**Issues: Parliamentary Review of Bill C-83**

1. **Legislative requirement for Parliamentary Review and Report Ignored**

Given concerns raised at the outset about whether Bill C-83 would remedy the Charter deficiencies found by the courts relating to administrative segregation, a robust review clause was included that required a comprehensive review by a Cabinet committee begin at the start of the 5th year after proclamation in force (June 21, 2023) and result in the tabling of a report recommending any needed changes by June 21, 2024. The review and report were not done.

1. **Continued Indeterminate Isolation**

Bill C-83 does not cap the duration of isolated confinement. People are experiencing long periods of solitary confinement which is known to have devastating mental health consequences. This is occurring both within and outside of the new Structured Intervention Units (SIU). The Ontario Court of Appeal held that such isolated confinement in excess of 15 consecutive days violated Charter rights.

While Bill C-83’s new Structured Intervention Unit (SIU) regime requires that prisoners be “offered” four hours out of cells and two hours of meaningful human contact per day, the reality is that many prisoners are not out of their cells for 4 hours per day or even for more than 2 hours per day. “Meaningful human contact” has not been defined and thus difficult to assess. The SIU Implementation Advisory Panel (SIU IAP) tracks and reports on time out of cells in SIUs and indicates that things are not improving over time with too many not being out of their cells as envisioned by the Bill. An early report by Professors Doob and Sprott found that about 10% or 195 people placed in SIUs had been subjected to what the UN describes as prolonged solitary confinement and prohibits as a form of torture.

1. **Inadequate Mental health protections**

The Courts cautioned against those with pre-existing mental illnesses being subjected to isolated confinement and the need for vigilant monitoring of the mental health of those in isolated confinement. The effectiveness of the legislated protections relying on CSC’s own health care staff and a process for referrals/reviews ultimately to the Independent, External Decision-Makers needs to be reviewed. Despite CSC’s continued use of solitary confinement in a significant number of cases, health care providers recommended removal from SIU in only 0.15% of cases (Doob and Sprott).

1. **Inadequate Procedural Safeguards**

The British Columbia Court of Appeal made a clear finding that “procedural fairness in this context (the placement of inmates in solitary confinement) requires the external review of administrative segregation decisions by reviewers who are independent of CSC, commencing with the five-day review.”  While the legislation includes independent, external decision-makers (IEDMs), the timing, scope, and impact of their decisions raises serious questions about adequacy. Significantly, the legitimacy of an initial placement in an SIU often involves a factual dispute between the institution and the prisoner. The legislation does not provide for IEDM involvement or any independent adjudication in an adversarial process that would respect the prisoner’s right to contest the basis for the harsher confinement at the five-day review or after.

1. **Covert Disciplinary Segregation**

The Bill purports to eliminate isolation as an outcome of a disciplinary process for institutional transgressions. However, the Review should investigate whether people continue to be punished through SIU placements for behaviour that might warrant an institutional charge but does not reach the more stringent criteria for a placement in a SIU. .

1. **Proliferation of “Solitary Confinement”**

The Correctional Investigator, the West Coast Prison Justice Society, Senators and others have raised concerns that Bill C-83 has resulted in a proliferation of solitary confinement under different names outside of procedural and substantive safeguards for prisoners. These can include Voluntary Limited Access Ranges, restricted movement, medical observation, lockdowns, etc. The Correctional Investigator even raised the possibility of “hidden cells”, where prisoners are kept in what the UN would define as solitary confinement. The impact of Bill C-83 on the broader federal prison practices also needs review.

1. **Barriers to Right to Counsel**

Section 97(2) of the *Corrections and Conditional Release Regulations* (“CCRR”) guarantees the right to counsel in relation to transfers to SIU, and a “reasonable opportunity to retain and instruct legal counsel.” Section 97(4) provides the right to retain and instruct counsel for SIU determinations or reviews when there is an opportunity to make representations in “the preparation, and if applicable, the presentation of those representations.”

Despite these provisions, people in SIU face significant barriers to exercising the right to counsel. Amendments to legislation are required to guarantee meaningful independent SIU reviews on the merits, provision of notice, documents and decisions directly to counsel with adequate notice to prepare for reviews. The review should consider needed corrective actionsuch as that recommended by the Canadian Bar Association in its November 28, 2023 letter to CSC and the Parole Board.

1. **Questionable Effectiveness of SIUs**

While intended to provide structured interventions to allow people to live safely in the general prison population, many prisoners have frequent returns to the SIU. The review should assess whether the SIUs are achieving their purpose particularly in light of increasing violence within prisons.

