Prisoners' Legal Services
A Project of the Westcoast Prison Justice Society

Correctional Service Canada's response to COVID-19
The implementation and operation of structured intervention units
Reports of sexual coercion and violence in federal prisons

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Prisoners' Legal Services provides all prison related legal aid to federal and provincial prisoners in British Columbia, other than appeals. We assist prisoners with about 3,000 legal issues each year.

A. CORRECTIONAL SERVICE CANADA'S RESPONSE TO COVID-19

Correctional Service Canada's (CSC) response to the COVID-19 pandemic was shameful. Ottawa ignored advice to reduce prison populations to control the spread of COVID. CSC's primary response to COVID-19 was to subject hundreds of people to torture by isolating them in solitary confinement for months on end. Even institutions without any COVID cases implemented widespread isolation in response to the pandemic. CSC's failure to take measures in accordance with public health advice resulted in 1,579 prisoners infected with COVID-19 and six deaths.

We have learned three things from COVID-19 in Canadian prisons:

1. CSC's discretion to impose solitary confinement outside of legislative authority must be curtailed. The United Nations defines solitary confinement as 22 or more hours of isolation per day without meaningful human contact. It considers solitary confinement to constitute torture or cruel treatment if it is used against people with existing mental health disabilities, or if it is used for more than 15 days against anyone. It is unacceptable for Canada to be engaging in the widespread use of torture.

2. It is unacceptable for CSC to provide health care to prisoners that is not independent of CSC's operations. Health care must be provided independently of corrections in close coordination with public health authorities.

3. Canada needs to implement law and policies that will result in a significant reduction of the number of people in prison, to avoid devastating outbreaks during future pandemics.

1. Solitary confinement of prisoners during the COVID-19 pandemic

Early in the pandemic, Mission Medium Institution (Mission) reported 120 positive COVID cases, representing over 40 percent of the prisoner population. Prisoners' Legal Services (PLS) received reports from prisoners at Mission of widespread use of isolation. The entire institution was locked down beginning on April 1, 2020 with no time out of cell for the first eight days. 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, which were often served cold.

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. Most people reported they did not have any access to go outside to the 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 meals until the week of April 16, 2020. This extreme isolation continued for almost two months, despite there being no new COVID-19 cases since May 1, 2020. Mission prisoners remained in solitary confinement, with less than two hours out of cell per day until some time in mid to late June, 2020.

One Mission prisoner 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… 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… 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.

By the end of May, 2020, we received many reports of Mission prisoners' mental health deteriorating. With everyone held in conditions of solitary confinement, everyone was feeling intense frustration with nothing to occupy their minds. We heard reports of prisoners attempting suicide and self-harming.

One prisoner 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.
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> 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.

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.

On April 23, 2020, the Correctional Investigator released a status update 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. …[1]

The World Health Organization also 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 and 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.[2]

We ask the Government of Canada to implement legislative reforms to prohibit Correctional Service Canada from imposing solitary confinement. People in custody should never be locked up in their cells for 22 to 24 hours per day without meaningful human contact. Solitary confinement can be avoided even during a pandemic with proper attention to public health protocols, including testing and by keeping people who are infected separate. People who need to be in medical isolation should receive human contact at a distance, by phone, by video or through a barrier, and should be provided regular activities to occupy their minds. There was no reason why medical isolation during COVID had to be for more than 14 days for any individual, which was the public health standard.

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[1] 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.

[2] 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: at 3-5.

The Correctional Service Canada's use of isolation is widespread. Its abuse during the COVID-19 pandemic is just one example of the extent to which the use of isolation has been normalized in Canadian prisons. Please see our report, *Solitary by Another Name*,[3] for more information.

2. Independent health care

PLS received many reports from prisoners during the pandemic that staff were often not wearing masks or socially distancing from each other. Mission prisoners reported they did not receive masks until mid-April. We also heard reports that CSC actually directed health care 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, and directed staff to keep working despite exposure to the virus. We received multiple reports from prisoners at the institution who said they had been denied tests despite showing symptoms.

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.

It was possible to contain the spread of COVID-19 in prisons while respecting the *Charter* and human rights of prisoners. In contrast to CSC's failure to contain COVID-19 and widespread abuse of human rights, BC successfully decreased the populations within its correctional centres, implemented a system of COVID testing and public health measures, and used very limited and targeted isolation of prisoners in small cohorts that avoided the widespread use of solitary confinement.

