



Union of BC Indian Chiefs



CONGRESS OF  
ABORIGINAL PEOPLES



Prisoners'  
Legal Services

September 13, 2024

VIA EMAIL

**The Honourable Dominic LeBlanc**  
**Minister of Public Safety**  
269 Laurier Avenue West  
Ottawa, Ontario K1A 0P8

**The Honourable Arif Virani**  
**Minister of Justice**  
House of Commons  
Ottawa, Ontario K1A 0A6

**The Honourable Patty Hajdu**  
**Minister of Indigenous Services**  
10 Wellington Street  
Gatineau, QC K1A 0H4

Dear Ministers LeBlanc, Virani and Hajdu:

**RE: Canada's obligations to address the mass incarceration of Indigenous people in prison and safeguard the human rights of incarcerated people consistent with Canada's commitments under its 4th UN Universal Periodic Review**

We write on behalf of the Union of BC Indian Chief, Congress of Aboriginal Peoples and Prisoners' Legal Services regarding our concern about the human rights of people in Canada's federal prisons and the mass incarceration of Indigenous people by Canada.

Safety is not created with more bars and razor wire, but by addressing the root causes of violence and harm and investing in community infrastructures that help people meet their needs and lead meaningful lives. Similarly, violence in prisons is not solved by more restrictions and isolation, but by giving people productive and meaningful ways to occupy their time, helping them maintain their community connections, and treating them with dignity. Public safety and the humane treatment of people in prison are not opposed, but go hand in hand.

It is against this backdrop that we write regarding the recommendations accepted by Canada during its 4th Universal Periodic Review, as well as the urgent need to reverse the warehousing of Indigenous people in prison.

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## Canada's 4th Universal Periodic Review

Canada's 4th Universal Periodic Review ("4th UPR") process concluded in March 2024, with Canada adopting a number of recommendations made by UN member states, which we strongly advocated for through our written, oral and in person meetings with the Canada mission and separate in person meetings with a number of States in Geneva, related to prisons, including recommendations to:

- address structural racism in and the over-representation of Indigenous and Black people in prisons (recommendations 84, 129, 130, 133),
- improve prison conditions (recommendations 121, 122, 123, 124),
- restrict or end solitary confinement (recommendations 124, 132),
- adhere to United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (recommendation 132), and
- invest in community-based, Indigenous-led alternatives to incarceration (recommendation 131).

Canada also adopted some recommendations related to the Optional Protocol to the Convention Against Torture (recommendations 10, 11, 15, 16, 17, 21).

As we stated in our written and oral submissions, as well as in person meetings with Canada and States, during the 4th UPR, we call upon Canada to meaningfully and effectively implement these recommendations as soon as possible, including by shifting significant funding and authority from Correctional Service Canada ("CSC") to Indigenous governments and organizations to decarcerate Indigenous people in a manner consistent with the UN Declaration on the Rights of Indigenous Peoples, Article 4 and based on principles of self-determination.

We also request an opportunity to meet with you to discuss the implementation of the commitments Canada made to us and the world during its 4th UPR related to ending the mass incarceration of Indigenous people in prison.

Also, as we stated during the 4th UPR, we call on Canada to eliminate solitary confinement in all forms. Rather than walking the line of the UN definition of solitary confinement through Structured Intervention Units, and using isolation in unregulated ways including during lock-downs and in solitary like units, Canada should adopt the opposite of solitary. It is well-accepted that isolation causes mental health deterioration, including feelings of rage and paranoia, and increases self-harm and suicide. Further, evidence supports the idea that safety is achieved not by locking people down, but by giving people full days out of their cells with programming and pro-social activities.

New York City recently adopted broad legislation that requires all incarcerated people to have, as a default, at least 14 hours out of their cells per day. It allows for "de-escalation confinement" for a maximum of four hours immediately following an incident, and defines solitary confinement as "any placement of an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period." Even those in restrictive housing – which is limited to people found guilty of a violent grade I offence (and in exceptional circumstances people pending a restrictive housing hearing) – are entitled to 14 hours out per day, as well as to at least seven hours per day of programming and activities outside their cells. Restrictive housing placements are also limited to a maximum of 60 days in any 12-month period.

This model, which relies on the opposite of solitary as a default, recognizes that isolation creates more harm and does not create safety. It should serve as a model for Canada.

