



# Human Rights

## for federal prisoners

The Canadian Human Rights Act applies to federal prisoners. This booklet tells you what rights you have and how to try to resolve human rights issues.

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## Human Rights in Prison

The Correctional Service of Canada (CSC) must comply with the *Canadian Human Rights Act* (the Act). The Act says:

**“all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on [the grounds of discrimination].”<sup>1</sup>**

### Discrimination under the *Canadian Human Rights Act*

In human rights law, it is discrimination to treat a person badly for certain reasons. These reasons are called **grounds of discrimination**.

The grounds of discrimination in the *Canadian Human Rights Act* are: race; national or ethnic origin; colour; religion; age; sex; sexual orientation; gender identity or expression; marital status; family status; genetic characteristics; physical or mental disability;

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1 *Canadian Human Rights Act*, RSC 1985, c H-6, s 2 [*Canadian Human Rights Act*].

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and conviction for which a pardon has been granted or a record suspension has been ordered.<sup>2</sup>

You might be experiencing discrimination if you are being treated worse than other people in prison for one or more of these reasons.

There needs to be a connection between the bad treatment you received and one of the “grounds” of discrimination. So, if a staff member uses insulting words about your race or sexual orientation, that could show a connection between the conduct and the ground of discrimination.

It does not matter if the person meant to treat you unfairly or not. Only the effect on you matters.

Being a prisoner is not a ground of discrimination. Even if you feel that your human rights are being violated, it might not be a right protected by the *Canadian Human Rights Act*.

## **What discrimination looks like**

Discrimination can take place in many ways. The bad effect on you might happen directly because of something CSC does. Or it might happen indirectly through a decision CSC makes.

### **Example 1:**

You are being harassed by someone who works for CSC. If you are being harassed because of your race, sexual orientation, or other “ground of discrimination” listed above, this might be discrimination.

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2 *Canadian Human Rights Act*, s 3.

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Harassment is any physical or verbal action that you did not want and that offends or humiliates you. Some examples of harassment are: threats, intimidation, verbal abuse, comments or jokes, offensive pictures or posters, sexual comments or gestures, physical touching, physical assault and sexual assault.

**Example 2:**

CSC is not accommodating your disability. This could be a physical disability or a mental disability. Mental health problems, like depression or addiction, are mental disabilities.

CSC has a duty to accommodate your disability. This means that CSC might have to adjust your conditions of confinement or take other steps to meet your needs. You have a right to the same services and facilities as other people without your disability.

For example:

- If you use a wheelchair, CSC should give you a cell on the ground floor or a chair lift.
- If you are deaf, CSC should give you an interpreter.
- If you have an opioid addiction, CSC should give you treatment, like methadone or Suboxone.

If CSC does not do these things, that might be discrimination.

**Example 3:**

Something is happening to everyone, but its effect is worse on you because of your disability or another ground of discrimination.

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**Negative treatment that is applied equally to all prisoners might be discrimination against you if the effect is harder on you than others because of a ground of discrimination.**

For example, not being provided food or water for a long time is not discrimination by itself. But if you have diabetes, not getting food might be discrimination based on your physical disability. This is because not eating for a long time could be worse for your health because you are diabetic.

Another example is segregation. Being in segregation for long periods of time is hard on anyone. But if you have ADHD, depression or anxiety, it might be even worse for you. In that case, you could argue that you are being discriminated against because of your mental disability.

A rule that requires all prisoners to work or attend programs during certain hours is not discrimination by itself. But if you have to miss religious service to work or attend a program at a particular time, that might be discrimination on the basis of religion.

## **Resolving Human Rights Issues**

If you think that you are being discriminated against on one of the grounds listed above, you can call Prisoners' Legal Services for help.

Keep detailed notes of what happened. Here are some things to write down:

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- Time, date and location of events or incidents
  - Names of people involved
  - Names of any witnesses
  - Details of what happened

Keep all documents related to your complaint. This could include request forms, CSC decisions, grievances, or medical records.

