



Indigenous Prisoners' Spiritual Accommodation

This booklet explains your right to take part in Indigenous spirituality while in federal prison.

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Introduction

Historically, Canada's policies ignored Indigenous rights and tried to assimilate Indigenous people into Canadian society.

In an effort to assimilate Indigenous people, Canada made Indigenous spiritual practices illegal, put Indigenous spiritual leaders in jail, confiscated sacred objects and removed many Indigenous children from their families and communities. These children were placed in residential schools, where the goal was to suppress their language and culture and convert them to Christianity. This loss was often passed on to their children, and their children's children. Through these policies, many First Nations communities lost the spiritual and cultural bonds that made them strong.¹

The Canadian government has apologized for these policies, but Indigenous communities are still suffering their effects. To be able to heal, you must be able to practice your spiritual and cultural ways.

CSC's duty to accommodate Indigenous spirituality

Under human rights law, CSC has a duty to accommodate your Indigenous spirituality to the point of undue hardship. This means that they must take steps to make sure that you can practice and

1 Truth and Reconciliation Commission, *The Final Report of the Truth and Reconciliation Commission of Canada*, Volume 1 – Canada's Residential Schools: The History, Part 1: Origins to 1939, pages 3-6, 149-167, 629-642.

participate in your Indigenous culture and spirituality. The only exception is where it would cause undue hardship on CSC, such as an unmanageable security risk.²

You have the right to practice your Indigenous traditions and CSC has a duty to provide you with reasonable opportunities to do so.³ CSC must provide you with places to practice your spirituality, and the items you need to practice your spirituality, where possible.⁴ CSC must give Indigenous spirituality and Elders the same status as all other religions and spiritual leaders.⁵

CSC must also accommodate your need to practice your spirituality communally with others through ceremonies or other group activities.⁶

This booklet explains your rights to spiritual and cultural accommodation in federal prisons, including rights in relation to:

- spiritual objects;
- spiritual ceremonies;
- traditional foods; and
- Aboriginal Offender Wellness Committees.

2 CHRC, *Human Rights Handbook for First Nations*, pages 6-10.

3 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11, s 2*; *Corrections and Conditional Release Act*, SC 1992, c 20, s 75 [CCRA].

4 *Corrections and Conditional Release Regulations*, SOR/92-620, s 101 [CCRR].

5 CCRA, s 83(1).

6 See *Trinity Wester v LSBC*, 2018 SCC 32 at para 64.

Examples of your spiritual rights

The following are examples of your rights and spiritual practices that CSC must accommodate. You might have other spiritual accommodation rights, depending on what Nation you are from, and what cultural and spiritual customs you follow.

Getting spiritual objects

You can ask for approval to buy items from outside the institution if you need them for spiritual or cultural reasons and you cannot buy them from the CSC catalogue.⁷

While you are normally not allowed to give, get, trade, loan, rent or sell personal property to other people in custody, you can ask permission if you want to give an offering or receive an object as part of a ceremony or other Indigenous practice in the institution.⁸ If you are going to attend a Giveaway ceremony while out on an escorted temporary absence, you should ask for the warden's permission before you leave in order to bring back the items that are given to you.⁹

You need to record any new property, including spiritual objects, on your property record at A&D. The officers at A&D must take a photo of the items and will ask you to sign the property record to confirm that the list of items is correct.¹⁰

7 Interim Policy Bulletin 528.

8 CD 566-12, para 20, Annex E: Giveaways and Offerings.

9 CD 566-12, Annex E: Giveaways and Offerings.

10 CD 566-12, para 37.

You can ask for permission to have spiritual, cultural or traditional items, such as medicines, medicine bags/pouches, and feathers with your cell effects. Spiritual objects are considered to have no *monetary* value and they do not count towards your \$1,500 maximum of personal property.¹¹

Searching and seizing spiritual objects

CSC can search your cell if a staff member has reason to believe that contraband or evidence of an offence is in your cell.¹²

If you are present for a search of your medicine bundle or other spiritual or sacred belongings, you are allowed to open and handle the items for the officer to visually inspect them. If you are not present for a search, an Elder or Elder's representative will handle your spiritual belongings for the officer.¹³

Sacred items should never be handled except by the owner, an Elder or the Elder's representative.¹⁴

