

**HUMAN RIGHTS IN ACTION**  
**A Handbook for Women in Provincial Jails in New Brunswick**

**CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES**

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Human Rights in Action: Handbook for Women Serving Federal Sentence  
ISBN: 978-0-9691975-5-3

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Publisher Information

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Typeset in Minion Pro

Printed in Canada

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# Preface

The manual you now have in your hands was produced for use in the prison advocacy training part of the Human Rights in Action (HRIA) project. We gratefully acknowledge the Status of Women Canada funding received that made this initiative possible.

The HRIA project is dedicated to ensuring that the human rights of all prisoners are protected, especially those of women prisoners who are racialized and those with disabling mental health issues. The groups involved in developing the project are also committed to working to decrease the use of prison and to developing release strategies for those who are currently incarcerated.

The project is also about enabling women to survive criminalization and prison by reinforcing their pre-existing capacities and strengths. Our aim is to support individual women in and from jail to:

create advocacy teams made up of current prisoners, ex-prisoners, and community supports;

- get out of jail as quickly as possible;
- stay out of prison once they are released;
- participate in systemic and issue-specific coalitions that support human rights principles and goals at the local, regional, and national levels.

This handbook is meant to assist you to advocate with and on behalf of women in the provincial prison system, as well as to assist women to advocate themselves and/or for their peers. The idea is to ensure that those whose rights are interfered with have support to address discriminatory treatment, in addition to identifying and addressing areas that require systemic advocacy.

## **A BRIEF HISTORY OF THE HUMAN RIGHTS IN ACTION PROJECT**

On March 8, 2001, CAEFS, Native Women's Association of Canada (NWAC), Strength in Sisterhood (SIS), and 24 other national and international women's, Aboriginal and justice groups formed a coalition that urged the Canadian Human Rights Commission (CHRC) to conduct a broad-based systemic review of the federal government's discriminatory treatment of women who are criminalized and imprisoned.

Nearly three years later, the Commission issued a special report entitled, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. The CHRC Report made nineteen recommendations that call for far-reaching changes with respect to the manner in which the Correctional Service of Canada (CSC) might work to alleviate the systemic discrimination experienced by women serving sentences of two years or more.

CAEFS and other coalition partners continued to work together on efforts to ensure the implementation of the CHRC recommendations and on long-term commitments to social justice, decarceration, and de-institutionalization. CAEFS sought and obtained resources that enabled it to work collaboratively with NWAC and SIS to further the human rights of women prisoners. The Human Rights in Action (HRIA) project was developed to provide practical tools and training for women inside to work with the support of allies on the outside to address advocacy issues in the prisons for women, as well as to develop community release options for women.

From 2006 through 2009, the HRIA project was initiated in 8 federal prisons throughout Canada where women are serving prison sentences of two years or more. In each prison, we were very pleased to welcome the majority of the women as participants in the rights orientation and training sessions. Many also continue to work at advocating for their rights and continue to

push for additional supports and opportunities to better advocate for themselves and their peers.

Many women also suggested that the program be offered to women in and from provincial jails. As a result, we are now piloting provincial human rights projects in British Columbia, Saskatchewan, Ontario, Quebec and New Brunswick, in the hopes that women who are provincially sentenced can also benefit from the training and experience opportunities to better advocate for their rights. Supporters and advocates are also being trained in each of the pilot sites.

## **THE PROVINCIAL HRIA PROJECT**

This manual is similar in format to the one we used for our federal initiative. That manual was originally drafted by a group of law students working with CAEFS and women who are or were federally sentenced prisoners. This one is geared to women in provincial jails, using the relevant New Brunswick provincial legislation and correctional policies.

In drafting this manual, there were a lot of places on the internet where people could access more information. We know that while you are inside, it won't be possible to access the internet, but wherever possible, we have included web site addresses, so that your family, friends and advocates can access the web site for you. Also, when you have access to the internet in the community, you can visit those sites on your own.

If you have any suggestions, comments or questions, please contact Kim at CAEFS.

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# Part I: Introduction

## THE LAW IN CANADA

### *What is the rule of law?*

The rule of law is an underlying principle in our society. It means that everyone is equal before the law and that every person in Canada must act in accordance with the law. This idea is guaranteed in our Constitution.

The Constitution dictates, among other things, what kinds of laws can be legally made in Canada. The *Charter of Rights and Freedoms*<sup>1</sup> is part of the Canadian Constitution, and is supposed to guarantee that our laws protect the values and freedoms of our society. In other words, the *Charter* should protect our right to be treated equally regardless of our sex, race, religion, age, mental or physical disabilities and sexual orientation.

### *Who makes the laws?*

Laws can be federal, meaning that they apply to everyone in Canada, or provincial, meaning they only apply to the people in that province or territory.

There are two ways that law is made in Canada:

- By a Government (federal, provincial, municipal/cities).
- By a Court (also known as common law or case law).

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<sup>1</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. [hereinafter cited as: *Charter*].

For both the federal and provincial/territorial governments, elected representatives make the law. In the courts, judges make the laws. The federal government appoints judges. For these reasons, it is important that all citizens - especially prisoners - exercise their right to vote. Everyone should have her or his say in shaping the law in New Brunswick and in Canada.

It can be confusing that different laws apply federally and provincially. The federal and provincial governments have split up different areas over which they have jurisdiction. So, while federal laws, like the *Charter* and laws about Aboriginal issues, divorce and criminal law are made by the federal government, many of the laws that will affect you are provincial laws that only apply to people living in New Brunswick, such as laws about provincial jails, remand centres, human rights, family law, health care, education and municipal matters.

## THE LAW IN NEW BRUNSWICK

Provincial governments run provincial jails and the federal government runs the federal penitentiaries. If your sentence is for two years or more, then you will most likely<sup>2</sup> be incarcerated in a federal institution and come under federal laws, but if your sentence is under two years, you will be in a provincial jail. Since this manual relates to provincial institutions in New Brunswick, a lot of the laws discussed will be the law of New Brunswick. Still, there are some federal laws, such as the *Charter*, that apply to everyone, regardless of whether they are in a provincial or federal institution.

What laws apply to you can be especially important if you are serving a federal sentence. If you are in a provincial jail, but serving a federal sentence, then for the time that you are in the provincial jail, the laws of New Brunswick will apply to you. However, if you are transferred to a federal institution, then it will be the Correctional Service of Canada who is running the prison, and therefore the federal laws governing prison administration apply.

If you are in a provincial jail on a temporary hold (e.g. for court proceedings), the Correctional Service of Canada may negotiate with the province to provide restrictions or freedoms on an individual basis. This is rare and

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<sup>2</sup> Some provinces allow federal prisoners to stay in provincial jails to serve their sentences, especially where the closest federal prison may be in another province or territory. This does not usually happen in New Brunswick.

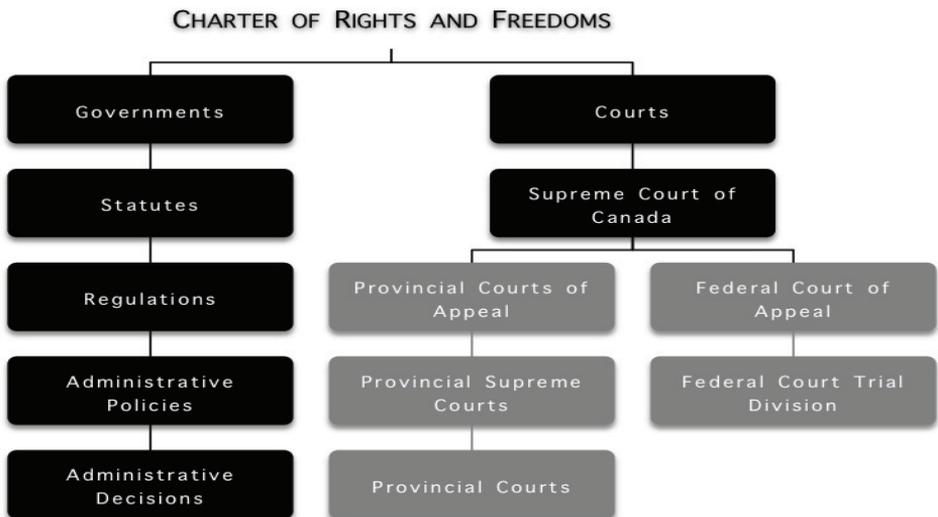
usually only done when they request it and are willing to pay for more restrictive measures for particular prisoners whom they consider dangerous.

Some provincial laws, like those dealing with child custody, will apply to you whether you are in a provincial or federal institution. The provincial and federal laws around prisons seem quite similar on paper, but the actual implementation of the policies can vary a lot, so it is very important that you are familiar with the laws that apply to *your* situation.

### *How does the law work?*

It is important to know that there is a chain of command to the law. This means that every law has to be consistent with the laws that are made by the court or group above it. Everyone, including governments and the courts shown on the chart on the next page, is supposed to follow the law.

In the courts, a judge’s decision on a new type of case or issue sets a new standard. This is called a *precedent*. All the courts below the one in which that precedent is set are supposed to make the same decision in similar cases. So, for example, if the Court of Appeal in New Brunswick made a decision, all of the other courts in the province have to then follow that decision. Decisions from the Supreme Court of Canada apply to all provinces and territories. The following chart illustrates the order in the **rule of law** hierarchy:



# LAWS FROM GOVERNMENT

## *Statutes*

Statutes are laws or legislation. They may be called *Codes* or *Acts*. For example, the *Criminal Code of Canada*<sup>3</sup> is the statute that defines what actions or behaviours we consider to be criminal in Canada. A statute is a law that is made by government, either the federal government, or a provincial or a territorial government.

Statutes specify that you have certain rights. They also allow restrictions to be placed on people serving prison sentences. Understanding what the laws say about your rights and what corrections can and cannot do in these various areas can help you know what rights are protected.

The *Corrections and Conditional Release Act*<sup>4</sup> (CCRA) governs the administration of prisons federally. This *Act* also governs some areas of provincial corrections.

While there are some federal statutes that will affect you, the majority are provincial. For example, the New Brunswick *Corrections Act*<sup>5</sup> is made by the government of New Brunswick and is designed specifically for the operation of prisons in this province. Other statutes that may affect you are the *Family Services Act*<sup>6</sup> or the *Human Rights Act*.<sup>7</sup>

Next to the *Charter*, the *Corrections Act* is probably the most important statute for you to know about. It specifies that you have certain rights, but also permits certain restrictions being placed on people who are serving prison sentences. Understanding what the *Corrections Act* says about your rights in these various areas can help you ensure that your rights are protected.

Throughout this manual, there will be reference to specific laws that apply to certain areas of corrections.

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<sup>3</sup> R.S.C. 1985, c. C-46 [hereinafter cited as: *Criminal Code*].

<sup>4</sup> S.C. 1992, c. 20.

<sup>5</sup> R.S.N.B. 1973, c. C-26 [hereinafter cited as: *Corrections Act*].

<sup>6</sup> S.N.B. 1980, c. F-2.2 [hereinafter cited as: *Family Services Act*].

<sup>7</sup> R.S.N.B. 1985, c.30 [hereinafter cited as: *Human Rights Act*].

## *Regulations*

Regulations go together with statutes and give more details about how the law will be regulated. They often go by the same name as the law that they work with. They help to interpret laws and they set out important guidelines on things like searches, segregation and parole. The most important regulations for you are the *General Regulations – Corrections Act*.<sup>8</sup> Like the *Corrections Act*, these regulations contain provisions that protect your rights (e.g. health care) and rules about how corrections can restrict your liberty (e.g., transfers, disciplinary processes, sanctions).

## *Policy*

Policies must flow from legislation and regulations. They are the rules and procedures set up by government ministries to help them know how implement the laws. The New Brunswick Department of Public Safety uses policies to interpret the statutes and set out the department's purpose and powers. They are usually concrete rules that spell out how they will follow the law. Some examples of policies that regulate you while you're in prison are segregation and complaint procedures. The Department develops policy and procedures for individual institutions, as well as for such particular areas.

Other provincial government departments or ministries will also have policies and procedures that may be relevant to you and/or your children while you are serving your sentence in or out of prison. Some policies that regulate you while you're in prison are New Brunswick's *Adult Institutional Policy*.<sup>9</sup>

## *Administrative Policies and Decisions*

Some power to make decisions is designated to individuals at the administrative level. In terms of decisions made concerning some prison-related matters, the authorized decision-maker can be:

- Local (usually the superintendent or her/his designate),
- Regional (often the Director of Correctional Services), or
- Provincial (Minister of Community Safety and Correctional Services).

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<sup>8</sup> N.B. Reg. 84-257 [hereinafter cited as: *Corrections Regulation*].

<sup>9</sup> New Brunswick Public Safety, *Adult Institutional Policy*.

Parole Boards and Human Rights Tribunals are examples of administrative bodies which are supposed to be independent of the prison administration.

## **CASE LAW OR COMMON LAW**

The law we've discussed so far is government made law, such as statutes, regulations and policies. Courts make laws too. They come in the form of case law. Case law comes from judges' decisions or judgments. When a judge makes a decision in a case – particularly on some issue that hasn't been in the courts before – the decision is called a *precedent*. This means that when the same issue is involved in cases that come later, the judge is supposed to rule in the same way the earlier judge did.

There is a hierarchy of courts in Canada. This is shown in the chart on the previous page. The higher the court, the more likely it is that other courts will follow the precedent. This means that if the Supreme Court of Canada makes a decision, all the lower courts are supposed to follow it.

## **INTERNATIONAL TREATIES**

Treaties are international agreements that are signed (ratified) by various countries. Countries that sign international – especially UN – instruments, are then expected to implement them in their own countries. The courts don't have to follow treaties, but when Canada signs and ratifies a treaty, it means that Canada is saying it supports what the treaty stands for, so Canadian laws and policies should not contradict such treaties. For example, the fact that Canada is a signatory to the *UN Standard Minimum Rules for the Treatment of Prisoners* should mean that Canadian prisoners are treated in accordance with the standards set out in that treaty.

### ***Which laws most affect women in prison?***

#### **CHARTER OF RIGHTS AND FREEDOMS**

The *Charter* is the highest law in Canada. It was created in 1982. Its goal is to protect the political and civil rights of people in Canada from the policies and actions of all levels of government. Every law in Canada must follow the principles laid out in it. No government law, regulation, policy, or administrative decision, nor any court decision (federal or provincial), should contradict your *Charter* rights.

Sections of the *Charter* that are particularly relevant to prisoners are:

**Section 2:** Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

**Section 7:** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

**Section 8:** Everyone has the right to be secure against unreasonable search or seizure.

**Section 9:** Everyone has the right not to be arbitrarily detained or imprisoned.

**Section 10:** Everyone has the right on arrest or detention:

- (a) to be informed promptly of the reasons thereof;
- (b) to retain and instruct counsel without delay and to be informed of that right; and
- (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

**Section 12:** Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

**Section 15:** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sexual orientation, sex, age or mental or physical disability.

