HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 137 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, November 20, 2018

Chair

The Honourable John McKay

Standing Committee on Public Safety and National Security

Tuesday, November 20, 2018

● (1535)

[*English*]

The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)): Colleagues, I call the meeting to order.

I see quorum. We're already under some time constraints.

I appreciate Mr. Zinger's patience. We welcome both you and Marie-France Kingsley to the committee.

Both of you are very familiar witnesses, so I don't need to give any instruction. We look forward to what you have to say.

[*Translation*]

Dr. Ivan Zinger (Correctional Investigator of Canada, Office of the Correctional Investigator of Canada): Good afternoon.

Thank you for the invitation to appear before your committee. It is a pleasure to be here.

I present to you Marie-France Kingsley, executive director of the office. She worked for many years as director of investigations and has a lot of expertise in operations.

[*English*]

As correctional investigator, I welcome the intent of Bill C-83, which proposes to eliminate the use of solitary confinement as defined by the United Nations in the newly revised Nelson Mandela rules—that is, less than 22 hours in cell. I am concerned, however, that this bill as it stands may not lead to the intended and laudable outcome and may even result in an increase in the use of restrictive confinement. lndeed, the structured intervention units, or SIUs, which would replace administrative and disciplinary segregation as we know it may simply become “segregation lite”.

I am specifically concerned that the bill fails to provide for independent or external oversight of SIU placements and eschews the need for procedural safeguards of any kind. Eliminating solitary confinement is one thing, but replacing it with a regime that imposes restrictions on retained rights and liberties with little regard for due process and administrative principles is inconsistent with the Corrections and Conditional Release Act as well as the charter.

Whenever rights and liberties are deprived, there is a corresponding obligation to provide safeguards proportionate to the degree of the deprivation. SIUs are, by design and intent, restrictive confinement environments, even if they allow for more out-of-cell time than current administrative segregation. The simple fact of the matter is that an inmate housed in an SIU would have not the same rights as other inmates or be able to exercise those rights, due to what the bill itself concedes are “limitations specific to the structured intervention unit or security requirements”. ln effect, Bill C-83 proposes a softer version of segregation without any of the constitutional protections. The bill is uniformly short on specifics and places too much discretion and trust in correctional authorities to replace segregation with an unproven and not well-conceived correctional model.

Before I go further into these concerns, I would like to first acknowledge some progressive and positive aspects of the proposed legislation.

I am pleased to see that Bill C-83 would entrench in legislation the clinical independence and autonomy of prison health care professionals. This measure would effectively mean that clinical decisions could not be overruled or ignored by non-medical prison staff.

The bill also proposes to enshrine access to patient advocacy services in federal corrections. Such a measure would help ensure inmate patients understand the implications of their health care decisions and fully exercise their right to free and informed consent. These measures are consistent with evolving international standards in the care and treatment of people in custody, including the revised Mandela rules, and are responsive to addressing outstanding recommendations from the coroner's inquest into the preventable death of Ashley Smith.

I am also pleased that the bill would obligate the service to consider systemic and background factors that contribute to the overrepresentation of indigenous persons in the criminal justice system. This provision reaffirms and codifies the Supreme Court of Canada decision in Gladue, which already requires CSC decision-makers to take into consideration the unique circumstances of indigenous offenders whenever their rights and liberties are at stake.

Returning to the bill's intent, it is instructive to note that the grounds for SIU placement would remain virtually identical to current segregation law. ln other words, an inmate could be placed in an SIU if the warden believes, on reasonable grounds, that he or she jeopardizes their own safety or that of any other person, or the security of the institution.

It's important to note that these are the two most-used grounds for placement in administrative segregation. Today, there are 380 segregated inmates in CSC facilities. Just under half of the segregated population is held there voluntarily, meaning they seek out or request to be placed in segregation out of fear for their own safety and well-being.

The proposed legislation has nothing to say about how an SIU, program or intervention would deal with a population that voluntarily requests segregation, a situation which effectively represents a failure of the Correctional Service of Canada to provide safe, secure and humane custody for inmates regardless of one's crimes or vulnerability. It is also not clear how the proposed legislation would deal with the disproportionate number of indigenous people, who currently make up 43% of the segregation population.

It's been said that SIUs are different from solitary confinement because inmates would have four hours out of cell each day, which is twice as much as current segregation practice allows. While four hours minimum out-of-cell time is an improvement, 20 hours maximum inside a cell is still a lot of time to be locked up.

I commend the effort to comply with the Mandela rules in this regard; however, it's important to be reminded that these are minimum standards for the preservation of human dignity and sanity behind bars. Surely Canada is not resigned to simply meeting minimum standards. As a recognized world leader, we have to get this legislation right, and for the right reason.

Simply increasing the out-of-cell hours that inmates could avail themselves of does not mean that Canada will have eliminated all the harm associated with restrictive confinement. Any potential gain in time out of cell is potentially compromised by a requirement that allows CSC to conduct a routine strip search without individualized suspicion whenever an inmate is entering or leaving the SIU. In effect, this means that an inmate residing in an SIU could be strip-searched multiple times in a day, which could prove a major disincentive to participating in out-of-cell activities.

The bill intends to provide inmates placed in SIUs with meaningful human contact. That is the same wording and intent behind the revised Mandela rules for reforming the solitary confinement regime worldwide. Forgive my skepticism, but it is not clear how the objectives will be met by this particular piece of legislation. Since we can only assume that SIU environments will be physically similar to existing segregation units—because we have not been provided with information that would suggest otherwise—we have to ask whether these environments will be conducive to meeting the test of meaningful human contact, much less the effective delivery of programs and services.

We know that current segregation units are not conducive to group learning. Indeed, segregation interventions, insofar as they can be called that, are typically delivered in-cell, behind a door, through a food slot or in small common spaces located in or near segregation ranges. Needless to say, these spaces are hardly conducive to effective delivery of therapeutic interventions.

It is important to note that the bill proposes to eliminate both administrative and disciplinary segregation. I have previously pointed out that disciplinary segregation is rarely used in federal corrections, largely because it is considered too much of an administrative burden. Because of the liberties at stake, disciplinary segregation provides for significant procedural safeguards, including sharing information with offenders, providing access to legal representation, holding a hearing before an external independent chairperson and meeting the high burden of proof.

Over time, administrative segregation became the default option, used to circumvent the due process requirement of a formal disciplinary system. Administrative segregation placements are simply easier, quicker and more responsive in serving the same population management ends: removing an individual who poses a risk to oneself or others or who jeopardizes the security of an institution.

● (1540)

Let me just conclude.

In terms of how I see this bill moving forward, I would say that at the very least, adequate procedural safeguards and some kind of independent monitoring and oversight of SIU placement need to be incorporated. Otherwise, the commendable intention of this bill cannot be met.

I will be happy to answer any of your questions, and I would ask if the chair could enter the complete text of these remarks into the record, if that's possible.

The Chair: Oh, I think those are already entered in.

Dr. Ivan Zinger: Perfect. Thank you.

The Chair: Thank you very much.

Ms. Dabrusin, you have seven minutes, please.

Ms. Julie Dabrusin (Toronto—Danforth, Lib.): Thank you. I appreciate that you came here. It has been interesting to hear your perspective. I've read a little bit about it in some newspaper articles.

I wanted to start where you ended, which was that at the very least you need the right to procedural safeguards. You talked about that.

There are two parts to that, as I see it: the oversight piece and then what you need for proper oversight, the mechanisms. If I could start at the most basic part, the decision to place a person in an SIU, would you find it helpful if there were a requirement that there would be written reasons provided for why a person was placed into an SIU, as well as what other options had been considered as part of those reasons? Would that be helpful to the oversight process?

● (1545)

Dr. Ivan Zinger: Part of the issue, and it's a very well-known principle of administrative law, is that you have to match what is potentially at stake, which is a loss of liberty or freedom, to the degree of fairness.

If you look at disciplinary segregation, for example, which this bill would eliminate, you have a really odd situation, because you would have the highest level of due process—which is a hearing before an ICP, an independent chairperson; access to a lawyer; the ability to cross-examine witnesses; and a requirement for a high burden of proof—yet there's no significant loss of liberties, so on that side, it is pretty peculiar that you would maintain the ICP for disciplinary purposes when there's nothing that can be lost, since 30 days in segregation can no longer be imposed by the ICP.

Therefore, I think there's a really good opportunity here to maybe use the pool of ICPs to provide the oversight on something that is "segregation lite". You still need that due process, and a high level, if you want those SIUs to flourish across the entire system, and then have all maximum security and significant portions of medium security institutions basically become SIUs. You need that independence to validate decisions made by a warden, and those decisions, as you said, if they are valid, could then be validated by an external oversight mechanism.

Ms. Julie Dabrusin: Sure. I was actually even breaking it down to the first piece, which is when there is a transfer, there would be a requirement to have the written reasons provided, as well as a listing of what other options had been considered. A copy would be provided to the inmate, multiple copies. I believe that there was a similar type of policy that was adopted. Was it in Ontario? It wasn't actually passed into law, but it was part of the legislation that was proposed there.

I'm just trying to think about some concrete amendments.

Dr. Ivan Zinger: Yes, and I think you're correct, because in terms of due process, you need to know what the reasons and the grounds are for your placement. A written reason is the basic first step to due process, but eventually, down the road—and let's say you would do it at 30 days—you need somebody from outside to validate the decision for the placement, those reasons, and—

Ms. Julie Dabrusin: Sure. I wasn't actually saying that this was the end place; I was just trying to pick that one little piece to begin.

One other question I had is on the issue of a cap on the number of days. We had someone from the John Howard Society who said that maybe a hard cap isn't possible in some circumstances, and that has come up in some articles.

