

# **Segregation Literature Review**

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## INTRODUCTION

***“I found solitary confinement the most forbidding aspect of prison life. There is no end and no beginning; there is only one's mind, which can begin to play tricks. Was that a dream or did it really happen? One begins to question everything.” – Nelson Mandela***

Over the last several years, segregation in correctional institutions in Ontario has been a matter of growing concern. Viewed as the most restrictive form of custody available, segregation is known to have damaging effects on prisoners’ mental health and overall well-being. It is so damaging, in fact, that it has been reported as ‘cruel and unusual treatment’ by the United Nations, and can even amount to torture. Concerns have been raised over the harsh, harmful and deleterious effects of segregation, as well as its lack of external oversight and accountability. International human rights laws and bodies have called for its prohibition for several categories of offenders, including those who are mentally ill, youth, women and those of Indigenous heritage. Recent deaths in custody have further increased the calls to abolish, restrict or reduce its use.

This literature review will provide a basic overview of segregation, including key themes and trends, conditions of confinement, effects of segregation, special populations, alternatives to segregation and models of oversight and accountability. This review is not meant to be exhaustive; rather, it provides a broad overview of the segregation literature and highlights pertinent key facts and findings.

### I. Segregation: Key Themes and Trends

This section will highlight key themes and trends in the use of segregation. It will include an overview of the definition of segregation, including both administrative and disciplinary segregation; a look at its purpose and reasons for use; the issue of length or duration; its effectiveness and impact; and a brief overview of the types of prisoners in such restricted forms of custody. This will be followed by a discussion on the conditions of confinement in segregation as well as prisoners’ rights while segregated. An examination of the health and psychological effects of segregation will then be examined, followed by a brief discussion of institutional effects and implications. The section will wrap up with a focus on special populations, including the mentally ill, youth, women and the Indigenous.

## a. Definition of Segregation

### i. Definitional Challenges

While there is no universally agreed-upon definition of segregation, it generally refers to a form of confinement where prisoners are placed in specifically designated cells separate from other prisoners for 22 to 24 hours a day (Elizabeth Fry Society of Quebec, 2005; Enggist et al., 2014; Lantigua-Williams, 2016; *The Mandela Rules*, 2015; Méndez Report, 2011; Office of the Provincial Advocate for Children and Youth (Ontario), 2015; O’Keefe, 2007; Istanbul Statement, 2007; Shalev, 2008; Shalev and Edgar, 2010; West Coast Prison Justice Society (WCPJS), 2016; Wichmann & Nafekh, 2001). The Ontario *Placement of Special Management Inmates* policy defines segregation as “an area [that is] designated for the placement of inmates who are to be housed separate from the general population” (at s. 4.1.). Thus, the province of Ontario refers to segregation as a physical location (an “area”), rather than a form of confinement or treatment (Dubé, 2016). The World Health Organization’s (hereafter WHO) *Prisons and Health* report suggests that “three main factors are inherent in all solitary confinement regimes: social isolation, reduced activity and environmental input, and loss of autonomy and control over almost all aspects of daily life” (Enggist et al., 2014. p. 28).

Different jurisdictions may use different terms to denote the physically and socially isolated regime of segregation, such as ‘segregation’, ‘isolation’, ‘restrictive housing’, ‘separation’, ‘seclusion’, ‘protective custody’, ‘separate confinement’, ‘observation’, ‘enhanced supervision’ and ‘observation cells’. These terms and their meanings vary greatly across correctional institutions and jurisdictions (Frost & Monteiro, 2016). For instance, the restrictions on freedom, the level of social and physical isolation and the diverse conditions of confinement may vary considerably from one to another (Zinger, Wichmann & Andrews, 2001).

Some researchers argue that correctional institutions “consciously choose the names of their segregation units to reflect the underlying notion of what purpose they believe the practice should serve” (Labrecque, 2016, p.51; see also Toch, 1978, for a similar argument). For instance, the term ‘observation cells’ denotes a softer, less restrictive form of confinement as compared with ‘segregation’ or ‘isolation’. Labrecque (2016), however, questions whether the difference in terms reflects notions of rehabilitation or is simply a matter of semantics.

The lack of definitional clarity poses a great many challenges to conducting research and interpreting or evaluating existing research (Frost & Monteiro, 2016), and it may not be suitable to group these varied terms under one umbrella (Suedfeld et al., 1982; Zinger et al., 2001).

Regardless of the term used, however, segregation involves keeping prisoners physically and socially isolated with little, if any, meaningful contact or interaction with others (Frost & Monteiro, 2016; *The Mandela Rules*, 2015; WCPJS, 2016). Although segregation practices and

policies vary across jurisdictions (Frost & Monteiro, 2016; Labrecque & Smith, 2014; Smith, 2016), many permit prisoners in segregation to leave their cells for up to one hour daily for exercise and personal oral hygiene maintenance (WCPJS, 2016).

ii. Administrative and Disciplinary Segregation (Close Confinement)

In Ontario, regulations and policies direct the use of disciplinary or administrative segregation in correctional institutions. Regulation 778 (see s. 34), enacted under the *Ministry of Correctional Services Act*, governs the use of segregation. The Ministry's *Placement of Special Management Inmates* policy also provides guidance. Under these authorities, inmates and detainees can be held in segregation either for administrative reasons or for punitive or disciplinary reasons.

Under Regulation 778, an inmate may be placed in segregation if

- ❖ in the opinion of the Superintendent, the inmate is in need of protection;
- ❖ in the opinion of the Superintendent, the inmate must be segregated to protect the security of the institution or the safety of other inmates;
- ❖ the inmate is alleged to have committed a misconduct of a serious nature; or
- ❖ the inmate requests to be placed in segregation.<sup>1</sup>

The primary purpose of administrative segregation is to ensure the safety or security of the institution and its staff, other prisoners or the prisoner himself or herself (Bottos, 2008; Cohen, 2016; Elizabeth Fry Society of Quebec, 2005). It is used for managerial purposes (Labrecque, 2016; Shalev, 2008) and involves removing a prisoner from the general population to prevent him or her from associating with other prisoners (Correctional Service Canada (CSC), 2008). It is not meant as a form of punishment. Under Regulation 778, an inmate in administrative segregation retains, "as far as practicable," the same benefits and privileges as if the inmate had not been placed in segregation (Reg. 778, s. 34(4)).

Disciplinary segregation (called close confinement in Ontario) is an interim population management measure used for prisoners who violate institutional rules or regulations (Browne et al., 2011; Harrington, 2015; Labrecque, 2016). Unlike administrative segregation, disciplinary segregation is meant to be a form of punishment or type of penalty imposed on a prisoner if he or she is found guilty of a serious disciplinary offence or misconduct (CSC, 2008; Dubé, 2016; Elizabeth Fry Society of Quebec, 2005). Disciplinary segregation may include harsher conditions than administrative segregation if punishment for the disciplinary infraction includes a loss of privileges (e.g., loss of participation in recreational activities) (Bottos, 2008; CSC, 2008;

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<sup>1</sup> Regulation 778, section 34(1).

Elizabeth Fry Society of Quebec, 2005; Thompson & Rubinfeld, 2013). Nevertheless, prisoners in disciplinary segregation have the right to the same conditions of confinement as those in administrative segregation (Elizabeth Fry Society of Canada, 2005). Disciplinary segregation may be used to encourage prisoners to follow institutional rules and regulations, to promote the good order and discipline of the institution and to contribute to and facilitate prisoners' successful reintegration into the community (Elizabeth Fry Society of Quebec, 2005).

Studies have found that administrative segregation is more commonly used within correctional contexts than disciplinary segregation (Bottos, 2008; Wichmann & Taylor, 2004). Called a "steel-door solution" by some (Lantigua-Williams, 2016), administrative segregation is generally intended to be used only as a last resort in exceptional circumstances (see CSC, 2008). However, both the Correctional Investigator of Canada and the Ontario Ombudsman have found that segregation is being used to separate, punish and deal with the most difficult and vulnerable prisoners (Dubé, 2016; Sapers, 2015).

Some have raised concerns with the fact that inmates may be sent to administrative segregation "merely on a 'reasonable belief' that they 'may' act in a manner that jeopardizes the security of the penitentiary or the safety of any person" (WCPJS, 2016, p. 15; emphasis added). While administrative segregation is a separation tactic used in institutions, it is not meant to be a form of punishment for an institutional infraction or violation (Browne, Cambier, & Agha, 2011). Rather, it is a preventative measure (Solicitor General of Canada, 1998) meant to foil altercations, harm or interference with ongoing investigations (Bottos, 2008).

Administrative segregation may be either voluntary, upon request of the prisoner, or involuntary, in which case the prisoner is placed in segregation at the discretion of the institutional head or superintendent (Bottos, 2008; *Corrections and Conditional Release Act* (CCRA), 1992; Elizabeth Fry Society of Quebec, 2005; Reg. 778, s. 34). Research suggests that while more are admitted to administrative segregation involuntarily, there is a subgroup of prisoners who enter segregation voluntarily (Bottos, 2008; Motiuk & Blanchette, 1997; Wichmann & Nafekh, 2001; Wichmann & Taylor, 2004). Research studies have provided several reasons for a request for segregation, including "protection of personal safety, conflicts with members in the general prison population over gambling and drug debts, the type of offence for which they were convicted (e.g., sex offences), being suspected of being an informant, being the target of sexual aggression, and wanting to escape the crowded and often violent atmosphere of maximum security" (Bottos, 2008, p.9; see also Gendreau, Tellier & Wormith, 1985; Kane, 1997; Wichmann & Nafekh, 2001; Wichmann & Taylor, 2004; Wormith, Tellier, & Gendreau, 1988).

The Office of the Correctional Investigator (hereafter OCI) has argued, however, that the legal distinction between voluntary and involuntary segregation is misleading and unhelpful. More specifically, the Correctional Investigator of Canada recently stated that "there is nothing

‘voluntary’ about voluntary segregation – many inmates who seek refuge in administrative segregation do so because they fear for their personal safety. Most inmates who voluntarily request administrative segregation would return to the general inmate population if the risk to their physical integrity was removed and their safety was assured” (Sapers, 2015, p.31).

## **b. Purpose and Reasons for Use**

Segregation is a population management tool used to separate certain prisoners from the general population (Bottos, 2008; CSC, 2008). The reasons for its use include safety and security (as noted above). It is meant to be used under strict guidelines.

The WHO’s *Prison and Health* report (2014)<sup>2</sup> offers many reasons for the use of segregation (see Enggist et al, 2014, p. 31). They include being implemented

- ❖ as a short-term-punishment for prisoners who break prison rules;
- ❖ to prevent escape;
- ❖ for the prisoners’ own protection to prevent them from harming themselves or being harmed by others;
- ❖ as a prison management tool for the safe management of difficult and challenging prisoners, and for the management of prisoners belonging to certain groups (such as prison gang members);
- ❖ where capital punishment is still practised death row prisoners are typically held in solitary confinement, and where the death penalty has been abolished it is often substituted with a sentence of life in conditions of solitary confinement, on the premise that prisoners sentenced to death have nothing to lose and may therefore commit serious crimes inside prison or indeed attempt to escape;
- ❖ with immigration detainees;
- ❖ while awaiting transfer to a hospital, another prison or bed, or a disciplinary or classification hearing (these are temporary measures, but in some cases the prisoner may be isolated for many weeks and sometimes months); or
- ❖ to help with staff shortages, for convenience or as group punishment, which can mean that prisoners are confined to their cells for an entire day or for several days at a time in what is commonly known as “lockdown” (Enggist et al, 2014, p. 31).

Sharon Shalev (2008) describes similar reasons why prisoners are placed in segregation, such as for punishment, protection, prison management, national security, pre-charge and pre-trial investigation and lack of other institutional solutions. Several of these reasons are echoed in Ontario’s regulations and policies (e.g., punishment, protection, prison management). Shalev (2008), however, highlights that the use of segregation is often due to a lack of other

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<sup>2</sup> See also Scharff-Smith, 2006.

institutional alternatives. The decision to place prisoners in segregation for lack of a better solution is problematic, particularly for vulnerable populations such as mentally ill prisoners and youth.<sup>3</sup>

A few researchers argue that some inmates are so violent and disruptive to the institution that they should not be held in the general population, and that segregation is necessary for the maintenance of order, discipline and security within institutions (Frost & Monteiro, 2016; O’Keefe, 2008; Pizarro & Narag, 2008; Pizarro & Stenius, 2004). In *Bacon v. Surrey Pretrial Services*, however, the notion that security requires segregation was rejected (WCPJS, 2016). More specifically, the court stated that “inhumane treatment cannot be justified on the basis of a choice between physical safety and psychological integrity” (*Bacon v. Surrey* in WCPJS, 2016, p. 56). In other words, the court held that it was unacceptable to threaten prisoners’ psychological health and safety in order to preserve the security of the institution and other prisoners (*Bacon v. Surrey* in WCPJS, 2016).

Whatever the reason for placing a prisoner in segregation, the WHO directs that “its use in any one case must be proportionate and reasonable and the decision taken by the competent lawful authority” (Enggist et al., 2014, p.31). Moreover, the prisoner must be informed, in writing, of the reasons for his or her placement in segregation. The record of this decision must be kept updated and the decision must be reviewed at regular intervals according to policy and practice (Enggist, et al., 2014).

A recent decision of the Alberta Court of Queen’s Bench confirmed that the reasons for a decision to place an inmate in segregation need to be adequate, and not merely amount to a statement of conclusions. In *Hamm v. Attorney General of Canada*, Justice Veit first concluded that “given the basis on which the inmates were sent to solitary confinement, and the individual mental health and aboriginal circumstances of each inmate, the decisions to send each of them to solitary confinement is not reasonable” (*Hamm v. Attorney General of Canada*, 2016, p. 28). She further stated that “the institution has not given the inmates adequate reasons, rather than conclusions, for their ongoing placement in segregation” (*Hamm v. Attorney General of Canada*, 2016, p. 31). Justice Veit’s decision has important implications for procedural fairness in segregation decisions, including ensuring that prison officials provide suitable reasons for such placements.

