

# Reforming Segregation: Best Intentions within Complicated Realities



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**Note:** Dr. Ricciardelli presented her recent work (as described in the piece below) at our Network workshop titled, “Dignity, Human Rights and Solitary Confinement,” during the 21<sup>st</sup> ICPA conference in Buenos Aires.

## Introduction: Canadian correctional services and segregation forms

In Canada, provincial and territorial correctional institutions are run by their respective provincial/territorial Departments of Justice and/or Public Safety and house individuals sentenced to less than two years as well as prisoners awaiting court proceedings. In contrast, federal institutions are run by a national prison agency (the Correctional Service of Canada) and hold individuals sentenced to a term of two or more years. While the systems operate under distinct policy frameworks, policy changes in one setting can generate influence across contexts; moreover, practices across settings are influenced by an array of socio-historical factors tied to different social, political, and legal factors. The case of segregation is an illustrative example.

For years, concerns have been raised regarding the use of segregation in Canada at the federal level by the Office of the Correctional Investigator, Canada’s federal prison oversight body. The former Correctional Investigator, Howard Sapers, noted in 2012<sup>1</sup> that from 2010-2011, 19 percent ( $n=8,019$ ) of the 42,000 federal prisoners in Canada had been housed in segregation, with only 18 percent being placed voluntarily (i.e., 82 percent were placed involuntarily). Concerns around length of stays in segregation have also been raised, as Sapers had found that placements average 35 days,<sup>2,3</sup> contravening the United Nation’s recommendation that segregation placements not

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<sup>1</sup> Sapers, H. (2012) *Annual Report of the Office of the Correctional Investigator of Canada 2011–2012*. Ottawa, ON: Office of the Correctional Investigator, Public Works and Government Services Canada

<sup>2</sup> Sapers, H. (2011) *Annual Report of the Office of the Correctional Investigator of Canada 2010–2011*. Ottawa, ON: Office of the Correctional Investigator, Public Works and Government Services Canada

<sup>3</sup> Sapers, H. (2012).

exceed 14 days.<sup>4, 5</sup> In 2015, Prime Minister Trudeau openly spoke about limiting the use of segregation,<sup>6</sup> words which he made true during his time in office with the tabling of Bill C-83.<sup>7</sup>

Recent federal litigation has successfully challenged the use of segregation in federal correctional services, with the Supreme Court ruling it unconstitutional.<sup>8, 9</sup> In response, the federal government has amended the Corrections and Conditional Release Act to include new units for individuals who are unable to be safe in the general prison population.<sup>10</sup> Structured Intervention Units (SIUs) are the new model being implemented as of November 2019.<sup>11</sup> In concept, the legislation addresses the tension that exists between human rights and security. On the one hand, the legislation recognizes that certain individuals may need accommodation outside of the general population for their own safety or that of others – thereby promoting the security and safety of institutions. At the same time, the legislation explicitly removes isolation as a population management tool and replaces it with the notion of intervention – which involves regular engagement and “meaningful human contact”. The goal of these intervention units appears to be tied to addressing the factors that lead to one’s inability to integrate through intensive interventions.

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<sup>4</sup> Mendez, J. (2011, October 18). Solitary confinement should be banned in most cases, UN expert says. *UN News*. Retrieved from <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>

<sup>5</sup> Metcalf, H. and Resnick, J. (2012) Reassessing Solitary Confinement, Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights Congregation. *Legal Testimony*.

<sup>6</sup> Fine, S. and White, P. (2015, November 13) Trudeau calls for ban on long-term solitary confinement in federal prisons. *The Globe and Mail*. Retrieved from <https://www.theglobeandmail.com/news/national/trudeau-calls-for-implementation-of-ashley-smith-inquest-recommendations/article27256251/>

<sup>7</sup> Harris, K. (2018, October 16). Liberals move to end solitary confinement of federal prisoners. *CBC News*. Retrieved from: <https://www.cbc.ca/news/politics/segregation-corrections-goodale-1.4602084>

<sup>8</sup> Li, W. (2019, June 24). B.C. Court of Appeal confirms prolonged solitary confinement is unconstitutional in Canada. *Star Vancouver*. Retrieved from <https://www.thestar.com/vancouver/2019/06/24/bc-court-upholds-decision-striking-down-canadas-solitary-confinement-laws.html>

<sup>9</sup> Perkel, C. (2019, July 16). Ottawa wins last-ditch reprieve for law allowing inmate segregation. *The Canadian Press*. Retrieved from <https://www.cbc.ca/news/canada/toronto/ontario-solitary-confinement-court-case-rerieve-1.5177613>.