Whether or not Mandela rules are what are at issue here, would it be helpful...? I read in a Toronto Star editorial that having a cap would be helpful just because it would force people to think about the other alternatives, to really go through the alternatives, and I believe that somewhere else it said that for the mental health of an inmate, it might be helpful to know there's at least a presumed cap with perhaps a policy that would enable it to be looked at. That was the type of wording that was in Bill C-56 as well, a presumed cap that could be extended if there were reasons.

Is it helpful to have a presumed cap?

Dr. Ivan Zinger: I think the clever part of Bill C-56 was the presumption of release after a certain period of time. Maybe that's when you would kick in some form of independent adjudication. Right now, with the way it's written, it's as soon as possible, and it's all internal. There's nothing there—it's all internal to the service, and we come up with a regime that has less due process than the previous regime did, and it has too much due process on the disciplinary side, arguably.

● (1550)

Ms. Julie Dabrusin: I don't have a lot more time, but you've alluded to it a little bit, and I'd like you to provide better detail if you could. What oversight process would work? There are different ideas as to what would be the trigger date for an oversight review date. If I'm referring to the Ontario legislation, which I think was called "correctional services act, 2018"—it didn't get royal assent—it suggested, I believe, that five days after placement, there would be a trigger for external review. Different versions have been put forth.

What would you think? If you were looking at the number of days, what would be the trigger and where would it go?

Dr. Ivan Zinger: My view is that as it currently stands, there is insufficient due process, because there's no oversight in the current scheme. The issue becomes one of identifying where it is salvageable, if you're using this legislation to try to bring in some external oversight?

I would say, given that you are providing at a minimum—and I'll say it's a minimum standard—four hours outside the cell, you could see that something like 30 days might be sufficient. It's very much an unproven territory, because we have strict guidelines with respect to the Mandela rules around at least 22 hours in the cell, with a great body of literature suggesting that is very harmful.

We probably know a little bit less about those restrictive environments, but the only thing I can tell you is that 20 hours in a cell is an awfully long time, and there has to be some oversight so that this does not become the norm for managing challenging offenders across the system.

The Chair: Thank you, Ms. Dabrusin.

Mr. Motz, go ahead for seven minutes, please.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Thank you, Chair.

Thank you, witnesses, for being here.

Mr. Zinger, do you support the abolishment of segregation, or is it a necessary measure to protect inmates, guards and now health professionals inside prisons?

Dr. Ivan Zinger: I think certainly solitary confinement as defined by the UN Mandela rules should be prohibited, absolutely. It's weird that the legislation doesn't actually say that. I think it should be in the legislation that solitary confinement, as defined by the Nelson Mandela rules, should be abolished in all federal corrections.

The issue is whether you need restrictive confinement to deal with certain individuals. I think the answer is yes. As I say, I'm still surprised that with regard to the disciplinary segregation, there are no alternatives. Now we can have a disciplinary court held by independent people, which can only impose fines and maybe some loss of privileges, and in that regard I think the Union of Canadian Correctional Officers has said that even here perhaps we are missing something in this equation.

You do need, if there are big transgressions in the penitentiary system, some consequences. I would suggest that in order to preserve the ICPs, you may want to look at restrictive confinement of up to four hours—defined as four hours—for up to 30 days as a consequence.

Mr. Glen Motz: You mentioned the correctional officers. Do you support the testimony they gave here at committee suggesting that it would take significant new resources to meet the requirements of this legislation? Is that something you would agree with?

Dr. Ivan Zinger: What I would agree with is that there has been very little detail provided by the Correctional Service or the government on how this is going to be implemented. If you read the proposed bill as it's currently written, there's a lot of stuff that seems to be pushed to regulation, as prescribed by regulations. We don't know what those regulations would look like. I think that's why there's a lot of uneasiness about this particular piece of legislation. We don't know how it's going to be rolled out.

From experience, I can tell you that it's always in the implementation where there's a high risk of not complying with the intent of you guys, the intent of the legislature.

● (1555)

Mr. Glen Motz: Keeping with that comment, we heard from correctional officers and prisoner advocates, such as the John Howard Society and the Elizabeth Fry Society, that they view this as bad legislation. Do you support this assessment from the union and from those two prisoner advocacy groups?

Dr. Ivan Zinger: Part of my remarks talked about it. I think there's been a lack of consultation on this one, and I think there is some stuff in the legislation that is unclear. For example, the whole notion that disciplinary segregation would remain as the system in place, but with no hard consequences, suggests to me that it was ill-conceived. All the consultations seem to have been done internally. To my knowledge, there have been no consultations with external stakeholders. I think that's why you end up with something that is perhaps not fully thought out. I'll say that.

Mr. Glen Motz: You mentioned the internal CSC aspect of it, that it looks as if the consultation was just done in-house.

On page 40 of your annual report, you make a note that the case summary from the Saskatchewan riot varies significantly from the national board investigation of that exact same incident. It's a summarization. It seems odd to me that the national board investigation report is going to vary from Correctional Service Canada's report. It just seem odd. Does that concern you?

I have a couple of things. It's concerning to me to read what you say.

My questions are as follows. Given your knowledge of what goes on, as the investigator, who would authorize the summary of a report to be different from the actual report? That's one.

On this suggestion from you that maybe the credibility of CSC is now called into question, does that, then, give rise to...? You just said that the devil is in the detail of the legislation. We're supposed to blindly pass a bill that has so much left to regulations that we don't know what we're going to get.

Dr. Ivan Zinger: With respect to the Saskatchewan riot, certainly I'm very.... I've made the entire report a question of openness, transparency and accountability with the service. I think there is a lot of room to move forward.

I was actually quite pleased with the mandate letter the minister issued to the commissioner, which basically makes clear the direction the service should go, endorsing those values of openness, transparency and accountability. This is why, if I were the commissioner, I would welcome external oversight and validation of decisions at the institution by, for example, independent adjudication to—

Mr. Glen Motz: True. Your previous comment, though, sir—

Dr. Ivan Zinger: If she ever wants to implement that mandate letter, she's going to need some help—

Mr. Glen Motz: Of course she is.

Dr. Ivan Zinger: —and that help can only come from external validation.

Mr. Glen Motz: I have one quick question.

The Chair: There is no quick question left on your time. I'm sorry, Mr. Motz.

Go ahead, Mr. Dubé, for seven minutes, please.

[*Translation*]

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thank you, Mr. Chair.

I thank the two witnesses for joining us today.

Discussion has focused on the importance of having an independent review and an independent validation, if I may put it that way. Instead of repeating everything that has already been said on the issue today, I would like to continue to talk about it, but in the context of health professionals.

When the minister came before us, he said that one of the major differences between the current situation and what the bill proposes has to do with the role health professionals could play.

As far as I understand, health professionals could come to a conclusion on an inmate's problematic situation, and that conclusion would not be independently reviewed. So there would be no mechanism in place to protect the inmate. For example, an inmate could need more oversight and may need to be removed from the structured intervention unit, but if health professionals' decision went against that, the inmate would, in a way, be a victim of the lack of independent review.

● (1600)

Dr. Ivan Zinger: One of the good things about the bill is that notion of clinical independence and health professionals' autonomy. That is also a very good reflection of the Nelson Mandela rules. The goal of that independence is to ensure that health professionals' opinion could not be ignored by correctional authorities for security reasons. I think there is always some tension between those two groups.

Does that suffice? If I was more innovative and wanted to implement a mechanism more in line with the Nelson Mandela rules, I would suggest that the assistant commissioner of health services at the Correctional Service of Canada, or CSC, report to the deputy minister of Health Canada. The objective would be to create a direct link to the health sector and to protect the separation of health-related functions from correctional authorities' functions. That would be one approach to consider.

It may be easier to do that in the provinces. In the management of correctional services, provinces have well-established health services —which they provide—while that is not the case at the federal level. Health Canada does not provide client services. However, federal authorities could try to do the same as the provinces. The notion of loyalty is always a problem for health professionals, who must deal with their employer, the CSC and the professional order of which they are members, be it a college of physicians or a college of nurses.

Mr. Matthew Dubé: I'm sorry to interrupt you, but time is running out. Let's stay on the topic of health professionals and services provided in those institutions.

The wording in the last part of subsection 32(a) of the bill, in the French version, is the following: “notamment pour des raisons de sécurité”. I'm not taking into account the possibility of the translation being inadequate, but in the English version, the wording is even more terse and problematic:

[*English*]

“for security or other reasons”.

[*Translation*]

Is there a concern that the words “other reasons” or “notamment” may lead to a lack of services in institutions, which would in turn mean, as you mentioned in your statement, that authorities would be likely to continue to use that tool as the primary resource to deal with cases requiring a variety of means to help inmates rehabilitate?

Dr. Ivan Zinger: That was sort of the intention of the previous Bill C-56, which clearly stated that it was prohibited to place individuals with mental health problems in segregation. That prohibition no longer exists because it is expected that inmates could spend at least four hours outside their cell. At the same time, I think that remains a very restrictive environment for someone suffering from serious mental health problems.

As it is not exactly known where those new structured intervention units will be located, it is relevant to wonder whether inmates could have a therapeutic environment. So far, we don't know whether the segregation areas will simply be restructured and renamed.

● (1605)

Mr. Matthew Dubé: I now want to talk about opportunities to leave the cell.

Should there be greater accountability in that respect? You talked about possible human contact when food trays are distributed to inmates. An inmate may also be asked whether they want to go outside at 5 a.m. when it is -40 degrees Celsius, for example. Should there be an accountability mechanism when it comes to the type of opportunity to leave the cell provided to inmates?

