



THE CANADIAN
BAR ASSOCIATION
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Via email: GEN-NHQPOL-CONSULTATION@CSC-SCC.GC.CA

Carla Di Censo
A/Director, Strategic Policy Division
Correctional Service Canada
340 Laurier Avenue West
Ottawa, ON K2P 0P9

Dear Director Di Censo:

Re: Consultation on Commissioner's Directive 702-1: Pathways Initiatives

We are writing on behalf of the Criminal Justice Section of the Canadian Bar Association (CBA Section) in response to draft Commissioners' Directive 702-1: Pathways Initiatives, the Pathways to Healing and Pathways National Handbook (Pathways) issued by Correctional Service Canada (CSC) on January 9, 2023.

The CBA is a national association of 37,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. Criminal Justice Section members include prosecutors, defense counsel and legal academics specializing in criminal law.

The CBA Section encourages CSC to consult widely with Indigenous inmate committees in prisons and with Indigenous service providers working with people in prison, and take direction from them, in accordance with Indigenous Peoples' right to self-determination. We offer our comments in support of an expansive application of the Pathways Initiatives to offer a supportive and healing environment for Indigenous participants.

Guideline No. 702-1

Paragraphs 4(e) and 7(a). We support policy that clearly outlines responsibility for recording Pathways progress reviews in Casework Records and Elder Reviews in the Offender Management System (OMS). Ensuring that work with Elders is reflected in case management documents is an ongoing complaint of Indigenous clients of the CBA Section. We suggest this role be undertaken by Indigenous staff. We understand that Elders and Indigenous Liaison Officers (ILOs) have been under-resourced and often unable to fulfil this role due to high case loads. The Guideline should be consistent with page 19 of the Handbook to identify staff who are responsible for recording information related to Pathways participation in OMS.

Paragraph 10. In our view, Elders should also assess suitability for Pathways based on their own views to complement the assessment. The individual's level of "commitment and dedication" may not be the only appropriate element to assess every person's suitability for involvement in Pathways.

CBA Section members have assisted many clients who feel depressed and hopeless because of prolonged isolation or because their parole officer does not support them cascading to lower security. Repeated disappointments can make it too painful to attempt to engage. Some Indigenous people in prison may not practice their culture because they, or their parents or grandparents, experienced discrimination, and Christianity was imposed upon them by missionaries. Many have been adopted through the 60s Scoop or taken away from their culture through the foster care system. Some have had to put on a tough front to protect themselves in a violent and abusive environment or may be angry because of racism experienced at the hands of correctional officers and may not be comfortable being "accountable".

An Elder might see an opportunity for them to progress and benefit from participation in Pathways in circumstances that preclude an exhibition of "commitment and dedication".

Annex B (Elements of a Supportive Environment for Indigenous Corrections)

Annex B - 7. The CBA Section does not support limiting the size of Pathways Initiatives at medium and minimum security to "no more than one-fifth to one-quarter of the total Indigenous population," or the need to maintain a waitlist for Pathways participation.

Pathways should not be limited to "the most committed offenders for Pathways participation." It should be open to anyone who would benefit from the Pathways environment. The answer to high demand is to increase capacity, and hire more Elders and other Indigenous staff, or contract with community based Indigenous organizations to provide in-reach services.

Limiting access to Pathways Initiatives is discouraging given its objective of assisting people to cascade to lower security and be released to community supervision. Presumably, this purpose is related to increased rates of mass incarceration of Indigenous people and their over representation in higher levels of security. We believe Pathways should be available to every Indigenous person who can benefit from it.

Annex B - 10. This paragraph on community connection should identify which staff person in the institution is responsible for connecting individuals with their Indigenous communities. It is not sufficient to state that "Institutions will assess whether or not they have the capacity to connect with the Indigenous community through escorted temporary absences or institutional volunteering opportunities, where appropriate," given the preceding acknowledgement of the importance of connecting Indigenous people in prison with their communities and families. Every effort should be made to make these connections and to grant escorted temporary absences (ETAs) and visits.

Annex C (Operational Requirements of Pathways)

Annex C, Designated Space (3). The policy on dedicated space seems unclear and inconsistent on the need for an outdoor space in medium and minimum security. Annex B, paragraph 6 states that all Pathways initiatives require an indoor and outdoor space, but Annex C, paragraph 3 only refers to indoor space in medium security, a unit or house in minimum, and indoor and outdoor space in maximum security. In our view, Pathways initiatives should have an outdoor space in all security levels.

Annex C, Admission Criteria (4). The CBA Section is pleased that the policy does not exclude people from participating in Pathways if they are prescribed Opioid Agonist Therapy (OAT) or for an association with a Security Threat Group (gang) (STG). We question whether it is necessary to exclude people who are actively involved in the "institutional subculture or STG activities."

Annex C, Waiting List (5). In our view, the policy should not state that “the number of individuals on the Pathways waiting list should be half of the available bed space[s] for Pathways.” We question how this requirement correlates to ensuring that people are transferred to lower security, Healing Lodges or conditional release from Pathways. People should obtain those transfers regardless of whether there is a waitlist, or its size. They should be placed on a waitlist if they wish to participate in Pathways and if there are no openings, capacity should be increased to accommodate everyone who is Indigenous and wishes to participate.

Annex C, Decision Process (7). The CBA Section submits that decision making related to Pathways Initiatives is a shared responsibility among involved staff. However, there is no mechanism to resolve an impasse if consensus cannot be reached. We suggest that in the event of an impasse, a final decision be made collaboratively by the Elder and the Indigenous staff as a group.

