

FOR IMMEDIATE RELEASE

**East Coast Prison Justice Society Raises Alarm Over Institutional Lockdowns at Burnside**

*Nova Scotia – November 7, 2023*

The East Coast Prison Justice Society operates a toll-free phone line for provincial prisoners in Nova Scotia. While we have previously raised concerns about institutional lockdowns, we continue to receive reports of lengthy, recurrent unit-wide and/or facility-wide lockdowns at Central Nova Scotia Correctional Facility (CNSCF, aka Burnside). **We are increasingly concerned about prisoners' physical and mental health and wellbeing under these conditions.**

Institutional lockdowns were employed during the COVID pandemic as an exceptional measure. **However, instead of becoming less frequent as the pandemic’s intensity waned, lockdowns at Burnside have been used repeatedly over the past two years to manage chronic short staffing, and recently, in apparent response to opioid overdoses.**

At Burnside, the majority of those affected by lockdowns are awaiting trial and presumed innocent. **Lockdowns disrupt correctional programming, spiritual practices, visits with friends and family, medical treatment, contact with lawyers, and access to external agencies, including the East Coast Prison Justice Society. According to one of our callers, “things are worse than they have ever been.”** Over the past five months, callers to our line have reported:

* Up to 23 hours of daily cell confinement
* Lockdown conditions lasting for weeks at a time
* Limited access to health care services, spiritual practices, and personal hygiene supplies
* Lack of access to showers and clean clothes
* Limited phone access, hindering legal preparations and reporting of conditions of confinement to external agencies

**Courts in Nova Scotia have likewise displayed increasing alarm over lockdown conditions.** In a recent court decision*,* Justice Brothers firmly denounced the routine use of lockdowns at Burnside in *Downey v Nova Scotia (Attorney General)*, [2023 NSSC 204](https://www.canlii.org/en/ns/nssc/doc/2023/2023nssc204/2023nssc204.html), remarking at para 94:

“Confining persons in custody – many of whom may have pre-existing mental health issues – to their cells for exorbitant periods of time does nothing to assist and support their rehabilitation... Even a person with robust mental health would find it challenging to be regularly confined to a cell, often for more than 20 hours per day, with little notice and no ability to earn more time out. This practice is dehumanizing, and it is setting these individuals up to fail. They deserve better.”

We agree. The United Nations’ Standard Minimum Rules for the Treatment of Prisoners define solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact. Indefinite solitary confinement and confinement for longer than 15 days amounts to torture, cruel, inhuman or degrading treatment under international human rights conventions. The ongoing use of lockdowns is especially troubling considering that over 75% of the provincial prisoner population in Nova Scotia are in jail awaiting trial. No one deserves this treatment, particularly not those presumed innocent of charges and denied pre-trial release for reasons often as simple as a lack of community housing and other supports.

**We recognize that the routine use of institutional lockdowns is a complex problem requiring a coordinated solution. Corrections alone cannot solve this problem. The solution requires a concerted intersectoral effort to safely reduce the operational burdens faced by corrections.**

We recommend solutions that focus on getting people out of provincial jails in ways that are safe for the community. Over 40% of the provincially incarcerated population was released in March and April of 2020. Working with community partners, correctional services released prisoners, with some going to new supported community residency options. These new community options proved successful even for people with the most complex needs.

Beyond the list of recommendations for curtailing lockdowns in our [2021-22 Visiting Committee Report](https://www.eastcoastprisonjustice.ca/uploads/1/3/8/1/138152103/vc_report_-_final.pdf), two additional solutions we have recommended previously in relation to pandemic lockdowns are as follows:

1. In the case of sentenced prisoners, use s.80 of the *Correctional Services Act* to grant individuals conditional release for “medical reasons” or “humanitarian reasons”.
2. To reduce the number of prisoners on remand, police should make liberal use of their powers of release post-charge (for instance, on a promise to appear), while prosecutors and other justice officials should similarly take all measures possible to avoid unnecessary detention.

**The conditions at Burnside are intolerable. As one caller remarked, "It's like you're not human in here, like you don't exist." Another caller observed that lockdowns are “putting stress on the inmates and the guards. You can feel the tension. It’s a zoo.”**

While recognizing the complex systemic issues contributing to these conditions, we urge politicians and officials across the justice and corrections systems to address this pressing issue. As Justice Brothers stated, they deserve better. We all do.

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Further information

ECPJS understands that there are various administrative reasons for unit-wide lockdowns, and we appreciate that staffing difficulties may arise on a day-to-day basis. However, as we elaborate in our 2021-22 Report (at pp. 35-49), **discretion to impose lockdowns is not untrammeled. It must adhere to legal, including constitutional, limits.** As we explain in our report, we are gravely concerned that current practice in Nova Scotia’s correctional facilities routinely exceeds those limits, subjecting prisoners to illegal deprivation of liberty and cruel and unusual treatment. **Lockdowns, along with problems accessing responsive health care, continue to be the most common and urgent concerns raised by callers to our phone line.**

**The lockdowns to which prisoners at CNSCF are routinely subjected also impinge on basic entitlements under provincial correctional law.** According to sections 55 and 57 of the *Correctional Services Act,* prisoners are entitled to have unrestricted communications with their lawyer, and at least thirty minutes a day of outdoor exercise. Neither section lists short staffing as an exception to receiving these entitlements. While there is not a corresponding section of the *Correctional Services Act* relating to shower access it is nonetheless an important means of infection control (page 28, *Offender’s Handbook*) and vital for personal hygiene – as are clean clothes. On this note, one of the prisoners who phoned to report extensive lockdowns recently informed us that he has gone without a clean set of clothing for more than 14 days. **Lockdowns such as this are analogous to solitary (or “close”) confinement according to international human rights standards and arguably according to correctional policy as well.** CSPP Policy 43 defines close confinement as a “restriction imposed on an individual to a cell or isolated area” that “limits interaction with other offenders.” A lockdown occurs where the superintendent confines prisoners to their cells on grounds of “safety, security or order” pursuant to section 79(3) of the *Correctional Services Regulations (CSR)*.

CSPP Policy 43 provides prisoners in close confinement with daily shower and phone access privileges. Section 95(3) of the CSR entitles prisoners in close confinement the ability to communicate with their lawyer. Even in close confinement, s.81 of the CSR mandates that prisoners have at least a half hour of activity outside of their cell per day. However, as noted, callers are repeatedly notifying us that they are being denied opportunities to shower, spend time outside their cells, and phone their lawyers as a result of unit-wide and facility-wide lockdowns. **It cannot be the case that prisoners placed under lockdowns have less access to privileges and entitlements normally afforded to those in close confinement.**

Justice Brothers' recent opinion in *Downey v Nova Scotia (AG)* 2023 NSSC 204, which concerned the ongoing use of rotational lockdowns at your facility, illustrates why lockdowns cannot become the norm. In her decision, Justice Brothers stresses that a key purpose of incarceration is to help individuals "rehabilitate themselves and successfully reintegrate into the community." **However, repeated lockdowns "set individuals up to fail," forcing them to endure conditions that "even a person with robust mental health would find challenging."** We urge you to pursue further and more effective measures to hire and retain staff. As Justice Brothers notes, if staff shortages continue to precipitate lockdowns, "there may come a day when, in the suitable procedural context, the court will impose a remedy."