



Human Rights in Action

Handbook for Women
Serving Federal Sentences

Human Rights in Action:

Handbook for Women Serving Federal Sentences

Copyright © 2014 Canadian Association of Elizabeth Fry Societies (CAEFS)
Human Rights in Action: Handbook for Women Serving Federal Sentences
ISBN: 978-0-9691975-0-8

Author: Canadian Association of Elizabeth Fry Societies (CAEFS)

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

Email: admin@caefs.ca
Web Site: www.caefs.ca

Cover Design: Naira Santana
Layout Design: Tony Di Iorio
Illustrations: Jorge Vargas
Funding: Alan Thomas Fellowship-Carold Foundation
Printed in Canada

CONTENTS

Preface	5
Part I - Introduction	7
The Law in Canada	8
Prison Advocacy	14
Part II: Arriving in Prison	19
The Intake Assessment Process	19
Mothers in Prison	29
Security Classification	38
Part III: Protecting Your Rights	43
Confidentiality and Access to Information	43
The Right to Counsel (Legal Assistance)	47
Health Care	49
Part IV: Restrictive Measures	55
Segregation	55
Transfers	59
Disciplinary Charges	63
Searches	68
Part V: Conditional Release	75
Overview	75
Types of Releases	79
Detention	90
Part VI: Remedies	97
The Remedies	97
Requests	100
Complaint and Grievance Process	102
Complaints Level	102
Grievances	105
Other Options	115

PREFACE

The manual you now have in your hands was produced with, by and for women in and from federal prisons for women, students in Dalhousie University 2013 and University of Ottawa 2014 Prison Law courses, and Regional Advocates with the Canadian Association of Elizabeth Fry Societies. Thanks to the resources provided by the Carol Foundation 2013 Alan Thomas Fellowship, Kim Pate shepherded the development, translation and production of this manual.

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

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

The *Human Rights Training Manual* is meant to assist advocates to ensure that those whose rights are interfered with have support to address the discriminatory treatment, in addition to identifying and addressing areas that require systemic advocacy. The human rights advocacy training includes very explicit and practical information on how to work toward and prepare for early release and parole.

If you have any suggestions, comments or questions,
Please contact Kim at CAEFS.

Call 1-800-637-4606 (toll free) or 613-238-2422 (collect).

You can also write to us at:
#701 - 151 Slater Street, Ottawa, Ontario K1P 5H3

PART I - INTRODUCTION

This chapter covers some of the information you'll need to get started. First, it explains some basics about the law in Canada, and how the law applies to women in prison. Second, the chapter discusses the idea of peer advocacy. In short, there are laws that protect your rights in prison, but prisoner advocates can assist you to take the right steps and to help you keep track of the steps taken, to help try to ensure that the law is actually followed.

The Project

As a woman in prison, you have been stripped of some, but not all, of your rights and freedoms. However, it is important that you clearly understand that – by law – you still have many rights. This booklet is a summary of a much larger manual (still in progress) which explains the rights you have while in prison and, later, while out on conditional release. The manual also discusses, in detail, some of the ways you can exercise your rights and avoid having them restricted any further than they are. These are also summarized here.

The purpose of this booklet is to provide basic information about how the law applies to women in prison, and to aid in the training of prisoner advocates. Prisoner advocates include current prisoners who advocate for themselves and their peers while inside, as well as ex-prisoners and activist allies in the community who also advocate with and for women inside.

The Canadian Human Rights Commission's report entitled *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* found that, across Canada, informational booklets on the law and the rights of women in prison are often inadequate, inaccurate and inaccessible.¹ The goal of the training manual and this booklet is to address that problem – to explain the law in a clear and useful manner.

¹ *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, Canadian Human Rights Commission, December 2003.

The Law in Canada

What is the rule of law?

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

The Constitution dictates, among other things, what kinds of laws can be legally made in Canada. The *Charter of Rights and Freedoms* is part of the Canadian Constitution, and is supposed to guarantee that our laws protect the values and freedoms of our society. In other words, the *Charter* should protect our right to be treated equally regardless of our sex, race, religion, age, mental or physical disabilities and sexual orientation.²

Who makes the laws?

There are two types of sources of law in Canada. Laws are made by governments (federal, provincial, and municipal) and, in a different way, by the courts. (For more on the kind of law the courts make, see the section on “case law” later in this chapter.) In government, representatives elected by Canadian citizens make the law. In the courts, it is the judges who make the laws. The federal government appoints judges. For these reasons, it is important that all Canadians - especially prisoners - exercise their right to vote. Everyone should have her or his say in shaping the law in Canada.

How does the law work?

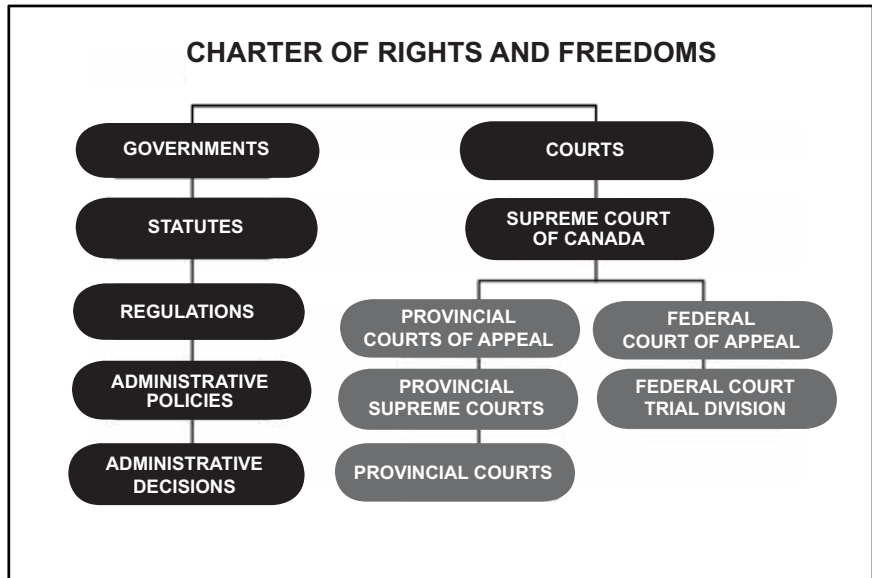
Everyone, including governments and the courts, are supposed to follow the law. All of the law-making entities shown on the chart on the next page are supposed to obey the law.

It is also important to know that there is a chain of command to the law. This means that every law made by every law-making entity shown on the chart has to be consistent with the laws that are made by the court or group above it.

In the courts, a judge’s decision on a new type of case or issue sets a new standard. This is called a precedent. All the courts below the one in which that precedent is set are supposed to make the same decision in similar cases it comes across from then on.

² *Reference re: Secession of Quebec* [1998] 2 SCR 217 at 32; West Coast Prison Justice Society manual.

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



Which laws most affect women in prison and where do they come from?

Laws from government

Charter of Rights and Freedoms³

The *Charter* forms the first part of the *Constitution Act, 1982*. Its goal is to protect the political and civil rights of people in Canada from the policies and actions of all levels of government. As you can see in the above chart, the *Charter* is at the top of the hierarchy, which means that every law in Canada must follow the principles laid out in it. No government legislated law, regulation, policy, or administrative decision, nor any court decision, can contradict your *Charter* rights.

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

- **Section 2:** Everyone has the following fundamental freedoms:
 - a) freedom of conscience and religion;
 - b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

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*].

- c) freedom of peaceful assembly; and
- d) freedom of association.

- **Section 7:** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
- **Section 8:** Everyone has the right to be secure against unreasonable search or seizure.
- **Section 9:** Everyone has the right not to be arbitrarily detained or imprisoned.
- **Section 10:** Everyone has the right on arrest or detention
 - a) to be informed promptly of the reasons thereof;
 - b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.
- **Section 12:** Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.
- **Section 15:** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

When a policy or law is challenged using the *Charter* it is called a *Charter* challenge. While *Charter* challenges have been undertaken by prisoners using section 7, there may be more room for challenges using other sections of the *Charter* -- specifically sections 12 and 15.

Statutes

A statute is a country, province or territory's formal written law. Statutes are also called laws or legislation and, usually, they tell us what we can and cannot do legally, as well as what rights we have. In Canada, published statutes are organized by topic and some are called codes. One of the most well-known examples is the *Criminal Code of Canada*.

Another example of a statute that applies to you is the *Corrections and Conditional Release Act (CCRA)*.⁴

Next to the *Charter*, the *CCRA* is probably the most important statute for you to know about. It specifies that you have certain rights, but also permits certain restrictions being placed on people who are serving prison sentences. Understanding what the *CCRA* says about your rights in these various areas can help you ensure that your rights are protected. One specific provision definitely worth noting is section 4(d), which states that **prisoners “retain the rights of all members of society, except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted.”**

A third example of statutory law is the *Canadian Human Rights Act*.⁵

The *Canadian Human Rights Act* guarantees that no one in Canada shall be discriminated against based on her race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and/or conviction for which a pardon has been granted. If you feel that any of these rights are being infringed, you can file a complaint with the Canadian Human Rights Commission.

Regulations

Regulations are specific rules – an administrative agency interprets the statutes setting out the agency’s purpose and powers, and writes up concrete rules concerning how these apply in reality. The most important regulations for you are the *Corrections and Conditional Release Regulations*⁶ (*CCRR*). Like the *CCRA*, these regulations contain both provisions which protect your rights (e.g., visits, safe and healthy living conditions, grievance procedures, Aboriginal prisoners) and rules about how CSC can restrict your liberty (e.g., classification, transfers, disciplinary processes, seizure of items, sanctions).

Policy

Policy is a plan of action (more rules and procedures) established by government to achieve a specific goal. Government policy is transformed into law through statutes and regulations. Some policies that regulate you while you’re in prison are:

⁴ *Corrections and Conditional Release Act*, SC 1992, c 20.

⁵ *Canadian Human Rights Act*, RS 1985, c H-6 [CHRA].

⁶ *Corrections and Conditional Release Regulations*, SOR/92-620.

- *Commissioner's Directives (CD)*;⁷
- *Standard Operating Practices*; and,
- Policy and Procedural Manuals (both for the CSC and the Parole Board of Canada).

Administrative Policies and Decisions

Some power to make decisions is designated to individuals at the administrative level. In terms of decisions made concerning some prison-related matters, the authorized decision-maker is local (usually the Warden or her/his designate), regional (often the regional Deputy Commissioner), or national (the Deputy Commissioner for Women or the Commissioner of Corrections).⁸ Boards and Tribunals are administrative bodies which are supposed to be independent of the prison administration. Disciplinary hearings before an independent chairperson and parole hearings are both examples of tribunals.

Laws from courts

Case Law

The law we've discussed so far is statutory law. 'Case law' is another kind of law. Case law comes from judges' decisions or judgments. When a judge makes a decision in a case – particularly on some issue that hasn't been before the courts before – the decision is called a precedent. This means that when the same issue is involved in cases that come later, the judge is supposed to rule in the same way the earlier judge did. The higher the court, the more likely it is that other courts will follow the precedent, as there is a hierarchy of courts in Canada. This means that if the Supreme Court of Canada makes a decision, all the lower courts are supposed to follow it. The court hierarchy is shown in the chart above.

International Treaties

Treaties are international agreements that are signed on to by various countries. Countries that sign them are then obligated to implement what they have agreed to. The courts don't have to follow treaties, but when Canada signs and ratifies a treaty, that can be used to show what Canada is saying to the rest of the world about the laws and rights the government supports. For example, the fact that Canada is a signatory to the *UN Standard Minimum Rules for the Treatment of Prisoners*

⁷ Correctional Service of Canada, *Commissioner's Directive No 705-7: Security Classification and Penitentiary Placement [CD 705-7]*.

⁸ West Coast Prison Justice Society.

should mean that Canadian prisoners are treated in accordance with the standards set out in this treaty.

Other examples of treaties that Canada has signed that relate to women in prison are the *Universal Declaration of Human Rights*,⁹ *United Nations Convention Against Torture*,¹⁰ *United Nations International Covenant on Civil and Political Rights*,¹¹ and the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*¹²

Reports/Commissions

In addition to the various legal documents related to the rights of prisoners, there have been a number of reports and inquiries in Canada related to the treatment of women in prison. These include the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (otherwise known as the *Arbour Commission*), 1996,¹³ and the *Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, 2003, by the Canadian Human Rights Commission.¹⁴

These reports highlighted problems in our prison systems and made several important recommendations. Although the findings from these reports do not result in binding law, the recommendations may influence policy.

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

Canada recognizes that a “*prison sentence deprives a [prisoner] of her right to liberty, but it should not deprive [her] of other rights. Infringements of other rights...can be justified only if they are necessary to give effect to the sentence.*”¹⁵

As noted above in the discussion of the *Charter of Rights and Freedoms*, you can challenge an unfair law or policy through a *Charter* challenge, and the case may ultimately be decided by the Supreme Court of

⁹ *Universal Declaration of Human Rights*, 10 December 1948, Res 217 A(III).

¹⁰ *United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* 1465 UNTS 85; 8 CFR § 208.18.

¹¹ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47, 6 ILM 368, entry into force 23 March 1976, accession by Canada 19 May 1976.

¹² *United Nations Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, entry into force 3 September 1981 in accordance with article 27(1), Res 34/180.

¹³ Solicitor General of Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (Ottawa: Public Works and Government Services Canada, 1996) [*Arbour Report*].

¹⁴ *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, Canadian Human Rights Commission, December 2003 [*Systemic Review*]. See Appendix for some of the *Systemic Review's* recommendations.

¹⁵ *Systemic Review*. See Appendix for some of the *Systemic Review's* recommendations.

Canada. However, there are other ways – at lower levels – that you can challenge unfair laws, regulations, policies and decisions that affect you.

These are outlined at the end of this booklet in the section on “remedies” (see Part VI).

Prison Advocacy

How do peer advocates fit into the HRIA project?

As discussed in the first section of this chapter, there are certainly laws that are meant to protect your rights. However, the law isn’t always applied the way it is supposed to be. Sometimes it’s necessary for you to speak up in order to have your rights respected. Sometimes it is also necessary to take action if your rights are violated.

Peer advocates can assist those whose rights are interfered with. They can provide support, while also working to ensure that federally sentenced women, especially Aboriginal women and those with mental health disabilities, have someone to insist that they receive the rights to which they are entitled.

The peer advocacy program is intended to train women to work at the local level so as to prevent and correct discrimination against individuals and attempt to remedy systemic discrimination against the groups mentioned above. Knowledgeable and trained peer advocates and community supporters will better enable women to exercise their own rights as well as empower others, especially by standing up for those who are less able or comfortable advocating for themselves.

The typical work of an advocate includes knowing and passing along complete and correct information on how to challenge inappropriate, discriminatory or otherwise illegal actions. In addition, the HRIA peer advocates are also working to prepare women for community release, starting with temporary absences and parole, and providing orientation to new prisoners about what their rights are and what they are entitled to expect while in prison.

What is advocacy?

Advocacy is a form of active support. Active support involves requesting or arguing for something on behalf of oneself or someone else.

Advocacy can also involve being a voice for someone who is unable, because they do not know how, or are afraid to speak on their own

behalf. An advocate can be any person or any group who **seeks justice** for another person or group of people.

What types of advocacy are there?

Advocacy can be practiced at the individual, group, or systemic level. Individual advocacy is pursuing the rights or the best interests of oneself or of another person on her or his behalf. Advocacy at the group level involves pursuing the rights or the best interests of an identified group on behalf that group. Systemic advocacy involves pushing for fundamental change for the better in an entire organization, structure, or system.

What is a peer advocate?

A peer advocate is a person who is part of the group for whose rights and interests she advocates. In the context of prison, a peer advocate is someone who is able to actively support other prisoners, guiding them throughout their imprisonment. This support can be given in many ways, from educating others on various legal processes, to ensuring that legal rights and entitlements are respected.

Most often, peer advocates for prisoners are women with the lived experience of prison. Peer advocates and peer advocate supporters might also be people outside prison who will form part of a woman's community once she is released. Prior to release, the advocate supports the prisoner and provides a strong, continuous link to the outside.

What are the duties of a peer advocate?

One of the most common duties of peer advocates is to assist women in prison to identify their rights, entitlements, application eligibility dates, et cetera. Peer advocates also need to assist others to advocate for and access services and supports that will facilitate a successful return to the community.

Other important duties include assisting other women with resolving specific problems, sometimes through successful use of the grievance process. Peer advocates need also to assist new women to adjust to the circumstances they find themselves in – to meet them and engage them in the spirit of solidarity.

What are the responsibilities and roles of a peer advocate?

One of the first responsibilities of a peer advocate is to participate in training to familiarize yourself with relevant law, policy and procedures.

In turn, you will have a responsibility to recognize and promote the potential you see in other women to do the same, and to bring them into the training and advocacy process. You will also need to know how to get in touch with other advocates, such as the E. Fry Regional Advocates, the Correctional Investigator, and lawyers who are willing and able to assist you to address any breaches of law or systemic issues that may be affecting the women in the prison you're in. If you choose to be an advocate with and for others, you assume the responsibility for monitoring and documenting ongoing issues, especially unresolved concerns and/or repeat issues.

Especially in the case of systemic and ongoing problems, your role is to call upon and seek the collaboration of other advocacy team members as well as outside advocacy groups, such as CAEFS and NWAC. Together, you may be able to come up with creative responses to certain issues, and possibly find unique ways to uphold and promote the rights, address the needs, and remedy the concerns of women in and from prison.

What are the limitations of peer advocacy?

As a peer advocate, you must not confuse your role with that of legal counsel. Your role is to offer information and guidance to sister prisoners so that they may benefit from your lived experience and personal knowledge of relevant laws and procedures regarding their (and your) rights and entitlements.

As a peer advocate, what do I need to know?

A good peer advocate will develop a firm grasp of two different types of knowledge: *procedural* and *foundational*.

Examples of procedural knowledge include familiarity with such areas as:

- prison policies and procedures;
- when you might need, and how to access, a lawyer;
- parole and grievance application procedures;
- formal rules and procedures, as well as informal prison rules; and,
- health and safety procedures.

Examples of things considered to be in the area of foundational knowledge include:

- conversational skills, such as how to talk to people;
- issues that affect many women prisoners, such as:

- » *abuse (physical, sexual, emotional),*
- » *addictions,*
- » *loss and grief,*
- » *self-esteem and self-care,*
- » *self-injury,*
- » *anger;*
- suicide intervention; and,
- peer support skills, such as:
 - » *empathy,*
 - » *understanding cultural diversity,*
 - » *how to perform peer support,*
 - » *ethics.*

What personal qualities make a good peer advocate?

Some of the most important qualities of peer advocates include:

- **Empathy:** identification with and understanding of another's situation, feelings, and motives.
- **Open-mindedness:** having or showing receptiveness to new and different ideas or the opinions of others, and being genuinely respectful of cultural differences.
- **Compassion:** deep awareness of the suffering of another coupled with the wish to relieve it.
- **Patience:** marked by or exhibiting calm endurance of pain, difficulty, provocation, or annoyance; being tolerant and understanding.
- **Assertiveness:** inclined to bold or confident assertion; self-assured.
- **Understanding:** to know, be tolerant of, and sympathetic toward: *I can understand your point of view even though I disagree with it.*
- **Dedication:** commitment to a particular course of thought or action.
- **Trustworthiness:** capacity to be reliable and dependable.

Do peer advocates need any special skills?

As a peer advocate, you will come to depend on certain skills. These include:

Organizational skills

As a peer advocate, you will need to develop skills that will enable you to manage numerous issues at once. For instance, as an advocate, you may be meeting with several women at once, and it will be your responsibility to offer your assistance to all of them while keeping their issues separate.

Communication skills

Interacting well with many different kinds of people is a skill you will need as a peer advocate. Therefore, it will be important for you to be able to express your thoughts clearly. Also, not all people communicate in the same way, and so it's important for you be able to adjust your own style of communication to meet the needs of the women you wish to assist.

Active listening skills

Passive listening is simply being present while another person talks; the listener may not be engaged in what the speaker is saying. Active listening is the opposite; it requires the listener to focus on what the speaker is saying and to engage herself. You might, for example, repeat or paraphrase the information provided by the person you are listening to, in order to confirm that you clearly and accurately understood her meaning. Active listening skills are very important for a peer advocate.

When someone you do not necessarily know very well has been brave enough to approach you for assistance with her problem, your full attention and energy will be required.



PART II – ARRIVING IN PRISON

The Intake Assessment Process

What happens after I am sentenced?

First, you will likely be taken to a provincial jail.¹⁶ Often, this is the one you were in if you were on remand in custody instead of out on bail while awaiting trial. Usually, you

will not be transferred to a penitentiary until 15 days after your sentencing. During this period, you may file an appeal, and the 15 days is supposed to ensure that you have time to begin the appeal process.¹⁷

The provincial jail you're in is where your initial assessment takes place. The initial assessment will be used to determine certain things that will greatly affect you, such as the prison at which you will begin to serve your sentence, and your initial security classification.¹⁸ According to the policy of the Correctional Service Canada (CSC), the following factors are taken into consideration:

- Security risk/classification
- Programming
- Cultural and linguistic needs
- Distance from home community and family
- Institutional adjustment, escape risk, public safety risk and public safety ratings (see section on classification for more details on some of these topics).¹⁹

¹⁶ *Corrections and Conditional Release Act, SC 1992, c 20, s 14 [CCRA].*

¹⁷ *CCRA, s 12.*

¹⁸ *Correctional Service of Canada, Commissioner's Directive No 705: Intake Assessment Process and Correctional Plan Framework [CD 705]; CD 705-7.*

¹⁹ *CD 705-7, Annex E.*

What information will I be asked to provide?

