


# BY ANY OTHER NAME:

## A 15 Day Spotlight on Solitary Confinement in Canada



SUMMARY REPORT - NOVEMBER 2021





**“Solitary confinement is a practice not a place.** Regardless of the unit or the reason, when one is locked up for long stretches of time without meaningful human contact, one is experiencing solitary confinement. Irrespective of the name we give it, solitary confinement has devastating effects on the mental and physical wellbeing of individuals, undermines one's chances of successful reintegration into community, and raises serious legal and ethical questions - this spotlight will make that clear to the public and to policy makers.

- Dr. Adelina Iftene, Schulich School of Law - Dalhousie University

**”**



# TABLE OF CONTENTS

<b>BACKGROUND</b>	<b>4</b>
<b>INTRODUCTION</b>	<b>5</b>
Spotlight on Solitary Launch Event	5
Solitary Confinement & SIUs	7
Segregation in the Maritimes	8
Solitary Confinement, International Rights & the Charter	11
Medical Implications of Solitary	13
Structured Intervention Units (SIUs)	15
Solitary Confinement & Prison Law	16
The Community Impact of Solitary Confinement	19
The History of Segregation & Calls for Legislative Reform	22
What is 'Meaningful Human Contact'?	24
<b>CHALLENGES DURING COVID-19</b>	<b>26</b>
Legal Action on the Response to COVID-19 in Federal Prison	26
COVID-19 Inside: Updates from the OCI	29
The International Response to COVID-19 in Prisons	32
<b>SISTERHOOD, ABOLITION, SOLIDARITY</b>	<b>36</b>
Toward a Future without Prisons with the Prisons for Women Memorial Collective (P4W) Sisterhood	36
<b>VOICES INSIDE AND OUT</b>	<b>39</b>
<b>CALLS FOR ACTION</b>	<b>41</b>



# BACKGROUND

On Monday, November 16, 2020, a coalition of groups invested in justice for prisoners launched a 15-day spotlight on the ongoing practice of solitary confinement in Canada. This spotlight led up to the one-year anniversary of the supposed implementation of the Structured Intervention Units (SIUs) in federal Canadian prisons – an implementation that has received considerable public criticism over the failure of the Correctional Service of Canada (CSC) to cooperate with the independent oversight committee, and a lack of meaningful change from the solitary confinement units they were intended to replace.

While the federal government may have announced that solitary confinement has been abolished in Canada, this 15-day spotlight - coordinated by The Canadian Association of Elizabeth Fry Societies (CAEFS), The John Howard Society of Canada, and Prisoners' Legal Services (PLS), and Dr. Adelina Iftene – brought to light all of the ways in which the practice of solitary confinement continues to persist in Canada, just by any other name: SIUs, Restrictive Movement Routines, Mental Health Monitoring, Medical Isolation, Lockdowns, and Dry Celling.

This report, released one year later, summarizes the panels from the Spotlight on Solitary campaign, most of which can be found on [YouTube](#). These panels include some of Canada's most respected and recognized advocates, scholars, lawyers, and politicians – and features the critical voices of individuals with lived experiences of incarceration and community groups.



# INTRODUCTION

## Spotlight on Solitary Launch Event

November 16, 2020

► [Watch the panel here](#)

### Panelists:


- Emilie Coyle, Executive Director of CAEFS
- Catherine Latimer, Executive Director of John Howard Society
- Jennifer Metcalfe, Executive Director of Prisoners' Legal Services

### Summary

The focus of the launch event's discussion was the Prisoners' Legal Services' report on SIUs and other forms of solitary confinement isolation, such as lockdowns and restricted institutional movement routines. Emilie Coyle and Catherine Latimer interviewed Jennifer Metcalfe on the findings of the report "*Solitary by Another Name: The Ongoing use of Isolation in Canada's Federal Prisons*," by the West Coast Prison Justice Society. As one of the authors of this report, Metcalfe spoke about the findings on solitary confinement and the need for independent healthcare and the pressing need for independent study of CSC staff culture within prisons designated for women.

### Key Discussion Points

- **SIUs:** In 2019, the segregation regime in Canada was deemed unconstitutional and was replaced by SIUs. SIUs have the dual purpose of keeping people separate from the general prison population when there's a risk to safety or security, while also trying to meet mental health needs and explore alternatives to isolation. The SIU model was designed to provide a more structured and effective intervention for prisoners by addressing their specific needs and risks, with the goal of ultimately being reintegrated into the mainstream prison population as soon as possible. Metcalfe outlined that one of the provisions of SIUs were to give prisoners the opportunity to spend a minimum of four hours a day outside their cell, including two hours a day of "meaningful interaction with others," which is often not occurring. She stated that SIUs are failing to meet legislative intent of addressing mental health needs and finding alternatives to isolation, as SIUs still allow for solitary confinement.
- **Lockdowns:** Metcalfe discussed the frequency of "lockdowns" and how their conditions ultimately replicate solitary confinement, except without any of the legislative protections or regulations. During lockdowns, prisoners are only allowed out of their cells for between 20 minutes and two hours a day – a violation of the Nelson Mandela Rules, which sets the international standard for the treatment of prisoners. Metcalfe emphasized that lockdowns should be considered torture if they last longer than 15 days, or if used against people with existing mental health issues – both of which have occurred on multiple occasions.



She notes that wardens have total control over lockdowns: when they happen, for how long, and under what conditions. Catherine Latimer of the John Howard Society remarked on how consistent Jennifer's findings were with their clients' experiences of lockdowns. Latimer went on to explain that lockdowns tend to be more difficult on prisoners than administrative segregation due to all the unknowns, such as why the lockdown is happening or when it will end, and also that no due process exists for prisoners to challenge the excessive use of lockdowns.

- **Lockdowns & COVID-19:** Metcalfe shared that lockdowns have become increasingly frequent during the pandemic. Indefinite lockdowns in conditions of solitary confinement result in profoundly negative effects on the mental health of prisoners. PLS reported that many people, especially those with mental health issues, are not getting two meaningful hours of human contact per day or any opportunities to be out of their cell. A prolonged lockdown of over two months during COVID-19 at Mission Institution in British Columbia (B.C.) is an extreme example. During the first eight days of this lockdown, prisoners were in complete isolation and not allowed out of their cells. After this eight-day period, prison management increased time out of cells to maximum two hours a day. As discussed, these conditions would still qualify as two months of solitary confinement. In the context of the pandemic, the fear and anxiety greatly increased for these prisoners, while their health and living conditions deteriorated.
- **The Independence of Healthcare:** The independence of healthcare in federal institutions is necessary. The healthcare staff in Canadian federal prisoners are employed by CSC. These CSC-employed healthcare professionals are challenged with dual loyalty: ethical obligations to their patients, the prisoners, and obligations to their employers, CSC. Metcalfe discusses how in B.C. Provincial Corrections, healthcare is provided through the Ministry of Health. Metcalfe notes that despite the higher risk of COVID-19 in provincial corrections, resulting from the frequency of people going in and out of the prison, the B.C. healthcare model functioned to prevent major COVID-19 outbreaks provincially. This provincial model mitigated the use of lockdowns and solitary confinement-like conditions to combat COVID-19 outbreaks.
- **Meaningful Human Contact:** The panelists discussed what exactly constitutes “meaningful human contact” – there is a level of subjectivity inherent to trying to define the nature of ‘meaningful’ contact. Emilie Coyle, Executive Director of CAEFS, put forward the possibility of the need to consider eliminating these extreme forms of isolation altogether.
- **Staff Conduct:** Metcalfe emphasized the most important recommendation of the report: the call for an independent study of staff culture within CSC. According to Metcalfe, since administrative segregation was deemed unconstitutional, the resentment amongst CSC staff has been palpable. The panelists all agreed that a large part of the change needed lies in staff behaviour. They noted that CSC constantly undermines the credibility of prisoner testimony. The report recommends that officers wear body cameras with audio and video capability whenever they interact with prisoners to aid in accountability.

To access Jennifer Metcalfe's report, go to [prisonjustice.org](https://prisonjustice.org)



# SOLITARY CONFINEMENT & SIUS

“ The evidence is that the promised transformational change that would effectively end solitary confinement in our federal prisons is not being delivered by the Structured Intervention Units. Instead, **we see significant solitary confinement taking place both inside and outside of the Structured Intervention Units** under different names and often without even the earlier inadequate rights protections. This Spotlight on Solitary is intended to provide a platform for those interested in addressing this cruel practice to learn more and to help shape solutions that respect the rights, health and dignity of prisoners while keeping them and others safe.

- Catherine Latimer, John Howard Society of Canada

”





## Segregation in the Maritimes

November 17, 2020

► [Watch the panel here](#)

### Moderator:

- Dr. Adelina Iftene, Law Professor at Dalhousie University Schulich School of Law

### Panelists:

- Sheila Wildeman, Law Professor at Schulich School of Law and Co-chair of East Coast Prison Justice Society (ECPJS)
- Harry Critchley, Co-chair of ECPJS and a Law Student at Schulich School of Law
- Claire McNeil, Lawyer with Dalhousie Legal Aid Clinic, and a member of ECPJS
- Emma Halpern, Lawyer and Executive Director of Elizabeth Fry Mainland

### Summary

The panelists discussed the ongoing practice of solitary confinement in the Maritimes, including important precedents, challenges to accessing legal supports, the intersection of mental health & solitary confinement, dry celling, and the impact of COVID-19 in federal prisons designated for women.

