



## Prisoners' Legal Services

A Project of the West Coast Prison Justice Society

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November 19, 2018

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**The Honourable John McKay, Chair**  
**Standing Committee on Public Safety and National Security**  
House of Commons  
131 Queen Street, Room 6-14  
Ottawa, ON K1A 0A6

Dear Mr. Chair:

**RE: Bill C-83, Amendments to the *Corrections and Conditional Release Act***

Prisoners' Legal Services (PLS) provides the following submissions on Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*. Thank you for the opportunity to provide comments.

PLS is a legal aid clinic for federal and provincial prisoners in British Columbia. We assist prisoners with issues that affect their residual liberty rights under s. 7 of the *Charter*, as well as with health care and human rights issues. In the past year we have assisted prisoners with more than 2,600 legal issues including solitary confinement, disciplinary charges, conditions of confinement, parole board matters, involuntary transfer to higher levels of security, health care and human rights. Our mandate includes promoting the rule of law within penitentiaries, and promoting the application of the *Charter* and human rights in the treatment of prisoners.

PLS endorses the submissions of the Canadian Bar Association, Criminal Justice Section and its Committee on Imprisonment and Release regarding the proposed amendments to the *Corrections and Conditional Release Act* (CCRA). We provide the following further submissions.

## **Least restrictive measures**

PLS highlights the CBA's concerns that the concept of "least restrictive measures" has been removed from the CCRA. Our clients have experienced a slippery slope in the routine deprivation of their liberty in the open population. In the maximum security Kent Institution in BC, general population prisoners are locked in their cells for all but three hours per day on weekdays, and often denied yard time. Some medium security prisons have implemented policies of requiring prisoners to remain in their cells unless they are employed or enrolled in programs, even when no jobs or programs are available.

We urge government to include enforceable standards for least restrictive measures that require prisoners to be unlocked from their cells for the majority of each day so that they may engage in meaningful activities that include meaningful human contact. Enforceable guidelines are also necessary to restrict the use and effect of lock-downs on prisoners' basic *Charter* and human rights. These reforms are essential for the Correctional Service Canada to fulfil its mandate under s. 3 of the CCRA of contributing

to the maintenance of a just, peaceful and safe society by

(a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and

(b) assisting the rehabilitation of offenders and their reintegration into the community as law abiding citizens through the provision of programs in penitentiaries and in the community.

## **Solitary confinement**

Canada's correctional system should be evidence-based in order for Canada to be an international leader in correctional practices. *BC Civil Liberties v Canada*, 2018 BCSC 62, represents the most thorough review of the evidence of Canada's use of segregation, including expert evidence on the psychological effects of solitary confinement. The Honourable Justice Leask found the CCRA's administrative segregation provisions to constitute solitary confinement and found that they violate s. 7 and 15 of the *Charter*.

Reforms to the CCRA must comply with the findings of Justice Leask. The evidence in that case demonstrates that solitary confinement is psychologically harmful for prisoners with mental disabilities for any amount of time, and after 15 days for anyone else. The evidence is that solitary confinement increases the risk of suicide and self-harm. Bill C-83 does not ensure that Canada will not use solitary confinement against prisoners with mental disabilities or for more than 15 days. The United Nations considers this to constitute torture or cruel treatment. Canada must go further than walking the line of torture and cruel treatment, and explicitly

prohibit the isolation of prisoners, for any reason and under any regime, for 22 or more hours per day without meaningful human contact.

PLS supports the purpose of Structured Intervention Units as providing “an opportunity to participate in programs and to have access to services that respond to the inmate’s specific needs”. However, enforceable standards are needed for the provision of such services.

We recommend legislation requiring CSC 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, legislation should require a care plan to be developed without delay, which should include an offer of trauma and addiction counselling.

We recommend that the CCRA be amended to include a requirement that therapeutic environments be provided to all prisoners who would benefit from them, including those with mental disabilities, addictions and past experiences of trauma.

Legislation should require prisoners at risk of self-harm or suicide to 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 legislated to be procedurally fair and transparent. Legislation should specify that observation cells may be authorized only by medical professionals in a hospital setting and be subject to time limits, if they must be used to prevent suicide or self-harm.

The definition of prisoners exempt from any form of isolation must be much broader than current policy, and in line with the United Nations’ *Mandela Rules* which prohibit solitary confinement for anyone with a disability that would be exacerbated by its use.

Section 35 (Inmate rights) should be amended to specify that the right to reading material, television and radio cannot be denied due to the limitations of the unit or security requirements. These are important distractions for alleviating isolation.

Daily visits by health care staff should be available in a private area, rather than through the cell door, and that should also apply to meetings under section 37.6(2) with the warden.

Without firm standards set out in legislation, CSC will continue to hold prisoners at risk of death from suicide or self-harm in solitary confinement.

Under current legislation and policy, our client, Joey Toutsaint, (who has given permission to share his story) continues to be placed in segregation and observation cells while he is at serious risk of death from suicide or self-harm. He is in urgent need of trauma counselling but is denied admission to a treatment centre or outside psychiatric hospital. He estimates he has spent eight years in solitary confinement while in CSC’s custody. While in segregation, he recently slashed his own throat and almost died from blood loss. He was treated at an outside hospital and a few days later was returned to solitary confinement in prison. In observation

cells he is denied his clothing, his belongings, television or radio. He would rather die than be deprived of all dignity and autonomy in solitary confinement.

PLS has produced a report entitled *Solitary: A Case for Abolition* in which we make several recommendations for legislative amendments that would prohibit this cruel practice and provide alternatives to address the needs of prisoners with mental disabilities. We encourage the Committee to review this report:

<https://prisonjusticedotorg.files.wordpress.com/2018/11/solitary-confinement-report.pdf>.

### **Security classification and mental health**

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.

We recommend that the CCRA be amended 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.

### **Indigenous prisoners**

PLS is concerned that Bill C-83 does not go far enough to effectively reduce the over-incarceration rates of Indigenous people in Canada. We support the CBA’s recommendation for legislation requiring the intergenerational trauma of Indigenous prisoners to be considered as a mitigating factor in decisions affecting liberty rights.

PLS further encourages government to ensure Indigenous communities have the resources to provide Indigenous-run facilities and trauma therapy to Indigenous prisoners that would make it possible for them to heal and rejoin their communities. This should be done at all levels of security classification.

### **Health care services**

PLS echoes the CBA’s call for independent health services for federal prisoners. Our clients often report that they do not trust CSC mental health staff to provide mental health services. CSC psychologists are primarily employed to conduct risk assessments used to justify higher levels of security. Prisoners are not able to develop the necessary trusting relationship with

mental health providers as long as they are employed by CSC. We recommend that the federal government partner with the provincial ministries of health to provide independent health services to federal prisoners. Strict confidentiality guidelines must also be established in legislation.

PLS welcomes the requirement in section 19.1 for a review of deaths from natural causes to determine the quality of care the prisoner received, with a copy to the CSC and the Correctional Investigator. This is important in identifying improvements that could be made to the quality of health care.

Thank you for your consideration of our submissions.

Yours truly,

**PRISONERS' LEGAL SERVICES**