



ARCHIVED - Archiving Content

Archived Content

Information identified as archived is provided for reference, research or recordkeeping purposes. It is not subject to the Government of Canada Web Standards and has not been altered or updated since it was archived. Please contact us to request a format other than those available.

ARCHIVÉE - Contenu archivé

Contenu archivé

L'information dont il est indiqué qu'elle est archivée est fournie à des fins de référence, de recherche ou de tenue de documents. Elle n'est pas assujettie aux normes Web du gouvernement du Canada et elle n'a pas été modifiée ou mise à jour depuis son archivage. Pour obtenir cette information dans un autre format, veuillez communiquer avec nous.

This document is archival in nature and is intended for those who wish to consult archival documents made available from the collection of Public Safety Canada.

Some of these documents are available in only one official language. Translation, to be provided by Public Safety Canada, is available upon request.

Le présent document a une valeur archivistique et fait partie des documents d'archives rendus disponibles par Sécurité publique Canada à ceux qui souhaitent consulter ces documents issus de sa collection.

Certains de ces documents ne sont disponibles que dans une langue officielle. Sécurité publique Canada fournira une traduction sur demande.

**COMMITMENT TO LEGAL COMPLIANCE,
FAIR DECISIONS AND EFFECTIVE RESULTS**



HV
8395
.A6
T37
1997

*Task Force Report
March 1997*

HV
8395
.A6
T37
1997

**COMMITMENT TO LEGAL COMPLIANCE,
FAIR DECISIONS AND EFFECTIVE RESULTS**



*Task Force Report
March 1997*

LIBRARY
SOLICITOR GENERAL CANADA
JUL 8 1998
SOLICITEUR GENERAL CANADA
OTTAWA (ONTARIO)
K1A 0P8

Table of Contents

A.	Opening Comments	1
B.	Acknowledgments	3
C.	Introduction	
	(a) Events Preceding the Task Force	6
	(b) Terms of Reference.....	6
	(c) Principles that Have Framed the Task Force's Deliberations	7
D.	Description of the Segregated Population	
	(a) Basic Statistics	9
	(b) Characteristics of Segregated Inmates	10
	(i) <i>Criminal History Background</i>	10
	(ii) <i>Risk/Need</i>	11
	(iii) <i>Voluntary vs. Involuntary</i>	12
E.	Preliminary Assessment: Task Force Findings	
	(a) A Casual Attitude Towards the Rigour of the Law and CSC Policies	12
	(b) Effectiveness Issues.....	13
	(c) The Purpose of Administrative Segregation is Misunderstood	14
F.	CSC's Ability to Address Procedural Compliance Issues	
	(a) Background	15
	(b) Formal Audit	16
G.	Improving the Segregation Review Process	
	(a) The Enhanced Model	19
	(b) Roles/Authorities/Accountabilities	21
	(c) Continuous Education	22
	(d) Alternatives To Segregation - Mediation	23
	(e) Conducting Hearings.....	24
	(f) Maintaining Accurate/Timely Documentation	25
	(g) Strengthening Regional Review Boards.....	26
	(h) The Complaints and Grievance Process	27
	(i) Scheduled and Random Audits	28
H.	Independent Adjudication	
	(a) Background	28
	(b) Consultation	32
	(c) Review of Proposals for Independent Adjudication	
	(i) Madame Justice Arbour's Model.....	33

(ii) Proposals by Professor Jackson	34
(d) Introduction of Independent Adjudication to CSC	
(i) The Purpose and Scope of the Experiment'	37
(ii) Models For Consideration	38
(iii) Criteria For Selection of Participants	40
(iv) Developing Evaluation Criteria	40
(v) The CCRA Review	41
(e) Evaluation of the Use of Compensation	41
I. Population Management	
(a) Introduction.....	42
(b) Current Population Management Practices	44
(c) The Incarcerated Population in the Context of the Law.....	46
(d) The Need to Extend the Legal Framework.....	47
(e) The Need for Formal Review.....	49
J. Conditions of Confinement	
(a) Introduction.....	50
(b) Survey of Segregated Inmates	50
(c) Recreation and Programming.....	54
(d) Physical Plant.....	55
(e) Informing Segregated Inmates of Their Rights and Privileges	56
(f) Cell Effects	56
(g) Roles and Responsibilities	
(i) <i>Visits by the Institutional Head and the Health Care Professional</i>	56
(ii) <i>The Psychologists</i>	57
(iii) <i>The Case Management Officer (CMO) and the Correctional Officer II (COII)</i>	58
(iv) <i>Staff of the Administrative Segregation Unit</i>	59
K. Women Offenders	60
L. Aboriginal Offenders	
(a) Introduction.....	62
(b) An Aboriginal Vision - Proposed Pilot Project.....	63
M. Research	
(a) Screening Protocol: Identifying the Needs of Inmates at Risk of Becoming Segregated	65
(b) The Effects of Long-Term Segregation	65

N. The Segregation Advisory Committee..... 66

O. Summary of Recommendations 68

P. Bibliography

Q. Annexes

A. Opening Comments

It is helpful for the reader to understand some of the dynamics and forces that shaped the deliberations, observations and recommendations of the Task Force. The responsibility that the members of the Task Force felt throughout the process was to serve as an effective catalyst in shaping a positive change in the culture of the Correctional Service of Canada, in how segregation operations are maintained in full conformity with the law, and how the law governing segregation and separation from the general inmate population is viewed by all levels of the organization.

Correctional jurisdictions have developed categories of separation of the incarcerated population into maximum, medium and minimum security penitentiaries in order to control and manage the risk that offenders can pose to the community, to staff and to one another. The separation of these populations provides the Correctional Service of Canada with the means of managing sentences imposed by the courts in a way that ensures safe, secure, and humane treatment while encouraging and assisting offenders to become law abiding citizens. The appropriateness of this classification system to women offenders remained a controversial issue - an issue that was not reviewed by the Task Force.

Segregation is one of many population management alternatives available to operational personnel within penitentiaries. When, how and why Wardens and their staff elect to use segregation is a function of the overall context of the institutions in which such decisions are taken. Segregation is an extreme option and signals that all other reasonable alternatives have been considered as being unavailable or ineffective. It is the responsibility of all correctional administrators to create an environment where meaningful alternatives to segregation are the well established norm and where all personnel and offenders alike are committed to the pursuit of options that minimize the need for such dramatic intervention. It is clear to me that those institutions in which the use of segregation is minimized, and expertly managed, are healthier and more productive environments for personnel and inmates.

The work of Madame Justice Arbour in her examination of the incidents at the Prison for Women served as a consistent reference point for the Task Force. As her report was reviewed and reread time and again throughout our deliberations, I became increasingly impressed by the quality of analysis that was reflected in her report. Despite the hard messages contained therein, her report presents an informed and articulate opinion that cannot be lightly regarded.

The Task Force determined that the recommendations made by Madame Justice Arbour on external review cannot be implemented without amendments to the existing legislation. In light of this and the need to more fully understand the operational

implications of putting external review in place, the Task Force believes that a more careful examination is required. It has recommended therefore the evaluation of an independent adjudication model, that approximates the intent of Madame Justice Arbour's recommendations.

Although compliance with the procedural requirements of the law is critical, it is not the sole objective. It is simply a necessary condition that must be fulfilled and maintained while working to the legal objective, which is to minimize the use of segregation and ensure effective and safe reintegration of segregated inmates into less restrictive correctional environments. This objective can only be achieved by changing the way the purpose of segregation is viewed by staff members and managers who actually make the critical decisions regarding segregation, and by ensuring that their attitude and actions are consistent with the principles and demands of the law.

The Task Force was made up of individuals, each well respected within their community of influence and who hold widely differing views and philosophies regarding the law, corrections in general and segregation in particular. The following report is the product of many hours of lively, often heated discussion and debate. The fact that consensus was achieved out of views that were so disparate, yet passionately held, testifies to the value of open and honest discussion.

Because it is vital that this dialogue with outside participants continue, the final recommendation of the Task Force is the creation of a Segregation Advisory Committee whose mandate would extend over the time it takes to develop and implement the recommendations of this report.

