***West Coast Prison Justice Society v. Attorney General and Correctional Service of Canada***

The West Coast Prison Justice Society (WCPJS) files this representative human rights complaint on behalf of prisoners with mental disabilities under the control of the Correctional Service of Canada (CSC) against the Attorney General of Canada and CSC. WCPJS asserts that CSC and Canada discriminated in the area of "goods, services, facilities or accommodation" on the ground of disability, race, national or ethnic origin, and religion. The discrimination took place in federal prisons in Canada and is ongoing.

## A. Discriminatory Conduct

Specifically, WCPJS asserts that CSC and Canada fail to accommodate prisoners with mental disabilities in the following areas.

### 1) Lack of staff training and clinical independence

CSC administers health services to prisoners, and prisoners often report they do not trust CSC mental health staff. Often, the only psychologists available to provide counselling are also employed to conduct risk assessments which can then be used to justify decisions that negatively impact prisoners. Canada should partner with the provincial ministries of health to provide independent health services to prisoners so that prisoners can develop the trusting relationships necessary for effective care. Confidentiality guidelines must be established.

Many prisoners report that they feel they need to be suicidal to receive any mental health services. If they do engage in self-harm or attempt suicide, they are labeled as "manipulative" and are sometimes denied therapeutic services. All CSC staff and health care providers need to be better trained to identify mental health needs before a prisoner becomes suicidal or engages in self-harm and to respond with warmth and positive interaction rather than force and isolation.

### 2) Prisoners with mental disabilities are placed in higher levels of security

Prisoners who suffer from mental disabilities are often placed at higher levels of security due to requiring "a high degree of supervision and control within the penitentiary" under s. 18 of the *Corrections and Conditional Release Regulations*. This is determined by the prisoner's institutional adjustment rating under Commissioner's Directive 705-7, "Security Classification and Penitentiary Placement", determined in part by a consideration of mental health concerns.

The intention of parliament cannot have been to punish prisoners for having mental health needs in higher levels of security. Policy should be amended to ensure that mental health needs are accommodated with appropriate treatment, and that security classification is based on escape risk, and the safety risk to the public, institutional staff and other prisoners. Mental disability should be considered only as a mitigating factor in security classification decisions.

### 3) Lack of treatment and therapeutic care units

The vast majority of prisoners suffer from past trauma and addictions but are not receiving adequate therapeutic treatment to help them heal. Prisoners who engage in self-harm are not provided therapeutic services upon first instance when they would be most effective in preventing future mental health deterioration.

Every prisoner should be assessed for mental health needs, including the need for trauma or addictions services, at intake. In every case where a need is identified, a care plan should be developed without delay, which should include an offer of trauma and addiction counselling.

Prisoners with mental disabilities who are classified to maximum security are often denied admission to Regional Treatment Centres, and as a result languish in maximum security institutions where they are subject to especially restrictive and isolating environments that can further exacerbate their mental health issues. These prisoners often have the highest need for support.

Culturally appropriate mental health services for Indigenous prisoners are limited, and often not available at all to higher security prisoners. The over-representation of Indigenous prisoners in higher levels of security means that Indigenous prisoners are disproportionately impacted by a lack of mental health services.

**4) Failure to provide referrals and reasons in admission to Regional Treatment Centre decisions**

The process for admission to a Regional Treatment Centre lacks procedural fairness. Prisoners are referred by the sending institution and the Regional Treatment Centre makes a decision whether or not to accept the referral. Policy does not require the prisoner to receive a copy of the referral or the decision from the Regional Treatment Centre. This results in prisoners being denied the right to provide written submissions in support of the referral and the ability to challenge a decision not to admit them.

