



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Ontario Human Rights Commission

Applicant

-and-

**Her Majesty the Queen in Right of Ontario as represented by
the Minister of Community Safety and Correctional Services**

Respondent

ORDER

Adjudicator: Leslie Reaume

Date: January 16, 2018

File Number: 2017-29710-S

Citation: 2018 HRTO 60

Indexed as: **OHRC v. Ontario (Community Safety and Correctional Services)**

APPEARANCES

Ontario Human Rights Commission,
Applicant

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Insiya Essajee, Matthew Horner,
and Nika Farahani, Counsel

Her Majesty the Queen in Right of
Ontario as represented by the Minister
of Community Safety and Correctional
Services, Respondent

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Victoria Yankou, Lorenzo Policelli,
and Hera Evans, Counsel

[1] The parties have resolved this Application and requested an Order on consent pursuant to section 45.9(2) of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended.

[2] The parties have agreed to the content and form of this Order which contains two separate schedules ("A" and "B") set out below.

[3] Having reviewed the material filed by the parties, including the request that the Tribunal remain seized, I direct that this Order be issued in the form set out below and that the Tribunal remain seized pending full implementation of the 2013 *Jahn v. MCSCS* settlement remedies (Appendix A) and the additional terms in Schedule "A" and Schedule "B".

SCHEDULE "A"

PUBLIC INTEREST REMEDIES RELATING TO HUMAN RIGHTS AND SEGREGATION

WHEREAS the Ontario Human Rights Commission ("OHRC") and Her Majesty the Queen in Right of Ontario as represented by the Minister of Community Safety and Correctional Services ("Ontario") were parties to the 2013 and 2015 *Jahn v. Ministry of Community Safety and Correctional Services* settlement agreements relating to the use of segregation and treatment of people with mental health disabilities, and particularly women, in Ontario's correctional system;

AND WHEREAS medical care in Ontario correctional facilities is provided by consent and no medical assessment or treatment can be provided by Ontario unless an individual or a substitute decision maker, where applicable, consents to the provision of medical care;

AND WHEREAS the OHRC has continued to make submissions and recommendations regarding segregation being used on and having particularly harmful effects for *Human Rights Code*-protected groups, and maintains the position that the use of this practice should ultimately be phased out;

AND WHEREAS the parties agree that any ongoing use of segregation must only be used as a measure of last resort and under the least

restrictive conditions possible, and in a manner that does not violate an individual's rights under the *Human Rights Code*;

AND WHEREAS Ontario is engaging in a multi-year process to implement new overarching principles relating to living conditions in correctional institutions which will include creating alternative placements, supporting infrastructure, new staff and staff training;

Jahn v. MCSCS Public Interest Remedies #2, #4, #5, #6, and #7

1. Ontario shall comply operationally with the 2013 *Jahn v. MCSCS* settlement Public Interest Remedies (PIRs) #2, #4, #5, #6 and #7 (attached as Appendix A).

Baseline Review

2. Ontario shall, by February 12, 2018, complete a baseline system-wide review which will include reviewing whether *Jahn* Public Interest Remedies #2, #4, #5, #6, and #7 were met for individuals with mental health disabilities who Ontario currently classifies as being in segregation. Ontario will provide a statement describing which placements it classifies as segregation. Mental health disabilities (including those at risk of suicide or self-harm) will be those identified through: (i) mental health alerts; (ii) the mental health screening assessment; or (iii) being reported and confirmed. This step will involve a point-in-time review of these individuals' files to assess the length of each individual's segregation placement, and whether and when the following occurred:

- Mental health screening (including the Brief Jail Mental Health Screening tool and, if warranted, the Jail Screening Assessment Tool);
- An assessment by a physician to determine if a referral to a psychiatrist was necessary (for individuals who screened positive on the mental health screening);
- A referral to a psychiatrist or other mental health care professional was made (when deemed necessary by a physician);
- A Treatment Plan was developed by a physician or psychiatrist (for individuals who screened positive on the mental health screening);
- Reassessment occurred using the mental health screening tools;
- Alternatives to the point of undue hardship were considered prior to the segregation placement;

