

What is solitary confinement?

Solitary confinement, also known as “segregation”, is the practice of confining a prisoner to a cell and depriving him or her of meaningful human contact for up to 23 hours a day. These conditions result in significant periods of sensory deprivation and social isolation. Prolonged, indefinite solitary confinement is [internationally regarded as cruel and unusual treatment amounting to torture.](#)

In Canada, [one out of every four prisoners](#) in the federal prison system has spent some time in solitary confinement. At any given time, there are as many as 1800 people in solitary confinement in federal or provincial prisons.

What are the BCCLA’s concerns with solitary confinement?

The negative effects of long-term solitary confinement are well-documented. These effects include psychosis, hallucinations, insomnia and confusion. Solitary confinement can create mental illness where none previously existed, or exacerbate pre-existing illness.

The damaging effects of solitary confinement increase the longer the prisoner is kept isolated. The effects of long-term isolation can also seriously hinder a prisoner’s rehabilitation. And as the United Nations Special Rapporteur on Torture has observed, when solitary confinement is indefinite – that is, without a specified end-date – harm is compounded: “The feeling of uncertainty when not informed of the length of solitary confinement exacerbates the pain and suffering of the individuals who are subjected to it.” Accordingly, the Special Rapporteur has found that prolonged or indefinite solitary confinement can amount to torture.

According to the Correctional Investigator of Canada, experiencing solitary confinement is “an important risk factor for prison suicide”. The suicide rate for prisoners is seven times the rate of the Canadian public, with nearly half of those suicides occurring in solitary confinement.

Canadian prison expert Michael Jackson has described solitary confinement as “the most individually destructive, psychologically crippling and socially alienating experience that could conceivably exist within the borders of the country.”

How is solitary confinement used in Canadian prisons?

Prisoners in Canadian federal prisons are placed into solitary confinement in one of two ways.

The first way, called “disciplinary segregation”, is used as punishment when a prisoner is found guilty of committing a serious disciplinary offense within the prison. The prisoner is “sentenced” to a period of disciplinary segregation after a hearing before an independent adjudicative body. Disciplinary segregation is limited to 30 days unless there are multiple convictions, where it is then capped at 45 consecutive days.

The second way, called “administrative segregation”, is used to separate a prisoner from the general prison population for safety or security reasons. With administrative segregation, there is no hearing before an

independent body. An individual is placed into solitary confinement based solely on the finding of the “institutional head” that the prisoner’s presence in the general prison population is a risk to security or safety. Risk to safety can mean both the risk posed by the prisoner, or risk to the prisoner’s own safety. Significantly, there is no limit on the amount of time a prisoner may be held in administrative segregation.

The day-to-day experience of solitary confinement, however, is the same regardless of whether it is imposed for disciplinary or administrative reasons.

The Canadian solitary confinement regime disproportionately impacts both mentally ill and Aboriginal prisoners.

Increasingly, solitary confinement is being used as a means to warehouse prisoners with mental health problems, and the number of inmates experiencing mental health problems is growing at an alarming rate. By the government’s own assessment, over 90% of female prisoners suffer from mental health problems. According to the Correctional Investigator’s most recent annual report, 28% of all use of force interventions investigated by his office involved a prisoner who had a mental health concern.

The Correctional Investigator has also observed that Aboriginal prisoners are placed in solitary confinement at a rate that is disproportionate to their rate of incarceration. In the women’s prisons, most of the women subject to long-term solitary confinement are Aboriginal.

The United Nations Committee Against Torture – the expert international body responsible for ensuring compliance with the UN Convention Against Torture – has explicitly criticized Canada’s use of solitary confinement. Following Canada’s last appearance before the Committee, it called upon Canada to

- (1) Limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review; and
- (2) Abolish the use of solitary confinement for persons with serious or acute mental illness.

Similarly, the Correctional Investigator has called on government to prohibit prolonged solitary confinement for the seriously mentally ill, and for prisoners who are at risk of suicide or self-injury.

The highly authoritative 1996 report from the *Commission of inquiry into certain events at the Prison for Women in Kingston*, conducted by Lousie Arbour, former UN High Commissioner of Human Rights and former justice of the Supreme Court of Canada, expressed serious concerns about the indefinite and prolonged nature of solitary confinement permitted under the administrative segregation regime.

A key recommendation of Madam Justice Arbour’s final report was that prisoners should not be made to spend more than 30 consecutive days in administrative segregation, and that such segregation should be imposed no more than twice in a calendar year. Similar recommendations were echoed by the coroner’s inquest into the death of Ashley Smith.

What are the alternatives to solitary confinement?

There are many alternatives to solitary confinement.

First, resources should be directed at preventing and diffusing situations that lead to the need to isolate a prisoner, rather than relying on solitary confinement as a solution. A range of non-violent, non-coercive interventions can be used to minimize the need for solitary confinement. Prisoners must also have opportunities for work, education and special programming. Increasing social ties and improving skills have been demonstrated to reduce violence and confrontation. Limiting prison overcrowding is also essential for maintaining a prison system that does not require solitary confinement as a way to manage tension and conflict. And adequate and appropriate mental health care in Canadian prisons is urgently required.

In certain instances, it may still be necessary to segregate a prisoner from the general prison population. In those limited circumstances, segregation should only be used as a last resort and be limited to a specific number of days. While in segregation, the prisoner should continue to have access to meaningful, daily human interaction in the form of programs, access to the outdoors, access to interaction spaces outside of their cells, visits, and supervised contact with other prisoners. The need for segregation must be regularly assessed by an independent decisionmaker and the burden must be on prison officials to demonstrate that no less restrictive measures could be employed.

Other countries, like the United States, are reducing the use of solitary confinement in their prisons. Mississippi has seen a 75% decrease in the use of solitary confinement since 2007. New York and Colorado have legislation banning solitary confinement for the seriously mentally ill. Maine and New Mexico are taking steps to reduce their use of solitary confinement as well. Canada, on the other hand, has seen a 6% increase in the number of federal prisoners in solitary confinement over the last five years.

The BCCLA's work on solitary confinement

In 2011, the BCCLA sued the government of Canada on behalf of BobbyLee Worm, a young Indigenous woman from Saskatchewan who spent a total of more than three-and-a-half years in solitary confinement. During her years of isolation, Ms. Worm spent up to 23 hours a day alone in her cell. She was subjected to the Management Protocol, a controversial program for female prisoners deemed "high-risk". A key feature of the Management Protocol was the use of solitary confinement. Two days after the BCCLA filed its lawsuit, Ms. Worm was removed from the Management Protocol. Shortly after that, the federal government announced it would eliminate the Management Protocol from Canadian prisons entirely. Ms. Worm's case ultimately settled in May 2013, and was one step in the fight to end prolonged, indefinite solitary confinement in Canada.

This lawsuit is the next step in that battle. At a time when the rest of the world is scaling back the use of solitary confinement, Canada remains steadfast in its reliance on a broken and dangerous system. The government's recent response to the recommendations resulting from the coroner's inquiry into the death of Ashley Smith, who committed suicide while in solitary confinement, confirms its refusal to make any changes to its practice of prolonged, indefinite solitary confinement with no judicial oversight.

The BC Civil Liberties Association is undertaking this legal challenge in partnership with the John Howard Society of Canada. The John Howard Society is a federation of provincial and local societies comprised of people whose mission is "effective, just and humane responses to the causes and consequences of crime." It

has branches and offices in over 60 communities across Canada, provincial offices in all ten provinces and the Northwest Territories and a national office in Kingston, Ontario. Read the John Howard Society's recent resolution regarding solitary confinement [here](#).