### Key Discussion Points


- **Solitary Confinement in Definition & in Practice:** McNeil discussed how Nova Scotia defines “close confinement” as no less than 30 minutes out of one’s cell for every 24-hour period. This is being adhered to differently across institutions and utilized to support the “needs of the institution rather than as a response to disciplinary tools.”

Halpern discussed how some institutions formally recognize the practice of solitary confinement as administrative segregation, while others do not. This use of segregation at provincial institutions prevents prisoners from accessing programs, the outdoors, and having meaningful interpersonal contact with others.

McNeil discussed how the current litigation in response to segregation challenging lockdowns in provincial jails has proven difficult given the shifting definition of solitary confinement. In addition, the fine print of the legislation allows the practice of solitary confinement to be extended if a Superintendent wants it to be, so long as they receive permission from the Executive Director – but there is seemingly no process in place to ensure that the prisoner is made aware that permission is being sought.

- **Important Precedents:** McNeil discussed a 2015 case against the Halifax Correctional Facility that clarified the definition of solitary confinement. The court concluded that solitary confinement is not a physical






place, but a condition and a deprivation of liberty. The court ruled that the provincial facility had been unreasonably using segregation for administrative convenience. This ruling was especially important for people incarcerated in provincial jails, as it affirmed that prisoners waiting in provincial institutions for federal sentencing decisions are being held in conditions akin to solitary confinement, even if the institution did not explicitly categorize the practice as solitary confinement. McNeil also discussed Maurice Pratt's habeas corpus application, where the Nova Scotia Court of Appeal provided a detailed analysis of the application of principles of fairness both at the administrative and judicial levels. The Court of Appeal quashed the Supreme Court's dismissal of Pratt's application, ruling that Mr. Pratt should have received a full hearing from the Court based in part on its finding that mootness did not apply where Mr. Pratt was still in solitary confinement at the time of the Court hearing.

- **Accessing Legal Counsel and Other Supports:** The panelists discussed the difficulty prisoners in solitary confinement face in accessing legal representation and legal advice. Only in exceptional cases have prisoners received funding for habeas corpus applications through Legal Aid in the Maritimes. Furthermore, self-represented prisoners often do not receive proper disclosure and are unable to identify procedural errors, which may critically impact the outcomes of their cases.

Critchley examined the province's use of lockdowns, which have become more common and extreme during COVID-19. Critchley argued that lockdowns have also worked to further limit prisoners' access to legal representatives, as they are not permitted enough time out of their cells to contact or receive counsel. Critchley also noted that quarantined prisoners are in lockdown for 14 days without any time outside, even in circumstances where they have received a negative COVID-19 test. They also have no opportunity to speak with correctional staff or health authorities.

- **Solitary Confinement & Mental Health:** Wildeman discussed how the use of 'mental health isolation spaces' – or "clinical sites" – is another example of the practice of solitary confinement, just by another name and without any formal or legal recognition. She notes that the overrepresentation of racialized and poor people, and people with pre-existing mental health conditions, is reflected both with higher incarceration rates, as well as the aforementioned groups' overrepresentation in solitary confinement conditions. Those subjected to mental health observation in these spaces and sites lack access to basic necessities, such as personal items, showers, proper bedding, and legal counsel. She also noted that due to low staffing levels in regional institutions, that clinical seclusion or segregation is being overused.
- **Dry Celling:** Halpern discussed the use of dry celling in federal institutions for women, which is the practice of confining someone to a cell with no access to the outdoors and 24-hour surveillance. While dry celling is a highly restricted form of solitary confinement, it has been largely been left out of the broader litigation surrounding segregation. Halpern asserts that this is because dry celling is categorized in the Corrections and Conditional Release Act (CCRA) as a method of searching, not confinement, and so there are limited procedural safeguards in place. Halpern discussed how Lisa Adams, a former prisoner at Nova Institution for



Women, spent 16 days in a dry cell in May of 2020 after being falsely accused of having multiple “balloon-like objects” in her vaginal cavity. Adams had to convince a doctor to issue a pelvic exam, which would prove that no contraband was present in her body. Once Halpern and Adams filed a habeas corpus application, Adams was released, and the application became moot. The litigation became a constitutional challenge on four Charter grounds, which has yet to be decided by the courts. [The charter challenge was decided in 2021 in favour of Adams].



## Solitary Confinement, International Rights & the Charter

November 18, 2020

► [Watch the panel here](#)

### Moderator:

- Dr. Adelina Iftene, Law Professor at Dalhousie University Schulich School of Law

### Panelists:


- Dr. Debra Parkes, Professor and Chair in Feminist Legal Studies at the Peter A. Allard School of Law at the University of British Columbia
- Dr. Lisa Kerr, Assistant Professor at Queen's University, and Director of the Queen's Criminal Law Group

### Summary

Dr. Iftene and the panelists discussed the primary international framework and the principles that govern the rights of prisoners, with a focus on solitary confinement and the Mandela Rules. They looked at the constitutional challenges to the Charter of Canadian Rights and Freedoms brought forward by B.C. Civil Liberties Association and the John Howard Society of Canada, as well as the Ontario Superior Court of Justice and Ontario Court of Appeal. They also spoke about the implementation of Bill C-83 and the introduction of SIUs in federal corrections.

### Key Discussion Points

- **International Framework of Solitary Confinement:** Iftene discussed how Canada has committed to the implementation of certain UN international human rights laws, specifically the Mandela Rules, which were adopted unanimously by the UN General Assembly in December 2015 as a revised set of international rules for the minimum standards for prison management. The Mandela Rules acknowledge that solitary confinement can, and often does, amount to torture. The rules also stipulate that solitary confinement is any condition that fits the internationally recognized definition, regardless of how that condition is specifically labelled or identified. The definition of solitary confinement often gets obscured: solitary confinement as a practice can refer to multiple forms of isolation, such as: suicide watch, mental health isolation, dry cell, quarantine, or SIUs. Regardless of what the practice is called, when confinement reaches the point of torture, it is strictly prohibited without exceptions. Canada has adopted international human rights laws which prohibit this type of segregation- yet solitary confinement as torture continues in both federal and provincial institutions.

- 
- **Constitutional Challenges in British Columbia:** Parkes discussed the constitutional challenges brought by the British Columbia Civil Liberties Association and the John Howard Society of Canada. This challenge found the federal administrative segregation regime to be unconstitutional, in that it violated sections 7 and 15 of the Charter. Significantly, the court recognized that administrative segregation is a form of solitary confinement that places all federal prisoners at risk of serious psychological harm, pain and suffering, and increased their risk of self-harm and suicide. Also affirmed in this decision was the idea that the practice should be the focus, rather than what that practice is called. The trial judge found that the practice of administrative segregation engaged s. 15 of the Charter by discriminating on the basis of both race and mental disability. This discrimination was especially evident in the treatment of Indigenous prisoners and prisoners with mental disabilities, as CSC failed to respond to the needs of these groups, and instead exacerbated hardships.
  - **Ontario's Jurisprudence:** Kerr compared the B.C. court decisions with the findings of the Ontario Superior Court of Justice. The Ontario Superior Court of Justice identified procedural issues related to oversight and access to counsel but did not state that an additional layer of oversight must be provided by external review. The Ontario court made similar factual determinations as those in B.C.'s jurisprudence, which led to the conclusion that the segregation regime violated s. 15 of the Charter. However, the Ontario Superior Court declined to find the legislation invalid on the basis that it lacked time limits or provisions for how people with mental illnesses should be treated. The Court declared that the prospect of mal-administration should not be grounds for striking the legislation. Nonetheless, they assumed that CSC would be able to respond even though the evidence presented suggested otherwise.

Kerr noted that what was lacking in the Ontario case was the voice of the prisoners, which resulted in a failure to address the unique circumstances of Indigenous prisoners. Fortunately, the Ontario Court of Appeal overturned the application judge's findings, stating that the legislative safeguards for cruel and unusual punishment are inadequate and holding that solitary beyond a 15-day period amounts to a s. 12 Charter breach.

- **Bill C-83:** The panelists discussed the federal government's development of Bill C-83 in June 2019, which introduced SIUs in the place of administrative segregation. The law came into effect November 2020. Bill-83 posited that under a different name, and framed in a different way, none of the previous unconstitutional rulings regarding the segregation regime would apply to SIUs. The practice of segregation itself, however, has not changed. The SIU regime does not immediately incorporate an independent review process. The panelists argue that the absence of a meaningful external and independent decision-maker needs to be addressed. Despite meaningful amendments called for by the Senate - such as triggering automatic review by the court following a placement of 48 hours - the government has done nothing to safeguard the SIU model.



## Medical Implications of Solitary

November 19, 2020

► [Watch the panel here](#)

### Moderator:

- Catherine Latimer, Executive Director of John Howard Society

### Panelists:

- Dr. Ruth Elwood Martin, MD, FCFP, MPH, Retired Family Physician, Clinical Professor in the Faculty of Medicine at The University of British Columbia (UBC), and Founding Director of UBC's Collaborating Centre for Prison Health and Education (CCPHE)

### Summary

Catherine Latimer and Dr. Ruth Elwood Martin discussed the disparity between prison healthcare and community healthcare, and the negative effects on prisoners' mental health brought about by isolation and solitary confinement.


