

PRISONERS' STRUGGLES

Prisoners' Legal Services on Segregation

Simon Cheung

There is an abundance of horror stories about the practice of solitary confinement, and plenty of voices calling for its end as a cruel and counter-rehabilitative practice. However, there have also been scant few full-scale proposals detailing exactly how solitary confinement could be eliminated in Canada. In an effort to change this, on 28 November 2016 Prisoners' Legal Services (PLS) released *Solitary: A Case for Abolition* – a 112-page report that offers a variety of solutions supported by historical research, academic articles and precedents from other jurisdictions – to address the issues currently responded to using solitary confinement.

The primary purpose of the report is to initiate discussions aimed at finally ending solitary confinement, also known as segregation and separate confinement in the Canadian federal and British Columbian prison systems respectively. The scale and complexity of such a process is not lost on PLS. We understand the process will likely take years of reform. However, *Solitary: A Case for Abolition* contains a comprehensive collection of current research and recommendations that, if implemented, could form a firm foundation for future dialogue in working committees or meetings between correctional organizations and stakeholders like PLS.

PLS is a legal clinic located in Burnaby, British Columbia that started off as a branch office of the BC Legal Services Society (BC legal aid) in 1980 and continued as a Legal Services Society-funded non-profit in 2002. Executive Director Jennifer Metcalfe oversees a small team of legal advocates and administrative staff who strive to further the organization's mandate of protecting British Columbian prisoners' liberty rights as enshrined under section seven of the *Canadian Charter of Rights and Freedoms*. Under this section, individuals in Canada are protected from government-imposed deprivation of their right to life, liberty and security of the person except in accordance with the principles of fundamental justice.

Complaints regarding solitary confinement – defined by the United Nations as “the confinement of prisoners for 22 hours or more a day without meaningful human contact” – from prisoners in both federal and provincial institutions across BC are commonly raised at PLS. On a day-to-day basis, PLS provides a range of support for clients in such circumstances: summary advice over one of our six phone lines; written advocacy; and

in-person representation by advocates and lawyers. However, *Solitary: A Case for Abolition* represents a longer-term ambition of our organization. It is intended to be, in essence, a blueprint for the abolition of solitary confinement.

The United Nations considers the use of solitary confinement on prisoners with mental disabilities or for anyone for more than 15 days to constitute torture or cruel treatment. For this reason, the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the *Mandela Rules*) prohibit the use of solitary confinement for those with mental or physical disabilities that would be exacerbated by its use, and limits its use for other prisoners to 15 days.¹

In order to facilitate the abolition of solitary confinement, *Solitary: A Case for Abolition* proposes a multi-faceted alternative system focused on addressing the therapeutic needs of prisoners via the implementation of a trauma-informed approach, dynamic security techniques and de-escalation practices. Correctional organizations are encouraged, for example, to establish specialized mental health units in greater numbers than currently exist, as both the federal and BC status quo are not adequate to the task of providing psychological treatment to prisoners who require it. These resources would, the report argues, largely prevent the problematic behaviours that solitary confinement not only fails to address, but in many cases aggravates and escalates.

On this point, *Solitary: A Case for Abolition* references a 2010 report by Dr. Margo Rivera concerning the Correctional Service Canada's treatment of prisoners deemed to be mentally ill. In it, she found that dismissive or confrontational responses from staff to prisoners' negative behaviour or complaints only serve to foster contentious relationships between captors and captives, which often leads to an escalation in conflict.² Dr. Rivera recommended that segregation staff selection, training, supervision and evaluation be reviewed and enhanced, and encouraged the staffing of a stable, high calibre team in segregation units trained in conflict-diffusion skills and the use of professional, respectful, encouraging, and empowering communication with prisoners.³

The report also draws on research such as the work done by Niki Miller and Lisa Najavits, who argued that a trauma-informed approach – where correctional staff are familiar with and sensitive to trauma and its symptoms, and are thus better prepared to compassionately handle its common responses

and reactions from prisoners – combined with interventions designed to address trauma symptoms, would reduce both harm to prisoners and staff, as well as decrease correctional security costs.⁴ It seems clear that such a system would also result in less reliance on solitary confinement in response to behavioural issues.

