CAEFS
Canadian Association of Elizabeth Fry Societies

Human Rights in Action: In Prison

A Handbook for Women and Gender-Diverse People in Federal Prison in Canada
by the Canadian Association of Elizabeth Fry Societies

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INTRODUCTION

Hello and welcome to the Human Rights in Action handbook! We are so glad you have found it.

This handbook is designed to give you the tools and resources to defend and advocate for your rights while you are federally incarcerated. It is important to remember that as an incarcerated person, you still have rights and must be treated with dignity. This handbook is written specifically for people in prison, but we hope that advocates, lawyers, and other allies will also find it useful in their work.

This handbook was initially developed through the leadership of Senator Kim Pate, with the help of current and former federally incarcerated women, along with prison law students at Dalhousie University and the University of Ottawa and Regional Advocates with the Canadian Association of Elizabeth Fry Societies (CAEFS). Aspects of the original handbook remain, but the version you are reading now was updated by staff at the Canadian Association of Elizabeth Fry Societies between 2020 and 2021.

Below are a few things to take note of before you continue reading:

Word Choice

The Word "Offender": We understand that the way that people and situations are talked about have real implications. You will notice that despite the word "offender" being an official term in legislation, CAEFS will not use it. We maintain that this term is discriminatory and harms people in prison, implying inherent and ongoing deviance. CAEFS is working diligently in the community to raise awareness about the harmful nature and history of the use of this term. Throughout this handbook, you will notice people centered language being used at all times except when we are directly quoting law or policy.

Gendered Language: We believe that the rights of all people in prison must be protected, but this handbook is designed specifically for women and gender-diverse people incarcerated in federal prisons. We will often refer to "prisons designated for women" or "prisons designated for men." We use this

language because we recognize that so-called “women’s prisons” not only imprison women (inclusive of trans women) but also imprison trans men, non-binary, and Two-Spirit people whose gender identity may not fit within colonial understandings of gender. Similiary, not everyone in so-called “men’s prisons” are men. Prisons designated for men also imprison trans women, non-binary people, and Two-Spirit people.

Prisons, Penitentiaries, and Jails: In this resource and beyond, CAEFS uses the word “prison,” “federal prison” and “penitentiary” interchangeably. If you read the legislation, the word that is used is “penitentiary.” This book does not go into detail regarding the rights of provincially incarcerated people, but when we do touch on this subject, we call the places where they are incarcerated “jails.”

End Notes

When referencing information from other sources (like laws, reports, and websites), you will see a small number next to the information. It will look like this.[1] Look to the end of the section you are reading to find the corresponding number; there, you will find the source referenced and where you can find it. When you see the words “same as above.” it means that the referenced source is the same as the one listed above. You can use these sources to read more about any of the issues or topics we write about in more detail.

If you have any suggestions, comments, or questions for us – do not hesitate to be in touch.

Canadian Association of Elizabeth Fry Societies: 1–800–637–4606

This publication contains general information only.
Each situation is unique. Law and policy can also change.
If you have a legal problem, contact your lawyer or
CAEFS for support in finding one.

1 This is where the title and other information about the source would be listed.

1 ESTABLISHING YOUR RIGHTS

1.0: Introduction – The Law in Canada

As a person in Canada – whether you are a Canadian citizen or not – you still have rights that are established through law.

In Canada, laws that protect your rights come from different sources: the Canadian Constitution (including The Charter), legislation (also known as "acts" or "statutes"), and case law.

The **Constitution** is the highest law in Canada and lays out the basic rules about how the country runs and operates and what laws can be made.[2] The Constitution also includes the *Canadian Charter of Rights and Freedoms* ("The Charter").[3]

Legislation, also known as "statutes" or "acts" are laws created by the government. There is provincial and federal (Canada-wide) legislation. The *Corrections and Conditional Release Act* and the *Indian Act* are two examples of federal legislation.[4]

Case law includes past legal decisions made by judges in court cases. Case law comes from all levels of courts in Canada.

This chapter will focus on describing how your rights are established through law and take a closer look at some of the laws that are most relevant to you.

We will also cover helpful policies, commissions, and reports that can help you support your legal rights. While these policies, commissions, and reports do not establish your rights on their own, they are useful guidelines that the government should follow. They are useful to help you understand what the government is considering and referencing when they make decisions about your conditions of confinement. We will also refer to these documents in the following chapter on protecting and defending your rights.

REFERENCES

2 *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix II, No 5; *Constitution Act, 1982*, s 35, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

3 *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 [*Charter*].

4 *Corrections and Conditional Release Act*, SC 1992, c 20 [*CCRA*]; *Indian Act*, RSC 1985, c I-5.

1.1: Your Charter Rights

The *Canadian Charter of Rights and Freedoms* ("the Charter")

We will start by discussing the Charter because, as part of the Canadian Constitution, it is the most important law we have in Canada. This means that all other laws in Canada must follow the principles laid out in the Charter. If laws are not in line with the Charter, they can be challenged in court.

Every person in Canada has the rights and freedoms that are described in the Charter. However, sometimes these rights and freedoms can be limited to protect other rights or important national values. Some Charter rights are also only given to Canadian citizens, like the right to vote (section 3) and the right to enter, remain in, and leave Canada (section 6).

The Charter protects the political and civil rights of people in Canada from the policies and actions of all levels of government – including police and correctional services. However, it is important to note that **the Charter only applies to government actions, not individuals or private businesses.**

Specifically, the Charter protects your Fundamental Freedoms, Democratic Rights, Mobility Rights, Legal Rights, Equality Rights, and Official Language Rights. **The Charter applies to everyone, regardless of whether they are in a provincial/territorial or federal prison.**

Below we have included a section from the Department of Justice website that summarizes these rights and freedoms. We also point out several rights that are especially important for you to understand as an incarcerated person.

Section 2 of the Charter establishes that **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 of the Charter establishes that **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 of the Charter establishes that **everyone has the right to be secure against unreasonable search or seizure.**

Section 9 of the Charter establishes that **everyone has the right not to be arbitrarily detained or imprisoned.**

Section 10 of the Charter establishes that **everyone has the right on arrest or detention:**

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

Section 12 of the Charter establishes that **everyone has the right not to be subjected to any cruel and unusual treatment or punishment.**

Section 15 of the Charter establishes that **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**, specifically without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Summary of the rights included in the *Canadian Charter of Rights and Freedoms*[5]

MOBILITY RIGHTS

Canadian citizens have the right to enter, remain in, and leave Canada.

Canadian citizens and permanent residents have the right to live or seek work anywhere in Canada. Governments in Canada can't discriminate based on what province someone used to live or currently lives in.

However, laws can set certain rules for when people are able to get social, health and welfare benefits. For example, you may have to live in a particular province for a certain length of time before getting health benefits from that province. Also, provinces with

an employment rate below the national average may create programs that are only available to its own socially and economically disadvantaged residents. These programs encourage the residents to stay in the province and contribute to the workforce.

EQUALITY RIGHTS

Equality rights are at the core of the Charter. They are intended to ensure that everyone is treated with the same respect, dignity and consideration (i.e., without discrimination), regardless of personal characteristics such as race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability, sexual orientation, residency, marital status or citizenship.

As a result, everyone should be treated the same under the law. Everyone is also entitled to the same benefits provided by laws or government policies. However, the Charter does not require the government to always treat people in exactly the same way. Sometimes protecting equality rights means that we must adapt rules or standards to take account of people's differences. An example of this would be allowing people to observe different religious holidays without losing their job.

Governments can also promote equality by passing laws or creating programs that aim to improve the conditions of people who have been disadvantaged because of the personal characteristics listed above. For example, governments can create affirmative action programs targeted at increasing employment opportunities for persons with disabilities.

FUNDAMENTAL FREEDOMS

Everyone in Canada is free to practise any religion or no religion at all. We are also free to express religious beliefs through prayer or by wearing religious clothing for example. However, the Charter also ensures that others also have the right to express their religious beliefs in public.

We're free to think our own thoughts, speak our minds, listen to views of others and express our opinions in creative ways. We're also free to meet with anyone we wish and participate in peaceful demonstrations. This includes the right to protest against a government action or institution.

However, these freedoms are not unlimited. There may be limits on how you express your religious beliefs if your way of doing so would infringe on the rights of others or undermine complex public programs and policies. For example, you may have religious reasons to object having your photo taken for your driver's license, but this requirement may be linked to a need to stop others from unlawfully using your identity. In addition, the Charter does not protect expression such as hate speech that involves threats of violence or that takes the form of violence.

The media also have certain fundamental freedoms and are free to print and broadcast news and other information. The government can only limit what the media prints for justifiable reasons set out in law. For example, a magazine cannot print slander, which is an untrue statement about a person that may hurt their reputation.

DEMOCRATIC RIGHTS

Every Canadian citizen has the right to vote in elections and to run for public office themselves. There are certain exceptions. For example, people must be 18 years old or older in order to vote.

Our elected governments cannot hold power for an unlimited amount of time. The Charter requires governments to call an election at least once every five years. An election could be delayed, however, during a national emergency, like a war. In this case, two-thirds of the members of the House of Commons or, the legislative assembly in the case of provinces or territories, must agree to delay the election.

The Charter makes it clear that elected representatives of legislative assemblies must sit at least once a year. This holds Parliament and all other legislatures responsible for their actions.

LEGAL RIGHTS

Legal rights include the right to be secure against unreasonable search and seizure. The Charter protects everyone's reasonable expectation to privacy. This means that no one can search you, take away your personal belongings or access your personal information without clear legal reasons. Authorities acting on behalf of the government, such as the police, must carry out their duties in a fair and reasonable way. For example, they cannot enter private property or take things without good reason. Police are required to get a warrant from a judge before searching someone's home.

Interactions with the Justice System

The Charter sets out rights that deal with the interaction between the justice system and individuals. These rights ensure that individuals are treated fairly at every stage of the justice process. This is especially true if an individual is charged with a criminal offence.

Protection Against Unreasonable Laws

The Charter protects everyone against unreasonable laws that could lead to imprisonment or harm their physical safety. The law may still comply with the Charter if it is consistent with a basic set of values. For example, there must be a rational link between the law's purpose and its effect on people's liberty. Also, laws should not have a severe impact on people's rights to life, liberty, or security of the person.

Protection Against Arrest Without Good Reason

The Charter also says law enforcement agencies cannot take actions against individuals that are random or not backed by good reasons. A police officer, for example, must have reasonable grounds to believe you have committed a crime and must tell you why you are being arrested and detained. You also have the right to consult a lawyer without delay and to be informed of this right. Finally, you have the right to have a court decide whether this detention is lawful. If you believe your detention is not legal, the Charter protects your right to challenge it.

Rights After Arrest

If you are charged with an offence under federal or provincial law, you have the right to:

- be told quickly of the offence you are charged with;
- be tried within a reasonable amount of time;
- choose not to testify at your own trial;
- be presumed innocent until proven guilty beyond a reasonable doubt in a fair and public hearing by an independent and unbiased tribunal;
- only be denied bail with reasonable cause;
- be tried by a jury for serious charges;
- be convicted only for an act or omission that was a crime at the time it was committed;
- only be tried or punished once for an offence; and
- receive the lesser punishment if the punishment for the crime changes between the time it was committed and the time of sentencing.

Protection Against Cruel and Unusual Punishment

In addition, the Charter protects everyone from cruel and unusual punishment. This includes torture and excessive or abusive use of force by law enforcement officials. Also, sentences of imprisonment must match the seriousness of the crime committed. For example, an extremely long prison sentence is not appropriate for a very minor crime.

Rights in Court

The Charter offers certain protections if you are accused of a crime and must go to court. This includes your right to a quick and reasonably speedy trial. This trial must be fair and done by an unbiased court that assumes your innocence until you are proven guilty. You are also entitled to an interpreter during court proceedings if you do not understand the language or if you are hearing impaired.

Anyone who is a witness in a trial has the right to not have incriminating evidence used against them in later proceedings. For example, if you admit to a crime while acting as a witness in court at someone else's trial, the police cannot use it to prove your guilt in

court later. Perjury, which is lying during legal proceedings, is the one exception to this rule.

The *Youth Criminal Justice Act* protects people under the age of 18. For more information on this act, check out this guide to the ***Youth Criminal Justice Act.***

OFFICIAL LANGUAGE RIGHTS

The Charter establishes that English and French are the official languages of the country and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada [...] The Charter establishes that everyone has the right to use English or French in any debates and other proceedings of Parliament. The statutes, records and journals of Parliament must be printed and published in both languages, and both language versions are equally authoritative.

Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

Any member of the public also has the right to communicate with and receive services in English or French from any head office of an institution of Parliament or Government of Canada. They also have the same right to communicate in English or French at any other office of any such institution where there is significant demands for communications with and services from that office in such language; or where due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Similar rights apply in New Brunswick, the only officially bilingual province in Canada. In fact, members of the public in New Brunswick have the right to communicate and obtain services in either English or French from any office of an institution of the legislature or Government of New Brunswick. The English and French linguistic communities in New Brunswick also have equality of status and equal rights and privileges. This includes the right to distinct educational institutions and cultural institutions that preserve and promote those communities.

Minority Language and Education Rights

Every province and territory has official language minority communities (French-speaking communities outside Quebec and English-speaking minorities in Quebec). Section 23 of the Charter guarantees minority language educational rights to French-speaking communities outside Quebec, and to English-speaking minorities in Quebec. It applies to all provinces and territories.

Canadian citizens living outside of Quebec have the right to send their children to

French schools if any one of the following apply:

- their mother tongue is French;
- they attended French primary and secondary schools in Canada; or
- they have a child who has attended, or is attending, French primary or secondary schools in Canada.

Canadian citizens living in Quebec have the right to send their children to English schools if any one of the following apply:

- they themselves attended English primary and secondary schools in Canada; or
- they have a child who has attended or is attending English primary or secondary schools in Canada.

This right to minority-language instruction applies where there's a large enough number of people to justify it.

REFERENCES

5 "Guide to the Canadian Charter of Rights and Freedoms" (last modified 8 June 2020), online: *Government of Canada* <www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>.

1.2: Your Human Rights in Canada

Your human rights in Canada are protected by laws made by federal, provincial, and territorial governments.

Federal: The Canadian Human Rights Act[6]

The *Canadian Human Rights Act* protects all people in Canada from harassment or discrimination based on their race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and/or conviction for which a pardon has been granted.[7] These reasons for discrimination are also called "grounds of discrimination." The Act stresses that all people should have equal opportunity to live the lives "that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society," without being prevented or discriminated against based on any of the listed grounds.[8]

In June 2017, the *Canadian Human Rights Act* was amended to include "gender identity and gender expression" as prohibited grounds of discrimination.[9] This addition makes the rights of transgender and gender diverse people in Canada explicitly protected under the law.

The Correctional Service of Canada (CSC) is required to follow the *Canadian Human Rights Act*.

If, as a person in a federal prison, you feel that any of the rights mentioned above are being infringed upon, then you can file a complaint with the Canadian Human Rights Commission. We will discuss how to do this in Chapter 3.2.

Provincial and Territorial Human Rights Acts

The human rights laws in provinces and territories are like the *Canadian Human Rights Act,* but they protect people from discrimination in areas of the law that fall under provincial and territorial jurisdiction – like education, housing, and most workplaces.

For incarcerated people, provincial/territorial human rights laws apply to those who are serving their sentence in provincial and territorial jails. For example, if you are in an Ontario prison, serving a sentence of less than 2 years, the Ontario *Human Rights Code* would apply to you.[10]

For those in federal prisons, the *Canadian Human Rights Act* is the legislation that applies.

What is a Human Rights Violation?

What is discrimination?

Discrimination is an action or a decision that treats someone – or a group of people – unfairly for reasons (grounds) protected under the *Canadian Human Rights Act (CHRA),* such as their race, sexual orientation, religion, and gender-identity / expression.

What is harassment?

The Canadian Human Rights Commission describes harassment as a form of discrimination that includes "any unwanted physical or verbal behaviour that offends or humiliates you. Generally, harassment is a behaviour that persists over time."[11] Examples of harassment are when someone makes unwelcome physical contact with you, or when someone makes unwelcome remarks, jokes, or threats about your race, religion, gender identity or expression, age, disability or any of the grounds of discrimination.

Am I experiencing discrimination?

Sometimes, incidents or treatment might feel wrong and be unacceptable to you but may not be considered discrimination under the Canadian Human Rights Act (CHRA). This could include not getting along with someone, or not agreeing with someone else's decisions, values, or morals.

Discrimination might be taking place if you are being treated worse or differently than other people based on one or more of the grounds of discrimination under the *Canadian Human Rights Act*. For you to prove a human rights violation, you need to show an established connection between the treatment you received and one of the grounds of discrimination.

Discrimination can be direct (comments or practices that clearly and overtly exclude or harm people based on a protected ground, such as a "no couples rule"). Or, discrimination can be indirect. This is called "adverse differential treatment" in the CHRA. Adverse differential discrimination occurs when a policy, rule or practice appears to treat everyone equally, but actually has a negative effect on a protected group. An example of this may a lack of culturally diverse products on canteen lists, or practices that are harder on aging populations or people with mobility issues (such as having to walk up stairs to get to a program, and there is not elevator access).

Discrimination is not the result of whether anyone, or any practice meant to treat you badly or not. With CSC, the discriminatory treatment could be a direct result of something CSC does, or it could happen as an indirect consequence of a decision CSC makes, or a policy that they have in place.

Examples of what might be considered discrimination:

- You are being harassed by someone in prison or someone who works for CSC based on one of the grounds listed above.
- You live with a physical or mental disability and CSC is not doing their duty to accommodate your disability to make sure you can access the same services as other people who do not have your disability – this could be the result of inadequate facilities or policies. Note that mental health issues and addiction can also be considered a disability under the CHRA.
- Something is impacting everyone in the prison, but the effects on you are worse because of one of the grounds of discrimination.
- You are treated badly or being retaliated against for filing a complaint with the Canadian Human Rights Commission.

REFERENCES

6 *Canadian Human Rights Act*, RSC 1985, c H-6.

7 Same as above, s 3(1).

8 Same as above, s 2.

9 Bill C-16, *An Act to amend the Canadian Human Rights Act and the Criminal Code*, 1st Sess, 42nd Parl, 2017, cls 1-3(1) (assented to 19 June 2017), SC 2017, c 13.

10 *Human Rights Code*, RSO 1990, c H.19.

11 "What is Harassment?" (last modified 5 November 2020), online: *Canadian Human Rights Commission* <www.chrc-ccdp.gc.ca/en/about-human-rights/what-harassment>.

1.3: Your Rights in Prison Law

In Canada, both the federal and the provincial/territorial governments share responsibility for the "correctional" system: the **federal government** is responsible for people who are convicted of a criminal offence with a sentence of **two or more years**. **Provincial or territorial governments** are responsible for people whose sentences are **less than two years.**

Given the scope of this handbook, we will be focusing on your rights within the federal legal framework.

The Correctional Service of Canada (CSC) and the Federal Ministry of Public Safety are responsible for the federal "corrections" system. The documents that outline the legal framework used by the CSC include the ***Corrections and Conditional Release Act*** **(***CCRA***),** the ***Corrections and Conditional Release Regulations*** **(CCRR),** and the **Commissioner's Directives (CDs).**

The *Corrections and Conditional Release Act*

An act is a form of law that can give the authority to make regulations. The *Corrections and Conditional Release Act*, or *CCRA*, guides the day-to-day work of CSC. It also establishes the **Office of the Correctional Investigator.**

The *CCRA* states that the purpose of the federal correctional system is "to contribute to the maintenance of a just, peaceful, and safe society by

a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community."[12]

The *CCRA* addresses matters such as "correctional" planning, placements and transfers, security classification, search and seizure, living conditions, programming, health care, grievance and complaints processes, and types of releases.[13]

The *CCRA* also specifies that you, as an incarcerated person, have certain rights.

Section 4(d) of the *CCRA* specifically states that people in prison **"retain the rights of all members of society, except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted."** [14] Section 4(g) goes on to state that the CSC must be guided by the principle that "correctional policies, programs, and practices respect gender, ethnic, cultural, religious and linguistic differences, sexual orientation and gender identity and expression, and are responsive to the special needs of women, Indigenous persons, visible minorities, persons requiring mental health care and other groups."[15] In a 2018 Supreme Court of Canada Case called *Ewert v Canada*, the Court stated that section 4(g) of the *CCRA* requires CSC to "pursue substantive equality" for the groups that are identified in section 4(g).[16]

In particular, the court stressed that CSC must "ensure that its practices, however neutral they may appear to be, do not discriminate against Indigenous persons," and that CSC must account "for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views."[17]

However, the *CCRA* also lays out what rights are removed or restricted because you are incarcerated. An example of this is freedom of movement or freedom of assembly.[18]

Section 96 of the *CCRA* gives authority to the Canadian Government to make regulations related to corrections and conditional releases, as well as the detention of people.[19] These regulations are called the Corrections and Conditional Release Regulations (the CCRR).[20] The CCRR gives directions about how CSC needs to carry out their responsibilities under the *CCRA*.

One important provision for many of the people who will access this handbook is section 77 of the *CCRA*. This provision requires CSC to provide programming "designed particularly to address the needs of female offenders."[21]

Commissioner's Directives (CDs)

Sections 97 and 98 of the *CCRA* state that the Commissioner of CSC can create rules for how CSC is run and how the *CCRA* and the CCRR should be applied – these rules are called "Commissioner's Directives" – or CDs.[22] Commissioner's

Directives set out:

- the procedures for how CSC staff should follow the legal framework of federal corrections;
- the responsibilities of CSC staff and prison management; and
- indicators on how CSC will be evaluated on their performance.

All CDs must align with laws set out in the *CCRA*, as well as the *Charter of Rights and Freedoms*.

A complete collection of CDs will be made available to you on institutional computers. There are many CDs, and some are more relevant to your experience of incarceration than others. Here are some of the CDs that come up the most often in our advocacy work, and a brief description of what they cover: they cover:

- **CD 081 Offender Complaints and Grievances:** Procedures for complaints and grievances. From timeframes, group complaints and/or grievances to corrective actions and alternative legal remedies.
- **CD 352 Inmate Clothing Entitlements:** Clothing and personal hygiene items, including special occupational clothing that are issued by CSC.
- **CD 559 Visits**: The process for visits, including eligibility and refusal or suspension of visits.
- **CD 566-7 Searching of Offenders**: Procedures for searches, including searches of Aboriginal items, frisk searches, strip searches, body cavity search, dry cell, etc.
- **CD 566-12 Personal Property of Offenders:** Procedures for authorized personal property, such as the dollar value, type of property, and the procedures for lost or damaged personal property, etc.
- **CD 567, 567-1, 567-4 Use of Force:** Procedures established for the safe use of force, including the use of force on pregnant women, for health purposes, mandatory video recording, etc.
- **CD 568-5 Management of Seized Items:** Procedures for seized items, return or forfeiture of seized items, and disposal of not-seized items.

- **CD 577 Staff Protocol in Women Offender Institutions:** Procedures to ensure that the dignity and privacy of women are respected, from security patrols and cells equipped with cameras, to health services and management of emergencies and security incidents.
- **CD 580 Discipline of Inmates:** Procedures about disciplinary intervention and rules, including informal resolutions, category of offences, hearings, and presentation of evidence.
- **CD 702 Aboriginal Offenders:** Procedures to respond to specific needs of Indigenous people.
- **CD 705-7 Security Classification and Penitentiary Placement:** Procedures to determine security classification.
- **CD 710-6 Review of Inmate Security Classification:** Procedures on security classification review and details on review timeframe.
- **CD 730 Offender Program Assignments and Inmate Payments:** Outlines parameters of program assignments and payments. From program assignments and pay levels, etc.
- **CD 767 Ethnocultural Offenders Services and Interventions:** Procedures to ensure the specific needs and cultural interests of ethnocultural persons are respected.
- **CD 800 Health Services:** Procedures for efficient, effective health services; health services delivery, medical emergency, medical care for pregnant women, etc.

While not technically a CD, Interim Policy Bulletin (IPB) 584 is – at the time of writing – the key policy document regarding the rights of gender-diverse people in prison in relation to their gender-identity and expression. This bulletin also overrides some content from a variety of the CDs above, such as 352, 566-7 and 800. A new CD is in development and will override this IPB when it is released. If you have questions, you are welcome to contact CAEFS. For more details on policies and procedures, reference the “Inmate Handbook” that should have been provided to you by the prison.

REFERENCES

12 *CCRA*, s 3.

13 Same as above, ss 15.1, 28, 29.1, 46, 68, 76, 85, 90, 92.

14 Same as above, s 4(d).

15 Same as above, s 4(g).

16 *Ewert v Canada*, 2018 SCC 30 at para 53.

17 Same as above at paras 54, 58.

18 *CCRA*, ss 37.91, 73.

19 Same as above, s 96.

20 *Corrections and Conditional Release Regulations*, SOR/92-620.

21 *CCRA*, s 77(a).

22 *CCRA*, ss 97-98.

1.4 Your Rights in Case Law

Case law comes from legal decisions made by courts. When a judge decides a case – particularly on some issue that hasn't been before the courts to decide on in the past – the decision is called a "precedent." When a case sets a precedent, it means that when the same issue is at the center of a dispute in future cases, a court should decide in the same way as they did in the precedent-setting case.

There is a ranking of courts in Canada, and the Supreme Court of Canada is at the top. This means that when a precedent is set at the Supreme Court of Canada, all the lower courts should follow that decision.

In the following sections, we will reference some important case law that will help you better understand how your rights apply in practice. Referencing case law can also be helpful when filing grievances or complaints.

Case law is relevant to you because all court rulings must consider past court decisions on that matter. If a decision has been made on a case that shares similarities with your own, and a precedent has been set relating to it, then that precedent can impact – if not determine – the court's ruling in your case.

At its core, case law is important because it turns court rulings on legally complex or vague issues into law which can help legitimize and support your case.

The goal is to take as many steps forward as possible, without taking any steps back, so it is important to understand that a higher court will not hear cases that have not been heard by lower courts. Not following the proper process can result in avoidable delays, or your grievance / appeal not being heard by a judge.

1.5 Your Rights as an Indigenous Person

The over-incarceration of Indigenous people, particularly women and gender-diverse people – including Two-Spirit people – can only be fully understood through an understanding of colonization, which is built into Canada's government structures and political systems.

It is CAEFS position that the makeup of the prison system is a clear reflection of the Government of Canada's priorities, and of its history of politically, socially, economically, and geographically alienating Indigenous peoples from their traditional lands, territories, and cultural practices.

Canada's justice system disproportionately criminalizes Indigenous women and gender-diverse people for the social injustices they experienced and continue to experience because of this alienation. The justice system, as it exists now, does not seek to address or change the system where these injustices have developed.

As an Indigenous person in Canada, you have rights and freedoms protected by international human rights laws. Even though the Canadian Government has been slow to recognize and protect these rights, it does not mean they do not exist. The expanding recognition of these rights and freedoms today speaks to the strong, resilient, and persistent voices of Indigenous people and their legacy of challenging discriminatory and unjust laws.

Section 718.2 of the *Criminal Code* (Gladue and Ipeelee Decisions)

When an Indigenous person is charged with a crime, the judge must consider what is referred to as the Gladue factors found in section 718.2 of the Criminal Code. Considering these factors are a way a judge can account for the unique circumstances and experiences of Indigenous peoples in sentencing. These unique circumstances include the impact that colonization has – and continues to have – on you, your family, and community. These challenges include racism, loss of language, removal from land, Indian residential schools, and foster care. These challenges together are often referred to as "Gladue factors."

If you had a Gladue report at your sentencing, this report should be used in your Correctional Planning. The report will help you access Indigenous programming and the Healing Pathway program. In addition, your Case Management Team

is required to take into consideration all the information that is in the report when preparing, updating or changing any information or recommendations as mitigating factors.

If you did not have a Gladue report done at the time of your sentencing, you can still request one post-sentencing. For support in making this request, or for more information, we suggest you reach out to your community, or you can contact a lawyer and/or CAEFS for support.

Alternatively, you can ask that your parole officer incorporate a historical, cultural, and healing component to your correctional plan, which is commonly understood to be a "Gladue-like" section. This is not the same as having a Gladue report because, unless explicitly trained, parole officers do not have the training to develop an official Gladue report.

Gladue factors should be considered at every step of the release process, including Escorted Temporary Absences, Unescorted Temporary Absences, and other forms of conditional release. They should also be considered in situations where your liberties are being further restricted – like if you are being placed in a Structured Intervention Unit.

Gladue factors should not be used to impact you in a negative way, including during classification. If you feel that your Gladue report has been used to classify you at a higher security level or for any other negative reason, you may consider contacting CAEFS or your lawyer for support in advocating for reclassification.

1.6: Your Rights in International Law

Canada is a member country (otherwise referred to as a state) of the United Nations (UN). Through treaties and other sets of rules, the UN supports countries who are members to put international human rights standards to protect all people, including people in prison, in place. When Canada signs an international treaty, it means that Canada supports that treaty and what it includes.

While International treaties are important, they are not enforceable in Canadian courts. This means that courts don't have to follow treaties. **Treaties can still be persuasive, and we can turn to them for guidance on how Canadian laws should be interpreted and applied to make sure they don't contradict each other**.

Some of the international agreements that Canada has signed on to and that are especially relevant to you as an incarcerated person are:

- **The Universal Declaration of Human Rights (UDHR):**[23] By signing the Universal Declaration of Human Rights, Canada recognized that all human beings are entitled to basic unalienable rights and fundamental freedoms. These universal rights and freedoms belong equally to every person and include the right to dignity and justice for all regardless of nationality, place of residence, gender, national or ethnic origin, color, religion, language, or any other status.[24]

- **The International Covenant on Civil and Political Rights (ICCPR):**[25] By signing the United Nation's (UN) International Covenant on Civil and Political Rights, Canada agreed to upholding the UN's international standard of political and civil rights. These rights, which are often referred to as human rights, range from the right to self-determination to the right of all persons to be tried without delay. The sections most referenced within the context of incarceration are the right of freedom from torture (Article 7), the right of liberty and security of person (Article 9), and the rights of detainees (Article 10).[26]

- **The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**:[27] By signing the International Convention on the Elimination of All Forms of Racial Discrimination, Canada agreed to enforce and protect an individual's right to live free from racial discrimination. The

rights enforced by this Convention are listed in articles 2 and 5 of the CERD respectively.[28] Article 2 of CERD discusses the fundamental obligations of State parties to eliminate racial discrimination, while article 5 lists the individual freedoms to be enjoyed by each and every person regardless of race, colour, or national or ethnic origin.

- **The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT):**[29] By signing the CAT, Canada – as a member state – is accountable for stopping the practice of torture and other cruel, inhuman, or degrading treatment or punishment throughout the world. This convention also defines what "torture" is.[30]

- **The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules):**[31] These rules focus on nine thematic areas, including prison health care, restrictions, discipline and sanctions, restraints, cell searches, contact with the outside world, prisoner complaints, and investigations and inspections. One of the most important revisions to the Mandela Rules was in the practice of discipline and solitary confinement. For the first time, solitary confinement is clearly defined, and strict limitations are placed on its use.[32]

- **The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules):**[33] These rules establish international guidelines for the treatment of incarcerated women. The rules provide guidance on appropriate healthcare, treating women humanely, preserving dignity during searches, protecting women from violence, and providing for prisoners" children. The rules also require special provisions to be made for mothers prior to admission into prison, so they can organize alternative childcare for children left outside.

REFERENCES

23 *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

24 Same as above, art 2.

25 *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

26 Same as above, arts 7, 9, 10.

27 *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

28 Same as above, arts 2, 5.

29 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

30 Same as above, art 1.

31 *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, GA Res 70/175, UNGAOR, 70th Sess, UN Doc A/RES/70/175 (2015).

32 Same as above, r 44.

33 *The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, GA Res 65/229, UNGAOR, 65th Sess, UN Doc A/RES/65/229 (2010).

1.7: Important Reports & Recommendations

There are several landmark reports, inquiries, and inquests that inform and reflect CSC's approach to incarcerating women and gender-diverse people, particularly in prisons designated for women. Below, we have outlined some of them, along with reasons why you might refer to them. While none of these reports are binding, meaning CSC does not *need* to follow them, they are often referred to in advocacy work and can be helpful tools in pushing for progress within CSC. We believe that as someone currently within this system you have a right to understand the history of corrections and the challenges faced by those who were incarcerated before you.

