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Solitary Confinement Continues in Canada Under a Different Name

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Solitary confinement continues in Canada under a different name

Abusive uses of Structured Intervention Units and the Correctional Service's conduct mean Parliament must get rid of SIUs or adopt Senate amendments.

by Adelina Iftene

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Exactly one year ago, in November 2019, Structured Intervention Units (SIUs) were implemented by the Correctional Service of Canada (CSC) in federal prisons to replace the old solitary confinement system. The new regime was supposed to abolish what is typically defined as segregation. Individuals placed in an SIU would receive four hours out of their cells and two hours of meaningful human contact. Solitary confinement is often defined as isolation for 22 hours or more in a given day and no more than two hours of human contact.

However, an independent report using CSC data released at the end of October 2020 shows that SIUs are in fact solitary confinement under a different name and with fewer restrictions.

SIUs were introduced after the passing of Bill C-83 in June 2019. The bill was the government's response to two court decisions, one of which found that numerous aspects of the old segregation regime were unconstitutional. This included prolonged or indeterminate isolation, using segregation in a discriminatory manner against Indigenous individuals and segregating people with mental or other types of disabilities. The other decision held that for segregation to be constitutional, a hard cap of 15 days was needed.

At the time that it was debated in Parliament, an open letter signed by lawyers and academics argued that the creation of SIUs in response to the courts' findings was simply window dressing.

At issue was CSC's good faith in implementing these units and the lack of judicial oversight instead of or in addition to the government-appointed independent monitors. There was also concern that there still wasn't a cap in place for the length of stay. The letter argued that SIUs would be segregation under a different name and thus, they should be subjected to the same constitutional requirements set out

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oversight for any extensions beyond that.

The bill was passed without the amendments, but the government appointed a panel of independent experts chaired by criminologist Anthony Doob, professor emeritus at the University of Toronto.

Doob spoke out about the failure of the CSC to provide the panel with complete data for the entire year regarding SIUs while giving it the runaround before the panel's mandate expired. In a memo, Doob wrote: "This panel is powerless to accomplish the job that it was set up to do without cooperation from CSC."

Following Doob's public statements and an intervention by Minister of Public Safety Bill Blair, CSC finally provided the information on SIUs in September, and Doob's report, co-written with a criminology professor at Ryerson University, Jane Sprott, was released in October.

> **Where did the individuals go for four hours? Were they allowed in the hallway or yard by themselves? Were they handcuffed outside their cell?**

The findings show that even by using the government's loose definition of what constitutes solitary confinement, SIUs fall squarely under this definition in that many prisoners did not receive the required four hours out of cell or their two hours of meaningful human contact. The report also showed that hundreds of individuals were held in SIUs for over two months, that numerous people with previously diagnosed mental illnesses were placed in these units and that a disproportionate number of those placed there were Indigenous. All of these scenarios had been deemed unconstitutional by courts under the previous solitary confinement regime.

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What the data cannot show is what four hours out of cell or meaningful human contact actually means for incarcerated individuals. Where did the individuals go for four hours? Were they allowed in the hallway or yard by themselves? Were they handcuffed outside their cell? And what constitutes meaningful contact for those who allegedly received it? Was it yelling through the wall at another prisoner? Was it being spoken to by an officer?

While the CSC data provides quantitative information of how the SIUs were implemented, it does not provide qualitative information. Without this information, it is impossible to assess whether the spirit of the law has been met even in those few situations where the legal requirements appear to have been met. This is because ensuring that the SIU regime does not have the deleterious effects on individuals that solitary confinement does is not just a matter of hours. It is a matter of what happens during those hours.

The CSC data also fails to discuss other forms of isolation employed over the last year. Anecdotal information suggests that some institutions found creative ways of avoiding placing someone in SIUs and thus reporting on it.

Instead, for various reasons, these types of isolation, with names such as range lockdowns, medical isolation or dry cells, have been used, with no monitoring. As a result, no data is available. Given how CSC has responded over the past year, one must ask whether there are other ways that the rule of law has been skirted and remained outside the public eye.

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integrity and perseverance of individuals on the expert panel.

CSC's response was to suggest that it provided the panel with flawed data, and instead of being concerned and committing to working with experts to do better, the commissioner highlighted how progressive SIUs were. Anne Kelly justified the findings by arguing that there was a problem with the integrity of data, that one year is not enough time to assess the implementation and that the pandemic made implementation difficult.

Doob and Sprott have disputed Kelly's claim and her blame of the pandemic with a follow up report. Once again, using the data provided to them by the CSC, they showed that there is no evidence that the poor implementation of the SIUs was due to any extent to the pandemic. Instead, the information shows that the implementation of SIUs was already fraught with problems at the time the pandemic was declared.

Given the demonstrated abusive uses of SIUs over the last year, as well as the failure of CSC to recognize the shortcomings of its practices, it is time for Parliament to go back to the drawing board and either truly get rid of solitary confinement under any name or reconsider the amendments proposed by the Senate back in June 2019. If kept, SIUs and other forms of isolation must be recognized for what they are: solitary confinement that must comply with constitutional requirements. Adding hard caps and judicial oversight would go a long way to helping enforce those requirements.

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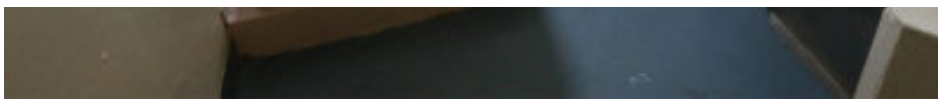

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