

## **Abolish Solitary Confinement in British Columbia BC First Nations Justice Council, January, 2022**

We write on behalf of the ‘Campaign for the Abolition of Solitary Confinement’ <https://abolishsolitary.ca/>, a voluntary organization founded in 2016 to work for the complete abolition of solitary confinement in all Canadian prisons.

### *Our goal:*

1. Legislation for the abolition of solitary confinement in BC provincial correctional centres and youth detention centres.
2. Annual data made public about the number of incarcerated individuals in BC who are placed in solitary, and the number of days, including specifics for youth, Indigenous persons, persons of colour and persons with mental health needs. Without yearly release of annual data, it is impossible to hold the government to account.

### *Indigenous Peoples*

The 1996 Royal Commission on Aboriginal Peoples,<sup>1</sup> the 2015 Truth and Reconciliation Commission (TRC),<sup>2</sup> and the Supreme Court of Canada (R v. Gladue [1999],<sup>3</sup> R. v. Wells [2000]<sup>4</sup> R. v. Ipeelee [2012]<sup>5</sup>) recognise that fundamental issues of historical and ongoing colonialism, residential school trauma, systemic discrimination, social and economic marginalization, culture clash, poverty and unequal life chances, contribute to the overrepresentation of Indigenous people in the criminal justice system.

Despite government attempts to implement Gladue Principles into the justice system, on Dec 17, 2021, the Correctional Investigator announced that the combined men and women Indigenous proportion in federal corrections is now 32%, with almost 50% of federally sentenced women of Indigenous ancestry, “.. the over-representation of Indigenous people in correctional settings is one of Canada’s most pressing human rights issues and evidence of public policy failures over successive decades.”<sup>6</sup>

On June 16, 2021, the Parliament of Canada passed The United Nations Declaration on the Rights of Indigenous Peoples Act (formerly Bill C-15), with Royal Assent on June 21, 2021.<sup>7</sup> The Government of Canada is to work in consultation and cooperation with Indigenous peoples, to take all measures necessary to ensure the laws of Canada are consistent with UN Declaration and prepare and implement an action plan to achieve the objectives of the Declaration.

In the Fall, 2017, the BC First Nations Justice Council and the Province of BC signed a memorandum of understanding committing to the development and implementation of a strategy to transform the criminal justice system and the relationship between Indigenous peoples and the criminal justice system. The BC First Nations Justice Strategy,<sup>8</sup> signed March, 2020, outlines specific actions that will lessen the daily negative impacts of the justice system on Indigenous peoples.

In November, 2019, the BC provincial government passed Bill 41 – Declaration on the Rights of Indigenous Peoples Act – into law, which establishes the UN Declaration as the Province’s framework for reconciliation, as called for by the TRC’s Calls to Action. On June 11, 2021, the BC government released its Draft Action Plan<sup>9</sup> relating to the implementation of UN Declaration. No action item specifically addresses solitary confinement, however, several action items call for Indigenous, traditional, restorative justice approaches, including Action 4.8 that calls upon the Ministries of Public Safety and Solicitor General, Health, and Mental Health and Addictions, to:

“Strengthen the continuum of Indigenous-led and community-based social services and supports that are trauma-informed, culturally safe and address a range of holistic wellness needs, for those who are in crisis, at-risk and have experienced violence and trauma.”

### *Solitary confinement background information*

Solitary confinement is used in all prisons in Canada: federal (individuals sentenced to two years or more), and provincial and territorial (under two years), and in youth detention. Solitary confinement, as

defined by the United Nations,<sup>10</sup> refers to any confinement, seclusion or segregation of individuals for 22 hours or more a day without meaningful human contact. Emotional, cognitive, social and physical harms are widely documented, and can develop with only a few days. Solitary confinement results in increased suicides and attempted suicides, self-harm, and new and exacerbated mental illnesses.<sup>11,12,13</sup> It costs lives (40 percent of prison suicides take place in solitary). Moreover, solitary confinement does not make correctional institutions safer for staff or incarcerated persons<sup>14</sup> and the cost per individual is higher for solitary than for the general incarcerated population.

### *The Abolition of Solitary Confinement in BC*

We believe that the abolition of solitary confinement in BC is an attainable shorter-term goal, hence our focus is on this one issue, whilst we also recognize that vast systemic injustices existing within the criminal justice system will be addressed by the BC First Nations Justice Strategy. Legislation is needed for the abolition of solitary confinement, not the introduction of regulation measures.

