



SPECIAL REPORT

Inmate Services and  
Conditions of Custody in  
Saskatchewan  
Correctional Centres

October 2002

9



# Segregation



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

# Segregation

## Introduction

*The forced isolation of individuals from their social and physical supports, and human contact, is a profound form of deprivation. It can only heighten feelings of desperation and anxiety in situations of despair and high need.<sup>1</sup>*

For the purposes of this report, the term "segregation" is synonymous with "solitary confinement" and "forced isolation."

resulting from a disciplinary charge, however, it cannot be punitive. Furthermore, the decision to segregate—whatever the reason—must always be made in accordance with the principles of fundamental justice.

The Solicitor General of Canada, in a 1998 review of administrative (non-disciplinary) segregation, stated the following:

*Since administrative segregation is not a punitive process, segregated inmates must be given the same rights, privileges and conditions of confinement as the*

Unless the segregation is a sanction resulting from a disciplinary charge, however, it cannot be punitive.



Some correctional centres in Saskatchewan have different levels of segregation depending on the behaviour of the inmate. In this report, "segregation" applies primarily to the practice of confining an inmate to a cell in a secure unit and allowing only one half to one hour per day outside the cell for activities such as exercising, making phone calls, showering, and cell cleaning.

Some form of segregation is likely to be a part of correctional practice for many more years, as it serves several purposes for which other alternatives have yet to be found. For example, some inmates present a significant threat to other inmates and staff members, and if they were to escape, the public. Others require protection from fellow inmates or themselves.

All of these inmates need to be separated from the general inmate population and closely supervised. Unless the segregation is a sanction

*general inmate population except for those that can only be enjoyed in association with other inmates, and that cannot reasonably be provided because of the limitations specific to the administrative segregation area, or because of security requirements.<sup>2</sup>*

Whether segregation is a necessity in correctional centres is not the issue under discussion; instead, we are interested in whether the practice of segregation as it is currently carried out in Saskatchewan's correctional centres conforms to Canadian and international laws and standards. In other words, our focus is on best practice.

Our primary point of comparison is the Correctional Service of Canada, whose policy on segregation closely aligns with current research and correctional philosophy.

<sup>1</sup> Louise Arbour, *Commission of Inquiry into Certain Events at The Prison For Women in Kingston* (Public Works and Government Services of Canada, 1996), 11.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

This report addresses thirteen aspects of correctional services that affect inmates and staff. Several of these areas are relevant to the segregation process, and there will be some overlap. With this in mind, the reader should note that there are some instances where a concern is addressed briefly in this chapter, but will be dealt with in more detail when it is the subject of its own section.

The review of Correction's use of segregation as a method for managing inmates who present a safety risk has revealed many good things. Saskatchewan Corrections has made a conscious effort to ensure respect for inmates' retained rights and compliance with the duty to act fairly. Even so, there are still issues that need to be addressed. Those issues are the focus of this review of segregation.

### Placement in Segregation

Some inmates, for a variety of reasons, do not function well in the conventional corrections environment. In those cases, when proper and appropriate, Corrections staff work with the inmates in their living units to avoid their placement in segregation.

Inmates who pose a risk to themselves or others, however, can be placed in segregation without this type of staff intervention being attempted. Either way, segregation is, by policy, to be used as a last resort.

Inmates can be placed in segregation for three reasons: as punishment (disciplinary segregation); to protect an inmate who would be at risk in the general population (voluntary segregation); and to protect the safety of staff members and other inmates (involuntary segregation). Voluntary and involuntary segregation are commonly referred to as administrative or non-disciplinary segregation.

Inmates housed in segregation are more closely supervised and have fewer privileges than inmates in the general population.<sup>3</sup> The following discussion of procedures that apply when placing an inmate in segregation applies to involuntary segregation.

The initial decision to place an inmate in segregation is usually made by an Assistant Deputy Director (ADD) and, in the men's centres, the Unit Team Leader. When an inmate is placed in segregation, he or she is supposed to be advised of the reasons either verbally or in writing.

At Pine Grove, an ADD makes the decision to segregate an inmate or to return her to the general population. It should also be noted that high-risk inmates at Pine Grove are not necessarily placed in segregation, as they would be in the men's centres.