Dan Kane, Chairperson
Task Force Reviewing Administrative Segregation

B. Acknowledgments

The composition of the Task Force represented a balance of members drawn from both within and outside the Correctional Service of Canada:

Bud Bannon, Regional Headquarters, Ontario Region, CSC
Charles Haskell, Legal Services, National Headquarters, CSC
Michael Jackson, Professor, Faculty of Law, University of British Columbia
Dan Kane, Chairperson, CSC
Fred Kapusta, Regional Headquarters, Atlantic Region, CSC
Jim LaPlante, National Headquarters, CSC
Janice Many Grey Horses, Regional Headquarters, Prairies Region, CSC
Doug McGregor, Regional Headquarters, Pacific Region, CSC
Daniel Merineau, Regional Reception Centre, Quebec Region, CSC
Patricia Monture Angus, Professor, Native Studies, University of Saskatchewan
Todd Sloan, Counsel, Office of the Correctional Investigator
Trish Trainor, National Headquarters, CSC
Paul Urmson, Regional Headquarters, Prairies Region, CSC
Ivan Zinger, National Headquarters, CSC

The members from the Service reflected operational and policy perspectives of National Headquarters and the operational experience of managers in all five regions of the Service. The outside membership was drawn from the Office of the Correctional Investigator, represented by its legal counsel, Todd Sloan, and two consultants, Professor Michael Jackson and Professor Patricia Monture Angus.

The input and expertise of Mr. Sloan, while maintaining the Correctional Investigator's statutory role of independent review from the perspective of the problems of offenders, was a major contribution to the development of the mandate of the Task Force and its final report. Professor Jackson, who teaches at the University of British Columbia Law School, brought to the deliberations of the Task Force his experience of over 25 years of research on the administration of justice inside federal penitentiaries, including research directed to the law and practice of segregation. Professor Monture Angus is a respected scholar in the areas of Aboriginal justice and the relationship between Aboriginal peoples and the Canadian justice system and is a Mohawk from Six Nations who currently resides at the Thunderchild (Cree) First Nations in Saskatchewan. Professor Monture Angus was a member of the 1991 Working Group of the Task Force on Federally Sentenced Women. She brought to the deliberations of the Task Force the critical importance of understanding the impact of correctional policies on the lives of Aboriginal people and the extent to which supposedly neutral policies and practices can contribute to systemic discrimination against Aboriginal people. The need to be respectful of the distinct experiences of Aboriginal people in

the Canadian justice system was also reflected in the involvement of Janice Many Grey Horses, a member of the Blackfoot Confederacy, who works for CSC in the Prairie region.

Other Participants:

Kelley Blanchette, Research, National Headquarters, CSC
Jackie Bulmer, National Headquarters, CSC
Ginette Collin, Legal Services, Regional Headquarters, Quebec Region, CSC
Fabien Lengellé, Legal Services, National Headquarters, CSC
Chris Manuge, Regional Headquarters, Atlantic Region, CSC
Larry Motiuk, Research, National Headquarters, CSC
Julie Renaud, National Headquarters, CSC
Dan Rowan, National Headquarters, CSC
Bill Staubi, National Headquarters, CSC

Audit Team Members:

Chantal Albert, Regional Headquarters, Atlantic Region, CSC
Mel Auten, Regional Headquarters, Prairie Region, CSC
Ken Baughan, Ottawa District Office, CSC
Winston Brant, Regional Headquarters, Ontario Region, CSC
Michel Brosseau, Regional Headquarters, Quebec Region, CSC
Michelle Carpentier, National Headquarters, CSC
Mike Charron, National Headquarters, CSC
John Costello, William Head Institution, CSC
Richard Crépin, Regional Headquarters, Quebec Region, CSC
Holly Frazer, Atlantic Institution, CSC
Stewart Harris, National Headquarters, CSC
Pam Haslam, National Headquarters, CSC
Diane Hedge, National Headquarters, CSC
Marie-Thérèse Hokayem, National Headquarters, CSC
Robert Hurtubise, Regional Headquarters, Atlantic Region, CSC
Julie Keravel, National Headquarters, CSC
Serge Lavergne, Atlantic Institution, CSC
Dale Leclair, National Headquarters, CSC
Heather Lockwood, National Headquarters, CSC
Lucille Matte, National Headquarters, CSC
Dan MacPherson, Dorchester Penitentiary, CSC
Christina Power, National Headquarters, CSC
Jim Roberts, National Headquarters, CSC
Susan Roberts, National Headquarters, CSC

John Rose, Federal Training Centre, CSC
Mike Ryan, Joyceville Institution, CSC
Yvan Thibault, Collins Bay Institution, CSC
Steve Wilson, National Headquarters, CSC
Diane Zilkowsky, National Headquarters, CSC

The Task Force Reviewing Administrative Segregation would like to express its appreciation to all of those who have helped it gain a better understanding of the many legal, operational, and ethical issues associated with segregation policies and procedures. We would like to acknowledge the efforts of staff members in the Correctional Service of Canada who have contributed to a more professional and accountable administrative segregation process. We would also like to thank the various external stakeholders for their contributions to the Task Force's work. Finally, we would like to express our appreciation to those offenders who participated in the consultation process during the Task Force's institutional visits as well as those segregated inmates who responded to our questionnaire.

C. Introduction

(a) Events Preceding the Task Force

On April 10, 1995, pursuant to Part II of the *Inquiries Act*, the Solicitor General of Canada appointed Madame Justice Arbour to investigate and report on the incidents that occurred at the Prison for Women in Kingston, Ontario. Part of the Commission's mandate was to investigate "the subsequent confinement in administrative segregation of the inmates concerned, the reasonableness of their treatment while in segregation and the duration of the segregation" (p.viii).

In April 1996, the report, entitled the *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (Arbour Report), was released. Madame Justice Arbour concluded that CSC has a culture that does not respect the "Rule of Law". She further concluded that "the most objectionable feature of administrative segregation, at least on the basis of what [she] had learned from the Inquiry, is its indeterminate, prolonged duration which often does not conform to legal standards". Furthermore, "the segregation review process that [she] examined in this case was not operating in accordance with the principles of fundamental justice" (Arbour pp. 191-192). Madame Justice Arbour therefore proposed that the management of administrative segregation be subject to judicial supervision, or as an alternative, to independent adjudication in order to ensure strict compliance with the law and CSC policies.

(b) Terms of Reference

In response to the Arbour Report, the Acting Commissioner of Corrections established the Task Force in June of 1996 to complete a comprehensive review of the use of segregation by CSC. The mandate of the Task Force was:

1. to address the recommendations and issues raised by Madame Justice Arbour;
2. to examine the extent to which Madame Justice Arbour's findings, relating to segregation at Prison for Women, were applicable to other institutions; and
3. to ensure that all staff members and managers were knowledgeable of legal and policy requirements and that measures to ensure continuing compliance were in place.

A three-phased approach was adopted to address the goals outlined in the Task Force's mandate. In the first phase, a preliminary assessment was undertaken to measure the extent to which the operation of segregation units was in compliance with

basic procedural requirements outlined in the Correctional and Conditional Release Act (CCRA), Correctional and Conditional Release Regulations (CCRR) and CSC policies. Staff members and managers in institutions with administrative segregation units were given an orientation of their legal, regulatory and policy obligations and responsibilities, and action was taken to correct procedural deficiencies. The accuracy of management information systems used to monitor and report on the administrative segregation process were examined, and recommendations for improvement were made.

As a result of its preliminary findings, the Task Force extended its original mandate. It observed that some inmates were confined in units in the general inmate population under conditions which were sufficiently similar in nature to administrative segregation that they warranted examination. Although conditions of confinement in these units were less restrictive than conditions in administrative segregation (e.g. inmates could freely associate with other inmates), some substantive limitations were found (e.g. restricted opportunities for exercise and limited access to programs). The Task Force also extended its mandate to include all institutions for women offenders, whether populated or not, and units for maximum security women offenders co-located in institutions for men.

In phase two, a formal compliance audit was completed to ensure that any outstanding procedural deficiencies were corrected.

In phase three, the Task Force -

- (i) examined policy, operational, and research issues in order to make recommendations on improving the fairness and effectiveness of the administrative segregation process;
- (ii) evaluated the use of independent adjudication; and
- (iii) examined the requirement to develop less restrictive approaches to population management and assessed the ongoing review mechanisms that support the protection of individual rights and freedoms.

(c) Principles that Have Framed the Task Force's Deliberations

The following seven principles guided the Task Force in making its observations and recommendations.

1. CSC must ensure that every inmate is placed in the least restrictive environment, taking into account the degree of custody and control necessary for the safety of the public, the safety of institutional staff, the safety of the inmate, and the security of the institution.

