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Chair

The Honourable John McKay

Standing Committee on Public Safety and National Security

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● (1530)

[*English*]

The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)): Okay, ladies and gentlemen, it's 3:30. I see quorum and we do have a lot to get through today.

As per the agreement we made earlier in the week, witnesses will be limited to seven minutes each, rather than the usual 10 minutes. I'll just simply call the witnesses in the order that they're listed on the agenda.

We have from the British Columbia Civil Liberties Association, Josh Paterson; from the Union of Safety and Justice Employees, Stanley Stapleton; and Lois Frank, who is a Gladue writer from Alberta Justice.

In that order, I'll ask Mr. Paterson for his seven-minute opening statement.

Mr. Josh Paterson (Executive Director, British Columbia Civil Liberties Association): Good afternoon and thank you for inviting me to testify today in unceded Algonquian territory.

I'm from the B.C. Civil Liberties Association, which along with the John Howard Society, are the organizations responsible for the B. C. court decision that I know most of you probably read around the table. I'm not going to belabour the legal conclusions there. I'm going to take it as given that you understand what the court ultimately decided. I want to talk about a particular aspect of it today.

The minister has urged this committee to note that Bill C-83 represents an entirely different regime and, therefore, that the findings of the courts in B.C. and in Ontario really aren't that applicable.

As you've heard from other witnesses, including the correctional investigator and in our view, the harms of the existing regime remain possible under this new bill because nothing that this bill promises is guaranteed in relation to segregation. I would suggest to you, with respect, that the government's argument, which is that we're in an entirely new world and, therefore, the rulings have no or little relevance is misplaced.

While I don't have time to get into all of the bill's significant shortcomings today in that regard, I will point you again to the submissions of John Howard, the CCLA and the correctional investigator, with whom we largely agree. I want to focus my time today on the issue of oversight.

Without taking you through all of the facts, the B.C. ruling found, as a fact, that there has been a long history of a culture of non-compliance with law and rules in the prisons, specifically as it relates to segregation, to solitary confinement and to isolation. Also, there has been a similarly long history of resistance to the idea of external oversight of segregation placements. The court drew a clear connection between those two trends and I hope that the connection will also be evident to this committee.

The B.C. court spends pages and pages on this, starting with the government's own Vantour report in the 1970s, which concluded that the penitentiary service—as it was then known—had failed to comply with existing laws, regulations and policy. Justice Leask goes on to the MacGuigan report, which the court found "was a damning indictment of the absence of the rule of law in the penitentiary system." It was actually after that report that the government put in place the independent chairpersons for disciplinary segregation and for disciplinary hearings.

He arrives at the Arbour report on what happened at the prison for women, which found that there were not individual instances of failure to respect the law, but rather a culture that failed to respect the law. Of course, she recommended hard caps for segregation and judicial, or at least independent adjudicator, supervision.

Following Arbour, there were at least six other internal CSC reports, House of Commons reports, correctional investigator reports and the Ashley Smith inquest. Each of them made recommendations that pointed to the need for independent adjudication of segregation decisions. Every time, the government has decided to ignore those recommendations.

Here we sit again. We have a court decision, in which the conclusion, based on the evidence and findings of fact, is conceded as true by the government and the finding is that internal oversight won't do. That ruling sits atop a heap of expert recommendations, stretching back decades, and the undisputed findings of fact that there is systemic widespread failure in the prisons and a culture of non-compliance. In our view, Parliament should pass no bill without ensuring that this long-standing issue is resolved.

Just last week, at the Court of Appeal in British Columbia, Canada tried to argue again that what had happened was just a bunch of individual bad decisions, like misapplying the law, poor exercises of discretion and so on. The judges of the court of appeal actually interrupted and stopped the lawyer for Canada. The lead judge said words to this effect, “Canada, you're not challenging the findings of the trial judge. The trial judge found that there were systemic problems and that these problems were widespread and systemic in nature, not a series of individual issues. Why are we arguing about individual issues?”

This is really critical. The Government of Canada doesn't challenge those findings. In fact, it conceded that there has been serious systemic and persistent mistreatment and that there were breaches of rights.

● (1535)

When you're considering what to do about this bill, and indeed what to do perhaps about oversight, I think it's really important for the members to sit within that context, not the context of hope and aspiration that CSC has shown itself capable of administering these things properly. In fact, that isn't the finding. The Government of Canada has agreed with those findings by not challenging them.

That brings me to the issue of independent external oversight. To be clear, we don't support this bill in its present form. A particularly egregious shortcoming is that it continues the decades-long record of rejecting external oversight in favour of an internal system. We ask that Parliament not repeat that mistake.

It's been raised in this committee that the Ontario court said the review could be internal. In questions, I'd be happy to get into the differences between the two judgments and why there's that discrepancy.

Here's what the judge in B.C. had to conclude:

> ...I believe that the evidence led before me...demonstrates that CSC has shown an inability to fairly review administrative segregation decisions.I therefore conclude that procedural fairness in the context of administrative segregation requires that... reviewing a segregation decision be independent of CSC.

By systematically failing to treat prisoners fairly, whether through a lack of resources or whatever other reason—I'm not saying it's malfeasance—CSC has not only breached the Constitution, but it's avoided the will of Parliament.

Is that the one-minute signal, sir?

The Chair: Yes.

Mr. Josh Paterson: The court in B.C. wrote, for example—and the correctional investigator told you this week—that one of the most disturbing elements of the whole framework is that for years, CSC had been avoiding the independent chairpersons in disciplinary segregation and circumventing them to go to administrative segregation.

In my view, that is an affront to Parliament's delegated authority. Parliament had already concluded that in respect of some placements in segregation, there needed to be independent review, and the CSC has deliberately and for years—and Canada doesn't challenge this—avoided doing that.

I think that's a really important fact to keep in mind when considering what to do here.

I'll leave it at that, Mr. Chair. Thank you.

The Chair: Thank you, Mr. Paterson.

As a helpful hint to the witnesses, just occasionally look at the chair so that I don't have to interrupt. I don't like to interrupt witnesses as they are trying to make their presentations.

Mr. Stapleton, you have seven minutes, please.

Mr. Stanley Stapleton (National President, Union of Safety and Justice Employees): Thank you.

I certainly agree with my colleague before me that oversight is critical with anything that happens within corrections because, sometimes, that is certainly missing.

I bring to the table my years of experience. I have over 30 years in corrections. I started off as a correctional officer at the medium-security Drumheller Institution in 1980. In 1983, I moved to the maximum-security Edmonton Institution. I was a correctional officer for 22 years there, and now I'm a program officer. That's still my substantive position.

As the president of the Union of Safety and Justice Employees, I represent thousands of employees who go to work every day in corrections to prepare offenders for their safe return to society.

Today we're talking about Bill C-83, measures to make Canada's federal prisons more humane and improve offenders' chances of rehabilitation. USJE believes Bill C-83 is a first step in this direction. However, from my experience, I can say that new resources are needed to ensure its successes. Today, front-line workers burdened with heavy caseloads are at a breaking point. Something has to give.

Since implementation of the reforms proposed by the new bill will fall on front-line workers, this is what USJE recommends. From what we understand, there is approximately $484 million earmarked to support these changes. From USJE's perspective, some of these funds must be used to recalibrate ratios of parole officers and program officers to offenders.

Currently for parole officers, ratios are 30:1 at a max, 28:1 at a medium, and 25:1 at a minimum, but there's no back filling if a parole officer goes on a long-term sick leave or when they take vacation leave. There's no back filling. This means that, when the parole officers are not there, the offenders have significantly less support.

USJE believes that the ratio should be 20:1 for parole officers, and we also believe that back filling must be reinstated. For program officers working in the SIUs, the ratio can be no more than 3:1. At times, due to the complexity of the offenders, the ratio needs to be 1:1.

The changes Bill C-83 proposes for more meaningful interaction with offenders are positive, and that's important, because in all my years working in federal prisons, I've always felt that you need to treat people like people.

I spent an accumulation of approximately four years working in segregation units, and I can tell you that in all those years I never saw one offender who went in to segregation come out of segregation a better person.

The one thing I can tell you is that, when I'm on the street and I have offenders approach me—and they do approach me—or when I'm working bingo for my daughters to raise money for sports, they talk to me there. The one thing I've heard over and over again is, “Thank you, boss. Thank you for treating me like a person when I was inside. That helped me, on the outside, to understand.”

Those interactions definitely need to take place, and they need to take place inside the prison. Preparing offenders for their safe return to society requires real interaction, and that means programs, counselling sessions, mental health care and more face time with individuals. Providing this interaction is necessary to even the most challenging offenders.

Bill C-83 addresses some of these issues, but as it moves forward, the system needs to be better resourced to undertake these changes. Funding matters. Having been so long in the service, we've been through several deficit reduction action plans with the latest, of course, by the previous government. Previously, the action plans have not had a huge impact on the front line. Most of the effects were at middle management and upper management; however, the last time, the effects of cutting resources at the front line really had a significant impact.

As I said earlier, the members that I represent, particularly programs and parole officers, are really feeling the stress. USJE believes that new legislation is a good step in the right direction if resources are identified and put in place to improve offenders' chances for rehabilitation, to help keep Canadian communities safe and to ensure the safety of all employees working inside federal institutions.

Thank you.

● (1540)

The Chair: Thank you.

Ms. Frank, you have seven minutes please.

Ms. Lois Frank (Gladue Writer, Alberta Justice, As an Individual): Thank you for inviting me here.

I'm a Gladue writer, I'm an educator, and I live on a reserve. I could read my presentation, but I've made copies for you.

One of the things I'm doing currently is working with the neuroscience people at the University of Lethbridge. Because I've been doing this work of writing up Gladue reports, I've met a lot of offenders. I've been in Drumheller and some other prisons. There are all different names for these prisons.

I have the experience in talking to a lot of these people and in being in these institutions. One of the reasons I was quite interested in coming here was to share my experience of doing these reports and of talking to the people who are most affected.

I had a chance to look at the bill, and while I understand that there needs to be reform, a lot of native people have been living on reserves as if in prison. I say that because I do live on a reserve and it can be very oppressive sometimes. There are few resources, housing is a problem, and there are no property rights. Things such as that contribute to the problems that first nations people have in this country.

The Indian Act is our policy. The Indian agent was our warden. Now we have band councils that are designated to be our—

● (1545)

The Chair: I apologize for interrupting. I'm trying to get my assistant's attention. Go ahead, please.

