

SOLITARY BY ANOTHER NAME

The ongoing use of
isolation in Canada's
federal prisons

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Prisoners' Legal Services, a project of the West Coast Prison Justice Society

Solitary by another name:

The ongoing use of isolation in Canada's federal prisons

November 2020

Acknowledgements

This report was produced by the West Coast Prison Justice Society / Prisoners' Legal Services with funding from the Law Foundation of British Columbia.

The West Coast Prison Justice Society operates Prisoners' Legal Services (PLS), a legal aid clinic for federal and provincial prisoners in British Columbia. This report was written by staff at PLS and was developed with input from our clients. We thank our clients for sharing their experiences with us in support of this report and we hope that in doing so, they may help others avoid the suffering and lasting psychological harm caused by solitary confinement and all forms of physical and social isolation.



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EXECUTIVE SUMMARY

~ It's relationship that produces safety. It's our connection with one another.¹ ~

Canada has announced that it has abolished the use of segregation in its prisons. However, prisoners in Canada's federal penitentiaries continue to be held in isolation at an alarming rate, despite overwhelming evidence that solitary confinement causes serious psychological harm and international consensus that the practice can amount to torture or other cruel, inhuman or degrading treatment or punishment.²

This report describes many of the ways Correctional Service Canada (CSC) continues to lock federal prisoners alone in their cells for all or most of the day, sometimes for months on end. These include:

- **Lockdowns.** Wardens at federal prisons across Canada regularly lock down entire institutions or units within them for days, weeks, or even months, without lawful authority. Prisoners under lockdown are sometimes not allowed out of their cells at all for days at a time, and other times are given only 15 minutes to one hour out per day. This report examines lockdowns at Kent Institution (Kent) in British Columbia, where lockdowns are relied on regularly for the mass solitary confinement of prisoners.
- **Restrictive movement routines.** These are schedules set by wardens that have been used to restrict prisoners in an entire institution to their cells for most of the day, indefinitely. We explore the movement routine at Kent and the effect it has on the wellbeing of prisoners through their accounts. Many describe feeling paranoia, and some report resorting to self-harm as a way of coping with the prolonged isolation.
- **Isolation for mental health reasons.** CSC routinely isolates people who are in mental health crisis in conditions that prisoners say are more traumatic and dehumanizing than segregation. Perversely, this can be for the purpose of observation when someone is at risk of suicide or severe self-harm. Even in CSC run "treatment centres" prisoners are held in what they call "quiet rooms" for exhibiting symptoms of Post Traumatic Stress Disorder. "Therapeutic units" at mainstream penitentiaries, which are supposed to provide a higher level of mental health treatment, are used to warehouse prisoners with mental health disabilities with very few resources. Some clients have described the only "therapy" they have received in these units as consisting of colouring pictures with other prisoners.
- **Structured Intervention Units (SIU).** SIUs were legislated to replace the unconstitutional segregation regime, but prisoners continue to be subjected to prolonged solitary confinement in these units, often without access to counsel, in inhumane conditions of confinement.

Prisoners with the highest mental health needs continue to be held in isolation in SIUs without adequate treatment.

All of these forms of isolation, other than SIUs, are done outside of legislative authority, with no procedural fairness rights. Even with the lengthy legislative and policy amendments that went along with the creation of SIUs, prisoners are routinely denied procedural fairness and the right to counsel in the many reviews that are part of the SIU regime.

The COVID-19 pandemic has amplified many of the issues and concerns raised in this report. The use of isolation has increased dramatically, and human rights have not been respected. The isolation of prisoners in normal times without judicial oversight has resulted in a reliance on modified routines and institutional lockdowns as the main method to address the pandemic, despite the well-known impacts of isolation on mental health. Instead of taking early action that would respect human rights and protect both the physical and mental health of prisoners, CSC and the federal government responded to the pandemic by imposing widespread and prolonged isolation and solitary confinement on prisoners across Canada.

As a legal aid clinic for all federal and provincial prisoners in British Columbia, Prisoners' Legal Services (PLS) is uniquely positioned to share prisoners' perspectives on how isolation is used in federal prisons in BC, and how it impacts their lives. PLS advocates and lawyers are in daily contact with federal prisoners in BC. In 2019, PLS assisted federal prisoners with over 1,900 issues, including various forms of isolation.

At the end of this report, we provide recommendations to Canada and CSC on measures they can take to ensure that prisoners' fundamental liberty and human rights are respected while they are in custody.

I. INTRODUCTION

Locking a person alone in a cell for most of the day causes serious harm. Isolation breaks down trust and connection with others, and decreases a person's ability to deal with future problems or negative feelings. While it may be an easy response to undesirable behaviour, staff shortages or emergency situations, isolating prisoners violates the fundamental *Charter* and human rights of prisoners. It undermines the legislative purpose of providing safe and humane custody, and the guiding principles that the least restrictive measures must be used and that prisoners retain all of the rights of members of society, except those that are necessarily removed as a consequence of the sentence.³

Despite the successful *Charter* challenges to CSC's use of solitary confinement under the former administrative segregation regime, CSC continues to routinely isolate prisoners to the point that their mental health suffers.

THE HARMS OF SOLITARY CONFINEMENT

It is widely accepted that solitary confinement (defined in the United Nations *Mandela Rules* as 22 hours or more per day without meaningful human contact) can have long term, irreversible and negative effects.⁴ It can cause harm after only a few days and poses a significant risk of serious psychological harm when used for longer than 15 days.

The harms of solitary confinement include the development of psychiatric symptoms such as depression, mental pain and suffering, self-mutilation, suicidal ideation, anxiety,

social withdrawal, hypersensitivity, cognitive dysfunction, hallucinations, loss of control, rage, paranoia, hopelessness, and a sense of impending emotional breakdown.⁵ Solitary confinement is also significantly associated with Post-Traumatic Stress Disorder.⁶

The risk of psychological damage from isolation depends not only on the number of hours in isolation per day, but on the vulnerabilities of the individual, the physical conditions, the quality of meaningful human contact, the duration of isolation and uncertainty as to the duration.⁷

Research on the effects of isolation on prisoners with pre-existing mental health disabilities shows they are at higher risk of worsening psychiatric problems as a result of their isolation.⁸

Dr. Stuart Grassian has found that those most severely affected by solitary confinement are often individuals with evidence of subtle neurological or attention deficit disorder, or with some other vulnerability.⁹

Dr. Craig Haney wrote of people with additional mental health issues in "supermax" confinement:

Although in my experience, virtually everyone in these units suffers, prisoners with preexisting mental illnesses are at greater risk of having this suffering deepen into something more permanent and disabling. Those at greatest risk include, certainly, persons who are emotionally unstable, who suffer from clinical depression or other mood disorders, who are developmentally disabled, and those whose contact with reality is

*already tenuous. There is good reason to believe that many of these prisoners in particular will be unable to withstand the psychic assault of dehumanized isolation, the lack of caring human contact, the profound idleness and inactivity, and the otherwise extraordinarily stressful nature of supermax confinement without significant deterioration and decompensation.*¹⁰

Similarly, Dr. William H. Reid wrote in *Law and Psychiatry* that solitary confinement can have substantial psychological consequences for an inmate with depression or schizophrenia.¹¹

In addition to the effects on mental health, the effects of solitary confinement on physical health can include insomnia, weakness, heart palpitations, migraine headaches, back and other joint pains, and aggravation of pre-existing medical problems.¹²

Solitary confinement also increases the risk of death for those subjected to it. Suicide rates are higher in solitary confinement.¹³ Several studies have found that even a short stay in solitary confinement increases the risk of death after release from prison as a result of non-natural causes such as accidents, suicides, violence and opioid overdose.¹⁴

Placement in solitary confinement for even a few days has been found to impact post-release employment rates and recidivism risks for formerly incarcerated individuals.¹⁵

ISOLATION THAT FALLS SHORT OF THE DEFINITION OF SOLITARY CONFINEMENT

solating a prisoner for the majority of each day – even if short of the 22 hours necessary to meet the definition of solitary confinement

– causes similar or identical harms as solitary confinement, especially where imposed on a prolonged or indefinite basis.¹⁶ The risk and degree of harm is even greater in the case of prisoners with mental health disabilities.¹⁷

In 2013, New York City attempted to reform its use of solitary confinement, including providing some programming for one to four hours per day. Researchers found that, “[f]or many patients, the reward of moving from one hour out of cell to two hours out of cell is not a qualitative improvement.”¹⁸

Dr. John Bradford and Dr. Terry Kupers, two world renowned forensic psychiatrists, reviewed the restrictive movement routine at Kent Institution, which confined prisoners to their cells for all but three hours per day on weekdays. Drs. Bradford and Kupers provided their professional opinions that allowing only three hours out of cell each day is not sufficient to escape the harms of solitary confinement.¹⁹ They both stressed that people who already have a mental health or psychiatric history are even more vulnerable to developing psychiatric issues in isolation.²⁰

Dr. Kupers provides the following illustration of how isolation can feed paranoia:

Paranoia is difficult to dispel when one’s circumstances render one unable to “reality-test” paranoid ideas. We all become momentarily paranoid in one circumstance or another, though we rarely apply that term to the experiences.

For example, ... I enter a room and see two people talking quietly near the far wall, as if sharing secrets. I suddenly think to myself they are saying negative things about me. But as I approach them, they turn to me and say, “Hi Terry” in a friendly tone, and it is clear that they were not discussing me. I think to myself, “I was being paranoid.” Most

people have moments when they irrationally fear harm from others, only to find that the motives of the others were actually friendly. ... But in a prison cell, with no trustworthy person to check with, it is extremely difficult to reality-test paranoid ideas.

For example, a prisoner in solitary confinement hears two officers talking loudly and laughing at the far end of the tier, but he cannot decipher what they are saying and assumes it is something negative about him. He gets frightened that they are about to enter his cell and beat him up. There is nobody he can talk to who can help him decide if he is being paranoid, so he experiences a burst of anxiety and files the thought in his memory. A little later, an officer yells at him for no apparent reason and he guesses that this must be further evidence he is disliked and about to be attacked by officers. I come to interview him a little while later and he looks very anxious as he reports that officers on the unit are out to get him, and I can see how the paranoia has been building in him. Paranoia is only one of the many symptoms and disabilities suffered by prisoners in solitary confinement.²¹

Our clients subjected to the long-term restricted movement protocol at Kent Institution commonly share experiences of anxiety, panic, irritability, paranoia, lethargy, depression, social withdrawal, difficulties with thinking, concentration and memory, and exacerbation of mental illness. Some also report experiencing suicidality, self-harm and rage.²²

Depriving prisoners of free time together for socializing and communal meals results in problems with mental health, employability and recidivism.²³ The evidence is clear that social deprivation has a negative impact on health, leading to both physical and psychological deterioration, with obvious ramifications for reintegration and rehabilitation.²⁴

LAW ON ISOLATING PRISONERS

Many courts in Canada have accepted as fact the adverse psychological effects of solitary confinement, after considering all the evidence and experts presented both by the plaintiffs and the Attorney General.²⁵ Both the academic literature and the evidence of the experts are laid out in great detail in those judgments.

In 2019, both the British Columbia Court of Appeal and Ontario Court of Appeal ruled Canada's administrative segregation regime unconstitutional.²⁶ The Supreme Court of Canada was set to hear arguments on the issues, but the federal government discontinued both appeals in April 2020.²⁷

Both Courts of Appeal determined that the administrative segregation regime under the *Corrections and Conditional Release Act* amounted to the solitary confinement of prisoners within the meaning of the United Nations *Mandela Rules*.²⁸ The *Mandela Rules*, which Canadian courts consider to be an authoritative interpretation of international rules on the treatment of prisoners, define solitary confinement as the confinement of a prisoner without meaningful human contact for 22 to 24 hours a day.²⁹ They prohibit its use for any period of time for prisoners with physical or mental health disabilities when it would exacerbate their conditions.³⁰

Both Courts of Appeal agreed that the regime allowed for the *prolonged* solitary confinement of prisoners, a practice condemned both in Canada and by the international community for many years.³¹ The *Mandela Rules* prohibit the use of solitary confinement for more than 15 days for any person, as beyond that it constitutes torture or other cruel, inhuman or degrading treatment or punishment.³²

The Ontario Court of Appeal found that the solitary confinement of any prisoner for more than 15 days constitutes cruel and unusual treatment or punishment.³³ Such treatment could not be justified because, while it may be necessary in a truly exceptional case to separate a person from others for a short period of time where a dynamic or dangerous situation arises, keeping the person in such conditions beyond 15 days goes beyond what is required to achieve that goal, unnecessarily exposing them to the risk of severe and potentially permanent psychological harm.³⁴

Earlier this year, the Ontario Superior Court of Justice further found that placement of prisoners with a serious mental illness in solitary confinement for *any amount of time* amounts to cruel and unusual treatment, deprives them of their life, liberty and security of the person not in accordance with the principles of fundamental justice, and is negligent, as is the solitary confinement of *anyone* for more than 15 days.³⁵

The BC Court of Appeal had also found that, by permitting the solitary confinement of any prisoner for more than 15 days, the law deprived prisoners of their life, liberty and security of the person in a way that was grossly disproportionate to the objectives of the law and offended the fundamental norms of a free and democratic society.³⁶ The BC Court of Appeal agreed with the trial judge that prolonged and indefinite segregation inflicts harm on those subject to it and ultimately undermines – rather than supports – the goal of institutional security.³⁷

Canadian courts have found that the indeterminacy of segregation exacerbates its harmful effects, increases frustration and pain, and intensifies depression and hopelessness.³⁸

While Canada has now replaced administrative segregation with “Structured Intervention Units” through the passing of *Bill C-83*, and the law now requires prisoners be provided with an

opportunity to spend at least four hours outside their cells and to interact with others for at least two hours per day,³⁹ the practice of solitary confinement continues, both within and outside of those units.

The *Corrections and Conditional Release Act* requires CSC to use the “least restrictive measures” in administering sentences, and provides that prisoners “retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted.”⁴⁰ Keeping prisoners locked in their cells to a degree that borders on the definition of solitary confinement is not in keeping with these important principles.

The Supreme Court of Yukon recently considered a case in which prisoners in a unit were held in isolation for 18 to 21 hours per day. The Court found this degree of isolation caused psychological harm and that the creation of this unit was outside of the warden’s rule-making powers.⁴¹

Wardens of federal penitentiaries are similarly routinely authorizing the isolation of prisoners – some falling within and some falling outside the United Nations’ definition of solitary confinement. This is done outside of their legislative authority and is contrary to the guiding principles of the *Corrections and Conditional Release Act* and the *Charter*.

The use of restrictive movement routines and frequent lockdowns in maximum security has a disproportionate impact on Indigenous and Black prisoners, because they are over-represented in higher levels of security. These restrictions on liberty often affect Indigenous prisoners’ access to Elders and ceremonies. This amounts to discrimination under the *Canadian Human Rights Act*.⁴²

Further legislative reform is needed to ensure that CSC is not able to continue to violate prisoners’ fundamental rights by isolating them, both within and outside of legislative authority.

II. LOCKDOWNS

Lockdowns amount to the mass solitary confinement of all prisoners in a unit or entire institution. Prisoners are locked in their small and austere single-dwelling cells for 22 or more hours per day, with little or no access to meaningful human contact.

Lockdowns are authorized by wardens. They can be as short as a few hours or go on for weeks or even months. During a lockdown, some institutions let prisoners out of their cells only for a brief period – sometimes as little as 15 minutes per day – to do things like shower or make a phone call. Some days prisoners may be kept locked in their cells all day, without being let out at all.

Lockdowns are sometimes ordered so prison officials can search for weapons, drugs or other contraband, or to deal with a security incident that has taken place. However, they are also regularly and increasingly imposed for operational and administrative reasons, such as staff shortages or construction, rather than true exigencies.

Documents obtained through *Access to Information Act* requests reveal extensive use of lockdowns across Canada, often for “operational” reasons such as staff shortages, staff training, staff lunches, unscheduled leaves, to “save overtime costs,” and for staff to cover other areas of the institution. Rather than scheduling additional staff to allow for continued operation of the institution during training or any of the above, the documentation reveals that institutions are regularly locked down for foreseeable and scheduled events.

In this chapter, we look at the use of lockdowns at Kent as an example. Lockdown decisions are made without any procedural fairness rights or due process for the individuals they affect. There is no mechanism for individualized assessment of risk to mental health.

NO LEGAL AUTHORITY FOR LOCKDOWNS

Neither the *Corrections and Conditional Release Act* nor the Commissioner’s Directives explicitly provide authority to impose a lockdown. Lockdowns are contrary to the liberty and security of the person rights under s 7 of the *Charter*, and contrary to the core principles of least restrictive measures and retained rights in the *Corrections and Conditional Release Act*.⁴³ Lockdowns also violate the *Corrections and Conditional Release Act* by failing to take into consideration the state of health and health care needs of prisoners. The living conditions imposed are often not safe or healthful and undermine personal dignity.⁴⁴

CSC appears to have read the power to lock down an institution into the responsibility of a warden for the care, custody and control of prisoners, and the management, organization and security of the penitentiary.⁴⁵ While no Commissioner’s Directive provides authority to impose a lockdown, the Commissioner’s Directive on Recording and Reporting of Security Incidents requires institutions to report all lockdowns to the regional office, and defines a lockdown as a “non-routine situation which results in full suspension of all activities/

privileges and the inmates are locked in their cells on a non-individualized basis.”⁴⁶

A 1999 security bulletin on lockdowns (which is not publicly available) requires that prisoners be provided with at least one hour of daily outdoor exercise, a daily shower, reasons for the lockdown and an expected duration.⁴⁷ Kent and Mission Medium Institution (Mission) regularly impose lockdowns that do not meet even these minimum requirements. There have also been reports from Mission of prisoners not receiving adequate meals, essential health care, or reasonable access to the telephone or to legal counsel for days at a time.

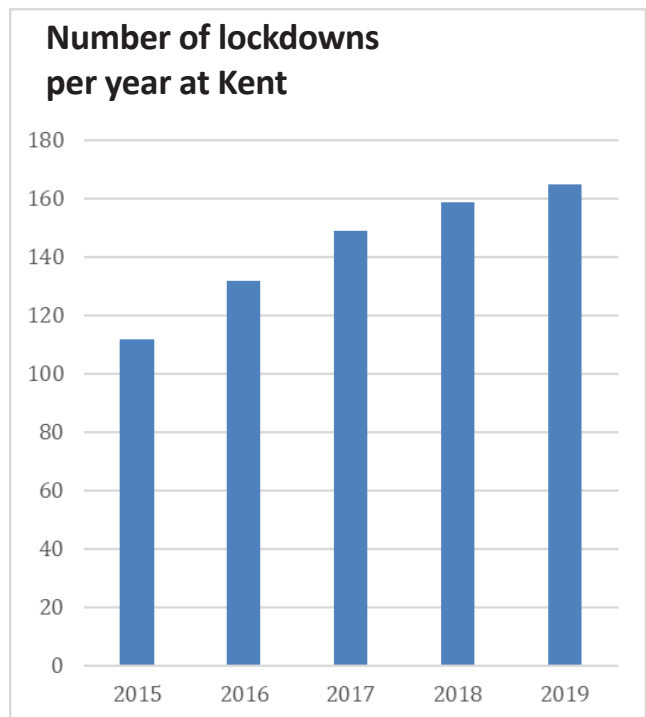
LOCKDOWNS AT KENT

Kent is the Pacific region’s federal men’s maximum-security institution. There are an inordinate number of lockdowns at Kent, which can be as short as a number of hours but sometimes have been known to last months, though normally they last for one to two days. They are regularly imposed due to staff shortages or undisclosed “operational requirements.”

Lockdowns at Kent are often imposed in a manner that constitutes solitary confinement and sometimes no time out is provided at all.

Documents obtained through *Access to Information Act* requests and provided by prisoners reveal a pattern of increased use of lockdowns. Documents provided by prisoners show that CSC made significant omissions in the information provided to PLS through our request for information. For this reason, our estimates of the number of lockdowns at Kent may be an undercount.

The graph below shows the increasing number of lockdowns that took place from 2015 to 2019 at Kent.



We have data on the duration of most lockdowns, however the duration is unknown for many. If we assume that the duration of unknown lockdowns was only one day, the data demonstrates that prisoners were locked down for the majority of days in most years between 2015 and 2019. For example, in 2017 there were lockdowns on 78 percent of the days in the year.

Most Kent lockdowns are for one day or less, but many last for many days at a time. For example, in 2015, there were at least 13 lockdowns that lasted three to six days, and five that were for a week or longer. In 2016, there were at least 19 lockdowns that lasted three to six days, and three that were for a week or longer. In 2017, there were at least nine lockdowns that lasted a week or longer, including lockdowns that lasted for 16, 24, 26 and 33 continuous days. These durations are beyond the 15 days after which the United Nations considers solitary confinement to constitute torture or cruel treatment.

Section 53 of the *Corrections and Conditional Release Act* allows a warden to authorize an exceptional search of all prisoners in the penitentiary or a part of it, if there are reasonable grounds to believe it is necessary to seize contraband that poses a substantial danger to life or safety or to the security of the penitentiary. This could reasonably require a lockdown. However, lockdowns are regularly imposed at Kent for operational and administrative reasons, rather than true emergencies or even security incidents. In 2019, for example, only one third of lockdowns were imposed due to an assault, investigation, incident or search. Significantly, 55 percent were due to operational requirements, staff shortages or construction. No reasons were disclosed for around 10 percent of lockdowns.

In addition to the low bar for imposing a lockdown, the documentation suggests lockdowns at Kent may be imposed for a longer duration than necessary.

In 2014, the entire institution was locked down at least three times per month in February, March and April for planned construction. Rather than organizing the construction and staff in a way that provided each unit with adequate time out, four of the nine lockdowns made no provision for any time out at all during the 24-hour period, and a further two made some provision for time out, but still amounted to the imposition of solitary confinement on the entire institution.

In addition to official lockdowns, prisoners at Kent report they are often not released for scheduled tier times, yard times or other scheduled activities such as gym, library, or religious services due to staff shortages or operational reasons. An occasional activity cancellation may not be egregious under normal circumstances, but with the restrictive moment routine discussed later in this report, prisoners

at Kent without jobs, school or programs were already confined to their cells for 21 hours a day.

When a lockdown is imposed at Kent, it applies to all prisoners in the impacted units or the whole institution. No individualized assessments are done to provide exemptions on the basis of health needs or other reasons. For as long as it lasts, the lockdown applies to everyone.