You will be asked for a lot of information. Your initial assessment is made up of a wide array of forms and reports, which are to be completed by different people. For example, you will be asked to undergo a medical assessment. A medical certificate will be prepared, which may be required for entry into the penitentiary.²⁰ Referrals to appropriate medical specialists may also be made at this time as required and if deemed appropriate.²¹

You will also have a community parole officer²² assigned to you. Her report (the “Post-Sentence Community Assessment”) is supposed to evaluate the community’s ability to support your reintegration,²³ and it will be used in your “correctional” planning. Work on this report involves checking out the personal contacts you have named, as well as information from “police or other official sources.”²⁴ (The CSC references criminal justice partners like social services, probation, community residential facilities, and this would also include court records, as well as any prison records on you developed with or without your participation.)

There are various other reports included in your initial assessment, including the “Criminal Profile Report” and those based on the “Immediate Needs Identification Interview” and the “Admission Interview.” In addition, there are various “Supplementary Assessments” you will be asked to undergo if the CSC believes they are needed in your particular case. These, especially the “Psychological Assessment” and others conducted by mental health care professionals, can have very serious implications (some negative, some positive) for how you will live your life over the course of your sentence.

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

²⁰ CCRA, s 13.

²¹ Correctional Service of Canada, *Commissioner’s Directive No 800: Health Services*, s 22(i) [CD 800].

²² Correctional Service of Canada, *Commissioner’s Directive No 705-1: Preliminary Assessments and Post-Sentence Community Assessments* [CD 705-1].

²³ CD 705-1, s 2(h). As of April 30, 2013, there is no longer a need to complete PSCA where no contact is identified.

²⁴ CD 705-1, Annex C.

circumstances, this information can legally be distributed to certain people far beyond the prison walls against your wish.

What information do I have to provide?

It is important to understand that you do not need to answer any questions asked during the intake process,²⁵ either about yourself or your family and community supports. Some laws concerning the Canadian right to privacy do apply to prisoners, so you must decide for yourself how much you want to cooperate. On one hand, you need to be aware that your conduct during assessment may be used as a factor in determining your classification, and declining to answer questions may have a negative effect on this. On the other hand, you need to keep in mind that the people who interview you for their reports do not have to keep any information you provide during the intake process confidential. In fact, some of this information may be used against you.²⁶ There are some circumstances in which it may be desirable to exercise your right not to cooperate.

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

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

The Criminal Profile Report, together with other reports, is used in the part of your “correctional planning” developed by the parole officer or primary worker in the Intake Assessment Unit. You should be aware that the Revised Statistical Information on Recidivism Scale, normally administered as part of the preparation of the Correctional Plan, is not

²⁵ *R v Starr*, [2001] MJ No 174. (No obligation to speak; no privilege).

²⁶ *R v Starr*, [2001] MJ No 174. (No obligation to speak; no privilege).

mandatory for women or for Aboriginal people.²⁷ If someone wants you to take that test, you may refuse. Consult your lawyer if you feel you are being coerced into taking the test.

What is the Correctional Plan?

The Correctional Plan is a document that outlines the goals CSC sets for you, as well as the programs you are expected to complete and the location where your sentence will be served. Correctional Planning involves interviewing you and making assessment of various ratings, including your “accountability,” your “motivation,” your “responsivity,” your “engagement,” your “reintegration potential,” and an initial assessment for potential for detention referral, (CD 705-6). The Correctional Plan gives you a score on two types of factors, *static* and *dynamic* factors. Static factors are factors about you or your past that you cannot change. Among other things, they include:

- your age at the time you were sentenced;
- your criminal record;
- your institutional preventive security record;
- the amount of harm that CSC determines you caused any victims;²⁸ and
- your family, cultural and social background issues.

Dynamic factors are factors that change over time. They include:

- your employment status, level of literacy, and level of education;
- your marital status and/or current family situation;
- your level of social support (friends and community members you can rely on);
- whether you are perceived to be reliant on alcohol and/or drugs;
- CSC’s assessment of your level of functioning in your community (whether they believe you are capable of accomplishing day-to-day tasks in your community on your own);

²⁷ Correctional Service of Canada, *Commissioner’s Directive No 705-6: Correctional Planning and Criminal Profile*, s 12 [CD 705-6]. See also *Pawliw v Canada*, [1997] FCJ No 379 (access to programs can be denied if not “conducive to the attainment of the Correctional Plan”), and Kelly Hannah-Moffatt & Margaret Shaw, *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada* (Ottawa: Status of Women Canada, 2001).

²⁸ CD 705-6, s 16(a)(ii) and Correctional Service of Canada, *Commissioner’s Directive No 705-8: Assessing Serious Harm*, s 11.

- CSC’s assessment of your emotional stability; and
- CSC’s assessment of your attitude (with a focus on whether they think you will break the law or not in the future).

The plan is prepared in conjunction with the ‘Criminal Profile Report’ by your institutional parole officer or primary worker as part of the ‘Intake Assessment’ process. You should be aware that the Revised Statistical Information on Recidivism Scale, normally administered as part of the preparation of the Correctional Plan, is not mandatory for women or for Aboriginal people,²⁹ so if someone wants you to take that test, you are entitled to refuse. If CSC insists that you take the test, advise them that you wish to grieve the decision and consult a lawyer.

Is the process the same for Aboriginal women?

CSC policy states that, where Elders are available, the Elder Review will be completed within 50 calendar days after admission or 40 calendar days from referral and before completion of initial security classification and penitentiary placement. Every effort will be made to complete the Review while you are in the Intake Assessment Unit, particularly for if you are serving four years or less.³⁰

“The Elder’s recommendations will be incorporated into the Correctional Plan and any subsequent updates.”³¹ Also, if a Gladue report was done as part of your sentencing proceedings, the information from it can also be used in the assessment and classification process.

What is an Elder Review?

The initial assessment takes place in the provincial jail and can go on for a few months after transfer to a federal penitentiary. The information will have a direct impact upon you. The Elder’s Review is supposed to be available too, although until recently, it was not available to most women serving federal sentences. The Elder Review allows you to work with the Elder to set objectives for yourself.

²⁹ CD 705-6, s 12. See also *Pawliw v Canada*, [1997] FCJ No 379 (access to programs can be denied if not “conducive to the attainment of the Correctional Plan”), and Kelly Hannah-Moffat & Margaret Shaw, *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada* (Ottawa: Status of Women Canada, 2001).

³⁰ Correctional Service of Canada, *Commissioner’s Directive No 705-5: Supplementary Intake Assessments*, s 24 [CD 705-5].

³¹ CD 705-5 s 25.

How do I get an Elder Review?

When you enter the prison, if you self-identify as an Aboriginal woman, you will participate in an “Aboriginal Assessment /Orientation” which is a structured assessment/orientation that will take place before the standard intake assessment. This review is supposed to identify your cultural needs and other factors you and the Elder consider important to prevent you from being criminalized again in the future. The review process should also provide you with information about the CSC, particularly Aboriginal heritage and healing opportunities.³² In addition to the Elder Review, you will also be required to complete the standard Intake Assessment.

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

Yes. All women coming into the prison system must be informed about the correctional system, have the opportunity to ask questions, and receive counselling on the details of the process if you need it.³³ Your first formal opportunity to begin asking for information you need, will be in an interview situation which is supposed to take place within 24 hours of your arrival.

The whole intake assessment process (including parts of it that take place after you arrive at the federal prison in which you’ll serve your sentence) may take from several weeks to a few months. There are rules that specify the time limits within which the CSC has to initiate and/or complete each type of report it will write about you. However, generally speaking, by certain points along the way in the process, the CSC must provide you with information on all of the following points: types of prisons within the federal system, sections of the *CCRA* related to the rights of Aboriginal people, security levels, visiting, the intake assessment process, Elder and Chaplain services, the transfer process, the release process, employment and employability programs, health care and medical services, the methadone maintenance program, psychological treatment and programs, correctional programs, the redress system, and services relating to case management.³⁴

Within two weeks of your arrival at a federal prison, you **must** receive an orientation specific to that prison.³⁵ This should include information on: health care services, rules and regulations concerning conduct,

³² Correctional Service of Canada, online: Correctional Service of Canada <<http://www.csc-scc.gc.ca>>.

³³ Correctional Service of Canada, *Commissioner’s Directive No 705-4: Orientation* [CS 705-4].

³⁴ *CD 705-4*, s 7.

³⁵ *CD 705-4*, s 4.

rights and responsibilities, program opportunities, security procedures, the case management process, institutional operations, finance, visits and correspondence, the availability of and how to access spiritual, educational, and vocational counselling and cultural services, and the Mother-Child Program if you have children³⁶ (see the section on Mothers in Prison later in this chapter for more information on that topic). Try to ask about anything that seems unclear during the orientation - which may be nothing more than giving you a handbook - but also consider asking peer advocates if you have questions or want more information.

Is there other information I should receive automatically?

There are at least two very important documents you should receive by the end of the Intake Assessment. One is a **list of the dates at which you are eligible for conditional releases of various kinds**. These include ETAs, UTAs, day parole, full parole, and statutory release. Although lifers are not eligible for statutory release at any time, they are eligible for all other types of conditional releases and should get their lists like everyone else. Calculating release eligibility dates on your own can get complicated, especially if you were remanded in custody while you were waiting for your trial and/or sentencing.

Since you definitely need to take an active role in preparing for parole and ensuring that the CSC has your paperwork ready on time for your hearings, you should be sure you receive this document. Try to keep it in a place you won't lose it while, at the same time, you have easy access to it.

The other document you should receive is a copy of your **“Correctional Plan.”** This document outlines the issues you'll be required to address, the goals CSC sets for you, the programs you must complete, and the location at which you will serve your sentence. CSC measures your “institutional progress” based on how much of your Correctional Plan you've completed and how well you've done that, so it is VERY important. For example, when it comes time for starting your release plans, your Case Management Team will usually only support you in your applications for conditional releases if you are making progress completing your Correctional Plan. The Parole Board of Canada (PBC) will also look very closely at this same factor in deciding whether or not to grant your release applications. This is true even when delays and cancellations in program offerings - even when noted by your Case

³⁶ CD 705-4, s 7(j).

Management Team - make it very clear that any lack of progress is not your fault.

It is very important that the information upon which the Correctional Plan is based is accurate, and that any disagreement over, or concern with, the Intake Assessment and resulting Correctional Plan is voiced and recorded as early as possible. Problems with Correctional Plans are much easier to resolve before the document is “locked.” Once it is locked, it is difficult to make any changes. The Correctional Plan is to be completed in consultation with you, your Case Management Team, and your parole officer.³⁷

The CSC has the right to prioritize who will be scheduled to take what programs and when, according to staff assessments of prisoners’ needs.³⁸ This may mean long delays for people found to be of lower need overall, or for those serving longer sentences. You may also be “screened out” of a program (not allowed to take it) on the say so of the person who delivers a program, but this does not mean it will be removed from your Correctional Plan. A memo will be added to your file noting the program deliverer’s reasons for not accepting you into the program.

However, even if the CSC makes a statement implying that you do not need the program, in some cases, the PBC has not agreed with these decisions and has required that releases be delayed until that particular program is completed. For these reasons, it is important that needs and/or programs that may not be appropriate for you are challenged and your Correctional Plan is corrected early in your sentence if it includes inappropriate or incorrect information.

You are allowed to have one person with you during meetings concerning the development of your Correctional Plan, and at the meeting with your Case Management Team at which you actually sign off on the plan. If you are Aboriginal, you can have the Elder assist you. Otherwise you can have the prison Chaplain. Advocates have noted that the people who hold these positions in the prison may not be equipped to provide the appropriate support for all women entering the system. These advocates note that policy dictates that the support person could be someone from the community, so you may want to request this.

³⁷ CD 705-6, s 7(e).

³⁸ *Ennis v Canada*, [2003] FCJ No 633 (Right to prioritize).

The Correctional Plan is prepared in conjunction with the Criminal Profile Report by the parole officer or primary worker in the Intake Assessment Unit. You should be aware that the Revised Statistical Information on Recidivism Scale, normally administered as part of the preparation of the Correctional Plan, is not mandatory for women or for Aboriginal people,³⁹ so if someone wants you to take that test, you may refuse. Consult your lawyer if you feel you are being coerced into taking the test.

What kind of programs will I have to take?

CSC “core” programs are set up somewhat like courses, or as series of group therapy sessions. Participation in a regular school program is also required for prisoners who haven’t yet completed the 10th grade. All programs are supposed to be designed to address your needs and assist you with successful reintegration into the community.⁴⁰

Are there programs for Aboriginal women?

The law says that particular programs are supposed to be designed to address the needs of Aboriginal people in prison.⁴¹ The term ‘Aboriginal’ includes people of First Nation (Indian), Inuit and Métis ancestry.⁴² If you are not of Aboriginal ancestry you may still access the programs,⁴³ although priority should be given to Aboriginal women.

Traditional ceremonies should be available and include, but are not limited to the following cultural ceremonies: 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.⁴⁴

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.⁴⁵

³⁹ *CD 705-6*, s 12. See also *Pawliw v Canada*, [1997] FCJ No 379 (access to programs can be denied if not “conducive to the attainment of the Correctional Plan”), and Kelly Hannah-Moffat & Margaret Shaw, *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada* (Ottawa: Status of Women Canada, 2001).

⁴⁰ *CCRA*, s 76.

⁴¹ *CCRA*, s 80.

⁴² *CCRA*, s 79.

⁴³ *CCRA*, s 81(2).

⁴⁴ Correctional Service of Canada, *Commissioner’s Directive No 702: Aboriginal Offenders*, Annex A Definitions [*CD 702*].

⁴⁵ *CD 702*, s 6(f).

Why are there programs specifically for Aboriginal women?

Sections 80 to 84 of the *Corrections and Conditional Release Act* require that the CSC provide Aboriginal prisoners with culturally appropriate programs to meet their “correctional” needs. “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 Aboriginal women should be developed and delivered by Aboriginal organizations or individuals with demonstrated awareness of their concerns and needs while incarcerated.”⁴⁶

Although this is consistent with an Aboriginal perspective you must be cautioned that Elders are under contract with CSC and as such must comply with the Commissioners’ Directive⁴⁷ regarding “Consent to the Health Service Assessment, Treatment and Release of Information.” Further to this caution is that the Aboriginal Advisory body is comprised of people appointed by CSC. As a result, many Aboriginal groups, such as the Native Women’s Association of Canada, as well as groups like CAEFS and SIS, have expressed concern that the Elders should have more community-based support and advice.

What is culture?

Culture is knowledge, beliefs and behaviour that are passed on to successive generations. It includes customary beliefs, spiritual forms, social forms, language, material⁴⁸ and holistic traditional healing practices,⁴⁹ reflective of a relationship-based society. The traditional concept of family is not limited to the immediate family but also includes the extended family. In fact it includes those who may not be related by birth but acknowledged as family nonetheless, perhaps as grandparent, parent, brother, sister, aunt, uncle or other relative.

You have a right to practice your culture and traditions without discrimination. You have a right to practice and *reconnect with* your cultural traditions and customs including the preservation, protection and access to cultural sites, ceremonial objects and traditional medicine.⁵⁰

⁴⁶ Laishes Jane, “The 2002 Mental Health Strategy for Women Offenders”, online: Correctional Service of Canada <<http://www.csc-scc.gc.ca>> at 15.

⁴⁷ Correctional Service of Canada, *Commissioner’s Directive No 803: Consent to Health Service Assessment, Treatment and Release of Information*, s 24.

⁴⁸ CD 702, s 10.

⁴⁹ CD 702, s 1-2.

⁵⁰ CD 702, s 4.

Who may deliver Aboriginal programs?

CSC may enter into an agreement with an Aboriginal community for the provision of services and programs.⁵¹ If you and your Aboriginal community agree, the law also permits Aboriginal communities to take responsibility for the care and custody of federal prisoners. The Okimaw Ohci Healing Lodge and the other healing lodges for men are sometimes used as an example of the type of arrangement that can be made under s. 81 of the CCRA.⁵² An Aboriginal community could include a First Nation, Tribal Council, band, community, organization or other group with a predominantly Aboriginal leadership.⁵³ Additionally, programs may be provided by any of the following or in combination: Aboriginal staff, Aboriginal individuals, Aboriginal organizations or an Aboriginal Sisterhood/ Brotherhood.⁵⁴

Mothers in Prison

Many women in prison are mothers. According to the Task Force on Federally Sentenced Women, two thirds of the women in prison in 1990 were mothers and most were the sole supports of their children before they were taken to prison. Being away from your children is difficult at any time. Being away from your children because you are in prison is especially difficult, not least because of the potential barriers to living with, visiting, or speaking with your children. You may also be dealing with fear of the difficulties there could be, and too often are, involved in regaining custody of your children after your release from prison.

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

What is custody?

Many people think of custody as simply determining which parent a child will live with. Custody is more than that; while children often do spend most of their time with the parent who has custody, custody also involves the right to make important decisions about your child. Having custody of your child means you have the right to make important decisions about your child as well as their physical care, control, and upbringing.

⁵¹ CCRA, s. 81(1).

⁵² CCRA, s 81(3).

⁵³ CCRA, s 79.

⁵⁴ CD 702, s 23.

What is access?

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

What is supervised access?

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

What is child protection?

Child protection is an area of the law where the government takes over the care of children who are found by a court to be at risk of abuse or neglect. Child protection laws are the responsibility of each province and territory, so it is the law in the province where the children are which applies. The laws are pretty similar, but there are some differences between procedures in child protection and general custody and access applications. The name of the body responsible for child protection will also depend on the province/territory.

What are "the best interests 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, such as their right to freedom of expression and their right to freedom of movement. 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. This means that the BIOC could differ slightly between provinces. Each province has 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;
- relationships by blood or through adoption between the child and any applicant(s).

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

The Task Force on Federally Sentenced Women recommended in its 1990 report, *Creating Choices*, that all new prisons for women be equipped to accommodate mothers with their young children. For existing facilities, the Task Force recommended that CSC “must provide the necessary resources to enable regular and close contact between mothers and children.”⁵⁵

For a while, there were children in the Okimaw Ohci Healing Lodge and a few of the regional prisons, but it is now relatively rare to have a child with her mother in the prisons for women. However, a number of CSC staff have declared on occasion that the reason a particular prison has no Mother-Child Program up and running is that no eligible women have requested their children live with them at the prison. If this is the option you would choose for yourself and your child, you should definitely pursue it in whichever prison you are placed. See *Commissioner’s Directive 768: Institutional Mother Child Program*.

Courts can order that parents should not have access to their children. All decisions are made according to the judge’s interpretation of the best interests of the child. There are examples of prisoners maintaining access even under extreme conditions, such as a father who was able to maintain telephone access with his children even though he was in jail for killing their mother.⁵⁶

There have been other cases in which parents have been denied access to their children apparently largely because they are in prison.⁵⁷ It is very difficult to predict how a judge will decide, but as you will know, most judges are not very sympathetic to mothers in prison.

In one case, a provincial prison director decided to suspend all contact visits for a parent because of a general concern about drug and

⁵⁵ Task Force of Federally Sentenced Women, *Creating Choices – The Report of the Task Force of Federally Sentenced women* (1990).

⁵⁶ *Anderson v Daley*, [2006] SJ No 447.

⁵⁷ *Family and Children’s Services of Lunenburg County v TLS*, [1999] NSJ No 434.

weapons being smuggled into a prison.⁵⁸ In another case, a woman argued that being kept from her newborn amounted to cruel and unusual punishment under s. 12 of the *Charter*. Sadly, she lost the case, but the judge argued that this was because she was a flight risk and was in a secure custody unit.⁵⁹

This might leave room for other women who are not considered flight risks and who are not in a secure unit to make a similar argument. The Supreme Court of Canada has certainly recognized that apprehension of child can interfere with the parents' right to security of the person under the *Charter*.⁶⁰

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

If you do not have access, you may not have any ability to make such decisions. If you have access, or, even better, if you have custody, you may be able to make or contribute to important decisions about your child's health, education, and well-being. If you have joint custody of children, meaning that you and the father or another parental figure share legal custody of the children, you will both have some ability to make decisions about your child, even if the child only lives with one parent. If you and the child's father are still in a relationship, then you automatically have the right to make decisions about your child, unless the child's father has obtained a court order saying that you no longer have custody.

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

Does my child have rights?

The short answer is, yes. For example, your child has a right of access to you in order to maintain his or her bond with you.⁶¹

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

⁵⁸ *KL v LT*, [2005] SJ No 52.

⁵⁹ *Turner v Burnaby Correctional Centre for Women* (1994), 24 WCB (2d) 250.

⁶⁰ *Winnipeg Child and Family Services v K LW*, [2000] 2 SCR 519.

⁶¹ *Inglis v British Columbia (Minister of Public Safety)* [2013] B.C.J. 2708.

Supreme Court of Canada has also recognized that keeping a child from his or her parents infringes the child's section 7 *Charter* right to security of the person, and must only be done in accordance with the principles of fundamental justice.⁶² This means that if you believe that your child is being kept from you for arbitrary or unfair reasons, you might be able to work with your child's caregiver to argue that your lack of access to the child violates his or her section 7 rights.

Who may apply for custody or access of a child?

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

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

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

The best interests of the child will be the most important consideration. The factors a court might consider in deciding if someone should be granted custody of your child include:

- their willingness to have the care and custody of your child;
- their ability to provide for your child, including their physical health (please note that if you are considering having an aging parent or grandparent take care of your child while you are inside, a court may check into their ability to handle the physical requirements of caring for your child);
- 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;
- whether that person is already dealing with difficult issues that might interfere with their ability to care for your child.⁶³

⁶² *New Brunswick (Minister of Health and Community Services) v G (J)* [JG], [1999] SCJ No 47.

⁶³ *Newfoundland (Director of Child, Youth and Family Services, St John's Region) v NB*, [2001] NJ No 74.