- **Creating Choices:**[34] The 1990 report entitled "Creating Choices" was the first of its kind in Canada as it was the first document to make open recommendations to CSC on their management of federally sentenced women. The report uses a women-centered approach to examine CSC's responsiveness to the unique needs of federally sentenced women, from the commencement of their sentence to their date of release. Unfortunately, this document does not take into account the unique experiences and needs of trans women or other gender diverse people. Creating Choices continues to be referenced today as a report foundational to women's rights in federal prisons and as a proponent of institutional change. The report outlines the five principles of women's corrections: empowerment, meaningful and responsible choices, respect and dignity, supportive environments, and shared responsibility.[35]

- **Final Report on the National Inquiry into Missing and Murdered Indigenous Women and Girls & Calls for Justice:**[36] This national inquiry seeks to address the disproportionate rates of missing and murdered Indigenous women and girls (MMIWG) in Canada. The national inquiry's two-volume final report "Reclaiming Power and Place" published in 2019 highlights through the stories of survivors and their families the fundamental responsibility of the federal government in upholding the rights of Indigenous women, girls, and Two Spirit people. The report also discusses the colonial context of violence committed against Indigenous women and girls, such as multigenerational and intergenerational trauma and marginalization in the form of poverty, insecure housing or homelessness and barriers to education, employment, health

care and cultural support. MMIGW has a separate section of its reporting dedicated entirely to "Calls to Justice" on behalf of Indigenous women, girls and 2SLGBTQQIA people.[37] Sections 14.1 to 14.13 of the Calls to Justice report specifically address CSC, and demand for CSC to evaluate, update and develop security classification tools that are sensitive to the nuances of Indigenous backgrounds and realities.[38]

- **The Truth and Reconciliation Commission and Calls to Action**: The Truth and Reconciliation Commission (TRC) was created following the Indian Residential Schools Settlement Agreement – a class action suit filed against the Government of Canada by survivors of Canada's residential school system. This settlement recognized the great harm residential schools inflicted upon Indigenous children and their communities and established both a monetary fund to financially aid survivors with recovery, and the Truth and Reconciliation Commission, a separate inquiry into the impacts of residential schools on Indigenous peoples and their communities.[39]

  The TRC spent six years travelling across the country documenting the experiences of survivors, their families, communities, and all those affected by the residential school system. Their testimonials were documented in a six-volume report published by the TRC, which includes 94 calls to action to address the social and economic inequities experienced by Indigenous people in Canada. The 94 calls to action include topics such as health, justice, language and culture, and child welfare. Of note are the following calls to action that address the experiences of Indigenous people, especially women, who are incarcerated:

  1. "30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so."[40]

  2. "32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences."[41]

  3. "34. We call upon the governments of Canada, the provinces, and

territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD)."[42]

4. "38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.[43]

To date, many of the 94 calls to action have not been acted upon.

- **Commission of Inquiry into Certain Events at the Prison for Women in Kingston (The Arbour Report):**[44] The Arbour Report followed an inquiry into certain events at the Prison for Women in April of 1994. The report included several recommendations on reforming the conditions of confinement in federal prisons designated for women, including:
  - appointing a Deputy Commissioner of Women;
  - draft protocols for staffing related to gender;
  - changes to the use of force and use of emergency response team protocol, including not to use male teams against people incarcerated in prisons designated for women;
  - provide legal counsel before consenting to a cavity search, and that cavity searches can only be done in appropriate medical environments by a female physician; and
  - permit all Indigenous women, regardless of security classification, to access the Healing Lodge. For women who are not incarcerated at a Healing Lodge ensure that they are provided with access to Elders, Indigenous staff, and culturally relevant programs. That they reduce sentences or give early release in situations where the experience of imprisonment was being more punitive than intended by the courts. That they restrict the use of segregation to 30 days at a time and implement stronger oversight in segregation.[45]

Some of these recommendations are now reflected in the Commissioner's Directives, but many have yet to be implemented.

- **Coroner's Inquest Touching the Death of Ashley Smith:** The inquest stated that CSC failed to provide an acceptable level of humane professional care and treatment to Ms. Smith while she was in custody. CSC prioritized their administrative needs, capacity issues, and put security needs over Ms. Smith's very real human needs. Ashley Smith required special care and CSC's efforts were determined to be inadequate and ineffective. The circumstances of Ashley's death were caused by larger systemic issues that existed within CSC and her death was found to be a homicide. These systemic issues contributed to the environment that permitted the individual failures to manifest themselves – with fatal consequences. These systemic concerns were well known to CSC at the time but were never addressed[46].

  The 104 recommendations made by the Jury in the Coroner's Inquest on the Death of Ashley Smith include, but are not limited to, the requirement for all women who are incarcerated to be assessed by a psychologist to determine whether any mental health issues and/or self-injurious behaviours exist within their first 72-hours in the prison; that a full range of effective therapeutic interventions are individualized to the needs of women who are incarcerated considering her self-identified needs, regardless of their security classification, status, or placement; and that CSC access community mental health services by developing partnerships with external mental health experts.[47]

  If you are not receiving adequate mental healthcare while incarcerated, referencing the Ashley Smith Inquest and the Coroner's Jury recommendations in your Request Form or while filing a grievance may help in accessing services by adding credibility to your position.

- **Reports from the Office of the Correctional Investigator:** The Office of Correctional Investigator (OCI) is mandated by *CCRA* as an Ombudsman for people serving federal time. The primary function of the Office is to investigate and bring resolution to individual complaints. The Office has a responsibility to review and make recommendations to CSC on their policies and procedures. The OCI often ties individual complaints to systemic issues to ensure these areas of concern are identified and appropriately addressed by CSC. The OCI publishes an annual report with recommendations to CSC.[48] These reports are important because investigations are largely based on the complaints received by the OCI from federally sentenced people. If you are to make a complaint

or pursue legal action against CSC, OCI reports demonstrate how individual issues and complaints are often caused by systemic issues. You can write to the OCI to request a copy of their reports, or contact a trusted support person, or a CAEFS regional/ peer advocate to research which reports may be useful to your grievance or legal action.

> “In a 2018 Supreme Court of Canada Case called *Ewert v Canada*, the Court stated that section 4(g) of the CCRA requires CSC to “pursue substantive equality” for the groups that are identified in section 4(g).
>
> In particular, the court stressed that CSC must “ensure that its practices, however neutral they may appear to be, do not discriminate against Indigenous persons,” and that CSC must account “for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views.”

REFERENCES

34 Canada, Task Force on Federally Sentenced Women, *Creating Choices: The Report of the Task Force on Federally Sentenced Women* (Ottawa: Correctional Service Canada, 1990).

35 Same as above at 77-82.

36 Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vols 1a and 1b, Catalogue Nos CP32-163/2-1-2019E-PDF and CP32-163/2-2-2019E-PDF (Vancouver: Privy Council Office, 2019).

37 Same as above at 167.

38 Same as above at 197-198.

39 Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, Catalogue No IR4-7/2015E-PDF (Ottawa: Truth and Reconciliation Commission of Canada, 2015) at 5-6.

40 Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action*, Catalogue No IR4-8/2015E-PDF (Ottawa: Truth and Reconciliation Commission of Canada, 2015) at 3.

41 Same as above.

42 Same as above at 4.

43 Same as above.

44 Canada, Commission of Inquiry into Certain Events at the Prison for Women in Kingston, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, by the Honourable Louise Arbour, Catalogue No JS42-73/1996E-PDF (Ottawa: Public Works and Government Services Canada, 1996) [*Arbour Report*].

45 Same as above at 251-59.

46 Correctional Service Canada, *Coroner's Inquest Touching the Death of Ashley Smith* (19 December 2013) online: <https://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml>.

47 Same as above, Jury Recommendations 3, 4, 7.

48 "Roles and Responsibilities" (last modified 16 September 2013), online: *Office of the Correctional Investigator* <https://www.oci-bec.gc.ca/cnt/roles-eng.aspx>.

2 UNDERSTANDING YOUR RIGHTS

2.0: Introduction

In this chapter – *Understanding Your Rights* – we will take the rights we described in Chapter 1 of this handbook and apply them to specific situations you may face or concerns that you may have while incarcerated at a federal prison.

More details on remedies and protecting your rights can be found in Chapter 3 of this handbook.

2.1: Your Security Classification and Placement

What is a security classification?

Security classification is the process CSC uses to assess your placement in a **minimum, medium,** or **maximum** security population.[49]

How is my security classification level decided?

Your initial classification – that means the first classification you are given when you arrive in prison – is determined by the score you receive on the Custody Rating Scale (CRS). This CRS score is calculated by the community parole officer and through clinical assessments.[50]

The assessment process is meant to determine the likelihood of you re-offending when released. It also assesses 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.

Classification assessments are usually based on:

- the seriousness of the offence and any outstanding charges against you;
- your behaviour while under sentence;

- social, criminal, and if applicable, “young offender” history;
- physical or mental illness;
- potential for violent behaviour; and,
- any continued involvement in criminal activities.[51]

How will my security classification impact me?

Your security classification determines the conditions under which you will serve your sentence, including where you will serve your sentence.

Except for the Okimaw Ochi Healing Lodge, all federal prisons designated for women are multi-level facilities. A multi-level facility is one that has minimum, medium, and maximum-security areas in one facility. This means that if you are in a prison designated for women, a different security classification may not change the prison you are assigned to, it may change where you are incarcerated in a specific prison.

If you are in a prison designated for men, a different security classification may result in an involuntary transfer to another prison that aligns with your security classification.

A higher security classification may make it more challenging to:

- be approved for a conditional release (see section on Conditional Release);
- access visits with your children and loved ones;
- access community programming;
- successfully apply for a work placement;
- access recreational programming in the prison; and
- spend time outside of your cell and/or participate in activities.

Can my classification change?

Yes. Changing your security classification requires special procedures according to CD 710-6.[52] For people incarcerated in prisons designated for women, this review is done through the Security Reclassification Scale for Women (SRSW), which is administered regularly.

SRSWs happen:

- Once a year for most people in prison.
- At least once every two years for people who have been classified at a maximum or medium security level. [53]

If you are Indigenous and are classified at a medium or maximum-security level, your clearance will be automatically reviewed within thirty days of completing a main program.[54] According to CSC, a main program is defined as: "nationally recognized correctional programs which include moderate intensity programs, high intensity programs, and hybrid programs. Main programs specifically address risk factors related to offending at intensity levels commensurate to offenders" risk and needs." [55]

If you are Indigenous and are participating in Pre-Pathways interventions or living in a Pathways unit, you will receive a security classification review at least every six months. This review will be completed within 30 days of the Pathways Progress Review Meeting.[56]

CSC is not required to complete either of the two former clearance reviews within 30 days if you are serving a life sentence for first or second-degree murder, or if you are convicted of a terrorism offence punishable by life, and you are currently classified as maximum security and have not had your first Security Classification Review. If either of these conditions apply to you, but you have the support of your Case Management Team (CMT) for review, then a review is still possible.[57]

CSC is also not required to do a Security Classification Review if you have a confirmed release date within 90 days.[58]

That being said, CSC can review your classification whenever they support a change. For example, CSC may do a security review prior to making a recommendation for conditional release.[59] You can also request a security reclassification by asking your CMT, but the final decision to proceed with this review will be up to the CMT.

What is over-classification and why does it happen?

As outlined in Chapter 1, according to the equality rights under the *Canadian Charter of Rights and Freedom,* the law does not allow discrimination against an

individual based on their race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.[60] CSC's security classification system has been criticized for discriminating against several protected groups including women, trans, non-binary, and Two Spirit People; Indigenous people; Black people; and people with disabilities.

What do I do if I believe that CSC has over-classified me?

If you feel that your classification is inappropriate, you may use the **CSC grievance process** to challenge your classification.[61] You can find guidance on how to file an effective grievance in Chapter 3, along with suggested next steps if you have exhausted the internal grievance process.

If you have completed the grievance process but do not get a solution that you are satisfied with, you can apply for **judicial review. More details about this process are available in Chapter 3 as well.** If you feel your security classification has been wrongfully increased, you can pursue a habeus corpus application. File an "inmate request" to meet with legal aid, or contact a lawyer immediately. Indicate that you would like to initiate a habeus corpus. This means that your body has been deprived of liberty without lawful grounds. Habeus corpus applications can take several months to be heard, so it is important you begin the process as soon as you are transfered. *(Note that you can also file a habeus corpus if transfered **anywhere** if you believe there was not legal justification to do so. See "**Involuntary Transfers**" page 63).*

Do I have the right to be placed in a prison that best aligns with my gender identity?

Yes – you have the right to be placed in a prison that most closely aligns with your gender identity. Bill C-16 amended the *Canadian Human Rights Act* by adding "gender identity or expression" as prohibited grounds of discrimination.

This means that your placement should not be based simply on your genitalia or the gender listed on your government documents, but your gender identity – which does not need to align with the sex you were assigned at birth. You do not need to have gender affirming surgery (top or bottom) to be placed in a prison that most closely aligns with your gender identity.

This is not to say that CSC always upholds this right. CSC's Interim Policy Bulletin 584

states that requests related to gender identity or expression can be denied because of "overriding health or safety concerns which cannot be resolved." [62]

Some people may choose to be placed in a prison that does not align with their gender identity for their own safety, to stay closer to family, or for variety of other personal reasons. For people whose gender does not fit within the colonial gender binary of "man" or "woman," the way that prisons have been divided based on gender can be challenging.

If CSC decides not to place you according to your preference, they must give you a written decision explaining the reasons.[63] If this occurs we suggest that you contact CAEFS or your lawyer for support.

Regardless of the prison that you are placed in, when you ask for accommodation on the basis of gender identity or expression, an individualized protocol should be developed. Note that a new Commissioner's Directive is said to be coming soon that will replace this Interim Policy and so some changes will likely follow. You can reach out to CAEFS or another trusted support for updates on this and how the new CD may impact you.

What is an Individualized Protocol?

Gender diverse people have the right to an individualized protocol that ensure that your needs, as they relate to your gender identity, are met. It is likely that you will need to ask to have this protocol made.

Your protocol might include things like your name and pronoun, whether male or female staff will do your searches, escorts, etc., and access to private showers and toilets. This protocol should be developed with you and in private, and then recorded in your file.

You can see Interim Policy 584 for more details on this, or contact CAEFS. Note that a new Commissioner's Directive is said to be coming soon that will replace this Interim Policy and so some changes will likely follow. You can reach out to CAEFS or another trusted support for updates on this and how the new CD may impact you.

REFERENCES

49 *CCRA*, s 30.

50 Correctional Service Canada, *Security Classification and Penitentiary Placement*, Commissioner's Directive No 705-7 (15 January 2018), online: <https://www.csc-scc.gc.ca/acts-and-regulations/705-7-cd-eng.shtml> [*CD 705-7*].

51 *CCRR*, s 17.

52 Correctional Service Canada, *Review of Inmate Security Classification*, Commissioner's Directive No 710-6, ss 12-16 (15 January 2018), online: <https://www.csc-scc.gc.ca/lois-et-reglements/710-6-cd-eng.shtml> [CD 710-6].

53 *Same as above*, s 7.

54 *Same as above,* s 8.

55 *Same as above*, Annex A, Definitions.

56 *Same as above*, s 9.

57 *Same as above*, ss 8-9.

58 *Same as above*, s 10.

59 *Same as above*, s 11.

60 *Charter*, s 15.

61 *CD 710-6*, s 5.

62 Correctional Service Canada, Interim Policy Bulletin 584 Bill C-16 (Gender Identity or Expression) (27 December 2017), online: https://www.csc-scc.gc.ca/policy-and-legislation/584-pb-en.shtml

63 Same as above.

2.2: Access to Information

What information must I share with CSC? Do I have the right not to share information?

As an incarcerated person, there are limits on your rights to privacy. According to the *Corrections and Conditional Release Act (CCRA)*, incarcerated people are not permitted to use the *Privacy Act or the Access to Information Act* to prevent CSC from obtaining information about their conviction, sentencing, or committal.[64] This legal access to information includes all court reports, recommendations, reasons, victim impact statements, or any other court documentation that is deemed relevant by CSC.[65]

With that being said, some federal laws concerning the right to privacy do apply to people in prison, so you can still decide how much you want to divulge or cooperate in information sharing with CSC.

When sharing information with CSC – be it a parole officer, mental health professional, or a correctional officer – remember that any information you share may be used in a way you may not expect and may have negative consequences for you.[66] So, there are some circumstances in which it may be desirable to exercise your right to not cooperate. An example of when you have the right not to cooperate is when someone requests information about your past actions during a standard assessment, like the Criminal Profile Report. This information you share in the report may be used in a way you may not expect and may have negative consequences for you, even if you were not convicted of a crime related to them. In the event that you find yourself in this situation, you may want to indicate that you do not believe that the information being requested is relevant to your current sentence and therefore do not feel that you must disclose the requested information.

If you disclose that relevant, official information exists that is not available through the courts (which is different from CSC requesting information independently), CSC must ask for your consent to release this information via a Consent for Disclosure of Personal Information (Inmate).[67] If you refuse to give consent, CSC will explore all legal options to obtain the information regardless. Because this information likely relates to your conviction, sentencing, or committal, CSC will likely legally acquire this information regardless of your consent due to the

provisions set out section 23 of the *CCRA*.[68]

Here is what this might look like in practice: Let's say that you are awaiting an appeal. CSC may request that you participate in supplementary assessments (for example, a Psychological Risk Assessment) as they develop your correctional plan. It is possible that your lawyer would advise you not to participate in these kinds of supplement assessments until after your appeal is decided because there is the possibility that your answers may be used against you. In this case, you would then tell the staff writing the report that your lawyer has advised you not to participate and request that this be clearly and prominently noted at the beginning of the document. If, on the contrary, a lawyer advises you to undergo the assessment, you should also tell that to the staff writing the report and ask them to note it at the top of the report.

What information must CSC share with me? Can CSC deny my request for information?

You or anyone with your permission (such as your lawyer) can access your files by submitting a request in writing to your parole officer. The information must be provided in accordance with the *Privacy Act*[69] and the *Access to Information Act.*[70] The Parole Officer will forward your written request for file information to the appropriate staff member.[71] Information that can be shared directly should be given to you as soon as practicable.[72] In practice, however, you will often need to submit an access to information request.

CSC formally has a 30-day period to give you information; however, if granting access in this time-period would "unreasonably interfere with the operation" of the prison, the time-period may be extended to 60 days.[73]

Under the *Privacy Act*, the warden may deny access to personal information relating to physical or mental health when reviewing this information would not be in your best interests.[74] Also, according to the *Privacy Act*, it is the warden who decides whether providing access to this information would be against your best interests and there is no suggestion that a physician's input should be sought in making this decision.

In all cases – whether medical or related to any other personal information – if CSC believes that giving you information about yourself would jeopardize either

the safety of individuals, the security of a penitentiary, or the conduct of any lawful investigation, it may withhold that information.[75]

Various Commissioner's Directives (CDs) tell us how much "reason" CSC must have to withhold the information you want. However, certain protections are offered in the *CCRA,* such as if a request in made, then you must be given access to the same information that would be disclosed under access and privacy legislation, including psychological information.[76]

The information that CSC generally believes should be shared with you is:

- information that you have provided;
- publicly available information;
- opinions expressed by CSC, other federal employees, members of the Parole Board of Canada (PBC), or contracted agency employees about your needs, attitudes, behaviours, etc., as long as there are no reasonable grounds to believe it would jeopardize the safety of any person; and
- locked documents in the Offender Management System (OMS).[77]

In some situations (for example, when preparing the Criminal Profile Report), CSC must provide at least the "gist" of police information held on you. They define "gist" as "the substance of the information and/or significant details." [78] It must be sufficiently detailed for you to know the case against you and give as much information as possible without disclosing information that can be withheld according to s.27(3) of the *CCRA*.[79]

CSC is legally obligated under subsections 27(1) and (2) of the *CCRA* to share information with you that it has requested from an external source (police department, your family, relatives, etc.).[80] CSC must state in its request that the information will be shared with you, unless it meets one of the following exceptions set out in subsecton 27(3) of the *CCRA*:

1. the information jeopardizes the safety of any person,
2. jeopardizes the security of a penitentiary, or
3. jeopardizes the conduct of any lawful investigation.[81]

If CSC claims the information meets one of the exceptions above, then your access to this information is restricted. In this type of situation, requesting for a "gist" of the information received from external sources would be appropriate. CSC's obligation to provide you with a "gist" falls under its "duty to act fairly." [82] More information about a "gist," and how to request a "gist," can be found in Annex C of CD 701.

You may also choose to submit an Access to Information request or make a complaint to the Privacy Commissioner. You can learn more about the Privacy Commissioner in Chapter 3 of this handbook.

Who else has access, or can request access, to my personal information?

CSC can release your information to the police, governments, the Parole Board of Canada, and courts.[83] CSC may give the police, governments, and the PBC "all information under its control that is relevant to release decision-making or to the supervision or surveillance" of an incarcerated person.[84] The *Privacy Act* offers little protection in this situation. CSC can also release your information to victims,[85] the general public,[86] and the media,[87] although these groups should only receive limited information.

To Police

- **Conditional Release:** If you are going out on a conditional release, the police in the destination jurisdiction (meaning the police in the place that you will be going) will be notified of unescorted temporary absences (UTAs), parole, and statutory release.[88]
- **Warrant Expiry:** At your warrant expiry, if it is believed that you pose a threat, CSC will "take all reasonable steps" to disclose all information to the police that is relevant to the perceived threat.[89]

To Victims and Other Impacted Parties

- **By Request:** If you have been convicted of a crime against someone, the victim can request information about you, including your name, offence, start date and length of sentence, and eligibility and review dates for temporary absences and parole.[90] More information may be released if the Commissioner

believes that the victim's interest outweighs your right to privacy, or if the Commissioner believes it will not negatively affect public safety.[91]

Additional information provided to the victim can include: your age, penitentiary name and location, transfer information, program information, disciplinary information, detention hearing dates, release dates, conditions attached to the conditional release, destination upon conditional release, and whether or not you are in custody, and, if not, the reason why not.[92] You will not be notified that information has been released to victims, and no victim contact information can be shared with you.

- **By Making a Complaint Against the Crown:** It may be possible for someone to obtain information about you even if you have not been convicted of a crime against a person. That is if they can prove that you harmed them or that they suffered physical or emotional damage as a result of something you did. In order to be successful, they would have had to make a complaint to the police or the Crown or be able to show that your actions caused them harm or damages. [93]

To the General Public

The general public can request the following information:

- an incarcerated person's name;
- the fact that a person is under federal jurisdiction;
- a person's current offence and the court that convicted them;
- the start date and length of a person's sentence;
- a person's eligibility dates for temporary absences or conditional release; and,
- the statutory release and warrant expiry dates.[94]

To the Media

CSC may respond to media requests for the same information as listed above in the section on requests from the public. CSC may also provide the media with any names of incarcerated people who have been victims of homicides, suicides, or serious assaults where criminal charges were laid.[95]

“An example of when you have the right not to cooperate is when someone requests information about your past actions during a standard assessment, like the Criminal Profile Report. This information you share in the report may be used in a way you may not expect and may have negative consequences for you, even if you were not convicted of a crime related to them. In the event that you find yourself in this situation, you may want to indicate that you do not believe that the information being requested is relevant to your current sentence and therefore do not feel that you must disclose the requested information.

Here is what this might look like in practice: Let’s say that you are awaiting an appeal. CSC may request that you participate in supplementary assessments (for example, a Psychological Risk Assessment) as they develop your correctional plan. It is possible that your lawyer would advise you not to participate in these kinds of supplement assessments until after your appeal is decided because there is the possibility that your answers may be used against you. In this case, you would then tell the staff writing the report that your lawyer has advised you not to participate and request that this be clearly and prominently noted at the beginning of the document. If, on the contrary, a lawyer advises you to undergo the assessment, you should also tell that to the staff writing the report and ask them to note it at the top of the report.”

Can CSC share information about my gender identity?

CSC is allowed to share information about your gender identity only with people directly involved in your care and only when relevant. You have a right to privacy and any conversations about your gender identity should be done in private.[96]

What do I do if I believe that my privacy has been breached?

If you believe that your privacy has been breached, you might consider filing a complaint with the privacy commissioner. More details on how to do this can be found in Chapter 3.

Information sharing regarding medical files and concerns

One key limitation on your privacy as an incarcerated person, when compared to someone who is not incarcerated, is the privacy you might expect in a patient / doctor relationship. For example, when you participate in psychological and psychiatric risk assessment assessments, these assessments are not considered confidential and will be shared with your Case Management Team. Therefore, you are not obligated to participate in the intake assessment. If you choose to not participate in the assessment CSC may see this as you not being willing to move forward with your correctional plan and they may characterize this as you not taking responsibility for the offence.

Outside of these kinds of assessments, your health information should remain confidential between you and the health professional except in need-to know circumstances related to risk or case management, such as if you pose a safety risk to yourself or those around you.[97] The level of detail shared by the health professional to CSC should be conducted on a case-by-case basis.[98] You should be notified of any health disclosure by the health professional to CSC staff unless doing so jeopardizes the safety of any person.[99]

What if some of the information CSC has about me is wrong?

According to the *CCRA*, CSC must take "all reasonable steps" to ensure that the information in your file is accurate, complete, and up to date.[100] However, there are no penalties for CSC if it does not meet this obligation, so the protection is limited. If you believe there is an error or omission in your file, you are entitled to ask for a

correction.[101]

You should request a file correction as soon as you become aware of inaccurate information. If you find the information in a document before it is "locked" on Offender Management System, you can ask your Institutional Parole Officer (IPO) to change it.

If your file is already locked (as is usually the case), you can ask for a file correction if CSC agrees that the document has an error.

CSC will only correct information:

- that is in a document or missing from a document created by CSC; and
- that is information proven to be untrue.

CSC will not correct information that comes to them from other people or organizations. For example, CSC will not correct information written by the RCMP, like a Report to Crown Counsel – even if information in that report was proven in your trial to be wrong. CSC will correct information that has been incorrectly quoted in a CSC document. CSC will not correct information that is someone's opinion. For example, CSC will not correct the opinion of your IPO that you are a risk to re-offend on release, or the opinion of an expert like a psychologist.

If your request for a correction is accepted, CSC must add the correct information to each document where the incorrect information appears. They will unlock the document that need correcting, correct the information, lock the document again and share it with you.

It is common for you to only find out about wrong information in your file when you are preparing for release, and so this wrong information may have been repeated many times and in many documents. If this happens to you, it is even more important to request a file correction.

How do I ask for a file correction?

Use the "Correction of Paperwork Form" or, if not available, the "Inmate Request Form."

- Write that you want to have file information corrected. Refer to *CCRA* section 24(2)(a).

- Identify the information that you want changed and where it is written in your file. Be specific about where the information is in your file.
- State what the correct information should be.
- Provide any information that will support your request. Refer to other documents that prove what you say is true. Quote from them and attach them to your Request Form.
- Make a copy for your own records.
- Your file correction should be completed within 30 days.

If your file correction is refused, you can submit a grievance and request that the grievance be attached (or appended) to your report. You can read more about the grievance process in Chapter 3 of this handbook.

EXAMPLE FILE CORRECTION REQUEST

I request that my file information be corrected, in accordance with s 24(2)(a) of the *CCRA* on (date).

My file currently states that I was criminally charged with trafficking.

On (date), I was found not guilty of trafficking. I am attaching a copy of my sentencing decision that proves I was not convicted of trafficking.

My IPO wrote in my Assessment for Decision dated (date), page 8, paragraph 3 that I was convicted of trafficking.

I ask that the Assessment for Decision be re-written without the statement that I was convicted of trafficking, because it is not true.

What is the difference between a fact and an opinion?

Only facts can be corrected in your files. CSC will not change an opinion that you do not agree with. A fact is something that is true and can be tested or proven. For example, your date of birth or conviction under the Criminal Code are facts that can be proven to be true. If a statement is not true, you can ask for it to be corrected. An opinion is what someone thinks or believes about something. For

example, your risk to re-offend and what your security classification is are opinions. Everyone may not share the same opinion about these things. Reasonable opinions are based on facts that are true. Unreasonable opinions may be based on incorrect information and not supported by facts. In either case, CSC will not "correct" file information that is an opinion. If the opinion is based on information that is not true, you can ask to have the information corrected and the opinion reviewed (and, hopefully, changed). If the opinion is not based on facts, it may be unreasonable. You can ask to have the opinion changed through the grievance process. See Chapter 3 for more information on the grievance process.

64 CCRA, s 23(3).

65 Same as above, s 23(1).

66 *R v Starr*, 2001 MBQB 108 (No obligation to speak; no privilege).

67 Correctional Service Canada, Information Sharing, Commissioner's Directive No 701 (1 June 2016), online: <www.csc-scc.gc.ca/lois-et-reglements/701-cd-eng.shtml> [CD 710].

68 *CCRA*, ss 23(1)-(3).

69 RS, 1985, c P-21.

70 RS, 1985, c A-1; *CCRA*, s 23(2).

71 *CD 701*, s 6(e).

72 *Same as above*, s 16.

73 *Access to Information Act*, s 9(1)(a).

74 *Privacy Act,* s 28.

75 *CCRA*, s 27(3).

76 *Same as above*, s 23(2).

77 *CD 701*, s 17.

78 *Same as above*, Annex C, s 1.

79 *Same as above*, Annex C, ss 2-3.

80 *Same as above*, s 12.

81 *Same as above*.

82 *Same as above*, Annex C, s 1.

83 *CCRA,* s 25(1).

84 *Same as above*.

85 *Same as above*, s 26.

86 *CD 701*, s 36.

87 Correctional Service Canada, *Media Relations*, Commissioner's Directive No 022, s 35 (20 January 2014), online: <https://www.csc-scc.gc.ca/lois-et-reglements/022-cd-eng.shtml#s2a> [*CD 022*].

88 *CCRA,* s 25(2).

89 *Same as above*, s 25(3).

90 *Same as above,* s 26(1)(a).

91 *Same as above*, ss 26(1)(b)-(c).

92 *Same as above*.

93 *Same as above,* s 26(3).

94 *CD 701*, s 36.

95 *CD 022*, s 35.

96 Correctional Service Canada, Interim Policy Bulletin 584 Bill C-16 (Gender Identity or Expression) (27 December 2017), online: https://www.csc-scc.gc.ca/policy-and-legislation/584-pb-en.shtml

97 Correctional Service Canada, *Consent to Health Service Assessment, Treatment and Release of Information*, Commissioner's Directive No 800-3, s 19 (27 April 2015), online: <https://www.csc-scc.gc.ca/acts-and-regulations/800-3-gl-eng.shtml> [*CD 800-3*].

98 *Same as above*.

99 *Same as above*, s 20.

100 *CCRA,* s 24(1).

101 *Same as above,* s 24(2)(a).

2.3 Surveillance & Searches

Surveillance & Searches

There are several ways that your right to privacy is restricted as an incarcerated person. As you know, as someone who is in prison, you are always being monitored in some way – be it through video monitoring, counts, and general staff presence. In addition, you may be subjected to other more invasive forms of surveillance.

Can CSC search my cell?

CSC can perform a routine cell search at least once every 30 days without reasonable grounds or cause in the presence of another staff member.[102] Non-routine cell searches are performed when CSC staff believes on reasonable grounds that "contraband" (drugs or weapons) or evidence is in your cell.[103] A staff member is not required to obtain authorization to conduct a search in the presence of another staff member, when the staff member believes on reasonable grounds that delaying a search would result in danger to the life or safety of any person or the loss or destruction of "contraband" or evidence.[104]

Can CSC search my mail?

Your mail cannot be opened if it is addressed to or received from a "privileged correspondent," such as your legal counsel, the Canadian Human Rights Commission, or Correctional Investigator.[105] There are 20 organizations/offices/government departments on the privileged correspondents list. A complete list of these privileged correspondents is in Annex A of CD 085: Correspondence and Telephone Communication.[106]

Sections 94(1) and 94(2) of the CCRR allow the Institutional Head or designate to read correspondences if they believe on "reasonable grounds" that: the correspondence between you and the member of the public contains or will contain evidence of an action that would jeopardize the security of the prison or the safety of an individual; CSC believes the correspondence relates to a criminal offence or a plan to commit a criminal offence; and interception of the correspondence is the least restrictive option in the circumstances.[107]

When letters are intercepted and read, this reading and the reasons for it should be recorded. You should be promptly advised, in writing, and given the opportunity to make representations, except in situations where the information would adversely affect an on-going investigation. In this case, you would be advised of the reasons and given an opportunity to make representations once the investigation is completed.[108]

Can my phone calls be intercepted?

