

# **A Review of the Use of Administrative Segregation**

## **In Newfoundland and Labrador Adult Correctional Facilities**

**Final Report**

**Submitted to the Superintendent of Prisons**

**Date: January 25, 2019**

# **Administrative Segregation in Newfoundland Labrador**

## **A Review of the Use of Administrative Segregation**

**January 2018**

### **Review Committee Team**

- Cindy Murphy, Committee Chair & Executive Director – John Howard Society of Newfoundland and Labrador
- Cindy Whitten – Nagle, Manager of Institutional Programs, Adult Custody – Department of Justice and Public Safety
- Dan McGettigan, Director/Founder – Turnings
- Denise Hillier, Director of Clinical Services – Stella Circle
- Diana Gibbons – Assistant Superintendent – Her Majesty's Penitentiary
- Heather Yetman – Health Consultant – Health and Community Services
- Heidi Edgar, Program Manager, Justice Program – Canadian Mental Health Association – NL Division
- John Bradbury, Correctional Officer – Her Majesty's Penitentiary
- Sam Martin, Psychologist – Her Majesty's Penitentiary
- Shawn Lahey, Sergeant – Her Majesty's Penitentiary
- Shelley Michelin, Assistant Superintendent – Newfoundland and Labrador Correctional Center for Women

# Table of Contents

Introduction .....	1
Administrative Segregation Defined .....	2
Mandate .....	2
Terms of Reference for the Review of Administrative Segregation .....	3
Methodology .....	3
Review of Existing Policy and Guidelines.....	4
Policy .....	5
Standing Orders .....	5
Criteria for Placement .....	6
Jurisdictional Scan .....	6
International Review.....	6
National Review.....	7
Provincial Review.....	9
Interviews with Correctional Officers .....	14
Interviews with Inmates.....	15
Interview with Management of the Forensic Unit.....	16
Guiding Principles.....	17
Segregation and the Need for Meaningful Contact.....	18
Recommendations .....	19
Other Considerations .....	25
Appendices .....	27
Appendix A - Inmate Interview Questionnaire .....	27
Appendix B - Correctional Officer Interview Questionnaire .....	28
References .....	29

## Introduction

Within our system of justice in Canada there are significant expectations that the men and women who are sent to jail will somehow come out better for their experience. This is based on the premise that male and female prisoners go through a period of rehabilitation, which seeks to restore them to normal life through training and therapy received while in prison. In our own province the Department of Justice and Public Safety Adult Corrections Division, has enshrined these beliefs through its Vision, Mission, Values Statements and Principles, which speak to recovery, rehabilitation, and respect for human dignity.

The realities however can be somewhat different. Prisons are often expected to address a lifetime of trauma and dysfunction in the months, weeks and sometimes days, people are in its care and custody. This often is within the confines of aging infrastructure, crowded facilities, shrinking resources and a more complex prison population than ever before. The Newfoundland Labrador correctional system is not immune to these realities.

Segregation which is the most restrictive form of housing, are complex places, where some of the prison's most challenging individuals are confined alongside some of its most vulnerable people, all within a small, enclosed space.

The most frequent definition of segregation, used by international and community stakeholders, is the physical and social isolation of an individual for 22 to 24 hours a day. Such a significant restriction on individual freedom must be tightly controlled by a comprehensive, clear, legal and policy framework. The decision to place a person in segregation results in the most complete deprivation of liberty authorized by law. It is frequently used as the default tool to manage individuals with mental health needs, those at risk of self-harm or suicide, the disabled and elderly who need mobility assistance devices, critically ill patients requiring close medical supervision, individuals who feel unsafe in general population units, and transgender inmates before in-depth placement and needs assessments can be completed.

In recent years the use of segregation, and in particular its impact on inmate's human rights, has been subject to extensive scrutiny by international human rights bodies, federal commissions and the Canadian courts. Specifically, there have been a number of recent legal challenges in Canada and a move towards a broader interpretation of how the *Charter* applies to the rights of inmates. There have also been a number of reports and inquests advocating for limitations to be placed on the use of segregation, and a greater focus on diverting vulnerable populations from segregation placements. Internationally, the newest revisions to the *Standard Minimum Rules for the Treatment of Prisoners*, commonly known as the *Nelson Mandela Rules*, has drawn global attention to legal considerations, limitations for the use of segregation, and the impact of segregation on inmates' physical and mental well-being.

In October of 2018, the Government of Canada tabled new legislation that they assert will effectively end the use of segregation. Through the use of new “Structured Intervention Units”, all federal correctional facilities will house inmates separately while still giving them access to rehabilitation, mental health care and other programs.

Other provinces are also reviewing the use of segregation. For example, Ontario completed an independent review in March 2017. The report titled *Segregation in Ontario: Independent Review of Ontario Corrections*, calls for profound changes to segregation practices including strict limits and prohibition for mentally ill inmates.

The Review Committee has welcomed the opportunity to complete this review and this report is an assessment of the current state of affairs in regard to only one aspect of corrections – the use of Administrative Segregation. With the recently completed Jesso Report on the deaths in custody, this report, along with the transfer of the responsibility of correctional health care coming later this year, creates a framework on how to improve reform efforts, fill gaps and continue to build a corrections system focused on human dignity and excellence in meeting its mission. Changes will require strong leadership and we urge the government to not only work collaboratively but to respond quickly to the recommendations. To do otherwise will only perpetuate the legacy that has been woefully inadequate in meeting the needs of both inmates and staff.

## **Administrative Segregation Defined**

For the purposes of this report, Administrative Segregation is defined:

*As a status within a correctional institution that maybe used according to established criteria in order to contribute to the safety of inmates, staff and the public by assisting in maintaining security of the institution. Administrative Segregation status should be a temporary, preventative and non-punitive measure, and should be used with the least restrictive measures. It also includes voluntary placement upon the request of an inmate. Furthermore, Administrative Segregation is a process of segregating an inmate and may occur anywhere within an institution as opposed to a defined area within an institution.*

## **Mandate**

With the growing concerns around the use of Administrative Segregation and its harmful effects, the former Superintendent of Prisons for the Province of Newfoundland Labrador, Owen Brophy assembled a committee to review the use of Administrative Segregation in the province’s adult correctional facilities.