### Key Discussion Points

- **International Research:** Martin discussed research conducted in Denmark in 1986, where detainees in isolation experienced significant negative effects from solitary confinement, including: higher rates of suicide, concentration problems, memory failure, fatigue, emotional lability, hallucinations, and fits of rage. The research also showed that isolation worsens physical medical conditions, such as diabetes, obesity, hypertension, and heart disease in part due to a lack of exercise.

In a more recent study done in New York, it was established that there are higher rates of lethal self-harm and mental illness among prisoners in solitary confinement. As a result, New York State changed their practice and no longer place people in solitary confinement. Instead, they try to route people with existing mental health issues to a more clinical setting rather than into cells.

In the Canadian context, examples such as Ashley Smith and Eddie Snowshoes – who both ended their lives in prison following periods of isolation – demonstrate that the suffering of prisoners is not being adequately addressed. Martin notes that people with underlying mental health issues are suffering immensely in prison and require more support.

- **Solitary Confinement & COVID-19:** Martin discussed how the practice of isolation has increased greatly during COVID-19. When people are placed in quarantine or medical isolation, the conditions are directly comparable to that of solitary confinement. She notes that when prisoners contract COVID-19, they are often



immediately put in extreme isolation, resulting in increased suffering. Martin asks: what kind of humane and less traumatic alternatives can be put in place for those who need to be quarantined due to COVID-19?

Martin noted that one way to improve the quality of care of incarcerated people who have contracted COVID-19 is to adopt a trauma-informed approach. She explained that trauma-informed care is person-centered and would enable the person infected with COVID-19 to be involved in developing their care plan. Martin explained that engaging people in their own care and actively listening to their needs provides healthcare providers with essential input. Martin noted that, for the correctional officers who now must play the role of caregivers, this approach would require a significant change in attitude. Engaging with healthcare providers and community organizations could help them to understand what a trauma-informed approach to care looks like in practice. Martin posited that a trauma-informed approach would allow more individual perspectives on care and facilitate more personal supports (such as spirituality and family). Martin discussed the need for population management strategies that ensure there is no risk to the general prison population, but also do not jeopardize the mental and physical wellbeing of someone already suffering from COVID-19.

- **Transfer of Healthcare:** Martin discussed how provinces have taken differing approaches to the administration of healthcare in prisons. Some provinces rely on the Ministry of the Solicitor General, while others have transferred responsibility for healthcare to the Ministry of Health, which the World Health Organization has recommended for many years.

In October 2017, the province of British Columbia transferred healthcare to the Ministry of Health to ensure the independence of healthcare. Academics are evaluating the impact of this, but it is worth noting that provincial B.C. prisons experienced less COVID-19 outbreaks than other provinces and were able to provide healthcare in a more humane way because of this shift. There have also been increased efforts in B.C. to avoid the use of solitary confinement.

- **The Role of Physicians and Trauma-Informed Care:** Martin explained that currently health care workers are being consulted by corrections officials regarding education and trauma-informed practices; however, more of this is needed to change the prison culture from punitive to rehabilitative and therapeutic, which would ultimately allow for easier reintegration following release.

Martin also commented that family physicians in Canada need to be competent in providing care for incarcerated people and that the College of Family Physicians should be involved in advocating for an improved Prison Health Program. Martin has been involved in writing physician papers through the Prison Health Program, including a co-authored paper on solitary confinement. While the report originally advocated for the use of solitary confinement as stated in the Mandela Rules, the report ultimately called for the complete abolishment of solitary confinement in Canada. Martin stated that family physicians working in prison facilities can and should advocate for patients they believe shouldn't be in isolation.



## Structured Intervention Units (SIUs)

November 23, 2020

### Moderator:

- Adelina Iftene, Law Professor at Dalhousie University Schulich School of Law

### Panelists:

- Anthony N. Doob, Professor Emeritus of Criminology at the Centre for Criminology and Sociolegal Studies, University of Toronto
- Jane Sprott, Professor in the Department of Criminology at Ryerson University

Unfortunately, due to a technical error the recording of this panel was deleted. However, the discussion of this panel focused on a report produced by Doob & Sprott on the operation of Canada's Structured Intervention Units, released in October 2020.

You can access the Doob & Sprott report [here](#).





## Solitary Confinement & Prison Law

November 20, 2020

► [Watch the panel here](#)

### Moderator:

- Bibhas Vaze, Associate Counsel at Hira Rowan LLP

### Panelists:

- John Conroy, Q.C, Barrister and Solicitor at Conroy & Company
- Hanna Garson, Lawyer at Mackillop Pictou Law Group Inc.
- Kate Mitchell, Associate Lawyer at Borys Law


### Summary

The panelists discussed access to justice within the context of solitary confinement. They looked at the establishment of peaceful remedies, such as established in *Martineau v Matsqui Disciplinary Bd.* They also discussed the use of habeas corpus applications as a mechanism for moving clients from segregation into the general population and posit the potential for this mechanism as a legal remedy to remove clients from SIUs.

### Key Discussion Points

*“You can take your most humane guard and make them work a solitary confinement shift. Within a few days, they will no longer be your most humane guard.” — John Conroy, citing Steinhauser*

- **Calls for Change:** Conroy began the discussion by noting that despite years of jurisprudence seeking peaceful remedies, and evidence pointing to the negative impacts of solitary confinement, the practice of solitary confinement continues in Canada. Conroy expressed cynicism about the persistent violation of prisoners’ statutory rights and called for lawyers to develop new avenues for drawing attention to the harmful impacts of solitary confinement. Conroy expressed that carceral contexts dehumanize everyone, and that solitary confinement is the epitome of these dehumanizing practices. As jurisprudence slowly builds, Conroy called on the legal community to find innovative and creative ways to call for much needed change.
- **Habeas Corpus Applications & Legal Representation:** Garson discussed the lack of legal aid funding in Nova Scotia, and the overreliance on pro bono work in the context of correctional law. In Garson’s view, these two factors have resulted in a lack of interest from law students in pursuing careers in prison law. Due to a lack of prison lawyers, many habeas corpus applications are being pursued by self-represented litigants. These self-represented litigants struggle to represent themselves against Attorney Generals, which in turn




creates a bad precedent for future applicants. Habeas cases are often mooted after they are taken out of segregation and appeals take additional time and resources that many prisoners do not have. While there has been an increase in guidebooks to assist self-represented litigants, making habeas corpus applications more accessible, there is a concern that this will result in an increase in applications without an associated increase in successful applications. This encourages the establishment of adverse cost awards against litigants, which would result in a chilling effect on the number of applications.

Despite the challenges, Mitchell discussed the importance of habeas corpus applications in expeditiously challenging deprivations of liberty. Once an applicant has established a deprivation of liberty, the onus shifts to the institution to show that the deprivation was reasonable. However, even as a prison lawyer, Kate has experienced issues surrounding access to prisoners, documents, and the shortage of legal aid funding.

Mitchell went on to explain how difficult it can be to arrange meetings with prisoners who are in solitary confinement. She noted that if you are unable to bring the habeas application within a 30-day time frame, the Attorney General (AG) will resist pursuing the matter. Getting a date set in court can also take a long time, especially given the AG's resistance to arguing habeas corpus applications during COVID-19. Recently, filing under the criminal law rules has also become an issue as Ontario's AG has insisted that habeas corpus applications be filed under the civil registry. This creates additional costs for prisoners and could further exacerbate a client's deprivation of liberty. Concerns about losing habeas corpus applications and the associated risk of being required to pay costs to the AG is also a deterrent to pursuing applications. The amount of time spent arguing preliminary issues before even setting a hearing date in habeas corpus cases means that clients are deprived of their liberty for longer than they need to be. Mitchell also noted that the second step of habeas corpus, showing the deprivation to be reasonable, is extremely difficult when the correctional context narrowly defines such deprivations.

Mitchell shared that often the AG will argue that the matter would be more appropriately pursued under judicial review, which prevents the prisoners from expeditiously challenging decisions related to their liberty. Assessing reasonableness as the standard of deference has also resulted in a very 'hands-off' approach in the correctional space. Mitchell reminded us, however, that the correctional authorities' mere adherence to statutory criteria does not ensure the risk of grossly disproportionate harm is avoided and deference does not preclude authorities from needing to properly justify their decisions.

- **Structured Intervention Units (SIUs) & Due Process:** The panel discussed the use of SIUs in comparison to older solitary confinement regimes by drawing on their own challenges with procedure and process. O'Connor shared that should a client be placed in an SIU, that their lawyer could write to the Warden upon hearing about their client's placement in the SIU and politely remind the Warden of CSC's duties as articulated in the statute as a way of urging compliance and creating a paper trail that may be used should the rule of law be violated. CSC should then provide a copy of the record to the lawyer, including reasons for granting authorization of the use of the SIU and any alternatives considered according to the CCRA s. 34(2). CSC should also provide



confirmation that oral notice of the authorization was given to the client along with the reasons for authorization – all within one day of transfer into the SIU, with written notice following within two days.

The new regime continues to pose challenges to due process. The new SIU committee meets with the prisoner as soon as ‘practical’, meaning it may not always be timely. The panel also discussed concerns regarding the lack of external oversight in the new regime, suggesting that it is not clear if there is a requirement to follow the advice of the external decision maker.