Dr. Ivan Zinger: External oversight is essential. That would help validate that everything has been done to mitigate the negative effects of very restrictive circumstances and ensure that the individual is enjoying the benefits set out in the bill concerning human contact. All that should be validated by someone from the outside for there to be accountability.

Mr. Matthew Dubé: Thank you.

The Chair: Thank you, gentlemen.

Ms. Damoff, go ahead.

[*English*]

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you, Chair.

Dr. Zinger, thank you for being here again, and Ms. Kingsley. We really appreciate your work in corrections.

We talked a lot about oversight. Who do you think should be doing this oversight? The Ontario courts said that if it was someone within CSC who was not reporting to the initial decision-maker, it was okay.

I'm curious. If oversight was brought in, who should be doing it? Do you think you should be doing it, or somebody in your office? Where do you think that should fall?

Dr. Ivan Zinger: We changed the discussion. Initially it was all about administrative segregation. Now we're into what I call “segregation lite”, a very restrictive environment that does require due process.

By the way, there's been a proliferation of those types of “segregation lite” conditions of confinement over the last decade. We have transition units, special needs units, structured living environment units—all sorts of different names that do not provide a full day out of cells.

I mentioned that there are 380 inmates. There are probably a lot more who fit the definition of an SIU who would benefit from some oversight in this case.

I think the independent chairperson model is probably a correct one. Unfortunately, when it came to disciplinary segregation, correctional officers often circumvented the disciplinary process. Administrative segregation was easier to do, because it was all run internally. You didn't have to go in front of anybody external and you didn't have to reach a really high burden of proof, and so on.

I think we could use that model of independent adjudication. I would bring it under the auspices of SIUs. Thirty days would be okay. I would be—

Ms. Pam Damoff: That was my next question, though. Instead of it being a specific time frame, a number of days, what if it was if the inmate was not taking advantage of the number of hours out of the cell for five straight days, for whatever reason? It might be their choice or it might be lack of access, or at the request of the health professional or patient advocate. What if those were the conditions for the oversight to be triggered?

Instead of it being just everybody after 30 days, let's say it was triggered when someone did not access the four hours for five days, or a health professional or patient advocate said, “Somebody needs to come in and look at this situation.”

Dr. Ivan Zinger: I think you could do both. The problem is making sure that you are capturing those who, for five days consecutively, haven't had human contact and so on. How can you—

Ms. Pam Damoff: They'd have to be reporting it, and the reports could be public.

Dr. Ivan Zinger: It's reporting, and it's all internal, and so forth. If you are able to bring some rigour into that, it could trigger it, but at one point—let's say 30 days—everybody should be looked at. You want to make sure that the Correctional Service of Canada is doing everything it can to apply the least restrictive approach and ensure that alternatives have all been exhausted. It needs to ensure that you've mitigated the harmful effect of those things; that you are actually forcefully developing this correctional plan modification that will allow you to cascade, that it is a therapeutic environment. All these wonderful things—which have very little detail, because they're all going to be coming in the future, in regulations—should be validated by somebody from outside.

● (1610)

Ms. Pam Damoff: That's why I'm thinking, though, that if the oversight were triggered by specific circumstances, it would also flag institutions that may have had an issue. If there were a number of reports in a particular institution, it would be a red flag for the commissioner that there may be a problem, whether with resources or anything else.

Dr. Ivan Zinger: I don't disagree. I think that could be one trigger, but you still need a review. You may have a two-step process. Those conditions would come forward—and I agree with the John Howard Society that there would be problematic instances that should trigger some sort of review—and then again at 30 days.

Ms. Pam Damoff: You said that there are 380 people in segregation right now. I understand that there are eight women. That's what the Elizabeth Fry Society was telling me.

When you appeared at Status of Women, you said that we could get rid of segregation in women's institutes tomorrow and that men's would be more challenging. My sense is that this bill has been written for men's institutions, and it's going to be applied in women's institutes.

Would you agree with that assessment, that we're really dealing more with an issue in the men's prisons than we are in the women's prisons?

Dr. Ivan Zinger: The number I have, which dates from last week, is 10 women. With respect to men, it's 370, and slightly more than half have been there for over 30 days.

We have some extreme cases. I don't like to say egregious cases, but we certainly have individuals.... One has been in administrative segregation for 510 days, others for 286 days, 264 days, and 194 days, and these are all men. It is much more difficult on the men's side, I agree.

With respect to women, I think I would like to see those who are significantly mentally ill, who are in secure, structured living environments, which are maximum securities, be transferred out of the correctional system into a therapeutic environment with an external hospital—

Ms. Pam Damoff: When we only have 20 beds in Canada, it's a little hard to do that, isn't it?

Dr. Ivan Zinger: Yes. I think that we are spending a lot of money on those women. I think that there are certainly....

Ms. Pam Damoff: Better ways to do it?

Dr. Ivan Zinger: I think that Philippe-Pinel, Brockville, or Alberta Health Services would all be willing to do their part if they were compensated appropriately.

The Chair: Thank you, Ms. Damoff.

Mr. Eglinski, you have five minutes.

Mr. Jim Eglinski (Yellowhead, CPC): You suggested in your report that the CSC no longer has credibility to investigate itself, yet we are asked to look at this Bill C-83 and pass it. Once we pass it, the minister and CSC will tell us how it works. Then they'll tell us how much it costs, because they say they don't really know today.

That leaves a big question mark, so my question to you is, would you recommend passing this legislation as it is?

Dr. Ivan Zinger: I'm of the view that there was insufficient consultation with external stakeholders. This is why I think you have a product that requires some significant amendments. Is it salvageable? I think it is if that component of external oversight is brought in. As it currently stands, I think it falls short.

Everything rests upon the discretion of the service to manage itself and ensure that they use those SIUs as infrequently as possible. We know very well that the history of corrections has been a gross overuse of administrative segregation for decades, until they finally decided to give it a bit of corporate attention and actually apply the current law. Then we saw it drop about 60% in terms of numbers in segregation. Those numbers could go up.

That's what's important about this legislation. I do believe the commissioner is well intentioned to try to reduce those numbers in segregation and keep at bay those SIUs. I also believe the minister when he says it. The issue is that this legislation has to go beyond the good intention of the current administration to a future commissioner and a future government. This is what worries me. We have seen the proliferation of SIU-like conditions of confinement.

● (1615)

Mr. Jim Eglinski: Good. Thank you.

You mentioned three minutes ago one gentleman at 510 days, one at 280-some days, another at 300-some days. As the correctional investigator, did you investigate the one with 510 days? Was it justified for him to be in there? Do you investigate those who are in the 100-, 200-, 300-day cycles?

Dr. Ivan Zinger: Let me ask my executive director. She can probably tell you, without giving the names of those individuals, what we do.

Ms. Marie-France Kingsley (Executive Director, Office of the Correctional Investigator of Canada): Each one of our senior investigators who visits a penitentiary and meets with offenders also visits the segregation area. Each of these investigators also has the numbers, and will raise those large numbers with the warden and ask for an explanation and/or a review on every single visit, every single time.

Mr. Jim Eglinski: Have you had any wardens refuse to give that information to you? Has there been a problem after they...? Have you seen consistent problems afterward?

Ms. Marie-France Kingsley: Have they refused to give the information? No. CSC has to respond to our queries and to our information requests. There can be disagreements. Our recommendations, as you are aware, are not binding, but we do raise the issues, and there is a response provided.

Mr. Jim Eglinski: When you have this response, maybe their reason for it is different than yours. Have you found that you've been able to negotiate with Correctional Service of Canada and come to a compromise? Each one of these long-term ones is a unique situation.

Dr. Ivan Zinger: I have about 15 investigators, and they go to the penitentiary regularly to visit. They take complaints and they sit down with wardens and negotiate. Usually we have resolution.

There are some difficult cases out there. This is why some of those egregious cases are difficult cases. Either they won't leave the segregation area or they are so notorious that to protect them from harm, you have to leave them in those segregation areas. I'll leave it at that.

The Chair: Thank you very much. I appreciated it.

Mr. Picard, you have five minutes.

[*Translation*]

Mr. Michel Picard (Montarville, Lib.): Thank you, Mr. Chair.

Mr. Zinger, you mentioned that, considering the environment, it was necessary to have restrictive measures for some individuals. You differentiate between restrictive measures and the expression “segregation lite” that you used.

What is the difference between those two concepts?

Dr. Ivan Zinger: It has to do with the number of hours, in the sense that administrative segregation, or what is called

[*English*]

solitary confinement

[*Translation*]

is defined by United Nations as 22 hours or more. In this case, we are talking about 20 hours.

It is worthwhile noting that nothing in the bill concerns solitary confinement that cannot currently be used by the CSC, which does not need the bill to do everything set out in it.

The CSC has already reduced that length from 23 hours to 22 hours, and it can reduce it even further to 20 hours, simply by adopting a policy on that. It does not need a bill to do so. It can be much more dynamic by providing programs to get inmates out of that more restrictive environment. It can also provide mental health care. All that is at its discretion, and it can already do so without the bill.

● (1620)

Mr. Michel Picard: Do you have a proposal in terms of the hours spent outside the cell? What number of hours would be more reasonable than the minimum of four hours? What should that number of hours be to reduce the difference between the number of hours for regular units and for segregation units?

Dr. Ivan Zinger: That is the challenge here. I think that 20 hours is too restrictive. There should be a degree of procedural fairness. If, for example, units provided six hours outside the cell, there would be no need for the same degree of procedural fairness, but acceptable procedural fairness should still be maintained.

The 1997 report produced by the task force on administrative segregation of which I was a member said that it was either administrative segregation or open population, but between the two, there were all sorts of things and no procedural fairness.