As well, *Solitary: A Case for Abolition* canvasses case studies from Canada, the United States and the United Kingdom to not only identify common problems, but find success stories where jurisdictions have drastically reduced their use of solitary confinement and initiated innovative mental health programs for prisoners.

The State of Colorado and its Department of Corrections, for instance, have been lauded for their progressive legislation and policy that places strict limits on their use of solitary confinement, as well as specifically directing resources to prison mental health services and requiring regular, public reporting of data from their solitary confinement practices. Notably, the state not only banned the use of solitary confinement for those with serious mental illnesses, but expanded the definition of “serious mental illness” to include, regardless of diagnosis, any prisoner indicating a high level of mental health needs demonstrating significant functional impairment within the correctional environment. The combined effect of these measures reduced Colorado’s segregated prison population from 1,500 in August 2011 to 177 in September 2015.

Even with such preventative measures, however, PLS recognizes that there may be occasions when prisoners require immediate separation from the open prison population. *Solitary: A Case for Abolition* advocates for limiting cell lock up to a few hours within one day, while ensuring that prisoners who are separated from other prisoners are provided sufficient daily meaningful human contact to ensure that their mental health is not impacted by isolation. This would also require greater external oversight of correctional institutions’ use of population management practices and mental health supports in general. For guiding principles behind such oversight, the report looks to the 1996 Arbour Report, the 1997 Task Force on Administrative segregation, various reports of the Correctional Investigator of Canada, the 2016 Ombudsman of Ontario report *Segregation: Not an Isolated Problem*, to the Ontario Ministry of Community Safety and Correctional Services’ review of segregation policies, and the 2015 *Mandela Rules*.

Solitary: A Case for Abolition draws on testimonies from prisoners who have experienced derelict conditions in solitary confinement to reinforce the importance of strictly limiting its use. Prisoners regularly contact PLS reporting segregation cells spackled with biohazards like urine, feces and blood. They describe excessive uses of force by segregation staff and guards who shut off water, lights and power to cells as punishment to prisoners. This is in addition to the cruel practice of isolating prisoners in a cell for 23 hours or more with little to no human interaction.

Canada has already felt the consequences of insufficient action to curb such inhumane treatment. On 19 October 2007, Ashley Smith died from self-strangulation while correctional officers watched after being segregated for 11 months despite her severe mental illness. Her death was later ruled a homicide by an Ontario coroner. Since then, prisoners like Edward Snowshoe, Christopher Roy, Terry Baker and others all tragically ended their own lives after segregation and their resulting compromised mental health.

Solitary: A Case for Abolition contains 39 total recommendations aimed at a more evidence-based, treatment-oriented and security-conscious correctional system. The most ambitious involve the complete prohibition of solitary confinement in Canada. PLS recommends the following legislative changes:

- The prohibition of solitary confinement in legislation requiring that, if it is absolutely necessary, solitary confinement (or short-term cell lockup) only be used for as short a period of time as necessary within one day, and requiring sufficient meaningful human contact each day; and
- The complete prohibition of solitary confinement on prisoners with mental disabilities and youth under the age of 21.

If the practice of solitary confinement continues, PLS recommends the following legislative changes:

- Enforcement of prisoners' statutory right to procedural fairness, including the right to an oral hearing of the evidence, legal representation of the prisoner's choice, and binding independent adjudication of segregation or separate confinement placements;
- Authority given to independent adjudicators to remove prisoners from segregation or separate confinement, order access to programs

or privileges, and recommend investigations and disciplinary proceedings against correctional staff who have violated law and policy;

- Time limits of 15 days' continuous placement, with an annual limit of 30 days; and
- External oversight of solitary placements to ensure that prisoners are not isolated, are provided opportunities to keep their minds productively occupied and have adequate levels of meaningful human contact each day.

