

# John Howard

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THE JOHN HOWARD SOCIETY OF CANADA  
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## **The John Howard Society of Canada's Position on Current Issues Impacting Federal Prisoners:**

### **COVID-19 and Structured Intervention Units**

#### **I. Introduction**

The John Howard Society of Canada is committed to effective, just, and humane responses to the causes and consequences of crime. There are several inhumane and pressing issues that prisoners in federal institutions are currently facing, including the response of Correctional Service Canada (CSC) to COVID-19 and the prolonged use of Structured Intervention Units (SIUs). It is the position of the John Howard Society that the federal government as well as the Minister of Public Safety ensure that solitary confinement beyond fifteen days be prohibited to ensure that prisoners' rights are not violated.

#### **II. Structured Intervention Units**

##### Overview

Rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, otherwise known as the Nelson Mandela Rules, defines solitary confinement as the confinement of prisoners for 22 hours or more per day without meaningful human contact. Prolonged solitary confinement is solitary confinement that lasts for fifteen consecutive days or longer.<sup>1</sup> In *British Columbia Civil Liberties Association v. Canada (Attorney General)*, the Supreme Court of British Columbia held that the prolonged use of administrative segregation or solitary confinement was

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<sup>1</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). December 17, 2015.

unconstitutional, as it violated s.7 and s. 15 of the *Charter*.<sup>2</sup> This decision was upheld by the British Columbia Court of Appeal, with the Honourable Justice Fish stating that

a legislative provision that authorizes the prolonged and indefinite use of administrative segregation in circumstances that constitute the solitary confinement of an inmate within the meaning of the Mandela Rules deprives an inmate of life, liberty and security of the person in a way that is grossly disproportionate to the objectives of the law. In addition, the draconian impact of the law on segregated inmates, as reflected in Canada's historical experience with administrative segregation and in the judge's detailed factual findings, is so grossly disproportionate to the objectives of the provision that it offends the fundamental norms of a free and democratic society."<sup>3</sup>

Additionally, in *Canadian Civil Liberties Association v. Canada (Attorney General)*, the Ontario Court of Appeal held that administrative segregation beyond fifteen days violated s. 12 of the *Charter* and could not be justified under s.1.<sup>4</sup>

Bill C-83, Parliament's response to these findings, replaced administrative segregation with SIUs in November 2019. The *Corrections and Conditional Release Act*, as amended, obliged CSC to ensure that prisoners were given the opportunity to spend a minimum of four hours outside of their cell and the opportunity to have meaningful human contact for a minimum of two hours a day through leisure time, interaction with others, and access to institutional programming and services.<sup>5</sup> Though this appears to be a positive change, many prisoners in federal institutions are not out of their cells for the minimum periods nor receiving meaningful human contact. In their 2020 study, Dr. Anthony Doob and Dr. Jane Sprott examined CSC's data on the SIUs, despite CSC's reluctance to provide them with this information. Their research concluded that SIUs were not operating consistently with Bill C-83's amendments to the *Corrections and Conditional Release Act*. Many prisoners were spending significant periods of time in the SIUs and were not receiving time out of their cells or the meaningful human contact that was envisioned. Their study also found that 170 prisoners in the SIU did not leave their cell for four or more hours for more than three quarters of their time in the SIU.<sup>6</sup>

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<sup>2</sup> *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62

<sup>3</sup> *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228

<sup>4</sup> *Canadian Civil Liberties Association v. Canada (Attorney General)*, 2019 ONCA 243

<sup>5</sup> Bill C-83: "An Act to amend the *Corrections and Conditional Release Act* and another Act", 2019

<sup>6</sup> Doob, A. & Sprott, J. "Understanding the Operation of Correctional Service Canada's Structured Intervention Units: Some

In their third report, Dr. Doob and Dr. Sprott evaluated the stays of prisoners who were still in the SIU on December 13, 2020 and were admitted between November 30, 2019 and February 14, 2020. They found that seven of the ten prisoners who had spent ten months or more in the SIU missed their four hours out of their cell and two hours of meaningful human contact in at least 76% of the days of their stay. Additionally, they estimated that 10% of stays in the SIU were torture as defined by the Nelson Mandela Rules.<sup>7</sup> This data demonstrates how significantly SIUs are failing in their attempt to prevent the cruel and unusual punishment of prisoners.