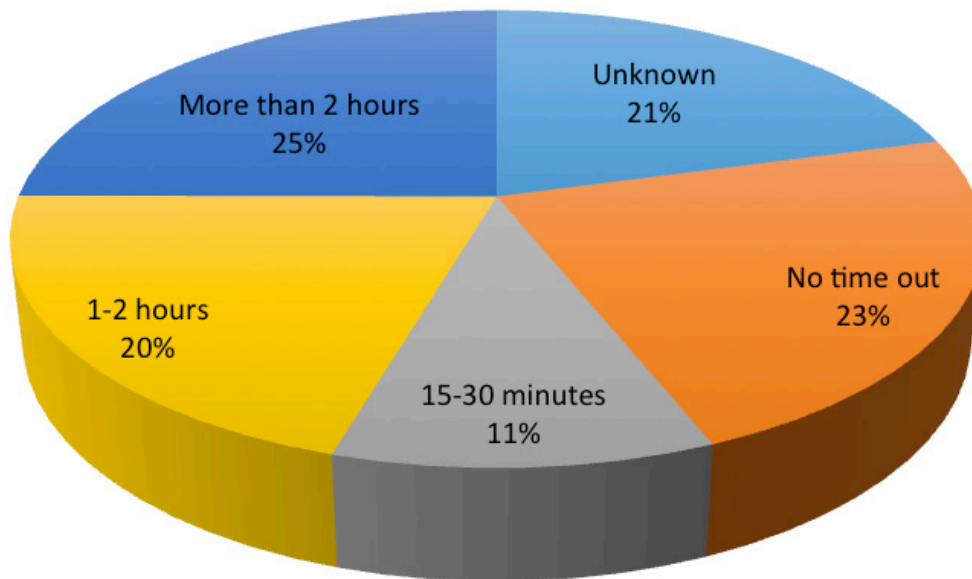
The conditions of lockdowns at Kent are often inconsistent with the following minimum legal requirements:

- more than two hours per day outside of one's cell with meaningful human contact;⁴⁸
- at least one hour of outdoor exercise per day, weather permitting;⁴⁹
- reasonable shower and telephone access through range activities; and⁵⁰
- provision of information regarding the anticipated duration of the lockdown, the daily routine during the lockdown and the schedule for resumption of normal activities.⁵¹

The majority of lockdowns imposed at Kent constitute solitary confinement as defined by the *Mandela Rules*. The pie graph below shows the breakdown of out-of-cell time provided for during lockdowns from 2015-2019.

This data shows that in over two thirds (68 percent) of lockdowns at Kent during this period for which we have data on the duration of the lockdown, prisoners were subjected to solitary confinement, receiving two hours or less out of their cells per day. In 29 percent of lockdowns for which the duration is known, prisoners received no time out of their cells at all, and in 14 percent, received only 15-30 minutes out of their cells. This confirms reporting from Kent prisoners that they often get either no time out at all or only a short time out to take a shower

Time out of cell per day during lockdowns at Kent, 2015-2019



and sometimes make a phone call when under lockdown.

Kent prisoners have expressed incredible frustration due to the regularity of lockdowns.

Kent prisoners have been subjected to a restrictive movement routine for years, that limited their time out of cell to all but three hours during weekdays, which is discussed in the following chapter. Lockdowns increase the psychological harms of isolation already experienced by prisoners at Kent through the movement routine, including paranoia, anxiety, panic, ruminations and intrusive obsessional thoughts, hallucinations, social withdrawal, and exacerbation of existing symptoms of mental illness. Solitary confinement also puts prisoners at an increased risk of self-harm and suicide.⁵²

Preeminent forensic psychiatrist Dr. John Bradford assessed Kent's use of lockdowns and found that since the 21 hours per day of social isolation experienced by prisoners at Kent was already problematic and placed prisoners at risk, lockdowns that further reduced time out would be a "significantly aggravating factor of risk for the people who are vulnerable to develop the psychiatric problems" of isolation.

Psychiatrist and professor Dr. Terry Kupers, an expert on the psychiatric effects of prison conditions, also considered the effects of lockdowns at Kent and found that the lockdowns make Kent's movement routine that much more congruent with the conditions and routines of solitary confinement, increasing the detrimental effects on mental health.

III. RESTRICTIVE MOVEMENT ROUTINES

At federal prisons across Canada, policy gives wardens the discretion to set up movement routines (schedules) for the entire institution and units within it.⁵³ Some wardens abuse this power to implement routines that isolate prisoners in their cells for the vast majority of each day, indefinitely.

In this chapter, we look at Kent Institution, which, before COVID-19 struck, isolated large numbers of prisoners for 21 or more hours per day on an indefinite basis. We are aware that these restrictive movement routines exist within units at other institutions in Canada. For example, maximum security Millhaven Institution in Ontario routinely locks prisoners in their cells for 21.5 hours per day in J unit. Prisoners at Edmonton Institution and Saskatchewan Penitentiary indicate that similarly restrictive movement routines and inadequate access to meaningful activities are issues in those institutions as well.

While these routines are unlawful, they have been allowed to remain in place for years on end by all levels of authority at CSC.

KENT INSTITUTION'S MOVEMENT ROUTINE

Until August 18, 2020, Kent's Standing Order on "Inmate Movement" required that all prisoners without school, employment or programs be locked in their cells approximately 21 hours per day on weekdays and 18 hours per day on weekends.⁵⁴ This is less

time out of cell on weekdays than is required for prisoners in SIU, the most restrictive form of isolation permitted by the legislation. Kent prisoners are single-celled and cell visiting is not allowed. This routine was in place since 2012.

In August 2020, Kent's movement routine allowed an additional hour out of cell on weekdays, during COVID-19 restrictions on services and activities. It is unknown whether this modification will be in place only during the pandemic.

PLS interviewed many prisoners at Kent about their experiences living under the restrictive movement routine. The following is based on their reports, and their testimonials are in Chapter IV of this report.

The three hours of time out was not provided in one long block but was split into three one-hour blocks at varying times after 3:00 p.m. – two separate hours of tier time and one hour of yard time. Prisoners we interviewed reported that time was regularly shaved off at the beginning and end of each of these blocks, meaning that they do not get the full hour out.

The result was that everyone had less than an hour to get the same basic tasks done. For example, there was one phone in the courtyard units, where six people were released at a time, and two phones in the Pods, where twelve were released at a time. This could lead to tension and conflict.

Prisoners at Kent eat all their meals alone in their cells. Under the 2012-2020 movement routine, they were usually allowed to leave their

cells for about five minutes at the start of a mealtime to get meals. There were generally six prisoners let out at a time. Meals were served cold and most people did not have enough time to heat their food in the microwave.

While prisoners with jobs or who were in programs or school usually received additional time out in the morning or early afternoon, to varying degrees, these opportunities were not available to everyone.

Depending on the job, a prisoner could see little in the way of additional time out of their cell. For example, of the approximately 152 people housed in Population 3, there were approximately 79 jobs to go around. People with certain positions, such as barber, would get little if any additional time out each week.

Many individuals have already completed programs elsewhere or Kent does not offer the programs they need. Prisoners who have completed high school have had their requests to attend school or update courses denied.

Splitting up the time like this also made it difficult for individuals to engage in meaningful conversation or activities, such as a game to engage the mind, as there would not be enough time to complete the activity.

There was little freedom of movement even during tier time. After a few minutes to get hot water or use the microwave, each individual would have to choose between being locked into the range area or the small exercise room for the rest of tier time.

During tier time, people living in the courtyard units had access to only the same five other prisoners every day. This made for a very limiting social experience and increased opportunities for conflict.

There was very little available on the tier to engage with mentally or socially, other than cards or possibly chess on some units. Many

described pacing aimlessly or choosing to simply stay in their cell, leading to further social withdrawal and other symptoms of isolation.

Yard time, when it was not cancelled, often took place when the sun had gone down. The “yards” are small concrete slabs surrounded by fencing next to each unit, and have little space for much other than pacing. A couple of the yards are slightly larger with a basketball hoop and a place to sit, but most of the yards do not have even this. People who did choose to go to yard were required to stay outside for the entire block of time, regardless of the temperature, which caused many to choose not to go out at all on colder days.

Access to the gym and library was inconsistent at best. Many prisoners we spoke to reported highly irregular and unreliable access. While gym appeared on the 2012-2020 movement schedule four times a week per population, prisoners we spoke to consistently reported significantly less access than this. When it did occur, numbers were limited, so not all prisoners were able to attend. While Population 3 houses approximately 152 prisoners, gym was limited to 30 individuals when it did occur, to an optimal maximum of four times per week. Library was scheduled to occur once a week, but many prisoners reported having difficulty getting access for long periods of time, if at all.

Access to religious activities was similarly irregular, especially during frequent lockdowns, and was inconsistent between units. One Muslim prisoner reported that he had access to communal prayers only once a month – that is, when they were not cancelled due to a lockdown or other reason. The chapel schedule in the Standing Order confirms his account.

Tier time, yard time, gym, library and religious services were regularly cancelled. Yard time was cancelled due to things like staff shortages, problems with the cameras and weather conditions setting off the fence

alarms. Tier times tended to be cancelled due to staff shortage, technical problems, or other “operational requirements.” Gym was regularly cancelled for staff shortage or other reasons. Many times, prisoners report, their door would not open for a scheduled activity, without any advance warning or reason.

With already so little time out of one’s cell, these regular last-minute cancellations – often with no explanation – served to increase a sense of frustration and led to social withdrawal, depression and hopelessness, among other issues. Some prisoners, for example, reported that they did not try to go to the gym or library anymore, to avoid disappointment.

THE HARMS OF KENT’S MOVEMENT ROUTINE

Kent’s 2012-2020 movement routine regularly led to immense individual frustration and a high level of tension on the units. Many people subjected to the routine reported experiencing the typical symptoms of isolation such as frustration, rage, irritability and paranoia.

This affected the interactions among prisoners when they were eventually released for some time out on the range (tier time) to do things like shower, laundry, heat up food, use the telephones and socialize with others.

The evidence is clear that Kent prisoners subjected to this routine experienced the same psychological harms experienced by prisoners in solitary confinement.

Dr. John Bradford reviewed Kent’s movement routine and concluded that the difference between 23 hours and 21 hours of social isolation is minimal. He noted it has been known since the early 19th Century “that prisoners

who were socially isolated developed serious psychiatric issues.” In his opinion, “[p]ersons who already had a mental health/psychiatric history would [be] more vulnerable.” He further found that breaking up the three hours out into one-hour increments is problematic, since it significantly hampers social interaction.

Dr. Bradford further concluded that, depending on individual risk factors and resilience and the degree of social isolation, Kent’s movement routine would have a significant impact on the rehabilitation and reintegration of prisoners.

He found that an increase to at least six continuous uninterrupted hours of social interaction outside one’s cell each day would reduce the level of social isolation on a daily basis and reduce the risk of psychiatric problems associated with isolation. In doing so, he noted that “[a]ny level of social isolation carries with it some level or degree of psychiatric harm” and that “[u]nder ideal circumstances there should be no social isolation between waking hours of say 8 AM to 8 PM.”

He also recommended prisoners have organized activities to occupy their time, and that tier and yard times happen in ways that would allow prisoners to move around and socialize meaningfully. This would help protect against psychiatric harm.⁵⁵

Dr. Terry Kupers also reviewed Kent’s movement routine. He concluded that Kent prisoners subjected to 21 hours per day of social isolation suffered much the same damage to their mental health as those who spend extended time in solitary confinement. He explained that the changes in brain morphology and physiology caused by solitary confinement would be expected to occur among prisoners isolated in their cells for 21 hours per day, and those changes would not be prevented or reversed by one or a few additional hours out of the cell.

As examples, he discussed paranoia, the exacerbation of despair and the intensification of suicidal thoughts. Dr. Kupers stated that as mounting anger is widely experienced by prisoners forced to remain alone in a cell, Kent's movement routine would make prisoners less capable of peaceful interactions with others when released onto the range. This would have dire consequences in terms of the eventual likelihood of success when outside their cells and when released from prison.⁵⁶

Personal accounts of Kent prisoners describing their experiences of the movement routine and lockdowns at Kent are found in Chapter IV.

HISTORY OF KENT'S MOVEMENT ROUTINE AND THE TREND OF INCREASING ISOLATION

Historically, prisoners at Kent were not subject to restrictions on their freedom to move around the institution and interact freely with others in their population, to anywhere near the degree of restrictions imposed under the 2012-2020 movement routine. Interestingly, there is a room in the courtyard section of the institution known as the "pool room" – because there used to be a pool table in it for prisoners to use during free time together. It is hard to imagine this happening in the current culture and climate at Kent.

There has been a consistent trend over the past decades of decreasing the amount of time prisoners at Kent are allowed to spend out of their cells interacting with others.⁵⁷ The history below is written on the basis of information provided by former Kent prisoners to the best of their recollection.

In around 2001, prisoners without jobs, programs or school were restricted to the unit during the day, but *not* to their individual cells.

They were allowed to move freely between the range (including the common room with a table, microwave, phone, and access to laundry and shower) and exercise room (with a table, TV, computer with no internet, and treadmill). They could ask staff to open the door when they wanted to use the small yard.

All prisoners would leave the unit at mealtimes to eat together in the dining room with all other prisoners from their population (General Population or Protective Custody).

Daily evening movements allowed for regular access to facilities off the unit such as the big yard and gym, library and chapel. There was regular access to a big exercise yard with grass and sports fields, where people could play soccer, hockey and other sports. The big exercise yard also allowed for prisoners to move freely from there to the big gym where there was a weight pit and space to play floor hockey or indoor soccer.

Over time, the restrictions on liberty became more and more severe. First, the institution closed the dining room. Prisoners had to eat in the common room on the unit with only the other 11 people from their tier. Then, cell doors were no longer left open. They were locked throughout the day and only opened once each hour. Next, people without jobs, programs or school had to be locked in their cell for the morning and early afternoon. However, they still ate meals communally on the tier and were allowed out for six hours or so after 3:00 p.m.⁵⁸

Then, at some point, the institution stopped releasing prisoners for meals. They had to eat all meals in their cells (which is contrary to the Canada Food Guide).⁵⁹

Around the same time, in approximately 2007, new units were being built in the big exercise yard. At first, the construction project meant that only a portion of what had been the big yard was available for use and prisoners no longer had

free movement from there to the gym. Later, there was no big yard at all. From then on, and continuing to this day, prisoners only had access to the unit yards, which are small fenced-in cement slabs next to each unit.

The standing orders setting out prisoner movement routines were then used to consistently and increasingly restrict prisoners to their cells. In 2007, prisoners without employment, programs or school were permitted to be out of their cells for around five and a half hours each weekday and almost nine hours each weekend day.⁶⁰ After February 2010 and into 2011, these prisoners were permitted just over four hours out of cell on weekdays and almost nine hours on weekends.⁶¹

In 2012, the restrictions on tier and yard time became even more severe. All prisoners without jobs, employment or programs were allowed out of their cells for only three hours per day on weekdays. This applied to everyone, regardless of any history of violence and any mental health needs or risks. These restrictions were never lifted and have continued for the entire prison population until recently. Starting in June 2019, the institution began running Fridays as a weekend routine, meaning six rather than three hours out of cell. However, this was explicitly stated to be only a temporary measure.⁶²

Even those who have employment are subject to tighter and tighter restrictions on their liberty. An Inmate Communiqué from April 2015 stated that only three prisoners per tier would be released at a time to do their jobs, and would be expected to lock up again as soon as their work was complete.⁶³

In the past, Kent staff were able to manage maximum security prisoners while ensuring that they retained their rights to residual liberty while incarcerated in the institution. There is no need for Kent's restrictive movement routine to continue in the future.

RESTRICTIVE MOVEMENT ROUTINES ARE UNLAWFUL

No law allows wardens to impose restrictive movement routines that significantly infringe on the liberty rights of prisoners.

Wardens are responsible for the “care, custody and control of all inmates in the penitentiary” and for the “management, organization and security of the penitentiary.”⁶⁴ This authority does not provide wardens with “absolute and untrammelled discretion.”⁶⁵ Discretion must accord with the purpose of the authority, with any other constraints under the legislation and with the *Charter*.⁶⁶

Restrictive movement routines are not in accordance with the purpose of the *Corrections and Conditional Release Act* to contribute to a “just, peaceful and safe society... through the safe and humane custody and supervision” of prisoners.⁶⁷

Neither do restrictive movement routines align with the guiding principles of the *Corrections and Conditional Release Act*, that everyone “retains the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted”⁶⁸ and that CSC must use the “least restrictive measures consistent with the protection of society, staff members and offenders.”⁶⁹

Restrictive movement routines are also inconsistent with other provisions of the *Corrections and Conditional Release Act*, which require correctional practices to be responsive to the special needs of those requiring mental health care and of Indigenous prisoners. Living conditions must be safe, healthful, and free of practices that undermine personal dignity. CSC must consider a prisoner's state of health and health care needs in all decisions that affect them.⁷⁰

Under the *Charter*, wardens must fulfill their responsibilities for the care, custody and control of prisoners and the management of the penitentiary in a way that does not subject prisoners to cruel or unusual treatment or punishment, or deprive them of their life, liberty or security of the person not in accordance with principles of fairness and justice.⁷¹

Restrictive movement routines also violate prisoners' equality rights under the *Charter*, as they have a disproportionately negative impact on Indigenous prisoners and prisoners with mental health disabilities. There is no individualized assessment conducted. Neither mental disability nor Indigenous social history play any role in whether a prisoner is subjected to indefinite isolation.

The routine at Kent teeters precariously on the edge of the formal definition of "solitary confinement" under the *Mandela Rules*. The routine is in place indefinitely for a prolonged period of time, and is imposed on everyone, including people suffering from physical and mental health disabilities that are worsened by the isolation. Despite the harms that are caused by the routine, there is no procedural fairness provided under legislation for prisoners subjected to it, other than the inadequate internal grievance process.

In *Sheepway*, Chief Justice Veale of the Yukon Supreme Court found that isolation of 18-21 hours per day, in a unit created by the warden, negatively affected prisoners' mental health and was unlawful, even though the amount of isolation was not within the 22-hour definition of solitary confinement.⁷²

Chief Justice Veale found it was outside the warden's rule making powers to create the unit. There were procedural protections in the regulations for the "separate confinement" of a prisoner, and calling the unit something else did not excuse the institution from following

those procedures. The Court declared that the institution could not place individuals in the "Secure Living Unit" without following the legal procedures for "separate confinement."

The same principle applies to wardens of federal penitentiaries – there is no legislation allowing them to impose restrictions on the liberty rights of prisoners that result in harms to mental health outside of Structured Intervention Units, which are governed by legislation. These routines are inconsistent with the *Charter*, the *Canadian Human Rights Act*, the *Corrections and Conditional Release Act* and its regulations.

EFFORTS TO ADDRESS INDEFINITE ISOLATION AT KENT

Efforts to challenge Kent on its use of isolation appear to have been ignored.

In its 2013-2014 Annual Report, the Office of the Correctional Investigator (OCI) discussed its review of a series of ongoing challenges with labour-management issues and prisoner-staff relations at Kent. Besides finding that one of the underlying issues was the unprofessional conduct of some front-line correctional officers that strained working and living conditions for both staff and prisoners, the OCI stated that "a concerted effort was initiated to address too much time spent in cells [and] there has been a reduction in the number of lockdowns and their duration."⁷³

It does not appear that these improvements were sustained.

In April and May 2017 and again in March, May and July 2018, PLS representatives discussed the issue of excessive cell lock up at five separate meetings with CSC officials. The Deputy Commissioner for the Pacific Region was at four of the meetings and Kent's warden at three. The

CSC officials indicated numerous times that they were working on the issue.

In March and June 2018 respectively, a group of General Population prisoners and another group of Protective Custody prisoners filed group grievances regarding the movement routine via CSC's internal complaints process.

The warden of Kent denied the first group grievance a few months later in a brief two paragraphs, citing safety and security. The response also indicated the movement routine would be the subject of a consultation and review "to move forward and effect change in a safe, secure, and humane manner." That was more than two years ago. Although the routine is neither safe for prisoners nor humane, it remained in place until COVID-19 prevented delivery of programs and services. PLS wrote to the warden in September 2019 to request information on the consultations that had taken place since her response. She did not reply.

The second group grievance – submitted in June 2018 by 123 Protective Custody prisoners – was forwarded to CSC National Headquarters for resolution. Over two years later, this grievance remains unanswered.

In November 2019, over 70 Kent prisoners signed onto group grievances directed to CSC's National Headquarters regarding Kent's movement routine as well as the over-use of lockdowns. CSC has not yet responded to these national level grievances.

Kent has also engaged in obstructionism of prisoners' right to counsel. The week after these grievances were submitted, Kent stopped passing messages to prisoners to let them know their legal representatives wished to speak with them, except in very limited and urgent circumstances. Lawyers cannot simply call their clients who are in prison. They must leave a message (or "call back request") with prison administration for the client to return the call.

Removing this option meant PLS had to drive for two hours to visit individuals in person (if a lockdown was not called) or use mail, which is slow and ineffective, and risks Kent staff reading privileged legal communication. Alternatives became impossible during the COVID-19 pandemic. Kent eventually reinstated call back requests after more than five months.

CSC's internal grievance process has been widely criticized for being fraught with delay, procedurally unfair and "broken, ineffective, dysfunctional... likely beyond repair."⁷⁴

CSC refuses to accept grievances submitted by counsel on behalf of prisoners or to correspond with counsel in respect of grievances. CSC requires prisoners to submit grievance documents by hand, in person at the institution. This creates delay, a risk of retaliation and a risk that the grievances will get lost, either accidentally or intentionally.

For example, one of the group grievances submitted at Kent did not arrive at National Headquarters until almost four months after it was submitted. The prisoner who submitted the grievance followed up diligently with numerous request forms and phone calls to CSC's National Headquarters – a difficult task for a prisoner locked up almost all day and in a different time zone. Given that CSC has 60 working days to respond to national level grievances concerning human rights issues, this delay is unacceptable.

When CSC refuses to correspond directly with counsel, a lawyer representing a client may not be aware of decisions and may miss time limits to challenge delays or decisions. Clients may have difficulty following up with counsel for a variety of reasons, including mental health disabilities, restrictive living situations (such as placement in segregation or SIUs), transfers to other institutions (which also make it difficult for prisoners to keep track of legal papers), and more. This practice makes it impossible for lawyers to effectively advocate for their clients.

For group grievances, CSC designates one prisoner to receive all correspondence on behalf of the group, and CSC does not allow the designated prisoner to be changed. If this person is released or transferred to another institution, there is no way for the others in the group to follow up on the grievance or receive the decision. This requirement is not found in law or policy.

The original designated grievor of the General Population group that filed a grievance in March 2018 is no longer at Kent. One of the other group members that signed the grievance originally attempted to take over that grievance in November 2019 and escalate it to the National level. He has not received a response from National.

CSC has long been criticized for routinely failing to meet its deadlines in the grievance process. Even for high priority human rights grievances with a deadline of 60 working days,⁷⁵ CSC often takes well over a year to respond. The group grievance submitted by 123 Protective Custody prisoners in June 2018 has now been awaiting a response from CSC National Headquarters for almost two and a half years.

CSC has also been criticized for grievance decisions being decided internally, resulting in bias.⁷⁶ We anticipate that the grievance procedure will not be an effective mechanism for challenging the issues raised above, and that any real change will need to come through direction from the courts.

ESCALATING TENSIONS AND INTRODUCTION OF A NEW ROUTINE

Ongoing tensions at Kent due to the 2012-2020 movement routine and excessive use of lockdowns were amplified by the COVID-19 pandemic, with prisoners confined to

their units and losing access to the gym, library, school, jobs and other activities, as well as in-person visits with loved ones, Elders and other supports. Meanwhile, there were reports that staff were not socially distancing, and anxiety was rampant among both prisoners and staff. It grew very tense on the ranges, leading to the escalation of smaller incidents.