### **HUMAN RIGHTS ACT**<sup>10</sup>

As mentioned before, another important piece of statutory law is the New Brunswick *Human Rights Act*. The New Brunswick *Human Rights Act* lists 15 ways in which it protects people in New Brunswick from discrimination. They are: race, colour, religion, national origin, ancestry, place of origin, age,

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<sup>10</sup> *Human Rights Act*.

physical disability, mental disability, marital status, sexual orientation, sex (includes pregnancy), social condition, political belief, or activity.

If you feel that any of these rights are being infringed, you can file a complaint with the New Brunswick Human Rights Commission. They are a body set up to investigate complaints and promote equality in New Brunswick. Information on how to file a complaint can be found in the remedies section of this manual.

### **INTERNATIONAL TREATIES**

Some treaties that Canada has signed that relate to women in prison include:

- The *Universal Declaration of Human Rights*;<sup>11</sup>
- The *United Nations Convention Against Torture*;<sup>12</sup>
- The *United Nations International Covenant on Civil and Political Rights*;<sup>13</sup> and
- The *United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.<sup>14</sup>

### **REPORTS/COMMISSIONS**

In addition to the various legal documents related to the rights of prisoners, there have been a number of reports and inquiries in Canada related to the treatment of women in prison.

Many of these reports apply to women who are federally sentenced, such as the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*<sup>15</sup> and the *Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*.<sup>16</sup> Since the federal system is generally considered to have better programs and services than any of the provincial or

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<sup>11</sup> *Universal Declaration of Human Rights*, 10 December 1948, Res. 217 A (III).

<sup>12</sup> *United Nations Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* 1465 U.N.T.S 85; 8 C.F.R. § 208.18.

<sup>13</sup> *International Covenant on Civil and Political Rights* 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976, accession by Canada 19 May 1976).

<sup>14</sup> *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, entry into force 3 September 1981 in accordance with article 27(1), Res. 34/180.

<sup>15</sup> *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, (Ottawa: Public Works and Government Services Canada, 1996) [hereinafter cited as: *Arbour Commission*].

<sup>16</sup> *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, (Ottawa: Canadian Human Rights Commission, December 2003) [hereinafter cited as: *CHRC Report*].

territorial jails, there is no doubt that the provincial and territorial human rights authorities would find human rights violations in the area of gender, race and disability in every jail that houses remanded and provincially sentenced women.

Other reports are published by the New Brunswick Ombudsman.<sup>17</sup> The role of the Ombuds Office is to conduct independent investigations of complaints. They publish annual reports that highlight problems in our prison systems and make important recommendations. An example of a report recently published by the Ombuds Office is the *Ashley Smith Report*<sup>18</sup> which dealt with the conditions in youth facilities. These reports highlight problems in our prison systems and make several important recommendations.

Although the findings from these reports do not result in binding law, the recommendations may influence courts and practice by altering policies.

### *Can I challenge an unfair law, policy, or decision?*

There are many ways that you can challenge unfair laws or policies. You can do this through a *Charter* challenge. The case could ultimately be decided by the Supreme Court of Canada. Prisoners have launched *Charter* challenges using section 7 of the *Charter* in the past. There may be room for challenges using other sections of the *Charter*, specifically 12 and 15.

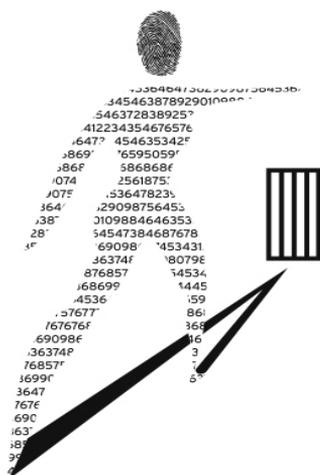
At lower levels, there are ways to challenge unfair laws, regulations, policies and decisions that affect you. These are outlined at the end of this booklet in the section on “Remedies” (see Part VI).

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<sup>17</sup> We will refer to the Office of the New Brunswick Ombudsman as “Ombuds Office” from now on.

<sup>18</sup> *Ashley Smith: A Report of the New Brunswick Ombudsman and Child and Youth Advocate on the services to a youth involved in the youth criminal justice system*, (Fredericton: Office of the Ombudsman and Youth Advocate, 2008) [hereinafter cited as: *Ashley Smith Report*].





## Part II: Arriving in Prison

### THE INTAKE ASSESSMENT PROCESS AND SECURITY CLASSIFICATION

#### *What happens after I am sentenced?*

After you are sentenced on all your charges you will be taken to the programmer's office to determine the type of institution and type of treatment most suitable for your rehabilitation.<sup>19</sup> This is your initial assessment.

#### *What is classification?*

According to New Brunswick's policy, classification is a continuous process of collecting and assessing information regarding a prisoner's security rating and need requirements. Classification reviews are regularly completed to assess progress, program needs and security rating.<sup>20</sup>

Your classification reflects a security rating that is meant to distinguish prisoners according to their needs and perceived risk to society. Classification

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<sup>19</sup> *Corrections Act*, section 1.

<sup>20</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

is broken down into three types: minimum; medium; and, maximum security.<sup>21</sup>

### *How will they determine my classification?*

Factors used to determine security ratings include, but are not limited to:

- length of sentence;
- previous escape history;
- history/record of criminal convictions/offences;
- existence of any outstanding charges;
- appeals; past or present institutional behavior; and,
- overall criminal history.<sup>22</sup>

### *Who decides my classification level?*

Classification is decided by a “Classification Committee” made up of correctional staff, such as the Deputy Superintendent, Program Supervisor, guards, and Probation Officers.<sup>23</sup> The classification committee is also responsible for case plans, program development and recommendations for conditional release such as temporary absences.<sup>24</sup> You are supposed to be able to participate in your case plan.

Your pre-sentence reports will be considered when deciding your classification. Where recent pre-sentence reports are not available, a Level of Service – Case Management Inventory (LS-CMI) and Classification Record will be prepared. This is supposed to be done within two weeks of your arrival in the institution, so long as you are serving a sentence of more than one month.<sup>25</sup>

As previously mentioned, there are three main categories of classification.

**Minimum classification:** is given if Corrections decides that you are non-violent and unlikely to attempt to escape.

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<sup>21</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

<sup>22</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

<sup>23</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

<sup>24</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

<sup>25</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

**Medium classification:** is given if they think you may attempt to escape, you require supervision, but you're not considered dangerous.

**Maximum classification:** is given if they think you might attempt to escape, are considered dangerous, and have a history that is considered violent.<sup>26</sup> Maximum security rating is normally assigned to: anyone who is remanded in custody; federal prisoners; prisoners with serious charges; and, those whose cases are being appealed by the Crown.<sup>27</sup>

You can also be given a “special category” classification, which is generally given to women who Corrections thinks are unable to function in the general population, usually for safety reasons – that is, if they are considered a risk to others or a risk to harm themselves. This classification is made on the basis of their assessment of your emotional instability, the nature of your charges or previous convictions, your previous occupation, or if you have been labeled as an informant.<sup>28</sup>

### *How long will it take for me to be assessed?*

Classification and assessment begins as soon as you are admitted to a jail.<sup>29</sup> However, your Level of Service-Case Management Inventory (LS-CMI) and Classification Record should be completed within 2 weeks of your arrival at jail.<sup>30</sup>

### *What information do I have to provide?*

It is important to understand that you do not need to answer any questions asked during the intake process,<sup>31</sup> either about yourself or your family and community supports. Some laws concerning the Canadian right to privacy apply to prisoners, so you must decide for yourself how much you want to cooperate.

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<sup>26</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

<sup>27</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

<sup>28</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

<sup>29</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

<sup>30</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

<sup>31</sup> *R. v. Starr*, [2001] M.J. No. 174 [No obligation to speak; no privilege].

On one hand, you need to be aware that your conduct during assessment may be used as a factor in determining your classification. Declining to answer questions may have a negative effect on this. For example, if you refuse to cooperate or are seen as being evasive, it may be used as an excuse to keep you in a more secure setting.

On the other hand, you need to keep in mind that the people who interview you for their reports do not have to keep any information confidential that you provide during the intake process. In fact, some of this information may be used against you.<sup>32</sup>

There are some circumstances in which it makes sense to exercise your right not to cooperate. For example, if you are awaiting an appeal, your lawyer might advise you not to participate in supplementary assessments such as psychological assessments, until after your appeal is completed. Corrections may still proceed even if you refuse to cooperate. However, if your lawyer has advised you against participating, tell that to the person writing the report and request that this be clearly and prominently noted at the beginning of the document. If, on the contrary, your lawyer advises you to undergo the assessment, you should also tell that to your interviewer and ask her to put that information at the top of her report.

Also be aware that any information you disclose about past actions can be used against you, even if you were not convicted of a crime in relation to them. In some cases, usually depending upon the seriousness of the behaviour, such disclosures have led to further investigation, charges, convictions, and imprisonment

### *What is my case plan?*

The case management plan is a document that outlines the goals Corrections sets for you, as well as the programs you must complete and the location where your sentence will be served.<sup>33</sup> Ideally, you should be involved in your own case plan, with classification reviews being done by corrections at least once a month. All reviews and results will be recorded in your file.

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<sup>32</sup> *R. v. Starr*, [2001] M.J. No. 174.

<sup>33</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

## *Can my classification be appealed or changed?*

You should be given an opportunity to be present at the classification meeting that deals with your case, and to have input into your case plan which is supposed to be reviewed monthly. If you disagree with the classification, you can request that it be reviewed. You should be advised of the recommendations that resulted from your request within 24 hours.<sup>34</sup>

## **MOTHERS IN JAIL**

### *Introduction*

Many women in jail are mothers, the majority of whom were sole supports for their children before they were imprisoned. Being away from your children is difficult at any time. Being away from your children because you are in prison, is especially difficult. In addition to the separation, prison also can make it difficult, sometimes impossible, to visit or speak with your children. You may also be understandably afraid of the difficulties you might experience regaining custody of your children after your release from prison.

This section reviews your rights as a mother in prison and explains some of the general legal concepts involved in the law regarding the custody and care of children.

In New Brunswick, the law that deals with child custody and access issues is: *The Family Services Act* (and its *Regulations*).

### *What is custody?*

Many people think of custody as simply determining which parent a child will live with. Custody is more than that. Although children often do spend most of their time with the parent who has custody, custody also involves the right to make important decisions about your child. Having custody of your child means you have the right to make important decisions about his/her physical care, control, and upbringing.

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<sup>34</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-1: Classification, March 2001).

## *What is access?*

Access is the right to visit or be visited by your child, and the right to be given important information about your child's health, education, and welfare. Access is a right granted by courts when parents separate or divorce, but also in child protection cases. The court order will often set out specific times when the parent with access will be able to see the child. Sometimes courts will order telephone access if it is hard for a parent to see a child in person.

It is important to remember that access is the right of both the parent and the child. As much as you have the right to spend time with your child, your child has the right to spend time with you.

## *What is supervised access?*

If a court grants a parent *supervised access*, it means that the parent will be able to see the child, but there will be someone else present at all times during the visit. Sometimes supervised access can take place at a supervised access centre, which is a place set up a bit like a child care centre, and staffed with people to supervise the visits. Other times, a social worker or a family member may be designated by a court to be the one supervising the visit if parents and other parties involved, such as a child protection agency, can agree on someone.

## *Who may apply for custody or access of a child?*

In most provinces, anyone may apply for custody or access of a child, although some people are more likely than others to be successful. It is often assumed that parents will have joint custody of a child,<sup>35</sup> so a parent is most likely to be granted custody or access. Of course, the over-riding factor in all matters involving children is the *Best Interests of the Child* (BIOC) test.

If a biological parent's new partner (step-parent) has developed a bond with a child and helped with parental responsibilities, s/he may also apply to the court. If the court decides that they acted "in the place of a parent," that person might also have a good chance of getting custody or access. Family members, especially grandparents and aunts, or even close family friends, can also be given custody or access, if it is considered by the judge to be in the best interests of the child.

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<sup>35</sup> *Family Services Act*, section 129(1).

## *What will a court consider when deciding if a proposed caregiver should be granted custody of my child?*

The best interests of the child will be the most important consideration. The factors a court might consider in deciding if someone should be granted custody of your child(ren) include:

- their willingness to have the care and custody of your child;
- their ability to provide for your child, including their physical health (please note that if you are considering having an aging parent or grandparent take care of your child while you are inside, a court may check into their ability to handle the physical requirements of caring for your child);
- the stability of the people and their environment;
- whether they have a spouse, and if so, how that spouse feels about bringing your child into their home;
- whether that person is already dealing with difficult issues that might interfere with their ability to care for your child.<sup>36</sup>

## *What are “the best interests of the child”?*

The “best interests of the child” (BIOC) is the test used by child protection authorities and the courts to help resolve any legal matter involving children. It has even been used to override parents’ *Charter* rights, such as their right to freedom of expression and their right to freedom of movement.

The BIOC test is defined in section 1 of the *Family Services Act*. Factors to be considered in determining the best interests of the child include:

- The mental, emotional and physical health of the child and her/his need for appropriate care or treatment, or both;
- The views and preferences of the child, where such views and preferences can be reasonably ascertained;
- The effect upon the child of any disruption of the child’s sense of continuity;
- The love, affection and ties that exist between the child and each person to whom the child’s custody is entrusted, each person to whom access to the child is granted and, where appropriate, each sibling of the child and, where appropriate, each grandparent of the child;
- The merits of any plan proposed by the Minister under which he would be caring for the child, in comparison with the merits of the

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<sup>36</sup> *Newfoundland (Director of Child, Youth and Family Services, St. John’s Region) v. N.B.*, [2001] N.J. No. 74.

- child returning to or remaining with his parents;
- The need to provide a secure environment that would permit the child to become a useful and productive member of society through the achievement of his full potential according to his individual capacity; and
- The child’s cultural and religious heritage.<sup>37</sup>

***What is child protection?***

Child protection is an area of the law where the government takes over the care of children who are found by a court to be at risk of abuse or neglect. Each province and territory has its own child protection laws.

In New Brunswick, the Department of Social Development is the government body that manages child protection. They are required to investigate allegations of child abuse, and they are mandated to provide care for children who have been found to be “in need of protection”.

There are 8 offices that deal with child protection in New Brunswick.

