

CANADIAN  
CIVIL LIBERTIES  
ASSOCIATION



ASSOCIATION  
CANADIENNE DES  
LIBERTES CIVILES

**Submission to the Standing Committee on Finance  
Regarding Division 19 of Bill C-19**

***Amendments to the Corrections and Conditional Release Act  
Regarding Dry Cells***

May 20, 2022

Abby Deshman  
Director, Criminal Justice Program  
Canadian Civil Liberties Association  
400-124 Merton Street  
Toronto, ON M4S 2Z2  
Tel.: (416) 363-0321  
[adeshman@ccla.org](mailto:adeshman@ccla.org)

Kent Elson  
Elson Advocacy  
1062 College Street, Lower Suite  
Toronto, ON M6H 1A9  
Tel.: 416-906-7305  
[kent@elsonadvocacy.ca](mailto:kent@elsonadvocacy.ca)

## Background

The Canadian Civil Liberties Association (“CCLA”) is an independent, non-governmental, non-partisan, non-profit, national civil liberties organisation. Founded in 1964, CCLA and its membership promote respect for and recognition of fundamental human rights and civil liberties. For over fifty years, CCLA has litigated public interest cases before appellate courts, assisted Canadian governments with developing legislation, and published expert commentary on the state of Canadian law.

Division 19 of Bill C-19 would make amendments to the *Corrections and Conditional Release Act* (the “Act”) relating to “dry cells.” A dry cell is a prison cell without plumbing or water where a form of solitary confinement occurs. Prisoners believed to be carrying contraband inside their body are separated, strip searched, and placed alone in a dry cell on the expectation that the contraband will be “expelled” during a bowel movement and can be seized. Individuals are forced to endure a traumatic procedure in a dry cell. The federal Correctional Investigator describes this procedure as follows:

The dry cell procedure requires strip-searching, around the clock direct observation and 24/7 illumination of the cell. Dry-celling imposes restrictions on any and all activity that would compromise the recovery of suspected contraband. The demands of staff are equally dignity depriving. Staff are required to observe and document the entire time that an inmate is on the toilet, write search and observation reports for every bowel movement, don protective equipment, search for contraband and hand over any seized item to a Security Intelligence Officer. It’s an extraordinary procedure.<sup>1</sup>

The Correctional Investigator sums up the procedure in stark terms:

**The conditions of dry cell confinement are, by far, the most degrading, austere and restrictive imaginable in federal corrections.<sup>2</sup>**

Division 19 of Bill C-19 responds to a recent court ruling in *Adams v. Nova Institution* that struck down the dry cell provisions in the *Act* as unconstitutional.<sup>3</sup> The wording of Division 19 as initially tabled only narrowly and partially addresses the specific situation in the *Adams* case by clarifying that a dry cell cannot be ordered for a person reasonably suspected of carrying contraband in a vagina. However, additional amendments are required to limit clearly unnecessary uses of dry cells. We propose amendments below that would do so.

The harms of dry cells are not merely speculative. The Court in the *Adams* case found that Ms. Adams “suffered emotionally and psychologically.”<sup>4</sup> She endured an unjustified dry cell detention for 15 days. Four days into her detention notes taken by prison staff indicated she faced “great mental distress” due to the lack of privacy afforded to her when urinating or attempting to

---

<sup>1</sup> Office of the Correctional Investigator Annual Report 2019-2020, June 26, 2020, section 5 ([link](#)).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Adams v. Nova Institution*, 2021 NSSC 313 ([link](#)).

<sup>4</sup> *Ibid.*

have a bowel movement. Her mental health deteriorated rapidly, and by the end of her placement institutional records confirmed she was rocking repeatedly, crying, pulling her hair, dissociative, unable to communicate, and apparently hallucinating. After nearly two weeks in a dry cell she was given a pelvic examination, which revealed she had no contraband in her vagina; she was released from the dry cell two days later.

In a separate lawsuit against Canada that has not yet made it to court, Michael Farrell suffered such mistreatment in his dry cell that he tried to kill himself three times, and almost succeeded. He pleaded for an X-ray to show that he had no contraband in him, without avail. The worst dry cell experiences are often for innocent individuals like Ms. Adams and Mr. Farrell. They are held the longest because they have nothing to expel.

### **Additional amendments requested**

We respectfully request that the Committee make additional amendments to restrict unnecessary dry cell use. This can be achieved while fully maintaining prison safety. The specific amendments we seek are contained in Appendix A. They would:

- Require that the reasonable grounds for a dry cell be confirmed using a body scanner (or an X-ray if a body scanner is not available) prior to a dry cell detention, or as soon thereafter as possible (see proposed s. 51(5));
- Outline circumstances where a dry cell cannot be commenced or continued because doing so is not necessary for safety or security reasons (see proposed s. 51(6)(a) to (d)); and
- Require release from a dry cell if so directed for medical reasons (s. 51(6)(a)) or after 72 hours has passed, as recommended by the Correctional Investigator (s. 51(6)(e)).<sup>5</sup>

We acknowledge that this is an omnibus bill on a tight timeline. However, there are strong reasons to make these specific amendments, including the following:

- Dry cells are horrendous and the government has shown a strong interest in reducing this kind of treatment wherever possible.
- In 2019, the government amended the *Act* to require a body scan in lieu of a strip search (s. 48(2)). The requested additional amendments take the same concept and apply it to dry cells. If a body scanner is to be used to avoid a single strip search, it should also be used to attempt to avoid a dry cell, which involves a series of strip searches and is “by far, the most degrading, austere and restrictive imaginable in federal corrections.”<sup>6</sup>
- The provisions authorizing a dry cell have already been struck down once. In our view, the existing provisions continue to be unconstitutional. A court could decide, for example, that the legislation does not contain sufficient safeguards to prevent an

---

<sup>5</sup> Office of the Correctional Investigator Annual Report 2019-2020, June 26, 2020, section 5 ([link](#)).

<sup>6</sup> *Ibid.*

unreasonable search under s. 8 of the *Charter* or cruel and unusual punishment under s. 12 of the *Charter*.

For those who wish to scrutinize the specific wording we have proposed, we provide the following explanatory notes:

- **X-ray alternative:** An X-ray is proposed as an option when a body scanner is not available. This is important because body scanners are not currently available in most institutions. X-ray searches are an accepted search tool to detect contraband under s. 51 as currently in force and in s. 51(3) as tabled at first reading. The conditions for X-ray searches in s. 51(3) are incorporated into the additional proposed amendments referentially, such as the requirement of a qualified X-ray technician and consent from a qualified medical practitioner and the inmate.
- **Sufficient justification:** The proposed amendments would allow use of a dry cell only if necessary to protect the safety of individuals and if less intrusive options are unavailable. For instance, concern over a smuggled cigarette partially motivated the detention of Ms. Adams in a dry cell. The safety concerns associated with a potential smuggled cigarette or similar contraband items are insufficient to justify a form of detention that is “by far, the most degrading, austere and restrictive imaginable in federal corrections.”<sup>7</sup>
- **Mandatory wording:** The proposed amendments state that a body scan and X-ray “shall” be undertaken, and therefore require steps to confirm the grounds used to justify a dry cell detention. This is important to ensure those steps are taken in every case. It also mirrors the wording in s. 48(2) of the *Act*, which came into force in 2019, stating that a body scan “shall” be conducted in lieu of a strip search.
- **Importance of legislation:** There is a unique opening to achieve this legislative change. While these changes could be introduced via policy, they would not be legally binding in the same way. If the existing legislative provisions were challenged in the future, a Court would determine their validity under the *Charter* based on the legislative safeguards, not the policy.
- **Flexibility:** The proposed amendments provide flexibility to allow the body scan or X-ray to be delayed if necessary (e.g. if a machine or technician is not immediately available).

Please see Appendix A on the following page for the specific amendments we propose. The proposed additional wording adds to, but does not change, the amendments set out in Division 19 as originally tabled. Appendix A shows both the amendments currently proposed in Division 19 (sections 51(1) to (3)) as well as the additional proposed wording (sections 51(4) to (6)).

---

<sup>7</sup> *Ibid.*

## Appendix A: Division 19 Amendments and Additional Proposed Amendments

### **Amendments proposed in Bill C-19, Division 19 at first reading:**

#### Detention in dry cell

**51 (1)** If the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in their rectum, the institutional head may authorize in writing the detention of the inmate in a cell without plumbing fixtures on the expectation that the contraband will be expelled.

#### Visits by registered health care professional

**(2)** An inmate detained under subsection (1) must be visited at least once every day by a registered health care professional.

#### Use of X-ray

**(3)** If the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in a body cavity, the institutional head may authorize in writing the use of an X-ray machine by a qualified X-ray technician to find the contraband, if the consent of the inmate and of a qualified medical practitioner is obtained.

### **Additional amendments we propose:**

#### Confirmation of dry cell necessity

**(4)** A body scan search shall be conducted prior to detaining an inmate in a dry cell, or as soon thereafter as possible if:

- (a) the body scan search is authorized under section 48.1; and
- (b) a prescribed body scanner in proper working order is reasonably available.

#### X-ray if body scan not available

**(5)** An X-ray search shall be conducted in lieu of a body scan search prior to detaining an inmate in a dry cell, or as soon thereafter as possible if:

- (a) the X-ray is authorized under section 51(3); and
- (b) a prescribed X-ray in proper working order is reasonably available but a body scanner is not reasonably available.

#### Limits on dry cell placement, continuation

**(6)** A dry cell detention shall not be commenced or continued if:

- (a) the contraband is produced;
- (b) the results of a body scan or X-ray do not substantiate reasonable grounds justifying placement in the dry cell under s. 51(1);
- (c) the dry cell detention is not reasonably necessary to protect the safety of individuals;
- (d) a less intrusive option is reasonably available in the circumstances;
- (e) 72 hours has passed since the initial placement in the dry cell;
- (f) a medical official indicates that placement or continued detention in a dry cell would be injurious to the physical or mental health of the person confined in a dry cell; or
- (g) in any other prescribed circumstances.