There are reports that there were a series of lockdowns in April of this year, purportedly in response to “confrontational and challenging” behaviour, and eventually there was a riot in early May. In response, food was reportedly withheld, water was shut off for days, pepper spray and rubber bullets were deployed against prisoners, and prisoners were forcefully extracted from their cells by the Emergency Response Team.

It was not until conditions deteriorated to this level that Kent administration expanded the movement routine on August 18, 2020, during the COVID-19 crisis, when prisoners have no access to the library, gym, programs or Elders.

The new movement routine is not much of an improvement on the previous one. Now, prisoners who do not attend school, programs or jobs receive four hours out of cell per weekday – one more hour per day than they did under the previous regime. They are locked in their cells all day until 3:00 p.m. when movement begins. The time is still divided into separate hours given at different times rather than a continuous four hours, and clients report that each hour really amounts to 50 minutes because count is done during the hour “out.” The number of prisoners out at a time is now 12 in the courtyard units (up from six) and 24 in the pods (up from 12). If you leave your cell, you are not permitted to return during your time out to use the washroom. Everyone still eats their meals alone in their cells under the new movement routine.

It is unknown whether Kent will resume the previous routine when the epidemic is over.

IV. PRISONERS' ACCOUNTS OF ISOLATION AT KENT

Kent's frequent lockdowns and restrictive movement routine lead to immense individual frustration and a high level of tension on the units. Many people report experiencing the typical symptoms of isolation such as frustration, rage, irritability and paranoia.

In the past year, PLS spoke with 231 prisoners at Kent, who called us for assistance with over 600 issues – far more than any other federal or provincial prison in BC. The following are just a few examples of the stories our clients shared with us about their experiences of isolation at Kent. We have not used their names to protect their privacy. We thank them for sharing their experiences for inclusion in this report.

Client A

When I was at Kent back in 2005, staff would crack all the doors around 4 p.m. and everyone – with or without jobs – would all be allowed out of their cells until about 10 or 10:30 p.m. With more time out, there was a lot less tension on the units.

Now, people without jobs are locked in their cells almost all day. It creates a lot of animosity and hostility, being locked up for so long. It creates a lot of friction amongst us because everybody is trying to do the same thing at the same time, like showering, making phone calls, and doing laundry. Even using the kitchen to heat up extra food if you have it causes a lot of friction.

I am so claustrophobic and shell shocked from all the lockdowns and other issues here that I don't even want to be out of my cell anymore.

I used to have panic attacks and anxiety attacks, but now I prefer to stay in my cell and come out as little as possible. I don't feel comfortable or safe unless I'm in my cell and the door is closed. When I'm out, I'm hyper aware of everything going on around me. I'm just waiting for something to happen.

I feel intense anxiety when I'm not in my cell. I know that sounds messed up but that's how it is with me. Pretty much every day, I come out just to do my laundry or heat something up in the microwave and then I ask to be locked up again. I rarely go to yard or hang out on the tier or socialize. It's just not me anymore.

This is not how I used to be before Kent, but I find it really difficult to interact with other people now.

Often I feel like a dark poison cloud is following me around, sometimes for months. I constantly feel hopelessness. That's a given. We're not offered any way to improve ourselves here. We're not offered any job skills. If they'd offered me a trade when I was in here 20 years ago, I don't think I'd be back here right now.

When I'm in my cell, my whole world is the size of a person's bathroom back home. It amplifies that feeling of hopelessness, because I start to not remember what my home or life used to look like. I forget the faces of my family and other things, other than the walls around me. It's hard to even remember what I was like before.



I'm older now and everything hurts. I get pain in my right side that feels like it's my liver, but it isn't. It's from laying around so much.

Library was scheduled for once a week, but I used to sign up and I would never be called, so I stopped bothering to sign up after a while.

I don't feel comfortable being in the gym with all those people. I get there and then I don't want to be there anymore – I just want to be back in my cell. I just don't feel comfortable being around that many people anymore.

At times, there have been so many lockdowns that it is difficult to express the level of frustration in words. We sometimes get to come out one person at a time once a day for around 10-20 minutes. Other days, we don't get to come out at all the entire day.

Client B

I came here from Edmonton Institution, where I was kept in segregation for over five years. The longest stint was around two and a half years straight. I would have given an arm and a leg for human contact. It's torture. People can't imagine what it's like unless they go through it.

Locked in segregation, I started taking my frustration out on myself by cutting myself. I have been to the hospital over a hundred times to get my arms stitched up and have had thousands of stitches in my arms.

After I came to Kent, I was on the Therapeutic Unit for a while. I was moved from the Therapeutic Unit to another unit, where I sat for several months with no job, school or programs. I didn't even have a TV to distract my mind for

most of that time. And nobody from mental health came to follow up with me after I was moved.

I was suspended from school shortly after that, and so I again had no job, school or programs. This also meant that I had no money at all that I could put on my phone card. I couldn't phone my mother, father, sisters, or my children for months. I was really going crazy, cutting myself with frustration.

I have never been to the library. I put my name on the list quite a few times. I hear the staff calling the library sometimes, but my name is never called.

I have been waiting to get access to programming since I came to Kent.

I have continued to slash myself at Kent. I have slashed at least half a dozen times at Kent and had approximately 200 stitches. I do it to cope. The more I bleed, the better I feel. I have been placed in the observation cell here many times, and then returned to my regular cell after that.

I have put in requests to see a psychiatrist, but I have only seen one once for what felt like two minutes. A few psychiatric nurses have come and spoken to me for a few minutes at a time, but I don't get regular counselling. I have also not been offered any programs to learn different ways of coping with my stress and depression.

After it's done and I get the stitches and the freezing wears off, I have to deal with the pain after that. I guess I'm trying to make myself suffer. I'm just trying to feel something – anything.

Being locked in a cell at Kent is similar to segregation at Edmonton Institution. I get a bit more time out of my cell than I did in segregation, but it's not enough to stop the suffering.

I've been in for so long that I feel used to being in my cell alone. I started getting hallucinations when I was in segregation, and those have continued at Kent. My hallucinations go up and down, depending on the amount of stress I'm under. A few months ago, I started hearing a voice again telling me to hurt myself.

I was transferred to a different unit recently after I was found with a noose tied to my fire alarm to hang myself. They put me in an observation cell for four days, and then somebody from Mental Health came to see me and I was then transferred to a regular cell on another unit.

My back is in a lot of pain from laying around too much.

When we are locked down a lot, I feel even more anxious when I am finally let out on the tier with the other five guys on my side of the range. People get in fights. It seems to me everybody is frustrated with being locked down so much. When we are locked down, we don't even get the three hours out. It seems like all the lockdowns literally drive people insane. I never know when I'm going to have to defend myself. I don't invite conversation with other people. I just want to be left alone.

I think that my food is going to be poisoned or somebody is going to stick a knife in my back.

If I had more time to use the phone, I would speak to my family more and build stronger bonds with them because it gives me hope for the future.

Client C

The majority of the population does not have jobs. There are not enough jobs to go around. Many of these people also do not have programs or school. People with no job, programs, or school are locked in their cells for most of the day. They get out for about five minutes at

mealtimes to fetch their meals, two hours of tier time and one hour of yard time per weekday.

When there is a lockdown, everybody is locked in their cell for almost the entire day. Depending on the feeding level, meals are brought to the door hatches by either staff or inmate servers. Depending on the lockdown, we may be let out for 15 or 20 minutes once a day to take a shower or make a phone call, or we may not be allowed out of our cells at all for 72 hours.

There are currently three adults on my unit with severe mental health issues. They appear to have the capacity of children. They set fires, urinate and defecate in their cells. It makes it hard for other people on the unit and creates tension. There is a deteriorating environment.

The number of lockdowns recently has been extreme.

It has a definite mental impact on me. I feel overwhelmed, sad and very angry. I can't clean my laundry, my room or myself, for reasons that turn out to be trivial later on.

It makes me feel isolated and that makes me depressed. When I look outside, but I'm locked in for nothing that I did, I get very frustrated.

In my experience, the first day locked in my cell during a lockdown is really hard. On day two it gets worse and worse. After day three, I start talking myself into believing this is normal, and I start sleeping all day. When I start sleeping all day, I get a sore back. My laundry piles up. And it makes things very tense between the guys on the unit when we do finally get out.

Client D

My time in my cell is bleak. I feel like it has made me angry and anti-social. I have a hard time relating to people, especially my family. After

being locked up so much, when I call my mom, I don't have much to talk about.

I've felt especially low since my wife passed away. With her gone, and nothing to give me hope here, I don't really care if I live or die anymore. I'm not suicidal, but it wouldn't bother me if I were killed tomorrow. It feels pretty bleak.

This feeling is worse when I'm alone in my cell. The hours I spent out of my cell working on the Inmate Committee helped a bit, but the other hours that I spent alone in my cell still felt like they changed me as a human being and made me anti-social.

It feels like I am conditioned to want to be locked up in my cell. It has been this way for so long, that it is hard to socialize. Being alone in my cell so much has taken a part of me away. It makes it so I don't care anymore.

I do feel isolated and I do want the social contact, but it is hard for me to open up to anyone. I don't trust anyone anymore. I'm suspicious of everybody. I often mute my TV because I heard people talking. I stand at my cell door listening, thinking they're talking about me or out to get me. I'm bored and I don't have a way to burn off energy. My brain goes into overdrive, examining every little thing that happens.

I managed to be re-classified to medium security last year. But when I got there, I didn't know how to be around people anymore. They didn't enroll me in programs, so I was sitting on the unit all day with other people. I felt shell-shocked. I didn't know how to conduct myself because I hadn't been around people in that way for so long. I ended up using drugs to cope, getting into trouble and getting sent back here.

I have serious back problems. The lower three discs in my spine are disintegrating, and my cell time makes the pain worse because I'm lying around all day rather than being active.

I think if I had more time out of my cell and more things to do with other people, like programs or sports, I would be more social and interactive. The way it is now, I feel like I'm just sitting in my cell getting angrier and more de-socialized.

The yard is a cement slab caged in by a fence. There is no grass to walk on or anything to do. When I'm in the yard here, it feels like I'm in a cage. I just walk around in circles. I feel like a dog.

Client E

Tier time is cancelled often. Sometimes we get a communiqué and we know it is a decision from upper management. But there are many times where we don't get any paperwork and we're just told there aren't enough staff.

When we're on the tier, we can't mix with other people from our unit unless they are on the same tier as us.

On my last unit, we would get gym twice on a very good week. But most weeks, we were lucky if we got to go once. I understand that in my new unit, we are scheduled to go to the big gym once a month. There is a big sign on the fridge saying that it is cancelled this month.

I've asked to put my name on the list for library several times in the past, but I have received no response. I have never been able to go to the library since I got to Kent.

In October or November, we were locked down for about five days in the course of one week. I did not receive any communiqués. In my first two weeks on my new unit, I was already locked up three times when I was scheduled to be out, and told it was because of short staffing or other reasons. Once we were locked up and told the cameras were being replaced, and the weekend before that we lost almost the whole day of tier and yard times. We were told the doors weren't

working. Another time, I lost the whole evening of tier and yard times, and another I only got to go to one tier time at the very end of the evening.

When I am in my cell, I feel cooped up and there is very little to distract me. It makes me feel angry and agitated. It is hard to control my reactions when I am around other people.

Being trapped in my cell makes me feel like I'm going insane. I have found that the only way to get through it is to sleep the day away. I can't stand it. I'm also very claustrophobic, because I had an accident where I was stuck under a truck for about four hours with a muffler burning me when I was younger.

When I wake up in the morning, I feel like there is no point in getting out of bed, eating, or doing anything else. I have to force myself to do those things. When I'm out cleaning the unit in the morning, things feel better for a while. But as soon as I'm back in my cell, I feel anxious. It feels like the walls are closing in. I have trouble breathing and my chest feels tight. My throat has a knot in it and I have pain in the back of my neck and temples. I just want to go back to bed. I want everything to stop. I want the thoughts in my head, the pain in my body, the tight feeling in my chest, and the pulsing in my temples, to go away.

I feel completely messed up spiritually and mentally. I spend my time just thinking about what I will do when I get out of my cell. And then I get so agitated that by the time I leave my cell, I get extremely irritated when people talk to me. When we get out of our cells, everybody is on edge, like me, and I feel like I have to watch my back.

I haven't seen the mental health worker for over a month, except for one short visit. She said that she only had a couple of minutes, and she wasn't available to speak with me about my mental

health. I have requested numerous times to see my mental health worker to speak with her and ask for more booklets so I have something to do in my cell, but she didn't come to see me again. She eventually sent me a booklet without coming to see me.

Being confined in my cell so much is physically draining as well. My body feels sore all the time because I can't do anything other than sit or lie down in my cell for most of the day.

Right now, we have so little time out that we don't have time to do anything that feels purposeful or productive. When someone asks me to help with math, I get frustrated because I like helping people but I don't have the time to do it.

Client F

I experience severe anxiety and panic attacks in my cell. My panic attacks can be as short as 30 seconds or as long as an hour. My heart beats fast, I shake, I get chest pain and I sweat. If I get a panic attack, I just have to wait 'til it calms down.

Sometimes I try to get mental health to come help. But when I have a panic attack, I need help in the moment. I press the call button in my cell, and a guard comes to check I'm still breathing. I tell them I need mental health, and they say someone will come. But most times, nobody from mental health comes.

A couple of times, my mental state got so bad that I had some suicidal thoughts. Sometimes it feels like a viable solution, because things in here feel like a never-ending cycle that keeps getting worse. I get really discouraged. I didn't go through with it, thank goodness.

I have completely lost it several times. I get depressed and lose hope. I have had periods at Kent where things get so bad that I started

cutting myself. I think I did it because cutting makes me feel alive a bit. I am trying really hard not to do that anymore. I try to pray and read the Qur'an, but sometimes I need somebody to talk to.

Client G

During those months, I was generally in my cell 21 hours a day on weekdays, 18 hours a day on weekends, and close to or a full 24 hours when there was a lockdown.

For the first month, I also didn't have a TV. I spent my time trying to read books. I did read about 20 books in that month, but it wasn't enough to stay calm and balanced.

I started going a bit nuts, doing things like laughing to myself and talking to myself. I started doing strange things that I didn't used to do.

I became really anxious about a lot of things. I felt like a failure, like my life was worthless, like I would never rebound afterwards.

I also felt really nervous about other people on the unit. I started over-analyzing and over-thinking things. I started thinking things that might not have been real, but it was hard to tell. I spent a lot of time in my head, thinking about every little thing that had happened on the tier or in the yard, and I would get a bad feeling about things. I thought people were talking about me or plotting to do something to me. I tried to reality-check myself but I couldn't figure out how to react, or if I should be worried, or if I was just in my head. My anxieties about other people and other issues seemed to build every day.

I feel like I'm not all there. When someone talks to me, I feel like I'm talking to them but I'm also in my head at the same time, thinking deep

about something else. It is difficult to have a real conversation where I'm in the conversation.

In some ways, I have become used to the time in my cell now, but I still feel like I'm not the same person I was when I got here. Being in my cell for such long stretches by myself has affected me. I hope it's not permanent.

The more time out of my cell, the better my brain does. It's hard to explain the feeling of being in your cell all day without experiencing it. It's very tough mentally.

When my family comes to visit me, I don't feel like I'm 100 percent present, like I was before. I hope I can get back to being more normal one day.

I think it would be helpful to offer people the opportunity to do something productive here so that they can keep focused or engaged on their future after prison.

I also think it would be helpful to spend more time outside, in a large outdoor space. When I was in a medium security institution, the yard was a big grass field and there was space... Going out to the yard there helped to decrease my anxiety. It helped me to clear my head. There were more people around to talk to and more time outside.

Attending yard here at Kent doesn't decrease my anxiety as much. An hour a day isn't enough. But even when we're outside, the yard is very small. It is just a little caged off concrete square. It feels claustrophobic.

Client H

Our daily routine at Kent feels very similar to segregation. Sitting in my cell feels like a waste of time. It is boring to be in my cell all day. The amount of time I spend in there feels like it deteriorates my mental and social ability.

I feel anxiety when I am in my cell. It goes up and down, depending on the day. My heart rate goes up. I know I can't get out unless they crack the door, and I start to feel claustrophobic.

When I'm on the unit, I sometimes feel like I don't want to talk to anybody because I feel like anything I say will somehow be used against me. I've been told that I'm being paranoid. Staff have put in paperwork that I am anti-social and have reintegration problems.

I've gotten used to this. Being isolated used to be so frustrating. I would kick my door and smash and break stuff, but then I just got more restrictions put on me. Now I just don't try to go to gym or the library or to get a job.

I don't try to go to the gym anymore, because I don't want to look forward to it when it is cancelled so often. I don't go to the library either for the same reason. I just try to keep to whatever I can control, like shower, phone, microwave and socializing on the range as much as possible.

A lot of times, I lock up early because there is nothing to do out on the tier. It just feels like a box where I am being monitored and surveilled. At least, in my cell, I feel like I can do what I want in my own small world.

I feel like after being locked in my cell all day, I snap really easily if I am delayed or something simple happens.

Client I

My symptoms feel worse when I am locked up for the majority of the day. My cell isn't big enough to work out in, or even to pace in really, so I just sit in my cell and watch TV all day. It makes me feel like garbage. I find that when I feel this way, I get anxious, and then little things stress me out or trigger me, and I get agitated and aggressive.

Being locked down so much, I have become really lethargic. There are times when my door opens for tier or yard time and I feel too lazy to go. I had a job as a morning cleaner, but I gave it away to somebody who was looking for a job because I generally feel tired and lethargic all day until about 6 p.m. in the evening. This is really different than how I was when I was in the community.

I also feel aggressive and agitated. I don't want to talk to anybody. It feels like I have become a lot more anti-social in the time I spent in solitary confinement at other institutions and my time at Kent.

I have made an effort to stay in touch with friends and family when I was in other institutions, but I don't stay in touch with them much at Kent because it is very difficult to hear anything on the range phone. On my range, the phone is right next to the laundry machines, microwave and toaster, and is on the table where people are talking.

Because I have PTSD from my history growing up, I have paranoia. I'll hear doors slam and my heart will stop. Or I'll hear a burst of laughter and think right away that one of my buddies is getting jumped.

Being at Kent feels basically the same as my time in segregation at other institutions. The extra hour or two out doesn't make much of a difference because I am still locked down all day until the evening routine. It feels like I'm in segregation all day.

Even when I come out of my cell, it feels small and claustrophobic. I am locked on either the range or in the exercise room.

School only gets me out of my cell for less than an hour and a half after lunch. Also, Health Care is weaning me off my PTSD medications at the moment, so I expect I will have to drop out of

school in a week or two because I won't be able to concentrate or focus.

I almost never get to spend time outside in the sunlight. With the rotating schedule, each range only gets to go to the yard in the afternoon every fourth day. I go to the gym when I can, but this is not very often. We are scheduled to go four times a week, but it is often cancelled. Some weeks it'll happen once or twice, and other weeks not at all.

I have outstanding programs on my correctional plan, but no programs are offered to our population. The only course I've ever been offered at Kent is a short food safe course.

Client J

When I was unemployed, I could only use the phones in the evenings, and usually only for 10-15 minutes because other people wanted to use the phone as well. I barely talked to my kids, which broke my heart. It really hurt me inside and I kept thinking about it. I have a 12-year old daughter and a 9-year old son. I try to talk to them as much as I can.

I tried to call my parents around once a week, but there have been times when we haven't talked for months because their work schedules didn't align with the limited times that I had out of my cell.

I have lost contact with lots of people because of this routine, including old friends and supports in the community. Around two years ago, my grandfather passed away, and I wasn't able to talk to him while he was sick.

When I came back to Kent in 2015 and was locked up all day, it was a real shock. I just shut down. I would try to sleep a lot or do something to not be present. It's a really hard feeling to explain, but it's not a good one. I experienced

a lot of anxiety. I felt trapped in my cell and wanted to get out. I just wanted to not be there.

Back in 2010, I had matured mentally and chose to stop using drugs in order to work towards getting back into society and have a positive future. But after I got back to Kent in 2015, I couldn't deal with everything in my life while sitting alone in my cell and ended up self-medicating to try and escape what I was feeling. I relapsed in my opioid drug use.

The amount of time I spent in my cell messed with my head, and still does. I get this extreme anxiety in small rooms now, and I get what I think are panic attacks.

I'm usually pretty active, and I like to go to the gym and run around. But being locked up so much hindered me a lot because I got so depressed. I ended up lying around, feeling really sluggish and slow, and didn't want to do anything. Sometimes when I had access to the gym, I felt too lazy to go.

Client K

It has come to the point that inmates on our tier expect lockdowns twice a week. It's always excuse after excuse as to why we get locked down. I will normally ask a guard, "Hey so how come we are locked down?" I usually get the reply "Short staff." But when I ask a different guard, it's a different answer. At other times we will get a communiqué saying "operational requirements" are the reason. If we're lucky, we will get a 20-minute shower routine, and that's it for the day.

One day we were on lockdown status because of an incident upstairs the day before. An inmate broke a few sprinklers and flooded all of lower Alpha unit. He also cut his wrists so his blood was leaking everywhere in the floodwater. We were told to lock up and ended up on lockdown.

Dirty water was flooding our cells and I spent the whole night trying to manage in a flooded cell. The next morning I stepped in the dirty water when I woke up. We were still locked down with no access to items to clean our cells. We asked to clean our cells but were told nothing could happen due to the lockdown.

Sometime in the morning, contractors were brought in to clean the ranges since there was blood in the floodwater but they did not clean any of the cells. It wasn't until 3:30 p.m. that they started giving people 20 minutes out, one at a time. We had only 20 minutes to shower, clean our cells, and hopefully a quick call to make sure our families are OK, considering this COVID-19 pandemic. I didn't get out of my cell until 9:35 p.m.

Living in a flooded cell for 24 hours is no fun. I asked the CXII on shift why we were being treated like this. She said she was just following the Correctional Manager's instructions. I explained to her that this much time in a cell is no good for one's mental health. She agreed but said it wasn't her decision. I then asked to see a mental health nurse, but was told that no mental health nurses were in.

V. PANDEMIC RESPONSE

CSC's response to the COVID-19 pandemic was shameful. In the face of global calls for public health measures to reduce transmission of the virus and to depopulate prisons where the virus would be very difficult to contain, CSC's only initial response was to cancel visits, programs and services for prisoners. With staff coming and going from institutions every day without proper screening, use of masks and proper hygiene, the inevitable happened – there were major outbreaks at three institutions. CSC began to lockdown entire institutions for prolonged periods of time to control the spread of the virus. Even prisons where there were no positive cases of COVID-19 instituted modified movement routines with only two to four hours out of cell per day.

Mission Medium Institution (Mission) was hit hard by COVID-19 and CSC's use of isolation in response. There were 120 positive COVID-19 cases at Mission. The entire institution was locked down beginning on April 1, 2020 with no time out of cell for the first eight days. From April 9 until May 26, 2020, every prisoner was locked in their cell for all but 15 to 20 minutes once every two or three days. This extreme isolation continued for almost two months, despite there being no new COVID-19 cases since May 1, 2020.⁷⁷ Mission prisoners remained in solitary confinement, with less than two hours out of cell per day until some time in June, 2020.

