



INDIGENOUS COMMUNITIES and HIV and HCV in Federal Prisons



Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

Questions and Answers

April 2017

Background

Overview of federal prisons and health care

This 'Question and Answer' booklet is for prisoners who identify as First Nations, Inuit and Métis, and who are imprisoned in a federal prison or healing lodge run by the Correctional Service of Canada (CSC). The CSC is responsible for prisoners with sentences of two years plus one day.¹

The law that governs how these prisons are run is called the *Corrections and Conditional Release Act (CCRA)*. This law recognizes that prisoners have all the same rights and privileges as other members of society *except* for those rights and privileges that are removed or restricted as a result of being in prison.

The law requires CSC to provide prisoners with health care that meets professionally accepted standards. Prison policies and programs must also respect and respond to the needs of different communities, such as Indigenous people, in prison. For health care, this means that CSC should provide health care services to prisoners that are equivalent to health care that is provided outside of prison. If CSC cannot provide those services to a particular prisoner, they must refer them to a health care provider outside prison to make sure they get the care and treatment they need.

Indigenous People in Prison

A history of cultural oppression, the damaging legacy of abuse in residential schools, and ongoing racism and colonialism have contributed to high rates of imprisonment for Indigenous people. First Nations, Inuit and Métis people represent over 25% of people in federal prison, despite comprising just 4.3% of Canada's population. And Indigenous women are the fastest growing population among prisoners in federal custody.² Rates of HIV and hepatitis C (HCV) are also much higher in prison than they are outside, especially among Indigenous prisoners.

¹ This resource has been developed for people who self-identity as First Nations, Inuit or Métis and for those who work with these communities. The authors recognize that language is constantly shifting and the terms people use can change. This booklet uses the term *Indigenous* to include all Aboriginal peoples in Canada. *Aboriginal* is used only when it is part of an official title that is defined by CSC.

² Office of the Correctional Investigator; *Annual Report of the Office of the Correctional Investigator 2015-2016*, June 30, 2016.

Privacy and HIV/HCV testing

When will I be able to see a health care worker when I first arrive at federal prison?

Health care concerns that need immediate medical attention, such as HIV treatment and opioid substitution therapy, are addressed during an “intake assessment.” This assessment happens within the first 24 hours of arriving in prison and is carried out by a nurse. In some institutions, an Indigenous Elder or Liaison Officer may be available to provide support during the assessment. Less urgent conditions will also be addressed, and if the nurse determines that you need to see a doctor or other medical specialists, you will be referred to them.

During the assessment, you will be asked about previous testing for infectious diseases. If you have been tested, you will be asked about the results. You do not need to disclose your HIV-positive or HCV-positive status if you don’t want to. You will also be offered voluntary testing for sexually transmitted and blood-borne infections, including HIV and HCV. If you agree to be tested, you will be put on a list to be tested at a later date.

Bleach should be provided during the assessment. Bleach can be used to clean tattooing equipment, piercing needles and injecting equipment. Although tattooing or drug use is prohibited in prison, CSC provides bleach to reduce the spread of HIV and HCV. The person giving you the bleach should also give you instructions on how to use it and advise you about its benefits and limitations. You should know that you can still get HIV and HCV from equipment that has been disinfected with that bleach.



Can I get tested for HIV and HCV in federal prison?

Yes. HIV and HCV testing is offered to all prisoners when they are admitted to federal prison. *You can also request testing any time during your sentence.* If you serve your sentence at a healing lodge, you can request HIV or HCV

testing there too. If testing is not available at the healing lodge you are in, you may be discreetly escorted to a nearby health centre, either in the neighbouring CSC prison or in the community.

HIV counselling is offered by a nurse before and after testing and doesn't depend on the test result.

You do not have to get tested for HIV or HCV. **All testing is supposed to be done only with your voluntary, informed and specific consent.** In other words, you have to freely give your permission to be tested and be told all the consequences, risks and benefits of the procedure.

