HRTO File No. 2016-25116-I

In the Matter of an Application under the *Human Rights Code*, R.S.O. 1990, c. H. 19, as amended.

B E T W E E N:

GREGORY ALLEN

(the "Applicant")

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES

(the "Respondent")

- and -

CANADIAN CIVIL LIBERTIES ASSOCIATION

(the "Intervenor")

FACTUM OF THE INTERVENOR, CANADIAN CIVIL LIBERTIES ASSOCIATION

McCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Kosta Kalogiros LS#: 53989A
Scott Robinson LS#: 65689W

Tel: 416-601-8349
Fax: 416-868-0673

Lawyers for the Intervenor, Canadian Civil Liberties Association

TO: MARTINEZ LAW
1235 Bay Street, Suite 700
Toronto, ON, M5R 3K4

Shane Martinez LS#: 60515M
Tel: 647-717-8111
Fax: 866-436-6586
shane@martinezlaw.ca

Lawyer for the Applicant, Gregory Allen

AND TO: MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES
Legal Services Branch
655 Bay Street, Suite 501
Toronto, ON M7A 0A8

Andrea Huckins LS#: 50774W
Tel: 416-212-8361
Fax: 416-314-3518
andrea.huckins@ontario.ca

Lawyers for the Respondent, Her Majesty the Queen in Right of Ontario

TABLE OF CONTENTS

PAGE

I. OVERVIEW 1

II. FACTS 2

III. ISSUES 7

IV. LAW AND ARGUMENT 8

A. The definition of solitary confinement 8

B. The impact and harms of solitary confinement 11

C. Canada's legal commitments and understanding of solitary confinement 21

1. Canada's obligations at international law and the use of solitary confinement 21

2. Domestic concern about solitary confinement throughout Canada 24

D. A person's disability cannot be a justification for solitary confinement 41

E. Solitary confinement cannot be "reasonable accommodation" under the Code 42

F. Potential public interest remedies 44

1. Public interest remedies, solitary confinement, and inmates with physical disabilities 45

2. Public interest remedies and accessibility for physical disabilities in Ontario jails 46

3. Other matters 48

a) Defining solitary confinement 48

b) The requisite independence of health services in Ontario jails 48

c) Interim measures 48

d) General 49

V. CONCLUSION 49

SCHEDULE A – LIST OF AUTHORITIES 51

HRTO File No. 2016-25116-I

In the Matter of an Application under the *Human Rights Code*, R.S.O. 1990, c. H. 19, as amended.

B E T W E E N:

GREGORY ALLEN

(the "Applicant")

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES

(the "Respondent")

- and -

CANADIAN CIVIL LIBERTIES ASSOCIATION

(the "Intervenor")

FACTUM OF THE INTERVENOR, CANADIAN CIVIL LIBERTIES ASSOCIATION

I. OVERVIEW

1. Solitary confinement is a harmful practice that severely violates individual rights, and has even more harmful effects on individuals with disabilities. The Canadian Civil Liberties Association ("**CCLA**") intervenes in this human rights application (the "**Application**") filed by Gregory Allen ("**Mr. Allen**") to provide background, context, and legal assistance to this Tribunal pertaining to solitary confinement in Canadian correctional facilities, including in Ontario jails.

2. The CCLA intervenes as a public interest organization committed to the protection of human rights and fundamental freedoms. Its intentions and submissions go beyond the ambit of the private rights of the parties before the Tribunal in this particular Application.

3. In Canada and abroad there is a well-established understanding of solitary confinement and its associated harms. This reality has been steadily taking root in Canada's federal and provincial legal and regulatory systems. This Tribunal will benefit from being apprised of these

developments relating to solitary confinement in Canada, especially in its consideration in this Application of the intersection between solitary confinement practices and a person's right to freedom from discrimination, including reasonable accommodation, under the Ontario *Human Rights Code* (the **"Code"**). The CCLA provides this information by way of its factum, authorities, and oral argument in this matter.

4. This Application presents a first instance opportunity for this Tribunal to consider, in relation to the Code, the harms of solitary confinement, the inappropriateness of, and inherent *Charter* violation in, subjecting persons with physical disabilities to solitary confinement, and the patently absurd justification for such confinement as a means of "reasonable accommodation". These are matters of broad public importance. These are matters directly concerned with the administration of justice in Ontario jails and the human rights of those whom the Crown has deprived of their liberty.

5. The CCLA has unique insight into these issues given its contribution and participation in various proceedings, reports, and initiatives regarding solitary confinement in Canada. It is here to guide the Tribunal on issues of importance to Mr. Allen's Application, as well as on potential public interest remedies this Tribunal could order to provide meaningful effect to the Code. In keeping with the scope of its intervention as permitted by this Tribunal, the CCLA relies upon the factual record and witness evidence as filed and introduced by the parties. It also relies upon relevant statutes, regulations, secondary sources, legal treatises, international law/conventions, endorsements of expert reports/studies available in the public domain, and jurisprudence which may be referenced without the need to call witnesses.

II. FACTS

6. As stated above, the CCLA takes no position with respect to any disagreement between the parties on factual matters. The CCLA has not proffered its own evidence in this Application of any kind. It has not and will not elicit testimonial evidence or its own expert reports.

7. The CCLA understands that several factual matters are in dispute. However, should the facts alleged by Mr. Allen be found to be true by this Tribunal, they will provide useful context and will likely carry important public interest implications. As such, and without taking a position as to the accuracy of the facts alleged by Mr. Allen, the CCLA's submissions will refer to these facts and to evidence provided by him, including his records as submitted in this matter and his *viva voce* testimony.

8. This Application raises the question of whether the Ministry of Community Safety and Correctional Services ("**MCSCS**") discriminated against Mr. Allen, an African-Canadian inmate who is confined to a wheelchair, during his incarceration at the Maplehurst Correctional Complex ("**Maplehurst**"). Among other things, Mr. Allen asks this Tribunal to determine whether the Respondent's decision to place Mr. Allen in "Medical Observation Unit" 10A ("**Unit 10A**") from September 4, 2014 to October 21, 2015 as an inmate with a physical disability, breached his rights under the Code.[1]

9. Facts alleged by Mr. Allen include the following:

10. Mr. Allen is a Canadian permanent resident who identifies as a Black Jamaican-Canadian.[2]

11. Since July 2012, Mr. Allen has been unable to walk. He requires the use of a wheelchair at all times, in all functions.[3]

12. Mr. Allen also has special diet considerations due to his injury. As the result of a partial colectomy, he is extremely sensitive to red meats and fried foods, for example.[4]

13. In or around 2014, following a search of his vehicle, Mr. Allen was charged with non-violent drug and weapons offences. His bail was revoked when his surety removed herself.[5] He had no prior criminal record.

14. In or around August 2014, Mr. Allen was placed in the general inmate population in the Brantford Jail. There, his mobility issues were deemed an issue on account of his wheelchair and whether the jail could accommodate his circumstances. He was also placed on a modified regular diet without beef, pork, or fried foods.[6]

15. On or about September 4, 2014, Mr. Allen was transferred from the Brantford Jail to Maplehurst in Milton, Ontario, to await trial.[7] The Maplehurst medical staff recommended his

---

[1] See generally Application of Gregory Allen dated July 29, 2016, Schedule A.

[2] Gregory Allen Examination-In-Chief Transcript dated October 31, 2018, p. 23, lns. 14-16; p. 24, lns. 21-25; p. 25, lns. 1-7; p. 26, lns. 4-19.

[3] Ibid at p. 27, lns. 19-25; p. 28, lns.1-3, 15-20.

[4] Ibid at p. 30, lns. 14-18; p. 39, lns. 19-15; p. 40, lns. 1-25, p. 41., lns. 1-25, p. 42, lns. 1-25; p. 188, lns. 20-25; p. 189, lns. 1-9.

[5] Ibid at p. 56, lns. 1-11.

[6] Ibid at p. 65, lns. 6-13; p. 67, lns. 17-19; p. 71, lns. 1-9, 24, 25; p. 72, lns. 1-9.

[7] Ibid at p. 77, lns.7-10.

placement in the infirmary and advised that due to his confinement in a wheelchair, he required daily showers for health reasons.[8]

16. Mr. Allen was prevented from being placed in the infirmary due to lack of resources. As a result, Mr. Allen was subsequently placed alone in segregation in Unit 10A (medical observation).[9] Mr. Allen was effectively placed in Unit 10A on account of his physical disability.

17. Mr. Allen then languished in Unit 10A for the next ***412 days***.[10]

18. Mr. Allen's segregation in Unit 10A demonstrates many of the harms and indicia of solitary confinement discussed herein. For example:

(i) Mr. Allen was alone in Unit 10A and quickly began experiencing feelings of sadness, loneliness and frustration;[11]

(ii) He remained immobile in his small cell for at least 23 hours per day;[12]

(iii) His placement in Unit 10A was prolonged in the extreme, lasting 412 days;[13]

(iv) Some days he would not be permitted to leave the cell at all;[14]

(v) He would often go days without a shower, despite his need for daily showers due to health reasons. He developed painful and irritating bedsores as a result, and his affected skin began to exude a foul odour;[15]

(vi) He was denied appropriate medical care while in Unit 10A, despite being advised of his health needs for cleanliness and daily showers by a doctor on staff;[16]

(vii) He would often go weeks without access to the exercise yard;[17]

(viii) His communication with those outside his cell was done through a small slot in his cell door, which would only occur when correctional staff would open it when they wanted to engage with him;[18]

(ix) His access to the telephone and writing materials was completely at the mercy of correctional staff;[19]

---

[8] Ibid at p. 81, lns.13-25; p. 82, lns. 1-11; p. 116, lns. 7-25; p. 117, lns. 1-9.

[9] Ibid at p. 81, lns.24-25; p. 82, lns. 1-11.

[10] Ibid at p. 14, lns. 14-17 [opening statement], p. 92, lns. 23-25; p. 93, lns. 1-3.

[11] Ibid at p. 245, lns. 20-25; p. 246, lns. 1,2; p. 249, lns. 7-11.

[12] Ibid at p. 92, lns. 5-7; p. 101, lns. 18-25; p. 102, lns. 1-14.

[13] Ibid at p. 14, lns. 14-17 [opening statement], p. 92, lns. 23-25; p. 93, lns. 1-3.

[14] Ibid at p. 92, lns. 5-7.

[15] Ibid at p. 141, lns. 1-25; p. 142, lns. 22-23; p. 128, lns. 23-25, p. 129, lns. 7-12.

[16] Ibid at p. 129, lns. 19-25; p. 130, lns. 1-25; p. 131, lns. 1-5; p. 132, lns. 14-25; p. 133, lns. 1-18.

[17] Ibid at p. 102, lns. 3-9; p. 277, lns. 3-8.

[18] Ibid at p. 95, lns. 9-25, p. 96, ln. 1.

(x) He had no access to a television or otherwise in Unit 10A;[20]

(xi) Over the period of his segregation, he was overcome with feelings of depression, fear, self-doubt, humiliation, loss of self-respect, loss of dignity, loss of self-esteem, stress, anxiety, and uncertainty. He suffers from the emotional and psychological impact of these experiences to this day;[21]

(xii) He witnessed what he understood to be two (2) attempted suicides in the segregation unit, which exacerbated his symptoms of, for example, depression, fear, and self-doubt;[22]

(xiii) He requested that his wheelchair be fitted with footrests while in Unit 10A. These requests were ignored;[23]

(xiv) Unit 10A was not equipped with any support bars for him to use when moving himself from the wheelchair to the toilet;[24]

(xv) He was denied the appropriate diet required due to his health needs while in Unit 10A. As a result, he was provided with an insufficient amount of food, which made him unable to take his prescribed medications;[25]

(xvi) He experienced ongoing hunger and began to lose weight and energy while in Unit 10A due to inadequate nutrition provided;[26]

(xvii) He was denied specialized footwear required due to his health needs while in Unit 10A, as well as other basic necessities such as blankets;[27]

(xviii) He was denied his regular and necessary physiotherapy, exercises, or physical assistance of any kind while in segregation in Unit 10A. This was partly due to lack of resources required for him to make progress;[28] and

(xix) He was subjected to racial slurs and insults by correctional staff.[29]

19. Throughout his segregation in Unit 10A, Mr. Allen's criminal counsel wrote to Maplehurst to contest the deplorable conditions in which Mr. Allen was segregated and to advise of his

---

[19] Ibid at p. 84, lns. 10-22; p. 110, lns. 25, p. 111, lns. 1-7.

[20] Ibid at p. 106, lns. 2-4.

[21] Ibid at p. 244, lns. 6-25, p. 255, lns. 1-2, 25, p. 246, lns. 1-21, p. 249, lns. 7-24; p. 250, lns. 16-22.

[22] Ibid at p. 246, lns. 24-25; p. 247, lns. 1-25; p. 248, lns. 1-25; p. 249, lns. 1-6.

[23] Ibid at p. 80, lns. 7-25; p. 81, lns. 1-3; p. 181, lns. 18-24; p. 185, lns. 1-9; p. 185, lns. 17-24.

[24] Ibid at p. 93, lns. 22-25; p. 94, lns. 1-2, 21-23.

[25] Ibid at p. 187, lns. 13-25; p. 188, lns. 1, 4-10; p. 189, lns. 10-25; p. 190, lns. 1, 4-8; p. 191, lns. 1-5; p. 195, lns. 21-25; p. 196, ln. 1; p. 198, lns. 2-13. See also Cross-Examination of Gregory Allen Transcript dated December 11, 2018, p. 37, lns. 3-23.

[26] Gregory Allen Examination-In-Chief Transcript dated October 31, 2018, p. 201, lns. 24-25; p. 202, lns. 1-16.

[27] See e.g. ibid at p. 51, lns. 1-14; p. 102, lns. 3-6; p. 148, lns. 13-24; p. 149, lns. 1-23; p. 206, lns. 22-25; p. 207, lns. 1-19.

[28] Ibid at p. 143, lns. 19-25; p. 144, lns. 1-4; p. 147, lns. 7-25, p. 148, lns. 1-12. See also Cross-Examination of Gregory Allen Transcript dated December 11, 2018, p. 53-55.

[29] Gregory Allen Examination-In-Chief Transcript dated October 31, 2018, p. 113, lns. 13-24.

special medical needs due to his physical disability, including his special diet and his need for daily showers.[30]

20. Mr. Allen was not sentenced to his term in custody until September 2015. He had no prior criminal convictions. The conviction was appealed. As such, Mr. Allen was subjected to the majority of his time in solitary confinement in Unit 10A under no criminal conviction or sentencing, but rather while he awaited his trial.

21. On February 14, 2018, for the purpose of this Application, Mr. Allen was assessed by Dr. Lara Hiseler to "provide an understanding of what effect, if any, that segregation at Maplehurst had on Mr. Allen's emotional and psychological well-being".[31] The report noted several concerns, including the following: Mr. Allen did not receive psychological services while in Unit 10A;[32] he felt his physical developments were stagnated due to lack of physiotherapy, lack of access to qualified professionals, and lack of resources;[33] he felt embarrassment and humiliation due to the odours and sores resulting from his lack of access to daily showers;[34] and his relationship with his spouse and daughter suffered as a result of his segregation in Unit 10A, with visits becoming infrequent, stressful, and often cut short.[35]

22. Particularly with respect to harms, the report noted that while in Unit 10A, Mr. Allen became withdrawn, angry, complaining, argumentative, impatient, and lost interest in activities he used to enjoy;[36] he experienced, among other symptoms, sadness, pessimism, loss of pleasure, feeling guilty, self-dislike, crying, agitation, indecisiveness, worthlessness, lethargy, decreased sleep, lack of concentration, nervousness, shortness of breath, fear of losing control, perspiration, stress, and anxiety;[37] his physical symptoms and disability were likely exacerbated by his mental state;[38] he suffers from nightmares and related issues associated with his time in

---

[30] See e.g. Letters from Law Office of David Bayliss to Maplehurst Correctional Complex dated September 18, 2014, March 7, 2015, and August 17, 2015, Applicant's Book of Documents, Vol. 1, Tab 4. See also Gregory Allen Examination-In-Chief Transcript dated October 31, 2018, p. 145, lns. 13-25; p. 146, lns. 1-25, p. 147, lns. 1-20.

