Prisoners' Rights in Alberta: Challenges and Opportunities

X Specific Prisoners' Rights

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A. INTRODUCTION

This section of the report focuses on specific rights of prisoners under supervision in the Alberta correctional system, in particular, residual liberty rights, the right to safe and secure prison conditions, privacy, health care and other rights conferred under the *Corrections Act*.[1]

[1] *Corrections Act*, RSA 2000, c C-29 9 [*Corrections Act*].

B. RESIDUAL LIBERTY RIGHTS

In a trilogy of cases delivered in 1985 (*R v Miller;*[2] *Cardinal v Kent Institution;*[3] and *Morin v Canada*[4]) [the *Miller* trilogy], the Supreme Court ruled that while prisoners are denied their absolute liberty, they retain some level of residual liberty and certain types of restrictions on their residual liberty rights may be unconstitutional.

In the *Miller Trilogy* the court ruled that the writ of *habeas corpus* can be granted to prisoners challenging the constitutionality of a restriction on their residual liberty rights and that correctional decisions that result in prisoners being moved to a stricter form of confinement within the correctional system, including decisions to move prisoners to a higher level of security within a correctional facility or to another higher security correctional facility as well as decisions to revoke a prisoner's parole, constitute restrictions on prisoners' residual liberty rights.

In *Miller*, the court ruled:[5]

> I am of the opinion that the better view is that habeas corpus should lie to determine the validity of a particular form of confinement in a penitentiary notwithstanding that the same issue may be determined upon certiorari in the Federal Court....Confinement in a special handling unit, or in administrative segregation as in *Cardinal*, is a form of detention that is distinct and separate from that imposed on the general inmate population. It involves a significant reduction in the residual liberty of the inmate. It is, in fact, a new detention of the inmate, purporting to rest on its own foundation of legal authority. It is that particular form of detention or deprivation of liberty which is the object of the challenge by habeas corpus... I do not say that habeas corpus should lie to challenge any and all conditions of confinement in a penitentiary or prison, including the loss of any privilege enjoyed by the general inmate population. But it should lie in my opinion to challenge the validity of a distinct form of confinement or detention in which the actual physical constraint or deprivation of liberty, as distinct from the mere loss of certain privileges, is more restrictive or severe than the normal one in an institution.

In *Howard*[6] the Federal Court of Appeal ruled that the failure of the correctional authority to allow a prisoner legal representation to challenge a disciplinary board's decision to move him into disciplinary segregation, which resulted in a loss of earned remission, breached the prisoner's section 7 *Charter*[7] rights. The Court explained that the circumstances and the liberty right

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[2] *R v Miller*, 1985 CanLII 22 (SCC), [*Miller*], online: <http://canlii.ca/t/1ftx9>.
[3] *Cardinal v Director of Kent Institution*, 1985 CanLII 23 (SCC), [*Cardinal*], online: <http://canlii.ca/t/1ftwk>.
[4] *Morin v (National Special Handling Unit Review Committee)*, 1985 CanLII 24 (SCC) [*Morin*], online: <http://canlii.ca/t/1ftx5>.
[5] *Miller* at para 35.
[6] *Re Howard and Inmate Disciplinary Court*, 1985 CanLII 3083 (FCA) [*Howard*], online: <http://canlii.ca/t/g91w0>.
[7] *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Charter*].

affected must be considered in each case in order to determine whether the section 7 right to fundamental justice is triggered:[8]

> What both the Canadian and the American cases indicate is that there are degrees of liberty, all protected in some way by a rule of due process or natural justice or fundamental justice, but not in the same way. What there must always be is an opportunity to state a case which is adequate for fundamental justice in the circumstances. In other words, there is a sliding standard of adequacy which can be defined only in reference to the particular degree of liberty at stake and the particular procedural safeguard in question. The resolution may involve the balancing of competing interests. Here the penitentiary setting is of capital importance in sorting out the interests in competition.
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> Penitentiaries are not nice places for nice people...In such an atmosphere of discord and hatred, minor sparks can set off major conflagrations of the most incendiary sort. Order is both more necessary and more fragile than in even military and police contexts, and its restoration, when disturbed, becomes a matter of frightening immediacy.
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> It would be an ill-informed court that was not aware of the necessity for immediate response by prison authorities to breaches of prison order and it would be a rash one that would deny them the means to react effectively.
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> But not every feature of present disciplinary practice is objectively necessary for immediate disciplinary purposes. The mere convenience of the authorities will serve as no justification; as Lord Atkin put it in *General Medical Council v. Spackman*, [1943] A.C. 627 at p. 638: 'Convenience and justice are often not on speaking terms.'…All that is not immediately necessary must certainly yield to the fullest exigencies of liberty.

The *Miller Trilogy* formed the basis for the Supreme Court's more recent clarification of the role of *habeas corpus* in protecting a prisoner's residual liberty rights in *May v Ferndale Institution;*[9] the majority clarified that *habeas corpus* in a prison setting applies to a "prison within a prison", including a special handling unit or administrative segregation:

> ... that is distinct and separate from that imposed on the general inmate population because it involves a significant reduction in the residual liberty of the inmate … a distinct form of confinement or detention in which the actual physical constraint or deprivation of liberty, as distinct from the mere loss of certain privileges, is more restrictive or severe than the normal one in an institution.

[8] *Howard* at paras 78 – 81.
[9] *May v Ferndale Institution*, [2005] SCC 82 (CanLII) at paras 27-28 [*May*], online: <https://www.canlii.org/en/ca/scc/doc/2005/2005scc82/2005scc82.html?resultIndex=1>.

C. RESTRICTION OF RESIDUAL RIGHTS THROUGH ADMINISTRATIVE AND DISCIPLINARY SEGREGATION (SOLITARY CONFINEMENT)

The decision to place a prisoner in isolation can profoundly intensify the severity of a legal sanction of imprisonment. While the Canadian legislative regime offers some protections, prison officials are empowered with broad discretion to make this decision with no judicial input. Strikingly, prisoners can be placed in isolation for indefinite periods of time, which has invited critical scrutiny. Litigation under the *Canadian Charter of Rights and Freedoms* could challenge the current Canadian scheme, but the US experience of litigating solitary confinement warns of the limits of some forms of judicial intervention as a means to generate effective controls over this practice. In response to extreme forms of solitary confinement, American courts have only articulated minimal constraints and narrow individual exemptions - no court has found the basic practice of indefinite isolation to be constitutionally barred, and it is currently used on a widespread basis... Canadian prison legislation already includes many of the same protections that have been extracted from US courts, but essential protections remain absent in both countries. Law reform efforts should aim for a judicial declaration that prohibits isolation for indefinite and excessive terms, and mandates external oversight over all forms of isolation.[10]

Solitary confinement is a severe form of restriction on a prisoner's residual liberty rights and has been described by the federal Correctional Investigator as the "most austere and depriving form of incarceration" legally administered in Canada.[11]

1. Definition of Segregation

The United Nations *Standard Minimum Rules for the Treatment of Prisoners*,[12] also known as the *Mandela Rules*, defines solitary confinement as "the confinement of prisoners for 22 hours or more a day without meaningful human contact" and prolonged solitary confinement as "solitary confinement for a time period in excess of 15 consecutive days."[13] The *Mandela Rules* state that segregation in excess of 15 days can constitute "torture or cruel, inhuman or degrading treatment or punishment" and prohibits unlimited or prolonged solitary confinement for all prisoners and any length of solitary confinement for women, children, and people with mental and physical disabilities.[14] Professor Mendez, the former United Nations Special Rapporteur on Torture, concluded in a report on solitary confinement that: [15]

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[10] Lisa Kerr, "The Chronic Failure to Control Prisoner Isolation in US and Canadian Law" (2015) 40 Queen's LJ 483 at 1.
[11] Canada, Office of the Correctional Investigator, Releases, *Administrative Segregation in Federal Corrections: 10 Year Trends - Federal Corrections Overuses Segregation to Manage Inmates* (Ottawa, 2015).
[12] *United Nations Standard Minimum Rules for the Treatment of Prisoners,* A/RES/70/175, UNGAOR, 17th sess, Supp No 106, UN Doc 70/175 (2015) Rule 43 [*Mandela Rules*].
[13] *Mandela Rules*, Rule 44.
[14] *Mandela Rules*, Rule 45(2).
[15] United Nations General Assembly, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment,* A/66/268, UNGAOR, 66th Sess, UN Doc 66/150 (2011) at paras 76, 88, [UN Special Rapporteur on Torture, *Report on Solitary Confinement*].

> …where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or punishment and even torture.

Canadian corrections laws do not use the term "solitary confinement" but use a variety of other terms to refer to conditions of solitary confinement. The Office of the Correctional Investigator (OCI) Annual Report 2014-2015, which focused on the conditions of confinement in administrative segregation, defines segregation as follows:[16]

> Many terms, such as administrative segregation, dissociation, isolation, seclusion, protective custody and solitary confinement are used, often interchangeably, to describe the segregation experience. These terms encompass a range of conditions of detention, but they share some common elements – e.g. restrictions on freedoms of association, assembly and movement and they imply some degree of perceptual and sensory deprivation as well as social isolation. The generally accepted term that captures these common elements, including administrative segregation, is "solitary confinement."

2. Alberta Legislation

The *Corrections Act* and its regulations do not use the terms "solitary confinement," "administrative segregation" or "disciplinary segregation" but do give correctional authorities the power to physically separate prisoners from the general prison population for disciplinary or mental health reasons or if the prisoner is considered violent.