*“In accordance with recommendation # 16 of A Review of Disciplinary Segregation: It is recommended that a thorough and complete review of Administrative Segregation should be conducted.....In light of recent trends within Corrections, and recent changes to Disciplinary Segregation, I think this work is timely and valuable to maintain the Vision, Missions & Values of Corrections and Community Services.*

*Superintendent of Prisons, Owen Brophy, October 20, 2017*

As indicated, this came following a review of Disciplinary Segregation that was completed in April 2017. The Use of Disciplinary Segregation report put forward 18 recommendations, all of which were accepted by the Department of Justice and Public Safety. To date however, all of the recommendations are yet to be fully implemented.

## **Terms of Reference for the Review of Administrative Segregation**

1. Review existing policy and guidelines.
2. Complete a jurisdictional scan.
3. Review Mandela Rules as they apply to Administrative Segregation within in Newfoundland and Labrador Adult Custody.
4. Make recommendations with emphasis on alternatives.

The Committee was also asked to consider the following as part of the Review:

1. Assessment criteria prior to placement.
2. What services should be offered during placement.
3. Renaming the area.
4. National Strategy for Segregation.
5. Assessment and process for transfer back to prison population.
6. Impacts of placement in Admin Segregation.
7. Context of the environment – multi placement unit and current situation in area known as the Special Handling Unit (SHU).

## **Methodology**

Information for this report was gathered from a number of provincial correctional sources including:

- The Prisons Act 1970 (amended 2006) including Prisons Regulations.

- Adult Custody Policy, NL Corrections & Community Services.
- Adult Custody Standing Orders.

Newfoundland and Labrador Correctional Services Act (assented to May 31, 2011, yet to be proclaimed).

The Department of Justice and Public Safety, Corrections and Community Services: Vision, Mission and Values.

Interviews with inmates and former inmates.

Interviews with Correctional Officers.

Interview with the Manager of the Forensic Unit at the Waterford Hospital.

Committee visit to Unit One at Her Majesty's Penitentiary and the Multi- Placement Unit at the Newfoundland and Labrador Correctional Center for Women.

## Review of Existing Policy and Guidelines

The Department of Justice and Public Safety has Vision, Mission and Values Statements which have been reflected upon in the preparation of this report and are relevant to consider in the area of proposed alternatives to the use of administrative segregation. These statements are:

- **Vision:** A dynamic service of distinction.
- **Mission:** Corrections and Community Services provides an integrated and supportive service to those who engage in, or have been affected by crime. We foster recovery, rehabilitation, and reintegration for the benefits of victims; adults and youth involved with criminal justice system; families and communities.
- **Values:** Integrity: Quality of adhering to high moral principles and professional standards; Respect: A positive regard for another's worth; Human Dignity: The innate right of all individuals to be valued and to receive ethical treatment that is fair, compassionate, equitable, and without judgement; Professionalism: knowledge, skills, and character expected from a person trained to do a job well.

There are varying types of segregation utilized by NL Adult Custody such as Administrative Segregation, Disciplinary Segregation and Special Handling. The rules and policies pertaining to each vary.

The focus of this report is the use of Administrative Segregation. It is defined within Adult Custody Policy as:

- The involuntary or voluntary separation of an inmate from the general population other than pursuant to a disciplinary decision.
- Voluntary Administrative Segregation is when an inmate requests placement in administrative segregation and the Institutional Head believes, on reasonable grounds, that the continued presence of the inmate in the general population would jeopardize the inmate's own safety, and there is no reasonable alternative to placement in Administrative Segregation.
- Involuntary administrative segregation is when the placement in administrative segregation is not voluntary (Policy 8.05.02).

## **Policy**

The policy framework for Administrative Segregation can be found in the Department of Justice and Public Safety Adult Corrections Policy Manual:

Policy 8.05.01 - Special Management Inmates – Sub-Section: General Policy Statement

Policy 8.05.02 – Special Management Inmates – Sub-Section: Administrative Segregation

Policy 8.05.03 – Special Management Inmates – Sub-Section: Special Handling Unit

## **Standing Orders**

Standing Orders for Unit One are as follows:

1-77 Special Management Inmates; 1-78 Inmates Accessing Program Services; 1-42 Segregation Privileges ; 4-01 Housing Protocol for Segregation,, Special Handling Unit; 4-02 Admissions ; 4-03 Placement of Inmates in Segregation; 4-04 Inmates being Released from Unit One; 4-05 Daily Cell Inspections; 4-07 Clothing for Seg/SHU Inmates; 4-09 SHU/Seg counts using the Data Recording System; 4-01 Escorts Living Unit One; 4-11 Segregation Special Handling Footwear; 4-12 Issuing Razors to Prisoners; 4-13 Issuing Razors to Inmates not on Observation; 4-14 items Permitted in Cells; 4- 15 Items Permitted in SEG/SHU; 4: 17 PCOMS Entries; 4-18 Inmate Files 4-19 Inmates Showers; 4:20 Inmate Curtain; 4-21 Segregation Privileges; 4-22 Inmates Property (Segregation/Special Handling Unit; 4-23 Single Cells; 4-24 Visits for Special Handling; 4-25 Living Unit One Staffing; 4-26 Telephone Call while in Segregation; 4-27 Transport Hoods; 4-28 Access to Segregation; 4-29 Dry Cell Protocol; 4-30 Cell lights in SHU.



## **Criteria for Placement**

As found in Policy 8.05.02, the following outline the criteria for placement in Administrative Segregation. An inmate may be placed in Administrative Segregation by the Institutional Head or designate if any of the following conditions apply:

- The inmate is being investigated for a criminal act or a serious violation of institutional rules or regulations.
- The inmate's federal transfer is pending.
- The inmate is awaiting the outcome of a disciplinary hearing.
- The continued presence of the inmate in the general population would jeopardize the security of a correctional facility or the safety of a person.
- The continued presence of the inmate in the general population would jeopardize the inmate's own safety.

## **Jurisdictional Scan**

Due to the numerous concerns raised around the use of segregation, its damaging effects and the number of deaths occurring in solitary confinement, the use of segregation is being examined internationally, nationally and provincially.

## **International Review**

*The United Nations' Standard Minimum Rules for the Treatment of Prisoners* have been the universally acknowledged minimum standards for the detention of prisoners and have been of significant value and influence as a guide in the development of correctional laws, policies and practices since their adoption by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1955.

In 2015, they were revised and adopted as the Mandela Rules. These Rules speak directly to the standard of care expected in custodial settings. Although not binding law, the Mandela Rules have been recognized by Canadian courts and can inform the interpretation of Canadian law and Charter rights. As explained by the United Nations Special Rapporteur on Torture and three other leading international human rights experts.

