

Decision/Direction Note
Department of Justice & Public Safety

Title: Implementation of the Adult Custody Inmate Internal Disciplinary Process

Decision/Direction Required:

- Whether to create three positions to implement the internal disciplinary process for inmates within Adult Custody in accordance with the **Correctional Services Act**.

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Background and Current Status:

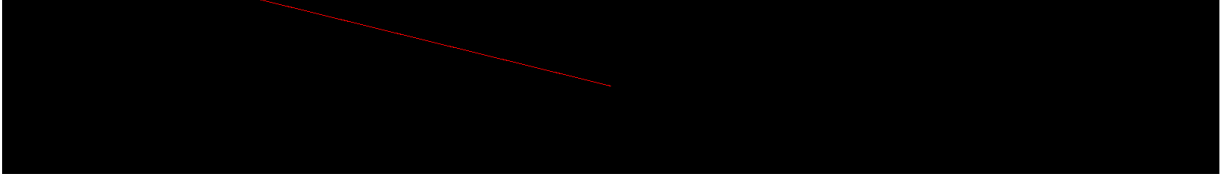
- The **Correctional Services Act** (the Act) was passed in the House of Assembly in May 2024 and will be proclaimed when all aspects, including the new internal disciplinary process, are ready to be operationalized.
- The current **Prisons Regulations** require the Superintendent, Assistant Superintendent, or a panel of three correctional officers, one of whom must be a commissioned officer, to review disciplinary breaches by inmates of the regulations or the rules of a correctional facility and determine appropriate punishment. This process will no longer be permitted under the Act.
- The Act legislates that the Minister may appoint persons, including employees of the government of the province who are not employees of a correctional facility, as hearing adjudicators to conduct disciplinary hearings in accordance with the regulations.
- Further, the Act legislates that the Minister may appoint persons, as appeal adjudicators to conduct, in accordance with the regulations, appeals of decisions of hearing adjudicators in respect to disciplinary hearings.
- Hearing adjudicator and appeal adjudicator positions do not currently exist within the organizational structure of JPS.
- In order to operationalize the inmate disciplinary process, a new position titled "Hearing Coordinator" will be necessary to handle all aspects of the disciplinary hearing for all correctional facilities in the province up to the point of adjudication and all requirements after the adjudication has taken place.
- See Annex A for detailed position descriptions for the Adult Corrections Disciplinary Hearing Adjudicator, Disciplinary Appeals Adjudicator and Disciplinary Hearing Coordinator.

Analysis:

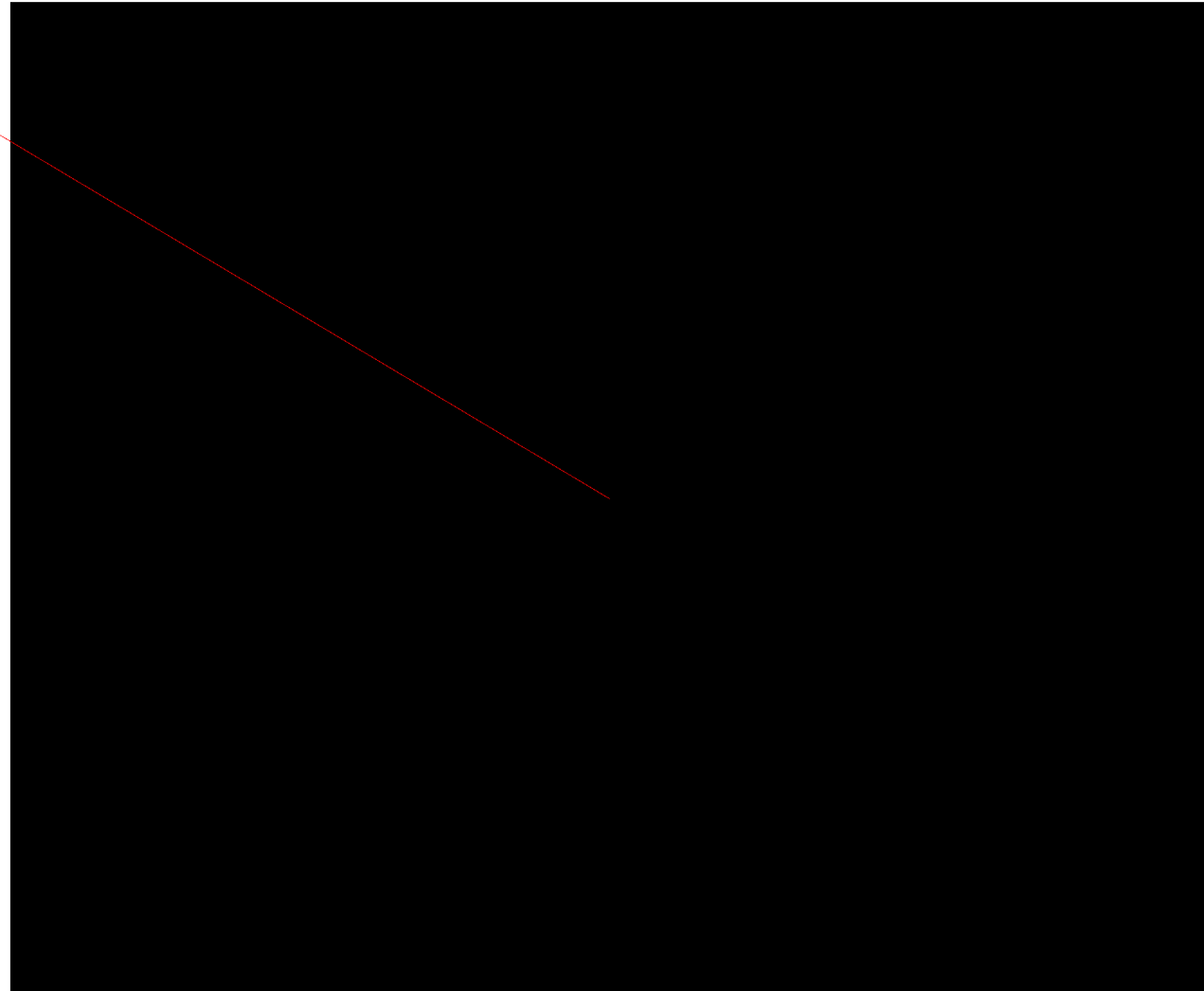
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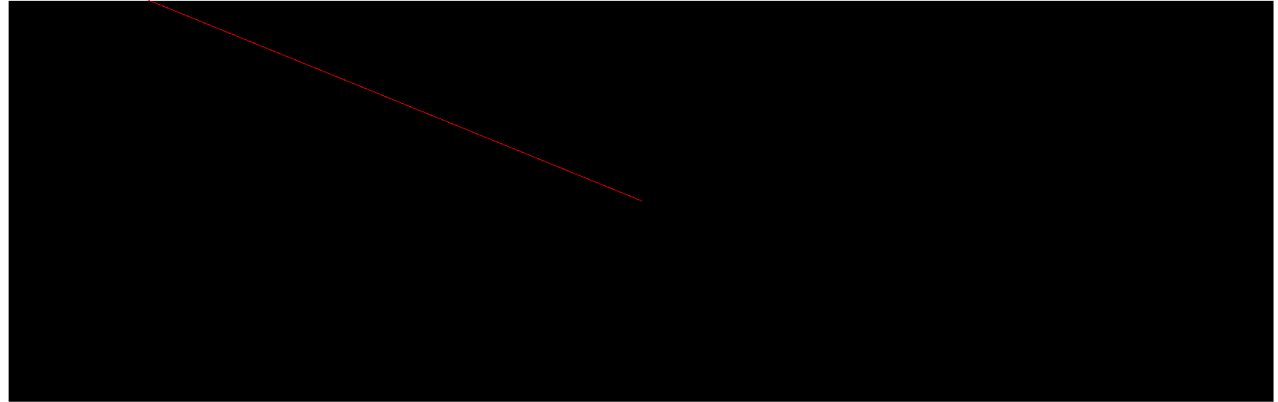
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- Rosters and salaried positions were explored with pros and cons identified. See Annex B for details. A jurisdictional scan of other Canadian provinces with independent adjudicator models, found that such jurisdictions employed an independent staff person, including former correctional employees, to conduct inmate disciplinary hearings. No other provinces utilize an external adjudicator or roster model.
- Individuals responsible for disciplinary hearing adjudication will require common specialized training in the areas of procedural fairness, administrative law principles, adult corrections, and prison culture to ensure fair and consistent application of adjudication.

