



## Prisoners' Legal Services

A Project of the West Coast Prison Justice Society

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### Brief to the Standing Senate Committee on Human Rights Prisoner Human Rights

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Prisoners' Legal Services (PLS) provides legal aid to federal and provincial prisoners in British Columbia on issues that affect their liberty rights under s. 7 of the *Charter*, as well as on health care and human rights issues. In the past year, we have assisted prisoners with more than 2,500 legal issues.

Thank you very much for the opportunity to provide written submissions to this Committee, and thank you for initiating this important study on the human rights of prisoners in Canada.

#### Case Study – Joey Toutsaint

Joey Toutsaint is a client of PLS who has given permission to share his story. His experience represents the worst kinds of abuses that are possible under the current legislative and policy regime governing the Correctional Service of Canada.

Joey Toutsaint grew up traditionally as a member of the Dene Nation. After his mother and grandfather died when he was a teenager, he became involved in the youth justice system. He entered the adult system at 18.

Like so many other Indigenous prisoners, Joey entered custody on relatively minor charges, but his experiences in custody led to more serious charges including serious violence. He is now 31 and he estimates that he has spent a total of seven or eight years in solitary confinement since 2005, where he is locked in a small cell alone for 23-24 hours per day with very little meaningful human contact. If he gets an hour out of his

cell, that is spent alone in the yard or shower. He has experienced multiple uses of force by correctional officers, including the use of chemical agents, often in response to acts of self-harm.

Joey has been diagnosed with Post Traumatic Stress Disorder, Attention Deficit Hyperactive Disorder and Major Depressive Disorder.

As a coping mechanism, Joey engages in self-harm. His body is covered in scars. On three occasions he chewed into his arm to reach an artery. He recently slashed his own throat and almost died from blood loss. After a short stay in a community hospital, Joey was returned to solitary confinement in prison.

When Joey self-harms, the Correctional Service of Canada puts him in an observation cell where he is isolated and often further deprived of all of his belongings, including his clothes, and anything to occupy his mind like television, radio, books or drawing materials (he is an artist). He describes his mattress as blanket-thin on the concrete floor. He is provided only finger food called “bag feed”. Cells are often very cold or very hot and the lights are on 24 hours per day. He can’t sleep and his body aches. His cell is often filthy and contaminated with chemical agents, so his skin burns. An officer sits outside his cell with a canister of pepper spray and does not speak to him.

Joey describes the conditions he lives under in segregation and observation as torture. In either observation or segregation, Joey has very little meaningful human contact. Meetings with health care professionals are generally through the cell door and last only a few minutes. He says officers and nurses are rude, and refuse to address his concerns or give their names. He says they treat him like a dog or a child. When he asks for his care plan, all he is told is that he needs to take “baby steps”. He reports that officers insult him, laugh at him and raise their voices. He says all officers and nurses do is threaten him with gas and Pinel restraints over and over again. For the most part, the only time Joey speaks to staff is to ask for pain medication and legal calls. He does not trust CSC staff, including medical and mental health staff.

CSC has refused to transfer Joey to a psychiatric facility.

CSC’s National Senior Psychiatrist told us that although he has not met with Joey, he has determined that Joey does not “meet the serious mental illness definition to prohibit use of administrative segregation”. He denies that Joey has PTSD. He characterizes Joey’s self-harm as manipulative. He also advised us that he is not involved in determining Joey’s treatment plan and that he will no longer respond to our emails about Joey.

## Human rights issues

### 1. De-incarceration

With the deinstitutionalization of psychiatric hospitals from 1965 to 1980, the number of psychiatric hospital beds in Canada dropped from 69,128 to 20,301.<sup>1</sup> The intent behind deinstitutionalization was to reducing expensive inpatient services and reallocate savings to additional community supports that would help more people. Canada and the provinces have failed to re-invest in these services, and instead, the prison system has taken over the role of psychiatric hospitals. Prisons lack the infrastructure, training and culture necessary to care for people with mental illnesses. People exhibiting symptoms of mental illness often end up in long-term solitary confinement rather than receiving therapeutic treatment for their disabilities.

The vast majority of prisoners suffer from mental health problems, including addictions. It is estimated that 80% of prisoners in Canada suffer from addictions. The link between mental health problems, trauma, addiction and criminal justice involvement are widely acknowledged.

Canada should invest in significantly higher levels of community-based mental health and addiction services in order to allow people who suffer from mental disabilities and addictions to receive treatment and be able to participate as productive members of society rather than ending up involved in the criminal justice system and languishing in our prisons.

Canada should also make reforms to the criminal justice system to reduce the number of people sentenced to custody.

### 2. Solitary confinement and therapeutic alternatives

Instead of working to address the mental health crisis in our prisons, the Correctional Service of Canada continues to place people in solitary confinement – a practice the United Nations considers to be torture or cruel treatment for people who suffer from mental disabilities or for anyone after 15 days. Research demonstrates that solitary confinement is psychologically damaging and increases the risk of suicide.

