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Conditions of Confinement in Nova Scotia Jails Designated for Men: East Coast Prison Justice Society Visiting Committee Annual Report 2021-2022

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Conditions of Confinement in Nova Scotia Jails Designated for Men

East Coast Prison Justice Society Visiting
Committee - Annual Report 2021-2022

Authored By

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Designed By

Kevin Mullen

East Coast Prison Justice Society, February 2023



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Executive Summary

Background

This is the second Annual Report of the East Coast Prison Justice Society (“ECPJS”) Visiting Committee (“VC”).

The purpose of the ECPJS VC is to bring increased accountability and transparency to the Nova Scotia correctional system in light of human rights standards, domestic and international. While the Elizabeth Fry Society of Mainland Nova Scotia provides human rights monitoring of conditions of incarceration experienced by women and non-binary people in federal prisons and provincial jails in the Atlantic region, and the federal Office of Correctional Investigator provides further oversight of conditions in federal prisons, there is no comparable independent oversight of provincial correctional facilities, specifically the units reserved for men.¹ The VC initiative, launched in 2020, represents our effort to fill this gap.

The core of the VC’s work involves engaging with prisoners in men’s units of Nova Scotia’s provincial correctional facilities to identify systemic concerns about conditions of confinement and then bringing these concerns to the attention of jail administration and the public, with the hope of producing systemic change. We also provide individualized non-legal advocacy, working with prisoners and correctional staff to resolve individual problems.

Finally, we work actively with other organizations in the region to increase opportunities for incarcerated people to access legal advocacy in matters relating to conditions of confinement (e.g., solitary confinement) and other human rights while incarcerated. This is an ongoing challenge, as there is little publicly funded legal assistance available for prison law matters in Nova Scotia or the Atlantic region more broadly.

The VC project began in earnest in February 2020, when we commenced in-person visits to the Central Nova Scotia Correctional Facility (“CNSCF”). This was pursuant to a 2019 agreement reached with Nova Scotia Correctional Services (“NSCS”), according to which volunteers would meet with small groups of prisoners in men’s units at the facility to discuss conditions of confinement and then bring systemic issues to the attention of NSCS administration.

Then, in March 2020, the COVID-19 pandemic reached Nova Scotia and provincial correctional facilities were closed to in-person visits. The VC soon created a toll-free phone line that provincially incarcerated persons could call to discuss conditions of confinement with VC representatives. We also relied upon lines of communication with prisoners already in place among VC volunteers, professionals and family members of incarcerated persons.

In the months that followed, in the spring and summer of 2020, the VC encountered challenges maintaining communication with prisoners as well as facility administrators. However, over time, calls increased and themes emerged. These themes indicated pressing systemic problems in provincial correctional facilities, including increasing intensity of liberty-restrictive measures (such as facility- or unit-wide lockdowns) and diminishing transparency.

Central Themes of 2021-22 Report

The central themes reported in this year's VC Annual Report carry forward the most common concerns raised in our inaugural 2020-21 report: 1) prolonged and indeterminate, intensive deprivations of residual liberty, including unit-wide lockdowns; and 2) lack of access to timely and responsive health care. Lockdowns and health concerns are often interrelated, as mass subjection to prolonged and indeterminate isolation produces serious psychosocial and physical health consequences for incarcerated people. These continuing institutional problems engage fundamental human rights to life, liberty, and security of the person, as well as the right to equality, given that Indigenous people, African Nova Scotians and other marginalized groups (e.g., persons with disabilities) are disproportionately represented in provincial custody.

Systemic harms to prisoners' health and human rights are in turn fundamentally interconnected with a further concern discussed in this year's report: 3) lack of transparency and public justification of COVID-19-related policies and protocols in provincial corrections. For the past two-plus years, there has been a frustrating lack of written COVID-19 policies or protocols addressing corrections-specific issues, such as the duration or conditions of quarantine upon admission; access to testing or vaccines inside; restrictions on lawyer visits and communications; and limitations on other outside visits and communications. These shifting policies and protocols have generally been justified on the basis of "public health requirements." However, there has been a chronic failure to articulate:

1. what steps have been taken to ensure these restrictions impair prisoners' *Charter*-protected rights as little as possible; and, more specifically,
2. how officials have balanced the positive purposes and effects of these policies (e.g., reduced risk of COVID-19 transmission) with their negative effects (e.g., limitations on prisoners' access to time out of cell, programming, and family visits).

Instead, correctional and correctional health officials have relied on an ever-shifting landscape of unwritten COVID-19 policies, leaving these background questions of proportionality unresolved and giving rise to confusion and anxiety amongst prisoners and their contacts on the outside.

Therefore, a key message of this year's report is that **COVID-19 cannot be used as a generalized excuse for suspending prisoners' basic entitlements.** Publicly accessible policies and protocols are required, though of course these may change over time as

circumstances change. As long as the pandemic threat persists, transparency and justification of essential public health protections that restrict residual liberties and other basic prisoner entitlements will be required, in accordance with expectations of legality and proportionality (i.e., the expectation that rights and important interests will be restricted no more than is necessary).

Beyond the above overarching concerns regarding ongoing deprivations of residual liberty and lack of transparency and justification of COVID-19 securitization policies, this year's report revisits and updates a set of further and related concerns reported on last year, including:

1. lack of opportunities for exercise and access to fresh air;
2. concerns about facility cleanliness and access to showers;
3. restrictions on communications (including with counsel), visits, and programming;
4. concerns about discrimination, including impeded access to smudging; and
5. specific health care concerns (e.g., lack of access to medications and mental health supports; continued blanket application of correctional health policy to deny methadone or other Opioid Agonist Therapy to persons not previously in community treatment).

We add to the above a section highlighting four systemic issues that we have identified as demanding extended discussion and analysis:

1. the need to re-engage preventive decarceration as a primary COVID-19 risk mitigation strategy, together with strategies for addressing low COVID-19 vaccine uptake among men in provincial custody;
2. grave human rights concerns with practices of "health segregation" in provincial corrections, i.e., solitary confinement on putative grounds of health;
3. lack of access to Indigenous spiritual supports, including culturally-endorsed Elders and traditional knowledge keepers, in provincial correctional facilities; and
4. suspension of the most basic procedural entitlement — the right to a hearing — in institutional discipline matters during the pandemic.

We also share certain positive developments through which both NSCS and the entity responsible for prisoner health — Nova Scotia Health - Correctional Health Services branch (NSH-CHS) — have demonstrated responsiveness to concerns that we and the constituencies we represent have brought forward. These include, on the part of NSCS, 1) policy changes to limit the intrusiveness and frequency of strip searching, 2) investment in improved access to bail bed programs and other community alternatives to incarceration, and 3) distribution of electronic tablets beginning with one facility, Northeast Nova Scotia, to help facilitate access to legal information and other communications.² On the part of NSH - CHS, positive moves include increased transparency of information about health services and complaint processes (in a May 2021 pamphlet brought to our attention in the 2021-22 period), and new public-facing policies on the duties of health care staff in contexts of close confinement.³

Beyond these moves, NSH-CHS has committed to involving ECPJS and other community organizations in accreditation-related stakeholder consultations on correctional health care. We have expressed to both NSCS and NSH-CHS officials our intent to provide them with regular updates on the issues brought to us by our prisoner contacts, in the hope that this will help ameliorate the pervasive and systemic issues outlined in this report.

Throughout this year's annual report, we provide updates on the 43 recommendations from our 2020-21 report, including responses received from NSCS and/or other authorities.⁴ We also add further recommendations where required. Notably, this includes **a new recommendation (2022 Recommendation 5) to abolish solitary confinement – prisoner isolation for 22 hours or more per day without meaningful human interaction – in Nova Scotia jails.** This recommendation goes further than the time caps and procedural protections urged in relation to solitary confinement in our 2020-21 Report – protections that we have determined are unlikely to prevent the grave human rights abuses associated with solitary confinement. However, until this year's more far-reaching recommendation is implemented, we continue to affirm (as interim measures) our 2020-21 Recommendations 1-4 on this issue.

While all of our 2020-21 and 2021-22 recommendations articulate important priorities, we emphasize throughout our report, this year as last, that **a whole-of-government approach must be taken to foster and sustain community-based alternatives to pre-trial detention and to support other initiatives preventive of criminalization and incarceration.** That is, the only way to curtail the enormous individual and social costs of ongoing harms to health and human rights of people incarcerated in provincial jails during and beyond the COVID-19 pandemic is to reduce reliance on incarceration and redirect resources from punitive measures to constructive, preventive, community-based supports addressing the social determinants of criminalization and incarceration.

In sum, with this report, we seek to raise public awareness about conditions in Nova Scotia jails while enabling institutional decision-makers to be more responsive to prisoner concerns, particularly where those concerns relate to fundamental human rights. We reiterate at the close of our report, as we did in 2020-21, that the health- and human rights-impairing conditions of confinement reported to us, together with reductions in provincial jail transparency throughout the COVID-19 pandemic period, have only made clearer the importance of robust, regular, and independent monitoring of all places of detention in Nova Scotia.

A Note on Our Recommendations

As this report is intended to provide an annual update on the work of the VC, we frequently refer to last year's report, which overviewed our activities and findings in 2020-2021. That report included 43 recommendations directed at NSCS, NSH-CHS, and the provincial government more generally, all of which are included in Appendix A, along with itemized responses received from

NSCS officials in September 2022. Less formal responses were received from NSH-CHS officials in the spring and summer of 2022; these are provided at key points in our report.

We have reiterated many of our 2021-22 recommendations this year, given that there is still much to be done before they may be considered resolved. In some cases, it has been necessary to further refine last year's recommendations by including new, more specific recommendations. For clarity's sake, we have done so by adding A, B, C, etc. to last year's recommendations (e.g., recommendations 28A and 28B below, which further particularize and elaborate recommendations 28 and 29 from last year, on access to smudging for Indigenous prisoners).

Finally, we have occasionally added new recommendations on matters not included in last year's report. These are identified with a 2022 prefix, i.e., "2022 Recommendation 1", and are numbered sequentially as they appear in the document. These new recommendations are consolidated in a separate table in Appendix B.

Section 1

Introduction and Context⁵

East Coast Prison Justice Society (ECPJS)

ECPJS is a collaborative association of individuals and organizations helping criminalized and imprisoned persons through advocacy, research, scholarship, legal support, education, and the provision of grassroots services. ECPJS works with prisoners to advance their human rights. Fundamentally, ECPJS seeks to promote decarceration by addressing the social determinants of criminalization and incarceration.

ECPJS engages in an array of projects involving: 1) correctional accountability on conditions of confinement, 2) police accountability and policing policy, 3) prisoner health, and 4) decarceration and community re-entry. More information regarding ECPJS's projects can be found on our website.⁶

Overview of NS Correctional System

NSCS operates four adult provincial correctional facilities:

- Central Nova Scotia Correctional Facility ("CNSCF") in Dartmouth;
- Northeast Nova Scotia Correctional Facility ("NNSCF") in New Glasgow;
- Southwest Nova Scotia Correctional Facility ("SNSCF") in Yarmouth; and
- Cape Breton Correctional Facility ("CBCF") in Sydney.

The operations of SNSCF have been greatly reduced during the COVID-19 pandemic. We understand it is currently being used mainly as a holding facility for people appearing in court in that region.

These facilities hold adults who are:

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

Men may be held in any of Nova Scotia's four correctional facilities; women are held in the East unit of CNSCF. Pursuant to correctional policy, trans people may or may not be held in the unit designated for their gender.⁷ Young people under 18 are held at a youth detention centre in Waterville, although youth have sometimes been held in a segregated unit at NNSCF.⁸

A. Rates of Incarceration

The rate of incarceration in Nova Scotia decreased from 2015-16 to 2020-21, followed by an increase from 2020-21 to 2021-22 – although the 2021-22 rate remains lower than the immediate pre-pandemic years.⁹ The per capita provincial incarceration rate has been either the lowest or second lowest nationally for the past 10 years.¹⁰ This is a welcome trend.

The rate of incarceration in Nova Scotia correctional facilities steeply declined in 2020-21.¹¹ This reflects developments at the onset of the COVID-19 pandemic. In March 2020, Nova Scotia correctional authorities worked with community partners to release incarcerated persons to community settings and divert those who otherwise would be placed in pre-trial detention, in an effort to minimize COVID-19 spread in facilities and, by extension, in the wider community.¹² In a period of a few weeks, from mid-March to mid-April 2020, the in-custody provincial correctional population was reduced by almost 50%: from 452 to 251 persons.¹³

However, Nova Scotia has not maintained the initial reduction in incarceration rates. By 2021-22, the number of people remanded to pre-trial custody had crept up to nearly pre-pandemic levels.¹⁴ As in past years, in 2021-22, the majority (76%) of people incarcerated in Nova Scotia jails were in pre-trial detention.¹⁵

While overall rates of provincial incarceration remain slightly lower than pre-pandemic levels, Indigenous people and African Nova Scotians continue to be over-represented, and the proportion of Indigenous people in pre-trial custody is growing. In 2019-20, 6% of the Nova Scotian population was Indigenous, but 13% of those remanded to custody and 11% of those in sentenced custody were Indigenous¹⁶ – a 5% increase in the remand rate from 2017-18.¹⁷ Indigenous women were particularly over-represented in 2019-20 (the last year this figure was reported), making up 23% of women remanded to Nova Scotia jails.¹⁸ In 2021-22, 15% of those remanded to pre-trial custody and 8% of those in sentenced custody were Indigenous.¹⁹

African Nova Scotian people are also overrepresented in provincial corrections. In 2019-20, African Nova Scotians made up about 2% of the Nova Scotian population but 10% of those in pre-trial custody and 11% of those serving provincial custodial sentences.²⁰ In both 2020-21 and 2021-22, the proportion of African Nova Scotians in pre-trial custody was up, at 12%, while the proportion in sentenced custody fell slightly.²¹

B. Governance and Oversight

Provincial correctional facilities are governed by the *Correctional Services Act*,²² the *Correctional Services Regulations*,²³ the *Correctional Services Policy and Procedures*,²⁴ and various institutional directives and standing orders.

The federal prison system, operated by the Correctional Service of Canada (“CSC”), holds people serving sentences of two years or longer. Under the *Corrections and Conditional Release Act*, federal corrections are subject to the independent oversight powers of the Office of the Correctional Investigator (“OCI”), which functions as an independent ombudsperson in relation to federal prisons.²⁵ The OCI has statutory powers, including to:

- make unlimited and unannounced visits to federal correctional facilities;
- inspect facilities;
- investigate complaints and requests from inmates;
- hold public or *in camera* hearings, with related powers to demand the attendance of witnesses and compel the provision of documents; and
- issue recommendations to the Commissioner of CSC.

The OCI is also protected against being subpoenaed. Importantly, the OCI is required to provide an annual report to the Minister of Public Safety and Emergency Preparedness, which is then tabled in Parliament.

There is no equivalent body in Nova Scotia dedicated specifically to addressing the concerns of people in provincial custody. Instead, various mechanisms exist, none of which provide true transparency and accountability. In what follows we provide some background to, and brief updates on, the primary formal mechanisms for correctional accountability in Nova Scotia.

Accountability Mechanisms in Provincial Corrections

In our report from last year, we described the various accountability mechanisms that people in provincial jail can access when problems arise.²⁶ Generally speaking, these mechanisms are either “internal”, meaning the complaint is received and processed by the same agency being complained of, or “external”, in that the complaint is dealt with by an independent agency.

Internally, NSCS and NSH-CHS each operate their own complaint processes. Externally, accountability mechanisms include the Nova Scotia Office of the Ombudsman, the Nova Scotia Human Rights Commission, the College of Physicians and Surgeons of Nova Scotia, and the courts.

Rather than repeat the descriptions from our 2020-21 report, below we have focused on developments in the past year relating to the strengths or weaknesses of these mechanisms and implications for the VC’s work.

A. Internal Accountability Mechanisms

I. Nova Scotia Correctional Services (NSCS)

People in provincial custody may use an internal complaints system to grieve any decision or condition of confinement with which they take issue. As indicated by its name, this is not an independent, external oversight mechanism.

The CSA and CSR collectively prescribe the complaint procedure that must be followed.²⁷ The official who initially assesses the complaint is internal to corrections, as is the person responsible for the review of that initial decision, should the complainant decide to appeal. Nothing in the CSA or CSR prevents a complaint from being reviewed by the individual against whom the complaint was made; similarly, nothing expressly protects the complainant from repercussions for complaining about an employee of corrections. Further, the officials dealing with complaints have significant discretion over whether or how to investigate or resolve the problems brought forward by prisoners.

*Some callers to our phone line in 2021-22 have reported that **staff members have ripped up complaints in front of them, rather than submit them to the appropriate authorities.*** Further, prisoners have reported that when complaints are submitted, they do not necessarily or regularly get written acknowledgment of receipt. This reinforces prisoners' perceptions that correctional officials will simply back their own and leads many of our callers to be skeptical of the efficacy and legitimacy of the internal complaint procedure. Failure to provide a written response to a complaint does not comply with the CSA, nor with the common law obligation to provide reasons for administrative decisions. Callers also expressed they were not being advised about the appeal process.

Because of these continuing problems, we recommend below that the Nova Scotia Ombudsman investigate the adequacy and responsiveness of the NSCS complaints process.

II. Nova Scotia Health - Correctional Health Services (NSH-CHS)

NSH is responsible for delivering health care in provincial correctional facilities and has a complaints system separate from that of NSCS. In our 2020-21 report, we noted that individuals in custody reported that the health complaints system was often inaccessible and did not meaningfully address their concerns.²⁸ At the time, there was no publicly available policy governing the complaint procedure.

This year, we are pleased to report that there have been improvements to the NSH-CHS complaints system. We detail these changes below in the "positive developments" section. However, we also note ongoing concerns that prisoners have raised about the responsiveness of

the complaints system, and related systems like the NSH Patient Relations line and professional disciplinary processes.

B. External Accountability Mechanisms

I. Nova Scotia Office of the Ombudsman

Nova Scotia's Office of the Ombudsman receives and investigates complaints about municipal and provincial government departments and services.²⁹ The Office has broad powers of entry and investigation, powers to compel attendance of witnesses, and powers to compel the production of documents. Further, the *CSR* provides that correctional authorities cannot restrict or monitor prisoners' communications or visits with the Ombudsman's office, even when disciplinary sanctions such as close confinement are in place.³⁰ The Ombudsman's Office is therefore, at least in theory, a place where provincially incarcerated people may direct complaints about the conduct of correctional or NSH staff and/or the conditions of confinement.

Decreasing Engagement with Provincial Prisoners

The Ombudsman indicates that it visits provincial correctional facilities quarterly and prepares written reports detailing these visits, even if a complaint is not made.³¹ These visits were temporarily curtailed during the COVID-19 pandemic. In 2020-21, there were 7 site visits to adult correctional facilities, down from 16 the prior year.³² In 2021-22, the Ombudsman reports that there were again 16 site visits to adult correctional facilities.³³

While the pandemic undoubtedly affected Ombudsman communications and outreach with prisoners,³⁴ prisoner contacts with the Ombudsman were already decreasing prior to the pandemic. Total complaints to the Ombudsman from the correctional context decreased steeply over the 5-year period from 2017-18 to 2021-22.

Setting aside the understandable drop in complaints from youth in custody (as that population has been reduced markedly over the past decade), complaints from the adult corrections context dropped from 238 in 2018-19, to 142 in 2019-20, to 66 in 2020-21,³⁵ to 71 (or 51³⁶) in 2021-22. Meanwhile, complaints to the Ombudsman about correctional health care also dropped, from 61 in 2019-20, to 21 in 2020-21 to 15 in 2021-22.³⁷ These low numbers are concerning to the VC.

In contrast, calls to the VC phone line have gradually increased following the line's inception in the late spring of 2020. Callers have conveyed rising frustration, as those who remain in jail have been subject to increasingly restrictive conditions in addition to heightened risks of COVID-19. A key concern (addressed below) has been the frequency and duration of lockdowns, attributed to staff shortages as well as intermittent COVID-19 outbreaks. As this report describes, related

problems include a lack of programming; restricted opportunities to exercise or access the outdoors; restricted contacts with lawyers, family and others; and increased exposure to violence, including self-harm reasonably surmised to be linked to extended in-cell isolation.

In short, jail has become increasingly hard for many reasons, including prolonged suspension of human rights and basic entitlements of correctional law.

There are a few possible explanations for the low number of prisoner complaints to the NS Ombudsman. First, prisoner lack of awareness: prior to the COVID-19 pandemic, prisoners reported to the VC that they did not know about the Ombudsman Office or what it does. Second, callers have also reported hesitancy to contact the Ombudsman and other external agencies, out of fear of retaliation by correctional staff. For example, one caller reported being transferred from one institution to another the day after he contacted the Ombudsman.

A third explanation for the low numbers of Ombudsman complaints is what appears to be an Ombudsman practice of advising prisoners to call police when they raise concerns about improper use of force.³⁸ This raises two concerns. On the one hand, prisoners may identify police and correctional officials as being aligned. On the other hand, several callers to the VC phone line have advised that it is not possible to call police from phones in the day rooms, meaning that one must request correctional staff assistance to access a private line, presenting a risk of retaliation from staff or others. This is a concern we address in a recommendation relating to outside communications, below.

A fourth and perhaps most obvious explanation for the low Ombudsman complaint rates is the Ombudsman's requirement that prisoners exhaust the internal NSCS complaints system first. This poses a barrier to prisoners who have lost faith in, or are prevented from accessing, that system. As context, Ombudsman annual reports since 2017-18 indicate that representatives use quarterly visits to correctional sites and other correctional communications to educate prisoners "on correctional services internal complaints process and encourage them to exhaust all avenues of appeal before filing a complaint with the Office." The annual reports suggest that "[t]his approach has reduced the total number of complaints involving correctional services."³⁹

We acknowledge that a requirement to exhaust internal systems of complaint is typically imposed by the Ombudsman as a matter of efficiency as well as deference to the agencies and entities that Office oversees. However, as indicated, problems with the correctional complaints system include:

1. its lack of independence;
2. the fact that it accords correctional staff significant discretion concerning when and how investigations will be conducted;
3. its lack of clarity regarding what, if any, resolutions are possible or likely to be achieved; and

4. the fact that it potentially exposes prisoners to retaliation from staff.

Further, prisoners advise us that official complaint timelines are frequently not respected, such that the process can drag on without resolution, frequently beyond the person's release date.

Given these and other concerns, we suggest a review of the Ombudsman's default requirement that prisoners exhaust the NSCS internal complaints process before Ombudsman complaints are accepted. Indeed, we go further, and recommend that the Ombudsman initiate a review of the efficacy and fairness of the NSCS internal complaints process. We note that the Ombudsman recently investigated the internal complaints process at the Wood Street Centre for secure treatment of youth, in response to concerns about the transparency and responsiveness of that process.⁴⁰

2022 Recommendation 1 (NS Ombudsman)

The Nova Scotia Office of the Ombudsman should initiate a systemic investigation of the adequacy and responsiveness of the NSCS internal complaints system.

Individual Dispute Resolution

Despite decreasing complaint numbers, it is clear that the Ombudsman retains important powers to advocate on behalf of prisoners. The 2020-21 Ombudsman report reiterated an example from its 2019-20 report⁴¹ involving the failure of one or more institutions or agencies to return jewelry to a prisoner after multiple transfers among correctional facilities and hospitals.⁴² The outcome included identification of the agency responsible and a commitment by that agency to compensate the prisoner. This is a positive outcome that likely only the Ombudsman's Office could achieve given its powers of access to files and officials.

Systemic Reviews of Correctional Policy and Practice

We hope that the Ombudsman will act on our recommendation to investigate the NSCS internal complaints system; however, with two recent exceptions, we have been unable to find any evidence of Ombudsman engagement in systematic reviews of provincial correctional policy or practice to date.

The first exception relates to the Ombudsman's role in the Department of Justice response to a critical report from the provincial Auditor General in 2018, which revealed multiple system failures in provincial corrections.⁴³ That report called for increased oversight and accountability. It noted in particular chronic failures of NSCS to adhere to correctional law and policy, including policies on "close confinement" (isolation/segregation) and use of force.

As part of its response to the Auditor General's findings, the Department of Justice agreed to engage the provincial Ombudsman for quarterly audits of close confinement.⁴⁴ We noted last year that since 2018, no public reporting had been made regarding the Ombudsman's activities in this oversight role, or what if any remediation of correctional non-compliance with law and policy had been undertaken.

The 2020-21 Ombudsman Annual Report contains the Ombudsman's first public statement on this arrangement with Justice, as follows:

[R]epresentatives from the Department of Justice approached our office about auditing the use of close confinement in correctional facilities. Those discussions resulted in Ombudsman Representatives developing and conducting an independent quarterly review process on the use of close confinement and providing our findings to the Department of Justice.⁴⁵

This is the extent of public reporting to date. Transparency concerning the nature and results of the Ombudsman's quarterly audits of close confinement is essential to rebuild trust following the criticisms of the Correctional Service raised by the Auditor General in 2018.

The importance of transparency and accountability is underlined by Canadian appellate court judgments pronouncing on the unconstitutionality of solitary confinement (22 hours or more of isolation without meaningful human interaction) for any period for people with serious mental health conditions, and beyond 15 days for others.⁴⁶ As discussed later, Nova Scotia court documents indicate that at least some individuals incarcerated in Nova Scotia jails over the past two years have been isolated in individualized close confinement and/or mass lockdowns for periods meeting or exceeding these descriptions.⁴⁷ The Ombudsman's office has the opportunity to contribute to public accountability on this fundamental human rights issue.

Further, we understand that the Ombudsman’s compliance reviews are paper-based only. Section 16 of NSCS Policy 43 (“Close Confinement”)⁴⁸ indicates that NSCS officials are to supply the Ombudsman with a “Department of Justice Close Confinement History” report on a quarterly basis, whereupon the Ombudsman will select a few files for paper-based review. The process appears to involve no facility visits or other conversations with prisoners in close confinement. We recommend below that the Ombudsman supplement its close confinement audits with visits and in-person interviews with prisoners who are being held or have recently been held in close confinement.

2022 Recommendation 2 (NS Ombudsman)

The Nova Scotia Office of the Ombudsman should publicly report on the nature and findings of its quarterly audits of close confinement in provincial jails. Further, the Ombudsman should supplement its compliance audits of close confinement in Nova Scotia jails with in-person visits and interviews with individuals who are being held or have recently been held in close confinement.

Another important and relevant investigation occurred in 2020-21. The Ombudsman’s 2020-21 Annual Report described the investigation of a complaint about health-related segregation at the East Coast Forensic Hospital (a facility governed by NSH). While the individual complaint was not substantiated, “procedural issues were noted,” and the Ombudsman made a formal recommendation to NSH and the Department of Health and Wellness.⁴⁹

We were pleased to see this engagement with procedural aspects of health segregation at the forensic hospital. We note that related practices affect the fundamental rights of those incarcerated in the correctional system who are identified as requiring isolation for putative health reasons.⁵⁰

The VC encourages the Ombudsman to engage in further systemic investigations on matters of importance to incarcerated populations and to provide public reporting thereon.

Final Note - Independence of the Ombudsman

Last year’s VC Report expressed concerns about the independence or perceived independence of the Ombudsman. It noted that Mr. William Smith, appointed to the office in 2016 and reappointed in 2021 for a second five-year term, was a retired RCMP officer who from 2012 to 2016 served as Executive Director of NSCS. We noted that the confidence of prisoners in the Ombudsman’s willingness to address correctional policy and practices, already low as a result of the public invisibility of the Ombudsman’s work, was likely lower still given that Mr. Smith had

recently served as the highest authority in the province's correctional system. Some of the persistent concerns reported to the VC engage policies and practices introduced or enforced during Mr. Smith's correctional leadership, and would likely engage the interests of staff and administrators he worked with closely in that role.

This concern has now been alleviated in some measure. Mr. Smith retired from the Ombudsman position effective June 30, 2022, one year into his five-year appointment.

We welcome Acting Ombudsman Christine Brennan to this important role. We hope that the Ombudsman office will place a new priority on public transparency in its oversight of corrections, including public sharing of the Ombudsman's ongoing audits of close confinement. We wish to stress the importance of the Ombudsman's engaging staff and investigators from a diversity of backgrounds, and avoiding past trends of filling investigative staff roles with retired police officers.

We will be reaching out to the new appointee in the coming year to discuss how the VC may better support the Ombudsman office, and how the office might liaise further with our staff to advance human rights and access to justice on the part of incarcerated populations.

II. Nova Scotia Human Rights Commission

The Nova Scotia Human Rights Commission ("NSHRC") has come under critical comment from the Nova Scotia Ombudsman in recent years. The 2020-21 Annual Report of the Ombudsman stated that, "as recently as four years ago, our Office produced a report which was critical of both the NSHRC's processes and its outcomes." A central criticism at that time "was that investigations by the NSHRC often lacked sufficient discipline and depth." The 2020-21 Ombudsman report further stated that while there had been improvements at the NSHRC, the Ombudsman continued "to receive similar complaints about the NSHRC complaint and investigation process."⁵¹

We are pleased to report new developments in strengthening the relationship between the VC and NSHRC. We welcome the opportunity to work with the NSHRC and contribute to enhancing its processes in relation to complaints and systemic problems arising from Nova Scotia corrections. In particular, we are eager to work with the NSHRC on responses to systemic discrimination in corrections relating to race, gender, sexual identity, Indigeneity, religion/spirituality, and/or disability.

We have commenced a process of engagement with the Executive Director and staff of the NSHRC to discuss how the VC and NSHRC may work together in ways that respect the independence of the NSHRC's adjudicative arm while advancing the human rights of incarcerated populations in the province.

During a recent meeting, we were pleased to learn that the NSHRC is in the final stages of implementing a new complaint procedure that will permit individuals to download complaint forms and submit complaints electronically via the NSHRC website. Although this is an important step in improving access to justice for Nova Scotians, the VC is concerned that persons in custody – who are normally without access to the internet – risk being left out. However, as we discuss further below, NSCS is currently piloting an initiative whereby electronic tablets are available for use on certain units at facilities across the province. These tablets permit individuals to have video calls with friends and family and they also have internet access limited to certain specified websites.

2022 Recommendation 3 (NSCS)

NSCS should liaise with NSHRC to ensure that prisoners have access to the newly implemented NSHRC online complaint form via the tablets that are available at NNSCF, and that the VC understands will soon be available in each facility.

III. Provincial Superior Courts

The Nova Scotia Supreme Court plays a limited role in oversight of provincial correctional facilities. There is limited legal aid funding available for prison law, meaning that prisoners who seek to challenge conditions of confinement, for instance through a *habeas corpus* application, must self-represent.

NS correctional administrators have been attempting to improve prisoner access to legal information; however, there have been setbacks, described later in this report. It continues to be extremely difficult for self-represented prisoners to access legal materials to assist in preparation of legal submissions in court proceedings, whether in criminal matters, prison law matters, or matters (such as child custody) requiring other kinds of legal proceedings.

The VC wishes to assist within our limited capacity to help facilitate access to legal information, and more broadly access to justice, for incarcerated persons in Nova Scotia. We are in active conversation with a range of other organizations to explore ways of better collaborating to this end. This includes not only correctional administrators, but also the Elizabeth Fry Society of Mainland NS, the Legal Information Society of Nova Scotia, Dalhousie Legal Aid Service, and Nova Scotia Legal Aid.

IV. College of Physicians and Surgeons of Nova Scotia (CPSNS)

Incarcerated persons who are not able to resolve health care issues via the NSH-CHS health care complaints process are sometimes directed to the CPSNS, especially when complaints involve the provision of care (or lack thereof) by a particular physician.

However, the VC has noted limitations and risks associated with the CPSNS complaint process. An initial step in the CPSNS complaint process is for the CPSNS to forward a copy of the complaint to the physician implicated. Incarcerated people who have phoned the ECPJS line have reported a fear of retaliation by health care staff; we are concerned that the CPSNS complaint process presents a potential to increase/inflate risk of retaliation.

Furthermore, CPSNS complainants are advised by the College to cease contact with the physician implicated in the complaint. Physicians who are implicated in the complaint may also choose to cease contact with the complainant. Given that there is often only one physician working within a given institution, this may result in prisoners losing access to a physician until the Department of Justice is able to make arrangements for an alternative physician at the request of the prisoner.

Finally, the CPSNS complaint process is not a crisis-driven process: it takes between 4 and 12 months to resolve a complaint, and the findings do not direct the provision of care to the patient. In summary, prisoners with ongoing, unresolved health care concerns are often directed to a complaint process that is not designed to meet their specific needs, will not directly provide them with better care, and may even result in their loss of access to a physician.

2022 Recommendation 4 (College of Physicians and Surgeons of NS)

CPSNS should conduct an independent review, in consultation with currently and formerly incarcerated Nova Scotians, to identify necessary changes to their complaint process in order to better reflect the distinct needs of incarcerated persons and the circumstances under which they receive health care treatment in custody.

Section 2

The Visiting Committee (VC) Project

Project Objective

The power imbalance present in correctional facilities necessitates that administration of these facilities be independently monitored for adherence to human rights standards.⁵² Yet, **there is very little publicly available information about the operations of provincial correctional facilities in Nova Scotia.**

The VC project functions to amplify prisoner experiences of incarceration, to analyze those experiences in light of international, national, and provincial human rights standards, and to make public annually the primary issues — both problems and system responses — we identify through our communications with prisoners and provincial correctional authorities. In short, the project involves independent, civil society-led *human rights monitoring*.

The work of the VC is guided by a number of key human rights standards, in addition to the statutory law noted above and the *Canadian Charter of Rights and Freedoms*, which is part of the Canadian Constitution.⁵³ These include the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”),⁵⁴ the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“OPCAT”),⁵⁵ and the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”).⁵⁶

The United Nations Standard Minimum Rules for the Treatment of Prisoners were adopted in 1955 and then revised and renamed the “Mandela Rules” in 2015. They are internationally recognized as minimum standards for treatment of prisoners. They have shaped the creation of prison laws worldwide and are relied upon by courts to inform legal limits on the discretion of prison authorities.⁵⁷ Closely related to the Mandela Rules, and also of critical importance, are the Bangkok Rules,⁵⁸ which are international standards of treatment specific to women prisoners.

OPCAT was adopted by the United Nations in 2002 and came into force in 2006. The objective of this Protocol “is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.” As of October 2019, OPCAT had been ratified by 90 states, and a further 15 states had signed but not ratified the protocol.⁵⁹ Canada has neither signed nor ratified the optional protocol.

Finally, UNDRIP reinforces state duties to respect Indigenous rights and sovereignty, and to identify alternatives to incarceration.⁶⁰ Employing UNDRIP to inform the analysis of provincial correctional law and policy is among the VC’s ongoing priorities.

Project Components

The VC's work involves two components. The first is periodic visits to provincial correctional facilities. In February 2020, the VC made its first visit with people incarcerated at CNSCF for a series of small-group facilitated conversations convened in three units of the facility over a full day; subsequently, steering committee members engaged in discussion with senior administration about the institutional conditions, policies, and practices that had been identified as concerns. The second component of our work, introduced shortly after the arrival of COVID-19 in Nova Scotia (in March 2020), involves contact with prisoners through a toll-free phone line.

At the time of writing, Nova Scotia's provincial correctional facilities remain closed to civil society groups and other volunteers. Therefore, the phone line is our only means of access to prisoners and vice versa. VC staff and steering committee members assist callers through individualized advocacy (i.e., bringing individual prisoner concerns to the attention of correctional staff and authorities in an effort to resolve problems in a timely way) and systemic advocacy (i.e., regularly reporting to and seeking responses from correctional authorities on policies or practices affecting the human rights of incarcerated persons, and periodically reporting to the wider public on these issues).

Work Undertaken in 2021-2022

A. Collaboration with Elizabeth Fry Society of Mainland Nova Scotia (EFMNS)

We are grateful for the assistance of the Law Foundation of Nova Scotia, which permitted ECPJS to carry over grant funds provided to the VC project in 2020-21 into 2021-22. In September 2021, ECPJS launched a new phase of our project, developed in coordination with EFMNS, which shaped the project through August 2022.

Specifically, EFMNS and ECPJS jointly hired two staff persons to support the work of the VC: the Provincial Advocacy Coordinator and the Provincial Advocacy Assistant. The Coordinator was a full-time (40 hours per week) position, with 20 hours of their time devoted to work with the ECPJS VC and 20 hours devoted to EFMNS. The Assistant was a part-time position with 15 hours per week solely devoted to the ECPJS VC.

These staff were able to deepen ECPJS's engagement with prisoners and their families, as well as social workers and others working inside correctional facilities. Over time, they established relationships with individuals inside and outside the jails seeking assistance with specific issues. They sought immediate and longer-term responses from staff inside the facilities, and they

informed steering committee members about individual and systemic issues requiring communications with correctional administration.

B. Month-Over-Month Call Breakdown

Month	Facility	Total Calls	Unique Callers	Key Topics
October 2021	TOTAL	1	1	
	CNSCF	1	1	lockdown, double-bunking, COVID vaccination
November 2021	TOTAL	7	6	
	CBCF	2	2	health care, cleanliness, correctional staff, rights and rules, strip searches, visits, lack of activities and programs, Indigenous medicines and spiritual practices
	CNSCF	1	1	legal information
	NNSCF	3	2	legal information, close confinement, cleanliness, correctional staff, internal complaint mechanism
	Springhill Institution (Federal Men's Medium Security)	1	1	prisoner transport, mental health
December 2021	TOTAL	18	16	
	CBCF	2	2	health care, dental care, mental health, health segregation, cleanliness, clothing, internal

Month	Facility	Total Calls	Unique Callers	Key Topics
				complaint mechanisms, visits
	CNSCF	12	10	health care, health segregation, mental health, medication, strip searches, correctional staff, staff shortage, legal information, lockdown, lack of programs and activities, visits, rodents, hygiene, drug overdose
	NNSCF	4	4	health segregation, mental health, human rights, correctional staff, use of force, rights and rules, religious accommodations, internal complaint mechanism, lockdown, double-bunking
January 2022	TOTAL	15	10	
	CBCF	2	1	Indigenous medicines and spiritual practices
	CNSCF	5	5	COVID outbreak, cleanliness, lockdown, staff shortage, hygiene, health segregation
	NNSCF	2	2	close confinement, lack of programs and activities, cleanliness, COVID, internal complaint mechanism

Month	Facility	Total Calls	Unique Callers	Key Topics
	East Coast Forensic Hospital	6	2	COVID protocol, health care, medication, close confinement, staff
February 2022	TOTAL	6	5	
	CNSCF	2	2	close confinement, <i>habeas corpus</i> , human rights
	NNSCF	3	2	close confinement, health segregation, social workers, Indigenous medicines and spiritual practices
	East Coast Forensic Hospital	1	1	health care, cleanliness, staff, COVID protocol
March 2022	TOTAL	8	7	
	CNSCF	6	6	lockdown, COVID, hygiene, health care, mental health, medication, opioid addiction treatment, legal information
	NNSCF	2	1	police complaint, lack of programs and activities, legal information
April 2022	TOTAL	8	4	
	CBCF	2	1	COVID (vaccination, contagion), health care, medication, opioid addiction treatment

Month	Facility	Total Calls	Unique Callers	Key Topics
	CNSCF	6	3	lockdown, correctional staff, lawyer calls, legal information, double-bunking
May 2022	TOTAL	37	17	
	CBCF	2	2	legal information, community resources, lawyer calls
	CNSCF	35	15	correctional staff, internal complaint mechanism, legal information, medication, human rights, close confinement, lockdown, staff shortage, adjudication, prisoner uprising, rodents, prison information (rights & rules), COVID policy
June 2022	TOTAL	25	16	
	CBCF	3	1	COVID lockdown, adjudication, internal complaint mechanism, <i>habeas corpus</i> , mental health, medication
	CNSCF	15	11	close confinement, health care, mental health, dental care, adjudication, lockdown, legal information, community resources, prisoner uprising, double-bunking,

Month	Facility	Total Calls	Unique Callers	Key Topics
				Indigenous medicines and spiritual practices
	NNSCF	7	4	health care, medication, correctional staff, internal complaint mechanism, legal information
July 2022	TOTAL	30	15	
	CBCF	1	1	medication, medical staff
	CNSCF	25	11	health segregation, close confinement, inmate assault, lockdown, hepatitis C outbreak, double-bunking, legal information, strip searches
	NNSCF	4	3	dental care, medication, medical staff, COVID lockdown, legal information
August 2022	TOTAL	29	19	
	CBCF	5	2	health care, medication, internal complaint mechanism
	CBCF (letters)		1	Indigenous medicines and spiritual practices
	CNSCF	22	15	health care, medication, medical distress, sepsis/needle use, extensive lockdown, legal information
	CNSCF -	1	1	N/A

Month	Facility	Total Calls	Unique Callers	Key Topics
	East Unit (Women)			
	NNSCF	1	1	legal information
October 2021 to August 2022	TOTAL	184	70	
	CBCF	19	10	
	CNSCF	130	46	
	CNSCF East	1	1	
	East Coast Forensic Hospital	7	3	
	NNSCF	26	15	
	Springhill Institution	1	1	

Calls to the VC phone line have fluctuated since the start of the pandemic, reflecting a variety of factors. This includes prisoners' awareness of our phone line as well as jail conditions – notably, lockdowns, COVID-19 outbreaks, and the pressures these interrelated challenges place on prisoners who must prioritize their activities during their limited time out of cells.

