HABEAS CORPUS GUIDE

A legal information resource created by the uOttawa Prison Law Clinic and the Jail Accounability & Information Line

This guide contains information about:

- what a habeas corpus application is and when it applies
- how to make a habeas corpus application
- when not to make a habeas corpus application
- other legal remedies and strategies you can pursue to address conditions of confinement

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Who is This Guide For?

This guide is intended to be a resource to be used by imprisoned people and those who work in solidarity with them to challenge the use of imprisonment and conditions of confinement. This resource explains what is a *habeas corpus* application, when it should be used, how to prepare an application, and what other legal remedies or strategies exist when an application should not be made. It is important to note that this resource should not be read as legal advice and that if you are considering filing a *habeas corpus* application it is recommended that you consult legal professionals to make a final determination as to whether or not you are likely to succeed using this approach.

Overview: What is *Habeas Corpus?*

In Canada, you have a right not to be detained or imprisoned for a reason that is not justified in law. *Habeas corpus* is a court application that allows a prisoner to require the jail or prison that has custody of them to justify the deprivation of their liberty.

Deprivations of liberty can be **total** (if the basis for incarceration itself is being challenged and if, successful with their *habeas corpus* application, the prisoner would be released from custody) or **residual** (if it is only the degree of liberty that is being challenged—i.e. the transfer to an institution with a higher security level or placement in segregation and if, successful with a habeas corpus application, the prisoner would stay incarcerated, but with lesser restrictions on their liberty). Most of the time, prisoners are dealing with residual liberty.

The Supreme Court of Canada, in *Khela*, stated that "Decisions which might affect a [prisoner's] residual liberty includes, but are not limited to, administrative segregation, confinement in a special handling unit and, as in the case at bar, a transfer to a higher security institution".

This guide will outline how *habeas corpus* can protect your residual liberties while you are imprisoned or detained and what you need to know to use the remedy effectively.

What Do I Need to Know Before Getting Started?

Limitations to Habeas Corpus

Habeas corpus is generally thought of as a quick remedy when compared to other legal processes. However, in Ontario, you should know that courts tend not to act expeditiously. It can sometimes take several months to get in front of a judge. Following up with the Court registrar and advocating for an earlier court date may, in some cases, result in an earlier date.

If you win your *habeas corpus* application, that does not necessarily prevent the institution from making a new, but similar, decision that impacts your liberty. This is particularly true if you win your *habeas* because the institution failed to provide adequate reasons for imposing additional restrictions on your liberty or some other procedural grounds.

Release from whatever form of security level the judge determines to be unlawful is the *only* remedy available on a successful *habeas corpus* application. A *habeas corpus* application will not result in information being removed from or corrected in your 'correctional' file. It will also not result in your Security Reclassification Scale score being lowered. Moreover, it will not result in criminal or institutional charges against you being dropped or suspended visits being reinstated. If these are your goals, check the *Other Legal Remedies or Strategies* section for other options.

A *habeas corpus* application is, in essence, a lawsuit against the government, specifically the Solicitor General of Ontario, provincially, or the Attorney General of Canada, federally, and, as with other types of lawsuits, cost rules apply. This means that if you lose the application, the judge may order that you pay the opposing side's legal costs. Given that you are in custody and your finances are, presumably, limited, a costs order is often for a smaller fixed amount, such as $500 to $1500, and not for the full costs that the other side incurred, which would likely be several thousands of dollars. There is no way for us to be able to know in advance what the costs against you will be if you are not successful. You are responsible for any costs awarded against you. Legal Aid will not pay for them.

A *habeas corpus* application is not a trial. The jail/prison will not be forced to prove the information they used against you in making decisions about such matters as a transfer. The jail/prison *is* entitled to rely on information from informants, kites, and other sources that have not been proven. How much weight they give such information, especially if the source of the information is not reliable is definitely a matter that can be challenged, but it is not the case that the jail/prison is prevented from considering this information.

A *habeas corpus* application does not involve calling and cross-examining live witnesses. *Habeas corpus* applications are conducted through oral argument in front of a judge on the basis of a paper record. That record can include examinations under oath of any witness that provides an affidavit as part of the paper record. You will be required to provide an affidavit as part of your case and you can be cross-examined on the affidavit. The jail/prison usually provides an affidavit from the head of the prison/jail or the Manager of Assessments and Interventions, or the Security Intelligence Officer, or your Parole Officer and they can be cross-examined on their affidavits as well. With this being said, it is often not necessary or productive to cross-examine witnesses on their affidavits, because, as noted above, a *habeas corpus* application is not a trial.

When Can I Use *Habeas Corpus*?

When deciding whether to pursue a *habeas corpus* application, the courts have two methods available to assess the lawfulness of a prison officials' decision: reasonableness and procedural fairness. It is up to the applicant to decide whether to frame the case on the grounds of reasonableness or procedural fairness or sometimes both.