PLS recommends the following general practices for housing prisoners in solitary confinement:

- Segregated prisoners should have as much human contact as possible with people from outside the institution, as well as with programming, religious and medical staff;
- Small groups of prisoners should be allowed to socialize if there are no serious safety concerns, such as for religious ceremonies, programs or in the yard;
- Access should be provided to counselling and behavioural therapy, programs, school, work and religious or community support;
- Psychological services should be offered to prisoners in segregation or separate confinement in a private area, rather than only through the cell door;
- All segregated prisoners should have access to television and personal effects within one day;
- A complete prohibition on double-bunking in segregation;
- The discipline and removal from vulnerable prisoners of any staff who behave inappropriately in relation to segregated prisoners or who fail to provide segregated prisoners with daily access to showers, telephones, cleaning supplies and a separate hour of daily exercise; and
- The provision of de-escalation training and conflict-diffusion skills as a central part of all correctional officer training, with refresher courses required every three years.

As well, since mental health issues are so commonly linked to institutional decisions to segregate prisoners, PLS recommends the following practices:

- Funding to designate at least half of the beds in each prison as therapeutic living units on an ongoing basis, adequately staffed by appropriate mental health professionals;
- Legislation specifying that the number of specialized therapeutic beds available must be sufficient to meet the mental health needs of a broad and inclusive class of prisoners with mental health needs (including prisoners who, regardless of diagnosis, demonstrate significant functional impairment within the correctional environment);
- That specialized mental health units no longer be considered transitional units, but that prisoners be permitted to stay in these units as long as they are benefiting from a therapeutic environment;
- The provision of additional mental health supports for any prisoners in voluntary segregation or separate confinement due to mental health problems, and offers for placement in units specifically designed for prisoners who have difficulty interacting socially with others, staffed by correctional officers and mental health professionals skilled at encouraging positive social interaction; and
- Guidelines stipulating that health care professionals who work in prisons must not play any role in approving prisoners for solitary confinement, must report to the warden if they consider a prisoner's physical or mental health is at risk by continued solitary confinement, and must report the use of solitary confinement on prisoners with mental disabilities or solitary confinement of more than 15 days to the applicable regulatory College of Physicians, the federal Correctional Investigator or provincial Investigation and Standards Office, and the federal or provincial Minister of Justice.

These and the other recommendations in *Solitary: A Case for Abolition* aim to protect prisoners and correctional staff alike. The adversarial culture that often manifests in Canadian corrections has resulted in preventable harm and, at times, deaths. As well, prisoners are often released who are more familiar with the blunt end of institutional security measures than rehabilitative counseling, and feel embittered against the correctional system – and thus, society as a whole – as a result. PLS proposes a system with the belief that we can do better and implores Canadian corrections start a dialogue toward making these ideals a reality.

ENDNOTES

- ¹ UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules): note / by the Secretariat, 29 September 2015, A/C.3/70/L.3, [The Mandela Rules]. Online: [http:// www.refworld.org/docid/56209cd14.html](http://www.refworld.org/docid/56209cd14.html).
- ² Rivera, Margo (2010) *Segregation Is Our Prison Within The Prison: Operational Examination of Long-Term Segregation and Segregation Placements of Inmates with Mental Health Concerns*, Ottawa: Correctional Service Canada, page 65.
- ³ *Ibid* at pages 65 and 83.
- ⁴ Miller, Niki A. and Lisa M. Najavits (2012) “Creating Trauma-informed Correctional Care: A Balance of Goals and Environment”, *European Journal of Psychotraumatology*, 3: 10.

CONTACT INFORMATION

Simon Cheung
Legal Advocate
Prisoners' Legal Services
302-7818 6th Street
Burnaby, British Columbia, Canada
V3N 4N8
Telephone: (604) 636-0470
Fax: (604) 636-0480
Email: scheung@pls-bc.ca