Ms. Lois Frank: A lot of our band councils are not representing the people in our communities. We see that the native people only represent 4% of the population. There have been many studies done. The overrepresentation is 50% to 70% in the justice system. There's something wrong. To try to create something that is going to rearrange the deck chairs on the Titanic...because it's getting worse.

I live in a community where we have a major opioid crisis. We had seven deaths last week. We have problems, but unless we are able to deal with some of these problems head-on, I don't think we're going to see the reduction.

The Gladue reports were put into place because the Supreme Court in its wisdom saw that the sentencing judges had to look at the circumstances of aboriginal people. That hasn't been expanded to the correctional system, not to my knowledge. I write these reports, spend a lot of time, talk to people, get into the souls of these individuals, their families, and then it stops there.

The recommendations that we make oftentimes are not used by the correctional system. There's a need for healing plans rather than putting people in solitary, in what a lot of inmates call “the hole”. You know, it's counterproductive. Sometimes the only thing they get is a bible and many of them have literacy problems, so sticking them in a room for 22 hours a day, with no human contact and no chance to rehabilitate themselves, is just going to lead to their going into the communities and reoffending.

I would like to see the Gladue program implemented in the correctional system because we do a lot of this work, and where does it go? It has to go somewhere to be meaningful for families, for inmates. The work I'm doing with the neuroscience, you might think that's kind of odd. I've worked in criminal justice for many years, but I'm doing doctoral research with one of the leading neuroscientists in the world, Dr. Bryan Kolb. We're looking at ways in which we could perhaps look at some of the conditions, and not just the mental health, cultural and economic ones. Maybe we could look at the biology, the science, because in many cases a lot of these offenders have been misdiagnosed or not diagnosed at all. There are ways to treat them and to prevent or even reverse some of the effects.

FASD is a big problem. A lot of the individuals who are in the justice system have been diagnosed by various people: social workers, teachers, all that. They're labelled as slow learners, and so on. They're given Ritalin because they're hyperactive. Maybe they're just bored in school. I've talked to teachers for many years. We need to look at different approaches. Rather than spending a lot of money creating something new, maybe looking at new prisons, new-generation facilities, maybe we could look at expanding the Gladue program into corrections and utilizing that.

I also believe that we need to involve band councils. The terminology that is used in this bill is perplexing because they're changing it from “aboriginal” organization to “indigenous governing body”. That could have negative effects on indigenous people, because you have to get the permission. Right now there's no impetus. There's no reason why band councils should get involved in these issues like criminal justice. Make them. Put in the resources and get people in there like these governing bodies to help solve some of these problems.

I'm here with regard to implementing the Gladue into corrections.

● (1550)

The Chair: Thank you very much, Ms. Frank.

Monsieur Picard, you have seven minutes, please.

[*Translation*]

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

I'll ask my questions in French,

[*English*]

if you want to put your translation device on. Do you need a hand with that?

[*Translation*]

I want to thank the three of you for joining us and for your presentations.

Mr. Stapleton, I want you to comment first on the recent announcement that the department will invest $448 million in the Correctional Service of Canada in the next six years.

[*English*]

Mr. Stanley Stapleton: Certainly $448 million is a significant amount of money. As we move forward, will it be enough? We're not sure, but certainly it will start the process, without a doubt.

Of course, as time goes on and more money is required, that $448 million is spread out over six years, I believe, and it increases as we move forward. It will be needed not only for staffing and other things, but it will certainly be needed in some other situations. It might be for some physical restructuring of the facilities themselves. I think it's a good investment.

[*Translation*]

Mr. Michel Picard: You worked in the field as a correctional officer. Based on your knowledge of the management of an inmate in what used to be a segregation unit and what's now being changed to a structured intervention unit, will the proposed increase from two hours to a minimum of four hours outside the cell affect the number of staff or the workload? How will this change affect operations?

[*English*]

Mr. Stanley Stapleton: On the resources themselves, for example, if you can only deliver programs to one to three people at a time, you're going to need more program officers. As there are more programs and things that are delivered in the structured intervention units, that will almost certainly mean more work for the parole officers, and the parole officers will have to do more assessments in that as new information comes in. In order to provide the necessary services for the offenders who are living in these areas, there will be the need for an increase in those personnel resources.

[*Translation*]

Mr. Michel Picard: Thank you.

Mr. Paterson, first of all, I want to thank you again for the excellent discussion that we had this week. It was very constructive. I understand that your association and our committee are seeking to improve a system that you think — and I fully agree with your rationale — has a number of shortcomings...

One issue that we discussed is the challenge of choosing between making changes and improving the current system. There may not be a difference between the two options, since the measures that we want to implement are designed to improve the system.

This brings me to the independence of the oversight body that you're proposing. You argued that an internal organization would be frowned upon for efficiency or partisanship reasons, for example. I understand your argument.

I would like you to consider the following comparison. When an internal issue arises, the police call on the internal affairs division. Within the organization, the division could be seen as both judge and jury. Nevertheless, the division is recognized as independent even though, as far as the police are concerned, it's made up of police officers.

I don't want to make the same comparison with CSC, but would having an independent group that reports to CSC pose a different problem and would it make this idea inconceivable?

[*English*]

Mr. Josh Paterson: If I understand your question correctly, let me just say that in respect of the police in the situation you raise where something goes wrong, where there is some type of misconduct and it's referred to professional standards or internal affairs, as they might say on TV, that is in respect of the discipline of members of the police. When someone has a complaint about the police, there is actually independent supervision of those reviews in most jurisdictions in the country.

Again, that's just where you have a complaint against the police. Your rights are at stake but your liberty isn't being threatened in the moment, and still we have *une surveillance indépendante* for that.

Here what we're talking about is substantial deprivation of liberty within a circumstance where liberty is already deprived. We don't know what types of resources will be there. We don't know what type of staffing will be put in. Therefore, it's possible that despite best intentions, and we think likely, there are going to be people who will continue in conditions of isolation very similar to what we see now, because this act doesn't prohibit it. We say, therefore, for those people, there does need to be an independent decision-maker who can come in to review those placements and that it isn't, as you recognize yourself, strictly analogous to an internal police disciplinary matter.

● (1555)

[*Translation*]

Mr. Michel Picard: What are our options? We're not talking about oversight. This isn't because oversight is rejected, but because it isn't included. This leaves open the possibility of submitting recommendations.

Instead of suggesting a single approach, unless you think that only one exists, can you provide a few options or ways to ensure the proposed oversight?

[*English*]

Mr. Josh Paterson: As far as exactly how it would be constructed is concerned, there are probably different ways. What we do submit there is only one way to go about is whether it ought to be external to CSC or internal, independent within CSC but over to one side, outside the chain of command. We reject that fundamentally.

Whoever is doing the reviewing, the triggers ought to be along these lines: When a registered health care professional or the patient advocate advises CSC that the preservation of the person's health requires their removal, the review should be triggered after another 24 hours to allow for management to try to deal with that situation. If someone, anywhere in the prison, spends more than five consecutive days, or 15 days in a calendar year, inside their cell, whether they refuse or whether they are not granted, that is another trigger as to when that should kick in.

The Chair: Thank you. That's a good conversation.

Thank you, Mr. Picard.

Mr. Motz, please, you have seven minutes.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Thank you, Chair, and thank you to the witnesses for being here.

Mr. Paterson, I'll start with you.

The correctional investigator was here on Tuesday. He said that he doesn't believe Correctional Service Canada should investigate itself in certain scenarios and that they've lost the credibility to do that in the investigator's eyes. The minister, in contrast, has asked us to trust Correctional Service Canada and him to get it right and that we should just pass the law as it stands.

Do you agree with the minister that we should just trust that the regulations will get it right and everything else will be fine?

Mr. Josh Paterson: With great respect to the minister and his intention, I don't think we should be trusting CSC to do this. Without seeing regulations, it's very difficult to say, okay, we'll all sign off on that.

While the minister may ask this committee and parliamentarians to trust CSC, the minister's lawyers in court, having had the opportunity to challenge the findings of courts in Ontario and B.C. that CSC was not to be trusted, refused to take that position. They conceded all of the factual findings. They conceded all of that which I already talked about, so with respect, I don't really think it's open to the government to simultaneously say, “We ought to trust CSC,” while it deliberately falls back from deciding to make that argument in court.

● (1600)

Mr. Glen Motz: Thank you.

Mr. Stapleton, we've heard from the minister himself and others that this bill cannot be costed until it's passed. Something we heard from former public servants is that this is not necessarily the case, in their experience.

You've said that this bill is only useful with resources. Is it irresponsible to pass a bill without knowing exactly what it's going to cost or when or if those resources will even be available in the first place?

Mr. Stanley Stapleton: My understanding is that there is $448 million being put towards doing what this bill is asking to be done. That's a significant amount of money.

Is it enough? I'm not sure. Is it too much? I'm not sure. Until we actually start the process inside corrections and put in place the tools that will need to be there, we won't really know the exact cost.

Mr. Glen Motz: Thank you.

Mrs. Frank, it's great to see you again. Thanks for being here.

Usually I see you at home, but it's good to see you here.

Ms. Lois Frank: Here it's warmer.

Mr. Glen Motz: Yes, it's a lot warmer.

As an expert in Gladue writing as well as first nations' work, in your review of this bill, Mrs. Frank, does it raise any alarm bells? You just briefly touched on them in your opening statement. Is there anything that concerns you greatly about this bill that you can expand upon further?

Ms. Lois Frank: I think a concern is the terminology. I had some concerns about the “indigenous governing body”, which gives more authority to band councils rather than the grassroots or other organizations, because a lot of these people who are being released have to go through them. That excludes people in the urban environment, the cities.

Mr. Glen Motz: With that, what would you recommend to be the change?

If we're saying that the phraseology or the description that was used needs to changed in Bill C-83, what would you recommend that it should be?

Ms. Lois Frank: It was previously “aboriginal community”. I don't know why that changed to “governing body”. I think it's because of the political correctness that the government tries to have, not to offend band chiefs and councils, but sometimes that's where the problems begin.

Mr. Glen Motz: Yes.

Ms. Lois Frank: I think to have to go there...and the courts oftentimes will not make decisions for individual first nations people because of that notion.

The other thing is the definition of health. Who's going to provide these services? What is restorative justice? Define it, because we have so many groups in Canada. First nations people are not one homogenous group. You need to clearly define that. Also, you need to look at who's going to pay for this.

