CANADIAN BAR ASSOCIATION
ASSOCIATION DU BARREAU CANADIEN

January 21, 2026

Via email: lcjc@sen.parl.gc.ca

The Honourable David Arnot
Chair,
Standing Senate Committee on Legal and Constitutional Affairs
Senate of Ottawa
Ottawa, K1A OA6

Dear Senator Arnot:

Re: Bill S-205, *An Act to amend the Corrections and Conditional Release Act*

I am writing on behalf of the Canadian Bar Association's Criminal Justice Section, and its Imprisonment and Release Committee (CBA Committee), about Bill S-205, *An Act to amend the Corrections and Conditional Release Act*, introduced in May 2025. The CBA Committee strongly supports Bill S-205 and offers additional considerations. It suggests further amendments to the *Corrections and Conditional Release Act* (CCRA) that further protect the basic human rights and dignity of people who are incarcerated and further Canada's commitments to Truth and Reconciliation to support Indigenous self-determination in alternatives to prison.

The CBA is a national association of 40,000 members, including lawyers, notaries, academics, and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Criminal Justice Section consists of a balance of prosecutors and defence lawyers from all parts of the country.

Definition of Structured Intervention Unit

Section 2 of Bill S-205 amends the definition of "structured intervention unit" (SIU) to include "any area of the penitentiary where a person is separated from the mainstream population and is required to spend less time outside their cell or engaging in activities than is a person in the mainstream population."

The CBA Committee supports this proposed definition because it prevents the Correctional Service Canada's (CSC) practice of implementing unregulated isolation units, such as observation cells or voluntary limited association ranges. The definition could also include a requirement that people in the mainstream population be permitted out of cells during waking hours, other than for counts. This would prevent the unregulated use of institution-wide lockdowns where everyone is held in conditions of solitary confinement, or of restrictive institutional movement routines, which in some maximum-security prisons are as restrictive as SIU.[1]

[1] West Coast Prison Justice Society, *Solitary by Another Name* (November 2020), online.

Transfer to hospital

The CBA Committee supports the proposal to require people with disabling mental health issues to be transferred to a community-based hospital or any mental health facility. It would prevent them being subjected to the most abusive harms of imprisonment, including uses of force and solitary confinement based on symptoms of mental health disabilities.

We understand that there are cost concerns of such transfers to community-based facilities. However, the incarceration cost for people in SIU or maximum security is staggering:

- The annual cost of segregation at the federal level is estimated at $463,045 or more.[2]
- The annual cost of maintaining an individual in a federal maximum-security institution is $231,339.[3]

Transferring people to a hospital or mental health facility would decrease the cost of incarceration in SIU and maximum security.

The criteria to keep someone in maximum security under s. 18(a)(ii) of the *Corrections and Conditional Release Regulation* (known in policy as a person's "institutional adjustment" rating) mirror symptoms of solitary confinement and trauma (in addition to discriminating against Indigenous people): **see Appendix**

The cost of allowing people to heal from isolation and trauma in hospitals or mental health facilities would be significantly less than the cost of ongoing placement in maximum security and SIU based on the symptoms of isolation and trauma. Once people receive treatment for these abuses, they can be transferred to lower security or released to community supervision, which are both less expensive options. The long-term cost savings are significant.

Judicial review of SIU placements

Section 5 of the proposed Bill restricts the use of SIU to 48 hours, unless authorized by a superior court. The CBA Committee supports this amendment. SIUs have operated for six years, and during this period, reports from the SIU Implementation Advisory Panel reveal that the Independent External Decision Maker review system has failed to prevent the continued use of prolonged solitary confinement,[4] and the need for judicial oversight.

Expanding sections 81 and 84 to include marginalized populations

The CBA Committee has concerns about CSC's implementation of s. 81 of the CCRA. It has underfunded s. 81 agreements, and has entered into only six s. 81 agreements since the provision was introduced over thirty years ago.[5] CSC spends only approximately 0.4% of its annual budget on s. 81 healing lodges.[6] Per person, s. 81 healing lodges receive $70,845 annually, while the average cost of incarceration of people in CSC prisons is $231,339 (maximum security), $136,987 (medium security) and $111,667 (minimum security).[7] Section 81 is intended to address the over-representation of

---

2 Parliamentary Budget Officer Report, online.

3 Correctional Investigator of Canada, Annual Report, 2023-24, online.

4 Structured Intervention Unit Implementation Advisory Panel 2023 to 2024 Annual Report (July 15, 2024), online.

5 Office of the Correctional Investigator, *Ten Years Since Spirit Matters*, 2023 online.

6 *Ten Years Since Spirit Matters*, p. 57 (CSC's annual costs of s. 81 healing lodges was $12,707,241. CSC's budget for 2023-24 was $3,375,000,000 (see: 2023 to 2024 Departmental Results Report, online).

