

## **BCCLA Position Paper Prisoner Access to Education + Internet**

Prepared by:

Lisa Kerr, Assistant Professor, Queen's Law  
Samantha Bondoux, JD '21, Queen's Law

### **The Issue: Access to (Self-Funded) Post-Secondary Education and Free Online Education is Effectively Banned in Federal Prisons**

Men and women in Canadian prisons are unable to access training and education beyond the Grade 12 level. The prison service stands in the way of those federal prisoners who are ready and motivated to pay for such post-secondary schooling themselves. CSC Policy makes clear that prison staff are expected to facilitate access, but that policy conflicts with another: the total ban on inmate access to the Internet.

At one time, postsecondary education was available to prisoners through paper-correspondence programs, which they could access and pay for at their own initiative and expense.<sup>1</sup> Today, however, it is nearly impossible to find a distance-education provider that does not require Internet access in order to complete coursework. The few paper courses that still exist are disappearing fast.<sup>2</sup>

Given the disproportionate rate of incarceration of Indigenous people in Canada, the effects of this policy likely have a disproportionate impact on Indigenous people.<sup>3</sup> In this way, the current state of affairs may help to sustain a program of colonization and economic marginalization that is, in fact, the root cause of such disproportionate rates of incarceration. What's more, the *Gladue* jurisprudence makes clear that judges and other decision-makers have a legal duty to ameliorate systemic and historic discrimination against Indigenous people in the criminal justice system. And yet, the CSC allows this policy arrangement to continue, effectively ensuring that the large numbers of Indigenous inmates cannot use their time in custody to gain technical skills, training, and accreditation. It also follows that Indigenous and other inmates will find it harder to maintain ties with their communities and envision life beyond incarceration.

### **The Relevant Law & Policy**

The Correctional Service of Canada (the "CSC") is governed by the *Corrections and Conditional Release Act* which stipulates that its purpose is to contribute to the maintenance of a just, peaceful and safe society by carrying out sentences imposed by courts and by "assisting the rehabilitation of offenders and their reintegration in to the community as law-abiding citizens through the provision of programs in penitentiaries and in the community."<sup>4</sup>

---

<sup>1</sup> S Duguid, "Cognitive Dissidents Bite the Dust—The Demise of University Education in Canada's Prisons" (1997) *Journal of Correctional Education* 48(2) at 56-68, online: <http://www.jstor.org/stable/23294133> [*Duguid*]. See also M Dubois, "Schooling Over Scolding: A Study of Postsecondary Education's Effect on Offender Correctional Success" (2016) University of Ottawa [*Dubois 2016*], online:

<https://ruor.uottawa.ca/bitstream/10393/34545/1/DUBOIS%2C%20Michael%2020161.pdf>.

<sup>2</sup> S Hiltz & M Turoff, "Education Goes Digital: The Evolution of Online Learning and the Revolution of Higher Education" (2005) *Communications of the ACM*, 48(1):59-64.

<sup>3</sup> Annual Report of the Office of the Correctional Investigator 2017-2018 at 61: "In the ten-year period between March 2009 and March 2018, the Indigenous inmate population increased by 42.8% compared to a less than 1% overall growth during the same period. As of March 31, 2018, Indigenous inmates represented 28% of the total federal in-custody population while comprising just 4.3% of the Canadian population. ... Over the last ten years, the number of Indigenous federally sentenced women increased by 60%, growing from 168 in March 2009 to 270 in March 2018. At the end of the reporting period, 40% of incarcerated women in Canada were of Indigenous ancestry."

<sup>4</sup> *Corrections and Conditional Release Act*, SC 1992 c 20 [*CCRA*] at s 3.

The CSC is required to provide “Adult Basic Education programming” – defined as education up to and including Grade 12 – to all inmates who lack a high school diploma.<sup>5</sup>

The CSC is not required to provide or pay for post-secondary education for inmates. Policy states as follows: “inmates are normally required to pay the cost of their participation in post-secondary education programs, unless such participation is included as part of a larger federal/provincial arrangement to provide these programs within the institution.”<sup>6</sup> An Institutional Head or Warden has the ability to approve an exception to payment for post-secondary education only if certain criteria are met.<sup>7</sup>

While payment for post-secondary education is discretionary and rarely offered, policy makes clear that the CSC is required to at least *facilitate* access to post-secondary education. An inmate who wishes to pursue post-secondary education at their own expense may request a referral to a distance Post-Secondary Prerequisite Program. Institutional staff are expected to facilitate such an inmate’s access to post-secondary schooling.<sup>8</sup>

Practically speaking, inmates cannot access distance post-secondary education programs, because inmates are prohibited from possessing or accessing computers (other than computers permitted prior to the computer ban in 2002, which are subject to strict technical limits).<sup>9</sup> There is a total ban on inmate access to the Internet for any reason including accessing (self-funded) post-secondary courses and self-directed free online education.