It is best to try to resolve issues at the lowest level. Your concern might be fixed right away. If it is not, you will be able to show that you tried to deal with the problem. It will also show that the institution was aware of your problem. Courts and tribunals often require you to try to resolve your problem within CSC before they will consider your application.

**Here are the steps you can follow:**

1. Start by talking to staff. Staff and prisoners must try their best to fix problems informally. Keep a record of the conversations you have with staff about the problem.
2. The next step is to make a formal request to CSC. Keep a copy of the request form that you submit. If no duplicates are available, copy the form out twice. Ask the staff person who takes your request to sign and date your copy of the form to show it was received. Keep this copy for your records.
3. Next, make a formal complaint to CSC. You can do this if your request is not answered in a timely way, or you are not happy with the answer. See PLS' booklet on "Writing an effective grievance".

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Submit your grievance about discrimination and harassment as an institutional level grievance to the Warden, if it is something under the Warden's control. If your complaint is about a national policy or something that the Warden did, you do not need to file an institutional level grievance. You can file a national level grievance.

If your grievance is about something that affects your life, liberty or security of the person, CSC should mark the grievance as high priority. Keep a copy of your grievance and ask the staff person who receives it to sign and date your copy.

**The CSC grievance process can take a very long time. If your grievance is ongoing or urgent, call Prisoners' Legal Services. We might be able to help you resolve your issue more quickly.**

If you filed an institutional level grievance, the Warden can respond to your grievance. Or the Warden can have a person outside the institution investigate it.

If there is an outside investigation, you might be interviewed. The investigator must give a draft of the investigation report to the Warden within three months. You should get a copy of the draft report. It will be vetted, which means that names and other personal information will be deleted. You will have a chance to make comments on the report. The Warden should also give you a vetted



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copy of the final investigation report and their response to your grievance.<sup>3</sup>

4. If you are not happy with the outcome of your institutional level grievance, you can submit a national level grievance. This is also called a Final Grievance. National could take more than a year to make a decision about your grievance. Call PLS for advice on the best way to resolve your problem.

## Canadian Human Rights Commission

CSC might not solve your problem. Or the grievance process might take too long. In that case, you can make a complaint to the Canadian Human Rights Commission (“the Commission”). It does not cost money to make a complaint.

Your complaint must be in writing.

If you want, you can call the Commission to talk about your case before you file your Complaint. You can also call PLS for advice.

### Time for filing your complaint

In most cases, you must file your complaint with the Canadian Human Rights Commission within **12 months** of the incident. If the discrimination was ongoing and the last incident happened within 12 months, your complaint is in time. You will need to explain how the discrimination was ongoing.

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3 CSC, *Guideline 081-1: Offender Complaint and Grievance Process* (Ottawa: CSC, 2018-02-19).

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If your complaint is about an event that took place over 12 months ago, explain why you did not file a complaint sooner. The Commission might accept your complaint even if it is late, depending on the circumstances.

### **Going through CSC’s grievance process first**

The Commission might ask if you have gone through all of the levels of CSC’s grievance process. If you haven’t, the Commission might tell you to go through the grievance process first and then submit your human rights complaint to them.

It is generally better to wait for a decision on your institutional level grievance from CSC before filing a human rights complaint with the Commission.

Either way, **make sure to file your human rights complaint within 12 months** of when the discrimination happened. You might want to also file a National level grievance with CSC, but this will take a long time and probably won’t result in any remedies. There is also a risk that if you have a human rights complaint and a National level grievance going at the same time, both processes will pause. The priority is to file your human rights complaint within 12 months.

The Commission might contact you for submissions on whether they should deal with your complaint even though you didn’t “exhaust” the grievance process first. You will need to write a letter to the Commission explaining the reasons that the CSC process is not an adequate alternative for dealing with your problem (for example, that your suffering is ongoing and CSC’s National level grievances can take a very long time). See the box below for help with this.

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Then, if the Commission makes you go back and continue with the CSC grievance process, you can file a National level grievance at that time.