7 Office of the Correctional Investigator, *Annual Report*, 2023-24, footnote 76 online.

Indigenous people in Canadian prisons, however, the proportion of Indigenous people in federal custody has only increased in the past three decades, and is now a staggering 33%.[8] The proportion of Indigenous people serving custodial sentences in s. 81 healing lodges is only 6%.[9]

The CBA's Resolution 22-03-A[10], *Call for Action: Indigenous Decarceration and Self-Determination,* urges the federal government, the provinces and territories to negotiate a distinctions-based action plan to provide well-resourced preventive community-based services and alternatives to incarceration of Indigenous peoples. Its goal is to significantly reduce incarceration rates, and to shift funding from CSC and provincial and territorial correctional service to Indigenous communities to implement the action plan.[11]

We are concerned that s. 81 has not succeeded in its intended goal of reducing incarceration rates of Indigenous peoples, and that broadening its scope to include non-Indigenous people may have the unintended consequence of further reducing the already low funding available for s. 81 agreements. Section 81 is based on the *sui generis* relationship between Indigenous Peoples and the federal government and should be administered in a way that respects the nation-to-nation relationship and the Indigenous right to self-determination.

Sections 81 and 84 should be amended to accord with the UN *Declaration on the Rights of Indigenous Peoples,* Canada's Indigenous Justice Strategy, the Truth and Reconciliation Calls to Action, and the Indigenous right to self-determination under s. 35 of the *Constitution*[12].

To respect the right to self-determination, the CBA Committee proposes that s. 81 be administered by an Indigenous-led body established through the Ministry of Public Safety, so that Indigenous communities can operate s. 81 facilities according to Indigenous law, rather than mirror the colonial structures of prisons with grossly inadequate budgets. Administration of s. 81 must not be delegated to CSC. Indigenous communities should possess authority to decide who can access s. 81 facilities, regardless of security classification level, and how they operate. Section 81 should also clarify that funding for alternatives to prison must be equitably based to address the needs of those to be served by them. Funding for agreements must be at least equal to funding per bed in penitentiaries, as a prerequisite to creating similar provisions for non-Indigenous groups.

Section 84 should include a funding provision administered through the above proposed Indigenous-led body established directly through the Ministry of Public Safety. We understand that Bill S-205 is not the place to make these changes to ss. 81 and 84, so we would suggest this section be removed from the Bill.

While we would support an amendment allowing other marginalized communities to provide correctional services and to propose release plans for marginalized people in custody, we submit that these provisions should be in a separate section of the CCRA, apart from ss. 81 and 84 in recognition of the *sui generis* relationship between Canada and Indigenous Peoples, and after the above noted amendments are made to strengthen Indigenous rights to self-determination under these provisions.

---

8 *Ten Years Since Spirit Matters*, p. 5.

9 *Ten Years Since Spirit Matters*, p. 38.

10 CBA Resolution, Call for Action: Indigenous Decarceration and Self Determination: online.

11 CBA Resolution, (2022) online.

12 United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, UN Doc A/RES/61/295 (2007), Canada, Department of Justice. Indigenous Justice Strategy (Ottawa: Department of Justice Canada, 2024), online: Government of Canada, online, Truth and Reconciliation Commission of Canada, Truth and Reconciliation Commission of Canada: Calls to Action (Winnipeg: TRC, 2015 and *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 35.

Court application for sentence reduction

Section 11 of the Bill proposes CCRA amendments that allow incarcerated people to "apply to the court that imposed the sentence for an order reducing that period as the court considers appropriate and just in the circumstances if, in the court's opinion, a decision, recommendation, act or omission" of CSC was contrary to law or policy, unreasonable, unjust, oppressive, improperly discriminatory, or on other grounds.

The CBA Committee enthusiastically endorses this CCRA amendment. Judicial oversight of the administration of criminal sentences is overdue, as demonstrated by evidence adduced during the hearings of the BC Civil Liberties Association and Canadian Civil Liberties Association challenges to CSC's administration of its segregation regime, held to violate the *Charter* under s. 7 and 12.[13]

Legal aid for people in prison in Canada is extremely limited, and opportunities to challenge mistreatment in Canadian penitentiaries are limited. Judicial oversight of sentence administration ensures that Canada's prisons are administered with transparency and accountability.

Members of our committee have seen clients experience repeated violent uses of force by correctional officers, and extensive use of isolation, even after the successful court challenges to the use of solitary confinement. One of our members has a client who has been in solitary confinement for over 3,000 days and has experienced hundreds of uses of force. His normal responses to this treatment (symptoms of self-harm, anxiety, paranoia, anger, etc.) are used to justify more harsh treatment. He has exhausted his criminal appeals and will likely die in prison if CSC continues to hold him in these conditions.[14]

Section 11 of Bill S-230 would allow such prisoners to challenge continued incarceration based on the maladministration of sentences.

