

1. During Canada's third Universal Periodic Review ("UPR"), several recommendations relevant to human rights violations in Canadian prisons were contained in the report of the Working Group on the Universal Periodic Review (A/HRC/39/11), including recommendations related to excessive force by police, limiting the use of solitary confinement, complying with the Optional Protocol of the Convention against Torture, improving access to treatment for prisoners with mental health issues, addressing the root causes of the overrepresentation of Black and Indigenous people in the justice system, and addressing the rising incarceration rates of Indigenous and Black women. Canada accepted (in whole or in part) 208 of the 275 recommendations made during the third UPR.ⁱ
2. Despite Canada's commitments, human rights violations against people in prison are widespread. Solitary confinement persists in a variety of forms. The percentage of people in prison who are Indigenous keeps increasing, and the vast financial and infrastructural investments by Canada to incarcerate Indigenous people represents a human rights violation. Trans and Two-Spirit people and people with disabilities experience discrimination and abuse in custody. Prison health providers, who are employed by correctional rather than health authorities, have their ethics consistently compromised.
3. In this submission for Canada's 4th UPR, PLS focuses on five key areas where Canada must fulfill commitments made at the third UPR cycle and rectify its ongoing violations of human rights, including:
 - i. continued use of solitary confinement;
 - ii. mass incarceration of Indigenous people;
 - iii. rights of trans and Two-Spirit people in prison;
 - iv. medical ethics and dual loyalty in prison healthcare; and
 - v. discrimination against people with disabilities in prison.

I. Continued use of Solitary Confinement

4. During the third UPR cycle, Canada did not accept recommendation 105, to "Halt the practice of solitary confinement of prisoners",ⁱⁱ and solitary confinement persists under a variety of names.
5. Canada replaced administrative segregation with a new separate confinement regime in 2019 (called Structured Intervention Units or "SIUs"), yet many people held in SIUs are in solitary confinement or solitary-like conditions. Research on SIUs concluded that 28% of stays in SIU constituted solitary confinement, and 10% met the United Nations definition of torture.ⁱⁱⁱ

6. Although legislation requires Correctional Service Canada (“CSC”) to offer people in SIUs at least four hours out of their cells per day and two hours of human interaction, several PLS clients report they cannot take advantage of these opportunities because they do not feel safe coming out of their cells or being around other people, including CSC officers. This is especially true for trans and Two-Spirit people, people with mental health disabilities, and racialized people.
7. Further, CSC has done nothing to assist people who spent prolonged periods in segregation to recover from the psychological harm done to them, and fails to acknowledge that people’s behaviours – including paranoia, anger, self-harm and further self-isolation – could be the ongoing symptoms of solitary confinement, which can persist even after someone is released from isolation.
8. Solitary confinement also continues in other forms in federal prisons, including observation cells, where CSC places people who self-harm or are at risk of suicide. Under CSC policy,^{iv} there are no requirements for time out of or human contact while in an observation cell, and no limits on the time someone can spend in an observation cell.
9. PLS clients describe observation cells as the height of degradation – often they are forced to remove all their clothing, submit to a strip search, and wear a “suicide smock”, a short sleeveless dress made of fabric that cannot easily be ripped. Some clients have been held down by officers and had their clothing forcibly cut off because they did not agree to don a suicide smock. People in observation cells are often not permitted any belongings and are forced to sleep on a concrete slab or a thin mattress on the floor. The lights are on 24 hours per day and they are monitored by officers who sometimes stand outside the door with pepper spray and antagonize them. There is no review or oversight process for observation cell placements.
10. At CSC Regional Treatment Centres (prisons where people with high mental health needs are meant to receive care), people are placed in clinical seclusion or “quiet rooms”, where they can be stripped of their belongings and held without time out or meaningful human contact.
11. People in federal custody are also held en masse in solitary confinement when there is a lockdown. Wardens regularly lock down entire institutions or units within them for days, weeks, or even months, without lawful authority. Prisoners under lockdown are sometimes not allowed out of their cells at all for days at a time, and other times are given only 15 minutes to one hour out per day.
12. Some prisons employ restrictive movement routines, or schedules set by wardens that restrict prisoners in an entire institution to their cells for most of the day, indefinitely. While these may not meet the UN definition of solitary confinement, they nevertheless rely heavily on isolation and permit people only a few hours out of their cells per day.