1. **Delayed Use of Body Scan Searches**

Bill C-83 provisions authorizing the use of body scanner technology to prevent the introduction of illegal substances into federal correctional institutions are waiting for regulations. Additionally, the Bill provides that a body scan search of prisoners shall be conducted instead of strip searches where possible. Regrettably, these provisions, which would be more reliable and effective, and less demeaning and traumatizing for those experiencing incarceration, have yet to be proclaimed in force. The review should explore why it has taken 5 years for Parliamentary intention to be reflected in operations.

1. **Detention in Dry Cells**

While s. 51 of the CCRA relating to dry cells was amended by Bill C-83, those provisions have not yet been proclaimed in force.  Bill C-83 removed the option of using x-rays to search for contraband believed to be hidden in the person’s body leaving only the placement in a cell without plumbing in the expectation that the contraband would be expelled.  The Bill also required a daily visit from a health care professional for those placed in dry cells.  Section 51 was then amended to clarify that only the belief that the contraband was being carried in the rectum should justify a placement in a dry cell.  While the required daily visits by health care professionals now seems to be a part of s. 51, the option for using x-rays remains.  Placements in dry cells represent one of the harshest forms of isolated confinement and more humane alternatives should be explored as part of the review of Bill C-83.

1. **Systematic and Background Factors Affecting Indigenous Peoples**

Bill C-83 introduced a provision aimed at addressing the mass incarceration of Indigenous people, and over representation of Indigenous people in higher levels of security and segregation. Section 79.1 of the CCRA requires CSC to consider Indigenous social history factors in making decisions, but prohibits using these factors in risk assessments unless they decrease the level of risk. This provision has not been successful in decreasing the over representation of Indigenous people in prison, higher levels of security or in SIU. Further measures are required.

1. **Inadequate Access to Health Care**

*Quality Care Reviews*

The term “mortality review” was replaced with “quality of care review” in Bill C-83. A 2013 report by the Office of the Correctional Investigator (OCI) raised serious concerns with the mortality review process—namely, poor healthcare record keeping, inadequate continuity of care, and no investigatory purpose, amongst others. We urge a review of the quality of care review process to ensure that it adequately explains “natural cause” deaths in custody.

*Medical Assistance in Dying (MAID)*

Bill C-83 included provisions that exempt deaths by medical assistance in dying (MAID) from reviews. This exemption shields the prisons from transparency or accountability for failing to provide alternatives such as parole by exception or humane palliative care that might have influenced the person to opt for MAID. Particular vigilance around MAID deaths in the prison context is required and this exemption should be reviewed.

*Definition of “Health Care”*

Bill C-83 amended the definition of health care to include the services being provided by those being supervised by registered health care professionals to count as health care.  To assess the impact of that provision on prisoners’ health care, it is important to know what percentage of those providing health care are “registered health care professionals” and what percent are not themselves registered but being supervised by them. Additionally, the nature of the supervision being provided to those who are not registered health care providers is important information and should be canvassed as part of the review.

*Professional Autonomy of Registered Health Care Providers*

Bill C-83 requires CSC to support the autonomy of registered health care providers. Most registered health care providers are under contract with CSC or employees of CSC. When the jailor is the health care provider, issues of security and cost frequently trump what health care providers recommend. This is reflected in prisoners having prescriptions for medicines before their incarceration that are not available to them in the prison, delays in diagnostic tests and surgical procedures, inability of prisoners to access their medical records in a timely manner, etc. Whether Bill C-83 actually increased the autonomy of registered health care providers should be assessed as part of the review.

*Patient Advocates*

Bill C-83 requires CSC to provide access to patient advocates for those serving sentences in federal prisons.  Virtually nothing has been done to support prisoners’ access to patient advocates, nor for patient advocates getting access to medical records prisoners have authorized them to have in order to advocate, advise, seek outside medical advice, etc. The Parliamentary review what has been done to provide patients in federal prisoners with access to Patient advocates who are independent of CSC as required by the Bill.

1. **Other Jurisdictions’ models of alternatives to solitary confinement**

The SIU regime has not ended Canada’s use of solitary confinement. Solitary confinement continues in SIU placements, observation cell placement for people at risk of suicide or self-harm, and in frequent and prolonged lockdowns. Canadian prisons implement regular institutional movement routines in some maximum-security prisons that come close to the UN definition of solitary confinement, such as in voluntary limited association ranges, that are also harmful to mental health.

Given Canada’s continued excessive use of isolation in its penitentiaries, the review should explore regimes from other jurisdictions, such as the City of New York Local Law No. 42 (2024) for more effective, just and humane alternatives