



BACKGROUND

No justice in Isolation: Ending solitary confinement in prison lockdowns and restrictive movement routines

Solitary by Another Name

The BCCLA is continuing its crucial work to stop solitary confinement. We filed this lawsuit to stop the wardens at federal prisons from unlawfully placing people in long-term solitary confinement. The government claims that long-term solitary confinement has been banned. But wardens at federal prisons continue to isolate people by using lockdowns and "restrictive movement routines," sometimes for months on end.

Solitary confinement is a measure of the wider punitive culture in our criminal legal system that has fueled over incarceration. Working to end solitary confinement helps challenge this culture. The BCCLA is demanding that corrections leaders and policymakers address the human rights crisis in our prisons by adhering to the *Charter of Rights and Freedoms* and the standards laid out by the United Nations.

What is Solitary Confinement?

Solitary confinement is the practice of confining a person in prison to a cell and depriving them of meaningful human contact for 22 hours a day or more. These conditions result in significant periods of sensory deprivation and social isolation. People are placed in solitary confinement for almost any reason, with or without the person's consent. Access to exercise, programming, and family visitation are either greatly curtailed or completely denied. People often receive food through a slot in the door. Few prison systems use the term "solitary confinement," instead referring to prison "segregation," placement in "restrictive housing," "Structured Intervention Units (SIUs)," "lockdowns," and "restrictive movement routines."

Solitary Causes Grave Harm to People

An overwhelming body of evidence shows that solitary confinement causes extreme and sometimes permanent damage to the individuals who endure it, and to the families and communities to which they will return. It is also counterproductive, increasing recidivism while failing to reduce prison violence. Prolonged, indefinite solitary confinement is internationally regarded as cruel and unusual treatment amounting to torture.

According to the Correctional Investigator of Canada, experiencing solitary confinement is "an important risk factor for prison suicide." The suicide rate for people in prisons 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."

Long-term Solitary Confinement is Unconstitutional

In Canada, the *Corrections and Conditional Release Act* ("CCRA") and its regulations govern federal prisons. They do not use, or define, the term "solitary confinement." They previously used the term "administrative segregation" but currently use the term "Structured Intervention Units."

In 2019, the BC Court of Appeal (in a case brought by the BCCLA and the John Howard Society of Canada) and the Ontario Court of Appeal (in a case brought by the Canadian Civil Liberties Association) each reviewed the CCRA's administrative segregation regime. Both courts found that the regime was unconstitutional because it could result in indefinite and prolonged solitary confinement. Those appeal courts considered the substantial evidence of the harms caused by prolonged solitary confinement and cited the *Mandela Rules* prohibitions on solitary confinement and torture as informing the interpretation of Canadian constitutional standards.

What are "Structured Intervention Units"?

Instead of pursuing appeals to the Supreme Court of Canada, Canada repealed the administrative segregation regime and replaced it with "structured intervention units" or SIUs. Like administrative segregation, people in prison are transferred to SIUs if a

warden or other correctional employee determines they cannot be safely managed in the mainstream population. The *CCRA* now requires that people in prison in SIUs be permitted outside their cells for at least four hours/day, which must include meaningful interaction with others for at least two hours. In other words, people in prison may only be confined to their cells for up to 20 hours/day. As well, the *CCRA* establishes two external bodies to oversee the use of SIUs, a positive change which was intended to bring external, independent oversight to solitary confinement and solitary confinement-like conditions.

However, the SIUs have been operating since 2019, and independent investigative bodies and human rights groups have serious concerns that people in prison continue to be held in conditions that fall within the international definition of solitary confinement. Indeed, a significant percentage constitute what is internationally described as "torture or other cruel, inhuman or degrading treatment."

What are Restrictive Movement Routines?

Outside of SIUs, the movements of the mainstream population in Canadian prisons are controlled through "standing orders," not directly through the *CCRA*. In particular, the *CCRA* empowers the Commissioner of Corrections to issue "Commissioner's Directives" regarding the management of the Correctional Service of Canada. Pursuant to a Commissioner's Directive issued in 2012, each head of a federal prison (i.e., each warden) is to ensure that a "Standing Order is in place to monitor and control inmate movement at all times."

