

Human Rights

for Federal Prisoners

The Canadian Human Rights Act applies to federal prisoners. This booklet tells you what rights are protected under human rights law and how to try to resolve human rights complaints.



Human Rights in Prison

The *Canadian Human Rights Act* (the “Act”) is meant to prevent certain types of discrimination. The Act prevents discrimination in accommodation, services and facilities available to the public (prison) based on the following **grounds of discrimination**:

- race;
- national or ethnic origin;
- colour;
- religion;
- age;
- sex;
- sexual orientation;
- marital status;
- family status;
- physical or mental disability; and
- conviction for which a pardon has been granted.

In human rights law, it is discrimination to treat a person badly because of a ground of discrimination. Being a

prisoner is not a ground of discrimination, so even if you feel that your basic human rights are being violated, it may not be a right protected by the Act.

The Correctional Service of Canada (CSC) must comply with the *Canadian Human Rights Act*. The purpose of the Act is to give effect to the principle that:

“all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.”

For example, you may be the victim of discrimination if you are harassed based on your race or sexual orientation. To establish that you have been discriminated against, you need to show a connection between the ground of discrimination (race or sexual orientation) and the negative

treatment. So, if a staff member uses insulting words about your race or sexual orientation, that would likely show a connection between the conduct and the ground of discrimination.

Another example of discrimination is if your physical or mental disability is not being accommodated. An example might be if you require the use of a wheelchair, your cell is only accessible by stairs and no chair lift is provided.

Negative treatment that is applied equally to all prisoners might be discrimination against you if the effect is harder on you than others because of a ground of discrimination. For example, not being provided food or water for a long time is not in itself discrimination under the Act. But if you have diabetes, and not eating for long periods of time harms your health, not being provided food might be considered a violation of the Act based on physical disability.

Being in segregation for long periods of time is hard on anyone. But being in segregation for a long time when you have a mental disability might be even worse for you. In that case, you could argue that you are being discriminated against because of your mental disability.

A rule that requires all prisoners to work during certain hours may have a worse effect on you if your religion requires that you attend a religious service during that time, and you are not allowed to go to the religious service.

Resolving Human Rights Complaints

If you think that you are being discriminated against on a human rights ground, you can call Prisoners' Legal Services for help to resolve your complaint at any stage of the process.

Keep detailed notes of what happened, the time and date of events, the names of people involved and the names of any witnesses. Keep a record of all documents related to your complaint.

It is best to try to resolve complaints at the **lowest level**. Your complaint might be resolved right away. If it is not resolved at the lowest level, you will be able to show higher levels that you made efforts to deal with the problem and that the institution was aware of your complaint. Most often courts and tribunals will require you to go through the process to resolve complaints internally before they will consider your application.

Start by raising your concern with **staff**. Staff and prisoners are required to use every effort to resolve grievances informally.

The next step is to make a formal **request** for what you are asking for. Keep a copy of the request form. If no duplicates are available, copy the form out twice. Ask the staff person who takes your request to sign and date your copy of the form. Keep this copy for your records.

If your request is not answered in a timely way, or you are not happy with the answer, you can submit a formal complaint. Complaints about discrimination and harassment should be submitted as a **first level grievance** to the Warden. CSC should mark the complaint as sensitive and high priority. Again, keep a copy of your grievance and ask the staff person who receives it to sign and date your copy.

The CSC grievance process can take a very long time to get through. If your complaint is ongoing or urgent, call Prisoners' Legal Services. We might be able to help you resolve your complaint more quickly.

The Warden can either respond to your grievance or arrange for it to be investigated by a person outside the institution. If your grievance is investigated, you might be interviewed. The investigator must give a draft of the investigation report to the warden within three months. You should get a vetted copy of the draft report (names and other personal information will be deleted). The Warden should tell you of the outcome of the final investigation report. If you are not happy with the outcome, you can submit a grievance to the second and then third level of the CSC grievance process.

