

Solitary Confinement, Torture, and Canada’s Structured Intervention Units*

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Executive Summary

In two 2019 decisions, Courts of Appeal in British Columbia and Ontario¹ found that ‘administrative segregation’, as it was then practised within Canadian penitentiaries, conformed to the definition of “solitary confinement” found in the United Nations’ Mandela Rules.² Further, the courts found that the prolonged, indefinite isolation of incarcerated people (no matter what that status/regime/unit was called) violated sections 7 and 12 of the Canadian *Charter of Rights and Freedoms* in various respects. Generally, the courts have found that prolonged and indefinite segregation violated liberty rights under s. 7 of the Charter (BC) and that segregation over 15 days was cruel and unusual punishment contrary to s. 12 of the Charter (ON).

At the same time as these Court of Appeal decisions were released, however, the Government of Canada was in the process of passing Bill C-83 (42nd Parliament, 1st session) which legislated new standards around ‘administrative segregation’ in penitentiaries. This new Canadian regime, termed Structured Intervention Units (SIUs), had a new set of rules that, if followed, could provide prisoners with an experience that differed enough from the practice of “solitary confinement” that it might be within the limits defined by Canada’s *Charter of Rights and Freedoms*. As one example, “solitary confinement” has internationally been defined by the Mandela Rules as the “confinement of prisoners for 22 hours or more a day without meaningful human contact” (Rule 44). Bill C-83, however, mandated that there was to be a minimum of four hours out of cell each day, two hours of which was supposed to be “meaningful human contact.” If the legislation was fully implemented, then, these SIUs would not be considered “solitary confinement” by the UN definition given the increased time out of cell.

These SIUs have now been in operation for just over one year. However, Correctional Service Canada (CSC) does not appear to us to be examining the operation of these units. Alternatively, if it is systematically examining their operation, CSC is not thus far making public its findings. Furthermore, the independent oversight panel (established in mid-2019 as the Structured Intervention Units – Implementation Advisory Panel) ceased to exist about 7 months ago and has not been re-established or renewed in any other form.

Given this lack of systematic oversight of the SIUs, we volunteered to examine CSC data to try to understand the operation of these new SIUs. This will be our third report. Our first report (October 2020) demonstrated quite clearly that the SIUs were not operating in a manner consistent with what might be expected from reading the relevant law (the Corrections and Conditional Release Act, as amended by Bill C-83). Without repeating those findings (they are publicly available³), many people were staying in SIUs for long periods of time; they were not getting their promised time out of their cells or their promised hours of meaningful human contact. In addition, there was a fair amount of regional and institutional variation which we (optimistically) thought might be used by CSC to “learn from the good practices” and apply them to poorer performing regions/institutions.

¹*British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228; *Canadian Civil Liberties Association v. Canada (Attorney General)*, 2019 ONCA 243. 4

² United Nations, Standard Minimum Rules for the Treatment of Prisoners, UN-Doc A/Res/70/175 (17 December 2015) [Mandela Rules].

³ Previous reports are available here: <https://crimbrary.blogspot.com/2020/11/solitary-confinement-continues-in.html>

CSC's response to our report was largely to try to deny the findings. They initially said that their data – which they have a statutory obligation to collect – were faulty. We found this explanation somewhat less sophisticated than the notional student's "A dog ate my homework" excuse. But like the "dog and homework" excuse, it was impossible to verify.

CSC also suggested that the disappointing findings were due to the COVID-19 pandemic. Unlike the dog-homework or faulty-data explanations, this one could be examined, though CSC seemed unwilling to do so. We therefore released a second report in November 2020 which demonstrated that the problems were pre-existing. CSC, to their credit, did not, in this case, publicly dispute our findings.

Notwithstanding the fact that our results had painted a disconcerting picture of how these new SIUs were being implemented, and that there was no clear evidence that this was due to COVID, nothing further has been released by CSC (as of mid-February 2021) that we are aware of. However, CSC responded favourably and promptly to our request for an extended set of data at the end of 2020. It is these updated data that form the basis of our third report. Thus, whatever criticisms we might have about CSC and the SIUs, it is important, we think, to acknowledge that, since September 2020, CSC been very open to sharing their data with us. It should be kept in mind, then, that our analyses would not have been possible if they had not been willing to allow us to do their work for them.

Our current report is not designed to be a comprehensive examination of all aspects of the SIUs. Rather, we wanted to focus on the few most pressing concerns and to provide a timely release of information. For this report, then, we chose to address three separate issues:

Issue 1: *Were there notable changes over time?* In particular, is there evidence that the initial problems we had identified lessened in importance over time. The answer to this is fairly clear: although there were some changes over time, they were not uniformly in a favourable direction.

- In general, prisoners entering SIUs late in the first year of their operation tended to stay there for shorter periods of time, although the pattern over the year was not uniform. (Table 5)
- There is no evidence of general improvement in terms of meeting the *minimum* four hours out of cell, two hours of which is supposed to entail "meaningful human contact" (Tables 6 & 9).
- Overall 38.9% of those entering SIUs are missing their full four hours out of cell every day of their stay (Table 6). Even for the longer (16+ day stays) 63% missed their full four hours out of cell in 76% or more of their days (Table 7).

Issue 2: *Regional variation in the operation of the SIUs.* We looked at regional differences on outcomes in a number of ways. The simple description of our findings is that there are often substantial differences across regions in the operation of the SIUs.

To give just one illustration, we found substantial variation across regions in the split between short and long stays in SIUs (Table 11). Just as important, perhaps, is that the proportion of prisoners in a region who found themselves in SIUs varied dramatically. Table 13 from the main body of the report demonstrates this variability very clearly. The overall rate (SIU person-stays per 1,000 total penitentiary prisoners in the region) of 'short stay' SIU prisoners (15 days or less) in Quebec was almost 10 times that of Ontario. Similarly, the rate of long stays in SIUs was considerably higher in all regions than it was in Ontario.

Table 13: Rate of short/long stays per 1,000 prisoners in region

	Short Stay Rate	Long Stay Rate	Overall Rate
Atlantic	70.2	124.8	195.0
Quebec	178.1	118.1	296.2
Ontario	18.2	30.3	48.5
Prairie	41.4	91.2	132.7
Pacific	102.7	99.8	202.5
Total	73.4	84.1	157.5

Another example of substantial variation across regions was in the ability of CSC to meet their obligation to provide the guaranteed *minimum* of “4 hours a day out of cell”. Many prisoners did not get their four hours out of their SIU cell. But of the 135 “long stay” prisoners who got all or most of their “four hours out of cell”, 134 were from the Prairie Region (Table 14).

We hope that – rather than denying our findings or defending their practices – CSC will use this regional variation as a tool to better understand and to improve on the operation of SIUs. By carefully examining the differences between the regions doing (relatively) better and those doing worse they may be able to better understand how best to improve the operation of the SIUs across the country.

Issue 3: Solitary Confinement and Torture. Trial and appeal courts in British Columbia and Ontario have found as a matter of fact and law that conditions of prolonged, indefinite isolation in prison violate the Canadian *Charter of Rights and Freedoms*. Those courts considered the substantial evidence of the harms caused by these conditions and cited the Mandela Rules prohibitions on solitary confinement and torture as informing the interpretation of Canadian constitutional standards. Applying the Mandela Rules to CSC’s data, then, we estimate that 28.4% of the SIU stays qualified as “solitary confinement”, and an additional 9.9% of stays fall under the definition of “torture or other other cruel, inhuman or degrading treatment”⁴.

As mentioned, the Mandela Rules define the practice of “solitary confinement” as the “confinement of prisoners for 22 hours or more a day without meaningful human contact” (Rule 44). Applying the Mandela Rules to CSC’s SIU data, there were 556 person stays in SIU (28.4%) that fall into that category (Table 19, below).

The Mandela Rules further state that if such stays (with 2 hours or less out of cell every day) last more than 15 days, it should be considered “torture or other cruel, inhuman or degrading treatment” and is thus prohibited (Rule 43). We estimate that 10% of SIU stays (N=195 SIU stays) fall into that definition (Table 19 below).