After the search, CSC staff must complete a Post-Search Report that lists the items they took.¹⁵ CSC must give you a "Contraband/Unauthorized Item Seizure Tag", and put your items in a secure evidence locker or give them to the seizure control officer.¹⁶

11 CD 566-12, paras 6, 25, Annex E.

12 CD 566-9, para 16.

13 CD 566-9, para 15.

14 CD 566-9, para 15; GL 750-1, para 9.

15 CD 566-9, paras 26-27.

16 CD 566-9, para 29.

If CSC seizes your spiritual items, they must consult with the Elder or Spiritual Advisor on how to treat your spiritual items respectfully.¹⁷

Once you have been notified that the item was seized, you have 30 days to **request that it be returned**. If CSC decides that your spiritual items were not contraband, unauthorized or evidence, they can be returned to you.¹⁸

If CSC decides that the items are unauthorized, CSC can let you arrange to have someone keep them safe for you outside of the institution.¹⁹ If the items need to be disposed of, CSC must consult with the Elder or Spiritual Advisor about how to dispose of them in a way that is respectful of your beliefs.²⁰

Headbands

You have the right to wear a headband if you wear it as a sincere expression of your Indigenous spirituality.²¹

CSC should let you wear a spiritual headband, unless there are security or safety concerns.²²

Any limits to your use of a spiritual headband should be based on clear evidence that it would create a risk to safety or security. The restriction should be as limited as possible.²³ For example, if CSC

17 CD 566-9, para 30.

18 CD 568-5, para 16.

19 CCR, s 59; CD 568-5, para 17.

20 CD 568-5, para 23; CD 566-9, para 30.

21 See *Syndicat Northcrest v Amselem*, 2004 SCC 47 at para 46.

22 CCRA, s 75.

23 See *Multani v Commission scolaire Marguerite-Bourgeoys*, 2006

has concerns that a headband might signify gang membership, they must show that they have good reason for those concerns and you should be allowed to wear it where others will not see you wearing it, such as in your cell.

Smudging ceremonies

CSC must provide you with access to items needed for smudging, and a place for you to smudge, when possible.²⁴ Your institution should ensure that traditional medicines (such as sweet grass, sage, cedar or tobacco) and ignition sources are available for smudging.²⁵

Your institution must have a policy that makes sure you are able to smudge.²⁶ Your cultural and spiritual practices should also be accommodated during lockdown.²⁷

Sweat lodge ceremonies

CSC must allow you to take part in regular sweat lodge ceremonies if they are a part of your Indigenous spirituality. They must allow you to take part in other traditional ceremonies and spiritual activities as well.²⁸

SCC 6 at paras 50, 67.

24 CCR, s 101; Commissioner's Directive 702: "Aboriginal Offenders", 2013-11-12, ("CD 702"), paras 6(f)-(g).

25 CD 702, paras 6(h), 9(d); CD 259, para 7(c).

26 CD 702, para 6(g); Commissioner's Directive 259: "Exposure to Second Hand Smoke", 2014-07-17, para 7(d).

27 CD 259, para 7(c)(vii).

28 CD 702, para 6(g); *Charter*, s 2.

If security concerns at your institution interrupt access to sweat lodge ceremonies for long periods of time, CSC might not be fulfilling its duty to accommodate your spirituality. You can talk to your Institutional Elder or Aboriginal Liaison Officer, or contact Prisoners' Legal Services for help. See the section below on "Protecting your Rights". Also see PLS' booklet: "Human Rights for Federal Prisoners".

Traditional foods

You can submit a request to the Aboriginal Liaison Officer if you need traditional food for a ceremony or other cultural or spiritual purpose. The Aboriginal Liaison Officer will review your request and may make a recommendation to the warden and Elder. The warden may allow foods from outside the institution. For more information, see *Annex F* of Commissioner's Directive 702.