The Nelson Mandela or Mandela Rules, place specific limits on the use of segregation. In particular:

***Rule 44 requires prohibitions on indefinite solitary confinement and prolonged solitary confinement. Prolonged solitary confinement is defined as segregation in excess of 15 consecutive days.***

***Rule 45 further states that “solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review.” It also prohibits the use of solitary confinement for women, children, and prisoners with mental or physical disabilities that would be exacerbated by the use of segregation.***

The United Nations Special Rapporteur on Torture has also expressed concern regarding the use of solitary confinement and stated prolonged segregation may amount to cruel, inhuman or degrading treatment or punishment. Under certain conditions, it may amount to torture.

The European Court of Human Rights has also found, in several cases, that the use of solitary confinement violates the European Convention for the Protection of Human Rights and Fundamental Freedoms. For example, in a 2009 case against the government of France, the court ruled, “Solitary confinement was not a disciplinary measure and mere reference to organized crime or some unsubstantiated risk of escape was insufficient. Likewise, the classification of a detainee as a dangerous prisoner, or his committing even a serious disciplinary offence did not justify placing him in solitary confinement” (Civil Liberties Association, 2016).

The United Nations (UN) Committee against Torture – the expert international body responsible for ensuring compliance with the UN Convention against Torture, has explicitly criticized Canada’s use of solitary confinement and called upon Canada to:

1. Limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review; and
2. Abolish the use of solitary confinement for persons with serious or acute mental illness (June 2016).

Furthermore, in 2018 Amnesty International highlighted numerous concerns regarding Canada’s shortcomings with respect to torture and ill-treatment in a number of area including the use of solitary confinement (Amnesty International 2018).

## **National Review**

In Canada, the use of Solitary Confinement has been subject to much scrutiny.

The federal government has had to answer for its use of solitary confinement in two lawsuits that were launched in 2015; the Ontario case was decided in December 2017 and the British Columbia case in January 2018. The judges in both largely rejected the evidence brought by Correctional Service Canada (CSC) on its' use of solitary confinement. At the time of this review, both decisions were under appeal.

In the meantime, Correctional Service of Canada has reported they are seeing a steady reduction in the use of solitary confinement. The department has tracked 6,037 admissions to Administrative Segregations in the 2016-2017 fiscal year, a 27 per cent decrease from two years prior.

In October, Ottawa introduced Bill C-83, which promises to eliminate the use of segregation altogether by replacing it with "Structured Intervention Units (SIU's)" According to Public Safety Canada, under the new SIU model, inmates who can't be safely managed in the mainstream population will receive interventions and programs tailored to their needs. They will also be allowed outside their cells for four hours each day (compared to two under the current administrative segregation model) and will have access to two hours a day of "meaningful human contact."

The creating of SIU's is only one of the proposed reforms contained in Bill C-83. Among the other proposed changes, is the provision of greater autonomy and clinical independence to health-care professionals working in prisons, and allowing for patient advocates, as was recommended by the coroner's inquest into the death of Ashley Smith. Calls for tighter restrictions on solitary confinement grew louder with that high-profile inquest into Smith's death. The teen died in a segregated prison cell at the Grand Valley Institution for Women in Kitchener, Ont., in 2007.

In October of 2018, former inmates of the Nova Scotia correctional system filed a class- action law suit over the overuse of solitary confinement. The lawsuit alleges that the use of solitary confinement for more than 15 days at a time constitutes cruel and unusual punishment, breaching the Charter of Rights and Freedoms. At the time of this report the case was yet to be decided.

Other provincial jurisdictions are also reviewing the use of Administrative Segregation. In March of 2018, Ontario released an independent review titled *Segregation in Ontario: Independent Review of Ontario Corrections*. This report calls for profound changes to segregation practices in Ontario's correctional system that will make it into " a progressive and individualized correctional services system that improves community safety, relies less on custody and focuses more on rehabilitation and reintegration" (Independent Review of Ontario Corrections, 2017). Those changes call for a limit of 15 continuous days in administrative or disciplinary segregation and that segregation must be limited to no more than 60 days for any individual within a 365 day period without the consent of the Minister.

## Provincial Review

The legal authority for the use of Administrative Segregation is found in the Department of Justice and Public Safety Adult Corrections Policy Manual. Through the review, it was determined not all institutions administer the use of Administrative Segregation. Bishop Falls Correctional Center (BFCC), West Coast Correctional Center (WCCC) and the Labrador Correctional Center (LCC) do not utilize separate areas for administrative segregation but rather confine inmates to their cell within the general population. At times male inmates requiring Administrative Segregation may be transferred to Her Majesty's Penitentiary (HMP). At the Newfoundland and Labrador Correctional Center for Women (NLCCW), an area known as the Multi-placement Unit is used for administrative segregation. Within HMP, Unit One is the area dedicated to Administrative Segregation.

At HMP, Unit One is also used to house inmates sentenced to disciplinary segregation, those with medical needs, inmates with serious and persistent mental illness, those who are identifying having suicidal ideation, inmates who are placed in administrative segregation for their own protection, and those who may be at risk to others who can't reside in general population. While inmates placed in Disciplinary Segregation are housed separately within Unit One, all others are housed together in the same section of the unit. Time out of their cell is dependent on the number of inmates placed on the unit and the reasons for such placements.

The committee toured Unit One, and while some improvements were reported to have been made to conditions of confinement, it presented as a very austere area of the prison.

