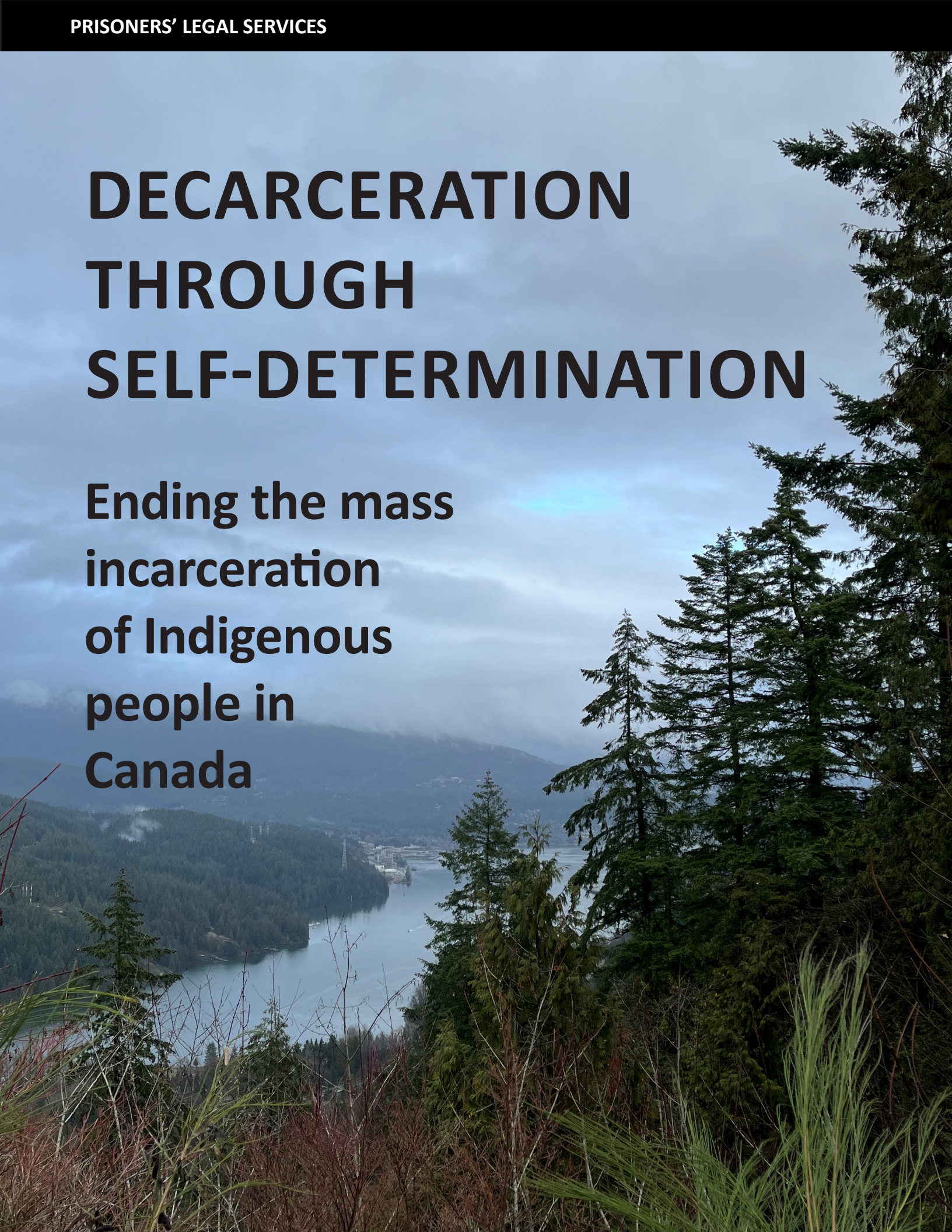


DECARCERATION THROUGH SELF-DETERMINATION

Ending the mass
incarceration
of Indigenous
people in
Canada



Prisoners' Legal Services, a project of the West Coast Prison Justice Society

**Decarceration through Self-Determination:
Ending the mass incarceration of Indigenous people in Canada**

April 2023

Acknowledgements

This report was produced by the West Coast Prison Justice Society/Prisoners' Legal Services with funding from the Law Foundation of British Columbia.

The West Coast Prison Justice Society operates Prisoners' Legal Services, a legal clinic that administers legal aid for people in federal and provincial prisons in British Columbia. This report was written by staff at Prisoners' Legal Services and was developed with extensive input from Indigenous clients and members of Indigenous communities.

We thank the many people who took the time to speak with us and share their stories, expertise, knowledge and experiences with us, both from behind bars and in Indigenous communities where people are engaging in the important work of healing members, communities and nations who have been harmed by the ongoing and intergenerational trauma of colonialism. We include a list of the people who agreed to have their names published in recognition of their experiences and insights at the end of this report. Others wished to remain anonymous.

Prisoners' Legal Services is not an Indigenous organization – we are a non-profit society funded by Legal Aid BC and the Law Foundation of BC. Some members of the Prisoners' Legal Services staff and board of directors identify as Indigenous. Supporting Indigenous self-determination to create alternatives to prison is essential in our role to advance truth and reconciliation between Indigenous Peoples and Canada. Prisoners' Legal Services' advocacy regarding the mass incarceration of Indigenous people is directed by Indigenous clients served by Prisoners' Legal Services. We consider it an important aspect of our work to be an avenue for Indigenous clients to have their voices heard publicly and considered in decisions that directly impact their rights and dignity.

Prisoners' Legal Services is located on the unceded territory of the x^wməθk^wəyəm (Musqueam), S^kwxwú7mesh Úxwumixw (Squamish), sə́lílwətaʔt (Tsleil-Waututh) and Qayqayt Nations. We respect and acknowledge all the Coast Salish Peoples whose territorial and ancestral lands we are situated on, their ongoing deep connection to their lands and waters, and their inherent rights to self-determination and self-governance.

Cover: View of Say Nuth Khaw Yum Provincial Park (co-managed by BC Parks and the Tsleil-Waututh First Nation).

Terminology notes

In this report:

“Indigenous” refers to Aboriginal or First Nation, Inuit and Métis individuals or Peoples.

“Indigenous government” refers to Aboriginal or First Nation, Inuit and Métis representative institutions including in urban areas.

“Indigenous Peoples” refers to Peoples, and is intentionally capitalized.

“Indigenous people” refers to individuals and is intentionally not capitalized.

As per the *United Nations Declaration on the Rights of Indigenous Peoples*:

Article 7 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Article 7. 2. Indigenous Peoples have the collective right to live in freedom, peace and security as distinct Peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

There are over 600 distinct Indigenous nations across Canada, as well as numerous Indigenous organizations representing and serving Indigenous people including in urban locations.

“Colonial genocide” refers to the definition under international law as defined by The National Inquiry into Missing and Murdered indigenous Women and Girls in its *Supplementary Report, A Legal Analysis of Genocide*.

Note on the scope of the report

This report is about the experiences of Indigenous people of all genders in Canadian prisons, and its content is largely influenced by what we have learned from our clients. Ninety-two percent of people in prison in Canada are in prisons designated for men and eight percent are in prisons designated for women.¹ For this reason, our report tends to focus on the experiences of Indigenous people in prisons designated for men. We acknowledge that Indigenous people experience significant abuses in prisons designated for men and women. We also acknowledge that the genders of people in prison may not align with the institutions where they are housed or how they are categorized by CSC, and that gender exists beyond the binary categories of “male” and “female.”

This report focusses on the experiences of Indigenous people in federal prisons in Canada. We acknowledge the mass incarceration of Indigenous people in provincial jails.

Warning

This report includes content that may be upsetting to read, including descriptions of rape, self-harm and physical abuse.

¹ Public Safety Canada, *2020 Corrections and Conditional Release Statistical Overview* (22 March 2022). Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2020/index-en.aspx#sc>.

CONTENTS

EXECUTIVE SUMMARY	7
I. INTRODUCTION	13
II. THE HARMS OF PRISON	22
Impact on liberty rights	22
The maximum-security environment	24
Use of force	27
Solitary confinement and torture	29
2SLGBTQIA+ people in prison	32
Self-harm, suicide and deaths in custody	33
III. POLICY AND PRACTICE PREVENT INDIGENOUS PEOPLE FROM GETTING OUT & STAYING OUT OF PRISON ..	37
CSC considers “Indigenous social history” in decisions to impose a higher security classification	37
CSC uses racist risk assessments to determine risk and reintegration potential	40
CSC prioritizes security over Indigenous services	41
CSC unreasonably suspends community release	44
The Parole Board of Canada	46
IV. CSC REFUSES TO APPROVE AND ADEQUATELY RESOURCE INDIGENOUS ALTERNATIVES TO PRISON	49
Success of Indigenous-operated healing lodges	51
Inadequate access to Indigenous-run healing lodges	53
Interest in establishing s 81 alternatives to prison	56
Underfunding and lack of permanence of existing s 81 Indigenous-run healing lodges	57
CSC’s inappropriate control and administration of s 81	59
CSC’s failure to transfer authority of CSC-operated healing lodges to Indigenous governments	61
V. CSC UNDER-RESOURCES AND OVERCOMPLICATES SECTION 84 RELEASES TO THE COMMUNITY	64
VI. CANADA’S PRISON SYSTEM VIOLATES DOMESTIC AND INTERNATIONAL LAW	69
Violation of the <i>Corrections and Conditional Release Act</i>	69
Human rights	70
The <i>Canadian Charter of Rights and Freedoms</i>	71
Genocide	73

VII. TESTIMONIALS	78
Buddy Klengenberg, 57, Inuvialuit	78
Joey Toutsaint, 35, Black Lake Denesuline First Nation	81
Connie Thorne, 54, Métis, Chipewyan and Bush Cree	87
Anonymous, 59, Métis	89
Gilbert Brass, 62, Cree and Dene, Deh Gah Gotie Dene Council – Fort Providence	90
Russell Paddy, 53, Plains Cree, Thunderchild First Nation	92
Nick Dinardo, 30, Cree, Piapot First Nation	93
Jason Boubard, 42, Anishinaabe Sagkeeng First Nation, Fort Alexander	95
Alberto Vogel, 34, Algonquin	97
Shawn Lundgren, 41, Cree, Little Pine First Nation and African-Canadian	99
Anonymous, 49, Métis	102
Ricky Leslie, 52, Métis and Ojibwe	105
Ashley Fontaine (sister of Kendal Campeau, Ozaawigwanong, Saulteaux, Yellow Quill First Nation)	107
VIII. MOVING FORWARD	111
Prevention	114
Alternatives to incarceration	125
Increased autonomy within the system	133
IX. CONCLUSION AND RECOMMENDATIONS	145
Recommendations to Canada	146
Recommendation to the Parole Board of Canada	148
Recommendation to provinces and territories	148
Recommendation to the Correctional Service Canada	148
LIST OF CONSULTATIONS	149



By Ricky Leslie, Métis and Ojibwe

EXECUTIVE SUMMARY

“When someone is sent out to prison, they come back at a whole other level. They have shame, a loss of identity. There is a stigma of having been in prison. Prison adds to the trauma. Prison is not a place for Indigenous people.”²

— Mary Brown, Heiltsuk Gvi’ilas Community Justice Program Coordinator

The rate of mass incarceration of Indigenous people in Canada continues to rise, despite decades of calls to action to end this appalling trajectory. The latest statistics reveal that Indigenous people represent 5% of the total population in Canada, and 32% of people in federal prisons. Fifty percent of women in prison are Indigenous.³

This level of mass incarceration of Indigenous people in prison follows on the heels of over 100 years of residential “schools” (which were schools in name only), and continues alongside the family policing of the “child welfare system” (including the practices referred to as the Millennium Scoop). Prisons continue to separate Indigenous people from their children and subject them to treatment that is void of dignity. As stated by the Truth and Reconciliation Commission of Canada:

Prison today is for many Aboriginal people what residential schools used to be: an isolating experience that removes Aboriginal people from their families and communities. They are violent places and often result in greater criminal involvement as some Aboriginal inmates, particularly younger ones, seek gang membership as a form of protection. Today’s prisons may not institutionally disparage Aboriginal cultures and languages as aggressively as residential schools did, but racism in prisons is a significant issue. In addition, prisons can fail to provide cultural safety for Aboriginal inmates through neglect or marginalization. Many damaged people emerged from the residential schools; there is no reason to believe that the same is not true of today’s prisons.⁴

Canada has been aware of the over-representation of Indigenous people in prison for decades. As early as 1989, with the Canadian Bar Association Report “Locking Up Natives in Canada,” there have been alarm bells ringing for Canada to address this injustice, when Indigenous people represented almost 10% of people in prison.⁵

The Supreme Court of Canada has recognized the widespread prejudice and racist stereotypes that “[have] translated into systemic discrimination in the justice system.”⁶

2 Interview with Mary Brown, Heiltsuk Gvi’ilas Community Justice Program Coordinator (29 September 2022).

3 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>.

4 Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The Legacy, The Final Report of the Truth and Reconciliation Commission of Canada*, Vol. 5, McGill-Queen’s University Press (Montreal: 2015) at 219. Online: https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Volume_5_Legacy_English_Web.pdf.

5 Michael Jackson, “Locking Up Natives in Canada” (1989) 23:2 UBC L Rev 215-300. Online: https://commons.allard.ubc.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1027&context=emeritus_pubs.

6 *R v Williams*, [1998] 1 SCR 1128 at ¶ 58.

Canadian initiatives to address the mass incarceration of Indigenous people have focussed on requiring courts to consider the impacts of colonialism that have brought Indigenous people into contact with the criminal legal system (social disadvantage factors unique to Indigenous people known as *Gladue*⁷ factors), and then for the Correctional Service Canada (CSC) to consider these factors during its administration of a person's sentence.⁸

CSC has introduced programs that are intended to provide “culturally specific interventions” and contracts with Elders to provide spiritual guidance for Indigenous people in prison. CSC's governing statute requires it to consider “Indigenous social history” in decision-making related to Indigenous people in prison and prohibits using consideration of Indigenous social history to increase risk.⁹

However, Correctional Investigator Ivan Zinger states in his 2021-22 *Annual Report* that “the use of Indigenous Social History in decision-making continues to be as inconsistent and perfunctory as it was [ten years ago].”¹⁰ CSC policy continues to instruct its staff to use Indigenous social history to justify *higher* security levels, and continues to use risk assessment tools that rely on historical factors, meaning that Indigenous people are more likely to be held in higher levels of security and are less likely to be released to community supervision during their sentences. Elder input into Correctional Plans is superficial or non-existent, there is inadequate access to Indigenous programs and the prison environment contributes to the colonial trauma Indigenous people in prison experience.

The *Corrections and Conditional Release Act* governs the federal prison and parole systems in Canada. Section 81 provides a mechanism for Indigenous self-determination to provide alternatives to prison whereby people sentenced to custody can serve their sentences in Indigenous communities. However, instead of implementing this provision based on an equal, nation-to-nation negotiation between the Indigenous government and Canada, CSC, a government agency, controls the approval process and sets the parameters.

Canada rarely approves applications by Indigenous governments or organizations to provide alternatives to incarceration through s 81. The Indigenous-operated healing lodges that do exist through s 81 are subject to the authority of CSC and its policies. Canada is not honouring Indigenous Peoples' right to self-determination as intended by the provision, and is not treating Indigenous governments or organizations as autonomous equals in providing correctional services. Section 81 initiatives are woefully underfunded compared to the amount of money CSC spends incarcerating Indigenous people in Canada's colonial prisons.¹¹

The reality for Indigenous people in CSC custody is in stark contrast to the policies and information provided to the public about CSC's “Aboriginal Continuum of Care Model” and its “National Indigenous Plan.” Indigenous people in prison report to our office that they are warehoused in custody and abused in solitary confinement, sometimes for years on end. Correctional officers beat them up, over and over again. Officers routinely strip people naked and force them to bend over and expose their backsides. We hear reports of correctional officers using racist slurs against Indigenous people, cutting their clothes off and putting them in

7 *R v Gladue*, [1999] 1 SCR 688; *R v Ipeelee*, 2012 SCC 13.

8 *Twins v Canada (Attorney General)*, 2016 FC 537 at ¶ 64.

9 *Corrections and Conditional Release Act*, SC 1992, c 20, s 79.1.

10 Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 98. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

11 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 20. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>; Patrick White, “Healing lodges help reduce Indigenous overincarceration. Why has Canada allowed them to wither?” *The Globe and Mail* (21 October 2022). Online: <https://www.theglobeandmail.com/canada/article-indigenous-healing-lodges/>.

cells smeared with other people's feces. The list of atrocities goes on, and the parallels with the residential school system cannot be denied.

CSC's approach is based on its philosophy of "offender accountability," which puts all blame on the individual while ignoring the impacts of colonialism, direct trauma, intergenerational trauma and poverty on their ability to do well. This approach requires people to take individual responsibility for their circumstances, while at the same time disempowers them by removing every aspect of autonomy from their lives.

CSC's treatment of Indigenous people in prison violates domestic law and contributes to Canada's colonial genocide of Indigenous people under international law.¹² In some cases, Canada's use of solitary confinement against Indigenous people constitutes torture under international law.¹³ CSC has demonstrated that it cannot be responsible for providing humane care and control or rehabilitative programs for Indigenous people, just like residential schools were not appropriate to provide "care" and "education" for Indigenous children.

Canada must move resources away from CSC and toward supporting self-determination so that First Nations, Inuit and Métis Peoples can decide what they need to address harm, create safety and heal their nations, communities, families and individual members from colonial genocide, outside of prisons.

Residential schools purposely moved children away from their families and kinship networks. The reserve system moved Indigenous Peoples to tiny pockets of land, breaking apart families and creating disconnect between relations and communities. Dispossession of land and resources is the backbone of colonialism. When we speak about the need for adequate funding for alternatives to prison, we are talking about a miniscule proportion of the resources that have been taken from Indigenous Peoples' traditional lands from which they have been unjustly dispossessed.

Prisoners' Legal Services recommends that Canada shift \$1 billion each year away from CSC to Indigenous governments and communities, representing the amount of money CSC receives to incarcerate Indigenous people (who represent 32% of people in federal prisons). These funds could be used to for a wide range of alternatives to prison, as well as for autonomous, independent Indigenous services for Indigenous people in prison and on conditional release. We recommend that Canada end the delegation of powers to CSC to negotiate and set limits on Indigenous-run healing lodges.

We recommend that Canada further invest in Indigenous communities to provide services that would prevent Indigenous people from entering, or re-entering the criminal legal system.

We call on the Parole Board of Canada to work with Indigenous governments and organizations to reform parole hearings and decision-making to respect Indigenous Peoples' rights to self-determination, which may require further changes to legislation.

12 UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277 (Entry into force: 12 January 1951), Article II. Online: <https://www.refworld.org/docid/3ae6b3ac0.html>.

13 UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* : resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175, Rules 43, 44 and 45(2). Online: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, UNGAOR, 66th Sess, UN Doc A/66/268 (5 August 2011) at ¶ 76 and 78. Online: <https://archive.org/details/452639-un-report-ontorture>;

We also call on Canada to take measures to end the abuse of Indigenous people in prisons by amending regulations on security classification; reviewing the sentences of Indigenous people in certain cases; ratifying the optional protocol of *the Convention Against Torture*; establishing a public inquiry to acknowledge the colonial harms of prisons; and providing reparations for these harms.

The history of criminalization of Indigenous people in Canada¹⁴

The history of imprisonment of Indigenous people in Canada is as long as the history of Canada.

Canada became a country in 1867. By that time, Kingston Penitentiary had already been built (in 1835) and Canada's first *Penitentiary Act* was implemented the following year, in 1868.

In 1874, Canada enacted laws to prohibit selling alcohol to Indigenous people and make it an offence for an Indigenous person to be found in a state of intoxication, punishable by imprisonment. Indigenous anti-intoxication laws were in place until they were struck down by the Supreme Court of Canada in *Drybones* in 1970.

The *Indian Act* came into force in 1876, imposing colonial control over Indigenous political structures, land holding, and resource and economic development, as well as imposing prohibitions against alcohol. In 1881, Indian agents were made Justices of the Peace, and in 1884 Indian agents were given the power to conduct trials for *Indian Act* matters and well as criminal matters for the next two years.

In 1884 it became an offence under the *Indian Act* to incite three or more Indigenous people to breach the peace or make riotous or threatening demands on a civil servant, and to sell ammunition to an Indigenous person. These provisions were introduced to criminalize political protest. In the early 1890s new offences were introduced, including certain sexual offences, "Indian prostitution" and "Indian vagrancy." Indian agent powers over criminal law were restored in 1894.

Also in 1884, Canada amended the *Indian Act* to prohibit the potlatch and the Tamanawas dance. Anyone participating in a Tamanawas dance could receive a jail sentence of two to six months. In the decades to come, these bans resulted in mass arrests and trials, and significantly undermined the traditional laws and cultures of west coast Indigenous Peoples.

¹⁴ This section is based on information from the Royal Commission on Aboriginal Peoples, *Volume 1, Looking Forward, Looking Back* (Ottawa: October 1996) at 254-271. Online: <https://data2.archives.ca/e/e448/e011188230-01.pdf>.

In 1895, Canada prohibited additional traditional dances and customs, including the Blackfoot sundance and the Cree and Saulteaux thirst dance. Indigenous people were arrested and imprisoned, including a 90-year-old visually impaired man named Taytapasahung in 1904. Bans on ceremonies were in place for close to 75 years.

In 1920, the *Indian Act* was amended to require Indigenous children to attend colonial schools, to authorize the federal government to compel any Indigenous child to attend residential school and to provide the power to imprison parents who refused.¹⁵

Other historic prohibitions that applied only to Indigenous people and were subject to a punishment of imprisonment included operating a pool room and selling agricultural products. In 1927, Canada made it an offence to solicit funds for Indigenous legal claims without a licence.

As Canadian settlement expanded, Indigenous people experienced greater poverty, leading to greater criminalization. One way poverty has historically directly contributed to incarceration of Indigenous people is through non-payment of fines. In 1974, the Law Reform Commission documented the trend of a large number of Indigenous people being imprisoned for non-payment of fines. In Saskatchewan in 1992-93, Indigenous people made up almost 75% of people jailed for non-payment of fines. The 1988 Aboriginal Justice Inquiry of Manitoba found that Indigenous men who defaulted on a fine were twice as likely to be imprisoned than non-Indigenous men, and Indigenous women were three times as likely to be imprisoned than non-Indigenous women.¹⁶

The mass incarceration of Indigenous people in prison today is part of the legacy of the way Indigenous children were treated in residential schools.

¹⁵ Truth and Reconciliation Commission of Canada, "Canada's Residential Schools: The History, Part 1 Origins to 1939," *The Final Report of the Truth and Reconciliation Commission of Canada*, Volume 1 (2015), at 279. Online: https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Volume_1_History_Part_1_English_Web.pdf.

¹⁶ Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide, A Report on Aboriginal People and Criminal Justice in Canada* (Ministry of Supply and Services Canada, 1996) at 43-44. Online: <https://data2.archives.ca/rcap/pdf/rcap-464.pdf>.



By Tara DeSousa, Cree (from the series "Indigenous Movements of Freedom")

I. INTRODUCTION

“It is racism past in our memories, and present in our surroundings, that negates non-Aboriginal attempts to reconstruct our lives. Existing programs cannot reach us, cannot surmount the barriers of mistrust that racism has built. It is only Aboriginal people who can design and deliver programs that will address our needs and that we can trust. It is only Aboriginal people who can truly know and understand our experience. It is only Aboriginal people who can instill pride and self-esteem lost through the destructive experiences of racism. We cry out for a meaningful healing process that will have a real impact on our lives, but the objectives and implementation of this healing process must be premised on our need, the need to heal and walk in balance.”

– Fran Sugar & Lana Fox, “Nistum Peyako Séht’wawin Iskwewak: Breaking Chains” at 482, *Report prepared for the Task Force on Federally Sentenced Women*.

The voices of Indigenous people incarcerated in Canada’s penitentiaries are not often heard. In this report, we aim to amplify their voices in the dialogue on the immediate need for decarceration of Indigenous people, and the corresponding need for an increase in resources in Indigenous communities to prevent and respond to the colonial harms that have fueled the mass incarceration of Indigenous people.

Prisoners’ Legal Services recognizes that this dialogue must be between Canada and Indigenous governments and organizations. In our view, Correctional Service Canada (CSC) has not demonstrated a willingness to respect the basic human rights and dignity of Indigenous people in its custody, or the role of Elders and other Indigenous staff who work with people in prison. In fact, CSC has participated directly in the colonial genocide of Indigenous Peoples. For this reason, most of our recommendations are directed at Canada, rather than CSC.

Our recommendations reflect what we have learned from speaking with our clients and members of Indigenous governments and organizations. Our recommendations are based on the fundamental principle of supporting Indigenous Peoples’ right to self-determination and self-governance.

The work of Prisoners’ Legal Services focusses on assisting people who are incarcerated, and this is why this report focusses on supporting Indigenous Peoples’ right to self-determination in alternatives to prison. However, we recognize that prison is only one area where there is a need to support Indigenous Peoples’ right to self-determination. The right to self-determination stems from the inherent rights of Indigenous Peoples. Canada has recognized the right to self-determination in s. 35 of Canada’s *Constitution Act*, and in Canada’s 2021 passing of the *United Nations Declaration on the Rights of Indigenous Peoples Act*.

We respect the initiatives of Indigenous nations and organizations who are working to simultaneously reform existing colonial models to make them less harmful to Indigenous people, and to also establish their own models to prevent and respond to harm, based on Indigenous law, that will one day replace prisons and other colonial systems.

Canada must ensure that real systemic change occurs to stop the mass incarceration of Indigenous people. Canada needs to work with Indigenous governments and organizations to build a new system based on Indigenous legal orders, infused from the beginning with Indigenous values and worldviews, rather than focussing exclusively on another reform of a broken system.

For decades, many Indigenous and non-Indigenous bodies, task forces, commissions, inquiries and parliamentary reports have called for action to end the mass incarceration of Indigenous people in prison by supporting self-determination in creating alternatives to prison, including through s 81 of the *Corrections and Conditional Release Act*. These calls to action include the following:

1983 Special Committee of the House of Commons on Indian Self-Government, *Second Report: Indian Self-Government in Canada* (chaired by Keith Penner), which recommends Canada enter into treaties with First Nations for broad powers of self-government including in justice and law enforcement.¹⁷

1988 Correctional Law Review *Working Paper No. 7, Correctional Issues Affecting Native Peoples*, which recommends legislation to transfer a significant degree of jurisdiction over correctional services to First Nations. This recommendation was echoed in the 1988 Report of the Canadian Bar Association Committee on Imprisonment and Release “Locking Up Natives in Canada,” which calls for legislation flexible enough to include models “very different from existing structures.”¹⁸

1990 Task Force on Federally Sentenced Women (*Creating Choices*), which recommends that a healing lodge be established for federally sentenced Indigenous women.¹⁹

1991 Law Commission of Canada, which recommends that “[s]maller local correctional facilities should be created and Aboriginal communities should exercise control over those facilities.”²⁰

1996 Royal Commission on Aboriginal Peoples, which recommends “that federal, provincial and territorial governments recognize the right of Aboriginal nations to establish and administer their own systems of justice pursuant to their inherent right of self-government, including the power to make laws, within the Aboriginal nation’s territory” and makes other recommendations that these initiatives be given priority for funding that would ensure a secure financial base for development and long-term implementation.²¹ The Royal Commission on Aboriginal Peoples also recommends the development of community-based healing lodges to provide culturally-appropriate alternatives to prison.²²

17 Special Committee of the House of Commons on Indian Self-Government, *Second Report: Indian Self-Government in Canada* (1983), Chair Keith Penner.

18 Correctional Law Review, *Working Paper No. 7 Correctional Issues Affecting Native Peoples* (Ottawa: February 1988), Solicitor General Canada.

19 Task Force on Federally Sentenced Women, *Creating Choices: the report of the task force on federally sentenced women* (April 1990). Online: <https://riseuparchive.wordpress.com/wp-content/uploads/2021/07/EFry-TaskforceReport-CreatingChoices-1990-OCR.pdf>.

20 Law Reform Commission of Canada, *Report: Minister’s Reference, Aboriginal Peoples and criminal justice* (1991) at 83. Online: <http://www.lareau-law.ca/LRCReport34.pdf>.

21 Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide, A Report on Aboriginal People and Criminal Justice in Canada* (Ministry of Supply and Services Canada, 1996). Online: <https://data2.archives.ca/rcap/pdf/rcap-464.pdf>.

22 Royal Commission on Aboriginal Peoples, *Aboriginal Peoples and the Justice System* (Minister of Supply and Services Canada, 1993). Online: <https://data2.archives.ca/rcap/pdf/rcap-452.pdf>.

1999 Aboriginal Justice Inquiry of Manitoba, which recommends that many Indigenous people who are incarcerated should be in open custody institutions in their own communities where they can address personal problems, work and gain education and job training, to “substantially reduce” the number of Indigenous people in jail, and recommends the “overall capacity of the jail system should also be reduced.”²³

2003 report of the Canadian Human Rights Commission, *Protecting Their Rights, A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, which notes that there were no s 81 agreements for Indigenous women in place at the time. It recommends that CSC change its policy of not allowing maximum security women at its CSC-operated healing lodge to a policy that is based on individual assessment.²⁴

2012 report of the Correctional Investigator of Canada, *Spirit Matters*, which recommends CSC develop a long-term strategy for increasing s 81 agreements and capacity, with permanent and realistic funding levels to allow salary parity with CSC, and a transfer of CSC-operated healing lodges to Indigenous communities based on negotiations as equal partners. *Spirit Matters* recommends CSC also consider non-facility-based s 81 agreements.²⁵

2015 *Final Report of the Truth and Reconciliation Commission of Canada* Recommendation 35, which calls on “the federal government to eliminate barriers to the creating of additional Aboriginal healing lodges within the federal correctional system.”²⁶

August 13, 2015 United Nations Human Rights Committee *Concluding Observations on the Sixth Period Report of Canada*, which notes concern with the disproportionately high rate of incarceration of Indigenous people in the criminal legal system. It recommends Canada enhance its programs enabling Indigenous people to serve sentences in their communities.²⁷

2018 Report of the Standing Committee on the Status of Women, *A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Correctional Systems*, which recommends the federal government increase access to healing lodges as an alternative to incarceration, ensure Indigenous-run healing lodges receive equal funding to healing lodges operated by CSC, and eliminate barriers to the creation of new healing lodges.²⁸

2018 Report of the Standing Committee on Public Safety and National Security, *Indigenous People in the Federal Correctional System*, which recommends the Government of Canada increase funding to address the funding gap between healing lodges operated by Indigenous

23 Aboriginal Justice Implementation Commission, *Report of the Aboriginal Justice Inquiry of Manitoba* (November 1999). Online: <http://www.ajic.mb.ca/volume.html>.

24 Canadian Human Rights Commission, *Protecting Their Rights, A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (December 2003). Online: <https://www.chrc-ccdp.gc.ca/sites/default/files/fswen.pdf>.

25 Office of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012). Online: <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022-eng.aspx#TOC15>.

26 Truth and Reconciliation Commission of Canada, “Canada’s Residential Schools: Reconciliation,” *The Final Report of the Truth and Reconciliation Commission of Canada*, Volume 6 (2015) at 228. Online: https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Volume_6_Reconciliation_English_Web.pdf.

27 UN Human Rights Committee (HRC), *Concluding observations on the sixth periodic report of Canada*, 13 August 2015, CCPR/C/CAN/CO/6. Online: <https://www.refworld.org/docid/5645a16f4.html>.

28 House of Commons Canada, *A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Correctional Systems; Report of the Standing Committee on the Status of Women*, 42nd Parliament, 1st Session (June 2018), Recommendations 19, 46, 60, 61, 62, 63, 64, at 19, 25, 27-28. Online: <https://www.ourcommons.ca/DocumentViewer/en/42-1/FEWO/report-13>.

communities and those operated by CSC and work to increase the number of Indigenous people eligible to serve sentences in healing lodges.²⁹

2019 Native Women's Association of Canada recommendation that "CSC prioritize the creation of additional s 81 agreements, Healing Lodges, and other community-based alternatives to incarceration rather than institutional Indigenous programs."³⁰

2019 report, *Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside*, which recommends "Increased resourcing, capacity, and funding for section 81 Healing Lodges. Indigenous nations and urban Indigenous organizations must be able to operate Healing Lodges on a long-term basis and with full wrap-around supports. Change the policy of not allowing women with maximum-security classifications to be at CSC-operated healing lodges and increase access to all healing lodges."³¹

June 2019 *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Calls for Justice* call for the federal government to implement ss 81 and 84³² of the *Corrections and Conditional Release Act*.³³

2020 Union of British Columbia Indian Chiefs (UBCIC) Resolution 2020-03 "Call for Action to Declare Indigenous Incarceration Rates a State of Emergency":

[T]he UBCIC Chiefs Council calls upon the federal and provincial governments to transfer jurisdiction over the care, custody and supervision of Indigenous offenders to First Nations, through the transformation of the criminal justice system and through ensuring that sections 81 and 84 of the *Corrections and Conditional Release Act* be utilized to their full legislative intent, including by ensuring First Nations are adequately resourced and supported to resume jurisdiction over justice matters.³⁴

2021 Assembly of First Nations support for "the development and implementation of restorative First Nations justice systems" and identification of "actions to end over-representation of First Nations people in the criminal justice and correctional systems" as a priority.³⁵ The Assembly of First Nations advocates for the federal government to engage with First Nations for the development of an Indigenous justice strategy, which

29 House of Commons Canada, *Indigenous People in the Federal correctional System: Report of the Standing Committee on Public Safety and National Security*, 42nd Parliament, 1st Session (June 2018), at 11-13. Online: <https://www.ourcommons.ca/Content/Committee/421/SECU/Reports/RP9984221/securp22/securp22-e.pdf>.

30 Native Women's Association of Canada, *CSC Healing Lodges and Section 81 Healing Lodges, Policy Background*, (November 2019) at 35. Online: https://nwac.ca/assets-knowledge-centre/NWAC_HealingLodges_v7_Interactive-1.pdf.

31 Downtown Eastside Women's Centre, *Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside* (2019) at 181. Online: <http://dewc.ca/wp-content/uploads/2019/03/MMIW-Report-Final-March-10-WEB.pdf>.

32 Section 84 of the *Corrections and Conditional Release Act*, SC 1992 requires CSC to provide Indigenous communities an opportunity to propose a release plan in advance of a person's parole review or statutory release date if the person expresses an interest in being released to an Indigenous community, with their consent.

33 National Inquiry into Missing and Murdered Indigenous Women and Girls, *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice* (June 2019) Call 5.20, at 186. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1b.pdf.

34 Union of BC Indian Chiefs, *Chiefs Council* (Musqueam Community Centre, x̣ẉṃə̣θ̣ḳẉə̣ỵəm (Musqueam Territory: 26-27 February 2020) Resolution no. 2020-03.

35 Assembly of First Nations, *Healing Path Forward: 2021 Federal Priorities for Strengthening and Rebuilding First Nations* (2021). Online: https://www.afn.ca/wp-content/uploads/2021/08/FINAL_FederalElection-2021_Platform-Report_ENG_3.pdf.

has now begun. “Central to this will be the revitalizing of First Nations legal orders and the implementation of First Nations justice models.”³⁶

June 2021 Standing Senate Committee on Human Rights report *Human Rights of Federally-Sentenced Persons*, which recommends that Canada commit to eliminating the overrepresentation of Indigenous people by 2025 and increase its use of *Corrections and Conditional Release Act* s 81 agreements.³⁷

February 7, 2022 Canadian Bar Association resolution, which urges governments to “shift funding from the Correctional Service of Canada ...to Indigenous communities to implement the action plan” that would “provide well-resourced preventative community-based services; and alternatives to incarceration of Indigenous Peoples, with a goal of significantly reducing incarceration rates.”³⁸

2021/22 *Annual Report* of the Correctional Investigator of Canada, which recommends “redistribut[ing] a significant portion of the current resources within the federal correctional system to Indigenous communities and groups for the care, custody, and supervision of Indigenous People’s.”³⁹

Canada has failed to implement these calls for Indigenous self-determination in creating alternatives to prison. Despite all of these recommendations, only six Indigenous-operated healing lodges exist today, with extremely limited capacity to meet the needs of the high number of Indigenous people in prison.⁴⁰

Howard Sapers, the then Correctional Investigator of Canada, noted in 2006 that while CSC is not responsible for past colonial harms and failures of the criminal legal system leading up to incarceration of Indigenous people in Canada, it is responsible for failing to comply with the law and failing to treat Indigenous people in prison fairly, which compounds the over-incarceration of Indigenous people. Howard Sapers calls CSC’s treatment of Indigenous people “institutional discrimination.”⁴¹

The Yellowhead Institute’s 2021 review of Canada’s implementation of the Truth and Reconciliation Commission’s Calls to Action states that the high numbers of Indigenous people in prison “*should* be a source of national shame and soul searching.” The review continues:

They *should* prompt an emergency response by all levels of government. The scale to which Indigenous communities, families, and individuals have historically been and are currently being harmed by the justice system is nearly unimaginable. Instead of an emergency response or any sense of urgency on the part of policy-makers, Canada’s response has

36 Assembly of First Nations, *Sector Update: Justice* (June 2021). Online: <https://www.afn.ca/wp-content/uploads/2021/07/Sector-Update-Justice-June-2021-EN.pdf>.

37 Standing Senate Committee on Human Rights, *Human Rights of Federally-Sentenced Persons* (Ottawa: June 2021) Recommendations 1, 2, 4, 19, 51, 52. Online: https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf.

38 Canadian Bar Association, *Resolution 22-03-A, Call for Action: Indigenous Decarceration and Self-Determination* (February 7, 2022). Online: www.cba.org/CMSPages/GetFile.aspx?guid=2461607c-e2f0-40f0-b851-01fee98c066c.

39 Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 105. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

40 Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 100. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

41 Office of the Correctional Investigator Canada, *Speaking Notes for Mr. Howard Sapers, Correctional Investigator, 33rd Annual Report to Parliament* (16 October 2006). Online: <https://www.oci-bec.gc.ca/cnt/comm/sp-all/sp-all20061016-eng.aspx>.

been, for all intents and purposes, small tinkering around the edges of a system in need of a complete overhaul.⁴²

Canada's adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* is a legal development that reinforces Canada's obligation to transfer authority and resources from CSC to Indigenous governments and organizations to provide alternatives to prison.

Kupki7 Judy Wilson, Union of British Columbia Indian Chiefs, former Secretary-Treasurer, put it this way:

"The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) has been passed into law by Canada and this comes with obligations to recognize Indigenous Peoples' rights in all areas of law, including the criminal justice system. Canada's history of incarcerating Indigenous Peoples is not in compliance with the UN Declaration and the obligation to incorporate Indigenous rights and freedoms is fundamental to creating a just, democratic, humane, equal, and non-discriminatory system of law and policy and stop the overincarceration of and unnecessary deaths of Indigenous Peoples in prison."⁴³

The federal *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIPA), enacted in 2020, requires Canada to "take all measures necessary to ensure that the laws of Canada are consistent with the *Declaration on the Rights of Indigenous Peoples*," in consultation and cooperation with Indigenous Peoples. Section 5 of UNDRIPA requires Canada to implement an action plan to achieve the objectives of the Declaration, which must include measures to "address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous Peoples."⁴⁴

The *United Nations Declaration on the Rights of Indigenous Peoples* includes, among other rights, the right to be free from discrimination, the right to self-determination, the right to autonomy or self-government in matters relating to internal and local affairs, and the right to maintain, strengthen and administer distinct institutions, including juridical systems, while maintaining the right to participate in state institutions.⁴⁵

On November 1, 2022, Canada announced that it would engage with First Nations, Inuit and Métis Peoples, as well as urban and other Indigenous organizations and justice system practitioners, to develop an Indigenous Justice Strategy.

With the passing of UNDRIPA and the recent introduction of the federal Indigenous Justice Strategy, we encourage Canada to finally bring to life the above decades of recommendations. Canada's commitment to support Indigenous self-determination bolsters the argument for shifting significant funding from CSC to Indigenous communities, and for these negotiations to be done on a nation-to-nation basis, rather than the current system of Indigenous governments and organizations begging for the crumbs under CSC's table.

In this report, Prisoners' Legal Services will explore the ways Indigenous people have experienced the worst harms of prison, such as maximum security, solitary confinement and uses of force. We examine how CSC

42 Eva Jewell and Ian Mosby, *Calls to Action Accountability: A 2021 Status Update on Reconciliation, A Special Report* (Yellowhead Institute: December 2021) at 20. Online: [trc-2021-accountability-update-yellowhead-institute-special-report.pdf](https://www.yhinst.org/reports/calls-to-action-accountability-update-yellowhead-institute-special-report.pdf).

43 Union of BC Indian Chiefs, *UBCIC Seeks Answers in Tragic Death of Indigenous Man in Custody in BC*, News Release (22 November 2022). Online: https://www.ubcic.bc.ca/ubcic_seeks_answers_in_tragic_death_of_indigenous_man_in_custody_in_bc.

44 *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, s 6.

45 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295. Online: <https://www.refworld.org/docid/471355a82.html>.

has chronically under-resourced Indigenous programs and Elder services, and has ignored the expertise of Elders in Indigenous people's Correctional Plans. We review CSC policies that result in Indigenous social history factors being used to increase the security levels of Indigenous people, thereby preventing them from accessing alternatives to incarceration under s 81 of the *Corrections and Conditional Release Act*.

We also seek to assess community interest in Indigenous-led alternatives to incarceration. We hope to answer the questions: what exists now; what could exist in the future; and how can roadblocks and challenges to Indigenous Peoples' self-determination in alternatives to prison be eliminated?

In this report we review some of the inspiring alternatives to incarceration initiated by Indigenous governments and organizations. Many of these initiatives have been focused on earlier stages of the criminal legal system, from prevention to pre-charge diversion and post-charge alternative measures. Finally, we explore the s 81 initiatives that Indigenous governments and organizations have created, and initiatives that have faced barriers to being created.

We identify a number of highly successful models of Indigenous-run programs and initiatives that could provide guidance and inspiration for others. Their budgets are tiny compared to the budget of CSC, many struggle for funding, and many other promising programs and initiatives have not been funded at all. Equity in funding of Indigenous justice initiatives, s 81 proposals, and Indigenous-led release planning and support under s 84 of the *Corrections and Conditional Release Act*⁴⁶ should be an immediate first step for Canada.

We make recommendations at the end of this report that we hope will be helpful in moving the dialogue forward, and in transferring resources and control to Indigenous governments and communities to prevent further colonial harms.

46 Section 84 of the *Corrections and Conditional Release Act*, SC 1992 requires CSC to provide Indigenous communities an opportunity to propose a release plan in advance of a person's parole review or statutory release date if the person expresses an interest in being released to an Indigenous community, with their consent.

Recognition of the mass incarceration of Indigenous people by the Supreme Court of Canada

The mass incarceration of Indigenous people in Canadian prisons is well documented and has received the attention of the Supreme Court of Canada.

In 1999, the Supreme Court of Canada, in *R v Gladue*, wrote: “The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system.” The Court referred to the “staggering injustice” these figures represented, and notes the rampant discrimination Indigenous people experience in prisons.⁴⁷

The Supreme Court in *Gladue* stated at paragraph 67:

The background factors which figure prominently in the causation of crime by aboriginal offenders are by now well known. Years of dislocation and economic development have translated, for many aboriginal peoples, into low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation. These and other factors contribute to a higher incidence of crime and incarceration.

In 2012, the Supreme Court in *Ipeelee* unequivocally acknowledged the importance of judicial understanding of the significance of the legacies of colonialism:

To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples.⁴⁸

47 *R v Gladue*, [1999] 1 SCR 688 at ¶ 64, 68 and 88.

48 *R v Ipeelee*, SCC 13 2012 at ¶ 60.

In the most recent Supreme Court of Canada decision, *R v Sharma*, Justice Karakatsanis provided an account of the long history of calls to action, the judicial response and the continuing failure to halt the escalating rate of over-representation of Indigenous people in Canadian prisons:⁴⁹

Indigenous overincarceration has been a particularly acute and visible issue for some decades. Already a “notorious fact in Aboriginal communities by the 1970s,” report after report from the late 1980s onward chronicled the problem in ever more alarming detail.⁵⁰

And still things worsened. In the 1980s, with Aboriginal peoples representing only 2 percent of Canada’s population, Aboriginal offenders represented roughly 17 percent of its provincial and territorial custody population,⁵¹ and 10 percent of its federal penitentiary population.⁵² Yet by 2018-19, Indigenous persons, representing only 4.5 percent of Canada’s adult population, had come to represent 31 percent of its admissions to provincial and territorial custody, and 29 percent of its admissions to federal custody.⁵³ In Manitoba and Saskatchewan, the provinces with the highest relative Indigenous adult populations, admissions reached 75 percent.⁵⁴

49 *R v Sharma*, 2022 SCC 39 at ¶ 123-138.

50 (J. Rudin, “Aboriginal Over-representation and *R. v. Gladue*: Where We Were, Where We Are and Where We Might Be Going” (2008), 40 *S.C.L.R.* (2d) 687, at p. 687; see, in particular, M. Jackson, “Locking Up Natives in Canada” (1989), 23 *U.B.C. L. Rev.* 215; Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba*, vol. 1, *The Justice System and Aboriginal People* (1991); Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal Peoples and Criminal Justice in Canada* (1996); J. Rudin, *Aboriginal Peoples and the Criminal Justice System* (2005))

51 (*R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 S.C.R. 688, at para. 58, citing Jackson, at pp. 215-16)

52 (J. V. Roberts and R. Melchers, “The Incarceration of Aboriginal Offenders: Trends from 1978 to 2001” (2003), 45 *C.J.C.C.J.* 211, at p. 220)

53 (Statistics Canada, *Adult and youth correctional statistics in Canada, 2018/2019* (December 2020), at p. 5)

54 (p. 5)

Incredibly, Canada’s Indigenous inmate population grew by nearly 43 percent between 2009 and 2018 even as the sirens of overrepresentation continued to sound ever louder.⁵⁵

Striking as they are, those figures understate the incarceration rates of Indigenous women. Accounting for only about 4 percent of the female population, Indigenous women now comprise 42 percent of federally incarcerated women, with their population in federal institutions having increased by an astounding 73.8 percent over the past decade...⁵⁶

The dislocations that the statistics imply — the lost jobs, the separated families, the cultural alienations, the broken societies — are harder to quantify, but no less grave. Noting that an Indigenous boy born in Saskatchewan in 1960 had a 70 percent chance of being incarcerated by the age of 25, Professor Jackson wrote in 1988 that prison had “become for many young native people the contemporary equivalent of what the Indian residential school represented for their parents” (p. 216). Many years later, the Truth and Reconciliation Commission of Canada echoed those comments in its 2015 *Final Report*, where it compared the experience of Indigenous offenders in prison to the experiences of Indigenous children in residential schools...

