

Conditions of Confinement in Men's Provincial Jails in Nova Scotia

ECPJS Visiting Committee
Annual Report 2020-2021

Authored by:

Hanna B. Garson, Director of the ECPJS Visiting Committee, with contributions from Sheila Wildeman and Harry Critchley.

Steering Committee Members:

Claire McNeil
Sheila Wildeman
Harry Critchley
Adelina Iftene
Hanna Garson

Acknowledgements:

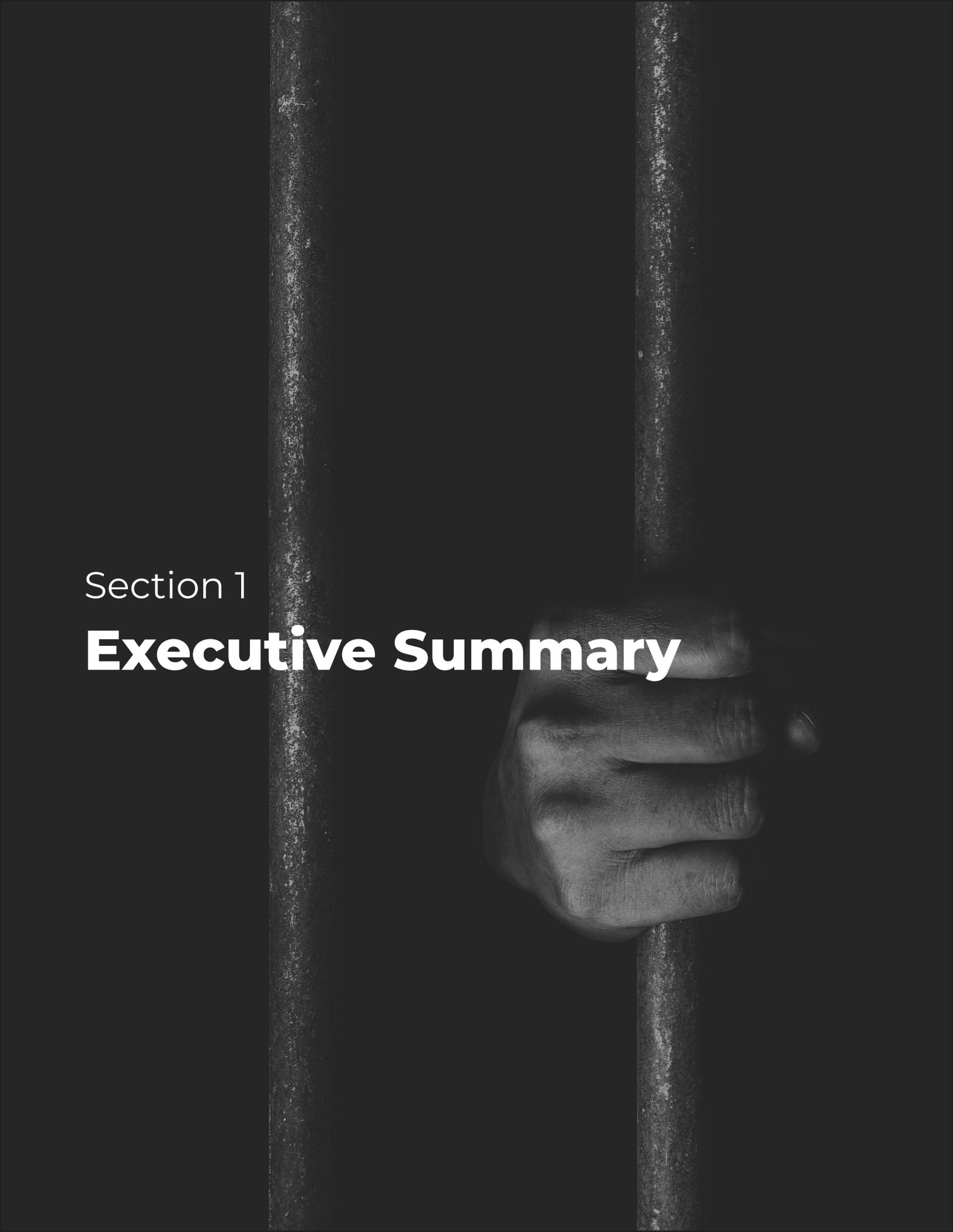
Thank you to: El Jones, Howard Sapers, Dalhousie Legal Aid Service, and the Elizabeth Fry Society of Mainland Nova Scotia.

Designed by:

Kevin Mullen

www.eastcoastprisonjustice.ca



A black and white photograph of a hand gripping a vertical metal bar. The hand is positioned on the right side of the frame, with fingers wrapped around the bar. The background is dark and textured, suggesting a wall or a similar surface. The lighting highlights the texture of the hand and the metal bar.

Section 1

Executive Summary

Executive Summary

Shortly after its founding in 2017, East Coast Prison Justice Society (ECPJS) identified the need for increased accountability and transparency in the Nova Scotia correctional system, in light of human rights standards, both domestic and international. In response, ECPJS constituted the 'Visiting Committee' ("VC") initiative. The primary objective of the VC is to work with prisoners to articulate systemic concerns and bring these to the attention of jail administration and the public, in hopes of catalysing systemic change by increasing transparency. In February 2020, ECPJS's VC began surveying conditions of confinement through in-person visits to the Central Nova Scotia Correctional Facility ("CNSCF"), pursuant to an agreement reached with NS Corrections in 2019 in which volunteers would meet with groups of male prisoners in CNSCF to engage in conversations on conditions of confinement, after which systemic issues would be discussed with prison administration and summarized in a letter. Shortly after our first visit, COVID-19 reached Nova Scotia and provincial correctional facilities were closed to in-person visits. To maintain communications with prisoners and continue, in some form, monitoring conditions of confinement, the ECPJS VC shifted to a phone line that prisoners could call for free, while also maintaining communications through ECPJS volunteers as well as professionals in the community in regular contact with those in provincial custody.

The VC encountered challenges maintaining steady lines of communication both with prisoners and facility administrators, largely due to the pandemic. However, **from prisoners' calls and reports of other contacts from service providers, families, and others, themes emerged indicating certain systemic problems in NS Correctional Facilities.** These included a reduction in the liberties of prisoners and in the transparency of the jails, both attributed at least in part to system responses to COVID-19.

This report summarizes what was heard from prisoners, the responses from correctional administrators, and the recommendations of ECPJS in relation to the most common complaints about conditions of confinement. **The issues are divided into the following categories:**

- A. deprivations of liberty and related concerns
- B. cleanliness and hygiene
- C. communication issues (such as access to phone calls with lawyers and family, as well as access to visits)
- D. other institutional concerns (including strip searching, racism, programming, and health care)

The most common complaints related to lockdowns, as well as difficulty navigating and accessing healthcare. The report is written with the hope of raising public awareness about current conditions in Nova Scotia provincial jails, and to inform decision-making in relation to the correctional system. **Conditions of confinement as reported over the past year, along with the reduction in provincial jail transparency, have only made clearer the importance of independent monitoring of places of detention.**



Section 2

Introduction

Introduction

East Coast Prison Justice Society

ECPJS is a collaborative partnership of individuals and organizations helping criminalized and imprisoned individuals through advocacy, research, scholarship, legal support, education, public service, and the provision of grassroots services. In furtherance of this mandate, ECPJS works with prisoners to advance their human rights including their civil and political as well as social, cultural and economic rights. More fundamentally, ECPJS seeks to promote decarceration and increase investment in addressing the social determinants of criminalization and incarceration.

ECPJS engages in an array of advocacy, legal education, law reform, and policy reform projects involving:

1. conditions of confinement
2. prisoner health
3. police
4. fatality inquiries
5. decarceration and community re-entry.

More information regarding ECPJS's various projects can be found in the most recent annual report.¹

Overview of Nova Scotia Correctional System

In Nova Scotia, there are four adult provincial correctional facilities operated by the Correctional Services Division of the provincial Department of Justice: the Central Nova Scotia Correctional Facility (“CNSCF”) in Burnside (Dartmouth), the Northeast Nova Scotia Correctional Facility (“NNSCF”) in New Glasgow, the Southwest Nova Scotia Correctional Facility (“SNSCF”) in Yarmouth, and the Cape Breton Correctional Facility (“CBCF”) in Sydney. These facilities hold adults who are:

- serving a sentence of less than two years,
- remanded (i.e., detained pending trial or sentencing), or
- held in some other form of detention (e.g., immigration detention, people in federal custody making court appearances).

Presently, the majority of people in provincial custody are on remand. In 2018-2019, 71 per cent of all adults in provincial custody were remanded.²

¹ ECPJS, “ECPJS 2019-2020 Annual Report” (24 September 2020), online: <https://docs.google.com/document/u/0/d/15FAA22HwJjyPaJKU_EpXvLGo9Z8vaj-ZdecBv2H2bxk/edit>; and on the ECPJS website: <https://www.eastcoastprisonjustice.ca/projects.html>.

² Jamil Malakieh, Canadian Centre for Justice and Community Safety Statistics, “Adult and Youth Correctional Statistics in Canada 2018/2019”, *Juristat*, Statistics Canada Catalogue no 85-002-X (21 December 2020), online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016-eng.htm>>.

Indigenous persons and African Nova Scotians are over-represented in provincial jails.³ In 2017–2018, Indigenous persons made up six per cent of the Nova Scotian population, but accounted for eight per cent of remand admissions. Indigenous women were particularly over-represented, making up 15 percent of remand admissions. In that same year, African Nova Scotians made up about 2 percent of the Nova Scotian population, but were 11 percent and 10 percent of admissions to remand and those serving custodial sentences, respectively.

Provincial correctional facilities are governed by the *Correctional Services Act* (“CSA”),⁴ the *Correctional Services Regulations* (“CSR”),⁵ the *Correctional Services Policy and Procedures* (“CSPP”), and various institutional directives and standing orders.

The federal prison system, operated by the Correctional Service of Canada (“CSC”), holds persons who are serving sentences of two years or longer. Under the *Corrections and Conditional Release Act*, federal corrections are subject to the independent oversight powers of the Office of the Correctional Investigator (“OCI”), which functions as independent ombudsperson specifically in relation to federal prisons.⁶ The OCI has statutorily granted powers, such as: unlimited and unannounced physical access to every space within federal correctional facilities, the ability to inspect facilities, discretion to pursue investigations of complaints and requests from inmates, the ability to hold public or in camera hearings and demand attendance of an individual and require that they furnish the OCI with information, including relevant documents and including the ability to issue a summons and examine any individual under oath, the ability to issue recommendations to the Commissioner of CSC, protection against being subpoenaed, and a requirement to provide an annual report of findings to the Minister of Public Safety & Emergency Preparedness, which is then tabled in Parliament.

There is no equivalent body in Nova Scotia dedicated specifically to addressing the concerns of people in provincial custody. Instead, various mechanisms exist, each which fulfills a narrow segment of the functions required of a true mechanism of transparency and accountability.

Internal Complaint Systems

I. Nova Scotia Corrections

People in provincial custody may use an internal complaints system to grieve any decision or condition of confinement with which they take issue. By its very name, the “internal” complaint process is not an oversight mechanism.

The CSA and CSR collectively prescribe the complaint procedure that must be followed.⁷ The Executive Director of Corrections is responsible for designating one or more employees to receive and respond to complaints. The designated employee must acknowledge the complaint in writing within five business days after receipt. The designated employee must then investigate the complaint and either take active steps to resolve it or refer the matter to a different agency for further inquiry. Under certain, limited circumstances,

³ Nova Scotia Department of Justice, “Corrections in Nova Scotia: Key Indicators” (April 2019), online (pdf): <<https://novascotia.ca/just/publications/docs/Correctional-Services-Key-Indicator-Report-2017-18.pdf>>.

⁴ *Correctional Services Act*, SNS 2005, c 37 [CSA].

⁵ *Correctional Services Regulations*, NS Reg 99/2006 [CSR].

⁶ *Corrections and Conditional Release Act*, SC 1992, c 20, s 167(1) [CCRA].

⁷ CSA, *supra* note 4, s 24; CSR, *supra* note 5, ss 25-30.

the designated employee may be exempted from investigating the claim; however, they must still provide a written response to the complaint.⁸ The response should also direct the complainant to alternative options to pursue a resolution and explain that they have a statutory right of appeal to the Executive Director or another employee designated by the Executive Director.

The official who initially assesses the complaint is internal to corrections, as is the individual responsible for the review of that initial decision, should the complainant decide to appeal. Additionally, nothing in the CSA or CSR prevents a complaint from being reviewed by the individual against whom the complaint was made and, similarly, nothing expressly protects the complainant from experiencing repercussions for submitting the complaint against an employee of corrections. Finally, the rules and policies give significant discretion to those dealing with complaints concerning whether or how to investigate or resolve the problems brought forward by prisoners.

Contrary to the requirements detailed above, people in custody report that it is common practice to submit complaints to any staff member, rather than a designated employee. Further, people reported that they do not regularly receive any written acknowledgment of their complaint, leading many to express skepticism regarding the efficacy and legitimacy of the internal complaint procedure. The failure to provide a written response to a complaint is not in compliance with the CSA, nor with the common law obligation to provide reasons. The Nova Scotia Court of Appeal has determined that, where an individual has a statutory right to appeal an administrative decision, as is the case under the CSA (there is an internal appeal to the Executive Director), reasons must be given for the decision.⁹ People also expressed that they were not being advised of the appeal process.

