

Prisoners' Rights in Alberta: Challenges and Opportunities

I INTRODUCTION

This Report discusses the rights of adults (persons who are 18 years or older) who have been accused or convicted of crimes and are either being held in custody in Alberta jails or correctional institutions or being supervised in the community by correctional authorities (for example, those released on bail, parole or other forms of conditional release). These individuals are referred to by a number of terms, including inmates, offenders, and criminals. This Report uses the term “prisoners”, both to avoid confusion and because it may also more accurately reflect the status of accused and convicted persons. Despite the fact that those who are accused or convicted of crimes are not all prisoners, in the sense that they are detained in prisons, they are nevertheless under some form of control by authorities in the criminal justice system from the time they are arrested until the time they are either acquitted or convicted and released after serving their sentences.

When considering the issues affecting prisoners' rights, it is necessary to think about why these issues are important. The answer is that a failure to address violations of prisoners' rights has had and will have long-term, costly repercussions for the individuals whose rights are being violated, and for society as a whole. These costs and repercussions are explored under Heading II (Why Protecting Prisoners' Rights is Important).

The violation of prisoners' rights by correctional authorities is not a new phenomenon in Canada. Prisoners' rights violations have been documented, studied and condemned from the time that the Kingston Penitentiary was opened in Ontario in 1835. Since that time, volumes have been written on the egregious conditions and treatment that prisoners have endured in the Canadian correctional system. Although floggings and hard labour are no longer the norm and correctional legislation now contains provisions intended to protect prisoners' rights, Canadian prisoners continue to be kept in prison environments that are unsafe, unhealthy and harmful. A brief overview of some of the more recent developments affecting prisoners' rights in the Canadian criminal law system is covered under Heading III (Canada's Historical Approach to the Protection of Prisoners' Rights).

Canada's crime rate just hit a 45-year low, down 50 percent from its peak high in 1991. Despite this, Canada's adult rate of incarceration is at an all-time high. More than half the adults incarcerated in Canada's provincial and territorial correctional facilities have not been convicted of the crimes for which they are charged. They are being detained in custody because they have been ordered to remain there (referred to as being “in remand”) while they await bail hearings or trials. There are now more prisoners being held in remand than there are prisoners serving sentences in provincial/territorial correctional institutions and this trend is being experienced in all Canadian provinces and territories. In 2015-2016, of all of the Canadian provinces and territories, Alberta had a greater proportion of people in remand than sentenced custody. People being held in remand awaiting bail hearings and trials are

Prisoners' Rights in Alberta: Challenges and Opportunities

Introduction

presumed innocent under the law, but in practice, they are held under highly restrictive, and what can ultimately amount to punitive, conditions of confinement, regardless of their individual circumstances. While questions remain about what is causing exploding prison and remand populations, it is clear that it is not a response to increasing crime rates. Canadian and Alberta crime and correctional statistics are discussed under Heading IV (Crime and Correctional Statistics).

The individuals supervised by correctional authorities belong to one of the most socially and economically disadvantaged groups in society, and therefore, one of the most marginalized. Education and employment rates are low. The majority of prisoners suffer from alcohol and substance addictions, have mental or cognitive health problems and many are homeless. Certain groups of prisoners are further marginalized, including women, Aboriginal, and mentally ill prisoners. Aboriginal prisoners and mentally ill prisoners are significantly over-represented in the criminal justice system. These prisoners have special needs over and above the general prison population that make them even more vulnerable to abuse from both correctional authorities and other prisoners. A profile of Canadian prisoners is covered under Heading V (Prisoner Profile).

Alberta adult prisoners are held in a variety of correctional institutions across Alberta and are also under correctional supervision in the community. The institutions and communities where Alberta prisoners are supervised by Alberta Correctional Services (ACS), the government agency responsible for administering Alberta correctional services, and the conditions in some of these institutions, are discussed under Heading VI (Supervision of Prisoners by Alberta Correctional Services and Conditions of Confinement).

The Canadian Constitution, which includes the *Charter*,¹ criminal legislation, and corrections legislation, which includes the federal *Corrections and Conditional Release Act*,² are the foundational laws upon which Canada's criminal justice system is built and the primary legislation affecting federal and provincial/territorial prisoners' rights. The Alberta *Corrections Act*³ and regulations also govern Alberta correctional law. The laws governing prisoners' rights are discussed under Heading VII (Laws Affecting Prisoners' Rights).

Specific provisions in the *Criminal Code*⁴ and other criminal law legislation, as well as provisions in the federal and provincial corrections legislation, are intended to safeguard the rights of accused and convicted prisoners, including provisions protecting the right to be presumed innocent until proven guilty, the right to have the least possible restrictions placed on one's liberty, the right to a fair trial, and the right to be tried within a reasonable time. However, these provisions do not necessarily safeguard prisoners' rights in practice—partly because of the way that they are implemented. Heading VIII (Criminal Law Safeguards Protecting Prisoners' Rights) focuses on how police arrest and detention, bail,

¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

² *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA].

³ *Corrections Act*, RSA 2000, c C-29 [Corrections Act].

⁴ *Criminal Code*, RSC 1985, c C-46 [Criminal Code].

Prisoners' Rights in Alberta: Challenges and Opportunities

Introduction

sentencing, and parole practices and delays in the criminal justice system generally affect prisoners' rights.

The processes through which prisoners can challenge government and correctional decisions and the related remedies that can be awarded to prisoners whose rights have been violated are discussed under Heading IX (Processes for Challenging Government and Correctional Decisions and Related Remedies).

Specific correctional practices and conditions and their effect on prisoners' rights, including internal complaint processes; disciplinary hearings and appeals; correctional practices that deprive prisoners of their residual liberty rights, in particular the placement of prisoners in disciplinary and administrative segregation; prison conditions; privacy rights; and healthcare rights are discussed under Heading X (Specific Prisoners' Rights).

The experiences and rights of Aboriginal prisoners are discussed under Heading XI (Aboriginal (Indigenous) Prisoners).

The experiences and rights of prisoners with mental and cognitive disabilities are discussed under Heading XII (Prisoners with Mental Health Challenges).

The experiences and rights of female prisoners are discussed under Heading XIII (Female Prisoners).

Finally, a summary of law reform and related recommendations will be found under Heading XIV (Summary of Recommendations).