

Know
Your
Rights!

HUMAN RIGHTS IN ACTION

A Handbook for Provincially Incarcerated Women in Alberta



Human Rights
Education and
Multiculturalism
Fund

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PREFACE

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ABOUT THE HUMAN RIGHTS IN ACTION PROJECT¹

The Human Rights in Action (HRIA) project is dedicated to ensuring that the human rights of all prisoners are protected, especially those of women who are racialized and those with disabling mental health issues.

The HRIA project vision is to increase our success in keeping and returning women to the community. The groups involved in developing the project are also committed to working to decrease the use of prison and to developing release strategies for those who are currently incarcerated.

All of the HRIA project's work is aimed at achieving substantive equality of women in and from prison. We work to address the intersectional, and multi-dimensional oppression women face, with a focus on the specific issues faced by Aboriginal women.

The project is also about enabling women to survive criminalization and prison by reinforcing their own, pre-existing capacities and strengths.

This handbook is meant to assist you to become a self and peer advocate. It is a tool that is intended to ensure that those whose rights are interfered with have support in addressing discriminatory treatment, and are able to identify and address areas that require system advocacy and change.

AIMS OF THE HUMAN RIGHTS IN ACTION PROJECT

have women out of jail as quickly as possible

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

enable women to stay out of prison once they are released

participate in coalitions that support human rights principles and goals at the local, regional, and national levels

¹ Canadian Association of Elizabeth Fry Societies. (2014). Human Rights in Action: Handbook for Women Service Federal Sentences. Ottawa, ON: Canadian Association of Elizabeth Fry Societies.

HISTORY OF THE PROJECT²

On March 8, 2001, the Canadian Association of Elizabeth Fry Societies (CAEFS), the Native Women's Association of Canada (NWAC), Strength in Sisterhood (SIS) and 24 other national and international women's, Aboriginal and justice groups, urged the Canadian Human Rights Commission (CHRC) to conduct a broad-based systemic review of the federal government's discriminatory treatment of women prisoners. Nearly three years later, the Commission issued a special report entitled, ***Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women.***

The CHRC Report made nineteen recommendations calling for far-reaching changes with respect to the manner in which the Correctional Service of Canada (CSC) might work to alleviate the systemic discrimination experienced by women serving sentences of two years or more.

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

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

THIS HANDBOOK

This Manual is a "work in progress." It is largely based on the federal HRIA manual, which was prepared by a group of law students at the University of Ottawa and women who are or were federally sentence prisoners. This manual contains relevant provincial legislation.

If information in this manual is changed or updated, the Elizabeth Fry Society of Edmonton will issue a revised version of this manual, if funding allows. If you have any questions, comments or suggestions please contact the Elizabeth Fry Society of Edmonton.

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THE LAW IN ALBERTA

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LAWS

Laws are the rules that structure our society and protect our rights and freedoms. The “rule of law” is an underlying principle in Canada, which means that no one is above the law and the law applies to everyone. The rule of law is guaranteed in the **Canadian Constitution**³, which is the highest law in Canada.

WHO MAKES LAWS?

Understanding who makes laws and how laws work is an important part of knowing your rights. There are two sources of law in Canada, the government and the courts.



THE GOVERNMENT

Federal, provincial and municipal governments can make laws. When laws are made by governments, representatives elected by citizens make laws.



THE COURTS

Laws made by the courts are often made through “case law”, which involves judges making laws through decisions and judgments.

LAWS MADE BY THE GOVERNMENT

FEDERAL LAWS

The federal government has the power to pass laws that apply to everyone in Canada. Examples of federally passed laws are the **Charter of Rights and Freedoms**⁴ and the **Criminal Code**⁵.

PROVINCIAL LAWS

Provincial and territorial governments can also pass laws, but these laws only apply to you if you are in that province. Many of the laws that affect you when you are in a provincial prison are provincial laws. Because this handbook is for provincially incarcerated women in Alberta, most of the laws it discusses will be provincial laws of Alberta. However, there are still some federal laws, such as the **Charter of Rights and Freedoms**, that apply to everyone in Canada, regardless of if they are in a federal or provincial institution.

As citizens, we get to play a role in making laws. We do this by voting for officials who we trust to make decisions on our behalf as constituents. That is why it is so important to vote whenever we have an election! Every Canadian citizen has the right to vote, even while they are in prison.



3 Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

4 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.

6 5 Criminal Code, RSC 1985, c C-46.

STATUTES

The formal written laws passed by federal, provincial or territorial governments are called statutes. Statutes can also be referred to as laws or Acts of Legislation. Statutes tell us what we can and cannot do, and what rights we have. Two important statutes to be familiar with when you are provincially incarcerated are the Alberta **Corrections Act**⁶ and the Alberta **Human Rights Act**⁷.

THE ALBERTA CORRECTIONS ACT

This is the statute that governs provincially incarcerated people and the institutions they are housed in. It describes the rules for how prisons in Alberta must operate, and outlines the roles and responsibilities of the government related to Corrections. Understanding the Alberta **Corrections Act** can help ensure your rights are protected.

THE ALBERTA HUMAN RIGHTS ACT

The Alberta Human Rights Act guarantees that all people are treated equally regardless of their race, religious beliefs, colour, gender identity & expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.⁸ If you feel that you are experiencing discrimination based on any of these identity categories, you can file a complaint with the Alberta Human Rights Commission. This process will be discussed further in Chapter 9.

REGULATIONS

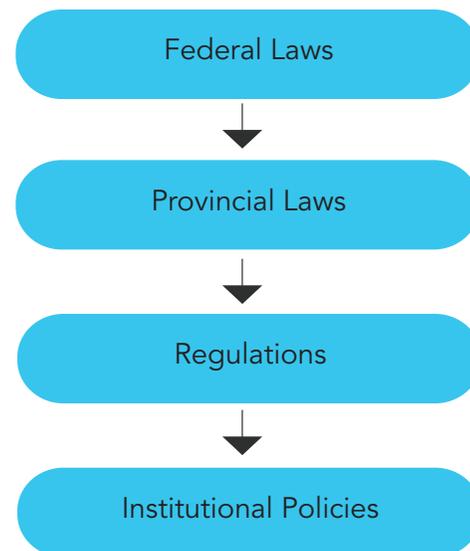
Regulations are made by interpreting statutes and creating concrete rules about how they should be applied in real-world situations. The most important regulations for you to be familiar with while you are incarcerated are the **Correctional Institution Regulations**⁹. These regulations set out guidelines for things like searches, segregation, and filing complaints in provincial prisons.

Similar to the **Corrections Act**, the **Correctional Institution Regulations** contain information to protect your rights and outlines how Alberta Corrections can restrict your liberties.

CORRECTIONAL INSTITUTION POLICIES

While there are statutes and regulations that govern all of the provincial correctional institutions in Alberta, each institution also has its own procedures that you must follow. Although these policies and procedures are made by each individual institution, they must conform to the **Correctional Institution Regulations** and the **Corrections Act**. The rules and policies you are expected to follow while you are incarcerated should be outlined in your inmate manual, which you should be given when you are admitted to a correctional institution.

HIERARCHY OF LAWS AND POLICIES



⁶ Corrections Act, R.S.A. 2000, C-29

⁷ Alberta Human Rights Act, R.S.A. 2000, C A-25.5.

⁸ Alberta Human Rights Act, R.S.A. 2000, C A-25.5, s 4.

⁹ Correctional Institution Regulations, AR 205/2001.

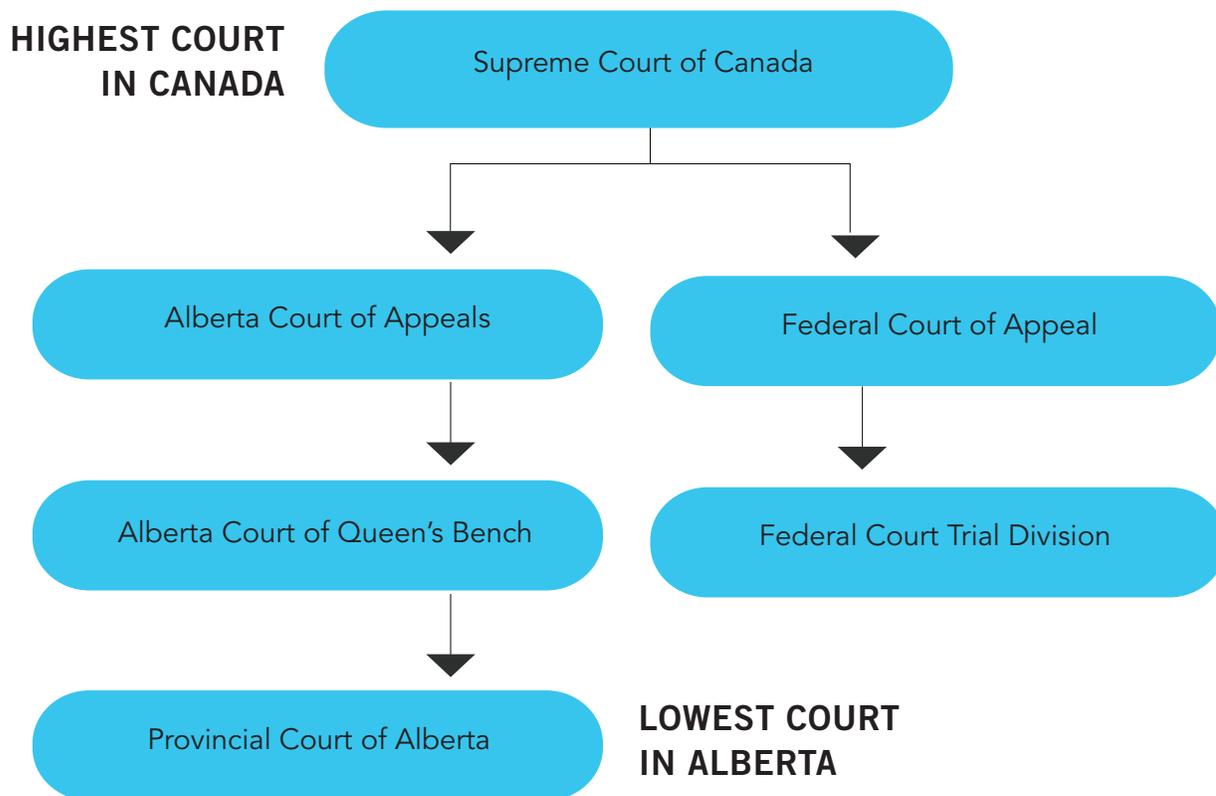
LAWS MADE BY THE COURTS

CASE LAW

“Case law” refers to law that is made by the courts. Through case law, laws are made by judges’ decisions or judgments. When a judge’s decision on a new type of case or issue sets a new standard, this is called a precedent. When a precedent is set, all the courts below the one where the decision was made are expected to follow the decision in similar cases. For example, if the Court of Appeals in Alberta makes a decision that sets a precedent, all other courts in the province have to follow that decision. And, if the Supreme Court of Canada sets a precedent, courts in all provinces and territories must follow it.

The chart below illustrates the hierarchy of courts in Alberta. The lowest court in Alberta is the Provincial Court of Alberta. The Supreme Court of Canada is the highest court in the country. The Supreme Court of Canada has the power to decide that current laws are unconstitutional (which means they violate the **Canadian Constitution**¹⁰). If the Supreme Court of Canada decides a law is unconstitutional, that law no longer has any power.

HIERARCHY OF COURTS IN CANADA AND ALBERTA



INTERNATIONAL TREATIES

International treaties are agreements that are signed by various countries. By signing these agreements, countries commit to acting in accordance with the standards described in them. Although international treaties are not legally binding unless they have been made a part of Canadian law, when Canada signs a treaty, it can be used to show the rest of the world what standards, laws and rights Canada supports. For example, Canada is a signatory to the **UN Standard Minimum Rules for the Treatment of Prisoners**¹¹, which means that Canadian prisoners should be treated in accordance with the standards outlined in this treaty. However, we know that this is often not the case. Canada's commitment to treaties like the **UN Standard Minimum Rules for the Treatment of Prisoners** can be used to advocate for yourself and others.

OTHER UN TREATIES SIGNED BY CANADA

- **The United Nations Universal Declaration of Human Rights**¹²
- **The United Nations Convention Against Torture**¹³
- **The United Nations International Covenant on Civil and Political Rights**¹⁴
- **The United Nations Convention on the Elimination of Discrimination Against Women**¹⁵



REPORTS & COMMISSIONS

In addition to the various laws and treaties that impact the rights of incarcerated women, there have been a number of reports and inquiries in Canada related to the treatment of women in prison. Most of these reports apply to women who are federally sentenced, such as **Protecting their Rights: Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women**¹⁶ by the Canadian Human Rights Commission, and **Federally Sentenced Women with Mental Disabilities: a Dark Corner in Canadian Human Rights**¹⁷ by the Disabled Women's Action Network. Although the findings from these reports do not result in binding law, the recommendations can influence courts and practices by altering policies and offering a platform for advocacy.

While most reports about the human rights of people who are incarcerated in Canada are written about federal prisons, there is no doubt that provincial and territorial human rights authorities would find human rights violations in the areas of gender, race, and disability in almost every jail that houses remanded and provincially sentenced women.



11 United Nations Congress on the Prevention of Crime and the Treatment of Offenders., & United Nations. (1958). Standard minimum rules for the treatment of prisoners and related recommendations. New York: United Nations, Dept. of Economic and Social Affairs.