2. Administrative segregation is one of the most intrusive forms of interference with inmates' rights of freedom, liberty, and association. The social isolation and sensory deprivation associated with administrative segregation not only are potentially harmful to inmates' mental and physical health, but can seriously interfere with their ability to reintegrate safely and successfully into the community.
3. Administrative segregation is only to be used as a last resort and when no other reasonable alternative exists. CSC's primary objective must be to return segregated inmates promptly and safely to the least restrictive correctional environment possible.
4. The administrative segregation review process requires the highest degree of procedural fairness. This means that CSC employees must strictly comply with rigorous procedural safeguards, and ensure that they act fairly and within the scope of their legal authority in the segregation of inmates.
5. Administrative segregation is understood to have more severe debilitating effects on women offenders. Women offenders can be more deeply affected by separation from the general inmate population.
6. Aboriginal peoples possess distinct legal rights including those in the Constitution of Canada which recognize and affirm existing Aboriginal and treaty rights. This legal reality is reflected in the distinct legal rights possessed by Aboriginal offenders in the CCRA. Administrative segregation of Aboriginal offenders severs community ties and this can extend the harm done to both the offender and the community. Placement in administrative segregation can disrupt healing opportunities and access to spiritual/cultural resources and practices.
7. Issues involving Aboriginal and women offenders must be approached as important correctional issues in their own right and not as afterthoughts to policies developed primarily for the non-Aboriginal male population.

D. Description of the Segregated Population

The Task Force monitored the population in administrative segregation units in order to understand its composition. Monthly statistics, collected between September, 1996 and February, 1997, focused on the number of segregated inmates, their status (voluntary and involuntary), the duration of their stay, and the reason for their segregation. This data was taken from the Offender Management System (OMS), which is CSC's computerized inmate management information system. A detailed comparison was made between segregated inmates and a sample of non-segregated inmates.

(a) Basic Statistics

On February 2, 1997, the total number of inmates in administrative segregation was 722. A breakdown of this population follows.

Aboriginal and Women Offenders in Administrative Segregation

Of the 722 inmates in administrative segregation in February 1997, 113 (15.7%) were Aboriginal males and 5 (0.7%) were women offenders (including 3 Aboriginals). These two groups represent 14.8% and 2.2% respectively of the general inmate population, which are similar national proportions as in administrative segregation. It is important to note that the information in OMS relating to Aboriginal inmates is self-reported and is low as a result.

Voluntary vs. Involuntary

Approximately half of the inmates were in voluntary segregation (49.6%) while the rest were in involuntary segregation (50.4%).

Reason for Segregation

Over half (54.4%) of the inmates in administrative segregation were placed there under Section 31(3)(c) of the CCRA ("continued presence of the inmate in the general inmate population would jeopardize the inmate's own safety"). A further 42.3% were segregated under Section 31(3)(a) of the CCRA ("jeopardize the security of the penitentiary or the safety of any person"). The remaining 3.3% were segregated under Section 31(3)(b) of the CCRA ("interfere with an investigation that could lead to a criminal charge or a charge ... of a serious disciplinary offence").

Length of Stay

Over three-quarters (76%) of the inmates in administrative segregation have been there for less than 90 days. Nevertheless, the Task Force was particularly concerned with the 24% who had spent more than 90 days in segregation. As a result, it initiated a review to learn more about the obstacles encountered in the reintegration of these inmates in to less restrictive environments. The Task Force found, among other things, that the only alternative to confinement identified for most inmates who had been in administrative segregation for a period of more than 90 days was a transfer. In some cases, even this would be difficult considering the number of 'incompatibles' that some inmates have in institutions across the country. Furthermore, some inmates (12% of the sample) simply did not wish to be reintegrated into the general inmate population.

This information is supported by the fact that the proportion of voluntary cases in administrative segregation increases by more than 20% for periods of more than 90 days.

Table 1: Voluntary/Involuntary Cases

	Voluntary	Involuntary
Less than 90 days	45%	55%
Greater than 90 days	66%	34%

Similarly, a significant proportion of inmates segregated after 90 days are there under s. 31(3)(c) of the CCRA.

Table 2: Inmates Segregated For More Than 90 Days

	s. 31(3)(a)	s. 31(3)(b)	s. 31(3)(c)
Less than 90 days	48%	4%	48%
Greater than 90 days	23%	1%	76%

(b) Characteristics of Segregated Inmates

The following is a brief summary of the major findings of a research project initiated by the Task Force and carried out by CSC Research Branch. Data, entered in OMS at time of admission, was used to develop comparisons between a sample of segregated inmates and a random sample of non-segregated inmates. This data came from three sources: the Offender Intake Assessment Process (a collection of historical and current information on each offender admitted in a federal correctional institution); the Statistical Information on Recidivism Scale (used to determine risk of reoffending); and the Custody Rating Scale (used to assess initial security level placement). The sample of segregated inmates was drawn from the inmates in administrative segregation on December 9, 1996.

(i) Criminal History Background

Statistical analysis revealed that segregated inmates had significantly different criminal histories than non-segregated inmates. They had more prior involvement with the criminal justice system both as young offenders and adult offenders; had been segregated more often for disciplinary reasons during previous prison terms; had higher rates of recidivism; and stayed out of prison for shorter periods of time.

Table 3: Inmates in Administrative Segregation: Criminal History

Variables	Segregated (percentages)	Not Segregated (percentages)
Youth court	59	41
Adult court	90	84
Disciplinary segregation	47	24
Escape	39	24
Failure on conditional release	54	37
Less than 6 months since last incarceration	38	21

(ii) Risk/Need

Segregated inmates were found to be higher-risk and higher-need inmates than non-segregated inmates. They were found to be more likely to reoffend than their non-segregated counterparts. Further, segregated inmates were found to be higher-need offenders than non-segregated inmates in six of the seven need categories assessed at admission. They were found to more likely to experience difficulties than non-segregated offenders in the following need areas:

- **employment** (e.g. less than grade 10, lacking skills area, trade or profession, unemployed at time of arrest, unemployed more often, unstable job history);
- **associates and social interaction** (e.g. socially isolated, association with substance abusers and criminal acquaintances, easily influenced by others, difficulty in communicating with others);
- **substance abuse** (e.g. abuse of alcohol and drugs, abuse of alcohol and drugs at an early age, alcohol and drug abuse interfered with most aspects of life);
- **community functioning** (e.g. unstable accommodations, financial difficulties);
- **personal/emotional orientation** (e.g. cognition problems, poor conflict resolution skills, low frustration tolerance, hostility, thrill-seeking, non-reflection, manipulative); and
- **attitude** (e.g. negative attitudes toward criminal justice system, pro-criminal attitudes, view interpersonal relations as having no value, disrespectful to personal belongings, lack direction, non-conforming).

It should be noted that the SIR scale has not been validated for Aboriginal and women offenders.

(iii) Voluntary vs. Involuntary

Voluntarily and involuntarily segregated inmates had very similar risk/need profiles. However, voluntarily segregated inmates were more likely than their involuntary counterparts to have previously served provincial prison terms (86% vs. 77%), to have a sexual offence history (27% vs. 18%), and to have often been victimized in social relations (30.2% vs. 18.5%).

E. Preliminary Assessment: Task Force Findings**(a) A Casual Attitude Towards the Rigour of the Law and CSC Policies**

The findings of the preliminary assessment (Phase 1) confirmed Madame Justice Arbour's findings that CSC did not fully appreciate the obligation to rigorously comply with legislative and policy provisions in its management of administrative segregation. Overall, CSC staff members and managers demonstrated a casual attitude towards the rigorous requirements of the law, both in terms of their understanding of the law and their sense of being bound by it.

The compliance shortcomings that were observed were both systemic and significant. The Task Force recorded the following:

- Formal documentation indicated that CSC had segregated inmates for reasons that did not meet legislative criteria. For example, some inmates were segregated for longer periods of time because they were awaiting the availability of cell space in the general inmate population or a transfer to another institution. It was found, on occasion, that segregation had been used as punishment.
- Time frames governing the one hour of daily exercise, the three-day written disclosure notice, and the five- and thirty-day hearings, were more likely to be seen as "guidelines" than mandatory regulatory provisions requiring compliance.
- Inmates were not well informed of their legal rights and privileges with respect to administrative segregation procedures and conditions of confinement.
- CSC was not sufficiently aware of Aboriginal rights under the law, such as access to Spiritual Leaders and Elders, Native Liaison Workers, sacred and cultural items, and spiritual ceremonies (e.g. sweat lodges).
- CSC provided insufficient access to programs and recreational activities, and its policy regarding access to personal effects was inconsistently applied across regions.

- CSC often failed to keep accurate records of all events concerning the administrative segregation of inmates, and, as a result, often failed to demonstrate legal compliance. This problem was compounded by information collection and management deficiencies relating to OMS.