Alternatives:



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Prepared/Approved by: T. King / H. Yetman / L. Roberts
Ministerial Approval:

September 2, 2024

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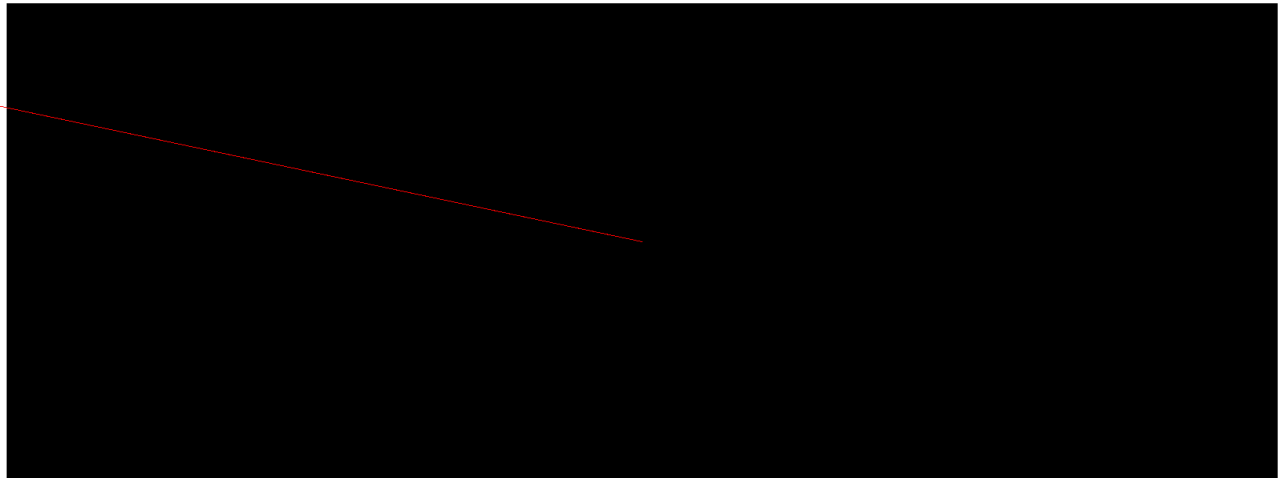
ANNEX A

POSITIONS:

Adult Corrections Disciplinary Hearing Adjudicator

Role:

Section 20 of the *Correctional Services Act* ("the Act") allows the Minister to appoint hearing adjudicators, including employees of government that do not work in correctional facilities to conduct inmate disciplinary hearings. While many Canadian jurisdictions still use corrections employees for their inmate discipline processes, NL has followed the modern trend of having independent adjudicators in order to address concerns about bias, lack of independence, transparency and fairness. In Canadian jurisdictions canvassed that employ adjudicators that are not employees of a correctional facility, the hearing adjudicator is still a staff member in some way – under contract or employ with the Department, but not employed by or working in a correctional facility. For the most part they are hired on contract by the Department but are kept separate and independent from corrections.