The dehumanization of prisoners and the lack of concern for their mental health appear to be central to the many decisions that together resulted in a monumental failure to act early to avoid outbreaks and the widespread solitary confinement of prisoners.

COVID-19 IN CANADA

COVID-19 claimed its first casualty in Canada on March 9, 2020 and was declared a pandemic by the World Health Organization (WHO) two days later. The rate of infections and deaths from the highly contagious and lethal virus continued to rise in Canada. It quickly became common knowledge that the virus was spread through small droplets in the air – produced by coughing, sneezing or talking – that could infect others who breathed in that air or who touched a contaminated surface and then touched their face.

On March 16, 2020 Canada announced it would close its borders to non-Canadians and on March 17, Ontario and Alberta declared states of emergency, followed soon after by the other provinces and territories.

In the community, public health officials called for “social distancing” to prevent the spread of the virus. The government informed the public that there was a greater risk of more severe outcomes for those with compromised immune systems or underlying medical conditions, or those aged 65 or over.⁷⁸ Throughout the month of March, increasing numbers of people began to work from home and to limit contact with others. Businesses closed and courthouses ground to a halt. The official Government of Canada website stated that “Everyone should be practicing physical (social) distancing.”

While these limitations were challenging to most, government and society alike sought to strike a balance that would reduce the effects on mental health. Many parks and outdoor public spaces remained open. Most people

in the community went for walks in their neighbourhoods, enjoyed online entertainment and hobbies at home to pass the time, and continued social interaction through online tools.

In contrast, in penitentiaries, the congregate living environment makes social distancing practically impossible and there is very little to do and no way to connect with others when confined to one's cell. The higher rates of chronic disease among prisoners, combined with close living quarters, make prisoners particularly vulnerable to the virus.⁷⁹

As medical experts predicted, COVID-19 began to spread rapidly through federal prisons once it entered the doors. In response, the federal government imposed prolonged isolation on large numbers of prisoners – just months after “abolishing” solitary confinement with the replacement of segregation with Structured Intervention Units. In so doing, Canada failed to take the necessary steps to protect both the lives and the mental health of prisoners.

As of May 25, 2020, CSC reported 360 positive tests of prisoners in six institutions and two deaths in its custody due to COVID-19.⁸⁰ Hundreds of prisoners were held in solitary confinement for months on end.

CSC AND CANADA’S RESPONSE VIOLATED PRISONERS’ FUNDAMENTAL RIGHTS

While many other jurisdictions within and beyond Canada took action to reduce prison populations,⁸¹ Ottawa ignored advice to reduce prison populations and to control the spread of COVID-19 in prisons. Besides introducing measures that disconnected and isolated prisoners – removing visits, temporary absences, group programming,

access to many communal spaces, and much time out of cell⁸² – Ottawa took very little action until it was too late to stop major outbreaks in two federal prisons.

Despite much rhetoric about facilitating early release for certain prisoners and expediting parole decisions,⁸³ only a handful of prisoners throughout Canada were granted early parole due to the pandemic between March 1 and June 7, 2020.⁸⁴ There are approximately 14,000 incarcerated federal prisoners.⁸⁵

Countless reports indicated that many of the transmission prevention measures within institutions – such as access to soap, hand sanitizer, masks and gloves, in-depth screening, physical distancing, self-isolation of staff returning from travel, and testing – were not implemented.⁸⁶ There were reports that even interregional transfers of prisoners continued despite claims they had been suspended.⁸⁷

On March 30, 2020, the first cases of federal prisoners with COVID-19 were confirmed. Two prisoners and nine officers at Port Cartier Institution in Quebec had tested positive, and the institution was put on lockdown.⁸⁸ By the next day, there was a confirmed case at Ontario’s Grand Valley Institution for Women as well, and employees had tested positive at Joliette Institution in Quebec and Beaver Creek Institution in Ontario. Still, no move was made to address overcrowding, and the virus continued to spread.

By April 2, health care workers in federal prisons were on the verge of refusing to work under the *Canada Labour Code* because of concerns about unsafe working conditions, a lack of personal protective equipment (PPE), and a direction for them to not use gloves or masks during the “hands on” intake process of prisoners being placed in medical isolation.⁸⁹ They also expressed concern about a lack of testing.⁹⁰

It was not until around April 8, 2020 that staff were directed to wear masks when within two meters of another person.⁹¹ Even then, prisoners continued to report that many officers failed to socially distance at work and new arrivals who had not been quarantined were introduced onto the units.⁹² Despite CSC's national direction that hand sanitizer be provided to everyone, access continued to be denied on the basis of high alcohol content.⁹³ In late April, prisoners at more than half a dozen institutions reported that they had still not received any masks.⁹⁴ Even into May, prisoners were speaking up about inadequate access to soap and hand sanitizer.⁹⁵

Instead of following public health directions, CSC's response was to isolate prisoners en masse. On April 23, 2020, 38 institutions that had not yet had any cases of the virus continued to be affected by modified routines that had restricted out of cell time to between two and four hours per day for over three weeks.⁹⁶

The Correctional Investigator warned CSC of the hardship on mental health caused by the excessive isolation of prisoners. He noted that he had observed spikes of non-compliant behaviour at various institutions, and encouraged CSC to monitor and be responsive to the health and resiliency of prisoners.⁹⁷

Hundreds of prisoners throughout Canada were placed in "medical isolation," in which they were confined to a cell for all but 20 minutes per day.⁹⁸

From April 7 to 20, 2020, the number of confirmed cases at Joliette Institution for Women in Quebec grew from 10 to 50, meaning 60 percent of prisoners at the facility were infected.⁹⁹ As in many other institutions, it was reported that the old segregation units were being used to isolate sick prisoners, which the Canadian Association of Elizabeth Fry Societies described as "cruel, punishing, [and] lacking humanity."¹⁰⁰

An outbreak was also reported at the Federal Training Centre in Laval, Quebec, on April 15, 2020 where a total of 162 prisoners eventually tested positive for COVID-19, and one prisoner died.¹⁰¹ Solitary confinement was imposed here too to control the spread of the virus.

As each day passed, it became increasingly clear that CSC's primary plan was to rely predominantly on lockdowns and modified routines to curb the spread of the virus, despite the long-term mental health consequences that would result.

EXPLOSION OF CASES AT MISSION MEDIUM INSTITUTION

The main steps taken at Mission – the site of one of the largest COVID-19 outbreaks in Canada – were to cancel all visits and confine prisoners to their units with little to do for the majority of each day.

The first positive tests of two prisoners at Mission were publicly reported on April 4, 2020. Within three weeks, there were 105 positive cases among prisoners (over 30 percent of Mission's population).¹⁰² Over 40 percent of the population was ultimately infected.¹⁰³

Reports from prisoners, officers and union representatives indicated that the institution failed to mitigate the risks early on.

Mission failed to adopt an aggressive strategy of testing and contact tracing. It failed to procure an adequate supply of masks, and actually directed healthcare staff not to use PPE during the intake process for prisoners being placed in medical isolation. Mission refused to take the temperature of staff showing up to work, directed staff to keep working despite exposure to the virus, and failed to provide prisoners with

access to showers, hand sanitizer and necessary hygiene supplies.¹⁰⁴

Prisoners reported that they did not receive a mask until close to the middle of April, and a prisoner reported two weeks later that he had not received a new disposable mask to replace the first one. There were multiple reports from prisoners at the institution who said they had been denied tests despite showing symptoms. Mission denied requests by prisoners to eat on their units rather than in the crowded cafeteria until the lockdown.

The Mission outbreak was not contained until the BC Ministry of Health stepped in. Provincial Health Officer Dr. Bonnie Henry noted that the outbreak had been recognized late at Mission, and that there had been challenges coordinating and communicating between Fraser Health and CSC.¹⁰⁵

By April 14, 2020 seven prisoners from Mission were in the hospital,¹⁰⁶ and on April 15 a prisoner died due to complications from the virus.¹⁰⁷

LOCKDOWNS AND MODIFIED ROUTINES IMPOSED TO ADDRESS THE MISSION OUTBREAK

Beginning on April 1, 2020, Mission was locked down in response to prisoners showing symptoms of COVID-19.¹⁰⁸ Prisoners report that for the first eight days, all 289 Mission Medium prisoners were completely locked down for 24 hours per day. No one was let out of their cells at all – everyone was denied canteen, showers, phone calls, fresh air and human interaction.

Prisoners received only two meals per day. There were many reports that food quantities were reduced even further than normal and

people were hungry. Family members reported significant anxiety regarding the mental or physical vulnerabilities of their loved ones inside, as they could not reach them or get any information.¹⁰⁹

There were reports that Mission descended into chaos and the mood grew tense after going into lockdown. Healthcare workers tussled with management over access to PPE, while prisoners screamed and banged on their metal doors.¹¹⁰

Prisoners with ongoing suicidal ideation and other mental health disabilities were equally subject to the 24-hour per day lockdown. Prisoners described “feeling doomed,” the mood as “tense,” and the isolation “anxiety provoking.” A nurse working at Mission at the time confirmed that almost 300 prisoners were locked in their cells for weeks, that many of them had severe anxiety and claustrophobia, and some were having panic attacks.¹¹¹

Not even legal calls were allowed. PLS received no calls from prisoners at Mission from April 1 until April 14, 2020.

A prisoner at Mission who tested positive in early April reported that he was placed in medical isolation in the old segregation unit. When he was finally able to make a legal call 15 days later, he advised that he had only been allowed to leave his cell three times over the course of the 15 days, for a shower each time. He was not allowed to make phone calls. He had not received any soap or cleaning supplies, and his meals were small and cold. After fifteen days in medical isolation, he had still not received any information regarding when he might be released from these incredibly depriving and arduous conditions.

One of the first prisoners to test positive at Mission had serious mental health disabilities. He reported that no mental health staff came to offer him treatment or counsel during his medical isolation and he experienced severe

psychological deterioration. He too was held in the previously decommissioned segregation unit, and found that staff took on a rude and unhelpful approach to his requests that was typical of correctional officers working in segregation units before they were eliminated for being unconstitutional. He had little of his own personal property with him to keep him occupied. He reported that after 14 days, the institutional physician cleared him for release, but management continued to hold him in the segregation unit without explanation.

A high degree of isolation continued for almost two months, despite there being no new COVID-19 cases since May 1, 2020 and Fraser Health having declared the outbreak over on May 28, 2020.¹¹²

Prisoners reported that from April 9, 2020 until sometime in May, they were locked in their cells for all but 15 to 20 minutes every two or three days. Most people reported they did not have any access to yard until approximately May 6, 2020. During this phase of the lockdown, some prisoners struggled to get even one personal phone call per week. Many were not receiving daily showers, and did not have access to canteen to supplement their food supplies until the week of April 16, 2020.

One individual described his experience of anxiety and desperation after a week or so in his cell during the pandemic:

I was so agitated... so much anxiety... I could not catch my breath. And the fact that nobody would listen to me. I was literally banging my head on the wall, wanting to chew my own arm off, because I was so angry and frustrated and hungry. And I couldn't catch my breath so I was panicky. I don't think I've ever been in that situation in my life. I've been in a lot of lockdowns but I have never experienced this. This situation – the fear and the treatment – there is nothing

going on at all to do. We are watching the same things on the screen again and again and again.

We were afraid of getting sick because they weren't following protocol on serving us food and were keeping guys who were sick still on the unit with us. Officers would be touching the sick people's doors and serving them food, and then coming over to serve us. They wore gloves when they served food but they didn't change them after touching those doors.

Guys are in a ton of pain from injuries and having to be sedentary, lying on our beds all day.

The federal government dropped its solitary confinement appeal to the Supreme Court of Canada on April 21, 2020, ostensibly agreeing that isolating an individual for 22 hours per day for more than 15 days or without independent external review is unconstitutional. Yet nothing was done to address the situation in Mission. By that point, the nearly 300 prisoners at Mission had already been in solitary confinement for 23.5 to 24 hours per day for 19 days, and there was no end in sight.

The Correctional Investigator released a status update on April 23, 2020, in which he affirmed that these violations of universal human rights were not justifiable even in the context of the pandemic:

It is very troubling that some infected inmates at Mission Institution have been subjected to periods of 24-hour lock-up with no access to phones, fresh air, lawyers or family members. Holding detained people incommunicado with the outside world in conditions of solitary confinement is a violation of universal human rights safeguards, and can never be considered justifiable, tolerable or necessary in any circumstance. ...

... Though restrictions are gradually being eased at some affected institutions, including opening up of the yard and more time on the living units for the general population, daily routines and conditions in institutions where COVID-19 is present remain extremely depriving.¹¹³

Two days later, the Prime Minister responded that his government was looking into the report. Nothing further was heard from the Prime Minister's office.

Eventually, prisoners began to receive 20 minutes out daily, but outdoor access was still not provided. Prisoners reported bedsores from lying in their rooms all day doing nothing. By early May, there were reports that people were "flipping out regularly."

The routine was minimally modified in May to provide 30 minutes per day out of cell, and access to the yard in small groups approximately once or twice a week for 45 minutes.

But prisoners remained in solitary confinement, with less than two hours out of cells per day, well into June 2020.

One prisoner described the situation at the end of May:

We're still locked up for all but 30 minutes a day, and they say yard will be for 45-60 minutes "maybe" twice a week.

There was a guy who tried to commit suicide yesterday, and a guy a month ago. There are guys smashing their heads on the windows in their cells because they're so frustrated and there is nothing they can do.

Some of the guards don't like the situation but they just say they have to do what they're told by management.

Just after the outbreak at Mission was declared over at the end of May, prisoners there

reported that the institution sealed off the fridges available to prisoners and removed the computer keyboard and mouse in the public area, making their lives even more difficult.

At the start of June, two months after the lockdown was first imposed, a prisoner at Mission reported he was advised the institution would "try" to let them out for an hour a day, and would start incorporating Fridays and weekends into the rotating yard schedule. He said that he had only been getting access to the yard approximately once a week since yard time had been returned, and now perhaps it would be twice a week.

He described how the ongoing isolation affected him:

For me, the first couple of weeks weren't much of a big deal, but the last month and a half, it's been pretty hard.

I've wanted to just off myself. I mean, I feel total hopelessness in my cell. You get up and you realize you're going to be stuck in this box all day. And you don't know when you're going to get out. You don't know when this pandemic is going to end. I feel like I don't want to live anymore, if this is what life is. I feel like I'm a dog, locked in a cage. It's really hard to explain what a day is. You have so much shit running through your head that it almost drives you crazy. You can't settle down. You can't relax because you don't know what's going to happen – it's the constant fear of not knowing what's going on because they don't tell us anything. They don't treat us like human beings. We didn't have rights in the first place, but it really feels like we're not human beings anymore in here. I get to the point where I just would rather be dead than deal with this.

I feel completely powerless. If I express dissatisfaction or fight anything I'll be threatened or disciplined for it. I don't have

any rights. I don't even have a right to be upset. The officers say, "Well we're dealing with this too." But they're not locked in a cell for 23 and a half hours a day.

I get that we're in the middle of a pandemic. I believe everybody out there is trying to work together and get through this. There should be a period of understanding and caring and respect for one another. We're not getting that here. We're less than. They said they're going to give us a yard routine and I thought, OK great. But that turned into yard once a week, for not even an hour. Now after two months in lockdown, they say they're going to add Friday, Saturday, Sunday to that routine, so we'll probably now get yard twice a week. So you can see how guys get frustrated with that.

The jail is now officially COVID free. There are no cases here. So they want to make sure it doesn't spread. Well, when it comes back, it's going to come from staff. So what are they going to do? They're going to lock us all down 24 hours again?

By June 9, 2020, with no active cases, prisoners at Mission reported that they continued to be confined to their cells for all but 45 minutes a day on tier and yard two or three times a week.

One Mission prisoner reported he was in medical isolation in the former segregation unit in mid-June, 2020, where he was held in his cell for about 23 hours per day. He said his cell was not cleaned or sanitized before he was placed in it, and that it was filthy:

There's mould in the toilet, walls have debris on them, cells smell of urine. It took three days for me to get cleaning supplies. They have professional cleaners but they didn't do anything – they don't go into the cells. The Correctional Manager said he'd see what he could do and never came back. I said I would kick the door until I get cleaning supplies.

I don't have hygiene, laundry products. I haven't had a warm meal since I got here.

The phone is on rollers, and they put cleaning supplies on the floor at the base of the phone, so we can't reach them to clean the phone.

They keep saying the doctor will come to see me and evaluate me, repeatedly. Turned out to be lies. They never told me how long I need to be in here. If they just told the truth from the beginning, people wouldn't freak out so badly.

The use of isolation continued across Canada. On June 19, 2020, there was only one active case of COVID-19 among all federal prisoners. The Correctional Investigator wrote in a status update report that it was time to ease lockdown measures that were causing frustration and tension among prisoners, and yet restrictions imposed showed little sign of abatement:

Indefinite lockdowns or extended periods of cellular isolation continue at many facilities, even those that have not experienced an outbreak. ...In some affected institutions, public health authorities imposed restrictions that included near total cellular confinement, and even denial of fresh air exercise. It needs to be said that some of these restrictions reach beyond measures or controls contemplated in either domestic or international law. Public health emergencies must be managed within a legal framework. Rights need to be respected and restored.¹¹⁴

The conditions imposed on prisoners during COVID-19 are not an isolated occurrence, to be chalked up to an unprecedented event and simply forgotten, but rather illustrate the danger of allowing wardens unfettered discretion to impose restrictions on liberty that violate the basic human rights of prisoners unchecked.

As this report shows, isolation has been permitted and continues to be imposed in a great number of forms in Canada's federal penitentiaries. The duration and conditions of medical isolation, lockdowns and modified routines in federal institutions across Canada during the pandemic show the extent to which human rights violations will occur when that door is left open, and the extent to which lockdowns and modified routines have been normalized as a means for managing the prison population.

CALLS TO REDUCE THE SPREAD OF COVID-19 WHILE PROTECTING PRISONERS' RIGHTS

CSC's response to COVID-19 ignored widespread calls to implement measures that would have reduced the spread of the virus while protecting the rights and dignity of prisoners.

In its Interim guidance document for preparedness, prevention and control in prisons dated March 15, 2020, the WHO stressed the importance of upholding the human rights of prisoners throughout the pandemic. The WHO emphasized that the COVID-19 outbreak should not be used as a justification for imposing solitary confinement beyond 15 days or otherwise undermining adherence to the *Mandela Rules*. They further stressed that human contact should be facilitated for prisoners in isolation, and any placement in conditions of medical isolation should be based on medical necessity, as a result of a clinical decision, and subject to authorization by law or regulation.¹¹⁵

In Canada, more than 700 federal prisoners are aged 65 or older, the majority of whom have underlying chronic health conditions. Twenty-

five percent are over 50 years old. Prisoner health is generally poor compared with the general population, with prisoners suffering higher rates of HIV, Hepatitis C and other serious health conditions. Prisoners also have a higher rate of mental health disabilities and substance use disorders that can severely compromise COVID-19 outcomes.¹¹⁶

In many of Canada's federal penitentiaries it is standard practice to have two prisoners sharing a cell.¹¹⁷

Starting at least as early as March 16, 2020, countless advocacy groups, medical professionals and others called for the release of low-risk and vulnerable prisoners, improved infection prevention and control measures within institutions, and increased access to mental health resources.¹¹⁸ Both the United Nations High Commissioner for Human Rights and the Canadian Human Rights Commissioner called on the government to release low-risk and vulnerable prisoners.¹¹⁹

Medical professionals informed public authorities that it is nearly impossible to limit a coronavirus outbreak in congregate living settings, especially those with close quarters. Prisoners have little control over their ability to socially distance or clean their hands and surfaces. They live in rooms with others or with shared air vents, receive food from common kitchens, and must touch common surfaces to use the telephone or do almost anything outside their cell.¹²⁰

For prisoners with underlying health issues, this proximity to others greatly increased anxiety and mental suffering. Prisoners also have limited access to healthcare and information regarding the virus and the institution's plans to address it. Access to family and community supports to alleviate isolation and anxiety are also limited.

Even healthcare professionals working in prisons throughout the country warned that

there would be explosive outbreaks once the virus entered prisons given the tight quarters and vulnerable populations, and appealed to correctional authorities to release prisoners.¹²¹

Dr. Homer Venters, the former chief medical officer of the New York City Jail System, recommended that prison authorities not use lockdowns as a response to the pandemic. He explained that solitary confinement causes extreme distress, and that this drives violence and fractures engagement between health staff and people who are sick just when we need it most.¹²²

The Vera Institute of Justice and Community Oriented Correctional Health Services recommended continuing programming and recreational activities, in smaller groups if necessary, and designating comfortable housing areas in anticipation of the need to separate people with symptoms, where they could have access to personal belongings, a telephone and programming, by videoconference if necessary.¹²³

Medical professionals stressed that medical isolation of prisoners due to COVID-19 should be a very different experience from solitary confinement, with access to resources to help make separation easier, including ways to communicate with loved ones. Prisoners in medical isolation with COVID-19 should be able to be housed together. Medical isolation should be overseen by medical professionals and should end in accordance with community standards (usually about 14 days).¹²⁴

The evidence-based solution that conforms to public health standards, medical opinion and the human rights of prisoners would have been to reduce the prison population, and to simultaneously increase transmission prevention measures for those remaining inside.¹²⁵

These measures would have included adequate access to hand sanitizer, cleaning supplies and

PPE, along with widespread testing, contact tracing and *selective* isolation with increased access to mental health supports. These measures would have allowed for increased social distancing and decreased exposure for those at greater risk of severe outcomes, while also mitigating the risks to mental health by providing access to fresh air and human contact outside one's cell.

Unfortunately, CSC's failure to heed these warnings and follow best practices resulted in hundreds of prisoners contracting the virus, two deaths, and the torture or cruel treatment of hundreds of prisoners in prolonged solitary confinement during the first wave of the pandemic.

VI. ISOLATION FOR MENTAL HEALTH REASONS

This report has discussed the ways CSC isolates prisoners, regardless of their existing mental health, and the extreme psychological distress it causes. Isolation is especially harmful to people with pre-existing mental health disabilities.

In the community, it is widely accepted that seclusion and restraint are not therapeutic and there has been a move away from these practices in psychiatric facilities. But in prison, CSC relies frequently and heavily on isolation to respond to emotional crises, including

suicidal thoughts and self-harm. Isolation for these reasons is imposed outside of legislated Structured Intervention Units, which means there is no external oversight of its use. Very little policy governs the use of isolation in these circumstances. Some decisions to impose isolation are made by operational staff rather than by medical staff.

Prisoners often describe horrible conditions when they are isolated for mental health reasons and say it makes them feel higher levels of anxiety or depression. Given how clear the



damaging effects of solitary confinement are, CSC's practice of isolating prisoners in emotional distress is totally unacceptable.

CSC uses a variety of ways to isolate prisoners with mental health disabilities outside the scope of legislation and policy. The following are some examples.