Justice Karakatsanis described sentencing reforms of the 1980s and 90s which included an obligation to consider the circumstances of Indigenous people in sentencing, and expanded sentencing options to include conditional sentences to allow people to serve sentences in their communities with conditions.⁵⁷

Justice Karakatsanis discussed the *Gladue* decision as changing the law to decrease the use of incarceration by requiring judges to consider the unique

background factors of Indigenous people due to colonialism, and to consider that:

Those differences were, broadly speaking, two-fold. First, Indigenous offenders often confront “unique systemic or background factors”... Second, an offender’s Indigenous heritage may inform the “types of sentencing procedures and sanctions which may be appropriate in the circumstances” (para. 66), since Indigenous concepts of sentencing, although “vary[ing] widely”, often place greater emphasis upon restorative justice and “the importance of community-based sanctions” than does the general law of sentencing (paras. 73-74).⁵⁸

Noting that over-representation of Indigenous people continued to rise after *Gladue*, Justice Karakatsanis discussed the 2012 *Ipeelee* case, which noted that courts had “thwart[ed] what was originally envisioned by *Gladue*” (para. 80)” and directs judges not to require Indigenous people to show a causal link between their background factors and the offence, but to take judicial notice of the harmful impacts of colonialism, displacement and residential schools. *Ipeelee* reinforced the importance of considering *Gladue* factors in all cases, including in relation to violent or serious offences.⁵⁹

As Justice Karakatsanis discussed, judicial attempts to reduce the over-representation of Indigenous people in prison alone have not been successful.

55 (Office of the Correctional Investigator of Canada (OCI), *Annual Report 2017-2018* (2018), at p. 61)

56 (OCI, *Annual Report 2020-2021* (2021), at p. 41)

57 *R v Sharma*, 2022 SCC 39 at ¶ 129-130.

58 *R v Sharma*, 2022 SCC 39 at ¶ 133-134.

59 *R v Sharma*, 2022 SCC 39 at ¶ 60, 137-138.

II. THE HARMS OF PRISON

“I don’t want that guard coming around my door, I don’t wanna see his face, nothing. Every time I see him, I respond. I end up flipping out because he just, he’s such a trigger to me. Every time he comes to my door, I started slashing up. They keep letting him come to my door – like taunting me, the way he’s smirking, he just knows he can get under my skin. The guards I have issues with, they keep letting them come to me and bothering me all the time. I wrote a letter, request to a lot of people, to have these people removed from me, not to interact with me. You don’t know how many times I’ve told these people, but nobody is doing anything about it. They don’t even care, they just want to see people suffer.”

— Joey Toutsaint, member of Black Lake Denesuline First Nation

While CSC has implemented many Indigenous-focussed policies and programs into its operations, the harms that CSC continues to do to Indigenous people in its custody cannot be ignored. Even if Indigenous staffing and programs were well-resourced (which they are not), the environment of prisons is based on containment, control, deprivation and the threat of violence. Healing from the impacts of colonialism cannot take place in prisons.

Prisoners’ Legal Services’ clients who are Indigenous consistently report the devastating impact of isolation, violence and racism that characterises their experiences in prison. Indigenous people in custody speak of the intergenerational trauma they have experienced from colonialism, and the trauma they continue to experience in prison.

In this chapter, we set out the factual context for the ways CSC violates its governing statute, the *Corrections and Conditional Release Act*, as well as the *Canadian Human Rights Act*, the *Canadian Charter of Rights and Freedoms*, and international law on genocide, torture and cruel treatment.

IMPACT ON LIBERTY RIGHTS

Within prisons, Indigenous people are disproportionately impacted by restrictions on their liberty rights under s 7 of the *Charter*. Indigenous people serve a higher proportion of their sentences in custody, rather than under community supervision (68.3% of Indigenous people are in custody versus 54.8% of non-Indigenous people).⁶⁰ Indigenous people are significantly less likely to be released on parole (23.2% granted) than non-Indigenous people (40.7% granted).⁶¹

60 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>.

61 Public Safety Canada, *Corrections and Conditional Release 2018 Statistical Overview* (August 2019) at 86. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2018/ccrso-2018-en.pdf>.



By Joey Toutsaint, Black Lake Denesuline First Nation

Joey Toutsaint
2020/07/28th

Indigenous people serving determinate sentences are more likely to be held in custody until their statutory release dates (74.4% for Indigenous people versus 55.8% for non-Indigenous people in 2017-18).⁶² Indigenous people serving life sentences are less likely than non-Indigenous people to be released on parole at or near their eligibility date.⁶³ Indigenous people are more likely to be released from higher levels of security – 79% are released from medium or maximum security later in their sentences, despite evidence that people are less likely to commit new crimes when they have more time under community supervision during their sentences.⁶⁴

Indigenous men are initially classified as maximum security at twice the rate of white men. Indigenous women are designated maximum security at four times the rate of white women, making up almost 70% of maximum-security placements.⁶⁵ Indigenous people are more likely to be held in maximum security (38% of people in maximum security are Indigenous), and less likely to be held in minimum security than non-Indigenous people (23.5% of people in minimum security are Indigenous).⁶⁶ Indigenous women are twice as likely to be placed in maximum security as non-Indigenous women (66% of women in maximum security are Indigenous).⁶⁷

Many Indigenous people who are placed in maximum security are transferred from maximum security prison to maximum security prison, across Canada. This represents a further colonial disruption of their connection to their family, land and culture.⁶⁸

Many of the Indigenous people we interviewed for this report told us they feel like they are being warehoused in prison. They describe the barriers they experience in getting to lower security and conditional release in Chapter VII of this report.

THE MAXIMUM-SECURITY ENVIRONMENT

The maximum-security environment has significant systemic and human rights issues for Indigenous people held in prisons designated for men and women.

The Correctional Investigator notes that “the security-driven approach within the Secure Unit [maximum security units in prisons designated for women] often exacerbates mental health issues, impedes meaningful participation in interventions, and further alienates Indigenous women from their culture.” He notes

62 Public Safety Canada, *Corrections and Conditional Release 2018 Statistical Overview* (August 2019) at 80. Online: <https://www.publicsafety.gc.ca/cnt/rsres/pblctns/ccrso-2018/ccrso-2018-en.pdf>.

63 Debra Parkes, Jane Sprott & Isabel Grant, “The Evolution of Life Sentences for Murder: Parole Ineligibility and Time Spent in Prison” (2022) 100 *Canadian Bar Review* 67 at 88 (“Indigenous people were significantly more likely to not be released or to be released more than four years after their eligibility date, with 72.4% falling into that category compared to 53.5% of non-Indigenous people.”) Online: <https://cbr.cba.org/index.php/cbr/article/view/4735/4518>.

64 Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada* (2016). Online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html.

65 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.

66 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).

67 Data received from the Office of the Correctional Investigator Canada (14 November, 2022).

68 See Krista Stelkia, Lindsay Beck, Anita Manshadi, et al. “Letsemot, ‘Togetherness’: Exploring How connection to Land, Water and Territory Influences Health and Wellness with First Nations Knowledge Keepers and Youth in the Fraser Salish Region of British Columbia,” *International Journal of Indigenous Health*, Vol. 16, Issue 2 (2020) at 364.

being in the Secure Unit is “another form of dislocation and displacement.” The Correctional Investigator states that Secure Units in prisons designated for women “are not equipped or resourced to provide the cultural support and resources that Indigenous women need” noting that “[i]nterventions and services are significantly more limited for a population of women who are assessed as high need.”⁶⁹

The Correctional Investigator describes maximum-security prisons designated for men as being operated by a culture that tolerates and condones violence. Edmonton Institution, one of Canada’s five maximum security prisons, has been described by an independent human resource assessment as running “on fear, suspicion, mistrust, intimidation, harassment, bullying and abuse of power – among staff members.”⁷⁰ People incarcerated in this maximum-security institution are treated in a “cruel, callous and degrading manner.” The Correctional Investigator describes maximum-security Atlantic Institution as having a high number of people alleging “improper or excessive use of force” with a staff culture “which gives licence to a security-first approach” and an over-reliance on inflammatory agents (pepper spray) and isolation.⁷¹

Almost 60% of people held at Edmonton Institution are Indigenous.⁷² In 2013, five people launched a lawsuit alleging that guards at Edmonton Institution put shampoo, spit, urine and feces in their food, beat them, intentionally put rival gang members together resulting in a deadly stabbing, and ran a prisoner “fight club,” where correctional officers would direct people in the prison to fight each other for staff entertainment. Anyone who refused to fight would be threatened with pepper spray or assault.⁷³ Several of our clients have told us about fight clubs at Edmonton and other maximum-security prisons in Canada.

Prisoners’ Legal Services has received reports from Indigenous people that correctional officers at maximum security institutions use racist slurs to antagonize them, make light of the bodies of children confirmed buried at residential school sites, encourage them to kill themselves when they are feeling suicidal, and giving them razors to do so. We have also received reports of Indigenous people being placed in cells contaminated with other people’s feces and blood, and of correctional officers contaminating meals with feces, and joking about doing so.

Joey Toutsaint said in an interview:

One time a guard called me a piece of shit dirty Indian and said I deserve to live in a cell like that because I come from a reserve. I deserve to be in my cell because I come from a reserve and it’s no different from the cell.... other than there’s feces, urine and there’s blood on the wall too and pepper spray. Somebody was in there and something happened there. They put me in there in a dirty cell and they let me stay there, and the guard called me a fucking piece of shit dirty Indian.

69 Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 25-27. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

70 Office of the Correctional Investigator Canada, *Latest Annual Report of the Correctional Investigator of Canada Tabled in Parliament; Dr. Zinger Raises Concern about Misconduct and Mistreatment Behind Bars* (Ottawa: 18 February 2020). Online: <https://www.oci-bec.gc.ca/cnt/comm/press/press20200218-eng.aspx>.

71 Office of the Correctional Investigator Canada, *Latest Annual Report of the Correctional Investigator of Canada Tabled in Parliament; Dr. Zinger Raises Concern about Misconduct and Mistreatment Behind Bars* (Ottawa: 18 February 2020). Online: <https://www.oci-bec.gc.ca/cnt/comm/press/press20200218-eng.aspx>.

72 Sean Amato, “A lot of racism’: Percentage of Indigenous inmates in Edmonton hitting new highs,” *CTV News* (Edmonton: May 26, 2022). Online: <https://edmonton.ctvnews.ca/a-lot-of-racism-percentage-of-indigenous-inmates-in-edmonton-hitting-new-highs-1.5920062>.

73 Dean Bennett, “Edmonton inmates were forced into prison fight club, lawsuit alleges,” *Canadian Press* (7 October 2013). Online: <https://globalnews.ca/news/887246/edmonton-max-runs-sadistic-fight-club-inmates/>.

In the *McCann* case in 1975, Jack McCann testified that after a person in solitary confinement in the BC Penitentiary had slashed himself, an officer offered him (Jack McCann) a razor blade so he, too, could “slash up.”⁷⁴ On Christmas Eve, 1976 after a riot in the BC Penitentiary, a correctional officer placed some razor blades on the ledge of one of the cell doors. As he left the range he shouted to the prisoners, “Have a Merry Christmas and a slashing New Year.” Later that evening a number of people on the range had in fact slashed themselves. The Parliamentary Subcommittee appointed to investigate the penitentiary system in the wake of the riots at the BC Penitentiary and other Canadian maximum-security prisons found these reports credible and included them in its report to Parliament.⁷⁵

Some of the reports of abuse by correctional officers Prisoners’ Legal Services has received have happened in the so-called “therapeutic unit” at Kent Institution, the men’s maximum-security prison in the Pacific Region. When Prisoners’ Legal Services attempted to report some of this staff misconduct to the person at Regional Headquarters we were told was our point person, she told us she had no interest in receiving these reports and would not read them.

An Indigenous person we interviewed, who has come out of prison, told us about a guard doing a count, who walked down the range, singing “one little, two little, three little Indians...” while his partner laughed. This guard was later assaulted. The Indigenous person we interviewed told us that he believed correctional officers at Edmonton Institution set him up to be assaulted and turned off the cameras in retaliation for filing a grievance. This person told us that he was waterboarded by correctional officers at Stony Mountain Institution.

A staff member of the Stan Daniels Healing Lodge gave an example of an Indigenous person who was in a penitentiary and witnessed his friend get murdered. The only help the Indigenous person received was a visit at his cell door from a Chaplain, who asked if they were OK and if they wanted a colouring book. “The lack of safety that these guys have experienced – how do you heal in a place that is unhealthy? And how do you feel in a place where you are constantly afraid? I hear over and over again from guys that they are put in the same space as people the guards know they are not safe with. There is this constant fear that they are living, whether it is perceived or real, it is a real fear they are living with within the walls.”

Indigenous people can find themselves trapped in higher security levels where programs are not available or responsive to their needs. This has an especially harsh impact on Indigenous people serving indeterminate or life sentences, whose only chance at being released to the community is cascading to lower security and achieving parole. When they get trapped in high-security prisons, they are denied parole and remain in prison far beyond their parole eligibility dates.⁷⁶ Many Indigenous people on determinate sentences are released from maximum security to the community on their statutory release dates after serving two-thirds of their sentences, or at the end of their sentence on warrant expiry, which makes their reintegration back to the community extremely difficult. This is not in their interests, or in the interests of public safety.

74 Michael Jackson, *Justice behind the Walls: Human Rights in Canadian Prisons* (Douglas & McIntyre, Vancouver: 2001). Online: <http://www.justicebehindthewalls.net/book.asp?cid=114>.

75 Michael Jackson, *Prisoners of Isolation: Solitary Confinement in Canada*. (University of Toronto Press, 1983). Online: <http://www.justicebehindthewalls.net/book.asp?cid=785&pid=89721>; *Report to Parliament: The Subcommittee on the Penitentiary System in Canada* (Ottawa: Minister of Supply and Services, 1977) at ¶ 220.

76 Debra Parkes, Jane Sprott & Isabel Grant, “The Evolution of Life Sentences for Murder: Parole Ineligibility and Time Spent in Prison” (2022) 100 Canadian Bar Review 67.

USE OF FORCE

Correctional officers frequently use force against people in Canadian prisons as a response to self-harm, when someone is in emotional distress or when someone is non-compliant (for example, if they are refusing to return to their cell where they will be isolated). Force may include spraying someone with pepper spray, tackling them to the ground, punching them, kicking their feet from under them, holding them down, shooting them with rubber bullets or cutting their clothes off.⁷⁷

Uses of force are sometimes spontaneous and sometimes planned. Planned uses of force are often done by the Emergency Response Team (ERT) – trained officers in riot gear with helmets, shields and weapons. Our clients describe them as a riot squad.

The Correctional Investigator of Canada has noted that “year after year” Indigenous people are over-represented in uses of force by correctional officers.⁷⁸ In his 2017-2018 Annual Report, the Correctional Investigator reported that 47% of uses of force involved one or more Indigenous person. At that time, the prison population in Canada was 28% Indigenous.⁷⁹ The Correctional Investigator’s 2021-22 Annual Report states that 39% of uses of force over the past five years involved Indigenous people.⁸⁰

One person we interviewed, who wished to remain anonymous, said:

As soon as an inmate who’s Indigenous gets out of line, it’s right away the ERT’s coming. It’s not a negotiation. They don’t stand there for an hour at your cell trying to calm you down – it’s right for the ERT team, and then it’s the pepper spray, and the handcuffs and the dragging away of the guy. It seems to escalate very quickly when it comes to the Indigenous population. Non-Indigenous inmates, they get an hour where they’ll call down the psychologist, and they’ll call down the priest, and they’ll call down other officers who knew the guy, and they’ll sit there for lengths of time, hours even, to just negotiate with the guy to talk about it. They’re a lot quicker to react negatively when it comes to the Indigenous population.

Nick Dinardo, who is Cree from the Piapot First Nation, has been subjected to violence numerous times by correctional officers in prisons designated for men. Nick Dinardo is Two-Spirit and transfeminine. Their applications to transfer to prisons designated for women have been denied. Nick Dinardo’s family are residential school survivors. They have a history of trauma both in and out of prison and they have tried to kill themselves many times. Despite their vulnerability, CSC holds them in maximum security and isolation.

Nick Dinardo has been subjected to so many uses of force, in the past they have been afraid to leave their cell, and would often not even come out for showers. They have been kicked, twisted, doused with pepper spray, tear gassed, shot in the face with an impact round, hit on the head with a baton, and had a warning shot from a rifle fired over their head. In May 2021, officers kicked Nick Dinardo repeatedly, pulled their hair,

77 West Coast Prison Justice Society, *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/2021/05/use-of-force-report-Nov-21-2019-updated.pdf>.

78 Office of the Correctional Investigator Canada, *Indigenous People in Federal Custody Surpasses 30%* (Ottawa: 21 January 2020).

79 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>.

80 Office of the Correctional Investigator Canada, *Annual Report 2017-2018* (Ottawa: 2018) at 96. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>.

forced them to the ground and put them on their stomach. One of the officers put his knee on the back of their neck and pulled their arm back hard, breaking their arm. CSC's own internal reviews characterized the force as excessive, unnecessary and disproportionate.⁸¹

Joey Toutsaint is from the Black Lake Denesuline First Nation. He grew up in a loving home where only Dene was spoken. Joey Toutsaint has also been subjected to so much violence in maximum security that he lives in terror of correctional officers using force against him, and self-harms to cope with his trauma. In his words:

My body is covered in scars. I used to cut from side to side, but now I go up and down because I'm running out of space. I used to take out my anger on other people, but now I take it out on myself. I feel broken... When I worry that the Emergency Response Team is coming, I wait with a razor blade to my neck. I've been through that so many times and I can't go through that again.

Both Nick Dinardo and Joey Toutsaint have had violence used against them as a response to their self-harm. Use of force in response to self-harm against Indigenous people is disproportionately high as compared to white people in prison – 51% of uses of force in response to self-harm are against Indigenous people, while 35% of uses of force in response to self-harm are against white people.⁸²

Researchers have described the effect of force used by police as traumatic “long after violent incidents occur” and potentially impacting a person’s “long-term psychological wellbeing.” They found that people who experienced force by police may also identify correctional officers “as a source of threat and mistrust, which may lead to increased anxiety and depression throughout their daily interactions with correctional officers.”⁸³

Reactions to traumatic stress include:

- severe emotional distress or physical reactions to something that reminds you of the traumatic event;
- negative thoughts about yourself, other people or the world;
- hopelessness about the future;
- memory problems, including not remembering important aspects of the traumatic event;
- difficulty maintaining close relationships;
- feeling detached from family and friends;
- lack of interest in activities you once enjoyed;
- difficulty experiencing positive emotions;
- feeling emotionally numb;
- being easily startled or frightened;
- always being on guard for danger;

81 Steve Deraps, “Use of Force Report - FOR2021368000306-01 – Port-Cartier” (Correctional Service Canada, 30 May 2021); Centre intégré de santé et de services sociaux de la Côte-Nord, «Département de radiologie – Nicholas Dinardo» (Correctional Service Canada, 5 June 2021).

82 Correctional Service Canada, *Policy Sector – Performance Measurement & Management Reports for the period between March 1, 2020 and August 30, 2020* (2020).

83 Benjamin Meade, Benjamin Steiner & Charles F. Klahm IV, “The effect of police use of force on mental health problems of prisoners.” *Policing and Society* Vol. 27, No. 2 (2017) at 230-231.

- self-destructive behaviour;
- trouble sleeping;
- trouble concentrating;
- irritability, angry outbursts or aggressive behaviour; and
- overwhelming guilt or shame.⁸⁴

CSC-employed mental health care staff rarely acknowledge the impact of violence against people in prison, and pathologize them for being angry in response to abuse. When Indigenous people experience these normal responses to traumatic experiences, they are viewed by CSC as lacking motivation to rehabilitate and as requiring a higher level of supervision and control, resulting in a higher security classification level, and making it more difficult to move to lower security levels, to Indigenous-run healing lodges or to the community on conditional release.

Prisoners' Legal Services considers strip searches to constitute abusive uses of force. Many clients have described feeling violated when forced to strip for a search, and many have told us that the experience brings back traumatic memories of being abused as a child. Clients also describe violent force by officers in the context of strip searches. Stephanie Fox, a formerly-incarcerated Two-Spruit person who is both Inuvialuit and from the Dene Tha' First Nation, told us in a letter that being strip searched was "always degrading and humiliating and brought back all my abuse as a child and teen." She said that she went to mental health for help, but instead:

I was thrown into segregation and made to strip and be searched before and after, until I complied to say I was OK, when I wasn't. The alternative was a potato sack naked in winter months with a window that never closed and dirty mattress on the floor, like a dog, with no blanket and a dirty cell in segregation. That was worse than the alternative of saying everything is fine. I didn't go for help next time, out of fear of being stripped and tortured again.

After this experience, she tried to kill herself.⁸⁵

SOLITARY CONFINEMENT AND TORTURE

The United Nations *Standard Minimum Rules for the Treatment of Prisoners* ("The Mandela Rules") define solitary confinement as 22 or more hours per day without meaningful human contact.⁸⁶ CSC's previous administrative segregation regime has been found to constitute solitary confinement and to violate ss 7 and 12 of the *Charter*.⁸⁷ Canada replaced this regime with Structured Intervention Units in 2019. Legislation now requires at least four hours out of cell per day, two of which are to involve meaningful human contact. This

⁸⁴ Mayo Clinic, *Post-traumatic stress disorder (PTSD)* (2023). Online: <https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causes/syc-20355967>.

⁸⁵ Stephanie Michelle Fox, Letter to Prisoners' Legal Services (27 April 2022).

⁸⁶ UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* : resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175, Rule 44. Online: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

⁸⁷ *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 228; *Canadian Civil Liberties Association v Canada (Attorney General)*, 2019 ONCA 243.

means the new regime continues to walk the line of perpetrating solitary confinement, since time out of cell may be spent alone.

According to the United Nations, solitary confinement constitutes torture or cruel treatment if it is used for more than 15 days, or for any amount of time for someone with a pre-existing mental health disability.⁸⁸

Indigenous people are subjected to higher rates of solitary confinement than other people in prison, both under the previous administrative segregation regime, and under the current Structured Intervention Unit regime. In early 2019, Indigenous people represented 44% of people in administrative segregation in federal custody.⁸⁹ The most recent statistics reveal that Indigenous people represent almost 50% of all Structured Intervention Unit stays (compared to being 32% of the prison population), with Indigenous women representing 76% of Structured Intervention Unit stays by women (compared to being 50% of women in prison).⁹⁰ In the Prairie region, 67% of people in Structured Intervention Units are Indigenous.⁹¹

Indigenous people are more likely to be held in Structured Intervention Units for prolonged periods of time. For Indigenous people, 62% of Structured Intervention Unit stays are longer than 15 days, compared to non-Indigenous rates of stays longer than 15 days at 53%.

Indigenous people in Structured Intervention Units are also more likely to get less than four hours out of cell per day than non-Indigenous people.⁹² According to CSC's data, use of Structured Intervention Units meets the definition of solitary confinement in 28% of placements. Ten percent of Structured Intervention Unit placements constitute torture under the United Nations' definition.⁹³ For people in Structured Intervention Units, time interacting with program officers or Elders is sometimes done from inside a small cage. It is questionable whether anyone can really have "meaningful human contact" in a cage.

Solitary confinement is defined by a lack of "meaningful human contact." It must be acknowledged that this is a western perspective on isolation that does not contemplate the importance of connection to land of many Indigenous Peoples, and connection to land as a key determinant of health and mental health.⁹⁴

The mental health impacts of solitary confinement are well documented in the literature and widely acknowledged, although CSC staff, including health care staff, rarely acknowledge these impacts.

88 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UNGAOR, 66th Sess, UN Doc A/66/268 (5 August 2011) at ¶ 76 and 78. Online: <https://archive.org/details/452639-un-report-ontorture>; *The Mandela Rules*, Rules 43, 44 and 45(2).*

89 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>.

90 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>.

91 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>.

92 Structured Intervention Unit Implementation Advisory Panel, *2021/22 Annual Report* (Ottawa: 2 September 2022) at 85. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap-nnlrpt/2022-siu-iap-nnlrpt-en.pdf>.

93 Anthony Doob and Jane Sprott, *Solitary Confinement, Torture and Canada's Structured Intervention Units* (23 February 2021) at 3. Subsequent data reveals that in about three-quarters of Structured Intervention Unit stays that were longer than 15 days, people did not receive at least two hours of meaningful human contact in over 21% of their days, meaning that these people experienced torture or cruel treatment according to United Nations definitions (Structured Intervention Unit Implementation Advisory Panel, *2021/22 Annual Report* (Ottawa: 2 September 2022) at 70. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap-nnlrpt/2022-siu-iap-nnlrpt-en.pdf>).

94 Krista Stelkia, Lindsay Beck, Anita Manshadi, et al. "Letsemot, 'Togetherness': Exploring How connection to Land, Water and Territory Influences Health and Wellness with First Nations Knowledge Keepers and Youth in the Fraser Salish Region of British Columbia", *International Journal of Indigenous Health*, Vol. 16, Issue 2 (2020) at 358, 362 and 365.

As set out in the Ontario Court of Appeal decision *Canadian Civil Liberties Association v Canada*, the impacts of solitary confinement include:

- depression;
- stress, anxiety and panic;
- increased risk of panic attacks and a sense of impending emotional breakdown;
- hatred, bitterness, anger and rage;
- loss of control;
- depersonalization;
- paranoia;
- hallucinations;
- self-mutilation;
- increased rates of suicide and self-harm;
- increased level of violence against other;
- frustration;
- boredom;
- loss of the sense of reality;
- trouble sleeping;
- impaired concentration;
- confusion;
- declines in mental functioning;
- delusions;
- difficulty solving interpersonal problems;
- unawareness of the consequences of actions;
- inability to make positive choices;
- impulsivity;
- loss of the ability to control behaviour (relying on prison structure to manage conduct);
- severe apathy; and
- lethargy.⁹⁵

Joey Toutsaint has been in many maximum-security prisons across Canada. He has experienced over 2,000 days in administrative segregation, and most of his time has been spent in isolation after this regime ended. He has experienced most of the symptoms listed above. One day he told our advocate that he had a good day because an Elder took him outside for the first time in six months.

Another Indigenous incarcerated person we interviewed in August 2022, who wanted to remain anonymous, said:

95 *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243, at ¶ 73-77.

Segregation touched people in different ways. It's really an individual thing. But first, you have to figure out how it affected you. Unfortunately, a lot of the guys in segregation were Indigenous, and they've already suffered through colonization, residential schools, all the things that segregation does to you as well, loss of culture, loss of family. So, there has to be somebody who you can talk to, to figure out how that affected you. Once you figure that out, there should be the means available to you to work on those issues. But none of that was available to anybody coming out of segregation. So, a lot of times guys are just booted right back to the general population setting, after spending a year locked in their cells, angry, frustrated, stressed, and then, all of a sudden, they're back in with the population still angry, stressed, and frustrated, and very quickly, things deteriorated.

Elder Wanda Whitebird, who used to work as an Elder in CSC institutions, described Indigenous people who ended up in segregation as “warriors,” noting that CSC likes to separate people who are leaders and who refuse to let abuse go by, as well as people who have anger because of colonial harms. “We all have anti-social personality disorder! They say you have a problem with authority, well I have a problem with authority too,” she joked. She said there isn't anyone she would not work with, including people in maximum security, noting that many people in prison are grieving the loss of the life they had before they went to prison. She would explain to people that anger is a normal reaction to being hurt.⁹⁶

2SLGBTQIA+ PEOPLE IN PRISON

Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex and asexual people are especially vulnerable to criminalization and to victimization in prison.

Being Two-Spirit is a specifically Indigenous identity. “From some perspectives, traditional Indigenous cultures held an honourable place for Two-Spirit persons, which were altered by cis-normative and hetero-normative colonial influences.”⁹⁷

We have received many reports from Indigenous clients who identify as Two-Spirit or LGBTQIA+ who experience violence and a lack of dignity because of discrimination based on gender identity or sexual orientation. We have heard reports that correctional officers sexually assault Indigenous trans women during searches and frequently use offensive language. CSC places Indigenous people who are vulnerable to sexual assault in cells with men against their wishes, routinely mis-genders people and uses dead names,⁹⁸ denies people clothing and personal effects that reflect their gender identity, and refuses requests to transfer to a prison that better reflects their gender identity. 2SLGBTQIA+ people are sometimes placed in solitary confinement for their own protection.

All prisons are designated by CSC for either men or women, which does not offer options for people who are Two-Spirit or non-binary. CSC policy allows people to be placed according to their gender identity (based on a gender binary) if that is their preference, but includes a caveat: “unless there are overriding health or

96 Interview with Elder Wanda Whitebird (20 October 2020).

97 National Inquiry into Missing and Murdered Indigenous Women and Girls, *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Calls for Justice* (June 2019) at 120. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1b.pdf.

98 “Deadnaming” is calling someone by their birthname when they have changed their name to accord with their gender identity.

safety considerations that cannot be resolved,⁹⁹ which is often used to prevent people from living in a prison that reflects their gender identity or that would be a safer environment.

SELF-HARM, SUICIDE AND DEATHS IN CUSTODY

Indigenous people experience high rates of suicide, attempted suicide and self-harm in federal custody. In 2020-21, 55% of self-harm injuries were experienced by Indigenous people in federal custody.¹⁰⁰ Over 40% of attempted suicides in federal prisons in the past 10 years were by Indigenous people.²⁶ Ten years ago, Indigenous people made up 20% of the federal prison population, compared to 32% today.¹⁰¹ In 2020 to 2021, 83% of deaths by suicide in Canadian prisons were of Indigenous people (5 out of 6).¹⁰²

The criminal legal system overall is responsible for high rates of death of Indigenous people. Indigenous people are over-represented in deaths by police in Canada.¹⁰³ According to data compiled by CBC News, Indigenous people represented 16% of deaths by police in Canada between 2000 and 2020.¹⁰⁴

People in prison have homicide and suicide rates that are almost eight times the rates of people in the community.¹⁰⁵ Deaths overall in federal prisons are more than two times higher for men of similar age distribution than those in the Canada population.¹⁰⁶

Despite ongoing criticism by the Correctional Investigator that many deaths in custody are preventable, the mortality rates of people in prison have remained constant – 536 people died in federal prisons between 2003 and 2013¹⁰⁷ and 580 people died in federal prisons between 2012 and 2022.¹⁰⁸

In 2008, the Correctional Investigator reported on the death of an Indigenous man who died from self-inflicted wounds in a medium-security prison. He pressed his cell emergency button, but correctional officers waited 10 minutes to call an ambulance and waited 33 minutes to enter his cell, when they found him on the floor unconscious and not breathing. His mattress was soaked in blood.¹⁰⁹

99 Correctional Service Canada, *Commissioner's Directive 100: Gender Diverse Offenders* (In effect: 2022-05-09) (Ottawa: Correctional Service Canada, 2022). Online: <https://www.csc-sec.gc.ca/politiques-et-lois/005006-100-cd-en.shtml>.

100 Data provided by the Office of the Correctional Investigator Canada (24 August 2021).

101 Office of the Correctional Investigator Canada, *Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge* (21 January 2020). Online: <https://www.ocibec.gc.ca/cnt/comm/press/press20200121-eng.aspx>.

102 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>.

103 See, for example, The Honourable Mr. Justice David H Wright, Commissioner, *Report of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild* (October 2004). Online: <https://www.stonechildinquiry.ca/finalreport/Stonechild.pdf>.

104 CBC News, *2020 already a particularly deadly year for people killed in police encounters, CBC research shows* (2020). Online: <https://newsinteractives.cbc.ca/features/2020/fatalpoliceencounters/>.

105 Office of the Correctional Investigator Canada, *Deaths in Custody Final Report* (Ottawa: 28 February 2007). Online: <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20070228-eng.aspx>.

106 Fiona Kouyoumdjian, *Health status of prisoners in Canada*, *Can Fam Physician*, 62(3): 215-222 (March 2016). Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4984599/#:~:text=Mortality%3A%20A%20large%20number%20of,custody%20between%202001%20and%202010>.

107 Fiona Kouyoumdjian, *Health status of prisoners in Canada*, *Can Fam Physician*, 62(3): 215-222 (March 2016). Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4984599/#:~:text=Mortality%3A%20A%20large%20number%20of,custody%20between%202001%20and%202010>.

108 Data received from the Office of the Correctional Investigator Canada (23 February 2023).

109 Office of the Correctional Investigator Canada, *Report on the circumstances surrounding The Death of a Federal Inmate, A Failure to Respond* (21 May 2008). Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20080521-eng.pdf>.

An internal CSC investigation found that officers failed to administer first-aid and failed to take any action to save the man's life. The officers received 10- to 20-day suspensions. The Correctional Investigator found that CSC failed to adequately address allegations of discrimination related to the officers' conduct and that the "disciplinary outcomes did not appear to reasonably coincide with the seriousness of the identified failures."¹¹⁰

In 2010, Eddie Snowshoe, a 24-year-old Gwich'in man, hanged himself after spending 162 days in solitary confinement at Edmonton Institution where he was serving a five-year sentence. His family and the Gwich'in Tribal Council filed a lawsuit against CSC alleging systemic discrimination against him as an Indigenous person in prison.¹¹¹

In 2014, a Public Fatal Inquiry into Eddie Snowshoe's death found that corrections officials were unaware that he had attempted to kill himself at least two or three times previously, and that he had been in solitary confinement for as long as he had, even though that information was readily available. The Inquiry found that "nothing was done to attempt to set up psychological communication with [Mr. Snowshoe] even though the psychology department had been advised by the admitting nurse of the prior suicides [sic] and self harm incidents," apart from one initial attempt to interview Mr. Snowshoe, which he declined.¹¹²

In March 2023, the Ontario inquest into the 2018 death of Brennan Nicholas resulted in 32 jury recommendations.¹¹³ Brennan Nicholas, from the Oneida Nation of the Thames, was 24 years old when he took his own life at the Millhaven Regional Treatment Centre by cutting his neck with a razor blade. The Jury's recommendations included that CSC ensure that Indigenous people at Millhaven have access to Elders and space for ceremonies including dedicated sacred grounds.

Christa Big Canoe, the lawyer representing Brennan Nicholas' family, said they had contemplated arguing that his death was a homicide because it was "blatantly obvious" he should not have been given a razor. A CSC article quotes Denise Desormeaux, Brennan Nicholas' mother as saying it was "no different than giving someone who was struggling a gun, rope, knife or weapon – the means to end life – when he was not in the best mind or ability to resist."¹¹⁴

In the past ten years, 127 Indigenous people have died in federal prisons. Forty percent of deaths by suicide in the past ten years were of Indigenous people.¹¹⁵ Prisoners' Legal Services continues to receive frequent reports that correctional officers encourage Indigenous people to kill themselves in prison.

110 Office of the Correctional Investigator Canada, *Report on the circumstances surrounding The Death of a Federal Inmate, A Failure to Respond* (21 May 2008). Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20080521-eng.pdf>.

111 Eric Bowling, "Gwich'in Tribal Council launches wrongful death lawsuit for Eddie Snowshoe," *NNSL Media* (9 May 2021). Online: <https://www.nnsl.com/news/gwichin-tribal-council-launches-wrongful-death-lawsuit-for-eddie-snowshoe/>.

112 Report to the Ministry of Justice and Attorney General, *Public Fatal Inquiry into the death of Edward Snowshoe*, Province of Alberta (4 June 2014).

113 Online: <https://www.ontario.ca/page/2023-coroners-inquests-verdicts-and-recommendations#section-1>.

114 Dan Taekema, "Jury issues dozens of recommendations after man dies at Millhaven Institution," *CBC News* (11 March 2023). Online: <https://www.cbc.ca/news/canada/ottawa/brennan-nicholas-millhaven-death-inquest-1.6774608>.

115 Data received from the Office of the Correctional Investigator Canada (23 February 2023).



By Ricky Leslie, Métis and Ojibwe

III. POLICY AND PRACTICE PREVENT INDIGENOUS PEOPLE FROM GETTING OUT & STAYING OUT OF PRISON

“In this system, we face a lot of systemic racism and discrimination towards our cultural practices we get from our Elders. They try their best to help and support us for these dates and transfers, but they most of the time go unheard.... If they go as far as to challenge the denial, they often get reprimanded... A staff got fired because of her help and support in our cultural centre....

In all actuality, they did nothing but warehouse the Native... We are in a way a cash cow for that institution. Why let you go when they can make money and profile you as a violent offender? ... Being in a place where the sun don't shine is a bad act towards reconciliation. You see us, but don't hear the actual truth of what we face in here, when it comes to ... what we call justice reform... Our healing lodges and our home community Elders try to build bridges to the inside, but are not welcomed. So how does a Native get through it all? Well, we just do our time until something is done about it.”

— Anonymous, Letter to Prisoners' Legal Services

CSC's policies and practices result in Indigenous people being warehoused, without opportunities to cascade to lower security levels and be released to Indigenous-run healing lodges or to the community.

CSC CONSIDERS “INDIGENOUS SOCIAL HISTORY” IN DECISIONS TO IMPOSE A HIGHER SECURITY CLASSIFICATION

Indigenous people are overrepresented in higher levels of security. One of the reasons for this is CSC's use of Indigenous social history considerations in its decision-making. In higher levels of security, Indigenous people are especially likely to experience the harms described above and they will be ineligible for transfer to an Indigenous-run healing lodge.

CSC operates three levels of security – minimum, medium and maximum. Healing lodges are generally classified as minimum-security facilities (although some healing lodges designated for women accept people who are classified as medium security). People in prison are classified as minimum, medium or maximum security.

Section 18 of the *Corrections and Conditional Release Regulations* includes risk to public safety, escape risk and the degree of “supervision and control” the person requires within the penitentiary as the criteria for determining security classification. Policy refers to the criterion related to the need for supervision and control as a person’s “institutional adjustment” rating. People can be classified to maximum security on the basis of a high institutional adjustment rating alone, regardless of their level of risk to public safety or risk of escape.

Commissioner’s Directive 705-7, *Security Classification and Penitentiary Placement* includes the criteria for a person’s initial security classification, including their “institutional adjustment” rating. These criteria include:

- the “inmate’s level of motivation/engagement to participate in his/her Correctional Plan”
- “mental health concerns that may affect institutional adjustment based on the results of psychological, psychiatric, mental health assessments or other information”
- “whether the inmate displays special needs or socio-cultural factors indicating a requirement for special intervention on an ongoing basis (Indigenous inmate, woman inmate, etc.)”
- “whether the inmate has a history of mental health issues, suicidal ideation, self-injury. For Indigenous offenders, provide an analysis of their history of mental health concerns, suicidal ideation and/or self-injury within the context of their Indigenous social history”
- “current emotional stability, and whether this will impact on the inmate’s institutional adjustment.”

The person will receive a high institutional adjustment rating (meaning they have poor institutional adjustment) if they are considered to demonstrate difficulties that require a “highly structured environment...subject to constant and direct supervision” and “an uncooperative attitude toward institutional programs and staff and [present] a potentially serious management problem within an institution.”¹¹⁶

Commissioner’s Directive 710-6 “Review of Inmate Security Classification” provides the factors to be considered in determining reviews of the level of supervision and control required for an individual. Some factors are clearly discriminatory based on human rights grounds, including Indigeneity or mental health disability. For example, CSC staff are instructed to:

- “identify 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.)”
- “identify 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”
- consider “current emotional stability and whether this will impact on the inmate’s institutional adjustment”
- “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

116 Correctional Service Canada, *Commissioner’s Directive 705-7: Security Classification and Penitentiary Placement* (In effect 2018-01-15) (Ottawa: Correctional Service Canada, 2018), Annex B, Part 1. Online: <https://www.csc-scc.gc.ca/acts-and-regulations/705-7-cd-eng.shtml#annexB>.

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 the legislation or CSC policy to consider Indigenous social history, or *Gladue* factors, as *reducing* an Indigenous person’s institutional adjustment rating related to security intelligence. The policy 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 encourages 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 could encourage an institutional parole officer¹¹⁷ to view relationships with other Indigenous people in prison as related to gang activity. Prisoners’ Legal Services has had Indigenous clients tell us that when they form supportive bonds with each other, CSC accuses them of being in gangs. Anyone who has experienced prolonged isolation or uses of force in prison will likely have a high institutional adjustment rating based on the criteria.

Without direction to use these factors to reduce an Indigenous person’s rating under institutional adjustment, the reasonable assumption is that the factors *increase* security rating, as they would indicate an Indigenous person who has difficulty adjusting to living in a colonial prison. This policy perpetuates the over-representation of Indigenous people being held in higher levels of security than other people in prison.

This policy remains in place despite the 2019 amendment to the *Corrections and Conditional Release Act* to prohibit consideration of *Gladue* factors to increase an assessment of risk.¹¹⁸ A 2019 CSC Interim Policy Bulletin about the amendment does not address decision-making specifically in relation to determination of institutional adjustment.¹¹⁹ Similarly, a 2021 CSC “Indigenous Social History Tool” document does not specifically address determination of institutional adjustment. It notes that “consideration of a lower security classification to allow for greater involvement in cultural and spiritual programming and services” may be considered, but only “[w]hen behaviour is not an issue.”¹²⁰

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. Who could be “emotionally stable” in an environment that is security-driven and 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.

117 Institutional parole officers supervise and manage the sentences of people in prison. Institutional parole officers have great power in making recommendations for decisions that affect a person’s security level and conditional release to community.

118 *Corrections and Conditional Release Act*, SC 1992, c 20, s 79.1:

79.1 In making decisions under this Act affecting an indigenous offender, the Service shall take the following into consideration

- (a) systemic and background factors affecting Indigenous peoples of Canada;
- (b) systemic and background factors that have contributed to the overrepresentation of Indigenous persons in the criminal justice system and that may have contributed to the offender’s involvement in the criminal justice system; and
- (c) the Indigenous culture and identity of the offender, including his or her family and adoption history.

Exception — risk assessment

- (2) The factors described in paragraphs (1)(a) to (c) are not to be taken into consideration for decisions respecting the assessment of the risk posed by an Indigenous offender unless those factors could decrease the level of risk. [Emphasis added.]

119 Correctional Service Canada, *Interim Policy Bulletin 648* (In effect: 2019-11-30) (Ottawa: Correctional Service Canada, 2019). Online: <https://www.csc-scc.gc.ca/lois-et-reglements/648-ipb-en.shtml>.

120 Correctional Service Canada, *Indigenous Social History (ISH) Tool* (2021-07-08).

Even after CSC implemented its 2021 “Indigenous Social History Tool” noted above, Prisoners’ Legal Services’ clients rarely have their Indigenous social history considered appropriately in decision-making by CSC. CSC tends not to consider restorative options, and rarely includes positive references to the person or the progress they have made. Systemic factors are frequently referred to as resulting in a failure of the person to learn “pro-social behaviour.” CSC’s consideration of Indigenous social history in reports, such as those for parole applications or transfers to higher security, is often limited to one or two boilerplate paragraphs. In some cases, CSC states that these considerations do not apply because the person did not grow up in their culture (i.e., was adopted or lived in an urban centre), which is obviously a significant *Gladue* factor.¹²¹

As experienced by Alberto Vogel, an incarcerated person:

The way CSC uses Indigenous social history is not “Oh, well, we need to develop a healing plan for this guy. We need to help this guy with this or help them with that.” No, it’s “OK, now we know what’s wrong with him. Now we can use this against him.”

Security classification should be based on the safety risk the person may pose to others, rather than on the criterion of the degree of supervision and control required. Supervision and control end up meaning isolation and violence, which leads to expressions of the symptoms associated with isolation and trauma, which is then used to justify more isolation and violence.

CSC USES RACIST RISK ASSESSMENTS TO DETERMINE RISK AND REINTEGRATION POTENTIAL

In 2018, the Supreme Court of Canada ruled in *Ewert v Canada*¹²² that CSC breached its governing legislation by failing to take all reasonable steps to ensure the information it relies upon in assessing the risk of Indigenous people is accurate. The Supreme Court noted that CSC had longstanding knowledge of concerns that the risk assessment tools it used may be culturally biased, but took no action to evaluate the tools’ validity for evaluating risk for Indigenous people in prison.

The Supreme Court highlighted that Indigenous people are overrepresented in prisons and also overrepresented in the harshest prison conditions.¹²³ The Court explained how reliance on inaccurate risk assessment tools could further contribute to this disparity:

[T]he clear danger posed by the CSC’s continued use of assessment tools that may overestimate the risk posed by Indigenous inmates is that it could unjustifiably contribute to disparities in correctional outcomes in areas in which Indigenous offenders are already disadvantaged. For example, if the impugned tools overestimate the risk posed by Indigenous inmates, such inmates may experience unnecessarily harsh conditions while serving their sentences, including custody in higher security settings and unnecessary denial of parole. Overestimation of the risk may also contribute to reduced access to rehabilitative

121 *R v Kehoe*, 2023 BCCA 2 at ¶ 56. (“Disconnection is one of the very harms associated with Canada’s colonial history and assimilationist policies that *Gladue* and *Ipeelee* seek to address.”)

122 *Ewert v Canada*, 2018 SCC 30.

123 *Ewert v Canada*, 2018 SCC 30 at ¶ 60.

opportunities, such as a loss of the opportunity to benefit from a gradual and structured release into the community on parole before the expiry of a fixed-term sentence.¹²⁴

Tom Cardoso's 2020 investigation into CSC's risk assessment tools published in the *Globe and Mail* looked at CSC's Custody Rating Scale and Reintegration Potential Score.¹²⁵ It notes that Indigenous men received a higher security classification more frequently than others, and were approximately 30% more likely than white men to have the worst possible reintegration score, despite being 9% less likely than white men to commit a new offence. Indigenous people with a maximum-security rating were released to community seven times less often than white people with the same score.