The VC line received a total of 184 calls from September 2021 to August 2022. Of those, 158 calls were received in the 8-month period from January to August 2022. We received just 26 calls from October to December 2021, with the bulk of those (18 calls) received in December. Prior to that, VC staff were engaged in training, preparing materials to support the phone line, publicizing the phone line, and re-establishing prisoner engagement.

The highest numbers of calls were received between May and August 2022. The lowest numbers (apart from the initial start-up period with new staff) were received in February to April 2022. That three-month slump in calls may have reflected changing conditions in the jails, or limitations on access to or awareness of our phone line. Given the intensity of the concerns expressed by those who did call during those months (and the months before and after) regarding matters such as prolonged lockdowns, confusion around COVID-19 quarantine and other COVID-19 policies, and access to health care (including opioid agonist treatment), we do not suggest that there was a comparative lack of problems in that period.

Over 70% of all calls came from CNSCF, with NNSCF and CBCF trailing far behind in second and third place respectively. As the largest provincial jail in the province, the higher representation of calls from CNSCF in our data pool is to be expected. At the same time, however, it also speaks to **longstanding and largely unresolved issues at CNSCF**. In response to a string of serious incidents and injuries in 2015, a Conservative MLA called on the provincial government to conduct an independent review of the facility.⁶¹ In 2018, the provincial Auditor General confirmed a long list of problems in Nova Scotia Corrections relating to safety, security and training, including non-compliance with close confinement policy.⁶² That same year, prisoners at CNSCF engaged in a large-scale non-violent protest action, demanding improvements to their conditions of confinement and health care access.⁶³

Over the course of the past year, the phone line also received a very small number of calls from individuals at sites of incarceration across the province other than men’s units in NSCS facilities, including the East Unit at CNSCF, which holds women and gender-diverse people;⁶⁴ East Coast Forensic Hospital (ECFH), a medium security psychiatric facility co-located with CNSCF and operated by NSH, which holds people found Not Criminally Responsible (NCR) or Unfit to Stand Trial as well as (in one unit) provincial prisoners sent for secure treatment or assessment; and Springhill Institution, a men’s medium security federal prison.

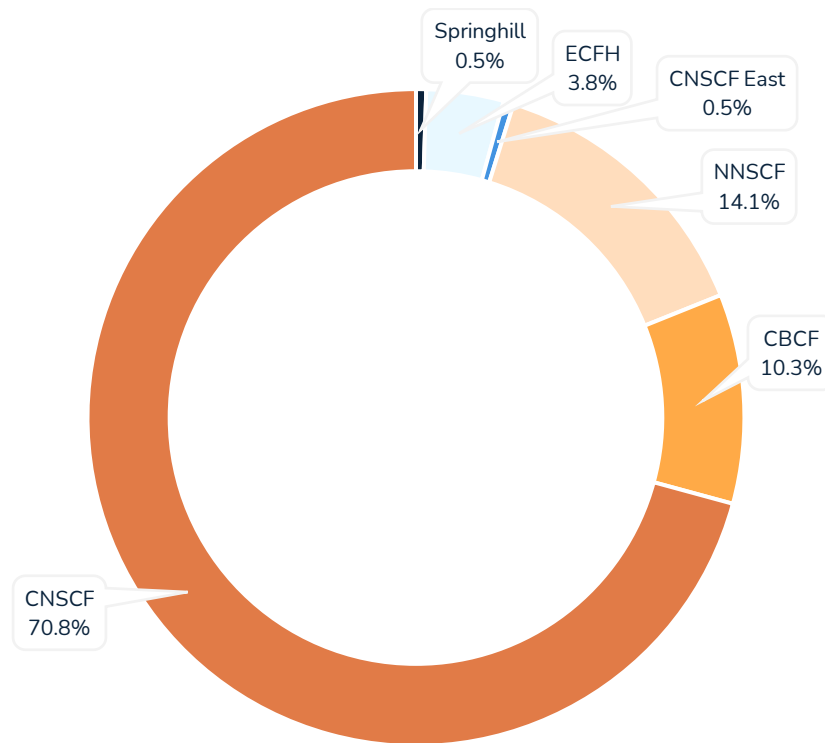


Figure 1: Call Breakdown by Facility, October 2021 to August 2022

In some months, the numbers of calls and individual callers are closely comparable, and in other months (particularly the months in which we have received the highest number of calls) the number of individual callers may be around 50% of the total calls received. This reflects the complexity and urgency of some individual callers' situations, and efforts of the VC to assist with individualized as well as systemic dimensions of their concerns.

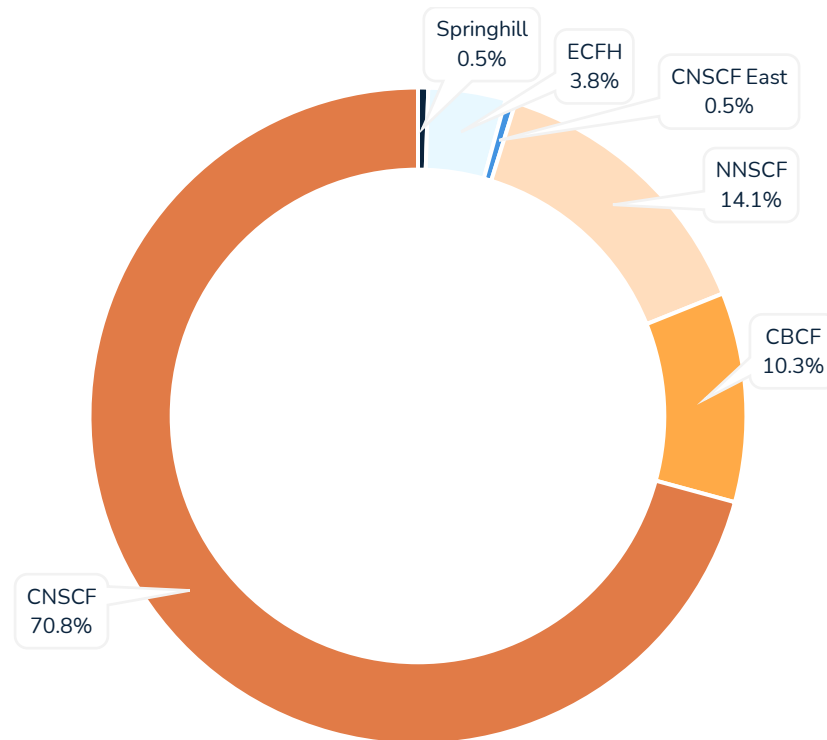


Figure 2: Caller Breakdown by Facility, October 2021 to August 2022

C. Systemic Advocacy

I. Nova Scotia Correctional Services

On **December 15, 2021**, a few months following the release of our July 2021 report, we wrote to NSCS officials seeking a meeting. We then copied those officials on a **December 21, 2021** letter which identified our concerns with rising in-custody numbers approaching pre-pandemic levels and low vaccination uptake.⁶⁵

In **January 2022**, the VC sent reporting letters to the Superintendents of CBCF, CNSCF, and NNSCF regarding concerns raised by callers during December 2021.⁶⁶ From January 2022 on, staff fielded calls and assisted with individualized non-legal advocacy as phone line activity increased.

The VC Steering Committee met with correctional officials on **January 24, 2022** to provide an update on systemic issues and to discuss next steps. This was followed by a set of individualized advocacy letters and related follow-up.

On **April 4, 2022**, the VC Steering Committee met with NSCS leads to discuss their responses to the recommendations in our July 2021 report. We continued discussion of those recommendations, and the process through which we might obtain more formal responses, in a further meeting on **May 30, 2022**.

On **June 9, 2022**, we sent a detailed letter to the interim head of the NSH-CHS branch, outlining concerns with practices of health-related close confinement, a practice otherwise known as “health segregation.”⁶⁷ We copied this letter to Correctional Services officials and the Nova Scotia Ombudsman. As we explore later in this report, our understanding is that Correctional Services shares responsibility with Correctional Health Services to address the human rights-impairing aspects of so-called health segregation.

On **June 30, July 6, and July 18, 2022**, we sent comprehensive reporting letters to the superintendents of CNSCF, CBCF and NNSCF, respectively, on systemic issues raised by prisoners calling from January through June, 2022.⁶⁸ We received brief responses from the superintendent of each facility, acknowledging receipt of our letter but declining to engage with the issues we had raised.

VC Steering Committee representatives met with NSCS leads on **August 22** and **September 9, 2022**, to continue discussion of our 2020-21 Annual Report recommendations and to make plans for the upcoming year. On **September 12, 2022**, NSCS leads provided written responses to our 2020-21 recommendations. We provide those responses in Appendix A.

Members of the VC also collaborated through the spring and summer of 2022 with the Halifax Refugee Clinic, Human Rights Watch, and Amnesty International in a campaign to end immigration detention in provincial jails. We helped promote a letter-writing campaign to the Premier commencing on World Refugee Day, **April 4, 2022**. That campaign resulted in over 3,000 letters being sent to the Premier on this issue.

ECPJS co-drafted a letter to the Premier detailing the harms of immigration detention in Nova Scotia’s jails, sent **May 10, 2022**, with a follow up in early August.⁶⁹ In campaign meetings over the spring and summer, VC members shared our understanding of the systemic harms occurring to the health and human rights of people incarcerated in Nova Scotia jails, including the particularly harsh impacts on immigration detainees.

Our coalition recently learned that in early August, Nova Scotia gave the federal government 12 months’ notice of its intended withdrawal from the contract through which immigration detainees

are held in Nova Scotia's jails.⁷⁰ This is an important victory for decarceration and migrant justice. We take this moment to celebrate with our allies and to congratulate Nova Scotia for becoming the second province in Canada, after British Columbia, to end this cruel, human rights-impairing practice.

II. Nova Scotia Health - Correctional Health Services

On **December 7, 2021**, VC staff and Steering Committee members, and members of the ECPJS Health Committee, met with the NSH-CHS program lead and other NSH-CHS representatives to discuss how we may work together to improve the health of incarcerated people.

On **December 21, 2021**, in view of escalating concerns about the Omicron variant of COVID-19, the VC wrote to the Minister of Justice, Chief Medical Officer of Health, and the NSH-CHS Program Lead to express concerns about low vaccine uptake among provincially incarcerated people, together with the growth of the in-custody population to nearly pre-pandemic levels.⁷¹ We sought responses on what was being done to mitigate risks, including efforts to decarcerate and to increase vaccination uptake. We offered to liaise with health care workers and others closely connected to affected communities.

In addition, we communicated with NSH-CHS officials on other problems raised by callers to our phone line. For instance, we sent letters on **December 24, 2021** and **March 22, 2022** outlining concerns about a specific case of "health segregation." On **June 9, 2022**, we sent a further letter to the Acting Program Lead of NSH-CHS raising more general concerns and questions about health segregation policies and practices.⁷²

Further, in early **August 2022**, we relayed our concerns to NSH-CHS officials regarding unsafe needle use and consequent infection amongst prisoners. We noted our interest in helping develop harm reduction policies for the correctional context, an ongoing imperative for us.⁷³

D. Individualized Advocacy

The following are two anonymized examples of situations giving rise to advocacy letters over the past year, to illustrate the VC's work in this area: one identifying serious concerns regarding a suicide watch placement and another about discriminatory disciplinary practices.

The first caller phoned us with concerns regarding their placement on suicide watch in the Health Care Unit ("HCU"). They reported that after approximately eight weeks during which their living unit had been near-continuously locked down, they "could not take it anymore" and attempted suicide. As a result, they indicated that they were placed on suicide watch in the HCU for approximately a week before temporary placement in the Close Confinement Unit ("CCU"). They reported that while in suicide watch they were subject to degrading and humiliating

conditions including but not limited to 24-hour per day lighting and camera surveillance, including while using the toilet. While deeply troubling, this kind of treatment in health segregation is not exceptional – it is contemplated in facility standard operative procedures, as we describe further in a section on health segregation later in this report. The caller further advised us that they were not provided mental health treatment.

The VC wrote a letter to the facility superintendent and the Program Lead for NSH-CHS bringing forward these allegations and our concerns. The letter was copied to the individual’s criminal defence counsel.

Beyond the disturbing nature of the facts described to us, this incident revealed the legal grey area in which the HCU resides as a result of NSCS and NSH-CHS’s overlapping jurisdiction.

Placements in the HCU constitute close confinement (otherwise known as segregation or solitary confinement). Nova Scotia courts have established that the ordinary meaning of “close confinement” under the CSA is “confinement in a close space or under close supervision.”⁷⁴ This means that it is not defined by the particular unit, such as the HCU, in which it occurs. As discussed further below, human rights standards must be met whether a person is in so-called “health segregation” or is isolated for other reasons.

In a second example of individualized advocacy arising from the VC project, an Indigenous caller informed us that his right to smudge had been suspended for two weeks as a sanction for a disciplinary infraction he allegedly committed. ECPJS staff worked to corroborate his claim, requesting a copy of the disciplinary sanction. Upon receipt, the VC wrote to the facility superintendent copying the man’s counsel, protesting the suspension of his right to smudge as contrary to NSCS’s Policies and Procedure, as well as provincial human rights law, constitutional rights, and international human rights standards.

This incident aligned with findings noted in our first annual report that African Nova Scotian and Indigenous men often reported receiving harsher treatment while in provincial custody.⁷⁵ These concerns speak to the need for further disaggregated data on in-custody treatment and discipline, particularly in light of the disproportionate incarceration of both African Nova Scotian and Indigenous persons in Nova Scotia.

Section 3

Major Themes

This section summarizes the major themes and prominent concerns raised by callers over the past year. We begin with updates on the issues reported in our 2020-21 report. Each thematic update begins with background on the applicable law, our 2020-21 recommendations and the response from NSCS (or NSH-CHS where applicable), followed by what we heard in 2021-22. We conclude with our 2021-22 recommendations. We then turn to some discrete issues that we have singled out for special attention and analysis in 2021-22.

The four major themes that were most frequently raised by callers during 2021-2022 are:

1. problems related to health care and medication;
2. lockdowns and other deprivations of liberty;
3. concerns related to staff behaviour and attitudes; and
4. requests for legal information.

Theme	Number of Calls	Proportion of Calls
Lockdown (unit- or facility-wide)	45	25% (1 in 4 calls)
Close confinement / segregation (CCU, HCU, etc.)	4	2%
Legal Information	42	23% (~1 in 4 calls)
Health care and medication (issues with access & administration)	55	30% (~1 in 3 calls)
Staff (negative attitudes, retaliatory behaviour, reluctance to assist)	48	26% (1 in 4 calls)

Deprivations of Residual Liberty

A. Background

I. Solitary Confinement: Definition and Legal Limits

Solitary confinement is generally defined as isolation for 22 hours or more without meaningful human interaction.⁷⁶ Prisoner isolation meeting this definition constitutes solitary confinement, no matter how it is labelled or described in correctional policy or where it occurs in a jail facility.⁷⁷

Appellate courts in Ontario and BC have declared the unconstitutionality of any period of solitary confinement where a person has a serious mental health condition,⁷⁸ and of prolonged solitary confinement beyond 15 days in other cases.⁷⁹

Relatedly, the BC Court of Appeal has ruled that solitary confinement (in the context of federal correctional law on “administrative segregation”) requires periodic independent review performed by someone external to, and not answerable to, the Correctional Service – commencing, in that context, with the 5-day review.⁸⁰ It also ruled that prisoners have a constitutional right to be represented by counsel at segregation review hearings.⁸¹

II. Nova Scotia Law and Policy on “Close Confinement”

The VC is concerned that Nova Scotia correctional law and policy on solitary confinement fails to meet the standards set by appellate courts in Ontario and BC. Specifically, adhering to an understanding of solitary confinement as isolation for 22 hours or more per day without meaningful human interaction, Nova Scotia correctional law, policy, and practice:

- fail to respect constitutional prohibitions on placing prisoners with serious mental health conditions in solitary confinement for any period;
- fail to respect constitutional prohibitions, beyond the above, on placing prisoners in solitary confinement for more than 15 days;
- fail to guarantee procedural fairness – including timely access to a hearing in which the prisoner has an opportunity to respond to the institution’s rationales for solitary confinement, the right to be represented by counsel, and the right to written reasons; and
- fail to guarantee independent review by a person external to the correctional service.

Instead, Nova Scotia law and policy confer discretion on authorities to impose, and indefinitely extend, close confinement for security or safety reasons (“administrative close confinement”), as well as permitting indefinite extensions of disciplinary close confinement. Nova Scotia law places no statutory limit on in-cell time beyond the constitutionally inadequate requirement of 30

minutes of out-of-cell exercise per day,⁸² places no statutory limit on the number of consecutive days of solitary confinement, and offers no meaningful safeguards for procedural fairness beyond periodic non-independent reviews.

To elaborate, focusing here on Nova Scotia law and policy on “administrative close confinement,” section 74 of the CSA reads:

A superintendent may, in accordance with the regulations, place an offender in close confinement in a correctional facility, if:

- a) in the opinion of the superintendent, the offender is in need of protection;
- b) in the opinion of the superintendent, the offender needs to be segregated to protect the security of the correctional facility or the safety of other offenders;
- c) the offender is alleged to or has breached a rule of a serious nature; or
- d) the offender requests.

The CSA does not define “close confinement” or provide a time limit. However, CSPP Policy 43 (“Close Confinement”) defines it as “a restriction imposed on an individual to a cell or isolated area (e.g., unoccupied dayroom, temporary housing unit)” that “limits interaction with other offenders,” or imposed “when an offender chooses to withdraw from the general population of their own accord.”⁸³

The only contemplation of a maximum duration of in-cell time in Nova Scotia correctional law is section 81 of the *CSR*, which states that those in close confinement must be permitted at least 30 minutes of “exercise outside the cell” each day.⁸⁴ Again, there is no cap on consecutive days in close confinement in NS law or policy.

CSPP Policy 43 (“Close Confinement”) indicates that persons subjected to “non-punitive” close confinement shall have access to a set of “privileges” including daily showers and phone access, and at least 2 hours per day out of cell.⁸⁵ However, the same policy also provides for curtailment of the listed “privileges.”⁸⁶ It further fails to accord the same default entitlement of at least 2 hours out of cell per day to people in disciplinary close confinement.⁸⁷

Other provisions of CSPP Policy suggest that close confinement is potentially, if not by definition, 22 hours or more per day confined to cell. Specifically, CSPP Policy 43 contemplates a category of persons “required to be housed in a close confinement unit but [who] have been provided access to out of cell programs/privileges **and to interact with other inmates in excess of two hours daily.**” The policy further states that these people “do not meet the criteria of confinement” – they are instead “housed with privileges.”⁸⁸ By implication, “close confinement” refers to those held in isolation for 22 hours or more per day. That is, it appears that this (along with lack of access to programs) is what distinguishes prisoners in close confinement from those who are “housed with privileges.”

Beyond a lack of strict temporal caps meeting human rights standards, Nova Scotia law and policy fail to provide constitutionally adequate procedure on close confinement.

Section 75 of the CSA states that where a prisoner is placed in close confinement the superintendent may “restrict [their] privileges” and “shall, in accordance with the regulations, conduct a review of the close confinement.” Sections 80(1) and (2) of the CSR state that the superintendent must conduct a “preliminary review of the offender’s case no later than 24 hours” after close confinement commences and must release the prisoner if continued close confinement is not warranted. If the person is not released, the superintendent must “review the offender’s circumstances” every 5 days.⁸⁹ After “a continuous period of 10 days,” the superintendent must “request permission from the Executive Director” to continue close confinement.⁹⁰

Under NSCS Policy, the Executive Director or delegate may grant extensions of up to 10 days of disciplinary close confinement and up to 30 days of administrative close confinement – with a possibility of further extensions.⁹¹ After 30 days – and each 30-day period thereafter – the prisoner “will receive a formal letter” from the superintendent indicating the period in close confinement, the reasons for it, options for discontinuing close confinement, and what “privileges/services” will be provided while in close confinement.⁹²

There is no contemplation, even at the 30-day mark, of a hearing inclusive of the prisoner’s right to receive disclosure, to make representations, and to be represented by counsel. These terms of Nova Scotia correctional law and policy stand in stark contrast to the law on solitary confinement articulated by leading appellate courts in Canada.⁹³

Last, provincial law of relevance also includes section 95(3) of the CSR. That provision restricts persons in close confinement from having communications or visits with anyone other than their lawyer or other listed officials (e.g., representative of the Human Rights Commission, Ombudsman, or a spiritual advisor), except with permission of the facility superintendent.

III. Nova Scotia Law and Policy on Lockdowns

A lockdown is a form of facility-wide or unit-wide close confinement. It describes a period of time when people who are housed in a living unit, who would typically have access to a common day room and facility programming, instead remain locked in their cells for a prolonged and often indeterminate duration (i.e., a period of hours or days not known in advance).⁹⁴ A lockdown can be “full” in the sense of affecting all units in a facility for all or part of a day, or “partial”, affecting only one or more units, or parts of a unit.⁹⁵

In Nova Scotia, provincial jails have in the last few years adopted “rolling rotational lockdowns,” where groups of people on a living unit are let out of cell periodically over the course of a day for set periods.⁹⁶

The source of authority relied upon by NSCS in imposing lockdowns is section 79(3) of the CSR. That provision states that a facility superintendent may restrict prisoners to their cells on grounds of “safety, security or order.” However, that law, like all statutes, regulations, and policy, must be applied in a way that is consistent with constitutional limits. That is, whatever the rationale for lockdowns – short staffing, institutional security, public health concerns, or some combination of these – time locked down must be justified as proportionate in light of the requirement to respect prisoners’ residual liberties and fundamental interests in security of the person, health, and life. Constitutional rights cannot be restricted merely on the basis of administrative convenience.⁹⁷

B. 2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Lockdowns	
<p>Recommendation 1: That minimum standards of treatment be adhered to regardless of lockdowns, meaning not simply that the standards expressed in the Mandela Rules (and accepted by appellate courts in Canada) should be followed—i.e., no subjecting people with serious mental health problems to any period of solitary confinement, and no solitary confinement beyond 15 consecutive days for others—but more generally, that people in custody should be guaranteed enough time out of cell each day to exercise outdoors, shower, telephone their lawyers, family and friends, and/or engage in religious and educational programming, as well as have access to other meaningful social interaction.</p>	<p>NSCS continues to minimize the use of confinement and lockdowns as often as operationally possible. When confinement is required for the safety of inmates or staff, it is in compliance with NSCS Policy 43 ‘Administrative and Disciplinary Close Confinement’. Inmates continue to be free to legally challenge their conditions of confinement through the <i>habeas corpus</i> process.</p> <p>The Division also audits their confinement process internally and collaborates with the Office of the Ombudsman and the Inspector, Correctional Services to ensure confinement is necessary, as short in duration as possible and inmates receive all entitlements while in confinement.</p>
<p>Recommendation 2: That a sufficient staffing complement be maintained, as well as an adequate scheduling system, to minimize short-staffing as a rationale for lockdowns.</p>	<p>NSCS has conducted a minimum of two recruiting sessions each year for the past decade and routinely collaborates with the</p>

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
	Union to maintain a sufficient and diverse staffing complement.
<p><i>Recommendation 3:</i> That legislative standards and/or publicly accessible policies be adopted to address the following:</p> <ul style="list-style-type: none"> a. Reporting requirements: staff must create detailed and publicly accessible daily records of: <ul style="list-style-type: none"> i. Date(s) of the lockdown including duration ii. Who authorized the lockdown and their reasoning in the circumstances for determining it was justified and necessary iii. The length of lockdowns/rotations used (time in cell) iv. The range(s)/unit(s) impacted by the lockdown v. The plan put in place to ensure the lockdown is as short in duration as possible, that persons with serious mental health conditions are not placed in conditions of solitary confinement for any period, and that limitations on liberty are otherwise kept as minimal as possible for the period during which the lockdown endures. b. The precise nature and range of liberty deprivations that may be affected pursuant to lockdowns and the steps that must be taken to ensure the variant of lockdown used is the least 	<p>Temporary lockdowns may be required for several operational reasons (security of inmates, integrity of facility, health protocols, searches, etc.) and often not appropriate for public disclosure.</p> <p>All Unit events are documented in the Unit Logbook in compliance with NSCS Policy 37.06 'Logbooks and Routine Documentation'.</p> <p>Inmates who are confined receive entitlements which are recorded on the 'Inmate Entitlement Report' in compliance with NSCS Policy 43 'Administrative and Disciplinary Close Confinement'. These documents are consistently audited for compliance.</p>

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<p>restrictive possible (e.g., time outside, exercise, limited programming, etc.)</p>	
<p><i>Recommendation 4:</i> That upon being detained in their cell for 20 hours or more in a 24 hour period, each detainee should be provided with the following:</p> <ul style="list-style-type: none"> a. Access to legal counsel: <ul style="list-style-type: none"> i. Number for legal aid ii. Forms for filing habeas corpus applications. iii. A signed and dated form (to be updated every 5 days) giving notice of: <ul style="list-style-type: none"> 1. The reasons for lockdown 2. Expected duration 3. Copy of the policy for the guarantees during lockdown 4. That the individual sign the form indicating receipt and then is given a copy of the signed version b. That every person in lockdown be visited by a mental health professional daily who is not accountable to the correctional facility to determine if the lockdown is causing psychological harm. 	<p>Inmates confined to their cell have access to staff 24/7 and may request to speak to a member of the clinical team at any time.</p> <p>If confinement is the result of discipline, details are captured on the Disciplinary Report and a copy given to the inmate as per NSCS Policy 42.00(7.6) 'Rules and Regulations'.</p> <p>If a temporary 'lockdown' is required due to other operational reasons, Supervisors explain to the inmate(s) why the confinement is taking place and that period of confinement is noted in the Unit Logbook. Inmates are provided <i>habeas corpus</i> applications upon request.</p> <p>Supervisors meet and speak with each offender daily and detail their status a minimum every 5 days on their individual Justice Enterprise Information Network (JEIN) profile</p>

C. What We Heard in 2021-22

I. Overview

In 2021-22, as in 2020-21, solitary confinement (isolation for 22 hours or more without meaningful human interaction) was practiced in Nova Scotia jails both on an individualized basis and a unit- or institution-wide basis. Individualized solitary confinement might take the form of disciplinary close confinement (a penalty imposed for an alleged or adjudicated breach of institutional rules) or administrative close confinement (as discussed above). In both cases, as we have demonstrated, Nova Scotia law and policy allow an indeterminate duration of solitary confinement based on successive requests and permissions by correctional authorities, contrary to international and domestic human rights law.

This year, as last year, calls to the VC phone line relating to close confinement mainly concerned facility- or unit-wide lockdowns. We were also contacted by individuals concerned about being moved among different units and/or receiving a series of different rationales for isolation of a nature and duration that met, or came very close to meeting, the definition of solitary confinement. Callers expressed frustration about placement in successive isolating spaces, including a minimal period of 14- or 10-day quarantine followed by placement on a range in lockdown, individualized health segregation, and/or disciplinary isolation.

The complaints we received were thus often not as simple as in the past where a clear period of confinement in a dedicated “close confinement unit” for a single or discrete disciplinary or administrative purpose could be distinguished from other sites or instances of in-cell isolation. *In short, a key theme in 2021-22 was the **circulation of individuals among different sites of individualized isolation as well as more generalized lockdown.***

II. Judicial Decisions Indicating Prolonged Solitary Confinement

Judicial decisions confirm that at least one person has been subject to more than 15 consecutive days of solitary confinement in Nova Scotia jails in the past year, in circumstances involving circulation among different units, including the COVID-19 quarantine-upon-admission unit.

In *Williams v Central Nova Correctional Facility*,⁹⁸ the self-represented prisoner established that they were in nearly 24-hour isolation from March 2 to May 9, 2022. It appears that they then remained in conditions of isolation at least until May 24, and perhaps beyond that date.⁹⁹ The judge described successive decisions and orders placing Mr. Williams in a series of isolation sites for health, disciplinary, and security reasons. The Justice then stated, in reference to the approximately two-month period immediately complained of:

Due to restrictions related to COVID and directed by Public Health, as well as security risks relating to Mr. Williams, it has been impossible to provide Mr. Williams with 2 hours each day out of cells. [NSCS staffperson] Mr. Verge testified that although public health restrictions have been dropped for the general public, the CNSCF is deemed a long-term care facility and remains subject to significant restrictions. These restriction [sic] in turn restrict Mr. William's ability to shower or have contact with legal counsel or family by telephone as these tasks must be done during the time out of cell.¹⁰⁰

It was not clear in *Williams*, or similar situations during the reporting period, that in-cell isolation for 22 hours or more per day was preceded or accompanied by attention to whether the individual had serious mental health disabilities likely to be exacerbated by solitary confinement – a circumstance engaging constitutional limits.¹⁰¹ Nor did the judge in *Williams* explain if any alternatives had been considered and, if so, why they were deemed unsuitable.

The judgment in *Williams* makes no mention of the *Charter*, or the various appellate and trial-level decisions from other Canadian jurisdictions suggesting that solitary confinement of the duration complained of may breach a prisoner's fundamental human rights to life, liberty, and security of the person and/or the right to be free of cruel and unusual treatment or punishment. The absence of any human rights-informed reasoning in this and similar cases raises questions about the obligations of judges, and counsel for the provincial Department of Justice, to ensure the fairness of *habeas corpus* applications brought by self-represented prisoners.¹⁰²

Another recent Nova Scotia court decision involving a self-represented *habeas corpus* applicant is *Seyforth v Nova Scotia (Attorney General)*.¹⁰³ This case involved fewer clear successive days of in-cell isolation (occurring in July and August of 2022), yet extremely limited time out of cell for the period in question. Specifically, the prisoner indicated that “over a period of nine days he was only allowed out of his cell for a total of 45 minutes and had no access to phone calls for most of the time.”¹⁰⁴ The judge accepted that, because of circumstances including the prisoner's belief they would be released imminently, they spent 6 further days following the initial 9 in quarantine with just 30 or 45 minutes out of cell per day, followed by transfer to a unit also locked down for an indeterminate period.¹⁰⁵

However, the judge in *Seyforth* prioritized deference to correctional and more specifically NSH-CHS authorities regarding COVID-19 protocols in the jails. The judge explained that, during the period complained of, restriction of time out of cell to just 30 or 45 minutes per day was necessitated in the COVID-19 quarantine-on-admission unit because of a COVID-19 outbreak in another unit at the facility.

The judge referenced section 81 of the CSR which requires that prisoners have a minimum of 30 minutes per day out of cell.¹⁰⁶ However, no mention was made of (perhaps the self-represented prisoner did not raise) precedent cases from other provincial appellate courts on constitutional limits to in-cell isolation – e.g., prohibiting any prisoner isolation for more than 22 hours per day

where individuals have serious mental health conditions,¹⁰⁷ and prohibiting solitary confinement for more than 15 days at a time in other cases.¹⁰⁸

In *Seyforth*, as in *Williams*, the judge emphasized deference to correctional and correctional health authorities with no mention of competing human rights imperatives. On that basis, the judge declared the reasonableness of in-cell isolation in excess of 22 hours per day in the circumstances, referencing public health rationales which were not examined in any detail nor evaluated against potentially less restrictive measures.¹⁰⁹

The VC is concerned that the pronouncements of Ontario and BC appellate courts regarding the constitutional limits on solitary confinement are being ignored in Nova Scotia.¹¹⁰ More generally, we are concerned that prolonged and indeterminate solitary confinement continues to be applied under other names, across multiple consecutive spaces and rationales, without transparent processes of public justification attentive to the human rights implications of these practices.

III. What We Heard About Unit-Wide Lockdowns

Beyond individual cases of solitary confinement across multiple sites in Nova Scotia jails, the experience of close confinement has been intensified and distributed across the entire prisoner population in the time of COVID-19. This reflects in part the requirement that all prisoners in the custody of Nova Scotia corrections spend time upon admission in a designated COVID-19 quarantine unit, for a minimum of 10-14 days.¹¹¹

In 2021-22, as in 2020-21, lockdowns were among the most frequently-mentioned and the most serious problems affecting the prisoners with whom we spoke. The majority of lockdown-related concerns came from CNSCF, followed by NNSCF. These concerns intensified as both NNSCF and CNSCF returned to double-bunking in the spring of 2022. Given the dorm-style accommodations at CBCF, we did not receive complaints about lockdowns from that facility. Prisoners who contacted the VC in 2021-22 indicated that the number of days locked down and severity of those lockdowns (hours out of cell per day) varied throughout the year and according to each range's rotational schedule. Some individuals at CNSCF kept careful records of lockdowns on the units in which they were held over a number of months. These reports indicate multiple consecutive days with little to no time out of cell.

For instance, a report about one unit indicated that, for about 10 consecutive days in mid-January, prisoners in that unit had less than an hour or no time out of cell – in addition to highly restricted time out (from less than two hours to a maximum of five hours) for three or four days on each end, immediately before and after that 10-day period.

The cumulative effect of prolonged lockdowns on prisoners' health, and opportunities for successful community re-entry, cannot be overstated. The fact that time locked down tends to be unpredictable and indeterminate adds to the frustration, as planned communications or activities

are suddenly interrupted, often with no way to notify lawyers, family, or other contacts. This can have grave effects where one is attempting to work on a bail plan or on one's criminal defence, as well as grave effects on many other legal and non-legal interests.

As in 2020-21, in 2021-22 lockdowns were, in prisoners' opinions (sometimes based on reported conversations with staff) often connected to short staffing. Staffing shortages continue to be chronic in provincial corrections.¹¹² The pandemic exacerbated pre-existing shortages, whether because of staff self-isolation requirements, associated child-care responsibilities, or refusals to work.

*Pandemic conditions have worsened problems long present in provincial jails, where **the majority of prisoners are held pre-trial in a state of enormous uncertainty, often locked down with little or no access to programming, and little or no way to deal with multiple unresolved health, family, financial, and non-criminal legal issues.** All this amounts to stress and frustration that may ultimately be directed at oneself, other prisoners and staff.*

Prolonged, indeterminate lockdowns have caused increasing frustration and tension, and grave health impacts among prisoners at both CNSCF and NNSCF. Those with prior experience of incarceration describe the past two years of lockdowns as unprecedented in terms of their frequency and perceived intensity and urgency. Callers from CNSCF and NNSCF indicated that it has "never been this bad" -- referencing time in cells, and limited or no access to the outdoors, programs or recreational equipment. Callers suggested that the stress of lockdowns results in more prisoner fights and self-harm.

A caller from CNSCF gave an example of the tensions, stating that people were "getting ready to cut each other over phone access." The caller added that "younger, smaller guys are not getting the phones at all on lots of days." As was the case in 2020-21, we heard that acting out in frustration (or being the subject of another's frustration) may in turn attract discipline, including time in close confinement or further time in-cell. This worsens the cycle of frustration and violence.

One caller from CNSCF commented on the further unpredictability of what have been called "rotational lockdowns":

*"We are locked down every second day because of staff shortages. They let us out of cells in groups, sometimes 2 or 3, sometimes 8. One time the whole range at once was let out, but not usually. **Some days no one gets out of their cell at all.** The guards say how many people will be let out, but it is up to the prisoners as to who it is who gets out. The younger weaker guys do not even*

ask to get out because they know they will get beaten up if they take a spot from someone higher in the pecking order.” – Caller from CNSCF

Three other callers confirmed that rotating time out on locked-down units lacked a clear or fair process of selection or entitlement. They said that staff simply ask who wants out, with incompatibility as the only criterion. This was said to result in inequitable time out of cell as between more and less powerful prisoners.

In sum, relentless intensity and frequency of lockdowns is producing unprecedented levels of desperation and despair among provincially incarcerated people in Nova Scotia. Some callers referenced fellow prisoners' suicide attempts and some described their own suicide attempts. We heard about how these incidents resulted in further time in isolation under “suicide watch”. We wrote a detailed individualized advocacy letter on this issue,¹¹³ and explore the problem in more detail below.¹¹⁴ We heard about severe mental health challenges arising from prolonged and indeterminate confinement, and that therapeutic responses to (as well as programming- or recreation-based ways of alleviating) psychological distress are absent.

IV. Solitary “Lite”

As noted, Canadian appellate courts have confirmed the unconstitutionality of solitary confinement (isolation for 22 hours or more without meaningful human interaction), ruling that solitary confinement for any duration is illegal where the individual has a serious mental health condition,¹¹⁵ and that otherwise solitary confinement is illegal when extended beyond 15 consecutive days.¹¹⁶ We have indicated that Nova Scotia law, policy, and practice relating to solitary confinement fail to meet human rights requirements, by 1) failing to prohibit solitary confinement of persons with serious mental health conditions; 2) failing otherwise to limit solitary confinement to a maximum of 15 days; and 3) failing to provide minimal procedural protections, including timely access to a hearing, a right to counsel, and independent reviews by a person external to corrections.

In our recommendations this year, we suggest that **the only way to eradicate impermissible solitary confinement is to ban the practice altogether in favour of alternative institutional and community-based regimes which better promote health and human rights, as well as public safety.**

However, we also reiterate and refine our 2020-21 recommendations, which urge clearer temporal and procedural limits to solitary confinement for as long as it continues to be part of Nova Scotia correctional policy and practice.

One issue that impedes progress on solitary confinement is the difficulty prisoners have definitively tracking periods of in-cell isolation or lockdown for the purpose of holding authorities to account. This is something we sought to address in our 2020-21 recommendations, by

suggesting mandatory documentation to be shared with prisoners. A further problem impeding progress relates to patterns of in-cell isolation fluctuating between days meeting the definition of solitary confinement and days falling just short of that 22-hours-in definition, potentially in institutional spaces not formerly recognized as sites of solitary confinement (i.e., solitary “lite”). We suggest that neither law nor correctional practice sufficiently reflects the seriousness of prolonged isolation falling short of but nonetheless resembling solitary confinement in key respects.

It was accepted by Justice Leask in *British Columbia Civil Liberties Association v Canada (Attorney General)*, and endorsed on appeal, that solitary confinement — even just for a few days — can lead to extreme psychological harm, and potentially self-harm, and that indeterminacy of solitary confinement exacerbates these harms.¹¹⁷ The Ontario Court of Appeal endorsed the findings of the trial judge in *Francis* that subjection of prisoners with serious mental health problems to any period of solitary confinement was cruel and unusual treatment.¹¹⁸

Experts have since observed that isolation for periods of less than 22 hours in-cell or 15 days consecutive can produce similar or identical harms to prolonged solitary confinement.¹¹⁹ This is consistent with experiences shared with the VC this year and last. Indeterminate periods of isolation, whether taking the form of administrative close confinement, unit-wide lockdowns, or some combination of these and disciplinary close confinement, are having severe effects on prisoner health – regardless of whether there are occasional days of three or four hours out of cell interspersed among successive days of solitary as formally defined. The harm is prolonged isolation, regardless of whether it is labeled as ‘solitary confinement’, ‘segregation’, or ‘lockdowns’. The harm accumulates over time, and is exacerbated by lack of clarity around when isolation will end.

Therefore, it is important not to lose sight of the cumulative effects of isolation, even if there happens to be a day or more of lesser restrictions within a longer period meeting or coming close to the strict definition of solitary confinement.

Further, where successive forms of or rationales for in-cell isolation are engaged (e.g., when someone is moved from the HCU, to the CCU, and then onto a living unit on lockdown), **it is important to track the total days in isolation and not “restart the clock” with each new institutional placement.** The focus of legal analysis – including proportionality analysis, weighing the harm to health and human rights against competing objectives like security or public health – should be on the individual’s critical interests and what alternative measures might better respect those interests. Such analysis must recognize that isolation skirting the edges of solitary confinement may also cause significant harm and thus attract legal censure.

A fundamental principle of prison law is that prisoners retain the same civil rights as all other community members but for those rights that are incompatible with their lawful sentence – or in

the case of remanded prisoners, a legal order of pre-trial detention.¹²⁰ Any further deprivation of liberty must be justified.