What role might a child protection agency play?

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

What if my child is Aboriginal?

The extent to which a child's Aboriginal heritage is considered in child protection varies between provinces and territories. In BC, there is a recommendation that Aboriginal children be placed in Aboriginal families⁶⁴. In Newfoundland, Aboriginality is not addressed in child protection laws. In New Brunswick, child protection laws only mention Aboriginality to say that adoption will not terminate any Aboriginal rights the child may have⁶⁵. 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 Aboriginality as part of the determination as to what is in the best interests of the child.

What rights do I have at a custody hearing?

Section 7 of the *Canadian Charter of Rights and Freedoms* guarantees parents the right to a fair hearing when the state is seeking custody of their children. In some cases, this will mean legal aid to cover a lawyer for your hearing. Whether or not you will have the right to have free legal assistance will depend on which province or territory you live in and the details of what has happened to you and your children.⁶⁶

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

⁶⁴ Pamela Gough, *British Columbia's child welfare system*, CECW Information Sheet #54E, at 3 (Toronto: University of Toronto, Faculty of Social Work, 2007) online: CWRP <<http://cwrp.ca/sites/default/files/publications/en/BCchildwelfaresystem54E.pdf>>.

⁶⁵ Anna Kozłowski, Vandna Sinha, & Judy Levi, *First Nations Child Welfare in New Brunswick*, CECW Information Sheet #96E (Montreal: McGill University, Centre for Research on Children and Families), online: CWRP <<http://cwrp.ca/infosheets/first-nations-child-welfare-new-brunswick>>.

⁶⁶ *New Brunswick (Minister of Health and Community Services) v G (J) [JG]*, [1999] SCJ No 47.

a Family Law Information Centre where you can get information about child protection proceedings.

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

If, at a care and custody hearing, your child is found to be in need of protection, then 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 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.

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 3 and 12 months.

What is ‘protective custody’ in child welfare situations?

If a child is taken out of his or her home and the child protections agency cannot find a family member with whom to place the child, the agency may take the child into protective custody. This may be temporary or permanent. Permanent custody orders may be called Crown wardship, permanent care and custody orders, guardianship orders, permanent surrender, or continuous orders. Temporary orders may be called society wardship, supervisory orders, temporary care and guardianship, temporary orders, or temporary care.

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.

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. The supervision and wardship orders discussed above may be appealed. An appeal may be the only way for a parent to change a Crown wardship order.

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

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

If you are applying for access, the forms you will need may be available on the internet as most provinces have made them available online. Although you will not be able to access the information directly yourself, you can ask your case management team or an Elizabeth Fry support worker can download and print the information for you. A list of the different provincial and territorial web sites is included below.

Filling out the forms yourself may be time-consuming and difficult. If you do not have a lawyer, you might want to ask someone you trust to help you fill out the forms. If you have a court date and are able to go to the courthouse, you may be able to get help from duty counsel lawyers, available free of charge at many courthouses. If you have a lawyer, you can ask her or him to ask the judge to issue a court order to bring you from prison to the hearing. Not all judges will do this, but some will.

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

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

- 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 (was he or she healthy, doing well in school, happy with his or her friends, supported by your family)?
- The fact that you are in prison may bias the judge, as they do not see many applications from prisoners, so you need to focus on the bond between you and your child and how that is sufficiently important to you and your child that it be maintained, so that judge can justify having a child visit a prison.

What if I am pregnant while in prison?

If you are pregnant, then CSC policy says that you will receive accommodation for pre- and post-natal care.⁶⁷ The policy does not specify whether the necessary exams should take place in or out of prison. This is also a right you have under section 23 of the United Nations *Standard Minimum Rules for the Treatment of Prisoners*. The UN High Commissioner for Human Rights is Navanethem Pillay, who succeeded Louise Arbour in 2008.

If you are addicted to opioids or have a history of opioid addiction and are pregnant, then you should have highest priority for access to methadone treatment in prison.

What if I give birth while in prison?

CSC policy says that you will be taken to an outside hospital for delivery.⁶⁸ You should not be shackled while you give birth. Although all the prisons still say that they have the Mother-Child program, it is rare that CSC allows women to have their babies in prison with them. Even so, you should apply and let the CAEFS Regional Advocate know, as CAEFS will support you in your attempts to retain custody of your baby.

Can my child come to visit me in prison?

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

What happens if my child comes to visit me?

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”. (*CCRA*, s. 59). So, although staff may frisk your baby, you should not be asked to strip your baby down, not even to his or her diaper.

CSC policy says that, “*no child will be subjected to a strip search by staff*”. If staff suspect, on reasonable grounds, that a child is being used

⁶⁷ *CD 800*, s 47.

⁶⁸ *CD 800*, s 47.

to carry contraband, the visit may be denied. CSC can also notify child protection authorities or police, or both.⁶⁹

What is the parenting skills program?

According to CSC's *Program Strategy for Women*, each prison is required to offer the Parenting Skills Program. While you should never feel that the fact that you are in prison means that you are an inadequate mother, there may be benefits to taking this program. For one, many judges may have a bias, however unfair, against parents in prison. If you want to apply for access or custody of your child, it may help if you can show the judge that you have taken a parenting course. Also, the program often involves visitation with children, so this might be a way to see your child more frequently. 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.

Security Classification

What is classification?

Classification is the security rating the CSC assigns to prisoners to distinguish them according to their needs and perceived risk to society. Classification is broken down into three types: minimum, medium, and maximum security.⁷⁰

Your initial classification is determined by the score you receive on the Custody Rating Scale (CRS) as calculated by the community parole officer, and clinical assessments,⁷¹ which are conducted by others. The assessment process you will go through is largely aimed at determining the likelihood that you will re-offend when released, or how likely you are to attempt to escape, and what risk you might pose to the community if you were released or escaped to the community on the date they assess you. This is what CSC means when it discusses risk, although the term is not explicitly defined in the *Corrections and Conditional Release Act (CCRA)*.⁷²

What factors are used to determine classification?

Classification assessments are usually based on:

⁶⁹ Correctional Service of Canada, *Commissioner's Directive No 566-8: Searching of Staff and Visitors*, ss 29-30.

⁷⁰ CCRA, s 30.

⁷¹ CD 705-7.

⁷² *West Coast Prison Manual*. Not sure what this is.

- 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.⁷³

What is my Correctional Plan?

The correctional plan⁷⁴ is prepared by your case management team. The correctional plan will determine which programs CSC thinks you must or should take in order to address the issues that they perceive make you a risk to the community.⁷⁵ It is very important that you review your plan and correct any information that is wrong before the plan is finalized.

How is my classification level decided?

You will be classified based on CSC’s assessment of your risk factors and needs and how these impact on their assessment of your institutional adjustment, risk to escape, as well as your risk to public safety. These categories are problematic for many reasons, especially because they penalize you for existing disadvantages. Addictions, for example, could count against you many times: being a factor in alcohol and drug use, “street stability,” and possibly number of previous convictions if they were drug-related.

Also, the categories differentiate between women in a potentially discriminatory manner. For example, women’s ages can cause them to receive different classifications under the “institutional adjustment” heading. They also penalize women who have received longer sentences, even though a prisoner’s sentence is meant to be the punishment; they are not supposed to be sentenced to prison for more punishment. Racialized women, especially Aboriginal women, are the most likely to be further over-classified and penalized.

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

⁷³ *Corrections and Conditional Release Regulations*, SOR/92-620, s 17 [CCRR].

⁷⁴ *CD 705-6*, s 28.

⁷⁵ *CD 705-6*, s 28(c). See also *Pawliw v Canada*, [1997] FCJ No 379 (access to programs can be denied if not “conducive to the attainment of the Correctional Plan”), and Kelly Hannah-Moffat & Margaret Shaw, *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada* (Ottawa: Status of Women Canada, 2001).

UN Human Rights Committee has expressed “concern about the situation of women prisoners, in particular Aboriginal women.”⁷⁶

There is ongoing debate about the relevance and legality of a number of the ways in which the CSC (Correctional Services Canada) assesses the security classification of women. The Canadian Human Rights Commission, United Nations Human Rights Committee, CAEFS (Canadian Association of Elizabeth Fry Societies), NWAC (Native Women’s Association of Canada), and the Correctional Investigator have all expressed concerns about the discriminatory nature of the process.

According to the *Charter*,⁷⁷ as discussed in the Part I, it is prohibited to discriminate against an individual based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Because your mental or physical disability can result in a higher (more secure) classification, you could argue that this classification procedure is discriminatory.

Finally, the argument has been made that it is inappropriate for CSC to penalise you for having certain characteristics like substance abuse problems, or literacy problems, rather than seeing these as an entitlement to assistance. In other words, instead of having these factors increase your security classification (which they often will); they should be signs that you are entitled to help.⁷⁸

How is a prison placement decision made?

The most significant impact of classification is that it determines the conditions under which you will serve your sentence. There are minimum, medium, and maximum-security prisons to which you are assigned based mostly on your classification.⁷⁹ Because of a shortage of minimum-security prisons for women, most women classified as minimum-security are held in facilities with a higher security rating than they have been assigned. There are minimum-security beds in regional facilities, but these are virtually indistinguishable from medium-security beds in terms of security features.⁸⁰

⁷⁶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, CCPROR, 85th Sess., UN Doc CCPR/C/CAN/ CO/5 (2006) at para 18.

⁷⁷ *Charter*.

⁷⁸ Kelly Hannah-Moffat & Margaret Shaw, *Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada* (Ottawa: Status of Women Canada, 2001).

⁷⁹ Correctional Service of Canada, *Commissioner’s Directive No 706: Classification of Institutions*.

⁸⁰ *Dodd et al*, 2007.

Consistent with s. 4 of the *CCRA*, your security should be no higher than what is necessary and proportionate to attain the purposes of the Act. There is also a CSC policy decision that requires prisoners convicted of first or second degree murder to serve a minimum of two years at the maximum security classification. Wardens were given the power to over-ride the policy, and some of them sometimes do. However, since the autumn of 2006, when the Minister of Public Safety (Stockwell Day) publicly stated that he disagreed with this practice, there has been more reluctance by wardens to over-ride decisions.

How else does a more secure (higher) classification affect me?

- Difficulty in obtaining conditional release (see section on Conditional Release)
- Difficulty of less access to children and community for women with maximum security classifications
- Obtaining a work placement
- Difficulty of accessing programs, thus bias at parole hearings
- Compulsory participation in programs for maximum security women

Can my classification be appealed or changed?

Parole officers, who may not have very much experience with psychological or mental health issues, conduct a large portion of the intake assessment, which contributes to your classification. Clinicians perform some parts of the assessment, but even with more experience, they are not infallible.

However, the CSC periodically reviews classification and can make changes. The Security Reclassification Scale for Women (SRSW) is administered once a year for most prisoners and twice a year for women with maximum-security classifications who are not serving a life sentence for first or second degree murder.⁸¹ In addition, they may review your classification whenever there is reason to believe a change in security classification may be required, or prior to making a recommendation for any decision (for example, parole).⁸²

Increasing your classification (as opposed to that of a man) requires special procedures.⁸³ The reasons for the differences stem from

⁸¹ Correctional Service of Canada, *Commissioner's Directive No 710-6: Review of Inmate Security Classification*, s 13 [CD 710-6].

⁸² CD 710-6, s 11.

⁸³ CD 710-6, s 14.

complaints that have been made to CSC about the lack of reliability and validity of the classification procedures for women.

If you feel that your classification is inappropriate, you may use the prisoners' grievance process.⁸⁴ If the grievance procedures are exhausted without a satisfactory resolution, you may pursue judicial review (See section on remedies for more information about judicial review).

⁸⁴ *CD 710-6*, s 8.



PART III – PROTECTING YOUR RIGHTS

Confidentiality and Access to Information

Is the confidentiality of information the CSC collects about me protected by law?

As briefly discussed with respect to assessment reports in the last section, there are limits on your right to privacy. For example, recall that your psychological and psychiatric assessments, even though based on information that would normally be protected in a patient/doctor relationship, are not considered confidential. Therefore, you are not obligated to participate in the intake assessment. However, if you do not do so, classification will nevertheless be carried out without your participation based on available documents.⁸⁵

Your privacy is also not legally protected in another way. According to the *Corrections and Conditional Release Act (CCRA)* you are not permitted to use the *Privacy Act* or the *Access to Information Act* to prevent the Correctional Service Canada (CSC) from obtaining the information about you that it uses in its standard assessments.⁸⁶

⁸⁵ CD 705-7, s 28.

⁸⁶ CCRA, s 23(3).

Do I have the right to know what information the CSC has in my file?

If you, your lawyer, or someone else who has your permission makes a request in writing for your own information, it must be provided in accordance with the *Privacy Act*⁸⁷ and the *Access to Information Act*.⁸⁸ The Parole Officer will forward written requests from prisoners for file information to the appropriate staff member.⁸⁹ Information that can be shared directly should be given immediately to the prisoner.⁹⁰ However, if the 30-day time period the CSC formally has to give you information would “unreasonably interfere with the operation” of the prison, the time period may be extended to 60 days.⁹¹

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

- Information you have provided;
- Publicly available information;
- Opinions expressed by the 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).⁹²

Somewhat ironically, a possible exception may be medical or psychological assessments. 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.⁹³ Also according to the *Privacy Act*, it is the warden who decides whether providing access to this information would be against your best interests. There is no suggestion that a physician’s input should be sought in making this decision.

The *CCRA* offers some protection, however. It says that on request, you must be given access to the same information as would be disclosed under access and privacy legislation, including psychological information.⁹⁴

⁸⁷ *RS*, 1985, c P-21.

⁸⁸ *RS*, 1985, c A-1; *CCRA*, s 23(2).

⁸⁹ *CD 701*, s 9(e).

⁹⁰ *CD 701*, s 19.

⁹¹ *Access to Information Act*, s 9(1)(a).

⁹² Correctional Service of Canada, *Commissioner’s Directive No CD 701: Information Sharing CD 701*, s 20 [CD 701].

⁹³ *Privacy Act*, s 28.

⁹⁴ *CCRA*, s 23(2).

Can any other types of information be withheld from me?

Yes. If the 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.⁹⁵ However, various Commissioner's Directives (CDs) stipulate how much reason the CSC has to have in order to withhold the information you want.

In some situations, as in the preparation of the Criminal Profile Report, the CSC is obligated to provide at least the "gist" of police information held on you. They define "gist" as "the substance of the information and/or significant details".⁹⁶ 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*.

What if some of the information about me is wrong?

According to the *CCRA*, the CSC must take "all reasonable steps" to ensure that the information in your file is accurate, complete, and up to date.⁹⁷ However, there are no penalties for the CSC if it does not meet this obligation, so the protection it provides is likely limited.

If you believe there is an error or omission in your file, you are entitled to ask for a correction.⁹⁸ If the correction is made, any person or body with whom the incorrect information was shared in the past two years must be notified of the correction.⁹⁹ If one of these bodies was a government institution, that institution must make a correction in their own records.¹⁰⁰ If your request for the change is refused, you are entitled to have a notation attached to your file outlining the change you believe should have been made.¹⁰¹

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

The main groups to whom the CSC will release your information are the police, governments, the PBC, and courts;¹⁰² victims;¹⁰³ the general public;¹⁰⁴ and, the media),¹⁰⁵ although victims and the public/media are

⁹⁵ *CCRA*, s 27(3).

⁹⁶ *No CD 701: Information Sharing*, Annex C.

⁹⁷ *CCRA*, s 24(1).

⁹⁸ *CCRA*, s 24(2)(a).

⁹⁹ *Privacy Act*, RSC 1985, c P-21, s 12(2)(c)(i) [*Privacy Act*].

¹⁰⁰ *Privacy Act*, s 12(2)(c)(ii).

¹⁰¹ *Privacy Act*, s 12(2)(b).

¹⁰² *CCRA* s 25(1).

¹⁰³ *CCRA*, s 26.

¹⁰⁴ *CD 701*, s 39.

only supposed to receive a limited amount of information. The 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 you.¹⁰⁶ The *Privacy Act* offers little protection in this situation.

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

In some situations, as discussed above, the CSC has the power to release information. In the case of conditional release, police in the destination jurisdiction, if it is known, will be notified of unescorted temporary absences (UTAs), parole, and statutory release.¹⁰⁷ If it is believed that a person about to be released at the expiration of her sentence poses a threat, the CSC will “take all reasonable steps” to disclose all information to the police that is relevant to the perceived threat.¹⁰⁸

Victims who request information about you, if you have been convicted of a crime committed against them, may be informed of the following information about you: name, offence, start date and length of sentence, and eligibility and review dates for temporary absences and parole¹⁰⁹

More information may be released if the Commissioner believes that the victim’s interest outweighs your right to privacy. This information includes: 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,¹¹⁰

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

Even if you have not been convicted of a crime against a person, it may be possible for someone to obtain information about you if they can prove that harm was done to them by you or that they suffered a

¹⁰⁵ Correctional Service of Canada, *Commissioner’s Directive No 022: Designation of Release Sites Other than Penitentiaries*, s 27.

¹⁰⁶ *CCRA*, s 25(1).

¹⁰⁷ *CCRA*, s 25(2).

¹⁰⁸ *CCRA*, s 25(3).

¹⁰⁹ *CCRA* s 26(1)(a).

¹¹⁰ *CCRA* s 26(1)(b).

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 you were charged.¹¹¹

What information can the general public be given?

The general public can request the following information:¹¹²

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

Additionally, CSC must respond to media requests about the same items listed above as well as provide to the media any names of prisoners who have been victims of homicides, suicides, or serious assaults where criminal charges were laid.¹¹³

The Right to Counsel (Legal Assistance)

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

You have a right to legal assistance - also known as right to counsel. In given situations, you are entitled to be informed of this right.¹¹⁴ You also have the right to be provided with information about legal aid services, if you request it.

When would I use my right to legal assistance?

There are numerous circumstances in which it is in your best interest to exercise your right to counsel. For instance, when:

1. You are placed in administrative segregation.¹¹⁵ - You should be informed of your right to counsel and given 'reasonable opportunity' to retain and instruct counsel without delay, that is, immediately, and within no more than 24 hours.
2. You are about to be transferred involuntarily.¹¹⁶ - You should be advised, in writing, of your right to counsel "without

¹¹¹ CCRA s 26(3).

¹¹² CD 701, s 39.

¹¹³ CD 022, s 27; Privacy Act s 8(2)(a).

¹¹⁴ Charter, s 10(b).

¹¹⁵ CCRR, s 97(2).

¹¹⁶ CCRR, s 97(2).

- delay”.¹¹⁷ This means immediately and within no more than 24 hours following the notice of transfer unless there are compelling circumstances preventing immediate action.
3. After an emergency transfer.¹¹⁸ - The rules say you must be allowed a call to a lawyer “without delay,”¹¹⁹ and within no more than 24 hours following the transfer.
 4. You are charged with a serious disciplinary offence. The rules say you have to be given ‘reasonable opportunity’ to retain and instruct counsel. Unfortunately, you are not guaranteed a lawyer and if you can’t afford one, Legal Aid does not have to pay for a lawyer. There is no automatic right to counsel for minor disciplinary proceedings, but whoever is conducting the hearing must consider any request for counsel.¹²⁰
 5. You have a parole hearing. - Prisoners are entitled to a lawyer for an assistant¹²¹ but in some provinces Legal Aid does not have to pay for it. This varies from province to province.

Can prisoners be denied the right to counsel?

Nobody, including the Correctional Supervisor, can interfere with your right to legal assistance. Examples of situations in which it is especially important that you exercise this right are when you are involuntarily segregated, or when you are about to be transferred on an involuntary (regular or emergency) basis. You must immediately be given the opportunity to have a confidential phone call to your lawyer. You are also entitled to other calls to follow up with your lawyer.

Unfortunately, the right to counsel, especially regarding incidents that take place in prison, continues to be interfered with in Canada. On two separate occasions, as recently as April and November 2006, federally-sentenced women in Canada were denied their right to counsel.¹²² While the Arbour Commission went as far as to recommend that some form of sanction be placed on those who fail to comply with a prisoner’s right to counsel, the recommendation has not been implemented. For this reason, you must be aware of and exercise your right to counsel, and prison staff must also be aware of their duties regarding this important right.

¹¹⁷ Correctional Service of Canada, *Commissioner’s Directive No 710-2: Transfer of Inmates*, s 32 [710-2].

¹¹⁸ *CCRR*, s 97(2).

¹¹⁹ *CD 710-2*, s 38.

¹²⁰ *CCRR*, s 31(2).

¹²¹ *CCRA*, ss 140(7), (8).

¹²² Letters regarding right to counsel from Kim Pate to RPC (6 November 2006) and FVI (28 April 2006).

Are my communications with my lawyer private?

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

It is important to note that, while all communication between you and your lawyer is supposed to be confidential, there is no guarantee that calls made on the Millennium phone systems will not be monitored. You should request a private, un-monitored phone call when speaking with your lawyer. CSC cannot refuse this request, but they may take up to 24 hours to fulfil your request.

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

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

Health Care

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

The CSC must provide essential services. It will provide screening, referral, and treatment under the following categories of care:

- emergency (life-endangering);
- urgent (likely to deteriorate to an emergency);
- mental health; and,
- acute and preventative dental.¹²³

CSC considers these to be essential services. Registered or licensed health care professionals will provide all services, and these services must be available on a 24-hour basis.¹²⁴

Other services that correspond to “community practices”¹²⁵ may also be available to you. If, for example, you are addicted to heroin, you may qualify for Methadone treatment.¹²⁶

¹²³ CD 800, s 6.

¹²⁴ CD 800, ss 9-10.

¹²⁵ CD 800, s 7.

¹²⁶ CD 800, s 44.

Who pays for my health care expenses?