12 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

13 UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85

14 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

15 UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13,

16 Canadian Human Rights Commission (CHRC), (2003), Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women. Ottawa, ON: Human Rights Commission.

17 Yvonne Peters & DisAbled Women's Action Network (DAWN), (2003), Federally Sentenced Women with Mental Disabilities: A Dark Corner in Canadian Human Rights. N.L: DisAbled Women's Action Network.

A CASE STUDY: SAUVÉ VS. CANADA¹⁸

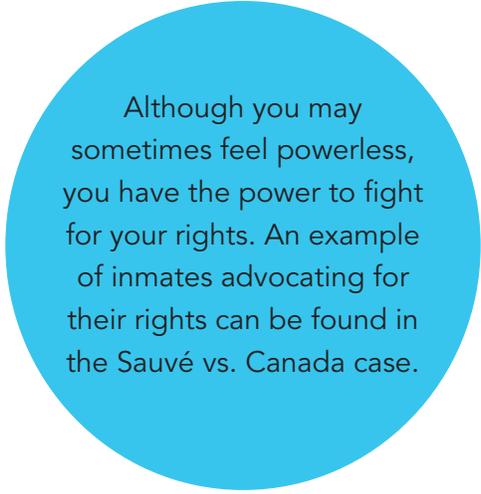
If you are a Canadian citizen you get to vote in provincial and federal elections. No one can take your right to vote away from you. However, this was not always the case. Before 1993, in many places in Canada you lost the right to vote if you were serving time in a correctional institution. But, the actions and advocacy of one inmate changed that.

Richard Sauvé was serving 25 years at a prison in Ontario. Like all inmates at the time he was not allowed to vote. Mr. Sauvé noticed that in the **Charter of Rights and Freedoms**¹⁹ (which we will talk about more in Chapter 3) it is stated that every citizen of Canada has the right to vote in an election of members of the House of Commons or of a Legislative Assembly, basically, that every citizen of Canada has the right to vote.

It took a few years, but eventually his case made it to the Supreme Court, who decided that the ban on inmate voting was unconstitutional²⁰. Based on the Supreme Court's decision, inmates could now vote!

The Decision in the Sauvé case highlights how laws made by the government and laws made by the courts work together. Even though the Supreme Court of Canada decided the voting ban for inmates was unconstitutional, the government did not change the Canada **Elections Act** to reflect this²¹. This means that the **Elections Act** still says that inmates serving federal sentences cannot vote. However, because the Supreme Court decided that withholding an inmate's right to vote was unconstitutional, that law no longer has any power, and inmates have been able to vote in every provincial and federal election since.

This case importantly demonstrates that you have the power to fight for your rights and advocate for changes in the system. Sauvé vs. Canada was a huge case because it gave inmates the right to have a say in who would represent them in government, something they previously were not able to do.



Although you may sometimes feel powerless, you have the power to fight for your rights. An example of inmates advocating for their rights can be found in the Sauvé vs. Canada case.

18 S v. Canada, [2002] 3 SCR 519 (SCC).

19 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.

20 Centre for Constitutional Studies. (2010, May 26). Sauvé v. Canada (2002) – Limits on Voting Rights for Prisoners. Retrieved from <https://ualawccsprod.srv.ualberta.ca>.

21 Elections Canada, (n.d.), A History of the Vote in Canada: Chapter 4 the Charter Era, 1982-2006. Retrieved from <http://www.elections.ca>.

KNOW YOUR RIGHTS

3

HUMAN RIGHTS

Human rights are rights that we have simply for being human—every person in the world has human rights. We are entitled to have our human rights met to live a life of quality and well-being. Human rights are universal and should be met without discrimination.

HUMAN RIGHTS ARE...

UNIVERSAL this means that everyone has these rights regardless of their race, religion, ethnicity, gender, sex, class, ability, etc.

INALIENABLE this means that they cannot be taken away from you.

INDIVISIBLE this means that human rights are interconnected to one another. As such, ALL of your human rights must be respected in their entirety.

RIGHTS VS. PRIVILEGES

While being in prison places restrictions on your freedoms you still have rights while you are incarcerated. It is important to know the difference between rights and privileges

RIGHTS

Rights are legal entitlements that every incarcerated person should be guaranteed. Withholding someone's rights is against the law.

When you are incarcerated some of your rights include: the right to items to allow you to maintain health and cleanliness; the right to exercise; the right to clothing, the right to health care.

PRIVILEGES

Unlike a right, a privilege is not guaranteed, and may be earned (for example for good behavior). Corrections staff have more discretion in limiting privileges, however, your privileges should not be taken away arbitrarily.

INTERNATIONAL HUMAN RIGHTS LAWS AND PROTECTIONS

Human rights have been defined and protected in societies throughout the world for thousands of years. However, to understand the laws protecting your human rights in Canada, it is helpful to start by Understanding the United Nations (UN), and its role in protecting human rights.

Following the end of World War II and the legacy of death and destruction it brought across Europe, global leaders felt a need to come together to create an international body promoting peace and preventing future wars. In 1945, delegates from 50 countries met and The United Nations was formed. In 1948, the United Nations created and signed the **Universal Declaration of Human Rights**²², which set a global standard for human rights protection and legislation.

²² UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

THE UN UNIVERSAL DECLARATION OF HUMAN RIGHTS

The **United Nation's Universal Declaration of Human Rights**²³ outlines 30 human rights that it suggests should be universal to all humans. All of the countries who were members of the United Nations at the time this Declaration was created signed it pledged to promote the 30 articles it outlines. Canada is a signatory on The Universal Declaration of Human Rights. Although signing this is not legally binding, it demonstrates Canada's commitment to promote and protect the rights this document lists. Canada's position as a signatory on the Declaration of Human Rights can be used to advocate for and protect your rights.

ABBREVIATED ARTICLES OF THE UN DECLARATION OF HUMAN RIGHTS²⁴

Right to Equality	Right to Marriage and Family
Freedom from Discrimination	Right to Own Property
Right to Life, Liberty, and Personal Security	Freedom of Belief and Religion
Freedom from Slavery	Freedom of Opinion and Information
Freedom from Torture and Degrading Treatment	Right of Peaceful Assembly and Association
Right to Recognition as a Person Before the Law	Right to Participate in Government and in Free Elections
Right to Equality Before the Law	Right to Social Security
Right to Remedy by Competent Tribunal	Right to Desirable Work and to Join Trade Unions
Freedom from Arbitrary Arrest & Exile	Right to Rest and Leisure
Right to Fair Public Hearing	Right to Adequate Living Standard
Right to be Considered Innocent until Proven Guilty	Right to Education
Freedom from Interference with Privacy, Family, Home and Correspondence	Right to Participate in the Cultural Life of Community
Right to Free Movement in and out of the Country	Right to a Social Order that Articulates this Document
Right to Asylum in Other Countries from Persecution	Community Duties Essential to Free and Full Development
Right to a Nationality and the Freedom to Change it	Freedom from State and Personal Interference in the above Rights

12 23 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

24 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

CANADIAN HUMAN RIGHTS LAWS AND PROTECTIONS

The Canadian **Charter of Rights and Freedoms**²⁵, which came in to force in 1982 represents Canada’s approach to implementing the principles in the UN’s **Universal Declaration of Human Rights**. In addition to the Charter, federal and provincial governments have specific human rights legislation and commissions. Federally, human rights are protected by the **Canadian Human Rights Act** and the Canadian Human Rights Commission. Provincially, human rights are protected by the **Alberta Human Rights Act** and the Alberta Human Rights Commission.



THE CHARTER OF RIGHTS AND FREEDOMS

The **Charter of Rights and Freedoms** is part of Canada’s highest law of the land—Canada’s **Constitution**. The Charter guarantees rights and freedoms to people in Canada and protects them from actions of the government that violate these freedoms.

All laws in Canada must respect the rights guaranteed in the Charter. If a law does not follow the rights and freedoms outlined in the Charter, the courts may find it is unconstitutional, meaning the law is considered invalid and cannot stand as a law anymore.

Although the rights in the Charter are guaranteed in most situations, there can be restrictions on certain rights if the government provides adequate reasons for doing so. The decision about whether the government’s reasons for limiting rights are justified or not is typically made by the courts.

While there are a number of rights contained in the Charter, this handbook focuses on the rights and freedoms that are most relevant to you while you are incarcerated.



²⁵ 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 RIGHTS

The rights listed below will be discussed in more detail in the pages that follow. These are some of your rights protected by the **Charter of Rights and Freedoms**²⁶. The specific Section of the Charter that protects each right is provided, should you want further information.

LEGAL RIGHTS

- The Right to Life, Liberty and Security of the Person (Section 7)
- The Right Not to Be Subjected to any Cruel or Unusual Treatment or Punishment (Section 12)
- The Right to be Secure Against Unreasonable Search or Seizure (Section 8)
- The Right to Equal Protection and Benefit of the Law Without Discrimination (Section 15)
- The Right Not to be Arbitrarily Detained or Imprisoned (Section 9)
- The Right Upon Arrest or Detention to Retain and Instruct Legal Counsel and be Informed of That Right (Section 10)
- The Right Upon Arrest or Detention to be Informed Promptly of the Reason for Your Arrest or Detention (Section 10)
- The Right Upon Arrest or Detention to Have the Validity of the Detention Determined by Way of Habeas Corpus (Section 10)
- The Right to Only Be Tried Once For an Offence (Section 11)
- The Right to be Presumed Innocent Until Proven Guilty (Section 11)

FUNDAMENTAL FREEDOMS

- Freedom of Thought, Belief, Opinion and Expression (Section 2)
- Freedom of Conscience and Religion (Section 2)
- Freedom of Peaceful Assembly and Association (Section 2)

DEMOCRATIC RIGHT

- The Rights to Vote in the Election of Members of the House of Commons or of a Legislative Assembly (Section 3)

**UNDERSTANDING
HOW THE CHARTER
OF RIGHTS AND
FREEDOMS PROTECTS
YOUR LIBERTIES IS A
HELPFUL STARTING
POINT FOR ADVOCATING
FOR YOURSELF AND
OTHERS WHILE YOU
ARE INCARCERATED.**

FUNDAMENTAL FREEDOMS

Fundamental Freedoms are considered to be an essential part of a democratic country. However, your Fundamental Freedoms may be restricted while you are incarcerated. Your Fundamental Freedoms are protected by Section 2 of the Charter²⁷ and include:

- Freedom of conscience and religion
- Freedom of thought, belief, opinion and expression
- Freedom of peaceful assembly and association.

FREEDOM OF CONSCIENCE AND RELIGION

Freedom of religion means that you are allowed to practice your religion without fear of government interference or control. The government cannot stop you from observing your religious beliefs and practices. If a correctional institution or corrections staff member tries to stop you from following your religion in a way that affects an important belief or practice, you can make a request to the prison to get a religious accommodation.

A religious accommodation requires that you be provided with access to the resources you need to properly practice your religion. When a religious accommodation is granted in prison, the Correctional Institution must ensure that your religious beliefs and practices are accommodated. For example, if you do not eat meat because of your religious beliefs, the prison should provide you with vegetarian meals as an option²⁸.

DEMOCRATIC RIGHT

Your democratic right is your right to vote and participate in democratic elections. This is a right that all Canadians of voting age have. This right is protected under Section 3 of the Charter²⁹. Your right to participate in elections by voting applies even when you are in prison. If there is an election while you are incarcerated, the prison should set up special ballot stations or there will be mail-in ballot procedures to ensure that you are able to place your vote in federal, provincial, and municipal elections.



27 Canadian Charter of Rights and Freedoms, s 2, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

28 *Maurice v Canada (Attorney General)*, 2002 FCT 69

29 Canadian Charter of Rights and Freedoms, s 3, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

30 *R v Kapp*, 2008 SCC 41 at paras 14-18.

31 *Inglis v British Columbia (Minister of Public Safety)*, 2013 BCSC 2309, 237 ACWS (3d) 380.

DOES THE LAW PROTECT ME FROM DISCRIMINATION?

Section 15 of the Charter is meant to promote equality and protect Canadians from laws and government actions that discriminate against them because of their identity. Therefore, if the effect of a law or government action treats people differently based on their personal characteristics (such as race, gender, sexuality, ability or age) and results in discrimination, then it is considered to violate the equality guarantee in the Charter³⁰.

In a case from British Columbia, the cancellation of a program that allowed mothers to keep their newborn babies with them while they served their sentences in provincial prison was found to discriminate against the mothers because of their race, ethnicity, disability, and sex³¹. The mothers were mainly Indigenous, and many had experienced mental health issues and struggles with addiction. The prison's decision to cancel the mother-baby program was reversed as a result of the ruling in this case.

LEGAL RIGHTS

These are some of your rights that are important when you are dealing with the justice system and law enforcement.

THE RIGHT TO LIFE LIBERTY AND SECURITY OF THE PERSON (SECTION 7)

LIFE

Laws or government actions that increase your risk of death can violate your right to life³¹. The law is still developing on this issue. For example, it is currently being argued in courts in British Columbia and Ontario that placing inmates in solitary confinement for long periods of time violates their right to life because it has been found that inmates may be more likely to attempt suicide while in solitary confinement³².

LIBERTY

The right to liberty includes freedom of movement. As an inmate, you have limits to this right because you may not have control of where you are allowed to go. However, prisons still have responsibilities to respect a person's right to liberty³³. Section 10(c) of the Charter guarantees inmates the ability to challenge the lawfulness or validity of their detention and to seek the remedy of Habeas Corpus (which is a Latin phrase that means "you shall have the body"). Through Habeas Corpus, individuals may be able to be released or transferred if their detention is found to be unlawful. Habeas corpus will be discussed further in Chapter 9.