Mr. Glen Motz: Thank you.

Mr. Paterson, the minister stated, when he appeared at committee, that C-83 would effectively eliminate segregation altogether.

Do you believe, as you understand Bill C-83, that statement is an accurate description of what will happen inside the bill?

Mr. Josh Paterson: I wish it were so, but I don't think it will be. I don't see any reason to expect that.

The bill continues to permit a lot of the same conditions to persist. The opportunities to have the four hours out of the cell and the two hours of meaningful contact can be taken away under a very broad discretion. It's very difficult to review, for whole bunches of different reasons.

Given what we know about the history of the prison system, we're very worried that will happen.

Mr. Glen Motz: Thank you.

With the time I have, my last question goes to Mr. Stapleton.

The minister has stated, in his statement to the committee, that the priority of corrections, and his priority, is to ensure the safety of staff, inmates and the public with Bill C-83. Do you feel this legislation ensures that happens in the way that it's intended?

Mr. Stanley Stapleton: Working in the prison environment is always an unsafe environment. As long as the personnel and the tools are there, I don't see why this would be significantly less safe than it was before.

Another thing we see is, if you create an oppressive environment and you're oppressing people, then those people who come out are probably less safe than when they went in. You have to try to create an environment where they're used to engaging under fairly normal circumstances.

● (1605)

Mr. Glen Motz: Thank you.

The Chair: Thank you.

Mr. Dubé, please. You have seven minutes.

[*Translation*]

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

[*English*]

Mr. Paterson, I want to start with you on the question of oversight, which has come up a number of times. As we all know, there was a previous bill that sought to address issues related to solitary confinement, Bill C-56, which was never debated in the House. One of the issues in that bill is that it actually had a mechanism, or at least more of a mechanism than we see in this legislation. The other issue was enforcement, as well, its having teeth, as we like to say.

I wonder if you can go into that, the importance of not just having a report or examining the particular case of an individual, but also having the ability to put remedial measures in place, so again understanding the link potentially with whether it's judicial or quasi-judicial oversight, or whatever form your organization believes that could take.

Mr. Josh Paterson: Thank you, Mr. Dubé.

It is very important. Moreover, the court in B.C. concluded that it was necessary that an external oversight body actually have a decision-making power. The hope would be that if everything went pretty well under this bill, you wouldn't have to be using that all the time and whatever body was there to do that could also make other orders. It wouldn't just be stay and a release. It could be in order to make sure that you comply with the statute, or to make sure they get their four hours and so on. However, having that order-making power is necessary, just based on a sanguine view of the evidence of years and years of a culture of non-compliance within the institution. In our view, it is not logical in the face of that unchallenged evidence to suppose that recommendations would be good enough.

In addition to the factors I mentioned before, that review should come in also at the 15-day mark of someone's placement in an SIU, and when someone spends 30 days or more non-consecutively in an SIU, that review power ought to also come into play.

As for who does it, I understand there are some restrictions as to what the committee can do about that, but there aren't those restrictions at report stage. It would be a good idea for the government to get it right, and if it requires spending power, for the government to bring in something appropriate.

Mr. Matthew Dubé: Thank you for that.

In terms of the wording in the legislation, if I'm not mistaken, in the B.C. decision they talked about the abuse, the systemic issues brought by witnesses we had on Tuesday, the fact that it became something that was basically almost operationalized. I don't want to be too crude in the terminology I am using.

One of the parts of the bill that I've harped on during this study is in proposed paragraph 32(a) where it talks about "for security or other reasons". I wonder if there's concern from your organization, based on the work you've done with the court decision in British Columbia, that "or other reasons" flies in the face of that and allows this abuse that took place, which was the fact found in the decision that the government hasn't contested, to then continue with that type of regime in place.

Mr. Josh Paterson: We do think that is problematic and we have good reason to think that. As the correctional investigator observed, and this was accepted as well by the trial court, there were a lot of other reasons that folks were winding up, for example, in administrative segregation that went beyond security, including punishment, which was actually supposed to be under an entirely different regime. Therefore, there definitely needs to be a sharpening up there.

Mr. Matthew Dubé: I appreciate that.

Mr. Stapleton, I want to go to you because you raised the issue of funding. I want to make the connection with another point you raised, which was about treating people humanely.

Again at the risk of beating a few dead horses here on some issues that are important, the corrections investigator raised the issue that there's a lack of psychiatric services. We know that mental health is one of the key issues around the abuse or overuse of solitary confinement. Is there concern for you that if there's a continued lack of funding, some of the issues we're currently seeing will continue to happen regardless of any legislative solution?

● (1610)

Mr. Stanley Stapleton: If there's a lack of funding, we're very concerned that the cycle will continue. You're absolutely correct. The number of psychologists and psychiatrists, particularly psychiatrists who are working with these men and women, are very few and we absolutely need to increase that.

Mr. Matthew Dubé: I apologize if I interrupted you, but I'm just wondering if, in your experience, you've seen some of this abuse of certain tools that are in the tool kit or of different measures in penitentiaries because there's been a lack of resources.

For example, it's almost a foregone conclusion from what we've seen reported publicly. They take individuals, saying, "We don't have the doctors. We're just going to put them in solitary because we can't deal with them."

Mr. Stanley Stapleton: Certainly solitary confinement, administrative segregation, have been used in order to manage offenders who they struggle to manage using other tools. That is very disappointing because putting people in solitary confinement does not help.

Mr. Matthew Dubé: We talk about the public safety aspect, and I'll end on this. Again, I think it goes without saying from other testimony you've given this committee in the past that anything that's done that undermines the mental health of offenders is also a public safety risk for the folks you represent.

Mr. Stanley Stapleton: Absolutely. Just imagine putting somebody in a cell for 22 hours a day. If they already struggle with mental health issues, that's just going to exacerbate those issues. As they continue their journey towards reintegrating into the community, if those are not dealt with at the appropriate times as they move along in that journey, public safety is going to suffer at the end.

Mr. Matthew Dubé: Thank you.

The Chair: Thank you, Mr. Dubé.

Ms. Dabrusin, you have seven minutes, please.

Ms. Julie Dabrusin (Toronto—Danforth, Lib.): Thank you.

I'd like to begin with Mr. Paterson. I was wondering if you have a copy of Bill C-83 on your computer in front of you.

Mr. Josh Paterson: Yes, I can bring it up.

Ms. Julie Dabrusin: Perfect.

The only reason is that I want to clarify something. I know that I've heard Monsieur Dubé bring up proposed paragraph 32(a) a few times, and that's in the section entitled "Purpose". He referred to the wording "or other reasons".

I just wanted to have your take on it because proposed section 34, immediately below, says:

> The Commissioner may authorize the transfer of an inmate into a structured intervention unit under section 29 only if the Commissioner is satisfied that there is no reasonable alternative to the inmate's confinement in a structured intervention unit and the Commissioner believes on reasonable grounds that

Then there is listed proposed paragraphs (a), (b) and (c) in which there is no general basket clause.

I'm just wondering—if I can have that time—because you commented on the "or other reasons". How does that tie in with proposed section 34?

Mr. Josh Paterson: Thank you for the question, Ms. Dabrusin.

What we have seen in the existing regime is that, as I was just explaining, purposes that were not set out as the reasons that people go into administrative segregation, or purposes for which people were put into administrative segregation, notably, for the purpose of punishment, is not found anywhere as a reason for administrative segregation in the current bill.

I know this list is more limited than the other purposes contained in the “Purpose” section, but our concern nevertheless stands that prisoners may wind up in these places for reasons other than they're supposed to. That is another reason that we think it's so important that there be an external oversight mechanism.

Ms. Julie Dabrusin: First of all, I absolutely agree with you about the external oversight, so that's not my discussion.

I wanted to clarify, because it seems to me that the point you're taking is in fact a “not following the law as written” point when you're saying people being placed in...when it's not one of the listed reasons. I just wanted to clarify from my reading of it, that, in fact, it can only be done on listed reasons.

The oversight piece is to make sure that it's followed.

Mr. Josh Paterson: Sure.

Ms. Julie Dabrusin: That was the part that I was hoping....

About the oversight, it seems like a smaller point, but I've been looking at the Ontario legislation, which never did come into effect but did pass three readings. It requires that written reasons be provided when a person is transferred into, in that case, a segregation unit.

I was wondering whether it would be helpful if Bill C-83 were amended to include a requirement for written reasons, including what alternatives were considered for that transfer. There would be some type of a record provided to the inmate, and it would also just be available so that when you get to the oversight part, you have something at least to track it back.

● (1615)

Mr. Josh Paterson: Our organization typically takes a position that written reasons for decisions that have a real, fundamental effect on someone are always a good thing.

I wouldn't say that its inclusion would cure the other defects in the bill, and you're not taking me to say that, but sure, written reasons would be useful. I agree.

Ms. Julie Dabrusin: What about when it's a voluntary transfer, for when an inmate has requested to be transferred into a structured intervention unit? Would it also be useful to have that type of a record kept, that this was requested and these were the other alternatives that were considered, before making that transfer?

Mr. Josh Paterson: I think that would be quite important.

The position that we took, and continue to take, in our litigation is that voluntary, in many cases, is not voluntary. Currently, if someone wants to be in administrative segregation, to us that's an indication that there is a failure of some kind that is going on in the general population to protect the individual, etc. We do think that those voluntary placements also would benefit from what you're talking about.

Ms. Julie Dabrusin: I'm just trying to get the pieces. As far as I see it, part of this is building the oversight. There are the oversight mechanisms and you've talked about that a bit, but there's also creating the extra layers within it. That's why I'm asking these questions.

Mr. Josh Paterson: I understand. Thank you.

Ms. Julie Dabrusin: I just wanted to be clear. I'm not putting that as an alternative.

I'm sure you've had a chance to look at the Ontario legislation. Is there anything that you like, as well, within that legislation? For example, I notice that somebody has raised the segregation prohibitions in the Ontario legislation. Is that translatable to a federal context? Is that something?

Mr. Josh Paterson: We don't see why not.

For example, in the Leask ruling in B.C., it was found that to the extent that the current system allows any placement of someone with mental illness or disability in segregation, it violates the Charter of Rights and Freedoms. It discriminates against them.

Whether it's mothers with child, minors or individuals who have mental illnesses, one wouldn't find us objecting to prohibitions on those placements.

Ms. Julie Dabrusin: Thank you.