If you are in a federal prison, or are a federal prisoner in a provincial jail, the CSC pays for all health care expenses outlined above. If you are on parole and live in a half-way house, health care expenses are covered by provincial health care plans.¹²⁷ If you are unemployed, have no source of income, and are ineligible for government or community support,¹²⁸ the CSC will cover non-insured health care expenses. If you are on conditional release, CSC will pay for non-insured mental health expenses, as stipulated by the PBC or the Correctional Plan.¹²⁹

How do I obtain health care services?

You can make confidential requests for health care services,¹³⁰ and any staff member observing apparent illness has an obligation to report it to health care professional, whether or not you complain.¹³¹

Do I have to accept medical treatment?

Medical staff normally require your informed consent in order to give you any examination, procedure, or treatment.¹³² 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.¹³³

You should know that clinicians in prison are only permitted to prescribe drugs for medical purposes, and that the medical procedures they perform should be only for your benefit, not to restrain you.¹³⁴ Health care workers may not collect samples from you for non-medical purposes.¹³⁵

What happens if I refuse treatment?

You may refuse to consent to any procedure, even if the refusal threatens your life.¹³⁶ Your refusal must not result in punitive action, and you should be offered an alternative treatment if possible.¹³⁷

¹²⁷ CD 800, s 66.

¹²⁸ CD 800, s 63.

¹²⁹ CD 800, s 64.

¹³⁰ CD 800, s 12.

¹³¹ CD 800, s 11.

¹³² CD 800, s 19.

¹³³ CCRA, s 88(2), and CD 803.

¹³⁴ CD 800, s 17.

¹³⁵ CD 800, s 18.

¹³⁶ CCRA, 88(1)(b).

¹³⁷ CD 803, s 15.

Confidentiality of health information will be maintained except in circumstances for which there is a need to know related to risk or case management.¹³⁸

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

You have a right to confidentiality for information related “solely to therapeutic matters”. However, if you see a psychologist or psychiatrist for assessment or case management purposes, it will be assumed that you have consented to share the information collected with your case management officer.

If you are seeing a psychologist or psychiatrist, you must be sure you understand the purpose of the visit. You should ask the mental health practitioner at the outset of an appointment whether the session is considered therapeutic or whether 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.

A psychologist will offer a written opinion and inform appropriate staff, regardless of the prisoner’s consent, concerning risk to re-offend, based on available information in the interest of public safety and the prisoner’s imminent risk for self-injury causing serious bodily injury or death to other persons¹³⁹

Information on the psychology file that is relevant to the prisoner’s risk to re-offend or the management of this risk will be disclosed to those who need to know, regardless of whether the prisoner consents¹⁴⁰

What right to confidentiality do I have in relation to my other medical records?

The CSC says that prisoners have the same right to confidentiality of information obtained by a health care professional as the rest of the population.¹⁴¹

¹³⁸ CD 803, s 24.

¹³⁹ Correctional Service of Canada, *Commissioner’s Directive No 840: Psychological Services*, s 26 [CD 840].

¹⁴⁰ CD 840, s 37.

¹⁴¹ Correctional Service of Canada, *Commissioner’s Directive No 835: Health Care Records*, s 2 [CD 835].

What should I know about the CSC's policy on suicide attempts and self-injuries?

The most important thing to know is if you attempt suicide or engage in self-injurious behaviour you are not supposed to be disciplined or otherwise punished for such behaviour, although this is no longer explicitly written into CSC policy.¹⁴² There is often disagreement over what constitutes protecting the prisoner from herself, and what constitutes discipline, especially given that CSC allows restraints, segregation and/or camera observation to be used in order to prevent self-injury.¹⁴³

The Pinel Restraint System is the only restraint system to be used for self-injurious behaviour in maximum and medium security institutions, women's institutions, and Regional Treatment Centres. Minimum security institutions and Healing Lodges may use the Pinel System, if available.¹⁴⁴ Use of the Pinel System does not replace efforts to understand and address the causes of the behaviour, and is not intended to be the principal intervention.¹⁴⁵

CSC policy directs that any prisoners held in the Pinel System should be offered the opportunity to attend to activities of daily living, such as eating, bathing, dressing, and grooming "to the extent possible." You should receive food at regular meal delivery times, fluids at least every two hours while you are awake, and the opportunity to meet your elimination needs at least every hour that you are awake.¹⁴⁶

If the restraints are applied continuously for more than eight hours, the Interdisciplinary Mental Health Team (IMHT) or Correctional Intervention Board (CIB) must develop a strategy to reduce and eliminate the use of the restraints. This strategy must be put into place no more than 36 hours after the restraints are applied.¹⁴⁷ If you are restrained for more than 24 hours, a review of the use of the restraints must be completed by a mental health professional no later than 48 hours after the IMHT/CIB strategy discussion.¹⁴⁸ This review must consider all alternatives to the Pinel System, and develop a strategy to prevent its use in the future. It must also look at whether a plan to

¹⁴² Correctional Service of Canada, *Commissioner's Directive No 843: Management of Inmate Self-Injurious and Suicidal Behaviour*, s 10 [CD 843].

¹⁴³ CD 843.

¹⁴⁴ CD 843, s 26.

¹⁴⁵ CD 843, s 27.

¹⁴⁶ CD 843, s 51.

¹⁴⁷ CD 843, s 52.

¹⁴⁸ CD 843, s 53.

remove the restraints is in place.¹⁴⁹ If use of the Pinel System continues, the IMHT/CIB must continue to meet to evaluate the intervention strategy every two working days.¹⁵⁰

¹⁴⁹ *CD 843*, s 54.

¹⁵⁰ *CD 843*, s 55.



PART IV – RESTRICTIVE MEASURES

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

Segregation

What is segregation?

If you are segregated, it is readily obvious. You are separated from the general prison population and put in a segregation cell. However, segregation is actually a status and not merely a place. Freedom inside the prison is more restricted than for most other prisoners -you do not have access to the rest of the prison, programs, yard, gym, etc. Because women classified as maximum security prisoners are generally housed in a separate wing of the women's or men's penitentiaries, they experience many of the same conditions that a prisoner locked in segregation encounters. For this reason, it is currently being argued that the procedures and rights outlined below apply just as much to women classified as maximum security prisoners than those in "seg." In fact,

CAEFS (Canadian Association of Elizabeth Fry Societies) and others consider all of the women in such units to be in a segregated form of prison.

What is the purpose of segregation?

The purpose of segregation is to keep you from associating with the general prison population in order to ensure the security of the institution and safety of the staff and prisoners, including you.¹⁵¹ That being said, women in segregation have a right to be treated in a safe and humane manner and be subject to the least restraint necessary.¹⁵² Segregation is an extreme measure and should only be used when it is believed there are no other reasonable alternatives.¹⁵³ Because of its severity, the CSC has a duty to return segregated women to the general population at the earliest possible time.¹⁵⁴

What are the different kinds of segregation?

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

Administrative Segregation

Administrative segregation is *preventative* in nature, and can be either *involuntary* or *voluntary*. The warden can order you into administrative segregation involuntarily if certain criteria are met. She must believe – on reasonable grounds – that one of three types of scenarios involving you is likely to unfold if you are left in the general population. These are:

- You threaten the security or safety of the prison or of a specific person or people¹⁵⁵
- You would somehow impede the investigation of a criminal or disciplinary offence¹⁵⁶
- Your own personal safety would be at risk¹⁵⁷

The first two points are usually the grounds for any involuntary administrative segregation orders. In practice, almost every time a prisoner is charged with either a criminal or disciplinary offence, she is immediately placed in segregation. If this happens to you, you should be provided with enough information to decide upon the reasonableness

¹⁵¹ CCRA, s 31(1).

¹⁵² Correctional Service of Canada, *Commissioner's Directive No 709: Administrative Segregation*, s 2 [CD 709]. See also CCRA, s 4(c).

¹⁵³ CCRA, s 31(3). See also CD 709, s 10.

¹⁵⁴ CCRA, s 31(2). See also CD 709, s 9.

¹⁵⁵ CCRA, s 31(1)(a). See also CD 709, s 16(a).

¹⁵⁶ CCRA, s 31(1)(b). See also CD 709, s 16(b).

¹⁵⁷ CCRA, s 31(1)(c). See also CD 709, s 16(c).

of the decision to place you in segregation within one working day.¹⁵⁸ If you are not given this information, you should file a grievance (see the section on remedies for further information).

You can also be placed in administrative segregation on a voluntary basis, that is, if you request to be put there for your own safety.¹⁵⁹ You must submit detailed reasons for your request, knowing that your request can be denied. If this occurs, however, the warden must meet with you to explain her reasons for denying the request and give you an opportunity to respond in person or in writing.¹⁶⁰

In order to place you in administrative segregation, either voluntary or involuntary, there must be no other reasonable alternative. Segregation is a measure of last resort.¹⁶¹ After the P4W (Prison for Women) Inquiry, Louise Arbour recommended that there be a 30 day limit on the use of segregation.¹⁶² Others have also made this recommendation, namely, the Correctional Investigator, CAEFS, many other women's justice and Aboriginal groups and the Canadian Human Rights Commission.

Disciplinary Segregation

The law allows for disciplinary segregation that is intended to be a punishment. If you are found guilty of a serious disciplinary offence, one possible sanction is placement in segregation.¹⁶³ Serious offences are defined as actions that are serious breaches of security, violent, harmful to others, or repetitive violations of rules.¹⁶⁴

The total time spent in disciplinary segregation cannot exceed a period of thirty days. If you are subject to the sanction of segregation while already placed in segregation for another offence, the sentences can be served concurrently or consecutively. When served consecutively, the total time spent in segregation cannot exceed forty-five days.¹⁶⁵

NOTE: Your health and health care needs should be taken into account before a decision is made to place you in segregation.¹⁶⁶

¹⁵⁸ *CCRR*, s 19. See also *CD 709*, s 40.

¹⁵⁹ *CCRA*, s 35. See also *CD 709*, s 13.

¹⁶⁰ *CCRA*, s 35.

¹⁶¹ *CCRA*, s 31(3). See also *CD 709*, s 10.

¹⁶² *Arbour Report*, at s 2.8.2.1.

¹⁶³ *CCRA*, s 44(1)(f). See also Correctional Services Canada, *Commissioner's Directive No 580: Discipline of Inmates*, s 46(f) [*CD 580*].

¹⁶⁴ *CD 580*, Annex A Definitions.

¹⁶⁵ *CCRR*, s 40(2).

¹⁶⁶ *CD 580*, s 8.

Are there any other reasons I could be placed in segregation?

Yes. You may be placed in segregation in a camera cell if you are placed on ‘suicide watch’. The decision to so designate you can be made by a mental health professional or the Duty Correctional Manager¹⁶⁷ if s/he believes there is a significant risk that you will cause harm to yourself, and that this is an acceptable preventative measure. If the Duty Correctional Manager places you in segregation, you must be assessed by a mental health professional as soon as reasonably possible, but within 24 hours.¹⁶⁸

You can also be placed in a segregation cell and ‘dry-celled’ if the warden has reasonable grounds to believe that you have ingested contraband or are carrying contraband in a body cavity. In this case, water to the sink and the toilet are generally turned off.¹⁶⁹

What procedures must be followed, and what rights do I have while in segregation?

Because segregation is such an extreme and restrictive measure, there are numerous rules governing its use. Some of these concern procedural matters. For example, only certain people have the authority to make the decision to send you into segregation in the first place and, after that, other authorities and boards contribute to decisions on whether to keep you in or let you out of segregation. Other rules establish time frames that are supposed to be followed.

You have certain rights concerning the conditions of your imprisonment in segregation. Some of these concern the access you must be given to the information the CSC is using against you. Other access issues concern your right to health care, and the legitimacy of limits placed on your continued right to access other services, programs and your belongings. There are also guarantees concerning your right to communicate with certain people while in segregation, including the warden, the Chair of the Prisoners’ Committee, advocates, your family, and – very importantly – your lawyer.

What can I do if my rights are violated?

If you feel that your rights have been violated, it is very important that you use the internal grievance process in place at the prison before you consider taking the matter to court. A court is unlikely to grant you a

¹⁶⁷ CD 843, s 8.

¹⁶⁸ CD 843, s 8.

¹⁶⁹ Correctional Service of Canada, *Commissioner’s Directive No 566-7: Searching of Inmates*, s 25(b) [CD 566-7].

remedy if you have not gone through the internal remedy procedure first. (See the section on remedies for more information.)

However, there are a number of steps you can take in the short term in addition to filing a grievance. You should contact your lawyer if you have retained one. If you do not have a lawyer and there are any charges pending, you should put in a request to see Legal Aid. You should also notify the Correctional Investigator at 1.877.885.8848 and inform her of any violation of your rights. Finally, you can contact the CAEFS information line at 1.800.637.4606.

Transfers

What do I need to know about transfers?

You can be transferred to another penitentiary, a provincial jail or a hospital upon an order from the Commissioner or at your own request.¹⁷⁰ All transfers must be carried out in a fair manner.¹⁷¹

First, the Commissioner must take all reasonable steps to ensure that the place to which you are transferred contains only the necessary restrictions, taking into account the degree and kind of control necessary for the safety of the public, the safety of any person in the penitentiary, and the security of the prison. Second, she must take into account accessibility to your community and family, a compatible cultural environment, and a compatible linguistic environment. Third, she must consider the availability of appropriate programs and services.¹⁷²

What kinds of transfers are there?

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

Voluntary transfers are initiated by you when you request to be moved to different prison, usually in another region but, in some cases, even in another country of which you are a citizen. *International transfers* – which are not the same as extraditions or deportations - are an example

¹⁷⁰ CCRA, s 29.

¹⁷¹ CD 710-2.

¹⁷² CCRA, s 28. See also CD 710-2, Annex C.

of a type of voluntary transfer to which a distinct set of legal rules apply.¹⁷³ You will likely need legal and or government assistance in order to apply for this type of transfer.

In the case of transfers to other prisons in Canada, the decision of whether or not to grant the transfer will usually be made within sixty days of your application.¹⁷⁴ 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 solid your reasons are for wanting the transfer, the better your chances of having it granted. You should also be aware that decisions to grant transfers can be reversed under certain circumstances, even once you've been moved, for example, if you've transferred to take part in programs which you later refuse to take.¹⁷⁵

Where mental health care is concerned, you are probably already aware that most women with mental health issues respond much better to psychiatric hospitals and facilities than to the conditions imposed in segregation units in prison. It is important for you to know, however, that the CSC is often reluctant to initiate a transfer to a psychiatric hospital because the CSC has to pay for your stay there. Because of this CSC reluctance, you may need assistance from a lawyer or CAEFS (Canadian Association of Elizabeth Fry Societies) in actually getting transferred in a crisis situation or for an assessment.

Involuntary transfers are transfers initiated by the CSC when it wants to move you against your will. There are many reasons the CSC can use to justify its request to the Commissioner for authorization to transfer you. Some of the most common are:

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

While this list is not exhaustive, it does provide an indication of the kind of reasons that may appear on a transfer notice. However, another common reason you may be transferred is an assessed incompatibility

¹⁷³ Correctional Service of Canada, *Commissioner's Directive No 704: International Transfers*.

¹⁷⁴ *CCRR*, s 15.

¹⁷⁵ *CD 710-2*, s 63(b).

with staff or guards. Unfortunately, this reason for transfer is often not officially documented by the CSC, and is therefore very difficult for you to respond to as you prepare a rebuttal.

One further important note about reasons for involuntary transfers is that often they are based on ‘security reasons,’ evidence of which may have come from a third party. The CSC frequently withholds the name of the informant, claiming it is necessary to ensure that person’s safety and to maintain the sanctity of the police-informant relationship. You should be aware of your right to challenge the withholding of this information if doing so means that you do not have sufficient information to effectively assess the reasonableness of the decision and make representations.

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 prisoners, or you, yourself that cannot be dealt with within the prison you’re in, and cannot be delayed in order to allow you your right to file a rebuttal to the transfer decision.¹⁷⁶

Unfortunately, sometimes an involuntary transfer is labelled an emergency transfer when it really is not. This means that all the procedural rules can be disregarded. These include your right to advance notice of the transfer, timely access to the information being used to justify the transfer, as well as your right to several types of responses which might result in stopping the transfer from taking place at all.

If this happens, you should contact a lawyer and/or the Correctional Investigator. As well, you should follow up with a 3rd level (national level) grievance if you have been transferred out of the region. If the transfer is to a prison or hospital within the same region, you should follow up with a 2nd level (regional level) grievance.

How can I object to a decision to transfer me involuntarily?

Except in the case of an emergency transfer, when the decision is made to transfer you involuntarily, you must receive a *Notice of Involuntary Transfer Recommendation* at least two days before the transfer is to take place.¹⁷⁷ (In the case of an emergency transfer, you still get the notice, but only after the fact.) The transfer notice informs you not only

¹⁷⁶ CCR, s 13(1).

¹⁷⁷ CD 710-2, s 32(c)

of the place to which the CSC proposes you be sent, but also the reasons for the transfer.¹⁷⁸ You then have 48 hours to prepare your counter-arguments, and to present them either in writing or in person (your choice) to the warden.¹⁷⁹ If this is not enough time, you can apply for an extension of up to ten days.¹⁸⁰

You must be notified in writing of your right to legal counsel immediately¹⁸¹ and, even in an emergency situation with “compelling circumstances,” you must still be notified of your right to legal counsel without delay.¹⁸² It can be very important that you exercise this right because, in some cases, your lawyer may be able to arrange for you to go before a judge¹⁸³ and request a legal remedy before the transfer. A prisoner is able to challenge the reasonableness of a transfer decision through judicial review under section 18 of the *Federal Courts Act*¹⁸⁴, or by making a habeas corpus application. The Supreme Court of Canada’s (SCC) decision in *Idziak* is a very useful precedent to use when arguing being granted *habeas corpus* in advance of an allegedly illegal detention/transfer.¹⁸⁵ As well, the Ontario Court of Appeal ruled that while women were held at Isabel McNeil House (IMH), the only former minimum security penitentiary for women in Canada, they had a right to a *habeas corpus* application and were permitted to remain at IMH until their application was heard regarding their transfer to a higher security institution.¹⁸⁶

The most recent case involved a prisoner who was involuntarily transferred on what CSC said was an “emergency” basis, and without being provided with access to the documents used to make the decision to transfer.¹⁸⁷ When he requested to see these documents so that he could challenge and oppose the transfer, his request was denied. Mr. Khela filed an application for *habeas corpus*, on the grounds that his transfer was “unreasonable.” The court agreed and said that when an application for *habeas corpus* is made, and the prisoner is able to raise a legitimate concern regarding the legality of the transfer, the onus rests with CSC to justify the lawfulness of the transfer.

¹⁷⁸ CD 710-2, ss 32(a), 44(a).

¹⁷⁹ CD 710-2, s 32(c).

¹⁸⁰ CD 710-2, s 32(c).

¹⁸¹ CD 710-2, s 32(b).

¹⁸² CD 710-2, s 44(c).

¹⁸³ CD 710-2, s 73.

¹⁸⁴ *Federal Courts Act*, RSC 1985, c F-7, s 18.

¹⁸⁵ *Idziak v Canada (Minister of Justice)*, [1992] 3 SCR 631.

¹⁸⁶ *Dodd v Isabel McNeill House*, ONCA 2007.

¹⁸⁷ *Mission Institution v Khela*, [2014] SCC 24.

What can I do if my rights are violated?

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 is wrong. A court is not likely to grant a remedy to you if you have not exhausted the institution's internal remedy procedure first.

Also, as with other issues, you should notify the Correctional Investigator at 1.877.885.8848 and inform her of the violation. You can also contact the CAEFS information line at 1.800.637.4606.

Disciplinary Charges

What is the purpose of the disciplinary system?

The CSC considers the disciplinary system to be a means to ensure that prisoners behave in a manner that promotes the good order of the prison and protects the safety of the public. The process is supposed to be one that *contributes to prisoners' rehabilitation and reintegration into the community* upon release.¹⁸⁸

In pursuing these goals, discipline must:

- be fair
- use measures that are limited only to what is necessary and proportionate to attain the purposes of the Act¹⁸⁹
- be corrective by design
- reinforce the prisoner's responsibility and accountability
- give due consideration to culturally appropriate restorative approaches to discipline and informal resolution to encourage positive interaction between prisoners and staff
- be timely
- be impartially determined and administered
- take into consideration the prisoner's mental health
- apply only those sanctions imposed for the specific offence by the person conducting the hearing¹⁹⁰

What are disciplinary offences?

The CSC considers a number of actions to constitute disciplinary offences. Some of these are: disobedience, trespassing, damaging property, theft, possessing stolen property, abusive behaviour, fighting, possessing unauthorized items (contraband), taking certain drugs, and

¹⁸⁸ CCRA, s 38.

¹⁸⁹ CCRA, s 4(c).

¹⁹⁰ CCRA, s 39

failing to provide a urine sample. Other prohibited activities include: creating a disturbance, attempting to escape, refusing work, gambling, and assisting other prisoners to engage in any of the behaviours listed here.¹⁹¹

The CSC recognizes the need to distinguish between minor infractions of the rules, and what it calls *serious* disciplinary offences. *Serious charges* usually apply only to actions that constitute serious breaches of security, are violent or harmful to others, or are repetitive violations of other rules. Examples of serious offences include threatening or abusing a staff member or involvement in a drug or alcohol related offence.¹⁹²

Usually only one disciplinary charge will come of a single incident unless there have been two very different and distinct acts committed.

Will the police be involved in my charge?

If you commit a serious offence, such as the ones noted above, the police may be informed.¹⁹³ Generally, the police will only be informed when a serious offence has been committed that clearly contravenes a Canadian law. If police do become involved, the decision to proceed with an internal disciplinary charge may be delayed in order to allow the police time to investigate.¹⁹⁴

What is the process involved in laying charges?