A major change in conditions that further limits an individual's freedom of movement could violate your right to liberty. For example, being transferred from a medium security to higher security institution or being placed in solitary confinement could be challenged because of the additional restrictions these changes place on your liberty.

In order for a detention or transfer to be lawful, any restriction on your liberty rights must follow fair and proper procedures³⁴. This means, for example, that the Director's decision to transfer you to a higher security prison must follow proper procedure and be supported by proper reasoning for doing so. Inmates must also be informed of the reason for the transfer.

SECURITY OF THE PERSON

Laws and government actions that cause serious mental or physical suffering may violate a person's right to security of the person guaranteed in the Charter. As previously mentioned, the law on this issue is still developing. For example, in a current case in British Columbia it is being argued that the seriously harmful effects of long periods of time in solitary confinement on an individual's mental health violates their right to security of the person³⁵.



31 Carter v Canada (AG), 2015 SCC 5 at para 62.

32 British Columbia Civil Liberties Association v Canada (AG) (21 June 2017), Vancouver, BC SC 150415 at 8 (amended statement of claim) [BCCLA Statement of Claim].³³

33 Dumas v Leclerc Institute, [1986] 2 SCR 459 at para 12.

34 Dumas v Leclerc Institute, [1986] 2 SCR 459 at para 12.

35 BCCLA Statement of Claim, supra note 12.

THE RIGHT NOT TO BE SUBJECT TO CRUEL OR UNUSUAL PUNISHMENT (SECTION 12)

Punishment that is extremely harsh or exceeds standards of common decency may be considered unlawful by a court. In prison, this mostly applies to the punishment and disciplinary action faced by inmates.

In a case from British Columbia, an individual was kept in solitary confinement for 23 hours a day, denied visitors, and given limited access to lawyers³⁶. Because these measures were extremely harsh and found to violate Section 12 of the Charter, the judge ordered the prison to restore this person's visiting and telephone privileges and to ensure he was given access to lawyers.

THE RIGHT TO BE SAFE AGAINST UNREASONABLE SEARCH OR SEIZURE (SECTION 8)

This right protects a person's reasonable expectation of privacy. Outside of prison, how much privacy you can reasonably expect depends on a number of factors including, for example, your location. For instance, the privacy you can expect at home is different from the privacy you would expect in more public spaces. In prison, the expectation of privacy is considered to be less because this setting is argued to require frequent searches, regular surveillance, and increased scrutiny to maintain the safety and security of people who are incarcerated, the Correctional Institution, and the public³⁷. But, there are exceptions to this rule. For example, the Alberta Court of Queen's Bench found that prisoners could reasonably expect not to have all of their phone calls recorded, and then used as evidence in the cases against them³⁸.

THE RIGHT TO RETAIN AND INSTRUCT COUNSEL WITHOUT DELAY (SECTION 10)

If you are arrested or detained, you should be able to talk to a lawyer as soon as possible. Once in prison, you should have further—although more limited—opportunities to consult with a lawyer. The right to counsel does not guarantee you unlimited or 24/7 access to a lawyer, but the right to a lawyer may be necessary speak in certain instances, such as: before a disciplinary hearing; if you are placed on administrative segregation; if you are transferred involuntarily

For example, in one case, a prisoner was required to consent to an invasive body cavity search without being allowed to talk to a lawyer before the search occurred. The Federal Court decided this violated the prisoner's Charter-guaranteed right to speak to a lawyer because the prisoner should have been allowed to receive legal advice before making the decision to agree to the search³⁹.

36 Bacon v Surrey Pretrial Services Centre (Warden), 2010 BCSC 805.

37 Weatherall v Canada (Attorney General), [1993] 2 SCR 872 at 877.

38 R v Williamson, 52 CRR (2d) 277 (AB QB).

39 Curry v Canada (Attorney General), 2006 FC 63.

PROTECT YOUR RIGHTS

4

As the previous Chapter discussed, being incarcerated does not erase the important human rights you have. This Chapter will discuss some of the ways you can advocate for yourself to ensure your rights are respected.

CONFIDENTIALITY

One of your most significant rights is your right to access the personal information that public bodies (including correctional institutions) have about you. While you have the right to keep your personal information confidential, there are some situations where your personal information can be accessed without your consent. These situations will be discussed below.

ACCESS TO INFORMATION

Some very big decisions are made about you based on the information in your file at a correctional institution. For example, things like your Security Classification and ability to get Temporary Absences are both impacted by the information in your file. Because your freedoms are effected by the information in your file, it is important to make sure that this information is accurate!

Your right to access your personal information is protected under the **Freedom of Information and Protection of Privacy Act**⁴⁰. Your right to access your health information is protected under the **Health Information Act**⁴¹. The easiest way to see your personal information is to ask a staff member, like your case manager, to give you access. However, for various reasons this may not always work. If you are not able to access your information by talking to a corrections staff member, you can file a formal request to access this information.

WHAT IF THE INFORMATION ON FILE ABOUT ME IS WRONG?

If any of the information that the Institution has on file about you is wrong, you can request a change of information to have it corrected. Requests to have information corrected must be done by writing the Director of the Institution. Be as detailed as you can about what information is incorrect and what corrections you want to make. Keep in mind that public bodies will only change information that is factually incorrect, not opinion-based. For example, if the public record states the opinion of a psychologist you could file for a change if the record states an opinion that was not given. However, you cannot file for a change if you disagree with the opinion given by the psychologist.



REQUESTING INFORMATION

To request access to your personal information on file at the correctional institution, you will need to file a request to the Director of the correctional institution in writing. Make sure that your request provides as much detail as possible about exactly what information you are looking for.

18 ⁴⁰ Freedom of Information and Protection of Privacy Act, RSO 1990, c F.31.
⁴¹ Health Information Act, RSA 2000, c H-5.

In your request you should also say that you are making this request “pursuant to the Acts.” This makes it clear that it is a formal request, which is important because it means that the Office of the Information and Privacy Commissioner (OIPC) can now investigate the response or failure to respond to your request.

You should get a response within 30 days of the day your request is received, although, under certain circumstances (for instance, if you have requested a lot of information) this 30 day deadline can be extended. If the institution is extending the deadline, they must tell you the reasons for the extension.

There may be some instances where your request is refused, as there are some cases where they cannot release your information. If this happens, the Office of the Information and Privacy Commissioner (OIPC) must tell you why your request was refused, and what part of the Freedom of Information and Protection of Privacy Act or the Health Information Act allows you to be refused this information. The OIPC will also give you someone to contact if you want to appeal this decision.

There is sometimes a fee for submitting an information request, but it can be waived in certain circumstances. An estimate of fees must be provided to you and accepted by you before your request is processed. Generally, for a Freedom of Information and Privacy Request, there is an initial \$25 fee that covers the first \$150 worth of processing fees. If the total cost is more than \$150, you will be told of the estimated costs and asked to pay a 50% deposit. You can ask the Correctional Institution to waive the fees. If they refuse, you can ask the OIPC to review that decision.

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER (EDMONTON)

 #410, 9925-109 Street
Edmonton, AB, T5K 2J8

 1-780-422-6860
Toll Free: 1-888-878-4044

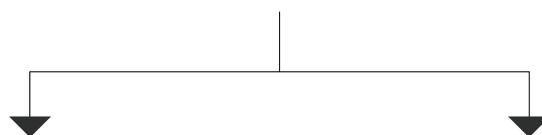
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER (CALGARY)

 #2460, 801 6 Avenue SW
Calgary, AB, T2P 3W2

 1-403-297-2728
Toll Free: 1-888-878-4044

RIGHT TO CONFIDENTIALITY

You have a right to the confidentiality of your information, however, there are certain instances when people will be able to look at your information without your consent. People can only access your information without your consent for specific reasons that are listed in our laws. Generally speaking, your personal information can be shared without your consent for the following reasons⁴²:



TO HELP WITH AN INVESTIGATION OR A LAW ENFORCEMENT PROCEEDING

IF THERE IS REASON TO BELIEVE THAT THE DISCLOSURE OF THE INFORMATION WILL PROTECT SOMEONE'S HEALTH AND SECURITY

42 Freedom of Information and Protection of Privacy Act c.2 s40(1).

VICTIMS AND YOUR INFORMATION

There is certain information that victims are able to access about you, this includes⁴³:

- Your name
- The charge you were found guilty of and what court found you guilty
- The start date and length of your sentence
- Any conditions you have to follow that relate to the victim
- Where you are serving your sentence
- What day you are going to be released, including any dates for Temporary Absences
- Any conditions you need to follow after your release
- Where you will be living while on a Temporary Absence or under court-ordered community supervision, and if you will be near the victim while you travel to that area

HEALTH SERVICES AND YOUR INFORMATION

Alberta Health Services can share certain with a correctional institution without your consent for the following reasons⁴⁴:

- Classification purposes
- Protection of the health, safety and security of inmates, staff and visitors
- Dealing with contagious diseases
- For use in a disciplinary hearing or appeal

INFORMATION SHARED BY ALBERTA HEALTH SERVICES SHOULD BE SHARED ON A “NEED-TO-KNOW” BASIS. IF YOU THINK THAT YOUR DOCTOR HAS SHARED INFORMATION WHEN THEY SHOULD NOT HAVE YOU CAN CONTACT A LAWYER, OR YOU CAN CONTACT THE COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA TO FILE A COMPLAINT.

ACCESS TO LEGAL COUNSEL & LEGAL AID

There may be times where you have problems you want to speak to a lawyer about, even after you have been convicted of an offense and you are serving your sentence. Your right to speak to a lawyer is protected by The **Charter of Rights and Freedoms**. You cannot be denied the right to speak to a lawyer. If you cannot afford a lawyer, Legal Aid may be able to help you. If you are denied access to legal counsel you can file a grievance, which will be discussed in Chapter 9.



43 Alberta Corrections Act c.2 s.14(2).

44 Alberta Corrections Act c.2 s.11.1.

LEGAL AID

Legal Aid is a service that can assist you in navigating the justice system and dealing with legal issues. There are some eligibility requirements you must meet to access Legal Aid. Contact the Legal Aid office in your area to find out if you are eligible.

APPLYING FOR LEGAL AID

To apply for Legal Aid contact them toll free at 1-866-845-3425. When applying for Legal Aid you may need to provide financial statements to determine if you qualify. Eligibility is determined based on your “net family income” for the last 30 days and last 12 months, as well as your family size and your assets. For Legal Aid eligibility purposes, a family consists of the applicant, your spouse, and any dependents (such as children or a common-law spouse). Even if you are eligible for Legal Aid you may still be required to make some financial contributions to the cost of your

LEGAL AID ALBERTA



Edmonton: Suite 600,
Revillon Building, 10320 102 Avenue
Edmonton, AB, T5J 4A1

Calgary: 1100 Dominion Centre
665 - 8 Street SW
Calgary, AB, T2P 3KE



Toll Free: 1-866-845-3425

FILING A COMPLAINT ABOUT YOUR LAWYER

If you have a complaint about your lawyer, you can file a complaint by contacting The Law Society of Alberta by phone or email, or by filling out a complaint form and mailing it to their office. To file a complaint about your lawyer you should provide the following information about your lawyer:

- You name, contact information and mailing address
- The name of the lawyer you are filing a complaint about
- The lawyer’s file number if you know it
- The legal service the lawyer provided
- What the lawyer did wrong or failed to do
- When it happened
- Why it happened

LAW SOCIETY OF ALBERTA



#500, 919 11 Avenue SW
Calgary, AB, T2R 1P3



1-403-229-4789
Toll Free: 1-800-661-9003

“PRIVILEGED COMMUNICATION”

legal fees.

Communication with your lawyer is called privileged communication—this means that this communication is completely private and anything you say to your lawyer cannot be shared with anyone else. Communication with your lawyer cannot be listened in on or recorded by a correctional institution. However, mail to and from your lawyer may be searched for contraband.



HEALTH CARE RIGHTS⁴⁵

Health care in Alberta provincial correctional institutions is the responsibility of Alberta Health Services. While incarcerated, you are legally entitled to the same standards of health care you would have access to in the community.

REQUESTING HEALTH CARE

If you require medical attention you should submit a medical request form. If you are having a medical emergency alert a Corrections Officer immediately.

If you have submitted two or more medical request forms and have not received medical follow up, you may want to write a letter to the Director of the Institution. Information about this process can be found in Chapter 9.

HOSPITALIZATION DURING INCARCERATION

If you get hurt or become ill while you are in prison, you may be sent to a hospital for medical treatment. While you are in the hospital, you are still in custody. This means that you are still serving your sentence even though you are at a hospital. This is also true if you are hospitalized for a mental health condition.



Alberta Health Services does not cover the costs of eye exams or glasses. If you require either of these things during your incarceration you may be asked to cover these costs.

HOSPITALIZATION FOR MENTAL HEALTH CONCERNS

If you are being held in a hospital because of mental health concerns, there will be regular reviews to decide if you need to remain in the hospital or not. You are allowed to have a lawyer present for these reviews. Legal Aid Alberta can sometimes help you with this. They can be contacted at 1-866-845-3425.

HEALTH CARE EXPENSES

In provincial prisons in Alberta, the Alberta government covers the expenses associated with essential medical services. This includes dental service, if it considered essential; however, Alberta Corrections will not provide extensive dental services prior to release if they determine you can be treated after you are released.

