



Canadian Friends Service Committee (Quakers)

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Submission by the Canadian Friends Service Committee to the Ministry of Community Safety and Correctional Service's review of segregation in Ontario's adult correctional facilities

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Executive Summary

The Canadian Friends Service Committee (CFSC) welcomes the opportunity to submit input into the Ontario's Ministry of Community Safety and Correctional Service (MCSCS) review of the use of segregation in its correctional facilities.

The Canadian Friends Service Committee (CFSC) endorses the recommendations of the Ontario Human Rights Commission to the MCSCS' provincial segregation review and calls for the abolition of the use of segregation.

About the Canadian Friends Service Committee

Founded in 1931, CFSC is the peace and service agency of the Religious Society of Friends (Quakers) in Canada. It is a federally registered charity and not-for-profit corporation. The worldwide community of Quakers has worked on concerns related to justice issues for over 350 years and brings a wealth of experience that ranges from work within prisons and restorative justice processes to participating in the establishment of norms and standard setting at the United Nations. Quakers Fostering Justice (QFJ) is the program within CFSC that addresses justice concerns. QFJ promotes less punitive and more restorative practices in the justice system.

Definition of Segregation

There is no universally agreed definition of segregation – often also called 'solitary confinement', 'isolation', 'separation' to name a few. Regardless of what it is called, it is commonly understood to be the physical and social isolation of individuals for prolonged

periods of time. Although the term “segregation” is not defined in Ontario’s regulation, “it is conceptualized as a physical ‘area,’ rather than the treatment of an inmate and the form of confinement.”¹

According to the Ombudsman of Ontario, segregation is “a distinct and potentially damaging form of detention, which can cause severe harm to inmates.”² An increasing body of research shows that the treatment of an inmate in the form of physical and social isolation can cause a variety of serious mental and physical health effects, and that some effects may be long-term, thus affecting the incarcerated person’s ability to successfully reintegrate upon release.³ In his report to the UN General Assembly in 2011, Juan Mendez, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, stressed that “solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions. He finds solitary confinement to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society.”⁴

Even though Ontario uses two types of segregation in correctional facilities, Administrative Segregation (non-disciplinary) and Close Confinement (disciplinary), the Ontario Human Rights Commission and the Ontario Ombudsman believe that other prisoners are put into segregation–like conditions in areas of the facility not designated as segregation units (e.g., protective custody, special needs units).⁵ Similar to the Ontario Human Rights Commission, CFSC’s comments on segregation apply to the range of situations that result in segregation or segregation-like circumstances.

¹ Ombudsman of Ontario, *Segregation: Not an Isolated Problem*. Submission to MCSCS consultation April 27, 2016, p.4 online at: <https://www.ombudsman.on.ca/Files/sitemedia/Documents/Segregation-ENfinal-May-10-linked.pdf> (Accessed May 13, 2016)

² Ombudsman of Ontario, *Segregation: Not an Isolated Problem*. Submission to MCSCS consultation April 27, 2016, p. 26 online at: <https://www.ombudsman.on.ca/Files/sitemedia/Documents/Segregation-ENfinal-May-10-linked.pdf> (Accessed May 13, 2016)

³ Kelsall D. Cruel and unusual punishment: solitary confinement in Canadian prisons. *Canadian Medical Association Journal*. December 9, 2014; 186(18):1345; and Annex to *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, online at: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> (Accessed May 13, 2016)

⁴ *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, online at: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> (Accessed May 13, 2016)

⁵ Ontario Human Rights Commission, *Submission of the OHRC to the Ministry of Community Safety and Correctional Services Provincial Segregation Review*, p. 2 online at: <http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review> (Accessed May 13, 2016); and Ombudsman of Ontario, *Segregation: Not an Isolated Problem*. Submission to MCSCS consultation April 27, 2016, p. 20, online at: <https://www.ombudsman.on.ca/Files/sitemedia/Documents/Segregation-ENfinal-May-10-linked.pdf> (Accessed May 13, 2016)

International Standards and Recommendations from Inquests and Reviews

Current MCSCS practices with respect to segregation are out of sync with international human rights standards and recommendations from inquests and reviews of the justice system. As pointed out by the Ontario Human Rights Commission, the federal Office of the Correctional Investigator, the Ashley Smith Inquest, and the Provincial Advocate for Children and Youth in Ontario, segregation is overused for certain groups: Black and Indigenous prisoners; those with mental health disabilities; women; and youth.⁶ Data collected by the Ombudsman of Ontario also indicate a large gap between MCSCS's policy position that segregation be used as a last resort and actual practice. For example:

29. After reviewing hundreds of segregation placements, it is clear that segregation is a tool regularly used by managers to separate out and effectively punish the most “difficult” and vulnerable inmates. The Correctional Investigator of Canada came to the same conclusion in his recent annual report, when he said “[t]here is no escaping the fact that administrative segregation has become the most commonly used population management tool to address tensions and conflicts in federal correctional facilities.” Inmates are also routinely placed in segregation because facilities lack the resources necessary for managers to accommodate them in more appropriate settings.⁷

The UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)⁸, and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)⁹, absolutely prohibit the use of solitary confinement for children and pregnant women, women with infants and breastfeeding mothers in prison respectively. In 2011, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment called for an absolute prohibition on the use of solitary confinement for juveniles and persons with mental disabilities, an end to the practice of solitary confinement in pretrial detention, and for the abolishment of

⁶ Margaret Gittens et al., *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995) at p. 313 online at: <https://archive.org/details/reportracismont00comm> (Accessed May 13, 2016) ; Office of the Correctional Investigator, *Annual Report of the Correctional Investigator 2014-2015*, online at <http://www.ocibec.gc.ca/cnt/rpt/annrpt/annrpt20142015-eng.aspx#s7> (Accessed May 13, 2016) ; Ontario Human Rights Commission, *Minds that matter: Report on the consultation on human rights, mental health and addictions* (2012) at p. 106, online at: <http://www.ohrc.on.ca/en/minds-matter-report-consultation-human-rights-mental-health-and-addictions>; and the Office of the Provincial Advocate for Children and Youth of Ontario, *It's A Matter of Time Systemic Review of Secure Isolation In Ontario Youth Justice Facilities* (2015) online at: http://provincialadvocate.on.ca/documents/en/SIU_Report_2015_En.pdf

⁷ Ombudsman of Ontario, *Segregation: Not an Isolated Problem*, Submission to MCSCS consultation April 27, 2016, at p. 8 online at: <https://www.ombudsman.on.ca/Files/sitemedia/Documents/Segregation-ENfinal-May-10-linked.pdf>

⁸ Online at: <http://www.un.org/documents/ga/res/45/a45r113.htm>

⁹ Online at: <http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>

indefinite solitary confinement.¹⁰ The Provincial Advocate for Children and Youth in Ontario, recently released a report on secure isolation for youth in custody with findings and recommendations that would be instructive for MCSCS's adult correctional facilities.¹¹

Recommendations

CFSC endorses the recommendations of the Ontario Human Rights Commission (see Annex 1) and calls for the abolition of segregation. We also see this as an opportunity for MCSCS to lead the way by developing and implementing standards that become a role model to which other jurisdictions will look to for inspiration.

As the John Howard Society of Ontario suggests, "it is fair to expect more human rights claims, lawsuits and legal challenges, and worsening outcomes for those in custody and those discharged who endured segregation; especially those with mental health issues."¹² Given the serious negative impact of segregation on prisoners we highlight:

- The UN Basic Principles for the Treatment of Prisoners which state that efforts to abolish solitary confinement as a punishment, or to restrict its uses, should be undertaken and encouraged;¹³ and
- The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment urging of States to prohibit the imposition of solitary confinement as punishment — either as a part of a judicially imposed sentence or a disciplinary measure, and recommendation that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement.¹⁴

¹⁰ *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, online at:

<http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> (Accessed May 13, 2016)

¹¹ Office of the Provincial Advocate for Children and Youth of Ontario, *It's A Matter of Time Systemic Review of Secure Isolation In Ontario Youth Justice Facilities* (2015) online at:

http://provincialadvocate.on.ca/documents/en/SIU_Report_2015_En.pdf (Accessed May 13, 2016)

¹² *John Howard Society of Ontario's Submission in Response to the MCSCS Segregation Policy Review Consultation* (November 2015)

¹³ Online at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>

¹⁴ Online at: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>

ANNEX 1: RECOMMENDATIONS OF THE ONTARIO HUMAN RIGHTS COMMISSION¹⁵

1. Publicly commit to eliminating the use of segregation;
2. Immediately implement strict restrictions on the ongoing use of segregation;
3. Continue to implement the terms of the *Jahn v. MCSCS* settlement, including prohibiting the use of segregation for prisoners with mental health disabilities;
4. Ensure that all prisoners being housed in conditions comparable to segregation, but categorized differently, benefit from the same rights and protections available to those officially placed in segregation;
5. Develop and implement meaningful alternatives to segregation, consistent with least restraint practices and MCSCS' duty to accommodate prisoners' *Code*-related needs to the point of undue hardship;
6. Adjust staffing models, and staff hiring, screening and training to ensure that staff with appropriate attitudes and behavioural skills are working with vulnerable prisoner populations;
7. Make segregation placement decisions and healthcare assessments subject to external and independent review and oversight, including judicial review;
8. Ensure all prisoners and their legal representatives are given relevant information about and a genuine opportunity to challenge both the nature of and justification for segregation placements;
9. Implement a system to collect and analyze human rights-based data on the use of segregation and its effects on *Code*-protected groups; and
10. Provide stakeholders and experts with an opportunity to review and publicly comment on any proposed changes to segregation practices and how they will be implemented.

¹⁵ Ontario Human Rights Commission, *Submission of the OHRC to the Ministry of Community Safety and Correctional Services Provincial Segregation Review*, at p. 2. online at: <http://www.ohrc.on.ca/en/submission-ohrc-ministry-community-safety-and-correctional-services-provincial-segregation-review>