CSC may authorize for interception of your telephone calls if they have the following "reasonable grounds" according to subsection 94(1) of the *CCRR*:

- that the communications contain or will contain evidence of an act that would jeopardize the security of the penitentiary or the safety of any person, or
- a criminal offence or a plan to commit a criminal offence; and
- that interception of the communications is the least restrictive measure available in the circumstances.[109]

Lawyer calls are not to be monitored however, while CSC is not permitted to monitor phone calls, it has been shown that CSC has monitored phone calls without authorization. If you believe that your phone call has been monitored without authorization, you may consider letting your lawyer, the Office of the Correctional Investigator, and /or CAEFS know.

Will I ever be required to wear a monitoring device?

CSC may require you to wear a monitoring device to monitor your compliance with a condition of Temporary Absence, work release, parole, or statutory or long-term supervision where you're required to be in a specific geographical area.[110]

What kinds of bodily searches is CSC permitted to perform?

There are several other types of searches that can be performed in federal prisons: body cavity search, frisk search, strip search, and uranalysis. These searches are detailed in sections 46 to 67 of the *CCRA*.[111]

When might a "Body Cavity Search" happen?

A body cavity search can occur when the Institutional Head believes, on

"reasonable grounds," that you are carrying contraband (drugs or weapons) in a body cavity and that a body cavity search is necessary to find or seize the alleged contraband.[112] The Institutional Head may authorize, in writing, a body cavity search to be conducted by a qualified medical practitioner if the incarcerated person's consent is obtained.[113] If CSC staff believes you have contraband in a body cavity, they cannot seize or attempt to seize the believed contraband, but instead must inform the Institutional Head.[114]

Plainly, body cavity searches can only be done by a qualified practitioner and only if you agree to the search.[115]

When might a "Frisk Search" happen?

Section 49(1) of the *CCRA* states: "Where a staff member suspects on reasonable grounds that an inmate is carrying contraband or carrying evidence relating to a disciplinary or criminal offence, the staff member may conduct a frisk search of the inmate."[116] The prison can also do routine frisk search. For example, this can occur when CORCAN workers finish their work period or at the end of a work period in the kitchen.

When might a "Strip Search" happen?

Sections 48, 49, and 53 of the *CCRA*, with guidance from CD 566-7, provide the legislative framework that allows strip searches to take place in prisons. According to s. 48(1) of the *CCRA*, CSC may conduct a routine strip search without individualized suspicion: (a) in the prescribed circumstances in situations in which the incarcerated person has been in a place where there was a likelihood of access to contraband that is capable of being hidden, or (b) when the incarcerated person is entering or leaving a structured intervention unit."[117]

In practice, this can mean that strip searches occur after:

- escorted temporary absences (for example, seeking medical treatment);
- unescorted temporary absences (for example, going home to visit family);
- work releases;
- personal visits within the prison (supervised or unsupervised);
- travelling to and from the Minimum-Security Unit to the main compound;

- when being placed in an SIU;
- when being placed in an observation cell; or
- when being placed in Pinel restraints

According to s. 49(3) of the CRRA, a non-routine strip search may occur when a staff member:

- believes on reasonable grounds that an incarcerated person is carrying contraband or carrying evidence relating to a disciplinary or criminal offence, and that a strip search is necessary to find the contraband or evidence, and
- satisfies the Institutional Head that there are reasonable grounds to so believe.[118]

Who can conduct a strip search?

According to s. 48(1) and 49(3) of the *CCRA,* a staff member of the same sex as the incarcerated person may conduct a strip search of the incarcerated person.

Interim Bulletin 584 also gives incarcerated people the ability to develop an individualized protocol for searches based on gender identity or expression. As a trans or non-binary person, you have a right to choose whether searches are done by male or female officers. This applies to everyone in the room, including witnesses or camera operators. You can also ask for a "split search," which means male officers do one part of your body and female officers do another part. For example, you could ask that a female officer search your upper body and a male officer search your lower body. Each part should be searched in private.[119]

It is important to note that Section 49(4) of the *CCRA* gives CSC the ability to override the same-sex requirement – or the individualized protocol – in the case of an emergency search.

When might a "Urinalysis" happen?

A urinalysis may be required for numerous reasons. CSC staff may demand a urinalysis if:

- They believe on "reasonable grounds" that you've taken an intoxicant,[120] and that a urine sample is necessary to prove this allegation.[121] In this case, the

staff member must obtain authorization from their Institutional Head.[122] If this is the case, you should be given enough notice to make representations to the Institutional Head before submitting the urine sample.[123] If you plan to make representations, or refuse a urinalysis, it may be in your best interest to contact a lawyer or a CAEFS regional advocate for support in navigating this process.

- As part of a prescribed random selection urinalysis program, which can be conducted without individualized groups on a periodic basis and in accordance with CD 566-10: Urinalysis Testing.[124]
- If participation in a program or activity within the community, or a prescribed substance abuse treatment program, requires it.[125]
- If CSC or someone providing a service (authorized persons under CSC contract)[126] has reasonable grounds to suspect you have breached any condition of a Temporary Absence, work release, parole or statutory release that requires abstention from alcohol or drugs.[127]
- At regular intervals to monitor compliance with any condition of a Temporary Absence, work release, parole or statutory release that requires abstention from alcohol or drugs.[128]
- If you are required to submit to a urinalysis, you should be told on which grounds the urinalysis is required and what are the consequences of non-compliance.[129] Also, if you are submitting to a urinalysis periodically as a condition, you should be given "reasonable" opportunities to make representations to the prescribed official in relation to the length of the intervals.[130]

If you are trans or non-binary, you can request a male or female collector, and your Individualized Protocol should reflect this preference.[131]

What is the "Exceptional Power of Search?"

This is what gives the power to the Institutional Head to authorize search to take place without consent if they think there are reasonable grounds to believe that:

- there exists, because of the contraband, a clear and substantial danger to human life or safety, or to the security of the prison; and

- a frisk search or body search of all incarcerated people or any part thereof is necessary to seize the contraband and avoid danger.[132]

What do I do if I was subject to a search that violated my rights?

You may contact the Office of the Correctional Investigator, start the grievance process, and contact a lawyer or legal services.

You may also start an action with the Canadian Human Rights Commission. We suggest you complete at least the Initial Grievance phase prior to starting an action for the CHRC, or they will generally refuse to consider your complaint or send it back (particularly if you are not working with a lawyer). Not all improper searches will warrant a human rights complaint – only searches that are discriminatory based on one of the protected grounds.

You can also call CAEFS for help.

REFERENCES

102 Correctional Service Canada, *Searching of Cells/Rooms, Vehicles and Other Areas*, Commissioner's Directive No 566-9, Annex B (2 July 2015), online: <https://www.csc-scc.gc.ca/acts-and-regulations/566-9-cd-eng.shtml>.

103 *Same as above*, s 16.

104 *Same as above*, s 17.

105 Correctional Service Canada, *Correspondence And Telephone Communication*, Commissioner's Directive No 085, Annex A (17 December 2001), online: <https://www.csc-scc.gc.ca/acts-and-regulations/085-cd-eng.shtml> [*CD 085*].

106 *Same as above*.

107 *CCRR,* s 94(1).

108 *CD 085*, s 9.

109 *Same as above*.

110 Correctional Service Canada, *Electronic Monitoring of Offenders*, Commissioner's Directive No 566-11, s 9 (15 August 2016), online: <https://www.csc-scc.gc.ca/lois-et-reglements/566-11-cd-eng.shtml>.

111 *CCRA*, ss 46-67.

112 *Same as above*, s 52.

113 *Same as above*.

114 *Same as above*, s 50.

115 *Same as above*, s 52.

116 *Same as above,* s 43(1).

117 *Same as above,* s 48(1).

118 *Same as above,* s 49(3).

119 Prisoner Legal Services, *Trans prisoner rights*, p. 8.

120 *CCRA,* s 40(k).

121 *Same as above*, s 54(a).

122 *Same as above.*

123 *Same as above,* 57(1).

124 *Same as above*, s 54(b); Correctional Service Canada, *Urinalysis Testing*, Commissioner's Directive No 566-10 (18 June 2015), online: <https://www.csc-scc.gc.ca/lois-et-reglements/566-10-cd-eng.shtml>.

125 *CCRA*, s 54(c).

126 *Same as above*, 49(2).

127 *Same as above*, s 55(a).

128 *Same as above*, s 55(b).

129 *Same as above*, s 56.

130 *Same as above*, 57(2).

131 Correctional Service Canada, Interim Policy Bulletin 584 Bill C-16 (Gender Identity or Expression) (27 December 2017), online: https://www.csc-scc.gc.ca/policy-and-legislation/584-pb-en.shtml

132 *Same as above,* ss 53(a)-(b).

2.4: Transfers

When can, or might I, be transferred?

Federally sentenced people can be transferred to another prison, a provincial jail, or a hospital upon an order from the Commissioner or at your own request.[133] All transfers must be carried out in a fair manner.[134] The Commissioner must take all reasonable steps to ensure:

1. that the place to which a person will be transferred contains only the necessary restrictions, considering the degree and kind of control necessary for the safety of the public, the safety of any person in the prison, and the security of the prison;
2. the accessibility to community and family, compatible cultural environment, and compatible linguistic environment; and
3. the availability of appropriate programs and services.[135]

What kinds of transfers are there?

Essentially, all types of transfers fit into one of three categories – voluntary, involuntary, and emergency.

Voluntary Transfers

What is a voluntary transfer?

Voluntary transfers are initiated by you when you request to be moved to a different prison.

You could have been arrested and/or imprisoned in a province that was not near your family. This could be a particularly good reason to ask to be transferred to a prison near your home community. You could want to participate in a program that is not offered in the prison you are presently in, like the healing path program or a section 81 placement (like a healing lodge). Or you could have been placed in a prison that does not (or no longer) best aligns with your gender identity.

For people in prisons designated for men wanting to transfer to another prison designated for men, this would only apply for transfers to a prison of the same

classification rating or lower.

How long will it take for my transfer to be granted?

In the case of transfers to other prisons in Canada, the decision of whether to grant the transfer will usually be made within 60 days of your application.[136] It may take longer, however, if you are requesting a transfer to gain access to community support. This is because a Community Assessment must be completed. Keep in mind that your request can be denied, but the more compelling the reasons are for wanting the transfer, the better your chances are of having it granted.

Can I request to be transferred for mental health purposes?

Yes – you can request a transfer to a regional psychiatric centre. The only CSC regional psychiatric centre with units designated for women as well as men is the Regional Psychiatric Centre in Saskatchewan. CSC also has an agreement with the Philippe-Pinel National Institute of Legal Psychiatry in Quebec, which also has units designated for women and for men.

Transfers for mental health purposes happen infrequently, as CSC has set the criteria very high – but they are not impossible.

Can I request to be transferred to a prison that better aligns with my gender identity?

Yes – you have the right to transfer to a prison that most closely aligns with your gender identity.

Bill C-16 amended the *Canadian Human Rights Act* by adding "gender identity or expression" as prohibited grounds of discrimination. This means that your placement should not be based simply on your genitalia or the gender listed on your government documents, but your gender identity – which does not need to align with the sex you were assigned at birth. You do not need to have gender affirming surgery (top or bottom) to be placed in a prison that most closely aligns with your gender identity.

See Chapter 2.1 for more information on placements based on gender identity and Interim Policy Bulletin 584.[137]

Can I be voluntarily transferred to another country?

Yes, if you are a citizen of another country, you may request an international transfer. International transfers are not the same as extraditions or deportations – they are an example of a type of voluntary transfer to which a distinct set of legal rules apply.[138] You will likely need legal and/or government assistance for this type of transfer.

Can my voluntary transfer be reversed by CSC?

Decisions to grant transfers can be reversed under certain circumstances, even after the transfer. For example, if you've transferred to access a program which you later refuse to take, the transfer decision could be reversed.[139]

Involuntary Transfers

What are involuntary transfers and why might I be involuntarily transferred?

Involuntary transfers are transfers initiated by CSC that are usually against your will. Some of the most common reasons for involuntary transfers include:

- to move to a higher security prison;
- to provide access to relevant programs and services, including health care;
- to provide you with a safe environment;
- for assessment purposes; and
- for court proceedings.

It is important to note that many incarcerated people have also reported being transferred because of incompatibilities with CSC staff – but this reason is often not officially documented and is therefore very difficult for you to respond to as you prepare a rebuttal.

Why might information about my transfer be withheld from me?

Many involuntary transfers are based on "security reasons," and the evidence to support these transfers often come from a third party. CSC frequently withholds the name of the informant(s), to – in their view – ensure the informant's safety and to maintain the sanctity of the police-informant relationship. If information is

withheld from you, leaving you with insufficient information to effectively assess the reasonableness of the decision and make representations, you have the right to challenge the withholding of this information.

When must I be notified about an involuntary transfer?

You must receive a **Notice of Involuntary Transfer Recommendation** at least two working days before the transfer is to take place.[140] The transfer notice informs you of where CSC proposes you be sent, and the reasons for your involuntary transfer.[141] You then have two working days to prepare your counterarguments and present them either in writing or in person (your choice) to the warden.[142] If this is not enough time, you can apply for an extension of up to ten days.[143]

There is an exception to this rule if it is an emergency involuntary transfer, in which case you will still get the notice of transfer, but only after the fact.[144]

Can I object to an involuntary transfer?

Yes – and you may want the support of legal counsel.

First, the Institutional Head must ensure that you are advised in writing of the appropriate grievance procedure related to transfers. It is important that you use this grievance process if you feel the decision for your transfer is wrong/unfounded.

You must also be notified without delay of your right to legal counsel and be given "a reasonable opportunity to retain and instruct legal counsel." [145] Even in the case of an emergency transfer, you must still be notified of your right to legal counsel without delay.[146] In some cases, your lawyer may be able to arrange for you to go before a judge and request a legal remedy before the transfer takes place. Your lawyer may also be able to challenge the reasonableness of a transfer decision through judicial review under section 18 of the ***Federal Courts Act,*** [147] or by supporting you in making a *habeas corpus* application.

It is important to note that a court is not likely to grant a remedy to you if you have not exhausted the prison's internal remedy procedure first.

Also, you may notify the Correctional Investigator and inform them of the violation and reach out to CAEFS for support. You can find more information about this in Chapter 3.

Emergency Transfers

What is an emergency transfer?

Emergency transfers can be either voluntary or involuntary. This type of transfer will only occur when there is an immediate risk to the public, staff, other incarcerated people, or to yourself, that cannot be dealt with within the prison you are in and cannot be delayed in order to allow you your right to file a rebuttal to the transfer decision.[148]

What if I disagree that the transfer is an emergency?

Unfortunately, sometimes an involuntary transfer is labelled an emergency transfer when it really is not. If this happens, you should consider contacting a lawyer and/or the Correctional Investigator. As well, you should follow up with a grievance if you have been transferred out of the region or to a higher security prison. If the transfer is to a prison or hospital within the same region, you should follow up with a grievance. See Chapter 3 for more information.

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135 *CCRA*, s 28.

136 *CCRR*, s 15.

137 Correctional Service Canada, Interim Policy Bulletin 584 Bill C-16 (Gender Identity or Expression) (27 December 2017), online: https://www.csc-scc.gc.ca/policy-and-legislation/584-pb-en.shtml

138 Correctional Service Canada, *International Transfers*, Commissioner's Directive No 704 (27 June 2013), online: <https://www.csc-scc.gc.ca/acts-and-regulations/705-7-cd-eng.shtml>.

139 *CD 710-2*, s 19.

140 Correctional Service Canada, *Inmate Transfer Processes*, Guideline No 710-2-3, s 30(a) (7 November 2018), online: <https://www.csc-scc.gc.ca/lois-et-reglements/710-2-3-gl-en.shtml> [*GL 710-2-3*].

141 *Same as above*, ss 27(a)-(c).

142 *Same as above*, s 27(d).

143 *Same as above*, s 28.

144 *Same as above*, s 34.

145 *CCRR*, s 97(2)(b).

146 *Same as above*, s 97(2)(c). See also *GL 710-2-3*, s 34(b).

147 *Federal Courts Act*, RSC 1985, c F-7, s 18.

148 *CCRR*, s 13(1).

2.5: Solitary Confinement

CAEFS defines solitary confinement as a practice of deny incarcerated people meaningful and consistent contact with others in prison, including that significant and consistent constricting of particular people in prison's access to services, programming, and holistic/natural environment. CSC does not have a publicly available definition of solitary confinement, but the United Nations Standard on Minimum Treatment of Prisons (often called the Mandela Rules) defines solitary confinement as "the confinement of a prisoner for 22 hours or more a day without meaningful human contact."

Structured Intervention Units

What are Structured Intervention Units?

The Commissioner of CSC has the power to designate any areas of prisons as Structured Intervention Units (SIUs).[149] Under the SIU model, the purpose of SIUs is to:

a) provide an appropriate living environment for an incarcerated person who can't be maintained in the mainstream population "for security or other reasons"; and

b) provide the incarcerated person with an opportunity for meaningful human contact and an opportunity to participate in programs and to have access to services that respond to their specific needs and risks associated with the incarcerated person.[150]

How are SIUs different from "administrative segregation"?

As of December 1, 2019, administrative segregation cells were renamed Structured Intervention Units. The changes were made after two court challenges[151] determined that the practice of administrative segregation in Canadian federal prisons under the *CCRA* was unconstitutional because it was in breach of Charter rights.[152] These court challenges clarified what needs to be in place to protect the Charter rights of people placed in isolation:

- that any isolation amounting to solitary confinement be strictly limited to 15 days;
- that the placement in isolation be reviewed after five working days by an

independent individual or body with the power to order the release of the incarcerated person; and
- that mentally ill persons be protected from any form of extreme isolation.

Even though SIUs were introduced to eliminate the use of administrative and disciplinary segregation,[153] SIUs still function in a similar way to "administrative segregation" and the reasons that you might be placed in an SIU are not that different from the reasons that were previously used to put people in administrative segregation.

Under what circumstances can I be placed in an SIU?

Certain staff members[154] are authorized to order your transfer to an SIU if they believe that:

- you could threaten the security of the prison or the safety of any person or group of people;
- your own safety is at risk; or
- you might somehow impede an investigation into a criminal offence or a serious disciplinary offence.[155]

A staff member may authorize that you be transferred to an SIU only if the staff member is satisfied that there is no reasonable alternative to isolation. You must be given reasons by CSC as to why you were placed in the SIU, verbally, within one working day after your transfer there, and in writing within two working days.[156]

What are my rights while in an SIU?

While you are in an SIU you have the same rights as other incarcerated person, "except for those that cannot be exercised due to the limitations specific to the structured intervention unit or security requirements."[157] In an SIU, you may have access to Independent External Decision Makers, which we will talk about more below. You also have the right to contact external organizations including, but not limited to, the Office of the Correctional Investigator, Citizen Advisory Committees, CAEFS and John Howard Society.[158] Within 24 hours of you arriving in an SIU, your case must be referred to health-care staff who must visit you at least once every day.[159]

If you are Indigenous, Indigenous social history factors (Gladue factors) should be considered in decisions regarding confinement in an SIU and in trying to find

alternatives.[160] You should also be given access to an Elder or Spiritual Advisor as well as to cultural, religious and spiritual practices, to the extent safely possible.[161]

How long can I be held in an SIU?

Your confinement in an SIU must be a last resort and be for the shortest period possible.[162]

While in an SIU, you must also get four hours out-of-cell time every day between 7.00 a.m. and 10 p.m.[163] unless:

- you refuse to leave the cell;
- you fail to follow "reasonable instructions"; or
- if there are "prescribed circumstances" that require you to stay in your cell which are "reasonably required for security purposes."[164]

Other Forms of Solitary Confinement

CSC also employs other solitary confinement methods to isolate people for unregulated periods of time. Solitary confinement can be called a structured intervention unit; high-modified watch, mental health observation; a lockdown; dry celling; or a maximum-security pod.

What is High-Modified Watch?

If a person is deemed to be at elevated or imminent risk of suicide, is actively self-harming, or has been identified by a health care professional as having a serious mental illness with significant impairment and whose risk cannot be safely managed within the normal prison routine, the warden can authorize their placement in an observation cell.[165] Observation cells are like SIUs, but they have windows in the door to permit continuing observation by CSC staff, and lights which are kept on 24 hours a day. There are no rules about the time out of your cell or around meaningful human contact.

What is Mental Health Observation?

Under the *CCRA*[166] CSC has five Treatment Centres (although only two of the five have areas designated for women) that offer acute and chronic mental health care to incarcerated people who require in-patient treatment due to severe

mental illness.[167] If someone is sent to a CSC Treatment Centre, they may be placed in a "quiet room" or be isolated for long periods of time. Again, this type of confinement is not regulated like SIUs are, particularly in terms of time limits, external review, or opportunities to challenge the placement.

What are Lockdowns?

Wardens at federal prisons regularly order lockdowns for periods that can range from hours to weeks. During lockdowns, you may only be allowed out of your cell for short periods of time to take a shower or make a phone call. In more extreme situations, you may not be allowed out at all. The reasoning for lockdowns can vary widely, from searches (for drugs or weapons) to staff shortages, as well as construction work, and other operational or administrative reasons. There is no law or CD clearly allowing wardens the power to lock down a prison, which also means that lockdowns are not regulated in any way. Like many other alternative methods of solitary confinement, there are no time limits or specific mechanisms for you to challenge this type of confinement.

What is Dry-Celling?

In a "dry cell," lights are kept on at all hours of the day and night. The law states that if the warden has reasonable grounds to believe that you have ingested drugs or weapons or are carrying either in one of your body cavities, the warden may request that you be "dry-celled" for as many days as the warden thinks is necessary.[168] According to CSC, in a dry cell, you must be visited at least once every day by a registered health care professional.[169] Dry celling is especially problematic for people with vaginas, as there is no way for the ingested drugs or weapons to be expelled without intervention. For gender diverse people, your individualized protocol must be followed.[170]

What are secure units, or max pods?

In institutions designated for women, secure units are isolated from the general prison population and contain maximum security cells (or "max pods"). The only difference between max pods and solitary confinement is that max pods have access to a larger yard area for one hour a day, and a small common area shared with three to five other people. People classified as maximum security

are confined to those cells and that small common area, which contains a TV, couch, table, fridge, and washing machine, often for 23 hours a day.[171] When there is a lockdown, people in the secure units are confined entirely to their cells and are denied access to programs, school, mental health supports and sometimes even showers. In Canada, all people who are sentenced to life in federal prisons designated for women spend their first two-years of incarceration in max pods (and sometimes longer). This is not a sentence or security requirement, but rather a chosen practice by CSC as part of the security classification process.

While you are in max pods or any other type of solitary confinement, your access to mandatory programming will be restricted. This inability to access timely programming can delay the completion of your correctional plan.

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156 *Same as above*, s 34(3).

157 *Same as above*, s 35.

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165 *CD 843,* s 10.

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167 *CSC Audit of Regional Treatment Centres and the Regional Psychiatric Centre.*

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171 CAEFS, "2018-2019 Annual Report" (2019) at 23, online (pdf): <https://ac935091-bf76-4969-8249-ae3a107fca23.filesusr.com/ugd/cb3f04_15ac0e97a08d4593bf11ad50314dd813.pdf>.

2.6: Physical Health & Dental Care

Physical Health Care

The UN's High Commissioner for Human Rights declared the right to health as a basic human right.[172] According to the High Commissioner, human rights are interrelated, interdependent, and indivisible.[173] This means that although the UN recognizes health as a basic human right, there are many other human rights that both directly and indirectly affect your right to health. The right to health isn't just access to healthcare, such as access to a healthcare professional or hospital, but it also encompasses the underlying determinants of health like safe drinking water and adequate sanitation; safe food; adequate nutrition and housing; healthy working and environmental conditions; health-related education and information; and gender equality.[174]

Canada is a signing party of several international human rights laws, such as The Convention on the Elimination of All Forms of Discrimination against Women, The Covenant on Economic, Social and Cultural Rights, and The Convention on the Elimination of All Forms of Racial Discrimination. The health rights discussed in these three separate international laws include, but are not limited to, equality in health-care services, including those related to family planning, and access and appropriate health services in connection with pregnancy and the post-natal period.[175]

What kind of health care must CSC provide me with?

While you are incarcerated, CSC must provide you with essential health care and reasonable access to non-essential healthcare[176]. "Health care" can mean any medical care, dental care, or mental health care, that is provided by a registered health care professional or by people who are supervised by a registered health care professional.[177]

When health care is provided to you by a health care professional, CSC must:

- support the professional autonomy and the clinical independence of the health care professional and their freedom to exercise their professional judgement in your care and treatment;
- support the health care professional in promoting patient-centered care and

patient advocacy in accordance with their professional codes of ethics; and

- promote decision-making that is based on the appropriate medical care, dental care, and mental health care criteria.[178]

Who can provide me with health care services?

Delivery of care is provided by health care professionals who are registered or licensed in Canada including physicians, nurses, pharmacists, psychiatrists, psychologists, occupational therapists, social workers, dentists, and other relevant specialists.[179] While contracted by CSC, these health professionals are bound to the code of ethics and regulations of their medical board, association, or whichever health body is responsible for their licensing or registration. CSC is required to provide your health professional with the ability to make their own independent decisions regarding your medical case.

Do health care services need to be sensitive to my specific needs?

Section 10(b) of CD 800 Health Services also states that health care professionals will ensure that health services are "sensitive to the needs" of incarcerated women and Indigenous people, and people who special needs. With your consent, healthcare professionals providing services will consult with Elders to gain a traditional perspective on your social history to deliver more culturally relevant health services.[180]

How do I access healthcare services?

The process for accessing healthcare depends on which prison you are in. Upon arriving at the prison, you should be provided with a "newcomer" package, which will include a Health Services Handbook. This Handbook will provide you with information regarding the healthcare process specific to your prison. Typically, there are three ways to access healthcare in prison: self-referral through filling out an "Inmate Request Form"; psychologist/nurse referral; or correctional staff referral, such as your Primary Worker (if in a prison designated for women) or Parole Officer.[181]

To access health care services through a self-referral, you can make a confidential request by placing a completed "Inmate Request Form" inside the Health Services Request Box, which should be located outside the Primary Worker office.[182]

Location and availability of the box may differ from prison to prison. Also, any staff member observing an apparent physical or mental health concern has an obligation to report it to a healthcare professional, whether you complain or not. [183]

CSC is also obligated to provide you with access to patient advocacy services to support your healthcare rights. This means that you can identify a support person, be it a family member or friend, to support you in understanding your rights and responsibilities related to healthcare services in your prison.[184]

What if I have a healthcare need that is not considered to be essential?

You still have the right to request healthcare services regardless of whether your healthcare need is considered essential by CSC. CSC is to provide both essential and "reasonable" non-essential healthcare services that will help with your successful reintegration in the community.[185] You should complete an "Inmate Request Form."

Is CSC required to provide specific care related to reproductive health?

There are specific, but limited, regulations and directives used to administer reproductive health services. For example, to comply with requirements set out in paragraph 83(2)(c) of the *CCRR*, CSC should provide you with a credit of $4 per payment period for the purchase of health and hygiene products listed in Annex B: National List of Health and Hygiene Products.[186]

If you are pregnant while incarcerated, then CSC policy says that you will receive accommodation for pre- and post-natal care.[187] This includes being prioritized for Opioid Agonist Treatment (Suboxone or methadone) if you use opioids or have a history of opioid addiction and are pregnant.[188] The policy does not specify whether the necessary exams should take place in or out of prison, but CD 800 does say that Health Services must ensure that arrangements for childbirth are made at an outside hospital.[189]

Is CSC required to provide me with access to gender affirming surgery and /or treatment?

CSC continues to understand gender diversity as a diagnosable disorder called "gender dysphoria," which they define as "distress that is caused by a discrepancy

between a person's gender identity and that person's sex assigned at birth."

If you have not yet been diagnosed with "gender dysphoria" and where there are "reasonable grounds to believe that such a condition exists," you can access a referral by the Institutional Psychiatrist who is a qualified health professional in the area of gender dysphoria for an assessment and possible diagnosis of gender dysphoria. This should be done at the earliest opportunity.

If you have already been diagnosed with gender dysphoria prior to being in prison (or during another sentence) CSC is required to provide continuity of care with respect the health services you access.

Regardless of when you were diagnosed, if you have been diagnosed with gender dysphoria you will be able to initiate continue hormone therapy as prescribed by either a Psychiatrist who is a qualified health professional in the area of gender dysphoria or other Specialist Physicians in the area of gender dysphoria or endocrinology.

With a diagnosis of gender dysphoria, you may also be able to access gender affirming surgery while incarcerated. Gender affirming surgery is also sometimes called "sex reassignment surgery" as is referred to as such by CSC. We use "gender affirming surgery" as it is the term most often used by the trans community in Canada.

Access to gender affirming surgery should be available while you are in prison if a qualified health professional in the area of "gender dysphoria" has confirmed that you have "satisfied the criteria for surgery as set out in the most recent edition of the World Professional Association for Transgendered Health's Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, including the Standards" requirement that certain specified surgeries require documented proof that the individual has lived 12 continuous months in an identity-congruent gender role." The qualified health professional must also then recommend the surgery during incarceration.

CSC will also pay for the gender affirming surgery if the qualified health professional deems the surgery to be an "essential medical service under CSC policy." CSC must then proceed without dealy to determine the timing of the

surgery, “taking into account operations considerations” and your release date.

The above information is based on the Interim Policy Bulletin 584 Bill C-16 and CD 800 -5. Note that a new Commissioner’s Directive is said to be coming soon that will replace this Interim Policy and so some changes will likely follow. You can reach out to CAEFS or another trusted support for updates on this and how the new CD may impact you.

Who can support me in accessing and understanding health care services?

Section 89(1) of the *CCRA* states that CSC shall provide access to patient advocacy services:

a) to support inmates in relation to their health care matters; and

b) to enable inmates and their families or an individual identified by the inmate as a support person to understand the rights and responsibilities of inmates related to health care.[190]

This is a new law. If you need support accessing patient advocacy, please connect with a peer advocate, lawyer, or CAEFS.

Who pays for my health care expenses?

CSC pays for all health care expenses outlined above.

Do I have to accept medical treatment?

Medical staff normally require your informed consent in order to give you any examination, procedure, or treatment.[191] **Informed consent** requires that you have the capacity to understand the nature of the procedure, are aware of the likely result and risks of the procedure, any reasonable alternatives to the treatment, are aware of the likely result if you do not consent to the procedure and are aware that you may refuse or withdraw from the procedure at any time.[192]

Your informed consent to treatment is not required in medical emergencies: meaning in situations where there is an immediate threat to your life and when you are not able to provide consent (you are unconscious).[193]

What happens if I refuse treatment?

You should not be punished for refusing treatment, and you should be offered an alternative treatment, if possible.[194] You may refuse to consent to any procedure, even if the refusal threatens your life.[195] For example, you may refuse to have open heart surgery even if refusing the surgery may be fatal.

If you refuse to consent to medical treatment, you will be asked to sign a statement that explains the recommended health service(s) that you are refusing to consent to. If a witness is present, they will also be asked to sign that statement.[196] The health care professional must also talk to you about the health consequences of refusing the treatment.[197]

What right to confidentiality do I have in relation to my health information and medical records?

Your health information will be kept confidential except if there is a "need to know" for CSC staff that is related to risk or case management. If CSC determines that personal information should be shared, they should only be sharing information that is relevant to the risk or case management.[198] Health information and medical records can be shared with relevant staff members if the healthcare professional believes your ability to function within the prison has changed, and/or impact your prospects for successful reintegration.[199]

What do I do if I am denied access to health care or receive inadequate health care?

If you are denied access to health care or receive inadequate health care, you can send a request to the health care manager explaining the issue. If you are again denied you can start the complaint process and contact the Office of the Correctional Investigator and ask them to consider the call as an emergency complaint (if that is the case). You can also contact a lawyer. You also have the option of contacting the relevant professional association and to file a complaint.

CSC has a duty to accommodate physical and mental health disabilities under the *Canadian Human Rights Act*. If CSC fails to accommodate you, you can make a complaint to the Canadian Human Rights Commission.

If you've had issues with the health care you've received at your prison, please document it and contact either a CAEFS and/or a lawyer so that further action can be taken.

Dental Care

CSC is obligated to provide you with essential dental care.[200] CSC contracts dentists and dental assistants to provide essential dental care, such as fillings, extractions, x-rays, and root canals.[201] Routine dental hygiene (cleaning or polishing) is only authorized following an assessment and diagnosis of dental disease where these services are a necessary component to managing the condition.[202]

Dental care is a huge concern for people in federal prisons designated for women. Both access to dental care and quality of the dental care received are frequent complaints made by people inside.[203]

What do I do if I am denied access to dental care or receive inadequate dental care?