⁴In this report, then, we will generally use the word “torture” to signify “torture or other other cruel, inhuman or degrading treatment.”

Table 19: Breakdown of SIU prisoners (other than those in for only 1 day)

	Percent (N)
<i>Solitary Confinement</i> (missed full four hours out of cell 100% of their days; received an average of two hours or less out of cell during their stay + stayed for up to 15 days)	28.4% (556)
<i>Torture</i> (missed full four hours out of cell 100% of their days; received an average of two hours or less out of cell during their stay + stayed 16 days or longer)	9.9% (195)
<i>All other person stays in SIUs</i>	61.7% (1,209)
Total	100% (1,960)

Again, however, there is considerable variation across regions in the proportion of people subject to solitary confinement or torture. Quebec stands out as having the highest proportion (40.6%) of SIU stays that would be considered solitary confinement by the Mandela Rules and the Pacific stands out as having an alarmingly high proportion (19.5%) of its SIU stays that would be considered torture under the Mandela Rules (Table 22).

Those percents, however, hide another even more disturbing fact. Expressed as the number of SIU stays that could be considered to be torture per 1,000 prisoners in the region, we see that the ‘Torture Rate’ is 1.73 prisoners being ‘tortured’ in SIUs per 1,000 prisoners in the Ontario Region. For the Pacific region the torture rate (69 prisoners being tortured out of an estimated 1,763 prisoners) would be 39.1 per 1,000 prisoners – about 22.6 times higher than Ontario’s rate (Table 23). We have no explanations for those regional differences.

Table 23: Rate of Solitary Confinement and Torture Person-Stays in SIUs by Region per 1,000 prisoners in each region. [Rates calculated using December 2020 estimates of the total penitentiary population in each region].

Region	Solitary Rate	Torture Rate
Atlantic	45.9	15.6
Quebec	118.1	25.2
Ontario	11.8	1.73
Prairie	13.2	10.5
Pacific	66.9	39.1
Total	44.2	15.5

It would appear to us that, using the commonly accepted UN definitions of solitary confinement and torture, Canada has serious problems with each. As the West Coast Prison Justice Society suggests with the title that they gave their November 2020 report⁵, Canada has “Solitary by Another Name.” It also has what the Mandela Rules refer to as “Torture” by another name.

⁵<https://prisonjustice.org/wp-content/uploads/2020/11/Solitary-by-another-name-report.pdf>

We found the figures on the use of solitary confinement and torture in Canada's penitentiaries to be very disturbing. We hope that CSC and Public Safety Canada would, similarly, be disturbed by these findings from their own data.

We are writing this summary (and our report) in mid-February 2021. Although the findings themselves are disturbing, we are almost equally disturbed that it is us – two researchers working pro bono and independently of CSC – who discovered these findings. We would have thought that it would be CSC's responsibility to examine its own data to try to understand what is happening in this most restrictive form of imprisonment. Certainly, it is true that letting us examine (and make public) the findings is much better than keeping them private. But in the end, CSC has the responsibility to demonstrate that they are in compliance with the legislation, and the intent of the legislation, governing SIUs.

The findings and CSC's apparent unwillingness to do – and make public – timely analyses of the operation of these units support the conclusion that many observers of CSC have been saying for at least 50 years: Canada needs meaningful oversight of the *decisions* that lead to a person being placed in and staying – sometimes for very long times – in units that are internationally recognized as being solitary confinement or a form of torture (or other cruel, inhuman or degrading treatment).

This report (including the short conclusion at the end of our full report) only scratches the surface of what can be known about the problems that clearly exist in Canada's SIUs. We would urge readers of this executive summary who are pressed for time to read the (roughly) one-page conclusion that starts on page 27.

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Introduction

In October 2020 we released our first report on the operation of Correctional Service of Canada's (CSC) Structured Intervention Units (SIUs). The data were quite clear: On a number of different dimensions, the SIUs were not operating as one might have hoped on the basis of assertions that had been made about the 'progressive' nature of the legislation governing SIUs.

In response to our report, CSC offered two explanations. First, they suggested that the data we had been given at the end of September 2020 were flawed. We were working with an excellent person at CSC and CSC was certainly not blaming her. That meant that CSC was suggesting that its own 'raw data' were flawed. This raised other concerns – most notably if the data that we received from CSC were flawed, that meant that not only our analyses might not be perfectly accurate, but also that CSC did not have information itself on the actual operation of their own SIUs. Their assertion of their own failure to keep accurate records might have suggested that they were acting in a manner inconsistent with the relevant language in the Corrections and Conditional Release Act which says:

34(2) The Service shall maintain a record of every instance in which an inmate is authorized to be transferred into a structured intervention unit indicating the reasons for granting the authorization and any alternative that was considered.

37 (2) The Service shall maintain a record of every instance that an inmate has been offered an opportunity referred to in paragraph 36(1)(a) or (b) that the inmate refused, indicating the specific opportunity and any reason given for the refusal, or has not been given such an opportunity by reason of paragraph (1)(b) or (c).

This requirement is also operationalized, it would seem, in the Commissioner's Directives which says that Institutions Heads will "monitor compliance with legislative timeframes for the appropriate inmate notification, information sharing and decision making" (77(j)) and that the Assistant Warden (Interventions; AWI) "will ensure that the conditions of confinement are met for each inmate" [re: hours out of cell] (78(c)) and that "incidents of non-compliance with SIU policy and guidelines" will be reported to the Institutional Head (78(d)).

CSC's "faulty data" explanation for our findings was difficult to evaluate. Like the closely related student explanation that "The dog ate my homework," the explanation from CSC for their failure to implement SIUs as the legislation directs is – without full cooperation from and access to the dog (in the first example) and CSC (in the second) – impossible to evaluate. On the other hand, if they are not following the legislation with respect to record keeping, that would appear to deserve immediate attention.

Their second explanation was that the problems they were having were caused by the (obviously real) difficulties they were experiencing with COVID-19. Setting aside their other suggestion -- that the apparent problems we uncovered were really artifacts of faulty data (not COVID related) -- this was a

plausible explanation and one that they, themselves, might have actually explored, had they taken their own explanations seriously.

As far as we could tell at the time, CSC did not seem particularly interested in exploring this explanation. Since CSC seemed more interested in invoking it as an explanation than they were in examining it, we felt that we needed to look into what might be called “the COVID explanation.”

Using the same data that we had used in our first report, we released a second report in November 2020 demonstrating that COVID-19 did not appear to be responsible for the difficulty in implementation of the SIUs. We are not suggesting that COVID might not have made things more difficult in terms of day-to-day operations (we have no information on that). But it would be hard to blame COVID for the extended periods of time that some people spent in SIUs and the fact that they often do not get their promised 4-hours out of cell, 2 hours of which are supposed to involve “meaningful human contact”. Our two reports are widely available⁶ and can be carefully examined by anyone interested.

Though CSC challenged (a) the accuracy of our findings (the faulty CSC data explanation) and (b) provided an evidence-free alternate explanation for our findings (the COVID explanation), curiously, they have not, to our knowledge, released any studies of their own to demonstrate the degree to which they are in compliance with the law or the intent of the law.

Canada has now had over one year of experience with the SIUs. Toward the end of 2020, since there appeared to be no broader public over-sight on the functioning of these SIUs⁷, we requested that CSC provide us with an updated and somewhat extended (in terms of what data were included) set of data. We were very pleased that by the beginning of January 2021 we were able to start work examining whether anything had changed in the operation of the SIUs based on more or less a full year of operation.

We do think it is important to point out that – as with the data we received in September 2020 – the data we received in late December 2020 and got full access to in January 2021 were presented to us in an excellent and efficient format. Those responsible for providing the data to us are clearly highly skilled at working with data and we have nothing but continued admiration and gratitude for their work.

Whatever criticisms we might have about CSC and the SIUs, it is important, we think, to consider that CSC has, since September 2020, been very open to sharing their data with us. It should be kept in mind, then, that our analyses would not be possible if they had not been willing to allow us to do their work for them.