- Five-day and 30-day segregation reviews were completed and document:
 - The details of alternatives that were considered and rejected;
 - Whether a Treatment Plan is in place;
- 30-day segregation reports were prepared and received by the Minister, and document:
 - Alternatives that were considered and rejected;
 - Whether a Treatment Plan is in place;
 - Whether the individual has a mental illness;
- 60-day aggregate segregation reports were prepared and received by the Assistant Deputy Minister, Institutional Services, and document whether individuals have a mental illness;
- A baseline health assessment by a physician/psychiatrist was conducted;
- Five-day health assessments by a physician/psychiatrist were conducted.

3. Ontario shall share the results of the baseline review in paragraph 2 with the OHRC, the Independent Expert (set out below at paragraph 10), and Independent Reviewer (set out below at paragraph 12) by February 20, 2018 (in the case of the Independent Reviewer and Independent Expert, if they are not appointed at that time they will be provided with the results upon their appointment). By April 16, 2018, Ontario shall make the results publicly available on its website. Prior to the results being published on Ontario's website, the parties will provide seven days' notice to each other before disclosing any of the results. Ontario shall work with the Independent Expert to ensure that the results are shared in a manner that allows for meaningful analysis.

4. Ontario shall, by March 14, 2018, complete a baseline system-wide review which will include reviewing whether *Jahn* Public Interest Remedies #2 and #4 were met for individuals not in segregation. This will involve a point-in-time review of the files of all individuals admitted (excluding intermittent inmates and those being transferred) into an Ontario correctional institution on Tuesday, January 10, 2017, Saturday, March 4, 2017 and Thursday, June 1, 2017, to assess whether and when the following occurred:

- Mental health screening (including the Brief Jail Mental Health Screening tool and, if warranted, the Jail Screening Assessment Tool);
- An assessment by a physician to determine if a referral to a psychiatrist was necessary (for individuals who screened positive on the mental health screening);

- A referral to a psychiatrist or other mental health care professional was made (when deemed necessary by a physician);
- A Treatment Plan was developed by a physician or psychiatrist (for individuals who screened positive on the mental health screening);
- Reassessment occurred using the mental health screening tools.

5. Ontario shall share the results of the baseline review in paragraph 4 with the OHRC, the Independent Expert (set out below at paragraph 10), and Independent Reviewer (set out below at paragraph 12) by March 21, 2018 (in the case of the Independent Reviewer and Independent Expert, if they are not appointed at that time they will be provided with the results upon their appointment). By July 31, 2018 Ontario shall make the results publicly available on its website. Prior to the results being published on Ontario's website, the parties will provide seven days' notice to each other before disclosing any of the results. Ontario shall work with the Independent Expert to ensure that the results are shared in a manner that allows for meaningful analysis.

June 2018 Review

6. In June 2018, Ontario shall conduct a sample review of the metrics identified in paragraphs 2 and 4 above, in six correctional institutions (two small, two medium, one large, one mega) to be chosen by the OHRC. For the purpose of the metrics identified in paragraph 4, the review will be with respect to those admitted on November 1, 2017.

7. By July 31, 2018, Ontario shall share the results with the OHRC, the Independent Expert (set out below at paragraph 10), and the Independent Reviewer (set out below at paragraph 12). By August 30, 2018, Ontario shall make the results publicly available on its website. Prior to the results being published on Ontario's website, the parties will provide seven days' notice to each other before disclosing any of the results. Ontario shall work with the Independent Expert to ensure that the results are shared in a manner that allows for meaningful analysis.

8. Nothing in Schedule "A" shall be relied upon as evidence of the meaning of segregation for the purposes of the 2013 *Jahn* settlement Public Interest Remedies.

Awareness of individuals with mental health disabilities

9. Ontario shall, by February 12, 2018, refine the mental health alert system by introducing a new policy which will require mental health

professionals to verify existing mental health alerts, remove inaccurate alerts and verify new mental health alerts when appropriate, on an ongoing basis as part of mental health screening upon admission and reassessment.