Last year the government introduced Bill C-56, which the media wrongly reported capped the use of segregation at 21 days. In fact, Bill C-56 does nothing to limit the use of segregation – the warden has the authority to continue segregation indefinitely.

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<sup>1</sup> Patricia Sealy & Paul C. Whitehead, "Forty Years of Deinstitutionalization of Psychiatric Services in Canada: An Empirical Assessment" (April 2004) 49:4 Canadian Journal of Psychiatry at 249.

Prime Minister Trudeau's mandate letter to the Minister of Justice directed her to implement the recommendation of the Ashley Smith inquiry to restrict the use of solitary confinement, and "to end appeals or positions that are not consistent with our commitments, the *Charter* or our values." However, the Canadian government is now appealing the ruling of Justice Leask in *BC Civil Liberties Association v Canada (Attorney General)*, 2018 BCSC 62 that found the government's use of solitary confinement violates ss. 7 and 15 of the *Charter* in the case of Indigenous prisoners and those with mental disabilities. Why is the government fighting for the right to continue a practice against its most vulnerable citizens that the United Nations considers torture or cruel treatment?

PLS has written a report that provides a blueprint for ending Canada's reliance on solitary confinement. *Solitary: A Case for Abolition* can be found online at: <https://prisonjusticedotorg.files.wordpress.com/2016/11/solitary-confinement-report.pdf>. This report cites studies, provides examples of successful alternatives to solitary confinement from other jurisdictions and contains a number of recommendations that would provide Canada and the Correctional Service of Canada with a framework to end this cruel practice.

The federal government should partner with the provincial ministries of health to provide independent health services to federal prisoners so that they can develop the trusting relationship necessary for effective care. Confidentiality guidelines must also be established.

Every prisoner should be assessed for mental health needs, including the need for trauma or addictions services, at intake. In every case where a need is identified, a care plan should be developed without delay, which should include an offer of trauma and addiction counselling. CSC must help people at risk of mental health deterioration before they begin to engage in self-harm, by providing therapeutic living units to everyone who would benefit from them.

Prisoners at risk of self-harm or suicide should be placed in community psychiatric hospitals or treatment centres where they can heal from trauma in a therapeutic environment. The process for admission to a treatment centre should be procedurally fair and transparent.

If observation cells must be used to prevent self-harm or suicide, their use should be authorized by medical professionals in a hospital setting and be subject to time limits. Anyone at risk of isolation should have offers and acceptance of meaningful human contact (including therapy) tracked, with a goal of preventing isolation.

### 3. Indigenous prisoners

The Correctional Investigator has identified the over-representation of Indigenous people in prison as one of the most pressing human rights issues in Canada today, with Indigenous adults making up 27% of admissions to federal custody while representing only 4.1% of the population in Canada. Indigenous women make up 43% of all women admitted to prison.<sup>2</sup>

For Indigenous people, incarceration in colonial prisons represents a continuation of the genocidal residential school system by separating families and contributing to multi-generational trauma.

Our clients who have been able to access Indigenous-run healing lodges have reported to us the benefit of working with staff who understand where they are coming from and who treat them with the dignity and respect necessary for healing. However, very few federal prisoners are able to access Indigenous-run healing lodges, which are not available to prisoners classified to most medium and maximum security prisons, and who have the highest needs.

### 4. Black prisoners

Black people are also over-represented in prison, making up 9.3% of the federal prisoner population, while representing 2.9% of the Canadian population. A 2014 review by the Correctional Investigator of Canada found that Black prisoners are more likely to be placed in maximum security prisons and segregation, more likely to be involved in uses of force, more likely to be institutionally charged, and less likely to be employed, despite having a lower risk to reoffend.<sup>3</sup>

Research identifies root causes of involvement in crime to include childhood trauma, racism, poverty and lack of community programs. Evidence shows that young people who are incarcerated benefit from educational opportunities, housing, employment and assistance with substance abuse and mental health challenges.<sup>4</sup>

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<sup>2</sup> Adult and youth correctional statistics in Canada, 2016/2017 (June 19, 2018). Online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm>.

<sup>3</sup> Office of the Correctional Investigator, "A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report", (November 26, 2013). Online: <http://www.ocibec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx#toc7>.

<sup>4</sup> Fiona Scott, "Look at My Life: Sparks for Firearm Possession Among Young People in Toronto (2018). Online: <http://amadeusz.ca/wordpress/wp-content/uploads/2018/07/Look-at-My-Life-Sparks-for-Firearm-Possession-Among-Young-People-in-Toronto.pdf>.

## **5. Security classification**

Prisoners who suffer from mental disabilities are often placed at higher levels of security due to requiring “a high degree of supervision and control within the penitentiary” under s. 18 of the *Corrections and Conditional Release Regulations*. This is determined by the prisoner’s institutional adjustment rating under Commissioner’s Directive 705-7, “Security classification and Penitentiary Placement”, determined in part by a consideration of mental health concerns. This is clearly discriminatory against prisoners with mental disabilities.