II. Nova Scotia Health

Nova Scotia Health (“NSH”) has a complaints system, separate from that of corrections. Individuals in custody reported feeling that this system was inaccessible and that engaging with it did not result in their concerns being meaningfully addressed. However, NSH has appointed a new Manager for the Correctional Health Branch, who has indicated that efforts are being made to improve the NSH complaint process. **At the time of writing this report there continues to be little clarity or accountability regarding the process** (e.g., NSH has no publicly available policy governing the complaint procedure).

Nova Scotia Office of the Ombudsman

Nova Scotia’s Office of the Ombudsman receives and investigates complaints about municipal and provincial government departments and services. The Office has broad powers of entry and investigation, powers to compel attendance of witnesses, and powers to compel the production of documents. Further, the *Correctional Services Regulations* provide that correctional authorities cannot restrict or monitor prisoners’ communications or visits with the Ombudsman’s office, including in instances where disciplinary sanctions such as close confinement are in place.

The Ombudsman’s Office is therefore, at least theoretically, a place where provincially incarcerated persons may direct complaints about the conduct of correctional or NSH staff and/or conditions of confinement.

⁸ *Ibid*, s 28.

⁹ *RDR Construction Ltd v Nova Scotia (Rent Review Commission)* (1982), 139 DLR (3d) 168 at para 23; 55 NSR (2d) 71 (NSCA); *Baker v Canada (Minister of Citizenship and Immigration)*, [1990] SCR 817 [*Baker*] at para 43.

The Office of the Ombudsman states in its 2019–20 annual report that it visits provincial correctional facilities quarterly and prepares written reports detailing these visits even if a complaint is not made.¹⁰

However, **the Ombudsman’s Office has failed to establish itself as a significant source of public oversight of provincial corrections.** Its approach to the oversight of corrections raises specific concerns. In its 2019–20 Annual Report, the Ombudsman indicates that complaints from the correctional context decreased steeply over a 3-year period, from 277 in 2017–18 to 170 in 2019–20.¹¹ The 2019–20 report gives some indication as to why. It states that Ombudsman representatives use their quarterly visits and other corrections contacts to “educate” those who are incarcerated “on correctional services internal complaints process and encourage them to exhaust all avenues of appeal before filing a complaint with the Office.” The report adds: “This approach has reduced the total number of complaints involving correctional services.”¹²

Reasons for a lack of prisoner confidence in the internal complaints system persist and are noted above: the system is not independent, it accords correctional staff significant discretion concerning when and how investigations will be conducted, and it offers no certainty regarding what if any resolutions are possible or likely to be achieved.

Prisoners themselves report to ECPJS that they do not regard the Ombudsman’s office as a source of meaningful recourse for their concerns or complaints. As an example, in 2020–21 ECPJS received a call from a person incarcerated at a provincial correctional facility who reported an incident of violence by a staff member against a disabled prisoner. The VC brought the report to the attention of the Ombudsman’s Office. When ECPJS checked back for an update, the Ombudsman representative said that they had determined that the Department of Justice / Correctional Services had jurisdiction over the matter and were reviewing it. The representative added: “The inmate will be offered the same rights of the public, so if the inmate wishes the incident to be investigated criminally the matter will be referred to the police agency of jurisdiction - The Halifax Regional Police.” This response is unacceptable. **The idea that an incarcerated person should call police to report violence from correctional staff shows a lack of concern for the power dynamics in correctional facilities and the likelihood that prisoners will regard police as an extension of rather than an alternative to correctional authority.**

Beyond individual complaints, the Ombudsman Office has issued no public statements about policies or systemic practices in provincial corrections that the VC knows of, to date. The 2019–20 annual report states that 19 formal recommendations were issued to government departments that year.¹³ None of the recommendations reported that year, or in the two previous years, involved Correctional Services—apart from a single report on the resolution of an instance of double-charging on a specific prisoner fine.

These circumstances exist despite the NS Auditor General calling for increased oversight and accountability of provincial corrections in its 2018 Report.¹⁴ That report noted chronic failures of the provincial Correctional Service to adhere to correctional law and policy, including policies on “close confinement” (isolation/segregation) and use of force. In response to the Auditor General report, Justice and the

¹⁰ Nova Scotia, Office of the Ombudsman, *2019–20 Ombudsman Annual Report* (September 2020) at 36.

¹¹ *Ibid* at 17. That said, in the same period, the comparatively low rate of correctional health care complaints nearly doubled, from 37 to 61, see *Ibid* at 19.

¹² *Ibid* at 37. The period in question in which complaints declined also overlaps with the tenure of the most recent Ombudsman appointment, William A. Smith. As noted below, Mr. Smith was Executive Director of the provincial Correctional Service prior to his 2016 appointment.

¹³ *Ibid* at 30.

¹⁴ Nova Scotia Auditor General, “Report of the Auditor General to the Nova Scotia House of Assembly” (29 May 2018) at 27–29, online (pdf): <https://oag-ns.ca/sites/default/files/publications/Report_May_2018.pdf>.

Correctional Service agreed to engage the provincial Ombudsman for quarterly audits of close confinement. Since that time, no public reporting has been made (including in the Ombudsman's Annual Reports) regarding the nature of this oversight role, what the Ombudsman has learned, or what if any remediation of correctional non-compliance with law and policy has been made.

In the intervening years, Canadian courts have pronounced on the unconstitutionality of solitary confinement for any period for persons with serious mental health conditions and beyond 15 days for others. Court documents establish that these standards have been breached in recent months in Nova Scotia's correctional facilities.¹⁵ It is a surprise, to say the least, that the Ombudsman's office has been completely silent on this and other issues.

The VC concludes with a point about independence. The recently reappointed Ombudsman is a retired RCMP officer who from 2012 to his initial 2016 appointment as Ombudsman was Executive Director of the province's Correctional Services branch. The confidence of prisoners in the Ombudsman as a means to address correctional policy and practices, the historical antecedents of which reach to the current Ombudsman's time as the head of Correctional Services, is affected by this close connection. At any rate, this close connection, in addition to the public invisibility of the Office's work, gives little confidence to prisoners seeking an effective oversight mechanism.

In light of all of the above, the NS Ombudsman Office is unfortunately not providing prisoners with the kind of robust independent oversight that is necessary and that its statutory powers might suggest is available in this province.

Nova Scotia Human Rights Commission

The Nova Scotia Human Rights Commission ("NSHRC") is an independent government agency tasked with administering the Nova Scotia Human Rights Act ("HRA"). The NSHRC describes itself as "committed to actively engaging and working with all Nova Scotians and our diverse communities to address issues of discrimination by effectively advancing equity and dignity, fostering positive and respectful relationships, and protecting human rights."

Being a "prisoner" (i.e., someone in custody) is not an enumerated ground under subsection 5(h) of the HRA. In other words, it is not one of the prohibited grounds of discrimination under provincial law. However, discrimination involving prisoners may be dealt with under the listed grounds—for example, race, gender, sex, age, disability, etc, or a combination of these. The NSHRC does receive and investigate such complaints. That said, monitoring conditions of confinement writ large does not clearly fall under the mandate of—and given resource limitations, is not a major priority of—the NSHRC.

Provincial Superior Courts

Through their jurisdiction over habeas corpus as well as judicial review of administrative decisions, provincial superior courts can play a limited role in providing oversight of provincial correctional facilities. This is only the case, however, where people in custody are able to retain a lawyer or where they file an application on their own behalf. There is limited legal aid funding available for prison law matters, so

¹⁵ "*Downey and Gray v. Attorney General (Nova Scotia)*, 2020 NSSC 213; *Lambert v. Nova Scotia (Attorney General)*, 2020 NSSC 282 at paras 9 & 15.

applicants are almost always self represented. When this happens, they are at a clear disadvantage, as they have very limited access to legal research materials, and are forced to make their case while going up against trained lawyers from the provincial Department of Justice.

Human Rights Monitoring in Places of Detention

Where individuals' liberty is restrained by the state, the institutions tasked with incarceration hold two roles which stand in tension with each other: maintaining security (an adversarial, law-enforcement role) and protecting the life and health of those they hold in custody while upholding their human rights. Prisoners may not be believed when their word is pitted against prison authorities about their treatment and conditions of confinement. The power imbalance present in correctional facilities necessitates that administration of these facilities be independently monitored for adherence to human rights standards.

There is very little publicly available information about the operations of provincial correctional facilities in Nova Scotia. Accordingly, **in order to ensure adherence to international, national, and provincial human rights standards, conditions of confinement must be transparent, which in turn requires independent human rights monitoring.**

Developing tools for effective monitoring of places of detention to ensure respect for human rights has been a focus of the United Nations, leading to the creation of both the Standard Minimum Rules for the Treatment of Prisoners, and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“OPCAT”). The United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955 – and revised and renamed as the “Mandela Rules” in 2015 – are the globally accepted base level for treatment of prisoners. These rules have shaped the creation of prison laws worldwide.¹⁶

OPCAT was adopted by the United Nations in 2002, coming into force in 2006. The objective of this Protocol “is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”¹⁷ As of October, 2019, OPCAT has been ratified by 90 states, and a further 15 states have signed but not ratified the protocol.¹⁸ Canada has neither signed nor ratified the optional protocol.

Under OPCAT, signatory states are required to establish a regimen of regular preventive visits to spaces of detention by independent bodies, which are known as National Preventive Mechanisms (“NPM”). Further, the signatories are also required to accept visits from the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“SPT”).

¹⁶ *United Nations Standard Minimum Rules for the Treatment of Prisoners*, UNGAOR, 70th Sess, Supp No 106, UN Doc A/Res/70/175 (17 December 2015) [Mandela Rules].

¹⁷ *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 18 December 2002, 2375 UNTS 237 art 1 (entered into force 22 June 2006) [OPCAT].

¹⁸ United Nations Treaty Collection, “9.b Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (last visited October 2019), online:

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&clang=_en>.

These NPMs may be constituted in ways that include the participation of civil society organizations, and must have the following qualities, amongst others:¹⁹

1. **Independence:** they need to be independent, financially and operationally. Members must not hold any positions that raise a conflict of interest.
2. **Mandate:** they should regularly examine the treatment of persons deprived of their liberty, have the power to make recommendations to relevant authorities, and to comment on (draft) legislation.
3. **In-Person Visits:** they should have access to all places where people are deprived of their liberty, without prior announcement and throughout the country. Visits should be undertaken frequently to ensure regular scrutiny.
4. **Unlimited Access:** they must have unlimited access to – and within – any place where people are deprived of their liberty. This includes access to information.
5. **Private Interviews and Confidentiality:** members of monitoring bodies must be able to conduct private interviews and protect information acquired from detainees on a confidential basis.
6. **Professional Team:** the members must have proven multidisciplinary experience. The team must include female members and have an ethnic and minority representation.
7. **Protection Against Reprisals:** detainees who speak to members of the monitoring mechanism must be protected from any form of sanction or reprisal as a result of having done so.
8. **Reporting:** Produce Reports following their visits as well as an Annual Report and any reporting determined to be necessary. When appropriate, Reports should include recommendations addressed to the relevant authorities, which should consider relevant United Nation norms in the realm of the prevention of torture and other ill-treatment, including the comments and recommendations of the SPT.

As with any mechanism for improving transparency, **human rights monitoring on its own is not sufficient to ensure adherence to the rule of law, let alone shifting state practices of incarceration to preventive measures through means such as diverting resources from prisons and jails to equitable access to the social determinants of health.** However, systematically collecting and analyzing information regarding conditions of confinement helps to promote accountability and may also help support law reform initiatives aimed at addressing more systemic issues.

¹⁹ UN, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on National Preventive Mechanisms*, 12th Sess, Geneva, CAT/OP/12/5, 15–19 November 2010; OHCHR, “Preventing Torture: A Practical Guide” (Geneva: 2018), online (pdf): <https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf>, and as summarized by Penal Reform International.

A dark, grayscale photograph of a school hallway. In the foreground, there are several round tables with chairs. In the middle ground, a staircase with a metal railing leads up. The hallway is lined with lockers and has a drop ceiling with recessed lights. The overall atmosphere is quiet and somewhat somber due to the low light and monochrome palette.

Section 3

The Visiting Committee Project

The Visiting Committee Project

Project Objective

The objective of the ECPJS VC is to ensure that the activity of provincial corrections is transparent and accountable to civil society in light of international and domestic human rights standards. It aims to accomplish these goals by periodically attending provincial facilities to engage in conversation with imprisoned individuals, together with follow-up meetings with administration, to create a public record of prisoner concerns about institutional conditions and administrative responses over time. The project had been approved to begin visits to the CNSCF, with the goal of expanding in the future to the NNSCF, SNSCF, and CBCF.

The project design was influenced by similar initiatives:

1. the Regional Advocacy model adopted by the Canadian Association of Elizabeth Fry Societies (“CAEFS”) for monitoring conditions of confinement in women’s prisons and jails across Canada. The VC model was created in collaboration with staff from Elizabeth Fry Society of Mainland Nova Scotia, who conduct periodic visits to the women’s unit at CNSCF and at the federal Nova Institution for Women in Truro;
2. the work of the federal Office of the Correctional Investigator, who also consulted with the steering committee as the VC model was devised;
3. the Mandela Rules, which state that penal institutions are to be inspected regularly to ensure they are being administered in accordance with existing laws and regulations, and in order to achieve the legislated objectives of correctional services;²⁰ and
4. civil society organizations internationally, including in Australia, involved in independent visiting / monitoring of places of detention under OPCAT.