Prolonged in-cell confinement has clear knock-on effects, including impacts on mental health and social functioning, impeded ability to organize one's legal defence, and disruption of familial and other relationships as well as access to programming.¹²¹ Such treatment cannot become the new routine of provincial corrections.

Just as administrative convenience and short staffing cannot justify ongoing lockdowns, the same can be said of COVID-19 risk. That is, even public health purposes cannot justify indefinite subjection to solitary confinement without clear evidence that less restrictive alternatives including means of mitigating the harms of isolation have been considered and deemed unworkable on reasonable grounds.

We return to the example of "rotational lockdowns" involving individuals or small groups successively released from cell into dayrooms over a 24-hour period – including reports that some prisoners have practically no time out of cell during rotational lockdowns because staff permit stronger, more experienced prisoners to intimidate others not to "volunteer" over successive days. It is not clear what efforts have been made in these or other situations to reduce the time prisoners are confined to their cell and increase opportunities for social interaction, programming, communications, visits, and so on. More specifically, it is not clear that adequate efforts have been made to ensure that, at an absolute minimum, at least 2 hours of meaningful human interaction out of cell is accorded each day.

Finally, with all this in mind, we return to our earlier point regarding transparency. It should not require a formal access to information request, *habeas corpus* application, or other legal proceeding for a prisoner, or the VC, to verify how often, for what duration, and on which units lockdowns are being applied. This information is necessary in order to hold authorities to account and may have significant bearing, for instance, on remanded individuals' sentencing.

D. VC Recommendations: 2021-22

The VC reiterates recommendations 1 through 4 of our 2020-21 report relating to lockdowns. As described at the start of this section, those recommendations focus on minimum standards, including standards adopted by appellate courts in other provinces, on the limits of solitary confinement. Our recommendations also call for additional procedural protections where lockdowns or other close confinement are imposed – including requirements to provide prisoners with written reasons for the lockdown,¹²² and to ensure that prisoners have timely access to confidential communications with counsel.

We appreciated the NSCS responses to these recommendations. However, those responses do not fully assure us that constitutionally adequate substantive and procedural standards are in

force. For instance, while we are glad to learn that internal records are kept concerning lockdowns and that internal audits of these documents occur, this does not satisfy the public transparency required where fundamental human rights have been, by all accounts, intensively restricted on a routine basis. Public availability of patterns of lockdown should be assured, the same way that nursing homes in Nova Scotia must now publicize performance on key issues of public concern (e.g., pressure injuries).¹²³

Also on the process side, while NSCS indicates that all prisoners are told why they are in close confinement (including lockdowns) and are visited by unit supervisors daily – and that NSCS policy requires written reasons every 30 days – this is not sufficient in the circumstances. Written reasons for individualized and unit-wide isolation should be provided as soon as possible, to enable prisoners and their counsel to assess the legality of detention and weigh the merits of a legal challenge.

Finally, we have not yet received a response to our 2020-21 recommendations specifically apprising us of measures being taken to facilitate timely access to counsel during lockdowns and any other instances of close confinement.

We add to our 2020-21 recommendations on close confinement the following clarification and refinement of Recommendation 1 – directed at the Department of Justice and Nova Scotia government, as well as NSCS officials responsible for the development of policy:

Refinements of 2020-21 Recommendations (NS Government, DOJ, NSCS)

Recommendation 1A: That correctional law and policy be reformed to provide that prisoners subject to close confinement have timely access to a hearing in which to respond to the institutional rationales for imposing or extending close confinement, together with a right to be represented by legal counsel.

Recommendation 1B: That correctional law and policy be reformed to guarantee a right to timely independent review of close confinement by an official external to the correctional service.

We add to the above a further, new recommendation which departs from the procedural and substantive limits on solitary confinement that we have recommended so far, to articulate the more fundamental goal of abolishing the practice entirely. We offer this more fundamental recommendation in order to avoid simply tinkering at the edges of the grave harms of solitary

confinement, including the harm of subjecting persons with serious mental health conditions to any period of solitary confinement:

2022 Recommendation 5 (NS Government / Department of Justice, NSCS)

That correctional law and policy be reformed to *prohibit* solitary confinement for periods longer than 20 hours per day and to further identify a baseline of daily time out of cell (for instance, 10 hours per day) failing which procedural and substantive protections, including written reasons, shall be provided to prisoners.

COVID-19 Securitization

A. COVID-19 Admissions Quarantine

I. Background

Correctional, health, and public health authorities must ensure that any restrictions on the liberty of people in provincial custody, including restrictions premised on public health or safety rationales, are both necessary and proportionate.

The law setting limits on solitary confinement (discussed above) provides a baseline for evaluating the legality of COVID-19 isolation in Nova Scotia jails. While it is critical to ensure public health protections for those in provincial custody – as a distant second best to preventing criminalization or diverting individuals away from jail in the first place – medical quarantine should never impose conditions of solitary confinement.¹²⁴ International human rights organizations have united around the imperative that measures must be taken to mitigate the human rights impairing effects of quarantine, and that this form of separation must be distinct from solitary confinement as a matter of state policy and practice.¹²⁵

Beyond ensuring that no one with serious mental health conditions is subject to solitary confinement and that otherwise no one is subject to solitary confinement beyond 15 days – including on auspices of quarantine – it is necessary that those in quarantine, including the new admissions unit, have access to basic entitlements like health care, outdoor time, showers, programs, and communications with counsel, potential sureties, and/or family. This is all the more important for persons newly admitted to jail, given the urgency of making arrangements for

family and/or childcare; dealing with employment, housing, and financial matters; and devising an appropriate bail plan.

II. 2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
COVID-19 Quarantine Unit	
<p><i>Recommendation 5:</i> That the justification for liberty infringements during quarantine be recorded in a manner understandable to the prisoner, and provided to each affected prisoner.</p> <p><i>Recommendation 6:</i> That there be a daily reassessment of necessity of the infringement(s).</p>	<p>Unfortunately, the Covid quarantine unit necessitates a short confinement period for assessment and containment as per NS Public Health pandemic protocols. This is explained to the inmates upon admission and reinforced by supervisors daily. As soon as NS Public Health clears an inmate from this unit, they are transferred to an alternate living unit.</p>

III. What We Heard in 2021-22

COVID-19 health protection measures have affected Nova Scotia’s jails in numerous ways. One example is the introduction of units reserved for COVID-19 quarantine upon admission.¹²⁶ Many callers to the ECPJS phone line in 2021-22 expressed confusion about the rules around this mandatory quarantine.¹²⁷

At the start of the pandemic, a minimum of 14 days was spent in quarantine upon admission to a Nova Scotia jail.¹²⁸ By the summer of 2022, the period of quarantine on admission was reportedly a minimum of 10 days.¹²⁹ At least one correctional quarantine unit permitted only 30 to 45 minutes out of cell per day, for weeks at a time.¹³⁰

We understand from correctional authorities that the duration of in-cell isolation in the COVID-19 quarantine unit has fluctuated in ways that reflect public health considerations as well as considerations specific to the jail context, including staffing shortages and other constraints. The result for prisoners has been increasing frustration, exacerbated by a lack of transparency on the duration of mandatory quarantine on admission and the restrictions required.

For instance, prisoners in the mandatory quarantine-on-admission unit at CNSCF have been denied any access to the outdoors. No notice of this restriction nor justification in light of possible alternatives has been offered to prisoners, to our knowledge.

The issue is addressed briefly in *Seyforth*, in a passage emphasizing the need for deference to correctional and health authorities:

Airing court time for inmates housed on North 1, the dedicated COVID unit, has been denied on guidance from NSH as the airing court is not attached to the dayroom and those on the COVID-19 protocol would have to be moved through the facility to access the airing court. NSH has instructed that the risk of transfer of COVID is too great to allow this.¹³¹

The judge in *Seyforth* further accepted that it was impossible, in the period complained of, to have permitted prisoners in the quarantine-on-admission unit time out of cell for more than 30 minutes per day (the prisoner in question experienced these conditions for 14 consecutive days).¹³²

IV. Applying the Law to What We Heard

We acknowledge the importance of preventing COVID-19 transmission in correctional facilities. However, while public health expertise is essential for promoting the welfare of people in correctional facilities and in the wider community, deference to that expertise must not undercut the need for justification. The rule of law requires that officials (correctional, public health, or both) be required to justify liberty restrictions in light of demonstrated consideration of less restrictive alternatives.

If the alternatives are inconsistent with reasonable public health protection, that should be demonstrated, not accepted without express substantiation. Given that solitary confinement causes significant harm to health and human rights, officials must be put to the test to demonstrate that there is no more humane, yet still reasonably safe, way to advance public health purposes than to require solitary confinement. Indeed, officials must justify any time that prisoners spend locked down, with the expectations of justification increasing as time confined to cells increases.

We are not satisfied that NSCS, NSH-CHS, and Public Health officials have been held to the requisite standard of reasonable justification.

V. VC Recommendations: 2021-22

In light of the continuing confusion and frustration expressed by prisoners concerning the duration and conditions of COVID-19 quarantine, including mandatory quarantine on admission

– and the concern that the duration and conditions of quarantine have come close to, and at times met, the definition of solitary confinement – **we reiterate our 2020-21 recommendations 5 & 6**, which are grounded in the rule of law requirement that authorities publicly justify the liberty restrictions applied in this unit.

B. Lack of Transparency of COVID-19 Policies & Protocols

I. 2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Accessibility of COVID-19 Policies	
<i>Recommendation 7:</i> That written health policies and protocols governing COVID-19 measures be made publicly available.	This is the responsibility of Public Health and the Nova Scotia Health Authority and is within their scope of authority to respond.

We recognize that this recommendation falls primarily within the jurisdiction of NSH-CHS and Public Health authorities; however, NSCS authorities are also critical to the design and implementation of policies and protocols affecting the administration of Nova Scotia jails.

NSH-CHS did not provide a formal response to our 2020-21 report. However, NSH-CHS officials were diligent in providing timely responses to related email communications from the VC. As described further below, officials confirmed that certain policies (for instance, on testing and admissions pathways) are shared in common with other NSH facilities, while others (for instance, protocols for outbreak isolation dayrooms) are devised through weekly meetings of a COVID-19 joint committee involving NSH-CHS, NSCS, Public Health, and Infection Prevention and Control representatives. NSH-CHS officials further speculated that pandemic trends appear to be moving in the right direction such that restrictions may be reduced in coming weeks and months.¹³³

II. What We Heard in 2021-22

Apart from prisoners’ confusion about what to expect in the admissions quarantine unit, many who called the VC phone line expressed frustration about a more general lack of transparency and accessibility of COVID-19 policies. Multiple callers asked for written policies on COVID-19 quarantine, including duration of quarantine upon admission and what entitlements one should expect (e.g., outdoor exercise, minimum time out of cell, access to showers, and lawyer or family

communications). People also expressed confusion about jail-wide policies related to testing and prevention, visits, programming, and other routines and protocols newly introduced or fundamentally disrupted since March of 2020. Failure to make the relevant policies known and thereby challengeable (including in cases of misapplication) was a frequent concern as the pandemic passed the two-year mark.

In the spring of 2022, we asked both NSH-CHS and NSCS to provide us with all written policies or protocols relating to COVID-19 regimes specific to the jails.

As noted above, we were advised that policies regarding testing and other admission processes were held in common with other NSH facilities,¹³⁴ while other, jail-specific policies were created and modified on an ongoing basis through weekly meetings of a joint committee of NSCS and NSH-CHS, NS Infection Prevention and Control and Public Health.¹³⁵ We were told that these policies were not written given the need to be responsive to changing conditions. For instance, we were advised that there are no policies addressing isolation in outbreak dayrooms, and that instead NSH-CHS, and in turn NSCS, follow the direction of Public Health and the Medical Officer of Health as situations progress.¹³⁶

The VC recognizes the need for responsiveness to community epidemiology and the special challenges of public health protections in a jail environment. On this basis, we and others have emphasized the importance of increased investment in and recourse to supportive community alternatives to incarceration in the time of COVID-19.

Yet just as it would be unacceptable for COVID-19 rules affecting the public as a whole to be distributed only through the spoken statements and shifting practices of various officials, so is it unacceptable in a correctional facility for such critically important rules to remain unwritten, with no accessible, centralized, authoritative repository.

There is a particular need for clarity of jail-specific COVID-19 policies which impact fundamental human rights in an institutional environment marked by strict hierarchical control and pervasive adversarialism. Reliance on unwritten rules increases the chances of conflict – of misunderstanding, misapplication, and abuse. Moreover, people in custody are under great stress and may not always absorb what is stated to them orally. They, their families, and legal counsel require clear, written rules in order to protect against arbitrary applications of power.

III. VC Recommendations: 2021-22

We reiterate our 2020-21 Recommendation 7, which is that NSH and Public Health, in coordination with NSCS, produce accessible, written COVID-19 policies specific to the jail environment.

In light of what we heard this year, we wish to add to and refine Recommendation 7 as follows:

Refinements of 2020-21 Recommendations (NSH-CHS, Public Health, NSCS)

Recommendation 7A: NSH-CHS and Public Health, in coordination with NSCS, should produce accessible, written COVID-19 policies specific to the jail environment. Each policy should reference the source of decision-making authority and describe how a prisoner may challenge failure to adhere to it. The policies should deal with the following subjects:

1. Terms and conditions of COVID-19 quarantine on admission (including minimal duration, maximum time in-cell per day, and rights and obligations of those quarantined);
2. Terms and conditions of COVID-19 quarantine in outbreak dayrooms (including minimal duration, maximum time in-cell per day, and rights and obligations of those quarantined);
3. Access to COVID-19 testing, as well as consequences of refusal to test;
4. Access to COVID-19 vaccinations, including any rules distinguishing those who are not vaccinated; and
5. Any other situations where COVID-19 outbreak control is presented as justification for restricting prisoner entitlements or supports (e.g., lawyer visits, in-person visits, library access, programming, volunteer or service provider entry).

Below, in the Special Topics section, we return to the ongoing disproportionate impact of the COVID-19 pandemic on prisoner rights. There we call for a whole-of-government approach to preventing COVID-19 spread and associated human rights violations in provincial corrections, specifically through renewed commitment to intersectoral action in furtherance of preventive decarceration together with a secondary emphasis on increasing COVID-19 vaccination rates among criminalized and incarcerated populations. These are in our view among the most pressing pragmatic means of reducing the immense damage being caused by ongoing COVID-19 securitization in Nova Scotia jails.

Other Restrictions and Deprivations

A. Exercise and Access to Air Court

I. Background

The *Mandela Rules* require that prisoners are to be offered at least one hour of outdoor activity per day.¹³⁷ The CSA is less generous, mandating that at least 30 minutes of daily outdoor time be offered.¹³⁸ There are a limited number of bases on which outdoor exercise can be denied under the CSA, all of which (other than weather-related reasons) require individualized justification based on risk to institutional security or others' safety.¹³⁹ Those reasons must be stated to the prisoner and recorded in writing.¹⁴⁰

II. 2020-21 Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Time Outdoors	
<p>Recommendation 8: That correctional staff must ensure that incarcerated people are offered their daily entitlement to outdoor time.</p> <p>Recommendation 10: That, where prisoners are denied access to outdoor exercise, correctional staff ensure that they are advised in writing of the reasons for the denial, and that such reasons be restricted to those enumerated in section 57(2) of the CSA.</p>	<p>Inmates are offered daily outdoor time in compliance with NSCS Policy 44.01 'Offender Entitlements'. If that entitlement is not provided, Officers must document the reason for the denial of that entitlement and submit it to his/her supervisor.</p>
<p>Recommendation 9: That adequate weather-appropriate clothes (e.g., shoes, coats) be provided to facilitate outdoor time.</p>	<p>All correctional facilities procure and supply inmates with weather appropriate coats. These coats are shared and therefore routinely laundered and are replaced if damaged.</p>

III. What We Heard in 2021-22

We received continuing reports in 2021-22 that time outdoors is limited or denied. We received multiple complaints – mostly from CNSCF – that prisoners were denied time outdoors for days or weeks at a time. This was reported to be a consequence of staff shortages, lockdowns, or both. We also heard that even when time outside is available, no fitness/recreation equipment is available. This was a concern coming specifically from individuals incarcerated at CNSCF.

IV. VC Recommendations: 2021-22

We reiterate recommendations 8 and 10 from last year. Utmost efforts must be made to facilitate access to appropriate spaces for exercise, including at least 30 minutes per day of fresh air. This is all the more important in the time of COVID-19. Where access is not facilitated, correctional staff should directly advise prisoners of those reasons, and where requested, provide a full record of dates such entitlements were denied and on what basis.

Administrative convenience is no justification for denying fundamental human rights.

B. Cleanliness and Hygiene

I. Background

The *Mandela Rules*¹⁴¹ require that all parts of the prison be kept “scrupulously clean”.¹⁴²

II. 2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Cleanliness of Units Within Facilities	
<i>Recommendation 11:</i> That there be a mechanism of accountability regarding cleanliness of facilities and that all prisoners be given proper cleaning supplies.	All inmates are provided cleaning supplies daily for their use. Inmates in the Close Confinement Unit may not be provided these items pending their Internal Security Assessment and/or risk level. Inspections of all inmate living areas are conducted daily by Unit

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
	Supervisor to ensure hygiene standards are being met.

Prior to NSCS’s response in September 2022, in February 2020 and again in January 2021 the superintendent of CNSCF communicated to the VC that cleaning on the units is performed by trusted inmates who request the position, meet applicable criteria and are paid a stipend, and that CCU cells are cleaned by outside personnel.¹⁴³

III. What We Heard in 2021-22

As was the case in 2020-21, individuals calling from CNSCF described unhygienic conditions in the CCU, health segregation cells, and elsewhere in the facility. We were advised that prisoners continue to lack access to adequate supplies to keep their individual cells and common living areas clean.

Some callers in 2021-22 indicated that they were able to request and receive cleaning materials or use their personal hygiene products (like shampoo) to clean cells. They reported, however, that CCU and other areas were sometimes covered in others’ blood and feces.

We were further advised that prisoners were dissatisfied with inadequate cleaning of cells and phones used by prisoners who were COVID positive. In CCU or health segregation, for example – where cordless phones are used – we were advised that the phones are not cleaned when being passed from a cell with a COVID positive person to a person who does not have COVID-19.

We also heard from multiple prisoners about a rodent infestation at CNSCF. We were told that the presence of rodents, amidst lockdowns, COVID-19, and other stresses of in-custody life was hard on mental health.

IV. VC Recommendations: 2021-22

We are pleased that there are processes of unit oversight and accountability regarding cleanliness. However, it is essential that prisoners are given equipment and products necessary to keep their living spaces clean, that common spaces and spaces into which new prisoners are placed are kept clean, and that special attention is paid to the cleanliness of phones and other items passed between prisoners. **We therefore reiterate recommendation 11 from 2020-21.**

We add to it the following:

Refinements of 2020-21 Recommendations (NSCS)

Recommendation 11A: That NSCS take all measures required to control the reported rodent infestation at CNSCF and to prevent future infestations.

C. Access to Showers

I. 2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Access to Showers	
<p><i>Recommendation 12:</i> That prisoners be enabled to access at least one shower daily, regardless of whether in lockdown or close confinement or some other form of deprivation of residual liberty.</p>	<p>Inmates in confinement receive a shower daily and it is recorded on the ‘Entitlement Report’. If a shower is denied for safety/operational reasons, Officers must document same on the Entitlement Report as per NSCS Policy 43 ‘Administrative and Disciplinary Close Confinement’.</p> <p>Every attempt is made to allow inmates in a larger living unit on a temporary ‘lockdown’ access to shower. Depending on number of inmates in the living unit and the length of time each inmate takes to shower, this may carry over into the following day</p>
<p><i>Recommendation 13:</i> That time for showering is not “subtracted” from someone’s daily minimum allotment of time out of cell. This is especially important in circumstances where people are afforded very little time out of cell, as is the case with people in close confinement,</p>	<p>Inmates in the Close Confinement Unit receive a shower daily in addition to time outdoors.</p> <p>Inmates in a larger living unit on a temporary ‘lockdown’ prioritize their own entitlements to</p>

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
who according to Nova Scotia’s Correctional regulations are entitled to be out of cell for a minimum of just 30 minutes every 24-hour period.	ensure that as many inmates are permitted time out of their cell as possible each day.

II. What We Heard in 2021-22

This year, we continued to hear from callers who were struggling to access showers regularly. This issue was exacerbated by frequent unit-wide lockdowns. For example, in *Williams v Central Nova Correctional Facility*, the Justice presiding over the *habeas corpus* application noted that lockdowns severely limited the ability of the prisoner-applicant to shower on a regular basis.¹⁴⁴

Likewise, in our reporting letter to the superintendent of CNSCF in December 2021, on concerns we heard from prisoners that month, we wrote:

As noted previously our greatest number of calls related to lockdowns on many units but especially on North 2, where multiple calls indicated that most days prisoners are out of cells for no more than two hours. **This extremely limited time out of cell creates difficulties in terms of having sufficient time to take a shower and make necessary phone calls to legal counsel and/or family.**

We heard about this same issue from a caller on North 2 at CNSCF in May 2022. Although we were not able to corroborate his claim, he indicated that there were only two working showers for the entire unit, with many others in disrepair. This concern echoed comments regarding failures to adequately maintain the shower facility at CBCF. At that facility, we heard in December 2021 that the shower area was covered with black mould which spread from the floor, along the walls, and onto the ceiling. We heard that many prisoners – and even some staff – had raised concerns about the mould with senior management, but that nothing had been done.

III. VC Recommendations: 2021-22

In light of our ongoing concerns, **we reiterate recommendations 12 and 13** from last year’s report.

D. Communications - General

I. Facility Communications & Information about Jail Rules and Processes

2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Intra-Facility Communications	
<p>Recommendation 14: That pursuant to the Mandela Rules, upon admission each individual be given written information regarding the law, regulations and policy governing the facility, as well as their rights, including how to access legal advice, further information in relation to prison law, and how to make complaints and requests.</p> <p>Recommendation 15: That the written information provided should also include the prisoners' obligations and any disciplinary sanctions should they be breached, as well as any other necessary information to assist the individual to adapt to life in prison.</p>	<p>Admission Officers as well as Case Management Officers orient each inmate to the facility in compliance with NSCS Policy 34.00 'Orientation and Security Assessment'. This includes the rules, regulations, and facility disciplinary process. The Inmate Handbook is also available in hard copy and/or on a computer tablet for their review when requested.</p>

What We Heard in 2021-22

We noted in 2020-21 that there was no orientation handbook at CNSCF. Prisoners told us then, and again this year, that they rely on each other to learn about facility rules, policies, and procedures.

We were advised in February 2020 that the handbook was being updated, and that a copy would be provided to ECPJS. This has still not happened – although a copy of the 2016 edition of the handbook is available online.¹⁴⁵

The formal response to our recommendations suggests that information is provided orally by the Orientation Officer during Orientation and Admission, and that the handbook is available in hard copy or on tablet, on request. We will seek to verify with prisoners their familiarity with and experiences of these opportunities for learning about facility processes and rules.

VC Recommendations: 2021-22

We are pleased to hear that efforts have been made to distribute information about facility processes and rules not only at orientation but also through tablets available on unit ranges. We will check in with prisoners concerning the accessibility and adequacy of these ways of making facility rules known. Until we have confirmed that the materials in question are accessible and up to date, **we reiterate recommendations 14 and 15 from our 2020-21 Report.**

II. Communications with Police

What We Heard in 2021-22

We were advised of a limitation on communications with the Halifax Regional Police or RCMP from NS jails; specifically, that the number for police is blocked on the unit phones. Callers this year complained that they could not contact the police about a stolen car or with requests for documents when self-represented. It is possible they might be able to make such a call from one of the office phones, but this requires permission of a staff member, and prisoners may not wish staff to know they are calling the police.

VC Recommendations: 2021-22

In light of these concerns, the VC makes the following new recommendation, not addressed in our 2020-21 report:

2022 Recommendation 6 (NSCS)

NSCS should ensure that phone calls to police are not blocked by the facility phone system.

E. Access to Legal Counsel

I. Impact of Lockdowns on Access to Counsel

Background

Nova Scotia law acknowledges that provincially incarcerated people have a right to access their lawyers.¹⁴⁶ Correctional authorities have a duty to facilitate prisoners' access to counsel to prepare their defence and otherwise to protect their rights in prison. This includes the right to retain and instruct counsel when facing major disciplinary penalties or other correctional decisions affecting liberty, such as close confinement.

2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Legal Communications	
<i>Recommendation 16:</i> That provincial correctional authorities establish mechanisms to ensure all prisoners, regardless of lockdown, are able to maintain access to counsel.	NSCS prioritizes inmate access to his/her legal counsel via in person visits, video conferencing and/or cellular telephone. Inmates are not denied access to their legal counsel.

What We Heard in 2021-22

Challenges accessing lawyers by telephone have persisted over the course of the pandemic. For much of 2020-21, no lawyers could enter the jails. Phone calls and videoconferencing enabled some access, yet were a poor substitute. Staffing shortages and continuing lockdowns, as well as new institutional requirements to support jail-based court proceedings held by videoconference, affected access to telephone or videoconference communications with lawyers.

In 2021-22, lawyers have had on-again, off-again in-person access, depending on community epidemiology and facility outbreaks. However, even with increased opportunities for in-person access, scheduling has often been difficult.

In 2021-22, individuals continued to report that the limited time permitted out of their cell (during frequent lockdowns) often does not align with their lawyers' availability. They report that this has interfered with court processes, resulting in adjournments and participants serving more

time on remand because they are unable to get information concerning disclosure or plea offers, or engage in other necessary preparation for hearings.

In our 2020-21 report, we noted that prisoners had suggested that cordless telephones or cell phones could be used on units experiencing extended lockdowns in order to facilitate greater telephone access to lawyers.¹⁴⁷ This year, we were advised by correctional officials that cell phones were purchased for use during lockdowns, with priority placed on persons newly admitted to the facility and seeking to make bail arrangements. This is a positive development. However, our callers continue to observe that they are often unable to access counsel until the day of their court appearance.

VC Recommendations: 2021-22

We reiterate our 2020-21 recommendation 16 on access to counsel. We look forward to learning more about efforts on the part of correctional officials to facilitate access to counsel, including by enabling cell phone use on the ranges during lockdowns.

II. Cost of Phone Calls to Lawyers

2020-21 VC Recommendations and NSCS Response

In 2020-21, the cost of calls was noted as a barrier to accessing counsel – including for Legal Aid clients who rely on private bar certificate lawyers rather than NSLA staff lawyers for representation on legal matters, criminal and non-criminal (e.g., child protection). Prisoners expressed the concern that those who cannot afford a call must rely on the generosity of staff.

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Legal Communications	
<p><i>Recommendation 17:</i> That provincial correctional authorities institute policies and practices to ensure that prisoners have meaningful access to <u>free</u>, private (unrecorded) communication with their counsel, regardless of whether the counsel is a staff legal aid lawyer or a private lawyer.</p>	<p>Inmates have free, private access to their legal counsel as per NSCS Policy 37.14 ‘Communication’.</p>

What We Heard in 2021-22

In the past year, prisoners again raised the concern that they could not afford calls to private lawyers who, we were told, did not qualify as free calls in the same manner as the Legal Aid line.

In 2020-21, the superintendent of CSNCF indicated that granting free telephone calls to prisoners (on phones other than the pay-based range phones) is done at the discretion of staff. He added that many legal calls are facilitated each day, and that calls to NSLA offices are free from the unit telephones. The superintendent expressed openness to exploring how free calls to private lawyers might be facilitated, for instance by enabling lawyers to register with the facility for this purpose the same way Legal Aid and other entities are registered. This past year, however, we were advised that arranging for free calls for lawyers outside Legal Aid may be administratively cumbersome or impossible.

As this appears to be an ongoing concern for prisoners with non-Legal Aid counsel (including certificate lawyers), we will continue to explore the possibility that private lawyers might register for free call status¹⁴⁸ – a status that should be paired with recognition that these are *confidential* calls.

III. Confidentiality and Privacy of Calls to Lawyers and Other Justice

Officials or Legal Information Service Providers

Background

Solicitor-client privilege is a “fundamental civil and legal right” which must be assiduously protected in criminal law matters.¹⁴⁹ Correctional authorities must therefore ensure that facility-based lawyer calls are “not vulnerable to breaches of solicitor-client privilege, intentional or accidental.”¹⁵⁰

The CSA provides that telephone communications with lawyers are confidential and cannot be recorded.¹⁵¹ However, in 2021-22, as in 2020-21, our communications with prisoners indicated that not all staff or incarcerated people know this, indicating that greater awareness of the right to confidential lawyer calls must be promoted within the facility. Further, many prisoners call their lawyers from the dayroom telephone lines, which we understand to be presumptively or potentially recorded.

2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Legal Communications	
<p><i>Recommendation 17:</i> That provincial correctional authorities institute policies and practices to ensure that prisoners have meaningful access to free, <u>private</u> (unrecorded) communication with their counsel, regardless of whether the counsel is a staff legal aid lawyer or a private lawyer.</p>	<p>Inmates have free, private access to their legal counsel as per NSCS Policy 37.14 ‘Communication’.</p>
<p><i>Recommendation 18:</i> That provincial correctional authorities ensure that any correspondence between a prisoner and their lawyer (or any other class of confidential correspondence) is not opened nor read.</p>	<p>Inmates have free, private access to legal aid – and other confidential correspondences - as per NSCS Policy 37.14(2) ‘Privileged Communication’ Persons in custody may also access their own private counsel.</p>
<p><i>Recommendation 19:</i> That provincial correctional authorities post policies putting prisoners on notice of their right to communicate with their lawyers in confidence and adopt mechanisms to ensure that this right is assiduously protected without exception.</p>	<p>Agreed. Draft posting to be developed.</p>

What We Heard in 2021-22

As noted, in 2021-22, the VC continued to hear concerns about inadequate privacy of telephone calls with lawyers.

*While we have been assured that the recording function can be disabled for lawyer calls, we are not yet confident that there is a reliable system for ensuring this is done. Multiple callers from all facilities expressed concern that **prisoners could not access unmonitored calls to their lawyers.***

This was a particular concern among people with non-Legal Aid lawyers, including lawyers whose private lines are not registered in the facility phone system.

Further, we were told that **people in custody are not given a private space in which to call their lawyers but must instead do so on the open unit in close proximity to other prisoners and staff.** We were told that lawyers were also concerned about having conversations on monitored phones in public locations, where conversations could be overheard.

One prisoner reported that there had once been designated office space in CNSCF where unmonitored, private calls to legal counsel could be made; however, since the pandemic began, these rooms are rarely if ever available. We heard similar complaints from other facilities. Regarding CBCF, we heard that access to the “private, office phone” had been discontinued for all prisoners because someone had used it to call a “no contact” number.

A further need that self-representing prisoners raised is the ability to make non-monitored legal calls not only to lawyers but to the court, Crown, or other representatives of the legal system and providers of legal information. We argue that the communications of self-represented parties not only with lawyers but also with third parties on matters currently or prospectively before the courts triggers “litigation privilege” – the purpose of which “is to create a ‘zone of privacy’ in relation to pending or apprehended litigation.”¹⁵² Therefore these calls should not be monitored.

We were further advised that the 20-minute time limit imposed on calls is not sufficient to meet the needs of the self-represented who may be placed on hold or otherwise forced to navigate complex bureaucracies and information while preparing their own case.

Finally, **prisoners also continued to raise concerns about mail from counsel being opened before being given to them.** We repeat that correspondence between a prisoner and their lawyer is privileged. It is exempt from the superintendent’s authority under section 56 of the CSA to read and inspect parcels and correspondence coming into or going out of the facility.

VC Recommendations: 2021-22

While we appreciate the commitments expressed by correctional officials to respect confidentiality of lawyer-client communications, our experience remains that prisoners are at best uncertain about whether phone calls on unit phones are being recorded. Moreover, they often have no alternative to having sensitive conversations about their legal interests in spaces where they cannot help but be overheard.

We therefore reiterate recommendations 17-19 from our 2020-21 Report. We add the following refinements to recommendation 17:

Refinements of 2020-21 Recommendations (NSCS)

Recommendation 17A That unmonitored calls be assured where prisoners engage in communications with the courts, Crown, police, or other representatives of the legal system, as well as providers of legal information such as the Legal Information Society of Nova Scotia and East Coast Prison Justice Society.

Recommendation 17B That prisoners be afforded opportunities to use non-dayroom phones for unmonitored calls for periods exceeding the default 20-minute limit on dayroom phones where engaged in preparing their defence.

F. Contact with Friends and Family

I. Family & Community Communications

Background

The Mandela Rules state that prisoners should be able to communicate with family and friends regularly through writing as well as phone and digital/electronic means, in addition to in-person visits.¹⁵³ Nova Scotia law leaves many of these essential matters unaddressed or addressed only in policy; however, in this as in other areas of correctional law and practice, the policies and discretionary decisions of authorities must respect domestic and international human rights.

2020-21 VC Recommendations and NSCS response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Family Communications	
<i>Recommendation 20:</i> That, regardless of lockdowns, prisoners be provided sufficient time out of cell to contact family and friends, reflecting reintegration as a mandate of NS Correctional Services. The CSA, regulations	NSCS supports and fosters inmate reintegration. Those inmates in a larger living unit on a temporary 'lockdown' have access to telephones, mail and laptops for video visits (if approved) to maintain their reintegration.

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
and policy should be amended to reflect this requirement.	
<i>Recommendation 21:</i> That, should lockdowns persist, additional methods must be put in place to enable communication, including through the use of cordless telephones.	NSCS supports and fosters inmate reintegration. Those inmates in a larger living unit on a temporary 'lockdown' have access to telephones, mail and laptops for video visits (if approved) to maintain their reintegration.

What We Heard in 2021-22

Prisoners continue to report that the barriers to telephone communication with lawyers also apply to communications with family. However, we welcome developments reported to us by authorities regarding increased access to video calls in all facilities and recent access to instant messaging services via tablets at NNSCF. While there have been delays in distributing the tablets to the other facilities, we understand that this continues to be the plan.

VC Recommendations: 2021-22

We reiterate our 2020-21 recommendations 20 & 21, while welcoming the above developments regarding (as yet, limited) access to video calls and instant messaging.

We add that video calls and instant messaging should only be considered a supplement to, and not a substitute for, in-person visits, including contact visits.

II. Family & Community Visits

2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Family Communications	
<i>Recommendation 22:</i> That a written, publicly available policy be created regarding contact	Contact Visits are reviewed and approved on a case-by-case basis, taking into account facility

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
visits, developed in consultation with community stakeholders, including formerly incarcerated persons and advocacy organizations for people in prison, with particular attention paid to the circumstances of parents who are incarcerated.	security concerns, visitor concerns and duration of custody.
<i>Recommendation 23:</i> That a resumption of visits (following over twelve months of COVID-19 suspension of visitation) be instituted immediately, in consultation with Public Health, to reflect parity with resumption of visits by essential supporters and others in other congregate facilities across the province.	Visitation program will be reinstated at the earliest opportunity once NS Public Health authorizes same.

What We Heard in 2021-22

Following the onset of COVID-19, family and community visits (along with visits with counsel) were suspended for many months. As noted above, visits with counsel were periodically suspended and then resumed as the pandemic progressed.

We heard that individual visits with family and other community members were gradually reinstated in the spring of 2022, starting with just one visit per month, and eventually increasing to one visit per week.

The visiting policy in place in the summer and fall of 2022 permitted prisoners to schedule one in-person visit from family/community members per week and to visit with only one person at a time. This made it difficult for some family members to visit. For instance, **callers said that the restriction to one person per week, and one person at a time, meant that elderly relatives, visitors with mobility impairments, and children who required accompaniment were unable to visit.**

Prisoners have been able to arrange visits with multiple people over video. This has been appreciated. However, it is not the same experience as an in-person visit, particularly with children. The lack of face-to-face visits strains prisoner mental health and relationships with family and others on the outside.

More generally, since March 2020, prisoners have expressed confusion about whether or how visits may be accessed and what the rules around those visits are. We reiterate our earlier point that institutional policies, including shifting policies relating to COVID-19 restrictions, should be communicated clearly and in writing.

We also reiterate the importance of contact visits whereby prisoners can hold hands with and otherwise embrace children, spouses, parents, and others with whom they are close. COVID-19 has made contact visits an even more remote possibility for prisoners who have long observed that correctional discretion to grant these visits is rarely accorded, and is based on considerations that are **unwritten, indeterminate, and as such arguably unfair.**

VC Recommendations: 2021-22

We **reiterate recommendations 22 and 23** from last year.

G. Programs

I. Background

Section 59 of the CSA states that, except where a prisoner cannot participate for health-related reasons, the facility superintendent “shall ensure that every offender works or participates in programs at a correctional facility.”¹⁵⁴ Programming refers to systematic opportunities to occupy one’s mind, build knowledge and skills, etc.

The *Mandela Rules* require that facilities have a library and section 57 of the *CSR* mandates that prisoners have an opportunity to access the facility library at least once per week.¹⁵⁵ The *Mandela Rules* further indicate that qualified spiritual representatives must be permitted to visit with prisoners and hold regular services, and that the institution must enable each prisoner to express their spirituality, including through access to books of religious observance and attendance at services.¹⁵⁶ For Indigenous prisoners, these entitlements must necessarily include smudging, access to other Indigenous spiritual practices, and time with elders.

II. 2020-21 VC Recommendations and NSCS response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Programming and Reading Material	
<p><i>Recommendation 24:</i> That as much programming as possible is provided in the context of shifting pandemic conditions, for example, by modifying through video programming, and enabling entry of certain limited program providers, and then fully reinstating programs as soon as possible.</p>	<p>All facility programs are regularly reviewed by the Covid Subcommittee (Public Health, Dr. Lisa Barrett and NSCS) and as many inmate programs will resume full function at the earliest safest opportunity and in accordance with NS Public Health mandates.</p>
<p><i>Recommendation 25:</i> That access to books through the library is provided as far as is possible in the context of shifting pandemic conditions, for example either bringing books to the day rooms, or allowing small groups to visit the library at a time, and that upon it being medically safe, full access is returned to the library.</p>	<p>Reading material has been brought to living units for inmate use. All facility programs are reviewed weekly by the Covid Subcommittee and as many inmate programs will resume full function at the earliest safest opportunity.</p>
<p><i>Recommendation 26:</i> That there be public reporting of when, why, and to what degree programs, religious services, and reading materials are available, and when full access will be reinstated.</p>	<p>Any/all facility programs will be reinstated at the earliest opportunity once NS Public Health authorizes same. The corresponding agencies and representatives will be contacted accordingly.</p>

III. What We Heard in 2021-22

We have continued to receive reports of very limited or no access to the library, chapel, in-person educational programs, Alcoholics Anonymous, or any other programming or activities. The in-person facilitated small group conversations and human rights monitoring of the VC have also continued to be suspended as of December 2022.

We have also heard that **there is no access to Bibles, Qurans, or prayer mats due to restrictions on religious leaders and clergy visiting the facilities.**

These suspensions of programming continue to be attributed to COVID-19. However, nursing homes, hospitals, and other congregate facilities have long had more relaxed visitation terms, and recreational and spiritual offerings, than correctional institutions.

Cessation of programming continues to gravely affect mental, physical, and spiritual well-being among provincially incarcerated people, and will likely make community re-entry harder.

IV. VC Recommendations: 2021-22

We reiterate recommendations 24 through 26 from 2020-21. We emphasize in particular the importance of allowing the VC to resume in-person small group facilitated conversations about prisoner experiences of, and perspectives on, jail conditions.

H. Discrimination, Including Allegations of Racism and Lack of Access to Smudging

I. Background

The Nova Scotia *Human Rights Act* prohibits discrimination on a set of listed grounds, including race, disability, religion, sex, sexual orientation, gender identity, and gender expression.¹⁵⁷ Section 15(1) of the *Charter* also prohibits discrimination on enumerated and analogous grounds.

Being a “prisoner” (i.e., someone in custody) is not among the prohibited grounds of discrimination listed in subsection 5(1) of the Nova Scotia *Human Rights Act*. However, a human rights complaint may be made where a prisoner or subgroup of prisoners is singled out for adverse treatment on the basis of one or more listed grounds (e.g., race, disability, age, etc.).

II. 2020-21 VC Recommendations and NSCS Response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Concerns related to the provincial <i>Human Rights Act</i> , including allegations of racism and access to smudging	
Recommendation 27: That NS Correctional Services consult with African Nova Scotian and Indigenous prisoner representatives, and other community stakeholders and organizations	NSCS continues to consult with and engage the services of our culturally and ethnically diverse group of volunteers. Various Culture Awareness Programs are offered within the

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
that live and work within communities that are the target of racism, to better understand how to address and prevent racism.	correctional facilities. There are also two Indigenous Liaison Officers in the province as well as an African Nova Scotian Liaison Officer that assist the division in this endeavour.
<i>Recommendation 28:</i> That correctional staff must be diligent in ensuring daily access to smudging where requested.	Smudging is offered daily in compliance with NSCS Policy 31 ‘Offender Programs’.
<i>Recommendation 29:</i> That, where it is not feasible to facilitate smudging for whatever reason, reasons should be provided, as well as a timeline for when smudging may resume.	If smudging cannot occur for operational or weather-related reasons, inmates are informed of same and is rescheduled for the next safest and earliest opportunity.