**In some cases, the Commission might accept your complaint even if you haven't gone through the grievance process first.**

There are also cases where you might want to file a human rights complaint first, before even filing an Institutional level grievance. For example, if you are suffering from ongoing discrimination or harassment, or your issue is urgent, you might want to go straight to filing your complaint with the Commission.

If you are not sure whether to file a human rights complaint or a CSC grievance first in your case, you can phone Prisoners' Legal Services to discuss your case.

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## **Submissions about exhausting the CSC grievance process**

If the Commission writes to you about exhausting the CSC grievance process, explain to them in a letter why they should deal with your Complaint now anyway. You can copy this paragraph in your letter to the Commission if you want:

“I ask that you accept my Complaint despite the fact that I have not yet fully exhausted the CSC grievance process. It is well established that the CSC grievance process is slow, ineffective and lacks many components of procedural fairness, including an independent decision-maker, disclosure of the information upon which a decision is made, and an opportunity to respond to that information. It also lacks legislated remedies, protection against retaliation, and enforcement mechanisms, and is not an adequate method of obtaining monetary relief. I submit that the internal grievance process is not a reasonable or adequate forum to address my concerns as outlined in this Complaint.”

You can add more information to explain why it does not make sense for you to go through the CSC grievance process first in your case. Or you can explain why any solutions you could potentially get through that process would not be enough. For example, if you need a solution quickly because you are suffering from ongoing discrimination or harassment, or if you are asking for financial compensation, you could argue that CSC’s grievance process is an “inadequate alternative process”.

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## How to File your Human Rights Complaint

The first step is to fill out a complaint form. You must use the Commission's special form. You can get a copy by calling the Commission at 1-888-214-1090 or Prisoners' Legal Services at 1-866-577-5245.

If you are not in prison, you can file your complaint online at [www.chrc-ccdp.gc.ca](http://www.chrc-ccdp.gc.ca).

The Commission will send CSC a copy of your complaint. Do not write anything in the complaint that you do not want CSC to know.

### **Filling out the complaint form**

Here is some information that might help you to fill out the form. This is based on the form when this booklet was written. The form could change.

Page i

**YOUR CONTACT INFORMATION:** Fill in your name and address. You can use the address of the prison where you are incarcerated. Also check off whether you are a citizen, permanent resident, or visitor in Canada.

Page ii

**YOUR ALTERNATE CONTACT INFORMATION:** If you wish, you

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can list a friend or family member in case the Human Rights Commission cannot reach you. Or you can leave this blank.

**YOUR REPRESENTATIVE'S CONTACT INFORMATION:** You do not need a lawyer to file a human rights complaint. If someone is helping you, put their name here. It is OK to leave this blank.

Do not list Prisoners' Legal Services as your representative. We can give you advice about your complaint, but we have a very small staff and cannot represent everyone. If you feel you need representation from PLS, please call us to discuss your case. You are welcome to send us a copy of your complaint to keep in your file.

Page iii

**TRADE UNION OR EQUIVALENT:** You can leave this page blank.

**PAGE 1: YOUR COMPLAINT**

**ORGANIZATION YOUR COMPLAINT IS AGAINST:** Write "Correctional Service Canada" here.

In what city and province (or territory) did the alleged discrimination happen? If the discrimination you faced took place in more than one federal prison, you can list multiple cities and provinces.

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When did the alleged discrimination take place? The start date is when the unfair or bad treatment started. If it is still happening, you can write “ongoing” as the last date.

I have a reasonable basis to believe that the respondent discriminated against me based on one or more of the following ground(s) of discrimination:

Check the grounds that apply to your case. You can check more than one.

For example, if you are not getting proper treatment for your mental health problem or addiction, check “disability”.

If you are being treated differently because you are Indigenous, check “race,” “national or ethnic origin,” and “colour.”

If you’re not sure, you can contact Prisoners’ Legal Services or the Commission. Remember that the Commission will take notes of what you say on the phone, and this information can be shared with CSC and used to make a decision in your case. What you say to Prisoners’ Legal Services is confidential.

PAGES 2-3

How and when were you treated differently, based on each ground of discrimination you have identified? Summarize and give the dates of each event.