We are a bit disappointed in that respect because it must absolutely be ensured that, the more restrictive the environment, the greater the procedural fairness. It should also be ensured that the CSC would be compelled to do whatever is needed to improve detention conditions, so that people could function in a less restrictive environment.

Mr. Michel Picard: On another note, the bill proposes that the quality of health care be reviewed, especially when an inmate dies. Physicians conduct their examination, and then a review of the quality of health care is done. I assume that health professionals are already following protocols on how to behave with inmates and that, within an institution, those protocols take into account the fact that an inmate may be diabetic or have allergies, for example.

Do you feel that this review is necessary every time someone dies? To update those practices, could consideration be given to an annual systematic review and, as needed, an additional special review owing to the new circumstances?

Dr. Ivan Zinger: There are just over 60 deaths per year, and I think that the CSC should investigate in every case. If the facts are very simple, there is no need to spend three months on an investigation. If someone dies from a heart attack, the file is checked to determine whether the previously provided care was appropriate. That can be done very quickly.

I think that more difficult cases should be addressed, but nothing should be let go. What may seem like a natural death can be a premature death caused by the fact that health care was inadequate or there was no oversight. All that needs to be reviewed, and an independent investigation must be conducted for every death.

The Chair: Thank you, Mr. Picard.

[*English*]

Mr. Motz, you have five minutes, please.

Mr. Glen Motz: Thank you, Chair.

Keeping with that point, do the coroners get involved with any in-custody deaths that occur in Correctional Service of Canada? Can you explain how that looks and works?

Dr. Ivan Zinger: By law, the service has to conduct an investigation. Once convened, the board of investigation has to send its results to my office. That's for every death.

Beyond that, coroners typically do a review, but that review can be years later.

Mr. Glen Motz: It's just a paper review. It's not an actual body review.

Dr. Ivan Zinger: Well, it depends on the provinces. Some of the provinces have mandatory examinations, and it's a fairly lengthy process. Sometimes it's the medical examiner, and so on.

● (1625)

Mr. Glen Motz: Does it concern you that the head of an institution is able to change the designations of a portion of that prison?

Dr. Ivan Zinger: Yes, it does, because you could designate an entire penitentiary as an SIU. That's currently in the bill. This is why I'm worried about how this could, under different circumstances and given that the average length of out-of-cell time has actually diminished over the years.... The services do not even keep track of that. There's been a proliferation of restrictive environments over the years.

Mr. Glen Motz: I just want to chat briefly about the administrative segregation, or whatever the bill's going to call it now—the structured intervention unit, or whatever it's going to be called.

Will it actually change how inmates are treated, in your opinion?

Dr. Ivan Zinger: What was that?

Mr. Glen Motz: Will it actually change or improve how inmates are treated, in your opinion?

Dr. Ivan Zinger: I mentioned the punishment side of things. As I said, that's only one side of the ledger.

Part of the problem is that in corrections, there are no incentives left for correctional officers and correction staff to leverage. There's no positive reinforcement. Inmate pay, for example, is a great incentive, yet inmate pay hasn't changed since 1981. It's extraordinary. As I'm talking to you guys, the base salary for an MP is $175,000; in 1981 it was $48,000. In corrections, we've created a system of deprivation, and there's no way of getting ahead if you want to. Now we have all these underground economies because there are insufficient resources. Food is a problem, and—

Mr. Glen Motz: I have limited time. The chair always seems to pick on me for time.

Have you ever done any work with the needle exchange program? Do you think there should be parameters around this policy in the legislation?

Ms. Julie Dabrusin: It's not relevant. It's not in the bill.

Mr. Glen Motz: The minister brought it up in the House and at committee. It was specific to needle exchange with IV and EpiPens. He did. You can go back and look at the transcripts.

The Chair: It's technically not in the bill, but I'm going to allow the question.

Dr. Ivan Zinger: Corrections spends tens of millions of dollars on interdiction. They strongly believe—and this was since the Harper years—in zero tolerance towards drugs. The problem with that strategy is that it has failed. It failed in society and it's failing in jails.

How can I convince you that it fails? I would say that if you look at the urine analysis that is being done, there were about 19,000 done last year—

Mr. Glen Motz: Just before my time is up, I would add that the correctional system is failing our inmates, because its purpose is to rehabilitate. Many of them end up there in the first place because of their addiction problems. Is that correct?

What you're really saying is that our system is failing the inmates. We're not rehabilitating anybody because they're still using the drugs that got them in there in the first place.

Dr. Ivan Zinger: If you look at positive urine analysis—

The Chair: Mr. Zinger, I'm truly sorry. Mr. Motz has run over his time. I apologize.

Mr. Glen Motz: I'll admit to that.

The Chair: That's a rare confession on your part.

Mr. Spengemann has the last five minutes, please.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): Thank you very much, Dr. Zinger and Madam Kingsley. Thank you for being back with us.

In the five minutes I have, I want to focus on the human element of corrections. I think it's pretty fair to say that our corrections system, in a large part, does not generate good mental health outcomes for the population of inmates, and also equally for our women and men who serve as correctional officers. You'll recall the report that this committee did on that question.

I'm wondering if you can briefly give the committee an appreciation of how much of an issue mental health is at the point of intake into the correctional system and also at the point of release, in terms of percentages. Maybe give a couple of qualitative comments as well, especially if there's a gender dimension to it.

● (1630)

Dr. Ivan Zinger: In terms of prevalence, I think the best data is that about 35% of men admitted into the system have a mental health issue that requires psychological or psychiatric services. For women, it's 50%. These are the numbers.

It is a growing concern. Of course, there are a disproportionate number of people who suffer from mental health issues in administrative segregation, or soon in SIUs in the future.

Mr. Sven Spengemann: Is there any data at the point of release on how the inmate fares in terms of mental health when he or she is released back into Canadian society?

Dr. Ivan Zinger: I can tell you about correctional outcomes for those who are mentally ill. They are more likely to serve more time in jail. They are more likely to be segregated. They are more likely to be subject to the use of force. They are more likely to have their parole suspended or revoked. The correctional outcomes are poor for those who suffer from mental illness.

Mr. Sven Spengemann: I commend the bill for putting forward a vision of culture change in the correctional system.

The bill calls for an increase in staffing of mental health professionals. I wanted to ask you if you could give the committee your view of who the women and men would be who would deliver these services.

The question is focused on how much experience a mental health professional would have to have with the correctional system to be able to effectively interact with and serve inmates who suffer from mental health issues. In other words, could these be mental health practitioners who have had no previous contact with correctional services at all, or do they need to have some familiarity with exacerbating factors that may pop up within the system to be able to deliver services effectively?

If it's the latter, where do we find those people?

Dr. Ivan Zinger: In my annual report, I talk about a report that was done by John Bradford, who reviewed the regional treatment centre. There are five regional treatment centres, which are basically designated psychiatric hospitals within Correctional Service of Canada.

The report is actually quite damning. He says that the level of care that is being provided is, in terms of....There are seriously insufficient resources that do not compare well to community psychiatric hospitals. He talks about the lack of training. His ultimate recommendation is that the service should actually get rid of those regional treatment centres and build stand-alone hospitals, and they should be outsourced to experts in forensic psychiatry.

I would direct you to that report to get a better understanding.

Mr. Sven Spengemann: Dr. Zinger, I want to circle back to the term “meaningful human contact”. It's UN language. It's a common denominator.

Is there value in this terminology, either through legislative interpretation, regulatory interpretation, or ultimately judicial interpretation? If so, can we use this term to take account particularly of vulnerable populations—in other words, a gender lens, a diversity lens, an indigenous lens, ethnic, religious backgrounds, disability? Can we get somewhere with this phrase “meaningful human contact”?

Dr. Ivan Zinger: That's probably part of the challenge of understanding this bill. It's not clear, because we don't know how this is going to unfold.

Segregation units, if this is where these SIUs are going to be located, are certainly not a therapeutic environment. The interaction would be through food slots. There are no common areas in most segregation areas, so it's not clear how this human contact will take place, because you'll have to actually physically take the inmates outside of those units in order to find appropriate program rooms or interview rooms.

The Chair: Thank you again on behalf of the committee, Mr. Zinger and Ms. Kingsley. I appreciate your contribution to the study of this bill.

We will suspend for a few minutes while our next panel comes in.

● (1630)

(Pause)

● (1635)

The Chair: We will reconvene.

We have with us Senator Kim Pate. Welcome again to the committee.

We also have Cara Zwibel and Noa Mendelsohn Aviv from the Canadian Civil Liberties Association. I don't know how you're going to split up your 10 minutes, but I'll leave that to you.

Colleagues, Ms. Mendelsohn Aviv needs to be out of here at 5:30 in order to catch a flight, so if you want to catch her with some questions, probably earlier would be better than later.

With that, I'll ask Senator Pate for her 10 minutes, and then swing over to the Civil Liberties Association.

Hon. Kim Pate (Senator, Ontario, ISG): Thank you very much, Mr. Chair, and thank you to all of the committee for inviting me to appear.

As someone who lives and has worked in this unceded Algonquin territory for now approximately 27 years, I want to say that the impact of colonization on our indigenous peoples is particularly acute when you have the privilege and responsibility, as I have for almost four decades now, of walking in to—but, most importantly, being able to walk out of—prisons for youth, prisons for men and, for 25 years before my appointment, prisons for women.

All that is to say that when the minister introduced Bill C-83, it was described as ending the practice of segregation by the Correctional Service of Canada and as the government's response to the recommendations of the jury regarding the homicide death of Ashley Smith. If in fact it were either or both of those, I would certainly be one of the most vocal supporters of the bill.