III. What We Heard in 2021-22

We have not been able to assemble data to follow up on concerns reported to us in 2020-21 that African Nova Scotian and Indigenous prisoners are treated worse than other prisoners. For instance, some callers in 2020-21 alleged that such prisoners were more likely to spend time in the CCU. We have refined our recommendations from last year by calling for NSCS to share disaggregated race-based data on incidences of and length of stay in close confinement, comparable to existing reporting on the proportion of sentenced and remanded prisoners who are African Nova Scotian or Indigenous.

As discussed in the Special Topics section, below, **we are concerned that there have been compliance issues with our 2020-21 Recommendations 28 and 29, as well as with existing policies noted in the above response from NSCS.** We are also concerned that there has been a failure to support community-endorsed Elders within the correctional system as a means of providing reasonable access to Indigenous spiritual knowledge and practices.

IV. VC Recommendations: 2021-22

We reiterate recommendations 27 through 29 from our 2020-21 report. Further basis for our reiteration of recommendations 28 and 29 is provided below, under “Special Topics 2021-22,” which includes in-depth analysis of NSCS duties in light of reported denials of access to Indigenous spiritual supports.

We add to last year’s recommendations the following:

Refinements of 2020-21 Recommendations (NSCS)

Recommendation 27A: That NSCS collect and publish data on incidence and length of stay in close confinement, disaggregated on the basis of race (including African Nova Scotian status) and Indigeneity, and distinguishing discrete forms of and/or rationales for close confinement.

I. Inmate Committees

I. Background

Inmate committees are representatives of people incarcerated in a given facility whose role it is to liaise with administration on matters of concern. The governing statute of the federal correctional service mandates that there be inmate committees.¹⁵⁸ There is no similar mandate in Nova Scotia’s provincial correctional law; however, correctional and justice leaders have acknowledged the importance of supporting inmate committees in order to give prisoners a means to communicate concerns to administration without fear of reprisal.

II. 2020-21 VC Recommendations and NSCS response

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Inmate Committees	
<i>Recommendation 31:</i> That inmate committees be reinstated and given statutory foundation.	NSCS has always supported the formation of an inmate committee in each correctional facility.
<i>Recommendation 32:</i> That publicly accessible policies be established regarding the functions of inmate committees.	Once established, inmate committee rules and guidelines can be accessed by the public.

III. What We Heard in 2021-22

We heard from several prisoners this year that there is a need for an inmate committee to represent people in provincial jails. They questioned why these committees do not exist, given their clear value in federal facilities. COVID-19, staff shortages, and lockdowns often left prisoners feeling that there was nowhere to turn. They suggested that an inmate committee would be able to negotiate with management and draw complaints to their attention in ways that individual prisoners cannot.

IV. VC Recommendations: 2021-22

We reiterate recommendations 31 and 32 from last year, calling for statutorily-grounded, properly resourced inmate committees and publicly available policies on the duties and powers of those committees.

Health Care

A. Health Care Complaints

I. Background

NSH-CHS is responsible for delivery of health care inside provincial correctional facilities.¹⁵⁹ Access to health care remained a primary topic of concern in our communications with provincially incarcerated people in 2021-22.

II. 2020-21 VC Recommendations and NSH-CHS Response

NSH-CHS did not provide a formal response to our 2020-21 VC report. However, in the past year, program leads at NSH-CHS engaged us on issues raised in our recommendations; we report on those responses and related developments here and in what follows.

With regard to the NSH-CHS health care complaints process, last year we recommended the following:

Recommendations from ECPJS 2020-2021 Visiting Committee Report - July 2021
Nova Scotia Health - Correctional Health Services Division
<p><i>Recommendation 33:</i> That NSH establish, and ensure prisoners are aware of and have access to, a health-specific complaint procedure.</p> <p><i>Recommendation 34:</i> That NSH ensure that its complaint procedure includes a mechanism for confirming receipt, clear timelines, a duty to give reasons and a clearly articulated appeal process.</p>

In May 2021, NSH released a new Correctional Health Services pamphlet.¹⁶⁰ The pamphlet, which is available online (and, we understand, in each of the jails), describes the health services offered in the jails, how to access them, and how the complaints process works.

III. What We Heard in 2021-22

We are not yet in a position to assess whether provincially incarcerated persons are familiar with the new pamphlet on correctional health services, and how helpful they have found it. However,

we continue to hear concerns about non-responsiveness of the correctional health system to prisoners' health needs. We describe some of the more common complaints in the sections that follow.

First, the complaints process described in the 2021 CHS pamphlet answers some, but not all, of the concerns reflected in our 2020-21 Recommendation 34. The pamphlet states:

You will be given a receipt within 3 days after the form has been received by the health care team. The unit supervisor/manager will review your feedback and follow up within 21 days (3 weeks), as per Nova Scotia Health Authority policy. You will receive a response from a member of the health care team in person, by phone, or in writing.¹⁶¹

This satisfies our recommendation on confirming receipt of prisoners' complaints in accordance with a specified timeline. However, it is not clear to us whether prisoners have been receiving these receipts, or whether prisoners have in fact received follow-up communications from a unit supervisor and/or member of the health care team within 3 weeks. It is also not clear that the responses given have engaged satisfactorily with the substance of prisoners' concerns. These are questions we would be interested in exploring further with prisoners and NSH-CHS officials.

Also concerning is the **lack of an appeal process**. The VC understands that health care decision-making tends to lack the more formal legal frameworks common to correctional and other administrative bureaucracies. However, the power imbalance inherent in the correctional context; the vulnerability of prisoners to having their health needs ignored or minimized; and the need to ensure independent oversight as a matter of basic quality control are factors that favour building a mechanism of appeal or review into the correctional health complaints process.

To date, **incarcerated persons continue to call our toll-free phone line with long-standing health issues** that have not been resolved by the internal health care complaint process. Furthermore, callers report similar issues to those described earlier concerning the NSCS complaint process,¹⁶² including "lost" complaints, lack of receipts, lack of timely responses to complaints, and a lack of clarity regarding the timeline for responses and receipts. We will be paying close attention to these issues in the coming year.

A few prisoners advised us that, after getting no resolution to their health care concerns by way of the internal complaints process, they tried to access the general NSH Patient Relations line. This is a pathway that the 2021 CHS pamphlet advises they may take. The pamphlet states that if one would prefer to submit a complaint by phone or is unsatisfied with a response received from the correctional health care team, this is an option. We have been advised that prisoners are also directed to this phone number by correctional staff.

Unfortunately, for our callers, this phone line has proven to be a further source of frustration. We have **received several reports from prisoners that they are unable to phone this number**

from inside the prison. We have had no reports of success getting through to the line. Some prisoners have informed us that the phone number for NSH Patient Relations has been blocked on the phone system available to prisoners. It is possible that the problem relates to an automated system of answering calls and promising call-backs via the Patient Relations line.

In short, it appears that prisoners are reaching out (unsuccessfully) to the Patient Relations Line in an effort to access external oversight – and this line does not appear to have been designed to play that role.

Perhaps as important as an internal route of appeal would be creation of an independent Patient Advocacy Service, comparable to the patient-advisor service instituted in the involuntary psychiatric hospitalization context.¹⁶³ We suggest that the role of such a service would be to advocate for patients in the Correctional Health Services system, including by liaising among prisoners and Correctional Health care providers. Given the stresses and complexities of life in jail, along with the difficulty many prisoners have dealing with jail-specific and other bureaucracies, having independent advocates in this role could do much to clear up misunderstandings and resolve disputes in a timely way.

Our VC phone line staff are attempting to fulfil a small piece of this function, but the volume of health care concerns, together with the complexity of navigating confidentiality and privacy protections, are such that a dedicated staff person or advocacy service – independent of NSH-CHS – is needed.

IV. VC Recommendations: 2021-22

We are pleased that our 2020-21 recommendation for NSH to take steps to inform prisoners about its health complaints process has been acted on through the May 2021 CHS pamphlet. We understand this to be part of a wider effort to create a more transparent and accessible correctional health care system.

This year we build on those positive developments by refining our recommendations as follows:

Refinements of 2020-21 Recommendations (NSH-CHS)

Recommendation 34A: NSH-CHS should collect and make public data on the number of health care complaints received quarterly, facilities in which complaints arose, and the proportion of complaints falling into designated thematic areas (e.g., mental health care, substance use issues, medication continuity, etc) in a manner compliant with provincial privacy legislation.

Refinements of 2020-21 Recommendations (NSH-CHS)

Recommendation 34B: NSH-CHS should ensure that its Correctional Health Service complaints process includes a clearly articulated appeal process.

Recommendation 34C: NSH-CHS, working with NSCS to the extent necessary, should take steps to ensure that people in provincial custody are aware of and have free access to the NSHA Patient Relations phone line.

Recommendation 34D: NSH-CHS should create an independent Correctional Health Patient Advocacy Service.

B. Timely Access to Responsive Health Services

I. 2020-21 VC Recommendations and NSH-CHS Response

Timely access to health services is a major problem facing prisoners in provincial and federal facilities across Canada and was a source of frustration for many callers to the VC line in 2020-21. For that reason, in last year's report, we made the following five recommendations:

Recommendations from ECPJS 2020-2021 Visiting Committee Report - July 2021
Nova Scotia Health - Correctional Health Services Division
<p>Recommendation 35: That NSH create a system of medical appointments whereby prisoners are given appointment times substantially ahead of the appointment itself (whether in-facility or in community).</p> <p>Recommendation 36: That NSH ensure that pressing medical issues be treated as such, enabling prisoners to have comparable access to emergency medical care as those residing in the community.</p> <p>Recommendation 37: That, pursuant to Mandela Rule 25, NSH ensure that mental health professionals, e.g. psychologists, are on site sufficient time to ensure that prisoners struggling with their mental health are able to access regular therapeutic treatment other than psychiatric</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report - July 2021

medication.

Recommendation 38: That NSH provide timely access to dental care.

Recommendation 39: That NSH ensure that medication is dispensed in the manner prescribed.

Again, we did not receive a formal response to these recommendations; however, we review other related developments next, addressing each of the above recommendations in turn.

35. Appointment dates and wait times. The 2021 NSH-CHS pamphlet confirms that an initial health care assessment will be performed on admission and states: “wait times for appointments in the jails will be similar to the wait time in the community.”¹⁶⁴ However, the pamphlet does not commit to pre-scheduled appointments (as opposed to notice day-of), nor wait-time estimates beyond reference to community comparability.

36. Access to emergency care: NSH-CHS officials responded to a query from the VC on this point, indicating that:

- In case of emergency requiring hospital care an ambulance will be called.
- Otherwise, health care professionals onsite include:
 - CNSCF- 24/7 Nursing coverage from 07:00- 23:00. After 23:00 there is 1 paramedic on-site with access to RN’s on the forensic side.
 - CBCF- Nursing coverage from 08:00 – 20:00.
 - NNSCF – Nursing coverage from 07:00- 23:00.
 - Yarmouth- Nursing coverage from 08:00 – 12:00 Mon- Fri.¹⁶⁵

37. Access to mental health professionals: NSH-CHS officials responded to a query from the VC on this point, indicating that:

- “Our mental health team includes two mental health nurses, one MSW and our consulting psychiatrist.”
- “We presently have the equivalent of .2 psychiatrist at the Burnside facility. He works closely with the mental health team and offers consults to other facilities as needed.”
- “We provide services to a wide range of mental health concerns/issues. [. . .] We triage all cases and those with the most severe/acute symptoms would be seen sooner than others.”¹⁶⁶

38. Dental care: We have not followed up with NSH-CHS on this issue in 2021-22 and will do so in our next reporting year.

39. Medication dispensing: The 2021 CHS pamphlet states:

We will do our best to make sure you do not have to wait for your medication(s), but it may take up to 24 hours (1 day) before you get your first dose.¹⁶⁷

The pamphlet indicates a few possible reasons for delays: e.g., facility doctors must review current medications and order new ones; some medications are not available in correctional facilities. It also indicates that sometimes medications will not be distributed at prescribed times of day because of staff shortages, emergencies, or facility security.¹⁶⁸

Finally, the pamphlet states: “[F]acility doctors may prescribe enough medication(s) for up to 14 days (2 weeks) after your release. This may be given to you on the day you leave, or made available at a community pharmacy.”¹⁶⁹

II. What We Heard in 2021-22

The VC continues to receive reports of **individuals being cut off their prescription medications upon entry to the facility, as well as lack of timely access to prescription medications.** Individuals also reported lack of access to medical appointments. Here it is important to keep in mind that incarcerated persons are under the custody and control of the state. This gives rise to special responsibilities to provide timely, accessible health services responsive to the health concerns of incarcerated populations.¹⁷⁰

As noted, the 2021 CHS pamphlet states that once a health care request form is completed (for which a receipt is to be given), the health care team will review the request within 24 hours. It does not indicate when or how a substantive response, or appointment, will be given.

On the lack of set appointment times, we continue to hear frustration – both with regard to facility-based health services and outside health providers. **Some prisoners wait days or weeks without knowing whether their appointment request was lost or rejected, or whether a pre-planned community health appointment has been cancelled.** Having a clear date and time established (even if that appointment may subsequently need to be moved) would help alleviate prisoners’ anxiety around untreated or ongoing health concerns.

On emergency care, a few callers in 2021-22 expressed concern that **prisoners requiring emergency medical attention have been forced to wait an unreasonably long time to receive emergency care or transport.** We raised this with correctional authorities and will ensure that Correctional Health Service authorities are also aware that prisoners have raised these concerns.

On access to mental health professionals, we continue to hear that it is very difficult or impossible to obtain a psychiatry appointment inside, and that psychological or counselling services are unavailable. We are interested in learning more from authorities about what services the two mental health nurses and MSW staff person are able to provide – for instance, whether this includes counselling or stress management, or dealing with Post Traumatic Stress Disorder. We would like to know whether there is capacity to hire a psychologist to provide such interventions and others, such as Cognitive Behavioural Therapy.

On medication dispensing, the VC has been advised that some prisoners have waited much longer than the promised 24 hours after admission before essential medications have been continued. We have also had reports of medications being administered improperly – for instance, at the wrong time of day, or crushed rather than in tablet form. It is difficult for the VC to assess or second-guess correctional health providers’ reasons for medication delay, denial, or dosage changes. What we do know is that callers have expressed confusion and frustration regarding these aspects of their health care. We point back to recommendation 34D, above: that NSH-CHS create a Correctional Health Patient Advocacy Service to liaise between prisoners and health staff to help clear up misunderstandings and explore and resolve complaints.

We wish to comment on three further issues relating to prisoners’ health.

Correctional Drug Formulary?

First, the 2021 CHS pamphlet references an “approved medication list” specific to correctional facilities.¹⁷¹ The VC would like more clarity around this list: whether it is the same or different from the hospital formulary, and where the list can be obtained. **Public accessibility of this list would assist patients and their advocates in understanding and assessing health care decisions, and in making representations regarding the content of the list.**

Access to Opioid Agonist Therapy

Second, we have continuing grave concerns with the NSH-CHS policy of denying Opioid Agonist Therapy (“OAT”) to persons not already receiving methadone or other OAT in the community and reducing community-based methadone dosage by a set formula.¹⁷² This policy is contrary to a therapeutic and harm reduction ethos. We argue, moreover, that it is contrary to constitutionally protected interests in both equality and security of the person. The discriminatory and health-impairing effects of denying OAT to incarcerated persons not already in treatment is exacerbated by the **failure to provide psychosocial services for prisoners in order to address the significant histories of trauma** proven to be common among this population and likely to be a factor in their substance use.¹⁷³

On this point, we mention the recent settlement of a 2018 Canadian Human Rights Commission complaint brought by BC Prisoners' Legal Services against the Correctional Service of Canada. That complaint related to lack of timely access to and inappropriate termination of OAT in federal prisons.¹⁷⁴ We understand that access to OAT in federal prisons has improved since this human rights complaint was settled.

Other provincial correctional systems, such as BC's, prioritize continuity of and timely access to OAT where clinically indicated, even where incarcerated persons were not already accessing OAT in the community. All three oral medications – buprenorphine/naloxone, methadone, and slow-release oral morphine – are provided in BC correctional facilities and “[a]ll reasonable efforts are made to start OAT as soon as possible for any individual who meets the clinical diagnosis of OUD [Opioid Use Disorder].”¹⁷⁵ In addition, BC's correctional health service offers a comprehensive clinical management strategy for those with OUD, including psychosocial support for emotional health and social stability, counselling and peer support to advance recovery goals, and support for related chronic medical conditions including mental health.¹⁷⁶

The benefits of helping prisoners initiate and maintain OAT and other responsive therapies in correctional settings are well established to include improvements in health and social functioning.¹⁷⁷ These therapeutic interventions are also likely to reduce the high rates of in-custody and post-release overdose mortality affecting criminalized and incarcerated people.¹⁷⁸ We will continue to advocate for the demise of the discriminatory and counterproductive NSH-CHS policy of denying OAT to persons not already in treatment.

The Need for a Harm Reduction Approach

Third, and also relating to harm reduction, in recent months **we have received prisoner reports of infection and even sepsis which callers speculate relates to unsafe needle use.** We have raised this concern with NSH-CHS officials. We wish to assist NSH-CHS in establishing consistency with best practices, and perhaps eventually, leadership, in meeting the critical health needs of prisoners with substance use issues through the adoption of harm reduction policies which have proven successful elsewhere.

III. VC Recommendations: 2021-22

We reiterate our 2020-21 recommendations 35 through 39 on timely access to responsive health services. We add the following elaboration and refinement of recommendation 37:

Refinements of 2020-21 Recommendations (NSH-CHS)

Recommendation 37A: NSH should make publicly accessible the list of medications approved for distribution in provincial correctional facilities.

Recommendation 37B: NSH should introduce a new policy permitting access to Opioid Agonist Therapy (OAT) where clinically indicated and should abolish its current policy of barring access to persons not already in treatment. It should also introduce related harm reduction policies responsive to the needs of incarcerated people.

C. Independence of NSH-CHS

I. Background

The ethical and legal duties of health care providers fit uneasily into the context of incarceration, where security considerations often win out over health in both policy and practice. Therefore, it is important for health professionals to maintain independence from corrections.¹⁷⁹

II. 2020-21 VC Recommendations and NSH-CHS Response

Recommendations from ECPJS 2020-2021 Visiting Committee Report - July 2021
Nova Scotia Health - Correctional Health Services Division
<p>Recommendation 40: That, pursuant to Mandela Rules 34 and 35, NSH must actively maintain their independence from corrections, meaning:</p> <ol style="list-style-type: none">That if inmates are experiencing mental or physical suffering as a consequence of conditions of confinement, the attending medical service provider must act on this knowledge by recommending a change in the conditions that are causing or contributing to such suffering, andThat NSH regularly send physicians to inspect the jails and advise on conditions of confinement.

In 2021-22, the VC asked NSH-CHS officials what policies or practices were in place to comply with Recommendation 40. This was asked in the context of a discussion about health segregation and other close confinement. NSH-CHS officials directed us to a new (October 2021) Standard Operating Procedure for monitoring patients in close confinement cells and/or segregation-like conditions. This policy is discussed in the Special Issues section on health segregation, below.

III. What We Heard in 2021-22

The issue of independence of correctional health staff from correctional authorities did not arise directly in our conversations with prisoners this year. However, it did come up indirectly, as prisoners sometimes expressed concern that their health was not taken as seriously as the health of those in the community. We take this to be a systemic concern that, despite the formal independence of NSH-CHS from Justice and NSCS, the reality of correctional institutions is that security imperatives tend to overshadow health imperatives in ways that affect health care access.

Independence also came up in relation to lack of independent oversight of correctional health care. Some prisoners have looked into health professional disciplinary bodies as an alternative to the internal complaints system and, as noted, have been advised that it is not possible to make an anonymous complaint.¹⁸⁰ Prisoners were concerned that this would expose them to retaliation, which could have grave effects given the lack of alternative health providers in correctional facilities.

IV. VC Recommendations: 2021-22

We reiterate our 2020-21 Recommendation 40. Further discussion of this recommendation as it applies in contexts of close confinement (segregation and lockdown) is found below, under Special Topics: Health Segregation.

Section 4

Special

Topics: 2021-

2022

Mitigating Ongoing COVID-19 Securitization

Earlier we reviewed various liberty-restrictive COVID-19 measures adopted by NSCS in consultation with NSH-CHS and Public Health. These include 14-day (more recently, 10- or possibly 7-day) minimum quarantine of new admissions, increased frequency and duration of lockdowns, and continued restrictions on programming and visits.

In this section we urge increased attention to preventive measures aimed at mitigating ongoing COVID-19 risks while respecting fundamental human rights.

A. Preventative Decarceration

Throughout the pandemic, including in VC communications to Nova Scotia correctional, health, and public health authorities spurred by arrival of the Omicron variant in December 2021,¹⁸¹ ECPJS has argued that the only adequate defence to the spread of COVID-19 in Nova Scotia jails is strategic decarceration. This means ensuring that admissions and numbers of prisoners held in facilities are as low as possible, consistent with public safety.

We have been disappointed to observe rising rates of incarceration following the initial provincial initiatives to rapidly decarcerate in March and April of 2020. As noted in the introduction to this report, while over 40% of the provincially incarcerated population was released in that period – spurring novel community residency options which proved successful even for people with the most complex needs – the concern to maintain low in-custody numbers quickly waned.¹⁸²

By the fall of 2020, in-custody numbers again approached pre-pandemic levels. On November 15, 2020 the in-custody count was 365 — just 20% lower than the pre-COVID incarceration rate.¹⁸³ In December 2020 the VC phone line received many calls expressing concerns about persistent institutional lockdowns and other liberty and health-impairing practices amidst facility-wide COVID-19 outbreaks. In 2021-22, remand numbers were approaching pre-pandemic levels, while the number of people in sentenced custody is also rising.¹⁸⁴

We understand the return to near pre-pandemic jail populations to be a function not, or not primarily, of the decisions and actions of correctional authorities but rather of police, prosecutors, judges and other justice officials, as well as politicians who no longer regard decarceration as a pandemic imperative. Unlike correctional officials and staff, these officials do not see firsthand the grave impacts on liberty and health that provincial incarceration in pandemic conditions has had.

In 2021-22, we heard reports of prisoner hospitalizations and critical illness which were not reported as critical incidents on the Department of Justice website. There does not appear to be public reporting of whether incarcerated persons are among reported COVID-19 hospitalizations and deaths.

Given the continuing special vulnerabilities of incarcerated persons to COVID-19 spread and attendant serious illness, and the realities of ongoing intensive liberty restrictions, we reassert our recommendations from previous waves of the pandemic¹⁸⁵ and call on the provincial government to reduce the number of persons in provincial custody.

As was the case in March and April of 2020, this may be done, in the case of sentenced prisoners, by means of conditional release (which correctional officials have the power to grant for “medical reasons,” “humanitarian reasons” or for “reintegration or rehabilitation”).¹⁸⁶ As for remanded prisoners – as discussed earlier, 75% of Nova Scotia’s provincially-incarcerated population – police should make liberal use of their powers of release post-charge on a promise to appear, while prosecutors and other justice officials should similarly take all measures possible to avoid unnecessary detention.¹⁸⁷

In short, **officials across the justice and correctional systems should work together to ensure that no one is incarcerated in the egregious conditions described in this report** unless there is no alternative consistent with criminal law purposes. Further, the purposes of criminal law-based justice themselves require reappraisal in light of the principle of proportionality, giving full weight to the grave health and human rights impacts of incarceration during COVID-19. In other words, COVID-19 must not be allowed to underwrite an indefinite future of intensive liberty restrictions infringing the most basic statutory and *Charter* entitlements of criminalized and incarcerated people.

More fundamentally, ECPJS continues to campaign for sustainable resourcing of community-based supports, including bail beds.¹⁸⁸ We congratulate Nova Scotia for intersectoral action in 2021 and 2022 to support community-based alternatives to detention, including new investments in community-based bail supports.¹⁸⁹ However, the achievements so far are only a start on the sustained investments required.

B. Increasing Vaccine Uptake

Beyond strategic decarceration and diversion of funds toward sustainable community supports, another preventive measure to protect the health and human rights of provincial prisoners is to increase COVID-19 vaccination rates among the in-custody population.

Nova Scotia’s vaccine rollout plan was first presented publicly by the provincial government in March 2021.¹⁹⁰ Soon after, ECPJS called for priority access for people in custody.¹⁹¹ It is now generally recognized that, like those in long-term care and other congregate living facilities, incarcerated persons are particularly vulnerable to contracting COVID-19. They are unable to

practice social distancing in any meaningful way. Staff and prisoners frequently pass into and out of the facility, presenting a heightened risk of spread both within facilities and to the wider community. This risk is compounded by challenges accessing preventative hygiene measures while inside.¹⁹²

Outbreaks at Nova Scotia correctional facilities have occurred in the past year. On December 31, 2021, authorities confirmed a COVID-19 outbreak at CNSCF with at least 31 positive cases.¹⁹³ Soon after, we were advised by callers from NNSCF that there were 24 cases of COVID at that facility, with people testing positive housed together in one lockdown unit.

Data from 2021 indicated that infection rates were six times higher in jails across Canada than in the general population.¹⁹⁴ Beyond the heightened likelihood of infection in correctional facilities is the further fact that prisoners are disproportionately affected by chronic health conditions, rendering them susceptible to the worst of COVID-19 complications, including death. High rates of chronic conditions, including respiratory problems and conditions compromising one's immune system, are well documented in this population.¹⁹⁵ Health vulnerability is compounded by the challenges prisoners face (as reported to the ECPJS VC last year and again this year) accessing timely, responsive health care.¹⁹⁶

At the same time, **incarcerated people are overwhelmingly representative of marginalized populations, including Indigenous and racialized persons, and the poor.**¹⁹⁷ These groups are already at greater risk of virus transmission in the community given challenges to social distancing presented to those with housing and income instability. They are, at the same time, groups that are highly vulnerable to discrimination, vilification, and exclusion.

The response of correctional facilities to virus risk has itself presented a further threat to prisoner health and human rights. That response has been to lock down facilities in an effort both to isolate prisoners with positive or indeterminate COVID-19 status, and to cope with staffing shortages traceable in part to the pandemic and attendant volatile jail conditions. A further and related move has been to seal off facilities from outside contacts as far as possible, prohibiting or severely restricting entry to lawyers, family, volunteers, and others critical to prisoners' legal rights and well-being.¹⁹⁸

The National Advisory Committee on Immunization recommended that incarcerated individuals be vaccinated before healthy Canadians under 60.¹⁹⁹ Yet despite this and other expert bodies acknowledging the special threats to health and human rights faced by incarcerated people, Nova Scotia correctional facilities were among the last in Canada to begin vaccinating prisoners - on May 3, 2021.²⁰⁰ By this time, most other provinces and territories had already administered first doses to incarcerated people and some — including the Yukon, Nunavut and the Northwest Territories — had already administered second doses.²⁰¹

Getting vaccines into Nova Scotia correctional facilities has been one of many related challenges. Since vaccines were first made available in Nova Scotia's correctional facilities, vaccine uptake amongst men in custody has been low. In December 2021, the vaccination rate for men in provincial custody was estimated to be less than 50%, and officials with whom we met speculated that the lowest vaccination rates were amongst African Nova Scotian and Indigenous prisoners. By contrast, we were advised that the rate of vaccine uptake amongst women was much higher, with nearly all of the women at CNSCF having been vaccinated at that time.

We suggested in our December 21, 2021 communications with NSCS, NSH-CHS, and Public Health that two crucial factors may account for the disparity in vaccination rates among incarcerated people compared with the wider population. First is the longstanding culture of fear and mistrust vis-à-vis health care delivery in provincial corrections. Prisoners perceive (with good reason) that security imperatives are prioritized over health care when one is incarcerated.

Callers to our phone line have raised concerns about correctional staff acting as gatekeepers or intermediaries to NSH-CHS. We have heard that people do not wish to entrust correctional officers with their personal health information, and that using them as an access point for health care does not feel safe, even for requests to book appointments. Fear and mistrust may be most acute among those who are marginalized and/or racialized, as the mistrust produced by incarceration is exacerbated by legacies of racism and colonialism in health care.²⁰²

Second, and related, is the lack of culturally-specific education and resources on vaccine safety available to men in provincial custody. Given the relatively small population of women in provincial custody, we understand that staff from the EFMNS and the Coverdale Courtwork Society were able to facilitate one-on-one phone calls with their clients to allay their concerns regarding the vaccine. Given the much larger population of men in custody, neither ECPJS nor other organizations like the John Howard Society have been able to fill a comparable role.

We communicated to correctional and NSH-CHS authorities in our letter of December 21, 2021 our understanding that education initiatives regarding vaccine safety have proven to be effective in a variety of other contexts. We noted, for example, that Dr. Tiffany Richards, an African Nova Scotian family doctor originally from Truro, has worked extensively online to combat vaccine misinformation amongst African Nova Scotian communities.²⁰³ Likewise, the Canadian Association of Elizabeth Fry Societies produced an online resource intended to respond to questions and concerns from incarcerated people and their loved ones regarding COVID-19 and vaccination in prisons.²⁰⁴

We are not aware of current vaccination rates among those incarcerated in Nova Scotia correctional facilities, and we acknowledge that it has been more than six months since our communications with officials on this subject. We will seek to re-engage on this topic in coming weeks, as we attempt to make a case for getting back inside facilities for in-person small group conversations.

ECPJS continues to be keen to work with our counterparts in other community organizations — such as the African Nova Scotian Decade for People of African Descent Coalition, the Mi'kmaq Legal Support Network, and the Sipekne'katik Health Centre, and public health experts like Dr. OmiSoore Dryden, James R. Johnston Chair in Black Canadian Studies in the Faculty of Medicine — to facilitate vaccine education sessions for men in provincial custody and/or arrange phone conversations to answer any questions they may have regarding vaccine safety. We have requested that the Department of Justice and the Correctional Services Branch collaborate with us and others on such initiatives. Such efforts are critical to reducing the use of lockdowns, prohibitions on visits and other facility entry, and other restrictive measures.

C. VC Recommendations: 2021-22

Without current information regarding vaccination rates among provincially incarcerated people, we reiterate the following recommendation from our letter of December 21, 2021:

2022 Recommendation 7 (NSH-CHS, NSCS, NS Public Health)

NSH-CHS and NSCS, together with the provincial DOJ and NS Public Health, should adopt a strategy, together with community leaders with close connections to incarcerated populations, to increase vaccine uptake amongst men in provincial custody.

Health Segregation

A. Background

I. What is Health Segregation?

We use the term “health segregation” to include, first, segregation in a specific area of a provincial correctional facility putatively devoted to prisoner health (e.g., Health Care Unit [HCU], “health care cells,” “close observation cells,”²⁰⁵ or the CNSCF / ECFH Forensic Assessment and Corrections Treatment Unit (“FACT”) formerly known as the Mentally Ill Offender Unit (“MIOU”)).²⁰⁶ We also use the term to designate any instance of intensified confinement or “close confinement”²⁰⁷ for health or putative health reasons.

We concentrate on situations where mental health concerns give rise to segregation or close confinement (including “special watch” or “suicide watch”). However, segregation may be triggered by other health conditions as well – e.g., post-surgical recovery.²⁰⁸ We set aside, for the purpose of this section, analysis of dedicated policies or practices on communicable disease quarantine (including COVID-19 quarantine).²⁰⁹

II. Suicide Watch in Securitized Settings

Dr. Reena Kapoor, a psychiatrist and professor at Yale School of Medicine, has commented on the inhumanity of “suicide watch” as practiced in US jails. What she describes is not unlike what we understand to occur in Nova Scotia jails. She writes:

Even in the most sophisticated and well-staffed jails, suicidal people are treated with a distinct lack of compassion. They are stripped of their clothing and underwear and dressed in a smock made of a tear-resistant material that is similar to the blankets moving companies use to wrap furniture. Individuals are placed in a suicide-resistant cell — typically a single cell without bed rails or anything that a noose could be tied around — and offered no items of comfort. They cannot shower or shave, and sometimes they are not even given toilet paper for fear that they might use it to harm themselves. Books and magazines are usually prohibited. Meals arrive without utensils, forcing suicidal people to eat foods like pasta and rice with their hands.²¹⁰

Dr. Kapoor adds:

These conditions continue until a mental health professional determines that the individual can be housed safely in a less restrictive environment. This determination can take days to make, as correctional facilities are often so short-staffed that a mental health

professional may only be available once or twice a week. In my experience, it is not uncommon for suicidal prisoners to spend a week or more without any meaningful psychiatric assessment or treatment, simply staring at the walls of their bare cells and waiting to be released.²¹¹

The predictable result of suicide watch – and, we would add, related forms of health segregation reviewed below – is exacerbation of mental health problems and deterrence of help-seeking. Dr. Kapoor concludes:

The end result is that many prisoners — particularly those who have served time and know how suicidal people are managed — would rather suffer in silence than subject themselves to the dehumanizing conditions of “suicide watch.” They keep their suicidal thoughts to themselves, and in some cases, they end their lives.²¹²

III. Legal Limits on Solitary Confinement

In 2021, the Ontario Court of Appeal in *Francis v Ontario*²¹³ held that close confinement (isolation for more than 22 hours in a day) of a person with a serious mental health condition constitutes cruel and unusual treatment. That ruling was informed by expert evidence that, in such circumstances, solitary confinement increased the risk of self-harm or suicide and of permanent impairment of social functioning.²¹⁴

The ruling was also guided by the *Mandela Rules*, which set international minimum standards on prison conditions.²¹⁵ Mandela Rule 45 states that the “imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.” Rule 32(1) further places a duty on health professionals to avoid participation in cruel and unusual treatment of prisoners.

The *Mandela Rules*, together with the ruling in *Francis*, bring the use of segregation in response to serious mental health issues starkly into question.

B. Overview of VC Concerns

Health segregation – including segregation on putative health grounds which meets the definition of solitary confinement – is practiced in Nova Scotia jails, yet it has long evaded public transparency and accountability.

Members of ECPJS have been aware of health segregation in Nova Scotia jails since about 2017 when our organization was formed. At that time, members were advised by prisoners and correctional leads about a practice known as “blue sheeting” – referring to the colour of

documents placed outside prisoners' cells when close confinement was authorized by medical officials.

We were advised that blue-sheeted individuals were effectively outside correctional authority; that is, that in such situations, NSCS policies relating to administrative and disciplinary close confinement -- e.g., timelines for accessing various entitlements or reviews -- were suspended or fundamentally altered in deference to decision-making and policies of NSH-CHS staff. We understood that this resulted in people being subject to health-related segregation without any procedural or substantive legal entitlements for weeks or months on end (indeed, we have been advised of at least one case where health segregation has persisted for a year or more).²¹⁶

We maintain that people incarcerated in Nova Scotia jails are not accorded basic constitutional guarantees relating to solitary confinement – protections articulated internationally and by appellate courts in Ontario and BC. Specifically, as discussed above, we contend that correctional law and policy in Nova Scotia:

- fails to prohibit solitary confinement for persons with serious mental health conditions;
- fails to prohibit solitary confinement beyond 15 days in other cases; and
- fails to provide constitutionally guaranteed procedural protections, including a right to a hearing, representation by counsel, and independent review.²¹⁷

These problems are compounded in instances of health segregation. The VC is concerned that Nova Scotia correctional law and policy, in interaction with NSH-CHS policies on close confinement for health-related reasons,

- condones solitary confinement of persons with serious mental health conditions, contrary to fundamental human rights guarantees and the *Mandela Rules*;
- specifically permits health care staff to impose or recommend health-related solitary confinement without constitutionally adequate legal standards for the exercise of that authority; and
- compounds barriers to substantive and procedural protections beyond the barriers already presented in non-health-related close confinement.

C. Incidence and Duration of Health Segregation in Nova Scotia Jails

In recent years, Nova Scotia courts have accepted evidence that provincially incarcerated people have been held in isolation in provincial jails for 22 hours or more per day, for periods that appear to have exceeded the human rights limits set by appellate courts in other provinces.²¹⁸ The self-represented prisoners who have challenged these practices have not yet successfully advanced the human rights arguments underpinning successful solitary confinement litigation in other

provinces.²¹⁹ Yet it is clear that incarcerated individuals have been moved among successive sites of isolation in NSCS facilities – for instance, shifted from disciplinary to administrative close confinement to one or another form of health segregation – for cumulative periods of many weeks or months.²²⁰

A July 29, 2017 snapshot of administrative close confinement in NS Correctional Facilities indicated that at CNSCF, 8 people, marking 44% of those in close confinement in the facility and 30% of those in close confinement across all provincial correctional facilities, were confined for “medical reasons.”²²¹ In March 2020, at CNSCF, 14 of 64 instances of close confinement were attributed to medical reasons (about 22%). The more common rationales for close confinement at that time were discipline (25 instances involved “alleged or breached” rules) and facility security (17 of 64 instances).²²²

The above figures were obtained through access to information requests. There is no regular public reporting on the frequency and duration of close confinement in Nova Scotia jails, including health segregation. Such reporting is needed. It should include disaggregated data reflecting the race and gender of those isolated and the rationale(s) for close confinement. Where medical reasons are cited, there should be further disaggregation of health-related rationales at a level of generality that preserves privacy.

Information on practices of health segregation is particularly needed in order to rebuild public trust following the Auditor General’s 2018 findings on institutional failures to document medical reasons for close confinement, as well as the NS Ombudsman’s 2021 finding of continued procedural failures relating to health segregation at the East Coast Forensic Hospital.²²³

I. VC 2021-22 Recommendation – Public Reporting on Health Segregation

2022 Recommendation 8 (NSCS & NSH-CHS)

NSCS and NSH-CHS should produce regular public reporting on close confinement, inclusive of segregation for health or medical reasons. Reporting should be disaggregated to reflect race and gender, and should distinguish the bases for segregation including distinct health-related rationales (eg, COVID-19 quarantine, other virus-related quarantine, mental health, suicidality, etc).

D. Critical Commentary from Nova Scotia's Auditor General and Ombudsman

This is not the first time health-related close confinement has been brought to the joint attention of Nova Scotia Health and Justice authorities. As we've noted, a 2018 Nova Scotia Auditor General Report raised concerns about health segregation within a broader set of problems relating to correctional and health officials' compliance with close confinement law and policy.²²⁴

Beyond lack of compliance with the 24-hour and 5-day reviews mandated by then-current NSCS close confinement policy, the Auditor General was also concerned about the lack of medical documentation supporting close confinement initiated for ostensible health reasons. The Auditor General's Recommendation 2.8 stated:

The Department of Justice should work with the Nova Scotia Health Authority to ensure documentation to support confining offenders for medical reasons is maintained in correctional facility files.²²⁵

In December 2019, Justice officials responded, stating:

A requirement to have medical documentation for those in close confinement for medical reasons was added to policy in October 2018. Email confirmation was received from all superintendents confirming that medical documentation is being required for those in close confinement for medical reasons. This practice was added to the audit schedule to ensure compliance.²²⁶

It is concerning that medical documentation was not required for close confinement for medical reasons until 2018. **This is one of many examples of disconnect between NSCS and NSH-CHS protocols resulting in impairment of prisoner rights.** If the reasons for confinement are not recorded, it is difficult for prisoners or their supporters to know whether, or on what grounds, confinement may be challenged.

Following the Auditor General's 2018 report, Justice engaged the NS Ombudsman to monitor compliance with close confinement law and policy.²²⁷ The Ombudsman has not reported publicly on the substantive results of its compliance audits. In our second 2022 recommendation, we have recommended that these findings be publicly shared, and moreover that the Ombudsman's compliance reviews no longer be solely paper-based, but include visits and in-person interviews with people held in close confinement.

Those recommendations have special relevance to health segregation. That is, the Ombudsman should be careful to ensure that its compliance audits, including in-person audits, give specific

consideration to the conditions and treatment of persons held in close confinement for putative health reasons.