Warning

CSC staff must first provide you with a warning that your behaviour may result in a disciplinary charge. If a warning is not provided, this failure to comply with procedural requirements can be presented at as a defence at a disciplinary hearing.

Informal Resolution

CSC staff must then take all reasonable steps to resolve a potential disciplinary matter by way of an informal resolution, where possible.¹⁹⁵ Informal resolutions are reasonable alternatives to the disciplinary process which are agreed to by both you and the institution.¹⁹⁶ They can

¹⁹¹ CCRA, s 40.

¹⁹² CD 580, Annex A Definitions.

¹⁹³ CD 580, s 11.

¹⁹⁴ CD 580, s 15.

¹⁹⁵ CCRA, s 41(1).

¹⁹⁶ CD 580, Annex A Definitions.

include such measures as resolution circles, negotiation, mediation, counselling, cooperative programs, warnings and advice.¹⁹⁷

There are many problems with the system of informal resolution as it exists in prisons. The most obvious is the power imbalance between the prisoner and the institution. The staff member always has more authority and power than the prisoner. There is enormous pressure on the prisoner to comply with staff demands in order to avoid charges. A true negotiation or mediation cannot take place in such circumstances.

Processing a Charge

If an informal resolution is not reached, CSC staff may issue a disciplinary charge through the formal disciplinary process,¹⁹⁸ if circumstances permit and this is not likely to exacerbate the situation.¹⁹⁹ First, a staff member must tell you that a report is being prepared and that it may result in a disciplinary charge. This report must be submitted to the correctional manager no more than 24 hours after an informal resolution has been attempted. After reviewing the report, the warden will make a decision about whether or not she will lay a charge and if so, whether the charge will be minor or serious. However, the warden may delegate this power to another senior staff member.²⁰⁰

If it is decided that a charge will be laid, the correctional manager or designate has a number of very important obligations. She must:

- ensure that the charge and any possible sanctions are explained to you²⁰¹
- ensure that you are advised of your right to legal counsel for the hearing of a serious charge.²⁰² (If no lawyer represents you, you will have the same opportunity as she or he would have to question and call witnesses, introduce evidence, and examine exhibits at the disciplinary hearing.)
- ensure that you are advised of your right to submit a list of witness or documents prior to the hearing²⁰³

You must be provided with a copy of the offence report, a written summary of the evidence, any documentation that will be presented to the Chairperson of the hearing, and written notice of the time, place

¹⁹⁷ CD 580, Annex A Definitions.

¹⁹⁸ CCRA, s 41(2).

¹⁹⁹ CD 580, s 7.

²⁰⁰ CD 580, s 2(b)(iii).

²⁰¹ CD 580, s 16(a).

²⁰² CD 580, s 16(b).

²⁰³ CD 580, s 16(c).

and date of the hearing. When there is evidence that will be presented at the hearing verbally, you must be provided with the gist of the information that will be presented. All of this information must be given to you within two working days of laying the charge.²⁰⁴

Hearing

A hearing must take place as soon as practicable, but not less than three working days after your receipt of notice of the charge, unless you consent to less time.²⁰⁵ Usually, an initial hearing will take place within ten days of the charges being laid,²⁰⁶ yet hearings can be held with as little as one hour's notice. In some cases, you will be placed in administrative segregation while awaiting your disciplinary hearing. These cases will be given priority over other hearings of disciplinary offences.²⁰⁷

Disciplinary hearings are overseen by a Chairperson. In the case of a minor offence, the institutional head will act as Chairperson, or she can delegate the responsibility to a senior staff member. In the case of a serious offence, an Independent Chairperson will conduct the hearing, except in extraordinary circumstances.²⁰⁸ Witnesses are sometimes present and, normally, you must also appear at the hearing. In the case of a serious offence, you have a right to have legal counsel present during the disciplinary hearing.²⁰⁹ In the case of a minor offence, it is also possible (but not made practical) to have legal counsel.

The Chairperson must give you a reasonable opportunity to question witnesses, introduce evidence, call witnesses, make submissions and examine exhibits and documents to be used in making the decision.²¹⁰ When you are represented by a lawyer, she or he is permitted to participate in the hearing to the same extent as the prisoner would be on her own.²¹¹

A decision should be rendered by the Chairperson as soon as is practical.²¹² You must receive a copy of this decision.²¹³ The Chairperson

²⁰⁴ *CD 580*, s 17.

²⁰⁵ *CCRR*, s 28. See also *CD 580*, s 27.

²⁰⁶ *CD 580*, s 26.

²⁰⁷ *CCRR*, s 29.

²⁰⁸ *CCRR*, s 27(2). See also *CD 580* ss 24–25.

²⁰⁹ *CCRR*, s 31(2).

²¹⁰ *CD 580*, s 34. See also *CCRR*, s 31(1).

²¹¹ *CCRR*, s 31(2). See also *CD 580*, s 35.

²¹² *CCRR*, s 32(1). See also *CD 580*, s 52.

²¹³ *CD 580*, s 52. See also *CCRR*, s 32(2).

cannot find you guilty unless she is convinced *beyond a reasonable doubt* that you committed the disciplinary offence²¹⁴.

What defences can I present at a hearing?

The most obvious defence that you can present is that you have not done what you have been accused of doing, that is, you claim innocence. Another defence may be that you broke a rule unknowingly. Another, often legitimate defence is that there was a misunderstanding between you and CSC staff or that prison staff misinterpreted your actions. Another common defence is CSC's failure to adhere to procedure. If any of the procedures outlined in this chapter have not been followed, this may lead to a dismissal of the charge.

Can the hearing be delayed?

Chairpersons can adjourn hearings for a number of reasons. Prisoners should know that unreasonable delays caused by the institution in a hearing may result in the dismissal of the charges.²¹⁵

What sanctions can be imposed at a hearing?

The Chairperson decides on any sanction to be imposed if you are found guilty. There are a variety of possibilities, which include:

- a warning or reprimand;²¹⁶
- a loss of privileges;²¹⁷
- an order to make restitution²¹⁸ (maximums of \$50 for a minor offence and \$500 for a serious offence apply²¹⁹);
- a fine²²⁰ (maximums of \$25 for a minor offence and \$50 for a serious offence apply²²¹);
- performance of extra duties²²² (maximum number of hours of extra hours that may be ordered is 10 for a minor offence and 30 for a serious offence²²³);
- in the case of a serious disciplinary offence only, disciplinary segregation for a maximum of thirty days.²²⁴

²¹⁴ CCRA, s 43(3).

²¹⁵ CD 580, s 30.

²¹⁶ CCRA, s 44(1)(a). See also CD 580, s 46(a).

²¹⁷ CCRA, s 44(1)(b). See also CD 580, s 46(b).

²¹⁸ CCRA, s 44(1)(c). See also CD 580, s 46(c).

²¹⁹ CCRR, s 36.

²²⁰ CCRA, s 44(1)(d). See also CD 580, s 46(d).

²²¹ CCRR, s 37.

²²² CCRA s 44(1)(e). See also CD 580, s 46(e).

²²³ CCRR, s 39.

²²⁴ CCRA, s 44(1)(f). See also CD 580, s 46(f).

The carrying out of any of the above sanctions may be suspended subject to the condition that you are not found guilty of another disciplinary offence during a period which will be fixed by the Chairperson. If you are later found guilty of an offence during this period, you will have to carry out the sanction that had been suspended.²²⁵

How can I appeal the outcome of a hearing?

If you want to appeal either the process of decision or the decision itself, with regard to a minor offence, you use the internal grievance procedure.²²⁶

The Independent Chairperson has the ability to re-open a case if new evidence is brought forward or if there is evidence of a procedural error. If no new evidence is brought forward or if you wish to appeal a decision of an Independent Chairperson with regard to a serious offence, you must make an application for judicial review to the Federal Court, Trial Division.²²⁷ If the penalty imposed results in segregation, you may also want to consider a habeas corpus application. Otherwise, by the time the matter gets to Federal Court, it might be considered moot and you would likely have already served your time in punitive segregation.

If you wish to bring your case to the Federal Court, you should most certainly contact your legal counsel. If you have not retained counsel, you should contact Legal Aid about the possibility of retaining their services.

Searches

What is a search?

There are several different kinds of searches. A *frisk search* is a manual search of your person while clothed. Specifically, it is a search from your head to your toes, down the front and back of your body, around your legs, and inside clothing folds.²²⁸ It must be performed by staff member of the same sex as you are. As well, a frisk search can include a search of your personal possessions, including a coat that you have been requested to remove.²²⁹

²²⁵ CCR, s 41.

²²⁶ CD 580, s 54.

²²⁷ CD 580, s 56.

²²⁸ CCR, s 44.

²²⁹ CCR, s 46 *Frisk Search*. See also CD 566-7, Annex A Definitions *Frisk Search*.

A *non-intrusive search* is a search performed by technical means.²³⁰ This means that the search can be conducted with the use of a handheld device or with a walk through metal scanner.²³¹

A *strip search* can include a visual inspection of your naked body. It can also include a search of your clothing and other personal possessions you are carrying.²³² During the course of a strip search, the staff member may also require you to open your mouth, show her the soles of your feet, open your hands and arms, and allow her to run her hands through your hair. As well, she may require you to bend over to allow for a visual inspection only.²³³

A strip search can only be performed in a private area out of sight of everyone except the woman staff member performing the search and one other woman staff member who acts as a witness.²³⁴ Men are no longer permitted to strip search women in federal prisons for women. It is important to note that due to the grave humiliation and degradation experienced by persons undergoing strip searches, they have been disallowed as part of “routine” policy outside the prison context.

When can I be searched?

A male or female staff member can perform **non-intrusive searches** or **frisk searches**, without any particular reason for suspicion, as long as they can establish the ‘prescribed circumstances’ which are those the CSC considers to be “reasonably required for security purposes.”²³⁵

The regulations state that a routine non-intrusive or frisk search can be done when:

- you are entering, leaving or returning to the prison;²³⁶
- you are entering or leaving the open area or family visiting area of the prison;²³⁷
- you are leaving a work or activity area of the prison;²³⁸
- you are entering or leaving a segregation area;²³⁹

²³⁰ CCRA, s 46 *Non-Intrusive Search*.

²³¹ CRR, s 43. See also CD 566-7, Annex A definitions *Non-intrusive Search*.

²³² CCRA, s 46 *Strip Search*.

²³³ CRR, s 45. See also CD 566-7 Annex A definitions *Strip Search*.

²³⁴ CRR, s 46. See also Correctional Service of Canada, *Commissioner’s Directive No 577: Staff Protocol in Women Offender’s Institutions*, s 16.

²³⁵ CCRA, s 47(1).

²³⁶ CRR, s 47(a).

²³⁷ CRR, s 47(b).

²³⁸ CRR, s 47(c).

²³⁹ CRR, s 47(d).

- you are on a temporary absence in which you have left the prison;²⁴⁰
- you have been requested to submit to urinalysis and the search is done prior to the collection process;²⁴¹
- the institution head believes that contraband has entered the prison and she specifically authorizes the searches in writing.²⁴²

In addition, if a staff member has reasonable grounds to suspect that, at times other than those listed above, you are carrying contraband or that you are carrying evidence related to either a disciplinary or criminal offence, she (or he) can frisk search you.²⁴³

A staff member of the same sex can perform a **strip search**, without suspicion, if you have been in a place where there was a likelihood you had access to contraband that you may have hidden on or in your body, or when you are entering or leaving a segregation area.²⁴⁴

You can be strip searched where you are entering or returning to the prison, you are leaving the open visiting area or family visiting area of the prison, or you are leaving the work area of the prison.²⁴⁵

The legal information is not consistent when it comes to saying when you *cannot* be searched. The law, as stated in the *Corrections and Conditional Release Act (CCRA)* and the *Corrections and Conditional Release Regulations (CCRR)*, aside from routine strip searches, say that it is illegal for CSC to strip search you unless they have a reasonable belief or suspicion to believe you had access to, and therefore may have on you, contraband. If this happens, you should immediately contact your lawyer if you have one. You should also call the Correctional Investigator and file a grievance.

Can prison staff search everyone?

Sometimes, CSC staff will shut down the prison and begin a prison-wide search. This means that the entire prison will be locked down and you will be locked in your cell. Staff members will then search all the buildings, cells and yards of the prison. It is important that you know that you still maintain all your basic rights during a prison-wide search. For example, you still have the right to one hour of recreation per day and the right to contact your lawyer.

²⁴⁰ CCRR, s 47(e).

²⁴¹ CCRR, s 47(f).

²⁴² CCRR, s 47(g).

²⁴³ CCRA, s 49(1).

²⁴⁴ CCRA, s 48.

²⁴⁵ CCRR, s 48.

That being said, the *CCRA*²⁴⁶ says that if the warden has a reasonable belief, based on reliable information such as intelligence information or past drug history, that there is a substantial danger to life or safety of any person or to the safety of the prison because of contraband, she can order a frisk search of all prisoners in the penitentiary.

When can a body cavity search be performed?

If a staff member believes you are carrying contraband in a body cavity she cannot try to seize the contraband but, instead, must inform the warden of her suspicion.²⁴⁷ The warden can then order that an x-ray be taken of you, **ONLY** if you consent. The CSC must advise you of your right to a lawyer before getting your consent. You should always indicate that you are not refusing the search, but you would like to speak to your lawyer first. The Commissioner's Directives direct the institutional head to allow you a reasonable opportunity to communicate with your legal counsel.²⁴⁸ As an alternative, the warden can also order that you be placed in a *dry cell*. This means you will be placed in a prison cell with no running water if it has any plumbing fixtures.²⁴⁹

Who can perform a body cavity search?

A body cavity search can be performed if the institutional head feels it is necessary in order to seize the suspected contraband. The search must be authorized in writing and can only be performed by a qualified medical practitioner with your consent.²⁵⁰ Most doctors will not perform these searches because they rightly question the ability of a prisoner to provide full informed consent.

Do I have to submit to a urine test?

A *urinalysis* can be ordered by a staff member in a number of special circumstances. The first is if there are reasonable grounds to believe that you have taken intoxicants, if there is a prescribed random urinalysis program, or if urinalysis is required for participation in a community activity or substance abuse treatment program.²⁵¹ If you are ordered to provide a reasonable grounds urine sample, you must be given the opportunity to make representations to the warden. She must then consider your objections and determine if there are reasonable

²⁴⁶ *CCRA*, s 53.

²⁴⁷ *CCRA*, s 50. See also *CD 566-7*, s 21.

²⁴⁸ *CD 566-7*, s 23.

²⁴⁹ *CCRA*, s 51 (b).

²⁵⁰ *CCRA*, s 52. See also *CD 566-7*, s 22.

²⁵¹ *CCRA*, s 54.

grounds to proceed with the request for a urine sample.²⁵² If you do provide a sample, you should receive a copy of the lab certificate to verify the results of the test.²⁵³

Can my cell be searched?

A staff member can conduct a search of your cell and its contents “in the prescribed circumstances, which circumstances must be limited to what is reasonably required for security purposes.” The regulations do little to further explain what is meant by this vague phrase. If a staff member believes on reasonable grounds that there may be contraband or evidence of an offence in your cell, she can search your cell *if* she obtains consent from her supervisor. Another member of staff must be present to witness the search. However, these regulations are subject to an exception. If the staff member has reasonable grounds to believe that delaying the search would result in harm to a person or destruction of the suspected contraband or evidence, she can perform the search without consent of her supervisor or without a witness.²⁵⁴

If the institutional head believes there is an emergency, and has a reasonable belief that there is contraband or evidence related to the emergency in your cell, she can authorize a search of your cell as well.²⁵⁵

Can the CSC search bundles and other religious or cultural belongings?

Searches of prisoners must be done in a manner that respects gender, religion and culture, and, as discussed in chapter two, you have a right to practice your culture and traditions without discrimination.²⁵⁶ With the agreement of the institutional head, in consultation with an Elder or an Aboriginal advisory body, you have the right to possess and use smudging materials²⁵⁷ for spiritual and ceremonial purposes.

With the approval of an Elder whose services have been arranged and approved by CSC, you have a right to possession of a medicine bundle and other sacred objects. The Elder will provide the bundle or sacred object. In the event that you are required to comply with a security examination of your bundle you will be required to manipulate them for visual inspection by the examining officer.²⁵⁸ You may wish to request the presence of the Elder while your bundle is searched.

²⁵² CCR, s 62.

²⁵³ CCR, s 68(2).

²⁵⁴ CCR, s 52(3).

²⁵⁵ CCR, s 53.

²⁵⁶ CD 702, s 1.

²⁵⁷ CD 702, s 9

²⁵⁸ CD 566-7, s 13.

However, any sacred, religious or cultural items seized during a search must be treated with respect.²⁵⁹ If a staff member wants to search a sacred object, such as a religious or spiritual item, you may manipulate the object to allow the staff member to perform a visual inspection.²⁶⁰

What is traditional medicine?

Any material that a designated Elder deems to have healing potential such as sage, sweet grass, sacred water, whistles, abalone shells²⁶¹. Smudging materials include but are not limited to sage, sweet grass, tobacco and cedar or substance which is burned or used for ceremonial purification.²⁶²

What are cultural and ceremonial objects and sites?

Ceremonial and cultural sites include but not limited to the following: Healing Lodges (not to be confused with the OOHL prison operated under the name), Sweat Lodges, Teaching Lodges, Smoke House, Big House, Sacred Mountain and Long Houses.²⁶³

Ceremonial objects are deemed as such by Elders and include, but are not limited to: Medicine bundles and bags, Sweet Grass, Ceremonial Pipes, Sacred Waters, Sweat Lodges, Drums, Cedar, Rattles, Sage and Eagle Feathers.²⁶⁴

What is a medicine bundle?

A medicine bundle is contained in a blanket or receptacle of any size that contains natural objects or substances of spiritual value. A medicine bundle is sacred and should only be handled by the owner of the bundle or a person entrusted with its care.²⁶⁵ In the event that you are required to comply with a security examination of your bundle you will be required to manipulate it for visual inspection by the examining officer.²⁶⁶ You can obtain a bundle or sacred objects from an Elder whose services have been arranged and approved by CSC.

Can prison staff seize something found in a search?

If a member of the prison staff finds contraband or evidence of an offence during a search, she can seize that property. If a medical

²⁵⁹ CD 566-7, s 30.

²⁶⁰ CD 566-7, s 13.

²⁶¹ CD 702, Annex A Definitions.

²⁶² CD 702, Annex A Definitions.

²⁶³ CD 702.

²⁶⁴ CD 702, Annex A Definitions.

²⁶⁵ CD 566-7, s 13.

²⁶⁶ CD 566-7, s 13.

practitioner finds contraband or evidence of an offence during a search seizure, she can also seize this property.²⁶⁷

If a staff member does seize an item during a search she must notify you in writing as soon as possible.²⁶⁸ She must also issue a receipt to you and must give the item to the institutional head.²⁶⁹ The item must be returned to you in the following circumstances:

- the item is not or is no longer required as evidence in a disciplinary or criminal proceeding;
- the item has not been forfeited to the Crown;
- the item is within the control of the Service;
- you request that the item be returned to you within 30 days after being notified of the seizure;
- possession of the item would be lawful;
- your possession of the item would not constitute possession of contraband or an unauthorized item.²⁷⁰

What should you do if your rights have been violated?

The same advice that applies to violations of rights with respect to issues discussed earlier in the manual applies to this issue. Contact a lawyer, CAEFS, or the Office of the Correctional Investigator.

²⁶⁷ CCRA, s 65(2).

²⁶⁸ CCR, s 59(1).

²⁶⁹ CCR, s 57.

²⁷⁰ CCR, s 59(3).



PART V: CONDITIONAL RELEASE

Overview

What is Conditional Release?

There is a lot to know about conditional release. A huge part of the manual this booklet is meant to summarize is devoted to the topic. The manual will cover all sorts of issues related to releases - and well it should! The manual is written from the perspective of authors who believe that keeping women in prisons, rather than addressing the problems that put them there in the first place, will never make society a better or safer place.

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

Although there is so much to know about conditional release, this part of the manual focuses on the basics. Part of the aim is to keep it relatively short and, to accomplish that, a lot of information that might have been included in this section was left out. However, we want to take this opportunity to remind you that this is just a draft. Everyone working on this project looks forward to your input, including your thoughts on what it might be useful to add -or leave out- in the final version of the Human Rights Manual!

Conditional release is any absence from a prison during the term of a prison sentence. Absences can range from brief emergency hospital visits to being permitted to leave prison and completing your term of imprisonment by reporting to a parole officer while living in your own community. Conditional release is intended to help maintain a “just, peaceful and safe” society by making decisions on the timing and conditions of your release to facilitate your rehabilitation and reintegration into the community.²⁷¹

What are the types of conditional releases?

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

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

Statutory Release (SR) operates now almost like a fifth form of release. It replaced the old mandatory supervision provisions and requires CSC to release you after you have served approximately two-thirds (2/3) of your sentence. CSC can apply to ‘detain’ you if they feel you should not be released on your SR date on the basis that you might pose a very serious risk to public safety²⁷².

Parole by Exception (PBE) also operates almost like a separate type of release. PBE can be granted at any time if you are terminally ill, if your mental or physical health would suffer serious damage if you were to remain in prison, if continued confinement would be an excessive hardship that was unforeseen at sentencing, or if there is an extradition order against you.²⁷³ Please note that PBE is *very rarely* permitted or pursued by the CSC. Prisoners who are serving a life sentence imposed “as a minimum punishment” or an indeterminate sentence do not qualify for PBE.²⁷⁴

When am I eligible for the various conditional releases?

When you enter the federal prison system, you must be given a list of dates for when you will be eligible for the various types of conditional

²⁷¹ CCRA, s 100.

²⁷² CCRA, s 130(3).