In the opinion of the Task Force, the above compliance issues provided sufficient evidence of a casual attitude toward the demands of the law by CSC staff members and managers to justify Madame Justice Arbour's assertion that CSC has a culture that does not respect the "Rule of Law". That is not to say that CSC staff members and managers went out of their way to act in violation of the law; but it is to say that they did not go sufficiently out of their way to ensure full understanding of and compliance with it. The Task Force concluded that review mechanisms required to ensure legal compliance and to support effective decision-making were not in place.

(b) Effectiveness Issues

Effectiveness means more than compliance to basic procedural requirements defined by the CCRA, CCRR and CSC policies. It includes ensuring that the intent of the law, as stated in the CCRA, CCRR and CSC policies, is followed, i.e. that administrative segregation is used only when no other alternative can be found, and release from administrative segregation must occur at the earliest possible opportunity to the least restrictive correctional environment possible.

In addition to procedural compliance issues, the Task Force observed that:

- institutional alternatives to the use of segregation were not being fully explored; reintegration plans that supported timely release from administrative segregation were not promptly developed and not sufficiently detailed;
- options for reintegration were usually limited to transfers away from the institution - a process that was administratively cumbersome, lengthy, and often not successful with respect to inter-regional transfers; and
- most regional reviews were not providing appropriate solutions for reintegration.

The Task Force believes that these effectiveness issues resulted in inmates being segregated for unnecessarily long periods of time.

(c) The Purpose of Administrative Segregation is Misunderstood

The Task Force found that the purpose of administrative segregation, as outlined in the *CCRA*, was not sufficiently well understood by CSC personnel. Under the *CCRA*, any decision to place or maintain an inmate in administrative segregation can be justified only if there are reasonable grounds to believe that one of the following three conditions exists, and only then as a last resort after all other options have been considered and no reasonable alternative to administrative segregation exists:

1. the inmate (i) has acted, has attempted to act or intends to act in a manner that jeopardizes the security of the penitentiary or the safety of any person, and (ii) the continued presence of the inmate in the general inmate population would jeopardize the security of the penitentiary or the safety of any person;
2. the continued presence of the inmate in the general inmate population would interfere with an investigation that could lead to a criminal charge or a charge, under subsection 41(2), of a serious disciplinary offence; or
3. the continued presence of the inmate in the general inmate population would jeopardize the inmate's own safety.

These three criteria for segregation are not punitive, but preventive in nature. In essence, the grounds for placement in and continuance of administrative segregation were designed to allow CSC to prevent altercations, harm, or interference with certain investigations. These provisions were not intended to be used to circumvent the inmate disciplinary provisions, the only punitively-oriented statutory provisions in the *CCRA*. Since administrative segregation is not a punitive process, segregated inmates must be given the same rights, privileges and conditions of confinement as the general inmate population except for those that can only be enjoyed in association with other inmates, and that cannot reasonably be provided because of the limitations specific to the administrative segregation area, or because of security requirements.

The Task Force came to the conclusion, based on several observations, that the perception of CSC personnel regarding the use of administrative segregation, does not match the principles outlined in the law and the *Mission*. For example, as mentioned earlier, the Task Force found that CSC segregated inmates for reasons that did not meet the legislative criteria (e.g. waiting for cell space or for a transfer to another institution).

In addition, from the Task Force's discussion with staff members and managers on the issue of offenders who voluntarily request to be segregated, it became apparent that the purpose of administrative segregation was misunderstood by CSC personnel. The problems associated with managing protective custody offenders are well known to CSC, which has expended great efforts trying to bring the number of protective custody

cases under control. One of the deeply held beliefs of staff members and managers is that if CSC makes it too "comfortable" for offenders in administrative segregation, inmates will "check in" in increasing numbers. The corresponding strategy to combat this problem is to limit how "comfortable" CSC makes it for protective custody (voluntarily segregated) inmates. The Task Force found that this deeply held belief, common to all levels of the CSC, places personnel in conflict with one of the basic principles of the law and the *Mission*. A strong historical bias exists against providing offenders access to programs or privileges in segregation units.

When one considers the large (and growing) proportion of segregated offenders that are voluntarily requesting to be segregated, it is easy to understand the concerns of operational personnel. However, as conscious as one might be of the problem of managing protective custody offenders, the law is clear in terms of their rights, privileges, and conditions of confinement while segregated. The growing proportion of voluntarily segregated inmates suggests that the management of this population is an issue that CSC has to re-examine in the context of a less restricted environment in the institution, and therefore outside the legal and policy procedures imposed by administrative segregation.

F. CSC's Ability to Address Procedural Compliance Issues

(a) Background

The Task Force concluded that immediate improvements were necessary to ensure CSC moved quickly to full legal compliance. It was equally clear that CSC had to review its own policies and procedures, and constructively engage staff members and managers, if the objective of 100-percent legal and policy compliance was to be achieved and maintained over time. The Task Force believes that the goal of 100 percent compliance, 100-percent of the time, as articulated by the current Commissioner, is the only acceptable goal for an organization which exercises such strong controls over the liberty of individuals.

The Task Force, with the full support of all levels of CSC, launched several initiatives to remedy all non-compliance issues. First, the Task Force requested that all assessed institutions submit detailed action plans outlining the steps undertaken to correct all compliance issues.

Second, the Task Force initiated steps to ensure that OMS reflected documentation requirements specified in the law. This action provided the necessary support to staff to document decisions taken at key stages in the administrative

segregation review process. Third, the Task Force issued an administrative segregation process checklist and a segregated inmates' placement handbook. Fourth, the Task Force and CSC Legal Services answered all questions raised by institutions, and issued a consolidated document entitled "*Administrative Segregation: Answers To Most Frequently Asked Questions*".

These efforts were augmented by the efforts of all Regional Headquarters which conducted their own training sessions, pre-audits, and discussion sessions to assist the institutions in understanding and complying with the law and CSC policies. In light of the amount of work undertaken, the Task Force acknowledges that staff members and managers of all levels of CSC worked hard in their collective effort to remedy these compliance shortcomings and to reassess their respective views of the legal purpose of administrative segregation.

(b) Formal Audit

During phase two, a comprehensive legal compliance audit was conducted by the Task Force. The purpose of the audit was to ensure that the operation of segregation units was in compliance with *basic legal procedural requirements*, and that all compliance issues identified during the preliminary assessment had been addressed.

It should be noted that the audit instrument was designed to determine the extent to which basic procedural steps, outlined in the law, were followed. This included the placement of inmates in administrative segregation; the conduct of one-, five-, thirty- and sixty-day reviews; provisions of notification and disclosure of information to inmates three days prior to their reviews; the provision of one hour of daily exercise; and daily visits by the institutional head or designate and daily visits by health care staff.

The Task Force must stress that the audit instrument was not specifically designed to assess the effectiveness of the reintegration process of segregated inmates into less restrictive correctional environments.

Institutions were provided with an ample opportunity to assess their procedural deficiencies and, with support, to take corrective action in advance of the formal compliance audit.

Action plans were developed as a result of the preliminary assessment. Procedural checklists and clarifications were provided by the Task Force to assist institutions in the review of their procedures. The institutions had access to the audit

instrument well in advance of the audit to ensure that they clearly understood the audit criteria and the methods that would be used to collect the data needed to complete the audit.

The following observations were drawn from the results of the audit.

1. Substantial progress was achieved by a majority of institutions in correcting the deficiencies identified during the preliminary assessment. In particular, regional institutions for women offenders and the Prison for Women demonstrated that they have a process in place to ensure compliance with the law when and if segregation is used. This was also true for all assessed minimum security institutions, five medium security institutions, and one maximum institution.
2. The remaining institutions still showed some deficiencies, particularly in complying with procedures that ensure inmates are notified and provided with sufficient documentation to make effective representations at the five-day review; and completing logs that provide a record of daily visits by the institutional head and by health care staff. Overall, these deficiencies occurred in a minority of the files reviewed. Nevertheless, Wardens were asked to respond to these deficiencies and ensure that action had been taken to correct them.
3. The Task Force was particularly concerned with deficiencies identified in three medium security institutions and three maximum security institutions. Detailed action plans were developed to ensure that corrective action was immediately taken and that a second compliance audit was conducted in March to ensure full compliance with the law.

Regional Deputy Commissioners were asked to follow-up with individual institutions to ensure that responses to all action plans were in place and that audits were conducted in selected institutions to ensure that they achieved full compliance.

The results of the audit can be viewed from a number of perspectives. From the perspective of where CSC was when the Task Force was established in June 1996, there has been significant positive change in the extent of CSC's compliance with the law, an achievement in which the Service can take justifiable pride. At the time of the initial assessment, procedural compliance shortcomings were significant and systemic across all regions and in almost every aspect of the administrative segregation process. The compliance audit revealed an overall pattern of compliance. From another perspective, the fact that the compliance audit revealed less than 100 percent compliance in all institutions is a concern.