How It Started

The Committee began discussing plans for civil society monitoring with Corrections and Justice officials in the fall of 2018. An agreement with senior correctional officials was reached on July 24, 2019, determining that Committee volunteers would be allowed scheduled entry into CNSCF to discuss conditions of confinement with groups of the detainees, provide information sessions, and then engage in follow up conversations with the administration.

²⁰ Mandela Rules, *supra* note 16, rules 83-85.

Because ECPJS's sister organization, Elizabeth Fry Society of Mainland Nova Scotia, already has a program of human rights monitoring for women and non-binary prisoners housed in the women's (East) unit of CNSCF and the federal Nova Institution for Women in Truro, ECPJS focused this initiative on the men's units (acknowledging that those residing on these units may not always be male-identifying). ECPJS and Elizabeth Fry are in regular contact and where appropriate share information about conditions of confinement to coordinate systemic advocacy strategies.

The VC had initially also hoped to engage with NSH, which provides healthcare services in the provincial jails. Concerns about healthcare are among the most common and most serious complaints raised by people in provincial custody. For this reason, the VC felt that the involvement of NSH was important to its capacity to meaningfully engage in systemic advocacy. However, the Committee was unable to develop a common understanding of the initiative with NSH administrators, despite an initial meeting and subsequent attempts to re-engage. Recently, in 2021, the VC has begun to develop a better working relationship with the Manager of the renamed Correctional Health Branch. The Committee hopes to further explore with NSH the prospect of expanding its civil society monitoring project to include a concentration on, and methods of systematically pursuing with NSH officials, the systemic healthcare concerns that are raised by Nova Scotia prisoners.

Project Design

The VC's work involves two components. The first is **periodic visits to provincial correctional facilities**. In late 2019 / early 2020, the VC made its first visit with people incarcerated at CNSCF. In November 2019 and February 2020, Committee members received a tour of the facility, discussed conditions of confinement with imprisoned individuals, and engaged in conversation with senior administration about institutional conditions, policies, and practices. Discussions with imprisoned individuals were structured by a facilitated conversation guide which had been finalized in consultation with senior correctional administration.

The second component involved **follow-up meetings and reporting letters in which the Committee brought issues arising in the visits to the attention of senior facility administration, justice officials, and other stakeholders**. The VC sought responses to issues of concern.

Following recognition of the COVID-19 pandemic as a national emergency in Canada in mid-March 2020, the VC altered the processes through which it engaged in monitoring and systemic advocacy (described below).

Project Rollout

First Visit in February 2020

To elaborate on the above, the Committee's first visit to CNSCF began with an orientation and tour provided by CNSCF staff on November 19, 2019. The tour included access to all areas of the institution but the North wing. The Committee then met with prisoners at CNSCF on February 4, 2020. Access was granted to the West and North wings, and a significant percentage of the male population attended these meetings. Twenty-two prisoners in each wing participated in the facilitated conversation sessions, forty-four in total. At the time there were fifty-two prisoners in total in the West unit, and eighty-seven prisoners in the North.

The VC was not admitted to the segregation nor 'health segregation' units for interviews although this was requested in advance.

The visit was followed by a meeting with the superintendent of CSNCF on February 13, 2020, to discuss the systemic issues reported. This information was then put into a letter and sent to the correctional administration. In a subsequent meeting with senior correctional staff, the VC was told that a written response would be provided. No such response was received to this initial February letter, although the superintendent of CSNCF did ultimately respond to subsequent letters that the Committee sent him later in the year.

Shift to the Telephone Line in May 2020

Shortly after the first visit to CNSCF, Nova Scotia declared a public health emergency due to COVID-19 (in March, 2020). One of many impacts of COVID-19 was that in-person attendance in Nova Scotia correctional facilities was no longer possible; all visits to facilities were discontinued to prevent viral transmission into the facility.

At this time, the Committee's focus, and that of ECPJS at large, shifted to advocating for a reduction in the number of people in the provincial jails to mitigate the risk of COVID-19 transmission. Over a few weeks in late March / early April, the population in provincial custody was reduced by 42 per cent. Many people worked across traditionally siloed systems to effect these releases; the subsequent challenge was to obtain sufficient funding and system coordination to ensure those vulnerable to incarceration or re-incarceration had access to critical community support. These efforts are described more fully below in section 5(a).

To facilitate some level of information flow between the VC and individuals in custody, the model for this project shifted from in-person visits to a free telephone line. With cooperation and support from the Director of Correctional Services, the VC launched a free phone line (1-877-589-9294) that individuals in custody could call on Tuesdays and Thursdays between 9:00 AM and 11:00 AM and 1:00 PM and 4:00 PM, and leave a voicemail at any time. Starting in Fall 2020, the VC model was shifted to permit prisoners to call and leave a voicemail at any time. Two differences between the telephone line and in-person visits are that telephone calls are restricted to 20 minutes and involve one prisoner at a time, whereas in-person visits are not limited in this way. Additionally, in person visits provided both time out of the day room as well as more dynamic interaction.

It became clear that individuals in custody were less interested in phoning the VC than attending in-person meetings, as the calls offered less immediate utility. The uptake was low. Early on in the transition to telephone lines, calls to the phone line were more steady, but as the year progressed, these decreased. Due to the reduction in calls, and inability to enter the facility, means of information gathering was delegated to: a) ECPJS board members and volunteers who received calls regarding conditions of confinement on their personal and professional phone lines, providing a summary of the calls to the VC.

Section 4

Major Findings

Deprivations of Liberty and Related Concerns.

Deprivations of Liberty

Lockdowns

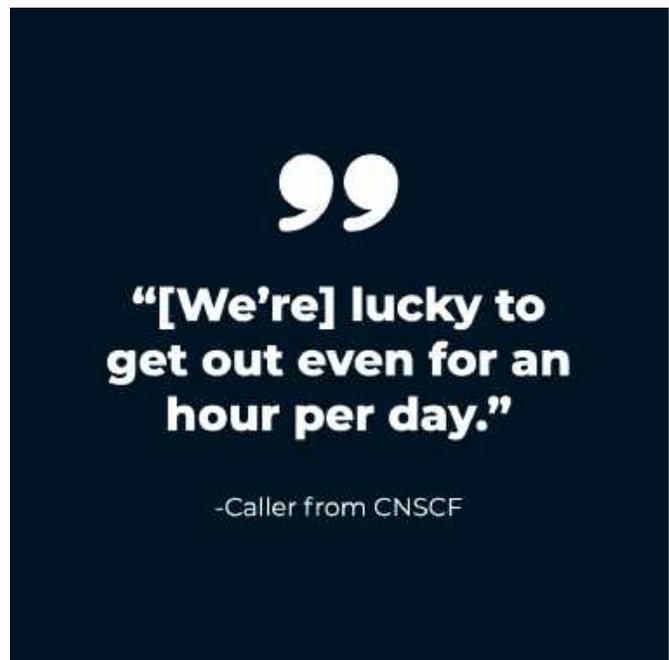
What the VC Heard

A lockdown refers to a period of time when people who are housed in a living unit, who would typically have access to the day room and programming, instead remain locked in their cells.²¹ A lockdown can be “full” in the sense of affecting all units within a facility for all or part of a day, or “partial” in affecting only one or more units (or one or more parts of a unit).²² In Nova Scotia, provincial facilities have also adopted “rolling rotational lockdowns,” where groups of people on a living unit are let out periodically over the course of a day for a minimum period of time.²³

Both during the first in-person visit to CNSCF, and persistently throughout the year, lockdowns caused the greatest concern to all individuals in custody with whom the VC spoke. Individuals reported great frustration at the limited amount of time during which they were allowed to leave their cell.

According to the prisoners who contacted the VC, the amount of time on lockdown (i.e., days of the week during which lockdown was in place) and the severity of the lockdown (hours out of cell per day) varied throughout the year, and according to the range’s rotational schedule. Over the course of the year, some individuals reported being locked down 80 to 90 percent over periods of time stretching back many weeks, if not months. However, the information was not specific to a particular range in the facility. Reports on the amount of time outside of the cell varied from days with no time out of the cell to being provided up to two hours a day outside of the cell. However, there was broad agreement that **time outside of the cell was the most limited on weekends, reported as often less than two hours a day.**

The VC repeatedly heard that lockdowns were, in prisoners’ opinions (sometimes based on their reported conversations with staff) connected to short staffing, as well as staff refusals to work. One individual stated “As soon as guards got put on range, it’s been awful. They don’t want to come to work and that creates lockdowns.” The connection to staffing shortages appears to have resulted in lockdowns occurring randomly



²¹ *Ogiamien v Ontario*, 2016 ONSC 3080 at para 31.

²² *Ibid.*

²³ *Crawley v Nova Scotia (Attorney General)*, 2020 NSSC 221 at para 30.

and unpredictably, and being of indeterminate duration. The lack of clarity as to when the lockdowns would end was experienced as particularly troubling.

Extended periods in lockdown led to frustration, anger and tension on the range. Callers reported that rising tensions in the facility because of lockdowns increased both in terms of their frequency and their perceived urgency. A distressed caller feared that there would soon be more fights on account of a prevailing view that “things have only gotten progressively worse.” Likewise, another caller described the situation on his range as being like “a powder keg.” In the view of many callers, the extended lockdowns may lead to people acting out in frustration if the frequency and duration of lockdowns are not addressed. One prisoner described a multitude of struggles within CNSCF, stating **“I must say how horrid the jail conditions are at this time; especially at Burnside (and all throughout during the time of this pandemic). From constant lockdowns, to abuse by guards and medical staff; I have experienced much of the worst that Burnside has to offer.”** Acting out in frustration may in turn attract discipline, including time in close confinement or further time in-cell.

Participants reported that the lockdowns had significant effects on their mental health, resulting in a general sense of despair. When the VC met in-person with men at CNSCF in February 2020, one group of men reported that there had been seven suicide attempts or significant self-harm incidents in the last month. As was clear from the in-person visits and telephone calls, there was a widespread perception that lockdowns increase the risk of self-harm, and violence between prisoners as well as between prisoners and staff.

The Response

In the meeting in February 2020, the superintendent of CSNCF confirmed that the lack of available staff did contribute to the frequency of lockdowns, and clarified that violent incidents have in some cases led to these staffing problems.

To alleviate the problem, he indicated that CNSCF administration was working on implementing a new staffing structure, including a new shift pattern. Instead of four-on, four-off, it would change to two-on, two-off. They also planned to recruit and train new staff, with 12 new staff members due to start March 25, 2020.

In a response letter of January 18th, 2021, the superintendent of CSNCF reported that COVID-19 has forced correctional authorities to look at how they assign prisoners to units, and that there has been an attempt to reduce the use of lockdowns by dividing inmates based on incompatibility. It was confirmed that lockdown rotations are “recorded and monitored for fairness to ensure all inmates receive equal time out of cell”.



Recommendations

The VC recognizes staffing issues are complex and involve the Nova Scotia Government and General Employees Union (NSGEU), which can create tensions between rights of union-member employees and those of incarcerated populations.

However, as upheld on appeal, it was accepted by Justice Leask in *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62, that periods of being kept in one's cell—even just for a few days—can lead to extreme psychological harm, including increased violence, and that the indeterminacy of the segregation was particularly exacerbating:

[247] I find as a fact that administrative segregation as enacted by s. 31 of the CCRA is a form of solitary confinement that places all Canadian federal inmates subject to it at significant risk for serious psychological harm, including mental pain and suffering, and increased incidence of self-harm and suicide. Some of the specific harms include anxiety, withdrawal, hypersensitivity, cognitive dysfunction, hallucinations, loss of control, irritability, aggression, rage, paranoia, hopelessness, a sense of impending emotional breakdown, self-mutilation, and suicidal ideation and behaviour. The risks of these harms are intensified in the case of mentally ill inmates. However, all inmates subject to segregation are subject to the risk of harm to some degree.

[248] The indeterminacy of administrative **segregation is a particularly problematic feature that exacerbates its painfulness, increases frustration, and intensifies the depression and hopelessness** that is often generated in the restrictive environments that characterize segregation.

[249] While many of the acute symptoms are likely to subside upon termination of segregation, **many inmates are likely to suffer permanent harm as a result of their confinement.** This harm is most commonly manifested by a continued intolerance of social interaction, which has repercussions for inmates' ability to successfully readjust to the social environment of the prison general population and to the broader community upon release from prison.

[250] Negative health effects can occur after only a few days in segregation, and those harms increase as the duration of the time spent in segregation increases. **The 15-day maximum prescribed by the Mandela Rules is a generous standard given the overwhelming evidence that even within that space of time an individual can suffer severe psychological harm.** It is, nevertheless, a defensible standard.

This conclusion is consistent with the VC's findings as described above. **Indeterminate periods of lockdown constitute serious deprivations of residual liberty and can have severe impacts on detainees' mental and physical health.** If short staffing can be linked to fear of violence, and short staffing leads to the institutional response of increasing lockdowns, the result is to perpetuate and worsen the underlying issue. The cause of this harm is the experience of being kept isolated in one's cell for a prolonged period, regardless of whether the isolation is labeled as 'solitary confinement', 'segregation', or 'lockdown'.