<b>Department of Social Development</b>	
General Mailing Address Sartain MacDonald Building P. O. Box 6000 Fredericton, New Brunswick E3B 5H1	
<b>Tel:</b> (506) 453-2001	<b>Fax:</b> (506) 453-2164
<b>E-mail:</b> sd-ds@gnb.ca	<b>Web site:</b> www.gnb.ca/0017/index-e.asp
<b>Acadian Peninsula Regional Office</b> Place Bellevue P.O. Box 5516 Caraquet, New Brunswick E1W 1B7	<b>Chaleur Regional Office</b> Harbourview Place 275 Main Street Bathurst, New Brunswick E2A 1A9
<b>Toll free:</b> 1-866-441-4149	<b>Toll free:</b> 1-866-441-4341
<b>Edmunston Regional Office</b> Carrefour Assomption P. O. Box 5001 Edmundston, NB E3V 3L3	<b>Fredericton Regional Office</b> Two Nations Crossing 460 Two Nations Crossing Fredericton, New Brunswick E3A 0X9
<b>Toll free:</b> 1-866-441-4249	<b>Toll free:</b> 1-866-444-8838

<sup>37</sup> *Family Services Act*, section 1.

**Miramichi Regional Office**

P. O. Box 6000 Miramichi  
New Brunswick E1V 3N3

**Toll free:** 1-866-441-4246

**Moncton Agency**

Assumption Place  
P. O. Box 5001  
Moncton, NB E1C 8R3

**Toll free:** 1-866-426-5191

**Restigouche Regional Office**

City Centre Mall  
P. O. Box 5001  
Campbellton, NB E3N 3H5

**Toll free:** 1-866-441-4245

**Saint John Department**

1 Agar Place  
P. O. Box 2900  
Saint John, New Brunswick E2L 5A3

**Toll free:** 1-866-441-4340

***How can my child be found in need of protection?***

According to the law in New Brunswick, some examples of when a child can be determined to need protection are:

- if the child is without adequate care, supervision or control;
- the child is physically or sexually abused;
- s/he is living in a situation where there is domestic violence; or
- is living in unfit or improper circumstances.<sup>38</sup>

The Department of Social Development can conduct an investigation to decide whether the security or development of the child is in danger.<sup>39</sup> If they decide that the child is at risk, then the child may be placed under protective care. This means that the child could end up either under supervision, in a foster home, or in permanent care of the state.

***What role might a child protection agency play?***

Child protection agencies are supposed to provide support to families, and to care for children when their parents are unable to do so. If you are a single parent and you do not have a family member who could apply for custody of your child, a child protection agency might apprehend your child when you go to prison. They may place your child with a family member, or if no family member is available or willing to care for your child, they may place your child in a foster home.

If there is an investigation involving your child, the Department of Social

<sup>38</sup> *Family Services Act*, section 31(1).

<sup>39</sup> *Family Services Act*, section 31(2).

Development can either stay involved with your family through a supervision order, or apprehend your child if your child is in need of protection.

If your child is taken into care, the Department of Social Development always has to put their case before the court. If the court does not agree with their decision, the judge will order that your child should be returned home to you.

### *What is a supervisory order?*

A court may order that an individual has custody of a child, but that a child protection agency will supervise that parent or other person responsible for the child. Supervision orders in New Brunswick last up to 6 months.<sup>40</sup> They may also be reviewed and extended.

### *What happens if my child is found to be “in need of protection”?*

If the Department of Social Development apprehends your child, they have to make a court application to have the court decide if your child is in need of protection, or, return your child to you within 5 days. The court will hold a hearing about the reasons why your child was apprehended within 7 business days of your child being placed in care.<sup>41</sup>

If, at a care and custody hearing, your child is found to be in need of protection, then the court will decide who gets custody of your child. The Minister is required to make sure that your child is cared for, and may place them in another home or in the care of social services.<sup>42</sup> If the court orders that a child become a temporary ward of the Department of Social Development, the order cannot last for more than twelve months without a review, so each case of temporary care is reviewed at least once per year.<sup>43</sup>

### *What is ‘protective custody’ in child welfare situations?*

If a child is taken out of his or her home and the child protection agency cannot find a family member with whom to place the child, the agency may take the child into protective custody (sometimes called protective care). This may be temporary or permanent. Permanent custody orders are called

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<sup>40</sup> *Family Services Act*, section 54(1).

<sup>41</sup> *Family Services Act*, section 51(6).

<sup>42</sup> *Family Services Act*, section 32(2).

<sup>43</sup> *Family Services Act*, section 39(4).

guardianship orders. Temporary custody orders are called ‘custody orders’. If your child is taken into protective care, then you should be advised immediately of the reasons why and what action has been taken.<sup>44</sup> Within 5 days of removing your child, the agency should either return the child to your care or make an agreement with you (and/or another parent of the child) as to what needs to be done with the child, or, apply to the court to make another order.

Temporary orders last up to 6 months, but can be reviewed and extended. Under a temporary order, the Minister should still consider the wishes of the child and the parent.<sup>45</sup>

If a child is placed in care permanently, then all parental rights and responsibilities are removed from the parent(s) and those rights will revert to the child welfare agency. The child is then under a guardianship order, and may be put up for adoption. Parents are supposed to be given reasonable access to their children unless there is a court order that denies it. If an order is made and parental access is denied, then parents will not be allowed to communicate with the child until the child turns 18 or marries, or the child protection agency seeks a status review.

### *Are child protection orders final?*

There is little that is truly final in cases involving children. Court orders can usually be varied. It is more difficult to vary child protection orders, however. Any orders or decisions made around protective care or guardianship can be appealed to the New Brunswick Court of Appeal within 30 days of the order.<sup>46</sup> The order will still be in force until the hearing, at which point, the Court can affirm, end, or change the order.

An appeal may be the only way for a parent to change a guardianship order.

### *What rights do I have at a custody or access hearing?*

Section 7 of the *Canadian Charter of Rights and Freedoms*<sup>47</sup> guarantees parents the right to a fair hearing when the state is seeking custody of their children. In some cases, this will mean legal aid to cover a lawyer for your

<sup>44</sup> *Family Services Act*, section 51(1).

<sup>45</sup> *Family Services Act*, section 55(4).

<sup>46</sup> *Family Services Act*, section 59(1).

<sup>47</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11. Web site: <http://laws.justice.gc.ca/en/charter/>

hearing. Whether or not you will have the right to have free legal assistance will depend on your financial situation, as well as the details of what has happened to you and your children.<sup>48</sup>

Even if you do not receive a legal aid certificate to find your own lawyer, you will likely be able to get assistance from duty counsel for many of the hearings you will have to attend.

Some complicating factors include the fact that you must apply for custody or access in the jurisdiction where your child lives.

### *Once I am in prison, do I still have the right to see my child?*

Whether or not you have the ability to see your child will depend on a few different factors. First, courts can order that parents should have no access to their children. All decisions are made according to the judge's interpretation of the best interests of the child. Still, there are examples of prisoners maintaining access even under extreme conditions, such as a father who was able to maintain telephone access with his children even though he was in jail for killing their mother.<sup>49</sup>

The Ministry of Social Development, who is responsible for Family Services, has the authority to limit your contact with your child if they think it is in the child's best interests. The Minister is allowed to prohibit any person (including a parent) from visiting, writing to, telephoning or otherwise contacting the child.<sup>50</sup> However, unless they have a good reason for doing so, they are supposed to give a parent reasonable access to their child.<sup>51</sup>

There have been other cases in which parents have been denied access to their children apparently largely because they are in prison.<sup>52</sup> It is very difficult to predict how a judge will decide, but as you will know, sometimes judges are not very sympathetic to mothers in prison. Usually, your visits will not be interfered with unless you or your visitors are suspected of doing something wrong. But, in more than one case, a provincial prison director decided to suspend all contact visits for a parent because of a general con

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<sup>48</sup> *New Brunswick (Minister of Health and Community Services) v. G. (J.) [J.G.]*, [1999] S.C.J. No. 47.

<sup>49</sup> *Anderson v. Daley*, [2006] S.J. No. 447.

<sup>50</sup> *Family Services Act*, section 13.

<sup>51</sup> *Family Services Act*, section 48(1).

<sup>52</sup> *Family and Children's Services of Lunenburg County v. T.L.S.*, [1999] N.S.J. No. 434.

cern about drug and weapons being smuggled into a prison and the courts did not interfere with the prison's decision.<sup>53</sup>

Still, it is important to know that in deciding a plan for a child, including custody and access, the Minister should consider the wishes of the child and the parent. Therefore, it is important to make sure that you and your child make your wishes known in deciding what happens. Also, Canada has an international obligation under the *United Nations Convention on the Rights of the Child* to give parents an opportunity to participate and make their views known if a child is being separated from his or her parents.<sup>54</sup>

You may also be able to use laws such as the *Charter* to argue that you should have access to your child. For example, in one case, a woman argued that being kept from her newborn amounted to cruel and unusual punishment under section 12 of the *Charter*. Sadly, she lost the case, but the judge said that this was because she was a flight risk and was in a secure custody unit.<sup>55</sup> This might leave room for other women who are not considered flight risks and who are not in a secure unit to be successful while making a similar argument. The Supreme Court of Canada has certainly recognized that apprehension of child can interfere with the parents' right to security of the person under the *Charter*.<sup>56</sup>

Another *Charter* argument that could be useful is the section 2(d) right of freedom of association. You could argue that you have the right to associate with your children, and that limiting your ability to interact with them is an interference with your *Charter* rights. Remember that children have a right to access their parents. Your child can argue that his/her rights are being interfered with if they are not allowed to see you.

### ***What sort of things should I tell the judge if I apply for access to my child(ren) while I am in prison?***

The judge will be making decisions according to his or her interpretation of the best interests of your child(ren), so you will need to argue that it is in your child(ren)'s best interests to stay in touch with you. Important information for the judge to know includes things like:

- Were you your child(ren)'s primary caregiver (were you a single par-

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<sup>53</sup> *K.L. v. L.T.*, [2005] S.J. No. 52.

<sup>54</sup> *UN Convention on the Rights of the Child*, article 9(2).

<sup>55</sup> *Turner v. Burnaby Correctional Centre for Women* (1994), 24 W.C.B. (2d) 250.

<sup>56</sup> *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519.

- ent or did you do most of the parenting, including emotional and financial support and tasks like feeding, clothing, bathing, et cetera)?
- How was your child doing under your care (was s/he healthy, doing well in school, happy with his or her friends, supported by your family)?

The fact that you are in prison may bias the judge, as they do not see many applications from prisoners, so you need to focus on the bond between you and your child(ren) and how that is sufficiently important to you and your child(ren) that it be maintained.

### *Can my child come to visit me in prison?*

Some children do have regular visits with their parents in prison. As long as there is no court order saying that you may not have access to your child(ren), then your child(ren) should be able to visit you. How often you have visits usually depends on how far your child(ren) are able to travel for the visits, and whether there is someone willing to bring them to visit you.

### *What is the parenting skills program?*

While you should never feel that the fact that you are in prison means that you are an inadequate mother, there may be benefits to taking a parenting skills program. For one, many judges may have a bias, however unfair, against parents in prison. If you want to apply for access or custody of your child(ren), it may help if you can show the judge that you have taken a parenting course. Also, such programs often involve visitation with children, so this might be an additional way to see your child(ren) more frequently.

If there is no parenting skills program in the prison where you are being held, you may want to request that one be put in place.

### *Do I still have the right to make important decisions about my child?*

If you do not have access, you may not have any ability to make such decisions. If you have access, and certainly if you have custody, you may be able to make important decisions about your child's health, education, and well-being.

If you have joint custody of child(ren), meaning that you and the father or another parental figure share legal custody of the children, you will both have some ability to make decisions about your child(ren), even if the child(ren) only lives with one parent. If you and the child(ren)'s father are still in a relationship, then you automatically have the right to make decisions about your child because it is presumed that you have "joint-custody", unless the child's father has obtained a court order saying that you no longer have custody.

Even though you are in prison, and your spouse or another family member has custody of your child, you might still be able to apply for joint custody. Unfortunately, too many parents are not able to maintain custody of their child(ren) while they are in prison.

### *Does my child have rights?*

The short answer is, yes. For example, your child has a right of access to you in order to maintain his or her bond with you. The *Family Services Act* says that when a decision is made that will affect a child, that child's wishes shall be taken into consideration.<sup>57</sup> A child has the right to have her or his wishes heard directly. S/he also is entitled to have a spokesperson to speak on his/her behalf.<sup>58</sup> This is a right that is also protected by our *Charter*.

Article 7 of the *United Nations Convention on the Rights of the Child* says that a child has the right to know and be cared for by his or her parents. In the event that a child is separated from one or both parents, Article 9 says that the child can "maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."<sup>59</sup>

The Supreme Court of Canada has also recognized that keeping a child from his or her parents infringes the child's right to security of the person, and must only be done in accordance with the principles of fundamental justice.<sup>60</sup> This means that if you believe that your child is being kept from you for arbitrary or unfair reasons, you might be able to work with your child's

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<sup>57</sup> *Family Services Act*, section 6(1).

<sup>58</sup> *Family Services Act*, section 6(4).

<sup>59</sup> *United Nations Convention on the Rights of the Child*, 20 November 1989, 112 U.N.T.S. 44 at 25, at Article 9.

<sup>60</sup> *New Brunswick (Minister of Health and Community Services) v. G. (J.) [J.G.]*, [1999] S.C.J. No. 47.

caregiver to argue that your lack of access to the child violates his or her rights pursuant to section 7 of the *Canadian Charter of Rights and Freedoms*.

### ***What if my child is Aboriginal?***

The extent to which a child's Aboriginal heritage is considered in child protection matters varies between provinces and territories. In New Brunswick, child protection laws only mention Aboriginality to say that adoption will not terminate any Aboriginal rights the child may have.<sup>61</sup> However, the Minister might still consider Aboriginality as part of what is in the best interests of the child.

## **LEGAL AID**

The right to counsel is protected by the *Charter*. The problem is, if you cannot afford a lawyer, it interferes with that right. For this reason, Legal Aid may be available. If you cannot otherwise obtain a lawyer, you may be able to get help from duty counsel at the courthouse.

Most of the court forms that you need in any legal matter can be obtained and downloaded from the internet. Although you will not be able to access the information directly yourself if you are in prison, you can ask your case management team or an Elizabeth Fry support worker to download and print the information for you. A list of forms can be found at: [http://www.gnb.ca/0062/regs/Form/form\\_liste.htm](http://www.gnb.ca/0062/regs/Form/form_liste.htm)

### **Legal Aid New Brunswick**

P.O. Box 20026

Saint John, New Brunswick E2L 5B2

**Tel:** (506) 633-6030

The forms that you need to apply for child access are:

- A notice of application (Form 73A or 73AA)
- A financial statement (Form 72J)

You will also have to complete an affidavit. An affidavit is a statement you make about your situation. An affidavit for custody or access must include your name and that of any other parent; where you and your children lived and where you are living now; the nature (never lived together, common law

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<sup>61</sup> *Family Services Act*, section 85(2).

or married) and length of your relationship with the other parent, as well as the date you separated (if applicable); the full names, dates of birth and ages of all of your children; and then give the reasons that it is in the children's best interests for you to have custody and/or access. You should also include any other relevant information, such as when you entered the prison and when you are scheduled to be released.