If I test positive for HIV or HCV in prison, who will know?

When you take an HIV or HCV test, both the person who tested you (in most cases, the prison nurse) and told you your results, and the laboratory that analyzed your blood will know

your results. Since HIV and HCV are both "reportable illnesses," the results will also be reported to the provincial health authorities.

Your health information is supposed to be confidential, meaning that your HIV and HCV test results should not be shared with anyone (such as other prisoners or correctional staff) beyond health care staff involved in your care. Although test

results are recorded in your medical file, health care staff have a professional duty to maintain the confidentiality of your medical records, unless there is some public interest or circumstance for which prison authorities consider there is a "need to know," such as security reasons (but we are not aware of specific examples of this having happened). The amount of detail shared, and the people with whom the information is shared, must be decided on a case-by-case basis.



Can a health care worker share my health information to others without my permission?

In most instances, your health information can only be shared with others with your permission or consent. Unless you have told a health care worker that you do not want your information shared, a health care worker might assume that you have agreed to your personal health information being shared with other health care workers involved in your care.

In some limited and exceptional circumstances, a health care worker can disclose your health information without your consent in order to prevent harm, protect public health or comply with a court order. In those cases, the fact that you might have indicated that you do not want your health status disclosed would not prevent this information being shared.

Do I need to tell health care staff or correctional staff in prison that I'm HIV-positive?

No. The law does not require you to disclose your HIV-positive or HCV-positive status to health care workers or other correctional staff in prison. You are legally required to disclose your HIV status **only** before having sex that poses a realistic possibility of HIV being transmitted. But you may wish to disclose your HIV-positive status

to health care staff in order to obtain appropriate treatment, care and support.

For more information on the criminal law on this matter, see the info sheet *Indigenous Communities and HIV Disclosure to Sexual Partners: Questions and Answers*.

If I tell correctional staff in prison that I am HIV-positive or HCV-positive, are they required to keep it confidential?

Yes. Correctional staff have an obligation to keep your HIV-status or HCV-status confidential. Prison staff who do not keep your health information confidential are violating your right to privacy.

What happens if my HIV or HCV status is shared without my permission?

The disclosure of your health information should be documented on your file and you should be notified of the disclosure. The only time you may not be notified is if doing so could jeopardize

the safety of another person. There have been cases where confidential health information, including a prisoner's HIV and/or HCV status, has been accidentally disclosed. In those circumstances, you could do any or all of the following:

- file a written complaint or grievance with CSC, which has a legal responsibility to support the fair and quick resolution of complaints and grievances³
- file a complaint with the Privacy Commissioner, an independent body which investigates complaints related to privacy, by calling toll-free 1-800-282-1376 or by writing to

The Privacy Commissioner of Canada
Place de Ville, Tower B
112 Kent Street, 3rd Floor
Ottawa ON K1A 1H3

- contact the Office of the Correctional Investigator (OCI),⁴ which is responsible for independent oversight of CSC by investigating federal prisoners' concerns, by calling toll-free 1-877-885-8848, approaching OCI staff during a scheduled prison visit, or writing to

Office of the Correctional Investigator
P.O. Box 3421, Station "D"
Ottawa ON K1P 6L4

- pursue civil action, meaning you could sue CSC for disclosing your health information without your permission (you will need the assistance of a lawyer)

Who is responsible for monitoring and treating HIV and HCV in federal prison?

Nurses are primarily responsible for tracking, monitoring and day-to-day management of HIV and HCV. If more specialized treatment is required, you will be referred to a doctor or infectious disease specialist.

³ For more information on filing a complaint or grievance, see Commissioner's Directive 081, *Offender Complaints and Grievances*, and Prisoners' Legal Services, *Writing an effective grievance*, October 2015. CSC has also set up a national toll-free phone number 1-800-263-1019 for prisoners to inquire about the complaint and grievance process or to ask specific questions about grievances they have filed.