Country foods

As country food (mainly seal, whale, caribou and arctic char) is a part of the Inuit identity and is a dietary requirement of Inuit people, CSC must provide country food to Inuit people at least once per month.²⁹

Rights in segregation

You must be given the same rights and privileges as other prisoners while you are in segregation, unless security concerns or the limitations of the segregation area make it impossible. Call

29 CD 702, 6(m), Definitions and Annex F.

Prisoners' Legal Services if you are having difficulty practicing your spirituality in segregation.³⁰

While you are in segregation, CSC must make sure that you have access to tobacco and ignition sources for personal smudging as much as this is safely possible.³¹ CSC must also allow you to access an Elder or other spiritual support in segregation and to access your cell effects and spiritual belongings that are safe in the segregation area.³²

Aboriginal Offender Wellness Committees

Aboriginal Offender Wellness Committees are prisoner groups that work with the Aboriginal Liaison Officers and Elders to plan cultural events, such as round dances, potlatch ceremonies or give-aways, pow-wows, sweat lodges and sharing circles. The members can also serve as helpers to the Elders if requested.

These Committees act as liaisons between prisoners and staff by sharing information with staff and prisoners and bringing ideas, input or concerns from Indigenous prisoners to staff.³³

If there is no Aboriginal Offender Wellness Committee at your institution and you would like to start one, you can submit a "protocol document" setting out the terms and objectives of your proposed Committee. You can ask the Elder or Aboriginal Liaison

30 CCRA, s 37; CCRR, ss 40(3).

31 CD 259, para 7(c)(i).

32 Commissioner's Directive 580: "Discipline of Inmates", 2015-10-26, paras 58-59.

33 CD 702, Annex D.

Officer for help. Your request must be reviewed by the warden and Elder within 30 days.³⁴

You have a right to join with other prisoners in spiritual or cultural activities, unless the gathering or activity, or your participation, would put safety or security at risk or involve contraband.³⁵

If you are not allowed to join an Aboriginal Wellness Committee or the warden rejects your request to start a Committee, they must give you written reasons for the decision. You have a right to respond to these reasons.³⁶

If you feel that the warden's decision is unreasonable or unfair, see the section below on Protecting your Rights.

Protecting your Rights

If you are having difficulties practicing your Indigenous culture and spirituality, there are steps that you can take to help protect and exercise your rights.

Start by keeping **detailed notes** of the difficulties you are facing in practicing your culture or spirituality, including the time, date, location and details of incidents and events where you are unable to practice your spirituality in the way that is most meaningful to you. If decisions are made that make it difficult for you to practice your Indigenous culture and spirituality, write down the date, name of the decision maker and what they told you about the reasons for

34 CD 702, paras 19-20.

35 CCRR, ss 98 to 100.

36 CCRR, ss 98-99.

the decision. If you are given a written decision, keep it in a safe place.

Try to resolve your issue with staff by talking to them about what you need to practice your culture and spirituality. Again, keep notes of the people involved and the dates and details of these discussions.

If you are unable to resolve the issue by talking with staff, you may want to file a **complaint** or **grievance** about the decisions or actions that are making it difficult for you to practice your spirituality. In your complaint or grievance, include the details of the requests you made to staff and their responses. For more information, see PLS' booklet: "Writing an Effective Grievance".

You can also make a **human rights complaint** to the Canadian Human Rights Commission if you are being discriminated against. Discrimination is an action or decision that causes you to be treated differently and negatively for reasons like your race, ethnic origin, colour or religion. Your complaint must be filed with the Commission within 12 months of the incident of discrimination. Or, if the discrimination and the difficulty you are facing is ongoing, your human rights complaint must be filed within 12 months of the last incident. It is a good idea to continue going with CSC' grievance process at the same time, because the Commission might require you to get to the end of that process before they will deal with your complaint. For more information, see PLS' booklet: "Human Rights for Federal Prisoners".

You can call Prisoners' Legal Services for help or advice.

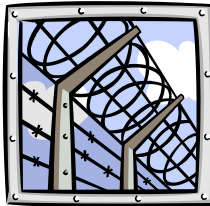
Getting legal help

You can contact Prisoners' Legal Services for advice or assistance with issues that affect your spiritual accommodation.

For assistance from Prisoners' Legal Services, you must have a referral from the Legal Services Society. Contact their call centre at 1-888-839-8889. Once you have a referral, you can call Prisoners' Legal Services directly at 1-866-577-5245.

Prisoners' Legal Services phones are open Monday to Friday from 9:00 a.m. to 11:00 a.m. and from 1:00 p.m. to 3:00 p.m.

This publication contains general information only. Each situation is unique. Law and policy can also change. If you have a legal problem, contact Prisoners' Legal Services or a lawyer.



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