



**Prisoners' Legal Services**  
A Project of the West Coast Prison Justice Society



CONGRESS OF  
**ABORIGINAL PEOPLES**

February 20, 2024

VIA EMAIL

**Anne Kelly**  
**Commissioner**  
**Correctional Service Canada**  
340 Laurier Ave W  
Ottawa, ON K1A 0P9

**Kathy Neil**  
**Deputy Commissioner for Indigenous Corrections**  
**Correctional Service Canada**  
Add 340 Laurier Ave W  
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**RE: Joey Toutsaint and the warehousing of Indigenous people in CSC prisons**

Dear Ms. Kelly and Ms. Neil:

We are writing to express our deep concerns about the warehousing of Joey Toutsaint and thousands of other Indigenous people in the federal prison system, and the deep harms that have been done – and continue to be done – to Indigenous people in Correctional Service Canada (“CSC”) custody by Canada.

Indigenous people represent 5% of the population in Canada but 32% of people in federal prisons overall and 50% of federal prisons for women.<sup>i</sup> Canada has been aware of the over-representation and steadily rising proportion of people in Canadian prisons who are Indigenous for decades,<sup>ii</sup> but the problem has only worsened.

CSC often deflects blame for this devastating human rights violation, yet it bears significant responsibility for perpetuating the mass incarceration of Indigenous people. Indigenous people spend more of their sentences in custody than non-Indigenous people.<sup>iii</sup> They are also disproportionately exposed to the most punishing and damaging aspects of prison, including solitary confinement (in Structured Intervention Units and elsewhere),<sup>iv</sup> violent and restrictive maximum-security environments,<sup>v</sup> and use of force by officers,<sup>vi</sup> which exacerbates trauma and makes healing impossible in this abusive environment, thereby lengthening time in prison. Indigenous people are also over-represented in self-harm injuries<sup>vii</sup> and deaths by suicide<sup>viii</sup> in prison. These experiences cause lasting harm and make it more difficult for people to achieve and maintain community release. Sections 81 and 84 of the *Corrections and Conditional Release*

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Act (“CCRA”), designed to facilitate Indigenous people serving their sentences in Indigenous communities rather than CSC-run institutions, are woefully under-funded, under-used and over-regulated by CSC.

As the Correctional Investigator of Canada recently concluded:

On nearly every measure of correctional performance – time spent behind bars before first release, placements in maximum-security institutions, involvement in use of force, recidivism and revocation rates, suicide and self-injury, placement in restrictive confinement units – the correctional system seems to perpetuate conditions of disadvantage and discrimination for Indigenous people.<sup>ix</sup>

CSC must take responsibility for its role in the continuing genocide of Indigenous Peoples in Canada. It must support Indigenous self-determination in alternatives to prison through sections 81 and 84 of the CCRA, support independent Indigenous healing practices for people in prison, incorporate Indigenous healing into decision-making, and end its use of racist risk assessments and security classification, to allow Indigenous people to cascade through and out of the prison system, as required by the CCRA.<sup>x</sup> This should be the top priority for the Deputy Commissioner for Indigenous Corrections. This means remedying the warehousing of Indigenous people, many of whom are trapped in prison because the harms they have experienced – including in custody -- make it difficult or impossible for them to cascade to lower levels of security and achieve parole based on the criteria set by CSC and the Parole Board of Canada. For people serving life or indeterminate sentences, this means they might be warehoused in custody forever. This is not in line with the requirements of the CCRA or a philosophy of rehabilitation.

#### *Case of Joey Toutsaint*

Joey Toutsaint exemplifies this warehousing and the immense harm done to Indigenous people in custody, especially in maximum security institutions.

Joey is a Dene man from the Black Lake Denesuline First Nation. He first entered CSC prisons at only 18 years old. He is now 37, and almost his entire adult life has been spent in maximum security prisons. He has grown up in CSC custody. Instead of spending his formative years finding his passions, cultivating family relationships and making a life for himself, he has endured violence, isolation and trauma and has become increasingly disconnected from his family, his community and the outside world. He is now serving an indeterminate sentence, and feels hopeless he will ever leave prison. This is unacceptable, and CSC must take responsibility for undoing the harms done to Joey by the prison system and support him to reenter the community.

Joey grew up on the Black Lake Reserve, a remote community in Northern Saskatchewan’s Athabasca Basin region, and was raised in a loving family by his grandfather and mother. Dene

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was his first language, and he grew up learning to live off the land and receiving teachings from his grandfather.

