

2022-2023 Annual Report of the Office of the Correctional Investigator

BACKGROUNDER

Summary of Ten Years since *Spirit Matters*: Indigenous Issues in Federal Corrections (Parts I & II)

CONTEXT

In 2015, the Truth and Reconciliation Commission (TRC) issued Call to Action #30 (emphasis our own):

*We call upon federal, provincial, and territorial governments to **commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade**, and to issue detailed annual reports that monitor and evaluate progress in doing so.*

Eight years have passed, yet during this time the proportion of Indigenous individuals in Canada's federal prisons *increased* by slightly more than 30%. With only two years remaining to respond to the TRC's call, and the increase in Indigenous people behind bars that appears unabated, it is unlikely that Canada will succeed in "eliminating" overrepresentation.

The general causes of overrepresentation are widely known, but worth reiterating. Arising from the ongoing impacts of colonialism and systemic racism, the offending circumstances of incarcerated Indigenous peoples are often related to socio-economic, political, and cultural disadvantages, inter-generational trauma and abuse, Residential Schools, the Child Welfare System, and the Sixties Scoop. There are higher rates of poverty, substance abuse, and homelessness in Indigenous communities and lower rates of formal education and employment. These socio-economic and historical factors increase the likelihood of contact (and re-contact) with Canada's criminal justice system, a proverbial *revolving door* that keeps Indigenous peoples criminalized, marginalized, and over-incarcerated.

Today, despite comprising just 5% of the overall population in Canada, Indigenous Peoples account for 32% of federally-incarcerated persons and Indigenous women account for approximately 50% of all women in federal custody. Canada's First Nations

account for 70% of all Indigenous people in federal custody, while Métis and Inuit represent 27% and 3%, respectively.

OVERVIEW

Ten years after *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* was tabled as a Special Report to Parliament in March 2013, the Office of the Correctional Investigator undertook a two-part national investigation updating findings and reviewing progress in federal Indigenous Corrections.

Part One was published in the Office's [2021-22 Annual Report \(PDF\)](#), and Part Two was tabled in Parliament on November 1, 2023 as part of the 2022-23 Annual Report. Part Two includes three national investigations looking into signature interventions in the Correctional Service of Canada's (CSC) Indigenous corrections portfolio:

1. *Unfulfilled Promises: Investigation of Healing Lodges in Canada's Federal Correctional System.*
2. *A Straight and Narrow Road: An Investigation into CSC's Pathways Initiatives.*
3. *An Investigation of the Role and Impact of Elders in Federal Corrections.*

In total, part two of *Ten Years since Spirit Matters* contains 12 recommendations, including seven directed to the Correctional Service of Canada and five directed to the Minister of Public Safety.

This two year, two-part report represents the most comprehensive investigation ever conducted by the Office. To mark this achievement, the Office took the unprecedented step of publishing both parts in a book, titled, "Ten Years Since *Spirit Matters: A Roadmap for the Reform of Indigenous Corrections in Canada.*"

This Backgrounder summarizes the findings and recommendations from both parts of *Ten Years Since Spirit Matters* update.

Ten Years since *Spirit Matters*: Indigenous Issues in Federal Corrections (PART I)

The investigation notes that in the years since *Spirit Matters*, a number of National Commissions and Inquiries, Parliamentary Committee studies and reports have looked into the needs and experiences of incarcerated Indigenous persons. Calls for action converge on four key areas:

1. Increase use of section 81 Healing Lodges, section 84 community releases, and engagement with Indigenous communities;
2. Enhance the quality of culturally-informed programming;
3. Create Indigenous specific screening, risk assessment, and classification tools; and,
4. Augment Indigenous leadership, employee representation, and cultural competence among all staff.

Despite increased levels of public interest and scrutiny, the investigation found that little material progress has been made since 2013, particularly on the use of specific sections of the *Corrections and Conditional Release Act* intended to address overrepresentation, such as sections 81 and 84.