### c. Duration or Length

***“How can we subject prisoners to unnecessary solitary confinement, knowing its effects, and then expect them to return to our communities as whole people? It doesn’t make us safer. It’s an affront to our common humanity.” - Barack Obama***

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<sup>3</sup> These special populations will be discussed later in the review.

Neither Regulation 778 nor Ministry policies specify the maximum time a prisoner can remain in administrative segregation. Administrative segregation is often enforced for indeterminate periods of time (Labrecque, 2016; Mears & Bales, 2010). For example, federal research conducted by Thériault (2010) indicated that the average length of stay of prisoners across five male medium-institutions was 143.9 days. The Office of the Correctional Investigator's *Administrative Segregation in Federal Corrections 10 Year Trends* report stated, however, that the average length of stay in segregation was 27 days in 2014-2015 (OCI, 2015). As Zinger, Wichmann and Andrews (2001) cogently state: "the length of stay is always unknown, and more than 80% of prisoners spend more than 10 days in segregation at any one time" (Zinger et al., p. 57). Most prisoners are unaware of the length of time they will spend in segregation.

The indeterminacy of the length of time in segregation is psychologically damaging. In her 1996 report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, Madame Justice Arbour indicated that "the most objectionable feature of this lengthy detention in segregation was its indefiniteness. This indefinite hardship would have the most demoralizing effect" (Arbour, 1996, p. 81). Justice Arbour found that the inability to plan for release or to determine what was required to bring an end to segregation was psychologically painful for prisoners.

Thériault's research (2010) coupled with Justice Arbour's comments support the repeated recommendations and demands from the Office of the Correctional Investigator that the use of administrative segregation be significantly limited, that its use be prohibited for young offenders (up to age 21) or for prisoners who are mentally ill, and that there be a ceiling of no more than 30 consecutive days (Sapers, 2015; OCI, 2016).

International human rights standards and multiple reports have critically reflected on the issue of the length of segregation. The United Nations *International Covenant on Civil and Political Rights* (hereafter ICCPR), to which Canada acceded in May 1976, strictly prohibits the use of torture or cruel, inhuman or degrading treatment or punishment (Article 7, ICCPR). In 1992, the United Nations Human Rights Committee stipulated that the use of prolonged solitary confinement may amount to a breach of Article 7 of the ICCPR (see *Istanbul Statement*, 2007). The *Istanbul Statement*, the result of a working group of international experts, calls on states to limit the use of segregation to exceptional cases, only as a last resort and for as little time as possible (*Istanbul Statement*, 2007).

In 2011, Juan Méndez, the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter UN Special Rapporteur on Torture), claimed that most studies on segregation fail to specify the length of time that would be considered 'prolonged'. This has resulted in prisoners being held in segregation for weeks or even years. As such, Méndez (2011) highlights the lack of international standards for the maximum duration of segregation. He considers segregation for more than 15 days to be

prolonged and can constitute either torture or cruel, inhuman and degrading treatment or punishment, depending on the circumstances (Méndez Report, 2011).

In 2015, *The Standard Minimum Rules for the Treatment of Prisoners* were revised and adopted as *The Mandela Rules*. These *Rules* stipulate that “solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible” (Rule 45, p.18). The *Rules* prohibit the indefinite use of segregation, as well as the prolonged use of segregation, defined as more than 15 days (*The Mandela Rules*, 2015). By continuing to place prisoners in segregation for more than 15 days, Ontario is not in compliance with *The Mandela Rules* (WCPJS, 2016).

Indeed, the international community has reproached Canada for its segregation practices. In 2012, the UN Committee Against Torture concluded its sixth periodic review of Canada and expressed concern over “the use of solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness” (19c, p. 6). The Committee urged Canada to “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” (19c, p. 6). Similarly, in 2015, the UN Human Rights Committee published a report which examined Canada’s compliance with the ICCPR. The report expressed concern over Canada’s use of administrative and disciplinary segregation for extended periods of time (UN Human Rights Committee, 2015). The Committee (2015) also advised Canada to “effectively limit the use of administrative or disciplinary segregation as a measure of last resort for as short a time as possible and to avoid such confinement for inmates with serious mental illness” (14, p. 5).

Unlike administrative segregation, there is a strict time limit imposed for disciplinary segregation. In Ontario, prisoners may spend up to 15 consecutive days in disciplinary segregation, down from 30 days – a recent reduction in provincial segregation policy, announced by the government in October 2016 (Oraziotti in Seymour, 2016). While this may seem more in line with international standards, this change in policy does not prevent a prisoner from being placed in disciplinary segregation for 15 days, being released for one day, and then being placed once again into segregation (Oraziotti in Seymour, 2016).

It is clear from the literature that a maximum duration for segregation is required – one that is meaningful in light of the damaging effects of prolonged segregation on mental health. Indeed, prolonged and extended use of segregation should be prohibited, as should segregation for the acutely mentally ill and other vulnerable populations.

#### **d. Effectiveness and Impact**

It is claimed that segregation restores order and increases the safety and security of both staff and prisoners in correctional institutions. Often, when institutional violence and misconduct threaten the safety and order of institutions, correctional officers respond by placing prisoners in segregation.

While a notable number of prisoners are held in segregation during their incarceration, relatively few studies have assessed whether segregation is effective in reducing and/or preventing violence and misconduct in correctional institutions (Frost & Monteiro, 2016). Proponents of segregation claim that its use will reduce violence and enhance security for staff and other prisoners because the prisoners who are most likely to engage in violence and misconduct will be isolated (Frost & Monteiro, 2016; Butler et al., 2013). Opponents of segregation argue that there is a lack of evidence to support the notion that segregation reduces violence in the prison system (Mears, 2008; Thompson & Rubenfeld, 2013). In 2013, for example the American Civil Liberties Union (hereafter ACLU) claimed that there is no empirical evidence that shows that segregation reduces violence in correctional institutions or that it acts as a deterrent (ACLU, 2014 in WCPJS). In fact, the ACLU argued that in some cases, incidents of violence increased with the use of segregation (ACLU, 2014 in WCPJS). Rick Raemisch, the executive director of the Colorado Department of Corrections stated: “[O]ur data has shown that the less you use it, the safer your facilities are, and that the safer your facilities are, the safer your community is once they get out” (Lantigua-Williams, 2016).

In 2015, Labrecque conducted a study focusing on the impact of segregation on institutional misconduct among prisoners who were incarcerated for at least one year between 2007 and 2010, and who experienced at least one segregation placement. Results from Labrecque’s study indicate that neither the use of segregation, nor its duration, had any effect on institutional violence. Similarly, a recent study by Morris in 2016 examined the effect of short-term segregation on institutional misconduct in a sample of male prisoners who were admitted to the Texas Department of Corrections between 2004 and 2006. Like Labrecque, Morris found that short-term disciplinary segregation had no effect on subsequent violent infractions. The findings from Labrecque and Morris suggest that segregation neither increases nor decreases incidents of violence or misconduct in correctional institutions.

For the most part, research suggests that placing prisoners in segregation “does not affect offender’s likelihood of institutional misconduct or their recidivism after their release from prison” (Steiner & Cain, 2016, p.181). Nevertheless, research continues to indicate that correctional authorities responsible for the administration of correctional facilities believe that segregation is important for the safety, order and security of institutions (Frost & Monteiro, 2016; see also Mears & Castro, 2006).

A general consensus in the literature is that there is a clear need for studies examining the effect and impact on institutional order of different types of segregation and for varying durations and lengths.

#### **e. Prisoners in Segregation: Who Are They?**

Studies have compared segregated and non-segregated prisoners (Kane, 1997; Motiuk & Blanchette, 1997; Zinger & Wichmann, 1999) and some have found clearly distinguishable differences between the two groups (Motiuk & Blanchette, 2001). Research suggests that segregated prisoners have considerably longer criminal histories compared to non-segregated counterparts (Bottos, 2008). For instance, segregated prisoners had more extensive involvement in the criminal justice system, both as youth and as young adults (Kane, 1997; Motiuk & Blanchette, 1997; Motiuk & Blanchette, 2001; O'Keefe, 2007; Wichmann & Nafekh, 2001; Wichmann & Taylor, 2004).

With regards to personal characteristics, segregated prisoners were more likely to have lower levels of education and unstable employment histories and to have been unemployed at the time of their offence (Bottos, 2008; Motiuk & Blanchette, 1997; Motiuk & Blanchette, 2001). Similarly, segregated prisoners often lacked a profession, trade or skill area (Motiuk & Blanchette, 2001). Segregated offenders were also more likely to be single at the time of their offence and to have experienced more familial dysfunction, such as negative sibling relationships during their childhood, as compared to non-segregated offenders (Motiuk & Blanchette, 2001). Segregated offenders were more likely to be socially isolated, have criminal associates and anti-social attachments, and associate with substance abusers and abuse alcohol themselves. Research suggests that segregated prisoners began drinking and abusing drugs at an early age (Motiuk & Blanchette, 2001; O'Keefe, 2007). Segregated prisoners were also more likely than non-segregated prisoners to have had unstable accommodation and financial difficulties (most likely related to their substance abuse histories) (Motiuk & Blanchette, 2001).

Segregated prisoners were more likely to suffer from cognitive problems, such as difficulty solving interpersonal conflicts, poor conflict-resolution skills, impulse control deficits, exhibiting hostility or thrill-seeking and manipulative behaviour and having a low tolerance to frustration (Bottos, 2008; Motiuk & Blanchette, 1997; Motiuk & Blanchette, 2001). Pro-criminal, non-conforming and anti-social attitudes were common among segregated prisoners. When compared with non-segregated prisoners, segregated prisoners held more negative attitudes toward the criminal justice system and interpersonal relationships (Bottos, 2008; Motiuk & Blanchette, 2001).

A Danish research study found that psychiatric disorders were higher among segregated prisoners (Andersen, Sestoft, Lillebaek, Gabrielsen, Hemmingsen, & Kramp 2000 in O'Keefe, 2007). Zinger and colleagues (2001) found that segregated prisoners had elevated levels of

interpersonal distress, psychiatric symptoms, depressive symptoms and problems in psychosocial adjustment, including increased anxiety (Zinger, Wichmann & Andrews, 2001). Finally, research suggests that segregated prisoners have higher overall risk and needs levels as compared with non-segregated prisoners at intake (Kane, 1997; Motiuk & Blanchette, 1997; Wichmann & Nafekh, 2001).

Taken together, these research findings suggest that segregated prisoners are different from their non-segregated counterparts in a variety of ways, notably in regard to their psychological and social well-being.

#### **f. Conditions of Confinement**

***“The design of the prison environment is crucial to its operation and to the impact it has on the achievement of correctional goals for inmates, staff and public users” (Fairweather, 2000, p.47).***

Several international instruments provide guidance on appropriate conditions of confinement. Canada ratified The United Nations *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (hereafter *UN Convention against Torture*) on June 24, 1978. Under this international human rights convention, Canada agrees that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (p. 85). As mentioned above, Canada also ratified the United Nations *International Covenant on Civil and Political Rights* (ICCPR) in 1976. The ICCPR is similarly legally binding and requires that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (Article 10(1)). In 2015, the UN Committee Against Torture urged Canada to “strengthen its efforts to adopt effective measures to improve material conditions in prisons, reduce current overcrowding, properly meet the basic needs of all persons deprived of their liberty, and eliminate drugs” (19a, p. 6). Similarly, *The Mandela Rules* (2015) outline acceptable standards (Rules 12-35; Rules 58-64) for the conditions of confinement of correctional institutions.

Certainly, the physical structure of the penal environment or prison setting plays an important role in the experience of imprisonment (Lutze, 1998; Shalev, 2008). Variations in the moral or emotional climate of the prison (Liebling, 2004) may also have an impact on prisoner behaviour (Wortley, 2002) and on the daily experiences of prisoners and staff, as well as the relationship between them (Shalev, 2008).

While the conditions of segregation vary considerably across jurisdictions, they are often characterized by isolation; absolute control; a separate location within the institution; reduced meaningful contact with the outside world; sensory deprivation; a lack of personal hygiene; reductions in programming and access to healthcare and education; small or absent windows; a

noisy environment; poor quality air and dull colours (Browne et al., 2011; Enggist et al., 2016; Foster, 2016; Labrecque, 2016; Rivera, 2010; Shalev, 2008; Shalev, 2009; Shalev & Edgar, 2010; Zinger, Wichmann & Andrews, 2001). In most 'supermax'<sup>4</sup> facilities, segregated prisoners are confined to their cells for 22 to 24 hours per day, with only one hour provided for personal hygiene and exercise. Prisoner movements are severely restricted and personal contact is kept to a minimum (O'Keefe, 2007; Shalev, 2009).

The story of Ashley Smith is illustrative of some of the poor conditions of segregation. Ms. Smith, who was fourteen years old at the time she was first charged, was placed in a youth facility for one month in 2003 after throwing apples at a mailman. Her initial one-month sentence would last almost four years due to numerous misconducts. Ms. Smith had significant mental health challenges and spent her sentence almost entirely in segregation until her death in 2007.

Ms. Smith was placed in an overly restrictive administrative segregation regime. The Office of the Correctional Investigator's subsequent inquiry into her death found that Ms. Smith had had little social contact, few opportunities for meaningful activity and had spent very long periods of time without any stimulation (Sapers, 2008). The Office of the Correctional Investigator stated that "the CSC's [Correctional Service Canada] treatment of Ashley Smith over the eleven and a half months she was in the care and custody of the federal system set the stage for the tragic circumstances that resulted in her death on October 19, 2007, at the Grand Valley Institution for Women, in Kitchener, Ontario" (OCI, 2008).

