



**“Segregation: Not an Isolated Problem”**

**Submission in response to the  
Ministry of Community Safety  
and Correctional Services’  
consultation on its review of policies  
related to segregation of inmates**

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## Background

- 1** No matter what you call it – segregation, solitary confinement, isolation, or separation<sup>1</sup> – the practice of confining inmates to a cell, alone, for 22 hours or more a day for prolonged periods has increasingly come under fire.
- 2** Despite strong consensus that lengthy time spent in segregation is harmful to inmates, correctional facilities throughout the province regularly use the practice to manage them. While some correctional officials believe that indefinite segregation is a necessary tool for inmate management, critics condemn the practice as severely damaging to inmates’ health and rehabilitation.
- 3** In 2013, the inquest into the death of Ashley Smith, a 19-year-old woman who died in a federal prison in Ontario in 2007, focused attention on the plight of vulnerable inmates in segregation. In November 2015, Prime Minister Justin Trudeau directed the Justice Minister to implement the recommendations from the inquest, which include a complete prohibition on indefinite segregation.
- 4** At the provincial level, in September 2013, the Ministry of Community Safety and Correctional Services settled a human rights complaint with former inmate Christina Jahn and agreed to implement 10 public interest remedies, several targeting segregation practices. More recently, the Ministry has committed to a comprehensive review of Ontario’s use of segregation within correctional facilities.<sup>2</sup>
- 5** As part of its review, the Ministry invited my Office to share our views and suggestions relating to segregation.
- 6** Several of my colleagues have also spoken out publicly, recommending that the practice of segregation be abolished. Ontario’s Chief Commissioner of Human Rights, Renu Mandhane, put forward 10 recommendations in her submission to the

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<sup>1</sup> For the purposes of this submission, I will use the term “segregation,” which is the term used by the Ministry.

<sup>2</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl, 1st Sess (2015 November 24) (Hon Yasir Naqvi), online: <[http://www.ontla.on.ca/web/house-proceedings/house\\_detail.do?locale=en&Date=2015-11-24&detailPage=%2Fhouse-proceedings%2Ftranscripts%2Ffiles\\_html%2F24-NOV-2015\\_L124.htm&Parl=41&Sess=1#tidyout](http://www.ontla.on.ca/web/house-proceedings/house_detail.do?locale=en&Date=2015-11-24&detailPage=%2Fhouse-proceedings%2Ftranscripts%2Ffiles_html%2F24-NOV-2015_L124.htm&Parl=41&Sess=1#tidyout)>.

Ministry, including that the Minister publicly commit to eliminating the use of segregation and immediately implement strict restrictions on its ongoing use.<sup>3</sup>

- 7** At the federal level, my colleague Howard Sapers, the Correctional Investigator of Canada, recommended in his latest annual report that the government of Canada amend the *Corrections and Conditional Release Act* to significantly limit the use of administrative segregation, including imposing a ceiling of no more than 30 continuous days.<sup>4</sup>
- 8** The Office of the Ontario Ombudsman has the authority to receive and respond to complaints about public sector bodies, including all 27 of Ontario’s provincial correctional facilities. We resolve some 4,000 complaints annually relating to correctional matters. We are in regular contact with Ministry staff to discuss urgent and serious inmate concerns and obtain and review relevant information. We also meet with senior officials to address problem trends. We have considerable experience in dealing with inmate concerns about segregation practices.
- 9** In 2014-2015 we noticed a marked increase in segregation-related complaints. Our staff met with senior Ministry officials and highlighted **15** egregious cases, including one instance where an inmate was kept in segregation for more than three years. Although the Ministry has since worked to resolve individual cases and committed to improve, it has struggled to implement meaningful change. The current review of segregation is a significant step and provides an excellent opportunity for the Ministry to embark on a fundamental cultural shift in its approach to dealing with inmate management.

## The bottom line

- 10** I met with the Ministry on April 27, 2016, to provide my perspective on segregation. In my view, the bottom line is that:
  - Segregation has serious adverse effects on inmates, especially vulnerable individuals who suffer from mental health and/or developmental disabilities. The United Nations has declared that placing inmates in segregation for longer than

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<sup>3</sup> Ontario Human Rights Commission, “Submission of the OHRC to the Ministry of Community Safety and Correctional Services Provincial Segregation Review,” online: <<http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review>>.

<sup>4</sup> Office of the Correctional Investigator of Canada, “Annual Report of the Office of the Correctional Investigator” (June 2015), online: <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf>> at 26.

15 days is a form of cruel, inhuman or degrading treatment.<sup>5</sup> **As a result, the Ministry should adopt the long-term goal of abolishing indefinite segregation and developing inmate housing and programs that meet the needs of vulnerable inmates living with mental health, developmental, and behavioural challenges.**

- In the short term, robust procedural safeguards must be put in place to protect the rights of inmates placed in segregation.
- The Ministry's current segregation regulation and policy do not provide sufficient safeguards. Although they state that inmates should undergo periodic reviews of their segregation placement, these do not always happen, and there is no monitoring mechanism to ensure compliance. Further, the aim of the review is only to determine whether continued segregation is warranted for security reasons or as punishment for bad behaviour; it does not directly assess the health of the inmate and whether segregation is having a negative effect on the inmate's well-being. In addition, there is no requirement that an independent or impartial decision maker conduct these reviews.
- The only way to ensure fairness for segregated inmates is to establish an independent segregation review panel, enshrine procedural guarantees in regulation rather than policy, and establish systematic monitoring of segregation practices. These oversight mechanisms should be combined with an enhanced emphasis on the well-being, treatment, and rehabilitation of segregated inmates.

**11** This submission reviews the legal framework for segregation in Ontario and the reality of segregation in practice. In it, I have identified serious issues with the current system and advanced recommendations to address these shortcomings (these are listed throughout the submission and at Appendix B).

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<sup>5</sup> United Nations, *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules) (21 May 2015), E/CN.15/2015/L.6/Rev.1. Note, the United Nations does not use the term "segregation"; rather, it relies on the more general idea of confining an inmate to his or her cell for 22 hours or more per day.

# Legality of segregation in Ontario

## Regulation and policy

**12** Segregation is currently legal in Ontario. The practice is governed by Regulation 778<sup>6</sup> under the *Ministry of Correctional Services Act* and the Ministry’s “Placement of Special Management Inmates” policy.

**13** The term “segregation” is not defined in the regulation. Rather, the policy contains a vague definition, stating that segregation is:

[a]n area (for administrative segregation or close confinement housing, inmates are confined to their cells, limited social interaction, supervised/restricted privileges and programs, etc.) designated for the placement of inmates who are to be housed separate from the general population (including protective custody, special needs unit(s), etc.).<sup>7</sup>

**14** This definition conceptualizes segregation as a physical “area,” rather than the treatment of an inmate and the form of confinement.

**15** Under section 34(1) of the regulation, an inmate may be placed in segregation if:

- a) in the opinion of the Superintendent, the inmate is in need of protection;
- b) in the opinion of the Superintendent, the inmate must be segregated to protect the security of the institution or the safety of other inmates;
- c) the inmate is alleged to have committed misconduct of a serious nature;
- or
- d) the inmate requests to be placed in segregation.

**16** An inmate may also be placed in disciplinary “close confinement” (segregation) for no more than 30 days under section 32(2) if he or she commits a “serious” misconduct offence.

**17** Once an inmate is placed in segregation, the regulation and policy mandate that a Superintendent or designate review the placement on a strict schedule. These reviews are recorded in a document called a “Segregation Decision/Review Form.”

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<sup>6</sup> RRO 1990, Regulation 778, under *Ministry of Correctional Services Act*, RSO 1990, c M.22 [Regulation 778].

<sup>7</sup> “Placement of Special Management Inmates,” Institutional Services Policy and Procedures Manual, updated September 24, 2015, [Placement of Special Management Inmates Policy] at s. 4.1.

**24-hour review:** Within 24 hours of an inmate being placed in segregation, the Superintendent or designate must conduct a preliminary review of the placement. The inmate must be advised of the reasons and duration of the segregation, as well as the right to make submissions about the placement to the Superintendent or designate, in writing or in person. The Superintendent or designate must document this review process on the Segregation Decision/Review Form.<sup>8</sup>

**Five-day review:** Every five days, the Superintendent or designate must review the full circumstances of the inmate's placement to determine whether the inmate's continued segregation is justified.<sup>9</sup> The details of this review are again documented on the Segregation Decision/Review Form.

**30- and 60-day reviews:** If an inmate is placed in segregation for a continuous period of 30 days, the Superintendent completes a further review. This review is submitted to the Regional Director, who also reviews the placement to determine whether continued segregation is justified. The Regional Director's report is forwarded to the Assistant Deputy Minister for Institutional Services (to be reported to the Deputy Minister).<sup>10</sup> A similar process is followed if an inmate has been in segregation for a total of 60 days in one year.<sup>11</sup>

- 18** The regulation and policy each provide that inmates placed in segregation for non-disciplinary purposes retain “as far as practicable,” the same benefits and privileges as if they were not placed in segregation.<sup>12</sup>
- 19** The policy also contains additional provisions intended to provide enhanced procedural protection for inmates placed in segregation. A number of these provisions are quite recent; a substantially revised version of this policy was released on September 24, 2015, further to the human rights settlement entered into with former inmate Christina Jahn.<sup>13</sup> The revised policy emphasizes the Ministry's duty to accommodate inmates under Ontario's *Human Rights Code*, especially those with mental health concerns, to the point of undue hardship.

