



## Prisoners' Legal Services

A Project of the West Coast Prison Justice Society

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May 3, 2019

VIA EMAIL

**Anne Kelly, Commissioner**  
**Correctional Service Canada**  
340 Laurier Avenue West  
Ottawa, Ontario  
K1A 0P9

Dear Ms. Kelly:

**RE: Open Letter on Institutional Adjustment**

I am the executive director of Prisoners' Legal Services, a legal aid clinic for federal and provincial prisoners in British Columbia. I write to raise concerns regarding the Correctional Service Canada's (CSC) policy interpreting s. 18 of the *Corrections and Conditional Release Regulations* (CCRR), and to request that amendments be made to policy to ensure that it is not discriminatory in its application.

Section 18 of the CCRR provides the criteria for assessing prisoners' security classification level. Prisoners are evaluated based on escape risk, risk to public safety and the level of "supervision and control" they require within the penitentiary. This third factor is referred to as "institutional adjustment rating" in CSC policy.

Prisoners must be considered both a high escape risk and high risk to public safety to be classified as maximum security. However, they can also be classified to maximum security only based on a high institutional adjustment rating, even if their public safety risk is low. Prisoners with a moderate institutional adjustment rating are classified to medium security, again even if they pose a low risk to public safety. A low public safety risk, low escape risk and low institutional adjustment rating are required to be classified to minimum security.

Commissioner's Directive 710-6, *Review of Inmate Security Classification* (2018-01-15) (CD 710-6), provides CSC staff with guidance on how to assess institutional adjustment when reviewing someone's security classification since their last review.

Prisoners' Legal Services is concerned that this guidance can result in a high institutional adjustment rating for prisoners with mental disabilities, Indigenous prisoners and others who tend to be discriminated against in society such as transgender prisoners, based on these factors rather than the risk they pose to the safety of others.

Annex B of CD 710-6 provides a list of factors to consider when assessing an institutional adjustment rating. This list does not specify which factors are to be considered as increasing as opposed to decreasing someone's classification. The reasonable assumption is that the factors increase the security rating, as they would indicate a person who has difficulty adjusting to institutional life. Only one of the listed considerations refers to violence. There is no mention of how the other 11 factors indicate any concern regarding risk to safety.

For example, the considerations listed include:

- The inmate's level of motivation/engagement to participate in his/her Correctional Plan.
- Whether the inmate displays special needs or socio-cultural factors indicating a requirement for special intervention on an ongoing basis (Aboriginal inmate, woman inmate, etc.).
- Whether the inmate has a history of mental health issues, suicidal ideation, self-injury. For Aboriginal offenders, provide an analysis of their history of mental health concerns, suicidal ideation and/or self-injury within the context of their Aboriginal social history.
- Emotional stability and whether this will impact on the inmate's institutional adjustment.

In our view, these considerations should be used to identify any mental health needs that should be addressed to help prisoners to be successful in their rehabilitation. However, they are listed as factors to consider in evaluating security classification level, not what forms of mental health supports should be made available to individuals who need them.

Maximum security prisons are characterized by increased security and control. Prisoners at the maximum security Kent Institution who do not have jobs are locked in their cells alone for all but three hours per day on weekdays. The environment is hostile and security-oriented, not therapeutic. There are often fewer opportunities to access resources for prisoners with mental disabilities in a maximum security prison than there are in lower levels of security, and even where resources are available, prisoners should not have to be in highly restrictive settings to access these supports. The mental health services that are offered in maximum security cannot effectively treat trauma because they are not offered in a therapeutic environment conducive to healing.

Another factor listed in determining institutional adjustment rating is “periods of segregation – disciplinary, voluntary and involuntary”. Again, the reason for the placement in segregation is not limited to those related to safety risk. Research shows that people who have spent long periods in segregation often experience negative psychological symptoms including anxiety and depression. They may experience difficulty when released from segregation being around other people. A high institutional adjustment rating as a result of being held in prolonged solitary confinement is not necessarily an indication that the individual requires more “supervision and control”. Rather, it may be an indication that they require therapeutic support. In addition, keeping people who have experienced prolonged isolation in maximum security environments is likely to negatively impact both their behaviour and their mental health.