Tom Cardoso's investigation found that CSC's risk assessments were "fundamentally, powerfully biased against Indigenous and Black inmates, placing them in higher security classifications and assigning them worse odds of successfully re-entering society." Open-ended questions in the Custody Rating Scale allow parole officers' prejudices to impact the results. Questions that rely on a person's past give a higher score for racialized people because they predict policing, not crime.

The investigation notes that CSC's use of these risk assessments perpetuates systemic discrimination, because it lands Indigenous people in higher levels of security with limited access to programs that would make it possible to get out of prison on conditional release to the community.

Despite the Supreme Court's decision in 2018 and subsequent media attention to the issue, CSC continues to use actuarial tests to assess risk that place heavy reliance on historical (*Gladue*) factors, such as history of problems with employment, history of problems with substance use and history of problems with traumatic experiences. These factors are used as aggravating factors elevating risk of violence and reoffending rather than contextualizing and ameliorating accountability.¹²⁶

CSC PRIORITIZES SECURITY OVER INDIGENOUS SERVICES

Despite a plethora of legislation and policies that require CSC to provide programs that are responsive to the needs of Indigenous people,¹²⁷ CSC's prioritization of security and its lack of respect for Elders and other Indigenous staff mean that these programs face serious challenges. While Indigenous programs and services are essential to helping Indigenous people cope with the prison environment, no amount of Indigenous programs and services can change the fact that prisons are fundamentally colonial institutions based on colonial ideas about criminality and punishment.

CSC policy requires that the views of Elders be taken into consideration in decision-making in relation to security classification and support for parole, in the form of Elder Reviews. However, Elders are not provided the resources and staff they would need to fulfil this role, and even when they do, CSC often minimises, if

124 *Ewert v Canada*, 2018 SCC 30 at ¶ 65.

125 Tom Cardoso, *Bias behind bars: A Globe investigation finds a prison system stacked against Black and Indigenous inmates*, *The Globe and Mail* (24 October 2020; Updated 11 November 2020). Online: <https://www.theglobeandmail.com/canada/article-investigation-racial-bias-in-canadian-prison-risk-assessments/>.

126 These are some of the historical factors in the *HCR-20V3* tool that continues to be used by CSC psychologists and relied upon in CSC assessments for decision.

127 *Corrections and Conditional Release Act*, SC 1992, c 20, s 4(g); Correctional Service Canada, *Commissioner's Directive 702: Indigenous Offenders* (In effect 2013-11-12) (Ottawa: Correctional Service Canada, 2013). Online: <https://www.csc-scc.gc.ca/acts-and-regulations/702-cd-eng.shtml>.

not ignores, their input. According to a 2016 Auditor General report,¹²⁸ CSC failed to adequately consider Indigenous social history in case management and Correctional Plans. It failed to request *Gladue* reports from sentencing and did not obtain them in 91% of cases.¹²⁹

The 2016 Auditor General report also found that Indigenous people did not have timely access to correctional programs – only 20% of Indigenous people had completed their correctional programs by their parole eligibility dates.

Indigenous people in prison often tell us how important it is for them to be able to meet with Elders to help them cope with the abuse and isolation of the prison environment. However, CSC currently employs only 133 Elders for 3,953 Indigenous people in prison – a ratio of one Elder for every 30 Indigenous people. The ratio is worse in the Prairie region where one institution has a ratio of 105 Indigenous people in custody to one Elder.¹³⁰ This ratio is particularly troubling when considered in the context of an organization that employs 13,215 staff working in prisons to 13,720 prisoners (a 1:1 ratio).¹³¹

The 2012 report of the Correctional Investigator, *Spirit Matters*, raised concern about the ability of Elders to provide services to Indigenous people in CSC custody. It notes that Elders were inhibited from providing healing services in institutions, which impacted people's abilities to cascade to lower security and then to a healing lodge. The Correctional Investigator recommended CSC resolve issues faced by Elders who work in institutions and in healing lodges, and set realistic standards of service, caseload and payment for Elders.

According to a CSC summary of a report on Elder vulnerability, Elders who work for CSC feel vulnerable and isolated in their roles. They feel that CSC staff do not understand or honour traditional protocol and ceremony. They felt that their perspective on the impact of Indigenous social history on people, and the progress Indigenous people have made in their Correctional Plans, was not well understood by CSC staff. They also expressed concerns with the Government of Canada contracting process, which makes them insecure in their employment.¹³²

This is consistent with reporting from Indigenous people in prison who do not reside at healing lodges or on Pathways units (units within prisons with an emphasis on Indigenous programs and services), who advise us that Elders are stretched thin and regular one-on-one meetings are hard to come by, particularly with an Elder they feel rapport and trust with. They also advise that ceremonies – especially more time-intensive ceremonies such as sweats – sometimes do not occur for many months and are subject to cancellation for operational reasons. CSC operational staff sometimes prevent individuals from attending ceremonies because of alleged behaviour concerns. This contributes to the perception that Indigenous people in prison must earn access to their own cultures from CSC.

128 Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada* (2016). Online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html.

129 Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada* (2016). Online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html.

130 Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 102. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

131 Public Safety Canada, *2020 Corrections and Conditional Release Statistical Overview* (22 March 2022). Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2020/index-en.aspx#sc>.

132 Correctional Service Canada, *Elder Vulnerability within CSC: A Summary of Discussions with Elders, Recommendations and Action Plans* (Date modified: 20 November 2017). Online: <https://www.csc-scc.gc.ca/002/003/002003-1012-en.shtml>.



“In 1983, members of the Native Brotherhood at Kent Institution went on a hunger strike, maintaining that they had the right to practise their spirituality, including participation in spiritual and healing ceremonies, and that this was both an existing Aboriginal right under section 35 of the *Constitution Act*, 1982 and a right of freedom of religion protected by the *Canadian Charter of Rights and Freedoms*. Beyond these arguments, they maintained that practising culturally relevant ceremonies directed to healing was more appropriate in their journey towards rehabilitation and reintegration into the community than programs that lacked Aboriginal cultural or spiritual content.”¹³³

— Michael Jackson, *Justice behind the Walls*

On April 28, 2022, 77 Indigenous people in custody at Matsqui Institution submitted a group grievance to CSC national headquarters regarding the systemic discrimination they experienced as a result of CSC’s failure to provide any Elder reviews over the past five years, and its failure to resource Elders to provide counselling, which impacted people’s ability to cascade to lower security and access healing lodges or conditional release to the community. The grievance also pointed to the failure of CSC to appropriately consider Indigenous social history in decision-making, noting that “[n]ot one of [the grievors] has had the ISH [Indigenous social history] properly considered in their intervention reports.” The grievance notes that there are only two Indigenous program delivery officers at Matsqui, with eight non-Indigenous program delivery officers, despite the Indigenous population of Matsqui being close to 45%.

The grievance sought remedies including hiring additional Elders to ensure timely reviews, that CSC incorporate reviews into Correctional Plans, and compensation. The grievance described the extensive efforts made by the Indigenous Inmate Wellness Committee since May 2021 to address these systemic issues, Matsqui staff’s attempt to have the grievors withdraw the grievance and Matsqui’s failure to respond substantively to the substance of the grievance.

CSC National upheld the grievance and made a number of promises to improve access to Elders and Elder Reviews, ceremonies, introduce a Pathways program at Matsqui, contract with community support service agencies to provide services to Indigenous people, and promote *Corrections and Conditional Release Act* s 81 and 84 transfers to Indigenous communities. CSC did not award compensation for its failures to provide these services.

Signatories to the grievance worry that the remedies listed in CSC’s grievance response are empty promises, as it is now past the time limit for CSC to complete corrective action, and no one from CSC has communicated “written confirmation and documentation indicating that procedures were completed” as required by policy.¹³⁴ In fact, no one has communicated any plan or timeline for implementation, and people who are waitlisted for Indigenous programs are being advised to choose between taking programs that are not culturally relevant or transferring to other institutions to receive them. Since receiving the response,

133 Michael Jackson, *Justice behind the Walls: Human Rights in Canadian Prisons* (Douglas & McIntyre, Vancouver: 2001). Online: <http://justicebehindthewalls.net/book.asp?cid=23>.

134 Correctional Service Canada, *Commissioner’s Directive 081: Offender Complaints and Grievances* (In effect 2019-06-28) (Ottawa: Correctional Service Canada, 2019) at ¶ 43. Online: <https://www.csc-scc.gc.ca/politiques-et-lois/081-cd-en.shtml>.

Matsqui has told the Wellness Committee that it will no longer provide sweat lodge ceremonies. The grievors have now submitted another grievance regarding CSC's failure to take the corrective action indicated in the first grievance.

Another example of broken promises is Lalem Xeyiyá:qt, "Home of the Transforming Warrior," a unit opened at Pacific Institution in 2018. Lalem Xeyiyá:qt was intended to provide a holistic healing environment to address "the spiritual, mental, physical, and emotional facets of each resident as is consistent with the Medicine Wheel."¹³⁵ However, reports from Indigenous people living in this unit paint a different picture. Clients report that with the exception of Elders, all but one staff member working on Lalem Xeyiyá:qt are white, including the correctional manager. One Indigenous client reported that he did not feel comfortable talking about his feelings to white staff on the unit, and that residents were charged with disciplinary offences for very minor incidents. One resident reported concern that Indigenous people on the unit are removed if they exhibit symptoms of trauma, without the benefit of a restorative justice approach. Indigenous people at Pacific Institution tell us that it is hard to get into Lalem Xeyiyá:qt and easy to get kicked out.

CSC UNREASONABLY SUSPENDS COMMUNITY RELEASE

When someone is suspended from conditional release to the community, they are brought back to prison to either have their suspension cancelled by the Parole Board, or if their release is revoked, to wait until the next opportunity for release. Being suspended can mean losing housing, employment and community supports, and is destabilizing. The process of being arrested and returned to prison can also be traumatic.

As discussed above, Indigenous people spend more of their sentences in prison than under community supervision compared to other people serving sentences. Suspensions are highly discretionary decisions. Policy allows suspensions without a breach of condition or a new offence, including for "deteriorating attitude."¹³⁶

Clients report feeling frustrated and abandoned when they are suspended. One client said "I started changing, I got out of the prison mentality, I stopped hanging out in gangs, and now they're going to throw me back in. How is that right? I'm stumbling, reaching out for help. Why aren't you helping? They are supposed to help, but instead they turn their backs on you."

Sam Ens, Provincial Manager, Diversion and Early Intervention, BC First Nations Justice Council, suggested that Indigenous people facing a suspension because of relapse to drug or alcohol use should be offered placement at an Indigenous treatment centre, where they can reconnect with culture, if they are willing. He gave the example of 'Aghelh Nebun, a community residential facility east of Prince George, operated by the Prince George Activator Society, which offers "a remote, holistic, and land-based healing environment structured around Indigenous philosophies of healing and well-being" where people can participate in programs to address substance abuse, employment training, education and life skills.¹³⁷ He said:

135 Correctional Service Canada, *Lalem Xeyiyá:qt Home of the Transforming Warrior, Pacific Institution Unit Handbook* (20 March 2018).

136 Correctional Service Canada, *Commissioner's Directive 715-2: Post-Release Decision Process* (In effect: 2019-04-15). Online: <https://www.csc-cc.gc.ca/politiques-et-lois/715-2-cd-en.shtml#6>.

137 Prince George Activators Society, *'Aghelh Nebun CRF* (Accessed 8 February 2023). Online: <https://www.activatorsociety.org/aghelh-nebun-crf.html>.

Where they're saying, "Look, I would like to reconnect with culture. I've strayed from the path," why are we going to do a suspension, put them back in prison for 30 to 120 days? That use of diversion needs to be intertwined through the entire justice system. It's about reintegrating people back in a safe and kind way. It's about caring for the needs of the person, as well as the community they come from, and the people that that were harmed.¹³⁸

One person who works at the Stan Daniels Healing Centre, who wanted to remain anonymous, said that when Indigenous people come to Stan Daniels on conditional release, they are terrified they will be suspended for "deteriorating behaviour." He said it is an added stress that they will have a non-Indigenous parole officer who doesn't understand where they are coming from.

The staff person from Stan Daniels Healing Centre told us about the way *Gladue* factors are weaponized against Indigenous people, and that parole officers often rely on racist stereotypes about Indigenous communities. Because they haven't been to a reserve or gotten to know and understand the communities where Indigenous people come from, they assume the reserve is unsafe. "I always say, have you been to one? If not, then you can't say they are bad. If you go to a reserve, you know what you won't see? Homelessness. You know why? Because people take care of each other. And yes, there are issues on the reserve, but those issues are created by colonial systems."

Stan Daniels does not have funding to provide parole officers to everyone living at the healing lodge. The person we spoke with said that having authority to avoid parole suspensions is important so that Indigenous people living at Stan Daniels feel safe talking with staff if they have relapsed into drug use. "Often times I tell them relapse is part of recovery. The guy who's been really good will tell me, and I could say, 'OK, let's deal with it. It's all good.' If we send them back every time, we make it easy for them to say, 'the system hates me, and the system keeps screwing me over.' If we support them, then it's on them to do well," he said.

We also spoke with a community corrections employee (who wished to remain anonymous) who told us that there used to be a restorative circle room at the Vancouver Parole office, but it was taken over for other purposes. The person we spoke with said this room was a form of traditional justice, which is now gone. It provided an opportunity for parole officers to engage with Indigenous people on conditional release and avoid suspensions through a restorative circle. He also told us that the Indigenous community development officers¹³⁹ have less authority than parole officers when it comes to suspensions of conditional release.

We have also heard that community Indigenous liaison officers¹⁴⁰ have much too high a case load and too little authority.¹⁴¹

CSC has recently announced a pilot project in the Pacific Region focussing on Indigenous people who are at imminent likelihood of suspension called the "Community Indigenous Targeted Alternatives to Suspension Pilot Project."¹⁴² The pilot project description states that it is "designed to help the offender reflect on their ability to recognize problem/risk areas and determine if they are willing to change."

138 Interview with Sam Ens, Provincial Manager, Diversion & Early Intervention, First Nations Justice Council (27 June 2022).

139 Indigenous Community Development Officers work with Indigenous people in prison and their communities to develop release plans.

140 Community Indigenous Liaison Officers work with Indigenous people on conditional release to the community to assist with reintegration.

141 Interview with Bert Azak, Justice Coordinator, Native Education College, former CSC Correctional Officer, Aboriginal Liaison Officer and Aboriginal Community Liaison Officer (21 June 2022).

142 Correctional Service Canada, *Community Indigenous Targeted Alternatives to Suspension Pilot Project – Pacific Region 2022/2023* (2023).

While it is encouraging that CSC is recognizing the need to address the issue of unnecessary suspensions of Indigenous people in the community, its approach does not address the need for greater autonomy of Indigenous roles in the decision-making process. The decision to refer someone to the project is made by the parole officer. The person is expected to attend a CSC program, and may also be expected to “participate in additional interventions and supports,” which may include Indigenous-focused interventions.

Many of the representatives of Indigenous governments and organizations we spoke with talked about the importance of supporting people in the community to avoid suspension by resolving issues using traditional approaches, such as restorative circles where the person can be heard and their unmet needs identified, where the harm can be made right and balance restored.

Merv Thomas, Chief Executive Officer of the Circle of Eagles Lodge Society, would like to see Indigenous communities develop a separate parole system based on Indigenous law. He stressed the importance of Indigenous communities having the authority to provide community assessments and having input into the release conditions of Indigenous people. He would also like to see more funding for alternatives to suspending release and returning people to prison, such as for land-based programs and Indigenous operated addiction treatment facilities.¹⁴³

Paula Marshall, Executive Director of Mi’kmaw Legal Services Network, told us that for 12 years, her organization had a contract with CSC to employ a community liaison, who worked with Indigenous organizations to provide support programs for people on conditional release. She said CSC provided very limited funding for the position, and Mi’kmaw Legal Services Network had to provide about half of the funding needed for the position. It became financially impossible to continue with the contract, and the position became a CSC position. The person who had the contract took the CSC position and her salary was increased by 50%. “So it’s wonderful that she now has a federal government job with all the perks, but for the Indigenous community, it’s no longer Indigenous operated, and they call all the shots again,” she said.¹⁴⁴

We recommend that Canada work with Indigenous communities to develop new models of independent community supervision services that respect the principles of Indigenous self-determination, and that Canada fund Indigenous communities at reasonable levels to provide these services. Indigenous communities should have the authority to prevent suspension of community release where there are opportunities to resolve the harm or meet the person’s needs in the community. This could be done through an expansion of the use of *Corrections and Conditional Release Act* s 84.

THE PAROLE BOARD OF CANADA

The Parole Board of Canada provides an option for Indigenous people to have a hearing assisted by an Elder or Cultural Advisor, who can answer questions of the Parole Board about Indigenous culture.¹⁴⁵ The Elder is not involved in decisions to grant or deny parole. The people we interviewed for this report felt that,

143 Interview with Merv Thomas, Chief Executive Officer of Circle of Eagles Society (20 January 2023).

144 Interview with Paula Marshall, Executive Director of Mi’kmaw Legal Services Network (6 October 2022).

145 See Kathy Louis, “Elder and Community Assisted Hearings,” paper presented at the International Indigenous Symposium on Corrections – Effective Corrections through Indigenous Wisdom (Vancouver, 23-25 March 1999) at 5-6, which describes Elder-assisted hearings as being different from regular hearings that involve the person applying for conditional release sitting on one side of the table and Board members on the other. The person may have an assistant who might be a friend, family member or lawyer. Hearings are inquisitorial with Board members asking questions. In contrast, Elder-assisted hearings are conducted in a circle and include an Elder retained by the Board, Board members, and possibly the institutional Elder or Indigenous Liaison Officer, as well as the institution’s case management staff and the person’s assistant. Elder-assisted hearings open with a smudging ceremony and prayer “prayer to cleanse the hearts and minds

although Elder-assisted parole hearings offer a more culturally-appropriate process for Indigenous people than a standard parole hearing, reforms are needed to ensure that hearings are truly culturally-appropriate and that Indigenous Peoples have more decision-making authority.

Bert Azak, Justice Coordinator with Native Education College, spoke about the value of Elder assisted parole hearings. “The Elder appointed from the parole board is setting the stage for the hearing, and it sets a really calming environment.” He said that having an Elder from the institution who is working with the person is important for the Parole Board to understand the person, given that parole officers usually meet with the person only once or twice each month. “When they are working with the Elder, that interaction and that support that comes from the Elder is genuine, rather than having something read out. It’s a big difference. The Elder appointed to the Parole Board and the Institutional Elder give that sense of balance in a parole hearing,” he said.¹⁴⁶

Sam Ens envisioned reforms to the Parole Board of Canada that would enable Indigenous governments and organizations to take more responsibility for decisions related to community release:

The current parole system strips people of their humanity. We expect people to be whole, well rounded and part of a community, but they are only allowed to have one person speak at their parole hearing. You are no longer part of the community. There is a very punitive approach within that.¹⁴⁷

Sam Ens suggested parole hearings be based on a restorative justice approach that includes community members and victims, where everyone is permitted to speak. “I’ve never been a part of a restorative circle where people don’t at some point shed tears, where the room takes a deep breath and says ‘wow.’”

He said it is essential that the process allow Elders to speak, to have the hearing in the community and to have the wrap around service providers able to speak at the hearing. “That’s the Indigenous way of being, and that’s the community supporting the individual,” he said.

“At parole hearings the outcome is often evident in the reports prepared by CSC staff. It should be Indigenous communities and Elders that contribute to the conversation and who make a decision as a whole. Now, it is like saying we have a medicine wheel, but we are only looking at one of the directions. It’s a completely ineffective system for Indigenous people. It doesn’t work,” he said.

We recommend that the Parole Board of Canada work with Indigenous governments and organizations to reform parole hearings and the decision-making process to respect the principles of self-determination.

of those participating and to open the road to clear, honest communication” and everyone is encouraged to speak. Hearings tend to be less confrontational. Elder-assisted hearings began in 1991 in the Prairie Region.

146 Interview with Bert Azak, Justice Coordinator, Native Education College, former CSC Correctional Officer, Aboriginal Liaison Officer and Aboriginal Community Liaison Officer (June 21, 2022).

147 Interview with Sam Ens, Provincial Manager, Diversion & Early Intervention, First Nations Justice Council, (27 June 2022).



By Charles Silverfox, Tlingit northern Tutchone and Irish ancestry

IV. CSC REFUSES TO APPROVE AND ADEQUATELY RESOURCE INDIGENOUS ALTERNATIVES TO PRISON

“All people want is to be treated with dignity, respect and kindness. It’s not rocket science.”

— Merv Thomas, Chief Executive Officer of Circle of Eagles Lodge Society

Section 81 of the *Corrections and Conditional Release Act* provides authority for the Minister of Public Safety (or a person authorized by the Minister) to enter into agreements with Indigenous governing bodies or organizations to provide correctional services to Indigenous people in custody, and for the Minister (or a person authorized by the Minister) to pay for provision of those services.¹⁴⁸

Despite the authority to enter into s 81 agreements being given to the Minister of Public Safety, in practice, the approval process and negotiation for s 81 agreements has been delegated to CSC.¹⁴⁹ While CSC may have a role to play in transitional provisions, these agreements should ultimately be nation-to-nation negotiations based on the principle of Indigenous Peoples’ rights to self-determination, and should not be delegated to an agency that practices the abuses described earlier in this report.

To date, CSC and the Minister of Public Safety have entered into only six s 81 agreements. All of them have been for the creation of healing lodges, which are residential facilities that provide access to traditional teachings and programs.

In the 2012 report *Spirit Matters*, Howard Sapers, the then Correctional Investigator of Canada, discussed the original intent that s 81 be interpreted broadly to give latitude in what options Indigenous governments and organizations use as alternatives to prison “from the point of sentencing to warrant expiry.”¹⁵⁰

He noted that initially s 81 was not considered to be limited to the creation of healing lodges, but that initially funding agreements included those that involved Indigenous communities providing “custody and programs without the establishment of a formal healing centre.”¹⁵¹ In two examples, agreements allowed

148 *Corrections and Conditional Release Act*, SC 1992, c 20, s 81.

149 Correctional Service Canada, *Commissioner’s Directive 543: CCRA Section 81 Agreements* (In effect 2022-07-18). Online: <https://www.csc-ccc.gc.ca/politiques-et-lois/543-cd-en.shtml>.

150 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 9. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

151 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (22 October 2012) at 13. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

people to be confined within the boundaries of the reserve, unless they had permission to leave under a temporary absence or work release.¹⁵² The Correctional Investigator noted that since these two s 81 agreements were signed, CSC had not entered into any non-facility s 81 agreements.¹⁵³

The 2021 Senate Committee Report on *Human Rights of Federally Sentenced Persons* noted that “federally-sentenced Indigenous Peoples informed the committee how these facilities have had a positive impact on their lives. They spoke of the benefits of living in an environment and participating in programming tailored to their needs. Many explained that their experience in the healing lodge has not only helped them to reconnect with their culture and come to terms with their past but has also shown them a way forward.”¹⁵⁴

The Senate Committee Report also noted the challenges Indigenous communities have experienced establishing healing lodges. “Many highlighted that the bureaucratic process was difficult to navigate, and that once section 81 facilities were open, funding from the CSC was inconsistent and inadequate.”¹⁵⁵

The Senate Committee also noted that CSC had limited the application of s 81 to agreements with communities to build larger institutional structures. It encouraged using s 81 to develop “community-based, individualized or small group alternatives to penitentiaries that would provide better options for federally-sentenced Indigenous Peoples, in particular, and reduce incarceration rates overall.”¹⁵⁶

In 2015, the federal government committed to implementing all of the Truth and Reconciliation Commission’s recommendations, including eliminating barriers to the creation of additional healing lodges and eliminating the overrepresentation of Indigenous people in prison over the next decade. Instead of fulfilling these goals, only one new healing lodge has been opened (Eagle Women’s Lodge, providing 30 beds), and the mass incarceration of Indigenous people has increased from 25% to 32%.

This broken promise is part of a long line of broken promises by Canada to Indigenous Peoples.

Canada amended the *Corrections and Conditional Release Act’s* guiding principles in 2019 to include an obligation on CSC to consider placement at Indigenous-run healing lodges as alternatives to custody in a penitentiary.¹⁵⁷ However, with inadequate funding for healing lodges, and with the requirement that people be classified to minimum security in most cases, this consideration will be meaningless for most Indigenous people.

152 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (22 October 2012) at 14. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

153 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (22 October 2012), at 15. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

154 Standing Senate Committee on Human Rights, *Report on the Human Rights of Federally-Sentenced Persons* (Ottawa: June 2021) at 230. Online: https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf.

155 Standing Senate Committee on Human Rights, *Report on the Human Rights of Federally-Sentenced Persons* (Ottawa: June 2021) at 230. Online: https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf.

156 Standing Senate Committee on Human Rights, *Report on the Human Rights of Federally-Sentenced Persons* (Ottawa: June 2021) at 231. Online: https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf.

157 *Corrections and Conditional Release Act*, SC 1992, c 20, s 4(c.1).

CSC-operated healing lodges:

Kwìkwèxwelhp Healing Village (for men) – Harrison Mills, BC, converted from Elbow Lake 2001

Pê Sâkâstêw Centre (for men) – Maskwacis, Alberta, opened 1997

Willow Cree Healing Centre (for men) – Duck Lake, Saskatchewan, opened 2004

Okimaw Ohci Healing Lodge (for women) – Maple Creek, Saskatchewan, opened 1995

Section 81 healing lodges:

Stan Daniels Healing Centre (operated by the Native Counselling Service of Alberta) (for men) – Edmonton, Alberta, opened 1999

O-chi-chak-ko-sipi First Nation Healing Lodge (operated by the Ochichakkosipi First Nation) (for men) – Crane River, Manitoba, opened 2003

Waseskun Healing Centre (for men) – St-Alphonse-Rodriguez, Quebec, opened 1999

Buffalo Sage for Women (operated by the Native Counselling Services of Alberta) – Edmonton, Alberta, opened 2011

Prince Albert Grand Council Spiritual Healing Lodge (for men) – Wahpeton First Nation, Saskatchewan, opened 1997

Eagle Women’s Lodge – Winnipeg, Manitoba, opened 2019¹⁵⁸

158 Correctional Service Canada, *Indigenous Healing Lodges* (Date modified: 22 March 2021). Online: <https://www.csc-ccc.gc.ca/002/003/002003-2000-en.shtml>.

SUCCESS OF INDIGENOUS-OPERATED HEALING LODGES

Indigenous people who have been to a healing lodge tell us that their experiences there are in stark contrast to experiences in prison, where most staff are not Indigenous. They report that Indigenous staff understand them and where they are coming from. They understand the impacts of colonialism. There is a greater level of cultural safety, and the environment is more conducive to healing than prison. Many people told us that they were treated as human at healing lodges, in contrast to the lack of dignity they experienced in prison.

While we acknowledge that CSC’s methods of evaluating success may be problematic, it is significant that numerous studies, including CSC’s own studies, have concluded that healing lodges are more successful at lowering risk and recidivism rates for Indigenous people than prison.

A 2022 CSC study on the impacts of Indigenous healing lodges for men¹⁵⁹ found that people admitted to healing lodges were considered to have a higher public safety risk and lower reintegration potential at intake than Indigenous men in mainstream minimum security CSC institutions.¹⁶⁰ When risk, need and characteristics were accounted for in the study, the study showed that men who had completed Indigenous cultural programs at healing lodges had a 54% lower risk of revocation of release than Indigenous men released from mainstream institutions.

The 2022 CSC study component on the impacts of Indigenous healing lodges for women¹⁶¹ also found that women admitted to healing lodges were assessed to have a higher public safety risk and lower reintegration potential than Indigenous women at mainstream multi-level institutions. This study found that women at healing lodges “demonstrated notable improvements in dynamic risk areas.”¹⁶²

A third aspect of the 2022 CSC study compared CSC-operated healing lodges to Indigenous-operated healing lodges.¹⁶³ It found that Indigenous people released from an Indigenous-run healing lodge had better post-release outcomes. People who had been at Indigenous-operated healing lodges had similar rates of suspension of conditional release (although they typically spent more time in the community before they were suspended), but they were more likely to have their suspension cancelled or withdrawn than people who had been at a CSC-operated healing lodge.¹⁶⁴ Indigenous people released from s 81 healing lodges were considered to have higher reintegration potential, and to have lower risk than people released from CSC-operated healing lodges.¹⁶⁵

A 2019 CSC study found that Indigenous men who were released from a healing lodge were 2.5 times more likely to be successful in the community than their counterparts who were not released from healing lodges.¹⁶⁶

The 2016 Auditor General report found that Indigenous people released from a healing lodge were more likely to successfully complete their community supervision (78%) than those released from other minimum-security prisons (63%).¹⁶⁷

159 Correctional Service Canada, *Impacts of Indigenous Healing Lodges for Men, R-437_M, 2022* (2022). Online: https://www.csc-scc.gc.ca/research/005008-r437_M-en.shtml; Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022).

160 Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022) at 17.

161 Correctional Service Canada, *Impacts of Indigenous Healing Lodges for Women, R-437_W, 2022* (2022). Online: https://www.csc-scc.gc.ca/research/005008-r437_W-en.shtml; Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes*, (Correctional Service Canada, 2022).

162 Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022) at 37.

163 Correctional Service Canada, *Comparison of CSC-operated and Section 81 Healing Lodges, R-437_C, 2022* (2022). Online: https://www.csc-scc.gc.ca/research/005008-r437_C-en.shtml; Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022).

164 Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022) at 31.

165 Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022) at 24.

166 Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes*, (Correctional Service Canada, 2022) at 7-8, citing Wardrop, K., Sheahan, C., & Stewart, L.A., *A quantitative examination of factors available in the Offender Management System associated with successful release, Research Report R-429*. (Ottawa: Correctional Service Canada, 2019).

167 Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada* (2016). Online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html.

CSC cites other research on its website that found that of people released from three healing lodges, 6% had been returned to federal custody for committing a new offence while on conditional release, compared to the national federal recidivism rate of 11% in 1997-98.¹⁶⁸

Research on healing lodges for women included the observations of women at the s 81 Buffalo Sage Wellness House, who said that they felt “more comfortable with the Healing Lodge staff because the staff was predominantly Aboriginal” and that they felt “more tense when they were in federal institutions.”¹⁶⁹ The research notes:

Many offenders felt their work with the Elders was the most important part of being at the lodge. In addition, the staff at the lodges, which are predominantly Aboriginal, also contribute to an environment that is more conducive to building respect and positive relationships. Ultimately, this directly affects the offenders’ healing.¹⁷⁰

INADEQUATE ACCESS TO INDIGENOUS-RUN HEALING LODGES

Despite their demonstrated benefits, only six s 81 Indigenous-run healing lodges have been approved in Canada, which, according to the Correctional Investigator’s 2021-22 *Annual Report*, have a combined capacity for only 139 people.¹⁷¹ Canada incarcerates approximately 3,953¹⁷² Indigenous people, meaning that there are only enough Indigenous-run healing lodge beds for 3.5% of Indigenous people in prison.

The Correctional Investigator notes in *Spirit Matters* the high level of interest among Indigenous people in prison to attend a s 81 healing lodge, stating that in 2011, 1,009 people in prison were informed of s 81 opportunities and 593 said they would like to transfer to an Indigenous-run healing lodge.¹⁷³

It is surprising then that healing lodges are only 51% occupied.¹⁷⁴ This can be explained in part due to the impact of the COVID-19 pandemic, which restricted transfers, but even before COVID-19, s 81 healing lodges were at only 28% to 87% occupancy.¹⁷⁵

168 Correctional Service Canada, *Backgrounder – Aboriginal Healing Lodges* (Date modified: August 15, 2013). Online: <https://www.csc-scc.gc.ca/aboriginal/002003-3002-eng.shtml>.

169 Rebeka Tabobondung, et al., *S. 81 Thunder Woman Healing Lodge Research Project Interim Report/Outline* (December 2016) at 46. Online: <https://test.twhls.ca/wp2/wp-content/uploads/2020/07/01-TWHL-RESEARCH-PROJECT-INTERIM-REPORT.pdf>.

170 Rebeka Tabobondung, et al., *S. 81 Thunder Woman Healing Lodge Research Project Interim Report/Outline*, (December 2016) at 46. Online: <https://test.twhls.ca/wp2/wp-content/uploads/2020/07/01-TWHL-RESEARCH-PROJECT-INTERIM-REPORT.pdf>.

171 Office of the Correctional Investigator Canada, *Annual Report 2021-22* (Ottawa: 2022) at 100. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

172 Office of the Correctional Investigator Canada, *Annual Report 2021-22* (Ottawa: 2022) at 102. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

173 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 19. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

174 Patrick White, “Healing lodges help reduce Indigenous overincarceration. Why has Canada allowed them to wither?” *The Globe and Mail* (October 21, 2022). Online: <https://www.theglobeandmail.com/canada/article-indigenous-healing-lodges/>.

175 Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011). Online: <https://www.csc-scc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>.

Low occupancy has been considered to be caused by systemic factors, primarily CSC's implementation of criteria for admission to a s 81 healing lodge which in practice require men to be classified to minimum security, and women to be classified to minimum or sometimes medium security.¹⁷⁶ With only 15% of Indigenous people in prison being classified as minimum security,¹⁷⁷ going to an Indigenous-run healing lodge is out of reach for the vast majority of Indigenous people in prison. Some of the people we interviewed felt that there was no point in applying to a healing lodge because their parole officer would not support their application.

The Correctional Investigator has been critical of CSC's policy of restricting access to healing lodges to people classified as minimum (or in rare cases low-risk medium) security, noting that at the time of his report, this policy excluded almost 90% of Indigenous people in federal custody "from even being considered for transfer to a Healing Lodge." The Correctional Investigator notes that CSC originally intended for s 81 options to be available to all Indigenous people in prison, regardless of security classification.¹⁷⁸

CSC also operates four healing lodges, despite the original plan to transfer control of these healing lodges from CSC to Indigenous bodies.¹⁷⁹

In *Spirit Matters*, the Correctional Investigator reported that in 2000, CSC was given \$11.9 million to fund new s 81 Indigenous healing lodges, but in 2001-2002, CSC took that funding from Indigenous communities and spent it in its own prisons to establish Pathways programs. "CSC chose to abandon its commitment to create new Section 81 agreements and facilities at the very same time as it was receiving additional government funding to do precisely that."¹⁸⁰ CSC continued to receive millions of dollars through the same program over the next five years, and CSC took more than half of that funding for its own prisons. Only one new s 81 agreement has been made since 2001 (two others have been expanded since that date)¹⁸¹ despite an 82% increase in the proportion of Indigenous people in prison since 2001.

176 Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011) at ix. Online: <https://www.csc-scc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>; Correctional Service Canada, *Guideline 710-2-1 CCRA Section 81: Transfers* (7 November 7 2018) at ¶ 9(a). Online: <https://www.csc-scc.gc.ca/005/006/710-2-1-gl-en.shtml>; Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022) at 2; Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 3. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

177 Data received from the Office of the Correctional Investigator Canada (14 November 2022).

178 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 10. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

179 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 23. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

180 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 16. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

181 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 15-16. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>. Note: The Eagle Women's Lodge opened in Manitoba in 2019.



Alma Brooks of Tobique First Nation initially conceived of the idea of the healing lodge at the 1989 Aboriginal Women's Caucus meeting, where she proposed the idea to government representatives. At a June 1991 Healing Lodge Sub-Committee meeting, she spoke of the need for healing lodges, saying "In the prisons are brothers, fathers, sisters, and mothers with feelings of anger and pain. Prison does not work...There has to be something else."¹⁸²

Journalist Patrick White wrote about s 81 healing lodges in a recent *Globe and Mail* article. He explains the reason additional healing lodges have not been supported by CSC:

Marty Maltby, acting director-general of CSC's Indigenous Initiatives Directorate, said several communities have expressed interest in having a healing lodge in recent years, but talks have broken down for two main reasons. Often communities have an all-encompassing notion of a healing lodge that would operate as women's shelter, addictions centre, counselling office, transitional housing and more.

"When you're talking about all these other populations," Mr. Maltby said, "the opportunity to have serving offenders and those vulnerable groups in the same house may not always work."

In other cases, the interested First Nations community is simply too remote. "We want to be able to provide the best opportunities for individuals going back to communities," Mr. Maltby said. "And you know, when those locations are so far removed from the cities, the towns, the places they want to go, it doesn't really make sense."¹⁸³

If First Nations have identified needs in their communities that they believe can be met by a multi-purpose healing centre, Canada should support that initiative. Indigenous communities know best what their needs are and how to meet them.

Marty Maltby's second justification for CSC denying support for healing lodges in First Nations' communities, because they are too remote, ignores the importance of restoring connections between Indigenous people in prison and their own communities and lands.

The problem of inadequate alternatives to prison is not a lack of will among Indigenous communities to provide healing services to people involved in the criminal legal system. The problem is Canada's refusal to fund Indigenous communities to provide healing services.

182 Native Women's Association of Canada, *CSC Healing Lodges and Section 81 Healing Lodges, Policy Backgrounder*, (November 2019) at 11. Online: https://nwac.ca/assets-knowledge-centre/NWAC_HealingLodges_v7_Interactive-1.pdf; citing Native Women's Association of Canada, *Aboriginal Women's Healing Lodge, an NWAC Report* (July 1993) at 12. Online: <https://epub.sub.uni-hamburg.de/epub/volltexte/2009/2946/pdf/AboriginalWomensHealingLodge.pdf>.

183 Patrick White, "Healing lodges help reduce Indigenous overincarceration. Why has Canada allowed them to wither?" *The Globe and Mail* (21 October 2022). Online: <https://www.theglobeandmail.com/canada/article-indigenous-healing-lodges/>.

INTEREST IN ESTABLISHING S 81 ALTERNATIVES TO PRISON

Many Indigenous government and organization representatives we spoke with felt that Indigenous communities want to be more involved in providing alternatives to prison and transitioning people out of prisons at an earlier stage. Some expressed interest in partnerships between First Nations to provide s 81 alternatives to incarceration. One person who works for CSC, who wished to remain anonymous, said that “communities have all sorts of plans, they just need the money to bring it all together.”

CSC’s position is that there is a lack of interest among Indigenous communities to enter into s 81 agreements. Senator Kim Pate has pointed out that “part of the reason we haven’t seen full implementation of those provisions...is that over the last couple of decades...very few [I]ndigenous communities have even known about those provisions, and if they did, they were told that they had to build institutions in order to implement them.”¹⁸⁴

The Native Women’s Association of Canada notes that in 1991, when the Solicitor General announced a healing lodge would be developed in Saskatchewan, the Healing Lodge Planning Committee received 47 expressions of interest from eligible communities and 23 submissions for funding for a healing lodge.¹⁸⁵

Spirit Matters also indicates that in the past there was broad interest, and support by CSC, for many more s 81 facilities than the six that are in operation today. The Correctional Investigator notes “in 2001, CSC reported that two additional Section 81 agreements were in the final drafting stage, three were in negotiation and 17 others were in the preliminary discussion phase.”¹⁸⁶

Prisoners’ Legal Services made an Access to Information request to CSC for information about statements of interest and proposals for s 81 agreements it received from 2012 to 2022. CSC’s response indicated that there were only four applications to establish new healing lodges – one was for Buffalo Sage, which was approved, and the other three were all in the pacific region and were rejected in 2017. CSC’s response did not include at least one statement of interest that we know was submitted in Nova Scotia during the time period (discussed below).

Other information that was provided on the Ministry of Public Safety website, but has recently been removed, indicates a high level of interest by Indigenous governments and organizations to provide alternatives to prison. In the 2017 federal budget, Public Safety allocated \$10 million over five years for the Indigenous Community Corrections Initiative for Indigenous communities to provide alternatives to incarceration and reintegration support. Public Safety’s website indicated that it received 126 proposals with a total budget of \$146 million. However, it funded only 16 projects, and funding for these initiatives expired

184 Native Women’s Association of Canada, *CSC Healing Lodges and Section 81 Healing Lodges, Policy Backgrounder* (November 2019) at 28. Online: https://nwac.ca/assets-knowledge-centre/NWAC_HealingLodges_v7_Interactive-1.pdf, citing Canada, Parliament, House of Commons, Standing Committee on Public Safety and National Security, *SECU Committee Meeting*, Evidence, 42nd Parl. 1st Sess, No 086 (23 November 2017). Online: <https://www.ourcommons.ca/DocumentViewer/en/42-1/secu/meeting-86/evidence>.

185 Native Women’s Association of Canada, *CSC Healing Lodges and Section 81 Healing Lodges, Policy Backgrounder* (November 2019) at 29. Online: https://nwac.ca/assets-knowledge-centre/NWAC_HealingLodges_v7_Interactive-1.pdf; See also Public Safety Canada, *Healing Lodge Location Announcement, Maple Creek, Saskatchewan* (22 May 1992) at 6. Online: <https://www.publicsafety.gc.ca/lbrr/archives/e%2098.w8%20h4%201992-eng.pdf>.

186 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 15. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

in March 2022.¹⁸⁷ None of the funded initiatives appear to provide alternatives to prison for incarcerated people.

UNDERFUNDING AND LACK OF PERMANENCE OF EXISTING S 81 INDIGENOUS-RUN HEALING LODGES

Spirit Matters states “[w]ithout a doubt the two greatest inhibiting factors to the establishment of new Section 81 Healing Lodges, which are in fact intertwined, are funding and permanency.”¹⁸⁸ In relation to permanency, the Correctional Investigator notes that while CSC-operated healing lodges are permanent institutions, s 81 healing lodges are based on five-year funding agreements with no guarantee that funding will be renewed.¹⁸⁹

Funding available for Indigenous-run healing lodges is a small fraction of the amount of money spent incarcerating Indigenous people in prisons. The 2016 Auditor General report “Preparing Indigenous Offenders for Release” indicates that in 2015-16, CSC spent only \$23 million on healing lodges, including CSC operated healing lodges and Indigenous run healing lodges,¹⁹⁰ out of \$2,357,784,645 total expenditures in that year.¹⁹¹

CSC’s 2011 *Evaluation Report* chapter on healing lodges breaks that number down for the year 2009/10, revealing that spending on s 81 Indigenous-run healing lodges was only \$4,819,479 out of a total budget of \$2,265,000,000, meaning that CSC spent only 0.2% of its budget funding Indigenous operated healing lodges.¹⁹² *Spirit Matters* notes that this number is actually smaller, as it includes expenditures related to CSC Regional Headquarters and the cost of housing people in healing lodges who are on conditional release.¹⁹³

Despite this offensively low percentage of funding dedicated to s 81 healing lodges identified in CSC’s 2011 *Evaluation Report*, the report makes no recommendations to increase the funding levels, finding that healing lodges are “a cost-effective option for offenders seeking culturally-focussed reintegration.”¹⁹⁴

187 Public Safety Canada. *Indigenous Community Corrections Initiative – Projects funded since 2017* (Accessed July 2020). Online: <https://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/cmmnt-crrctns-nttv-prjcts-en.aspx>. Note: Some content of this page has since been removed by Public Safety Canada.

188 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 20. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

189 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 20. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

190 Office of the Auditor General of Canada, *Report 3 – Preparing Indigenous Offenders for Release – Correctional Service Canada* (2016). Online: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html.

191 Correctional Service Canada, *2015-16 Departmental Performance Report* (2016). Online: <https://www.csc-scc.gc.ca/publications/005007-4500-2015-2016-eng.shtml>.

192 Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011) at viii. Online: <https://www.csc-scc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>.

193 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 19. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

194 Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011) at viii. Online: <https://www.csc-scc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>.

The CSC 2011 *Evaluation Report* indicates that CSC funds s 81 healing lodges at only \$47,734 per bed, whereas the cost per person at a CSC-operated healing lodge was \$167,800.¹⁹⁵

Media reports similarly indicate that Indigenous-run healing lodges are under-funded compared to CSC-run healing lodges. For example, in 2017 the Indigenous-run Stan Daniels Healing Centre, which offered 73 beds, had an annual budget of \$2.8 million (\$38,356 per resident). CSC-run healing lodges had budgets between \$7 million to \$12 million, despite some offering fewer beds.¹⁹⁶ Staff at Stan Daniels earn half the pay of employees at CSC facilities.¹⁹⁷

For comparison, the annual average cost of incarcerating an individual in 2018-19 was \$120,269. The annual cost of imprisonment in maximum-security institutions designated for men in 2018-19 was \$163,649 and the cost of imprisonment in an institution designated for women is \$204,474.¹⁹⁸

The Correctional Investigator also found that the underfunding of s 81 Indigenous-run healing lodges was significant compared to CSC-run facilities:

In 2009-2010, the allocation of funding to the four CSC-operated Healing Lodges totalled \$21,555,037, while the amount allocated to Section 81 Healing Lodges was just \$4,819,479. Chronic under-funding of Section 81 Healing Lodges means that they are unable to provide comparable CSC wages or unionized job security.

The Correctional Investigator noted that the inadequate funding of s 81 healing lodges leads to high staff turnover.¹⁹⁹ It also makes it difficult to provide education and employment training opportunities that will help Indigenous people get out of poverty when they return to the community.²⁰⁰

The underfunding of healing lodges makes it incredibly challenging to provide holistic services beyond their spiritual focus, including space and other resources to provide educational and language services, employment training and physical activities.²⁰¹

The Correctional Investigator's 2021-22 *Annual Report* says that "[p]roportionally little new funding has been allocated to Indigenous controlled or run community correctional initiatives."²⁰²

195 Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011) at 77. Online: <https://www.csc-ccc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>.

196 Martha Troian "Healing lodges designed to help rehabilitate Indigenous offenders underfunded, advocates say," *CBC News* (1 March 2017). Online: <https://www.cbc.ca/news/indigenous/indigenous-healing-lodges-unfairly-funded-advocates-1.4002806>.

197 Patrick White, "Healing lodges help reduce Indigenous overincarceration. Why has Canada allowed them to wither?" *The Globe and Mail* (21 October 2022). Online: <https://www.theglobeandmail.com/canada/article-indigenous-healing-lodges/>.