We believe the difference in approaches are because health services for BC prisoners are provided through the BC Public Health Services Authority, independent of BC Corrections. The approach taken to COVID-19 in BC correctional centres was a health-care centred approach that was part of the province's broader public health strategy, in contrast to CSC's approach to COVID-19, which was directed by operations. Health care providers have ethical obligations to respect the human rights of patients and to act in the best interest of patients. CSC has other priorities, and health care staff are subjected to dual loyalties because CSC is their employer. **We recommend that Canada negotiate independent health services for federal prisoners with the ministries of health.**

3. Significantly reduce prison populations

We also recommend that Canada and CSC do everything within their powers to reduce the number of people in federal custody, in order to prevent the likelihood of future pandemics having a devastating effect on prisoners.

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.[4] Medical professionals informed public authorities that it is nearly impossible to limit a coronavirus outbreak in congregate living settings,

[3] Prisoners' Legal Services, *Solitary by Another Name* (November 2020), online: https://prisonjustice.org/wp-content/uploads/2020/11/Solitary-by-another-name-report.pdf.

[4] 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); Canadian Human Rights Commission, Statement: Release low-risk inmates to slow spread of COVID-19 in prisons (15 April 2020).

especially those with close quarters. 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.[5]

CSC's policies prevent people from cascading to the lowest level of security suitable to their level of risk, and prevent people from re-entering society at the earliest time possible in their sentences, contrary to s 7 of the *Charter* and the principle of least restrictive measures under the *Corrections and Conditional Release Act.* There is a current trend toward holding people in higher levels of security, resulting in high counts in maximum security institutions and low counts in minimum security. For example, Kwìkwèxwelhp Healing Village currently has only 20 residents, while Kent Maximum security prison has 253 residents.

The following policy amendments should be made which would result in reducing the population of people in custody in Canadian prisons:

(a) **Policy should not require Indigenous prisoners to be classified to minimum security to access a healing lodge. Indigenous healing lodge operators should have the power to decide who can access their facilities.** Often Indigenous people are held in medium or maximum security due to high "institutional adjustment" ratings. This is an indication that their needs are not being met in colonial prisons. In many cases, if Indigenous people were in a culturally appropriate healing environment, they would not have a high institutional adjustment rating. **Significantly more resources should be available to Indigenous communities to establish and expand Indigenous-run healing lodges.**

(b) **"Institutional adjustment" should be abolished as a tool for determining security level.** Security level should be determined only by considering where a person's needs can best be met and by the person's level of risk. CSC's interpretation of the degree of security and control needed within an institution under s 18 of the *Corrections and Conditional Release Regulations* (CCRR) is discriminatory as it results in people with unmet needs, including Indigenous people, people with mental health disabilities and transgender people, being held in higher security than necessary if their needs were met.

(c) Policy should require people to be provided programs, services and access to temporary absences that will help them to rehabilitate and reintegrate into the community as early as possible during sentences, regardless of the length of their sentences.

(d) Length of sentence and time remaining in a sentence before eligibility for unescorted temporary absence should not be used to deny someone access to lower security or a healing lodge.

(e) Policy should include an obligation on decision makers to explore all alternatives to emergency transfers to maximum security and to attempt to resolve the issue without resorting to involuntary transfer to higher security.

[5] An 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.

(f) Transfer decisions should include the principles set out by the Supreme Court of Canada in *Vavilov* requiring consideration of the consequences of a decision, including the consequence of remaining at and moving to an institution.

B. THE IMPLEMENTATION AND OPERATION OF STRUCTURED INTERVENTION UNITS

Prisoners' Legal Services has assisted many individuals with structured intervention unit (SIU) placements since they were established in November 2019. We have noted four significant areas of concern with the SIU regime:

1. Inadequate remedies available to Independent External Decision Makers (IEDM) conducting reviews;
2. Inadequate access to mental health supports, meaningful human contact and meaningful activities;
3. Lack of medical independence and lack of compliance with Mandela Rules in relation to SIU placements; and
4. Inadequate access to counsel for SIU reviews.

1. Inadequate remedies available to Independent External Decision Makers (IEDM) conducting reviews

While the implementation of independent review of SIU placement decisions was an important development, this independent review procedure is meaningless because IEDMs do not have the authority to order remedies other than removal from SIU to the population of the maximum-security prison where the SIU is located.