## The Community Impact of Solitary Confinement

► [Watch the panel here](#)

**November 21, 2020**

### Moderator:

- Catherine Latimer, Executive Director of the John Howard Society

### Panelists:

- Rev. Dr. Carol Finley, Founder of Book Clubs for Inmates
- George Myette, National Executive Director of the Seventh Step Society of Canada
- Susan Haines, Executive Director of the National Associations Active in Criminal Justice (NAACJ) and Volunteer at Millhaven Lifers Liaison Group (MLLG)
- Rick Sauvé, Peer Support/Program Provider in Prisons


### Summary

This series of short interviews centered on the community impact of solitary confinement, as well as volunteer programs and other forms of support for those in the prison system.

### Key Discussion Points

- **Book Clubs for Inmates:** Founded in 2008 by Rev. Dr. Carol Finley, Book Clubs for Inmates organizes volunteer-led book clubs within federal penitentiaries across Canada. It currently runs about 36 book clubs across the country with the help of approximately 130 volunteers. The book clubs emphasize respectful discussion and are intended to generate prosocial habits that will help prisoners' eventual reintegration into the community. Volunteers are trained to treat prisoners with kindness and respect, and to prevent any prejudice or judgement from coloring their interactions in the book club sessions. Finley shares that their approach has been successful, as participants have commented that they value the book clubs precisely because they represent one of the only places they are treated as human beings.

Finley discussed how since the onset of COVID-19, Book Clubs for Inmates facilitators have been unable to hold any in-person sessions within Canadian prisons. Although facilitators can send questions via mail, this method is not ideal because it is not confidential and can be read by CSC staff. Confidentiality is also a problem if book club sessions are held via video, as CSC staff also have access to these sessions. This lack of confidentiality poses a fundamental problem for the participating inmates, as it prevents them from talking openly about their experiences, both past and present. In addition to these confidentiality issues,



the pandemic has also caused a host of other logistical problems for Book Clubs for Inmates, for example, difficulties communicating by phone and email with the CSC librarians who are supposed to supervise the book clubs. As a result of these disruptions, the future of the book clubs is precarious. Finley shared that, in her view, book clubs function as much needed therapy for participants and this loss has been intensely felt.


- **7th Step Society of Canada:** Established by Pat Graham and Tom Gordon, 7th Step Society of Canada is a volunteer-driven self-help organization that provides support to incarcerated people and helps them reintegrate into the community after they are released. It is run by volunteers who have been through the prison system, volunteers currently serving sentences, and ‘non-offender’ volunteers. As with many organizations that provide support and services to incarcerated people, 7th Step Society of Canada faced many logistical challenges and instances of institutional resistance even before the COVID-19 pandemic. For example, volunteers would often travel a long distance to institutions only to be informed upon their arrival that they could not enter due to a lockdown.

Myette explains that 7th Step Society of Canada has been really impacted by COVID-19 related lockdowns and that while video conferencing has been used to connect prisoners with peer support services during these unprecedented times, video conferencing should be treated as to supplement, rather than replace, in-person meetings. Myette emphasized that while video conferencing may be more convenient for institutions, this technology should by no means replace the more meaningful in-person visits. Myette also suggested that CSC make a concerted effort to speed up the security clearances when volunteers are able to resume their in-person visits. Instead of creating more obstacles for organizations trying to offer in-person programs for prisoners, Myette argues that CSC should streamline this process.

- **Millhaven Lifers Liaison Group (MLLG):** Haines discussed the work of the Millhaven Lifers Liaison Group (MLLG), which is a volunteer group that aims to give hope, encouragement, and motivation to men serving life sentences in the Millhaven Institution. MLLG aims to provide these men with access to legislation and policies to help them situate themselves within their environment, and to help them work towards moving to lower security institutions.

Haines stated that COVID-19 intensified many of the challenges facing the volunteers prior to the pandemic and, at the time of the presentation, the group had not been able to visit the institution since February 2020. Although MLLG has advocated for telephone meetings/video conferencing with participants, these virtual meetings had not yet been confirmed or implemented by Millhaven, nor has there been any indication about when the volunteers would be able to resume their in-person programming.

Additionally, although MLLG has been told by the CSC headquarters that protocols are being developed for them to be able to return to the institution, these protocols specify that only one volunteer will be able to enter the institution at a time. MLLG has argued that this is not viable for safety reasons and are in the process of trying to get permission for at least two volunteers to enter at the same time.



Although MLLG has maintained communication with prisoners, they are anxious to return to their in-person visits. MLLG is concerned about what they might learn when in-person institutional visits resume. Haines explained that since Millhaven is a maximum-security prison, prisoners have always faced a severe lack of programming and support. COVID-19 have only exacerbated all pre-existing issues.

- **Break Away & the Work of Rick Sauvé:** For many years, Rick Sauvé has provided peer support for inmates, helping them navigate the prison system, prepare for parole hearings, and reintegrate into the community. He is also the developer and facilitator of Break Away, a program designed for prisoners involved with gang culture. This program has been offered in minimum, medium, and maximum-security prisons in Canada, but Break Away has been particularly meaningful for those prisoners in maximum security prisons, because of the lack of programming and jobs available to those incarcerated in such facilities.

Sauvé discussed the many challenges faced with facilitating this program in maximum security institutions, even before the onset of COVID-19 because of the frequent lockdowns. Although the program normally takes 8 weeks to complete, in maximum security facilities it could take up to four months due to the frequency of lockdowns. Sauvé stated he would often make the three-hour drive to Kingston only to be turned away due to a lockdown that he had not been previously informed about.

With the onset of COVID-19, Sauvé has been unable to do any in-person programming. Though he has been able to assist with some parole hearings via telephone, he noted that this is not an ideal way to support inmates and makes the work more challenging.

Sauvé also noted that COVID-19 has been very punitive and disruptive for many prisoners, especially those serving life sentences. Prisoners serving life sentences are required to do a certain number of ETA's (escorted temporary absences) and UTA's (unescorted temporary absences) prior to getting a parole hearing. Because all work releases and community service activities have been stopped, many prisoners have been unable to complete these required absences impacting many prisoners' ability to be granted parole resulting in longer prison sentences. Those serving life sentences that had been previously working towards a release plan are therefore now facing nothing but roadblocks.



## The History of Segregation & Calls for Legislative Reform

November 22, 2020

► [Watch the panel here](#)

### Moderator:

- David Cole, Provincial Court Judge in Ontario and former Prison Litigator

### Panelists:

- Mary Campbell, retired Director General Corrections and Criminal Justice
- Howard Sapers, Independent Advisor on Corrections Reform for Ontario
- Kim Pate, Independent Senator

### Summary

The panelists reviewed the history of segregation in Canada, the Ontario Correctional Services and Transformation Act, and the need to push for bolder legislative reforms to decriminalize, decarcerate, and desegregate individuals.


### Key Discussion Points:

- **The Origins of Imprisonment and Segregation:** Campbell began the panel by reviewing the history of the use of segregation, starting with the use of capital punishment in 1700 Great Britain - the point of origin for our current Canadian system. Campbell explains that capital punishment was used before imprisonment, and that imprisonment eventually became the most common way of separating people from society in order to facilitate reflection and moral reform. The original condition of confinement included 24/7 isolation and total separation from other prisoners. It became clear that these conditions of confinement were not prompting the desired self-reflection or moral reform, but instead producing negative effects. Since the 1900s, reports, studies, and litigation have all called for an overhaul in how we approach corrections and the practice of segregation.

Howard Sapers also spoke to the history of segregation as being a reform of capital punishment. He challenged the idea that extreme isolation can have any kind of rehabilitative effect and further emphasized that extreme limitations on movement have nothing to do with preparing individuals for release.

- **Ontario Correctional Services and Transformation Act:** Sapers shared the story of Adam Capay, who spent 1,560 days in solitary. Capay's experience generated some political attention that resulted in "crisis driven" changes, including the implementation of the Independent Advisor on Corrections to investigate the use of segregation in Ontario. The Advisor found there were 22,509 distinct admissions to segregation in 2016





alone, including vulnerable populations such as Indigenous persons and women. The investigation resulted in 41 recommendations and the introduction of the Ontario Correctional Services and Transformation Act, which received Royal Assent on May 3rd, 2018. Sapers explained that this Act clearly defines segregation as the practice of confinement as opposed to a set place. The Act, however, was not enacted before the provincial election and has therefore never actually been operative. Everything that was found to be deficient by the Advisor's investigation remains in effect today. Sapers noted that in contrast to Ontario, the Yukon Legislative Initiative, Bill 38 – Amendments to the Corrections Act is an extremely positive example of an Act that reinforces the principles in Mandela Rules and appoints independent adjudicators for disciplinary decisions.

- **Takeaways & Recommendations:** Senator Kim Pate suggested that there is a need to push for bolder approaches to reform that would decriminalize, decarcerate, and de-segregate individuals. She argued that in Canada, where we have an international reputation for human rights promotion, we should be treating the Mandela Rules as a floor, not a ceiling when it comes to setting a human rights standard. Senator Pate also suggested that we look at conditions of isolation more broadly, including mental health units and other forms of isolation not formally known as solitary confinement. Her final suggestion was the implementation of several legal pathways to reduce the use of segregation, such as civil suits or group habeas corpus applications.



