

# Prisoners' Rights in Alberta: Challenges and Opportunities

## EXECUTIVE SUMMARY

It is settled law that prisoners have *Charter* rights and residual liberty interests that cannot be eroded except in compliance with fundamental principles of justice. Many prisoners fought hard to secure voting rights, due process rights, and other human rights in the courts. But, the hard won judicial victories and the codified rights in the *Charter* do not translate into prisoners having their rights in practice. Individual rights may be seen as contrary to efficient prison management and security.....Prison is not a rights affirming culture. Rights without remedies are no rights at all.<sup>1</sup>

The unjust treatment of prisoners under the care and control of Canada's correctional authorities has been well documented. Numerous studies, inquiries and reports have called for reform, including calls to prohibit or closely limit solitary confinement, improve the conditions of confinement, end the mass incarceration of Aboriginal people, and recognize and accommodate the unique needs of Aboriginal people, women and mentally ill people. Despite this, the lack of regard for human rights in the Canadian correctional system continues to be revealed on an almost daily basis.

These issues take on added significance in the face of Canadian adult incarceration rates that are at an all-time high, and record high remand rates in provincial and territorial correctional facilities. The majority of the people in remand are awaiting bail hearings and trials. Although presumed innocent under the law, they are detained in very restrictive, often harsh, conditions.

The magnitude of the human rights violations suffered by prisoners in the Canadian correctional system is difficult to reconcile with our understanding of Canada as a rights-affirming country governed by the rule of law, under which no one, including governments and their agents, is above the law; all persons are bound by and entitled to protection under the law; and all laws are observed and enforced equally.

Canadian law is clear. The Canadian *Criminal Code*,<sup>2</sup> federal corrections legislation and the common law grant specific rights to persons accused and convicted of committing criminal offences, among them, the right of an accused to be presumed innocent until proven guilty and the right of accused and convicted individuals not to be deprived of their liberty, if less restrictive sanctions are appropriate. The *Canadian Charter of Rights and Freedoms*<sup>3</sup> has also been found to protect the human rights and civil liberties of prisoners. The Supreme Court of Canada has confirmed that the rights guaranteed under the *Charter* apply to prisoners and that the government is not permitted to make prisoners temporary

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<sup>1</sup> Canada, Parliament, Senate, Standing Committee on Human Rights, *Minutes of Proceedings and Evidence*, 42nd Parl, 1st Sess, No 14 (1 February 2017) at pp 14-30-14-31 (from remarks of Catherine Latimer, Executive Director, John Howard Society), online: < <https://sencanada.ca/en/Content/Sen/Committee/421/RIDR/53027-e>>.

<sup>2</sup> *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*].

<sup>3</sup> *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*].

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outcasts from our system of rights and democracy.<sup>4</sup> Imprisonment limits liberty and places certain restrictions on prisoners' rights. However, prisoners continue to be citizens and retain the rights of all members of society except those that are, as a consequence of their criminal conduct, lawfully and necessarily removed or restricted.

In the broader context, the criminal justice system attempts to strike a balance between those criminal justice principles intended to safeguard the public from the criminal behaviour of those who violate the law, and those intended to safeguard accused or convicted individuals from the unauthorized or excessive use of government power.

This balance is greatly influenced by the approach to criminal justice taken by the governing political parties and the attitudes, policies and practices of all major players in the criminal justice system. There are two main value systems underlying the administration of the criminal justice system that affect this balance: the "crime control model" and the "due process model". The crime control model's primary purpose is to protect the public through the deterrence and incapacitation of offenders. It supports making offenders responsible for their actions and a strong presumption of guilt. It favours the swift, certain and efficient administration of justice; the rights of victims over the rights of prisoners and reflects conservative values. The due process model's primary purpose is to secure equal justice for all individuals. It also supports making prisoners responsible for their actions but favours a strong presumption of innocence; the deliberate and procedurally fair administration of justice; the protection of the rights of accused and convicted persons; and the structured and confined exercise of government power and discretion. The due process model reflects liberal values.<sup>5</sup>

Governments have the power to enact legislation, create policies and influence public opinion surrounding the criminal justice system. Government power flows from the top down and has an overarching influence on all aspects of the justice system, including the degree of respect that is accorded to human rights generally and prisoners' rights specifically. In the area of criminal law, the federal government exercises a great deal of influence, since Canada's *Constitution*<sup>6</sup> grants it the exclusive jurisdiction to enact criminal law, which includes the *Criminal Code* and federal corrections legislation. As would be expected, the federal government's approach to the criminal justice system swings back and forth between the crime-control model and due-process model, depending upon its liberal or conservative leanings. However, over time, Canadian criminal and corrections law has moved away from a crime-control approach and toward a due-process approach. This was the case until 2006 when this trend was slowed by the former federal Conservative government. During its tenure, it enacted numerous substantial amendments to key criminal justice statutes eliminating or limiting various provisions intended to protect or advance the rights of prisoners.

Correctional authorities control almost every aspect of a prisoner's life, which makes prisoners extremely vulnerable to human rights violations within the correctional system. However, the attitudes,

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<sup>4</sup> *Sauvé v Canada (Chief Electoral Officer)*, 2002 SCC 68 (CanLII), online: <http://canlii.ca/t/50cw>.

<sup>5</sup> Herbert L Packer, "Two Models of the Criminal Process" (1964)113 U Pa L Rev, pp 1-68.

<sup>6</sup> *The Constitution Act, 1867*, 30 & 31 Vict, c 3 [Constitution Act, 1867]

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policies, practices and law governing other parts of the criminal justice system also influence the conditions and the respect that is accorded to prisoners' rights within the correctional system.

Changes in how corrections are delivered must be integrated into system-wide criminal justice reforms. Those who study and work in the criminal justice system point out that political attitudes and dysfunctional and inefficient practices and policies in specific parts of the criminal justice system are directly or indirectly contributing to rising incarceration rates and the poor conditions and violations of prisoners' rights in all parts of system. Contributing factors include tough-on-crime legislation including an increase in the number and length of mandatory minimum sentences, politicians' belief that there is no political advantage to investing in improved prison conditions, police detention and arrest practices, bail practices, the increasingly lengthy time required to complete bail hearings, sentencing hearings and trials, and a risk-adverse criminal justice system. This report examines some of these factors.

The continuing lack of regard for prisoners' basic human rights has led to calls from all criminal justice system stakeholders for independent accountability and oversight of the Canadian correctional system, including more rigorous judicial review and effective remedies, and more broadly, for reforms to the criminal justice system as a whole.