As was also indicated earlier in this report,²²⁸ in 2020-21 the Ombudsman completed an investigation involving health segregation at the East Coast Forensic Hospital [ECFH]. This followed a complaint from an ECFH patient that they had been “kept in patient seclusion for days without attention from staff.”²²⁹ The Ombudsman found no evidence to support the complaint; however, procedural problems were noted and the Ombudsman made the following formal recommendation to NSH / DHW:

1. Develop and implement a single seclusion record that tracks the complete sequence of a patient’s seclusion from initial placement to discharge. That the record includes details around the circumstances for initiating seclusion, appropriate physician check-ins, and incremental monitoring information. The record should also include clearly stated justifications for continuing seclusion and reasons for discontinuing.²³⁰

This recommendation reportedly resulted in “procedural modifications” on the part of NSH / DSW, which the Ombudsman indicated it would monitor.²³¹

In short, **it appears from the Ombudsman’s above-noted recommendation that, in 2020-21, ECFH lacked record-keeping protocols for its segregation practices including written reasons for health- or safety-related patient seclusion.** This is a concern not just for forensic patients (who by definition are not under the jurisdiction of NSCS), but also people incarcerated in the NS correctional system who may be subject to health segregation upon transfer to the FACT, which is co-located with ECFH.

I. VC 2021-22 Recommendation: NS Ombudsman Audits of Health Segregation

2022 Recommendation 9 (NS Ombudsman)

We recommend that the Ombudsman ensure that its quarterly compliance audits of close confinement in NS jails pay specific attention to close confinement for medical reasons (health segregation), inclusive of the experiences of people in Health Care Holds, Health Care Cells, and NSH-governed spaces such as the Forensic Assessment and Corrections Treatment Unit or other areas of the East Coast Forensic Hospital. The Ombudsman (and NSCS and NSH-CHS officials) should moreover ensure that health segregation is included in a single record of close confinement imposed on the individual while subject to NSCS and/or NSH-CHS authority.

E. Health Segregation in its Further Institutional Context: Limited Access to Mental Health Services

Health segregation occurs in different spaces across NSCS facilities. The role of NSCS and NSH-CHS staff in decisions about placement and conditions of health segregation varies with the context, including the facility at which the prisoner is located. CNSCF is positioned as the central facility for prisoner health care, and health segregation may occur there in different locations, including Health Care Cells in the HCU and the area of joint ECFH/CNSCF jurisdiction known as the FACT.

Yet, to be clear, Health Care Cells are minimally if at all different from other close confinement cells. As stated in a 2020 decision of the Nova Scotia Supreme Court:

The HCU is physical isolation. The only difference between a close confinement unit and the HCU is that there is a window in the HCU. Inmates are unable to mingle and must stay in their cells except for short periods in the “Airing Court”.²³²

The same judgment established that, during the period complained of, prisoners held in the HCU were permitted a minimum of 1 hour and a maximum of 2.5 hours out of cell per day.²³³ That is, the HCU was acknowledged to have been a site of solitary confinement on grounds of health.

One factor distinguishing CNSCF as a centre for prisoner health management is the presence of a consulting psychiatrist, but that presence is minimal. As noted above, as of June 2022, NSH-CHS contracted .2 of one psychiatrist to serve all provincially incarcerated persons²³⁴ -- roughly 400 individuals at any one time. This is a population recognized to have disproportionately urgent and chronic health (including mental health and substance use) needs, which are only intensified by incarceration itself.

Beyond the .2 psychiatrist, the full NSH-CHS mental health team for all NSCS facilities consists of two mental health nurses and one social worker (MSW).²³⁵ In August 2022, we were advised that general nursing coverage at CNSCF was from 7am to 11pm daily, with a paramedic available overnight as well as access to nurses on the forensic side.²³⁶ At NNSCF, nursing coverage was 7am – 11pm, at CBCF 8am – 10pm, and at Yarmouth (under reduced operations during COVID) Mon – Fri from 8am – 12pm.

What these hours of availability do not reflect is the difficulty or impossibility prisoners face when specifically seeking mental health support. In 2021-22, prisoners regularly shared concerns about lack of access to and improper dosage or administration of medications (including medications prescribed for mental health reasons), and absence of psychological counselling or cognitive behavioural therapy (whether for mental health or substance use problems). **More**

than one prisoner perceived that the only way to access psychiatrist support in Nova Scotia jails was to attempt suicide – and even then, access is not guaranteed.

We suggest that the chronic lack of access to mental health supports fuels prisoner self-harm and suicidality, while at the same time rendering crisis-based mechanisms like segregation the go-to institutional response. This concern informs our recommendations for enhanced mental health supports, below.

F. NSCS & NSH-CHS Roles in Health Segregation

I. Joint Responsibilities

Close confinement for health reasons, including perceived mental health distress, engages joint responsibilities of NSCS and NSH-CHS. This tracks the broader allocation of legal authority to these entities, with DOJ/NSCS holding primary responsibility for safety and security in correctional facilities, and the Minister of Health being primarily responsible for correctional health services (a responsibility delegated to NSH).²³⁷

More specifically, statutory authority to hold prisoners in close confinement on grounds of institutional security or individual safety is conferred on NSCS officials, not health care staff.²³⁸ Yet NSCS and NSH-CHS policies suggest that health staff may in some circumstances *require* (i.e., authorize) “health care holds”²³⁹ (a form of close confinement on grounds of health) and in other circumstances *recommend* such “holds” to NSCS officials.²⁴⁰ It further appears from existing policies that, once commenced, health-related close confinement may only be terminated “with the consent” of health care staff.²⁴¹

One concern the VC has relates to the legal authority of health care staff. Apart from involuntary psychiatric hospitalization laws²⁴² and narrowly-drawn necessity-based defences against claims of battery or assault, health workers have no legal authority to place someone in restraints or seclusion – and certainly no authority to do so on a routine or prolonged basis.²⁴³ Questions arise around the legality of NSCS officials effectively delegating power to NSH-CHS staff on matters of close confinement.

Beyond this, our primary concern is that the NSCS and NSH-CHS policies on health segregation do not protect fundamental human rights and do not provide for procedural fairness.

II. Locating NSCS and NSH-CHS Policies on Health Segregation

A policy cannot override law or legal responsibilities. Again we note the Ontario Court of Appeal judgment in *Francis v Ontario*, which, consistent with the *Mandela Rules*, declared solitary

confinement of persons with serious mental health conditions to be cruel and unusual treatment.²⁴⁴

In the spring of 2022, we asked NSCS and NSH-CHS to provide the VC with all current policies relating to health segregation. At the time, we had just two relevant policies: a May 2019 update of NSCS policy 43 (“Close Confinement”) which briefly referenced close confinement “for medical reasons”;²⁴⁵ and a 2015 NSH-CHS (then CDHA) policy entitled “Suicide Watch – Offender Health Services”²⁴⁶ which described responsibilities of health care staff where prisoner suicidality is suspected.

NSCS did not provide any policies in response to our request. It specifically denied our request for a policy we had seen referenced elsewhere (46.15, “Special and Suicide Watches”), on the basis that this policy was a “protected document which cannot be shared.”²⁴⁷ The VC takes the position that correctional and correctional health policies demand public transparency and justification, particularly where they engage heightened prisoner vulnerability to institutional abuses of power.

We have since obtained the NSCS Special and Suicide Watch policy, having learned that it had been publicly released on the FOIPOP website in August 2021.²⁴⁸ That policy, together with other NSCS policies current to August 2021 released in the same FOIPOP response, informs the analysis that follows.

NSH-CHS authorities were more forthcoming. They advised us that the 2015 “Suicide Watch” policy we had obtained from the NSH policy portal was under review. However, they provided three new NSH-CHS Standard Operating Procedures (SOPs), each dated October 29, 2021. These are titled, respectively “Use of Health Care Holds”;²⁴⁹ “Use of Central Nova Scotia Correctional Facility Health Care Cells”;²⁵⁰ and “[M]onitoring of patient health while in Close Confinement Cells and/or segregation-like conditions.”²⁵¹ We review these along with the above-noted NSCS policies, below.

III. NSCS Roles and Responsibilities

Placement in Health Segregation (General) – NSCS Role

There are a few ways one can be placed in health segregation in Nova Scotia jails. Whether or how this occurs depends on whether health staff are available, where the individual is at the time health segregation is contemplated (for instance, in one of the day rooms or in close confinement on another basis), and other factors noted below.

NSCS staff have key decision-making roles on many aspects of health segregation.

NSCS Policy 43 (“Close Confinement”)²⁵² states that the facility superintendent or delegate is responsible to identify prisoners who “may require placement in close confinement” for reasons including “health of the offender.”²⁵³ A “detailed note” is to be made in the JEIN (“Justice Enterprise Information Network”) indicating the reason for close confinement, including whether the reason is medical.²⁵⁴ A close confinement report must be initiated by the captain, unit supervisor, or assistant deputy superintendent in all cases, including medical-based close confinement.²⁵⁵

NSCS Policy 46 (“Access to Health Care”)²⁵⁶ states that prisoners “requiring close supervision and/or ongoing treatment for medical reasons may be confined to a cell at the request of health care.”²⁵⁷ The language suggests that correctional authorities retain discretion as to whether to grant such requests. However, other NSCS and NSH-CHS policy appears to make compliance with health care requests mandatory.²⁵⁸

In any case, justification for health segregation is the responsibility of health care staff. Section 3 of Policy 46 states that where a person “is confined for medical reasons”:

3.1.1. the superintendent or delegate will request health care staff to provide documentation on the Correctional Health Services Communication Form to support the individual’s ongoing confinement.

Once a person is placed in health segregation, it appears that **NSCS staff lack discretion to release the person.**²⁵⁹ Rather, as noted above, the policy states that the “individual will not be moved without the consent of health care.”²⁶⁰

Conditions and Treatment in Health Segregation (General) - NSCS Role

NNSCF SOP 43 (“Close Confinement”)²⁶¹ indicates that individuals “will be strip searched prior to placement in close confinement.”²⁶² There is nothing indicating that this practice is suspended in instances of health-related close confinement.

NSCS Policy 46 states that individuals confined to cell for medical reasons will receive programs and privileges in accordance with close confinement policy and “the medical treatment plan.”²⁶³ As described above, NSCS Policy 43 (“Close Confinement”)²⁶⁴ acknowledges that all prisoners are entitled to 30 minutes of outdoor exercise daily²⁶⁵ – while also contemplating a process for registering refusals to grant this entitlement.²⁶⁶

Policy 43 also acknowledges statutorily prescribed non-discretionary access to communications with key officials²⁶⁷ and lists further “programs and privileges” to which persons in close confinement for “non-punitive reasons” are entitled,²⁶⁸ including canteen, personal visits, daily access to shower and phones, and “permitted time outside of cell for a period not less than 2

hours.”²⁶⁹ However, the policy again contemplates a process for restricting access to the latter programs and privileges.²⁷⁰

It appears that when someone is in health-based close confinement, the medical treatment plan may further restrict access to so-called privileges under NSCS policy. In any case, it is clear that certain forms of health segregation involve increased restrictions – for instance, Special or Suicide Watch and the No Sharps protocol, discussed below.

A further NSCS obligation, imposed by the governing statute, states that the person in charge of a correctional facility must ensure that every person in close confinement (not merely those in health-related confinement), is, where a health-services professional is normally on duty, visited daily by the health-services professional.²⁷¹

Placement in Special or Suicide Watch - NSCS Role

A correctional services policy of particular relevance to health segregation is entitled “Special or Suicide Watch” (Policy 46.15).²⁷² This policy requires correctional staff to “closely monitor” individuals who appear to be intoxicated or undergoing withdrawal, at risk for self-harm or suicide, or “in distress as a result of mental illness.”²⁷³ NSCS staff are to notify health care staff of such observations.²⁷⁴

Where health care staff are not available to do an assessment, NSCS staff may place the individual on “special watch,” involving close monitoring (and potentially, close confinement) prior to health care assessment.²⁷⁵ A separate policy applies for monitoring and treatment of those undergoing drug or alcohol withdrawal.²⁷⁶

NSCS policy and operational statements further indicate that **correctional staff lack discretion should health staff advise that special or suicide watch is required.** For example, the CNSCF Special and Suicide Watch SOP (46.15)²⁷⁷ states that “[i]f a health services professional from the offender health services (OHS) unit determines . . . that an offender must be placed on a special/medical or suicide watch, the offender will be placed in close confinement.”²⁷⁸

The NSCS Special or Suicide Watch policy indicates that, once assessed, the person “may be removed from special watch by the Correctional Services on duty manager when the signs or symptoms indicating the special watch no longer exist.”²⁷⁹ However, where persons “are identified as suicidal,” they are placed on suicide watch until health care staff advise correctional staff that this may be discontinued.²⁸⁰

Conditions and Treatment in Special or Suicide watch - NSCS Role

NSCS Special or Suicide Watch policy designates NSCS officials as responsible to make decisions about conditions of confinement. Those conditions may be harsher than otherwise in

close confinement, including 24-hour lighting and video observation, denial of clothing other than a “suicide gown,” and denial of bedding other than a suicide blanket and mattress.

To elaborate, the NSCS Special or Suicide Watch policy states that placement and security measures are determined by NSCS onsite managers in consultation with NSH-CHS staff.²⁸¹ It adds that the individual may remain in the dayroom with access to the same activities and services as others, or alternatively may be subject to “constant monitoring (i.e. confined to cell under camera)”²⁸² or given “immediate medical care.”²⁸³

NSCS staff decide whether the prisoner is required to wear a “suicide gown” (some call these “baby dolls” – which connotes the humiliation that may be entailed) and have a specially approved form of blanket or mattress. Section 6.2 states that:

use of a suicide gown and blanket will only be implemented as a security measure for individuals requiring special or suicide watch when the individual is uncooperative/noncompliant and at risk to self or others.²⁸⁴

The onsite NSCS manager is to communicate placement in special or suicide watch and related conditions (“security measures”) to the deputy superintendent and enter the details into JEIN.²⁸⁵

Facility superintendents are expected to develop SOPs on special and suicide watch, elaborating on “monitoring requirements pending health care assessment” (“eg, camera monitored cell”) and “additional security precautions” such as “removal of personal property from cell, suicide gowns, suicide blanket.”²⁸⁶ A CNSCF SOP²⁸⁷ states that where individuals are in special or suicide watch “cell lights and cameras must remain on and uncovered/operational.”²⁸⁸ A distinct SOP contemplates disciplinary action where an individual in “segregation or health care segregation . . . has a damaged camera or an obstructed cell camera and refuses a staff direct order to uncover that camera.”²⁸⁹

A CBCF SOP on Special or Suicide Watch²⁹⁰ states that where “constant monitoring under camera is required the offender must be placed in CCU,”²⁹¹ and “will be given suicide gown and isolation blanket if confined.”²⁹² An NNSCF SOP on Special or Suicide Watch²⁹³ indicates that special watch is to take place in “a close confinement unit or health care cell” or a holding cell if these are not available. Again, the shift captain determines whether a “suicide gown, suicide blanket and suicide mattress” are required.²⁹⁴ In instances of suicide watch, the individual is to be placed in “a health care cell or the close observation cell,” or, if these are occupied, a CCU cell.²⁹⁵ Canteen privileges are suspended and no sharps are allowed (including utensils, pens and pencils).²⁹⁶

No Sharps Protocol - NSCS Role

NSCS Policy 43 contemplates a distinct No Sharps protocol which includes close confinement. This protocol may be imposed by NSCS officials as part of a Security Management Plan.²⁹⁷ A CNSCF SOP entitled “Close Confinement”²⁹⁸ indicates that individuals who have “a history of self harm, but do not require placement on a special/suicide watch, may be placed in close confinement and a ‘No Sharps’ behaviour management strategy” may be implemented at the discretion of the duty captain, unit supervisor,²⁹⁹ or health care staff.³⁰⁰

The No Sharps protocol provides for denial of utensils and restricted access to razors, pens, and eyeglasses.³⁰¹ A blue sheet is to be placed outside the individual’s cell.³⁰² The protocol is to continue “until the unit/OIC captain communicates that the offender no longer requires this behavioural management strategy.”³⁰³ There is no reference to a time limit or right of review.

Monitoring & Oversight - NSCS Role

Under NSCS Policy 43 (“Close Confinement”), case management reviews of persons in close confinement are ordinarily to be done three times per week, and the case management officer is to “report any concerns regarding the offender’s health or mental health status to the social worker, or in their absence the on-duty captain.”³⁰⁴ A social worker must conduct a mental health status exam every four days. Where “concerns have been noted” during the mental health status exam, further examinations are to be conducted daily.³⁰⁵

As discussed above, in the general section on close confinement and lockdowns, s13 of the NSCS Close Confinement policy sets out processes of review of close confinement contemplated under section 80 of the CSR. An initial review is to be conducted by the deputy superintendent or provincial adjudicator after 24 hours, with further reviews every 5 days. Requests must be made to the Executive Director for extensions beyond 10 days.³⁰⁶ Every 30 days thereafter, a new extension must be sought, and the facility superintendent must provide reasons for continued close confinement.³⁰⁷

The procedures contemplated fall short of a hearing wherein prisoners can test and respond to the case against them. That is, **while prisoners are to be given notice of the reasons for close confinement after 30 days, there is no procedural guarantee of disclosure of the materials in support nor a right to respond.** This is true for all close confinement, including health-related close confinement.

Summary - NSCS Roles and Responsibilities: Health Segregation

In sum, while NSCS policies recognize decision-making authority on the part of health professionals regarding placement in and discontinuation of health segregation (including special or suicide watch), NSCS staff retain significant responsibilities. For instance, they may decide to commence special or suicide watch in anticipation of a health professional’s assessment; they

may decide whether a “suicide gown,” “suicide blanket” and/or “suicide mattress” is required; they decide, in light of health staff input, whether or how prisoners may access time out of cell, showers, visitors and the like; and, even if the health professional recommends against health segregation, the NSCS unit manager may impose or continue close confinement per the “No Sharps” protocol under conditions very like special or suicide watch.

IV. NSH-CHS Roles and Responsibilities

With that we turn to the role of NSH-CHS staff in relation to health segregation.

2015 Suicide Watch Policy

A 2015 Capital District Health Authority policy entitled “Suicide Watch - Offender Health Services” (currently under review) outlines responsibilities of correctional health care providers where correctional staff identify risks of prisoner suicide or self-harm.³⁰⁸ According to this policy, NSCS staff may impose “enhanced rounds” (defined as check-ins every 15 minutes) in anticipation of an assessment by a health care provider.³⁰⁹ Upon that assessment, the health care provider is to “determine if the offender requires a suicide watch” until a psychiatrist assessment may be completed.³¹⁰

Under the 2015 NSH-CHS policy, suicide watch requires a physician’s order and its duration is to be decided by “the psychiatrist in consultation with the mental health nurse.”³¹¹ Where suicide watch is indicated at a facility other than CNSCF, a process is provided whereby the individual may be “medically cleared” and transferred to CNSCF.³¹²

“Health Care Holds”

Three recent NSH-CHS SOPs elaborate the role of correctional health staff in imposing, monitoring, and discontinuing health segregation, including but not limited to suicide watch. The SOP “Use of Health Care Holds”³¹³ states a least restriction standard based on the health care provider’s assessment of (unspecified) risks and individualized health needs. That is, the document states that when the health care provider determines that “*a patient’s health care needs cannot be met in a lessor [sic] restrictive environment,*” a Health Care Hold may be imposed.³¹⁴ The health care provider is to document reasons in a progress note.³¹⁵ We note with concern that **this “least restrictive” standard lacks the substantive and procedural specificity of Nova Scotia’s involuntary psychiatric hospitalization and treatment law.**³¹⁶

The Health Care Holds SOP distinguishes Health Care *Holds* from Health Care *Cells*. The latter are contemplated where there is “increased need of monitoring, assessment and/or treatment or to prevent the risk of harm to themselves or others.”³¹⁷ Where a prisoner meets this standard at a jail other than CNSCF, the health care provider (RN or delegate) is to advise the NSH-CHS Program Lead, who then “will request that DOJ transfer the patient to CNSCF.”³¹⁸

Where a Health Care Hold is in place, an RN must develop a care plan to be evaluated daily. Interdisciplinary team reviews inclusive of a physician are to occur weekly.³¹⁹ Every 10 days, the RN or delegate is to notify the NSH-CHS Program Lead of the duration of the person's health care confinement.³²⁰ However, no decision making or oversight responsibility is placed on the Program Lead. Moreover, **there is no process whereby the patient is offered notice or disclosure of the reasons for health segregation, or a right to respond.**

The Health Care Hold SOP further states that if the patient's "mental status deteriorates," the RN must consult a physician who will determine whether to advise transfer to the FACT – as noted, a secure forensic unit for persons in custody of the forensic hospital as well as persons held at CNSCF. The SOP adds that "[i]f a patient meets IPTA criteria" (risk-based standards as well as legal incapacity to make decisions about psychiatric hospital treatment and admission under the province's *Involuntary Psychiatric Treatment Act*), they must be "immediately" transferred to the FACT.³²¹

A physician, in consultation with the RN, may discontinue a Health Care Hold where the person's "physical health, mental health and suicide risk" have improved such that "they can safely return to a lessor [sic] restrictive environment."³²² While the Health Care Hold SOP contemplates the person's leaving health segregation against medical advice,³²³ the person may continue to be held should the physician "determine that it is medically / psychiatrically necessary." In such cases, the physician provides a medical order and the Program Lead recommends to the Captain or delegate that the Health Care Hold be continued.³²⁴

CNSCF "Health Care Cells"

A separate SOP, "Use of CNSCF Health Care Cells,"³²⁵ resembles the SOP on Health Care Holds but adds specificity on the use of Health Care Cells at CNSCF. The purpose is the same: "to meet medical and/or psychiatric needs of a patient when those needs cannot be met in a lessor [sic] restrictive environment."³²⁶ As with Health Care Holds, this unelaborated reference to a less restrictive environment suggests implicit determination of health or safety risks as well as health care needs. Where a Health Care Cell is contemplated specifically to prevent "aggressive behaviour that may pose a danger to self or others,"³²⁷ a physician order is required – and, if the person is not already at CNSCF, a transfer must be arranged.³²⁸

The RN or other health care provider must consult with a physician before confining someone to a Health Care Cell.³²⁹ Periodic health checks and interdisciplinary reviews are the same as with Health Care Holds, as is the requirement to inform the CHS Program Lead of the duration of health segregation every 10 days.³³⁰ If the person's mental health status further deteriorates, the responsible physician must consider transfer to the FACT³³¹ – and, again, if the individual seeks to leave health segregation against medical advice, the physician may issue a "medical order" to

the contrary, which is to inform a recommendation from the CHS Program Lead to the DOJ Captain.³³²

Monitoring & Advocating for the Health of All Persons in Close Confinement

A last NSH-CHS SOP³³³ relates to monitoring the health of persons in close confinement cells or “segregation-like conditions” – including isolation initiated on putative grounds of health. According to this SOP, DOJ/NSCS staff must advise NSH-CHS staff “of all patients in Close Confinement Cells and/or segregation-like conditions.”³³⁴ An RN is to assess and document those individuals’ “physical health, mental health and suicide risk” daily, and develop care plans.³³⁵ As with the Health Care Holds and Health Care Cells SOPs, an interdisciplinary team (including a physician) is to engage in weekly reviews.³³⁶

Where a health professional determines that the health of someone in close confinement is deteriorating, they may, following physician consultation, recommend that NSCS authorities move the individual to a Health Care Cell or the FACT. That is, once again, health deterioration permits health care providers to advance a health-based rationale for transfer to a different, putatively health-oriented site of close confinement.

Importantly, the SOP on health care monitoring in close confinement further contemplates recommendations from the health care provider to **move the prisoner to a less restrictive environment** on the basis of health deterioration. Section 11 states: “Should there be a concern that a patient in a Close Confinement Cell and/or segregation-like conditions *requires termination or alteration to those conditions based on the patient’s physical health, mental health or suicide risk status,*” the RN, in consultation with the physician, must advise the CHS program lead – who must recommend to the Superintendent or delegate what changes are “necessary” to improve the individual’s health.³³⁷

This provision is arguably responsive to the VC’s 2020-21 Recommendation 40, which proposed (per Mandela Rules 32-34)³³⁸ that, where health professionals ascertain that prisoners are experiencing mental or physical suffering as a consequence of conditions of confinement, they identify the practice in question as inconsistent with prisoner health and recommend a *less restrictive* alternative.³³⁹ The provision noted is the clearest statement we have seen from NSH-CHS inviting health care staff to assert their independence from the security-centric mandate of NSCS and recommend less restrictive conditions.

However, more is needed to ensure that correctional health staff are guided by human rights norms when formulating their clinical judgments and recommendations. Below, we recommend that the NSH-CHS SOPs on Health Care Holds, CNSCF Health Care Cells, and Close Confinement Health Monitoring should each expressly reference the duty of health professionals *to refrain from participating in human rights violations.*³⁴⁰

Further, in order to ensure that health professionals do not inadvertently participate in human rights violations (including cruel and unusual treatment or torture), **NSH-CHS policies should expressly incorporate human rights standards, including the prohibition on placing persons with serious mental health problems in solitary confinement for any period.**³⁴¹

Finally, NSH-CHS policy should *require health professionals working in prisons or jails to participate in continuing education on human rights*, including how the right to be free of cruel and unusual treatment or torture may be engaged across different correctional and correctional health settings.

The VC acknowledges that even where a health professional recommends less restrictive conditions, the facility superintendent retains discretion regarding institutional security and placement. The question for both health and correctional decision-makers is thus how best to facilitate rights-respecting conditions.

Our recommendations below centre on our earlier recommendation in this report (2022 Recommendation 5) to abolish solitary confinement in Nova Scotia jails. More specifically, we have recommended that prisoner isolation for more than 20 hours per day be strictly prohibited, and that the law set a baseline entitlement (e.g., 10 hours) of time out of cell per day, failing which procedural and substantive protections must come into play.

We believe this is the best way to bring an end to the grievous harms that prisoner isolation is inflicting on the health and human rights of incarcerated people, particularly but not exclusively those with serious mental health conditions.

*We encourage NSCS and NSH-CHS officials to meet with the VC and other stakeholders to explore alternatives to solitary confinement, including mechanisms for **transferring prisoners experiencing serious mental health problems to human rights-respecting community-based health care settings**, should health staff determine this to be necessary.*³⁴²

G. VC Conclusions and Recommendations on Health Segregation

In sum, until recently, health segregation has evaded public attention and oversight in Nova Scotia, in part because of joint failures of NSCS and NSH-CHS to adopt transparent processes of record-keeping and public justification. Yet while health segregation is sometimes positioned as a therapeutic alternative to solitary confinement, it is nonetheless a site, or potential site, of health-impairing and human rights-impairing solitary confinement.

As we have described, **health segregation may involve prolonged and indefinite in-cell isolation for periods that approach or exceed 22 hours per day, for weeks or months on end.** People held in health segregation experience the same indignities as those held in other forms of administrative close confinement – strip-searching, denial of personal items, and denial of access to programming, visits, or other communications. **Health segregation may also involve additional restrictions such as denial of cutlery, pens, and other items deemed security risks, and subjection to 24-hour monitoring and lighting – precisely at a time of extreme health vulnerability.** It is therefore critical to ensure that health segregation attracts robust human rights analysis and institutional responses.

NSCS and NSH-CHS staff currently play interactive and interdependent roles regarding placement and conditions in health segregation. Neither can simply shift responsibility and accountability to the other on the basis that one holds final authority on matters of health and the other on security. Rather, both entities are responsible not to abuse their powers and moreover to employ those powers to ensure that fundamental human rights are respected.

NSCS authorities are responsible for institutional security and individual safety in provincial jails. Their pursuit of that mandate must accord with constitutional law, including substantive limits on the duration and conditions of permissible confinement and procedural fairness protections which include the right to a hearing, counsel, and independent review where deprivation of liberty is in issue. At present, it appears that NSCS defers to or effectively delegates authority to NSH-CHS professionals in situations of health-related close confinement. Yet **NSCS cannot simply delegate to health officials the responsibility to justify the liberty restrictions to which persons in their custody are subject.**

For their part, NSH-CHS authorities are responsible for providing health care to provincial prisoners in highly securitized contexts fundamentally in tension with health. Health professionals do not have inherent power to detain or restrain. Such powers require express state-conferred authority which moreover must be exercised within constitutional limits.

NSH-CHS policy suggests that there is broad discretion on the part of health professionals to order or recommend health segregation where a person's health "needs" cannot be met in a less restrictive environment. However, **the standard stated in NSH-CHS policy fails to specify the nature or magnitude of risk putatively justifying the deprivation of liberty; fails to limit the number of hours per day or consecutive days a person may be held in health-related isolation; and fails to incorporate procedural protections, including notice, disclosure, access to counsel, and the right to a hearing before an independent and impartial decision-maker.** Neither weekly interdisciplinary clinical reviews nor periodic health professional check-ins with the NSH-CHS Program Lead satisfy legal expectations where deprivation of liberty is in issue.

*The above considerations call into question the constitutional adequacy of NSCS and NSH-CHS policies on health segregation. **Those working on both sides of the correctional / health divide have a duty to promote and protect the human rights of those who are vulnerable by reason of their incarceration.** The VC is concerned that the policies described implicate both correctional and correctional health staff in practices of close confinement prohibited by the Mandela Rules and human rights pronouncements of appellate courts in other Canadian jurisdictions.*

In sum, the VC is concerned that health segregation:

- condones solitary confinement of persons with serious mental health conditions, contrary to fundamental human rights guarantees and the *Mandela Rules*;
- permits health care staff to impose or recommend health-related solitary confinement without constitutionally adequate legal standards for the exercise of that authority; and
- compounds barriers to substantive and procedural protections beyond the barriers already presented in non-health-related close confinement.

I. Abolish Solitary Confinement in All its Forms (Including Health Segregation)

In light of the human rights inadequacy of current policy and practice relating to health segregation and close confinement more generally, **we reiterate our 2022 Recommendation 5, above.** That recommendation, that solitary confinement in Nova Scotia jails be strictly prohibited, supplements our 2020-21 recommendations which proposed substantive and procedural limits on solitary confinement short of total prohibition.

We refer to this more definitive recommendation again here for two reasons: 1) the difficulty or impossibility of singling out prisoners with serious mental health problems for exemption from solitary confinement, despite clear human rights obligations to do so; and 2) the damage that even a few days in solitary may do to any prisoner's health and human rights.

In a concluding section on alternatives to health segregation, below, we make complementary recommendations urging correctional and correctional health authorities to identify ways of preventing and responding to prisoner mental health problems that, unlike solitary confinement, do not undermine individual, institutional, and public safety.

Until our recommendation to abolish solitary confinement in Nova Scotia jails is achieved, we continue to recommend, as interim and supplementary measures, the procedural and substantive limits on solitary confinement proposed in our 2020-21 recommendations.

II. Related Reforms to NSH-CHS Policies and Procedures

In light of the above analysis, we add the following recommendations specific to NSH-CHS:

2022 Recommendation 10 (NSH-CHS)

We recommend that NSH-CHS policies and procedures expressly incorporate the duty of health professionals to refrain from participating in human rights violations.

2022 Recommendation 11 (NSH-CHS)

We recommend that NSH-CHS policy and procedures expressly incorporate human rights standards, including the standard stated in Mandela Rule 45, and endorsed by Canadian appellate courts, prohibiting placement of persons with serious mental health problems in solitary confinement for any period.

2022 Recommendation 12 (NSH-CHS)

We recommend that NSH-CHS policy and procedures require health professionals working in prisons or jails to participate in continuing education on how prisoners' human rights are engaged in correctional and correctional health settings.

H. VC Recommendations on Access to Rights-Respecting Mental Health Supports

We add to our observations and recommendations on health segregation, above, further suggestions oriented to better supporting prisoner mental health – including by opening pathways of transfer or diversion to community-based sites of rights-respecting mental health care.

I. NSCS Staff Training on Trauma-Informed Practice

The 2018 Auditor General Report on deficiencies in correctional practice commented unfavourably on rates of non-completion of required correctional staff training, including training modules on working with persons with mental health problems.³⁴³ The report further noted a

high incidence of mental health and trauma-related conditions among those incarcerated in provincial correctional facilities and thus the importance of this training. Agreement with these observations was reflected in the May 2018 and December 2019 responses of the Department of Justice / NSCS. It is essential that the public be informed of what progress has been made on rates of completion of the relevant training.

2022 Recommendation 13 (NSCS)

We recommend that NSCS provide a public update on compliance with the Auditor General's recommendations on completion and documentation of staff training requirements.

II. Availability of Trauma-Informed Counselling and Other Mental Health Services

We have noted that the NSH-CHS Mental Health Team consists of a .2 consulting psychiatrist, two mental health nurses and one MSW. The VC has been advised by prisoners that it is nearly impossible to obtain a psychiatrist appointment, and that there are no psychologist-based mental health or trauma-informed counselling options.

2022 Recommendation 14 (NSH-CHS)

We recommend that NSH-CHS ensure that the mental health staff complement is sufficient to meet the needs of provincially incarcerated people, recognized to be disproportionately likely to have mental health and substance use problems. We further recommend that mental health support options include trauma-informed psychologist services, cognitive behavioural therapy and other counseling services.

III. Patient Advocacy Service

Further, while correctional health staff are expected to advocate for the health-related interests of their patients, the pressures of correctional environments including overlapping prisoner health and human rights concerns indicate need for an independent Patient Advocacy Service, based loosely on the model of the IPTA system.

We reiterate Recommendation 34D, above: that NSH-CHS institute an independent Patient Advocacy Service for provincially incarcerated persons.

IV. Access to Rights-Respecting Community-Based Mental Health Care

An important question for NSCS and NSH-CHS, in view of their shared human rights obligations, is how to create alternatives to solitary confinement and similar restrictive conditions which exacerbate mental health problems and attendant risks of harm to self and others. We suggest that authorities meet with the VC and other stakeholders to explore alternatives. Such alternatives should include institutional mechanisms for facilitating access to rights-respecting community-based supports for persons with serious mental health problems.³⁴⁴

2022 Recommendation 15 (NSH-CHS & NSCS)

We recommend that NSH-CHS and NSCS officials meet with the VC and other stakeholders in the coming year to discuss mechanisms for transferring or diverting individuals experiencing serious mental health problems to rights-respecting community-based health care settings where health care staff determine this to be necessary.

We would be pleased to engage with NSH-CHS and NSCS authorities to further discuss health segregation and alternatives to it, informed by the VC's contacts with prisoners and our understanding of the legal and policy dimensions of this priority issue at the interface of health and justice obligations.

Disciplinary Adjudication

A. Background

Upon admission, prisoners must be informed orally or in writing of the disciplinary rules and disciplinary procedures of the facility.³⁴⁵ **When someone in provincial custody is charged with a disciplinary offence for allegedly breaking one of these rules or procedures, they are entitled to a disciplinary hearing.**³⁴⁶

Prisoners are entitled to a copy of any disciplinary reports of which they are the subject, as well as a copy of the results of the investigation under section 89A into the individual's alleged breach of a rule.³⁴⁷

Section 93(1) of the CSR outlines the procedure to be followed if a disciplinary hearing is held. When there is a plea of not guilty, all evidence pertaining to the incident will be presented in accordance with sections 93(1) and (2) of the CSR and the prisoner will be allowed to make a

statement, call a witness, and, if appropriate, cross-examine a witness.³⁴⁸ Prisoners are presumptively entitled to “be present at all phases of the hearing.”³⁴⁹

Section 94 of the *CSR* identifies grounds under which a superintendent may proceed with a disciplinary hearing in the absence of the prisoner:

- a. the offender is voluntarily absent;
- b. the superintendent believes on reasonable grounds that the presence of the offender would jeopardize the safety of a person present at the hearing;
- c. the offender disrupts and is removed from the hearing;
- d. the offender refuses to appear before the superintendent.

Like with a criminal trial, **a prisoner cannot be penalized for a disciplinary breach until they are first found guilty or plead guilty.** However, before a disciplinary hearing is held, correctional employees have the power to take an “immediate measure” when they consider it to be necessary.³⁵⁰ These immediate measures are restricted to either:

- a. removing any or all of the offender’s privileges;
- b. confining the offender to their cell or room.³⁵¹

However, such temporary measures “must not be imposed on an offender for longer than 3 hours.”³⁵²

B. What We Heard in 2021-22

Beginning in May 2022, callers at CNSCF consistently began to raise concerns with us regarding the disciplinary adjudication process. In particular, callers identified the following issues:

- Disciplinary hearings were either not being held at all (i.e., in-person or by video) or hearings were being conducted without prisoners being permitted to attend;
- Prisoners were receiving “levels” (i.e., disciplinary sanctions) without the relevant documentation, including their disciplinary reports; and
- Prisoners were largely unaware that they are entitled to appeal disciplinary decisions, were being discouraged from doing so by staff, and were having completed appeal forms returned to them unanswered.

We also received one complaint from an individual at CBCF and another from a caller at NNSCF regarding the same issue. Both reported that they had not been provided a copy of their disciplinary report and had not been permitted to attend their respective disciplinary hearings before receiving their level.

These concerns about the disciplinary adjudication process were in addition to a longstanding problem the VC has heard about since our very first in-person visit to CNSCF in February 2020. Specifically, we have been advised that, when disciplinary hearings are held, they often occur after the prisoner has already spent a day or more either locked in their cell or in the CCU. In such cases, we are hearing that prisoners are dissuaded from filing a complaint or appeal because their time in cell / CCU is being treated as “time served,” such that there is no further sanction post-hearing.

C. NSCS Response to VC Concerns

In response to these concerns from callers, we emailed the Inspector for Correctional Services with the following questions in June 2022. Below, we have included our questions, together with the Inspector’s response:

1. Are disciplinary hearings currently being conducted in-person or by video?

“Historically, Nova Scotia Correctional Services (NSCS) conducted disciplinary hearings in person. For the past five years they have been conducted via video.”

“However, during the pandemic, intermittent covid outbreaks at both the NNSCF and CNSCF required disciplinary hearings to be conducted with the inmate in absentia at the recommendation of Public Health.”

“Currently, all disciplinary hearings are conducted via video.”

2. How frequently are inmates being excluded from disciplinary hearings? What documentation is provided to inmates in these circumstances?

“Inmates were excluded from disciplinary hearings during outbreaks in a correctional facility. In these circumstances inmates are provided the entire Discipline Report (incident summary, page 01. Incident investigation page 2. Adjudication result page 3).”

3. Under what timelines are inmates normally supposed to receive disciplinary reports? What other documentation do inmates normally receive accompanying a level?

“Once an inmate is identified as being involved in an incident and documented on a Discipline Report, a manager will investigate the incident and speak with the inmate. The inmate will then receive a copy of the Incident summary and Investigation in order to prepare themselves for the adjudication process. Generally, they will receive this documentation prior to the end of shift (7pm or 7am).”

“The process of adjudication and accompanying Discipline Reports is already the subject of the NSCS Provincial Audit Program. If compliance falls below 95% the Inspector engages with the Superintendent to identify required corrective action.”

4. What documentation do inmates receive when temporary measures are imposed under section 88(2) of the Regulations?

“Inmates receive a copy of their Discipline Report.”

5. How long after an inmate is alleged to have breached a rule are disciplinary hearings normally conducted?

“All discipline reports are adjudicated every weekday for each facility as required. On site managers are authorized to release an inmate from his/her disciplinary sanctions prior to adjudication (for minor infractions) during the weekend.”

It was very concerning to us to hear that “intermittent covid outbreaks at both the NNSCF and CNSCF required disciplinary hearings to be conducted with the inmate in absentia at the recommendation of Public Health.” **Establishing a general policy of not allowing prisoners to attend their disciplinary hearings is inconsistent with section 94 of the Regulations.** Although this section outlines discretionary grounds under which the superintendent may exclude a prisoner from a hearing, all of these grounds require an individualized assessment and cannot be applied on a “blanket” basis to anyone and everyone. This practice also raises significant issues with procedural fairness, and specifically the right to a hearing in a context where possible disciplinary penalties can include time in close confinement.

As a result of these concerns, we replied to the Inspector with the following follow-up questions:

1. During what periods specifically, since March 2020, have disciplinary hearings been conducted without prisoners present at CNSCF or other facilities (i.e., NNSCF and CBCF)?
2. Would you mind explaining what constitutes an “outbreak” for the purpose of informing the policy of not involving prisoners in disciplinary hearings during outbreaks? Is this guidance provided from Public Health?
3. Can you confirm approximately how many disciplinary hearings took place at CNSCF or other facilities during the period when prisoners were not able to attend those hearings?
4. Thank you for informing us that individuals who could not attend their hearing were given an Incident summary and Investigation summary prior to adjudication, and that they received a full Discipline Report after the adjudication. A few more questions about this process:
 - a. For prisoners who weren't present for their adjudication, were they otherwise given an opportunity to respond to charges against them in some way? If so, how did they do this?
 - b. Were written reasons included in the final Discipline Report?
 - c. Who was responsible for providing prisoners with the final Discipline Report?
 - d. When prisoners were provided with their Discipline Report, were they also advised of their right to appeal disciplinary decisions to the Executive Director within 10 business days, per s. 71 of the Act, and if so how were they advised?
 - e. Did anyone challenge a disciplinary decision by way of an internal appeal and/or judicial review during the period in which in-person attendance was suspended? If so, how many appeals were brought?
5. Did Justice/Correctional authorities consider ways of convening hearings that would be less impairing of rights yet consistent with public health? If so, what alternatives were considered?
6. Are prisoners currently able to attend disciplinary hearings by video at CNSCF or other facilities?