People are often in SIU because the maximum-security environment is not safe for them or cannot meet their needs. Prisoners in maximum security populations are often locked up in their cells alone for hours each day, to a degree that is comparable to SIU. On top of the restrictive movement routines that are imposed on a daily basis, maximum security prisons frequently have lockdowns where prisoners are held in their cells for all or most of the day. At Kent Institution, which houses the only SIU for men in the Pacific Region, prisoners were locked down for the majority of days in most years between 2015 and 2019. In 2017 Kent had lockdowns on 78% of the days in the year.[6]

PLS has received many reports from prisoners at Kent Institution that correctional officers routinely facilitate violence between prisoners by "double dooring" them (allowing incompatible prisoners in the same area), give prisoners other people's paperwork with sensitive information in it (which puts their safety at risk), and antagonize prisoners by calling them discriminatory and offensive names. We have received several reports of correctional officers encouraging prisoners to self-harm, and sometimes giving them razors to cut with. We have heard reports of prisoners being required to live for days in cells smeared with feces. Some prisoners are too afraid of retaliation to give instructions for us to report abuses.

We have also heard of a few instances of Kent officers firing live ammunition and rubber bullets. One of our clients was shot in the face with a rubber bullet at Kent.

Another Kent client recently reported that he was subjected to a sexual assault during a strip search by the Emergency Response Team. While he was completely naked, five or six officers held him face down, spread

[6] West Coast Prison Justice Society, *Solitary by Another Name* (November 2020) at 11. Online: https://prisonjustice.org/wp-content/uploads/2020/11/Solitary-by-another-name-report.pdf.

his buttocks and an officer shoved two fingers into his anus and "dug around". This client told us that it "felt like rape". This conduct is especially horrendous considering that we know from research that 22% of men in prison have been sexually abused as children.[7]

Prisoners who have histories of trauma are triggered by their experiences in maximum security, which leads to behaviours that keep them trapped in maximum security and SIU, where isolation then exacerbates their distress. 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.

IEDMs must have the power to order alternatives other than return to the same violent and isolating environment in the open population of maximum security.

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 retraumatizes 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 client was ordered removed from SIU and 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.

PLS had another client who was being held in Kent's SIU while he was certified under the BC *Mental Health Act*. He had been placed on "extended leave" from the hospital, a type of leave is supposed to be used for community releases from psychiatric hospitals if there were therapeutic value that would benefit the patient. CSC used it to keep this client in a more restrictive and less therapeutic environment than a mental health facility. He has a history of physical and sexual abuse in his childhood, and has been diagnosed with Schizophrenia. He has spent most of his sentence in isolation. This client reported that he spent virtually all day isolated in his cell with nothing to do, pacing back and forth. He had no TV or radio. Another prisoner reported to PLS that correctional officers were harassing and abusing him, and denying him access to legal counsel. He reported that he had very little contact with health and mental health care in SIU who would

[7] https://pubmed.ncbi.nlm.nih.gov/30676787/.

generally speak to him through the hatch in his door. Despite this, CSC documents indicate Kent mental health staff have “no concerns” with his continued placement in the SIU.

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. 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.

In another IEDM decision for this client, who at this time had been held in SIU for many continuous months, the IEDM did not order his release because there were no viable mainstream options available to him at Kent due to his severe mental health issues. She noted his need to be placed in a safe environment and to receive proper treatment. The decision concludes:

> In light of the fact that there are no alternative options available for Mr. [redacted] at this time, I do not order his transfer out of the SIU. I acknowledge that I do not have a jurisdiction to order Mr. [redacted] out of the SIU to a treatment centre or a psychiatric hospital. However, I strongly recommend the following:
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> - Mr. [redacted] should be transferred to a treatment centre or psychiatric hospital in order to complete a thorough psychiatric assessment; this will hopefully assist to find best-suited placement for him, taking into consideration his current diagnosis of treatment-resistant schizophrenia.

This client is still in SIU.

Long term isolation can result in social withdrawal. 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 being moved to a treatment centre where he could get 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. Simply transferring them will not address their underlying issues and leave them vulnerable to isolation at their new institution.

IEDMs can order removal from SIU, but they cannot direct what alternatives must be implemented, such as placement in a treatment centre, an Indigenous-run healing lodge, a medium security institution or a community forensic psychiatric hospital.

