

Senate Committee on Human Rights
Issues relating to the human rights of prisoners in the correctional system
February 1, 2017

Opening Comments of the John Howard Society of Canada

Let me first congratulate this committee for choosing to study the human rights of prisoners in the correctional system. The John Howard Society of Canada is committed to effective, just and humane correctional practices and therefore we believe that the absence of effective rights protections for prisoners is in dire need of study and remediation.

Embarking on this study now is especially relevant. 2017 marks the 25th year of the Corrections and Conditional Release Act. It was oriented to the human rights of prisoners and served as a model for other countries, but no longer delivers the promise of a human rights respecting regime. In fact, in August 2015, the UN Human Rights Committee in its sixth periodic report on Canada's compliance with the International Covenant on Civil and Political Rights called on Canada to improve its prison conditions. The Concluding Observations mention reducing overcrowding, limiting the use of administrative and disciplinary segregation and avoiding it entirely for people with serious mental illnesses, and improving the treatment of prisoners with mental health conditions. Also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) were adopted in Dec 2015 and reviewing our compliance with international standards is timely.

It is settled law that prisoners have Charter rights and residual liberty interests that cannot be eroded except in compliance with fundamental principles of justice. Many prisoners fought hard to secure voting rights, due process rights, and other human rights in the courts.

But, the hard won judicial victories and the codified rights in the Charter do not translate into prisoners having their rights in practice. Individual rights may be seen as contrary to efficient prison management and security. Prison is not a rights affirming culture.

Rights without remedies are no rights at all. Prisoners have very limited access to remedies. The grievance system is broken and often completing the grievance process is a condition precedent to going to the courts. The Correctional Investigator's recommendations are advisory and will not directly fix any human rights violations found. The Citizens Advisory Committee is advisory to CSC only. Exercising habeas corpus rights to challenge unlawful detention is extremely difficult for prisoners and poorly understood. Access to counsel is limited and even access to legal materials so prisoners can self-represent is inadequate.

I invite the Committee members to be vigilant about prisoners experiencing negative repercussions for having asserted their rights. I am told that those seeking rights can be viewed as management problems and lose access to programs and privileges. Prisoners believe that bringing complaints or law suits against the correctional service can lead to reprisals. Certainly Shawn Keepness, who with others brought a successful habeas corpus application and then sued for damages, claims he was deliberately

shot in the testicles with a rubber bullet as a direct consequence of his law suit against Edmonton Institution.

Likely the Charter right violation that has been most litigated by prisoners relates to their section 7 rights not to be deprived of their residual liberties except in accordance with fundamental principles of justice. Despite Supreme Court rulings affirming these rights, there are significant abuses made by those revoking residual liberties in the corrections system. These decisions affecting liberty interests can include breaches of parole, involuntary transfers, placements in administrative segregation, increasing security levels, and placements in special handling units. The recent January 16, 2017 federal court decision in the case of DeMaria v. the Attorney General found that the Parole Board failed to meet its duty of procedural fairness. Successful habeas corpus applications from those in administrative segregation are usually based on the correctional authorities' failure to respect fundamental principles of justice. Losing liberties unfairly not only violates the individuals' rights but alienates them from a belief in the rule of law and justice for all.

Other Charter protections that are worth examining in the context of prisoners' rights include: fundamental rights to freedom of conscience, religion and expression, etc. under s. 2; voting rights under s. 3; unreasonable search and seizure which are more limited in prisons but protected under s. 8; arbitrary detention and imprisonment under s. 9; protections upon arrest and detention including being informed of the reasons for the arrest, right to counsel, and habeas corpus to test the lawfulness of the detention under s. 10; if charged with an offence, to protections in criminal and penal matters including the presumption of innocence under s. 11; and, protection from discrimination under s. 15. Many of these stated rights are seen as illusory by prisoners.

Particularly applicable to prisoners are Charter protections against cruel and unusual treatment or punishment. The courts have set a high bar on what constitutes torture but cruel treatment of prisoners has no place in a humane progressive country. Thankfully there has been a growing awareness of the mental and physical toll experienced by those confined in isolation and an increasing number of lawsuits and public calls to limit this practice. We are grateful that the government is committed to implementing the related Ashley Smith Coroner's recommendations and trust that the legislative reforms will also ensure independent adjudication in relation to administrative segregation placements.

The failure to provide adequate mental and physical health care can amount to cruelty. Chronic diseases, such as diabetes, tend to be managed in a manner that is more likely to lead to complications down the road and would be inconsistent with good therapeutic practices. Many prisoners with prescriptions for pain medications can be cut off their medications because of their behaviour or the behaviour of others. Isn't the infliction of pain whether by active abuse or withholding treatment for pain a form of torture?

Increasingly long parole ineligibility periods and greater numbers of indeterminate sentences raise concerns about cruelty consistent with the Supreme Court of Canada's decision in Charkoui. Many serving indeterminate sentences do not get the programs and timely reviews needed to earn their releases.

Peace officers within the prison system can use reasonable force but there needs to be better limits on and accountability for the excessive use of force. The death of Matthew Hines following use of force together with the OCI reports of increasing use of pepper spray and video recording errors in more than 3/4s of the use of force episodes studied raise some serious concerns about monitoring and accountability for use of force. Prisoners' accounts of "dooring accidents" which trap incompatible prisoners in confined spaces raise the spectre of deliberate cruelty and risk of harm to others. Also worthy of investigation are the allegations that some prisoners in psychiatric distress are being told to go ahead and kill themselves. Prisons are harsh environments but prisoners vulnerable due to power imbalances should not be treated with cruelty.

I would encourage the Committee to look at every Rule in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and assess how well our federal correctional system complies. Rule 1 states that all prisoners shall be treated with the respect due to their inherent dignity and value as a human being. Far too many prisoners in maximum security facilities have told me that the atmosphere is one of being goaded and disrespected by staff. Talking with prisoners and former prisoners is essential to fully understanding what rights are available and not available behind bars. There is a significant disparity between the rights and protections written in human rights documents and reflected in laws and regulations and what actually takes place in the dark recesses of our prisons. I am thankful for the many prisoners and former prisoners who have taken the time to share their experiences with me. Those stories are difficult to reconcile with our understanding of Canada as a rights respecting country governed by the rule of law.

Bringing to light issues in protecting the human rights of prisoners is the best way to ensure that all our human rights are respected. Senators have access to federal prisons and I hope that you individually or as a Committee will be visiting penitentiaries and hearing from prisoners themselves. As Ronald Reagan once said "a violation of human rights anywhere is the business of free people everywhere".