## What is ‘Meaningful Human Contact’?

November 24, 2020

► [Watch the panel here](#)

### Moderator:

- Emilie Coyle, Executive Director of the Canadian Association of Elizabeth Fry Society (CAEFS)

### Panelists:

- El Jones, Poet, Professor at Mount Saint Vincent University, and Activist in Nova Scotia
- Dr. Idil Abdillahi, Assistant Professor at Ryerson University School of Social Work
- George Myette, National Executive Director of the Seventh Step Society of Canada
- Pete Brown, Current Case Manager with an opioid assisted program in Nova Scotia and Former Executive Director of Seven Step Society of Canada

### Summary


The panel explored how to define “meaningful human contact” and what meaningful human contact means for people who are incarcerated, particularly those in SIUs. All panelists emphasized the importance of kindness, love, and compassion for incarcerated people.

### Key Discussion Points:

- **Impacts of the Practice of Isolation:** The panelists discussed the extreme lockdowns of COVID-19 that resulted in up to 23 hours of isolation per day. They noted that when someone is put in an SIU, they are isolated for 22 hours per day – emphasizing the similarities between lockdown conditions and solitary confinement. The panelists also explained the severe impact that these inhumane conditions have on the mental health of prisoners. El Jones reminded us that changing the name does not change the nature of isolation.

Pete Brown, who has 12 years lived experience behind bars, reiterated the horrifying experience of segregation and maximum-security units. He said the common perception of solitary as “the hole” is exactly how it felt, and that being in isolation has severely detrimental effects on one’s well-being and mental health.

The panelists stated that two hours out of the cell does little to counter the damaging effects of 22 hours in isolation. The unpredictability of the SIU regime is also challenging. As El Jones discussed, prisoners are sent in and out of SIUs arbitrarily and aren’t made aware of when they’ll be released. Instead, prisoners are told that they will be let out when their behaviour changes. The panelists asked us to consider: How are prisoners expected to change their behaviour when there is no mental health supports available



to them in the SIUs? And why are Indigenous, Black, disabled, and individuals with mental illnesses so disproportionately placed in SIUs?

- **Peer Support & Lived Experience:** Jones discussed how prisoners are often seen as people with no credibility and who don't take responsibility. As a result, prisoners are often kept from contributing their voices to the process of institutional change. Jones encouraged us to hear and pay attention to the testimony of those inside regarding their situation and reminds us that treating people behind bars as human beings who deserve kindness, compassion, and humane treatment is an essential part of any reform. Transformation cannot happen by way of discipline, control, and inhumane treatment.

Myette and Brown discussed the importance of peer support programs. The programs were described as being an essential resource for meaningful human contact for those both inside and outside of institutions. One of the most valuable opportunities for a person with lived experience in the prison system would be to give back by providing meaningful human contact through peer support. Despite public perception, there is a lot of humanity between prisoners, and that time spent together can foster very strong bonds, sisterhoods, brotherhoods, friendships, and beyond.

- **What Counts as Meaningful Human Contact:** Abdillahi shared that society's emphasis on individualism and the misconception of incarcerated people as 'bad thought' people is extremely detrimental to understanding systems of criminalization, as well as the prison community. CSC culture is based on divisiveness rather than inclusion. Prison culture does not encourage interaction – instead, the surveillance of prisoners by guards often occurs without any interpersonal engagement. Abdillahi explained that guards exist to discipline, maintain order, and suppress prisoners – so how can their interactions with prisoners ever be considered 'meaningful'? The panelists discussed how meaningful human contact must be enhanced through resources from the outside communities and prisoner programs, whether in person or digitally.

The panelists all discussed how during COVID-19, prisoners have only had access to loved ones via video and phone. Often the technology of CSC is substandard so even video visits can be very unsatisfactory. The panelists discussed how COVID-19 has presented unprecedented challenges to health management, resulting in severe restrictions on both medical and mental health supports inside – yet another limitation on the possibility of meaningful human contact. The pandemic has taught society the value of human contact and how greatly it can affect us when we are unable to get it. Understanding the importance of truly meaningful human contact is instrumental.

- **Harm and Human Contact:** The panelists explained that not all human contact is beneficial, and that abuse is widespread within the prisons. For example, the standard practice of strip searches, which equate to sanctioned sexual assault and result in additional mental health concerns. Another example of harmful human contact discussed was the institutional response to people with addictions where, rather than providing proper support, prisoners with addictions are met with violence. Where the focus is social control, discipline, and punishment- there is little room for the fostering of meaningful contact.



# CHALLENGES DURING COVID-19

## Legal Action on the Response to COVID-19 in Federal Prison

November 25, 2020

► [Watch the panel here](#)

### Moderator:

- Tom Engel, Lawyer at Engel Law

### Panelists:

- Paul Champ, Litigator at Champ & Associates
- Abby Deshman, Director of Criminal Justice Program at Canadian Civil Liberties Association (CCLA)

### Summary


This discussion focused on the challenges exacerbated by COVID-19 in federal institutions. Panelists also spoke to practical legal avenues for decarceration, such as 'Parole by Exception' and 'Interim Relief'.

### Key Discussion Points

- **COVID-19 in Federal Institutions:** Deshman discussed the unique challenges presented by COVID-19 in federal institutions, including the fact that the prison population is made up of individuals with a disproportionate number of health challenges. The health age of prisoners is believed to be on average 10-15 years older than their actual birth age. The majority of prisoners are over the age of 50 and experience health conditions such as heart disease, asthma, respiratory diseases, and diabetes – all of which are comorbidities with COVID-19.

Deshman explained that from mid-February to April 2020, there was a 19% drop in the custodial population, however that decrease slowed in almost all provinces and territories in fall 2020. While there has been a significant decrease in the provincial prison populations (including bail and pre-trial populations), this has not been the case federally. Instead, there has only been a 2% drop in the federal prison population. The Office of the Correctional Investigator determined that the federal 2% drop was not the result of proactive efforts to depopulate prisons during the pandemic, but rather was caused by delayed trials and provincial-federal transfers during COVID-19. At the time of the panel, there had yet to be an organized, concerted, federal effort to ensure that everyone who can be released is [this remains true at the time of writing].

All pandemic-related transmission evidence proves that communities are safer if correctional populations are reduced. This is due to the congregational environment of prisons which help to accelerate virus spread, and thereby endangering the entire community. In the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, Madame Justice Arbour suggested that where sentences are not being administered by law, the constitutional remedy under section 24(1) should reduce that sentence. Deshman argued that prisoners




who are serving sentences where there is a communicable disease, which increases the risk of death, are currently serving disproportionate sentences. A remedy is required to acknowledge the disproportionate punishment experienced by prisoners serving federal sentences during COVID-19. Deshman reminded us that the Charter remedy under section 24(1) can work to override section 116 of the CCRA, even if the particular prisoner does not meet the technical criteria for an unescorted temporary absence.

- **Derrick Snow:** Champ shared the story of Derrick Snow, a prisoner who was incarcerated at the Bath Institution. Snow had several pre-existing health conditions, which put him at a higher risk should he contract COVID-19. Champ worked with the Queen's Prison Law Clinic to aid Snow in an application for an Unescorted Temporary Absence (UTA), which would allow him to leave the institution on medical grounds. Snow's request was ignored by the warden, the doctor, and his parole officer. Champ then brought the application to court to push for Snow's interim release. Before the motion was heard, the institution released Snow, presumably to avoid establishing a negative precedent in court. Sadly, Snow passed away in 2020 shortly after his release. His case demonstrates the potential for UTA's or interim releases to be used during COVID-19.
- **Parole by Exception and Interim Relief:** Instead of taking the opportunity to decarcerate, prisons have resorted to the increased use of segregation to manage the risk of infectious spread, leaving prisoners in segregation for prolonged periods of time. Champ shares that, in his opinion, any prisoner who is not a risk to the public and who has a pre-existing medical condition/is elderly, should be released immediately. Champ suggested that making an application to the Parole Board of Canada for "Parole by Exception" could be pursued during COVID-19. In his view, Parole by Exception provides a viable avenue for non-violent prisoners and can be initiated through a request to their parole officer. The prisoner's legal counsel can then follow up with a written submission to the regional parole office. The Parole Board would then need to make a decision within two weeks of receiving the appropriate documentation, though the institution may cause delays by taking an inordinate amount of time to produce the required assessment report.

Deshman discussed the importance of obtaining evidence from prisoners to support their UTA and/or Parole by Exception applications but notes that this has become increasingly difficult due to the widespread lockdowns in federal institutions. During lockdowns, prisoners have severely limited access to phones, programs and services, which works to both suppress the voice of prisoners while also making their time behind bars much more difficult.

CSC has increased the number of prisoners released on medical temporary absences and on Parole by Exception, but there are still significant delays and barriers, including access to counsel. Only 12 cases have been granted for Parole by Exception, with 11 more pending at the time of the presentation. While CSC mentioned granting an increase of 50%+ early discretionary releases, Deshman points out that this only means that people are being released five-days before their scheduled release and is therefore not very meaningful.



At the time of the presentation, Deshman was waiting on an application for interim relief to ensure those who remain in prisons are not detained in segregation-like conditions. This request for interim relief contained mandated remedies under the Charter, which are a response to the declaration of breached Charter rights. In the meantime, she hopes institutions would permit adequate physical-distancing and professional cleaning, as most of this work is currently being done by prisoners.