Our focus on analyzing the conditions of confinement as experienced from the perspective of the person so confined is also consistent with case law from Nova Scotia, most notably the habeas corpus decision *Gogan v. Nova Scotia (Attorney General)*, 2015 NSSC 360 at paragraph 40, where Justice Moir wrote: There is a segregation unit at Burnside. Repeatedly during cross-examination, Mr. Verge made it clear that Mr. Gogan and Mr. Roach received no review of their solitary confinement because they are not in the segregation unit. Mr. Gogan put the irrationality of this thinking into high relief when he said in submissions “segregation is not a place.”

The Committee recommends:

1. That minimum standards of treatment be adhered to regardless of lockdowns, meaning not simply that the standards expressed in the Mandela Rules (and accepted by appellate courts in Canada) should be followed—i.e., no subjecting people with serious mental health problems to any period of solitary confinement, and no solitary confinement beyond 15 consecutive days for others—but more generally, that people in custody should be guaranteed enough time out of cell each day to exercise outdoors, shower, telephone their lawyers, family and friends, and/or engage in religious and educational programming, as well as have access to other meaningful social interaction.
2. That a sufficient staffing complement be maintained, as well as an adequate scheduling system, to minimize short-staffing as a rationale for lockdowns.

Further, the greater the impact on the individual and their interests, the greater the duty of procedural fairness owed by an institutional decision-maker, and the greater the expectation that the impact be justified in responsive reasons.²⁴ The Committee also recommends:

3. That legislative standards and/or publicly accessible policies be adopted to address the following:
 - a. Reporting requirements: staff must create detailed and publicly accessible daily records of:
 - i. Date(s) of the lockdown including duration
 - ii. Who authorized the lockdown and their reasoning in the circumstances for determining it was justified and necessary
 - iii. The length of lockdowns/rotations used (time in cell)
 - iv. The range(s)/unit(s) impacted by the lockdown
 - v. The plan put in place to ensure the lockdown is as short in duration as possible, that persons with serious mental health conditions are not placed in conditions of solitary confinement for any period, and that limitations on liberty are otherwise kept as minimal as possible for the period during which the lockdown endures.
 - b. The precise nature and range of liberty deprivations that may be affected pursuant to lockdowns and the steps that must be taken to ensure the variant of lockdown used is the least restrictive possible (e.g., time outside, exercise, limited programming, etc.)
4. That upon being detained in their cell for 20 hours or more in a 24 hour period, each detainee should be provided with the following:
 - a. Access to legal counsel:
 - i. Number for legal aid
 - ii. Forms for filing habeas corpus applications.

²⁴ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77 [*Vavilov*]; *Baker*, *supra* note 9 at para 25.

- b. A signed and dated form (to be updated every 5 days) giving notice of:
 - i. The reasons for lockdown (transparent and intelligible)
 - ii. Expected duration
 - iii. Copy of the policy for the guarantees during lockdown
 - iv. That the individual sign the form indicating receipt and then is given a copy of the signed version
- c. That every person in lockdown be visited by a mental health professional daily who is not accountable to the correctional facility to determine if the lockdown is causing psychological harm.

”

**“I feel like I’m in the hole.
90% of my day I’m locked in
my cell... You’re supposed to
get out for 2 hours but half
the time you don’t get out ...
It’s just crazy.”**

-Caller from CNSCF

COVID-19 Quarantine Unit

What the VC Heard

In response to the COVID-19 pandemic, CNSCF developed a COVID-19 admissions dayroom to house individuals upon their arrival to the facility. Callers reported an extended period of lockdown in the COVID-19 admissions dayroom.

Communications with prisoners at CNSCF suggested that newly admitted prisoners are first swabbed while segregated in the Admissions & Discharge (“A&D”) area and held in Close Confinement until receiving a negative test result. Following that, they are held on lockdown in the COVID-19 admissions room for 14 days, after which they are then moved to a different living unit.²⁵ The VC also heard that individuals in the COVID-19 admissions dayroom were not provided any time outside.

A caller on August 13, 2020 indicated that he had been at CNSCF for five days. After transitioning into the quarantine unit, **he told the VC that he was being locked in his cell for 22 hours per day together with 14 other prisoners as part of a “14-day segregation upon admission” protocol. He also expressed frustration over the fact that he had not been offered the opportunity to go outside—a circumstance he suggested was exacerbating his mental illness.**

A caller on August 18th, 2020 reported to the VC that, during his time in the quarantine unit, he was often locked down for 22 hours each day, with no ability to place calls to his lawyer or to family members. In this individual’s view, because prisoners in this day room were afforded so little time out of cell per day, most people who would otherwise be good candidates for bail were not able to communicate with their potential sureties. For example, it took four days before one individual in the unit was able to get in touch with his surety for the purpose of arranging a bail application. Likewise, the caller himself had missed two opportunities to connect with sureties and apply for bail during this time.

Access to medical care and the cleanliness of the quarantine unit were also areas of concern raised by callers. One caller indicated that while in the Covid unit he experienced significant fever and other discomfort arising from a medical condition and was told to “sweat it out” for a number of days before his requests for medical attention were answered and treatment was provided. Several callers conveyed their concern about the fact that the cleaning of the quarantine unit was left to prisoners themselves and there was no standard upheld.

The Response

In his September 2, 2020 letter, the Director of Correctional Services confirmed that the following protocol was in place:

- The measures implemented to address all new admissions follow the guidelines and direction of the healthcare team. These individuals are isolated until we are advised by healthcare that they are cleared. The inmate is then moved to the COVID cohort unit where they will remain for 14 days until medically cleared by healthcare to be relocated within the facility.

²⁵ See also *Cox v. Nova Scotia (Attorney General)*, 2020 NSSC 253 [Cox] at paras 11-16.

The VC also heard that a similar practice was implemented at the NNSCF,²⁶ and the Committee sent a letter in August 2020 expressing concerns. In response, the superintendent of NNSCF said the following about the practice of segregation upon admission at the facility:

- Upon admission to the NNSCF an inmate is swabbed for COVID-19. It normally takes between 24 and 48 hours to get the results of the test. During this waiting period an inmate is isolated in a single cell, for the protection of everyone, and droplet protocols are employed. If the test is negative, the inmate is moved to a living unit.
- During the early stages of COVID-19, prior to the creation of the swabbing protocol, newly admitted inmates were isolated for the recommended 14 days prior to being placed on an open living unit before being swabbed.

Unlike the written Health Protection Act order and protocols affecting the community at large, written health protocols affecting incarcerated individuals are not publicly available and appear to be employed on a discretionary basis.

Recommendations

The lack of time outdoors and significantly reduced liberties are not in keeping with the measures recommended by numerous leading international health and human rights organizations. While it may be necessary to create a different area for new admissions in the interest of public health, medical quarantine should never, as was the case at CNSCF and NNSCF, be akin to segregation or solitary confinement.²⁷ Leading human rights organizations emphasize that all measures necessary must be taken to mitigate the effects of quarantine and that clear policies must be created which include the steps being taken to distinguish this form of separation from segregation.

These practices are a clear example of how the COVID-19 pandemic has had the ancillary impact of significantly restricting the residual liberty of individuals upon being jailed in a provincial correctional facility. Since the beginning of the pandemic, any remand or jail sentence is necessarily accompanied by two weeks of quarantine in conditions reported to us as solitary confinement. That is, time out of cell in these units has been highly restricted and was reported to be, at times or in some cases continuously, fewer than 2 hours out of cell with access to social interaction per day. Moreover, **these conditions have clearly been in breach of Mandela Rule ss 21(1), which mandates that every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.**

²⁶ Cox, *ibid* at para 16.

²⁷ See for instance: Council of Europe, Commissioner for Human Rights “COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe”, (6 April 2020) online: <<https://www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe>>; OHCHR & WHO, Inter-Agency Standing Committee, “IASC Interim Guidance on Covid-19: Focus on Persons Deprived of Their Liberty” (27 March 2020), online: <<https://interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus-persons-deprived-their-liberty>>; Penal Reform International, “Coronavirus: Preventing harm and human rights violations in criminal justice systems” (14 July 2020), online (pdf): <<https://cdn.penalreform.org/wpcontent/uploads/2020/07/Coronavirus-briefing-July-2020.pdf>>.

As noted above, in *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62, Justice Leask wrote at paragraph 250 that “[n]egative health effects can occur after only a few days in segregation, and those harms increase as the duration of the time spent in segregation increases. The 15-day maximum prescribed by the Mandela Rules is a generous standard given the overwhelming evidence that even within that space of time an individual can suffer severe psychological harm. It is, nevertheless, a defensible standard.” Moreover, the Ontario Court of Appeal in *Francis v Ontario* 2021 ONCA 197 affirmed that placing prisoners with serious mental health problems in administrative segregation for any period violates sections 7 and 12 of the *Charter*.

The VC reminds the correctional service of its obligation to respect *Charter* rights and refrain from unjustifiable deprivation of liberty and cruel and unusual treatment. Due to the significance of the affected interests, the VC further recommends that the following processes be adopted where prisoners are held in restricted conditions as part of a facility’s pandemic response:

5. That the justification for liberty infringements during quarantine be recorded in a manner understandable to the prisoner, and provided to each affected prisoner.
6. That there be a daily reassessment of necessity of the infringement(s).
7. That written health policies and protocols governing COVID-19 measures are made publicly available.

Time Outdoors

What the VC Heard

Beginning in February 2020 and throughout the year, there were persistent reports of limited time outdoors, with some individuals reporting almost two months without their range being offered any time out of doors or access to indoor recreation time in the gym. Those in the quarantine unit reported no time out of doors. The lack of time outdoors was reported to impact mental and physical health. One caller who reported not having gone outside in over a month expressed that the lack of time outdoors made him feel “sick and stressed.”

Callers reported that the lockdowns appeared to be interfering with access to the outdoors. An additional barrier for many was the inadequacy of their clothes and shoes given the cold weather, so that, even when offered, they remained unable to spend time outdoors.

The Response

In January, 2021 the superintendent of CSNCF wrote that CNSCF continued to provide access to outdoor time in keeping with the CSA and the CSPP. He also indicated that they were in the process of ordering more jackets, as people are no longer allowed to share jackets due to COVID-19.

Recommendations

According to provincial law, incarcerated people are entitled to be offered 30 minutes of time outdoors (not just out of their cell, but in the fresh air) per day.²⁸ There are a limited number of bases on which time outdoors can be denied according to provincial law, most of which require an individualized analysis (e.g., “the offender is actively attempting to escape”), and so cannot be applied to deny a whole living unit access to time outdoors.²⁹ Where someone is denied access to outdoor exercise, the superintendent must advise them of the reasons for the denial, and also prepare a written report detailing such reasons.³⁰ Additionally, the Mandela Rules provide for an even more generous allotment of daily outdoor time, mandating that individuals should be given a minimum of one hour outdoors each day.³¹ It is recommended:

- 8.** That correctional staff must ensure that incarcerated people are offered their daily entitlement to outdoor time.
- 9.** That adequate weather-appropriate clothes (e.g., shoes, coats) be provided to facilitate outdoor time.
- 10.** That, where prisoners are denied access to outdoor exercise, correctional staff ensure that they are advised in writing of the reasons for the denial, and that such reasons be restricted to those enumerated in section 57(2) of the CSA.

²⁸ CSA, *supra* note 4, s 57(1).

²⁹ *Ibid*, s 57(2).

³⁰ CSR, *supra* note 5, s 56.

³¹ Mandela Rules, *supra* note 16, rule 21.

Cleanliness and Hygiene Issues.

Cleanliness and Hygiene

Cleanliness of Units in the Facility

What the VC Heard

Over the span of several months, multiple individuals in CNSCF described unhygienic conditions of the Close Confinement Unit (“CCU”). **More than one caller stated that the CCU was “filthy,” noting that there was food and fecal matter, as well as other potentially biohazardous materials, on the walls of the cells in this unit.**

The VC heard concerns in relation to the cleanliness of the A&D area at CNSCF, which is the unit where persons are held either upon first arriving at the facility or just before leaving. In August 2020, several callers who had recently been admitted said the area was extremely dirty, with **one person saying “no one should be living there.” Another was very concerned by the fact that, in his A&D cell, he received what he perceived to be “the same blanket as the last guy” without it first being freshly laundered.** Finally, one caller stated that he was held in this area for close to 30 hours while awaiting the results of his COVID-19 test. During this time, he said that he repeatedly requested to have the light turned on in the cell, but was told that it was broken. As a result, he ended up having to eat his meals in the dark.

Many people with whom the Committee spoke felt as though they were not being provided with adequate supplies to keep their individual cells, as well as the common spaces in their living unit, clean. Callers reported, for the purpose of keeping the shared space on the living unit as well as their respective cells clean, they are provided with a cleaning spray, as well as a broom and/or a mop. However, **several callers noted they are not provided with any brushes, rags or toilet brushes for the purpose of cleaning toilets or other items in their cells.** Instead, prisoners reported that, as a result of a perceived lack of adequate cleaning supplies, they were put in a position where they had no choice but to use their towels or other items of their clothing for cleaning purposes. However, they also reported that ripping their clothing in this manner was considered to be a disciplinary offence and could result in them receiving a level (i.e., heightened restrictions on their liberty as a penalty or the loss of other privileges).