13. More information about the ongoing use of solitary confinement in Canadian federal prisons, including testimonials from incarcerated individuals, can be found in PLS' report *Solitary by Another Name*.^v

14. RECOMMENDATIONS:

- i. Commit to fully eliminating solitary confinement and solitary-like conditions in all federal prisons.
- ii. Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

II. Mass Incarceration of Indigenous People

15. Canada has been aware of the over-representation of Indigenous people in prison for decades,^{vi} yet the proportion of people in prison who are Indigenous continues to grow. Indigenous people represent 5% of the total population in Canada, but 32% of people in federal prisons. Fifty percent of women in prison are Indigenous.^{vii} Indigenous people also spend more of their sentences in custody than non-Indigenous people.^{viii} Despite calls to action to end this appalling trajectory, Canada continues to perpetuate the mass incarceration of Indigenous people.

16. Indigenous people are also over-represented in the harshest aspects of prison. They are subjected to higher rates of solitary confinement, under the previous administrative segregation regime and under the current SIU regime.^{ix} Indigenous people are more likely to be classified to maximum security,^x where the environment is austere, security-driven, violent and highly restrictive. CSC often uses an Indigenous person's experiences of colonization (or "Gladue factors") and/or their mental health issues against them to justify a higher security classification through "institutional adjustment" ratings, which have nothing to do with a person's level of risk.^{xi}

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

18. Indigenous people are over-represented in uses of force by CSC officers.^{xii} Force can include being pepper sprayed, tackled to the ground, punched, kicked, held face down, shot with rubber bullets, having one's clothes cut off, hair pulled or arms twisted behind one's back (sometimes to the point of breaking), being cell extracted by the Emergency Response Team (or "ERT" - similar to a riot squad) and more.^{xiii} Officers often use force to respond to people in emotional distress, and data shows officers are more likely to use force against Indigenous people who are self-harming than white people.^{xiv}

19. As Joey Toutsaint, Dene man from Black Lake First Nation, told us:

Do you know how many times I got ERT coming for me? When they take me down, it's more than just them taking me down. They take me down to a point where I feel like I'm gonna die. Sometimes I feel like I don't know what's going to happen to me because things can happen to me without anybody knowing, and that is how I'm going to die one day, but it's not my time yet.

...One time, I cut my throat and I nearly died. As soon as I saw the ERT, I didn't want to deal with it no more...I didn't even think twice or nothing. I just cut my throat, just like that. One slash and then a second and a third one. I cut my carotid artery and I lost consciousness. I woke up in a pool of blood and they had to take me on a stretcher to hospital.^{xv}

20. While force by police received much-needed attention during Canada's third UPR, force by correctional officers requires similar scrutiny. See PLS' report *Damage/Control: Use of force and the cycle of violence and trauma in BC's federal and provincial prisons* for more information.^{xvi}

21. Indigenous people are also over-represented in self-harm injuries in prison.^{xvii} In 2020-2021, five out of six deaths by suicide in Canadian prisons were of Indigenous people.^{xviii} Clients report that officers encourage them to kill themselves when they are feeling suicidal and sometimes give them razor blades to harm themselves.

22. In 2023, the United Nations Special Rapporteur on the Rights of Indigenous Peoples (UN SRRIP) concluded:

Indigenous Peoples are disproportionately held in higher security settings and have limited access to culturally appropriate and responsive rehabilitative programming and are disproportionately subjected to the use of force and isolation. From what I observed, specific accommodations were not in place for gender-diverse prisoners.^{xix}

23. Although Canada provides a mechanism for people sentenced to custody to serve their sentences in Indigenous communities rather than prisons (section 81 of the *Corrections and Conditional Release Act* ["CCRA"]), this provision is woefully under-funded and under-used.

24. Canada rarely approves Indigenous governments or organizations to provide alternatives to incarceration through CCRA s. 81, such as healing lodges. Indeed, only six s. 81 Indigenous-run healing lodges have been approved in Canada, which have a combined capacity for only 139 people.^{xx} Four other healing lodges are run by CSC. Canada incarcerates approximately 3,953^{xxi} Indigenous people, meaning there are only enough Indigenous-run healing lodge beds for 3.5% of Indigenous people in prison. Only one new CCRA s. 81 Indigenous-run healing lodge has opened since 2001 (two others

have been expanded since that date)^{xxii} despite an 82% increase in the proportion of Indigenous people in prison since 2001.