The case of Adam Capay, a 23-year-old man who spent 1,560 days in segregation is also noteworthy (Latimer, 2016). Mr. Capay was a prisoner at the Thunder Bay Jail, a 170-bed facility built in 1926. He was placed in administrative segregation purportedly for his own protection, with the apparent knowledge of the facility's senior management (Gee & Baum, 2016; Mathers, 2016; Patriquin, 2016). Mr. Capay's conditions of confinement were restrictive, harsh and questionable in regards to international human rights standards. Mr. Capay's cell lights were purportedly on 24 hours a day, and he was permitted exercise or yard privileges only once or twice a month (Patriquin, 2016; Gee & Baum, 2016; Mathers, 2016). Mr. Capay engaged in acts of self-harm, lacerating his wrists and smashing his head against the cell wall (Gee & Baum, 2016; Mathers, 2016; Patriquin, 2016). He spent four-and-a-half years in segregation, under strict conditions, with little if any meaningful human contact. He told the Chief Commissioner of the Ontario Human Rights Commission that he had difficulty speaking (i.e., he spoke slowly), as

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<sup>4</sup> Supermax is the term used to describe prisons or units within prisons with the most secure levels of custody. The objective is to provide long-term segregated housing for prisoners classified as the highest risk or prisoners who pose a threat to national or international security. For a detailed account of supermax prisons see Shalev, 2009.

he had not spoken much in the last four years since being placed in administrative segregation (Patriquin, 2016).

Unfortunately, Ms. Smith's and Mr. Capay's cases are not entirely unique; there are several studies and reports, including investigations into deaths in custody, that confirm the overly restrictive, harsh and detrimental conditions of segregation.

In recent years, there have been growing concerns about overcrowding and other conditions of confinement at the Ottawa-Carleton Detention Centre (hereafter OCDC) in Ottawa, for example. Claims that segregated prisoners were sleeping on mattresses in shower cells prompted the Minister of Community Safety and Correctional Services to issue a statement calling this practice "appalling" and "unacceptable" and to order an "immediate and permanent end to this" (OCDC Task Force, 2016, p. 3). On March 25, 2016, a Task Force was created to develop an action plan to address the issues of overcrowding and overcapacity at OCDC, as well as to identify long-term solutions to improve the health and safety of OCDC prisoners (OCDC Task Force, 2016).

Segregation conditions at Kent Institution, a maximum security federal prison in British Columbia, have also been described as harsh, with poor temperature control; a lack of cleanliness and inadequate opportunities to clean cells; poor air quality and the presence of mould; regular flooding; lack of sufficient quantities of food; an absence of programming; poor access to hygiene items and showers; restrictions on exercise and yard privileges; inconsistent access to telephone calls; poor response times for medical care; noisy cells; and disrespectful, abusive and threatening prison officers (WCPJS, 2016; Jackson, 2002).

In the United States, in the benchmark case of *Ruiz v. Johnson* (1999), the court ruled that "the extreme deprivations and repressive conditions of confinement of Texas' administrative segregation units ... violate the Constitution of the United States' prohibition against cruel and unusual punishment" (United States District Court, No. CIV.A. H-78-987). In this case, it was not administrative segregation itself that was deemed unconstitutional, but the deprivation of psychological needs such as human contact, human dignity and social and psychological stimulation (O'Keefe, 2007). Similarly, in *Jones 'El v. Berge* (2001), the judge ruled that conditions of confinement were not unconstitutional *per se* but that their totality, that is, the cell temperatures, lack of psychological input, and lack of exercise and programming amounted to cruel and unusual punishment (O'Keefe, 2007).

#### **g. Prisoner Rights While Segregated**

As mentioned, regulations in Ontario stipulate that inmates in administrative segregation are meant to retain the same rights, privileges and conditions as those in the general population, except for those that cannot be reasonably provided due to security concerns or the limitations

of segregation (CCRA, 1992; Elizabeth Fry Society of Quebec, 2005; Reg. 778). The Ontario Ombudsman stated, however, that “segregated inmates often lose access to privileges and programs available to other inmates (Dubé, 2016, p. 9). Many inmates in administrative segregation have complained to us about having no access to the exercise yard, programs, and telephone privileges.” It appears, therefore, that the regulations may frequently be disregarded in practice.

In October 2016, the Government of Ontario announced that the “loss of all privileges” in disciplinary segregation was to be eliminated, effective immediately, in contrast to current provincial regulations, which contemplates the loss of some or all privileges (Reg. 778, s. 32(1)). If effectively implemented, this could improve the conditions of disciplinary segregation in Ontario.

The Ontario Human Rights Commission (hereafter OHRC) has expressed concerns regarding the rights of prisoners held in segregation. More specifically, the OHRC stated that segregation “is disproportionately used on, and has particularly harmful effects for, *Code*-protected groups such as Black and Indigenous prisoners, prisoners with mental health disabilities, and women” (2016; emphasis in original). The OHRC reservations are especially important in light of recent deaths in custody (e.g., Ashley Smith; Edward Snowshoe<sup>5</sup>). Similar concerns have also been raised by the Ontario Ombudsman and the OCI.

In April 1994, events unfolded at the Kingston Prison for Women (hereafter P4W) that exposed Correctional Service Canada’s (hereafter CSC) use of segregation. The events at P4W garnered public attention and brought scrutiny to the operations, policies and procedures of the CSC. The subsequent report by Madame Justice Louise Arbour (1996) emphasized the importance of procedural rights and fairness for prisoners and reaffirmed the importance of the rule of law. In particular, Justice Arbour encouraged a shift toward a “rights-based approach to correctional administration where compliance with the law is the overriding priority” (Sloan, 2004, p.4). She stated that “one must resist the temptation to trivialize the infringement of prisoners’ rights as either an insignificant infringement of rights, or as an infringement of the rights of people who do not deserve any better. When a right has been granted by law, it is no less important that such right be respected because the person entitled to it is a prisoner” (3.2, p.100).

Professor Michael Jackson of the University of British Columbia has written extensively on human rights in prison and segregation. He posits that independent adjudication is essential for

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<sup>5</sup> Edward Showshoe was a federal prisoner from the Northwest Territories who committed suicide in prison after spending 162 days in segregation. He had been sentenced to five years in a federal prison. While Mr. Showshoe had attempted to take his own life three times before, this information was not fully shared with front line staff.

the protection of prisoners' human rights and compliance with the law (Jackson, 2002). He effectively endorsed Justice Arbour's recommendation for independent adjudication – a model of oversight and accountability that buttresses compliance with the rule of law and ensures the protection of human rights (Sloan, 2004). More specifically, he states that “the reforms the Correctional Investigator, Madama Justice Arbour and I have proposed all seek to draw the operations of the Correctional Service of Canada into the gravitational pull of a culture that respects legal and constitutional rights” (Jackson, 2002, p. 602). Although these recommendations were meant specifically for the federal corrections system, they apply equally to the corrections system in Ontario.

The general consensus among human rights proponents is that corrections systems, whether federal or provincial, must comply with national and international human rights standards, and that a model of oversight must be effectively implemented to ensure accountability and compliance with the rule of law.

#### **h. Effects of Segregation**

***“[Solitary Confinement is] the most individually destructive, psychologically crippling and socially alienating experience that could conceivably exist within the borders of the country.”***  
– Michael Jackson

The consensus among researchers is that individuals in segregation experience both physiological and psychological effects, including the following:

- ❖ Heart palpitations; poor appetite; insomnia; weight loss; weakness; shaking; deteriorating eyesight; lethargy; back and joint pain; sudden excessive sweating; and aggravation of pre-existing medical problems.
- ❖ Anxiety; fear of impending death; panic attacks; irritability; and persistent low levels of stress.
- ❖ Depression; hopelessness; social withdrawal; loss of initiation of activity; and mood swings.
- ❖ Anger; irritability and hostility; poor impulse control; and unprovoked anger leading to outbursts.
- ❖ Cognitive disturbances including short attention span; poor concentration; poor memory; and disorientation and confused thought processes.
- ❖ Perceptual distortions, including hypersensitivity to noises and smells; distortions of sensations, such as feeling the walls closing in; disorientation in time and space; depersonalization; and hallucinations.
- ❖ Paranoia and psychosis, including recurrent and persistent thoughts, often of a violent and vengeful character; paranoid ideas; and psychotic episodes or states, including psychosis, depression and/or schizophrenia. (Shalev, 2008, pp. 9-24)

In addition to these physiological and psychological effects, findings have suggested that “self-harm and suicides are more common in isolation units than in the general prison population” (Haney & Lynch, 1997, p. 525; Sapers, 2014). For example, the OCI’s *Administrative Segregation in Federal Corrections 10 Year Trends* report states that “of the 967 [prisoners] with a history of self-injury, 86.6% also have a history of segregation compared to a rate of 48.1% in the general population who have not self-injured” (OCI, 2015, p. 2).

Federally, the OCI’s annual report for 2011-2012 indicated that close to one-third of reported self-harm incidents in federal correctional institutions in Canada in the 2010-2011 fiscal year occurred in segregation (Sapers, 2012a). Moreover, the OCI’s *Three-Year Review of Federal Inmate Suicides* report (2014) indicates that “the literature is also clear that physical isolation and separation increases the risk of suicidal behaviour” (Sapers, 2014, p.15). The report completed a comprehensive review of the 30 prisoners who committed suicide in federal penitentiaries between April 2011 and March 2014. The report highlights the pressing issue of mentally ill prisoners in segregation and condemns this practice, stating “this Office has long advocated [that] long-term segregation of mentally disordered inmates or those at risk of suicide or serious self-injury should be prohibited” (Sapers, 2014, p.16).

Although deaths in custody have also occurred in Ontario jails while prisoners were placed in segregation, the available information on the number of suicides at the provincial level for such prisoners is unknown (Dubé, 2016). Following deaths in provincial custody, coroners’ juries have repeatedly made recommendations to the Ministry regarding the risk of committing suicide in segregation (Dubé, 2016).

It must be noted that there are some contradictory findings on the psychological effects of segregation in the available literature, but many academics have found that research flaws have contributed to the confusion. As Zinger and colleagues (2001) note “some researchers describe segregation as ‘cruel and unusual punishment’ and ‘psychologically damaging’ whereas others provide evidence that segregation has little, if any, negative psychological effect on prisoners” (Zinger et al., 2001, p. 48; see also Frost & Monteiro, 2016; & Morgan, R. D., Gendreau, P., et al., 2016). Critics have argued that negative findings about the effects of segregation are marred by research bias and methodological flaws. However, the discrepancy in research findings can be accounted for by looking at how segregation studies are constructed and how “researchers using different methods to study different populations have come to different conclusions about the psychological effects [of segregation] on inmates” (Frost & Monteiro, 2016, p. 20; see also Arrigo & Bullock, 2008).

Zinger and colleagues (2001) discuss at length the methodological shortcomings of research on segregation, which include, but are not limited to: reliance on qualitative data; problems with operationalizing the constructs being evaluated; issues with field and laboratory experiments;

subject selection; attrition; overreliance on cross-sectional research; and a lack of a comparison group (Zinger et al., 2001). Research by Suedfeld, Ramirez, Deaton and Baker-Brown (1982) suggested that many of the studies on the effects of solitary confinement were anecdotal and “based on far-fetched extrapolations and generalizations” (p. 304).

One of the most well-known studies about the damaging effects of segregation on prisoners comes from the work of Stuart Grassian (see Grassian, 1983; Grassian & Friedman, 1986), who documented a long list of damaging effects, including hyperresponsivity to external stimuli; anxiety and panic attacks; difficulty concentrating and thinking; perceptual distortions and paranoia; and poor impulse control. Similarly, Craig Haney, who has been studying segregation for years, reported that:

Documented negative psychological consequences of long-term solitary-like confinement include: an impaired sense of identity; hypersensitivity to stimuli; cognitive dysfunction (confusion, memory loss, ruminations); irritability, anger, aggression and/or rage; other directed violence, such as stabbings, attacks on staff, property destruction, and collective violence; lethargy, helplessness and hopelessness; chronic depression; self-mutilation and/or suicidal ideation, impulses, and behaviour; anxiety and panic attacks; emotional breakdowns, and/or loss of control; hallucinations, psychosis and/or paranoia; overall deterioration of mental and physical health. (Haney, 2002, pp. 85-86)

Shalev (2008) stated that “there is unequivocal evidence that solitary confinement has a profound impact on health and well-being, particularly for those with pre-existing mental health disorders, and that it may also actively cause mental illness. Notwithstanding variations in individual tolerance and environmental and contextual factors, there is remarkable consistency in research findings on the health effects of solitary confinement throughout the decades.”

A more recent study by O’Keefe and colleagues (2010) in Colorado found an interesting result: the harmful effects of segregation were not unique to segregated prisoners but were also found among the general population of prisoners. As such, these results “could as easily be interpreted as demonstrating that incarceration in and of itself has damaging effects on the mental health of individuals subjected to it” (Frost & Monteiro, 2016, pp. 22).

In 2016, Morgan, Gendreau et al. conducted a meta-analytic review on the effects of administrative segregation. They found that administrative segregation has low to moderate effects on inmates’ well-being, but concluded existing analyses on administrative segregation to be very problematic. They note that there was less of a correlation between inmates’ well-being and administrative segregation when a stronger research design was used. When closely examined, they discovered that the effects of administrative segregation were comparable with the subsequent effects of incarceration. In their findings they also noted that the majority of

the literature on the effects of administrative segregation has focused heavily on narrative summaries, which have been proven to be unreliable in other areas of psychological study (Beaman, 1991 in Morgan & Gendreau, 2016). In summary, Morgan, Gendreau et al. (2016) found that “although these meta-analyses indicate that AS [administrative segregation] has rather modest effects on inmate well-being, the results are not justification for its continued use at current levels or for the extreme length of time (e.g., several years) inmates often spend there” (2016, p.416).

The body of literature generally indicates that segregation can have detrimental effects on a prisoner’s psychological well-being and mental health. The National Research Council found that “the overwhelming majority of studies document the pain and potentially damaging nature of long-term prison isolation” (2014, p. 186 in Foster, 2016). Similarly, in 1996, Justice Arbour noted that the prison psychologist at the Kingston Prison For Women found that women were experiencing negative psychological effects as a result of long-term segregation, including perceptual distortions; auditory and visual hallucination; flashbacks; increased sensitivity and startle response; concentration difficulties and subsequent effect on school work; emotional distress due to extreme boredom and monotony; anxiety, particularly associated with leaving the cell or segregation area; generalized emotional liability at times; a fear of ‘going crazy’ or ‘losing their minds’ because of limited interactions with others, which results in a lack of external frames of reference; and a low mood and a generalized sense of hopelessness (Arbour, 1996).