²⁷³ CCRA, s 121(1).

²⁷⁴ CCRA, s 121(2).

release.²⁷⁵ It is important for you to receive this “conditional release eligibility date letter”, as the calculation of dates can be a confusing technical process that will vary according to the type of offence and length of sentence.

If you have been sentenced to life imprisonment with no parole eligibility for more than 15 years, you can apply for a judicial review of your parole ineligibility period pursuant to s. 745.6 of the *Criminal Code*. As a result of changes to the law in 2011, it does not apply to women sentenced after 2011. At sentencing, a court can limit your parole eligibility for Schedule I and Schedule II offence convictions to 10 years or half your sentence, whichever is shorter, if satisfied, having regard to your character and circumstances and the circumstances of the offence, that society’s concern for the offence or the need to deter you or others requires it.²⁷⁶

When should I begin preparing for the various conditional releases?

Start preparing for conditional release from the first day of your sentence. Document the things you do and issues that arise during your time in prison. This will also be important if disciplinary charges are ever filed against you or incorrect information is inserted in your file. Keep track of everything you do: courses, programs, work reports, education, evaluations, community supports, volunteer projects, et cetera (e.g. planning and organizing an event or speaker).

Always keep a paper copy of all your documents including correspondence concerning your release applications (e.g. requests for information from schools, half-way houses, employers, child care providers), as well as any documents or notices presented to you by CSC staff regarding your prisoner record and any correspondence with your lawyer, the Parole Board of Canada (PBC), the Correctional Investigator or other agency working on your behalf. When in doubt, keep the document.

Keep all of your documents and records in a safe place, such as your prisoner designated safe box. However, you will undoubtedly be subject to cell tosses on occasion, and some prisoners are afraid that some things might get ‘damaged or accidentally destroyed’ in this process.

²⁷⁵ Correctional Service of Canada, *Commissioner’s Directive No 703: Sentence Management*, s 23.

²⁷⁶ *Criminal Code*, RSC 1985, c C-46, s 743.6(1).

You might want to consider sending your documents to a person that you trust outside of the prison to hold for you.²⁷⁷

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

The only automatic review the PBC is required to conduct is before your full parole eligibility date and every two years after that. In all other circumstances *you have to apply for the parole review*. The PBC is not required to accept an application for review within 12 months of your last review,²⁷⁸ and can take 6 months from the time it accepts your application to make a decision. Therefore, if you are denied parole, your case will probably not be reviewed for at least another year and a half.

The PBC will usually review an application before the required time if it receives a complete parole package with a recommendation from CSC for your release. The difficulty in this approach is that you have to obtain the support of your case management team and persuade them to do all the necessary case preparation before they are actually required to do so. All documentation must be received at least 21 days before the scheduled review. If it does not receive the documentation in time, the PBC may postpone (you request the review to be moved to a later date) or adjourn (the PBC reschedules the review for another date, your consent is not necessary) the review.

Most parole reviews are made according to the eligibility dates calculated at the start of your sentence. As stated earlier, Sentence Management will provide you with a calculation of these dates on your intake.

You will need to apply for the various release options at least 6 months before these dates. It is good idea to ask other women inside or an advocacy agency how long it takes to prepare such applications. This will give you a good indication of when you should start putting together the necessary paperwork so you can submit your application at least 6 months prior to your eligibility date.

²⁷⁷ This person might need to be a family member so you can give them to him or her during contact visits. If due to disciplinary charges, you are no longer able to have contact visits (or if you are generally having difficulty getting the documents out of the prison), argue that this person is who you have chosen to help assist and represent you at your PBC hearings and therefore needs to have access to the documents.

²⁷⁸ CCRA, ss 122(4), 123(6).

Types of Releases

Temporary Absences (ETAs and UTAs)

What is a Temporary Absence (TA)?

Temporary Absences (TAs) are usually your first absences from the prison. These are the first types of absences for which you are eligible. There are two types of TA, Escorted Temporary Absences (ETAs) and Unescorted Temporary Absences (UTAs).

What are the differences between ETAs and UTAs?

An ETA is a short temporary absence under direct escort. You leave the prison with either a security escort (CSC staff) or a citizen escort (volunteer from the community). A security escort will be made up of one to three members of CSC staff, at least one of whom must be a woman.²⁷⁹ The number of escorts you have is supposed to depend on your security classification. If you have a medium or maximum security classification, you will need a security escort of at least two CSC employees.²⁸⁰ CSC employees will determine the level of security you need for a non-security escort based on an “objective assessment of risk” including:

- your security classification,
- your mental and physical health,
- your behaviour,
- the purpose and destination of your ETA,
- your mode of travel,
- travel time, and
- security intelligence information.²⁸¹

UTAs are usually for somewhat longer periods and you are not required to be accompanied by CSC staff or citizen escorts authorized by the CSC to engage in this task. Usually (with the exception of medical TAs), ETAs must not be for more than five days, or not more than fifteen days if authorized by the Commissioner.²⁸²

Another major difference between ETAs and UTAs is that you will not be eligible for a UTA if you have a maximum security classification, or if you

²⁷⁹ Correctional Service of Canada, *Commissioner’s Directive No 566-6: Security Escorts*, ss 15, 11(f) [CD 566-6].

²⁸⁰ CD 566-6, s 11.

²⁸¹ Correctional Service of Canada, *Commissioner’s Directive No 566-5: Non-Security Escorts*, s 4(b).

²⁸² CCRA, s 17(f).

are detained until your warrant expiry date.²⁸³ You are also not 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.²⁸⁴
- You were sentenced to an indeterminate sentence before August 1, 1997²⁸⁵.
- You are serving a life or indeterminate sentence followed by a definite sentence.²⁸⁶

What criteria need to be met for me to get a TA?

You may be able to obtain a TA if you do not pose an unmanageable risk to society of re-offending, your actions while in prison have not precluded an authorization, and where a structured plan for your absence has been prepared.²⁸⁷ What constitutes behaviour that may justify a temporary absence is often arbitrarily defined and applied, as there is no set specification of such behaviour.

Who makes the decision?

The Commissioner or the warden will typically have the authority to grant a TA if you meet these criteria,²⁸⁸ whereas in some circumstances, it is the PBC that makes the decision to grant TAs.

For what purposes can TAs be granted?

Where the criteria for obtaining TAs are met, a TA can be authorized for the following reasons,²⁸⁹ with or without escorts:

- Medical reasons: examination or treatment (unlimited time);²⁹⁰
- Administrative reasons: attending to essential personal affairs or legal matters (up to 48 hours per month for medium-security prisoners, and 72 for minimum-security);²⁹¹
- Community service purposes: volunteer work for benefit of community (up to 15 days not more than three times per year for a medium security prisoner, and not more than 4 times a year for a minimum security prisoner, with at least a seven day custody period in between each);²⁹²

²⁸³ CCRA, s 130(5).

²⁸⁴ CCRA, s 128(4).

²⁸⁵ CCRA, s 115.

²⁸⁶ Correctional Service of Canada, *Commissioner's Directive No 710-3: Temporary Absences*, s 10 [CD 710-3]. See also CCRA, s 115.

²⁸⁷ CCRA, ss 16-17.

²⁸⁸ CCRA, ss 17, 116(2).

²⁸⁹ CRR, ss 9, 155. CD 710-3, s 7.

²⁹⁰ CCRA, s 17(e).

²⁹¹ CCRA, s 116(7).

²⁹² CCRA, ss 116(4)-(5).

- Family contact purposes: maintaining and strengthening family ties (up to 48 hours per month for medium-security prisoners, and 72 hours for minimum-security);²⁹³
- Parental responsibility reasons: maintaining a parent-child relationship (up to 48 hours per month for medium-security prisoners, and 72 hours for minimum-security);²⁹⁴
- Personal development for rehabilitative purposes: treatment to reduce risk of re-offending and for rehabilitation, including cultural and spiritual ceremonies unique to Aboriginal peoples (if for specific program, can be for up to 60 days and renewed for additional periods of 60 days);²⁹⁵
- Compassionate reasons: urgent matters affecting immediate family or others with whom the prisoner has a close personal relationship (up to 48 hours per month for medium-security prisoners, and 72 hours for minimum-security).²⁹⁶

Does travel time to and from my destination count as part of the time I'm granted for a TA?

In addition to time granted for the TA, you may be granted the necessary time to travel to and from the authorized site.²⁹⁷ However, time limits on TAs, especially those requiring a security escort, are frequently limited as a result of the terms of the collective agreement of the CSC staff because staff only travel for limited periods each day.

What do I need to do to be granted a TA?

You must file an application for a TA. In some prisons, CSC staff were encouraging women to use regular request forms versus the TA application forms. This meant that the requests were not being entered in to the Offender Management System (OMS), which triggers the time line for paper work, referral to the PBC if applicable, and so on. You should therefore always ensure that you file an application for a TA on the proper form, not merely on a request form.

When correctional staff receive your application, you will be interviewed to discuss the proposed TA.²⁹⁸

²⁹³ CCRA, s 116(7).

²⁹⁴ CCRA, s 116(7).

²⁹⁵ CCRA, s 116(6). See also CD 710-3, s 35.

²⁹⁶ CCRA, s 116(7).

²⁹⁷ CCRA, ss 17(5), 116(9).

²⁹⁸ CD 710-3, s 22.

How should I prepare for the interview?

Application

The purpose of the interview is for CSC to assess the level of risk involved in the proposed absence and the progress of the prisoner in dealing with the factors contributing to her 'criminal' behaviour that create the risks.

Elder Assistance

The interview is an opportunity to assess, if the PBC is the granting authority, whether special arrangements need to be made for the hearing such as an interpreter, Elder or other cultural accommodations.²⁹⁹

Progress on your Correctional Plan

It is important to make sure you have given some thought to what you might say in response to questions about your 'criminal' behaviour and the programs you are taking/have taken to address the issues CSC has assessed as relevant.

Community Assessments

It is important to think ahead to what you might need at the hearing and start making arrangements for it. For example, you should let people in the community know that parole officers will visit them to do a community assessment before consideration will be given to granting you a pass to their home.³⁰⁰

Assistance

When the PBC decides to hold a hearing, you have the right to have someone of your choice there to assist you throughout the hearing, or to address the Board on your behalf.³⁰¹ You should consider who you want to assist you at the hearing and give them sufficient notice to attend.

How long does the 'Granting Authority' have to decide if they will grant my TA?

If CSC is making the decision, the decision must be made no later than ten days after completion of the "Assessment for Decision".³⁰² If the PBC

²⁹⁹ CD-712-3, s 8(e).

³⁰⁰ CD 710-3, s 22. See also Correctional Service of Canada, *Commissioner's Directive No 715-3: Community Assessments*, s .6.

³⁰¹ CD 712-3, s 15. See also CCRRA, s 140(7).

³⁰² CD 710-3, s 28.

is making the decision, it must be made no later than six months after receiving the application, and may adjourn for a maximum of two months where it needs more time or information to render its decision.³⁰³

I have authorization for my TA, now what?

There may be conditions imposed by CSC or PBC that they believe to be ‘reasonable and necessary’ to protect society.³⁰⁴ Your TA can be cancelled during the absence itself or before it starts if the reasons for the absence no longer exist or if the cancellation is believed to be necessary to prevent the breach of a condition.³⁰⁵ You are entitled to written reasons for approval, refusal, or cancellation of TAs.³⁰⁶ If there is a suspension by the Institutional Head of a UTA, your case must be forwarded to the PBC “forthwith” for review.³⁰⁷

Unfortunately, if an authorization for a TA is not actually suspended, your case does not have to be referred to the PBC. You might be told that CSC/the prison staff are unable to facilitate your absence due to insufficient staff or financial resources. If this happens, consider filing a grievance, arguing that internal budgetary issues should not interfere with your legal entitlements.

You may also consider writing a letter to the Correctional Investigator stating that your entitlement to an absence, or to a review process if the absence is denied, is being subverted by a refusal to make an ‘official’ and clear decision on the matter.

What if I am denied an Unescorted Temporary Absence?

If either the CSC or the PBC denies your application, they do not have to consider an application you make for another six months, with the exception of TAs for medical or compassionate reasons.³⁰⁸

You do, however, have the right to appeal a decision of the PBC and to grieve a decision of the CSC. For more information on this, please look in the section on ‘Remedies’.

³⁰³ CD 710-3, ss 42-43. See also CCRR ss 156(3), (5).

³⁰⁴ CCRA, s 17(2), 133(3).

³⁰⁵ CCRA, s 116(10).

³⁰⁶ CCRA, s 17(4).

³⁰⁷ CCRA, s 117(4).

³⁰⁸ CCRR, s 156(6). See also CD 710-3, s 29.

Work Releases

What is a work release?

Work release is a structured program of release of specified duration for work or community service outside the prison, under CSC supervision.³⁰⁹

What do I have to do to obtain a work release?

You may be granted a work release if:

- you are assessed by CSC as not posing an undue risk to re-offend, and so are not considered an ongoing risk to society;
- the CSC believes it is desirable for you to participate in a structured work or community service;
- your behaviour while in prison does not preclude the authorization of such an absence, and;
- a structured plan for the work release has been prepared.³¹⁰

Unfortunately, what behaviour may preclude an authorization is not specified. This criterion is often arbitrarily defined and applied. It often depends on the testimony of third parties whose reliability is too rarely carefully scrutinized, much less confirmed.

Once I am granted a work release, then what?

Conditions may be imposed on your release if they are deemed to be ‘reasonable and necessary’ for the protection of society.³¹¹ A work release can be cancelled during the absence itself, or before it begins.³¹² You are entitled to written reasons for an approval, refusal, or cancellation of your work release.³¹³

Day Parole

What is day parole?

Day parole is a form of conditional release granted to the prisoner by the PBC or a provincial parole board where you are required to return to an authorized community-based residential facility, correctional facility, penitentiary or private home facility at the end of each day, or at another specified interval.³¹⁴

³⁰⁹ CCRA, s 18(1).

³¹⁰ CCRA, s 18(2).

³¹¹ CCRA, s 18(3).

³¹² CCRA, s 18(4).

³¹³ CCRA, s 18(5).

³¹⁴ CCRA, s 99(1) Definitions.

What are the criteria for granting day parole?

You may be granted day parole if, in the Board's opinion:

- you do not pose an undue risk to society by re-offending; and
- your release will contribute to the protection of society by facilitating your reintegration into society as a law-abiding person.³¹⁵

Day parole may be granted for up to six months and may be continued for additional periods of up to six months each, following reviews by the PBC.³¹⁶

When can I be released on day parole?

Most prisoners are eligible for day parole on the day they complete one sixth of their sentences. When you apply for day parole, the application should be made to the PBC no later than six months before two thirds of your sentence is completed.³¹⁷ The PBC must then hear your case within six months, but not before the two months preceding your eligibility date.³¹⁸ The PBC may also adjourn your hearing for up to two months if it requires more time or information to make its decision.³¹⁹

Can I be released into an Aboriginal community?

If you would like your day or full parole to be served in an Aboriginal community, including an urban community, you can apply for a section 81 request under the *CCRA*.³²⁰ CSC and the Aboriginal community (usually with an external CSC employee and sometimes the Elder as liaison) will develop a plan for your release and set conditions accordingly. This provision of the *CCRA* is not used as much as it could be by women and, together with Elder Assisted Hearings, the possibilities it suggests ought to be explored in an effort to reduce the over-representation of Aboriginal women in the federal system.

What is a Cultural Advisor or an Elder Assisted Hearing?

A Cultural Advisor Assisted Hearing³²¹ (formerly known as Elder Assisted Hearing) includes an Aboriginal Cultural Advisor provided by the PBC, who facilitates a parole hearing process for Aboriginal prisoners. Anyone committed to an Aboriginal way of life may request a Cultural Hearing (form PBC 0035).

³¹⁵ *CCRA*, s 102.

³¹⁶ *CCRA*, s 122(5).

³¹⁷ *CCRR*, s 157(1).

³¹⁸ *CCRR*, s 157(2).

³¹⁹ *CCRR*, s 157(4).

³²⁰ *CCRA*, s 81(1).

³²¹ *CD 712-3*.

Non-Aboriginal prisoners requesting a Cultural Hearing must be committed to an Aboriginal way of life or healing path (as per CD 712-3), or her request may be denied. In addition to the Aboriginal Cultural Advisor provided by the PBC, women may invite the institutional Elder with whom she has been working with to provide support during the Cultural Hearing. Roles, responsibilities and processes related to a Cultural or Elder Assisted Hearing are detailed in CD 712-3.

Cultural or Elder-Assisted Hearings are conducted by the PBC. They are designed to help create an environment that is culturally sensitive. The Elder's role is to provide Board Members with spiritual and cultural advice, but they cannot vote on a decision.

At the hearing, the woman applying for release may request the Elder to say a prayer. The PBC Elder begins by conducting a smudging ceremony with all hearing participants.

Cultural or Elder Assisted Hearing participants are seated in a circle. The PBC Hearing Officer will introduce the hearing participants. They include the Board Members, CSC Parole Officer, you, and your assistant. If someone has identified him or herself as a victim of an offence for which you were convicted, they may also attend the hearing. Others, including people you've asked to come to provide you with moral support, can also apply to the PBC to sit in on your hearing as observers. If your case was in the media when you were convicted, the members of the media may also apply to the PBC to attend your hearing as observers.³²²

Any victim(s) who attend may present a statement to the Board Members and may choose to read it or to present it on a videotape or an audiotape.

The entire proceedings are audio-recorded. The PBC Hearing Officer introduces the participants and ensures that procedural safeguards are respected. Board Members then begin the parole hearing. They start by asking the CSC Parole Officer to present the case and to make recommendations. Please note that the hearing room is small. Observers are seated outside the circle. At times, the victim may sit within the circle. A security officer is present for all hearings observed by victims.

³²² CD 712-3.

Board Members then interview you regarding your criminal and social history, institutional behaviour and results of programming and release plans. Your assistant may speak after Board Members are finished with their questioning. Because it is a Cultural or Elder Assisted Hearing, you may hold an eagle feather which requires you to speak from the heart.

When Board Members have completed their questions of you, everyone must leave the room in order for Board Members to deliberate. Victims and other observers return to the waiting room where they can ask questions about what they have observed. If members of your family and the victims are both present, they may be placed in separate waiting areas.

When the Board Members have made their decision, everyone returns to the hearing room. The Board Members will announce their decision to you and will provide reasons for that decision. The decision is at the end of the hearing, although the Elder may close with a prayer and/or ceremony.

How do I get one and how do they work?

In order to have a Cultural or Elder Assisted Hearing, you will need to request one. You should be offered this by your institutional parole officer, but you may want to ask about it yourself.

Are regular parole hearings different than Cultural or Elder Assisted Hearings?

Some Aboriginal women who have been through the process comment that the spiritual element in a Cultural Hearing makes it *feel* quite different than a regular hearing. However, except for the part played by the Elder(s), the same people are involved, and each has the same role and responsibilities as she or he would have at a Cultural Hearing.

What if the PBC refuses to grant me day parole?

If you are denied day parole, you can make another application one year after the denial.³²³

³²³ CCRA, s 122(4).

Full Parole

What is full parole?

Full parole is the authority granted to you by the PBC or a provincial parole board to complete your prison sentence in the community, under the supervision of a parole officer.³²⁴

What are the criteria for granting full parole?

Where a structured program of release of specified duration for work or community service is prepared, you may be granted full parole if, in the Board's opinion:

- you do not pose an undue risk to society by re-offending before your warrant expiry date: and
- your release will contribute to the protection of society by facilitating your reintegration into society as a law-abiding person.³²⁵

When can I be released on full parole?

Most prisoners are eligible for full parole once they complete one third of their sentences. When you are applying for full parole, the application should be made to the PBC no later than six months before you complete two thirds of your sentence.³²⁶ The PBC must then hear your case within six months, but not before the two months preceding your eligibility date.³²⁷ The PBC may also adjourn your hearing for up to two months if it requires more time or information to make its decision.³²⁸

Lifers are eligible for full parole on the day they complete the number of years the judge has ruled they must serve before becoming eligible for parole. However, when this number of years is more than 15, she may be eligible, once she has served 15 years, to apply for a judicial review of that date under what is known as the "faint hope clause." Successful reviews can result in reductions of sentences from, for example, "life twenty-five" to "life fifteen." Please note that CAEFS works with all women who wish to have their support to apply for this type of judicial review. In 2011, the law changed, so the time lines and requirements for applications are more restricted for these reviews, so you should speak to a lawyer if you are hoping to pursue an application.

³²⁴ CCRA, s 99(1).

³²⁵ CCRA, s 102.

³²⁶ CCRR, s 158(2).

³²⁷ CCRR, s 158(2).

³²⁸ CCRR, s 158(4).

What if the PBC refuses to grant me full parole?

If you are denied full parole, you can make another application one year after the denial.³²⁹ The PBC must review your case regardless every two years after the initial decision was made, until your sentence expires, your release on full parole or statutory release, or until there are less than four months to your statutory release date.³³⁰

If a removal order was issued against you pursuant to the *Immigration and Refugee Protection Act*, you are ineligible for day parole until you are eligible for full parole.³³¹

If you are denied parole, you must be given a copy of the decision (in whichever of the two official languages of Canada that you request) and reasons for the denial.³³²

Statutory Release

What is statutory release?

Lifers or those serving indeterminate sentences are not eligible for this type of release but, for those serving fixed sentences, statutory release is an *entitlement* to what is consistent with a full parole release *required by law* on a predetermined date, and the right to remain so until the expiration of your court ordered sentence. The “predetermined date” falls on the day you have completed two thirds of your sentence.³³³

It should be noted that it has become quite common to have a “residency” special condition added to the standard conditions for full parole on your statutory release. These women must then live in half-way houses or other CSC approved residences - often treatment centres – meaning that essentially they are released on conditions much closer to day than full parole. If their statutory release is revoked for breaches of conditions, they are returned to prison and their new stat release date is calculated at two thirds of whatever portion remains of their original sentence.