As soon as possible after an inmate is placed in segregation, the placement is to be reviewed by the correctional centre's security review panel to determine whether or not it is warranted. If the panel concludes that it is not, the inmate is returned to the general population. If the panel concludes that it is warranted, it periodically reviews the situation.

While the inmate is segregated, staff members are supposed to work with the inmate to prepare a plan to reintegrate him or her back into the general population. The inmate is not to be returned to the general population until the panel is convinced that he or she no longer presents an undue risk to the safety of staff, other inmates or him- or herself.

A segregated inmate has the right to appeal the security review panel's decisions to the correctional centre's director, who has the authority to overturn the panel's decisions.

<sup>2</sup> "Administrative Segregation," *Corrections and Conditional Release Act Review (CCRA) 5 Year Review Reports* (Solicitor General of Canada: February 1998), 2.

<sup>3</sup> The correctional centres refer to what is called the "segregation unit" in this report as the "secure unit." We believe the term "segregation unit," or simply "segregation," more accurately captures the intent of placement in this unit.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

## Issues Regarding Procedure

Section 7 of the *Canadian Charter of Rights and Freedoms* states that no one is to be deprived of liberty "except in accordance with the principles of fundamental justice."

Since placement in segregation is clearly a deprivation of liberty, it must be imposed in accordance with the principles of fundamental justice. This means that inmates have the right to an opportunity to be heard, to know the case against them, and to an impartial decision maker.<sup>4</sup> Furthermore, fair procedure requires the decision maker to provide the inmate with reasons for the decision.

### Initial Placement in Segregation

Strictly speaking, an inmate is entitled to know the case against him or her before the decision to segregate is made and to have an opportunity to challenge the evidence.

However, this would not be prudent in most cases, since the inmate is being segregated because he or she is believed to present a risk to other inmates' or staff members' safety and must be moved immediately.

When an inmate is placed in segregation, policy provides that he or she is to receive written documentation stating the reasons for the move.

All four correctional centres normally do explain to inmates the reasons for the move to segregation, but we get repeated complaints that the information given is too vague to be of much use. For example, we receive complaints that the reason provided is "muscling", without any further explanation as to when, who, how or where.

One explanation is that staff members assume that the inmate knows full well the reasons for the placement. That is a dangerous assumption because it is only correct if the inmate is guilty, and it is inevitable that the assumption of guilt will be wrong in some cases.

Another explanation is that staff members believe that in many cases, the provision of those details would jeopardize the security of the institution or of individuals within it. If providing details of the reasons would compromise security or endanger other inmates or staff, the accused inmate should at a minimum be provided with sufficient information to challenge the case against him or her.

Although inmates do not get an opportunity to challenge the evidence when they are initially placed in segregation, they do have a right to appeal the placement. However, they cannot submit a meaningful appeal if they do not have sufficient information about their placement.

### RECOMMENDATION

+ Ensure that inmates are provided meaningful and detailed reasons for placement in segregation.

### Security Review Panel and the Provision of Reasons

While a segregated inmate is provided at least general information about the reasons for his or her placement in segregation, none of the security review panels provides segregated inmates with the evidence they will consider in determining an appropriate security rating.

To accommodate the inmate's right to be heard, he or she ought to be supplied with all of the evidence before the panel. In supplying this evidence, some allowances will have to be made for security concerns, but these should be addressed without compromising the inmate's rights any more than is absolutely necessary.

<sup>4</sup> "Fundamental Justice" is often construed as being synonymous with "natural justice". This was addressed in Reference regarding Section 94(2) of *The Motor Vehicle Act* (1985). With reference to this case, the Charter of Rights Annotated stated, "The principles of fundamental justice are to be found in the basic tenets and principles not only of our judicial process, but also the other components of our legal system. While many of the principles of fundamental justice are procedural in nature, they are not limited solely to procedural guarantees." (Charter of Rights Annotated 7-11) Thus, when a charter right is limited, inmates are entitled to a higher standard of justice than that afforded by natural justice alone.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

Not only are inmates entitled to know the evidence that will be considered, they are also entitled to challenge the evidence directly or indirectly.

Despite this, none of the centres provide inmates an opportunity to respond to the information the security review panel will be using to make its decision or to present their case and argument to the panel. This is clearly a violation of the inmates' rights.

As discussed in the previous section, when an inmate is placed in segregation, provincial policy stipulates that he or she is to be provided with reasons for the move. Later, if the security review

+ Allow inmates to address the security review panel in person or in writing prior to their deliberations.

