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Criminal Justice Issues and Prisoners' Rights

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close

Search

close

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by [Garrett Zehr](#) | April 7, 2016

The use of solitary confinement in Canada could soon undergo major changes as prominent figures and organizations issue ever louder calls to reform the practice or even abolish it entirely.

Ending segregation is not a revolutionary, unrealistic, or aspirational idea, [says Renu Mandhane](#), Chief Commissioner of the Ontario Human Rights Commission. It is primarily one of adequate resources and political will. Mandhane recently provided submissions on the human rights implications of the use of solitary to the government of Ontario Canada's largest province which is currently reviewing its use of the practice.

Provincial jails are where individuals are detained on remand waiting for trial and to serve sentences of less than two years. [Recent figures](#) released as part of a lawsuit settlement show that at two of Ontario's biggest jails, individuals in segregation daily averaged approximately seven per cent of the total prison population.

The extent and gravity of [Human Rights] Code concerns with the use of segregation is why the OHRC is taking the rare step of advocating that Ontario show bold leadership by publicly committing to eliminate this practice across all its institutions, says Mandhane. The solutions are clear, albeit challenging, but the political environment is ripe for a new approach to corrections one that is firmly grounded in equality, human rights, and human dignity, says Mandhane.

Acknowledging that the practice is not likely to be abolished immediately, the Commissioner recommends interim measures until that happens, including external oversight and strict timelines.

There is also optimism about the potential for significant change of the use of solitary in federal prisons, where individuals are incarcerated for custodial sentences of more than two years.

Soon after Prime Minister Justin Trudeau was elected last fall, he directed his government to implement a series of recommendations around solitary, which include a ban on prolonged solitary of more than 15 days and an upper limit of 60 days total per year.

Trudeau [instructed Justice Minister](#) Jody Wilson-Raybould that one of her top priorities would be to implement recommendations from the inquest into the death of Ashley Smith regarding the restriction of the use of solitary confinement and the treatment of those with mental illness.

The commitment refers to recommendations that came out of the inquest into the death of Ashley Smith, a young woman who spent [more than 1000 days in solitary](#) and died as prison guards watched from outside her cell.

The political will for reform at the federal level represents a significant shift after a decade of rule by the Conservative Party, which was hostile to the Smith inquiry recommendations and under whose watch the use of solitary steadily grew.

Trudeau's announcement has been welcomed by advocates for solitary reform in prisons.

It would be an excellent start if the government was to implement the recommendations, said Noa Mendelsohn Aviv, a director at the Canadian Civil Liberties Association, in an interview with Solitary Watch. We need very much to get up to speed to bring Canadian correctional policies up to the international standards that have been set and to reflect the scientific findings about the harms of solitary.

The CCLA hopes the government goes beyond the Smith recommendations in areas such as the treatment of vulnerable individuals, including those with mental illness, as well as the need for transparency and accountability around decisions when solitary is used, Mendelsohn Aviv said.

The civil liberties group is an applicant in [one of two lawsuits](#) filed last year alleging that the current practice of solitary is

unconstitutional because it violates the right not to be subjected to cruel and unusual punishment and the right to life, liberty and the security of the person. The courts therefore remain an avenue to push possible reform if the federal governments proposals or their implementation fall short. The lawsuits could also set a precedent for the use of solitary in provincial jails across the country.

Mendelsohn Aviv advocated a cautious approach in terms of the governments announcement: We need to see actual changes on the ground, she said. These are positive steps forward and they need to happen ASAP.

The government has not provided a timeline for the changes. A spokesperson declined Solitary Watchs interview request and instead directed questions to the Correctional Service of Canada the agency responsible for prisons which did not provide an interview or comment.

The CSC has been widely criticized for dragging its feet on implementing reform recommendations around solitary. However, just shortly before last falls election, the agency quietly announced a series of moderate reforms, which include an advocate to help individuals with mental illness in solitary.

The agency also recently revealed in a rare media interview that it had [cut in half](#) the number of individuals held in long-term solitary confinement since last March. A senior official with the CSC told the *Globe and Mail* newspaper that the total number of individuals in solitary has been reduced by 34 per cent since last March and that the number of individuals spending more than 60 days in solitary had declined by 52 per cent.

The agency claims the reduction is part of a two-year renewal strategy that began after the release of the recommendations from the Smith inquest.

I think the segregation renewal strategy was very effective in doing what it was supposed to do, said Chris Hill, CSCs Director of Security Operations, Procedures and Monitoring.

The reduction is in sharp contrast to a [report released last summer](#) by Correctional Investigator Howard Sapers, which showed that the number of individuals spending time in solitary over the past the past decade had consistently rose and that Black and Indigenous individuals were highly overrepresented in segregation. At the time, Sapers described the use of solitary as out of control.

The Correctional Investigator recently released his [most recent annual report](#), which found that almost half of those individuals currently incarcerated have spent time in segregation and that 14 of 30 suicides during the period studied occurred in solitary cells.

Segregation is the most onerous and depriving experience that the state can legally administer in Canada; it is only fitting that safeguards should match the degree of deprivation. The system desperately requires reform not renewal, says the report.

The Office of the Correctional Investigator recommends that CSC significantly limit the use of solitary, abolish its use for youth under 21 years and for individuals with mental illness, and prohibit stays longer than 30 continuous days.

As Correctional Investigator, Sapers has often been a thorn in the side of both the government and CSC for various damning reports and recommendations for reform he has put forward. His job was in limbo since the Conservative government announced that he would not be reappointed despite his request to continue. A replacement was not announced before last falls election and Sapers has remained in the position with an extension of his current term.

On March 31, the day that extension was set to expire, Ralph Goodale, Minister of Public Safety and Emergency Preparedness announced that Sapers had been renewed for an additional one-year term. Goodale said Saperss experience and dedication will be invaluable as we move towards fulfilling the Governments commitment to review the criminal justice system. Our Government believes in strong public institutions, in transparency and accountability, and that includes an accountable federal correctional system that is fair, humane, and effective.

Garrett Zehr is a Toronto-based legal aid lawyer practicing criminal defense and international human rights law, and a proud union member.

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September 29, 2022

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Wonderful job! There are major changes that need to happen, but it makes sense that sometimes change occurs in smaller steps. However, if larger changes are realistic and safe, those should happen. Each person who is hurt in conditions of social isolation is a real person with a real story.

It is easy for all us to lose sight of people and focus on numbers and statistics. People are not statistics. People suffer. Their lives are destroyed. They lose their hope. Statistics dont do that. They sit placidly on the page and reflect progress or lack of progress. I am actually a big fan of statistics since we need numbers to measure overall improvement or lack of improvement, but in developing momentum and passion for reforms, we need to keep the reality of the shattering of peoples lives in the front of our minds.

People are the ones who suffer. People are the ones who slowly lose their minds while statistics reflect institutional progress. People cry. People give up. People lose their sense of reality. Statistics never, ever do those things. This is why we need to focus on people and their stories.

I am very encouraged and inspired by the efforts that Canada is making. The United States is also making huge efforts in this area which are very inspiring. Each step in the right direction is truly laudable and commendable, no matter how small. But we all need to do our best to remember what is at stake. What is stake is not statistics. What is at stake are real peoples lives.

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