Disciplinary segregation refers to segregation used punitively as a disciplinary action for an in-prison offence. If a hearing adjudicator or appeal adjudicator appointed under the *Corrections Act* finds that a prisoner has committed an offence under the *Corrections Act* or regulations, the prisoner may be punished to "confinement to a disciplinary unit for a period of not more than 14 days."[17] If the deputy director of the correctional institution is of the opinion that "an inmate has done anything for which the inmate *may be charged,*" he or she "may move the inmate from the inmate's living unit to a disciplinary unit" for a maximum of 72 hours without confirmation of the punishment by the hearing adjudicator.[18]A "disciplinary unit" is defined as "a physically separated area of an institution designated as a disciplinary unit by the Chief Executive Officer."[19] Prisoners who are confined in disciplinary units forfeit their privileges.[20]

Administrative segregation may be involuntary or voluntary; for example, when a prisoner requests placement in segregation for protection from other prisoners. The *Corrections Act*

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[16] Canada, Office of the Correctional Investigator, *Annual Report 2014-2015* at p 25 [*OCI Annual Report 2014-2015*].
[17] *Correctional Institution Regulation*, AR 205/2001 [*Regulation 205/2001*], section 46(c).
[18] Regulation 205/2001, section 52.
[19] Regulation 205/2001, section 1(1)(b).
[20] Regulation 205/2001, section 54.

grants ACS the power to segregate prisoners for non-disciplinary reasons in two cases. Prisoners with mental health conditions must be adequately observed and separated from other inmates within the institution, if recommended by the institution's health practitioner.[21] If the director of a correctional institution is of the opinion that an inmate is violent, the director "may order the separation of the inmate from other inmates in the institution."[22] Unlike disciplinary segregation, there are no statutory time limits on administrative segregation, which results in prisoners being detained indefinitely, sometimes for months and years. Nor does the legislation impose a requirement that a prisoner's administrative segregation be reviewed on a periodic basis.

3. Use of Administrative Segregation

In addition to disciplinary segregation, segregation for health reasons, segregation of violent prisoners and voluntary segregation, it is widely known that prisoners are placed in administrative segregation as a means of managing the prison population.

The federal Correctional Investigator reports that conditions in federal prisons are becoming increasingly restrictive in terms of inmate association, movement and assembly and that restrictions are being imposed on prisoners to manage a changing and more complex inmate profile. The prison population is described as being comprised of prisoners who are gang members, more culturally diverse, addicted to drugs and alcohol, and suffering from mental health problems.[23]

The use of "dynamic security" practices is also said to be declining, which means that correctional authorities are moving away from managing prisoners through interpersonal interactions and toward more "static" methods, which use prisoner isolation as a means of control.[24]

The Correctional Investigator has found that administrative segregation is commonly used to manage and punish prisoners who are mentally ill, self-injurious or at risk of committing suicide and that federally sentenced women, Aboriginal people and black people are put in administrative segregation at a higher rate.[25]

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[21] Regulation 205/2001, section 19.
[22] Regulation 205/2001, section 51.
[23] Canada, Office of the Correctional Investigator, *Conditions of Confinement* (2016) [*OCI Conditions of Confinement*], online: http://www.oci-bec.gc.ca/cnt/priorities-priorites/confinement-eng.aspx.
[24] United Nations Office on Drugs and Crime, "Handbook on Dynamic Security and Prison Intelligence" (2015), online: <https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Handbook_on_Dynamic_Security_and_Prison_Intelligence.pdf> at p 30 which states: "The concept of security involves much more than physical barriers to escape. Security depends on an alert staff who interact with prisoners, who have an awareness of what is going on in the prison and who ensure that prisoners are kept active in a positive way. This is often described as "dynamic security".
[25] *OCI Annual Report 2014-2015* at p 27.

The Ontario Ombudsman has also found that segregation is being used to separate, punish and deal with the most difficult and vulnerable prisoners in the Ontario correctional system.[26]

Alberta Correctional Services (ACS) policies and practices with respect to disciplinary and administrative segregation are not publicly available. However, some information is available in Alberta case law, discussed below, and reveals the very harsh conditions that Alberta prisoners experience in disciplinary and administrative segregation in Alberta correctional facilities.

4. Effects of Segregation

Research and reports on solitary confinement clearly show that it exacerbates the mental and physical health of prisoners and that prisoners are significantly harmed by it. Experts have found that between 33% and 90% of prisoners who have experienced solitary confinement experience increased sensitivity to stimuli, hallucinations, insomnia, confusion, feelings of hopelessness and despair and cognitive problems including memory loss, difficulty thinking and impulsiveness.[27]

The overuse and inhumane conditions of administrative segregation in the federal corrections system has been a priority of the federal Correctional Investigator since at least 2009. As a result, the federal correctional system has implemented a number of measures that have reduced the use of administrative segregation and the length of stay in administrative segregation decreased substantially between 2014 and 2017. The Office of the Correctional Investigator Annual Report 2016-2017[28] recognizes these improvements but states that serious issues remain, including the fact that federal legislation and policy continues to allow indefinite, long-term isolation in solitary confinement; Aboriginal prisoners are more likely to experience segregation and for longer periods than any other group (35.5% of prisoners in segregation in March 31, 2017); inhumane conditions in segregation remain; and that there are concerns that the prisoners who have been moved out of segregation that have behavioural, emotional or cognitive issues have, in the absence of other alternatives, been moved into "segregation lite" units where the conditions approximate the conditions of solitary confinement as defined under the *Mandela Rules*.

There is little information available on the number, ethnicity, age, sex or health of prisoners that are held in segregation in Alberta correctional institutions or on the length of time that they are held there, and this is the case for most of the other Canadian provinces and territories.[29]

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[26] Ontario, Office of the Ontario Ombudsman, "*Segregation: Not an Isolated Problem*", by P. Dubé, Submission in Response to the Ministry of Community Safety and Correctional Services' Consultation on its Review of Policies Related to Segregation of Inmates [*Ontario Ombudsman Review of Segregation, 2016*].
[27] Stuart Grassian, "Psychiatric Effects of Solitary Confinement" (2006) 22:325 Wash. U.J.L. & Pol'y, online: <http://heinonline.org/HOL/Page?handle=hein.journals/wajlp22&div=26&g_sent=1&casa_token=&collection=journals>; OCI *Annual Report 2014-2015* at p 26.
[28] Canada, Office of the Correctional Investigator, Annual Report 2016-2017 [*OCI Annual Report 2016-2017*] at pp 40 – 42, online: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>.
[29] Debra Parkes, "Ending the Isolation: An Introduction to the Special Volume on Human Rights and Solitary Confinement"(2015) 4:1 Can J Hum Rts at viii.

A January 2015 *Globe and Mail* investigation into provincial correctional solitary confinement practices reports that all provincial correctional systems use some form of solitary confinement; that prisoners in solitary confinement are generally confined to their cells for approximately 23 hours per day; and that current and former prisoners and criminal lawyers report that segregated prisoners are often denied access to health care, daily outdoor exercise, legal counsel, chaplains, family visits, telephone services, writing materials and books.[30]

A 2016 *Globe and Mail* investigation found that most provinces and territories do not keep statistics on the segregation of prisoners. In September 2015, the *Globe and Mail* asked all Canadian provinces and territories to provide information on the number of inmates who spent more than 15 days in segregation for each of the past five years. Alberta could not provide statistics and only Quebec could provide long-term statistics.[31]

5. Case Law

The *Charter* rights that clearly apply to segregation based on the case law to date include the right to be free from arbitrary detention (section 9); the right to be free from cruel or unusual punishment and treatment (section 12); the right not to be deprived of life, liberty or the security of the person, except in accordance with the principles of fundamental justice (section 7); and the right to habeas corpus (section 10(1)).

Michael Jackson, a Professor of Law at the University of British Columbia's Faculty of Law and prisoners' rights advocate for over 40 years, published *Prisoners of Isolation: Solitary Confinement in Canada*,[32] in 1983. The book discusses the early use of solitary confinement in the federal correctional system, and the lack of accountability or oversight of solitary confinement policies and practices. In 2015, Professor Jackson published *Reflections on 40 Years of Advocacy*[33] documenting his disappointment in the lack of meaningful change in solitary confinement practices and the strong resistance by the federal government to seeing prisoners as rights holders, particularly given the many independent reports recommending the need for change and oversight of correctional authorities.

The Ontario and British Columbia courts have both recently ruled that federal administrative segregation legislation, specifically sections 31-37 of the *Corrections and Conditional Release Act*,[34] infringe prisoners' liberty rights under section 7 of the *Charter*. In addition, the BC court

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[30] Patrick White, "Do provincial jails use solitary confinement the way federal penitentiaries do?" *The Globe and Mail* (2015) online: <https://ask.theglobeandmail.com/do-provincial-jails-in-canada-use-solitary-confinement-the-way-federal-penitentiaries-do/>.

[31] Patrick White, "Solitary confinement reform hindered by gaps in prison statistics", *The Globe and Mail* (2016) online: <https://www.theglobeandmail.com/news/national/solitary-confinement-reform-hindered-by-gaps-in-prison-statistics/article29413413/>.

[32] Michael Jackson, *Prisoners of Isolation: Solitary Confinement in Canada* (Toronto: University of Toronto Press, 1983) [*Jackson, Prisoners of Isolation*].