⁴ For more information on making a complaint to the Office of the Correctional Investigator, see *Making a Complaint to the Office of the Correctional Investigator* on the Office of the Correctional Investigator website..

Can I access my health records in prison?

You have the right to access, or request access, to your health care records in prison. You should make the request in writing. Within 30 days of requesting access to personal information, you should receive written notice informing you if you will get access to your health records.

If access is given, the information should be provided. The 30-day time frame can be extended in limited circumstances.

Among other reasons for non-disclosure, federal prisons may refuse to disclose information if seeing this information would affect your physical and mental health and would not be in your best interest (but we are not aware of examples of this having happened).⁵ If access is refused, it may be because the information does not exist. If the information does exist and access is refused, you should be told on what grounds access was refused.⁶ If you disagree with a decision to refuse access to your health records, you could file a complaint with the Privacy Commissioner (see contact details above).



Okimaw Ohci Healing Lodge (Maple Creek, Saskatchewan)

Health care and harm reduction services

If I test positive for HIV or HCV in prison, will I be able to see a doctor and start treatment?

Generally, yes. Prisoners have the right to what is called “essential healthcare.” This means that HIV-positive and HCV-positive prisoners have, at a minimum, occasional access to specialist care.

HIV treatment is available in federal prison and can be started or continued in federal prison, though prisoners have said that their HIV treatment was interrupted when they were transferred from one prison to another. Often, you are given a

⁵ See ss. 24, 25 and 28 of the *Privacy Act*, R.S.C., 1985, c. P-21.

⁶ See s. 16(1) of the *Privacy Act*.

two-week supply of medication that you are allowed to keep in your cell. HIV-positive prisoners should also be provided with adequate dietary supplements.

HCV treatment should be available in federal prison. However, access to HCV treatment is inconsistent, and you may be put on a waiting list. If you are not able to access HIV or HCV treatment, you can file a complaint or grievance with CSC, contact the OCI, or pursue civil action (see above for more information).

Do I have a right to refuse treatment?

Yes, in most cases, you have the right to refuse medical treatment or withdraw from treatment at any point in time.

Will my treatment for HIV or HCV be affected if I am in a healing lodge?

Before being transferred to a healing lodge, residents undergo an assessment to determine whether or not the healing lodge can accommodate their health situation. In most cases, healing lodges are able to provide the necessary care and treatment for people living with HIV and HCV, including through visits to specialist doctors outside the healing lodge.

Can I access traditional medicines for HCV and HIV in prison?

Residents at healing lodges, and to a lesser extent, at CSC prisons, have access to traditional medicine. Traditional treatments can also be organized by Elders and medicine carriers at a healing lodge.

Although cultural and religious food and medicine, including tobacco, sweet grass, sage, cedar, fungus and other ceremonial items, such as pipes and drums, are typically allowed to enter, move within and exit from federal prison, these items are examined upon entry. This has led to these items being inconsistently available in federal prisons across the country, making it difficult to conduct many traditional ceremonies and accommodate spiritual healing practices outside of a healing lodge.

When I am released from prison, will I be given a supply of HIV or HCV treatment?

When you leave prison, or transfer from one institution to another, your treatment may be interrupted. If there are no medications in stock at the new institution, you must wait,

and potentially miss doses, while the prison pharmacy orders them in. When you are released from prison, it is possible that you will not have a supply of medication. You should make a doctor's appointment for the day of your release so you have a prescription or supply of medication with you upon release. The prison nurse can also help you arrange a follow-up visit with a doctor after your release, and help you get an adequate supply of medication until your next doctor's appointment.

Will I be tested for illegal drugs in prison?

Federal prisons carry out random urine testing for illegal drugs, including THC (an active ingredient found in cannabis or marijuana). Urine samples of 5% of the prison population are

tested each month. CSC also carries out urine tests if they believe a prisoner has used alcohol or drugs, or as a condition of participation in some programs.

Drug testing also happens at healing lodges. The frequency of drug testing at healing lodges depends on the frequency of health care visits to the healing lodge.