Independent Expert

10. Ontario shall appoint a mutually agreeable Independent Expert on human rights and corrections to assist in implementing the terms of this consent order as soon as reasonably possible, and no later than March 30, 2018. The Independent Expert shall be appointed for a term of one year. The Independent Expert's appointment may be renewed for an additional term of up to one year.

Internal Monitoring of Compliance

11. Ontario shall establish internal mechanisms to monitor the implementation of and ongoing compliance with the terms of the *Jahn* settlement agreements and the terms of this consent order.

Independent Monitoring of Compliance

12. Ontario shall appoint an Independent Reviewer to report on compliance with the 2013 *Jahn* settlement agreement and the terms of this consent order as soon as reasonably possible, and no later than March 30, 2018. The Independent Reviewer shall be approved by the OHRC and be appointed for a term of up to two years.

13. Ontario shall provide the Independent Reviewer with full cooperation and unencumbered access to the information and locations necessary to conduct his or her review.

14. In the fall of 2018, the Independent Reviewer shall issue a progress report setting out the progress that Ontario has made with respect to the commitments in this consent order which are to be completed prior to the date of the progress report. The timing and content of the progress report is subject to the discretion of the Independent Reviewer.

15. The Independent Reviewer shall issue a final report setting out, in the Independent Reviewer's opinion:

- The *Jahn* settlement remedies and terms of this consent order that have been complied with;
- The *Jahn* settlement remedies and terms of this consent order that remain outstanding;

- Any non-compliance with the *Jahn* settlement remedies and terms of this consent order, and if so, recommended steps with associated timelines for promoting compliance;
- The effectiveness of the accountability and oversight mechanisms put in place by Ontario, including the mechanisms for assessing undue hardship before placing individuals with mental health disabilities (including those at risk of suicide or self-harm) in segregation;
- Whether further changes are necessary to address the use of segregation for individuals with mental health disabilities (including those at risk of suicide or self-harm), and whether the ongoing use of segregation for this population is still necessary;
- Whether any changes are necessary to address the use of alternative housing or restrictive confinement for individuals with mental health disabilities (including those at risk of suicide or self-harm);
- Measurable changes to the treatment and experiences of individuals with mental health disabilities (including those at risk of suicide or self-harm) supported by human rights-based data and statistics.

The content of the final report is not limited to the above, and additional content can be included based on the discretion of the Independent Reviewer.

The final report will be issued by September 30, 2019, subject to the discretion of the Independent Reviewer.

16. The Independent Reviewer will be a compellable witness and the Independent Reviewer's reports may be relied upon as evidence in any subsequent proceeding.

17. The draft reports of the Independent Reviewer shall be sent to Ontario and the OHRC for their input, and to the Human Rights Tribunal of Ontario upon completion. Within 60 days of receiving the final report, Ontario shall make the report publicly available on its website.

SCHEDULE "B"

PUBLIC INTEREST REMEDIES RELATING TO HUMAN RIGHTS AND SEGREGATION

WHEREAS the Ontario Human Rights Commission ("OHRC") and Her Majesty the Queen in Right of Ontario as represented by the Minister of Community Safety and Correctional Services ("Ontario") were parties to the 2013 and 2015 *Jahn v. Ministry of Community Safety and Correctional Services* settlement agreements relating to the use of segregation and treatment of people with mental health disabilities, and particularly women, in Ontario's correctional system;

AND WHEREAS medical care in Ontario correctional facilities is provided by consent and no medical assessment or treatment can be provided by Ontario unless an individual or a substitute decision maker, where applicable, consents to the provision of medical care;

AND WHEREAS the OHRC has continued to make submissions and recommendations regarding segregation being used on and having particularly harmful effects for *Human Rights Code*-protected groups, and maintains the position that the use of this practice should ultimately be phased out;

AND WHEREAS the parties agree that any ongoing use of segregation must only be used as a measure of last resort and under the least restrictive conditions possible, and in a manner that does not violate an individual's rights under the *Human Rights Code*;

AND WHEREAS Ontario is engaging in a multi-year process to implement new overarching principles relating to living conditions in correctional institutions which will include creating alternative placements, supporting infrastructure, new staff and staff training;

Defining Segregation

1. For the purposes of meeting its obligations under Schedule "B", Ontario shall define segregation to cover at least all circumstances in which individuals are physically isolated and confined in a cell for 22 hours or more per day, excluding circumstances of lockdown. This definition will include individuals who have requested to be placed in segregation pursuant to s. 34(1)(d) of Ontario Regulation 778.