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<sup>8</sup> *Ibid* at s.6.6.2 and Segregation Decision/Review Form.

<sup>9</sup> Regulation 778, *supra* note 6 at s. 34(3).

<sup>10</sup> Placement of Special Management Inmates Policy, *supra* note 7 at s.6.6.4(b)(iv).

<sup>11</sup> *Ibid* at s.6.6.5.

<sup>12</sup> Regulation 778, *supra* note 6 at s. 34(4) and Placement of Special Management Inmates Policy, *supra* note 7 at s.6.1 and s.6.2.3.

<sup>13</sup> “Public Interest Remedies,” *In the matter of Christine Nadine Jahn v Her Majesty the Queen in Right of Ontario as represented by the Minister of Community Safety and Correctional Services before the Human Rights Tribunal of Ontario* (24 September 2013), online:

<[http://www.ohrc.on.ca/sites/default/files/Jahn%20Schedule%20A\\_accessible.pdf](http://www.ohrc.on.ca/sites/default/files/Jahn%20Schedule%20A_accessible.pdf)>.



- 20** The policy states that segregation cannot be used for inmates with mental illness and/or intellectual disability unless the facility can demonstrate and document that all other alternatives to segregation have been considered and rejected because they would cause an undue hardship.<sup>14</sup> If the threshold of “undue hardship” is met and an inmate with mental illness and/or intellectual disability is placed in segregation, additional procedures must be followed. A physician must conduct a baseline assessment of the inmate when he or she is placed in segregation, and a mental health provider must assess the inmate at least once every 24 hours.<sup>15</sup> Prior to each five-day review, a physician or psychiatrist must assess the inmate’s mental health.<sup>16</sup>
- 21** The revised policy also provides for mental health screening on admission, the creation of inmate “treatment plans” and/or “care plans” in certain instances, and increased officer training. Further, senior officials are required to visit inmates in the segregation unit at least once in every three-day period.<sup>17</sup>

## What the courts have said

- 22** Canadian courts have generally been unwilling to accept that segregation is contrary to an inmate’s *Charter* rights.<sup>18</sup> They also typically do not grant a remedy to segregated inmates who bring applications for *habeas corpus*, a proceeding that requires the Crown to show lawful grounds for an individual’s detention. Despite this reluctance to interfere with institutional decisions to hold inmates in solitary confinement, several judges have commented on the harsh conditions of segregation.
- 23** For instance, in a 2010 decision, Justice T. Mark McEwan found that apart from solitary confinement, additional isolating deprivations imposed on an inmate caused **psychological stress**. He concluded that the inmate’s liberty and security interests and right to be free from cruel and unusual treatment under sections 7 and 12 of the *Charter* had been breached.<sup>19</sup> Then in 2014, Justice B.D. MacKenzie, while not finding any *Charter* contraventions in the specific case, generally observed that, “there is no question [segregation] is much **more onerous and even degrading**

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<sup>14</sup> Placement of Special Management Inmates Policy, *supra* note 7 at s. 3.1.3.

<sup>15</sup> *Ibid* at s. 6.2.3(c)(i-iii).

<sup>16</sup> *Ibid* at s. 6.2.3(c)(iv).

<sup>17</sup> *Ibid* at s. 6.5.2.

<sup>18</sup> For example, *R v Olson*, [1987] OJ No 855 and *R v Boone*, 2014 ONCA 515, leave to appeal denied.

<sup>19</sup> *Bacon v Surrey Pretrial Services Centre*, 2010 BCSC 805 at para 322.

than being in the general population or even in protective custody.”<sup>20</sup> These comments underscore the reality that although segregation may be legal, it can be a severe, demeaning practice that, coupled with associated deprivations, can place inmates under intense psychological stress.

## International and medical opinions

- 24** The United Nations’ Special Rapporteur on Torture has clearly stated that lengthy segregation can amount to torture.<sup>21</sup> Based on this conclusion and input from others, in May 2015 the United Nations declared that placing inmates in segregation for longer than 15 days is a form of cruel, inhuman or degrading treatment.<sup>22</sup> Other jurisdictions are considering similar limitations on the length of time inmates may be segregated from the general population.<sup>23</sup> The deleterious effects on inmates arising from prolonged isolation have also been documented in numerous clinical studies.<sup>24</sup>

## The reality of segregation in Ontario

- 25** In our Office’s 2014-2015 Annual Report, it was noted that complaints to the Ombudsman from segregated inmates had increased significantly. They also highlighted the disconnect between the reality of segregation and the practice envisioned by the Ministry’s regulation and policy.

## Segregation by the numbers

- 26** Over the past three years, our Office has received 557 complaints related to segregation placements. A breakdown of these complaints by facility is provided in Appendix A.

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<sup>20</sup> *R v Anderson*, 2014 BCSC 395 at para 30.

<sup>21</sup> United Nations, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 28 July 2008, A/63/175.

<sup>22</sup> United Nations, *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules), 21 May 2015, E/CN.15/2015/L.6/Rev.1.

<sup>23</sup> See for example Illinois: Ivan Moreno, “Illinois Seeks to Limit Use of Solitary Confinement”, *The Associated Press* (24 April 2016), online: <<http://abcnews.go.com/Politics/wireStory/illinois-seeks-limit-solitary-confinement-38635013>>.

<sup>24</sup> For example, the studies summarized in: Louise Arbour, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, (Ottawa: Canada Communication Group, 1996) at 186.

**27** Currently, each correctional facility manually records the number of inmates in segregation as of midnight each day. The Ministry does not routinely record the number of segregation admissions for any of its 27 correctional facilities, although it recently compiled information from the Ottawa-Carleton Detention Centre and Central East Correctional Centre. The data from those two facilities for the period April to August 2015 revealed a total of 1,677 segregation admissions.<sup>25</sup>

## The gap between policy and practice

**28** With more than 1,600 segregation admissions at just two facilities in such a short period (five months), it is difficult to understand the Ministry’s policy position that segregation is a last resort, carefully controlled and monitored. The policy provides segregated inmates with legal safeguards to ensure that their placement is regularly reviewed and, on paper, requires that high-level Ministry officials approve all lengthy segregation placements. However, our Office’s experience has revealed that the policy requirements are often ignored in practice.

**29** After reviewing hundreds of segregation placements, it is clear that segregation is a tool regularly used by managers to separate out and effectively punish the most “difficult” and vulnerable inmates. The Correctional Investigator of Canada came to the same conclusion in his recent annual report, when he said “[t]here is no escaping the fact that administrative segregation has become the most commonly used population management tool to address tensions and conflicts in federal correctional facilities.”<sup>26</sup> Inmates are also routinely placed in segregation because facilities lack the resources necessary for managers to accommodate them in more appropriate settings.

**30** The following cases are illustrative of the systemic issues our Office has encountered when considering segregation-related complaints.

## Cut off from support and programming

**31** The regulation and policy state that, as far as practicable, administratively segregated inmates should be provided the same conditions of confinement, rights

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<sup>25</sup> Amy Dempsey, “Data reveal ‘shocking’ numbers of Ontario inmates in solitary,” *Toronto Star* (1 March 2016), online: <<http://www.thestar.com/news/canada/2016/03/01/data-reveal-shocking-numbers-of-ontario-inmates-in-solitary.html>>.

<sup>26</sup> Office of the Correctional Investigator of Canada, *supra* note 4 at 26.

and privileges as general population inmates.<sup>27</sup> However, we have found that this typically does not occur. Segregated inmates often lose access to privileges and programs available to other inmates. Many inmates in administrative segregation have complained to us about having no access to the exercise yard, programs, and telephone privileges. Even trying to call my Office to complain can be a challenge. At many correctional facilities, the segregation unit telephone is affixed to a cart, and inmates are dependent on staff members having the time and inclination to wheel the cart to their cells so they can make calls.

## Meaningless or non-existent internal segregation “reviews”

- 32** Similarly, the periodic segregation reviews guaranteed by the Ministry’s regulation and policy are sometimes not completed, or are completed in a perfunctory and mechanical way. For instance, after receiving a complaint from an inmate who had been in segregation repeatedly since his admission to jail, my Office requested documentation for all five-day and 30-day reviews performed since the inmate’s latest placement. The documentation revealed numerous gaps, with a review occurring, on average, every 20 days. This meant that the length of time between each review was **four times** longer than the regulation and policy required.
- 33** This was not a one-off occurrence. My Office has presented numerous cases to the Ministry where mandatory reviews were not completed in accordance with the regulation and policy. On three occasions in 2013 and 2014, my staff discovered inmates had been in segregation continuously for more than three months and the facilities could not produce *any* of the required reporting for those placements. In two other cases, my Office uncovered that managers had actually **replicated** segregation review documentation they claimed had gone missing after being properly completed. That revelation led the head of one facility to conduct an audit into the segregation reporting for several periods during 2014. The audit determined that **most of the reviews that should have been completed could not be found.**

## Lack of independent external segregation review

- 34** Under Ministry policy, the first review of a segregation placement by an official outside of the facility only occurs after 30 days. The next Ministry review takes place, if the inmate is still in segregation, at the 60-day mark. Regional directors

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<sup>27</sup> Regulation 778, *supra* note 6 at s. 34(4) and Placement of Special Management Inmates Policy, *supra* note 7 at s. 6.1 and s. 6.2.3.

conduct these reviews. Their reports are forwarded to an Assistant Deputy Minister and then to the Deputy Minister.