We never heard back from the Inspector, or anyone else from Correctional Services, in response to these follow-up questions.

D. VC Recommendations: 2021-22

In light of these concerns, the VC recommends the following:

2022 Recommendation 16 (NSCS)

Where prisoners are denied access to a disciplinary hearing, correctional staff should ensure they are advised in writing of the reasons for this denial. Such reasons should be restricted to those enumerated in section 94 of the *Regulations*.

2022 Recommendation 17 (NSCS)

Correctional staff should only penalize prisoners for disciplinary breaches after they either plead guilty or are found guilty after a hearing. Consequently, correctional staff should ensure that any “immediate measures” taken where an inmate has allegedly breached a rule comply with the restrictions and limitations on such measures under section 88 of the *Regulations*.

Access to Indigenous Spiritual Practices

A. Background: Relevant Law and Policies

Under section 2.1 of the *Correctional Services Policy and Procedures*, Subject No. 33.01.00, “Use of Tobacco and other Plants for Aboriginal Spiritual Services,” carrying of medicine bags and smudging ceremonies are approved Aboriginal ceremonial or spiritual activities. Under section 1, tobacco and other plants sacred to Aboriginal peoples as well as associated devices are permitted in correctional facilities. “Other plants sacred to Aboriginal peoples” is defined at section 3.1 as sweet grass, sage, and cedar.

Under section 3.4 of the *Policy and Procedures*, Subject No. 33.01.01, “Smudging Ceremony,” smudging is to be available to offenders on a daily basis. Under section 3.3, to participate in a smudging ceremony, a prisoner must be approved by the Deputy Superintendent, Programs or Deputy Superintendent, Programs and Administration or their designate. In assessing whether to approve a prisoner, the following factors are considered:

- are they Aboriginal offenders;
- compatibility of offenders;
- any serious behaviour issues; and
- other identified security issues.

Although access to smudging and medicine bags are framed under the *Policy and Procedures* as privileges, NSCS has a legal duty under the provincial *Human Rights Act* to uphold Indigenous peoples’ right to be free from discrimination based on their religion and Aboriginal origin.³⁵³ As part of this obligation, where there is a negative impact on Indigenous peoples’ spiritual beliefs and practices, **there is a duty to accommodate up to the point of undue hardship**. Case law from around Canada has clearly recognized Indigenous spirituality to be within the meaning of “religion” under human rights legislation.³⁵⁴

In addition, section 25 of the *Charter* and section 35 of the *Constitution Act, 1982* recognize and affirm the constitutional rights of Indigenous peoples in Canada. These include **enforcing treaties and Aboriginal land titles, and the right to preserve traditional cultural practices and activities such as fishing, logging, hunting, and other customary and sacred traditions**. Additionally, section 2(a) of the *Charter* protects the rights of Indigenous people to hold and manifest their religious beliefs.³⁵⁵

Nova Scotian laws and human rights provisions affecting Indigenous peoples should be interpreted in light of, and uphold the provisions of, the *United Nations Declaration of the Rights of Indigenous Peoples* (“UNDRIP”).³⁵⁶ Endorsed by the Government of Canada in 2010, UNDRIP provides an internationally recognized framework for measuring the human rights of Indigenous

peoples, setting the “minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world.” Several provisions directly relate to rights associated with practicing Indigenous spirituality, including but not limited to:

Article 12(1):

Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 25:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 34:

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Finally, under Article 66 of the *Mandela Rules*, “every prisoner shall be allowed, so far as practicable, to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination.”

B. 2020-21 VC Recommendations and NSCS Response

Lack of access to smudging by Indigenous prisoners was a problem we identified in our report from 2020-2021.³⁵⁷ Below, we have repeated our recommendations 28 & 29 from last year’s report on this issue, together with the NSCS response.

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Concerns related to the provincial <i>Human Rights Act</i> , including allegations of racism and access to smudging	

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<i>Recommendation 28:</i> That correctional staff must be diligent in ensuring daily access to smudging where requested.	Smudging is offered daily in compliance with NSCS Policy 31 'Offender Programs'.
<i>Recommendation 29:</i> That, where it is not feasible to facilitate smudging for whatever reason, reasons should be provided, as well as a timeline for when smudging may resume.	If smudging cannot occur for operational or weather-related reasons, inmates are informed of same and is rescheduled for the next safest and earliest opportunity.

C. What We Heard in 2021-22

Over the course of the past year, we continued to hear concerns from Indigenous callers at CNSCF, NNSCF, and CBCF regarding a lack of consistent access to smudging ceremonies and ceremonial medicine bags. Many callers reported:

- not being able to access smudging on a daily basis, despite their entitlement to do so;
- confiscation of sacred medicines, including medicine bags, by correctional staff, despite their entitlement to carry such items with them;
- inadequate provision of sacred medicines (e.g., running out of medicines for smudging); and
- treatment of sacred medicines by non-Indigenous correctional staff and prisoners (e.g., blending medicines together inappropriately and/or discarding them upon the ground).

“In both CCU and on the range, there is no access to smudging or medicine bags. They hand you a bible before they even get you a mattress or blanket. They have no respect for Indigenous spiritual practices at all.”

- Caller from CNSCF

“There is a sweat lodge on site which is being allowed to disintegrate which is disrespectful. It is outside so I don’t know why prisoners cannot go use it or maintain it. Or at least for the jail to dismantle it. **As an Aboriginal person, I am not allowed to pray and that is discrimination.**”

- Caller from CNSCF

In two very troubling cases, we also heard about individuals who had each faced disciplinary sanctions that restricted their ability to engage in Indigenous spiritual practices:

- 1. Incident #1 (also described above):** An Indigenous prisoner had been using a smudging kit during their outdoor time. After the ceremony was completed, he took some sacred medicines with him while under the supervision of a staff member. Later that day, these items were confiscated while he was sitting outdoors with other prisoners. The prisoner was disciplined as a result. When the disciplinary hearing was conducted, he was told that the items were contraband. Consequently, he received a disciplinary sanction which suspended his right to smudge for 14 days.

After the prisoner brought this issue to our attention, we worked with him to request a copy of the disciplinary decision, which was then mailed to us. The disciplinary report clearly indicated that the penalty received was “14 Days suspended from smudge.”

- 2. Incident #2:** An Indigenous prisoner had his medicine bag confiscated by correctional staff. A few days later, staff attempted to confiscate other sacred medicines he had in his cell. The prisoner did not want to hand over the items to the staff and received a disciplinary sanction.

Despite the assurances from NSCS in response to recommendations 28 and 29, **we continue to hear from callers about officials curtailing their access to smudging and Indigenous spiritual practices, a pattern of reporting we have brought to the attention of correctional management several times over the last year.** At the request of the prisoner involved in Incident #1, we sent a letter to the facility superintendent outlining our concerns that denial of a right to engage in smudging was being used as a disciplinary sanction. We included documentation which clearly indicated that the penalty received was “14 Days suspended from smudge.” However, the superintendent indicated that there had been a mistake with the paperwork and denied that the prisoner had been penalized in this way.

At the request of the prisoner involved in Incident #2, we sent a letter to the facility superintendent identifying our concerns, but we never received a response.

D. VC Recommendations: 2021-22

In light of the above, we reiterate our recommendations from last year and also recommend that:

Refinements of 2020-21 Recommendations (NSCS)

Recommendation 28A

Working together with relevant community agencies such as the Mi'kmaq Legal Support Network and the Mi'kmaw Native Friendship Centre, NSCS should explore options for reworking their policies and procedures as they relate to Indigenous sacred medicines and spiritual practices. As much as possible, these matters should be under the purview of a local, community-recognized Elder/traditional knowledge keeper, as opposed to correctional staff.

Recommendation 28B

NSCS should take steps to ensure that the sweat lodge constructed on the grounds of CNSCF be restored and maintained under the direction of community-endorsed Elders, and that access be granted in compliance with the duty to accommodate Indigenous spirituality.

Section 5

Positive Developments in 2021-2022

Although a major focus of the VC project is amplifying concerns raised by prisoners relating to their conditions of confinement, it is important to highlight positive changes as well. As a civil society organization, our work is informed by international human rights norms that stress the importance of clear communication and collaboration. For this reason, in this section, we discuss five major positive developments that occurred in 2021-22, three of which were implemented by NSCS (in the second example, NSCS together with other government and non-government partners) and two by NSH-CHS.

Nova Scotia Correctional Services

A. Changes to Strip Search Policies

We devoted a section of our 2020-21 report to concerns about the use of strip searches in provincial facilities.³⁵⁸ In particular, we identified issues raised with us by prisoners regarding the fact that prisoners who receive opioid agonist treatment (“OAT”), such as methadone, were strip searched on a daily basis after they received their medication. This practice had been in place in provincial jails since 2014, when Clayton Cromwell, a 23-year-old man without a methadone prescription, died of a methadone overdose at CNSCF.³⁵⁹

Many callers indicated that being forced to undergo these strip searches on a daily basis felt degrading and humiliating. In our 2020-21 report, we also noted that, in addition to being highly degrading and retraumatizing for people in custody, strip searches engage constitutionally protected rights against unreasonable search and seizure under section 8 of the *Charter*.³⁶⁰

I. 2020-21 VC Recommendations and NSCS Response

To this end, we made the following recommendation in 2020-21 and are pleased to note the NSCS response:

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Strip searching after receiving opioid agonist therapy	
<i>Recommendation 30:</i> That NSH and NS Correctional Services should convene a joint committee with community stakeholders, including formerly incarcerated persons and	NSCS continues to collaborate with and support NS Health Authority to achieve the least intrusive and safest method of methadone delivery. The division no longer

harm reduction experts, to develop a new system for distributing methadone, suboxone, or other OAT medications without relying on strip searches and in the least intrusive manner possible.	routinely conducts strip searches of persons in custody as part of the methadone delivery protocol.
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II. VC Discussion and Response

We welcome the positive changes to NSCS policy reported in the above NSCS response.

In a subsequent conversation with the Director of Correctional Services, he clarified that on January 15, 2021, the NSCS post-OAT strip search policy was changed to a Visual Body Search. NSCS indicated that this method of search is less intrusive and more respectful of prisoners, while still helping to maintain the safety of the persons in custody and staff. Visual body searches permit staff to detect contraband attached to the body, as well as pre-existing bodily injuries.

In this same conversation, we also learned that NSCS had done away with the practice of strip-searching prisoners immediately before they are released from custody. The Director of Correctional Services acknowledged that this practice had no security benefit, such that it could be discontinued.

We look forward to continued efforts on the part of NSCS to modify or eradicate strip searches, a practice recognized to do immense harm to the rights and dignity of prisoners – who often carry childhood and later-life traumas, including the trauma of sexual assault and abuse.³⁶¹

B. Improved Access to Bail Bed Programs and Other Community Alternatives

I. 2020-21 VC Recommendations and NSCS Response

Last year’s Recommendation 41 urged the Nova Scotia government as a whole to take the intersectoral action required to create sustainable community alternatives to incarceration:

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Recommendations to the Government of Nova Scotia	

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<p><i>Recommendation 41:</i> That the NS Department of Justice work together with Community Services, Municipal Affairs / Housing, and Health to collaborate with the non-profit sector (including Elizabeth Fry Societies, Coverdale Courtwork Society and John Howard Society) to:</p> <ol style="list-style-type: none"> a. Provide community-based alternatives to pre-trial detention (“bail beds”), and short- and long-term supports for persons released from detention, persons serving sentences of probation or conditional sentence orders, and persons granted conditional release from East Coast Forensic Hospital patients granted community release, and b. Commit core funding to ensure the sustainability of these alternatives. 	<p>NSCS continues to collaborate with the Elizabeth Fry Society and the John Howard Society to provide community-based housing alternatives. NSCS co-founded and financially supports the ‘Hub’ – a community housing option for inmates being released from custody.</p> <p>NSCS also funds community-based Bail Programs throughout the province. The division is open to further initiatives with our Community Services partners.</p>

II. VC Discussion and Response

We recognize and commend the efforts of municipal, provincial, and federal officials over the past year to direct resources toward non-profits in the supported housing sector, including to increase capacity to accommodate individuals released on bail and those exiting incarceration. We note in particular the commitment of resources to community-based supported housing leaders providing alternatives to incarceration, namely Elizabeth Fry Society of Mainland Nova Scotia, Coverdale Courtwork Society, and the John Howard Society of Nova Scotia.³⁶²

We are very pleased that NSCS has directed funding in the past year to support the important initiatives it referenced in response to our 2020-21 recommendations. However, **we have also heard from callers, legal professionals, and other service providers that the waitlists for bail support programs are often extremely long** – to the point of requiring applicants to wait several weeks or longer on remand before a spot becomes available.

For men specifically, the fact that the “Hub” bail bed program is located in Pictou County also creates challenges for some. For people who would not otherwise reside in this region, a move to

the Hub can result in being dislocated from their families, friends, and home communities, and can cut them off from key services and resources. Yet many individuals who rely on bail verification and supervision programs may have already reached the “top” of the so-called bail ladder, such that they have few other options available to them in terms of less restrictive release plans. Such persons – who are disproportionately African Nova Scotian and/or Indigenous, live in poverty, and/or face mental health and substance use challenges – may as a result of further dislocation end up caught in the cycles of ongoing criminalization that the bail system has been associated with.

The responsibility of all justice system actors to respect the right to reasonable bail was recognized by the Supreme Court of Canada in *R v Zora*, 2020 SCC 14, where Justice Martin wrote:

[77] Several factors contribute to the imposition of numerous and onerous bail conditions. Courts and commentators have consistently described a culture of risk aversion that contributes to courts applying excessive conditions (Tunney, at para. 29; see also pp. 223-24 (Comment by T. Quigley); Schab, at para. 15; Friedland (2017); B. L. Berger and J. Stribopoulos, “Risk and the Role of the Judge: Lessons from Bail”, in B. L. Berger, E. Cunliffe and J. Stribopolous, eds., *To Ensure that Justice is Done: Essays in Memory of Marc Rosenberg* (2017), at pp. 308 and 323-24). In Tunney, Di Luca J. emphasized that this culture continues despite the directions of *Antic*. He rightly noted, in my view, that “the culture of risk aversion must be tempered by the constitutional principles that animate the right to reasonable bail” (para. 29).

[78] The expeditious nature of bail hearings also generates a culture of consent, which aggravates the lack of restraint in imposing excessive bail conditions. This is the practical reality of bail courts, which must work efficiently to minimize the time accused persons spend unnecessarily in pre-trial detention. As this Court has previously recognized, the timing and speed of bail hearings impacts accused persons by making it difficult to find counsel, resulting in many accused who are self-represented or reliant on duty counsel who are often given little time to prepare (*St-Cloud*, at para. 109). This process encourages accused persons to agree to onerous terms of release rather than run the risk of detention both before and after a contested bail hearing (see CCLA Report, at pp. 46-47; Pivot Report, at p. 79; Myers, at pp. 667 and 676-77; Sylvestre, Blomley and Bellot, at p. 118; Berger and Stribopolous, at p. 319; *R. v. Birtchnell*, 2019 ONCJ 198, [2019] O.J. No. 1757, at para. 29 (QL)). Where joint submissions are made, some observers have gone so far as to suggest that the Crown is rarely asked to justify the proposed conditions of release, which is “arguably a key contributing factor to the higher number of conditions imposed in consent release cases than would be expected based on the law” (C. Yule and R. Schumann, “Negotiating Release? Analysing Decision Making in Bail Court” (2019), 61 *Can. J. Crimin. & Crim. Just.* 45, at pp. 57-60).

[79] A third reality of bail is that onerous conditions disproportionately impact vulnerable and marginalized populations (CCLA Report at pp. 72-79). Those living in poverty or with addictions or mental illnesses often struggle to meet conditions by which they cannot reasonably abide (see, e.g., Schab, at paras. 24-5; Omeasoo, at paras. 33 and 37; *R. v. Coombs*, 2004 ABQB 621, 369 A.R. 215, at para. 8; M. B. Rankin, “Using Court Orders to Manage, Supervise and Control Mentally Disordered Offenders: A Rights-Based Approach” (2018), 65 C.L.Q. 280). Indigenous people, overrepresented in the criminal justice system, are also disproportionately affected by unnecessary and unreasonable bail conditions and resulting breach charges (see, e.g., *R. v. Murphy*, 2017 YKSC 34, at paras. 31-34 (CanLII); Omeasoo, at para. 44; CCLA Report, at pp. 75-79; J. Rogin, “Gladue and Bail: The Pre-Trial Sentencing of Aboriginal People in Canada” (2017), 95 Can. Bar. Rev. 325; *Ewert v. Canada*, 2018 SCC 30, [2018] 2 S.C.R. 165, at paras. 57-60; also s. 493.2, as of December 18, 2019). The oft-cited CCLA Report provides the following trenchant summary:

Canadian bail courts regularly impose abstinence requirements on those addicted to alcohol or drugs, residency conditions on the homeless, strict check-in requirements in difficult to access locations, no-contact conditions between family members, and rigid curfews that interfere with employment and daily life. Numerous and restrictive conditions, imposed for considerable periods of time, are setting people up to fail — and failing to comply with a bail condition is a criminal offence, even if the underlying behaviour is not otherwise a crime. [p. 1]

For these reasons, the VC believes that the provincial Justice Department can and must do more to divert funds from jail-based incarceration to supportive community options promoting individual and public health and safety. In particular, more can be done to improve the accessibility of bail bed programs around the province, so as to avoid the risk of people having to access services far from their home communities and supports.

We therefore reiterate our 2021-22 Recommendation 41.

C. Improved Access to Legal Information

I. Positive Developments and Continuing Barriers

Access to free and reliable legal information has been a longstanding challenge in provincial jails. Prisoners have few means at their disposal to understand their legal rights and responsibilities while incarcerated, or to do legal research relevant to their matters before the court.³⁶³ This concern is especially acute if individuals want to bring legal challenges to their conditions of confinement – for example, by way of a *habeas corpus* application – as there is limited Legal Aid funding available for prison law matters in Nova Scotia.³⁶⁴

The VC has tried to help fill this gap in the past by printing and mailing case law and other resources to prisoners; however, **the demand for legal information was so overwhelming that we had to discontinue this service.**

However, we are pleased to report that NNSCF has been piloting a program to provide prisoners with tablets to permit them to access legal information electronically from their living units. This initiative was first introduced in March 2017, but we are reporting on it now as we have heard many good things about the program from callers this year. In conversations with NSCS senior leadership, we have learned that there are currently three tablets available on each of the larger units at NNSCF and two on each of the smaller ones. The tablets can be accessed during regular hours after the morning inspection and through until 9:45 PM. NSCS staff indicated to us that the tablets are typically distributed on a first come, first served basis.

For a period after their introduction, the tablets permitted prisoners to access CanLII, which is a free online database of statutes and case law from across the country. However, recently, some aspects of CanLII's online formatting changed, such that it became incompatible with the security features on the tablet. NSCS senior leadership indicated that this is a problem that many correctional services are currently facing across Canada. As a result, the only legal resource available on the tablets at the moment is the *Criminal Code*. The Director of Correctional Services has advised us that NSCS is currently exploring other options for facilitating prisoners' access to legal information and case law that are compatible with the tablets.

The VC will continue to monitor this situation closely. **It is our hope that prisoners' access to CanLII will be restored in a timely manner and that this tablet pilot program will be extended to other provincial facilities in the near future.**

II. VC Recommendation: 2021-22

2022 Recommendation 18 (DOJ & NSCS)

We recommend that NSCS take immediate measures to ensure that all prisoners held in Nova Scotia jails are able to access legal information adequate to their needs, including their needs as self-represented persons. We encourage increased distribution of electronic tablets for this purpose, beyond the pilot at NNSCF. We further urge government to allocate the necessary resources to NSCS so that they may meet this critically important access to justice obligation, and we urge NSCS to consult with prisoners and community legal information experts to ensure that the tablets and materials accessible through them meet prisoners' legal information requirements.

Nova Scotia Health – Correctional Health Services

A. New Complaint Process, Form, and Informational Materials

As discussed, we are pleased to report that NSH-CHS has made efforts to increase clarity and accountability regarding correctional health services. An introduction to the services offered and processes for accessing services is provided in a May 2021 pamphlet entitled “Correctional Health Services Patient and Family Guide.”³⁶⁵ The pamphlet is available online and we are informed by NSH-CHS officials that it is also available in correctional facilities. We also understand that revised complaint forms are available in correctional facilities upon request.

This move toward increased transparency is a positive step, and responsive to prisoner concerns brought to the VC. However, **concerns regarding timely and responsive health care have continued to be prominent in our conversations with prisoners.** For example, individuals have frequently expressed concerns about delays in accessing health care, as well as shifts in medication type, dosage, and delivery method.³⁶⁶

We will be attentive in the coming year to how the new emphasis on transparency and accountability of correctional health services is being experienced by prisoners.

B. New Protocol for Monitoring Health in Close Confinement & Recommending Changes to Conditions

As noted earlier, NSH-CHS provided us with three new protocols created in December 2021, including one on the responsibilities of correctional health staff to monitor the health of people in close confinement.³⁶⁷ The protocol in question elaborates on section 29 of the CSA, which requires “that every offender in the facility who is in close confinement is, where a health-services professional is normally on duty, visited daily by the health-services professional.”³⁶⁸ This is the first formal elaboration of these responsibilities that the VC has seen.

Our earlier discussion of the role of NSH-CHS staff in initiating and overseeing health segregation expressed concern about the lack of clear human rights parameters in the relevant NSH-CHS protocols. However, we added that **the protocol on monitoring the health of persons in close confinement makes the important, positive move of requiring health professionals to assess whether close confinement is impairing the individual’s health, and if so, to consider recommending a change in conditions.**³⁶⁹

As noted above, we regard this part of the protocol to be at least partially responsive to the VC's 2020-21 Recommendation 40. That recommendation was grounded in the ethical and legal duty of correctional health staff to avoid passive or active participation in cruel and unusual treatment and other human rights abuses.³⁷⁰ We look forward to learning more in 2022-23 about how NSH-CHS staff have sought to satisfy their ethical and legal duties in this regard.

Section 6

Final

Reflections

Strengthening Independent Oversight of Corrections in Nova Scotia

Since its inception in early 2020, the ECPJS VC Project has worked to advance the human rights of people incarcerated in provincial jails. We systematically built upon a solid foundation of inreach and advocacy, including the work of EFMNS, the work of other civil society organizations performing monitoring roles under the Optional Protocol to the Convention Against Torture, and the work of many ECPJS members with pre-existing research and advocacy connections with incarcerated populations.

As related in our July 2021 VC Annual Report, while certain public bodies (the NS Ombudsman and NS Human Rights Commission) have been given special statutory status in respect to communications with prisoners, **they have not used those powers to advance correctional accountability in a manner that is transparent to prisoners or the general public.** Lack of correctional accountability raised concerns on the part of the NS Auditor General in 2018.³⁷¹ Those concerns have only grown during the COVID-19 period as provincial jails have been effectively sealed off from public scrutiny.

ECPJS stepped into a dysfunctional system to assert the legitimacy and effectiveness of civil society oversight. We have done this while advocating for creation of a new office: a provincial Correctional Investigator with statutorily-grounded powers, an innovation that we would regard as complementary to, rather than a substitute for, the civil society work we are doing.

ECPJS has devoted hundreds upon hundreds of hours of mostly volunteer time to jail in reach and advocacy because it regards prison transparency and accountability as among the top priorities of a society grounded in human rights and the rule of law. **Incarcerated populations are grossly over-representative of the most marginalized and vulnerable members of society – disproportionately poor, racialized, Indigenous, and affected by chronic health conditions.**³⁷² To abandon correctional oversight to internal systems lacking in public transparency and independent accountability mechanisms is to trade the rule of law for arbitrary power.

We believe the ECPJS VC project has made significant inroads toward public transparency and accountability on the part of NS correctional and correctional health authorities, through our:

- initial facilitated conversations session at CNSCF in February 2020;
- pivot to a phone line in March 2020 with the inception of COVID-19;
- many systemic advocacy efforts during the COVID era;
- compilation of key issues and recommendations in our July 2021 annual report;

- continued engagement with systemic advocacy issues, including through periodic discussions with NSCS and NSH-CHS officials;
- individualized advocacy since September 2021; and
- present work laying the ground for a return to in-person facilitated conversations.

A. 2020-21 Report Recommendations and NSCS Response - Correctional Oversight

In light of our concerns that external oversight mechanisms, including the Ombudsman and the Nova Scotia Human Rights Commission, are not functioning effectively to protect the rights and interests of incarcerated persons, in last year’s report we recommended that these oversight mechanisms be strengthened. Specifically, we called for the creation of a dedicated statutory body intended specifically to oversee provincial corrections – akin to the Office of the Correctional Investigator in the federal prison system.

We also called on the provincial government to urge the federal government to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, otherwise known as OPCAT.³⁷³ Under OPCAT, signatory states are required to establish a regimen of regular preventive visits by independent bodies to spaces of detention, which are known as National Preventive Mechanisms. Further, the signatories are also required to accept visits from the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Recommendations to the Government of Nova Scotia	
<p>Recommendation 42: That Nova Scotia create a statutory body dedicated to independent monitoring of provincial corrections, meeting OPCAT criteria to ensure that the body can fulfill its purpose.</p>	<p>NSCS created the Office of Inspector, Correctional Services in 2020 to monitor and audit provincial corrections operations. The Inspector works closely with the Office of the Ombudsman to ensure the Correctional Services Division is compliant with all policies and procedures.</p> <p>Additionally, representatives from the Human Rights Commission regularly attend provincial</p>

Recommendations from the ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
	correctional facilities – either in person or virtually – to address any concerns.
<i>Recommendation 43:</i> That Nova Scotia urge the federal government to ratify OPCAT.	Not appropriate for comment at this time.

B. Concluding Recommendations

The creation of the Office of Inspector, Correctional Services in 2020 by NSCS is an important step forward in improving oversight and accountability in provincial corrections in Nova Scotia. Indeed, over the past year, ECPJS has liaised with the Inspector on a number of occasions for the purpose of raising concerns brought to our attention by callers. As discussed above, this included the issue of persistent non-compliance with laws and policies regarding disciplinary adjudication.

Nonetheless, the Inspector position does not meet the requirements set out under international human rights law. In order to meet the requirements of OPCAT, National Preventive Mechanisms must include the following features:

1. **Independence:** they need to be independent, financially and operationally. Members must not hold any positions that raise a conflict of interest.
2. **Mandate:** they should regularly examine the treatment of persons deprived of their liberty, have the power to make recommendations to relevant authorities, and to comment on (draft) legislation.
3. **In-person visits:** they should have access to all places where people are deprived of their liberty, without prior announcement and throughout the country. Visits should be undertaken frequently to ensure regular scrutiny.
4. **Unlimited access:** they must have unlimited access to – and within – any place where people are deprived of their liberty. This includes access to information.
5. **Private interviews and confidentiality:** members of monitoring bodies must be able to conduct private interviews and protect information acquired from detainees on a confidential basis.
6. **Professional team:** the members must have proven multidisciplinary experience. The team must include women and have ethnic and minority representation.
7. **Protection against reprisals:** detainees who speak to members of the monitoring mechanism must be protected from any form of sanction or reprisal as a result of having done so.

8. **Reporting:** monitoring bodies must produce reports following their visits, an annual report, and any other necessary reports. When appropriate, reports should include recommendations addressed to the relevant authorities, which should consider relevant United Nation norms in the realm of the prevention of torture and other ill treatment, including the comments and recommendations of the SPT.³⁷⁴

Although the creation of the Inspector role is commendable, for these reasons **we reiterate recommendations 42 and 43 from our report last year.**

The VC looks forward to further work with provincially incarcerated persons and correctional and correctional health authorities on matters of fundamental human rights in the coming year. We are grateful to the Law Foundation of Nova Scotia for its 2020-21 funding support with carry-over into 2021-22, and to The Northpine Foundation for funding this project into 2022-23 by way of our sister organization, EFMNS, and linked initiative Prisoner Advocacy & Transformation Hub (PATHS). Special thanks to our extraordinary staff and volunteers from 2021-22 and the present reporting year.

Last, to the prisoners who have trusted the VC with their insights and experiences: we dedicate this report to you.

Appendix A: 2020-2021 Report Recommendations and NSCS Response

In the following table, we have included our recommendations from last year’s report, which was published in July 2021, together with the response to each from Nova Scotia Correctional Services, which was provided to us in September 2022.

Recommendations 33 through 40 are directed to Nova Scotia Health. Although a copy of the report was provided to NSH senior management at the time of publication, no formal response was received to these recommendations. However, as our 2021-22 report reflects, the VC has had continuing communications with NSH-CHS on these and related matters.

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
Lockdowns	
<p>Recommendation 1: That minimum standards of treatment be adhered to regardless of lockdowns, meaning not simply that the standards expressed in the Mandela Rules (and accepted by appellate courts in Canada) should be followed—i.e., no subjecting people with serious mental health problems to any period of solitary confinement, and no solitary confinement beyond 15 consecutive days for others—but more generally, that people in custody should be guaranteed enough time out of cell each day to exercise outdoors, shower, telephone their lawyers, family and friends, and/or engage in religious and educational programming, as well as have access to other meaningful social interaction.</p>	<p>NSCS continues to minimize the use of confinement and lockdowns as often as operationally possible. When confinement is required for the safety of inmates or staff, it is in compliance with NSCS Policy 43 ‘Administrative and Disciplinary Close Confinement’. Inmates continue to be free to legally challenge their conditions of confinement through the habeas corpus process.</p> <p>The Division also audits their confinement process internally and collaborates with the Office of the Ombudsman and the Inspector, Correctional Services to ensure confinement is necessary, as short in duration as possible and inmates receive all entitlements while in confinement.</p>
<p>Recommendation 2: That a sufficient staffing complement be maintained, as well as an adequate scheduling system, to minimize short-staffing as a rationale for lockdowns.</p>	<p>NSCS has conducted a minimum of two recruiting sessions each year for the past decade and routinely collaborates with the Union to maintain a sufficient and diverse staffing complement.</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<p>Recommendation 3: That legislative standards and/or publicly accessible policies be adopted to address the following:</p> <ul style="list-style-type: none"> a. Reporting requirements: staff must create detailed and publicly accessible daily records of: <ul style="list-style-type: none"> i. Date(s) of the lockdown including duration ii. Who authorized the lockdown and their reasoning in the circumstances for determining it was justified and necessary iii. The length of lockdowns/rotations used (time in cell) iv. The range(s)/unit(s) impacted by the lockdown v. The plan put in place to ensure the lockdown is as short in duration as possible, that persons with serious mental health conditions are not placed in conditions of solitary confinement for any period, and that limitations on liberty are otherwise kept as minimal as possible for the period during which the lockdown endures. b. The precise nature and range of liberty deprivations that may be affected pursuant to lockdowns and the steps that must be taken to ensure the variant of lockdown used is the least restrictive possible (e.g., time outside, exercise, limited programming, etc.) 	<p>Temporary lockdowns may be required for several operational reasons (security of inmates, integrity of facility, health protocols, searches, etc..) and often not appropriate for public disclosure.</p> <p>All Unit events are documented in the Unit Logbook in compliance with NSCS Policy 37.06 'Logbooks and Routine Documentation'.</p> <p>Inmates who are confined receive entitlements which are recorded on the 'Inmate Entitlement Report' in compliance with NSCS Policy 43 'Administrative and Disciplinary Close Confinement'. These documents are consistently audited for compliance.</p>
<p>Recommendation 4: That upon being detained in their cell for 20 hours or more in a 24 hour period, each detainee should be provided with the following:</p> <ul style="list-style-type: none"> a. Access to legal counsel: 	<p>Inmates confined to their cell have access to staff 24/7 and may request to speak to a member of the clinical team at any time.</p> <p>If confinement is the result of discipline,</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<ul style="list-style-type: none"> i. Number for legal aid ii. Forms for filing habeas corpus applications. iii. A signed and dated form (to be updated every 5 days) giving notice of: <ul style="list-style-type: none"> 1. The reasons for lockdown 2. Expected duration 3. Copy of the policy for the guarantees during lockdown 4. That the individual sign the form indicating receipt and then is given a copy of the signed version b. That every person in lockdown be visited by a mental health professional daily who is not accountable to the correctional facility to determine if the lockdown is causing psychological harm. 	<p>details are captured on the Disciplinary Report and a copy given to the inmate as per NSCS Policy 42.00(7.6) 'Rules and Regulations'.</p> <p>If a temporary 'lockdown' is required due to other operational reasons, Supervisors explain to the inmate(s) why the confinement is taking place and that period of confinement is noted in the Unit Logbook. Inmates are provided habeas corpus applications upon request.</p> <p>Supervisors meet and speak with each offender daily and detail their status a minimum every 5 days on their individual Justice Enterprise Information Network (JEIN) profile</p>
COVID-19 Quarantine Unit	
<p>Recommendation 5: That the justification for liberty infringements during quarantine be recorded in a manner understandable to the prisoner, and provided to each affected prisoner.</p> <p>Recommendation 6: That there be a daily reassessment of necessity of the infringement(s).</p>	<p>Unfortunately, the Covid quarantine unit necessitates a short confinement period for assessment and containment as per NS Public Health pandemic protocols. This is explained to the inmates upon admission and reinforced by supervisors daily. As soon as NS Public Health clears an inmate from this unit, he/she is transferred to an alternate living unit.</p>
<p>Recommendation 7: That written health policies and protocols governing COVID-19 measures are made publicly available.</p>	<p>This is the responsibility of Public Health and the Nova Scotia Health Authority and is within their scope of authority to respond.</p>
Time Outdoors	
<p>Recommendation 8: That correctional staff must ensure that incarcerated people are offered their</p>	<p>Inmates are offered daily outdoor time in compliance with NSCS Policy 44.01 'Offender</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<p>daily entitlement to outdoor time.</p> <p>Recommendation 10: That, where prisoners are denied access to outdoor exercise, correctional staff ensure that they are advised in writing of the reasons for the denial, and that such reasons be restricted to those enumerated in section 57(2) of the CSA.</p>	<p>Entitlements'. If that entitlement is not provided, Officers must document the reason for the denial of that entitlement and submit it to his/her supervisor.</p>
<p>Recommendation 9: That adequate weather-appropriate clothes (e.g., shoes, coats) be provided to facilitate outdoor time.</p>	<p>All correctional facilities procure and supply inmates with weather appropriate coats. These coats are shared and therefore routinely laundered and are replaced if damaged.</p>
<p>Cleanliness of units within facilities</p>	
<p>Recommendation 11: That there be a mechanism of accountability regarding cleanliness of facilities and that all prisoners be given proper cleaning supplies.</p>	<p>All inmates are provided cleaning supplies daily for their use. Inmates in the Close Confinement Unit may not be provided these items pending their Internal Security Assessment and/or risk level. Inspections of all inmate living areas are conducted daily by Unit Supervisor to ensure hygiene standards are being met.</p>
<p>Access to Showers</p>	
<p>Recommendation 12: That prisoners be enabled to access at least one shower daily, regardless of whether in lockdown or close confinement or some other form of deprivation of residual liberty.</p>	<p>Inmates in confinement receive a shower daily and it is recorded on the 'Entitlement Report'. If a shower is denied for safety/operational reasons, Officers must document same on the Entitlement Report as per NSCS Policy 43 'Administrative and Disciplinary Close Confinement'.</p> <p>Every attempt is made to allow inmates in a larger living unit on a temporary 'lockdown' access to shower. Depending on number of inmates in the living unit and the length of</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
	time each inmate takes to shower, this may carry over into the following day
<p>Recommendation 13: That time for showering is not “subtracted” from someone’s daily minimum allotment of time out of cell. This is especially important in circumstances where people are afforded very little time out of cell, as is the case with people in close confinement, who according to Nova Scotia’s Correctional regulations are entitled to be out of cell for a minimum of just 30 minutes every 24-hour period.</p>	<p>Inmates in the Close Confinement Unit receive a shower daily in addition to time outdoors.</p> <p>Inmates in a larger living unit on a temporary ‘lockdown’ prioritize their own entitlements to ensure that as many inmates are permitted time out of their cell as possible each day.</p>
Intra-facility communications	
<p>Recommendation 14: That pursuant to the Mandela Rules, upon admission each individual be given written information regarding the law, regulations and policy governing the facility, as well as their rights, including how to access legal advice, further information in relation to prison law, and how to make complaints and requests.</p> <p>Recommendation 15: That the written information provided should also include the prisoners’ obligations and any disciplinary sanctions should they be breached, as well as any other necessary information to assist the individual to adapt to life in prison.</p>	<p>Admission Officers as well as Case Management Officers orient each inmate to the facility in compliance with NSCS Policy 34.00 ‘Orientation and Security Assessment’. This includes the rules, regulations, and facility disciplinary process. The Inmate Handbook is also available in hard copy and/or on a computer tablet for their review when requested.</p>
Legal Communications	
<p>Recommendation 16: That provincial correctional authorities establish mechanisms to ensure all prisoners, regardless of lockdown, are able to maintain access to counsel.</p>	<p>NSCS prioritizes inmate access to his/her legal counsel via in person visits, video conferencing and/or cellular telephone. Inmates are not denied access to their legal counsel.</p>
<p>Recommendation 17: That provincial correctional authorities institute policies and practices to ensure</p>	<p>Inmates have free, private access to their legal counsel as per NSCS Policy 37.14</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<p>that prisoners have meaningful access to free, private (unrecorded) communication with their counsel, regardless of whether the counsel is a staff legal aid lawyer or a private lawyer.</p>	<p>'Communication'.</p>
<p>Recommendation 18: That provincial correctional authorities ensure that any correspondence between a prisoner and their lawyer (or any other class of confidential correspondence) is not opened nor read.</p>	<p>Inmates have free, private access to legal aid – and other confidential correspondences - as per NSCS Policy 37.14(2) 'Privileged Communication' Persons in custody may also access their own private counsel.</p>
<p>Recommendation 19: That provincial correctional authorities post policies putting prisoners on notice of their right to communicate with their lawyers in confidence, and adopt mechanisms to ensure that this right is assiduously protected without exception.</p>	<p>Agreed. Draft posting to be developed.</p>
<p>Family Communications</p>	
<p>Recommendation 20: That, regardless of lockdowns, prisoners be provided sufficient time out of cell to contact family and friends, reflecting reintegration as a mandate of NS Correctional Services. The CSA, regulations and policy should be amended to reflect this requirement.</p>	<p>NSCS supports and fosters inmate reintegration. Those inmates in a larger living unit on a temporary 'lockdown' have access to telephones, mail and laptops for video visits (if approved) to maintain their reintegration.</p>
<p>Recommendation 21: That, should lockdowns persist, additional methods must be put in place to enable communication, including through the use of cordless telephones.</p>	<p>NSCS supports and fosters inmate reintegration. Those inmates in a larger living unit on a temporary 'lockdown' have access to telephones, mail and laptops for video visits (if approved) to maintain their reintegration.</p>
<p>Recommendation 22: That a written, publicly available policy be created regarding contact visits, developed in consultation with community stakeholders, including formerly incarcerated persons and advocacy organizations for people in prison, with particular attention paid to the circumstances of parents who are incarcerated.</p>	<p>Contact Visits are reviewed and approved on a case-by-case basis, taking into account facility security concerns, visitor concerns and duration of custody.</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<p>Recommendation 23: That a resumption of visits (following over twelve months of COVID-19 suspension of visitation) be instituted immediately, in consultation with Public Health, to reflect parity with resumption of visits by essential supporters and others in other congregate facilities across the province.</p>	<p>Visitation program will be reinstated at the earliest opportunity once NS Public Health authorizes same.</p>
<p>Programming and Reading Material</p>	
<p>Recommendation 24: That as much programming as possible is provided in the context of shifting pandemic conditions, for example, by modifying through video programming, and enabling entry of certain limited program providers, and then fully reinstating programs as soon as possible.</p>	<p>All facility programs are regularly reviewed by the Covid Subcommittee (Public Health, Dr. Lisa Barrett and NSCS) and as many inmate programs will resume full function at the earliest safest opportunity and in accordance with NS Public Health mandates.</p>
<p>Recommendation 25: That access to books through the library is provided as far as is possible in the context of shifting pandemic conditions, for example either bringing books to the day rooms, or allowing small groups to visit the library at a time, and that upon it being medically safe, full access is returned to the library.</p>	<p>Reading material has been brought to living units for inmate use. All facility programs are reviewed weekly by the Covid Subcommittee and as many inmate programs will resume full function at the earliest safest opportunity.</p>
<p>Recommendation 26: That there be public reporting of when, why, and to what degree programs, religious services, and reading materials are available, and when full access will be reinstated.</p>	<p>Any/all facility programs will be reinstated at the earliest opportunity once NS Public Health authorizes same. The corresponding agencies and representatives will be contacted accordingly.</p>
<p>Concerns related to the provincial Human Rights Act, including allegations of racism and access to smudging</p>	
<p>Recommendation 27: That NS Correctional Services consult with African Nova Scotian and Indigenous prisoner representatives, and other community stakeholders and organizations that live and work within communities that are the target of racism, to better understand how to address and</p>	<p>NSCS continues to consult with and engage the services of our culturally and ethnically diverse group of volunteers. Various Culture Awareness Programs are offered within the correctional facilities. There are also two Indigenous Liaison Officers in the province as</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
prevent racism.	well as an African Nova Scotian Liaison Officer that assist the division in this endeavour.
Recommendation 28: That correctional staff must be diligent in ensuring daily access to smudging where requested.	Smudging is offered daily in compliance with NSCS Policy 31 'Offender Programs'.
Recommendation 29: That, where it is not feasible to facilitate smudging for whatever reason, reasons should be provided, as well as a timeline for when smudging may resume.	If smudging cannot occur for operational or weather-related reasons, inmates are informed of same and is rescheduled for the next safest and earliest opportunity.
Strip searching after receiving opioid agonist therapy	
Recommendation 30: That NSH and NS Correctional Services should convene a joint committee with community stakeholders, including formerly incarcerated persons and harm reduction experts, to develop a new system for distributing methadone, suboxone, or other OAT medications without relying on strip searches and in the least intrusive manner possible.	NSCS continues to collaborate with and support NS Health Authority to achieve the least intrusive and safest method of methadone delivery. The division no longer routinely conducts strip searches of persons in custody as part of the methadone delivery protocol.
Inmate committees	
Recommendation 31: That inmate committees be reinstated and given statutory foundation.	NSCS has always supported the formation of an inmate committee in each correctional facility.
Recommendation 32: That publicly accessible policies be established regarding the functions of inmate committees.	Once established, inmate committee rules and guidelines can be accessed by the public.
Recommendations to Nova Scotia Health, Correctional Health Services Division	
Recommendation 33: That NSH establish, and ensure prisoners are aware of and have access to, a health-specific complaint procedure.	This is the responsibility of the Nova Scotia Health Authority and is within their scope of authority to respond.
Recommendation 34: That NSH ensure that its	