In the event that Ministry policy or the Legislature adopts a definition of segregation that is as broad as or broader than the definition of

segregation contained in this paragraph, Ontario's obligations under Schedule "B" will be governed by the definition adopted by the Legislature. Ontario will ensure that in meeting its obligations set out in Schedule "B", it captures, at a minimum, the circumstances described in this paragraph.

For greater clarity, individuals who are in segregation at the time of a lockdown will continue to be treated as being in segregation.

2. A definition of segregation that is consistent with the terms of paragraph 1 above shall be set out in policy by June 29, 2018.

3. As of June 29, 2018, Ontario's ongoing obligations under the terms of the 2013 *Jahn v. MCSCS* settlement Public Interest Remedies (attached as Appendix A) shall be governed by the definition of segregation set out in paragraph 1 above.

4. The definition of segregation set out above at paragraph 1 has been agreed to for the purposes of resolving this litigation and compliance with the terms of Schedule "B". For greater clarity, nothing in Schedule "B" prevents the OHRC from advocating for changes to the scope of conditions that are treated as segregation or the resulting protections that should be provided, in any forum, including before the Human Rights Tribunal of Ontario.

Tracking Segregation

5. Ontario shall, by July 31, 2018, have commenced manual tracking of continuous and aggregate placements in segregation, as defined in paragraph 1 above. The parties recognize that manual tracking is subject to human error and that Ontario will continuously work towards improving its tracking mechanisms. By January 31, 2019, Ontario shall consult with the Independent Expert regarding its efforts to improve its process for manually tracking segregation.

Standardizing alternative housing and tracking restrictive confinement placements

6. Ontario shall, by June 29, 2018, identify and categorize all housing placements other than general population ("alternative housing") based on the conditions of confinement therein.

7. Definitions of alternative housing shall be set out in policy by June 29, 2018 and applied across Ontario's correctional system by December 31, 2018.

8. Ontario shall seek the advice of the Independent Expert to develop a phased implementation plan to track continuous and aggregate placements of individuals in restrictive confinement, defined as any conditions of confinement that are more restrictive than general population but less restrictive than segregation, excluding circumstances of lockdown. The plan will include a method for specifically identifying any individuals who are physically or socially isolated for 22 hours or more per day, but are not otherwise considered to be in segregation. The plan will enable tracking of situations where individuals are transferred from such conditions of confinement in one facility to the same conditions in another facility as single, continuous placements. This plan will be provided to the Independent Reviewer for consideration in the Independent Reviewer's final report.

9. In the event that Ministry policy or the Legislature adopts a definition of restrictive confinement that is as broad as or broader than the definition contained in paragraph 8, Ontario's obligations under Schedule "B" will be governed by the definition adopted by the Legislature. Ontario will ensure that in meeting its obligations set out in Schedule "B", it captures, at a minimum, the circumstances described in paragraph 8.

Awareness of individuals with mental health disabilities

10. Ontario shall ensure that individuals admitted to Ontario's correctional institutions with mental health disabilities (including those at risk of suicide or self-harm) have mental health alerts and are identified in a manner consistent with protecting individuals' personal health privacy rights. Ontario shall ensure that mental health disabilities are identified through: (i) mental health screening and reassessment; or (ii) because of being reported and confirmed. Ontario shall ensure that all mental health alerts under the refined mental health alert system are verified by mental health professionals. The presence of a mental health alert under the refined mental health alert system will act as an indicator that alternatives to segregation must be considered to the point of undue hardship on account of an individual's mental health disability.