Mr. Stapleton, I really appreciated when you talked about the importance of treating people with humanity. That's a basic piece.

One of the things that struck me—I believe it was in the B.C. case, but I might be blurring it with the Ontario case—was that a lot of the contact was from meal hatches. People actually hadn't had direct—and I noticed that in the Ontario legislation as well—there was a requirement that when there was contact, that it was not through the meal hatch.

Do you think that would be helpful to have? Some type of a clarification that a conversation through a meal hatch is not, in fact, meaningful contact?

Mr. Stanley Stapleton: I think that would help, whether it goes in the regulations or not, because you're absolutely correct that talking through a meal hatch or through a crack in the door is not meaningful interaction at all. You need to have a much more normal interaction with these men and women, in order to be meaningful.

Ms. Julie Dabrusin: That's the end of my time.

The Chair: Thank you, Ms. Dabrusin.

Mr. Eglinski, you have five minutes, please.

Mr. Jim Eglinski (Yellowhead, CPC): Thank you.

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

I'll start with Mr. Paterson. We've had a number of witnesses come to us and say that solitary confinement is necessary and then we've had others, who work in the field, who say it's essential for inmates to have solitary confinement. We can use whatever terminology they want to use in the new bill.

Do you feel that there still is some need for that within the penal institutions of Canada?

Mr. Josh Paterson: Thank you for the question.

We've never taken the position in our litigation that there shouldn't be a form of isolation or confinement that CSC could resort to when it needed to in very serious cases and emergencies, etc.

Under the current system, our position is that there should not be prolonged and indefinite solitary confinement. There should be review and so on and so forth. That's our position.

● (1620)

Mr. Jim Eglinski: Mr. Stapleton, can we get a reply from you, since you've been working in the field for a long time?

Thank you for your service there.

Mr. Stanley Stapleton: Thank you.

Yes, there is certainly always a need. There are always individuals who are too violent or too disturbed to take quickly and move them back into the general population or even to allow them to mingle with two or three. There are those times when you need to do that.

However, even when they're down there, we still need to provide them with some sort of interaction with program officers, psychologists, psychiatrists and health care people. We absolutely have to provide them with that.

Mr. Jim Eglinski: Thank you for the comment you made. I think Ms. Dabrusin said the same thing earlier. The interaction between prison guards and the inmates is so crucial.

I know when I attend the Grand Cache Institution in my area, which is medium security, I've wandered through there with the guards and intermingled with the prisoners. You see a very strong relationship between some guards and the prisoners, a very good working relationship. Then you see some intensity, as I guess I'll describe it.

Are we training our young prison guards adequately to deal with these prisoners? I used to escort prisoners for a number of years in my role as a police officer, and if you work with them and have a good relationship, it makes it so much easier.

Are we giving enough training, and will Bill C-83 do it for us?

Mr. Stanley Stapleton: I haven't been on core training for almost 40 years.

I would say no, at this point in time we are not. I speak from my experience of seeing new correctional officers come off core training and start interacting, and they do seem to lack those skills.

The people I represent, program officers, parole officers, teachers, and so on, naturally have those skills, but—

Mr. Jim Eglinski: They're more experienced.

Mr. Stanley Stapleton: They're more experienced in that type of thing.

Yes, they could use more training.

Mr. Jim Eglinski: Thank you.

Under proposed subsection 37.3(2), it still gives:

> The institutional head may determine that the inmate should remain in the unit only if the institutional head believes on reasonable grounds that allowing the inmate's reintegration into the mainstream inmate population

Should that be left in his hands, or should it go to an alternate group?

Mr. Paterson talked about oversight. I've been a policeman for 35 years, and lived in B.C. for all of those 35 years. We had the public complaints commission of the Province of British Columbia that oversaw complaints against police officers. Even though we investigated our own, they also investigated us and investigated our investigators who did the job.

Is that what you're referring to in there, and do you think there's a need for that?

When you give one person the authority to do things, it might cause problems.

Mr. Josh Paterson: Without saying, by the way, that even having the external oversight would fix everything else in the bill, yes, but it's not quite the same as the police complaints commissions. What we do say is that there needs to be—

Mr. Jim Eglinski: There needs to be independent....

Mr. Josh Paterson: —someone external with a decision-making authority.

Oftentimes, the external commissions for policing can make a finding but can't actually impose discipline, and so on.

At some point, the external person does need to be able to make a decision, because that is how you're going to make sure there is finally compliance and a culture of compliance grows. CSC won't want to get decided over by this body, so there will be an encouragement to actually do better in the first instance.

The Chair: Thank you, Mr. Eglinski.

Ms. Damoff, please, you have five minutes.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you, Chair, and thank you to all our witnesses for being here.

Stan, I'm going to start with you. You've mentioned the $448 million that we're putting into corrections. It's certainly a conversation we've had here a number of times, that for these SIUs to work, there has to be investment, because for your program officers and parole officers who are trying to do the programming for these offenders, there needs to be enough. There needs to be the time they need. However, we also need to make sure that everyone, including your folks and the corrections officers, are safe while they're in there.

We had even the John Howard Society saying that there still needed to be disciplinary segregation. I was actually surprised at that.

With the investments and with this legislation, do you think your folks will still be safe when they're working in the prisons?

● (1625)

Mr. Stanley Stapleton: Yes, I think so.

I come from an era where I was a correctional officer and we didn't have vests or anything such as that. We had the clothes on our backs.

That how most of the people I represent interact with the offenders in the institutions. I don't see many of our people thinking they will be less safe, as long, of course, as there are the correctional officers available to respond if necessary.

Ms. Pam Damoff: Okay, that's great.

Do you think it will allow you to effectively manage the offenders when they're in the SIUs?

Mr. Stanley Stapleton: Yes, I certainly do. Having worked quite a bit in administrative segregation and the hole, if you have sufficient staff you can certainly manage the risk reasonably well.

Ms. Pam Damoff: Okay. Thanks, Stan.

Ms. Frank, it's really nice to have you here, and I appreciate your expertise on the Gladue reports because the legislation legislates that the Gladue reports be taken into consideration when an offender is sent to prison.

During our study at the status of women committee, we heard those reports were misused at corrections and were resulting in increased security levels, particularly for women in prisons. The Native Women's Association is testifying on the next panel, but they had provided a brief and in that they had specified that these reports should be directed to the needs of the offenders as opposed to the perceived risk from them.

I'm wondering what your thoughts are on that.

Ms. Lois Frank: I think there's a difference between the pre-sentence reports and the Gladue. A lot of people don't know the distinction between the two.

I do these reports and I think people have to be trained in how to do them. I think sometimes that's a problem.

Ms. Pam Damoff: I'll stop you though because, just to clarify, the legislation doesn't specifically mention Gladue reports. It mentions taking into account the indigenous.... I was looking for it quickly, but something about indigenous history, taking into account the intergenerational trauma or the history that person has gone through to get there.

Do you support that it would be used to assess their needs as opposed to their risk?

Ms. Lois Frank: Yes, I believe that's what it was intended for. As far as risk, you'd have to ask somebody who does the pre-sentence reports, but I believe the Gladue reports would be a bridge among corrections, the people who are being sentenced and the criminal justice system.

As I said, training. It's not just in the Gladue. It's also police training. I used to teach criminal justice to college students going into law enforcement, and I also see problems with training correctional officers. Sometimes you see institutional racism. I've had a lot of clients who have had problems with guards because they didn't understand—

Ms. Pam Damoff: I don't have much time left, and I have a very quick question again for Stan.

I know you've mentioned you believe strongly in the importance of rehabilitation to make our country safer.

Do you think these SIUs will do more for rehabilitation than the way we currently have the prison set up?

Mr. Stanley Stapleton: Absolutely. I think it'll be much better than the current system where there is very little meaningful interaction.

Ms. Pam Damoff: Provided you're—

Mr. Stanley Stapleton: Provided the resources are there... absolutely, yes.

Ms. Pam Damoff: I keep hearing paperwork being brought up, and I'll be honest, the first thing I think of is your parole officers talking about the burden they have now with paperwork. It does concern me a little when I hear about adding more paperwork.

It can be necessary, but I know they're already quite overburdened with the amount of paperwork they have.

The Chair: We're going to have to leave it there.

On behalf of the committee, I want to thank Ms. Frank, Mr. Stapleton and Mr. Paterson for their contribution to our study of Bill C-83.

With that, we'll suspend for a moment or two and re-empanel.

● (1625)

(Pause)

● (1630)

The Chair: I see quorum. We're back on for our second panel.

We have, from Aboriginal Legal Services, Jonathan Rudin. From Native Women's Association of Canada, we have Steven Pink and Elana Finestone. Professor Debra Parkes has joined us from wherever it is she's joining us from. It looks like British Columbia.

Given that the rule around here is that we always have technical difficulties, I'm going to ask Professor Parkes to speak first.

You will have seven minutes and we look forward to what you have to say.

● (1635)

Professor Debra Parkes (Professor and Chair in Feminist Legal Studies, Peter A. Allard School of Law, University of British Columbia, As an Individual): [*Technical difficulty—Editor*]

The Chair: No truer words were spoken. We see you moving your lips, but we hear no sound.

Okay, we're going to go with Mr. Rudin first while we fix this technological glitch.

Mr. Rudin, you have seven minutes, please.

Mr. Jonathan Rudin (Program Director, Aboriginal Legal Services): Thank you very much.

Aboriginal Legal Services appreciates the opportunity to speak to the public safety committee today on Bill C-83—

The Chair: My apologies, but we can hear her now.

Prof. Debra Parkes: You can hear me now. I was just calling my tech guy, but I didn't do anything.

Should we let Jonathan go ahead?

The Chair: No, I'm afraid we'll lose you again, so we'll go with you first.

Sorry, Mr. Rudin.

Prof. Debra Parkes: Thank you for the opportunity to speak to you today.

I've been researching issues associated with imprisonment in Canada for more than 20 years. My research focuses on charter rights issues in imprisonment, including solitary confinement, segregation, oversight and accountability of corrections, and on the imprisonment of women in particular.

In 2013 I convened an international conference on human rights and solitary confinement at a time when the issue was not on legislative and judicial agendas, so it's heartening to see attention being paid in courts and in Parliament to the human rights crisis and now well-known harms associated with segregating and isolating human beings. However, I have to say, it's disheartening to see this particular legislative response.