[31] Report of Dr. Lara Hiseler on Psychological Assessment of Gregory Allen dated February 14, 2018, Applicant's Book of Documents, Vol. 1, Tab 5. See also Gregory Allen Examination-In-Chief Transcript dated October 31, 2018, p. 288, ln. 25; p. 289, lns. 1-7.

[32] Report of Dr. Lara Hiseler on Psychological Assessment of Gregory Allen dated February 14, 2018 at p. 5, Applicant's Book of Documents, Vol. 1, Tab 5.

[33] Ibid at p. 5, Applicant's Book of Documents, Vol. 1, Tab 5.

[34] Ibid at p. 6, Applicant's Book of Documents, Vol. 1, Tab 5.

[35] Ibid at p. 6, Applicant's Book of Documents, Vol. 1, Tab 5.

[36] Ibid at pp. 6, 11, Applicant's Book of Documents, Vol. 1, Tab 5.

[37] Ibid at pp. 11-12, Applicant's Book of Documents, Vol. 1, Tab 5.

[38] Ibid at p. 12, Applicant's Book of Documents, Vol. 1, Tab 5.

Unit 10A;[39] his mental health problems onset during his time in Unit 10A and have persisted since his removal;[40] and "The negative effects of segregation on mental health problems are profoundly negative, extremely common, and well documented in various international jurisdictions as well as in Canada".[41]

23. In or around November 2018, Mr. Allen was released from custody.

III. <u>ISSUES</u>

24. In keeping with the permitted scope of its intervention, the CCLA makes submissions below in respect of the following:

(i) The definition of solitary confinement;

(ii) The serious harm solitary confinement can have on individuals' health and its impact on their fundamental human and *Charter* rights;

(iii) Canada's domestic and international legal commitments in regards to limiting the use of solitary confinement and Canada's understanding of solitary confinement;

(iv) The impermissibility of using a person's disability, including physical disability, as a justification for solitary confinement;

(v) The severity and harms of solitary confinement which render solitary confinement patently inappropriate as a means of "reasonable accommodation" for individuals with disabilities, including physical disabilities; and

(vi) Appropriate public interest remedies this Tribunal could order in relation to solitary confinement of persons with physical disabilities, as well as in relation to accessibility and accommodation generally for persons with physical disabilities in Ontario jails and other related matters.

25. The Tribunal's decision in this Application could play a role in providing guidance to correctional facilities throughout Ontario, and perhaps beyond, regarding the use of solitary confinement with respect to inmates with a physical disability, a matter of great public interest that has not otherwise received due attention in Canada to date. This Tribunal is uniquely situated to make declarations and fashion public interest remedies that further reflect Canada's and Ontario's understanding of solitary confinement and its nature and impact. It should seize upon this opportunity presented in this Application.

---

[39] Ibid at p. 9, Applicant's Book of Documents, Vol. 1, Tab 5.

[40] Ibid at p. 13, Applicant's Book of Documents, Vol. 1, Tab 5.

[41] Ibid at pp. 12-13, Applicant's Book of Documents, Vol. 1, Tab 5.

IV. LAW AND ARGUMENT

A. The definition of solitary confinement

26. Canadian courts have recognized that solitary confinement is a "prison within a prison".[42] It has unfortunately become an ordinary means of removing certain inmates who are seen as "problematic" from the general population, or of disposing of inmates who present a burden to jail staff, many of whom are in a vulnerable mental and/or physical state.

27. Solitary confinement is a form of confinement involving extreme isolation of individuals. The *United Nations Standard Minimum Rules for the Treatment of Prisoners*, commonly known as the "**Mandela Rules**", provide a minimum international standard below which Canada and its actors cannot fall. The Mandela Rules define solitary confinement under Rule 44 as follows:

> For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.[43]

28. Rule 43(1) of the Mandela Rules prohibits solitary confinement in excess of 15 days, which is commonly referred to as "prolonged solitary confinement":

> [I]n no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:
>
> a. Indefinite solitary confinement;
>
> b. Prolonged solitary confinement.[44]

29. Canadian courts have utilized the Rule 44 definition of solitary confinement as helpful in establishing international norms and minimal standards operative and applicable in Canada. For example, recently in *CCLA v. Canada*, the court found that the Mandela Rules "represent an international consensus of proper principles and practices in the management of prisons and

---

[42] See e.g. *Hamm v Attorney General of Canada (Edmonton Institution)*, 2016 ABQB 440 at para. 67, Intervenor's BOA, Tab 19.

[43] *United Nations Standard Minimum Rules for the Treatment of Prisoners* (17 December 2015), Rule 44, Intervenor's BOA, Tab 46.

[44] Ibid at Rule 43(1), Intervenor's BOA, Tab 46.

the treatment of those confined",[45] and that the practice of 'administrative segregation' in Canada amounts to solitary confinement under the Mandela Rules.[46]

30. Moreover, recently in *BCCLA v. Canada*, the court cited the fact that "[t]he Mandela Rules define solitary confinement as the confinement of an inmate for 22 hours or more a day without meaningful human contact".[47] It noted that it was "satisfied that administrative segregation as currently practiced in Canada conforms to the definition of solitary confinement found in the Mandela Rules", and that "inmates in administrative segregation are confined without meaningful human contact".[48]

31. Similarly, the *Istanbul Statement on the Use and Effects of Solitary Confinement*, adopted by the International Psychological Trauma Symposium, states:

> Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.[49]

32. In the March 2017 report titled *Segregation in Ontario: Independent Review of Ontario Corrections*, conducted by former federal Correctional Investigator of Canada, Howard Sapers, the following was noted about the applicable definition in Ontario:

> It is a basic question: "What is segregation"? Unfortunately, provincial law and policy offer no clear answer. The only definition of segregation appears in Ministry policy, which essentially states that a person is in segregation when they are in the official segregation area. This definition is both under-inclusive and tautological. Inmates confined to their cells for 22 or more hours a day, but outside of the designated segregation area, may not fall within this definition. Those inmates that are officially counted in "segregation" are so regarded because the institution has defined the area in which they are held as the segregation area – a designation that is determined solely by the institution itself. …
>
> Ontario's laws and policies set out a series of procedural protections and rights that must apply when an inmate is placed in segregation. When inmates are held in segregation-like conditions outside of the designated segregation areas, these protections often fall away.

[45] *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491 at para. 61, Intervenor's BOA, Tab 11.

[46] See e.g. ibid at para. 46, Intervenor's BOA, Tab 11.

[47] *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62 at para. 123, Intervenor's BOA, Tab 6.

[48] Ibid at para. 137, Intervenor's BOA, Tab 6.

[49] *Istanbul Statement on the Use and Effects of Solitary Confinement* (9 December 2007), Intervenor's BOA, Tab 57.

> The Ontario Ombudsman has recommended that the Ministry adopt a broader, more accurate definition that reflects the international consensus, as well as the reality of segregation in Ontario. Despite the fact that this recommendation was made almost a year ago, no policy change has occurred …[50]

33. Sapers noted that: "The most frequent definition of segregation, used by both international organizations and community stakeholders, is the physical and social isolation of an individual for 22 to 24 hours a day".[51]

34. The College of Family Physicians of Canada,[52] the Registered Nurses Association of Ontario,[53] and the John Howard Society of Ontario,[54] all refer to this generally agreed upon definition of solitary confinement.

35. In conclusion, the internationally agreed upon definition of solitary confinement constitutes isolation, without meaningful contact, for 22 to 24 hours per day. And what defines solitary confinement is not the terminology or categorization utilized by correctional institutions, but the state of extreme isolation in which individuals are held. It is this that causes serious harms to individuals. As such, for the purpose of this Application, this Tribunal is respectfully urged to define solitary confinement as: ***a state of extreme isolation, which must include at least any circumstances in which prisoners are held without meaningful human contact for 22 or more hours a day***.

36. This definition includes an objective, fact-based determination, regardless of what the actor depriving the liberty may wish to call it. Indeed, as recently noted in *Hamm v. Canada*, "[i]t is agreed by all parties that what the institution describes as 'segregation' is often referred to in the public media, in academia, and in United Nations documents as 'solitary confinement'."[55]

37. Endorsing this above definition would also align in many respects with this Tribunal's Consent Order in 2018 in relation to the settlement of the *Jahn v. Ontario (MCSCS)* matter, discussed more below. In its Consent Order, this Tribunal stated:

---

[50] Howard Sapers, *Segregation in Ontario: Independent Review of Ontario Corrections* (March 2017) at pp. 60-61 [citations omitted], Intervenor's BOA, Tab 56.

[51] Ibid at p. 61, Intervenor's BOA, Tab 56.

[52] See CFPC, "Position Statement on Solitary Confinement" (7 August 2016), Intervenor's BOA, Tab 51.

[53] See RNAO, "Transforming Ontario's Correctional Services: Starting, But Not Stopping, with Segregation" (22 February 2016) at p. 4, Intervenor's BOA, Tab 65.

[54] See JHSO, "Solitary Confinement Fact Sheet" (2017) at p. 2, Intervenor's BOA, Tab 59.

[55] *Hamm v. Attorney General of Canada (Edmonton Institution),* 2016 ABQB 440 at para. 15, Intervenor's BOA, Tab 19.

> 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.[56]

B. The impact and harms of solitary confinement

38. There is overwhelming medical opinion and consensus statements of the Canadian and North American medical communities, correctional commentators, and expert reports filed in a variety of court settings, that solitary confinement causes serious psychological and physical damage. Ontario has, or should have, long been aware of this. The harms of solitary confinement, and calls for significant reform, have been a matter of public discussion for decades, and are very much on the public agenda.

39. Perhaps most pertinent to this Application, in January 2017, the American Civil Liberties Union ("**ACLU**") released its findings from the first inquiry of its kind devoted specifically to an analysis of ***inmates with physical disabilities in solitary confinement*** in American prisons. Its report, titled *Caged In: Solitary Confinement's Devastating Harm on Prisoners with Physical Disabilities*, noted significant and unique harms caused to such inmates, including the following:

(i) "In solitary confinement, all are vulnerable to the devastating psychological and physical effects of near-total isolation, and social and sensory deprivation. But, for those with physical disabilities, the harmful effects of solitary confinement may be even worse … people with physical disabilities have unique medical and mental health needs, but many are denied regular access to such care while in solitary confinement. Limited access to health care can exacerbate some existing physical disabilities, and limited to no access to regular physical activity—whether indoor exercise or outdoor recreation—can also be detrimental";[57]

(ii) "Prisoners with disabilities are uniquely harmed by the negative health effects of solitary confinement. What's more, they receive even less access to programs available to prisoners held in solitary confinement because they are not provided with accommodations to allow them to participate in these programs. Due to their disabilities, they are neglected and even more isolated while in solitary confinement";[58]

(iii) "People with physical disabilities will suffer even greater psychological harms in correctional systems where they do not receive these accommodations that allow them to communicate effectively with mental health professionals";[59]

---

[56] See *OHRC v. Ontario (Community Safety and Correctional Services)*, 2018 HRTO 60 at p. 9, Schedule B, Intervenor's BOA, Tab 28.

[57] ACLU, *Caged In: Solitary Confinement's Devastating Harm on Prisoners with Physical Disabilities* (January 2017) at p. 12, Intervenor's BOA, Tab 47.

[58] Ibid at p. 24, Intervenor's BOA, Tab 47.

[59] Ibid at p. 26, Intervenor's BOA, Tab 47.

(iv) "[T]here is also evidence to suggest that the practice [of solitary confinement] can be physically debilitating. … Prisoners with physical disabilities are particularly susceptible to worsening physical health while in prison", and solitary confinement only further exacerbates this reality;[60]

(v) "Prisoners with physical disabilities held in solitary confinement are often denied access to the very physical and pharmacological therapies that will help them maintain their health or prevent physical deconditioning";[61] and

(vi) "When held in solitary confinement, prisoners with physical disabilities are often prohibited from participating in any rehabilitative programming, including educational and vocational programs and activities".[62]

(vii) Many inmates "shared the pain and humiliation of being left to fend for themselves in solitary confinement without wheelchairs, prosthetic limbs, or other necessary accommodations to carry out life's basic daily tasks. Without these vital accommodations, many of them were left without the means to walk, shower, clothe themselves, or even use the toilet. Deaf and blind prisoners reported that prison officials failed to provide them with access to hearing aids, Braille materials, certified sign language interpreters, or other auxiliary aids and services that are necessary to facilitate meaningful communication";[63]

(viii) "[F]or prisoners with physical disabilities, solitary confinement imposes additional harms";[64]

(ix) "Prisoners with mobility disabilities, such as those resulting from spinal cord injuries, often rely on regular physical therapy, exercise, and access to proper prescription medications to maintain a healthy existence. Yet the highly restrictive environment of solitary confinement runs completely counter to these health goals. Held in tiny cells for upwards of 22 hours per day, prisoners with physical disabilities in solitary confinement are either completely denied or seldom provided the regular exercise necessary to prevent muscle deterioration. They are also denied or seldom provided the physical therapy necessary to support muscle strength and conditioning";[65]

(x) "Similarly, blind and/or deaf prisoners experience unique harms when held in solitary confinement, and many experience this isolated condition more acutely than seeing or hearing prisoners. These prisoners often experience a heightened form of sensory deprivation while trapped in the mind-numbing emptiness of solitary confinement. Not only are these prisoners locked in their cells for most or all of the day, they are also frequently denied access to in-cell constructive or recreational activities, such as reading, writing, or watching television, which can be used to help stimulate the mind while in isolation. Instead, many are left to languish in a state of total idleness for weeks, months, and even years at a time";[66]

---

[60] Ibid at p. 26, Intervenor's BOA, Tab 47.

[61] Ibid at p. 27, Intervenor's BOA, Tab 47.

[62] Ibid at p. 32, Intervenor's BOA, Tab 47.

[63] Ibid at p. 4, Intervenor's BOA, Tab 47.

[64] Ibid at p. 4, Intervenor's BOA, Tab 47.

[65] Ibid at pp. 4-5, Intervenor's BOA, Tab 47.

[66] Ibid at p. 5, Intervenor's BOA, Tab 47.

