



## Prisoners' Legal Services

A Project of the West Coast Prison Justice Society

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### Brief regarding Canada's Third Universal Periodic Review

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Prisoners' Legal Services (PLS) provides legal aid to federal and provincial prisoners in British Columbia on issues that affect their liberty rights under s. 7 of the *Charter*, as well as on health care and human rights issues. In the past year, we have assisted prisoners with more than 2,500 legal issues including conditions of confinement, solitary confinement, parole, involuntary transfer to higher levels of security, health care and human rights.

Thank you very much for this opportunity to provide written submissions in relation to Canada's Universal Periodic Review.

In addition to ratifying the Optional Protocols to the Convention Against Torture (OP-CAT) and the Convention on the Rights of Persons with Disabilities (OP-CRPD) (21-23), PLS urges Canada to accept and prioritize the following recommendations.

**A. Strengthen national mechanisms for monitoring implementation of the international human rights recommendations (35), strengthen coordination on human rights implementation across all levels of government (36) and establish a mechanism to implement human rights at all levels of government (37)**

PLS echoes the Canadian Human Rights Commission's call on government to prioritize recommendations 35-37 to ensure that there are mechanisms to monitor and meaningfully implement human rights protections at all levels of government. We encourage Canada to establish monitoring and implementation strategies that involve the individuals most in need of human rights protections, as well as non-profit agencies with expertise in human rights issues at the community level.

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**B. Ensure there is adequate funding for Indigenous communities to access culturally appropriate social services to alleviate poverty (140, 143, 144, 146, 148 242, 244, 249, 250) and take measures to address the root causes of over-incarceration of African Canadians and Indigenous people in Canada (114)**

Indigenous adults now make up 27% of admissions to federal prisons, while representing 4.1% of the population in Canada. Indigenous women make up 43% of admissions to prisons and Indigenous youth represent 46% of admissions to custody.<sup>1</sup> Indigenous prisoners are also over represented in segregation in federal prisons.<sup>2</sup>

These high rates of incarceration of Indigenous people continue on the heels of Canada's genocidal residential school program.<sup>3</sup> Both residential schools and the prison system result in the separation of families, which can only serve to contribute to the multi-generational trauma experienced by Indigenous people in Canada.

The Correctional Investigator of Canada has identified the over-representation of Indigenous people in prison as one of the most pressing human rights issues in Canada today.<sup>4</sup>

This issue must also be considered in the context of Canada's history of taking land and resources from First Nations and then denying sufficient resources for Indigenous communities to be able to provide for themselves.

The first step in addressing this over-representation must be to engage with First Nations, on a nation-to-nation basis, to negotiate self-determination in the provision of wrap-around community services so that Indigenous people have the support and resources they need to heal from trauma and avoid contact with the criminal justice system.

Canada should also negotiate with First Nations on self-determination in corrections so that Indigenous people are not held in colonial prisons, which represent a punitive

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<sup>1</sup> Adult and youth correctional statistics in Canada, 2016/2017 (June 19, 2018). Online:

<sup>2</sup> Office of the Correctional Investigator, "Administrative Segregation in Federal Corrections 10 Year Trends", Report, (28 May 2015). Online: <http://www.oci-bec.gc.ca/can't/rot/oth-aut/othaut20150528-eng.aspx>.

<sup>3</sup> Truth and Reconciliation Commission of Canada, Final Report of the Truth and Reconciliation Commission of Canada, Summary: Honouring the Truth, Reconciling for the Future, 2015 (Winnipeg).

<sup>4</sup> Public Safety Committee, Evidence of meeting #83 for Public Safety and National Security in the 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, (November 7, 2017). Online: <https://openparliament.ca/committees/public-safety/42-1/83/dr-ivan-zinger-1/only/>.

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institutional environment where it is impossible to heal from inter-generational trauma. Our clients who have been able to access Indigenous-run healing lodges report they have benefited from Indigenous staff who understand where they are coming from, and treat them with the dignity and respect necessary for healing. Currently, very few federal prisoners are able to access Indigenous-run healing lodges, which are not available to prisoners classified to medium or maximum levels of security, who have the the highest needs.

Black people are also over-represented in prison, making up 9.3% of the federal prisoner population, while representing 2.9% of the Canadian population. A 2014 review by the Correctional Investigator of Canada found that Black prisoners are more likely to be placed in maximum security prisons and segregation, more likely to be involved in uses of force, more likely to be institutionally charged, and less likely to be employed, despite having a lower risk to reoffend.<sup>5</sup>

Research identifies root causes of involvement in crime to include childhood trauma, racism, poverty and lack of community programs. Evidence shows that young people who are incarcerated benefit from educational opportunities, housing, employment and assistance with substance abuse and mental health challenges.<sup>6</sup> Canada must invest in addressing the root causes of the over-representation of Black prisoners in Canada by providing additional services in neighbourhoods with large Black populations.

## **C. Develop people and community-centred mental health services that do not lead to institutionalization (170)**

With the deinstitutionalization of psychiatric hospitals from 1965 to 1980, the number of psychiatric hospital beds in Canada went from 69,128 to 20,301.<sup>7</sup> The intent behind deinstitutionalization was to reduce the high cost of inpatient services and reallocate the savings to additional community supports that would help more people. However, Canada and the provinces have failed to adequately resource community-based alternatives to institutionalization, and as a result, the prison system has taken over the

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<sup>5</sup> Office of the Correctional Investigator, "A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report", (November 26, 2013). Online: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx#toc7>.