<sup>10</sup> Corrections and Conditional Release Act. (2018). Commissioner’s Directive Number 709: Administrative Segregation. Correctional Services Canada, Ottawa. GL-709-1. Retrieved from <https://www.csc-scc.gc.ca/lois-et-reglements/709-cd-eng.shtml>

<sup>11</sup> Correctional Services Canada (CSC). (2019). Structured Intervention Units. Correctional Services Canada, Ottawa. Retrieved from <https://www.csc-scc.gc.ca/002/010/002010-index-en.shtml>

The extent to which changes in federal legislation will affect provincial and territorial correctional systems, and, by implication, the working environment of staff, remains to be seen. In some provinces administrative segregation remains, but changes in the use of disciplinary segregation are underway. Insofar as they manage the daily interactions of prisoners, front-line staff will undoubtedly play a significant role in shaping the practical implementation of policies. Their perceptions, understandings, and beliefs can mediate how policies are interpreted and applied. Furthermore, the personal safety and well-being of staff are shaped by the policies governing correctional operations, including policies around segregation. Yet few Canadian researchers have examined segregation from the perspective of front-line staff.

Seeking to explore the working meanings of segregation from the point of view of officers, I focus my attention on those who manage the daily interactions of prisoners and thus enact the use of segregation at a prison in Atlantic Canada, a medium and maximum provincial institution built in 1859, renovated in 1945, 1981 and 1994, that has, at present, both an administrative and a disciplinary segregation unit. The institution primarily houses men but can also house women if the need in the province arises. Prisoners at the institution included those sentenced to a provincial term (i.e., less than two years), those on remand (awaiting trial and/or sentencing), as well as those awaiting transfer to a federal institution. The institution faces chronic structural problems, perhaps most evidenced by announcements from Ministers of Justice that the ground will break (at some point) and a new prison will be built.<sup>12, 13</sup> In addition, new policies on disciplinary segregation (not administrative) are set to be released in the fall of 2019.

In the province, a key distinction remains (as in many other jurisdictions) between administrative and disciplinary segregation. Administrative segregation is utilized in cases where a prisoner's safety is perceived to be at risk within the general population.<sup>14</sup> As frontline officers explained, administrative segregation units contain a small number of cells and a small area with a common space. If there are no issues of compatibility, segregated prisoners may interact within the communal space on the segregation unit, thereby enabling some degree of human interaction. In contrast, disciplinary segregation in the province is employed when the actions of prisoners

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<sup>12</sup> For example: CBC. (2019, April 10). \$200M replacement pledged for Her Majesty's Penitentiary, says Justice Minister. *CBC News*. Retrieved from <https://www.cbc.ca/news/canada/newfoundland-labrador/andrew-parsons-corrections-1.5091886>

<sup>13</sup> Kelland, A. (2018, March 29). Money budgeted for planning of new penitentiary – but will it ever happen. *CBC News*. Retrieved from <https://www.cbc.ca/news/canada/newfoundland-labrador/hmp-budget-planning-1.4596894>

<sup>14</sup> For more information on administrative segregation, see Bonta, J., and Gendreau P. (1990) Re-examining the Cruel and Unusual Punishment of Prison Life. *Law and Human Behavior* 14(4): 347-72.

are perceived to disturb the security or order of the institution or otherwise compromise the safety of the prisoner, fellow prisoners, staff, the facility, or society. To contain the perceived potential threat, the prisoner is relocated to disciplinary segregation, where they are typically cell-confined for 23 hours daily, until the risk is deemed manageable.

### **Correctional Officer Perceptions**

Reforming segregation reveals a welcomed trend away from punitive ideologies (e.g., “tough on crime”) toward more humane conditions of confinement, which counters much of penal populist previous ideologies toward harshening conditions of confinement and lengthening sentencing (see the *Safe Streets and Communities Act* [C-10] enacted under the former Conservative Harper government<sup>15</sup>). There is hope to create a more humane working environment and provide more space for interaction, however, key questions emerge around safety.

Officers recognize how segregation reforms are influenced by the public, particularly in relation to inquests,<sup>16</sup> reviews<sup>17</sup> and legal actions.<sup>18</sup> A key concern among correctional officers was that their perceptions, positions, and experiences are neglected in the context of policy reforms. Officers are responsible for the relocation of prisoners to disciplinary segregation (or administrative) and for overseeing their return to general population; obligated to ensure the safety and security of the prison and all those inside its walls.<sup>19</sup> Yet, officers felt largely excluded from the process of decision-making, despite the fact that policy decisions have direct bearing on their occupational work, including their safety and that of prisoners, and the institutions.

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<sup>15</sup> Parliamentary Information and Research Service (2011) *Legislative Summary of Bill C-10*. Publication Number 41-1-C10-E.