**5) Prisoners with mental disabilities regularly placed in segregation**

Policy prohibits placement of prisoners in administrative segregation if they have a "serious mental illness with significant impairment, including inmates who are certified" or if they are "actively engaged in self-injury which is deemed likely to result in serious bodily harm or at elevated or imminent risk for suicide." The definition of serious mental illness with significant impairment is limited to symptoms of psychotic, major depressive and bipolar disorders resulting in significant impairment in functioning. In practice, this category is interpreted so narrowly that prisoners diagnosed with serious mental disabilities or with serious histories of self-harm are admitted to segregation.

Rule 45 of the United Nations' *Mandela Rules* prohibits solitary confinement of prisoners with mental disabilities that would be exacerbated by its use because it amounts to torture or cruel treatment.

Many prisoners with mental disabilities are subjected to solitary confinement, including prolonged solitary confinement, under CSC policies, which increases the risk of suicide and self-harm. The categories of prisoners who should be inadmissible to solitary confinement should include all prisoners with mental disabilities to prevent having their conditions worsen.

**6) Observation cells constitute solitary confinement**

Prisoners report that the only worse torture than segregation is being placed in an observation cell, which is often CSC's response to self-harm and suicidal ideation. Policy also provides observation cells as the alternative placement option for prisoners who are inadmissible to administrative segregation because of "serious mental illness with significant impairment."

Observation cells are generally akin to segregation cells except prisoners housed there are often deprived of their clothes, belongings, books, televisions and radios. Prisoners are provided little to no meaningful human contact. They are monitored continuously by security staff, and may receive only a 10 minute visit by a social worker or health care provider in a day. They are often not permitted outdoor exercise or showers, and they are often not provided programs or any activities. For prisoners on "high watch" for

suicide or self-harm, policy requires they be provided only a security gown, blanket and mattress, finger food and hygiene items (unless they can be used to self-harm). These conditions constitute solitary confinement.

Prisoners also describe degrading treatment by the correctional staff assigned to observe them. Since observation cells are generally on segregation ranges, the conditions are generally comparable to segregation or worse. Prisoners report being transferred back to segregation from observation cells after serious self-harming or suicide attempts.

Suicidal and self-harming prisoners have described their observation cell placements as being traumatic and not at all therapeutic or supportive of their mental health. Further, there is no reason that someone with a serious mental illness with significant impairment should be isolated in an observation cell. They should be admitted to a community psychiatric hospital or Regional Treatment Centre.

Under policy, observation cells are authorized by the warden of the institution, rather than a medical professional. Policy does not require prisoners in observation cells to be offered counselling or any specified amount of meaningful human contact, or for the amount of meaningful human contact and services to be tracked. There are no time limits on the use of observation cells. Observation cells are about monitoring prisoners at risk of self-harm to prevent suicides (often by force) rather than providing services to help prisoners heal and stop self-harming. Observation placement should be available only at Regional Treatment Centres or outside hospitals, and it must meet standards so that it does not constitute solitary confinement.

**7) Use of force, including Pinel restraints, in response to mental health crises**

CSC's primary response to self-harm and mental distress is too often force and restraint rather than meaningful clinical intervention. Prisoners have described being pepper-sprayed, handcuffed and dragged out of their cells by correctional staff when they are discovered to be self-harming, even if they have stopped hurting themselves. This kind of force only serves to further traumatize them and exacerbate their mental disabilities.

Policy provides the warden of the institution the authority to apply Pinel restraints to prisoners. There are no time limits on the use of Pinel restraints. This should be a medical decision made by a medical professional that should only be used in emergencies involving imminent risk of serious bodily harm, must be the least restrictive measure, with time limits, and be complemented by intensive clinical services.

**8) Access to Information**

CSC fails to comply with the time limits for requests from prisoners to access their own medical information. Requests are often not provided for nine months to one year or longer. When a prisoner seeks to challenge the quality of their mental health care, they are unable to obtain the necessary evidence in a timely way. Mental health needs can often be urgent. CSC's failure to provide medical information in a timely way is obstructionist, especially for prisoners at great risk of suicide or self-harm.

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Jennifer Metcalfe, WCPJS Date