Placing a mentally ill prisoner and/or a prisoner who is at risk of self-harm or suicide in segregation exacerbates the prisoner’s underlying mental health distress. The UN Special Rapporteur on Torture as well as *The Mandela Rules* have called for a complete prohibition on the use of segregation for prisoners with mental illness and for a prohibition on the use of segregation for an excess of 15 days, the point at which segregation is considered to be cruel, inhuman or degrading treatment (Méndez, 2011). The OCI recommended that all places of detention, including segregation, should conform with *The Mandela Rules* (OCI, 2016; see also UN Committee Against Torture, 2012).

#### **i. Institutional Effects and Institutional Implications for Segregated Prisoners**

In addition to the negative physiological and psychological effects of segregation on prisoners, there is some evidence to suggest that segregation may also have institutional effects, with implications for prisoners. In particular, segregation may affect a prisoner’s security reclassification status; program participation; discretionary release decisions; and/or conditional release outcomes (Bottos, 2008; Wichmann & Nafekh, 2001; Zinger et al., 2001).

Placement in segregation is an important factor considered during a prisoner’s security review, for example (Wichmann & Nafekh, 2001). Research suggests that “placement in segregation is

the strongest predictor of security reclassification” (Wichmann & Nafekh, 2001, p. 32; Luciani, 1997). Program participation may also play a role in a prisoner’s security reclassification (Bottos, 2008; Luciani, 1997; Wichmann & Nafekh, 2001).

Given that there is no set maximum duration for placement in administrative segregation, prisoners could be held there for significant periods of time. Since prisoners in administrative segregation are entitled to the same rights and privileges as the general population, they should theoretically be able to continue their correctional plan in segregation. However, research has shown that this is not always the case. The inherent nature of segregation is restrictive and the segregated environment imposes limits on such opportunities while in custody (Bottos, 2008). As such, their ability to follow and address the goals of their correctional plan is severely restricted (Wichmann & Nafekh, 2001). This is problematic given that “research has shown that program completion is inextricably linked to an offender’s ability to cascade to lower levels of security” (Wichmann & Nafekh, 2001, p. 32).

A prisoner’s placement in segregation may also have an impact on parole decision-making or reduce the chances of being admitted to a half-way house (Bottos, 2008; Motiuk & Blanchette, 2001; Zinger et al., 2001). Recent studies have confirmed that segregated prisoners were significantly less likely to be granted discretionary release (Wichmann & Nafekh, 2001) and more likely to be released on their statutory release date (Bottos, 2008) or warrant expiry date as compared with non-segregated prisoners.

## **j. Special Populations**

There are certain groups of incarcerated people who present special needs and risks. For these special populations, the effects of segregation are felt even more harshly and can be more detrimental to their overall well-being. The placement of special populations in segregation, including the mentally ill, youth, women and Indigenous individuals, has garnered increasing attention over the last several years. Many have called for the prohibition of segregation for these groups.

### **i. The Mentally Ill**

There have been growing concerns about the placement of mentally ill prisoners in segregation. The practice has been criticized by human rights experts as too harsh and inhumane, with little social contact and long periods of isolation (Human Rights Watch, 1999; King, 2000; O’Keefe, 2007; Toch, 2001). In addition to *The Mandela Rules*, which maintain that “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” (Rule 45(2), p.18) other international human rights standards and laws also demand its prohibition. For example, *The Istanbul Statement*

urges that “The use of solitary confinement should be absolutely prohibited ... for mentally ill prisoners” (Istanbul Statement, 2007).

The UN Committee on Torture raised concerns in 2012 about Canada’s use of disciplinary and administrative segregation for persons with mental illness (19c, p. 6). The Committee urged Canada to abolish the use of segregation for persons with serious or acute mental illness (UN Committee on Torture, 2012; see also Sapers, 2015). Yet, reports and research continue to indicate that segregation is widely used to manage mentally ill prisoners and those who engage in self-harm. For example, segregation trends compiled by the OCI show that 31% of female prisoners placed in segregation in 2013-2014 have a history of self-harm and/or attempted suicide (OCI, 2015).

In *Madrid v. Gomez* (1995, p. 1265), a case in the United States, the court held that “for [mentally ill] inmates, placing them in the SHU [Special Handling Unit] is the mental equivalent of putting an asthmatic in a place with little air to breathe ... Such inmates are not required to endure the horrific suffering of a serious mental disorder or major exacerbation of an existing mental illness before obtaining relief.”

As discussed, the particular vulnerabilities of mentally ill prisoners are likely to be exacerbated in segregation. Research has shown that the psychological impact of isolation during segregation is particularly grave for prisoners with mental illness (Cohen, 2016; Dubé, 2016; Frost & Monteiro, 2016; Kupers, 1999; Office of the Provincial Advocate for Children and Youth (Ontario), 2015; OHRC, 2016; Shalev, 2009). As Kupers (1999) observes, a cycle can occur;

The forced idleness and isolation in these units cause many previously stable men and women to exhibit signs of serious mental illness. But for people who already suffer from mental disorders, the segregation environment is totally intolerable. Meanwhile, a significant proportion of prisoners with psychiatric problems are selectively funneled into segregated housing. In other words, they misbehave on account of their mental illness, but since they are not likely to be diagnosed and treated adequately, they are punished with time in ‘the hole’. If they attempt suicide or self-mutilation, they are punished for their illegal attempts to harm themselves with more time in the punitive segregation. (1999, p. 33)

Kupers (1999) also raises an important point in regard to poor institutional adjustment. Research shows that by virtue of their mental illness, these individuals have difficulty adjusting to institutional demands and conforming to rules and regulations. Consequently, they amass more disciplinary misconducts and violations (Frost & Monteiro, 2016; Kurki & Morris, 2001). As above, it is a vicious cycle, with many mentally ill prisoners ending up in segregation due to disruptions resulting from poor

adaptations to institutional life. They are, in turn, unable to adjust to isolation when placed in segregation and may be likely to create even more disturbances as a result. O’Keefe (2007) also argues that “a lower tolerance exists for mentally ill persons within the prison system, thereby giving rise to increased segregation placements” (p. 162).

When the Correctional Investigator of Canada conducted an investigation into the death of Ashley Smith, he found that “Ms. Smith’s death was preventable” (Sapers, 2008, p. 4). In his report, *A Preventable Death*, Sapers outlined violations of the *Corrections and Conditional Release Act* (hereafter CCRA) and CSC policy, as well as individual and systemic failures, which ultimately led to Ms. Smith’s death. He found that the Correctional Service of Canada was aware of Ms. Smith’s mental health needs; yet, “the Correctional Service placed Ms. Smith on administrative segregation status – under a highly restrictive, and at times, inhumane regime – and maintained her on this status during her entire period of incarceration” (Sapers, 2008, p. 6).

Given that prisoners with mental illness have more difficulty adjusting to prison life, research suggests that these individuals require additional care and vigilance in their treatment (Shalev, 2008). The Inter-American Court on Human Rights stated that “when the person kept in isolation in a penitentiary institution has a mental disability, this could involve an even more serious violation of the State’s obligation to protect the physical, mental and moral integrity of persons held under its custody” (1999, par. 58 in Shalev, 2008). Echoing this concern, the *Convention on the Rights of Persons with Disabilities* recognizes that “discrimination against a person on the basis of disability is a violation of the inherent dignity and worth of the human person<sup>6</sup> [and requires states to] take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment”<sup>7</sup>

Segregation for persons with mental illness should be prohibited in accordance with international human rights standards and laws, recommendations from the OCI and the preponderance of research which demonstrates the debilitating and negative effects of segregation on this vulnerable population.

## ii. Youth

Segregation, which is typically known as secure isolation in the youth justice system, has generated significant concern. Recent deaths of young people in custody have raised

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<sup>6</sup> Preamble (h), UN Convention on the Rights of Persons with Disabilities, 2007.

<sup>7</sup> Article 15, UN Convention on the Rights of Persons with Disabilities, 2007.

questions about the use of segregation for youth. The harmful effects of segregation found in adult institutions have also been found in youth facilities, including indications that serious mental health problems may be exacerbated during the period of secure isolation (Office of the Provincial Advocate for Children and Youth (Ontario), 2015).

Researchers have referred to concepts of importation and deprivation to explain how youth may adjust to being in custody (Office of the Provincial Advocate for Children and Youth (Ontario), 2015). Importation refers to what youth bring with them to their experience of incarceration; for example, their personal histories and background. Deprivation refers to the conditions of custody and how the youth adapts or adjusts to this environment (Office of the Provincial Advocate for Children and Youth (Ontario), 2015). It is the interaction between the individual youth's background and personal makeup and the custody environment that will determine how the youth adjusts to secure isolation (Office of the Provincial Advocate for Children and Youth (Ontario), 2015). The importation model sees a prisoner's unique past experiences and characteristics manifested prior to imprisonment as a critical component in the prisoner's adaptation to prison life (Slotboom, Kruttschnitt, Bijleveld, & Menting, 2011).

Investigations have concluded that "youth who are placed in custody and have high degrees of emotional instability experience even higher degrees of anxiety, which, in turn, interferes with their ability to adapt to the structure of the facility and affects their effective accommodation to the rehabilitation efforts that are offered" (Office of the Provincial Advocate for Children and Youth (Ontario), 2015, p. 16). Research suggests that segregation for youth is especially damaging because their brains are still developing and they have limited experience to help them navigate through their period of custody (Office of the Provincial Advocate for Children and Youth (Ontario), 2015; WCPJS, 2016). In other words, youth experience 'doing time' differently than their adult counterparts (Cohen, 2016). Haney argues that "you put them [youth] in a situation where they have nothing to rely on but their own, underdeveloped internal mechanisms, but you are making it impossible for them to develop a healthy functioning adult social identity. You're basically taking someone who's in the process of finding out who they are and twisting their psyche in a way that will make it very, very difficult for them to ever recover" (2003).

Haney's concerns are echoed by a number of international human right bodies. *The United Nations Convention on the Rights of the Child*, which Canada ratified in 1991, strictly prohibits the use of segregation for children (or people under the age of 18). The World Health Organization, the United Nations, Human Rights Watch, the UN Special Rapporteur on Torture and *The Istanbul Statement*, as well as scholarly research and government reports have all called for a ban on the use of segregation for youth. Former U.S. President Barack Obama also announced a ban on the use of segregation

for youth (Shear, 2016). The UN Special Rapporteur on Torture contends that “the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment” (Méndez, 2011, p. 69b) and violates both Article 7 of the *International Covenant on Civil and Political Rights* and the *Convention Against Torture* (Office of the Provincial Advocate for Children and Youth (Ontario), 2015).

In Ontario, the use of secure isolation is governed by the *Child and Family Services Act*, which states that “young people under the age of 16 cannot be kept in secure isolation for more than 8 hours in any one day or 24 hours in any one week.” For those 16 years of age and older, “a young person cannot be held in secure isolation for more than 72 hours unless this is approved by a provincial director” (Office of the Provincial Advocate for Children and Youth (Ontario), 2015, p. 10-11).

While secure isolation is to be the last resort for behavioural management and used only in exceptional cases for as short a period as possible, many jurisdictions continue to use secure isolation for youth and young people (Office of the Provincial Advocate for Children and Youth (Ontario), 2015). In some jurisdictions in the United States (e.g., West Virginia, Alaska, Colorado and Mississippi), there are plans to ban the use of segregation for youth (Frost & Monteiro, 2016). In Ontario, there is a need for additional restrictions and prohibitions on the use of this practice with respect to youth.

### iii. Women

Research suggests that women experience imprisonment differently than men. For women, the experience of imprisonment has often been described as more painful since it cuts off relationships and contact with family, friends and loved ones, especially children (Ward & Kassebaum, 1965). Indeed, “the isolation of segregation, combined with the crisis or stress the woman is experiencing, can take its toll, particularly for those who spend long periods in segregation” (Owens, 2006, p. 34). In her Commission report, Justice Arbour emphasized that “women's correctional needs are profoundly different from men's, and that to do justice to the aims and purposes of a sentence imposed on women, the correctional system must be gender sensitive” (Arbour, 1996, p. 108). The Canadian Human Rights Commission (2003) argues that separation from the general population as a result of placement in segregation has a more profound effect on women as compared to men (see also Owens, 2006, p. 34).

A female prisoners' social world has also been found to be different than that of their male counterparts; that is, women 'do' time differently than men (Owens, 1998). While male prisoners have been found to concentrate “on 'doing their own time' relying on feelings of inner strength, and their ability to withstand outside pressures to get themselves through their time” (Lord, 1995, p. 266), female prisoners have been found

to be more connected to the lives of their significant others (Bloom & Steinhard, 1993; Carlen, 1983; Hairston, 1988; Owens, 1998). There is a sense of community among female prisoners, for example – women create small, organized and intimate groups called ‘pseudo-families’ or ‘play families’ as part of their social relationships and support networks during their incarceration (Owens, 1998; Owers, 2006; Suedfeld et al., 1982; Ward & Kassebaum, 1965). Research suggests that women find it incredibly painful to be cut off from this support group or ‘family’ when they are placed in segregation (Foster, 2016; Owens, 1998; Owers, 2006).

Similar to findings regarding youth, the effects of segregation on women offenders may be explained in part by women’s responses and adjustments to prison. The importation and deprivation model helps explain patterns of adjustment to prison life and has been of great interest to researchers (Irwin & Cressey, 1962; Toch, 1977). The extent to which a prisoner adapts to prison life is influenced by the prison environment (i.e., deprived) or influenced by the prisoner’s characteristics prior to entering the prison (i.e., imported). The major premise of the importation model suggests that adjustment to prison life is related to the degree to which prisoners can tolerate the ‘pains of imprisonment’ (Sykes, 1958). Research suggests that for women, the pains of imprisonment may be augmented by fear for their children’s safety, separation from family and other sources of support (Liebling, 1992, 1994, & 1995).