The result of the total CSC ban on Internet access for inmates – with no exception for things like educational content or professional training – is that Canadian prisoners cannot access post-secondary education or professional training programs while incarcerated. Incarcerated people in Canada are effectively barred from progressing beyond a high school diploma, notwithstanding law and policy that directs the CSC to facilitate inmate access to post-secondary education, rehabilitation, and reintegration. Other jurisdictions, including the United States, Belgium, Finland, and Norway,<sup>10</sup> have adapted their correctional policy to allow for continued access to post-secondary education through the Internet. The CSC has failed to catch up.

The blanket denial on inmate access to the Internet, and the corresponding ban on access to education, is destructive to the CSC’s goals of public safety and inmate rehabilitation. As the federal ombudsman for prisons put it in a 2016 Report: “It’s hard to understand how an environment deprived of computers and Internet, and thereby deprived of information, can be rehabilitative.”<sup>11</sup>

In this paper, we begin with a profile of the extraordinary educational needs of Canada’s incarcerated population. We then move through the various arguments in favor of change. The current state of affairs is not only bad policy – it’s unlawful and unconstitutional.

## **Profile of an Incarcerated Person Today**

It is impossible to appreciate the significance of educational and professional training in prison without understanding the considerable deficits that many incarcerated people are facing on this topic. It is well-known that correctional facilities house large numbers of individuals who have experienced deficits in literacy,

---

<sup>5</sup> Commissioner’s Directive 720 (2017-05-15) “Education Programs and Services for Inmates” [*CD 720*] at para 24.

<sup>6</sup> *CD 720* at para 28.

<sup>7</sup> *CD 720* at para 29.

<sup>8</sup> Commissioner’s Directive 720-1 (2018-02-05) “Guidelines for Education Programs” at paras 50–54.

<sup>9</sup> Commissioner’s Directive 566-12 (2015-10-19) “Personal Property of Offenders” at para 21.

<sup>10</sup> For more information on how prisoner access to the Internet is regulated in these countries, see European Commission, “Prison Education and Training in Europe – Current State of Play and Challenges” (2013) at pp 19, 35, 43, online: [http://www.antonioacasella.eu/nume/Hawley\\_UE\\_education\\_may13.pdf](http://www.antonioacasella.eu/nume/Hawley_UE_education_may13.pdf).

<sup>11</sup> Annual Report of the Office of the Correctional Investigator 2016-2017 at 58.

education, housing, employment, social support networks, income, and social status.<sup>12</sup> Offenders admitted into the custody of the CSC typically rank among Canada's most poorly educated citizens.<sup>13</sup>

Approximately 75% of offenders admitted to federal custody on their first sentence lack a high school diploma<sup>14</sup> – a rate more than three times greater than in the general population.<sup>15</sup> Shockingly, over 60% of the overall inmate population does not have an education higher than grade 8.<sup>16</sup> Low levels of education negatively impact inmate ability to maintain employment.<sup>17</sup> Approximately 60% of federally-sentenced offenders have employment needs identified at intake.<sup>18</sup> Most are chronically under or unemployed.<sup>19</sup>

Since the 1990s, Canadian labour market standards have increased such that the employment rate of young Canadians without a high school diploma has declined from 63% to 54%.<sup>20</sup> There is an even higher demand for workers with a post-secondary education and post-secondary education is correlated with lower unemployment rates.<sup>21</sup> Given that 75% of offenders report that they do not have even a high school diploma, they are further disadvantaged when finding a job if their educational needs are not met during incarceration.

Aside from low levels of education and employment, offenders are fettered by a number of other challenges. Nearly 4 in 10 male offenders require special assessment for mental health needs upon intake, while 6 in 10 incarcerated women are prescribed psychotropic medication<sup>22</sup> – a rate four times higher than that of the general population.<sup>23</sup> Close to 70% of federally sentenced women report histories of sexual abuse and 80% of male offenders struggle with addiction or substance abuse.<sup>24</sup> Given the multitude of obstacles facing offenders both in and out of prison, time spent behind bars should constructively address needs, risks, and behaviours that led offenders into conflict with the law in the first place.