If you are denied access to dental care or if you received inadequate dental care, you could send a request to the health care manager explaining the issue. If you are again denied you can start the complaint process and contact the Office of the Correctional Investigator and ask them to consider the call as an emergency complaint (if that is the case). You can also contact a lawyer. You also have the option of contacting their professional governing body of dentists in your region and put in a complaint. See Chapter 3 for more details.

If you've had issues with the dental care you've received at your prison, we suggest that you document it. You may also reach out to CAEFS for support.

Food, Nutrition, and Physical Wellbeing

What food is CSC required to provide? Are they required to accommodate my dietary restriction?

CSC's food and nutrition obligations are discussed in CD 880: Food Services. Under this directive, CSC is obligated to provide every incarcerated person with essential food services and reasonable access to nutrition counselling, if

required.[204] Below, you will find the four categories of special diet considerations recognized by CSC and the corresponding approval authorities required.[205]

Special Diet	Approval Authority
Therapeutic	Physician/regional dietician
Conscience	Institutional Head or delegated authority
Food allergies	Physician
Religious	Institutional Chaplain

The process for accessing nutrition therapy/counselling and food allergy testing/ medical assessments is detailed in Guidelines 880-2 Nutrition Management Program.[206]

Do I have the right to access physical exercise and recreation?

According to the CCRR, CSC must take all reasonable steps to ensure you are given the opportunity to exercise for at least one hour every day outdoors, weather permitting, or indoors where the weather does not permit exercising outdoors.[207]

What do I do if I am denied access to adequate food & nutrition and/or physical exercise?

If you are denied access to adequate food & nutrition and/or physical exercise, you can start by sending a request to the head of the department explaining the issues and asking for a resolution to the issue and contact the Office of the Correctional Investigator. If that does not work, you can then start the complaint process and contact a lawyer or legal services.

Please document it and contact either a CAEFS or EFry representative so further action can be taken.

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175 *Same as above*.
176 *CCRA,* s 86.
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187 *CD 800*, s 13. See also Correctional Service Canada, *Institutional Mother-Child Program,* Commissioner's Directive No 768, s 4(b), online: <https://www.csc-scc.gc.ca/politiques-et-lois/768-cd-en.shtml> [*CD 768*].
188 *CD 768,* s 4(c).
189 *CD 800*, s 20.
190 *CCRA*, s 81(1)
191 *CCRA*, s 88(1). See also *CD 800-3,* ss 2, 4-12.
192 *CCRA*, s 88(2) (meaning of informed consent).
193 *CD 800-3,* s 13.
194 *Same as above,* s 10.
195 *CCRA*, s 88(1)(b).
196 *CD 800-3,* s 9.
197 *Same as above*, s 11.
198 *CD 800-3,* s 19; see also *CD 701*, s 8(c): "personal health information is protected and may be shared with other CSC staff without consent, only after the **need to know** is established and it has been determined to be consistent with the stated purposes for which the personal information was collected. The information that is shared, however, must be limited to only that which is relevant for the staff member to perform his/her specific duties."
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200 *CCRA,* s 85.
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2.7: Mental Health

What mental health services will CSC provide?

Mental health services are included as part of CSC's healthcare delivery model. Mental health care is defined in the *CCRA* as: "the care of a disorder of thought, mood, perception, orientation or memory that significantly impairs judgment, behaviour, the capacity to recognize reality or the ability to meet the ordinary demands of life." [208] The availability of mental health services may vary depending on your prison. The services of a psychologist, psychiatrist, or social worker should be available to you.

CSC has five Treatment Centres (although only two of the five accept women) that offer acute and chronic mental health care to people who require in-patient treatment due to severe mental health disabilities.[209] Admittance to one of CSC's facilities requires a psychological assessment. If you're being forced to take a psychological assessment against your will, contact your lawyer, legal counsel, and/or CAEFS (you can find more information in Chapter 3).

Your prison's chaplaincy services may also offer support programs, such as spiritual and personal development programs or reintegration support programs.

What right do I have to confidentiality in relation to mental health services?

You have a right to some confidentiality for information related to your mental health; however, if you see a psychologist or psychiatrist for risk assessment or case management purposes, it is assumed that you have consented to share the information collected with your Case Management Team.[210]

For this reason, make sure you are clear on and understand the purpose of the visit to mental health services. You should ask the mental health practitioner at the beginning of your appointment whether the session is considered therapeutic or if it is for case management purposes. You should also be aware that part of a CSC therapist's contract requires them to report to CSC, so there is a conflict between professional ethics and employment contracts, meaning that confidentiality may be compromised. However, according to *GL 800-3: Consent to Health Service Assessment, Treatment and Release Information*, your health information, which includes your mental health information, should remain confidential between you

and your mental healthcare worker "except in circumstances for which there is a need to know related to risk or case management."[211] "Need to know" information is defined as "information that is pertinent and necessary to an individual performing his/her duties."[212] The level of detail shared by your mental healthcare worker, and the parties with whom the information is shared, must be decided on a case-by-case basis.[213]

Does CSC have a policy on self-harm and suicide?

Yes – CD 843: Interventions to Preserve Life and Prevent Serious Bodily Harm outlines CSC's protocol regarding self-injurious behaviour and suicide.[214] CD 843 discusses procedures for enhanced observation levels, assessment and use of restraints, and screening of suicide risk by non-health professions.[215]

How does CSC decide what action is taken in response to self-harm and /or suicidality?

The action that CSC takes in response to self-harm and / or suicidality is dependent on which "watch" level you are assessed as. CSC has several different enhanced observation levels for mental health observation: Mental Health Monitoring, Modified Watch, and High Watch.[216]

Mental Health Monitoring:

You will be placed on Mental Health Monitoring by the Institutional Head or a healthcare professional if you've been identified as at risk for suicide or self-injury or if a mental health care professional has identified you as needing observation because of a serious mental illness with significant impairment.[217]

If you've been categorized as needing Mental Health Monitoring, you should not be confined to a cell.[218]

In practice you will be in an SIU observation cell until you have been revaluated as no longer a risk to yourself and others. Very rarely will you be observed in your unit cell.

High or Modified Watch:

You may be placed on High or Modified watch if CSC finds you to be engaging in

self-injurious behaviour, at elevated or imminent risk of suicide, or a health care professional has identified you as having a serious mental illness with significant impairment and whose risk cannot be safely managed within the normal prison routine.[219] According to CSC, High or Modified Watch will "only be used as a last resort after all reasonable efforts to use alternative, less restrictive measures and de-escalation strategies have been considered or implemented and assessed as not effective."[220] If you are placed on High or Modified Watch:

- You will be placed in an observation cell.
- You should have a mental health assessment completed, in person, by a health care professional within 24 hours. These assessments should continue to happen at least every 24 hours until you are released from observation.
- You should be given the opportunity to provide input on the use of enhanced observation and be informed of the reason you have been placed on enhanced observation, and be given reasonable access to relevant documentation.
- You should be informed of your right to engage an advocate.[221]

If you are placed on **High Watch**, you are entitled to:

- A security gown, at a minimum.
- A security blanket and mattress, unless these items have been used in a self-injurious way, or they affect CSC staff's ability to monitor you. If this is the case, CSC can remove the items from the cell, with the intention of returning the items as soon as safely practicable.
- A change of gown or blanket each day you're under observation.
- Food and fluids. You'll likely receive "finger foods," or foods that don't require cutlery.
- Regularly receive hygiene products.[222]

Modified:

If you are placed on Modified Watch, you are entitled to all the items listed under

High Watch, as well as:

- Personal items, including but not limited to clothing, books and writing materials.
- Cutlery and/or tableware, and regular prison meals in lieu of finger foods.[223]

You will be monitored either by direct observation or constant observation via closed circuit television (CCTV). If you're being watched by CCTV in an institution designated for women, then only staff who are women can monitor you and monitor screens must be placed in a way to protect your privacy.[224] CSC should be trying to normalize your situation as much as possible and re-evaluating their response to reduce restrictions while you are under continuous observation.

If you engage in self-injurious behaviour, or attempt suicide, you should not be disciplined or otherwise punished for this – but not using punitive action is no longer explicitly written into CSC policy.

Can I be restrained if I engage in self-injurious behaviour?

Yes – The "Pinel Restraint System" is the only restraint system used by CSC to respond to self-injurious behaviour.[225] The guidelines set out that the use of the Pinel Restraint System should not replace efforts to understand and address the causes of the behaviour and is not intended to be the principal intervention.[226]

CSC policy also indicates that the Pinel Restraint System should be used only as a last resort for the purpose of preserving life or preventing serious bodily harm.[227]

If you are placed in the Pinel Restraint System, CSC must provide you with the opportunity to give input on the use of restraints; they must inform you of the reason for placement in restraints; and they must provide you with reasonable access to relevant documentation.[228] You must also be informed of your right to engage an advocate.[229]

CSC policy directs that any person held in the Pinel Restraint System should be offered the opportunity to attend to activities of daily living, such as eating, bathing, dressing, and grooming "to the extent possible."[230] A mental health assessment by a health care professional must be completed every 24 hours, following the initial assessment.[231] A person should receive food at regular meal delivery times, fluids

at least every two hours while they are awake, and the opportunity to meet their elimination needs at least every hour that they are awake.[232]

If the restraints are applied continuously for more than eight hours, the Integrated Mental Health Team (IMHT) must develop a strategy to reduce and eliminate the use of the restraints.[233] Mental Health Services must complete an additional review of restraint use if someone is restrained for more than 24 hours. This review must consider all alternatives to the Pinel Restraint System, and[234] if use of the Pinel Restraint System continues, the IMHT/Correctional Intervention Board (CIB) must continue to meet to evaluate the intervention strategy.[235]

CSC's "Use of Restraint for Security Purposes" policy states that physical restraint is to be used as a last resort on pregnant people and should be used with extreme caution in a way that protects both the person and fetus.[236] Also, it is important to note that pregnant people should NEVER be restrained during labour or birth.[237]

What do I do if CSC has used unauthorized restraints on me, or has used the Pinel Restraint System inappropriately?

Call a lawyer or seek access to legal counsel. You can also call CAEFS on our toll-free regional (Atlantic, Quebec, Ontario, Prairies, and Pacific) or national lines. The numbers are in Chapter 3 of this manual.

208 *CCRA*, s 85.

209 Correctional Service Canada, *Audit of Regional Treatment Centres and the Regional Psychiatric Centre*, Internal Audit 378-1-252 (Ottawa: CSC, 2011) online (pdf): <https://www.csc-scc.gc.ca/005/007/092/005007-2508-eng.pdf> [*CSC Audit of Regional Treatment Centres and the Regional Psychiatric Centre*].

210 *CD 800-3*, s19.

211 *Same as above.*

212 *Same as above*, Definitions.

213 *Same as above.*

214 Correctional Service Canada, *Interventions to Preserve Life and Prevent Serious Bodily Harm*, Commissioner's Directive No 843 (1 August 2017), online: < https://www.csc-scc.gc.ca/acts-and-regulations/843-cd-eng.shtml> [*CD 843*].

215 *Same as above*.

216 *Same as above*, ss 8-26.

217 *Same as above*, s 25.

218 *Same as above*, s 26.

219 *Same as above*, s 10.

220 *Same as above*, s 8.

221 *Same as above*, ss 11(a)-(d).

222 *Same as above*, ss 20(a)-(e).

223 *Same as above*, ss 22(a)-(b).

224 *Same as above*, s 24.

225 *Same as above,* s 30.

226 *Same as above*, s 31.

227 *Same as above*, Purpose.

228 *Same as above*, s 35(a).

229 *Same as above*, s 35(b).

230 *Same as above*, s 53(a).

231 *Same as above*, s 51.

232 *Same as above*, ss 53(b)-(d).

233 *Same as above*, s 54.

234 *Same as above*, s 56.

235 *Same as above*, s 57.

236 Correctional Service Canada, *Use of Restraint Equipment for Security Purposes*, Commissioner's Directive No 567-3, s 15 (26 February 2018), online: <https://www.csc-scc.gc.ca/lois-et-reglements/567-3-cd-eng.shtml>.

237 *Same as above*, s 16.

2.8: Educational, Correctional, and Work Programming

Education Programs (CD 720)[238]

When can my parole officer refer me to an education program?

When you arrive at the prison, your parole officer should review your education assessments to determine your level of educational objectives for your Correctional Plan.

If your grade level is assessed at or below grade 12 (or the equivalent), you will be required to take additional high school credits before enrolling in any employment programs or before requesting a referral to post-secondary education.

You will also need to take additional high school credits prior to enrolling in employment or requesting a referral to post-secondary education if you have difficulty communicating in either French of English.

You will be expected to participate in the objectives in your Correctional Plan, including education programs.

How will my parole officer know if I need an education program?

Your educational assessment will be done during your intake. This assessment will have taken into consideration the results of all education assessments, including any potential learning difficulties and challenges. If your grade level is assessed at below grade 12 (or its provincial equivalent, like CEGEP), education will be identified as a need in your Correctional Plan. Your education programs should result in a recognized diploma.

If you already have a high school diploma (or equivalent) and you wish to obtain additional high school credits so that you can enroll in other programs, you can ask to be referred to the Post-Secondary Prerequisite Program. You need an education program that will have to be identified as an objective in the Correctional Plan for you to be eligible to do this.

What if I want to take a post-secondary program, like college or university?

Options for accessing post-secondary courses and/or programs change depending on where you are incarcerated. The education department at the prison you are in may be able to provide you with existing options. This may include information about correspondence courses through Athabasca University or similar schools, in person courses through programs such as Walls to Bridges, or ETA's/UTA's to university campuses where you can attend community-based courses (ETA/UTA options require support from your CMT and necessary approvals from the warden and/or PBC).

Most correspondence options require you to pay for your tuition, so you should have a plan in place for this. If you cannot afford a course, there are different types of funding you can seek, although funding is limited and can be hard to access. If there is a teacher who can assist you in the prison, you can apply for a "Part Time Studies Grant" through the government of Canada. **CSC CD 720 Education Programs and Services for Inmates** indicates that if post-secondary has been identified as an objective in your correctional plan, you can also file a request to the warden and ask for your tuition to be covered by the prison's education budget. Also include in your request any documentation you have about the course you want to take, and its associated costs. Please note that there is no obligation on the part of CSC to pay for your tuition, even if post-secondary is listed in your correctional plan.

If post-secondary education is or becomes important to you while you are incarcerated, your parole officer should reflect this in your correctional plan, **however, college/university does not have to be identified as an objective of your correctional plan in order for you to take courses**. If you are ever told that you need parole officer approval or that you cannot take a course if it is not in your correctional plan, please file a written request and indicate what you have been told on the request. Ask, in writing, for post-secondary to be included in your correctional plan. It is important that your correctional plan reflects your goals and positive activities that you self-determine as important.

Correctional Programs (CD 726)[239]

Are there programs that I will be required to take?

People in prisons designated for women will first be required to take the "Engagement Program." The Engagement program must be completed before you start any of the other specialized programs, including:

- Women Offender Moderate Intensity Program (WOMIP)
- Women Offender High Intensity Program (WOHIP)
- Women's Sex Offender Program (WSOP) and Self-Management Program (SMP)

All the programs also have counterparts for Indigenous people. Indigenous people can also participate in the Healing Pathways program.

People in prisons designated for men will be required to take "Program Primers." Similarly to the Engagement programs in prisons designated for women, these programs must be completed before you start any other specialized programs.

CSC has not yet made "engagement programs" available to trans women in prisons designated for men, nor do they make "program primers" available to trans men in prisons designated for women. CSC also does not have programming that is designated for people whose gender does not align with either of these binary categories.

How will my parole officer decide what programs I should take?

Your parole officer will have consulted with the Correctional Program Officer, Aboriginal Correctional Program Officer, and / or Aboriginal Liaison officer to identify what programs you should take.

How will I know what programs have been assigned to me?

Your parole officer will enter your program information into your correctional plan, along with a suggested start date. The Program Officer should also receive a "Consent to Participate in a Correctional Program" form. Make sure you understand what is described in the form and what you need to do before signing. The program officer should be able to answer any questions you may have.

Are correctional programs evaluated?

Yes. You will have an evaluation meeting with the program officer and will receive a program report at the end of the program. If you find any mistakes in your program reports, you can ask for a file information correction.

Can I request to take additional programs?

Yes, you can request additional programs. But priority is given to those who have not yet taken any programs. There is usually a waiting list.

How will participating in programs impact my chances of parole?

Participating fully in your program will be very important to a favorable parole hearing. Parole officers would not recommend you to the parole board without you having taken your recommended programming. If a program that you think is important to your release is not being offered – or you have not been given the opportunity to take it – we suggest that you make continual (monthly) requests for the program. Be sure to keep a copy of these requests to be included as part of your parole hearing.

Employment and Employability Program (CD 735)[240]

If I am working while in prison, am I considered an employee?

Even though you are working, CSC considers your participation in "employment programming" to be just that: program participation. CSC does not consider you to be a "worker" or an "employee" and so, by law, you do not have an employer/employee relationship with CSC. This means you are not protected by any labour legislation or regulation, neither federal nor provincially. But that does not mean that you still don't have rights. The *CCRA*, CCRR and Commissioner's Directive define what your rights are.

Am I required to participate in employment and employability programs?

CSC will expect you to participate in employment and employability programs. If you do not participate in employment / employability programs, your parole officer will likely consider your lack of participation as a sign that you are not following

your Correctional Plan, which can impact your chances of parole.

How will my parole officer decide what my working abilities and needs are?

Your employment indicators will be identified during your intake. The results of the assessments will be documented and incorporated in your Correctional Plan by your parole officer.

Your employment indicators include an assessment of your "soft" and "hard" skills.

- Soft skills are skills, attitudes and behaviors such as communication skills, working with others, managing emotions, thinking and solving problems, etc. If you are assessed as needing to improve your soft skills, you should be referred to the National Employability Skills Program
- Hard skills are technical skills learned through on-the-job training. If you are assessed as needing to improve your hard skills you should be referred to vocational training and employment.

Does CSC provide job training?

Prior to you commencing a work assignment, the work supervisor will, at a minimum: provide an orientation to the work area, including the health and safety procedures, and any specific rules and regulations, review the main duties and expectations of the work assignment, as outlined in the generic work description. Both your work supervisor and you will sign and date a copy of the work description to confirm that the orientation has taken place. The original copy of the signed work description will be placed in your Employment file, and they review their Performance Evaluation form (CSC/SCC 1138) with you to ensure that you are informed of, and understand, how your performance will be evaluated.

If this orientation is not provided, or you feel that you have not been given enough information to do your job safely, you may put in a request to your supervisor's manager explaining the issue and requesting the appropriate training as per the regulations. You should include your parole officer and primary worker in your request.

How do I apply for a work program?

To apply for a work program, you need to fill out an employment form (CSC/

SCC 0843). Since every prison has a unique way of advertising available work positions, you should read your prison manual or ask around. You will then send the form to either your PO or your PW depending on how your team works. They will forward it to the appropriate person.

Who will decide if my application for the work program is successful?

When you apply for a work program, your parole office will provide comments on your Application for Employment (CSC/SCC 0843) and indicate if the Case Management Team is supportive of your application.

When will I be expected to work?

The work week is from Monday to Friday. You may be asked to work on weekends and holidays only to perform essential tasks, for emergency requirements, and/or for exceptional requirements of the program assignment.

If you work on Saturdays and Sundays, you should normally be given equivalent time off during the week, unless you have been approved to work overtime.

How much will I be paid?

The daily payments or allowance rates are:

- Level A: $6.90
- Level B: $6.35
- Level C: $5.80
- Level D: $5.25
- Allowance: $2.50
- Basic allowance: $1.00

This amount is subject to change.

Who will decide how much I am compensated for my work and how?

Your primary worker will complete the “inmate payment review” within 6 months of the start of your work program, and every 6 months after until the end of every work program assignment. Pay reviews and decisions to increase or decrease your pay level should be based on:

- Attendance and punctuality;
- Performance in meeting the expectations of the program assignment (including interpersonal relationships, attitude, behavior, effort, motivation, productivity, and /or responsibility);
- Involvement in your Correctional Plan (including your level of accountability, motivation and engagement, overall behavior, while in prison including convictions for disciplinary offenses, positive or refused urinalysis, affiliation with a security threat group, and /or placement in a specialized unit); and,
- Duration of time you have been at your current pay level.

If you believe you are being unfairly reviewed or compensated, you might consider filing a complaint or grievance. See Section 3 of this handbook for more details.

If you have an authorized absence from the program assignment or are unable to participate in a program assignment for reasons beyond your control, you will receive an allowance of $2.50 a day.

How often will I be paid?

You will receive payment every 14 days and be paid no later than the last normal working day in the next payment period.

Will any deductions be taken from my earnings?

You will have deductions taken from your earnings before they are deposited in your Trust Fund.

Deductions are made in order to:

1. Cover any indebtedness to the federal Crown
2. Pay for food and accommodation
3. Pay for the administration of the telephone system
4. Contribute to the Inmate Welfare Fund.

During your intake assessment process, you will not be deducted the 22% for food and accommodation. If you have a source of income other than, or

in addition to CSC pay (like selling your hobby craft) you will be deducted the normal contribution of 30% of that income. If you are not assigned to any program assignment and your income consists solely of CSC's basic allowance, you will not be charged for food and accommodation. If you are selling your hobby/craft only your net profit will be deducted the 30%.

Can deductions be reduced or waived?

You may request that the food and accommodation deduction be reduced or waived. The Institutional Head/District Director will assess the information supplied by you on the Application for Reduction or Waiver of Food and Accommodation Deduction form and determine whether the deduction constitutes an undue interference.

"Undue Interference" is when the deduction makes it so that you are unable to meet basic needs or family or parental responsibilities. If you can prove that there is undue interreference, then the Institutional Head can reduce or waive the deduction/payment to allow you to meet those objectives, needs or responsibilities.

The institutional Head/District Director will then provide a justification for the decision, ensure the decision is documented on your file, and set a maximum six-month validity period for any waiver or reduction of deductions. Following this six-month validity period, you must submit a new request.

Will I be paid more if I have more than one work assignment?

No – you are only given compensation at 1 payment level, even if you are participating in multiple work program assignments.

Will I still be paid if I am absent from my work assignment?

You will not receive any payment or allowance during unauthorized absences.

Authorized absences would include attending Indigenous spiritual and cultural ceremonies as part of your Healing and/or Correctional Plan.

Will my pay change if I am transferred to another prison or my security level changes?

If you are transferred to another prison, you will be placed on "basic allowance" during the transfer and for the period during which you are not participating in a program assignment.

If you are moved to a different security level as a result of a change in security classification and are unable to continue your previous work program assignment, you will be placed on allowance for the period during which you are not participating in a work program assignment.

If you are transferred to a higher security level prison or move to a higher security level as a result of a change in security classification, but can continue with your previous work, the Correctional Intervention Board will review your case within two weeks and determine an appropriate payment level.

Can I be suspended from my work program assignment?

Yes. Your supervisor may suspend you if you leave a program assignment for unauthorized reasons, or your actions demonstrate a refusal to participate in a program assignment.

Your supervisor will normally try to resolve any issues with attendance or behavior informally prior to suspending you. This is called an informal resolution and CSC suggests that this be the first step in any conflict, but it is not an obligation. You will be given two working days, from the time you have received your written suspension notice, to provide written notification to the manager, Programs/Community Program Manager that it is your intention to appear before the Correctional Intervention Board during its review of the suspension. Within five working days of the receipt of notification, the manager, Programs/Community Program Manager will convene a Correctional Intervention Board to complete the review of the suspension and either:

- **Cancel the suspension:** if the suspension is cancelled, you will be awarded full back payment for the period of the suspension
- **Reduce the period of the suspension**: if the period of the suspension is reduced, you will be awarded back payment to reflect the period of reduced suspension
- **Confirm the suspension**: if the suspension is confirmed, you are not awarded any back payment.
- **Maintain the suspension**: you will be placed on allowance until a new

program assignment has been found.

What happens if I am injured during a program assignment?

Staff will report and record all injuries you sustained during an assignment. Upon being informed of your injury, your program/work supervisor will complete section A of the Inmate Injury Supervisor's Workplace/Approved Program Accident Report and within 10 working days, section B of the same form, and attach a copy of the completed Classification of Inmate Injuries form.

If you are authorized to be absent from the program assignment because of an injury sustained during an assignment, you will be awarded an allowance of $2.50.

What happens to my pay if the prison is on lock down and I cannot work?

In the event of a lockdown, payment will normally be awarded as follows:

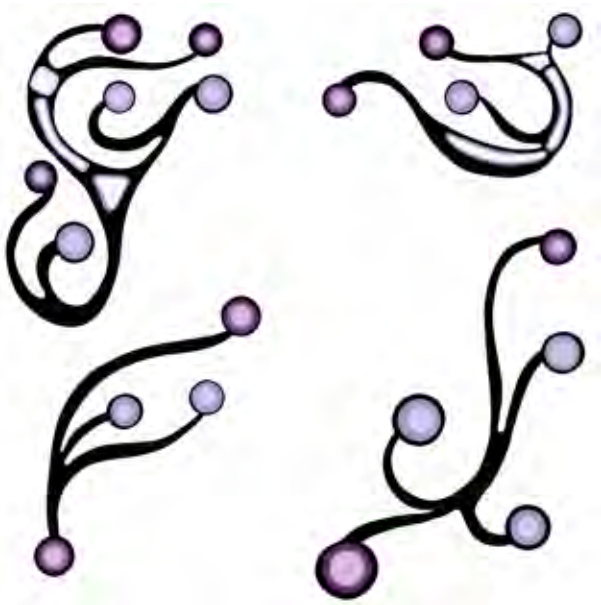
When the lockdown is **not** the result of any action taken by the population (such as holidays, staff absences, implementation of security measures training or other administrative or operational requirements) a full day's payment for each day of the lockdown is provided if you participate in your program assignment for a portion of each day (portions can be interpreted in diverse ways depending on the prison). Some prisons consider working for 10 minutes in a half day as participating, (others require a minimum of 30 min) or a half-day's payment per day if you did not participate in your program assignment for a portion of each day of the shutdown.

- When the shutdown results from the actions of incarcerated people and / or incidents involving them, people who have been clearly identified as not having participated in an individual or group action that led to the shutdown will normally receive:
  - a full day's payment for each day of the shutdown providing the incarcerated person participates in their program assignment for a portion of each day, or
  - a half day's payment per day if the incarcerated person does not participate in their program assignment for a portion of each day of shutdown.

- In cases in which a person has been clearly identified as participating in an individual or group action that has resulted in a shutdown, no payment will be awarded to that person for the entire period of the shutdown.

Does CSC offer maternity leave from employment programs?

Your maternity leave can commence prior to the birth of the child. The level of payment assigned to you while on maternity leave will be equal to your level of payment prior to commencement of your maternity leave. The duration of your maternity leave depends on if you are participating in the "Mother-Child" program. If you are participating in the "Mother-Child" program, your maternity leave is fifteen weeks and your payment remains at the level it was just before your leave started. If you are not participating in the "Mother-Child" program, your leave will be six weeks long and your payment remains at the level it was just before your leave started. Once completed, you will gradually resume participation in your Correctional Plan over a period of nine weeks, during which you will continue to receive payment at the pay level you received at the time of commencement of your maternity leave.



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238 Correctional Service Canada, *Education Programs and Services for Inmates*, Commissioner's Directive No 720 (15 May 2017), online: <https://www.csc-scc.gc.ca/acts-and-regulations/720-cd-eng.shtml>.

239 Correctional Service Canada, *Correctional Programs*, Commissioner's Directive No 726 (5 February 2018), online: <https://www.csc-scc.gc.ca/politiques-et-lois/726-cd-eng.shtml>.

240 Correctional Service Canada, *Employment and Employability Program*, Commissioner's Directive No 735 (15 May 2017), online: <https://www.csc-scc.gc.ca/acts-and-regulations/735-cd-eng.shtml>.

2.9: Cultural, Religious, and Spiritual Accommodations & Programming

There are Commissioner's Directives which specifically address cultural and religious rights. The four main CDs for these rights are: CD 702 (Aboriginal Offenders), CD 750 (Chaplaincy Services), CD 750-1 (Inmate Religious Accommodations), and CD 767 (Ethnocultural Offenders: Services and Interventions).[241] All CDs should be available to you at your prison's library.

Do I have the right to practice religion and engage in cultural practices?

Yes – According to the Principles of the *CCRA*, CSC's programs, policies, and practices must respect peoples" religious and cultural rights.[242] The *CCRA* discusses religion in sections 75 and 83(1). Section 75 states that you are entitled to reasonable opportunities to freely and openly participate in, and express, religion or spirituality subject to "reasonable limits"; and the expression of religion or spirituality cannot compromise the security of the prison or the safety of another person or involve contraband.[243]

What kinds of religious or spiritual accommodations can I request?

The CCRR builds on the *CCRA* and states in section 101 that CSC should ensure, where practicable, that you are provided with the services or items required for you to practice your religion or spirituality.[244]

The CCRR provides the following as examples of religious services or accommodations:

- Providing interfaith chaplaincy services;
- Facilities for the expression of the religion or spirituality;
- A special diet as required by the religion; and,
- All religious or spiritual necessities.[245]

CSC may also authorize unescorted temporary absences for cultural and spiritual ceremonies.[246]

Specifically, the types of religious accommodations listed in CD 750-1 are:

- Religiously accommodated items or clothing;
- Religious modification to daily routine or schedule;
- Rites of passage; and,
- Healthcare or therapeutic care.[247]

CD 750 Chaplaincy Services sets out how the prison and Institutional Head are to provide people with access to religious/spiritual authorities and spaces. This CD holds the Institutional Head accountable for the provision of religious or spiritual resources within the prison; for the access of Chaplaincy services to people in all areas of the prison; and for identifying, maintaining, and providing people access to a sacred space, which is exclusively reserved for religious and spiritual activities.[248] CSC is also supposed to make every reasonable effort to incorporate external community support, including family members, into your religious celebrations and practices.[249]

How can I request religious accommodations?

CD 750-1 details how you can request religious accommodations while incarcerated. The Chaplain is responsible for processing all religious accommodation requests.[250] The form Religious Accommodation Review Request (CSC/SCC 1541) should be made available to you by the Chaplain, and they should assist you with its completion. A religious accommodation request must include:

1. a description of the required religious accommodation;
2. demonstration of affiliation with the religious tradition for which the accommodation is being requested; and,
3. contact information for the faith community resource person for confirmation of affiliation, religious care and support and that the requested accommodation is a requirement of the faith.[251]

You will be provided with a written notice of the final decision and associated reasons in the Religious Accommodation and Decision Form (CSC/SCC 1540).[252] This document should also detail the grievance process if you are unhappy with the outcome. For more information on how to file a grievance, please see our section “Complaint and Grievance Process” in Chapter 3 of this handbook.

What kind of cultural accommodations or services can I request?

CD 767 Ethnocultural Offenders: Services and Interventions is designed to give people the right to engage in their own cultures and cultural practices. This CD sets out CSC's ethnic and cultural inclusion responsibilities which range from promoting an environment free of racial profiling and harassment, to ensuring programs, services and interventions respect ethnic, cultural, spiritual, and linguistic differences and your right to form multicultural associations to meet your cultural needs and interests is upheld. [253]

According to CD 767, every Regional Commissioner is responsible for establishing a Regional Ethnocultural Advisory Committee.[254] This committee:

- Advises the Regional Deputy Commissioner on the development, implementation, delivery, management and analysis of programs, services and interventions designed to meet the needs of ethnocultural people in prison;
- Shares its expertise and helps identify the needs and cultural interests of ethnocultural people in prison;
- Builds and maintains partnerships and networks within ethnocultural communities to assist in the safe reintegration of culturally diverse people;
- Assists CSC in raising awareness and/or providing training on issues relating to multiculturalism; and lastly,
- Liaises with staff and incarcerated people in order to promote multiculturalism.[255]

Are there restrictions on my right to practice my religion or engage in cultural practices?

Sections 98 and 99 of the CCRR give the Institutional Head or their designate the power to supervise or prohibit religious and spiritual gatherings, or to disallow you from attending, if they believe it could compromise the security of the prison or safety of a person.[256] If you are banned from attending a spiritual or cultural gathering, or if the gathering is banned altogether, then the Institutional Head or designate must provide either you or the group's representative with written notice, which includes the reasons for the banning. You or the representative must also be given the opportunity to oppose the decision.[257]

Are there programs for Indigenous people in prison?

The law says that there should be programs designed to address the needs of Indigenous people in prison.[258] The term "Indigenous" includes people who are First Nations, Inuit and Métis.[259] If you are not Indigenous, you may still be able to access the programs,[260] although priority should be given to those who are Indigenous.