Are there harm reduction supplies offered in prison?

Some harm reduction supplies are offered in prison.

CSC currently provides prisoners with condoms, dental dams, lubricant, bleach, as well as access to opioid substitution therapy, in the form of methadone or Suboxone. Bleach, condoms, lubricant and dental dams are supposed to be provided in at least three designated locations in the prison and at all private family visiting units, without asking. But studies have found that bleach is not completely effective in preventing the spread of HIV and HCV.

Sterile injection equipment (i.e. needles and syringes) is not available in federal prisons.

Prisoners should be provided with information on harm reduction throughout their sentence. You should be able to access educational and health promotion materials about different health-related subjects, including information specific to HIV and HCV.

Can I begin or continue opioid substitution therapy (OST) in prison?

If you are already on OST when you begin your prison sentence, you are allowed to remain on it. Your first nursing assessment happens within the first 24 hours of arriving in prison. You can

tell the nurse during the assessment that you were on methadone or Suboxone in the community, before you were in prison.

You will need to give your consent to the nurse to continue on methadone or Suboxone. You will be asked to sign a “Release of Information” form so that CSC can confirm your participation in an OST program and obtain your treatment history from your community OST provider. You will still need to go through an assessment process. If CSC decides that you should not be on OST after assessing you, the prison doctor must taper you off methadone or Suboxone in a humane and safe manner.

If you would like to begin OST in prison, tell your Institutional Parole Officer (IPO) that you would like to start OST. Because you could be charged with an institutional offence for using drugs in prison, you should tell your IPO or any other CSC staff person that you are disclosing *private medical information* (i.e. such as drug use) because you would like to get on OST. A team that is responsible for enrolling prisoners in OST will examine you based on a set of criteria (see below for more detail). As part of the team’s assessment, you will be given two urinalysis tests at two random times. The test results are considered medical information and should not be used for other purposes, including disciplinary charges.

If you qualify for OST, your name will be put on a waitlist until a spot in the program becomes available. Waiting lists to begin methadone or Suboxone in prison are often long. This fact may make it difficult for you to continue on, or begin, OST early in your sentence.

Can I begin or continue OST in a healing lodge?

The availability of OST varies in healing lodges. Consult with your Aboriginal Liaison Officer to see if programming is available before transferring to a healing lodge. Other drug treatment programs might be available.

What are the criteria to qualify for OST in federal prison?

To qualify for OST in federal prison, you must

- be diagnosed with dependence on intravenous opioids, or have a well-documented history of opioid addiction with a high risk of relapse confirmed by a certified prison doctor
- have a history of failed attempts at treatment and have evidence that your chance of benefiting from other treatment options is small
- agree to the terms and conditions of OST⁷

⁷ CSC, *Specific Guidelines for the Treatment of Opiate Dependence (Methadone/Suboxone®)*.

Can I be placed on priority admission to OST?

- are HIV-positive and opioid dependent or at a high risk for relapse
- require treatment for HCV
- are opioid dependent with a history in the past three months of a life-threatening opioid overdose, are endocarditic, have septicemia, have septic arthritis, or exhibit suicidal behaviour directly related to your opioid dependence
- are opioid dependent, and you will be released within the next six months and you have a well-established release plan for a community OST provider

If you qualify for priority admission to the OST program, you should get OST without delay, before being transferred to your parent institution.⁸

Will I be cut off OST when I am released from prison or transferred to a healing lodge?

You should not be cut off OST when you are released from prison. CSC should ensure that your OST is not interrupted when you are released on parole, statutory release or warrant expiry. Your Parole Officer should put you in contact with a community OST provider before you are released so that you can continue your

treatment in the community right away. If you want to be released in an area where you cannot access OST, you will be tapered off methadone or Suboxone before you are released.

Some healing lodges offer OST treatment, and others do not. Be sure to inquire if this treatment is available when speaking with your Aboriginal Liaison Officer during your healing lodge intake assessment.