Research shows that women in prison are more likely to have a history of psychiatric problems and psychiatric treatment, suicide attempts, substance abuse and physical and sexual abuse (Slotboom et al., 2011; Tye & Mullen, 2006; see also Sapers, 2013). Similarly, women placed in segregation demonstrated higher risk and needs at intake than prisoners who had not been segregated (Thompson & Rubinfeld, 2013).

The United Nations *Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders* (also known as *The Bangkok Rules*) recognize that women are particularly vulnerable due to their victimization and potential re-victimization in correctional facilities. Given this vulnerability, women’s specific needs and requirements must be acknowledged for them to be addressed (*The Bangkok Rules*, 2016). *The Bangkok Rules* also clearly stipulate that “punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison” (2016, Rule 22,). Similarly, the *Mandela Rules* prohibit the use of segregation for some women (*Mandela Rules*, 2015).

With federal segregation trends reported by the OCI showing that “the incarcerated female population has increased 77.4% since March 31, 2005” (OCI, 2015, p. 7) and that “FSW [federally sentenced women] have the highest average number of admissions to

segregation per individual offender” (OCI, 2015, p. 6), particular attention needs to be paid to the needs of this group.

iv. Indigenous

Concerns regarding Indigenous individuals in various forms of custody are longstanding and well documented.<sup>8</sup> The overrepresentation of Indigenous individuals in correctional institutions is well known and growing (Sapers, 2012b; Sloan, 2004). In a report titled *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*, the OCI found that while the Indigenous (including First Nations, Métis and Inuit) make up roughly 4% of the Canadian population they account for 23% of the incarcerated population (Sapers, 2012b).

The Supreme Court of Canada recognized that there are historical and social circumstances unique to Indigenous individuals that should be considered in sentencing decisions (i.e., the Gladue principle<sup>9</sup>). However, in *Spirit Matters*, the OCI found that since 2005-2006, the Indigenous prisoner population has increased by 43% and that incarcerated Indigenous individuals are overrepresented in segregation populations (Sapers, 2012b). Research shows that the number of Indigenous admissions to segregation has continued to increase over the last 10 years (OCI, 2015). The Solicitor General of Canada also found that Indigenous individuals usually serve longer sentences in correctional institutions rather than in the community as compared to non-Indigenous individuals (Sloan, 2004).

Research has shown that there may be many contributing factors:

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<sup>8</sup> Due to lack of space in this document, the case of Indigenous offenders in corrections will be brief and focus on Indigenous populations and segregation. For a more in-depth discussion on Aboriginal corrections, please see the [final report of the Truth and Reconciliation Commission and the Royal Commission on Aboriginal Peoples](http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20080620info-eng.aspx) at <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20080620info-eng.aspx>

<sup>9</sup> Gladue is a sentencing principle which recognizes that Indigenous Peoples face racism and systemic discrimination in and out of the criminal law system, and attempts to deal with the crisis of overrepresentation/inequities of Aboriginal Peoples in custody, to the extent possible, through changing how judges sentence. Gladue instructs judges, when sentencing or setting bail, to consider: “all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to” the circumstances of Aboriginal offenders” (Native Women’s Association of Canada, 2015:38).

The offending circumstances of Aboriginal offenders are often related to substance abuse, intergenerational abuse and residential schools, low levels of education, employment and income, substandard housing and health care, among other factors. Aboriginal offenders tend to be younger; to be more likely to have served previous youth and/or adult sentences; to be incarcerated more often for a violent offence; to have higher risk ratings; to have higher need ratings, to be more inclined to have gang affiliations, and to have more health problems, including Fetal Alcohol Spectrum Disorder (FASD) and mental health issues. (Mann, 2009:4; see also Sapers, 2015 and OCI, 2015)

Indigenous individuals may be particularly vulnerable to the harmful effects of segregation, given the “intergenerational effects of Indigenous social histories (i.e., residential schools experience; involvement in the child welfare, adoption and protection systems; dislocation and dispossession of Indigenous people; poverty and poor living conditions on many native reserves; family or community history of suicide, substance abuse and/or victimization” (Sapers, 2015, p. 38).

Research has also shown that those of Indigenous background are placed in segregation more often, far from their family and sources of social supports, with little to no access to programming (Mann, 2009). As discussed earlier, there are serious institutional effects as a result of segregation placement, such as the inability to complete correctional programming, obtain conditional release or cascade to lower levels of security – all of which affect Indigenous offenders and create greater barriers to release.

A research study on women in segregation indicates that Indigenous women are more likely to be involuntarily segregated and have longer segregation periods than non-Indigenous women (Thompson & Rubinfeld, 2013). More specifically, the study found that Indigenous women spent about 7.5 days more in segregation than their non-Indigenous counterparts (Thompson & Rubinfeld, 2013). In its report titled *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, the Canadian Human Rights Commission found that the Government of Canada, including the Correctional Service of Canada owes a fiduciary duty or a duty of care to federally sentenced women, particularly Aboriginal women. Women, particularly Aboriginal women, are vulnerable not only because they lack power in the prison context, but also because of the economic, social and political realities of women’s lives. This is particularly true for Aboriginal women who ... are being incarcerated in increasing numbers. The disadvantage they experience is multi-layered both in the society and the correctional system. From this perspective, the fiduciary duty on the Government of Canada augments the human rights obligations of the Correctional Service to these vulnerable groups (2003, p. 16).

Placement in segregation may further victimize, harm and isolate Indigenous offenders, particularly women, including through isolation from correctional programming and culturally-specific support and interventions – all of which are critical to their rehabilitation and reintegration into the community (Mann, 2009).

## II. Moving Away from Segregation

This section will focus on alternatives to segregation, including alternatives for staffing and voluntary segregation. Finally, the review will end by considering models of oversight and accountability, including implementing a system of prison inspection and independent adjudication.

### a. Alternatives to Segregation

In recent years, there has been an increasing demand for alternatives to segregation to be put in place (WCPJS, 2016; OHRC, 2016). The Prisoners' Legal Services in British Columbia called "on the governments of Canada and British Columbia, and their correctional services ... to establish adequate numbers of specialized mental health units ... to widely implement a trauma-informed approach, dynamic security and de-escalation practices in all correctional settings" (WCPJS, 2016, pp. 4-5).

The West Coast Prison Justice Society (WCPJS) in its report titled *Solitary: A Case for Abolition* (2016, pp. 62-70) cites numerous alternatives to segregation. These include:

- ❖ Correctional Service Canada:
  - Intermediate Mental Health Care Units to accommodate prisoners who suffer a variety of mental health problems, including depression, anxiety, post-traumatic stress and anti-social or borderline personality disorders. Despite concerns that the program is under-resourced and lacks funding, the creation of this unit was a positive step in the right direction.
  - The CSC Complex Needs Program was an attempt to address the mental health needs of prisoners with a history of self-harm. In 2012, it was refined as a 10-bed parent-institution located at the Regional Treatment Centre in the Pacific Region. The implementation of this program was unsuccessful due to a number of difficulties, including staff recruitment issues, problems with the physical infrastructure, staff fatigue and a concern that self-harm would be copied by others

- Complex Mental Health Committees made up of CSC senior executives to monitor complex mental health cases. Although the committees received poor feedback from the Office of the Correctional Investigator, they continue to operate.
  - Special Handling Unit (SHU) in the Québec region, which is a 90-bed, high security facility intended for prisoners who cannot be integrated into maximum security institutions. Prisoners are placed in the SHU for a short duration, stabilized, offered programs and then returned to an open maximum security institution.
- ❖ British Columbia:
- The Alouette Correctional Centre for Women (hereafter ACCW) in British Columbia takes a trauma-informed approach to corrections which recognize that some women offenders have a history of trauma. The ACCW also operates a Complex Needs Program which is intended to be a transitional unit with the goal of community reintegration. The Complex Needs Program has resulted in reducing the rates of women in solitary confinement.
- ❖ Colorado:
- The Colorado Senate passed Bill 11-176 in 2011 to address the use of solitary confinement and require the executive director of the Colorado Department of Corrections to provide an annual report regarding the use of segregation and reform efforts. The Bill also required any cost savings achieved as a result of segregation reforms to be directed to mental health units. Resources were also supplied to provide support for mental health services and behaviour-modification programs.
  - In 2013, a residential treatment program was implemented to help transition prisoners with serious mental health problems out of solitary confinement.
  - Bill SB 64 was passed in 2014 and prohibits the Colorado Department of Corrections from placing offenders with serious mental illness in segregation, unless there are exceptional and exigent circumstances. It also created a working group to advise the Colorado Department of Corrections on policies and procedures for the proper treatment and care of prisoners with serious mental illness.

- ❖ California:
  - Legal action was taken against the California Department of Corrections and Rehabilitation Centre (*Ashker v. Brown*). A settlement in the case was reached on September 1, 2015, and was successful in eliminating solitary confinement for indeterminate sentences and for sentences of 10 years or more. The settlement also created a new unit called the Restricted Custody General Population Unit designed as an alternative to segregation. It was aimed at helping prisoners return to the general population in two years or less.
  
- ❖ New York City:
  - In 2012, the Correctional Health Services of the New York City Department of Health and Mental Hygiene adopted a human rights framework for the New York City jail health mission. A new unit, called the Clinical Alternative to Punitive Segregation (CAPS), was created as a clinical setting for prisoners with serious mental illness who had breached institutional rules and regulations. CAPS permitted patients to participate in therapeutic activities, groups and meetings. Prisoners were encouraged to interact with others outside of their cells. Prisoners in the CAPS unit had lower rates of self-harm and injury than those who were held in less therapeutic environments.
  
  - In 2015, New York also implemented a Restrictive Housing Unit for prisoners with less serious mental illness who received segregation for breaking institutional rules.
  
  - In January 2015, the City of New York Corrections Department announced a ban on solitary confinement for all prisoners under 22 years of age.
  
- ❖ United Kingdom:
  - Closed Supervision Centres were created as a recommendation from the Wolf Report. These centres are made up of less than 10 prisoners each in their own individual cells, housing around 60 prisoners in total. These prisoners are considered to be the most difficult to manage. The centres are an incentives-based program and run on a step-down model whereby prisoners who cooperate and behave may be rewarded with increased freedom and privileges. In a 2015 review, the Prison Inspectorate was critical of the Centres in a 2015 review with regards to the lack of external oversight of the admission process at the centres. The Centres have also faced criticism for holding many prisoners with severe mental illness and failing to provide them with adequate treatment. The Centres have been publicly criticized but continue to remain in working order.

- Styal prison for women in the UK was renamed the Care, Support and Reintegration Unit following several deaths in custody. The new unit provides women with mental health support and increased human interaction and socialization.
- ❖ Various Jurisdictions:
  - Diversion programs have been suggested as an alternative at various stages of the criminal justice process, including pre-arrest, pre-trial and post-sentence. Court-based diversion may include specialized courts such as a mental health courts (WCPJS, 2016, p. 62-70).

According to federal policy, prior to being placed in segregation, prison authorities are required to exhaust all other alternatives. These include

- ❖ a change in unit;
- ❖ a transfer (internally or inter-regionally);
- ❖ voluntary cell confinement;
- ❖ mediation;
- ❖ culturally appropriate and/or restorative alternatives;
- ❖ intermediate Mental Health Care placement; and
- ❖ individual lock up (CSC, 2008; CSC, 2015a; CSC, 2015b; CSC, 2015c).

In some federal male institutions, transition units have been created to assist in the transfer of prisoners from segregation to the general population. However, concerns about these units have been raised with regard to cell restriction and the availability of programs and services. Notwithstanding, these units have resulted in reduced segregation counts (CSC, 2016). The Edmonton Institution for Women implemented certain alternatives for women. It set aside one of its living units for low-functioning women who require special supervision in order to live with others and for those having difficulty coping with living in the general population (Thériault, 2010). Women in these living units were supervised by behavioural counsellors, provided with supportive counselling and taught relevant social skills (Thériault, 2010). Research findings have suggested employing different approaches to de-escalation rather than using segregation. For example, research from the UK suggests demonstrating flexibility and a willingness to negotiate over prisoner interests as well as using a problem-solving approach (Shalev & Edgar, 2010). Moreover, showing consistent support and a willingness to meet the person's needs was another alternative suggested in the research. For example, this method could involve directing prison officials to transfer the prisoner as he or she has requested. Thus, Shalev and Edgar (2010) note that "resolving differences or solving problems at the stage of mutual cooperation and reasoning is more efficient than imposing three-men unlocks and managing dirty protests" (122).

Such alternatives to segregation encourage an open dialogue between staff and prisoners, and strengthen staff-prisoner relationships. Akin to Shalev and Edgar's alternatives to segregation, Zinger and colleagues suggest implementing appropriate dispute resolution techniques and processes as a "promising initiative to reduce the disproportionate number of segregation cells and units" (2001, p. 79). Overreliance on segregation as a population management tool could also be reduced by "providing the tools to resolve conflicts and fostering a correctional environment respectful of human rights" (Zinger et al., 2001, p. 79).

There are other examples of alternatives to segregation found in the Canadian context. For example, Stony Mountain Institution created a sheltered unit for prisoners who have difficulty adjusting to the general population (Rivera, 2010). A sheltered unit is designed to assist and engage prisoners by teaching social skills and facilitating interactions with other prisoners. Prisoners in this unit preferred to spend time alone rather than interacting with other prisoners and tended to be low-functioning – a population at high risk of being placed in segregation, according to staff (Rivera, 2010). Other institutions created alternative units which were designed to effectively manage various groups of prisoners, including those in segregation. Unfortunately, these alternative units often closed due to a lack of resources (Rivera, 2010). This is unfortunate because staff stated that such units had been helpful "in providing the extra attention and interventions that were able to keep vulnerable offenders from acting out in such a way that they would end up on segregation status" (Rivera, 2010, p. 59).