SUICIDE WATCH IN OBSERVATION CELLS

Self-harm and suicidal thinking occur with alarming frequency among prisoners,¹²⁶ who are often dealing with unresolved trauma, untreated mental health disabilities, isolation from their families and communities, and conditions of confinement that exacerbate their distress.

When prisoners in CSC custody become so distressed that they slash or choke themselves, punch themselves in the face, swallow razor blades, bang their heads on the wall or otherwise harm themselves, they are generally placed on suicide watch in conditions that involve extreme deprivation and loss of dignity.

CSC's response to self-harm and suicidality is governed by Commissioner's Directive 843 – *Interventions to Preserve Life and Prevent Serious Bodily Harm* (CD 843). Under CD 843, prisoners on "high" or "modified" suicide watch are placed in observation cells, which are like segregation or SIU cells except that they have windows in the doors so that officers can watch prisoners constantly and the light is always on (even at night).

Observation cell placements are authorized by wardens (or Regional Treatment Centre directors, who also sometimes do not have medical or mental health backgrounds). Prisoners placed in observation cells do not have any opportunity to challenge their placements

and there are no mechanisms for external review.

Prisoners have described observation cells as filthy and sometimes contaminated with blood, feces and pepper spray. Until recently, observation cells were on segregation ranges. They are used at CSC Regional Treatment Centres as well as mainstream institutions.

Under CD 843, prisoners on "high" suicide watch are stripped of their clothing and required to wear "suicide smocks" or "baby dolls": short, smock-style coverings made of fabric that cannot be easily ripped and that are sometimes barely long enough to cover the person's genitals. Some prisoners have described them as so degrading that they choose to go naked.

Prisoners on high watch are also given what they call "bag feed" (finger foods) and may be deprived of mattresses, pillows or blankets. Some are forced to sleep on concrete slabs.

Prisoners also describe being antagonized and taunted by the correctional officers whose job it is to continuously observe them. They describe these officers sometimes encouraging them to self-harm and other times threatening to pepper spray them (or at times actually pepper spraying them) if they harm themselves.

Prisoners on high watch are also generally not allowed belongings to help occupy their minds. They are often left with nothing but their own thoughts.

There are no time limits governing how long a prisoner can be confined to an observation cell. There are also no minimum requirements for how much time they get out of their cell or opportunities for meaningful human contact. Prisoners in observation often describe no time out at all and very short and cursory visits from mental health staff designed only to determine if they are still sufficiently suicidal to require continued placement in the observation cell.

Prisoners describe observation as even worse than segregation and as an environment that only exacerbates the extreme distress they already feel. These conditions discourage prisoners from revealing when they feel like self-harming or killing themselves because of fear of the consequences.

This punitive and restrictive approach to self-harm is contrary to community standards, which emphasize the concept of “least restraint.” For instance, the Canadian Patient Safety Institute explains that “restraint and seclusion are not therapeutic care procedures,” that they “can induce further physical or psychosocial trauma,” and that they have “no known long-term benefit in reducing behaviours.”¹²⁷

A February 2019 external ethics review of CSC’s policy on the use of observation cells and restraints by researcher and ethicist Mike Kekewich and Dr. Jacky Parker from the Ottawa Hospital raised ethical concerns about CSC’s practices in this area.¹²⁸ Mr. Kekewich and Dr. Parker state, “[r]ather than a form of treatment, observation and restraint could be characterized as behaviour management tools,” and note that most of the prisoners they interviewed “clearly perceived the interventions under CD 843 as forms of punishment, as opposed to care.”

They also cite the Canadian Patient Safety Institute’s statement that isolating people in seclusion rooms (or observation cells in the case of CSC) actually *increases* suicidal ideation and self-harm.¹²⁹

Mr. Kekewich and Dr. Parker acknowledge the argument that “the *Mandela Rules* would discourage or even prohibit some forms of observation as outlined in CD 843 altogether” because “enhanced observation in the form of high or modified watch is simply a more restrictive form of segregation, and...segregation (solitary confinement, per the *Mandela Rules*) should not be used for offenders ‘with mental or

physical disabilities when their conditions would be exacerbated by such measures.”

Dr. John Bradford similarly concluded, in a review of CSC’s regional treatment centres, that any use of crisis intervention services should be provided in a therapeutic setting.¹³⁰

Despite these critical external reviews, the alleged abolition of solitary confinement in federal prisons left CD 843 unchanged, and prisoners who are suicidal or self-harming continue to experience extreme isolation and deprivation.

ISOLATION AT CSC TREATMENT CENTRES

Even clients placed at CSC’s treatment centres due to their serious mental health needs sometimes face severe isolation.

Some prisoners have described being isolated in “quiet rooms” – isolation cells where they are confined away from the rest of the population for an indefinite period and without any external review or opportunity to challenge their placement. They may be held with minimal time out of their cell and inadequate meaningful human contact.

Prisoners at treatment centres sometimes report hearing others screaming and crying out while they are held in isolation.

Prisoners at treatment centres are also held in observation cells on suicide watch, as described above.

Even prisoners who are not confined to one of these cells report extensive isolation at treatment centres. Some have reported spending most of the day locked in their cells without meaningful activities or therapeutic services.

This is consistent with Dr. Bradford's findings that prisoners at CSC treatment centers "spend very lengthy periods of time behind locked doors."¹³¹

THERAPEUTIC UNITS

Therapeutic Units were most recently implemented in some federal prisons in 2017-18 to offer moderate intensity Intermediate Health Care services for maximum-security prisoners. They were intended to provide a "therapeutic alternative" to segregation.¹³²

However, prisoners held on Kent's Therapeutic Unit have reported that they are isolated in their cells for the majority of each day and that the unit does not provide a therapeutic environment, has limited programming, and is not effectively addressing their mental health needs. Some clients have even reported that an officer who worked in the unit antagonized vulnerable prisoners.

One client described his experience on Kent's Therapeutic Unit:

My time on the Therapeutic Unit was very similar to my time on the other units. We were locked in our cells almost all the time. The only difference I can think of is that I went to a group program around once a week, and occasionally twice a week. Everything else was run the same as on the other units.

I was moved off the Therapeutic Unit to a regular living unit around ten months ago. Nobody from Mental Health came to follow up with me after I was moved.

Some prisoners describe the "therapy" they received in Kent's Therapeutic Unit as going into a room with other prisoners and being given pages from colouring books to colour.

They report they did not find this particularly therapeutic.

The Correctional Investigator recently conducted a preliminary review of Therapeutic Units, which included site visits and information provided by CSC regarding staffing and services. Following this review, the Correctional Investigator questioned whether these ranges align with mental health care objectives:

In the absence of information or evidence provided by CSC to the contrary, I am led to the preliminary conclusion that Therapeutic Ranges in maximum-security institutions serve more as a segregation diversion strategy than enhancement of mental health treatment capacity. On the face of it, there seems to be little clinical value for employing this model over other segregation diversion/intervention strategies....

Frankly, it is unclear what the new funding for Therapeutic Ranges has been used for, or even what results they are expected to achieve other than diverting maximum-security inmates with challenging behaviours away from segregation. More importantly, I do not see how these environments could be expected to serve any therapeutic aim.¹³³

Therapeutic Units are purported to address the mental health needs of vulnerable prisoners. If prisoners on these units are still subjected to isolation that borders on the definition of solitary confinement, without meaningful therapeutic interventions, they are not meeting this purpose and may be exacerbating existing mental health disabilities.

VII. STRUCTURED INTERVENTION UNITS (SIUs)

On November 30, 2019, the new Structured Intervention Unit (SIU) regime came into effect, replacing CSC’s segregation regime that courts had found to be unconstitutional.¹³⁴

The amended *Corrections and Conditional Release Act* states that SIUs are a place where prisoners who “cannot be maintained in the mainstream inmate population for security or other reasons” are provided with an “appropriate living environment,” the “opportunity for meaningful human contact,” an “opportunity to participate in programs” and “access to services” that respond to specific needs and risks.¹³⁵

There is, however, a real disconnect between how the new regime appears on paper and its implementation in reality. The new law still allows for the isolation of prisoners – including those with mental health disabilities – for the vast majority of the day, for indefinite periods of time. Our clients continue to report inhumane conditions of confinement in SIUs and great difficulty accessing their right to counsel.

The most significant positive change of the SIU regime is the introduction of Independent External Decision Makers (IEDMs) to the review process. IEDMs provide essential external oversight of SIUs by conducting independent reviews of placements after certain time periods or in certain circumstances. However, IEDMs lack the power to order CSC to implement alternatives that would break the cycle of isolation and violence experienced by most SIU prisoners.

SIU IMPLEMENTATION ADVISORY PANEL

On August 19, 2020, University of Toronto Professor Emeritus of Criminology, Dr. Anthony Doob, chair of the SIU Implementation Advisory Panel, released a report on the first year of the Panel’s work.¹³⁶ Dr. Doob’s August report revealed CSC’s lack of transparency and lack of commitment to making SIUs fulfil their promise as an alternative to solitary confinement.

The SIU Implementation Advisory Panel was created by Public Safety Canada in May 2019. Beginning in November 2019, the Panel requested systemic administrative data on the operations of SIUs (including information on time out of cell and meaningful human contact) from CSC necessary to review its implementation. CSC indicated in February 2020 that it had not yet decided whether it would provide the data. In May, CSC provided a batch of data that was “incomplete, unspecified, and nearly impossible to use.” It was inadequate for the Panel to be able to do its job. In August, CSC admitted that the data the Panel requested did not exist.

The Panel issued a statement written by Dr. Doob noting that the information it had requested was “necessary to understand the operation of the SIUs – by the panel, or CSC itself” and that with “over 18,000

employees...[i]f they do not have the information about the operation of these units, it was clearly CSC's decision not to give this a high enough priority."

In an interview with *The Globe and Mail*, Dr. Doob said, "How much confidence do we have that the experience of a prisoner has changed? My answer is none, because we don't have any information."¹³⁷ He told CBC: "We don't know whether things were good, bad, indifferent or awful, because they don't want anybody to know, and you can draw your own inferences about what that means."¹³⁸

CSC finally provided data to Dr. Doob on September 30, 2020, and he and Dr. Jane Sprott published their findings regarding the first nine months of SIU implementation on October 26, 2020.¹³⁹

Drs. Doob and Sprott found that 1,037 people were transferred to an SIU in the nine-month period. Thirty-five percent of people transferred to SIU had more than one stay, and those with multiple SIU stays tended to have "identifiable mental health needs *before* being transferred to an SIU." Approximately 16 percent of stays in SIU were for more than two months. Indigenous prisoners were overrepresented in SIU placements.

Drs. Doob and Sprott also found that only 21 percent of SIU prisoners had at least four hours out of cell per day on half or more of the days they were in SIU, and in only 46 percent of cases did the prisoner have two hours of meaningful human contact on at least half of the days. Prisoners in SIU for more than two months tended to have even less time out of cell and less meaningful human contact.

SOLITARY CONFINEMENT PERMITTED UNDER SIU REGIME

Legislation requires prisoners in SIU to be given the opportunity to spend at least four hours outside their cells each day, including two hours interacting with others. These include leisure time, programs, interventions, religious and spiritual practice, and access to family and community supports.¹⁴⁰

By requiring a minimum of only two hours of daily meaningful human contact, the new law continues to allow the solitary confinement of prisoners for prolonged and indefinite periods of time. The United Nations' definition of solitary confinement is 22 or more hours of isolation per day, which is considered torture or cruel treatment for people with mental health disabilities or for anyone after 15 days.¹⁴¹ Two hours of human interaction per day is an improvement to the previous segregation regime, but it is insufficient to curb the psychological harm of isolation in a cell the size of a bathroom with heavy metal doors.¹⁴²

As Drs. Doob and Sprott found, often prisoners in SIU are denied four hours out of cell and two hours of human interaction. Sometimes correctional officers refuse to provide tier time, or time out is denied because of a lockdown. Prisoners with mental health disabilities or incompatible prisoners on the unit might decline time out of cell, and staff fail to find alternatives or create the conditions necessary to allow them to benefit from social interaction.

Contrary to the *Mandela Rules*, isolation may still take place for prolonged and indefinite periods of time, and prisoners with mental health disabilities are not exempt from placement in SIU.

LIFE IN SIU

The Canadian government promised a new regime distinct from segregation where prisoners would have better access to mental health care and meaningful human contact in “appropriate living environments.”¹⁴³ But this has not been the reality for prisoners who have spoken to us about their experiences in SIU.

Senator Kim Pate visited a number of prisons across Canada after the implementation of SIUs, and concluded that the conditions and the new system were much the same as before.¹⁴⁴ She described some of the superficial changes to the physical space:

*Despite the name changes, some fresh coats of paint, and sometimes a few more chairs or other additions, prisoners and staff agree that conditions remain much the same. In one prison for women, an empty asphalt space was rebranded as a garden and spiritual space. In another, the prisoners and staff indicate that they are expecting a single couch to be introduced and that it will provide the only tangible change to a virtually unused and bare common area.*¹⁴⁵

In November 2019, the Correctional Investigator provided feedback to CSC’s Commissioner on the draft version of the SIU policies. He pointed out that it is the *quality* of human contact that counts, and recommended clearer guidelines around human interaction. He also recognized that CSC programs and interventions may not be meaningful to many of the people in SIUs, and that expanding the range and opportunity for meaningful human interaction may mean opening up SIUs to non-CSC personnel – “outside groups, associations and stakeholders who have proven and established rapport and trust among [prisoners].” The Correctional Investigator

expanded on these concerns in his 2019-2020 Annual Report, stating:

*Inmates who find their way into these units are not likely to be overly responsive to CSC overtures to participate in correctional programs and interventions. As it stands, all the time-out-of-cell examples, including access to programs, interventions, educational, cultural, spiritual, and leisure opportunities contemplated in policy, are defined and determined by internal prison rules and institutional routines. It is not at all clear that inmates in these units will find these measures “meaningful” to them.*¹⁴⁶

Our clients reporting from Kent’s SIU confirm the validity of the Correctional Investigator’s concerns about the quality of meaningful human contact. One SIU prisoner reported they were given a Sudoku puzzle and a picture to colour in place of human interaction.

At Kent, prisoners continue to report that staff are disrespectful and antagonize them to act out. This is not surprising, given that many of the same staff who worked in segregation are stationed to work in the SIU.

One Muslim prisoner advised that he had not seen the Imam once, but he prayed in his cell five times a day. He said that every time he prayed officers would bang on his door. He reported that he had an argument with an officer who asked him why he was praying like a “terrorist.”

He reported that on another occasion, a Correctional Manager assaulted him:

I was engaging in a peaceful protest for being on handcuff status for the shower. I put a towel over the lock part of my food slot so they couldn’t close it. The Correctional Manager came down the range and untied my food slot. My arm was through the food slot so that they couldn’t close my hatch. I

asked him what he was going to do, and he said “I’ll break your fucking arm you piece of shit.” He said I was a poor excuse for a Muslim. He then started slamming the hatch on my arm again and again. He grabbed my arm and then slammed it again. My arm is badly swollen and a deep reddish green. I’m afraid to come out for medication line.

A number of other reports cast light on the environment in the SIU at Kent:

- One individual reported he did not receive his hygiene items for 11 days after he arrived at the SIU, and therefore was unable to brush his teeth for that time.¹⁴⁷
- Another individual reported he arrived at the SIU with a serious injury to his foot – it was “black and blue” and he believed his toe or possibly his foot was broken. He reported that he was not taken to the doctor to have it assessed for at least the first two weeks, and had to wrap it in his own hand-made bandage.
- One prisoner reported he had been requesting clean bedding for two months, without success.
- Another prisoner reported he only gets access to laundry every two weeks.
- Prisoners report they are only allowed to clean their cells once per week for 20 minutes, on Sundays, with no exceptions.
- A trans woman with a history of physical and sexual abuse reported that she went two weeks without a shower because she was not provided the opportunity to shower in private (i.e. out of view of male prisoners and/or corrections officers), despite her legal right to do so.

Access to meaningful human contact and time out of cells is especially limited for people who may choose not to attend SIU programs or yard

due to a lack of trust in CSC staff, fear of fellow prisoners, mental health symptoms or other reasons.

Kent SIU prisoners who do not attend programs or yard advise that they are not allowed to spend that time outside their cells on the tier doing something else instead. Kent staff have taken the position that prisoners who do not wish to attend programs or yard have had their “opportunity” and must sit in their cells all day.

This is contrary to legislation, which identifies opportunities for human interaction and time out of cell as “activities including, but not limited to (i) programs, interventions and services ... and (ii) leisure time.”¹⁴⁸ The law also states that the purpose of the SIU is to provide prisoners “with an opportunity for meaningful human contact and an opportunity to participate in programs and have access to services.”¹⁴⁹ [Emphasis added.]

Policy requires staff to “explore all reasonable options to provide inmates with as much time out of their cells, beyond the minimum four hours” and “with as much time to interact with others beyond the minimum of two hours as is operationally feasible.”¹⁵⁰ Everyone working with prisoners in an SIU is required to work collaboratively “to ensure these opportunities are provided.”¹⁵¹

Despite this law and policy, prisoners at Kent refusing yard and programs were reporting in approximately December 2019 and January 2020 that they only received 50 minutes out of their cells each day. In the following months, prisoners reported they were no longer provided with any tier time other than a 20-minute shower.

An Indigenous prisoner with multiple mental health disabilities reported that he refused programs, school and yard time because he was afraid of others. He requested time on the tier alone so that he could leave his cell, but was refused.

I'd be more than happy to do programs. I need it. But I don't do programs because I don't feel safe to come out.

I was often locked in my cell 23 hours and 45 minutes. When I asked for tier time, they said "nope." They said they can give me programs, and that tier time has nothing to do with the four hours.

Some SIU prisoners have reported great difficulty making phone calls to loved ones and supports in the community because of a lack of tier time.

SIU staff at Kent also administer yard time in a way that discourages prisoners from taking the opportunity for fresh air and exercise. One client reported in January 2020 that he was consistently offered yard time around 8:00 a.m. and that if he did go to yard, he would not be allowed back inside for two hours, despite freezing winter temperatures. Another client reported being locked out in the rain for over two hours by staff.

Prisoners report that the SIU yard is visible to incompatible populations, which can result in harassment and threats. Others have reported that yard is not offered every day, and the amount of time out can vary widely from one day to the next.

Accessing programs and services is challenging even for those who wish to participate. Many of our clients in SIUs report great frustration with a lack of follow through on promises made by staff. When they are offered opportunities to attend programs or have visits with Elders or chaplains, they often accept and prepare, but in the end wait in vain.

An Indigenous prisoner explained the lack of reliable follow-through on programs and Elder visits, and how it impacted his willingness to accept opportunities in the future:

*I'll tell you why I don't do programs:
Programs people came to my cell, asked me*

if I wanted to do programs, I said yes... And then they never came back. I got dressed, got excited, and they never came back. The Elder came to see me – said "I'll come back and we'll do a one-on-one smudge – and then never came back. This doesn't just frustrate me. It frustrates everyone. They come to a guy and say, you wanna come out? Yes, yes. And then they don't come back. And it's not like they come and tell you that this happened or that happened – they just don't come back. I told myself, instead of getting angry and frustrated, I'll just refuse everything.

Clients have also reported inaccuracies in the documentation about the time they spend out of their cells and interacting with others. One client reported that he kept detailed notes and, because he had left his cell so little, he knew exactly what time out he had received. He had been leaving his cell for 50 minutes of tier time per day (before staff decided to no longer provide tier time), yet several of the daily reports for that period record him as being out of his cell for over two, three and even four hours:

For two weeks I didn't come out of my cell except for tier time – I came out for an hour – more like 50 minutes because they don't give us the full hour. And yet, these papers they gave me has shower time, cultural activities, spiritual activities, staff interactions...

These reports are concerning, especially since the mandated IEDM reviews will only be triggered when the records show that a person has not had the requisite minimum time out of cell or time interacting with others for a certain number of days.

Until the culture of administrators and staff working in SIU changes, the discretionary direction in policy for staff to provide prisoners with time out of cells "beyond the minimum required number of hours" will not be realized in most cases, and many prisoners will continue to live in solitary confinement.

INDIGENOUS PRISONERS IN SIU

Drs. Doob and Spratt's October 26, 2020 report on the first nine months of SIU implementation reveals that the law governing the new regime is not effectively preventing the overrepresentation of Indigenous people in SIU, who were overrepresented in the previous administrative segregation regime.¹⁵² They found that Indigenous people represented 39 percent of stays in SIU, while representing 30.4 percent of prisoners in CSC custody (and 4.9 percent of the population in Canada).¹⁵³

While the legislation requires the consideration of Indigenous social history factors in SIU decisions,¹⁵⁴ there is no guidance on how these factors should be considered. In our clients' experiences, Indigenous social history factors are usually used against them, to deprive them of liberty. Often background factors are reported in such vague terms that they could be referring to anyone, and are only included as lip service.

Policy states that Indigenous social history must be considered in support of alternatives to remaining in an SIU. However, lack of investment in alternatives makes this provision hollow. Indigenous run healing lodges are generally available only to people classified to minimum security.

SIU policy guides institutions to advise prisoners placed in the SIU that they may have access to an Elder or Spiritual Advisor as well as to cultural, religious and spiritual practices, to the extent safely possible.¹⁵⁵ In practice, prisoners report differently. While some prisoners in SIU reported that they had regular access to Elders and were able to engage in cultural and spiritual practices, many advised that they rarely saw the Elders, and when they did, it was for a brief period. Prisoners also expressed frustration at being told they would be meeting with an Elder,

and the meeting being cancelled without an explanation.

During the first few months of the COVID-19 pandemic, Elders at Kent Institution were not allowed to be in the institution. This restriction was lifted in July or August of 2020, however, SIU prisoners' access to Elders remains limited. Prisoners report repeatedly placing written requests to meet with an Elder often to no avail. Yet, prisoners report that their SIU documents often state they were given the opportunity to meet with the Elder, whether the meeting actually occurred, or however short or cursory that visit may have been.

CONTINUED ISOLATION OF PEOPLE WITH MENTAL HEALTH DISABILITIES IN SIU

Despite the promise that prisoners' needs would be addressed in SIU and mental health services increased,¹⁵⁶ clients report there is insufficient access to mental health care in the SIUs. While access to mental health care is inadequate for federal prisoners in general, CSC's failings are pronounced in SIUs because people with untreated mental health needs are more likely to end up there, and to stay longer than if their health care needs were addressed. When the only option to get out of an SIU is to go into the maximum-security population, prisoners with untreated mental health disabilities will not be able to leave SIU because they cannot survive in that environment.

Prisoners in SIUs are often there because of behaviour caused by mental health disabilities. For example, symptoms of Post-Traumatic Stress Disorder include feeling on-edge because of an intense fear that officers or other prisoners might attack you at any moment. Many prisoners in SIUs previously spent prolonged periods in

segregation, and the damaging effects of that isolation do not disappear when a prisoner begins to be offered four hours out of their cell. Prisoners with long histories of being in solitary confinement often experience the same patterns of self-harming, and having correctional officers use force against them as a response, while in SIU.

Long term isolation can also result in social withdrawal.¹⁵⁷ These symptoms make participating in programs and socializing with others challenging.