Prisoners have reported being cut off OST because of allegations of giving the medication to other prisoners, or poor behaviour. Prisoners should never be cut off OST as punishment for bad behaviour. If this happens, you can file a complaint or grievance with CSC and/ or contact the OCI (see details above).



⁸ Ibid.

Are there treatment options that are specifically for Indigenous people for drug dependency in federal prison?

Yes. While in federal prison, you can participate in the Aboriginal Offender Substance Abuse Program. This program is for Indigenous men only and combines cultural healing traditions and contemporary best practices in substance use treatment. Some healing lodges also have specific programs for drug dependency.

Will I be able to meet with an Elder in prison?

You have the right to access traditional Indigenous healing practices, which includes meeting with an Elder in prison. Indigenous Elders have the same status as other religious leaders.

However, in prisons where fewer Indigenous people are incarcerated, prisoners typically have less access to spiritual Elders and limited access to Indigenous-specific services and programs than they would in institutions with a higher Indigenous population.

What Indigenous-specific programs are available in CSC facilities?

There are four different kinds of Indigenous living environments offered in federal prisons: (1) pathways healing units; (2) pre-pathways day programs; (3) pathways transition units; and (4) CSC or community-based healing lodges.

Pathways Healing Units are designated within certain medium and multi-level security institutions and offer a structured living environment and opportunities for Indigenous people to engage in Indigenous-specific programs, ceremonies and activities in preparation for transition into a lower security institution or a Healing Lodge. Transfer to a Pathways Unit is voluntary and subject to screening by the Elder(s) and a correctional case management team. Most Pathway Healing Units exist in men's institutions. For Indigenous women, there are currently two Pathways Units, both of which are located in the western region: (1) Edmonton Institution for Women and (2) Fraser Valley Community Correctional Centre in British Columbia.

Pre-Pathways Day Program is a program for Indigenous men in some maximum security prisons. It prepares prisoners to move to a Pathways Unit once they are rated at medium security. The program focuses on cultural, traditional and ceremonial practices and is guided by Elders.

Pathways Transition Units provide Indigenous-specific programs for prisoners who have transitioned from a Pathways Unit to a minimum security

institution. Similar to the Pre-Pathways program, initiatives offered through the Pathways Transition Units focus on cultural, traditional and ceremonial practices and are also guided by Elders. These units are typically an option for prisoners not living in a Healing Lodge.

Healing Lodges are open environments that are run similar to a minimum-security facility and offer services and programs that reflect Indigenous culture. They also incorporate Indigenous peoples' traditions and beliefs into the space. Residents live in houses, and Indigenous teachings and ceremonies are used to address the needs of residents. Residents have contact with Elders and access to other culturally relevant programs. For example, traditional activities and treatments are available to manage the symptoms of HIV and HCV. While non-Indigenous people can also live at a healing lodge, they must choose to follow Indigenous programs and spirituality.

An **Aboriginal Women Offender Self-Management Program** may also be offered in an institution or the community. It targets women who need support to maintain skills they have learned in other programs. The program involves Indigenous Elders and consists of 12 sessions that are each 2 hours long.



Okimaw Ohci Healing Lodge (Maple Creek, Saskatchewan)

Who provides Indigenous-specific HIV and HCV programs in prison?

HIV and HCV programs are available to Indigenous people in federal prisons with the support of various staff, volunteers and community workers.

Most federal prisons have Peer Education and Counselling program (PEC) workers or Aboriginal PEC (APEC) workers. They are prisoners who have received training on HIV and AIDS, HCV and

harm reduction to provide support and health information to other prisoners. Unlike the PEC program, the APEC program emphasizes Indigenous traditional healing practices and employs Elders as regular participants offering spiritual guidance. Circle of Knowledge Keepers are also peer health educators who are traditional storytellers that help organize workshops and activities to create awareness about HIV and HCV and harm reduction strategies. Some also play key roles in ensuring that safer sex supplies are consistently available to all Indigenous prisoners.