Joey's mother and aunt attended an Indian Day School, and their parents (Joey's grandparents) attended Indian Residential School.<sup>xi</sup> Joey and his siblings experienced anti-Indigenous racism as youth, and had difficulty in school because they primarily spoke Dene.<sup>xii</sup>

When Joey was only 15, his grandfather passed away, and just one month later his mother was killed tragically after being struck by a drunk driver just outside the family home. According to CSC Elder Elsie Wuttunee, "Joey has very vivid memories of running home and seeing the ambulance at the location where his mother was killed...he was very traumatized."<sup>xiii</sup> His younger brothers were asleep in the house.

According to Joey's Gladue Report, "Joey's conflicts with the law began when [he and his siblings] were in the throes of grief after the passing of their grandfather and mother in quick succession." As Joey's brother recalled, "We were grieving a lot. We didn't care. We felt we didn't belong anymore...Joey did not get the support he needed back then. I don't remember there being anything available back then such as alternative measures for him and I don't recall any counselling that we received."<sup>xiv</sup>

Instead of receiving support and staying with his family, Joey was criminalized and taken from his community. As a teen, Joey bruised a pedestrian with a pellet gun and was sent to North Battleford Youth Centre, where he was isolated and mistreated because he spoke Dene exclusively.<sup>xv</sup> He began to accumulate criminal charges and ultimately entered the federal prison system at age 18.

At Edmonton Institution, when Joey was still a teenager, he was repeatedly raped and physically assaulted by other incarcerated people, facilitated by CSC officers. Over the next several years, he would spend more than 2,180 days in segregation, and many more in other forms of isolation – including Structured Intervention Units ("SIUs") and observation cells.

Joey exhibits many of the well-known psychological symptoms of long-term solitary confinement, including "sleep disturbances (including nightmares and sleeplessness); heightened levels of anxiety and panic; irritability, aggression, and rage; paranoia, ruminations...loss of emotional control, mood swings...and depression; increased suicidality and instances of self-harm; and, finally, paradoxical tendencies to further social withdrawal."<sup>xvi</sup> At one time he went nine months without going outdoors. An independent psychiatrist who assessed Joey concluded that solitary confinement "greatly exacerbates Mr. Toutsaint's psychiatric problems and directly contributes to him becoming more suicidal".<sup>xvii</sup>

Joey's Gladue Report notes that "by 2015 he was making regular and severe attempts to hurt himself", including "multiple attempts to end his life". This self-harm has included cutting his arms, legs, throat and stomach with razor blades, tying ligatures around his neck, punching himself in the face, banging his head against the wall or floor, and swallowing sharp objects. It

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must be understood in the context of the abuse Joey has endured in custody and his powerlessness to improve his conditions of daily life. In response to these actions, CSC has used physical force, isolation, restraint and other restrictive measures. Joey has spent countless hours in sometimes filthy observation cells. He has reported multiple occasions where officers have encouraged him to kill himself.

Joey has told us:

Do you know how many times I got ERT coming for me? When they take me down, it's more than just them taking me down. They take me down to a point where I feel like I'm gonna die. Sometimes I feel like I don't know what's going to happen to me because things can happen to me without anybody knowing, and that is how I'm going to die one day, but it's not my time yet.

...One time, I cut my throat and I nearly died. As soon as I saw the ERT, I didn't want to deal with it no more...I didn't even think twice or nothing. I just cut my throat, just like that. One slash and then a second and a third one. I cut my carotid artery and I lost consciousness. I woke up in a pool of blood and they had to take me on a stretcher to hospital.

Even at CSC treatment centres, Joey has continued to be isolated. He was until recently at the Regional Psychiatric Centre, where he told us he was not coming out of his cell because, when he did, officers would contaminate it with feces. He stopped leaving his cell for showers, instead opting to take “bird baths” in his cell. He often refuses food because of concerns it is contaminated by officers, and is often hungry. Rather than simply giving Joey food he feels safe eating, CSC has denied Joey’s accusations. Despite his high mental health needs, Joey was discharged from the Regional Psychiatric Centre and returned to Saskatchewan Penitentiary, where he will no doubt continue to be isolated and to experience harassment and abuse. Joey has stayed in regular contact with PLS and CAP’s National Vice-Chief Beaudin over the last few years and is often in distress, describing acts of self-harm.