Filling out the forms yourself may be confusing or difficult. If you do not have a lawyer, you might want to ask someone you trust to help you fill out the forms. You might also be able to get some support from the Public Legal Education and Information Service of New Brunswick. While they cannot offer legal advice, they can give you legal *information* that might help. They can be reached at:

**Public Legal Education and Information Service of New Brunswick**

P.O. Box 6000, Fredericton

New Brunswick E3B 5H1

**Tel:** (506) 453-5369

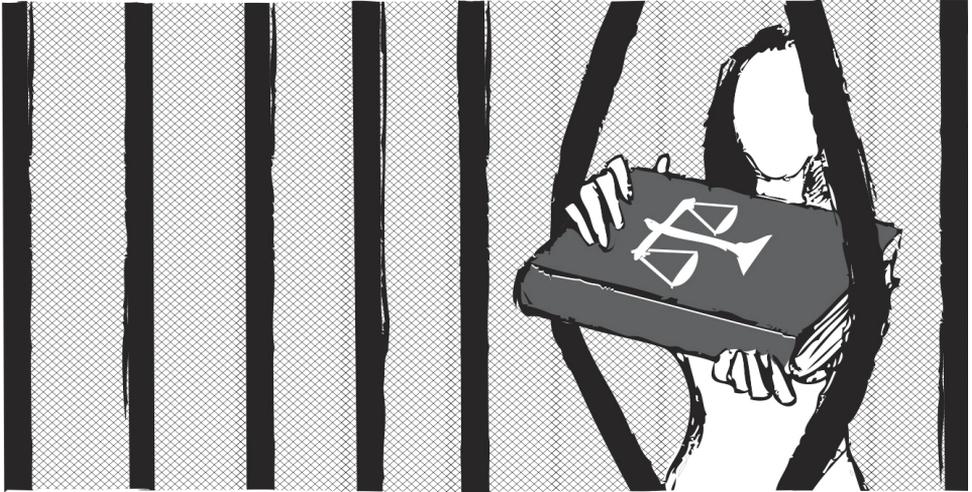
**Fax:** (506) 462-5193

**E-mail:** [pleisnb@web.ca](mailto:pleisnb@web.ca)

**Web site:** [www.legal-info-legale.nb.ca](http://www.legal-info-legale.nb.ca)

If you have a court date and are able to go to the court house, you may be able to get help from duty counsel lawyers. Duty counsel lawyers are available free of charge at many court houses. If you have a lawyer, you can ask her or him to ask the judge to issue a court order to bring you from prison to the hearing. Not all judges will do this, but some will.





## Part III: Protecting Your Rights

While many things in jail will restrict your freedom, you maintain certain rights and privileges inside. It is important to know the difference between rights and privileges. A **right** is a legal entitlement which cannot be taken away from prisoners. Withholding someone's right is against the law; and, there are remedies that may be used to ensure that rights are provided.

Privileges, on the other hand, usually have to be earned in prison, and are not guaranteed. For example, a temporary absence is not guaranteed, and may be granted based on your behaviour or other factors. Corrections staff often can decide to grant or limit privileges, but they still should not be taken away for random or arbitrary reasons.

You have a number of very important rights. The following section will look at some of the rights you have in prison and discuss how you can make sure these rights are respected.

## CONFIDENTIALITY AND ACCESS TO INFORMATION

Your personal information is very important in jail, as it determines a lot of things. Information in your file plays a big role in things like classification, programming and the success (or not) of applications for various forms of conditional release. It is therefore very important to know what is in your file and make sure that if you find any errors, you also seek to correct them. Your rights to protect your personal information are in the *Right to Information Act*,<sup>62</sup> the *Protection of Personal Information Act*,<sup>63</sup> and the *Right to Information and Protection of Privacy Act*.<sup>64</sup>

### *Is the information Corrections collects about me considered confidential by law?*

There are limits on your right to privacy. For example, even though your psychological and psychiatric assessments are based on information that would normally be protected in a patient/doctor relationship, in prison, they are not necessarily considered confidential. It is because of this, that you cannot be forced to participate in the intake assessment. Remember though, even if you do not participate, corrections will still classify you based on whatever information is available from your file, court or police information.

### *Do I have the right to know what information Corrections has in my file?*

The Department of Public Safety recognizes your right to have access to information in files they keep on you.<sup>65</sup> You have the right, like any other citizen of New Brunswick, to use the *Right to Information Act* to access any of your personal information.<sup>66</sup> Using the *Act* can be more complicated and time-consuming than simply dealing with staff at the prison, but you are still entitled to use it.

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<sup>62</sup> S.N.B. 1978, c. R-10.3 [hereinafter cited as: *Right to Information Act*].

<sup>63</sup> S.N.B. 1998, c. P-19.1 [hereinafter cited as: *Protection of Personal Information Act*].

<sup>64</sup> S.N.B. 2009, c. R-10.6 [hereinafter cited as: *Right to Information and Protection of Privacy Act*].

<sup>65</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-20: Inmate Access to Own File Information, March 2001).

<sup>66</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-20: Inmate Access to Own File Information, March 2001).

## *How do I access my own information?*

In order to access the information in your file, you can write a letter, addressed to the Superintendent, which outlines the information you are requesting.<sup>67</sup> If you are unable to write the letter personally, then a staff member should assist you. A staff member will then speak to you to determine exactly what information you are requesting.<sup>68</sup> The more specific the request, the easier it will be to get the information. Once the information has been identified, then a staff member will prepare photocopies of the information, making sure that their safety and security is not compromised, and that your rights are not infringed.<sup>69</sup>

If you are not comfortable seeking the assistance of staff, then you may request assistance from the Elizabeth Fry workers or the Ombuds office.

The information you have requested should be given to you within 30 calendar days.<sup>70</sup> If you do not receive the information within 30 days, or if you do not receive the information that you want, then you can make a request through the *Right to Information Act* for the Ombuds Office to review your request. The Ombuds Office is responsible for conducting, within 30 days, independent reviews of government departments, such as Corrections, if/when they refuse to release information under the *Right to Information Act*.

A complaint can be made to the Ombuds Office in writing, by fax, over the phone, via e-mail, or in person. If you wish to make your complaint in person, we recommend you call first to ensure someone will be available in the office to help you. You can contact the Ombuds Office at:

### **Office of the Ombudsman**

P. O. Box 6000

Fredericton, New Brunswick E3B 5H1

**Tel:** (506) 453-2789

**Toll free:** 1-888-465-1100

**Fax:** (506) 453-5599

**E-mail:** nbombud@gnb.ca

**Web site:** www.gnb.ca

<sup>67</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-20: Inmate Access to Own File Information, March 2001).

<sup>68</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-20: Inmate Access to Own File Information, March 2001).

<sup>69</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-20: Inmate Access to Own File Information, March 2001).

<sup>70</sup> *Right to Information Act*, section 3(1).

## *Can any information be withheld from me?*

According to the *Right to Information Act*, information can be denied for a variety of reasons. For example, information can be withheld if:

- It would disclose someone else's confidential information;<sup>71</sup>
- It could reasonably be expected to threaten your safety or mental or physical health, or that of another person;<sup>72</sup>
- It would be detrimental to 'the proper custody, control or supervision' of someone who has been sentenced;<sup>73</sup>
- Would reveal information gathered by the police in the course of an investigation.<sup>74</sup>

## *What if some of the information about me is wrong?*

If you think the information in your file is wrong, then you should do your best to make sure it gets corrected. You are not allowed to alter information contained in your file, but you should tell the Superintendent, in writing, of the mistake. The Superintendent should then either correct the mistake; or, if she disagrees, note objection in your file.<sup>75</sup>

## *Are my conversations and mail confidential?*

Certain communications, called 'privileged communications,' are confidential. People with whom you share privileged communication include: the Assistant Deputy Minister; provincial Director of Institutions; the Ombuds Office; an immigration officer; and your lawyer. These calls are not allowed to be monitored or recorded.

Any other communications can be monitored or recorded. However, your phone conversations should only be listened to if prison staff have a belief, on reasonable grounds: that you are involved in illegal activities; harassing or causing harm to others; or, participating in an activity that could jeopardize the management, operation or security of the jail. Mail may be intercepted to determine if it contains contraband, but staff are not entitled to read your mail.

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<sup>71</sup> *Right to Information Act*, sections 6(a), 6(b), 6(b.1)(i).

<sup>72</sup> *Right to Information Act*, section 6(b.1)(ii).

<sup>73</sup> *Right to Information Act*, section 6(e).

<sup>74</sup> *Right to Information Act*, section 6(h.1).

<sup>75</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-20: Inmate Access to Own File Information, March 2001).

## THE RIGHT TO COUNSEL (LEGAL ASSISTANCE)

### *Do I have a right to a lawyer while I am in prison?*

You have a right to legal assistance - also known as right to counsel -- in the following circumstances. You are entitled to be informed of this right<sup>76</sup> anytime you are:

- Arrested;
- Detained; or,
- Charged with an Offence.

You also have the right to be provided with information about legal aid services.

### *Are my communications with my lawyer private?*

Yes. What you and your lawyer say to each other during visits cannot legally be monitored. Likewise, mail that goes in or out and is between you and your lawyer should not be read. You also have a right to confidential phone calls with your lawyer, but there are certain limits placed on your access to the designated phone line on which these take place.

It is important to note that while all communication between you and your lawyer is supposed to be confidential, there is no guarantee that calls made on the phone systems will not be monitored.

### *When would I use my right to legal assistance?*

There are numerous circumstances in which it is in your best interest to exercise your right to counsel. For instance, you should try to speak to a lawyer right away if you are:

- Placed in segregation;
- About to be transferred involuntarily to another institution;
- Have just arrived at another institution after an involuntary transfer;
- If you have a parole hearing; or,
- If you are charged with a serious disciplinary offence, either institutional (by the jail), or outside charges (by the police).

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<sup>76</sup> Charter, section 10(b).

Unfortunately, you are not guaranteed a lawyer. If you cannot afford one, Legal Aid does not have to pay for a lawyer. There is no automatic right to counsel for minor disciplinary charges, but whoever is conducting the hearing must consider any request for counsel, so do request legal assistance.

### *Can prisoners be denied the right to counsel?*

Nobody, including the Superintendent, can interfere with your right to legal assistance. This right is protected by section 10(b) of the *Canadian Charter of Rights and Freedoms*. You must immediately be given the opportunity to have a confidential phone call to your lawyer.

Unfortunately, the right to counsel, especially regarding incidents that take place in prison, continues to be interfered with in Canada.<sup>77</sup> While the *Arbour Commission* went as far as to recommend that some form of sanction be placed on those who fail to comply with a prisoner's right to counsel, the recommendation has not been implemented. For this reason, you must be aware of and exercise your right to counsel. Also, prison staff must also be aware of their duties regarding this important right.

## **LEGAL AID**

### *How do I apply for Legal Aid?*

In order to get legal aid, you will need to contact the Legal Aid office in your area. The phone numbers for these are listed below.

When you apply, you must provide financial statements that will determine whether or not you qualify. Eligibility is determined based on your assets, liabilities, income and expenses. If you have a spouse, her/his financial situation will also be considered. Consideration is also given to the number of dependents you have. Even if you are eligible for Legal Aid, you may still be required to make some financial contribution to the cost of legal services.<sup>78</sup>

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<sup>77</sup> Letters regarding right to counsel; written by Kim Pate to RPC (November 6, 2006) and FVI (April 28, 2006).

<sup>78</sup> Legal Aid New Brunswick Web Site: < [www.sjfn.nb.ca](http://www.sjfn.nb.ca) >.

## **LEGAL AID NEW BRUNSWICK**

### **Mailing Address**

P.O. Box 20026  
Saint John, New Brunswick E2L 5B2

### **Location Address**

28-32 King Street  
Saint John, New Brunswick E2L 1G3

**Tel:** (506) 633-6030

**Fax:** (506) 633-8994

**Web site:** [www.sjfn.nb.ca](http://www.sjfn.nb.ca)

## **LEGAL AID OFFICES AND NUMBERS:**

Bathurst: (506) 546-5010

Miramichi: (506) 622-1061

Campbellton: (506) 753-6453

Moncton: (506) 853-7300

Edmundston: (506) 735-4213

Saint John: (506) 633-6030

Fredericton: (506) 444-2777

Woodstock: (506) 328-8127

## ***What can I do if my rights with respect to legal counsel are infringed?***

If you are being denied rights to which you are entitled, you can file a grievance. For more information on how and when to file a grievance, please refer to the *Remedies* chapter. You should also let the Ombuds Office know about this.

## ***What can I do if I have a complaint about my lawyer?***

If you have a complaint about your lawyer – for instance, you believe that they are either incompetent or have engaged in misconduct -- you may file a complaint in writing to the Registrar of Complaints of the Law Society of New Brunswick. The complaint should clearly set out:

- The name of the lawyer;
- What the lawyer did or failed to do;
- Where the event or omission happened;
- When it happened; and,
- Why you think it happened.

You should include your name and contact information, including full mailing address. If you have any supporting documents, you can include those and send the complaint to:

Registrar of Complaints / Deputy Executive Director

**Law Society of New Brunswick**

1133 Regent Street, Suite 206

Fredericton, New Brunswick, E3B 3Z2

**Tel:** (506) 458-8540

**Fax:** (506) 451-1421

**E-mail:** smaclean@lawsociety-barreau.nb.ca

The Registrar will investigate the complaint, and send details of the complaint to the lawyer, who will be asked to respond with an explanation of what happened. If the Registrar of complaints cannot resolve your complaint, s/he may either dismiss it or refer it to the Complaints Committee. If the Committee finds that the complaint is valid, they may order disciplinary sanctions against the lawyer.

Examples of complaints which have been considered by the Complaints Committee include:

- Failure to keep the client reasonably informed;
- Failure to answer reasonable requests from the client for information;
- Unexplained failure to respond to the client's telephone calls;
- Withholding information from the client or misleading the client;
- Failure to make every effort to provide prompt service to the client; and, Failure to follow the client's instructions.

The Law Society will not award money to the person who files a complaint. However, filing a complaint can be very useful to ensure that you receive the standard of legal service to which you are entitled.

## **HEALTH CARE**

### *Will I have access to health care services while I am in prison?*

Yes. Corrections has to provide you with basic medical services, emergency dental care, et cetera. You may obtain access to health care services by putting in a request slip and request that staff file a written report about your injury/illness. Staff may make verbal requests in urgent situations. The

nurses are expected to act upon or acknowledge receipt of a request within 2 working days.<sup>79</sup>

### *How do I access health care services?*

You can access health services in jail a few different ways, depending on your situation. The main times that you will access health services are:

- When you admitted to the jail;
- When you report an injury or illness; and,
- When a staff member notices that you are injured or ill, and files an incident report.