The Plan of this Paper

The data that we have would allow for a large number of different analyses (e.g., of institutions, regions, subsets of types of prisoners in the SIUs, etc.). Therefore, in order to be manageable, we had to make some decisions on priorities.

⁶Both reports are available here: <https://crimbrary.blogspot.com/2020/11/solitary-confinement-continues-in.html>

⁷The “Structured Intervention Units – Implementation Advisory Panel” died a natural death after the 1-year terms of its members expired in mid-2020. It has not been resuscitated or replaced.

Given the rather disturbing findings about the operation of SIUs contained in our first two reports, we thought that the most obvious starting point would be to see if the operation of the SIUs was improving. We have repeatedly been told that the implementation of the SIUs was a “challenge” for CSC. We don’t challenge that view. That being the case – and given our ‘early’ data on their operation – our first goal was to see if anything had changed in the overall operation of the SIUs during their first year. As staff got used to the challenges of the SIUs, one could expect that the operation of the SIUs would shift toward what was, perhaps, anticipated by some: shorter stays in the SIUs and higher compliance with the minimum “4 hours out of cell” and “2 hours of meaningful human contact” requirements of the law.

The second priority for this report is something we have touched on in previous reports. One of the more notable findings in earlier reports is the variation that exists in the manner in which SIUs are apparently being used. This variation isn’t merely of academic value. If we were advising CSC, we would suggest that they might see if they can learn from this variation. Thus if one SIU is achieving a higher degree of success than others (e.g., in getting people out of their SIU cells or in providing meaningful human contact or in getting prisoners back into the ‘mainstream’ prison population), then perhaps CSC as a whole can learn from what that institution (or perhaps region) is doing.

Third, we felt that we have to address a fundamental question: to what extent can we say that Canada has successfully shifted from a solitary confinement system that violates the “Mandela Rules⁸” or are we, in important ways, regularly subjecting our prisoners to what, internationally, is considered to be solitary confinement and torture⁹?

As we have already stated, these questions do not exhaust the ability of these data to examine important aspects of the operation of the SIUs. On the other hand, we are constrained by the fact that these data are all we have. CSC, if it were interested, could take these findings as a starting point and try to understand why things are happening the way they are. Almost certainly, such an (important) inquiry would require data that go beyond the administrative data available to us. The SIU-Implementation Advisory Panel (that ceased to exist in mid-2020 and has not been replaced or re-established) expected that the analysis of these administrative data would be the first step, not the only step, in understanding the operation of the SIUs.

Describing the Data

Our first report examined “Person Stays” in which a prisoner entered a “Restricted Movement” (RM) or SIU cell from the time the SIU cells opened (30 November 2019) until 31 August 2020 (N=1,966). We now have a full year of admissions. This adds another 539 admissions for a total of 2,505 person stays where a prisoner entered an RM or SIU cell between 30 November 2019 and 30 November 2020.

⁸See Rule 44: “Solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days”. Available online: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

⁹ See Rule 43: “In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited... (b) Prolonged solitary confinement”. Available online: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

If a stay ended and the person was transferred back to the regular population, but then, at a later date, returned to an SIU (or RM) cell, that second event would be considered a “new event” even though it involved the same person. In total, there were 1,461 people, 900 (61.6%) of whom experienced one stay (Table 1). Generally, the number of stays ranged between 1 and 7, though three people had 8 stays, one person had 10 stays and another person had 11 stays between 30 November 2019 and 30 November 2020.

Table 1: Number of Stays

One	900 (61.6%)
Two	314 (21.5%)
Three	125 (8.6%)
Four	60 (4.1%)
Five or more	62 (4.2%)
Total	1,461 (100%)

Our main unit of analysis, however, will be “person stays” (N=2,505). If a prisoner is not in one of the 16 institutions with SIUs and CSC believes that they cannot be left in the general penitentiary population, they can be placed in RM in that institution. Within a small number of days, they are normally expected to be either moved back to the general population or moved to an SIU. If they were already housed in one of the 16 institutions that had an SIU, they would go directly to the SIU.

Of the 2,505 admissions, 226 (9.0%) stayed in RM and never moved to an SIU. All but one of them completed their RM stay prior to 13 Dec 2020. Of those who completed their RM stay (N=225), 36% were in a RM cell for 1 to 3 days (N=81); 49% were in an RM cell for 4 thru 7 days (N=110); 9.8% (N=22) stayed 8 thru 15 days and the remaining 5.3% spent 16 to 128 days a RM cell (N=12). Although the “long stays” in RM cells is obviously a concern, and should be studied by CSC, they are not looked at further in this report.

For the remainder of the report, we remove the RM-only group from our analyses in order to focus solely on the operation of the SIUs (N=2,279 person stays).

Issue #1: Trends Over Time

a) Length of Stays. Within the 2,279 SIU person-stays, 153 (6.7%) were still in an SIU as of 13 December 2020, when the data were captured for us by CSC. For these prisoners the length of their stay in the SIU cannot be fully described since it was ongoing at the time of the collection of the data. Similarly, what happened to them during their stay cannot be fully examined since their stay has not yet ended. When examining the length of time in the SIU, we have set their end-date as 13 December 2020 to obtain their length of stay up until that date. This group of prisoners needs to be considered carefully since, for example, a prisoner who entered the SIU on 1 January 2020 would be very different from one who entered on 1 December 2020 even though both might still be in the SIU on 13 December 2020.

Much of the focus of this report will be on those who entered the SIU between 1 November 2019 and 30 September 2020. That way, any prisoner who entered on the last day of the final period (30 September), and was still in the SIU on 13 December, will fall into our longest period of time in the SIU (62 or more days). Thus, the first four time periods are *relatively* comparable in that all prisoners can be included in our analyses.

We divided the time period from 30 November 2019 to 30 September 2020 into four periods (of around 75 days each). The people who entered SIUs toward the end of our “study period” (1 October onwards) have the largest proportion (31.8%) of people whose stay had not yet ended (Table 2). For that reason, those who entered on or after 1 October will be a kind of ‘special group’ and will generally not be included in analyses in this report.

Table 2

When the person-s SIU stay started * Is the prisoner still in an SIU on 13 Dec2020? Crosstabulation

		Is the prisoner still in an SIU on 13 Dec2020?		Total
		Released from SIU	Still in SIU	
When the person-s SIU stay started	30Nov2019-14Feb2020 (76 days)	558	10	568
		98.2%	1.8%	100.0%
	15Feb-1May (76 days)	485	2	487
		99.6%	0.4%	100.0%
	2May-17July (76 days)	443	11	454
		97.6%	2.4%	100.0%
	18July-30Sept (74 days)	438	36	474
		92.4%	7.6%	100.0%
	1Oct-30Nov (60 days)	202	94	296
		68.2%	31.8%	100.0%
Total		2126	153	2279
		93.3%	6.7%	100.0%

While most of those who were still in SIUs at the end of our study period were admitted more recently, there were a few who entered early in our study period who were still there as of 13 December 2020. These cases (particularly the 23 who entered before 17 July (Table 2) deserve, we think, special attention and would urge CSC to examine them.

What we can say about the 10 who had been in the SIU for at least 10 months (admitted between 30 November 2019 and 14 February 2020) is that the majority (N=7) missed their full four hours out of their cell in 76% or more of the days of their stay (Table 3). The majority (N=7) also failed to receive their full two hours of meaningful human contact in 76% or more of their days (Table 3).

Table 3: Those admitted between 30 November 2019 and 14 February 2020 and were still in on 13 December 2020: Missed time out of cell

	Four hours out of cell	Two hours of meaningful human contact
Missed up to 20% of their days	1	1
Missed up to 21% to 50% of their days	1	1
Missed up to 51% to 75% of their days	0	1
Missed up to 76% to 99% of their days	5	5
Missed 100% of their days	3	2
Total	N=10	N=10

By looking only at those who entered SIUs on or before 30 September 2020 (N=1,983), we can describe without much distortion, whether the time in the SIU changed over time by defining the 'longest stay' as being 62 days or more. Those still in were given the end date of 13 December 2020 to approximate their length of stay. Slightly over half of the SIU person stays lasted for longer than 15 days (Table 4).