In fact, as we know, October 19 of this year marked the eleventh anniversary of the preventable death of Ashley Smith in the segregation unit at Grand Valley Institution for Women. Since that time, we have seen the implementation of very few of the recommendations put forth by the coroner's jury.

One of the things that is outlined in the bill and is certainly foreshadowed as though it were in response to the jury recommendations is the potential use of mental health advocates. In fact, what was being recommended by the jury were peer advocates and peer supports as well as mental health advocates, who are currently in place in the various prisons for women. The jury also recommended advocates to be available in some of the federal penitentiaries, particularly the regional psychiatric centre, which is dually designated as a psychiatric hospital and a federal penitentiary, but these have not in fact been used.

I'd be happy to talk more about why they have not been used. In part it's because of the process by which corrections implements the mental health legislation, invoking the mental health legislation for the purposes of forcible treatment when they wish to do so and then abandoning it before all the protective mechanisms, which include mental health advocates, kick in.

Therefore, the practice and procedure of the Correctional Service of Canada in this regard to date does not hold out great hope that a new process would be put in place just because of this bill, particularly in light of the fact that the bill also removes a number of the other procedural safeguards that currently exist for segregation.

I want to draw particular attention to the fact that prior to the bill being introduced and since the bill was introduced, going into federal penitentiaries both in my capacity as teaching a prison law course at Dalhousie University and in my capacity as a member of the human rights committee of the Senate, it is clear to me that what is likely to happen as a result of this bill, if it is passed as is, has already started to happen within the federal penitentiaries.

Certainly, we've seen this trend in the prisons for women for some time. All of the women who are classified as maximum security prisoners have been living in a state of segregation, because segregation is both a place called segregation and a status of separation. All federally sentenced women who are classified as maximum security have been living in these kinds of units since they were developed in the regional prisons across the country.

As I visited the last couple of penitentiaries when this bill was introduced, I was advising students on the sections that we were in. At one point, for instance, we entered the Nova Institution for Women, and I advised the students that we were in the segregation area. I was quickly corrected that it was no longer the segregation area; it was pod C of the intensive intervention unit. It was a very clear and very graphic example of how nothing has changed—merely the change of the name of the unit in that context.

In the men's prisons we saw the same thing, and similarly—unbeknownst to me before I started on the human rights committee review, because it had been some time since I was going regularly into the prisons for men—all the men's maximum security units and prisons are also now a series of segregated units.

That brings me to a point that has been raised in some previous testimony, which is that the majority of those in segregation are there voluntarily.

● (1640)

Some of you know that in fact there are very few members of Parliament, senators or judges who enter the penitentiary, despite their right of access according to section 72 of the Corrections and Conditional Release Act. Well, for all of us who have entered and who have asked prisoners this precise question, for almost all of them, if they say that they are there “voluntarily”—and I would put that in quotation marks on purpose—it is because they are looking for a time out, for protection, or to be separated from the general population for some other reason. It is usually generated by the pre-existing conditions of confinement.

When we ask them if they would like to be in any other type of conditions, whether that would be in the private family visiting unit if they're looking for time to themselves or to have access to programs and services so as to have some time away from the very small, contained segregated units, in every instance prisoners have indicated that they would prefer that. Equally important is that when we've talked to staff, they have talked about the fact that increasingly people are segregated, and that is raising tensions in prisons and raising concerns.

The other piece I'm working on separately from the work of the human rights committee is in starting to go in and meet with the groups of men who have been gang-involved and who are the other rationale that is often given for segregating. There is a very good program in the Stony Mountain Institution. There is also a very good intervention being run by a man named Richard Sauvé, who is himself serving a life sentence. A number of senators and others are going into the prison in the coming weeks to actually meet with him and talk about the work they're doing to de-escalate situations and assist people, and in particular both African-Canadian and indigenous men who want to drop their colours so that they can actually start to desegregate, if you will, within the prison population.

There are a number of initiatives that have not actually been adequately canvassed, in my view, and it remains my view that in fact we could be looking at truly doing what this bill says it wishes to do. I for one would be happy to work with any and all of you on the committee, as well as with others, to ensure that the bill actually does that. My suggestion, actually, is that this be repealed and that we start from a new perspective and really try to do what is a very laudable intention brought forth by the Minister of Public Safety.

Finally, I would say a word about what you've already heard from Dr. Zinger, the correctional investigator, on the lack of accountability.

The very few procedural safeguards that exist now for administrative segregation will essentially be thrown out the window and the monitoring of it will largely rest on the Correctional Service of Canada. I would suggest respectfully that there is a very important role for this committee and possibly for the human rights committee or the legal committee of the Senate to jointly look at implementing a recommendation that this committee made around oversight. I would recommend that annual reviews, not just reviews every five years, be conducted in accordance with the recommendation you made earlier with respect to the review of prisons.

Thank you. I look forward to your questions.

● (1645)

The Chair: Thank you.

From the Canadian Civil Liberties Association, who's speaking first?

Ms. Noa Mendelsohn Aviv (Director, Equality Program, Canadian Civil Liberties Association): I'll be going first. Cara will come in a little bit later.

Good afternoon, Mr. Chair and members.

When we raise concerns about solitary confinement, this is not an abstract discussion. We are expressing concern about the harms caused to human beings by the practice of extreme isolation.

These harms are well established by experts and were recognized by courts. Associate Chief Justice Marrocco found that the effect of isolation and prolonged isolation include—I won't even give you the whole list—hopelessness, depression, confusion, hallucinations and delusions, re-traumatizing of women and eroding of their self-worth, rage, loss of control, self-mutilation, declines in mental functioning, a sense of impending emotional breakdown and a vicious cycle in which a prisoner's extreme behaviour and acting-out leads to an increase in physical altercations with prison staff—frustrating them both, and of course leading to further isolation.

Fifteen consecutive days of isolation poses a serious risk, the court found, of permanent, observable, negative mental health effects. It's because of these harms to people that courts in B.C. and Ontario found the current administrative segregation regime to be unconstitutional and have ordered change. In order for Canada to uphold the law—as it is its duty to do—and obey the court orders, a new law must prohibit indefinite or prolonged solitary confinement, however it's called, and it should not exceed 15 days. It should prohibit placing people with mental illness and/or disabilities in solitary, and it should ensure the use of solitary doesn't discriminate against indigenous persons, as it currently does.

Bill C-83 does not include these protections.

Both Ontario and B.C. courts noted the absence of independent oversight and independent review. This is critically necessary, because a strong, external independent review process could help build public trust and ensure that prisons are obeying the law, that inmates are not being placed in isolation unless in absolutely necessary and exceptional circumstances, that no one is held in prolonged solitary, that indigenous individuals receive sensitive and culturally appropriate programming, and that a person who is mentally decompensating receives treatment rather than being left alone to deteriorate.

Any new law should also prohibit solitary for people under the age of 21 and people in need of protection. There is no justification to impose this status, whatever it's called, on young and vulnerable inmates.

The costs of isolation are not just to the individual but to correctional staff who have to manage individuals who are losing their grip on reality or their ability to control their reactions. It has a cost to our society, because people complete their sentences and are going to be reintegrated. The rehabilitation of inmates so that they are able to reintegrate requires an investment of resources in our correctional system. We need clear legislative protections, and this investment of resources is critical to making our society in Canada safer. As complex as it may appear, there are significant tools available for reform—real, implemented, effective alternatives as well as countless recommendations, models, reports and legislative blueprints. My colleague Cara will speak to some of them in a moment.

Justice Arbour's report is over 20 years old. The Ashley Smith jury inquest, with its 104 recommendations, is five years old. Two commissioned expert reports on segregation and corrections from Ontario are extremely recent.

I'll take a minute to talk about the U.K. prison system, which is up and running. They have all but eliminated solitary. Individuals there needing protection or supervision are placed in smaller units appropriate to their needs, to their population, and only the most exceptional of cases are kept in the special closed-supervision units. Of a prison population of roughly 85,000, approximately 60 men and zero women are held in this special unit.

As Senator Pate was saying, if we want to deal with extreme isolation of inmates, changing the sign will not create the change or provide sufficient relief to people held alone in tiny cells with mesh on the windows and a tiny concrete yard. What defines the experience of solitary is extreme isolation, which causes the harms discussed above. This bill, or this act, needs to be amended to say that any protections provided must be for anybody held in those circumstances of isolation. “Solitary” needs to be defined in the law.

● (1650)

Of course, any relief for people in those circumstances is better than no relief, including time out of cell, including human contact, but I note that there are enormous exceptions under proposed section 37, each of which is subject to possible overuse or misuse, and documentation and oversight are critically necessary to ensure that does not happen.

In addition, the broad language of proposed paragraph 37(1)(c) could exclude a huge number of people who would therefore be held in extreme isolation without four hours out of cell or two hours of human contact.

In any event, isolation is still practised and it would still be the order of the day. If some people believe that administrative segregation is necessary as a measure of last resort to be used in exceptional circumstances—say in the event of a riot—this bill is doing the very opposite. It is institutionalizing and attempting to justify isolation as an ordinary prison practice. Canada can do better.

It is a far cry from the kind of prison reform that we need and that we deserve for our safety and for our well-being. We need it as well because not only will it reduce harms, financial and mental, to inmates and to correctional staff, but it will be better for our society as well.

I'll add one more word before I turn it over to Cara.

For meaningful reform, which Canada needs, there has to be a meaningful process. None of the organizations that challenged this law successfully in court were invited to consult on the bill before it was introduced. I note with strong objection the absence of key indigenous rights groups from these committee hearings, including Aboriginal Legal Services and the Native Women's Association of Canada—both of whom asked to appear—despite the fact that indigenous individuals are overrepresented in solitary and that this bill has a section dedicated to indigenous offenders.