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Responsibilities:

1. Receive charge sheets with evidence package from Hearing Coordinator for each inmate scheduled for the day and review.
 - a. Identify any conflicts in advance.
2. Upon review of the evidence package, the hearing adjudicator may dismiss the charge without a hearing per s.20(6) of the *Correctional Services Act*.
3. Determine whether hearing will be conducted in person (HMP) or by video where appropriate per s.27(6) of the regulations.
4. Attend at time scheduled for hearing:
 - a. Hearing must commence as soon as practicable and **no later than** 96 hours from when the charge was laid. The hearing should commence on all but complicated matters within 24 hours.
 - b. Hearing commencement may be adjourned beyond 96 by the hearing adjudicator per s.27(1) of the regulations but this should only be in the most exceptional of circumstances due to the potential impact on the offender, correctional facility security and proper function of the hearing adjudication process. Adjournment should never be a matter of convenience. Reasons for adjournment must be noted in the Inmate Discipline – Hearing Report Form.

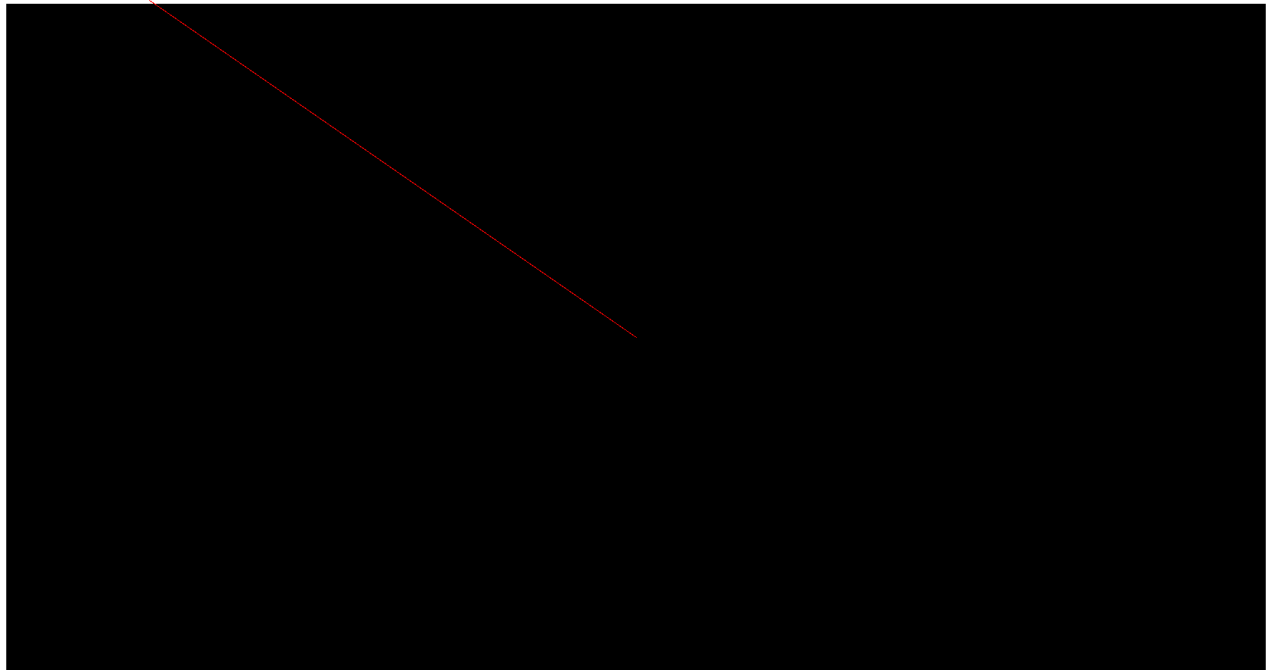
5. Ensure that the inmate is present for the hearing per s.27(2) of the regulations unless the adjudicator is satisfied that the inmate's absence is appropriate based on one or more of the criteria in s.27(3) of the regulations.
6. Ensure that the hearing is recorded by the Hearing Coordinator per s.27(4) of the regulations.
7. The hearing adjudicator shall, at the commencement of the hearing, read all charges to the inmate and ensure that they understand.
8. The hearing adjudicator shall, at the commencement of the hearing, confirm with the inmate whether they have had the opportunity or wish the opportunity to contact counsel in relation to the charges before the hearing adjudicator.
9. If the inmate wishes to contact counsel, the hearing adjudicator shall adjourn briefly to allow the inmate to contact counsel. This adjournment shall not exceed 24 hours. **
10. The hearing adjudicator shall, inquire whether the inmate wishes to plead guilty or not guilty to the charges before the hearing adjudicator.
11. If the inmate wishes to plead guilty, the hearing adjudicator shall read aloud the summary provided by the hearing coordinator.
12. The hearing adjudicator shall give the inmate the opportunity to comment on the facts contained in the evidence package.
13. If the inmate pleads not guilty or does not plead and is deemed to plead not guilty, the hearing adjudicator shall conduct the hearing as required by s.20(1) of the Act and review such evidence as has been provided in accordance with s.20(5) of the Act.
14. At the conclusion of the hearing, the hearing adjudicator shall determine, on a balance of probabilities, whether the inmate has or has not breached the rule or regulation.
15. If the hearing adjudicator determines that the inmate has not breached the rule or regulation, the hearing adjudicator shall dismiss the charge(s).
16. If the hearing adjudicator determines that the inmate has breached a rule or regulation, the hearing adjudicator may impose a disposition as outlined in s.29 of the regulations.
17. The hearing adjudicator may, if necessary, adjourn the hearing to consider the disposition and, in so doing, may consider any information that the hearing adjudicator considers relevant and reliable, including the inmates discipline record per s.28(2) of the regulations. No adjournment should be longer than 24 hours.
18. The hearing adjudicator shall complete the Inmate Discipline – Hearing Report as required.
19. The hearing adjudicator shall, no later than 48 hours after the conclusion of the disciplinary hearing, or where the charges are dismissed under s.20(6) of the Act, provide a report to the superintendent as required by s.28(5) of the regulations.
20. The hearing adjudicator shall conduct a review and possible rehearing when a matter is referred back to them on the basis of new evidence being presented on an appeal in accordance with s.22(7)-(8).
21. The hearing adjudicator shall conduct a new hearing when ordered to do so by the appeal adjudicator pursuant to s.22(9) of the Act.
22. The hearing adjudicator shall be required to conduct an annual review and provide a report to the Minister.