You only have two pages for your response. You can write it

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on the form or type it on a separate page. You cannot use more than two pages. Here are some ideas to help get you started.

- DESCRIBE YOURSELF BRIEFLY. For example: “My name is [NAME] and I am a federal prisoner at [INSTITUTION], a [maximum/medium/ minimum] security prison in [CITY, PROVINCE]. My complaint is against Correctional Service Canada.”
- Describe any of the “grounds” of discrimination that apply to your complaint (such as your place of origin, your disability or your gender identity).
- Describe what happened. Include the date of each incident. If you can’t fit everything in two pages, focus on the most important details. If there is space, include names and witnesses.

#### PAGE 4

How did these events have a negative effect on you? Briefly describe the steps you have taken to resolve the situation.

You only have 1 page for your response. You can write it on the form or type it on a separate page. You cannot use more than one page.

- Describe how the discrimination has affected you.
- If you have tried to solve the problem, describe what you have done.



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PAGE 5

## AGREEMENTS

You do not have to check the box that says:

I agree that the Commission may use the information provided in my complaint to assist it in researching issues and in addressing human rights in Canada. [...]

You must check these boxes for the Human Rights Commission to accept your complaint:

The information in this Complaint Form is true to the best of my knowledge and belief.

I authorize the Commission to collect my personal complaint information (such as the information about me in this complaint form) and use it to process my human rights complaint.

I authorize anyone (such as an employer, service provider, witness) who has information needed to process my complaint to share it with the Commission. The Commission can obtain this information by talking to witnesses or asking for written records. Depending on the nature of the complaint, these records could include personnel files or employer data, medical or hospital records, and financial or taxpayer information.

You must sign and date the form for the Human Rights Commission to accept your complaint.

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## Filing your complaint

You can mail the complaint back to the Human Rights Commission, or you can fill out an ITF and have it faxed. The Commission's address is on the complaint form.

Submit only the complaint form. Keep any documents that support your complaint, like request forms or medical records.

Make a copy of the completed complaint form to keep. Call the Commission to make sure they received your complaint.

You can call Prisoners' Legal Services for advice or help to file your complaint.

## Complaint Process

The Commission will normally contact you within 20 days of receiving your complaint. You can call the Commission to check on your complaint if you have not heard back.

You might get a letter about mediation. A mediation is an informal meeting between you and CSC to see if you can agree on a solution. You do not have to agree to mediate with CSC. If you mediate, you do not have to agree to the solution they offer. There is more information in the "Mediation and Settlement" section below. This step might not happen until later. Or it might not happen at all.

The Commission might ask you to explain why you think they should deal with your complaint.

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The Commission might say:

- You should go through CSC’s grievance process first;
- The Complaint is not about a federal government department;
- Your Complaint is trivial, not serious enough, or made to cause trouble; or
- Your Complaint is based on events that finished more than 1 year ago.<sup>4</sup>

The Commission will tell you if it is concerned about any of these issues. You will have a chance to respond. If you do not know how to respond, you can call Prisoners’ Legal Services for advice.

If the Commission is concerned that you didn’t finish the CSC grievance process, explain why you didn’t and why the CSC grievance process is not adequate in your case. See the section earlier in this booklet on “Going through CSC’s Grievance Process first”.

The Commission will then decide whether to deal with your complaint. They might dismiss your complaint and close your file. Or they might tell you to finish the internal grievance process first and then come back. If you disagree with their decision, you can file a judicial review of the Commission’s decision at the Federal Court. If the Commission agrees to deal with your complaint, the process will continue.

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4 *Canadian Human Rights Act*, s 41.

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If the Commission agrees to deal with your complaint, they might offer mediation at this point. You can find out more about mediation in the next section.

The Commission might investigate your complaint. This could happen if there is no mediation or if you and CSC go to mediation but do not agree on a solution. The investigator can interview you and any witnesses. They can also review documents. They will get information from CSC. If you have any documents that are relevant to your complaint, you should give copies to the investigator. You can also ask the investigator to discuss your case by phone.