[33] Michael Jackson, "Reflections on 40 Years of Advocacy" (2015) 4:1 Can J Hum Rts 57, online: <http://cjhr.ca/articles/vol-4-no-1-2015/reflections-on-40-years-of-advocacy/>.

[34] *Corrections and Conditional Release Act*, SC 1992, c 20 [*CCRA*].

found that administrative segregation legislation violated prisoners' right to be free from cruel and unusual punishment and treatment under section 12 of the *Charter*. The reasons for these rulings are discussed below.[35]

a. Corporation of the Canadian Civil Liberties Association v Her Majesty the Queen[36]

In *Corporation of the Canadian Civil Liberties Association v Canada*, delivered in December 2017, the Supreme Court of Ontario declared that sections 31-37 of the CCRA violated section 7 but not section 12 of the *Charter*, and suspended the declaration of invalidity for 12 months to allow the federal government to take steps to amend the legislation. The Court's ruling included the following findings:

1. The administration segregation legislation infringed prisoners' rights to liberty and security of the person contrary to the rules of fundamental justice under section 7 of the Charter, based on the following findings:

   (a) The administrative segregation law infringed prisoners' liberty (paras 85 – 88).

   (b) The administrative segregation law infringed prisoners' rights to security of the person, based on evidence that it "imposes a psychological stress, quite capable of producing serious permanent observable negative mental health effects" (paras 89 – 101).

   (c) The administrative segregation law is arbitrary, as there is no connection between the effect and the purpose of the law. The law gives the institutional head the right to involuntarily confine an inmate in administrative segregation and to make the final decision about whether to release the inmate from segregation. The law states that the purpose of administrative segregation is to preserve the safety of staff, inmates and the integrity of ongoing serious investigations. The court ruled that "[i]nsulating the administrative segregation decision-maker from meaningful review does not advance this legislative purpose" and is therefore arbitrary, contrary the rules of fundamental justice under section 7 of the Charter (paras 105 – 108).

   (d) The "statutory review of the decision to segregate is procedurally unfair under the *Baker* test and contrary to the principles of fundamental justice because the procedure chosen provides that the Institutional Head is the final decision maker for admission, maintenance and release from administrative

[35] A more extensive analysis and comparison of these two decisions can be found in "You are not Alone: Ontario and British Columbia Invalidate Solitary Confinement" (2018), by Bailey Fox, online: <http://www.thecourt.ca/not-alone-ontario-british-columbia-invalidate-solitary-confinement/>. See: *BC Civil Liberties Association v Canada (Attorney General),* 2018 BCSC 62 (CanLII); Canada (Attorney General) appealed this ruling on February 16, 2018. See Application for Intervenor Status: *BC Civil Liberties Association v Canada (Attorney General),* 2018 BCCA 282 (CanLII).

[36] *Corporation of the Canadian Civil Liberties Association v Her Majesty the Queen*, 2017 ONSC 7491 (CanLII) [*CCCLA v R*], online: <http://canlii.ca/t/hpdbx>. Note: In January 2018, the CCLA filed for leave to appeal this decision on the *Charter* s 12 issue. See: CCLA, January 17, 2018, "Legal Fight Against Solitary Confinement Continues" online: https://ccla.org/legal-fight-solitary-confinement-continues/.

segregation and is the final institutional decision-maker of required reviews and hearings which occur immediately after an inmate is segregated" (at para 155).

(e) Given the context of the legislation and the nature of administrative segregation in the correctional system, "because Charter rights are affected and because negative psychological effects can occur within days … it is a principle of fundamental justice that the review of the decision to place an inmate in segregation required by Parliament must occur promptly" (at para 156).

2. The legislative scheme does not breach prisoners' rights to be free of cruel and unusual treatment or punishment under section 12 of the Charter, based on the following findings:

(a) The legislative scheme does not permit cruel and unusual punishment or treatment under section 12 of the Charter because it does not forbid administrative segregation of persons between the ages of 18 and 21 (paras 191 – 212).

(b) "Because the legislation requires both the Institutional Head and the independent reviewer to balance the security needs of employees and inmates in the general population with the psychological harm to the administratively segregated inmate, I am satisfied that the legislative scheme properly applied to inmates with mental illness does not offend section 12 of the Charter of Rights and Freedoms" and that "the legislative scheme is capable of administration in relation to mentally ill inmates in a way which does not offend section 12 of the Charter of Rights and Freedoms" (paras 228 and 229).

(c) The legislative scheme providing for administrative segregation is not contrary to section 12 of the Charter because it does not contain a hard cap on the length of time that an inmate can be administratively segregated, however, this does not equate with a finding that the legislative scheme could never be grossly disproportionate treatment of a particular inmate (paras 230 – 271).

b. British Columbia Civil Liberties Association v Canada (Attorney General)[37]

This challenge to the *CCRA* administrative segregation law was commenced by the British Columbia Civil Liberties Association (BCCLA) and the John Howard Society of Canada in 2014 who asserted that sections 31 – 37 of the *CCRA* caused prisoners unnecessary suffering and death, deprived prisoners of fundamental protections, and discriminated against mentally ill and Aboriginal prisoners, and thereby violated sections 7, 9 10, 12 and 15 of the *Charter*.[38] The

[37] *British Columbia Civil Liberties Association v Canada (Attorney General*), 2018 BCSC 62 (CanLII), online: <http://canlii.ca/t/hprxx>. Canada (Attorney General) appealed this ruling on February 16, 2018. See Application for Intervenor Status: *BC Civil Liberties Association v Canada (Attorney General),* 2018 BCCA 282 (CanLII).

[38] Information about the litigation can be found on the British Columbia Civil Liberties Association website, online: <https://bccla.org/topics/solitary-confinement/>.

decision was delivered on January 17, 2018, and the court's reasons for declaring the law unconstitutional under section 52 of the *Charter* is summarized in para 609 of the judgment:

> On the basis of the findings made in these Reasons, I am prepared to make the following s. 52 declarations:
>
> 1. The impugned laws are invalid pursuant to s. 7 of the Charter to the extent that:
>
> a) the impugned laws authorize and effect prolonged, indefinite administrative segregation for anyone;
>
> b) the impugned laws authorize and effect the institutional head to be the judge and prosecutor of his own cause;
>
> c) the impugned laws authorize internal review; and
>
> d) the impugned laws authorize and effect the deprivation of inmates' right to counsel at segregation hearings and reviews.
>
> 2. The impugned laws are invalid pursuant to s. 15 of the Charter:
>
> a) to the extent that the impugned laws authorize and effect any period of administrative segregation for the mentally ill and/or disabled; and
>
> b) also to the extent that the impugned laws authorize and effect a procedure that results in discrimination against Aboriginal inmates.

6. Current Status

Canadian governments have been and continue to be sued by prisoners and former prisoners under civil law for damages suffered as a result of being held in solitary confinement.[39]

In June 2017, the federal government tabled Bill C-56, *An Act to* amend the *Corrections and Conditional Release Act (CCRA)* and the *Abolition of Early Parole Act (AEPA)*.[40] Bill C-56 introduces a framework to limit the time a federal prisoner can be held in solitary confinement to 15 days, in line with the *Mandela Rules*.[41]

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[39] Alex Ballingall, "Judge certifies $600M lawsuit for mentally ill inmates allegedly mistreated", *The Star* (2016), online: <https://www.thestar.com/news/canada/2016/12/14/judge-certifies-600-million-lawsuit-for-mentally-ill-inmates.html>.

[40] Canada, House of Commons, BILL C-56:
An Act to amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act, First Session, 64-65-66 Elizabeth II, Parliament of Canada (2017) online: http://www.parl.ca/DocumentViewer/en/42-1/bill/C-56/first-reading.

[41] Canada, Ministry of Public Safety and Emergency Preparedness, *Government of Canada introduces legislative changes addressing issues in the federal corrections system*, News Release (Ottawa: Public Safety Canada, 2017) online: <https://www.canada.ca/en/public-safety-canada/news/2017/06/government_of_canadaintroduceslegislativechangesaddressingissues.html>.

In June 2017, the *Globe and Mail* reported that CSC and those provincial correctional authorities that support the reform of solitary confinement measures are drafting a national segregation strategy which will act as a framework for jurisdictions to follow in developing and improving segregation policies and procedures.

D. OTHER FORMS OF RESTRICTIONS ON RESIDUAL LIBERTY

1. Lockdowns

Correctional authorities can require prisoners to be locked down, meaning they must stay in their cells for an indefinite and sometimes lengthy periods of time. Lockdowns have been found to be very close if not worse than conditions in solitary confinement and can constitute a violation of a prisoner's section 12 *Charter* rights.[42]

2. Revocation of Parole

Revocations of parole have also been successfully challenged as violations of prisoners' residual liberty rights.

