

A photograph of a road surface with a white dashed line. The left side of the image is covered by a brown, textured overlay. The text 'Know your rights' is positioned on the brown overlay, with a white horizontal line underneath it.

Know your rights

**Searches**

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# What are my rights?



**You have a right to be protected from unreasonable search and seizure.**



**You have a right to safety, privacy, bodily autonomy, and human dignity.**



**These fundamental rights and freedoms, protected by law, cannot be taken away in order to punish you.**



**You have a right to get help and to file a grievance if there is a violation of these fundamental rights.**

# Definitions:

## Non-Intrusive Search

is a search performed by a handheld device or with a walk-through scanner.

## Frisk Search

is a manual search while fully clothed, from head to toe, front and back, around your legs, and inside clothing folds by someone of the same sex.

## Strip Search

is a visual inspection that must be done privately, away from the eyes of everyone but the person conducting the search and the witness accompanying them.

While the Corrections and Conditional Release Act (CCRA) at s.48 (see page 9) still provides for routine strip searches (entering/leaving SIUs and where prescribed by regulation (such as following visits with family), strip searches are an infringement of constitutional rights to security and privacy.

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On July 6, 2020 the Canadian Civil Liberties Association and Elson Advocacy launched a class action law suit against the Attorney General of Canada on behalf of those who are illegally strip searched in Canadian federal prisons.



**“While we recognize how difficult it is to hold corrections to account, we encourage prisoners to use the grievance system to document their concerns. Even if they are not properly responded to by CSC, complaints and grievances help to create the record that courts might later rely on to remedy wrongs.”**

**– Kim Pate**

Write down a record of the abuses and conditions that you face and file a grievance. This can help build a legal case that you can use in court to **defend your rights.**

Keeping detailed records of abuses and filing grievances also helps advocates outside prison to understand the issues you face and to **push for change.**



## When are searches authorized?

A non-intrusive or a frisk search can be performed whenever CSC staff consider it to be **reasonably required** for **security purposes**.

This may include, when

- you are entering, leaving, or returning to prison;
- you are entering or leaving the open area or family visiting area;
- you are leaving a work or activity area;
- you are entering or leaving a SIU area;
- you are on a temporary absence in which you have left the prison.

CSC staff can also frisk you if they suspect you are carrying contraband or carrying evidence related to a disciplinary or criminal offence. You may be placed in a dry cell if they have reasonable grounds to believe you have ingested or are carrying contraband in your body. If this happens, you should be visited by a registered healthcare professional at least once every day.

## Can my cell be searched?

- A CSC staff member can search your cell and its contents “in the prescribed circumstances, which circumstances must be limited to what is **reasonably required for security purposes.**”
- They must obtain consent from their supervisor.
- Another CSC staff member must be present to witness the search.
- A search can also be authorized if there is an emergency and the institutional head has a reasonable belief that there is contraband, or evidence related to the emergency in the cell.

**Exception:** if a CSC staff has reasonable grounds to believe that delaying the search would result in harm to a person or destruction of the suspected contraband or evidence, consent and witness are not required.

## Visitors

**Visitors have the right to know why CSC wants to frisk, wand, or strip search them and they have the right to refuse to be searched and leave the prison. If corrections wants to detain visitors, they must call police to do so.**



## **The “Nelson Mandela Rules” on searches:**

**“Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner’s privacy”.**

**“The prison shall keep appropriate records of searches... [including] the reasons for the searches, the identities of those who conducted them and any results of the searches.”**

**Strip searches are a measure of last resort, only to be used when “absolutely necessary”. They must be “conducted in private and by trained staff of the same sex as the prisoner.”**

**“Prisoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings.”**

## What are the standards for searches?

**“Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality, and necessity.”**

*The United Nations Standard Minimum Rules for the Treatment of Prisoners under International Law*, otherwise known as the “Nelson Mandela Rules”, sets minimum standards for searches (see box left). You may want to reference these provisions in support of your complaints or grievances.