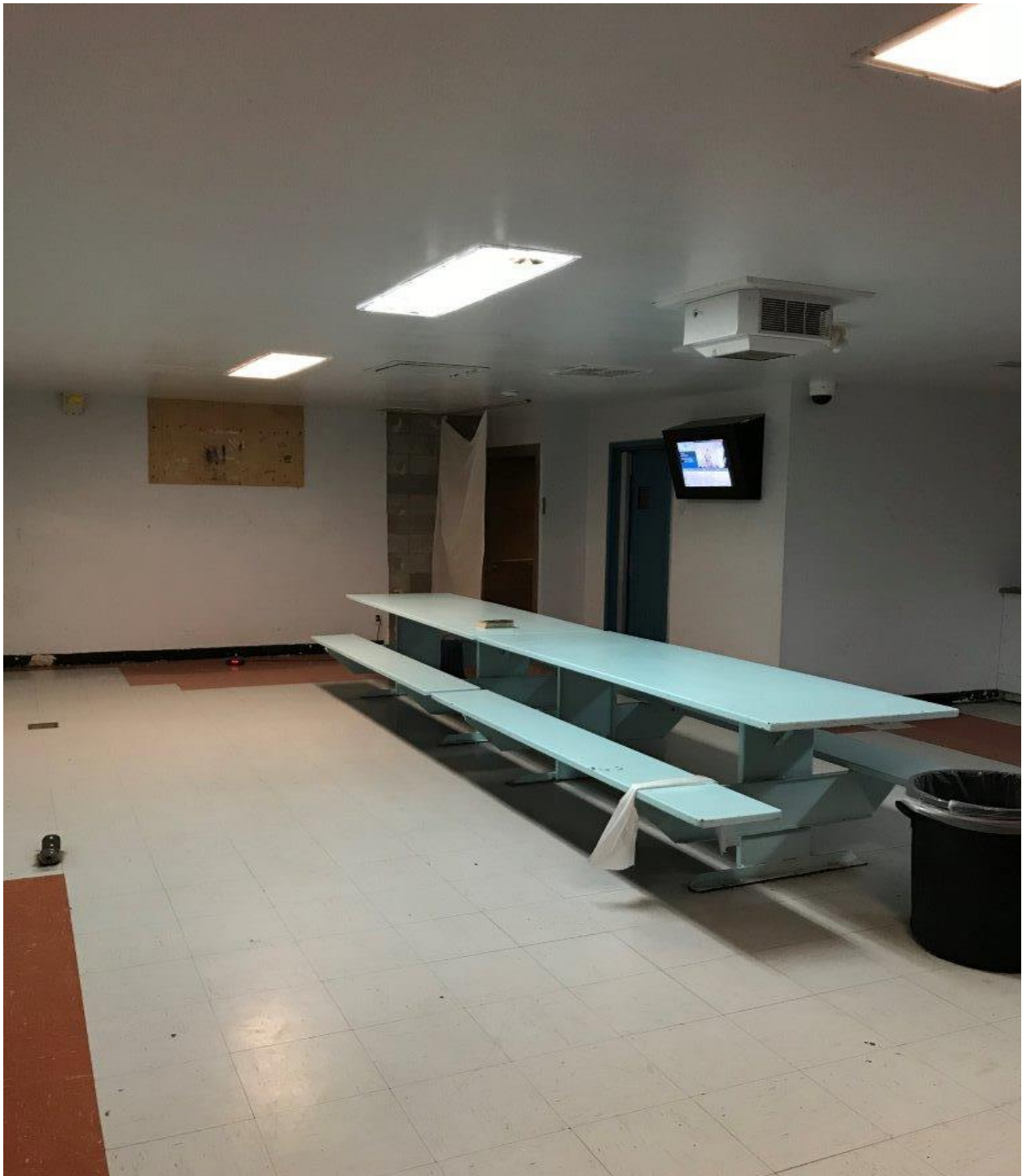
In some cells the gyproc was torn from the walls reportedly by inmates (since been removed). Some of the cells were not cleaned thoroughly. There is little to no access to fresh air throughout the institution. Reportedly, it is often very cold in the cells in Unit One. Administrative Segregation inmates are offered recreation a minimum of twice per week in the gymnasium.

There are five cells in total that are used all types of restrictive housing other than disciplinary segregation. For individuals placed in Unit One for Administrative Segregation, their placement can range from days to a year or more. *There are no time limits contained in policy.* Due to the lack of alternative placements, individuals are known to have spent more than one year in Administrative Segregation.

The committee also toured the Multi-placement Unit at Clarendville. This unit has two cells which are used for administrative segregation and for intermittent sentences. When there are no women in this unit for either of these reasons, it is utilized for general population. The unit is located at the end of the main range separated from the main cell area by a secure door. There is a common living space for the two cells sharing access to phone, television, shower area, table, chairs and exercise equipment.



**Figure 1 – Her Majesty's Penitentiary male segregation cell**



**Figure 2 – Her Majesty's Penitentiary male segregation unit**



**Figure 3 – Newfoundland and Labrador Correctional Center for Women female segregation cell**



**Figure 4 – Newfoundland and Labrador Correctional Center for Women female segregation unit**



As there was no formal data collection process, the Review Committee was unable to access any historical data to determine the numbers of inmates who have been housed in Administrative Segregation, the length of placement, or the reasons for placement. Since July of 2018 however, an informal process was put in place. During the reporting period from July 2018 to January 14, 2019 there were four individuals placed in Administrative Segregation at HMP:

- Inmate 1 – 39 days.
- Inmate 2 – 20 days.
- Inmate 3 – 96 days.
- Inmate 4 – 482 days.

It should be noted that during the six month period indicated above, during the same period the unit was reportedly often filled to capacity with inmates requiring other types of restrictive housing.

For the same period at the NLCCW, two women were placed in the Multi-placement unit on Administrative Confinement:

- Inmate 1 – 8 days.
- Inmate 2 – 23 days.

## **Interviews with Correctional Officers**

The Committee conducted a total of 11 interviews with correctional officers. The interviews took place either in person (9 total) or via telephone (2 total) and occurred between October 12 – October 19, 2018.

The correctional staff interviewed were comprised of men and women from both HMP and NLCCW with varying experience working on a unit housing administrative segregation inmates.

Some common themes which occurred throughout the staff interviews included a concern that those inmates with severe mental health concerns were not benefitting from this placement and, further, were a disturbance for others housed within administrative segregation. Many of those interviewed noted that the dynamic inmate population in administrative segregation (especially at HMP) tends to add to the deterioration of the inmates' mental and/or physical health. Another reoccurring theme was that staff reported that they felt further training in mental health was required and that this could allow their duties to be performed more effectively, especially working with a vulnerable population. Additionally, staff felt that this unit was not staffed adequately and that low staff complements hinder security, job performance, and meaningful contact with those housed in administrative segregation.

Relatedly, many staff disclosed deterioration in their own mental health while working continuously on the Administrative Segregation unit. Staff noted that clear policy directives and consistency could help alleviate some of the unnecessary stressors.

## **Interviews with Inmates**

Seven interviews were carried out with male inmates to gain an understanding of their experiences in Administrative Segregation and suggestions for any alternatives to such placement. Five inmates were serving time at HMP and interviewed in person while the other two inmates were serving their sentences at federal institutions and were interviewed by telephone.