The CBA Committee asks that the Bill be therefore amended as suggested above.

We hope these observations are helpful.

Yours truly,

(*original letter signed by Julie Terrien for Melanie Webb)*

Melanie Webb
Chair, Criminal Justice Section

---

13 *BC Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 228; *Canadian Civil Liberties Association v Canada (Attorney General)*, 2019 ONCA 243.

14 Jenifer Metcalfe, Why Canada needs judicial remedies for oppressive administration of sentences, The Hill Times, November 27, 2024 online.

APPENDIX

Institutional Adjustment Criteria[15]	**Gladue factor**	**Symptoms of trauma**[16]	**Symptoms of isolation**[17]
Length of sentence and its impact on the inmate's institutional adjustment.	Indigenous people receive disproportionately longer and more punitive sentences.[18]		
Violent institutional incidents. Review of the inmate's disciplinary information. Review the Preventive Security file.		Severe emotional distress. Physical reactions to something that reminds the person of the traumatic event. Being easily startled or frightened. Always being on guard for danger. Irritability, angry outbursts or aggressive behaviour.	Hatred, bitterness, anger and rage. Loss of control. Paranoia and delusions. Increased level of violence against others. Frustration. Difficulty solving interpersonal problems. Unawareness of the consequences of actions. Inability to make positive choices. Impulsivity. Loss of the ability to control behaviour.
Include comments about the inmate's behaviour from unit staff.		Severe emotional distress or physical reactions to something that reminds the person of the traumatic event. Difficulty maintaining close relationships. Self-destructive behaviour.	Loss of the ability to control behaviour (relying on institutional structure to manage conduct).
Indicate whether the inmate has any affiliations with criminal organizations/gangs.	When Indigenous people find connection and make friends with other Indigenous people in custody they are sometimes accused of being in a gang.		

15 Commissioner's Directive 705-7: *Security Classification and Penitentiary Placement*, 2018-01-15.

16 Mayo Clinic, Post-traumatic stress disorder (PTSD) (2023), online.

17 *Canadian Civil Liberties Association v. Canada*, 2019 ONCA 243, at ¶ 73-77.

18 Alberton, Amy and Gorey, Kevin M. (2021). Structural Violence Perpetrated Against Indigenous Peoples in Canadian Criminal Courts: Meta-Analytic Evidence of Longstanding Sentencing Inequities. Critical Social Work, 22 (1), 2-22, online.

Identify the existence of incompatibles and the impact on institutional adjustment.			Difficulty solving interpersonal problems.
Identify whether any administrative intervention has been required, such as involuntary or emergency transfers, periods of provincial segregation or transfers to Structured Intervention Units.	Indigenous people are more likely to be held in solitary confinement and to be subjected to uses of force.[19]		
Comment on inmate's level of motivation/engagement in participating in his/her Correctional Plan.		Negative thoughts about oneself, other people or the world. Hopelessness about the future. Memory problems. Lack of interest in activities the person once enjoyed. Trouble concentrating. Trouble sleeping. Overwhelming guilt or shame.	Severe apathy. Lethargy. Boredom. Trouble sleeping. Impaired concentration. Confusion. Declines in mental functioning.
Mental health concerns that may affect institutional adjustment based on the result of psychological, psychiatric, mental health assessments or other information.	Individual and intergenerational trauma.	Difficulty maintaining close relationships. Feeling detached from family and friends. Difficulty experiencing positive emotions. Feeling emotionally numb.	Depression. Stress, anxiety and panic. Depersonalization. Paranoia. Hallucinations. Self-mutilation. Increased rates of suicide and self-harm. Increased risk of panic attacks and a sense of impending emotional breakdown. Loss of the sense of reality.
Identify whether the inmate displays special needs or socio-cultural factors indicating a requirement for special intervention on an ongoing basis (Indigenous inmate, woman inmate, etc.).	Being Indigenous.		

[19] The Office of the Correctional Investigator, *Ten Years Since Spirit Matters*, 2023, page 6 online.

Identify whether the inmate has a history of mental health issues, suicidal ideation, self-injury. For Indigenous offenders, provide an analysis of their history of mental health concerns, suicidal ideation and/or self-injury within the context of their Indigenous Social History. Current emotional stability, and whether this will impact on the inmate's institutional adjustment.	Suicide rates are higher among Indigenous people because of colonialism.[20]	Difficulty maintaining close relationships. Feeling detached from family and friends. Difficulty experiencing positive emotions. Feeling emotionally numb.	Depression. Stress, anxiety and panic. Depersonalization. Paranoia. Hallucinations. Self-mutilation. Increased rates of suicide and self-harm. Increased risk of panic attacks and a sense of impending emotional breakdown. Loss of the sense of reality.

[20] Statistics Canada. Suicide among First Nations People, Metis and Inuit (2011-2016). June 28, 2019. online.