The Correctional Investigator reports that Indigenous prisoners tend to be placed in higher levels of security than other prisoners, and tend to spend more of their sentences in custody than other prisoners. Prisoners’ Legal Services is concerned that the considerations listed in CD 710-6 perpetuate this discriminatory treatment.

For example, one consideration listed reads:

- review the Security Intelligence file, record date of review and consultation with the Security Intelligence Officer. Indicate whether the inmate has any affiliations with criminal organizations/gangs, or continues to be involved in criminal activities while in custody. Identify the existence of incompatibles or co-convicted inmates and the impact on institutional adjustment. For Aboriginal offenders, consider any affiliations within the context of their Aboriginal social history (this may be related to family fragmentation and a lack of cultural identity linked to a desire to belong)

There is no direction in this section to consider *Gladue* factors as *reducing* an Indigenous person’s institutional adjustment rating related to security intelligence. It suggests that *Gladue* factors should be used to explain allegations of gang affiliation, affiliation with criminal organizations or involvement in criminal activities in custody, but not as a mitigating factor. In this way, the policy may encourage staff to use *Gladue* factors to *increase* or justify an Indigenous person’s security classification rating. This reference to “Aboriginal offenders” in the section on security intelligence might encourage an institutional parole officer to view relationships with other Indigenous prisoners as related to gang activity. Indigenous women prisoners have reported to Prisoners’ Legal Services that when they form bonds with each other, CSC accuses them of being in gangs.

The over-representation of Indigenous prisoners follows on the heels of over 100 years of residential schools. Canada’s Truth and Reconciliation Commission’s report acknowledges the genocide Canada committed against Indigenous people which included forcibly taking children away from families to remote locations and subjecting them to programs designed to destroy their pride and self-respect.

It is not surprising that Indigenous people tend to have high institutional adjustment ratings, given that their imprisonment by Canada is an extension of the genocidal policies of residential schools. It would be next to impossible for them to have a low rating for institutional adjustment in a security driven prison environment that is not culturally safe or trauma-informed. Such environments perpetuate violence and do not achieve the foundation of trust and respect that is necessary for healing.

CD 710-6 directs CSC to apply a high institutional adjustment rating if a prisoner demonstrates:

- an uncooperative attitude toward institutional programs and staff and presents a potentially serious management problem within an institution.

Indigenous prisoners may feel resentful of the correctional system that is perpetuating this colonial legacy, or they may be perceived by non-Indigenous staff as being “uncooperative” toward programs or staff that are not responsive to their needs. This could result in a high institutional adjustment rating.

Access to culturally appropriate services to help Indigenous prisoners heal from trauma decreases with higher security classifications. Indigenous run healing lodges are not available to prisoners in maximum security. The Pathways program is not available in maximum security. Prisoners tell PLS they feel they have to earn access to their cultural practices with good behaviour. By identifying factors that result in a higher security classification that are a result of intergenerational trauma, the policy on security classification contributes to the over securitization of Indigenous people. In this context, any reference to making the assessment “in the context of the offender’s Aboriginal social history” is mere lip service.

Trauma affects mental health and behaviour. For instance, someone with post-traumatic stress disorder may act aggressively as a means of self-protection. Prisoners have told PLS that their acts of self-harm have been included in lists of their behavioural problems. Classifying prisoners to higher levels of security based on institutional adjustment problems results in prisoners who have suffered high rates of personal and intergenerational trauma being denied the supports they need to heal.

Transgender women living in men’s prisons may be considered high institutional adjustment because they are victimized by male prisoners, or because the programs available are not relevant to them as women.

The test for institutional adjustment should be amended to ensure that the only factors considered are an indication of increased safety risk (to others) that require a higher level of supervision and control.

Consideration of *Gladue* factors and factors related to mental health and trauma should be a separate consideration to determine what therapeutic services would benefit an individual.

Prisoners who have experienced trauma or have high mental health needs should be provided more access to resources that would facilitate healing, such as mental health services and a non-punitive, culturally appropriate therapeutic environment. These services must be offered in the least restrictive environment possible.

Please feel free to contact me if you would like to discuss this matter.

Yours truly,

**PRISONERS' LEGAL SERVICES**

A handwritten signature in black ink, appearing to read 'Jennifer Metcalfe', with a long horizontal flourish extending to the right.

Jennifer Metcalfe  
Executive Director  
Barrister and Solicitor