**You have a right to dignity.**

**You have a right to respect.**

*The UN International Covenant on Civil and Political Rights* says that:

**No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment.**

**All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.**

**“No one truly knows a nation until one has been inside its jails.”**

**- Nelson Mandela**  
*Long Walk to Freedom*

## What if I am strip-searched?

Inappropriate use of force including any forms of sexual assault and harassment should be reported. If a search is conducted, it can be done in two stages (above and then below the waist, to provide more dignity). Strip searching should not be used to threaten or to punish you in any way. If you feel that your rights have been violated you are entitled to file a grievance and contact the Correctional Investigator at:

Office of the Correctional Investigator (OCI), P. O. Box 3421, Station "D", Ottawa, ON, K1P 6L4  
Toll-free: 1-877-885-8848

Keep a detailed record of each time you or others are being strip searched, the stated reasons for the searches, anything that is confiscated from you, and any disproportionate actions that have been taken or caused you harm.

Any history of abuse or self-harm suffered by you can also be documented in your report. Also, if you belong to an equity-seeking group, and feel that you are being targeted because of your Indigenous status, racial background, religion, etc. please be sure to include this in your report.

Note: A grievance related to a strip search is high priority and can be mailed directly to National

CSC National Headquarters Commissioner: 340 Laurier Avenue W., Ottawa, ON, K1A 0P9  
Phone: 613-992-5891, Fax: 613-943-1630



## **CCRA on Routine Strip Searches:**

**48 (1) Subject to subsection (2), a staff member of the same sex as the inmate may conduct a routine strip search of an inmate, without individualized suspicion,**

**(a) in the prescribed circumstances in situations in which the inmate has been in a place where there was a likelihood of access to contraband that is capable of being hidden on or in the body; or**