In *Dumas c. Centre de détention Leclerc de Laval,*[43] the Supreme Court ruled, in the context of a challenge to the refusal to grant parole, that *habeas corpus* is not restricted to situations where a prisoner seeks complete liberty, but rather can be ordered to release a person from a particularly aggravated form of detention, leaving the prisoner under some lesser degree of restraint. The Court identified three different categories of deprivation of liberty: "the initial deprivation of liberty, a substantial change in conditions amounting to a further deprivation of liberty, and a continuation of the deprivation of liberty.[44] The Court ruled that had the prisoner in this case been released on parole ,and then denied it and again incarcerated, this would have amounted to a deprivation of liberty. However, in this case, the prisoner was not released prior to being denied parole and there was, therefore, a continuation of his deprivation of liberty, which was not open to challenge under an application for *habeas corpus*.[45]

E. PRISON CONDITIONS

The focusing of section 12 of the *Charter* on prison conditions and practices would be particularly appropriate given that typically such practices and conditions are not specifically prescribed by Parliament but rather are applied through the interpretation of very broadly drafted legislative

[42] Melody Izadi, "Lockdowns and Liberty: Why Lockdowns in Correctional Facilities are Violating Human Rights, and Costing Tax Payers" Law Now (2017) online: http://www.lawnow.org/lockdowns-and-liberty-why-lockdowns-in-correctional-facilities-are-violating-human-rights-and-costing-tax-payers/.
[43] *Dumas v Leclerc* Institute, 1986 CanLII 38 (SCC), [*Dumas*], online: <http://canlii.c/t/1ftqz>.
[44] *Dumas* at para 11.
[45] Early *Charter* decisions concerning parole are discussed in David Cole & Allan Manson, *Release from Imprisonment: The Law of Sentencing, Parole and Judicial Review* (Toronto: Carswell, 1990) and in James O'Reilly, "Prisoners as Possessors of Rights in Canadian Law" (LL.M. Thesis, University of Ottawa, 1989) at 135-59 [unpublished]. More recent discussions of specific issues concerning parole and the *Charter* can be found in Allan Manson, Patrick Healy & Gary Trotter, *Sentencing and Penal Policy in Canada: Cases, Materials and Commentary* (Toronto: Emond Montgomery, 2000) at c.19, and Nathan J. Whitling, "Comsa v. Canada (N.P.B.): The Right to a Timely Post-Revocation Hearing" (2002) 40 Alta. L. Rev. 511.

provisions which are made specific through administrative policy making. Judicial monitoring of such practices against the standard of section 12 would therefore involve the courts not in the overriding of clearly expressed legislative intention but rather in the superintendency of decision-making which has always been the most immunized from public scrutiny.[46]

1. Reports on Prison Conditions

Reports, inquiries, case law and news reports are replete with evidence of prison conditions and practices that expose prisoners to perils, including double or triple-bunking, exposure to certain physical hazards such as infectious diseases, and lack of basic amenities necessary for a decent standard of living. Evidence suggests that prison conditions have grown worse as prison populations have risen and that the prison population is increasingly composed of prisoners with violent backgrounds, mental disabilities including serious psychiatric and cognitive disorders, alcohol and substance addictions, infectious diseases and poor health generally, gang members and other groups who are incompatible and dangerous to one another.[47]

The Alberta *Fatalities Inquiries Act*[48] requires the Alberta Fatality Review Board to review deaths of prisoners in correctional institutions in the Province. The Board may recommend to the Ministry of Justice and Solicitor General that a public fatality inquiry be undertaken and the Ministry may also call for a public inquiry without the recommendation of the Board. The inquiry is conducted before a judge of the Alberta Provincial Court. The Ministry maintains a public database that provides public access to public fatality inquiry reports for the period from 1991 to the present. In June 2017, the Ministry launched a database, *Responses to Fatality Inquiry Recommendations,* that documents, on a go-forward basis, the actions or inactions of the entities to whom recommendations have been made.[49] At the time of writing, there were 117 public inquiry fatality reports in the database covering the deaths of prisoners in all correctional facilities in Alberta, including federal and provincial facilities and young offender facilities. The causes of death include assaults by other prisoners, suicide by asphyxia or strangulation, accidental drug overdoses both from the consumption of illicit drugs and as a result of methadone administration, and natural causes resulting from health conditions. Approximately 50% of the inquires involved deaths in correctional facilities under the administration of ACS and 15 of those deaths occurred in the Edmonton Remand Centre and 15 occurred in the Calgary Remand Centre.

There have also been numerous Inquiries and recommendations for change resulting from the deaths in custody of prisoners in the federal correctional system and other provincial/territorial correctional systems. The highly publicized death of Ashley Smith from self-strangulation, while being held in isolation on suicide watch and while under the observation of prison guards, is but

[46] Michael Jackson, "Cruel and Unusual Treatment or Punishment?" (1982) 16 UBCL Rev 189 at 211.
[47] *OCI Conditions of Confinement*.
[48] *Fatality Inquiries Act*, RSA 2000, c F-9, <http://canlii.ca/t/81qd>.
[49] Alberta, Ministry of Justice and Solicitor General, *Responses to Fatality Inquiry Recommendations*, online: <https://open.alberta.ca/dataset/responses-to-public-fatality-inquiry-recommendations>.

one example. Ms. Smith had spent a significant amount of her sentence in solitary confinement and had a long history of self-harm. The 2013 Coroner's Inquest into her death concluded that the cause of death was homicide, meaning that her death was caused from the intentional acts of others. The coroner's inquest into her death made 104 recommendations.[50] Other examples of inquiries into deaths in custody include those into the death of Edward Snowshoe, who spent lengthy periods of time in solitary confinement and who hanged himself in 2010,[51] and Christopher Roy, who hanged himself in 2015 after spending two months in solitary confinement when it was known that his mental health in confinement was deteriorating.[52]

2. Alberta Legislation and Policies

The *Corrections Act* and its regulations contain a number of general provisions that could affect the conditions in correctional institutions, but nothing that deals specifically with such conditions.

Section 2(c) of the *Corrections Act* states that the Minister in charge of corrections is responsible for the "safe custody and detention of inmates."

Section 33 of the *Corrections Act* grants the government the power to make regulations in respect of a number of matters that may affect the conditions in correctional institutions including regulations: "establishing standards for the maintenance and operation of correctional institutions and the inspection of them"; "for the good order and internal management, including the direction and co-ordination of programs, of correctional institutions"; "concerning the security of correctional institutions and the discipline of inmates"; "prescribing and governing the duties and conduct of persons employed in correctional institutions"; "respecting the security of inmates and the duties and responsibilities of an employer of inmates"; and "authorizing and governing the establishment of committees to inquire into any matter relating to the operation of a correctional institution."

Section 19 of the *Corrections Act* states that "[p]ersons committed for trial, remanded for trial, remanded for sentence, awaiting the hearing of an appeal, awaiting deportation or awaiting transfer to a federal penitentiary (a) are to be kept apart from persons sentenced to a provincial institution, when the Director is of the opinion that it is possible or desirable, and (b) are not required to work other than to clean their own living quarters but may work if they request employment and the work assignment is not detrimental to the security of the institution."

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[50] Canada, Correctional Service Canada, *Coroner's Inquest Touching the Death of Ashley Smith*, online: http://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml.

[51] Globe & Mail, *A numbing response to the death of Edward Snowshoe*, online: https://www.theglobeandmail.com/opinion/editorials/a-numbing-response-to-the-death-of-edward-snowshoe/article23749738/.

[52] British Columbia, Ministry of Public Safety and Solicitor General, "Verdict of Coroner's Inquest", online: <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/inquest/2016/roy-christopher-robert-jury-finding-2015-0378-0097.pdf>

3. Case Law

Individual prisoners have had some success in establishing that prison conditions violate their section 7 and section 12 *Charter* rights. In order to be successful, prisoners must satisfy the very high bar of proving that prison conditions are so excessive or grossly disproportionate, that they "outrage standards of decency." The successful cases have put forward extensive evidence, including evidence from prison experts on prison condition standards and evidence from medical experts on the extremely harmful psychological effects on prisoners' of sub-standard prison conditions.[53] However, the courts have also clearly stated in most cases that they are not setting standards for prison conditions or practices but are rather limiting their decisions to determinations of whether prison conditions violate the individual prisoners' *Charter* rights. As a result, *Charter* litigation challenging prison conditions is unlikely to result in correctional authorities addressing systemic practices and attitudes resulting in poor prison conditions. The following five decisions, four of which are from Alberta, are illustrative.

a. Trang v Alberta (Edmonton Remand Centre)[54]

Justice Marceau's 2010 decision in *Trang* is a leading case in this area. The decision resulted from the 1999 arrest of a number of individuals on gang-related drug offences and their incarceration in the former Edmonton Remand Centre [ERC], some for lengthy periods of time. The prisoners brought an application for habeas corpus and declaratory relief on the grounds that the conditions of their incarceration violated their section 12 *Charter* rights to be free from cruel and unusual treatment. After numerous applications and decisions, Marceau J. delivered his judgment in January 2010.

As a preliminary matter, the court ruled that international UN standards for the treatment of prisoners were guidelines and did no bind prison officials.

The court also rejected the argument that prisoners in remand awaiting trial, who are presumed innocent until proven guilty, should not be subjected to prison conditions that are harsher than those faced by sentenced prisoners.

The prisoners submitted extensive evidence to support their case including expert opinion from Professor Michael Jackson comparing the conditions in the ERC to conditions in other correctional systems and UN standards. The prisoners also provided extensive evidence from medical authorities regarding the detrimental effects of solitary confinement.