One of these programs is the "Pathways Initiative." This program is an Elder-driven program that focuses on healing through the reinforcement of Indigenous traditions, and increased access to one-to-one counselling and ceremonies. In order to qualify for Pathways CSC must determine that you have "already made a serious commitment to pursue [your] healing journey" and that you "have already worked significantly with Elders to address areas of healing"[261].

What traditional ceremonies should be available to me?

Traditional ceremonies should also be available and include, but are not limited to, the following:

- Sweat Lodge Ceremonies,
- Healing Ceremonies,
- Traditional Pow-wows,
- Changing of the Season Ceremonies,
- Sundance Ceremonies,
- Healing Circles,
- Sacred Circles,
- Pipe Ceremonies,
- Potlatches,
- Fasts,
- Feasts,
- Moon Ceremonies, and
- Tea Ceremonies.[262]

Indoor and outdoor space should be designated to conduct traditional and

spiritual activities. The prison is also required to promote and facilitate regular traditional ceremonies, including smudging with ceremonial medicines.[263]

Why are there programs specifically for Indigenous people in prison?

Sections 80 to 84 of the *Corrections and Conditional Release A*ct require that CSC provide Indigenous people in prison with culturally appropriate programs to meet their "correctional" needs. The act states that: "Elders should be an integral part of the mental health interdisciplinary team. Easy access to the services of Elders should be available, with provision for necessary ceremonies and teachings. Mental health programs for Indigenous people in prison should be developed and delivered by Indigenous organizations or individuals with demonstrated awareness of their concerns and needs while incarcerated."[264]

Note that Elders are under contract with CSC and so must comply with the Commissioners" Directive regarding "Consent to the Health Service Assessment, Treatment and Release of Information."[265] The Indigenous Advisory body is also comprised of people appointed by CSC.

Who may deliver Indigenous programs?

CSC may enter into an agreement with an Indigenous community to provide services and programs.[266] If you and your Indigenous community agree, the law also permits Indigenous communities to take responsibility for the care and custody of federally incarcerated people. An Indigenous community could include a First Nation, Tribal Council, band, community, organization or other group with a predominantly Indigenous leadership.[267] Additionally, programs may be provided by any of the following or in combination: Indigenous staff, Indigenous individuals, Indigenous organizations or an Indigenous Sisterhood/ Brotherhood, which is often renamed as Indigenous Wellness Committees.[268]

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2.10: Parenting in Prison

According to the *Office of the Correctional Investigator's 2014-2015 Annual Report*, more than 70% of people incarcerated in federal prisons designated for women have children under the age of 18.[269] This means that you are not alone – most people in prisons designated for women are trying to navigate the unique challenges of parenting from prison. The information in this section introduces you to the programs available to you as a parent in prison, your child's rights as a child with an incarcerated parent, and concepts relating to custody and access. It is to help you re-establish or maintain your relationship with your child(ren), if doing so is of interest to you.

Your value as a parent is not determined by whether you are incarcerated. This truth, along with the importance of the parent-child relationship – and particularly the mother-child relationship – and its unique needs are recognized in the *United Nations Rules of the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)*. For example, the rules say that family contact should not be withheld as a form of discipline (23.0), family contact is to be encouraged and facilitated (26.0), and that visits with children should be in a child-friendly space (28.0).

The "Mother-Child" Program

What is the "Mother-Child" Program?

The program allows you to have your child live with you while you serve your sentence. The program recognizes the importance of the mother-child bond and doesn't think that your prison sentence should disrupt that. As part of the program, your child can live with you on a full-time or part-time basis. They will either live with you in a living unit or at a private family visiting location.

The "Mother-Child" Program is not often used but it is available at all prisons designated for women.

An Elder/Spiritual Advisor is available to provide support, guidance, cultural awareness, and information about Indigenous parenting practices to staff and parents participating in the program.[270]

We put "mother-child" in quotation marks to acknowledge that not everyone who

accesses the “mother-child” program is a mother, and may instead identify as a father or parent.

Am I eligible for the “Mother-Child” Residential Program?

Both you and your child must meet the eligibility criteria to participate in the program. This includes:

- You must be the child’s biological or adoptive mother, legal guardian, or stepmother
- You must be classified as minimum or medium security. If you are currently in maximum security and are being considered for medium security, you can also apply. If you are in the Structured Living Environment (SLE), Structured Intervention Units (SIU), or the Enhanced Support House (ESH), you cannot participate in the full-time program but can participate in the part-time program by using the private family visiting location.
- The child welfare agency must agree that your child(ren) should live with you.[271]

There are also some factors that may disqualify you from the residential mother-child program. These include:

- A current assessment from a mental health professional saying that you are not capable of caring for your child because of a mental health concern that you or they have.
- You have been convicted of an offence against a child or of an offence which could reasonably be seen as endangering a child.[272]

You may still be able to participate if a psychiatric or psychological assessment is completed and finds you do not pose a danger to your child.[273]

Until what age can my child participate in the residential program?

Your child is eligible to participate in the full-time residential program until they turn five, the part-time program in a living unit until they turn seven, or, if using the private family visiting location, until they are over the age of majority.[274]

How do I apply for the program?

The Mother-Child Coordinator is available to help you with the application process.[275] To apply, complete the Mother-Child Program Residential Application Form (CSC/SCC 1159-01).

You may also have to undergo a psychiatric or psychological assessment and the Parole Officer may request a Community Assessment to evaluate the support from your child's current caregiver in the community.[276]

If your application is accepted, the Mother-Child Coordinator will meet with you and help you complete the Mother-Child Program Residential Agreement (CSC/SCC 1159), Mother-Child Program Health Care Checklist – Child (CSC/SCC 1159-03), and Mother-Child Contingency Plan (CSC/SCC 1159-04).[277] They can also assist you with filling out paperwork relating to your child's birth certificate, health card, and status card. They can also assist with paperwork related to child tax credits.[278]

Who decides if I am accepted into the program?

The Parole Officer and a review board make recommendations around your participation in the program, but it is the Institutional Head who will ultimately decide whether to accept your application.[279]

Their decision will be based on several pieces of information that they've received including:

- Your application;
- A child welfare registry scan;
- The support of the child welfare agency;
- The best interests of your child; and,
- Whether there are any mental health concerns.

The results of a psychiatric or psychological assessment and the feelings of the individual currently caring for your child may also inform their decision.

What if my application is denied?

If you disagree with a recommendation, you may submit a rebuttal (either in person or in writing) to the Institutional Health within two working days from the sharing of the

reports.[280] The Institutional Head may grant an extension of up to 30 days at your request.[281] You will be provided with a written copy the Institutional Head's final decision and their reasons.[282] If you have a complaint or grievance with the decision, you can submit a grievance in accordance with CD 081 – Offender Complaints and Grievances.[283] For more information on grievances, turn to Chapter 3 of this handbook.

Where will we live?

You and your child will live either on a living unit designated for the Mother-Child Program or a Private Family Visit unit. If you are on a living unit, only other incarcerated people who meet the eligibility requirements for living on the unit will be there with you.[284]

What if I need someone to watch my child?

A babysitter can be hired (paid by CSC) to care for your child when you're not able to look after them. Incarcerated people interested in being employed as a babysitter must complete the Mother-Child Program Inmate Babysitter Application (CSC/SCC 1159-02), meet the eligibility requirements and complete a child first aid course and a parenting skills program.[285]

If you are unable to take your child to an appointment in the community, a community caregiver, other community supports, or volunteer can take them for you.[286] If this is the case, you have a right to speak with your child's health care professional on the phone to discuss your child's appointment.[287]

What if my participation in the program is suspended or terminated? What will happen to my child?

If the safety of your child is jeopardized, you are transferred to the SIU, moved to the ESH, or admitted to the SLE, the Mother-Child Program Contingency Plan (CSC/SCC 1159-04) will be put in place and your participation will be suspended.[288] All staff are required to report any suspected child abuse and/or neglect.[289]

If you are suspended, the Parole Officer will assess whether you should be reinstated, switch from full-time to part-time, suspended until certain conditions are met, or terminated. You will be told of the recommendation, and it will be sent to the review board, who will make a recommendation to the Institutional Head.

The Institutional Head will then reinstate you, terminate your participation, or continue your suspension. You will receive a copy of their decision.

Your child will live in the community with the person identified in your Contingency Plan during your suspension. If your suspension is extended, your child will continue to live with that person until your suspension is lifted. The local child welfare agency will be notified upon activation of the Contingency Plan.[290]

Can I reapply to the program if I have been terminated?

If you've been terminated from the program, you can re-apply.[291] A termination or suspension does not mean that you can never participate in the program again.

Non-Residential Programs

How can I maintain contact with my children if I do not qualify for — or are not participating in — the "Mother-Child" program?

If you are not participating in the "Mother-Child" Program, you can still maintain contact with your child through non-residential programs. You can participate in these programs regardless of your security classification.[292] Eligibility depends on the program policies.[293]

What is the Parenting Skills program?

Under CSC's *Program Strategy for Women*, each prison designated for women is required to offer the Parenting Skills Program.[294] Each prison is to develop their own program to reflect the needs of its population.[295] This means there will be some variation from prison to prison, but all are required to take a "women-centered" and strength-based approach.[296]

Themes covered by the program offered at your prison may include child development, healthy lifestyle choices, responsible parenting, making decisions that are in the best interests of your child, how to cope with stress and frustration, everyday problem solving, how to talk to your children about your incarceration, and dealing with reintegration and marginalization.[297]

The program often involves visitation with children, so participating might be a

way to see your child more frequently. [298]

If you do not have a parenting skills program in your prison, you may want to request that one be put in place or that you be allowed to attend a community-based program through a series of Temporary Absences. These escorted or unescorted temporary absences allow you to go into the community for family contact and/or parental responsibilities.[299]

I am a good parent, why would I take a parenting skills class?

While you should never feel that the fact that you are in prison means that you are an inadequate parent, there may be benefits to taking this program. For example, judges may have a bias, however unfair, against parents in prison. If you want to apply for parenting time with your child, it may help if you can show the judge that you have taken a parenting course.

Can I still visit with my children if I am not part of the residential mother-child program?

Yes. Private Family Visits are another way to spend quality time with your child.[300] Through this program, you can spend up to 72 hours with your family members, every two months.[301] If there is no court order saying that you may not have access to your child, then your child should be able to visit you. How often you have visits usually depends on how far away your child lives and whether there is someone willing to bring them to the prison to visit you.

Video Visitations are also available. You can apply by completing the Video Visitation Application.[302]

CD 768 mentions that you can record yourself reading a story and send the recording to your child.[303] It also mentions that parents can pump and store breast / chest milk for their children living in the community.[304]

Pregnancy & Postpartum Care

What kind of care am I entitled to while pregnant? Will I receive post-partum care?

If you are pregnant while incarcerated, then CSC policy says that you will receive

accommodation for pre- and post-natal care.[305] This includes being prioritized for Opioid Agonist Treatment (Suboxone or methadone) if you use opioids, or have a history of opioid addiction, and are pregnant.[306] The policy does not specify whether the necessary exams should take place in or out of prison, but CD 800 does say that Health Services must ensure that arrangements for childbirth are made at an outside hospital.[307]

Will I be shackled during labour?

No. CD 567-3 Use of Restraint Equipment for Security Purposes states that pregnant people will not be restrained during labour and delivery.[308]

Can I be restrained during my pregnancy?

You may be restrained during your pregnancy. However, restraints can only be used as a last resort and care must be taken to prevent injury to you and the fetus.[309] No pressure is to be put on your stomach or torso.[310]

The Rights and Best Interest of Your Child

What is "The Best Interest of the Child"?

The "best interests of the child" (BIOC) is the key test used by child protection authorities and the courts for any legal matter involving children. It has even been used to override parents" *Charter* rights. It is very broadly defined, so it can be difficult to interpret.

The BIOC test is discussed in the federal *Divorce Act*, but not defined there. Each province and territory have legislation that defines the BIOC. It is usually a long and complex definition, involving many factors, some of which include:

- the child's emotional ties;
- the child's preferences, if the child is able to communicate them;
- how long a child has been living in a stable environment;
- the ability of an applicant to act as a parent;
- the ability and willingness of an applicant to provide for the child; and

- relationships by blood or through adoption between the child and any applicant(s).

Does my child have rights?

Yes. For example, your child has a right of access to you to maintain their bond with you.[311]

- 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."

The Supreme Court of Canada has also recognized that keeping a child from their 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.[312] If you believe that your child is being kept from you for arbitrary or unfair reasons, you might be able to argue that the lack of access to your child violates their section 7 rights.

Can my child be searched?

Yes. Your child can be searched if they are living with you or visiting you.[313]

The *CCRA* says that staff members "may conduct routine non-intrusive searches or routine frisk searches of visitors, without individualized suspicion, in the prescribed circumstances, which circumstances must be limited to what is reasonably required for security purposes." [314] Although staff may frisk your child or baby, you should not be asked to strip your baby down, not even to their diaper.

CSC policy says that "no child will be subjected to a strip search by staff." [315] If staff suspect, on reasonable grounds, that a child is being used to carry contraband, the visit may be denied. CSC can also notify child protection authorities or police, or both. [316]

Can my child's property be searched?

Yes. Your child's room and property, such as clothing and toys, may be searched while they are living with you.[317] These searches are to be conducted in accordance with *CD 566-9 – Searching of Cells/Rooms, Vehicles and Other Areas.*

What if there is an emergency or my child needs emergency care?

If a situation arises and staff feel it poses a risk to your child, they will intervene as quickly as possible.[318] Ensuring that your child remains safe will be a priority.[319]

Although you are responsible for your child's heath care, your child will be provided with emergency care, such as emergency first aid, if required.[320]

How do I prepare my child for their transition back to the community?

If your child is transitioning from the full-time to part-time program, you are not being released but your child has aged-out of the full-time or part-time program, or you are being released but your child will not be living with you in the community, the Parole Officer and Mother-Child Coordinator will work with you to develop a Mother-Child Program Transition Plan (CSC/SCC 1159-05) to deal with a changing primary caregiver.[321]

Transition Plans are to be implemented well before your child re-enters the community, so that you have time to properly prepare them for the upcoming change.

Family Law Hearings

Being in prison doesn't mean that you automatically lose your responsibilities as a parent. However, the court may find that it is in your child's best interest for someone else to have decision-making responsibilities. For more information on what constitutions the "best interest of the child," refer to the section, "The Rights and Best Interest of Your Child."

The Mother-Child Coordinator is available to assist you in these matters, including helping facilitate communication with child welfare agencies, lawyers, and family court.[322]

What are Parenting Arrangements?

Parenting arrangements determine who has decision-making responsibility for your child. The decision-making can be shared or it can be taken on by one of the parents, known as sole decision-making responsibility. The parenting arrangement states who can make important decisions about them, such as their physical care,

control, and upbringing.

Shared decision-making responsibility means that parents share the responsibility of making decisions on behalf of the child. Both parents have some ability to make decisions about the child, even if the child only lives with one parent. If you and the child's other parent are still in a relationship, then you automatically have the right to make decisions about your child, unless the child's other parent has obtained a court order saying that you no longer have decision-making responsibility.

Family law in Canada changed in 2021 for married parents. The updated *Divorce Act* has rules that apply to parenting arrangements for parents who are getting a divorce. The provinces and territories generally have similar rules for unmarried parents and for married parents who separate but do not apply for a divorce. Your province or territory's laws may use other words to refer to parenting arrangements, and decision-making responsibility, like "custody" or "access."

Can I participate in my child's upcoming "parenting decision-making" hearing?

Section 7 of the *Canadian Charter of Rights and Freedoms* guarantees parents the right to a fair hearing when the state is seeking decision-making responsibility for their children. In some cases, this will mean legal aid will cover the cost of 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.[323]

Even if you do not receive legal aid, you will likely be able to get assistance from duty counsel. Most court houses in Ontario have a Family Law Information Centre where you can get information about child protection proceedings.

You can also contact your local Elizabeth Fry Society for more information and guidance.

What is "Parenting Time"?

"Parenting Time" 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. Parenting time is a responsibility 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 their child. Sometimes courts will order telephone access if it is hard for a parent to see their child in person.

Who may apply to have decision-making and parenting time for my child?

In most provinces, anyone may apply for decision-making or parenting time for 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 make decisions for a child, so a parent is most likely to be granted decision-making responsibility.

If a biological parent's new partner (stepparent) has developed a bond with a child and helped with parental responsibilities, they 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 being granted decision-making responsibility for your child. Family members, especially grandparents and aunts, or even close family friends, can also be granted decision-making responsibility if it is considered by the judge to be in the best interests of the child and the nature of the relationship with the child.

What factors will the court consider in granting someone decision-making responsibility for my child?

The best interests of the child will be the most important consideration for the court. Other factors that might be considered in deciding if someone should be granted decision-making responsibility for your child include:

- Their willingness to make decisions and parent your child;
- Their ability to provide for your child, including their physical health (if you are considering having an aging parent or grandparent take care of your child, a court may check into their ability to handle the physical requirements of caring for your child);
- The stability of the people and their environment;
- Whether they have a spouse, and if so, how that spouse feels about bringing your child into their home; and

- Whether that person is already dealing with difficult issues that might interfere with their ability to care for your child.[324]

Can I apply for parenting time?

Yes. Legal aid may be available to you, and it can cover parenting time applications. If you cannot find a lawyer, you may be able to get help in court from duty counsel at the courthouse. You must apply for access in the jurisdiction where your child lives. If you have a lawyer, you can ask your lawyer to ask the judge to issue a court order to bring you from prison to the hearing. Not all judges will do this, but some will. If appearing in court is not possible, you might be able to arrange to participate by telephone.

The forms you need may be available on the internet. You can ask your Case Management Team, the Mother-Child Coordinator or contact your local Elizabeth Fry to print the information for you.

Filling out the forms alone 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 can go to the courthouse, you may be able to get help from duty counsel lawyers.

How will the judge decide if I should have parenting time my child?

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

- Were you your child's primary caregiver (were you a single parent or did you do most of the parenting, including emotional and financial support and tasks like feeding, clothing, bathing, etc.)?
- How was your child doing under your care (were they healthy, doing well in school, happy with their friends, supported by your family)?
- You may wish to focus on the bond between you and your child and how that is sufficiently important to you and your child that it be maintained, so that the

judge can justify having a child visit a prison.

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

If your child is found to be in need of protection, the court will decide who gets custody of your child. The court may make a temporary or a permanent order to place your child in the care of social services. If you are a single parent and you do not have a family member or close friend who is willing or able to apply for decision-making responsibility for your child, a child protection agency (CPA) might place your child in a foster home. In unusual cases, CSC's assessment of a CPA may apply to court to put children into permanent care, so that they can be put up for adoption.

Temporary orders may be called society wardship, supervisory orders, temporary care and guardianship, temporary orders, or temporary care. If the court orders that a child become a temporary ward of the Children's Aid Society, the order can only last for a limited amount of time, usually 12 months, but sometimes 24 months. Each case of temporary care has to be reviewed by a judge at various points throughout the child's time in care. Different provinces may have different rules, so be sure to check the provincial laws.

Permanent orders may be called Crown wardship, permanent care and custody orders, guardianship orders, permanent surrender, or continuous orders. If a child is placed in care permanently under Crown wardship, that child may be put up for adoption. The court may decide to grant wardship with or without access. If an order is made and parental access is denied, then parents will not be allowed to communicate with the child until the child turns 18 or marries, or the child protection agency seeks a status review.

What is a supervision order?

A court may order that an individual has custody of a child, but that a child protection agency will supervise that parent or other person responsible for the child. Supervision orders usually last between three and 12 months.

Are child protection orders final?

There is little that is truly final in cases involving children. Court orders can usually

be varied; however, it is more difficult to vary child protection orders. Supervision and wardship orders may be appealed, however.

What if my child is Indigenous?

The extent to which a child's Indigenous heritage is considered in child protection varies between provinces and territories. For instance, in BC there is a recommendation that Indigenous children be placed in Indigenous families.[325] Laws in most other provinces include provisions such as a requirement that if the child is registered under the *Indian Act*, the child's Band must be notified of any court proceedings or potential adoptions. Some provinces include a requirement to consider Indigeneity as part of the determination as to what is in the best interests of the child. It is important to check which laws apply in the province or territory that you come from. On June 21, 2019, Bill C-92 *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families* became law. The Bill is the first time the federal government has exercised its jurisdiction to legislate in the area of Indigenous child welfare. It is an evolving practice of implementation, so it is important to ensure that you have a lawyer who understands what this Bill means for you and your children.

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2.11 Cohabitation and Relationships

Can I have a romantic relationship with another incarcerated person?

Yes, you can. It's common for romantic relationships to develop in federal prisons. While the desire for intimacy is normal and healthy, especially given the difficult conditions of confinement, CSC does not have any Commissioner's Directives with respect to the romantic relationships of federally incarcerated people. This policy gap has produced inconsistent and seemingly arbitrary rules regarding relationships. In our experience, this inconsistency has created a disincentive for many people inside to declare their intimate relationships to CSC, and request cohabitation.[326]

Can I live with my partner?

Yes. It is your human right to request cohabitation with your romantic partner. Exclusion of consideration for individuals in intimate relationships to cohabitate is a violation of the *Canadian Human Rights Act*. As result of a case before the Canadian Human Rights Commission, in 2019, the CSC communicated memos to all incarcerated populations that "the Correctional Service Canada has no tolerance for discrimination with respect to inmate accommodation. Inmate requests for house/cell moves will not be declined based on sexual orientation or relationship status. All requests will be considered based on the provisions outlined In Commissioner's Directive 550 – Inmate Accommodation."[327]

What do I do if I feel like I am being discriminated against?

The resolution of a 2019 Canadian Human Rights Complaint made it clear that a cohabitation request must not be declined based on sexual orientation or relationships status.[328] However, there are still reported instances of discrimination and exclusion based on relationship status and/or sexual orientation.

It is very important that you document your experiences. File a written request for a house move to reside in the same unit as your partner. List any benefits that the relationship provides you in relation to your ability to complete your correctional plan. Save this request, and all communication pertaining to your relationship in a file. If your request is not answered, or is denied discriminatorily, file a complaint. If the complaint process does not resolve your issue, begin a complaint with the Canadian Human Rights Commission.

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326 CAEFS GVI Warden Letter, January 2021. *Advocacy Meeting*, at 2.

327 CAEFS Warden Letter, January 2021. *Advocacy Meeting*, at 2.

328 Government of Canada, *Memorandum on Inmate Accommodation – Sexual Orientation or Relationship Status* (2019) at 1.

2.12: Assault, Sexual Assault, and Coercion

Who can be perpetrators of sexual violence and coercion?

Sexual violence and coercion can be perpetrated by anyone, including CSC staff and other incarcerated people. In their 2019-2020 investigation into sexual violence and coercion in Canadian prisons, the OCI examined sexual violence perpetrated by incarcerated people inside federal prisons. The investigation revealed that sexual violence between incarcerated people is on the rise. For example, in the investigation's analysis of Incident Reports of sexual assaults between years 2014 and 2019, 30% of reports took place in 2019.[329]

How often does sexual violence or coercion happen in prison?

Even though people in federal prisons designated for women make up approximately 5% of the total Canadian prison population, they account for one-third of all reported incidents of sexual assault.[330] People who are, or are perceived to be, lesbian, gay, bisexual, or trans are also more often targeted, regardless of whether they are in prisons designated for men or women.[331]

While statistics help prove that sexual violence is an ongoing issue within prisons, we must also keep in mind that the majority of sexual assaults both in the Canadian public (where only 5% of sexual assaults are reported to police) and in prisons are not reported.[332] Incarcerated people face numerous barriers and disincentives to reporting sexual assault, such as fear of retaliation, retribution or re-victimization, fear of not being believed, fear of being ridiculed, or fear of being punished for reporting.[333] CSC also does not have a specific document for reporting sexual assaults.

Can sexual relationships in prison be consensual?

Yes, but not between staff and incarcerated people. Consent is defined in the *Criminal Code of Canada* as the voluntary agreement to engage in the sexual activity in question.[334]

It is not uncommon for people to engage in sexual activity while incarcerated— in a 2007 national survey of incarcerated people conducted by CSC, 31% of women reported engaging in sexual activity,[335] but according to the Code, consent cannot be given when it is the result of someone's abuse of power or authority – which

would include CSC staff.[336] In prisons, the power imbalance between incarcerated people and staff is so immense that consent between two equal parties cannot exist. CD 060 Code of Discipline also states that employees commit an infraction if they 1) improperly use their title or authority to personal gain or advantage[337] and 2) enter a personal relationship with an incarcerated person without their superior's permission.[338]

There are both federal and international laws that protect your right to safety and your right to have control over your body. Violence, sexual assault, and coercion are violations of these rights as enshrined by the Government of Canada and the United Nations.

What is sexual violence, sexual coercion, and sexual consent?

Sexual violence can mean any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological committed, threatened, or attempted against a person without the person's consent.[339] Sexual violence includes sexual assault (including rape), sexual harassment, stalking, indecent exposure, voyeurism, and sexual exploitation.[340]

Sexual coercion is defined as engaging in unwanted sexual activity after feeling pressured in a nonphysical way to do so.[341] Some examples of sexual coercion include being worn down by someone who repeatedly asks for sex; being lied to or being promised things that weren't true to trick you into having sex; having someone threaten to spread rumours about you if you don't have sex with them; or having an authority figure use their influence or power to pressure you into having sex.[342]

Sexual consent is an agreement to participate in a sexual activity.[343] Consent is about communicating personal boundaries to your sexual partner and having those boundaries respected—and vice versa. Consent is freely given (a choice not influenced by drugs, alcohol, or manipulation); reversible (you can change your mind at any time); informed (you know exactly what to expect); enthusiastic (only engaging in sexual activity if you want to); and specific (because you've said yes to one thing, doesn't mean you've said yes to everything).[344]

How do I report sexual violence or coercion?

In prisons, sexual violence and coercion are typically reported in the form of grievances. Please see Chapter 3 to learn more about the grievance process.

You also have the option of reporting the assault to the police; however, this would need to be done through a CSC staff as incarcerated people are not able to phone the police directly without staff facilitation.

You may also choose to contact both CAEFS and your legal counsel. If you don't have legal counsel, a CAEFS Regional Advocate may be able to help in researching options and connecting you with appropriate emotional supports.

What process should CSC follow if I report an act of sexual violence or coercion?

At present, there are only two documents that provide guidance to CSC staff on how to respond to an incarcerated person's report of sexual misconduct or assault. "What to Do if an Inmate is Sexually Assaulted"[345] is a one-page document located in the Health Services section of CSC's internal website, and "Sexually Transmitted Infections Guidelines- Appendix 7: Response to Alleged Sexual Assault"[346] is a document that is almost exclusively available to Health Services staff. These documents are located CSC's Health Services policy suite— and is not readily accessible to the majority of CSC staff.

Unfortunately, CSC does not have a specific document for reporting sexual assaults. However, we will go through what the process should look like when a sexual assault is reported to CSC. CSC staff are required to record and report incident details in documents such as Statement/Observation Reports.[347] These details should be used to inform and create an Incident Report, which will be filed in CSC's Offender Management System.[348] For Incident Reports of sexual assault, CSC's Incident and Investigations Branch should conduct a formal investigation regarding the incident in question.[349] According to CSC policy, the purpose of this investigation is to assess and report on circumstances surrounding the incident; provide information so CSC can prevent similar incidents from occurring again; to learn and share best practices; and for issue findings and recommendations.[350]

When an incarcerated person alleges that a CSC staff member has assaulted them, then at the very minimum, CSC should conduct a local/disciplinary

investigation.[351] CSC also can conduct increasingly serious investigations for allegations of sexual assault made by an incarcerated person. These types of investigations are referred to as National Tier II and I investigations. National Tier II must involve CSC's Director General, whereas National Tier I must involve the Commissioner.

If you have completed a grievance form and reported a sexual assault, and your grievance is not being investigated by CSC, then you should contact legal help, the OCI, as well as a CAEFS Regional Advocate.

Can I be punished for reporting sexual violence or coercion?

It is against the law for CSC staff to punish you for reporting an incident, especially one involving sexual violence. Section 91 of the *CCRA* states that all incarcerated people should have access to the grievance procedure without negative consequences.[352] Unfortunately, retaliation does happen in federal prisons. It is best to keep track of every retaliation incident, either in your own personal records or through the more formal grievance process. We also encourage you to seek outside legal supports.

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331 Same as above, 24.

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334 The *Criminal Code of Canada* (R.S.C., 1985, c. C-46), s 273.1(1)

335 OCI, 2019-2020 Annual Report, pg. 25.

336 The *Criminal Code of Canada* (R.S.C., 1985, c. C-46), s 153.1(3).

337 CD 060- Code of Discipline, s 11(b).

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340 *Same as above.*

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343 Planned Parenthood, Sexual Consent. Available online at https://www.plannedparenthood.org/learn/relationships/sexual-consent

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346 "Findings: Examination of CSC Policies, Procedures & Research on SCV" cited from OCI 2019-2020 Annual Report, pg. 29.

347 OCI, 2019-2020 Annual Report, pg. 32.

348 Same as above.

349 Same as above.

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351 CD 041- Incident Investigations, Annex B: Responsibility to Convene an Investigation.

352 CCRA, s 91.

2.13: Conditional Releases – Temporary Absences & Work Release

What is a conditional release?

Conditional Release is any absence (time away) from prison you spend during your prison sentence. It is called "conditional" release because while you may be released from prison, there are still specific rules, or "conditions," that you will need to follow.

There are four main types of conditional releases that you can apply for while serving a federal sentence:

- **Temporary Absences (TAs**), including Escorted Temporary Absences (ETAs) and Unescorted Temporary Absences (UTAs);
- **Work Release;**
- **Day Parole**; and
- **Full Parole.**

In this handbook, we cover temporary absences and work releases. Day parole and Full parole are covered in the companion to this guidebook: *HRIA – Release & Reintegration*.

Temporary Absences

Temporary Absences are the first kinds of absences that you can apply for during your sentence.

There are two types of temporary absences: **Escorted Temporary Absences (ETAs**) and **Unescorted Temporary Absences (UTAs).**

What are ETAs and UTAs?

ETAs are short absences under direct escort, meaning that will be accompanied by one or more CSC staff members (called a "security escort"), or a volunteer from the community (called "a citizen escort") for several days decided on in advance.

UTAs are for longer absences where you are not accompanied by anyone.

ETAs and UTAs can be authorized for:

- medical reason, like examination or treatment;
- administrative reasons, like attending to essential personal affairs or legal matters;
- community service purposes, like volunteer work for the benefit of the community;
- family contact, like maintaining and strengthening family ties;
- parental responsibility, like maintaining a parent-child relationship;
- personal development for rehabilitative purposes, including cultural and spiritual ceremonies unique to Indigenous communities; and
- compassionate reasons, like urgent matters affecting the immediate family.[353]

Why might I apply for a Temporary Absence?

Successful temporary absences can be very helpful in your conditional release process for a few different reasons:

- They can help with your parole applications because successful TAs can show the Parole Board of Canada (PBC) that you can follow conditions while out in community.
- They can help you to gain the trust of your Case Management Team.
- They can help you stay connected to your community, helping to make your transition back into community on day or full parole less stressful.

ETAs and UTAs are often viewed by CSC as building blocks for your gradual reintegration into the community, especially for people serving longer sentences

Do I qualify for a Temporary Absence?

You should qualify for a Temporary Absence if the person granting the TA (the warden or the PBC) decides that:

- you will not pose an "undue risk to society" by reoffending during your TA (which may include taking your behaviour while in prison into consideration);
- your absence is desirable for medical or administrative reasons, community service, family contact (including parental responsibilities), personal development for rehabilitative purposes or compassionate reasons;
- your behaviour while in prison does not rule out a TA; and
- a suitable structured plan for the TA has been prepared.[354]

There are no set guidelines on how the warden or PBC should decide if you do or do not pose an "undue risk to society." This means that this part of the decision is subjective and based on your individual situation and surrounding circumstances.

If you are classified as maximum security or are not eligible for parole, you cannot apply for unescorted temporary absences,[355] but you can apply for escorted temporary absences at your eligibility date.[356]

You will also not be eligible for UTAs if:

- a removal order was issued against you under the *Immigration and Refugee Protection Act*, and you are not yet eligible for full parole;[357]
- you were sentenced to an indeterminate sentence for offences which occurred before August 1, 1997; or
- you are serving a life or indeterminate sentence followed by a definite sentence.[358]

When can I apply for an ETA?

ETAs can be granted at any time except if you are detained after your statutory release date.[359] All incarcerated people are eligible for medical ETAs at any time during their sentence.[360] If you are serving a life sentence imposed as a minimum sentence you can only apply for ETAs at your eligibility dates. You will find all your important dates, at the top of most of your CSC documents.