You will first have a health assessment when you are admitted to the jail.<sup>80</sup> Once you arrive, you will be referred to a nurse as soon as possible. The nurse will do an assessment to determine if you have any acute or chronic physiological, emotional or mental conditions. If you have symptoms of mental illness you are supposed to be seen as soon as possible by the physician. Also, if you have a history of mental disorders, then the doctor can refer you to a psychiatric consult as part of your assessment.<sup>81</sup>

During your initial consultation, the nurse will also assess any need for medical intervention and record your medical history. Based on this information, the nurse will put together a Nursing Care Plan. This plan will allow her to start any treatment or refer you to someone else, including a doctor, if necessary.

After this initial assessment, if you need to, you are supposed to be able to access health care either through request slips or reports of injury/illness written by prison staff. Verbal requests by staff will be limited to urgent situations. There is a time limit of 2 working days for the nurse to acknowledge your request.<sup>82</sup> You can also put in request to see a physician of your choice.<sup>83</sup>

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<sup>79</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-10: Offender Access to Health Care Services, March 2001).

<sup>80</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-1: Health Assessment, Draft October 2001).

<sup>81</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-29: Psychiatric Assessment, March 2001).

<sup>82</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-10: Offender Access to Health Care Services, March 2001).

<sup>83</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-24: Offender Request Physician of Choice, March 2001).

If a staff member becomes aware that you have been injured or are sick, they have to prepare an incident report and make sure that the nurse is notified so that you can be treated.<sup>84</sup>

### ***Do I have to accept medical treatment?***

In order to accept medical treatment, you have to consent to it. When you are admitted to the jail, you will be requested to sign a “*Consent for Medical Treatment*” form.<sup>85</sup> The form shows that you consent to any investigative, operative, or treatment procedures performed or recommended by medical personnel associated with Community and Correctional Services. It also authorizes your medical records to be released to other health agencies if necessary, provided that the information remains confidential. This means that if you have to be transferred to the hospital, you consent to your medical records being forwarded from the jail to the hospital.

The consent form that you sign in the institution only applies with respect to services with Community and Correctional Services. Any treatment that you receive outside the jail will have a different consent procedure.

### ***What happens if I refuse treatment?***

If you refuse medical treatment, then you will be asked to sign the “*Release from Responsibility for Medical Treatment*” form.<sup>86</sup> If you refuse to sign the form, the staff must, with both you and a staff witness watching, write down that you refused to sign. The form will be forwarded to the nurse and a copy to the Superintendent.

The nurse or doctor should explain to you the consequence of refusing treatment, and document these anticipated consequences in your file.<sup>87</sup> If your conditions get a lot worse, then you will be transferred to a hospital. The Superintendent might also encourage family or friends to help to persuade you to accept treatment. If you are refusing medical treatment, then you should

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<sup>84</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-11: Record of Health Related Incident, March 2001).

<sup>85</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-6: Consent for Medical Services, March 2001).

<sup>86</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-15: The Ill Offender, March 2001).

<sup>87</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-15: The Ill Offender, March 2001).

be kept under close observation with frequent communication with correctional staff, who must keep a written record of the reason(s) you are refusing treatment, as well as your response to the ‘encouragement’ efforts of staff.<sup>88</sup>

### ***Are my medical records confidential?***

Your medical information and records are confidential and cannot legally be shared or disclosed outside the institution unless you authorize the disclosure. When medical or psychiatric information is requested by an outside agency, you will have to sign a “*Consent to Release Information*” form before the information can be shared.

### ***What if I have a complaint about lack of access to or quality of health care?***

All health care professionals (doctors, nurses, psychiatrists, et cetera) have an obligation to act professionally and ethically. Each profession has its own regulatory body, which protects the public by making sure that these codes of conduct are being followed. So, if you have a complaint about someone involved in health care, you can not only file a grievance with the institution, but you can file a complaint with the regulatory body of the person’s profession.

You can file a complaint about a specific act by a health care worker, or you can complain about an omission (something that was not done that should have been done). So, if you haven’t been able to get treatment for something, or haven’t received proper care from a professional, you can file a complaint to one of the regulatory bodies.

### ***What will happen if I file a complaint?***

The purpose of regulatory bodies is to monitor and regulate professionals, not to compensate people who have experienced the misconduct or incompetence. This means that if your complaint is found to be valid, you will not receive any money or another remedy. However, the professional will be penalized for what s/he has done. Possible outcomes include fines or other reprimands. In very serious cases, the person might be suspended or have his/her ability to continue to practice terminated.

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<sup>88</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (G-19: Medication Issue, November 2007).

Even though you will not get compensated personally, filing a complaint with a regulatory body can be a very useful tool in making sure that whatever happened to you stops, and does not happen to anyone else. It can be important to make sure that health care workers act professionally and ethically, and ensure that you are treated with respect.

## DOCTORS

If you have a complaint about a doctor, you can file it with the College of Physicians and Surgeons of New Brunswick. The College's *Code of Conduct* says that doctors must take reasonable steps to avoid harm to the patient, not discriminate against any patients, respect the right of a patient to accept or reject any medical treatment, and protect the personal health information of the patient.

Complaints to the College are usually in the form of a letter to the Registrar. College staff can help you to prepare the complaint. Once a complaint is received, the Registrar forwards a copy to the physician, requesting a response. The Registrar arranges for additional information, such as hospital records or records from other physicians, to be obtained.

You should include as much information as you can in your complaint, including:

- your name;
- the name of the physician;
- any dates, times, and/or locations where the behaviour complained about took place;
- any supporting documents you might have.

Registrar

**College of Physicians and Surgeons of New Brunswick**

1 Hampton Road, Suite 300

Rothesay, New Brunswick E2E 5K8

**Tel:** (506) 849-5050

**Toll free:** 1-800-667-4641

**Fax:** (506) 849-5069

**E-mail:** [info@cpsnb.org](mailto:info@cpsnb.org)

The College will investigate the complaint, and present the evidence to its Complaints and Registration Committee. This Committee will then review the material and make a recommendation to the Council, which is made up of 17 people and has the ultimate authority in the College. It can recom-

mend: no further action; recommend the appointment of a Board of Inquiry; or, refer the matter to the Review Committee.

If the complaint gets referred to the Board of Inquiry, the Board will conduct a hearing. In a hearing, evidence is given/taken under oath, there must be full disclosure of documents and the opportunity to cross-examine witnesses. In the end, the Board of Inquiry makes a finding on the guilt or innocence of the physician. The Board then requests submissions regarding penalty before it makes a recommendation to the Council.

The Council has the authority to impose one or more of the following orders: revocation of license; suspension of license; fine; or, reprimand. Various conditions may also be imposed. Physicians have the right to appeal any order from Council, to the Court of Appeal.

## **PSYCHIATRISTS**

Psychiatrists are also regulated by the College of Physicians and Surgeons. If you have a complaint about a psychiatrist, you can file a complaint using the same process as you would for physicians.

## **NURSES**

Complaints against a nurse can be sent to the Nurses Association of New Brunswick. A complaint must be in writing and signed. It can be about the nurse's conduct, actions, competence, character, fitness, health, or ability. You should include:

- your name;
- the name of the nurse(s);
- details of the alleged misconduct, including dates, times and locations;
- any other supporting documents.

Regulatory Consultant  
**Nurses Association of New Brunswick**  
165 Regent Street  
Fredericton, New Brunswick E3B 7B4

**Tel:** (506) 459-2859

**Fax:** (506) 459-2837

**Web site:** [www.nanb.nb.ca](http://www.nanb.nb.ca)

**E-mail:** [nanb@nanb.nb.ca](mailto:nanb@nanb.nb.ca)

When you file a complaint, both the nurse and her employer will be sent a copy. Her employer will be asked to submit relevant information. The complaint will be forwarded to the Complaints Committee, which will consider and investigate the complaint. They will look at the written evidence and decide to either: dismiss the complaint or refer it to the Discipline Committee or Review Committee.

The Review Committee hears health related issues, while the Discipline Committee hears issues about anything else. These committees decide what will happen to the nurse(s). They can either dismiss the complaint, order that conditions be imposed on the nurse, or they may order a reprimand, fine, or any other order that it sees fit. In the alternative, either Committee may dismiss the complaint.

If you're not happy with a decision of the Complaints Committee, Discipline Committee or the Review Committee, you can appeal the decision by filing a written notice of appeal with the Board within 30 days of receiving notice of the decision.

## PSYCHOLOGISTS

If you have a complaint against a psychologist, you can file it with the College of Psychologists of New Brunswick. Your complaint must be in writing, and signed, and should include:

- your name and mailing address;
- the name and address of the psychologist you are complaining about;
- what you are complaining about;
- a statement of all the facts that support your complaint;
- a list of any documents you've submitted to support your complaint;
- a statement that you understand that the complaint puts into motion the College's disciplinary procedure and will be given to the member complained against; and
- how you will testify against the psychologist if you are asked to.

Registrar

**College of Psychologists of New Brunswick**

238 St. George Street, Suite 5

Moncton, New Brunswick E1C 1V9

**Tel:** (506) 382-1994

**Fax:** (506) 857-9813

**Web site:** [www.cpnb.ca](http://www.cpnb.ca)

**E-mail:** [cpnb@nbnet.nb.ca](mailto:cpnb@nbnet.nb.ca)

Once you've filed your complaint, the registrar will notify the psychologist named of the complaint, who can submit a response, including any explanations or representations. The Complaint Committee will investigate the matter, and their decision be given in writing to the Registrar.

The Complaints Committee is responsible for evaluating the merits of any complaint brought against a licensed member of the College. If the Committee determines that there are sufficient grounds to initiate proceedings against a member, the matter shall be referred to the Discipline Committee.

The Discipline Committee is responsible to hear and assess the validity of allegations of professional misconduct or incompetence against any member and to determine the remedy where it finds the member has committed an act of professional misconduct or has demonstrated incompetence.





## Part IV: Restrictive Measures

Beyond the obvious restrictions on your rights and liberties that prison necessarily imposes, there are ways your rights and/or liberties can be further restricted. This section outlines some of those, and begins to suggest what you can do to protect yourself and your peers.

### **SEGREGATION**

#### *What is segregation?*

If you are segregated in a segregation unit, you are separated from the general prison population and put in an isolation cell. However, segregation is actually a status, not just a place. Freedom inside the prison is generally restricted and not what prisoners in general population experience. Segregated prisoners do not have access to the rest of the prison, programs, yard, gym, et cetera.

Because women in provincial jails who are classified as maximum security prisoners are generally housed in the same areas as those remanded in custody, awaiting trial, they experience many of the same conditions that a prisoner locked in segregation encounters. For this reason, it is currently being argued that the procedures and rights outlined below apply just as much to women classified as maximum security prisoners as those in “seg.” In fact, CAEFS and others consider all of the women in such units to be housed in segregated conditions in prison.

### *What is the purpose of segregation?*

The purpose of segregation is to keep you from associating with the general prison population. Prison authorities generally justify such segregation by arguing that it is necessary in order to ensure the security of the institution and/or the safety of the staff and prisoners.

Sometimes, you might be segregated because institutional staff believe you are at risk of self injury, suicide, or that other prisoners pose a risk to you. Regardless, women in segregation have a right to be treated in a safe and humane manner and be subject to the least restrictive measures possible. Segregation is an extreme measure and should only be used when there are no other reasonable alternatives. Because of its severity, correctional staff have a duty to return segregated women to the general population at the earliest possible time.

### *When can I be placed in segregation?*

You can be placed in segregation for a variety of different reasons. Some of these reasons are administrative, meaning that they have to do with the running of the prison. Usually prison authorities will justify using administrative segregation as being for the protection of yourself or others.

If you are placed in segregation for disciplinary reasons, it is imposed as a penalty or punishment.

You may be segregated for the following reasons:

- If, in the opinion of the superintendent, you are in need of protection;<sup>89</sup> this might include if you are seen to be at risk of self-harm.

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<sup>89</sup> *Corrections Act Regulations*, section 19(a).

- If, in the opinion of the superintendent, you must be segregated in order to protect the security of the correctional institution or the safety of others.<sup>90</sup>
- If you request to be placed in segregation.<sup>91</sup>
- If it is alleged that you have broken one of the rules in the regulations,<sup>92</sup> some examples of misconduct include: assaults or threats to assault another person, and smuggling and/or possession of contraband.<sup>93</sup>

### *Are there any other reasons I could be placed in segregation?*

According to the law in New Brunswick, you can also be placed in segregation if you have received a disciplinary ‘sentence’ of segregation.<sup>94</sup> You may also be ‘dry celled’ for suspicion of hiding contraband in your body. In a dry cell, everything you eat and excrete is monitored, by prison staff and often by video as well.<sup>95</sup>

### *How long can I spend in segregation?*

You can be put in segregation for an undefined period of time. However, you cannot spend more than 5 days in segregation without the approval of the Regional Director. According to correctional policy, you are only supposed to be in segregation for long enough to ‘achieve a change in conduct.’<sup>96</sup>

If you are placed in segregation as a result of being found to have committed a misconduct, you may be placed in segregation for no more than 5 days, unless the Director of Institutional Services approves a longer period of time.<sup>97</sup>

Regardless of whether you are in segregation for administrative or disciplinary purposes, the superintendent must review your case at least once every 24 hours to determine whether or not segregation should be continued.<sup>98</sup>

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<sup>90</sup> *Corrections Act Regulations*, section 19(b).

<sup>91</sup> *Corrections Act Regulations*, section 19(e).

<sup>92</sup> *Corrections Act Regulations*, section 19(d).

<sup>93</sup> *Corrections Act Regulations*, section 13.

<sup>94</sup> *Corrections Act Regulations*, section 19(d).

<sup>95</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (D-27: Segregation, April 2005).

<sup>96</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (D-27: Segregation, April 2005).

<sup>97</sup> *Corrections Act Regulations*, section 16(e).

<sup>98</sup> *Corrections Act Regulations*, section 20.

## *What procedures must be followed, and what rights do I have while in seg?*

Because segregation is such an extreme and restrictive measure, there are numerous rules governing its use.

When you are admitted to segregation, you will be searched and given clean coveralls, as well as a mattress and blanket, although the policy notes that the institution may *temporarily* remove the mattress and blanket if you, the prisoner, are seen as ‘abusive’.<sup>99</sup>

There are a number of other things that you should have access to while in segregation. First, you should receive 1 hour each day outside of your cell for recreation and fresh air. You should also be permitted to shower and go to the gym daily, provided the weather is acceptable and staff are available. You should be able to have reading materials. You can receive and send letters, although your writing materials will usually be removed when you’re finished writing.

While you are segregated, your visiting privileges will be suspended. Your visitors should be notified of the suspension by the shift supervisor. You always retain the right to contact your lawyer, whether or not you are being segregated. You should not be denied access to your lawyer while in segregation.

If you have medical concerns, then you must receive timely medical attention even if the prison demands that you remain segregated.