Almost every administrative decision that is made will have an applicable policy or law to guide and limit the possible decisions and decision-making process. Knowledge is power, so try to get your hands on the policy or law that relates to your situation. The decision maker applies the facts of your case to the law or policy to come to a decision (reasonableness) and the law tells them the steps and timelines to follow in rendering this decision (procedural fairness). It is important to know that the Court's give a certain amount of deference, or respect, to administrator's decisions because they are seen as experts in applying the law and policy that governs them. In the case of federal prisons, the governing law is the *Corrections and Conditional Release Act,* and the policy is the Commissioner's Directives. Provincially, the *Ministry of Correctional Services Act* applies. See below for more information on reasonableness and procedural fairness.

Reasonableness

Reasonableness is the court looking at whether the decision maker's decision was in a range of possible, acceptable outcomes, keeping in mind the facts and the law. The court is not deciding if the decision the official made is the right one. The court will look at both the outcome of the official's decision and how they reached that decision. The court is determining whether the reasons the official relied on justify the decision they reached. So long as the decision maker's process and outcome are transparent, justified, and intelligible (or make sense), the reviewing court will find the decision reasonable. In a reasonableness review, courts give a high degree of deference to the decisions of administrative decision makers, including jail/prison officials.

A decision that sacrifices a prisoner's liberty will be unlawful IF:

- It is made without evidence;
- It is based on unreliable or irrelevant evidence; or
- It is based on evidence that cannot support the conclusion reached.

In the case of reliability of evidence, jail/prison officials must show how they determined that evidence is reliable. If the evidence is from an informant, you want to know what the reliability assigned to that informant is. You can request the security information the institution is relying on to make its decision. In some cases, they will not give you full details for security reasons, but they should still provide what is called a "gist" or summary. Sometimes this gist will indicate the source of the evidence (e.g. informant) and what level of reliability is assigned to it. If the jail is relying on evidence from a source that is "reliability unknown", which sometimes happens, then this may

be grounds to question the reasonableness of the decision. Keep in mind, the courts will generally respect the institution's reliability assessment, so if they are assessed as reliable, this may not be the issue you should focus your application on.

Procedural Fairness

Procedural fairness is owed to the person impacted by an administrator's decision, especially where the person's life and liberty are affected. The level of fairness owed will depend on the context of each case. Basically, the greater the restriction on your liberty, the more procedural fairness is owed in the decision-making process. Procedural fairness guarantees you a basic level of notice as to why a decision was made and the reasons. If the jail/prison officials refuse to provide you with this information, the decisions might be assessed as procedurally unfair.

Example: In *Mission Institution v Khela,* the SCC found the Warden had breached his duty of procedural fairness owed to Khela, the applicant challenging his transfer to a different federal penitentiary. The Warden refused to provide the information he based the transfer decision on and there was no legal basis to justify withholding the information.

Often jail/prison policy sets out the procedures or steps to be followed when making certain decisions (e.g. when segregating someone). It is important to read the policy that applies to your situation to determine if the steps were followed properly. If they were not, then the decision might not be procedurally fair.

Common ways a decision may be procedurally unfair include where 'correctional' authorities fail to provide the security classification scoring matrix, where they deny your right to counsel,[1] or where there is a lack of information sharing that makes it hard for you to know the case being made against you so you can defend yourself.

Please remember, the two most common ways to challenge a decision through habeas corpus are reasonableness and procedural fairness.

Established Grounds for Habeas Corpus

This section will help clarify when a *habeas corpus* is the best remedy to address your issue. There are certain conditions of imprisonment that *habeas corpus* cannot be used to change, but there are other conditions of confinement that have been challenged again and again through *habeas corpus*.

[1] For Federal Prisoners, see section 97 (2) of the *Corrections and Conditional Release Regulations*, which sets out that CSC must give you a reasonable opportunity to obtain and instruct legal counsel in certain situations like a transfer to segregation (or Structured Intervention Unit) or a proposed involuntary transfer. Consult the Regulations for more information.

Some examples of conditions of imprisonment that the Supreme Court of Canada has recognized as challengeable on *habeas corpus* include:

- A placement in segregation;
- An increased security classification resulting in an involuntary transfer to a higher security level; and
- A continuation of a deprivation of liberty (such as being placed lawfully in segregation, but then remaining there beyond what is lawful).[2]

Any one of these situations may form the **grounds**, or reason, for a *habeas corpus* application.

What Remedies Can I Ask For?

In *habeas corpus* applications, the specific solution you are asking for (i.e. the "**remedy**") from the court is to end the unlawful restriction on your liberty. For example, if you have been placed in segregation unlawfully, you will request to be let out of segregation. If your security classification was changed from minimum to medium unlawfully, you will request to return to a minimum-security institution.