Do I have to apply for statutory release?

No, it is automatically considered.

³²⁹ CCRA, s 123(6).

³³⁰ CCRA, s 123(5).

³³¹ CCRA, s 128(4).

³³² CCRA, s 143(2)(b).

³³³ CCRA, ss 127(3)-(4).

Is everyone considered for statutory release?

If you were convicted of a Schedule I or II offence, or under s. 130 of the *National Defence Act*, then the Commissioner will have your case reviewed by the CSC.³³⁴ If the Commissioner believes on reasonable grounds that you are likely to commit an offence causing death or serious harm to another person, a sexual offence involving a child or a serious drug offence before the expiration of your sentence, s/he (usually the Commissioner's designate – your case management team, in fact) can refer your case to the PBC.³³⁵ The PBC will then determine whether you can be detained until the end of your prison sentence.³³⁶

Detention

What is detention?

Despite being eligible for your statutory release date after serving two thirds of your sentence, it is possible that the Correctional Service of Canada (CSC) may apply to have the Parole Board of Canada further detain you. If it is determined that there are reasonable grounds to believe you are likely to re-offend you can be denied statutory release and remain imprisoned until your warrant expiry date (WED).

Who can be detained?

It is mandatory that certain prisoner's statutory release undergo review by CSC. This happens if:

- You committed an offence causing the death of, or serious harm to another
- You committed a sexual offence against a child
- You committed a serious drug offence³³⁷

CSC then has the power to refer your case to the Parole Board of Canada (PBC), who may ultimately decide that you should not be released from imprisonment before your WED, the end of your sentence.

How do detention referrals work?

If your Parole Officer determines that there are **not** reasonable grounds to believe that it is likely you will re-offend you will get statutory

³³⁴ CCRA, s 129(1).

³³⁵ CCRA, s 129(3).

³³⁶ CCRA, s 130(3).

³³⁷ CCRA s 129(1). See also Correctional Service of Canada, *Commissioner's Directive No 712-2: Detention*, s 11 [CD 712-2].

release. However, if your Parole Officer determines there are reasonable grounds to believe you are likely to re-offend, your case will be referred to the PBC for review.

Why would my case be referred to the PBC?

Your Parole Officer will refer your case directly to the Parole Board of Canada if you have committed an offence of the type identified above and there are reasonable grounds to believe that:

- You are likely to commit an offence causing death or serious harm to another
- You are likely to commit a sexual offence involving a child, or
- You are likely to commit a serious drug offence

For a direct referral by the Commissioner of Corrections to be possible it must be started more than six months prior to your statutory release date.³³⁸

Can my statutory release be reviewed for any other reason?

The Commissioner can refer a case to the PBC if they have reasonable grounds to believe you are likely to commit an offence which causes death or serious harm of another, a sexual offence involving a child or a serious drug offence. This can happen even if you were not originally convicted for these types of offences.

Generally this must be done more than six months prior to your statutory release date unless new information comes to light within the six months or your release date is changed due to recalculation.³³⁹

What is the process for detention?

Detention begins with your Parole Officer completing a report on your offences, your sentence and any risk you may pose. This is generally completed 11 months before your statutory release date.³⁴⁰ If you have been released on day parole by this time, this report is unnecessary.³⁴¹ Also, around this time your Parole Officer will request a psychological risk assessment.³⁴²

³³⁸ CD 712-2, s 12; See also CCRA, s 129(2)

³³⁹ CD 712-2, s 13; See also CCRA, s 129(3).

³⁴⁰ CD 712-2, s 15.

³⁴¹ CD 712-2, s 18.

³⁴² CD 712-2, Annex C.

Once your case has been referred to the PBC, you will be informed by your Parole Officer.³⁴³ The PBC will conduct a review of your case as soon as possible. This should not be later than four weeks after it was referred to them.³⁴⁴

As soon as you are referred for detention, you will no longer be eligible for any form of conditional release, except for escorted temporary absences for medical or legal reasons.

Do I need to do anything throughout this process?

No, if your offence requires a review of your statutory release it will happen automatically. You will be informed if your case is referred to the PBC. After this, you will be informed of any decision made by the PBC.

What is a “risk assessment”?

There are three different types of risk assessments depending on for what offence you are serving a sentence. They are all generally looking at any factors which may indicate that you pose a threat to public safety. Some things that are considered are:

- A pattern of persistent violent behaviour/sexual behaviour involving children/involvement in drug-related crime considering:
 - Number of offences; the seriousness of the offence; difficulty controlling violent or sexual impulses; the use of a weapon during the commission of offences; threats; particularly brutal behaviour committed during the offence; indifference as to the consequences of your behaviour
- Medical or psychiatric evidence that you are likely to commit an offence because of mental illness
- Reliable information that you are planning to commit an offence
- The availability of programs in the community that would help protect the public from any risk you may pose³⁴⁵

What are “reasonable grounds”?

Reasonable grounds are required to support the suspicion or belief of the Commissioner or Parole Officer that you pose a risk of re-offending. They must be:

³⁴³ CCRA, s 130(a); See also CD 712-2, s 26.

³⁴⁴ CCRA, s 129(7).

³⁴⁵ CD 712-2, Annex D & E. See also CCRA, s 132.

- Objective: other staff members with similar training consider the suspicion reasonable
- Clear: the beliefs must be based on verifiable facts, not just a hunch or “feeling”
- They must be related to and support the conclusions of the suspicion or belief

This means that CSC cannot detain you or even refer your case to the PBC based on their suspicions or beliefs if there is no evidence or facts to support this conclusion.³⁴⁶

Does anything change once my case has been referred to the PBC?

If your case has been referred, you will not be entitled to statutory release until the PBC has made a decision. However, you are still eligible for full parole, day parole, work release and temporary absences.³⁴⁷

What happens if the PBC decides to detain me?

After reviewing your case the PBC can order that you not be released from prison until you have served your entire sentence. Once this happens you cannot leave prison except for escorted temporary absences for medical or administrative reasons. If you had any other applications for conditional release outstanding at this point they will be considered void.³⁴⁸

Can I appeal the detention order?

No, there is no formal appeal process for this type of decision. There will be a review of your detention order every year.³⁴⁹

How does detention review work?

Your institutional Parole Officer will complete an assessment of your risk of reoffending, at least two months prior to the review. They will recommend one of three things:

- You continue to be detained
- You be granted statutory release with specific conditions on where you will live
- You be granted statutory release with no residency conditions

The decision will ultimately be made by the PBC.³⁵⁰

³⁴⁶ CD 712-2, Annex A.

³⁴⁷ CD 712-2, s 26. See also CCRA, s 130(2).

³⁴⁸ CD 712-2, s 32(a). See also CCRA, s 130(5).

³⁴⁹ CCRA, s 131(1).

Your institutional Parole Officer can recommend that you be released prior to your annual detention review if there demonstrated gains, and it is determined that you have made improvements to address your risks, and/or alternative measures can effectively manage your risk factors.³⁵¹

Long Term Supervision

What is long term supervision?

If you are determined by the courts to be a “dangerous offender” or a “long term offender” you can be sentenced to time in prison and a long term supervision order. The long term supervision order cannot exceed a period of 10 years.

Long term supervision is when you are supervised in the community although you have completed your full sentence. This means that even if you have been granted statutory release or parole your long term supervision order begins at the end of your sentence.

You will be subject to all the normal conditions of release including reporting to your Parole Officer at set times, travel restrictions and carrying release certificate and identity cards. You may also be subject to any conditions the PBC finds necessary to protect society. Any conditions you were subject to under conditional or statutory release only apply to your long term supervision if the PBC specifically says so.³⁵²

How is a long term supervision order different from detention?

Long term supervision orders (LTOs) are imposed by a court, at the time of sentencing. LTOs begin after your warrant expiry date, the last day of your sentence. It means that even after you have served your entire sentence, either in prison or on parole or statutory release, you will continue to be supervised for up to 10 years.

Detention is the process of holding you in prison until your WED, after which you are released.

³⁵⁰ CD 712-2, s 33. See also CCRA, s 131(3).

³⁵¹ CD 712-2, s 34.

³⁵² Correctional Service of Canada, *Commissioner's Directive No 719: Long-Term Supervision Orders*, ss 10-13. See also CCRA, s 134.1, and CRRR, s 161.

How are long term supervision orders issued?

Long term supervision orders are issued by a judge in court. You can only be given a long term supervision order if you are found by a judge to be a “dangerous offender” or a “long term offender”.³⁵³

This process is generally started by the prosecutor during your original sentencing unless the prosecutor has applied for an extension or new evidence comes to light after your sentence is imposed.³⁵⁴

The prosecutor can apply to have you deemed a long term or dangerous offender if you have committed a serious personal injury offence and you have been convicted of two other similar offences previously.³⁵⁵

Can a long term supervision order be imposed at a later date?

Yes, a prosecutor can make an application to a judge at any point during your sentence to make you subject to a long term supervision order.

In order to do this the prosecutor needs the consent of the Attorney General of the province in which your trial was held. They must also provide you with at least seven days’ notice of the application, letting you know why they are making the application.³⁵⁶

These applications will always be heard by a judge alone, without a jury. If you have admitted to any of the allegations contained in the notice the prosecutor gave you, then they do not have to show any proof of the allegations, they will be accepted as true.³⁵⁷

What do I need to do?

If the long term supervision order is imposed at your initial sentencing, you will have counsel there to represent your interests.

However, if the application is started later in your sentence and you receive notice of it you should contact a lawyer to represent your interests to the judge.

According to the law you must be present in court when this application is heard. This means you will be taken from prison to court, or if you are paroled you will be summoned to the court.³⁵⁸

³⁵³ *Criminal Code*, s 753(4)(b), 753.1(3)(b).

³⁵⁴ *Criminal Code*, s 753(2).

³⁵⁵ *Criminal Code*, s 752.01.

³⁵⁶ *Criminal Code*, s 754(1).

³⁵⁷ *Criminal Code*, ss 754 (2)-(3).

³⁵⁸ *Criminal Code*, s 758(1); although, this has also been done via videoconference.

If in court, the judge finds that you are being disruptive, you may be asked to leave.³⁵⁹

Can I appeal the decision?

Yes, you can appeal a long term or dangerous offender decision.³⁶⁰

Is there any time I cannot be ordered long term supervision?

Yes. If you are serving a life sentence, the court cannot order long term supervision.³⁶¹

If subject of a long term supervision order, can I still get conditional release?

Yes. Prior to the end of your sentence, you are eligible for all forms of conditional release. The regular procedure discussed above will be followed.³⁶²

Can I get my long term supervision reduced or terminated?

Yes. There are two ways in which your long term supervision order can be reduced or terminated.

The first is through an application by your Parole Officer. If they believe that you no longer present a substantial risk of re-offending, they can complete and Assessment for Decision and you can apply to the PBC to reduce or terminate the order. If the PBC approves the application and agrees that the LTSO should be reduced or terminated, then your Parole Officer can assist you to apply to the Attorney General to have the court confirm the reduction or termination of the supervision order. The key is for you to be able to show your PO, the PBC, and the court that you no longer present a substantial risk of reoffending nor a danger to the community.³⁶³

The second is through your own application. You can apply directly to the court to reduce or terminate your long term supervision order. If you do so, you must prove that you pose no substantial risk of reoffending. It is likely that your Parole Officer will be required to provide an assessment of your risk of reoffending to the court.³⁶⁴

³⁵⁹ *Criminal Code*, s 758(2).

³⁶⁰ *Criminal Code*, s 759.

³⁶¹ *Criminal Code*, s 755(1).

³⁶² *CD 719*, s 6.

³⁶³ *CD 719*, ss 64-65.

³⁶⁴ *CD 719*, s 66.



PART VI: REMEDIES

This section provides details concerning the steps you can take to protect your rights if they are not respected. References to this section have appeared throughout this manual, and you are now no doubt aware that the main topics in this section include:

- Complaints
- Grievance System
- Judicial Reviews
- Complaints to the Correctional Investigator
- Complaints to the Canadian Human Rights Commission

The Remedies

What are remedies?

Remedies are solutions to problems you may face while in prison. A variety of ways to seek these solutions are available to you. These include making a request for something you are not getting, filing a complaint or grievance with the CSC, filing a complaint to the Canadian Human Rights Commission, filing a complaint with the Correctional Investigator, or attempting to have your case reviewed in Court.

While this chapter briefly covers the entire range of ways that you can seek a solution to a problem, the main focus is the most common form -

a grievance. Here we discuss how to file a grievance, the different types of grievances available to you and the information that you should include in the grievance.

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

As discussed in the Introduction chapter, as a woman in prison you retain all of the rights that you enjoyed before incarceration, except those that need to be restricted in order to enforce your sentence.³⁶⁵

These rights include the ability to complain 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. This could mean anything from being denied your allotted hour of yard time to being physically assaulted by a staff member.

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

- a. The right to make a complaint regarding an action or decision of a staff member without negative consequences;³⁶⁶
- b. The right to file a grievance regarding an action or decision of a staff member without negative consequences;³⁶⁷
- c. The right to legal assistance and reasonable access to legal reading materials;³⁶⁸
- d. The right to a fair hearing protected by procedural safeguards including:³⁶⁹
 - i The right to notice of a hearing or a case,
 - ii The right to a hearing be it oral or written,
 - iii The right to counsel regarding “serious matters,” particularly matters in which a decision against you could mean any further restrictions on your liberty,
 - iv The right to know the case against you and present a defence,
 - v The right to cross-examine witnesses if there is a hearing against you;
- e. The right to apply for certiorari (right to review/be heard) in the federal court with respect to decisions made by federal agencies which have a judicial or quasi-judicial function;
- f. The right to review and challenge inaccuracies in your file;

³⁶⁵ CCRA, s 4(d).

³⁶⁶ CCRA, s 91.

³⁶⁷ CCRA, s 91.

³⁶⁸ CCRR, ss 97(1)-(3).

³⁶⁹ See Chapter 1.

- g. The right to make a complaint to the Privacy Commissioner;
- h. The right to make a complaint to the Canadian Human Rights Commission;
- i. The right to make a complaint to the Correctional Investigator.

Document everything.

In order to ensure that all the above rights are protected, it is essential that you keep careful records of any incidents you might at any time wish to bring up and of any and all attempts you make to try to resolve your problems. If you have an interaction with a staff member that upsets you, write it down and include the date and time that it happens. If you make a request to a staff member, do the same.

If you file a complaint or grievance, keep a copy of it for your records. If you receive any written documentation from prison staff, the CSC, an outside organization, the Canadian Human Rights Commission, the Courts, or anybody else – keep it in as safe a place as possible! This will be very helpful in helping you to resolve your problem. You may also want to give copies of your paperwork to someone outside of the prison.

What is a problem that I should try to remedy?

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

- poor treatment by a staff member (e.g. the way you are talked to or otherwise dealt with);
- denial of your yard time;
- denial of your documentation;
- denial of a phone call;
- prison placement;
- inaccuracy in your file(s) or report(s);
- new (higher) security classification;
- reduction of your visiting rights;
- disciplinary charge;
- placement in administrative segregation;
- involuntary transfer.

Why should I seek a solution to my problem?

Perhaps the most obvious reason to seek a remedy for your problem is that success will mean an immediate improvement in your personal

situation. However, there are a number of other reasons that may be just as important or, ultimately, even more so.

Perhaps one of the most important reasons to file a complaint or grievance is that now you have that right. While generations of prisoners 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.³⁷⁰ You also have a right to be treated with respect and dignity³⁷¹ and the right to validation when someone treats you otherwise. However, history shows that rights can be lost as well as gained, and that one of the best ways to keep your rights is to exercise them.

When you use the 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, on the other hand, you can't get a problem resolved through the grievance procedure, you still document that something is going wrong, and therefore help to build the argument that other alternatives are needed. In short, you can help to maintain or even advance your rights simply by exercising them.

Filing grievances can have an impact on the justice system as a whole and help other imprisoned women. Grievances allow organizations representing women like you to collect statistics that reflect the realities of women's experiences inside. These statistics help organizations fight for improved conditions for prisoners. The statistics may also serve as a tool for documenting institutional accountability³⁷² and create penalties for correctional interference with the integrity of your sentence.³⁷³

Requests

What is a request?

A request is simply asking for something that you want or need. A request is appropriate in situations where the problem is less serious. For instance, let's say you are told that you cannot yet take a required program because of the criminogenic factors outlined in your

³⁷⁰ *CCRA*, s 4(f).

³⁷¹ *CCRA*, s 70.

³⁷² 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.

³⁷³ This was recommended by Justice Arbour in the *Arbour Report*.

Correctional Plan (CP). You could make a request to access the program as soon as possible in order to permit you to fulfill the requirements of your CP. You could also request a timeline in terms of when you are expected to take the program, whether there are any other expectations of you in order to access the program(s), et cetera. A request is generally seen as less threatening by staff, while allowing you to document your needs and concerns.

Why bother trying to make a request first?

Consider what it is you want. If you can get what you want without filing a grievance, then ask for it. This is important because filing unnecessary grievances may, in some cases, create ill-will on the part of staff. A complaint may be refused if, in the opinion of the supervisor, it is frivolous, vexatious, or not made in good faith (see *CCRR* ss. 74(4)). Sometimes making a request is a better strategy than filing a formal complaint or grievance, one reason being that this is seen as the least threatening option. The Commissioner's Directive (CD) states that staff should make every effort to discuss and resolve problems before they are pursued through the formal complaint and grievance process.³⁷⁴

Another reason it may be wise to begin with a request is that this creates a record of your attempt to resolve a problem at the lowest level possible. The CD mentioned above also states that there should be active participation by the staff and prisoner in the resolution of the complaints and grievances.³⁷⁵

Being able to show that you first tried to resolve your problem by making a request may help your case if you later decide to file a grievance.

Finally, because making a request is a simpler process and involves less paperwork than filing a complaint or grievance, it may be a faster way to resolve your problem. Indeed, responses to requests are supposed to be provided within 15 days of receipt of the 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 that you don't run out of time to file a grievance (see usual time frames below), in case your request does not result in a satisfactory solution.

³⁷⁴ Correctional Service of Canada, *Commissioner's Directive No 081: Offender Complaints and Grievances*, s 5(e) [CD 081]. See also *CCRR*, s 74(2).

³⁷⁵ CD 081, ss 5(e), 6(b).

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 Level:** submitted at the institution/district parole office and responded to by the supervisor of the staff member who made the decision you are dissatisfied with.
2. **Initial Grievance** (Institution/District Parole Office): submitted to the Institutional Head or District Director.
3. **Final (National) Grievance:** submitted to the Commissioner at National Headquarters.³⁷⁶

CSC prefers that you start at the lowest level but depending on the issue being grieved, the grievance may go directly to the initial or final level. The level ultimately depends on who you are grieving about. For instance, if your problem is with your institutional head, it obviously wouldn't make sense for you to complain directly to her – so you have to submit your grievance to her 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 complaint with the Canadian Human Rights Commission.³⁷⁷ These two options will be discussed briefly later in the chapter.

Complaints Level

What is a complaint?

Most grievances start as complaints, but a complaint may result in a solution to your problem in and of itself. If you are unhappy with an action or a decision by a staff member, you have the right to submit a written complaint to the staff member's supervisor. CSC prefers you to use the forms that they provide to do this.³⁷⁸

If you can't identify the appropriate 'supervisor', send your complaint to the warden. She will direct it to the right person.

³⁷⁶ Correctional Service of Canada, *Commissioner's Directive No 081-1: Guidelines*, s 2. See also *CD 081* ss. 7-10.

³⁷⁷ *CD 081*, ss 15, 45.

³⁷⁸ *CCRR*, s 74(1).

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. For example, if staff fail to respond to a request or if you have concerns about your food or ongoing, non-urgent activities, you may want to make a complaint.

If, however, the issue is of a more serious nature or if 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 grievance. Being placed in segregation or being threatened with security re-classification are examples of actions or decisions that restrict your liberties.

Do I have to file a complaint first?

While you are encouraged to file a complaint before resorting to a grievance³⁷⁹, there is no rule that says you must do so.

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.³⁸⁰ If you fill out an initial grievance and it is returned with “grievance” crossed out and “complaint” written in, check to see who on staff has signed this. Ask for a written reason as to why this was done and what law or policy CSC is relying on that it must be done this way. Point out that this could delay the process by as much as five weeks. Re-submit the grievance, this time to the next level, whether or not the issue was submitted as a grievance or complaint.³⁸¹

How long do I have to file a complaint?

A complaint should be made within 30 days of the problem.³⁸² However, the 30-day limit is not absolute. If there is a good explanation for why that was not possible, file the complaint and explain the reason for the delay. For instance, if the complaint is about the fact that you were put in segregation, and while in segregation you had no access to complaint forms, you should explain this.

How do I file a complaint?

A written complaint should be addressed to the supervisor of the staff member who made the decision³⁸³ or the Institutional Grievance

³⁷⁹ *CD 081*, ss 1, 13.

³⁸⁰ *CCRR*, s 74(1).

³⁸¹ “Filing Complaints and Grievances,” 2004 at 1. I could not locate this reference.

³⁸² *CD 081*, s 11.

³⁸³ *CCRR*, s 74(1).

Coordinator (or District Office, if you are in the community and your complaint is about someone involved in the supervision of your conditional release).³⁸⁴

Both complaint and grievance forms are supposed to be freely available within the prison. They are usually kept in the common area. If the complaint is a priority, mark it as such (i.e., “priority” or “sensitive”) and submit it to the warden either by putting it in the Complaint/Grievance box or by delivering it by hand directly to the warden. If you can’t make a photocopy, copy out the complaint form twice and keep a copy for yourself.