The investigation demonstrates the continuation of Indigenous overrepresentation in federal corrections and widening disparities in outcomes between Indigenous and non-Indigenous persons. Indigenous individuals are increasingly entering the system at a younger age, spending considerably longer time behind bars, and returning to federal corrections at unprecedented rates compared to their non-Indigenous counterparts.

With respect to cultural and professional competency within CSC the investigation found that:

1. Indigenous representation among CSC staff, particularly in key leadership positions, is lagging (only 10% of CSC staff identify as Indigenous).
2. Elders are too few in number and are spread thin (ratio of 30 Indigenous persons for every one Elder).
3. National engagement strategy developed in collaboration with Indigenous communities is lacking.

At the highest levels, CSC is dismissive of its role in reversing overrepresentation. Often deferring blame to “forces beyond its control”, the Service promotes a corporate culture that ignores how its own actions, and *inaction*, create systemic barriers and undermine correctional outcomes for Indigenous Peoples.

The investigation issued two recommendations:

1. Create a *Deputy Commissioner of Indigenous Corrections*.
2. The Department of Justice should include the Correctional Service of Canada and the Office of the Correctional Investigator in the development and implementation of its Indigenous Justice Strategy (IJS). Further, the IJS should redistribute a significant portion of CSC’s resources to Indigenous communities for the care, custody, and supervision of Indigenous Peoples.

Ten Years since *Spirit Matters*: Indigenous Issues in Federal Corrections (PART II)

Purpose and Context

Ten Years Since Spirit Matters (Part II) is the second part of a two year national investigation and the ten year follow-up to our 2013 special report, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*. In revisiting and updating some of the key issues and findings of the 2013 report, the objectives of the current investigation were to:

1. Assess progress and developments in Indigenous Corrections since the release of *Spirit Matters* over a decade ago.
2. Document the perspectives, experiences and voices of federally sentenced Indigenous peoples, parolees, staff and Elders/Spiritual Advisors.
3. Conduct in-depth reviews of three signature interventions in CSC’s Indigenous “continuum of care” model: Healing Lodges, the Pathways Initiative, and the role and impact of Elders.

Our Office is especially proud to have been able to foreground the experiences and insights of those at the frontlines of federal corrections. In the course of this investigation, the Office’s team of investigators and researchers conducted well over 200 interviews with incarcerated Indigenous individuals, CSC staff and management,

Elders, Spiritual Advisors, as well as their Helpers. We met with numerous individuals working or residing in 30 different federal institutions, including CSC-run and Section 81 Healing Lodges across the country.

What follows is a brief overview of the main findings and recommendations from the three investigations.

1. *Unfulfilled Promises: Investigation of Healing Lodges in Canada’s Federal Correctional System.*

Findings

- The insufficient number of Healing Lodges and bed spaces has been a long-standing issue, one that has become more pressing as the overrepresentation of Indigenous peoples has continued to increase.
- CSC is continuing to pay just under 62 cents on the dollar to Section 81 Healing Lodges compared to what they spend on residents at state-run Healing Lodges.
- Vacancy rates remain high, with more than one-third of available bed spaces sitting vacant.
- Too few new lodges and agreements have been established in the last decade. For example, only one new S.81 Healing Lodge created since 2013.
- The existence of a “two-tier” system – section 81 community-run Healing Lodges and CSC or “state-run” facilities – puts section 81 and state-run facilities in competition with one another for residents, staff, and resources. CSC’s own research has shown that community-run healing lodges are a worthwhile investment.

Recommendations

The Minister of Public Safety should direct the Correctional Service of Canada to:

1. Fund an external, Indigenous-led national engagement initiative to create capacity, interest, and innovation among Indigenous communities and organizations (urban and rural) to enter into Section 81 and 84 agreements.

2. Develop and publicly report on clear actions, timelines, measureable targets and deliverables to: 1) engage Indigenous communities and organizations to establish more Section 81 agreements; 2) establish section 81 agreements in urban and rural areas; and, 3) transfer control and ownership of CSC-run Healing Lodges to communities.
3. Work with the Section 81 Healing Lodges to identify the main causes of vacancy rates and identify actions that will be taken to increase and maintain higher occupancy rates.
4. Co-develop, with communities and organizations, a new funding model for Section 81 agreements and significantly increase funding to Section 81 Healing Lodges to better support their specific needs and to address the existing disparities with state-run lodges, in order to achieve resourcing parity.