198 Public Safety Canada, *2020 Corrections and Conditional Release Statistical Overview* (Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2020/index-en.aspx>).

199 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 20. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

200 Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022) at 38; Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011) Finding 13. Online: <https://www.csc-ccc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>.

201 Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011). Online: <https://www.csc-ccc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>.

202 Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 98. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

There are also barriers to securing funding through other federal government sources for Indigenous-run healing lodges, such as the Canadian Mortgage and Housing Corporation (CMHC), as experienced by the Thunder Woman Healing Society discussed below. Liz Vick, the Vice President of Connective (formerly John Howard Society Pacific) told us in an interview about the challenges Connective, in partnership with the Council of Yukon First Nations, has had in establishing an Indigenous-led shelter for women and children. Liz Vick said the CMHC application process was extremely complicated, and required so many resources up front, such as land, and hiring a housing consultant and architect, that it would be a barrier for smaller organizations, including most Indigenous nations and organizations, to get through the process.²⁰³

In *Spirit Matters*, the Correctional Investigator was also concerned that although over 70% of Indigenous people released from custody go to urban communities, only one healing lodge was in a city, and that healing lodges designated for women are only available in the prairies, requiring many women to travel far from their own families and communities. Both concerns are still true today.

A significant shift in funding priorities must happen to rectify the severe underfunding of Indigenous-run healing lodges and to finally address the mass incarceration of Indigenous people in prison. With Indigenous people representing 32% of people in prison, Indigenous governments and organizations should receive \$1 billion annually to provide alternatives to prison, as well as independent and autonomous Indigenous services for people in prison and on conditional release, based on CSC's 2021 annual budget of approximately \$3 billion.²⁰⁴

CSC'S INAPPROPRIATE CONTROL AND ADMINISTRATION OF S 81

CSC has recently updated its 2010 policy "Negotiation, Implementation and Management of CCRA Section 81 Agreements"²⁰⁵ with the 2022 Commissioner's Directive 543, "CCRA Section 81 Agreements"²⁰⁶ in response to the Truth and Reconciliation call to action to remove barriers to the creation of s 81 agreements. The new policy is still not a vision of nation-to-nation negotiation in recognition of the rights of Indigenous Peoples to self-determination. It still provides CSC with inappropriate control of the negotiation, implementation and management of s 81 agreements that are a diversion from the legislative intent of the provision.

The new policy retains the requirement that s 81 agreement-holders support "the spirit of the CCRA [Corrections and Conditional Release Act], the Mandate of the Department of Public Safety, as well as CSC's Mission and Values and Ethics Framework, corporate priorities, and Strategic Plan for Aboriginal Corrections."²⁰⁷ If s 81 agreements are to be negotiated in the spirit of Truth and Reconciliation, they should respect the rights of Indigenous communities to develop alternatives to prison founded in Indigenous law, and should not be required to follow colonial laws and priorities.

203 Interview with Liz Vick, Vice President of Strategy, Connective (20 July 2022).

204 Correctional Service Canada, *Statement of management responsibility including internal control over financial reporting 2021-22* (1 September 2022). Online: <https://www.csc-scc.gc.ca/publications/005007-4014-en.shtml>.

205 Correctional Service Canada, *Commissioner's Directive 541-2: Negotiation, Implementation and Management of CCRA Section 81 Agreements* (In effect: 2010-07-14). Online: <https://www.csc-scc.gc.ca/acts-and-regulations/541-2-gl-eng.shtml>.

206 Correctional Service Canada, *Commissioner's Directive 543: CCRA Section 81 Agreements* (In effect: 2022-07-18). Online: <https://www.csc-scc.gc.ca/politiques-et-lois/543-cd-en.shtml>.

207 Correctional Service Canada, *Commissioner's Directive 543: CCRA Section 81 Agreements* (In effect: 2022-07-18) Annex B, ¶ 7. Online: <https://www.csc-scc.gc.ca/politiques-et-lois/543-cd-en.shtml>.

Bert Azak, who worked at CSC Pacific Regional Headquarters, understood that CSC would only approve s 81 healing lodges that mirrored the structure and hierarchy of CSC minimum security prisons.²⁰⁸ CSC's 2011 *Evaluation Report* indicated that CSC required s 81 healing lodges to implement a model that included an executive director as the "institutional head," and a board of directors which included CSC staff, who were responsible for operations, staffing and management.²⁰⁹

Although the 2022 policy has removed the objective that s 81 agreements be "cost-effective," it retains that priority by stating that CSC will provide information about whether the proposed s 81 agreement will be cost-effective in the formal s 81 proposal.²¹⁰

The new policy retains authority of the CSC Regional Deputy Commissioner to assess initial statements of interest from Indigenous bodies. The CSC National Management Committee is still responsible for reviewing and assessing s 81 applications. This committee is made up entirely of CSC bureaucrats.²¹¹

The new policy designates the CSC Director General, Indigenous Initiatives Directorate as the person responsible for preparing "a briefing note to advise the Minister of the assessment and recommendation for the Minister's decision" and drafting a letter for the Minister's signature to inform the applicant of the Minister's decision.²¹²

Although the new policy now acknowledges that healing lodges can also provide services to people who are not serving custodial sentences, Marty Maltby, CSC's acting Director General, Indigenous Initiatives Directorate, told the *Globe and Mail* after the new policy was promulgated that s 81 talks have broken down because Indigenous communities want to serve other clients alongside people under CSC supervision.²¹³

One improvement to the new policy is the acknowledgment that s 81 agreements can be for non-facility open settings. The policy states that this "will most often be the case on reserve land, wherein the boundaries of the reserve, or some other area specified within it, define the ... 'place of confinement.'"²¹⁴

CSC remains responsible for monitoring the s 81 expenditures under the policy. It also requires s 81 applicants to prove land ownership where the facility will be located, in its statement of interest. We have heard this is a barrier to Indigenous organizations' ability to apply for s 81 agreements on traditional territory to which the nation claims Aboriginal title which has not been established in court.

CSC also controls the admission criteria for s 81 healing lodges. It requires that people be classified to minimum (or in rare cases medium security) and that they be committed to the healing components of their

208 Interview with Bert Azak, Justice Coordinator, Native Education College, former CSC Correctional Officer, Aboriginal Liaison Officer and Aboriginal Community Liaison Officer (21 June 2022).

209 Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011) at 6-7. Online: <https://www.csc-scc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>.

210 Correctional Service Canada, *Commissioner's Directive 543: CCRA Section 81 Agreements* (In effect: 2022-07-18) at ¶ 16. Online: <https://www.csc-scc.gc.ca/politiques-et-lois/543-cd-en.shtml>.

211 Correctional Service Canada, *Commissioner's Directive 543: CCRA Section 81 Agreements* (In effect: 2022-07-18) at ¶ 4. Online: <https://www.csc-scc.gc.ca/politiques-et-lois/543-cd-en.shtml>.

212 Correctional Service Canada, *Commissioner's Directive 543: CCRA Section 81 Agreements* (In effect: 2022-07-18) at ¶ 5. Online: <https://www.csc-scc.gc.ca/politiques-et-lois/543-cd-en.shtml>.

213 Patrick White, "Healing lodges help reduce Indigenous overincarceration. Why has Canada allowed them to wither?" *The Globe and Mail* (October 21, 2022). Online: <https://www.theglobeandmail.com/canada/article-indigenous-healing-lodges/>.

214 Correctional Service Canada, *Commissioner's Directive 543: CCRA Section 81 Agreements* (In effect: 2022-07-18). Online: <https://www.csc-scc.gc.ca/politiques-et-lois/543-cd-en.shtml>.

Correctional Plan.²¹⁵ Section 81 agreement holders should have the authority to decide their own admission criteria. As discussed above, limiting eligibility to people in minimum security makes s 81 out of reach for the vast majority of Indigenous people in prison. We have also heard from people we interviewed for this report how inappropriate it is for CSC to require people to follow a traditional Indigenous healing path, as defined by CSC, in order to access s 81 facilities, when Canada has historically criminalized Indigenous ceremonies and imposed Christianity on Indigenous people.

The decision-maker for pen placement to an Indigenous run healing lodge is the CSC Regional Deputy Commissioner of the receiving region, not the healing lodge.²¹⁶

This degree of CSC control of s 81 agreements is contrary to the intent of s 81 and is not consistent with the principles of self-determination or nation-to-nation relations.

CSC'S FAILURE TO TRANSFER AUTHORITY OF CSC-OPERATED HEALING LODGES TO INDIGENOUS GOVERNMENTS

The 2021 Senate Committee report *Human Rights of Federally-Sentenced Persons* notes that the original intention behind CSC-operated healing lodges was to eventually transfer their authority over to the partnering First Nation. This has not happened. To the contrary, Senate Committee witness Clare McNab, who is a former Warden of CSC-run Okimaw Ohci healing lodge for women, notes that security at this healing lodge has increased over the years: "Now when you go in, it looks the same as everywhere else."²¹⁷ The Senate Committee Report also notes concerns expressed by some witnesses that CSC was not hiring staff from Indigenous communities.²¹⁸

Sharon Mclvor shared similar views in a Global News article about Okimaw Ohci, where she said the healing lodge was successful with low recidivism rates in its early days, but that CSC took over operations from Elders, making it unrecognizable from its original vision.²¹⁹ She told Global News that her biggest concerns were that CSC staffed the healing lodge for women with male correctional officers who have weapons training, and the elimination of a daycare space. She said that the facility is no longer a safe place for Indigenous women, which was the most important aspect of the vision for the Okimaw Ohci when it started. Sharon Mclvor notes that people who are in "survival mode" will not be able to heal.²²⁰

The Native Women's Association of Canada shares the concern that CSC-operated healing lodges have become increasingly security driven:

215 Correctional Service Canada, *Commissioner's Directive 710-2-1: CCRA Section 81:Transfers* (In effect: 2018-11-07) at ¶ 9. Online: <https://www.csc-scc.gc.ca/politiques-et-lois/710-2-1-gl-en.shtml>.

216 Correctional Service Canada, *Commissioner's Directive 705-7: Security Classification and Penitentiary Placement* (In effect: 2018-01-15) at Annex F, ¶ 26. Online: <https://www.csc-scc.gc.ca/politiques-et-lois/705-7-cd-eng.shtml>.

217 Standing Senate Committee on Human Rights, *Report on the Human Rights of Federally-Sentenced Persons* (Ottawa: June 2021) at 232. Clare McNab appeared as an Individual. Online: https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf.

218 Standing Senate Committee on Human Rights, *Report on the Human Rights of Federally-Sentenced Persons* (June 2021), at 230. Online: https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf.

219 Abigail Bimman, "'There's nothing left there': A founder of Canada's first healing lodge says CSC dismantled vision," *Global News* (10 January 2019). Online: <https://globalnews.ca/news/4836380/founder-canada-first-healing-lodge-csc-vision/>.

220 Abigail Bimman, "'There's nothing left there': A founder of Canada's first healing lodge says CSC dismantled vision," *Global News* (10 January 2019). Online: <https://globalnews.ca/news/4836380/founder-canada-first-healing-lodge-csc-vision/>.

This is problematic because, while prisoners report more positive relationships with CSC-run Healing Lodge staff than those in CSC prisons, many of these employees were former correctional officers in the federal prison system. CSC prisons are structured environments ... and CSC-run Healing Lodges tend to follow this approach. Conversely, for most s. 81 facilities, prisoners are permitted to be on the land as long as they stay within the grounds of the Lodge. The consistent focus of CSC-run Healing Lodges on security rejects the fundamental purpose of the Healing Lodges in that, they are beneficial precisely because they are not CSC prisons.²²¹

CSC's 2011 *Evaluation Report* found that the main issue facing CSC-operated healing lodges concerned the "varying levels of cultural competency among staff and the incompatibility of CSC policies with Healing Lodge vision and operational needs." Thirty-four percent of people living at CSC-operated healing lodges "noted that some staff members were not supportive of the traditional healing methods used in the Healing Lodge due to a limited understanding of, and connection to, Aboriginal culture."²²²

2022 research conducted by CSC about the CSC-operated Pê Sâkâstêw Centre noted that residents, Elders, and staff saw the Pê Sâkâstêw Centre as emphasising security over Indigenous culture and traditions. People interviewed for this study said the infrastructure, including fences, x-ray machine and metal detector "resembled that of higher security institutions and are not representative of a true traditional healing experience." This study also found that "Elders were reported to have little control and input in the operation of the Healing Lodge."²²³

The CSC study on the Pê Sâkâstêw Centre also found that a lack of engagement by staff in ceremonies and events led to a lack of rapport between staff and people living at the centre.²²⁴

The study noted a need for more Indigenous staff, especially staff from the local community, a need for Elders to play a larger role in decision-making at the Pê Sâkâstêw Centre, and a need for barriers to be removed so that Elders could take people out on cultural temporary absences.²²⁵

CSC conducted a similar study on the Kwikwêxwelhp Healing Village, a minimum-security healing lodge operated by CSC in partnership with the Sts'ailes First Nation. This study found that Kwikwêxwelhp is a unique environment rooted in Sts'ailes First Nation traditions where Elders are "essential to its vision, stability, and integrity" who share "knowledge, compassion, and teachings" with the people who live at Kwikwêxwelhp. The study notes the strong partnership between Kwikwêxwelhp and the Sts'ailes First Nation, but also notes the challenges related to hiring correctional officers and balancing CSC policies with Indigenous beliefs and practices.²²⁶

221 Native Women's Association of Canada, *CSC Healing Lodges and Section 81 Healing Lodges, Policy Backgrounder* (November 2019) at 15. Online: https://nwac.ca/assets-knowledge-centre/NWAC_HealingLodges_v7_Interactive-1.pdf.

222 Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011) Finding 9. Online: <https://www.csc-scc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>.

223 Correctional Service Canada, *Pê Sâkâstêw Centre: Resident, Elder, and Staff Experiences* (2022). Online: <https://www.csc-scc.gc.ca/research/005008-err-20-11-en.shtml>.

224 Correctional Service Canada, *Pê Sâkâstêw Centre: Resident, Elder, and Staff Experiences* (2022). Online: <https://www.csc-scc.gc.ca/research/005008-err-20-11-en.shtml>.

225 Correctional Service Canada, *Pê Sâkâstêw Centre: Resident, Elder, and Staff Experiences* (2022). Online: <https://www.csc-scc.gc.ca/research/005008-err-20-11-en.shtml>.

226 Correctional Service Canada, *Kwikwêxwelhp Healing Village: Resident, Elder, and Staff Experiences* (2022). Online: <https://www.csc-scc.gc.ca/research/005008-err-20-10-en.shtml>.

V. CSC UNDER-RESOURCES AND OVERCOMPLICATES SECTION 84 RELEASES TO THE COMMUNITY

“The system calls them ‘offenders.’ The language we use to talk about people is absolutely indicative of our belief in them. It’s like a kid that flinches every time someone claps their hands together, because they’ve been hit. How do you show positivity and not strike that child? They say for every one negative experience, it takes 20 positive experiences to undo that harm.”

– Sam Ens, BC First Nations Justice Council

Section 84 of the *Corrections and Conditional Release Act* gives Indigenous communities the opportunity to work with members who are incarcerated to develop release plans. It requires CSC to give Indigenous governing bodies notice of a person’s parole review or statutory release date and an opportunity to propose a plan for the person’s release and integration into the community if the person expresses an interest in being released to an Indigenous community and gives consent.²²⁷

As noted by the Correctional Investigator in *Spirit Matters*:

The original intent of Section 84 was to enhance the information provided to the National Parole Board (now Parole Board of Canada) and to give authority and voice to Aboriginal communities in preparing a release plan. It was not intended to trigger a lengthy or onerous process for CSC, the offender or the community.²²⁸

Spirit Matters discusses how “lengthy, cumbersome and frustrating” the s 84 process is, which makes it inaccessible to most people.²²⁹

The Correctional Investigator notes that the number of people who have developed s 84 release plans is low and has fluctuated dramatically in the years between 2006 and 2011, with a low of 51 and a high of 226.²³⁰ In the 2021-22 Annual Report, the Correctional Investigator notes that these numbers have not improved along with the increased numbers of Indigenous people in prison, with only 227 s 84 releases in 2020-21, and a high of 307 releases in 2017-18, when 798 people requested s 84 releases.²³¹

227 *Corrections and Conditional Release Act*, SC 1992, c 20, s 4(c.1), s 84.

228 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 10. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

229 Officer of the Correctional Investigator of Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 25. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

230 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 24. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

231 Office of the Correctional Investigator Canada, *2021-22 Annual Report* (Ottawa: 2022). Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.



Carving by Dene artist, Ron Laprise, at the entrance to Naa-Na-Himyis, an Indigenous-run halfway house.

The Correctional Investigator recommends that CSC partner with Indigenous collectives to develop protocols for s 84 releases to establish a process for accepting and monitoring people released under s 84.²³²

The Correctional Investigator also notes that communities are not compensated for monitoring people's conditions in the community, and that program and transportation costs are supposed to be paid, but CSC decides whether or not to cover these costs based on its determination of the value of programs and availability of funds. "The fact that CSC can determine the validity of programs to support offender's healing and reintegration, and not the Aboriginal Community itself, is viewed as patronizing by many Aboriginal people and communities."²³³

Paula Marshall, Executive Director of Mi'kmaw Legal Services Network, told us that CSC expects Indigenous communities to be responsible for the cost of having services and programs that the person would need for a s 84 release. "If we're looking at communities that are already struggling, or have poor access to services, without providing resourcing for services, then it's just putting an expectation on community without building capacity. They aren't ready to take additional burdens on when they're dealing with other more pressing issues like housing and lack of clean water. Trying to reintegrate somebody back into the community who has committed a lot of harm is not their number one priority," she said.

Merv Thomas, the Chief Executive Officer of Circle of Eagles Lodge Society, also told us how important it is for Indigenous communities to have funding at levels that allow them to provide wrap around services to people leaving prison. Circle of Eagles operates Naa-Na-Himiyis, a halfway house for Indigenous men, and Anderson Lodge, a halfway house for Indigenous women. These are two of the very few Indigenous-operated halfway houses in Canada. Circle of Eagles must seek alternative funds to supplement the CSC program.

Merv Thomas said Circle of Eagles has been working on s 84 releases for 20 years, with no capacity nor financial support from CSC to do an effective job. "Indigenous communities should be given the capacity to carry out their programs. Each community is unique and no one size will fit all. So it is important for communities to be given capacity to effectively implement s 84," he said.

The halfway houses operated by Circle of Eagles do not have their own parole officers, in part because they do not want to be involved in punishment. "We want people to feel safe. As soon as they come in, their guard is down. It's a home, not a prison. It's a safe place," said Merv Thomas.²³⁴

However, they would like to have more authority to prevent parole suspensions. Merv Thomas said that more resources need to be put into community-based services so that if someone needs to be removed from a halfway house, there are options available that will help the person stay in the community and not be returned to prison under a suspension of conditional release. These might include Indigenous operated addiction treatment facilities or land-based programs. "We must decriminalize mental health and addiction," he said.²³⁵

Merv Thomas said that one of the reasons s 84 is underutilized is that Indigenous governments and organizations are not provided funding to develop feasibility studies on establishing s 84 opportunities. They are also not funded to provide training programs for people on s 84 releases.

232 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 34. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

233 Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa: 22 October 2012) at 25. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

234 Interview with Merv Thomas, Chief Executive Officer of Circle of Eagles Lodge Society (18 January 2023).

235 Interview with Merv Thomas, Chief Executive Officer of Circle of Eagles Lodge Society (20 January 2023).

He told us that Naa-Na-Himyis accepts people who CSC has identified as high risk. In fact, in 2020, 84% of people at Naa-Na-Himyis were labelled high risk by CSC, and in 2021, 80% were considered high risk. “And they do well,” Merv Thomas said, noting that his organization maintains low rates of people going on unauthorized leaves.²³⁶ He would like Indigenous communities to have the ability to accept anyone they choose on s 84 releases.

Mo Korchinski, the Executive Director of Unlocking the Gates Services Society,²³⁷ told us how important it is for people to access substance use treatment immediately upon release from prison, which could be done through s 84 of the *Corrections and Conditional Release Act* if more community-based Indigenous-operated treatment programs were funded. She said:

If there isn't support when they walk out that gate, except for a clear plastic bag with their dirty clothes inside and a bus ticket to where they were arrested, they're going to go back in again. We don't have any services for people coming out. I have probably 30 people on a list right now who want treatment. There is so much hope before people come out of prison, but it is gone if they are released without support. People waiting for a treatment bed are at a high risk of overdosing and dying.²³⁸

Unlocking the Gates provides support for people upon release from prison. This organization can assist Indigenous people to get back to their home communities as soon as they are released, instead of waiting in the city for transportation. Mo Korchinski noted in her interview that people are much more successful in staying out of prison if they can get home to family and community, and connect with an Elder right away, after incarceration.²³⁹

Laura Beaudry, a former CSC volunteer, commented that it is especially challenging for people who have been in prison for longer periods of time to re-enter the community, “because they do not have the coping skills to live on their own.” She said, “They are often released into a city or province where they have no family and their only community are those in their halfway houses. There is no support for them to travel back home after release, and because of the stigma of prison they may not be welcomed back into their community.”

Laura Beaudry noted that if anyone is helping people with reintegration it is often volunteers rather than paid staff with proper training. She felt that people were set up to fail when released without necessary supports.

We recommend that Canada work with Indigenous governments and organizations to reform the s 84 process, based on respect for self-determination, and ensure that Indigenous communities are reasonably compensated for the costs of providing community supervision.

236 Interview with Merv Thomas, Chief Executive Officer of Circle of Eagles Lodge Society (20 January 2023).

237 Unlocking the Gates Services Society is a peer-led, non-profit organization that supports the reintegration of people being released from prison in British Columbia: <https://unlockingthegates.org/>.

238 Interview with Mo Korchinski, Executive Director of Unlocking the Gates (13 July 2022).

239 Interview with Mo Korchinski, Executive Director of Unlocking the Gates (13 July 2022). See also Wen Qi Gan et al, “Risk of overdose-related death for people with a history of incarceration,” (2021) 116(6) *National Library of Medicine* 146-1471 (British Columbia study finding that people with a history of incarceration were more than four times more likely than those without an incarceration history to die of an overdose.)



By Tara DeSousa, Cree (from the series "Indigenous Movements of Freedom")

VI. CANADA'S PRISON SYSTEM VIOLATES DOMESTIC AND INTERNATIONAL LAW

“The overrepresentation of Indigenous Peoples in the criminal justice system must be understood in the context of colonialism and the intergenerational trauma related to the residential schools. Disproportionately high rates of Indigenous Peoples in jails and prisons have been linked to structural racial discrimination at every level, including policing, the judicial system, and corrections...”²⁴⁰

— Mr. José Francisco Calí-Tzay, United Nations Special Rapporteur on the Rights of Indigenous Peoples

VIOLATION OF THE *CORRECTIONS AND CONDITIONAL RELEASE ACT*

Given the facts discussed in this report, it is evident that CSC is violating its own governing legislation, the *Corrections and Conditional Release Act*, which requires it to:

- “carry out sentences imposed by courts through the safe and humane custody and supervision of offenders” (s 3(a));
- “[assist] the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community” (s 3(b));
- use “the least restrictive measures consistent with the protection of society, staff members and offenders” (s 4(a));
- consider “alternatives to custody in a penitentiary, including the alternatives referred to in section... 81” (s 4(c.1));
- ensure that “correctional policies, programs and practices respect ... ethnic, cultural, religious and linguistic differences... and are responsive to the special needs of ... Indigenous persons...” (s 4(g));

²⁴⁰ Mr. José Francisco Calí-Tzay, United Nations Special Rapporteur on the Rights of Indigenous Peoples, *United Nations Special Rapporteur on the Rights of Indigenous Peoples Visit to Canada 1-10 March 2023 End of Mission Statement*. In his statement, the Special Rapporteur also invited Canada to implement s 81 of the *Corrections and Conditional Release Act* “in consultation with Indigenous Peoples to create alternatives to incarceration based on Indigenous legal orders.”

- “take all reasonable steps to ensure that penitentiaries, the penitentiary environment, the living and working conditions of inmates and the working conditions of staff members are safe, healthful and free of practices that undermine a person’s sense of personal dignity (s 70); and
- ensure that systemic and background factors affecting Indigenous people “are not to be taken into consideration for decisions respecting the assessment of risk posed by an Indigenous offender unless those factors could decrease the level of risk” (s 79.1(2)).

The incarceration of Indigenous people in Canadian prisons is not safe, healthful or humane, and the penitentiary environment undermines the dignity of Indigenous people. CSC is not providing culturally appropriate programs to the majority of Indigenous people in prison, and its delays in providing programs lead to Indigenous people spending more of their sentences in prison rather than under community supervision. This means that CSC is not using the least restrictive measures in administering Indigenous people’s sentences. The overrepresentation of Indigenous people in solitary confinement also represents a breach of the requirement to use least restrictive measures. CSC prevents Indigenous people from accessing alternatives to prison by allowing only people who it classifies to minimum security (and rarely medium security) access to healing lodges.

Contrary to a liberal and purposive interpretation of the 2019 amendments to the *Corrections and Conditional Release Act* that prohibit CSC from considering *Gladue* factors to increase an Indigenous person’s level of “risk,” policy dictates that *Gladue* factors be used to increase Indigenous people’s security classification under the criterion of “institutional adjustment.”

In *Ewert v Canada*,²⁴¹ the Supreme Court of Canada provided guidance for the interpretation of s 4(g) of the *Corrections and Conditional Release Act*, finding that s 4(g) requires CSC “to pursue substantive equality in correctional outcomes... of Indigenous persons,” meaning that “CSC’s practices must not perpetuate systemic discrimination against Indigenous persons.”²⁴²

While the cause of the mass incarceration of Indigenous people is a function of a combination of factors stemming from colonialism, including policing policy, sentencing legislation (including minimum mandatory sentences) and judicial sentencing practise, the facts that have been presented in this report demonstrate how CSC policies and practices contribute to this “staggering injustice.”²⁴³

HUMAN RIGHTS

The adverse impacts of incarceration on Indigenous Peoples, and Canada’s refusal to adequately fund alternatives to incarceration, also constitute discrimination under the *Canadian Human Rights Act*.

In *First Nations Child and Family Caring Society of Canada v Canada*,²⁴⁴ the Canadian Human Rights Tribunal found that Aboriginal Affairs and Northern Development Canada’s (AANDC) under-funding of child welfare services on reserve and in the Yukon constituted discrimination under the *Canadian Human Rights Act*.

241 *Ewert v Canada*, 2018 SCC 30.

242 *Ewert v Canada*, 2018 SCC 30 at ¶ 55 – 66.

243 *R v Gladue*, [1999] 1 SCR 688 at ¶ 88.

244 *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2, [*Caring Society v Canada*].

The Tribunal considered the inadequate funding to result in deficiencies for salaries, training and culturally appropriate programs and services, among other expenditures.²⁴⁵ In that case, the Tribunal also considered the principle of substantive equality to mean that “[i]f AANDC’s conduct widens the gap between First Nations and the rest of Canadian society rather than narrowing it, it is discriminatory.”²⁴⁶

The Tribunal also found that the “AANDC’s design, management and control of the FNCFS [First Nations Child and Family Services] Program, along with its corresponding funding formulas and other related provincial/territorial agreements have resulted in denials of services and created various adverse impacts for many First Nations children and families living on reserves.”²⁴⁷ The Tribunal found that “adverse impacts perpetuate the historical disadvantage and trauma suffered by Aboriginal people, in particular as a result of the Residential School systems.”²⁴⁸

The Tribunal stated:

Despite being aware of the adverse impacts resulting from the FNCFS Program for many years, AANDC has not significantly modified the program since its inception in 1990.... Notwithstanding numerous reports and recommendations to address the adverse impacts outlined above...AANDC has sparingly implemented the findings of those reports... [Improvements still fall short of addressing the service gaps, denials and adverse impacts... and ultimately, fail to meet the goal of providing culturally appropriate child and family services to First Nations children and families living on-reserve that are reasonably comparable to those provided off-reserve].²⁴⁹

The parallel between Canada’s failure to adequately fund child welfare services on reserve and in the Yukon and its failure to fund Indigenous-led alternatives to prison under s 81, and Indigenous community release plans under s 84, are undeniable. Canada is discriminating against Indigenous Peoples by failing to fund s 81 healing lodges on par with funding used to operate its penitentiaries. CSC’s severe underfunding of s 81 healing lodges and other alternatives to prison results in deficient salaries, programs and services, and is contributing to the increase in the mass incarceration of Indigenous people in Canada.

It is noteworthy that Canada spent between \$5 and \$9 million fighting the *Caring Society* case at the Canadian Human Rights Tribunal.²⁵⁰

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The mass incarceration of Indigenous people routinely violates the right to equality under s 15 of the *Canadian Charter of Rights and Freedoms*. However, there have been relatively few successful s 15 claims brought by Indigenous people or other claimants in the prison context. This is largely due to the practical challenges of litigating systemic inequality that is so far-reaching and multi-faceted. *Charter* cases are

245 *Caring Society v Canada* at ¶ 389.

246 *Caring Society v Canada* at ¶ 403.

247 *Caring Society v Canada* at ¶ 456-458.

248 *Caring Society v Canada* at ¶ 459.

249 *Caring Society v Canada* at ¶ 461.

250 Eva Jewell and Ian Mosby, *Calls to Action Accountability: A 2021 Status Update on Reconciliation, A Special Report* (Yellowhead Institute: December 2021) at 21. Online: trc-2021-accountability-update-yellowhead-institute-special-report.pdf.

expensive and difficult to bring, especially with inadequate legal aid for people in prison across Canada. Despite the challenges to litigation, there have been some significant successes.

To establish a breach of s 15 of the *Charter*, a claimant must show that a law or state action: (a) creates a distinction based on enumerated or analogous grounds, on its face or in its impact; and (b) imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating disadvantage.²⁵¹

In *Inglis v British Columbia*, the BC Supreme Court held that the cancellation of the mother baby program, which permitted mothers incarcerated in provincial prisons to have their babies with them, violated the equality rights of both the affected mothers and babies under s 15 of the *Charter*, noting the over-representation of Indigenous women who are members of a “vulnerable and disadvantaged group.”²⁵²

In *R v Turtle*, the Ontario Court of Justice found that the unavailability of intermittent sentences to Indigenous women on reserve violated their s 15 rights.²⁵³ The Court noted the conditions at the Kenora District Jail where the applicants would be required to serve their sentence if their application was not granted, which included violence, overcrowding and many lockdowns. The Court noted that 94% of the people in the jail are Indigenous.²⁵⁴

In *R v Sharma*,²⁵⁵ the Ontario Court of Appeal found that the mandatory minimum sentence for importing cocaine was unconstitutional under s 15 of the *Charter* because the provisions created a distinction on the ground of race related to the over-incarceration of Indigenous people in the criminal legal system. The Court of Appeal found the *Safe Streets and Communities Act* denied Ms. Sharma the benefit of a community-based conditional sentence “in a manner that has the effect of reinforcing, perpetuating or exacerbating the disadvantage of Aboriginal [people].”²⁵⁶

Recently, a narrow 5-4 majority of the Supreme Court of Canada overturned the Ontario Court of Appeal decision in *Sharma*,²⁵⁷ largely on evidentiary grounds. The four dissenting judges found that the legislation restricting the availability of conditional sentences (to be served in the community) unjustifiably infringed the s 7 and s 15 rights of the Indigenous claimant. They noted the urgent need for courts and legislatures to do more to address the alarming rise in the incarceration of Indigenous people, and cite Professor Rudin in *lpeelee*: “The time for mere concern has long since passed. Put simply: we must do better.”²⁵⁸

Canadian courts have found that harmful conditions of confinement such as solitary confinement amount to violations of the *Charter*²⁵⁹ and that Indigenous people are more likely than other incarcerated people to be subjected to these conditions.

251 *R v Sharma*, 2022 SCC 39 at ¶ 28.

252 *Inglis v British Columbia (Minister of Public Safety)*, 2013 BCSC 2309 at ¶ 612 and 656. Note that the Court held that the cancellation of the program also violated s 7 of the *Charter*.

253 *R v Turtle*, 2020 ONCJ 429.

254 *R v Turtle*, 2020 ONCJ 429 at ¶ 102.

255 *R v Sharma*, 2020 ONCA 112.

256 *R v Sharma*, 2020 ONCA 112 at ¶ 132.

257 *R v Sharma*, 2022 SCC 39.

258 *R v Sharma*, 2022 SCC 39 at ¶ 142.

259 *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 228; *Canadian Civil Liberties Association v Canada (Attorney General)*, 2019 ONCA 243.

GENOCIDE

The mass incarceration of Indigenous people is part of Canada's overall colonial genocide against Indigenous Peoples.

Genocide is defined under international law as any acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group; and
- Forcibly transferring children of the group to another group.²⁶⁰

Canada ratified the *Convention on the Prevention and Punishment of the Crime of Genocide* in 1952, and codified it into Canadian law through the *Crimes Against Humanity and War Crimes Act*,²⁶¹ in 2000. Canada's legislation includes an element of the definition of genocide that the *Convention* does not include – omissions, or the failure to act. Canada's definition of genocide relies on customary international law, which allows for a living interpretation of genocide that can evolve over time.²⁶²

The National Inquiry into Missing and Murdered indigenous Women and Girls concluded that Canada is responsible for committing genocide against Indigenous Peoples under international law. In its *Supplementary Report, A Legal Analysis of Genocide*, the National Inquiry notes that historically, prosecutions for genocide have been against individuals who have engaged in acts of genocide related to mass killing over discrete periods of time. Despite this historical treatment, the National Inquiry is of the view that Canada's treatment of Indigenous people over time represents a "slow death" of "colonial genocide" that Canada has perpetrated against Indigenous Peoples over decades, which has included both lethal and non-lethal measures with the purpose of "assimilating and obliterating" Indigenous Peoples to take land and resources for settlers.²⁶³

The National Inquiry points to legal scholars and jurists who consider the concept of cultural genocide to be open to recognition within the *Convention*, and opines that "the definition of genocide in international law, as it stands, encompasses the past and current actions and omissions of Canada toward Indigenous

260 See UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277 (Entry into force: 12 January 1951), Article II. Online: <https://www.refworld.org/docid/3ae6b3ac0.html>.

261 *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24.

262 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 4. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

263 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 9-11. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

Peoples.”²⁶⁴ Cultural genocide is defined as the destruction of structures and practices that allow a group to keep living as a group.²⁶⁵

The Supplementary Report notes Canada’s role in opposing the explicit inclusion of cultural genocide from the *Convention’s* definition because it was actively “perpetrating this type of genocide contemporaneously with the drafting of the Convention.”²⁶⁶

The National Inquiry also points to recent developments of the International Court of Justice that have read into law an obligation on states (in addition to individuals) not to commit genocide.²⁶⁷

Based on its review of international law and the writing of legal scholars, the National Inquiry finds that Canada engages in colonial genocide. In support of its finding, the National Inquiry cites “thousands of testimonies” of violence against women, girls and 2SLGBTQQIA people that are rooted in colonial structures and policies.²⁶⁸ The National Inquiry cites Canada’s lack of implementation of recommendations of the 1996 Royal Commission on Aboriginal Peoples and the 2015 Truth and Reconciliation Commission as “evidence of Canada’s continuing violation of its international obligation not to commit genocide.”²⁶⁹

Regarding the element of intent necessary for a finding of genocide, the National Inquiry reviewed case law and concluded that specific intent to destroy covers the destruction of a group as a social unit, and that “Canada’s colonial history provides ample evidence of the existence of a genocidal policy... which reflects an intention to destroy Indigenous peoples” physically, biologically and as social units.²⁷⁰

The National Inquiry provides examples of Canada’s genocidal acts, including:

- colonial troops’ participation in biological warfare by distributing blankets infested with smallpox throughout Indigenous communities in the 1700s;
- Nova Scotia scalping bounties for the murder of Mi’kmaq people;
- the deliberate starvation of Indigenous Peoples in the prairies to clear the way for settler agriculture and construction of the railway;

264 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 7. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

265 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 6. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

266 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 7. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

267 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 5. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

268 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 17. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

269 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 17-18. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

270 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 20-24. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

- the creation of the residential school system where “Indigenous children were forcibly removed from their families to face starvation, deliberate infection of diseases, beating, torture, rape, solitary confinement, assaults and ill-treatment” as well as inhumane medical experimentation, leading to mortality rates of 30 to 60% of children who attended those schools;
- deaths of women in police custody;
- mental abuse inflicted against Indigenous women and girls in state institutions; and
- the 60s scoop.²⁷¹

Additional examples include:

- the banning of dances and ceremonies that constitute political systems and the prohibition on Indigenous Peoples retaining legal counsel to protect their rights;²⁷²
- appropriation of Indigenous land and the creation of reserves;
- forced sterilization of Indigenous women; and
- the overrepresentation of Indigenous people in the criminal legal system.²⁷³

Pauline Wakeham makes a case for consideration of these individual acts to also be considered together as constituting “genocide by attrition”:

[W]hen these multiple genocidal processes accumulate within a persistent structure that perpetuates grave socio-economic disparities, territorial dispossession, and the violation of Indigenous rights, their effects typically compound over time into a prolonged, multi-generational assault on Indigenous nations. This dynamic requires serious attention.²⁷⁴

The National Inquiry found that Canada continues similar colonial genocidal policies today, including both acts and omissions. It calls for Canada to “adopt a decolonizing approach” and dismantle colonial structures that foster racism, oppression and violence and calls for reparations and accountability.²⁷⁵

The National Inquiry notes that its analysis is focussed on genocidal conduct against women and girls, but that its analysis is not exhaustive of all conduct that contributes to the colonial genocide Canada continues to perpetrate against Indigenous Peoples.²⁷⁶

271 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 17, 24-25. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

272 Pauline Wakeham, “The Slow Violence of Settler Colonialism: Genocide, Attrition, and the Long Emergency of Invasion,” *Journal of Genocide Research*, 24:3, 337-356 (2022) at 354. Online: <https://doi.org/10.1080/14623528.2021.1885571>; Royal Commission on Aboriginal Peoples, *Volume 1, Looking Forward, Looking Back* (Ottawa: October 1996) at 65, 73-74. Online: <https://data2.archives.ca/e/e448/e011188230-01.pdf>.

273 Kona Keast-O’Donovan, *Convicting the Clergy: Seeking Justice for Residential School Victims Through Crimes Against Humanity Prosecutions*, *Manitoba Law Journal*, Vol. 45, Issue 4 (2022) at 47.

274 Pauline Wakeham, “The Slow Violence of Settler Colonialism: Genocide, Attrition, and the Long Emergency of Invasion,” *Journal of Genocide Research*, 24:3, 337-356 (2022) at 349. Online: <https://doi.org/10.1080/14623528.2021.1885571>.

275 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 26-27. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

276 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 15. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

Canadian prisons contribute to colonial genocide of Indigenous Peoples in the following ways:

(a) By killing members of the group – The term “killing” as been interpreted broadly by the International Criminal Court’s Elements of Crimes to mean “caused death.”²⁷⁷ As discussed above, Indigenous people are overrepresented in deaths by police and in death by suicide in prison. Prisoners in general have higher rates of death by homicide and suicide than in the Canadian population, and the risk of dying within weeks of release from prison is elevated.²⁷⁸

(b) By causing serious bodily or mental harm to members of the group – Indigenous people in prison are more likely to be held in solitary confinement and to have violence used against them by correctional officers. Solitary confinement is considered torture or cruel treatment if it is used for more than 15 days or if it is used against someone with a mental health disability that would be exacerbated by its use.²⁷⁹ These forms of abuse have long-term negative mental health impacts, including self-harm and suicide.

It could be argued that the mass incarceration of Indigenous people in Canada contributes to colonial genocide by imposing conditions of life calculated to bring about the group’s physical destruction. The International Criminal Tribunal for the former Yugoslavia has identified examples of conduct that meet this part of the genocide definition as including “subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing [and] sanitation.”²⁸⁰ The life expectancy of people in prison is 62 years – 20 years younger than the national average of 82 years.²⁸¹ CSC is frequently criticized for providing inadequate health care, food and sanitation in its prisons.²⁸² Indigenous people are disproportionately impacted by these conditions due to their over-representation in prison.

It could also be argued that prisons contribute to colonial genocide by imposing measures intended to prevent births within the group and by forcibly transferring children of the group to another group. Mass

277 Pauline Wakeham, “The Slow Violence of Settler Colonialism: Genocide, Attrition, and the Long Emergency of Invasion,” *Journal of Genocide Research*, 24:3, 337-356 (2022) at 346. Online: <https://doi.org/10.1080/14623528.2021.1885571>.

278 The risk of death from overdose for people recently released from prison is high. One study found the risk of overdose deaths in the first two weeks after release from prison in Ontario was 56 times higher than in the population, and 29 times higher in weeks three to four after release. Another study found that the rate of overdose death of people released from prison in British Columbia was “markedly elevated in the first two weeks after release” and that the rate of non-overdose deaths was also higher for people recently released from prison. (Stuart A. Kinner, Wenqi Gan, Amanda Slaunwhite, *Fatal overdoses after release from prison in British Columbia: a retrospective data linkage study* (CMAJ Open, 9(3), 2021).)

279 *Francis v Ontario*, 2021 ONCA 197; Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UNGAOR, 66th Sess, UN Doc A/66/268 (5 August 2011) at ¶ 78. Online: <https://archive.org/details/452639-un-report-ontorture>; UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules: resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, Rule 43. Online: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

280 National Inquiry into Missing and Murdered Indigenous Women and Girls, *A legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019) at 15. Online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf.

281 Adelina Iftene, “Life and death in Canadian Penitentiaries,” *Can Fam Physician*, 66(10): 759 (2019). Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7571640/#:~:text=As%20a%20result%2C%20their%20life,Canadian%20average%20of%2082%20years.&text=The%20aging%20of%20the%20incarcerated%20population%20creates%20unexpected%20challenges>.

282 See for example, Office of the Correctional Investigator Canada, *Annual Report 2018-2019* at 52-61 (Ottawa: 2020) <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20182019-eng.aspx#s4>; Standing Senate Committee on Human Rights, *Human Rights of Federally-Sentenced Persons* (Ottawa: June 2021) at 23. Online: https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf; Adam Miller, “Prison health care inequality,” *Canadian Medical Association Journal*, (2 April 2013), 185(6): E249-E250. Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3612166/>.

incarceration of Indigenous people results in parents being separated from their children. As noted in *Creating Choices*,²⁸³ mothers may have been the only significant person in their children's lives, and many children will be placed in foster care when a mother is put in prison. Women's imprisonment has negative outcomes for children.²⁸⁴ Indigenous women are disproportionately impacted in this way by imprisonment due to their over-representation in prison.

The second part of the test for genocide requires that the acts be intentional. Intent is established where the perpetrator means to engage in the conduct, and means to cause the consequence or is aware that it will occur in the ordinary course of events.²⁸⁵

Canada has been aware of the mass incarceration of Indigenous people in prison, and the associated harms, for decades. CSC intentionally denies funding for s 81 alternatives to prison, and intentionally under-funds the six Indigenous-operated healing lodges that do exist. CSC policy that prevents the vast majority of Indigenous people in prison to access healing lodges, based on racist determinations of security classification, is also intentional. CSC's policies mean that the benefits of Indigenous-run healing lodges are out of reach to the vast majority of Indigenous people in prison²⁸⁶ and contributes to Canada's genocide of Indigenous people.

The people who suffered residential schools and forced family separation are the same people, or their children or grandchildren, who are in prisons. Canada's strategy for responding to its genocidal practices has been incarceration, which only contributes to its legacy of colonial genocide.

The fact that Indigenous Peoples continue to resist and endure Canada's genocide is a testament to their strength.²⁸⁷

283 Task Force on Federally Sentenced Women, *Creating Choices: The Report of the Task Force on Federally Sentenced Women* (Ottawa: 1990). Online: <https://www.csc-scc.gc.ca/women/toce-eng.shtml>.

284 Debra Parkes, "Women in Prison: Liberty, Equality, and Thinking Outside the Bars", 12 J.L. & Equal. 127 (2016) at 138-139.

285 Pauline Wakeham, "The Slow Violence of Settler Colonialism: Genocide, Attrition, and the Long Emergency of Invasion," *Journal of Genocide Research*, 24:3, 337-356 (2022) at 355. Online: <https://doi.org/10.1080/14623528.2021.1885571>, citing Rome Statute of the International Criminal Court, Art. 30, 17 July 1998, *United Nations, Treaty Series* 2187 (1998): 20.

286 Leah Combs, *Healing Ourselves: Interrogating the underutilization of Sections 81 & 84 of the Corrections and Conditional Release Act*, (2018) 41(3) *Manitoba Law Journal* 163.

287 Pauline Wakeham, "The Slow Violence of Settler Colonialism: Genocide, Attrition, and the Long Emergency of Invasion," *Journal of Genocide Research*, 24:3, 337-356 (2022) at 356. Online: <https://doi.org/10.1080/14623528.2021.1885571>.

VII. TESTIMONIALS

“Staff view us all in a derogatory fashion. They shouldn’t be punishing people for drug abuse. They try to escape from the abuse and punishment here by getting high. But then they look at them and say they’re not suitable for minimum security. Well then, send them to a healing lodge, or send them to a treatment centre! Anywhere but here.”

— Incarcerated person, Anonymous

The picture CSC paints of individual Indigenous people in prison is often of people who are dangerous and irrationally violent. They use forensic psychology’s tests to assert that people are incapable of change, based on their past behaviour. Yet, when we read clients’ paperwork written by Elders, the same people are described as engaged in spiritual learning, helpful, caring and as having a sense of humour.

Similarly, when we have had funding available to obtain an independent psychiatric or psychological report for an Indigenous client, someone who has been described by CSC-employed forensic psychologists as having “anti-social personality disorder” is now diagnosed for the first time as suffering from the effects of traumatic events and isolation.

We do not see our clients the way they are portrayed by CSC. We see people who have been deeply hurt by the foster care system, the youth custody system and the prison system. We see people who are multi-generation survivors of sexual abuse in residential school, and who are continuing to suffer at the hands of state institutions that destroy their identity and self-esteem and make them powerless.