One prisoner we spoke with was fearful of coming out with other prisoners. Security staff concluded that his various reports of other prisoners trying to kill him were unfounded, but did not then consider that he might be experiencing paranoia or a reaction to past trauma. He spent most days in his cell alone for over a month before coming out with one other person. When mental health staff came to his cell door to do their mandatory assessments, he refused. Despite all this, the SIU Review Committee's recommendation to the warden 50 days into his confinement in SIU stated, "No concerns noted from Health Care."

This individual made repeated requests for a psychological assessment to review the diagnoses that had been made during his childhood, to no avail. Instead of spending the next few months getting an assessment or diagnosis to uncover the underlying issues driving his behavioural difficulties and fear, he continued to sit in the SIU, months later, waiting for a transfer to a different region. Prisoners in his circumstances risk repeated transfers from maximum security institution to institution across the country, as their mental health continues to deteriorate in isolation.

Why is this still happening, when Public Safety Canada announced that investments would support enhanced assessment and early

diagnosis of prisoners to "reduce incidents resulting from an undiagnosed or untreated mental illness"?¹⁵⁸

In one case, a client in Saskatchewan had a diagnostic report prepared by mental health professionals with directions for how staff should accommodate his disabilities, but recent paperwork reveals that staff are not aware of these directions.

SIUs are also being used to house prisoners with severe mental illnesses who cannot function on regular units because of their disabilities. For instance, one prisoner who is certified under the *Mental Health Act*, has been warehoused in the Kent SIU for months after being transferred away from a CSC treatment centre.

We have received many reports that mental health and counselling services are insufficient in Kent's SIU, with requests for trauma or grief counselling going unanswered. One prisoner reported:

I haven't seen mental health since I got here. I am borderline schizophrenic I asked for mental health. I know my patterns – I get loud and I know I need help before it gets worse. So I asked for help. I submitted a request for mental health, but no one came to see me.

Some prisoners have reported that when health care staff do their daily rounds and ask about their mental health, security staff are present. This can understandably impact a person's willingness to disclose issues they are facing and is a clear violation of doctor-patient confidentiality.

Health and mental health services are not available at all times in SIUs, so if someone has a mental health crisis late at night, correctional officers are left to respond. As the Correctional Investigator has written: "The Service continues to assume the risk of running prisons without 24/7 health care coverage."¹⁵⁹

Despite legal requirements that decision makers consider and be responsive to prisoners' state of health and health care needs,¹⁶⁰ and mandatory mental health assessments for prisoners in SIU,¹⁶¹ the new law continues to allow CSC to segregate prisoners with mental health disabilities, and to do so indefinitely.

Policy provides no guidance on how health care needs should factor into a decision regarding a person's continued confinement in an SIU.¹⁶² Without such guidance, the consideration of health care needs becomes mere lip service.

Where a staff member believes confinement in an SIU is having a detrimental impact on a person's health, they are required to refer the person's case to health care.¹⁶³ Grounds for this belief include refusing to interact with others, engaging in self-injurious behaviour, showing symptoms of drug overdose, or showing signs of emotional distress.¹⁶⁴

If a referral to health care is made, health care staff are not required to take action to protect the health of their patients. Legislation only provides that health care staff *may* recommend to the warden that a person be moved from the SIU or that their conditions of confinement be altered.¹⁶⁵

This safeguard appears to be rarely used. CSC health care staff lack the clinical autonomy and independence necessary to put the interests of their patients first. This has an impact on the patient's trust, which leads some to refuse mental health assessments altogether. CSC healthcare providers' dual loyalty to both CSC (as their employer) and their patients also has the potential to impact the medical opinions formed, and the willingness of health care professionals to speak up regarding the wrongful treatment of an individual.¹⁶⁶

Legislation allows for a health care professional's recommendation to be overruled by non-health

care professionals in a cascading scheme of reviews.¹⁶⁷ This is inconsistent with the clear language in the United Nations *Mandela Rules* that clinical decisions may only be taken by the responsible health care professionals and may not be overruled or ignored by non-medical prison staff.¹⁶⁸

SIU REVIEWS

The former administrative segregation regime was criticized because reviews were done internally and suffered from bias. In his decision in *BC Civil Liberties v Canada*, Justice Leask noted the evidence that internal segregation reviews gave little weight to the prisoner's account while "the institution's information is taken to be presumptively reliable" and senior administrators give deference to front line staff.¹⁶⁹

The legislation and policy governing SIUs have implemented external oversight. This has proven to be the most significant and meaningful change to the regime.

However, the new regime calls for a number of internal reviews of an SIU placement before an independent review is triggered. These internal reviews suffer from the same lack of independence that Justice Leask was critical of in his decision. The Correctional Investigator raised concern with this lack of independence in the SIU regime, noting that the warden's decision to transfer someone to SIU is neither impartial nor independent simply because the transfer is "authorized" by subordinate administrators.¹⁷⁰

The new regime provides for SIU Review Committees to make recommendations to decision makers for their reviews of SIU placements.¹⁷¹ SIU Review Committees are made up of CSC staff of the prison where the SIU is located.¹⁷² Although there is provision for

inclusion of outside volunteers or stakeholders in these committees, this is not mandatory,¹⁷³ and PLS has not seen Kent's SIU Review Committees include anyone other than Kent staff.

SIU Review Committees refuse to share documents with counsel in advance of hearings, or to advise counsel of the date and time of hearings, which makes the right to counsel in these hearings illusory. Despite law requiring the SIU Review Committee to provide the prisoner with advanced notice of their proposed recommendations,¹⁷⁴ at a hearing in February 2020, the SIU Manager advised counsel that their practice is *not* to give advance notice of their recommendations. This compromises the right to know the evidence against you and the opportunity to prepare representations for the review.

In our experience, SIU Review Committee recommendations to decision makers do not adequately reflect the representations made by the prisoner to the Committee at the hearing. It is unclear whether SIU Review Committees are providing the written submissions made by prisoners or their counsel to the decision maker. The SIU Review Committee tends to recommend the *status quo*, as the members are likely to defend their own administration of the prisoner's SIU placement. Internal CSC decision makers tend to adopt the recommendation of the SIU Review Committee.

IEDM reviews have provided important oversight over the use of isolation through SIUs. IEDM decisions tend to take into consideration the environment and context of a person's behaviour. In many cases, IEDM recommendations, if implemented, would have a positive impact on ending the cycle of isolation that prisoners with mental health disabilities experience in a maximum security environment, including transfer to treatment centres and access to culturally appropriate healing services for Indigenous prisoners.

Unfortunately, external reviews do not take place in the usual course of events until a prisoner has spent 90 days in SIU – well over the recognized time-period of 15 days when individuals are likely to suffer negative effects of isolation.¹⁷⁵ IEDMs can order the prisoner be removed from SIU in these reviews.

If a prisoner has not spent at least four hours out-of-cell or interacted with others for at least two hours for the last ten consecutive days, an IEDM reviews the case and may make *recommendations* to CSC on reasonable steps to take to provide opportunities out of cell and opportunities to interact with others.¹⁷⁶ The IEDM cannot order CSC to remove the prisoner from SIU until a further seven days have passed.¹⁷⁷

This means that, even if a prisoner were isolated for 24 hours per day, it would take at least 12 days for an independent decision maker to order them removed – and perhaps even longer for the prisoner to actually be moved. These reviews may not be triggered if Kent staff log time incorrectly, which has been reported by our clients. Often people who are not getting out of their cells or are not receiving adequate human contact are people with preexisting mental health disabilities, where it is recognized that any amount of time in solitary confinement is cruel.

In one case, an IEDM ordered a client's removal from the SIU, however, he had still not been moved three days later. He seriously self-harmed and was taken to hospital and then to a CSC regional treatment centre for one week, after which he was returned to the SIU.

An IEDM can also order removal from SIU if health care staff recommend removal of a person from the SIU or a change of conditions, but the warden has disagreed, another health care professional has provided advice to a committee, *and* the committee has decided

the health care recommendation should not be implemented.¹⁷⁸

The difficulty with the SIU process is that IEDMs can order removal from SIU, but they cannot direct what alternatives must be implemented, such as placement in an Indigenous-run healing lodge or transfer to a community forensic psychiatric hospital. In most cases, if removed from SIU, the prisoner would be released to the open population in Kent. With the restrictive movement routine at Kent described earlier in this report, a return to open population is not a significant improvement on a prisoner's conditions of confinement.

For most prisoners who end up in SIU, release to the open population is not an adequate alternative to SIU, since many end up in the SIU because they struggle in the maximum-security environment, often as a result of mental health disabilities and trauma. Merely releasing someone from SIU to maximum security will not break the cycle of emotional distress, use of force, self-harm and isolation.

DENIAL OF ACCESS TO COUNSEL FOR SIU REVIEWS

The new law provides for prisoners transferred to an SIU to have a right to counsel, and policy affirms the responsibility of staff to facilitate access to counsel.¹⁷⁹ However, the policy leaves the door open for staff to obstruct the right to counsel because it does not specifically identify what staff need to do to facilitate this right. Kent's administration and staff have been actively preventing prisoners in segregation, and then SIU, from exercising the right to counsel.

Before the implementation of SIUs, PLS ran a bi-weekly legal clinic in the segregation unit at Kent for four years until it was shut down by

management in January 2019, one week after the BC Court of Appeal ordered that segregated prisoners must be provided with enhanced rights to legal counsel.

The legal clinic was important to ensure that the most vulnerable prisoners who tend not to access legal services by telephone on their own initiative had access to counsel for segregation reviews.

The clinic also provided outside observation of the conditions of confinement in segregation. Prior to the commencement of the legal clinic in February 2015, PLS received regular reports of cells contaminated with feces, urine and blood, correctional officers slipping razor blades underneath the cell door of prisoners known to be at risk of suicide and self-harm, correctional officers assaulting prisoners or instructing prisoners to assault others, correctional officers using demeaning language to address prisoners, and officers antagonizing prisoners in emotional distress.

Conditions in Kent's segregation unit began to improve during the time that PLS had a regular presence there. The clinic allowed PLS to walk the range and ask people through their cell doors if they wanted help. Many of the people who responded were those who would not be able to contact us on their own because of their mental health disabilities.

After the cancellation of the legal clinic, PLS began to receive reports of inhumane conditions of confinement again, including several reports that prisoners were put in cells with feces all over the walls, windows, food slot and mattresses. Prisoners were denied proper cleaning supplies or adequate water to clean with. Prisoners reported being denied a change of clothes for several days, and hygiene items or personal property for many days. Several clients reported that on one occasion when a toilet overflowed and their cells flooded with

biohazard water, they were forced to remain in these contaminated cells for six hours.

Clients reported being denied legal calls, not receiving call back requests placed by legal representatives, being denied request forms or sharing of information forms, having forms “lost” once submitted, and not getting their documents brought to the front gate for PLS’ couriers to pick up.

Despite all of this, the legal clinic was not reinstated either in the administrative segregation unit or in the SIU. Three prisoners submitted national-level grievances in March 2020 regarding the cancellation of the legal clinic, but no response to these grievances has been received. Two of the three advised that they have not even received a confirmation of receipt of the grievance. CSC refuses to correspond with counsel regarding these grievances.

Legislation governing SIUs strengthens the right to counsel as part of the review process. However, Kent staff have actively obstructed SIU prisoners’ right to counsel.

The law requires CSC to tell prisoners who are authorized to transfer to an SIU that they have a right to counsel, and to facilitate that right.¹⁸⁰ Prisoners in the SIU regularly report that they were not told of or given these rights upon admission. With no legal clinic at Kent’s SIU, we are concerned that prisoners may not be aware of their right to legal assistance when their liberty rights are at issue.

Four days after the opening of the new SIU, Kent staff informed PLS that they would no longer give prisoners messages to call their legal representatives. Five months later, after PLS filed an application for mandamus in Federal Court for an order that Kent facilitate call back requests, Kent reinstated call back requests by fax.

A number of prisoners in Kent’s SIU have reported difficulties accessing legal calls, including difficulties getting request forms to make a request for a legal call, staff refusing to take completed request forms, no responses to requests for several days, and staff providing the opportunity to make legal calls only after PLS phone lines were closed for the day. Some clients have not been represented at SIU reviews because they have not been able to call our office in time for assistance, despite their best efforts.

Clients report being told by officers to hang up after 20 minutes while they were still on hold waiting to speak with their legal advocate.

Prisoners also report concerns about confidentiality of legal calls, which are provided in a room where officers can hear everything.

Since early 2019, PLS has experienced great difficulty getting disclosure of documents for segregation and now SIU reviews. For PLS or other counsel to provide effective legal representation to prisoners in SIU during reviews, we need to review CSC’s assessments and recommendations, so that submissions can be responsive to CSC’s concerns.

CSC requires prisoners to sign consent forms before they share information with their lawyers. The new SIU policy requires prisoners authorized for transfer to an SIU be “provided an opportunity to sign a consent form for the release of information to their legal counsel and/or assistant.”¹⁸¹ Despite this, we still hear reports of staff refusing to give prisoners consent forms. Staff sometimes tell PLS that the client had not signed a consent form when the client says that they have. Kent does not accept PLS’ forms authorizing release of information.

Even with a signed consent form in hand, Kent refuses to provide documents directly to counsel. In January 2020, Kent administration

advised in writing that it would only share materials with the prisoner directly. Logic would lead to the conclusion that if staff must facilitate the signing of a consent form for the sharing of information, information would then be shared,¹⁸² but without policy explicitly enumerating a requirement to provide documents to counsel, Kent's administration refuses to do so.

Prisoners often have difficulty getting their documents to us by mail, courier or fax in time for their SIU reviews. The cost of faxing or mailing documents was prohibitive until after PLS filed an action in Federal Court challenging this refusal to provide documents to counsel, and CSC waived the cost of outgoing faxes to counsel during the COVID-19 pandemic.

Even with free faxing, some clients' mental health disabilities make it impossible for them to follow the process to have documents faxed, or Kent staff still do not fax the documents after a fax request form is submitted. This has resulted in PLS being forced to make submissions on behalf of a client without knowing how CSC has presented the facts of the case, what concerns CSC has about our client being released from SIU, or what alternatives to SIU have been considered. It is a serious impediment to effective legal representation.

Starting in early 2019, Kent also refused to tell PLS the date and time of segregation reviews, making it impossible for us to appoint lawyers to represent prisoners at these hearings. This problem has continued to arise with hearings in the SIU.

Without knowing the date of reviews, we do not know the deadline for making written submissions. In some cases we are forced to make written submissions without knowing whether we have missed the review, and without documents.

In one case, Kent staff ignored a request by a PLS advocate for documents and the time of an SIU review so that she could participate on the client's behalf. Kent called the advocate at the commencement of the hearing without any advance notice, and when she was unavailable on the first attempt, scolded her when she was able to answer the call a few minutes later for delaying the hearing.

Even when Kent does disclose the date and time of hearings, they have refused prisoners the right to be represented by counsel. On one occasion, counsel was refused entry to a segregation review hearing after arriving at the institution at 9:00 am, the time the hearing was scheduled to commence, after he had driven approximately two hours to attend. On another occasion, a lawyer was unable to attend an SIU review hearing because a snowstorm made the roads unsafe. He phoned to postpone the hearing, but Kent staff brought the prisoner in and proceeded with the hearing without counsel.

CSC's SIU policy requires prisoners to submit a request to the Chairperson of the SIU Review Committee for legal counsel to attend no later than three working days prior to the scheduled review. This is the same day on which CSC notifies the prisoner of the review, essentially requiring the prisoner to get their documents to counsel, speak on the phone with counsel, and submit the request for counsel to attend, all in one day. This is practically impossible.

Kent staff also obstruct prisoners' right to meet with counsel. Legal visits are routinely in rooms that are not soundproof, with officers standing outside the door or sitting in an office next door where they are able to listen to the privileged conversation. Kent staff sometimes make lawyers and advocates wait for more than an hour before bringing a client to the meeting room, or interrupt client meetings after only a few minutes for things like count or a sudden

lockdown. Sometimes not enough chairs are provided, and PLS staff must stand or sit on the dirty floor during client meetings. On multiple occasions, clients have been forced to sit in a cage in the corner of the room for the duration of the meeting.

Kent staff have also informed PLS that clients declined meetings with us when this was not true.

This type of obstructionism can be devastating for a prisoner who is being subjected to solitary confinement and has sought legal assistance, especially if the prisoner suffers from depression or anxiety, or engages in self-harm – all well documented symptoms of isolation. It is certainly a breach of the legal obligation to facilitate access to counsel.

Far from reflecting a new and better system that respects the rights of prisoners, these reports echo those heard by the Standing Senate Committee on Human Rights in 2017-18 in respect of the previous segregation units.¹⁸³

As CSC transitions from the use of segregation to the use of SIUs, it is especially critical that prisoners have access to legal aid services to ensure SIUs do not replicate the conditions of segregation which have been found unconstitutional by the courts. When CSC prevents prisoners from accessing legal counsel, they cut them off from the outside world, without recourse. This contributes to an environment where human rights abuses and cruel treatment can continue unchecked.

ALTERNATIVES TO SIU

Often the only alternatives to SIU placement are return to the maximum-security population, or an inter-regional transfer to another maximum-security prison. Many prisoners before the legislation change

would do a “cross country tour” of segregation units in maximum security institutions. We do not see a change in this pattern with the SIU regime. Vulnerable prisoners who were unable to integrate into the population in maximum security at one institution quickly face the same issues in another.

For example, a review by an IEDM of an Indigenous client noted his “anxiety over his interactions with officers he is not familiar with, or with other officers that he has had negative interactions with, tend to lead him to self harm and/or become more aggressive.” The IEDM questioned “whether the mental health issues that [he] must overcome can be dealt with without serious intervention that would most likely not be available for this individual in the general population or in the SIU.” He also concluded that “[d]ue to the Inmate’s mental health issues it is likely that his incarceration in either a maximum security range at a Federal Prison or the SIU will eventually result in serious adverse outcomes to either the Inmate or to others,” and that “an extended stay in the SIU would be counter to the principles set forth in the [*Corrections and Conditional Release Act*].”

Another client with a history of being held in segregation was moved in and out of the SIU numerous times since it came into existence. At one point, he was held in the SIU for approximately three months and rarely left his cell. He is Indigenous and his family are residential school survivors. He is diagnosed with Post Traumatic Stress Disorder and has attempted suicide many times. Correctional officers often use force against him, which re-traumatizes him, leading to more self-harm.

An IEDM who reviewed this client’s SIU placement concluded: “[t]here is a strong probability that, should serious intervention not be taken, [this person] will die in jail as a result of a successful suicide, or that he will enter back into society with the same issues that brought

him there.” This is the client referred to at page 52, who was ordered removed from SIU and who seriously self-harmed after the order was not complied with after three days. He was transferred to a regional treatment centre for one week and then returned to SIU, where he self-harmed again and was again brought to a treatment centre.

Another client (referred to on page 50) was held in the SIU on an “extended leave” while being certified under the *Mental Health Act*. This provision is supposed to be used to allow psychiatric patients to live in the community if their doctor feels it would be therapeutic and beneficial to them. This client received an IEDM review after being in isolation for 11 weeks because he was not coming out of his cell or receiving meaningful human contact. He described spending most of his days alone, pacing back and forth in his cell. Another prisoner reported to PLS that correctional officers were harassing and abusing him, and denying him access to legal counsel. The IEDM made strong recommendations, including that he be transferred to a treatment centre or psychiatric hospital for an assessment of his treatment needs and to determine proper placement, that he be provided alternative options for time out of cell and that CSC customize services and interventions for him. To date, we are not aware of CSC meaningfully implementing any of these recommendations.

Without the power to order CSC to implement specific alternatives to SIU or placement in the open population of maximum-security prisons, independent reviews will not result in meaningful, long-term changes for the most vulnerable prisoners.

CSC should ask questions such as: Why have programs not been effective in the past for this person? Were they culturally appropriate? Does this person have a learning disability? Do they have a history of trauma or victimization

that is leading to symptoms of Post-Traumatic Stress Disorder or safety concerns? The answers to these questions should inform alternatives to SIU placement. Qualified, independent behavioural counsellors, occupational therapists and social workers should be available in all men’s and women’s prisons to provide services to promote mental well-being and to avoid prisoners being placed in SIU in the first place.

If a prisoner has a history of not benefiting from programs or of refusing programs or time out with others, the reason for this should be explored through a mental health assessment. If a prisoner refuses the assessment at the door of their cell, more needs to be done to make a connection with the prisoner and to develop trust in a safe environment.

Prisoners with serious mental illnesses should be transferred to community-based psychiatric hospitals under s 29 of the *Corrections and Conditional Release Act*, where they can receive appropriate mental health treatment in a therapeutic environment. As the Standing Senate Committee observed prior to the passing of the new legislation, this approach would be more effective, less expensive, and better aligned with Canada’s human rights obligations.¹⁸⁴

Without adequate investment in alternatives to SIUs, including meaningful investment in mental health services to prisoners generally, funding for transfers to community-based forensic hospitals under s 29 of the *Corrections and Conditional Release Act* and significantly more funding for Indigenous-run healing lodges, orders to remove prisoners from SIU will not result in meaningful changes to the prisoner’s life or ability to cascade to lower levels of security.

Correctional decision makers will continue to use isolation until legislation prohibits its use, and until correctional staff culture becomes truly committed to its abolition.

VIII. RECOMMENDATIONS

1. We recommend that legislation prohibit the use of solitary confinement as it is defined by the United Nations' in the *Mandela Rules*.
2. We recommend legislation remedy the widespread use of isolation not specifically permitted by law.

REGARDING RESTRICTIVE MOVEMENT ROUTINES

3. We recommend that legislation prohibit restrictive movement routines.
4. During waking hours, the norm should be free movement and the opportunity for meaningful activities and meaningful human interaction. This could include a variety of organized recreational, educational, cultural, spiritual and occupational activities facilitated by qualified staff, volunteers, community service providers and peers, and should include unstructured time indoors and out of doors.

REGARDING LOCKDOWNS

5. We recommend that legislation and policy limit lockdowns to truly exceptional emergencies and security incidents.
6. We recommend that legislation require any lockdowns to be approved by independent external decision makers if they are to be used for more than 24 hours, or if more than five lockdowns are imposed at a given institution within a year. A lockdown that is

approved shall be independently reviewed every 24 hours. CSC must demonstrate that the lockdown is necessary according to legislative criteria, represents the least restrictive measure necessary and that the duration is for the shortest amount of time possible. Independent external decision makers must have the authority to make orders to end a lockdown and orders respecting conditions of confinement.

7. We recommend that legislation and policy require that for the duration of a lockdown, all prisoners be provided with a minimum of four hours out of their cell daily, including daily access to more than two hours of meaningful human contact, telephones, showers, and at least one hour of outdoor exercise (or indoor exercise in poor weather).
8. We recommend legislation requiring prisoners to be provided with clear and timely information on the reasons for the lockdown, the daily routine and the expected duration.
9. We recommend that health care and Indigenous healing services be provided to prisoners independently of CSC, and that these professionals provide activities and counselling to prisoners during a lockdown, particularly for prisoners with pre-existing mental health disabilities.