- a. By December 31, 2018, Ontario shall ensure that, going forward, individuals admitted to Ontario's correctional institutions with mental health disabilities will have the verified mental health alerts;
- b. By July 31, 2019, all individuals in custody in Ontario's correctional institutions will have undergone mental health screening or reassessment consistent with that set out above and have any mental health alerts verified.

Enhanced mental health screening and access to treatment

11. Ontario shall ensure that the following timelines are formalized in policy, and shall make all reasonable efforts to ensure substantial compliance with them on a system-wide basis, by July 31, 2018:

- a. The mental health screening required by *Jahn* Public Interest Remedy #2, including all stages of mental health screening completed by clinical staff, shall be completed no later than 96 hours after admission;
- b. Any necessary referrals arising out of the mental health screening shall be made within 24 hours/next business day of completing the screening;
- c. Treatment Plans developed in accordance with *Jahn* Public Interest Remedy #4 shall be established within 48 hours of the appointment with the assessing physician or psychiatrist, subject to the discretion of the assessing physician or psychiatrist; and
- d. Individuals shall be reassessed using the mental health screening process at least once every 6 months.

12. Ontario shall perform a compliance review to review and report on compliance with the timelines set out in sub-paragraphs 11(a) to 11(c). This will involve a point-in-time review of the files of all individuals admitted (excluding intermittent inmates and those being transferred) into an Ontario correctional institution on Thursday, August 16, 2018 to assess whether and when the health care processes set out in sub-paragraphs 11(a) to 11(c) occurred. Ontario shall share the results of this compliance review with the OHRC, the Independent Expert and the Independent Reviewer within six weeks of August 16, 2018. A further compliance review will be conducted if determined necessary by the Independent Reviewer. The timing and scope of any such review will be determined by the Independent Reviewer in consultation with Ontario.

13. Ontario shall perform a compliance review to review and report on compliance with the timelines set out in sub-paragraph 11(d). This will involve a point-in-time review of the files of 50 randomly selected individuals who, as of Thursday, March 8, 2019, have been in custody for 6 months or longer. The review will assess whether and when the 6-month mental health screening reassessments set out in paragraph 11(d) occurred. Ontario shall share the results of this review with the OHRC, the Independent Expert and the Independent Reviewer within six weeks of March 8, 2019.

Enhanced segregation documentation and reporting

14. Ontario shall, by February 15, 2018, ensure that all reports to the Minister and Assistant Deputy Minister, as per *Jahn* Public Interest Remedies #5 and #6, regarding individuals with mental illness in segregation will:

- Be provided to the Minister and Assistant Deputy Minister regardless of any delegation that would have otherwise occurred;
- Detail the circumstances of each individual's segregation placement;
- Detail the undue hardship analysis undertaken, and set out the objective, real, direct evidence relied upon in determining no alternative placement was available for each individual.

Human rights-based data collection

15. Ontario shall, starting from October 31, 2018, and continuing annually, publicly release data regarding its use of segregation and restrictive confinement for all individuals in Ontario's correctional system (excluding those on lockdown). For this data release, individuals in restrictive confinement will be determined by policy, standing orders, and a bi-monthly assessment of typical operations. Such data will include:

- a. Number of placements;
- b. Duration of placements (continuous days and aggregate days over the course of the previous 365 days);
- c. Reason for placements;
- d. Deaths; and,
- e. Instances when individuals are put on suicide watch by clinical staff.

Data relating to the above categories, shall be disaggregated based on: (i) those with mental health disabilities (including risk of suicide or self-harm) whether identified through mental health alerts, mental health screening and reassessment, or by being reported and confirmed; (ii) sex/gender; (iii) facility; and (iv) region. Ontario shall work with the Independent Expert to ensure that the data is released in a manner that allows for meaningful analysis of how segregation and restrictive confinement are used on and affect individuals based on mental health disability and sex/gender.