25. Indigenous-operated healing lodges that do exist through s. 81 are subjected to the authority of CSC policies and practices, including that men be classified to minimum security and women be classified to minimum or sometimes medium security.^{xxiii} With only 15% of Indigenous people in prison classified by CSC as minimum security,^{xxiv} transfer to an Indigenous-run healing lodge is not possible for the vast majority of incarcerated Indigenous people.
26. Funding available for healing lodges is a small fraction of the amount spent incarcerating Indigenous people in prisons. In 2015-16, CSC spent only \$23 million on healing lodges (including CSC-operated healing lodges and Indigenous-run healing lodges)^{xxv} out of \$2,357,784,645 total expenditures that year.^{xxvi} This represents less than 1% of CSC's total budget. Further, per-bed funding for Indigenous-run healing lodges is far less and more unstable than the per-bed funding for CSC-run healing lodges.^{xxvii}
27. The problem is not a lack of will among Indigenous Peoples to provide healing services to people in the criminal legal system, but Canada's refusal to fund and remove barriers for Indigenous Peoples to provide alternatives to prison.

28. RECOMMENDATIONS:

- i. Recognize Indigenous self-determination by shifting significant funding and authority from CSC to Indigenous governments and organizations to decarcerate Indigenous people in a manner consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*.
- ii. Accept the UN SRRIP's invitation to "invest in community-based, Indigenous-led policies with the aim of disrupting the poverty-to- prison 'pipeline' and embracing a justice strategy that includes recognition of Indigenous legal systems", and "implement Section 81 of the [*Corrections and Conditional Release Act*] in consultation with Indigenous Peoples to create alternatives to incarceration based on Indigenous legal orders."^{xxviii}

III. Rights of trans and Two-Spirit people in prison

29. Trans, Two-Spirit and other gender-nonconforming people are particularly vulnerable in prison. Although CSC policy states that people can be placed according to their gender and not their anatomy,^{xxix} many trans and Two-Spirit women are denied placement at institutions designated for women based on alleged "overriding health or safety concern that cannot be resolved". This caveat allows CSC to deny trans people's requests to transfer to institutions that align with their gender for reasons that are often based in transphobic stereotypes and are not applied to cisgender people.

30. CSC data shows that, out of 47 requests by gender-diverse individuals for placement or transfer to institutions designated for women over an approximately four-year period, only seven (or 15%) were approved, while 34 (or 72%) were denied (another six were either withdrawn or pending).^{xxx}
31. Trans and Two-Spirit individuals report extensive violence against them in institutions designated for men, from other incarcerated people and officers. They describe physical and sexual assaults, transphobic harassment and name-calling, dehumanizing searches by male officers, dead-naming, violations of their privacy and disclosure of their gender identity to other incarcerated people, a lack of gender-appropriate clothing, and denial of gender-appropriate programming. CSC generally fails to meaningfully consider a trans or Two-Spirit person's safety or dignity when making placement decisions about them, which results in transfers and isolation.
32. CSC policy also prohibits people from changing their sex marker in CSC's Offender Management System unless they undergo genital surgery, even if they have changed other government documents (such as birth certificates) and/or been transferred to an institution that aligns with their gender. PLS clients describe this practice as demeaning and as an invasion of privacy.

33. RECOMMENDATIONS:

- i. Place people in prison according to self-identified gender if that is their wish and close the loophole that allows trans and Two-Spirit people to be denied placement by gender identity.
- ii. Affirm the dignity and gender identities of trans, Two-Spirit and gender-nonconforming people in prison, including in relation to programming and sex markers, and eliminate unnecessary reliance on gender binaries.

IV. Medical ethics and dual loyalty in prison healthcare

34. Healthcare for people in federal custody is provided by CSC rather than by the Ministry of Health and/or local health authorities. PLS clients regularly report the medical and mental health care they receive is substandard, difficult to access, and inadequate.
35. Healthcare providers who work for CSC often fail to meet their ethical obligations to act with undivided loyalty to and in the best interest of their patients. For instance, although health providers are required to assess the health of people in SIUs (many of whom are living in solitary confinement or solitary-like conditions), they almost never recommend someone's conditions be altered – and as such provide fitness assessments for isolation.^{xxxi} Similarly, prison health providers generally fail to acknowledge when people are suffering the well-known psychological effects of solitary confinement or the effects of violent force.