## 1. The Ban on Internet / Post-Secondary Education is Bad Policy

---

<sup>12</sup> Annual Report of the Office of the Correctional Investigator 2014-2015 at 8.

<sup>13</sup> Correctional Service of Canada, *A Two-Year Follow-Up of Federal Offenders who Participated in the Adult Basic Education (ABE) Program* (1998) Research Branch Correctional Service of Canada, online: [https://www.csc-scc.gc.ca/research/092/r60\\_e.pdf](https://www.csc-scc.gc.ca/research/092/r60_e.pdf).

<sup>14</sup> This group consisted of offenders who were on their first sentence and had an Offender Intake Assessment (OIA) between April 1, 2008 and March 31, 2013. See Correctional Service of Canada, *CSC Education Programs and Services Evaluation, File #394-2-78 Evaluation Report: Offender Education Programs and Service* (Ottawa: CSC Education Programs and Services (2015) [2015 Education Programs and Services Evaluation] at 7, online: Government of Canada <https://www.csc-scc.gc.ca/publications/092/005007-2014-eng.pdf>.

<sup>15</sup> Roughly 20% of the general population aged 15 or over lacks a high school diploma. See Statistics Canada, *Canada at a Glance, Education*, online: <https://www150.statcan.gc.ca/n1/en/pub/12-581-x/12-581-x2019001-eng.pdf?st=AkhUy8h9>.

<sup>16</sup> Annual Report of the Office of the Correctional Investigator 2015–2016 at 2.

<sup>17</sup> *2015 Education Programs and Services Evaluation* at 1 citing: Correctional Service Canada Review Panel, “Report of the Correctional Service of Canada Review Panel: A Roadmap to Strengthening Public Safety” (2007), Public Works and Government Services Canada.

<sup>18</sup> Correctional Service of Canada, *Outcomes for Offender Employment Programs: Assessment of CORCAN Participation* (2014) Research at a Glance Number R-283, online: <https://www.csc-scc.gc.ca/005/008/092/005008-0283-eng.pdf>.

<sup>19</sup> Annual Report of the Office of the Correctional Investigator 2015–2016 at 2.

<sup>20</sup> Statistics Canada, *Study: Young Men and Women Without a High School Diploma, 1990-2016* (2017) Component of Statistics Canada catalogue no. 11-001-X, online: <https://www150.statcan.gc.ca/n1/daily-quotidien/170504/dq170504b-eng.htm>.

<sup>21</sup> Statistics Canada, *Employment Rates by Educational Attainment* (2009) Labour Force Survey CANSIM table 282-0004, online: <https://www150.statcan.gc.ca/n1/pub/71-222-x/2008001/sectionf/f-education-eng.htm> [*Stats Canada Employment Rates*].

<sup>22</sup> Annual Report of the Office of the Correctional Investigator 2015–2016 at 2.

<sup>23</sup> Annual Report of the Office of the Correctional Investigator 2015-2016 at 3.

<sup>24</sup> Annual Report of the Office of the Correctional Investigator 2015–2016 at 3.

A blanket denial of access to the Internet and thus post-secondary education and training is bad penal policy. A disproportionate amount of crime is committed by reoffenders.<sup>25</sup> Successful rehabilitation, which involves constructively addressing criminogenic needs, has the potential to address high rates of recidivism resulting in systemic reduction of crime. Prioritizing rehabilitation benefits inmates as well as society as a whole; an inmate who participates in post-secondary education while incarcerated is more likely to obtain employment when released and less likely to reoffend.<sup>26</sup> Released offenders may lack the basic education qualifications to be competitive in the labour market, while at the same time the demand for workers with lower qualifications is deteriorating.<sup>27</sup> Research clearly indicates that without stable employment when released, offenders stand a much poorer chance of being successfully re-integrated into the community.<sup>28</sup>

