposit or the posting of a guarantee) is returned to the guarantor within six to eight weeks after the conclusion of the immigration proceeding, provided conditions of release were met.<sup>169</sup>

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<sup>162</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 85.1(1).

<sup>163</sup> Public Safety Canada, *Security Certificates*. Online: <<http://www.publicsafety.gc.ca/cnt/ntnl-scr/cntr-trrrsm/s crt-crtfcts-eng.aspx>>.

<sup>164</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 45(c).

<sup>165</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 45(c).

<sup>166</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 56.

<sup>167</sup> *Canada (Minister of Citizenship and Immigration) v Zhang*, [2001] FCJ No 796, 2001 FCT 521 (FCTD); *Canada (Minister of Citizenship and Immigration) v B157*, [2010] FCJ No 1648, 2010 FC 1314 (FC).

<sup>168</sup> *Canada (Minister of Citizenship and Immigration) v Zhang*, [2001] FCJ No 796, 2001 FCT 521 (FCTD).

<sup>169</sup> Canada Border Services Agency web site. *Fact Sheet*. Online: <<http://www.cbsa-asfc.gc.ca/media/facts-faits/121-eng.html>>.

## ***What conditions can be imposed on my release?***

- **Conditions may include:**

**Deposit:** This is money provided by a guarantor to make sure you comply with the conditions of your release from detention. Generally, it is returned to the guarantor six to eight weeks after the conclusion of your case, provided that all the conditions of your release have been met.

**Guarantee:** This does not require a deposit. The guarantor (who must be a Canadian citizen or a permanent resident of Canada) promises to pay a sum of money if you do not follow the conditions of your release. If you have a guarantor, they will not normally be excused from their legal obligations before your immigration case has been concluded.<sup>170</sup> Other conditions that may be imposed include a curfew, curtailing of visitors, outings and travel, and permission to officers to enter and search person's premises.<sup>171</sup>

## ***What happens if I breach the conditions of my release?***

If you breach the conditions of your release, or a peace officer believes that you are about to, then the officer may arrest you and bring you before a judge who may order your detention, confirm your release or vary the conditions previously imposed.<sup>172</sup>

## ***Can I have the conditions changed?***

If you are released from detention under conditions, you may apply to the Federal Court for another review of the reasons for continuing the conditions if a period of six months has expired since the last review.<sup>173</sup> On review, the judge can remove, vary, or confirm the conditions. You must be able to show that there has been “a material change in the circumstances” in order for the judge to vary or remove the conditions.<sup>174</sup>

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<sup>170</sup> Canada Border Services Agency. *Information for people detained under the Immigration and Refugee Protection Act*. Online:

<<http://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf>>.

<sup>171</sup> Mahjoub (Re), [2009] FCJ No 1453, 355 FTR 94 (FC)

<sup>172</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 82.2.

<sup>173</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 82(4).

<sup>174</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 82.1.

## ***Can I be released before my detention review hearing?***

- **No reason to detain:** If, at any time prior to the first detention review, a peace officer is of the opinion that the reasons for the detention no longer exist, the officer may order your release from detention before the first detention review by the Immigration Division of the Immigration and Refugee Board.<sup>175</sup> The Immigration Division cannot prevent your release if you do not meet one of the factors for detention (flight risk; danger to the public; inadmissible on security grounds, for violation of human rights; or, if your identity cannot be established).

## ***What factors will be considered when determining whether or not to release me from detention?***

The Division is required to take into account the following when deciding whether or not to release you:

1. Whether you are a flight risk in that you are unlikely to appear for examination, an admissibility hearing, removal from Canada or at a proceeding that could lead to the making of a removal order;
2. Whether you are a danger to the public;
3. Whether you are a foreign national whose identity has not been established; or
4. Whether you may be inadmissible to Canada.<sup>176</sup>

Additional Factors that should be considered include:

5. The reason for the detention;
6. The length of time in detention;
7. Whether there are any elements that can assist in determining how much longer you are likely to be detained;
8. Any unexplained delays or lack of diligence by the Department or the person who has been detained; and
9. Any alternatives to the detention.<sup>177</sup>

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<sup>175</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 56.

<sup>176</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, ss 55, 58; (CAN) *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 244.

<sup>177</sup> *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 248.

***What Factors would cause me to be considered a Flight Risk?***

In determining whether or not you are likely to be considered a flight risk, the Immigration Division must consider the following factors:

1. Whether you have been charged with an offence outside of Canada that would be considered an offence if committed in Canada;
2. Whether you voluntarily complied with any previous departure order, required appearance at an immigration or criminal proceeding, or any conditions imposed regarding entry, release or a stay of removal;
3. Whether you have previously failed to appear at an examination or have escaped or tried to escape from custody;
4. Whether you have been involved with smuggling or trafficking people. This could lead you to be vulnerable to being influenced or coerced by an organization involved in such an operation and not appear for a proceeding; and,
5. Whether you have strong ties to a community in Canada.<sup>178</sup>

***What factors would be considered a danger to the public?***

The Immigration Division must consider the following factors in determining if you pose a danger to the public:

1. The fact that you constitute, in the opinion of the Minister of Public Safety, a danger to the public in Canada or a danger to the security of Canada under the legislation;
2. Whether you are associated with a criminal organization;
3. Whether you are engaged in people smuggling or trafficking in persons;
4. Whether you have been convicted in Canada for a sexual offence, an offence involving violence or weapons, or trafficking, importing and exporting or production of drugs; and

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<sup>178</sup> Immigration and Refugee Protection Regulations, SOR/2002-227, s 245.

5. Whether you have been convicted outside of Canada or are facing pending charges for any of the offences listed in point 4 above.<sup>179</sup>

***What factors could lead to me receiving an identity not established designation?***

The officer or Immigration Division must consider the following factors:

1. Your cooperation in providing evidence of your identity, or assisting the Department in obtaining evidence of your identity;
2. In the case that you are making a claim for refugee protection, the possibility of obtaining identity documents or information without divulging personal information to government officials of your country of nationality or ... your country of former residence;
3. The destruction of identity or travel documents, or the use of fraudulent documents in order to mislead the Department, and the circumstances under which you acted;
4. the provision of contradictory information with respect to identity at the time of an application to the Department; and
5. the existence of documents that contradict information provided by you with respect to your identity.<sup>180</sup>

## Removal Orders

***What is a removal order?***

A removal order requires a person to leave Canada. There are three types of removal orders:

1. Departure orders
2. Exclusion orders and
3. Deportation orders

Once a determination to make an order is made, the officer or member of the Immigration Division of the Immigration and Refugee Board must determine which type of order to make.<sup>181</sup> All three kinds of removal

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<sup>179</sup> Immigration and Refugee Protection Regulations, SOR/2002-227, s 246.

<sup>180</sup> Immigration and Refugee Protection Regulations, SOR/2002-227, s 247.

<sup>181</sup> Immigration and Refugee Protection Regulations, SOR/2002-227, s 223.

orders require you to tell Canada Border Services Agency that you have left Canada.<sup>182</sup>

**No discretion:** In all cases there is no discretion and the Immigration and Refugee Protection Regulations specify the type of removal order that is to be made.<sup>183</sup>

### ***Why would I receive a removal order?***

You may be issued a removal order if you are considered “inadmissible” to Canada. You may be considered inadmissible if you commit a crime<sup>184</sup>, if you have been involved in organized crime<sup>185</sup>, for violating human rights inside or outside Canada<sup>186</sup>, for being considered a danger to public safety by being very ill<sup>187</sup>, for being unable support yourself financially<sup>188</sup> or for security reasons, like being a danger to the security of Canada.<sup>189</sup> If you were a refugee, you may also be issued a removal order if you are no longer protected as a refugee.<sup>190</sup> If this is the case, an immigration officer will prepare a report that includes information about you and the removal order and give it to the Minister of Citizenship and Immigration. The Minister can then give the report to the Immigration Division where they will decide if you are inadmissible.<sup>191</sup> After the hearing, the Immigration Division can choose to grant you permanent residence status, let you into Canada to get more information on your situation, or issue a removal order.<sup>192</sup> If a removal order is issued, you will lose your permanent resident status.

### ***How can a removal order be cancelled?***

A removal order is cancelled if it goes against the decision of a judge.<sup>193</sup> A removal order is put on hold if you are sentenced to a term of imprisonment, until your incarceration is finished.<sup>194</sup>

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<sup>182</sup> Canada Border Services Agency web site. *Fact Sheet*. Online: <<http://www.cbsa-asfc.gc.ca/media/facts-faits/121-eng.html>>.

<sup>183</sup> Immigration and Refugee Protection Regulations, SOR/2002-227, ss 224-226.

<sup>184</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 36.

<sup>185</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 37.

<sup>186</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 35.

<sup>187</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 38.

<sup>188</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 39.

<sup>189</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 34.

<sup>190</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 40.1.

<sup>191</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, ss 44(1)(2).

<sup>192</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 45.

<sup>193</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 50(a).

<sup>194</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 50(b).

You can ask for a change of any decision of Immigration Canada. Asking for a change of the decision is called an “appeal”. You can appeal the decision of a removal order to the Immigration Appeal Division.<sup>195</sup> But if you were considered inadmissible because of a human rights violation or serious crime, you cannot appeal the decision of a removal order.<sup>196</sup>

If you try to appeal the decision, the Immigration Appeal Division can decide to:

- (a) allow the appeal (this means they will reconsider the decision); or
- (b) put the removal order on hold; or,
- (c) dismiss the appeal (this means you will be removed from Canada).<sup>197</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 can decide to cancel the removal order, and issue permanent resident status because of humanitarian reasons.<sup>198</sup> It is rare for this to happen, and you must pay all fees owing to have the Minister do this.<sup>199</sup> If you are unhappy with the decision of the Immigration Appeal Division, you can apply to have a court reconsider the reasons why you were considered inadmissible or the decision of the removal order.<sup>200</sup>

## Immigration Appeals

To obtain a review of the reasons for detention, you must apply to the Immigration Division.<sup>201</sup> The review must be conducted in your presence.<sup>202</sup> It can also be conducted using telecommunications.<sup>203</sup>

### **Who has to prove what?**

The initial obligation to prove things on review lies on the Minister. The Minister should establish reasons why your detention should continue.

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<sup>195</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 63(2).

<sup>196</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, ss 64(1) and 64(2).

<sup>197</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 66.

<sup>198</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 25(1).

<sup>199</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 25(2).

<sup>200</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 72.

<sup>201</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 54.

<sup>202</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 164.

<sup>203</sup> *Canada (Minister of Citizenship and Immigration) v Zheng*, [2001] FCJ No 319, 2001 FCT 143 (FCTD).

If she cannot, you must be released.<sup>204</sup> Once the Minister has made out an initial case for continued detention, then the obligation to prove things shifts to you, and you must show that you do not constitute a danger to the public or a flight risk.<sup>205</sup>

### ***Is the appeal considered a brand new proceeding?***

Each detention review is considered to be a brand new proceeding and each member of the Immigration Division of the Immigration and Refugee Board must make an independent decision. In coming up with the decision, the member must take into account the decisions of previous members, as well as any new evidence. The member must provide reasons for her determination. The member can come to a different conclusion than any previous member, but must provide clear reasons for the decision explaining why she has come to a different conclusion than the previous member. When looking over the evidence and issues, the member must decide whether it is *likely* that you will either pose a danger, or fail to appear.<sup>206</sup>

## Detention Conditions

### ***Who can I contact with regards to my detention?***

You have a right to contact your home country's embassy or consulate if you choose. If you prefer that your consulate not be contacted, you may also request that the office of the United Nations High Commissioner for Refugees in Canada be notified of your detention.<sup>207</sup>

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<sup>204</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 58(1).

<sup>205</sup> *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, [2004] FCJ No 15, [2004] 3 FCR 572 (Fed CA); *Canada (Minister of Citizenship and Immigration) v B157*, [2010] FCJ No 1648, 2010 FC 1314 (FC).

<sup>206</sup> *Salilar v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1043, 97 FTR 110 (FCTD); *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, [2003] FCJ No 1548, 2003 FC 1225 (FC), upheld by the Federal Court of Appeal in Canada (*Minister of Citizenship and Immigration) v Thanabalasingham*, [2004] FCJ No 15, [2004] 3 FCR 572 (Fed CA).

<sup>207</sup> Canada Border Services Agency. *Information for people detained under the Immigration and Refugee Protection Act*. Online: <<http://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf>>.



If you have concerns or complaints about your detention, you can speak to a Canada Border Services Agency officer, if you choose. You can also follow the steps outlined throughout the remainder of this book to file requests or complaints about the manner of your detention.<sup>208</sup>

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<sup>208</sup> Canada Border Services Agency. *Information for people detained under the Immigration and Refugee Protection Act*. Online:  
<<http://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf>>.



## PART IV: PROTECTING YOUR RIGHTS

### Confidentiality and Access to Information

***Is the confidentiality of information collected about me by the Ministry of Community Safety and Correctional Services (MCSCS) protected by law?***

As briefly discussed when we were talking about assessments in the last section, there are limits on your right to privacy. For example, your psychological and psychiatric assessments are normally protected by a patient/doctor relationship, but they are not considered confidential once they become part of your prison file. Because of this, you are not obligated to participate in the intake assessment.

You need to know though, that even if you do not participate, you will still be classified. The staff will just rely on whatever information on you is available from your file, court or police information.<sup>209</sup> Also, according to the *Ministry of Correctional Services Act (MCSA)*, all staff must preserve the privacy of prisoners and any knowledge that they obtain during the course of their employment must be kept confidential.<sup>210</sup>

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<sup>209</sup> Ministry of Community Safety and Correctional Services Web Site:  
<[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>210</sup> *Ministry of Correctional Services Act*, s 10(1).

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

You have the right to gain access to personal information about you that is under the control of an institution.<sup>211</sup> You, your lawyer, or someone who has your permission, can make a written request for your information, in accordance with the *Freedom of Information and Protection of Privacy Act (FIPPA)*.<sup>212</sup>

There is a mandatory \$5.00 application fee for filing an access to information request. In addition, there may be processing costs. If the costs to process your request will be more than \$25.00, an estimate will be provided to you.<sup>213</sup> You can request to have the fees waived and consideration will be given to the following factors:

- The actual cost of processing the request compared with the estimated cost;
- Financial hardship;
- The nature of the information being requested (e.g. if it is a matter of public health or safety as opposed to a request for private information).<sup>214</sup>cc

An institution may deny access to personal information for a number of reasons found in sections 12-22, and 49 of the *FIPPA*, most notably if it interferes with another individual's right to privacy.<sup>215</sup> However, if you are denied access to your information, you can always appeal to the Information and Privacy Commissioner.

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

If you believe that there is an error or omission on your file, you are entitled to request a correction.<sup>216</sup> If a request has been put in writing and the correction is not made, you have a right to require that a statement of disagreement be provided explaining why the information was not corrected.<sup>217</sup>

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<sup>211</sup> *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F 31, s 47(1).

<sup>212</sup> *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F 31, s 47(1).

<sup>213</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual* (Correspondence, October, 2003), pp 98-99.