The court addressed the interplay between section 7 and 12 of the *Charter*. It applied the Supreme Court's ruling in *R v Malmo-Levine*,[55] in which the court found that there is no principle of fundamental justice embedded in section 7 that would give rise to a constitutional remedy

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[53] See Lisa Kerr, "Contesting expertise in prison law" (2014) 60 McGill LJ 43.
[54] *Trang v Alberta (Edmonton Remand Centre)*, 2010 ABQB 6 (CanLII) [*Trang*], online: <http://canlii.ca/t/27g9w>.
[55] *R v Malmo-Levine*, 2003 SCC 74 at paras 159-60, online: <https://www.canlii.org/en/ca/scc/doc/2003/2003scc74/2003scc74.html?resultIndex=2>.

against a treatment or punishment that does not also infringe section 12. In *R v Lloyd*,[56] the Supreme Court confirmed that the *Charter* must be interpreted in a coherent fashion, and that sections 7 and 12 impose the same standards in respect of the proportionality of treatment or punishment. In *Trang*, the court stated:

> …In keeping with the Supreme Court's decision in *Malmo-Levine*, ss. 7 and 12 must be read in a complementary manner. An arbitrary rule or condition that engages an inmate's life, liberty or security of the person will only be contrary to s. 7 if that arbitrary rule or condition is grossly disproportionate. Since the same test applies, it is not necessary to consider s. 7 where s. 12, the more specific provision, is engaged. In my opinion, s. 7 in this context applies only to decisions related to classifications, placements, and the disciplinary process.[57]

The Court ruled that some prisoners' section 7 *Charter* rights were breached by ERC decisions to reclassify them from lower security units where they had more freedom to higher security units where they had much less freedom: [58]

> In my view, the interests here are similar and the *Baker* factors lead to the conclusion that the Applicants were entitled to notice that their classification was to be changed, to know the basis of the proposed change, and to be able to respond to the allegations against them. Failure to do so, breached the principles of natural justice, a component of the principles of fundamental justice (*Re BC Motor Vehicle Act*), and would amounts to a breach of s. 7.

The court considered the test for establishing that prison conditions amount to cruel and unusual treatment:[59]

> The Supreme Court in *Smith* set out the criterion to be applied to determine whether a punishment is cruel and unusual: is it so excessive that it outrages standards of decency? To make that determination, the Court indicated that the punishment must not be grossly disproportionate. This standard has been applied to prison conditions, as well as to punishments (see for example *R v Munoz*, 2006 ABQB 901 (CanLII)).

Marceau J. referred to the factors listed by the Supreme Court in *R v Smith*,[60] "as adapted for the purpose of determining whether the treatment, as opposed to punishment, is disproportionate", and the requirement that these considerations be weighed in the context of the particular circumstances of the individual in question. The factors include whether:

> a. it goes beyond what is necessary to achieve a legitimate aim;
> b. has adequate alternatives;
> c. is unacceptable to a large segment of population;

[56] *R v Lloyd*, 2016 SCC 13 (CanLII) at para 35, [Lloyd], online: <http://canlii.ca/t/gpg9t>.
[57] *Trang* at para 965.
[58] *Trang* at para 978.
[59] *Trang* at para 985.
[60] *R v Smith*, 1987 CanLII 64 (SCC), online: <http://canlii.ca/t/1ftmr>.

d. can be applied upon a rational basis in accordance with ascertained or ascertainable standards;
e. is arbitrary;
f. has no value or social purpose;
g. accords with public standards of decency or propriety;
h. shocks the general conscience or is intolerable in fundamental fairness; and
i. is unusually severe and hence degrading to human dignity and worth.[61]

The court concluded that remand conditions that resulted in prisoners being locked up in their cells for up to 20-23 hours each day, where they were double-bunked in cells of insufficient size for two people, for extended periods of time; with limited access to exercise and recreation inside and outside the cell, no privacy inside the cells, and for prolonged periods of time were "intolerable and degrading to human dignity and worth"[62] and violated the prisoners' section 12 *Charter* rights.[63] The court also ruled that failing to provide the prisoners with their own underwear and providing them with stained and improperly cleaned underwear also breached their section 12 *Charter* rights.[64]

b. Bacon v Surrey Pre-Trial Services Centre[65]

In 2010, in *Bacon*, the British Columbia Superior Court ruled that a prisoner's treatment in solitary confinement in a BC correctional remand centre violated his section 7 and section 12 *Charter* rights.

The court ruled that the prisoner's section 12 rights were breached through the collective actions of BC Corrections "in arbitrarily placing the petitioner in solitary confinement, in failing to appropriately mitigate his circumstances in solitary confinement, and in unlawfully denying him the other rights to which he was entitled, significantly threatening his psychological integrity and well-being".[66] The court accepted expert evidence from a psychologist, Craig Haney, that the conditions in segregation in the remand centre were "very harsh and truly severe" and "equivalent in most respects" to the "most severe solitary or 'supermax'-type facilities…in the United States.[67] The Court found that:

> The petitioner is kept in physical circumstances that have been condemned internationally. He is locked down 23 hours per day and kept in the conditions Professor Haney described as "horrendous". These conditions would be deplorable in any civilized society, and are certainly unworthy of ours. They reflect a distressing level of neglect. On top of this, the petitioner is only allowed out at random times.

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[61] *Trang* at paras 1017-1018.
[62] *Trang* at para 1021.
[63] See discussion in *Trang* at paras 997 – 1027 generally.
[64] *Trang* at paras 1042-1046.
[65] *Bacon v Surrey Pretrial Services Centre (Warden)*, 2010 BCSC 805 (CanLII), online: <http://canlii.ca/t/2b1qj> [*Bacon*].
[66] *Bacon* at para 353.
[67] *Bacon* at para 170.

> He is denied almost all human contact. His treatment by the administration and the guards is highly arbitrary and further accentuates his powerlessness.[68]

There was evidence that the head of the correctional facility had cooperated with the police to allow them to investigate charges against the prisoner while he was in the remand centre. The court ruled that the prisoner's section 7 rights were breached by BC Corrections "creating circumstances and maintaining the petitioner in circumstances that manifestly threaten the security of his person (which includes both a physical and a psychological dimension) and by the unlawful deprivation of his rights for an unlawful purpose."[69] The Court ruled that the complaint included, but was much more than, a complaint about the denial of the prisoner's procedural due process rights under section 7 of the *Charter*, stating at para 299:

> When the judiciary delivers a person to the jailer with a direction to keep him "safe", the mandate obviously includes protecting health in mind and body. It means that his or her residual rights will be respected. While the content of such rights is not precisely defined, it certainly includes the "privileges" set out in s. 2 of the *Correction Act Regulation*. It also includes the right to a fair trial and to treatment that ensures that a fair trial is possible. This means that an inmate is not held so that the police can improve their case, or so that Corrections can, without the nuisance of judicial authorization, assist them. An inmate is a person with positive rights to counsel, to approach witnesses, and to prepare his case unimpeded by rules or practices having the effect of frustrating such access. It is truly shocking that a facility called a PreTrial Services Centre has no accommodation for reasonable communication with lawyers (i.e. privacy, desks, telephones, paper) during ordinary business hours. It is scandalous that the staff, willingly and unlawfully abet the police in their investigative objectives. It is difficult to imagine a less even-handed system than which the respondent currently administers.

The Court did not accept that the requirement for safety and security of the correctional facility and the persons working and living in it necessitated the treatment to which the prisoner was subjected:[70]

> This sets up a manifestly false dichotomy. Inhumane treatment cannot be justified on the basis of a choice between physical safety and psychological integrity. The submission strongly implies that for a certain class of inmate deemed unsuitable for release into the general population, the only alternative is to keep them alive in circumstances that threaten their psychological health and safety. This is so far from the imaginable range of ameliorative options (small secure courtyards attached to separated cells, video links as a substitute for direct visits, etc.) that it can only be read as a rationalization of resource limitations that are assumed but unspoken.

The court refused to rule on the constitutional validity of the BC correctional legislation and policies governing solitary confinement, which governed prisoners' rights and restrictions while in

[68] *Bacon* at para 292.
[69] *Bacon* at para 354.
[70] *Bacon at para 296.*

solitary confinement, ruling that in this case they were "ignored or misapplied in a manner that renders their constitutionality an abstract question" and that "[t]here would have to be a good faith attempt to abide by the terms [of that law] before its adequacy as a template for due process could be meaningfully assessed."[71]

c. R v Adams[72]

In the Alberta Court of Queen's Bench 2016 sentencing decision, in *R v Adams*, the court ruled that the following treatment of a prisoner in the ERC justified the court giving the prisoner enhanced credit for pre-sentence custody but did not rise to the level of cruel or unusual treatment or punishment: a guard's beating of the prisoner in his prison cell; assaults and threats from other inmates where the guards had to be taken as knowing that such activities had or were likely to occur but did little to protect against them; and retributive and petty discipline by guards.

The court distinguished the foregoing treatment from the following treatment, which the court found was no different from the treatment experienced by other prisoners in the ERC: 23 hour lock up, cramped and unhygienic cell conditions, no access to the outdoors, little access to activity, entertainment or programming, bad food, denial of bedding, and poor fitting clothing and footwear.

The court stressed that this was a sentencing decision and not an inquiry into the "appropriateness of the various general practices of the Remand Centre", the approach taken by Marceau J. in *Trang*.[73] However, the court also strongly condemned ERC practices that failed to respect and protect prisoners' human rights, while recognizing correctional authorities' corresponding duty to protect the safety and security of the prison, prisoners and staff, and the very difficult conditions under which prison staff must exercise those duties:[74]

> There has been and I suspect there remains the notion that prisoners have no rights and deserve whatever ill treatment they may suffer...Criminals are still people entitled to basic human rights and the Charter extends into that environment the same way it extends into all environments.
>
> It is also important to remember that when we are considering behaviours in a Remand Centre, we are talking about many people who, like the accused here, have not been convicted and therefore are presumed to be innocent. While poor treatment of the guilty is not justified, it must be even more true that poor treatment of the innocent is not justified. An accusation does not justify punishment without proof. So jailhouse justice to the extent it occurs is simply vigilantism. When an accused on remand is targeted for abuse, the abuser acts unlawfully and reprehensively. The lynch mob mentality that fuels such abuse is a basic but vile instinct which simply can't be tolerated in a just society. During this

[71] *Bacon* at para 355.
[72] *R v Adams*, 2016 ABQB 648(CanLII), online: <http://canlii.ca/t/gvpfm> [*Adams*].
[73] *Adams* at para 68.
[74] *Adams* at paras 72-78.

