

Does Overcrowding in Canadian Prisons Amount to Cruel and Unusual Punishment?

1. Do current conditions in provincial correctional and remand centres amount to violations of Charter protections against cruel and unusual punishment?

The Supreme Court of the United States held in May 2011 that California prisons needed to reduce their numbers to less than 137.5% of capacity to avoid violating protections against cruel and unusual punishment. Many provincial correctional facilities in Canada are reporting crowding in excess of 137.5% capacity.

2. What would amount to “cruel and unusual punishment” under Canadian law?
3. Do current conditions of overcrowding endanger corrections workers and those in custody?
4. In the face of year over year declining crime rates, why has crowding of provincial remand and provincial jails increased?
5. What accounts for the remand crisis in Canada where more than half of the youth and adults behind bars in Canada have yet to be sentenced?

Why is the percentage of those in remand so high compared with other first-world countries?

6. How much would be required from provincial and federal taxpayers to build our way out of possibly cruel and unusual punishment and into effective corrections (about 90% capacity and good programs)?
7. Are there options (such as bail programs, effective community-based sentences) that could be implemented now to effectively reduce overcrowding and avoid the need for costly prison expansion?
8. Does the Minister of Justice’s obligation to alert Parliament to potential violations of the Charter and the Bill of Rights associated with federal legislative reforms include the impact of overcrowding in provincial correctional centres that could constitute cruel and unusual punishment?

9. In his appearance before Parliament in connection with the changes to credit for pre-trial detention, the Minister of Justice advised that the new laws, which took effect in February 2010, would unclog the courts and reduce the numbers in remand. Has that occurred?

Others including the Correctional Investigator and the Parliamentary Budget officer raised concerns that the provisions would increase the numbers in custody. Have the numbers in provincial and federal custody increased since February 2010?

What part of any increase could be attributed to elements of the “tough on crime agenda” that have already been implemented?

10. Were provinces and territories adequately forewarned of the likely increase in prison populations resulting from federal tough on crime legislation?