I'm going to spend my short time today on what I see as three key issues or problems with Bill C-83, with a focus on the regime for segregating prisoners.

One, the proposal for structured intervention units actually expands rather than eliminates segregated conditions. Two, the proposal for SIUs, as I'll call them, has many of the same deficiencies and even fewer procedural safeguards than the existing regime, which has been found unconstitutional. Three, implementing this bill will be costly in human and fiscal terms in ways that are counterproductive to its ends. These issues lead me to the conclusion that the bill won't achieve its objective of eliminating segregation, and in my opinion, it is also unconstitutional.

The first point is that the proposal for structured intervention units actually expands rather than eliminates segregated conditions. These provisions give incredibly broad powers to the commissioner to designate whole prisons or areas of prisons as SIUs. Purposes for placing in SIUs are also very broad, including from proposed paragraph 32(a), to “provide an appropriate living environment for an inmate who cannot be maintained in the mainstream inmate population for security or other reasons”, undefined and unclear. It's very broad.

Proposed section 37.6 authorizes the imposition of SIU conditions and restrictions even before someone is in one of these new units, in other parts of a prison not designated as an SIU.

Also, with respect to time out of cell, proposed section 36, the opportunity for four hours out of cell and the opportunity for two hours of meaningful human contact are clearly a key aspect of this new regime that is said to make it very different from segregation, but there are many reasons built into the legislation that it might not be possible to actually achieve those hours out of cell. There is no actual way or mechanism or enforcement in the bill to ensure that prisoners are going to get the four hours outside of cell. I think you've heard from other witnesses this week and earlier that prisoners often don't even get the two hours outside of cell that they are supposed to be getting currently. There is no new provisions to make sure that actually happens.

The second point is that the proposal for SIUs has many of the same deficiencies and even fewer procedural safeguards than the existing regime, which has been found to be unconstitutional in the British Columbia case, and parts of it in the Ontario case. I know other speakers have and will speak about this. Not only is there no external oversight, but all of the reviews are internal. The regime itself has fewer safeguards and more discretion accorded to correctional officials. The internal review process includes vague factors such as “the appropriateness of the inmate's confinement in the penitentiary”, in proposed paragraph 37.3(3)(b).

Very much in this regime is left to regulations, which we, of course, do not have now and which are not subject to the legislative review process and this very process that the committee is engaged in right now, such as those proposed or future regulations related to the review by the commissioner after 30 days from the institutional head's decision to keep the person in SIU—which is actually 60 days from an initial placement, as I read the legislation.

As far as I can see, the much-discussed daily visit by a member of health care staff does not actually move the needle. As I read the legislation, it could be the nurse distributing medications. There is no requirement that it be some new form of review or care.

In addition, the existing requirement that the warden or designate visit the segregation area, or SIU, seems to be no longer required under Bill C-83 although it appears in the transfer part of the legislation.

● (1640)

Similar is the fact that health care staff recommendations that a person not be in SIU do not need to be heeded by the warden. There is no mechanism for that, again, and even the obligation is now gone that the warden meet with the prisoner who they have decided must remain in segregation to explain reasons and allow representation. It's replaced with a basic provision that the institutional head will meet with everyone in SIU every day.

Why are there fewer procedural safeguards? The reason for this seems to be that the government has attempted to create a system of isolating prisoners that is not called segregation, and they argue it's sufficiently different from segregation. Therefore, I think the logic goes that none of the findings of fact in the courts, in international human rights standards or the charter rulings about segregation apply. Minister Goodale said in his testimony to this committee:

> The point is this. We are getting rid of administrative segregation. The arguments pertaining to administrative segregation are thus no longer relevant.

That is what is so concerning, the idea that slapping a new coat of paint and a new sign on a segregation unit and aspiring to have people confined for fewer hours in there, but not ensuring it, takes us out of the purview of the charter and human rights laws. In my view, of course, it's clear that the charter does apply and this regime suffers from many of the same deficiencies as the existing one, and some new ones, and will likely be found to be unconstitutional.

I will leave it there.

The Chair: Thank you very much.

I apologize again for the technical difficulties.

Mr. Rudin, do you want to take another run at this?

Mr. Jonathan Rudin: I'll try again, thank you.

The Chair: You have seven minutes, please.

Mr. Jonathan Rudin: Again, thank you for the invitation to be here.

I don't want to spend too much time talking about Aboriginal Legal Services, but I do need to say that our spirit name is *Gaa kinagwii waabamaa debwewin*, which in Anishinaabemowin means “All those who seek the truth”.

We have often appeared as an intervenor at the Supreme Court of Canada and before committees of the Senate and the House.

As you know, aboriginal people are grossly overrepresented in the prison system. In the context of this bill, we have to recognize that aboriginal people are also overrepresented in administrative segregation. The correctional investigator reported that the percentage of segregated aboriginal inmates increased by 31% between 2005 and 2015, and that is compared to a growth of 1.9% for non-aboriginal inmates. Aboriginal offenders have consistently had the longest average stay in segregation of any group.

As was recently stated by the Supreme Court of Canada in Ewert, the reasons for aboriginal overrepresentation in prison do not lie with the inmates, but with the system they are living in. The Supreme Court said that discrimination experienced by indigenous persons extends to the prison system.

We want to focus our submissions today on three issues: the structured intervention units, the failure of the legislation to require the consideration of Gladue factors and the need for independent oversight, and finally the issue of community reintegration.

In our submission, as many other people have said, we have said that the creation of structured intervention units runs the risk of repeating the same harms that are acknowledged to be created with solitary confinement. The bill fails to meaningfully address the underlying reasons that inmates are placed in SIU. The focus on inmates' safety and institutional security in the bill fails to address the finding of the correctional investigator that many inmates who are placed in administrative segregation are primarily at risk to themselves because they are suicidal, engage in other self-injurious behaviour or pose challenges to management because they have mental health or cognitive limitations.

Instead of addressing the mental health needs of inmates, this legislation only guarantees a minimum of four hours outside the cell each day. Clearly, more significant reforms are needed to truly address the underlying reasons people are placed in segregation. Reforms, such as those proposed in the jury recommendations in the Ashley Smith inquest, would ensure that, rather than warehousing inmates with cognitive disabilities or mental health issues and those who are emotionally distraught, CSC would be required to provide appropriate assessment and treatment.

We echo NWAC's submissions about the crucial importance for aboriginal inmates of access to appropriate cultural and spiritual advisers.

Second, in this bill, proposed subsection 37.3(1) ensures the head of an institution reviews the situation of an inmate in SIU on a regular basis, but that protection was also provided for in the previous regulations. Those protections have failed to protect inmates from long periods of time in solitary.

The proposed legislation offers no change to the discretion an institution has had to continue to approve continuous segregation. What is glaringly absent from the proposed legislation is any recognition that the deprivation of an aboriginal person's liberty occasioned by placing them in solitary confinement requires the consideration of the Gladue factors. While CSC has repeatedly stated that the Gladue principles inform their actions, there is nothing in Bill C-83 that actually puts that into practice. The gap between rhetoric and reality in this regard has been remarked upon a number of times by courts that have said that, despite CSC saying that they apply Gladue principles, they simply don't.

Given the inability of CSC to incorporate Gladue principles into its work, and specifically with regard to solitary, it would be naive to think that simply adding those words to the legislation would change anything.

That's why it's so important that there be an independent oversight officer position created that would allow for actual meaningful use of Gladue. This recommendation came from the correctional investigator in 2014-15. That should be adopted and the present legislation should be amended to allow for this position. If that were to occur, we think the wording that Gladue principles would apply to the decisions of that person would actually have some meaning.

● (1645)

To wrap up, our last point is on community reintegration. We're very concerned about the change to the wording on who can participate in an inmate's return to an aboriginal community. This is outside of the admin's say, but it's part of the legislation. The amended legislation deals with who can work to take inmates in under sections 81, 84, or 84.1.

Under the current act, the law says that this can be done by an aboriginal community and that “aboriginal community means a first nation, tribal council, band, community organization or other group with a predominantly aboriginal leadership”.

In this bill, it's proposed that the term “Indigenous governing body” be used, which means “a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.”

We're very concerned about this. We have no sense of what it means to be “authorized”, and the addition of the link to section 35 certainly will disqualify many urban aboriginal communities from participating in the reintegration of their members. As you know, over half of the indigenous community in Canada lives in urban communities, and urban communities want to provide resources to those people who are being released from prison. We have an organization in Toronto, the Thunder Woman Healing Lodge, that is actively working to do this and would be denied this opportunity under this legislation.

We support the definition in an amendment that has been provided by NWAC, which would essentially take the definition in the current legislation, update the language and provide a better definition for what it means to be “predominantly” led by indigenous people. That, we suggest, is a change that would restore us to where we are instead of moving us back.

Meegwetch.

● (1650)

The Chair: Thank you, Mr. Rudin.

From NWAC, I have Ms. Finestone, please, for seven minutes.

Ms. Elana Finestone (Legal Counsel, Native Women's Association of Canada): Good afternoon. Thank you for having us here.

I plan to show you that when you consult with the Native Women's Association of Canada you get comprehensive answers. I would like to discuss NWAC's answers with you today.

I'd like to tell you a little bit about NWAC. NWAC is a national indigenous organization with a mandate and resources dedicated exclusively to empowering disadvantaged and discriminated against women, girls and gender-diverse persons who are first nations, Inuit and Métis. NWAC examines and understands the systemic factors that contribute to their criminalization, their overrepresentation in federal prisons and their confinement under stringent conditions. We have extensive experience in advocating for indigenous women in the House of Commons, at inquests and in various courts. We know that indigenous women are now the fastest-growing population in Canadian prisons.

When discussing Bill C-83, it's important to understand the underlying factors leading to indigenous women's criminalization. I want to highlight the gendered effects of colonization on indigenous women and how these effects should meaningfully respond to their needs. Simply stated, it's about needs: how to assess their needs, how to support their needs and address them in the institution, and how to address those needs outside of the institution.

I don't have enough time to address all of NWAC's concerns about this bill. Suffice it to say that NWAC endorses the Aboriginal Legal Services' submission and echoes their call for more significant reforms in structured intervention units to—as they say—truly “address the underlying reasons” people are placed in segregation. NWAC also supports the Canadian Association of Elizabeth Fry Societies' recommendation to abolish administrative segregation and similar isolating and restrictive practices in women's prisons.