(xi) "[P]risoners with physical disabilities in solitary confinement are frequently denied necessary accommodations to ensure they have equal access to prison medical and mental health care, as well as prison programs and services";[67]

(xii) "What is most troubling is the fact that prisoners with disabilities are placed into solitary confinement even when it serves no penological purpose. Corrections officials have put prisoners with physical disabilities into solitary confinement because there were no available cells that could accommodate them in a less restrictive environment. The lack of available cells that can accommodate prisoners with physical disabilities can also contribute to prolonged placements in solitary confinement";[68]

(xiii) "Prisoners and detainees with disabilities may be placed in solitary confinement because there are no accessible housing units in which to hold them, as is the case for prisoners who use wheelchairs";[69]

(xiv) Some inmates "have even been punished with solitary confinement for rule violations that were caused by their disabilities";[70]

(xv) "People with physical disabilities constitute one of the most vulnerable groups living in isolation in prisons and jails across America";[71] and

(xvi) "Prisoners with disabilities find themselves subject to solitary confinement due to administrative segregation, protective custody, medical isolation, disciplinary segregation, and/or lack of accessible housing".[72]

40. The ACLU's report recommended, among other things, that correctional authorities:

(i) "End all placements of prisoners with physical disabilities into solitary confinement where their disabilities will be worsened by such placements";[73]

(ii) "Prohibit all placements of prisoners with physical disabilities into solitary confinement due to a lack of accessible cells";[74]

(iii) "Provide all accommodations, including assistive devices and auxiliary aids, to prisoners with physical disabilities who are held in solitary confinement, unless a substantial and immediate security threat is documented. In such cases, alternative arrangements must be made and documented";[75] and

(iv) "Establish data procedures to improve tracking and monitoring of prisoners with physical disabilities in prisons and jails, including the number of people with

---

[67] Ibid at p. 6, Intervenor's BOA, Tab 47.

[68] Ibid at p. 6, see also p. 11, Intervenor's BOA, Tab 47.

[69] Ibid at p. 11, Intervenor's BOA, Tab 47.

[70] Ibid at p. 11, Intervenor's BOA, Tab 47.

[71] Ibid at p. 11, Intervenor's BOA, Tab 47.

[72] Ibid at p. 41-46, Intervenor's BOA, Tab 47.

[73] Ibid at p. 9, Intervenor's BOA, Tab 47.

[74] Ibid at p. 9, Intervenor's BOA, Tab 47.

[75] Ibid at p. 9, Intervenor's BOA, Tab 47.

> disabilities and those in solitary confinement, or other forms of restrictive housing, and the reasons for their placement".[76]

41. The report also recommended, among other things, that appropriate U.S. legislative authorities: (i) initiate "an audit of prisons on an annual or biannual basis to evaluate whether corrections facilities have completed building and programming evaluation plans or are otherwise in compliance with the regulations governing public entities"; and (ii) "[e]nact appropriate legislation requiring state and local jurisdictions to track the number of people with disabilities and those in solitary confinement, or other forms of restrictive housing, and the reasons for their placement, in their state and local corrections institutions".[77]

42. To date, there is no similar examination with respect to inmates with physical disabilities in solitary confinement in Canada or Ontario. Such information remains greatly needed.

43. But there are many Canadian authorities that have noted the harms associated with solitary confinement. For example, the Canadian Medical Association ("**CMA**"), which is Canada's national voluntary association of physicians comprised of over 85,000 clinicians across all disciplines, published an editorial in December 2014 in the Canadian Medical Association Journal which concluded:

(i) "Solitary confinement, ***defined as physical isolation for 22 to 24 hours per day*** and termed 'administrative segregation' in federal prisons, has substantial health effects. These effects may develop within a few days and increase the longer segregation lasts" [emphasis added];

(ii) "Those in solitary confinement are at increased risk of self-harm and suicide. Over the past three years, nearly half of suicides (14/30) in federal prisons occurred in segregation cells; most of these inmates had known serious mental health conditions"; and

(iii) "A growing body of literature shows that solitary confinement can change brain activity and result in symptomatology within seven days".[78]

44. The Canadian Mental Health Association ("**CMHA**") is Canada's oldest and most extensive community mental health organization. It is the CMHA's view that solitary confinement "can aggravate pre-existing mental health and addictions conditions and impede recovery and successful transition back into the community".[79] As a result, the CMHA's position is that "the

---

[76] Ibid at p. 9, Intervenor's BOA, Tab 47.

[77] Ibid at p. 9, Intervenor's BOA, Tab 47.

[78] Diane Kelsall, M.D., M.Ed., "Cruel and usual punishment: solitary confinement in Canadian prisons", Canadian Medical Association Journal (9 December 9, 2014), Intervenor's BOA, Tab 53.

[79] CMHA, "Segregation and mental health: CMHA Ontario supports Sapers' report" (4 May 2017), Intervenor's BOA, Tab 50.

irresponsible use of solitary confinement for individuals with serious mental health issues can be life-threatening".[80] The Ontario Division of the CMHA has expressly endorsed the findings of the independent report on the use of solitary confinement in Ontario jails written by Howard Sapers, the former Correctional Investigator of Canada, discussed herein.[81]

45. The College of Family Physicians of Canada ("**CFPC**") is the professional organization responsible for establishing standards for the training, certification and continuing education of family physicians, and represents more than 35,000 members across the country. Through its Prison Health Program Committee, the CFPC represents the interests of members providing care to persons incarcerated. In August 2016, the CFPC released a "Position Statement on Solitary Confinement".[82] The CFPC concluded that the peer-reviewed literature demonstrates that solitary confinement can alter brain activity and result in symptomatology within days.[83] As a result, the CFPC has issued, *inter alia*, the following recommendations:

(i) "Abolish solitary confinement. Non-segregation options must be created within correctional facilities, with adequate resources and correctional staff";

(ii) "Solitary confinement for medical reasons (including cardiovascular disease, respiratory disease, cancer, infectious disease, liver disease, and/or diabetes) is inappropriate. These persons require care that will address the medical health needs rather than exacerbate them in solitary confinement";

(iii) "Solitary confinement for mental illness (including those with post-traumatic stress disorder) is inappropriate. These persons require care in a specialized setting that will address the mental health needs rather than exacerbate them in solitary confinement";

(iv) "Until solitary confinement is abolished, correctional facilities should assure that the health care needs of persons in segregation are met. Persons in solitary confinement should be assessed in person by medical and nursing staff at least daily, in addition to regular assessment by correctional staff. If the person requires health care, then the patient should be seen in a health care setting that maintains confidentiality and dignity."[84]

46. The Canadian Federation of Medical Students ("**CFMS**") is an organization representing over 8,000 medical students from 15 Canadian medical student societies from coast to coast. In 2018, the CFMS issued a "Policy Statement on Solitary Confinement and Health Delivery in

---

[80] See ibid, Intervenor's BOA, Tab 50.

[81] See ibid, Intervenor's BOA, Tab 50.

[82] CFPC, "Position Statement on Solitary Confinement" (7 August 2016), Intervenor's BOA, Tab 51.

[83] Ibid, Intervenor's BOA, Tab 51.

[84] Ibid, Intervenor's BOA, Tab 51.

Canadian Correctional Facilities".[85] The CFMS made a numbers of statements and observations pertaining to solitary confinement, including:

(i) Noting the "impacts of its use on the mental and physical health of patients";

(ii) The reality that "[i]nadequate healthcare in the correctional system impacts individual health, community re-integration post-release, social determinants of health, and the public health system at large";

(iii) The "issue of solitary confinement, which can have severely detrimental impacts on the physical and mental health of prisoners";

(iv) "Solitary confinement is in violation of these principles, and is a harmful practice that should be abolished by correctional facilities and government policymakers";

(v) "Evidence indicates that solitary confinement is not only detrimental to the health of prisoners, but that it is also an ineffective method of disciplining inmates";

(vi) "[P]rolonged solitary confinement (exceeding 15 days) is in violation of the minimal standards for prisoners that the United Nations (UN) has endorsed. The UN calls for solitary confinement to only be used as a last resort, and to be ***prohibited when exacerbation of physical and mental disability is possible***" [emphasis added];

(vii) "The CFMS endorses the position taken by the CFPC to abolish solitary confinement and transfer responsibility for correctional health services to provincial/territorial Ministries of Health";

(viii) "The CFMS particularly opposes the solitary confinement of youth and individuals with mental ***and physical disabilities***" [emphasis added].[86]

47. The Registered Nurses Association of Ontario ("**RNAO**") is the professional association representing registered nurses, nurse practitioners and nursing students in Ontario. In January 2015, the RNAO delivered a letter to the then-Minister of Community Safety and Correctional Services outlining its position on solitary confinement, such that authorities must "limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review; and abolish the use of solitary confinement for persons with serious or acute mental illness".[87] It stated "[t]he ongoing use of administrative segregation, even for incarcerated individuals with identified mental illness, is enabled by a provincial correctional system that has yet to abolish it", and that "[i]n the global context of international jurisdictions moving away from the use of solitary confinement due to evidence of its harmful health and behavioural impacts, the province must act swiftly to correct this

[85] CFMS, "Policy Statement on Solitary Confinement and Health Delivery in Canadian Correctional Facilities" (2018), Intervenor's BOA, Tab 49.

[86] See ibid, Intervenor's BOA, Tab 49.

[87] RNAO, "Protection of Human Rights and Improving Health Care in Correctional Facilities" (23 January 2015), Intervenor's BOA, Tab 64.

unconscionable situation." Ultimately, "[u]sing segregation as a workaround to the problem of not having fully staffed infirmaries and mental health units contravenes the letter and spirit of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."[88]

48. In 2016, the RNAO supplemented these views in its report titled *Transforming Ontario's Correctional Services: Starting, But Not Stopping, with Segregation*.[89] In relation to solitary confinement in Ontario jails, it further called for and highlighted the following:

(i) "As recommended by the Ashley Smith inquest, abolish indefinite solitary confinement. Inmates without serious or acute mental illness must not be placed in segregation for more than 15 days at a time. There must be a wait period of at least five consecutive days between each placement in segregation. Ensure that an inmate is not placed in seclusion for more than 60 days in a calendar year. If an inmate is transferred to a different institution, the calculation of consecutive days must continue and not be considered a break from segregation or seclusion";

(ii) "Increase transparency and accountability for health and human rights for inmates in segregation and the general population within the provincial system equivalent to the federal Office of the Correctional Investigator of Canada";

(iii) "[Inmates in solitary confinement] face 'escalated deprivation of liberties, programming and privileges'. The attributes of segregation-reduced environmental stimulation, social isolation, and loss of control over most aspects of daily life are each harmful in themselves and together create 'a potent mix' Being in segregation is 'an inherently punishing experience,' regardless of whether the rationale for segregation is for administrative or disciplinary purposes";

(iv) "The evidence is clear: segregation has profoundly negative health impacts, especially for those with pre-existing mental health challenges, and it may also cause mental illness. Changes in brain activity with symptoms may start to occur within seven days of solitary confinement and some effects may be longterm or permanent. An inmate's ability to reintegrate into society upon release may be compromised by these long-term effects, which can include depression, confusion, phobias, impaired memory, and personality changes. Although a range of physiological effects are also recorded, acute and chronic psychological effects commonly include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis"; and

(v) "Increased risk of self-harm and suicide is of particular concern with solitary confinement".[90]

49. In 2016, the John Howard Society of Ontario publicly noted, among other concerns, that "[t]his practice of ***<u>isolating incarcerated persons with physical or mental health issues</u>*** not

[88] See ibid, Intervenor's BOA, Tab 64.

[89] RNAO, *Transforming Ontario's Correctional Services: Starting, But Not Stopping, with Segregation* (22 February 2016) at pp. 2-4 [citations omitted], Intervenor's BOA, Tab 65.

[90] See ibid, Intervenor's BOA, Tab 65.

only creates barriers in access to adequate medical care, but further exposes these individuals to the deleterious effects of segregation" [emphasis added].[91]

50. In 2017 in *CCLA v. Canada*, the Ontario Superior Court of Justice expressly recognized a number of serious harms associated with solitary confinement. The court refused to find that some segregated inmates will not experience harm.[92] It recognized that 'administrative segregation' imposes psychological stress,[93] exceeding the "ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action".[94] It found:

(i) The negative effects of segregation on inmates' mental health include "sensory deprivation, isolation, sleeplessness, anger, elevated levels of hopelessness, the development of previously undetected psychiatric symptoms, including depression and suicidal ideation";[95]

(ii) "Segregation has repeatedly been linked to appetite and sleep problems, anxiety, panic, rage, loss of control, depersonalization, paranoia, hallucinations, self-mutilation, increased rates of suicide and self-harm, an increased level of violence against others, and higher rates of frustration";[96]

(iii) Isolation causes "the development and exacerbation of mental illness";[97]

(iv) Indefinite isolation will "result in permanent psychological harm";[98]

(v) The harm caused by solitary confinement is recognized "by reputable Canadian medical organizations like the CMA [Canadian Medical Association] and the Registered Nurses Association of Ontario";[99]

(vi) "[T]he harmful effects of sensory deprivation caused by solitary confinement could occur as early as 48 hours after segregation";[100]

(vii) "[S]olitary confinement can alter brain activity and result in symptoms within days";[101]

(viii) The harmful effects of solitary confinement are "foreseeable and expected",[102] even though the "negative psychological effects may not be observable",[103] and "[n]o nurse or

---

[91] JHSO, *Fractured Care: Public Health Opportunities in Ontario's Correctional Institutions* (2016) at p. 12, Intervenor's BOA, Tab 58.

[92] *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491 at para. 94, Intervenor's BOA, Tab 11.

[93] Ibid at para. 99, Intervenor's BOA, Tab 11.

[94] Ibid at para. 100, Intervenor's BOA, Tab 11.

[95] Ibid at paras. 92-93, Intervenor's BOA, Tab 11.

[96] Ibid at para. 238, Intervenor's BOA, Tab 11.

[97] Ibid at paras. 238 and 240, Intervenor's BOA, Tab 11.

[98] Ibid at para. 252, Intervenor's BOA, Tab 11.

[99] Ibid at para. 96, Intervenor's BOA, Tab 11.

[100] Ibid at paras. 123, 238 and 240, Intervenor's BOA, Tab 11.

[101] Ibid at paras. 126-127, Intervenor's BOA, Tab 11.

[102] Ibid at para. 240, Intervenor's BOA, Tab 11.

doctor currently working with segregated prisoners in Canadian Penitentiaries testified that practice was benign in some or most cases";[104] and

(ix) "Segregation appears to be a significant risk factor for the development of psychiatric symptoms including depression and suicidal ideation, as well as psychiatric symptoms generally", and "[s]egregated prisoners who are already experiencing mental health problems, have a history of suicide attempts, and have high levels of hopelessness, are more likely to report suicidal ideation".[105]

51. In 2018, in *BCCLA v. Canada*, the British Columbia Supreme Court similarly recognized significant harms associated with solitary confinement, including the following:

(i) All inmates subjected to solitary confinement are subject to risks of harm to some degree;[106]

(ii) Negative consequences of solitary confinement include onset of mental illness, exacerbation of pre-existing mental illness, and the development and worsening of physical symptoms;[107]

(iii) The indeterminacy of solitary confinement is a particularly problematic feature that exacerbates its painfulness, increases frustration, and intensifies the depression and hopelessness that is often generated in the restrictive environments that characterize solitary confinement;[108]

(iv) Many inmates are likely to suffer permanent harm as a result of solitary confinement;[109]

(v) Negative health effects can occur after only a few days in solitary confinement, and those harms increase as the duration of the time spent in solitary confinement increases. The 15-day maximum prescribed by the Mandela Rules is a generous but defensible standard given the overwhelming evidence that within that time individuals can suffer severe psychological harm.[110] These health effects have been recognized since the late 19th century;[111] and

(vi) Solitary confinement also causes physical harm to some inmates.[112]

52. There is also widespread international recognition of the harms associated with solitary confinement. For example, the World Health Organization has recognized that solitary confinement has a negative impact on the health and well-being of prisoners, especially when

---

[103] Ibid at para. 241, Intervenor's BOA, Tab 11.

[104] Ibid at para. 96, Intervenor's BOA, Tab 11.