Six of the seven inmates described the overall impact as negatively affecting their mental health. Heightened anxiety, sleep deprivation, weight loss, depression, loss of connection with reality and increased violence were common experiences reported among this group of six inmates. One inmate said after spending six months there he was content to stay stating “it’s strange but I started to become comfortable there.” One inmate described his experience in segregation as positive and noted he could access most services he needed. He did state, however, that he has seen other inmates in administrative segregation who he felt should have been receiving mental health services elsewhere. “One guy was there sleeping in his feces. He shouldn’t have been there.”

At the time of the interviews, seven males interviewed had spent various amounts of time in administrative segregation, ranging from two months to nine months. Some of those interviewed were uncertain why they were in administrative segregation or what they needed to do to be able to move. Most inmates noted the physical conditions were problematic and this has been previously outlined in the Review of the Use of Disciplinary Segregation which was completed in 2017.

All those interviewed had recommendations for alternatives to segregation, including:

- Teaching mediation and conflict resolution skills to both inmates and staff.
- Establishing a separate unit for people who have mental illness.
- Increasing clinical interventions available to those in administrative segregation.
- Providing options to inmates in segregation to transfer to other institutions.
- Increased training for staff in the area of mental health.

For those spending time in Unit One, there were suggestions of improving the physical space, alleviating isolation by having more dialogue between staff and inmates, and providing opportunity to participate in such activities as inmate committee. At the time of interviews being conducted there were no females identified to be interviewed.

## **Interview with Management of the Forensic Unit**

Due to the interdependence between Adult Corrections and the Forensic Unit of the Waterford Hospital, the Review Committee toured the Forensic Unit in April 2018 and had a subsequent follow-up meeting with the Unit Manager in September. What was clearly evident from the discussions with both staff from the Forensic Unit and Adult Corrections, is there are very few formal policies or processes in place to define the various responsibilities. Furthermore, it appears that very often processes relating to inmates/patients are very ad hoc with a lack of communication, and little or no continuum of care planning for inmates returning to Adult Corrections.

When an inmate is being returned to a custodial setting following hospitalization, a letter to the Superintendent of Prisons is sent which may outline a change in medication should it be required. The staff of the Forensic Unit were unaware if that information was then provided to the medical staff at the appropriate institution. At times, the psychiatrist at the Forensic Unit would be asked to convey the information to the medical unit at the appropriate facility.

Several other issues we also highlighted including the lack of coordination around transportation issues when inmates on the Forensic Unit have to appear in court, a lack of understanding of the roles and responsibilities of each other, issues relating to managing individual exhibiting violent behaviour when chemical restraint can't be utilized.

It appears both Adult Corrections and the Forensic Unit are working in their respective "silos" and clearly all of the above noted issues are problematic to providing a continuum of care for individuals with serious mental health issues. Furthermore, it appears these are historical problems that have persisted over many years. It is the Review Committee's understanding that various committees were struck and reports written such as the one written by The Institute for the Advancement of Public Policy (Jan. 2015), however, it appear little change was affected.

In addition, in the recent report completed by Accreditation Canada for NL Health Services, as part of the pending transfer of correctional health care services, they recommended "it is imperative that in order to support the continuum of care for the inmate population, the relationship between the Waterford Hospital and Adult Corrections needs to be improved". Accreditation Canada (Dec. 2018).

## Guiding Principles

As noted in the Review of Disciplinary Segregation completed in April 2017, the following guiding principles were recommended and later adopted by the Department of Justice and Public Safety for the effective management of segregation in the province of Newfoundland and Labrador.

All correctional facilities that utilize segregation should strive to adhere to these principles, recognizing the operational challenges unique to each correctional facility:

- The safety and security of inmates, staff, institution and the public are paramount.
- Reasonable alternatives to segregation shall be exhausted prior to placement.
- Inmates are entitled to fair and humane treatment and to have access to timely and efficient redress mechanisms.
- Meaningful human contact is recognized as being integral to the wellbeing and successful reintegration of segregated inmates.
- Due diligence and procedural fairness are essential elements to an appropriate and comprehensive segregation process.
- Segregation policies, practices, programs and services will be respectful of gender, ethnic, cultural and linguistic differences and be responsive to the particular needs of women and Indigenous people, as well as those with mental health concerns and other groups of inmates with special requirements.
- Segregation policies, practices, programs and services will be trauma-informed and responsive to the inmates' mental and physical health needs.
- Inmates are encouraged to actively participate, to the best of their ability, in their rehabilitation and reintegration planning.
- Comprehensive reviews will occur at prescribed times, as well as when changing circumstances are identified, with the goal of reintegrating the inmate at the earliest opportunity while maintaining the safety and security of the institution.
- Effective oversight will ensure transparency and accountability in the administration of segregation by correctional management.
- Correctional institutions will ensure the continuous provision of training and education with a view to maintaining and improving the knowledge and professional capacity of its personnel.

## Segregation and the Need for Meaningful Contact

Solitary confinement may cause serious psychological and sometimes physiological ill effects. Negative health effects can occur after only a few days in solitary confinement and the risk rises with each additional day spent in such conditions. The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and wellbeing (Istanbul Statement, 2007).

Solitary confinement has long lasting and damaging effects due to the isolation associated to this type of confinement. Medical research confirms that the denial of meaningful human contact can cause 'isolation syndrome', the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide. (Essex paper 3, 2016, pgs. 49-58).

Furthermore, the Essex paper has clarified the term *meaningful human contact* as "the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and wellbeing. Such interaction requires the human contact to be face to face and direct (without physical barriers) and must not be limited to those interactions determined solely by prison routines, the course of (criminal investigations) or medically

Meaningful contact does not include: staff delivering food, mail, or medication to the cell door or if prisoners are able to shout at each other through cell walls or vents. In order for the rationale of meaningful contact to be met, the contact needs to provide stimuli necessary for human wellbeing, which implies an empathetic exchange and sustained, social interaction. Meaningful human contact is direct rather than mediated, continuous rather than abrupt, and must involve genuine dialogue. It could be provided by prison or external staff, individual prisoners, family, friends, or others – or by a combination of these.

This means that prison administrations should put effort into raising the level of meaningful social contacts with others, for example by facilitating more visits and access to social activities with other prisoners, by arranging talks with social workers, psychologists, psychiatrists, volunteers from NGOs, from the local community, or religious prison personnel, if so wished by the prisoner. Regular contact with family members through visits, letters, and phone calls are crucial for inmates. The provision of meaningful in-cell and out-of-cell activities, such as educational, recreational and/or vocational programs, are equally important to prevent infringements of prisoners' dignity and health, and will have a positive effect on levels of violence (Essex paper 3, 2016)

## Recommendations

The Review Committee respectfully makes the following recommendations:

**Recommendation # 1** It is recommended Administrative Segregation shall be used only in exceptional cases as a last resort, for as short a time as possible, and should be subject to review.