As referenced by Shalev, in British Columbia the Alouette Correctional Centre for Women (ACCW) in British Columbia has designed a Complex Needs Unit to address the unique challenges of female inmates with mental health issues, medical issues and functional issues - a group it recognizes as having more complex requirements. The ACCW states that this group of inmates represents a diverse population with higher needs, who are usually excluded from traditional programming and regular unit management. The Unit allows female inmates to be housed in a safe environment with enhanced support systems. They are subsequently less likely to face victimization and discrimination by general population inmates. The goal is to work closely with these inmates through case management and other supports so that they graduate from the program and can be reintegrated back to regular living unit routines and then into communities, with improvements to self-management, anger management, problem solving and life skills. The Unit's Mental Health team consists of health care professionals, leadership members from within the institution and designated trained line staff. Expert community resources are also on hand on a voluntary basis, if needed. As part of this program, inmates have access to the same standard of programs "consistent with the principle of equivalence with other general population inmates" (ACCW, 2016).

Following the Christina Jahn Settlement in September 2015, the Ottawa-Carleton Detention Centre (OCDC), in consultation with a mental health professional, proposed the creation of both a Special Needs Unit and a Step-Down Unit at its facility. These Units were proposed because

the OCDC does not have any specialized accommodation for inmates with significant mental health challenges, and such inmates are therefore housed in either regular living units or segregation living units. The newly proposed Units recognize the fact that “segregation is frequently not the appropriate housing for these vulnerable individuals and may, in fact, exacerbate some mental health symptoms” (Reesor & Poulin, 2016b). The proposals state that such inmates may, nevertheless, require specialized housing for their own safety or the safety of other inmates, but that greater access to human contact and specialized mental health care are also required. The Units will respond to the need for Inmate Care Plans (ICPs) for these inmates, who require specialized care, accommodation, custody and treatment. (Reesor & Poulin, 2016a; Reesor & Poulin, 2016b).

The goal of the Special Needs Unit at the OCDC is to “provide a secure housing area properly equipped and staffed in order to meet the assessment, treatment and programming needs for those inmates with mental health disabilities” who are in acute crisis (Reesor & Poulin, 2016a). In this Unit, a specialty group of correctional officers and sergeants with experience, training and an expressed interest in providing care for inmates with mental health challenges will work with a multidisciplinary team, which includes mental health professionals, to provide care under a direct supervision model of correctional security. Once the acute crisis has passed, the specialized team will create an individualized plan of care and reintegration into a standard living unit.

The OCDC Step-Down Unit is proposed as one method of balancing institutional safety with appropriate mental health care. The proposal states that the short-term plan for this Unit, which is to change one segregation unit to a step-down unit, requires no additional funding or infrastructure changes. The purpose of the Step-Down Unit is to provide a housing option for reintegrating those inmates who have been segregated. It will allow allows increased access to services and programs and opportunities for socialization for more vulnerable inmates, without exposing them to the safety risks of regular living units (Reesor & Poulin, 2016b).

Due to the growing number of mentally ill prisoners being placed in segregation, Rivera (2010), in her study on long-term segregation, proposes “increasing the level of intervention by program and mental health professionals in general population before inmates act out in a variety of ways and get placed in segregation is an important way to prevent admissions to segregation” (Rivera, 2010, p. 68). Other preventative measures might include ensuring that dynamic security, rather than static security, is being used in the general population to prevent institutional violence and misconduct, and creating specialized units based on offender needs and mental health concerns (Rivera, 2010). Ensuring that prisoners have access to a wide variety of supports is an important preventative measure to segregation placement. More specifically, “creating day programs where offenders with particular problems can associate and build new skills throughout the day and then return to their general population ranges at the end of the day is another potential solution” (Rivera, 2010, p. 68).

Further alternatives to segregation focus on staff and prison authorities, rather than on the physical structures of the prison. Rule 74 of *The Mandela Rules* states that “the prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends” (p. 25). Therefore, focusing on recruiting appropriate candidates, staff training and improving prison culture can result in the provision of appropriate alternatives to segregation. Providing training to staff in conflict-resolution, problem-solving and conflict-diffusion skills will empower staff to communicate better with prisoners (Rivera, 2010). There is a large body of literature dedicated to staff-prisoner relationships and the importance of this relationship within prisons (see for example, Liebling & Arnold, 2004). Staff working in segregation units who are respectful and professional toward segregated prisoners may find, as a result, that staff-prisoner relationships are enhanced and that conflict, tension and power struggles between the two groups are reduced.

## **b. Models of Oversight and Accountability**

Segregation units are often located in a different part of the prison, away from other units, and away from the scrutiny of prison authorities and the public at large. As a result of high profile deaths in custody; events at the now closed Kingston Prison for Women; court findings of a lack of procedural fairness; infringements of human rights standards; and concerns raised by the Office of the Correctional Investigator, the Ontario Ombudsman and the Ontario Human Rights Commission, there has been an accelerated interest in models of oversight and accountability.

The importance of installing robust mechanisms of accountability cannot be overstated. Given the damaging effects of segregation and isolation, it is imperative to establish regular and independent prison oversight and guidance.

### **i. Prison Inspections**

*The Optional Protocol on the Convention against Torture* (hereafter OPCAT) is an international agreement aimed at preventing cruel, inhuman or degrading treatment and punishment. By ratifying the OPCAT, states parties agree to permit the United Nations Subcommittee on the Prevention of Torture to conduct international inspections of their places of detention. States are also required to establish their own National Preventive Mechanism (hereafter NPM) that would likewise conduct inspections on all places of detention.

The OCI has called upon the federal government to ratify the OPCAT, stating that “this action would continue Canada’s long tradition of promoting and defending human rights at home and abroad” (OCI, 2007-2008, p. 45). The Canadian Civil Liberties Association (hereafter CCLA) similarly argues that “by ratifying the Optional Protocol, it not only

demonstrates Canadian opposition to torture around the world, but also reflects a willingness to finally confront how we treat our own prisoners at home” (CCLA, 2016). The Secretary General of Amnesty International Canada has also stated that “having expert UN investigators poke and prod jails in those countries is an absolutely essential step in helping to end torture. Once Canada is on board, we can at long last push those other countries to follow suit” (in Hanly, 2016).

Canada has twice previously promised to sign the OPCAT. On May 2, 2016, Canada announced that it will begin the process of joining the OPCAT. This is a welcome development for ensuring greater oversight and accountability for Canada’s correctional institutions (CCLA, 2016, p. 1-2).

Within one year of ratifying the OPCAT, states must establish an NPM, which includes the following essential elements, as set out under Part IV of the OPCAT (Articles 17 – 23):

- ❖ A mandate to undertake regular preventive visits.
- ❖ Independence (functional independence, independence of personnel).
- ❖ Expertise (required capabilities and professional knowledge).
- ❖ Necessary resources.
- ❖ Access (to all places of detention; to all relevant information; the rights to conduct private interviews).
- ❖ Appropriate privileges and immunities (no sanctions for communicating with the NPM; confidential information shall be privileged).
- ❖ Dialogue with competent authorities regarding recommendations.
- ❖ Power to submit proposals and observations concerning existing or proposed legislation, (Australian Human Rights, 2016)

The International Centre for Prison Studies (hereafter ICPS) states that “[i]ndependent monitoring is a basic and essential element of ensuring human rights compliance in prison systems. External independent inspection highlights abuses, protects prison staff from unfounded criticism, strengthens the hand of staff who want to resist involvement in brutality and helps keep prison conditions in the public eye” (ICPS, 2005, p. 1). The ICPS notes that judges can perform the function of monitoring prisons. Alternatively, inspectors can be appointed at the national level and oversight mechanisms can be created at the level of each prison, with civil society organizations also playing a role. What is key is that an independent body that is not under the same administrative authority as the prison system should be able to inspect prison conditions, assess whether ill-treatment is occurring and report its findings to a “part of government that has the power to act” on such findings (ICPS, 2005, p. 2).

In the United Kingdom, the role of the prison inspectorate is to provide “independent scrutiny of the conditions for and treatment of prisoners and other detainees, promoting the concept of healthy establishments in which staff work effectively to support prisoners and detainees to reduce reoffending and achieve positive outcomes for those detained and for the public” (HM Inspectorate of Prisons, 2014). In determining the inspection program, the inspector must rely on his or her expertise in deciding what to inspect, the process for carrying out the inspection and whether the inspection should be announced or unannounced (HM Inspectorate of Prisons, 2014).

The inspector is expected to publish his or her findings, including the methodology employed for the inspection. The inspector will often work with a team which may include researchers, health care inspectors, drug inspectors and administrative staff (HM Inspectorate of Prisons, 2014). Inspections are to be conducted at least once every five years, although prisons are typically inspected every two to three years.

Most prison inspections are unannounced, but in exceptional cases, inspections may be announced (HM Inspectorate of Prisons, 2014). The prison inspector cannot be refused entry. The inspector will collect information from a variety of sources, as well as conduct interviews with prison authorities and prisoners. The inspector may provide recommendations or highlight good practices observed. The inspected establishment is expected to produce a report which will include an action plan to address the inspector’s recommendations (HM Inspectorate of Prisons, 2014).

While Australia is a party to the *UN Convention against Torture*, it has not yet ratified the OPCAT (Australia Human Rights Commission, 2016). Nevertheless, the government of Western Australia has implemented a modified version of the prison inspector regime in its Department of Corrective Services. The Office of the Inspector of Custodial Services was established to provide accountability for custody services in Western Australia (Government of Western Australia, 2003). The Inspector of Custodial Services is required to “inspect and report to Parliament on all custody services provided in adult prisons, court custody centres or custody transport arrangements and in Western Australia will inspect and report on both publicly managed services and services managed under contract” (Government of Western Australia, 2003). Akin to the prison inspector regime outlined in the NPM, the inspector of custodial services has unfettered access to all aspects of the prison, including to prisoners, prison authorities and staff, prison transportation and prison documents – including those held by contractors or sub-contractors (Government of Western Australia, 2003). Other similarities to the NPM inspector model include the ability to perform announced or unannounced prison inspections, with the inspector and his or her team granted free and autonomous access to the prison at any time (Government of Western Australia, 2003).

The establishment of a prison inspectorate provides independent accountability and external oversight to ensure that prison regimes comply with federal, provincial and international policies, regulations and human rights standards and laws. Ratifying the OPCAT and establishing the NPM would provide the much-needed legislative reform articulated by Madame Justice Arbour, *The Mandela Rules*, the Office of the Correctional Investigator of Canada and Professor Michael Jackson. Mechanisms of accountability and oversight may be established even without ratifying the OPCAT, as demonstrated by the government of Western Australia. What is clear from the literature is the need for increased oversight and accountability to ensure procedural fairness and human rights protections for prisoners, who are not only shut off from the outside world, but also from other parts of the prison, far from scrutiny.

ii. Independent Adjudication

Independent adjudication of segregation placements and reviews has been strongly recommended by Canadian scholars, human rights activists, the Office of the Correctional Investigator, the Ontario Ombudsman, Madame Justice Arbour, the Task Force on Administrative Segregation and the Yalden report. Independent adjudication would allow for external oversight of federal and provincial corrections decisions (Sloan, 2004). Advocates argue that independent adjudication is essential for ensuring procedural justice and compliance with the rule of law, as well as protecting human rights (Jackson, 2002).

Indeed, despite review procedures for placement of prisoners in segregation, some prisoners seem to have ‘fallen through the cracks’ (WCPJS, 2016). In 2014, a federal Public Fatality Inquiry into Edward Snowshoe’s death was conducted and found that correctional officers were not aware that he had attempted suicide at least two or three times before, or that he had been in segregation for over 160 days (WCPJS, 2016). The Inquiry also raised issues relating to his five-day review and found that pertinent information relating to his mental health had not been raised (WCPJS, 2016). The Inquiry, like many others, recommended external oversight of mandatory segregation reviews to address the gaps or negligence of the Correctional Service’s responsibility under the CCRA and Commissioner Directives 709 and 709-1 (WCPJS, 2016).

Ontario Ombudsman Dubé (2016) echoed similar themes in his report titled *Segregation: Not an Isolated Problem*. He argued that “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 ... 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” (Dubé, 2016, p. 9; emphasis in original). He argued that reviews of

segregation placement decisions were careless, lacked transparency and lacked justifications for segregation placement (Dubé, 2016).

The Correctional Investigator of Canada has articulated the need for independent adjudication. A thematic compilation of the OCI's segregation recommendations (OCI, 2016) shows repeated calls for independent adjudication of segregation placements. For example, recommendations include:

- ❖ “The Service immediately implement independent adjudication of segregation placements of inmates with mental health concerns. This review should be completed within 30 days of the placement and the Adjudicator's decision should be forwarded to the Regional Deputy Commissioner. In the case of a female inmate, the Adjudicator's decision should be forwarded to the Deputy Commissioner for Women” (OCI, *Backgrounder: Preventable Death*, June 2008).
- ❖ “I recommend that the Government of Canada amend the *Corrections and Conditional Release Act* to significantly limit the use of administrative segregation, prohibit its use for inmates who are mentally ill and for younger offenders (up to 21 years of age), impose a ceiling of no more than 30 continuous days, and introduce judicial oversight or independent adjudication for any subsequent stay in segregation beyond the initial 30-day placement.” (OCI, *2014-2015 Annual Report*, 2016)

A policy discussion paper issued by the OCI titled *Shifting the Orbit: Human Rights, Independent Reviews and Accountability in the Canadian Corrections System* (Sloan, 2004) also highlights the need for independent adjudication, with a detailed analysis of several Canadian legal reports, decisions and scholarly pieces of work. This report states that “the service has possessed the means to demonstrate accountability for more than a century and yet has consistently been cited for being incapable of consistently taking fair and legally compliant decisions” (Sloan, 2004, p. 34). Furthermore, the former Correctional Investigator stated “our findings have been shared to varying degrees by a number of learned observers of the correctional system ... [T]hese experts have concluded that the Service's internal decision-making processes do not adequately promote the accountability for human rights that should characterise corrections in the post-Charter of Rights and Freedoms era” (Sloan, 2004, p. 2).

These comments echo those of Madame Justice Arbour in her report on the events at the Kingston Prison for Women. As discussed, she recommended a shift to a rights-based approach to corrections where compliance with the law is the overriding priority of the service (Arbour, 1996). Of particular concern was the indeterminate length of time that prisoners were spending in segregation, which does not conform to

international legal standards. Justice Arbour recommended that segregation placements be limited by means of independent adjudication, preferably by the courts (Arbour, 1996).