MEDICAL EXAMINATION

You may be examined by a medical examiner during your intake or during your time at a correctional institution. This examination can include one or more of the following:^x

- Dental exam
- Mental assessment
- Blood tests and urine tests
- X-rays
- Anything else that a medical professional deems necessary

⁴⁵ The information above comes from the Corrections Act, Correctional Institution Regulations, and other relevant corrections policy. If you require more information, please submit a request for relevant policy and contact your lawyer.

DO I HAVE TO ACCEPT MEDICAL TREATMENT?

Medical staff need your Informed Consent prior to an examination, assessment, treatment or procedure. Your consent may be implied, expressed orally or in writing. Receiving your Informed Consent means that medical professional must ensure that you:

- Are aware of your right to withdraw consent at any time
- Are free of undue influence, duress or coercion in making the consent decision
- Demonstrate a reasonable understanding of the information provided and the reasonably foreseeable consequences of a decision and a failure to make a decision.
- Are provided an explanation of diagnosis reached; advised interventions and treatments; exact nature and anticipated benefits of the proposed examination, assessment, treatment or procedure; common risks and significant risks; reasonable alternative treatments available, and the associated common risks and significant risks; natural history of the condition and the consequences of forgoing treatment



Important Note: There are certain situations in which medical professionals are not required to obtain Informed Consent, for instance, in emergency situations. The requirement for Informed Consent may also be overridden by a warrant, subpoena, court order or according to applicable legislation (for instance, treatment orders under the Mental Health Act; orders under the Public Health Act; or orders under the Mandatory Testing and Disclosure Act).



PRESCRIBED MEDICATIONS

Generally, if you are on a medication before you are admitted to an institution, it is likely that you will continue on this medication. However, if medical staff at a correctional institution think that a medication is no longer the right medication for you, they may not renew your prescription.

HEALTH CARE IN SEGREGATION

If you are in segregation your health care rights are not any different than if you are in general population. This means you should be seen by nurses, social workers, doctors, and psychologists as necessary. Health care services are not a privilege that can be withheld, they are a right.

POLICY THAT PROTECTS YOUR HEALTH CARE RIGHTS

- The Alberta Corrections Act
- The Alberta Correctional Institution Regulations
- The Alberta Health Care Act
- The Alberta Health Charter

OBSTETRIC CARE⁴⁶

PREGNANCY AND ABORTION

If you are pregnant in prison you should be provided with medical services through Alberta Health Services, and casework assistance through corrections facility staff. If you desire to carry your pregnancy to term, seek an abortion or arrange for an adoption, you should be provided with these same supports.

If you are pregnant while incarcerated you should have access to the following:

- If you deliver your child while you are in custody, necessary care, housing and delivery accommodations should be made for you by the Director of the institution.
- If you are pregnant you should be able to access local agencies that offer comprehensive counseling, if you desire.
- If you choose to have an abortion, corrections staff are expected, in every way possible, to avoid accentuating the difficult nature of the situation.
- If medical authorities recommend the termination of a pregnancy as vital to the life of the person who is pregnant, and they refuse to accept this recommendation, this is their right.



Beyond the obligations of Alberta Corrections, Canada is a signatory of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which affirms its commitment to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation”

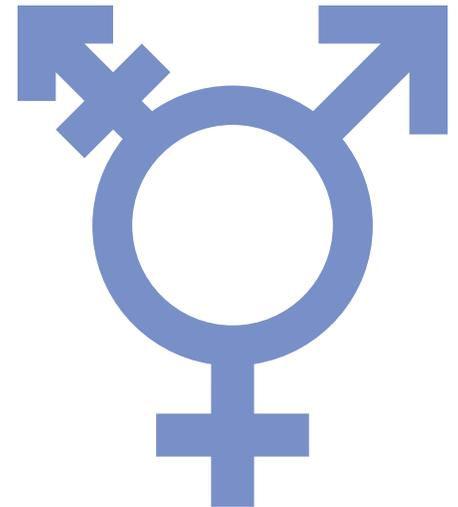
TRANSGENDER INMATES⁴⁷

Transgender identities are nuanced and dynamic, and every individual may have a different understand of what it means to be trans. However, during incarceration it is important to understand how transgender identities are classified by Alberta Corrections. In correctional institutions, transgender inmates are classified as those whose gender identity or gender expression is different from their birth assigned gender. Alberta Corrections understands trans inmates as identified by their outward appearance, external sources, and in most cases, inmate self-identification.

⁴⁶ and ⁴⁷ The information above comes from the Corrections Act, Correctional Institution Regulations, and other relevant corrections policy. If you require more information, please submit a request for relevant policy and contact your lawyer.

RIGHTS OF TRANSGENDER INMATES WHILE INCARCERATED

- Unless there are overriding health and/or safety concerns transgender inmates will be placed according to their self-identified gender.
- Correctional staff are to ensure that steps are taken to maximize privacy and confidentiality related to an inmate's gender identity or history.
- Gender is one of the identity-based categories that the **Alberta Human Rights Act** prohibits discrimination against. As such, trans inmates are to be treated with dignity and respect.
- Trans inmates may identify differently than they did prior to admission to a correctional facility. As such, assumptions about gender identity or placement should not be made based upon previous assumptions by staff.
- Trans inmates are to be provided with clothing that is consistent with their self-identified gender, at the discretion of the institution's Director.
- Trans inmates are to be addressed by preferred names where applicable.
- Trans inmates are permitted to order canteen products consistent with their self-identified gender.



HEALTH RIGHT VIOLATIONS

If you think that your health care rights have been violated, you can file a complaint with the office of the Alberta Health Advocates. They have a Health Advocate for general health problems and complaints, and a Mental Health Advocate for complaints relating to mental health.

THE ALBERTA HEALTH ADVOCATES has authority under The Alberta Health Act to review situations where someone is believed to have acted in a manner that is inconsistent with the principles of the Alberta Health Charter.

THE MENTAL HEALTH PATIENT ADVOCATE has the authority to investigate complaints about a patient who is or has been under one or two admission certificates or renewal certificates, or subject to a Community Treatment Order. To submit a complaint, or for more information, contact the Office of the Alberta Health Advocates

OFFICE OF THE ALBERTA HEALTH ADVOCATES



106th Street Tower - 9th Floor
10055 -106 Street
Edmonton, AB, T5J 2Y2



1-780-422-1812

COMPLAINTS ABOUT MEDICAL PROFESSIONALS

This section provides information about the processes for filing complaints about nurses, doctors, psychologists and social workers.

COMPLAINTS ABOUT NURSES

Complaints can be made about the conduct of nurses through the College & Association of Registered Nurses of Alberta. Your complaint can be submitted by print, mail or fax. If you have questions about the process for filing a complaint, please call the College directly.

YOUR COMPLAINT SHOULD INCLUDE:

- Your name, address, telephone number, date of birth and signature
- The first and last name of the nurse you are making a complaint against
- Specific information about the unprofessional conduct of the nurse (in as much detail possible)

TO SUBMIT A COMPLAINT YOU CAN...

- Write a letter to the Complaints Director
- Submit a Complaint Form (found on the College's website)

COLLEGE & ASSOCIATION OF REGISTERED NURSES OF ALBERTA



Attention: Complaints Officer
11620-168 Street
Edmonton, AB, T5M 4A6



1-780-451-0043
Toll Free: 1-800-252-9392

COMPLAINTS ABOUT DOCTORS

Complaints about doctors can be made to the College of Physicians and Surgeons of Alberta. To submit a complaint you must submit an official complaint form or send a letter. You can find a copy of the official complaint form on the College of Physicians and Surgeons website. Complaint letters must be in writing (typed or hand-written), signed and delivered by hand, mail or by fax. You must also submit a "Release of Information Form" which gives the College permission to access files in order to investigate the complaint. There is no specific time limit to file a complaint, but it is best to file your complaint as soon as you can following an incident.

YOUR COMPLAINT SHOULD INCLUDE:

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

COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA



2700 10020-100 Street NW
Edmonton, AB, T5J 0N3



Toll Free: 1-800-661-4689
Fax: 1-780-420-0651

COMPLAINTS ABOUT PSYCHOLOGISTS

To make a formal complaint about a psychologist or former member of the College of Alberta Psychologists you must submit a complaint form. A complaint form can be obtained by writing or phoning the College of Alberta Psychologist and requesting a complaint package or by accessing one on their website.

All complaints must be signed and submitted in writing. A complaint against a former member must be made within two years from the time they stopped being a member of the College, apart from this there is no time limitation for filing a complaint

COLLEGE OF ALBERTA PSYCHOLOGISTS



2100 Sun Life Place
10123-99 Street NW
Edmonton, AB, T5J 3H1



1-780-424-5070

COMPLAINTS ABOUT SOCIAL WORKERS

Complaints about Socials Workers in Alberta can be made to the Alberta College of Social Workers. You can submit a completed complaint form on the ACSW website or submit a letter. Your complaint must be in writing and signed. Letters should be mailed or delivered in person.

YOUR COMPLAINT SHOULD INCLUDE:

- Your full name, address, and phone number
- The full name of the Registered Social Worker involved, including any known contact information about the social worker
- The details of your relationship with the Registered Social Worker: how you came in to contact with them, how long you have been in contact with them
- The details of the circumstances which led to your complaint, including dates, the names of any witnesses, and any other information relevant to the complaint.
- Specific details regarding the act (or failure to act) that forms the basis of the unprofessional conduct.
- Supporting documentation should be copied and included.

ALBERTA COLLEGE OF SOCIAL WORKERS



Attention: Complaints Director
550, 1070-100 Avenue NW
Edmonton, AB, T5J 3M1



1-780-421-1167
Fax: 1-780-421-1168

**MORE INFORMATION ABOUT COMPLAINTS AND GRIEVANCES
PROCESSES CAN BE FOUND IN CHAPTER 9 OF THIS HANDBOOK**

ARRIVING TO PRISON

5

DETENTION BEFORE COURT⁴⁸

Anyone who is arrested and held in custody has the right to be seen by a justice of the peace or judge as soon as possible (usually within 24 hours of being arrested). The judge or justice of the peace will decide if there is a good reason to hold the person in jail during all of their court appearances (from first appearance until sentencing, if found guilty) or if they should be released into the community while they attend court.

Generally speaking, a person in custody is given time to make necessary phone calls as soon as possible and again, before they leave the police station to go to a Remand Centre. Once you leave the police station to go to the Remand Centre, it can be 12 to 24 hours before they would have another opportunity to place telephone calls.

INTAKE

While each provincial correctional institution is different, when you arrive at a correctional institution you may be asked to provide the following information:

- Your name, date of birth, address, next of kin, where you born, education level, ethnicity, the number of children you are the guardian of
- If you are Indigenous and have lived on a Reserve you may be asked the name of the Reserve
- A physical description (including: weight, height, tattoos, birthmarks)
- Gang involvement or affiliations
- Incompatibles
- Medical information and history, such as health issues or medications (this information will be obtained by nursing staff)

When you go through intake you should also be given an inmate

IF YOUR SENTENCE IS...

2 YEARS OR MORE

you will serve your sentence at a federal institution. All federal prisons follow the same rules, regardless of which province they are in.

LESS THAN 2 YEARS

you will serve your sentence at a provincial prison. Provincial Correctional Institutions follow specific provincial laws. This means that provincial prisons in different provinces may have different rules.

IMPORTANT NOTE

If you are in a provincial prison on a federal sentence (for example, prior to being transferred to a federal prison or while awaiting trial) then the provincial laws apply to you during your time there.

manual, an orientation of the facility, information about programming, and information about your sentence. During your intake process you will also undergo a Security Classification.

MEDICAL EXAMINATION

As discussed in Chapter 4, you may be examined by a medical examiner when you enter an institution, or at any other time during your incarceration.

PERSONAL BELONGINGS

Your personal belongings (including clothing) may be taken from you when you are admitted into a Correctional Institution. You will likely not be able to access these items until your release. Your items will be kept in a safe place, and the institution is to keep a record of all your personal items that are stored.

The Director of an Institution can order that your personal belongings be disposed of at any time if they believe that the clothing is a hazard to health or safety.

WHAT HAPPENS TO ANY MONEY I HAVE WITH ME WHEN I ENTER PRISON?

Any money in your possession when you are admitted into a Correctional Institution is to be deposited in to your Inmate Trust Account so you can access it while you are in prison. Friends and family members can put money in to this account for you. Upon request, you can receive a statement of the money in your Inmate Trust Account.



For more information on your health care rights while you are incarcerated see Chapter 4

If you are transferred from one institution to another, the money in your account is to be transferred to the institution you are being moved to.

WHAT ITEMS WILL I RECEIVE WHEN I AM ADMITTED TO PRISON?

When you go through intake you will likely be given a uniform, an inmate manual, and items that are necessary for you to maintain personal health and cleanliness (typically this includes soap, shampoo, a toothbrush, and a comb).

SECURITY CLASSIFICATION

When you arrive at a Correctional Institution you will undergo a classification process. This process is used to determine what your security level and where you will be housed. This process is also used to determine what programs you will attend related to education, treatment or work. You will be required to participate in whatever programs you are assigned.

Your security classification will be one of the following...

- Minimum
- Medium
- Maximum

WHAT DETERMINES MY CLASSIFICATION LEVEL?

Your classification level is determined based on the following...

- Your physical and mental health
- Any security risks you may pose
- Your behavior

The Institution will have access to some of your records for the classification process. These records can include: medical records, your criminal record and past history of incarceration (including your behavior while incarcerated), and any gang affiliations, and/or people that you cannot be in contact with.