<sup>214</sup> Information and Privacy Commissioner Ontario, "Fees, Fee Estimates and Fee Waivers", (2003) at 9-12. Online: < <http://www.ipc.on.ca/images/Resources/fees.pdf> >.

<sup>215</sup> *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F 31, s 49.

<sup>216</sup> *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F 31, s 47(2).

<sup>217</sup> *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F 31, s 47(2).

You may also contact the Ontario Ombuds Office, as their function is to investigate any administrative decision, recommendation, act or omission on the part of a governmental organization, which affects any person or group in a personal capacity<sup>218</sup> Ask staff for the Ombuds complaint form and envelope. If you have access to the internet, you can visit their web site.

**Office of the Ombuds of Ontario**

Bell Trinity Square

483 Bay Street, 10th Floor, South Tower

Toronto, ON M5G 2C9

**Tel:** 1-800-263-1830

**Fax:** 416-586-3485

**Email:** info@ombudsman.on.ca **Web site:** www.ombudsman.on.ca

***How much of my information can be released – and to whom?***

The groups to whom Corrections can release your information are the police, governments, the Ombuds Office, the Ontario Parole and Earned Release Board (OPERB), courts, victims, and the general public.

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

Corrections can release information about you to the police if they reasonably believe that you pose a significant risk of harm to other persons or property and they believe that disclosing that information will reduce the risk.<sup>219</sup>

If information is disclosed, it must be done for a specific purpose or reason. These purposes are set out in the MSCA and include: protection of the public; protection of victims of crime; to keep victims informed; law enforcement; correctional purposes, et cetera.<sup>220</sup>

If you have been convicted of a crime committed against them, victims may be informed of the following information about you:

- the progress of investigations that relate to the offence;

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<sup>218</sup> *Ombudsman Act*, RSO 1990, c O-6, s 14(1)(2).

<sup>219</sup> Ministry of Correctional Services Regulations, s 61(1).

<sup>220</sup> *Ministry of Correctional Services Act*, s 10(3).

- the charges laid regarding the offence, and if no charges are laid, the reasons why;
- the dates and places of all significant proceedings that relate to the prosecution, as well as their outcomes (including any appeals);
- any pre-trial arrangements or interim release;
- any application for conditional release;
- any escape from custody;
- any hearings regarding fitness to stand trial;<sup>221</sup>
- parole hearings.

You will not be notified that information has been released to victims, and no victim contact information can be shared with you.

### ***What information can the general public be given?***

The general public can request the following information:

- A prisoner's name, date of birth and address;
- The offence with which a prisoner has been charged;
- The outcome of all significant judicial proceedings (trials, et cetera) relevant to the offence;
- The state of the criminal justice process (i.e. if the person is in custody, and if they have been released, what the conditions are);
- The date of release or pending release.<sup>222</sup>

### ***Is my communication confidential?***

"General Correspondence" is any correspondence that is not designated as special or privileged. Ontario law allows the Superintendent or staff members to read and inspect all letters and parcels sent in or out of the prison.<sup>223</sup> It may be opened, examined for contraband, read, delayed or interrupted.<sup>224</sup>

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<sup>221</sup> Ministry of Correctional Services Regulations, s 62(2).

<sup>222</sup> Ministry of Correctional Services Regulations, s 61.

<sup>223</sup> *Ministry of Correctional Services Act*, s 61(1)(t).

<sup>224</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual* (Correspondence, February 2007), p 490.

This means that staff can refuse to forward mail or delete parts of the letter if they think that the contents are a threat to the person receiving the letter, or if they think they are a risk to public safety.<sup>225</sup>

There are, however, some exceptions. “Privileged correspondence” should not be opened, copied, delayed, intercepted or censored. Privileged correspondence includes correspondence from a Member of Parliament (either provincial or federal), Ontario Civilian Commission on Police Services, Senior Medical and Senior Nursing Consultants, Ontario Human Rights Commission, Correctional Investigator of Canada, Anti Racism Coordinator, the Deputy Minister of Correctional Services, your lawyer, the Ontario Information and Privacy Commissioner, or the Ontario Ombuds Office.<sup>226</sup>

Phone conversations can also be listened to or otherwise intercepted if the Superintendent thinks that there would be evidence in the conversation that would jeopardize the safety of the prison or someone in it.<sup>227</sup> If your phone calls are being monitored you should be given notice of the possibility of interception by way of a voice-over message or other means.<sup>228</sup> Some institutions do this by posting a sign beside the telephone.

## The Right to Counsel (Legal Assistance)

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

You have a right to legal assistance. This is known as the right to counsel. In the following circumstances, you should be informed of this right.<sup>229</sup>

- If you are arrested;
- If you are detained/held in custody;
- If you are charged with an offence;
- You also have the right to be provided with information about legal aid service; too often, you need to request it, however.

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<sup>225</sup> *Ministry of Correctional Services Act*, s 61(1)(t).

<sup>226</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual* (Correspondence, February 2007), p 491.

<sup>227</sup> *Ministry of Correctional Services Act*, s 61(1)(t).

<sup>228</sup> *Ministry of Correctional Services Regulations*, s 17.1(3).

<sup>229</sup> *Charter of Rights and Freedoms*, s 10(b).

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

There are numerous circumstances in which it is in your best interest to exercise your right to counsel. For instance, if you are placed in segregation, involuntarily transferred (regular or emergency), have a parole hearing, or if you are charged with a serious disciplinary offence.

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

Nobody, including the Correctional Superintendent, has the authority to interfere with your right to legal assistance. This right is protected by section 10(b) of the *Charter of Rights and Freedoms*. You must immediately be given the opportunity to have a confidential phone call to your lawyer.

Unfortunately, the right to counsel, especially regarding incidents that take place in prison, continues to be interfered with in Canada. For this reason, you must be aware of and exercise your right to counsel, and prison staff must also be aware of their duties regarding this important right.

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

Yes. What you and your lawyer say to each other during visits cannot legally be monitored. It counts as privileged communication. Likewise, mail that goes in or out and is between you and your lawyer should not be read.<sup>230</sup> However, the Superintendent can only open communication between you and your lawyer if both you and a staff witness the letter being opened.<sup>231</sup> This can be done to inspect for contraband. The Superintendent cannot read it unless she has reasonable and probable grounds to believe that there is something in the letter that is not just lawyer-client communication (which is privileged).<sup>232</sup> You also have a right to confidential phone calls with your lawyer, although there are certain limits placed on your access to the designated phone line on which these take place.

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

If you are being denied rights you are entitled to, you can request to see the Superintendent. If you are not satisfied with the

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<sup>230</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual* (Correspondence, February 2007), p 492.

<sup>231</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual* (Correspondence, February 2007), p 492.

<sup>232</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual* (Correspondence, February 2007), p 492.

Superintendent's handling of the situation or the decision you can file a complaint with the Regional Director for your area. You can also file a complaint with the Minister of Community Safety and Correctional Services or/and the Ombuds Office.

**Ministry of Community Safety and Correctional Services**

18<sup>th</sup> Floor - 25 Grosvenor Street

Toronto, ON M7A 1Y6

**Toronto local:** 416-326-5000

**Toll free:** 1-866-517-0571

**TTY: Toronto local:** 416-326-5511

**TTY: Toll free:** 1-866-517-0572

**Minister's Office:** 416-325-0408

**Fax:** 416-325-6067

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

If you have a complaint about a lawyer, you can file it with the Law Society of Upper Canada, the regulatory body that sets standards for how lawyers should act in Ontario. The Law Society recommends that before filing a complaint, you speak with your lawyer about your concerns. If this does not solve the problem, you should make a formal complaint. The Law Society has a formal complaint form you can use. You can get this form by writing to the Law Society, or asking someone to download it from the Society's web site.<sup>233</sup> There is no time limit on filing a complaint, but it should be done as quickly as possible.

Make sure you include the following information when you send in your complaint:

- Your name, address, telephone number and other contact information;
- The name and address of the lawyer you are complaining about;
- Full, accurate information relating to the complaint, including:
- What the lawyer did that should not have been done;
- What the lawyer did not do that should have been done;
- Copies of all relevant documents;
- The names and contact information of any witnesses or other sources of information relating to your complaint.

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<sup>233</sup> The Law Society of Upper Canada Web Site: <[www.lsuc.on.ca](http://www.lsuc.on.ca)>.



The complaint should be sent to:

Complaints Services

**The Law Society of Upper Canada**

Osgoode Hall, 130 Queen Street West  
Toronto, ON M5H 2N6

**Tel:** 416-947-3310

**Toll free:** 1-800-268-7568

**Fax:** 416-947-5263

**Web site:** [www.lsuc.on.ca](http://www.lsuc.on.ca)

Once the Law Society receives a complaint, they will investigate it. If there is not enough evidence to warrant further proceedings against the lawyer, then they will close the file. If you disagree with a decision to close the complaint file, you can ask the Complaints Resolution Commissioner (CRC) for a review.

The Law Society may deal with the matter in a remedial way, such as providing the lawyer with guidance so that they don't continue with that behaviour. A small number of complaints may result in formal prosecution, hearing and penalty. If there is a formal hearing, the Society will hear evidence about what happened, and may discipline the lawyer.

If you feel that a lawyer has discriminated against you on a ground such as race, sex, ability or sexual orientation, you can contact the Discrimination and Harassment Counsel Program (DHC). Although the DHC does not investigate complaints, they may be able to assist you by intervening informally as a neutral third party or by conducting formal mediation where appropriate and where the lawyer volunteers to participate in mediation.<sup>234</sup> You can contact the DHC 24 hours a day and leave a confidential message on voice-mail: Toll Free Telephone: 1-877-790-2200.

## Legal Aid Ontario

Often, it is far too expensive to hire a lawyer. Because of this and because the right to counsel is a fundamental right, if you cannot afford a lawyer, you may apply to legal aid for one.

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<sup>234</sup> The Law Society of Upper Canada Web Site: <[www.lsuc.on.ca](http://www.lsuc.on.ca)>.

## **Legal Aid Ontario**

Suite 200 – 40 Dundas St. West  
Toronto, ON M5G 2H1

**Tel:** (416) 979-1446

**Toll Free:** 1-800-668-8258

**Fax:** (416) 979-8669

**Web site:** [www.legalaid.on.ca](http://www.legalaid.on.ca)

### ***Eligibility***

In order to apply for legal assistance, you must tell the correctional officer at your institution that you want to apply for legal aid and ask for a *Legal Aid Inmate Request Form* or application. This application will determine if your legal matter is eligible and confirm if you meet the financial eligibility test. If you do, you will be issued a *legal aid certificate*, which outlines the services that legal aid will provide to you.

Legal aid may be offered through a legal aid clinic, or a lawyer in the community. In Ontario, Legal Aid usually allows you to hire your own lawyer. If this is the case, you will usually be issued a legal aid certificate. If you already know a lawyer who you would like to have represent you, you can give legal aid the name and your certificate will be sent directly to your lawyer. If you do not have a lawyer, the certificate will be sent to you.

If Legal Aid needs more information from you about your case or your financial situation, a Legal Aid representative will either visit you at the jail or you will meet with a video interviewer. To apply for legal aid you must qualify under the financial eligibility test that has two parts: the asset test and the income test.<sup>235</sup>

### ***What is the asset test?***

The asset test is an assessment done by Legal Aid that involves reviewing your financial situation to see if you qualify for legal aid. To do this, they will consider how many assets you have (e.g. cash, stocks, bonds, RRSPs, property (house), et cetera). They will be checking to see if they believe you are able to pay your own legal fees. Generally, if you own a home or property, you are expected to borrow against it to pay your own legal fees. If you cannot borrow against it, Legal Aid usually asks you to agree to a lien against the property before they will grant you any legal aid.

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<sup>235</sup> Legal Aid Ontario Web Site: <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.

### ***What is the income test?***

This is where Legal Aid will request information about all of your sources of income, for you, your dependent children, your spouse (married, common-law or same-sex partner).

Eligibility is based on your gross income from all sources and depends on the number of people who make up your household. If your income falls within a certain amount, you will likely qualify for a legal aid certificate. If it is slightly above the cut-off, and depending on whether or not you own property, you may qualify for a certificate if you sign a contribution agreement to make small monthly payments towards your legal services.<sup>236</sup>

If you are on social assistance, you are usually eligible for legal aid, depending on your available assets. You may be eligible for legal aid if your gross income falls into the guidelines in the following table.

#### **CERTIFICATE FINANCIAL ELIGIBILITY TABLE<sup>237</sup>**

	<b>Will likely qualify if your income does not exceed:</b>	<b>or May qualify with Contribution Agreement if your income falls within:</b>
family size = 1	\$10,800	\$10,800 - \$12,500
family size = 2	\$18,684	\$18,684 - \$22,500
family size = 3	\$21,299	\$21,299 - \$26,220
family size = 4	\$24,067	\$24,067 - \$31,120
family size = 5+	\$26,714	\$26,714 - \$33,960

If your income is more than these amounts, you may qualify for Duty Counsel services or summary legal advice. This is a service offered at the courthouse that may provide you with immediate legal advice if you appear in court without a lawyer.

<sup>236</sup> Legal Aid Ontario Web Site: <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.

<sup>237</sup> Legal Aid Ontario Web Site: <[www.legalaid.on.ca/en/getting/certificateservices.asp](http://www.legalaid.on.ca/en/getting/certificateservices.asp)>.

For more information, you can ask a family member, friend, or advocate to visit the legal aid web site at: <http://www.legalaid.on.ca>

Family matters with which Legal Aid may provide assistance include:

- Helping you leave an abusive situation
- Getting custody of your children
- Helping you deal with the Children's Aid Society
- Getting you access to see your children
- Helping you if your partner denies you access to your children
- Setting up a child or spousal support payments
- Stopping your partner from selling or destroying your property.<sup>238</sup>

Criminal matters with which Legal Aid may be able to assist include<sup>239</sup>:

- Appeal of a Refusal by Legal Aid
- Certain Serious Criminal Charges
- Charges Laid under the *Youth Criminal Justice Act*

If you have been denied Legal Aid or asked to contribute some money to your legal fees and you cannot afford to, you can appeal the decision to the Area Committee by submitting a notice of appeal, or a letter for review. You can also reapply if there is a change in your financial circumstances.

An appeal is available where a person:

- Has been refused based on financial eligibility, merit or coverage policy;
- Disagrees with the requirement of a contribution agreement;
- Objects to the cancellation of a legal aid certificate; or
- Disagrees with the terms upon which legal aid was offered by the Committee.<sup>240</sup>

## Filing a Complaint

If you are unhappy with your experience with Legal Aid, you can file a complaint by:

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<sup>238</sup> Legal Aid Ontario Web Site: <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.

<sup>239</sup> Legal Aid Ontario Website: <[http://www.legalaid.on.ca/en/getting/type\\_criminal.asp](http://www.legalaid.on.ca/en/getting/type_criminal.asp)>.

<sup>240</sup> Legal Aid Ontario Web Site: <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.