> proceeding, I developed the sense that inmates and some Centre staff felt it was somehow okay to target sex offenders for abuse because they had been charged with sex offences. So using the word "skinner" to describe those persons is more or less acceptable as is picking on or harassing such persons. Somehow it is seemingly alright to categorize all such inmates as whipping boys who must accept and expect to be badly treated. These notions are ridiculous and wrong and the leaders of our institutions need to do everything in their power to eradicate this reprehensible attitude and the behaviours it encourages.
>
> On the other hand we accept, and I think we must, that jails and remand centres are rough places. They are full of people who have or have had problems. They are full of men who are full of testosterone. The likelihood of conflict is huge. In that environment control is maintained by guards and institutional rules. Control is not easily maintained. Therefore violence erupts, events occur which cause safety concerns and life for both guard and inmate can be difficult and is stressful. Like police, guards have a very difficult job. Both see us at our worse [sic]. Both get little respect from the people they arrest or guard. Both have exceedingly stressful and difficult jobs. In those circumstances, we must accept the occasional imperfect behaviour. We cannot expect sainthood from police or guards any more than we can reasonably expect it from ourselves. Having said that, however, major transgressions undermine the confidence we have in our police and our guards. Therefore, when we come across that kind of behaviour we must act decisively to root out the behaviour so as to restore the confidence in and confidence of those whom we trust to act correctly.

d. R v Blanchard[75]

In the Court of Queen's Bench 2017 decision in *R v Blanchard*, the prisoner, who had been convicted of numerous serious offences, alleged that his rights under sections 7, 8, and 12 of the *Charter* had been violated based on his treatment and the conditions he experienced while on remand at the ERC. The prisoner applied for a stay of proceedings on the basis that the ERC conditions and treatment amounted to an abuse of process, or alternatively, a sentence reduction. The court ordered a reduction of the prisoner's sentence.

The court ruled that the following conditions and treatment of the prisoner at the ERC, taken as a whole, were contrary to sections 7 and 12 of the *Charter*, being grossly disproportionate and offensive to societal notions of fair play and decency: severely limited physical recreational opportunities and mental stimulation; inadequate food and lack of appropriate utensils; difficulty in obtaining new eyeglasses; difficulty in obtaining new hearing aids; denial of medication on one occasion; failure to respect the confidentiality of complaint forms to the director of the institution; verbal abuse by guards and the guards' condonation of verbal abuse by fellow prisoners; the guards' provision of the prisoner's criminal record to fellow prisoners; the guards' condonation of fecal bombing, urine dumping and food tampering by other prisoners; and the

[75] *R v Blanchard*, 2017 ABQB 369 at para 223 (CanLII) [*Blanchard*]., online: <http://canlii.ca/t/h470v>.

apparent failure by the ERC to take steps to investigate certain serious allegations made against the guards.

The court stated that it had considered that ''[i]n the absence of a manifest violation of a constitutionally guaranteed right, prison administrators should generally be accorded a wide range of deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and maintain institutional security."[76]

The court also advised that it had received many of the same materials that were received by the court in *Adams* and that it had adopted the same approach as that taken in *Adams,* "that the issue in the case was not whether various general ERC practices and conditions comply with any particular standard, but was rather solely about the treatment of the individual prisoner in the circumstances."[77]

F. PRIVACY RIGHTS

Imprisonment necessarily entails surveillance, searching and scrutiny. A prison cell is expected to be exposed and to require observation. The frisk search, the count and the wind are all practices necessary in a penitentiary for the security of the institution, the public and indeed the prisoners themselves. A substantially reduced level of privacy is present in this setting and a prisoner thus cannot hold a reasonable expectation of privacy with respect to these practices.[78]

1. PRISONER COMMUNICATIONS

Prisoners have the right to communicate with persons outside the correctional institution, which includes oral, electronic and written communications. In addition to telephone systems, some correctional institutions connect with outside facilities by means of video links, which may be used for bail hearings or other court appearances. In most cases, prisoners do not have a right of privacy in respect of such communications.

Section 1(d.1) of the *Corrections Act* defines "inmate communications" as "communication made by oral, written or electronic means between an inmate and any other person, *but does not include a privileged communication* as specified in the regulations."

Section 1(e) of the *Correctional Institution Regulation* defines "privileged communication" as communication between a prisoner and a wide range of specified persons or offices outside of the correctional institution, including: the prisoner's legal counsel; the Executive Director or CEO of ACS; the federal Commissioner of Corrections and the OCI; the Alberta Human Rights Commission; the Canadian Human Rights Commission; the Alberta Ombudsman; a member of the Senate or House of Commons; a member of the legislative assembly of Alberta or of another province or territory of Canada; the Information and Privacy Commissioner appointed under the

[76] *Blanchard* at para 170.
[77] *Blanchard* at para 218.
[78] *Weatherall v Canada (Attorney General)*, 1993 CanLII 112 (SCC).

Freedom of Information and Protection of Privacy Act[79] (Alberta) or the Privacy Commissioner appointed under the *Privacy Act*[80] (Canada); the Auditor General of Alberta or of Canada; a person designated as an officer under the *Immigration and Refugee Protection Act*[81] (Canada), if the inmate is detained or subject to a warrant for arrest; and a tip-line program operated by a crime stoppers association, a law enforcement agency, a correctional institution or any similar entity to receive information on a basis respecting offences: CA section 1(e).

Section 1(3) of the *Correctional Institution Regulation* states that "[i]n section 1(d.1) of the *Act*, "privileged communication" has the meaning specified in subsection (1)(e) [of the *Correctional Institution Regulation*].

a. Prisoner Communication Systems

Section 31(1) of the *Correctional Institution Regulation* provides for the establishment of inmate communication systems, which includes privileged communications in this section.

Section 31(2) of the *Regulation* authorizes the establishment of inmate communication systems in an institution for the purposes of: (a) providing inmates with reasonable access to communication systems, and (b) ensuring the security of the institution and the protection of the public.

Section 31(3) of the *Regulation* gives the director of the institution the authority to suspend inmate access to any inmate communication system if, in the Director's opinion: (a) the system is being misused or abused; or (b) the suspension is necessary to maintain the security of the institution.

Section 31.1 of the *Regulation* states that the director of a correctional institution must ensure that: (a) the name of the institution is attached to inmate communications that are directed to recipients outside of the institution, and (b) a recorded announcement, identifying that the inmate communication comes from the institution, is played at the beginning of inmate communications that are made by telephone or other electronic means to a place outside of the institution.

In *Criminal Trial Lawyers' Association v Alberta (Solicitor General)*,[82] a new telephone system was implemented at the ERC, which notified outside callers that the call was coming from the ERC as stipulated under section 31.1 of the *Regulation*. It also allowed the ERC to block calls from inmates to specific outside callers who the prisoner was prohibited from calling under "no contact" conditions under bail orders. The system was implemented to prevent ERC prisoners from making harassing telephone calls from remand and to enforce no contact bail conditions.

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[79] *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25.
[80] *Privacy Act*, RSC 1985, c P-21.
[81] *Immigration and Refugee Protection Act*, SC 2001, c 27.
[82] *Criminal Trial Lawyers' Association v Alberta (Solicitor General)* 2004 ABQB 534 (CanLII), [*Criminal Trial Lawyers*], online: <http://canlii.ca/t/1hjjn>.

The new system also required ERC prisoners to pay for the calls or make local calls on a collect call basis. This prevented prisoners from making calls to cellular telephones or accessing support from family, other members of the community and legal counsel, unless they agreed to pay for the call. The court ruled that "imposing a telephone system which impedes remand inmates in their attempt to obtain or exercise bail or in locating potential witnesses for trial is in breach of the section 7 *Charter* protection of the right to liberty."[83] The court ruled that this breached the requirements of fundamental justice by impeding a remand prisoner's right to a fair trial by interfering with his or her ability to contact defense witnesses including alibi witnesses for trial.[84] For the same reasons, the court ruled that the implementation of the telephone system violated prisoners' right to a fair trial under section 11(d) of the *Charter*.[85]

b. Monitoring and Recording Prisoner Communications

Section 14.4(1) of the *Corrections Act* states that, subject to the regulations, the director of a correctional institution may direct that inmate communications initiated by or received by an inmate *may be recorded* by electronic or other means.

Section 14.4(2) of the *Act* states that the director of a correctional institution *may restrict* or *monitor* inmate communications where the director believes on reasonable grounds that the:

> (a) prisoner communication contains or will contain evidence of: (i) an act that would jeopardize the security of the institution or the safety of any persons, or (ii) a criminal offence or a plan to commit a criminal offence;
>
> (b) communication is or will be made to a victim (defined in section 14.3(1)) or to another person who would be likely to consider the inmate communication intimidating or threatening; or
>
> c) monitoring of the communication is otherwise necessary for the security of the institution or for the safety of inmates, staff or the public.