When can I apply for an UTA?

You are eligible for UTAs six months into your sentence, or when you have served

half the time required to reach your full parole eligibility date – whichever is longer.

For example: Say on January 1, 2020, you are sentenced to six years on drug-related charges. You should receive full parole after two years served (January 1, 2022). Half the time needed to reach your full parole eligibility date is one year, which is longer than 6 months. So, you should be eligible for an UTA on January 1, 2021.

If you are serving a life or indeterminate sentence, you generally become eligible for UTAs three years before your full parole eligibility date, unless you were under the age of 18 at the time you were charged[361] or you fall under one of the categories for persons not eligible for UTA described above.

You can apply for an UTA within the 12-month period before your UTA eligibility date. Using the example above, if you are eligible for a UTA on January 1, 2021, you can start applying for your UTA starting January 1, 2020.

The "releasing authority" (which is either CSC or PBC) is required to review only one of your UTA applications every six months, except if the UTA is for medical reasons or compassionate reasons.

Who can authorize my ETAs?

In most cases, it is the warden who authorizes ETAs. The warden is also responsible for imposing any conditions. The warden can set any conditions that they consider "reasonable and necessary in order to protect society."[362] In some cases, the Parole Board of Canada (PBC) may also be involved in authorizing ETAs.

If you are serving a life sentence for first- or second-degree murder or high treason, your ETAs must be approved by the PBC. If you are serving a life sentence for first- or second-degree murder or high treason, you do not need the PBC's approval in the case of ETAs for medical reasons or to attend judicial proceedings or a coroner's inquest – these absences can be granted by the CSC at any time.[363]

If you are serving a life sentence that was imposed as a minimum sentence, the PBC is also responsible for authorizing ETAs and imposing conditions, except

for medical reasons or to attend judicial proceedings or a coroner's inquest.[364] If the PBC authorizes an ETA for you for the purposes of community service, family contact (including parental responsibilities) or personal development — and the ETA is not cancelled – all of your next ETAs can be authorized by the warden instead of the PBC.[365] If your first ETA is then cancelled because a condition is breached (i.e. you did not follow the rules that were set by the PBC), only the PBC can authorize your next ETA.[366]

You are entitled to receive written reasons for the authorization, refusal, or cancellation of an ETA.[367]

Who can authorize my UTAs?

The warden can also authorize your UTAs, unless you are serving:

- a life sentence imposed as a minimum punishment (or commuted from death);
- a sentence for an indeterminate period;
- a sentence for an offence set out in Schedule I which resulted in either the death of or serious harm to the victim; or
- a sentence for a sexual crime involving a child.[368]

If you are serving a sentence for any of the above crimes, the PBC is responsible for authorizing your UTA.

How long can temporary absences be?

ETAs can be for:

- an unlimited period if authorized for medical reasons;
- a period of not more than five days (plus travel time potential) if for any reason other than medical;
- a period of more than five days, but less than 15 days, if for any reason other than medical (with Commissioner's approval); and
- not more than 15 days if you are serving a life sentence.[369]

UTAs can be for:

- an unlimited time for medical reasons;
- a maximum of 15 days, maximum three times per year for personal development or community service if you are classified as medium security;
- a maximum of 15 days, maximum four times per year for personal development or community service if you are classified as minimum security;
- a maximum of 72 hours (three days) per month for people classified as minimum security and a maximum of 48 hours (two days) per month for people classified medium security for reasons other than medical, personal development or community service;
- for a maximum of 60 days and may be renewed, for periods of up to 60 days each, for the purposes of a specific personal development program.[370]

You can be given extra time for travel to and from your destination,[371] but how long your TA can last – especially an ETA with a security escort – is often limited because staff can only travel for a limited amount of time per day (as per their union's collective agreement). It can also be difficult to find community volunteers to act as escorts. Limited staff or availability of volunteers can make travel to remote communities especially difficult.

What conditions might be imposed on my Temporary Absence?

The CSC or the PBC may impose conditions on your TA that they decide are "reasonable and necessary" to protect society.[372]

Everyone released on unescorted Temporary Absence is obligated to respect the following CSC conditions:

- That on release, you travel directly to the destination set out in your absence permit, report to a parole supervisor as directed by the releasing authority and follow the release plan approved by the releasing authority;
- That you remain in Canada and within the territorial boundaries fixed by the parole supervisor for the duration of your absence;

- That you obey the law and keep the peace;
- That you inform your parole supervisor immediately if you are arrested or questioned by the police;
- That you carry at all times the absence permit and the identity card provided by the releasing authority and produce them on request for identification to any police officer or parole supervisor;
- That you report to the police if and as instructed by the releasing authority;
- That you return to the penitentiary from which you were released on the date and at the time provided for in the absence permit; and
- That you do not own, possess or have the control of any weapon, as defined in section 2 of the Criminal Code, except as authorized by the parole supervisor.[373]

Additional conditions can be imposed, such as conditions related to the use of drugs and/or alcohol.[374] Conditions can also be imposed with the intention of protecting a victim, such as restricting contact with the victim or restricting access to a specific place.[375]

What is the application process for a Temporary Absence?

1. **Complete and submit the form:** To apply for a Temporary Absence, you need to complete the "Temporary Absence" form. Make sure to use the correct form, and not just a general request form so that your application is entered into the Offender Management System (OMS) and processed on the correct timeline, by the right people.

2. **Participate in an interview to develop your Assessment for Decision**: Once your application is received, CSC staff should invite you to an interview to discuss your proposed TA.[376] At this interview, CSC staff will be assessing the perceived "level of risk" involved in your proposed absence. An "Assessment for Decision" is a document drawn up, usually by your Parole Officer or Primary Worker, that has all details for your TA – like the "structured plan" of the TA (which indicates things like the objectives of the TA and their relationship to your Correctional Plan), risk factors, an

assessment of the risk, and a recommendation.[377]

3. **(Maybe) Attend a hearing:** CSC or PBC may hold a hearing to decide on your TA application, or alternatively, they may decide based on a review of the documents in your file. Where the PBC is the granting authority, it must hold a hearing:
    - for ETAs, until a first ETA is approved or authorized by the Board at a hearing (except for ETAs for administrative and compassionate reasons); and
    - for UTAs, until a first UTA is authorized or a first day parole is granted by the Board.[378]
4. **Wait for a decision:** If CSC is making the decision about your TA, the decision must be made no later than ten days after completion of the "Assessment for Decision." [379]

If the PBC is making the decision, it must be made no later than six months after receiving the application. However, they may adjourn for an additional period of up to two months where more time or information is required.[380]

What is included in an Assessment for Decision?

An Assessment for Decision will include:

- Risk assessment/risk factors;
- Structured plan for the proposed Temporary Absence;
- Overall assessment;
- Any dissenting opinion;
- Recommendation; and,
- Information for specific to your UTA or ETA.

What is a community assessment?

For your TA to be approved, there will need to be a community assessment done on the place you plan to go, such as your home or the community agency where the program is being offered. We suggest that you request your community

assessments as soon as you can.

As this process begins, you might consider contacting your local Elizabeth Fry Society or another community organization that works with incarcerated people for support. Their staff should be able to advise you on how best to prepare for a community assessment and may even arrange for you to meet with representatives of halfway houses, community organizations, Indigenous program coordinators (for Pathways, for example) either by phone or in person where possible. You can also request an in-reach visit with a representative from a halfway house and your outside parole officer. All community meetings and information will be useful in your community assessment as they will show that you have outside support for your reintegration.

Completing your community assessments before you apply for a Temporary Absence may help improve your chances of a TA and make the process move quicker.

We suggest letting the people at the location where the community assessment will be done know that parole officers will be visiting them to do a community assessment. You might also consider sending the Community Assessment policy to relevant community parties.[381] This will give them the opportunity to familiarize themselves with CA protocols, such as confidentiality protocols.

If I am required to have a hearing regarding my Temporary Absence, can I ask for help?

If the PBC is holding a hearing to decide on your TA application, you have the right to have someone of your choice be there to assist you throughout the hearing or address the Board on your behalf.[382] Think about who you might want to assist you at the hearing and give CSC notice. If you want a lawyer to be there as your assistant, this may be covered by Legal Aid in some provinces or territories. You should be aware that a lawyer does not have any special status before the PBC and, technically speaking, is not considered any different from other less formal kinds of support. See Section 4 of this Handbook for details on what services are covered in the different provinces and territories.

What if my Temporary Absence is refused or cancelled?

There are several reasons why CSC might refuse your TA, including administrative

or staffing issues. Your TA can also be cancelled during, or before it starts, if the reason for the TA no longer exists or if the cancellation is believed to be necessary to prevent the breach of a condition.[383]

You have the right to receive written reasons for approval, refusal, or cancellation of TAs.[384]

If your UTA is suspended by CSC, your case must be forwarded right away to the PBC for review,[385] except in cases where your TA was not approved due to insufficient CSC staffing or financial constraints.

If you are denied a UTA by CSC or PBC, they do not have to consider another application you make for another six months, except if it is a TA for medical or compassionate reasons.[386] In the case of a compassionate leave requests (to attend funerals and family emergencies), CSC is obligated to recognize the compassionate nature of the ETA for bereavement. If the CSC is not able to accommodate a compassionate request, then they are mandated to support and implement various alternatives that allow family contact such as involving chaplains or Elders to facilitate family calls and video conferencing. A compassionate ETA may also be granted later so that the gravesite can be visited.

Depending on who denied or cancelled your application, you can appeal the PBC decision or file a grievance with CSC. For more information on the grievance process, please see Chapter 3. We especially encourage filing a grievance if the reason for your denial or cancellation is because of insufficient staff or financial constraints – internal budgetary issues should not be a barrier to your legal entitlements. You may also consider writing a letter to the Correctional Investigator.

Work Releases

What is a work release?

A work release is a structured program of release for a specified duration of work or community service outside the prison, under CSC's supervision.

Why should I consider applying for a work release?

A work release will give you the opportunity to go out into the community to do

volunteer work or a paid job. As with temporary absences, work releases can be very helpful in your conditional release process by showing that you are capable of being out in the community without posing any risk, and by helping to build trust between you and your Case Management Team. Besides the financial benefit of working in the community, this opportunity to improve your skills while in the community will help you to build self-confidence and self-esteem and may also lead to employment or other opportunities once you are released.

Am I eligible for a work release?

If you are eligible for UTAs then you should be eligible to apply for a work release. If you are maximum security, or you have been detained in custody beyond your Statutory Release Date, then unfortunately you are ineligible for a work release.

Here are the other factors that will be considered by CSC when granting a work release:

- You must not present an undue risk to society by reoffending during a work release. In this case, "undue risk" refers to the CSC's (warden's) perception of how likely it is that you will reoffend while in the community.
- If you plan to participate in a structured program of work or community service in the community (this is preferred).
- If CSC claims that your behaviour does not warrant authorizing a work release (for example, CSC may deny a work release if they consider that you may be aggressive with people because you have had several fights while in prison; however, they will consider the length of time that has passed and the seriousness of the altercation when finalizing a decision). The Case Management Team is tasked with considering all available information from collateral sources prior to final decisions related to your reintegration. It is a combination of taking the good with the bad and striving to render an impartial decision, based on various risk management strategies, to formulate a release plan using the least restrictive means possible.
- If you have a structured plan for the work release which is linked with your Correctional Plan.[387]

Like a Temporary Absence, a work release may involve specific conditions if CSC deems them to be "reasonable and necessary" for the protection of society.[388] These conditions can include things like prohibiting the consumption of drugs or alcohol, having contact with certain individuals or going to a specific place. CSC also has the right to cancel a work release, but they must provide you with written reasons for the cancellation. They also must provide you with a written reason if they refuse your work release application.[389]

When am I eligible for work release?

You are eligible for work release when you have served one-sixth of the sentence or six months, whichever is greater.[390]

How long is a work release granted for?

The Institutional Head can grant a work release for up to a maximum of 60 days under specified conditions and supervision.[391]

How do I apply for a work release?

You will need to apply for a work release by completing the relevant application form and submitting it to your Parole Officer. These forms are generally found in the Inmate Committee office or the common area building where various form boxes exist.

Most prisons have a list of employers that they typically use for work releases. You can ask your PO or PW to see this list. Work releases can be escorted and unescorted, and may also be for attending school.

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354 *CCRA* ss 17(1), 17.1(1), 116(1)-(2).

355 *Same as above*, ss 115(1), 115(3); *CD 710-3,* s 11.

356 *CD 710-3,* s 14.

357 See *CCRA*, ss 128(3)-(7).

358 *CD 710-3*, ss 9(a)-(c).

359 *Same as above*, s 14.

360 *Same as above*, s 13.

361 *CCRA*, s 115(1)(a.1) (A person who was under the age of 18 at the time of commission of murder, and who is sentenced to life imprisonment without parole for a specified number of years, must serve the longer of a) all but one-fifth of the period which must be served until eligibility for parole and b) the period to reach full parole eligibility less three years).

362 *Same as above*, s 17(2).

363 *Criminal Code*, RSC 1985, c C-46, s 746.1 [*CC*] ; *CD 710*-3, Annex C, s 3.

364 *CCRA*, ss 17.1,17.1(1); *CD 710-3,* Annex C, s 4.

365 *CCRA*, s 17.1(2)

366 *Same as above*, s 17.1(3).

367 *Same as above*, ss 17(4), 17.1(6).

368 *Same as above,* ss 107(1)(e), 116(2); *CD 710-3*, Annex C, s 10.

369 *CCRA*, s 17(1). See also *CD 710-3*, Annex B.

370 *CCRA*, ss 116(3)-(6). See also *CD 710-3*, Annex B.

371 *CCRA*, ss 17(5), 116(9).

372 *Same as above,* ss 17(2), 17.1(4), 133(3).

373 *CCRR*, s 161(1).

374 *CCRA*, s 133(3).

375 *Same as above*, s 133(3.1).

376 *CD 710-3*, s 22.

377 *Same as above*, Annex E.

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379 *CD 710-3*, s 28.

380 *CCRR*, ss 156(3), 156(5).

381 See Correctional Service Canada, *Community Assessments*, Commissioner's Directive No 715-3 (15 April 2019), online: <https://www.csc-scc.gc.ca/politiques-et-lois/715-3-cd-en.shtml>.

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383 *CCRA*, s 116(10).

384 *Same as above*, s 17(4).

385 *Same as above*, s 117(4).

386 *CCRR,* s 156(6); *CD 710-3*, s 29.

387 *CCRA*, s 18(2).

388 *Same as above*, s 18(3).

389 *Same as above*, ss 18(4)-(5).

390 *Sentence Calculation: How Does It Work?* Ottawa: Public Safety and Emergency Preparedness Canada, 2005.

391 *Same as above*

2.14: Legal Counsel & Assistance

Do I have the right to a lawyer?

You have the right to a lawyer while you are in prison. Your rights to legal counsel are enshrined in the *Charter of Rights and Freedoms,* and these right does not go away while you are in prison. Often, having the right to a lawyer or legal assistance is known as "right to counsel." Nobody has the right to interfere with your right to legal assistance.

When should I be informed of my right to a lawyer?

While you always have the right to contact a lawyer, there are also particular situations where you must be *informed* of your right to counsel, these include: when charged with a crime and /or when receiving a major disciplinary charge.

When might I want to exercise my right to a lawyer?

There are many different circumstances where it might be in your best interest to contact a lawyer. Here are some examples:

- **You are going to be transferred to a Structured Intervention Unit:** You should be informed of your right to counsel and given "reasonable opportunity" to retain and instruct counsel without delay.[392] Without delay means you should be able to contact a lawyer immediately, but certainly in no more than 24 hours.
- **You have been, or are about to be, transferred involuntarily:** You should be informed of your right to counsel and given "reasonable opportunity" to retain and instruct counsel without delay." [393] "Without delay" here means immediately, unless there are compelling circumstances preventing immediate action, and within no more than 24 hours following the notice of transfer.[394]
- **After an emergency transfer:** You should be informed of your right to counsel and given "reasonable opportunity" to retain and instruct counsel without delay.[395] The Institutional Head or designate must advise you of your right to legal counsel within two working days after the transfer.[396]
- **You are charged with a serious disciplinary offence:** Some federal prisons (including Grand Valley Institution for Women and the Edmonton Institution

for Women) have duty counsel programs established for major disciplinary court. This means that a lawyer should be available to you on the day of your hearing. If there is no duty counsel program established at the prison you are incarcerated, you may choose to hire a lawyer yourself. If this is the case, you must be given "reasonable opportunity" to retain and instruct counsel, but you are not guaranteed a lawyer if you cannot afford a lawyer. Some Legal Aid programs pay for a lawyer for disciplinary hearings. If you are incarcerated in BC, Prisoner Legal Services can also assist. If you are in the Kingston areas, Queen's Prison Law Services may also assist.

- **You have a parole hearing:** You are entitled to have a lawyer assist you at your parole hearing.[397] In some provinces, this parole assistance is covered by Legal Aid. A lawyer can assist with your parole hearing by building a strong case for your early release through their knowledge of the law and the parole system.

Do I have the right to a lawyer when facing disciplinary charges?

It depends, in part, on the seriousness of the charge.

For serious disciplinary charges, CSC must give you "reasonable opportunity" to find and instruct a lawyer. Your lawyer must also be able to participate in the proceedings to the same extent that you would be.[398] If you are not informed of this right, you should discuss CSC's failure to comply with not only the *CCRA* and CCRR, but the Charter, with the Serious Disciplinary Hearing Advisor, who should be overseeing the disciplinary process and hearing.[399]

For minor disciplinary charges, there is no automatic right to counsel but you can still request a lawyer. The Institutional Head or designated staff member conducting the hearing must consider your request for counsel. Their decision to grant your request is based on the circumstances of your case, like the complexity and potential consequences. Whatever the Institution Head or staff member decides, they must document their decision and the reasoning for their decision. [400]

What do I do if CSC is restricting my access to legal assistance?

While the Arbour Commission went as far as to recommend that some form of sanction be placed on those who fail to comply with a person's right to counsel,

the recommendation has not been implemented. For this reason, you must be aware of your right to counsel, because prison staff may not be proactive in supporting you in exercising this right.

Some prisons may try to restrict your access to counsel by not arranging phone calls with your lawyer, delaying phone calls with your lawyer, or restricting the day and time you can receive visits from your lawyer. We have also received reports of staff providing incarcerated people with the incorrect information regarding the timing of visits and phone calls.

If you are being denied rights to which you are entitled, you can file a grievance. For more information on how and when to file a grievance, please refer to Chapter 3. You should also let the Office of the Correctional Investigator and CAEFS know about this.

To read more about access legal counsel, turn to Chapter 3.

REFERENCES

392 *CCRR*, s 97(2)(a). See also *CD 711*, ss 150-52; *GL 711-1*, s 18(c)-(e); Correctional Service Canada, *Structured Intervention Unit (SIU) Transfer Procedures – Non-SIU Sites*, Guideline No 711-2, ss 19(c)-(e) (30 November 2019), online <https://www.csc-scc.gc.ca/politiques-et-lois/711-2-gl-en.shtml>.

393 *CCRR*, s 97(2)(b).

394 *GL 710-2-3*, Definitions.

395 *CCRR*, s 97(2)(c).

396 *GL 710-2-3*, s 34(b).

397 *CCRA*, ss 140(7)-(8).

398 *CCRR* s 31(2)

399 Correctional Service Canada, Discipline of Inmates, Commissioner's Directive No 580, Annex C (26 October 2015), online: <https://www.csc-scc.gc.ca/politiques-et-lois/580-cd-eng.shtml>.

400 Correctional Service Canada, Inmates' Access To Legal Assistance And The Police, Commissioner's Directive No 084, s 13 (28 March 2002), online: <https://www.csc-scc.gc.ca/acts-and-regulations/084-cd-eng.shtml> [CD 084].

3 PROTECTING AND DEFENDING YOUR RIGHTS

3.0: Introduction

This section provides details concerning the steps you can take to protect your rights if they are not respected, and who you can reach out to for support.

Protecting Your Rights

Knowledge is power. One of the best ways of protecting your rights is to know that you have them. We suggest that you take the time to read Section 2 of this book that we've designed to help you to understand your rights.

Information is power. One of the most helpful things that you can do to protect your rights is to have documentation. We suggest that you also keep a record of:

- Courses and programs you take;
- Work reports;
- Education evaluations;
- Community supports; and
- Volunteer projects.

We also suggest that you keep track of things that happen to you, or issues that may come up. This may include disputes with other incarcerated people, or with staff; security incidents in which you were involved or for which you were questioned; things that you were told by your PO or by other CSC staff concerning the above points or about your correctional plan; or external incidents involving

your close family or friends that may influence how you feel and act.

We think it is a good idea to also keep a paper copy of all your official documents. This could include:

- correspondence concerning your release applications (like requests for information from schools, halfway houses, employers, childcare providers, etc.);
- documents or notices presented to you by CSC staff about your record while incarcerated; and
- any correspondence with your lawyer, the PBC, the Correctional Investigator or any other agency working on your behalf.

You should not rely on the prison to provide you with this information, but instead ask your Parole Officer or your lawyer about these.

We suggest that you keep all your documentation in your designated safe box, which may be provided to you by the prison. This may help avoid the risk that documents might get damaged or destroyed (for example during cell searches). If you do not have a designated safe box, keep your documents together and somewhere relatively safe.

You can also consider sending your documents to a person that you trust on the outside of the prison to keep them safe for you. If this person is a family member, you can arrange to give the documents to them during contact visits, if the prison allows it. You can also ask your lawyer to make copies, or you can mail them out to a person you trust. If you are having difficulty getting the documents out of the prison to the person, you can argue that the person is the one you have chosen to assist you at PBC hearings and that they need to have access to the documents, so long as this is the truth.

Defending Your Rights

Before we get started, we want to be clear that defending your rights – seeking a solution or finding a "remedy" – when your rights have been violated can often be frustrating and is not always successful. People often share with our advocates that seeking remedies can feel pointless given the power difference between

individuals and the prison – so: **why seek a solution to your problem?**

First: **success is possible.** Finding a remedy for your problem can mean an immediate improvement in your personal situation.

Another important reason to seek a remedy is that **you have the right to do so.** While generations of incarcerated people before you had no such law to protect them, the *CCRA* now states that decisions made about you must be made in a forthright and fair manner and that, if this is not the case, you have the right to an effective grievance procedure. You also have a right to be treated with respect and dignity and the right to object 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. In short, you can help to maintain or even advance your rights simply by exercising them.

When it comes to taking action to protect my rights, what are my options?

You have the right to voice when you feel you have been badly treated and to seek remedies for actions and decisions made by prison authorities that you feel are unfair. There are several rights that help to support you:

- The right to make a complaint regarding an action or decision of a staff member without experiencing negative consequences.[401]
- The right to file a grievance regarding an action or decision of a staff member without experiencing negative consequences.[402]
- The right to legal assistance and reasonable access to legal reading materials.[403]
- The right to a fair hearing protected by procedural safeguards including:[404]
  - 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; and

  - The right to cross-examine witnesses if there is a hearing against you.

- The right to apply for certiorari (right to review/be heard) in the federal court with respect to decisions made by federal agencies that have a judicial or quasi-judicial function, including:
  - The right to review and challenge inaccuracies in your file.
  - The right to make a complaint to the Privacy Commissioner.
  - The right to make a complaint to the Canadian Human Rights Commission.
  - The right to make a complaint to the Correctional Investigator.

Know that you are not alone in seeking to have your rights protected. Let's start by outlining who you might reach out to for support if or when your rights have been violated, and what they can do to help.

REFERENCES

401 *CCRA*, s 91.

402 *Same as above*.

403 *CCRR*, ss 97(1)-(3).

404 See Chapter 1.

3.1: CSC's Internal Accountability & Oversight Processes

Correctional Service of Canada Internal Request & Grievance Process

What is a Request?

Requests, in prison, are a formalized process asking for something that you want or need. Requests are used for a variety of reasons while you are incarcerated.

When a problem arises or you feel your rights may have been restricted, a request is often a good first step as it can be efficient and unlikely to result in retaliation from staff.

For example, let's say you are told you cannot take a required program yet because of the factors outlined in your Correctional Plan (CP). You could make a request to access the program as soon as possible to allow you to fulfill the requirements of your CP. As part of the request, you could ask for a timeline of when you are expected to be able to take the program and whether there are any other requirements you will need to meet to access the program(s), etc.

Why might I start by making a request, rather than filing a complaint or grievance?

A request gives staff the opportunity to simply grant your request, rather than addressing a grievance. A request is also a simpler process, involves less paperwork than filing a complaint or grievance, and may be a faster way to resolve your problem as responses to requests are supposed to be provided within 15 days of receipt of the request.

Another reason you may want to start with a request is that submitting a request creates a record of your attempt to resolve a problem at the lowest level possible. Being able to show that you tried to resolve your problem first by making a request may help your case if you later decide to file a grievance. Making a request is a better strategy than filing a formal complaint or grievance because staff see them as the least threatening option.

In any case, make sure that you keep a copy of your request.

What are potential problems with making a request?

In practice, requests are more likely than grievances or complaints to be ignored or to get lost. Also, if you decide to make a request, be careful to ensure you understand the grievance time frames so that you don't run out of time to file a grievance (see usual time frames below) if your request does not result in what you are seeking.

Complaint and Grievance Process

What are the different levels of the grievance process?

Beyond a request, there are three levels of the complaint and grievance process that are available to you. They are:

1. **Complaint:** submitted at the prison and responded to by the supervisor of the staff member who made the decision you are dissatisfied with.
2. **Initial Grievance:** submitted to the Institutional Head or District Director.
3. **Final (National) Grievance:** submitted to the Commissioner at National Headquarters.[405]

CSC prefers that you start at the lowest level but depending on the issue the grievance may go directly to the initial or final level.[406] The level often depends on who the grievance is about. For instance, if the problem is with the Institutional Head, it wouldn't make sense to complain directly to them – so you would submit your grievance to their superior: The Commissioner at National Headquarters.

If you are not satisfied with the outcome once your grievance has been processed at the final level, you may choose to take legal action through the Federal Court or file a human rights complaint with the Canadian Human Rights Commission. These two options will be discussed briefly later in the chapter.

Complaints Level

What is a complaint?

This is the first step of the grievance process. A complaint itself may result in a

solution to your problem. If it does, then you don't need to continue through the other grievance levels.

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.[407] CSC prefers that people use the forms that they provide in order to make these complaints. If you can't identify the appropriate "supervisor," you can send your complaint to the warden, and they will direct it to the right person.

Why file a complaint instead of a grievance?

The complaint level can be useful for misunderstandings or decisions that can be quickly resolved. It can also be useful if the matter is not pressing.
Here are some examples of possible complaint level issues:

- Staff have not responded to a request in the appropriate timeframe, or at all.
- You have concerns about the food at the prison.
- You have been denied access to a particular program that is non-urgent.
- You have concerns about the conduct of a staff member (non-violent / non-threatening only).

Do I need to file a complaint before I file a grievance first?

The *CCRR* and the CDs use the word "may" when they refer to submitting a complaint, but they do not say you "must" submit a complaint. This means that while you are encouraged to file a complaint before resorting to a grievance, there is no rule that says you must file a complaint first. For example, if the issue is very serious or your rights or liberties are restricted in any way then a complaint is not the appropriate form to use. In these cases, you should go directly to the first level of grievance.

How long do I have to file a complaint?

A complaint should be made within 30 working days of when the problem occurred, or the issue arose.[408] However, the 30-day limit can be more flexible under certain circumstances. If there is a good explanation for why it was not possible for you to file a complaint within the 30-day limit, then you should file the complaint anyway and clearly explain the reason for the delay.

How do I file a complaint?

A written complaint should be addressed to the supervisor of the staff member who made the decision or the Institutional Grievance Coordinator.[409]

Complaint and grievance forms should be available within the prison and are usually kept in common areas. If the complaint forms are not available in a common area, you can request one. Every prison has specific people who will give out this type of form.

You can submit your complaint by putting it in the Complaint/Grievance box located in different areas depending on the prison. You should ask the person who gives you the form where the Complaint/Grievance box is located.

Make sure that you keep a copy for yourself! If you can't make a photocopy, then complete two forms in writing and keep one for your own records.

Are complaints kept confidential?

All complaints are kept confidential to the greatest extent possible.[410] All complaints are investigated so it is sometimes difficult to keep them totally confidential. However, your complaint and the surrounding investigation should not be mentioned by CSC staff outside of the formal complaint/grievance process without prior authorization from the Institutional Head.[411] If a claim is not kept confidential, you can file a complaint with the Privacy Commissioner.

When can I expect to hear back about my complaint?

For most complaints, CSC is to provide a written response within 25 working days.[412]

CSC officials (including the Institutional Head; the Director of Offender Redress; the Regional Deputy Commissioner; and the Assistant Commissioner of Policy, Planning and Coordinating) have the right to request more time to adequately deal with the complaint. You should be informed, in writing, of the reasons for the delay and be told when to expect the response.[413] Often one of these officials will inform you they need more time.

If a grievance or complaint has been deferred, the Grievance Coordinator will

verify either with you, or on their own, that the deferral remains appropriate.[414]

Either way, the process can take many years in some cases.

What solutions can come from a complaint?

If you are not satisfied with the solution or decision rendered from your complaint, you can file an initial grievance to the Institutional Head through the Institutional Grievance Coordinator.[415]

Normally, this must be done within 30 working days of receiving the response.[416]

Be sure to correctly indicate the solution you would like to have on the grievance form and remember the time frame of your solutions. What you want at the time you filed the complaint could be no longer valid by the time your complaint is finalized. So, alternatives solutions should also be in the complaint, if applicable.

What is an informal resolution?

When you submit a complaint or grievance, every effort should be made by staff members and yourself to resolve the matter informally through discussion.

Alternative dispute resolution mechanisms such as coaching, counselling, mediation, healing/ resolution circles, and facilitation should be offered to the parties involved and must remain available throughout the redress process.

What is a group complaint and how do we file one?

If you are considering making a complaint about an issue that affects you and other incarcerated people, you might want to ask around and see if other people share your concern(s). If other people do share your concerns, you may want to file a group complaint. Note that this does not prevent you from also filing an individual complaint or grievance.

When filing a group complaint, the complaint must be signed by all the complainants involved, i.e., each person who wants to submit this complaint. Remember to designate one person as a representative for the group.[417] The representative is responsible for all communications regarding the complaint and for informing the group about the decision.[418]

Here are some instances where you might consider filing a group complaint:

- lack of available hygiene products;
- lack of access to workout equipment or physical exercise;
- unsubstantiated lockdown; or
- denied access to showers.

Grievances

What is a grievance?

A grievance is a written statement outlining a wrong that has been committed against you as an individual or as part of a group. A grievance asks for an official response and a solution to the problem. Grievances are filed using an official form, which should be available to you in commons areas of the prison.
For a grievance to be considered, the issue or problem you are grieving needs to be within the jurisdiction of CSC.[419]

This might include issues around security classification, like maximum security placement or delays in your programming.

It is important to file a grievance regarding any staff decision which **further restricts your freedom** or violates your rights. Like placements in an SIU or religious discrimination.

Examples of common issues not within CSC's jurisdiction include:

- a doctor's decision not to prescribe pain medication;
- Parole Board decisions; and
- the actions of contract workers, such as construction workers.

There are two levels of grievances:

- **Initial Grievance**: An initial grievance is generally used if you are not satisfied with the response to a complaint.[420] It is also used for allegations of harassment, sexual harassment or discrimination.[421]

- **Final Grievance**: A final grievance is used if your concern involves either the warden or Regional Deputy Commissioner, or if you are not satisfied with the response to the initial grievance.[422]

Are there any possible negative consequences for filing a grievance?

The *CCRA* states that every incarcerated person must have complete access to the grievance procedure without negative consequences.[423] If, for any reason, there is retaliation by CSC staff after you file a grievance, you must document this so that it can be made part of the record as a staff mistake. You then need to go to the next level of grievance and explain that your rights under the *CCRA* were infringed.

Additionally, the confidentiality of your complaint or grievance is supposed to be preserved to the greatest possible extent.[424] If your confidentiality is not protected, it is important, again, to document this and to ask why the Commissioner's Directive was not followed.

How effective is the grievance system?