REGARDING ISOLATION FOR MEDICAL OR MENTAL HEALTH REASONS

10. We recommend that legislation require any placements in observation cells for the purpose of monitoring prisoners at risk of self-harm or suicide be authorized by independent registered mental health professionals, with reasons provided to the prisoner and their legal representative. Such placements must not exceed six hours and must be imposed only at treatment centres.
11. We recommend legislation require that isolation for medical purposes be authorized by independent registered health care professionals, with reasons provided to the prisoner and their legal representative.
12. We recommend that individuals placed in isolation for medical or mental health reasons must be offered at least four hours of meaningful human contact per day. If a prisoner's mental health is poor or deteriorating, they should be provided additional opportunities for meaningful human contact. Prisoners should be offered daily time out of their cell including outdoors if medically safe. They should have regular and no-cost access to telephone and video visitation with family, community supports and legal representatives. Within their cells, they should have access to televisions and increased access to canteen and free snacks.
13. We recommend prisoners with serious mental illnesses be transferred to community-based psychiatric hospitals under s 29 of the *Corrections and Conditional Release Act*, where they can receive appropriate mental health treatment in a therapeutic environment.
14. We recommend that specialized Therapeutic Units address the unique needs of prisoners with mental health disabilities, and that they be adequately funded and sufficiently staffed with independent professionals including nurses, social workers, Elders, counselors, psychologists and psychiatrists as appropriate to provide robust and culturally appropriate treatment and high levels of meaningful human contact.
15. We recommend that Canada and CSC amend their laws and policies related to medical professionals to be in full accordance with the *Mandela Rules*.

REGARDING STRUCTURED INTERVENTION UNITS

16. We recommend that Canada institute legislative time limits of 15 continuous days in an SIU, with an annual limit of 30 days.
17. We recommend that Canada amend legislation to ensure that conditions of confinement in SIUs do not constitute solitary confinement.
18. We recommend that meaningful human contact be defined in policy, and that it be acknowledged that it must be meaningful to the individual.
19. We recommend that all prisoners in an SIU have access to a television in their cell within one day.
20. We recommend that governments fund legal aid to provide prisoners with legal representation in SIUs in each jurisdiction in Canada.

21. To facilitate meaningful access to counsel, we recommend legislation or policy providing:
- That outside agencies should be allowed to provide in-person legal aid clinics in SIUs on a regular basis.
 - That CSC staff must deliver and facilitate all legal callback requests within 24 hours.
 - That CSC must share relevant documentation directly with counsel at least three days in advance of all SIU reviews, without requiring a signed consent form.
 - That outgoing faxes to counsel be provided to all prisoners free of charge and within one working day.
 - That prisoners be provided sufficient time to meet with counsel in person, in a confidential room.
 - That all necessary steps be taken to facilitate the attendance of counsel at hearings, including advising counsel of the time and date of the hearing as soon as it is scheduled and confirming requests by counsel to attend.
22. We recommend legislation be amended to provide Independent External Decision Makers the power to order that specific alternatives to SIU be implemented, including transfers under s 29 and 81 of the *Corrections and Conditional Release Act*.
23. We recommend legislative amendments to provide Independent External Decision Makers the power to order specific changes to a prisoner's conditions of confinement and the power to investigate allegations of staff misconduct in SIUs.
24. We recommend Canada significantly increase funding for Indigenous-run healing lodges and allow Indigenous communities to determine eligibility, in order to address the overrepresentation of Indigenous prisoners in SIU and in maximum security.
25. We recommend that legislation be amended to provide Independent External Decision-Maker reviews of SIU placements within five days, and every subsequent 15 days thereafter. Sufficient resources should be allocated to Independent External Decision Makers for them to be able to fulfil their roles.
26. We recommend a legislative amendment to make it clear that health care considerations under s 87(a) of the *Corrections and Conditional Release Act* take priority over the criteria for placement in SIU.
27. We recommend legislative amendments to provide Independent External Decision Makers the power to order independent medical and mental health assessments, including culturally appropriate assessments for Indigenous and other racialized prisoners.
28. We recommend that the SIU Review Committee be abolished, and law and policy be clear that prisoners have the right to be represented by counsel at an oral hearing before the actual decision maker.
29. We recommend that CSC invest in qualified, independent behavioural counsellors, occupational therapists and social workers to be available in all men's and women's SIUs to provide services to promote mental well-being.

REGARDING STAFF CULTURE

30. We recommend that CSC fund an external review of staff culture at all levels within CSC to develop a plan to change the culture of corrections, with a focus on the dignity and human rights of prisoners.
31. We recommend that any staff who behave inappropriately in relation to prisoners held in any form of isolation, or who deny them their rights, be disciplined and removed from working with vulnerable prisoners.
32. We recommend that all correctional officers be required to wear body cameras that record video and audio whenever they are working in areas with prisoners.

ENDNOTES

- 1 Danielle Sered, “Why Incarceration Doesn’t Reduce Violence” (5 December 2019) (podcast), online: *At Liberty* <aclu.org/podcast/why-incarceration-doesnt-reduce-violence-ep-76>.
- 2 *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, 21 December 2015, UN Doc A/RES/70/175 (2015) Rule 43 [*UN Mandela Rules*].
- 3 *Corrections and Conditional Release Act*, SC 1992, c 20, ss 3, 4(c), 4(d) [CCRA].
- 4 *BCCLA v Canada*, 2018 BCSC 62 at paras 185, 194, 247 [BCCLA, 2018 BCSC]; *BCCLA v Canada (Attorney General)*, 2019 BCCA 228 at para 90 [BCCLA, 2019 BCCA]; *CCLA v Canada*, 2017 ONSC 7491 at paras 238, 240, 252 [CCLA, 2017 ONSC]; *CCLA v Canada*, 2019 ONCA 243 at paras 72-77 [CCLA, 2019 ONCA]; *Brazeau v Attorney General (Canada)*, 2019 ONSC 1888 at para 262 [Brazeau, 2019 ONSC]; *R v Capay*, 2019 ONSC 535 at paras 210-270, 379 [Capay]; *Reddock v Canada*, 2019 ONSC 5053 at paras 190-198 [Reddock, 2019 ONSC]; *Brazeau v Canada (Attorney General)*, 2020 ONCA 184 at paras 16-18 [Brazeau, 2020 ONCA]; *Sheepway v Hendriks*, 2019 YKSC 50 at paras 59, 68, 116, 125-127 [Sheepway]; *Francis v Ontario*, 2020 ONSC 1644 at para 269 [Francis, 2020 ONSC]; *R v Ugbaja*, 2019 ONSC 96; *R v Prystay*, 2019 ABQB 8; Canada, Standing Senate Committee on Human Rights, *Interim Report – Study on the Human Rights of Federally-Sentenced Persons: The Most Basic Human Right is to be Treated as a Human Being* (Ottawa: Standing Senate Committee on Human Rights, 2019) at 29 [Standing Senate Committee on Human Rights Interim Report].
- 5 Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique* (2018) at 371-374 [Haney 2018]; Stuart Grassian, *Psychiatric Effects of Solitary Confinement* (2006) at 335-336, 350-354 [Grassian 2006]; Sharon Shalev, *A Sourcebook on Solitary Confinement* (2008) at 15-17 [Shalev 2008]; Sharon Shalev, “Solitary Confinement as a Prison Health Issue” in Stefan Enggist et al, eds, *WHO Guide to Prisons and Health* (Copenhagen: World Health Organization, 2014) 27 at 33 [Shalev 2014]; Fatos Kaba et al, “Solitary Confinement and Risk of Self-Harm Among Jail Inmates” (2014) 104:3 *Am J Public Health* 442; Lisa Kerr, “The Chronic Failure to Control Prisoner Isolation in US & Canadian Law” (2015) 40:2 *Queen’s Law Journal* at 495-497 [Kerr 2003]; Also see cases listed at note 4.
- 6 Brian O Hagan et al, “History of Solitary Confinement is Associated with Post-Traumatic Stress Disorder Symptoms among Individuals Recently Released from Prison” (2018) 95:2 *J Urban Health* 141; *Reddock*, 2019 ONSC, *supra* note 4 at paras 180, 194; *Capay*, *supra* note 4 at paras 221, 226.
- 7 Grassian 2006, *supra* note 5 at 346-354; Dr John M W Bradford, *Re: Psychiatric Opinion – Inmate Movement at Kent Institution* (November 2019) at 6, online: < <https://prisonjustice.org/wp-content/uploads/2020/10/Bradford-Report-with-addendum.pdf> > [Bradford Report]; Canada, The Honourable Louise Arbour Commissioner, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (Ottawa: Public Works and Government Services Canada, 1996) at 81 [Arbour Report]. (Online: <http://www.caefs.ca/wp-content/uploads/2013/05/Arbour_Report.pdf>); *CCLA*, 2019 ONCA, *supra* note 4 at para 73; *Capay*, *supra* note 4 at para 222.
- 8 Dr Terry Allen Kupers, *Affidavit of Terry Kupers* (November 2019) at 6, online: <<https://prisonjustice.org/wp-content/uploads/2020/10/Kupers-Report.pdf>> [Kupers Report]; Haney 2018, *supra* note 5 at 368, 374-375; Grassian 2006, *supra* note 5 at 329, 333, 335-336, 350-355; American Civil Liberties Union, *Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States* (ACLU: New York, 2014) at 6-7; Bradford Report, *supra* note 7 at 6-7; Shalev 2008, *supra* note 5 at 15-17; Shalev 2014, *supra* note 5 at 29; Standing Senate Committee on Human Rights Interim Report, *supra* note 4 at 29; Kerr 2003, *supra* note 5 at 496; *CCLA*, 2019 ONCA, *supra* note 4 at para 76; *BCCLA*, 2019 BCCA, *supra* note 4 at para 90; *BCCLA*, 2018 BCSC, *supra* note 4 at para 247.
- 9 Grassian 2006, *supra* note 4 at 332.
- 10 Craig Haney, “Mental health issues in long-term solitary and ‘supermax’ confinement” (2003) 49:1 *Crime & Delinquency* 124 at 142.
- 11 William H Reid, “Offenders with Special Needs” (2000) 6:5 *Journal of Psychiatric Practice* 280 at 281.
- 12 Shalev 2014, *supra* note 5 at 28.
- 13 Kupers Report, *supra* note 8 at 5; Raymond F Patterson & Kerry Hughes, “Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999 to 2004” (2008) 59:6 *Psychiatric Services* 676 [Patterson & Hughes]; Bruce B

Way et al, “Factors related to suicide in New York state prisons” (2005) 28:3 Int J Law Psychiatry 207; Daniel P Mears & Jamie Watson, “Towards a Fair and Balanced Assessment of Supermax Prisons” (2006) 23:2 Justice Quarterly 232.

14 Lauren Brinkley-Rubinstein et al, “Association of Restrictive Housing During Incarceration with Mortality After Release” (2019) 2:10 JAMA Network Open; Christopher Wildeman & Lars H Andersen, “Solitary confinement placement and post-release mortality risk among formerly incarcerated individuals: a population-based study” (2020) 5:2 Lancet Public Health e107.

15 Christopher Wildeman & Lars H Andersen, “Long-term consequences of being placed in disciplinary segregation” (2020) 58:3 Criminology.

16 *Sheepway*, *supra* note 4 at para 127; Bradford Report, *supra* note 7 at 7 (Response #1); Kupers Report, *supra* note 8 at 10-13; Debra Umberson & Jennifer Karas Montez, “Social Relationships and Health: A Flashpoint for Health Policy” (2010) 51(Suppl) J Health Soc Behav S54 [Umberson & Montez 2010].

17 Refer to note 8.

18 Sara Glowa-Kollisch et al, “From Punishment to Treatment: The “Clinical Alternative to Punitive Segregation” (CAPS) Program in New York City Jails” (2016) 13:2 Int J Environ Res Public Health 2 at 8.

19 Bradford Report, *supra* note 7 at 7 (Response #1); Kupers Report, *supra* note 8 at 10.

20 Bradford Report, *supra* note 7 at 7 (Response #1); Kupers Report, *supra* note 8 at 6, 13; Also see expert evidence of Dr. Bradford accepted by the Court in *Capay*, *supra* note 4.

21 Kupers Report, *supra* note 8 at 10-11.

22 See Chapter IV.

23 Kupers Report, *supra* note 8 at 13-14; Also refer to notes 4-18.

24 Bradford Report, *supra* note 7 at 7 (Response #1); *Sheepway*, *supra* note 4 at paras 59, 68, 116; Shalev 2014, *supra* note 5 at 33; Umberson & Montez 2010, *supra* note 16 at 1; Also refer to notes 4-18.

25 Refer to note 4.

26 *BCCLA*, 2019 BCCA, *supra* note 4; *CCLA*, 2019 ONCA, *supra* note 4.

27 Supreme Court of Canada, Docket 38814, Attorney General of Canada v British Columbia Civil Liberties Association, et al, online: < <https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=38814>>; Patrick White, “Canada abandons solitary confinement appeal to Supreme Court” *The Globe and Mail* (21 April 2020), online: < <https://www.theglobeandmail.com/canada/article-canada-abandons-solitary-confinement-appeal-to-supreme-court/>>.

28 *BCCLA*, 2019 BCCA, *supra* note 4 at paras 161-162; *CCLA*, 2019 ONCA, *supra* note 4 at para 25.

29 *UN Mandela Rule*, *supra* note 2, Rule 44; Also see *CCLA*, 2019 ONCA, *supra* note 4 at paras 23, 28; *BCCLA*, 2019 BCCA, *supra* note 4 at para 75; *CCLA*, 2017 ONSC, *supra* note 4 at para 61; *Francis*, 2020 ONSC, *supra* note 4 at para 269; *Brazeau*, 2020 ONCA, *supra* note 4 at paras 82, 89.

30 *UN Mandela Rule*, *supra* note 2, Rule 45.

31 *BCCLA*, 2019 BCCA, *supra* note 4 at para 158; *CCLA*, 2019 ONCA, *supra* note 4 at paras 5, 115, 126, 130.

32 *UN Mandela Rule*, *supra* note 2, Rules 43-44; Also see *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, UNTS 1465 (entered into force 26 June 1987, ratified by Canada 24 June 1987).

33 *CCLA*, 2019 ONCA, *supra* note 4 at paras 4-5, 99. Note: That issue was not before the British Columbia Court of Appeal (*BCCLA*, 2019 BCCA, *supra* note 4 at para 95).

34 *CCLA*, 2019 ONCA, *supra* note 4 at paras 122-125.

35 *Francis*, 2020 ONSC, *supra* note 4. Note: While this case was in respect of provincial institutions, the Court stated that the way in which administrative segregation was implemented in Ontario was virtually identical to how it was implemented in federal penitentiaries (See paras 184-186, 211, 525). Further, in *Brazeau*, 2019 ONSC, *supra* note 4 the Court found that seriously mentally ill *federal* prisoners involuntarily placed in administrative segregation for more than 30 days are cruelly and unusually treated (para 377).

36 *BCCLA*, 2019 BCCA, *supra* note 4 at para 167.

37 *BCCLA*, 2019 BCCA, *supra* note 4 at para 165.

- 38 *BCCLA*, 2018 BCSC, *supra* note 4 at para 248; Also see the Arbour Report, *supra* note 7 at 81; *Reddock*, 2019 ONSC, *supra* note 4 at para 178; *Capay*, *supra* note 4 at para 222.
- 39 CCRA, *supra* note 3, s 36.
- 40 CCRA, *supra* note 3, ss 4(c), (d).
- 41 *Sheepway*. *supra* note 4.
- 42 *Canadian Human Rights Act*, RSC 1985, c H-6, ss 3, 5.
- 43 CCRA, *supra* note 3, ss 4(c), (d).
- 44 CCRA, *supra* note 3, ss 3, 28, 69, 70, 87.
- 45 *Corrections and Conditional Release Regulations*, SOR/92-620, s 4 [*Regulations*].
- 46 Canada, Correctional Service Canada, *Commissioner's Directive 568-1: Recording and Reporting of Security Incidents* (In effect 2016-06-06) (Ottawa: Correctional Service Canada, 2016), Annex B.
- 47 Canada, Correctional Service Canada, *Security Bulletin: Institutional Lockdowns*, No. 99-07 (12-04-1999) [Security Bulletin 99-07]. Note: An hour of daily exercise is also required by regulation (See *Regulations*, *supra* note 45, s 83(2)(d)).
- 48 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 7 [*Charter*]; *BCCLA*, 2019 BCCA, *supra* note 4; *CCLA*, 2019 ONCA, *supra* note 4.
- 49 *Regulations*, *supra* note 45, s 83(2)(d); Security Bulletin 99-07, *supra* note 47.
- 50 Security Bulletin 99-07, *supra* note 47.
- 51 Security Bulletin 99-07, *supra* note 47.
- 52 Refer to notes 5 and 13.
- 53 Canada, Correctional Service Canada, *Commissioner's Directive 566-3: Inmate Movement* (In effect 2012-06-03) (Ottawa: Correctional Service Canada, 2012), para 4(a).
- 54 Kent Institution, *Standing Order 566-3: Inmate Movement* (Dated 2019-03-28).
- 55 Bradford report, *supra* note 7.
- 56 Kupers report, *supra* note 8.
- 57 This section is based on the recollections of former Kent prisoners as well as any relevant information available in the various Standing Orders on Inmate Movement in effect since 2005.
- 58 Kent's Standing Order on Inmate Movement dated 2005-04-07 confirms that prisoners were allowed to eat their meals in the common area on the tiers.
- 59 Canada, Health Canada, *Canada's Dietary Guidelines* (Ottawa: Health Canada, 2012) at 13.
- 60 Kent Institution, *Weekday Routine* (Dated Effective 2007-11-08).
- 61 Kent Institution, *Standing Order 566-3* (Dated 2011-04-05); Kent Institution, *Inmate Movement: Annex* (Dated effective 2010-02-01).
- 62 Kent Institution, *Inmate Communication: Modified Routine: Fridays – Extended until January 03, 2020* (Undated).
- 63 Kent Institution, *Inmate communication: Unit 1 New Routine – 2015-04-22*.
- 64 *Regulations*, *supra* note 45, s 4.
- 65 *Roncarelli v Duplessis*, [1959] SCR 121 at 140.
- 66 *Vavilov* 2019 SCC 65 at para 108; *PHSA*, 2011 SCC 44 at paras 117, 128.
- 67 CCRA, *supra* note 3, s 3.
- 68 CCRA, *supra* note 3, s 4(d).
- 69 CCRA, *supra* note 3, s 4(c).
- 70 CCRA, *supra* note 3, ss 3, 4(c), (g), 28, 69, 70, 87.
- 71 *Charter*, *supra* note 48, ss 7, 12.
- 72 *Sheepway*, *supra* note 4 at para 68.
- 73 Canada, The Correctional Investigator, *Annual Report 2013-2014 of the Office of the Correctional Investigator* (Ottawa: The Correctional Investigator, 2014) at 39.
- 74 Canada, The Correctional Investigator, *Office of the Correctional Investigator Annual Report 2017-2018* (Ottawa: The Correctional Investigator, 2018) at 9 [OCI Annual Report 2017-2018]; Arbour Report, *supra* note 7, s 2.9.4.

75 Canada, Correctional Service Canada, *Commissioner's Directive 081: Offender Complaints and Grievances* (In effect 2019-06-28) (Ottawa: Correctional Service Canada, 2019), para 12.

76 Refer to note 74; Also see Standing Senate Committee on Human Rights Interim Report, *supra* note 4 at 63.

77 Global News, "B.C. officials report 9 new cases of COVID-19, outbreak at Mission Institution declared over" *Global News* (28 May 2020), online: <<https://globalnews.ca/video/7000444/b-c-officials-report-9-new-cases-of-covid-19-outbreak-at-mission-institution-declared-over>> [Global News, 28 May 2020].

78 Government of Canada, *Coronavirus disease (COVID-19): Prevention and risks*, online: <<https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks.html?topic=ex-col-faq#r>> (Accessed May 23, 2020).

79 Affidavit of Dr. Aaron Orkin (Sworn April 7, 2020), online: <<https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Ascds%3AUS%3Aa9eca53-cd4c-4ccb-9f00-d8899fbd35f2#pageNum=1>> [Dr. Aaron Orkin, 7 April 2020]; Affidavit of Dr. Tim O'Shea (Sworn on April 13, 2020), Filed in Federal Court File No. T-464-20: *Derrick Snow v Attorney General of Canada*, contained within a Motion Record on behalf of Applicant in support of Motion Doc. No. 2 with Exhibits A to C filed on 13-APR-2020 [Dr. Tim O'Shea, 13 April 2020]; Jane Philpott & Kim Pate, "Several Measures should be taken immediately to prevent a catastrophic outbreak of COVID-19 in Canada's overcrowded and underprepared prisons" *Policy Options* (31 March 2020), online: <<https://policyoptions.irpp.org/magazines/march-2020/time-running-out-to-protect-prisoners-and-prison-staff-from-calamity/>> [Philpott & Pate, March 2020].

80 Canada, Correctional Service Canada, *Inmate COVID-19 testing in federal correctional institutions*, online: <<https://www.csc-scc.gc.ca/001/006/001006-1014-en.shtml>> [Accessed May 25, 2020] [CSC, Inmate COVID-19 Testing].

81 See Affidavit of Lisa Kerr (Sworn on April 13, 2020), Filed in Federal Court File No. T-464-20: *Derrick Snow v Attorney General of Canada*, contained within a Motion Record on behalf of Applicant in support of Motion Doc. No. 2 with Exhibits A to F filed on 13-APR-2020.

82 Office of the Correctional Investigator, *COVID-19 Status Update* (23 April 2020), online: <<https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20200423-eng.pdf>> [OCI Status Update, 23 April 2020]; Canada, Correctional Service Canada, *News Release: Visits to inmates suspended at federal correctional institutions to prevent spread of COVID-19* (March 14, 2020), online: <<https://www.canada.ca/en/correctional-service/news/2020/03/visits-to-inmates-suspended-at-federal-correctional-institutions-to-prevent-spread-of-covid-19.html>>; Canada, Correctional Service Canada, *March 16, 2020 – Message from the Commissioner*, online: <<https://www.csc-scc.gc.ca/001/006/001006-1029-en.shtml>>; Canada, Correctional Service Canada, *April 1, 2020 – Message from the Commissioner*, online: <<https://www.csc-scc.gc.ca/001/006/001006-1026-en.shtml>>; Canada, Correctional Service Canada, *April 1, 2020 – Message from the Commissioner*, online: <<https://www.csc-scc.gc.ca/001/006/001006-1026-en.shtml>>; Canada, Correctional Service Canada, *April 1, 2020 – Message from the Commissioner*, online: <<https://www.csc-scc.gc.ca/001/006/001006-1044-en.shtml>>.

83 See Justin Ling, "COVID-19 spurs prison reform from provinces but federal government slow to act" *National Post* (16 April 2020), online: <<https://nationalpost.com/news/covid-19-spurs-prison-reform-from-provinces-but-federal-government-slow-to-act>> [Justin Ling, 16 April 2020]; Kelvin Gawley, "Mission Institution headed for 'explosive' COVID-19 outbreak, prison doctor says" *News 1130* (8 April 2020), online: <<https://www.citynews1130.com/2020/04/08/mission-institution-headed-for-explosive-covid-19-outbreak-prison-doctor-says/>> [Kelvin Gawley, 8 April 2020]; Selena Ross, "A second inmate in a Canadian federal prison has died of COVID-19" *CTV News* (5 May 2020), online: <https://beta.ctvnews.ca/local/montreal/2020/5/5/1_4926031.html>; Brett Forester, "Ottawa facing mounting pressure to protect inmates in minister's absence" *APTN National News* (15 May 2020), online: <<https://www.aptnnews.ca/national-news/ottawa-facing-mounting-pressure-to-protect-inmates-in-ministers-absence/>>.