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. A decision to remove someone from SIU would be like ordering them out of the frying pan and into the fire.

We recommend that IEDMs have the authority to order changes to an SIU prisoner's conditions of confinement, including that people in SIU be transferred to regional treatment centres, community hospitals or treatment centres, to medium security institutions or to healing lodges.

2. Inadequate access to mental health supports, meaningful human contact and meaningful activities

SIUs were implemented to end the unconstitutional practice of the former administrative segregation regime of solitary confinement, by addressing people's needs and by providing additional programs and opportunities for meaningful human contact. However, the legislation only requires two hours of meaningful human contact each day, which is still within the United Nations' definition of solitary confinement, which becomes torture after 15 days or after any amount of time for someone with a mental disability.

As documented by Dr. Anthony Doob and Dr. Jane Sprott, CSC continues to subject prisoners to solitary confinement in 28% of SIU placements, and to conditions of confinement that constitute torture in 10% of SIU placements (the Pacific Region has the highest torture rate at 19.5%).[8] SIUs are failing to deliver on the promise to address people's needs and provide adequate levels of meaningful human contact.

Many agencies reported to a CSC stakeholder roundtable on SIUs held on June 17 and 18, 2021 that they wish to provide meaningful human contact for people in SIU, but CSC has shut them out.

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.

This is likely because of lack of adequate resourcing for mental health services, and because CSC does not consider most people to have mental health needs, despite its own research showing that 79.2% of women in custody and over 70% of men at admission to custody have a mental illness.[9] Data provided to Dr. Doob and Dr. Sprott indicated that only 28% of stays in SIU had a "mental health need" flag.[10] In our experience working with prisoners in SIU, most of them have significant mental health needs and would benefit from living in a therapeutic environment where they could receive treatment.

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[8] Jane B. Sprott and Anthony N. Doob, *Solitary Confinement, Torture, and Canada's Structured Intervention Units* (23 February 2021).

[9] Correctional Service Canada, *National Prevalence of Mental Disorders among Federally Sentenced Women Offenders: In Custody Sample* (April 2018). Online: https://www.csc-scc.gc.ca/research/r-406-en.shtml. Correctional Service Canada, *National Prevalence of Mental Disorders among Incoming Federally-Sentenced Men* (February 2015). Online: https://www.csc-scc.gc.ca/research/005008-0357-eng.shtml.

[10] Anthony N. Doob and Jane B. Sprott, *Understanding the Operation of Correctional Service Canada's Structured Intervention Units: Some Preliminary Findings* (26 October 2020), Table 8 at 14.

We have also received reports from clients that access to Elders in Kent's SIU remains limited, even after COVID restrictions were lifted.

More than one of our clients in Kent's SIU have reported that when they are offered programs, it is, in reality, an invitation to sit alone in another room. One said most of the time when he attends SIU programs, the Social Program Officer speaks with him for about five minutes, and then leaves him to sit alone in the room or in a small cage for the rest of the time. Another client told us when he was offered a program at 6 pm (after Social Program Officers had gone home for the day) he declined, having heard that he would be required to sit alone in a room. This would then be recorded as his refusal to participate in programs. One client told us they were given a picture to colour and sudoku puzzles in place of meaningful human contact.

Clients have 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.

We recommend that legislation be amended to require significantly more than 2 hours of meaningful human contact each day for prisoners in SIU. If the intention is to address peoples' needs, including mental health needs, much more must be done to engage with people and provide an assortment of opportunities for meaningful human contact, including by implementing peer support programs**. A policy defining meaningful human contact should be developed, and it should be clear that whether or not human contact is meaningful is determined by the person, not CSC.**

In addition to meaningful human contact, more must be done to provide meaningful activities. The Supreme Court of Canada has noted the fundamental importance of work to the wellbeing of individuals:

> Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being. Accordingly, the conditions in which a person works are highly significant in shaping the whole compendium of psychological, emotional and physical elements of a person's dignity and self respect. In exploring the personal meaning of employment, Professor David M. Beatty, in his article "Labour is Not a Commodity" in Studies in Contract Law (1980), has described it as follows, at p. 324:
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> > As a vehicle which admits a person to the status of a contributing, productive, member of society, employment is seen as providing recognition of the individual's being engaged in something worthwhile. It gives the individual a sense of significance. By realizing our capabilities and contributing in ways society determines to be useful,

> employment comes to represent the means by which most members of our community can lay claim to an equal right of respect and of concern from others. It is this institution through which most of us secure much of our self-respect and self-esteem.[11]

The importance of meaningful activities is no less significant for people in custody. It may be even more important given that prison is rife with degrading experiences and loss of identity and purpose, and many prisoners have very low self-esteem, suffer from depression, and have experienced high levels of trauma including childhood sexual abuse.[12]

We recommend that Canada amend legislation to require opportunities for several hours of meaningful activities each day for prisoner in SIU, including employment opportunities, skills training, education, opportunities to contribute to society, and opportunities to engage the mind and spirit.