It must be remembered that the audit was preceded by an extensive process of identifying problem areas and clarifying outstanding questions regarding the interpretation of law and policy. In addition, pre-audits were performed to assess readiness for the formal compliance audit, and a delay of two months from the original audit dates was granted to provide more time for corrective action. It should have been possible, and this was the Task Force's expectation, that all institutions would have been able to achieve 100-percent compliance with the basic procedural requirements of the law.

As noted, some of the areas of non-compliance were technical in nature and easily remedied. Others were more serious. The fact that non-compliance spanned a number of areas in the administrative segregation review process in several of the institutions is a cause for concern, especially in maximum-security institutions where intrusiveness can be the most severe.

In sum, the results of the compliance audit can be viewed from different perspectives. On the one hand, CSC has demonstrated that, given the necessary corporate will, leadership, and resources, it can significantly improve its ability to comply with the basic procedural requirements of the law. On the other hand, considering the scope of the compliance audit, which was directed only to compliance with the basic procedural requirements of the law, and the fact that it was conducted at a time when full attention was being given to the issue of segregation, CSC's performance falls short of full compliance.

Since CSC's focus could easily shift to other areas in the future, the Task Force believes it critical that mechanisms be put in place to ensure that recent progress is sustained. Consequently, the Task Force recommends that a Segregation Advisory Committee be created with membership from inside/outside CSC to continue to shape an effective and compliant administrative segregation process within a fixed time frame.

This action, coupled with other recommendations related to an enhanced segregation review process and experimentation with independent adjudication, will contribute to public confidence that CSC is maintaining its corporate commitment to respect the "Rule of Law".

G. Improving the Segregation Review Process

The overriding objective of the Task Force is to recommend changes to the administrative segregation process that will improve the effectiveness and fairness of decision-making, in order to ensure that inmates, who must be kept from associating with other inmates for limited periods of time are segregated in a safe and humane

fashion; that they are subject to the lowest level of restraint necessary, in accordance with a fair and reasonable decision-making process; and that they are returned to the general inmate population at the earliest appropriate time.

The Task Force has determined that this objective can best be achieved through the *blending* of the implementation of an enhanced segregation review process and experimentation with independent adjudication.

As a preliminary caution, the Task Force must note that the enhanced model and the experimentation with independent adjudication proceed from assumptions about fairness and justice conceived within a non-Aboriginal perspective. The Aboriginal Justice inquiries conducted over the last decade have made it clear that many Aboriginal people do not share these assumptions and do not benefit from the framework of due process built into the law. The necessity to build upon distinct Aboriginal conceptions of justice is addressed later in this report.

(a) The Enhanced Model

In order to more permanently address the deficiencies that have been identified through the audit process and the issues raised by Madame Justice Arbour and other stakeholders, fundamental enhancements must be made to CSC's segregation review process, based on the following principles:

- CSC acknowledges that the placement of inmates in the general inmate population is the norm, as is the provision of adequate protection, control, and programs and services to inmates who cannot be maintained in this population (*CCRA*, s. 4(d); *Mission* (1.5)).
- CSC has a specific obligation to ensure that procedural safeguards are stringently followed, that decisions are not made arbitrarily and that every effort is made to remove inmates from administrative segregation at the earliest possible opportunity (*CCRA*, s. 31(2), CD 590, para. 9(f)).
- Any decision that is made to place, or retain, an inmate in administrative segregation can only be justified if one of the criterion defined in the *CCRA* applies and when no other alternative to administrative segregation exists (*CCRA*, s. 31(c)).

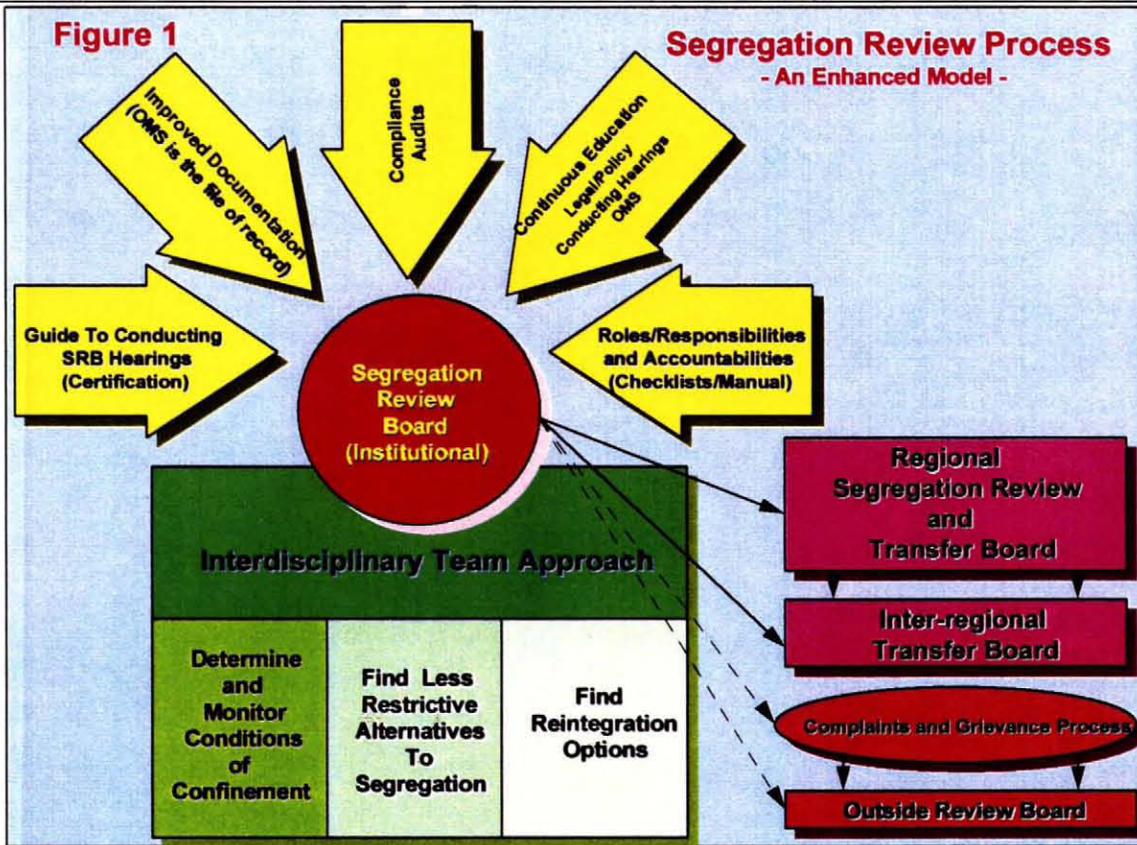
The Task Force has identified eight elements that are required to enhance the segregation review process (see Figure 1).

- (i) A standard operating procedure should be developed and adopted, outlining the roles and responsibilities of all parties involved in the administrative

segregation process in the context of the relevant statutory, regulatory and policy provisions. Staff members and managers must be held accountable. Steps should be taken to include *compliance with the law* as a key factor in the staffing, promotion and performance review processes.

- (ii) A continuous education initiative must be targeted at staff members and managers with direct responsibilities for administrative segregation. The initiative must include training on the distinct legal rights of Aboriginal people and, more specifically, on their access to spiritual/cultural possessions and support, and the need to continue the healing process identified in the Correctional Plan. Further, training on changes to the OMS with respect to the administrative segregation process must be immediately provided to all users that are involved in the process.
- (iii) Institutions with segregation units should review their initial informal approaches used to prevent or discontinue segregation, and explore other alternatives, such as formal and informal mediation mechanisms.
- (iv) More formal and disciplined procedures for segregation review hearings should be adopted. The Task Force recommends mandatory certification for all chairpersons of Segregation Review Boards.
- (v) OMS should be recognized as the *principal file of record*.
- (vi) A Regional Segregation Review and Transfer Board should be established in each region to expedite intra-regional transfers of segregated inmates. The Task Force also recommends that CSC create an Inter-Regional Transfer Board to arbitrate and effect transfers between regions.
- (vii) Proposed changes to expedite the resolution of complaints and grievances initiated by segregated inmates should be integrated into the enhanced model.
- (viii) Scheduled and random compliance audits should be performed on the segregation review process and the conditions of confinement in segregation units.

In implementing the recommendations, CSC will have to respect both Aboriginal and women offenders, and rely on input from both internal and external specialists and stakeholders.