- 35** Given the significant deprivations and psychological stress that can accompany prolonged segregation, review of institutional decisions of segregation for periods of 30 and 60 days should be rigorous and transparent. Unfortunately, our experience has shown that the opposite is true. Typically, when we attempt to uncover why a segregation placement was confirmed at the institutional level, we find scant documentation recording what information institutional officials considered and virtually no reasons to support the outcome of the review.
- 36** For example, my staff became sadly accustomed to seeing one word – “security” – repeatedly provided as the sole justification for lengthy segregation placements. In September 2015, the Ministry updated the Segregation Decision/Review Form to require decision makers at each stage to document additional information during the review process. While this is a positive step, given the past history of non-compliance, I am unconvinced that changes to the form will lead facilities to conduct meaningful and considered reviews of each segregation placement.

## The length of placements

- 37** Among the most alarming features of the Ministry’s current practice are the extremely long periods of segregation that some inmates must endure. In 2014, my Office received a complaint from an inmate who spent more than **three years** in segregation at various facilities. He told our staff that his continual separation from other inmates had made him feel depressed and “**sick of life.**” After my Office became involved, the facility considered alternatives to continued segregation and the inmate was ultimately returned to the general population. This outcome should not have taken years and should not have required our Office’s involvement. Adequate checks and balances should exist to ensure earlier consideration of other placement options for segregated inmates.
- 38** It is common for my Office to receive complaints from inmates who have been in segregation for several months. But it is impossible for us to know how prevalent such placements are, as the Ministry has only recently started to collect even basic information about segregation counts in individual facilities. Sometimes the only way that my Office can learn about lengthy segregation placements is through the news media. For example, a recent media report described how an inmate spent over a year in segregation at the Ottawa-Carleton Detention Centre before

eventually being found unfit for trial and transferred to a treatment centre.<sup>28</sup> Another report this month observed that for a five-month period in 2014, at least 360 inmates were kept in segregation for a prolonged time with an average stay of 103 days.<sup>29</sup> If these placements were not reported on publicly, my Office would not have become aware of them.

- 39** In contrast, at the federal level, statistical information about the time inmates spend in segregation is available.<sup>30</sup> In 2015, the Correctional Investigator of Canada reported that the average length of a segregation placement was 27 days for the previous year.<sup>31</sup>

## Impact on inmates – suicide and self-harm

- 40** Segregation can have profoundly negative impacts on inmate health and welfare. The suicides of federal inmates who spent lengthy periods in segregation, such as Ashley Smith and Edward Snowshoe (who spent 162 days in segregation in an Edmonton prison in 2010), highlight the risk that segregation poses, particularly for vulnerable inmates.<sup>32</sup> It has also been reported that a disproportionate number of suicides occur among segregated inmates.
- 41** In his three-year review of federal inmate suicides, the federal Correctional Investigator found that segregation is an independent risk variable for inmate suicide.<sup>33</sup> In reviewing 14 suicides that occurred in segregation from 2011 to 2014, the Correctional Investigator determined that:

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<sup>28</sup> Gary Dimmock, “After 18 months in solitary, Ottawa man found unfit for trial: ‘He felt like there were bugs... in his brain,’” *National Post* (11 April 2016), online: <<http://news.nationalpost.com/news/canada/after-18-months-in-solitary-ottawa-man-found-unfit-for-trial-he-felt-like-there-were-bugs-in-his-brain>>.

<sup>29</sup> Patrick White, “Documents reveal troubling details about long-term solitary confinement,” *The Globe and Mail* (24 April 2016), online: <<http://www.theglobeandmail.com/news/national/documents-reveal-troubling-details-about-long-term-solitary-confinement/article29746902/?cmpid=rss1>>.

<sup>30</sup> The Office of the Correctional Investigator analyzed segregation-related data extracted from the CSC/PBC Data Warehouse to determine statistical trends in segregation placements. Office of the Correctional Investigator of Canada, “Administrative Segregation in Federal Corrections: 10 Year Trends” (28 May 2015), online: <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20150528-eng.aspx>>.

<sup>31</sup> *Ibid.*

<sup>32</sup> Government of Canada, Coroner’s Inquest Touching the Death of Ashley Smith, online: <<http://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml>>; Government of Canada, *Report to the Minister of Justice and Attorney General – Public Fatality Inquiry* (4 June 2014), online: <[https://justice.alberta.ca/programs\\_services/fatality/Documents/fatality-report-Snowshoe.pdf](https://justice.alberta.ca/programs_services/fatality/Documents/fatality-report-Snowshoe.pdf)>.

<sup>33</sup> Office of the Correctional Investigator of Canada, “Three Year Review of Federal Inmate Suicides (2011-2014)” (10 September 2015) at 15, online: <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20140910-eng.pdf>>.

suicide rates are more prevalent in physically isolated cells (segregation, observation and mental health cells) than in general population cells. The literature is also clear that physical isolation and separation increases the risk of suicidal behaviour.<sup>34</sup>

- 42** All but three of the suicides occurred after the inmates had spent more than 14 days in segregation.<sup>35</sup>
- 43** In Ontario, the Ministry has not produced comprehensive statistics on the rate of suicides amongst segregated inmates. However, coroner’s juries have repeatedly recommended improvements to provincial segregation practices in connection with inmate suicides. For instance, in May 2013, a coroner’s jury made nine recommendations to the Ministry after the suicide of two inmates, one of whom was found hanging in a segregation cell at the Central North Correctional Centre.<sup>36</sup> In June 2014, a coroner’s jury made five recommendations to the Ministry after an inmate at Toronto’s Don Jail committed suicide while held in segregation,<sup>37</sup> and as recently as November 2015, a coroner’s jury made 12 recommendations to the Ministry in regard to the suicide of a segregated inmate at the Elgin-Middlesex Detention Centre.<sup>38</sup>
- 44** Despite these many recommendations, inmate suicides in segregation persist. Earlier this month, according to news reports, another inmate took his own life in a segregation cell at the Ottawa-Carleton Detention Centre.<sup>39</sup> The available information on the number of suicides among segregated inmates in Ontario facilities is ad hoc. However, my Office is aware of at least four segregated inmates who are believed to have taken their own lives in Ontario jails in recent years.<sup>40</sup> Inquests into the deaths of two of the inmates are pending.
- 45** As noted in our Office’s 2014-2015 Annual Report, one of these inmates had complained to our staff that correctional workers had told him he would be in segregation for his entire sentence of two years less a day. He said he was “very

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<sup>34</sup> *Ibid* at 15.

<sup>35</sup> *Ibid* at 11.

<sup>36</sup> *Re Sylvester, Re Veinott*, 2013 CanLII 56115.

<sup>37</sup> *Re Seago*, 2014 CanLII 87165.

<sup>38</sup> Verdict of Coroner’s Jury, Inquest into the death of Keith Patterson, Jury Recommendations (6 November 2015).

<sup>39</sup> Gary Dimmock and Andrew Seymour, “Accused serial rapist commits suicide in solitary confinement in Ottawa jail,” *National Post* (12 April 2016), online: <<http://news.nationalpost.com/news/canada/inmate-in-solitary-confinement-commits-suicide-in-ottawa-carleton-detention-centre-cell>>.

<sup>40</sup> Office of the Ontario Ombudsman, *2014-2015 Annual Report* (28 July 2015) at 36, online: <<https://www.ombudsman.on.ca/Files/sitemedia/Documents/AR14-15-EN.pdf>>.

**distressed**” at this possibility. When our staff attempted to reach him to follow up on his complaint, we learned that he had taken his own life.

- 46 We are also aware of at least one case in which a despondent inmate attempted to kill himself after a prolonged period of segregation.** Our Office received a complaint about a 19-year-old man who had been in segregation for more than two months after a series of institutional misconducts. He was frustrated and angry about his placement and tried to take his own life, leading to his hospitalization. The inmate told our Office that **every day in segregation felt like three days** and that his situation felt hopeless. It was only after we had raised the matter with senior Ministry officials that the facility was persuaded to develop a behaviour modification plan, intended to transition the inmate back into the general population. Although the inmate eventually regained certain privileges, he remained in segregation.