Table 4: Admissions in SIUs from 30 November 2019 to 30 September 2020: Length of Stay

Total days in SIU				
	Frequency	Percent	Valid Percent	Cumulative Percent
1 thru 5	456	23.0	23.0	23.0
6 thru 15	468	23.6	23.6	46.6
16 thru 31	320	16.1	16.1	62.7
32 thru 61	326	16.4	16.4	79.2
62 thru 380	413	20.8	20.8	100.0
Total	1983	100.0	100.0	

An encouraging finding is that, over time, there appears to be a trend towards slightly shorter stays (Table 5). The stays for those who entered the SIU between 15 February and 1 May were significantly shorter than the stays for those who had entered between 30 November 2019 and 14 February (Chi square = 11.43, df=4, p=.022).

The less encouraging finding is that in the most recent time frame (18 July-30 Sept) the stays appear slightly *longer* than they had been for those who entered the SIU between 2 May and 17 July (Chi square=17.73, df=4, p=.0014). However, the distribution of time in the SIU was still significantly shorter in the most recent (fourth) time period than it had been in the first period (Chi square = 14.04, df=4, p=.007).

Table 5

		When the person-s SIU stay started * Total days in SIU Crosstabulation					Total
		Total days in SIU					
		1 thru 5	6 thru 15	16 thru 31	32 thru 61	62 thru 380	
When the person-s SIU stay started	30Nov2019-14Feb2020 (76 days)	102	116	82	117	151	568
		18.0%	20.4%	14.4%	20.6%	26.6%	100.0%
	15Feb-1May (76 days)	123	118	73	66	107	487
		25.3%	24.2%	15.0%	13.6%	22.0%	100.0%
	2May-17July (76 days)	137	106	86	59	66	454
		30.2%	23.3%	18.9%	13.0%	14.5%	100.0%
	18July-30Sept (74 days)	94	128	79	84	89	474
		19.8%	27.0%	16.7%	17.7%	18.8%	100.0%
Total		456	468	320	326	413	1983
		23.0%	23.6%	16.1%	16.4%	20.8%	100.0%

We have not been able to explore further why there is this apparent variation in the length of stays in SIUs over time. Clearly it deserves further exploration. It should be recalled that the CCRA explicitly states (s. 33) that “An inmate’s confinement in a structured intervention unit is to end as soon as possible.” We have no idea, assuming the law was being followed, why “what was possible” varied so much over time.

To put these numbers into context, Table 5 shows that in total, 739 prisoners were confined in an SIU for 32 or more days. If the “best” time period (2 May to 17 July – where “only” 27.5% had been in SIUs for 32+ days) had been achieved for the whole time period (those entering an SIU between 30 November 2019 and 30 September 2020), then almost 200 fewer people (545) would have been confined this long.

Said differently, if this ‘better’ standard was achieved for those who entered between 2 May and 17 July 2020, why couldn’t it be achieved earlier and later? Our statistical tests suggest that this variation is *not* random. More needs to be known about the relative success in achieving shorter stays across time periods.

b) Four Hours Out of Cell. In our November report, we noted that ‘time out of cell’ deteriorated over time and that this appeared unrelated to COVID. For this report we used slightly different time periods but the same results appear: deterioration over time.

Assessing time out of cell requires the removal of people who appear to have been placed in an SIU cell for only one day (and those who entered the SIU one day and checked out on the second day). Effectively what this does is that it looks only at those whose stay in an SIU was long enough to warrant taking them out of their cells.

Essentially, then, we repeated the analysis described in detail in our October and November reports though we have slightly different time periods and a longer overall period of time to examine. The law states that people isolated in SIU cells are supposed to get a *minimum* of 4 hours out of their cells every day (s 36(1)(a)). However, what we see here is what we saw in our previous reports: deterioration over time as larger proportions of people miss their full four hours every day of their stay – from 25.8% in the first time period up to 45.2% in the most recent time period (Table 6). Many SIU prisoners never or seldom receive their full four hours out of their cell. Looking across all 1,960 SIU person-stays, 1,548 (or 79%) did not get their full four hours out of their cell during at least half of their days in the SIU (Table 6).

Table 6

When the person-s SIU stay started * Percent of days that 4 hours out of cell was not achieved Crosstabulation

		Percent of days that 4 hours out of cell was not achieved						
		missed zero days (0%)/got out for 4 hrs every day in SIU	missed up to 20% of their days	missed 21% to 50% of their days	missed 51% to 75% of their days	missed 76% to 99% of their days	missed 100% of their days	Total
When the person-s SIU stay started	30Nov2019-14Feb2020 (76 days)	31	35	57	83	212	145	563
		5.5%	6.2%	10.1%	14.7%	37.7%	25.8%	100.0%
	15Feb-1May (76 days)	20	25	56	58	137	185	481
		4.2%	5.2%	11.6%	12.1%	28.5%	38.5%	100.0%
	2May-17July (76 days)	19	36	41	40	91	222	449
		4.2%	8.0%	9.1%	8.9%	20.3%	49.4%	100.0%
Total	18July-30Sept (74 days)	27	15	50	51	113	211	467
		5.8%	3.2%	10.7%	10.9%	24.2%	45.2%	100.0%
Total		97	111	204	232	553	763	1960
		4.9%	5.7%	10.4%	11.8%	28.2%	38.9%	100.0%

Time out of the cell become more important, presumably, the longer one is in an SIU. The Mandela Rules differentiate between those in solitary confinement for more vs. less than 15 days. We then looked at “time out of cell” for those in SIU cells for 16 or more days (Table 7).

Similar to the pattern overall, large proportions of longer stay people miss their full time out of cell. Table 7 shows that overall, 798 prisoners (77% of all ‘long stay’ prisoners in SIUs) missed getting 4 hours out of cell on at least half of their days in the SIU. Overall, or among the longer stay people only, “missing” the four hours out of cell is not rare. Indeed, of the 1,032 long person stays in SIUs, only 135 (13%) rarely missed getting out of their cells for 4 hours (missed getting their four hours out of cell on 20% or fewer days during their stay).

Table 7: Longer stays only (16+days) by achieving four hours out of cell

When the person-s SIU stay started * Percent of days that 4 hours out of cell was not achieved Crosstabulation^a

		Percent of days that 4 hours out of cell was not achieved						
		missed zero days (0%)/got out for 4 hrs every day in SIU	missed up to 20% of their days	missed 21% to 50% of their days	missed 51% to 75% of their days	missed 76% to 99% of their days	missed 100% of their days	Total
When the person-s SIU stay started	30Nov2019-14Feb2020 (76 days)	13	25	21	61	187	35	342
		3.8%	7.3%	6.1%	17.8%	54.7%	10.2%	100.0%
	15Feb-1May (76 days)	13	21	22	27	107	48	238
		5.5%	8.8%	9.2%	11.3%	45.0%	20.2%	100.0%
	2May-17July (76 days)	9	28	17	26	74	52	206
		4.4%	13.6%	8.3%	12.6%	35.9%	25.2%	100.0%
Total	18July-30Sept (74 days)	18	8	39	32	88	61	246
		7.3%	3.3%	15.9%	13.0%	35.8%	24.8%	100.0%
Total		53	82	99	146	456	196	1032
		5.1%	7.9%	9.6%	14.1%	44.2%	19.0%	100.0%

a. Number of days in SIU = 16 thru 379 days

One would be hard pressed, looking at Tables 6 (everyone) or 7 (longer stays only), to suggest that, over time, “time out of cell” hours were moving in the direction contemplated by the goal in the Corrections and Conditional Release Act that states that:

36 (1) The Service shall, every day, between the hours of 7:00 a.m. and 10:00 p.m., provide an inmate in a structured intervention unit

(a) an opportunity to spend a minimum of four hours outside the inmate’s cell....