Given past non-compliance with segregation rules and regulations, external oversight through independent adjudication would ensure accountability in decision-making processes, transparency of institutionally-mandated reviews and processes, and compliance with the rule of law and procedural fairness.

The former Correctional Investigator's comments regarding the death of Ashley Smith provide a reminder of the importance of accountability and responsibility within corrections. Sapers stated:

I believe strongly that a thorough external review of Ms. Smith's segregation status could very likely have generated viable alternatives to her continued and deleterious placement on such a highly restrictive form of confinement. There is reason to believe that Ms. Smith would be alive today if she had not remained on segregation status and if she had received appropriate care. An independent adjudicator – as recommended by Justice Arbour – would have been able to undertake a detailed review of Ms. Smith's case and could have caused the Correctional Service to rigorously examine alternatives to simply placing Ms. Smith in increasingly restrictive conditions of confinement (Sapers, 2008, p. 21).

## CONCLUSION

***“Spiteful words can hurt your feelings, but silence breaks your heart.” – Mother Theresa***

Segregation is the most restrictive measure used to manage difficult and sometimes vulnerable inmate populations. Known by a variety of terms, segregation removes prisoners from the general population and places them far from external scrutiny. Often considered to be damaging to inmates’ psychological health, human rights advocates, scholars and government bodies alike have called for a reduction in its use, and for more accountability and oversight. Recent deaths in custody in Canadian correctional institutions have brought to light some of the failures of policies and procedures, and raised questions about the use of segregation for certain populations of prisoners, such as youth and those who suffer from mental illness. Nevertheless, many such inmates are still being placed in segregation.

Alternatives to segregation are needed to reduce and restrict the number of inmates placed in segregation, but also to provide more support for those who staff consider to be ‘too difficult’ to manage in the general population. As well, improvements in the conditions of confinement of those who are segregated are required.

There is also a need to focus on the recruitment, training and support of staff so that they may be better equipped to handle segregated prisoners. Providing training for staff in conflict resolution, human rights, dispute resolution and problem-solving will help staff communicate more effectively with segregated prisoners. Arming staff with new knowledge, skills, training and tools can help reduce the conflict between staff and prisoners – a relationship which research has proven is vital to the safety of the institution and for how prisoners perceive and experience their imprisonment. Many jurisdictions in the United States have prohibited the use of segregation for certain populations and have developed successful alternatives to segregation, which have drastically reduced the segregated population.

Although Canada has a reputation for being a “bastion of fairness” (Patriquin, 2016), both the federal government and the Province of Ontario have come under recent attack for their lack of compliance with the rule of law and procedural fairness for inmates. The story of 23-year-old Adam Capay, who spent 1,560 days in segregation, is a stunning example.

Deaths in custody, prolonged and indefinite segregation, non-compliance with segregation rules and regulations, poor conditions of confinement and meaningless or non-existent internal segregation reviews have resulted in calls for reforms for segregation in Ontario. These reforms should include the establishment of independent adjudication and oversight mechanisms. It is apparent from the literature that segregation is not an issue to be ignored. All of the evidence points to the need for reform and a lasting reduction in the use of segregation as a population management tool.

## REFERENCES

Alouette Centre for Women (2016) The Complex Unit Needs Overview Draft. British Columbia: BC Government

Andersen, H.S., Sestoft, D., Lillebaek, T., Gabrielsen, G., Hemmingsen, R., and Kramp, P. (2000). 'A Longitudinal Study of Prisoners on Remand: Psychiatric Prevalence, Incidence, and Psychopathology in Solitary vs. Non-Solitary Confinement'. *Acta Psychiatr Scand*, 102: 19-25.

Arbour, L. (1996). Commission of Inquiry into Certain Events at the Prison for Women in Kingston. Ottawa: Public Works and Government Services Canada.

Arrigo, B. A., and Bullock, J. L. (2008). 'The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change'. *International Journal of Offender Therapy and Comparative Criminology*, 52(6): 622-640.

Australian Human Rights Commission. (2016). [Optional Protocol to the Convention against Torture \(OPCAT\)](https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/optional-protocol-convention-against-torture-opcat). Retrieved from: <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/optional-protocol-convention-against-torture-opcat>.

*Bacon v. Surrey* Pretrial Services Centre, 2010 BCSC 805.

Baker, P., and Goode, E. (2015). [Critics of Solitary Confinement are Buoyed as Obama Embraces their Cause](https://www.nytimes.com/2015/07/22/us/politics/critics-of-solitary-confinement-buoyed-as-obama-embraces-cause.html). New York: New York Times. Retrieved from: <https://www.nytimes.com/2015/07/22/us/politics/critics-of-solitary-confinement-buoyed-as-obama-embraces-cause.html>.

Bloom, S. L., and Steinhard, D. (1993). *Why Punish the Children? A Reappraisal of the Children of Incarcerated Mothers in America*. San Francisco: National Council on Crime and Delinquency.

Bottos, S. (2008). *Profile of Offenders in Administrative Segregation: A Review of the Literature*. Research Report No. B-39. Ottawa: Research Branch, Correctional Service Canada.

Browne, A., Cambier, A., and Agha, S. (2011). 'Prisons Within Prisons: The Use of Segregation in the United States'. *Federal Sentencing Reporter*, 24(1): 46-49.

Butler, H. D., Griffin, O. H., and Johnson, W. W. (2013). 'What Makes You the "Worst of the Worst?" An examination of State Policies Defining Supermaximum Confinement'. *Criminal Justice Policy Review*, 24(6): 676-694.

Canadian Civil Liberties Association. (2016). [Canada to Join Critical Anti-Torture Protocol](https://ccla.org/canada-to-join-critical-anti-torture-protocol/). Retrieved from <https://ccla.org/canada-to-join-critical-anti-torture-protocol/>.

Canadian Human Rights Commission. (2003). *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. Ottawa: Canadian Human Rights Commission.

Carlen, P. (1983). *Women's Imprisonment: A Study in Social Control*. London: Routledge and Kegan Paul.

Child and Family Services Act, RSO 1990, c C.11.

Cohen, F. (2016). 'Restricted Housing and Legal Issues', In National Institute of Justice (Ed). *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*. (pp.367-400). Washington: Department of Justice.

Corrections and Conditional Release Act, S.C. 1992, c. 20.

Correctional Service Canada. (2008). *Administrative Segregation Handbook for Staff*. Ottawa: Government of Canada.

Correctional Service Canada. (2015a). *Commissioner's Directive 709: Administrative Segregation*. Ottawa: Government of Canada.

Correctional Service Canada. (2015b). *Commissioner's Directive 709-1: Administrative Segregation*. Ottawa: Government of Canada.

Correctional Service Canada. (2015c). *Segregation Assessment Tool (SAT): User Guide*. Ottawa: Government of Canada.

Correctional Service Canada (2016). *Research in Brief: Examining Time Spent in Administrative Segregation*. Ottawa: Government of Canada.

Dubé, P. (2016). "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. Ontario: The Office of the Ontario Ombudsman.

Elizabeth Fry Society. (2005). *Administrative and Disciplinary Segregation: Personal Guide*. Quebec: Elizabeth Fry Society of Québec.

Enggist, S., Moller, L., Galea, G., and Udesen, C. (Eds.) (2014). *Prisons and Health*. Denmark: World Health Organization Regional Office for Europe.

Fairweather, L. (2000). 'Psychological Effects of the Prison Environment' In L Fairweather and S McConville (Eds). *Prison Architecture: Policy Design and Experience*. (pp. 31-48). New York: Routledge.

Foster, H. (2016). 'Conditions of Confinement in Restrictive Housing', In National Institute of Justice (Ed). *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*. (pp.1-47). Washington: Department of Justice.

Frost, N. A., Monteiro, C. E. (2016). 'Administrative Segregation in U.S. Prisons', In National Institute of Justice (Ed). *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*. (pp.1-47). Washington: Department of Justice.

Gee, E. A., and Baum, K. B. (2016). [Adam Capay's Lonely Path to Solitary Confinement](http://www.theglobeandmail.com/news/national/adam-capays-journey-through-prison-system-tells-sad-story/article32585480/). Toronto: The Globe and Mail. Retrieved from: <http://www.theglobeandmail.com/news/national/adam-capays-journey-through-prison-system-tells-sad-story/article32585480/>

Gendreau, P., Tellier, M. C., and Wormith, J. S. (1985). 'Protective Custody: The Emerging Crisis Within Our Prisons'. *Federal Probation*, 44(3): 55-63.

Government of Western Australia. (2003). *The Office of the Inspector of Custodial Services*. Western Australia: Department of Corrective Services.

Government of Ontario. (2016). *Institutional Services, Policy and Procedures Manual: Placement of Special Management Inmates*. Ontario: Ministry of Community Safety and Correctional Services.

Grassian, S. (1983). 'Psychopathological Effects of Solitary Confinement'. *American Journal of Psychiatry*, 140(11): 1450-1454.

Grassian, S., and Friedman, N. (1986). 'Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement'. *International Journal of Law and Psychiatry*, 8(1): 49-65.

Hairston, C. F. (1988). 'Family Ties and Imprisonment: Do They Influence Future Criminality?' *Federal Probation*, 52(1): 48-52.

*Hamm v. Attorney General of Canada* (Edmonton Institution) 2016 ABQB 440.

Haney, C. (2002). *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*. Washington: Paper presented at the From Prison to Home Conference.

Haney, C. (2003). 'Mental Health Issues in Long-Term Segregation and "Supermax" Confinement'. *Crime and Delinquency*, 49(1): 124-156.

Haney, C., and Lynch, M. (1997). 'Regulating Prisons of the Future: Psychological Analysis of Supermax and Solitary Confinement'. *New York University Review of Law and Social Change*, XXIII (4): 477-570.

Hanly, K. (2016). [Canada Will Sign Optional Protocol to Convention Against Torture](http://www.digitaljournal.com/news/politics/canada-will-sign-optional-protocol-to-convention-against-torture/article/464695). Digital Journal. Retrieved from: <http://www.digitaljournal.com/news/politics/canada-will-sign-optional-protocol-to-convention-against-torture/article/464695>.

Harrington, M. P. (2015). 'Methodological Challenges to the Study and Understanding of Solitary Confinement'. *Federal Probation*, 79(3): 45-47.

Her Majesty's Inspectorate of Prisons. (2014). *Report on an Announced Thematic Inspection of the Close Supervision Centre System*. London: Her Majesty's Inspectorate of Prisons.

Human Rights Watch. (1999). 'Red Onion State Prison: Super-maximum Security Confinement in Virginia'. *Human Rights Watch*, 11: 1-24.

International Centre for Prison Studies (2005). *Guidance Note 11: External inspection monitoring and redressing grievances*. Retrieved from [http://www.prisonstudies.org/sites/default/files/resources/downloads/gn11\\_6.pdf](http://www.prisonstudies.org/sites/default/files/resources/downloads/gn11_6.pdf).

Irwin, J., and Cressey, D. (1962). 'Thieves, Convicts, and the Inmate Culture'. *Social Problems*, 10(2): 142-155.

Jackson, M. (2002). *Justice Behind the Walls: Human Rights in Canadian Prisons*. Vancouver: Douglas and McIntyre.

*Jones 'El v Berge*, 164 F. Supp. 2d 1096 (W.D. Wisc. 2001).

Kane, D. (1997). *Commitment to Legal Compliance, Fair Decisions and Effective Results*. Ottawa: Correctional Service Canada.

Kapoor, R., and Trestman, R. (2016). 'Mental Health Effects of Restrictive Housing', In National Institute of Justice (Ed). *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*. (pp.199-232). Washington: Department of Justice.

King, R. (2000). 'The Rise and Rise of Super-Max: An American Solution in Search of a Problem?' *Punishment and Society*, 1(2): 163-186.

Kupers, T. (1999). *Prison Madness: The Mental Health Crisis Behind Bars and What We Must do About It*. San Francisco: Jossey-Bass.

Kurki, L., and Morris, N. (2001). 'The Purposes, Practices, and Problems of Supermax Prisons'. *Crime and Justice*, 28: 385-424.

Labrecque, R. M. (2015). *The Effect of Solitary Confinement on Institutional Misconduct: A Longitudinal Evaluation*. Washington: U.S. Department of Justice.

Labrecque, R. M. (2016). 'The Use of Administrative Segregation and Its Function in the Institutional Setting', In National Institute of Justice (Ed). *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*. (pp.49-84). Washington: Department of Justice.

Lantigua-Williams, J. (2016). '[More Prisons Are Phasing Out the Box](http://www.theatlantic.com/politics/archive/2016/12/more-prisons-are-phasing-out-the-box/509225/)'. *The Atlantic*. Retrieved from: <http://www.theatlantic.com/politics/archive/2016/12/more-prisons-are-phasing-out-the-box/509225/>.

Latimer, C. (2016). '[Government Action to Curb Solitary Confinement Long Overdue](http://www.broadbentinstitute.ca/catherinelatimer/action_on_solitary_confinement_long_ov_erdue)'. Ottawa: The Broadbent Blog. Retrieved from: [http://www.broadbentinstitute.ca/catherinelatimer/action\\_on\\_solitary\\_confinement\\_long\\_ov\\_erdue](http://www.broadbentinstitute.ca/catherinelatimer/action_on_solitary_confinement_long_ov_erdue)

Liebling, A. and Arnold, H. (2004). *Prisons and Their Moral Performance: A Study of Values, Quality, and Prison Life*. Oxford: Oxford University Press.

Liebling, A. (1992). *Suicides in Prison*. London: Routledge.

Liebling A. (1994). 'Suicide Amongst Women Prisoners'. *Howard Journal of Criminal Justice*, 33(1): 1-9.

Liebling, A. (1995). 'Vulnerability and Prison Suicide'. *The British Journal of Criminology*, 35(2): 173-187.

Lord, E. (1995). 'A Prison Superintendent's Perspective on Women in Prison'. *The Prison Journal*, 75(2): 257-269.

Luciani, F. (1997). *The Security Classification of Offenders: Development of Security Reclassification Protocols*. Ottawa: The Correctional Service Canada.