In 2019, the Supreme Court of Canada stated *habeas corpus* is not a static, narrow, or formalistic remedy, but rather it is broad, and its purpose is to ensure individuals are free from wrongful restraints impinging upon their liberty.[3] In practice, however, the remedies available under *habeas corpus* are very narrow. The basis for *habeas corpus* and therefore your remedy is to be free from wrongful restraints on your liberty.

Limits on What Remedies are Available

There are limits to the scope of remedies that can be granted when you are asking for *habeas corpus*. Courts have concluded that you are not able to ask for damages (financial compensation under section 24(1) of the *Charter*) as a remedy in *habeas corpus* applications.[4] In order to receive damages as a remedy, you must bring a separate *Charter* claim.

A successful *habeas corpus* application does not necessarily get you back to the institution you were moved from or to the jail/prison of your choice. The judge will not make a specific order about where you will be imprisoned, but rather that 'correctional' authorities cannot keep you in a

[2] A refusal by 'correctional' authorities to lower your security classification despite attempts you have made to address your so-called risk factors has not yet been successfully challenged, but may be a ground that is developed in the future.
[3] *Canada (Public Safety and Emergency Preparedness) v. Chhina*, 2019 SCC 29 at para 19.
[4] *Brown v Canada (Public Safety),* 2018 ONCA 14 at para 52.

higher security setting, segregation, etc. anymore and leaves it to them to decide what to do from there.

When Should I NOT Use Habeas corpus?

Many parts of prison life have not been recognized as deprivations of residual liberty by the courts, which means they cannot be remedied with *habeas corpus*.

In *McCargar v Canada,* 2017 ABQB 416, the court gave a list of grounds that are ***not*** currently acceptable for *habeas corpus* applications. These are:

1) a loss of privileges;
2) an insignificant or trivial limitation on rights;
3) denial of or inability to access rehabilitation programming;
4) being on lockdown and subject to other intermittent forms of detention;
5) rude, abusive or inattentive staff;
6) exposure to dangerous prisoners;
7) complaints about food, medical services and hygiene;
8) complaints that the prisoner grievance procedures are ineffective;
9) inadequate mail services and searches of mail;
10) inadequate access or excessively expensive telephone communications; and
11) restrictions that impede legal research, document preparation and litigation.

Additional situations in which habeas cannot yet be used include:

12) challenging whether a criminal conviction is legal;[5]
13) future or past restrictions on liberty (for *habeas* to apply, the restriction must be ongoing);[6] and
14) challenging parole board decisions (these should be reviewed through the appeal process or **judicial review**, not *habeas corpus*).[7]

The focus of *habeas corpus* is to prevent wrongful restraints on liberty so lateral transfers (for example, from one medium prison to another medium prison, even if out-of-province) are also not generally recognized by the courts as deprivations of liberty (although there are some exceptions here). Because the security levels are the same, it is hard to show an added restriction on your

[5] See *Latham v Her Majesty the Queen*, 2018 ABQB [*Latham*].
[6] Ibid, *Latham.*
[7] Ibid, *Latham*.

liberty. However, if you have reason to believe the conditions are far worse at the jail/prison you are being transferred to you should indicate this to your lawyer.

In addition, if you do wish to make a novel argument based on a ground that has not yet been recognized, you should do so with caution. You could be labelled a vexatious litigant if the Court finds a lack of basis for your application and costs could be awarded against you. In addition, each novel case that is decided negatively can make it more difficult for others to successfully argue for new grounds to be recognized in the future. If your argument is novel, it is a good idea to consult a lawyer or reach out to an organization for feedback and support. Please consult the section *Other Legal Remedies or Strategies* for other avenues you can seek remedies or support through.

Preparing Your *Habeas Corpus* Application

Step 1: Gathering Documentation

The first thing you should do is ask, in writing, for all information the warden or superintendent has considered in making the decision (if the additional deprivation of liberty has already been imposed) or all information the warden will consider in making the transfer or other decision (if the additional deprivation of liberty has yet to be imposed).

If you have a lawyer, ask (in writing) for those documents to be sent to your lawyer. You can also request (in writing) that the jail/prison officials facilitate a confidential phone call with your lawyer prior to the decision or as soon after as possible.

It is important that you do things in writing so you can build a record of your own. You may not always get a response to your requests or grievances, but at least you can show evidence that you made the request or grievance. This kind of record can become important for showing a lack of procedural fairness. If you request information from the jail/prison, for example about the reason for your segregation placement or for the gist of allegations being used against you, and the jail/prison does not respond within the required timeframe, then they have not followed the proper procedure which brings into question whether the decision was fair.

To file a *habeas corpus* application, you need to complete certain required forms for the court. You need copies of both Form 14E (Notice of Application) and Form 14F (Information for Court Use). You will need multiple copies of the forms to serve them on the court, the government, the jail/prison, and to keep in your own records. Filing out these forms will involve writing a short explanation of why you meet the legal test for habeas corpus.

You will also need to prepare an affidavit of your evidence, or evidence of a witness, using form 4D (Affidavit).