- Talking directly with the person who has been serving you;
- Asking to speak to the Area Director of a Legal Aid office, or the Executive Director of a Community Legal Clinic;
- Asking to speak to a member of the Clinic Board;
- Writing to the Clinic Board c/o the clinic.

If you are not a client or former client, your complaint should be made in writing to the attention of the Executive Director, Area Director or the Clinic Board of the clinic.<sup>241</sup>

Complaints Department

**Legal Aid Ontario**

Suite 200 – 40 Dundas Street West Toronto, ON M5G 2H1

**Tel:** 416-204 7104

**Toll free:** 1-800-668-8258

**Fax:** 416-204-4718

**E-mail:** [complaints@lao.on.ca](mailto:complaints@lao.on.ca)

Complaint forms are available on the legal aid web site at:  
<http://www.legalaid.on.ca/en/getting/complaints.asp>

## Lawyer Referral Service

This service helps people find a private lawyer in Ontario. It includes a referral to a lawyer and there is no charge for your first half-hour consultation with the lawyer.<sup>242</sup>

**Toll-free:** 1-800-268-8326 (bilingual)

## Family Law Offices

Lawyers are available to handle family law cases for people who have a legal aid certificate.

**Toronto toll-free:** 1-800-331-9618

**Ottawa toll-free:** 1-800-348-0006

<sup>241</sup> Legal Aid Ontario Web Site: <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.

<sup>242</sup> The Law Society of Upper Canada Web Site:  
 <<http://www.lsuc.on.ca/find-a-lawyer-or-paralegal/>>.

## Social Workers

### ***What is a social worker?***

Social workers are people who work in a wide variety of places, such as children's aid societies, jails/prisons, and schools. Social workers usually work with people, families and communities to resolve problems.

In Ontario, to be called a social worker, a person must be registered with the Ontario College of Social Workers and Social Service Workers.

### ***What can I do if I have a problem with a social worker?***

If you do not feel a social worker is doing what they should be to assist you, you can ask to speak to their supervisor and/or you can make a complaint to the Ontario College of Social Workers and Social Service Workers. Complaints must be in writing and cannot be anonymous. There is no time limit on making a complaint but it is better to make a complaint sooner than later. The more time passes between the problem or concerns and filing a complaint, the greater the chances that any documents or witnesses may be harder to find.

If you have complaint(s) about more than one social worker, you will need to file a separate complaint about each person.

### ***What must be included in a complaint?***

In your complaint, be sure to include:

- Your name;
- Your contact information, such as your phone number and address where you can be reached;
- The name of the social worker, or, if not known, enough details (like where they work, date, time of incident(s), physical description, et cetera), so that the College can determine the name; and,
- a statement regarding the conduct or actions of the member of the College with enough details to identify the concerns of the person making the complaint, including,
- what actions the social worker took that are causing you to file the complaint;

- dates, times, places of when the action(s) you are complaining about took place;
- contact information of any witnesses.

### ***What kinds of things can the Complaints Committee do?***

The Complaints Committee cannot award money but may take the following action(s):

- Refer the matter to the Discipline Committee or the Fitness to Practice Committee of the College;
- This can result in the social worker's suspension, or restrictions placed on them regarding the type of work they can do;
- Require the member complained against to appear before the Complaints Committee for a warning;
- Refer the matter for alternative dispute resolution, such as mediation;
- Take any action the Complaints Committee considers appropriate in the circumstances consistent with the Act, the regulations or the bylaws;
- Dismiss the complaint.

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

Director, Complaints & Discipline  
**Ontario College of Social Workers  
 and Social Service Workers**  
 250 Bloor Street East, Suite 1000  
 Toronto, ON M4W 1E6

**Tel:** 416-972-9882    **Fax:** 416-972-1512    **Toll Free:** 1-877-828-9380

**Web site:** [www.ocswssw.org](http://www.ocswssw.org)    **Email:** [info@ocswssw.org](mailto:info@ocswssw.org)

## Health Care

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

The laws that govern the provision of health care services in the prison are the *Ministry of Correctional Services Act* and its *Regulations*. Some sections of the *Mental Health Act* also apply. Corrections must provide essential health care. Their policies state that prisoners should be provided with health care services comparable to those available in the general public.

They should provide treatment under the following categories of care:

- An assessment by a health care practitioner following admission to the institution;
- Basic and emergency medical care;
- Emergency dental care;
- Emergency counseling;
- Emergency mental health services;
- Urgent medical care (could deteriorate to an emergency).<sup>243</sup>

These are considered to be essential services. There should be at least one licensed health care professional working in the institution who will be responsible for providing all health care services at the institution.<sup>244</sup>

If a prisoner requires health services that cannot be accommodated by the institution, the Superintendent will make arrangements to have them transferred to a hospital or a community health care facility.

### ***How do prisoners access health care?***

Anyone in provincial custody is supposed to have access to the same level of health care as they would receive in the community.

All women are supposed to have a health assessment done by a health care provider as soon as possible after admission to the institution.<sup>245</sup>

This includes a mental health assessment. In some facilities, a nurse may not be present in the facility at the time of admission. In that case, you might not be assessed until a nurse is available. If you require health care on an urgent basis, and a nurse is not present, the jail should take you to the nearest emergency department for assessment and treatment.

After admission, in order to access health care, you will be expected to complete a request form for health care services. Information about how to access health care services is supposed to be provided verbally to you during your admission assessment. Information is also supposed to be included in the prisoner handbook you should receive when you enter the jail.

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<sup>243</sup> Ministry of Correctional Services Act, RSO 1990, m 22, s 24(1).

<sup>244</sup> Ministry of Correctional Services Regulations, s 4(1).

<sup>245</sup> Ministry of Correctional Services Regulations, s 4(2).



Correctional officers are expected to know the request process and are supposed to answer questions and assist you if you have trouble completing the form. Other women will also usually assist you if you have trouble understanding the form or the process.

Request forms should be available on all living units and should either be forwarded to the Health Care Unit or picked up directly on the unit by the nurse during routine rounds. The requests are then prioritized by a nurse depending on the level of urgency. Access to health care can also be facilitated by someone else if that person – either another woman or, more usually, a staff member – makes a referral because of observations or information they receive about your medical condition. For example, if a correctional officer observes that you are not well, s/he is expected to inform health care.<sup>246</sup>

***What accommodations are made for women who are pregnant, give birth or wish to pump their milk to send it to their babies while they are in prison?***

Accommodations are assessed on a case-by-case basis. However, lactating women who wish to express milk can be accommodated and arrangements made with family or community supports for collection and delivery of breast milk.<sup>247</sup> If accommodations are not being made for you to pump milk for your baby, you can ask your lawyer to go to court to fight for your baby's right to receive your breast milk (You should tell your lawyer that s/he can argue that this is in the 'best interests of the child').

***Is medical detox and methadone treatment available for women when they are first taken into custody?***

Too many people have to face detox and withdrawal in prison. Although the Ministry has a recommended protocol for opiate withdrawal management, the Ministry advises that individual physicians may use their clinical judgment and experience to choose an alternative course of therapy for withdrawal management. This, unfortunately, too often results in people withdrawing without medical aid. In addition, methadone treatment is only available to those women

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<sup>246</sup> Information obtained by telephone conversation with the Corporate Health Care Manager, Ministry of Community Safety and Correctional Services.

<sup>247</sup> Information obtained by telephone conversation with the Corporate Health Care Manager, Ministry of Community Safety and Correctional Services.

who were already on methadone in the community, prior to their incarceration.<sup>248</sup>

### ***Who pays for my health care expenses?***

If you are in an Ontario provincial jail, the Ministry of Community Safety and Correctional Services pays for all available health care services, as outlined above. If you are on conditional release and live in a halfway house, essential health care expenses are covered by OHIP, the Ontario provincial health care plan. If you request a second medical opinion and the doctor do not agree with your request, you must pay all or some of the costs not covered by OHIP.<sup>249</sup>

### ***How do I obtain health care services?***

You can make confidential requests for health care services,<sup>250</sup> and any staff member observing apparent illness has an obligation to report it to health care professional, whether or not you complain.<sup>251</sup>

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

It is every individual's right to refuse health care services. Fundamental to assisting the individual in the decision making process, is the individual's comprehension of the medical/health issues presenting, the proposed treatment options, the benefits of the proposed treatments, and knowledge of any complications that may arise as a result of treatment or the decision to not have treatment. A health practitioner must not administer any treatment unless they have determined your consent.<sup>252</sup>

### ***What is "consent"?***

Consent is a concept that you must willingly agree to something. It consists of four parts.

1. You must actually know what is the treatment or procedure to which you are being asked to agree.
2. You must be informed (given enough information that you can understand the implications of the medical treatment or procedure).

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<sup>248</sup> Information obtained by telephone conversation with the Corporate Health Care Manager, Ministry of Community Safety and Correctional Services.

<sup>249</sup> *Inmate Informational Guide for Adult Institutions*, p 10.

<sup>250</sup> *Inmate Informational Guide for Adult Institutions*, p 9.

<sup>251</sup> *Inmate Informational Guide for Adult Institutions*, p 9.

<sup>252</sup> *Health Care Consent Act*, SO 1996, c 2, Sched A, s 10(1) [hereinafter cited as the *Health Care Consent Act*].

3. Your consent must be voluntary, so you should not feel pressured or that you will be punished if you do not agree to the treatment or procedure.
4. You will not be considered to have consented if you did so because you were misinformed or lied to about the treatment.<sup>253</sup>

When you are giving your consent, you must first be informed of the nature of the treatment or medical procedure, the expected benefits of the treatment, the risks of having the treatment, the side effects of the treatment, any alternative courses of action, as well as the likely consequences of not having the treatment or medical procedure.<sup>254</sup> You have a right to ask questions and receive answers.<sup>255</sup>

You may refuse to consent to any procedure, even if your refusal to undergo a treatment or procedure is considered life threatening.<sup>256</sup>

### ***What happens if I become seriously ill?***

If you become seriously ill, a nurse or doctor must make a report to the Superintendent.<sup>257</sup> At that point, the Superintendent must notify your close relatives and a religious representative (preferably of the relevant faith) and can also notify anyone else that you ask her to.<sup>258</sup>

### ***If a prisoner appears to be ill, but does not self-report, do staff have an obligation to report any apparent illness?***

Although the Policy and Procedure manuals do not provide specific direction in this regard, since the Ministry is charged with the care and custody of those imprisoned in their facilities, it should form a fundamental part of the responsibilities of correctional staff. Staff usually alerts health care if they see someone is seriously ill.<sup>259</sup> Unfortunately, without 24-hour health care on site, mistakes can be made, so if you or someone else feels ill, it is important to report it to staff and request medical attention immediately.

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<sup>253</sup> *Health Care Consent Act*, s 11(1).

<sup>254</sup> *Health Care Consent Act*, s 11(3).

<sup>255</sup> *Health Care Consent Act*, s 11(2).

<sup>256</sup> *Health Care Consent Act*, s 26.

<sup>257</sup> Ministry of Correctional Services Regulations, s 4(3).

<sup>258</sup> Ministry of Correctional Services Regulations, s 5.

<sup>259</sup> Information obtained by telephone conversation with the Corporate Health Care Manager, Ministry of Community Safety and Correctional Services.

***Do I have a right to confidentiality when it comes to my medical records, especially my psychiatric or mental health records?***

Personal health care information, (mental and physical health) is protected by the *Personal Health Information Protection Act* [PHIPA] and maintained in your health care record. Health care professionals are required to safeguard this information and comply with the law. Information in the medical records is subject to the privacy requirements as set out in the PHIPA.<sup>260</sup>

As a general rule, all psychiatric, psychological and mental health records should be kept confidential. According to the *Mental Health Act*,<sup>261</sup> an officer in charge of a psychiatric facility may use, collect, or disclose your personal health information without your consent for the purpose of examining, observing, assessing, or detaining the patient in accordance with the Act.

Unless you are posing a risk to yourself or others, Ministry health care staff should only collect information about you with your consent.<sup>262</sup> If you give them permission, they may also collect information about your personal health from other health care professionals who may have treated you in the past, including before you were admitted to the jail.<sup>263</sup> If you feel that your rights have been violated under the PHIPA, you can file a complaint with the Information and Privacy Commissioner.<sup>264</sup> A staff member or an Elizabeth Fry representative can help you make this contact. A complaint must be made within 6 months.

More information about the complaints process and complaints forms can be downloaded from the web site of the Information and Privacy Commissioner.

**Information and Privacy Commissioner/Ontario**

2 Bloor Street East - Suite 1400 Toronto, ON M4W 1A8

**Tel:** 416-326-3333      **Ontario Toll Free:** 1-800-387-0073

**Web site:** [www.ipc.on.ca](http://www.ipc.on.ca)

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<sup>260</sup> Information obtained by telephone conversation with the Corporate Health Care Manager, Ministry of Community Safety and Correctional Services.

<sup>261</sup> *Mental Health Act*, s 35(1).

<sup>262</sup> *Personal Health Information Protection Act*, SO 2004, c 3, Sched A, s 29 [hereinafter cited as PHIPA].

<sup>263</sup> *Inmate Informational Guide for Adult Institutions*, p 8.

<sup>264</sup> PHIPA, s 56(1).

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

You can file a complaint about a specific act by a health care worker, or about an omission (something that didn't happen). Health care professionals have an obligation to act professionally and ethically. Each profession (doctors, nurses, psychiatrists, et cetera) has its own regulatory body, which protects the public by making sure that codes of conduct are being followed. If you have a complaint about someone involved in a health care profession, you can not only file a grievance with the institution, but you can file a complaint with the regulatory body of the person's profession.

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

The purpose of regulatory bodies is to monitor and regulate professionals, not to compensate those who experienced the misconduct or incompetence. This means that if your complaint is found to be valid, you won't receive any money or another remedy. However, the professional may be penalized for what they've done. Possible outcomes include suspending or taking away their certificate to practice, fines or other reprimands.

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

## **Doctors**

The regulatory body for doctors is the Ontario College of Physicians and Surgeons. A complaint can be lodged with the College against a doctor for professional misconduct, including incompetence and sexual abuse. To file a complaint, you will need to fill out the complaint form, which is available on their web site, and mail the form into the College. If you cannot access the form, be sure to provide the relevant information that the form includes:

- The person registering the complaint, their name and contact info;
- The Patient's information;
- The Physician's name, contact information and where the complainant saw the physician;

- Details of the complaint, including: locations of treatment; concerns about the physician's care; a description of any efforts to resolve the matter with the physician or hospital, if relevant.

Your complaint should be sent to:

**The Registrar c/o Investigations and Resolutions Department**

**The College of Physicians and Surgeons of Ontario**

80 College Street

Toronto, ON M5G 2E2

**Tel:** (416) 967-2615

**Toll Free:** 1-800-7096 ext. 615

**Web site:** [www.cpso.on.ca](http://www.cpso.on.ca)

**E-mail:** [ir@cpso.on.ca](mailto:ir@cpso.on.ca)

The Complaints Committee investigates written complaints about physicians' practice and conduct. The Committee will try to consider all relevant documents and records, including the submissions of the physician.