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<p>complaint procedure includes a mechanism for confirming receipt, clear timelines, a duty to give reasons and a clearly articulated appeal process.</p>	
<p>Recommendation 35: That NSH create a system of medical appointments whereby prisoners are given appointment times substantially ahead of the appointment itself (whether in-facility or in community).</p>	<p>This is the responsibility of the Nova Scotia Health Authority and is within their scope of authority to respond.</p>
<p>Recommendation 36: That NSH ensure that pressing medical issues be treated as such, enabling prisoners to have comparable access to emergency medical care as those residing in the community.</p>	<p>This is the responsibility of the Nova Scotia Health Authority and is within their scope of authority to respond.</p>
<p>Recommendation 37: That, pursuant to Mandela Rule 25, NSH ensure that mental health professionals, e.g. psychologists, are on site sufficient time to ensure that prisoners struggling with their mental health are able to access regular therapeutic treatment other than psychiatric medication.</p>	<p>This is the responsibility of the Nova Scotia Health Authority and is within their scope of authority to respond.</p>
<p>Recommendation 38: That NSH provide timely access to dental care.</p>	<p>This is the responsibility of the Nova Scotia Health Authority and is within their scope of authority to respond.</p>
<p>Recommendation 39: That NSH ensure that medication is dispensed in the manner prescribed.</p>	<p>This is the responsibility of the Nova Scotia Health Authority and is within their scope of authority to respond.</p>
<p>Recommendation 40: That, pursuant to Mandela Rules 34 and 35, NSH must actively maintain their independence from corrections, meaning:</p> <ul style="list-style-type: none"> a. That if inmates are experiencing mental or physical suffering as a consequence of conditions of confinement, the attending medical service provider must act on this 	<p>This is the responsibility of the Nova Scotia Health Authority and is within their scope of authority to respond.</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
<p>knowledge by recommending a change in the conditions that are causing or contributing to such suffering, and</p> <p>b. That NSH regularly send physicians to inspect the jails and advise on conditions of confinement.</p>	
Recommendations to the Government of Nova Scotia	
<p>Recommendation 41: That the NS Department of Justice work together with Community Services, Municipal Affairs / Housing, and Health to collaborate with the non-profit sector (including Elizabeth Fry Societies, Coverdale Courtwork Society and John Howard Society) to:</p> <p>a. Provide community-based alternatives to pre-trial detention (“bail beds”), and short- and long-term supports for persons released from detention, persons serving sentences of probation or conditional sentence orders, and persons granted conditional release from East Coast Forensic Hospital patients granted community release, and</p> <p>b. Commit core funding to ensure the sustainability of these alternatives.</p>	<p>NSCS continues to collaborate with the Elizabeth Fry Society and the John Howard Society to provide community-based housing alternatives. NSCS co-founded and financially supports the ‘Hub’ – a community housing option for inmates being released from custody.</p> <p>NSCS also funds community-based Bail Programs throughout the province. The division is open to further initiatives with our Community Services partners.</p>
<p>Recommendation 42: That Nova Scotia create a statutory body dedicated to independent monitoring of provincial corrections, meeting OPCAT criteria to ensure that the body can fulfill its purpose.</p>	<p>NSCS created the Office of Inspector, Correctional Services in 2020 to monitor and audit provincial corrections operations. The Inspector works closely with the Office of the Ombudsman to ensure the Correctional Services Division is compliant with all policies and procedures.</p> <p>Additionally, representatives from the Human Rights Commission regularly attend provincial correctional facilities – either in person or</p>

Recommendations from ECPJS 2020-2021 Visiting Committee Report, released July 2021	Nova Scotia Correctional Services (NSCS) response, provided September 2022
	virtually – to address any concerns.
Recommendation 43: That Nova Scotia urge the federal government to ratify OPCAT.	Not appropriate for comment at this time.

Appendix B: 2021-2022 Updates to 2020-2021 Recommendations and 2021-2022 New Recommendations

The following Appendix has two sections. In this first, we provide updates to our 2020-2021 recommendations. Here, we list all the recommendations from last year that are still unfulfilled, such that we have reiterated them this year. Where applicable, we have also further refined specific recommendations. These new refined recommendations are highlighted in yellow. In the second section, we list all of our new recommendations for 2021-2022.

1. 2021-2022 Updates to 2020-2021 Recommendations

Recommendations to the Minister of Justice and Nova Scotia Correctional Services

Lockdowns

2021 Recommendation 1: That minimum standards of treatment be adhered to regardless of lockdowns, meaning not simply that the standards expressed in the Mandela Rules (and accepted by appellate courts in Canada) should be followed—i.e., no subjecting people with serious mental health problems to any period of solitary confinement, and no solitary confinement beyond 15 consecutive days for others—but more generally, that people in custody should be guaranteed enough time out of cell each day to exercise outdoors, shower, telephone their lawyers, family and friends, and/or engage in religious and educational programming, as well as have access to other meaningful social interaction.

2021 Recommendation 1A (NS Government, DOJ, NSCS): That correctional law and policy be reformed to provide that prisoners subject to close confinement have timely access to a hearing in which to respond to the institutional rationales for imposing or extending close confinement, together with a right to be represented by legal counsel.

2021 Recommendation 1B (NS Government, DOJ, NSCS): That correctional law and policy be reformed to guarantee a right to timely independent review of close confinement by an official external to the correctional service.

2021 Recommendation 2: That a sufficient staffing complement be maintained, as well as an adequate scheduling system, to minimize short-staffing as a rationale for lockdowns.

2021 Recommendation 3: That legislative standards and/or publicly accessible policies be adopted to address the following:

- a. Reporting requirements: staff must create detailed and publicly accessible daily records of:
 - i. Date(s) of the lockdown including duration
 - ii. Who authorized the lockdown and their reasoning in the circumstances for determining it was justified and necessary
 - iii. The length of lockdowns/rotations used (time in cell)
 - iv. The range(s)/unit(s) impacted by the lockdown
 - v. The plan put in place to ensure the lockdown is as short in duration as possible, that persons with serious mental health conditions are not placed in conditions of solitary confinement for any period, and that limitations on liberty are otherwise kept as minimal as possible for the period during which the lockdown endures.
- b. The precise nature and range of liberty deprivations that may be affected pursuant to lockdowns and the steps that must be taken to ensure the variant of lockdown used is the least restrictive possible (e.g., time outside, exercise, limited programming, etc.)

2021 Recommendation 4: That upon being detained in their cell for 20 hours or more in a 24 hour period, each detainee should be provided with the following:

- a. Access to legal counsel:
 - i. Number for legal aid
 - ii. Forms for filing habeas corpus applications.
 - iii. A signed and dated form (to be updated every 5 days) giving notice of:
 1. The reasons for lockdown
 2. Expected duration
 3. Copy of the policy for the guarantees during lockdown
 4. That the individual sign the form indicating receipt and then is given a copy of the signed version
- b. That every person in lockdown be visited by a mental health professional daily who is not accountable to the correctional facility to determine if the lockdown is causing psychological harm.

COVID-19 Quarantine Unit

2021 Recommendation 5: That the justification for liberty infringements during quarantine be recorded in a manner understandable to the prisoner, and provided to each affected prisoner.

2021 Recommendation 6: That there be a daily reassessment of necessity of the infringement(s).

2021 Recommendation 7: That written health policies and protocols governing COVID-19 measures are made publicly available.

2021 Recommendation 7A (NSH-CHS, Public Health, NSCS): NSH-CHS and Public Health, in coordination with NSCS, should produce accessible, written COVID-19 policies specific to the jail environment. Each policy should reference the source of decision-making authority and describe how a prisoner may challenge failure to adhere to it. The policies should deal with the following subjects:

- a. Terms and conditions of COVID-19 quarantine on admission (including minimal duration, maximum time in-cell per day, and rights and obligations of those quarantined);
- b. Terms and conditions of COVID-19 quarantine in outbreak dayrooms (including minimal duration, maximum time in-cell per day, and rights and obligations of those quarantined);
- c. Access to COVID-19 testing, as well as consequences of refusal to test;
- d. Access to COVID-19 vaccinations, including any rules distinguishing those who are not vaccinated; and
- e. Any other situations where COVID-19 outbreak control is presented as justification for restricting prisoner entitlements or supports (e.g., lawyer visits, in-person visits, library access, programming, volunteer or service provider entry).

Time Outdoors

2021 Recommendation 8: That correctional staff must ensure that incarcerated people are offered their daily entitlement to outdoor time.

2021 Recommendation 9: That adequate weather-appropriate clothes (e.g., shoes, coats) be provided to facilitate outdoor time.

2021 Recommendation 10: That, where prisoners are denied access to outdoor exercise, correctional staff ensure that they are advised in writing of the reasons for the denial, and that such reasons be restricted to those enumerated in section 57(2) of the CSA.

Cleanliness Of Units Within Facilities

2021 Recommendation 11: That there be a mechanism of accountability regarding cleanliness of facilities and that all prisoners be given proper cleaning supplies.

2021 Recommendation 11A (NSCS): That NSCS take all measures required to control the reported rodent infestation at CNSCF and to prevent future infestations.

Access To Showers

2021 Recommendation 12: That prisoners be enabled to access at least one shower daily, regardless of whether in lockdown or close confinement or some other form of deprivation of residual liberty.

2021 Recommendation 13: That time for showering is not “subtracted” from someone’s daily minimum allotment of time out of cell. This is especially important in circumstances where people are afforded very little time out of cell, as is the case with people in close confinement, who according to Nova Scotia’s Correctional regulations are entitled to be out of cell for a minimum of just 30 minutes every 24-hour period.

Intra-Facility Communications

2021 Recommendation 14: That pursuant to the Mandela Rules, upon admission each individual be given written information regarding the law, regulations and policy governing the facility, as well as their rights, including how to access legal advice, further information in relation to prison law, and how to make complaints and requests.

2021 Recommendation 15: That the written information provided should also include the prisoners’ obligations and any disciplinary sanctions should they be breached, as well as any other necessary information to assist the individual to adapt to life in prison.
Legal communications

2021 Recommendation 16: That provincial correctional authorities establish mechanisms to ensure all prisoners, regardless of lockdown, are able to maintain access to counsel.

2021 Recommendation 17: That provincial correctional authorities institute policies and practices to ensure that prisoners have meaningful access to free, private (unrecorded) communication with their counsel, regardless of whether the counsel is a staff legal aid lawyer or a private lawyer.

2021 Recommendation 17A (NSCS): That unmonitored calls be assured where prisoners engage in communications with the courts, Crown, police, or other representatives of the legal system, as well as providers of legal information such as the Legal Information Society of Nova Scotia and East Coast Prison Justice Society.

2021 Recommendation 17B (NSCS): That prisoners be afforded opportunities to use non-dayroom phones for unmonitored calls for periods exceeding the default 20-minute limit on dayroom phones where engaged in preparing their defence.

2021 Recommendation 18: That provincial correctional authorities ensure that any correspondence between a prisoner and their lawyer (or any other class of confidential correspondence) is not opened nor read.

2021 Recommendation 19: That provincial correctional authorities post policies putting prisoners on notice of their right to communicate with their lawyers in confidence, and adopt mechanisms to ensure that this right is assiduously protected without exception.

Family Communications

2021 Recommendation 20: That, regardless of lockdowns, prisoners be provided sufficient time out of cell to contact family and friends, reflecting reintegration as a mandate of NS Correctional Services. The CSA, regulations and policy should be amended to reflect this requirement.

2021 Recommendation 21: That, should lockdowns persist, additional methods must be put in place to enable communication, including through the use of cordless telephones.

2021 Recommendation 22: That a written, publicly available policy be created regarding contact visits, developed in consultation with community stakeholders, including formerly incarcerated persons and advocacy organizations for people in prison, with particular attention paid to the circumstances of parents who are incarcerated.

2021 Recommendation 23: That a resumption of visits (following over twelve months of COVID-19 suspension of visitation) be instituted immediately, in consultation with Public Health, to reflect parity with resumption of visits by essential supporters and others in other congregate facilities across the province.

Programming And Reading Material

2021 Recommendation 24: That as much programming as possible is provided in the context of shifting pandemic conditions, for example, by modifying through video programming, and enabling entry of certain limited program providers, and then fully reinstating programs as soon as possible.

2021 Recommendation 25: That access to books through the library is provided as far as is possible in the context of shifting pandemic conditions, for example either bringing books to the day rooms, or allowing small groups to visit the library at a time, and that upon it being medically safe, full access is returned to the library.

2021 Recommendation 26: That there be public reporting of when, why, and to what degree programs, religious services, and reading materials are available, and when full access will be reinstated.

Discrimination, Including Allegations Of Racism And Lack Of Access To Smudging

2021 Recommendation 27: That NS Correctional Services consult with African Nova Scotian and Indigenous prisoner representatives, and other community stakeholders and organizations that live and work within communities that are the target of racism, to better understand how to address and prevent racism.

2021 Recommendation 27A (NSCS): That NSCS collect and publish data on incidence and length of stay in close confinement, disaggregated on the basis of race (including African Nova Scotian status) and Indigeneity, and distinguishing discrete forms of and/or rationales for close confinement.

2021 Recommendation 28: That correctional staff must be diligent in ensuring daily access to smudging where requested.

2021 Recommendation 28A (NSCS): Working together with relevant community agencies such as the Mi'kmaq Legal Support Network and the Mi'kmaq Native Friendship Centre, NSCS should explore options for reworking their policies and procedures as they relate to Indigenous sacred medicines and spiritual practices. As much as possible, these matters should be under the purview of a local, community-recognized Elder/traditional knowledge keeper, as opposed to correctional staff.

2021 Recommendation 28B (NSCS): NSCS should take steps to ensure that the sweat lodge constructed on the grounds of CNSCF be restored and maintained under the direction of community-endorsed Elders, and that access be granted in compliance with the duty to accommodate Indigenous spirituality.

2021 Recommendation 29: That, where it is not feasible to facilitate smudging for whatever reason, reasons should be provided, as well as a timeline for when smudging may resume.

Strip Searching After Receiving Opioid Agonist Therapy

NOTE: 2021 Recommendation 30, which recommended that NSCS and NSH-CHS convene a joint committee to develop a new system for distributing opioid agonist medications without relying on strip searches, has been completed.

Inmate Committees

2021 Recommendation 31: That inmate committees be reinstated and given statutory foundation.

2021 Recommendation 32: That publicly accessible policies be established regarding the functions of inmate committees.

Recommendations To Nova Scotia Health, Correctional Health Services Division

2021 Recommendation 33: That NSH establish, and ensure prisoners are aware of and have access to, a health-specific complaint procedure.

2021 Recommendation 34: That NSH ensure that its complaint procedure includes a mechanism for confirming receipt, clear timelines, a duty to give reasons and a clearly articulated appeal process.

2021 Recommendation 34A (NSH-CHS): NSH-CHS should collect and make public data on the number of health care complaints received quarterly, facilities in which complaints arose, and the proportion of complaints falling into designated thematic areas (e.g., mental health care, substance use issues, medication continuity, etc) in a manner compliant with provincial privacy legislation.

2021 Recommendation 34B (NSH-CHS): NSH-CHS should ensure that its Correctional Health Service complaints process includes a clearly articulated appeal process.

2021 Recommendation 34C (NSH-CHS): NSH-CHS, working with NSCS to the extent necessary, should take steps to ensure that people in provincial custody are aware of and have free access to the NSHA Patient Relations phone line.

2021 Recommendation 34D (NSH-CHS): NSH-CHS should create an independent Correctional Health Patient Advocacy Service.

2021 Recommendation 35: That NSH create a system of medical appointments whereby prisoners are given appointment times substantially ahead of the appointment itself (whether in-facility or in community).

2021 Recommendation 36: That NSH ensure that pressing medical issues be treated as such, enabling prisoners to have comparable access to emergency medical care as those residing in the community.

2021 Recommendation 37: That, pursuant to Mandela Rule 25, NSH ensure that mental health professionals, e.g. psychologists, are on site sufficient time to ensure that prisoners struggling with their mental health are able to access regular therapeutic treatment other than psychiatric medication.

2021 Recommendation 37A (NSH-CHS): NSH should make publicly accessible the list of medications approved for distribution in provincial correctional facilities.

2021 Recommendation 37B (NSH-CHS): NSH should introduce a new policy permitting access to Opioid Agonist Therapy (OAT) where clinically indicated, and should abolish its current policy of barring access to persons not already in treatment. It should also introduce related harm reduction policies responsive to the needs of incarcerated people.

2021 Recommendation 38: That NSH provide timely access to dental care.

2021 Recommendation 39: That NSH ensure that medication is dispensed in the manner prescribed.

2021 Recommendation 40: That, pursuant to Mandela Rules 34 and 35, NSH must actively maintain their independence from corrections, meaning:

- a. That if inmates are experiencing mental or physical suffering as a consequence of conditions of confinement, the attending medical service provider must act on this knowledge by recommending a change in the conditions that are causing or contributing to such suffering, and
- b. That NSH regularly send physicians to inspect the jails and advise on conditions of confinement.

Recommendations To The Government Of Nova Scotia

2021 Recommendation 41: That the NS Department of Justice work together with Community Services, Municipal Affairs / Housing, and Health to collaborate with the non-profit sector (including Elizabeth Fry Societies, Coverdale Courtwork Society and John Howard Society) to:

- a. Provide community-based alternatives to pre-trial detention (“bail beds”), and short- and long-term supports for persons released from detention, persons serving sentences of probation or conditional sentence orders, and persons granted conditional release from East Coast Forensic Hospital patients granted community release, and
- b. Commit core funding to ensure the sustainability of these alternatives.

2021 Recommendation 42: That Nova Scotia create a statutory body dedicated to independent monitoring of provincial corrections, meeting OPCAT criteria to ensure that the body can fulfill its purpose.

2021 Recommendation 43: That Nova Scotia urge the federal government to ratify OPCAT.

2. 2021-2022 New Recommendations

Recommendations For The NS Office Of The Ombudsman

2022 Recommendation 1 (NS Ombudsman): The Nova Scotia Office of the Ombudsman should initiate a systemic investigation of the adequacy and responsiveness of the NSCS internal complaints system.

2022 Recommendation 2 (NS Ombudsman): The Nova Scotia Office of the Ombudsman should publicly report on the nature and findings of its quarterly audits of close confinement in provincial jails. Further, the Ombudsman should supplement its compliance audits of close

confinement in Nova Scotia jails with in-person visits and interviews with individuals who are being held or have recently been held in close confinement.

Prisoner Access To The Nova Scotia Human Rights Commission Complaint Form

2022 Recommendation 3 (NSCS): NSCS should liaise with NSHRC to ensure that prisoners have access to the newly implemented NSHRC online complaint form via the tablets that are available at NNSCF and that the VC understands will soon be available in each facility.

Recommendation For The College Of Physicians And Surgeons Of Nova Scotia

2022 Recommendation 4 (College of Physicians and Surgeons of NS): CPSNS should conduct an independent review, in consultation with currently and formerly incarcerated Nova Scotians, to identify necessary changes to their complaint process in order to better reflect the distinct needs of incarcerated persons and the circumstances under which they receive health care treatment in custody.

Close Confinement

2022 Recommendation 5 (DOJ and NSCS): That correctional law and policy be reformed to prohibit close confinement for periods longer than 20 hours per day and to further identify a baseline of daily time out of cell (for instance, 10 hours per day) failing which procedural and substantive protections, including written reasons, shall be provided to prisoners.

Prisoner Communications With Police

2022 Recommendation 6 (NSCS): NSCS should ensure that phone calls to police are not blocked by the facility phone system.

COVID-19

2022 Recommendation 7 (DOJ, NSCS, NSH-CHS, and NS Public Health): NSH-CHS and NSCS, together with the provincial DOJ and NS Public Health, should adopt a strategy, together with community leaders with close connections to incarcerated populations, to increase vaccine uptake amongst men in provincial custody.

Health Segregation

2022 Recommendation 8 (NSCS & NSH-CHS): NSCS and NSH-CHS should produce regular public reporting on close confinement, inclusive of segregation for health or medical reasons. Reporting should be disaggregated to reflect race and gender, and should distinguish the bases for segregation including distinct health-related rationales (eg, COVID-19 quarantine, other virus-related quarantine, mental health, suicidality, etc).

2022 Recommendation 9 (NS Ombudsman): We recommend that the Ombudsman ensure that its quarterly compliance audits of close confinement in NS jails pay specific attention to close confinement for medical reasons (health segregation), inclusive of the experiences of people in Health Care Holds, Health Care Cells, and NSH-governed spaces such as the Forensic Assessment and Corrections Treatment Unit or other areas of the East Coast Forensic Hospital. The Ombudsman (and NSCS and NSH-CHS officials) should moreover ensure that health segregation is included in a single record of close confinement imposed on the individual while subject to NSCS and/or NSH-CHS authority.

2022 Recommendation 10 (NSH-CHS): We recommend that NSH-CHS policies and procedures expressly incorporate the duty of health professionals to refrain from participating in human rights violations.

2022 Recommendation 11 (NSH-CHS): We recommend that NSH-CHS policy and procedures expressly incorporate human rights standards, including the standard stated in Mandela Rule 45, and endorsed by Canadian appellate courts, prohibiting placement of persons with serious mental health problems in solitary confinement for any period.

2022 Recommendation 12 (NSH-CHS): We recommend that NSH-CHS policy and procedures require health professionals working in prisons or jails to participate in continuing education on how prisoners' human rights are engaged in correctional and correctional health settings.

2022 Recommendation 13 (NSCS): We recommend that NSCS provide a public update on compliance with the Auditor General's recommendations on completion and documentation of staff training requirements.

2022 Recommendation 14 (NSH-CHS): We recommend that NSH-CHS ensure that the mental health staff complement is sufficient to meet the needs of provincially incarcerated people, recognized to be disproportionately likely to have mental health and substance use problems. We further recommend that mental health support options include trauma-informed psychologist services, cognitive behavioural therapy and other counseling services.

2022 Recommendation 15 (NSH-CHS & NSCS): We recommend that NSH-CHS and NSCS officials meet with the VC and other stakeholders in the coming year to discuss mechanisms for transferring or diverting individuals experiencing serious mental health problems to rights-respecting community-based health care settings where health care staff determine this to be necessary.

Disciplinary Adjudication

2022 Recommendation 16 (NSCS): Where prisoners are denied access to a disciplinary hearing, correctional staff should ensure they are advised in writing of the reasons for this denial. Such reasons should be restricted to those enumerated in section 94 of the *Regulations*.

2022 Recommendation 17 (NSCS): Correctional staff should only penalize prisoners for disciplinary breaches after they either plead guilty or are found guilty after a hearing. Consequently, correctional staff should ensure that any “immediate measures” taken where an inmate has allegedly breached a rule comply with the restrictions and limitations on such measures under section 88 of the *Regulations*.

Prisoner Access To Legal Information

2022 Recommendation 18 (DOJ and NSCS): We recommend that NSCS take immediate measures to ensure that all prisoners held in Nova Scotia jails are able to access legal information adequate to their needs, including their needs as self-represented persons. We encourage increased distribution of electronic tablets for this purpose, beyond the pilot at NNSCF. We further urge government to allocate the necessary resources to NSCS so that they may meet this critically important access to justice obligation, and we urge NSCS to consult with prisoners and community legal information experts to ensure that the tablets and materials accessible through them meet prisoners’ legal information requirements.

Endnotes

¹ The binary division of correctional services into “men’s” and “women’s” units is one of many ways incarceration reproduces structural injustice in the lives of trans and non-binary people. When using the term “men,” we intend presumptive inclusion of trans men. However, while gender identity and individual preference are to inform placement decisions upon admission to Nova Scotia jails, correctional authorities may rely on health, safety or security to place a person in a unit that conflicts with their gender identity or individual preference. We discuss Nova Scotia correctional policy relating to trans people and institutional placement briefly in the introductory section of this report.

² In the same section, we engage with challenges that have recently arisen affecting use of the tablets to access legal information.

³ Later in our report, we engage critically with the content of the pamphlet and policies in question. However, production of these public-facing documents enables increased awareness and engagement and suggests a welcome commitment to transparency on the part of NSH-CHS.

⁴ We met with correctional authorities periodically over the first six months of 2022 to discuss the 2020-21 Recommendations. We received a formal set of written responses in September 2022. (See Appendix A).

⁵ Parts of this introduction are reproduced from (or partially modified versions of) sections of the VC’s 2020-21 Report. This includes the introductory description of East Coast Prison Justice Society, the Nova Scotia correctional system and Nova Scotia correctional law, as well as background on the federal Office of the Correctional Investigator and international human rights standards. Other parts of this introduction have been significantly updated, for instance on 2021-22 rates of incarceration and 2021-22 activities of NS Health - Correctional Health Services, the NS Ombudsman, the NS Human Rights Commission and NS College of Physicians and Surgeons.

⁶ ECPJS, “ECJPS Projects,” online: <<https://www.eastcoastprisonjustice.ca/projects.html>>.

⁷ Correctional Services Policy & Procedures, Policy 34.05.00, “Trans and Gender Variant Offenders,” s 7.1 (rev dated May 19, 2017) [CSPP].

⁸ CSPP, Policy 1.00.00, “Department of Justice - Organization,” s 4.6; BP (Re), 2017 NSPC 47.

⁹ Nova Scotia Department of Justice, “Corrections in Nova Scotia: Key Indicators” (March 2021), online: <<https://novascotia.ca/just/corrections/>> [“NS Corrections, Key Indicators, (2020-21)”], Figure 6 at 6; Nova Scotia Department of Justice, “Corrections Key Indicators, 2021-2022” online: <<https://novascotia.ca/just/corrections/>> [“NS Corrections, Key Indicators (2021-22)”].

¹⁰ “NS Corrections, Key Indicators (2020-21)” at 7.

¹¹ Statistics Canada shows 4331 total custodial admissions in Nova Scotia correctional facilities in 2019-20 and 3,326 total admissions in 2020-21. Statistics Canada. Table 35-10-0014-01 Adult admissions to correctional services. DOI: <https://doi.org/10.25318/3510001401-eng>.

¹² Hayley Ryan, “Nova Scotia jail population almost cut in half under COVID-19 measures” CBC News (April 22, 2020), online: <<https://www.cbc.ca/news/canada/nova-scotia/jail-population-cut-in-half-new-covid-19-measures-1.5541732>>.

¹³ Ibid.

¹⁴ “NS Corrections, Key Indicators (2021-22),” supra note 9.

- ¹⁵ Ibid. See also Statistics Canada. Table 35-10-0014-01: Adult admissions to correctional services. DOI: <https://doi.org/10.25318/3510001401-eng>.
- ¹⁶ Nova Scotia Department of Justice, “Corrections Key Indicators, 2019-2020,” at 10, online: <<https://novascotia.ca/just/corrections/>> [“NS Corrections, Key Indicators (2019-20)”].
- ¹⁷ Nova Scotia Department of Justice, “Corrections in Nova Scotia: Key Indicators, 2017-2018” (April 2019) at 10, online: <<https://novascotia.ca/just/publications/docs/Correctional-Services-Key-Indicator-Report-2017-18.pdf>>.
- ¹⁸ “NS Corrections, Key Indicators (2019-20),” supra note 16 at 10.
- ¹⁹ “NS Corrections, Key Indicators (2021-22),” supra note 9.
- ²⁰ “NS Corrections, Key Indicators (2019-20),” supra note 16.
- ²¹ “NS Corrections, Key Indicators (2020-21);” “NS Corrections Key Indicators (2021-22),” supra note 9.
- ²² Correctional Services Act, SNS 2005, c 37 [CSA].
- ²³ Correctional Services Regulations, NS Reg 99/2006 [CSR].
- ²⁴ A compendium of NSCS policies and procedures (short form herein: CSPP) was available online as of 2019 but later removed. Our references to CSPP specify, where possible, the revision date of the policy referenced.
- ²⁵ Corrections and Conditional Release Act, SC 1992, c 20, s 167(1) [CCRA].
- ²⁶ ECPJS, “Conditions of Confinement in Men’s Provincial Jails in Nova Scotia: ECPJS Visiting Committee Annual Report 2020-2021,” online: <https://www.eastcoastprisonjustice.ca/uploads/1/3/8/1/138152103/ecpjs_vc_2020-2021_report_fin.pdf> at 5-9 [ECPJS, “2020-21 VC Report”].
- ²⁷ CSA, s 24; CSR, ss 25-30. See also ECPJS, “2020-21 VC Report” at 5-6.
- ²⁸ ECPJS, “2020-21 VC Report” at 6.
- ²⁹ Ombudsman Act, RSNS 1989, c 327.
- ³⁰ CSR, s 59(1)(a).
- ³¹ Nova Scotia Office of the Ombudsman, “2021-22 Ombudsman Annual Report” (June 2022), online: <<https://ombudsman.novascotia.ca/sites/default/files/Ombu%20AR%20Eng%20-%20Final.pdf>> at 42.
- ³² Nova Scotia Office of the Ombudsman, “2020-21 Ombudsman Annual Report” (June 2021), online: <https://ombudsman.novascotia.ca/sites/default/files/documents/annual_reports/OmbudsAR-2020-2021.pdf> at 43.
- ³³ Nova Scotia Office of the Ombudsman, “2021-22 Report,” supra note 31 at 42.
- ³⁴ Nova Scotia Office of the Ombudsman, “2020-21 Report,” supra note 32 at 44.
- ³⁵ Ibid at 44.
- ³⁶ The number of complaints sourced to “Correctional Services” at page 19 (figure 7) of the 2021-22 Ombudsman Annual Report is 51, while the number of “Correctional Services Complaints” reflected at page 43 (figure 19) is 71. Past reports indicate that the figure at page 19 is drawn from a larger set of sources – stated in the 2020-21 report at p.18 (figure 8) to include “complaints from adults and youth in custody,” and stated elsewhere to include “a total of all inmate and public complaints about correctional services” (2020-21 Report at 44 (referencing figure 8); 2021-22 Report at 43). It does not immediately make sense that the complaints from the narrower subset of adult corrections only

(at p.43 of the 2021-22 Report) is greater than the number of complaints from the broader set (adult and youth complaints received from inmates themselves as well as the wider public) reported at p.18 of the 2021-22 Report. Perhaps there are different ways of counting not indicated in the body of the report.

³⁷ Nova Scotia Office of the Ombudsman, “2021-22 Report,” supra note 31 at 20.

³⁸ ECPJS, “2020-21 VC Report” at 7.

³⁹ Nova Scotia Office of the Ombudsman, “2021-22 Report,” supra note 31 at 43.

⁴⁰ Nova Scotia Office of the Ombudsman, “2019-2020 Ombudsman Annual Report” (September 2020), online:

<https://ombudsman.novascotia.ca/sites/default/files/documents/annual_reports/OmbudsAR-2019-2020.pdf> at 41. We also note the positive example of facilitation of the ability of a youth incarcerated at Wood Street secure treatment centre to contact their spiritual adviser: Nova Scotia Office of the Ombudsman, “2020-21 Report,” supra note 32 at 48.

⁴¹ Nova Scotia Office of the Ombudsman, “2020-21 Report” at 44; Nova Scotia Office of the Ombudsman, “2019-20 Report” supra note 40 at 37.

⁴² Ibid.

⁴³ Nova Scotia Auditor General, “Report of the Auditor General to the Nova Scotia House of Assembly” (29 May 2018), online: <https://oag-ns.ca/sites/default/files/publications/Report_May_2018.pdf> at 27-52. [2018 Auditor General Report].

⁴⁴ Ibid at 42.

⁴⁵ Nova Scotia Office of the Ombudsman, “2020-21 Report,” supra note 32 at 44.

⁴⁶ British Columbia Civil Liberties Association v Canada (Attorney General), 2019 BCCA 228; Canadian Civil Liberties Association v Canada (Attorney General), 2019 ONCA 243; and Francis v Ontario, 2021 ONCA 197.

⁴⁷ See, e.g., Williams v Central Nova Correctional Facility, 2022 NSSC 159; Seyforth v. Nova Scotia (Attorney General), 2022 NSSC 234; R v Lambert, 2020 NSPC 39 at paras 65-75. See also Downey and Gray v. Attorney General (Nova Scotia), 2020 NSSC 213.

⁴⁸ CSPP Policy 43.00.00 “Close Confinement” (revision dated October 16, 2019), s 16.

⁴⁹ Nova Scotia Office of the Ombudsman, “2020-21 Report,” supra note 32 at 35.

⁵⁰ We address this form of prisoner isolation (“health segregation”) later in this report and engage with the substance of the Ombudsman’s systematic review in that section.

⁵¹ Nova Scotia Office of the Ombudsman, “2020-21 Report” supra note 32 at 23.

⁵² ECPJS, “2020-21 VC Report” at 9. The description of international law as well as background on the VC project that follows is drawn in part from our 2020-21 Report.

⁵³ Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter].

⁵⁴ United Nations Standard Minimum Rules for the Treatment of Prisoners, UNGAOR, 70th Sess, Supp No 106, UN Doc A/Res/70/175 (17 December 2015) [Mandela Rules].

⁵⁵ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002, 2375 UNTS 237 art 1 (entered into force 22 June 2006) [OPCAT].

⁵⁶ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, available at: <https://www.refworld.org/docid/471355a82.html> [UNDRIP].

⁵⁷ ECPJS, “2020-21 VC Report” at 9 and see, eg, Canadian Civil Liberties Association v. Canada, 2019 ONCA 243 at para 23.

⁵⁸ The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders A/RES/65/229 16 Mar 2011 [Bangkok Rules].

⁵⁹ United Nations Treaty Collection, “9.b Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (October 2019), online: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&clang=_en.

⁶⁰ Note 56, supra; see, eg, Articles 34 & 35.

⁶¹ Allan MacMaster, “An unending cycle of violence inside the Burnside jail” The Coast (March 26, 2015), online: <https://www.thecoast.ca/halifax/an-unending-cycle-of-violence-inside-the-burnside-jail/Content?oid=4577881>.

⁶² Supra note 43.

⁶³ El Jones, “The prisoners at the Burnside jail are engaged in a non-violent protest; here is their statement” The Halifax Examiner (August 19, 2018), online: <https://www.halifaxexaminer.ca/government/province-house/the-prisoners-at-the-burnside-jail-are-engaged-in-a-non-violent-protest-here-is-their-statement/>.

⁶⁴ As noted above, our sister organization, Elizabeth Fry Society (Mainland Nova Scotia) engages in individualized and systemic advocacy on behalf of persons incarcerated in the East Unit at CNSCF.

⁶⁵ ECPJS, “Immediate measures needed to reduce incarceration rates provincially during Omicron wave of the COVID-19 pandemic” (December 21, 2021), online: https://docs.google.com/document/d/1VQEedra_omcYDWAMqmwQBG7eNsUeYju/edit?usp=sharing&oid=113442406227179867574&rtpof=true&sd=true.

⁶⁶ ECPJS, “East Coast Prison Justice Society (“ECPJS”) Visiting Committee Report on Phone Calls Received from CBCF, December 2021” (January 14, 2022), online: https://drive.google.com/file/d/1AnG1APL7Y-eOOm2LbkUy0Nh_0Entos65/view?usp=sharing; ECPJS, “East Coast Prison Justice Society (“ECPJS”) Visiting Committee Report on Phone Calls Received from CNSCF, December 2021” (January 14, 2022), online: <https://drive.google.com/file/d/15FOah49hbFKt0JTKcUftv9QLSUxf1ow/view?usp=sharing>; ECPJS, “East Coast Prison Justice Society (“ECPJS”) Visiting Committee Report on Phone Calls Received from NNSCF, December 2021” (January 14, 2022), online: <https://drive.google.com/file/d/1MV2SpmgWaD2TBww9OLR931cpG2srzBVS/view?usp=sharing>.

⁶⁷ ECPJS, “Health-Related Close Confinement Policy (“Health Segregation”)” (June 10, 2022), online: https://drive.google.com/file/d/1Ndu6jym71OFjmRTj7j3FziWCnVbHY-g2/view?usp=share_link.

⁶⁸ ECPJS, “East Coast Prison Justice Society (“ECPJS”) Visiting Committee Report on Phone Calls Received from CNSCF, January-June 2022” (June 30, 2022), online: https://drive.google.com/file/d/1xodbXR2Pf2cFr2e7WEskhgqLE7uaE31u/view?usp=share_link; ECPJS, “East Coast Prison Justice Society (“ECPJS”) Visiting Committee Report on Phone

Calls Received from CBCF, January-June 2022” (July 6, 2022), online:

https://drive.google.com/file/d/1-CCzo5cn2mCAFazLKaa4D8yStZj-eVQS/view?usp=share_link

ECPJS, “East Coast Prison Justice Society (“ECPJS”) Visiting Committee Report on Phone

Calls Received from NNSCF, January-June 2022” (July 18, 2022), online:

https://drive.google.com/file/d/1Lj4RJULy--4go-ktBKITCL5v7i8LA85s/view?usp=share_link.

⁶⁹ ECPJS and the Halifax Refugee Clinic, “Ending immigration detention in Nova Scotia provincial jails” (May 10, 2022), online: <https://drive.google.com/file/d/1SB2eOK-y-EMS8OVdxDFGMplJ00HPW5U1/view?usp=sharing>

⁷⁰ Nicholas Keung, “Nova Scotia joins B.C. in refusing to hold immigration detainees in provincial jails” The Toronto Star (September 21, 2022), online:

<https://www.thestar.com/news/canada/2022/09/21/nova-scotia-joins-bc-in-refusing-to-hold-immigration-detainees-in-provincial-jails.html>.

⁷¹ ECPJS, “Immediate measures needed to reduce incarceration rates provincially during Omicron wave of the COVID-19 pandemic,” *supra* note 65.

⁷² ECPJS, “Health-Related Close Confinement Policy (“Health Segregation”),” *supra* note 67.

⁷³ See discussion at section III.4 (Health Care), below.

⁷⁴ *Gogan v Nova Scotia (Attorney General)*, 2015 NSSC 360 at para 49.