Step 2: Establishing the Legal Test for Habeas Corpus

To make the best argument possible, you will need to show how your facts fit the legal test for *habeas corpus.* You will need to write your argument in the application forms. The legal test for determining whether *habeas corpus* should be granted looks like this:

Establish a Deprivation: what happened to you and how did it deprive you of liberty?

The first step of the legal test is to show that your liberty, or residual liberty, has been deprived. This involves identifying the deprivation, or the thing that happened to you, and framing it in a way that fits into one of the categories the court has already established, or arguing that your situation is novel and deserves to be recognized as a new category. It is much harder to argue for a new category than it is to try and describe the thing that happened to you in terms that the court has already recognized. See pages 5 and 6 for information on what grounds for *habeas* have been recognized.

There are three situations where it is well established that you would meet this step of the test:

1. **Initial deprivation:** Your liberty was affected when you first entered the prison.
   - Examples of this might include where the judge orders a sentence be served in a hospital, but it is instead served in a prison.[8]
   - This is not an appropriate place to make the argument that your original conviction was wrongly decided, as the court might say you are being vexatious.[9] You should instead appeal your conviction or sentence in the criminal courts.

2. **Change in circumstances (lost something you once had):** Something has happened to you since you entered prison that has led to "a substantial change in conditions amounting to further deprivation of liberty."[10]
   - The most common example of this is when a prisoner is transferred to a more secure part of the prison, or different prison altogether where they enjoy fewer privileges.[11] For instance, an increase in security classification from medium to maximum.

[8] See e.g. *RL c The Queen*.
[9] See e.g. *Latham v Her Majesty the Queen*, 2018 ABQB 69 at para 36.
[10] *Dumas v Leclerc Institute*, [1986] 2 SCR 459.
[11] *Ogiamien v Ontario (Community Safety and Correctional Services)*, 2017 ONCA 667.

- Another example may be a placement in segregation. If you are in a provincial jail, the decision makers must abide by sections 28.2 -28.9 of the *Ministry of Correctional Services Regulations,* which set out certain requirements when segregating prisoners. For example, jail officials cannot place someone with a mental health disorder in segregation according to section 28.2 (1).[12] If you have a diagnosed mental illness your placement in segregation (or arguably under conditions similar to segregation) may be considered unlawful.
- While this is the category that may allow for the broadest of possible deprivations, courts have been reluctant to allow new grounds under it. For example, in one 2017 case, the Court decided that frequent prison lockdowns did not count because the conditions were the same for all prisoners.[13] On the other hand, some prisoners have particular vulnerabilities and may be more greatly impacted by lockdown conditions. For example, according to provincial Corrections Regulations, individuals with diagnosed mental illness or those exhibiting mental illness symptoms cannot be placed/kept in segregation. Arguably, this reasoning could be extended to lockdowns, though it would be a novel argument.

3. **Deprivation of liberty stops being lawful:** Your liberty was deprived appropriately, but it has continued inappropriately.
- A common example of this is when a prisoner is eligible and ready to be released for parole, but they are not let out on time.
- Another example is when a prisoner is lawfully placed in segregation but continuing their placement in segregation becomes unlawful. For example, section 28.3 (1) and (2) of the Ontario Correctional Regulations says prisoners cannot be held in segregation longer than 15 days and where they are the Superintendent must alter the conditions of confinement enough that they no longer constitute segregation. Again, this reasoning could arguably be extended to lockdown scenarios, but it would be a novel argument which is challenging.

Questioning lawfulness: How was the thing that happened to you illegal or wrong?

Once you have demonstrated that your liberty was deprived, the second step of the test is to show the court that the deprivation was unlawful. You do not need to **prove** that it was unlawful, you just need to raise a **legitimate ground** for the Court to believe that it *may* have been unlawful. Sometimes this is called making a ***prima facie*** case. While this is a low **burden**, it is still the claimant (you) that is responsible to make the

[12] Ministry of Correctional Services Act, RRO., 1990, Regulation 778. [Ontario Correctional Regulations]
[13] *Ogiamien*.

case for it. Make sure to review pages 5 to 7 for more details on legitimate and illegitimate grounds for a *habeas corpus* application.

What types of deprivations might be unlawful? Again, there are broad categories of ways that your liberties could have been deprived unlawfully. A deprivation of liberty may be unlawful when it breaks a law or rule that applies to prisoners. **Ask yourself: is the decision contrary to regulations or laws about how human beings in my situation should be treated?**

There are two categories under which you can question the lawfulness of the decision:

1. Where the decision to deprive your liberty was not made with proper procedural fairness.[14] Under the **common law**, everyone is owed a certain amount of fairness in the way that decisions are made, especially where those decisions affect their basic liberties. Procedural fairness can include things like being given reasons for decisions or being given time to reply or rebut a decision. Courts use a test called the *Baker* test to determine how much fairness a person is owed in a particular circumstance. Generally, the more serious the impacted liberty interest is, the more procedural fairness owed.

