

Top Ontario court reaffirms decision on solitary confinement, sets seven-week limit on federal prison system to end stalling and soften the practice

[By Patrick White, *Globe and Mail*, Apr 27, 2019](#)

Ontario's top court has granted Canada's prisons agency just seven weeks to establish a new oversight model for the placement of inmates in solitary confinement. In a strongly worded decision released on Friday, a three-member Court of Appeal panel ruled that Canada's request for another seven months to impose new oversight rules was "unacceptable."

The ruling places additional legal pressure on the Correctional Service of Canada to overhaul its use of administrative segregation, an internal term for solitary confinement, that isolates inmates in their cells for up to 22 hours a day without meaningful human contact. The federal prison agency is appealing two other court decisions that have rendered administrative segregation unconstitutional.

"This is a strong signal from the highest court in the province that Canada cannot continue to turn a blind eye to the serious harm caused by its continued practice of solitary confinement," said Michael Rosenberg, one of the lawyers arguing the case against administrative segregation on behalf of the Canadian Civil Liberties Association. "The time has come for meaningful change, and not a moment too soon."

As it stands, the federal government has already had one year and four months to comply with a lower court order to impose a more rigorous oversight mechanism.

Under the current process, the institutional head, or warden, is ultimately responsible for placing an inmate in solitary and for reviewing that placement decision five days later during something called a fifth working day review.

In effect, the institutional head acts as both investigator and adjudicator. Ontario Superior Court Justice Frank Marrocco ruled in December, 2017, that the regime violated Section 7 of the Charter of Rights and Freedoms, which protects individual liberties against arbitrary government actions.

"Any continued use of administrative segregation that relies on the fifth working day review is unconstitutional," Justice Marrocco ruled. He suspended his ruling for one year to give the federal government ample time to devise a more independent oversight system where the person reviewing the institutional head's segregation decision does not also report to the institutional head.

Since then, the government has twice argued to extend the suspension. Most recently, it asked to have until Nov. 30 to impose a legislative fix, which it insists will be contained in Bill C-83, proposed legislation currently before the Senate. The Court of Appeal called the November extension request "unacceptable" and said it has seen little evidence "to indicate that the

constitutional breach identified by the application judge is being or will be addressed in the future.”

The bill would replace administrative segregation with structured intervention units, where inmates would be provided at least four hours a day outside their cells, twice what they are currently offered in administrative segregation.

“While we are working to get the new system in place as quickly as possible, it will take some more time to recruit and train new staff, make the necessary infrastructure changes and establish the external independent review process,” explained Scott Bardsley, spokesman for Public Safety Minister Ralph Goodale. “In the meantime, CSC has been implementing policy changes to safely reduce administrative segregation placements.”

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Canada’s investment in prison system isn’t bringing results, watchdog reports

[By Patrick White, *Globe and Mail*, Apr 25, 2019](#)

Canada is pouring money into an outdated prison model that provides questionable value for dollars spent, according to an internal analysis by the federal corrections ombudsman.

The 33-page document, obtained by Access to Information legislation, shows that recently announced spending will give Canada approximately one staff member for every inmate, an employee-to-prisoner ratio that would lead the world.

For all that investment, however, the ombudsman states Canada is earning dubious returns, with the country posting inmate outcomes that are regressing in important areas.

“We are spending an inordinate amount of money – \$2.5-billion – and the performance is just not there,” Ivan Zinger told *The Globe and Mail* in an interview about the report. “If we were talking electricity bills, this would be the equivalent of telling Canadians they are paying the highest hydro rates in the world and getting tons of blackouts.”

Dr. Zinger’s analysis emerged the same day the Parliamentary Budget Officer (PBO) issued a brief report on the government’s plans to spend \$300-million over six years to replace the incarceration practice known as administrative segregation with new housing units, called Structured Intervention Units (SIUs), designed to provide inmates more time outside cells.

The new units are prescribed in a government bill currently sitting with the Senate that professes to eliminate the Correctional Service’s controversial use of segregation, also called solitary confinement.

Correctional Service Canada (CSC) is planning to build 27 of the new units for men, and five for women, with annual staffing costs of \$58-million.

“We believe this is an appropriate level of funding for CSC’s expected number of SIUs and associated staffing,” the PBO report states.

Dr. Zinger warns that the new investment further commits Ottawa to funding a correctional system based out of penitentiaries when the need is greatest within community corrections, a category that includes oversight of prisoners on parole, work release and long-term supervision orders.

Scott Bardsley, spokesman for Public Safety Minister Ralph Goodale, said the government investments are aimed at mental health and rehabilitation, helping to compensate for a decade of punishment-oriented policies under the previous government.

“Better supports for mental health and other risk factors ultimately reduce the likelihood of reoffending when people are eventually released into the community, making us all safer,” he said.

The number of inmates in prisons has declined from 15,340 since 2013 and currently stands at around 14,050. Over that same period, the number of offenders under community supervision has risen from roughly 7,860 to 9,310.

Despite that population shift, CSC has added 2,000 institutional staff since 2007-08, according to the analysis. Roughly 37 per cent of federal prisons now have more full-time employees than inmates and roughly 2,000 cells are vacant.

“This, in my view, represents maladministration,” Dr. Zinger said.

Dr. Zinger said that the SIU initiative along with recent funding dedicated to prison health care will add another 1,000 staff to CSC’s total complement, pushing the staff-to-inmate ratio from 1.2 to 1 down to 1 to 1. In his analysis of worldwide prisons stats, the ombudsman found that only Norway and Northern Ireland come close to dedicating that many employees to inmates, both posting a 1.2-to-1 ratio. Europe dedicates an average of one staff member to every 3.5 inmates, the U.S. Bureau of Prisons employs one person for every 4.4 inmates.

“The money is beyond what any other country is willing to pay,” he said.

The ultimate performance indicator for prison systems is recidivism, a measure of inmates who are reconvicted after two years.

While other big spenders such as Norway have recidivism rates of 20 per cent, Canada’s reconviction rate is unknown, according to Dr. Zinger, largely because of the country’s complicated interplay of provincial, territorial and federal prison systems. The last time CSC fully measured its two-year reconviction rate was 1995 and it stood at 41 per cent, he said.

In a statement, CSC insisted it has a more recent recidivism figure of 23.4 per cent for 2011-12.

“The Correctional Investigator’s study underlines the need for better Canadian data on recidivism, which is notoriously difficult to track and compare,” said Mr. Bardsley, adding that Ottawa is now working on new recidivism stats with the provinces and territories.

Other indicators suggest the prison service’s performance is sagging in key areas despite budget increases, Dr. Zinger said. Inmate-on-inmate assaults, attempted suicides, self-injuries and use of chemical sprays on inmates have all surged by more than 100 per cent since 2006-07.

CSC spokeswoman Véronique Vallée said that, based on other stats, the agency is meeting its mandate of successfully rehabilitating and reintegrating offenders into the community.

“Offenders are being released earlier in their sentences, are upgrading their education, and are more successful in returning to and staying in the community as law-abiding citizens.”

The union representing correctional officers has blamed recent increases in violence on new Correctional Service directives that have drawn down segregation numbers and stated that the pending legislation would only make penitentiaries more dangerous. “We are entering a time in corrections when I think violence will be unbelievably bad,” union president Jason Godin said. “People will get hurt.”

Dr. Zinger would rather see CSC funding shift away from prisons and into community corrections, particularly toward mentally ill, Indigenous and elderly people.

“With our current level of spending,” he said, “we should be outstanding in every aspect of corrections.”