The investigator's job is to decide if there is evidence to prove that CSC discriminated against you.<sup>5</sup> The investigator will write a report telling the Commission what it found and recommending what should be done.<sup>6</sup>

Both you and CSC will get a copy of the investigation report, and you will both have a chance to respond. You can write a letter to the Commission about the report and about what you think should be done.

The Commission will then decide what to do. It can do any of the following:

- Refer your complaint to the Human Rights Tribunal for a hearing – It can do this if it believes that there is a good reason to have an inquiry into your Complaint.<sup>7</sup> Very few complaints have a Tribunal hearing.

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5 *Canadian Human Rights Act*, s 43.

6 *Canadian Human Rights Act*, s 44.

7 *Canadian Human Rights Act*, ss 44(3), 49.

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- Refer you to “conciliation” – This is like mediation but you must participate. If you and CSC still do not agree after a period of time (usually 3 or 4 months), the Commission will make a new decision about what to do with your complaint.
  - Refer you to CSC’s grievance process or another process.
  - Dismiss your complaint.<sup>8</sup>

If you do not agree with a decision of the Commission, you can ask the Federal Court to review the decision. This is called a “judicial review”. You must file your judicial review application within 30 days of the Commission’s decision.

## Mediation and Settlement

The Commission or the Tribunal might appoint a mediator to try and help you and CSC reach an agreement on what should be done.<sup>9</sup> This can happen at any time from when you file the complaint until the start of a hearing at the Tribunal. A mediation will only happen if both you and CSC agree to take part.

A mediation is an informal meeting between you and CSC with the help of a mediator to facilitate the discussion. The mediator sits at a table with you and the CSC representative (with or without

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8 Canadian Human Rights Commission, ‘About the Process’, (accessed 12 September 2018), online: <<https://www.chrc-ccdp.gc.ca/eng/content/about-process>>; CHRC, ‘Human Rights Handbook for First Nations’, (2011), online: <<https://www.chrc-ccdp.gc.ca/eng/content/human-rights-handbook-first-nations>>.

9 *Canadian Human Rights Act*, ss 47-48.

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lawyers) to discuss your case. The mediator works for the Human Rights Commission. They are impartial, which means they do not take sides.

Agreeing to go to mediation does not mean you have to reach a settlement. A settlement can only happen if both you and CSC agree on the terms of the settlement and the Commission approves the settlement.

You should focus on what is important to you. You can ask for more than one remedy. Some of the things you might ask for are:

- that the discrimination stop;
- that CSC make a policy or take steps to prevent the same kind of discrimination in the future;
- that you be given something you were denied because of the discrimination;
- compensation for money you had to spend because of the discrimination;
- compensation for pain and suffering that you experienced because of the discrimination against you (the most that can be ordered by the Tribunal is \$20,000); and
- special compensation if CSC purposely discriminated against you (the most that can be ordered by the Tribunal is \$20,000).<sup>10</sup>

Agreeing on a settlement usually means that neither you nor CSC are totally happy with the outcome. The mediator might try to pressure you to settle your case for less than you ask for. You need

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10 *Canadian Human Rights Act*, s 53.

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to decide if you can live with what CSC offers you, but you do not need to agree to settle. It can be helpful to decide on your bottom line (the least you will accept) before you go to the mediation. That can help you to stay strong on the points that are the most important to you.

The mediation and the settlement are both confidential. You are not allowed to talk about them to anybody, including prison staff, your friends, or sometimes even your own family. Sometimes you cannot even say that there was a mediation or a settlement. If CSC agrees to give you money as part of your settlement and they find out that you have told somebody about the settlement or mediation when your agreement says you can't, they could make you pay back all of the money.

If you do not reach a settlement, you are not allowed to use things that CSC said in mediation against CSC later.

## **Human Rights Tribunal**

The Commission might refer your complaint to the Human Rights Tribunal. The Tribunal can offer mediation or go straight to a hearing.<sup>11</sup>

The hearing process is called an “inquiry.” At the inquiry, you can give evidence, call witnesses and make legal arguments. You can also ask CSC’s witnesses questions. You can represent yourself at

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11 Canadian Human Rights Tribunal, ‘A Guide to Understanding the Canadian Human Rights Tribunal, (page last updated 2018-02-17), on-line: <<https://www.chrt-tcdp.gc.ca/resources/guide-to-understanding-the-chrt-en.html>>.