The Response

The superintendent of CSNCF reported that cleaning on the unit was performed by trusted inmates who requested the position and met applicable criteria and who are paid a stipend for this role. When the concern regarding cleanliness of the CCU was raised with the superintendent of CSNCF in the February 2020 meeting, a degree of skepticism was expressed about the extent of the hygiene problem in relation to the CCU, and noted that CCU cells are cleaned by outside personnel. This was reiterated to us in a follow-up letter in January 2021.

Recommendations

The Mandela Rules require that all parts of the prison be kept scrupulously clean.³² It is recommended :

11. That there be a mechanism of accountability regarding cleanliness of facilities and that all prisoners be given proper cleaning supplies.

Access to Showers

What the VC Heard

A number of callers over a period of several months reported that, on account of lockdowns and other restrictions on their time out of cell, they had been unable to shower on a regular basis. For instance, one caller in August 2020 whose unit had been on lockdown for up to 23 hours per day for much of that week noted that sometimes they did not have time to shower in their daily allotted time out of cell. This was because, in the limited time people were let out each day, they also needed to complete a variety of other tasks, including placing phone calls to their lawyers or family members, exercising, and the like. In other cases, the caller said that men on his unit were let out of their cells solely for the purpose of taking a shower before being locked in again.

There was a consensus among the callers that access to showers was especially limited for those in the COVID-19 admissions dayroom. Virtually all callers expressed concerns that their inability to access regular showers raised public health issues and that these issues were especially acute considering the ongoing COVID-19 pandemic.

Recommendations

The CSA, CSR, and CSPP are almost entirely silent on the issue of showers, including the minimum number of showers that people in custody, when locked down or in segregation, must be able to access each week.³³ It is recommended:

12. That prisoners be enabled to access at least one shower daily, regardless of whether in lockdown or close confinement or some other form of deprivation of residual liberty.
13. That time for showering is not “subtracted” from someone’s daily minimum allotment of time out of cell. This is especially important in circumstances where people are afforded very little time out of cell, as is the case with people in close confinement, who according to Nova Scotia’s Correctional regulations are entitled to be out of cell for a minimum of just 30 minutes every 24-hour period.³⁴ This aspect of the recommendation is consistent with rules recently put in place in the federal prison system. For people held in a Structured Intervention Unit, the federal equivalent to close

³² *Ibid*, rule 17.

³³ Notably, people in prison are required to take a shower prior to working in the kitchen at a facility, or if they receive a haircut, but no other circumstances are contemplated: *CSPP*, 45.07.00, “Hygiene”, s 3.1.

³⁴ *CSR*, *supra* note 5, s 81.

confinement, time spent taking a shower does not count toward the daily minimum entitlement to four hours out of cell per day.³⁵

”

“You guys need to come and take a look at this place. I was just out on a temporary absence and I went down to the [Admissions and Discharge area] and there was still blood on the wall from two Saturdays ago when an assault happened. Nobody is cleaning and the place is running rampant.”

-Caller from CNSCF

³⁵ CCRA, *supra* note 6, ss 36(1)(a), 36(3).

Communication Issues.

Communication Issues

Intra-Facility Communication

What the VC Heard

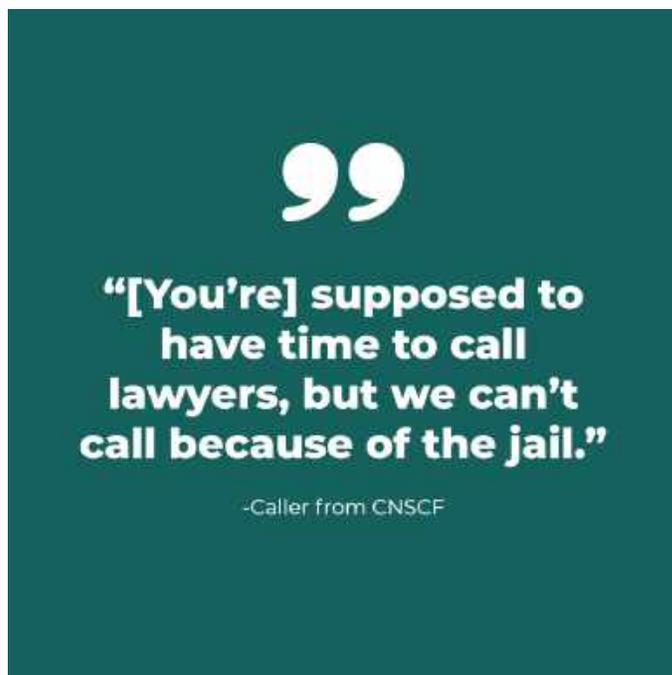
The VC heard from many individuals that the orientation handbook, in circulation years ago, had been discontinued. The lack of an orientation handbook made it difficult for them to know what their rights and responsibilities were at CNSCF, especially if this was their first time being incarcerated. People relied on other prisoners incarcerated in their unit to learn about the relevant rules, policies, and procedures with which they were required to comply. However, if they were not well connected, they often lacked an understanding of their rights and responsibilities.

The Response

The superintendent of CSNCF confirmed in February 2020 that the handbook had been discontinued due to security concerns—namely, incidents in the past where people had ripped pages from the book to block their cell's window. He also noted that many policies had been changed since the time when the handbook was first published. He indicated that the handbook is in the process of being updated, and that a copy of the current handbook would be provided to ECPJS, however this never happened. The VC was, however, able to find a copy of the 2016 edition of the handbook online.³⁶

The superintendent of CSNCF added that information is provided orally by the Orientation Officer during Orientation and Admission. VC members remarked that prisoners did not seem to have much recollection of this, noting the difficulty they may have in retaining this information given the various stressors associated with admission (see section on the A&D area above).

Finally, in subsequent communications with the Committee, the superintendent of CSNCF stated that communication is a high priority for corrections and that changes are planned to help ensure that prisoners will know what is going on. As a facility, CNSCF operates on a “direct supervision” model, which means that staff are stationed in the units where incarcerated people live. The idea behind this model is that it will permit staff to develop open lines of communication, and better relationships, with prisoners so as to be able to proactively address any issues on the unit before they arise. The direct supervision model is premised, however, on the assumption that authorities will put in place mechanisms for facilitating



³⁶ Nova Scotia, Correctional Services, “Offender Handbook” (2016), online (pdf): https://novascotia.ca/just/Corrections/docs/Adult_Offender_Handbook_EN.pdf.

communications and establishing common expectations. When communication fails, or where people do not know clearly what is expected of them, they can feel that they are being unfairly punished.

Recommendations

It is recommended:

14. That pursuant to the Mandela Rules, upon admission each individual be given written information regarding the law, regulations and policy governing the facility, as well as their rights, including how to access legal advice, further information in relation to prison law, and how to make complaints and requests.³⁷
15. That the written information provided should also include the prisoners' obligations and any disciplinary sanctions should they be breached, as well as any other necessary information to assist the individual to adapt to life in prison.³⁸

Legal Communication

Lockdowns Restricting Phone Contact with Lawyers

What the VC Heard

The VC received persistent reports that lockdowns were interfering with people's ability to access their lawyers by telephone. During periods of lockdown where prisoners were given as little as two hours per day out of their cells, the limited number of pay telephones in the day rooms meant they had major difficulties contacting their legal counsel. Individuals reported that the time they were provided out of their cell often did not align with their counsels' hours of availability.

The VC heard from prisoners that the difficulties people faced contacting their legal counsel has resulted in interference with court processes, including adjournments and participants serving more time on remand as a result of not being able to get information concerning disclosure or plea offers, or other required preparation for hearings.

It was reported to the Committee that individuals placed in the CCU and HCU were being provided with cordless telephones by means of which to contact their lawyers. Callers suggested that cordless telephones could also be used on units experiencing extended lockdowns in order to facilitate greater telephone access to lawyers.

The Response

In relation to facilitating greater access to telephones in order to contact counsel, the VC suggested to the superintendent of CSNCF that the facility should expand the use of cordless phones. He expressed a willingness to explore this idea.

³⁷ Mandela Rules, *supra* note 16, rule 54. See also the Canadian Association of Elizabeth Fry Societies (NS Mainland) and East Coast Prison Justice Society, *Human Rights in Action: A Handbook for Prisoners in Provincial Jails in Nova Scotia* (2016, joint update 2019-20), available at <https://www.eastcoastprisonjustice.ca/resources.html>.

³⁸ Mandela Rules, *Ibid*.

Recommendations

The VC recommends:

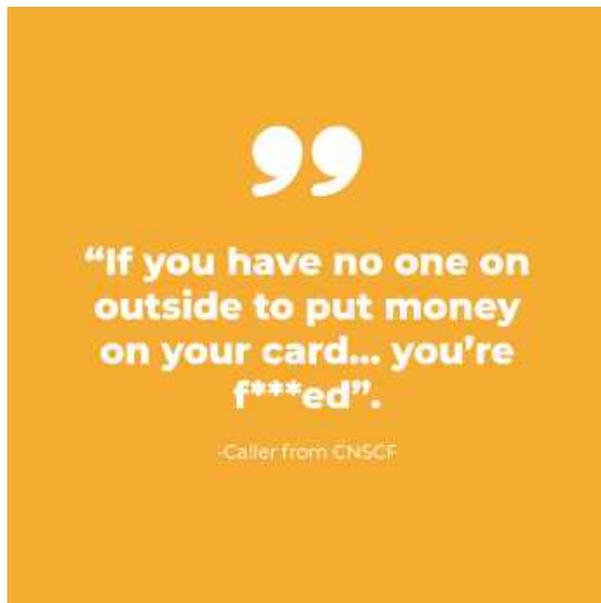
16. That provincial correctional authorities establish mechanisms to ensure all prisoners, regardless of lockdown, are able to maintain access to counsel.

Legal Communication

Cost of Phone Calls

What the VC Heard

The cost of calls was noted as a barrier to accessing counsel—especially for the 30% of legal aid clients who rely on the private bar certificate lawyers rather than NSLA staff lawyers for representation on a range of legal matters, including criminal and non-criminal matters (e.g., child protection). Concern was expressed about the criteria for qualifying for free telephone calls, for those who cannot afford the cost of a telephone call, and inconsistency in use of discretion among staff.



The Response and Recommendations

The superintendent of CSNCF noted that requests for free telephone calls can be very frequent from some prisoners and the response may depend upon the generosity/discretion of those in charge. Calls to most lawyers are free and can be made from the living units; he added that a significant number of calls are facilitated each day to legal representatives and that staff are managing record numbers of virtual court hearings each day. He also noted that calls to NSLA offices were free from the unit telephones. He was open to exploring how to provide free calls from individuals to their lawyers and speculated about the possibility that lawyers might be able to register with the facility for this purpose. The VC recommends:

17. That provincial correctional authorities institute policies and practices to ensure that prisoners have meaningful access to free, private (unrecorded) communication with their counsel, regardless of whether the counsel is a staff legal aid lawyer or a private lawyer.

Legal Communication

Confidentiality and Privacy Concerns

What the VC Heard

Solicitor-client privilege is a “fundamental civil and legal right,” which is particularly important where the individual is involved in the criminal justice system.³⁹ Under provincial law, telephone communications with lawyers are confidential and cannot be recorded.⁴⁰ However, based on our communications with prisoners, this fact did not seem to be known amongst all staff and people in custody, suggesting greater awareness of the confidentiality of lawyer calls needs to be promoted within the facility. ECPJS was informed that many individuals place calls to their lawyers using the regular telephone lines, which are recorded.

The superintendent of CSNCF noted that there is a means in place through the telephone system by which the recording function can be disabled for lawyer calls. However, it appears there is no clear or reliable system for ensuring this is done. **It is imperative that correctional authorities provide a system for making lawyer calls that is “not vulnerable to breaches of solicitor-client privilege, intentional or accidental.”**⁴¹

Further concerns were expressed regarding the inadequacy of the privacy of communication with lawyers by telephone, **as people in custody are not given a private space in which to call their lawyers but must instead do so on the open unit within earshot of others.** Both staff and other prisoners who are in close proximity to the caller compromise the privacy of conversations with counsel.

Prisoners also mentioned their legal mail being opened before being given to them. Correspondence between a prisoner and their lawyer is privileged. As such, it is exempt from the superintendent’s authority under section 56 of the CSA to read and inspect parcels and correspondence coming into or going out of the facility.

Recommendations

It is recommended:

18. That provincial correctional authorities ensure that any correspondence between a prisoner and their lawyer (or any other class of confidential correspondence) is not opened nor read.
19. That provincial correctional authorities post policies putting prisoners on notice of their right to communicate with their lawyers in confidence, and adopt mechanisms to ensure that this right is assiduously protected without exception.

³⁹ *Bacon v Surrey Pretrial Services Centre (Warden)*, 2012 BCSC 1453 at para 24 [Bacon], citing *Geffen v Goodman Estate*, [1991] 2 SCR 353 at p 383, 1991 CanLII 69.

⁴⁰ CSA, s 55. See *Bacon*, *ibid* at paras 9-12.

⁴¹ *Bacon*, *ibid*, at paras 44, 51-53.