If CSC does not adequately resolve your human rights complaint, you can make a complaint to the Canadian Human Rights Commission (“the Commission”).

Canadian Human Rights Commission

You can call Prisoners' Legal Services for advice or help to file your complaint.

Time for filing

In most cases, you must file your complaint within **12 months** of the incident. If the discrimination was ongoing, and the last incident happened within 12 months, your complaint is in time. You will need to explain how the discrimination was ongoing.

If your complaint concerns an event that took place over 12 months ago, explain why you did not file a complaint sooner. The Commission might accept your complaint even if it is late, depending on the circumstances.

Complaint process

The Commission's process involves the following steps:

1. You fill out and file a complaint form. You can call the Commission at **1-888-214-1090** or write to them at **344 Slater Street, 8th Floor, Ottawa, Ontario K1A 1E1** and ask them to send you a form.
2. The Commission will send a copy of your complaint to the respondent (CSC) as soon as possible.
3. The Commission will decide whether to accept your complaint. The Commission can refuse to deal with

your complaint if, for example, it was not filed in time, if other grievance procedures could resolve your complaint, or if your complaint is frivolous or vexatious. You will be given a chance to make arguments if any of these issues come up.

4. If the Commission decides to deal with your complaint, CSC will be given a chance to respond to your complaint.
5. You will then be asked to give your comments on CSC's response.
6. The Commission can appoint an investigator to look into your complaint more closely. The investigator can interview you and any witnesses, and get information from the respondent. If you have any documents that are relevant to your complaint, you should give copies to the investigator. You should be given a copy of the investigation report.
7. The investigation report is given to the Commission with a recommendation that your complaint be dismissed or referred to the Tribunal for a hearing. You will have a chance to make submissions about the investigation report before the Commission makes this decision.
8. After the investigation, the Commission will decide whether to dismiss your complaint or refer it to the Tribunal to hear your case.

If your complaint is referred to the Tribunal, it can be resolved either through mediation or through a hearing.

Your complaint can be resolved through mediation only if you and CSC agree to take part in mediation and agree on the settlement of your complaint. If your complaint does not settle, it will continue to a hearing.

The hearing process is called an “inquiry.” At the inquiry, you can give evidence, call witnesses and make legal arguments. You can also ask CSC’s witnesses questions. You can represent yourself at this inquiry or you can have a lawyer or advocate represent you. The Commission might appoint a lawyer who will be there to represent the public interest.

If you are successful at the inquiry, the Tribunal can order any of the following remedies to your complaint:

- that the discrimination stop;
- that CSC take steps to resolve the effects of the discrimination;
- that CSC make a policy to prevent the same kind of discrimination in the future;
- that you be given something you were denied because of the discrimination; and
- compensation for injury to dignity, feelings and self respect caused by the discrimination.

If the Tribunal does not accept your complaint, or denies your complaint after an inquiry, you might be able to apply to the Federal Court to review the decision. Call Prisoners' Legal Services or a lawyer for advice or help.

Prisoners' Legal Services

If you are in prison in British Columbia, you can contact Prisoners' Legal Services for advice or assistance with issues that affect your liberty (such as segregation, disciplinary charges or parole hearings) or about health care or human rights issues.

For assistance from Prisoners' Legal Services, you must have a referral from the Legal Services Society. Contact their call centre at 1-888-839-8889. Once you have a referral, you can call Prisoners' Legal Services directly at 1-866-577-5245.

Prisoners' Legal Services phones are open Monday to Friday from 9:00 a.m. to 11:00 a.m. and from 1:00 p.m. to 3:00 p.m.



**This publication contains general information only.
Each situation is unique. The law can also change.
If you have a legal problem, contact Prisoners’
Legal Services or a lawyer.**



**Produced by Prisoners’ Legal Services with
funding from the Law Foundation of British
Columbia.**

**A project of the West Coast
Prison Justice Society**

October 2015