When we see someone who has been held in solitary confinement for years swear at correctional officers and destroy property in a prison, we know they are still fighting and that they have hope. When a client makes a joke when we are talking with them on the phone, we see a glimpse of the person they could be if they were given some freedom, love and kindness.

In this chapter we share the words of some of the Indigenous people in prison we have had the honour of knowing.

BUDDY KLENGENBERG, 57, INUVIALUIT

I’ve been in prison for 27 years. I thought, or was told, I’d be in for 10-15 years, but I didn’t know CSC had a plan to keep me in jail forever.

I was born and raised in Tuktoyaktuk. The first 10 or 15 years of my life I was bouncing back and forth from living with my grandparents and my mother. My mother was supportive of me, but she was in a relationship. She got married, but he was an alcoholic. There was neglect in our family. So, I was bouncing back and forth



This photo was taken of Buddy Kengenbergl at Naa-Na-Himyis, after he was released to community supervision. He is a talented artist. In this photo, he shows a work in progress.

with my grandparents, learning how to hunt and fish, and always wanting to be with my mother. But she was never happy. I saw her and grew up with low self-esteem as a teen. Knowing my mother, there is a lot of heartbreak in our family. Being a child, or growing up with some siblings, was really tough because all you know is hunger when you're growing up. When your single parent's trying to get the next meal, that's the tough part. Being a sibling, the oldest one anyway, trying to feed my other siblings, was the hardest part.

So my teens were taken away from me. Also, residential school didn't really help at all.

My parents went through the same, so it wasn't really their fault. Growing up as children, we didn't really understand that part because it was not their fault that we were neglected either.

They were just so quiet – they hadn't even talked about it. I know they were in so much pain. They didn't really like talking to the Elders. They hardly really shared their feelings. The only time my mother showed her emotions was when she was drinking. Or, even my stepfather, I know they had a lot of tears. That is the hard part to understand why there was so much pain. I didn't see any pain around me, but there was pain.

In the 70s and 80s, our community was just gearing up for oil and gas and we had settled our land claims in 1981 or '82 with the government. The oil and gas companies brought a lot of alcohol and drugs to the community. What they had not thought about was the effects of all that – all the violence, and neglect for the children.

I guess it's really affected me because when I was drinking too, when I was a teen, it would numb my feelings, shut off my hurts and pains, and then I would do the same as my parents. I would have tears, or I would have emotions. That's the only time that I would release those emotions, was when I was drinking. A lot of what my parents went through, I was going through too. I was going through the pain with them, and I didn't really share that with my mother, well my late mother. She's trying to take care of us as much as she can. She did her best. That's all I can say.

My grandparents showed me a lot of love and respect with their upbringing, and taught me how to hunt and fish. When there's a big blizzard – snow blizzard – I can go to a blizzard and I can know where I am. Amazing, eh? I can go and see if somebody needs saving or somebody who was lost, I go look for them and I would find them.

I was one with nature when I was with my grandparents. They didn't really speak English. They spoke to me with their native language, so when I went to residential schools, they didn't understand us, or we didn't understand the English part. We were in an unknown world. I can't really speak my language as much as I used to. I still know some of the words.

I think I know more Cree and Sioux than my actual language being in the system. You learn how to survive. I was adopted by the Cree and Sioux and their ceremonies, so I'm more of their culture, not as much *my* culture.

But I know the Elders back home, that's what they fought for in our government negotiations. They were thinking about me and my children. They wanted us to go to college or university, so they fought for us. I think that is all they wanted for us, for the future, and I think they were looking at the reconciliation part. They wanted us to get along, but it can be really hard to put things together when you're hurt, like you hurt somebody, that's a scar. So, you got to let that scar heal or that part heal for yourself, and for the other side. Things take a little time, then you move on. You move on for the younger people. Hopefully I won't sound like an Elder now [laughs].

I did nine years in Prince Albert penitentiary. The parole officers would tell me: “Just sign your parole away, you’re not ready for parole.” So I did that for about 20 years or so. When I got to Pacific Institution, I had four parole officers in six months. They still kept telling me to waive my parole hearings, so I transferred back to Matsqui. Only now I’m being considered for release.

The last two parole hearings I went to, there was one Elder. To them, it didn’t really make a difference what his recommendation was. It didn’t really matter. They didn’t really understand. At one hearing, they were willing to give me a release, but there was no release plan with my PO [parole officer].

Nobody has ever told me anything encouraging. I never understand that. The only people that were helping me were the ALOs [Aboriginal liaison officers] and the Elders. I’m in jail and that was it, I thought. I thought that was the end.

I left home when my daughters were 2 or 3 or something. I guess they understand me being in jail as much as they can. They can only talk to me on the phone, that’s about it. If I could take them to a restaurant and a meal or a coffee shop, or just learn how to be a father to them, that would be an experience.

People who have caused harm, they have to give the community a lot of time to heal. But this DO [Dangerous Offender] thing – I guess it’s eliminated that whole process. It doesn’t really fit for Indigenous people.

For myself, I’d like to go to another place and complete my diploma. I have this healing process from the day I was sentenced. I already knew that I hurt my community. I already knew that I hurt myself, but a process started there already. I’m trying to lead by example, so maybe for me to have that story, maybe one person will listen.

JOEY TOUTSAINT, 35, BLACK LAKE DENESULINE FIRST NATION

I’m Dene. I speak my language too, it’s my first language. I taught myself how to speak English in jail. My culture was a big part of my life growing up, but there’s a really small amount of culture available in prison.

When I was younger, my grandpa used to take me away and he’d teach me how to do hunting and trapping and stuff like that. I know he is getting me away from a lot of things too.

I never been abused at home, but I got bullied. My family pretty much passed away and I got involved with gangs. They were the only people around when my mom passed away. I didn’t want anyone to have trouble with me again, and then I started hurting people and I ended up in jail. I used to do things that I don’t do no more.

A lawyer killed my mother right outside of my house, and the lawyer only spent one month in jail and then he got out and he’s still practicing as a lawyer. 15, I was 15, it was exactly 20 years ago. It happened on October 6, 2002. He was drunk and driving outside our house. My stepdad got arrested too. My mom got killed right in front of him. He got arrested. He couldn’t stop it, he was screaming, and they got her to the clinic but they couldn’t do anything and the cops had to arrest him, I guess.

When I came home, I was gonna go through the front door but they told me, “go around,” and as soon as I went around, I knew something was wrong, when I went around the corner. For one, the doors are

open and the lights are on, and there's cop cars and a couple ambulances parked outside the house and I knew something was wrong. I went inside and called for my mom and my stepdad, but nobody answered. I checked the bathroom, I checked the basement. I don't see nobody. I checked every bedroom but there's nobody there, until I went to my mom's bedroom, and my brothers were sleeping there. Both my brothers – Tyler and Corey. They were only 10 and 9 years old. I walk out the front door and he asked me what my name was and if I knew somebody and I told them my mom and my stepdad were here. And then they told me my mom, she, she got killed. She's dead. She's covered in the white sheet outside the house on the street, exactly by where I started walking. I went back inside, and I woke my brothers up and I told them our mom is dead. They start crying right away. Then we went to my cousin's house, and I called my auntie.

I thought how does my grandpa pass away a month and a half later after I lost my mother? They were really close, the two closest people in my life and I just lost them, just like that.

Before that, I wandered around, I wasn't getting in any trouble that much, but after they were gone, I just had nobody around. I was pretty much on my own. My house even burned down too, and I lost everything. Everything's all gone and the only people I had left was pretty much my auntie and my brothers. So, pretty much I'm on my own.

Since then....I just ended up in jail....I was taken away to young offenders and I never got let go. I'm still to this day locked up.

I was involved with gangs, but I got out in 2009. The gang gave me a chance to get out, so I took that chance, and I got out. People were trying to recruit me here and there, but I didn't want nothing to do with them.

Not everyone did come out of the gang. All the people I know, they had to kill people, or they got killed. My brother told me I was the last one left out of all the kids I grew up with.

I don't think anything good came out of it. I never had a job or nothing to get my own money and I started selling weed, then stealing stuff. I was younger then. I always could get or borrow money from my family, but I thought it was a better way to get my own money, and a lot faster. I don't do that anymore.

I remember about when I was a kid and I couldn't speak English, and the staff [at North Battleford Youth Centre] took me down to the ground and smashed my face on the ground, and put their knees on my face, and my mouth was bleeding. By one of the court orders, I wasn't forced to go back there no more.

Then in adult custody, every time they let me out, they always let me out on parole with really strict [conditions]. I can't drink and everything but then I'd still drink, I'd still get arrested, I'd go to jail for a couple months and then I'll be out, how many times until I went to the Pen.

20 years I'm still here and there's a lot of very, very bad negative stuff in prison and the only people who ever tried to help me is PLS [Prisoners' Legal Services], and nobody else. Pretty much it's nobody else and I'm on my own.

In prison, I distance myself. I shut a lot of people out of my life, I don't want nothing to do with them. I just want to get away from everybody. I just don't want nothing to do with a lot of people. There's so many things on my mind... I don't know. I wasn't anti-social before... it all started in prison.

I got PTSD and I got bad ADHD. I'm taking Ritalin for it. For my anxiety, I used to get on Valium. I get anxiety attacks a lot, but they took away my Valium.

I stopped taking my medication because I had an issue with the guard here, I don't want that guard coming around my door, I don't wanna see his face, nothing. Every time I see him, I respond. I end up flipping out because he just, he's such a trigger to me. Every time he comes to my door, I started slashing up. They keep letting him come to my door – like taunting me, the way he's smirking, he just knows he can get under my skin. The guards I have issues with, they keep letting them come to me and bothering me all the time. I wrote a letter, request to a lot of people, to have these people removed from me, not to interact with me.

You don't know how many times I've told these people, but nobody is doing anything about it. They don't even care, they just want to see people suffer.

I don't know how many times, over 30 times, I've cut my neck now. Since 2018, and in the last three years or four years, I cut my neck, I don't know like another 27 more times or, I don't know, too many.

One time, I cut my throat and I nearly died. As soon as I saw the ERT [Emergency Response Team], I didn't want to deal with it no more. Like, I know what's gonna happen, I know how stuff is gonna turn out, so I try to change it – to make something happen. 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. When I was in the hospital, I even got assaulted by guards too because I had a razor blade in my arm, and they started beating me up in the hospital. The hospital did a surgery.

At first, I didn't care what happened to me and then the next couple days later it hit me and I start breaking down and after that I don't know how many times I self-harmed again, many times in other jails and here, I don't know how many times they've had to take me to the hospital. I lost so much blood, I cut my veins a lot on my arm, too many, I don't know. But this is the longest I've ever gone without self-harming. I try not to think about it – I watch TV all day.

They've been targeting everything that works, they target my medication, they target my stereo, they won't let me use a phone that much. Pretty much locked up – I've been isolated, and I haven't been outside in a couple months now, I've been inside the whole time.

There's no help. I'm telling you there's no help at all. There's things that I went through that I'm gonna have to live with the rest of my life. I won't get it out of my head. I think about it, I try not to, I try to distract myself but like I don't even have a fucking stereo no more. I used to just turn it up and just drown out all the noise and just listen to music, so I don't have to listen to them.

You don't know how many times they [correctional officers] broke my stereo and TVs, too many times, and I don't have my art supplies. I have a pencil. I can draw, but I haven't drawn in a couple months now. I lost interest in drawing. I like drawing but I just don't feel like I can draw anymore. No, not in the mood like I used to be.

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.

That day I went to observation cell²⁸⁸ and they put me in a spit mask.²⁸⁹ They put the spit mask on me, and it was covered in pepper spray. The doctor came to talk to me. He told me my treatment team agrees it's better to keep me in the observation cell.

This place [Regional Treatment Centre] is not for mental health. This place is for segregation. This is a normal jail like any other jail across Canada. There's 96 beds. The units that go across Canada, this is the exact same jail they build and they turned this into an RTC. It's not an RTC, this is a prison, a real prison.

Now, people are supposed to be helping and they don't, they're part of what's going on here, the way they won't be doing what needs to be done. They're part of it too. They don't care. They just laugh and they don't care. Nobody fucking does nothing. These people are so fucking crooked here.

These people don't care. I'm telling you, they don't care. They only come here for work. They sit around all day. They give a negative vibe from these people, you know? People [in custody] are pretty much locked up doing nothing.

You can't trust nobody, there's nobody you can trust in jail, nobody at all.

The Elders in jail are pretty much the only people I can really talk to, or people who I talk to on the phone. The people who can, who are supposed to be doing something about it, they're not doing nothing. These people are out of control, they're doing what they want to do.

I was working with Elders, and it's better, and I was always going to sweats, always talking with them, always interacting with Elders a lot in the other institution. I feel a lot calmer. I was in a better place where I get to talk to somebody, somebody that's actually listening to me, and they don't start ignoring me or nothing like that.

They can understand and they don't do the stuff like what guards are doing. They do their job and they try to do their best to help us and talk to people and help them get to have smudge or to pray.

Every time I go somewhere I'm always in the handcuffs. Even when a lawyer comes to visit me or an Elder comes to visit me, they put handcuffs on me and everything. They are not supposed to do that. They told a lawyer they are going to stay in a room with us. They are not supposed to do that. Even last week when I was trying to discuss business and it was supposed to be private...., it wasn't. I was supposed to be talking with the Elders and the ILO [Indigenous liaison officer] on my own. The guard got a chair and sat in the room with me. Like how was that even possible?

They made me go there with a spit mask on and I was handcuffed from behind. I was having a hard time talking with the Elders too and it was supposed to be private with just me and the Elders, but it wasn't. The guard started sitting in the room and they're watching on the other side, on the monitor. I talked a little bit, but next time they told me we'll talk when I don't have a mask on. Even the handcuff dug into my wrist too, it was too tight.

288 An observation cell is a cell that allows correctional staff to see the person through the door, where they can be observed under Commissioner's Directive 843. They are used to monitor someone at risk of self-harm or suicide. Sometimes people are put in a suicide smock and their belongings and bedding are taken from them when in an observation cell.

289 A spit mask is a mask correctional officers sometime use to prevent someone from spitting while in emotional distress. They have been widely criticized as dangerous, cruel and degrading.

Since I filed a human rights complaint and I have other legal stuff going on, people been hating me so much and so bad. They've been doing everything, getting POs [parole officers] to make reports and everything, and all the reports are making false accusations that's gonna stay on my record. They're gonna use it against me in court, or when I go to a parole hearing they're gonna use it against me. They always bring that stuff up all the time and they don't get the story right neither. They always say something stupid. Like all my paperwork, they've never said nothing nice about me. They always put negative stuff in the papers but the positive things – they never talk about it. I finished school here and they never put it on my file before until the last couple years.

It doesn't feel good. They even talk about my mom too...they don't even know anything about my mom, but they say things about my mom too. I don't like that. They don't even know about anybody from my family. They don't even know me personally. They don't even know me at all.

These people are fucking animals. First time I've ever seen people so hateful. People are so racist, people are so hateful that I can't be around these people. I have to get away from them. I don't want to be around these kinds of people.

One time a guard called me a piece of shit dirty Indian and said I deserve to live in a cell like that because I come from a reserve. I deserve to be in my cell because I come from a reserve and it's no different from the cell.... other than there's feces, urine and there's blood on the wall too and pepper spray. Somebody was in there and something happened there. They put me in there in a dirty cell and they let me stay there, and the guard called me a fucking piece of shit dirty Indian.

Even like a month ago...one guard was making like an Indian war cry and the guards call me homophobic names, call me a fucking fag and call me gay and shit...I tell them to fucking stop harassing me... I swore at them, they pissed me off, so I started swearing at them and then they make up stories that I made threats and this and that. Then I'm getting charged a lot and it's their way or the highway, and I just got more charges again.

Even the Elders, sometimes they see what guards do, and the things the guard says, things they shouldn't have been doing. I heard a guard swore at the Elder and called him an Indian, and then I guess the Elder told the guard he's the worst in the institution and then the Elder showed him his ID, and the guard apologized. That was at RPC [the Regional Psychiatric Centre].

[Guards] tamper with my food, and more than once, and I know they've been doing it too. They can talk about it, laugh about it, laugh in my face, but they can't make me eat stuff like that and I even got sick here too a couple of times. I've been throwing up and in my cell on the toilet. I've been getting sick and... I don't know, they're just, they're doing something to my food and I didn't want to eat this food, but the only food I've been eating is stuff in packages. When I was going on a hunger strike here, I didn't wanna eat anything and I was eating like tiny little sugar packets and condiments like ketchup and stuff like that, like little packages of ranch dressing. I was going hungry but there were some inmates that helped me out a little bit with canteen here and there, give me a little bit of food to eat, they helped me out.

I don't care, they can go run and cry to a union all they want but they won't get away with the things they have done. They can lie all they want but all they've done, they're gonna have to answer on their part too. I've brought complaints against them, but nothing gets done except to separate him. But these people are still doing the same thing.

I've never been to residential school, but I think I feel like I'm in a residential school in a way from all the stories that I hear about people being in a residential school and stuff they experienced.

The Elders, I know they're trying, but we don't really get nothing. They're not even around all the time. They just come around here and there, once in a while. There's not a lot of access to Elders. They can smudge and things like that, which is good.

One time I was in Quebec, and I was I was smudging and the guards – they don't like the smell of the sage – they're complaining. I don't know why, because they approved the smudging for me and gave me sage, and they gave me a match to light up the sage.

I haven't gotten no pipe ceremony. At another jail I did – in Saskatchewan. I had pipe ceremony with the Elders. I like having pipe ceremony with the Elders because it's for my spiritual healing. So, I pray. But smudging is something I learned in jail so it's something that's kind of new to me.

I had a Dene Elder one time, but he quit. Not because of me, you know, he quit because he got a different job somewhere else up north and he took the job, so he ended up quitting. He was working in Sask Pen back then. It was a couple years ago.

I really wanna get out of here, you know that? I don't know, this is the longest time I went without doing anything. These people see I won't do nothing. What can I do behind closed doors?

So many bad things going through my mind, and I'm trying not to think about it. I don't want to do anything stupid. I know what's going to happen. I'm trying really hard here.

I've never been given a chance. Maybe they'll never give me a chance to be in a medium. People were doing way more serious stuff. Committing murders and everything. They're in a medium, they're in a minimum, they're getting out.

I want to get somewhere I can get help. Like get to a community, get to a healing lodge. I want to go there, I'd rather be there than in jail. They told me they even got a Dene Elder there too and next time when I talk to them, they say well they're gonna let me talk to the Dene Elder too.

I talked to people there last week. They are Indigenous people. ILOs and Elders. They told me it's gonna be harder though. You're gonna have to be working. But it's better than here, better than being locked up and being tortured and eaten alive by these fucking assholes. I'd rather be out there working and interacting with Elders instead of being here having to deal with fucking pigs all of the time.

I want to reach out to somebody because nobody listens to me. I'm getting other people's attention about what's going on so that somebody can do something about it.

CONNIE THORNE, 54, MÉTIS, CHIPEWYAN AND BUSH CREE

My older brothers and sisters, parents and grandparents went to residential school. They were abused, and abuse usually breeds abuse.

When I was 14, my brother and his wife weren't getting along, and they were pretty much neglecting me, so I was looking after the kids. At school, they noticed I wasn't properly cared for, so they called social services. I was in a group home for about a month. Then my mother went to court. They heard my mother out and I went back to my mother.

I don't have a lot of support in the community. My spouse has been in jail, he's always in and out of jail. You don't have a relationship with somebody that you're always separated from. Because of all the separateness too in my family, I don't have support from my family.

My daughter died of a fentanyl overdose in foster care, while I was in jail.

I'm from Fort Smith, Northwest Territories and I come from Chipewyan and Bush Cree. I was born and I grew up there.

My culture was not part of my life growing up because, back when I was little, we were told that to practice Indigenous culture was witchcraft and that Christianity and the Catholic faith was the right way to go. You would basically go to hell – you were the devil. It made me feel like to be Indigenous, I was a mistake, and that white was supreme. I used to wish I was white.

Now, we're struggling to get our culture back. My grandmother spoke our language, but she didn't want to teach us.

I just went for my warden's board today. They're still keeping me at medium. I've been medium ever since I was incarcerated in 2019. Even though I have no institutional charges and I've never been violent in the institution.

Even with my [conditional release] breach, I was distressed, and I turned to the halfway house for help. I had slipped into alcohol, but because I was not my normal self, because I was depressed, and I was under the influence, they got scared. I was turning to them because I was distressed. So now I can't get minimum.

The other reason I was breached is because I had been in communication with my incarcerated spouse. I didn't think I was doing anything wrong because the Yukon jail permitted me to have visits with him and be in communication with him. I wasn't in a romantic relationship with him, I just kept in touch with him, and we just lost our daughter.

I think a person who knows me, they would describe me as quiet. I mind my own business. I'm easy to get along with. Corrections, based on reports – belligerent came up a lot. Belligerent and violent, definitely alcoholic. It's the negatives only. It just feels like anything I've done good in my life doesn't matter. I've been sober for so long.

It gets where you just feel like, why do I even want to be a good member of society? I'm never good enough. Now I have a criminal record, it just feels like I'm not good enough.

With my community parole officer, she'd say: "You're giving me attitude right now." I'd say: "What do you mean?" And I'm not saying that to be sarcastic to her. I'm actually asking her: "What do you mean? I don't see what you're seeing." So, it's a cultural difference. I've noticed that especially with that one community parole officer. Then they ended up hiring an Indigenous lady parole officer who's now my parole officer. And she's kind of been mediating. For me, I'm really grateful. Because for a while there, I was really starting to not like my community parole officer. I just thought, oh, she hates me. And I don't like her very much anymore, either. I thought she's out to get me, the way I was feeling. But then when the community parole officer, the Indigenous lady, started to explain things to the community parole officer, she's eased up a lot now. She's a little bit more relaxed with me. And I'm a bit more relaxed with her too, you know, because now I see we just had these misunderstandings. And that's probably what happened too at the halfway house.

Jail is a cold environment. It's an institution. Some of the girls, they joke about it – it's like a dog kennel. You're locked up, you get let out. Oh, you're good, you get a treat – you get a privilege.

With Elders and Indigenous staff, I feel like I don't have to really explain myself so much, being with an Indigenous person. They just kind of understand me right off the bat. Like, especially if I'm talking about Indigenous Social Histories. They get it right away – it saves me from explaining. Just treat me as a human being, like, how would you want to be treated? I feel, I am sad, I'm happy, I have desires, I have dreams. I'm human. But with white staff, there's always this like, Oh, you're different than I am, so we're gonna treat you differently. No, just treat me like a human being. That's all.

There's Elders here in the jail. There's some cultural ceremonies that take place, like pipe ceremonies. They're just starting sweats again. There's cultural teachings, different Elders. There's drumming. Yeah, they do whatever they can. But for me, I'm a Métis, I'm different in my culture. We don't have pipes and stuff. So, I don't really get any of my own culture in here.

I don't know what's gonna happen to me. I might possibly end up getting stuck in here 'til [my warrant expiry], which makes it harder to get a place and a job, and then leads to ending up back in the same old cycle.

I think there needs to be more focus on intergenerational trauma. If the jails are filled with Indigenous people who are getting violent, or they have mental health issues, or they're drinking, they need to address those traumas, and keep addressing them until they get to the root of the problem.

Especially when people are removed from their biological family, it does affect them. That's what they're discovering from residential schools too, they get removed from biological families, and then they go out and have families and they don't even know how to be a mum or dad. My son too, he's in foster care. He doesn't even know his real family. He was traumatized being taken away and I don't think they're gonna love him. I don't think they can really play a real parent. It creates more problems for everybody. Not only the family but the whole society.

Why not start to ask the Elders what worked in the old days before there was a prison system, because it worked. If a person goes to prison, and comes out worse, then what good is it really doing for society when they were originally supposed to be brought into prison to be corrected, or to be better people? It's a waste of money, time – everything. The person comes out worse, there are more victims. Where does it stop?

ANONYMOUS, 59, MÉTIS

I grew up in Regina, Saskatchewan, and around Indian Head. Something happened when I was 11 or 12. I can't remember – I kind of blocked it out, whatever happened. I remember my father. There's many things I just can't remember. It's just a fog.

My stepfather basically beat the shit out of me all the time. He called me a sissy. I wasn't allowed to hang out with "dirty Indians." That kind of crap. So basically, it was all swept under the carpet. I didn't have any knowledge of any of this stuff until I was released from prison and my mother told me she was dying. What would it have been like for me growing up in the 60s and 70s as Métis? They really forced me to hide it from the world, and from myself. It makes you wonder.

I think things could have been much uglier because I was almost seized back when I was young, when I was in around that age that I can't remember. I remember them coming to get myself and my brother one time, and my auntie saved us. So, things would have been much different.

When I came to prison in 1998, I was reintroduced to the sweat lodge and I immediately felt like I was home. I worked with an Elder. All the memories of being an Indian, and I remembered the drums when I was a child, out on the reserve. I was like, wow, yeah. It's something that's there but it's not. Until somebody says something, then you just remember and you go, oh, yeah, I remember that stuff from way back then.

It's very easy to become isolationist in here, being blocked off from the world. I don't have visitors in a medium. It is a long trip for my friends, and really intrusive on their lives. I wouldn't ask them to even do it. I force myself to call them.

There is a program facilitator here who filed a grievance against the institution over bullying. He was being bullied by other staff members, and he was going to quit at one point. I said I know it's difficult for you, but imagine the difficulty if you leave. There's people here who need you to continue doing your job.

I've been waiting three years, two months to do a maintenance program to get on to minimum security. I mean, I've been sitting here for three years for no real God damn reason. And they don't care, because I'm doing life. So, who cares? I ended up taking the mainstream program instead of the Indigenous one. If I'd waited for the Indigenous one, I'd still be waiting.

I was out for 14 years, and I'm running into people who were out for years and years, and are now coming back for "deteriorating behaviour." All of a sudden, you're put back in the system. For someone on a stat release, they are coming back for three, four months. A lifer – you're back for two, three, five years. It's not like we've committed another crime.

We get plane loads of Indigenous guys from Manitoba, and the first thing they do is arm up, because that's what they've had to do to survive in Stony Mountain.

Staff view us all in a derogatory fashion. They shouldn't be punishing people for drug abuse. They try to escape from the abuse and punishment here by getting high. But then they look at them and say they're not suitable for minimum security. Well then, send them to a healing lodge, or send them to a treatment centre! Anywhere but here.

Without an Elder Review, I would not go to Kwikwèxwelhp. Plain and simple. They don't understand the value of Elder Reviews. It is sometimes the only positive piece of paperwork you get. And it's addressing who you are, not what they believe you are. The Elders have more contact with you, and see your actions. Because actions speak louder than words. That's the only opposing view to CSC's view of you, especially as a Native person.

In five years, I've had the same parole officer in this institution. I've talked with her probably for a maximum of 45 minutes to one hour in that entire five years. The longest I think we sat down for a half an hour, one time and talked.

Twenty years ago, we would've all gotten in a van and gone and picked rocks and picked medicines. Now we don't do that anymore. There are very few ETA [Escorted Temporary Absence] programs from here.

When you finally get to a healing place, it takes you out of that negativity, and lets your mind, your body, your spirit finally relax. You get solace from Mother Earth.

One Elder I worked with – I looked at him as a father figure for years, simply because he was the first person to treat me with any love and caring.

GILBERT BRASS, 62, CREE AND DENE, DEH GAH GOTIE DENE COUNCIL – FORT PROVIDENCE

I was born in Northwest Territories and grew up there. I was part of the 60s Scoop when I was three or four. Me and my sisters were outside playing. I was making a trail of mud, and I had a boat made out of paper, and I was playing with them. Then a government person came. He gave candy to my older sister, and she gave it to us. She took off to get my mom and dad who were cleaning fish on the riverbank. The worker said: "Let's go see your mom," and put us in a car and took off. The band tried to locate us. My mom couldn't take it.

At the receiving home, they took my sister away, and I didn't see her again. The ones who stayed at the receiving home, there's no record of them.

I went to residential school, then boys' school. When I was 17, I was in a foster home and boys' school. That's how my life started. I used to speak my language until it was driven out of me. We'd get a strap for speaking our language. One time I broke the strap, and they broke my fingers, when I was five, six or seven. I got in trouble a lot. I tried to run away from those places a lot.

My siblings who stayed at home have no criminal record. They still speak our language. They hunt and fish. My brother is a wilderness tour guide. If they didn't pick me up, I'd be on reserve painting or something.

I saw my parents again for the first time when I was 16. I knew I was considered an adult, so I told the director, "If I run again, I'll get a charge, and get put in jail, and I won't have to come back to this house. But I don't want to do that. I just want to go home." They gave me \$50 for a bus ticket. I saw my siblings, my mom, my dad. Then I went to Calgary, got a job, and tried to do right, working labour, picking up garbage for the Calgary Stampede through student hires. I was happy when I saw my family, but I didn't go again because of my involvement in corrections.

My mom died of a rare blood disease, and my dad died of alcohol poisoning.

I used to talk to my siblings, but I didn't like being phony. I was using drugs, and I couldn't do it anymore. I told them I'm proud of them and said goodbye. I'd like to reconnect when I'm sober and in the community. I have some family in Vancouver, but I don't know where. Maybe if I get out and I'm doing good I can look them up.

I have a grade eight or nine education, enough to read and write a bit, but it's like grade five. I need a dictionary to write a page. One page takes all afternoon. Staff don't help. Other inmates help each other out. Even with request forms, I get confused sometimes. The Indigenous wellness chairman has been helping me. Staff do not take into account my hearing problems and memory loss. When I have to talk on the phone, another inmate will help with what I have to say.

You get all kinds of attitudes in prison. Some of them plain don't like Natives. For example, a staff said in January that I told them I was high on clonazepam and something else. That's what they reported. I didn't do it. He just didn't like that I criticized him one time for not doing his job. There were a couple other occasions like that, and I tried to find out his name, but he wouldn't give it to me. I just had to take it dry. I couldn't do anything about it. Too much power is given to them. They didn't do any piss test, or blood test. I wanted his name to see if he had any history of doing this. That was one year sober down the drain.

Staff have been racist here and other places. They'll say things like "come here chief." A health care person said that. All I could do is try to change her mind. I took it, kept it in my memory. I always say good morning, thank you, be polite. Try to change their minds about us.

Edmonton Max is not a nice place. Racism was in effect and there was even a fight club. They'd set up a Native guy to lose or use it to straighten him out.

Segregation or SIU, I've been in lots of times. I've been in for instigating, using drugs, court orders in the institution, for security of self and others. Once I was in for nine months straight. Guards taunt you to fight. I've had lots of disciplinary charges for possession of a joint or threatening an officer. He said something rude to me and I told him, "Come on the range and say that to me." His partner avoided court, probably didn't want to lie for him. I got 30 to 60 days street charged for a joint. I've been cell extracted in Edmonton Max.

I've been stuck at medium for a long time and haven't been able to apply for a healing lodge or release, because I know I won't be supported because of my addiction problems. If a job is available here, I'm gonna grab it, but it's hard for a Native guy to get a job. So, what's there to do?

There's no Elder review. I see them every week though. They're trying to help. I tell them about how my week goes. POs [parole officers] are just to sign forms. My last PO, not once did he ever say, "this guy is trying to change." This PO gave me a Correctional Plan and said, "this is what you need to do to get my support, go to school Monday to Friday." Where were you 10 to 20 years ago? My memory is going, I need tests or a magic pill to go to school. So, she did order the test. They're listening and helping out here or there if you play their game.

Doing ceremony, sweats, smudging every morning, that stuff helps. It's a big part of my life, changing my way of thinking, praying every day, having a conversation with Creator. I could see myself as an Elder out there, helping young people, so other kids don't go through the same thing. Staying on reserve, I wouldn't have ever been introduced to city life, the hustle and bustle, trying to get a job.

I teach art to guys on the mental health unit here, and I'd like to teach youth. I'd love it if an Elder gets called to schools to show our way of life: smudging, etc. Show Natives they can make it out there. For my

generation, it was all thrown on me in a mean way with residential school, boys' school, foster homes. If I lived my spiritual way of life, I'd have stayed straight, it would open doors for me. I can see myself in a school a couple of times a week teaching art, teaching the next generation, building opportunities.

RUSSELL PADDY, 53, PLAINS CREE, THUNDERCHILD FIRST NATION

I was part of the 60s scoop. I was taken between 5 and 8. They put me with a non-Indigenous family. There was minor abuse. I am still connected to my siblings. Both parents have passed away.

I was born in a little town called Turtle Ford, in Saskatchewan. I was living on reserve since I was 16. In my younger years, my mother, my sister, and I, we were living in Edmonton, at a young age. I didn't even really know who I was at the time. My culture has been gone for a while.

I am serving Life 14. I've been in for 15 years. I'm fighting my charge. There's no physical evidence to charge me.

I applied for ETAs [Escorted Temporary Absences], and a transfer to another institution. But my parole officer didn't accept them. His line is usually "it's not acceptable at this time." Then he enrolls me in a program that doesn't have anything to do with my charges or anything else. First it was a maintenance program and then House of Healing that the church offers. It is run by Catholic volunteers.

I feel like I am treated differently because I am Indigenous, all the time. Let's say we're behind locked doors. [White people] get out much more, to get what they want on the other side, and then when I ask, they just leave my door locked. Same with employment, we get passed over.

Some of the staff are laid back, some of them don't want to have much of a conversation and there are some big-time assholes.

I feel like they are warehousing me. I have been medium security for five years now. They say my institutional adjustment needs improving. I have no institutional charges here, I've been clean – I don't do drugs, alcohol. I only had one disciplinary charge and it happened over a decade ago. But when there are non-Natives who have institutional charges, they get out on parole and whatnot.

When I got here, my security reclassification scale was 19. In four years, it only went down one point. There's a lifer who's white. He came with me, at the same time. He was gone within six months. CSC likes me because I'm the cash cow. We got to keep these people employed.

When I talk to my parole officer, and the Parole Board, they are always using the negative parts, one sided.

I was in seg for a week, back at Prince Albert Max. By the end of the week, I wanted to talk to somebody, but there's nobody there. And then you hear these little whispers. It would have been better if I had an Elder to talk to.

My friend here says if you can go to a healing lodge, go. They went to one. It would be nice if you can change your IPO.

I just want to be treated as an equal, a person.

NICK DINARDO, 30, CREE, PIAPOT FIRST NATION

[Much of the following are excerpts from Nick Dinardo's human rights complaints.]

I am Cree from the Piapot First Nation in Saskatchewan and I was born in North Vancouver. My mother and her family are residential school survivors. I am Two-Spirit and my pronouns are they/them.

I have a history of childhood trauma and abuse. I have been in psychiatric hospitals and I have tried to kill myself many times. Sometimes I have needed blood transfusions as a result of self-harm.

I was in youth custody off and on starting around age 12, and I first came to federal custody when I was 18. I have seen and experienced a lot of violence, including being assaulted many times by other prisoners. Guards have used force against me a lot.

I have been diagnosed with PTSD. My self-harm started in prison. It started in Victoria originally in Vancouver Island [Regional Correctional Centre] in an observation cell.

I have a history of long-term solitary confinement. Once I was in segregation for about seven months. This was an awful experience. I didn't have a TV or radio to occupy my mind, and I remember only getting out of my cell for one 20-minute phone call every other day. The rest of the time I was locked in my cell with nothing to do.

I have been moved back and forth numerous times between maximum security institutions and CSC treatment centres for self-harm and suicide attempts.

I have swallowed glass and razor blades, climbed the razor wire, tried to hang myself, refused blood transfusions and gone on hunger strikes to try to kill myself. I have been placed in Pinel restraints several times.

CSC mental health staff have labeled my behaviour as manipulative. I have been self-harming so severely that I have almost died. I have been placed in observation cells on suicide watch, where I am stripped of my clothing and placed in a suicide smock. Sometimes I don't even have a mattress. I don't have any belongings. Rarely, I will get a book. One hour can feel like a whole day when you're in conditions like that.

Sometimes they say I have to spend the weekend in observation, since there are no mental health staff around, and get assessed by the doctor on Monday. A weekend can feel like forever and it makes me feel hopeless. It makes me feel worse than I did before and want to kill myself more. But I know if I try to do something I could be strapped to a Pinel board. It also makes me not want to tell anyone when I'm feeling suicidal because of what might happen.

In the Regional Treatment Centre in BC, I was held in isolation. I was denied clothing, books or pens (which prevented me from filing grievances) and I was not given shoes (only sandals) or warm clothing, even though it was winter. I could not go outside for fresh air and I had very little meaningful human contact. Some of the officers antagonized me, including by telling me they hoped I would die. When I asked for a copy of my treatment plan, staff told me they did not have it.

Guards have used force against me several times when I have self-harmed.

When I was at Saskatchewan Penitentiary around September or October 2019, I was in segregation. A bunch of us had our windows blocked. Even though I had taken my blocker down, the ERT cell extracted me as I was trying to go to sleep. They brought me to an area to do a strip search, but when I refused to spread my buttocks cheeks, the ERT started grabbing me from different angles and forcing my legs apart. This was extremely traumatic and afterwards I was so stressed out and paranoid, constantly waiting for the ERT to come back. I couldn't sleep for days.

When I was at the CSC Regional Psychiatric Centre, they said I was unstable and wanted to give me an injection, but I refused. The ERT came and emptied a huge quantity of pepper spray on me, put me in a suicide cell, and forcibly injected me.

Despite experiences like the one with the ERT, I liked being at RPC because I got to go to the cultural centre and participate in talking circles. The Elders would let me stay there sometimes to be away from the officers. But then I was transferred out of the treatment centre and then to Kent. At Kent, I had almost no access to my Indigenous culture or practices.

I ended up in the SIU [Structured Intervention Unit], where I was for about three months. I was barely leaving my cell. An Independent External Decision Maker reviewed my SIU placement and concluded: “[t]here is a strong probability that, should serious intervention not be taken, [Ms. Dinardo] will die in jail as a result of a successful suicide, or that she will enter back into society with the same issues that brought her there.” He also recommended I “be placed into an environment where [my] mental health issues can be given serious and thoughtful consideration, and that a successful treatment regime be developed” and that I be offered immersive cultural programming.

On or around July 2, 2020, I was in my SIU cell and I was trying to make a legal call, but officers tried to grab the phone away with force by pulling the cord. It caused a friction burn under my arm, and when I wouldn't let go, they hit me on the head with a baton through the food slot. When I put my hands out of the food slot and asked to speak to a correctional manager, officers hit them with the baton and tried to force my hands back in. They slammed the food slot on my fingers, pulling the skin off of two of them.

Another time, guards broke my arm. It was extremely painful. It was one of the most traumatizing moments of my life that's for sure. 100% top three. It happened when I was asking for help because I didn't want to self-harm. I wanted to talk to someone instead of locking up in my cell, but instead they assaulted me and broke my arm.

CSC staff antagonize and insult me based on my gender in front of other people in prison, which makes me feel unsafe. I have been repeatedly frisk searched by male guards against my wishes. One guard grabbed my penis during a search, and told me if I made a move, I would be shot. Another time, guards burst into my cell while I was on the toilet, which was extremely humiliating. They started hitting me in the face with a shield when I tried to move, and threatened to beat me if I kept hitting my panic button. One called me a “fucking tranny” and said I wasn't a woman. CSC denied my requests to move to an institution designated for women.

When I was out on conditional release, I was like a sketch bag, just being around that many people. Seeing my friends was really nice. They helped me stay in contact with my sister.

My warrant expires next year in November, mathematically [laughing]. So, I'm just trying not to jeopardize that by getting more time for something stupid like destroying a unit or something. Next year's the year – that's it for sure. I am 30 years old.

The anti-social thing – I’m not anti-social in the community. I have good friends. It’s here, I’m obviously anti-social here because I can’t live and be respected.

JASON BOUBARD, 42, ANISHINAABE SAGKEENG FIRST NATION, FORT ALEXANDER

I have permanent brain damage from my FAS [Fetal Alcohol Syndrome], and now I have more permanent brain damage from the coma I was in and concussions throughout my life. My brain isn’t doing so well.

Now they’ve maxed me out, but they ain’t giving me any help. All they’re giving me is a cell that’s super, super hot. I got money transferred to me so I can buy a fan and a TV. They’re still not here, and I’m going through PTSD. I’m super, super hot, like I was when I was a child in the back of a car. And now that I see other kids dying in cars and animals dying, I was like, oh, wow, I could have been one of those people. It’s crazy, because the PTSD that I got, like, I know where I am – I’m in a room, right now I’m in the range. But in front of that range, in front of my vision, I can see, like my PTSD, I can see that exact thing that happened to me, all the other traumas that go through my head.

The last time I was here in this jail, they don’t help me. All they do is keep me in a cell.

I’ve been accepted into Pathways since 2018. And now that I come back, I’m still on the wait list. And they’re saying, why don’t you come? I’m saying they don’t open my doors. They don’t let me come. And she says, “well, we’ve been trying to talk to him, to tell him to let you come,” but they aren’t letting me. I say, “why not?” If I’ve been accepted and I’ve been approved, why don’t they let me?

They’re trying to make me mad so I can go off. I walk around here in the range all day. I walk around and I’m mad. I’m super mad. I’m traumatized. I come walking around and I can’t get out of my past. I don’t know how to.

I went in April for my assessment, I went through my diagnosis, my assessments, and I got diagnosed with PTSD and ADHD. I’m like, well this should have been done a long time ago, because I told them a long time ago that I needed help, and they don’t believe me.

The other thing, when I try to talk to them, I’m always misinterpreted, and they always put things in their own words. Like I told them that the voices that I hear in my head, they tell me to do things and sometimes I don’t do them, and I shouldn’t do them. It’s kind of messed up. Things aren’t happening for me good. I don’t know how to control my mind, and I just feel lost and confused, and I don’t want to exist anymore.

I get bounced around – like I get maxed out, I come back down to a medium, I get back up to a max – they keep playing around with me.

Now that I do more spiritual stuff, I’m kind of more spiritual, but I’m kind of actually losing it because they don’t let me attend spiritual or Native teachings. So, I ain’t using it, so it’s being washed away.

I had a very good time with the Elder in 2019 when I went to PI [Pacific Institution]. The Elder helped me out a lot. Now, I don’t know, it’s tough for me how things are going. I don’t know how to control my mind or anything. And then these people are taking advantage of it. It’s like when I sign things, they say, no, you signed it, your initial’s there, your signature’s there. But I don’t... I got grade 9 reading, but I can’t

comprehend what I read. The only book that really made sense to me, was *Chicken Soup for the Soul* or something. Because it's a lot of damage and a lot of hurt, a lot of pain, suffering and stuff. I know that, it makes sense to me. But it's all the other books and stuff that I've read, they don't make sense to me.

It's like, even right now. I'm here, but my mind isn't here. I'm not with my body. I'm just I'm off somewhere else. I don't even know where I am some of the times.

I got the 60s scoop. I got put in CFS [Child and Family Services] from 1-18. I was in a foster home from one year old to five years old, and then we moved foster homes because we went to a funeral on my reserve, and we talked about the abuses and stuff that we were suffering in that foster home, and they wouldn't take us back.

But I've really been in CFS from one year old to 12 years old, because ever since I turned 12, I've been in jail. As a kid, I went down to Stony Mountain as a child, and they said, "What are you doing? You're not supposed to be here, you're a young offender." And they kicked me out of there.

Jail is very much the same as being in foster care. I don't know, maybe it's because of me. Because I'm being bounced around from jail to jail to jail. I'm getting in trouble, I get maxed out, I go here and then this jail doesn't want me anymore. So, I have to go to a different place, like foster home, foster home, foster home. It's very stressful because then I lose my property for a little bit. Right now, it's kinda better because I'm allowed to take a TV or something with me because I got a diagnosis. So, I need something like a babysitter, I guess. I need hearing aids, so it's kind of hard, not having my electronics or whatever. Something to do. Like I said, I can read, but I just can't comprehend what I read, and I get mad.

I'm walking around mad, and it adds more fuel to the fire, and then when someone does something wrong, to me, it's just like an impulse move. I just hit. I'm trying to really slow that down. It's like I'm still stuck in my childhood, but I'm trying to get out of it. Because what the Elder told me in 2019 kind of made sense to me. It happened, and it's done. They can't do it anymore. Now, they can only hurt me if I let them, open myself up for them to hurt me.

More teachings would help. Like the camps that they have in Manitoba. They have camps in the bush, living off the land and being taught, and ceremony all day.

I gotta get out of this headspace. I don't want to be like that person anymore. But that's all these people do is teaching me that here. The other month they [correctional officers] tackled this 64-year-old man. And they dropped them onto the ground like they threw them onto the ground hard. He busted his head open, his forehead. That guy needed help. They attacked him for nothing.

So, it's really messed up. I need help, and I ain't getting it in jail. They always lie to me. I should be on a mental health range. But no, they keep me on a normal range where I'm not getting any help at all.

I want to get out of jail, but I want to work my way to get out, to a medium, then to a minimum, then go to a halfway house, or just get out. I want to work to get out because when I got out the last four times, I didn't commit a new crime, but I came back within a month. That's exactly what happened. My whole entire life, I've always come back to jail within a month of my release, but I've always had new charges. And the last four times I was let out, I never had a charge.

You can see the racism. Like when I got stabbed, the guard, the big 4 Bar [correctional manager], he looked at me and made a judgement call. He phoned an ambulance and said yeah, the inmate just got into a fight

and got slashed. Just a simple fight. But when I got there, the EMT [Emergency Medical Technician] said, “what are you doing? What are they doing? You’ve been stabbed! They shouldn’t have called us, you should have been airlifted out of here.” That happened at 7:30 in the morning, and I didn’t leave here until after 9. I had to wait for the helicopter. I’m like, what the heck, man? That was crazy. Like, what are these people doing? When he looked at me, my intuition was that it was a racist look. I know that face. When that lady was looking at me, saying, “this is what we do when we have little Indians that don’t listen.” And she was shaking her head. And it was like oh man, I know that face. I know the racist face.