Based on the investigation, a panel of the Committee may dismiss the complaint. Alternatively, it may take a variety of actions including: cautioning the physician in writing or in person; referring allegations of professional misconduct or incompetence to the Discipline Committee; referring potential incapacity concerns to the Executive Committee; or taking any other action the Committee feels is appropriate.

The Discipline Committee hears matters of professional misconduct or incompetence. If the panel finds that the physician has committed an act of professional misconduct or is incompetent, it can make a variety of orders to the Registrar, including to: revoke the physician's certificate of registration; suspend the physician's certificate; impose specified terms, conditions or limitations on the physician's certificate; require the physician to appear before the panel to be reprimanded; and require the physician to pay a fine of not more than \$35,000 to the Minister of Finance.<sup>265</sup>

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<sup>265</sup> Ontario College of Physicians Web Site:  
<[www.cpso.on.ca/policies/complaints/default.aspx?id=1772](http://www.cpso.on.ca/policies/complaints/default.aspx?id=1772)>.

## Psychiatrists

The College of Physicians and Surgeons regulates psychiatrists as well. If you have a complaint about a psychiatrist, follow the same steps as you would if you were filing a complaint against a doctor.

## Nurses

Nurses are regulated by the Ontario College of Nurses. You can file a complaint by contacting an investigator at the College of Nurses. Complaints can be sent in writing, e-mail, or on audio or videotape, and should include the following:

- The name(s) of the nurse(s) involved (if known);
- The date the incident occurred;
- The time the incident occurred;
- The exact location where the incident occurred (e.g., name of facility, room);
- As many details as possible about the incident; and
- Your name, address, and telephone number.

You can send your complaint to:

Executive Director

**College of Nurses of Ontario**

101 Davenport Road

Toronto, ON M5R 3P1

**Tel:** 416 928-0900 ext.6988 **Ontario Toll-free:** 1 800 387-5526

**Web site:** [www.cno.org](http://www.cno.org)

**E-mail:** [investigations-intake@cnomail.org](mailto:investigations-intake@cnomail.org)

Once the complaint has been received, an investigator will gather all relevant documents and interview the people with knowledge of the incidents outlined in the complaint. A written report of the complaint is presented to the College's Complaints Committee. This Committee may dismiss the breach, issue a warning or reminder to the nurse, or may order the nurse to appear before the Committee for a caution.

If the matter is of a serious nature, the Complaints Committee may refer the case to the Discipline Committee. At a Discipline hearing, both the nurse and the College are represented by a lawyer. If the hearing panel finds that the nurse has committed professional misconduct or is

incompetent, actions taken may range from a reprimand to withdrawal of the member's right to practice as a nurse.

The College of Nurses also has a Participative Resolution Program that acts as an alternative to the formal complaint investigation process. This process allows the parties involved to work together to resolve issue(s) relating to a complaint about nursing care. Resolutions may include educational activities by the member, policy changes by the employer, or a letter of apology.

In the event that you are not satisfied with the Complaint Committee's decision, you have the right to request a review of the decision by the Health Professions Appeal and Review Board. A review is not available for cases referred to the Discipline Committee.<sup>266</sup>

### **Health Professions Appeal and Review Board**

151 Bloor Street West, 9<sup>th</sup> Floor  
Toronto, ON M5S 2T5

**Tel:** 416-327-8512

**Toll-free:** 1-866-282-2179

**TTY:** 416-326-7889TTY

**Toll-free:** 1-877-301-0889

**Web site:** [www.hparb.on.ca](http://www.hparb.on.ca)

**E-mail:** [hparb@ontario.ca](mailto:hparb@ontario.ca)

## Psychologists

The College of Psychologists of Ontario regulates psychologists. The College accepts complaints of misconduct, incapacity or incompetence. Before you file a complaint, you can discuss the matter with an investigator from the Investigations and Resolutions Team. To lodge a formal complaint, you must write to the Registrar of the College clearly stating that you are lodging a complaint. You can also fill out the College's complaint form and/ or attach a separate sheet indicating:

- Any dates, times and locations;
- Reason(s) for concern about the member's care, behaviour, etc.;
- Description of any efforts made to resolve the matter;
- Any supporting documentation with an explanation of how each document relates to the concern.

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<sup>266</sup> College of Nurses Ontario Web Site: <[www.cno.org/ih/complaints\\_intro.html](http://www.cno.org/ih/complaints_intro.html)>.



The Registrar

**The College of Psychologists of Ontario**

110 Eglinton Avenue West, Suite 500

Toronto, ON M4R 1A3

**Tel:** (416) 961-8817      **Toll Free:** 1-800-489-8388

**Web site:** [www.cpo.on.ca](http://www.cpo.on.ca)

Once received, the College will give the psychologist the letter of complaint and any supporting documents so that they will have the opportunity to respond. Usually, the member's response will be provided to you. However, if the Inquiries Complaints and Reports Committee (ICRC) feel that releasing the report to you may result in harm to you or another person, the ICRC will consider the advice and may decide not to forward the response to you.

After collecting any other information required for the investigation, the investigator will present the case to a panel of the ICRC. The panel may dismiss the complaint, or may issue a caution to the member, either in writing or in person. If the Committee believes that there is enough evidence to support a finding of incompetence of professional misconduct, it may refer the matter to the Discipline Committee.

The College also has a Facilitated Resolution process, where an agreement can be reached between you, the psychologist and the College. This process is voluntary, and can be terminated by any person at any time. Resolutions are often achieved more quickly, and outcomes are customized to address your concerns. The process is not adversarial like a trial is, and you will be directly involved in determining the outcome of the matter. If this process is not successful, then a formal process will have been delayed.

Any information about the complainant is confidential to the complaints process. While the Committee tries to avoid delays, it can take up to a year from the time a complaint is lodged until a decision is released. If you're not satisfied with the decision, you can request that the Health Professionals Appeal and Review Board review the decision.

## **PART V: RESTRICTIVE MEASURES**

Beyond the obvious restriction on your rights and liberties that prison necessarily imposes, there are ways that your rights and/or liberties can be further restricted. This

section outlines some of these restrictions, and suggests what you can do to protect yourself and your peers.



When you have been sentenced to prison, it is important to remember that living inside the prison is your sentence. Restrictions beyond prison itself must have a legal basis.

### **Segregation**

#### ***What is segregation?***

If you are segregated, it is readily obvious. You are separated from the general prison population and put in a segregation cell. Freedom inside the prison is more restricted when you are in segregation than for most other prisoners. You do not have access to the rest of the prison, programs, yard, gym, et cetera.

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

The purpose of segregation is to keep you from associating with the general prison population. That being said, you have a right to be treated in a safe and humane manner and be subject to the least

amount of restraint necessary. As far as possible, you should be treated as you would if you were not in segregation.<sup>267</sup>

Segregation is an extreme measure and should only be used when there are no other reasonable alternatives. Because of its severity, 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?***

According to the law in Ontario, there are five reasons for which you can be put in segregation. Some of these reasons are administrative, which means that they are intended to prevent either you or someone else from being harmed. However, segregation can also be used as a disciplinary measure, as a punishment.

You can be placed in segregation if the Superintendent decides that:

- You are in need of protection;
- You must be segregated in order to protect the security of the institution or the safety of other prisoners;
- You have been alleged to have committed a misconduct ‘of a serious nature’; or,
- You request to be placed in segregation.<sup>268</sup>

You can also be placed in segregation if you refuse or resist a search. You can be kept in segregation until you decide to participate in the search or until the institution determines there is no longer a need for the search.<sup>269</sup> In order to place you in administrative segregation, either voluntary or involuntary, there should be no other reasonable alternative.

Segregation should not be used to discipline women with mental health issues unless the Ministry can demonstrate that alternatives to segregation have been considered and rejected.<sup>270</sup> A psychiatrist must examine women with a major mental illness who are placed in segregation every five days.<sup>271</sup>

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<sup>267</sup> Ministry of Correctional Services Regulations, s 34(4).

<sup>268</sup> Ministry of Correctional Services Regulations, s. 34.

<sup>269</sup> Ministry of Correctional Services Regulations, s 26.

<sup>270</sup> *Jahn v Ontario (Community Safety and Correctional Services)*, Public Interest Remedies, September 24, 2013, p 4 [hereinafter referred to as the *Christina Jahn Settlement*].

<sup>271</sup> *Christina Jahn Settlement*, p 4.

If you are in segregation for a continuous period of 30 days, the Superintendent must report to the Minister the reason for the continued segregation.<sup>272</sup> The Superintendent must also indicate if you have a mental illness.<sup>273</sup>

### ***What rights do I have while in segregation?***

Because segregation is such an extreme and restrictive measure, there are numerous rules governing its use. Some of these concern procedural matters. For example, only certain people have the authority to make the decision to send you into segregation in the first place and, after that, other authorities and boards contribute to decisions on whether to keep you in or let you out of segregation. Other rules establish time frames to be followed.

When you have been placed in segregation for a *serious misconduct*, the Superintendent of the institution has a duty to conduct a preliminary re- view within 24 hours after you have been placed in segregation.<sup>274</sup> If the Superintendent deems that continued segregation is no longer necessary, she must release you from segregation.<sup>275</sup>

No matter what reason you have been placed in segregation, the Superintendent must conduct a review at least once in every five-day period to assess if continued segregation is necessary.<sup>276</sup>

You have certain rights concerning the conditions of your imprisonment in segregation. Some of these rights concern the access you must be given to the information the institution is using against you. You must also still have access to health care and other services, programs and your belongings.<sup>277</sup>

There are also guarantees about your right to communicate with people while you are segregated, including: the Superintendent; advocates; your family; and, importantly, your lawyer.<sup>278</sup> You are

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<sup>272</sup> Ministry of Correctional Services Regulations, s 34(5).

<sup>273</sup> *Christina Jahn Settlement*.

<sup>274</sup> Ministry of Correctional Services Regulations, s 34(2).

<sup>275</sup> Ministry of Correctional Services Regulations, s 34(2).

<sup>276</sup> Ministry of Correctional Services Regulations, s 34(3).

<sup>277</sup> Ministry of Correctional Services Regulations, s 34(4).

<sup>278</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual* (Visiting, November 2007), p 527.

entitled to continue receiving visits, unless the Superintendent determines otherwise.

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

If you feel that your rights have been violated and you would like to pursue a remedy, there are a number of things you can do.

You should contact your lawyer if you have retained one. If you don't have a lawyer and there are any charges pending, you can request to see Legal Aid. You can also contact your Elizabeth Fry representative for assistance.<sup>279</sup>

Depending on the type of remedy you would like to pursue, your strategy will vary. Before taking the matter to court, you must first exhaust the internal remedies available to you.

The first step in that process is to try to make a complaint to the Superintendent. This can be done verbally, although you should try to ensure that you submit your complaint in writing. You may also write to the Minister of Community Safety and Correctional Services, the Ontario Human Rights Tribunal, the Ontario Human Rights Legal Support Centre, a Member of Parliament or a Member of the Ontario Legislature before proceeding to court.

You may wish to commence civil proceedings against Correctional Services or an employee, or contact a Justice of the Peace for the purpose of laying a criminal charge. A court is unlikely to grant you a remedy if you have not gone through the internal remedy procedure first.

You should also notify the Ombuds Office at 1-800-263-1830 and inform them of any violation of your rights.

#### **Justice of the Peace Review Council**

P.O. Box 914 - Adelaide Street Postal Station

31 Adelaide Street East, Toronto, ON M5C 2K3

**Tel:** 416-327-5672

**Toll Free:** 1-800-806-5186

**Fax:** 416-327-2339

**TTY:** 1-800-695-1118

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<sup>279</sup> A list of Elizabeth Fry Societies in Ontario and their contact information is provided at the end of this booklet.

## Transfers

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

After you have been sentenced and interviewed by Classification, you may be transferred to another institution or hospital by the Regional Office, unless the Superintendent approves a “Request to Remain in Jail/Detention Centre” or the local institution conducts the transfer.<sup>280</sup> Transfers are supposed to be done so prisoners can attend programs, receive treatment, or work in the institution.<sup>281</sup>

If your court date is not for some time, you may be transferred to another institution to wait for your trial. This happens when institutions are crowded and others have empty beds.<sup>282</sup> No prisoner is supposed to be transferred until they are declared fit for transfer by the health care staff at the institution. Even in the event of an emergency transfer, an unfit prisoner may only be transferred after consultation with health care staff.<sup>283</sup>

Unless security precautions dictate otherwise, you will be advised of the decision to transfer you but not the date you will go. You are supposed to be allowed to make a phone call to your family when you arrive at your destination.<sup>284</sup>

### ***What kinds of transfers exist, and can I object to an involuntary transfer?***

Essentially, all transfers fit into one of three categories: voluntary; involuntary; and, emergency. However, there are a number of factors that further divide the kinds of transfers there are within these basic categories. The law takes some of the differences into account, and sometimes different rules can apply to these. The Supreme Court of Canada’s (SCC) decision in the case of *Idziak* provides a very useful tool with which to argue for being granted *habeas corpus* in advance of an

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<sup>280</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual* (Transfer, November 2008), p 199.

<sup>281</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual* (Transfer, November 2008), p 201.

<sup>282</sup> *Inmate Information Guide for Adult Institutions*, p 18.

<sup>283</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual* (Transfer, November 2008), p 198.

<sup>284</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual* (Transfer, November 2008), p 199.

allegedly illegal detention, to prevent a transfer.<sup>285</sup> This court decision may favourably influence the outcomes of new court cases.

## Types of Transfers

**Voluntary Transfers:** you initiate these when you request to be moved to a different prison, usually in another region. You must write a letter to the Superintendent of the current institution detailing the reasons for the request.<sup>286</sup> You will likely need legal and government assistance in order to apply for this type of transfer. Keep in mind that your request can be denied but, the more solid your reasons are for wanting the transfer, the better your chances of having it granted. Some reasons you may request a transfer are:

- To provide access to your family, home community or a compatible cultural environment;
- To facilitate your reintegration into the community;
- To provide access to needed rehabilitative/treatment programs; or,
- To provide continuity, if you are likely to serve additional time in another province due to outstanding charges.<sup>287</sup>

If the request is denied then you may submit a written request for a review by the Superintendent at the institution. The Superintendent will advise you of the review decision in writing. If you are not satisfied with this decision, you may write to the Regional Director requesting a further review. The Regional Director's decision is final.<sup>288</sup>

**Involuntary Transfers:** These are transfers initiated by the Ministry of Community Safety and Correctional Services when it wants to move you against your will to another institution to address security or behavioural concerns in your current institution.<sup>289</sup> Unless this is an emergency transfer, you will be notified before it happens and you

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<sup>285</sup> *Idziak v Canada (Minister of Justice)*, [1992] 3 SCR 631.

<sup>286</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual* (Transfer, November 2008), p 199.

<sup>287</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual* (Transfer, November 2008), p 201.

<sup>288</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual* (Transfer, November 2008), p 200.