The wardens at all federal institutions issue standing orders, which basically create a routine or schedule for each prison. In some cases, the routines are very restrictive and sometimes are actually more restrictive than the conditions in SIUs. Wardens at prisons use restrictive movement routines to restrict people in prison in an entire institution to their cells for most of the day, indefinitely. Wardens apply restrictive movement routines without any assessment as to their impact on individual people, such as those with disabilities. There is also no independent oversight of restrictive movement routines or other procedural protections afforded to people in prison.

What are Lockdowns?

The movement of people in prison is also restricted through lockdowns, which are "non-routine situations" where all people in a prison are locked in cells, and any scheduled

activities are cancelled. During a lockdown, people can be restricted to their cells all day, for several days or weeks at a time. Lockdowns are not just used for emergency or security purposes. They are often implemented for foreseeable, administrative reasons, such as construction or staff shortages. Wardens implement lockdowns at their discretion, with no legislated minimum standards nor any procedural protections provided to people in prison.

Canada is Violating the Mandela Rules

In 2011, a report by United Nations Special Rapporteur on Torture Juan E. Méndez identified the use of solitary confinement as cruel, inhuman, and degrading treatment often rising to the level of torture. Four years later, the UN included strict limits on the use of solitary in its revised Minimum Standards for the Treatment of Prisoners, known as the *Nelson Mandela Rules*. These rules demand that all nations restrict their use of solitary to no more than 15 days, and ban it altogether for children, pregnant people and new mothers, individuals with mental illness and physical disabilities, and other vulnerable populations. The *Mandela Rules* stipulate that solitary confinement must only be used in exceptional cases, as a last resort, for as short a time as possible and subject to independent review.

Although the rules are meant to set absolute minimums for upholding the human rights and dignity of incarcerated people, Canada remains nowhere near compliant. Anthony N. Doob, Professor Emeritus of Criminology at the University of Toronto, chaired the now defunct "Structured Intervention Units – Implementation Advisory Committee" established in 2019 by Public Safety Canada. He authored a paper with Jane Sprott, Professor of Criminology at Ryerson University, in which they determined that 28.4 percent of SIU placements qualify as solitary confinement under the UN definition. That is, the placements entail 22 hours or more per day confined in a jail cell. A smaller portion, 9.9 per cent, could fall under the definition of torture or other cruel, inhuman or degrading treatment because the placements (with 2 hours or less out of cell every day) last more than 15 days.

Safe and Humane Alternatives to Solitary Confinement

In the past decade, a movement has grown internationally and nationally to abolish long-term solitary confinement. Through litigation, legislation, and grassroots pressure, advocates have begun to secure meaningful reforms, while also increasing public

awareness of the harms caused by solitary and the existence of safe and humane alternatives. According to multiple studies and reports, isolation causes more violence inside correctional facilities and an increase in mental illness. There are also increased harms to the communities survivors are placed in following imprisonment. Our prisons are a reflection of our values as a society. Canada should uphold human rights and respect the dignity and worth of all people. Any meaningful transformation of our criminal legal system must address what happens inside prison walls. Reformers and abolitionists alike have a stake in opposing solitary and other inhumane conditions of confinement.

Solitary is a Racial Justice Challenge

Like incarceration itself, research shows that solitary confinement is disproportionately inflicted on Indigenous, Black, and racialized people. Lockdowns and restrictive movement routines disproportionately impact Indigenous and Black people because they are over-represented at higher levels of security. These restrictions on liberty often affect Indigenous prisoners' access to Elders and ceremonies. Ending solitary confinement demands confronting these inequities and the racial bias driving them. Indigenous people account for 5 percent of the people living across the country, but they now make up more than 30 percent of the people in federal prisons. Indigenous women are the fastest-growing prison population in Canada.

Solitary is a Mental Health Challenge

Canadian prisons and jails have become the nation's largest inpatient psychiatric centers. Increasingly, solitary confinement is used to warehouse thousands of individuals with mental illness. The number of people in prison experiencing mental health problems is growing at an alarming rate. By the government's own assessment, over 90% of women in prison suffer from mental health problems. According to a recent Correctional Investigator's annual report, 28% of all use of force interventions investigated by his office involved a person in prison who had a mental health concern. The Correctional Investigator has called on the government to prohibit prolonged solitary confinement for the seriously mentally ill, and for people in prison who are at risk of suicide or self-injury. The United Nations Committee Against Torture – the expert international body responsible for ensuring compliance with the UN Convention Against Torture – has also called upon Canada to abolish the use of solitary confinement for persons with serious or acute mental illness.