What is a group complaint or grievance and how do we file one?

If you are considering making a complaint about an issue that affects other women too, ask around and see if other prisoners share your concern. If so, you may want to file a group grievance. 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 of the women. Remember to designate one woman as a representative for the group.³⁸⁵ The representative is responsible for all communications regarding the complaint or grievance and for informing the group about the decision.³⁸⁶

Are complaints kept confidential?

All complaints are supposed to be kept confidential to the greatest possible extent.³⁸⁷ If your claim is not kept confidential, you can file a complaint with the Privacy Commissioner. (See Information chapter.)

When can I expect to hear back about my complaint?

In serious or high priority cases, the CSC must provide women filing complaints with complete, written responses to the issues raised in their complaint within 15 working days of receipt. For non-serious issues, the CSC is to provide a written response in 25 days.³⁸⁸

The institutional head, or the Director, Offender Redress, the Regional Deputy Commissioner, or the Assistant Commissioner, Policy, Planning and Coordinating, have the right to request more time in order to

³⁸⁴ CD 081, ss 7-8.

³⁸⁵ CD 081, s. 19.

³⁸⁶ CD 081, s. 19.

³⁸⁷ CD 081-1, s 7(h). See also CD 081, s 51.

³⁸⁸ CD 081, s 12.

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.³⁸⁹

What solutions can come from a complaint?

If, in the course of investigating the complaint, it is found that the CSC made a mistake, they have to admit this wrongdoing in writing.³⁹⁰ This means that you should receive a written admission of the errors made.

If you are not satisfied with the solution or decision rendered on a complaint, you can file an initial grievance to the institutional head or District Director through the Institutional Grievance Coordinator or through the District Office. This must normally be done within 30 working days of receiving the response.³⁹¹

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, and it asks for an official response and solution to the problem. You submit this information on a form available to you in the prison or, if you are out on conditional release, in your community-based parole office. You can file a grievance either right after the incident that provokes the grievance occurs or after receiving an unsatisfactory decision from a complaint.

There are two levels of grievances. Each type is reviewed at a different level of the system – an initial grievance is decided at the local level (the prison or the parole office, whichever is responsible for the problem), and a final grievance is decided at the national level. Each level is progressively more serious and involves higher-ranking officials. Regardless of the level, you should not be afraid to file a grievance since, legally, you have the right to grieve without any negative consequences.³⁹² The Commissioner of Corrections only has the authority to prohibit a prisoner from submitting grievances that are considered frivolous, vexatious or made in bad faith.³⁹³

³⁸⁹ CD 081, s 13.

³⁹⁰ CD 081-1, Annex E *How to Analyze a Complaint or Grievance*.

³⁹¹ CD 081, s 14.

³⁹² CCRA, s 91.

³⁹³ CCRA, s 91.1.

In order to file a grievance, your problem needs to be within the jurisdiction of the CSC.³⁹⁴ Examples of common issues not within the CSC's jurisdiction are doctors' decisions not to prescribe pain medication, parole board decisions, and actions of contract workers.

It is important to file a grievance regarding any staff decision which **further restricts your freedom**. Grievances that significantly affect a woman's rights and freedoms will be assigned priority.³⁹⁵ You will find a list of examples below.

What issues are considered high priority?

Certain grievances are automatically assigned high priority. These include³⁹⁶ (but are not limited to):

- Placement in administrative segregation
- 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 prisoners and visitors)
- Prisoner complaint and grievance procedure

Other situations that have a significant impact on a prisoner's rights and freedoms but are not on this list may also be deemed high priority. Urgent matters are to be given high priority status. For example, if you file a grievance after being denied a temporary absence in order to visit a terminally ill relative, your case should be given high priority status and immediately brought to the appropriate decision maker's attention.³⁹⁷

³⁹⁴ See *CCRA*, s 90; *CCRR*, s 76(1). See also *CD 081*, s 6(a).

³⁹⁵ *CD 081*, ss 16(b).

³⁹⁶ *CD 081*, ss. 16(c); *CD 081-1*, ss 12-14.

³⁹⁷ *CD 081-1*, s 14.

How do I know which level to send my grievance to?

Initial Grievance

Generally, an **initial grievance** is used if you are not satisfied with the response to a complaint.³⁹⁸ An initial level grievance is submitted to the warden, as the head of the institution. There should be drop off boxes for this purpose placed in one or more convenient locations in the prison, so as to avoid prisoners ever having to put a grievance directly into the hands of the person who has generated the complaint. If you are putting in a complaint about the actions of someone in the community, the complaint goes to the District Director.

Final Grievance

Submit a **final grievance** to the Commissioner, if your problem

1. involves the warden or Regional Deputy Commissioner, or
2. if you are not satisfied with the response to the initial grievance.

A final grievance is sent to:

CSC National Headquarters

Commissioner: Don Head

340 Laurier Avenue W.

Ottawa, ON, K1A 0P9

Phone: (613) 992-5891 Fax: (613) 943-1630

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.³⁹⁹ However, note that most of the prisons for women do not have these options.

What is an Institutional⁴⁰⁰ Grievance Committee (IGC)?

An IGC is a group within a prison that reviews initial grievances and makes recommendations to the institutional head. An IGC consists of an equal number of prisoners and staff members. There is also a non-

³⁹⁸ *CCRR*, s 75(a).

³⁹⁹ *CD 081*, s 5(h).

⁴⁰⁰ Also referred to in the Commissioner's Directive and Guidelines as an "Inmate Grievance Committee." See *CD 081*, s 36. See also *CD 081-1*, s 42-51.

voting Chairperson who can be either a prisoner or a staff member.⁴⁰¹ The institutional head is supposed to ensure that the prisoner members of the IGC represent the prisoner population as a whole.

If your institution does not have an IGC and you submit a request to form one, permission should be granted. If your prison does have an IGC and you ask for your initial grievance to be reviewed by the Committee, your request should be followed, unless the grievance contains a sensitive or emergency issue. The institutional head can also refer initial grievances to the IGC.⁴⁰² No individual involved in the matter giving rise to the grievance can sit as a member of the IGC while that particular issue is being investigated.

If you file a grievance with the IGC you should be permitted to present witnesses, if the IGC Chairperson considers their input to be relevant. You should also be allowed to produce supporting documents (again, an important reason to keep careful records!) and to pose questions to the IGC Chairperson. You are not, however, permitted to cross-examine IGC staff.⁴⁰³

The IGC will review the complaint and any relevant documents, except for documents of a sensitive or confidential nature. Within ten working days the IGC will forward its recommendations to the institutional head.⁴⁰⁴ After reviewing the recommendations, the institutional head should then provide you with the decision as soon as practicable.⁴⁰⁵

The institutional head is not bound by the IGC's recommendations, but if she disagrees, she must provide reasons for her disagreement.⁴⁰⁶

What is the Outside Review Board?

The Outside Review Board (ORB) is a group of individuals from outside the CSC who review initial grievances and provide impartial recommendations to the institutional head. In many cases, the CSC appoints members of its Citizen's Advisory Committee (CAC) to the ORB.

You can request that your institutional head refers your initial grievance and the response to the ORB by completing the form **Request for**

⁴⁰¹ CD 081, s 36 and Annex A.

⁴⁰² CCR, s 77(1).

⁴⁰³ CD 081-1, s 51.

⁴⁰⁴ CD 081-1, s 48.

⁴⁰⁵ CCR, s 77(3).

⁴⁰⁶ CD 081-1, s 51.

Outside Review (CSC/SCC 0359) within ten working days of the receipt of the response.⁴⁰⁷

After the institutional head reviews your case, it should be referred to the ORB as soon as possible, and your 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).

The institutional head should notify you of the ORB hearing and of the date a decision is expected. Similar to an IGC, the ORB may review relevant documents and it may conduct a hearing with you and any relevant witnesses. 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 taking into account the recommendations.⁴⁰⁸

When do I need to file a grievance?

In general, you should file your complaint or grievance as soon as possible following the action that prompted it.

If you are filing a higher level grievance after receiving a response to a complaint, you generally have 30 working days from the day you receive your response to file a grievance.⁴⁰⁹ If you are filing a grievance immediately following an action, you “normally”⁴¹⁰ have 30 calendar days.⁴¹¹

Meet the time limits if you possibly can, as it will make the whole process a lot easier. 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.

Again, 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.⁴¹²

⁴⁰⁷ CD 081, s 37.

⁴⁰⁸ CD 081-1, s 62.

⁴⁰⁹ CD 081, s. 1419.

⁴¹⁰ The CD also uses the word “normally” for other time limits imposed on women. If a woman is not satisfied with the response to a grievance, she “normally” has 320 calendar days to submit the grievance to the next level.

⁴¹¹ CD 081, s.1117.

⁴¹² CD 081, s. 11.

What do I include in my grievance?

Before writing your grievance, spend some time thinking about what you want to say and why you've decided to take this course of action. In order to write an effective grievance, there are a number of important questions you should consider:

Why?

- What do you want to get out of it?
 - » *A decision reversed?*
 - » *A service you are being denied?*
 - » *Information?*
 - » *Creation of a record?*
- Why is it necessary to file a grievance rather than a less confrontational and time-consuming request?

Who?

- Whose action/inaction do you want to complain about? This sometimes determines the level at which you should file your grievance.
- Is the problem within the jurisdiction of the CSC? Remember that 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 not, she or he needs to inform you, in writing, of other ways to seek redress.⁴¹³

What?

- What is the issue?
 - » *If the issue involves discrimination (based on race, religion, gender, ethnic origin, age, sexual orientation, disability, etc.) make that clear. This will alert CSC to the fact that your grievance may implicate the Canadian Human Rights Act.*⁴¹⁴
- What are the facts?
 - » *Don't make them up or try to fill in missing blanks.*

⁴¹³ CCR, s 76(2).

⁴¹⁴ The CHRA grounds are included in the checklist for discrimination in CD 081, s 16, as something that the person reviewing grievances has to look out for.

» Remember to keep careful records! This will allow you to relay detailed and accurate facts, such as dates and times.

- What are the opinions?
 - » Be clear that your opinion is based on your own analysis of the situation and, therefore, is not a “fact.”
 - » Ask yourself if there is an alternate scenario that could also match the facts.
- What is the relevant law or policy?
 - » Find a relevant law (from the CCRA), regulation (from the CCRR) or policy (from the CDs) that is relevant to your case.
 - » Was there a breach of this law, regulation, or policy?
- What “corrective action” do you want the CSC to take?
 - » What outcome would you like to achieve?
 - » What solution would make you happy?

What if I don’t have all the information I need?

You have the right to access the information that is relevant to your case. If the 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.)

If a lawyer or an advocacy organization (such as the Canadian Association of Elizabeth Fry Societies) is working on your behalf, they may need you to sign an information release so that they can access records on your behalf.

Who reads 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.⁴¹⁵ CSC is supposed to give a written response to any level of complaint or initial grievances within 15 working days in priority cases and 25 working days in all other cases⁴¹⁶

⁴¹⁵ CCRA, s 90. See also CD 081, s 21.

⁴¹⁶ CD 081, s 128.

(see section earlier in this chapter on “**What issues are considered high priority?**”). However, this is rarely what happens in practice. 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.

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.⁴¹⁷ 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.⁴¹⁸

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. You may also want to submit an Access to Information/Privacy (ATIP) request for the paperwork pertaining to your grievance. Then, if after another thirty days ATIP has not responded, you may launch a complaint with the Privacy Commissioner (for more information on this, refer to the Information chapter).

Are there any possible negative consequences for filing a grievance?

The *CCRA* states that every prisoner must have complete access to the grievance procedure without negative consequences.⁴¹⁹ If, for any reason, there is retaliation 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.⁴²⁰ 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 women view the grievance system as ineffective, slow, and unsafe, as it does not provide any safety against retaliation.⁴²¹

⁴¹⁷ *CD 081*, s 1320.

⁴¹⁸ *CD 081*, s 12.

⁴¹⁹ *CCRA*, s 91.

⁴²⁰ *CD 081*, s 54. See also *CD 081-1*, ss 7(h), 9(i).

⁴²¹ *Systemic Review*, at s 7.6.

Complaints from women prisoners include: lack of communication about the status of a complaint, grievances going missing or never being acknowledged, staff pressuring women to withdraw complaints, grievances being denied, and wardens failing to implement the agreed upon terms of successful grievances.⁴²²

Even CSC officials agree that the grievance system could be improved. In fact, CSC's own data shows that almost half of the priority complaints filed in the year 2001-2002 were not processed within the prescribed time lines. As a result of this data, CSC agreed to address the problem of slow responses.

It is important that women like you continue to file grievances in order to ensure that CSC lives up to its promise and improves the system. Be sure to follow-up on your grievance if you don't receive a reply. It is also a good idea to send a copy of your grievance to CAEFS or your Elizabeth Fry Regional Advocate so that an advocate can follow-up on your behalf.

What are the possible outcomes from my complaint or grievance, and what do they mean?

Your grievance or complaint can end in a number of possible decisions.⁴²³

Upheld

CSC agrees your complaint/grievance is justified either because of the way you were treated or because a procedure was unfair, it was arbitrarily applied or it was contrary to guiding legislation or policy.

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
- 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).

⁴²² *Systemic Review*, s 7.6.

⁴²³ *CD 081-1, Annex C Decisions*.

Resolved

You may decide you no longer want to pursue a complaint/grievance. In order for the matter to be considered resolved, you have to submit an explanation in writing stating how it was resolved to your satisfaction. The explanation must be signed by both you and the staff member involved in the resolution.

Deferred

Complaints and grievances may be deferred when⁴²⁴:

- There is a simultaneous Federal Court proceeding regarding the matter⁴²⁵
» *Complaint/grievance will only be reactivated upon your request (CD 081, s. 45)*
- There is a simultaneous Canadian Human Right Commission (see below for more detail on the CHRC)
» *Deferred until a decision is made by the CHRC*
- There is an ongoing outside investigation into allegations of harassment
» *Complaint/grievance should be reactivated by the CSC when the investigation report is received by the decision maker.*
- You are pursuing the issue through alternative dispute resolution or mediation
- The complaint/grievance is being reviewed by the Grievance Committee or the Outside Review Board.

Rejected

Complaints/grievances may be rejected when (Guidelines Annex C):

- 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 uses offensive or inappropriate language
» *Even if you're very upset, be sure to use words that sound as neutral as possible so that CSC may not use this as a reason to reject your grievance*
- The issue has already been responded to in a previous complaint/grievance
- The initial grievance was not filed within the 30 day timeline of the event
- The final grievance was not filed within the 30 day timeline 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

⁴²⁴ CD 081-1, s 3.

⁴²⁵ CCRR, s 81. Note: This section does not apply to this topic.

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).

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.

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.

What action will be taken if my grievance is upheld?

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. 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 of the receipt of the response.⁴²⁶ If corrective action is not taken within this time frame you have the right to grieve again. 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.⁴²⁷

Unfortunately, the corrective action you ask for may not be granted. For example, if you ask for the dismissal of a staff member as a result of unfair treatment, that is unlikely to happen.

Other Options

What if my grievance is not upheld? What can I do if I am not satisfied with the decision?

If you are not satisfied with the decision of your initial grievance, you

⁴²⁶ CD 081, s 425.

⁴²⁷ CD 081, s 436.

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, as follows.

1. 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 function⁴²⁸ (see the Introduction chapter for more information).

2. Apply for *habeas corpus*

Habeas corpus is a form of judicial review that is used mainly by prisoners. It is a Latin term that means roughly ‘to have a body.’ An application for *habeas corpus* can be brought on behalf of any detained person to show cause for detention. If it can be shown that you have been an unlawfully detained you may be released.

After many cases with unfavourable results, in 2005 the Supreme Court of Canada finally ruled that prisoners can choose to challenge the legality of their detention in a provincial superior court by way of an application for *habeas corpus*. Most importantly, the Court said that a provincial superior court should hear the application when requested to do so unless it falls into two very narrow categories.⁴²⁹

This can be very important to you for many reasons. For example, you may wish to make an application for *habeas corpus* if you are unlawfully placed in segregation. As well, you may also wish to consider an application if you are unfairly being transferred to a penitentiary with a higher security rating. The Ontario Court of Appeal previously ruled that prisoners 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 institution.⁴³⁰

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.⁴³¹ In a recent case,⁴³² the Supreme

⁴²⁸ *Martineau v Matsqui Institution Disciplinary Board* (1980), 1 SCR 602.

⁴²⁹ *May v Ferndale Institution*, [2005] 3 SCR 809.

⁴³⁰ *Dodd v Isabel McNeill House*, 2007 ONCA 250.

⁴³¹ *Beaudry v Canada* (Commissioner of Corrections), ONCA [1997] OJ No 5082.

Court of Canada upheld a prisoner's right to use *habeas corpus* to challenge a transfer that CSC said was an emergency, but provided no proof that the circumstances actually justified an emergency transfer.

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 Regional Advocates directly or via CAEFS' (1.800.637.4606) for assistance.

3. Contact the Correctional Investigator

Who is the Correctional Investigator?

The Correctional Investigator is an ombuds office for federal prisoners. This means that it is the job of correctional investigators to investigate and try to resolve complaints made by prisoners about decisions, acts or omissions of CSC staff.⁴³³ In 2012-2013 the Office of the Correctional Investigator of Canada received 5477 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 the CSC and those of individual prisoners.

How can the Correctional Investigator help me?

The Office of the Correctional Investigator (OCI) can make an inquiry in response to a complaint, in response to the request of a minister, or based on the Investigator's own initiative. The OCI has full discretion in deciding whether or not to conduct an investigation and can terminate an investigation at any time.⁴³⁴

The OCI is not obliged to tell CSC what they learn from a prisoner and they are not obliged to tell a prisoner what they learn from the CSC.

⁴³² *Mission Institution v Khela*, 2014 SCC 24.

⁴³³ *CCRA*, s 167.

⁴³⁴ *CCRA*, ss 170, 176.

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.⁴³⁵

Unfortunately, decisions and recommendations made by the Correctional Investigator are not binding on CSC, and the office has no authority over the Parole Board of Canada.⁴³⁶

Be sure to be persistent with the Office of the Correctional Investigator. If you don't get what you need during your first contact with the Office, try again.

How do I contact the Correctional Investigator?

Office of the Correctional Investigator

P. O. Box 3421, Station "D"
Ottawa, Ontario, K1P 6L4

Toll-free: 1.877.885.8848

4. File a complaint with the Canadian Human Rights Commission (CHRC)

Why would I file a CHRC complaint?

As a federally-regulated service provider, CSC is subject to the *Canadian Human Rights Act*.⁴³⁷ This means that if your grievance or complaint is the result of discrimination, you can file a complaint with the Canadian Human Rights Commission. (Refer to Introduction chapter for more info on the CHRC).

What is discrimination?

Discrimination is unfair treatment based on any of the following grounds:

- Race, national or ethnic origin, colour, religion, age, sex (including pregnancy or childbirth), sexual orientation, marital status, family status or disability.⁴³⁸

⁴³⁵ CCRA, s 184.

⁴³⁶ CCRA, s 167(2)(a).

⁴³⁷ Systemic Review, s 3.1.

⁴³⁸ CHRA, s 2.

Section 5 of the *Canadian Human Rights Act* defines discrimination as: “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.”⁴³⁹

This essentially means that you 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 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 prisoners with disabilities that is direct discrimination.⁴⁴⁰

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.⁴⁴¹ For example, if every prisoner is allotted one hour of yard time per day, but the yard is not wheelchair accessible, that is systemic discrimination.

If you think you were the victim of either direct or systemic discrimination, you can file a CHRC complaint.

How long do I have to file a CHRC complaint?

You have one year from the incident to file a CHRC complaint.⁴⁴²

What should the complaint include?

The complaint form is a legal document that sets out the allegation of discrimination. It gives, in three pages or less, the complainant’s version

⁴³⁹ CHRA, s 5.

⁴⁴⁰ *Systemic Review*, s 3.3.1.

⁴⁴¹ *Systemic Review*, s.3.3.1.

⁴⁴² CHRA, ss 41(e).

of events in sufficient detail for the respondent to understand what discrimination is being alleged. The Commission requires that you provide the following information:⁴⁴³

- Your name
- The name of the staff member who you are complaining about
- A description of the events, including dates and locations (again, a good reason to keep careful records!)
- The prohibited grounds of discrimination (gender, race, disability, etc.)
- The alleged discriminatory practice
 - » *Why was it discrimination?*
 - » *What did your gender/race/disability/etc. have to do with the way you were treated?*
- Consent to have the Commission investigate the complaint.

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.⁴⁴⁴

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.⁴⁴⁵ Therefore, if you do suffer from retaliation after filing a complaint, contact the Canadian Association of Elizabeth Fry Societies immediately. (Contact info below)

Where do I send the complaint?

Canadian Human Rights Commission

344 Slater Street, 8th Floor, Ottawa, Ontario K1A 1E1

(613) 995-1151

Toll Free: 1.888.214.1090

5. File a complaint with the Privacy Commissioner

Please refer to the Information chapter for an explanation of how to file a complaint with the Privacy Commissioner.

⁴⁴³ Canadian Human Rights Commission, *Dispute Resolution Operation Procedures*, 9.2, online: Canadian Human Rights Commission <<http://www.chrc-ccdp.ca/eng/content/dispute-resolution-operating-procedures>>.

⁴⁴⁴ *CHRA*, s 52.

⁴⁴⁵ *CHRA*, ss 14, 59.

6. Call the Canadian Association of Elizabeth Fry Societies, a lawyer or another advocacy group

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

**Telephone: 613-238-2422
Toll Free: 1-800-637-4606
Fax: 613-232-7130**

**E-mail: caefs@web.ca
Web Site: www.caefs.ca**

NOTES

NOTES

NOTES

NOTES

NOTES

NOTES

NOTES