### Access to Legal Counsel

As is discussed in the section on discipline, inmates are entitled to a fair hearing regarding decisions that may adversely affect them. In some cases, a fair hearing will require a right to competent counsel and representation.<sup>5</sup>

As is the case with discipline panel decisions, decisions made by the security review panel are often very serious and can affect the inmates' freedom. Consequently, it is our view that



decisions made by the security review panel are often very serious and can affect the inmates' freedom.



panel decides that an inmate's segregation should be continued, the inmate is to be supplied with reasons for this decision as well.

The provision of reasons is a necessary part of a fair process and a fair decision. Reasons should be adequately detailed to allow the inmate to determine whether his or her position was heard and understood, whether the facts determined are accurate and whether an appeal is appropriate.

### RECOMMENDATIONS

- + Provide inmates with the evidence that will be considered by the security review panel.
- + Give inmates sufficient time to consider the evidence that will be considered by the security review panel.

inmates who are the subject of security review panel hearings are entitled to some form of meaningful representation.

We are aware that Corrections' practice is not significantly different than that of any other province in this regard. Nevertheless, for the reasons provided in the section on discipline, it is our view that, ideally, inmates should be provided with legal counsel free of charge.

At a minimum, inmates should be provided with competent representation. There are various non-governmental agencies that are capable and able to provide such counsel. Inmates could also be allowed to secure the assistance of other inmates who they believe are competent to represent them.

<sup>5</sup> In *Howard v. Stony Mountain Institution*, [1984] 2 F.C. 642 (FCA), Mr. Justice MacGuigan provided six criteria that determine the right to representation by counsel: (1) The seriousness of the charge and the potential penalty; (2) Whether any points of law are likely to arise; (3) The capacity of a particular prisoner to represent his own case; (4) Procedural difficulties; (5) The need for reasonable speed in adjudication; and (6) The need for fairness as between prisoners and as between prisoners and prison officers.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

### RECOMMENDATIONS

- + Allow inmates appearing before a security review panel the opportunity to be represented by counsel or an agent, including an agent chosen from among other inmates.
- + Explore with appropriate non-government agencies their willingness to provide competent representation for inmates appearing before security review panels.

### Composition of the Security Review Panel and Concerns about Impartiality

In all four correctional centres, the security review panel is made up of correctional centre staff.

It could be argued that these panel members have a vested interest in the decision of the panel and cannot therefore claim impartiality. For example, a panel member may be influenced by his or her personal experience with the inmate outside of the security review process or fear for his or her own safety if an inmate with a violent record is released into the general population.

To address this issue in the federal system, Madame Justice Arbour recommended that an independent adjudicator be requested to review and confirm decisions to segregate within 5 days.<sup>6</sup>

Arbour's recommendation should be applied to Saskatchewan's provincial correctional centres as well, not because staff members do not discharge their duties professionally, but because the appearance of prejudice and the risk of bias compromise the inmates' right to procedural fairness.

An outside adjudicator would address the issue of bias and, if carefully selected, could ensure that the inmates' right to procedural fairness is respected.

### RECOMMENDATION

- + Appoint an independent, outside adjudicator to review decisions regarding segregation and continued segregation.

### The Decision to Continue Segregation

In the documents we reviewed, the reasons the security review panel provided for a decision to continue segregation were often either omitted or vague. Because of this, we do not have enough information to comment on the actual reasons for continuing segregation.

There are, however, criteria that these reasons should meet, including Corrections' guiding principle of using the least restrictive measures necessary and charter rights requiring that an inmate be kept in segregation no longer than is strictly necessary.

When deciding whether to continue an inmate's segregation, the panel should consider whether the reasons for continuing segregation would be sufficient for an initial placement. If they are not, the inmate should be placed in a unit that matches the inmate's security rating. Either way, the inmate is entitled to full reasons for the continued segregation or alternate placement.

Reasons for the security review panels' decisions should be carefully and thoroughly stated and indicate the information, law and policy that were applied in reaching the decision. These reasons, of course, should be provided to the inmate and should be sufficient to enable him or her to understand the decision and make a reasoned decision whether or not to appeal. While Corrections policy requires this, it has been our experience that reasons frequently fall short of this mark.

Security review panel decisions should also be timely. Panels generally convene weekly, but they do not necessarily review each segregated inmate's security rating at each meeting.