Many people view the grievance system as ineffective, slow, and unsafe, as it does not provide any safety against retaliation.[425]

Problems expressed by people in prison regarding the grievance process include lack of communication about the status of a complaint, grievances going missing or never being acknowledged, staff pressuring people to withdraw complaints, grievances being denied, wardens failing to implement the agreed upon terms of successful grievances, and years passing before final grievances are answered.[426]

When you use the grievance procedure successfully, you reinforce the notion that there is a need for the formal procedure, and you also demonstrate that the procedure can work. If you can't get a problem resolved through the grievance procedure, going through the process will still result in documentation that something went, or is going, wrong which can be helpful as you seek other means of remediation and can also help to build evidence that alternatives are needed.

Filing grievances can have an impact on the justice system as a whole and help other people who are incarcerated. Grievances allow organizations representing

incarcerated people to collect statistics that reflect the realities of people's experiences inside. These statistics help organizations fight for improved conditions for incarcerated people. The statistics may also serve as a tool for documenting institutional accountability[427] and create penalties for correctional interference with the integrity of a person's sentence.[428]

We also recognize that filing grievances and advocating for your rights can also lead to retaliation and retribution from staff. If you are concerned about what exercising your rights may mean for your safety or security, we encourage you to contact CAEFS, or another trusted organization, to discuss how we might support you.

It is important that incarcerated people continue to file grievances to ensure that CSC lives up to its promise and improves the system. You should be sure to follow-up on your grievance if you don't receive a reply.

What questions should I consider before writing a grievance?

- **Is your concern or problem within CSC's jurisdiction?** Remember that the examples of things that are not in CSC's jurisdiction include: a doctor who will not prescribe pain medication; a decision of the Parole Board; and the action of a contract worker. Ultimately, the Institutional Head or the person reviewing the grievance will determine if the issue is within CSC's jurisdiction. If the issue is not within CSC's jurisdiction, they will need to inform you, in writing, of other ways to seek redress.[429]
- **Have you already tried an informal resolution?**
- **Have you already attempted a resolution through a complaint?**
- **Is your issue serious and/or high priority?**
- **Whose action/inaction is your grievance about?** This sometimes determines the level at which you should file your grievance. Remember, if your grievance is against the warden, you should immediately file a final grievance to the Commissioner.

Are there any tips to guide my grievance writing process?

- **Start with the facts:**

- Be clear and accurate in describing the issue and the events surrounding the issue.
- Include dates, times, and names wherever possible.
- Include only what you know to be true (avoid embellishment or attempts to try to fill in any information that you aren't sure of).
- If the issue involves discrimination (based on race, religion, gender, ethnic origin, age, sexual orientation, gender, disability, etc.) make that clear. This will alert CSC to the fact that your grievance may implicate the *Canadian Human Rights Act*.[430]
- Remember: opinions are not the same as facts.

- **Include supportive information and documentation:**
  - If you have paperwork, documentation, or other information that supports your grievance be sure to include it. Remember to always keep a copy for yourself!
  - Note that you have the right to access the information that is relevant to your case. If CSC 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. For more information on this, please refer to the Information chapter.
  - You also have the option to amend your grievance. If you are missing information and want to respect the timelines, we recommend you file the grievance with the information you have, and then add the other documents as they come in. Be sure to advise the Commissioner that you are still waiting for additional information from CSC.
- **Support your concern with relevant law and / or policy:**
  - Does the issue you are grieving involve a breach of the law, regulation, or policy? If so, you can reference it in your grievance to support your concerns and demonstrate that what has happened is not acceptable.
  - In order to do this, you'll want to look through the *CCRA* (law), the

regulations (*CCRR*), and the CDs (policy). You can ask CAEFS and / or a peer advocate for support with this.

- **Consider and write what "corrective action" you want CSC to take:**
  - If you know how you'd like CSC to address your concerns (that is take "corrective action") be sure to include this information as part of your grievance.
  - Some examples of corrective action include: a reversal of a decision or access to a service or program you are currently being denied. Remember that you could possibly not receive any answer for a few months, so please take that into consideration when asking for corrective measures. For example, if you have been moved from one unit to another without cause. You could ask to be reinstated to that unit, but that unit could be full, or it could no longer interest you to move back when the process is finished. So, you could ask for your paperwork to be reflective of the fact that the move was without cause.

What is considered a high-priority grievance?

Grievances that significantly affect a person's rights and freedoms will be assigned a high priority.[431] These may include:

- placement in Structured Intervention Units;
- treatment and diagnosis – urgent health services treatment;
- religious and spiritual programs;
- restriction/cancellation of visits;
- penitentiary placement;
- involuntary transfers;
- decisions of the National Review Board – Special Handling Unit;
- use of force;
- harassment by staff;
- sexual harassment;
- discrimination;

- strip searches (both incarcerated people and visitors); and
- CSC complaint and grievance procedure.

Other situations that have a significant impact on a incarcerated people's rights and freedoms, but are not on this list, may also be deemed high priority.

Urgent matters are also to be given high priority status. For example, if you file a grievance after being denied a Temporary Absence to visit a terminally ill relative, your case should be given high priority status and immediately brought to the appropriate decision maker's attention.[432]

In serious or high priority cases (like sexual harassment), CSC must provide incarcerated people with complete, written responses to the issues raised in their grievance within 60 working days of receipt.[433]

What are Group Grievances?

A complaint or grievance may be submitted by a group of grievers, but the submission must be signed by all grievers involved. One griever must be designated to receive the response for the group as well as any other correspondence related to the complaint or grievance.

How do you file an individual or group grievance?

An **initial level** grievance is submitted to the warden (the Institutional Head). There should be drop off boxes for this purpose placed in one or more convenient locations in the prison, to avoid anyone ever having to put a grievance directly into the hands of the person who their grievance is against.

If you fill out an initial grievance and it is returned with "grievance" crossed out and "complaint" written in, you may want to follow up. First, check to see which CSC staff member has signed this. Ask this staff for the reason, in writing, as to why they downgraded your grievance. Ask what law or policy they are relying on that indicates that your grievance must be downgraded. You may want to emphasize that the downgrading of your grievance could delay the process by as much as five weeks. Then, we suggest you resubmit a complaint or your original grievance at the same level, include the original altered grievance. Alternatively, if you file a complaint that should have been a grievance, it will be refiled as

a grievance on your behalf, or you will be asked to refile as a grievance (this depends on the prison).

Final grievances are deposited in the Complaint and Grievance box of the prison. It is emptied daily.

If you send your grievance to the wrong level, it will be corrected for you.

Are there time limits on when I can file a grievance?

In general, you should file your complaint or grievance as soon as possible following the incident or problem that you are grieving. Normally, you have 30 working days from the date of the incident to file a grievance.[434]

If you are filing a higher-level grievance after receiving a response to a complaint or initial grievance, you generally have 30 working days from the day you receive your response to file the grievance.[435]

You should do your best to meet the time limits as it will make the whole process run more smoothly. Keep notes that show you have met the time limits and include explanations from staff for any actions or inactions on their part that may have stalled your progress.

Note that the 30-day limit is not absolute. If there is a good reason it wasn't possible for you to meet standard deadlines, file the grievance late and explain the reason for the delay. The decision maker may extend this timeframe.[436]

Who reads and reviews the grievance?

Your grievance is supposed to be read by a particular official—the supervisor of the person to whose action you are objecting. However, in practice, CSC often sends grievances and complaints to the staff involved so they can respond to them. While their input may be relevant, they should not sign the decision. If they do, you should file another grievance about this breach of the procedure.

When can I expect a response?

Both law and policy are clear about your right to a fair and timely response to your grievance.[437] CSC is supposed to give a written response to any level of complaint or initial grievances within 15 working days of receipt in priority cases and 25

working days in all other cases.[438] CSC often exceeds the time frames, and although they often notify you that they are extending their own response time, they may not, so you might need to follow up with a further grievance regarding the unfairness of the time delay. Often, CSC is able to meet initial grievance timelines, but final grievances can take between one to three years for a response.

Currently, if CSC does not meet this time limit, it must give you written reasons for the delay and explain when you will get a response.[439] The time frames for CSC to respond to final level grievances are 60 working days for priority grievances and 80 working days for regular grievances.[440]

If CSC does not meet its time limit, you may submit your grievance to the next level. If your grievance is at the final level, you may wish to remind them you are waiting for an answer. Access to Information/Privacy (ATIP) request for the paperwork pertaining to your grievance. You will be responsible for covering the cost of the the Access to Information request (usually around $5.00). A *Privacy Act* request is free. Then, if after another 30 days the ATIP has not responded, you may launch a complaint with the Privacy Commissioner (for more information on this, refer to the Information chapter).

Apart from complaints, are there alternatives to an initial grievance?

Yes and no. In theory, there are two alternatives to sending your initial grievance to the Institutional Head for a decision. The first is the Grievance Committee, if one exists in the prison you are in, and the second is an Outside Review Board.[441] However, note that most prisons do not have these options.

What is the Outside Review Board?

The Outside Review Board (ORB) is a group of individuals from outside CSC who review initial grievances and provide impartial recommendations to the Institutional Head. In many cases, CSC appoints members of its Citizen's Advisory Committee (CAC) to the ORB.

You can request that the Institutional Head refers your initial grievance and the response to the ORB by completing the form Request for Outside Review (CSC/SCC 0359) within 10 working days of the receipt of the response.[442]

After the Institutional Head reviews the case, it should be referred to the ORB as soon as possible, and the grievance will be deferred (see the section *"What are the possible outcomes from my complaint or grievance?"* later in this chapter for an explanation of deferrals).[443]

The ORB Chairperson will record a summary of the investigation and the recommendations. The Institutional Head will then inform you, in writing, of the ORB's recommendations. Upon receipt of the ORB's recommendations, the Institutional Head will issue a new response considering the recommendations.[444]

What are the possible outcomes from my complaint or grievance, and what do they mean?

A grievance or complaint can end in a few possible decisions. Below, we've listed all the possible outcomes, and what the reasoning might be behind CSC's decision.

- **Upheld**: CSC agrees the complaint/grievance is justified either because of the way you were treated or because a procedure was unfair, arbitrarily applied, or it was contrary to guiding legislation or policy. If your grievance is upheld (either in part or in full), a corrective action should be taken. The person responding to the grievance will decide on a corrective action that will effectively respond to your grievance.[445] For example, if you were inappropriately denied a visit, you should be permitted to have your visit. This must be completed within 30 working days.[446] If corrective action is not taken within this time frame you have the right to grieve again.[447] Whoever is responsible for implementing the corrective action must provide the decision-maker (depending on the grievance level) with a description of the actions taken, in writing.[448] Unfortunately, the corrective action you ask for may not always be granted. You can grieve the corrective action taken or not taken with the grievance process.
- **Upheld in part:** This may happen when:
  - several issues are grieved but only one or some are upheld;
  - the decision by the staff member is deemed appropriate, but CSC recognizes that proper procedure was not followed; or

- you are seen as bearing some responsibility of the matter being grieved (for example, you file a grievance after a transfer denial and, after reviewing your grievance, CSC decides that the transfer denial is valid, but the proper time frames were not respected).[449]

- **Deferred:** Complaints and grievances may be deferred when:
  - You are pursuing an alternate legal remedy, like bringing the issue before the courts or the Canadian Human Rights Tribunal. In this case, a complaint/grievance will only be reactivated upon your request.[450]
  - There is an ongoing outside investigation into allegations of harassment, sexual harassment or discrimination. In this case, a complaint/grievance should be reactivated by CSC when the investigation report is received by the decision maker.[451]
  - The complaint/grievance is being reviewed by the Grievance Committee or the Outside Review Board.[452]

Rejected: Complaints/grievances may be rejected when:

- The issue being grieved is not under the jurisdiction of the Commissioner. You should be informed, in writing, of this fact and be provided with information on alternative ways to pursue the grievance.
- The issue is seen to be frivolous, vexatious or not made in good faith.[453] This applies only to complaints.[454]
- The initial complaint/grievance was not filed within 30 working days of the event.
- The final grievance was not filed within 30 working days of receiving the response to the initial grievance.
- The issue in your grievance has already been raised or addressed in a separate grievance.
- An issue raised in your final grievance was not raised in your initial grievance.[455]

- **Beyond Authority:** Complaints / grievances are beyond the level of authority to which you have sent it (i.e., you have filed an initial grievance, but it should have been a final level grievance).[456]

- **Denied**: After reviewing the complaint / grievance, CSC considers the issue to be unfounded or it finds the decision or action by the staff in question to have been appropriate.[457]
- **No Further Action:** This is when the action taken at a previous level is seen to have been done in accordance with law and policy so that, in CSC's view, the issue is resolved. Unfortunately, you may not feel as though the issue has been resolved to your satisfaction. This occurs most often with final level grievances. You can refile a new grievance and formulate it differently using the information given in your answer.[458]
- **Resolved:** You may decide you no longer want to pursue a complaint/ grievance. For the matter to be considered resolved, you must submit an explanation in writing stating how it was resolved to your satisfaction. The explanation must be signed by both you and the staff members involved in the resolution. This could happen when much time has passed and that this issue no longer needs to be grieved in your opinion.[459]

What if I am not satisfied with the decision?

In any case, if you are not satisfied with the decision of your initial grievance, you can file a final grievance. If you are not satisfied with the decision of a final level grievance, then you have a few other options, such as:

Apply for *certiorari* (right to review or be heard) in the Federal Court: You can apply to the Federal Court to review decisions made by federal agencies which have a judicial or quasi-judicial function.[460]

What if you are designated as a "Multiple Griever"?

You may be designated as a multiple griever, by the Institutional Head / District Director, if the volume of complaints and/or grievances submitted impacts the capacity to respond to submissions by other grievers and/or hinders other grievers" access to the process at that site.[461]

You may be designated as a multiple griever by the Institutional Head/District Director when an assessment is made based on local complaint and grievance information and the determination is validated statistically.[462]

You must be informed, in writing, by the Institutional Head/District Director that a multiple griever status is being considered. You must be provided with the information that will be used to determine the designation and given an opportunity to:

a) rebut the information on which the proposed designation is based, and/or

b) present an alternative plan or resolution, to find alternative means to address your issues.[463]

The Institutional Head/District Director will consider your submission before a decision is finalized. The outcome of any discussions between you and the Institutional Head/District Director will be documented. The Institutional Head/District Director will ensure that the griever is notified in writing of the final decision without delay. Where multiple griever status is confirmed, the Institutional Head/District Director will include in the notification the number of routine complaints and grievances that will be responded to each month and inform the multiple grievers of the length of the designation. A multiple griever designation must be reassessed at least every six months. Complaints and grievances submitted by multiple grievers that are deemed high priority will be responded to within established timeframes.[464]

The Inmate Committee (CD 083)[20]

What does the "Inmate" committee do?

The "Inmate" committee (or Prisoner Committee) makes recommendations to the Institutional Head on decisions affecting the population, except decisions relating to security matters and is responsible for making recommendations to the Institutional Head or delegate regarding the use of the population Welfare Fund.

Who can be part of the inmate committee?

Members of the Inmate Committee will not benefit from any special privileges. They are subject to all regulations and directives in the same way as other person.

The Inmate Committee is a representative body. As such, it should reflect, wherever possible, the cultural, spiritual and ethnic background of the population. Note that CSC does not appoint members, individuals must agree to be part of the committee, this means that body representation is not always possible.

The Inmate Committee will include at least two (2) elected executive members, the Chair and the Secretary-Treasurer. But a third elected executive member, a Vice-Chair, may be authorized at the discretion of the Institutional Head.

Other persons may be members of the Inmate Committee as directed by the Institutional Head. The composition of the Inmate Committee should be reflective of the population and consistent with all areas of the prison, including the Special Handling Unit, the Structured Living Environment, Special Handling Unit and secure units (as applicable to the prison where you are incarcerated).

Any person is eligible to be a candidate who:

a) submits their name and position of interest to the Liaison;

b) is willing to work varied hours of work;

c) has been residing at the prison for at least three (3) months within the last year prior to the date of the election;

d) has at least four (4) months of incarceration to serve prior to their release date, if known, or approved transfer;

e) has not resided in the special handling unit during the past six (6) months;

f) is compliant with their Correctional Plan;

g) would not normally be precluded from being a member of an Inmate Committee as a result of being a member or associate of a criminal organization as outlined;

h) agrees to accept the responsibilities incumbent upon the position of a member of the Inmate Committee; and

i) has demonstrated a commitment to reasonably resolve issues in conjunction with the prison's management team as well as with the other members of the Inmate Committee.

How is the "Inmate" committee elected?

All the executive members of the Inmate Committee are elected by secret ballot.

Persons interested in serving on the Inmate Committee will submit their names

and position of interest to the Liaison at least two (2) weeks prior to the date of the scheduled election. The Liaison will then submit the list of candidates to the Institutional Head and respective parole officer for approval.

The Liaison will ensure that the list of candidates for election is posted in ranges/living units or transmitted to the overall population at least one (1) week prior to voting day.

The candidates receiving the most votes in their respective categories will be elected to these positions.

When are elections held?

Elections will normally be held at least once a year except in exceptional circumstances. By-elections to fill vacant positions must be held within a reasonable period, normally within two (2) months of the vacancies. The Institutional Head may also assign a person to a vacant position, on an interim basis, pending the next election.

Executive Inmate Committee membership will normally be limited to two (2) consecutive terms. Sole or unopposed candidates for executive positions will not be automatically elected by acclamation. Institutional management reserves the right to poll the general population or to refuse the appointment of a candidate. In such instances, the person must be provided with a written reason for the decision, to which they will have the opportunity to respond.

Does the "Inmate" Committee meet with prison management?

Unless precluded by extenuating circumstances, the "Inmate" Committee will meet with the prison management, including the Institutional Head or their replacement, at least four (4) times per year. The Liaison will attend all meetings.

In addition, the Inmate Committee will meet with the assistant warden, intervention and/or the Liaison at least once a month to discuss institutional programs, activities and expenditures of the Inmate Committee.

Will the general population know what was discussed in the meetings?

Minutes of each meeting will be kept and will reflect the rationale and discussion

for decisions concerning each item.

Minutes of the meetings will be distributed as follows to the Institutional Head and their management team;

a) to each Inmate Committee member for posting in the ranges/living units;

b) to the Chairperson of the Citizens" Advisory Committee;

c) in sufficient quantity to ensure the prison staff are informed; and

d) in an electronic format to be made available on the prisons" InfoNet site.

Can members of the Inmate Committee be removed from office?

The Institutional Head may remove a member of the Inmate Committee where:

a) the member's committee activities pose a threat to the security of the prison or to the protection of staff, persons and the public;

b) the member abuses their committee position to achieve ends which are inconsistent with his or her mandate; or

c) the member fails to adhere to their Correctional Plan or demonstrates deteriorating behaviour.

Where an Inmate Committee member is dismissed, the Institutional Head shall inform, in writing, the affected person of the reason for the decision to which the person member shall have an opportunity to make representations verbally or in writing.

Any, or all, of the representatives may resign at any time when they feel it may be in their best interest, or in the best interest of the population. Individual resignations will normally be submitted though the Liaison to the Institutional Head.

In most prisons, a confidentiality agreement is signed by Inmate Committee members and an Inmate Committee charter should be in place and reviews on a regular basis. The charter will define the duties and regulations associated with the Inmate Committee.

405 *CD 081,* s 7.

406 Correctional Service Canada, *Offender Complaint and Grievance Process*, Guideline No 081-1, s 2 (28 June 2019), online: <https://www.csc-scc.gc.ca/acts-and-regulations/705-7-cd-eng.shtml>

<https://www.csc-scc.gc.ca/acts-and-regulations/081-1-gl-en.shtml> [*GL 081-1*].

407 *CCRR*, s 74(1).

408 *CD 081*, s 11.

409 *CCRR*, s 74(1); *CD 081*, s 16.

410 *CD 081*, s 51.

411 *Same as above*.

412 *CD 081*, s 12.

413 *Same as above*, s 13.

414 *GL 081-1*, s 6.

415 *CD 081*, s 14.

416 *Same as above*.

417 *Same as above*, s 19.

418 *Same as above*.

419 See *CCRA,* s 90; *CCRR,* s 76(1). See also *CD 081*, s 6(a).

420 *CCRR*, s 75.

421 *GL 081-1*, s 2(a).

422 *Same as above*, s 2(b); *CCRR*, s 75.

423 *CCRA*, s 91.

424 *CD 081*, s 51. See also *GL 081-1*, s 8(b).

425 Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (December 2003) at s 7.6 [*Systemic Review*].

426 *Same as above*.

427 For example, in 1997, the Working Group on Human Rights examined the ability of the Correctional Service of Canada to monitor its compliance with Canada's domestic and international human rights obligations, and developed a strategic model for evaluating human rights performance.

428 This was recommended by Justice Arbour in the *Arbour Report.*

429 *CCRR,* s 76(2).

430 *CD 081*, s 16(c) describes that the person reviewing grievances has to look out for discrimination which is defined including the *CHRA* grounds in the Definitions section.

431 *Same as above*, s 16(b).

432 *GL 081-1*, s 14.

433 *CD 081*, s 12.

434 *CD 081*, s 11.

435 *CD 081*, s 14.

436 *CD 081*, s 11; *GL 081-1,* Annex C, s 4.

437 *CCRA,* s 90. See also *CD 081*, s 21.

REFERENCES

438 *CD 081*, s 12.
439 *Same as above*, s 13.
440 *Same as above*, s 12.
441 *CD 081*, Definitions. See also s 5(h).
442 *CD 081*, s 37.
443 *GL 081-1*, ss 50, 3(b).
444 *Guideline 081-1* ss 52-54.
445 *GL 081-1*, Annex C.
446 *CD 081*, s 42.
447 *Same as above*, s 44.
448 *Same as above*, s 43.
449 *GL 081-1*, Annex C.
450 *GL 081-1*, s 3(a); *CD 081*, s 46.
451 *GL 081-1*, s 3(c).
452 *Same as above*, s 3(b).
453 See definitions in *CD 081*, Annex A.
454 *GL 081-1*, Annex C.
455 *GL 081-1*, Annex C.
456 *Same as above*.
457 *Same as above*.
458 *Same as above*.
459 *Same as above*.
460 *Martineau v Matsqui Institution Disciplinary Board* (1979), [1980] 1 SCR 602, 106 DLR (3d) 385.
461 *CD 081*, s 24.
462 *Same as above*, s 25.
463 *Same as above*, s 26.
464 *Same as above*, ss 27-30.

3.2: External Oversight & Support

Office Of The Correctional Investigator

The Correctional Investigator (OCI) is an Ombud's office for federally incarcerated people. This means that it is the job of correctional investigators to investigate and try to resolve complaints made by people in prison about decisions, acts or omissions of CSC staff.[465] In 2019-2020 the Office of the Correctional Investigator of Canada received 5,553 complaints. The Correctional Investigator also reviews CSC policies and procedures and makes recommendations to ensure systemic areas of concern are identified and dealt with. The Correctional Investigator's main concern is to ensure that there is a fair balance between the interests of CSC and those of individual people.

How does the Office of the Correctional Investigator Work?

The Office of the Correctional Investigator was established on the recommendation of an Inquiry into the 1971 riot at Kingston Penitentiary. The Inquiry concluded that incarcerated people need an independent and impartial vehicle to resolve their problems in a timely fashion. The OCI is mandated to fulfill this role.

The Correctional Investigator is mandated by Part III of the *Corrections and Conditional Release Act* as an Ombudsman for federally incarcerated people. The primary function of the Office is to investigate and bring resolution to individual complaints. The Office also has a responsibility to review and make recommendations on the Correctional Service's policies and procedures associated with the areas of individual complaints to ensure that systemic areas of concern are identified and appropriately addressed.

The notion of righting a wrong is central to the Ombudsman concept. This involves much more than simply responding to specific legal, policy or technical elements associated with the area of concern that is under review or being investigated. It requires the provision of independent, informed and objective opinions on the fairness of the action taken to counterbalance the relative strength of public institutions (CSC) against that of individuals (incarcerated people). When dealing

with the findings and recommendations of an ombudsman's office, public institutions are expected to be fair, open, and accountable.

The "function" of the Correctional Investigator, as defined by the *CCRA*, is purposefully broad:

"to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner (of Corrections) or any person under the control and management of, or performing services for, or on behalf of, the Commissioner, that affect offenders either individually or as a group." [466]

Dr. Ivan Zinger is the current Correctional Investigator of Canada. The OCI only has the power to make non-binding recommendations. Generally, the OCI strives to resolve issues with CSC at the lowest possible level. If a solution cannot be agreed upon, the OCI can ask the Minister of Public Safety to review the matter or / and bring the issue to the attention of Parliament through a special report or its annual report. Special interest reports may also be publicly released.

Why might I contact the Correctional Investigator?

The safety of incarcerated people and staff can be affected by disputes inside penitentiaries. Being able to conduct timely and relatively informal investigations, often on site in prisons, can allow the OCI to resolve issues before they get more serious. Being independent and impartial enhances trust in the process and the willingness to raise problems with the OCI.

They are not advocates for incarcerated people or the prison system. They investigate from an impartial perspective and, if they decide a complaint has merit, they work toward achieving resolution of the problem.[467]

Will my complaint always result in an investigation?

The OCI can make an inquiry (a) in response to a complaint, (b) at the request of a Minister, or (c) based on the Investigator's own initiative. The OCI has full discretion in deciding whether to investigate and can terminate an investigation at any time.[468]

Is my correspondence with the OCI confidential?

The OCI is not obligated to tell CSC what they learn from the incarcerated person, and they are not obligated to tell the incarcerated person what they learn from CSC. They cannot be compelled to testify or to reveal the source of information. If you send a letter to the Correctional Investigator, no one at the prison you are in is allowed to open it, so anything you send to the Correctional Investigator should be kept private.[469]

Does CSC have to follow the decisions and recommendations made by the OCI?

Unfortunately, decisions and recommendations made by the Correctional Investigator are not binding for CSC, and the office has no authority to investigate the Parole Board of Canada.[470]

How do I contact the Correctional Investigator?

By Mail:

Office of the Correctional Investigator
P. O. Box 3421, Station "D"
Ottawa, Ontario K1P 6L4

By Phone:

1-877 -885 -8848

In Person:

Investigators for the OCI do visit prisons on a regular basis. When an investigator visits the prison, they will advise the prison in advance. The prison will then advise the population via memo explaining the process for requesting an appointment with the OCI.

The Canadian Human Rights Commission

What is the Canadian Human Rights Commission?

The Canadian Human Rights Commission (CHRC) protects the core principle

of equal opportunity and promotes a vision of an inclusive society free from discrimination by:

- promoting human rights through research and policy development;
- protecting human rights through a fair and effective complaints process;
- representing the public interest to advance human rights for all Canadians; and
- auditing employers under federal jurisdiction for compliance with employment equity.

Namely, the CHRC is concerned with discrimination. Discrimination is unfair treatment based on any of the following grounds: race, national or ethnic origin, color, religion, age, sex (including pregnancy or childbirth), sexual orientation, gender identity or expression, marital status, family status, disability, or genetic characteristics.[471]

Section 5 of the *Canadian Human Rights Act* (CHRA) states that "it is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or (b) to differentiate adversely in relation to any individual on a prohibited ground of discrimination."[472]

This essentially means that a person cannot be denied something in prison or treated differently because of the characteristics or "grounds" mentioned above, such as gender, race, and disability.

Section 5 of the CHRA prohibits direct and systemic discrimination in the provision of correctional services.

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 incarcerated people with disabilities, that is considered direct discrimination.[473]

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.[474] For example, if every person in prison is allotted one hour of yard time per day, but the yard is not wheelchair accessible, that is considered systemic discrimination.

Why would I file a CHRC complaint?

If you think you were the victim of either direct or systemic discrimination, you can file a CHRC complaint. As a federal service provider, CSC is subject to the *Canadian Human Rights Act*.[475] This means that if your grievance or complaint is the result of discrimination, you can file a complaint with the Canadian Human Rights Commission.

What is the process for filing a complaint with the CHRC?

Prior to filing a complaint, we suggest completing at least the initial internal CSC grievance process. While it is your right to file a complaint with CHRC immediately, attempting a resolution through the internal grievance process first may increase the likelihood that your complaint will be accepted. There are several different stages in the CHRC complaint process, which are described below.

- **Filing your complaint:** As of Fall 2021[476], there is a new standard complaint form that must be used to submit a complaint. These forms should be made available to you in paper[477], or you can ask for help from an external support person (like a CAEFS regional advocate or a lawyer) to file the form online on your behalf. If you are completing the paper form, you may ask for the support of a peer advocate in locating and completing the complaint form.
- **Accessing your complaint:** Once the CHRC receives the complaint, they will review it to make sure that it meets all the necessary criteria of a human rights complaint. During this process, they may contact you to get more information to make your complaint more complete. After they have reviewed the completed complaint, they will decide whether it is admissible (meaning if they will accept it or not). The Commission will notify you either way. [478]

- **Completing the Response Form:** If your complaint is accepted, and if there does not appear to be a preliminary issue based on the information available, you will be invited to provide your Response and Reply using the standard forms. At this stage, CSC (or whomever the complaint is against) will also be provided with these forms. Like the complaint form, these forms should be available to you in paper, or you can ask for help from an external support to complete them online. [479]

- **Mediating:** All of the information provided will help the CHRC to determine if they should offer mediation, which the CHRC would facilitate. Mediation is voluntary and confidential. It gives you and CSC the opportunity to explain your sides of the issue and to try to resolve the concerns that led to the complaint. CHRC schedules and provides mediation services at no cost to the parties. If mediation works, both sides will sign a settlement agreement. This agreement would state what you and CSC have committed to do to resolve the dispute.[480]

- **Referral to Human Rights Commissioners:** If mediation does not work, or if either you or CSC refuses mediation, the CHRC will advise you that the mediation process is over and that the file will proceed to assessment.[481]

  During the complaint assessment process, a Human Rights Officer will consider whether there is evidence to support the claims you've made in the Complaint Form. This includes reviewing the information that was included in the CSC's Response Form and your Reply Form. The Human Rights Officer might also request additional information from you or CSC. The Human Rights Officer will then prepare a Report for Decision, which The Commissioner(s) will review when deciding what will happen with the complaint. You and CSC will both be contacted in writing and within 6 months to share the Report for Decision.[482]

  Once you are contacted, both parties will have the opportunity to provide comments on the report. Once the CHRC has received comments from the parties, the CHRC will send the Report for Decision along with the parties" comments to the CHRC Commissioner(s).[483]

  The Commissioner(s) will review both the Report for Decision and any comments that were submitted by the parties and make one of the following decisions:

- to dismiss your complaint;
- to send your complaint to conciliation ("conciliation" means the process used to try to bring about a settlement of a complain);
- to defer their decision and request more information and further analysis; or
- to refer your complaint to the Canadian Rights Tribunal.

All decisions made by the Commissioners are final. [484]

How long do I have to file a CHRC complaint?

You have one year from the incident to file a CHRC complaint.[485]

Are complaints confidential?

The Commission claims that it attempts to preserve confidentiality, to the extent possible, during the complaint process. However, if the Commission decides to refer a complaint to the Canadian Human Rights Tribunal for further inquiry, then the subject matter of the complaint may become a matter of public record, therefore, may not remain fully confidential.[486]

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 CHRC.[487] Therefore, if you do suffer from retaliation after filing a complaint, contact CAEFS or your lawyer.

Privacy Commissioner

How does the Privacy Commission Work?

The Office of the Privacy Commissioner of Canada (OPCC) carries out its mission to protect and promote the privacy rights of individuals in a variety of ways. For example, the OPCC:

- investigates complaints, conducts audits and pursues court action under two federal laws—the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act* (PIPEDA);

- publicly reports on the personal information handling practices of public and private sector organizations;
- supports, undertakes, and publishes research on privacy issues; and
- promotes public awareness and understanding of privacy issues.

You can contact the OPCC by phone (1-800-282-1376) if you feel that your personal information was mishandled or to make a complaint.

Professional Bodies

All healthcare providers in federal prisons are bound to their professional bodies" code of ethics and standards. Regardless of whether they're being contracted by CSC, these healthcare providers must follow the same rules and regulations as they do outside in communities.

Contacting these external professional bodies can be an effective way of holding both CSC and healthcare professionals in prisons accountable to their professional and ethical obligations.

How do Professional Governing Bodies work?

The primary job of the governing body is to **protect the rights, interests, and wellbeing of all the members on whose behalf the organization is working**.

Why might I contact a Professional Governing Body?

You can contact a professional Governing Body if you feel that the professional you dealt with was unprofessional or acting unethical.

What can I expect from contacting a Professional Governing Body?

If they feel that the complaint is merited, they will start an investigation into the matter at hand.

To file a complaint with a Professional Governing Body, call or write to the numbers that follow. Some colleges and governing bodies have specific requirements for filing a complaint. We suggest that you contact a trusted support person, or a CAEFS regional advocate to help you look up the requirements and complete the proper documentation.