Post-secondary education provides the accreditation needed to get employment in today's market. A prison secondary-education program run by the University of Victoria and Simon Fraser University in the 1990s offered an opportunity to study the effects of such education on employment and recidivism. *Duguid et al.* established that only 25% of post-secondary education participants recidivated in comparison to the 49% recidivism rate of their non-post-secondary education counterparts.<sup>29</sup> This correlation between participation in post-secondary education and lower recidivism rates has been corroborated by both American<sup>30</sup> and Canadian<sup>31</sup> studies. Post-secondary education also provides other unexpected benefits which can assist prisoners in challenges associated with reintegration. For example, education fosters soft skills such as critical thinking and

---

<sup>25</sup> Public Works and Government Services Canada, *The Reconviction Rate of Federal Offenders* (2003), JS42-100/2002E-IN, online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rcnvctn-rt-fdrl/rcnvctn-rt-fdrl-eng.pdf>. In this study, recidivism was defined as any new conviction within two years of release from prison. The sample included all releases from federal penitentiaries in the years 1994-1996. The reconviction rate was approximately 42%. The researchers found these rates to be comparable to other Canadian studies.

<sup>26</sup> *2015 Education Programs and Services Evaluation* at 2 citing: J Cronin, "The Path to Successful Re-entry: The Relationship between Correctional Education, Employment and Recidivism" (2001) Institute of Public Policy Report 15 at 1; L Davis, R Bozick, J Steele, J Saunders & J Miles, "Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults" (2013), online: [http://www.rand.org/pubs/research\\_reports/RR266.html](http://www.rand.org/pubs/research_reports/RR266.html); C Gillis & D Andrews, "Predicting Community Employment for Federal Offenders on Conditional Release" (2005) Research Branch of the Correctional Service of Canada at 1-99; J Nally, S Lockwood, T Ho & K Knutson (2012), "The Post-Release Employment and Recidivism Among Different Types of Offenders With A Different Level of Education: A 5-Year Follow-Up Study in Indiana" 9:1 Justice Policy Journal 1. See also Gerald G Gaes, "The Impact of Prison Education Programs on Post Release Outcomes" The Urban Institute: Re-entry Roundtable on Education (New York: March 2008) at 1-30 citing: S Duguid, C Hawkey, and W Knights, "Measuring the Impact of Post-Secondary Education in Prison: A Report from British Columbia" (1998) 27:1-2 *Journal of Offender Rehabilitation* at 87, online: [http://www.tandfonline.com/doi/abs/10.1300/J076v27n01\\_07](http://www.tandfonline.com/doi/abs/10.1300/J076v27n01_07) [*Duguid et al 1998*].

<sup>27</sup> *Stats Canada Employment Rates*.

<sup>28</sup> *2015 Education Programs and Services Evaluation* at 1 citing Correctional Service Canada Review Panel, "Report of the Correctional Service of Canada Review Panel: A Roadmap to Strengthening Public Safety" (2007) Public Works and Government Services Canada.

<sup>29</sup> *Duguid et al 1998* at pp 87-106.

<sup>30</sup> HD Jenkins, SJ Streurer & J Pendry, "A Post-Release Follow-Up of Correctional Education Program Completers Released in 1990-1991" *Journal of Correctional Education* 46:1 at pp 20-24.

<sup>31</sup> RH Kim & D Clark, "The effect of prison-based college education programs on recidivism: Propensity Score Matching approach" (2013) *Journal of Criminal Justice*, 41:3 at pp 196-20, online: <https://economix.fr/uploads/source/membres/536/matching-prisoneducation.pdf>; C Chappell, "Post-Secondary Correctional Education and Recidivism: A Meta-Analysis of Research Conducted 1990-1999" (2004) *Journal of Correctional Education*, 55:2 at pp 148-169; M Jancic, "Does Correctional Education Have an Effect on Recidivism" (1998) 49 *Journal of Correctional Education* 152, online: [http://www.jstor.org/stable/23294070?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/23294070?seq=1#page_scan_tab_contents); Davis et al, "How Effective Is Correctional Education, and Where Do We Go from Here? Results of a Comparative Evaluation" (2014) United States: RAND Corporation, online: [http://www.rand.org/content/dam/rand/pubs/research\\_reports/RR500/RR564/RAND\\_RR564.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR500/RR564/RAND_RR564.pdf).

pro-social models which help inmates handle social stress post release.<sup>32</sup> Finally, access to post-secondary education could also help create a culture of learning in correctional facilities and address the problem of criminalized behavior.<sup>33</sup>

*Some* Canadian prisons facilitate *some* access to limited post-secondary courses, however, this access is inconsistent across regions and falls far short of reliable access to the accreditation needed to obtain employment post-release. *Walls to Bridges*, a program that brings post-secondary educators in to prisons to teach classes at no expense to the CSC, is sporadically offered in limited facilities, such as Grand Valley Institution for Women. This program, operated by civil society rather than the CSC, lessens the gap between inmates and higher education, but sporadic access to one-off courses in the humanities is not an adequate substitute for accredited post-secondary education, professional accreditation, or the multitude of free educational resources now available online.