In many cases, a segregated inmate's situation is reviewed only every two or three weeks, and inmates are not usually moved back into the general population between reviews. This means that some inmates will remain in segregation for longer than is necessary.

<sup>6</sup> Arbour 256.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

For example, even if an inmate's behaviour is exemplary following a decision to continue segregation, the inmate will usually have to wait until the next security review panel hearing before he or she has the opportunity to be returned to the general population. As noted above, this could be as long as three weeks.

The problem is clear. The panel cannot know with any certainty how long it will be before an inmate is ready to return to the general population. It would not be practical to review an inmate's placement daily, but every two or three weeks is too long.

In keeping with the principle of least restrictive measures, it would be better if the situation of all segregated inmates were reviewed more frequently.

### RECOMMENDATIONS

- + Follow the same criteria for making the decision to continue to segregate an inmate as was followed in the initial decision to impose segregation.
- + Increase the frequency of security review panel hearings for a segregated inmate to once a week.
- + Provide full reasons for the security review panel's decisions, unless doing so would compromise security interests.

### Appeal Responses

An inmate can appeal the decisions to initiate or continue segregation to the correctional centre's director. For the appeal process to be a reasonable recourse, the reasons given to the inmate for the placement in segregation must be sufficient to provide a realistic opportunity to construct a meaningful appeal.

We often heard that responses to appeals about placement in segregation took too long. In some centres, it was not uncommon for inmates to wait more than a week for a response to their appeal.

In some cases, the inmate was not provided with a response until after he or she had been placed back into the general population, rendering the

response theoretical rather than practical. This was not a common problem, although we received complaints from every centre.

Segregation is a significant intrusion on an inmate's liberty, and appeals should be addressed as soon as reasonably possible. The timeliness of appeal responses is an issue we have discussed with Corrections on several occasions.

In the end, we agreed that the response time for appeals about placements in segregation should be the same as appeals of disciplinary sanctions involving cell confinement, which is two days. In January 2002, Corrections implemented a provincial policy requiring correctional centre directors to respond to segregation appeals within two days. We are monitoring the application of the new policy.

### COMMENDATION

- + For Corrections' decision to implement provincial policy limiting the response time for appeals regarding segregation to two days.

## Activities and Privileges in Segregation

### Programming

A 1997 federal task force report on legal compliance and fairness stated the following regarding administrative segregation in the federal correctional system:

*The purpose of delivering programs in administrative segregation is to offset the debilitating impact of segregation, to assist inmates in reintegrating into less restrictive environments, when and where possible, and to prepare inmates for reintegration into the community when release into the institutional populations is not possible.<sup>7</sup>*

Only inmates who are placed in segregation as the sanction for a disciplinary offence are there as punishment.

<sup>7</sup> Correctional Service of Canada, Task Force on Administrative Segregation, *Commitment to Legal Compliance, Fair Decisions and Effective Results: Reviewing Administrative Segregation* (March 1997), 70.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

Segregation is not supposed to be punitive for inmates who are there for their own safety (voluntary segregation) or for inmates who are there because they cannot function in the general population without placing other inmates or staff at risk (involuntary segregation).

For this reason, every effort ought to be made to provide these inmates with the same rights and privileges they had while in the general population, with the exception of those that cannot reasonably be provided because of security concerns or the limitations of the segregation area. The rights and privileges segregated inmates are entitled to include access to programming.

As was discussed in "Programming," the inmates most likely to benefit from programming are those with the highest criminogenic needs, who are also the most likely to reoffend. This profile fits most of the inmates who are segregated involuntarily.

Allocating resources to programming for inmates in segregation, therefore, would serve several purposes, including targeting those inmates most likely to benefit from programming and helping to prepare segregated inmates for reintegration into the general inmate population and, after they are eventually released, the community.

the inmates most likely to benefit from programming are those with the highest criminogenic needs



Programming to prepare segregated inmates for reintegration into the general inmate population would be the most appropriate. Currently, segregated inmates receive visitors, medical and dental care, spiritual guidance and other basic services. In addition, staff members provide informal individual support and counselling when time permits.

Programming directed to the individual's specific needs, such as anger management or addictions counselling, is not generally available to segregated inmates in the men's centres. The exceptions are the Regina centre, which attempts to provide segregated inmates with continuity of programming when possible, and Pine Grove, which offers segregated inmates hand crafts, classroom and addiction education in addition to basic services.