Joey has been classified as maximum security for virtually all of his time in CSC custody – which has spanned approximately 18 years. His security classification has never been reduced. CSC characterizes his behaviour as aggressive and violent and he has accumulated numerous institutional and sometimes criminal charges for incidents that have occurred in prison, which then lead to further restrictions. But CSC fails to acknowledge that Joey’s adult life has been shaped almost exclusively by his experiences in custody, and that he exhibits normal human responses to prolonged isolation, extensive exposure to violence, and repeated traumas.

It is clear that Joey’s imprisonment does not fulfill the purpose of CSC, as outlined in s. 3 of the CCRA: it is not “safe” or “humane” and he is not being assisted in his “rehabilitation” or “reintegration into the community”. Indeed, quite the opposite is occurring – the longer he spends in custody, the more he is harmed, the less he is equipped to return to the community, and the more he is at risk of death by suicide or self-harm.

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Despite all he has endured, the Joey we have had the privilege of knowing is kind, funny, smart and caring. This is also the version of Joey that has been described by CSC Elders. For instance, Elder Elsie Wuttunee has described Joey as very respectful,<sup>xviii</sup> and noted that after Joey set up a tipi for the cultural centre, “the look on his face after that accomplishment was very peaceful”. She further noted that Joey “really likes the outdoors and I believe that being on the land is helpful to him as is smudging and praying” and that she “saw Joey come alive when we go out[side] and I think for him the land is healing.”<sup>xix</sup> She also stated that Joey “helps by the fire, and she sees him looking peaceful to be a part of something outside the institution’s walls.”<sup>xx</sup>

Contrary to CSC’s security-focused approach, Elder Elsie expressed her view to the writer of Joey’s Gladue report that it is important that Joey not be handcuffed during their meetings, and that no guards accompany him into the cultural centre. As she told the Gladue writer: “I believe it is important to provide a safe space for him, an element of normalcy and some freedom. We spend time outside walking, we smudge, we pray, and I feed him.”<sup>xxi</sup>

What Joey needs is not more CSC intervention, but the opportunity to receive healing in a restorative and culturally-appropriate environment, and for his allegations of mistreatment to be taken seriously, meaningfully investigated and remedied. His interactions with officers should be limited and he should have opportunities for more regular interactions with Elders and to participate in ceremonies and cultural practices. This is what will bring Joey the “stability” CSC requires. Joey should have the opportunity to go to a healing lodge.

In the spirit of truth and reconciliation, we request that CSC retain an Indigenous organization to conduct an independent and culturally appropriate investigation under s. 20 of the CCRA into Joey’s experiences in CSC’s custody, including allegations of misconduct and abuse by officers over the years, most of which have never to Joey’s knowledge been meaningfully examined. We suggest contracting with Kūwiingu-néewul Engagement Services (KES) to conduct the investigation and make recommendations for his care and custody moving forward. KES is an Indigenous-led organization that has been contracted by Canada to conduct consultations for Canada’s Indigenous Justice Strategy. It has the expertise, independence and cultural safety to conduct this investigation in an unbiased manner. KES has confirmed that it is available and willing to conduct this independent investigation.

Joey’s experience is egregious, but it is not unique. CSC must review the cases of all Indigenous people who are being warehoused – especially those serving life and indeterminate sentences – and eliminate barriers at a systemic level so that Indigenous people can serve their sentences in Indigenous communities.

Finally, major shifts in CSC’s policies related to risk assessments, security classification and support for independent Indigenous in-reach and alternatives to prison must be prioritized. See Prisoners’ Legal Services’ report [\*Decarceration through Self-Determination\*](#) for more information about these recommendations.

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The Congress of Aboriginal Peoples' vision is that all Indigenous peoples in Canada will experience the highest quality of life, founded on the rebuilding of our Nations. All Indigenous citizens will be rightfully treated with respect, dignity, integrity, and equality. This can't possibly come to fruition with Joey and other Indigenous peoples being warehoused in abusive and culturally-inappropriate correctional systems.

We request a written response that outlines what CSC will do to end the mass incarceration and abuse of Indigenous people in its prisons, including specifically what CSC will do to end the cycle of abuse and isolation that Joey Toutsaint has endured. We also invite you to accept Prisoners' Legal Services' prior invitation to meet to discuss these issues further.