First, I will touch on assessing indigenous women's needs. It is clear that the intergenerational effects of Canada's history of colonialism, residential schools, the gendered implications of the Indian Act on indigenous women's status and many other forms of displacement harm indigenous women. Almost all federally imprisoned indigenous women have had previous violent and traumatic experiences, such as physical and sexual abuse and problems with substance misuse. It's important for federal prisons to meaningfully respond to their realities in a way that's sensitive to these gendered impacts of colonization.

CSC's obligation to advance substantive equality and correctional outcomes for indigenous prisoners underscores the importance of using the Gladue principles to assess and respond to their needs, not their risks, but that is not what happens. Corrections overclassifies indigenous women's level of risk. A high-risk classification translates into restrictive and isolating prison conditions, where they don't have sufficient or culturally appropriate care. These restrictive, isolating and culturally inappropriate conditions are mentally and physically harmful to them. They perpetuate the gendered effects of colonization.

As you can see, indigenous women in federal prisons require the most support but are the most punished. CSC conflates risks with needs, and this is troubling, since the systemic and background factors elucidated in Gladue are intended to be mitigating. That's why NWAC wants to ensure that systemic and background factors affecting indigenous people are applied correctly.

We recommend that you amend proposed section 79 of Bill C-83 to ensure that every decision affecting federally imprisoned indigenous women and the gendered impacts of their systemic and background factors are considered and used only to assess prisoners' needs.

Now I'd like to talk about how these needs can be addressed in prison. The necessity of providing culturally appropriate and trauma-informed care was underscored during the community hearings at the National Inquiry into Missing and Murdered Indigenous Women and Girls. Those who testified about traumatic and harmful events needed resources to heal their reopened wounds. Proposed section 79.1 of Bill C-83 will likely call for federally imprisoned indigenous women to disclose their Gladue factors in order for their systemic and background factors, culture and identity to be properly understood and applied to CSC decisions.

● (1655)

Bill C-83 cannot ignore the re-traumatizing impacts their disclosure will have on them in the aftermath. In our brief, we recommend that culturally appropriate care be provided in these instances. NWAC recognizes the value that culture and spirituality can have in healing from the physical, mental, emotional and spiritual harms caused by Canada's colonial history. That's why it's important for federally imprisoned indigenous women who choose this healing path to have elders or indigenous spiritual advisers available to them. The element of choice is worth emphasizing when it comes to cultural and spiritual healing.

NWAC takes issue with the lack of consultation CSC affords indigenous communities, especially concerning culturally appropriate healing. The pan-indigenous approach to cultural healing in federal prisons is one example of CSC's culturally inappropriate practices. First nation, Métis and Inuit women are significantly different from one another. There are different communities within each of these groups, and each elder within these communities has their own teachings, traditions and protocol.

NWAC finds it concerning that not all people hired to be elders in prisons have earned the title of elder from their communities. To ensure that elders are responsive to the needs of the diverse groups of federally imprisoned indigenous women, NWAC recommends that CSC meaningfully and respectfully consults with federally imprisoned indigenous women and indigenous communities across Canada about the culturally appropriate use of elders and indigenous spiritual leaders in federal prisons.

We also call for a definition of “indigenous communities” that characterizes what legitimate indigenous organizations across Canada look like and excludes organizations that aren't legitimate. I'm happy to answer questions about that during the question period.

Thank you very much.

The Chair: Thank you, Ms. Finestone.

Before I go to Ms. Damoff for her seven minutes, as we were a little slow getting off the mark here, I propose that we extend the hearing for five or 10 minutes.

Is that fine?

An hon. member: Yes.

The Chair: Should it be 10 minutes or five?

Ms. Pam Damoff: Ten minutes is fine with me.

The Chair: Okay, it's 10 minutes. That way Mr. Motz will not complain anymore.

Mr. Glen Motz: Today....

Voices: Oh, oh!

The Chair: Ms. Damoff, you have seven minutes, please.

Ms. Pam Damoff: Thank you, Chair.

To the witnesses, I see you're smiling. This is a very collegial committee.

Mr. Michel Picard: Usually....

Ms. Pam Damoff: I'm really happy to see you here. Thank you so much. It's nice to see you again.

Ms. Finestone, when you and I met, we spoke about the definition of “indigenous organization”. Dr. Allen Benson, who appeared before this committee, provided some wording to be added that would define indigenous organizations as ones with predominantly indigenous leadership.

I'm wondering if both of you could comment or give your thoughts on that and if there's anything you wanted to add or remove.

Ms. Elana Finestone: Our definition, which we have put forward to this committee, means to be responsive to that concern. In no way do we want organizations that aren't legitimate to be part of this.

This is what we propose in terms of “indigenous community” and “predominantly indigenous leadership”:

> lndigenous community is an organization, community, band, tribal council, nation, or other group with a predominantly lndigenous leadership of First Nation, status, non-status, on or off reserve, Métis or Inuit.
>
> Predominantly lndigenous leadership exists where the majority of a group's board of directors are status or non-status First Nations, Métis, or Inuit, on or off reserve and where the group
>
> (i) demonstrates expertise and program delivery that is grounded in lndigenous laws and customs; and
>
> (ii) advocates for culturally appropriate, community-based alternatives to prisons.

Our definition is meant to reflect the diversity of indigenous groups, with a nod to Métis in adding the word “nation”, and non-status women who are disenfranchised because of the Indian Act.

● (1700)

Ms. Pam Damoff: Just out of curiosity, which group is hoping to do a healing lodge in Toronto?

Mr. Jonathan Rudin: The group is called Thunder Woman Healing Lodge.

Ms. Pam Damoff: Thank you. I'm also wondering about your thoughts on the definition.

Mr. Jonathan Rudin: We support the definition that NWAC has proposed. We are very opposed to the definition that exists in the proposed legislation. For example, based on the definition that's here, Thunder Woman Healing Lodge would not be able to open because it's not clear who authorizes an urban organization to do anything. The whole discussion of section 35 has no place in this process at all.

We're very supportive of certainly Dr. Benson's concerns, but I think the NWAC suggestion addresses those.

Ms. Pam Damoff: Okay. That's great. I think we're all working towards the same thing on this. It's just getting the wording right in the legislation.

There's another thing. You've talked about this a bit, but I wonder if you could reinforce the importance for indigenous women in particular and for all indigenous people in prison of the misuse of the Gladue reports or the history. We've heard that women are classified as maximum-security prisoners—the majority of them—when their past history is taken into account.

Despite the best intentions of this legislation in saying that these must be considered, the first thing I thought of when I read that was, but they're being misused right now. How do we ensure that this history is taken into account? You've suggested that it be used to assess needs. I wondered if you could speak a bit more to the importance of ensuring that it is included.

Ms. Elana Finestone: Certainly. It's important because it is misused and indigenous women are overclassified. Maximum segregation is composed of 50% indigenous women, and 50% of the population in segregation in women's prisons is indigenous women. I know that Aboriginal Legal Services is not providing their Gladue reports to prisons in fear that they will be used to increase their risks. That's why it's really important to focus on needs. I would also echo Aboriginal Legal Services' call to have independent oversight to ensure that this is in fact the case on the ground.

The Chair: Professor Parkes.

Prof. Debra Parkes: I'll just say one other thing about that. The other way that there's a failure to consider Gladue factors—or the misuse that I think Ms. Finestone was talking about—is in setting the correctional plan itself. If you are assessed as having all these needs and they translate into risks, that means you have to do all these additional things in your correctional plan to be able to get released. We know that indigenous people—and indigenous women in particular—are more unlikely than other prisoners to meet their release date, their eligibility date. That's in part because of a correctional plan that has many elements to it that have to be addressed, due to the way the Gladue factors can actually hurt instead of help.

Mr. Jonathan Rudin: If I might add to that, the other thing is that it's not just Gladue reports. CSC—

Ms. Pam Damoff: Gladue reports aren't actually mentioned in the bill.

Mr. Jonathan Rudin: Right, but CSC takes an aboriginal social history of people when they come in and they use it in a risk assessment mode. That's the problem.

The Supreme Court of Canada in Ewert said that “relative to non-Indigenous offenders, Indigenous offenders are more likely to receive higher security classifications, to spend more time in segregation, to serve more of their sentence behind bars before first release”. That's all tied to CSC's insistence on risk measurements that don't actually address indigenous needs.

Ms. Pam Damoff: I only have 20 seconds left, and this is actually more to make sure all of you are aware that, along with this bill, CSC yesterday committed $448 million over six years to corrections. Much of the concern around how the SIUs will work has to do with resourcing. It's a significant amount of money that was committed in yesterday's fall economic statement, which will help to provide the resources, such as aboriginal liaison officers, program officers and everything else, for corrections.

● (1705)

The Chair: Thank you, Ms. Damoff.

[*Translation*]

Mr. Paul-Hus, you have seven minutes.

Mr. Pierre Paul-Hus (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chair.

Good afternoon, everyone. I'll start with Mr. Pink or Ms. Finestone.

The Elizabeth Fry Society states that administrative segregation isn't necessary, whereas the John Howard Society, the correctional officers and the Correctional Service of Canada maintain that it's sometimes necessary.

In your opinion, does Bill C-83 seek to eliminate segregation or to ensure the safe and secure implementation of segregation?

[*English*]

Ms. Elana Finestone: Thank you very much.

Yes, we would echo the Elizabeth Fry statement that it should be abolished in women's prisons. As I hoped to illustrate, the women who come in have very different circumstances and needs than the men do. Right now, there are only eight women who are in segregation. We don't need it. There are other ways to support their needs and manage risk.

[*Translation*]

Mr. Pierre Paul-Hus: Okay.

If a person poses a threat to themselves or others, how else should their case be handled if segregation is eliminated?

[*English*]

Ms. Elana Finestone: There are other places to put them. As Jonathan Rudin mentioned, a lot of the issues stem from mental health, and they should be put in appropriate facilities that can address those needs.

[*Translation*]

Mr. Pierre Paul-Hus: I agree that they're often people who have mental health issues, and that's why they engage in aggressive behaviour. We need a place in prison to treat them. If we eliminate segregation, how do you think we can treat them? I don't understand.

[*English*]

Ms. Elana Finestone: They need to be put in different areas outside of the prison to manage it. Courts across Canada have found that CSC is not able to manage this, so I don't think they should be in the prison setting.

[*Translation*]

Mr. Pierre Paul-Hus: Okay.