(b) Roles/Authorities/Accountabilities

Section 3 of the *CCRR* establishes a central guiding principle underlying the roles, authorities and accountabilities of staff -

Every staff member and manager shall (a) be familiar with the Act, the regulations and every written policy directive that relates to the staff member's duties; (b) perform the staff member's duties impartially and diligently and in accordance with the principles set out in the Act and in the Mission of the Correctional Service of Canada, published by the Service, as amended from time to time; and (c) encourage and assist offenders to become law-abiding citizens.

There is a broad list of actions that must be taken to manage a segregated inmate from placement to release. The Task Force on Policy Review identified a need to combine policy and procedural guidelines related to segregated inmates into a comprehensive reference manual.

A draft reference document has been completed by the Task Force. Other reference material developed by the Task Force in support of assessment and audit activities together with this report, represent a comprehensive set of information to create a standard operating procedure for administrative segregation.

Consideration must be given to holding staff members and managers fully accountable. Steps should be taken to include *compliance with the law* as a key factor in the staffing, promotion and performance review processes. Respect for the "Rule of Law" demands that the principles of progressive discipline be applied when the law is violated.

(c) Continuous Education

In discussions with the Task Force, staff members and managers have clearly voiced their desire to participate in continuous education on the law, policies and procedures governing administrative segregation. These discussions have led us to conclude that:

- insufficient understanding of the "Rule of Law" exists among staff members and managers;
- insufficient support and training have been provided to staff members and managers to assist them in the effective management of the legal and policy provisions outlined in the *CCRA*, *CCRR* and Commissioner's Directive 590 (Administrative Segregation); and
- insufficient legal education on the principles of administrative law and the principles enshrined in the *Canadian Charter of Rights and Freedoms* has been delivered to ensure compliance with the law and the adoption of fair decision-making practices.

The Task Force on Policy Review pointed out that CSC has a strong oral tradition and recommended that it capitalize on this tradition as a means of communicating the meaning and application of existing law and policy to line staff. It suggested that, if managers are well-trained and educated on the law and policy, and if they play a significant role as *models and coaches*, legal compliance can be achieved and sustained.

The Task Force acknowledges and encourages the work that is being undertaken to develop a legal education package for CSC. This provides the opportunity for CSC to develop constructive partnerships with organizations with expertise and experience in correctional law and its application (law schools; Canadian Bar Association; Indigenous Bar Association; Women's Legal Education and Action

Fund; etc.). It suggests that accelerated action be taken to provide training targeted at staff members and managers with direct responsibilities for administrative segregation. This training should be reviewed, updated and provided to staff members and managers in the form of *refresher training* at a minimum interval of every eighteen months. This type of training must be incorporated into the Correctional Training Program. Consideration should also be given to holding one legal education session at the annual Senior Managers' Conference.

Training on the legal rights of Aboriginal people should be developed and integrated into this legal education package. Four specific areas should be addressed:

- the rights of Aboriginal people to spiritual possessions while segregated;
- the need to continue any healing process that the inmate is pursuing through Aboriginal spirituality initiatives that have been identified in the inmate's Correctional Plan;
- the continuous access to spiritual and cultural support provided by the Elder and the Native Liaison Officer; and
- access to spiritual ceremonies (e.g., sweat lodges).

Staff must fully understand and make full use of the OMS as the principle file of record. An action plan has been developed in conjunction with line staff and OMS specialists. The plan calls for the implementation of improvements to the Administrative Segregation Module. A training package has also been developed which brings together information on the use of OMS with information on the types of procedural data that are required to comply with the law and CSC policies and practices.

(d) Alternatives To Segregation - Mediation

The importance of intervention in order to pre-empt and provide early alternatives to segregation cannot be over-emphasized.

The Task Force suggests that informal approaches such as mediation be considered as a first step in dispute resolution, particularly in responding to requests for voluntary segregation. Most voluntary segregation cases stem from unresolved disputes involving individual inmates or inmate groups. The issues in dispute are often taboo subjects such as drugs, debts, or sexual activities which make it difficult, if not impossible, for inmates to discuss them freely with CSC staff members or managers. This often leaves staff members and managers in the position of bystanders, unaware of the real issues and unable to intervene in a meaningful way.

The Task Force saw cases where effective mediation was the immediate first level response to voluntary segregation when the institution had access to individuals

who had the skill and willingness to play that role. The anecdotal evidence suggests that there can be a reasonable degree of success at reintegration, particularly when mediation efforts are undertaken immediately.

The effectiveness of mediators is determined by the level of respect that they hold or develop with the disputing parties, the respect that they have from management and staff, the access that they have to all parties involved, their capacity to honor confidentiality and their capacity to listen and communicate. Correctional history reveals that effective mediators can be staff members, contract employees (i.e. teachers, Aboriginal staff), community organizations and volunteers, members of the inmate population or members of groups such as the Inmate Welfare Committee and Native Brotherhood. It is also important to ensure that mediation occurs in Aboriginal and gender-sensitive ways. The Task Force recommends that the principles and practices of informal dispute resolution be endorsed by CSC and that a process of mediation be adopted at all institutions with segregation units to assist in the handling of voluntary segregation cases.

(e) Conducting Hearings

The Task Force has developed a *Guide for Conducting Segregation Review Board (SRB) Hearings* (see Annex 1). The guide describes twelve procedural steps that must be followed when conducting an SRB hearing.

The role of the SRB chairperson is critical to the effectiveness and perceived fairness of the segregation process. Chairpersons have the primary responsibility for ensuring that *basic procedural requirements*, as defined by the CCRA/CCRR and CSC policies, are continuously being administered in compliance with the law. They play a critical role in ensuring that each institution maintain full compliance with the requirements of the law and CSC policies. The chairperson must demonstrate an ongoing knowledge of the law, policies and procedures to effectively manage the Board's decision-making responsibilities. They must be respectful of Aboriginal rights and privileges. They must understand the need to balance the legitimate safety and security of the institution with the need to adequately protect and maintain the rights of the segregated inmate.

The Task Force recommends that the chairperson of the SRB undergo specialized training in the context of a formal certification program.

This program should focus on administrative law and *Charter* principles, and knowledge of the CCRA/CCRR and CSC policy. Some jurisdictions in the United States have adopted such certification programs. Re-certification would be required on

a regular basis. The Task Force suggests that the chairperson of the SRB be the Deputy Warden or an Assistant Warden, and consideration should be given to rotating the responsibility for this position.

The chairperson must have the authority and responsibility to ensure that a reintegration plan is implemented in the shortest possible time frame. The chairperson must also have the authority to recommend that the inmate be reintegrated into another institutional setting and must be provided with external decision-making support to act on such recommendations quickly. The Task Force acknowledges that SRBs currently have limited options available to them for reintegration into less restrictive populations. Enhanced effectiveness depends on the use of such reintegration options, and training must focus on their availability and use. The Task Force notes that initiatives have recently been undertaken at Kent Institution to provide a less restrictive environment for long-term, voluntarily segregated inmates.

The composition of the SRB should reflect an inter-disciplinary team approach. At the very least, the core composition of the Board should include the chairperson, the Unit Manager responsible for the administrative segregation unit, the Institutional Preventative Security Officer, and a Case Management Officer or Correctional Officer II. Depending on the sequence of the hearing (5- or 30-day), other participants should be identified as required; for example, the Psychologist, a representative from the Program Board (programs/pay), the Elder, Native Liaison Officer, etc.

The SRB should be playing a more significant role in determining and monitoring *conditions of confinement*. More specifically, the SRB should:

- ensure that the segregated inmate is provided with a summary of basic rights and privileges while in segregation;
- define a reintegration plan (amendment to the inmate's Correctional Plan) that includes programming, counseling and other service support options that will facilitate reintegration; the plan should clearly defined reintegration option(s) defined against an implementation time frame; particular attention should be given to access by Aboriginal inmates to distinct spiritual and cultural effects and support as provided for in law; and
- identify entitlements to specific cell effects, programs and services.

(f) Maintaining Accurate/Timely Documentation

One of the more important findings of the Task Force was that existing documentation often failed to reveal whether procedural safeguards established in the law and CSC policies had been respected. Maintaining an accurate *documentation trail*

must be a primary goal of the SRB. CSC must be stringent in ensuring that OMS becomes the principle file of record, must provide support in the form of ongoing training in both the use of the system and the preparation and maintenance of well-documented cases.

(g) Strengthening Regional Review Boards

The Task Force has reviewed successful practices related to intra-regional transfers in both the Ontario and Prairie Regions. Steps have been taken in each of these regions to accelerate the transfer process and thereby significantly reduce the time an inmate is held in segregation awaiting transfer.