84 Canada, Parole Board of Canada, *COVID-19 and the Parole Board of Canada*, online: <<https://www.canada.ca/en/parole-board/services/coronavirus-covid-19.html#p7>> [Accessed June, 2020]; Justin Ling, "Canada has Failed to Protect Inmates From Pandemic, Lawsuite Alleges" *Vice News* (13 May 2020), online: <https://www.vice.com/en_ca/article/ep44aa/justin-trudeau-canada-has-failed-to-protect-inmates-from-pandemic-lawsuit-alleges>; Cristin Schmitz, "Federal judge rejects DOJ foot-dragging; expedites inmate's 'urgent'

- plea for parole due to COVID-19” *The Lawyer’s Daily* (7 May 2020), online: <<https://www.thelawyersdaily.ca/articles/18940/federal-judge-rejects-doj-foot-dragging-expedites-inmate-s-urgent-plea-for-parole-due-to-covid-19>>.
- 85 Canada, Correctional Service Canada, *About Correctional Service Canada* (Updated May 2019), online: <<https://www.csc-scc.gc.ca/publications/005007-3002-eng.shtml>>.
- 86 Justin Ling, “Canada’s Prisons Are a Coronavirus Time Bomb, Say Guards and Inmates” *Vice News* (27 March 2020), online: <https://www.vice.com/en_ca/article/jge4yy/canadas-prisons-are-a-coronavirus-time-bomb-say-guards-and-inmates>.
- 87 Justin Ling, “Inside the Canadian Prison Hardest Hit by the Coronavirus Pandemic” *Vice News* (21 April 2020), online: <https://www.vice.com/en_ca/article/4agjyq/inside-the-canadian-prison-hardest-hit-by-the-coronavirus-pandemic> [Justin Ling, 21 April 2020]; Canada, Correctional Service Canada, *Update on COVID-19: March 25, 2020*, online: <<https://www.csc-scc.gc.ca/001/006/001006-1012-en.shtml>>.
- 88 Julia Page, “Correctional officers, inmates at Port-Cartier prison test positive for COVID-19” *CBC* (30 March 2020), online: <<https://www.cbc.ca/news/canada/montreal/covid-19-correctional-officers-port-cartier-1.5514962>>.
- 89 Canadian Press, “Health care workers in Canada’s federal prison system threaten to walk off the job” *The Globe and Mail* (2 April 2020), online: <<https://www.theglobeandmail.com/canada/article-the-latest-on-the-coronavirus-ottawa-amplifies-stay-home-message-as/>>; Justin Ling, 21 April 2020, *supra* note 87; Philpott & Pate, March 2020, *supra* note 79.
- 90 Kelvin Gawley, 8 April 2020, *supra* note 83.
- 91 Canada, Correctional Service Canada, *Update on personal protective equipment: April 8, 2020*, online: <<https://www.csc-scc.gc.ca/001/006/001006-1021-en.shtml>>.
- 92 Justin Ling, “Justin Ling: The CSC is censoring whistleblower complaints about COVID-19 in federal prisons” *National Post* (8 April 2020), online: <<https://nationalpost.com/opinion/justin-ling-the-csc-is-censoring-whistleblower-complaints-about-covid-19-in-federal-prisons>> [Justin Ling, 8 April 2020].
- 93 OCI Status Update, 23 April 2020, *supra* note 82; Justin Ling, 8 April 2020, *supra* note 92.
- 94 Justin Ling, 21 April 2020, *supra* note 87.
- 95 Canada, Correctional Service Canada, *May 6, 2020 – Message from the Commissioner*, online: <<https://www.csc-scc.gc.ca/001/006/001006-1038-en.shtml>>.
- 96 OCI Status Update, 23 April 2020, *supra* note 82.
- 97 *Ibid.*
- 98 *Ibid.*; Justin Ling, “Inmates With Coronavirus Are Being Thrown Into ‘Extremely Difficult’ Confinement: Prison Watchdog” *Vice News* (27 April 2020), online: <https://www.vice.com/en_ca/article/z3bpp4/inmates-with-coronavirus-are-being-thrown-into-extremely-difficult-confinement-prison-watchdog> [Justin Ling, 27 April 2020].
- 99 Lindsay Richardson, “‘Hundreds’ of inmates quietly released from federal prisons over COVID-19 fears: Blair” *APTN National News* (20 April 2020), online: <<https://aptnnews.ca/2020/04/20/hundreds-of-inmates-quietly-released-from-federal-prisons-over-covid-19-fears-blair/>>.
- 100 *Ibid.*
- 101 Selena Ross, “Prison with Canada’s worst COVID-19 outbreak houses Inuit inmates” *CTV News* (31 May 2020), online: <<https://montreal.ctvnews.ca/prison-with-canada-s-worst-covid-19-outbreak-houses-inuit-inmates-1.4962407>>.
- 102 Canada, Correctional Service Canada, *News Release: Statement on Mission Institution, a federal correctional facility in British Columbia* (25 April 2020), online: <<https://www.canada.ca/en/correctional-service/news/2020/04/statement-on-mission-institution-a-federal-correctional-facility-in-british-columbia.html>>.
- 103 CSC, Inmate COVID-19 Testing, *supra* note 80.
- 104 Kim Bolan, “Outside investigation demanded after COVID-19 races through prison in B.C.” *Vancouver Sun* (17 April 2020), online: <<https://vancouversun.com/news/outside-investigation-demanded-after-covid-19-races-through-prison-in-b-c/>>; Justin Ling, 21 April 2020, *supra* note 87; Jen St. Denis, “COVID-19 cases continue to rise at B.C. prisons as advocates call for inquest” *CTV News* (18 April 2020), online: <<https://bc.ctvnews.ca/covid-19-cases-continue-to-rise-at-b-c-prisons-as-advocates-call-for-inquest-1.4902470>>; Canada, Correctional Service Canada, *Update on COVID-19: April 30, 2020*, online: <<https://www.csc-scc.gc.ca/001/006/001006-1037-en.shtml>>; Kathryn Tindale, “Union calls for extra safety measures at Mission Institution as COVID-19 outbreak

- continues”, *News 1130 CityNews* (13 April 2020), online: <<https://www.citynews1130.com/2020/04/13/union-calls-on-mission-institution/>>; Douglas Quan, “‘Disaster waiting to happen’: Inside the biggest prison coronavirus outbreak in Canada” *Toronto Star* (10 May 2020), online: <<https://www.ourwindsor.ca/news-story/9984222--disaster-waiting-to-happen-inside-the-biggest-prison-coronavirus-outbreak-in-canada/>> [Douglas Quan, 10 May 2020]; Angela Sterritt, “It’s horrifying: Physicians and lawyers say coronavirus outbreak at B.C. prison could have been prevented” *CBC* (9 April 2020), online: <<https://www.cbc.ca/news/canada/british-columbia/mission-institution-covid-19-coronavirus-outbreak-april-9-1.5527684>> [Angela Sterritt, 9 April 2020]; Sean Boynton, “Issues continue to plague coronavirus-ravaged B.C. prison, officers’ union says” *Global News* (18 April 2020), online: <<https://globalnews.ca/news/6837283/coronavirus-mission-institution-issues-officers/>>.
- 105 Vaughn Palmer, “Vaughn Palmer: B.C. feels feds let guard down on COVID-19 outbreak in Mission prison” *Vancouver Sun* (1 May 2020), online: <<https://vancouversun.com/opinion/columnists/vaughn-palmer-b-c-feels-feds-let-guard-down-on-covid-19-outbreak-in-mission-prison/>>.
- 106 Kim Bolan, “COVID-19: Fraser Health officials say they’re assisting with Mission prison outbreak” *Vancouver Sun* (15 April 2020), online: <<https://vancouversun.com/news/fraser-health-officials-say-theyre-assisting-with-mission-prison-coronavirus-outbreak/>>.
- 107 Canada, Correctional Service Canada, *News Release: COVID-19 related death of an inmate* (16 April 2020), online: <<https://www.canada.ca/en/correctional-service/news/2020/04/covid-19-related-death-of-an-inmate.html>>.
- 108 Douglas Quan, 10 May 2020, *supra* note 104.
- 109 Douglas Quan, 10 May 2020, *supra* note 104; Kim Bolan, “COVID-19: Inmate suite filed against federal government over Mission outbreak” *Vancouver Sun* (24 April 2020), online: <<https://vancouversun.com/news/crime/covid-19-inmate-suit-filed-against-federal-government-over-mission-outbreak/>>; Justin Ling, 21 April 2020, *supra* note 87.
- 110 Douglas Quan, 10 May 2020, *supra* note 104.
- 111 Kim Bolan, “COVID-19: Mission Institution nurse says ‘amazing’ team tackling outbreak” *Vancouver Sun* (28 April 2020), online: <<https://vancouversun.com/news/mission-institution-nurse-says-amazing-team-tackling-outbreak/>>; Douglas Quan, 10 May 2020, *supra* note 104.
- 112 Global News, 28 May 2020, *supra* note 77.
- 113 OCI Status Update, 23 April 2020, *supra* note 82 at 6.
- 114 Office of the Correctional Investigator, *COVID-19 Update for Federal Corrections – June 19, 2020*, online: <<https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20200619-eng.pdf>> at 7.
- 115 World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim Guidance*, 15 March 2020 (Copenhagen: WHO Regional Office for Europe, 2020), online: <http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1> at 3-5.
- 116 The Correctional Investigator, Letter to Ms. Tina Namiesniowski, President of the Public Health Agency of Canada, dated April 15, 2020, online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20200415-eng.pdf>; Angela Sterritt, 9 April 2020, *supra* note 104.
- 117 Canadian Centre for Policy Alternatives, *Warehousing Prisoners in Saskatchewan: A Public Health Approach* (Saskatchewan: Canadian Centre for Policy Alternatives, 2014) at 11; Ryan Beardy, “I’ve experienced prison life – and what was once a viral hotbed is now a potential death sentence” *The Globe and Mail* (15 April 2020), online: <<https://www.theglobeandmail.com/opinion/article-ive-experienced-prison-life-and-what-was-once-a-viral-hotbed-is-now/>>.
- 118 These included the Union of BC Indian Chiefs, BC Assembly of First Nations, Canadian Human Rights Commissioner, Correctional Investigator, Congress of Aboriginal Peoples, Criminal Trial Lawyers Association, Canadian Civil Liberties Association, British Columbia Civil Liberties Association, West Coast LEAF, East Coast Prison Justice Society, Alberta Prison Justice Society, Canadian Prison Lawyers Association, John Howard Society of Canada, Canadian Association of Elizabeth Fry Societies, Prisoners’ Legal Services, physician and former Minister of Health Jane Philpott, infectious disease doctor John Farley, and Senator Kim Pate, as well as many individual health care professionals (see note 121), lawyers and reporters.
- 119 UN News, “UN rights chief urges quick action by governments to prevent devastating impact of COVID-19 in places of detention” *UN News* (25 March 2020), online: <<https://news.un.org/en/story/2020/03/1060252>>; Canadian Human Rights Commission, *Statement: Release low-risk inmates to slow*

spread of COVID-19 in prisons (15 April 2020), online: <<https://www.chrc-ccdp.gc.ca/eng/content/statement-release-low-risk-inmates-slow-spread-covid-19-prisons>>.

120 World Health Organization, *Frequently asked questions about prevention and control of COVID-19 in prisons and other places of detention* (WHO Regional Office for Europe, 2020), online: <http://www.euro.who.int/__data/assets/pdf_file/0008/436904/prisons-FAQ-COVID-2019.pdf?ua=1> [WHO, 2020]; Dr. Aaron Orkin, 7 April 2020, *supra* note 79 at para 25; Dr. Tim O’Shea, 13 April 2020, *supra* note 79.

121 The open letter from health providers can be found online: <<https://prisonjustice.org/wp-content/uploads/2020/04/Health-professionals-call-for-decarceration-20200407.pdf>>; Terri Theodore, “COVID-19: Doctors say governments should release as many inmates as possible” *CTV News* (7 April 2020), online: <<https://www.ctvnews.ca/health/coronavirus/covid-19-doctors-say-governments-should-release-as-many-inmates-as-possible-1.4887159>>; Kelvin Gawley, 8 April 2020, *supra* note 83; Justin Ling, 16 April 2020, *supra* note 83.

122 Dr. Homer Venters, Opinion Contributor, “Coronavirus behind bars: 4 priorities to save the lives of prisoners” *The Hill* (23 March 2020), online: <<https://thehill.com/opinion/criminal-justice/488802-coronavirus-behind-bars-4-priorities-to-save-the-lives-of-prisoners>>.

123 Vera Institute of Justice & Community Oriented Correctional Health Services, *Guidance for preventive and responsive measures to coronavirus for jails, prisons, immigration detention and youth facilities*, 18 March 2020 (New York: Vera, 2020), online: <<https://cochs.org/files/covid-19/covid-19-jails-prison-immigration.pdf>>.

124 David H Cloud et al, “Medical Isolation and Solitary Confinement: Balancing Health and Humanity in US Jails and Prisons During COVID-19” (2020) 35 *J Gen Intern Med*, online: <<https://doi.org/10.1007/s11606-020-05968-y>>.

125 Dr. Aaron Orkin, 7 April 2020, *supra* note 79 at paras 22-36; Dr Tim O’Shea, 13 April 2020, *supra* note 79; WHO, 2020, *supra* note 120 at 2; Kelvin Gawley, 8 April 2020, *supra* note 83.

126 Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness* (New York: Human Rights Watch, 2003)

127 LL Emanuel et al, *The Patient Safety Education Program – Canada (PSEP – Canada) Curriculum: Module 13d: Mental Health Care: Seclusion and Restraint: When All Else Fails* [Revised 2017] [Patient Safety Education Program, 2017], online: <<https://www.patientsafetyinstitute.ca/en/education/PatientSafetyEducationProgram/PatientSafetyEducationCurriculum/Documents/Module%2013d%20Seclusion%20and%20Restraint.pdf>>.

128 Mike Kekewich & Dr. Jacky Parker, *Ethics Review: CD 843 “Interventions to Preserve Life and Prevent Serious Bodily Harm”*, February 2019.

129 *Ibid* at 25.

130 Dr. John Bradford, *The Regional Treatment Centres*, December 2017 at 11.

131 *Ibid* at 16.

132 Canada, The Correctional Investigator, *Office of the Correctional Investigator 2018-2019 Annual Report* (Ottawa: The Correctional Investigator, 2019) at 8, citing CSC’s Corporate Business Plan [OCI Annual Report 2018-2019].

133 *Ibid* at 8-10.

134 Bill C-83, An Act to Amend the Corrections and Conditional Release Act and another Act, 1st Sess, 42nd Parl, 2019 (Received Royal Assent June 21, 2019).

135 CCRA, *supra* note 3, s 32.

136 Anthony Doob, *Structured Intervention Unit – Implementation Advisory Panel First Year Report*, 11 August 2020. Online: <<https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:061fe4b0-7d81-4151-aa1e-ee75c7a65ae6#pageNum=1>>.

137 Sean Fine, “Federal, Ontario governments under fire for handling of solitary confinement” *The Globe and Mail* (25 August 2020), online: <<https://www.theglobeandmail.com/canada/article-federal-ontario-governments-under-fire-for-handling-of-solitary/>>.

138 Kathleen Harris, “Federal stonewalling left solitary confinement panel ‘powerless,’ says ex-member” *CBC* (26 August 2020), online: <<https://www.cbc.ca/news/politics/solitary-confinement-panel-blair-trudeau-1.5701134>>.

139 Anthony N. Doob and Jane B. Sprott, *Understanding the Operation of Correctional Service*

Canada's Structured Intervention Units: Some Preliminary Findings, 26 October 2020 [Drs. Doob and Sprott Report].

140 CCRA, *supra* note 3, s 36(1); Canada, Correctional Service Canada, *Commissioner's Directive 711: Structured Intervention Units* (In effect 2019-11-30) (Ottawa: Correctional Service Canada, 2019), para 146 [CD 711].

141 *UN Mandela Rules*, *supra* note 2, Rules 43-44.

142 See notes 16-20.

143 CCRA, *supra* note 3, s 32(1); Canada, Correctional Service Canada, *Statement: Correctional Service Canada responds to Correctional Investigator's Annual Report* (Ottawa, February 18, 2020); Canada, Public Safety Canada, *News Release: Government appoints expert Advisory Panel to monitor new correctional system* (6 September 2019), online: <<https://www.canada.ca/en/public-safety-canada/news/2019/09/government-appoints-expert-advisory-panel-to-monitor-new-correctional-system.html>>; Canada, Public Safety Canada, *Parliamentary Passage of Bill C-83: Transforming corrections to focus on rehabilitation and mental healthcare* (21 June 2019), online: <<https://www.canada.ca/en/public-safety-canada/news/2019/06/parliamentary-passage-of-bill-c-83-transforming-corrections-to-focus-on-rehabilitation-and-mental-healthcare.html>> [Public Safety SIU Backgrounder]; Canada, Public Safety Canada, *Statement from Minister Goodale on the passage of Bill C-83 to strengthen federal corrections and keep communities safe* (21 June 2019), online: <<https://www.canada.ca/en/public-safety-canada/news/2019/06/statement-from-minister-goodale-on-the-passage-of-bill-c-83-to-strengthen-federal-corrections-and-keep-communities-safe.html>>.

144 Senator Kim Pate, *Ministerial Message on the Coming into Effect of Bill C-83* (3 December 2019) [Kim Pate, December 2019]; Justin Ling, 27 April 2020, *supra* note 98.

145 Kim Pate, December 2019, *supra* note 144.

146 Office of the Correctional Investigator, Feedback on draft Commissioner's Directives, letter to Anne Kelly, dated Nov 12, 2019 [OCI Feedback on Draft SIU Policy]; Canada, The Correctional Investigator, *Office of the Correctional Investigator 2019-2020 Annual Report* (Ottawa: The Correctional Investigator, 2020), at 10. Online: <<https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20192020-eng.pdf>>

147 The policy requires the provision of hygiene items immediately (CD 711, *supra* note 140, para 147).

148 CCRA, *supra* note 3, s 36(1).

149 CCRA, *supra* note 3, s 32(1)(b).

150 CD 711, *supra* note 140, paras 5, 117, 121.

151 CD 711, *supra* note 140, para 123.

152 Standing Senate Committee on Human Rights Interim Report, *supra* note 4 at 50; *BCCLA*, 2018 BCSC, *supra* note 4 at para 466.

153 Drs. Doob and Sprott Report, *supra* note 139, page 10.

154 CCRA, *supra* note 3, s 79.1; CD 711, *supra* note 140, para 65(d).

155 Canada, Correctional Service Canada, *Guidelines 711-1: Structured Intervention Unit (SIU) Transfer Procedures – SIU Sites* (In effect 2019-11-30) (Ottawa: Correctional Service Canada, 2019), [Guideline 711-1], para 18(h).

156 See references at note 143.

157 See references at note 5.

158 Public Safety SIU Backgrounder, *supra* note 143.

159 OCI Annual Report 2017-2018, *supra* note 74 at 10.

160 CCRA, *supra* note 3, ss 4(g), 87(a); *BCCLA*, 2019 BCCA, *supra* note 4 at para 236; *CCLA*, 2019 ONCA, *supra* note 4 at para 105.

161 CCRA, *supra* note 3, s 37.1(2)(b), CD 711, *supra* note 140, para 99.

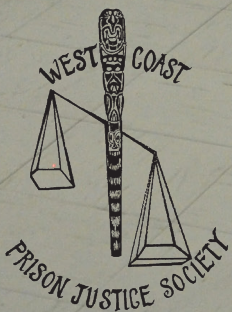
162 Guideline 711-1, *supra* note 155, para 7; Canada, Correctional Service Canada, *Guidelines 711-2: Structured Intervention Unit (SIU) Transfer Procedures – Non-SIU Sites* (In effect 2019-11-30) (Ottawa: Correctional Service Canada, 2019), para 8 [Guideline 711-2]; CD 711, *supra* note 140, para 65(d); CCRA, *supra* note 3, ss 34(1), 37.41(1), 37.82(1); *Regulations*, *supra* note 45, s 23.06(2).

163 CCRA, *supra* note 3, s 37.11

164 CD 711, *supra* note 140, para 116(b).

165 CCRA, *supra* note 3, s 37.2.

- 166 For a further discussion of dual loyalties, see: OCI Annual Report 2017-2018, *supra* note 74 at 17-20; and Canada, The Correctional Investigator, *Annual Report: Office of the Correctional Investigator: 2016-2017* (Ottawa: The Correctional Investigator, 2017) at 9-11.
- 167 CCRA, *supra* note 3, ss 37.2-37.81.
- 168 *UN Mandela Rules*, *supra* note 2, Rule 27(2).
- 169 *BCCLA*, 2018 BCSC, *supra* note 4 at paras 387-388.
- 170 OCI Feedback on Draft SIU Policy, *supra* note 146; Refer to CD 711, *supra* note 140, para 34.
- 171 *Regulations*, *supra* note 45, s 20; CD 711, *supra* note 140, paras 45-55.
- 172 CD 711, *supra* note 140, paras 49-51.
- 173 CD 711, *supra* note 140, para 52.
- 174 *Regulations*, *supra* note 45, s 20(2)(a).
- 175 CCRA, *supra* note 3, ss 37.3(1)(b), 37.4, 37.8; CD 711, *supra* note 140, paras 56(b), 77(a)(iii).
- 176 CCRA, *supra* note 3, ss 36(1), 37.83; *Regulations*, *supra* note 45, s 23.06.
- 177 CCRA, *supra* note 3, s 37.83(3).
- 178 CCRA, *supra* note 3, ss 37.2-37.81.
- 179 *Regulations*, *supra* note 45, s 97(4); CD 711, *supra* note 140, para 152.
- 180 *Regulations*, *supra* note 45, s 97(2); CD 711, *supra* note 140, para 151; Guideline 711-1, *supra* note 155, paras 18-19; Guideline 711-2, *supra* note 162, paras 19-20.
- 181 CD 711, *supra* note 140, para 152; Guideline 711-1, *supra* note 155, paras 18-19; Guideline 711-2, *supra* note 162, paras 19-20.
- 182 This is especially true given the prisoner's right to the assistance of counsel for the fifth working day review, and the requirement on staff to facilitate access to counsel. Refer to: CD 711, *supra* note 140, para 152; Guideline 711-1, *supra* note 155, paras 27-28; Guideline 711-2, *supra* note 162, para 27.
- 183 Standing Senate Committee on Human Rights Interim Report, *supra* note 4 at 63.
- 184 *Ibid* at 62.



Produced by the West Coast Prison
Justice Society with funding from the Law
Foundation of British Columbia.

November 2020