Obviously, the law contemplates that there are circumstances in which ‘time out of cell’ can be legally denied or forfeited. It states that:

37 (1) Paragraph 36(1)(a) or (b), as the case may be, does not apply

- (a) if the inmate refuses to avail themselves of the opportunity referred to in that paragraph;
- (b) if the inmate, at the time the opportunity referred to in that paragraph is provided to them, does not comply with reasonable instructions to ensure their safety or that of any other person or the security of the penitentiary; or
- (c) in the prescribed circumstances, which circumstances may include, among other things, natural disasters, fires, riots and work refusals under section 128 of the Canada Labour Code, and those circumstances must be limited to what is reasonably required for security purposes.

We had access to data which counted the number of days during a stay that people refused to leave their cell (all day long). Coding refusals is, however, not straightforward. First of all, we removed the small number of people (n=23) who entered the SIU and were transferred out on the same day. But there are other technical challenges.¹⁰ Those issues aside, what we see in Table 8 is that a little over half never, or only once, refused to their cell all day while 11% refused to leave their cells on the majority of their days.

¹⁰CSC understandably counts a ‘day’ as any part of a 24-hour day. Thus, a person admitted to an SIU at 11 pm on one day and transferred back to the mainstream population at 10am the next day would be counted as having been in an SIU for 2 days. Therefore, for most purposes, we subtracted 1 day from all stays. (As noted above, we also removed the people who entered and left on the same day.). Our data on refusals counted the number of days a person ‘refused’ to be released in the same way (i.e. any part of 24hr day counts as a day). However, we did not subtract 1 day from the number of days refused. Instead, we felt that a person who refused once (especially in a very short stay) is probably more like a person who didn’t refuse since a refusal had little lasting effect. Thus we classified people as having refused zero times or only one time as one category. And for the groups with higher rates of refusal, we divided those who refused two or more times into three additional groups corresponding to how much they refused. Obviously had we subtracted one from the days refused, we would have slightly lower refusal rates. However, either way of coding produced the same pattern of results as shown in Table 8.

Table 8

Percent of days the person refused to leave the cell all day	
Refused zero or one day	51.6% (1,011)
Refused at least twice, constituting up to 20% of their days	19.4% (381)
Refused at least twice, constituting 21% to 50% of their days	17.9% (351)
Refused at least twice, constituting 51% to 100% of their days	11.1% (217)
Total	100% (1,960)

The problem we faced in looking at these data is simple: we have no idea *why* people have refused to leave their cells. The Commissioner's directives, however, imply that a simple refusal should not end the issue of 'time out of cell'.

117. When an inmate is not availing themselves of opportunities to be out of their cell for the minimum required time or is not interacting with others, the conditions of confinement may be amended to support and encourage the inmate to avail themselves of those opportunities.
118. Amendments to the conditions of confinement must not negatively impact the inmate entitlements but are in response to the specific needs of the offender in order to support their engagement in programs, interventions, cultural, religious and spiritual practice, leisure, family or community contact.
119. The time an inmate spends out of their cell and the time they engage in meaningful human contact, as well as any refusals and the reasons for their refusals, must be documented in the LTE-SIU Module.

As we said in our first report, to understand what a 'refusal' means requires one to know what the circumstances were that led to the refusal, or what, actually, was refused (i.e., what was the alternative to staying in the cell that was offered to the prisoner?). One doesn't need much of an imagination to understand why prisoners might prefer, in some circumstances, to stay in their cells. These administrative data cannot answer these questions.

c) Two Hours of Meaningful Human Contact. The Commissioner's Directives instructs staff that the CCRA also requires that two of these four hours out of cell be spent in special ways.

120. As part of their daily minimum of four hours out of cell, an inmate in an SIU will be provided the opportunity for meaningful human contact for a minimum of two hours daily, which includes, but is not limited to, visits, participation in programs, interventions

and services that encourage the inmate to make progress towards the objectives of their SIU Correctional Plan and support their return to a mainstream inmate population.

Comparing Table 6 with Table 9 (and Table 7 with Table 10), it would appear that the problem is not as simple as getting people out of their cells. CSC staff is more able to get prisoners out of their cells for the full two hours of activities that fall under the category of “meaningful human contact.”

“Only” 56% of SIU-stays failed to get their full 2 hours of meaningful human contact in over half their days (Table 9). That stands in contrast to the close to 80% of SIU-stays that failed to receive their full four hours out of cell in over half their days (Table 6). And of those who spent at least 16 days in an SIU, 52% (N=533) missed their meaningful hours out of cell on half or more of their days (Table 10). Where one sees the starkest differences is in the proportion who missed their full hours every day: of the longer stays, 19% missed their full four hours out every day (Table 7) whereas only 3.1% missed their meaningful hours every day (Table 10).

Table 9

When the person-s SIU stay started * Percent of days in SIU that 2 hours of meaningful human contact was not achieved
Crosstabulation

		Percent of days in SIU that 2 hours of meaningful human contact was not achieved						
		missed zero days (0%)/got out for 2 hrs every day in SIU	missed up to 20% of their days	missed 21% to 50% of their days	missed 51% to 75% of their days	missed 76% to 99% of their days	missed 100% of their days	Total
When the person-s SIU stay started	30Nov2019-14Feb2020 (76 days)	57	58	151	131	97	69	563
		10.1%	10.3%	26.8%	23.3%	17.2%	12.3%	100.0%
	15Feb-1May (76 days)	57	46	125	74	89	90	481
		11.9%	9.6%	26.0%	15.4%	18.5%	18.7%	100.0%
	2May-17July (76 days)	47	40	89	90	72	111	449
		10.5%	8.9%	19.8%	20.0%	16.0%	24.7%	100.0%
	18July-30Sept (74 days)	44	41	115	87	86	94	467
		9.4%	8.8%	24.6%	18.6%	18.4%	20.1%	100.0%
Total		205	185	480	382	344	364	1960
		10.5%	9.4%	24.5%	19.5%	17.6%	18.6%	100.0%

The group for whom ‘meaningful human contact’ is, presumably, most important – those who were in the SIU for at least 16 days -- we see no evidence of improvement over time. In the final period that we examined, 18 July through 30 September, 53% of the prisoners entering the SIU during this period failed to get at least 2 hours per day of meaningful human contact during half of their days in the SIU. 54% of those who entered the SIU between 30 November and 14 February missed getting their promised 2-hours of meaningful human contact in at least half of their days in the SIU. Importantly, then, whether looking overall, or among longer (16+ days) stays only, one sees no consistent evidence of improvement over time in achieving two hours of meaningful human contact.

Table 10: Longer stays only (16+days) by achieving their two hours of meaningful human contact

When the person-s SIU stay started * Percent of days in SIU that 2 hours of meaningful human contact was not achieved
Crosstabulation^a

		Percent of days in SIU that 2 hours of meaningful human contact was not achieved						
		missed zero days (0%)/got out for 2 hrs every day in SIU	missed up to 20% of their days	missed 21% to 50% of their days	missed 51% to 75% of their days	missed 76% to 99% of their days	missed 100% of their days	Total
When the person-s SIU stay started	30Nov2019-14Feb2020 (76 days)	25	38	95	99	81	4	342
		7.3%	11.1%	27.8%	28.9%	23.7%	1.2%	100.0%
	15Feb-1May (76 days)	21	36	66	41	65	9	238
		8.8%	15.1%	27.7%	17.2%	27.3%	3.8%	100.0%
	2May-17July (76 days)	22	29	51	43	56	5	206
	10.7%	14.1%	24.8%	20.9%	27.2%	2.4%	100.0%	
	18July-30Sept (74 days)	22	25	69	55	61	14	246
		8.9%	10.2%	28.0%	22.4%	24.8%	5.7%	100.0%
Total		90	128	281	238	263	32	1032
		8.7%	12.4%	27.2%	23.1%	25.5%	3.1%	100.0%

a. Number of days in SIU = 16 thru 379 days

Issue #2: Regional Variation in the operation of SIUs

We discussed regional variation in our previous two reports (October and November 2020). Our interest in regional (and institutional) variation is because we think a careful examination of regional variation may provide the key that opens the door to understanding how the operation of the SIU might be improved.