THE IMPACT OF YOUR CLASSIFICATION

Your security level will impact on your level of freedom and access to programming both inside the institution and outside in the community when you are released. Your security classification also determines your living unit.

CAN MY CLASSIFICATION BE APPEALED?

Yes. You have the right to appeal your classification to the Director of the Institution. Following your appeal, if you are not happy with the Director's decision, you can make a complaint to the Ombudsman. The process for making a complaint to the Ombudsman is discussed in Chapter 9.

CAN MY CLASSIFICATION CHANGE?

Yes. Your security level can change while you are incarcerated. It can increase or decrease. Any change in your security level must be based on an assessment of the factors listed above.

DISCRIMINATION AND SECURITY CLASSIFICATION ⁴⁹

There is concern in Canada and internationally about the over-incarceration and over-classification of Indigenous, First Nations, Métis and Inuit people in Canadian prisons. According to Statistics Canada, Indigenous people represent 26% of those admitted to provincial correctional institutions, despite making up only 3% of Canada's total population ⁵⁰. The Canadian Charter of Rights and Freedoms prohibits discrimination against individuals based on race, national or ethnic origin, colour, religion, sexuality, sex, age, or mental or physical disability. If you believe any of these factors have impacted your classification, you can argue that the classification procedure is discriminatory under section 15 of the Charter and may be able to file a complaint with the Human Rights Commission. See Chapter 9 for more information on this process.



PARENTS IN PRISON

6

There is no doubt that parenting while incarcerated is a challenge, even if you are able to see your child. Understanding exactly what kind of custody and access you have over your children will allow you to maintain as much of a relationship with your child as possible during your incarceration.

CUSTODY AND ACCESS

It is important to remember that custody and access rights are considered to be rights of a child, and not of a parent. Your child has a right to have a relationship with their parent(s).

CUSTODY

Custody is not just a matter of who a child lives with. Someone with custody over a child has the right to make major decisions about the child's health, education, welfare and religion. Being incarcerated may cause you to lose custody of your children, but this is not always the case. If you share custody with a partner or a relative (like a grandparent) you may not have to lose custody while you are incarcerated.

Custody comes with specific responsibilities. These responsibilities include: providing day-to-day care and control of the child (food, shelter and clothing); supervising the child's daily activities; and, meeting the required ordinary health, education and welfare needs of the child.



RELEVANT LEGISLATION

FAMILY LAW ACT⁵¹

- Applies to married and unmarried couples
- Uses words such as: custody, guardianship and protection order

DIVORCE ACT⁵²

- Applies ONLY to married and divorced couples
- Uses words such as: custody, access and divorce

CHILD, YOUTH & FAMILY ENHANCEMENT ACT⁵³

- Applies to married and unmarried couples
- Uses words such as: Child and Family Services, intervention, and guardianship

51 Family Law Act, SA 2003, c F-4.5.

52 Divorce Act, RSC 1985, c 3 (2nd Supp).

53 Child, Youth and Family Enhancement Act, RSA 2000, c C-12.

JOINT CUSTODY VS. SOLE CUSTODY



SOLE CUSTODY means that one parent has the ability to make all the decisions regarding a child's needs. Even if you do not have custody, one parent cannot deny the other parent the right to see the child unless there is a court order that says so.



JOINT CUSTODY means that you share the responsibility of making day-to-day decisions about your child with another guardian.

Even if one parent has sole custody, they may not be able to make all the decisions about the children on their own.

A court order may have terms that restrict their powers, for example, by specifying that the custodial parent may not move without the other parent's consent; that the custodial parent may have to consult the other parent before making decisions; or, that the access parent may be allowed to make certain decisions.

ACCESS

Access is a term used in the **Divorce Act**, so, in Alberta, it will only apply to divorcing or divorced parents. Access refers to the time that the parent without custody (or primary care) has with the child. While people who have access (and not custody) to their children do not have as many rights over the child as someone with custody, there are still a number of rights that you can maintain. Five different types of Access are discussed below. The above list does not cover all of the rights you may have over your child.

REASONABLE ACCESS: Parents get to decide between themselves what, when and where access is allowed. If the parents cannot agree, you can go to court and ask for certain access conditions.

CONDITIONAL ACCESS: Certain conditions must be met before the parent requesting access is granted access. This can include attending programs or court ordered rehabilitation.

SUPERVISED ACCESS: The parent requesting access can only visit the child in the presence of another adult approved by the person with custody or the courts.

SPECIFIED ACCESS: The court specifies the days and times that you can visit with your child.

NO ACCESS: If you are considered to be a threat to the best interests of your child, the court can decide that you are not allowed to have access to your child.



Important Note: In the same way that courts can remove custody from you, they can also take away access rights from you, provided their decision passes the "best interests of the child" test.

PARENTS AND GUARDIANS⁵⁴

In the law there is a difference between being a parent and a guardian. You can be a parent without being a guardian, and you can be a guardian without being a parent.

GUARDIANS

Every province has different laws about whether or not a parent is also a guardian of the child. In Alberta, the child's mother is always a guardian. The father of the child may be a guardian if he acknowledges that he is the father of the child; and he demonstrates an intention to assume responsibility for the child within one year of finding out that the mother is pregnant or that the child has been born. Specifics of this can be found in the **Family Law Act**.

If a guardian abandons or neglects their child, then Children and Family Services may become involved and take steps to remove the children or supervise the guardians. And, if guardians cannot agree on how the powers and responsibilities will work between them, then the court can make that decision for them in a court order called a Parenting Order or a Custody and Access Order

GUARDIAN RESPONSIBILITIES

- Be involved in making significant decision about the child
- Have enough time with the child to exercise their powers and responsibilities
- Take care of the child's physical, psychological and emotional development
- Make sure the child has medical care, food, clothing and shelter

⁵⁴ The information in this section all comes from "Families and the Law" as published by CPLEA.

2 IT IS POSSIBLE FOR A CHILD TO HAVE MORE THAN TWO GUARDIANS

PARENTS

In a relationship between a man and woman, the mother who gives birth to the child is a parent. A male partner will be presumed to be the parent if he was married to the mother at the time of the child's birth, acknowledged being the father, or registered as the father on the child's birth certificate. Being a child's parent means you have obligations to provide the necessities of life (food, clothing, shelter, medical aid) to a child under the age of sixteen. For more information on this consult the **Family Law Act**.

PARENTING AGREEMENTS VS. PARENTING ORDERS

Parenting is a term used in the Family Law Act when guardians do not live together. Normally, when guardians live together they share all of the powers, entitlements, and responsibilities for their children. But, when they live apart, they must come to terms with how time with the child will be shared and how decisions will be made.

PARENTING AGREEMENTS In some cases guardians work together and form a verbal agreement about how much time the child will spend with each of them, and how decisions will be made. In other cases, the will enter in to a "Parenting Agreement" which is a more formal contract outlining the same things.

PARENTING ORDERS If parents are not able to agree on how time and responsibilities for their child will be divided, they can go to court, where a judge will hear from both of them and make a decision about how much time the child will spend with each guardian and how decisions will be made. This information is then formally set out in a Parenting Order.

CONTACT

Contact simply means that you can spend time with the child. The time you spend with the child might be in person, by telephone, by mail or email. Through Contact, you would have no decision making powers with respect to the child. If you would like to apply for Contact, please consult a lawyer.



TO GRANT CONTACT A JUDGE MUST BE SATISFIED THAT...

- Contact between the child and the person is in the child's best interest
- The child's physical, psychological, or emotional health may be put in danger if the contact is denied
- The guardian's denial of contact is unreasonable

"BEST INTERESTS OF THE CHILD"

The courts use a test called the "Best Interests of the Child" when they make decisions about your child. Everything that the courts decides will be done in an effort to do what is best for the child. This test is very broad but very powerful, and in some instances it can even have the power to override a parents' Charter rights.

For example, if two people in Alberta have custody of a child and one person wants to move with their child to British Columbia but the other person does not want the child to move, the first parent is unlikely to be allowed to move with the child to British Columbia.

FACTORS USED TO DETERMINE THE "BEST INTERESTS OF THE CHILD"

- The protection of the child's physical, psychological and emotional safety and needs (taking in to consideration the child's need for stability as well as the child's age and stage of development)
- The child's cultural, linguistic, religious and spiritual upbringing and heritage
- The child's views and preferences
- The benefit to the child in developing relationships with both guardians
- The nature and strength of existing relationships
- Any history of family violence
- Any civil or criminal proceedings that may be relevant to the child's safety or well being

CHILD PROTECTION AND INTERVENTION

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

In Alberta, the **Child, Youth and Family Enhancement Act** gives Alberta Child and Family Services the power to take measures to protect children from abuse and neglect. They are mandated to provide care for children who are found to be "in need of intervention"

DOES MY CHILD HAVE A SAY IN MATTERS? A child who is able to express an opinion on matters affecting them must have counsel appointed to represent them and will have their opinion considered when decisions are made about their care. Generally, this applies to children over the age of 12. Children under 12 may have counsel appointed to represent them, even if their opinion is considered to hold less weight.

FACTORS USED TO DETERMINE IF A CHILD IS “IN NEED OF INTERVENTION”

The **Child, Youth and Family Enhancement Act** states a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security, or development of the child is endangered, for instance, in any of the following scenarios:

- A child who has been abandoned or lost
- A child whose guardian is dead and who has no other guardian
- A child whose guardian is unable or unwilling to provide the child with the necessities of life
- A child who faces a real risk that they will be physically and/or sexually abused
- A child who has been emotionally injured by their guardian or whose guardian is unable or unwilling to protect the child from physical injury, sexual abuse, emotional injury or from cruel and unusual treatment or punishment
- A child who is totally unmanageable and whose guardian cannot provide the child with adequate care and supervision

WHAT HAPPENS IF MY CHILD IS FOUND TO BE “IN NEED OF INTERVENTION?”

The court's first priority is to ensure that the child's best interests are protected and served by the intervention. In order to do so, the court will compare the benefits and risks to the child if they remain with their present guardian, or if they are apprehended and move into the custody and care of the Director of Child and Family Services.

To determine if a child is in need of intervention the court considers if the child is a valued member of their family; has stable and permanent relationships; has access to educational resources and health care; and, lives in a safe, nurturing environment

COURT ORDERS

The list below provides basic summaries of 5 types of Court Orders that can put in place about your child. If you have specific questions, please contact a lawyer.



APPREHENSION ORDER

An Apprehension Order allows the Director of Alberta Child and Family Services to take the child from the custody/home of their guardian when there are reasons that a child is in need of intervention. After a child has been apprehended, the Director has full custody of the child until the child is legally returned to their guardian, or there has been an application made to the court for a change.

SUPERVISION ORDER

In some situations, the Court may decide that a child should be returned to the custody of their guardian, but that more supervision and protective service is needed for the survival, security and development of the child. Typically, a Supervision Order will have terms and conditions, and will consist of planned visit by a social worker in the home of the child and their guardian. A Supervision Order will often have terms and conditions that must be followed.

TEMPORARY GUARDIANSHIP ORDER (TGO)

The Court may grant a Temporary Guardianship Order (TGO) if it is determined that a child is in need of intervention and that the child is at risk if they stay in the custody of their current guardian. A TGO can be granted when the Court believes that the child will be returned within a reasonable time to the custody of their guardian, or, the child is 16 years of age or older and may be able to live independently. In the case of a TGO, the Director becomes a joint guardian of the child.

While the child is under the TGO, a guardian or any other person living in the residence of the child may be required by the court to submit to a parenting or psychological assessment before the child can be returned. Generally, a TGO can only last for a total of 6 months if the child is under 6 years old, or 12 months if the child is 6 years of age or older. These time periods can be extended by the court if there are good reasons for doing so.

PERMANENT GUARDIANSHIP ORDER (PGO)

If the court finds that the survival, security and development of a child will not be protected well enough by their guardian, the court may grant a Permanent Guardianship Order (PGO). A PGO differs from a TGO because it is granted in situations where the court has determined that the possibility of the child being returned to the custody of their guardian within a reasonable time is unlikely. Under a PGO, the Director of Child and Family Services becomes the sole guardian of the child.

Arguing against a PGO after it is ordered is very difficult, but it is possible. Parents can appeal up to the 13 months after a PGO has been granted to terminate the order. Disputes regarding PGOs must be done through an application for appeal in the Court of Queen's Bench or judicial review.

SECURE SERVICES ORDER

A Secure Services Order gives the Director of Child and Family Services the authority to confine a child in a Secure Services Facility for a period of no more than 5 days. A Court will grant a Secure Services Order when it is satisfied that the child is in a condition that presents an immediate danger, where confinement is necessary to stabilize and assess the child, or where less serious solutions are not available. A Secure Services Order is usually a last resort and a court will not decide to use a Secure Services Facility unless they have no other choice.

55 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577.

MY CHILD'S RIGHTS

DOES MY CHILD HAVE RIGHTS?

Yes. Through the **Child and Family Enhancement Act**, some of your child's rights are protected. The Act says that when a decision is made that will affect a child, the child's wishes will be taken in to consideration. A child also has the right to have their wishes heard directly and the right to have a spokesperson to speak on their behalf. A child's right to have someone speak on their behalf is also protected in the Charter of Rights and Freedoms.

Another way your child's rights are protected is through the United Nations Convention on the Rights of the Child, which Canada is a signatory to. While being a signatory on this Convention is not legally binding, you may be able to use the articles it outlines to advocate for yourself and your child.