[105] Ibid at para. 238, Intervenor's BOA, Tab 11.

[106] *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62 Ibid at paras. 247, 264-272, 277-284, Intervenor's BOA, Tab 6.

[107] Ibid at paras. 277-278, 328, Intervenor's BOA, Tab 6.

[108] Ibid at para. 248, Intervenor's BOA, Tab 6.

[109] Ibid at paras. 249, 276, 282, 284, Intervenor's BOA, Tab 6.

[110] Ibid at para. 250, Intervenor's BOA, Tab 6.

[111] Ibid at para. 252, Intervenor's BOA, Tab 6.

[112] Ibid at paras. 307-310, Intervenor's BOA, Tab 6.

imposed for prolonged periods, and that it can affect rehabilitation efforts, as well as prisoners' chances of successful reintegration into society following their release.[113]

53. The International Psychological Trauma Symposium has also recognized that solitary confinement may cause serious psychological and physiological ill effects; that negative health effects can occur after only a few days in solitary confinement; and that the health risks rise with each additional day spent in solitary confinement. It concluded that solitary confinement should only be used in very exceptional cases, for as short a time as possible, and only as a last resort.[114]

54. In conclusion, the harms of solitary confinement may be severe and irreversible.[115] These harms can be detrimental to individuals' mental and physical health, in particular in the case of prolonged solitary confinement, and for individuals with prior vulnerabilities such as physical disabilities. Such extreme isolation is contrary to Canadian and international medical standards.

55. Ontario jails have a legislated mandate to rehabilitate inmates.[116] An important goal in its own right, this also has a practical significance for those (the vast majority of inmates) who expect to be returned to society at large. The damage caused by solitary confinement may hinder individuals' opportunities for rehabilitation upon release, including their ability to find employment and stable housing, among other areas governed by the Code. These are areas in which marginalized individuals already experience discrimination, even without the harms and disadvantages caused by solitary confinement. In addition, given the over-representation of racialized, Indigenous, and other marginalized individuals in prisons and in solitary confinement, many inmates, including those with physical disabilities, may be dealing with multiple and

[113] See e.g. WHO, *Prisons and Health* (2014) at pp. 27-36, Intervenor's BOA, Tab 67.

[114] See *Istanbul Statement on the Use and Effects of Solitary Confinement* (9 December 2007), Intervenor's BOA, Tab 57.

[115] The various authorities demonstrate that prisoners can suffer severe adverse effects when subjected to solitary confinement, including but not limited to: anxiety; anger; distinct emotional lability (including fits of rage); depression; difficulty separating reality from their own thoughts; confused thought processes; perceptual distortions and hallucinations; paranoia; psychosis; worsening of pre-existing mental and physical conditions; memory failure; PTSD; physical effects, such as lethargy, insomnia, palpitations and various eating disorders; difficulty coping with social interactions; impaired ability to participate in or transition to a normal family life; alienation from family, spouses and children; an impairment of the capacity to function in the workplace; pain and suffering; and self-harm and suicide.

[116] See *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22, s. 5(c) ("It is the function of the Ministry to supervise the detention and release of inmates, parolees and probationers and to create for them an environment in which they may achieve changes in attitude by providing training, treatment and services designed to afford them opportunities for successful personal and social adjustment in the community, and, without limiting the generality of the foregoing, the objects of the Ministry are to, … provide programs and facilities designed to assist in the rehabilitation of inmates").

intersecting forms of discrimination. As such, keeping persons in prolonged solitary confinement, and keeping persons with physical disabilities in solitary confinement, subjects them to a multiplicity of harms both within the prison system and upon release.

56. By subjecting any inmates to prolonged solitary confinement, or vulnerable inmates such as persons with physical disabilities to any solitary confinement, Ontario is breaching its duties to these groups and risking harm to them. This is a prohibited form of discrimination under the Code. It also constitutes a severe violation of individuals' fundamental rights under the *Charter*. The juxtaposition of discrimination with a severe infringement of *Charter* rights and values reinforces the conclusion that prolonged solitary confinement, and solitary confinement of persons with physical disabilities, is a prohibited form of discrimination that must be remedied.

C. Canada's legal commitments and understanding of solitary confinement

57. International law, as well as expert opinions, scholarly and medical literature, and official reports in Canada and abroad, are consistent in condemning the practice of prolonged solitary confinement, and require significant reform, limits, and in some cases, clear prohibitions, on the use of solitary confinement for vulnerable individuals, such as persons with disabilities. Courts throughout Canada, including in Ontario, have taken explicit note of the Crown's legal obligations in this area and the concerns associated with solitary confinement.

1. *Canada's obligations at international law and the use of solitary confinement*

58. Under Article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the "**CAT**"), which Canada ratified in 1987, torture is defined as:

> [A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[117]

[117] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (26 June 1987) at Art. 1, Intervenor's BOA, Tab 40.

59. Acts falling short of the definition of torture under Article 1 of the CAT may nevertheless constitute cruel, inhuman or degrading treatment or punishment under Article 16 of the CAT.[118]

60. The UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Juan Méndez, as advisor to the United Nations Human Rights Council, found serious issues with solitary confinement, including that:

(i) Solitary confinement can cause a number of severe health problems, including anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, and self-harm;

(ii) The social isolation and minimal stimulation that are hallmarks of solitary confinement produce negative health effects after only a few days;

(iii) Negative health effects attributable to solitary confinement increase the longer a prisoner is held in solitary confinement;

(iv) Solitary confinement is contrary to the goals of rehabilitation and reintegration in the penitentiary system;

(v) Prolonged solitary confinement may rise to the level of torture or cruel, inhuman, or degrading treatment, and it should be abolished;

(vi) Solitary confinement of persons with decreased capacity, including adolescents and young adults, and juveniles is cruel, inhuman or degrading treatment and may rise to the level of torture.[119]

61. Moreover, as indicated above, the United Nations' Mandela Rules – which Canada helped draft – prohibit prolonged solitary confinement, and solitary confinement of persons with mental and physical disabilities when a risk of exacerbating their conditions is threatened.[120]

62. Prolonged solitary confinement, as informed by the Mandela Rules, constitutes either torture or cruel, inhuman, or degrading treatment or punishment, and contravenes Canada's obligations under the CAT, and by affiliation, Ontario's obligations. Even solitary confinement for periods shorter than 15 days could contravene the CAT when the inmate subjected to the solitary confinement is particularly vulnerable, be it mentally or physically.

---

[118] Ibid at Art. 16, Intervenor's BOA, Tab 40.

[119] See *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, A/66/268 (5 August 2011), Intervenor's BOA, Tab 42.

[120] *United Nations Standard Minimum Rules for the Treatment of Prisoners* (17 December 2015), Rules 44, 45(2) Intervenor's BOA, Tab 46.

63. The United Nations' *Basic Principles for the Treatment of Prisoners*, adopted by the United Nations General Assembly with Canada's vote, state that efforts to abolish solitary confinement as punishment and to restrict its use should be undertaken and encouraged.[121]

64. Article 7 of the *International Covenant on Civil and Political Rights* (the "**ICCPR**"), to which Canada acceded in 1976, requires that no person be subjected to torture or to cruel, inhuman or degrading treatment or punishment.[122] According to the United Nations Human Rights Committee, the international body tasked with oversight and administration of the ICCPR, prolonged solitary confinement may be prohibited by Article 7 of the ICCPR.[123] Prolonged solitary confinement contravenes Article 10(3) of the ICCPR, which states "[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation," because the severe health impacts of the practice do not promote those aims.[124]

65. Canada is also a member of the Organization of American States ("**OAS**"), of which the Inter-American Commission on Human Rights ("**IACHR**") is a principle organ. At its 147th session in 2013, the IACHR held that all of the Commission's member states must adopt concrete measures to eliminate prolonged or indefinite isolation. The IACHR affirmed that solitary confinement must never be applied to juveniles or persons with mental disabilities, and it upheld the prohibition of solitary confinement in excess of 15 consecutive days.[125]

66. While these international norms binding on Canada in the international plane may not be directly actionable in Canadian courts, Canada, and as such the Crown in right of provinces like Ontario, is presumed to operate in accordance with its international obligations.[126] As such, Canadian courts have canvassed and taken direction from international norms in a variety of solitary confinement cases to date.[127]

---

[121] *United Nations Basic Principles for the Treatment of Prisoners* (14 December 1990) at para. 7, Intervenor's BOA, Tab 45.

[122] *International Covenant on Civil and Political Rights* (16 December 1966) at Art. 7, Intervenor's BOA, Tab 43.

[123] Human Rights Committee, General Comment No. 20, 44th session (1992), Intervenor's BOA, Tab 41.

[124] *International Covenant on Civil and Political Rights* (16 December 1966) at Art. 10(3), Intervenor's BOA, Tab 43.

[125] See e.g. OAS, Annex to the Press Release Issued at the Close of the 147th Session (5 April 2013), Intervenor's BOA, Tab 44.

[126] See e.g. *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para. 59, Intervenor's BOA, Tab 35; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para. 70, Intervenor's BOA, Tab 3; *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62 at para. 150, Intervenor's BOA, Tab 24.

[127] See e.g. *Bacon v. Surrey Pre-trial Services Centre*, 2010 BCSC 805 at paras. 271-290 (identified international norms for the treatment of prisoners and emphasised the inherent dignity of the human person), Intervenor's

2. *Domestic concern about solitary confinement throughout Canada*

67. Knowledge has taken root in Ontario, and indeed throughout Canada, of the rampant over-use, abhorrent conditions, and harms of solitary confinement. Recent developments attest to this reality. The threat to fundamental rights and freedoms posed by the current use of solitary confinement in correctional facilities has risen to a ripe matter of public interest. Given this, and the fact that *Charter* values must be considered by administrative bodies,[128] this Tribunal now faces a critical opportunity to contribute to the treatment of this issue in Ontario.

68. Concerns about solitary confinement and the damage it causes have in fact been a matter of public interest in Canada since at least as far back as 1975, for example, with the Federal Court's consideration of solitary confinement in *McCann v. The Queen*.[129]

69. Another important matter of public interest proved to be the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, headed by the Honourable Louise Arbour as Commissioner, who reported to Canada in 1996.[130] It detailed the harsh conditions under which inmates in solitary confinement were being held, especially prolonged solitary confinement, and noted the dissonance between the legislative requirements and operational reality in this regard. It was also critical of the review process for solitary confinement. Among the shortcomings was the failure of the reviews to address the statutory standards, and the

---

BOA, Tab 2; *Trang v. Alberta (Edmonton Remand Centre)*, 2010 ABQB 6 at para. 182 (reviewed international authorities and found a minimum standard of one hour outdoor exercise per day), Intervenor's BOA, Tab 37; *Hamm v. Attorney General of Canada (Edmonton Institution),* 2016 ABQB 440 at para. 92 (without expert opinion on the Mandela Rules, the Alberta Court of Queen's Bench relied on the Supreme Court of Canada's decision in *114957 Canada Ltee (Spraytech, Societe d'arrosage)* to apply "international standards such as the Mandela Rules"), Intervenor's BOA, Tab 19; *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491 at paras. 46, 61 (the Mandela Rules were found to "represent an international consensus of proper principles and practices in the management of prisons and the treatment of those confined", and the court accepted that Canada's current practice of administrative segregation amounts to solitary confinement under the definition in the Mandela Rules), Intervenor's BOA, Tab 11; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62 at paras. 50-58, 250 (the Mandel Rules, and the views of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, were viewed as instructive to provide context to the issue of solitary confinement in Canada), Intervenor's BOA, Tab 6.

[128] See *Taylor-Baptiste v. Ontario Public Service Employees Union*, 2015 ONCA 495 at para. 57, Intervenor's BOA, Tab 36.

[129] See *McCann v. The Queen*, [1976] 1 FC 570, Intervenor's BOA, Tab 26. There, an inmate at the British Columbia Penitentiary had been held in solitary confinement for 754 continuous days and challenged his confinement as cruel and unusual punishment under s. 2(b) of the Canadian Bill of Rights. Seven other plaintiffs had been in solitary confinement at the same institution for continuous periods ranging from 95 to 682 days. Each inmate was confined to a small cell with the light burning 24 hours a day and had to sleep with his head next to the toilet. They were also subject to open strip searches. The court found the plaintiffs' conditions constituted cruel and unusual punishment.

[130] See e.g. Louise Arbour, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (1996) at p. 39, Intervenor's BOA, Tab 60.

deferential nature of the regional reviews.[131] In the view of Commissioner Arbour, the "most objectionable feature" of prolonged solitary confinement was its "indefiniteness".[132]

70. In 2007, Ashley Smith died in her cell after spending almost a year of continuous solitary confinement in federal institutions. In 2008, then Correctional Investigator of Canada ("**OCI**"), Howard Sapers, an agent of the federal government charged with independent oversight of the federal correctional service in Canada, documented the abuse of 'administrative segregation' as a factor contributing to Ms. Smith's death in a report entitled *A Preventable Death*. It noted, *inter alia*, that:

> (i) Despite her documented troubled history in provincial juvenile corrections, Ms. Smith was never provided with a comprehensive mental health assessment or treatment plan;
>
> (ii) Immediately upon her entry into the federal system, she was placed in administrative segregation and maintained on that status for her entire time under federal jurisdiction;
>
> (iii) The conditions of her confinement were oppressive and inhumane, and her grievances regarding these conditions were inadequately addressed.[133]

71. As a result, the OCI recommended, *inter alia*, immediate implementation of independent adjudication of solitary confinement of inmates with mental health concerns, to be completed within 30 days of the placement, with the adjudicator's decision to be forwarded to the regional deputy commissioner.[134]

72. In 2010, in *Bacon v. Surrey Pre-trial Services Centre*, the British Columbia Supreme Court found the following conditions of solitary confinement violated the inmate's rights under ss. 7 and 12 of the *Charter*: the inmate was confined to a cell for 23-hours per day; was permitted to be outside of the cell for one hour to shower or visit the exercise facility; had no pillow and there was no change of bedding in the first five weeks he was segregated; was given cold food; denied access to programs and activities; and denied asthma medication for the first three weeks of his confinement, among other things.[135] The inmate had also described episodes of increasing anxiety, including panic attacks occurring as often as three times per day.[136] The court recognized the availability of reasonable alternatives to solitary confinement:

---

[131] See generally ibid at pp. 102-105, Intervenor's BOA, Tab 60.

[132] See generally ibid at p. 81, Intervenor's BOA, Tab 60.

[133] See Howard Sapers, OCI, *A Preventable Death* (2008), Intervenor's BOA, Tab 54.

[134] See ibid at pp. 31-33, Intervenor's BOA, Tab 54.

[135] See *Bacon v. Surrey Pre-trial Services Centre*, 2010 BCSC 805 at paras. 49-73, Intervenor's BOA, Tab 2.

[136] See ibid at paras. 92-94, Intervenor's BOA, Tab 2.