ALBERTO VOGEL, 34, ALGONQUIN

My mother is 100% white – 100% Ukrainian. My father is Indigenous. He’s Algonquin First Nations and Algonquin are in Quebec, and as far as I know, part of the United States. Another thing I know about them is they were a peaceful tribe. That’s about it. I didn’t know I was Aboriginal until I met my dad in my twenties. I remember asking my grandmother, because she had all this Aboriginal stuff in the house, “Grandma, are you Aboriginal?” And her telling me, “No, I just like this stuff.” She never told me I was Aboriginal.

My experience in ministry care was horrible. One time in Catholic Social Services, I had to go to the hospital to get stitches. They used to put me face down in restraints.

I was abused a lot in the ministry. I didn’t get to know what a good family looked like. I didn’t get to develop good social skills or good relationship skills. Group homes are a lot like halfway houses and halfway houses are a lot like jail. You’re told when to go to bed or when to lock up. You’re told what items you can have in your room and what items you can’t. Even in group homes you have a count, well not a count, but they have a lock up time where you go to your room you lock up and you can come out at a certain time, it’s usually at around the same time this jail does it – lunch and dinner. And then they say it’s time for your bedtime, you need to go to your room and you can’t come out. Jail and ministry are so much alike.

I got an ADHD diagnosis. Some of them are old, and they don’t apply any more, but they still try to use them. Like ODD (oppositional defiant disorder). I’ve had that since I was a kid. Then the new one, they diagnosed me with was more of an opinion. It was the maladaptive personality traits, and back in the day, they said I had chronic anger... and that’s a problem with diagnosis is everybody and their dog has gotten a diagnosis, it’s no real scientific proof, it comes down to behaviour. But ADHD, I 100% have ADHD, and depression. I 100% have depression.

It often comes down to trauma or how people treat someone, and then how that person reacts to it, and the other person perceives it in a different way than was intended.

If I’m suicidal, and I tell him I’m suicidal, in my experience in the federal system here in BC, they don’t do anything. I tried to commit suicide. When I was in Alberta, the moment I said, “I’m suicidal,” boom, on the baby doll [suicide smock], and isolation. Here in BC, it’s like “Oh, are you gonna commit suicide right now? No? OK, come talk to us when you feel like you’re gonna commit suicide.” At that point it’s a little too late.

A lot of the guards don’t help out inmates. If I asked a guard, and then the other guards will bash him for helping me out. They say they’re here to help, to rehabilitate us, because that’s their job, but then when someone that’s actually trying to help us with something and showing any kind of human decency, they right away bash them for it. That’s the total opposite of what CSC is supposed to stand for.

I had a PO [parole officer] when I was at William Head Institution, and she was labeled a con lover because she fought for her guys on her caseload.

I think the whole CSC system needs to be revamped. Guards are bashing other guards, or other staff for helping out inmates, basically trying to rehabilitate guys. They shouldn't be working here.

The only thing prisons understand is violence and money...like Corcan [CSC employment program],²⁹⁰ they make so much money off of Corcan. Do we get to see a cent of that? No. If you're medium the most you're getting is \$6.35 a day – six dollars and 35 cents a day.

I feel like when I'm outside and I'm actually making progress, and then all of a sudden, I'm getting thrown back in jail for something stupid. When I was in Prince George, I had this girlfriend. I kissed her. This was when COVID was still brand new. They threw me back in jail. And I'm just like, "What the heck am I back in jail for?" My PO's like, "Well, you kissed your girlfriend. You weren't two meters apart from her." Huh? I'm not even joking about this. The stupidest reason I was sent back in – more stupid than the kissing my girlfriend one – I was on the deck outside, nobody around me, smoking without a mask on.

They want to keep guys in jail. They want to send guys back because I guess at the end of the day, we're money to them, we're dollar signs, and we're Indigenous people so it's easier to send us back.

I've been able to get out, mainly because I look white, but these other guys, no. There's a guy here...and he's done everything, model inmate not in any subculture and they won't move him along. He's been here for a lot longer than I have. Another guy – same thing. He can't move along. There are so many guys that are DOs [Dangerous Offenders], that are lifers, and they're not able to move on because it's easier for them to keep them here. It's sad. At what point has a guy spent enough time in a medium where they can say he's no longer a risk to society? These guys have been waiting for years and years to move on.

This PO literally said to this guy, "I'm not supporting you, or anyone, because if I support you, and you screw up, then it comes back on me." Did I just hear that right?... I'm like, "Dude, you need a new PO." He goes, "yeah, yeah, but what are the chances of that?"

The way CSC uses Indigenous social history is not "Oh, well, we need to develop a healing plan for this guy. We need to help this guy with this or help them with that." No, it's "OK, now we know what's wrong with him. Now we can use this against him."

I see an Elder on a regular basis – almost every day. I can go and just talk about how my day is and I will have an actual human being listening and interacting with me. If I'm going to talk to correctional staff, it's like, "what do you need? Oh, I'm busy." You look on their computer and they're on Facebook. These guys get paid a lot, and a lot of them like to sit around and basically go on Facebook or watch TV.

I'm proud that I've never done drugs in my life. I was never an alcoholic. I'm proud that I completed two college courses. I'm proud that no matter what, I'm not gonna give up on having a family one day – no matter how many roadblocks CSC puts in my way – because for me, that's something important.

290 Corcan is a Correctional Service Canada employment program that has people in prison making products such as furniture and textiles, and providing services such as construction and laundry. Corcan also offers "Indigenous offender made products" such as moccasins and beaded jewellery. See: <https://www.corcan.ca/>.

SHAWN LUNDGREN, 41, CREE, LITTLE PINE FIRST NATION AND AFRICAN-CANADIAN

My sentence was 10 years. I did almost all those 10 years in custody. I have five more months left, and then I'm released. And then I'm on parole until August of next year.

It's been my experience, and from being around for so many years in these kinds of places, and meeting so many people, a lot of the stories are all the same. It comes down to just different people with the same story. And 98% of people in prison are here because they're drug addicts, or they have mental health issues.

I was adopted by my grandmother... because my mom had me when she was 12 or 13 years old. I have contact with my real mom. My grandmother passed away recently. I have a daughter.

It's difficult keeping in contact with people, because they make it so hard – it's such a process. You try to explain it to your family or friends and they don't understand it.

My family comes from Little Pine First Nation in Saskatchewan. I experienced a lot of ceremonies around dances, powwow through my best friend who was my neighbor, and his parents. So, I do have a bit of knowledge about my culture and heritage.

My great, great grandma, she came from Oklahoma, during the Underground Railroad, and my family came to Nova Scotia. From Nova Scotia, they migrated over this way to Athabasca, and then ended up in the North Battleford area. The reserve is Little Pine, which is not too far from North Battleford.

Having two experiences of two different cultures – they're both the same colonization, systemic racism, created poverty. It's normalized.

I used to be an extrovert. I used to like to socialize and all that, and I noticed now that I've been in so much isolation, I've become more of an introvert. It's like I kind of like being alone now, but it's not a natural thing. It's something that I really want to overcome, because I think I'm going to be in a position where I'm going to be around a lot of people and I need to be able to feel comfortable and express myself, have confidence.

In seg [segregation], you get anxiety, you become an introvert. Maybe depression.

I was in Edmonton Max from 2004 to 2010 [when the fight club was happening]. There's so many things that went on. I didn't understand what rights are in jail. I just had my head down, did my time. I'm in a hostile environment, I'm worried about somebody trying to stab me or fight me. But now, I've been in a calmer environment, I've educated myself on all the rules in here.

I've had a lot of uses of force against me – throwing gas cans at us, shooting at us. Getting tackled and restrained, fighting and pepper spray. Those things, pretty much anything they can do, I've been through.

The institution knows, but not a lot [of complaints] get followed through on. They play the long game, try to tire you out. A lot is hush hush – it's the hardest entity to get information out of.

My PO [parole officer] wants to help so much, but this is her career, her position in life. Who's going to want to risk that? She helps where she can, but she doesn't want to look bad in front of peers. If you help, you are a con lover – why are you helping them? It's mostly guards against POs.

Staff have very racist views. You can tell how Indigenous people just kind of get left to the sidelines. If most of the staff you're dealing with are Caucasian males, most guys aren't going to feel comfortable approaching them, and they don't make it easy, either.

It's the stereotypes – they're alcoholics, they're just drug users anyway. I think a lot of staff that work here haven't really been exposed to culture other than their own. It seems like they're not really encouraged to take that training. Some of them don't even really care.

I think a lot of Indigenous people aren't comfortable with speaking to a lot of those people. A lot of times the mental health issues get passed by. I feel a lot of people choose to suffer with whatever they have, or they'd just rather not get help, because I see a lot of times that people tell their problems to these people [staff], then you find out later that they're laughing and talking with their co-workers. That makes people discouraged.

There were times I spent a year straight in seg. I was fighting a transfer, I wanted to stay near family, I got a false [gang] label in Edmonton, and they tried to send me to Sask Pen. My kid was born and my fiancé, my family can't come visit. They're saying it's for my own safety.

I'm 19 years old, in the worst jail, worst range, with gang members. I'm just a little kid. I stabbed someone in the first four months in self-defence, got maxed out. At Sask Pen, there's only gen pop [general population] gang range. I got sent there again, non-gang members are getting beat up, rolled out. I had to fight a lot – got jumped a few times. It got put on my file that I have gang association in 2003. In 2022, I'm still answering for that today, it still affects me, where I can or can't go. I've never been a gang member. People you never see make these decisions.

They see two or three guys hanging out, automatically you're a gang.

It would help to have a little bit more interaction with Elders in seg, for them to come see us while we're down there. You know you wouldn't see nobody for three months. Only thing you see is the guard walk by every time he does his rounds. That's it right? For months and months.

Cascading to lower security hasn't worked for me. I haven't been fortunate to basically do anything but max time, or medium time. Conditional release has been kind of tough because I'm changing cities or changing provinces, so it's a different place, different rules. You get used to being in a max for so long, and then you're transitioning to society. Your belief system is kind of stuck in a certain way, and conflicts with how it is the community. You end up wherever, you have substance abuse problems, or you have authority issues, and usually end up getting parole violations.

A lot of people get unfairly labeled and stuck at a level that you're not supposed to be. There's a lot of people that have security ratings that they shouldn't have. Unfortunately, people get warehoused, and some people get left behind.

Our unit there's 42 guys, and there's only two parole officers. So how much can they really do? And they're only here twice a week. That means they're only here eight times a month.

They only care about Indigenous social history because there's a spotlight on it. Had the spotlight not been there? They don't really care. I feel like they make up things – they put you in a category. There's lots of stuff in my paperwork that's not accurate about my Indigenous cultural history. They said that issues from my childhood are why I have problems with authority.

Elder-assisted [parole] hearings are helpful, because I feel like they try to bully you when you're just there by yourself, you get hit from all different directions. Whereas if the Elder's there, they kind of have to be more professional.

If you're talking to somebody [an Elder] who understands where you come from, and it's a little bit easier to talk to that person, right? You get a little bit more conversation.

Elders' opinions are not at all respected because of racism. They feel it too. A lot of the people that work here don't understand the culture. The Elders – there's a lot of stuff they want to do, but they can't. They're always trying to fight against them. They want to do a lot more, and they know they can do a lot more, but security trumps everything. You can't get past that.

For instance, they wanted to help guys so they can move forward. The Elder, he wanted to put a spirit bath on our side of the fence so that he can take guys every day, or a couple of days a week, and it counts as an ETA [Escorted Temporary Absence], so that guys can move on, so they can cascade down to get out. A simple little thing like that, right? But security came and said no.

The Elders don't have enough time to come. They're not providing beads, leather, art supplies, more smudge. I put in a request – it took two months to answer. I think they're stuck in program classes. There's a huge spiritual grounds here, the service is there, available, but not being provided. It's being neglected.

The information they give us about s 84 is pretty vague. No one really tells us about it or encourages us to do it.

They make it easy to get kicked off the Indigenous unit here, just because there's so many guys waiting to get there. Because they're waiting so long, they end up getting in trouble. They go back to the back of their list. I mean, a lot of guys never end up getting there. They should get there.

Say you're smudging, in your cell and your fire alarm goes off. They punish you for that because they want to take away your lighter and your smudge kit, but they won't take away a person's Bible. I've never heard them ever trying to take somebody's Bible or prayer beads away. Not a lot of respect towards the culture.

Prison is like having your house burned down when you get here. When you go back to the community after being inside for so long, now you're trying to play catch-up. If you don't have positive people around – a lot of people are walking out alone, no money, don't know how to use cell phones, computers. They need someone to hold their hand everywhere they go. A lot of people don't have time for that. A lot of guys don't have a chance, if they don't have the confidence, the knowledge.

There needs to be more focus on education, building people's confidence. Put something together that's going to help when I get out, how is it bettering me if I'm the garbage guy and that's my only meaning here? What have I learned? Nothing. I'm worse off.

People passed away, I lost relationships, now I'm an older person with the same problems I came in with. Getting to know a new place, know the resources, there's so many out there. I just didn't know about them.

Why not help people learn about the resources in the community? You don't know how it might change their life, not knowing. Searching is hard. A lot of people lack the confidence to ask questions, to ask for help.

Last summer, when I was out, was the best summer of my life. I saw the ocean for the first time. The next time I get out, I want to start a non-profit for youth to join sports, to be involved in positive activity.

ANONYMOUS, 49, MÉTIS

I grew up in a family where my father forbid anything cultural to be displayed or discussed. My mother was Métis, but he didn't advertise that to anybody. My father was European, he was English, white. He would call my mom a squaw. He was very abusive towards her and me, and the rest of the kids in the family.

I was taken into CFS custody when I was 13 after a suicide attempt. When I was taken into CFS custody, I was moved to non-Indigenous people – to foster parents – and I was sent to church in the Roman Catholic Church.

My security rating is medium, and 18.5 on the scale. That's based on the institutional adjustment, I guess. I'm waiting for a maintenance program to bring me down to minimum security. I'm one of the lucky ones – I've only been waiting two years. Some guys wait five years.

I sometimes try and do the math when a guy just gets here, and he says, well how long am I going to wait for my high intensity program? Their dates come and go, their day parole dates come, their full parole dates. Parole officers tell all the Indigenous guys, I can't support you until you're done your program or your maintenance, then they make it impossible for you to get your program and maintenance done before.

They move guys around for two reasons: incompatible with people in their jail and programs. But when the guys get here... they find out pretty quick that they've sort of made a wrong turn, because they're moved all the way across the country to the promise of a program that they might not see.

So you have to choose: Do I want to take the culturally appropriate program and wait, or do I wanna get the hell out of jail and take this non-Indigenous program and probably not get much out of it? You're gonna come out of jail with a non-Indigenous program. The cultural program is way more tuned to your culture.

If you're doing a three-year sentence, you won't get a program here. You'll be doing your two years and then you're out on your stat [statutory release date]. When they tell me that I have to wait three years for a maintenance program, that's three years where I won't be able to get out of jail, or get to minimum security or a healing lodge.

If they are getting closer to their day paroles, or they receive a positive program report, that's when you're in the danger zone, because if the guards don't like you, and you do get a positive programming report, they will find a way to charge you after that program. I let them know to make sure after you take your program, or you're six months from your parole date that you are squeaky clean, because they will be looking for some reason. They will find something, so make sure there's nothing in your cell that doesn't belong to you, and make sure that you're following the rules, you don't talk back to staff. You have to be very careful, because they will target you.

They're very disinterested when an inmate says, this particular person who works here discriminated against me. I think the guards already know the administration is not going to do anything about it. So, we don't have anybody.

They tend to frisk and search and suspect the Indigenous population. In the walkways, Indigenous people who are walking together, I see them making it difficult or putting barriers in front of guys going to cultural ceremonies, that's the way that they're sort of treated unfairly. It's very rare guys going to church here are stopped and frisked, you know, questioned on where they're going, having their cells searched while they're not here.

When I came to this institution in 2020, I found out pretty quick that you can't get an Elder review here. It had been since 2018, at least, since any inmate here had had an Elder review done. We've had guys here that are trying to get 81s and 84s where the community is saying to them, I need to see the input from the Elder before we can support you. I mean the healing lodge is empty. There's nobody there. They're half full... if that. I haven't seen one guy in two years in this jail ever get a section 81 or 84. Not one person. How are they going to do it without an Elder review showing that you're on a healing journey here and you're doing your cultural stuff, and you're going to ceremonies and smudging and sweats? You can never get an 81 or an 84. It's just impossible.

If you put all the pieces together, there's only two Indigenous program officers here, no Elder reviews, the parole officers telling guys they won't support them and they need to waive their parole hearings for later dates. This all adds up to systemic racism, in my book.

I tell anybody who wants to know what it's like to be locked up 23 hours a day, just put themselves in their bedroom and shut the door for 23 and a half hours a day for a week. It's terrible because you lose contact with everybody. Sometimes, five days will go by before they let you out. Sometimes it's 24 hours a day. I went my first week without ever being let out of the cell. That consecutively happened many times.

I don't remember any time during that segregation period, where an Elder came down, smudged or offered you ceremonial things. Having a sharing circle, sitting down and giving a teaching, none of those things happened in segregation. I never saw it.

In segregation, you don't talk to anyone for months and months and months at a time. So you actually lose your communication skills. You lose that ability.

When I first got out of jail in 2002, one of the first things that I did was walk into McDonald's. On the board were like, 700, things to choose from. I couldn't make a choice. I stood there just in awe over what I'm doing here. How do I talk to them?

You're used to being locked up in a cell. You lose hope, you lose all the loved ones that were in your life back then, so you can't talk to your friends. They move on with their lives. You can't talk to your girlfriend – she moves on with her life. Your kids grow up. You might be able to call them once a week, if you're lucky, if the guards allow it. There's sometimes where you don't get a phone call for a month. So that also impacts the way your kids think about you.

The things that I went through for that 18 months [in segregation], that mental health effect that had on me, the way that when I got out of jail, I was unable to cope with a lot of things – those things are just things that you have to live with for the rest of your life.

It affects every aspect of your life. How you eat, how you think, how you talk. All those things take many, many, many years for you to recover from, and we know guys that are on medication that were in segregation for long periods of time, that will never recover from it...and that's just the reality of the situation.

It just blows my mind that here we are in Canada we've got guys locked in their cells 23 hours a day for, for me 18 months. It just blows my mind that is occurring.

I mean, you get angry. You're in a cell, you can't do anything, you're frustrated, you're stressed, there's nothing there for you to do. You want to have some sort of outlet. There is no outlet other than to flip out.

That's what happens, and it happens again, and again, and again with guys all around me. Always the ERT [Emergency Response Team] showing up to drag somebody out of their cell after they spray them down. The guy had been waiting weeks for a phone call. You want to do a lot – call your family, talk to your kids on their birthdays, you want them to come visit you – but you can't even do any of those things. So, it's a terrible thing.

There was a fight club at Stony Mountain and Sask Pen too – they were just more covert about it and didn't get caught. Often here, we get guards feed information to inmates all the time about other inmates. So, is that a fight club? Are guys betting on it?

I don't have a *Gladue* report. So, then the CSC relies on the ISH [Indigenous social history], right? Which your parole officer comes up with. I'm pretty sure that they have some sort of document where they copy and paste these words in everybody's Correctional Plan. They're the exact same things, you know, we caught them a few times because they'll actually copy and paste and accidentally put the other guy's name in there, and you look at the report and you're like well, who the hell is this guy? I'm not that guy, that's not my last name. They'll put the "needs more work" part, but they won't put the person's improvements. Parole officers have the power of God almost. That's what happens to guys, and there's really nothing you can do about it. I mean, you can't fight your parole officer's assessment.

There's no understanding of *Gladue* factors here anyway. So even if you had one, they would do the same thing that they do with program reports that are positive, they just take whatever they want out of it and put it in there, and it's usually on page nine where nobody reads it anyway. It's not helpful at all until they start actually considering *Gladue*.

Access to culture makes a big difference because it keeps you balanced, right? How somebody who's non-Indigenous goes to church on Sunday, they probably feel pretty good afterwards, they go to confessional, and they do the things that make them more balanced in life. Without those purposes, we, as people, don't feel our balance. We're not able to keep it. The big problem in this jail, ever since I arrived here, was receiving bundles, which allow us to practice our spirituality ourselves, with smudging and whatnot. Some guys, it's taken years to get their bundle pack. Me, it took nine months. That's just not acceptable. It's against our *Charter* and it's a violation of our rights not to be able to have those bundle packs when we come in.

We have two Elders here. One of them is recognized as an Elder in his community, which is sort of the criteria, right? The second one, he'd straight up tell us at the ceremonies, "I'm not an Elder, I barely sweat. I'm a woodcarver." But somebody told him to apply for the Elder's position at CSC, and he got it. That's not really the criteria. Because you're old doesn't mean you're automatically an Elder.

A lot of it here is security related. For instance, in the program that the Elder is assisting, he wants to use regular needles to sew the way it's been done traditionally. But the CSC said, well, you can't use those needles, you have to use a hole puncher. The Elder had spent three or four months trying to rectify that. It's little things like that that really makes the Elder feel not important. His view is not being respected.

In prison they're still "teaching the Indian out" of people. It seems like everywhere that you try and get the Indigenous experience – the traditions, the programming – in every case, it's been restricted. So, your only choice is to go the colonial way. Take a non-Indigenous program, talk to the Chaplain instead of the Elder, go to church instead of sharing circles. Every time you try and do something spiritually or through your traditional ways, it's almost impossible.

I think it would make a huge difference if it was run by community-based, Indigenous-run, per tradition. I think that CSC, just by its nature, are opposed to anything related to people making the decisions other than them.

I don't know how CSC can ever understand the experiences of Indigenous people when I look around here and I don't see any person above correctional officer who's Indigenous. I don't see parole officers. I don't see any managers. I don't see administrators, I don't see a warden, deputy warden, assistant warden. Nobody is Indigenous, and in fact, I think I can find one Indigenous guard in the whole jail.

I don't know why that is, maybe they don't want to work in corrections, knowing that the way that they treat the Indigenous population is probably reflective of how they're going to get treated.

RICKY LESLIE, 52, MÉTIS AND OJIBWE

I am 52 years old and I've been seven years in a max.

I wanted to get involved in Pathways when I got here and to [move to] medium and a healing lodge. I worked with Elders all the way until I got to this institution. It took since last year to get a shell to smudge. I wasn't able to go to Pathways. I was waiting and waiting to get on Pathways. I get so easily frustrated. I'd rather push myself away than be disappointed. I shouldn't have had to wait. I should have been in Pathways right away.

Everything is a fight. I didn't get to see an Elder until PLS [Prisoners' Legal Services] wrote to Kent about it. I want to follow my culture but it's a fight here.

When I got here, there was nothing. I'm getting nothing. They had no intention of giving me my medium. So now I'm probably stuck here until my stat release in 15 months.

They hold me back for the stupidest, minor things. If I have a charge and it's thrown out, they shouldn't keep using it to keep me back. They keep me here, fuck with my head. I'm institutionalized. They say stay out of trouble for this long, but it's just talk. They don't care. My parole officer says, "I told you to keep your nose clean and you'd get your medium." I lost all hope of getting to medium. I just want to get out of here.

I'm vulnerable being in Kent. For a while I was slashing and slashing. I hung myself. Port Cartier [maximum security penitentiary in Quebec] broke me hard. I didn't slash up before I went there last year.

In the quarantine range here at Kent, I was cutting myself to the bone. I don't want to slash up, but I can't stop. Every time I slash up, I get stitches. I don't want to go down that road.

This place is a game. They want you to rot. I can't draw anymore. All the frustration – It's built up. Here I can't get into it. This place is ripping me apart.

In the mental health unit, you are locked up in the morning until 11:50. You are out for half an hour at lunch and then locked up until 2:30 if you don't have a job. Then out for 50 minutes, and then locked up for med [medication] line. At 4:30 they call people for meal carts and you are out for half an hour. Then locked back up until 6:48 when you get out for 50 minutes. Then locked up for the range walk. They let you back out after that for 50 minutes at a time until 9:10 when you are locked up for the night.

This place is terrible. The guards, just the way they treat you. They target people with mental health issues. They break their TVs. The way they treat you is unbelievable. An officer here called me a "rat"²⁹¹ in front of other people. They call you a "retard." I would slash up and they make you sit in your blood. Even a nurse made me sit in my blood. The guards have authority over health care.

Officer [X] does the walk at night. I worry – will I just die in my cell? They get away with murder. There are times when my cell floor is covered in blood. They want me to die in my own blood. I'm trying so hard not to slash up. I've just got to take it, and take, and take it.

There is no grievance box in this unit. They do that so they can keep an eye on what's going in against them. Trying to file anything around here – I think it just goes in the garbage. I think when you complain, they make it a point to make it hard on you.

I don't want to come back to prison when I get out. I want to be close to my daughter and granddaughter.

291 "Rat" in prison slang means an informant. Calling someone a "rat" could put their safety at risk.

ASHLEY FONTAINE
(sister of Kendal Campeau,
Ozaawigwanong, Saulteaux, Yellow
Quill First Nation)

The following are excerpts from a letter Prisoners' Legal Services received from Ashley Fontaine, whose brother Kendal Campeau died in prison on November 14, 2021.

This past week has been emotionally difficult for me to get through. I was under severe emotional distress brought on by my thoughts of the inequities within Canada's justice, correctional and family services systems. An in-depth look into the poor quality of care performed by those employed within the judicial system across Canada needs to be completed. What I have witnessed from my brother being in the system is devastating. Nobody appears to be talking about the lack of quality care, services denied, disciplinary tactics used, and officer misconduct. If they are, it is being unnoticed and/or silenced... The correctional system does not appear to be taking adequate care of their inmates' mental, physical, emotional, and spiritual well-being. I know this to be true, because I have had family in and out of the justice system, and most recently with the death of my little brother Kendal while he was an inmate. My brother was serving a life sentence, I strongly believe this could've been prevented if he had the necessary supports that should be made available to inmates both in prisons and those on probation.

For me it has been incredibly disheartening to hear of the abuse he endured while incarcerated ... My brother's behaviors or outbursts could've been mitigated if he had the proper care and/or was provided medications that worked for him. Officials in charge of the correctional system don't seem to care because people (inmates) in these institutes, are depicted as criminals and nothing else. It is so hard for me to tell my brother's story because it literally makes me sick to my stomach to think about what was done to him and how he was treated while in the care of the Ministry of Community Safety and Corrections Canada.

...My brother was suffering from severe PTSD, dissociative disorder, and ADHD. Due to the conditions he was experiencing in prison, his mental health was deteriorating tremendously. It was less than two years ago when he came out and told me about what happened to him. I cried with him on the phone the first time I heard his story, I still cry when I think about it, I feel this sickness at the pit of my stomach every time I think about him. I still hear his voice saying, "Doll (his childhood nickname for me) you don't know what it's like in here, you don't know what these guards get away with in here." I know he made a lot of bad choices in life, but no human being deserves to go through such horrific or in-human unnecessary traumatic experiences at the hands of guards and police officers.

All I want today is to get the justice he deserves. I want the guards that did this to him held accountable for what they put him through ...Writing this and recounting what he told me isn't easy. I have tears streaming down my face every time I replay those conversations with him in my mind. He suffered in silence and had a mental health breakdown that resulted in him being sent to the Saskatoon Regional Psychiatric Centre (RPC) in 2019. He no longer wanted to keep what happened to him silent. He was trying to make noise, but myself and other family members told him to keep quiet for fear of retaliation. We didn't want him to go public with his story because we were all worried about his safety; given what he had already went through at that time we knew the next incident with guards would more than likely result in his death. This is not something any family should have to worry about...

Kendal himself told us that nobody was listening to him in there. He even told us that they were just going to try and cover it all up and act like nothing happened.

Kendal had been trying to get his story about the abuse he endured in prison out in the media; to have his voice heard. In September of 2010, Kendal was involved in the hostage-takers situation that occurred at the Saskatoon Correctional Centre. Ever since this incident, Kendal had suffered years of abuse at the hands of guards.

Kendal told me numerous stories about abuse that was done to him when he was in solitary confinement. Guards would take him to blind spots and physically assault him. When in solitary confinement they stripped him of his clothing and threw cold water on him, and removed everything from his cell that could keep him warm. He had no bed to lay on, no blankets or clothing. He told me that the floor was cold and he constantly banged on the door shouting "give me back my fucking clothes." He told me that he was frustrated, angry and couldn't do nothing else but shout and cry.

He was trying to go to the media about a specific event that happened to him, Kendal said that the guards "pissed in a mop bucket" and told him to mop his cell with the urine in the pail. He refused and began swearing at the guards. He then became overwhelmed with emotions and you can hear it in his voice. Kendal said, "I fought back Doll. I wasn't going to mop my cell with pissy water, fuck that shit. I pissed one of the guards off, so he kicked over the mop water, spilling all over in my cell." Kendal then went onto say that what the guard did by spilling the pail in the cell had angered him and then he started "swinging punches." Kendal said that at this point the guards rushed him, tackled him down and beat "the shit out of me." Kendal started crying on the phone with me as he mentioned what they did to him next. He said they pulled his pants down and shoved the mop stick "up his ass." He was raped by the guards wielding the stick. Kendal told me he couldn't "shit or sit for weeks" while he was down in the hole due to the damage from the rape.

I was in disbelief and shock, I felt completely sick to my stomach. When I asked him if he reported it, he told me he couldn't because they (the guards) had pictures of me and my boys. I told him not to worry about us and that they don't even know where we live. Kendal said they have your address, and I couldn't live with myself if anything ever happens to you or the boys (his nephews). We cried together on the phone. He said once he gets released, he wanted to go public with his story.

After he made this disclosure, in subsequent phone calls, I noticed his mental health was deteriorating. After processing what Kendal had shared with me, I

remember a phone call I received from my dad, my dad was crying on the other end of the call. I asked him what was wrong and he said he just had a visit with Kendal. He said Kendal was badly beaten and appeared to be in a lot of physical pain. His face was swollen, it was black and blue. My dad felt something was very wrong with him, Kendal couldn't even sit down and he was holding his stomach like he was in a lot of pain. I asked my dad if he knew what had happened to Kendal and he told me that he didn't know. He said Kendal wasn't talking; he was quiet the whole visit. He just sat there with tears in his eyes and my dad said that seeing Kendal like that made him cry. A few months from this visit that my dad had, Kendal finally called me and shared what had happen to him.

When Kendal ended up at RPC in Saskatoon, he told me that a guard gave him the razor blade. This guard tormented him into thinking that he was a waste of life and encouraged him to end his life. He said that he was cutting his arms and legs. All the while this guard that gave him the razor blade stood there and watched.

He spent so many years being physically assaulted but remained silent out of fear that these guards would do the same to the ones he loved. When he returned back to the Prince Albert Penitentiary after he escaped from RPC, he was badly beaten by other inmates. Kendal at this point told me that one of the guards told another inmate that Kendal was a rat ... which resulted in Kendal getting beaten up by other inmates... This assault caused significant head injuries, where he became dependent on Tylenol to deal with the headaches. He mentioned that the guards just watched, and didn't do anything to intervene while he was being beaten.

The psychological damage and physical abuse that Kendal suffered through changed him. It had such detrimental impact on his mental well-being, it literally broke him. He spent most of his life institutionalized and a lot of the time while he was incarcerated, he spent a lot of time in solitary confinement...

My brother has served a life sentence to say the least, especially ever since he was old enough to

be legally charged he has been in an institution of some sort. He is no saint by any means, but he was a human being that did not deserve to be treated like an animal. He became involved with the street life since he was in kindergarten. During this time, he was being used by older gang members for the purpose of breaking and entering into homes. My mom reached out to Child and Family Services (CFS) for help during this time and instead of helping her, they made her feel like the worst parent in the world and removed Kendal from our home. Our family has never felt whole since Kendal was removed from our mother's care. All I remember from that time are the tears shed. It was very traumatic to go through that. Can you imagine being witness to five to six workers tackling down a child, your younger brother, to restrain him only because all he wanted to do was go home with his mom and sister.

Kendal's life inspired me to go to school and pursue my education to help troubled youth. I received a youth care worker certificate and worked in group homes... I remember me and my mom leaving numerous visits crying because we felt hopeless that he wasn't going to get the help and/or support he needed. Also, like I said it was very traumatic for me as a young child to witness him being tackled down and hearing his cries.

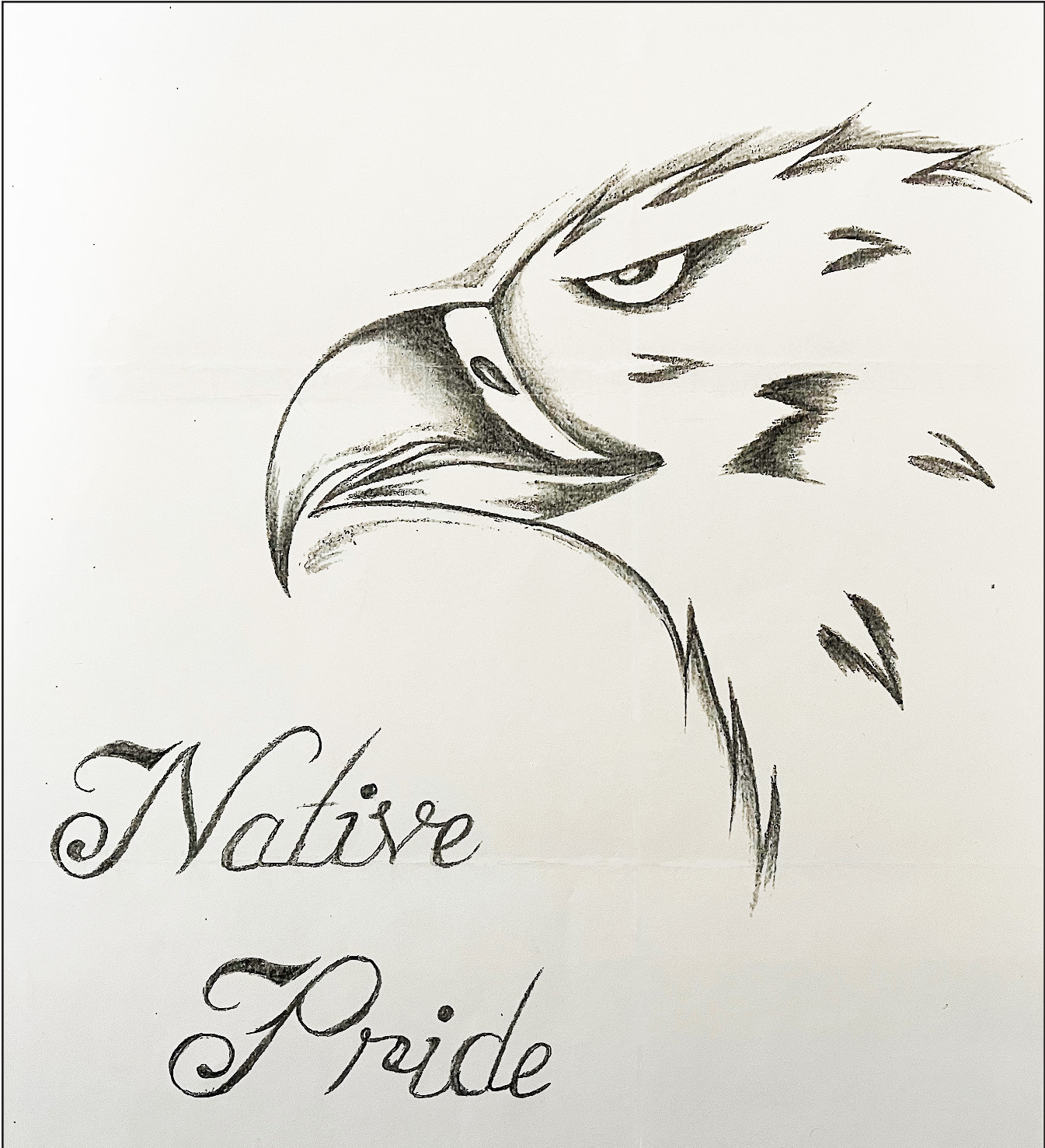
I then went on to pursuing my next degree in obtaining a Bachelor of Indigenous Social Work. I went into this field because I wanted to understand the roles and responsibilities of a social worker. I also wanted to learn the Ministry's policies and Acts... I am frustrated today because the Ministry was supposed to leave the family better off than when they became involved. Maybe there wasn't that much support back then, I can't speak to that. When my brother was missing for two weeks in Alberta, as a youth, no one contacted my mom to make her aware that he was missing. He showed up on our doorstep, rang the door bell and had a big smile on his face, saying "mom I'm home." My mom was confused, she thought he was dropped off. She made some calls to find out what was going on, to her surprise she was then notified that Kendal was missing. The reason I am sharing this information is because I am trying to shed some light into my brother's upbringing and I know I can't speak to

everything he's been through. But I feel as though everyone gave up on him because he was too difficult to manage and his behaviors were out of control.

There are not adequate transitioning supports for inmates when being released back into society. They get out and then return to prison because they struggle when re-entering back into society. Someone like Kendal didn't know how to function in society on his own as he had been institutionalized his whole life.

On Wednesday, December 8, 2021, there was a knock at the door at approximately 4:40pm. As I opened the door, I saw a lady running to her Canada Post truck. I looked down and noticed a brown box sitting on the ground. I started crying because I knew what it was. It was shipped from Abbotsford BC, where my brother was serving time. I cried because he spent his whole life institutionalized for numerous criminal offences that he was involved with. This box was all that he had of materialistic belongings. I couldn't bear to pick this box up and bring it in the house. I had to callout for my son... to bring it in. He looked at me and asked if I was OK. I had this lump in my throat and tears streaming down my face. I looked at him and shook my head and said I need a minute. I locked myself in the bathroom trying to pull myself together yet again. He was on my mind since I opened my eyes on this day. When I awoke from my sleep all I could think about was what his spirit whispered in my ear. I woke myself up that night, hoping to see him or even to see him in spirit. Unfortunately, he wasn't there. I cried and struggled pulling myself together the whole day. It's frustrating to know what he went through. For weeks I'd go to bed sick and wake up sick... This is not something you can just forget, and it's hard because there wasn't anything else I could've done for him. They silenced him and all he wanted was for his story to be heard...

As a family we have numerous, unanswered questions about his death and about his life while behind bars. If he experienced this treatment, are there others suffering in silence due to fears of repercussions? Serious investigation needs to be done into the treatment of inmates with mental health issues and into the excessive use of solitary confinement.



By Joey Toutsaint, member of Black Lake Denesuline First Nation

VIII. MOVING FORWARD

“When Christopher Columbus landed in North America not one Native person was in prisons, because there were no prisons. We had laws and order because law was written in the hearts and minds and souls of the people and when justice had to be applied it was tempered with mercy. The laws came from the ceremonies which were given by the spirit people, the invisible ones. As a people we were less than perfect as all other people are, but we had no prisons because we didn’t need them. We know how to live and we also knew how not to live.”

— Art Soloman, Ojibwe Elder²⁹²

In the 1996 Royal Commission on Aboriginal People report *Bridging the Cultural Divide*,²⁹³ the Commission recognized that the right of Indigenous Peoples to establish their own justice system, as part of the inherent right to self-government under s 35 of the *Constitution Act 1982*, was an integral part of decolonization and re-establishing the legitimacy of Indigenous law within a legally pluralistic Canada. The Commission stated:

It has been through the law and the administration of justice that Aboriginal people have experienced the most repressive aspects of colonialism. Ovide Mercredi, National Chief of the Assembly of First Nations, made this point in a presentation to the Aboriginal Justice Inquiry of Manitoba:

In Law, with law and through law, Canada has imposed a colonial system of government and justice upon our people without due regard to our treaty and aboriginal rights. We respect law that is fair and just, but we cannot be faulted for denouncing those laws that degrade our humanity and rights as distinct peoples.

It is in Aboriginal law, with Aboriginal law and through Aboriginal law that Aboriginal people aspire to regain control over their lives and communities. The establishment of systems of Aboriginal justice is a necessary part of throwing off the suffocating mantle of a legal system imposed through colonialism...

Aboriginal control over the substance and process of justice, flowing from the Aboriginal right of self-government, and the right to have a justice system that respects the cultural distinctiveness of Aboriginal peoples are not only issues of principle. Based on the evidence we have considered, it is our view that the contemporary expression of Aboriginal concepts

292 Rebeka Tabobondung, et al., *S. 81 Thunder Woman Healing Lodge Research Project Interim Report/Outline*, (December 2016) at 47, citing Cathleen Kneen & Michael Posluns, “Eating Bitterness: A Vision Beyond the Prison Walls: Poems and Essays of Art Solomon” *NC Press* (Toronto: 1994).

293 Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (1996).

and processes of justice are likely to be more effective than the existing non-Aboriginal justice system...²⁹⁴

There has been a resurgence of Indigenous law in recent years. Many Indigenous governments are reinvigorating Indigenous laws unique to their nations to draw from the “strengths and principles of the past to deal with modern-day problems and situations.”²⁹⁵ Canada must acknowledge and respect Indigenous law when negotiating with Indigenous governments and organizations for self-determination in alternatives to prison.

The Yellowhead Institute notes that the Truth and Reconciliation Commission’s Final Report is

pretty explicit that Canadian law is a tool of colonialism, is an impediment to reconciliation, and needs to be transformed. It’s also explicit that Indigenous law needs to be part of defining what reconciliation is and that’s going to be different, based on the diversity of Indigenous peoples and their distinct cultures and experiences.²⁹⁶

Bridging the Cultural Divide proposed two tracks – one track for Indigenous systems based on Indigenous law, and a second track for reforms to the existing criminal legal system to make it more respectful and responsive to the experiences of Indigenous people. The Commission stated:

The connections between the establishment of Aboriginal justice systems and necessary changes to the non-Aboriginal system should be seen in a holistic framework of reform. In the area of justice – perhaps more than any other, because of the impact on the lives of Aboriginal people – constructive partnership and dialogue are critical.²⁹⁷

The BC First Nations Justice Council has adopted a two tracked approach of restoring Indigenous legal systems and reform of the current system, with an ultimate aim of reducing the number of Indigenous people involved in the criminal legal system. The Council’s website states:

First Nations peoples... have, since time immemorial, exercised self-determination by building and maintaining flourishing societies and Nations rooted in their stewardship and title to their lands and territories. This included sophisticated governance and justice systems that maintained social order as well as the safety and holistic well-being of their citizens.

Colonialism has evolved a set of processes, mechanisms, and structures designed to dispossess First Nations of their self-determination and territories. This involved legislation, policy and systems that undermined First Nations governance and justice systems and forcibly interrupted Indigenous social and familial fabric. This also involved systematically disempowering individuals from decision-making about their lives, including through various means such as residential schools, Indian hospitals, child welfare and the criminal justice

294 Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (1996) at 58 and 66.

295 Val Napoleon, “Thinking About Indigenous Legal Orders” *Research Paper for the National Centre for First Nations Governance* (June 2007). Online: https://fngovernance.org/wp-content/uploads/2020/09/val_napoleon.pdf.

296 Eva Jewell and Ian Mosby, *Calls to Action Accountability: A 2021 Status Update on Reconciliation, A Special Report* (Yellowhead Institute: December 2021) at 21. Online: <trc-2021-accountability-update-yellowhead-institute-special-report.pdf>.

297 Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (1996) at 78.

system. Legislation, policy, and institutions are founded upon these realities of colonialism, the results of which are seen in the available data about Indigenous peoples and the justice system.²⁹⁸

Part of the Justice Strategy is to revitalize Indigenous justice systems through the establishment of a network of corrections alternatives across the province over the next decade. These will provide culturally appropriate alternatives to prison.

In this report, we will parallel the two tracked approach by first discussing Indigenous self-determination in alternatives to prison based on Indigenous law, and second, some ways the current system can be reformed to ensure that Indigenous services providers have autonomy within prisons to lessen the harms of prison on Indigenous people, while alternatives are built up to replace them. We wish to foreground the urgency and possibility of building up alternatives to prison, so that this track is not left behind. Since *Bridging the Cultural Divide* was written, CSC has had control of reforms and has focused on minor tinkering within the existing prison system. In this report, we are calling for a major shift in focus in the direction of Indigenous self-determination in building up alternatives to prison. In both tracks, Canada must acknowledge the authority of Indigenous Peoples and Indigenous law.

CSC has placed tight controls over what s 81 alternatives to prison look like, and has limited agreements to healing lodge facilities that it requires to follow colonial models, policies and objectives. While Indigenous-run healing lodges offer important options for Indigenous people to participate in Indigenous programs and ceremonies, they should not be considered the only model for s 81 agreements.

In light of the recognition that mass incarceration of Indigenous people is rooted in colonialism, criminalization, racism, and the genocidal practices of residential schools, the 60s scoop and the family policing system (benignly labelled “the child welfare system”), in negotiating s 81 agreements, Canada should be open to alternatives to prison that are rooted in Indigenous perspectives on healing and resilience²⁹⁹ and that are not limited to colonial concepts of punishment for individual failings.

As stated by Connie Thorne, an Indigenous person in prison:

Why not start to ask the Elders what worked in the old days before there was a prison system, because it worked. If a person goes to prison, and comes out worse, then what good is it really doing for society when they were originally supposed to be brought into prison to be corrected, or to be better people? It’s a waste of money, time – everything. The person comes out worse, there are more victims. Where does it stop?

Lynne Hill, who is mixed Red River Métis and settler, and was formerly a Community Justice Worker practicum student for the Squamish Nation, said:

We know that, as Indigenous people, we carry the trauma of so many generations. In the institution, they’re being told that everything is individual, and they made an individual

298 BC First Nations Justice Council, *Why a BC First Nations Justice Strategy?* (2022). Online: <https://bcfnjc.com/why-a-bc-first-nations-justice-strategy/>.

299 For example, see Krista Stelkia, Lindsay Beck, Anita Manshadi, et al. “Letsemot, ‘Togetherness’: Exploring How connection to Land, Water and Territory Influences Health and Wellness with First Nations Knowledge Keepers and Youth in the Fraser Salish Region of British Columbia”, *International Journal of Indigenous Health*, Vol. 16, Issue 2 (2020); and Janice Cindy Gaudet, “Project George: An Indigenous Land-Based Approach to Resilience for Youth,” *International Journal of Indigenous Health*, Vol. 16, Issue 2, 2021.

choice that led them there. They're not often told about the structures that have kept them there.