Preparing a segregated inmate for reintegration into the general population or the community is only part of the need to provide programming. Madame Justice Arbour, in her report on the Kingston Prison for Women, states:

*The most objectionable feature of this lengthy detention in segregation was its indefiniteness. The absence of any release plan in the early stages made it impossible for the segregated inmates to determine when, and through what effort on their part, they could bring an end to that ordeal. This indefinite hardship would have the most demoralizing effect.<sup>8</sup>*

Saskatchewan Corrections Policy states:

*The Secure Unit Manager will ensure that a reintegration plan is established within*

<sup>8</sup> Arbour 141.

<sup>9</sup> Saskatchewan Corrections Divisional Policy, Security 006.





## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

*seven (7) days for any inmate placed on confinement in a high security unit due to behavioural problems. The reintegration plan will establish the behavioural requirements for the inmate to return to a less restrictive area.*<sup>9</sup>

Notwithstanding this policy, none of the centres except Pine Grove adequately address the inmate's need to know specifically what needs to be done to get out of segregation and how long it will take.

Inmates receive a behavioural change plan and know that their behaviour has to change, but this is not quantified in any way. From the inmate's perspective, he is at the mercy of the staff's subjective evaluation of his behaviour.

It would ease inmate uncertainty and frustration if the reintegration plan were defined in measurable terms. Access to a broader range of programming would provide options in this regard.

On the positive side, we are encouraged by the knowledge that Corrections is committed to providing adequate programming for segregated inmates as soon as resources permit.

### RECOMMENDATIONS

- + Provide programming to segregated inmates tailored to their specific needs.
- + Ensure that a release plan is prepared for each segregated inmate that enables him or her to work toward definite goals, and minimizes the indefiniteness of their stay in segregation.

### Exercise time

The United Nations Standard Minimum Rules for the Treatment of Prisoners, section 21 (1) clearly calls for at least one full hour of exercise, preferably in the open air, for all inmates; this includes segregated inmates.

Physical and social isolation are extreme measures that have a significant psychological effect on an inmate. The recommended minimum of one hour of exercise would help moderate these effects.

None of the centres complies with this rule with respect to inmates who are segregated as a disciplinary sanction, or those who are segregated involuntarily. Furthermore, the limited time inmates do get out of their cells is not strictly for exercise, but rather includes time for showering, making phone calls and cleaning cells. This is a problem.

One cannot reasonably conclude that "exercise" as meant by the Standard Minimum Rules includes these activities. Not only do showering, making phone calls and cleaning cells not meet the accepted definition of exercise, they can easily use up the entire time allowed out of the cell.

For exercise to be meaningful, some exercise equipment should be available, but none of the centres provides equipment for segregated inmates to use.

In Regina, if the exercise period has to be spent indoors because of inclement weather, inmates have only a narrow unit corridor in which to move about. In the other centres, inmates have access to a common room with tables and chairs.

The centres that do not provide an hour for exercise claim that the necessary resources are simply not there. However, the resource argument can reasonably be taken only so far. The Standard Minimum Rules are an authoritative guide to help states meet their treaty obligations. Canada ought to comply.

Even if this were not the case, inmates have a right under article 10 of the International Covenant on Civil and Political Rights to be treated "with humanity and with respect for the inherent dignity of the human person." It is reasonable to conclude that this right includes a minimum of one hour of exercise outside the cell.

We recognize that Corrections is working towards providing appropriate exercise time and that the matter is not simple.

<sup>9</sup> Saskatchewan Corrections Divisional Policy, Security 006.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

For example, because cells in Regina's segregation unit are opened with a key, there are security considerations and logistical difficulties not faced in other centres where the cells can be opened electronically. This results in difficulties whenever inmates are let out of their cells for any reason. To Regina's credit, despite the obstacles, it is working toward providing segregated inmates with a full hour of exercise.

### RECOMMENDATION

+ Provide all segregated inmates with a minimum of one full hour of quality physical exercise, including access to exercise equipment.

### Property Allowances

Our review revealed that property allowances for inmates in segregation differ from centre to centre. One centre allows only basic essentials, while others allow portable radios with headphones, magazines, books, and photographs.

