

Background Information on Prison Overcrowding

Humane prison conditions respecting the dignity of the person have improved over the years and are now both expected and legally protected. When the Mulroney government introduced comprehensive and progressive correctional reforms in its *Corrections and Conditional Release Act*, now law in Canada for almost 25 years, it emphasized safe and humane custody and supervision as an important aspect of correctional policy¹.

History

The standards for humane prison conditions have evolved over time with the increasing humanity of social expectations. Landmarks in the early history of public outrage over inhumane crowding in prisons were the infamous 'Black Hole of Calcutta,' where in 1755 extreme overconcentration of prisoners of war in a narrow confine resulted in 43 deaths, and the American Civil War's Andersonville Prison, where overcrowding of 33,000 Union prisoners of war in a camp of 107,000 square meters caused disease and death, eventually resulting in the execution of the camp commandant for war crimes. John Howard, the renowned 18th century prison reformer, recommended single cell prison occupancy with cells being at least 8' 2" by 5' 8"². During the 1950s, the United Nations Standard Minimum Rules for the Treatment of Offenders were adopted to require that, where sleeping accommodation is provided in individual cells, each prisoner should have his own cell, and it is undesirable to have double occupancy even where temporary overcrowding might exist.³

Modern Standards

A number of organizations provide guidance on minimum space requirements of prison cells. The International Red Cross in 2005 calls for at least 3.4 square meters per person. This is less space than the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommends.⁴ The American Public Health Association calls for 60 square feet of space per occupant in a cell and 75 square feet per occupant in a dormitory. At a certain point the level of prison overcrowding and the conditions arising from it can violate protections against cruel and unusual punishment. Thus in May, 2011, the U.S. Supreme Court held that the California prison system had to reduce its inmate population by 46,000 over 2 years to achieve an occupancy below **137.5%** of the prison capacity in order to avoid violating constitutional protections against cruel and unusual punishment.⁵

¹ S. 3. (a) of the *Corrections and Conditional Release Act*, (S.C. 1992 c.20)

² Southwood, Martin, *John Howard, Prison Reformer*, Independent Press, London, 1958 at p. 92.

³ Article 9. (1) of the Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders held in Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

⁴ 12th U.N. Congress on Crime Prevention and Criminal Justice Release, U.N. Information Officer, Salvador, Brazil, 16 April 2010.

⁵ *Brown v. Plata*, No. 09-1233, decided May 23, 2011, 563 U.S. ____ (2011)

What Prison Overcrowding Does

Howard Sapers, Canada's Correctional Investigator, warns us about the harmful effects of prison crowding:

It is also important to understand that the serious, if unintended, effects of prison crowding reach far beyond the provision of a comfortable living environment for inmates. Aside from the immediate issue of physical capacity, prison crowding has negative impacts on the system's ability to provide safe and secure custody. It is well understood that prison crowding can lead to increased levels of tension, frustration and institutional violence, which can jeopardize the safety of staff, inmates and visitors. According to CSC data, the number of major institutional incidents increased during the reporting year— including preventable deaths in custody, violent assaults, serious bodily injury and use of force. As correctional populations increase, timely access to offender programs, treatment and meaningful employment opportunities measurably diminish, resulting in delays for safe reintegration into the community and further exacerbating both population management and cost pressures. ...

Given high rates of mental illness, drug addiction, violence and criminal gang membership, it is difficult to see how double-bunking can be viewed as a correctionally appropriate or sustainable solution to crowding pressures in either the short or medium terms.⁶

Why Even Occupation to Capacity is Inhumane

To the outsider, a prison occupied to 100% capacity might seem to be still within the limit of humane confinement. However, correctional officials advise that levels below 100% occupancy are needed to allow for effective management of the prison population. They recommend ideal levels as no more than 90% of the rated occupancy for maximum security prisons and no more than 95% for medium security prisons. Having some surplus space is necessary to permit correctional officials to separate rival gang members or deal with other conflicts to prevent violence and reduce tensions by transferring inmates away from danger zones, as well as to repair and provide maintenance to cells as needed.

Occupancy to capacity may mean that parts of the prison system are overcrowded because distribution is uneven. Prison officials may have excess space available that is

⁶ Correctional Investigator's Annual Report 2009-10

inappropriate to the security level, gender, or mental health needs of some offenders, who then have to be overcrowded in the appropriate spaces.⁷

The Situation in Canada Today

The following highlights indicate the dimension of the prison overcrowding problem in Canada now, even before the proposed Omnibus Crime Bill has come into operation:

British Columbia:

On May 18, 2011 the B.C. Government and Service Employees Union (BCGEU), reporting on a May 17th meeting between Shirley Bond, Minister of Public Safety, and union president, Darryl Walker, on overcrowding in B.C.'s jails, said that "the prisons are at **170%** over capacity and around **200%** percent in some of the maximum security jails".