> The petitioner is entitled to an order in the nature of *habeas corpus* directing that if he is not found, on proper grounds, to be a candidate for release within the general prison population, but must continue to be separated from at least a segment of that population, the respondent must either:
>
> > (a) find the means to place the petitioner in a setting that will include other inmates who are not at risk from, or a risk to, him; or
> >
> > (b) otherwise mitigate the petitioner's conditions of confinement to achieve a level of treatment comparable to that of an inmate in the general population, including times out, recreational opportunities and comparable privileges. ***He must not be treated as if he is being perpetually punished or disciplined. If it is a question of resource limitations, resources must be found.*** [emphasis added][137]

73. In 2013, a settlement was reached in the *Jahn v. Ontario (MCSCS)* matter in this Tribunal. It stemmed from a 2012 human rights application filed against MCSCS. At the time of her 2011 and 2012 incarcerations, Ms. Jahn was a woman living with mental illness, addictions and cancer. She alleged she was placed in solitary confinement for the entire period of her incarcerations (approximately 210 days) and experienced abhorrent and humiliating treatment because of her gender and mental health disabilities. This matter exposed systemic issues in the Ontario correctional system relating to a lack of mental health services, including less access for women as compared to men, as well as issues relating to inmates with mental health disabilities in solitary confinement. The 2013 settlement agreement ushered in a number of public interest remedies to address the use of segregation and treatment of inmates, particularly women, with mental health disabilities in Ontario jails. Under it, Ontario agreed to prohibit the use of segregation for any individuals with mental illness, except as a last resort.[138]

74. In 2013, the *Coroner's Inquest Touching the Death of Ashley Smith* was completed and released various recommendations. Eleven recommendations specifically addressed segregation, principally that indefinite solitary confinement be abolished and long-term segregation not exceed 15 days. It also sought restrictions on the number of periods that inmates could spend in segregation, including a requirement that inmates spend no more than a cumulative total of 60 days in a calendar year. Other recommendations included that the restrictive conditions of segregation be reduced to the lowest possible level, and that both the institutional head and a mental health professional be required to visit all segregated inmates at least once a day, and not, under any circumstances, through the food slot in the cell door.[139]

---

[137] See ibid at para. 351, Intervenor's BOA, Tab 2.

[138] See *Jahn v. Ontario (MCSCS)* - Public Interest Remedies (24 September 2013), Intervenor's BOA, Tab 22.

[139] See *Coroner's Inquest Touching the Death of Ashley Smith* (19 December 2013), Intervenor's BOA, Tab 52.

75. In 2014, Canada released its *Response to the Coroner's Inquest Touching the Death of Ashley Smith*. Ultimately, it claimed that the Canada was unable to fully support the recommendations without causing undue risk to the safe management of the federal correctional system.[140] The OCI's response in 2014-15 to Canada's positions in this respect was highly critical, noting among other concerns, that the overuse of solitary confinement was "the most commonly used population management tool to address tensions and conflicts in federal correctional facilities" and "to manage mentally ill offenders, self-injurious offenders and those at risk of suicide".[141] Again, the OCI made recommendations to severely limit the use of solitary confinement in Canadian prisons.[142]

76. In 2014, in *Boone v. Ontario (Community Safety and Correctional Services)*, the Ontario Court of Appeal recognized that "[t]here has been a growing recognition over the last half-century that solitary confinement is a very severe form of incarceration, and one that has a lasting psychological impact on prisoners."[143]

77. In 2014, the Canadian Human Rights Tribunal recognized that:

> The Office of the Correctional Investigator (OCI) has, over the years, consistently reported on and expressed concern about the practice of segregation as a means to manage inmates suffering from mental illness. This view has been echoed by the Federal Court of Canada, the United Nations Human Rights Committee, the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the United Nations Committee Against Torture, who have declared that the solitary confinement of mentally ill offenders constitutes a form of cruel, inhumane and degrading treatment or punishment and, in some circumstances, torture.[144]

78. In 2015, a follow-up agreement was entered into relating to the *Jahn v. Ontario (MCSCS)* matter in this Tribunal whereby Ontario agreed to provide individuals in solitary confinement in Ontario jails with an information handout about their rights.[145]

79. In 2015, in *Gogan v. Nova Scotia (Attorney General)*, Moir J. of the Nova Scotia Supreme Court held, *inter alia*, that:

---

[140] See *Response to the Coroner's Inquest Touching the Death of Ashley Smith* (December 2014), Intervenor's BOA, Tab 63.

[141] See e.g. Howard Sapers, OCI, *Annual Report of the Office of the Correctional Investigator 2014-2015* (26 June 2015) at pp. 15, 26-27, 30-31, Intervenor's BOA, Tab 55.

[142] See e.g. ibid at Annex A, Intervenor's BOA, Tab 55.

[143] *Boone v. Ontario (Community Safety and Correctional Services)*, 2014 ONCA 515 at para. 3, Intervenor's BOA, Tab 4, leave to appeal to S.C.C. ref'd 2014 CarswellOnt 14531.

[144] *Desmarais v. Correctional Service of Canada*, 2014 CHRT 5 at para. 56, Intervenor's BOA, Tab 13.

[145] See *Jahn v. Ontario (MCSCS)* - Supplemental Public Interest Remedies (2015), Intervenor's BOA, Tab 23.

(i) "To lock a man alone in a cell for twenty-three hours a day is not merely to deprive him of the common room. It is to deprive him of social interaction, of the simplest personal amusements such as cards or television, of the most rudimentary activities that keep us sane";

(ii) "[S]olitary confinement is *ipso facto* a deprivation of residual liberty. Indeed, it may amount to a breach of s. 12 of the *Charter* depending on 'the conditions, duration and reasons for segregation' … I emphasize 'reasons for segregation'";

(iii) "It is unreasonable to make prisoners pay for overcrowding, whether it results from fiscal restraint or minimum sentences or both, by making them submit to the agony of solitary confinement. All prisoners are forced to pay for the government's choice of overcrowding by being housed in overcrowded jails and prisons. To compound that with solitary confinement when on remand is unreasonable because it is so unfair."; and

(iv) "The phrase 'housed on W5' is a euphemism for kept in solitary confinement. The resort to a euphemism is telling of the unreasonableness of this line of reasoning. The phrase tends to duck the gravity of solitary confinement and the prisoner's right to residual liberty."[146]

80. In 2015, in *R. v. Anderson*, Howard J. of the British Columbia Provincial Court remarked: "Suffice it to say that there is a good case to be made for the proposition that long-term segregation in solitary confinement imposes severe mental pain suffering 'that is likely to psychologically destabilize a prisoner to the point where the prisoner is no longer capable of improving his behaviour. In other words, the practice may well be incompatible with the desired goal of rehabilitation within the prison.'"[147]

81. In 2015, Prime Minister Trudeau made public his mandate letter to the Minister of Justice and Attorney General of Canada. The letter directed, in part: "In particular, I will expect you to work with your colleagues and through established legislative, regulator, and Cabinet processes to deliver on your top priorities: … implementation of recommendations from the inquest into the death of Ashley Smith regarding the restriction of the use of solitary confinement and the treatment of those with mental illness".[148]

82. In March 2016, the Ontario Human Rights Commission called for an outright ban on solitary confinement in Ontario's jails, declaring: "We cannot let another prisoner die alone in a

[146] *Gogan v. Nova Scotia (Attorney General)*, 2015 NSSC 360 at paras. 20-21, 32, 34, Intervenor's BOA, Tab 17.

[147] *R. v. Anderson*, 2015 BCPC 210 at para. 30, Intervenor's BOA, Tab 30.

[148] Prime Minister of Canada, Minister of Justice and Attorney General of Canada Mandate Letter (12 November 2015), Intervenor's BOA, Tab 62.

jail cell while we consider how to reform a practice that is clearly harmful and contrary to human rights law”.[149]

83. In May 2016, the Ontario Ombudsman, Paul Dubé, urged Ontario to ban prolonged solitary confinement in Ontario jails, stating: “It’s soul-crushing, cruel and counter-productive — and it needs to stop”.[150]

84. On August 9, 2016, in *Hamm v. Attorney General of Canada (Edmonton Institution)*, Veit J. of the Alberta Court of Queen's Bench made a number of findings in relation to solitary confinement, including the following:

(i) Courts must consider “the seriousness of the consequences of a placement in solitary confinement” and “the potential serious negative effects on an inmate of prolonged solitary confinement”;

(ii) “[F]or the inmate who is placed in solitary confinement, the negative impact is great. … The court can take judicial notice of much public commentary about the potentially deleterious effects on human beings as a result of being kept in solitary confinement. One of those independent, public, sources of notice is the United Nations 2015 revision to the Mandela Rules”;

(iii) “[A] decision to place an inmate in solitary confinement is the equivalent, as other courts have put it, of sentencing an inmate to a ‘prison within a prison’. Therefore, the process to be followed in making such decisions should mirror the process in the justice system whereby a court sentences a convict to a prison sentence”;

(iv) “[T]he statutory scheme clearly intends that inmates should be provided in as timely a way as possible with the maximum amount of information about the reasons why they are being placed in solitary and given the appropriate opportunity to defend themselves, of course all within the strictures which are necessarily implicit in the penitentiary setting; as the case law states, inmates have a legitimate right to expect that the ‘rule of law continues to run within penitentiary walls’”;

(v) “[N]ecessarily, the usual administrative law safeguard against apprehension of bias must be modified in the custodial context where the inmate is fighting against the prison authorities from whom he must obtain practical support. The general need for procedural fairness is heightened in such situations”;

(vi) “There has not yet been much judicial consideration of the Mandela Rules — 2015 revision: in relation to prisons and prisoners; those rules were only adopted by the United Nations in December, 2015 and have not been adopted in Canada. As can be seen from the extract set out in Appendix B, those rules prohibit solitary confinement for longer than 15 consecutive days”;

[149] Renu Mandhane, Chief Commissioner, Ontario Human Rights Commission, “Speaker's Corner: End segregation, says Ontario Human Rights Commission”, Law Times, (7 March 2016), Intervenor’s BOA, Tab 66.

[150] “Ban long-term solitary confinement: Editorial”, Toronto Star (12 May 2016), Intervenor’s BOA, Tab 48.

(vii) "[W]hile the Mandela Rules are not determinative, they encapsulate an international standard in relation to the treatment of prisoners which Canada acknowledges; those rules inform, but do not dictate, the result in a Canadian *habeas corpus* application"; and

(viii) "What we can take from the Mandela Rules is that solitary confinement is a last resort in the treatment of prisoners. Custodial institutions must be zealous in limiting the use of that technique to those situations where the use of solitary confinement is, unfortunately, the only reasonable alternative available to them to manage what is undoubtedly a difficult population."[151]

85. On December 14, 2016, in *Brazeau v. Attorney General (Canada)*, the Ontario Superior Court of Justice certified a class action against Canada which alleges, *inter alia*, over-reliance by Canada on the use of extended periods of "Administrative Segregation", "or solitary confinement, as it is more commonly known", in managing class members, contrary to its duties under ss. 7, 9, and/or 12 of the *Charter*.[152] All class members were vulnerable individuals diagnosed by a medical doctor with an Axis I Disorder (excluding substance use disorders), or Borderline Personality Disorder, who suffered from their disorder, and reported as such.

86. Also on December 14, 2016, in *Charlie v. British Columbia (Attorney General)*, the British Columbia Supreme Court opined on a *habeas corpus* challenge to confinement in an "Enhanced Supervision Placement (ESP)". While not officially designated as segregation, the ESP unit imposed very similar restrictions. The applicant was locked alone in her cell for at least 21 hours a day. The court held that her detention was unlawful because she was not provided with basic procedural fairness rights, including an adequate explanation of the reasons for her isolation. In order for a placement in segregation to be lawful, the court ruled that correctional authorities must provide the inmate with written reasons for the placement decision that include particular details about any alleged incidents that formed the basis for the decision.[153]

87. On January 13, 2017, in *Gallone c. Attorney General of Canada*, the Superior Court of Quebec authorized a class action against Canada similar to the *Brazeau* action in Ontario, but also inclusive of claims predicated upon the *Quebec Charter*.[154] The claim alleges that Canada places thousands of inmates in solitary confinement, where they stay more than 23 hours a day without human contact or activities.

---

[151] *Hamm v. Attorney General of Canada (Edmonton Institution)*, 2016 ABQB 440 at paras. 9, 67, 91, 94-95, Intervenor's BOA, Tab 19.

[152] *Brazeau v. Attorney General (Canada)*, 2016 ONSC 7836, Intervenor's BOA, Tab 5.

[153] *Charlie v. British Columbia (Attorney General)*, 2016 BCSC 2292, Intervenor's BOA, Tab 9.

[154] *Gallone c. Procureur général du Canada*, 2017 QCCS 2138, Intervenor's BOA, Tab 16.

88. In March 2017, an independent report was released on the use of solitary confinement in Ontario jails by Howard Sapers, the former Correctional Investigator of Canada.[155] Alarmingly, with respect to Ontario jails, it found, *inter alia*, the following:

(i) In 2016 alone, "over 1,300 men and women spent 60 or more aggregate days inside an Ontario Correctional Services segregation cell";[156]

(ii) In Ontario jails, "[i]n practice, this means confining individuals to a six by nine foot cell for 22 or more hours a day, with little human interaction";[157]

(iii) "Policy requires that those confined to segregation be provided with regular reviews in which their continuing placement must be justified. All are to receive regular nursing visits and individuals with mental illness must receive regular assessments from physicians. While there may be a loss of some privileges, those segregated are to be offered the same level of services and programs as individuals in the general population. These requirements routinely go unmet";[158]

(iv) "Even though the number of people in Ontario's correctional institutions has been decreasing for a decade, the number of people sent to segregation is on the rise. On any given day [in 2016], 575 people were detained in a segregation cell. Seven out of ten of them were in pretrial detention – legally innocent, waiting for their trial or a determination of their bail. While most were released within two weeks, one in six was segregated for weeks, months, or in some cases even years. In early November 2016, there were 22 inmates known to have been in segregation continuously for over a year; five of those individuals have been in segregation for over three years";[159]

(v) "Particular individuals and groups – the young and the elderly, those with mental illness, women, racialized and indigenous persons – are differentially impacted by incarceration";[160]

(vi) "Many of those in segregation simply should not be there. In most institutions, segregation is the default tool to manage individuals with mental health needs; those at risk of self-harm or suicide; ***<u>the disabled and elderly who need mobility assistance devices</u>***; critically ill patients requiring close medical supervision; individuals who feel unsafe when in general population units; and transgender inmates before in-depth placement and needs assessments can be completed" [emphasis added];[161]

(vii) "The decision to place a person in segregation results in the most complete deprivation of liberty authorized by law. Such a significant restriction on individual freedom must be tightly controlled by a comprehensive, clear legal and policy framework. Ontario law and policy fails to meet this standard";[162]

---

[155] Howard Sapers, *Segregation in Ontario: Independent Review of Ontario Corrections* (March 2017), Intervenor's BOA, Tab 56.

[156] Ibid at pp. 1, 3. Intervenor's BOA, Tab 56.

[157] Ibid at p. 1, Intervenor's BOA, Tab 56.

[158] Ibid at p. 1, Intervenor's BOA, Tab 56.

[159] Ibid at p. 3, Intervenor's BOA, Tab 56.

[160] Ibid at p. 3, Intervenor's BOA, Tab 56.

[161] Ibid at p. 3, Intervenor's BOA, Tab 56.

[162] Ibid at p. 3, Intervenor's BOA, Tab 56.