2. Where the decision to deprive your liberty was unreasonable. A decision could be unreasonable in many ways, but one thing to think about is whether the person who deprived your liberty did so based on bad, unreliable or irrelevant evidence.[15] Some prisoners have seen success by pointing to other types of evidence (like International Mandela Rules) to show that the decision was unreasonable.[16] The Supreme Court recently decided a case called *Vavilov* where they modified the test for unreasonableness in a way that some believe may make it easier to demonstrate that a decision-maker acted unreasonably.

Step 3: Identify the Remedy You are Seeking

Make sure to identify the specific remedy you are seeking (see the *What Remedies Can I Ask For* section on page 5).

[14] See e.g. *Mission Institute v Khela*.
[15] *Mission Institute v Khela* at para 74.
[16] See e.g. *Hamm v Edmonton Institution*, 2016 ABQB.

Step 4: File and Serve your Application

After filling out the application, the next step is to file your forms in the court, then serve them on all parties. To do this you must pay your filing fee ($229.00) or fill out a Fee Waiver form, if eligible (FW-A 3 or FW-A 4). Each courthouse has different rules on filing applications. The *Rules of Civil Procedure* for Ontario also set out requirements for serving applications. Before filing or serving your application, contact the courthouse to understand the specific rules of filing and service.

You may also want to consider bringing what is called a *certiorari in aid* **writ** alongside your *habeas corpus* application.[17] *Certiorari in aid* means the government has to provide the file and evidence they rely on to justify their decision. In other words, the court will have the full record before it to review the decision. This is useful when you cannot get a copy of the file from the jail/prison.

Step 5: Rebut Government Response

Now that you have filed a *habeas corpus* application on reasonable and probable grounds that your liberty was deprived unlawfully, the government has an opportunity to justify to the court why their deprivation of your liberty is lawful, despite what you have stated. Once the government makes their argument, you will be given an opportunity to respond.

Other Legal Remedies or Strategies

Applying for *Habeas corpus* is not your only option. The following are some additional avenues you may find helpful. If you have already filed an internal complaint/grievance about your treatment or conditions in a jail/prison and are not satisfied with the result, there are a few options.

Human Rights Complaint

People in Canada and Ontario are protected from being harassed and/or discriminated against because of their:

- Race
- Colour of their skin
- Ancestry
- Place of origin
- Citizenship
- Ethnic origin
- Gender identity
- Gender expression
- Family status
- Marital status
- Parental status (including pregnancy)
- Age

[17] See *Mission Institute v Khela* at paras 35-36.

- Disability
- Creed
- Sex
- Sexual orientation
- Receipt of public assistance (applies only to claims about housing)
- Record of offences (applies only to claims about employment and to criminal convictions for which you have received a pardon)

Federal Human Rights	**Ontario Human Rights Code**
Canadian Human Rights Act prohibits discrimination in: • **Section 5:** "the provision of goods, services, facilities or accommodation customarily available to the general public" It may seem strange to think of jails/prisons as a service, but this is the section that applies to imprisoned people. There is a two-stage process to file a federal human rights complaint, which is outlined below. 1) Send complaints to: **Canadian Human Rights Commission** 344 Slater Street,8th Floor Ottawa, Ontario K1A 1E1 • Receives complaint, may refer the matter to mediation, then investigates, and screens the complaint. 2) The complaint may be then referred to the Canadian Human Rights Tribunal	The law that determines what "human rights" are in Ontario is the *Human Rights Code* ("the Code"). Under the Code, people in Ontario are protected from discrimination and harassment on any of the grounds listed above. Provincial jails and prisons are included under the scope of the *Human Rights Code* in Ontario. To make a claim to the **Human Rights Tribunal of Ontario (HRTO)**, you need to have experienced unequal treatment in an Ontario 'correctional' facility and the unequal treatment must have been based on one or more of the grounds listed above. You must then fill out a form that can be accessed online from the HRTO website, or you can contact the HRTO and ask them to mail you a copy. A copy of this form can be obtained through the Jail Accountability & Information Line or the Legal Information Line (see page 21) In your form, you must explain in detail the discrimination you experienced, and you must explain what *remedy* you are seeking – meaning what the HRTO can do to make it

who adjudicates or conducts a formal hearing.	right. Once this form is complete you can submit it using one of the options noted below. **By mail:** Human Rights Tribunal of Ontario 655 Bay St. 14th Floor Toronto, ON M7A 2A3 **By email:** Hrto.registrar@ontario.ca **By fax:** 416-326-2199 OR 1-866-355-6099 (toll-free) **Using the free SmartForm platform online:** http://www.sjto.gov.on.ca/hrto/forms-filing/
If you need help preparing your application, you can contact the Human Rights Legal Support Centre (HRLSC) for help toll free at 1-866-625-5179 or TTY toll free at 1-866-612-8627. The HRLSC is independent of the HRTO and offers free services throughout Ontario. You can also contact other legal clinics, a lawyer or paralegal, or file the application on your own.	