You may be physically restrained in segregation if prison staff think that you are either harming yourself, harming others or destroying property. Restraints cannot be used for more than 8 hours without approval of the Regional Director.<sup>100</sup>

## *What can I do if my rights are violated?*

If you feel that your rights have been violated, it is very important that you use the internal grievance process in place at the prison before you consider taking the matter to court. A court is unlikely to grant you a remedy if you

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<sup>99</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (D-27: Segregation, April 2005).

<sup>100</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (D-27: Segregation, April 2005).

have not gone through the internal remedy procedure first (See the section on remedies for more information).

However, in addition to filing a grievance, there are a number of steps you can take in the short term. You should contact your lawyer if you have retained one. If you do not have a lawyer and there are any charges pending, you should put in a request to see Legal Aid. You should also notify the Ombuds Office to inform them of any violation of your rights. Finally, you can contact the CAEFS information line at 1-800-637-4606, or Elizabeth Fry Saint John at (506) 635-8851.

## **TRANSFERS**

### *What do I need to know about transfers?*

According to the Corrections Act, you can be transferred to another correctional institution for a number of reasons, including for treatment and for segregation.<sup>101</sup> You can also be transferred to a hospital or psychiatric facility for treatment.<sup>102</sup> It is important to know that if you are transferred to a hospital or psychiatric facility, that you are still considered to be in custody. The time that you spend there will be counted the same way it would if you were in prison.<sup>103</sup>

### *What kinds of transfers are there and can I object to a decision to transfer me involuntarily?*

Essentially, all types of transfers fit into one of three categories – voluntary, involuntary, and emergency. However, there are a number of factors that further subdivide the kinds of transfers there are within these basic categories. The law takes some of the differences into account, and sometimes different rules can apply to these.

**Voluntary transfers:** are initiated by you when you request to be moved to different prison, usually in another region but, in some cases, even in another country of which you are a citizen.

**International transfers:** are not the same as extraditions or deportations. They are an example of a type of voluntary transfer to which a distinct set

<sup>101</sup> *Corrections Act*, section 14(1).

<sup>102</sup> *Corrections Act*, section 16(1).

<sup>103</sup> *Corrections Act*, section 16(4).

of legal rules apply. You will likely need legal, consular and or government assistance in order to apply for this type of transfer.

You may also be able to be transferred *inter-provincially* to a province or territory. In order to be transferred to one of these provinces or territories, you must submit an application which the Superintendent recommends and the Director of Operations approves.

An inter-provincial/territorial transfer may be considered if you:

- are normally a resident in another province or territory;
- have significant family contact in the province/territory requested;
- can be transferred without staff escort ;
- are prepared to assume all costs for transportation and escort;
- are serving a sentence long enough to warrant a transfer; and
- agree, in writing, to all conditions imposed by New Brunswick correctional authorities.

Inter-provincial/territorial transfers will not be approved where you:

- are appealing your case;
- have outstanding charges in New Brunswick;
- have not yet had your trial, unless you are applying to have your charges waived to another province and you provide written confirmation of your intention to plead guilty along with the consent of the New Brunswick Minister of Justice for you to do so.

To apply for a transfer, the following information will be considered:

- your application;
- letter(s) of request from your family, where appropriate;
- letter of acceptance into a program not available in the province;
- your prisoner 'profile'; and
- all information regarding the sentence you are serving and/or your remand details (such as, your current warrant(s) of committal).

After you apply for a transfer, the Superintendent will review the package and forward it, along with a recommendation to the Director of Institutional Services who will contact the requested province/territory, obtain the necessary approval or denial for transfer, and ensure the receiving institution receives all documents related to your request. This will include your prison records, as well as your, mental health and criminal history.<sup>104</sup>

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<sup>104</sup> New Brunswick Public Safety, Adult Institutional Policy, (E-21: Inter-Provincial Territorial Transfers, March 2001).

The decision of the Supreme Court of Canada in the *Idziak* case provides a very useful tool with which to argue for being granted *habeas corpus* in advance of an allegedly illegal detention/transfer.<sup>105</sup> Such court decisions may favourably influence the outcomes of new court cases.

### *What can I do if my rights are violated?*

The institutional head must ensure that you are advised in writing of the appropriate grievance procedure related to transfers. It is important that you use this grievance process if you feel the decision is wrong. A court is not likely to grant a remedy to you if you have not exhausted the institution's internal remedy procedure first.

Also, as with other issues, you should notify the Ombuds Office (1-888-465-1100) and inform them of the violation. You can also contact the CAEFS information line at 1.800.637.4606.

## **DISCIPLINARY CHARGES**

### *What is the purpose of the disciplinary system?*

The disciplinary system is in place as a tool for the jail administration to ensure order. Staff must try to use reasonable means to deal with a situation before charges are laid, but they are legally permitted to take more severe disciplinary action if they consider something to amount to a case of serious misconduct.<sup>106</sup>

### *What are disciplinary offences?*

The law in New Brunswick identifies both infractions and misconduct.

Some examples of an infraction are: failing to maintain a clean living area; failing to respect the rights and dignity of another prisoner; and failing to comply with instructions made by an officer.<sup>107</sup>

Examples of misconduct include: assaults or threats to another person; damaging personal or private property; smuggling an unauthorized sub-

<sup>105</sup> *Idziak v. Canada (Minister of Justice)*, [1992] 3 S.C.R. 631.

<sup>106</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-14: Discipline & Offences – Inmate, March 2001).

<sup>107</sup> *Corrections Act Regulations*, section 12.

stance (contraband); disobeying a lawful order of an officer or employee; and refusing or failing to do work.<sup>108</sup>

The Superintendent has the final say over whether an act is an infraction or a misconduct.<sup>109</sup>

### *What happens if I am charged with an infraction or misconduct?*

If you are charged with an infraction or misconduct, the Superintendent must inform you of the nature of the charge and then conduct a hearing to decide whether or not you committed the infraction or misconduct with which you are charged.<sup>110</sup> You should be present throughout the hearing, and can have your charge heard in the language of your choice.<sup>111</sup>

If you plead ‘guilty’ to an institutional charge, the Superintendent must take all relevant information, both verbal and written, into account and decide what your disciplinary penalty will be. If you plead ‘not guilty’, the Superintendent may postpone the hearing until the reporting staff or other witnesses are interviewed and based on the review, s/he will make a determination about your guilt. If you are found guilty, s/he will also determine your penalty.<sup>112</sup>

The range of penalties open to the Superintendent to impose, include:

- a verbal warning;
- reduction of privileges for a set period of time;
- additional work; or
- confinement to a cell or unit.<sup>113</sup>

If the Superintendent takes disciplinary action against you, s/he must inform you of the prisoner appeal/complaint/grievance process.<sup>114</sup> If you disagree with the process or the penalty imposed, you may appeal it using the grievance process.

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<sup>108</sup> *Corrections Act Regulations*, section 13.

<sup>109</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-15: Procedure for Institutional Offences, March 2001).

<sup>110</sup> *Corrections Act Regulations*, section 14.

<sup>111</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-16: Disciplinary Hearings – Offenders, March 2001).

<sup>112</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-16: Disciplinary Hearings – Offenders, March 2001).

<sup>113</sup> *Corrections Act Regulations*, section 15.

<sup>114</sup> *Corrections Act Regulations*, section 17(1).

Usually only one disciplinary charge will be laid against you for a single incident of rule-breaking. You should not be charged with more than one infraction unless there have been two very different and distinct acts committed.

### *Will the police be involved in my charge?*

If you are alleged to have committed a serious offence, such as an action that is defined as criminal by the *Criminal Code of Canada*, then police may be called and a Crown prosecutor may proceed with ‘outside’ charges against you. If police do become involved, the decision to proceed with an internal disciplinary charge may be delayed in order to allow the police time to investigate. You may also be segregated while the investigation is being completed.

If you are charged in court with committing an offence within the institution, even if you are already serving a provincial sentence, you may also be considered a remand prisoner until your court appearances are finished in relation to the new charge.<sup>115</sup>

### *How can I appeal the outcome of a hearing?*

If you are unhappy with the outcome of your hearing, you can appeal by following the Grievance procedures<sup>116</sup> in the Remedies section.

## **SEARCHES**

### *What is a search?*

There are several different kinds of searches.

**A frisk search:** is a manual search of your body done over your clothes. Specifically, it is a search from your head to your toes, down the front and back of your body and around your legs. A frisk search may also include a search of your personal possessions, and outerwear, such as coats or jackets, which you may have been requested to remove.

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<sup>115</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-15: Procedure for Institutional Offences, March 2001).

<sup>116</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-16: Disciplinary Hearings – Offenders, March 2001).

**A non-intrusive search:** is a search performed by technical means. This means that the search can be conducted with the use of a handheld, chair-style, or walk through metal scanner.

**A strip search:** is a visual inspection of your naked body. It can also include a search of your clothing and other personal possessions you are carrying. During the course of a strip search, the staff member may also require you to open your mouth, show her the soles of your feet, open your hands and arms, and allow her to run her hands through your hair. As well, she may require you to lift your breasts and bend over to allow for a visual inspection of your anal and vaginal area.

A strip search can only be performed in a private area out of sight of everyone except the woman staff member performing the search and one other woman staff member who acts as a witness. Men are no longer permitted to strip search women in women's prisons, nor can women strip search men. You should ensure that your visitors also know this information, in case they are searched prior to a visit. If the staff decide to search your visitor(s), they are not required to submit to it. Visitors may choose to refuse a strip search. You should ensure they know, however, that if they do not agree to a search, the visit will likely be denied.

### *When can I be searched?*

You are initially searched when you enter a provincial prison. You will also usually be required to shower and you will be given institutional clothing to wear.<sup>117</sup>

The Superintendent is allowed to authorize a search at any time after the initial strip search, if s/he has reasonable grounds to believe you are hiding contraband or weapons on your person or in your belongings.<sup>118</sup> Reasonable grounds means that she has to have some reason to search you based on legitimate and reliable information. This too often includes third party or protected reports from informants. You will not be permitted to know who provided information against you, but you should be provided with information about what the person said you were hiding.

An officer may also conduct an immediate search, without the authorization of the Superintendent, where they have reasonable grounds to believe that

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<sup>117</sup> *Corrections Act Regulations*, section 5.

<sup>118</sup> *Corrections Act Regulations*, section 6(2).

you have an unauthorized substance (contraband or a weapon) and that in the time it would take to authorize a search, you would be able to dispose of.<sup>119</sup>

### *Who can search me?*

Generally, a guard will search you once they have had authorization from the Superintendent. However, other people may be able to search you, such as a health care professional.

Correctional policies state that you should not be searched by a person of the opposite sex except for in a few special circumstances. One example is where the person conducting the search is a health care professional. The only other instance where someone from the opposite sex can search you is if the officer suspects, on reasonable grounds, that you have contraband that is dangerous or harmful and that there is no time to get someone of the same sex to search you.<sup>120</sup>

### *Can prison staff search everyone?*

The Superintendent is allowed to authorize a search at any time of: any part of the prison; any of your property; or any vehicle located on the premises.<sup>121</sup> If the Superintendent authorizes a prison-wide search, and you are locked down in your cell, you are still entitled to have access to your counsel.

The Superintendent can also authorize a search of any employee, officer or visitor, and any of their property that is on the premises, if s/he has reasonable grounds to believe that that person is attempting to bring into the prison an unauthorized substance. That means that if someone is visiting you, that there is a possibility that they could be searched.

### *Can I refuse to be searched?*

You have the right to refuse to be searched. However, if you do refuse or resist a search, you may be placed in segregation either until you submit to the search, or until there is no longer any need for the search.<sup>122</sup>

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<sup>119</sup> *Corrections Act Regulations*, section 8.

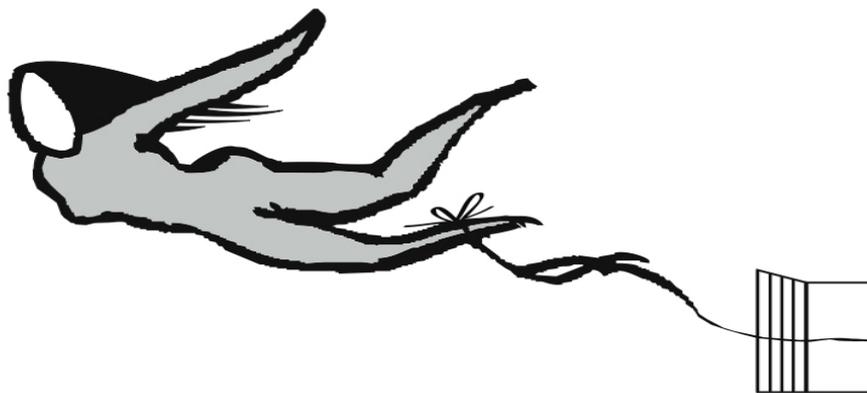
<sup>120</sup> *Corrections Act Regulations*, section 9.

<sup>121</sup> *Corrections Act Regulations*, section 6(1).

<sup>122</sup> *Corrections Act Regulations*, section 10.

## *What should you do if your rights have been violated?*

The same advice that applies to violations of rights with respect to issues discussed earlier in the manual applies to this issue. Contact a lawyer, CAEFS, or the Ombuds Office.



## Part V: Conditional Release

### OVERVIEW

#### *What is Conditional Release?*

There is a lot to know about getting back into the community after you have been sentenced. This part of the manual will cover some of the issues related to releases from jail after you have served all or part of your provincial sentence. **This section does not apply to those women who are remanded in provincial jails while they await trial or sentencing.**

Conditional release is any absence from prison during the term of a prison sentence. Absences can range from brief emergency hospital visits to being permitted to leave prison and completing your term of imprisonment by reporting to a parole officer while living in your own community. In New Brunswick, the main form of conditional release is temporary absence. Temporary absences are intended to help your rehabilitation and reintegration into society.

While much of the discussion so far may seem geared towards trying to make sure your rights are not violated in prison, everyone working on this project is interested in assisting women to get out as soon as possible with their rights respected and spirits intact.

## TEMPORARY ABSENCES

The main form of conditional release available in New Brunswick is the temporary absence. The *Temporary Absence Program* allows you to participate in community-based programming and employment. It is also used for medical, administrative, and humanitarian reasons. Temporary absences are regulated according to the *Prison and Reformatories Act*<sup>123</sup>, which is a federal law that applies to provincial jails. According to this *Act*, the purpose of a temporary absence program is to contribute to the maintenance of a just, peaceful and safe society by facilitating the rehabilitation of prisoners and their reintegration in the community as law-abiding citizens.<sup>124</sup>

### *On what grounds can I apply for a temporary absence?*

The *Corrections Act* specifies a number of reasons that a temporary absence may be granted. These reasons include:

- **Medical:** this could include both examination and treatment;
- **Humanitarian:** these are usually granted to allow you to go to a hospital or funeral, where time is of the essence and the urgent matter affects a member of your immediate family or people very close to you;
- **Administrative:** this relates to dealing with personal or legal matters in the community;
- **Education or training:** not available in New Brunswick for provincial prisoners;
- **Employment:** to obtain or continue employment in the community;
- Any other activity which might be of assistance in your rehabilitation,<sup>125</sup> such as meaningful community activities, employment searches, voluntary services, family events, educational testing, et cetera.<sup>126</sup>

Keep in mind that just because you apply for a temporary absence does not mean that you will automatically get it. The person in charge of temporary absences has the ability to refuse your application. She also has the authority to attach specific conditions to the absence, even if it is granted.

