Prisoners' Legal Services
A Project of the West Coast Prison Justice Society

November 24, 2022

VIA E-MAIL: hrc-sr-torture@un.org

Special Rapporteur on Torture
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
CH 1211 Geneva 10
Switzerland

Dear Special Rapporteur:

RE: Input to the Report of the Special Rapporteur on Torture

I write on behalf of Prisoners' Legal Services, a legal aid clinic serving people in federal and provincial prisons in British Columbia, Canada. I provide information in support of your call for input to the Report of the Special Rapporteur on Torture, under the "short on time" option for providing input.

Torture is prohibited by s. 269.1(1) of the *Criminal Code of Canada*. It is extremely rare for charges to be laid against police or correctional officers in Canada, let alone charges of torture.

Our clients in federal and provincial prisons universally report that if they request to contact the police about mistreatment, their requests are either not complied with or the police do not conduct a thorough investigation. We are not aware of any time that a client reported mistreatment to police resulting in a charge or conviction under any laws prohibiting torture in BC or Canada. Our office has not pursued this avenue because we are skeptical that it would bear fruit. Our understanding is that police and correctional officers are part of the same code, and police would protect the actions of their fellow officers.

Both BC Corrections and Correctional Service Canada engage in torture and cruel treatment of people in prison, through the use of solitary confinement and through uses of force.

Both jurisdictions' legislation permits the use of indefinite solitary confinement, despite recent changes to legislation after court challenges found Canada's use of solitary confinement

unconstitutional under s. 7 (life, liberty and security of the person) and s. 12 (cruel treatment) of the *Canadian Charter of Rights and Freedoms*.[1]

British Columbia Corrections

Legislation governing BC Corrections still permits imposition of segregation as a disciplinary sanction, contrary to the Mandela Rules[2]. Although legislation imposes a limit of 15 days segregation for one offence, there is no prohibition or limit on someone serving numerous segregation sentences consecutively if one sentence ends and a new breach occurs.

Legislation governing BC Corrections also permits indefinite use of separate confinement. Although the time out of cell under legislation is 2.5 hours[3], this time is usually spent alone. "Outdoor" yards are generally small concrete boxes with solid walls extending above sight lines. Many segregation cells do not have windows that offer a view of land. Some of our clients are held in separate confinement with disciplinary segregation interspersed, for months or years on end.

There is no prohibition on the solitary confinement of people with mental health disabilities and the Provincial Health Services Authority who provides health care to people in BC Corrections refuses to incorporate the Mandela Rules into its policies and procedures. They refuse to acknowledge any role in reporting and objecting to torture or cruel treatment of patients who are held in solitary confinement, despite our attempts to draw their attention to obligations under international law. (See: Proposed guidelines for medical professionals working in BC Corrections: Compliance with the Mandela Rules.)

Challenges to the use of solitary confinement can be made to the BC Supreme Court, however despite a successful challenge that found the use of separate confinement at one institution to violate s. 12 of the *Charter*,[4] the practice continues.

The issue of the role of physicians in participating in torture or cruel treatment was brought to the attention of the BC College of Physicians and Surgeons who determined that the Mandela Rules do not apply to doctors who work in prisons in British Columbia. This case was reviewed by the BC Health Professions Review Board who found the decision unreasonable and referred it back to the College.[5]

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[1] *BC Civil Liberties Association v Canada*, 2019 BCCA 228; *Canadian Civil Liberties Association v Canada*, 2019 ONCA 243.

[2] *Correction Act Regulation*, B.C. Reg. 58/2005, s. 27(2)(d).

[3] *Correction Act Regulation*, B.C. Reg. 58/2005, s. 2(1)(a).

[4] *Bacon v Surrey Pretrial Services Centre*, 2010 BCSC 805. Online: https://www.canlii.org/en/bc/bcsc/doc/2010/2010bcsc805/2010bcsc805.html.

[5] *Complainant v College of Physicians and Surgeons of BC* (No. 1), 2022 BCHPRB 39. Online: https://www.canlii.org/en/bc/bchprb/doc/2022/2022bchprb39/2022bchprb39.html.

Provincially there are no requirements to report on the use of solitary confinement or uses of force publically. There is insufficient oversight of BC Corrections through the Investigation and Standards Office, who only has power to make recommendations (other than for appeals of disciplinary convictions and dispositions).

Correctional Service Canada

Legislation governing the Correctional Service Canada requires people held in Structured Intervention Units to be offered at least four hours out of cell each day, including two hours of meaningful human contact. CSC routinely fails to meet these standards (see footnote below and attached report by Dr. Doob and Dr. Sprott).[6]

People held in Structured Intervention Units can be housed there indefinitely, despite frequent legislative reviews. Some reviews are conducted by Independent External Decision Makers, however, they only have the authority to order a person out of Structured Intervention Unit, rather than authority to order they go to a lower security institution or to an Indigenous run healing lodge. When someone is ordered out of Structured Intervention Unit, they are usually released to a maximum security institution where conditions are often worse and more restrictive than in Structured Intervention Units. Many end up transferred to another maximum security institution in Canada where they inevitably end up back in another Structured Intervention Unit.

The Correctional Service Canada also routinely imposes solitary confinement on people in its custody through lockdowns and restrictive movement routines that are not authorized by legislation. For more information, see our report: Solitary by Another Name.

Prisoners' Legal Services has also made submissions to Correctional Service Canada on international law obligations for medical professionals working in its prisons, who very rarely recommend someone be removed from solitary confinement. (See: Proposed guidelines for medical professionals working in CSC: Compliance with the Mandela Rules.)

The Correctional Investigator of Canada provides good public reporting of conditions inside Canada's penitentiaries, however, he does not have the power to order changes to policy or practices of the Correctional Service Canada – he can only make recommendations.

A further barrier to accountability for torture is the ineffective process for accessing one's personal information. Use of force reports are not shared with the person who was beaten. It usually takes years to receive information through the *Privacy Act*. Prisoners' Legal Services has some requests on behalf of our clients that are outstanding for over five years. The time limit to take an issue to Federal Court for judicial review is 30 days, and the time limit to file a

[6] https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2022-siu-iap-nnlrpt/2022-siu-iap-nnlrpt-en.pdf

complaint with the Canadian Human Rights Commission is one year. This means it is impossible for people in prison to access these mechanisms for redress of abuse with a record that corroborates their claims.

Indigenous peoples in Canadian prisons are incarcerated at extremely high rates and suffer the harshest treatment. For more information about the ways that Canada abuses Indigenous peoples in its prisons, please see: The role of prison in genocide and crimes against humanity against Indigenous people in Canada.

For more information about uses of force in BC and Canada, and the lack of avenues to pursue these abuses, please see our report: Damage/Control. Pages 38-45 describe the legal framework related to uses of force.

For some examples of the types of abuses that have been reported to our office, which we consider to constitute torture or cruel treatment, please see our news releases.

One mechanism to improve oversight and accountability of mistreatment of people in prisons would be for Canada to sign the Optional Protocol to the Convention Against Torture, which it still has not done twenty years after its adoption by the UN.

Prisoners' Legal Services also supports the submissions made by the Canadian Association of Elizabeth Fry Societies and the John Howard Society of Canada.

Yours truly,

PRISONERS' LEGAL SERVICES

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