A number of Indigenous organizations also offer Indigenous-specific HIV and HCV education and programs. These organizations may coordinate traditional activities in prisons to help prisoners cope with illness. Common activities include talking and healing circles with Elders, smudging and traditional Indigenous crafting workshops.

At the Okimaw Ohci Aboriginal Healing Lodge for Women in Maple Creek, Saskatchewan, Kimisinaws (Cree term for “older sister”) provide Indigenous-specific programs for women. Kimisinaws are the primary, daily contact for Indigenous women at the healing lodge and work with psychologists, behavioural counsellors, parole officers and others to develop correctional plans with each woman.

There are also chaplains, Elders, Aboriginal Liaison Officers, program officers, volunteers, teachers and employment counsellors that can offer support and help you better navigate existing programs and services. Ask federal prison staff how to connect with these support networks.

Can I be transferred to the care and custody of an Indigenous community?

Yes. Section 81 of the CCRA permits Indigenous prisoners to be transferred to the care and custody of an Indigenous community. If you are interested in this option, the first step is for the Aboriginal Liaison Officer in federal prison and the Indigenous community to prepare a plan for your supervision and integration into the community. After the CSC and the Indigenous community have signed an agreement, you will be released to the community that has promised to providing long-term supervision.

Section 84 of the CCRA also permits Indigenous prisoners to be released into an Indigenous community. If you request this, CSC must give adequate notice to the community of your parole review or statutory release date, and an opportunity to propose a plan for your release and integration into the community.

What is the difference between a CSC-run and a Section 81 healing lodge?

Healing lodges vary in size, location and design across Canada. They can be located remotely or in urban settings. Some healing lodges are run by CSC and others operate under Section 81 of the CCRA, which authorizes an agreement with an Indigenous community to provide correctional services to Indigenous prisoners through healing lodges.

CSC-run healing lodges focus on Indigenous values, traditions and beliefs to design services and programs for residents. They are considered CSC correctional facilities. **Section 81 healing lodges** are privately run by Indigenous communities in agreement with CSC to provide correctional services.

CSC-run	Section 81
1. Okimaw Ohci Healing Lodge, Maple Creek, Saskatchewan*	1. Stan Daniels Healing Centre, Edmonton, Alberta
2. Pê Sâkâstêw Centre, Maskwacis, Alberta	2. Buffalo Sage Wellness House, Edmonton, Alberta*
3. Kwikwêxwelhp Healing Village, Harrison Mills, British Columbia	3. Prince Albert Grand Council Spiritual Healing Lodge, Wahpeton First Nation, Saskatchewan
4. Willow Cree Healing Lodge, Duck Lake, Saskatchewan	4. Ochi-chak-ko-sipi Healing Lodge, Crane River, Manitoba
	5. Waseskun Healing Centre, St-Alphonse-Rodriguez, Quebec

* For women only.

Are there separate healing lodges for Indigenous women?

Yes. The Okimaw Ohci Healing Lodge for Indigenous women is a 30-bed facility run by CSC and located in the territory of the Nekaneeet First Nation in southern Saskatchewan. It contains both single and family residential units

that can accommodate children. The Okimaw Ohci Healing Lodge only accepts women who have been classified at minimum- or medium-security.

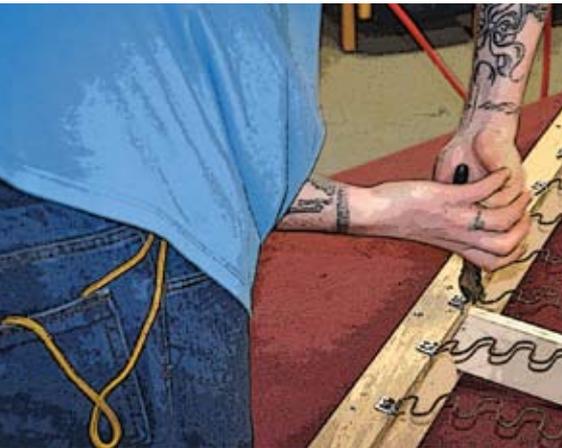
Buffalo Sage Wellness House is a 16-bed, Section 81 healing lodge run by Native Counselling Services of Alberta and located in Edmonton, Alberta. Buffalo Sage also accepts only women classified at minimum- or medium- security.