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<sup>123</sup> *Prisons and Reformatories Act*, R.S.C. 1985, c. P-20 [hereinafter cited as: *Prisons and Reformatories Act*].

<sup>124</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-6: Temporary Absences, March 2001).

<sup>125</sup> *Corrections Act Regulations*, section 27.

<sup>126</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-6: Temporary Absences, March 2001).

## *How long can a temporary absence be?*

There are 4 types of authorized temporary absences in New Brunswick. They are:

- **One Day:** permitting you to be away from the jail for up to a period of less than 24 hours;
- **Daily:** requires you to return to the institution each day;
- **Full:** does not require you to return until the end time specified on the temporary absence (TA) certificate. No single TA shall normally be for more than 60 days consecutive, however, the absence may be reassessed and reissued after 60 days;
- **Unlimited/Medical:** permits you to be absent for medical reason. The release is for an unlimited period and may extend up to the expiration of a sentence if necessary.<sup>127</sup>

## *Do I have to apply for temporary absences or are they automatically considered?*

Once you are eligible for a temporary absence, you will still need to submit an application to be considered. It is important that you fill out the temporary absence request form, as opposed to a generic request form. This way, it will be easier to keep track of the time frames for corrections to process your application. You should apply for a temporary absence at least 21 days before the anticipated absence.<sup>128</sup> The forms that you must fill out can be found at the end of the *Corrections Act Regulations*. If you need help filling out the forms, then you should ask someone you trust for assistance.

Except for medical or humanitarian TAs, although you can submit as many request forms as you like, the prison is not required to review more than one application for a temporary absence in any 6 month period (if your sentence is more than 12 months) or any 3 month period (if your sentence is less than 12 months). Although you have the right to apply for a TA, it is the correctional authorities who have the discretion to grant TAs or not.

## *When am I eligible for a temporary absence?*

Your eligibility for temporary absences depends on how long your sentence is. If you have been sentenced to 12 months or more, you are eligible for a

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<sup>127</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-6: Temporary Absences, March 2001).

<sup>128</sup> *Prison and Reformatories Act*, section 16.

temporary absence after serving at least one third of your sentence, or 6 months, whichever is greater.<sup>129</sup> So, for example, if you have been sentenced to 2 years less a day, you should be eligible for a temporary absence after 8 months.

If your sentence is less than a year, then you are eligible for a temporary absence upon serving at least one sixth of your sentence. So, if you are serving a 6 month sentence, you should be eligible after 1 month.<sup>130</sup>

### *What criteria are used to decide whether to grant a temporary absence?*

A number of criteria will be used to decide whether or not to grant your temporary absence. The following will be considered:

- your degree of risk to the community, as determined by the risk assessment protocols and the results of institutional/community assessments;
- the details of your proposed release plan; it is assessed based upon how well it will meet your personal and program goals and whether or not the proposed activities/objectives could be adequately met in custody;
- what the judge intended when you were sentenced;<sup>131</sup>
- your criminal history;
- your community and institutional performance;
- any outstanding charges;
- your immigration status;
- your community support;
- the availability of programs to address your correctional plan; and,
- the impact of you having a TA on your victim(s).<sup>132</sup>

In deciding this, a Classification Committee will also look at:

- your temporary absence application, with a focus on the details of your release plan;
- your pre-sentence report ( if you have a recent one on file);
- your criminal record;
- any available arrest report(s);

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<sup>129</sup> *Corrections Act Regulations*, section 25(2).

<sup>130</sup> *Corrections Act Regulations*, section 25(3).

<sup>131</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (F-6: Temporary Absences, March 2001).

<sup>132</sup> *Prison and Reformatories Act*, section 22.

- any risk assessment results;
- institutional reports;
- community assessments; and,
- any other information which is deemed relevant to the application.

The Classification Committee may also gather other information about you, including verifying your address, previous relationships, interests/leisure activities, previous substance use history, your finances and the level of community support for your TA.<sup>133</sup>

The Classification Committee or Institutional Programmer will conduct an Institutional Assessment within 15 days of your application.<sup>134</sup> At the discretion of the Superintendent, you may make oral or written submissions to the Classification Committee or designate in support of your TA application.<sup>135</sup>

You will normally be advised within 72 hours if your application has been denied. You should then receive a written explanation within 5 working days.<sup>136</sup>

### *Are there conditions attached to a temporary absence?*

If you are granted a temporary absence, you are still considered to be in custody when you are outside the prison for the TA. There will therefore a number of conditions that you will have to follow while you are on your TA. The basic conditions include:

- To keep the peace and be of good behaviour;
- To report to or maintain contact with a correctional authority;
- To accept supervision from a correctional authority;
- To return to custody at the end of your absence; and,
- To abstain from the use of drugs and alcohol.<sup>137</sup>

You will also be required to contact the supervising person/agency every 48 hours unless otherwise specified, and the releasing authority can contact you or your supervisor any time during your TA.<sup>138</sup>

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<sup>133</sup> *Prison and Reformatories Act*, section 25.

<sup>134</sup> *Prison and Reformatories Act*, section 20.

<sup>135</sup> *Prison and Reformatories Act*, section 19.

<sup>136</sup> *Prison and Reformatories Act*, section 32.

<sup>137</sup> *Corrections Act Regulations*, section 31.

<sup>138</sup> *Prison and Reformatories Act*, section 28.

The conditions attached to a temporary absence are taken quite seriously. If, on reasonable grounds, a designated authority (i.e. the Superintendent, a guard, et cetera) decides that you are not complying with the conditions, they can either suspend or revoke your temporary absence, meaning you will have to return to the prison immediately. They can also issue a warrant of committal, which is an order to have you arrested in order to return you to the prison.

Remember that the ability to impose those measures relies on there being 'reasonable grounds' to believe that you have not complied with the conditions. If you think that you were in fact complying with the conditions, or that there were no reasonable grounds on which to believe otherwise, you should file a complaint saying so. This could lead to an investigation, and if the investigation finds that you have not violated any of the conditions of your temporary absence, then the absence may be re-instated.

### *Can a temporary absence be cancelled?*

Your TA can be revoked, suspended or cancelled either before or after it has begun for a number of reasons. First, the Superintendent can cancel it if s/he thinks that it's necessary and justified to prevent a breach of a condition of the absence or where a breach has occurred. Your TA can also be taken away if the grounds for authorizing the absence have changed or no longer exist; or the case has been reassessed, based on information that could not reasonably have been provided when the absence was authorized.<sup>139</sup>

Your TA can also be suspended for disciplinary reasons. In that case, the TA can be revoked as a result of a misconduct, infraction or further charges. It can also be reinstated if you are found not guilty of the disciplinary charge, or it can be reinstated with more stringent conditions.<sup>140</sup>

Where a temporary absence has been suspended or revoked, reasons for this decision should be communicated to you within 72 hours of the decision being made. A written decision with reasons should be provided to you within 5 working days.<sup>141</sup>

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<sup>139</sup> *Prison and Reformatories Act*, section 7.5.

<sup>140</sup> *Prison and Reformatories Act*, section 46.

<sup>141</sup> *Prison and Reformatories Act*, section 52.

## *Can I appeal a decision relating to a temporary absence?*

According to the *Prison and Reformatories Act*, you can appeal the decision of any official with respect to the temporary absence process. The appeal process consists of 2 levels. You can first appeal to the Manager of Institutional Services. If you are dissatisfied with that decision, you may subsequently forward the appeal to the second level, the Director of Institutions, for a final decision.<sup>142</sup>

## **EARNED REMISSION**

### *What is earned remission?*

Earned remission is a way to get the length of your sentence reduced through good behaviour and participation in programs. In New Brunswick, earned remission is regulated through the *Prison and Reformatories Act*.

### *How does earned remission work?*

According to the law, you should be credited with 15 days of remission for your sentence for every month that you spend in custody. This time will be given based on your obeying prison rules and conditions governing temporary absence and by actively participating in programs, designed to promote rehabilitation and reintegration.<sup>143</sup> The first credit of earned remission should be made not later than the end of the month after you arrive at the prison, and then at intervals of not more than three months.<sup>144</sup>

This means that based on the amount of remission that you have earned, you can be released from prison before the expiration of your sentence.<sup>145</sup>

### *Can I lose earned remission?*

You can lose your remission in a number of ways. As outlined in the section on disciplinary offences, you can lose remission as a penalty for a disciplinary charge. According to the law, you can lose your remission in whole or

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<sup>142</sup> *Prison and Reformatories Act*, section 56.

<sup>143</sup> *Prison and Reformatories Act*, section 6(1).

<sup>144</sup> *Prison and Reformatories Act*, section 6(2).

<sup>145</sup> *Prison and Reformatories Act*, section 6(5).

part for breaking a rule in the prison.<sup>146</sup> You should note that the institutional head (i.e. the Superintendent) or the parole board can re-credit your remission.<sup>147</sup>

### *When should I begin preparing for conditional release?*

Start preparing for conditional release from the first day of your sentence. Document the things you do and issues that arise during your time in prison. This will also be important if disciplinary charges are ever filed against you or incorrect information is inserted in your file. Keep track of everything you do: courses, programs, work reports, education, evaluations, community supports, volunteer projects (i.e. making and donating things to community-based charities or events, planning and organizing an event or speaker).

Always keep a paper copy of all your documents, including correspondence concerning your release applications (i.e. request for information from schools, half-way houses, employers, child care arrangements), and any documents or notices presented to you by correctional staff regarding your prisoner record, any correspondence with your lawyer, the Ombuds Office or other agency working on your behalf. When in doubt, keep the document.

Keep all of your documents and records in a safe place. However, you will undoubtedly be subject to cell searches on occasion, and some prisoners are afraid that some things might get ‘damaged or accidentally destroyed’ during cell tosses. You might want to consider sending your documents to a person that you trust outside of the prison to keep them for you.<sup>148</sup>

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<sup>146</sup> *Prison and Reformatories Act*, section 6(4).

<sup>147</sup> *Prison and Reformatories Act*, section 6(8) and 6(9).

<sup>148</sup> This person might need to be a family member so you can give them to him or her during contact visits. If due to disciplinary charges, you are no longer able to have contact visits (or if you are generally having difficulty getting the documents out of the prison), argue that this person is who you have chosen to help assist and represent you at your parole hearings and therefore needs to have access to the documents.



## Part VI: Remedies

### **INTRODUCTION**

This section provides details concerning the steps you can take to protect your rights if they are not respected. References to this section have appeared throughout this manual, and you are now no doubt aware that the main topics in this section include information about:

- The Grievance System;
- Judicial Reviews;
- Complaints to the Ombuds Office;
- Complaints to the New Brunswick Human Rights Commission;
- Complaints to the Privacy Commissioner.

### **THE REMEDIES**

#### *What are remedies?*

Remedies are solutions to problems. A variety of ways to seek these solutions are available to you. These include making a request for something you are not getting, filing a complaint or grievance, filing a complaint to the

New Brunswick Human Rights Commission, filing a complaint with the Ombuds Office, or attempting to have your case reviewed by a Court. As discussed previously in the section “Protecting your Rights,” you can also file a complaint with various regulatory bodies for issues concerning professionals such as doctors, nurses, psychiatrists, psychologists or lawyers.

While this chapter briefly covers the entire range of ways that you can seek a solution to a problem, the main focus is the most common form - a grievance. Here we discuss how to file a grievance, the different types of grievances available to you and the information that you should include in the grievance.

### *What can I do if I feel I am being treated badly?*

As discussed in the Introduction chapter, as a woman in prison you retain all of the rights that you enjoyed before incarceration, except those that need to be restricted in order to enforce your sentence.

These rights include the ability to complain when you feel you have been badly treated and to seek remedies for actions and decisions made by prison authorities that you feel are unfair. This could mean anything from being denied your allotted hour of yard time to being physically assaulted by a staff member.

There are a number of ways to have your voice heard. For instance, you have the following rights:

- The right to file a grievance regarding an action or decision of a staff member without fear of retaliation or other negative consequences;<sup>149</sup>
- The right to legal assistance and reasonable access to legal reading materials;
- The right to a fair hearing protected by procedural safeguards including;<sup>150</sup>
  - the right to notice of a hearing or a case;
  - the right to a hearing be it oral or written;
  - the right to counsel regarding “serious matters,” particularly matters in which a decision against you could mean any further restrictions on your liberty, such as loss of earned remission or segregation;

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<sup>149</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-19: Grievance Procedures – Offender, March 2001).

<sup>150</sup> See Chapter 1.

- the right to know the case against you and present a defence;
- the right to cross-examine witnesses if there is a hearing against you.
- The right to review and challenge inaccuracies in your file;
- The right to make a complaint to the Privacy Commissioner;
- The right to make a complaint to the New Brunswick Human Rights Commission;
- The right to make a complaint to the Ombuds Office.

Document everything. In order to ensure that all the above rights are protected, it is essential that you keep careful records of any incidents you might at any time wish to bring up and of any and all attempts you make to try to resolve your problems. If you have an interaction with a staff member that upsets you, write it down and include the date and time that it happens. If you make a request to a staff member, do the same.

If you file a complaint or grievance, keep a copy of it for your records. If you receive any written documentation from prison staff, Corrections, an outside organization, the New Brunswick Human Rights Commission, the Courts, or anybody else – keep it in as safe a place as possible! This will be useful in helping you to resolve your problem. You may also want to give copies of your paperwork to someone outside of the prison.

### *What is a problem that I should try to remedy?*

Any decision or action by a staff member that is illegal, or compromises your dignity, may be a problem. Any decision or action that denies your rights or further restricts your liberty is almost definitely a problem. Here are some examples:

- Poor treatment by a staff member;
- Denial of your yard time;
- Denial of access to your documents;
- Denial of telephone calls, especially if it is to your lawyer;
- Prison placement;
- Inaccuracy in your file(s) or report(s);
- New (higher) security classification;
- Reduction of your visiting rights;
- Disciplinary charge(s);
- Placement in administrative segregation; or,
- Involuntary transfer.

## *Why should I seek a solution to my problem?*

Perhaps the most obvious reason to seek a remedy for your problem is that success will mean an immediate improvement in your personal situation. You also have a right to be treated with respect and dignity and the right to validation when someone treats you otherwise. However, history shows that rights can be lost as well as gained, and that one of the best ways to keep your rights is to exercise them.