36. CSC health providers sometimes lay institutional disciplinary charges against their patients. They also participate in other punitive measures, such as transfers to higher security prisons and placement in observation cells.

37. CSC health providers are also permitted broad latitude to share their patients' private medical information with security staff.^{xxxii}

38. RECOMMENDATION:

- i. Transfer the provision of healthcare for people in federal prisons to federal health and/or provincial health authorities and require care to follow domestic and international ethical obligations to provide care with undivided loyalty to the patient.

V. Discrimination against people with disabilities

39. CSC discriminates against people with mental health disabilities in federal custody by responding to emotional distress with force and isolation, failing to acknowledge the psychological effects of solitary confinement, and using mental health symptoms to justify placement to higher levels of security. CSC rarely uses legislative provisions that permit transfer to community health care facilities.^{xxxiii}

40. CSC also discriminates against people with physical disabilities, including Deaf people. CSC denies Deaf people in custody adequate access to sign language interpreters, leaving them profoundly isolated and often unable to communicate. CSC also denies Deaf people access to the Video Relay System,^{xxxiv} a system for making phone calls that remotely connects Deaf people to sign language interpreters and is widely available in the community. Instead, they must use TTY, an outdated, cumbersome and error-prone system requiring Deaf people to type what they wish to say and have it read by an operator.

RECOMMENDATIONS:

- i. Prioritize community-based care for people with mental health disabilities and stop using mental health concerns to increase security classification.
- ii. Ensure Deaf people in prison can communicate fully and freely, including by allowing the use of the Video Relay System and providing robust access to sign language interpreters.

ⁱ Report of the Working Group on the Universal Periodic Review – Canada – Addendum (18 September 2018). Online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/278/42/PDF/G1827842.pdf?OpenElement>.

ⁱⁱ *Ibid*

ⁱⁱⁱ Jane B. Sprott and Anthony N. Doob, "Solitary Confinement, Torture, and Canada's Structured Intervention Units" (23 February 2021). Online:

<https://www.crimsl.utoronto.ca/sites/www.crimsl.utoronto.ca/files/Torture%20Solitary%20SIUs%20%28Sprott%2>

[0Doob%2023%20Feb%202021%29.pdf](#).

^{iv} Commissioner's Directive 843, online at <https://www.csc-scc.gc.ca/acts-and-regulations/843-cd-eng.shtml>.

^v Online at <https://prisonjustice.org/reports>.

^{vi} See for instance the Supreme Court of Canada's decision in *R. v. Gladue*, [1999] 1 S.C.R. 688.

^{vii} Office of the Correctional Investigator Canada, *Proportion of Indigenous Women in Federal Custody Nears 50%: Correctional Investigator Issues Statement* (Ottawa: 17 December 2021). Online: <https://www.oci-bec.gc.ca/cnt/comm/press/press20211217-eng.aspx>.

^{viii} Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 86. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>. Public Safety Canada, *Corrections and Conditional Release 2018 Statistical Overview* (August 2019) at 80 and 86. Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2018/ccrso-2018-en.pdf>.

^{ix} Public Safety Canada, *2019 Annual Report, Corrections and Conditional Release Statistical Overview* (September 2020) at 71. Online:

<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2019/ccrso-2019-en.pdf>. Structured Intervention Unit Implementation Advisory Panel, *2021/22 Annual Report* (Ottawa: 2 September 2022) at 83-84.

Online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2022-siu-iap-nnlrpt/2022-siu-iap-nnlrpt-en.pdf>.

Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022). Online:

<https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

^x Auditor General of Canada, *Systemic Barriers – Correctional Service Canada* (2022) at 8. Online: https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202205_04_e.pdf. Public Safety Canada, *Corrections and Conditional Release 2018 Statistical Overview* (August 2019) at 55; Office of the Correctional Investigator Canada, *Indigenous People in Federal Custody Surpasses 30%* (Ottawa: 21 January 2020); Data received from the Office of the Correctional Investigator Canada (14 November 2022).