In the Ontario Region, the Regional Administrator, Community and Institutional Operations (hereafter RACO) has been delegated the authority to effect intra-regional transfers, particularly in instances where there is a dispute between sending and receiving institutions. In addition, the RACO inspects segregation units on behalf of the Deputy Commissioner, recommends changes to physical conditions or administrative processes, and ensures that legislated requirements are followed. The RACO is supported by a *Regional Transfer and Project Officer - Segregation* who continuously monitors and develops transfer options.

The Prairies Region has established a Regional Transfer Board. It is composed of all regional Deputy Wardens and meets once a month to review segregation transfer cases. The Case Management Officer, responsible for the case, presents arguments for the transfer. Notification is sent to all Board members of the cases being presented and related documentation is noted for review on OMS.

The Task Force recommends that each region establish a *Regional Segregation Review and Transfer Board*, to expedite the transfers of segregated offenders, using the best combination of the Ontario and Prairie Region's experiences that applies to their circumstances.

The Task Force has noted that a significant impediment to the transfer of segregated inmates who are held in maximum-security institutions is the lack of regional bed space. This limitation is even more acute for women offenders.

This has put regional staff in the position of having to negotiate inter-regional transfers for many segregated inmates. Some of the issues that are impeding these transfers are:

- the perception that such transfers represent nothing more than the “dumping of regional problems”;
- the inter-regional transfer is a last priority for the receiving region;
- transportation options are few and infrequent; and
- the existence of a significant number of “incompatibles” frequently limits the number of available options

The Task Force further recommends that an *Inter-Regional Transfer Board* be established to expeditiously arbitrate and effect transfers between regions, as required. This Board should be composed of Assistant Deputy Commissioners (or designates) and convene monthly to review and arbitrate regional recommendations made by RACOs. The effectiveness of this Board will depend on the removal of obstacles to expedient transfers.

Notwithstanding the above recommendations, the Task Force acknowledges that for a few segregated offenders, neither transfers nor reintegration into the general inmate population are viable options. These are usually high risk offenders requiring maximum security, who have “incompatible” offenders in all institutions to which transfer might be considered. In these rare cases, little more can be done than to enhance the conditions of confinement, to the extent it is practical.

(h) The Complaints and Grievance Process

CSC is reviewing the complaints and grievance process and is proposing the following enhancements that are pertinent to the considerations being made by this Task Force:

- complaints and grievances which significantly impact on an inmate’s rights and freedoms must be assigned priority for investigation, resolution and response (i.e. all segregation decisions and conditions of confinement);
- inmates will be provided with complete, written responses to issues raised in the complaint or grievance within 15 working days of receipt (instead of 25 working days); and
- when corrective action has to be taken, the institutional head must provide written confirmation to the Deputy Commissioner or the Assistant Commissioner, Corporate Development, that the required action has taken place within 30 working days of receipt of the response.

It should be noted that pursuant to the *CCRR*, subsequent to the receipt of the institutional head’s response, an inmate may request a review by an *Outside Review Board* within 10 working days. The Task Force views the above enhancements, paired

with the availability of *Outside Review Boards*, as providing additional procedural safeguards to ensure that decisions are not taken arbitrarily. The Task Force recommends that institutional SRBs inform segregated inmates of the availability of the redress process at their hearings.

It should be noted that, historically, most Aboriginal inmates have not made use of the grievance process. The use of *Outside Review Boards*, involving the representation of Aboriginal people, would be of particular significance in changing this reality.

(i) Scheduled and Random Audits

The Task Force recognizes that closer monitoring of all activities surrounding administrative segregation is necessary to ensure strict compliance with the law and CSC policies. Therefore, it recommends that a plan for scheduled and random audits by regional and national headquarters be developed and promptly implemented.

H. Independent Adjudication

(a) Background

In her report, Madame Justice Arbour stated that the management of administrative segregation should be subject to independent oversight. Madame Justice Arbour recommended independent oversight, in part, because the evidence before her inquiry revealed that both the segregation review process and the conditions of confinement in segregation did not comply with principles of fundamental justice as outlined in the *Canadian Charter of Rights and Freedoms* or in the *CCRA*, the *CCRR*, and CSC policies.

Madame Justice Arbour also concluded that the harmful effects of long-term segregation, coupled with the significant restrictions on liberty, subject inmates to greater deprivations than originally envisaged by the sentencing court.

In fact, the Supreme Court of Canada has described administrative segregation as constituting a "prison within a prison", so that the placement of inmates in segregation requires a high degree of procedural fairness. Madame Justice Arbour recommended independent oversight because the placement of an inmate in administrative segregation represents such a significant deprivation of rights of liberty and freedom of association.

It is important to recognize that the concept of independent oversight for administrative segregation cases has been proposed for many years. The concept is one which has already been recognized as an important feature of federal correctional law in the adjudication of serious disciplinary offences. It is thus instructive to briefly trace the developments leading to the introduction of independent adjudication in the disciplinary context, in order to better understand the underlying reasons for its application to segregation decisions.

Justice Behind the Walls - 1972

In 1972, Professor Michael Jackson, a member of this Task Force, concluded a four month review of the disciplinary process at a medium security federal penitentiary in British Columbia by which serious disciplinary offences were adjudicated by Wardens or Deputy Wardens. He found that the process lacked the essential attributes of objective and fair adjudication. He believed that a fundamental flaw in the Warden's Court System was that the same people who were accountable for maintaining the good order of the institution, were the ones judging whether or not inmates had committed offences against that good order. The judges, in other words, were the offended parties. Those adjudicators brought to the hearings, in most cases, considerable personal knowledge of the inmates, based upon their previous dealings with them, and it was therefore difficult for them to approach the particular case free from the biases of that prior knowledge. Objective judgment was further hampered by the need for prison administrators to maintain staff morale by accepting the testimony of correctional officers where it was in conflict with that of inmates. Professor Jackson proposed that the crux of any real reform required an impartial disciplinary tribunal - a tribunal in the sense of one which would approach cases free from bias based upon prior knowledge of the inmate and which would handle the task of discipline in a spirit of maximizing the procedural protections designed to ensure a fair hearing. He therefore proposed that independent chairpersons be appointed to conduct hearings for serious disciplinary cases and that such persons should be legally trained and therefore familiar with the essential elements of a fair hearing.

With regard to the administrative segregation process, Professor Jackson concluded that the very broad discretion given to the institutional head to segregate an inmate required adequate procedural checks and balances to prevent any potential abuse of that discretionary power. In light of the fact that inmates could and did spend far longer periods in administrative than disciplinary segregation, Professor Jackson argued that, while the initial decision to place an inmate in administrative segregation should be left with the institutional head, there should be a formal review before an independent chairperson after five days.

Study Group on Dissociation - 1975

In 1975, the Solicitor General of Canada established a Study Group on Dissociation under the chairmanship of Dr. Jim Vantour, following a recommendation of the Correctional Investigator in her Annual Report of 1973-4, that there be a special study of the use of dissociation in Canadian penitentiaries. In its report, the Study Group dealt with both punitive and non-punitive dissociation. The Study Group recommended that the Canadian Penitentiary Service appoint independent chairpersons to preside over disciplinary hearings for serious offences because "the present composition of the disciplinary board prohibits the appearance of justice". Because the Study Group saw its recommendation as a "relatively drastic alternative to the present system", it made the further recommendation that independent chairpersons should be introduced on an experimental basis in two of the five CPS regions.

The Study Group did not consider independent adjudication in its proposals for the reform of administrative segregation. Instead, it recommended the establishment of a Segregation Review Board, chaired by the Director (Warden) of the institution. The Segregation Review Board would review the case of an inmate within five working days of the Warden's decision to segregate and at least once every two weeks thereafter. The Board would be required to develop a plan to reintegrate the inmate into the population as soon as possible and monitor that plan during subsequent reviews.

The Study Group also addressed the general issue of the CPS's compliance with the existing law, regulations and policy dealing with dissociation. The Study Group encountered many situations in which regulations were ignored by staff in charge of dissociation facilities, resulting in inmates being deprived of rights and privileges to which they were entitled. It concluded that "New regulations alone cannot change the psychological milieu of the dissociated inmate. The philosophy of the Service and the attitudes of individual staff members are not necessarily affected by a change in the regulations."

Parliamentary Sub-Committee on the Penitentiary System in Canada - 1977

In its 1977 Report to Parliament, the Parliamentary Sub-Committee on the Penitentiary System in Canada endorsed the concept of independent chairpersons to preside over disciplinary hearings but was of the opinion that the 1975 Study Group did not go far enough in recommending gradual implementation of the concept. The Sub-Committee maintained that independent chairpersons "are required immediately as a basic demand of justice at all Penitentiary institutions in Canada."