College of Physicians

Nova Scotia

College of Physicians & Surgeons of Nova Scotia
Suite 400 – 175 Western Parkway
Bedford, Nova Scotia, B4B 0V1
1-877-282-7767

Québec

Collège des Médecins du Québec
250, René-Lévesque Boulevard West, Suite 3500
Montreal (Quebec) H3B 0G2
1-888-633-3246

Ontario

College of Physicians and Surgeons of Ontario
80 College Street
Toronto, Ontario M5G 2E2
1-800-268-7096 Ext 603

Saskatchewan

College of Physicians and Surgeons of Saskatchewan
101 – 2174 Airport Drive
Saskatoon, Saskatchewan S7L 6M6
1-800-667-1668

Alberta

College of Physicians and Surgeons of Alberta
2700-10020 100 Street NW
Edmonton, AB, T5J 0N3
1-800-661-4689

British Columbia

College of Physicians and Surgeons of BC

300–669 Howe Street
Vancouver BC V6C 0B4
1-800-461-3008

College of Nurses

Nova Scotia

Nova Scotia College of Nursing (NSCN)
Suite 300 – 120 Western Parkway
Bedford, NS B4B 0V2
1-833-267-6726

Québec

Ordre des infirmières et infirmiers du Québec
4200, rue Molson
Montréal, QC H1Y 4V4
1-800-363-6048

Ontario

College of Nurses of Ontario (CNO)
101 Davenport Road
Toronto, ON M5R 3P1
1-800-387-5526

Saskatchewan

Saskatchewan Registered Nurses Association
2066 Retallack Street
Regina, SK S4T 7X5
1-800-667-9945

Alberta

College & Association of Registered Nurses of Alberta
11120, 178 street

Edmonton, AB T5S 1P2
1-800-252-9392

British Columbia

BCCN&M British Columbia college of Nurses & Midwives
900-200 Granville St.
Vancouver, BC V6C 1S4
1-866-880-7101

College of Social Workers

Nova Scotia

Nova Scotia of Social Workers
1888 Brunswick Street, Suite 700
Halifax, NS B3J 3J8
Complaints and discipline 902-429-7799 Ext 222

Québec

Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec
255, boulevard Crémazie Est, bureau 800
Montréal, QC H2M 1L5
1-888-731-9420

Ontario

Ontario College of Social Workers and Social Service Workers
250 Bloor Street East, Suite 1000
Toronto, ON M4W 1E6
1-877-828-9380

Saskatchewan

The Saskatchewan Association of Social Workers
2110 Lorne Street
Regina, SK S4P 2M5
1-877-517-7279

Alberta

Alberta College of Social Workers
550 10707 100 Avenue NW
Edmonton, AB T5J 3M1
1-800-661-3089

British Columbia

BC College of Social Workers
1420-1200 West 73 Avenue
Vancouver, BC V6P 6G5
1-877-576-6740

Professional Bodies Governing Dentists

Nova Scotia

Provincial Dental Board of Nova Scotia
Suite 103, 210 Waterfront Dr.
Bedford, NS B4A 0H3

Quebec

Office of the Syndic, Ordre des dentistes du Québec
800 René-Lévesque West, Room 1640
Montréal (Québec) H3B 1X9
1-800-361-4887

Ontario

Royal College of Dental Surgeons of Ontario
6 Crescent Road, Toronto, ON M4W 1T1
1-800-565-4591

Saskatchewan

College of Dental Surgeons of Saskatchewan
201 1st Avenue South 1202, The Tower at Midtown

Saskatoon, SK S7K 1J5
306-244-5072

Alberta

Alberta Dental Association and College
Suite 402, 7609 – 109 Street NW
Edmonton, Alberta T6G 1C3
1-800-843-3848

British Columbia

College of Dental Surgeons of BC
110 – 1765 West 8th Avenue
Vancouver, BC V6J 5C6
1-800-663-9169

Canadian Association Of Elizabeth Fry Societies

What is the Canadian Association of Elizabeth Fry Societies?

The Canadian Association of Elizabeth Fry Societies, usually called CAEFS, is an association that takes on the key issues facing criminalized and incarcerated women and gender-diverse people. Our work focuses mostly on the rights of women and gender diverse people who are incarcerated in federal prisons, as well as those who are incarcerated in the two federal psychiatric prisons.

By meeting with incarcerated people, we work to understand the issues that are most concerning to you and work to improve the conditions of confinement in federal prisons designated for women with the ultimate goal of working toward a world without prisons. We also wrote the handbook that you are reading right now!

How can CAEFS help me uphold and protect my rights?

This first step in CAEFS" advocacy work is meeting with people in prison and working with peer advocates. This work is done by our regional advocates, who are organized into five regional advocacy teams: Atlantic, Quebec, Ontario, Prairies, and Pacific. The teams make regular advocacy visits to the federal prison designated for

women and / or psychiatric prison in their region. Each team aims to visit the prison or centre in their region at least once a month. Sometimes we go in more, and sometimes less. During the COVID-19 pandemic, we have been especially limited in our access to the prisons. While we do not currently make regular advocacy visits to prisons designated for men, if you are a woman or gender diverse person and are currently incarcerated in a federal prison designated for men and are in need of support, we encourage you to give us a call.

Have a look on the next page to see which team advocates for people in which prison.

Regional Team	Federal Prison	Psychiatric Centre
Atlantic	Nova Institution for Women	None
Quebec	Joliette Institution for Women	Philippe-Pinel National Institute of Legal Psychiatry
Ontario	Grand Valley Institution for Women	None
Prairies	Edmonton Institution for Women & Okimaw Ochi Healing Lodge	Regional Psychiatric Centre
Pacific	Fraser Valley Institution	None

When the advocacy teams go into the prisons, they will meet with individuals, heads of committees, house reps, and CAEFS peer advocates. Through these meetings they develop an understanding of the conditions of confinement. They are especially looking out for any issues that are related to human rights violations. Usually, there will be posters up announcing a regional advocacy visit from CAEFS – keep an eye out and come speak with us. You are an essential part of this work.

As part of these meetings, we will also often assist individuals in navigating the grievance and complaint process, offer guidance on preparing for parole, and connect people in prison to external resources and supports (like lawyers, halfway houses, and counselling). We call this **“individual advocacy.”**

CAEFS also trains and supports 2-4 peer advocates in each prison designated for women. Peer advocates are an essential part of CAEFS advocacy work. They can be your 1st point of contact in resolving issues you are facing, by:

- Talking with you about different options you have to resolve issues you are experiencing
- Guiding you in how to write complaints and grievances
- Assisting you to informally resolve and achieve other positive outcomes related to disciplinary charges
- Attending hearings with you (disciplinary hearings, security reviews, or other hearings during which you may need support and advocacy)
- Answering questions you may have about law and policy
- Working with various levels of institutional management to implement solutions to problems that impact different communities within, or the whole prison population

In exceptional circumstances – like egregious use of force (situations where the level of force used was harmful and unnecessary), solitary confinement, or sexual violence – CAEFS will also take on more of an active role in individual advocacy. If something like this has happened to you, we welcome you to call us for support and intervention. We do not, however, do ongoing case management. Ongoing case management would be things like representing you in court or preparing a release plan. For these, we would connect you with legal support and community service providers, including local Elizabeth Fry Societies, which you can find in Chapter 3.

Institutional Advocacy

After our regional advocates have had their meetings and identified issues, they meet with the Warden and other prison administrators. In these meetings, we raise the concerns that we have heard from people in prison, and we back them up with the Correctional Service of Canada's Commissioners" Directives, the *Corrections and Conditional Release Act*, the *Canadian Charter of Rights and Freedoms*, and other relevant policies and laws, which you can read about in Chapter 1.

Our goal in meeting with the wardens and administration is to make sure that the prison is following the law and operating in accordance with its stated policies. We call this **"institutional advocacy."** These meetings are documented in a "regional advocacy letter." These letters are written by each team following their meeting. The letter outlines the concerns that were raised, the laws and policies that support these concerns, and call for remedies or responses. These letters are sent

to the Warden, the Office of the Correctional Investigator, the Canadian Human Rights Commission, the Citizen's Advisory Committee, and key Senators.

We know, however, that often the laws and policies that we are using to hold the prison accountable do not go far enough to truly protect the rights and dignity of incarcerated people. And so, we have another step to our advocacy.

Systemic Advocacy

This next step – what we call **"systemic advocacy"** – is where the CAEFS national office comes in. Our national team looks at all the issues raised across the country and works to find ways of changing the laws and policies so that they are more equitable and just.

The idea is that by making the laws and policies more progressive, we give our regional advocates better tools to help hold the prison accountable. Better tools for accountability help to create better conditions of confinement for you. We do this by lobbying the government, by meeting with National Correctional Service Canada (CSC) headquarters, the chair of the Parole Board of Canada, and other key stakeholders.

Everything we have described so far falls under one of the "pillars" (key areas) of CAEFS work: **Defending the Rights of Incarcerated People.** Defending the Rights of Incarcerated People – your rights – is what this handbook is all about.

How do I contact CAEFS for support?

National Office

- Canadian Association of Elizabeth Fry Societies, National Office, 1–800–637–4606

Regional Advocacy Teams

- Atlantic: 1-844-379-7624
- Quebec: 1-844-489-2116 ext. 235
- Ontario: 1-877- 674-2939
- Prairies (Saskatchewan): 1-888-934-4606
- Prairies (Edmonton): 1-866-421-1175
- Pacific: 1-888-315-1384

Peer Advocates

Please call CAEFS, reach out to the prisoners" committee, or a social programs officer to learn who your Peer Advocates are, as well as where and when you can meet them for support.

You can also contact CAEFS if you are interested in taking our training and joining our Peer Advocacy team. While CSC recognizes this position as an official employment position, CAEFS delivers the training and maintains the ongoing support for people in this role.

Citizens Advisory Committee

What is the Citizens Advisory Committee?

Citizen Advisory Committees (CACs) were set up by law to be a "public presence" in federal corrections. They are intended to help CSC build stronger links between incarcerated people and communities. There are CACs at almost every federal prison and district parole office across Canada. Members are citizens who come from different cultures and backgrounds that range from university students to retirees.

How can they help me uphold and protect my rights?

CACs are intended to be impartial observers of CSC's day-to-day operations. They help assess if people in prison are getting adequate care, supervision, and services. They also ensure that CSC is operating under the *Corrections and Conditional Release Act.*

If your rights have been violated, writing to the CAC can help to inform them that the prison is not operating in accordance with the CCRA, and therefore encourage them to raise this issue with the prison administration.

How do I contact them for support?

If you need to contact the CAC, you can send a request to the chair of the committee of your prison. The Inmate Committee should have that information for you.

CAC should also make regular visits to the prison and meet with the population.

REFERENCES

465 *CCRA*, s 167(1).

466 *Same as above.*

467 "Home Page" (last modified 18 March 2021), online: *Office of the Correctional Investigator* <https://www.oci-bec.gc.ca/index-eng.aspx>.

468 *CCRA,* ss 170(1)-(2).

469 *Same as above,* s 184.

470 *Same as above*, s 167(2)(a).

471 *CHRA*, s 2.

472 *CHRA*, s 5.

473 *Systemic Review*, s 3.3.1.

474 *Same as above*.

475 *Same as above*, s 3.1.

476 "Complaints Services Branch Meeting with Advocacy Organization Representatives Fall 2021," Canadian Human Rights Commission, October 20, 2021, pp.8

477 Same as above pp.3-4

478 "About the Process," online (last modified 12 November 2021), Canadian Human Rights Commission: <https://www.chrc-ccdp.gc.ca/en/complaints/about-the-process>

479 Same as above

480 Same as above

481 Same as above

482 Same as above

483 Same as above

484 Same as above

485 *CHRA*, s 41(e).

486 *CHRA*, s 52.

487 *CHRA*, ss 59-60.

3.3: Legal Action and Resources

Legal Mechanisms

What is a Habeas Corpus?

Habeas corpus is a form of judicial review that is used mainly by incarcerated people. 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 unlawfully detained, you may be released.

After many cases with unfavourable results, in 2005 the Supreme Court of Canada finally ruled that incarcerated people 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.[488]

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 a Structured Intervention Unit. 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 previously ruled that people held at Isabel McNeil House (IMH), formerly the only minimum-security penitentiary for women in Canada, had a right to a *habeas corpus* application and were to remain at IMH until the application was heard regarding their transfer to a higher security prison.[489]

An earlier decision of the Ontario Court of Appeal also contended that women had a right to *habeas corpus* before they were transferred from the Prison for Women in Kingston.[490] In a 2014 case, the Supreme Court of Canada upheld a an incarcerated person's right to use *habeas corpus* to challenge a transfer that CSC said was an emergency but provided no proof that the circumstances justified an emergency transfer.[491]

These decisions can be used as precedents in future applications.

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 retaining their services. You may also contact the CAEFS Regional Advocates directly or via CAEFS" National Phone Line (1-800-637-4606) for assistance.

What is a Class Action?

A class action is a form of civil action where one or a few plaintiffs can sue a defendant or a number of defendants on behalf of a larger group of people who claim the same type of loss from the same defendant or group of defendants. It is important that you discuss this with a lawyer who specializes in class action lawsuits. You can contact CAEFS if you need to know how to find a lawyer.

Accessing Legal Assistance & Support

Many of your legal issues may be CSC-related and take place within the prison, such as your Parole Board of Canada hearing and major court. Common legal issues within prison are family court (hearings, visitations, etc.), immigration / deportation, and issues related to restrictive confinement (like an SIU placement). However, you can still be charged with criminal offenses when incarcerated, for example possession of an illegal substance, assault, etc.

You will want to be well represented or advised in all legal issues when incarcerated because it can, and usually will, affect your correctional plan, criminal profile report, as well as affect your PBC hearing. Any infraction report that can be won or dismissed will be to your advantage.

There are three ways you can access legal representation: through provincial legal aid, through lawyers that take on pro bono cases, or by hiring a lawyer yourself and paying for it. Below, we will cover your legal aid and pro bono options. It is especially important to know that legal aid is managed by the province and is not done federally. This means that every province has its own rules and regulations for legal aid. What was good in one province will not necessarily be the same in another.

How can I find legal representation?

Where to find legal representation depends, in part, on the kind of legal help you

are seeking. We have included a list of resources related to finding legal help later in this chapter. You may also contact CAEFS for assistance in researching legal counsel, but CAEFS does not provide legal representation.

What if I can't afford a lawyer?

The legal resources provided in this handbook are free. If you cannot afford a lawyer, one should be provided to your through Legal Aid.

Once I've retained legal counsel, how do I contact my lawyer?

While you are incarcerated, you can access your lawyer in three ways:

- **By Phone:**
  - Legal counsel is a "privileged correspondent" on your caller list and therefore, you can communicate with them at any time during regular business hours, when "reasonable notice" is provided- which according to CSC, is no less than 24 hours.[492] The prison must accommodate your request to speak to a lawyer in a private room on a secure line.
  - What you and your lawyer say to each other during phone calls cannot legally be monitored unless the conditions in subsections 94(1) and 94(2) of the *Corrections and Conditional Release Regulations* are met and in accordance with Commissioner's Directive 568-10.[493] If a confidential call is intercepted under these stipulated conditions, you should be notified in writing as to why the interception happened. If there is an ongoing investigation, you will be notified in writing following the investigation.[494]
  - You may also choose to call your lawyer from the phone in your living unit but there is a risk that confidentiality may be compromised. While, by law correspondence with your lawyer should not be monitored, there is no guarantee that calls made on the phone systems in the living units will not be monitored. Also, because of where the phone is located, your call may be overheard by other people in prison and CSC staff in your living unit.
  - If you choose to contact your lawyer using the phone in your living unit, you will also need to wait for their number to be approved on your PIN list, which can often take upward of two weeks. In addition, if your lawyer does not have a toll-free number, calling from your living unit will cost you money. The exception

to this would be if you are contacting Prison Legal Services (PLS) in BC and the Queen's Prison Law Clinic (QPLC) in the Kingston, Ontario area. Both PLS and QPLC are on the common access numbers in their respective areas.

- **In Person:** You have the right to meet with your lawyer in-person. To arrange an in-person visit, your lawyer will need to make an appointment though the Visits and Correspondence (V&C) Department of your prison. They can do this by phoning the prison and speaking to the V&C department, or your Correctional Management Team.
- **By Mail:** You and your lawyer can correspond with each other by mail. Any mail between you and your lawyer is privileged and confidential. The mail should be both sent and received without being opened.

In addition to a lawyer, you also have the right to be provided with information about legal aid services.

What is Legal Aid?

If you cannot afford to pay a lawyer, you may be eligible for assistance under the Legal Aid system in your province or territory. These official systems, which cover different types of legal issues depending on the province or territory, are to ensure that people who cannot afford paid legal services still have access to some form of legal representation or advice.

Delivery of Legal Aid is under the jurisdiction of the provincial or territorial level of government. In order to obtain Legal Aid assistance, you need to apply according to the procedure established in each province or territory. We will refer to this type of legal services as Legal Aid (i.e., capitalized). There are also other systems existing in the community which take different forms — from free legal services provided by private lawyers to specialized or general legal clinics set up to help people on low income.

Some provinces also have legal aid clinics set up specifically for people in prison that you can contact directly by phone.

How do I access Legal Aid?

Federal prisons should provide you with free access or 800 telephone numbers

for the Legal Aid office in your area. Once you have requested Legal Aid and it has been verbally accepted, you will meet with one of their agents. The agent will ask you financial and personal questions to establish eligibility to the service. They can also ask for copies of old pay stubs or bank account statements. If you are in a common law union or married, they can also ask for your partner or spouse's financial information. The agent will ask you to sign the contract they will then send the legal aid mandate to either a lawyer of your choice or a "legal aid" (some Legal Aid offices will want you to use their lawyers).

And finally, some law offices will do the Legal Aid request themselves on your behalf, but you will still need to meet with an agent.

Organizations in the community that provide legal assistance to incarcerated people may also be able to help you with this. Most, if not all, prisons will have the number of Legal Aid as part of the common access lists.

What if my legal issue is in another province?

If you are involved in a civil law issue in another province or territory, there exists a reciprocity agreement between the federal government, the provinces, and the territories. This means that an application for Legal Aid can be filed at the Legal Aid Office closest to where you reside. The application is then forwarded to the province or territory in question so that they can determine whether the case comes under the financial eligibility and coverage criteria of that province or territory. This is not the case in criminal matters: if you are involved in a criminal matter in another province or territory, you must apply for Legal Aid in that province or territory. In such cases, you will probably need assistance from someone outside the prison (your lawyer, a *pro bono* lawyer or legal clinic, the local Elizabeth Fry Society, a family member or friend, etc.). The process can be complicated and long.

Who is eligible for Legal Aid?

In Canada, Legal Aid is granted in most cases based on your financial eligibility. This means that you will have to show that your income and other aspects of your financial situation are within the guidelines established in your province or territory.

When you apply for Legal Aid, you will need to provide documents relating both to your legal issue and to your personal situation. Such documents can include:

- documents relating to your case, including court orders, agreements, served papers, etc.;
- proof of your household income, including pay stubs, social assistance or Employment Insurance statements, records of employment, etc.;
- proof of any Child Support payments;
- proof of Child Tax Benefit income; and
- proof of unusual expenses, such as medical / dental costs, etc.

What legal services are covered by Legal Aid?

Not all legal services are covered by Legal Aid. Certain legal services in criminal law matters, including representation by a lawyer in specific types of criminal law cases, must be covered by law in all provinces and territories. The situation varies greatly from province to province, and territory to territory, in matters of family law, civil law, immigration and refugee law, and administrative law.

For most services other than basic information, duty counsel and summary advice; you must apply to the Legal Aid provider in your province or territory for assistance with your legal issue(s). If you are granted Legal Aid, a lawyer will be assigned to assist you with your case.

Some lawyers are staff lawyers, which means that they are employed by the Legal Aid provider. Other lawyers are from private practice but work with the Legal Aid provider to help individual clients. They are paid by the Legal Aid provider to work on your case. Both types of lawyers have the same qualifications and are competent to help you by providing information, advice, and representation.

In addition, in many places duty counsel lawyers are present at court to help people at their first court appearance. This service is free of charge for everyone and does not depend on your financial eligibility, or on your being granted Legal Aid services. In many provinces and territories, you can speak to the duty counsel lawyer without making an appointment. However, in others you may have to call in advance in order to make an appointment.

Most Legal Aid systems in Canada also provide lawyers" services in the form of summary advice, that is, a one-time appointment to get advice or assistance with

your case or issue. These services are usually free of charge and do not depend upon your financial eligibility. The procedure for making an appointment to get summary advice is provided on the Legal Aid provider's website.

What if I am refused Legal Aid?

If you are refused legal aid, you will receive a letter from the Legal Aid authorities informing you of the refusal. The letter should also include instructions on how you can make an appeal or a complaint against this decision.

If you do make an appeal or a complaint, you will have to provide reasons as to why you think the decision is unfair or why you think your legal matter falls within the Legal Aid guidelines. If you need help making a complaint or an appeal you should ask for help from an internal or external advocacy worker. People who have already been through the process may also be able to help.

What if my legal issue is not covered by Legal Aid?

If your legal issue is not covered by Legal Aid or your Legal Aid application is rejected, there are other ways for you to seek free or low-cost legal advice and legal representation.

Some lawyers, law firms and community organizations provide legal services – from legal information and advice to representation by a lawyer in the courts – free of charge. This is known as *"pro bono"* work (which comes from the Latin expression *"pro bono publico"* which means "for the public good"). In many cases, to get pro bono legal assistance, you will need to show that you or your legal issue do not qualify for, or that you have been rejected by, Legal Aid. This legal assistance is sometimes in the form of legal clinics organized to advise clients and assist them with their legal problems. In other cases, clients are matched with volunteer lawyers who can offer advice and information on a specific area of law, as well as legal representation before the courts in some cases.

Where do I access pro-bono legal assistance?

We suggest you start by approaching your local Elizabeth Fry Society with your legal problem. Your regional advocacy team or CAEFS can also support in connecting you with legal representation, if needed.

Legal Resources

Below is a list of legal resources to support you in upholding your rights while incarcerated. This list is primarily focused legal resources that support matters related to prison law. If you are looking for legal support related to other matters, we suggest calling the CAEFS national office, your regional advocacy team, or your local Elizabeth Fry Society for more information.

Nova Scotia

Elizabeth Fry Mainland Nova Scotia
Telephone: (902) 454-5041
Toll-free: 1-844-379-7624 (call on Mondays for legal support)

Elizabeth Fry Mainland Nova Scotia provides legal support and advice to people incarcerated at the Nova Institution. EFry Mainland Nova Scotia is part of the East Coast Prison Justice Society (ECPJS). ECPJS is a collaborative partnership of like-minded individuals and organizations helping criminalized and imprisoned individuals through advocacy, research, scholarship, legal support, education, public service, and provision of grassroots services. You can contact them through Elizabeth Fry Mainland Nova Scotia (above).

Nova Scotia Legal Aid (NSLA)
Telephone: (902) 420-6578
Toll-Free: 1-877-420-6578

Legal Aid in Nova Scotia is administered by Nova Scotia Legal Aid (NSLA), which covers criminal law, family law, civil law, and some other areas of law. NSLA also covers some matters related to prison law, including people who are remanded in custody or serving sentences with a variety of legal matters, including advice on *habeas corpus*, disciplinary proceedings, and parole or detention hearings.

Québec

The Commission des Services Juridiques (CSJ)
Telephone: (514) 873-3562

Legal Aid in Québec is administered by the Commission des Services Juridiques (CSJ). Legal Aid services are provided by lawyers and, on occasion, by notaries.

Legal Aid is provided free of charge or for a contribution from the client, depending on the client's financial situation. CSJ Legal Aid services cover the following criminal matters: family law, youth protection issues, claims regarding benefits, and other administrative, civil and immigration law issues in some instances.

Association des Avocats et Avocates en Droit Carcéral du Québec (AAADCQ)
Telephone: (514) 954-3471

Québec has a well-developed network of lawyers who do both criminal and carceral (prison) law called the "Association des Avocats et Avocates en Droit Carceral du Québec." Much of their work is covered by CSJ Legal Aid. For example, assistance by a lawyer with disciplinary tribunals and with Parole Board of Canada hearings and appeals is covered by the CSJ. Your lawyer should be able to help you complete the forms to apply for Legal Aid and to send them in, and a CSJ representative may meet with you in the prison to have you sign any additional paperwork, if necessary.

Ontario

Legal Aid Ontario (LAO)
Toll-Free: 1-800-668-8258

Legal Aid in Ontario is administered by Legal Aid Ontario (LAO) and covers serious criminal matters, family legal issues, mental health legal issues, refugee and immigration legal issues.

Legal Aid in Kitchener also covers some matters related to prison law. They are on the common access list at GVI: 519-578-0869.

- Through their duty counsel program, Legal Aid in Kitchener ensures that lawyers are made available to anyone facing serious disciplinary charges at GVI. If you are facing serious disciplinary charges, you may consider contacting the Legal Aid in Kitchener ahead of your hearing and request to speak with the lawyer who will be assigned to you.
- Legal Aid in Kitchener will also fund an opinion letter regarding parole and may then cover the cost of a lawyer for a hearing.
- Legal Aid Kitchener may also fund other prison-law matters such as *habeas*

corpus applications. Contact their office for more details.

Queen's Prison Law Clinic
Phone: 613-546-1171

The Queen's Prison Law Clinic provides legal advice, assistance, and representation in matters relating to prison and parole in Kingston-area penitentiaries and Warkworth Institution.

Legal services are provided to clients by students under the supervision of the Clinic's lawyers, as part of their legal education. Students learn to manage the solicitor/client relationship, interview clients, conduct case-specific research, prepare examinations/cross-examinations of witnesses, draft legal submissions, and represent clients at Hearings.

The Queen's Prison Law Clinic is funded by Legal Aid Ontario.

Saskatchewan

Legal Aid Saskatchewan (LAS)
Telephone: 306-787-1019
Toll-Free: 1-800-667-3764

Legal Aid in Saskatchewan is provided by Legal Aid Saskatchewan (LAS) under the authority of the Saskatchewan Legal Aid Commission and covers criminal law, charges under the *Youth Criminal Justice Act*, and family law issues.

Elizabeth Fry Society of Saskatchewan Women's Legal Services
Telephone: 1-888-934-4606

The Elizabeth Fry Society of Saskatchewan, based in Saskatoon, provides legal advice and support to people incarcerated in prisons designated for women in Saskatchewan.

Pro Bono Law Saskatchewan – Inmate Legal Assistance Panel Program
Telephone: 306-569-3098
Toll-free: 1-855-833-7257

The Inmate Legal Assistance Panel Program aids individuals, who are currently imprisoned in a provincial or federal correctional facility in Saskatchewan,

facing legal issues within the prison (but not for criminal matters). This includes disciplinary charges, access to medication/medical services, access to programming, security rating reviews, or access to communications.

An application is necessary. Call them to apply for access to services.

Alberta

Legal Aid Alberta (LAA)
Toll-Free: 1-866-845-3425

The Legal Aid system in Alberta is administered by Legal Aid Alberta (LAA) and covers serious criminal charges, charges under the Youth Criminal Justice Act, family law issues, child welfare matters, civil law issues such as adult guardianship/trusteeship (when the client is the subject of the application) and income support; and immigration and refugee claims.

LAA also has a special joint program with the Siksika Nation that provides a fully staffed LAA office at the Siksika Nation Tribal Administration building. Indigenous culture and values are "given meaningful consideration," according to the LAA website. The program provides Legal Aid assistance for criminal charges, family law and child welfare matters, and advice on a variety of other civil law issues. Legal services include legal information, summary legal advice, representation by a lawyer, brief services and referrals.

Elizabeth Fry Northern Alberta Legal Clinic Program
Telephone: (780) 427-4060
Toll-Free: (866) 421-1175

The Elizabeth Fry Northern Alberta runs a Legal Clinic Program for federally sentenced women at Edmonton Institute for Women. Volunteer lawyers meet individually with the people in the federal prison to address their legal issues. The lawyers can provide legal information, referrals to Legal Aid and community agencies, and follow up.

British Columbia

Legal Aid BC (LABC)
Call Centre: 1-866-577-2525

Legal Aid services in British Columbia are administered by Legal Aid BC (LABC) and covers criminal law issues, family law issues, child protection issues, mental health law issues, and immigration law issues. For any issues related to prison, phone Prisoners" Legal Services (below). They are funded through LABC.

Prisoners" Legal Services (PLS) – West Coast Prison Justice Society (British Columbia)
Phone: 1-866-577-5245

PLS, operated by the West Coast Prison Justice Society, helps people in federal and provincial prisons in British Columbia with issues related to their incarceration. PLS provides assistance on issues affecting incarcerated people's right to liberty under s. 7 of the *Canadian Charter of Rights and Freedoms*. PLS can also help with conditions of confinement, human rights violations and some health care issues.

Issues PLS can help with include:

- Structured Intervention Units (SIUs);
- disciplinary hearings;
- sentence calculation;
- involuntary transfers;
- parole suspension;
- detention hearings;
- conditions of confinement;
- human rights;
- health and mental health care; and
- issues facing trans, Two-Spirit and gender diverse people in custody.

Incarcerated people in British Columbia can access services by calling 1-866-577-5245 from 9-11am and 1-3pm weekdays (phones are closed on Wednesday afternoons). This is a common access number in all federal prisons in BC.

REFERENCES

488 *May v Ferndale Institution,* 2005 SCC 82.

489 *Dodd v Isabel McNeill House,* 2007 ONCA 250.

490 *Beaudry v Canada (Commissioner of Corrections)*, 1997 CarswellOnt 4610, [1997] OJ No 5082 (ONCA).

491 *Khela v Mission Institution*, 2014 SCC 24.

492 *CD 085,* s 23.

493 CCRR, ss 94(1)-(2); Correctional Service Canada, Interception of Inmate Communications, Commissioner's Directive No 568-10, ss 16-19 (18 November 2013), online: <https://www.csc-scc.gc.ca/politiques-et-lois/568-10-cd-eng.shtml#s2e>.

494 *CCRR,* s 94(3).

QUESTION INDEX

This section lists all the questions that are answered in this handbook, by chapter and sub-chapter. You can use it to quickly look up any question you might have and know where to locate the answer in the handbook.

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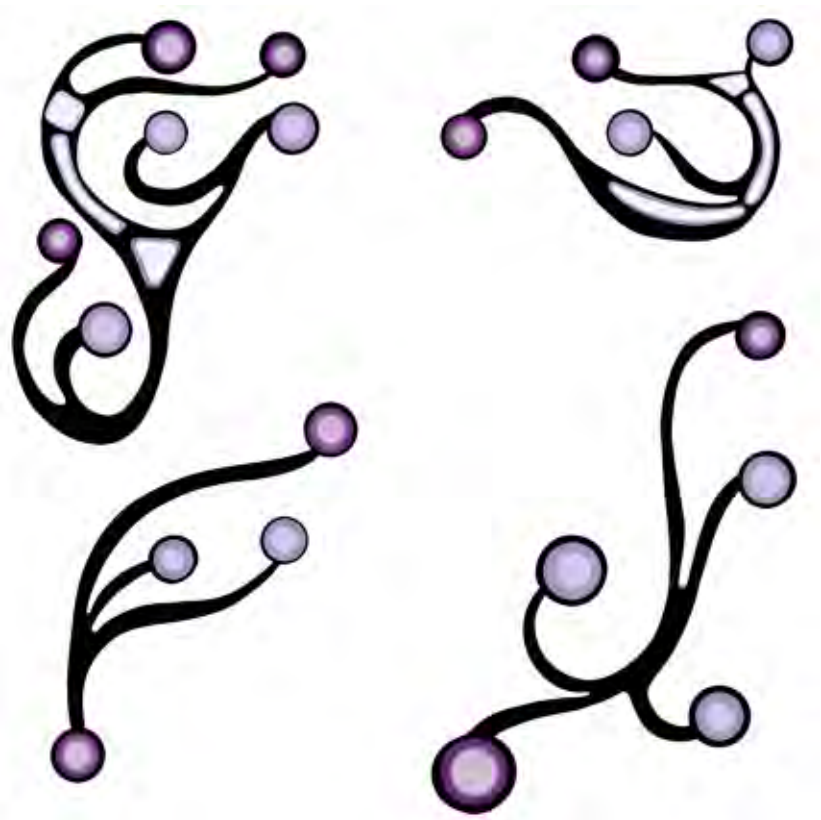

Published by the Canadian Association of Elizabeth Fry Societies, March 2022

Cover and other featured illustrations created by Cherylanne James