Adult Corrections Disciplinary Appeal Adjudicator

Role:

Section 21 of the Act allows the Minister to appoint appeal adjudicators to conduct appeals of the decisions of hearing adjudicators in respect of disciplinary hearings.

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Responsibilities:

1. The appeal adjudicator will be notified by the hearing coordinator when an inmate or the Superintendent of a correctional facility has filed an appeal per s. 22 of the Act.
2. The appeal adjudicator shall review the appeal document submitted to ensure that it complies with s.22(3) of the Act. If it does not, the appeal should be dismissed.
3. If the appeal discloses new evidence that did not form part of the disciplinary hearing, the appeal adjudicator shall refer the matter back to the original hearing adjudicator or another hearing adjudicator by notifying the hearing coordinator per s.22(7) of the Act.
4. If the appeal is in compliance with s.22(3) of the Act and does not disclose new evidence, the appeal adjudicator shall conduct the appeal within a timeframe to be established in regulations (recommend 7 calendar days of the filing of the appeal) unless the appeal adjudicator extends the timeline in accordance with the regulations.
5. In conducting the appeal, the appeal adjudicator shall review the record of the disciplinary hearing forwarded by the hearing coordinator and apply the appropriate legal standard of review.
6. Upon review of the record, the appeal adjudicator may, in accordance with s.22(9) of the Act, within a timeframe to be established in regulations (recommend 48 hours in keeping with s.27(5) of the regulations), confirm, revoke or vary the decision of the hearing adjudicator or order that a new disciplinary hearing be held.
7. The appeal adjudicator shall provide their decision to the hearing coordinator for dissemination to the parties in accordance with established timeframes.

