



Prisoners' Legal Services

A Project of the West Coast Prison Justice Society

June 6, 2020

VIA EMAIL: financecommittee@leg.bc.ca

**Select Standing Committee on
Finance and Government Services**

Room 224, Parliament Buildings
Victoria, B.C. V8V 1X4

Dear Honourable Committee Members:

RE: BC Budget Consultations

Thank you for the opportunity to provide a submission during the 2021 BC budget consultations. I am the executive director of Prisoners' Legal Services, a legal aid clinic for federal and provincial prisoners in BC. We assist prisoners with issues that affect their liberty rights, human rights and health care. We provide the following recommendations.

1. Mental health services

Prisoners' Legal Services has a client whose case illustrates the great need for more significant investment in community-based mental health services. He is a young Metis man who has FASD and PTSD. He has a history of problematic substance use, recurring incarcerations, long-term solitary confinement and serious self-harm. He struggles to be successful in the community because there are insufficient services for him and because of the challenges of transitioning from a highly restrictive prison environment to the community without adequate support. He would very much like to reside at a residential treatment facility, but he has had difficulty gaining acceptance due to his complex needs and because many will only accept people who have been out of jail for 30 days. An independent psychologist recommended he receive long-term residential care in a setting that has a focus on mental health rather than punishment, but no such facility is accessible to him. This gap in services has led to a revolving door of incarcerations for him and others like him.

The vast majority of BC prisoners suffer from trauma, addiction and other mental health disabilities. The best way to help them and to address public safety issues is to provide robust mental health services in the community so that individuals may heal from trauma and receive mental health support before they become involved in the criminal system.

Many of our provincial clients are released from high-stress and often traumatic prison environments to the community without adequate mental health supports. More in-patient and supportive housing

services, access to social workers and counselling are needed so that people can receive the support they need to live their lives in the community.

We echo the calls for “bold investments” in community mental health services as part of BC’s poverty reduction strategy, made in February by the Canadian Mental Health Association. The CMHA called for a minimum 9% of health care funding for mental health and addiction for early intervention “so that people can get care before crisis.” We support this approach.

BC Corrections has implemented some mental health units in provincial jails, however, these units are staffed by correctional officers with little training to work with people with serious mental health needs. Funding should be provided to the Provincial Health Services Authority, in partnership with the First Nations Health Authority, to hire mental health professionals, social workers and Indigenous Elders and traditional healers to staff mental health units and to work with prisoners in all units who have mental health needs, including by providing culturally appropriate care and access to ceremonies and other Indigenous healing traditions.

Our clients with the highest mental health needs in prison often end up in solitary confinement, either in regular segregation cells or in cells in the segregation area designated for prisoners on suicide watch. The Forensic Psychiatric Hospital should be funded to provide a secure therapeutic environment for BC prisoners who have high psychiatric care needs.

2. Indigenous-run healing lodges and independent healing services for prisoners

In 2017/18, 32% of BC custody admissions were Indigenous adults, despite Indigenous people representing only 5.9% of the population in BC.¹ The overrepresentation of Indigenous people in Canada and British Columbia is shameful. It is a continuation of our legacy of genocide against Indigenous people. We must do everything we can to stop putting Indigenous people in colonial prisons and to ensure Indigenous communities have access to the resources needed to heal from multi-generational trauma.

Many Indigenous prisoners are in custody because of violence they learned from their experiences, or their parents’ or grandparents’ experiences, in residential schools. Often Indigenous people enter the justice system on minor charges, but the prison environment is traumatizing and not culturally safe, and they end up with more serious charges and longer and longer sentences, in higher levels of security. Many Indigenous prisoners are people who have aged out of the foster care system, and without adequate community-based supports, have entered the justice system. Prisons perpetuate genocide by continuing to separate Indigenous people from their children, communities and nations.

Prisoners’ Legal Services is excited that British Columbia has engaged with the BC First Nations Justice Council and has developed a Justice Strategy² to address the overrepresentation of Indigenous people in the justice system. The Justice Strategy will advance self-determination in justice and correctional

¹ Malakieh, Jamil, Adult and youth correctional statistics in Canada, 2017/2018, Table 4, Statistics Canada. Online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010/tbl/tbl04-eng.htm>.

² BC First Nations Justice Council, *BC First Nations Justice Strategy*, February 2020. Online: https://9c56a069-86c3-43b1-ad5b-8cdb6fae3682.filesusr.com/ugd/43baff_3801249e459642c8bb314bc276384f4b.pdf.

systems, based on Indigenous legal orders and governance. We are encouraged by this government's commitment to nation to nation negotiations, to bringing BC laws into alignment with the UN *Declaration on the Rights of Indigenous Peoples*, to truth and reconciliation, and to the investment in community-based services and housing in Indigenous communities in previous budgets.

We hope this budget will dedicate significant resources to ensure the Justice Strategy's goals are fully realized.