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this inquiry or you can have a lawyer or advocate represent you.<sup>12</sup> The Commission might appoint a lawyer who will be there to represent the public interest. The Commission's lawyer is not there to represent you.

At the Tribunal, you have to prove that you have been discriminated against.

## Remedies

If you are successful at the inquiry, the Tribunal can order any of the following remedies to your complaint:

- that the discrimination stop;
- that CSC take steps to resolve the effects of the discrimination;
- that CSC make a policy or take steps to prevent the same kind of discrimination in the future;
- that you be given something you were denied because of the discrimination;
- compensation for money you had to spend because of the discrimination;
- compensation for pain and suffering that you experienced because of the discrimination against you (maximum of \$20,000); and

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12 *Canadian Human Rights Act*, s 50(1).



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- special compensation if the Tribunal finds that CSC purposely discriminated against you (maximum of \$20,000).<sup>13</sup>

If the Tribunal denies your complaint, you might be able to apply to the Federal Court to review the decision. You would need to do this within 30 days of the negative decision. Call Prisoners' Legal Services or a lawyer for advice.

## **Will my information be confidential?**

When you make a Complaint to the Human Rights Commission, your information might not stay confidential. If your case goes to the Tribunal for a hearing, or a judicial review at the Federal Court, the information will be made public.<sup>14</sup> Before that, the information in your Complaint will be available to the staff at the Commission and to CSC. Only the information shared in the mediation and settlement is confidential.

## **If I get money, will it affect my social assistance?**

If you apply for income assistance or disability income assistance after you are released, there is a limit on the assets you can have. The money you get from a human rights award will count towards your assets and could prevent you from getting social assistance.

If you are applying for income assistance, the limit on your assets is only \$2,000 if you are a single person, and \$4,000 if you are a part of a couple or family. You will normally not be able to get

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13 *Canadian Human Rights Act, s 53.*

14 *Canadian Human Rights Act, s 52.*

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income assistance if you have more than this amount in cash and savings.

If you are applying for disability income assistance, you are normally allowed up to \$100,000 in cash/savings (or \$200,000 if two people in your family are applying for disability). So the human rights award will probably not affect your application.

But, if you receive a human rights award and want to apply for welfare, there are things that you can buy that will not count towards the asset limit. These are called “exempt assets”. These include a home you live in, a car up to \$10,000 (if you use it for day-to-day transportation), reasonable household furnishings and effects, clothing, business tools, a Registered Educational Savings Plan, and other things listed in section 11 of the Employment and Assistance Regulation.

You can also spend the money you receive on debts that you owe or on reasonable living costs.

If you are applying for disability assistance (or are applying for welfare but have a genuine intention to apply for disability assistance), then in addition to buying these “exempt assets” with your human rights award, you can put funds into the Registered Disability Savings Plan (RDSP). To do this, you would need to apply to the Canada Revenue Agency (CRA) first and be found eligible for the Disability Tax Credit. For more information, see the information sheets available online at <http://disabilityalliancebc.org/hs8/> and <http://disabilityalliancebc.org/hs/15/>. If you are in prison and cannot access these information sheets, you can ask PLS to send you a copy.

If you receive money through a settlement (agreed to by you and CSC), the money might count towards your asset limit. If you have

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problems getting welfare or disability assistance because of this, you should contact an advocate. You can find an advocate online at <http://www.povnet.org/find-an-advocate/bc>.

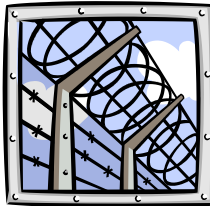
## **Prisoners' Legal Services**

If you are in prison in British Columbia, you can contact Prisoners' Legal Services for advice or assistance with issues that affect your liberty (such as segregation, disciplinary charges or parole hearings) or about health care or human rights issues.

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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