The complexity of segregation brings many challenges to already beleaguered prison staff and prisoners who for whatever reason, cannot manage or be managed in, the main body of n prison. Segregation, though it may sometimes be necessary, must not be prolonged or indefinite. Where the international legal and human rights community stands on the use of segregation is very clear: the imposition of restricted, isolated confinement beyond 15 days can constitute torture or cruel, inhuman, or degrading treatment or punishment (Mandela Rules 45.2, Segregation in Ontario, 2017).

To alleviate the effects of isolation, the provision of meaningful human contact should be promoted in all restrictive housing and include significant, relevant, purposeful and individualized contact for the inmate. This goes beyond the daily operational routine of the institution or the unit and more than communication through a cell door. In order for the rationale of meaningful contact to be met, the contact needs to provide stimuli necessary for human wellbeing, which implies an empathetic exchange and sustained social interaction.

**Recommendation # 2:** It is recommended firm policies be enacted that prohibit placing people in Administrative Segregation who have serious mental illness, development disabilities or neurogenic diseases.

The United Nations Standards and Norms in Crime Prevention and Criminal Justice Rule 45.2 states, *“the imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.”* .

Placing inmates who have mental illness in segregation contradicts the principles of recovery. As segregation has the propensity to punish a person for their mental illness, it can further aggravate symptoms of illness (Schizophrenia Society of Ontario 2016, p 4).

Furthermore, the Newfoundland and Labrador *Human Rights Code* prohibits discrimination against individuals with mental illness. Within the correctional system, the government has an obligation to ensure that individuals with mental health needs are accommodated and receive medical treatment rather than punishment or isolation due to their illness or its symptoms.

Given segregations' impact on those with mental illness, the government also has the obligation to provide services, programs or conditions of confinement that would alleviate the particularly negative impacts of segregation for this population.

**Recommendation # 3: It is recommended the maximum amount of time an individual can be placed in Administrative Segregation is 15 days with no more than 60 days in any calendar year.**

As previously stated, the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners. Mandela Rule 44 defines prolonged solitary confinement as solitary confinement for a time period in excess of 15 consecutive days. The limit of 60 aggregate days in a calendar year is now widely accepted as the maximum number of days an individual can be placed in restricted housing. The evidence for this can be found in the Jury's Recommendations from the Coroners' Inquest in the Death of Ashley Smith (2013), the Ontario Review of Segregation (2017), the 2018 Canadian Court challenge on the Use of Solitary Confinement brought forward by the BC Civil Liberties Association, which found the practice was unconstitutional.

**Recommendation # 4: It is recommended units be established to enable the placement of complex needs inmates.**

Creating specialized units would provide a dedicated or allocated physical location used to assess, stabilize, treat and house complex needs inmates in a safe and therapeutic environment. The unit would require specialized staff with the appropriate training and qualifications necessary to work with a complex needs population.

The units could be designed taking into consideration a number of factors including the safety and security of the inmate and staff; protection of the inmate's mental and physical wellbeing; inmate's ability to function in the general population; the ability to execute and carry out individualized inmate plans.

These units should significantly expand the quality of health services through the provision of daily contact with health professionals, therapeutic programming, out-of-cell time and recreational activities.

Criteria for these units would include inmates with a complex need(s) who would meet one or more of the following criteria:

- Presentation of a severe and/or persistent mental illness (e.g. schizophrenia, affective disorder, organic brain syndrome, borderline personality disorder, dementia, etc.);

- An intellectual disability; and/or
- A significant physical disability (e.g., restricted mobility, deaf, blind, etc.).

**Recommendation # 5: It is recommended all inmates placed in Administrative Segregation during a term of incarceration be referred to a Multidisciplinary Team.**

All inmates placed in segregation should be referred to a Multidisciplinary Team. The Multidisciplinary Team is to include the Institutional Head or designate, a mental health professional, a member of the medical team, a Classification Officer, Security Captain, Unit Manager and a Correctional Officer working in Unit One. The mandate of the Multidisciplinary team would be to will review each case on an on-going basis at proscribed intervals and as needed should the inmates' circumstances change. The Team would provide support necessary in order to have the inmate moved to less restrictive housing as soon as possible.

**Recommendation # 6: It is recommended formal reviews be conducted for inmates housed in Administrative Segregation with the objective of facilitating their reintegration as soon as possible.**

There are few, if any practices in corrections more in need of oversight and full compliance with law and policy than the use of segregation. Segregation, and others forms of isolated or restricted housing, have been referred to as a prison within a prison. It is the most austere form of custody legally allowed in Canada. Such a significant restriction on individual freedom must be accompanied by a robust, effective and procedurally-fair oversight and review mechanisms.

The Review Committee make the following recommendations for the Review process:

After the initial segregation placement decision within 72 hours the Institutional Head or designate will conduct a follow-up with the inmate. The inmate is to be advised in writing of the reasons for placement in segregation, his or her right to provide a written or in-person response (following the interview), the date of the next review, and steps the inmate can take to be moved sooner to an alternate placement.

- Within 5 days of placement, the Multidisciplinary Team will convene to review the case to determine if the placement should continue, and whether placement would exacerbate existing conditions should they exist. If continuation is recommended, a case plan is developed to provide the necessary supports and programming required to best meet the individuals' needs while they are housed in Administrative Segregation.



- If an inmate remains in Administrative Segregation for 15 days, a review with the Multidisciplinary Team is to be once again completed. If continued placement is recommended, a written report prepared by the Institutional Head or designate is forwarded to the Superintendent outlining the rationale and what alternatives were explored. Continuation of an Administrative Segregation placement in excess of 15 days will require formal approval from the Superintendent.
- If after 30 continuous days an inmate remains in Administrative Segregation, formal approval is once again required from the Superintendent. The Superintendent must also formally notify the Assistant Deputy Minister of Justice and Public Safety.
- In the event an inmate has been placed in Administrative Segregation for 60 aggregate days within a calendar year, the Superintendent must be formally notified and formal approval from the Minister of Justice and Public Safety is required to continue the placement.

At all review intervals, consultation with the Multidisciplinary Team is required to ensure meaningful contact is occurring. The inmate is provided a written report outlining the reasons for placement, the date of the next review, and as the steps that can be taken to shorten their time in segregation.