## COVID-19 Inside: Updates from the OCI

November 26, 2020

► [Watch the panel here](#)

### Panelists:

- Dr. Ivan Zinger, Correctional Investigator of Canada


### Summary

Dr. Zinger discussed updates of the work done by his office of Correctional Investigation during the COVID-19 pandemic.

### Key Discussion Points

- **The Office of the Correctional Investigator (OCI):** Correctional Service of Canada operates 43 penitentiaries in Canada, employing over 18,000 full-time employees and operating on a budget close to 2.5 billion dollars per year. In 2017/18, it cost \$120,571 to incarcerate someone at the federal level and \$84,915 to keep someone in provincial custody. Zinger stated that while provincial jails are typically overcrowded, federal prisons are not. In fact, Canada has one of the highest staff to prisoner ratios in the world with one employee to every prisoner. The OCI focuses on federally sentenced prisoners by providing independent oversight of federal corrections. It conducts investigations into the problems experienced by prisoners related to acts or omissions by CSC, focusing on compliance, fairness, and legality. Every use of force incident is reviewed by the OCI, and while they have legal authority, the recommendations that their office makes to CSC are not legally binding.
- **The OCI & Monitoring During COVID-19:** At the onset of the COVID-19 pandemic in mid-March 2020, the OCI suspended visits to the institutions but continued regular monitoring of prisons through weekly contacts with Assistant Wardens, Institutional Heads of Health Care, and Inmate Welfare Committees. They also continued to take 1-800 calls and complaints from prisoners to review use of force incidents. From June to September 2020, they were able to arrange for short, targeted inspections, with a total of ten investigations conducted at prisons in Ontario and Quebec only. When the second wave of the virus hit in September, even these short inspections were suspended. As of December 2020, the OCI conducted virtual visits using CSC video conferencing at some federal institutions.
- **Testing and Case Numbers:** As of November 25, 2020, 3,390 prisoners had been tested for COVID-19, and 458 of those tests came back positive. The case counts are being posted publicly on the CSC web page. The OCI has reported that most cases seem to be asymptomatic and believes that with strong measures, the CSC should be able to manage the positive cases. [NOTE: as of writing (March 21st): a total of 1,436 positive cases and 5 deaths from all Canadian federal institutions]



- 
- **OCI Recommendations:** The OCI made several recommendations regarding various observational concerns noted in the early days of the pandemic. They expressed concerns about the intense lockdowns used by institutions, prohibiting visits, and sending non-essential staff home. With reduced staffing, many institutions implemented solitary confinement-like conditions. The office noted that prisoners were only afforded 20 minutes to 1 hour of out of cell time during outbreaks.

The OCI also identified several areas of non-compliance with major statutory obligations. These included a failure to provide access to Chaplains, Elders, Citizen Advisory Committees, and other programs and services. As well as a lack of outdoor time, fresh air and exercise, access to mental health services, specialized care such as dentistry and ophthalmology, and the suspension of disciplinary hearings with Independent Chairpersons. Along with a failure to meet the legal requirements of SIUs, CSC was committing, and continues to commit, human rights violations.


The OCI had also recommended that CSC increase public communications and transparency during the crisis, but this recommendation was ultimately rejected by CSC.

- **Population Reduction and Programming:** Zinger shared that it is clear that CSC is not adequately prepared for a pandemic, as we have seen with a lack of testing and mask compliance. While masks were issued to front-line staff, many prisoners did not receive masks. There were also no audits conducted by external public health officials in order to evaluate infection prevention and control procedures. The OCI wrote to public health, who then provided masks, testing, audited institutions, and offered advice on reducing spread.

Unfortunately, these efforts have not been met by a commitment to decarcerate in response to COVID-19. The decline in the federal prison population is attributed to delays in hearings, not a concerted effort to release prisoners. At the time of the presentation, CSC had only reported 11 medical releases, which was only up by 2 or 3 from the previous year.

Despite being one year into the pandemic, CSC continues to restrict visits, while also having low-video-conferencing capacity. The significant reduction in access to rehabilitation programs and services threatens to delay access to conditional release or parole. Due to this lack of programming, prisoners are unable to make progress on correctional plans which adversely effects their ability to be re-classified to lower security and ultimately progress towards community reintegration. CSC has demonstrated an inability to provide online services, as they lack tablets, monitored emails, and supervised internet access.

Zinger noted that conditions of confinement are much harsher now than were originally anticipated at the time of sentencing. Pre-trial custody has recognized these increasingly difficult conditions of confinement and has made adjustments to time-served accordingly. The OCI suggested similar amendments be made to federal sentences during COVID-19.

- 
- **SIUs & Other Forms of Confinement:** The OCI was also given data from CSC that demonstrated systemic non-compliance with the legal requirements of the SIU regime. The data demonstrated significant human rights violations, with a failure by CSC to demonstrate that they have done everything in their power and authority to justify using SIUs. Medical isolation measures have been put in place for all new or returning admissions to prisons. Zinger explained that while ‘medical isolation’ has been used interchangeably with ‘quarantine’, medical isolation is meant only for those with symptoms or who have a positive test.
  - **Public Feedback:** Those attending the panel expressed concern that the OCI had exercised its section 171 powers under the CCRA to hold a public hearing. They asserted that this is the worst crisis in corrections in the last 50 years and it is in the public interest of OCI to use its subpoena powers and commence a broad investigation. Zinger stated that while the OCI is granted the exceptional ability to intervene, he believes that there are various other mechanisms at the Office’s disposal and that the situation does not require such extreme actions. Zinger explained that the OCI is focused on ensuring that programming and education is available to prisoners as the pandemic continues, while considering the potential risk of infection.



## The International Response to COVID-19 in Prisons

November 29th, 2020

► [Watch the panel here](#)

### Moderator:

- Emad Talisman, Policy and Research Analyst for the Correctional Investigator of Canada

### Panelists:

- Dr. David Cloud, Research Director for Amend at the University of California, San Francisco School of Medicine
- Andra Nicolescu, Senior Legal and Policy Advisor with the Association for the Prevention of Torture in Geneva
- Dr. Robert Patterson, Regional Detention Doctor, International Committee of the Red Cross


### Summary

The panel focused on the international response to COVID-19 in prisons and included perspectives from United States and international political bodies.

### Key Discussion Points

- **Medical Isolation in Canadian Federal Prisons:** Talisman began the panel by discussing the use of medical isolation in Canadian federal prisons. The use of medical isolation was announced on April 1st, 2020. In practice, medical isolation means near total cell confinement, including no time outdoors. Talisman explained that as COVID-19 spread in Canada, CSC began placing both symptomatic and non-symptomatic prisoners in medical isolation. On July 16th, 2020, CSC introduced a provisional policy (CD-822) that stated that medical isolation was considered a modified routine, urgently necessitated by the pandemic. The policy defines medical isolation as the “short-term limitation to an inmate’s movement to help prevent the introduction and spread of COVID-19,” and it applies to various prisoners, including those who have a new warrant of committal or returns, those who are symptomatic and diagnosed, those who had been in close contact with carriers, and those who have been transferred. Essentially, the practice can be applied to any individual who enters the institution. Talisman explained that there was little consultation on this provisional policy and there has yet to be any revisions since its implementation.

Significantly, prisoners do not have access to usual programs, yard time, fresh air, exercise, time out of their cells, meaningful human contact, visits, or mental health services during medical isolation. Talisman also mentioned that the use of ‘flags’ to identify those in medical isolation has not been a reliable source




of data because CSC has not been using the flagging system properly. As a result, CSC cannot accurately report on time spent in medical isolation. What can be deduced is that there have been many more flags (indicating a prisoner is in medical isolation) than positive COVID test. While the OCI recognizes the need for temporary restrictive cell confinement until test results are received, this should not violate basic statutory SIU requirements, including minimum time out of the cell, regular health checks, meaningful human contact, external oversight and review, and access to programs and services.

Talisman recommended that there should be clear distinguishment between medical isolation and quarantine, based in part on clinically relevant criteria. He notes that there should be service standards around time restrictions inside cells and response times for both medical isolation and quarantine, and that an additional flag should be added for medical isolation placements that go beyond 14 days . This additional flag should trigger the same review and oversight as SIUs.

- **Solitary Confinement & COVID-19 in Prisons in the United States:** Cloud discussed how Amend works to transform correctional systems to improve the health and well-being of the people who live and work inside. He began by expressing that while the ethical use of medical isolation to reduce the transmission of COVID-19 in prisons is justified, reports show that the use of solitary confinement has increased dramatically in the US during the COVID-19 pandemic. There is limited guidance and legal standards governing pandemic responses in US carceral settings and a sense of confusion around public health terminology. Overall, there has been a lack of information, standards, and guidance on how to ensure that the transmission of COVID-19 is slowed or prevented in US prisons.

Cloud also discussed how solitary confinement operates to worsen the COVID-19 crisis by creating a more difficult environment to detect COVID-19 cases, while also deterring prisoners from reporting symptoms. Cloud echoed Talisman, saying that people working in correctional settings need to better understand the difference between quarantine and medical isolation. He pointed out that people can be medically isolated alone or together with other patients who have tested positive for COVID-19. This helps to ensure that diagnoses via testing is not a punishment.