Alberta:

A May 14, 2011 CBC story, "Inmate death highlights jail overcrowding", reported Guy Smith, President of the Alberta Union of Public Employees, commenting on overcrowding in the Edmonton Remand Centre, where there was no room in the mental health unit so an offender with mental health conditions was housed with others in an overflow unit. Mr. Smith said, "It's totally over capacity in terms of the number of inmates — they're double-bunked in their cells, sometimes triple-bunked, in a facility that was just not built to sustain that kind of population. We've been saying for a long time that if you're going to have that many inmates in the environment like that, you have to increase the numbers of front-line correctional peace officers who work on those units."

Saskatchewan:

On August 22, 2011, Ombudsman Kevin Fenwick reported that prison facilities were twice as full as they should be. Fenwick said that new federal laws will only mean further overcrowding of the already overcrowded facilities. He remarked that "You can imagine that if you have any kind of facility that you stuffed twice as many people in as what they were designed to hold, there very well may be problems".

Manitoba:

In June 2009, CTV Winnipeg reported that hundreds of Manitoba corrections officers held a rally at the legislature to protest overcrowding and prison conditions. Corrections workers said that in the last eight months they've seen increased tension among 42 rival gang members. At that time, the Manitoba Government and General Employees' Union reported that Manitoba Jails were housing 600 more inmates than what the system was built to handle.

⁷ Allen, Rob, "Current Situation of Prison Overcrowding", 2010, International Centre for Prison Studies, King's College, University of London, United Kingdom

Pat Gilbertson, a corrections worker for 27 years, said, "Every floor you go to you see a sea of inmates...when you start putting inmates into areas [that] were never meant to house anybody, it's looking for trouble" .

Quebec:

Back in June 2007, the Montreal Gazette reported that the Quebec Ombudsman found that Quebec's prisons were so overcrowded that inmates were bunking on mattresses in gyms and classrooms.

New Brunswick:

A CBC Report in April, 2010 indicated that New Brunswick jails were bracing for overcrowding and the Minister advised that the province's six jails were already over capacity by more than 100 people at a total 468 inmates.

Prince Edward Island:

In a May 12, 2011 CBC report on overcrowding in P.E.I.'s Sleepy Hollow prison, Attorney General Doug Currie said that new federal legislation is putting an extra strain on the provincial jail. He acknowledged that the centre at Sleepy Hollow was meant to house 80 but now often holds as many as 130 inmates.

Nunavut:

In May 2010, the Nunatsiaq News reported that the Nunavut jail had reached a boiling point and was more crowded than at any time in its history. A building originally designed for 48 inmates now housed 102 inmates. The author, Gabiel Zarate, said, "the badly overcrowded state means more than mere discomfort; it means few essential programs, dangerously poor hygiene, and the ever-present threat of violence."

Legal Consequences of Canada's Current and Future Overcrowding

Canada has protections against cruel and unusual punishment in section 12 of the Charter of Rights and Freedoms, and many prisons across the country are already operating at occupation rates above the **137.5%** threshold set by the U.S. Supreme Court. The mandatory minimum penalties, the restrictions on community based sentencing options, and the changes to parole eligibility and remission anticipated to be in the Omnibus Crime Bill will increase the numbers in remand and in provincial, and territorial and federal correctional facilities. Given current occupancy levels, these increases would likely violate section 12 Charter of Rights protections against cruel and unusual punishment. For example, although prison cell size varies across Canada, if we take the cell size of 6' x 10' at Millhaven Penitentiary as a rough basis for evaluation, Canadian prisoners now have 5.57 square meters of space even if cells are kept at single occupancy, which is often not the case. While single occupancy would provide more space per occupant than offered in the war crime of Andersonville Prison, double occupancy would not. Similarly, these cells meet the American Public Health Association's standard of humanity with single occupancy, yet as the highlights of present overcrowding have indicated

above, single occupancy is even now more than can be expected at many facilities. Thus the proposed legislation should not be proclaimed in force until the provinces, territories, and the federal government can assure Parliament that the expected increase in offenders can be accommodated within 100% occupancy rates of the prisons and without worsening the existing problem to inhumane levels.