<sup>6</sup> Fiona Scott, "Look at My Life: Sparks for Firearm Possession Among Young People in Toronto (2018). Online: <http://amadeusz.ca/wordpress/wp-content/uploads/2018/07/Look-at-My-Life-Sparks-for-Firearm-Possession-Among-Young-People-in-Toronto.pdf>

<sup>7</sup> Patricia Sealy & Paul C. Whitehead, "Forty Years of Deinstitutionalization of Psychiatric Services in Canada: An Empirical Assessment" (April 2004) 49:4 Canadian Journal of Psychiatry at 249.

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role of psychiatric hospitals. Prisons lack the infrastructure, training and culture necessary to care for people with mental illnesses. People exhibiting symptoms of mental illness often end up in long-term solitary confinement rather than receiving therapeutic treatment for their disabilities.

The vast majority of prisoners suffer from mental health issues, including addiction. The link between childhood abuse and adult victimization, mental health issues, substance abuse and criminality is widely acknowledged.<sup>8</sup> It is estimated that 80% of federal prisoners suffer from a serious substance use problem.<sup>9</sup>

Canada should invest in significantly higher levels of community-based mental health and addiction services in order to allow people who suffer from mental disabilities and addictions to receive treatment and be able to participate as productive members of society rather than ending up involved in the criminal justice system and languishing in our prisons.

For people with mental disabilities who are now in prisons, Canada should invest in a trauma-informed approach and provide therapeutic environments where all prisoners with mental disabilities, addictions and past experiences of trauma can heal and become rehabilitated and reintegrated into society as law abiding citizens.<sup>10</sup>

## **D. Halt the practice of solitary confinement of prisoners (105)**

The Liberal government's November 12, 2015 mandate letter to the Minister of Justice included the mandate to implement the Ashley Smith inquest recommendations "regarding the restriction of the use of solitary confinement and the treatment of those with mental illness". It also included the mandate to review Canada's litigation strategy, including "early decisions to end appeals or positions that are not consistent with our commitments, the *Charter* or our values."

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<sup>8</sup> Nancy Wolff, Jing Shi, and Jane A. Siegel, "Patterns of Victimization Among Male and Female Inmates: Evidence of an Enduring Legacy" (2009) *Violence Vict.* 24(4) at 469-484. Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3793850/>.

<sup>9</sup> Correctional Service Canada (2008). Audit of physical health care delivery to inmates. Internal Audit Branch 378-1-236. <HTTP://www.csc-Scott.gc.ca/publications/pa/adt-pic-378-1-236/adt-pic-eng.shtml>.

<sup>10</sup> West Coast Prison Justice Society, "Solitary: A Case for Abolition" (November, 2016). Online: <https://prisonjusticedotorg.files.wordpress.com/2016/11/solitary-confinement-report.pdf>.

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Despite this mandate, the government is pursuing an appeal of Justice Leask's decision in *BC Civil Liberties Association v Canada (Attorney General)*, 2018 BCSC 62, in which he found Canada's use of solitary confinement breaches s. 7 and s. 15 of the *Charter* in relation to Indigenous prisoners and those who suffer from mental disabilities.

The United Nations considers the use of solitary confinement on prisoners with mental disabilities to constitute cruel treatment, and its use on anyone for more than 15 days to constitute torture or cruel treatment. Why is the government spending taxpayer dollars to fight for the right to continue to use this practice? Canada should be engaging with stakeholders, experts and non-profits who work with prisoners to develop alternatives to solitary confinement (including therapeutic environments, addiction counselling and mental health services) and put an end to this draconian practice.

The Correctional Service of Canada is still using solitary confinement on prisoners like Ashley Smith, who are actively engaging in serious self-harm and who are at risk of suicide, based on the opinions of its own medical professionals. Health services should be provided independently through agreements with the provincial ministries of health in order to ensure continuity of care, care that is on par with community standards, and to enable prisoners to develop a trusting relationship with their caregivers.

## **F. Increase funding for civil legal aid (112)**

Although this recommendation was focused on the rights of women, PLS calls on government to increase funding for legal aid to all prisoners to ensure adequate levels of legal aid in each region across Canada.

Legal aid for prisoners is administered inequitably and inadequately across Canada. In Ontario, Quebec and British Columbia, legal aid may be provided to assist prisoners with issues that affect their residual liberty rights, such as for representation in disciplinary hearings, parole issues or involuntary transfer to higher levels of security. Legal aid for prisoners in the maritimes and prairies is woefully inadequate. Legal aid for human rights and health care issues is virtually non-existent in most regions.<sup>11</sup>

There is a great need for an investment in legal aid for prisoners across Canada so that prisoners may be able to exercise their statutory human rights protections. Prisons operate behind closed doors with little public accountability or transparency. As stated

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<sup>11</sup> PLS receives a grant from the Law Foundation of BC to provide legal aid for human rights and health care issues for prisoners in BC.

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by Justice Mactavish in *Drennan v Canada*, 2008 FC 10, the duty to protect quasi-constitutional human rights “is all the more important in the case of a prisoner, who has no choice as to his living arrangements, and as such is in a uniquely vulnerable position” (at paragraph 41).

When prisoners feel they have not been treated fairly while incarcerated, it is difficult for them to develop a respect for the rule of law. They may leave prison feeling a greater sense of resentment toward the justice system than when they entered the system. Legal aid for prisoners can serve to promote respect for the rule of law, which makes rehabilitation possible, and as a result, increases public safety.