⁷⁵ ECPJS, “2020-21 VC Report” at 38.

⁷⁶ Mandela Rules, *supra* note 54, Rules 43 & 44; and see appellate court cases cited at note 46, *supra*.

⁷⁷ *Ibid*. See also *Gogan v Nova Scotia (Attorney General)*, 2015 NSSC 360.

⁷⁸ *Francis v Ontario*, *supra* note x.

⁷⁹ *British Columbia Civil Liberties Association v Canada (Attorney General)*, *supra* note 46; *Canadian Civil Liberties Association v Canada (Attorney General)*, *supra* note 46.

⁸⁰ *British Columbia Civil Liberties Association v Canada (Attorney General)*, *ibid*, at paras 192-198 & 276.

⁸¹ *Ibid* at paras 202-208 & 271, 276.

⁸² CSA, s 57(1) & (2); CSR, s 81.

⁸³ CSPP, Policy 43.00.00, “Close Confinement,” (Oct 16, 2019 revision) at 7.2.5. The policy further specifies among the institutional security rationales for administrative close confinement per CSA, s.74(b), “space limitations” (4.3.1.2) and “health of the offender” including during illness or recovery from surgery (4.3.5).

⁸⁴ CSR, s 81.

⁸⁵ CSPP, Policy 43.00.00, “Close Confinement,” (Oct 16, 2019 revision).

⁸⁶ *Ibid* at s 7.3.

⁸⁷ *Ibid* at s 10. Our conversations with officials prior to 2019 suggested that people in health segregation also did not have the same access to privileges under this policy as those in non-medical administrative segregation. We discuss this in the “Special Topics” section on health segregation, below.

⁸⁸ CSPP, Policy 43.00.00, “Close Confinement,” (Oct 16, 2019 revision), s 14. (emphasis added)

⁸⁹ CSR, s.80(3).

⁹⁰ *Ibid*, s 80(4).

⁹¹ CSPP, Policy 43.00.00 (dated Oct 16, 2019), ss. 13. Although disciplinary close confinement is to be restricted to a maximum of 7 consecutive days per s 8 of the “Disciplinary Penalties” policy (Policy 42.05.00, revision dated Jan 15, 2021), that period may be extended with approval of the Executive Director or their designate. (s 8.3).

⁹² *Ibid.*, s 13.5.

⁹³ *Supra* note 46.

⁹⁴ See *Ogiamien v Ontario*, 2016 ONSC 3080 at para 31.

⁹⁵ *Ibid.*, and see ECPJS, “2020-21 VC Report” at 16.

⁹⁶ *Crawley v Nova Scotia (Attorney General)*, 2020 NSSC 221 at para 30 and see ECPJS, “2020-21 VC Report” at 16.

⁹⁷ *Downey and Gray v Attorney General (Nova Scotia)*, 2020 NSSC 213 at paras 19-21.

⁹⁸ 2022 NSSC 159.

⁹⁹ *Ibid* at para 4.

¹⁰⁰ The judge described the facts as follows: “[Williams] was transferred to the CNSCF on March 2, 2022 and initially placed in the Health Care Unit in accordance with Covid screening protocols in place at that time. He was also placed on a High Risk Security Protocol (HRSP) after his security risk score was classified as “high”. After completing the Covid protocol Mr. Williams was by court order placed in the Mentally Ill Offender Unit at the East Coast Forensic Hospital from April 6 to April 28, 2022. Upon his return to CNSCF he was placed in the Close Confinement Unit (CCU) due to security concerns. On April 5, 2022 he was provided with a letter outlining the expectations that the Institution had of him if he were to be placed into a rotation allowing, initially, 2 hours per day out of cells.”: *Ibid* at para 3. The judge added: “On May 24, 2022 Mr. Williams Security Management Plan (SMP) was amended to allow him to be on a two-cell rotation if compatible inmates are available. Unfortunately, no compatible inmate has been identified. For the same security reasons, the Facility is not able to transfer Mr. Williams to another housing unit”: *Ibid* at para 4.

¹⁰¹ *Francis v Ontario*, *supra* note 46.

¹⁰² See Sheila Wildeman, “Habeas Corpus in a Nutshell” Crown Law Conference, Halifax (June 16, 2021) (on file with authors). That presentation’s title was a tribute to a presentation by Dylan Gogan and lawyer Claire McNeil on a precedent-setting habeas corpus victory Gogan achieved as a self-represented prisoner (given at the first ECPJS “Prison Law 101” workshop in October, 2017). See El Jones, “A prisoner on prisons: ‘Habeas corpus in a nutshell’” *The Halifax Examiner* (October 28, 2017), online <<https://www.halifaxexaminer.ca/uncategorized/a-prisoner-on-prisons-habeas-corpus-in-a-nutshell/>>. And see *Gogan v. Nova Scotia (Attorney General)*, 2015 NSSC 360.

¹⁰³ 2022 NSSC 234.

¹⁰⁴ *Ibid* at para 2.

¹⁰⁵ *Ibid* at paras 11, 16-22.

¹⁰⁶ *Ibid* at paras 19-21.

¹⁰⁷ *Francis v Ontario*, *supra* note 46.

¹⁰⁸ *British Columbia Civil Liberties Association v Canada (Attorney General)*, *supra* note 46; *Canadian Civil Liberties Association v Canada (Attorney General)*, *supra* note 46.

¹⁰⁹ *Seyforth v Nova Scotia (Attorney General)*, *supra* note 103 at para 21.

¹¹⁰ See *Barrett v Layton*, [2003] OJ No 5572 (Sup Ct); *Manitoba (Director of Child and Family*

Services) v A (J) 2004 MBCA 184 (CanLII). In *Barrett v Layton*, the trial judge dismissed a motion for mistrial with the following reasons:

Trial fairness requires ensuring that an unrepresented person is not denied a trial on the merits by her lack of knowledge of either the trial process or procedural or substantive law, or by the stress of appearing in court, or by a combination of those factors. Litigants have the right to appear in court without counsel and the right to a fair hearing regardless of whether they are legally represented. Since it is the trial judge who is required to give effect to those rights, doing so cannot amount to abandonment of the role of the trial judge and assumption of a counsel-like role. (emphasis added) See also Michelle Flaherty, “Self-Represented Litigants, Active Adjudication and the Perception of Bias: Issues

in Administrative Law” (2015) 38:1 Dalhousie LJ 119 at 139-40.

¹¹¹ See section III.2 of this report.

¹¹² See e.g. Alexa MacLean, “Staff shortages leave Central Nova Correctional Facility in perpetual state of lockdown” Global News (December 3, 2020) <https://globalnews.ca/video/7500607/staff-shortages-leave-central-nova-correctional-facility-in-perpetual-state-of-lockdown>. Continuing staff shortages have been a theme of the VC’s discussions with prisoners and NSCS authorities over the past two years.

¹¹³ See section II.3.d of this report (“Individualized advocacy”), above.

¹¹⁴ See section IV.2 of this report (“Health segregation”), below.

¹¹⁵ *Francis v Ontario*, supra note 46.

¹¹⁶ *British Columbia Civil Liberties Association v Canada (Attorney General)*, supra note 46; *Canadian Civil Liberties Association v Canada (Attorney General)*, supra note 46.

¹¹⁷ 2018 BCSC 62 at para 250 (emphasis added).

¹¹⁸ *Francis v Ontario*, supra note 46, at paras 46 & 49.

¹¹⁹ See West Coast Prison Justice Society, “Solitary by another name: The ongoing use of isolation in Canada’s federal prisons” (November 2020), online: <<https://prisonjustice.org/wp-content/uploads/2020/11/Solitary-by-another-name-report.pdf>> at 7-8.

¹²⁰ *Solosky v. The Queen*, [1980] 1 SCR 821 at 839: “[A] person confined to prison retains all of his civil rights, other than those expressly or impliedly taken from him by law.”

¹²¹ Section 59 of the CSA states: “Except where exempted by a health-services professional, a superintendent shall ensure that every offender works or participates in programs at a correctional facility.”

¹²² *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 25.

¹²³ Government of Nova Scotia, “Pressure injuries in long-term care: public reporting” (n.d.), online: <<https://novascotia.ca/pressure-injuries-in-long-term-care/>>.

¹²⁴ See Council of Europe, Commissioner for Human Rights “COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe” (April 6, 2020), online: <<https://www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe>>; OHCHR & WHO, Inter-Agency Standing Committee, “IASC Interim Guidance on Covid-19: Focus on Persons Deprived of Their Liberty” (March 27, 2020), online: <<https://interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus->

[persons-deprived-their-liberty](#)> ; Penal Reform International, “Coronavirus: Preventing harm and human rights violations in criminal justice systems” (July 14, 2020), online:

<<https://cdn.penalreform.org/wpcontent/uploads/2020/07/Coronavirus-briefing-July-2020.pdf>>.

¹²⁵ See *ibid*, and Adelina Iftene, “COVID-19, Human Rights and Public Health in Prisons: A Case Study of Nova Scotia’s Experience During the First Wave of the Pandemic” (2021) 44:2 Dal LJ 477.

¹²⁶ See Adelina Iftene, *ibid*. See also Nova Scotia Health Authority, “Mental Health and Addictions Services Care Directive: ECFH & OHS Screening for COVID-19 by Swab Collection” (March 20, 2020, revision April 29, 2020) <https://perma.cc/MBM4-9ZCD?type=standard>. This policy addresses swabbing on admission to correctional facilities and, e.g., placement of those who test negative in a unit of “cohorts” for 14 days (yet leaves conditions in this unit, such as time in cell, unspecified).

¹²⁷ See Adelina Iftene, *ibid*, and Jeff Douglas interview with Sheila Wildeman (CBC Mainstreet NS), “How prison lockdowns affect the mental health of inmates” (May 27, 2022), online: <<https://www.cbc.ca/listen/live-radio/1-37-mainstreet-ns/clip/15915353-how-prison-lockdowns-affect-mental-health-inmates>>.

¹²⁸ See “ECFH & OHS Screening for COVID-19 by Swab Collection,” *supra* note 126.

¹²⁹ *Seyforth v Nova Scotia (Attorney General)*, *supra* note 103 at para 4.

¹³⁰ *Williams v. Central Nova Correctional Facility*, *supra* note 98 at paras 3-4; *Seyforth v Nova Scotia (Attorney General)*, *supra* note 103 at paras 3-8 & 21.

¹³¹ *Seyforth v Nova Scotia (Attorney General)*, *ibid* at para 20.

¹³² *Ibid* at paras 6-7 & 21-22. The judge states at para 6 that prisoners in the North 1 quarantine-on-admission unit received “a maximum of 30 to 45 minutes of time out of cell on a single cell rotation each day.” (emphasis added)

¹³³ Communications from James MacLean, Health Services Manager, Mental Health and Addictions Program, East Coast Forensic Hospital (and Interim Program Lead, Correctional Health Services), to ECPJS VC rep Sheila Wildeman, May 20, 2022.

¹³⁴ We were advised that all facilities follow this care directive for testing:

http://policy.nshealth.ca/Site_Published/NSH/document_render.aspx?documentRender.IdType=6&documentRender.GenericField=&documentRender.Id=90554 and all facilities follow this admission pathway:

http://policy.nshealth.ca/Site_Published/covid19/document_render.aspx?documentRender.IdType=6&documentRender.GenericField=&documentRender.Id=85440. (Communications from Cyndi Nippard, NSH, to VC rep Sheila Wildeman, May 25, 2022.)

¹³⁵ James MacLean to Sheila Wildeman, *supra* note 133.

¹³⁶ Cyndi Nippard to Sheila Wildeman, *supra* note 134.

¹³⁷ Mandela Rules, Rule 23.

¹³⁸ CSA, s 57(1).

¹³⁹ *Ibid*, s 57(2).

¹⁴⁰ CSR, s 56.

¹⁴¹ Again, the Mandela Rules are not directly binding in Canada, but are nonetheless useful as interpretive aids in setting limits on correctional discretion.

¹⁴² Mandela Rules, Rule 17.

¹⁴³ See ECPJS, “2020-21 VC Report” at 26.

- ¹⁴⁴ Supra note 98, at para 4.
- ¹⁴⁵ Nova Scotia, Correctional Services, “Offender Handbook” (2016), online: <https://novascotia.ca/just/Corrections/_docs/Adult_Offender_Handbook_EN.pdf>.
- ¹⁴⁶ CSA, s 54(2). See also CSA, s 55 & 56; CSR, s 95(3).
- ¹⁴⁷ ECPJS, “2020-21 VC Report” at 31.
- ¹⁴⁸ See 2020-21 Recommendation 17 which we reiterate, below.
- ¹⁴⁹ Bacon v Surrey Pretrial Services Centre (Warden), 2012 BCSC 1453 at para 24 [Bacon], citing Geffen v Goodman Estate, [1991] 2 SCR 353 at p 383.
- ¹⁵⁰ Bacon, *ibid* at paras 44, 51-53.
- ¹⁵¹ CSA, s 55.
- ¹⁵² Blank v Canada (Minister of Justice), 2006 SCC 39 at para 34.
- ¹⁵³ Mandela Rules, Rule 58.
- ¹⁵⁴ CSA, s 59.
- ¹⁵⁵ CSR, s 57; Mandela Rules, Rule 64.
- ¹⁵⁶ Mandela Rules, Rules 65 & 66.
- ¹⁵⁷ Human Rights Act, RSNS 1989, c 214, s 5(1).
- ¹⁵⁸ Corrections and Conditional Release Act, SC 1992, c 20, ss 73-74.
- ¹⁵⁹ CSA, ss 25-26. Although Corrections is not responsible for delivering health care in correctional facilities, they are responsible for facilitating access to NSH supports and services. For example, under section 45(2)(b) of the CSR, correctional officials are responsible for ensuring that, upon admission to a facility, each person receives a “health assessment.”
- ¹⁶⁰ Correctional Health Services (Patient and Family Guide) 2021 (May, 2021) [2021 CHS Pamphlet], available at: <https://www.nshealth.ca/sites/nshealth.ca/files/patientinformation/2204.pdf>
- ¹⁶¹ 2021 CHS Pamphlet at p.8.
- ¹⁶² See this report at section I.3, above.
- ¹⁶³ Involuntary Psychiatric Treatment Act, SNS 2005, c. 42, s 61.
- ¹⁶⁴ 2021 CHS Pamphlet, *supra* note 160 at p.3.
- ¹⁶⁵ Communications from Health Services Manager, Mental Health and Addictions Program, East Coast Forensic Hospital (and Interim Program Lead, Correctional Health Services) James MacLean to ECPJS VC reps Sheila Wildeman & Harry Critchley (Aug 11, 2022).
- ¹⁶⁶ Communications from Health Services Manager, Mental Health and Addictions Program, East Coast Forensic Hospital (and Interim Program Lead, Correctional Health Services) James MacLean to ECPJS VC reps Sheila Wildeman & Harry Critchley (June 16, 2022).
- ¹⁶⁷ 2021 CHS Pamphlet, *supra* note 160 at p.4.
- ¹⁶⁸ *Ibid*.
- ¹⁶⁹ *Ibid* at p.5.
- ¹⁷⁰ See Adelina Iftene, Lynne Hanson & Allan Manson, “Tort Claims and Canadian Prisoners” (2014) 39 Queen's LJ 655.
- ¹⁷¹ 2021 CHS Pamphlet, *supra* note 160 at p.4.
- ¹⁷² MM-OFH-001 Methadone Offenders Health (effective Dec 3, 2015) available at www.policy.nshealth.ca.

¹⁷³ See Claire Bodkin et al., “History of Childhood Abuse in Populations Incarcerated in Canada: A Systematic Review and Meta-Analysis” (2019 Mar) 109(3) Am J Public Health. e1-e11. doi: 10.2105/AJPH.2018.304855.

¹⁷⁴ Prisoners’ Legal Services, “News Release: Human rights complaint results in a settlement that will improve services for people in prison with opioid dependency” (Dec 17, 2021). <https://prisonjustice.org/news-release-human-rights-complaint-results-in-a-settlement-that-will-improve-services-for-people-in-prison-with-opioid-dependency/>

¹⁷⁵ Expert Report of Seonaid Nolan, MD FRCPC, dip ABAM, Medical Director of Providence Health Care’s Interdisciplinary Substance Use Program, submitted as part of BC PLS Human Rights Complaint against the Correctional Service of Canada (Nov 30 2018) at 9. On file with authors.

¹⁷⁶ Ibid at 6-10.

¹⁷⁷ Ibid at 11-12, and see Claire Bodkin, Matt Bonn & Sheila Wildeman, “Fuelling a crisis: Lack of treatment for opioid use in Canada’s prisons and jails” (The Conversation, Mar 4, 2020) <https://theconversation.com/fuelling-a-crisis-lack-of-treatment-for-opioid-use-in-canadas-prisons-and-jails-130779>.

¹⁷⁸ See Bodkin, Bonn & Wildeman, *ibid*.

¹⁷⁹ See S. Enggist et al, eds, Prisons and Health (Copenhagen: WHO Regional Office for Europe, 2014) <https://apps.who.int/iris/handle/10665/128603> at 4. See also Mandela Rules 32 & 33. Recommendation 40 is also grounded in professional ethical obligations, for instance the Canadian Medical Association Code of Ethics and Professionalism (2018), s.10, states: “Never participate in or condone the practice of torture or any form of cruel, inhuman, or degrading procedure.” See also Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2022 BCHPRB 39 <https://canlii.ca/t/jqcl9>.

¹⁸⁰ See this report at section I.3.b.iv.

¹⁸¹ ECPJS, “Open letter on the urgency of reducing incarceration during COVID-19 pandemic” (March 16, 2020), Nova Scotia Advocate: <https://nsadvocate.org/2020/03/16/open-letter-on-the-urgency-of-reducing-incarceration-during-covid-19-pandemic/>; ECPJS, “Press release: Nova Scotia must protect human rights and reduce risks of COVID-19 in provincial jails” (January 12, 2021), Nova Scotia Advocate: <https://nsadvocate.org/2021/01/12/press-release-nova-scotia-must-protect-human-rights-and-reduce-risks-of-covid-19-in-provincial-jails/>; ECPJS, “Media release: COVID-19 risk mitigation in Nova Scotia’s provincial jails and mass preventative release” (April 26, 2021), Nova Scotia Advocate: <https://nsadvocate.org/2021/04/26/media-release-covid-19-risk-mitigation-in-nova-scotias-provincial-jails-and-mass-preventative-release/>; ECPJS, “Immediate measures needed to reduce incarceration rates provincially during Omicron wave of the COVID-19 pandemic” (December 21, 2021), online: https://docs.google.com/document/d/1VQEedlra_omcYDWAMqmwQBG7eNsUeYju/edit?usp=sharing&oid=113442406227179867574&rtpof=true&sd=true.

¹⁸² See Adelina Iftene, *supra* note 125.

¹⁸³ Figures obtained from the Director of Nova Scotia’s Correctional Service (December, 2020).

¹⁸⁴ “NS Corrections, Key Indicators (2021-22),” *supra* note 9.

¹⁸⁵ ECPJS, “Urgent open letter re health, safety and human rights of people in prison during COVID-19 crisis” (March 15, 2020), Nova Scotia Advocate: <https://nsadvocate.org/2020/03/15/urgent-open-letter-re-health-safety-and-human-rights-of-people-in-prison-during-covid-19-crisis>; ECPJS, “Open letter on the urgency of reducing incarceration during COVID-19 pandemic,” supra note 181.

¹⁸⁶ CSA, s 79.

¹⁸⁷ We discuss the right to reasonable bail later in this report.

¹⁸⁸ See, e.g., Coverdale Courtwork Society, “Bail Support and Supervision Program” <https://www.coverdale.ca/bail-support-and-supervision-program>. See also Adult Bail Supervision and Support Program Regulations, N.S. Reg. 88/2021 (effective May 26, 2021) <https://novascotia.ca/just/regulations/regs/coradult.htm>.

¹⁸⁹ We provide more details on these important developments later in this report.

¹⁹⁰ See Simon Avery, “Different Paths of Pandemic Protection: A comparative case study on vaccine rollouts in Nova Scotia, Quebec and Ontario” Public Policy Forum (October 28, 2021), online: <https://ppforum.ca/publications/different-paths-of-pandemic-protection-a-comparative-case-study-on-vaccine-rollouts-in-nova-scotia-quebec-and-ontario/>

¹⁹¹ ECPJS, “Immediate measures needed to reduce incarceration rates provincially during Omicron wave of the COVID-19 pandemic” (December 21, 2021), online: https://docs.google.com/document/d/1VQFedra_omcYDWAMqmwQBG7eNsUeYju/edit?usp=sharing&oid=113442406227179867574&rtpof=true&sd=true.

¹⁹² See Adelina Iftene, supra note 125; and ECPJS, “Urgent open letter re health, safety and human rights of people in prison during COVID-19 crisis” (March 15, 2020), Nova Scotia Advocate: <https://nsadvocate.org/2020/03/15/urgent-open-letter-re-health-safety-and-human-rights-of-people-in-prison-during-covid-19-crisis>; “Open letter on the urgency of reducing incarceration during COVID-19 pandemic” (March 16, 2020), Nova Scotia Advocate: <https://nsadvocate.org/2020/03/16/open-letter-on-the-urgency-of-reducing-incarceration-during-covid-19-pandemic>.

¹⁹³ NS Justice Press Release, “COVID Cases Reported at Central Nova Scotia Correctional Facility” (December 31, 2021) <https://novascotia.ca/news/release/?id=20211231004>.

¹⁹⁴ Valerie Ouellet, Sylvene Gilchrist, “Some prisoners not offered COVID-19 shots until months after general public, CBC analysis finds” (June 16, 2021).

¹⁹⁵ Fiona Kouyoumdjian et al, “Health status of prisoners in Canada” (2016) 62(3) Can Fam Physician 215-222.

¹⁹⁶ See section III.4.b above, and ECPJS “2020-21 VC Report.”

¹⁹⁷ Kouyoumdjian et al, supra note 195, and see this report at section I.2.a (“Rates of incarceration”).

¹⁹⁸ See section III.3.e & f, above.

¹⁹⁹ National Advisory Committee on Immunization, Guidance on the prioritization of initial doses of COVID-19 vaccine(s) [2020-12-18] archived at: <https://www.canada.ca/en/public-health/services/immunization/national-advisory-committee-on-immunization-naci/guidance-prioritization-initial-doses-covid-19-vaccines.html>.

²⁰⁰ Ouellet & Gilchrist, supra note 194.

²⁰¹ Ibid.

²⁰² See, e.g., Ian Mosby, “Administering colonial science: Nutrition research and human biomedical experimentation in Aboriginal communities and residential schools, 1942–1952” (2013) *Social History*, 46:145–72; OmiSoore Dryden & Onye Nnorom, “Time to dismantle systemic anti-Black racism in medicine in Canada” *CMAJ* (Jan 11, 2021) 193 (2) E55-E57; DOI: <https://doi.org/10.1503/cmaj.201579>.

²⁰³ El Jones, “Meet the African Nova Scotian woman doctor who is fighting vaccine misinformation one post at a time,” (June 7, 2021) *Halifax Examiner* <https://www.halifaxexaminer.ca/featured/meet-the-african-nova-scotian-woman-doctor-who-is-fighting-vaccine-misinformation-one-post-at-a-time/>

²⁰⁴ Canadian Association of Elizabeth Fry Societies, COVID 19 and Vaccination in Prison (YouTube video) https://www.youtube.com/watch?v=QDOPWYyY4FA&ab_channel=CanadianAssociationofElizabethFrySocieties

²⁰⁵ See NNSCF Standard Operating Procedure “Health Care: Special or Suicide Watch” at 5.1 (revision dated Nov 29, 2018).

²⁰⁶ NSHA Mental Health and Addictions Services, “Forensic Assessment and Corrections Treatment Unit (FACT)” at <https://mha.nshealth.ca/en/services/forensic-assessment-and-corrections-treatment-unit-fact>

²⁰⁷ As we have reiterated throughout this report, close confinement is a condition, not a place: see *Gogan v. Nova Scotia (Attorney General)*, 2015 NSSC 360 at paras 41-51.

²⁰⁸ CSPP, Policy 43.00.00, “Close Confinement,” (Oct 16, 2019 revision) at 4.3.5.

²⁰⁹ COVID-19 quarantine, and specifically the absence of clear written policies or protocols on COVID-19 quarantine on admission or following a positive test, is dealt with above in section III.2 of this report.

²¹⁰ Dr. Reena Kapoor, “The Brutality of ‘Suicide Watch’” (August 16, 2019) *Cognoscenti* <https://www.wbur.org/cognoscenti/2019/08/16/mental-health-prison-suicide-jeffrey-epstein-reena-kapoor>

²¹¹ *Ibid.* See also Archie Kaiser, “Opinion: Jail suicide cries out for public inquiry,” (*Halifax Herald*, March 30, 2019) <https://www.saltwire.com/nova-scotia/opinion/opinion-jail-suicide-cries-out-for-public-inquiry-296124/>.

²¹² *Ibid.*

²¹³ *Supra* note 46 at para 49.

²¹⁴ *Ibid.*, at para 16.

²¹⁵ *Supra* note 54.

²¹⁶ For instance, in 2017-18 we were advised that an individual had been held in health segregation for more than one year. We have not been able to confirm this. In this report, we recommend that NSCS and NSH-CHS commit to public transparency through regularized practices of data-gathering and data-sharing on health segregation and other forms of close confinement.

²¹⁷ See section III.1 (“Deprivations of residual liberty”), above.

²¹⁸ See Williams, *supra* note 98; Seyforth, *supra* note 103.

²¹⁹ There is a solitary confinement class action in process, brought by persons who have been held in solitary confinement in NS provincial corrections. See <https://www.apmlawyers.com/solitary-confinement-class-action/>; <https://valentlegal.ca/class-action/solitary-confinement-class-action/>

- ²²⁰ Downey and Gray v. Attorney General (Nova Scotia), 2020 NSSC 213, <<https://canlii.ca/t/j91nr>>; Williams, supra note 98.
- ²²¹ FOIPOP Disclosure Log Package 2017-04798-JUS (at pp9 & 14), on file with authors.
- ²²² FOIPOP Disclosure Log Package 2021-00653-JUS (at p5) provided through the Prison Pandemic Papers website (<https://ruor.uottawa.ca/handle/10393/43344>).
- ²²³ These findings are discussed below.
- ²²⁴ 2018 Auditor General Report, supra note 43 at 27-52.
- ²²⁵ Ibid at 28.
- ²²⁶ Nova Scotia Auditor General, “Follow-up of 2015, 2016 and 2017 Performance Audit Recommendations” (May 2020) at 66.
- ²²⁷ See section I.3.b.i of this report.
- ²²⁸ Ibid.
- ²²⁹ Nova Scotia Office of the Ombudsman, “2021-22 Report,” supra note 31 at 35.
- ²³⁰ Ibid.
- ²³¹ Ibid.
- ²³² Downey and Gray v. Attorney General (Nova Scotia), 2020 NSSC 213 at 6.
- ²³³ Ibid.
- ²³⁴ Communications from Health Services Manager, Mental Health and Addictions Program, East Coast Forensic Hospital (and Interim Program Lead, Correctional Health Services) James MacLean to ECPJS VC reps Sheila Wildeman & Harry Critchley (June 16, 2022).
- ²³⁵ Ibid.
- ²³⁶ Communications from Health Services Manager, Mental Health and Addictions Program, East Coast Forensic Hospital (and Interim Program Lead, Correctional Health Services) James MacLean to ECPJS VC reps Sheila Wildeman & Harry Critchley (Aug 11, 2022).
- ²³⁷ CSA, ss 25 & 26.
- ²³⁸ CSA, ss 74 & 75. Parameters of permissible delegation under s 38 of the CSA is beyond the scope of this report.
- ²³⁹ See, e.g., NSH - CHS Standard Operating Procedure “Use of Health Care Holds” (October 29, 2021). As described below, initial assessment for and decision-making about Health Care Holds is the responsibility of health care professionals. Subsequently, transfer to a “Health Care Cell” (which may require transfer to CNSCF) again involves decision-making of the health professional who “advises” the CHS Program Lead, who then “will request that DOJ transfer the patient to CNSCF”.
- ²⁴⁰ See s 12 of NSH - CHS Standard Operating Procedure, “Use of Health Care Holds,” discussed below.
- ²⁴¹ CSPP, Policy 46.00.00 (“Access to Health Care”) rev. Feb 17, 2020, s 3.1.3.
- ²⁴² In Nova Scotia, see the Involuntary Psychiatric Treatment Act, SNS 2005, c 42.
- ²⁴³ See Sheila Wildeman, “Consent to Psychiatric Treatment: From Insight (into Illness) to Incite (a Riot)” in Colleen Flood & Jennifer Chandler, eds, Law and Mind: Mental Health Law and Policy in Canada (Toronto: LexisNexis, 2016) 81 at 88-91.
- ²⁴⁴ Francis v Ontario, supra note 46.
- ²⁴⁵ A May 24, 2019 revision of NSCS Policy 43.00.00 was included in the 2019 compendium of NSCS policies available online until sometime in late 2019, when online access was discontinued. In

this report we rely on a subsequent revision published on the NS FOIPOP website, dated Oct 16, 2019. See below.

²⁴⁶ CH 65-036 (February 2015).

²⁴⁷ Email communication from Coordinator, Administration and Support Services, Correctional Services to Sheila Wildeman, March 17, 2022.

²⁴⁸ FOIPOP Disclosure Log package 2021-01483-JUS. On file with authors.

²⁴⁹ NSH - CHS Standard Operating Procedure "Use of Health Care Holds" (Oct 29, 2021). On file with authors.

²⁵⁰ NSH-CHS Standard Operating Procedure "Use of Central Nova Scotia Correctional Facility Health Care Cells" (Oct 29, 2021). On file with authors.

²⁵¹ NSH-CHS Standard Operating Procedure "[M]onitoring of patient health while in Close Confinement Cells and/or segregation-like conditions" (Oct 29, 2021). On file with authors.

²⁵² Revision dated October 16, 2019. This policy is described (at s 3.1) as an elaboration of powers conferred under s 74 of the CSA, and ss 79-81, 88(2)(b), 89(c) and 95(1)(c) and (d) of the CSR.

²⁵³ Ibid, s 4.3.5.

²⁵⁴ Ibid, s 4.5.2.1.

²⁵⁵ Ibid, s 4.5.3.

²⁵⁶ Revision dated February 17, 2020.

²⁵⁷ Ibid, s 3.1.(emphasis added)

²⁵⁸ For instance, CNSCF SOP 46.15.00 ("Special or Suicide Watch," rev dated Feb 28, 2014) states at s 3.1: "If a health services professional from the offender health services (OHS) unit determines . . . that an offender must be placed on a special/medical or suicide watch, the offender will be placed in close confinement in accordance with Policy and Procedures 43.02.00."

²⁵⁹ In cases of non-medical confinement, discontinuing close confinement is to be done where "the deputy superintendent or provincial adjudications [sic]" are satisfied "that it is in the best interest of the offender, other offenders and the security of the correctional facility" to release the person. (Policy 43 "Administrative and Disciplinary Close Confinement" revision dated Oct 16, 2019, s.15).

²⁶⁰ CSPP, Policy 46, supra note 256, s 3.1.3. The same policy contemplates infectious disease quarantine "until cleared by health care staff" (s 3.2), and references other policies, including 6.11.00 "Pandemic Situations". As discussed earlier, we have been advised that operational decisions on COVID-19-related matters have been made by a joint NSCS/NSH/Public Health committee rather than committed to written policy.

²⁶¹ NNSCF SOP 43.00.00 ("Close Confinement," rev dated Sept 28, 2017).

²⁶² Ibid, s 10.2.

²⁶³ CSPP, Policy 46.00.00 ("Access to Health Care"), supra note 256, s 3.1.4.2.

²⁶⁴ CSPP, Policy 43.00.00 ("Close Confinement"), supra note 252.

²⁶⁵ Ibid, s 5.1.

²⁶⁶ Ibid, s 5.2.

²⁶⁷ Ibid, s 6.1.

²⁶⁸ Ibid, s 7.2.

²⁶⁹ Ibid, s 7.2.5.

²⁷⁰ Ibid, s 7.3. As noted in the section on close confinement, above, the part of the policy devoted to disciplinary close confinement does not include the default 2-hours-out “privilege” (see *ibid*, s 10). Our conversations with officials prior to 2019 suggested that persons in health segregation also did not have the same access to privileges as persons in (non-health-related) administrative segregation.

²⁷¹ CSA, s 29.

²⁷² CSPP, Policy 46.15.00 (“Special or Suicide Watch”) rev dated Nov 3, 2020.

²⁷³ *Ibid*, s 1.1.

²⁷⁴ *Ibid*, s 3.1.

²⁷⁵ *Ibid*, s 4.1. The CBCF SOP on Special or Suicide Watch (46.15.00, revision dated June 5, 2019) indicates that the captain is responsible to determine whether to order suicide watch where “it is outside health care staff’s normal hours of work” (s 5.2).

²⁷⁶ *Ibid*, s 4.2. The NSCS policy referenced, titled 46.13.00, Drug and Alcohol Withdrawal, has not yet been obtained by the VC.

²⁷⁷ CNSCF SOP 46.15.00 (“Special or Suicide Watch,” rev dated Feb 28, 2014).

²⁷⁸ *Ibid*, s 3.1. (emphasis added)

²⁷⁹ *Supra* note 272, s.4.3.

²⁸⁰ *Ibid*, s 5.2.

²⁸¹ *Ibid*, s 6.1.

²⁸² *Ibid*, s 6.1.2.

²⁸³ *Ibid*, s 6.1.3.

²⁸⁴ *Ibid*, s 6.2.

²⁸⁵ *Ibid*, s 6.3, 7.1.

²⁸⁶ *Ibid*, s 8.1.

²⁸⁷ CNSCF SOP 43.02.00 (“Administrative Close Confinement,” revision dated Feb 28, 2014).

²⁸⁸ *Ibid*, ss 4.1., 5.1.

²⁸⁹ CNSCF SOP 43.00.00 (“Close Confinement,” revision dated Feb 15, 2012), s 9.9.

²⁹⁰ CBCF SOP 46.15.00 (“Special or Suicide Watch,” revision dated June 5, 2019).

²⁹¹ *Ibid*, s 6.1.2.

²⁹² *Ibid*, s 6.1.3.

²⁹³ NNSCF SOP 46.15.00 (“Special or Suicide Watch,” revision dated Nov 29, 2018).

²⁹⁴ *Ibid*, s 4.4.

²⁹⁵ *Ibid*, s 5.1.

²⁹⁶ *Ibid*, ss 5.5, 5.6.

²⁹⁷ *Supra* note 252, s 12.1.3.

²⁹⁸ CNSCF SOP 43.00.00 (“Close Confinement,” revision dated Feb 15, 2012).

²⁹⁹ *Ibid*, s.6.1.1.

³⁰⁰ *Ibid*, s.6.1.2.

³⁰¹ *Ibid*, 6.2.3.

³⁰² *Ibid*, s.6.4.

³⁰³ *Ibid*, s.6.2.1.

³⁰⁴ *Supra* note 252 at s 11.

³⁰⁵ *Ibid*, s 11.1.2.6.

³⁰⁶ Ibid, s 13.3

³⁰⁷ The form for provision of reasons is provided in the FOIPOP Disclosure Log Package 2021-01483-JUS at p71. On file with authors.

³⁰⁸ CH 65-036 (February 2015).

³⁰⁹ Ibid at p.1.

³¹⁰ Ibid at s 2.

³¹¹ Ibid at s 6.

³¹² Ibid at s 7.

³¹³ Supra note 249.

³¹⁴ Ibid, s 1.

³¹⁵ Ibid.

³¹⁶ See Involuntary Psychiatric Treatment Act, SNS 2005, c 42.

³¹⁷ Supra note 249, s 1.

³¹⁸ Ibid.

³¹⁹ Ibid, ss 3-5.

³²⁰ Ibid, s 6.

³²¹ Ibid, s 10.

³²² Ibid, s 11.

³²³ Ibid, s 12.

³²⁴ Ibid.

³²⁵ Supra note 250.

³²⁶ Ibid, s 1.

³²⁷ Ibid, s 2.

³²⁸ Ibid.

³²⁹ Ibid, s 3.

³³⁰ Ibid, s 8.

³³¹ Ibid, ss 11 & 12.

³³² Ibid, s 14.

³³³ Supra note 251.

³³⁴ Ibid, s 1.

³³⁵ Ibid, s 2.

³³⁶ Ibid, s 4.

³³⁷ Ibid, s 11.

³³⁸ Mandela Rule 33 states: “The physician shall report to the prison director whenever he or she considers that a prisoner’s physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.” Mandela Rule 32(1)(d) states an “absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment.”

³³⁹ Ibid.

³⁴⁰ Ibid, and see note 179, supra, for support from the CMA Code of Ethics.

³⁴¹ Francis v Ontario, supra note 46.

³⁴² See CSA, s.44.

- ³⁴³ 2018 Auditor General Report, supra note 43 at 34-37.
- ³⁴⁴ See, e.g., CSA, s 44.
- ³⁴⁵ CSR, s 87(1).
- ³⁴⁶ CSA, s 69.
- ³⁴⁷ CSR, s 90(1).
- ³⁴⁸ CSPP, Policy 42.04, "Adjudication Hearings."
- ³⁴⁹ Ibid.
- ³⁵⁰ CSR, s 88(2).
- ³⁵¹ Ibid.
- ³⁵² CSR, s 88(3).
- ³⁵³ Human Rights Act, RSNS 1989, c. 214, s. 5(1)(k), (q).
- ³⁵⁴ Kelly v British Columbia (Public Safety and Solicitor General) (No. 3), 2011 BCHRT 183.
- ³⁵⁵ Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations), 2017 SCC 54.
- ³⁵⁶ Supra note 56.
- ³⁵⁷ ECPJS, "2020-21 VC Report" at 39.
- ³⁵⁸ ECPJS, "2020-21 VC Report" at 39-41.
- ³⁵⁹ Sherri Borden Colley, "Justice Department asked to release records in Clayton Cromwell's death", CBC News (20 August 2018), online: <<https://www.cbc.ca/news/canada/nova-scotia/methadone-overdose-death-records-jail-custody-freedom-of-information-1.4792342>>.
- ³⁶⁰ ECPJS, "2020-21 VC Report" at 40.
- ³⁶¹ See Bodkin et al, supra note 173.
- ³⁶² In October, 2021 Nova Scotia was reported to have committed \$931,000 "to support people transitioning out of correctional facilities, including funding for the John Howard Society and the Elizabeth Fry Society of Mainland Nova Scotia." (<https://www.cbc.ca/news/canada/nova-scotia/n-s-pledges-10m-to-support-people-experiencing-homelessness-1.6218019>). See also the 2021-22 Annual Report of John Howard Society of Nova Scotia, available at <https://www.jhsns.ca/organization>, at 10-12 (describing a partnership with NSCS to initiate a Community Hub in Pictou, as well as NS and Bail Programs in Cape Breton and Halifax). The JHSNS Executive Director notes that the organization's new bail programs have been slow to start (with 1 client in Cape Breton and 6 in Halifax) but expresses optimism on increasing community connections and consequent participation. While it is not clear what if any role DOJ / NSCS is playing in Coverdale Courtwork Society's initiatives, see also that organization's 2021 Annual Report, available at <https://www.coverdale.ca/about-2> (describing a Sept, 2021 tripartite arrangement among Coverdale, AHANS – Affordable Housing Association of NS, a throughway for federal housing funding – and NS Department of Community Services to ensure continuation of Caitlin's Place, supported housing for women, trans and non-binary people exiting incarceration; and describing a new Bail Verification and Support initiative).
- ³⁶³ 2020-21 VC Report at 30-33.
- ³⁶⁴ Ibid at 8-9.
- ³⁶⁵ 2021 CHS Pamphlet, supra note 160.
- ³⁶⁶ See section III.4 of this report, above.

³⁶⁷ Supra note 251.

³⁶⁸ CSA, s 27.

³⁶⁹ See the discussion of the role of NSH-CHS staff in relation to health segregation, and in particular under the protocol on monitoring the health of all persons in close confinement, at section IV.2.f, above.

³⁷⁰ See note 179, supra.

³⁷¹ 2018 Auditor General Report, supra note 43.

³⁷² Fiona Kouyoumdjian et al, “Health Status of Prisoners in Canada: Narrative Review” (2016) 62 Can Fam Physician 215.

³⁷³ Supra note 55.

³⁷⁴ UN, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guidelines on National Preventive Mechanisms, 12th Sess, Geneva, CAT/OP/12/5, 15–19 November 2010; OHCHR, “Preventing Torture: A Practical Guide” (Geneva: 2018), online: <https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf>.