Family Communication

Lockdowns Restricting Phone Contact with Family

What the VC Heard

Prisoners reported that the above discussion of barriers to telephone communication with lawyers caused by lockdowns and expense of calls also apply to communications with family. Some prisoners have children in school or loved ones with jobs that make it impossible to speak with them for weeks, given the few times per day they have access to the telephones on weekdays and the restricted time out of cell on weekends.

It is recommended:

20. That, regardless of lockdowns, prisoners be provided sufficient time out of cell to contact family and friends, reflecting reintegration as a mandate of NS Correctional Services.⁴² The CSA, regulations and policy should be amended to reflect this requirement.
21. That, should lockdowns persist, additional methods must be put in place to enable communication, including through the use of cordless telephones.

Family Communication

Contact Visits

What the VC Heard

Prior to the pandemic, the VC heard that many people find the process for applying for and receiving a contact visit unclear and largely dependent on the discretion of officers. An individual with whom the Committee spoke in February 2020 expressed frustration regarding his inability to have a contact visit with his family, stating “more contact visits would be nice. [They] wouldn’t let me hold my baby.” Individuals who had recently had children expressed frustration regarding the fact that they had asked staff about contact visits, but received no information regarding how to apply. This is not a new issue and was raised by the CAEFS Regional Advocacy Committee in May 2017. However, since the onset of COVID-19, there have been no visits, whether contact or not, permitted at facilities.



⁴² Mandela Rules, *supra* note 16, rule 4.

The Response

The superintendent of CSNCF reported that CNSCF has devised and implemented a video visitation system, which gives a degree of communication, and while not replacing in-person visits, is the safest option during the pandemic.

Recommendations

Pursuant to the Mandela Rules, prisoners are to be allowed to communicate with family and friends regularly through writing as well as telephone and digital/ electronic means where available, as well as in person visits.⁴³ The CSA, CSR, and CSPP are silent on the procedure for applying for contact visits, as well as the criteria for assessing such applications.

It is recommended:

- 22.** That a written, publicly available policy be created regarding contact visits, developed in consultation with community stakeholders, including formerly incarcerated persons and advocacy organizations for people in prison, with particular attention paid to the circumstances of parents who are incarcerated.
- 23.** That a resumption of visits (following over twelve months of COVID-19 suspension of visitation) be instituted immediately, in consultation with Public Health, to reflect parity with resumption of visits by essential supporters and others in other congregate facilities across the province.

⁴³ *Ibid*, rule 58.

Other Institutional Concerns.

Other Institutional Concerns

Programming

What the VC Heard

Throughout the year, there were persistent reports of limited or no access to the library, chapel, Alcoholics Anonymous, in-person educational programs, or any other programming or activities. However, the VC did hear positive feedback about program staff and social workers at the facility.

This lack of programming is a direct result of COVID-19 related suspension of in-person visits to the correctional facility, other than security-focused staff and medical personnel.

This is another clear example of how the COVID-19 pandemic has had the ancillary impact of significantly worsening conditions of confinement of those in provincial custody. **Cessation of programming affects mental and physical health and may impact community re-entry success.**

The Mandela Rules mandate that institutions have a library that is accessible to prisoners.⁴⁴ Moreover, qualified spiritual representatives must be able to hold regular services in the institution and visit with prisoners, and the institution must enable each prisoner to practice their religious life by providing books of religious observance and attending the services provided.⁴⁵ Smudging and access to other Indigenous spiritual practices and elders is necessarily included in these entitlements where Indigenous prisoners are concerned.

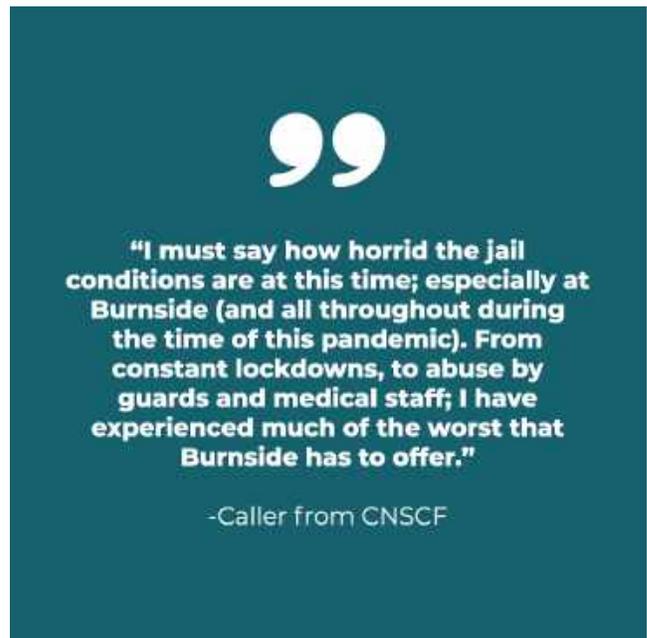
Recommendations

It is recommended:

- 24.** That as much programming as possible is provided in the context of shifting pandemic conditions, for example, by modifying through video programming, and enabling entry of certain limited program providers, and then fully reinstating programs as soon as possible.

⁴⁴ *Ibid*, rule 40

⁴⁵ *Ibid*, rules 41-42.



“I must say how horrid the jail conditions are at this time; especially at Burnside (and all throughout during the time of this pandemic). From constant lockdowns, to abuse by guards and medical staff; I have experienced much of the worst that Burnside has to offer.”

-Caller from CNSCF

25. That access to books through the library is provided as far as is possible in the context of shifting pandemic conditions, for example either bringing books to the day rooms, or allowing small groups to visit the library at a time, and that upon it being medically safe, full access is returned to the library.
26. That there be public reporting of when, why, and to what degree programs, religious services, and reading materials are available, and when full access will be reinstated.

Concerns Related to the *Nova Scotia Human Rights Act*

Racism Towards African Nova Scotians and Indigenous People

What the VC Heard

The VC received reports of incidents of racism directed toward African Nova Scotian and Indigenous prisoners. It was reported to the Committee on August 27, 2020 that **Black people in custody are put in segregation more often and for longer periods of time.** There were also perceptions that they were being refused access to the canteen and that they had a harder time getting access to their prescription medications. A different detainee told the VC that **Black and Indigenous people in custody continue to be targets of racism from guards, that they are less likely to be provided with their medication, and that their complaints and suggestions are not taken seriously or investigated.**

In addition to engaging protected grounds under Nova Scotia's Human Rights Act, such conduct is contrary to section 17 of the CSR and section 15 of the *Canadian Charter of Rights and Freedoms*, which mandates that employees "must maintain proper relationships with offenders and [...] treat offenders and their families fairly and with courtesy, respect, and honesty while on duty or in circumstances related to their duties."

The Response and Recommendations

When these concerns were raised, the VC wrote to the Superintendent of CSNCF, in September 2020, to request an investigation. The VC acknowledged that, where prisoner concerns engage NSH jurisdiction (i.e. the concern raised regarding access to medications), senior administration in corrections would need to engage with their counterparts in NSH for the purpose of such investigation. We did not receive a response to this letter.

As perpetrators of racism may not understand the significance of their own behaviours, and in light of past and present systemic racism of the criminal justice system recently acknowledged by former Nova Scotia Premier McNeil, it is strongly recommended:

27. That NS Correctional Services consult with African Nova Scotian and Indigenous prisoner representatives, and other community stakeholders and organizations that live and work within communities that are the target of racism, to better understand how to address and prevent racism.

Concerns Related to the Nova Scotia Human Rights Act

Access to Smudging

What the VC Heard

Prior to the pandemic, and in January and March of 2021, Indigenous people in custody reported that they were not being permitted to smudge. In January, this was specific to the quarantine range, though the VC did not hear whether access to smudging was being provided for other ranges. The lack of smudging both before and during COVID-19 was explained as a consequence of the fact that Indigenous elders, who bring the smudging kits into the facility, were not being allowed entry to the facility or their visits had otherwise not been facilitated.

The Response

The superintendent of CNSCF responded that, due to the pandemic, the facility cannot currently conduct religious services, but that he and his staff were looking into facilitating access to smudging.

Recommendations

Under NS correctional policy, smudging must be made available every day when requested.⁴⁶ Accordingly, it is recommended:

28. That correctional staff must be diligent in ensuring daily access to smudging where requested.
29. That, where it is not feasible to facilitate smudging for whatever reason, reasons should be provided, as well as a timeline for when smudging may resume.

Strip Searches After Receiving Opioid Agonist Treatment

Background

Since Clayton Cromwell, a 23-year-old man without a methadone prescription, died of a methadone overdose at CNSCF in 2014,⁴⁷ Nova Scotia provincial correctional facilities have implemented a policy of strip searching methadone patients after they receive their medication. A strip search is defined under the CSPP as “when a person is required to undress completely and personally expose the external areas of body

⁴⁶ *Correctional Services Policies and Procedures [CSPP]*, 33.01.01, “Smudging Ceremony”, s 3.4. Available on request per https://novascotia.ca/just/Corrections/policy_procedures/.

⁴⁷ Sherri Borden Colley, “Justice Department asked to release records in Clayton Cromwell's death”, CBC News (20 August 2018), online: <https://www.cbc.ca/news/canada/nova-scotia/methadone-overdose-death-records-jail-custody-freedom-of-information-1.4792342>.

orifices for visual inspection and the person's clothing must be closely examined and searched. At no time during a strip search is it necessary to touch the person to complete the search.”⁴⁸

Referencing the high rates of sexual and physical abuse among incarcerated women, in 2018, advocates with CAEFS succeeded in lobbying for the province to exempt women from the methadone strip-search policy. In the federal prison system, Opioid Agonist Therapy (“OAT”) patients are not routinely strip searched after receiving their medication.⁴⁹

In June 2018, ECPJS members wrote to correctional officials expressing concern regarding this practice. The then-Director of Corrections Sean Kelly and then-superintendent of CNSCF Tim Carroll replied, explaining that the reasoning for strip-searching post-OAT was that some people in custody “diverted” their medication (e.g., regurgitating for later use). Officials were concerned that diversion could lead to deaths in custody, and noted that the goal of the Correctional Service was to be as least intrusive as possible while ensuring offender safety. In arguing that there was no reasonable alternative to strip searching post-methadone that sufficiently addressed concerns, correctional officials identified the following factors: the large number of men in custody, the large number of men deemed “incompatible” with one another, the time required to distribute medication, and limited staff resources.

What the VC Heard

In October 2020, it was brought to the Committee’s attention that individuals, after being given their OAT prescription (whether methadone or suboxone) continue to be strip searched on a daily basis. It was reported to the VC that those who undergo these strip searches feel degraded and humiliated.

The Response

The January 2021 letter raised as a concern that the VC did not receive a response from corrections on this issue. However, when raised with Correctional Health Services, the VC was told that it was a concern that he and the rest of the Correctional Health team had noted to their counterparts in corrections.

Although strip-searching post-OAT has been occurring for many years, it is not explicitly contemplated in any of the CSA, the CSR, or the CSPP. This is despite the CSPP listing several other circumstances where strip searches will be conducted, including when someone is admitted or transferred to a different facility.⁵⁰ Although the VC’s recommendation in this subsection is that strip searching post-OAT cease, at a minimum it is recommended that a written policy be created to begin to address these concerns.

In addition to being highly degrading and retraumatizing for people in custody, strip searches engage constitutionally protected rights against unreasonable search and seizure under section 8 of the Charter.

Preventing overdose deaths in custody is a shared priority between the Correctional Service and NSH. Although addressing the risk of “diversion” has been consistently cited by provincial correctional officials as

⁴⁸ CSPP, *supra* note 46, 39.01.00, “Definitions”, s 3.4.

⁴⁹ “Matt Bonn and Martha Paynter, “Methadone Access in Prisons: Stop Strip-Searching” (19 November 2019), online: *Impact Ethics* <<https://impactethics.ca/2019/11/19/methadone-access-in-prisons-stop-strip-searching/>>.

⁵⁰ CSPP, *supra* note 46, 39.02.00, “Search Procedures On Release or Transfer”, s 5.1.

the primary motivator for conducting strip searches, insufficient attention has been given to the needs of prisoners who are dependent on substances and who may not qualify for OAT.

As detailed further below, ECPJS commonly hears concerns about limited access to prescription medication. The VC suggests suggest that some of the diversion that is occurring may reflect cessation or reduction of medications on which people have become dependent, delays in accessing OAT post-admission for those admitted with a valid OAT prescription, and lack of access to OAT on the part of people who would qualify in the community but lack a prior prescription and therefore suffer withdrawal upon admission (as the current NSH policy is to not prescribe OAT to those who enter the facility without a pre-existing prescription). As stated by Paynter and Bonn:

“Most incarcerated people have histories of substance use disorder, related to experiences of trauma. Despite this, methadone treatment is highly inaccessible to prisoners. In Nova Scotia and in many jurisdictions, new prescriptions are not generally initiated when a person is admitted to a carceral institution. For those with an existing prescription from a community prescriber, within the Corrections facility a “ceiling” dose is applied. People who have experienced incarceration report it is limited to 120mg/day.”⁵¹

Recommendations

It is recommended:

- 30.** That NSH and NS Correctional Services should convene a joint committee with community stakeholders, including formerly incarcerated persons and harm reduction experts, to develop a new system for distributing methadone, suboxone, or other OAT medications without relying on strip searches and in the least intrusive manner possible.