There is no doubt that both higher education and technological literacy significantly increase a person's employability and, accordingly, their likelihood of successful rehabilitation and reintegration. Denying inmates access to such education will only exacerbate the challenges facing them post-release. The CSC's ban is inconsistent with its statutory mandate and Canadian principles of sentencing as it adversely affects inmate rehabilitation at the detriment of inmates and society as a whole.

## **2. The Correctional Investigator Demands Access to Education for Incarcerated Persons**

For years, the Office of the Correctional Investigator (the "OCI") has called for inmates to have access to computers and the Internet in order to pursue post-secondary and self-directed education.<sup>34</sup> The OCI recognizes computer illiteracy as a significant barrier to safe and successful reintegration;<sup>35</sup> most recently stating, "The Correctional Service can and should do more to bring the full reach of online learning platforms and enabling tools and devices into prison. Public safety depends on it."<sup>36</sup>

In its 2016 Report, the OCI recommended an implementation goal of three years for monitored e-mail and laptop use.<sup>37</sup> In 2018, the OCI noted that low participation in post-secondary studies is compounded by the prohibition on the Internet and restricted use of computers.<sup>38</sup> In the same report, the OCI recommended, as 2 of only 21 recommendations, that the CSC "provide inmate access to monitored email and Internet, online learning and in-cell tablets,"<sup>39</sup> and that it "increase inmate access and capacity to pursue post-secondary studies."<sup>40</sup> The most recent OCI report notes that no changes have been made.<sup>41</sup>

## **3. International Law Recognizes Inmate Right to Education**

---

<sup>32</sup> D Ayers, S Duiguid & C Montague, "Effects of University of Victoria Program: A Post-Release Study" *Ministry of the Solicitor General of Canada* at 31, online: <<http://www.publicsafety.gc.ca/lbrr/archives/hv%208875%20e35%201980-eng.pdf>>.

<sup>33</sup> Esperian, "The effect of prison education programs on recidivism" *The Journal of Correctional Education* 61:4, at 316-33.

<sup>34</sup> Annual Report of the Office of the Correctional Investigator 2017-2018 at 71-73. (See also OCI reports in 2014-2015 at 47, 2016-2017 at 58-59, 2011-2012 at 39, 2005-2006 at 19.)

<sup>35</sup> Annual Report of the Office of the Correctional Investigator 2005-2006 at 58-59.

<sup>36</sup> Annual Report of the Office of the Correctional Investigator 2017-2018 at 7. The OCI recognizes that educational advancement presents offenders with greater opportunities for employment, financial security, increased ties to the community upon release, and reduced re-offending.

<sup>37</sup> Annual Report of the Office of the Correctional Investigator 2015-2016 at 59 recommendation no 23.

<sup>38</sup> Annual Report of the Office of the Correctional Investigator 2017-2018 at 71.

<sup>39</sup> Annual Report of the Office of the Correctional Investigator 2017-2018 at 18 recommendation 16.

<sup>40</sup> Annual Report of the Office of the Correctional Investigator 2017-2018 at 19 recommendation 17.

<sup>41</sup> Annual Report of the Office of the Correctional Investigator 2017-2018 at 72-73.

The conclusions of the OCI are supported by international norms. The international community has recognized the right to education, including prisoners' right to education, and more recently, the right to Internet access. Education is recognized as a human right in some of the most widely agreed upon international instruments including the Universal Declaration of Human Rights<sup>42</sup>, the International Covenant on Civil and Political Rights<sup>43</sup>, and the International Covenant on Economic, Social and Cultural Rights<sup>44</sup> to name but a few. Moreover, there is a developing international consensus that access to the Internet is essential to participation in society, and that technological literacy is a crucial skill for work, learning, and life.<sup>45</sup>