In 2019, the BC Court of Appeal ruled that prolonged solitary confinement is inhumane and unconstitutional, consistent with a United Nations Mandela<sup>15,16</sup> rule that prolonged solitary confinement of >15 days is torture. Accordingly, a 2020 amendment to the BC Correction Act Regulation introduced a 15-day limit on solitary confinement.<sup>17</sup> In June, 2021, the BC Ombudsperson published a scathing review of the use of solitary confinement for youth in custody in BC, and recommended the establishment of meaningful alternatives to solitary confinement and significant law reform to address the shortcomings in the current legislative and regulatory framework.<sup>18</sup> The public, however, remains in the dark!

At a cost of \$510, we received 2020/21 BC Corrections records through FOIPPA<sup>19</sup> on 25<sup>th</sup> August, 2021. Some key data include:

- For the fiscal year 2020/21, there were 8,281 new admissions to BC Corrections centres accounted for by 5,564 unique individuals. There was an average daily count of 1,488 (this was the pandemic period).
- While Indigenous persons are 5.9% of the BC population (2020), too many Indigenous persons are impacted by both incarceration and solitary confinement. 35% of the 1488 persons in custody in BC on any one day self-identified as Indigenous.
- 24% of individuals with at least one day of solitary confinement in BC self-identified as Indigenous. On average, 28% of the 66 individuals in solitary confinement on any one day in BC self-identified as Indigenous.
- 39% of incarcerated individuals in BC had at least one day in solitary confinement.
- On any one day in BC, an average of 33 individuals had been in solitary confinement for 15 or more days, of which an average of 10 individuals had been in solitary for more than 60 days. This constitutes torture and is a violation of the 2015 United Nation rules, the 2019 BC Court of Appeal ruling and the amended BC Correction Act Regulation.
- Of the unique individuals placed in solitary confinement in BC, approximately 77% were placed there for administrative<sup>20</sup> reasons and 46% were placed there for disciplinary reasons. The median number of days spent in solitary confinement was 14 days for administrative reasons and 11 days for disciplinary reasons.
- We requested but received no data about individuals in custody who are diagnosed with mental illness, or individuals in solitary confinement who are diagnosed with mental illness. This is unacceptable.<sup>21</sup> Mental health assessments should be directly tied to the tracking mechanisms for solitary confinement. Recent research demonstrated that 75% of people admitted to BC Corrections in 2017 suffered from a mental health need and/or substance use disorder, which is an increase from 61% in 2009.<sup>22</sup>

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We would be happy to provide further published research and scientific evidence as needed.

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## References and Endnotes

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- <sup>10</sup> United Nations standard minimum rules for the treatment of prisoners (the Nelson Mandela Rules). General Assembly resolution 70/175, annex, adopted on 17 December 2015. <https://drive.google.com/drive/u/0/folders/14RhtZ4KEHX6mEdpfXFtDQTFfoN5MXV06> Page 14, Rule 44.
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- <sup>18</sup> ALONE: The Prolonged and Repeated Isolation of Youth in Custody. Ombudsperson BC. Special report No. 48. June 2021. [https://bcombudsperson.ca/assets/media/OMB-Alone\\_Youth-in-Custody-06-11-2021.pdf](https://bcombudsperson.ca/assets/media/OMB-Alone_Youth-in-Custody-06-11-2021.pdf)
- <sup>19</sup> Freedom of Information and Protection of Privacy Act. The records were to be published on the BC Governments' Open Information Website [www.gov.bc.ca/openinformation](http://www.gov.bc.ca/openinformation) File: 292-30/PSS-2021-12561
- <sup>20</sup> Administrative reasons include 'jeopardise institution/inmate safety/interfere investigation.'
- <sup>21</sup> The explanation given by BC Corrections is that the scale and its ratings (Clinical Global Impressions-Corrections mental health tool) are not directly tied to the tracking mechanisms in place for separate confinement/segregation.
- <sup>22</sup> Amanda Butler, Ph.D., Tonia Nicholls, Ph.D., Hasina Samji, Ph.D., Sheri Fabian, Ph.D., M. Ruth Lavergne, Ph.D. Prevalence of Mental Health Needs, Substance Use, and Co-occurring Disorders Among People Admitted to Prison. *Psychiatric Services*. Published Online:23 November 2021 <https://doi.org/10.1176/appi.ps.202000927>