The purpose of prescribed reviews is to help ensure further placement is not having negative effects on the individual; that all alternatives to placement are explored; and individuals are released from segregation at the earliest opportunity.

**Recommendation # 7: It is recommended additional Mental Health Professional positions be established to provide service to all Correctional Facilities.**

Recognizing that segregation and other forms of isolation are the most austere form of custody permitted in Canada, and that segregation and isolation can have a profound effect upon one's mental health, the addition of additional mental health professionals to provide services to all inmates, and specifically those in Administrative Segregation would be beneficial. In the federal system, extensive changes have been made to the process of maintaining an inmate in Administrative Segregation, and health care professionals must visit the inmate at the time of admission and daily thereafter. It is recommended that NL Adult Custody follow this sanction as well, and a mental health professional could fulfill this role and provide constant monitoring and evaluation of the mental health of the inmate being held in this area. This clinician would provide a written opinion on the inmate's current mental health status, and any noted deterioration of mental health would be considered during placement, and throughout the period of placement.

The mental health professional would also be mandated to provide additional services within the prison setting, including mental health assessments upon admission, which could have impact and proactively reduce the number of admissions to Administrative Segregation.

**Recommendation # 8: It is recommended other institutions be utilized to accommodate the transfer of inmates who are currently being housed for long periods in Administrative Segregation.**

At times inmates in general population who experience incapability with other inmates, and/or who maybe a risk to themselves or others, are placed in Administrative Segregation. The length of placement varies but could be for weeks or months or years. This appears to be an issue primarily for HMP. While security concerns are suggested as the reason transfers are not considered, it is recommended a critical review be conducted to determine how transfers can be better utilized rather than placing prisoners in Administrative Segregation for extended periods of time. Following the review, a formalized process should be developed to be used when transfers are being considered.

**Recommendation # 9: It is recommended every effort should be made to offer inmates in Administrative Segregation the same frequency and variety of activities that are available to other inmates in general population and should include:**

- Least restrictive measures possible
- A minimum of four hours out of cell daily, including the opportunity to exercise for at least one hour everyday outdoors, weather permitting, to and interact with other inmates.
- Immediate access to personal items related to hygiene, religion and spirituality, medical care and non-electronic personal items; with access to remaining personal property items within 24-hours of admission to Administrative Segregation.
- Daily showers, with the time spent not to be included in the inmate's four hours out of cell.
- Access to reading material, visits and telephone calls.
- Access to case specific programming.
- Assistance in maintaining the cleanliness of their cell should it be required.

**Recommendation #10: It is recommended mandatory on-going mental health training for all correctional employees be provided.**

With the prevalence of mental illness in the inmate population, there has been a shift in the duties of Correctional staff and how they need to respond in a variety of circumstances. By providing mandatory mental health training for frontline staff, this will help foster a safer more humane prison environment. Furthermore, specific mental health training will assist staff in identifying and interacting more effectively with inmates. It is suggested Adult Corrections trainers can work with community partners to create a training model to educate frontline staff on topics such as understanding mental illness, common types, and ways to respond more humanely to the needs.

**Recommendation #11: It is recommended the area at Her Majesty's Penitentiary known Unit one be renamed to the Multi-placement Unit.**

Currently Unit One at HMP is used for multiple types of segregation including disciplinary, medical, mental health, those who pose a risk to themselves or others, and those with suicidal ideation. Due to the varying nature of the use of the area, renaming it to the Multi-placement Unit is more reflective of its usage.

**Recommendation #12: It is recommended a formal process of data collection and statistics should be implemented immediately for the use of segregation.**

Data collection should include information such as: violations of the Prisons Act; internal dispositions; reasons for the use of segregation; length of stay in the segregation unit; and time from initial charge to hearing.

These statistics shall then be used to generate reliable data about trends relating to the use of segregation including occupancy rates, in order to create a basis for evidence-based decision-making (Ontario Human Rights Commission Report 2017).

Good data can gain trust, develop effective, respectful consultations, and secure the support of key decision-makers and stakeholders. It can also reduce exposure to possible legal action and human rights complaints.

## **Other Considerations**

The Review Committee suggests the following additional considerations:

### **Suggestions to address the overcrowding issues and the need for additional space.**

Prison overcrowding is one of the key contributing factors to poor prison conditions around the world. It is also arguably the biggest single problem facing prison systems and its consequences can at worst, be life-threatening, at best, prevent prisons from fulfilling their proper function. “Overcrowding, as well as related problems such as lack of privacy, can also cause or exacerbate mental health problems, and increase rates of violence, self-harm and suicide” (Penal Reform International 2018).

Throughout Canada and in many other jurisdictions, Bail Verification and Supervision programs are utilized to provide interim judicial release for people who are awaiting trial. The program would potentially serve to reduce the number of people in custody on remand status who could be safely managed in the community under supervision.

With a reduction in the numbers of individuals on remand it could also serve to help reduce overcrowding and create additional space.

Another advantage of a bail program, would allow individuals living with mental illness and charged with an offense the opportunity to apply for judicial interim release. Should they be granted they would then become eligible to apply to have their charges adjudicated through the Mental Health Court. Currently, if an accused is living with a mental illness and placed on remand they are not currently eligible to apply for mental health court.

Some of the factors preventing interim release include inadequate or inappropriate housing, lack of employment, lack of support, or lack of a suitable surety. A bail program would alleviate these pressures allowing the individual, should they be suitable for mental health court, to be supervised appropriately and availing of supports and services rather than incarcerated on remand putting further pressure on an already overtaxed system.

It is further recommended that in an effort to reduce the number of people incarcerated, that the Department of Justice explore all possible measures including enhanced use of Temporary Absence program, creating community alternatives to housing people serving intermittent sentences, as well as creating alternatives to the periodic housing female offenders at HMP.

**It is recommended a working group be established to support the provinces Forensic Unit and Adult Corrections.**

Due to the interdependence between Adult Corrections and the Forensic Unit of the Waterford Hospital, and, as was recommended in the Accreditation Canada Simulated Onsite Survey for NL Health Services, it is imperative that in order to support the continuum of care for the inmate population, the relationship between the Waterford Hospital and Adult Corrections needs to be improved.