16. As of July 31, 2019, each time the data as per paragraph 15 is released, Ontario will also provide information on the proportion of individuals in the overall correctional population with mental health

disabilities, and the breakdown of the overall correctional population based on sex/gender.

17. When Ontario implements a system, as referenced in Paragraph 8, to track continuous and aggregate restrictive confinement placements based on individual conditions of confinement, excluding circumstances of lockdown, it will publicly release such data on a disaggregated basis as set out above in paragraph 15, and specifically identify any individuals who are physically or socially isolated for 22 hours or more per day, but not considered to be in segregation.

18. Ontario shall consult with the Information and Privacy Commission to ensure that it releases data in a manner that respects individuals' privacy rights.

Independent Expert

19. The Independent Expert appointed pursuant to Schedule "A" shall assist in implementing the terms set out in Schedule "B".

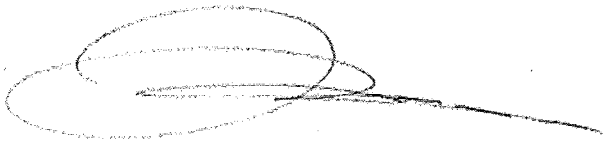
Internal Monitoring of Compliance

20. Ontario shall establish internal mechanisms to monitor the implementation of and ongoing compliance with the terms of Schedule "B".

Independent Monitoring of Compliance

21. The reports of the Independent Reviewer appointed pursuant to Schedule "A" shall include a consideration of Ontario's compliance with the terms of Schedule "B".

Dated at Toronto, this 16th day of January, 2018.



Leslie Reaume
Vice-chair

APPENDIX A

IN THE MATTER OF

***CHRISTINA NADINE JAHN v. HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
AS REPRESENTED BY THE MINISTER OF COMMUNITY SAFETY AND
CORRECTIONAL SERVICES***

BEFORE THE HUMAN RIGHTS TRIBUNAL OF ONTARIO

September 24, 2013

PUBLIC INTEREST REMEDIES

WHEREAS medical care in Ontario correctional facilities is provided by consent and no medical assessment or treatment can be provided by the Respondent unless an inmate, or a substitute decision maker, where applicable, consents to the provision of medical care;

AND WHEREAS the parties recognize and acknowledge that medical decisions regarding appropriate assessment and treatment options for inmates must be made by qualified professionals according to their own judgment and professional standards;

AND WHEREAS no party to this agreement shall be liable for failing to perform, or delaying the performance of, the terms of this agreement in the event that such failure is caused by events outside of the parties' control, including, but not limited to, labour disruptions at the Respondent Ministry;

AND WHEREAS "inmate" refers to all incarcerated individuals, including both remanded and sentenced individuals;

Facilities

1. The Ministry commits to completing a report within 18 months on how best to serve female inmates with major mental illness. A copy of this report will be provided to the Commission.

This report will be prepared in consultation with a mental health expert and will consider various options for female inmates with major mental illness including, among other things, the viability of: building a secure treatment facility for women of a comparable nature to that provided to male offenders at the SLVCTC; creating secure treatment units for inmates with major mental illness in existing facilities; and incorporating a secure treatment unit for inmates with a major mental illness into all new correctional facilities built on or after 2014. All options considered will include the provision of 24/7 medical supervision, and require

decisions about the treatment and movement of inmates with major mental illness to be made in consultation with health care providers. The report will be evidence-based and will include recommendations.

The Ministry will commit to implementing the report's recommendations within a further period of 18 months. In the event the Ministry does not implement specific recommendations, it will provide a detailed written rationale to the Commission.

Screening

2. The Ministry will ensure that all inmates are screened for mental health issues on admission to a correctional facility.

The Ministry commits to establishing mental health screening, using an evidence-based, gender-responsive screening tool approved by a correctional psychiatrist, of all inmates upon admission to all provincial correctional facilities within 18 months. A copy of the mental health screening tool will be provided to the Commission.

The Ministry will provide training on the mental health screening tool to all corrections staff who will be using the tool and will implement the use of the tool at all provincial correctional facilities within 24 months.