This consensus applies equally to offenders, who retain the rights guaranteed to them by domestic and international human rights instruments.<sup>46</sup> The United Nations recalls that "human rights are not relinquished upon imprisonment" and that one such inviolable right is the right to education while in detention.<sup>47</sup> In 2009, the Special Rapporteur for the Human Rights Commission of the United Nations devoted a report to the question of the right to education of persons in detention.<sup>48</sup> According to this report, "all prisoners should have the right to take part in cultural activities and education aimed at the full development of the human personality."<sup>49</sup> The United Nations insists that education is more than an indispensable tool for change, it is "imperative in its own right."<sup>50</sup>

#### 4. The CSC Ban on Internet / Education Violates the Charter of Rights and Freedoms

There is a strong argument that prisoner access to the Internet / education engages section 2(b) of the *Charter* which states that everyone has the freedoms of "thought, belief, opinion and expression."<sup>51</sup> The CSC's total ban on Internet access violates freedom of expression by preventing inmates from receiving information and communicating in a manner that would allow them to pursue post-secondary or self-directed education, and thereby imposes a substantial limit on the rights and core values protected by section 2(b) of the *Charter*.

In *Irwin Toy*, the Supreme Court of Canada adopted the following three-part test for analyzing whether state action violates section 2(b): (1) Does the activity in question have expressive content, thereby bringing it within

---

<sup>42</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 at art 26.

<sup>43</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 at art 1 (entered into force 23 March 1976).

<sup>44</sup> *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 at art 13 (entered into force 3 January 1976).

<sup>45</sup> G20 Argentina 2018, "G20 Education Ministers Declaration 2018: Building consensus for fair and sustainable development - Unleashing people's potential" (2018) at paras 3, 9, online: <http://www.g20.utoronto.ca/2018/2018-09-05-g20-education-ministers-declaration-english.pdf>.

<sup>46</sup> *CCRA* at s 4(d).

<sup>47</sup> UN General Assembly, *Basic Principles for the Treatment of Prisoners*, GA Res 45/111, 45<sup>th</sup> Sess, UN Doc A/RES/45/111 (14 December 1999) at paras 5, 6. A number of international instruments deal specifically with prisons and conditions of detained persons. See ECOSOC, *Standard Minimum Rules for the Treatment of Prisoners*, Res 663 c (XXIV) (31 July 1957) Rules 77(1) and (2): "Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible". See also *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (1985) Rule 26.2: "juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex, and personality and in the interest of their wholesome development".

<sup>48</sup> UN General Assembly, *Report of the Special Rapporteur on the right to education*, *Vernor Muñoz*, 11<sup>th</sup> Sess, UN Doc A/HRC/11/8 (2 April 2009) [*Report of the Special Rapporteur on the right to education*].

<sup>49</sup> *Report of the Special Rapporteur on the right to education* at 9 art 6.

<sup>50</sup> *Report of the Special Rapporteur on the right to education* at 4.

<sup>51</sup> *Canadian Charter of Rights and Freedoms*, s 2(b), Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*.

section 2(b) protection; (2) Does the method or location of this expression remove that protection?; and (3) Does the government action in question infringe that protection, either in purpose or effect?<sup>52</sup>

Online education clearly contains expressive content that not only engages section 2(b) but falls within the core of section 2(b) protection. Canadian courts have interpreted freedom of expression very broadly. If the activity in question conveys meaning, it falls within the scope of freedom of expression regardless if that meaning is unpopular, offensive, or even false. Freedom of expression includes the freedom to impart as well as receive information.<sup>53</sup> An inmate who accesses distance education programs through the Internet is receiving and imparting information; clearly conveying meaning and thereby falling within the scope of section 2(b).

Not only is Internet access for education within the protection of section 2(b), it is at the core of the right. The Supreme Court of Canada in *Irwin Toy* said the protection of freedom of expression is premised upon fundamental principles and values that promote the search for and attainment of truth, participation in social and political decision-making and the opportunity for individual self-fulfillment through expression.<sup>54</sup> These core purposes of freedom of expression are to be granted greater protection. Access to online education undeniably serves the purpose of self-fulfillment. In sum, inmate access to online education should be afforded the greatest protection that section 2(b) of the *Charter* has to offer.