People's mental health is at stake. People's lives are at stake. This is no time for a slapdash attempt at a band-aid solution. I echo Senator Pate's proposal that there be a repeal of the bill and a proper effort at reform. Canada has had plenty of time and needs to do this properly.

I turn it over now to my colleague Cara to share some remarks on recent work in Ontario and possible alternatives.

● (1655)

The Chair: Welcome, Cara. You have approximately two and a half minutes left out of the 10 minutes.

Ms. Cara Zwibel (Director, Fundamental Freedoms Program, Canadian Civil Liberties Association): Thank you.

I'm going to try to talk a little about the model that the federal government could have considered as part of a truly meaningful effort to transform corrections and address some of the constitutional violations that were identified by the courts in Ontario and B.C. that have examined this issue closely.

The Province of Ontario has recently undertaken a significant amount of work looking at the state of corrections in the province and examining the practice of solitary confinement in particular. The province benefited from two thorough, independent reviews conducted by a team led by Howard Sapers, the former federal correctional investigator and a leading expert in criminology and corrections. Even recognizing the differences between provincial and federal institutions and the inmates they house, the recommendations made in the Sapers report could certainly have served as a strong foundation for reform at the federal level. They are not reflected in the bill that this committee is considering.

Indeed, Ontario passed legislation that incorporated many of Mr. Sapers' recommendations, and that legislation explicitly prohibits the use of segregation for certain categories of inmates, namely those who are pregnant or have recently given birth, those who are chronically self-harming or suicidal, those with a significant developmental disability, those with a significant mobility impairment, and those who require medical observation.

The legislation in Ontario also put in place hard caps on the amount of time an inmate can spend in segregation: 15 days at a time, and no more than 60 days in a 365-day period. Segregation placements require regular and independent reviews.

The bill this committee is examining contains none of those provisions, and in our view those changes constitute the bare minimum required to address the charter violation inherent in the existing scheme.

The Ontario legislation also makes it clear that a visit from the institutional head or from a health care practitioner that takes place through a meal slot does not meet the legislative requirements for visits from these people. Federal legislation should similarly reflect the fact that communication through a meal slot does not constitute meaningful human contact, just as it specified that a shower doesn't constitute time out of cell.

It should also make clear that segregation is a last resort. It should require documentation of other options that were exhausted before a decision to place an inmate in segregation was made, and require documentation of efforts made to engage an inmate in meaningful human contact.

To conclude, Bill C-83 is not the deep-seated reform that is required, and simple amendments to echo what my colleague and Senator Pate have said will not bring it into compliance with the charter. What is constitutionally required, in our view, is an end to indefinite solitary confinement and an end to its use for those with serious mental illness and for other particularly vulnerable groups.

The Chair: Thank you, Ms. Zwibel.

Before we go to Ms. Sahota for seven minutes, I'll say that it's my intention to end the meeting at 5:35 and then adjourn and re-empanel in camera. I have some decisions that need to be made by the committee about a number of issues going forward sooner rather than later.

With colleagues' consent, we will run another five minutes over our normal period of time.

Ms. Sahota, you have seven minutes.

● (1700)

Ms. Ruby Sahota (Brampton North, Lib.): Thank you, Senator.

Thank you, everyone, for coming today.

We've been hearing about oversight again and again from various witnesses, and from the previous panel we got an idea of what they think and who should be in charge of providing that oversight. I was wondering if I could get your opinions on that aspect as well.

Hon. Kim Pate: Following the events at the Prison for Women, Louise Arbour recommended judicial oversight. I think every move since then has reinforced why that is the best model and the model that should be implemented, because every measure to produce so-called independent bodies to come in, whether it's for charges within the prisons and the independent chairpersons, is very dependent on the individual before whom the prisoners and the staff appear, and the reality is that in most cases they have become further arms of the government body.

You may have a really excellent independent chair—for instance, Marie-Claude Landry, who was head of the independent chairs in Quebec. Everybody recognized, while she was head of that process, that it had a very robust—

Ms. Ruby Sahota: When you say “judicial oversight”, how do you envision that? Is that a quasi-judicial tribunal or actually going to the courtrooms? We know how backlogged they are, so how would this work?

Hon. Kim Pate: I would say that it could be. It would be going to the court if in fact you have a robust provision that says no segregation, so if, for some reason, the Correctional Service decides they have to do some kind of separation, they should have to establish that.

Right now all that would be required with this bill, with respect, in many of the mechanisms being proposed is that the Correctional Service of Canada would have to develop a case record, and what we know and what we saw most clearly through the Ashley Smith inquest is that those case records are developed largely to benefit those who are recording them.

Ashley Smith, for instance, was described as out of control and violent all the time, and yet when we actually saw the videotape of the evidence and cross-examined correctional officers, all of them described that they knew that information from what they had read about her, not from their actual experience with her. It reinforces that we need to actually pull people out of that process.

Similarly, it sounds wonderful to have external oversight of health care, for instance, through people responding to health authorities within the prison setting, but in every instance where that has been implemented—I mentioned the regional psychiatric centre, and there are a number of contexts in the youth system where that approach has been implemented—if the people are then embedded in the prisons and prisoners are not taken out, as clause 29 would allow you to recommend and require be done, and are not taken directly out of the prison into an externally administered service rather than having external people coming into it, then you see a far less robust oversight process. Instead, what you see when they are in the system is what I repeatedly had happen, whether it's a youth system or the regional psychiatric centre: the head of therapy coming to people like me saying that this person needs an advocate.

Many lawyers and judges don't even know that exists, because while they're looking at the legislation and they're hearing from individuals, they're not necessarily seeing first-hand what the conditions of confinement are.

Ms. Ruby Sahota: We had a witness before us here who had been in segregation for several years and advocated strongly against removing it, because there is a need for it, especially in men's prisons. He said there was a need due to many different reasons: safety, mental illness and all the things to which you are referring.

This process you see is to have judicial oversight. In the interim before you get that decision, how do you foresee them being able to deal with those types of situations internally and safely? You mentioned also that the proposals you bring today would reduce harm to correctional officers and inmates. Can you describe a little bit about how you think we can—

Hon. Kim Pate: I'm sorry to interrupt.

Prior to my appointment, in the job I was in previously we had recommended and offered an approach to Correctional Service of Canada in the process of all of these court cases being developed.

At that time the Elizabeth Fry Society was the only organization recommending no segregation at all, and certainly not for women, and not for those with mental health issues. Many other groups are now on side with that, but at the time part of what we had done over the period of 20 or 25 years was we had worked with individuals and started to develop advocacy options within the prison, working with the institution—and, as you probably know, there are teams that go in once a month—and actually starting to break down those barriers. We had recommended setting up a team to look at every individual that the Correctional Service of Canada was considering segregating, and then we worked on a plan to assist them that involved a responsibility of community actors, a responsibility of legal counsel sometimes, a responsibility of the prison.

They refused to set up that kind of initiative, and in fact part of the reason so many people are saying we don't need it for women is that some of those measures toward that end were actually incredibly effective, and so many people, including those working within the Correctional Service, recognized that we actually don't need that process.

As for going into the men's prisons again and starting to have those conversations with men, I don't think we're there yet. I would be remiss if I actually said that we were, but the same arguments that you're hearing from men and that you heard from the witness here are what I heard from women when we first started that process. That's why we're starting to work with the men and going in and meeting with the lifers and the brotherhood, the indigenous men's groups, to start to deconstruct that as well in those contexts.

Ms. Ruby Sahota: I'd like to allow you an opportunity as well.

● (1705)

Ms. Noa Mendelsohn Aviv: All I want to add.... There isn't a lot to add to that, but I think we need to understand that the way our corrections system works is not the only way it has to work, and that's why my colleague and I keep talking about a need for deep-seated reform. We look at some of the measures that are discussed by Professor Andrew Coyle, who is an international expert who testified on our behalf at the Ashley Smith inquest. When asked by the jury at that inquest about alternatives to segregation, he didn't talk about somebody who was at the point of rage and loss of control and decompensation; he started from the very first night that a person arrives at a penitentiary, frightened and not sure, but provided with peer support and peer advocacy and the kinds of programming and rehabilitation that can be offered in a reform setting.

Therefore, similar in some ways to what Senator Pate is saying, we'd say the reform has to be at the institutional level.

Ms. Ruby Sahota: If those resources are provided, do you think there can be reform, even through—

Ms. Noa Mendelsohn Aviv: Absolutely. I think that's part of how the U.K. has been able to all but eliminate these exceptional and difficult circumstances. Then they don't have to isolate those 60 people.

The Chair: We'll have to leave it there.

It's amazing to see the creativity of members in extending their time.

Voices: Oh, oh!

The Chair: It would be helpful if the witnesses would look at the chair from time to time so that I don't have to rudely interrupt but just interrupt.

Next is Mr. Motz, who has never been rudely interrupted.

Mr. Glen Motz: Oh, never. Thank you, Chair.

Thank you, Senator, and the Civil Liberties Association group.

Senator, you have previously suggested, and you suggested today, that we need to scrap this legislation and basically start over. Did the minister consult with you on this legislation, or on the previous bill, Bill C-56?

Hon. Kim Pate : No, he did not, nor did the Correctional Service of Canada.

Mr. Glen Motz: There is confusion over costs, as we heard from Dr. Zinger initially and from witnesses previously. There was confusion over the implementation of the bill. We don't understand what it's going to look like yet. CSC has said that some prisons might get body scanners. Others will have to use ion scanners. Questions linger as to how the structured intervention units will be reconfigured within the current infrastructure inventory of CSC. A lot of things are still up in the air.