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We further call on Canada to fully adopt the UN Nelson Mandela Rules – not only with respect to solitary confinement but also in relation to the ethical obligations of prison health providers and the requirement for health services to be connected to the general public health administration, rather than siloed in CSC, among other things. It is not human rights compliant for CSC, the agency responsible for confinement, to also be in charge of providing healthcare. Canada must move health services out of CSC and into agencies responsible for health.

### **Joey Toutsaint and the warehousing of Indigenous people in CSC prisons**

On February 20, 2024, PLS and the Congress of Aboriginal Peoples (“CAP”) wrote a letter to CSC raising deep concerns about the warehousing of Indigenous people in federal prisons, including Joey Toutsaint, a Dene man who has suffered extensive isolation and violent force by officers in federal prisons over the course of his lifetime. Mr. Toutsaint’s ongoing incarceration is contrary to the legislated purposes of CSC and places him at high risk of death by suicide or self-harm. We called upon CSC to retain an Indigenous organization to conduct an independent and culturally appropriate investigation under s. 20 of the *Corrections and Conditional Release Act* (“CCRA”) into Mr. Toutsaint’s experiences in federal custody, including allegations of misconduct and abuse by officers. We also called on CSC to 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.

CSC’s response to our letter was cursory and disappointing – and a copy was not even sent to the Congress of Aboriginal Peoples. The initiatives mentioned in the letter do not prioritize the autonomy of Indigenous nations and organizations to support and care for Indigenous people serving federal sentences, and instead focus primarily on CSC-run programs. There is no commitment of resources necessary for Indigenous communities to provide services under CCRA ss. 81 or 84 or otherwise, and no recognition of the right to self-governance. Under CSC’s control, the proportion of incarcerated people who are Indigenous has continued to climb. Further investment in CSC is not what is needed.

It is also disappointing that the letter refused to engage at all with respect to Mr. Toutsaint. CSC’s reference to Mr. Toutsaint’s participation in a class action lawsuit and a previous human rights complaint gives the impression that CSC will only address abusive treatment to the extent it is forced to by litigation, and that any ongoing suffering is not their concern.

When Mr. Toutsaint attempts to bring forward new allegations through CSC’s grievance process, they are not taken seriously or meaningfully examined. Mr. Toutsaint has experienced prolonged isolation, numerous uses of force, racist comments by officers, and a fear that his food, clothes and bedding are being contaminated with feces so that he doesn’t eat and sleeps on a bare metal bedframe. He continues to seriously self-harm and is at risk of dying in prison.

We ask that you use your powers to retain an Indigenous organization, such as Kūwiingu-néewul Engagement Services (KES), which has already been contracted by Canada to conduct consultations for its Indigenous Justice Strategy, to conduct an independent investigation into Mr. Toutsaint’s experiences in CSC and make recommendations for his care and custody moving forward. As we informed CSC, KES has confirmed that it is available and willing to conduct this independent investigation.

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## Conclusion

The recommendations that we seek to be implemented reflect the 2015 Truth and Reconciliation Commission's (TRC) Calls to Action, which we remind you, include:

### Recommendation 30

We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

### Recommendation 31

We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

### Recommendation 35

We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.

### Recommendation 36

We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

### Recommendation 37

We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.

### Recommendation 42

We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Canada in November 2012.

Taking steps to end the mass incarceration of Indigenous people by Canada, and upholding the human rights of people in prison is growing as a priority for First Nations governments and organizations, and as such, we attach, two resolutions passed at the Assembly of First Nations on July 10, 2024. We are very pleased to see this advocacy by the AFN, and we fully support the content of the resolutions.

We look forward to your response and welcome the opportunity to meet with you to discuss the concrete steps that Canada is taking to implement the recommendations and initiatives in this letter, and especially the TRC and 4th UPR recommendations. We hope to have a meeting arranged before Truth and Reconciliation Day on September 30, 2024.

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Yours truly,

**On behalf of the CONGRESS OF ABORIGINAL PEOPLES**



Kimberly Beaudin  
National Vice-Chief

**On behalf of the UNION OF BC INDIAN CHIEFS**



Grand Chief Stewart Phillip  
President



Chief Don Tom  
Vice-President



Chief Marilyn Slett  
Secretary-Treasurer

**On behalf of PRISONERS' LEGAL SERVICES**



Jennifer Metcalfe  
Executive Director

Encl.