A simple example may help explain our logic. Imagine that Region A is operating consistently better than Region B. (Note that “Institution” can be substituted for “Region” in this hypothetical example.) The next stage would be to see if there are any obvious differences in the prisoners in these two regions. (This probably is not possible from the current data set alone, but it could easily be carried out by CSC with its full set of administrative data on the prisoners in each region.) If there are differences, it would be trivial to see if these differences between groups of prisoners might account for the difference in the operation of the SIUs. If there are not, then, CSC should want to carry out a careful examination of the “good” region, in comparison to the “bad” region to understand how things can be improved in the regions that aren’t performing well. Implementing the changes may not be simple, and this “experiment” may not immediately show results. But what it would show is that CSC was interested in learning from its relative successes and failures.

a) Length of SIU stays. There is considerable regional variation in the length of SIU stays across regions. The Atlantic region and Prairies stand out as having high proportions of relatively long stays while Quebec stands out as having a high proportion of very short stays (Table 11).

Table 11

Region of SIU * Total days in SIU Crosstabulation

		Total days in SIU					Total
		1 thru 5	6 thru 15	16 thru 31	32 thru 61	62 thru 380	
Region of SIU	Atlantic	25	56	32	50	62	225
		11.1%	24.9%	14.2%	22.2%	27.6%	100.0%
Quebec		266	179	90	79	126	740
		35.9%	24.2%	12.2%	10.7%	17.0%	100.0%
Ontario		23	40	24	28	53	168
		13.7%	23.8%	14.3%	16.7%	31.5%	100.0%
Prairies		52	102	96	118	125	493
		10.5%	20.7%	19.5%	23.9%	25.4%	100.0%
Pacific		90	91	78	51	47	357
		25.2%	25.5%	21.8%	14.3%	13.2%	100.0%
Total		456	468	320	326	413	1983
		23.0%	23.6%	16.1%	16.4%	20.8%	100.0%

Chi-square=201.00, df=16, p<.001

While Quebec has shorter stays, it appears to contribute a larger proportion of prisoners to SIUs given the population of prisoners housed in that region. Table 12 shows that the use of SIUs is higher in Quebec than would be expected given the proportion of all prisoners who are housed in that province/region. That is, while Quebec houses 19.8% of CSC prisoners, it accounts for 37.3% of the SIU person stays. The use of SIUs is lower in Ontario and to some extent in the Prairies than one might expect given the CSC custodial population in those regions.

Table 12: Distribution of person-stays (starting between 30 November 2010 and 30 September 2020) by region compared to an estimated total (in custody) penitentiary population (estimated on the basis of the population in December 2020).

Region	Proportion of all completed SIU person stays	Estimated Proportion of all prisoners, December 2020
Atlantic	11.3%	9.2%
Quebec	37.3%	19.8%
Ontario	8.5%	27.5%
Prairie	24.9%	29.5%
Pacific	18.0%	14.0%
Total	100% (n=1,983)	100% (n=12,661)

On the surface Table 11 suggested that Quebec is much better than the Atlantic, Ontario, and Prairie regions in transferring people out of SIUs after a relatively brief stay (1-15 days). However, taking Tables 11 and 12 together, we thought it might be worthwhile to look at the 'rate' of 'short stays' (1-15 days) and long stays (16 days or more) in the regions, expressed in terms of number of SIU stays (of each kind)

per 1,000 prisoners (estimated on the basis of the population in December 2020¹¹). The rates are presented in Table 13.

Table 13: Rate of short/long stays per 1,000 prisoners in region and Number of SIU prisoners and SIU prisoners per 1000 prisoners in the region on 13 December 2020

	Short Stay Rate	Long Stay Rate	Overall Rate
Atlantic	70.2	124.8	195.0
Quebec	178.1	118.1	296.2
Ontario	18.2	30.3	48.5
Prairie	41.4	91.2	132.7
Pacific	102.7	99.8	202.5
Total	73.4	84.1	157.5

Table 13 gives a very different picture of regional variation. Specifically, although Quebec's rate of SIU stays (per 1,000 estimated prisoners in the region) for 'short stays' in SIUs is considerably higher than the rate in any other region, its 'long-stay' rate (stays of 16 days or more per 1,000 prisoners) is also quite high (almost 40% higher than the overall national average rate). Quebec, it would seem is transferring more people into SIUs than any other region – 88% higher than the overall national average (see final column of data). Many of them stay for a short time but compared to the rest of the country many are staying a long time.

On the basis of Table 13, if one were to look for a region which might be a model for a relatively low rate of using SIUs, one would want to examine Ontario much more closely with its low rate of use of SIUs overall and its low rate of people staying in SIUs for short *and* long periods of time.

We provide this simply as an example of what we hope CSC will see as an opportunity rather than just one more criticism of the way in which they are running SIUs. This is an opportunity to find out what is happening in Ontario and, if that knowledge can be transferred to other regions, to attempt to do so immediately.

Though clearly we could examine this in more detail using the data that are available to us, we believe that CSC's research team, with more complete access to data, and the ability to collect new data that might explain these differences, is better placed to do this work than two unpaid volunteers.

b) Fours hours out of cell. As we have suggested elsewhere, getting out of the SIU cell for some amount of time each day is important for all prisoners (and is obviously a goal in the legislation) but it is more important for those in SIUs for long stays than it is for those in for a short period of time.

¹¹ One could, of course, use different estimates of the penitentiary population for calculating these rates (and those related to Table 23). We looked at a number of other estimates of the penitentiary populations in each region. Different population estimates obviously resulted in slightly different estimated rates. None of the differences we saw affected in any meaningful way the variation that we see in these tables.

For simplicity sake, we will focus, therefore, on regional variation among long-stay guests in SIUs (16+ days). As shown earlier (Table 7), overall, of the 1,032 long person stays in SIUs, only 135 (13%) rarely missed getting out of their cells for 4 hours (missed getting their four hours out of cell on 20% or fewer days during their stay). Table 14 shows that all but one of these 135 ‘successes’ occurred in the Prairie region. Said differently, with one lone exception, only those ‘lucky’ enough to be transferred into a Prairie SIU were successful in getting what the law guaranteed them. (Table 14).

Table 14: Missed 4hrs out of cell by region (16+day stays only).

Region of SIU * Percent of days that 4 hours out of cell was not achieved Crosstabulation^a

		Percent of days that 4 hours out of cell was not achieved					Total	
		missed zero days (0%)/got out for 4 hrs every day in SIU	missed up to 20% of their days	missed 21% to 50% of their days	missed 51% to 75% of their days	missed 76% to 99% of their days		missed 100% of their days
Region of SIU	Atlantic	0	0	4	26	95	18	143
		0.0%	0.0%	2.8%	18.2%	66.4%	12.6%	100.0%
Quebec		0	0	19	42	165	63	289
		0.0%	0.0%	6.6%	14.5%	57.1%	21.8%	100.0%
Ontario		0	0	26	27	42	6	101
		0.0%	0.0%	25.7%	26.7%	41.6%	5.9%	100.0%
Prairies		53	81	50	33	75	39	331
		16.0%	24.5%	15.1%	10.0%	22.7%	11.8%	100.0%
Pacific		0	1	0	18	79	70	168
		0.0%	0.6%	0.0%	10.7%	47.0%	41.7%	100.0%
Total		53	82	99	146	456	196	1032
		5.1%	7.9%	9.6%	14.1%	44.2%	19.0%	100.0%

a. Number of days in SIU = 16 thru 379 days

This is not to suggest that the Prairie Region was perfectly in compliance with the Act. We see that many prisoners (147 out 331 or 44%) in Prairie Region SIUs missed getting their four hours out of cell during the majority of their days in the SIU. But they came closer to the legislative standard than any other region.