When you use the grievance procedure successfully, you reinforce the notion that there is a need for the formal procedure and you also demonstrate that the procedure can work. If, on the other hand, you cannot get a problem resolved through the grievance procedure, you are still documenting that something is going wrong, and therefore helping to build the argument that other alternatives are needed. In short, you can help to maintain or even advance your rights simply by exercising them.

Filing grievances can have an impact on the justice system as a whole and help other imprisoned women. Grievances document concerns regarding prisoners' concerns, which in turn may assist organizations to fight for institutional accountability<sup>151</sup> and create penalties for correctional interference with the integrity of your sentence.<sup>152</sup>

## **FILE A GRIEVANCE WITHIN THE JAIL**

If you feel that you have received unjust treatment, then you can submit a grievance. This way you give the Superintendent the opportunity to address the complaint.<sup>153</sup>

In provincial jails in New Brunswick, the grievance procedure consists of one level:<sup>154</sup> Level 1 – Director of Institutional Services.

You may also write to the Ombuds Office at any time, whether or not you

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<sup>151</sup> For example, in 1997, the Working Group on Human Rights examined the ability of the Correctional Service of Canada to monitor its compliance with Canada's domestic and international human rights obligations, and developed a strategic model for evaluating human rights performance.

<sup>152</sup> This was recommended by Justice Arbour in the *Arbour Commission*.

<sup>153</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-19: Grievance Procedures – Offender, March 2001).

<sup>154</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-19: Grievance Procedures – Offender, March 2001).

have used the internal grievance procedure, and especially if you are not happy with the outcome of your grievance.

### ***How long do I have to file a grievance?***

You must submit a signed and dated written outline of your grievance to the Regional Director within 10 days of the action or incident about which you are filing the grievance.<sup>155</sup>

### ***What should I include in my grievance?***

Before writing your grievance, spend some time thinking about what you want to say and why you've decided to take this course of action. In order to write an effective grievance, there are a number of important questions you should consider:

#### **1. WHY?**

*What do you want to get out of it?*

- A decision reversed?
- A service you are being denied?
- Information?
- Creation of a record?

#### **2. WHO?**

*Whose action/inaction do you want to complain about?*

Is the problem within the jurisdiction of N.B. Corrections to fix? Remember that examples of things that are not in the jail's jurisdiction include:

- a doctor who will not prescribe pain medication;
- a decision of the parole board ; or,
- the actions of a contract worker who reports to someone other than corrections (eg. sheriff, E Fry worker).

#### **3. WHAT?**

*What is the issue?*

If the issue is involves discrimination (based on race, religion, gender, ethnic origin, age, sexual orientation, disability, etc.) make that clear. This will alert Corrections to the fact that your grievance may pertain to the New Brunswick *Human Rights Act*.

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<sup>155</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-19: Grievance Procedures – Offender, March 2001).

### *What are the facts?*

- Do not make them up or try to fill in missing blanks.
- Remember to keep careful records! This will allow you to relay detailed and accurate facts, such as dates and times.

### *What are the opinions?*

- Be clear that your opinion is based on your own analysis of the situation and, therefore, is not a “fact.”
- Ask yourself if there is an alternate scenario that could also match the facts.

### *What is the relevant law or policy?*

- Find out if there is a law that gives direction (from the *Corrections Act*), regulation, or policy that is relevant to your case.
- Was there a breach of this law, regulation, or policy?

### *What “corrective action” do you want the Corrections to take?*

- What outcome would you like to achieve?
- What solution would make you happy?

Sometimes people are worried that they do not know the exact names, policies or law. Please note that even if you don’t have all of the information listed above, it should not stop you. Provide as much detail as you are able. You may still submit your complaint/grievance.

### *What happens next?*

The Director of Institutional Services *may*, upon receiving your grievance, schedule an interview, and should forward her findings in writing.<sup>156</sup> The policy does not specify a time limit for responding to your grievance, but if you do not hear back from the Director of Institutional Services within 20 days, you should follow up.

## **FILE A COMPLAINT WITH THE OMBUDS OFFICE**

### *What is the Ombuds Office?*

The Ombudsman [*sic*] is an officer of the government of New Brunswick, but operates independent of government. They are not advocates. Their role

<sup>156</sup> New Brunswick Public Safety, *Adult Institutional Policy*, (E-19: Grievance Procedures – Offender, March 2001).

is to ensure that government agencies, such as corrections, follow the law and are run fairly.

The Ombudsperson has the authority to investigate complaints received from the public if they believe that a government agency has acted unfairly. S/he can investigate a decision or recommendation made, an act done or omitted or a procedure.<sup>157</sup> So, if you feel that a particular procedure is unfair, you can ask the Ombuds office to conduct an investigation.

### *How can the Ombuds Office help me?*

The Ombuds office has a variety of ways to help. First, they can advise you of what steps to take. As previously mentioned, they can investigate complaints of specific events, but they can also review legislation and policies to see if they are being followed and if they are fair. They can also look at government's decisions and actions to see if they are fair, reasonable and legal. Finally, the Ombudsperson can recommend that the government make certain changes (but they cannot order them to do so).

The Ombuds Office may refuse to investigate a complaint, and can cease an investigation at any time.<sup>158</sup> Some reasons they might refuse an investigation are: there is another way to appeal<sup>159</sup>; the event giving rise to the complaint happened more than year earlier<sup>160</sup>; the person writing does not have enough personal interest in the subject matter.<sup>161</sup>

It is therefore important to make sure that you file a complaint as quickly as possible. Any correspondence that you have with the Ombuds Office is not supposed to be opened and read by the staff.

### *How do I make a complaint?*

A complaint can be made to the Ombuds office in writing, by fax, over the phone, by e-mail, or in person. There is no special form to fill out, you just need to write a letter, outlining in as much detail as possible, what has happened to you that you feel is unfair, and what you would like the Ombuds office to do about it.

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<sup>157</sup> *Ombudsman Act*, section 12(1).

<sup>158</sup> *Ombudsman Act*, section 15(1).

<sup>159</sup> *Ombudsman Act*, section 15(1)(a).

<sup>160</sup> *Ombudsman Act*, section 15(1)(d).

<sup>161</sup> *Ombudsman Act*, section 15(1)(e).

## *Is my complaint confidential?*

Complaints from prisoners are forwarded to the Ombuds Office in sealed envelopes. They are supposed to remain confidential.

## *How do I contact the Ombuds Office?*

You can write or call the Ombuds Office at:

### **Office of the Ombudsman**

P. O. Box 6000

767 Brunswick Street

Fredericton, New Brunswick E3B 5H1

**Tel:** (506) 453-2789

**Toll free:** 1-888-465-1100

**Fax:** (506) 453-5599

**E-mail:** nbombud@gnb.ca

## **FILE A COMPLAINT WITH THE NEW BRUNSWICK HUMAN RIGHTS COMMISSION**

### *Why would I file a human rights complaint?*

The government of New Brunswick runs and regulates provincial prisons and is therefore subject to the New Brunswick *Human Rights Act*. This means that if your grievance or complaint is the result of discrimination, you can file a complaint with the New Brunswick Human Rights Commission (NBHRC).

### *What is discrimination?*

According to the New Brunswick *Human Rights Act*, discrimination is unfair treatment based on any of the following grounds:

Race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity.<sup>162</sup>

This essentially means that you cannot be denied something in prison or treated differently because of the characteristics or “grounds” mentioned

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<sup>162</sup> *Human Rights Act*, section 3(1).

above, such as gender, race and disability. Discrimination can be both *direct* and *systemic*.

**Direct Discrimination:** happens when an individual or group is treated differently in a negative way based on characteristics related to the prohibited grounds of discrimination, such as gender, race and disability. This kind of discrimination tends to be easy to identify. For example, when a guard uses a racial slur or when a policy singles out prisoners with disabilities, that is direct discrimination.<sup>163</sup>

**Systemic Discrimination:** Is the creation, perpetuation or reinforcement of persistent patterns of inequality among disadvantaged groups. It is usually the result of seemingly neutral legislation, policies, procedures, practices or organizational structures. Systemic discrimination tends to be more difficult to detect.<sup>164</sup> For example, if every prisoner is allotted 1 hour of yard time per day, but the yard is not wheelchair accessible, that is systemic discrimination.

If you think you were the victim of either direct or systemic discrimination, you can file a human rights complaint with the New Brunswick Human Rights Commission.

### *How long do I have to file a Human Rights Complaint?*

You have one year from the incident to file a HR complaint, although in some cases, the deadline may be extended.<sup>165</sup>

### *How do I file a human rights complaint?*

The first thing to do is contact the Human Rights Commission. They will listen to your complaint, and help you to decide what to do next. Staff at the commission might suggest early intervention, but if early intervention is not available, they will send a 'Complaint Kit' which will help you to describe the discrimination to submit your complaint.<sup>166</sup>

When filing a complaint, it is important to include as much information as possible. This is another reason to document things very carefully!

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<sup>163</sup> CHRC Report.

<sup>164</sup> CHRC Report.

<sup>165</sup> New Brunswick Human Rights Commission, *Complaint Process Brochure* (May 2007).

<sup>166</sup> New Brunswick Human Rights Commission, *Complaint Process Brochure* (May 2007).

Things that are particularly important include:

- The name of the staff member about whom you are complaining;
- The date(s) and location(s) where the discrimination was experienced;
- Description of the event(s), as detailed as possible;
- The ground of discrimination (i.e. race, gender, sexual orientation, et cetera);
- The alleged discriminatory practice and an explanation as to how the treatment you received is discriminatory.

### *What happens next?*

Once you submit your complaint, it is reviewed by the Commission. They will consider whether the complaint might be solved through mediation. If the complaint is not able to be resolved through mediation, the Commission will investigate the complaint. They will gather evidence, and might interview you and any other parties. A report will be written, and the Commission decides whether to dismiss the complaint, ask for further settlement or recommend that the Minister appoint a Board of Inquiry.

A Board of Inquiry is an independent tribunal that operates separately from the Commission. The Board of Inquiry holds a public hearing of the evidence to hear everyone's perspective. They may either dismiss the complaint or order a remedy, such as accommodation, reimbursement, or apology.

The decisions of the Commission and the Board of Inquiry are both reviewable by the Court. This means that if you're not happy with the decision, you can ask the court to review the decision. Or, you can ask the Ombuds office to review the process used by the Commission to investigate the complaint.<sup>167</sup>

### *What will I get if my complaint is seen to be valid?*

Filing a human rights complaint is different than suing someone in court, and is also different from filing a complaint with a regulatory body like the College of Physicians and Surgeons (see Health Care). When you sue someone, there is a chance that you can receive damages, or money to compensate for what happened.

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<sup>167</sup> New Brunswick Human Rights Commission, *Complaint Process Brochure* (May 2007).

The Human Rights Commission does not offer financial compensation, but it can order other remedies that can help. For example, they might ask that the discriminatory practice be changed, or that the guard offer you an apology, or that they better accommodate your needs based on the ground of discrimination. So, while complaints against a nurse or doctor serve mostly to penalize that person rather than compensate you, the Human Rights Commission looks to solve the problem and come up with a solution that addresses your needs.

### *Are complaints confidential?*

The Commission attempts to preserve confidentiality during the complaint process. However, if the Commission decides to refer a complaint to the Board of Inquiry, the hearings of evidence are public and therefore will no longer be fully confidential.<sup>168</sup>

### *Do I need to worry about retaliation?*

According to the Commission, it is illegal for someone to retaliate against a person who has filed a complaint. Therefore, if you do suffer from retaliation after filing a complaint, you should tell the Commission about it.

### *Where do I send the complaint?*

#### **New Brunswick Human Rights Commission**

P.O. Box 6000

Fredericton, New Brunswick E3B 5H1

**Tel:** (506) 453-2301

**Toll free:** 1-888-471-2233

**Fax:** (506)453-2653

**Web site:** [www.gnb.ca/hrc-cdp/index-e.asp](http://www.gnb.ca/hrc-cdp/index-e.asp)

## **FILE A COMPLAINT WITH THE PRIVACY COMMISSIONER**

For more information, refer to the section on Confidentiality.

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<sup>168</sup> New Brunswick Human Rights Commission, *Complaint Process Brochure* (May 2007).

## **APPLY FOR *HABEAS CORPUS***

*Habeas corpus* is a form of judicial review that is used mainly by prisoners. It is a Latin term that means roughly ‘to bring the body forward’ [out of the alleged illegal detention]. An application for *habeas corpus* can be brought on behalf of any detained person to show cause for detention. If it can be shown that you have been an unlawfully detained, you may be released.

After many cases with unfavourable results, in 2005 the Supreme Court of Canada finally ruled that prisoners can choose to challenge the legality of their detention in a provincial superior court by way of an application for *habeas corpus*. Most importantly, the Court said that a provincial superior court should hear the application when requested to do so unless it falls into two very narrow categories.<sup>169</sup>

This can be very important to you for many reasons. For example, you may wish to make an application for *habeas corpus* if you are unlawfully placed in segregation. As well, you may also wish to consider an application if you are unfairly being classified as higher security, being transferred to a penitentiary with a higher security rating, et cetera. A decision of the Ontario Court of Appeal also contended that women had a right to *habeas corpus* before they were transferred to the Prison for Women in Kingston.<sup>170</sup> These decisions can be used as precedents in future applications.

If you wish to make an application for *habeas corpus*, it is important that you immediately contact your lawyer if you have one. If you do not have counsel, you should contact Legal Aid about the possibility of attaining their services.

## **CALL THE CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES, A LAWYER OR ANOTHER ADVOCACY GROUP**

### **Elizabeth Fry Society of New Brunswick**

176 Archibald Street  
Moncton, NB E1C 5J1

**Tel:** (506) 855-7781

**Fax:** (506) 855-1739

**E-mail:** [efrynb@nb.aibn.com](mailto:efrynb@nb.aibn.com)

<sup>169</sup> *May v. Ferndale Institution*, [2005] 3 S.C.R. 809.

<sup>170</sup> *Beaudry v. Canada* (Commissioner of Corrections) ONCA 1997.

**Elizabeth Fry Society of Saint John**

P.O. Box 23012

Saint John, New Brunswick E2J 4M1

**Tel:** (506) 635-8851

**Fax:** (506) 635-8851

**E-mail:** [efry@nb.aibn.com](mailto:efry@nb.aibn.com)

**Web site:** [www.efrysj.com](http://www.efrysj.com)

**Canadian Association of Elizabeth Fry Societies (CAEFS)**

#701, 151 Slater Street

Ottawa, ON K1P 5H3

**Tel:** 613-238-2422

**Toll free:** 1-800-637-4606

**Fax:** 613-232-7130

**E-mail:** [caefs@web.ca](mailto:caefs@web.ca)

**Web site:** [www.elizabethfry.ca](http://www.elizabethfry.ca)