Many of our clients are people who have experienced the long-term effects of isolation after years in federal custody and in solitary confinement. These clients have developed symptoms of post-traumatic stress disorder. They constantly feel unsafe and fearful of assault, both by correctional officer and other prisoners. Many engage in self-harm as a coping mechanism and are at risk of suicide.

These highly vulnerable people require first and foremost a safe living environment, which does not exist in maximum security prisons. Once they are in an environment where they feel safe, they need intensive mental health treatment to recover from the effects of long-term isolation. **Canada should contract with community mental health facilities to allow prisoners who self-harm or have other high mental health needs to receive mental health support in a therapeutic environment.**

CSC's regional treatment centres are generally better environments than maximum security prisons, however, some clients have reported that they are kept in isolation in treatment centres' "quiet rooms" or observation cells, and we have received frequent reports of officers abusing and using force against patients in treatment centres. **We recommend that correctional officers not be permitted on living units at treatment centres unless they are responding to emergency calls for assistance by health care providers. Instead, treatment centres should be staffed with social workers, psychiatric nurses, Elders, counsellors and other health care providers on living units.**

We recommend that health care staff be required to appropriately assess mental health needs for people in SIU, and develop treatment plans and care plans for prisoners in SIU who have mental health disabilities. Care plans would provide guidance for staff to avoid triggering a prisoner and identify effective strategies for de-escalation. Treatment plans would set out treatment needs to be met through counselling and other mental health services. If a prisoner has a history of not benefiting from programs or of refusing programs, the reason for this should be explored through a mental health assessment. If it has not already been done, an SIU placement should trigger a screening for possible FASD, trauma or residential school syndrome. Any accommodation or treatment needs that are identified should be addressed in culturally appropriate ways,

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[11] *Reference Re Public Service Employee Relations Act (Alberta),* [1987] 1 S.C.R. 313 at para 91.

[12] Claire Bodkin, et al. *History of Childhood Abuse in Populations Incarcerated in Canada: A Systemic Review and Meta-Analysis*, 24 January 2019. Online: https://pubmed.ncbi.nlm.nih.gov/30676787/#:~:text=The%20summary%20prevalence%20of%20sexual,to%2055.6%25)%20among%20men.&text=Conclusions%3A%20Half%20of%20people%20in,Canada%20experienced%20abuse%20in%20childhood.

including consideration of placement at a Regional Treatment Centre, community hospital or Indigenous-run healing lodge.

3. Lack of medical independence and lack of compliance with Mandela Rules in relation to SIU placements

Bill C-83 amendments to the CCRA included provisions intended to strengthen the independence of health care providers in federal prisons. However, the amendments failed to provide actual independence of health services and medical professionals working in federal prisons continue to be influenced by dual loyalty. Legislation does not require health care staff to refuse to participate in torture or cruel treatment, which is prohibited by the Mandela Rules.

Where a CSC 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. 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.

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.

According to data received from CSC by Dr. Doob and Dr. Sprott, of the 1,983 people who began SIU stays before September 2020, there were only three instances where a mental health professional recommended the prisoner be removed from the SIU.[13]

The Mandela Rules say that a stay in solitary confinement for more than 15 days constitutes torture or cruel treatment, and that a stay in solitary confinement for any amount of time for someone with a mental disability is prohibited as cruel treatment. As noted, Dr. Doob and Dr. Sprott found that 10% of SIU stays (195) from 30 November 2019 to 30 November 2020 constituted torture in solitary confinement. If CSC medical professionals were abiding by their ethical duties without being influenced by dual loyalty, they should have recommended prisoners be released from SIU at least 195 times in this period. With 28% of SIU transfers having a mental health need flag at the start of the stay, health care professionals should have recommended removal from SIU 638 times in the same time period.