The *Correctional Institution Regulation* requires the correctional institution to follow specific rules when monitoring and recording inmate communications. Section 31.2 prohibits the monitoring or recording of privileged communications. Section 31.3 directs that the prisoner be given reasonable notice that communications may be recorded. Section 31.4 requires that recorded records that contain words or images be destroyed after 90 days unless there are reasonable grounds to believe that the prisoner is involved in illegal activities; harassing or causing harm to others; or participating in an activity that may jeopardize the management, operation or security of the institution.

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[83] *Criminal Trial Lawyers* at para 78.
[84] *Criminal Trial Lawyers* at para 89.
[85] Criminal Trial Lawyers at paras 93-94.

In *R v Drader,*[86]the Alberta Court of Queen's Bench upheld the constitutional validity of section 14.4 of the *Corrections Act* and ruled that ERC monitoring of a prisoner's telephone conversations did not breach the prisoner's section 8 *Charter* right to be secure from unreasonable search and seizure. The court ruled that the ERC had satisfied the conditions under which telephone calls could be monitored and recorded under section 14.4 of the *Act*. In addition, the evidence was that the ERC had followed its internal policy of requiring the prisoners to sign a form upon admission to the ERC advising that all telephone communication would be subject to monitoring and recording unless privileged; posting signs in the intake area and above each set of unit phones indicating that telephone communications were subject to monitoring and may be recorded unless privileged; having a pre-recorded message played before telephone conversations started, indicating that the call was subject to recording and monitoring unless privileged; and including information in the Inmate Manual that all telephone calls were subject to recording and monitoring unless privileged. The Court stated:

> I conclude that ERC inmates do have an expectation of privacy in their telephone communications, but it is very limited. Their informational privacy concerns arise in a place, the ERC, which is governed by a statutory regime requiring the Director to address, among other things, matters of security, inmate control, and the care, custody, treatment and training of inmates. This regime permits the director to monitor inmate communication where the director believes on reasonable grounds that the communication will contain evidence not only of a crime, but also of any act that would jeopardize, or the monitoring is otherwise necessary for, the security of the institution or the safety of any persons.[87]

The Court ruled that prisoners' privacy rights did protect them from having institutional recordings of their telephone calls released to outside parties, in this case, the police, unless a warrant or court order based on reasonable grounds authorizes release, but saw no need for a correctional institution to seek permission of an independent authority (a judge or justice of the peace) before reviewing inmate communications.[88]

c. Monitoring of Prisoner Mail Communications

Section 12.1 of the *Corrections Act* allows a correctional institution to monitor, open and examine all mail communications, except communications with the Alberta Ombudsman:

> 12(1) Subject to the *Ombudsman Act*, the director of a correctional institution or a person authorized by the director may
>
> (a) open or examine any letter, parcel or other matter received at the correctional institution through the mail or otherwise, addressed to or intended

[86] *R v Drader*, 2012 ABQB 168 (CanLII) [*Drader*], online: <http://canlii.ca/t/fqkdb>.
[87] *Drader* at para 33.
[88] *Drader* at para 73. *Drader* was followed in *R v Doonanco*, 2016 ABQB 584 (CanLII), online: <http://canlii.ca/t/gwl3d>).

for an inmate and withhold from an inmate, or otherwise deal with, any objectionable contents of the letter, parcel or matter, and

(b) open or examine any letter, parcel or other matter an inmate desires to have sent out by mail or otherwise and detain or otherwise deal with any objectionable contents of the letter, parcel or matter.

(2) When the director withholds, detains or otherwise deals with the contents of a letter, parcel or other matter under subsection (1), the director shall so advise the inmate concerned.

2. DISCLOSURE OF PRISONER INFORMATION

a. Disclosure of prisoner information to victims

Section 14.3 of the *Corrections Act* states that the director of an institution, or a community corrections manager responsible for overseeing prisoners on conditional release, must give specified information about a convicted prisoner to victims of the crime, and may give other specific information to victims.

b. Disclosure of prisoner health information

Section 11.1(a) of the *Corrections Act* gives a custodian of health information, as defined in the *Health Information Act*,[89] authority to disclose individually identifying health information about a prisoner, without their consent, to a director of a correctional institution. The director of the correctional institution may collect and use that information for purposes of: (i) the classification process (under section 11 of the *Act*); (ii) protecting the health, safety and security of inmates, staff and visitors and the safety and security of the correctional institution; (iv) addressing or preventing a nuisance, as defined in the *Public Health Act*,[90] in the correctional institution; or (iv) addressing or preventing a communicable disease outbreak in the correctional institution. Section 11.1(b) also states that the information can be used for any other purpose prescribed in the regulations.

3. SEARCHES AND MEDICAL AND DENTAL EXAMINATIONS

Section 33(k) of the *Corrections Act* gives the Ministry responsible for corrections the power to make regulations "requiring an inmate on entry to and during the inmate's imprisonment in a correctional institution to submit to searches, illicit-drug tests and illicit-drug testing programs and to medical, dental and mental examinations".

Section 47(1)(u) of the *Act* prohibits prisoners from refusing to submit to, resisting or obstructing a search authorized by or under this Regulation.

[89] *Health Information Act*, RSA 2000, c H-5.
[90] *Public Health Act*, RSA 2000, c P-37.

a. Illicit-drug searches

Section 1(c.1) of the *Corrections Act* defines an "illicit drug" as: (i) alcohol; (ii) a controlled substance and an analogue, as defined in the federal *Controlled Drugs and Substances Act*[91]; and (iii) any other substance designated by the regulations.

Section 33(gg) of the *Act* grants the Ministry responsible for corrections the power to make regulations "designating substances as illicit drugs".

Section 1(c.2) of the *Act* defines "illicit‑drug test" as "a test, provided for in the regulations, to determine the presence of an illicit drug."

Section 33(hh) of the *Act* grants the Ministry responsible for corrections the power to make regulations respecting illicit‑drug tests and illicit‑drug testing programs.

Section 48 of the *Correctional Institution Regulation* prohibits prisoners from using, being under the influence of or having in their possession an illicit drug, unless prescribed by the health practitioner and authorized by the director of the institution.

(i) Illicit-drug tests under a random illicit-drug testing program under section 14.1 of the *Act*

Section 14.1 of the *Act* states that a person authorized by the Minister for the purpose may demand that an inmate produce evidence of the absence of illicit drugs in the inmate's body, by submitting to an illicit‑drug test, if the demand is part of a random selection under an illicit‑drug testing program *conducted without individualized grounds on a periodic basis* in accordance with the regulations.

(ii) Illicit-drug tests based on reasonable grounds *or* as a requirement for participation, under section 14.2 of the *Act*

Section 14.2(1) of the *Act* grants a person authorized by the director of a correctional institution the power to demand that a prisoner submit to an illicit-drug test, requiring them to produce evidence of the absence of illicit drugs in their bodies, if the person making the demand has *reasonable grounds*: (a) to suspect that the inmate has consumed or used an illicit drug, and (b) to require the test to confirm the consumption or use of an illicit drug.

Section 14.2(2) of the *Act* grants a person authorized by the director of a correctional institution the power to demand that a prisoner submit to an illicit-drug test, requiring them to produce evidence of the absence of illicit drugs in their bodies, if an illicit-drug is a requirement for participation in: (a) a program or activity involving contact with the community, or (b) an alcohol or substance abuse program.

Section 48.1 of the *Act* requires the CEO of the ACS to establish a "urinalysis and breath sample illicit drug test program" for the purposes of section 14.2 of the *Act*.

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[91] *Controlled Drugs and Substances Act*, SC 1996, c 1.

b. Bodily searches

Section 10(1) of the *Correctional Institution Regulation* gives ACS broad search powers:

> 10(1) An inmate may be searched on admission to an institution and at any other times as the Director may require.
>
> (2) A search may be conducted *in any manner* as the Director may direct.
>
> (3) All searches of inmates are to be carried out in a manner so as to respect the dignity of the inmate *as far as possible without interfering with the thoroughness of the search*.
>
> (4) An external body search of an inmate is to be made *where possible* by an employee who is of the same sex as the inmate.
>
> (5) An internal body search is to be made by a physician in the presence of an employee who is of the same sex as the inmate.

In *Trang*, the court ruled that strip-searches, reasonably conducted when prisoners were escorted into and back from court appearances, did not breach the prisoners' section 8 *Charter* rights.[92]

c. Cell searches

Cell searchers may also be conducted under the authority of section 10(1).

d. Medical or dental examinations

Subsection 14(1) of the *Correctional Institution Regulation* states that every inmate may be medically examined by an institution's health practitioner.

Subsection 14(2) of the *Regulation* states that a medical examination may include one or more of the following: (a) a dental examination; (b) a mental examination; (c) blood tests; (d) x-rays; (e) a urinalysis; or (f) any other examination or test that is considered necessary by the examining health practitioner.

G. HEALTH CARE

The failure to provide adequate mental and physical health care can amount to cruelty. Chronic diseases, such as diabetes, tend to be managed in a manner that is more likely to lead to complications down the road and would be inconsistent with good therapeutic practices. Many prisoners with prescriptions for pain medications can be cut off their medications because of their behaviour or the behaviour of others. Isn't the infliction of pain whether by active abuse or withholding treatment for pain a form of torture?[93]

[92] *Trang* at paras 1062-1086.