(viii) "Multiple institutions across the province are confining portions of their custodial population to their cells for 22 or more hours a day, but do not consider these individuals to be 'in segregation' because they are being held outside of the 'designated' segregation area. These individuals are not reflected in the province's official segregation counts and are not provided the same level of oversight, individual review or mental health services";[163]

(ix) "There are few if any practices in corrections more in need of robust oversight and full compliance with law and policy than the use of segregation. Unfortunately, Ontario's procedural safeguards and oversight are insufficient. Provincial law and policy require correctional authorities to maintain an extensive, detailed paper trail, conduct frequent and repeated segregation reviews and forward reports through a cascading oversight structure. Some portions of this oversight framework, however, have never been fully operationalized, and there are frequent gaps in the reviews that are completed. ***When the reviews and reports are generated, most are simply passed along with little or no critical analysis***" [emphasis added];[164]

(x) "Over the last ten years, Ontario's overall custodial population decreased by 11%, but segregation counts rose 24%";[165]

(xi) "In 2016, on average, 7 out of 10 individuals in segregation were on remand – legally innocent, waiting for their trial or bail determination. Based on the average weekend count for 2016, five percent of segregated inmates were serving an intermittent sentence";[166]

(xii) "Within the calendar year of 2016, segregation terms ranged from 1 to over 1,500 days";[167]

(xiii) "During 2015/16, over 1000 inmates spent 30 or more continuous days in segregation. The average time spent in segregation for these inmates was 104 days";[168]

(xiv) "On average, in 2016 individuals with mental health and/or suicide risk alerts spent approximately 30% more time in segregation as compared to the rest of the segregated population";[169]

(xv) "Individuals in segregation in Ontario are usually confined to their cells for 22 or more hours per day with limited association and movement";[170]

(xvi) "Ministry policy states that inmates in segregation are entitled to be integrated into the general population to the fullest extent possible and that their access to programs, rights and privileges must be maintained unless doing so would cause undue hardship.

---

[163] Ibid at p. 4, Intervenor's BOA, Tab 56.

[164] Ibid at p. 4 [emphasis added], Intervenor's BOA, Tab 56.

[165] Ibid at p. 43, Intervenor's BOA, Tab 56.

[166] Ibid at p. 43, Intervenor's BOA, Tab 56.

[167] Ibid at p. 43, Intervenor's BOA, Tab 56.

[168] Ibid at p. 43, Intervenor's BOA, Tab 56.

[169] Ibid at p. 43, Intervenor's BOA, Tab 56.

[170] Ibid at p. 43, Intervenor's BOA, Tab 56.

However, given staffing challenges, physical design and varying segregation operating procedures, institutions are not adhering to this policy";[171]

(xvii) "Shower areas do not exist in some segregation areas, which creates additional escort burdens and time pressures on correctional staff";[172]

(xviii) "Access to programming and services frequently differ for inmates in segregation. Some segregated inmates do not leave their cells for days on end";[173]

(xix) Existing law and policy provide little guidance to individuals in segregation and their advocates regarding their need to know why they are there, what their rights are, who is in charge of reviewing their detention and when or under what circumstances they will be released;[174]

(xx) "The lack of effective legal and policy guidance means that, in practice, conditions of confinement and other inmate rights vary from site to site and day to day. Ultimately, the lack of transparency and minimum standards undermine accountability";[175]

(xxi) "Indigenous individuals make up 2% of Ontario's population, but in 2016 accounted for at least 14% of the admissions to custody and segregation. Just over half of the Indigenous women and men admitted to segregation in 2016 had a suicide risk alert";[176]

(xxii) "Those with mental health needs end up in segregation more often and for longer periods of time. Approximately one in five individuals admitted to custody in Ontario in 2016 had a suicide alert on file. For those admitted to segregation, it was one in three";[177]

(xxiii) "Whether it is due to inadequate legislation, poorly crafted policies, lack of staff resources, insufficient training, crumbling physical infrastructure or simply a lack of space, the result is the same: segregation has become the multi-purpose default to respond to diverse correctional challenges. This inappropriate use of segregation must stop";[178]

(xxiv) "Frontline health care workers and inmate advocates alike have raised concerns about a 'growing health crisis' in the province's correctional institutions. Not only do inmates, as a group, suffer more health problems as compared to the general Canadian population, but ongoing concerns have been expressed over the conditions of correctional institutions themselves, which can expose inmates to additional health risks and poorer health outcomes. As discussed, the experience of segregation can have a profound, negative impact on the mental health of individuals, particularly for those with pre-existing mental challenges or when imposed for long periods. Addressing this means also addressing the tension that often exists between security interests on the one hand and the provision of

[171] Ibid at pp. 43-44, Intervenor's BOA, Tab 56.
[172] Ibid at p. 44, Intervenor's BOA, Tab 56.
[173] Ibid at p. 44, Intervenor's BOA, Tab 56.
[174] Ibid at p. 58, Intervenor's BOA, Tab 56.
[175] Ibid at p. 60, Intervenor's BOA, Tab 56.
[176] Ibid at p. 43, Intervenor's BOA, Tab 56.
[177] Ibid at p. 3, Intervenor's BOA, Tab 56.
[178] Ibid at p. 66, Intervenor's BOA, Tab 56.

adequate health care on the other. For those on the frontlines providing care, security concerns are often seen as overshadowing the clinical needs of inmates";[179]

(xxv) "***Individuals with physical disabilities are also frequently segregated because the assistive devices they require are not items that would typically be allowed in a jail***" [emphasis added];[180]

(xxvi) Ad hoc alternatives to segregation, which effectively mirrored official segregation practices, were employed in an inconsistent manner throughout the Ontario correctional system;[181]

(xxvii) "Segregation, and other forms of isolated or restricted housing, have been referred to as a prison within a prison; it is the most austere form of custody legally allowed in Canada. Such a significant restriction on individual freedom must be accompanied by a robust, effective and procedurally-fair oversight and review mechanism. Unfortunately, Ontario's current system for reviewing the appropriateness and legality of segregation placements fails to meet this standard";[182]

(xxviii) "Protective custody [must] not be considered or operated as a form of segregation";[183]

(xxix) It recommended that "[n]o placement in administrative or disciplinary segregation will exceed 15 continuous days";[184]

(xxx) "Segregation must be limited to no more than 60 days for any individual within a 365 day period without the consent of the Minister";[185]

(xxxi) The human rights of inmates in segregation in Ontario under the Code have been violated in a variety of ways and failures to accommodate have occurred;[186] and

(xxxii) ***Segregation reform announcements made by Ontario in 2016 have largely gone unfulfilled*** [emphasis added].[187]

89. Similarly, in April 2017, Ontario Ombudsman, Paul Dubé, released a report titled *Out of Oversight, Out of Mind*, which released findings of an investigation into how MCSCS tracks the admission and placement of segregated inmates, and the adequacy and effectiveness of the review process for such placements.[188] Among other alarming findings, the report found:

(i) The moniker of "segregation" or "solitary confinement" or "isolation" or "separation" is irrelevant to the reality of the identical conditions experienced in Ontario jails, where

[179] Ibid at p. 71, Intervenor's BOA, Tab 56.
[180] Ibid at p. 76, Intervenor's BOA, Tab 56.
[181] Ibid at pp. 78-80, Intervenor's BOA, Tab 56.
[182] Ibid at p. 81, Intervenor's BOA, Tab 56.
[183] Ibid at p. 104, Intervenor's BOA, Tab 56.
[184] Ibid at p. 105, Intervenor's BOA, Tab 56.
[185] Ibid at p. 105, Intervenor's BOA, Tab 56.
[186] See e.g. Ibid at pp. pp. 71-72, 75-76, Intervenor's BOA, Tab 56.
[187] See Ibid at pp. 55-56 [emphasis added], Intervenor's BOA, Tab 56.
[188] Paul Dubé, Ontario Ombudsman, *Out of Oversight, Out of Mind* (April 2017), Intervenor's BOA, Tab 61.

inmates are confined in their cells for 22 hours per day or more with little meaningful human contact, many of whom are on remand and have not been convicted [emphasis added][189]

(ii) Despite being particularly vulnerable to harm through solitary confinement, these inmates are routinely housed in isolated cells for 'safety and security' reasons or because corrections officials do not have more appropriate options for housing them;[190]

(iii) Policy requirements that may be meant to provide legal safeguards to inmates in solitary confinement are often ignored;[191]

(iv) Correctional authorities often fail to accurately track how long inmates have been kept in solitary confinement;[192]

(v) MCSCS struggles to accurately track solitary confinement placements are compounded by the confusion and disagreement around what 'segregation' actually means;[193]

(vi) Reviews of inmates in solitary confinement are often non-existent or wholly inadequate;[194] and

(vii) Review forms meant to track how long inmates have been in solitary confinement and why, are often mere copies of each other, failing to note correct details, and which repeatedly pass on incorrect information.[195]

90. In September 2017, the Ontario Human Rights Commission filed a contravention application against Ontario alleging its breach of the *Jahn v. Ontario (MCSCS)* settlement agreement in this Tribunal.[196] It alleged that Ontario had failed to comply with the public interest remedies in the 2013 settlement agreement noted above. In particular, it alleged that Ontario had failed to meet its legally binding commitments to prohibit the use of segregation for persons with mental health disabilities, provide mental health screening and services, and accurately document, review and report on the use of segregation.

91. On August 23, 2017, in *Ogiamien v. Ontario (Community Safety and Correctional Services)*, despite allowing the appeal with respect to the impact of lockdowns on *Charter* rights, the Ontario Court of Appeal still made it a point to note the "***physical and social isolation and***

---

[189] Ibid at p. 5, Intervenor's BOA, Tab 61.
[190] Ibid at p. 6, Intervenor's BOA, Tab 61.
[191] Ibid at p. 6, Intervenor's BOA, Tab 61.
[192] Ibid at p. 6, Intervenor's BOA, Tab 61.
[193] Ibid at p. 6, Intervenor's BOA, Tab 61.
[194] Ibid at p. 7, Intervenor's BOA, Tab 61.
[195] Ibid at p. 7, Intervenor's BOA, Tab 61.
[196] See Ontario Human Rights Commission, *Jahn v. Ontario (MCSCS)* Settlement Contravention Application (September 2017), Intervenor's BOA, Tab 29.

the resulting psychological and physical effects that accompany solitary confinement" [emphasis added].[197]

92. On December 18, 2017, in *CCLA v. Canada*,[198] Marrocco A.C.J. of the Ontario Superior Court of Justice stuck down Canada's federal solitary confinement laws relating to "Administrative Segregation" under the federal *Corrections and Conditional Release Act* as unconstitutional. They were found to contravene s. 7 of the *Charter*, which could not be saved under s. 1 due to the lack of procedural safeguards in the fifth working day review, and thereby the unconstitutionality of any administrative segregation that relies upon this review. It was found that the impugned provisions authorize treatment that causes serious psychological harm, is offside responsible medical opinion, causes and exacerbates serious mental illness, and is contrary to international norms and principles. Notably, Marrocco A.C.J. made the following findings or observations:

(i) Solitary confinement, or 'administration segregation' under the federal regime considered therein, "waits for the negative psychological effects [of isolation] to manifest in the form of some recognizable observable form of mental decompensation or suicidal ideation before supporting or perhaps removing the inmate".[199] In other words, the inmate will only be released when it is apparent that debilitating harm has occurred;

(ii) The United Nations' Mandela Rules "represent an international consensus of proper principles and practices in the management of prisons and the treatment of those confined",[200] which "Canada has supported" and "Canada helped draft".[201] The Mandela Rules define solitary confinement as "the confinement of prisoners for 22 hours or more a day without meaningful human contact" under Rule 44. The court accepted that Canada's current practice of administrative segregation amounts to solitary confinement under the Mandela Rules;[202]

(iii) The Mandela Rules prohibit solitary confinement in excess of 15 days.[203] The court accepted the evidence of Professor Juan Mendez, the former United Nations Special Rapporteur on Torture, that this limit is a "hard and fast rule for cruel, inhuman and degrading treatment contrary to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (June 1987)*", which Canada has

[197] *Ogiamien v. Ontario (Community Safety and Correctional Services)*, 2017 ONCA 667, Intervenor's BOA, Tab 27.

[198] *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, Intervenor's BOA, Tab 11.

[199] Ibid at para. 255, Intervenor's BOA, Tab 11.

[200] Ibid at para. 61, Intervenor's BOA, Tab 11.

[201] Ibid at para. 249, Intervenor's BOA, Tab 11.

[202] Ibid at para. 46, Intervenor's BOA, Tab 11.

[203] Ibid at paras. 51 and 249, Intervenor's BOA, Tab 11.

ratified.[204] Likewise, the court noted that the Ashley Smith Inquest recommended a prohibition on administrative segregation beyond 15 consecutive days;[205]

(iv) There is "no serious question" that prolonged administrative segregation is "harmful and offside responsible medical opinion".[206] The court accepted the CCLA's evidence of Dr. Ruth Martin,[207] Dr. Gary Chaimowitz,[208] Dr. Kelly Hannah-Moffat,[209] and others. And the court rejected Canada's only medical opinion on point, tendered by Dr. Robert Morgan, a Texas psychologist who had no experience with Canadian prisons and had never treated a Canadian inmate;[210]

(v) The court refused to accept Canada's evidence that most segregated inmates will not experience harm.[211] The court recognized that solitary confinement imposes psychological stress,[212] which exceeds the "ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action".[213]

93. The matter in *CCLA v. Canada* is currently before the Ontario Court of Appeal.

94. On January 17, 2018, in *BCCLA v. Canada*, Leask J. of the British Columbia Supreme Court similarly struck down the same impugned sections of the *Corrections and Conditional Release Act* relating to solitary confinement.[214] They were again found to contravene s. 7 of the *Charter*, which could not be saved under s. 1.[215] Moreover, Leask J. found they contravene s. 15 equality rights relating to Indigenous inmates and those with mental illness.[216] Leask J. made many findings and observations, notably including the following:

(i) He found that "rather than prepare inmates for their return to the general population, prolonged placements in segregation have the opposite effect of making them more dangerous both within the institutions' walls and in the community outside";[217] and

(ii) He recognized that "'segregation' is a generic term that encompasses a range of circumstances. In its widest sense, it implies that some form of restriction is placed on the degree of association that an inmate may have with other inmates. For example, an inmate may be kept in a normal cell but be limited as to which other inmates he or she

---

[204] Ibid at para. 57, Intervenor's BOA, Tab 11.
[205] Ibid at para. 32, Intervenor's BOA, Tab 11.
[206] Ibid at paras. 89, 97, 254, Intervenor's BOA, Tab 11.
[207] Ibid at para. 123, Intervenor's BOA, Tab 11.
[208] Ibid at para. 46, Intervenor's BOA, Tab 11.
[209] Ibid at para. 239, Intervenor's BOA, Tab 11.
[210] Ibid at paras. 94-95, Intervenor's BOA, Tab 11.
[211] Ibid at para. 94, Intervenor's BOA, Tab 11.
[212] Ibid at para. 99, Intervenor's BOA, Tab 11.
[213] Ibid at para. 100, Intervenor's BOA, Tab 11.
[214] *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62, Intervenor's BOA, Tab 6.
[215] See e.g. ibid at paras. 256-437, Intervenor's BOA, Tab 6.
[216] See e.g. ibid at paras. 438-524, Intervenor's BOA, Tab 6.
[217] See ibid at para. 330, Intervenor's BOA, Tab 6.

> can interact with or the activities in which he or she can participate. Segregation can also be very restrictive and amount to isolation wherein the inmate is confined to a special cell with no association with any other inmates".[218]

95. The matter in *BCCLA v. Canada* is currently before the British Columbia Court of Appeal.

96. On January 18, 2018, this Tribunal issued a Consent Order prohibiting the use of solitary confinement for persons with mental health disabilities in Ontario jails, barring exceptional circumstances, arising from the settlement and public interest remedies emanating from the *Jahn v. Ontario (MCSCS)* matter.[219] The Consent Order requires Ontario to take specific steps, with detailed timelines, to keep people with mental illness out of segregation, including implementing a system to identify individuals with mental health disabilities in the correctional system; accurately track segregation use; monitor the health of any individuals placed in segregation; accountability and transparency mechanisms, like expert involvement in implementation; the appointment of an Independent Reviewer tasked with monitoring compliance; and requirements that Ontario collect and publicly report data on its ongoing use of segregation.