Sam Ens, Provincial Manager, Diversion and Early Intervention, BC First Nations Justice Council, spoke about the importance of a distinctions-based approach – specific to the person's own nation, community and territory – rather than a pan-Indigenous approach to alternatives to prison:

We need nations to work with their own people, because they understand the cultural identity of that individual. If you don't identify with a culture, and you have your own cultural identity, that can do harm to people. Providing them with their traditional ceremony is a really key part of their internal healing and moving forward, especially when you can integrate with the community they come from that understands that cultural way of being.

Elder Wanda Whitebird spoke of the importance of meeting people's individual needs: "Not everyone is going to sweat or fast ... People need to be who they are, have the freedom to feel good about themselves. We are good, and we are special. We need to learn to love ourselves. We can't define ourselves by those who lock us up."

Every Indigenous representative of an Indigenous government or organization we spoke with about this report discussed the importance of land-based healing. The experiences of Indigenous people who have been held in prison, and in prolonged solitary confinement, are far removed from the land-based approaches to wellbeing based on Indigenous law.

Some of the Indigenous governments and organizations we spoke with, and other programs we have learned about, are currently engaging in land-based programs that connect people with their roots as alternatives to prison. Others expressed interest in seeking funding to support land-based programs. Canada should support a diversity of models proposed by Indigenous bodies as alternatives to prison under s 81 agreements.

PREVENTION

Before considering the two tracks of (1) Indigenous alternatives to prison and (2) reforms to allow for independent Indigenous in-reach for people in prison, we discuss some of the inspiring initiatives we learned about which are being used at various stages in the criminal legal system to keep people out of prison, or from returning to prison after serving a sentence.

It may be appropriate for some of these initiatives to be implemented as alternatives to prison through s 81 as well, or they could inspire other visions of what s 81 alternatives to prison could look like, if Indigenous Peoples were given the authority to establish alternatives to prison based on Indigenous law.

The mandate of Prisoners' Legal Services is to assist people who are already serving sentences. However, we acknowledge that the most important work and need for resources is in preventing Indigenous people from entering the criminal legal system. Many Indigenous governments and organizations are focussing on this crucial work.

In our research and interviews for this report, we learned about many inspiring justice-related programs that Indigenous governments and organizations are working on to prevent incarceration. These include

restorative justice, diversion, alternative measures, reconnecting children and youth with their cultural roots, addiction treatment facilities, and land-based programs that are based on Indigenous law.

The following are just a few of the many inspirational programs that Indigenous governments and organizations are engaged in.

Indigenous Courts

Indigenous courts are making a difference in diverting Indigenous people away from prisons, and in providing a way for communities to be involved in helping members heal outside of prison. There is still a need for First Nations to have more funding and autonomy in responding to harm in communities.³⁰⁰

There are eight Indigenous courts in BC. These courts can be accessed only if the accused pleads or is found guilty to an offence. Indigenous courts use restorative justice and collaboration between the judge, defence lawyer, Crown counsel, Elders and the person's community and family to work with the person to create a healing plan. Although the focus of Indigenous courts is to avoid sentencing people to prison, that is still a possibility.³⁰¹

Many people spoke to us about the significant work of the Honourable Judge Joanne Challenger at the Chet wa nexwníw ta S7eḵw'í7tel, North Vancouver First Nations Court in acknowledging and addressing the role of colonial trauma, and in bringing an Indigenous world-view and Elders into the court's process. Representatives from both the Squamish Nation and the Tsleil-Waututh Nation told us Judge Challenger's work at the First Nations Court played a significant role in keeping their members out of the prison system.³⁰²

Sam Ens spoke about the importance of a restorative justice approach:

You need to remember that some of the victims of residential school sexual abuse are now committing offences because of the cycle of abuse. That's where restorative justice has the power to offer an opportunity for change to the person who was victimized, and to change their behaviour, saving potentially hundreds of victims, which again, down the road can compound.

Going through Indigenous court should not be seen as taking the easy route. Sam Ens finds Indigenous court to be more onerous than sentences in many cases. "It is a commitment to address the harm which can take more time than a short stay in prison. It is not a 'get out of jail free card,'" he said.

Sam Ens gave an example of a man who took the traditional healing approach. "He quit drinking, he got a job, and was stable. He did a lot of really positive things. All of his kids and his wife came to his graduation ceremony at the courthouse. It was moving being there – I could feel the emotions welling up. The judge hugged him. It was a very different experience from regular court where the judge is unapproachable."

Lynne Hill said:

300 Interview with the Honourable Judge Joanne Challenger, Provincial Court Judge (16 December 2021).

301 Legal Aid BC, *Aboriginal Legal Aid in BC* (Accessed 8 February 2023). Online: <https://aboriginal.legalaid.bc.ca/courts-criminal-cases/first-nations-court>.

302 Interview with Nicasio Campos, former Community Justice Worker, Squamish Nation (16 December 2021).

In Indigenous court, I see how the individuals respond to the judge, who is white, and their lawyers – people who are in authority. The judge is the ultimate authority in the room. How they respond to the judge, both their language and their body language, is respectful. The way they respond to their Elders – I don't want to just say respect – it's reverence. It's not just somebody sitting at the front of the room with authority, it is your community. These are people who have known you for a majority of your life or have known your family. They know the situations that you grew up in. They know your successes and know where you've struggled.

It will be real talk with them. You have made this mistake and that is partially on you, but it's partially on the system. It's partially on the world that you're living in. It's that level of genuine connection. I can't tell you how many times I cried sitting in Indigenous court.

You think about the Elders right now, who are supporting our community. They are residential school survivors, and they are day school survivors, or their parents hid them in the four weeks when the Indian agent was in town. They know hardship. They're not scared of it. The colonial individual – maybe are a little bit more scared of that kind of real talk. And it's unreal to see that everyone is crying in the room. That level of love and connection is incredible.

We recommend that provinces and territories negotiate with Indigenous governments and organizations on a nation-to-nation basis to establish Indigenous courts in all jurisdictions, if that is the wish of the Indigenous governments and organizations.

Restorative Justice Programs

There are over 90 restorative justice programs in BC, including Indigenous Justice Programs discussed below. Restorative justice programs can provide support at all stages of the criminal legal system, but the vast majority of cases are resolved through pre-charge programs with police.

We spoke with Sioned Dyer, the Executive Director of North Shore Restorative Justice Society, the largest restorative justice agency in BC. North Shore Restorative Justice Society has memorandums of understanding with the Squamish and Tsleil-Waututh Nations to provide restorative justice services to their members, sometimes with the involvement of Elders. Sioned Dyer quoted a former counselor with the Squamish Nation who said their partnership “moved at the speed of trust.”³⁰³

Restorative justice is a voluntary process that can be used when the person who caused the harm takes responsibility for the harm. The facilitators meet each party separately, in a safe and confidential process. In the end, they have a face-to-face meeting to come together on an agreement on how they can move forward. The person who was harmed identifies what they need to repair the harm and the person who did the harm does what it takes to make the person whole, which could include financial compensation, community service or an apology.³⁰⁴

303 Interview with Sioned Dyer, Executive Director, North Shore Restorative Justice Society (9 November 2021).

304 Interview with Sioned Dyer, Executive Director, North Shore Restorative Justice Society (9 November 2021).

Sioned Dyer told us that “often people engage in crime because they feel disconnected from the community, and community service can make them feel more connected.” Counselling for either the person who did the harm or the person harmed is another possible outcome.³⁰⁵

Sioned Dyer told us that going through restorative justice instead of the court process “completely changes the trajectory of your life.” It prevents people from having the stigma of a criminal record. She noted that “blame compounds trauma” and the negative ripple effect of taking Indigenous people out of their communities and families, which restorative justice prevents.³⁰⁶

Despite significant cost savings of restorative justice compared to the high cost of putting people through the criminal legal system, restorative justice programs are underfunded.³⁰⁷

Indigenous Justice Programs

In British Columbia, there are approximately 30 Indigenous Justice Programs that are jointly funded by BC Corrections and the federal Department of Justice. These programs are operated by individual First Nations or Indigenous organizations to assist people on probation and on bail, and also help people coming out of prison with crucial reintegration support, to help them get established in the community and not go back to prison. They are based on a restorative justice approach, and include healing or sentencing circles, Elders’ councils, pre-charge diversion, mediation and alternative measures services. One example is the Nak’azdli Alternative Justice Program, discussed below. Many of the programs have struggled with inadequate funding over the years, and the number of funded programs is inadequate to meet the community justice needs of the over 200 First Nations in British Columbia and the large number of Indigenous people who live off reserve.³⁰⁸

There are 110 Indigenous Justice Programs, and over 600 First Nations, across Canada.³⁰⁹

In 2016, the Department of Justice Canada conducted an evaluation of the impact of the [then] Aboriginal Justice Programs on rates of re-offending.³¹⁰ Its research revealed that “[r]ates of re-offending were found to be significantly lower among program participants at every point in time after completing the programs.” After one year, program participants were almost half as likely to be convicted of a new crime. The success of these programs is long term – even after eight years, 29.6% of program participants had re-offended, compared to 47.3% of the comparison group who had re-offended.

Lori Pruce, Director of Indigenous Programs and Relationships for the BC Corrections Branch of the Ministry of Public Safety and Solicitor General, noted that “the Indigenous Justice Programs do incredibly important front-line work, and are critical justice partners within the Canadian criminal legal system.”

305 Interview with Sioned Dyer, Executive Director, North Shore Restorative Justice Society (9 November 2021).

306 Interview with Sioned Dyer, Executive Director, North Shore Restorative Justice Society (9 November 2021).

307 Interview with Sioned Dyer, Executive Director, North Shore Restorative Justice Society (9 November 2021).

308 Interview with Lori Pruce, Director, Indigenous Programs and Relationships, BC Corrections Branch, and James Knighton, Indigenous Program and Relationship Analyst, BC Corrections Branch (16 November 2022).

309 British Columbia, *Indigenous Justice Programs and Services* (Accessed 12 December 2022). Online: <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/understanding-criminal-justice/indigenous-justice/programs-services>.

310 Department of Justice Canada, *Evaluation of the Impact of the Aboriginal Justice Strategy on Rates of Re-Offending Final Report* (December 2016). Online: https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2021/indigen-autochtone/pdf/EN_IJP%20Report_Final2.pdf.

We recommend that Canada provide significant funding to any Indigenous government or Indigenous organization that is interested in developing an Indigenous Justice Program.

Tsleil-Waututh Nation³¹¹

The Tsleil-Waututh Nation considered applying for a s 81 agreement, to use some of its remote land on its territory to provide land-based alternatives to prison. However, establishing alternatives to prison has not been a priority, because Tsleil-Waututh members have low rates of incarceration. “It is phenomenal that we are under-represented in prison, being an urban community,” said Andrew Van Eden, Tsleil-Waututh, Manager of Community Safety.

Andrew Van Eden attributes this success to Tsleil-Waututh’s economic growth in recent years. “Access to resources has allowed greater access to language, cultural programming, ceremonies, counselling services and employment. We have our own kindergarten to grade 12 school now for children to stay in the community and learn. Our government services are far greater than they used to be,” he said.

Andrew Van Eden also points to the success of Tsleil-Waututh’s collaboration with police in pre-charge diversion and the North Vancouver First Nations sentencing court as key contributors to its success in keeping members out of prison.

Tsleil-Waututh also has a memorandum of understanding with both CSC and BC Corrections so that the Nation is notified when a member is incarcerated. This allows Tsleil-Waututh to connect with members who are in prison and work with them on a release plan.

Tsleil-Waututh has advocated for members who were in prison. Andrew Van Eden told us about a member who was in maximum security Kent Institution for break and enter convictions related to his drug use. Despite never having committed a violent crime, he was confined to solitary confinement for over a year. He was recommended for transfer to the Special Handling Unit super-max prison in Quebec. Tsleil-Waututh successfully argued that CSC should not remove a Coast Salish person from his community and send him across the country. They also arranged a community-based parole hearing for this member, which “was incredibly successful in striking at the hearts of everyone present,” said Andrew Van Eden. This man is now doing well living in the community.

Tsleil-Waututh has also taken Indigenous people (who were not necessarily Tsleil-Waututh members) on community release out on their territory. They spent a day hiking and went out with Tsleil-Waututh field crew members to learn about the environmental work they do on the land, repairing salmon habitats, doing fish counts and water quality testing, and checking on the elk herds that had been reintroduced in the area. They shared a meal and some stories. The people on community release also had an opportunity to give back to the Nation by planting willow reeds along the creek beds which helps with salmon restoration.

Tsleil-Waututh also took people living in a half-way house to an overnight camp. “It gives a chance for Indigenous men who are far from home to connect with the local community whose land they now live on,” said Andrew Van Eden.

311 This section is based on information received during an interview with Andrew Van Eden, Manager, Nation Community Safety, Tsleil-Waututh Nation (22 September 2022).

They have also done land-based trips with youth living in Vancouver who are disconnected from their own communities. Andrew Van Eden said Tsleil-Waututh would be interested in doing excursions for people in prison through unescorted temporary absences.

Sam Ens said about Tsleil-Waututh: “I think it’s pretty amazing that they’re not only providing for people born in their nation, but they’re providing for people who are guests on their territories, and they recognize that there’s a community safety aspect to that – we would like all people to be healthy, and it’s a natural evolution of the Indigenous worldview or way of being. It’s pretty amazing to see it happen.”

Andrew Van Eden said that Tsleil-Waututh would be interested in taking authority over bail, parole and probation supervision of members in the community.

“All of these things are ways we can Indigenize the colonial system to move it from where it is, to where we want it to be. Obviously, it would be great if we could take on the system as a whole and return it back to the Nation, under Tsleil-Waututh Nation laws and governance. It’s a challenge, especially for the smaller, more remote nations. There is a need for capacity in our community to take over these things,” said Andrew Van Eden.

Tsleil-Waututh may still be interested in a s 81 agreement, if it were done in partnership with other First Nations, and if there were adequate resources to pay for water transportation, staff and Elders, and other costs.

Tsleil-Waututh is interested in gaining legal authority to implement the traditional practice of banishment, for people who are not Tsleil-Waututh who come and cause harm in their territory.

Heiltsuk Nation³¹²

The Heiltsuk Gvi-ilas Community Justice Program provides reintegration protocols and programs to restore community wellness and balance through restorative justice.

Heiltsuk also have a memorandum of understanding with the RCMP that allows the community to consider addressing the harm through *Ǵviłás*, which is Heiltsuk law. Mary Brown, Heiltsuk Gvi-ilas Community Justice Program Coordinator, described the process this way:

When a person is going through the court system with an indictable offence with the possibility of going into remand, they have to be transported south for pretrial. We do not want them to be displaced, so we have chosen to look at the option of isolation. We built six cabins in Heiltsuk territory in different locations, based on the territory of different families.

If we have a person in custody, the RCMP contacts us immediately, and I go to see them and explain the process. If you go through the courts, you will be shackled, taken on a plane to the North Fraser Pretrial Centre, and will be held in custody until your hearing. The other option is to be in an isolated cabin in our territory until your hearing.

312 This section is based on information received during an interview with Mary Brown, Heiltsuk Gvi’ilas Community Justice Program Coordinator (29 September 2022).

We will have a meeting with your family, meeting with a doctor to make sure you will be OK, and with a counsellor to see if there would be any risk of suicidal ideation. A safety plan is developed.

This is done within 24 hours so that a plan is in place before the person has a hearing with the Justice of the Peace. The plan is proposed to the Justice of the Peace. If the plan is approved, we take the person out to one of our rustic cabins where they will be until their hearing date, as an alternative to remand in provincial jail.

A crew ensures they have help getting wood and getting situated. The person will need to become self-sufficient. They might be there for three weeks to nine months until their hearing.

Ǫviłás isolation is also an option for sentencing. I prepare something for sentencing and it is worked into the sentence. People who are sentenced might be at a cabin for two to five months.

The person would have a review with the Heiltsuk Justice Advisory Committee, made up of Hereditary Chiefs, resource people and political leadership, and present a wellness plan to ensure a successful return to the community. The wellness plan might include meeting with the Justice Centre each week, counselling or planning a family or community feast. The person would talk about their actions and be accountable in order to put it behind them. The person would apologize for their action and talk about what they learned in isolation.

When people have trauma, they lose their way. They might be able to get back on track, or they might be too traumatized or hurt to get back on track themselves. They might lose their identity, sense of belonging and culture.

Isolation brings you back. We say we are going to support you. You need to know you will go through some things when you are out there. You will be angry, you will be scared, and you are going to second guess yourself. You may start to hear things, your fears coming out, things in nature. Bakwis, the wild man of the woods comes out – that is your worst fears and nightmares confronting you. You have to deal with your issues. You are there by yourself. You will cry, get sick, yell and scream. Your soul gets spooked. You won't be able to eat, you will be scared to go outside. You will stay awake all night because you are afraid.

Then there is an amazing acceptance. I can tell when a person goes through this process. It is peace. I did these things and I'm not going to let it continue to own me. This is what I will do to heal. It is one of the most amazing things I've seen.

We give the person their family tree, stories of cultural lineage of where they are from, where their family is from, going back hundreds and hundreds of years. This gives them that sense of identity. I bring different family members out there to talk, visit, and have a meal. Visits are only once per week – we make a day of it. We start to develop a wellness plan and reintegration plan.

It gives you an opportunity to reconnect with your family. A mentor also meets with you, and shares stories and family lineage. It is a positive form of being, a way of teaching the things that you may have lost along the way. You belong to the Heiltsuk Nation. This is who you are.

It works well. It opens the eyes of not just the participant, but of family members. Some people are in such a dark place, you don't know how to reach them. Sometimes you need to work it out for yourself, to find your way.

Sometimes people are not ready for programs like anger management. Having them by themselves allows them to see what they struggle with.

With Heiltsuk isolation, you are on the land. You are not within confinement. You are exercising your Aboriginal rights – clam digging, crab fishing, getting to know the area. It's a form of identity.

I give them a whole package – a map, family tree, creation story, traditional names and the meaning of them. The place name. They learn what is available for food harvesting, and how to prepare food out on the land. They learn different skills, learn to be self-sufficient, by starting a fire, preparing food and knowing the area. So, it is very different from solitary confinement in a prison.

When someone is sent out to prison, they come back at a whole other level. They have shame, a loss of identity. There is a stigma of having been in prison. Prison adds to the trauma. Prison is not a place for Indigenous people.³¹³

Nak'azdli Alternative Justice Program³¹⁴

The Nak'azdli Alternative Justice Program works to deal with the harmful effects of the residential school system on members of the community. It provides opportunities for people at any stage of the criminal legal system, from diversion or bail to reintegration during conditional release under s 84 of the *Corrections and Conditional Release Act* through traditional values, including the potlatch system.

When a member of the community does serious harm, the person is asked to do a potlatch to restore the harm and bring closure to the victims. The person is expected to go onto the land with another member of the community who has knowledge of the person's family tree and the land, who can teach them about their role within their clan, their family and their territory, to give them a sense of belonging. The Nak'azdli Alternative Justice Program supplies them with rabbit snares, traps, fishing nets or beaver traps, depending on the season. The justice program might also provide things like winter boots to make this possible. The person who takes them onto the land can also teach them how to set a net or trap, and might teach them about thousands-year-old pictographs they see on their way.

The person who did the harm gathers the gifts that they gathered on the land and restores the harm by giving the gifts at a potlatch dinner that they host, with the help of the justice centre. Gifts might be meat, skins or medicines. The person also apologizes to the victim and a peace-making circle allows everyone to be heard. The potlatch gives the person who did the harm skills for the future, and restores the harm done to the victims.

313 Interview with Mary Brown, Heiltsuk Gvi'ilas Community Justice Program Coordinator (29 September 2022).

314 This section is based on information received during an interview with Karla Olinek, Justice Coordinator, Nak'azdli Alternative Justice Program (12 December 2022).

The Nak'azdli Alternative Justice Program also provides preventative programs for youth by engaging with them on their level, and teaching leadership skills. The program assists community members who feel detached, to help them feel a sense of belonging by reconnecting with their family and their roots. The program can help with addictions and harm reduction and works closely with the community health centre which has Indigenous counsellors and a wellness program. All of their programs are grounded on traditional practices and the land.

In some cases, a person may be banned from the community, although there is a high standard of risk that must be proven before someone is banned. If someone is banned, they are always supported to be welcomed back and to talk with the Elders.

The Nak'azdli Alternative Justice Program can also help members of neighbouring communities who do not have the infrastructure to provide services, including reliable phone lines and internet.

The program does not currently offer a s 81 alternative to prison, although they would be interested in this option if adequate funding for housing was available, perhaps in partnership with other local First Nations.

Beardy's & Okemasis Cree Nation

In addition to having an agreement with CSC for a CSC-operated healing lodge on the Beardy's & Okemasis Cree Nation reserve, the First Nation is working on addressing the core issues faced by their community to prevent involvement in the criminal legal system. Their programs are staffed by Indigenous counsellors and therapists, which is important to establish a connection and understanding of where people are coming from. As Councillor Delano Mike said in interview: "It will take our own people to heal our people."³¹⁵

Their program focuses on dealing with the impact on their community of the intergenerational trauma of sexual abuse from residential schools, which has led community members to use drugs and join gangs. Delano Mike emphasized the importance of community members understanding that their problems are rooted in the effects of intergenerational trauma, and that they are not alone. "Were we born murderers, sexual predators? No! It was all learned. If you're doing it, someone did it to you. That person who did it to you had someone do it them. We have to understand that. We are creating a safe space to talk about it, to allow healing."³¹⁶

Angelique Clinton, Mental Health Therapist with Beardy's and Okemasis Cree Nation Willow Cree Mental Health Services said:

Many clients are residential school survivors, or children of them, or 60s scoop survivors. It continues to affect our children and grandchildren because of trauma and neglect. Language has been punished out of the children. That's our identity that empowers us. I am finding when the community members come in and they deal with those issues, and involve the whole family with our Elders in our communities, it is so important in preventing them from going into the criminal justice system.

315 Interview with Delano Mike, Band Councillor, Beardy's and Okemasis Cree Nation, Dr. Herman Michelle, Consultant, Angelique Clinton, Mental Health Therapist, and Lisa Antoine, Mental Health Coordinator (3 November 2022).

316 Interview with Delano Mike, Band Councillor, Beardy's and Okemasis Cree Nation, Dr. Herman Michelle, Consultant, Angelique Clinton, Mental Health Therapist, and Lisa Antoine, Mental Health Coordinator (3 November 2022).

The Beardy's and Okemasis Cree Nation Willow Cree Mental Health Services is working to establish a culturally-based and holistic addictions treatment facility, but have faced barriers in securing adequate funding.

Beardy's and Okemasis Cree Nation submitted an \$8.9 million proposal to Indigenous Services Canada to fund construction of a detox centre. However, there was no funding available for operations.³¹⁷

“At the end of the day, there are no dollars connected to government proposals for community building,” said Lisa Antoine, Mental Health Coordinator for Beardy's and Okemasis Cree Nation.

Project George

Project George is another inspiring example of a land-based program that aims to connect people with the land. It was started in 2009 by Charlie Cheechoo of the Moose Cree First Nation, who had a “deep compassion and understanding of the struggles [youth] face with drugs, alcohol, poverty, low school attendance, intergenerational trauma, and family breakdown. With the growing number of suicides in 2010... Charlie was driven to reconnect youth to the land, and to reach out to youth in the community who are isolated from formalized community programming.”³¹⁸

Project George takes youth out on the land to learn Cree land-based skills including fishing, trapping, hunting, setting up camp, water navigation and food preparation. It also involves enjoyment and leisure – “humour prevails at Project George,”³¹⁹ as well as caring for the community, such as by bringing firewood to Elders, sharing the food harvest with Elders and sharing skills and knowledge with others.³²⁰

Local police collaborate with Project George by referring youth to participate in the program. “The aim is to respond to ‘unlawful conduct’ with a culturally-based approach led by the community, given the community best knows its history, its people, its needs, and its well-being solutions.”³²¹

Project George has been successful in increasing youths' sense of belonging to the land and people, and having a purpose. It strengthens participants' pride, identity and sense of accomplishment in their work and capacity to help and to know their own people. It allows participants to work together “to pass on inherent rights and Cree knowledge. What is valued is not ‘perfection,’ but rather humility, connectivity, relationships, presence, and enjoyment.”³²² One participant said: “Learning through fun is how we hold things more to our heart.”³²³

317 Interview with Delano Mike, Band Councillor, Beardy's and Okemasis Cree Nation, Dr. Herman Michelle, Consultant, Angelique Clinton, Mental Health Therapist, and Lisa Antoine, Mental Health Coordinator (3 November 2022).

318 Janice Cindy Gaudet, “Project George: An Indigenous Land-Based Approach to Resilience for Youth,” *International Journal of Indigenous Health* (2021) Vol. 16, Issue 2 at 177, at 179.

319 Janice Cindy Gaudet, “Project George: An Indigenous Land-Based Approach to Resilience for Youth,” *International Journal of Indigenous Health* (2021) Vol. 16, Issue 2 at 177, at 180.

320 Janice Cindy Gaudet, “Project George: An Indigenous Land-Based Approach to Resilience for Youth,” *International Journal of Indigenous Health* (2021) Vol. 16, Issue 2 at 177, at 180.

321 Janice Cindy Gaudet, “Project George: An Indigenous Land-Based Approach to Resilience for Youth,” *International Journal of Indigenous Health* (2021) Vol. 16, Issue 2 at 177, at 180.

322 Janice Cindy Gaudet, “Project George: An Indigenous Land-Based Approach to Resilience for Youth,” *International Journal of Indigenous Health* (2021) Vol. 16, Issue 2 at 177, at 187.

323 Janice Cindy Gaudet, “Project George: An Indigenous Land-Based Approach to Resilience for Youth,” *International Journal of Indigenous Health* (2021) Vol. 16, Issue 2 at 177, at 187.

There is also an emphasis on empowering youth to participate in decision-making, and to feel free “to express themselves honestly without fear of reprisal.” Young people bond by visiting, sharing and being together.³²⁴

Ktunaxa Nation

The Ktunaxa Nation is working toward self-government with both the federal and provincial governments, on a nation-to-nation basis. Their work is focussing on outcomes through sustainable investment in prevention and wellness promotion, and on achieving self-government by incrementally assuming authority over service delivery.³²⁵

The Ktunaxa word for “justice” translates to “forgiveness/finished.” For Ktunaxa, “when an offense was committed, perpetrators went before the Council and Elders who would assign appropriate punishment. Once the punishment or restitution was satisfied, forgiveness was granted. Holding on to anger and resentment was not healthy for the individual, the wronged or the community.”³²⁶

Ktunaxa law is based on the relationships between people, the land, animals and resources. It keeps these relationships safe and promotes healing for the person who did harm, their families, communities and those affected by the harm, while addressing the underlying trauma.³²⁷

One of the long-term goals for Ktunaxa’s justice strategy is the creation of a healing lodge for people who are incarcerated.³²⁸ Another part of its action plan is to establish land-based justice camps for people at high risk of offending “that connects individuals to their cultural roots, beliefs and values while building self-esteem and individual responsibility.”³²⁹ The strategy would also assist people released from prison with housing, employment, education and cultural supports.³³⁰

In 2018, the Ktunaxa Nation Council applied for funding through Public Safety Canada for an Indigenous community corrections Initiative, to support its justice system in the Ktunaxa Traditional Territory that supports all Indigenous people in the East Kootenay Region.³³¹ It did not receive this funding. Its proposal included “research to identify the various traditional justice systems including kinship systems ... and to learn more about the traditional and historic ways of dealing with breaches of laws.”³³²

The 2018 proposed justice initiative would include pre-charge diversion and community reintegration options, with a goal of working with partners to establish an Indigenous Justice Council/Court, Healing Circles, Healing Plans, community safety plans, re-integration from incarceration plans, and a formalized Restorative Justice System.

324 Janice Cindy Gaudet, “Project George: An Indigenous Land-Based Approach to Resilience for Youth,” *International Journal of Indigenous Health* (2021) Vol. 16, Issue 2 at 177, at 188.

325 Interview with Racheal Nicholas, Clinical Advisor, Shannon Girling-Hebert, Administrator, Quality Assurance & Service Integration, Brody Pocha, Aboriginal Justice Worker, Melanie Gould, Regional Social Governance, Roberta Vansteinburg, Social Sector Business Manager, Ktunaxa Nation (25 May 2020).

326 Ktunaxa Nation, *Aboriginal Community-Based Justice Strategy – A Holistic Culturally Based Model* (January 2020).

327 Ktunaxa Nation, *Aboriginal Community-Based Justice Strategy – A Holistic Culturally Based Model* (January 2020).

328 Ktunaxa Nation, *Aboriginal Community-Based Justice Strategy – A Holistic Culturally Based Model* (January 2020).

329 Ktunaxa Nation, *Aboriginal Community-Based Justice Strategy – A Holistic Culturally Based Model* (January 2020).

330 Ktunaxa Nation, *Aboriginal Community-Based Justice Strategy – A Holistic Culturally Based Model* (January 2020).

331 Ktunaxa Nation Council, *Indigenous Community Corrections Initiative Proposal* (2018).

332 Ktunaxa Nation Council, *Indigenous Community Corrections Initiative Proposal* (2018).

Ktunaxa’s proposal states that it is “well positioned to facilitate diversion support to achieve healing and connection. This is a much more compassionate and trauma informed approach and likely more successful in creating lasting positive change for individuals” than “further traumatizing individuals through the mainstream justice.”

Ktunaxa’s proposed justice initiative notes that 40% of their citizens are affected in some way by Fetal Alcohol Spectrum Disorders, and other emotional and developmental challenges, and that these citizens need support with reintegration and to prevent recidivism.

In 2020, Ktunaxa Nation’s justice strategy reiterates the nation’s goal of self-government in justice through a system that is “immersed in culture and is relevant, adaptable and sensitive to complex mental health, substance use and developmental disabilities.”³³³

The 2020 justice strategy states that Ktunaxa is ready and positioned to provide its own holistic justice system, noting the ultimate cost-savings of providing wrap-around services needed to reduce or eliminate recidivism through wellness.³³⁴ Ktunaxa just needs Canada and British Columbia to step up and support their initiatives.

ALTERNATIVES TO INCARCERATION

Numerous studies indicate that Indigenous operated healing lodges are successful, despite their extreme under-funding.³³⁵ Additional Indigenous-operated healing lodges should also be supported, and CSC-operated healing lodges should be transferred to the partnering First Nations, as originally intended.

We recommend that Canada return to its original broad interpretation of s 81, and support a broad range of visions for alternatives to prison, based on Indigenous law. These alternatives should not be limited to healing lodges, but may include land-based initiatives such as the Heiltsuk Gvi-ilas isolation model, Project George and others described above. Canada should remove barriers to Indigenous people accessing alternatives to prison based on CSC’s security classification.

CSC operated healing lodges – Kwikwèwelhp, a case study

People we spoke with who have been to CSC-operated healing lodges report feeling more comfortable in the environment than in mainstream prisons, and having greater contact with Elders and access to ceremonies.

333 Ktunaxa Nation, *Aboriginal Community-Based Justice Strategy – A Holistic Culturally Based Model* (January 2020).

334 Ktunaxa Nation, *Aboriginal Community-Based Justice Strategy – A Holistic Culturally Based Model* (January 2020).

335 Correctional Service Canada, *Impacts of Indigenous Healing Lodges for Men, R-437_M, 2022* (2022). Online: https://www.csc-scc.gc.ca/research/005008-r437_M-en.shtml; Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022); Correctional Service Canada, *Impacts of Indigenous Healing Lodges for Women, R-437_W, 2022* (2022). Online: https://www.csc-scc.gc.ca/research/005008-r437_W-en.shtml; Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes*, (Correctional Service Canada, 2022); Correctional Service Canada, *Comparison of CSC-operated and Section 81 Healing Lodges, R-437_C, 2022* (2022). Online: https://www.csc-scc.gc.ca/research/005008-r437_C-en.shtml; Laura Hanby, Thana Ridha, Rebecca Sullivan & Shanna Farrell MacDonald, *Indigenous Healing Lodges: Impacts on Offender Reintegration and Community Outcomes* (Correctional Service Canada, 2022).

However, there are still concerns about non-Indigenous correctional officers and parole officers working in CSC-run healing lodges, which operate under the more punitive mindset of CSC.

Kwìkwèxwelhp provides a good example of the great impact a healing lodge can have for the people who live there when it receives reasonable funding levels. It is also a good example of the importance of transferring CSC-operated healing lodges to the authority of First Nations through s 81, with funding levels that would allow for substantive equality. As further discussed below, the original intention was for Kwìkwèxwelhp to become an independent s 81 healing lodge, but CSC has not agreed to provide sufficient funds to do so.

In 1998, CSC approached the Chehalis Indian band (now Sts'ailes) to propose a partnership with Elbow Lake Institution to provide a new focus on incorporating the community in providing healing services for Indigenous people in prison. The Chief and Council engaged in research and community consultations. Over 80% of the Chehalis people surveyed were in favour of redeveloping Elbow Lake in partnership with CSC, with an understanding that it would become a s 81 facility.³³⁶

Chehalis created a s 81 proposal to transfer Elbow Lake to their authority, however, CSC decided the proposal did not meet the requirements of a s 81 agreement. "After the initial disappointment of the refused proposal, it was determined that the best option for Chehalis and CSC would be an inclusive partnership."³³⁷

In 2001, the Chehalis and CSC signed a Memorandum of Understanding for the partnership, which included a commitment to transform Elbow Lake Institution into an Aboriginal Healing Village.³³⁸ The Chehalis built a beautiful longhouse, and Elbow Lake received its traditional name back – Kwìkwèxwelhp, meaning "a place where we gather medicine."³³⁹

In 2005, the people who lived at Kwìkwèxwelhp helped Chehalis members to clear a trail around the reserve where there are many ancient Sts'ailes village sites that included long houses, burial mounds and pit houses from thousands of years ago. People who live at Kwìkwèxwelhp can participate in cultural teachings, such as storytelling, cedar bark weaving, drum making and giving firewood to the Elders. There is also a successful work release program.³⁴⁰

The cultural protocols for Kwìkwèxwelhp are Coast Salish, and the ceremonies and teachings are Sts'ailes, however Indigenous people from any nation are welcome there.³⁴¹

The work done by members of the Sts'ailes First Nation at Kwìkwèxwelhp has made a significant impact on the lives of people who live there. People who have lived at Kwìkwèxwelhp are more likely to receive day parole and have substantially lower recidivism rates than people released from other minimum-security institutions.³⁴² The Sts'ailes people are more accepting of the people who live at Kwìkwèxwelhp than they were when it was newly established.³⁴³

336 Brandi Stobbart, *Kwìkwèxwelhp and Sts'ailes: A Historical Journey in Healing Aboriginal Offenders* (2013) at 6.

337 Brandi Stobbart, *Kwìkwèxwelhp and Sts'ailes: A Historical Journey in Healing Aboriginal Offenders* (2013) at 8.

338 Brandi Stobbart, *Kwìkwèxwelhp and Sts'ailes: A Historical Journey in Healing Aboriginal Offenders* (2013) at 8.

339 Brandi Stobbart, *Kwìkwèxwelhp and Sts'ailes: A Historical Journey in Healing Aboriginal Offenders* (2013) at 9-10.

340 Brandi Stobbart, *Kwìkwèxwelhp and Sts'ailes: A Historical Journey in Healing Aboriginal Offenders* (2013) at 11-12.

341 Interview with Boyd Peters, Director of Xwiléxmet, Sts'ailes Rights and Title Department (20 September 2022).

342 Brandi Stobbart, *Kwìkwèxwelhp and Sts'ailes: A Historical Journey in Healing Aboriginal Offenders* (2013) at 12-13.

343 Brandi Stobbart, *Kwìkwèxwelhp and Sts'ailes: A Historical Journey in Healing Aboriginal Offenders* (2013) at 13.

Reports we have received from clients at Kwikwèxwelhp are that they feel heard, staff are willing to help them move forward, and there are ceremonies and Elders to talk with. People describe the environment as being positive.

Boyd Peters, a founder of Kwikwèxwelhp and a member of its governing body, Sts'ailes councillor, and the Director of Xwiléxmet, Sts'ailes' Rights and Title Department, told us of the importance of the Elder teachings given to the people who live at Kwikwèxwelhp, and how "the land and teachings can transform the way the guys behave."³⁴⁴ He said:

Some of the teachings of our Indigenous laws are based on petroglyphs. They all have a meaning. Our people thousands of years ago had a high level of connection to the land – how to treat the land, the ones that fly, the ones in the rivers and oceans, the plant people. You have to respect that and have to respect our people. You would have the guys on the land learning these laws. We don't want to be in an environment where there is conflict, or anything that disrupts our traditional laws.

There are many, many ancient village sites in our traditional territory. We have the guys come down and clear off the ancient village sites to learn how we lived, how our villages were constructed. Some of them are 3,000 years old. The guys are clearing out pit houses – subterranean dwelling houses, places where our ancestors are buried. When they hear the stories of our ancestors they say "I feel so good about doing this kind of work. I want to learn more about how we take care of our ancient village sites."

That is how we would want to operate a land-based program. Learn about the medicines of the land, how to use the plants to make medicine, how we used to survive with ancient tools, how we fished, how we made use of berries, how we protect ourselves from the elements. Elder teachings would also be a part of it.³⁴⁵

Boyd Peters told us about a man who came to Kwikwèxwelhp who had been in segregation for years. He came to have a look at the healing village and to speak with the Elders. Boyd Peters said:

Because of his segregation, he had high anxiety. He was afraid of being around people. When he got up to the village, he wouldn't even step out of the vehicle, he was so scared. He went home, but the Elders worked with him more, and it gave him the courage to come again, and actually look at the facility. He was admitted, and he thrived after that. He worked with the Elders and went through the ceremonies. He is so talented. He became relieved of all the things that tortured him. He finally turned the corner of recognizing how the land is healing. Once he accepted that, he became a totally different person.³⁴⁶

The 2001 co-management agreement for Kwikwèxwelhp between CSC and the Sts'ailes First Nation included a plan to transfer its operation to the Sts'ailes First Nation under s. 81. This transfer has not happened to date, in large part due to a lack of adequate financial support by CSC.³⁴⁷

344 Interview with Boyd Peters, Director of Xwiléxmet, Sts'ailes Rights and Title Department (20 September 2022).

345 Interview with Boyd Peters, Director of Xwiléxmet, Sts'ailes Rights and Title Department (20 September 2022).

346 Interview with Boyd Peters, Director of Xwiléxmet, Sts'ailes Rights and Title Department (20 September 2022).

347 Interview with Boyd Peters, Director of Xwiléxmet, Sts'ailes Rights and Title Department (20 September 2022).

Kwìkwèxwelhp is very successful in providing healing services to Indigenous people who live there, due to the work of members of the Sts’ailes First Nation. However, we have also received reports that some non-Indigenous white staff who work at Kwìkwèxwelhp are not respectful of Sts’ailes traditional restorative justice approaches.

Darla Rasmussen, Justice Coordinator for the Sts’ailes First Nation, told us about a man who went to Kwìkwèxwelhp who was falling behind on his journaling, which was required by CSC. This man had Fetal Alcohol Spectrum Disorder, and he was transferred back to medium security because of a lack of understanding. “What makes Indigenous approaches different, they don’t look at compliance, black and white on paper. They look at the person. They look at forgiving themselves and others. They look at where the action was rooted, and how to change it.”³⁴⁸

We have heard other examples of people involuntarily transferred from Kwìkwèxwelhp back to medium security prisons in circumstances that could have been resolved using a traditional approach. Darla Rasmussen told us there are no Indigenous parole officers at Kwìkwèxwelhp that she is aware of, and this has been a long-standing problem because parole officers have the authority to recommend involuntary transfer out of the healing lodge. She said the Indigenous staff at Kwìkwèxwelhp do not have the same authority as a parole officer or a guard.³⁴⁹

Darla Rasmussen told us that Sts’ailes would like to have authority over Kwìkwèxwelhp staffing, policies and procedures including control over involuntary transfers out of Kwìkwèxwelhp. They would also like to work on a healing lodge designated for women.³⁵⁰

Indigenous-run healing lodges

As discussed above, CSC has made it very challenging for Indigenous governments and organizations to breathe life into to s 81 of the *Corrections and Conditional Release Act*, to provide alternatives to incarceration, including healing lodges. CSC controls the process for approving s 81 healing lodges, and funding for s 81 healing lodges is a fraction of that spent incarcerating Indigenous people in prisons or in CSC-operated healing lodges.

In this section we give examples of groups that have attempted to establish, or have established healing lodges, despite the barriers that exist. They serve as inspiration for eliminating the barriers and examples of the kinds of opportunities for Indigenous-run healing lodges that could flourish if given the chance.

Stan Daniels Healing Centre

Stan Daniels Healing Centre is a s 81 healing lodge in Edmonton. It accepts people who are serving custodial sentences as well as people on community supervision.

We interviewed a staff member of Stan Daniels Healing Centre who wished to remain anonymous. He told us about the many benefits of providing a s 81 alternative to prison for Indigenous people who are sentenced to custody. He said the people who live there tell him: “This is such a great place – it doesn’t feel like we’re

348 Interview with Darla Rasmussen, Justice Coordinator for Sts:ailes Nation (3 October 2022).

349 Interview with Darla Rasmussen, Justice Coordinator for Sts:ailes Nation (3 October 2022).

350 Interview with Darla Rasmussen, Justice Coordinator for Sts:ailes Nation (3 October 2022).

in jail at all!” He said that, in the 40 years Stan Daniels has been in existence, there has never been an assault on staff, despite having people live there who are doing time for murder or other violent offences.

He gave an example of someone at Stan Daniels who was a lifer, and who had been in residential school:

He said, “it is so different when you’re in a place like this. You get to feel, you get to have emotions, and you don’t get in trouble when you’re mad. And if you’re upset, you don’t get written up.” He is in a program which is bringing up a lot of past traumas. He had a bad reaction the other day. He was really upset. He kind of raised his voice, and I said, “I got you bro, you’re allowed to feel.”

I think that if you really want to solve it, you need to build up s 81 and s 84 facilities, build them up alongside right now. And then eventually topple over the system as it is right now.

When we put them in places like the max for 10 years, what are our expectations for when they come out of max after 10 years? It goes back to – could we do this for everybody? And every security classification? Absolutely. Because when you’re in here, you don’t feel like you need to be violent. People have said, “I’ve been here for four days, and I feel like I’m with a family.” That’s the point of it all. It’s about getting back to your community.

The staff member we spoke with also told us about the severe underfunding of Stan Daniels. “The majority of staff at Stan Daniels are Indigenous, and all of our program staff are Indigenous. Our underfunding is keeping Indigenous people in lower paying jobs.” He said:

We are underfunded, even for things like toothpaste, toothbrushes, shampoo and soap. I’ve gone around to everyone I know asking if they have hotel soap, shampoo and body lotion, so at least I can give the guys something. We are so underfunded. If you came here for a tour, you’d think: “People want to live there?” We have five guys in a room with some plywood between them and some curtains. It’s not the greatest living conditions here. That being said, the guys want to be here.

Every healing lodge should be independent and Indigenous-led, and funded equally.

The person we spoke with from Stan Daniels said that he thinks Indigenous-operated healing lodges should have the authority to take people from any security classification level. He said they take people who are coming out of prison on statutory release from maximum security.

He gave an example of someone who had been incarcerated in maximum security since the age of 16 who is now 29, who said: “It took me a couple of days here, but it is an amazing place. I feel like you guys actually care about us.” The person we interviewed said: “You take these folks and give them opportunities like this, and you’re going to see way better successes when they leave here. And they cannot be run by corrections. They have to be run by the community.” He would like to see policy that allows Indigenous-run healing lodges to accept people directly from pen placement to avoid Indigenous people having to go to prison from the outset.

He gave another example of someone who was openly gay, was incarcerated, and was sexually assaulted. He told the guards, who said: “Too bad.” The staff member we interviewed at Stan Daniels said: “If he had been pen placed to Stan Daniels, he never would have had to experience that trauma. When we put people

in those places, we actually are more likely to make them come out worse than if we placed them in a place like this.”

Thunder Woman Healing Lodge

After years of work, the Thunder Woman Healing Lodge is close to opening its doors in the Toronto area, to provide 12 beds for Indigenous women leaving federal and provincial prisons or on bail. The building will also provide 12 affordable transitional housing units and wrap-around support for women who have completed the healing lodge program while they transition in the community.³⁵¹

The Thunder Woman Healing Lodge Society was established to make the healing lodge a reality. In 2019, the society acquired property in Scarborough to build the healing lodge, after completing extensive community consultations and receiving zoning approval.³⁵²

The development of the lodge was originally conceived as a s 81 healing lodge. In 2016, a working group produced a report as part of a project funded by Public Safety Canada called *S.81 Thunder Woman Healing Lodge Research Project Interim Report/Outline*.³⁵³ The report is a feasibility study on developing a s 81 healing lodge for Indigenous women and gender diverse people in the Toronto area.

The study describes the vision of a healing lodge as “a place to break the cycle and heal from colonial trauma, reclaim positive cultural identity and achieve rehabilitation, wellness, and reintegration into the community through a strong web of culture-based supports.”³⁵⁴

Consultations conducted for the study identified “culture-based egalitarian methods of governance and inmate focussed decisions concerning everything from the governance to programs and service delivery” as core needs of Indigenous women in transitioning back to the community.³⁵⁵

The study identified the approaches and services that should be available at the healing lodge which would be provided through Indigenous governance directed by cultural approaches. It emphasized personal autonomy as a part of healing, and the inclusion of Two-Spirit and trans people, and sex-trade worker perspectives. The vision included innovative therapies such as work with animals, an emphasis on Indigenous spirituality, connection with families and wellness. The study also emphasized the importance of a safe healing place and ongoing support that would not be withdrawn because someone has a setback.³⁵⁶

The Research Project cites interviews with Indigenous women who had been to a healing lodge who noted that their awareness of Indigenous culture increased while at the healing lodge.³⁵⁷ The study notes:

351 Thunder Woman Healing Lodge Society, *The Lodge Project* (Accessed 8 February 2023). Online: <https://www.twhls.ca/projects-2/the-lodge-project/>.

352 Thunder Woman Healing Lodge Society, *The Lodge Project* (Accessed 8 February 2023). Online: <https://www.twhls.ca/projects-2/the-lodge-project/>.