### Racial Inequalities

It is important to note that racialized prisoners are disproportionately impacted by these failings and that there are significant inequalities between prisoners in relation to the use of SIUs. Dr. Doob & Dr. Sprott's initial report determined that there is an overrepresentation of Indigenous people in SIUs. In their study, Indigenous people were found to account for approximately 39% of total stays in the SIU.<sup>8</sup> A subsequently obtained Access to Information Request indicates this number at approximately 45%, which is nearly one in two.<sup>9</sup> This number was much higher at Edmonton Institution for Women, where 78% of prisoners in the SIU were Indigenous. The study also found that black prisoners were also overrepresented in SIUs, making up 13% of SIU stays.<sup>10</sup> This is despite the fact that, according to data from 2018, only 7.3% of all federal prisoners are black.<sup>11</sup>

### **III. COVID-19**

The COVID-19 pandemic has also presented many challenges to federal prisoners. In normal

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Preliminary Findings" (October 26, 2020)

<sup>7</sup> Sprott, J. & Doob, A. (February 23, 2021). "Solitary Confinement, Torture, and Canada's Structured Intervention Units"

<sup>8</sup> Refer to note 5

<sup>9</sup> See Exhibit 11

<sup>10</sup> Refer to note 5

<sup>11</sup> Public Safety Canada. "Corrections and Conditional Release Statistical Overview". 2018 Annual Report.

circumstances, overcrowding poses a significant threat to the health of prisoners, and has been linked to inadequate sanitation and medical treatment as well as increased medical demands.<sup>12</sup> With the added threat of COVID-19, these problems were exacerbated. Many factors such as prisoners having underlying medical conditions, living in overcrowded conditions, double-bunking, being unable to social distance, and utilizing many shared facilities make prisons the perfect environment for COVID-19 to spread rapidly and uncontrollably.<sup>13</sup> Additionally, the risk of severe outcomes was higher for prisoners because of the aging prison population, significant number of immunocompromised prisoners, increased prevalence of chronic diseases, as well as the risk of community-based transmission to prison staff who travelled in and out of the institutions.<sup>14</sup>

CSC's response to the pandemic was and continues to be inadequate to say the least. At the beginning of the pandemic, epidemiologists and prisoner rights groups advocated for the decarceration of certain prisoners, particularly those who had medical vulnerabilities.<sup>15</sup> However, this advice was ignored. Instead, CSC introduced their own institutional practices they believed would prevent the spread of COVID-19 such as allowing COVID-19 positive prisoners to remain in the general prison population and simply hanging flammable plastic shower curtains around their cells to separate them from other prisoners<sup>16</sup>. Prisoners at Saskatchewan Penitentiary became frustrated with CSC's response to COVID-19 and took part in suicide and starvation pacts in an attempt to ensure increased access to phones to speak with their families, more frequent COVID-19 testing, and adequate PPE. They also wanted a prisoner they believed to be COVID-19 positive removed from their range and to have a separate range for COVID-19 positive prisoners.<sup>17</sup> Additionally, significant use of force was used in response to prisoners protesting staff failure to wear PPE and COVID-related restrictions which

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<sup>12</sup> Iftene, A., & Manson, A. (2013). Recent crime legislation and the challenge for prison health care. *CMAJ*, 886–889.

<sup>13</sup> Philipott, J. & Pate, K. (March 31, 2020). "Time running out to protect prisoners and prison staff from calamity" retrieved from: <https://policyoptions.irpp.org/magazines/march-2020/time-running-out-to-protect-prisoners-and-prison-staff-from-calamity/>

<sup>14</sup> Blair A., Parnia A., & Siddiqi, A. (January 2021) "A time-series analysis of testing and COVID-19 outbreaks in Canadian federal prisons to inform prevention and surveillance efforts". *The Public Health Agency of Canada*.

<sup>15</sup> See Exhibit 2

<sup>16</sup> See Exhibit 4 at pg. 38, 58 and 59

<sup>17</sup> See Exhibit 4 at pg. 42, 54-56

included rubber bullets at Donnacona Institution and percussion grenades at Collins Bay Institution.<sup>18</sup> Despite increasing concerns over the spread of COVID-19 in federal institutions, there was no formal record of any National Health Care Advisory Committee recommendations for the nine months between January 1 and October 1, 2020.<sup>19</sup>

There have also been many complaints by prisoners of guards not wearing effective PPE such as gloves and masks.<sup>20</sup> The Office of the Correctional Investigator examined this issue at Millhaven Institution and found that there was some lack of compliance with mandatory mask wearing by staff. They also noted that from the start of the pandemic until February 2021, they had received approximately 500 prisoner complaints relating to COVID-19. These complaints and concerns included “restricted access to health care and medications due to lockdowns, potential maladministration of medical isolation measures, slow return to services (programs, school, libraries, gym), lack of or limited access to fresh air exercise and yard, availability and access to sanitation supplies and personal protective equipment, staff non-compliance with protective measures... disruptions in routine and excessive time spent in-cell, and limited access to programs and potential impacts on parole eligibility”.<sup>21</sup>

As well, prisoners were also most often tested reactively, rather than on a proactive basis, which meant that they were usually tested only if they presented symptoms. In January 2021, it was found that there was a disproportionate number of COVID-19 cases in federal prisons, with approximately 3% of