^{xi} *Corrections and Conditional Release Regulations* section 18; Commissioner's Directive 705-7 - Security Classification and Penitentiary Placement; and Commissioner's Directive 710-6 - Review of Inmate Security Classification.

^{xii} Office of the Correctional Investigator Canada, *Indigenous People in Federal Custody Surpasses 30%* (Ottawa: 21 January 2020). Office of the Correctional Investigator Canada, *Annual Report 2017-2018* (Ottawa: 2018) at 11 and 34. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>.

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

^{xiii} Prisoners' Legal Services/West Coast Prison Justice Society, *Damage/Control: Use of force and the cycle of violence and trauma in BC's federal and provincial prisons* (June 2019). Online: <https://prisonjustice.org/wp-content/uploads/2021/05/use-of-force-report-Nov-21-2019-updated.pdf>.

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

^{xv} More information about Joey Toutsaint's experiences in CSC custody can be found in Brittany Guyot/APTN Investigates – "Inside Corrections – 2180 Days" (March 10, 2023). Online:

<https://www.aptnnews.ca/ourstories/insidecorrections/>.

^{xvi} Available online at <https://prisonjustice.org/reports>

^{xvii} Data provided by the Office of the Correctional Investigator (24 August 2021).

^{xviii} Office of the Correctional Investigator Canada, *Annual Report 2021-2022* (Ottawa: 2022) at 97. Online:

<https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

^{xix} United Nations Special Rapporteur on the Rights of Indigenous Peoples, Mr. José Francisco Calí-Tzay, "Visit to Canada 1-10 March 2023 - End of Mission Statement". Online:

<https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/statements/eom-statement-canada-sr-indigenous-2023-03-10.pdf>.

^{xx} Office of the Correctional Investigator Canada, *Annual Report 2021-22* (Ottawa: 2022) at 100. Online:

<https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

^{xxi} Office of the Correctional Investigator Canada, *Annual Report 2021-22* (Ottawa: 2022) at 102. Online:

<https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20212022-eng.pdf>.

^{xxii} Officer of the Correctional Investigator Canada, *Spirit Matters: Aboriginal People and the Corrections and*

Conditional Release Act (Ottawa: 22 October 2012) at 15-16. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>. Note: The Eagle Women’s Lodge opened in Manitoba in 2019.

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

^{xxiv} Data received from the Office of the Correctional Investigator Canada (14 November 2022).

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

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

^{xxvii} Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (Evaluation Branch, Policy Sector, February 2011) at 77. Online: <https://www.csc-scc.gc.ca/text/pa/ev-ahl-394-2-49/healing-lodges-eng.shtml>. Standing Senate Committee on Human Rights, *Report on the Human Rights of Federally-Sentenced Persons* (Ottawa: June 2021) at 230. Online: https://senCanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf. Patrick White, “Healing lodges help reduce Indigenous overincarceration. Why has Canada allowed them to wither?” *The Globe and Mail* (21 October 2022). Online: <https://www.theglobeandmail.com/canada/article-indigenous-healing-lodges/>.

^{xxviii} United Nations Special Rapporteur on the Rights of Indigenous Peoples, Mr. José Francisco Calí-Tzay, “Visit to Canada 1-10 March 2023 - End of Mission Statement”. Online: <https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/statements/eom-statement-canada-sr-indigenous-2023-03-10.pdf>.

^{xxix} Commissioner’s Directive 100 – Gender Diverse Offenders. Online: <https://www.csc-scc.gc.ca/acts-and-regulations/005006-100-cd-en.shtml>.

^{xxx} Correctional Service Canada, response to *Access to Information Act* request A-2022-00162.

^{xxxi} Jane B. Sprott and Anthony N. Doob, “Solitary Confinement, Torture, and Canada’s Structured Intervention Units” (23 February 2021). Online: <https://www.crimsl.utoronto.ca/sites/www.crimsl.utoronto.ca/files/Torture%20Solitary%20SIUs%20%28Sprott%20Doob%2023%20Feb%202021%29.pdf>.

^{xxxii} See Commissioner’s Directive 701 – Information Sharing. Online: <https://www.csc-scc.gc.ca/politiques-et-lois/701-cd-eng.shtml>.

^{xxxiii} *Corrections and Conditional Release Act* section 29.

^{xxxiv} <https://srvcnadavrs.ca/>