## The status quo

- 47** My Office has already brought many cases concerning problematic segregation practices to the Ministry’s attention. Our involvement in individual cases has helped ensure that segregation placements were properly reviewed, and in some instances, led to the development of plans to reintegrate inmates into the general population. However, proper exercise of discretion and policy compliance should not depend on the prompting of my Office. Unfortunately, despite the Ministry’s efforts to resolve individual cases and its stated commitment to improve its practices, systemic problems continue unabated. As recently as September 2015, a correctional facility sent my Office faulty segregation review documentation – we determined that it covered time periods when the **inmate was not even at the facility**.
- 48** Recent amendments to the Ministry’s segregation policy in the wake of the Jahn settlement are intended to mitigate the harmful impact of segregation on inmates who are experiencing mental health challenges. However, these improvements will only be effective to the extent that the policy is followed in practice. This will be a challenge, given that provincial facilities often failed to comply with the simpler procedural requirements under the previous policy.
- 49** Further, even with these policy revisions, facilities are only required to report segregation placements to the Ministry’s senior levels once the placements reach 30 consecutive days or 60 aggregate days. By this point, a segregated inmate may already have experienced serious and irreversible harm. The policy revisions do not contemplate earlier scrutiny or intervention by the Ministry.



**50** As evidenced by its present review, the Ministry recognizes that the status quo is unacceptable. While the Ministry has recently taken positive steps to improve its segregation practices, the situation calls out for enhanced procedural safeguards as well as rigorous and meaningful oversight.

## A path to segregation reform

**51** The Ministry provided my Office with discussion questions to guide the segregation consultation. These questions concern incremental and limited modifications to the existing system. For instance, two of the questions posed by the Ministry ask:

- What does short, medium and long term success look like from your organization’s perspective?
- If you had to change one or two things, what would you change?<sup>41</sup>

**52** In my view, a broader and transformative approach to segregation practices is necessary. Accordingly, rather than answer discrete questions, I have formulated recommendations addressed at developing a comprehensive legislative and policy framework to ensure proper balancing of concerns for institutional security and safety as well as respect for individual human rights and fundamental freedoms.

**53** Although Minister Yasir Naqvi said the Ministry is undertaking “a comprehensive review of Ontario’s use of segregation,”<sup>42</sup> the Ministry has so far met with only 14 stakeholder organizations. As of April 26, 2016, the Ministry began seeking comments or concerns from the public through an online “submission box” on the Ministry’s website.<sup>43</sup> However, it is unclear how those most affected by segregation – inmates – will learn of or access this website. In addition, the Ministry has indicated that this online consultation will only be in place until May 15, 2016, giving the public less than three weeks to participate in the consultation process.

**54** These modest measures contrast sharply with the Ministry’s recent consultation process on regulating street checks, better known as “carding.” During the street check consultation, the Ministry engaged with more than 40 stakeholder

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<sup>41</sup> Handout from Ministry of Community Safety and Correctional Services, “Provincial Segregation Review – Questions.”

<sup>42</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl, 1st Sess (2015 November 24) (Hon Yasir Naqvi), online: <[http://www.ontla.on.ca/web/house-proceedings/house\\_detail.do?locale=en&Date=2015-11-24&detailPage=%2Fhouse-proceedings%2Ftranscripts%2Ffiles\\_html%2F24-NOV-2015\\_L124.htm&Parl=41&Sess=1#tidyout](http://www.ontla.on.ca/web/house-proceedings/house_detail.do?locale=en&Date=2015-11-24&detailPage=%2Fhouse-proceedings%2Ftranscripts%2Ffiles_html%2F24-NOV-2015_L124.htm&Parl=41&Sess=1#tidyout)>

<sup>43</sup> Ministry of Community Safety and Correctional Services, “Comprehensive Review of Segregation”, online: <[http://www.mcscs.jus.gov.on.ca/english/PublicConsultations/mcscs\\_pc.aspx](http://www.mcscs.jus.gov.on.ca/english/PublicConsultations/mcscs_pc.aspx)>.

organizations and held five public meetings throughout the province; it also collected almost 500 comments through its website. A statement from the Minister said the “voices, feedback, and lived experience” heard in the consultation process would be “instrumental” in finalizing the regulation.<sup>44</sup>

- 55** This same robust and transparent consultation should be conducted during the segregation review. The Ministry should ensure that the public and appropriate stakeholders, including inmates and former inmates, are actively engaged in the segregation consultation process. It should ensure that the method used to consult with current inmates is accessible within correctional facilities. Only then will the Ministry be able to obtain the “voices, feedback and lived experience” of the people most directly impacted by segregation.

### Recommendation 1

**The Ministry of Community Safety and Correctional Services should ensure that the public and appropriate stakeholders, including inmates and former inmates, are meaningfully engaged in the segregation consultation process. The Ministry should ensure that the method used to consult with current inmates is accessible within correctional facilities.**

### Prohibiting indefinite segregation

- 56** Indefinite segregation should no longer be an accepted or legal correctional practice in Ontario.
- 57** The Prime Minister recently directed the federal Justice Minister to implement the numerous recommendations arising from the inquest into Ashley Smith’s death. These recommendations would require that:
- in accordance with the recommendations of the United Nations Special Rapporteur, **indefinite solitary confinement be abolished**; and
  - until segregation is abolished, segregation be limited to 15 consecutive days, followed by a mandatory period outside of segregation for five

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<sup>44</sup> “Consultations on Street Checks – Message from Minister Naqvi”, Ministry of Community Safety & Correctional Services, online: [http://www.mcscs.jus.gov.on.ca/english/PublicConsultations/StreetChecks/Street\\_checks.html](http://www.mcscs.jus.gov.on.ca/english/PublicConsultations/StreetChecks/Street_checks.html).

consecutive days. Further, an inmate would not be placed in segregation for more than 60 days in a calendar year.<sup>45</sup>

- 58** The federal Correctional Investigator has also strongly advocated for implementation of the Ashley Smith inquest recommendations.<sup>46</sup> The Ministry should make the same commitment to implementing the segregation-related recommendations from that inquest in the provincial system.
- 59** Prohibiting indefinite segregation placements serves two important goals.
- 60** First, it serves to assure inmates that the maximum time they will be kept in segregation is 15 days. This can help limit the harmful psychological effects that indefinite segregation has on inmates. One social psychologist described that an inmate’s uncertainty over the length of a segregation placement “promotes a sense of helplessness” and that “finite [placements]...seem less prone to inspire panic”.<sup>47</sup>
- 61** Second, prohibiting indefinite segregation changes the purpose of the segregation review process. The focus of such reviews would shift from confirming whether continued isolation is “appropriate” to developing viable reintegration plans, as well as updating treatment and care plans, to ensure an inmate’s smooth transition back to general population.

## **Recommendation 2**

**The Ministry of Community Safety and Correctional Services should abolish indefinite solitary confinement for all inmates. In accordance with the recommendation of the United Nations Special Rapporteur, “indefinite” should be defined as greater than 15 days.**

## **Recommendation 3**

**Until indefinite segregation is abolished, the Ministry of Community Safety and Correctional Services should limit all segregation placements (administrative or disciplinary) to 15 consecutive days, followed by a mandatory period outside of segregation for five days. No inmate should be placed in segregation for more than 60 days in a calendar year.**

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<sup>45</sup> Government of Canada, Coroner’s Inquest Touching the Death of Ashley Smith, online: <<http://www.csc-ccc.gc.ca/publications/005007-9009-eng.shtml>>.

<sup>46</sup> Office of the Correctional Investigator of Canada, *supra* note 4 at 16.

<sup>47</sup> Hans Toch, *Mosaic of Despair: Human Breakdown in Prison* (1992: American Psychological Association) at 250.

## Changing inmate management models

- 62** I understand that eliminating indefinite segregation is a long-term goal that will undoubtedly present numerous practical implementation challenges. If an inmate is only to be placed in segregation for 15 days, facilities must develop other placement options to address cases where integration in a general correctional environment may not be feasible. This is a daunting task for correctional institutions, which must serve a diverse group of inmates, including those with mental health and developmental disabilities, as well as a variety of behavioural problems and special handling considerations. Regrettably, the absence of adequate community-based treatment and services can, at times, result in vulnerable individuals becoming entangled in the criminal justice system. Correctional facilities are ill-equipped to meet the needs of these inmates, but nonetheless must do so out of necessity.
- 63** The Ministry’s current policy requires clinical staff, whenever possible, to assess an inmate before he or she is admitted to or released from segregation.<sup>48</sup> Certain inmates – those with known or suspected mental illness, intellectual disability or other *Human Rights Code*-related needs – must be assessed by a mental health provider every 24 hours. A physician or psychiatrist must assess these inmates prior to each five-day segregation review.<sup>49</sup> While I applaud these protections, I see no reason to limit them to a subset of segregated inmates. **All** segregated inmates should receive these periodic health assessments. Expanding the scope of these assessments will act as an important safeguard for inmates and allow facilities to better monitor the ongoing impact of segregation on the physical and mental well-being of affected inmates.

### Recommendation 4

**The Ministry of Community Safety and Correctional Services should require that all segregated inmates receive assessments from a mental health provider every 24 hours. Moreover, the Ministry should require that a physician or psychiatrist assess segregated inmates prior to each five-day segregation review.**

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<sup>48</sup> Placement of Special Management Inmates Policy, *supra* note 7 at s. 6.3.1.