Freedom of Information and Protection of Privacy (FIPPA) (Provincial)

The *Freedom of Information and Protection of Privacy Act* governs access to information held by the provincial government in Ontario. The *Act* allows people to request access to government records and personal information through a Freedom of Information (FOI) request.

To make an FOI request, you first need to determine which government institution is most likely to have the information you are seeking, for example, the Ministry of the Solicitor General. If you are not sure, you can ask the FOI coordinator of the government institution where you are considering submitting your request.[18]

[18] List of FOI coordinators for all government institutions are available here: http://www.infogo.gov.on.ca/infogo/#orgProfile/1803/en.

You can then send a request by filling out the Freedom of Information form and submitting it by either mail or email to the ATIP coordinator of the institution:

FOI Coordinators	
Solicitor General of Ontario Enza Ragone 416-326-4300 Enza.Ragone@ontario.ca Ministry of the Solicitor General 25 Grosvenor Street Toronto, Ontario M7A 1Y6	Ontario Human Rights Commission Jennifer Noronha 416-311845 jennifer.noronha@ohrc.on.ca Dundas/Edward Ctr 9th Flr, 180 Dundas St W, Toronto, ON M7A 2G5
For general inquiries about FOI requests, or contact information for other departments, call 416-327-1600.	

All FOI requests have a $5.00 fee, which should be enclosed with your application.[19] There is no fee for filing a request to make a correction to *personal* information. The form and fee can be sent to the department you are making the request to. The government has 30 calendar days to respond to your request once they receive it.[20]

Once you are granted access to the records, you can view them either electronically or ask the government institution to mail them to you or your community advocate.

Records are generally provided in the language in which they were created. You can request that the records be translated into either English or French. If you have a sensory disability, you can also request that the records be provided to you in an alternative format.

[19] Cheques or money orders can be made payable to the Minister of Finance.
[20] Please note that the response period *may* be extended for certain limited reasons, like if you have requested a very large number of records or if the documents you are requesting need to be translated before they release them to you.

Access to Information & Privacy (ATIP) (Federal)

The *Privacy Act* provides people with the general right to access information about them that is held by the federal government. Similarly, the *Access to Information Act* allows the public to request access to general government records. A request for information under one or both of these acts is called an Access to Information and Privacy ("ATIP") request. Anyone who is present in Canada can make an ATIP request, even if they are not a Canadian citizen or permanent resident.[21]

To make an ATIP request, you first need to determine which government institution is most likely to have the information you are seeking, for example, the Correctional Service of Canada or the Parole Board of Canada. If you are not sure, you can ask the ATIP coordinator of the government is situation where you are considering submitting your request. [22]

You can then send a request by filling out the Access to Information Request Form and submitting it by either mail or email to the ATIP coordinator of the institution:

ATIP Coordinators	
Correctional Service Canada Stéphane Brisson Access to Information and Privacy Coordinator Sir Wilfrid Laurier Building 340 Laurier Avenue West Ottawa, ON K1A 0P9 Telephone: 1-844-757-8031 Fax: 613-995-4412 csc.atip-aiprp.scc@csc-scc.gc.ca	Parole Board of Canada Mark Prieur Access to Information and Privacy Coordinator 410 Laurier Avenue West, 7th Floor Ottawa, ON K1A 0R1 Telephone: 613-954-6547 Fax : 613-957-3241 ATIP-AIPRP@pbc-clcc.gc.ca

[21] Note: Canadian citizens and permanent residents are always eligible to make ATIP requests, even if they are outside the country.
[22] List of ATIP coordinators for all government institutions are available here: https://www.tbs-sct.gc.ca/ap/atip-aiprp/coord-eng.asp

There is no fee for personal information requests under the *Privacy Act*. If you are requesting general government records, a $5.00 fee should be enclosed with your application.[23] The government has 30 calendar days to respond to your request once they receive it.[24]

Once you are granted access to the records, you can view them either electronically or ask the government institution to mail them to you or your community advocate.

Records are generally provided in the language in which they were created. You can request that the records be translated into either English or French. If you have a sensory disability, you can also request that the records be provided to you in an alternative format.

You can lodge a complaint about any issue related to your ATIP request or if you believe that a government institution has not respected your privacy rights. To do so, send a letter outlining your complaint *within 60 days from the date you received a response to your request or if you do not receive a response within the required timeframe (usually 30 days subject to extensions)*. The address where you send your letter will depend on which type of information is involved.