The federal government should amend s. 18 of the *Corrections and Conditional Release Regulations* and CSC policy to ensure that mental health needs are accommodated with appropriate treatment, and that security classification is based on escape risk, and the safety risk to the public, institutional staff and other prisoners. Mental disability should be considered only as a mitigating factor in security classification decisions.

## **6. Access to information**

CSC routinely fails to comply with the time limits for requests from prisoners to access their own medical information. Requested information is often not provided for nine months to one year or longer. When a prisoner seeks to challenge the quality of their health care, they are unable to obtain the necessary evidence in a timely way. Health care needs can often be urgent, especially mental health care needs when the person is at risk of suicide or self-harm. CSC’s failure to provide medical information in a timely way is obstructionist and lacks transparency resulting in CSC being immune to accountability.

Canada should implement more oversight so that that CSC’s Access to Information process is timely and transparent.

## **7. Legal Aid for prisoners in Canada**

PLS calls on government to increase funding for legal aid to all prisoners to ensure adequate levels of legal aid in each region across Canada.

Legal aid for prisoners is administered inequitably and inadequately across Canada. In Ontario, Quebec and British Columbia, legal aid may be provided to assist prisoners with issues that affect their residual liberty rights, such as for representation in disciplinary hearings, parole issues or involuntary transfer to higher levels of security. Legal aid for

prisoners in the Maritimes and Prairies is woefully inadequate. Legal aid for human rights and health care issues is virtually non-existent in most regions.<sup>5</sup>

There is a great need for an investment in legal aid for prisoners across Canada so that prisoners may be able to exercise their statutory human rights protections. Prisons operate behind closed doors with little public accountability or transparency. As stated by Justice Mactavish in *Drennan v Canada*, 2008 FC 10, the duty to protect quasi-constitutional human rights “is all the more important in the case of a prisoner, who has no choice as to his living arrangements, and as such is in a uniquely vulnerable position” (at paragraph 41).

When prisoners feel they have not been treated fairly while incarcerated, it is difficult for them to develop a respect for the rule of law. They may leave prison feeling a greater sense of resentment toward the justice system than when they entered the system. Legal aid for prisoners can serve to promote respect for the rule of law, which makes rehabilitation possible, and as a result, increases public safety.

## Recommendations

PLS makes the following recommendations:

1. That the federal government make a significant investment in mental health and addiction services in the community.
2. That the federal government transform the justice system to establish and resource community-based alternatives to prisons and reduce the number of people sentenced to custody.
3. That the federal government ensure there are adequate educational, housing and employment opportunities for young people at risk of incarceration.
4. That the federal government partner with the provincial ministries of health to provide independent health services to federal prisoners. Confidentiality guidelines must also be established.
5. That CSC be required and resourced to assess every prisoner for mental health needs, including the need for trauma or addictions services, at intake. In every case where a need is identified, a care plan should be developed without delay, which should include an offer of trauma and addiction counselling.

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<sup>5</sup> Prisoners’ Legal Services receives a grant from the Law Foundation of BC to provide legal aid for human rights and health care issues for prisoners in BC.

6. That Canada invest in a trauma-informed approach and provide therapeutic environments to all prisoners who would benefit from them, including those with mental disabilities, addictions and past experiences of trauma.
7. That Canada ensure that prisoners at risk of self-harm or suicide are placed in community psychiatric hospitals or treatment centres where they can heal from trauma in a therapeutic environment. The process for admission to a treatment centre should be procedurally fair and transparent.
8. That Canada require the use of observation cells to be authorized by medical professionals in a hospital setting and be subject to time limits, if they must be used to prevent suicide or self-harm.
9. That the Correctional Service of Canada be required to track offers and acceptance of meaningful human contact (including therapy) for anyone at risk of isolation, with a goal of preventing isolation.
10. That Canada engage with First Nations to negotiate self-determination in corrections, so that no Indigenous person is subjected to incarceration in a colonial prison. Indigenous prisoners should have access to Indigenous-run healing lodges where they can recover from inter-generational trauma.
11. That the federal government amend s. 18 of the *Corrections and Conditional Release Regulations* and CSC policy to ensure that mental health needs are accommodated with appropriate treatment, and that security classification is based on escape risk, and the safety risk to the public, institutional staff and other prisoners. Mental disability should be considered only as a mitigating factor in security classification decisions.
12. That Canada implement more oversight so that that CSC's Access to Information process is timely and transparent.
13. That Canada increase funding to the provinces and territories dedicated to the provision of legal aid for prisoners in Canada, including legal aid for liberty rights, health care and human rights.
14. That solitary confinement be abolished in Canada. No prisoner should be subjected to torture or cruel treatment in Canada. Canada should end its appeal in *BC Civil Liberties Association v Canada (Attorney General)*, 2018 BCSC 62 and instead reach out to experts and stakeholders to develop alternatives to solitary confinement.