Adult Corrections Disciplinary Hearing Coordinator

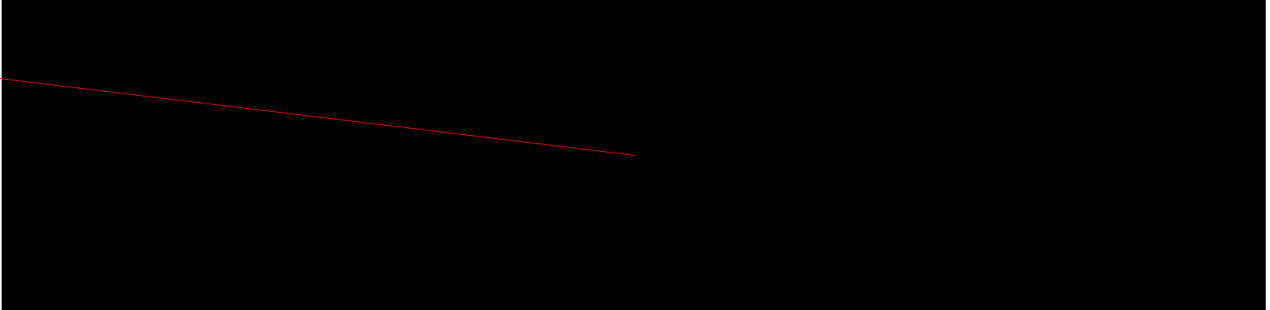
Role:

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_____ In order for the hearing adjudicator to remain impartial and removed from the investigative process, most jurisdictions have someone within corrections that receives and reviews the charges, ensures that they are sufficient to proceed to a hearing, gathers information and evidence and forwards all relevant information to

the hearing adjudicator for consideration. This person would also facilitate the hearing by scheduling the hearing and arranging the attendance of the inmate, witnesses, and the hearing adjudicator. This person would be tasked with ensuring that the recording equipment is working, and the hearings are recorded. They would also be tasked with providing all necessary notifications before and after the hearing and ensuring the decisions and dispositions of the HA are distributed and implemented as recorded in PCOMS etc.

Much of this work is largely being done by the Lieutenant that currently serves as the adjudicator.



As the hearing coordinator is a gatekeeper of sorts ensuring that the charges are appropriate and evidence complete, it is recommended that this person be of Lieutenant rank or higher as they will be reviewing and critiquing the evidence and submissions of other officers.

Responsibilities:

1. The hearing coordinator will be a necessary liaison between the hearing adjudicator and the correctional facility. This role will be based in HMP but will fulfill the role for all correctional facilities in NL.
2. The primary role of the hearing coordinator will be to facilitate the flow of information and co-ordinate with the hearing adjudicator and correctional facility staff.
3. The hearing coordinator will receive the Inmate Discipline- Charge Report as authorized by the Captain acting under the authority of the Superintendent per s.25(1) of the regulations each morning and throughout the day.
4. The hearing coordinator will review the Inmate Discipline – Charge Report to confirm that it contains all necessary information to proceed as required by s.25(3) of the regulations.
5. The hearing coordinator will compile a copy of the inmates' institutional disciplinary record for consideration under s.28(2) of the regulations, should this become necessary.
6. The hearing coordinator will identify all areas of further investigation required such as the archiving and reviewing of video evidence, the solicitation of witness statements, the provision of information to the inmate in relation to the ability to contact counsel and provide evidence for consideration.
7. While the hearing coordinator may gather some of this evidence themselves, they will primarily be directing staff in the relevant roles within the correctional facility to gather same.
8. Once all evidence pertaining to the investigation is gathered, the hearing coordinator will review and
 - a. Identify any gaps in evidence and attempt to have them addressed.
 - b. Prepare an executive summary of the evidence to be provided to the hearing adjudicator.
 - c. Complete the Inmate Discipline – Investigation Report
 - d. Ensure that forms Inmate Discipline-Charge Report and Inmate Discipline-Investigation Report are complete.
9. Set the time for the hearing and notify the inmate and hearing adjudicator.