What health services are offered at healing lodges?

Each healing lodge provides health services, including HIV-treatment and HCV-treatment, in different ways. A lot depends on the location of the healing lodge and the prisoner's circumstances.

For example:

- Residents at Pê Sâkâstêw healing lodge in Maskwacis, Alberta, can access health care services from a dedicated health care unit, which oversees HIV- and HCV- treatment. A doctor visits the unit twice a month. In the event a resident needs more than the clinic can provide, staff can take the resident into Edmonton.
- Residents at Stan Daniels Healing Centre, located in downtown Edmonton in a courtyard opposite a CSC facility, can access CSC health services or health clinics within the city, facilitating access to HIV-treatment and HCV-treatment.



- At Waseskun Healing Centre, located about one hour from Montréal, Quebec, a nurse comes once a week and a doctor comes once a month (or more if needed). For non-emergency hospital care, residents are escorted to the nearest CSC health facility; otherwise, residents use outside health services.
- Ochi-chak-ko-sipi Healing Lodge in Crane River, Manitoba, has a memorandum

of understanding with the First Nation health clinic. Residents of the healing lodge visit the community health nurse there as well as a nearby town for appointments and prescriptions. Residents may also travel to Dauphin, a larger, more distant centre, to meet with doctors and dentists.

Will my health situation be taken into account while I am in prison, or in decisions related to my placement?

Yes. If prison authorities are aware of a health condition that requires additional support, they are required to consider that condition in all decisions relating to placements, transfer, administrative segregation and disciplinary matters, as well as in preparation for a prisoner's release and supervision.

Discrimination

What is HIV- or HCV-related discrimination?

Under human rights law, treating someone negatively or unfairly because of their health status (such as their HIV-positive or HCV-positive status) is discrimination. You can also be discriminated against on many other grounds (i.e. because you are Indigenous, or because of your sexual orientation, gender identity, use of drugs, or because you are or were a sex worker).

CSC is required to comply with the *Canadian Human Rights Act*, which prohibits discriminating against and harassing prisoners on grounds of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, physical or mental disability, and conviction for which a pardon has been granted.⁹

What can I do if I am harassed or discriminated against by CSC staff because of my HIV status and/or HCV status?

To prove that you have been discriminated against, you need to show a connection between the reason for discrimination and the negative treatment. For example, if a staff member uses insulting words about your HIV-positive status, this would likely show a connection between the conduct and the ground of discrimination.

If you believe you have experienced discrimination on the basis of your HIV-status and/or HCV status, write down what happened to you so you have a record of the situation. Sometimes talking to the person who is responsible, or their supervisor, regarding the discrimination may resolve the situation. It is ideal to try and resolve the matter at the initial level. If it is not resolved at the lowest level, you will be able to show that you made efforts to deal with the problem and that the institution was aware of your complaint.

If the discrimination was not addressed, you could submit a written complaint with CSC as an institutional grievance to the prison warden. CSC should mark the complaint as sensitive and high priority. Be sure to keep a copy of your grievance and ask the staff person who receives it to sign and date your copy. If the institutional level grievance does not address the discrimination, a final grievance can be filed to CSC national. The CSC grievance process can take a very long time to get through. If you require more urgent assistance, contact a lawyer or legal services.

⁹ At the time of writing, *Bill C-16, An Act to amend the Canadian Human Rights Act and the Criminal Code*, was before the House of Commons. The proposed legislation would add gender identity and gender expression to the grounds of discrimination under the *Canadian Human Rights Act*.