**It is recommended strategies are explored to address vacancies, turnover and burnout among correctional officers and mental health professionals.**

Working in a prison environment is a very stressful occupation. Staff are exposed to a range of duties from periods of routine, monotonous activities to periods of high alert where they witness or respond to threats, physical danger, self-harm, or suicide. In some of more extreme circumstances, they can be forced to respond to a riot. Strategies must be introduced to improve human resource management, professionalize the role of Correctional Officer, and increase the positive social aspects. Occupational stress injury training should be offered to all Correctional Officers. Furthermore, organizational development must play a key role in providing effective supports to Correctional Officers experiencing burn-out.

## **Appendices**

### **Appendix A - Inmate Interview Questionnaire**

#### **Inmate Interview Questions**

1. Can you tell us how long you were place in Administrative Segregation?
  - Were you placed there more than once during your sentence?
  - Roughly how long ago were you there?
2. What is your understanding of why you were placed in Administrative Segregation?
3. What was that experience like for you?
4. If there was something you could change about Administrative Segregation, what would you recommend?
5. Can you recommend any alternatives to inmates being placed there?

## **Appendix B - Correctional Officer Interview Questionnaire**

### **Correctional Staff Interview Questions**

1. How long have you worked in Unit One?
  
2. In your opinion, how do you think Administrative Segregation has affected the mental and/or physical health of inmates housed in SHU?
  
3. Has working in Unit One affected your mental and/or physical health? If so, are there examples of incidents that may have contributed?
  
4. Are there any challenges that affect your ability to maintain Administrative Segregation protocol? If so, what would be some ways to possibly improve these challenges?
  
5. Are there any other recommendations you would suggest to improve Administrative Segregation?

## References

Accreditation Canada, Simulated Onsite Survey. Report prepared for the Newfoundland and Labrador Health Services Provincial Corrections (Dec 2018).

Amnesty International (2018), Retrieved from: <https://www.amnesty.ca/news/amnesty-international-highlights-concerns-regarding-canada%E2%80%99s-record-preventing-torture-un>

Angela Browne, Alissa Cambier, Suzanne Agha, Prisons within Prisons: The Use of Segregation in the United States, Federal Sentencing Reporter, Vol. 24, No. 1, pp. 46-49. Vera Institute of Justice (2011).

Canadian Civil Liberties Association. Submission to the Ministry of Community Safety and Correctional Services Review of Segregation in Ontario Adult Correctional Facilities. Retrieved from <https://ccla.org/cclanews/wp-content/uploads/2016/05/2016-05-05-CCLA-Submission-re-MCSCS-Segregation-Review.pdf>

Canadian Mental Health Association, Retrieved from: <https://toronto.cmha.ca/understanding-mental-illness/>

Essex paper 3, Initial Guidance on the Interpretation and Implementation of the UN Nelson Mandela Rules (2016) Retrieved from: <https://rm.coe.int/16806f6f50>

*Freidman, a (April 2014). Lowering Recidivism through Family Communication. Retrieved from <https://www.prisonlegalnews.org/news/2014/apr/15/lowering-recidivism-through-family-communication/>*

The Institute for the Advancement of Public Policy, Inc., Collaborative Program Planning, HMP and the Waterford Replacement (Jan. 2015).

Istanbul Statement (Dec. 2007) Retrieved from: [http://solitaryconfinement.org/uploads/Istanbul\\_expert\\_statement\\_on\\_sc.pdf](http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf)

National Segregation Strategy: For Corrections in Canada, a Federal-Provincial-Territorial Partnership, *Draft Report* 2016

NL Department of Justice & Public Safety Corrections and Community Services Institutional Services, Branch, Disciplinary Court Prisons Regulations, Punishment and Sentence Guidelines (2014).

NL Prisons Act 2006 ([file:///F:/RSNL1990%20CHAPTER%20P-21%20-20PRISONS%20ACT\[Repealed%20by%20SNL2011%20cC-37\\_0001%20s51%20-%20not%20in%20force\].htm](file:///F:/RSNL1990%20CHAPTER%20P-21%20-20PRISONS%20ACT[Repealed%20by%20SNL2011%20cC-37_0001%20s51%20-%20not%20in%20force].htm))

NL Prison Regulation under the Prisons Act. Retrieved from: <http://www.assembly.nl.ca/Legislation/sr/regulations/rc960993.htm>

Nova Scotia Department of Justice. Retrieved from: ([http://novascotia.ca/just/Corrections/policy\\_procedures/Correctional\\_Services\\_Policies\\_Procedures.pdf](http://novascotia.ca/just/Corrections/policy_procedures/Correctional_Services_Policies_Procedures.pdf))



Ontario Human Rights Commission. Collecting Data – Consider the Benefits. Retrieved from <http://www.ohrc.on.ca/en/count-me-collecting-human-rights-based-data/3-collecting-data-%E2%80%93-consider-benefits>

Ontario Human Rights Commission Report (2016) Retrieved from: [http://www.ohrc.on.ca/en/news\\_centre/prisoners-justice-day-significant-barriers-progress-remain-42-years-later](http://www.ohrc.on.ca/en/news_centre/prisoners-justice-day-significant-barriers-progress-remain-42-years-later)

Ontario Ministry of Community Safety and Correctional Services. (2016). Ontario to Begin Overhaul of the Use of Segregation in the Province. (Press release). Retrieved from <http://news.ontario.ca/mcscs/en/2016/10/segregation-in-ontario-correctional-institutions>

Penal Reform International: January 2018 Retrieved from: <https://www.penalreform.org/priorities/prison-conditions/key-facts/overcrowding/>

Prison Legal News, (2014) Lowering Recidivism through Family Communication. Retrieved from <https://www.prisonlegalnews.org/news/2014/apr/15/lowering-recidivism-through-family-communication/>

Segregation in Ontario: Independent Review of Ontario Corrections March 2017, Retrieved from: <https://www.mcscs.jus.gov.on.ca/english/Corrections/IndependentReviewOntarioCorrections/IndependentReviewOntarioCorrectionsSegregationOntario.html>

Schizophrenia Society of Ontario, May 2016 Submission to the Provincial Segregation Review Team,

The Vera Institute, Recommendations to Safely Reduce Pennsylvania Department of Corrections' Use of Segregation, January 2014

UN Committee Against Torture. (2012, June 6). Considerations of reports submitted by states parties under Article 19 of the Convention: Concluding observations of the Committee against Torture, 48th Sess. UN Doc CAT/C/CAN/CO, and p. 6.

United Nations Human Rights Committee. (2015, August 13). Concluding observations on the sixth periodic report of Canada, p. 5

United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules), Penal Reform International, Retrieved from: <https://www.penalreform.org/wp-content/uploads/2015/05/MANDELA-RULES.pdf>