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RE: Consultation on amendments to the *Corrections and Conditional Release Regulations*

To Whom It May Concern:

I appreciate this opportunity to contribute to the consultation on proposed regulations in support of Bill C-83. I participated actively on this bill while it was still in the House of Commons, submitting 43 amendments at committee out of which four were ultimately accepted. Nevertheless, I voted against this bill at Third Reading because it falls well short of the bright line set by the courts in British Columbia and Ontario. It is those same courts that have set June 17th as the firm deadline for the government of Canada to bring its laws around solitary confinement into compliance with the Constitution.

Barring a remarkable show of cooperation between the House of Commons and the Senate, Bill C-83 will not pass constitutional muster by the court-imposed deadline. In spite of the shift towards 'Structured Intervention Units,' the same harmful conditions under the current *CCRA* will persist so long as there are no hard time-caps (i.e., 15 days max.), *timely* independent external reviews, and rigorous assessments of and exclusions for prisoners with mental illness or at risk of developing a mental illness. Our courts have recognized that without the right screening and accountability measures in place, prolonged periods of isolation can be used in ways that systematically violate prisoners' *Charter* rights. While it is appreciated that Public Safety Canada is planning out regulations in advance of Royal Assent, until we have legislation that stands up to judicial scrutiny this does seem rather like putting the cart before the horse.

Nonetheless, respectfully I would like to submit brief comments on the proposed amendments in terms of healthcare arrangements and decision-making processes.

Healthcare

One of the gaping flaws in Bill C-83 is that it contains nothing to ensure the competencies and knowledge of "registered health care professionals" tasked with diagnosing and treating mental illness. This does not even get to the complexities of treating trauma specifically, a condition so prevalent among the prison population. It is a profound failure of our society that our prisons has become the dumping ground for too many individuals with severe mental illness owing to the absence of much-needed supports and services in the community. It is unfair and unsafe for correctional officers to be responsible for overseeing vulnerable inmates without the prerequisite training to address their specific needs.

Study after study has shown that prolonged, indeterminate periods of isolation induce and exacerbate serious psychological harm. We need certainty that health care workers tasked with identifying and intervening before *even the risk* of such harm can take place have the necessary medical and clinical experience to do so. Solidifying this piece then eliminates the need for higher-level decision-making – such as the Health Committee – where it should be noted that required healthcare-related competencies are even fewer. Engaging experienced frontline professionals will do far more to ensure clinical independence than the weak gestures toward it promised by these regulations, hamstrung as these regulations are by an inadequate bill.

Decision-making Procedures

The layers of decision-making required by Bill C-83, with their varying timelines and triggers, is sure to create gaps, confusion and delays in the process. During this time, the prisoner confined to an SIU could sustain serious harm. We need timely interventions by an independent external reviewer, not a series of internal paper reviews. This is particularly true when the procedural rights afforded to prisoners are so inconsistent (i.e., sometimes access to an oral hearing, other times not; sometimes access to legal counsel, other times not). At minimum, they should retain the same rights as they do under sections 31-33 of the current *CCRA*.

In order to comply with the Ontario Court of Appeal's decision from April 26th, an independent review must take place after five days under all circumstances, and the IEDM should be authorized to provide immediate release. Further, there needs to be a de-emphasis on security and correctional concerns while greater attention must be given to the prisoner's physical and mental well-being. As Josh Paterson, lead counsel in the BCCLA case, pointed out, "The courts found that safety and security rationales advanced by government did not justify that kind of treatment. Unless that possibility is snuffed out, this law will be unconstitutional the moment it receives Royal Assent." On that note, Section 1.2 of these proposed regulations could give attention, for one, to the role that lockdowns play in curtailing time outside of cell and could then be very precise in its list of justifiable reasons for restricting this time in the event of a lockdown.

More than that, greater consideration should be given to what is meant by "meaningful human contact." One way to define it could be by restricting it to contact that is sustained, intentional and not limited to interactions determined by penitentiary routines like criminal investigations. This definition is based upon research by Dr. Craig Haney, one of the expert witnesses in the BCCLA case, and a 2017 paper from the University of Essex Human Rights Centre. Without more definition, I worry the time prisoners spend outside of their cells could be of such poor quality as to remain, effectively, a form of solitary confinement.

Alternative Solutions

I am sure that the government's injection of over $400 million into CSC for the purpose of administer Bill C-83 is a welcome funding initiative. However, a recent report by the Parliamentary Budget Officer makes it absolutely clear that this money would be better spent on four cheaper alternatives to SIUs, all of which have demonstrated success in rehabilitating prisoners. The four options included:

1. Interventions from representatives of the Canadian Association of Elizabeth Fry Societies to find alternative solutions for women who would otherwise be placed in segregation.
2. Exercising the under-utilised provisions already in the *CCRA* to transfer inmates with mental health issues into the provincial healthcare system for treatment.
3. Exercising s.81 provisions to transfer Indigenous prisoners into the care and custody of Indigenous communities.
4. Interventions to disaffiliate and terminate gang involvement among male prisoners.

Both Bill C-83 and the attending regulations would better fulfill their mission to address the unique needs of female, Indigenous, and mentally ill inmates by exploring these options rather than carrying through with the SIUs, which will cost more and do less.

The evidence that prolonged confinement induces and exacerbates harm is indisputable. I have faith in the Senate to fix Bill C-83 so that solitary confinement is properly abolished, taking a resolute humanitarian stand like Parliament did forty years ago in ending the death penalty. Once done, I look forward to working with Correctional Services so that together with our communities, we fulfill that mission to rehabilitate every person.

Thank you in advance for your consideration.

Sincerely,

Elizabeth May, O.C.
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Saanich-Gulf Islands
Leader of the Green Party of Canada