Lutze, F. H. (1998). 'Are Shock Incarceration Programs More Rehabilitative than Traditional Prisons? A Survey of Inmates'. *Justice Quarterly*, 15(3): 547-563.

*Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

Mann, M. (2009). *Good Intentions, Disappointing Results: A Progress Report on Federal Aboriginal Corrections*. Ottawa: The Office of the Correctional Investigator of Canada.

Mathers, S. (2016). [Adam Capay and the Reality of Solitary Confinement In Thunder Bay](https://theargus.ca/news/2016/adam-capay-and-the-reality-of-solitary-confinement-in-thunder-bay/). Thunday Bay: The Argus. Retrieved from: <https://theargus.ca/news/2016/adam-capay-and-the-reality-of-solitary-confinement-in-thunder-bay/>.

Mears, D. P., and Bales, W. D. (2010). 'Supermax Housing: Placement, Duration, and Time to Re-entry'. *Journal of Criminal Justice*, 38(4): 545-554.

Mears, D. P., and Castro, J. L. (2006). 'Wardens' Views on the Wisdom of Supermax Prisons'. *Crime and Delinquency*, 52(3): 398-431.

Méndez, J.E. (2011). *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNGAOR, 66th Sess, UN Doc A/66/268 ["Méndez Report"].

*Ministry of Correctional Services Act, R.S.O. 1990, c. M.22.*

Morgan, R. D., Gendreau, P., Smith, P., Gray, A. L., Labrecque, R. M., MacLean, N., Van Horn, S.

A., Bolanos, A. D., Batastini, A. B., & Mills, J. F. (2016, August 8). *Quantitative Syntheses of the*

*Effects of Administrative Segregation on Inmates' Well-Being. Psychology, Public Policy, and Law*. Vol.22(4): 439-461.

Morris, R. G. (2016). 'Exploring the Effect of Exposure to Short-Term Solitary Confinement Among Violent Prison Inmates'. *Journal of Quantitative Criminology*, 32(1): 1-22.

Motiuk, L. L., and Hayden, M. (2016). *Examining time Spent in Administrative Segregation*. Research in Brief 16-07. Ottawa: Research Branch, Correctional Service Canada

Motiuk, L. L., and Blanchette, K. (1997). *Case Characteristics of Segregated Offenders in Federal Corrections*. Research Report No R-57. Ottawa: Research Branch, Correctional Service Canada.

Motiuk, L. L., and Blanchette, K. (2001). 'Characteristics of Administratively Segregated Offenders in Federal Corrections'. *Canadian Journal of Criminology*, 43:131-143.

National Research Council. (2014). 'The Growth of Incarceration in the United States: Exploring the Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration'. J. Travis, B. Western, and S. Redburn (Eds.). *Committee on Law and Justice, Division of Behavioral and Social Sciences and Education*. Washington: The National Academies Press.

Office of the Correctional Investigator (2007-2008). *Annual Report of the Office of the Correctional Investigator 2007-2008*. The Office of the Correctional Investigator of Canada retrieved from <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20072008-eng.pdf>.

Office of the Correctional Investigator (2008). [\*Backgrounder: A Preventable Death\*](#). Ottawa: The Office of the Correctional Investigator of Canada retrieved from: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20080620info-eng.aspx>.

Office of the Correctional Investigator (2015b). *Administrative Segregation in Federal Corrections 10 Year Trends*. Ottawa: The Office of the Correctional Investigator of Canada.

Office of the Correctional Investigator (2016). *Thematic Compilation of Segregation Recommendations*. Ottawa: The Office of the Correctional Investigator of Canada.

Office of the Provincial Advocate for Children and Youth (Ontario). (2015). *It's a Matter of Time: Systemic Review of Secure Isolation in Ontario Youth Justice Facilities*. Ontario: Office of the Provincial Advocate for Children and Youth of Ontario.

O'Keefe, M. L. (2007). 'Administrative Segregation for Mentally Ill Inmates'. *Mental Health Issues in the Criminal Justice System*, 45(1-2): 149-165.

O'Keefe, M. L. (2008). 'Administrative Segregation from Within: A Corrections Perspective'. *The Prison Journal*, 88(1): 123-143.

O'Keefe, M. L., Klebe, K. J., Stucker, A., Sturm, K., and Legget, W. (2010). *One Year Longitudinal Study of the Psychological Effects of Administrative Segregation*. Colorado: Department of Corrections and University of Colorado, Colorado Springs.

Ontario Human Rights Commission. (2016) *Segregation and mental health in Ontario's prisons: Jahn v. Ministry of Community Safety and Correctional Services*. Retrieved from <http://www.ohrc.on.ca/en/segregation-and-mental-health-ontario%E2%80%99s-prisons-jahn-v-ministry-community-safety-and-correctional>.

Ontario Human Rights Commission. (2016). [Submission of the OHRC to the Ministry of Community Safety and Correctional Services Provincial Segregation Review](http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review#_ftn2). Retrieved from: [http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review#\\_ftn2](http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review#_ftn2)

Ottawa Citizen Editorial Board (2016). *Enough. Fix the Ottawa jail*. Ottawa: The Ottawa Citizen. Retrieved from <http://ottawacitizen.com/opinion/editorials/editorial-enough-we-must-fix-the-ottawa-jail>.

Ottawa-Carleton Detention Centre Task Force. (2016) *OCDC Task Force Action Plan*. Toronto: Ministry of Community Safety and Correctional Services.

Owens, B. (1998). *'In the Mix': Struggle and Survival in a Women's Prison*. New York: State University of New York Press.

Owers, A. (2006). *Ten-Year Status Report on Women's Corrections*. Ottawa: The Correctional Service of Canada.

Patriquin, M. (2016). [Why Adam Capay has Spent 1,560 Days in Solitary](http://www.macleans.ca/news/why-adam-capay-has-spent-1560-days-in-solitary/). Maclean's. Retrieved from: <http://www.macleans.ca/news/why-adam-capay-has-spent-1560-days-in-solitary/>

Pizarro, J. M., and Narag, R. E. (2008). 'Supermax Prisons: What We Know, What We Do Not Know, and Where We Are Going'. *The Prison Journal*, 88(1): 23-42.

Pizarro, J. M., and Stenius, V. M. K. (2004). 'Supermax Prisons: Their Rise, Current Practices, and Effect on Inmates'. *The Prison Journal*, 84(2): 248-264.

Reesor, A., and Poulin, F. (2016a). *Special Needs Unit Ottawa-Carleton Detention Centre*. Ottawa: Ministry of Community Safety and Correctional Services.

Reesor, A., and Poulin, F. (2016b). *Step-down Unit Ottawa-Carleton Detention Centre*. Ottawa: Ministry of Community Safety and Correctional Services. *R. v. Gladue* (1999) 1 S.C.R. 688.

Rivera, M. (2010). Operational Examination of Long-Term Segregation and Segregation Placements of Inmates with Mental Health Concerns in the Correctional Service of Canada. Ottawa: Correctional Service Canada.

*Ruiz v. Johnson*, 37 F. Supp. 855 (S.D. Tex. 1999).

Sapers, H. (2008). *A Preventable Death*. Ottawa: The Office of the Correctional Investigator of Canada.

Sapers, H. (2012a). *Annual Report of the Office of the Correctional Investigator, 2011-2012*. Ottawa: The Office of the Correctional Investigator of Canada.

Sapers, H. (2012b). *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*. Ottawa: The Office of the Correctional Investigator of Canada.

Sapers, H. (2014). *A Three-Year Review of Federal Inmate Suicides (2011 – 2014)*. Ottawa: The Office of the Correctional Investigator of Canada.

Sapers, H. (2013). *Risky Business: An Investigation of the Treatment and Management of Chronic Self-Injury Among Federally Sentenced Women*. Ottawa: The Office of the Correctional Investigator of Canada.

Sapers, H. (2015). *Annual Report of the Office of the Correctional Investigator, 2014-2015*. Ottawa: The Office of the Correctional Investigator of Canada.

Scharff-Smith, P. (2006). 'The Effects of Solitary Confinement on Prison Inmates. A Brief History and Review of the Literature'. *Crime and Justice*, 34(1): 441–528.

Seymour, A. (2016). [Corrections Minister Cuts Solitary Confinement Limit in Half, Announced Segregation as 'Last Resort'](http://ottawacitizen.com/news/local-news/corrections-minister-cuts-solitary-confinement-limit-in-half-announces-segregation-as-last-resort). Ottawa: Ottawa Citizen. Retrieved from: <http://ottawacitizen.com/news/local-news/corrections-minister-cuts-solitary-confinement-limit-in-half-announces-segregation-as-last-resort>

Shalev, S. (2008). *A Sourcebook on Solitary Confinement*. London: Manheim Centre for Criminology.

Shalev, S. (2009). *Supermax: Controlling Risk Through Solitary Confinement*. Devon: Willan Publishing.

Shalev, S., and Edgar, K. (2010). *Deep Custody: Segregation Units and Close Supervision Centres in England and Wales*. Oxford: Prison Reform Trust.

Shear, M. (2016). [Obama Bans Solitary Confinement of Juveniles in Federal Prisons](https://www.nytimes.com/2016/01/26/us/politics/obama-bans-solitary-confinement-of-juveniles-in-federal-prisons.html?_r=0). New York: The New York Times. Retrieved from: [https://www.nytimes.com/2016/01/26/us/politics/obama-bans-solitary-confinement-of-juveniles-in-federal-prisons.html?\\_r=0](https://www.nytimes.com/2016/01/26/us/politics/obama-bans-solitary-confinement-of-juveniles-in-federal-prisons.html?_r=0)

Sloan, T. (2004). *Shifting the Orbit: Human Rights, Independent Review and Accountability in the Canadian Corrections System*. Ottawa: The Office of the Correctional Investigator.

Slotboom, A. M., Kruttschnitt, C., Bijleveld, C., and Menting, B. (2011). 'Psychological Well-Being of Incarcerated Women in The Netherlands: Importation or Deprivation?' *Punishment and Society*, 13(2): 176-197.

Smith, P. (2016). 'Toward an Understanding of "What Works" in Segregation: Implementing Correctional Programming and Re-Entry-Focused Services in Restrictive Housing Units', In National Institute of Justice (Ed). *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*. (pp.331-366). Washington: Department of Justice.

Solicitor General of Canada. (1998). *CCRA 5 Year Review: Administrative Segregation*. Ottawa: Public Safety Canada.

Steiner, B., and Cain, C. M. (2016). 'The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systemic Review of the Evidence', In National Institute of Justice (Ed). *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*. (pp.165-199). Washington: Department of Justice.

Suedfeld, P., Ramirez, C., Deaton, J., and Baker-Brown, G. (1982). 'Reactions and Attributes of Prisoners in Solitary Confinement'. *Criminal Justice and Behaviour*, 9(3): 303-340.

Sykes, G. M. (1958). *The Society of Captives*. Princeton: Princeton University Press.

*The Istanbul Statement on the Use and Effects of Solitary Confinement*. (1999). Adopted at the International Psychological Trauma Symposium, Istanbul.

Theriault, Y. (2010). Operational Examination of Long-Term Segregation and Segregation Placements of Inmates with Mental Health Concerns. Ottawa: Correctional Service Canada.

Toch, H. (1977). *Living in Prison: The Ecology of Survival*. New York: Free Press.

Toch, H. (1978). 'Is a 'Correctional Officer' by Any Other Names a 'Screw'? *Criminal Justice Review*, 3(2): 19-35.

Toch, H. (2001). 'The Future of Supermax Confinement'. *The Prison Journal*, 81(3): 376-388.

Thompson, J., and Rubenfeld, S. (2013). *A Profile of Women in Segregation*. Ottawa: Research Report N. R-320, Correctional Service Canada.

Tye, C. S. and Mullen, P. (2006). 'Mental Disorders in Female Prisoners'. *Australian and New Zealand Journal of Psychiatry*, 40(3): 266-271.

UN General Assembly, *Basic Principles for the Treatment of Prisoners*: resolution / adopted by the General Assembly, 28 March 1991.

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee Against Torture, 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/6, June 2012.

UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

UN General Assembly, *Convention on the Rights of the Child*, 20 November 1991, United Nations, Treaty Series, vol. 1577, p.3.

UN General Assembly, *Convention on the Rights of Persons with Disabilities*: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106.

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p.171.

UN General Assembly, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 9 January 2003, A/RES/57/199.

UN General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) : note / by the Secretariat, 6 October 2010, A/C.3/65/L.5

UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules): note / by the Secretariat, 29 September 2015, A/C.3/70/L.3, [The Mandela Rules].

UN Human Rights Committee (HRC), *Concluding observations on the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/CO/6, 23 June 2015,,

*Victor Rosario Congo v. Ecuador*, Case 11.427, Report No. 63/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 475 (1998). April 13, 1999 para.58.

Ward, D. and Kassebaum, G. (1965). *Women's Prison: Sex and Social Structure*. Chicago: Aldine-Atherton.

West Coast Prison Justice Society. (2016). *Solitary: A Case for Abolition*. British Columbia: The Law Foundation of British Columbia.

Wichmann, C., Nafekh, M. (2001) *Moderating Segregation as a Means to Reintegration*. *Forum on Corrections* 13(1): 31-32

Wichmann, C., and Taylor, K. (2004). *Federally Sentenced Women in Administrative Segregation: A Descriptive Analysis*. Research Report No. R-158. Ottawa: Research Branch, Correctional Service Canada.

Wormith, J. S., Tellier, M. C., and Gendreau, P. (1988). 'Characteristics of Protective Custody Offenders in a Provincial Correctional Centre'. *Canadian Journal of Criminology*, 30(1): 39-58.

Wortley, R. (2002). *Situational Prison Control: Crime Prevention in Correctional Institutions*. Cambridge: Cambridge University Press.

Zinger, I., and Wichmann, C. (1999). *The Psychological Effects of 60 days in Administrative Segregation*. Research Report No. R-85. Ottawa: Research Branch, Correctional Service Canada.

Zinger, I., Wichmann, C., and Andrews, D. A. (2001). 'The Psychological Effects of 60 days in Administrative Segregation'. *Canadian Journal of Criminology*, 43(1): 47-83.