Would you agree that having the implementation costs ahead of time is critical to knowing how this legislation will actually impact prisoners and correctional officers and the like?

Hon. Kim Pate : Of course it's important to know. I think we actually do have some information on costs. The Parliamentary Budget Officer updated the 2010 figures that the former PBO came up with. From the costing they were able to find so far, we can see that the structured living environments in prisons for women, for instance, were costed at around $533,000 per year, per woman.

Now, if that's the cost of the structured living environments now, we can easily say that this will likely be the cost of these new units. For men, it was costed at somewhere between $300,000 and $600,000. That's to my recollection, but I could—

● (1710)

Mr. Glen Motz: Just for clarity, that is per inmate, per year, for segregation.

Hon. Kim Pate: That's what it is currently, yes, for women.

Mr. Glen Motz: That was in 2010.

Hon. Kim Pate: No, this was last year. I asked for an update in 2018. This is the update.

Mr. Glen Motz: It's probably no surprise, then, that when the minister was here and we asked him about costs, he had no idea what costs were and was unwilling to provide anything. Is that maybe why?

Hon. Kim Pate: I can't speak for the minister. I do know that one of the issues the Parliamentary Budget Officer raised when I asked for the updated costs was that they could not estimate what it would cost for maximum security for women. They're all in these segregated units, which are basically what the structured living environments would be. Their best guess, based on the information they could provide, was about half a million dollars per year, per woman.

When you take into account the number of indigenous women who are in those positions and also combine that with the parts of the bill that will actually make it more difficult for the progressive elements of the current legislation, the CCRA, to be implemented, I think we're likely to see costs greater than that.

Mr. Glen Motz: You mentioned the indigenous inmates. Do you think the committee should make it more than just ministerial discretion but actually entrench it in law that first nations communities be consulted on which prisoners are transferred to healing lodges?

Hon. Kim Pate: Well, in fact, if it's an institution run by an indigenous community, they are consulted. They are the decision-makers. If it's a federal penitentiary, then I think it should be the decision-making of the Correctional Service of Canada.

I think the manner in which the federal penitentiary for women that was set up on the Nekaneet reserve—it sounds like you're referring to that one, so let's get right to that—

Mr. Glen Motz: I'm not referring to that one at all. I'm talking about the general scheme of how inmates are transferred to healing lodges and whether first nation communities should be consulted.

Hon. Kim Pate: They are if it's—

The Chair: I want to caution the witness and Mr. Motz that this is a bill about segregation, not healing lodges or maximum security or minimum security. There is some tangential relevance, but possibly you could focus in on the bill, please.

Hon. Kim Pate: Thank you for the reminder, Mr. Chair. I will focus in on the bill.

In the proposed legislation, one of the things that will happen is that agreements under sections 81 and 84, which is how healing lodges and agreements with indigenous communities are negotiated —so not federal penitentiaries, but community-run healing lodges— will actually be more limited.

As well, the manner in which the Correctional Service has implemented those has been to develop institutional beds, as opposed to something that the Auditor General spoke about today in the report that was released around conditional release, stating that in fact we need to see more individualized options closer to people's communities and more negotiations with individual communities. Some of that will be interfered with by this legislation, through the removal of the “community” in “indigenous community”, because that had not been fully implemented already, and I think that the scope of the legislation was fettered by the policy that Correctional Service of Canada developed.

Ms. Noa Mendelsohn Aviv: If I may jump in on that, you'll have submissions on that, both from Aboriginal Legal Services and from the Native Women's Association of Canada, and our organization endorses their positions.

Mr. Glen Motz: Thank you.

Senator, correctional officers have come out and said that they're deeply concerned about this legislation. Do you think they have a reason to have those concerns, based on how the legislation is currently drafted?

Hon. Kim Pate: I'm not familiar with all the details of their concerns. I think the concerns with a lack of consultation are there.

In our experience, there were two differing opinions from correctional officers when we were visiting the institutions with the humans rights committee. One was the official position, and one was often the position of those working on the ground—if you will, the boots on the ground—in the institutions. Many of them supported a more robust community involvement and less of the restrictive measures that potentially would be imposed by these intervention units without the oversight.

I would say that it depends on who you ask. I would encourage you to visit those institutions and seeing what's actually happening.

● (1715)

Mr. Glen Motz: Thank you.

Apparently my time is up, and I won't try to sneak in a "Ruby".

The Chair: Oh, that was not nice.

Mr. Dubé, who never tries to sneak in anything, can go ahead for seven minutes.

Mr. Matthew Dubé: I just get cut off.

Thank you, Mr. Chair.

I thank all three of you for being here.

I have a few questions on some of the language that is in, or not in, the legislation. I'll just throw them out there and ask for a response from both you, Senator, and our friends from the Canadian Civil Liberties Association.

The first is the absence of the term "least restrictive" that was in Bill C-56, which was also flawed legislation, but that's not what we're here to discuss.

The other piece of language that I wanted to hear from all three of you about is in proposed paragraph 32(a), which talks about "for security or other reasons". That's something that I've asked multiple witnesses about because I have a concern that it continues the status quo of using this type of confinement to compensate for other systemic issues in our corrections system.

Can I hear all three of you—or both of you, however you divvy it up—on both of those two language issues in the legislation?

Ms. Noa Mendelsohn Aviv: I'll start with the first one.

"Least restrictive" is a constitutional standard. It's just impermissible under Canadian constitutional law to hold people in restrictive circumstances and in a restrictive status that is not necessary and that is not the least restrictive.

I think that's an important question and I think that the language should be there because upholding constitutional and charter rights needs to be done in legislation. If we're going to be taking away people's rights, we also need to ensure that the protections are set out in statute so that there is no confusion and the public knows that Parliament is doing its job properly and seriously and the Correctional Service knows as well.

Hon. Kim Pate: I would agree.

I've provided charts; I haven't done the submission in the usual form, but I thought it might be useful for the committee. I have them in French and English and I'm happy to circulate them so that you can actually see what the current legislation is, what's been proposed, and the commentary. One of the issues is exactly what Ms. Mendelsohn has said.

In addition, regarding your very astute point about the basket category, as we often refer to them, this basically leaves it wide open for the discretion of the Correctional Service to determine any other behaviour or any other circumstance under which they would require someone to be separated.

I made a note about this next point, and pardon my mental pause at the beginning. You heard about the Ontario legislation, although what you weren't told is that the initial iteration of that legislation actually proposed that at least four prisons should commence without segregation units, so committed were those who were involved in the process that they could be run that way. It was actually some political pressure that came to bear that caused that not to happen.

I think Canada has long been a leader in human rights, and this is an area where we could be leading very clearly. We shouldn't be looking at UN standards as the ceiling; we should be looking at them as the floor.

Mr. Matthew Dubé: Could I just backtrack to the "least restrictive" piece, for my own benefit and for that of colleagues on the record as well?

If I'm not mistaken, that language was at one point in the CCRA and was then removed. I'm only asking because I know sometimes we hear the argument that because it's a constitutional obligation, it doesn't need to be in the legislation because it's de facto protected. However, it was for a very long time part of the legislation until relatively recently, if I'm not mistaken.

Hon. Kim Pate: That's correct.

Mr. Matthew Dubé: Thank you.

The other piece I wanted to ask about, Senator Pate, is the experience you talked about in visiting institutions where they're already being referred to colloquially in not quite the same way, but close enough to the same way that it is cause for wondering if it is a real change or just a cosmetic change.

Again I'd like to hear from all our witnesses on this piece. We've been told at the technical briefing—and the commissioner and the minister didn't deny this when I asked them, and it was brought up again by the correctional investigator—about being able to designate existing areas as SIUs. This basically means that structurally they would be identical in everything but name, and some of the provisions in this bill may or may not be effective.

I'm wondering what your thoughts are on that.

Ms. Noa Mendelsohn Aviv: Over and above areas designated as SIU, as I mentioned in my remarks, in any situation in which a person is held in extreme isolation—whether it's maximum security, medical observation, a disability, or whatever the reason is—that isolation is causing the harms to human beings that led two judges in this country to say that this regime cannot stand because it is unconstitutional and it violates fundamental rights.

Therefore, not only should we be concerned about designating areas as SIUs; we should also be concerned about the conditions in which people are kept. That's why any new legislation needs to define that being held in situations of isolation is the issue, and that's where the protections have to be placed.

● (1720)

Hon. Kim Pate: Even more stringently than that, those judges made those decisions without going into the units. In the visits we've been doing with the human rights committee, as we've gone into the maximum security units, every senator has recognized them as segregated conditions, without any of us saying it. It is from witnessing what they have access to, what they don't have access to, and what the meaningful intervention or meaningful contact is, which is negligible at best.

The reality is that people are living with two, three or sometimes four other people in common spaces that are smaller than the area of this—

Mr. Matthew Dubé: I'm sorry to interrupt. I think I'm on my last 30 seconds, if that.

The Chair: You've got a minute.

Mr. Matthew Dubé: I'd be remiss if I didn't ask a question to the Canadian Civil Liberties Association while you are here.

Are you not concerned that on the one hand the government is saying that this legislation responds to the court decisions, both in Ontario and B.C., but on the other hand, it's being appealed? I'm not sure if the Ontario one is being appealed, but I know the B.C. one is.

Ms. Noa Mendelsohn Aviv: The government did not appeal the decision that ruled it unconstitutional because of the lack of independent review, so that decision stands. Our organization appealed all the grounds for which the court did not find it unconstitutional, so that part is continuing.