10. Provides the Inmate Discipline – Charge Report and Inmate Discipline – Investigation Report to the hearing adjudicator and the inmate in advance of the hearing and notifies both of any additional evidence such as video.
11. Arranges the inmate's attendance at the hearing.
12. Ensure in advance that steps are taken to ensure that the hearing is recorded per s.27(4) of the regulations and that recording is retained.
13. If the inmate provides a version of events at the hearing that requires follow up investigation and the hearing adjudicator adjourns the hearing for this purpose, the hearing coordinator will conduct this investigation and forward any evidence obtained to the inmate and to the hearing adjudicator for consideration.
14. Once the hearing adjudicator has come to a decision and filled in the information required by s.27(5)(a)-(f) of the regulations and returned the completed Inmate Discipline – Hearing Report form to the hearing coordinator, the hearing coordinator is responsible for providing a copy of the decision and disposition to the inmate; entering a copy in PCOMS and circulating a copy to the Superintendent and any other necessary party within the correctional facility.
15. Provide the inmate with information pertaining to their ability to appeal the decision of the hearing adjudicator to an appeal adjudicator per s.22(a) of the Act.
16. If an inmate or the superintendent files an appeal and the hearing coordinator determines the appeal to be in compliance with s.22 of the Act, the hearing coordinator shall notify the other party and the appeal adjudicator of the appeal.
17. The hearing coordinator shall forward the appeal documents and the record of the disciplinary hearing to the appeal adjudicator and ensure that timelines and requirements are met.
18. Upon receipt of the appeal adjudicator's decision, the hearing coordinator shall notify the inmate, superintendent and hearing adjudicator of the decision and provide a copy.

Information Note
Department of Justice and Public Safety

Title: Federal Government Firearms Compensation Program

Issue: To provide information regarding the Federal Government's Firearms Compensation Program

Background and Current Status:

- In May 2020, the Federal Government passed an Order in Council banning 1,500 assault-style firearms and certain components of newly prohibited firearms under the **Criminal Code**.
- In May 2023, Bill C-21, **An Act to amend certain Acts and to make certain consequential amendments (firearms)** was passed by Parliament. The **Act** includes several new provisions, including:
 - Increasing maximum penalties for weapons trafficking;
 - Requiring a license to import ammunition;
 - Making it an offence to alter cartridge magazines to exceed legal limits;
 - Introducing "red and yellow flag" laws to reduce firearm-related family violence and self-harm;
 - Introduction of a national freeze on the purchase, sale and transfer of handguns; and
 - Make the buyback of prohibited assault-style firearm mandatory.
- An amnesty period for individuals possessing prohibited firearms is currently in place until the buyback program is implemented.

Analysis:

- The federal firearms compensation (buyback) program is being implemented in two phases:
 - Phase 1, buyback for industry – The Government of Canada is working with the Canadian Sporting Arms and Ammunition Association (CSAAA) who will represent firearms retailers, distributors and manufacturers to help determine how each can participate in the program and benefit from the offered compensation.
 - Phase 2, buyback for individuals – The Federal Government were hoping to work with Canada Post to implement this phase; however, Canada Post recently announced that they would not be participating due to safety concerns for their employees.
- On March 27, 2024, JPS officials met with PSC officials regarding the buyback program. At

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s. 34(1)(b)

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s. 31(1)(a)

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s. 31(1)(a)

Action Being Taken:

- Departmental officials continue to work with police and communities to develop strategies for crime prevention to ensure our communities remain safe.
- JPS officials are working closely with the Federal Government, the RNC and the RCMP to ensure that the implementation of this program does not negatively impact front line police resources in this province.
- JPS officials will seek direction from the Minister of Justice and Public Safety on the best path forward for implementation of this program within NL.

Prepared/Approved by: G. Chakhunashvili/K. Brodeur/S. Simmons/L. Roberts/
Ministerial Approval:



September 4, 2024