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<sup>18</sup> Global News. (April 23, 2020) “Coronavirus: Activists call for release after alleged use-of-force by officers” from: <https://globalnews.ca/news/6859676/coronavirus-activists-inmate-releases-after-alleged-use-of-force/>

<sup>19</sup> See Exhibit 7

<sup>20</sup> APTN News. (April 16, 2020). “Prison watchdog investigating complaint of guards not wearing masks at Sask Pen” from: <https://www.aptnnews.ca/nation-to-nation/prison-watchdog-investigating-complaint-of-guards-not-wearing-masks-at-sask-pen/>

<sup>21</sup> Office of the Correctional Investigator. (February 23, 2021). “Third COVID-19 Status Update”

the overall prison population contracted COVID-19 compared to the 0.2% prevalence in Canada.<sup>22</sup> Additionally, institutional programming and visits were cancelled and prisoners were subjected to lockdowns and isolation, which is known to lead to significant psychological impacts.<sup>23</sup> Prisoners in Saskatchewan Penitentiary were also denied access to harmless forms of entertainment such as literature and Sudoku puzzles during a 23-hour per day lockdown, despite the institutional library being closed due to a COVID-19 outbreak.<sup>24</sup> Many of CSC's policies and practices constituted significant rights violations and proved to be ineffective, with more than 10% of prisoners contracting COVID-19<sup>25</sup>, six deaths and an unknown number of lasting health impacts.<sup>26</sup> A further investigation into the COVID-19 related deaths is warranted to allay concerns that more could have been done to prevent these fatalities. For example, it has been suggested that a Bowden Institution prisoner was denied his dialysis treatments after he contracted COVID-19 and subsequently died. If true, this would fall far below professional standards of treatment.

### COVID-19 and SIUs

As noted above, the COVID-19 pandemic has presented a variety of challenges for prisoners in the general population, though, there have been notable difficulties for those in the SIUs. CSC has expressed that the failings in the SIUs is a result of the ongoing COVID-19 pandemic, however this is accurate. In their second report studying the relationship between the COVID-19 pandemic and the problems in SIUs, Dr. Doob and Dr. Sprott found that the failures of the SIUs were not a result of the pandemic, as SIUs were not operating as intended prior to March 2020 when the COVID-19 pandemic began. Their research concluded that there was significant variation in SIU stays between regions, with respect to length of stay as well as time spent outside of cells, which would have likely remained

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<sup>22</sup> Refer to note 12

<sup>23</sup> Refer to note 10

<sup>24</sup> See Exhibit 9

<sup>25</sup> Based on the number of federal prisoners in Canada in 2018/2019 (from Statistics Canada: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510015501>) and the total number of COVID-19 cases in federal institutions as of June 20, 2021 (from the Government of Canada: <https://www.canada.ca/en/correctional-service/campaigns/covid-19/inmate-testing.html>).

<sup>26</sup> Government of Canada. "Testing of inmates in federal correctional institutions for COVID-19" (as of June 20, 2021)

constant if COVID-19 was to blame. Perhaps most compellingly, there was almost no difference in the number of prisoners who did not receive the required four hours out of their cells in approximately three-quarters of their time spent in the SIU prior to the COVID-19 pandemic and during it.<sup>27</sup> This information suggests that contrary to CSC’s explanation, the continuing failures of the SIUs cannot be blamed on the COVID-19 pandemic. Additionally, in an investigation conducted by the Office of the Correctional Investigator at Millhaven Institution during the COVID-19 pandemic, it was found that there were “significant compliance issues with the Structured Intervention Unit (out of cell time, “meaningful” human contact, inadequate yards).”<sup>28</sup>

#### **IV. Conclusion**

Overall, the challenges faced by prisoners in federal institutions cannot be ignored. It is abundantly clear that the objective of Bill C-83 was not to simply recreate administrative segregation or solitary confinement with a different name, but to ensure that the *Charter* rights of prisoners be upheld. Given the ample evidence, it is clear that this goal is failing enormously. Day in and day out, *Charter* rights are being violated. Though these problems may be exacerbated by the COVID-19 pandemic, they cannot be attributed to it. Additionally, the measures taken by CSC to control the spread of COVID-19 within federal institutions were ineffective and constituted significant rights violations, both under the *Charter* and at international law. In response, the federal government must immediately prohibit the prolonged use of solitary confinement for fifteen days or more as defined by the UN’s Mandela Rules.

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<sup>27</sup> Sprott, J. & Doob, A. (November 15, 2020). “Is there clear evidence that problems that have been identified with the operation of Correctional Service Canada’s “Structured Intervention Units” were caused by the COVID-19 Outbreak? An examination of data from Correctional Service Canada”

<sup>28</sup> See note 18