The Supreme Court of Canada has also recognized that keeping a child from their parents infringes on the child's right to security of the person, which is protected by Section 7 of the Charter of Rights and Freedoms. This means that if you believe your child is being kept from you for arbitrary or unfair reasons, you might be able to argue that your lack of access to your child violates the child's rights pursuant to Section 7 of the Canadian Charter of Rights and Freedoms.

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD ⁵⁵

The UN Convention on the Rights of The Child outlines various rights that children should be guaranteed. Concerning a child's relationship with their parent, the convention says that "Children also have the right to know and, as far as possible, to be cared for by their parents" and "the right to stay in contact with both parents, unless this might hurt the child".

CAN MY CHILD COME VISIT ME IN PRISON?

Children are allowed to visit their parents while they are incarcerated, if the parent has access rights. However, children under 18 yearsold must be accompanied by an adult when they visit you. How often you have visits with your child usually depends on how far your children are, and whether someone is willing to bring them to you.

Courts are able to order that parents should have no access to their children, because, as earlier mentioned, all decisions are made according to the judge's interpretation of what is in the best interest of the child. Still, there are examples of prisoners maintaining access to their children even under extreme situations. For example, a father who was able to maintain telephone access with his children even though he was in jail for killing their mother.

The Ministry of Child and Family Services has the authority to limit your contact with your child if they believe it is in the child's best interests. The Minister is allowed to prohibit any person (including a parent) from visiting, writing to, telephoning or otherwise contacting the child. However, unless they have a good reason for doing so, a parent is to be given reasonable access to their child.

Canada has the obligation under the United Nations Convention on the Rights of the Child to give parents an opportunity to participate and make their views known if a child is being separated from his or her parents. You may also be able to use laws such as the Charter to argue that you should have access to your child. An example of this is one case in which a woman argued that being kept from her newborn amounted to cruel and unusual punishment under section 12 of the Charter. Sadly, she lost the case, but the Judge said that this was because she was a "flight risk" and was in a secure custody unit. This might leave room for other women who are not considered "flight risks" and who are not in a secure unit to be successful while making a similar argument.

The Supreme Court of Canada has certainly recognized that the apprehension of child a can interfere with the parents' right to security of the person under the Charter. Another Charter argument that could be useful is the Section 2(d) right of freedom of association. You may be able to argue that you have the right to associate with your children, and that limiting your ability to interact with them is an interference with your Charter rights. Remember that children have a right to access their parents. Your child can argue that his/her rights are being interfered with if they are not allowed to see you.

If you have questions about any of the information above please contact a lawyer.

WHAT IF I DO NOT AGREE WITH A DECISION MADE ABOUT MY CHILD?

If you do not agree with a decision made about your child, you have the option to appeal the decision. Any order made under the **Child, Youth and Family Enhancement Act** can be appealed to the Court of Queen's Bench within 30 days of the order being made or renewed.

While appealing a Court's decision could lead to a different result, it is difficult to do and is always taking a risk. Prior to any appeal or administrative review it is highly recommended that you speak to a lawyer to determine whether your circumstances are right for an appeal or review.



AS A GRANDPARENT DO I HAVE THE RIGHT TO SEE OR TAKE CARE OF MY GRANDCHILDREN?

No. Unfortunately, nothing in the **Family Law Act** protects grandparents' rights to see their grandchildren. The law does not state that children have a right to a relationship with the grandparents (or vice versa). And, a parent or guardian can prohibit grandparents from seeing their grandchildren.

There are, however, options for grandparents when guardians (often parents) and grandparents cannot agree on provisions for contact. Grandparents are able to apply to the court for a Contact Order. More information about this can be found earlier in this Chapter.

In some situations, grandparents can also apply to have care through the "Kinship Care" program or by becoming their guardian.

WHAT IS KINSHIP CARE?

Kinship Care is a program in which children who have already come in to the care of Child and Family Services are placed with extended family members, such as grandparents, or someone with whom they have a significant relationship. The role of the Kinship Caregiver is to take on the everyday responsibilities of a parenting including:

- Providing food, housing and the necessities of life
- Attending medical appointments and helping child follow through with treatment and medication
- Involvement in the child's school
- Providing children with a safe and stable environment

Although Kinship Care allows children to live with their grandparents, they are still technically in the custody of Child and Family Services. Applying for Private Guardianship of a child would allow a grandparent to be legally responsible for taking care of a child

If you would like more information about becoming a Kinship Caregiver or guardian for your grandchild a helpful place to start is by contacting the Family Law Information Centre.



FAMILY LAW INFORMATION CENTRE

Toll Free: 310-0000
Edmonton: 1-780-415-0404
Calgary: 1-403-297-6600
Elsewhere in Alberta:
1-403-297-6600

DISCIPLINARY ACTION 7

As we discussed in Chapter 3, the **Alberta Corrections Act** and the **Correctional Institution Regulations** outline the rules you and corrections staff need to follow. The correctional institution will also have its own institutional rules that need to be followed. It is important to read over these laws and policies to be sure you are familiar with them.

DISCIPLINARY CHARGES

If you are charged with a major offense while you are incarcerated you will have a disciplinary hearing. If you are facing a major offense, you have the right to speak to a lawyer and you may ask to have a lawyer present at your hearing. The decision to permit you a lawyer at your hearing will be based on the complexity of the case, how well you can represent yourself, and the severity of the penalty you are facing. If you are allowed to have a lawyer, Legal Aid may be able to provide you one for free or at a low cost.

A disciplinary hearing will be run by a hearing adjudicator who is not an employee of the institution. This is to make sure you get a fair hearing. At your hearing you will be read your charge and then given a chance to enter your plea. You are also allowed to make a statement if you wish. The hearing adjudicator will tell you if you are found guilty or not guilty and explain your sentence to you (if you get one).

In order to find you guilty at a disciplinary hearing in an Alberta provincial prison, your guilt needs to be shown based on the balance of probability—this means that it needs to be demonstrated that you are very likely to have committed the offense you are being accused of. This is very different from how it works in the court system, where they are required to show you committed a crime beyond a reasonable doubt.

DISCIPLINARY HEARINGS

If someone thinks you have broken a rule, you may have a disciplinary hearing. If this happens you should get three things:

- A Notice to Inmate of Disciplinary Board Hearing Procedure
- A copy of both sides of the charge sheet
- Copies of related documentation and evidence

Make sure you read everything over very carefully and keep it all in a safe place.



PUNISHMENTS

If you are charged with an offense you may be given any of the following as punishment:

- A reprimand
- The loss of one or more privileges
- Confinement to a disciplinary unit for up to 14 days
- Forfeiture of earned remission for a period of not more than 30 days
- An assessment towards payment for willful or negligent damage to public or private property
- Extra duties of not more than 4 hours per day in addition to the normal work period
- Based on the severity of the crime, you may also face either institutional or criminal charge

THE RIGHT TO APPEAL

If you do not agree with your conviction or the sentence you received you have the right to appeal. You will need to submit an appeal in writing within 7 days.

To do this you need to submit a "Request for Interview" form to the Director with all the information about your case, why you are appealing and what kind of result you want to see happen.

The Director of the Institution can also submit an appeal about your case to an appeal adjudicator as well. The appeal will be heard by an appeal adjudicator. Just like the hearing adjudicator, the appeal adjudicator is not an employee of the institution.

SEGREGATION

Segregation is a very controversial issue, and there are some groups that want this practice banned in Canada. It is important for you to have a good understanding of what segregation means and what the rules are for segregation.

The United Nations believes that isolation should not be used for young people or for people dealing with mental health issues. The UN also says that the use of solitary confinement lasting longer than 15 days can be considered "torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances". Despite this, inmates in Canada sometimes spend longer than this (sometimes much longer) in solitary confinement. While disciplinary segregation has strict restrictions on length of stay, administrative segregation has very different rules.

DISCIPLINARY SEGREGATION

This is the kind of segregation you will experience if you have been sentenced to a disciplinary unit after a hearing. You must have been charged with a major offense to be placed in disciplinary segregation. While on the disciplinary unit, you will lose some of your privileges, such as the use of the radio or television, visits to the canteen, visits from family and friends (but not from your lawyer), and your incentive allowance.

You can be placed in a disciplinary unit before your disciplinary hearing. If this happens you must get confirmation of your charges from the hearing adjudicator within 72 hours. All of this comes from Section 52(1) of the Alberta Correctional Institution Regulation.

ADMINISTRATIVE SEGREGATION

Administrative segregation can happen for a number of reasons, and it has different rules than disciplinary segregation. For example, you can be placed in administrative segregation if the institution believes it will keep you or someone else safe.

You should not be placed in administrative segregation without the approval of the Director of the correctional institution. It is important to note that administrative segregation is not intended as a punishment and regular privileges should not be unduly denied while you are in administrative segregation.

REASONS YOU MAY BE PLACED IN ADMINISTRATIVE SEGREGATION

- You are awaiting appearance before a hearing adjudicator, where continued placement in general population is considered unsafe
- Your placement in general population is considered unsafe based on new information or changing offender circumstances
- There is documented information about you that prior disciplinary measures, including punishment levied by the hearing adjudicator, have not corrected your problem behavior

Important Note: Unless there are compelling reasons to the contrary your canteen privileges, regular exercise, personal property, visiting, correspondence, reading material and access to regular clothing should not be compromised while you are in administrative segregation.



THE FOLLOWING STAFF SHOULD VISIT SEGREGATED UNITS...

- Nurses: every 24 hours
- Psychologists: once every workday
- Assigned Correctional Services Officer: once every work week
- Living Unit Supervisor: once every shift
- Living Unit Peace Officer: shall speak to the offender when they are awake at least every 30 minutes

SEGREGATION REVIEWS

By law, you are entitled to have the status of your segregation reviewed every 14 days. You are allowed to have a lawyer present at these reviews

TREATMENT BY STAFF

While you are incarcerated there are certain standards of treatment you can expect from corrections staff. There are exceptions to these situations but these are general standards you can expect.

In their treatment and interactions with inmates, corrections staff are expected to:

- Not use humiliating tactics or harassing techniques
- Deal with inmates in a manner designed to encourage the self-respect and personal responsibility of inmates

STAFF USE OF FORCE

Concerning the use of force towards inmates, corrections staff are expected to:

- Not use force unless it is essential
- When use of force is essential, no more force is to be used than is necessary to maintain or restore order or to stop acts of violence

SEARCHES

CAN I BE SEARCHED?

Yes. Searches can be performed when you enter a correctional institution, and whenever required by the Director. Searches can be conducted in any way the Director requires; however, searches must be carried out as respectfully as possible.

It is not just your living space and your body that may be searched, anyone entering or leaving an institution can be searched, including any items they bring in or out with them. This means that your visitors may also be subjected to searches.

CAN I REFUSE TO BE SEARCHED?

No. It is an offense under the **Correctional Institution Regulation** to refuse to submit to a search. However, if you think that your rights have been violated during a search you should contact a lawyer or the Ombudsman's office (we will go into more detail about this later).

EXTERNAL BODY SEARCHES

An external body search involves searching the outside of your body. If an external body search is being performed, it is to be performed by a staff member of the same sex as the inmate whenever possible.

STRIP SEARCHES

A strip-search requires that you undress completely and personally expose external areas of body orifices for visual inspection.

During a strip-search your clothes will also be examined for any articles that may have been concealed.

Strip-searches will normally be conducted by corrections staff who are the same gender as you, but there may be exceptions, for instance, in emergency situations. Any instance where a strip-search is conducted by a corrections staff of a different gender than you, it must be fully justifiable and documented on every occurrence.

All strip-searches should be conducted with two guards present. At minimum, the primary guard should be the same gender as the inmate. If the second guard is not the same gender as the inmate, that person is expected to take a position so that the primary guard is visible, but the inmate is not directly observable.

Strip-searches should occur in an area that ensures privacy from all other persons except the searching officers.

Strip-searches may be conducted if a person:

- is believed to be concealing contraband
- is being admitted to an institution
- is moved to segregation
- is isolated due to suicide risk, self-harm or risk to others
- is preparing to be transferred

INTERNAL BODY SEARCHES

Internal body searches involve searching inside your body cavities, internal searches must be performed by a physician and there must be an employee present that is the same gender as the inmate. Under no circumstances will internal body searches be done by anyone other than a physician.

WILL I BE SEARCHED BY A GUARD OF THE SAME GENDER?

Whenever possible, you should be searched by a member of the same sex. However, cross-gender frisking or pat-downs of offenders may occur in emergency situations. Male staff may search the outer garments of female inmates and have them turn their pockets out for observation.

EXPECTATIONS OF STAFF DURING SEARCHES

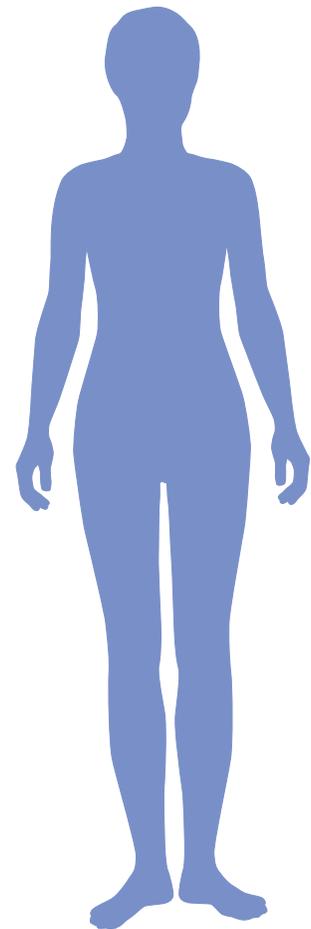
During searches, guards are expected to exercise professionalism and sensitivity to the greatest extent possible. They are expected to remain cognizant of the sensitive nature of the procedures and conduct the search in an area and a manner to reduce the potential for embarrassment and humiliation for those who are incarcerated.