Yours truly,

**CONGRESS OF ABORIGINAL PEOPLES**



Kimberly Beaudin  
National Vice-Chief

**PRISONERS' LEGAL SERVICES**



Jennifer Metcalfe  
Executive Director

cc: Ivan Zinger, Correctional Investigator of Canada  
Chief Coreen Sayazie, Black Lake Denesuline First Nation  
The Honourable Dominic LeBlanc, Minister of Public Safety  
The Honourable Kim Pate, Senator  
The Honourable Peter Julian, P.C., M.P

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- <sup>i</sup> Office of the Correctional Investigator Canada, *Proportion of Indigenous Women in Federal Custody Nears 50%: Correctional Investigator Issues Statement* (Ottawa: 17 December 2021). Online: <https://www.oci-bec.gc.ca/cnt/comm/press/press20211217-eng.aspx>.
- <sup>ii</sup> See for instance the Supreme Court of Canada's decision in *R. v. Gladue*, [1999] 1 S.C.R. 688.
- <sup>iii</sup> Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 86. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>. Public Safety Canada, *Corrections and Conditional Release 2018 Statistical Overview* (August 2019) at 80 and 86. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2018/ccrso-2018-en.pdf>.
- <sup>iv</sup> Public Safety Canada, *2019 Annual Report, Corrections and Conditional Release Statistical Overview* (September 2020) at 71. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2019/ccrso-2019-en.pdf>. Structured Intervention Unit Implementation Advisory Panel, *2021/22 Annual Report* (Ottawa: 2 September 2022) at 83-84. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap-nnlrpt/2022-siu-iap-nnlrpt-en.pdf>. Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022). Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.
- <sup>v</sup> Auditor General of Canada, *Systemic Barriers – Correctional Service Canada* (2022) at 8. Online: [https://www.oag-bvg.gc.ca/internet/docs/parl\\_oag\\_202205\\_04\\_e.pdf](https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202205_04_e.pdf). Public Safety Canada, *Corrections and Conditional Release 2018 Statistical Overview* (August 2019) at 55; Office of the Correctional Investigator Canada, *Indigenous People in Federal Custody Surpasses 30%* (Ottawa: 21 January 2020); Data received from the Office of the Correctional Investigator Canada (14 November 2022).
- <sup>vi</sup> Office of the Correctional Investigator Canada, *Indigenous People in Federal Custody Surpasses 30%* (Ottawa: 21 January 2020). Office of the Correctional Investigator Canada, *Annual Report 2017-2018* (Ottawa: 2018) at 11 and 34. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>. Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022). Online: [annrpt20212022-eng.pdf \(oci-bec.gc.ca\)](https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf). <sup>vii</sup>
- <sup>vii</sup> Data provided by the Office of the Correctional Investigator (24 August 2021).
- <sup>viii</sup> Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 97. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.
- <sup>ix</sup> Office of the Correctional Investigator of Canada, *Correctional Investigator Releases Undated Findings on the State of Indigenous Corrections in Canada: National Indigenous Organizations Issue Statements of Support* (November 2, 2023). Online: <https://oci-bec.gc.ca/en/content/correctional-investigator-releases-updated-findings-state-indigenous-corrections-canada>.
- <sup>x</sup> Prisoners' Legal Services, *Decarceration through Self-Determination: Ending the mass incarceration of Indigenous people in Canada* (April 2023). Online: <https://prisonjustice.org/wp-content/uploads/2023/04/Decarceration-through-Self-determination-w.pdf>.
- <sup>xi</sup> Kimberly Gee, "Gladue Report for Joey Toutsaint General Support/Sentence Management", December 7, 2021 ["Gladue Report"], p. 7.
- <sup>xii</sup> Gladue report, pp. 4-5.
- <sup>xiii</sup> Gladue report, p. 5.
- <sup>xiv</sup> Gladue Report, p. 5.
- <sup>xv</sup> Gladue Report, p. 6.
- <sup>xvi</sup> Craig Haney, "The Psychological Effects of Solitary Confinement: A Systematic Critique", *Crime and Justice* 47.1 (2018).
- <sup>xvii</sup> Report of Jon Wesley Boyd, M.D., Ph.D., October 29, 2018 ("2018 Boyd Report"), p. 5.
- <sup>xviii</sup> Gladue Report, p. 9.
- <sup>xix</sup> Gladue Report, p. 10.
- <sup>xx</sup> Gladue Report, p. 11.
- <sup>xxi</sup> Gladue Report, p. 10.