<sup>289</sup> *Inmate Information Guide for Adult Institutions*, p 18.

must be given an opportunity to explain why you should not be transferred.<sup>290</sup>

**Emergency Transfers:** These transfers can be either voluntary or involuntary. Unfortunately, sometimes an involuntary transfer is labelled as an emergency transfer when it really is not. This means that all the procedural rules can be disregarded. These include your right to be given advance notice of the transfer, timely access to the information being used to justify the transfer, as well as your right to several types of responses, which might result in stopping the transfer from taking place at all.

If this happens, you should contact a lawyer and/or the Ombuds Office.

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

As with the process you should follow if your rights have been violated with respect to segregation, the same procedures are advised if you wish to pursue a remedy for a violation of your rights with respect to transfers.

## Disciplinary Charges

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

The Ministry of Community Safety and Correctional Services considers the disciplinary system to be a means to ensure that prisoners behave in a manner that promotes the good order of the prison and promotes the safety of the public. The process is supposed to be essential for maintaining security, safety and good order in institutions and achieving rehabilitation goals.<sup>291</sup>

***What is a misconduct?***

Corrections consider a lot of actions to constitute as misconduct. These include: wilfully disobeying an officer; assault; damaging property; creating a disturbance; having contraband; leaving your cell without the proper authority; and, helping another prisoner to break the rules.<sup>292</sup>

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<sup>290</sup> *Inmate Information Guide for Adult Institutions*, p 18.

<sup>291</sup> *Ministry of Correctional Services Act*, s 5.

<sup>292</sup> *Ministry of Correctional Services Regulations*, s 29(1).



You must be informed of the rules about what a misconduct is. Information should be in the handbook that you receive when you are admitted to the jail, or it can be posted in an area that is available to you.<sup>293</sup>

### ***What happens if I am accused of misconduct?***

If it is alleged that you have committed a misconduct, the Superintendent must notify you of the allegation and will give you an opportunity to have an interview with the Superintendent to discuss what happened.<sup>294</sup> You should know that you only have one day to notify the Superintendent that you want an interview.<sup>295</sup> Otherwise, the Superintendent can make a decision about the allegation without your input, and will simply inform you about the decision and the penalty.

This interview must happen no more than 10 days after she became aware of the allegation. When you meet with the Superintendent, you will be given the chance to explain what happened and give any arguments to counter the allegation. At the interview with the Superintendent, you are entitled to question the person who made the allegation, as well as any other witnesses to the incident.<sup>296</sup> The Superintendent can adjourn the interview, but can't do so for more than 3 days without your consent.<sup>297</sup> The Superintendent is also required to make a record of the case, including the allegation, any explanation made by you, and the decision, reasons and penalty.<sup>298</sup>

### ***What kinds of penalties are there for a misconduct?***

If the Superintendent decides that you have committed a misconduct, she can impose one or more of the following penalties:

- Loss of all or some privileges, such as canteen privileges, for no more than 120 days;
- A change of program or work activity;
- A change of security status;
- A reprimand; or,
- Revocation of a temporary absence permit.<sup>299</sup>

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<sup>293</sup> Ministry of Correctional Services Regulations, s 29(2).

<sup>294</sup> Ministry of Correctional Services Regulations, s 31(2).

<sup>295</sup> Ministry of Correctional Services Regulations, s 31(7).

<sup>296</sup> Ministry of Correctional Services Regulations, s 31(3).

<sup>297</sup> Ministry of Correctional Services Regulations, s 31(5).

<sup>298</sup> Ministry of Correctional Services Regulations, s 31(8).

<sup>299</sup> Ministry of Correctional Services Regulations, s 32(1).

If misconduct is seen to be of a 'serious nature', then the Superintendent can impose the following penalties on top of the penalties just mentioned:

- Segregation, for a definite period of time no greater than 10 days, on a special diet;
- Forfeiture of a portion of or all earned remission for a maximum of 15 days;
- A suspension of your ability to earn remission for a period of 2 months.<sup>300</sup>

### ***Can I appeal the Superintendent's decision?***

There are some situations where the Minister can step in and review the decision of the Superintendent. You can appeal if you believe that the Superintendent did not follow the rules of the legislation in making her decision. You can also appeal if your remission has been forfeited.<sup>301</sup> The Minister can either confirm or vary the decision, or order that the Superintendent reconsider the case. The decision of the Minister is final.<sup>302</sup>

### ***Will the police be involved if I am charged?***

If you are deemed to have committed a criminal offence, the police will be called and the Crown may decide to charge you. Generally, the police will only be informed when a serious offence has been committed that clearly contravenes a Canadian law. If police become involved, you can still be found guilty of the misconduct, even if the police charge you.<sup>303</sup>

## Searches

### ***What is a search?***

There are several different kinds of searches.

**Frisk Search:** is a manual search of your person while clothed. Specifically, it is a search from your head to your toes, down the front and back of your body and around your legs. As well, a frisk search can

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<sup>300</sup> Ministry of Correctional Services Regulations, s 32(2).

<sup>301</sup> Ministry of Correctional Services Regulations, s 33(1).

<sup>302</sup> Ministry of Correctional Services Regulations, ss 33(3)-(4).

<sup>303</sup> *Inmate Information Guide for Adult Institutions*, p 12-13.

include a search of your personal possessions, including a coat that you have been requested to remove.

**Non-Intrusive Search:** is a search performed by technical means. This means that the search can be conducted with the use of a handheld device or with a walk through a metal scanner.

**Strip Search:** can include a visual inspection of your naked body. It can also include a search of your clothing and other personal possessions you are carrying. 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 allow her to run her hands through your hair. As well, she may require you to bend over to allow for a visual inspection only.

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

The Superintendent can authorize a search at any time of any part of the institution, you or your property, or any vehicle on the property.<sup>304</sup> In addition, staff members may conduct an immediate search without the authorization of the Superintendent where there is a reasonable cause to believe that the prisoner will destroy or dispose of contraband during the delay necessary to obtain the authorization.<sup>305</sup> You may be subject to search procedures before and after all visits.<sup>306</sup>

Any search where you are required to undress must be conducted in a place and manner so that you are not embarrassed or humiliated.<sup>307</sup> Men are no longer permitted to strip search women in women's prisons, nor can women strip search men, something your visitors should be aware of. Someone of the opposite sex cannot search you, except if that person is a health care professional (i.e. a doctor or a nurse).<sup>308</sup>

The only other reason you can be searched by someone of the opposite sex is if there is reasonable cause to believe that an immediate search is necessary because you are concealing contraband that is dangerous or

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<sup>304</sup> Ministry of Correctional Services Regulations, s 22(1).

<sup>305</sup> Ministry of Correctional Services Regulations, s 22(3).

<sup>306</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedures Manual* (Visiting, November 2007), p 526.

<sup>307</sup> Ministry of Correctional Services Regulations, s 24(1).

<sup>308</sup> Ministry of Correctional Services Regulations, s 23(a).

harmful.<sup>309</sup> It is important to note that due to the grave humiliation and degradation experienced by persons undergoing strip searches, they have been disallowed as part of “routine” policy outside the prison context.

### ***Can prison staff search everyone?***

Sometimes, staff under the authorization of the Superintendent can conduct a prison-wide search, especially when there is reasonable cause to believe that there is contraband, which is a danger to the safety of the prison and any person in it.<sup>310</sup> Staff members will search all the buildings, cells and yards of the prison. It is important that you know that you still maintain all your basic rights during a prison-wide search. For example, you still have the right to contact your lawyer.

### ***Can I refuse to be searched?***

You can refuse to be searched. However, there may be consequences if you do so. If you refuse to be searched or resist a search, force may be used to complete the search<sup>311</sup>, or you may be placed in segregation until you either submit to the search or there is no longer a need for you to be searched.<sup>312</sup>

### ***Who can perform a body cavity search?***

The *Regulations* state that a search of a prisoner’s rectal or vaginal areas, otherwise known as a body cavity search, can only be conducted by a health care professional. A body cavity search can be performed if the institutional head feels it is necessary in order to seize the suspected contraband. The search must be documented in writing and can only be performed by a qualified medical practitioner with your consent.<sup>313</sup> Most doctors will not perform these searches because they rightly question the ability of a prisoner to provide full informed consent within a prison environment.

### ***Can my cell be searched?***

The regulations state that the Superintendent can authorize a search of any part of the institution, which would necessarily include your cell. If the Superintendent or staff believe there is contraband or evidence

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<sup>309</sup> Ministry of Correctional Services Regulations, s 23(b).

<sup>310</sup> Ministry of Correctional Services Regulations, s 22(1).

<sup>311</sup> Ministry of Correctional Services Regulations, s 7(1)(d).

<sup>312</sup> Ministry of Correctional Services Regulations, s 26.

<sup>313</sup> Ministry of Correctional Services Regulations, ss 24(2) & 26.

related to the emergency in your cell, s/he could authorize a search of your cell as well.<sup>314</sup>

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

If a member of the prison staff finds contraband or evidence of an offence during a search, she can seize that property.<sup>315</sup>

If a staff member seizes an item during a search, you must be told as soon as possible.<sup>316</sup> The Superintendent has the right to forfeit any items seized to the Crown (i.e. not give them back to you), unless she decides that doing so would cause you undue hardship,<sup>317</sup> at which point the item will be held by the Superintendent until your release from the institution.

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

The same advice that applies to violations of your rights with respect to issues discussed earlier in the manual applies to this issue as well. You can contact a lawyer, your Elizabeth Fry Society representative, the Ombuds Office, Ontario Human Rights Tribunal, or write to the Superintendent of the correctional facility.

## Use of Force

### ***When can use of force be used against me?***

Generally, employees of the prison should not use force against a prisoner.

The only exceptions for this are if the use of force is necessary to:

- Enforce discipline and maintain order;
- Defend against an assault from a prisoner;
- Control a 'rebellious or disturbed' prisoner;
- Conduct a search;<sup>318</sup> or,
- Prevent risk to the safety of any person or the security of any property.<sup>319</sup>

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<sup>314</sup> Ministry of Correctional Services Regulations, s 22(3).

<sup>315</sup> Ministry of Correctional Services Regulations, s 27(1).

<sup>316</sup> Ministry of Correctional Services Regulations, s 25(2).

<sup>317</sup> Ministry of Correctional Services Regulations, s 27(3).

<sup>318</sup> Ministry of Correctional Services Regulations, s 7(1).

<sup>319</sup> Ministry of Correctional Services Regulations, s 57.5(4).

If force is used, it still has to be reasonable and not excessive relative to the threat that is perceived by the guard or employee.<sup>320</sup> Staff are also required to file a written report detailing the nature of the threat posed by the prisoner and all other circumstances of the case in situations where they have used force.<sup>321</sup>

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

The same advice that applies to violations of your rights with respect to issues discussed earlier in the manual applies to this issue as well. You can contact a lawyer, your Elizabeth Fry Society representative, the Ombuds Office, Ontario Human Rights Tribunal, the Ontario Human Rights Legal Support Centre or write to the Superintendent of the correctional facility.

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<sup>320</sup> Ministry of Correctional Services Regulations, s 7(2).

<sup>321</sup> Ministry of Correctional Services Regulations, s 7(3).





## Part VI: Conditional Release

### Overview

#### ***What is Conditional Release?***

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

Conditional release is any absence from a prison during the term of a prison sentence. Absences can range from brief emergency hospital visits to being permitted to leave prison and completing your term of imprisonment on parole in the community.

#### ***What are the types of conditional releases?***

There are essentially three types of conditional release options available to women in provincial jails.<sup>322</sup> They are:

- Temporary Absences (includes escorted and unescorted absences);
- Parole.

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<sup>322</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions and Procedures Manual* (Temporary Absence Programs), pp 585 & 588.



### ***When should I begin preparing for conditional release?***

Start preparing for conditional release from the first day of your sentence. Document the things you do and issues that arise during your time in prison. This will be important if disciplinary charges are ever filed against you or incorrect information is inserted in your file. Keep track of everything you do: courses, programs, work reports, education, evaluations, community supports, and volunteer projects (i.e. planning and organizing an event or speaker).

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), any documents or notices presented to you by correctional staff regarding your prisoner record, and any correspondence with your lawyer, the Ontario Parole Board, or other agency working on your behalf. When in doubt, keep the document.

Keep all of your documents and records in a safe place. If there is no such place in your cell or dormitory, ask your lawyer or local Elizabeth Fry worker to keep copies for you. You might also consider sending your documents to a person that you trust outside of the prison to hold for you.

This person might need to be a family member, so you can give them to him or her during contact visits. If due to disciplinary charges, you are no longer able to have contact visits (or if you are generally having difficulty getting the documents out of the prison), you can argue that this person is who you have chosen to help assist and represent you at your OPB hearings and therefore needs to have access to the documents.

### ***Do I have to apply for conditional releases?***

You must apply for conditional releases such as temporary absences, work releases, and parole review. The only automatic review the Ontario Parole Board conducts is for prisoners serving sentences longer than six months.<sup>323</sup>

This is to be done whether or not you apply. If you are serving more than 6 months in jail, you are entitled to a hearing before the Parole

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<sup>323</sup> Ministry of Correctional Services Regulations, s 43(1)

Board, unless you waive it in writing.<sup>324</sup> If you are serving a sentence less than six months, you may apply for parole consideration any time.<sup>325</sup> According to the Regulations of the *Ministry of Correctional Services Act*, parole can be ordered at any time where there are compelling or exceptional circumstances, regardless of whether you have reached the one-third mark or not.<sup>326</sup>

## Types of Releases

### 1. Temporary Absences (ETAs and UTAs)

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

A Temporary Absence (TA) is a short absence from the prison for a specific reason (such as employment, educational classes, or treatment), and with certain terms or conditions.<sup>327</sup> TAs are usually your first absences from the prison, since they are the first types of absences for which you are eligible. They are different from parole, since you have to report back to the prison once the TA is over. There are two types of TAs: Escorted Temporary Absences (ETAs) and Unescorted Temporary Absences (UTAs).<sup>328</sup>

#### ***What do I have to do to get a TA?***

In order to get a TA under 72 hours, you must apply in writing to the Superintendent. You must set out the reasons that you are requesting the absence.<sup>329</sup> After considering your application, the Superintendent is supposed to promptly give you a written decision to allow or deny your request.<sup>330</sup> She should also provide you with the reasons for her decision.<sup>331</sup>

If you want to get a TA that is longer than 72 hours, you should apply in writing to the Superintendent who will then refer your request to the Ontario Parole Board (OPB).<sup>332</sup> The Board must then consider your

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<sup>324</sup> Ministry of Correctional Services Regulations, s 43(2).

<sup>325</sup> Ministry of Correctional Services Regulations, s 42(1).

<sup>326</sup> Ministry of Correctional Services Regulations, s 41(2).

<sup>327</sup> Ministry of Community Safety and Correctional Services Web Site: <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>328</sup> Ontario Parole Board Web Site: <[www.opb.gov.on.ca](http://www.opb.gov.on.ca)>.

<sup>329</sup> Ministry of Correctional Services Regulations, s 37(1).

<sup>330</sup> Ministry of Correctional Services Regulations, s 37(2).

<sup>331</sup> Ministry of Correctional Services Regulations, s 37(3).