The differences in allowances can be explained by the fact that each centre has the authority to tailor its programs and procedures to fit the dynamics of the local inmate culture and the physical surroundings. This is as it should be.

On the other hand, inmates sentenced to a term of incarceration in Saskatchewan are entitled to serve their time in similar, or at least equivalent, conditions regardless of the place of incarceration. This also applies to conditions in segregation.

For example, if some centres can allow portable radios with headphones without experiencing any trouble, the same privilege should be extended to segregated inmates in the other centres. In other words, although there has to be room to address local conditions, each inconsistency ought to be justifiable.

Corrections is currently reviewing matters relating to inmate property, and advises that this matter will be considered in the course of that review.

### RECOMMENDATION

+ Ensure that property allowances in the segregation units of the four centres are reasonably equivalent and as generous as possible.



### Showers

Segregated inmates in three centres can shower daily if they wish. In the Regina centre, they are allowed only two showers per week, and these are to be taken during the daily half hour allowed for exercise.

Providing two showers per week complies with the minimum called for by the Standard Minimum Rules. Even so, one could argue that if it is possible to make daily showers available in three centres it should be possible to do so in the fourth.

Although it might be logistically difficult to allow daily showers in Regina, as discussed above, it is likely not impossible. Furthermore, segregated inmates in this centre should not be treated any more harshly than segregated inmates in the other centres unless the differences can be fairly justified.

### RECOMMENDATION

+ Provide segregated inmates in all four centres the opportunity to shower daily if they wish.

### Phone Calls

Until recently, all four correctional centres allowed inmates in segregation to make business and humanitarian calls as needed, but the calls were to be made during the exercise period.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

In February 2002, a new policy stated that privileged calls were to be facilitated at all times and in emergencies. This new policy is appropriate, considering problems evident in the previous practice. Exercise times were not necessarily convenient for the people receiving the calls, and furthermore, as noted above, the exercise period should be reserved for physical exercise only.

The allowances for personal calls remain more restricted. One centre does not allow segregated inmates to make any personal calls. Another allows only two personal calls per week.

Segregated inmates have to cope with significant deprivations, and personal calls have the potential to offer some relief. To deny personal calls altogether or to severely limit personal calls without strong justification is punitive.

### COMMENDATION

+ For the 2002 policy that allows segregated inmates to make privileged telephone calls at all reasonable times.

### RECOMMENDATIONS

- + Allow segregated inmates to make at least one personal call daily.
- + Provide the opportunity for segregated inmates to make phone calls during a time other than their exercise period.

## Other Issues

### Segregation as a Last Resort

Provincial policy states that segregation is to be used as a last resort, and requires the Assistant Deputy Director or Team Leader to document what alternatives were considered prior to segregation. These alternatives include confinement to one's own cell on the unit or the loss of privileges.

This is a relatively recent policy and we do not know how closely it is being followed. It does, however, raise another issue. Since alternatives

to segregation could include a restriction of liberties, the inmate is entitled to procedures that comply with the principles of fundamental justice, unless the inmate voluntarily agrees to the restriction.

Such procedures would include the rights to know the case before him or her, to be heard by an impartial decision maker, and to be provided with the reasons for the decision. At this time, there is no formal provision for such a procedure when an alternative measure is used in any of the centres.

### RECOMMENDATION

+ Make decisions to implement an alternative to segregation in accordance with the principles of fundamental justice.

### Segregation as Punishment

Although our review has revealed that some believe that the segregation of inmates for their own protection or for behaviour modification is supposed to be a deterrent, it is intended to protect the safety of inmates and staff and to prepare an inmate for reintegration into the general inmate population, and as such is not supposed to be a punishment.

Inmates can be forgiven, however, if they fail to see the distinction. Conditions and privileges for high-risk inmates in non-disciplinary segregation are nearly identical to those for inmates in disciplinary segregation. When conditions are the same, it is difficult to imagine how inmates could conclude that one type of segregation is punitive and the other is not.

The rights and privileges of inmates in segregation in the federal system are explicitly stated in *The Corrections and Conditional Release Act*. Section 39 states that no punishment is to be meted out except through the disciplinary process. Section 37 contains inmate rights and privileges in segregation.<sup>10</sup>

<sup>10</sup> *The Corrections and Conditional Release Act*, section 37:

"An inmate in administrative segregation shall be given the same rights, privileges and conditions of confinement as the general inmate population except for those rights, privileges and conditions that (a) can only be enjoyed in association with other inmates; or (b) cannot reasonably be given owing to i) limitations specific to the administrative segregation area, or ii) security requirements."