**(b) when the inmate is entering or leaving a structured intervention unit.**

### **Choice of body scan search**

**(2) A body scan search of the inmate shall be conducted instead of the strip search if**

**(a) the body scan search is authorized under section 48.1; and**

**(b) a prescribed body scanner in proper working order is in the area where the strip search would be conducted.**

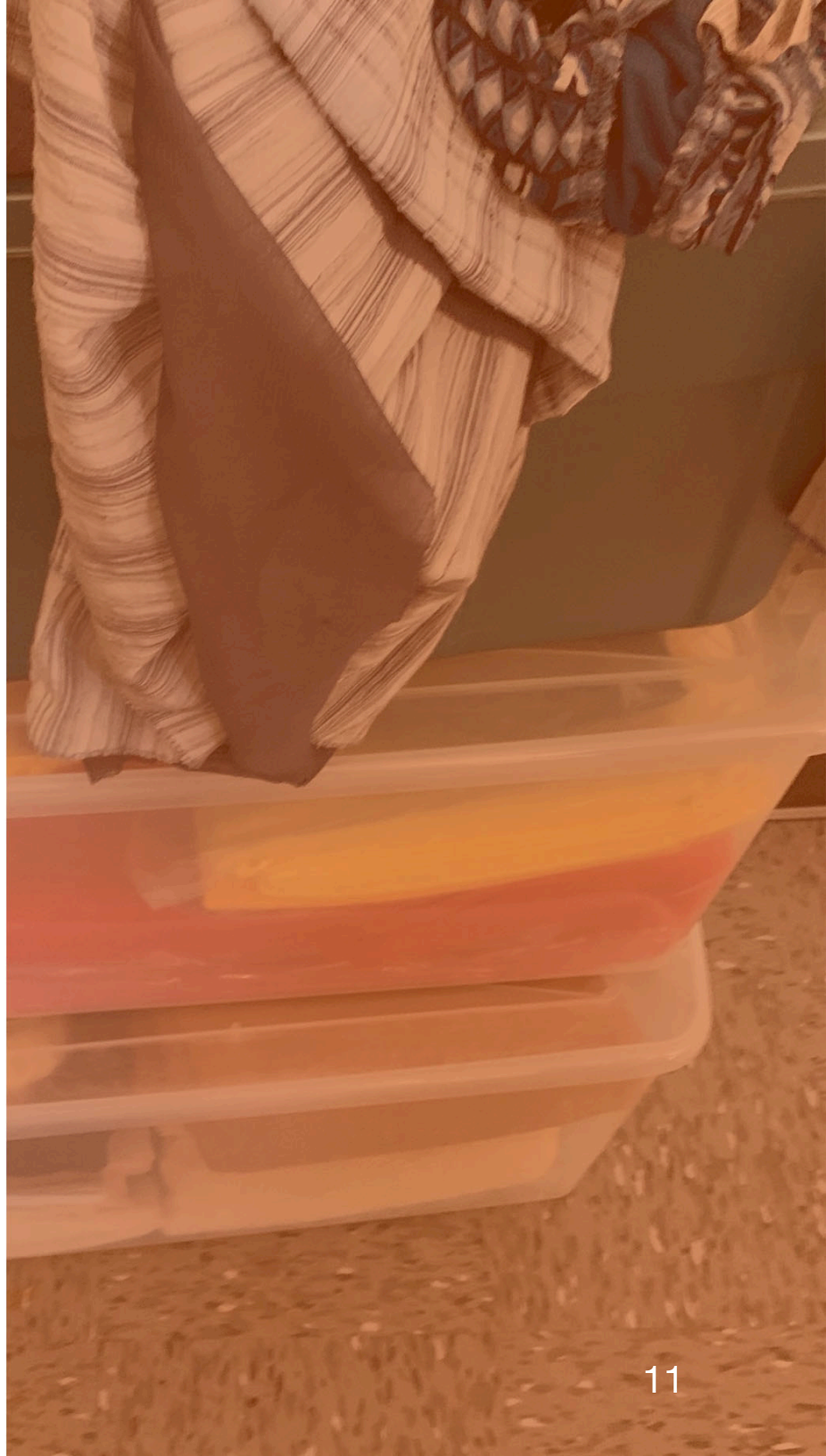


## **While in prison, your gender, religion, and culture must be respected, without discrimination.**

- You have the right to possess and use smudging materials. Smudging materials include sage, sweet grass, tobacco, cedar, or any substance which is burned or used for ceremonial purification.
- You can also possess a medicine bundle. A medicine bundle contains medicines such as cedar, sage, and sweet grass and can contain other items of spiritual value.
  - A bundle can be searched. You may need to handle the item for visual inspection. If you are not present, an Elder, an Elder's representative or a religious representative will inspect or handle the contents for inspection.
- You can also possess any material an Elder deems to have healing potential, such as sacred water, whistles, and abalone shells.
- You can also possess ceremonial objects. This includes ceremonial pipes, drums, cedar, rattles, and eagle feathers.

## **If any of my things are taken by CSC staff during a search, how can I have them returned?**

- **If an item is seized, you have a right to be notified in writing and issued a receipt as soon as possible.**
- **The seized item(s) must be returned to you in the following circumstances:**
  - **the item is not or is no longer required as evidence in a disciplinary or criminal proceeding;**
  - **the item has not been forfeited to the Crown;**
  - **the item is within the control of the Service;**
  - **you request that the item be returned to you within 30 days after being notified of the seizure;**
  - **possession of the item would be lawful;**
  - **your possession of the item would not constitute possession of contraband or an unauthorized item.**



## Where can I get additional help?

### Office of the Correctional Investigator (OCI)

P. O. Box 3421, Station "D"  
Ottawa, ON  
K1P 6L4  
Toll-free: 1-877-885-8848

### Canadian Association of Elizabeth Fry Societies

190 Bronson Ave.  
Ottawa, ON  
K1R 6H4  
T: 613-238-2422  
Toll-free: 1-800-637-4606

### John Howard Society of Canada

809 Blackburn Mews  
Kingston, ON  
K7P 2N6  
T: 613-384-6272



Contact/copy your M.P. or Senator:

[Add your MP's name here]  
House of Commons  
Ottawa, ON  
K1A 0A6

[Add Senator's name here]  
Senate of Canada  
Ottawa, ON  
K1A 0A4