<sup>332</sup> Ministry of Correctional Services Regulations, s 38(1).

application and either allow or deny your request<sup>333</sup> in writing.<sup>334</sup> This should be done promptly and given the reasons for their decision in writing, too.<sup>335</sup> The Board is supposed to review your request and make their decision within 30 days of receiving the request from the Superintendent.<sup>336</sup>

If your request for a TA has gone to the Ontario Parole Board, you are entitled to appear before the Board to speak in support of your request. The Board may allow another person to attend for the purposes of assisting you or assisting them to make their decision regarding your application.<sup>337</sup>

### ***What criteria need to be met for me to get a TA?***

In order to be eligible for a temporary absence, you must meet all three of the following eligibility criteria:

1. have served one-sixth of your sentence (i.e. if you have a 12 month sentence, you must have served at least 2 months);
2. have no outstanding charges or warrants (except if bail has been granted on those charges); and,
3. have excellent behaviour in the jail.<sup>338</sup>

### ***Who makes the decision?***

The decision-making for temporary absences in Ontario is shared between the Superintendent of the jail and the Ontario Parole Board (OPB). Superintendents are responsible for all ETAs and UTAs that are up to 72 hours long. Either way, if you want to request a temporary absence, you will write to the Superintendent. If it is for a period of longer than 72 hours, then she will refer the request to OPB.<sup>339</sup>

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

Where the criteria for obtaining TAs are met, a TA can be authorized for the following reasons, with or without escorts:

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<sup>333</sup> Ministry of Correctional Services Regulations, s 38(4).

<sup>334</sup> *Ministry of Correctional Services Regulations*, s 38(5).

<sup>335</sup> Ministry of Correctional Services Regulations, s 38(5).

<sup>336</sup> Ministry of Correctional Services Regulations, s 38(2).

<sup>337</sup> Ministry of Correctional Services Regulations, s 38(3).

<sup>338</sup> Ontario Parole Board Web Site: <[www.opb.gov.on.ca](http://www.opb.gov.on.ca)>.

<sup>339</sup> Ministry of Correctional Services Regulations, s 38(1); Ontario Parole Board Web Site: <[www.opb.gov.on.ca](http://www.opb.gov.on.ca)>.

**Humanitarian:** allow you to attend to essential personal matters, family visits, serious illnesses and funerals of family members. Each TA will be limited to the amount of time required to deal with the specific issue. Work is not considered to be grounds for a humanitarian TA.

**Medical:** allow you to leave the prison for medical appointments or treatments. These absences are limited to the duration required for the medical appointment or treatment.

**Rehabilitation/Reintegration:** Allows you to be absent for the time required for a particular activity or program that will help in rehabilitation or reintegration.<sup>340</sup> This can include substance abuse treatment, specialized education, technical training, and even employment.

A Temporary Absence Permit includes the time for you to travel to and from the authorized destination. If you are unable to return by the stipulated time, then you must advise the institution immediately and comply with all instructions given by institutional staff.<sup>341</sup>

### ***What do I need to do to be granted a TA?***

You must file a request to be considered for a TA. This request has to be in writing, and should clearly set out the reasons for the request.<sup>342</sup> If your request is referred to OPB, then you are allowed to go before the Board to give reasons or information to support your request.<sup>343</sup> For example, if you are requesting a TA to access a particular program, you can show the Board why this program will help with your rehabilitation. You can also give evidence to show that you are deserving of the TA, such as good behaviour.

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<sup>340</sup> *Ministry of Correctional Services Act*, s 27(1); *Prisons and Reformatories Act*, RSC 1985, c P-20 OIC, s 7(3) [hereinafter cited as: *Prisons and Reformatories Act*]; Ontario Parole Board Web Site: <[www.opb.gov.on.ca](http://www.opb.gov.on.ca)>.

<sup>341</sup> Ministry of Community Safety and Correctional Services Adult Institutions and Procedures Manual: Institutional Programs: Temporary Absence Programs, p 604.

<sup>342</sup> Ministry of Correctional Services Regulations, s 37(1).

<sup>343</sup> Ministry of Correctional Services Regulations, s 38(3).

### ***How long can the ‘Granting Authority’ take to decide whether to grant my TA or not?***

If the Superintendent is making the decision, then she is supposed to look at the request once she receives it, and promptly notify you of her decision.<sup>344</sup>

If the request is forwarded to the OPB, then they have to review your request as soon as possible, no later than within 30 days of receiving it.<sup>345</sup> Both the Superintendent and the OPB are required to notify you in writing with reasons.<sup>346</sup>

### ***What conditions will I be expected to comply with on a TA?***

- The conditions that you will have to follow for a TA are quite similar to those for parole. There are a number of conditions that will apply automatically, unless the Board says otherwise. They include to:
- remain within the jurisdiction of the Board;
- keep the peace and be of good behaviour;
- obtain consent of the Board or your parole supervisor for any change of residence or employment;
- keep a copy of your certificate of conditional release with you at all times;
- report to your parole supervisor and the local police force;
- refrain from associating with anyone who is engaged in criminal activity or has a criminal record.<sup>347</sup>

The conditions of your temporary absence must be clearly defined. Specific terms, such as the date, duration and place of your temporary absence should also be clearly outlined.<sup>348</sup>

### ***What if I am denied an Unescorted Temporary Absence?***

If the request was denied by OPB, then you can make a request in writing that the Chair of the Board review the decision.<sup>349</sup> The Chair will

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<sup>344</sup> Ministry of Correctional Services Regulations, s 37(3).

<sup>345</sup> Ministry of Correctional Services Regulations, s 38(2).

<sup>346</sup> Ministry of Correctional Services Regulations, s 38(5).

<sup>347</sup> Ministry of Correctional Services Regulations, s 48.

<sup>348</sup> Ontario Parole Board Web Site: <[www.opb.gov.on.ca](http://www.opb.gov.on.ca)>.

<sup>349</sup> Ministry of Correctional Services Regulations, s 38(6).

then review the decision and can either order the Board to reconsider your application for a TA or uphold the original decision.<sup>350</sup>

### ***Can a TA be cancelled?***

Your TA can be cancelled during the absence itself or before it starts. It can be cancelled for a number of different reasons, including if the reasons for the absence no longer exist, the application has been re-assessed, or if the cancellation is believed to be necessary to prevent the breach of a condition.<sup>351</sup>

If your TA was authorized and cancelled by OPB, you can appeal this cancellation by submitting a request to have the cancellation reviewed by the Chair of the Board.<sup>352</sup> The Chair can then either reauthorize the temporary absence or uphold the cancellation, and should promptly notify you in writing of the results of the review, with reasons.

## **2. Work Absence**

### ***What is a work release and how do I obtain one?***

Work absence is a type of temporary release for a specified duration for work or community service outside the prison, under the supervision of corrections, which is approved by the Minister of Correctional Services.<sup>353</sup> In order to get a work release, you must apply in writing, the same way as you would for a temporary absence.

### ***Once I am granted a work absence, then what?***

Conditions may be imposed on your absence, if they are deemed to be 'reasonable and necessary' for the protection of society. A work absence can be cancelled during the absence itself, or before it begins. You are entitled to written reasons for an approval, refusal, or cancellation of your work absence.

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<sup>350</sup> Ministry of Correctional Services Regulations, s 38(7).

<sup>351</sup> Ministry of Correctional Services Regulations, s 39.1(1).

<sup>352</sup> Ministry of Correctional Services Regulations, s 39.1(3).

<sup>353</sup> *Ministry of Correctional Services Act*, s 26(1).

### 3. Parole

#### ***What is parole?***

Parole is a form of conditional release granted to the prisoner by the Ontario Parole Board where you serve the remainder of your sentence in the community under supervision.<sup>354</sup>

#### ***When can I get parole?***

You can be considered for parole after you have served one-third of your sentence.<sup>355</sup> So, for example, if you are serving a sentence of one year, you can apply for parole after 4 months. If your sentence is less than 6 months, then you can apply to the Board at any time.<sup>356</sup> If your sentence is more than 6 months, then the Board must consider you for parole before your parole eligibility date, whether or not you have applied for parole.<sup>357</sup> However, the Board has the authority to give you parole at any time if there are 'compelling or exceptional circumstances' that warrant your early parole.<sup>358</sup>

When you enter into a provincial jail, you should be notified of your parole eligibility no later than two months after the date you were sentenced.<sup>359</sup>

#### ***What do I need to get parole?***

The Board will consider a number of factors in deciding whether or not to grant you parole. They can consider any information they think is useful and relevant regarding your character, abilities and prospects, including:

- Details about your trial, conviction and sentence;
- Your criminal record;
- Your background and living conditions before you were incarcerated;
- A report from the Superintendent about progress towards your rehabilitation; and,

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<sup>354</sup> Ministry of Community Safety and Correctional Services Web Site: <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>355</sup> Ministry of Correctional Services Regulations, s 41(1).

<sup>356</sup> Ministry of Correctional Services Regulations, s 42(1).

<sup>357</sup> Ministry of Correctional Services Regulations, s 43(1).

<sup>358</sup> Ministry of Correctional Services Regulations, s 41(2).

<sup>359</sup> Ministry of Correctional Services Regulations, s 41(3).

- A report from a health care professional about your physical and mental health.<sup>360</sup>

The Board may have a hearing to decide whether or not to grant you parole. They will usually first examine the perspective of the staff who work on community release, this is the worker in the jail who will gather the information about where you will live, work, go to school, et cetera. A Parole Officer in the community will then follow-up and assess your plans. You need to be sure to advise your supports that the Parole Officer will likely also be following up with the supports directly.

### ***What happens if there is a hearing?***

If there is a hearing, you must be given at least 48 hours' notice.<sup>361</sup> The Board will interview you so that they can decide whether to either grant or deny parole, or to defer the decision to a later date. In all cases, the Board has to provide the reasons for the decision to you in writing.<sup>362</sup>

You can attend this hearing and present arguments or information on your own behalf to show why you should be given parole.<sup>363</sup> You might want to show that you've participated in certain programs, or have been given temporary absences. The Ontario Parole Board has to consider 'public safety' so you will need to show them that you are not a risk to the community. This is another reason that it's very important to DOCUMENT everything. You will be allowed to have someone with you for language interpretation, legal advice or general assistance. Also, in preparing for your hearing, you can ask to have access to any relevant information on file that the Board will use to arrive at its decision, although they are not legally required to provide it to you.<sup>364</sup>

The Board uses a 'standardized risk assessment tool' to assess what kind of risk there will be to the community in granting parole.

### ***Who can attend a hearing?***

Besides yourself and a person assisting you, there are other people who might be able to attend the hearing.

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<sup>360</sup> Ministry of Correctional Services Regulations, s 44(1).

<sup>361</sup> Ministry of Correctional Services Regulations, s 44(2)(a).

<sup>362</sup> Ontario Parole Board Web Site: <[www.opb.gov.on.ca](http://www.opb.gov.on.ca)>.

<sup>363</sup> Ministry of Correctional Services Regulations, s 44(2)(b).

<sup>364</sup> Ontario Parole Board Web Site: <[www.opb.gov.on.ca](http://www.opb.gov.on.ca)>.



First, a victim can apply to the Board to attend your hearing.<sup>365</sup> If they are given permission, then they may be able to participate in the hearing by making submissions to the Board on the effects and impacts of the offence and their recommendations of what the Board should decide.<sup>366</sup>

Any other person besides the victim can also apply to the Board if they would like to attend the hearing.<sup>367</sup> In this case, the Board will consider the views of the victim as well as the confidentiality of the information in deciding whether or not to allow that person to attend. If they are granted permission, this person will not be allowed to participate in the proceedings.<sup>368</sup>

### ***Can I appeal a Parole Board decision?***

If you are not happy with the Board's decision, then you can request, in writing, that the Chair of the Board review the decision.<sup>369</sup> If you submit this request, then the Board should look at your case again, and can either uphold the decision or order a new hearing. They should tell you of their decision 'forthwith' (as soon as possible).<sup>370</sup>

### ***What kind of conditions attach to parole?***

There may be certain conditions imposed on your parole. There are seven standard conditions that apply. These are:

- Keep the peace and be of good behaviour;
- Remain within the jurisdiction of the Board;
- Get the Board's consent for any changes in residence or employment;
- Report to local police as required;
- Refrain from associating with anyone who is engaged in criminal behaviour or has a criminal record (unless they are approved by the Board);
- Carry a temporary absence permit with you at all times;

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<sup>365</sup> Ministry of Correctional Services Regulations, s 44.2(1).

<sup>366</sup> Ministry of Correctional Services Regulations, s 44.3(1).

<sup>367</sup> Ministry of Correctional Services Regulations, s 44.3.1(1).

<sup>368</sup> Ministry of Correctional Services Regulations, s 44.3.2.

<sup>369</sup> Ministry of Correctional Services Regulations, s 46(1).

<sup>370</sup> Ministry of Correctional Services Regulations, s 46(2).

- Abstain from alcohol or drugs (except as directed by a health care professional) and submit to drug testing.<sup>371</sup>

In some cases, you might have additional conditions that are specific to your situation. These include conditions of curfew, electronic surveillance, non-association with specified individuals, et cetera.<sup>372</sup>

### ***Can parole be revoked or suspended?***

If you have been granted parole, but have not yet been released from custody, then there is a possibility that your parole can be revoked under a few circumstances. The first is if the Board receives new information that is relevant to its decision to grant parole.<sup>373</sup> Or, your parole can be revoked if you request for it to be revoked.<sup>374</sup> If either of these situations happens, then you are entitled to a new hearing to decide whether or not parole should be granted. The only reason that this hearing won't happen is if you expressly waive your right to a hearing, meaning that you say that you do not want one.<sup>375</sup>

Your parole can be suspended (or taken away temporarily). This can be done for a few reasons. The first is if you have breached a condition of your parole.<sup>376</sup> The Board also has the power to suspend your parole if they feel that it's necessary to prevent you from breaching a condition of your parole, or to protect any person from danger or any property from damage.<sup>377</sup> If this happens, then you will be put back in the prison, and the Board will hold another hearing called a review hearing.<sup>378</sup> This hearing should happen as soon as possible once you've been put back in custody to determine whether you should be released and continue on with your parole, or whether your parole should indeed be revoked.<sup>379</sup>

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<sup>371</sup> Ministry of Correctional Services Regulations, s 48; Ontario Parole Board Web Site: <[www.opb.gov.on.ca](http://www.opb.gov.on.ca)>; See also: *Ministry of Correctional Services Act*, section 39(1), which states that a prisoner may have to return to prison if they fail to follow the conditions of their parole.

<sup>372</sup> Ontario Parole Board Web Site: <[www.opb.gov.on.ca](http://www.opb.gov.on.ca)>.

<sup>373</sup> *Ministry of Correctional Services Act*, s 36(1)(a).

<sup>374</sup> *Ministry of Correctional Services Act*, s 36(1)(b).

<sup>375</sup> *Ministry of Correctional Services Act*, s 36(2).

<sup>376</sup> *Ministry of Correctional Services Act*, s 39(2)(a).

<sup>377</sup> *Ministry of Correctional Services Act*, s 39(2)(b).

<sup>378</sup> *Ministry of Correctional Services Act*, s 39(3).