Inmate Committees

What the VC Heard

Inmate committees are made up of people in custody who are elected to provide an exchange of information between prisoners and staff regarding institutional programs and activities. They serve as an important means for incarcerated people to convey their comments and concerns to senior management.

During the “Burnside Protest” at CNSCF over the summer of 2018, then-Minister of Justice Mark Furey said that the Department of Justice was having “conversations regarding the formation of an inmate committee at the [CNSCF].”⁵² Although such a committee may have been formed then, by the time the VC met with people at CNSCF in February 2020 the VC heard that the committee had been discontinued. As a result, many individuals felt that they did not have a clear mechanism to raise concerns with management as a group.

⁵¹ “Methadone Access in Prisons: Stop Strip-Searching”, *supra* note 49. See also Claire Bodkin, Matt Bonn & Sheila Wildeman, “Fuelling a crisis: Lack of treatment for opioid use in Canada’s prisons and jails” *The Conversation* (Mar 4, 2020) <https://theconversation.com/fuelling-a-crisis-lack-of-treatment-for-opioid-use-in-canadas-prisons-and-jails-130779>

⁵² Michael Tutton, “Nova Scotia inmate protest rare and effective, national advocate says”, *The Canadian Press* (8 September, 2018), online: <<https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-inmate-protest-burnside-jail-1.4815858>>.

The Response

In his letter of January 18, 2021, the superintendent of CSNCF reported that he visits every unit and meets with every prisoner on a regular basis, and personally attends to issues raised.

Though regular in-person visits by the superintendent to personally meet with and address prisoners' issues is important, this may be contrasted with the federal correctional system, where the governing statute, the CCRA, mandates that there be "inmate committees".⁵³ In the federal system, these committees serve an important purpose in ensuring CSC meets its statutory duty to "provide inmates with the opportunity to contribute to decisions of the Service affecting the inmate population as a whole, or affecting a group within the inmate population, except decisions relating to security matters."⁵⁴ Although federal sentences are of longer duration, many of the reasons underlying the importance of these committees are equally applicable in the provincial context.

Inmate committees may enable more organized communication of systemic issues to correctional staff and other officials. The committees can aid in maintaining more constructive relationships with staff. This is not to diminish the importance of individual prisoners being able to communicate with staff and the superintendent one on one - as there will likely be individuals with concerns not able to be addressed in a group. These committees may also enable greater effectiveness in contacting advocacy organizations outside of the jail.

Recommendations

The VC recommends:

31. That inmate committees be reinstated and given statutory foundation.
32. That publicly accessible policies be established regarding the functions of inmate committees.

Healthcare

What the VC Heard

Along with issues relating to lockdown, access to healthcare services while incarcerated was the topic of greatest concern in the VC's communications with provincially incarcerated people since February 2020. The VC recognizes that NSH is responsible for delivering healthcare services in provincial correctional facilities.⁵⁵ Prisoners' concerns about health care were not formally included among the issues to be explored in the VC initiative on the understanding the VC reached with NS Corrections in July 2019, and correctional administrators were clear that any agreement in relation to such an initiative must be reached with NSH. Questions about health care were therefore not incorporated in the facilitated conversation

⁵³ CCRA, *supra* note 6, ss 73-74, 98(1).

⁵⁴ *Ibid*, s 74.

⁵⁵ Although Corrections is not responsible for delivering healthcare in the facilities, they do have responsibilities for facilitating access to NSH supports and services. For example, under section 45(2)(b) of the CSR, correctional officials are responsible for ensuring that, upon admission to a facility, each person receives a "health assessment."

guide for in-person meetings. However, comments about health care were an essential part of what was heard by the VC both in the in-person meetings in February 2020, and after that, and therefore are included in this report. That is, prisoners have consistently made clear to us that their experiences of ill-health and problems accessing health care are among their most fundamental concerns.

There were reports of individuals being cut off their prescription medications upon entry to the facility, as well as lack of timely access to prescription medication. Individuals also reported lack of access to assessments by doctors. In one particularly extreme case in February 2020, **the VC was involved in advocating for a man suffering from an acute injury who was denied access to a medical assessment for several days after being admitted to CNSCF on a Friday night, after suffering a fall, and who had significant pain and knee issues. He additionally reported being denied his methadone.**⁵⁶

The VC received complaints of difficulty in accessing appointments with medical professionals even when prisoners were experiencing medical emergencies. Callers advised that no timeline is provided for when prisoners may expect access to medical care. As reported by one caller, “if I requested to see a doctor, I wouldn’t be given any approximate appointment time. This is devastating to inmates dealing with serious medical conditions.”



There were specific concerns regarding lack of access to mental health support. The VC was advised by prisoners that individuals would only be given appointments if they had attempted suicide, and that those appointments would be with a psychiatrist, never with a psychologist.

There were reports concerning the dispensation of medication throughout the day, and medication not being administered according to the instructions. For example, one caller expressed concerns about the fact that the medication he was supposed to take in the morning was not being provided to him until the afternoon.

The VC also received a number of reports regarding difficulties accessing NSH complaint forms. One caller said that he had asked for a form at the nursing unit and was told that they did not have them. Another caller said he had also found it difficult to access a form, despite asking for one. This same caller, upon release, told the VC that **“the Offender Health Services (through NSH) provide no real accountability to inmates**; for example, the Offender Health Service request/ complaint forms have no receipt system that numbers or gives details into the inmates requests/complaints. This is problematic as inmates are not given clear receipt of their requests/complaints in the first place.”

⁵⁶ Alexa MacLean, “Halifax woman raises concern over prisoner access to health care in N.S.,” Global News (4 February 2020), online: <<https://globalnews.ca/news/6506124/nova-scotia-prisoner-health-care-access/>>.

The VC received multiple reports of lack of access to appointments with dentists, including emergency dental care. It was further reported that there were not sufficient dental supplies provided to inmates to enable them to properly clean their teeth.

The Response and Recommendations

In response to a question about prisoners' lack of access to dental care on June 23, 2020, the manager of the Correctional Health Branch indicated that dental services had not yet been reintroduced since they were withdrawn from provincial correctional facilities as part of the pandemic response. It was stated that outstanding dental requests would be reviewed and triaged when services were reintroduced. He confirmed he was in contact with all health units and that if inmates have dental issues, they would be assessed by clinical staff and treated.

The manager of Correctional Health Services further stated that he found reports of individuals being refused medications or other necessary treatment concerning and wants to make sure all those in need of care in a correctional facility receive it. He explained that in order for him to investigate and respond to these issues, the individual prisoner should submit a complaint either through phone or Health Care Complaint Form.

It was subsequently reported to the VC by a professional within the community that they continued to hear complaints of lack of access to dental appointments in provincial custody. Responding to an email from this professional, the manager of Correctional Health Services stated on June 30, 2020, that since restrictions had been in place, starting in April, 2020, dental services had not been provided on site. He explained that provincial prisoners were able to have appointments with a physician and be referred to a dental clinic if in need of emergency dental care. He added that recently approval was received from the COVID-19 Working Group to recommence onsite dental services and that a plan was being developed to ensure the proper policies and procedures are followed. Disappointment was expressed in relation to prisoners not receiving responses to their requests for services and that this would be reviewed with staff, and that he would ensure inmates would be aware of the resumption of dental services.

In response to a further reported inability to access a timely medical appointment, Correctional Health Services was contacted, and responded that prisoners could request and complete a healthcare form, and give it to a nurse, who will send it to healthcare, who may respond to the request or may require a further request form be completed, and that all healthcare requests are to be read within 24 hours of receipt. It was recommended that healthcare staff be spoken to directly in regard to ongoing concerns, and if still unsolved, that the prisoner could submit a healthcare complaint form, or could phone Patient Relations, all of which would be reviewed by healthcare management.

Recommendations to NSH Correctional Health Services:

- 33.** That NSH establish, and ensure prisoners are aware of and have access to, a health-specific complaint procedure.
- 34.** That NSH ensure that its complaint procedure includes a mechanism for confirming receipt, clear timelines, a duty to give reasons and a clearly articulated appeal process.

- 35.** That NSH create a system of medical appointments whereby prisoners are given appointment times substantially ahead of the appointment itself (whether in-facility or in community).
- 36.** That NSH ensure that pressing medical issues be treated as such, enabling prisoners to have comparable access to emergency medical care as those residing in the community.
- 37.** That, pursuant to Mandela Rule 25, NSH ensure that mental health professionals, e.g. psychologists, are on site sufficient time to ensure that prisoners struggling with their mental health are able to access regular therapeutic treatment other than psychiatric medication.⁵⁷
- 38.** That NSH provide timely access to dental care.
- 39.** That NSH ensure that medication is dispensed in the manner prescribed.
- 40.** That, pursuant to Mandela Rules 34 and 35, NSH must actively maintain their independence from corrections, meaning:
 - a. That if inmates are experiencing mental or physical suffering as a consequence of conditions of confinement, the attending medical service provider must act on this knowledge by recommending a change in the conditions that are causing or contributing to such suffering, and
 - b. That NSH regularly send physicians to inspect the jails and advise on conditions of confinement.

⁵⁷ Mandela Rules, *supra* note 16, rule 25.

Section 5

Other Projects

Other Projects Undertaken by the Committee

First Wave of COVID-19

At the onset of the COVID-19 pandemic, a coalition of civil society groups working together with East Coast Prison Justice Society engaged in advocacy through open letters to public health, justice, community services and other government authorities, as well as media work and meetings with high-level officials, with the aim of reducing the population of NS jails to mitigate the heightened risk of COVID-19 transmission inside and consequent facility-community spread. Correctional facilities were identified early on as at elevated risk for rapid spread, and prisoners were recognized to be among those most vulnerable to COVID-19 given high rates of chronic and acute health conditions and disproportionate numbers of prisoners representative of communities also at heightened risk, including Indigenous, racialized and poor communities.

On March 15, 2020, this coalition issued an open letter⁵⁸ calling for a public statement from the Minister of Justice, Director of Corrections, and Nova Scotia Health concerning measures to be taken to avert the emergence of COVID-19 inside provincial jails. The letter called on officials to facilitate immediate supported community release, and to share with the public plans for public health and human rights protections inside, including by:

- Ensuring risk mitigation strategies do not unduly restrict prisoners' liberties, e.g. avoiding reliance on prolonged or indeterminate lockdowns/solitary confinement.
- Ensuring prisoners have regular access to telephone communications with lawyers and family.
- Ensuring prisoners have regular access to programming and other activities and possibly reinstating volunteer access, with necessary modifications.
- Meeting public health standards, including by increasing sanitation measures and ensuring inmate access to hygiene and sanitation products at no cost.

This was followed by another⁵⁹ on March 16, 2020 addressed to government leaders in the justice, health, and community services sectors. This letter provided further, more detailed recommendations for effecting preventative decarceration of Nova Scotia's correctional facilities, including recommendations that:

- Justice, acting in coordination with the appropriate correctional officials, should immediately grant all prisoners given intermittent sentences conditional release / temporary absence from custody;

⁵⁸ Sheila Wildeman, "Urgent open letter re health, safety and human rights of people in prison during COVID-19 crisis" (15 March 2020), online: *The Nova Scotia Advocate* <<https://nsadvocate.org/2020/03/15/urgent-open-letter-re-health-safety-and-human-rights-of-people-in-prison-during-covid-19-crisis/>>.

⁵⁹ Sheila Wildeman, "Open letter on the urgency of reducing incarceration during COVID-19 pandemic" (16 March 2020), online: *The Nova Scotia Advocate* <<https://nsadvocate.org/2020/03/16/open-letter-on-the-urgency-of-reducing-incarceration-during-covid-19-pandemic/>>.

- Correctional authorities should use the power to grant conditional release under s.79 of the Correctional Services Act for medical and/or humanitarian reasons, including for mothers and others who are primary support parents;
- Justice, Community Services, or both should provide resources to non-profits in the supported housing sector on an emergency basis to increase capacity to accommodate prisoners moving out of the jails;
- Community Services, in coordination with the NSH and East Coast Forensic Hospital, should implement community release plans on an urgent basis, to facilitate supported release of ECFH patients who have received conditional discharges from the Criminal Code Review Board or who have been granted temporary absences;
- Court officials, including the Chief Justices of the Provincial and Superior Courts, together with the Public Prosecution Service / Crowns and defense counsel / legal aid, should coordinate efforts to expedite bail hearings as well as review of orders denying interim release;
- The Director of Public Prosecutions should draft policy to guide Crowns' assessment regarding bail that properly considers the heightened risk posed by Covid-19 in the prison and jail setting;
- Public authorities with oversight of policing should instruct officers to give serious weight to the individual and the public health risks presented by placing an arrested person in lockup post-arrest.

The multi-faceted decarceration efforts that ensued over the following weeks resulted in a 42 percent reduction in the in-custody population provincially. Thirty of the individuals released on bail were housed in hotels through an emergency housing program ("JEC"), operated by the Elizabeth Fry Society of Mainland Nova Scotia, Coverdale Courtwork Society, and the John Howard Society of Nova Scotia. None of the individuals released and supported through JEC breached their conditions of release.⁶⁰

Third Wave of COVID-19: Vaccines and Decarceration 2.0

In January 2021, ECPJS called upon government to renew its efforts to protect people incarcerated in provincial jails as well as correctional staff from COVID-19. At that time, there were three major concerns, informed in part by the communications through the monitoring project:

- Government had been silent on the need to prioritize incarcerated populations and correctional staff for COVID-19 vaccination;
- In-custody numbers had risen to pre-pandemic levels (with approximately 70-75% of those inside remanded to custody pre-trial);

⁶⁰ See Adelina Iftene, "COVID19, Human Rights and Public Health in Prisons" (2021) 42:2 Dalhousie Law Journal (forthcoming).