<sup>49</sup> *Ibid* at s.6.2.3(c).

- 64** The Ministry is aware that some inmates require specialized treatment. Since the Jahn settlement, it has taken steps to adapt its policies to better accommodate inmates with mental health issues. While these changes are a welcome starting point, the Ministry should design programs and custodial environments to serve inmates suffering from mental health and/or behavioural challenges or developmental disabilities. The Ministry should leverage the expertise and experience of the Ministry of Health and Long-term Care and the Ministry of Community and Social Services to develop a correctional model that balances the goals of institutional security and inmate welfare. The model should provide a mechanism **other than segregation** for managing inmates in these circumstances.
- 65** The public interest remedies arising from the Jahn settlement have already led the Ministry to implement “step-down” or “stabilization” units to help rehabilitate inmates with mental health issues so that they can ultimately return to the general population. In addition, the Ministry has implemented the use of care plans and treatment plans for inmates with mental illness. These changes are important advancements in helping the Ministry achieve its “stated goals of rehabilitation, reintegration, increased mental health supports, and improved staff and inmate safety.”<sup>50</sup>
- 66** While I applaud this focus on treatment and rehabilitation, there are still inmates who fall through the cracks, such as the inmate who spent over a year in segregation at the Ottawa-Carleton Detention Centre before eventually being found unfit for trial and transferred to a treatment centre.<sup>51</sup> During his lengthy segregation placement, the inmate reportedly told his mother “he felt like there were bugs and ants in his ears, in his head and in his brain.” A psychiatric assessment linked the inmate’s deteriorated mental health with his time spent in segregation. The Ministry told us that there was a treatment plan in place for this inmate. However, it did not sufficiently mitigate the harmful effects of segregation on his mental well-being.
- 67** Despite these shortcomings, the use of treatment and care plans should be expanded. Rigorous and meaningful treatment plans and care plans should be created for **all** inmates in temporary segregation, as well as those facing the possibility of segregation due to their challenging behaviours.

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<sup>50</sup> Yasir Naqvi, “Statement by Minister Yasir Naqvi on review of segregation policy in Ontario correctional system” (25 March 2016), online: Ministry of Community Safety and Correctional Services <<https://news.ontario.ca/mcscs/en/2015/3/yasir-naqvi-minister-of-community-safety-and-correctional-services-made-the-following-statement-toda.html>>.

<sup>51</sup> Gary Dimmock, “After 18 months in solitary, Ottawa man found unfit for trial: ‘He felt like there were bugs... in his brain,’” *National Post* (11 April 2016), online: <<http://news.nationalpost.com/news/canada/after-18-months-in-solitary-ottawa-man-found-unfit-for-trial-he-felt-like-there-were-bugs-in-his-brain>>.

## Recommendation 5

**The Ministry of Community Safety and Correctional Services should consult with the Ministry of Health and Long-term Care and the Ministry of Community and Social Services to develop a correctional model that balances the goals of institutional security and inmate welfare. The model should include programming and living arrangements other than segregation for managing inmates with mental health issues and developmental disabilities.**

## Recommendation 6

**The Ministry of Community Safety and Correctional Services should ensure that the approach for managing inmates with mental illness – including step-down or “stabilization” units and the use of treatment plans and care plans – is extended for use by all inmates who are in segregation or facing the possibility of segregation.**

- 68** My Office is also aware of the growing use of “reintegration plans” for segregated inmates. The purpose of these plans is to give segregated inmates a “road map” for returning to the general inmate population. When we were responding to a complaint from one inmate in segregation, we reviewed a treatment plan that provided for incentives, if he avoided identified behaviours. A multidisciplinary team at the facility met periodically to review the inmate’s progress. It is important to note that this plan was developed with the input and agreement of the inmate. In fact, in the cases that our Office reviewed, the reintegration plans were often successful at initiating rapid, marked improvement in the inmate’s behaviour.
- 69** Reintegration plans should not be a discretionary process. The Ministry should require that reintegration plans be created for **all** inmates placed in temporary segregation.
- 70** By making treatment and rehabilitation the standard approach, facilities can focus on getting to and resolving the underlying issues that result in an inmate’s challenging behaviours.

## Recommendation 7

**The Ministry of Community Safety and Correctional Services should require that reintegration plans be created for all inmates placed in temporary segregation, and that an inmate has input into the plan.**

### Defining boundaries

- 71** My Office’s experience with segregation-related complaints reveals that inmates are sometimes kept in segregation-like conditions in areas of the facility not designated as “segregation” units. In fact, the definition of “segregation” in the Ministry’s policy implies that segregation is a physical *area* to confine inmates, rather than a *form* of confinement. This is deeply troubling difference.
- 72** Some facilities have told my Office in responding to specific complaints that unless inmates are in the official segregation unit, they do not qualify for the procedural protections guaranteed in the regulation and policy. They claim that because these inmates were on an “overflow” or other similar unit, the protections did not apply. Under this logic, an inmate who was kept in his or her cell, alone, for over 23 hours a day would not be entitled to any procedural protections if the cell was not physically in the designated segregation unit. As the Ontario Human Rights Commission noted in its submission to the Ministry, “[w]hat matters is the lived experience on the prisoner, not the label applied to the practice by correctional authorities.”<sup>52</sup>
- 73** Although there is no universally agreed upon definition for segregation, the United Nations Special Rapporteur defines solitary confinement (segregation) as the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day.<sup>53</sup> The Ministry should adopt this definition of segregation, which focuses on the inmate and the conditions of confinement, not the location where the confinement occurs.

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<sup>52</sup> Ontario Human Rights Commission, “Submission of the OHRC to the Ministry of Community Safety and Correctional Services Provincial Segregation Review,” online: <<http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review>>.

<sup>53</sup> United Nations, *supra* note 21 at para 88.

## Recommendation 8

**The Ministry of Community Safety and Correctional Services should revise the definition of segregation to ensure that it encompasses all inmates who are held in segregation-like conditions. The revised definition should be in accordance with international standards, which define segregation as the physical isolation of individuals to their cells for 22 to 24 hours a day.**

- 74** The existing regulation also does not explain or provide any criteria to further define what circumstances might justify segregation. Ministry policy sets out situations in which an inmate can be considered in need of protection. However, there is no guidance on what justifies segregation “to protect the security of the institution or the safety of other inmates,” or clarification of what misconducts are considered so serious that they warrant an inmate being placed in segregation.
- 75** In addition, there is no requirement that when inmates voluntarily request placement in segregation, reasonable steps are taken to address any safety and security concerns they have identified about their placement in the general inmate population.
- 76** The Ministry should provide clearer guidance on the situations where the use of segregation is authorized, and emphasize that it should only be used as a last resort. Whenever practical, institutional officials should also be directed to remedy any underlying issues that have led to requests for placement in segregation, to reduce reliance on voluntary isolation as a solution to conflicts in the general population.

## Recommendation 9

**The Ministry of Community Safety and Correctional Services should provide greater guidance concerning the circumstances in which placement in segregation is authorized and direct that it is only to be used as a last resort.**

## Recommendation 10

**The Ministry of Community Safety and Correctional Services should require that correctional officials address underlying issues resulting in inmates requesting voluntary placement in segregation.**



## Fair reviews for inmates

- 77** While abolishing indefinite segregation is a crucial step, that alone is not sufficient. My Office’s experience provides ample evidence that correctional employees often fail to implement the Ministry’s segregation regulation and policy, whether deliberately or through inadvertence or neglect. This failure makes the protections provided by the regulation and policy meaningless and potentially denies inmates their common law right to procedural fairness.
- 78** When a decision made pursuant to a statutory authority affects the rights of an individual, the courts require that the decision be made according to fair procedures.<sup>54</sup> This requirement goes by many names, including the duty to act fairly, the rules of natural justice, or **procedural fairness**. At a minimum, procedural fairness requires that an individual be told the case to be met and given an opportunity to respond before a decision adverse to his or her interests is made.<sup>55</sup> This right to be heard allows the affected person an opportunity to influence the decision and provide information that may assist the decision maker in coming to a rational and informed decision. In addition, procedural fairness may require that a decision be supported by written reasons, if the decision is significant for the individual or when there is a statutory right of appeal.<sup>56</sup>
- 79** Under the current segregation review process, decisions about whether or not to keep an inmate in segregation are made by managers within the correctional facility. Inmates are allowed to make submissions before a decision is reached, but there is no tribunal-like, in-person hearing, and inmates typically are not provided with meaningful reasons for the manager’s decision. Moreover, facilities sometimes fail to conduct these mandatory reviews at all. Although regional and senior Ministry officials conduct reviews after an inmate has been in segregation for 30 consecutive days (or 60 days in a year), there is no independent external assessment. Inmates have no right of appeal for these decisions.
- 80** One option to ensure that inmates are being treated in accordance with the Ministry’s regulation and policy, as well as procedural fairness, is to provide for independent and impartial review of all segregation placements. In addition to ensuring that the reviews occur as scheduled, external observers, removed from correctional culture,<sup>57</sup> would be able to apply the segregation criteria in the

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<sup>54</sup> *Martineau v Matsqui Institution Disciplinary Board (no 2)*, [1979] SCJ No 121.

