John Howard

THE JOHN HOWARD SOCIETY OF CANADA LA SOCIÉTÉ JOHN HOWARD DU CANADA

**Press Release: No End to Abusive Solitary Confinement**

November 30, 2022: Three years ago today the legislative changes that the federal government assured us would end abusive solitary confinement took effect. There was sufficient scope for discretion in those legislative changes that their implementation was critical to overcoming abuse and respecting the Charter and International Human Rights of prisoners. With the recent reports of the Structured Implementation Units Implementation Advisory Panel and the Correctional Investigator, we know that unlawful and abusive solitary confinement persists in our federal prisons.

“Solitary confinement” is defined by the UN Mandela Rules as isolated confinement of a prisoner for 22 hours or more a day without meaningful human contact. The Rules prohibit more than 15 consecutive days of such confinement as cruel and a form of torture. The mental health and other negative effects are well documented. Canadian Courts of Appeal examining the Charter compliance of administrative segregation articulated principles for isolated confinement: independent adjudication of the decisions to place and maintain prisoners in isolation; cautions relating to those with pre-existing mental health conditions; and limits on the duration (15-day cap imposed by the Ontario Court of Appeal). Subsequent judicial decisions found that longer than 15 days in administrative segregation violated Charter rights and entitled prisoners to damages.

Abusive and unlawful solitary confinement exists both within and outside of the Structured Intervention Units. The Correctional Investigator reporting on responses to Covid-19, indicated that a form of isolated confinement imposed on prisoners was outside the scope of any domestic or international legal frameworks. In his most recent Annual Report, he advised that there was no legislative authority for the new Voluntary Limited Association Ranges. Those ranges no doubt house those who previously would have been in voluntary administrative segregation and afforded more procedural protections than they have now. Previous Charter rulings have held that placing prisoners in confinement that reduces residual liberties requires compliance with principles of fundamental justice.

Earlier Reports by Professors Doob and Sprott, accepted by the Public Safety Minister of the day, found that about 10% or those placed in Structured Intervention Units had been subjected to prolonged solitary confinement. The legislative requirement that Correctional authorities “offer” 4 hours of time out of cells and 2 hours of meaningful human contact per day does not mean that prisoners actually receive at least 2 hours out of cells and meaningful human contact – the UN definition of solitary confinement. The UN prohibits solitary confinement if it persists for more than 15 consecutive days and Canadian Courts have also capped it at 15 days.

The recently released Annual Report of the Structured Intervention Unit Implementation Advisory Panel also shows that Charter required independent adjudication of placements in Structured Intervention Units is ineffective. Not only are the legislatives timelines too long to protect a prisoner from prohibited prolonged solitary confinement or a serious deterioration of mental health, but once a direction is given by an independent, external decision-maker to remove a prisoner from the Structured Intervention Unit, the correctional authorities do not always comply in a timely manner leaving the impression that they are ignoring the decision.

Given that unlawful and abusive solitary confinement is continuing three years after new laws came into effect to end the abuse, the John Howard Society of Canada calls on the government immediately to legislate a definition of solitary confinement consistent with the UN definition and prohibit its use for more than 15 days. It also calls on Parliamentarians to take action now to prepare for the required 5-year review of the legislative reforms, which should begin on November 30, 2024. Data needs to be collected on all forms of isolated confinement in federal prisons, not just in Structured Intervention Units. The legislation is gravely flawed and does not protect Canadians from having their Charter rights denied and from being tortured.

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