Annex C, Expectation Documentation (8). We are concerned that the policy allows CSC to withhold cultural accommodations as punishment for relapsing into drug use, which is a medical issue. The policy also states that “disciplinary sanctions” may be imposed for relapsing into drug use. In our view, this imposition violates the *Canadian Human Rights Act* and discriminates based on disability, place of origin, race and religion.

Annex C, Dispute /Conflict Resolution and Discipline and Consequences/Criteria for Removal (9 & 10). The policy should clearly state that no one should be “disciplined” outside of the framework in the *Corrections and Conditional Release Act* (CCRA) and Regulations (see section 39 of the Act: “Inmates shall not be disciplined otherwise than in accordance with sections 40 to 44 and the regulations”). The policy should be clearer and state that Elder led circles will be used to resolve conflict whenever possible, outside of the disciplinary process. Again, we are concerned with the requirement that people be “committed to the traditional healing path”.

Annex C, Schedule of Activities (13.). We question why a schedule should be created “to demonstrate a visible difference between Pathways and non-Pathways interventions”. We believe activities and ceremonies should be encouraged in any unit where people would benefit from them, especially considering the limits on the number of Indigenous people who can participate in Pathways.

Annex C, Temporary Absences/Indigenous Community Engagement (14.). We fully support the policy requiring CSC staff to assist Indigenous people in prison to reconnect with their communities. These roles should be clearly identified. ETAs and visits should be supported and adequately resourced at all institutions.

Annex C, Transfer to Healing Lodges or Lower Security (15). We strongly support Pathways’ purpose to lower the security classification of Indigenous people and help their reintegration into the community - which supports reducing the disproportionate numbers of Indigenous people in prison. However, this purpose is undermined by a policy that limits the number of participants, and the number of people on the waitlist, as discussed above.

Handbook

The CBA Section suggests not using the term “offenders” to describe Indigenous people in prison in the handbook. Although this is in the CCRA, a handbook can use more informal and respectful language. “Offender” identifies them at their worst and does not allow them to move past their offence as a person. This is especially important for a unit that is intended to offer culturally appropriate healing.

Page 8. Given Pathways Initiatives limitations, it is our view that Indigenous people should be given priority of access to these services over non-Indigenous people. Again, we are concerned that the policy sets availability limits to Pathways. The policy states Pathways would be available to only two to four women in maximum security units.

Page 9. Deciding whether women in the SLE should have access to Pathways should be made by Elders who can consult with other mental health professionals. It should not be decided by 2 non-Indigenous mental health professionals. This part of the policy undervalues the expertise of Elders. Again, we are concerned about the limits to Pathways.

Page 11. are concerned that the policy identifies “commitment to traditional healing, values and beliefs, and are able to take responsibility for their own healing” as eligibility criteria. There are many reasons why someone might not meet these criteria (i.e., *Gladue* factors) which should not preclude someone’s participation in Pathways. Elders must have the freedom to decide whether someone qualifies for participation in Pathways.

Page 12. We do not support limiting Pathways beds to 20% for people serving indeterminate or life sentences. This policy contributes to the mass incarceration of Indigenous people. We question limiting programs when more than 20% could benefit from the program..

We support the policy requiring assessment for a reduction in security level at least every six months while participating in Pathways, to help de-carcerate Indigenous people. The handbook could be clearer in stating that people in Pathways should be supported to go to lower security, Healing Lodges or community any time they are considered ready and should not need to wait until their next review.

Page 14. The CBA Section questions why every Pathways participant must engage in every planned activity, including ceremonies. There are over 600 distinct Indigenous Nations across Canada with different cultural practices, beliefs and ceremonies. People should be free to decline to participate in ceremonies, especially those that do not align with their Nation’s beliefs or practices.

We are concerned that the policy permits institutions to limit available activities due to resource issues. Given CSC’s annual budget of approximately \$3 billion, we are hopeful it has enough resources to allow Indigenous people the basic human right to participate in their own traditions and ceremonies.

The CBA disagrees with limiting ceremonies in maximum security to once monthly. We suggest that the policy could set out a permissible number with an expectation that they should be facilitated as frequently as the Elder wishes.

The policy should be strengthened to explain that activities and ceremonies should be respected and must not be interfered with by operations unless there is a true emergency that precludes it, and in that case, it must be documented and rescheduled as soon as possible. The CBA Section has heard of reports of Indigenous people in maximum security going months or years without access to ceremonies.

Page 20. We support access to Pathways at the earliest opportunity, including at intake. Although continuity is important, we believe there may be circumstances where individuals could change Institutional Parole Officer (IPO) if their IPO is not assisting them in cascading to lower security, a Healing Lodge or the community. We have had clients with unsupportive IPOs and it is very difficult for them to gain access without their IPO’s support.

Page 22. Mandatory training should be offered to all correctional officers in institutions housing Indigenous people. This training should make it clear that obstructionism of ceremonies and abuse of Indigenous people in prison will not be tolerated.

Page 23. We support CSC evaluating the success of Pathways using indicators that will encourage staff to facilitate people going to lower security, Healing Lodges and conditional release.

Page 25. There should be Pathways Initiatives at every institution that houses Indigenous people.

Page 29. People sentenced to life imprisonment should have access to Pathways and should also be supported to cascade to lower security, Healing Lodges and to conditional release upon parole eligibility.

The CBA Section appreciates the opportunity to comment on the draft policy. We trust our comments are helpful and would be pleased to offer further clarification.

Yours truly,

(original letter signed by Julie Terrien for Kevin B. Westell)

Kevin B. Westell
Chair, Criminal Justice Section