On a similar note, we've been told by health care professionals that, when a decision is required in a mental health case, the decision should be taken out of the director's hands. The director of corrections shouldn't make the decision to take someone out of segregation. The decision should be left to the people in the health care service.

Do you agree?

[*English*]

Mr. Jonathan Rudin: This is the point of having independent oversight. The decision of the head gets reviewed, and there is an opportunity to raise questions about where the appropriate placement of the individual is. There may be a need to call upon mental health professionals, but the important thing is that there be independent oversight and a place for people to bring that information before someone who can make that decision, as opposed to simply someone working for CSC.

Ms. Elana Finestone: It's important to place indigenous women in the context of the crimes they have committed. Often indigenous women are very much construed as violent, but a lot of their crimes are self-defence against spouses who have battered them. They fear for their lives or those of their children, and that should be informing how we are "managing" indigenous women in prison.

[*Translation*]

Mr. Pierre Paul-Hus: Mr. Rudin, you already spoke here in 2013. You talked about the issue of violence caused by fetal alcohol spectrum disorder among Indigenous people.

Do you currently think that Indigenous people are more likely to be placed in segregation as a result of this factor?

● (1710)

[*English*]

Mr. Jonathan Rudin: You've raised an important point. People with FASD are often much more sensitive to external stimulation, so they often overreact. I am regularly in touch with a particular inmate with FASD. He said he was in an institution where, when the guards came in, they said, "Okay, we're coming in. This is what we're doing," and everything was fine. He was in another institution where guards would come in and just grab him, and he reacted inappropriately. Those are the sorts of things that will put you in solitary.

The other problem is that people with FASD are often highly subject to manipulation. They will also end up there for disciplinary charges, often because they will take responsibility for the acts of other people. Certainly, we know we have a lot of people in the prison system with FASD and other cognitive deficits. They're being put in solitary and that is just exacerbating their problems.

[*Translation*]

Mr. Pierre Paul-Hus: Thank you.

Mr. Eglinski, do you have anything to add?

[*English*]

Mr. Jim Eglinski: I have a really quick question for Professor Parkes.

In one of the reports you put out a few years ago on solitary confinement, prisoner litigation, etc., you stated that out of approximately 8,300 prisoners who had two-year sentences or greater, almost 5,000 were put into administrative segregation. When you were doing that study, was there an indicator as to why that happened to so many? That's well over half. I wonder if you saw a pattern.

Prof. Debra Parkes: Yes. Those data come from the Corrections itself and through the correctional investigator. They show a whole range of reasons. Some are mental health reasons. People are engaging in self-harm or are seen as a threat to themselves. It's essentially for their own safety. Sometimes they're in a dispute with another prisoner. They might need it for safety for that reason.

There's a whole range of reasons, but CSC's own reports and literature—I'm looking at one of the reports over the years from the correctional investigator—show that a lot of the placements and security incidents that cause people to be placed in segregation result from poor interactions between staff and prisoners or from limited interactions between staff and prisoners. Research shows that better dynamic security and relationships between prisoners and staff can really radically reduce the number of behaviours that would cause someone to be placed in an isolating situation in the first place.

The Chair: We have to leave it there. Mr. Eglinski and Mr. Paul-Hus managed to be well over their time.

Mr. Dubé, you have seven minutes, please.

[*Translation*]

Mr. Matthew Dubé: Thank you, Mr. Chair.

[*English*]

Thank you all for being here.

Having been on this committee for as long as I have, I imagine I should stop being surprised by these statistics. I want to make sure I heard you correctly: 50% of women in solitary, as I still call it, are indigenous. Is that correct?

Ms. Elana Finestone: That is correct.

Mr. Matthew Dubé: Nothing in the legislation would see any remediation of that situation, according to your assessment.

Ms. Elana Finestone: That is my assessment. Correct.

Mr. Matthew Dubé: Thank you.

I apologize if my next question was already raised, but I had to step out to take a call; I haven't yet learned how to separate myself into multiple people. The issue of oversight has been brought up. I'd like to hear from each of you—including you, Professor Parkes, on video conference—on not just what's lacking but how you envisage oversight, if we were to put it into the regime in any kind of substantive way.

Mr. Jonathan Rudin: Let Debra start.

Prof. Debra Parkes: You may have already heard from Josh Paterson of the B.C. Civil Liberties Association. I know that they will have significant submissions on that.

The reality is that oversight needs to be independent of Corrections. In fact, without that, this bill is unconstitutional. I think it's very clear. We have many, many years of reports and recommendations. We have great laws on the books, but unless there is external oversight....

What would that look like? That could look like a tribunal or an independent decision-maker appointed to be independent from Corrections. It could be like a chairperson who is currently appointed for disciplinary hearings outside of Corrections. It could be a tribunal like the Canadian Human Rights Tribunal or some other tribunal. It could be the courts. You'd have to get approval from the court for any segregation or isolation over a certain number of days. For example, 15 days is the international standard under the Nelson Mandela rules. There are different ways that could be achieved.

My own view is that court oversight is the best and most likely route to have meaningful independence, because there's always the potential for regulatory capture and layers of administrative tribunals. It's very difficult to get timely results.

● (1715)

Mr. Matthew Dubé: Thank you.

Mr. Jonathan Rudin: I think the other issue that has to be balanced here is that these individuals are very vulnerable and they need a process that is relatively quick. I agree with Debra that the courts have a lot of advantages, but the difficulty with courts is that things quickly turn into incredibly legalistic processes. There are questions of access to legal aid. There are all of those issues. We have to think about how that works so that these are not empty promises.

The idea is that it doesn't require the individual to bring an application; rather, the institution has to justify why it's keeping people past a particular date. It would then trigger a process that would allow, I think, more opportunities to really get at these issues. For people who have mental health issues and who might not know to bring a challenge, if the CSC has a responsibility to bring it, and if they have access to representation, then someone can raise their concerns in a way that doesn't require them to be totally proactive. Again, you're asking people to do more than they probably are capable of under the circumstances.

Ms. Elana Finestone: I echo what both of our witnesses are saying. I would emphasize that it's important that there be a solution that takes their needs into account and provides them with meaningful access to justice, something independent, as Dr. Parkes suggests, but that is also quick and that people know is available, and that addresses their needs and provides them with a quick remedy.

Mr. Matthew Dubé: Thank you very much.

The other piece, which I'm getting from all of the responses, is that I think that's why the courts come back. I think there are two reasons the courts come back—and perhaps Professor Parkes could comment on this. One is the fact that you get to the point, with abusive punishment, where you are influencing the sentencing decision that was made by a court in the first place. The other piece, just in order to give it teeth, which I think is a concern here, is that you get all of these reports. We know it's an issue whenever we get media stories of people who have self-harmed and all of these horrifying situations, but ultimately would you agree that the issue has to do with an ability to actually enforce any kind of recommendation that's made?

I don't know if you share it, but my understanding is that the bill doesn't allow for any recommendation by a health care professional or anyone else but a warden or the commissioner to be enforceable.

Prof. Debra Parkes: Exactly. The decision-making and the review process are all entirely internal to Correctional Services. As far back as Justice Louise Arbour's report in 1996 to the task force on administrative segregation to the most recent court decisions, we've had all these years of recommendations saying we need external oversight. It's just something the CSC has resisted.

I can understand why it would be resisted, but there's going to come a time when if this committee is not going to recommend those changes, I think a court is going to ultimately impose them in any event. It would be nice for legislation to get ahead of that and to say we recognize that the potential for harm is so great—we see deaths in custody, and we see the people languishing in solitary confinement—that we need something external to the correction service. It's no indictment of individual people. It's just a system that is all about maintaining power and control. You need a check on that.

Mr. Matthew Dubé: Thank you all very much.

The Chair: Thank you, Mr. Dubé.

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

● (1720)

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): Mr. Chair, thank you very much.

I would like to thank all four of you for being with us. I would like to take my time to explore the issue of mental health or at least use a mental health lens.

I think this is a system that doesn't generate good mental health outcomes for anybody who's involved with it, be they correctional officers or inmates. I think the aspiration—and Professor Parkes, I appreciate your point on closing the gap between aspiration and ensuring that it actually happens—of doing away with administrative segregation is a very important one, a fundamental one.

We've heard a lot in the last few sessions about the Gladue principles and the Mandela rules. I would like to add to those the lens of reconciliation with our indigenous peoples and go with the assumption that, yes, inmates create social risks, which is why they are inmates in the first place, but to correct their behaviour, we have to explore their needs and we have to take their needs seriously. That is a fundamental, logical step.

I want to ask your opinion aside from the legal framework, or going below the legal framework, with regard to what would have to change inside the correctional system to achieve this culture change.

I would like to start with the question of who Correctional Service's personnel are, the women and men who do the work inside the correctional facilities. How much diversity is there? How do we hire them? Who should we hire? Are there changes that need to happen there, especially when we look at vulnerable populations and representation among our corrections officers?

Ms. Elana Finestone: We recommend that elders be part of that process and that Corrections not define who those elders are, that communities themselves determine that and that these elders be reflective of these communities.

Also, I think it's important to provide culturally sensitive and trauma-informed care when people are disclosing what people would call their systemic or background factors, or their Gladue factors, and make sure that one-on-one counselling is available in their language, to be determined by that counsellor, and also that people can choose to have an elder as their counsellor.

The Truth and Reconciliation Commission has said that spiritual and cultural care is often a very important factor in addressing mental health, physical health and emotional effect, and that needs to be factored in. That's why in proposed sections 85 and 86 I've inserted in my brief that elders be given the autonomy to make certain decisions about mental and emotional health, and that they be health care providers in a sense.

Mr. Sven Spengemann: Professor Parkes, would you like to add anything to that?

Prof. Debra Parkes: I don't have specifics in front of me. That would be a good question for CSC. Maybe you've already asked it of them in terms of the demographics of the staffing.

Certainly, I guess the way I see it is that it goes to issues of diversity in terms of staffing but also to training. You see reports regularly from the union for correctional officers about how little training they get in mental health, for example, and some of those issues.

As well, if you look at the most recent Auditor General's report, the fall Auditor General's report, in terms of what proportion of CSC funding goes to community supervision and what per cent goes to corrections, you see that it's 6%. Forty per cent of people are on community release and only 6% of the funding is going there. It's also about the preparation for getting people out into the community and how little resources there are in corrections.