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

Conditions of confinement in segregation are more an issue of attitude than policy. Saskatchewan's policy on segregation is clear: it should only be used as a last resort, and with the least restriction necessary.

In 1973, Corrections agreed with the Ombudsman's conclusion that inmates in non-disciplinary segregation were to receive the same rights and privileges as inmates in the general population to the extent reasonably possible. Current practice falls far short of this commitment.

Admittedly, there are staffing issues and bed space problems that make this commitment difficult to live up to. Nevertheless, despite the difficulties, Corrections and Correctional staff must keep in mind that we are dealing with inmates' legal rights.

### RECOMMENDATIONS

- + Provide segregated inmates with programming and privileges consistent with Corrections' policy of least restrictive measures.
- + Provide inmates segregated for non-disciplinary reasons with rights and privileges equivalent to those they would receive in the general population, to the extent reasonably possible.

### Length of Stay in Segregation

The 1997 federal task force report titled "Commitment to Legal Compliance, Fair Decisions and Effective Results" concludes, while acknowledging that others have come to a different conclusion, that the effects of long-term segregation are harmful.

We have not conducted our own study, but this conclusion is consistent with reports we have received from inmates. Even if one were to conclude that there is no harm or that the harm is minimal, segregation is an extreme restriction of liberty that should only be used as a last resort, and for the minimum time necessary to achieve its objectives.

The experience of the four centres varies. Each of the four centres provided statistics showing the number of days inmates spent in segregation. It is difficult to compare the experience of one centre to another or to a model standard

without an analysis of the reasons for each instance of segregation and the culture of each institution.

For example, the fact that one institution holds inmates in segregation longer on average than another may simply mean that its inmates are, in general, more difficult to manage. On the other hand, it may mean that one institution's reintegration program is more effective than another's. When bed space availability is an issue, some centres place inmates in the secure unit as a temporary measure, and this will affect its statistics.

In addition to these difficulties, Corrections does not have a database it can use to determine how many inmates are being segregated, for what reasons, and for how long. This information can only be obtained by manually going through individual records. We have been informed, however, that they are presently in the process of creating such a database.

Despite having to gather information manually, Corrections examined its use of segregation in 1999. Unfortunately, due to inconsistencies in the record keeping practices of the four centres, the data is not entirely reliable. Even so, we have been advised the results are generally consistent with what was expected.

The results showed that, on average, Pine Grove and Prince Albert kept inmates on non-disciplinary segregation for six days, Regina for twelve days, and Saskatoon for seventeen and a half days.

Evidently, at least in 1999, stays in Segregation were not excessively long, although we are aware of some stays that were much longer than the above averages.

We have been advised that since 1999, there has been a slight to moderate trend toward increased use of segregation to manage inmate behaviour due to an overall increase in the risk levels of inmates. This is a subjective observation, as Corrections does not currently have a database that would enable a statistical analysis of the use of segregation, as mentioned above.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

One purpose of better information would be to ensure that so far as reasonably possible, inmates in the province's four correctional centres are being treated similarly and fairly with regard to segregation practices.

### RECOMMENDATION

+ Keep records on the use of segregation that can be used for statistical analysis.

### Bed Space Availability

The inmate population in a correctional centre often rises beyond the centre's ability to house inmates in the general population. In these circumstances, the practice has been to transfer some inmates to another centre or, in at least one centre, to place some inmates in segregation.

strictly necessary, but such placement for the purpose of bed space management is questionable.

A problem can also arise when an inmate in segregation is ready to be reintegrated into the general population but there are no cells available. If there are no provisions to allow a segregated inmate who is ready to be reintegrated to follow the same routine as inmates in the general population, that inmate's imprisonment will be unnecessarily intensified until he is moved.



A problem can also arise when an inmate in segregation is ready to be reintegrated into the general population but there are no cells available.



The problem with moving inmates to segregation is that, with the exception of Pine Grove, the move inevitably results in a curtailment of liberty.<sup>11</sup> The extreme example is the Regina correctional centre, where all inmates in segregation are on 23 ½-hour lockup.