97. On January 25, 2018, in *Gogan v. Canada (Attorney General)*, Hunt J. of the Nova Scotia Supreme Court stated "[i]n the time since the original filing of this Application any observer of the law surrounding administrative segregation/solitary confinement will have detected a growing caution in the emerging case law", with reference to both *CCLA v. Canada* and *BCCLA v. Canada* noted above.[220]

98. On March 19, 2018, in *Hamm v. Canada (Attorney General)*, Schlosser J. of the Alberta Court of Queen's Bench recognized "[the *habeas corpus* applicant] endured a total of 822 days in solitary over his prison career. It does not take much imagination to think that two or three years in solitary might cause someone to become psychologically spent."[221]

99. On May 7, 2018, the Ontario *Correctional Services and Reintegration Act* received Royal Assent (Part V sets out requirements with respect to segregation and restrictive confinement that illustrate Ontario's commitment at the time to addressing segregation/solitary confinement

---

[218] See ibid at para. 331, Intervenor's BOA, Tab 6.
[219] See *OHRC v. Ontario (Community Safety and Correctional Services)*, 2018 HRTO 60, Intervenor's BOA, Tab 28.
[220] *Gogan v. Canada (Attorney General)*, 2018 NSSC 18 at paras. 80-81, Intervenor's BOA, Tab 18.
[221] *Hamm v. Canada (Attorney General)*, 2018 ABQB 206 at para. 31, Intervenor's BOA, Tab 20.

or restrictive confinement).[222] The *Correctional Services and Reintegration Act* has not yet been proclaimed and is not yet in force. It remains unclear when, or whether at all, the Act will be brought into force.

100. On June 21, 2018, in *Reddock v. Canada (Attorney General)*, the Ontario Superior Court of Justice certified a class action against Canada concerning the employment of "prolonged administrative segregation" – solitary confinement for a period at least 15 consecutive days – in Canadian federal correctional facilities.[223] The claim alleges violations of ss. 7, 9, 11(h) and 12 of the *Charter*; the parties also agreed to hold in abeyance claims for negligence. Generally, the class members consist of all persons who were involuntarily subjected to a period of prolonged administrative segregation at a federal institution between November 1, 1992 and the present, and were alive as of March 3, 2015.

101. On September 18, 2018, in *Francis v. Ontario*,[224] the Ontario Superior Court of Justice certified a class action concerning the employment of administrative segregation of inmates in Ontario jails under the *Ministry of Correctional Services Act*. This practice is known colloquially as solitary confinement. The case alleges that Ontario was negligent and breached the inmates' rights under ss. 7 and 12 of the *Charter* by its use of administrative segregation. The class members consist of all inmates who were subjected to administrative segregation at an Ontario jail post-January 1, 2009 and were either (i) diagnosed with a serious mental illness as defined, having reported such diagnosis and suffering; or (ii) subjected to administrative segregation for a prolonged period of 15 or more consecutive days.

102. On December 17, 2018, in *J.K. v. Ontario*, Perell J. of the Ontario Superior Court of Justice certified a class action concerning allegations of solitary confinement of youth offenders in Ontario youth justice facilities.[225] This case alleges Ontario breached its fiduciary duty, was negligent, and breached the *Charter* in the treatment of the youth offender class members.

103. As recently as January 4, 2019, in *R v. Prystay*, Pentelechuk J. (as she then was) of the Alberta Court of Queen's Bench found that prolonged solitary confinement constitutes cruel and unusual punishment contrary to s. 12 of the *Charter*. The accused had spent ***over 400 days*** in

---

[222] *Correctional Services and Reintegration Act, 2018*, Schedule 2 to *Correctional Services Transformation Act, 2018*, S.O. 2018, c. 6 - Bill 6 (Assented to May 7, 2018).

[223] *Reddock v. Canada (Attorney General)*, 2018 ONSC 3914, Intervenor's BOA, Tab 33.

[224] *Francis v. Ontario*, 2018 ONSC 5430, Intervenor's BOA, Tab 15.

[225] *J.K. v. Ontario*, 2018 ONSC 7545, Intervenor's BOA, Tab 21.

administrative segregation in a provincial jail. The remedy at sentencing was 3.75 days credit for every day in custody. The court noted, in part, that:

(i) "Segregation ravages the body and the mind. There is growing discomfort over its continued use as a quick solution to complex problems";

(ii) "Informed Canadians also realize that indefinite placement in segregation thwarts an inmate's chance of successfully re-integrating into society";

(iii) "Canadians find abhorrent that someone should remain in segregation for months or even years";

(iv) "Perhaps one day, segregation will be ended. Until then, recognizing that inmates have no political clout or influence, robust judicial oversight is the means of ensuring the constitutionally protected right to be free of cruel and unusual punishment or treatment is not sacrificed in the name of convenience or expediency"; and

(v) "It is not hopelessly idealistic to expect that if segregation is to remain as part of our correctional fabric, every effort is made to improve the restrictions on mobility, mental stimulation and meaningful human contact. Nor is it unrealistic or impractical to expect that correctional institutions demonstrate procedural fairness in the decision to *place* an inmate in segregation and that a robust process is in place to ensure the inmate is released to general population as soon as possible."[226]

104. In conclusion, it is the CCLA's view that prolonged solitary confinement, and solitary confinement of persons with physical disabilities, are practices that shock the conscience of Canadians. They contravene the rights of inmates under the *Charter*, contrary to Ontario's constitutional obligations. These include, *inter alia*: the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice (s. 7); the right not to be subjected to any cruel and unusual treatment or punishment (s. 12); and the right to equality (s. 15).

105. Given the depth and severity of the harms and *Charter* violations, officials cannot rely on administrative difficulty, or lack of resources, or cost concerns, to justify solitary confinement when it constitutes a *Charter* infringement.[227]

106. This Tribunal now has the opportunity to recognize the harms and severe constitutional violations resulting from the forms of solitary confinement highlighted above. Any interpretation

[226] See *R v. Prystay*, 2019 ABQB 8 at paras. 10-12, 56, 128-130, 165, Intervenor's BOA, Tab 31.

[227] See e.g. *Bacon v. Surrey Pre-trial Services Centre*, 2010 BCSC 805 at paras. 269, Intervenor's BOA, Tab 2; *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486 at para. 85, Intervenor's BOA, Tab 32; *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177 at para. 70, Intervenor's BOA, Tab 34.

and employment of the Code, as quasi-constitutional legislation itself,[228] must be informed by the constitutional reality of solitary confinement as echoed by the courts.[229]

107. As such, consideration by this Tribunal of Mr. Allen's placement in, and experience of, Unit 10A, should be considered within the context of solitary confinement, its harms, and its severe impact on fundamental human and *Charter* rights, as highlighted above.

D. A person's disability cannot be a justification for solitary confinement

108. Placement of persons with physical disabilities in solitary confinement is harmful and discriminatory and clearly cannot be justified by virtue of the disability. Rule 45(2) of the Mandela Rules sets out a minimum international standard, requiring that "[t]he imposition of solitary confinement should be prohibited in the case of prisoners with mental ***or physical disabilities*** when their conditions would be exacerbated by such measures."[230] [emphasis added]

109. And Howard Sapers states in his 2017 independent review of solitary confinement practices in Ontario jails:

> The Ministry's struggles to realize appropriate accommodations are not limited to mental health and segregation. ***Individuals with physical disabilities are also frequently segregated because the assistive devices they require are not items that would typically be allowed in a jail. Under the Human Rights Code, these individuals must be offered the same conditions of confinement as the rest of the inmates, up to the point of undue hardship.***[231] [emphasis added]

110. Solitary confinement is not aligned with the goal of providing an inmate with a physical disability equal access to those services or facilities enjoyed by inmates without a disability.

111. There is no functional definition of "segregation", nor a regime for its imposition, found in Ontario legislation or regulations. It is found, if anywhere, in internal MCSCS policies which control the placing of inmates in solitary confinement, under various monikers ('administrative segregation', 'medical isolation', 'special needs unit', etc.). There are various applicable policies

---

[228] See e.g. comments in *Fay v. Independent Living Services*, 2014 HRTO 332 at para. 4, Intervenor's BOA, Tab 14; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3 at para. 44, Intervenor's BOA, Tab 7.

[229] See *Taylor-Baptiste v. Ontario Public Service Employees Union*, 2015 ONCA 495 at para. 57, Intervenor's BOA, Tab 36.

[230] *United Nations Standard Minimum Rules for the Treatment of Prisoners* (17 December 2015), Rule 45(2), Intervenor's BOA, Tab 46.

[231] Howard Sapers, *Segregation in Ontario: Independent Review of Ontario Corrections* (March 2017) at p. 76, Intervenor's BOA, Tab 56.

that touch upon solitary confinement. They are not readily available or accessible. Some are *ad hoc*. Most inconsistently operate among the various Ontario jails, if at all. While the policies themselves are frequently not clear, what is clear is that human rights considerations are supposed to inform throughout the process of solitary confinement.[232]

112. Of particular note to this Tribunal is the MCSCS policy of July 30, 2015 titled *Undue Hardship: Providing Accommodations Short of Undue Hardship*, implemented towards the end of Mr. Allen's period of solitary confinement. Under it, acceptable living standards and humane treatment are always to be maintained. Inmates are to be integrated into the general population to the fullest extent possible, with the same access to programs, rights and privileges, unless access would cause undue hardship. Indeed, "as far as practicable," inmates in solitary confinement, whatever the moniker used, must be given the same conditions of confinement, rights, and privileges as inmates in the general population.[233]

113. In no way does this above legislative, regulatory, or policy scheme permit any disability, including physical disability, to be a *bona fide* basis by which an inmate is placed in solitary confinement. And if it did, this would be contrary to the *Charter* and to the Code. There is no question that a person's disability cannot justify penalizing that person – not by placing them in a "prison within a prison", and certainly not by keeping them in unconstitutional conditions.

E. Solitary confinement cannot be "reasonable accommodation" under the Code

114. As the Supreme Court of Canada has observed, the duty to provide reasonable accommodation is a fundamentally important aspect of human rights legislation and an integral part of the right to equality.[234] Moreover, the Supreme Court of Canada has advised:

(i) "'Accommodation'" refers to what is required in the circumstances to avoid discrimination. Standards must be as inclusive as possible";

(ii) "There is more than one way to establish that the necessary level of accommodation has not been provided";

(iii) "Failure to accommodate may be established by evidence of arbitrariness in setting the standard, by an unreasonable refusal to provide individual assessment, or perhaps in some other way";

[232] For a detailed discussion of the applicable internal policies, see e.g. ibid at p. 27-37, Intervenor's BOA, Tab 56.

[233] For firsthand discussion of this MCSCS policy, see e.g. ibid at p. 34-36, Intervenor's BOA, Tab 56.

[234] See *Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 S.C.R. 525 at 544, Intervenor's BOA, Tab 10.

(iv) Most importantly, the test for "reasonable accommodation" in a human rights context involves both a procedural and a substantive component.[235]

115. Within the correctional system in particular, it is unquestionable that the government has an obligation to ensure that individuals with human rights needs are accommodated and, for example, receive necessary medical treatment and rehabilitation, rather than punishment or isolation, due to their illness, symptoms, or particular circumstances.[236] Inmates are already a particularly vulnerable segment of the population, at the mercy of correctional authorities. Inmates with disabilities are even more vulnerable.

116. The Supreme Court of Canada has observed that:

> The concept of reasonable accommodation recognizes the right of persons with disabilities to the same access as those without disabilities, and imposes a duty on others to do whatever is reasonably possible to accommodate this right. The discriminatory barrier must be removed unless there is a *bona fide* justification for its retention, which is proven by establishing that accommodation imposes undue hardship on the service provider.[237]

117. This Tribunal has expressly echoed these remarks.[238]

118. It is widely recognized that in all circumstances, the use of solitary confinement has a profoundly detrimental impact on the well-being of a human being. As discussed above, the use of solitary confinement on vulnerable persons, or on persons for prolonged periods, constitutes cruel and unusual punishment, contrary to international standards instructive in Canada, contrary to *Charter* rights and values, and contrary to fundamental human rights.

119. The concept of "reasonable accommodation" involves a duty to engage in a positive, good faith effort to create equal access for marginalized persons. To argue that this could be accomplished through the severely harmful, unconstitutional, and discriminatory practice of solitary confinement is cynical indeed. It is therefore the CCLA's position, which it encourages this Tribunal to expressly endorse at this time, that both reasonably, and legally-speaking, under no circumstances can such a negative and harmful measure constitute a "reasonable accommodation" of a physical disability within the meaning of the Code.

---

[235] See *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 at paras. 22, 42-45, Intervenor's BOA, Tab 8; see also *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3 at paras. 65, 66, Intervenor's BOA, Tab 7.

[236] See e.g. general discussion in JHSO, *Fractured Care: Public Health Opportunities in Ontario's Correctional Institutions* (2016), Intervenor's BOA, Tab 58.

[237] *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15 at para. 121, Intervenor's BOA, Tab 12.

[238] See *Wozenilek v. Guelph (City)*, 2010 HRTO 1652 at para. 11, Intervenor's BOA, Tab 39.

120. Out of an abundance of caution, even if gauged under the legal test for "reasonable accommodation", the use of solitary confinement does not, and cannot, meet the procedural and substantive requirements of the test as established by this Tribunal:

(i) The essential elements of the ***procedural*** component of reasonable accommodation of a disability under the Code, such as the request for accommodation, the offer to accommodate, and the duty to cooperate in the process, are not present in the context of an administrative decision to remove an inmate from the general population and place him or her in solitary confinement. This is certainly the case when a disabled inmate is placed in solitary confinement on account of his or her disability. That decision-making process does not envisage any collaboration between the correctional administrator and the inmate. The requisite collaboration and exploration of accommodation options is non-existent. The parties are not working towards a reasonable solution. Moreover, placing an inmate in solitary confinement in any circumstance – and certainly when done on account of a disability – is effectively a unilateral imposition, even if the inmate requests some kind of protection. The inmate is ultimately not involved in the process so that he or she would be apprised of the ongoing supports and alternatives available as required under the Code;[239]

(ii) Similarly, the essential elements of the ***substantive*** component of reasonable accommodation of a disability under the Code are non-existent when an inmate with a physical disability is placed in solitary confinement. This analysis considers the reasonableness of the accommodation offered in the circumstances or the respondent's reasons for not providing accommodation. It is patently absurd to suggest that a placement of a person with a disability in solitary confinement can be accepted as a reasonable and legitimate solution to enhance equal access.[240]

121. All of this supports the common sense reality that placement of an inmate with a physical disability in solitary confinement can never be "reasonable accommodation" of that disability under the Code.

F. Potential public interest remedies

122. This Application presents an opportunity for this Tribunal to order public interest remedies beyond specific remedies that may arise with respect to Mr. Allen's individual rights on the underlying facts of this matter, if established. This Tribunal has broad jurisdiction to order such relief. Such relief would have a nexus to these facts and would give meaningful effect to advancing the Code in Ontario by removing barriers relating to inmates with physical disabilities.

123. The CCLA generally supports the public interest remedies proposed by the Applicant in his "Schedule C", initially dated February 2018, particularly the Applicant's calls for an end to

---

[239] See e.g. *Alexander v. Zellers*, 2009 HRTO 2167 at para. 30 [citations omitted], Intervenor's BOA, Tab 1; *Vargas v. University of Waterloo*, 2013 HRTO 1161 at paras. 37-39, Intervenor's BOA, Tab 38.