353 Rebeka Tabobondung, et al., *S. 81 Thunder Woman Healing Lodge Research Project Interim Report/Outline* (December 2016). Online: <https://test.twhls.ca/wp2/wp-content/uploads/2020/07/01-TWHL-RESEARCH-PROJECT-INTERIM-REPORT.pdf>.

354 Rebeka Tabobondung, et al., *S. 81 Thunder Woman Healing Lodge Research Project Interim Report/Outline* (December 2016) at 8. Online: <https://test.twhls.ca/wp2/wp-content/uploads/2020/07/01-TWHL-RESEARCH-PROJECT-INTERIM-REPORT.pdf>.

355 Rebeka Tabobondung, et al., *S. 81 Thunder Woman Healing Lodge Research Project Interim Report/Outline* (December 2016) at 11. Online: <https://test.twhls.ca/wp2/wp-content/uploads/2020/07/01-TWHL-RESEARCH-PROJECT-INTERIM-REPORT.pdf>.

356 Rebeka Tabobondung, et al., *S. 81 Thunder Woman Healing Lodge Research Project Interim Report/Outline* (December 2016) at 13-18. Online: <https://test.twhls.ca/wp2/wp-content/uploads/2020/07/01-TWHL-RESEARCH-PROJECT-INTERIM-REPORT.pdf>.

357 Rebeka Tabobondung, et al., *S. 81 Thunder Woman Healing Lodge Research Project Interim Report/Outline* (December 2016) at 46. Online: <https://test.twhls.ca/wp2/wp-content/uploads/2020/07/01-TWHL-RESEARCH-PROJECT-INTERIM-REPORT.pdf>.

Perhaps one of the more important impacts may be from offenders who felt fairly ambivalent about their culture or traditions prior to coming to the Healing Lodge. A number of them reported that they had little or no cultural exposure prior to coming to the lodge. However, once they had the opportunity to learn about their culture, it greatly enhanced how they viewed themselves and others, as well as their behaviour. Many experienced an increase in pride regarding who they are, and where they come from...This is important to keep in mind when determining which offenders may succeed at Healing Lodges.³⁵⁸

The Thunder Woman Healing Lodge Society did not become a s 81 facility. Patti Pettigrew, Executive Director of the Thunder Woman Healing Lodge Society, told us that they “could not get two cents from Public Safety to help build the healing lodge.”³⁵⁹

Patti Pettigrew explained the challenges the Thunder Woman Healing Lodge was having securing funding from the Canadian Mortgage and Housing Corporation (CMHC), in a recent CBC interview.³⁶⁰ She expressed worry that, despite all of the progress made in working toward the healing lodge, it might not be able to open due to a \$2 million shortfall in funding.

When asked “what would be the impact of the project not going ahead?” Patti Pettigrew said:

There are a number of impacts. I mean, let’s just take the impact on the Canadian taxpayer first. At a minimum it costs the Canadian taxpayers \$3 million a year to keep 24 Indigenous women in prison. If they sent those same 24 women to us it would cost half of that....

But the human impact is what I really focus on. And that means they are continuing to keep Indigenous women in prison... We have had the residential schools, we’ve had the 60s scoop, and now we have Canada’s prison system. We are overrepresented in that system, and the impact is – I don’t know that I can go into how serious it is. I mean by sending these women to a healing lodge, they are going to reduce recidivism. I don’t know what they are afraid of. Sending Indigenous women to a healing lodge is a no-brainer.

As Indigenous people, we know how to work with our own people. But they refuse to see us as equals at the table. You know, we are still living under the *Indian Act*. And it’s very clear when I have to deal with government agencies, particularly the federal government, that they still consider them as having power over us and we have to beg for every dollar.

I am an Indigenous woman. I am from Pikwàkanagàn First Nation, and quite frankly, the seat of the Canadian government is sitting on our land, and they have never given us any rent. ...

I think it’s very clear what’s going on. There is systemic racism. Indigenous women are treated differently.

... I want people to know that these women are victims also. A lot of the women I work with are victims of abuse, victims of trafficking. They carry the intergenerational trauma of the

358 Rebeka Tabobondung, et al., *S. 81 Thunder Woman Healing Lodge Research Project Interim Report/Outline* (December 2016) at 46. Online: <https://test.twhls.ca/wp2/wp-content/uploads/2020/07/01-TWHL-RESEARCH-PROJECT-INTERIM-REPORT.pdf>.

359 Interview with Patti Pettigrew (9 October 2020).

360 Patti Pettigrew, “Ontario Healing Lodge” interview with Nil Köksal and Chris Howden, *As It Happens*, CBC Radio (24 October 2022). Online: <https://www.cbc.ca/listen/live-radio/1-2-as-it-happens/clip/15944354-follow-latest-leader>.

residential schools and the 60s scoop within them. Throughout all of that, they are amazing survivors. They are artists, they are mothers, they are aunties, they are grandmothers, they are daughters. They have families who love them, and they don't deserve to be in Canada's correctional institutions, when they can be in a healing lodge addressing the issues that brought them before the court. ...

You know, I think I have exhausted every resource. When I tell you we have value engineered and cut things out at the expense of programming, I just can't tell you how serious this is. I don't know where to go from here. We have had wonderful partners as far as the city of Toronto, Aboriginal Labour Force and Development, everybody has doubled up on their funding, with the exception of CMHC – they are the only ones who have not given us extra funding. That's the feds, right?

Patty Pettigrew told us that CMHC did not come through with the funding they needed, but they “are not giving up.” They have changed the design of the building at a lower cost, and will be breaking ground by spring 2023. They have a house they are using now that accepts people on probation and bail. They are in the process of contracting with CSC to have two beds for federally sentenced women. When the new facility is built, they will be able to house six to nine federally sentenced women.

Cape Breton Healing Lodge

In 2018, the Mi'kmaw Legal Support Network, Native Council of Nova Scotia and Elizabeth Fry Society of Cape Breton submitted a proposal to open a s 81 healing lodge for Indigenous women in Nova Scotia. The model was approved by the six Indigenous Chiefs of Cape Breton. The proposal included extensive programs and services by numerous Indigenous organizations in Nova Scotia. The healing lodge would be developed by a committee that included the Mik'maw Legal Support Network, the Native Council of Nova Scotia and the Elizabeth Fry Society of Cape Breton.³⁶¹

The proposal included that each person at the healing lodge would have an Elder as part of their case management team.³⁶² Women in the healing lodge would have access to drug and alcohol counselling, mental health services, employment counselling and family healing programs. The proposal included a budget for several Elders to work with the women living at the healing lodge. Any issues that might come up in the healing lodge would be resolved with an Elder's help. The budget proposal was for approximately \$100,000 per resident, which is significantly less than the average cost of incarcerating women in prison.³⁶³

The Chiefs of the Union of Nova Scotia Indians wrote a letter of support for the project. Paula Marshall, Executive Director of the Mi'kmaw Legal Support Network, said in an interview that the Chiefs were in support of the proposal because they felt it should not be in one specific community. They wanted the initiative to be a shared responsibility of all Indigenous communities in Nova Scotia.

When the applicants met with CSC, they were told that Elizabeth Fry Society is not an Indigenous organization, and therefore, the proposal would not be approved.

Paula Marshall said in an interview that the Mi'kmaw Legal Support Network wished to partner with the Elizabeth Fry Society because of the organization's expertise in the field, having operated a halfway house.

361 Mi'kmaw Legal Services Network, et al. *Cape Breton Section 81 Proposal* (October 2018).

362 Mi'kmaw Legal Services Network, et al. *Cape Breton Section 81 Proposal* (October 2018).

363 Interview with Darlene MacEachern, Executive Director, Cape Breton Elizabeth Fry Society (25 August 2022).

The Elizabeth Fry Society said it would have been happy to withdraw its involvement once the healing lodge was up and running.

The three organizations were extremely disappointed that their proposal was rejected. Surely, part of self-determination must include the right to choose to partner with allies.

INCREASED AUTONOMY WITHIN THE SYSTEM

Recognizing that self-determination in alternatives to prison will not happen overnight, there is a need to also reform the colonial system to provide more autonomy and independence for Indigenous people working within the system, while Indigenous alternatives are built up to replace the colonial system.³⁶⁴

As discussed in the testimonials of people in prison, access to Elders, ceremonies and culturally appropriate programs are essential to many Indigenous people's survival and ability to cope with the prison environment. However, these services are under-resourced and disrespected by prison authorities and staff. Indigenous people working in prisons have little authority or autonomy.

Sam Ens asked, "How do you take two things that are opposing beliefs, thoughts and ways of being, and try to combine them? Because that's the inherent issue. How do you run a sweat lodge within a maximum-security federal institution? How do you engage with others in a meaningful way behind a barbed wire fence with people that are armed? How do we wrap our arms around the people that are the most vulnerable? Because they are often the ones that are acting out in the most extreme ways."³⁶⁵

These are difficult questions to answer. Many of the people we interviewed felt that Indigenous people needed to have decision-making authority that would allow Indigenous people to access healing lodges, get to lower levels of security and get to the community so they would stop being warehoused in prison. But the question of how that decision-making authority interacts with the colonial model without merely Indigenousizing it, and legitimizing it, is challenging.

We recommend that Canada fund Indigenous governments and organizations to administer independent Indigenous services for people in CSC custody, not under the authority of CSC. We recommend that Canada negotiate the structure of independent in-reach services with Indigenous governments and organizations based on the principle of self-determination, with a goal of decarceration.

Some of the people we spoke with said that there is a lack of funding and infrastructure that allows Indigenous people who work in prisons to communicate and network with each other. Independent Indigenous in-reach could be organized to allow providers to learn about what others are doing in different regions, and to identify best practices.

³⁶⁴ For example, First Nations Justice Council, *BC First Nations Justice Strategy* (February 2020) Foundation 2 states "A Strategy must pursue two tracks of change at once: (1) reform of the existing justice system; (2) Transformation through the rebuilding of Indigenous justice systems."

³⁶⁵ Interview with Sam Ens, Provincial Manager, Diversion and Early Intervention, First Nations Justice Council (27 June 2022).

Divert Indigenous people to healing lodges at intake

Independent Indigenous in-reach services could have a role in initial security classification and placement decisions for Indigenous people at intake, and when appropriate could divert many people from entering the colonial prison system at the beginning of their sentences, in coordination with healing lodge providers.

Boyd Peters, Director of the BC First Nations Justice Council, Councillor of Sts'ailes First Nation and a founder of Kwikwèxwelhp Healing Village, said in an interview that if Indigenous governments were able to manage the sentences of Indigenous people, they could avoid becoming institutionalized in higher levels of security. "It would be better if they could go directly to Kwikwèxwelhp. That way they wouldn't have to be subjected to the treatment at higher levels of security. They wouldn't have to be part of the con code and do certain acts to survive."³⁶⁶

Sam Ens emphasized how important it is for people to access help immediately when they have an impetus for change. "If people would like to go to a healing lodge at the beginning of their sentence, they should have that opportunity. If they have to rot in jail or prison waiting for services, they can lose their motivation. If we can do that, and build a sense of community and wraparound services around people, that's when we're going to see change."

Indigenous involvement in case management

Sam Ens told us he was speaking with an Elder who worked in a federal penitentiary who said:

Where are the people doing case management? I am sitting in a sweat lodge with someone, getting to know him. They've never met their case management team. They are churning out reports on them, but they haven't met them, and they haven't met me. I am building a relationship with the people inside and none of the case management people are reaching out to me. The guards are in the control rooms, the Emergency Response Team is around, but the people managing the caseloads who can lower the person's security level, they're gone.

Bert Azak, from the Nisga'a Nation, is now the Justice Coordinator with Native Education College. He worked for CSC in various roles from 2000 to 2020, including at Kent Institution as a uniformed officer and then as a Social Programs Officer, before working at Kent Institution's Pre-Pathways unit (a unit at some maximum-security prisons intended to prepare people to cascade to a Pathways unit at medium security). Bert Azak then transferred to Mission Medium Institution as an Aboriginal Liaison Officer in the Pathways unit, which would have held between 20 and 30 people at a time.

He said that although the purpose of Pathways was to help Indigenous people cascade to lower security, most people did not have the support of their parole officers and case management team to move to minimum security, even though people were supported by the Elder and showed they were low risk and were capable of being managed at a lower level of security. He said there were many people who "became dormant sitting in Pathways, even though they practiced their culture, there just wasn't support. So, the people waiting to get into Pathways were slowed in their progress too."

366 Interview with Boyd Peters, Director of Xwiléxmet, Sts'ailes Rights and Title Department (20 September 2022).

Bert Azak raised the concern that it is common for people to have institutional parole officers come and go, working with them for only a few months each. Each new parole officer must review the person's file and get to know them before they are willing to support them for lower security or community release.

"From an Elder's perspective and the liaison's perspective, and seeing their growth, they were more than capable of going right from medium to community, without having to go into minimum security and proving themselves there," Bert Azak said.

Bert Azak also noted that Elders would work with people on a daily basis, whereas people would see their parole officers perhaps once or twice each month.

Although Bert Azak had the same training as a parole officer, and regularly carried out the duties of a parole officer, he did not have the same level of authority to help people get to lower security. His recommendations and the recommendations of the Elders would go unheard. He also felt that although Elders worked closely with people and were part of the case management team, they "had no authority whatsoever" and "were not recognized for contributing to that Correctional Plan."

Indigenous involvement to avoid involuntary transfer to higher security

Boyd Peters spoke of the desire of the Sts:ailes people who work at Kwikwèxwelhp to create a safe space for people who have been involved in minor infractions, so that they can be accountable and be given an opportunity to make amends through a restorative circle, rather than by being involuntarily transferred to a medium security penitentiary.

Because Kwikwèxwelhp is a CSC-operated healing lodge, Sts:ailes does not have authority over hiring the warden, parole officers and correctional officers, or decisions to involuntarily transfer people out of Kwikwèxwelhp to another prison. "This [a restorative circle] could allow them to determine what caused him to do the things that brought him to the involuntary transfer recommendation, and how things can be improved. We don't disown them or give up on them. We want to help them to become balanced again, to repair harms that were done. But we don't have any say in that right now."

More autonomy over services and spaces

Lisa Antoine, Mental Health Coordinator for Beardy's and Okemasis Cree Nation Willow Cree Mental Health Services, talked about the prison environment making healing there a challenge. "How controlled they are – it's such a controlled environment. How do they expect success there? Tobacco is banned there, but it is part of our medicine." Lisa Antoine also expressed concern that CSC programs are not looking at the core issues rooted in intergenerational trauma.³⁶⁷

Elder Wanda Whitebird had been going into prisons to work with Indigenous people since 1978, until CSC took away her security clearance. She felt it was a better model when Elders were independent from CSC.³⁶⁸ The first time an Elder entered a federal prison to conduct a ceremony was in 1972. In 1987 Elder services

367 Interview with Delano Mike, Band Councillor, Beardy's and Okemasis Cree Nation, Dr. Herman Michelle, Consultant, Angeliqne Clinton, Mental Health Therapist, and Lisa Antoine, Mental Health Coordinator (3 November 2022).

368 Interview with Elder Wanda Whitebird (20 October 2020).

became part of CSC policy.³⁶⁹ Elder Wanda Whitebird said that the security of prisons is an impediment to Elders working with people. “Security rules,” she said. “It’s up to them if you can come in. It’s not right.”³⁷⁰

Bert Azak stressed the importance of Indigenous people having exposure to their culture in a maximum security prison, which would “lessen the impact of their responses to security.” He said that, in maximum security, there are officers who are laid back, those who are complicit in abuses, and those who “are just outright wanting to push buttons,” and said it was a challenge for people in prison to deal with those different personalities. “You can see how that could create a stress level that fluctuates and eventually snaps a person,” he said.

So being able to meet with an Elder on a regular basis would be a calming sensation for an individual. And it’s something that Elders always encouraged. ‘Let’s go over and see him, even if he’s in segregation,’ so we went to go see the individual, because they see familiar faces that listen, so they want to talk. And we weren’t in uniform. So that also made a big difference.

Bert Azak felt that Elders needed better employment security, and should not be contract employees, which can result in them being uprooted from one institution to another against their wishes.

Bert Azak said:

Some of the Elders were reluctant to introduce their own cultures, because there was a specific culture practiced in the institution. There was the sweat lodge, the seven sacred teachings, the four directions medicine wheel. Those were the guiding principles within the institution. And then the Elders left the institution, and a whole different culture was practiced from their nation. So they had to balance the two. Elders ensured that persons were practicing the culture and learning of their history.

One of my supervisors told me, when I started working as a liaison officer, she said, “you’ll see these guys [Indigenous people in custody], their attitude when they come here is totally calm. But when they’re out there, they see the officers, some of them are pushing their buttons. It’s totally uncalled for. They are here. They are serving their time. This is their punishment. Why make it worse?” That was her advice to me.

A lot of the times it’s just ignorance. When you consider all of the opportunities to learn and to participate. None ever took that opportunity. Even on Indigenous Peoples Day, when the doors were open. Staff could come and experience, listen and come participate. We’d get about four or five out of the three or four hundred staff members in the institution. But the Elders were willing to share with those who came to see what we actually did.

Bert Azak also spoke of the way that correctional officers were disrespectful of the CSC Indigenous staff working at Huli Tun, the healing centre at Pacific Institution. He explained that Indigenous staff used to be able to open the gate to let people leave when movement was opened (the time in the routine when people in custody could move between areas of the prison). At one point, Pacific Institution took away the ability of

369 Correctional Service Canada, *Aboriginal Elders in Federal Penitentiaries 1972* (2015). Online: <https://www.csc-scc.gc.ca/text/pblct/rht-drt/04-eng.shtml>.

370 Interview with Elder Wanda Whitebird, (20 October 2020).

Indigenous staff to open the gate, requiring correctional officers to open the gate and search people before leaving Huli Tun. People would have to wait until after regular movement.

Bert Azak said that officers would see people waiting at the gate to leave, and then would intentionally walk away and not let them out. The Indigenous staff of Huli Tun would then have to call the officer and say: “You forgot our guys.” He said the officers would then “come walking down all grumbly.”

When Bert Azak decided to open the gate himself and let people leave the area, a correctional manager came “screaming all around the Huli Tun. ‘What’s going on here? There was no movement! I’m going to shut this place down!’” Bert Azak felt that there was a double standard, as other people in custody were able to walk through the Huli Tun area, escorted by non-correctional staff.

Bert Azak left Pacific Institution to work at CSC Pacific Regional Headquarters shortly after this incident. “Looking back, I think they were trying to get rid of me at Pacific Institution. It’s a common practice, I’ve seen it happen. If you ruffle feathers, they don’t want you at the institution,” he said. He left CSC in 2020.

“Prisons have come into place and replaced the residential schools. It’s as simple as that. It’s all about control. In a way, I felt like I was in a residential school, even as an employee,” said Bert Azak.

An Elder who worked for many years in a maximum-security federal prison until relatively recently, and wishes to remain anonymous, told us about her experiences. The Elder said there were no uniformed officers present in the Pre-Pathways area where she worked. She had one officer in plain clothes whose main role was to assist the Elder as a helper. This officer would be the person to intervene in the event of an emergency but, those occurrences were very rare. The Elder told us that, despite the maximum-security classification of the people she worked with, they had only one fight in the pre-Pathways area in the many years she worked there. There would be 36 people involved in the program with 12 in the program area at a time. The participants would have access to things like scissors and pizza cutters, yet no one was ever stabbed. “That’s significant,” The Elder said, because it showed the level of respect they had for the program.

The Elder helped the men there give back to the community by donating art, drums and blankets. An example given was that the men had made toys and blankets for a community devastated by fire. Another example was that the men donated 185 separate items to a community so they could fund-raise to open a safe park space for children. “They became human and believed in themselves again. They had hope and made contributions. We would do circles, pipe ceremonies, cook together – we were like a family. They would prepare to go back to their community with a good mind and heart. All of these brothers are coming back to the community one day.”

“You can’t just lock people up and throw away the keys,” the Elder said, as she told us about going to visit people in segregation, bringing them traditional food and treats, and how important that was to keep them feeling connected to the cultural teachings they were learning to rely on. “For the guys, it’s very hard. If you think of the family process, for the men especially – they miss their mothers, aunties, grandmas, sisters. I fill that gap for them,” she said.

She noted that CSC staff would tell pre-Pathways participants that they were not permitted to attend the program some days based on their behaviour. “Do you have to be a good boy or girl to go to church?” she asked. She felt it was wrong that CSC controlled access to Indigenous healing services, and felt that Indigenous services in prisons should be independent. Also, it was important to remember different people would connect better with different Elders based on both personality and their particular Indigenous background. “There’s more than one type of Indigenous spirituality! A person from Alberta needs Tipi

teaching. Another from BC may need an Elder who does Long House ceremonies. Ask the Elders what the people need! We know that Plains and Coastal are different!”

“It shouldn’t be dictated by CSC how and when we do ceremonies,” she said. “You can fight the war or the battle. If I made a stink about anything too much, the men would lose out.” She said that it was a struggle to keep the pre-Pathways program operating, and how important it was for the people in the prison. She gave an example of someone who had been in maximum security for 27 years, who she worked with, who managed to cascade to medium security, and is now at a healing lodge.

Elders and other Indigenous staff should have the authority over who is permitted to participate in ceremonies and culturally appropriate programs. Indigenous Peoples should have authority over what traditions are practiced in prisons. Indigenous cultural services should be provided independently of CSC, through independent in-reach, with the funding, authority and autonomy to provide services as Elders and other Indigenous staff feel is appropriate. CSC should not be permitted to interfere with independent Indigenous in-reach services.

An excellent example of independent Indigenous in-reach is the Prince George Urban Aboriginal Justice Centre, which provides independent services in BC Corrections’ Prince George Regional Correctional Centre (PGRCC). Their program could serve as a model for expansion of independent Indigenous in-reach services elsewhere.

Chris Dalziel, Justice Coordinator for the Prince George Urban Aboriginal Justice Centre, told us about their program at PGRCC. She said that their cultural liaison and two staff Elders go into PGRCC four days per week, and three additional staff go in to provide additional services regularly.³⁷¹

Chris Dalziel said that staff at PGRCC want to work with them and to understand the population.

She provides presentations to staff at the jail about the impacts of colonialism on Indigenous people in prisons. She also gives presentations to people in custody at PGRCC to help them learn about their rights.³⁷²

The Prince George Urban Aboriginal Justice Centre has recently built a sweat lodge and smoke house at PGRCC. “When we go to do cultural teachings, PGRCC staff never say someone isn’t allowed to go due to their behaviour,” Chris Dalziel said. PGRCC staff will let program staff know if someone is having difficulties. Sometimes people are brought to teachings in handcuffs, but when Elders ask that the cuffs be removed, staff will remove them.³⁷³

The program also provides support to people leaving custody, and one of their Elders sits with the PGRCC release planning team every week. They make sure that everything is in place, including housing and community supports.³⁷⁴

371 Interview with Chris Dalziel, Justice Coordinator for the Prince George Urban Aboriginal Justice Centre (7 November 2022).

372 Interview with Chris Dalziel, Justice Coordinator for the Prince George Urban Aboriginal Justice Centre (7 November 2022).

373 Interview with Chris Dalziel, Justice Coordinator for the Prince George Urban Aboriginal Justice Centre (7 November 2022).

374 Interview with Chris Dalziel, Justice Coordinator for the Prince George Urban Aboriginal Justice Centre (7 November 2022).

The British Columbia First Nations Justice Council

The British Columbia First Nations Justice Council was created in 2016 by the BC Assembly of First Nations, the First Nations Summit and the Union of BC Indian Chiefs. In 2017, the BC First Nations Justice Council signed a Memorandum of Understanding with the Province of British Columbia committing to develop and implement a joint justice strategy. The Justice Strategy³⁷⁵ was signed by BC and the BC First Nations Justice Council on March 6, 2020.

The Justice Strategy includes 42 actions, aimed at reducing the number of Indigenous people involved in the criminal legal system. The actions are directed both at reforming the current justice system and restoring Indigenous legal traditions and structures. The Justice Strategy is intended to prevent incarceration through the core presumption of diversion, and to revitalize Indigenous justice systems through the establishment of a network of corrections alternatives across the province over the next decade. These will provide culturally appropriate alternatives to prison, focusing on rehabilitation, not incarceration.

Anisa White, Provincial Director of Gladue Services for the BC First Nations Justice Council, stressed the importance of cultural norms, practices and programs in the healing of Indigenous people in prison. She said the Justice Strategy is committed to expanding cultural programming throughout BC Corrections custody centres, along with training to reduce the impact of bias and to improve cultural safety for Indigenous people working in prisons.

Anisa White also said it is crucial for First Nations to know where their members are in the system, and when a move is contemplated, to

provide support for members, their families and communities in reunification and reintegration, which will support better outcome for people who have been in prison.

The BC First Nations Justice Council is now responsible for provision of government funded *Gladue* Reports so that the unique social history and culture of Indigenous people are recognized throughout the criminal legal system. Anisa White said, “this is necessary as a precursor to properly identifying how the needs of Indigenous people who are involved in the system can and must be met.”

375 BC First Nations Justice Council, *BC First Nations Justice Strategy* (February 2020). Online: https://bcfnjc.com/wp-content/uploads/2022/04/BCFNJC_Justice-Strategy_February-2020.pdf.

Increased opportunities for temporary absences

Independent Indigenous in-reach services would also have the benefit of providing more opportunities for temporary absences, where Indigenous people in prison could connect with local communities to participate in land-based healing. These opportunities could be as simple as going outside with Elders to gather medicines or lava rock from sweat lodge and other ceremonies, such as those that were authorized from Matsqui Institution in 1993.³⁷⁶ Or they could involve over-night excursions such as the Tsetsusem (Camp Potlatch) Cultural Journey offered by Circle of Eagles Lodge Society twice each year, which brings people in prison (on temporary absences) and people serving sentences in the community on a four-day canoe trip to rustic cabins where they have many traditional and cultural experiences.³⁷⁷

Indigenous health care

In 2018, CSC contracted with Dr. Melinda Joye Fowler to create a pilot project on integrating traditional medicines in Canadian prison healthcare. Her report, *Medicines working together*, includes a number of recommendations for CSC to work with Elders and traditional healers to incorporate traditional healing practices on an equal footing with health care services offered to Indigenous people in prison.³⁷⁸

Dr. Fowler's report identifies many barriers to accessing traditional healing in prison, including access to Elders, smudging medicines, tobacco, ceremonies, land-based teachings and traditional foods. Her report also discusses the role of Elders as being part of institutional programs, rather than being respected and compensated as health care professionals. She cites reports from Elders that CSC staff disrespect their role, cancel ceremonies and interfere with protocols. She raises concerns about CSC searching medicine bundles, banning tobacco, and failing to provide compensation for the process of harvesting, drying and preparing medicines.

People Dr. Fowler interviewed raised concerns that CSC's process for accessing Elders and traditional medicine is a barrier to accessing traditional health care. Correctional officers receive requests from incarcerated people to see Elders, and they decide whether the request is an emergency, and whether to contact the Indigenous liaison officer to inquire whether or not an Elder is available. People interviewed felt that access to Elders should be part of ongoing care, and not available only in emergencies or after making written requests and receiving an appointment.

People in prison also reported to Dr. Fowler having to wait a long time for medicines and smudge kits, and not having access when they need them to feel calm. Although policy allows people to keep some smudge in their cells, people in prison reported that this is not allowed in practice.

Dr. Fowler discusses the need for a positive environment for traditional medicine to be effective.

³⁷⁶ Michael Jackson, *Justice behind the Walls: Human Rights in Canadian Prisons* (Douglas & McIntyre, Vancouver: 2001). Online: <http://www.justicebehindthewalls.net/book.asp?cid=23&pid=323>. The chapter "Along the Red Road" describes the escorted temporary absence program at Matsqui Institution which enabled Indigenous people incarcerated there to make a one-day journey, accompanied by correctional staff, to gather lava rock and plant materials for use in the sweat lodge and other ceremonies within the prison. Lava rock, because it does not crack under the heat of the sweat lodge fire, is a prized resource.

³⁷⁷ Circle of Eagles Lodge Society, *Programs and Services* (Fall 2021). Online: <https://www.circleofeagles.com/programs-and-services/>.

³⁷⁸ Dr. Melinda Joye Fowler, *Medicines Working Together* (undated).

Indigenous staff interviewed for *Medicines working together* noted the problem of CSC imposing controls on traditional medicines. One staff member said: “Smudging and a policy exist, yet it is not being followed. People are given Lorazepam and Haldol instead of what they are asking for to calm them down. This is an issue. They should be given the smudge... Smudging every day decreases mental health issues.”³⁷⁹

Others interviewed for Dr. Fowler’s research expressed concern about CSC hiring people who may not be recognized as Elders in their communities, known as “popcorn Elders,” and said there should be traditional governance of Indigenous staff services.³⁸⁰

Dr. Fowler recommends that Canada and CSC take action toward reconciliation by addressing Truth and Reconciliation Calls to Action, including by funding alternatives to prison, eliminating barriers to the creation of Indigenous operated healing lodges, working with Indigenous communities to provide culturally relevant services to address intergenerational trauma, and committing to the recognition and implementation of Indigenous justice systems.

Dr. Fowler states:

The implementation of a program to provide Indigenous inmates with access to traditional medicines and healing practices will first need to begin the difficult process of recognizing how the power imbalances within the system has led to inequalities, health disparities, and the opportunities for structural systemic racism to impact the lives of Indigenous peoples within correctional facilities.

Dr. Fowler recommends that CSC “[g]ive the Healers/Elders/Knowledge Keepers a voice and power over the policies and procedures that oversee their work in order to protect the traditional knowledge of our Peoples.” She also recommends that National Healers/Elders gatherings be reinstated annually, that CSC integrate traditional healing into the correctional system and expand its offering to Indigenous people in prison, and that health services and Indigenous initiatives form an integrated health team. This would require restructuring the governance system. Finally, Dr. Fowler recommends an upfront financial commitment to secure a culturally safe workspace for healers and their helpers.³⁸¹

Prisoners’ Legal Services has recommended that health care be provided independently of CSC, to avoid issues of dual loyalty.³⁸² Dr. Fowler’s recommendations would fit well within a truly independent prison health care service.

379 Dr. Melinda Joye Fowler, *Medicines Working Together* (undated) at 25.

380 Dr. Melinda Joye Fowler, *Medicines Working Together* (undated) at 26.

381 Dr. Melinda Joye Fowler, *Medicines Working Together* (undated) at 34-37.

382 Prisoners’ Legal Services, *Proposed guidelines for medical professionals working in CSC: Compliance with the Mandela Rules* (4 March 2019). Online: <https://prisonjustice.org/wp-content/uploads/2018/10/Proposed-guidelines-for-medical-professionals-working-in-CSC.pdf>.

Sentence reviews

People we interviewed often spoke about the disproportionately harsh sentences Indigenous people receive through the mainstream courts. Many Indigenous people did not have the benefit of *Gladue* reports when they received lengthy federal sentences.

Thirty-six percent of Dangerous Offender designations were Indigenous in 2019-2020.³⁸³ Dangerous Offender designations involve indeterminate (lifelong) sentences, which result in the person being unable to cascade below medium security, and languishing in prison for decades.

There have been calls for a public inquiry into Saskatchewan's disproportionate sentencing of Indigenous people, based on its sentencing practices and its high rate of designating Indigenous people as Dangerous Offenders.³⁸⁴ Sentencing data analyzed by Saskatoon defence lawyer James Scott reveals that from 1996 to 2014, Indigenous people received, on average, double the time of people who were not identified as Indigenous, for the same crimes. For certain crimes, Indigenous people received extremely disproportionate sentences – for aggravated assault, Indigenous people were sentenced to 3.4 times more months; for assault with a weapon, Indigenous people were sentenced to 10.2 times more months; and for assault causing bodily harm, Indigenous people were sentenced to 13.7 times more months than people not identified as Indigenous.³⁸⁵

The Honourable Harry S. LaForme, a member of the Mississaugas of the New Credit First Nation and the first Indigenous appellate court judge in Canadian

383 Yasmine Ghania, Dangerous offender hearing highlights disproportionate harm on Indigenous people, say advocates," *CBC News* (3 June 2022). Online: <https://www.cbc.ca/news/canada/saskatchewan/indigenous-dangerous-offender-hearing-disproportionate-harm-1.6474374>.

384 Kenneth Jackson, *Calls for public inquiry into Saskatchewan's over incarceration of Aboriginal People*, APTN National News (28 May 2015). Online: <https://www.aptnnews.ca/national-news/calls-public-inquiry-saskatchewans-incarceration-aboriginal-people/>.

385 James T.D. Scott, *Reforming Saskatchewan's Biased Sentencing Regime* (2015) at 3 - 4. Online: <https://www.aptnnews.ca/wp-content/uploads/2015/05/saskatchewan-report.pdf>.

history, notes that for the most part, criminal courts in Canada:

have largely ignored the mandate of *Gladue*. They have, in sentencing Indigenous offenders, treated its principles as though they were an unnecessary burden, a nuisance. Or, as it's often referred to, "a get out of jail free card". Invariably *Gladue* is then treated as a mere mitigating factor that a judge can rely on to reduce the number of years the Indigenous offender is to serve in prison.

More often than not, the *Gladue* mandate is simply referred to in passing in court, if at all, without any assessment of its impact or intended purpose. Most importantly, it appears to have had no impact on the "crisis" that is the over-representation of Indigenous people in prison.³⁸⁶

The harshness of sentences is compounded by Indigenous people's treatment in custody, as discussed above. Senator Kim Pate has sponsored Bill S-230, which would allow people to apply to the court for an order reducing a sentence or a period of parole ineligibility when a sentence is administered contrary to law or policy, or in an unreasonable, unjust, oppressive or improperly discriminatory way.³⁸⁷

We recommend that Canada introduce legislation that would require the *de novo* review of the sentences of Indigenous people who did not have the benefit of a *Gladue* report, or who apply for review based on the maladministration of their sentences, regardless of whether or not they have exhausted appeals.

386 Harry S. LaForme, *The Over Representation of Indigenous People in Prison* (First Peoples Law, 24 November 2021). Online: <https://www.firstpeopleslaw.com/public-education/blog/the-over-representation-of-indigenous-people-in-prison>;

387 Canada, Bill S-230, *An Act to amend the Corrections and Conditional Release Act*, 1st Sess, 44th Parl, 2021, cl 11 (second reading 3 November 2022).



By Charles Silverfox, Tlingit northern Tutchone and Irish ancestry

IX. CONCLUSION AND RECOMMENDATIONS

“CSC tends to come in and tell everyone what to do. That doesn’t work effectively. In my experience working with Indigenous communities and Elders, often you need to shut up and listen. And that’s not something the government is good at doing.”

— Sam Ens, Provincial Manager, Diversion and Early Intervention, BC First Nations Justice Council

If Canada is going to take truth and reconciliation seriously, and respect its obligation to implement the UN *Declaration on the Rights of Indigenous Peoples*, it must listen to Indigenous Peoples and engage in negotiations of a significant transfer of authority and funding to Indigenous communities. If Canada truly wishes to end its continuation of genocidal practices, it must reallocate funding from CSC and end its mass incarceration of Indigenous people in its prisons.

Section 81 of the *Corrections and Conditional Release Act* provides the mechanism to achieve these goals. Canada must take the authority for negotiating s 81 agreements away from CSC, and be open to a wide range of models envisioned by Indigenous Peoples as alternatives to prison, based on Indigenous law and self-determination.

As acknowledged throughout this report, the following recommendations build on and echo decades of calls to action and reform. Some of the below recommendations are reminiscent especially of the Truth and Reconciliation Commission’s Calls to Action Recommendations 30, 31, 35, 36, 37 and 42. The Truth and Reconciliation Commission’s Calls to Action and the decades of advocacy to address the gross injustices experienced by Indigenous people who are incarcerated by Canada are worth repeating. It will also be necessary for Canada to address the broader issues contained in the Truth and Reconciliation Commission’s Calls to Action that would meet community needs to prevent Indigenous people from entering, or re-entering, the criminal legal system.

In this report, we have endeavored to include the voices of Indigenous people in prison in the conversation envisioning alternatives to prison and in reforms to the colonial system. We sincerely hope that their voices are heard. Our recommendations reflect what we have learned from speaking with clients, and members of Indigenous governments and organizations. Our recommendations are based on the fundamental principle of supporting Indigenous Peoples’ right to self-determination and self-governance.

WE RECOMMEND THAT CANADA:

1. Shift funding from Correctional Service Canada to Indigenous governments and organizations in the amount of \$1 billion each year, representing the approximate amount of money CSC receives to incarcerate Indigenous people, with the goal of significantly reducing the number of Indigenous people in prison and supporting autonomous Indigenous-run alternatives to incarceration, as well as independent and autonomous Indigenous services for Indigenous people in prison and on conditional release.
2. Negotiate with Indigenous governments on a nation-to-nation basis to ensure ample funding to respond to harm, including restorative justice and diversion programs, and other approaches.
3. End the delegation of powers from the Minister of Public Safety to CSC to negotiate and decide admission criteria and other requirements for *Corrections and Conditional Release Act* s 81 agreements. Admission criteria and other requirements should be decided by the s 81 agreement holder, and Indigenous governments and organizations as per recommendation 4 below.
4. Fund Indigenous governments and organizations to develop, structure and administer:
 - (a) independent Indigenous services for Indigenous people under the supervision of Correctional Service Canada in the community or in the custody of Correctional Service Canada; and
 - (b) *Corrections and Conditional Release Act* s 81 alternatives to prison.

In accordance with the principles of self-determination and UNDRIP, Indigenous governments and organizations should determine how best to coordinate the administration of Independent Indigenous services and s 81 agreements.

5. Work with Indigenous governments and organizations to determine how autonomous in-reach services to people in CSC prisons should be structured. Independent in-reach services should be based on respect for self-determination and be distinctions-based. The ultimate goal should be the decarceration of Indigenous people.
6. Ensure that Indigenous Peoples have autonomy and control over the spaces where Indigenous people live and participate in programs and ceremonies, within prisons. There should be no routine presence of correctional officers in these areas. Officers should only come into a unit, program or ceremony space if Elders or other Indigenous staff call them in for assistance. Indigenous people in prison should have the right to have an Indigenous witness present whenever they are required to be with correctional officers.
7. Arrange training for CSC staff to understand the new relationship of equality, respect and authority of Indigenous partners.
8. Implement a policy of zero tolerance for obstructionism of Independent Indigenous in-reach providers.
9. Enter into agreements with Indigenous governments and organizations to share information regarding when Indigenous people enter the criminal legal system and when they may be, or are, moved within

the system. Make any necessary legislative amendments as may be necessary to ensure information sharing occurs.

10. Work with Indigenous governments and organizations to reform the *Corrections and Conditional Release Act* s 84 process based on respect for self-determination. Ensure that Indigenous governments, organizations and communities are reasonably compensated for the costs of providing community supervision.
11. Implement independent health services in prisons, which include independent Indigenous healing services.
12. Ratify the optional protocol of the *Convention Against Torture*.
13. Establish a public national inquiry, in collaboration with Indigenous governments and organizations, to acknowledge the colonial harms of prisons, and provide reparations for these harms.
14. We recommend that Canada introduce legislation that would require the *de novo* review of the sentences of Indigenous people who did not have the benefit of a *Gladue* report, or who apply for review based on the maladministration of their sentences, regardless of whether or not they have exhausted appeals with the power to reduce a person's sentence. Reviews should include consideration of *Gladue* factors as well CSC's administration of the person's sentence to date.
15. Amend s 18 of the *Corrections and Conditional Release Regulations* as follows:

For the purposes of section 30 of the Act, an inmate shall be classified as

(a) maximum security where the inmate is assessed by the Service as

(i) presenting a high probability of escape and a high risk to the safety of the public in the event of escape, or

(ii) ~~requiring a high degree of supervision and control within the penitentiary~~ presenting a high risk to the safety of staff or offenders within the penitentiary;

(b) medium security where the inmate is assessed by the Service as

(i) presenting a low to moderate probability of escape and a moderate risk to the safety of the public in the event of escape, or

(ii) ~~requiring a moderate degree of supervision and control within the penitentiary~~ presenting a moderate risk to the safety of staff or offenders within the penitentiary; and

(c) minimum security where the inmate is assessed by the Service as

(i) presenting a low probability of escape and a low risk to the safety of the public in the event of escape, and

(ii) ~~requiring a low degree of supervision and control within the penitentiary~~ presenting a low risk to the safety of staff or offenders within the penitentiary.

WE RECOMMEND THAT THE PAROLE BOARD OF CANADA:

16. Work with Indigenous governments and organizations to reform parole hearings and the decision-making process to respect Indigenous Peoples' rights to self-determination. This would likely require changes to legislation.

WE RECOMMEND THAT PROVINCES AND TERRITORIES:

17. Negotiate with Indigenous governments, based on the right to self-determination of Indigenous Peoples, to support and ensure ample funding for Indigenous courts that incorporate Indigenous laws and traditions in their operation and decision-making. People should not be required to plead or be found guilty to charges to be able to access Indigenous courts. Elders who work in Indigenous courts must be fairly compensated.

WE RECOMMEND THAT THE CORRECTIONAL SERVICE CANADA:

18. Acknowledge the harms prison has caused and continues to cause Indigenous Peoples, listen to Indigenous experts, including Indigenous people in prison and those who work with Indigenous people involved in the criminal legal system, and support Indigenous Peoples' rights to self-determination. We recommend that the Correctional Service Canada support the implementation of the other recommendations contained in this report.

LIST OF CONSULTATIONS

Lisa Antoine, Mental Health Coordinator, Beardy's and Okemasis Willow Cree Mental Health Services

Gaelene Askeland, (former) Executive Director, BC First Nations Justice Strategy

Bert Azak, Justice Coordinator, Native Education College, former Correctional Officer and Aboriginal Community Liaison Officer, Correctional Service Canada

Kim Beaudin, National Vice-Chief, Congress of Aboriginal Peoples

Laura Beaudry, Policy Analyst, Union of BC Indian Chiefs

Jason Boubard, Incarcerated person

Brianna Bourassa, Regional Coordinator for Yukon, Northwest Territories and Nunavut, Canadian Association of Elizabeth Fry Societies

Mary Brown, Coordinator, Heiltsuk Gvi'ilas Community Justice Program

Nicasio Campos, Community Justice Worker, Squamish Nation

The Honourable Judge Joanne Challenger

Angelique Clinton, Mental health therapist, Beardy's and Okemasis Willow Cree Mental Health Services

Chris Dalziel, Justice Coordinator, Prince George Urban Aboriginal Justice Centre

Nick Dinardo, Incarcerated person

Jennifer A. Duncan, Indigenous Barrister & Solicitor, Consultant

Sioned Dyer, Executive Director, North Shore Restorative Justice Society

Sam Ens, Provincial Manager, Diversion and Early Intervention, BC First Nations Justice Council

Ashley Fontaine, sister of Kendal Campeau

Formerly incarcerated person (Anonymous)

Sarah Froese Kakish, Senior Policy Analyst, BC Assembly of First Nations

Shannon Girling-Hebert, Administrator, Quality Assurance & Service Integration, Ktunaxa Nation

Andrea Glickman, Policy Director, Union of BC Indian Chiefs

Melanie Gould, Regional Social Governance, Ktunaxa Nation

James Knighton, Indigenous Program and Relationship Analyst, BC Corrections Branch

Lynne Hill, Red River Métis and settler from Treaty 1, former Practicum Student, Community Justice, Squamish Nation

Incarcerated person (Anonymous)

Incarcerated person (Anonymous)

Incarcerated person (Anonymous)

Incarcerated person (Anonymous)

Buddy Klengenber, Resident, Naa-na-himyis

Mo Korchinski, Executive Director, Unlocking the Gates

Shawn Lundgren, Incarcerated person

Darlene MacEachern, Executive Director of Elizabeth Fry Society of Cape Breton

Paula Marshall, Executive Director of Mi'kmaw Legal Support Network

Dr. Herman Michell, Consultant for Beardy's & Okemasis Cree Nation Indigenous Justice Strategy

Delano Mike, Band Councillor, Beardy's & Okemasis Cree Nation

Racheal Nicholas, Clinical Advisor, Ktunaxa Nation

Karla Olinek, Justice Coordinator, Nak'azdli Alternative Justice Program

Russell Paddy, Incarcerated person

Boyd Peters, Director of the BC First Nations Justice Council and Lead on Policing and Corrections, Director of Xwiléxmet, Sts'ailes' Rights and Title Department

Elder Patty Pettigrew, Founder and Executive Director, Thunder Woman Healing Lodge Society

Brody Pocha, Aboriginal Justice Worker, Ktunaxa Nation

Shelley Price, Assistant Professor, Gustavson School of Business, University of Victoria

Lori Pruce, Director, Indigenous Programs and Relationships, BC Corrections Branch, Ministry of Public Safety and Solicitor General

Darla Rasmussen, Justice Coordinator for Sts'ailes First Nation

Amber Routledge, Access to Justice Supervisor, Elizabeth Fry Society of Cape Breton

Brian Sarwer-Foner, Indigenous Services Canada, former Communications officer, Waseskun Healing Centre

Bill Small, Director of Community Corrections, BC Ministry of Public Safety

Staff member (anonymous), Correctional Service Canada

Staff member, Elder (anonymous), Correctional Service Canada

Staff member (anonymous), Kwikwèxwelhp Healing Village

Staff member (anonymous), Stan Daniels Healing Centre

Merv Thomas, Chief Executive Officer, Circle of Eagles Lodge Society

Connie Thorne, Incarcerated person

Joey Toutsaint, Incarcerated person

Andrew Van Eden, Manager, Nation Community Safety, Tsleil-Waututh Nation

Roberta Vansteinburg, Social Sector Business Manager, Ktunaxa Nation

Liz Vick, Vice President of Strategy, Connective (formerly John Howard Society Pacific)

Alberto Vogel, Incarcerated person

Anisa White, Provincial Director, Gladue Services Department, BC First Nations Justice Council

Elder Wanda Whitebird



Produced by Prisoners' Legal Services, a project of the West Coast Prison Justice Society, with funding from the Law Foundation of British Columbia.

April 2023