To answer your question, and I tried to address it in my remarks, this legislation doesn't answer those grounds of unconstitutionality that we argued in our case and that B.C. argued in their case and that the judges found. It doesn't address them. It has been 12 months, almost to the day, since the Ontario decision was issued. One way or the other, this committee is out of time, but that doesn't make this bill any good.

The Chair: Thank you, Mr. Dubé.

Madam Damoff, you have seven minutes, please.

Ms. Pam Damoff: Thank you all for being here.

Thank you for your advocacy on this issue, Senator Pate, for many years.

The first question really has nothing to do with the bill, but it does in a way.

Would you acknowledge that there have been more investments after 10 years of horrendous cuts to corrections, and that there's been a change in attitude and investments? I'm not saying we have it right yet, but have you seen a difference in the department and in the minister in their attitude towards corrections and investments?

I'll put that question to both of you.

Hon. Kim Pate: We certainly have seen a difference in the language that's coming out.

For instance, in our visits to the institutions and in our meetings with senior managers and any witnesses who come from national headquarters and regional headquarters, the language sounds much more progressive than we've heard for some time. However, that has not permeated even the next layer of the institutions, in our experience. Going into the institutions, we often have a presentation from management, and then we'll walk into the institution and see something diametrically opposed to it.

Ms. Pam Damoff: I know you've read the report out of Edmonton max that said you can't fix overnight something that has taken so long to fester.

I just want to acknowledge that I'm actually really proud of what the minister is trying to do. It's really important that we keep on that path in order to make changes within the system all the way down to the ground.

Hon. Kim Pate: Certainly the teacher in me says that you have to repeat it at least 29 times before it starts to penetrate.

The difficulty is, though, that if there was a real willingness, then many of us would have been involved in that process. Unfortunately, it looks to be a more cynical process if in fact you don't take the next step and actually engage those individuals who have, as I do, a huge investment in wanting to make this work.

Ms. Pam Damoff: This question is probably more to you: What are you defining as “solitary”? You mentioned women's institutes, and we heard from the corrections investigator that there are 10 women in right now. As I mentioned earlier to the civil liberties folks, my sense is that this bill has been written for the men's institutes and not the women's, because you're dealing with very different circumstances in both. You don't have the gangs in women's prisons to the same extent.

You were talking about Stony Mountain. I was there in 2016 and I saw one of the units where they have what I think you referred to as “pod C”. Why do you think those can't work?

● (1725)

Hon. Kim Pate: I actually do think they can work.

Ms. Pam Damoff: Okay.

Hon. Kim Pate: I'll back up. Part of the reason Louise Arbour recommended that the women be used as the flagship for corrections is exactly what you've pointed to, which is that we could be doing many more progressive things that in our experience would also then benefit the men. Healing lodges are a perfect example. They were initially piloted with women.

However, what we can be doing is learning from that process and starting to work at undoing the culture that has been embedded in corrections, and in particular in the prisons for men. That's part of why I'm starting to go in to work with those men who are actually trying to undo that process.

I don't think it requires segregated units to do it, though. I do think we can work with a number of individuals who want to see meaningful change. Already, just in challenging some of the men I've come into contact with by asking them how they're going to get to medium security, they know they'll have to drop their colours and they'll have to negotiate.

Corrections historically would say that starts the minute someone walks into the prison, not somewhere down the road. We're not doing that.

Ms. Pam Damoff: I don't disagree with you at all, but when I asked the minister and the commissioner when she was here about those units such as the pods at Stony Mountain, I believe that was the intent for these units. There would be four to six units together, where people who can get along, such as two gangs that don't kill each other in prison, can have meals together. That's the intent behind it.

Hon. Kim Pate: If you start with separation, you actually build friction. In terms of any institution that has worked at this, Ms. Mendelsohn talked about some of the U.K. system and I was involved in some of the U.K. reforms that looked at removing segregation and removing maximum security types of settings and using more dynamic security. Of course that was not to put people at risk, because none of us want that, but to build on the ways that you actually do change behaviour, which is through relationships. It's not through putting people behind barriers because it's easier if you're not getting along to yell through a wall than it is to actually have to negotiate.

Ms. Pam Damoff: I only have two minutes left and I want to ask you about oversight. I asked the previous witnesses as well.

If we were to add something in oversight that saw it being triggered after five days when the conditions were not being met, or by the patient advocate or the health care professional, would that ease some of your concerns?

Hon. Kim Pate: For me, no, because I'm familiar with how those mechanisms are being used right now.

If there have been no meaningful consultations to this point on this process, then I would not have faith that those mechanisms would be put in place within the prison setting without external push.

Ms. Pam Damoff: However, it would be independent oversight.

Hon. Kim Pate: Right now, it's considered independent when the mental health advocates come in. When I contacted them in Saskatchewan, they hadn't been receiving calls at all. The commencement of committal proceedings would start once the person was forcibly medicated or injected, as the case would be, and then they would abandon the proceedings, which meant that the mental health advocate was never called in.

Ms. Pam Damoff: I only have a few seconds left and I want to hear from you as well.

Ms. Noa Mendelsohn Aviv: If by “conditions” you mean making sure that people get a few hours out of cell, including a couple of hours of human contact, and that this would be the only form of oversight in addition to the patient advocate and mental health advocate, that would certainly not be sufficient in any case, because there has to be oversight over placement in some kind of isolation and over the decision to continue to hold somebody in those circumstances.

All of our objections have been registered. If any of those things are to continue, there has to be oversight over why that person is in that situation and has that status in the first place.

The Chair: Thank you, Ms. Damoff.

Mr. Eglinski, you have the final five minutes, please.

Mr. Jim Eglinski: Thank you.

I'd like to thank the witnesses for being here today.

I've been listening to Ms. Aviv talking about this oversight. Do you believe that under this bill, and I believe it's actually in the current legislation of the Correctional Service of Canada, that the warden must have that right to make the decision to put a person in a segregated area, or whatever we want to call it—ward C or B or D or E? Do you believe that we need to have it in the legislation that the warden needs to have the right to make that decision, and then have it reviewed?

● (1730)

Ms. Noa Mendelsohn Aviv: I think it depends very much on what you mean by segregation. I'm not sure that we have the kind of reform or the kind of legislation that we need to justify any kind of isolation. Even the most difficult of people—people who have decompensated—can still have contact with somebody within a prison setting. They can and should, and that will only improve the situation for them and for the institution.

Mr. Jim Eglinski: No, that's not what I'm asking. If someone has to make that decision initially—

Ms. Noa Mendelsohn Aviv: If there's an emergency situation, such as a riot, and you need containment on an urgent basis, then I think that the people who are on hand need to be able to do that. That is not a power that should be open to abuse, overuse or misuse. When we say “for the shortest possible duration”, we're talking about a day or two, not 15 days extended and extended, institutionalizing it.

Mr. Jim Eglinski: All right. Thank you for that, but if someone in the institution where this person is becomes violent or if this person is threatened by another inmate in a life-and-death situation, someone must have the authority to put that person in an area where he or she can be protected.

Do you agree?

Ms. Noa Mendelsohn Aviv: Yes, but that doesn't have to translate into isolation, nor does it mean that there can't be judicial oversight within a very short period of time.

Mr. Jim Eglinski: At 12 o'clock midnight, someone becomes very violent. Now who is going to give that oversight? Are you going to call a judge and get the oversight, or does someone within the penal institution have to make that initial decision? Maybe the oversight comes later. You seem to be saying that you have to have oversight in every decision.

Ms. Noa Mendelsohn Aviv: No, I'm not sure that's what I said, Mr. Eglinski.

What I was saying was actually in agreement with you. In an emergency situation, there has to be somebody on hand who can take care of the situation. That doesn't have to translate into isolation, and there should be external, appropriate oversight as soon as possible afterwards.

Mr. Jim Eglinski: How soon do you think that needs to be?

Ms. Noa Mendelsohn Aviv: It's very hard to provide an answer in the abstract. In Ontario, Associate Chief Justice Marrocco talked about the five-day review and said that there needs to be external oversight at that point. I think it may be very possible, if you're going to be reviewing the placement in segregation sooner than that.... Again, our objections are registered, and I note, by the way, that this bill contemplated not even moving the person into a structured intervention unit for five days.

However, this bill is not talking about emergency situations; this bill is talking about moving a person into a different part of the institution as an ordinary part of prison life. We're not actually talking about the same thing. Emergencies happen, and they have to be dealt with.

Mr. Jim Eglinski: Yes, definitely, absolutely. That's what I'm concerned about: the safety of the prisoners and the guards.

Hon. Kim Pate: Yes, I'll give you an example.

Just two weeks ago, I was called by an individual in an institution because, having done this for years, I know many of the staff as well as many of the prisoners. This is an example of what could have evolved into a very different type of emergent situation.

Someone was distressed. There was a decision taken by a staff member to call me, even though it was after hours—it wasn't within the usual nine to five—because there was a perception that I might be able to engage in a discussion that could yield a very different result than where they were headed, which was potentially segregation, restraints, using OC spray and the like.

Those are the kinds of things that were being talked about earlier, things that can be developed from the beginning. If you establish those kinds of relationships and know who actually might be able to work with this individual to move them to a different place, it can be done in an emergency and has been done. Those decisions have been taken by front-line staff, by wardens and by more senior individuals within the Correctional Service of Canada, in my humble experience.

I think there are opportunities to do things differently. Yes, people have to be able to make decisions, but the choices they make depend on what they know is available.

The Chair: Thank you.

Before I suspend, I want to thank Senator Pate, Ms. Mendelsohn Aviv—I hope you make your flight—and Ms. Zwibel. Thank you for your contribution to the study of Bill C-83.

We'll suspend for a minute or two while we clear the room for an in camera discussion.

[*Proceedings continue in camera*]