- Through no fault of their own, people in custody were being subjected to ongoing, indefinite lockdowns and solitary confinement causing serious harm to mental and physical health and infringing on human rights.

No response to this letter was received.

Subsequently, on April 26, 2021, ECPJS issued a press release⁶¹ highlighting the fact that there had been no vaccination rollout either for provincial prisoners or correctional staff. This was despite the fact that, according to Public Health’s plan, Phase Two of the vaccine rollout was intended to include “those who live in large group settings and those who work directly with them, including Correctional facilities, shelters and temporary foreign workers’ quarters.”

ECPJS called on the NS government, including call on the NS government, including Justice / Correctional Services, Health / NSHA, and Community Services to:

- Offer vaccinations to prisoners and staff in correctional facilities and staff and residents of transition houses commencing the week of the press release;
- Ensure frequent COVID-19 testing of correctional staff and prisoner and transition house staff and residents;
- Promote mass release by re-instituting expedited bail hearings and bail reviews, including on weekends and by video/telephone, and use of statutory powers to effect conditional release of sentenced persons;
- Collaborate with the non-profit sector (including Elizabeth Fry Societies, Coverdale Courtwork Society and John Howard Society) to provide short- and long-term supports for persons released from detention and alternatives to pre-trial detention (“bail beds”) as well as supports for East Coast Forensic Hospital patients granted community release.

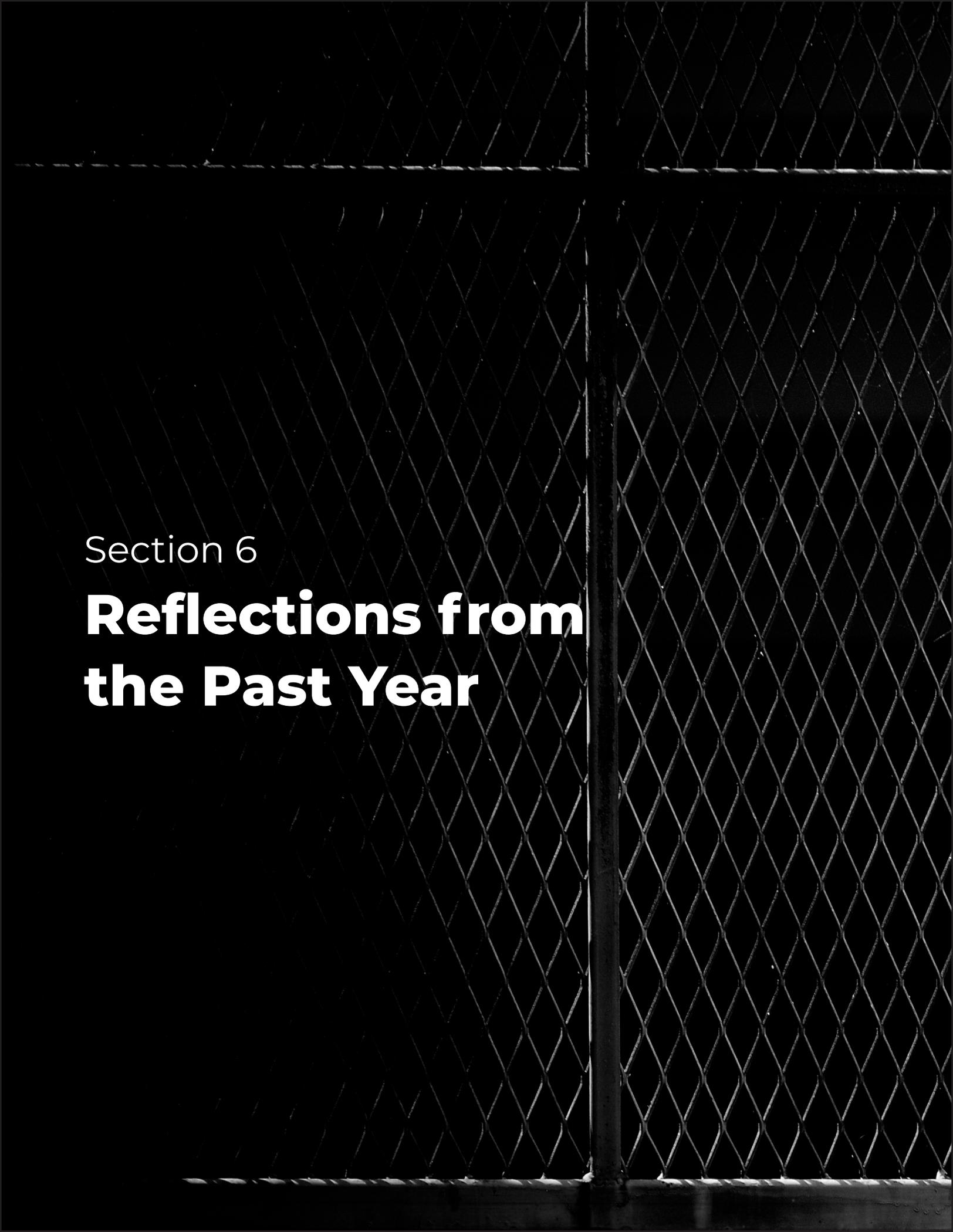
Reports from individuals in NS jails and in the media confirmed that the vaccine rollout for prisoners began shortly thereafter, in the first week of May. In addition, over the next few weeks and following sustained advocacy on the part of many, the non-profits with whom we work, including Elizabeth Fry Societies (Mainland) were given resources for providing temporary wraparound supports for those granted preventive release during the third wave.

The above-noted interventions by ECPJS and allied non-profits were informed in part by the communications the VC was able to maintain through the telephone line, as well as other community-based contacts. These communications extended over a period of over 12 months, during which Nova Scotia’s provincial jails were effectively sealed off from visitors, including family, volunteers, and external programming and other service providers.

The events of the past year have only made clearer to ECPJS, as well as the non-profits and incarcerated people with whom ECPJS works, the importance of independent monitoring of places of detention. The VC seeks a return to in-person visits as soon as possible, consistent with public health protocols and reflecting

⁶¹ See Appendix A.

the relaxation of restrictions across the public service and in particular across other congregate institutions. While the health and safety of prisoners is paramount, independent visits and inspections must be facilitated whether in nursing homes, hospitals or prisons/jails.



Section 6

**Reflections from
the Past Year**

Reflections From the Past Year

Communications with NS Corrections

Over the course of the past year, the superintendent of CSNCF facilitated the VC's first visit, met with the VC and responded to its letters, and assisted in the implementation of the telephone line. The VC looks forward to re-entering the facility once public health protocols allow, to continue to implement the initial VC model. The VC notes that as public facilities reopen and return to normal operations, this critical initiative in which civil society engages prisoners on the conditions of their confinement and liaises with administration for a response should be among the top priorities of the Correctional Service.

The Impact of Covid: Severe Reduction in Transparency

States of emergency have the effect of eroding civil liberties, and this has been the observed impact of COVID-19 on prisoners' liberties. The state of emergency also has had the effect of shielding NS jails from public transparency. Over the past year, COVID-19-related measures exacerbated troubling conditions of confinement already brought to the attention of ECPJS by prisoners, as described above. The VC concludes by noting the following limitations on the rights of prisoners which had particular impact on transparency and accountability of jail administration:

- Prisoners were regularly locked down for extended periods, restricting their telephone communication with the outside world - family, friends, and lawyers.
- Prisoners were not able to have any in person visits with family or friends.
- Prisoners were not provided any in person programming, including rehabilitative programming to decrease likelihood of recidivism.
- Prisoners were not provided any in-person visits by community advocacy organizations, such as John Howard Society, Elizabeth Fry Society, Coverdale Courtwork Society, Stepping Stone Society, East Coast Prison Justice Society.
- The NS Human Rights Commission was not provided physical access to prisoners in the provincial jails.
- Prisoners' access to lawyer visits oscillated between a complete bar and access to visits during limited time slots, restricting in-person communication.
- As noted above, the Ombudsman is mandated to conduct regular audits of the use of segregation in provincial correctional facilities. In a letter to ECPJS dated May 27, 2021, Deputy Minister of Justice

Candace Thomas confirmed that these audits were “temporarily suspended” in 2020 due to COVID-19. The Deputy Minister further indicated that, as of April 2021, the audits resumed, but that, with the resurgence of the third wave of the pandemic, they were paused again and would “resume as soon as is practicable.” We await public reporting on the results of this work.

- Courts of all levels experienced mass adjournments during the first wave, resulting in a heavy backlog. Though not explicitly stated to be a result of this backlog, during early 2021 a superior court judicial working group proposed amendments to the habeas corpus civil procedure rules that many working in the area believe threaten to restrict access to the writ.⁶²

This is not to dismiss the necessity of special public health-related limits in and beyond NS jails. The extreme risk of viral contagion in a congregate living space populated by persons with elevated health vulnerabilities necessitates extreme caution. The concerns raised do not impugn the motivation of correctional administrators, but merely speak to the impact of these limits. Each limit must be carefully examined in order to ensure that liberties are infringed only as much as, and for as long as, is truly necessary. As was stated by the CCLA in their interim report on COVID-19’s first wave:

“Civil liberties are not an afterthought or luxury to be lost in the fog of emergency management. They are the guideposts and limits of legislative and governmental action. The Charter of Rights and Freedoms always applies, in good and bad times. The Constitution is the supreme law of the land, and as such is more, not less important during an emergency. Reasonable limits upon those rights will be judged in context, varying on the degree of compliance that can be expected, depending on the state of the pandemic or other emergency. The notwithstanding clause remains available, albeit not for all rights (like mobility rights), to permit the rule of law to operate, pursuant to the process set out in the Constitution Act, 1982. We would rather it never be used, of course, but even worse is willful blindness to the Constitution by people in power. [...] The health of our society is not measured merely in empirical, physiological terms.”⁶³

It is noteworthy that the OCI working in the federal prison context continued to collect data on and release reports specific to conditions of confinement during COVID, however only through a virtual model of visitation.⁶⁴

Recommendations to the Government of Nova Scotia

ECPJS recommends investment of resources into community alternatives to incarceration, both in the form of remand and sentence. Specifically, it is recommended:

⁶² See Appendix C.

⁶³ Canadian Civil Liberties Association, “Canadian Rights During COVID-19: CCLA’s Interim Report on COVID’s First Wave (June, 2020)” (August 2020) at 46, online (pdf): <<https://ccla.org/cclanewsites/wp-content/uploads/2020/08/2nd-Interim-Report-Working-Documents-August-2020-1.pdf>>.

⁶⁴ Office of the Correctional Investigator, “COVID-19: A Message from the Correctional Investigator of Canada” (24 December 2020), online: <<https://www.oci-bec.gc.ca/index-eng.aspx>>.

41. That the NS Department of Justice work together with Community Services, Municipal Affairs / Housing, and Health to collaborate with the non-profit sector (including Elizabeth Fry Societies, Coverdale Courtwork Society and John Howard Society) to:
 - a. Provide community-based alternatives to pre-trial detention (“bail beds”), and short- and long-term supports for persons released from detention, persons serving sentences of probation or conditional sentence orders, and persons granted conditional release from East Coast Forensic Hospital patients granted community release, and
 - b. Commit core funding to ensure the sustainability of these alternatives.

Other justice system actors have important responsibilities as well. The high remand rates in the province signal that prosecutorial and judicial decision- making practices are likely already inconsistent with the clear requirement in *R. v. Antic*, 2017 SCC 27 that pre-trial custody (or even placing conditions on interim release) should in all but the most serious cases be a last-resort measure, only justified where the Crown demonstrates these measures to be necessary. Reasonable bail is a constitutional right.

Awareness of the conditions of confinement is important for all stakeholders in the criminal justice system – and for society at large. Such awareness is essential to informing prosecutorial and judicial decisions, and more broadly, public deliberation about the laws, policies and practices that befit a constitutional democracy committed to human rights and the rule of law. Our justice system continues to avow that imprisonment is not akin to civil death. This undertaking necessitates, at the very least, the development of proper mechanisms for regular monitoring of what goes on behind prison walls.

In order to ensure the rule of law runs within prison walls, it is recommended:

42. That Nova Scotia create a statutory body dedicated to independent monitoring of provincial corrections, meeting OPCAT criteria to ensure that the body can fulfill its purpose.
43. That Nova Scotia urge the federal government to ratify OPCAT.

“No one truly knows a nation [or province] until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.” - Nelson Mandela



Hanna B. Garson

Director of the ECPJS Visiting Committee
with contributions from Sheila Wildeman and Harry Critchley

Appendix

[Appendix A: List of Recommendations](#)

[Appendix B: Letters to NS Corrections](#)

[Appendix C: Responses from NS Corrections](#)

[Appendix D: Letters regarding proposed changes to Habeas Corpus Civil Procedure Rule sent to the NSSC Habeas Corpus working group](#)



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