STRIP-SEARCHES SHOULD OCCUR IN AN AREA THAT ENSURES PRIVACY FROM ALL OTHER PERSONS EXCEPT FOR THE SEARCHING OFFICERS

GENDER SPECIFIC STAFFING

Female inmates should be supervised by guards of the same gender. Male guards are permitted to observe female inmates only in the following situations:

- emergency situations
- senior administrative review of incidents
- where operational circumstances dictate (for the least amount of time possible)



When you are incarcerated you can expect guards of the same gender as you to do the following:

- supervise change areas where you are required to partially or fully undress, shower, or strip-search
- supervise toilet and shower areas where guards are in full view of showering people
- strip searches (except for in emergency situations)

TRANSFERS

BETWEEN INSTITUTIONS

You may be transferred from one Correctional Institution to another. This may happen after you are sentenced or if it is believed that the transfer will ensure the safety of yourself, others, or the institution.



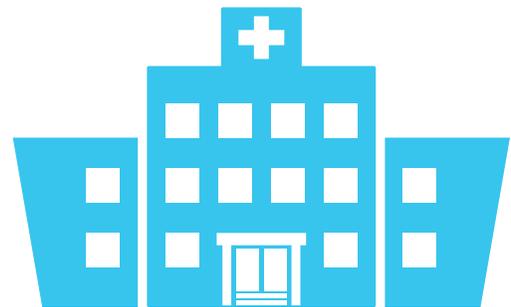
BETWEEN UNITS

You may be transferred from one unit to another within a Correctional Institution. If you are transferred internally from a unit with less security and restrictions to a unit with more security and restrictions, staff must verbally tell you why you are being transferred. If you want to appeal this, you can give a "Request for Interview" form to the Director stating your case.



TO A HEALTH FACILITY

You can be transferred because of a physical illness or because of a mental health condition under the Mental Health Act. If you are transferred to a hospital, you are still considered to be in custody and will continue serving your sentence.



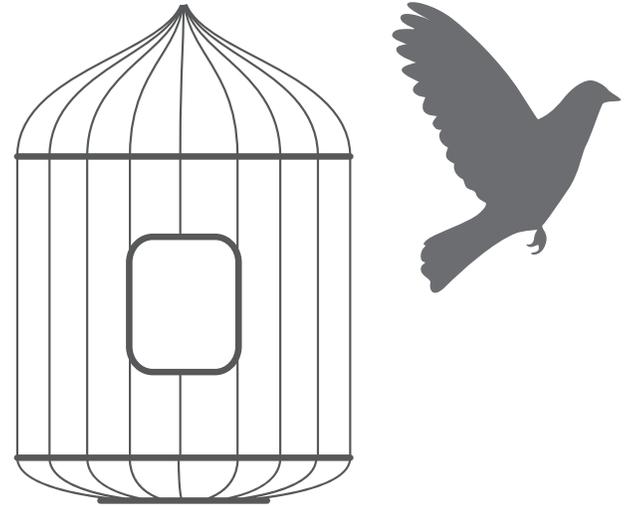
IF YOU ARE IN A PROVINCIAL INSTITUTION BUT ARE AWAITING TRANSFER TO A FEDERAL INSTITUTION YOU MAY BE KEPT SEPARATE FROM PROVINCIALY SENTENCED INMATES.

EARNED FREEDOMS 8

TEMPORARY ABSENCES

Temporary absences are short periods of time that you can spend away from the prison. The absence needs to be for a specific reason. Usually, these reasons are compassionate (for example, to attend a funeral), medical, or for rehabilitation purposes (for example, attending programming that will help you when you are released). While you are on a Temporary Absence, you are still in custody.

You must apply for a temporary absence through your caseworker. You will have certain conditions that you must follow while you are on a Temporary Absence. Once your absence is approved you will be required to sign a document saying that you agree to the conditions before you leave.



There are two kinds of Temporary Absences:

- Escorted Temporary Absences (ETAs)
- Unescorted Temporary Absences (UTAs). Generally, you will be required to start with ETAs.

People in provincial prisons are typically eligible for Escorted Temporary Absences (ETAs) after they have served 1/6th of their sentence. People in provincial prisons may be eligible for Unescorted Temporary Absences (UTAs) after successfully completing ETAs.

Only sentenced inmates are eligible for Temporary Absences. If you are still on remand status, you will have to wait until you are sentenced. Depending on your charges, you may also be required to serve a certain amount of your sentence before you are eligible.

For more information regarding your eligibility for Temporary Absences and how to apply, submit a request form to talk to your caseworker.



Important Note: Be patient! Applying for, and being granted a Temporary Absence is not something that happens overnight. This process can take one month from the date you submit your request to the date you are approved. So, start this process sooner rather than later!

EARNED REMISSION

Once you are sentenced and transferred to the center where you will be serving your time you should be given your earliest Temporary Absence possibility and your earliest possible Release Date.

Through the Earned Remission Program you are able to earn credits that allow you to reduce the amount of time you must spend in custody. Basically, it is time off for good behavior. If you behave well, get involved in programs and do not break rules you can earn up to 15 days of credit for every month served. This means that you may be able to get released after serving only 2/3rds of your sentence.

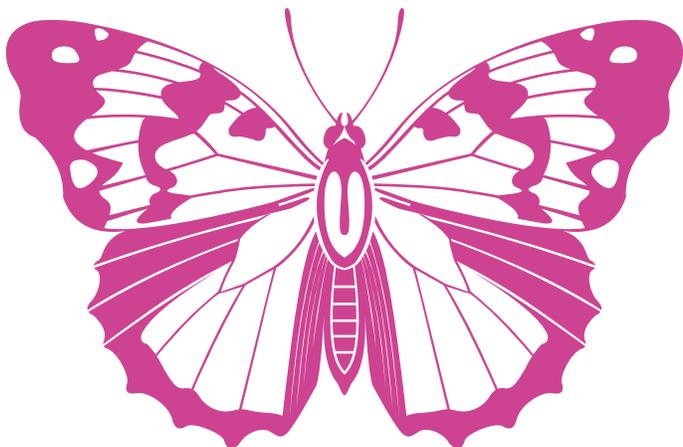
You should be told what the earliest date you can be released on if you earn every possible remission day and do not lose any of them.

To Earn Remission You Must...

- Obey all rules of the institution
- Actively participate in all programs you are assigned to
- Actively participate in any employment programs required of you
- Comply with conditions of Temporary Absences if you go on ETAs or UTAs

You May Not Get Remission If..

- You do not follow the rules of the institution
- You fail to participate in assigned programs
- You fail to comply with conditions of ETA/UTAs



Important Note:

Remission is for provincially sentenced inmates only. This information does not apply to anyone while they are on remand status.

IF YOU BREAK THE RULES OF THE INSTITUTION OR GET DISCIPLINARY CHARGES YOU MAY LOSE REMISSION DAYS THAT YOU HAVE ALREADY EARNED. IF THIS HAPPENS TO YOU, YOU SHOULD BE INFORMED OF THE NUMBER OF REMISSION DAYS YOU DID NOT EARN OR THAT YOU LOST, WHY YOU LOST THEM, AND WHAT YOUR UPDATED EARLIEST RELEASE DATE COULD BE.

PAROLE

Parole is a conditional release from custody where you live in the community. Parole is less restrictive than Temporary Absences because there are fewer conditions you must meet. Parole is the final bridge between incarceration and your return to the community. There are two types of Parole: Day Parole and Full Parole.

DAY PAROLE

Day Parole (DP) allows you to be in the community in preparation for Full Parole or Statutory Release. When you are on Day Parole you typically return to a community-based residential facility or a halfway house each night. The Parole Board can impose special conditions on your day parole.

You are eligible for day parole 6 months before your Full Parole Eligibility Date (PED) or 6 months into your sentence, whichever is greater.

FULL PAROLE

Full Parole (FP) allows you to serve part of your sentence under supervision in the community under specific conditions. Usually you will go on Full Parole after successfully completing Day Parole. Typically, when you are on Full Parole you are able to live in a private residence.

HOW DO I APPLY FOR PAROLE?

To be considered for Day Parole, you must submit an application to the Parole Board. You can get this application from your Parole Officer, who will give your completed application to the Parole Board.

For Full Parole you will automatically be scheduled by law for a Full Parole Review within 6 months of your eligibility date. If you do not know your eligibility dates, ask your Parole Officer.

HOW ARE PAROLE DECISIONS MADE?

Parole decisions are made by Parole Board members who review each case individually through an in-office file review or a face-to-face hearing with you and your parole officer.

WHAT INFORMATION IS USED TO MAKE PAROLE DECISIONS?

When the Parole Board is making a decision they consider all relevant information about you including:

- Information from the police, courts, Crown attorneys, mental health professionals, correctional authorities, private agencies, and victims of crime
- Judges' sentencing comments or recommendations
- Employment history
- Risk-assessments

PAROLE BOARD DECISIONS

The Parole Board considers two things when making conditional release decisions, whether:

- You will not present an undue risk to society before the end of your sentence
- Your release will contribute to the protection of society by facilitating your return to the community as a law-abiding citizen

THE PAROLE BOARD OF CANADA (PBC) IS IN CHARGE OF GRANTING, DENYING AND REVOKING PAROLE FOR PEOPLE WHO ARE INCARCERATED IN ALBERTA.

PAROLE BOARD RISK-ASSESSMENTS

In their risk-assessments the Parole Board will consider:

- Your social and criminal history, any systemic or background factors that may have contributed to your involvement with the criminal justice system
- The reasons for and type of offence(s) you have been charged with, and your understanding of the offence and any past offenses
- Any progress you have made through participation in programs
- Your behavior in the institution and while on previous conditional releases
- Any victim statements
- Your release plan and community supports

APPEALING PAROLE BOARD DECISIONS

If you are not happy with a decision made by the Parole Board you have 60 days from the date of the decision to appeal to the PBC Appeal Division in Ottawa

STATUTORY RELEASE

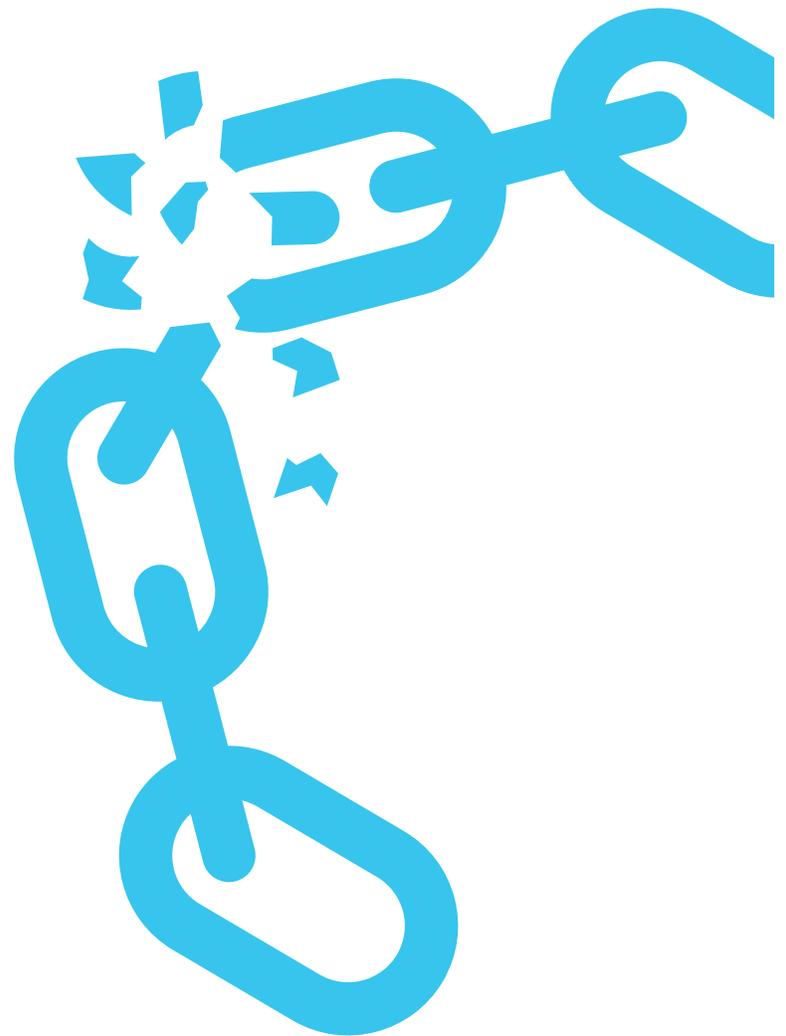
Statutory Release is your mandatory release by law. It is not parole and it is not a decision of the Parole Board.

By law, most people who are incarcerated must be released with supervision after serving 2/3 of their sentence, if parole has not already been granted.

Upon Statutory Release you are typically required to follow standard conditions. If you violate the conditions of your release or are seen to be a risk to the public you can be returned to custody.

CONDITIONS OF RELEASE

The standard conditions of release include reporting to a parole officer, obeying the law and keeping the peace, not owning or possessing a weapon, and reporting any change in family, domestic or financial situation to their parole officer.