Online education clearly contains expressive content, and the additional criteria from the *Irwin* test are easily met. The location of the expression, the Internet, is not government property, and therefore, the protection of 2(b) is not removed.<sup>55</sup>

There is little doubt that a total ban on Internet access, and thereby education, is an infringement that would not be justified under section 1. The total ban is not consistent with the CSC's objectives as it presents major obstacles to offender rehabilitation and reintegration. Also, the ban almost certainly does not pursue security in a way that "gives effect, as fully as possible to the *Charter* protections at stake".<sup>56</sup> Other countries have found ways to regulate Internet access such that inmates can continue to pursue post-secondary education. There are reasonable options available to the CSC that would impair freedom of expression to a lesser extent.

To date, the Federal Court has only weakly articulated the rehabilitative benefits of educational programming for prisoners.<sup>57</sup> We have not seen a comprehensive *Charter*-based challenge on this issue in a superior court.

## Conclusion

The CSC's total ban on Internet access is bad penal policy as it effectively denies prisoners access to post-secondary education, technological literacy, information, and job prospects. The policy ensures that inmates will lack the basic skills required for nearly all forms of modern employment following release, along with credentials beyond a high school diploma. It ensures the permanent social and economic subjugation of people

---

<sup>52</sup> *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927 at para 56 [*Irwin Toy*].

<sup>53</sup> *Dagenais v Canadian Broadcasting Corp*, [1994] 3 SCR 835.

<sup>54</sup> *Irwin Toy* at 976.

<sup>55</sup> The caselaw regarding location screening generally concerns the use of government/public property in order to express one's views, whether it be distributing leaflets in an airport, putting posters on hydro poles, playing music in the street, or placing advertisements on buses. See *Committee for the Commonwealth of Canada v Canada*, [1991] 1 SCR 139; *Ramsden v Peterborough (City)*, [1993] 2 SCR 1084; *Montreal (Ville) v 2592-1366 Quebec Inc*, 2005 SCC 62.

<sup>56</sup> *LSBC v Trinity Western*, 2018 SCC 32 at para 80.

<sup>57</sup> See *William Head Institution Inmate Committee v Canada (Correctional Service)*, [1993] FCJ No 821 at para 7: The FC stated that the statutory objective of rehabilitation is more likely to be achieved through the use of educational programs such as university programs than without them. See also *Cranshaw v Canada (Attorney General)*, (2000, FC) 187 FTR 269 at paras 12, 14: FC stated that access to a particular educational publication, at the very least, would not be counterproductive to good order or offender rehabilitation, and that the Appellant's request to not be prohibited from receiving a science journal was consistent with sections 3 and 4(e) of the *CCRA*.

sentenced to a custodial sanction – a collateral consequences that is not contemplated by any court or legislative provision, and one that is destructive of rational correctional policy, but one that is a central feature of the Canadian custodial experience nonetheless.

Time spent in prison could be far more productive and meaningful if the CSC were to remove its total ban on inmate access to the Internet. We call for a tailored approach: permitting secure access to approved education programs, along with free online resources and educational websites. The potential benefits to institutional security and correctional outcomes are easy to predict. The costs to the CSC would be minimal, and certainly a fraction of its approximately \$1 billion annual budget, the bulk of which is currently allocated to staff salaries rather than rehabilitative programming.

The current state of affairs undermines the goals of reintegration and rehabilitation and is destructive to public safety. It violates section 2(b) of the *Charter*. Incarceration is meant to punish through the deprivation of liberty – it is not meant to ensure permanent social subjugation. The OCI and the international community have called for inmates to have access to information and education. The reasoning is a matter of common sense and is obvious to any Canadian adult with minimal knowledge of both the labour market and the demands of living in an increasingly technological world.

These policies are so dysfunctional that one wonders how the status quo has been allowed to exist for so long. The only plausible explanation is that prisons are closed and secretive institutions, and that inmates lack an effective voice to press for minimally rational, lawful, and humane policies and conditions of confinement. It is also clear that the CSC is aware of these issues: they have received the multiple recommendations for reform registered by the Office of the Correctional Investigator. Indeed, it seems that the CSC may have a nascent plan for reform. But they must be pressed to act now. In the rapidly evolving digital world, the CSC's persistent inaction has increasingly crippling consequences for Canadian prisoners with each passing month. A blanket ban on access to Internet-based educational materials is not compatible with imprisonment in a modern constitutional democracy like Canada. The CSC must adapt to technological change – just as prison systems in other jurisdictions have – so that incarcerated people are not prohibited from social, intellectual, and professional development.