- **Standards in Medical Isolation and Quarantine:** Cloud explained that the purpose of medical isolation and quarantine is to reduce the spread of disease. The length of the isolation or quarantine is determined by the disease and the relevant medical guidance. Medical isolation and quarantine should take place in an environment that is sanitary and kept at comfortable temperatures, and with adequate ventilation. The space also requires a functional toilet, sink, and accessibility to soap. Those who are subject to medical isolation should not be deprived of necessities that would mitigate the harm that isolation may cause, including human contact where possible. Prisoners experiencing medical isolation should be cared for by medical staff with clear and daily communication. The duration of their isolation, and the medical rationale for that duration, should be communicated to prisoners. Prisoners should maintain opportunities to go outdoors, to exercise, and to receive regular and nutritious food. They should also be receiving enhanced




access to televisions, tablets, radios, and reading materials and should have free and accessible means for communicating with loved ones. It is likewise important that institutions have fully stocked medical supplies for the treatment of patients and the safety of staff.

- **Human Rights Violations during COVID-19:** Nicolescu discussed how COVID-19 has worsened pre-existing human rights issues, particularly affecting the most marginalized and vulnerable people. She expressed that prison authorities around the world are using the pandemic to excuse or instigate severe human rights violations, such as limiting mobility and public assembly. Nicolescu explained how states are weaponizing what might be legitimate restrictions for illegitimate means, such as quashing dissent. She reminded us that obligations under international law are irrevocable no matter the extent or severity of the public emergency - and chief among them is the prohibition of torture and ill-treatment.
- **Adverse Impacts of Solitary Confinement:** Nicolescu explained that persons deprived of liberty in prisons or other institutional settings experience extreme human rights abuses and patterns of discrimination. Solitary confinement is widely abused across the globe and can threaten physical and mental integrity amounting to inhumane and degrading treatment, or torture. Nicolescu expressed that social isolation of this kind runs contrary to the essential aim of the penitentiary system, which is to rehabilitate prisoners and reintegrate them into the general population. After only a few days in solitary confinement, adverse health effects can result in irreversible psychotic disorders.

Nicolescu expressed that in order to determine whether solitary confinement qualifies as torture, each case requires an individual assessment of the purpose, conditions, length, and effects of treatment. She also explained that the experiences of each prisoner must be considered, in terms of mental and/or physical previous traumas and treatment, as this may change the severity of the effects of solitary confinement. Ultimately, she argues, solitary confinement must only be used under exceptional circumstances as a matter of last resort for a duration that is as brief as possible, while following due process. Individuals must be afforded resources for challenging the reasons and duration of their confinement while being ensured access to legal advice and medical care.

- **COVID-19 Prevention in Carceral Settings:** The panelists discussed carceral institutions are particularly susceptible to COVID-19 outbreaks, and yet these institutions do have options to prevent or slow these outbreaks. Preventative measures include preventing entry of COVID-19 into the institution, preventing spread, or implementing infection prevention control measures. Preventing entry involves systematic screening on admission, triage care, and quarantining. Preventing spread requires the timely identification and effective response to diagnoses as well as triage care and isolation.

Dr. Robert Paterson, of the International Committee of the Red Cross, expressed concern about countries relying too heavily on lockdowns to prevent spread, while failing to develop other prevention measures. He noted, for example, that there is a widespread shortage of PPE, and similarly, a lack of training for both prisoners and staff as to its proper use. There exists a clear disconnect between prisons and national health



systems, with COVID-19 standards and norms differing within carceral institutions. Additionally, there is a lack of actionable data concerning how COVID-19 is affecting carceral institutions.

The panelists reminded us that prison health is public health. Organizations focused on global health have noted that overcrowding creates insurmountable obstacles for preventing and responding to COVID-19, and that a health response in a closed setting alone is insufficient. Reducing the number of prisoners inside should be a top priority.

Globally, countries should be implementing safe release processes that are fully integrated into the national COVID-19 response. Dr. Paterson reiterated the need for prison measures to be aligned with the community's control, testing, and vaccination strategies. Prisoners and staff should have priority access to vaccines. For future pandemics, countries need better data and emergency preparedness/response plans for public health crises. Dr. Paterson closed the panel by stating that COVID-19 control requires global unity and solidarity.



# SISTERHOOD, ABOLITION, SOLIDARITY

## Toward a Future without Prisons with the Prisons for Women Memorial Collective (P4W) Sisterhood

November 27, 2020

► [Watch the panel here](#)

### Panelists:

- Joey Twins: A Cree Cree Twin Spirit woman from Treaty 6 Territory. She is involved in many causes- two of which are as an avid prison advocate and motivational speaker.
- Fran Chaisson: A founding member of the P4W (Prison for Women) Memorial Collective in Kingston, Ontario. Her spirit name is Shandor, meaning daughter of the stars. After her release in 1989, Chaisson began a healing circle, with another woman, to provide women with a way to heal and forgive traumatic events in their lives. This circle happens annually on August 10th - Prisoners Justice Day.
- Bobbie Kidd: After being the first woman to keep her child in federal prison, Bobbie Kidd was released from P4W in 1993 and has now been clean for over 20 years. She is a member of the P4W Memorial Collective, a volunteer peer support worker for women coming out of prison to Elizabeth Fry. She was also an inspirational speaker at Queen's University for a fundraiser with Elizabeth Fry and United Way.

### Summary

Members of the P4W Collective shared some of their personal stories and experiences from their journey of incarceration. They discussed their feelings and the trauma they endured to survive solitary confinement. They explain that the SIU regime is just a different name for segregation, and that it is a continuation of colonial violence within Canadian prisons.


### Key Discussion Points:

Joey Twins, Fran Chaisson, and Bobbie Kid were instrumental in forming the P4W Memorial Collective. They bonded during time spent together at P4W and are working tirelessly to help women who are still struggling both within and outside of the prison walls.

- **Treatment and Over-classification of Indigenous Prisoners:** Twins spoke very passionately about the injustices of the prison system, specifically towards Indigenous people, as there is an extreme culture of bias in the Canadian prison system. Her goal is to identify and stop injustices against all female prisoners, with an emphasis on Indigenous prisoners.

Twins outlined an incident during her time in prison, where a fight with guards broke out due to a fellow prisoner being taken to segregation, rather than providing her with much needed support. This woman was hurting herself and was suicidal, resulting in her being put in segregation for “medical observation.”





She discussed the specific biases and oppressions that face Indigenous prisoners. Immediately upon arrival, Twins explained, Indigenous prisoners are treated as “no good drunks with mental health issues”. Twins is a strong advocate against the racism and colonization present in the judicial system, beginning with the police and ending with provincial and federal penitentiaries. As Twins stated: as an Indigenous person, “you are guilty until proven innocent” in society, articulating how inequitable the judicial system is.


Twins highlighted that the majority of prisoners in maximum-security prisons identify as Indigenous. According to Public Safety Canada, Indigenous people account for about 4.9% of Canada’s population, but comprise over 30% of the total incarcerated population. This percentage is even higher for Indigenous women; who are now the fastest growing prison population in Canada, with 42% of all federally incarcerated women identifying as Indigenous.

- **Suicide, Trauma, and Healing:** Chaisson shared that she was one of the eight women - seven Indigenous and one white - who attempted to commit suicide by hanging themselves in their prison cells. This left her with an immense amount of shame and guilt, but she decided it was time to own her story and work towards healing. Back in the 80s, Fran was one of these eight women taken into segregation for being under the influence of drugs. While she was in segregation, she repeatedly asked to see a doctor, filing daily requests for medication to help her sleep. She shares that she had felt that the four cell walls were closing in on her, and that despite being both a physically and mentally strong person, she felt that she was left with no option other than suicide. Chaisson ripped a bed sheet and timed her suicide for 6:00am- to align with a staff shift change. She had not been aware that there was a two-way intercom in her cell, and when the guards heard noises, they came and freed her from the sheet with scissors. She was already unconscious and only came to after being cut down and hitting the cement floor.

The next day she was called in to see a doctor, which she explained was encouraging and hopeful for her because she hoped she would finally be prescribed sleeping medication. Instead, she was brought in to see a psychiatrist who asked her if she attempted suicide for attention. She was released from segregation back into the prison population immediately.

The charge for being under the influence of drugs was still being pursued in court, but her lawyer was able to get the case dismissed due to lack of evidence. Following this, her charges, along with the other seven women’s cases, were dismissed in the Institution Court. She was released on parole in 1989, with mandatory supervision and a DO (Dangerous Offender) designation, and was received at half-way house in Kingston.

Chaisson explained that she lives with the trauma of this event every day. The healing circle that she leads is dedicated to those women who died in the prisons by hanging and suicide. As the gathering has grown over the years, she has seen women come for the same reasons as her - to heal and support each other while remembering the women who died in prisons. After P4W closed in 2000, they decided to work with developers to create a healing garden in front of the property. This garden is extremely important to Chaisson, as it was a life-long dream for her.

- 
- **CSC Staff Behaviour:** Kidd shared that she had witnessed a young prisoner being taken by an ambulance after attempting suicide while in a Special Handling Unit (SHU) due to mental health concerns. She stated this as an example of how isolation clearly negatively affects the mental state of prisoners. Kidd discussed how people in isolation or segregation were told they would re-enter the prison population when they “behaved better,” which was rarely followed through with. Often women would lose all hope of being released, further damaging their mental health. This would lead some to decide that suicide was the only way out.