<sup>379</sup> *Ministry of Correctional Services Act*, s 39(4).

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

Earned remission is where you can earn a reduced sentence by meeting certain requirements.<sup>380</sup> In order to earn remission, you must actively participate in work, skills/trades training, education, community service, rehabilitative and treatments programs; and, follow the prison's rules. You will not earn remission (or you could lose remission) if you don't actively participate in programs, violate the 'zero tolerance policy' for violence against correctional staff, or fail to meet the 'standards of positive behaviour.'<sup>381</sup>

### ***How does the earned remission program work?***

When you are admitted to the prison, you should be told of the earned remission rules, standards and regulations. Prisoner case plans will be prepared and prisoners will be assigned or referred to the appropriate programs.<sup>382</sup>

The Ontario Parole Board makes the decisions for early release for prisoners serving sentences of 18 to 24 months, and can audit and review earned remissions decisions made by correctional institutions for prisoners serving sentences of less than 18 months.<sup>383</sup>

### ***Does Parole include earned remission?***

If you are granted parole, then your parole will include any remission that you have earned.<sup>384</sup> In other words, earned remission might make your parole date earlier, but you will not get your earned remission on top of parole.

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<sup>380</sup> *Prisons and Reformatories Act*, s 6(1).

<sup>381</sup> Ministry of Community Safety and Correctional Services Web Site: <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>382</sup> Ministry of Community Safety and Correctional Services Web Site: <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>383</sup> Ministry of Community Safety and Correctional Services Web Site: <[www.mcscs.jus.gov.on.ca](http://www.mcscs.jus.gov.on.ca)>.

<sup>384</sup> *Ministry of Correctional Services Act*, s 37.



## PART VII: 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, and you are now no doubt aware that the main topics in this section include:

- Complaints;
- Judicial Reviews;
- Complaints to the Ontario Ombuds;
- Complaint Applications to the Ontario Human Rights Tribunal.

### The Remedies

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

Remedies are solutions to problems you may face while in prison. There are many ways to seek the solutions that are available to you. These include: making a request for something you are not getting; filing a complaint with the Superintendent; filing a complaint application to the Ontario Human Rights Tribunal; filing a complaint with the Ombuds Office; 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 main focus is the most common form, a complaint.

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

There are a number of ways to have your voice heard. You have the following rights:

- a. The right to make a complaint regarding an action or decision of a staff member without negative consequences;<sup>385</sup>
- b. The right to legal assistance and reasonable access to legal reading materials;<sup>386</sup>
- c. The right to a fair hearing protected by procedural safeguards including;
  - the right to notice of a hearing or a case,
  - the right to a hearing be it oral or written,
  - the right to counsel regarding “serious matters,” particularly matters in which a decision against you could mean any further restrictions on your liberty,
  - the right to know the case against you and present a defence,
  - the right to cross-examine witnesses if there is a hearing against you;
- d. The right to apply for *habeas corpus* which is a court proceeding by which an applicant seeks to test the legality of their detention;<sup>387</sup>
- e. The right to apply for *certiorari* (right to review/be heard) in the court with respect to decisions made by inferior tribunals, which have a judicial or quasi-judicial function. This remedy is not available to review administrative or ministerial functions;<sup>388</sup>
- f. The rights to apply for *mandamus* which is a court proceeding by which an applicant seeks to compel a public official to perform a public or statutory duty;<sup>389</sup>
- g. The right to review and challenge inaccuracies in your file;<sup>390</sup>

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<sup>385</sup> Ministry of Correctional Services Regulations, s 91.

<sup>386</sup> *Charter of Rights and Freedoms*.

<sup>387</sup> *Provincial Offences Act*, RSO 1990, c P 33, s 142(1). [hereinafter cited as *Provincial Offences Act*]; Ministry of Correctional Services Regulations, s 2(3)(b).

<sup>388</sup> *Provincial Offences Act*, ss 140-141.

<sup>389</sup> *Provincial Offences Act*, s 140; Ministry of Correctional Services Regulations, s 2(3)(b).

<sup>390</sup> *FIPPA*, s 47(2).

- h. The right to make a complaint to the Privacy Commissioner;
- i. The right to make a complaint application to the Ontario Human Rights Tribunal; and,
- j. The right to make a complaint to the Ombuds Office.

***Document everything.***

In order to ensure that all the above rights are protected, it is essential that you keep careful records of any incidents you might at any time wish to bring up and of any and all attempts you make to try to resolve your problems. If you have an interaction with a staff member that upsets you, write it down and include the date and time that it happens. If you make a request to a staff member, do the same. You should also keep track of which staff and/ or women inside may have witnessed the incident.

If you file a complaint, keep a copy of it for your records. If you receive any written documentation from prison staff, the Ministry of Community Safety and Correctional Services, an outside organization, the Ontario Human Rights Tribunal, the Courts, or anybody else – keep it in as safe a place as possible! This will be very helpful in helping you to resolve your problem. You may also want to give copies of your paperwork to someone outside of the prison.

***What is a problem that I should try to remedy?***

Any decision or action by a staff member that makes you unhappy or compromises your dignity may be a problem. Any decision or action that denies your rights or further restricts your liberty is almost definitely a problem.

Here are some examples:

- poor treatment by a staff member (e.g. the way you are talked to or otherwise dealt with);
- denial of fresh air;
- denial of your documentation;
- denial of a phone call;
- denial of basic and emergency medical care;
- denial of access to reading material;
- prison placement;
- inaccuracy in your file(s) or report(s);

- new (higher) security classification;
- reduction of your visiting rights;
- disciplinary charge;
- placement in segregation;
- involuntary transfer.

### ***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.

Perhaps one of the most important reasons to file a complaint or grievance is that, once remedied, there is no question that you have that right. While generations of prisoners before you had no such law to protect them, the MCSCS now states that decisions made about you must be made by ensuring that prisoners are accorded their full legal and statutory rights and are treated with dignity. If this is not the case, you have the right to an effective complaint procedure.<sup>391</sup> 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 show 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.

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<sup>391</sup> Ministry of Correctional Services Regulations, s 28.

## Requests

### ***What is a request?***

A request is simply asking for something that you want or need. A request is appropriate in situations where the problem is less serious. For instance, let's say you are told that you cannot yet take a required program because of the factors outlined in your Correctional Plan (CP). You could make a request to access the program as soon as possible in order to permit you to fulfill the requirements of your CP. You could also request a timeline in terms of when you are expected to take the program, whether there are any other expectations of you in order to access the program(s), et cetera. A request is generally seen as less threatening by staff, while allowing you to document your needs and concerns.

### ***Why bother trying to make a request first?***

Consider what it is you want. If you can get what you want without making a complaint, then ask for it. This is important because filing unnecessary complaints may, in some cases, create ill will on the part of staff.

Sometimes making a request is a better strategy than filing a formal complaint, one reason being that this is seen as the least threatening option. Another reason it may be wise to begin with a request is that this creates a record of your attempt to resolve a problem at the lowest level possible. Being able to show that you first tried to resolve your problem by making a request may help your case if you later decide to file a complaint.

Finally, because making a request is usually considered a simpler and less threatening process and may involve little to no paperwork compared to filing a complaint, you may want to use it as a first step to try to resolve your concern/problem.

### ***What are potential problems with making a request?***

In practice, requests are more likely than complaints to be ignored or to get lost. Also, if you decide to make a request, be careful that you do not run out of time to file a complaint, in case your request does not result in a satisfactory solution.



# Complaints

## ***What is a complaint?***

A complaint may result in a solution to your problem in and of itself. If you are unhappy with an action or a decision by a staff member, you have the right to submit a written complaint to the staff member's supervisor. You may also use the complaint process to voice concerns about Correctional Services, the institutions or any person.

To make a complaint or voice concerns a prisoner may:

- Make a written complaint to the Superintendent;<sup>392</sup>
- Access the Ombuds Ontario through confidential correspondence or the prisoner telephone system;
- Write in confidence to the Ontario Human Rights Tribunal;
- Write to a Member of Parliament or a Member of the Ontario Legislature;
- Access their personal record under the *Freedom of Information and Protection of Privacy Act* and correspond in confidence with the Information and Privacy Commissioner;
- Write to the Minister, Deputy Minister, Regional Director or other senior officials at any time;
- Commence civil proceedings against Correctional Services or an employee or contact a Justice of the Peace for the purpose of laying a criminal charge.<sup>393</sup>

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

A prisoner may file a complaint at any time to bring a problem to the attention of staff or appeal a specific action. The prisoner must make the complaint personally and not through another prisoner. However, a second prisoner may be permitted to assist the complainant if this is necessary to clarify the complaint or the complainant is unable to communicate effectively.<sup>394</sup>

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<sup>392</sup> Ministry of Correctional Services Regulations, s 28.

<sup>393</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual*, (Requests and Complaints, November 2004), p 514.

<sup>394</sup> Ministry of Community Safety and Correctional Services, *Adult Institutions Policy and Procedural Manual*, (Requests and Complaints, November 2004), pp 514-515.

You should make sure that your complaint is in writing and you should send a copy to the Superintendent and keep a copy for your own records. If you cannot make a photocopy, copy out the complaint twice and keep a copy for yourself.

***Are complaints kept confidential?***

All complaints are supposed to be kept confidential to the greatest possible extent.<sup>395</sup> If your claim is not kept confidential, you can file a complaint with the Privacy Commissioner.

***What do I include in my complaint?***

Before writing your complaint, spend some time thinking about what you want to say and why you've decided to take this course of action. In order to write an effective complaint, there are a number of important questions you should consider.

**Why?**

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

- i.e., A decision reversed? A service you are being denied? Information? Creation of a record?

**Who?**

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

This sometimes determines the level at which you should file your complaint.

***Is the problem within the jurisdiction of the MCSCS?***

Remember that examples of things that are not in MCSCS's jurisdiction include:

- A decision of the Parole Board; and
- The action of a contract worker.

Ultimately, the Superintendent or the person reviewing the complaint will determine if the issue is within MCSCS's jurisdiction.

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<sup>395</sup> *Ministry of Correctional Services Act*, s 10(1); *FIPPA*, s 55(1).

## **What?**

### ***What is the issue?***

- If the issue involves discrimination (based on race, religion, gender, ethnic origin, age, sexual orientation, disability, et cetera), make that clear. This will alert MCSCS to the fact that your complaint may implicate the Ontario *Human Rights Code*.

### ***What are the facts?***

- This is basically telling the details as you know them. Sometimes you may not know all of them. For example, sometimes you can lose track of times or dates if you are in segregation and have nothing to write with or on. Once you have paper and pen or pencil, you would start by writing these facts: “*I was not provided with a writing instrument or paper, nor could I be certain what the exact time was, but I do know that when officer X was on shift on my 3rd night in segregation, I requested Y and was told Z. I then...*” What is most important, is that if you don’t know something, or aren’t sure, don’t make anything up or try to fill in what you think happened.
- Remember to keep careful records! This will allow you to relay detailed and accurate facts, such as dates and times.

### ***What are the opinions?***

- Be clear that your opinion is based on your own analysis of the situation and, therefore, is not a “fact.”
- Ask yourself if there is an alternate scenario that could also match the facts.

### ***What is the relevant law or policy?***

Find a relevant law from any of the following laws that is relevant to your case:

- *Ministry of Correctional Services Act (MCSA);*
- *Ministry of Correctional Services Act Regulations (MCSAR);*
- *Adult Institutions Policy and Procedures Manual;*
- *Freedom of Information and Protection of Privacy Act (FIPPA);*
- *Canadian Charter of Rights and Freedoms;*
- *Ontario Human Rights Code;*
- *Prisons and Reformatories Act;* or
- *Corrections and Conditional Release Regulations (CCRR).*

***Was there a breach of this law, regulation, or policy?***  
***What “corrective action” do you want the MCSCS to take?***  
***What outcome would you like to achieve?***  
***What solution would make you happy?***

***What if I do not have all the information I need?***

You have the right to access the information that is relevant to your case. If the MCSCS is withholding this information from you, then you may want to file an access to information request or make a complaint to the Privacy Commissioner.

If a lawyer or an advocacy organization (such as your local Elizabeth Fry Society) is working on your behalf, they may need you to sign an information release so that they can access records on your behalf.

***What action will be taken if my complaint is upheld?***

If your complaint is upheld, a corrective action should be taken. The person responding to the complaint will decide on a corrective action that will effectively respond to your complaint. For example, if you were inappropriately denied a visit, you should be permitted to have your visit.

Unfortunately, the corrective action you ask for may not be granted. For example, if you ask for the dismissal of a staff member, that is unlikely to happen. It is important that women like you continue to file complaints in order to ensure that MCSCS lives up to its promise and improves the system. Be sure to follow-up on your complaint if you don't receive a reply. It is also a good idea to send a copy of your complaint to your Elizabeth Fry representative so that an advocate can follow-up on your behalf.

## 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 of your original complaint, then you have a few other options, as follows.

## 1. Apply for *certiorari* (right to review or be heard in the Superior Court of Justice)

You can apply to the Superior Court of Justice in Ontario to review decisions made by an inferior tribunal, which has a judicial or quasi-judicial function.<sup>396</sup>

## 2. Apply for *habeas corpus*

*Habeas corpus* is a form of judicial review that is used mainly by prisoners. It is a Latin term that means roughly 'to have a body'. An application for *habeas corpus* can be brought on behalf of any detained person to show cause for detention. If it can be shown that you have been an unlawfully detained, you may be released from the form of detention that is unlawful.<sup>397</sup>

After many cases with unfavourable results, in 2005 the Supreme Court of Canada finally ruled that prisoners can choose to challenge the legality of their detention in a provincial superior court by way of an application for *habeas corpus*. Most importantly, the Court said that a provincial Superior Court should hear the application when requested to do so, unless it falls into two very narrow categories.<sup>398</sup>

This can be very important to you for many reasons. For example, you may wish to make an application for *habeas corpus* if you are unlawfully placed in segregation. As well, you may also wish to consider an application if you are unfairly being transferred to a penitentiary with a higher security rating. The Ontario Court of Appeal ruled that prisoners have a right to a *habeas corpus* application in advance of the alleged illegal detention and should remain in the lower level of detention pending a determination of the allegations.<sup>399</sup> An earlier decision of the Ontario Court of Appeal also contended that women had a right to *habeas corpus* before they were transferred to the Prison for Women in Kingston.<sup>400</sup> These decisions can be used as precedents in future applications.

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<sup>396</sup> *Provincial Offences Act*, ss 140 & 141 *Martineau v Matsqui Institution Disciplinary Board* (1980) 1 SCR 602.

<sup>397</sup> *Provincial Offences Act*, s 141.

<sup>398</sup> *May v Ferndale Institution*, [2005] 3 SCR 809.

<sup>399</sup> *Dodd v Isabel McNeill House*, 2007 ONCA 250.

<sup>400</sup> *Beaudry v Canada* (Commissioner of Corrections) ONCA 1997.

If you wish to make an application for *habeas corpus*, it is important that you immediately contact your lawyer, if you have one. If you do not have counsel, you should contact Legal Aid about the possibility of attaining their services.