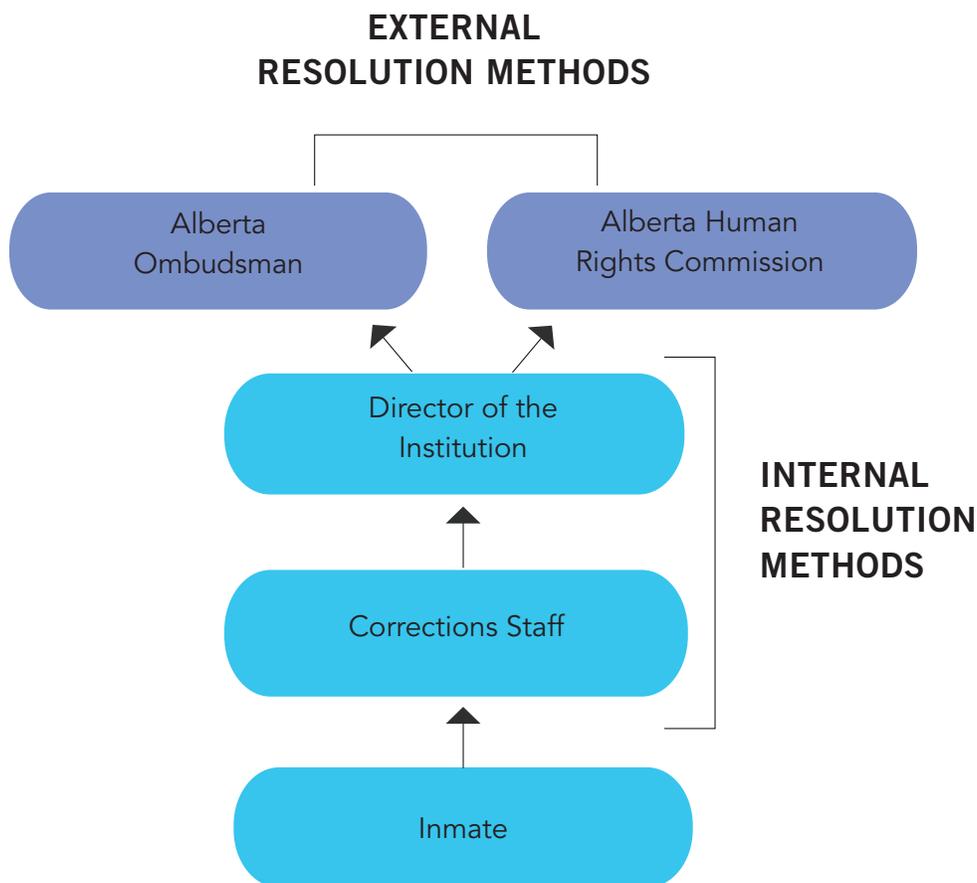


COMPLAINTS & GREIVANCES 9

It is very discouraging to experience an abuse of your rights, especially in a setting where you can often feel powerless. However, there are options available for you to protect your rights when you feel that they have been violated.

When dealing with any concerns it is best for you to first try to resolve your issue at the “lowest” level first, and then escalate things to “higher” level remedies if you do not get the help or answers you are seeking.

The chart below offers an illustration of the general avenues for complaints related to provincial correctional institutions in the order that they should be pursued.



RECORD EVERYTHING!

If you are dealing with a problem, it is a good idea to keep a record of all of the information that is important to your issue and all of the things that you have done to deal with it. For example, keep copies of any interview request forms and keep a record of dates and conversations held while trying to resolve your issue. Written documentation will make a stronger case for you and will help you if you do have to go to the Ombudsman or the Human Rights Commission for help, as it shows that you have already made an effort to fix the problem.



INTERNAL RESOLUTION

Internal resolution methods are ways you can work to resolve your issue and advocate for yourself within a correctional institution. Typically, internal resolution methods should be pursued before you escalate your concern to external resolution methods. The two options for internal resolution in provincial correctional institutions include: speaking to corrections staff or writing to the Director of the institution.

OPTION 1: SPEAK TO CORRECTIONS STAFF

If you can resolve your problem directly with the corrections staff involved, that is great. However, this may not be possible if your concern is related to the behaviour or actions of corrections staff.

OPTION 2: WRITE TO THE DIRECTOR OF THE INSTITUTION

If you are unable to resolve your issue directly with corrections staff, the next step you might pursue would be to write a letter to the Director of the Institution.

WRITING THE DIRECTOR OF THE INSTITUTION

If you decide to write a letter to the Director of the correctional institution, provide as much detail as possible about the who, what, when, where and why. When you are writing your letter, consider the questions below.

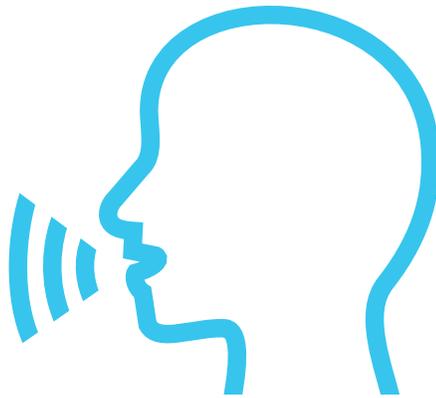
- **WHO:** Who is your complaint about? Whose action/inaction are you concerned about? Are there specific individuals involved in the situation? Provide as much information about those involved as you can (ie. their name, identification number, etc.)
- **WHAT:** What are the fact? (Do not make things up to try to fill in missing blanks) What is the relevant law, regulation or policy? (ie. Corrections Act or Correctional Institution Regulations) Was there a breach of this law, regulation or policy? What outcome would you like to achieve?
- **WHEN:** When did the incident(s) occur? Provide as much detail about the time and date as possible.
- **WHERE:** Where did the incident occur? Provide as much detail about where the incident occurred as possible (the Institution, unit, etc.)
- **WHY:** Why are you writing a complaint? If the problem involves discrimination (based on race, religion, gender, sexual orientation, etc.) make that clear. This will alert Corrections to the fact that your complaint may implicate the **Alberta Human Rights Act**.

Note: When you are writing to the Director consider if the issue you are complaining about is within the control of Corrections. Some things you deal with may not be in Corrections control and will require different actions to deal with. For instance, a complaint about Edmonton Police Service will require a complaint submitted to EPS directly.

EXTERNAL RESOLUTION

There are two major groups that can help you with complaints related to rights violations in provincial correctional institution: The Alberta Ombudsman and The Human Rights Commission.

Places like the Alberta Ombudsman and the Human Rights Commission will usually make sure that you have tried to resolve your complaint internally (within the institution) before you come to them for help. Even if you feel like it may not get you anywhere, it is still a necessary part of the process.



THE ALBERTA HUMAN RIGHTS COMMISSION

The Alberta Human Rights Commission exists to support a law called the **Alberta Human Rights Act**, which was written to ensure that Albertans are protected from discrimination. They accept complaints about rights violations based on things like: age, ancestry, colour, family status, gender, marital status, mental disability, physical disability, place of origin, race, religious beliefs, sexual orientation and source of income. If your complaint does not fall under the discrimination categories listed for the Alberta Human Rights Commission, you should go to the Ombudsman for help. Information on filing a complaint with the Alberta Human Rights Commission can be found on the next page.

THE ALBERTA OMBUDSMAN

The Ombudsman's job is to ensure that Albertans are treated fairly by public services and the people who work for them. This includes provincial correctional institutions and corrections staff. The Ombudsman does not work for the government—this is to make sure that anyone with a complaint gets a fair result. Information on filing a complaint with the Ombudsman can be found on the next page.

FILING A COMPLAINT WITH THE ALBERTA

WHAT HAPPENS IF THE PERSON I AM COMPLAINING ABOUT SEES MY COMPLAINT?

It is illegal for anyone to retaliate against someone who has made a complaint to the Alberta Human Rights Commission or the Alberta Ombudsman. If you think that you are being treated badly by someone you have made a complaint about because of your complaint, contact the Human Rights Commission or the Ombudsman. Try your best to keep a record of what has happened.

WHAT IF I WANT TO CHALLENGE A LAW OR POLICY I THINK IS UNFAIR?

Like we learned from reading about *Sauvé vs Canada* in Chapter 2, it is possible to change unfair laws in Canada. If you think that a law is unfair because it discriminates against you, you could issue a Charter challenge. This is how *Sauvé vs Canada* came in front of the courts.

OMBUDSMAN

It is free to file a complaint with the Ombudsman and you must submit your complaint in writing. You can mail or fax it in to their office. You should file your complaint as soon as you can – if you file more than 12 months after the incident occurred, the Ombudsman can reject it.

Similar to your conversations with a lawyer, any conversations you have with the Ombudsman's office are privilege (meaning they are private and cannot be recorded). However, if the office accepts your complaint, they will write to the appropriate person to inform them that a complaint has been made about them. The Ombudsman does not tell them who has made the complaint. The individual you are complaining about will get to see the letter of complaint and will be given a chance to respond. If, after this, the Ombudsman thinks the complaint is supported they will conduct an investigation and try to help you resolve the issue.

The Ombudsman's investigation generally takes between 6-12 months to complete, and they will tell you what the results of the investigation is. The Ombudsman has the power to make recommendations to government and specific ministries about their conduct. They can also present these recommendations to the Lieutenant Governor and publish a public report of their findings.

THE ALBERTA OMBUDSMAN



Edmonton: 1-780-427-2756
Calgary: 1-403-297-6185
Toll Free: 1-888-455-2756

FILING A COMPLAINT WITH THE HUMAN RIGHTS COMMISSION

The application process with the Alberta Human Rights Commission is very similar to the process with the Ombudsman. Like complaints to the Ombudsman's office, complaints to the Alberta Human Rights Commission must be in writing. They must also be submitted within a year of the incident. The Human Rights Commission is stricter than the Ombudsman's office on this – they will not take complaints that are more than one year old.

If the Human Rights Commission accepts your complaint they will notify the respondent (the person you are making a complaint about) and give them a copy of your complaint. Similar to the Ombudsman, the Human Rights Commission tries to keep your identity anonymous. The individual you are complaining about will get a chance to respond, and you will be able to read that response.

If you are happy with the response to the complaint, you are able to withdraw your complaint. If you are not, the Human Rights Commission may try to help you with a process called "conciliation". In this process, you work with a conciliator who tries to help you and the respondent understand each other better and come up with a solution that works for everyone. If that does not work, or you do not want to try conciliation, the Commission may begin an investigation.

THE ALBERTA HUMAN RIGHTS COMMISSION



Southern Regional Office
Confidential Inquiry Line:
1-403-297-6571

Northern Regional Office
Confidential Inquiry Line:
1-780-427-7661

To call Toll Free in Alberta dial
310-0000 and then enter the
area code and phone number.

COMPLAINTS ABOUT POLICE SERVICES AND RCMP

It is important to note that those who work for at correctional institutions are not police or RCMP officers, therefore, the avenues for complaints discussed below are not relevant to your time at a correctional institution. This information should be used if you would like to file complaint about police or RCMP officers (for instance, during your arrest, or during your time in the community).

If you have concerns about the policies, services or actions of a police officer you can make a complaint to the Professional Standards Branch of the Edmonton Police Services or the Calgary Police Service Professional Standards Section. If you would like to file a complaint about an RCMP officer, you can contact the RCMP Civilian Review and Complaints Commission.

FILING A COMPLAINT ABOUT EDMONTON POLICE SERVICE

A complaint can be made online, by letter, or by phone.

If you are making a complaint by submitting a letter to the Chief of police you should include:

- Your full name, address, and phone number
- Specific details about the services or actions of a police officer (date, time, etc.)
- If your complaint is about a specific police officer(s) provide any information you have about them (name, registration number, area the officer works, description, etc.)

EDMONTON POLICE SERVICE PROFESSIONAL STANDARDS BRANCH



Attention: Chief of Police
Police Headquarters
9620 103A Avenue
Edmonton, AB, T5H 0A7



1-780-421-2676

FILING A COMPLAINT ABOUT CALGARY POLICE SERVICE OR RCMP

For complaints about both Calgary Police and RCMP officers, a complaint form must be printed and returned to them by mail. You can also call about your complaint at the numbers listed below.

CALGARY POLICE SERVICE PROFESSIONAL STANDARDS SECTION



Professional Standards Section
Westwinds Campus East Building
#811 5111 47 St NE
Calgary, AB T3J 3R2



Complaint Intake Line:
1-403-428-5904

RCMP CIVILIAN REVIEW AND COMPLAINTS COMMISSION



Civilian Review and
Complaints Commission: RCMP
National Intake Office
P.O. Box 1722, Station B
Ottawa, ON K1P 0B3



Toll Free: 1-800-665-6878

HABEAS CORPUS

Habeas Corpus is a very important feature of our legal system that allows anyone who believes they are being unlawfully detained to challenge the legality of their detention. Any prisoner can make an application for Habeas Corpus. If you make this application you will be able to appear in court and Corrections officials will have to prove that they have the authority to detain you.

APPLYING FOR HABEAS CORPUS

You are able to make an application Habeas Corpus if you believe you have been unlawfully:

- Placed in segregation
- Transferred to a higher security unit
- Transferred to another institution
- Transferred as part of an emergency transfer

If you want to apply for Habeas Corpus you should contact your lawyer or make a call to Legal Aid Alberta to see if they can help you.



Special thanks to the Human Rights Education and Multiculturalism Fund for supporting this project.

A Handbook for Provincially Incarcerated Women in Alberta