It can be argued that if the moving of an inmate from one unit in a correctional centre to another without any fault on the part of the inmate constitutes an intensified imprisonment, the move would be arbitrary and unfair, contrary to section 7 of the Charter of Rights and Freedoms.

Such a move might be acceptable in the event of an emergency, such as a flooded unit, in which case the placement should last only as long as is

### RECOMMENDATIONS

- + Use the segregation unit for overflow living space only when absolutely necessary in the event of an emergency.
- + Take steps to enable segregated inmates waiting for cell vacancies in the general population to participate in programming and have privileges in keeping with their right to be part of the general population.

<sup>11</sup> The Pine Grove Correctional Centre is set up to enable inmates in the secure unit to follow the same routine as inmates in the general population.



## Inmate Services and Conditions of Custody in Saskatchewan Correctional Centres

### Inmate Handbook

Although practices vary, all four correctional centres provide inmates with an orientation and an explanation of the rules for the segregation unit. In some centres, the rules are written; in others they are explained orally.

One problem with oral explanations is that they are quickly forgotten unless they have immediate relevance. Despite staff attempts to orient inmates, inmates often tell us that they do not know what their rights are and do not know what the expectations are.

This situation would be addressed if inmates in the segregation unit were given, or at least had access to, a handbook that explained the rules, their rights and what is expected of them.

At this time, only Pine Grove provides inmates with a handbook regarding the segregation unit. The 1997 federal task force report on administrative segregation recommended that all inmates entering segregation receive a handbook. Although we acknowledge that the federal system has the advantage of working with more resources than the provincial system, this recommendation has merit.

If inmates' rights are to be respected, inmates have to know what their rights and obligations while in segregated are; otherwise, they can too easily be ignored.

#### RECOMMENDATION

+ Prepare a handbook for segregated inmates explaining the rules, rights and expectations in segregation.



## Segregation

### SPECIAL REPORT

#### RECOMMENDATIONS

- + Ensure that inmates are provided meaningful and detailed reasons for placement in segregation.
- + Provide inmates with the evidence that will be considered by the security review panel.
- + Give inmates sufficient time to consider the evidence that will be considered by the security review panel.
- + Allow inmates to address the security review panel in person or in writing prior to their deliberations.
- + Allow inmates appearing before a security review panel the opportunity to be represented by counsel or an agent, including an agent chosen from among other inmates.
- + Explore with appropriate non-government agencies their willingness to provide competent representation for inmates appearing before security review panels.
- + Appoint an independent, outside adjudicator to review decisions regarding segregation and continued segregation.
- + Follow the same criteria for making the decision to continue to segregate an inmate as was followed in the initial decision to impose segregation.
- + Increase the frequency of security review panel hearings for a segregated inmate to once a week.
- + Provide full reasons for the security review panel's decisions, unless doing so would compromise security interests.
- + Provide programming to segregated inmates tailored to their specific needs.
- + Ensure that a release plan is prepared for each segregated inmate that enables him or her to work toward definite goals, and minimizes the indefiniteness of their stay in segregation.
- + Provide all segregated inmates with a minimum of one full hour of quality physical exercise, including access to exercise equipment.
- + Ensure that property allowances in the segregation units of the four centres are reasonably equivalent and as generous as possible.
- + Provide segregated inmates in all four centres the opportunity to shower daily if they wish.
- + Allow segregated inmates to make at least one personal call daily.

- + Provide the opportunity for segregated inmates to make phone calls during a time other than their exercise period.
- + Make decisions to implement an alternative to segregation in accordance with the principles of fundamental justice.
- + Provide segregated inmates with programming and privileges consistent with Corrections' policy of least restrictive measures.
- + Provide inmates segregated for non-disciplinary reasons with rights and privileges equivalent to those they would receive in the general population, to the extent reasonably possible.
- + Keep records on the use of segregation that can be used for statistical analysis.
- + Use the segregation unit for overflow living space only when absolutely necessary in the event of an emergency.
- + Take steps to enable segregated inmates waiting for cell vacancies in the general population to participate in programming and have privileges in keeping with their right to be part of the general population.
- + Prepare a handbook for segregated inmates explaining the rules, rights and expectations in segregation.

#### COMMENDATIONS

- + For Corrections' decision to implement provincial policy limiting the response time for appeals regarding segregation to two days.
- + For the 2002 policy that allows segregated inmates to make privileged telephone calls at all reasonable times.