The Ministry has advised that it is currently piloting mental health screening using a gender-responsive, evidence-based screening tool in several selected facilities. The Ministry will commit to continuing to use this form of mental health screening until it establishes and implements mental health screening, using an evidence-based, gender-responsive screening tool approved by a correctional psychiatrist, for all inmates upon admission to all provincial correctional facilities, as required above. Information gathered during this pilot will inform the implementation of the screening tool that is ultimately established.

The Ministry will ensure that a physician conducts an assessment of all inmates who screen positive for mental health issues as soon as possible upon admission to all corrections facilities, and determines whether a further referral to a psychiatrist is necessary.

The Ministry will continuously reassess inmates using the mental health screening tool, and will commit to mental health professionals following up with inmates who have a mental health care need.

Access to mental health services

3. The Ministry will complete a review of its psychiatric physician contracts within 6 months to ensure adequate sessions are funded and available to address the needs of inmates in all provincial correctional facilities at the earliest and most appropriate opportunity. The review will include an assessment utilizing interviews with health care

staff and physicians, a review of waiting lists and waiting list times, and a review of alerts in the Ministry's Offender Tracking Information System ("OTIS").

4. For those inmates who screen positive for mental health issues through the aforementioned gender-responsive, evidence-based, mental health screening tool, a physician will develop an appropriate treatment plan. This treatment plan may be developed in consultation with mental health professionals. The treatment plan will be: accessible to all inter-professional team members involved in the case; identify the issues and goals, including addressing behavioural issues, illness, etc.; outline interventions; identify who is responsible for treatment and interventions; and set out how the treatment plan will be implemented. The Ministry agrees that amendments to or variance from the treatment plan can only be made in consultation with a primary care physician or a psychiatrist, as appropriate.

Those inmates with a major mental illness will be referred as soon as possible to a psychiatrist, who will develop an appropriate treatment plan. The treatment plan will: be accessible to all inter-professional team members involved in the case; identify the issues and goals, including addressing behavioural issues, illness, etc.; outline interventions; identify who is responsible for treatment and interventions; and set out how the treatment plan will be implemented. The Ministry agrees that amendments to or variance from the treatment plan for inmates with a major mental illness can only be made by a psychiatrist. Inmates with a major mental illness will also be assessed on an ongoing basis, as medically required in order to meet the requisite standard of care, by a psychiatrist.

In addition to psychiatrists, inmates will also be referred to other mental health resources as required to support the inmate where appropriate. The program personnel engaged in discharge planning will also be advised at the earliest opportunity to begin planning for the inmate's return to the community.

Segregation

Disciplinary Segregation [Disciplinary segregation includes close confinement]

5. The Ministry will promptly amend the Inmate Management Policy on Discipline and Misconduct to require staff to:

- a. take mental health considerations into account as a mitigating factor in cases of misconduct;
- b. consult with a mental health professional to see if therapeutic alternatives are available before making a decision in accordance with the procedure set out in sections 31 and 32 of RRO 1990, Reg 778, regulation under the *Ministry of Correctional Services Act*, with respect to an allegation of misconduct on the part of an inmate with mental illness;

- c. not use segregation to discipline inmates with mental illness, unless the Ministry can demonstrate that alternatives to segregation have been considered and rejected because they would cause an undue hardship (including for reasons related to security and/or health and safety concerns); and,
- d. notify the Assistant Deputy Minister, Institutional Services, when any inmate has been in segregation in excess of 60 aggregate days in a year, and will indicate if the inmate has a mental illness.

The Ministry will provide the Commission with a copy of the amended Inmate Management Policy on Discipline and Misconduct.

Within 12 months the Ministry will, in consultation with a mental health expert, complete a review of its policies and practices regarding institutional misconduct handling to ensure the issues relating to inmates with mental health concerns are addressed in accordance with the Human Rights Code. The Ministry will provide the Commission with a copy of the review and advise of any changes it will make to its policies and practices regarding institutional misconduct handling as a result of the review.