If we had CSC resources and access, we would probably want to try to understand the difference between the Prairie and BC regions in Table 14. When one compares the performance in the Pacific Region to either the Prairie Region or to the legislation, one might get the impression that the Pacific region was reading, or acting under, a different set of rules.

c) Mental Health Needs. As part of its ongoing monitoring of all prisoners, CSC has, in its information system an indicator as to whether, in its opinion, the prisoner had a mental health “need.” For our purposes, we have data on whether an indicator of a mental health need existed at the start of the stay in the SIU.

Looking at all 2,279 SIU person stays that started between 30 November 2019 to 30 November 2020, one sees considerable regional variation in the identification by CSC of mental health needs (Table 15). While overall 28% of the SIU transfers had a mental health need flagged at the start of their SIU stay,

there was considerable regional variation from a low of 23.1% in Quebec and Ontario to a high of 34% in the Atlantic and Prairies.

Table 15

		Mental Health Need		Total
		No	Yes	
Region of SIU	Atlantic	169	88	257
		65.8%	34.2%	100.0%
	Quebec	652	196	848
		76.9%	23.1%	100.0%
	Ontario	160	48	208
		76.9%	23.1%	100.0%
	Prairies	369	190	559
		66.0%	34.0%	100.0%
	Pacific	291	116	407
		71.5%	28.5%	100.0%
Total		1641	638	2279
		72.0%	28.0%	100.0%

Chi-square = 27.51, df=4, p<.001.

Because we did not request such information for all CSC prisoners, we do not know whether this variation reflects differences in the overall penitentiary population in the different regions, or differences in the selection of prisoners who are transferred to an SIU.

Table 16 suggests that having a mental health need was inconsistently associated with length of stay in the SIUs across regions. In 3 of the 5 regions, those with mental health needs identified at transfer to the SIU were more likely to be kept in the SIU for a longer period of time. But only in Quebec, was the difference in length of stay significantly different for those with and without identified mental health needs.

Table 16

Mental Health Need * Total days in SIU * Region of SIU Crosstabulation

Region of SIU			Total days in SIU		Total
			1 thru 15 days	16 or more days	
Atlantic	Mental Health Need	No	48	101	149
			32.2%	67.8%	100.0%
	Yes	33	43	76	
			43.4%	56.6%	100.0%
Total		81	144	225	
			36.0%	64.0%	100.0%
Quebec	Mental Health Need	No	367	208	575
			63.8%	36.2%	100.0%
	Yes	78	87	165	
			47.3%	52.7%	100.0%
Total		445	295	740	
			60.1%	39.9%	100.0%
Ontario	Mental Health Need	No	50	78	128
			39.1%	60.9%	100.0%
	Yes	13	27	40	
			32.5%	67.5%	100.0%
Total		63	105	168	
			37.5%	62.5%	100.0%
Prairies	Mental Health Need	No	102	227	329
			31.0%	69.0%	100.0%
	Yes	52	112	164	
			31.7%	68.3%	100.0%
Total		154	339	493	
			31.2%	68.8%	100.0%
Pacific	Mental Health Need	No	131	118	249
			52.6%	47.4%	100.0%
	Yes	50	58	108	
			46.3%	53.7%	100.0%
Total		181	176	357	
			50.7%	49.3%	100.0%
Total	Mental Health Need	No	698	732	1430
			48.8%	51.2%	100.0%
	Yes	226	327	553	
			40.9%	59.1%	100.0%
Total		924	1059	1983	
			46.6%	53.4%	100.0%

Quebec chi-square(corrected)=13.97, df=1, p<.001

Looking at the 1,983 people who started their stay in an SIU on or before 30 September 2020, there were only three (3) where a mental health professional recommended that the prisoner be removed from the SIU. Two were transferred back into the mainstream population that same day and one was transferred 2 days later.

Issue #3: Solitary Confinement and Torture

We saw that overall very few SIU prisoners (4.6%; N=97) received their full four hours out of their cell every day of their stay (see Table 6). The majority (N=1,863) missed their full four hours out of cell on one or more of their days during their stay. We had, for those who missed their full four hours out of their cell on one or more days, the average hours they managed to receive. The results are simple to describe: most prisoners are *not* missing the 4-hour legislative standard by a small amount (Table 17). Most (82%) are averaging 2 hours or less.

Table 17: For those who did not receive their full 4 hours out of cell every day: How much time, on average, did they get out of their SIU cell?

	Percent (N)
Zero thru half an hour	22.0% (410)
Over half an hour to one hour	20.3% (378)
Over one hour to two hours	39.9% (743)
Over two hours to three hours	17.1% (319)
Over three hours to four hours	0.7% (13)
Total	100% (1,863)

We also saw that overall 763 (38.9%) missed their full hours out of cell every day (Table 6). That is, they never received their full hours out. Looking only at those who missed every day, we can then explore the average time out of cell by the length of time in the SIU, again using the Mandela Rules differentiation of up to 15 days vs 16 days or more. Those who missed their full four hours every day of their stay did not come close to the four-hour minimum (Table 18). Whether they are 'short' or 'long' stay prisoners in SIUs: 98% got 2 hours or less out of their cells.

Table 18

Number of days in SIU * For those who missed their full 4 hours 100% of the time: average hours out of cell^a

		Average Hours Out of Cell				Total
		0 thru a half hour	over half an hour to 1hr	over 1 hr to 2hrs	over 2hrs to 3hrs	
Number of days in SIU	1 thru 15 days	225	163	168	11	567
		39.7%	28.7%	29.6%	1.9%	100.0%
	16 thru 379 days	92	57	46	1	196
		46.9%	29.1%	23.5%	0.5%	100.0%
Total		317	220	214	12	763
		41.5%	28.8%	28.0%	1.6%	100.0%

a. Percent of days that 4 hours out of cell was not achieved = missed 100% of their days

The Mandela Rules define the practice of “solitary confinement” as the “confinement of prisoners for 22 hours or more a day without meaningful human contact” (Rule 44; see footnote 8). Since there is some ambiguity on differentiating ‘meaningful’ from ‘not meaningful’ we decided to say that being out of their cell for any activities (other than a shower) for more than two hours meant that the person was not in solitary confinement. Hence, our definition would tend to reduce the proportion of SIU stays that, under the Mandela Rules, would constitute solitary confinement.

The Mandela Rules say, however, that if such stays (with 2 hours or less out of cell every day) last more than 15 days, it should be considered “torture or other cruel, inhuman or degrading treatment” (Rule 43: see footnote 9). These operational definitions allowed us, then, to divide our 1,960 SIU prisoners (excluding those 23 in SIU cells on one day only) into three groups: those in solitary, those who qualified as being tortured, and all others.¹² The overall breakdown is contained in Table 19. Overall, 28% of stays in SIUs would be considered “solitary confinement” and an additional 9.9% would be considered “torture” under the Mandela Rules.

Table 19: Breakdown of SIU prisoners (other than those in for only 1 day)

	Percent (N)
<i>Solitary Confinement</i> (missed full four hours out of cell 100% of their days; received an average of two hours or less out of cell during their stay + stayed for up to 15 days)	28.4% (556)
<i>Torture</i> (missed full four hours out of cell 100% of their days; received an average of two hours or less out of cell during their stay + stayed 16 days or longer)	9.9% (195)
<i>All other person stays in SIUs</i>	61.7% (1,209)
Total	100% (1,960)

It is worth noting, we think, that the “torture” group (N=195) is not dramatically clustered just above the 16-day breakpoint (between ‘solitary’ and ‘torture’). More than half of the stays for this group are 32 days or more (see Table 20).

Table 20: Days in SIU for those being tortured according to Mandela Rule Definitions

	Percent (N)
16 thru 31 days	45.1% (88)
32 thru 61 days	30.3% (59)
62 thru 380 days	24.6% (48)
Total	100% (195)

¹² There are obviously other ways in which these groups might be defined. We believe that our operationalization of “solitary confinement” and “torture” are within the constructs described by the Mandela Rules, but we probably exclude some from the categories of “torture” or “solitary confinement” that other operationalizations would include.