<sup>55</sup> *Nicholson v Haldimand-Norfolk (Regional) Police Commissioners*, [1978] SCJ No 88.

<sup>56</sup> *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] SCJ No 39 at para 43.

<sup>57</sup> In *The Code*, my Office discussed the dysfunctional correctional culture that pervades provincial facilities. It can cause officers to prioritize their fellow officers over the well-being of inmates. See: Office of the Ontario Ombudsman, *The Code: Investigation into the Ministry of Community Safety and*

regulation objectively. They could ensure that segregation is truly being used only as a last resort. This independent oversight panel should be appointed by the Minister and tasked with reviewing all segregation placements.

## Recommendation 11

### The Minister should appoint an independent panel to review all segregation placements.

- 81** This approach is not novel. It has been promoted by the Correctional Investigator of Canada<sup>58</sup>, the Arbour Commission<sup>59</sup>, and many others<sup>60</sup> in Canada.
- 82** The independent panel should hold administrative hearings when reviewing an inmate’s segregation placement. The hearing should take place within the first five days of the placement – early enough that, should a placement be found inconsistent with the regulation and policy, the inmate can be returned to the general population with minimal impact on his or her health. This five-day time frame, while restricted, should be administratively workable. The Consent and Capacity Board routinely holds hearings within seven days of an application to the Board.<sup>61</sup>
- 83** At the review hearing, the inmate should be guaranteed certain procedural rights, including the right to attend the hearing in person or through video conferencing, to be represented by a person of his or her choosing, and to know the case that he or she will have to meet. The Ministry should provide inmates with access to duty counsel. The hearing should take place in as “neutral” a venue as possible, and never in an inmate’s cell or on a living unit.

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*Correctional Services’ response to allegations of excessive use of force against inmates* (June 2013), online: <<https://ombudsman.on.ca/Ombudsman/files/45/450c6aa8-3481-43d6-bce1-8141fa6bbbda.pdf>>.

<sup>58</sup> Office of the Correctional Investigator of Canada, “Shifting the Orbit: Human Rights, Independent Review and Accountability in the Canadian Corrections System” (June 2004), online: <[http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20040629-eng.aspx#\\_end16](http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20040629-eng.aspx#_end16)>.

<sup>59</sup> The Honourable Louise Arbour, “Commission of Inquiry into certain events at the Prison for Women in Kingston” (1996), online: <[http://www.justicebehindthewalls.net/resources/arbour\\_report/arbour\\_rpt.htm](http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm)>.

<sup>60</sup> For example: Canadian Human Rights Commission, “Protecting Their Rights: A systemic review of human rights in correctional services for federally sentenced women” (December 2003), online: <<http://www.chrc-ccdp.ca/sites/default/files/fswen.pdf>>.

<sup>61</sup> *Health Care Consent Act*, SO 1996, c 2, Sched A, s. 75(2).

## Recommendation 12

**The independent panel appointed by the Minister should hold administrative hearings within the first five days of each segregation placement. The inmate should be allowed to attend in person or through video conferencing with a representative of his or her choosing. The inmate should be given the opportunity to prepare and to know the case that he or she will have to meet. The Ministry should provide inmates with access to duty counsel. The hearing should be held in as neutral a venue as possible, and never in an inmate’s cell or on a living unit.**

- 84** Before the review hearing, a segregated inmate should be required to meet with an advisor who can inform the inmate of his or her rights, including the right to obtain legal representation. The rights advisor should ensure that the inmate knows how to access duty counsel. Currently, facilities give segregated inmates a “Segregation Handout” that is intended to provide similar information. For some inmates, a printed handout is not an accessible way to convey important information. A rights advisor, in contrast, is able to adapt his or her approach and explanation to each individual inmate. This helps ensure that inmates are able to understand the procedural protections guaranteed to them under the regulation and policy. Rights advice is an important component in the system of checks and balances to protect the rights of segregated inmates.

## Recommendation 13

**Before the review hearing, a segregated inmate should be required to meet with a rights advisor who can inform the inmate of his or her rights, including the right to obtain legal representation.**

- 85** At the hearing, the burden of proof must be on the facility and/or the Ministry to show that the inmate’s temporary placement in segregation is justified. In the case of inmates with mental health issues and/or developmental disabilities, the facility or Ministry would have to demonstrate other solutions were considered and tried, and prove that placing the inmate elsewhere would amount to undue hardship.
- 86** As part of the segregation review hearing, the independent panel should evaluate the mental and physical well-being of each inmate. The Ministry should ensure the panel is provided with all clinical assessments of the inmate. The panel should review the physician or psychiatrist assessment that will take place prior to each five-day segregation review. The independent panel’s final decision should take

into account factors related to the inmate's mental and physical health, including the impact of segregation on the inmate's well-being.

#### **Recommendation 14**

**At the segregation review hearings, the burden of proof must be on the facility and the Ministry to show that the inmate's temporary placement in segregation is justified.**

#### **Recommendation 15**

**At the segregation review hearings, the independent panel should evaluate the mental and physical well-being of each inmate, and the panel's decision should take these factors into account.**

**87** After the hearing, the independent panel should make a timely decision on the segregation placement. Again, the practices of the Consent and Capacity Board are instructive. The Board is required to issue certain decisions within one day.<sup>62</sup> Written reasons are issued if any of the parties request them within 30 days of the hearing.<sup>63</sup> These practices should be adopted by the independent panel.

**88** The independent panel must have the power necessary to grant remedies to segregated inmates. This should include the power to remove an inmate from segregation immediately, as well as other broad powers to compel changes in an inmate's treatment. For instance, the independent panel should be empowered to require a facility to provide a segregated inmate with access to programming or privileges.

**89** In addition, the independent panel should be empowered to recommend that the Superintendent of the facility initiate further investigation with a view to commencing discipline proceedings as appropriate for correctional staff found to have violated the segregation regulation and policy. This process would respect the existing collective agreements in place at correctional facilities while ensuring that correctional staff is held responsible for misconduct.

**90** Like other Ontario boards and tribunals, the independent panel should also be subject to the Ombudsman's jurisdiction.

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<sup>62</sup> *Ibid*, s. 75(3).

<sup>63</sup> *Ibid*, s. 75(4).

### **Recommendation 16**

**The independent panel should issue a decision within one day. Written reasons should be issued if any of the parties request them within 30 days of the hearing.**

### **Recommendation 17**

**The independent panel should be empowered to remove inmates from segregation immediately, as well as grant a broad range of other remedies.**

### **Recommendation 18**

**The independent panel should be empowered to recommend that Superintendents initiate investigations and discipline proceedings, as appropriate, for correctional staff found to have violated the segregation regulation and policy.**

### **Recommendation 19**

**The independent panel appointed by the Minister should be subject to the Ombudsman’s jurisdiction.**

**91** I acknowledge that these procedural protections are extensive. However, they recognize and reflect the serious liberty interests that are on the line for segregated inmates, even if the segregation is only temporary. Segregation is not just another type of confinement. It is a distinct and potentially damaging form of detention, which can cause severe harm to inmates. Under the circumstances, inmates subject to placement in segregation should be entitled to enhanced procedural protection.

## **Training for correctional staff**

**92** To ensure proper application of the revised policy and regulatory guidelines, the Ministry should provide training to correctional staff that emphasizes the importance of respecting inmates’ procedural rights, as well as the harmful effect of prolonged segregation. The training should be regularly updated to reflect best practices and legal developments. Officials from all levels of the correctional service, including senior administrators, should be legislatively required to undergo periodic training on segregation procedures.

## Recommendation 20

**The Ministry of Community Safety and Correctional Services should prepare a comprehensive segregation training program for correctional staff, which emphasizes the importance of respecting inmates' procedural rights, as well as the harmful effect of prolonged segregation. The program should be revised as appropriate in accordance with best practice and legal developments.**

## Recommendation 21

**Regulations should require that correctional officials from all organizational levels regularly undergo segregation training.**

## Enforcing the rules

- 93** The creation of a new independent review panel would be a major step forward in ensuring timely and effective oversight for temporary segregation placements. However, the Ministry also needs to actively monitor, track, and assess all segregation placements.
- 94** In preceding years, the Ministry has essentially followed the honour system, relying on facilities to submit reports on segregation reviews. If a facility failed to do any of the required segregation reviews, there was no mechanism in place to alert the Ministry to this omission. The Offender Tracking and Information System (OTIS), a computer program used by facilities to track inmates, lacks the ability to generate informative reports or statistics about segregated inmates easily. According to the Ministry, these limitations would require staff to “manually go through hundreds of thousands of paper files” to generate accurate long-term segregation figures.<sup>64</sup>
- 95** Ministry officials told my Office earlier this year that facilities must now record, as of midnight each day, which inmates were placed in segregation. This is accomplished through entering basic information in a spreadsheet, including inmate

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<sup>64</sup> Patrick White, “Solitary confinement reform hindered by gaps in prison statistics,” *The Globe and Mail* (28 March 2016), online: <<http://www.theglobeandmail.com/news/national/solitary-confinement-reform-hindered-by-gaps-in-prison-statistics/article29413413/>>.

names, OTIS numbers, and segregation start dates.<sup>65</sup> Facilities are asked to mark a box indicating why the inmate is being held in segregation. However, the basic spreadsheet does not track information such as:

- the inmate’s continuous days in segregation (including in facilities he or she was in previously);
- whether the inmate has mental health or developmental disabilities or other *Human Rights Code*-related needs;
- when the inmate last met with a health care professional; and
- if there is a care or treatment plan for the inmate.