We recommend legislation or policy require health care staff not to participate in torture or cruel treatment.

Legislation allows for a health care professional's recommendation to be overruled by non-health care professionals in a cascading scheme of reviews. This is inconsistent with the clear language in the 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. **We recommend legislation or policy prohibit health care decisions to be overruled by non-health care staff.**

SIU policy provides no guidance on how health care needs should factor into a decision regarding a person's continued confinement in an SIU. Without such guidance, the consideration of health care needs becomes mere lip service. **We recommend policy that prohibits placement of a person with a mental disability in**

[13] Jane B. Sprott and Anthony N. Doob, *Solitary Confinement, Torture, and Canada's Structured Intervention Units* (23 February 2021) at 22.

conditions that constitute solitary confinement, and that requires removal from conditions of solitary confinement to a therapeutic environment if a person's mental health deteriorates while in SIU.

PLS is also concerned that CSC health care providers are not diagnosing mental disorders when they exist. We have seen some clients who have not been diagnosed by CSC health care professionals receive independent assessments that diagnose them with post-traumatic stress disorder or fetal alcohol spectrum disorder. When these conditions are not recognized, behaviours caused by a disability are responded to punitively.

Without the separation of health services from operations, budgets that were intended to provide greater mental health supports for prisoners end up being used to pay for more security measures. Correctional Service Canada employs approximately 13,000 people (not including staff at headquarters and central services) to work in prisons that incarcerate approximately 12,500 prisoners. Only 5.5% of these employees are health care staff.[14]

We again recommend that Canada partner with the federal and provincial Ministries of Health to ensure they provide truly independent health care services for prisoners that are closely aligned with community public health administration, in accordance with Mandela Rule 24(2). We recommend that health services be funded at levels that allow for a high quality of mental health care.

4. Inadequate access to counsel for SIU reviews

PLS provides legal aid to prisoners in BC for issues related to their liberty rights, human rights and health care. Our assistance includes providing legal aid lawyers to represent clients at SIU hearings, or legal advice for prisoners to make their own submissions regarding SIU placement.

Prisoners have a right to retain and instruct counsel for SIU reviews, including for preparing and presenting representations, under ss 97(2)(a) and 97(4) of the CCRR.

The only SIU for men in the Pacific region is at Kent Institution. Kent's administration has made it impossible for PLS to fulfil our mandate by obstructing prisoners' right to counsel in SIU reviews.

Beginning in February 2015, PLS ran a legal aid clinic in Kent's segregation unit. This allowed us to connect with the most vulnerable people held in long-term isolation who might not be able to contact us by phone, and help them get out of segregation, ensure their human rights were respected, and assist them to access mental health supports. In January 2019, one week after the BC Court of Appeal ordered that segregated prisoners must be provided with enhanced rights to legal counsel, Kent's administration unilaterally cancelled our clinic.

The clinic also provided outside observation of the conditions of confinement in segregation. Prior to the commencement of the legal clinic, PLS received regular reports of cells contaminated with feces, urine and blood, correctional officers slipping razor blades underneath the cell doors 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.

[14] Public Safety Canada, *2019 Corrections and Conditional Release Statistical Overview* (September 2020). Online: https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2019/index-en.aspx#b.

Conditions in Kent's segregation unit began to improve during the time that PLS had a regular presence there.

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 request forms, having forms "lost" once submitted, and having their right to counsel obstructed. Despite all of this, the legal clinic was not reinstated either in the administrative segregation unit or in the SIU. Without the clinic, we are concerned that prisoners in Kent's SIU may not be aware of their right to legal assistance.

Since the SIU regime has been in force, Kent's administration has made it very difficult for prisoners to exercise their right to counsel. Four days after the opening of Kent's 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. Kent still refuses to allow lawyers to leave urgent messages for prisoners to call them without requiring the lawyer to breach solicitor client privilege by disclosing the reason for the urgency of the call.

Prisoners often report difficulty accessing phones to make legal calls during business hours, and some report that they were not given call back requests. Some clients have reported being told by officers to hang up after 20 minutes while they were still on hold waiting to speak with their legal advocate.