We next explore the amount of time people refused to leave their cell all day by our three groups (those in solitary; those being tortured; and everyone else). Table 21 shows that only about 20% of the solitary confinement group refused to leave their cells most of the time (51% or more of their stay). The vast majority (61%) of SIU-solitary confinement prisoners never or only one time refused to leave their cells.

Table 21 also shows that there were some (n=23 or about 12%) of the group who fall into the Mandela Rules' definition of torture who never (or only one time) refused to leave their cells. Another 102 (or 52%) refused to leave their cells at least twice and up to 50% of the days they were in the SIU cell.

Table 21: Refusals to leave the cell by Mandela Rules definitions of solitary confine and torture.

groups * Amount of refusal to leave the cell all day Crosstabulation

		Amount of refusal to leave the cell all day				Total
		Refused zero or one time	Refused at least twice, constituting up to 20% of their days	Refused at least twice, constituting 20.1% to 50% of their days	Refused at least twice, constituting 50.1% to 100% of their days	
groups	Solitary Confinement (missed full 4hrs out 100% of their days; average of 2hrs or less out of cell + stayed up 15 days)	341	7	96	112	556
		61.3%	1.3%	17.3%	20.1%	100.0%
	Torture (missed full 4hrs out 100% of their days; average of 2hrs or less out of cell + stayed 16+ days)	23	38	64	70	195
		11.8%	19.5%	32.8%	35.9%	100.0%
	Everyone else	647	336	191	35	1209
		53.5%	27.8%	15.8%	2.9%	100.0%
Total		1011	381	351	217	1960
		51.6%	19.4%	17.9%	11.1%	100.0%

Chi-square =459.13, df=6, p<.001

It would appear to us that, using the commonly accepted definitions of solitary confinement and torture, Canada has serious problems with each. As the West Coast Prison Justice Society suggests with the title that they gave their November 2020 report, Canada clearly has "Solitary by Another Name." It also has what the Mandela Rules refer to as "Torture" by another name.

However, there is considerable variation across regions in the proportion of people subject to solitary confinement or torture. Quebec stands out as having the highest proportion (40.6%) of SIU stays that would be considered "solitary confinement" by the Mandela Rules and the Pacific stands out as having an alarming high proportion (19.5%) of SIU stays that would be considered torture.

Table 22: The Distribution of Solitary Confinement and Torture by Region

Region of SIU * groups Crosstabulation

		Solitary Confinement (missed full 4hrs out 100% of their days; average of 2hrs or less out of cell + stayed up 15 days)	Torture (missed full 4hrs out 100% of their days; average of 2hrs or less out of cell + stayed 16+ days)	Everyone else	Total
Region of SIU	Atlantic	53	18	152	223
		23.8%	8.1%	68.2%	100.0%
Quebec		295	63	369	727
		40.6%	8.7%	50.8%	100.0%
Ontario		41	6	118	165
		24.8%	3.6%	71.5%	100.0%
Prairies		49	39	403	491
		10.0%	7.9%	82.1%	100.0%
Pacific		118	69	167	354
		33.3%	19.5%	47.2%	100.0%
Total		556	195	1209	1960
		28.4%	9.9%	61.7%	100.0%

Chi-square=208.54, df=8, p<.001

But those percents in Table 22 hide another even more disturbing fact. Our estimate of the penitentiary population in Ontario in December 2020 was 3,461 prisoners; for the Pacific region it was 1,763 total prisoners. Expressed then as the number of SIU stays that could be considered to be torture per 1,000 prisoners in the region, then, we see even more dramatic differences. (See Table 23)

What might be considered to be CSC's "Torture Rate" would be 1.73 prisoners being 'tortured' in SIUs per 1,000 prisoners in the Ontario Region. For the Pacific region the torture rate (69 prisoners being tortured out of an estimated 1,763 prisoners) would be 39.1 per 1,000 prisoners – about 22 times higher than Ontario's rate.

Table 23: Rate of Solitary Confinement and Torture in SIUs by Region per 1000 prisoners in each region. [Rates calculated using December 2020 estimates of the total penitentiary population in each region].

Region	Solitary Rate	Torture Rate
Atlantic	45.9	15.6
Quebec	118.1	25.2
Ontario	11.8	1.73
Prairie	13.2	10.5
Pacific	66.9	39.1
Total	44.2	15.5

We would hope that these different rates might stimulate CSC to examine these rather dramatic differences in the use of these two forms of punishment.

Conclusion.

The continued use of solitary confinement and torture in the SIUs raises important questions. Soon after our initial (October 2020) report, Anne Kelly, the Commissioner of the Correctional Service of Canada (CSC) said in a press release, on 28 October 2020 that:

Since their implementation on November 30, 2019, SIUs have been closely monitored by independent bodies that were set up as transparency and accountability measures. In addition to the Implementation Advisory Panel, which Dr. Doob chaired, Independent External Decisions Makers (IEDMs) were put in place across the country to provide oversight related to an inmate's conditions and duration of confinement in an SIU. This oversight has been happening, in real-time, since day one. IEDMs review inmate cases on an ongoing basis and provide recommendations and decisions related to conditions and duration of confinement, and their decisions are binding.

I want to be clear that we take our legislative obligations very seriously....

Three points need to be made. First, the SIU-Implementation Advisory Panel (SIU-IAP) referred to in the press release not only no longer existed, but it was never able to do its work because of the failure of CSC to cooperate with it¹³. Unfortunately, the CSC Commissioner's statement could be read as if the panel still existed on 28 October 2020 even though it might not then have been chaired by Doob. In any case to imply that the SIU-IAP was able to 'closely monitor' the SIUs is simply false.

Second, although IEDMs can review and make non-binding recommendations on such matters as time-out-of-cell, there is no requirement that they speak to prisoners and inquire in detail about the reasons for a failure to provide appropriate conditions. Third, and perhaps more importantly, the IEDM reviews "length of time in the SIU" only after the prisoner has been in the SIU for about 60 days¹⁴. Their decision

¹³See Appendix D of our October 2020 report for the full history of the SIU-IAP.

¹⁴In special certain circumstances reviews may take place earlier. Our concern, however, is that what we present here is how the SIUs are currently functioning – thus, if IEDMs are "correcting practices", this is what they're correcting them to.

may be binding (though the timing of the implementation of their decisions is vague), but it is worth noting that for a prisoner who, according to internationally accepted standards is being tortured, the IEDM's involvement is coming about 44 days after the beginning of the period of torture. As can be seen in Table 20, this is far too late for a large number of prisoners.

That third point relates, more generally, to the oversight and monitoring of these SIUs in Canada. This is our third report on the operation of the SIUs since October 2020. To be honest, we are disturbed by the fact that the only independent systematic examination of the operation of the SIUs comes from two volunteer criminologists. We obviously have access (after the fact) to a limited amount of data and are not in a position to cause anything to change.

This third report demonstrates beyond a reasonable doubt the necessity of having two types of review of SIUs. In the first place, as those in Canada who have been looking at forms of segregation for a very long time have suggested, some form of meaningful independent – perhaps judicial – oversight needs to be implemented to review cases soon after transfer to the SIU. We think that the time has come for Canada to acknowledge that it still has solitary confinement and torture by another name.

Second, there needs to be a small, but dedicated and permanent body to provide systematic oversight of the operation of these units across Canada. Canada's experience since November 2019, makes it clear that we cannot rely on CSC alone to provide adequate information about the operation of the SIUs.

These suggestions might provide a means of beginning the reform of the SIUs. We fully expect that others will recommend other remedies for the problems that have been or will be uncovered. These could include firm and enforceable procedures for removing prisoners from conditions that could be characterized as torture or other cruel, inhuman or degrading treatment. Similarly, the issue of strict time limits could be considered.

It worries us, however, that the things that we are seeing, and the lack of accountability that appears to exist, does not look to us to be very different from what experts on this topic have been describing for at least 50 years. We find it important to note that when we read reports on solitary confinement written decades ago by Canadian experts like Michael Jackson, it appears that nothing much has changed.