**96** While this new procedure is a start, more substantive information is required, including information about inmates who are essentially segregated, but because of overcrowding or exigency, are being housed outside of a designated segregation unit. The Ministry must capture the total number of segregation admissions by facility, while at the same time tracking inmates who move between facilities without leaving segregation. Currently, the Ministry only gathers information about individual inmate counts once a night.

**97** Fortunately, these are problems that technology can solve. Rather than relying on a manual process, the Ministry should develop an automated reporting tool to improve its monitoring of institutional practices. Ministry staff should regularly generate reports showing details of all segregation placements and proactively review them to ensure compliance with legislative and policy requirements. The Ministry should also ensure that a special audit team, including individuals from the Correctional Services Oversight and Investigations unit, regularly monitors the reports to ensure that segregation placements are warranted. These reviews would be separate from the mandated reviews performed by the proposed independent review panel. The Ministry should report publicly on the results of its review on an annual basis.

**98** In addition, the Ministry should address any disciplinary and training issues identified as a result of its review with relevant institutional managers.

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<sup>65</sup> The spreadsheet includes space to indicate the institution and unit/cell number where the inmate is being held. A yes/no box indicates whether the inmate is serving an intermittent sentence. A “Comments/Additional Information (as desired)” box is also available.

## Recommendation 22

**The Ministry of Community Safety and Correctional Services should collect information on:**

- **inmates segregated outside of designated segregation units;**
- **inmates' continuous days in segregation across facilities;**
- **whether segregated inmates have mental health or developmental disabilities or other *Human Rights Code*-related needs;**
- **when inmates have last met with a health care professional; and**
- **whether there is a care or treatment plan for the inmate.**

## Recommendation 23

**The Ministry of Community Safety and Correctional Services should regularly generate and proactively review reports that provide details of all segregation placements in the province to ensure that each placement is in accordance with segregation requirements and then take appropriate remedial steps, as warranted.**

## Recommendation 24

**The Ministry of Community Safety and Correctional Services should ensure that a special audit team, including individuals from the Correctional Services Oversight and Investigations unit, regularly reviews segregation placements to determine if they are in accordance with regulation and policy. The Ministry should report publicly on the results of this review on an annual basis.**

- 99** The Ministry should ensure that its electronic inmate management system collects and reports meaningful data about the use of segregation across facilities and amongst various inmate populations. Data collected and reviewed should include information about the inmate's gender, race, mental health status, aboriginal status, and other relevant personal factors.
- 100** The Ministry should also collect and generate reports on the number of inmates who self-harm, require increased medical treatment, hospitalization, or die while in segregation.
- 101** Tracking and monitoring of this information would help the Ministry identify risk factors and develop and implement best practices to reduce reliance on segregation for inmate management and mitigate its deleterious effects. It would also allow the Ministry to determine whether segregation placements are disproportionality used against certain inmate populations.



**102** Aggregate information concerning the use of segregation is of significant public interest and should be publicly reported each year.

### **Recommendation 25**

**The Ministry should keep statistics about the use of segregation across facilities and amongst various inmate populations. This data should include information about the inmate’s gender, race, mental health status, aboriginal status, and other relevant personal factors, as well as instances of self-harm, increased medical treatment, hospitalization and deaths occurring during segregation.**

### **Recommendation 26**

**The Ministry should analyze the statistics regarding the use of segregation across facilities and amongst various inmate populations to identify risks, trends and potential best practices relating to segregation. The results of this analysis, as well as the underlying data, should be reported publicly on an annual basis.**

**103** The Ministry should also conduct thorough research to understand the impact that segregation has on inmates. In the federal correctional system, dedicated researchers within Correctional Service Canada are employed exclusively for this purpose.<sup>66</sup> As part of its research, the Ministry should explore the link between segregation and inmate self-harm, suicides and hospitalizations, through evaluating its own information as well as the experience of other jurisdictions. With this information, the Ministry will no longer be limited to anecdotal experience when assessing its segregation procedures. The results of the Ministry’s study should be reported publicly.

### **Recommendation 27**

**The Ministry of Community Safety and Correctional Services should conduct thorough research to understand the impact that segregation has on inmates. The Ministry should ensure that this research explores the link between segregation and inmate suicides, self-harm and hospitalizations. The results of this study should be reported publicly.**

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<sup>66</sup> “Research at CSC,” Correctional Service Canada, online: <<http://www.csc-scc.gc.ca/research/index-eng.shtml>>.

## Legislative force

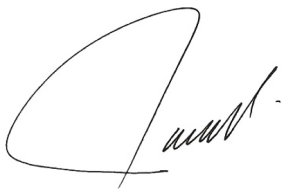
- 104** To underscore the importance of the substantive and procedural requirements governing decisions to place inmates in segregation, segregated inmates' rights and privileges should be entrenched in legislation rather than policy – either in the Act or regulation. This should include the rights and privileges reflected in the recommendations in this submission.

### Recommendation 28

**The Ministry of Community Safety and Correctional Services should ensure that all procedural protections for segregated inmates are incorporated into legislation.**

## Conclusion

- 105** Given the serious adverse effects of segregation and the wholesale inadequacy of existing procedural protections, the Ministry should commit to abolishing the practice of indefinite segregation in Ontario. While I recognize the difficulty of balancing the goals of institutional security and inmate welfare, the Ministry's current policy and regulation fails to adequately protect inmates from the harmful effects of segregation.
- 106** I strongly recommend that the practice of indefinite segregation be abolished and that enhanced procedural protections, including the creation of an independent review panel, be implemented to monitor and scrutinize all segregation placements.



Paul Dubé  
Ombudsman of Ontario



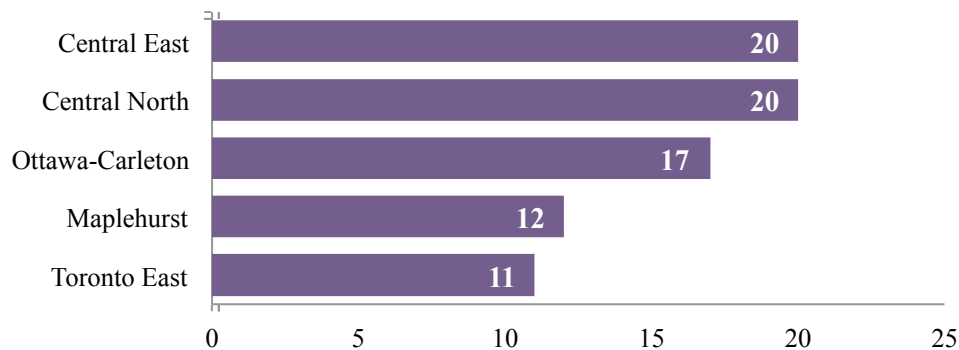
## Appendix A - Segregation complaint numbers

During the **2013/14** fiscal year, the Ombudsman’s Office received **146 complaints** about segregation – which is about **12 complaints per month**.

Of these 146 complaints:

- **106** were about administrative segregation placements; and
- **40** were about disciplinary segregation placements (arising from misconduct charges).

The chart below shows a breakdown of these 146 complaints by facility (for facilities where we received at least 10 complaints):

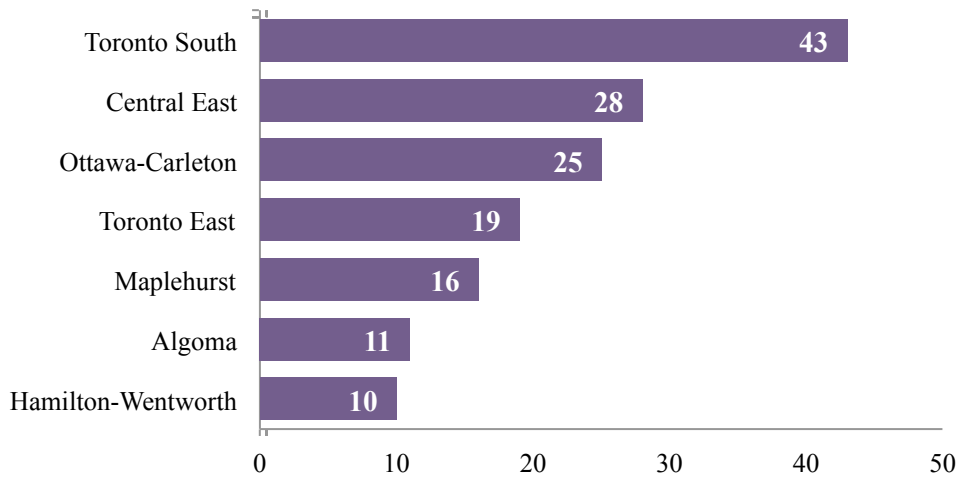


During the **2014/15** fiscal year, my office received **225 complaints** about segregation – this is about **19 complaints per month**.