We support the Justice Strategy's focus on providing robust proactive and preventative wrap-around services that are culturally appropriate and Indigenous-led, to allow healing at the individual, community and nation-wide levels, to prevent people from entering the justice system in the first place.

Full implementation of Strategy 14 is particularly crucial for Indigenous prisoners: to "Expand culturally-based programs throughout corrections, and supports for use of alternatives within First Nations."

Indigenous prisoners often tell us that they do not trust prison staff, and are uncomfortable sharing their traumatic experiences with non-Indigenous people in a prison environment. They often do not have access to their traditional ceremonies, languages, foods and other traditional ways of healing. Prisoners who have been to Indigenous-run healing lodges report that they felt safe, trusted staff and could begin to heal from trauma. Funding for Indigenous-run healing lodges in BC, as an alternative to incarceration in colonial prisons, is an essential first step toward reducing the over-representation of Indigenous people in prison.

Within BC Correctional centres, it is essential that Indigenous Elders and counsellors have the authority to provide well resourced, culturally-appropriate healing services, independent of BC Corrections. A prisoner should not be denied these essential services by BC Corrections based on their behaviour – Elders should have the authority to make decisions about when and how to provide services to, and ceremonies with, people who need their support.

The Justice Strategy states that the "[BC First Nations Justice Council] and BC will pilot two new correction alternatives within First Nations in BC over the next three years, as a basis of informing the development of a network of alternatives over the next decade" and with a workplan and budget to guide the pilots. They will also establish a workplan and budget to expand cultural programs within BC Corrections, with options for expansion over the next 1, 3 and 5 years.

We encourage BC to ensure that these initiatives are fully resourced. Reconciliation with Indigenous people is only possible when we break the cycle of genocide.

3. Investigation and Standards Office oversight of use of force

Currently there is no external oversight of use of force against prisoners in the custody of BC Corrections. Last year, Prisoners' Legal Services conducted a review of use of force in BC prisons, speaking with more than 70 provincial prisoners who had force used against them by correctional

officers.³ We found that force was frequently used against prisoners in medical and emotional distress and prisoners who were not following directions but posed no immediate safety risk. After a use of force, prisoners were sometimes left with their bodies and clothes covered in pepper spray. Internal reviews generally did not reflect the prisoners' perspective.

Our report recommends that the Investigation and Standards Office be funded to play the critical role of providing external review of uses of force, which would require increased funding for that office. We also recommend resources be devoted to allowing the Provincial Health Services Authority to play a greater and sometimes principle role in responding to and deescalating crises involving psychological or physical distress.

For more information, please refer to our report *Damage/Control: Use of force and the cycle of violence and trauma in BC's federal and provincial prisons* (<https://prisonjustice.org/wp-content/uploads/2019/06/use-of-force-report-online-1.pdf>).

4. External oversight of RCMP municipal lock-up cells

Prisoners' Legal Services is concerned that there is no oversight of municipal RCMP lockup cells in BC. We recommend that that BC fund an independent oversight body to investigate complaints related to officer misconduct in RCMP municipal lockups.

5. Increase prisoner legal aid

Prisoners' Legal Services provides legal aid to one of the most marginalized and vulnerable populations in BC. In the last year we assisted prisoners with more than 3,300 prison law issues that affect their *Charter* and human rights. We are in the privileged position of being able to challenge these violations and to help maintain the rule of law within BC prisons.

Due to a dramatic increase in demand for our services over the past few years, we are facing a funding crisis. It has become increasingly difficult to provide adequate services with our existing funding levels. While we have not had an increase in core funding since 2012, the demand on our services has increased by 105 percent since 2015.

Our small staff of eight employees receives approximately 60 (and sometimes as many as 90) calls per day from prisoners. It is increasingly difficult for prisoners to get through to an advocate for assistance due to the high demand. This has resulted in prisoners unable to access legal assistance for issues that engage their fundamental liberty and human rights. Prisoners in solitary confinement may miss taking a shower or phoning family that day if they spend all of their time out of their cells on hold with PLS.

In his 2019 report *Roads to Revival*,⁴ Jamie Maclaren, QC cited PLS as an effective model that should be followed for developing other specialty legal clinics that provide cost-effective services to specific

³ Prisoners' Legal Services, *Damage/Control: Use of force and the cycle of violence and trauma in BC's federal and provincial prisons*, June 2019. Online: <https://prisonjustice.org/wp-content/uploads/2019/06/use-of-force-report-online-1.pdf>.

⁴ Page 52. Online: https://news.gov.bc.ca/files/Roads_to_Revival-Maclaren_Legal_Aid_Review-25FEB19.pdf.

marginalized groups in particular areas of law that affect low-income people. The McLaren report recommends that BC “Develop and nurture a strategic network of speciality legal aid clinics to serve specific communities of legal need.” PLS desperately needs an increase to our funding to meet the high demand on our services and the increased cost of living.

Thank you for your consideration of these submissions.

Yours truly,

PRISONERS’ LEGAL SERVICES

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

Jennifer Metcalfe
Executive Director
Barrister and Solicitor