General Government Records (*Access to Information Act*):	**Your Own Personal Information (*Privacy Act*)**
Mail a letter explaining your complaint to: Office of the Information Commissioner of Canada 30 Victoria St. Gatineau, QC K1A 1H3	Mail a letter explaining your complaint to: Office of the Privacy Commissioner of Canada 30 Victoria Street Gatineau, QC K1A 1H3 You may also submit your complaint online at: https://www.priv.gc.ca/en/report-a-concern/

[23] Cheques or money orders can be made payable to the Receiver General of Canada.
[24] Please note that the response period *may* be extended for certain limited reasons, like if you have requested a very large number of records or if the documents you are requesting need to be translated before they release them to you.

Privacy Complaint (Provincial)

You have the right to file a complaint with the Information and Privacy Commissioner of Ontario (IPC) if you think that your personal information has been improperly collected, used, or disclosed by a public institution, child and family service provider, or by a health sector organization or practitioner. You can also file a complaint with the IPC if you request access to or correction of your personal information and your request is denied.

Once the IPC determines that the organization did not comply with Ontario's access and privacy laws, they can make recommendations to the institution to make sure the same thing does not happen again. It is important to note that the IPC does not have the power to order an institution to do something in relation to a privacy complaint. This means that it cannot issue fines, award damages, or require the institution to discipline its staff members.

You can file a complaint with the IPC by mail or online.

By mail:	**Online:**
Registrar Information and Privacy Commissioner of Ontario 2 Bloor Street East Suite 1400 Toronto, ON M4W 1A8	https://www.ipc.on.ca/guidance-documents/forms/

Record Correction

You can also request a correction to your paperwork under the *Freedom of Information and Protection of Privacy Act*, section 47(2).[25] If you receive your records that is in the custody of an institution and there is an error or an omission, you can request a correction by either writing a letter or filling out the designated Request Form. This form should be sent to the institution you are requesting your information changed from.

Ombudsman

The Ombudsman for Ontario is responsible for overseeing and investigating more than 1,000 provincial government and public sector organizations, including provincial jails and prisons. The

[25] If a request has been put in writing and a correction is not made, you have a right to require that a statement of disagreement be provided explaining why the information was not corrected.

function of the Ombudsman is to investigate prisoners' complaints about any decision, recommendation, or act or omission made by jail staff.[26]

To make a complaint to the Ombudsman, you first need to have attempted all other institutional remedies first. This means you need to pursue all options available through the institution where you are being held and have received a response *before* you pursue a complaint with the Ombudsman.

The Ombudsman can make an inquiry in response to a complaint in response to the request of a minister or based on their own initiative. They also have full discretion in deciding whether or not to conduct an investigation and can terminate an investigation at any time.[27]

Once you have filed a complaint, the Ombudsman's Office will contact you and inform you whether they will be pursuing your complaint and why. They will also inform you of the results of the investigation once it is completed.

By mail: Office of the Ombudsman of Ontario 483 Bay Street 10th floor, South Tower Toronto, ON M5G 2C9	**By phone:** Toll-free (inside Ontario only): 1-800-263-1830 Outside Ontario: 416-586-3300
By email: info@ombudsman.on.ca	**Online:** https://www.ombudsman.on.ca/have-a-complaint/make-a-complaint/complaint-form-general

Office of the Correctional Investigator of Canada

Federal prisoners held in a penitentiary operated by Correctional Service Canada (CSC) or in the community on parole can issue complaints through the Office of the Correctional Investigator (OCI). Complaints made to the OCI can be made if you believe that CSC officials and staff have acted unfairly, unreasonably or in a manner that fails to comply with their obligations and your rights under law and policy. You should contact OCI should you be unable to resolve your concerns through CSC's internal complaint and grievance process.

[26] See *Ombudsman Act*, RSO 1990, c O.6 s 14.
[27] See *Ombudsman Act*, RSO 1990, c O.6 s 17.

When making your complaint to the OCI by mail, phone or by email, you should provide your name, FPS number, institution or contact information in the community, a brief description of the issue you are facing, and steps you have taken to try to resolve it. During the initial intake and assessment process, OCI will provide and gather information, explore options to address the issue you are facing and decide whether further action is required. If further action is deemed warranted, the OCI will contact CSC to see if the issue can be resolved in short order and, if not, pursue an investigation to "determine whether or not the CSC's actions or decisions were fair, appropriate and in compliance with policy and law".[28]

Based on this investigation, findings and recommendation (if applicable) will be issued to CSC, who will then decide whether and how to implement the recommendations or what other remedial actions they will take should they agree to act to correct the matter you have raised. The complaint process can take up to 90 business days.

By mail: Office of the Correctional Investigator P.O. Box 3421, Station "D" Ottawa, ON K1P 6L4	**By phone:** Toll-free: 1-877-885-8848
By email: org@oci-bec.gc.ca	**Online:** https://www.oci-bec.gc.ca/index-eng.aspx

Complaint to the College of Physicians and Surgeons / College of Nurses Ontario

Complaints can be made to either the College of Physicians and Surgeons of Ontario (CPSO) or the College of Nurses Ontario (CNO) for issues such as restrictions to, and the misadministration of, medication by health care unit staff, or other more general maltreatment regarding your healthcare within an Ontario institution.