Administrative Segregation [Administrative segregation includes all other forms of segregation other than disciplinary segregation]

6. The Ministry will amend its segregation policies to state that segregation for inmates with mental illness shall not be used unless the Ministry can demonstrate alternatives to segregation have been considered and rejected because they would cause an undue hardship (including for reasons related to security and/or health and safety concerns). The Ministry recognizes that segregation can have an adverse impact on inmates with mental illness.

The Ministry will continue to review the circumstances of inmates who are placed in segregation at least once every five days and again after a period of 30 continuous days in segregation. For inmates with mental illness, the Ministry shall document in the segregation reviews what alternatives have been considered and rejected, including whether a treatment plan is in place that may assist the Inmate in leaving segregation. The Ministry will commit to notifying the Assistant Deputy Minister, Institutional Services, when any inmate has been in segregation for a period in excess of 60 aggregate days in one year, and will indicate if the inmate has a mental illness.

Any report to the Minister under section 34(5) of ARO 1990, Reg. 778 under the *Ministry of Correctional Services Act* of the reasons for an inmate to be in continuous segregation for over 30 days will indicate if the inmate has a mental illness, and shall document what alternatives have been considered and rejected, including whether a treatment plan is in place that may assist the inmate in leaving segregation.

The Ministry will complete a review, in consultation with mental health expert, of its policies and practices regarding the management of inmates housed in segregation,

with a focus on the management of mentally ill inmates, within 12 months. The Ministry will provide the Commission with a copy of this review.

Assessment and access to mental health services for inmates in segregation

7. When an inmate with mental health issues is placed in segregation, the Ministry will provide or offer to provide a baseline assessment by a physician, who will determine what, if any, changes are required to the inmate's treatment plan. For inmates with a major mental illness, the Ministry will provide or offer to provide a baseline assessment by a psychiatrist, who will determine what, if any, changes are required to the inmate's treatment plan.

The Ministry agrees that a physician will, subject to the inmate's consent, conduct an assessment of an inmate prior to each 5-day segregation decision/review. For inmates with a major mental illness, the Ministry agrees that a psychiatrist will, subject to the inmate's consent, conduct an assessment of an inmate prior to each 5-day segregation decision/review.

The Ministry will ensure that all inmates in segregation are offered individualized mental health services as appropriate on an ongoing basis.

Mental health training

8. The Ministry is committed to delivering a training program on mental health issues to its front line staff and managers.

The Ministry has completed a pilot training program and will consult with the Commission and mental health professionals regarding the next steps in that pilot program.

The Ministry will implement a training program that specifically addresses the following:

- a. human rights obligations and the need to accommodate inmates with mental illness;
- b. identifying barriers that are the symptoms of mental illness;
- c. the impact of punitive measures, such as the use of force and segregation, on inmates' mental illness; and,
- d. the specific needs of particularly vulnerable inmate populations with mental illness.

Whereas the Ministry has advised that the process for delivering this training program will take some time to complete given the size of the Ministry, and the need to consult with its bargaining agent, the Ministry will commit to delivering this training within 24 months.

Inmate Handbook

9. The Ministry will, within 12 months, review and revise its Inmate Handbook to reflect the rights and responsibilities of inmates, with specific reference to rights of inmates set out in section 34 of ARO 1990, Reg. 778 under the *Ministry of Correctional Services Act*, as well as Ministry policies (including those related to discipline and misconduct and/or administrative segregation, conditions of confinement, health care, and making complaints). This will be done in coordination with the review of its policies and procedures regarding institutional misconduct handling and the management of inmates housed in segregation. The Inmate Handbook will be posted on the Ministry's public website, will be made accessible to all inmates, and will be proactively offered to inmates who are subject to disciplinary or administrative segregation.

Statistical Reporting

10. The Ministry will prepare a statistical report concerning the number of female inmates at the Ottawa Carleton Detention Centre placed in segregation for 30 continuous days and/or in excess of 60 aggregate days in one year and the reason(s) for each placement. This report will be provided to the Commission once annually for a period of 3 years commencing from the introduction of a revised OTIS, currently scheduled to be implemented in Spring 2014.