[240] See e.g. *Alexander v. Zellers*, 2009 HRTO 2167 at para. 31 [citations omitted], Intervenor's BOA, Tab 1; *MacDonald v. Cornwall Public Library*, 2011 HRTO 1323 at para. 35, Intervenor's BOA, Tab 25.

segregation or solitary confinement as a means of managing inmates because of their physical disabilities; the distribution of relevant Code-related information in all inmate handbooks; and the formation of an independent audit group to assess and report on the state of accessibility in Ontario jails.[241]

124. The CCLA would, however, respectfully go further in its efforts to be of assistance to this Tribunal in its disposition of this Application, and proposes that it order public interest remedies in relation to: (1) prolonged solitary confinement and solitary confinement of inmates with physical disabilities in Ontario jails; (2) accessibility and accommodation of inmates with physical disabilities in Ontario jails generally; and (3) other related matters.

1. *Public interest remedies, solitary confinement, and inmates with physical disabilities*

125. International, domestic, medical, and scholarly consensus all require, for the purpose of upholding human rights and protecting the right to freedom from discrimination, a prohibition on the use of "prolonged solitary confinement", meaning any solitary confinement over 15 days.[242] This Tribunal should respectfully so order.

126. In addition, in conjunction with the facts of this matter, the CCLA submits that a public interest remedy suitable for this Tribunal to order at this time is a ***prohibition*** on the placement of persons with physical disabilities in solitary confinement, but for exceptions established by statute. For any such exception, the legislature must state the exception's specific purpose, maximum duration, and require such an exception to be a demonstrable justification of last resort, and subject to effective and transparent oversight and accountability mechanisms.

127. Such a prohibition should equally apply with respect to individuals with physical disabilities, irrespective of whether the solitary confinement is in an administrative or disciplinary context. It is clear that inmates with physical disabilities suffer new, unique, and exacerbated harms when subjected to solitary confinement. This is at risk of occurring regardless of the purpose of the confinement. The CCLA submits that alternatives to solitary confinement for individuals with physical disabilities can and must be found.

[241] See Application of Gregory Allen dated July 29, 2016 (as amended), Schedule C dated February 14, 2018 at paras. 1 and 12 (recently amended).

[242] See various authorities cited above in Part IV.A-C.

128. This proposed prohibition should be ordered to take immediate effect. Any persons with physical disabilities currently in solitary confinement should be released accordingly without delay.

129. Ontario must, in consultation with an Independent Expert, establish internal mechanisms to monitor the implementation of, and ongoing compliance with, the terms of this prohibition, including the tracking, with recorded reasons, of any such placements in solitary confinement should they occur. Data from this tracking, in disaggregated form, must be provided to the Independent Expert, and be made public. External oversight and accountability must also be undertaken, such that Ontario should appoint an Independent Reviewer, and provide him or her with full cooperation and unencumbered access to the information and locations necessary to conduct his or her review of the implementation of the prohibition. The Independent Reviewer should deliver a periodic, public report considering Ontario's compliance with the prohibition, with timing and content of the report subject to the discretion of the Independent Reviewer.

130. The Independent Expert and Independent Reviewer should be agreed upon by the parties to this Application, including the Intervenor.

2. *Public interest remedies and accessibility for physical disabilities in Ontario jails*

131. The facts of this Application also present this Tribunal with an important opportunity at first instance to order public interest remedies in respect of inmates with physical disabilities in Ontario jails generally, including their accommodation in Ontario jails.

132. The CCLA proposes that an Independent Report[243] should be commissioned to study the issues of accessibility and accommodation of inmates with physical disabilities in Ontario jails. To date, these issues have not received proper study and due attention in Ontario or Canada. The Independent Report should be led by a neutral expert versed in the applicable subject matters.

133. Mutually agreeable key stakeholders, or the parties and Intervenor to this Application or their designates, should determine the neutral expert who will serve as the Independent Report's project lead, as well as determine the Terms of Reference for the Independent Report,

---

[243] It could also be called an independent "study", "inquiry", or "commission"; all would denote the same meaning.

including timeframes, content, and details pertaining to implementation of the Independent Report's recommendations.

134. The Independent Report should be administered in a manner that retains its independence. Funding should come from the Ontario government. Set timelines for the establishment of this Independent Report, and for setting out Terms of Reference, should be ordered, in consultation with the pertinent parties.

135. Pertinent stakeholders, including disability rights, prisoner rights, and civil rights organizations, should be permitted to make submissions as part of the Independent Report.

136. A final report must be released with detailed recommendations for improving the accessibility of Ontario jails for inmates with physical disabilities,[244] including recommendations and timeframes for their implementation.

137. In the event MCSCS does not implement specific recommendations within a set timeframe, it should provide a detailed written rationale to the Independent Report within a set timeframe.

138. Topics that the Independent Report could study may include, but are not limited to:

(i) The healthcare and disability issues and concerns of inmates with physical disabilities in Ontario jails, including: communication challenges and the use of force; appropriate healthcare and needs assessment; and grievance procedures in relation to these issues.

(ii) Supports and accommodation needs, including access to appropriate healthcare including physiotherapy, interpreters, special diets, access to showers and other spaces, accessible programs and jobs, prosthetics and mobility aids;

(iii) A review of policies and practices to ensure the issues relating to inmates with physical disabilities are addressed in accordance with the Code;

(iv) The provision of training programs on physical disabilities and health issues, accommodation, and accessibility to front line correctional staff and managers, which addresses but is not limited to: (a) human rights obligations and the need to accommodate inmates with physical disabilities; (b) identifying barriers that are the symptoms of physical disabilities; (c) the impact of punitive measures, such as the use of force and isolation of inmates with physical disabilities; and (d) the specific needs of particularly vulnerable inmate populations with physical disabilities.

(v) The scope of the accommodations necessary;

---

[244] This includes spotlighting the dangers and impairments for blind people, deaf people, people in need of walking assistance devices, and people with other physical disabilities, in custody in Ontario jails.

(vi) In conjunction with that noted in the section above, the potential appointment of an Independent Reviewer with relevant expertise to monitor the implementation of the Independent Report's recommendations in an accountable, accessible, and transparent manner; and

(vii) The possibility of interim measures relating to pressing matters that may arise during the course of the Independent Report.

3. *Other matters*

a) Defining solitary confinement

139. For the purpose of these submissions, in particular with respect to proposed public interest remedies, and for the purpose of any remedy, settlement, or Order resulting from this Application, CCLA proposes that solitary confinement must be defined as the extreme isolation of an individual, including at least any circumstances in which inmates are held without meaningful human contact for 22 or more hours a day.

b) The requisite independence of health services in Ontario jails

140. Given the heightened healthcare needs of many inmates with physical disabilities, the CCLA also submits that there must be independent health services in Ontario jails. Healthcare in Ontario jails, including that related to physical disabilities, must be integrated with the larger provincial healthcare system, such that medical staff assessing and treating inmates, including those with physical disabilities, retain their independence. Such a transition is widely recognized as essential. This Tribunal should order Ontario to provide a detailed response to this submission to include measures taken to implement this transition and timelines for future measures; or a detailed rationale, if any, pertaining to the preservation of the status quo.

c) Interim measures

141. The CCLA also proposes that as an interim measure, Ontario should begin an internal review process concerning its policies and training practices with respect to inmates with physical disabilities, accommodation, and accessibility in Ontario jails.

142. In addition, CCLA proposes the establishment of a joint Accessibility Committee for Ontario jails, to include internal corrections experts and external prisoners' rights and human rights experts. Appropriate remuneration should be provided to external experts.

143. Interim measures should be implemented without delay.

d) General

144. The CCLA stands ready to offer its full support as a further resource for this Tribunal in respect of these public interest remedies going forward if deemed necessary. Should such public interest remedies be ordered, the CCLA requests an opportunity to make further submissions on such remedies once their general scope and content is decided upon, including with respect to specific timelines for their implementation.

V. CONCLUSION

145. As the above authorities demonstrate, the harms of solitary confinement are severe and well-known, with direct, deleterious impact on an inmate's fundamental human and *Charter* rights.

146. The international definition of solitary confinement provides an instructive baseline for this Tribunal, below which Canada and Ontario should not fall. Solitary confinement should be recognized as a state of extreme isolation, which must include at least any circumstances in which prisoners are held without meaningful human contact for 22 or more hours a day. This includes an objective, fact-based determination, regardless of the term used to describe solitary confinement.

147. No person, for any reason, should be subjected to 15 or more consecutive days in solitary confinement ("prolonged solitary confinement"). Subjecting persons with a disability – be it a mental ***or physical*** disability – to solitary confinement is a prohibited form of discrimination. Courts, commentators, and public actors alike have recognized the harms of prolonged solitary confinement, and solitary confinement of persons with a physical disability.

148. This Tribunal is faced with an opportunity to progress this issue further by declaring a prohibition on prolonged solitary confinement, and on the placement of inmates with physical disabilities in solitary confinement, subject to exceptions, if any, as set out above.

149. It is undeniable that using a person's disability, including physical disability, as a justification for solitary confinement is unacceptable, impermissible, and discriminatory. As demonstrated above, the severity and harms of solitary confinement render it patently absurd and completely inappropriate as a means of "reasonable accommodation" under the Code.

150. Therefore, if this Tribunal finds that Mr. Allen suffered for over 400 days in solitary confinement in an Ontario jail, and was discriminated against under the Code, it falls to this Tribunal to remedy any such wrongs. In addition to any personal remedies it may order, the Tribunal may remedy these wrongs by way of public interest remedies discussed herein, and available to it, that could prohibit prolonged solitary confinement, prohibit the placement of persons with physical disabilities in solitary confinement, as well as initiate the effort necessary to improve accessibility and accommodation for inmates with physical disabilities in Ontario jails.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of January, 2019.

McCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Kosta Kalogiros LS#: 53989A
Scott Robinson LS#: 65689W

Lawyers for the Intervenor, Canadian Civil Liberties Association

SCHEDULE A – LIST OF AUTHORITIES

Canadian Case Law

1. *Alexander v. Zellers*, 2009 HRTO 2167
2. *Bacon v. Surrey Pre-trial Services Centre*, 2010 BCSC 805
3. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817
4. *Boone v. Ontario (Community Safety and Correctional Services)*, 2014 ONCA 515
5. *Brazeau v. Attorney General (Canada)*, 2016 ONSC 7836
6. *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62
7. *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3
8. *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868
9. *Charlie v. British Columbia (Attorney General)*, 2016 BCSC 2292
10. *Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 S.C.R. 525
11. *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491
12. *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15
13. *Desmarais v. Correctional Service of Canada*, 2014 CHRT 5
14. *Fay v. Independent Living Services*, 2014 HRTO 332
15. *Francis v. Ontario*, 2018 ONSC 5430
16. *Gallone c. Procureur général du Canada*, 2017 QCCS 2138
17. *Gogan v. Nova Scotia (Attorney General)*, 2015 NSSC 360
18. *Gogan v. Canada (Attorney General)*, 2018 NSSC 18
19. *Hamm v. Attorney General of Canada (Edmonton Institution)*, 2016 ABQB 440
20. *Hamm v. Canada (Attorney General)*, 2018 ABQB 206
21. *J.K. v. Ontario*, 2018 ONSC 7545
22. *Jahn v. Ontario (MCSCS)* - Public Interest Remedies (24 September 2013)
23. *Jahn v. Ontario (MCSCS)* - Supplemental Public Interest Remedies (2015)
24. *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62
25. *MacDonald v. Cornwall Public Library*, 2011 HRTO 1323
26. *McCann v. The Queen*, [1976] 1 FC 570
27. *Ogiamien v. Ontario (Community Safety and Correctional Services)*, 2017 ONCA 667
28. *OHRC v. Ontario (Community Safety and Correctional Services)*, 2018 HRTO 60
29. Ontario Human Rights Commission, *Jahn v. Ontario (MCSCS)* Settlement Contravention Application (September 2017)
30. *R. v. Anderson*, 2015 BCPC 210
31. *R v. Prystay*, 2019 ABQB 8
32. *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486
33. *Reddock v. Canada (Attorney General)*, 2018 ONSC 3914
34. *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177
35. *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1

36. *Taylor-Baptiste v. Ontario Public Service Employees Union*, 2015 ONCA 495
37. *Trang v. Alberta (Edmonton Remand Centre)*, 2010 ABQB 6
38. *Vargas v. University of Waterloo*, 2013 HRTO 1161
39. *Wozenilek v. Guelph (City)*, 2010 HRTO 1652

International Law

40. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (26 June 1987)
41. Human Rights Committee, General Comment No. 20, 44th session (1992)
42. *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, A/66/268 (5 August 2011)
43. *International Covenant on Civil and Political Rights* (16 December 1966)
44. Organization of American States, Annex to the Press Release Issued at the Close of the 147th Session (5 April 2013)
45. *United Nations Basic Principles for the Treatment of Prisoners* (14 December 1990)
46. *United Nations Standard Minimum Rules for the Treatment of Prisoners* (17 December 2015)

Public Reports, Inquiries, and Statements

47. American Civil Liberties Union, *Caged In: Solitary Confinement's Devastating Harm on Prisoners with Physical Disabilities* (January 2017)
48. "Ban long-term solitary confinement: Editorial", Toronto Star (12 May 2016)
49. Canadian Federation of Medical Students, "Policy Statement on Solitary Confinement and Health Delivery in Canadian Correctional Facilities" (2018)
50. Canadian Mental Health Association, "Segregation and mental health: CMHA Ontario supports Sapers' report" (4 May 2017)
51. College of Family Physicians of Canada, "Position Statement on Solitary Confinement" (7 August 2016)
52. *Coroner's Inquest Touching the Death of Ashley Smith* (19 December 2013)
53. Diane Kelsall, M.D., M.Ed., "Cruel and usual punishment: solitary confinement in Canadian prisons", Canadian Medical Association Journal (9 December 9, 2014)
54. Howard Sapers, OCI, *A Preventable Death* (2008)
55. Howard Sapers, OCI, *Annual Report of the Office of the Correctional Investigator 2014-2015* (26 June 2015)
56. Howard Sapers, *Segregation in Ontario: Independent Review of Ontario Corrections* (March 2017)
57. *Istanbul Statement on the Use and Effects of Solitary Confinement* (9 December 2007)
58. John Howard Society of Ontario, *Fractured Care: Public Health Opportunities in Ontario's Correctional Institutions* (2016)
59. John Howard Society of Ontario, "Solitary Confinement Fact Sheet" (2017)
60. Louise Arbour, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (1996)
61. Paul Dubé, Ontario Ombudsman, *Out of Oversight, Out of Mind* (April 2017)

62. Prime Minister of Canada, Minister of Justice and Attorney General of Canada Mandate Letter (12 November 2015)
63. *Response to the Coroner's Inquest Touching the Death of Ashley Smith* (December 2014)
64. Registered Nurses Association of Ontario, "Protection of Human Rights and Improving Health Care in Correctional Facilities" (23 January 2015)
65. Registered Nurses Association of Ontario, *Transforming Ontario's Correctional Services: Starting, But Not Stopping, with Segregation* (22 February 2016)
66. Renu Mandhane, Chief Commissioner, Ontario Human Rights Commission, "Speaker's Corner: End segregation, says Ontario Human Rights Commission", Law Times, (7 March 2016)
67. World Health Organization, *Prisons and Health* (2014)