CPSO

The CPSO governs all doctors licensed to practice in the province and sets standards for their practice. The CPSO is also responsible for responding to concerns and investigating complaints from members of the public.

[28] See https://www.oci-bec.gc.ca/cnt/complaint-plainte-eng.aspx

All complaints to the CPSO must be submitted in writing and must include the Complaint Form:

- The doctor's name and office address;
- A description of the events that led to the complaint;
- The date and location of those events; and
- Any other information that may help the CPSO conduct its review of the situation, such as the names of any witnesses or individuals who may have helpful information.

Complaints to the CPSO can be mailed to the following address:

Registrar/CEO
College of Physicians and Surgeons of Ontario
80 College Street
Toronto ON
M5G 2E2

CNO

The College of Nurses Ontario (CNO) serves as a professional oversight body for nurses employed in the province, including in provincial jails and prisons, as well as federal penitentiaries in Ontario. Complaints can come from patients and other members of the public. By law, the College must address every complaint it receives about nursing care.

All complaints must include the following details outlined in your Make a Complaint Form:

1) the date(s) and time(s) the incident(s) occurred;
2) the name(s) of the nurse(s) involved; and
3) the name and address of the facility where the incident(s) occurred.

Complaints to the CNO can be mailed to the following address:

Public Complaints
College of Nurses Ontario
101 Davenport Rd.
Toronto, ON
M5R 3P1

Innocence Canada & Other Innocence Projects

Innocence projects are volunteer-run non-profit organizations that work to identify, advocate for, and exonerate people who have been convicted of an offence they did not commit. They also provide legal education to the community about wrongful convictions and miscarriages of justice.

To apply to Innocence Canada, you must meet the following criteria:

1) You must have been convicted for homicide. They will be unable to help you if you were convicted on a different offence.
2) You must be innocent of the offence for which you have been convicted.
3) You also must have completed an appeal to the Court of Appeal for your province.

To request an application by mail, or for assistance in completing the application, please contact Innocence Canada's Director of Client Services, Win Wahrer by email at wwahrer@innocencecanada.com or toll free by phone at 1-800-249-1329.

Applications and correspondence can be mailed to the following address:

Innocence Canada 555 Richmond Street West – Suite 1111 PO Box 106 Toronto, ON M5V 3B1

To apply to Innocence Ottawa, you must meet the following criteria:

1) You must be innocent of the offence for which you have been convicted.
2) Must meet all requirements for conviction review.
3) Must have exhausted all rights of appeal (provincial Courts of Appeal and the Supreme Court).
4) Must not have dangerous or long-term offender status.

Applications and correspondence can be mailed to the following address:

By Mail: Innocence Ottawa University of Ottawa Faculty of Social Sciences Department of Criminology	**By Email**: uottawainnproj@gmail.com

120 University Avenue Room 14002 Ottawa, ON K1N 6N5	

To Apply to the Osgoode-Hall Innocence Project, you must be innocent of the offence for which you have been convicted. Applications and correspondence can be mailed to the following address:

Osgoode Hall Law School at York University
4700 Keele Street
Toronto, ON
M3J 1P3
Canada

Criminalization and Punishment Education Project /
JAIL Hotline / Legal Information Line

The Criminalization and Punishment Education Project (CPEP) is a community-university initiative that aims to reduce the use and harms of imprisonment, while working towards abolitionist and decarceral futures. CPEP members collaborate on many initiatives to achieve the groups short- and long-term objectives.

One such initiative is the Jail Accountability & Information Line (JAIL). The **JAIL hotline** takes calls from Ottawa-Carleton Detention Centre prisoners and their loved ones **Monday to Friday from 1:00pm to 4:00pm**. This hotline documents and works with callers to address human rights and re-entry issues experienced at the Ottawa jail, advocating for their needs to be met in a dignified and respectful manner, while connecting criminalized people to community supports to enhance re-entry outcomes.

The JAIL hotline in collaboration with the uOttawa Prison Law Clinic also runs a **Legal Information Line Tuesday and Thursday from 9:30am to 11:00am.** These hours are staffed by students as part of the Prison Law Practicum at the University of Ottawa. Under the supervision of practicing lawyers, students provide legal information to people imprisoned at OCDC and conduct brief service legal work in some cases.

You can reach the JAIL hotline at **613-567-5245**, including to obtain copies of the *habeas corpus* application documents and other relevant materials noted in this guide.

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uOttawa Prison Law Clinic Student Contributors

Alex Bondy
Alexandria Bonney
Lydia Dobson
Carol Drumm
Jazmeen Fix
Portia Larlee
Claire Michela
Hardie Rath-Wilson
Reakash Walters
Rebecca Ward

Instructor and/or Faculty Contributors

Savannah Gentile, JD
Vanessa MacDonnell, LLM, JD
Justin Piché, PhD