



Congress of Aboriginal Peoples

Submission to House of Commons Justice Committee on the Impact of COVID-19 on the Judicial System

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CAP Background

The Congress of Aboriginal Peoples (CAP) is one of five National Indigenous Representative Organizations recognized by the Government of Canada.

Founded in 1971 as the Native Council of Canada (NCC), and renamed in 1993, CAP represents all off-reserve status and non-status Indians, Métis and Southern Inuit Indigenous Peoples, and serves as the national voice for its 10 provincial and territorial affiliate organizations. Today, over 80% of Indigenous people in Canada live off-reserve in urban and rural areas.

Study:

Justice Committee - Impact of COVID-19 on the Judicial System

COVID and the Indigenous Experience with the Judicial System:

Over-representation of Indigenous inmates in CSC custody puts Indigenous lives disproportionately at risk.

In January 2020, the Office of the Correctional Investigator reported that “the proportion of Indigenous people behind bars has now surpassed 30%.”¹

In February 2021, OCI reported that “Indigenous inmates accounted for close to 60% of all positive COVID-19 cases in Canadian prisons since November.”² Within the correction system, Indigenous inmates have been disproportionately impacted by COVID and put at elevated risk compared to non-Indigenous inmates.

Over-representation in custody is the result of a range of factors. However, among those factors are higher rates of applying custodial sentences to Indigenous people, a lack of community release options, a lack of culturally appropriate Indigenous sentencing options like sentencing circles, and a failure to support Indigenous communities to run services like healing lodges.

These gaps are particularly acute for urban and off-reserve Indigenous communities, who lack recognition and delegated authority to implement those programs in their regions.

¹ Indigenous People in Federal Custody Surpasses 30%, Correctional Investigator Issues Statement and Challenge, Ottawa, January 21, 2020, <https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx>

² Office of the Correctional Investigator, Ottawa, February 23, 2021, “Correctional Investigator Releases Third Status Update on COVID-19 in Federal Corrections”, <https://www.oci-bec.gc.ca/cnt/comm/press/press20210223-eng.aspx>

Lack of access to basic rights for Indigenous inmates:

COVID prompted increased use of solitary confinement for Indigenous inmates, in violation of "Torture" rulings - OCI statement: "some of these exceptional measures – denial of fresh air exercise or solitary isolation/confinement – breach domestic and international human rights standards."³

CAP discussions with parole board confirms the lower access to early release among Indigenous inmates, and the OCI recommendations on COVID reflect how early release has been under-utilized during the pandemic. Equal access to parole and early release is a basic matter of equality, and under COVID discrimination in parole access has life-threatening consequences for inmates.

CAP and OCI Calls to Action:

CAP called on the government to prioritize improved PPE, COVID safety protocols, and community release for inmates back in April of 2020⁴ and again, in August when the initial calls had not been acted on⁵.

The Office of the Correctional Investigator called on CSC to take similar actions as CAP called for, prioritizing early release for inmates, community release options, and improvements to the safety of inmates without compromising human rights, in their report in February of 2021⁶.

Lack of access to Elders among Indigenous inmates during COVID creates dangers culturally and spiritually.

Elders lack secure contracts with CSC, lack effective representation, lack pension/benefits, and their personal safety is not protected.

Elders have come to CAP with complaints about insecure employment, being put at risk and guards/prisons failing to provide security or prevent violent incidents. Employment security and employment benefits for Indigenous elders are an important safety measure. Insecure employment contracts with CSC institutions create a fear of having their employment cancelled if they register complaints about working conditions or safety violations.

³ Third COVID-19 Status Update, Office of the Correctional Investigator, February 23, 2021, <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20210223-eng.pdf>

⁴ Congress of Aboriginal Peoples, "Federal Leadership Missing in Action on COVID in Prisons", April 17, 2020 <http://www.abo-peoples.org/wp-content/uploads/2020/04/CAP-March-COVID-Prison-Update-EN.pdf>

⁵ Congress of Aboriginal Peoples, "Prison Population Puts Lives at Risk", August 14, 2020 <http://www.abo-peoples.org/wp-content/uploads/2020/09/CAP-Jail-Release-Statistics-Aug-14-2020.pdf>

⁶ <https://www.oci-bec.gc.ca/cnt/comm/pdf/press20210223-eng.pdf>

Access to health and protective equipment

CAP continues to hear reports from inmates about basic safety issues like lacking PPE, guards not following COVID safety protocols, and other health and safety violations that put Indigenous health at risk.

Oversight of service availability in correctional institutions remains inconsistent, and options for inmates to register complaints and safety violations are limited. Inmates held with little access to their communities, family and advocates face higher barriers to seeking help when they face abuse or unsafe conditions.

Community Access to vaccination

CAP and PTOs have not been included in federal COVID vaccination initiatives. This can pose major risks for inmates requesting community release, if their communities are not secure and prioritized for vaccination.

Health care services more broadly have been unequally accessible for different groups of Indigenous people, depending on their affiliation.

CAP supports the prioritization of vaccination for inmates undertaken by the government of Canada, and calls on all parties to unanimously support these protective measures. The elevated risk experienced by inmates makes them a priority population for vaccination.

Prioritization of Indigenous communities is likewise an important COVID response measure, however not all Indigenous communities have had equal access to vaccine roll-out programs.

Recommendations:

- CAP calls on government to fully adopt the OCI recommendations to from February 2021 -
 - Develop and fund a plan that significantly shifts program access and delivery to the community rather than prison
 - Focus on early and prioritized release of elderly and medically compromised inmates who pose no undue risk to society.
 - Examine alternatives to incarceration, reallocating resources to community release programs and alternatives to custodial sentencing.
- In particular, provide support off-reserve and non-Status Indigenous communities who face the greatest gaps in providing supportive programs for community

release, early release, healing lodges and alternative sentencing options.

- Support reforms to the parole system to close the gaps in access to early release for Indigenous and non-Indigenous inmates.
- Support secure and long-term employment conditions for Indigenous Elders employed in Correction Services Canada.
- Include all Indigenous communities on an equal basis for COVID response measures and vaccination, so that communities can be safe for inmate release without increasing the danger to inmates or communities from COVID.