You may also contact the Council of Elizabeth Fry Societies of Ontario (CEFSO) through the CAEFS toll-free line at 1-800-637-4606 for advice.

### **3. Contact the Ombuds Office**

#### ***Who is the 'Ombudsman'?***

The Ombudsman [*sic*] for Ontario is responsible for investigating complaints made by provincial prisoners. This means that it is their job to pursue and try to resolve complaints made by prisoners about decisions, acts or omissions of MCSCS staff.<sup>401</sup>

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

The Ombuds Office can make an inquiry in response to a complaint, in response to the request of a minister, or, based on his or her own initiative. They will not conduct an investigation until they are sure that you have exhausted all other institutional remedies first.<sup>402</sup>

S/he has full discretion in deciding whether or not to conduct an investigation and can terminate an investigation at any time.<sup>403</sup> If this happens, you should be informed in writing by the Ombuds Office of their decision not to investigate and if s/he deems fit the reasons should also be included.<sup>404</sup>

The Ombuds Office staff are not obliged to tell MCSCS what they learn from a prisoner and they are not obliged to tell a prisoner what they learn from the MCSCS. However, the Office does have to inform you of the results of the investigation.<sup>405</sup>

The Ombuds personnel cannot be compelled to testify or to reveal the source of information.<sup>406</sup> If you send a letter to the Ombuds office, no

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<sup>401</sup> *Ombuds Act*, ss 14(1), 14(2), 14(2.2).

<sup>402</sup> *Ombuds Act*, s 14(4).

<sup>403</sup> *Ombuds Act*, s 17(1), s 17(2).

<sup>404</sup> *Ombuds Act*, s 17(3).

<sup>405</sup> *Ombuds Act*, s 22(2).

<sup>406</sup> *Ombuds Act*, s 24(2).

one at the prison you are in is allowed to open it so anything you send to the Ombuds Office should be kept private.<sup>407</sup> Be sure to be persistent with the Ombuds Office.

If you do not get what you need during your first contact with their office, then try again.

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

##### Office of the Ombudsman of Ontario

Toll-Free: 1-800-263-1830      TTY:1-866-411-4211

Email: [info@ombudsman.on.ca](mailto:info@ombudsman.on.ca)      Web site: [www.ombudsman.on.ca](http://www.ombudsman.on.ca)

#### 4. Ontario Human Rights Tribunal Complaint

##### ***Why would I file a Human Rights Application?***

As a provincially regulated service provider, the MCSCS is subject to the *Ontario Human Rights Code*. This means that if your grievance or complaint is the result of discrimination, you can file a complaint with the Ontario Human Rights Tribunal. When you file a complaint, the Tribunal will work with you and MCSCS to reach an agreement that will solve the problem that you have experienced.

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

The *Ontario Human Rights Code* is designed to protect the people of Ontario from being discriminated against or harassed on any of the following grounds: race, colour, ancestry, place of origin, citizenship, ethnic origin, disability, creed, sex (including sexual harassment, pregnancy, and gender identity), sexual orientation, family status, marital status and age.<sup>408</sup>

This essentially means that you cannot be denied something in prison or treated differently on the basis of one of the characteristics or “grounds” mentioned above, such as gender, race and disability.

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<sup>407</sup> Ministry of Correctional Services Regulations, s 17(2)(e).

<sup>408</sup> *Ontario Human Rights Code*, s 1.

Discrimination can be either direct or systemic.

**Direct Discrimination:** happens when an individual or group is treated differently in a negative way based on characteristics related to the prohibited grounds of discrimination above, including gender, race and disability. This kind of discrimination tends to be easy to identify. For example, when a guard uses a racial slur or when a policy singles out prisoners with disabilities, which is direct discrimination.

**Systemic Discrimination:** on the other hand, is the creation, perpetuation or reinforcement of persistent patterns of inequality among disadvantaged groups. It is usually the result of seemingly neutral legislation, policies, procedures, practices or organizational structures. Systemic discrimination tends to be more difficult to detect. For example, if every prisoner is allotted one hour of yard time per day, but the yard is not wheelchair accessible, that is systemic discrimination.

If you think you were the victim of either direct or systemic discrimination, you can file a Human Rights application.

### ***What is the role of the Human Rights Tribunal?***

The Human Rights Tribunal is responsible for resolving complaints filed by individuals who claim that they have experienced discrimination or harassment. The Tribunal also resolves complaints filed by a person or organization on behalf of another person. In most cases, the Tribunal will try to help both sides reach an agreement that settles the matter.

If a complaint cannot be settled, the Tribunal will hold a hearing to decide whether discrimination or harassment took place. If the Tribunal finds that the applicant experienced discrimination or harassment, the Tribunal can make an order to address the discrimination or harassment. This can include ordering the respondent to pay financial compensation to the applicant, and/or make orders to prevent further human rights violations. If the Tribunal finds that discrimination did not occur, it will dismiss the application.

Whether through mediation or a hearing, the Tribunal works to resolve applications on the basis of the facts and the law. The Tribunal's rules and procedures are designed to deal with all applications fairly and



quickly, and in a way that ensures parties can understand and fully participate.

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

You have one year from the incident to file a human rights complaint. If there was a series of events, then you have one year from the last incident in the series.<sup>409</sup> You might be able to submit a complaint after the one-year mark, as long as the Tribunal thinks that the delay won't result in any harm to anyone affected by it.<sup>410</sup>

### ***What should the application include?***

The complaint form is a legal document that sets out the allegation of discrimination. You will need to get the official form from the Human Rights Tribunal, and you might want to get the *Applicant Guide*, which explains the sections of the form.

### **You can contact the Tribunal at:**

#### **Human Rights Tribunal of Ontario**

655 Bay Street, 14th Floor  
Toronto, ON M7A 2A3

**Tel:** (416) 326-1312

**Toll Free:** 1-866-598-0322

When you file a human rights application, you will have to include your personal contact information as well as the following:

- Contact information of the person you're complaining about;
- Grounds of discrimination (i.e. whether you were discriminated against based on race, colour, disability, sexual orientation, et cetera. You can tick off more than one ground. For example, if you believe that you were discriminated against because you are a woman of African descent, you may choose to put an x beside Race, Colour, Ancestry, and Sex). Facts that support your complaint, including location, date, what happened, who was involved, et cetera;
- The remedy that you're asking for;
- Any documents that are important to your application;
- Whether you want to try mediation (Mediation is a less formal process than a hearing, but only happens if both parties agree).

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<sup>409</sup> Ontario Human Rights Code, s 34(1).

<sup>410</sup> Ontario Human Rights Code, s 34(2).

You don't have to agree to mediation if you don't feel comfortable doing so).<sup>411</sup>

You can find the Internal Guide to Processing Complaints for more information on the Commission's web site at: [www.ohrc.on.ca](http://www.ohrc.on.ca).

### ***Are applications confidential?***

The Tribunal claims that it attempts to preserve confidentiality, to the extent possible, during the complaint process. However, your information may become public in a few different ways through the course of the Tribunal Process.<sup>412</sup> For example, your information will become public at the hearing and in the Tribunal's decision. Your information could also become public in response to a request to the Tribunal under the *Freedom of Information and Protection of Privacy Act*.

The Tribunal has policies for responding to requests for information, as well as requests to keep information private. Their responses are based on balancing privacy interests with the public's interest in having a transparent legal process. By signing your application, you are declaring that you understand your information can become public in these ways.<sup>413</sup>

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

It is a crime for anyone to threaten, intimidate or retaliate against you for filing a complaint with the OHRT.<sup>414</sup> Therefore, if you do suffer from retaliation after filing a complaint, contact the Ombuds Office and your local Elizabeth Fry Society immediately.

### ***What do I do if I need help filling out the forms?***

It can sometimes be difficult to fill out all of the forms for a human rights application. If you are having trouble, you might want to ask somebody you trust to help you. Otherwise, you can contact the Human Rights Legal Support Centre for help. They cannot give you legal advice, but they provide support and information to people who are filing human rights complaints in Ontario. Their contact information is below.

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<sup>411</sup> See the *Applicant's Guide*, pp 5-11, Human Rights Tribunal of Ontario Web Site: <[www.hrto.ca](http://www.hrto.ca)>.

<sup>412</sup> See the *Applicant's Guide*, p 15, Human Rights Tribunal of Ontario Web Site <[www.hrto.ca](http://www.hrto.ca)>.

<sup>413</sup> See the *Applicant's Guide*, p 17, Human Rights Tribunal of Ontario Web Site <[www.hrto.ca](http://www.hrto.ca)>.

<sup>414</sup> *Criminal Code of Canada, RSC 1985, s 423(1)(a)-(b)*.

### **Human Rights Legal Support Centre**

400 University Avenue, 7th Floor  
Toronto, ON M7A 1T7

**Tel:** (416) 314-6266

**Toll Free:** 1-866-625-5179

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

You can send your application by mail to:

Registrar

### **Human Rights Tribunal of Ontario**

655 Bay Street, 14th Floor  
Toronto, ON M7A 2A3

**Tel:** (416) 326-1312

**Toll Free:** 1-866-598-0322

**Fax:** (416) 326-2199

**Toll Free Fax:** 1-866-355-6099

**E-mail:** Registrar@ontario.ca

**Note:** Submit/send your application only once. If the Tribunal receives more than one application, they will only accept the first application received.

## **5. File a Complaint with the Privacy Commissioner**

All privacy complaint files will be analyzed at the Intake stage to determine the most appropriate process for the file. The Registrar and a team of Intake Analysts are responsible for the following Intake functions.

### **Screening**

The Commissioner has delegated authority to the Registrar and Intake Analysts to “screen out” files where the IPC has no jurisdiction or where it has determined that the type of file should not proceed through the privacy complaint process. Privacy complaints may therefore be dismissed at the intake stage.

### **General Intake Functions**

For those files that are not screened out, the Intake Analyst will complete various intake functions including:

- contacting the complainant to clarify the privacy issues;
- explaining the IPC procedures for processing privacy complaints; and,

- contacting the institution to obtain its position about the complaint and discussing the possibility of settlement.

### **Intake Resolution Stream**

The Registrar will stream a privacy complaint to the Intake Resolution Stream if it appears that a quick informal resolution can be achieved without having to go through a formal investigation.

### **Investigation Stream**

The Registrar will stream all other privacy complaint files to the Investigation Stream. A Mediator will be assigned to:

- clarify the complaint;
- contact the parties, gather information, and attempt settlement;
- send a Draft Privacy Complaint Report which includes:
  - o a summary of the complaint;
  - o a discussion of the information obtained during the investigation;
  - o conclusions; and,
  - o recommendations (if any) to the parties, if the file is not settled.
- provide the parties with an opportunity to comment on any factual errors and/or omissions in the Draft Privacy Complaint Report;
- send a final Privacy Complaint Report to the parties under his/her signature, with the endorsement of the Assistant Commissioner or Commissioner; and,
- follow-up with the institution to ensure that any recommendations have been implemented.

Please refer to the Office of the Information and Privacy Commissioner of Ontario for more detailed information and to obtain an application form. If you have access to the internet, or someone you know has access, you can access the information at: <http://www.ipc.on.ca>

## **6. Request to See a Justice of the Peace**

A prisoner has the right to request to see a Justice of the Peace for the purposes of laying a criminal charge. Such requests will be forwarded

promptly and without screening or evaluation. The Justice of the Peace, not institutional staff, determines the merits of the complaint or allegation.

If the Justice of the Peace refuses or fails to see you, you must be immediately notified and advised of your right to request a review by the Justice of the Peace Review Council.

**Justice of the Peace Review Council**

31 Adelaide St. E., P.O. Box 914  
Toronto, ON M5C 2K3

**7. Call a lawyer, an Elizabeth Fry Society in your area, or another advocacy group.**

Below is the contact information for the local Elizabeth Fry Societies in Ontario who are members of Council (CEFSO):

**EFS of Kitchener-Waterloo**

58 Queen Street South  
Kitchener, ON N2G 1V6  
**Tel:** (519) 579-6732  
**Fax:** (519) 579-6367  
**Email:** e.f.society@gmail.com

**EFS of Hamilton**

85 Holton Avenue South  
Hamilton, ON L8M 2L4  
**Tel:** (905) 527-3097  
**Fax:** (905) 527-4278  
**Email:** lkilby@efryhamilton.org  
**Web site:** www.efryhamilton.org

**EFS of Peterborough**

223C Aylmer Street North  
Peterborough, ON K9J 3K3  
**Tel:** (705) 749-6809  
**Fax:** (705) 749-6818  
**Web site:** www.efryptbo.org

**EFS of Simcoe County**

102 Maple Avenue  
Barrie, ON L4N 1S4  
**Tel:** (705) 725-0613  
**Fax:** (705) 725-0636  
**Email:** tracyw@elizabethfrysociety.com  
**Web site:** www.elizabethfrysociety.com

**EFS of Northwestern Ontario**

217 Algoma Street South  
Thunder Bay, ON P7B 3C3  
**Tel:** (807) 623-1319  
**Fax:** (807) 684-0894  
**Web site:** www.elizabethfrynwo.org

**EFS of Sudbury**

204 Elm Street West  
Sudbury, ON P3C 1V3  
**Tel:** (705) 673-1364  
**Fax:** (705) 673-2159  
**Email:** info@efrysudbury.com

**EFS of Ottawa**

309-211 Bronson Avenue  
Ottawa, ON K1R 6H5  
**Tel:** 1-800-611-4755  
**Fax:** (613) 237-8312  
**Email:** bryonie.baxter@efryottawa.com  
**Web site:** www.efryottawa.com

**The Council of Elizabeth Fry Societies of Ontario (CEFSO)**

c/o

**Canadian Association of Elizabeth Fry Societies (CAEFS)**

151 Slater Street, #701  
Ottawa, ON K1P 5H3  
**Toll-Free:** 1-800-637-4606  
**Collect:** 613-238-2422  
**E-mail:** caefs@web.ca  
**Web site:** www.caefs.ca

Elizabeth Fry Societies in Ontario who are NOT members of Council are listed below:

**EFS of Peel Halton**

24 Queen Street East, Suite LL-01

Brampton, ON L6V 1A3

**Tel:** (905) 459-1315

**Fax:** (905) 459-1322

**Email:** [efry@efrypeelhalton.ca](mailto:efry@efrypeelhalton.ca)

**Web site:** [www.efrypeelhalton.ca](http://www.efrypeelhalton.ca)

**EFS of Kingston**

***NOT A MEMBER OF CAEFS***

127 Charles Street

Kingston, ON K7K 1V8

**Tel:** (613) 544-1744

**Toll Free:** 1-888-560-3379

**Fax:** (613) 544-0676

**Elizabeth Fry Society of Toronto**

215 Wellesley Street East

Toronto, ON M4X 1G1

**Tel:** (416) 924-3708

**Toll Free:** 1-855-924-3708

**Fax:** (416) 924-3367

**Email:** [info@efrytoronto.org](mailto:info@efrytoronto.org)

**Web site:** [www.efrytoronto.org](http://www.efrytoronto.org)

## NOTES



## NOTES