If you feel that CSC did not adequately resolve your human rights complaint, you could make a complaint to the Canadian Human Rights Commission by completing and filing a complaint form, which you can obtain by calling the Commission toll-free at 1-888-214-1090 or by TTY at 1-888-643-3304, or by requesting a form in writing at

Canadian Human Rights Commission
344 Slater Street, 8th floor
Ottawa, Ontario K1A 1E1

For more information about the human rights complaint process, see *Human Rights for Federal Prisoners* and *Writing an effective grievance* (information below).

Can transgender people choose where they are housed in CSCs?

At the time of writing, a transgender person cannot choose where they are housed within a CSC institution and is often placed in a federal prison based on their assigned sex at birth rather than gender identity.¹⁰

Can I be segregated from other prisoners just because of my HIV status and/or HCV status?

Segregation is intended to keep certain prisoners from associating with the general prison population in order to ensure the security of the prison and safety of the staff and prisoners, including the segregated prisoner. Sometimes, segregation can also be used as a disciplinary measure.

A prisoner should not be segregated on the basis of their HIV-status and/or HCV-status alone. International human rights guidelines recommend that segregation on the basis of HIV status should be prohibited.¹¹ CSC's own guidelines recommend that segregation should only be used for the shortest period of time necessary, when there are no reasonable alternatives, and in accordance with a fair, reasonable and transparent decision-making process.¹² However, correctional staff in Canada have used segregation in situations

¹⁰ CSC, Commissioner's Directive 800-5, *Gender Dysphoria*, April 27, 2015, at para. 3.

¹¹ See, for example, paras. 21(e) and 153 of the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version*.

¹² CSC, Commissioner's Directive 709, *Administrative Segregation*, October 15, 2013.

involving HIV-positive prisoners, citing concerns for the prisoner's safety. Human rights authorities consider segregation beyond 15 days to be torture, or cruel, inhuman or degrading treatment, depending on the circumstances.¹³

You have rights in segregation. You must be allowed access to spiritual support, including Indigenous Elders, and to health care and mental health services. You must also be allowed access to personal cell effects, such as your medicine bundle and smudging kit, within 5 working days of moving to segregation.¹⁴



Pê Sâkdstêw Centre (Maskwacis, Alberta)

¹³ See, for example, Rule 44 of the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (the "Nelson Mandela Rules"), A/RES/70/175, 17 December 2015 and UN Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/66/268, August 5, 2011, at para. 76.

¹⁴ CSC, Commissioner's Directive 709, *Administrative Segregation*, October 13, 2015 and CSC, Commissioner's Directive 580, *Discipline of Inmates*, October 26, 2015.

Additional resources

Canadian Aboriginal AIDS Network, *Aboriginal people and incarceration issues related to HIV/AIDS, Hepatitis C and residential schooling*, 2006.

Canadian Aboriginal AIDS Network, *Circle of Knowledge Keepers Manual*.

Canadian Aboriginal AIDS Network, *Residential Schools, Prisons, and HIV/AIDS among Aboriginal People in Canada: Exploring the Connections*, 2009.

Canadian HIV/AIDS Legal Network, *Know Your Rights: Privacy and Health Records*, June 2014.

Canadian HIV/AIDS Legal Network, *Criminal Law & HIV Non-Disclosure in Canada*, 2015.

Canadian HIV/AIDS Legal Network, *Indigenous Communities and HIV Disclosure to Sexual Partners: Questions and Answers*, April 2016.

Prisoners' Legal Services, *Methadone Treatment in Federal Prison*, April 2011.

Prisoners' Legal Services, *Aboriginal Prisoners' Legal Rights*, January 2014.

Prisoners' Legal Services, *Writing an effective grievance*, October 2015.

Prisoners' Legal Services, *Human Rights for Federal Prisoners*, October 2015.

Prisoners with HIV/AIDS Support Action Network (PASAN), *Cell Count*.

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