Of these 225 complaints:

- **161** were about “administrative segregation” placements; and
- **64** were about disciplinary segregation placements.

The chart below shows a breakdown of these 225 complaints by facility (for facilities where we received at least 10 complaints):

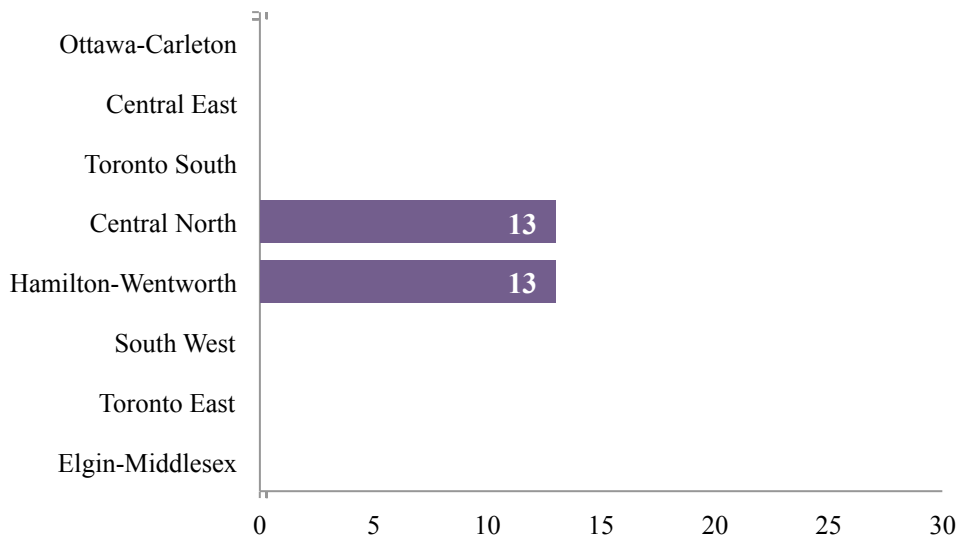


During the **2015/16** fiscal year, my office received **186 complaints** about segregation – this is about **15 - 16 complaints per month**.

Of these 186 complaints:

- **129** were about “administrative segregation” placements; and
- **57** were about disciplinary segregation placements.

The chart below shows a breakdown of these 186 complaints by facility (for facilities where we received at least 10 complaints):



## **Appendix B – List of recommendations**

### **Recommendation 1**

**The Ministry of Community Safety and Correctional Services should ensure that the public and appropriate stakeholders, including inmates and former inmates, are meaningfully engaged in the segregation consultation process. The Ministry should ensure that the method used to consult with current inmates is accessible within correctional facilities.**

### **Recommendation 2**

**The Ministry of Community Safety and Correctional Services should abolish indefinite solitary confinement for all inmates. In accordance with the recommendation of the United Nations Special Rapporteur, “indefinite” should be defined as greater than 15 days.**

### **Recommendation 3**

**Until indefinite segregation is abolished, the Ministry of Community Safety and Correctional Services should limit all segregation placements (administrative or disciplinary) to 15 consecutive days, followed by a mandatory period outside of segregation for five days. No inmate should be placed in segregation for more than 60 days in a calendar year.**

### **Recommendation 4**

**The Ministry of Community Safety and Correctional Services should require that all segregated inmates receive assessments from a mental health provider every 24 hours. Moreover, the Ministry should require that a physician or psychiatrist assess segregated inmates prior to each five-day segregation review.**

### **Recommendation 5**

**The Ministry of Community Safety and Correctional Services should consult with the Ministry of Health and Long-term Care and the Ministry of Community and Social Services to develop a correctional model that balances the goals of institutional security and inmate welfare. The model should include programming and living arrangements other than segregation for managing inmates with mental health issues and developmental disabilities.**

### **Recommendation 6**

**The Ministry of Community Safety and Correctional Services should ensure that the approach for managing inmates with mental illness – including step-down or “stabilization” units and the use of treatment plans and care plans – is extended for use by all inmates who are in segregation or facing the possibility of segregation.**

### **Recommendation 7**

**The Ministry of Community Safety and Correctional Services should require that reintegration plans be created for all inmates placed in temporary segregation, and that an inmate has input into the plan.**

### **Recommendation 8**

**The Ministry of Community Safety and Correctional Services should revise the definition of segregation to ensure that it encompasses all inmates who are held in segregation-like conditions. The revised definition should be in accordance with international standards, which define segregation as the physical isolation of individuals to their cells for 22 to 24 hours a day.**

### **Recommendation 9**

**The Ministry of Community Safety and Correctional Services should provide greater guidance concerning the circumstances in which placement in segregation is authorized and direct that it is only to be used as a last resort.**

### **Recommendation 10**

**The Ministry of Community Safety and Correctional Services should require that correctional officials address underlying issues resulting in inmates requesting voluntary placement in segregation.**

### **Recommendation 11**

**The Minister should appoint an independent panel to review all segregation placements.**

### **Recommendation 12**

**The independent panel appointed by the Minister should hold administrative hearings within the first five days of each segregation placement. The inmate should be allowed to attend in person or through video conferencing with a representative**

**of his or her choosing. The inmate should be given the opportunity to prepare and to know the case that he or she will have to meet. The Ministry should provide inmates with access to duty counsel. The hearing should be held in as neutral a venue as possible, and never in an inmate's cell or on a living unit.**

#### **Recommendation 13**

**Before the review hearing, a segregated inmate should be required to meet with a rights advisor who can inform the inmate of his or her rights, including the right to obtain legal representation.**

#### **Recommendation 14**

**At the segregation review hearings, the burden of proof must be on the facility and the Ministry to show that the inmate's temporary placement in segregation is justified.**

#### **Recommendation 15**

**At the segregation review hearings, the independent panel should evaluate the mental and physical well-being of each inmate, and the panel's decision should take these factors into account.**

#### **Recommendation 16**

**The independent panel should issue a decision within one day. Written reasons will be issued if any of the parties request them within 30 days of the hearing.**

#### **Recommendation 17**

**The independent panel should be empowered to remove inmates from segregation immediately, as well as grant a broad range of other remedies.**

#### **Recommendation 18**

**The independent panel should be empowered to recommend that Superintendents initiate investigations and discipline proceedings, as appropriate, for correctional staff found to have violated the segregation regulation and policy.**

#### **Recommendation 19**

**The independent panel appointed by the Minister should be subject to the Ombudsman's jurisdiction.**



## **Recommendation 20**

**The Ministry of Community Safety and Correctional Services should prepare a comprehensive segregation training program for correctional staff, which emphasizes the importance of respecting inmates' procedural rights, as well as the harmful effect of prolonged segregation. The program should be revised as appropriate in accordance with best practice and legal developments.**

## **Recommendation 21**

**Regulations should require that correctional officials from all organizational levels regularly undergo segregation training.**

## **Recommendation 22**

**The Ministry of Community Safety and Correctional Services should collect information on:**

- **inmates segregated outside of designated segregation units;**
- **inmates' continuous days in segregation across facilities;**
- **whether segregated inmates have mental health or developmental disabilities or other *Human Rights Code*-related needs;**
- **when inmates have last met with a health care professional; and**
- **whether there is a care or treatment plan for the inmate.**

## **Recommendation 23**

**The Ministry of Community Safety and Correctional Services should regularly generate and proactively review reports that provide details of all segregation placements in the province to ensure that each placement is in accordance with segregation requirements and then take appropriate remedial steps, as warranted.**

## **Recommendation 24**

**The Ministry of Community Safety and Correctional Services should ensure that a special audit team, including individuals from the Correctional Services Oversight and Investigations unit, regularly reviews segregation placements to determine if they are in accordance with regulation and policy. The Ministry should report publicly on the results of this review on an annual basis.**

#### **Recommendation 25**

**The Ministry should keep statistics about the use of segregation across facilities and amongst various inmate populations. This data should include information about the inmate’s gender, race, mental health status, aboriginal status, and other relevant personal factors, as well as instances of self-harm, increased medical treatment, hospitalization and deaths occurring during segregation.**

#### **Recommendation 26**

**The Ministry should analyze the statistics regarding the use of segregation across facilities and amongst various inmate populations to identify risks, trends and potential best practices relating to segregation. The results of this analysis, as well as the underlying data, should be reported publicly on an annual basis.**

#### **Recommendation 27**

**The Ministry of Community Safety and Correctional Services should conduct thorough research to understand the impact that segregation has on inmates. The Ministry should ensure that this research explores the link between segregation and inmate suicides, self-harm and hospitalizations. The results of this study should be reported publicly.**

#### **Recommendation 28**

**The Ministry of Community Safety and Correctional Services should ensure that all procedural protections for segregated inmates are incorporated into legislation.**