2. A Straight and Narrow Road: An Investigation into CSC's Pathways Initiatives.

Findings

- Only one Pathways Initiative could claim to be Elder-driven. The rest, due to either the absence of Elders or an institutional culture that diminished their value, were not compliant with the initiative's most innovative and central feature.
- There was a great deal of variance in how applicants were actually screened for Pathways. The bar was sometimes set so high that only the most compliant, engaged, or committed candidates could hope to gain entry.
- The cultural insensitivity and disrespect shown by some correctional officers was a common complaint from both staff and Pathways residents.
- With limited resources, large caseloads, multiple corporate reporting requirements, and the operational realities of working in a prison, Pathways staff reported feeling pulled away from their important case management responsibilities.
- Progress made on Healing Plans does not easily map onto CSC's assessment and classification tools, neither does it inform reintegration planning.

- The Indigenous Continuum of Care is supposed to continue in the community, to “sustain progress beyond the end of the sentence.” However, we learned that support mostly ends upon release.

Recommendations

CSC should enhance the impact and reach of institutional Indigenous initiatives by:

- Conducting a review of current Pathways participants to identify individuals for Healing Lodge placements and other non-custodial alternatives.
- Developing an approach that comprises of institutional initiatives for Indigenous people who do not benefit from the current Pathways model.
- Developing clear and concrete Correctional Plan objectives that guide sentence planning for *lifers*.
- Increasing community in-reach to establish ties and support systems with incarcerated individuals that begin at intake and continue post-Warrant Expiry.

3. An Investigation of the Role and Impact of Elders in Federal Corrections.

Findings

- Elders working inside federal institutions are under-supported, under-valued, and under-appreciated by CSC.
- CSC is unable to provide any reasonable assurance that it is properly and consistently providing Elder services from one site to another.
- Elders repeatedly raised concerns about the hiring, employment and compensation structure within CSC. Elders explained that the structure of contract work means that they do not get sick days, vacation pay, pension, health benefits, or job security.
- Elders are too few in number and spread too thin to serve the growing population and needs of Indigenous people under federal custody. There are approximately 30 Indigenous prisoners for every one Elder.

- Elders raised concerns about their capacity to meet the demands and expectations placed on them, with much of their time consumed by administrative duties.
- There is little or no formal orientation training, mentoring or direction provided to Elders.
- Many Elders shared that they had experienced resistance to their teachings and interventions within CSC, sometimes in the form of cultural insensitivity and pushback from staff. Many Elders expressed that they often felt isolated and unsupported by their employer, leading to exhaustion, isolation, and burnout.

Recommendations

The Correctional Service of Canada should:

1. Create job security and additional financial supports for Elders.
2. Integrate Elders within CSC's leadership and governance structures.
3. Develop a standardized onboarding training for Elders that outlines the expectations, rules, and reporting practices of CSC.
4. Provide Elders with appropriate, prioritized and dedicated indoor and outdoor spaces to conduct ceremonies and programs.

CONCLUDING MESSAGE

The findings from our investigations provide compelling evidence of broader, prevailing issues within federal corrections, suggestive of:

- Organizational paternalism;
- Pan-Indigeneity and the prescription of *Indigeneity*;
- Use of culture as program;
- Exclusionary and short-reaching investments; and,
- Inefficient use of existing opportunities.

To conclude, the Correctional Investigator issued **three summative calls to action**:

1. CSC ensure that all staff undergo mandatory and annual Indigenous cultural safety and awareness training, provided by an external agency.
2. CSC report yearly and publicly on measureable performance indicators, results and outcomes to reduce Indigenous over-representation in federal corrections.
3. The Minister of Public Safety work jointly with the Ministers of Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada, as well as the Minister of Justice and Attorney General of Canada, to develop and implement a national Indigenous *decarceration* strategy.