Kidd spoke about her observations of the ‘younger girls’ who, she explains, were particularly vulnerable to the mind games played by the CSC staff. These younger women would often be told they were going to be released from segregation and then would be denied because they were “acting up”. Kidd recalls that while she was in P4W, a young girl did commit suicide because of these mind games.

Kidd stated that another major issue with CSC is that of credibility, as they always manage to prove prisoners wrong and cover their own behavior. She stated that the only way some of the women made it through this trauma was through the bonds created with a small support group they created.

- **Sisterhood & Friendship:** All three women share how prisons are a strictly punitive environment – not a rehabilitative one – and that they make an already oppressed person, who has suffered childhood trauma and other painful life experiences, feel even worse about themselves. The women share that, once released, the sisterhood and friendships made in prison are necessary to coping with the challenges faced on the outside. Twins, Chaisson, and Kidd have known each other for over 30 years, which includes time in P4W and now in the outside community. Together, they fiercely advocate for the women still behind bars and who face tremendous challenges. Despite simply trying to live their lives and support the community, they are still criminalized by their parole officers - watched carefully and consistently seen as “suspicious”. Their time and experiences in prison will follow them throughout their lives, but they continue to heal and support each other.



# VOICES INSIDE AND OUT

November 16, 2020

► [Watch the panel here](#)

## Moderator:

- Catherine Latimer, Executive Director John Howard Society of Canada

## Panelists:

- Lawrence Da Silva, Served 19 Years in Federal Prison


## Summary

In this podcast, Da Silva discussed his time spent in federal prison, focusing on his time in segregation and isolation, including Special Handling Units (SHUs) and Dry Cells. Da Silva was not in prison when SIUs were implemented, however he speaks to this as simply changing the name for segregation.

## Key Discussion Points

- **The “Refrigeration Box”:** Da Silva shared that most of his 19 years in federal prison was spent in segregation and isolation. Da Silva stated that once a prisoner was deemed a threat to the security of the general prison population, they would be put in segregation and kept there indefinitely, or they would be transferred from one segregation to another. He described this as a “prison within a prison.” Being in segregation takes a heavy toll on prisoners’ mental health and further limits their access to medical care, such as receiving medications. This exacerbates an already volatile mental state. Due to this, these prisoners were more prone to physical altercations and increased self-harm. Da Silva stated that during his time in the “refrigeration box,” he was witness to the severe deterioration of mental and physical health, with some prisoners experiencing symptoms of schizophrenia.
- **Special Handling Unit:** Da Silva spoke about his time in the Special Handling Unit. The SHU was used to isolate prisoners who had been accused of extreme violence such as murder, stabbing, piping, group assaults, or attempted escape. Da Silva also shared that if you were declared a “terrorist,” you would immediately be put into the SHU. Under legislation, the SHU is a different form of segregation and is really “the worst of the worst.” Da Silva explained that upon arrival in the SHU, there is an assessment period of 60-90 days, during which a prisoner is placed in a segregation unit. If the prisoner is not disruptive, they are let out into the range after an assessment.

The range allows for groups of nine prisoners to have two hours per day out of cell during the week and four hours on the weekend. That group decides together whether they will go outside or stay inside, which is the allotted time for using the phone. There are occasionally supervised programs in the SHU, such as violence



prevention and school. Time spent in the SHU is a minimum of 6-8 months and maximum of 1-1.5 years, depending on the prisoner's behaviour.

Lockdowns also occur within SHUs, which break down the routine of time outside the cell to go outside, participate in programs, access the phones and more. This creates a lot of stress for those in SHUs, as they suffer an increased isolation and can't access necessities, like showers.

- **Edmonton Lockdown:** Da Silva also spoke about his time in lockdown in an Edmonton facility, where he worked as a cleaner while he was incarcerated and tried to get his programming done before his Statutory Release date. Two weeks into his program, there was a lockdown initiated by the workers' union due to "staff shortages." Da Silva said this lockdown was extremely difficult because they were not able to access cleaning supplies, toiletries, and toilet paper – and this lasted for five weeks. It got to the point where prisoners were using their socks to clean themselves after going to the bathroom. The guards showed little to no concern or compassion for these circumstances, which Da Silva stated was extremely disappointing and humiliating for everyone.
- **Dry Celling:** Da Silva explained how dry cells are another form of extreme punishment. Those who are suspected of ingesting and hiding contraband in their bodies are put into dry cells. These cells have no running water. When a prisoner has to defecate, they are taken to a room where there is a portable toilet. Those in dry cells are fed two cheese sandwiches per day, which Da Silva stated causes constipation and results in more time spent in the dry cell. Da Silva shared that these cells are beyond inhumane and inevitably trigger anger in prisoners.

Da Silva stated that even when a prisoner has admitted to ingesting contraband and then expels it, he is not believed by the guards and kept in the dry cells. When prisoners are put in dry cells for suicide watch or medical observation, they are still only given an apple and tea or coffee on top of the two cheese sandwiches. Also, personal clothing is not permitted in dry cells, so they have to wear tunics, which Da Silva stated is dehumanizing and he would have preferred walking around naked.

- **Structured Intervention Units (SIU's):** The legislation that shifted segregation to SIUs changed the wording but did little to change the practice – or to reduce the damaging effects of isolation. They discussed how the focus should be on the time frame and practice of isolation, which actually impacts the physical and mental wellbeing of prisoners.

Da Silva said he believes extremely violent prisoners should still be separated from the general population until they are able to be calm down. He referred to himself as one of those with a violent background and shares that isolation only exacerbated this violence. Da Silva believes the separation of prisoners should be within the legal limit (15 days), as that is an appropriate amount of time to identify and address the issue. However, he emphasized that 15 days is not necessary for every prisoner, as some only require 2-3 days for behaviour modification.



# CALLS FOR ACTION

November 30, 2020

► [Watch the panel here](#)

## Panelists:


- Emilie Coyle, Executive Director of Canadian Association of Elizabeth Fry Society (CAEFS)
- Jennifer Metcalfe, Executive Director of Prisons' Legal Services (PLS)
- Adelina Iftene, Law Professor at Dalhousie University Schulich School of Law

## Summary

In this final panel of the 15 day “Spotlight on Solitary”, the panelists share specific calls to action. They note that Structured Intervention Units (SIUs) are a different form of solitary confinement, and that this change in terminology does not equate to reform. Solitary confinement is a symptom of the problems that exist in our society and need to be addressed.

## Key Discussion Points:

- **Lack of Accountability:** The panelists began by discussing the report that Justice Louise Arbour wrote 25 years ago, on the injustices faced by women in solitary confinement at P4W (Prison for Women in Kingston), which closed in 2000. Today we are still fighting those injustices, and while different in name, they are the same issues. CSC continues to operate outside the rule of law and as many of the speakers during the “Spotlight on Solitary” have reiterated. Even today, there is a lack of transparency and accountability from CSC. They do not comply with SIUs rules and instances of cruel forms of isolation, such as with “Dry Cells” and medical isolation, are still routinely practiced. The extensive financial budget (\$2.5 Billion annually) provided to CSC needs to be more wisely spent in addressing the traumas of colonialism, poverty, misogyny, and addiction that lead to criminalization. The government needs to implement the changes recommended by Justice Louise Arbour 25 years ago. They also need to respond to the reports submitted by Prisoners’ Legal Services. They need to abolish any and all forms of isolation, regardless of terminology. While the government is working on this, the United Nations Mandela Rules of maximum 15 days in any kind of isolation needs to be adhered to. Adequate remedies need to be provided to those prisoners who have endured prolonged periods of isolation. The government needs to enforce the transparency of the prison systems.
- **Solitary Confinement and Maximum-Security Units:** When solitary confinement was implemented years ago it was considered a form of torture- and yet it is still practiced today. Despite the CSC having a high operational budget allowing for equal staff to prisoners, the needs of the prisoners, such as meaningful human contact, are not being met. As we see in institutions like Kent and Mission, in the onset of COVID-19 (brought in by the staff) prisoners are having to isolate in their cells for 72 hours at a time, without showers or



phone calls. This has resulted in the prisoners experiencing tremendous stress and anxiety, leading to some going on a hunger strike.

The number of prisoners is currently down, which could be an opportunity to close the maximum-security prisons, as they further traumatize those who have already experienced high levels of life trauma. The money saved with this could be used to provide programs for people with mental health illnesses and addictions, as well as for rehabilitating prisoners to prepare them for reintegration into the wider community. As 30% of the prison population is Indigenous people, there should also be more money put towards Indigenous healing lodges.

This disregard for humanity and preservation of human rights has been challenged for several years in the judicial system. The progress is very slow, and the fight is very long. The federal government needs to launch an inquiry into human rights abuses in the prison systems and the failure to abolish solitary confinement. The abuse of Canadians in isolation and solitary confinement must end, as it is inhumane and unconstitutional.

This is the beginning of change which although not rapid, is necessary. Prisons are a symptom of our failure as a society and we need to work towards making drastic changes within the confines of prisons, which we hope will not take another 25 years.

“

By putting a spotlight on the ongoing cruelty of solitary confinement — and it's disproportionate use against Indigenous people, Black people, people with mental health issues, and people who use drugs — it is CAEFS' hope that our collective frustration and desire for justice will lead us to seek and build meaningful alternatives not just to solitary confinement, but to incarceration.

**We cannot reform torture; we must abolish it.**

- Emilie Coyle, Canadian Association of Elizabeth Fry Societies

”