Unlike any other type of legal context, Kent administration refuses to provide legal representatives with necessary documents. Kent requires prisoners to give their documents to their legal representatives themselves. This poses challenges given the short time to make legal representations for SIU reviews, and the amount of time it takes for a client to speak with legal counsel, make a request to have the documents sent to counsel, for counsel to receive and review them and then arrange to speak with the client again to provide advice or to discuss representation. Prisoners may not know what documents a lawyer needs for a particular review (they may not know what documents were provided to the decision maker) or they may have mental health disabilities that make it difficult to identify documents and request for them to be sent to PLS.

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. The inability to receive documents in a timely way or at all seriously infringes our ability to provide legal representation to prisoners in SIU reviews.

We received a report from one client that the warden of Kent yelled at the client's Institutional Parole Officer (IPO) for providing him a copy of submissions for his 30-day SIU review, prepared by a lawyer at PLS. This client reports that when the warden saw the submissions in his hand during his warden's review, she asked whether the IPO had provided them to him, and when he confirmed she had, the warden yelled at the IPO something to the effect of "we do not help them, it is not our job to help them with their lawyers, it is their lawyers' jobs to get the documents to their clients." Our client states that he asserted that he had a right to receive correspondence from his lawyer and that CSC needs to facilitate that, particularly when there was no

other way he would have been able get the documents in time for his hearing. Our client reports that the warden argued with him and said: "So sue me then."

Kent administration also refuse to tell legal counsel the date and time of the SIU review hearing. This of course makes it impossible for PLS to provide legal aid representation for prisoners at SIU review hearings. We cannot appoint a lawyer if we cannot tell them when the hearing will take place. Prisoners are only told the time of the fifth day review hearing the day before the hearing date. If they wish to tell their lawyer the time of the hearing, they must put in a request form to make a legal call, which takes 24 hours to facilitate.

PLS has also experienced significant interference by Kent staff when we attempt to meet with clients in person.

It is 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.

We recommend CSC implement law and policy requiring CSC to facilitate the right to counsel, including:

- 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 all prisoners be able to send outgoing faxes to counsel 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 CSC advising counsel of the time and date of the hearing as soon as it is scheduled and confirming requests by counsel to attend.

C. REPORTS OF SEXUAL COERCION AND VIOLENCE IN FEDERAL PRISONS

1. Strip searches

Our clients experience strip searches as routine and repetitive sexual violence. **PLS recommends that law and policy prohibit the use of strip searches on prisoners.**

We have had the opportunity to review the submission provided by the Canadian Association of Elizabeth Fry Societies, and we endorse their submission and recommendations regarding sexual violence by correctional staff against prisoners, including strip searches.

Strip searches are traumatic for people of all genders – especially those who have a history of childhood sexual abuse. One particularly traumatic strip search that included an illegal body cavity search is described above. We have also heard concerns that strip searches are used punitively and without justification against men, as a demonstration of power.

We understand prisoners are routinely strip searched when being placed in observation cells on suicide watch. The routine use of strip searches against prisoners in such a vulnerable emotional state is particularly inappropriate and harmful.

PLS has received complaints by a number of transgender women prisoners held in prisons designated for men about strip searches. Correctional officers violate their individualized protocols requiring strip searches to be conducted by women officers. Many of these women have histories of being sexually abused by men.

One client reported that she has been forcibly moved to an observation cell and strip searched while in extreme emotional distress – to the point that she curls up into a ball and shuts out the world – six or seven times. In this state she is not able to comply with a strip search. On one occasion, she was dragged by a male officer and thrown onto her back. The officer cut her clothes off, including her bra and underwear. When the officer was unable to cut through her bra, he ripped it off of her. She described this strip search as "violent," leaving her feeling violated and traumatized. This client is a transgender woman and her search protocol requires women officers to conduct strip searches of her.

2. Other forms of sexual violence

We have received multiple reports from transgender women who are held in prisons designated for men of sexual violence against them by both staff and prisoners.

We recommend CSC protect transgender women's safety, including by removing barriers to their placement in prisons designated for women. We recommend CSC implement policy that requires decision makers to consider the safety risk of women of remaining in prisons designated for men if their requests to transfer to prisons designated for women are denied.

We have also heard reports by two different prisoners of correctional officers allowing prisoners into their segregation cells to rape them on multiple occasions. Two other prisoners have reported that they were raped by their roommates. They reported these rapes to CSC and staff required them return to the same cell with the same roommate after the report was made. One of these clients committed suicide shortly after he was later told he was required to share a cell with another prisoner.

We recommend that no prisoner be required to share a cell without their consent, and that the interview to determine consent be conducted in private.