[93] Canada, Parliament, Senate, Standing Committee on Human Rights, Minutes of Proceedings and Evidence, 42nd Parl, 1st Sess, No 14 (1 February 2017) at p 14-31 (from remarks of Catherine Latimer,

The *Corrections Act* contains few provisions directing how correctional authorities are to be involved in the healthcare of prisoners.

Section 9 of the *Corrections Act* grants the director of a correctional institution the power to direct that an inmate be treated in a hospital or in a facility pursuant to the *Mental Health Act*.

As discussed above, section 11.1 of the *Corrections Act* allows the custodian of a prisoner's health care information to disclose that information to the director of a correctional institution, with or without the prisoner's consent, and for the director to use that information for specified purposes. Section 33(n.2) of the *Corrections Act* also gives the government the power to make regulations "prescribing purposes for which individually identifying health information may be disclosed or used pursuant to section 11.1(b)".

There is an international and academic consensus that the responsibility for health care in correctional facilities must rest with the government authority in charge of health. Alberta was the first Canadian jurisdiction to make this transition. Responsibility for delivering health services provided in provincial correctional institutions was transferred to Alberta Health Services (AHS) on September 10, 2010.[94]

Complaints about the provision of health care by Alberta Health Care are to be dealt with under section 2(1) of the *Patient Concerns Resolution Process Regulation,*[95] enacted under the *Regional Health Authorities Act.*[96] It provides that prisoner patients can make complaints to the health authority regarding: (a) the provision of goods and services to the patient; (b) a failure or refusal to provide goods and services to the patient, or; (c) the terms and conditions under which goods and services are provided to the patient by the health authority or by a service provider under the direction, control or authority of that health authority.[97]

When concerns are lodged with AHS, they are categorized according to the subject of concern, including concerns regarding the health care plan of prisoners, as well as concerns regarding wait times for health services and availability of health programs and services. Once complaints have been processed through AHS, if prisoners wish to register a complaint regarding their care, they are able to do so via the Alberta Ombudsman. It is important to note that prisoner complaints rely on self-reporting. This requires prisoners to be aware that a complaints process exists, and to

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Executive Director, John Howard Society), online: <https://sencanada.ca/en/Content/Sen/Committee/421/RIDR/53027-e>.

[94] Alberta Health Services, *Communique - Corrections Amendment Act* (Edmonton: AHS, 2010) online: <http://www.albertahealthservices.ca/info/Page5803.aspx>.

[95] *Patient Concerns Resolution Process Regulation*, Alta Reg 124/2006.

[96] *Regional Health Authorities Act*, RSA 2000, c R-10.

[97] AHS, Policy Level 1, Patients Concern Resolution accessible at https://extranet.ahsnet.ca/teams/policydocuments/1/clp-patient-concerns-resolution-process-prr-02-policy.pdf

take the initiative to attempt to resolve the complaint internally at the institutional level, and if that fails, externally via the Office of the Alberta Ombudsman.

The mental health and mental health rights and services available to prisoners are discussed under Heading XIII.

H. OTHER RIGHTS

1. Employment

Employment rights and responsibilities of Alberta prisoners are discussed in the ACLRC paper, *Keeping the Peace: Prisoners' Rights and Employment Programs*.[98]

2. Voting Rights

Prisoners' rights to vote were guaranteed by the Supreme Court in 2002, in *Sauvé v Canada*.[99] This has led to all provinces amending their election legislation to grant prisoners the right to vote.

3. Visitors

Visitors are governed under section 22 of the *Corrections Act*. The director of the institution sets the visiting hours and visitors must visit within those hours unless otherwise permitted. A prisoner's legal counsel must be permitted to visit the prisoner. Police officers and government employees conducting inquiries or investigations in the course of their duties may visit outside visiting hours. Persons nominated as visitors by the prisoner may visit the prisoner, at a time and in the manner designated by the CEO and after obtaining the consent of the director of the institution. Persons under the age of 18 may visit if accompanied by an adult or if the director consents.

Visits may be suspended or terminated by the director if the prisoner or visitor breaches the regulations or rules of the institution. Visitors are not permitted to visit if, in the opinion of an employee of the institution, they are under the influence of liquor, drugs or other intoxicating substances. Section 14 of the *Act* prohibits visitors from being involved in bringing in or taking out anything that is not permitted by the director of the institution. If the director has reasonable and probable grounds to believe visitors have done so, they must be reported to the police, and if they have violated these rules, they are guilty of an offence. Section 33(e) of the *Act* grants the government the power to enact regulations regarding the searching of visitors and other persons entering a correctional institution.

Section 23 of the *Act* grants the director of an institution the power to confiscate any article or thing given to or, left with the intention that it be given, to a prisoner, or conveyed, deposited or

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[98] Alberta Civil Liberties Research Centre, "Keeping the Peace: Prisoners' Rights and Employment Program"(2014), online: <https://static1.squarespace.com/static/511bd4e0e4b0cecdc77b114b/t/54dd0bf5e4b0dbc3de80c990/1423772661517/Prisoners+and+work+-+2014_web_version.pdf>

[99] *Sauvé v Canada (Chief Electoral Officer),* 2002 SCC 68 (CanLII), online: <http://canlii.ca/t/50cw>.

thrown into or out of an institution, without the director's prior consent. Such articles or things are to be confiscated and disposed of as directed by the CEO. Section 25 grants the director of the institution the power to order the search of any person or vehicle entering or leaving an institution and of any parcels, bags, packages and containers that are with that person or in or on that vehicle. Employees of the institution may remove a person from the institution if (a) in the opinion of the employee, the person is detrimental to the security of or discipline in the institution, or (b) refuses to submit to a search under subsection.

4. Access to Resources Outside Correctional Institutions

Access to resources outside the institution, by means of the internet or cell phones, is in most cases, denied to Canadian prisoners. This type of access raises safety, logistical, and financial concerns. Canada lags behind some other countries in providing prisoners with such access and prisoner advocates argue that this needs to change.[100]

An exception to this rule was made in *R v Biever*,[101] in which the Alberta Court of Queen's Bench ruled that, in the very limited circumstances of this case, a prisoner in the ERC was entitled to be provided with limited access to the internet to conduct legal research as part of his section 7 *Charter* right to make a full answer and defence to the case against him. The court did not address but implied that the prisoner's internet access would be monitored stating that any additional obligations placed on the ERC in terms of monitoring or security would not be unduly onerous.[102]

I. SUMMARY

As a general observation, the lack of transparency and minimum standards that presently surround Alberta prisoners' rights and ACS practices undermines accountability. The *Corrections Act* and its regulations provide very little protection and impose very few requirements to protect prisoners' rights. Alberta Correctional Services publishes policies providing guidance to its employees on how the correctional system is to be administered however these policies are not publicly available. Alberta law does not subject ACS operations to independent oversight. The Alberta Ombudsman is given the authority to investigate complaints about ACS, however, unlike the federal Office of the Correctional Investigator, oversight of the ACS is not the Alberta Ombudsman's sole responsibility. The Alberta Ombudsman receives complaints about all Alberta government agencies.

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[100] Kathleen Harris," Email from behind bars? Prisoner advocates push for access to laptops, tablets and internet" *CBC News* (2017) online: <http://www.cbc.ca/news/politics/prison-csc-computer-internet-1.4222230>.

[101] *R v Biever*, 2015 ABQB 301 (CanLii), online: https://www.canlii.org/en/ab/abqb/doc/2015/2015abqb301/2015abqb301.html?resultIndex=1.

[102] For a more detailed discussion of the case, see Sarah Burton, "The Right of an Imprisoned Accused to Conduct Online Research" *Law Now* (2016): online: <http://www.lawnow.org/the-right-to-online-research-behind-bars/>.

Prisoners' residual liberty rights have been protected under sections 7 and 12 of the *Charter*. These rights are triggered when prison authorities restrict a prisoner's liberty rights beyond those restrictions that apply to the prison population as a whole. Residual liberty rights have been found to be restricted when prisoners are placed in segregation, transferred to a higher security prison or have their parole revoked. Section 7 has been most effective in protecting prisoners' residual liberty rights. The courts have found that correctional authorities violate prisoners' right to fundamental justice under section 7 of the Charter by restricting their residual liberty rights without providing prisoners with prior notice of why such rights are being restricted and an opportunity to have their defence to the restriction heard.

Prisoners have been largely unsuccessful in asserting that correctional authorities have a duty to ensure that prison conditions meet at least a minimum standard of health and safety. For example, despite numerous reports and expert evidence showing the detrimental effects of solitary confinement on prisoners' health, the Canadian correctional system continues to use segregation to control prisoner behaviour.

Prisoners have very limited privacy rights. Their telephone calls can be monitored and recorded, unless the communication falls under the definition of a "privileged communication" under the *Corrections Act*. Both their incoming and outgoing mail can be examined and intercepted. Prisoners must submit to strip searches, cell searches and drug tests. Their medical information is made available to correctional authorities and the ACS has a wide discretion to decide how it will be used. Prisoners must submit to medical and dental examinations.

Prisoners are entitled to health care and it is provided independent of ACS through Alberta Health Services. Little is known about how health care is provided inside ACS institutions. Information on the mental health needs and services provided to Alberta prisoners is discussed under Heading XIII.

The *Corrections Act* and regulations also govern other prisoners' rights including employment and visiting rights.

For specific recommendations related to specific prisoners' rights, please see Chapter XIV: Recommendations.