<sup>16</sup> Correctional Services Canada (CSC). (2014). Coroner’s Inquest Touching the Death of Ashley Smith by Dr. John Carlisle. Held at Corner’s Court Toronto, Ontario. Retrieved from <https://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml>

<sup>17</sup> Jesso, M. (2018, December 12). Newfoundland and Labrador Corrections and Community Services: Deaths in Custody Review. Department of Justice and Public Safety. St. John’s, Newfoundland. Retrieved from [https://www.justice.gov.nl.ca/just/publications/pdf/Death\\_Custody\\_Review.pdf](https://www.justice.gov.nl.ca/just/publications/pdf/Death_Custody_Review.pdf)

<sup>18</sup> McKenzie-Sutter, H. (2019, September 17). Families launch claims against N.L. government over deaths in custody. *Global News*. Retrieved from <https://globalnews.ca/news/5914721/families-launch-claims-against-n-l-government-over-deaths-in-custody/>

<sup>19</sup> Robinson, D., Porpino F. and Simourd L. (1993) The influence of Career Orientation on Support for Rehabilitation of Correctional Staff. *The Prison Journal* 73(2):162-177

On the topic of segregation reforms, officers expressed concerns in the ambiguity and unpredictability of what lies ahead. A commonly noted concern rests in what can be done to intervene in an altercation between prisoners and to create a space for the de-escalation of emotions. Officers explained that the possible inability to remove an irate prisoner in an overcrowded cell creates undue risk for the cellmate(s). Thus, officers feel their options are restricted and their occupational discretion and agency in making choices is reduced. In select cases creating an even more vulnerable and uncertain work space.

The prospect of losing segregation as a population management tool led some officers to fear they would lack the ability to express their authority or ensure control over a unit. Officers explained that changing norms around the use of segregation was changing staff-prisoner dynamics; specifically, officers felt that as prisoners were aware that segregation is declining as an option, they are engaging in more confrontational behaviours with staff. Of course, whether or not segregation operates as a deterrent to compromising behavior is not empirically known; what is notable here is how officers' perceptions of safety are linked to the ability to use segregation to promote personal and institutional safety (e.g., to isolate a prisoner who has drugs in a cavity before the drugs infiltrate a unit, or who requires eyes on surveillance due to risk of self-harm, or who is heated after an incident). In addition, officers expressed a deep-seated fear of being reprimanded and held responsible if anything were to escalate on a unit—or if they were to use segregation in a way later deemed unwarranted. Thus, any action engaged in felt potentially 'risky', leaving officers vulnerable to consequences. The overarching positioning is simply that eventually (but rather soon) "someone is going to get hurt" and correctional officers will be held at fault; possibly criminally charged and convicted.

Segregation, however, does not appear to have a singular meaning among officers, evidenced by views regarding its adverse consequences. Officers felt segregation could aggravate an already negative situation and noted extended periods of idle time in isolation was problematic. It is not to say that officers are or are not supportive of changing legislation and policy around segregation. Their key concerns remains their perceived exclusion from decisions around policy reforms and that their perceptions and experiences are discounted, as well as their unanswered questions regarding how to deal with prisoners with complex needs in the context of outdated facilities where alternative housing options are few. Provincial institutions in many cases appear to lack the infrastructure, funding, resources, and space for alternative housing options, such as the SIU models currently being implemented federally. It remains unclear, given infrastructural and resource restrictions, if and how provinces might incorporate components of the federal model within provincial institutions or if they choose to follow suit.

The adverse consequences of the use of segregation have been well-documented.<sup>20,21,22,23,24,25,26</sup> While segregation reforms are undeniably necessary, the institutional implications of reformation are yet to be known. Segregation reform will impact the dignity, rights, and safety of those employed and living in prison; as much as possible, reforms should reflect an understanding of the varied social meanings associated with segregation so as to attempt to mitigate unintentional effects that change may bring. While segregation is commonly understood in a singular way (largely synonymous with disciplinary or punitive segregation), the social meanings attributed to segregation units are varied and dynamic, often shaped by the broader institutional environment and, at times, counter to policy intentions.

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<sup>20</sup> Conley, A. (2013) Torture in US Jails and Prisons: An Analysis of Solitary Confinement under International Law. *Vienna Journal on International Constitutional Law*, (7): 415-425.

<sup>21</sup> Gordon, S. E. (2013) Solitary Confinement, Public Safety, and Recidivism. *University of Michigan Journal of Law Reform* 47(2): 495-528.

<sup>22</sup> Grassian, S. (2006) Psychiatric Effects of Solitary Confinement. *Journal of Law and Policy* 22: 325-382.

<sup>23</sup> Haney, C. (2003) Mental Health Issues in Long-Term Solitary and "Supermax" Confinement. *Crime and Delinquency* 49(1): 124-156.

<sup>24</sup> Jackson, M. (1983) *Prisoners of Isolation: Solitary Confinement in Canada*. University of Toronto Press: Toronto, Canada.

<sup>25</sup> Wright, R. G. (2014) What (Precisely) Is Wrong with Prolonged Solitary Confinement. *Syracuse Law Review* (64): 297-306.

<sup>26</sup> Zinger, I., and Wichmann, C. (1999) The Psychological Effect of 60 Days in Administrative Segregation. *Research Branch Correctional Service Canada* 43(1): 47-83.