It goes to Ms. Damoff's point. I'm glad to see that resources are being allocated, but one would hope that a lot of those resources would be going to preparing people for release, because, again, indigenous women and indigenous people and others within corrections go well past their parole eligibility date. They go to statutory release or they go to warrant expiry in a way that's not good for public safety, so preparing them for release....

Mr. Sven Spengemann: Thank you for that.

Let me pause you there for a second and ask the four of you this question. This is sort of embedded in your submissions.

It's the conclusion that “meaningful human contact”, to use the Mandela phrasing that was put forward by the UN, should take place throughout a person's correctional plan, not in a prescribed number of hours but really from the day of incarceration to the day of release. Is that a fair statement?

Prof. Debra Parkes: Yes.

Ms. Elana Finestone: Yes.

Mr. Sven Spengemann: Okay.

If we look at the specific mental health challenges and the addiction challenges, I think what we need and what's being contemplated through the bill is a massive investment in mental health services, and potentially also in physical health services in dealing with addictions. If that's true, who would the folks be who would provide mental health services specifically, not with the kind of training that a correctional officer would undergo but psychologists and potentially psychiatrists...? Where would we find them? How much familiarity would they need to have with the correctional system to be able to deliver on the needs that incarcerated persons have?

● (1725)

Mr. Jonathan Rudin: First, I think, Corrections has to figure out how they want to deliver services. One of the problems is that Corrections likes to deliver services in a particular way. Take the question about FASD. If you have FASD, you are not going to work well in group settings. You're not going to work well in a cognitive behavioural process. You can't do that. If the rule is that in order to move through your correctional plan you must have completed these groups, it won't happen. It doesn't matter who you put in to administer those programs. If they can't make it work, it won't work.

CSC has to be willing. It may be willing. We'll see. I mean, the money is fine, but we'll see how it actually gets put out and if they're willing to listen to people who can talk about “this is how services have to be developed”. The focus needs to be on the needs of the individual person and to move out from there, as opposed to saying, no, they all have to fit into this particular framework. That's crucial.

Prof. Debra Parkes: About indigenous women in particular, I was just out at the Fraser Valley Institution this week with my students here at the law school. We met with women in the minimum-security unit who should be ready for release, and they are entirely idle with their time. They talked to me about how they have absolutely virtually nothing. In terms of programming, they have way less on the minimum-security side than people on the maximum-security side or the medium-security side. That is clearly an example of how all the resources are going into certain interventions. That's what I worry about with regard to the SIUs: all the resources going into those kinds of interventions and not into getting people out into the community.

Mr. Sven Spengemann: I think that's my time. Thank you very much.

[*Translation*]

The Vice-Chair (Mr. Pierre Paul-Hus): Thank you, Mr. Spengemann.

Mr. Motz, you have five minutes.

[*English*]

Mr. Glen Motz: Thank you, Chair.

Thank you to the witnesses for being here.

I feel that at this time I need to suggest a motion. We've had nearly eight hours of testimony from witnesses. We've had numerous witnesses here testifying on Bill C-83. Other than Mr. Stapleton's cautious optimism about Bill C-83, and the minister's staff who support it, obviously, no one is supporting this legislation.

We're required and asked by the committee to have our amendments to committee on Monday. Right now, it looks like the entire bill needs to be redone. The entire bill needs amending. Our role as a committee, as I understand it, is to give oversight of the minister's legislation and to provide direction. We are to suggest changes based on the needs of Canadians as well as the expert advice we receive.

It is therefore imperative to me that this legislation be right, since the rehabilitative capacity of Corrections for our inmates as well as other lives are on the line—other inmates, guards, as well as the people in our communities. Given our committee's role and the importance of the legislation, I cannot in good conscience move ahead with this legislation. I don't think this committee should either. It is deeply flawed. Making minor amendments would only paint over a problem.

Additionally, this government appeared before the court of appeal yesterday and asked for an extension on this particular piece of legislation. They did so for a number of reasons—i.e., to meet the demand of the 2017 court order that the government had under December 18 to get this passed to make its solitary confinement oversight process compliant with the charter.

I, therefore, move the following:

> That, in light of recent testimony the Committee has heard during its study of Bill C-83, the Committee suspend its study in recognition of the Bill's flaws and inadequate consultations; resume its study once the Government of Canada has consulted with involved parties and ensured there are no flaws; and that the Committee report this recommendation to the House.

I put this motion before the clerk in both languages.

● (1730)

[*Translation*]

The Vice-Chair (Mr. Pierre Paul-Hus): Thank you, Mr. Motz.

Ms. Damoff, do you have something to add?

[*English*]

Ms. Pam Damoff: Chair, I think what Mr. Motz meant to say was that he was providing notice of motion. To my understanding, he presents the motion today and it has to be presented within so many hours. The clerk can clarify how many hours it is, whether it's 24 or 48 hours.

[*Translation*]

The Vice-Chair (Mr. Pierre Paul-Hus): No, because we're currently discussing the topic. It's part of the body of the study, and a motion can be presented during the study.

[*English*]

Ms. Pam Damoff: Okay.

[*Translation*]

The Vice-Chair (Mr. Pierre Paul-Hus): Is there a debate?

No. Okay.

I'll give the chair his seat back and take my seat to vote.

[*English*]

The Chair: Apparently I shouldn't leave, should I.

Mr. Glen Motz: I was actually disappointed you'd left.

Mr. Pierre Paul-Hus: There's a motion on the table from Glen.

The Chair: Okay. This is a debatable motion but there's no debate.

All those in favour of the motion?

(Motion negatived)

The Chair: Mr. Motz, you have 30 seconds.

Mr. Glen Motz: Perfect.

In the opinion of the witnesses who are here at this time, do you believe this bill provides the support that those who are incarcerated need in order to deal with mental health and addiction issues? Will it help in that regard?

Mr. Jonathan Rudin: The bill as currently constructed doesn't change the situation at all. I don't think we could expect different results if this bill were passed in its current form.

Prof. Debra Parkes: The bill is not primarily about the delivery of mental health care, although there are some pieces to it. In my view, the bill is flawed for the reasons I talked about at the beginning. I think it will actually expand rather than reduce the use of segregation. I do think it is flawed for that reason.

The Chair: Thank you, Mr. Motz.

Ms. Dabrusin, please, you have five minutes.

Ms. Julie Dabrusin: Thank you.

I want to thank all of you for your testimony and your help. In particular, I'd like to thank the Native Women's Association of Canada for providing a written and tangible amendment, because it really helps to ground us in the wording. Thank you for that.

I also wanted to touch on some other issues you raised. In particular, you've mentioned it a couple of times now when you talked about elders and who decides who's an elder. Partly, I guess, in terms of my question, is this something that possibly ends up more as a policy piece as to how you apply the legislation, or is there a piece that you'd want to see as a change in the legislation?

What would you propose as the best way? I've heard other people raise this too. You're not the first. How would you suggest that we broach that concern?

Ms. Elana Finestone: We do provide some recommendations in our brief that touch on potential amendments. One of them would be that under “Definitions”, we'd recommend making a proposed section 85.1, where there would be a special definition for indigenous inmates. It would say, “For Indigenous inmates, health care also means mental health, cultural and spiritual care provided by Elders or Indigenous spiritual advisors, at the Indigenous inmate’s discretion.” That would be one example.

Under “Health care obligations”, for proposed section 86.1, we would add under proposed paragraph 86.1(a), which talks about “autonomy”, that health care shall be provided to inmates and this service shall “support the autonomy and the independence of Elders and Indigenous spiritual advisors and their freedom to exercise, without undue influence, their judgment in the care and treatment of Indigenous inmates”.

Those are two examples, and we would also propose a new paragraph (d) in proposed section 86.1, which would say something like, “following an Indigenous inmate’s disclosure of any factors in 79.1(a) to (d), provide the Indigenous inmate culturally appropriate, one-on-one counselling in their preferred language with either a registered mental health care professional, Elder or Indigenous spiritual leader, at the Indigenous inmate’s discretion.”

● (1735)

Ms. Julie Dabrusin: Thank you for that. I appreciate having you read that out.

You also had talked, though, about the qualification—or what is the consultation—to decide who is an elder. I was wondering if you could perhaps give guidance as to what you would suggest is the best way to ground that.

Mr. Rudin.

Mr. Jonathan Rudin: The word “elder” gets used a lot. When it's used in a professional sense, it has a different meaning. One of the difficulties we have is that a correctional institution may have an institutional elder, and that's an elder that the correctional institution says is an elder. That's fine, but that may or may not.... It often has great meaning to inmates, but for some inmates it has no meaning because an elder is someone you choose. You don't go to “elder school” and you don't get—

Voices: Oh, oh!

Mr. Jonathan Rudin: I've been contacted by people, very well-meaning people, who say, “Give me the list of elders.” It's not analogous to religious leaders.

What it means is that the institution can provide what the institution provides, but it has to realize that is not the response to an individual if someone says, “The elder that I need is this person, because that's my tradition”.

CSC moves people across the country. You can be Mi'kmaq and be in B.C. The odds that you're going to have a Mi'kmaq elder in B.C. are pretty low. If you want an elder, and there's someone who can provide that service and that person is there, they should have access to the institution to provide that service. That's not the way the situation is currently working.

Ms. Elana Finestone: Yes. I would add to that and say that you need to consult with organizations like NWAC that work very closely with their provincial and territorial organizations. They know what they need, and they can answer these questions.

Ms. Julie Dabrusin: Thank you. It's just because you flagged it when you did your initial presentation, so I was trying to ground it a bit as to what you would want to see us do. I appreciate it. I think that helps to flag it. I'm good—

No...? Am I not good, Chair?

The Chair: No, you're not great.

Ms. Julie Dabrusin: I'm out of time.

The Chair: You have seven seconds.

On behalf of the committee, I do want to thank you for your contributions to this study of Bill C-83, Professor Parkes, Ms. Finestone, Mr. Pink and Mr. Rudin. This is all helpful.

With that, it does bring an end to our witness list.

I remind colleagues that you must have any amendments in by 4 p.m. on Monday. Also, given that I left for one minute and you brought a motion, I'm a little nervous about Tuesday with the ministers. I'm hoping that when I'm sitting here next Thursday I'll have no reports of any difficulties with the ministers.

Mr. Glen Motz: I wasn't trying to be difficult. I was just trying to help.

The Chair: Yes...“help”.

Mr. Glen Motz: I was. I was trying to help.

The Chair: There may be a difference in our definition of “help”.

With that, the meeting is adjourned.

Thank you.