The Sub-Committee also endorsed the Study Group's recommendation that a Segregation Review Board be set up in each institution, and that the Board review cases after five days and every two weeks thereafter. The Sub-Committee indicated that it had debated whether such an internal review provided adequate protection for inmates, and in particular whether the chairperson of the Review Board should be the same kind of independent person which had been recommended for disciplinary boards. The Sub-Committee, however, concluded that the internal model of review advanced by the 1975 Study Group "should not be judged and found wanting until it had been tried." It therefore recommended that the adequacy of the protections under the Internal Segregation Review Board Model should be reconsidered after two years of experience.

Following the Report to Parliament, the Service began appointing independent chairpersons for disciplinary boards, initially at maximum-security institutions, and in 1980, at medium-security institutions.

Prisoners of Isolation: Solitary Confinement in Canada - 1983

After reviewing the segregation review process at Kent Institution, Professor Jackson, in his 1983 book *Prisoners of Isolation*, concluded, that the introduction of the SRB had not brought about any significant change to ensure that segregation decisions were made in a principled and fair manner, and that inmates were not subject to inhumane and degrading conditions. His criticisms focused on the lack of principled criteria for segregation and the absence of a rigorous and independent process of review. To address these deficiencies, Professor Jackson drafted a *Model Segregation Code*. The Code sets out detailed criteria for segregation and included limitations on the amount of time an inmate could be segregated for investigative purposes and, except in exceptional circumstances, an overall limitation of 90 days of continuous segregation for involuntary cases. It also provided for a segregation review process chaired by an independent chairperson; and set out in affirmative terms the rights and privileges to which segregated inmates were entitled.

The chairperson's role is to ensure that there is a factual basis to justify segregation measured against specific criteria; to assess the reliability of confidential information which cannot be disclosed to the inmate; to ensure that the inmate receives a fair hearing and is able to present an answer and defense to any allegations made against him or her; and to ensure compliance both with the time constraints placed upon segregation and with the law regarding the conditions of segregation.

According to Professor Jackson, the essential thrust of the proposal to expand independent adjudication to the administrative segregation process was that decisions which have a significant impact on liberty, and which involve an adjudication of disputed

facts and competing interests, should be subject to such adjudication. In other words, Wardens' and SRB members' vested interests in the outcome of administrative segregation decisions were too great, and could hinder decision-makers' ability to act, or undermine the perception that they have acted fairly. Professor Jackson argued that it was this necessity of ensuring a fair decision-making process, free from institutional bias, which formed the foundation for the implementation of independent chairpersons in disciplinary cases. He argued that no less a compelling case should be made for independent adjudication in cases of administrative segregation. He also argued that, with disciplinary hearings, it was necessary to have a hearing officer who was both knowledgeable about the letter and spirit of the law, and who had a commitment to upholding that law without undue concern for issues of institutional convenience or politics.

Report of the Canadian Bar Association - 1988

In its 1988 report, *Justice Behind the Walls*, the Canadian Bar Association endorsed the *Model Segregation Code* with its proposal for independent adjudication of segregation cases. It stated that the thrust of the proposals in the Code was to "bring about a change in attitude, not so that the interests of correctional administrators in maintaining order and security are disregarded, but to ensure that they are held in balance with the rights of a prisoner not to be falsely accused and to be subjected to lengthy deprivation of institutional liberty on the basis of unfounded suspicion and unproved allegations" It further observed that "It is demonstrably unlikely that this change will come about if the decision remains in the hands of the correctional administrator who favours one interest over the other. This is where the proposal for an independent decision-maker is critical."

(b) Consultation

The Task Force has consulted some key stakeholders to discuss external review in the context of the recommendations of the Arbour Commission and CSC's operating environment¹.

¹ The Task Force held a two day meeting (January 23 and 24, 1997) to consult with external agencies. The following participants attended the meeting held in Ottawa: Charles Ferris, General Counsel, Human Rights Commission (New Brunswick); Clara Gloade, Native Women's Association of Canada; Isabelle Impey, Aboriginal Advisory Committee; Terry Lumb, National Chairperson, Citizen Advisory Committee; Margaret Shaw, Canadian Association of Elizabeth Fry Societies; Graham Stewart, Executive Director, John Howard Society of Ontario; Elizabeth Thomas, Women's Legal Education and Action Fund; and Elizabeth White, St. Leonard House.

The proposed enhanced segregation review process model was reviewed and accepted as a necessary step to move staff members and managers to respect and comply with the law.

Some opinion supported the requirement for CSC to retain the responsibility and accountability for the management of these processes within specific time frames, before independent adjudication is invoked to ensure that unjustified and prolonged segregation does not occur. An independent adjudication model had to be implemented to ensure that inmates are treated fairly under the law when circumstances can create conflicts between effective due process and operational expediency. Other opinion supported the position that CSC should move directly to judicial review. Overall opinion supported the introduction of independent adjudication as a necessary step to regaining public credibility and demonstrating departmental accountability.

There was support for the proposal that CSC take the time to develop and experiment with an independent adjudication model. It was felt that the experiment should provide decision-making authority to the adjudicator and that consideration should be given to appointing a provincial or federal judge to participate full-time in the experiment. Such an appointment would provide *ready-made credibility* in terms of the adjudicator's possessing skills in conflict resolution and risk-balancing, as well as being able to be trained quickly on the segregation review process in the context of law.

These observations have contributed significantly to the deliberations and recommendations of the Task Force on independent adjudication.

(c) Review of Proposals for Independent Adjudication

The Task Force reviewed three different independent adjudication proposals: the preferred proposal of judicial oversight as recommended by Madame Justice Arbour; her alternative model of independent adjudication; and finally, the model of independent adjudication developed by Professor Jackson.

(i) Madame Justice Arbour's Judicial Oversight and Independent Adjudication Model

Recommendation (9) of the Arbour Report (pages 255-256) did not differentiate between involuntarily and voluntarily segregated inmates with respect to review processes. The preferred review process consisted of the following steps:

- the initial decision to segregate should remain with the Warden;

- 3-day review should be conducted by an (institutional SRB) to determine if further detention in segregation is required, up to a maximum of 30 days (an inmate could not spend more than 60 non-consecutive days in segregation in a calendar year);
- after 30 days, the institution must identify an alternative to segregation; and
- if alternatives are not available, or if there is a requirement to continue segregation, CSC is required to apply to a court.

As an alternative, the following review process was proposed:

- the initial decision to segregate should remain with the Warden;
- 5-day review by independent adjudicator is made to confirm the decision; and
- 30-day reviews should be conducted by a different adjudicator each time.

(ii) Proposals by Professor Jackson

Professor Jackson's *Model Segregation Code* was designed to deal with cases of involuntary segregation. Since that Code was drafted in 1983, there has been an increase in the population of inmates who are in various forms of segregated status for their own protection, and in most cases at their own request. The circumstances which have led to their segregation run a broad spectrum. This population includes inmates who are facing pressure or threats arising from drug or gambling debts; socially inadequate inmates with a history of mental illness who are constantly running into difficulties in their relationships with other inmates; inmates who are believed to be informants; and inmates who, because of the nature of their crime (usually involving a brutal sexual assault or an offence against children), are in imminent danger from all but a few other inmates.

In evaluating the role of independent adjudication in these types of cases, Professor Jackson suggests that it is important to identify not only the common elements they share with involuntary cases, but the main distinctions as well. As for the distinctions, typically the reasons for voluntary segregation are not embedded in disputed factual allegations. To the extent that there are disputed facts, it is often the inmates who assert that their lives or safety are threatened and the correctional administration who believes that their fears may not be justified or are exaggerated - the reverse of the situation that exists in involuntary cases.

What is critical to the resolution of these cases is not so much the adjudication of disputed facts, but the development of creative and realistic plans for the reintegration of the inmate, either through a negotiated return to the population of the parent institution; transfer to a special needs unit; or transfer to the population of another institution, together with effective mechanisms for the implementation of these plans.

The primary challenge here is to develop creative alternatives to segregation and ensure that the necessary resources are available.

Even though these voluntary cases do not usually involve the disputed factual allegations which underlie involuntary segregation cases, Professor Jackson argues that this does not resolve the question of the need for an independent adjudicator to review these cases. Voluntary cases, like involuntary cases, raise common issues of ongoing compliance with the law. While the legal requirements for review are less onerous in voluntary cases, there is still the need for the development of a reintegration plan and for that plan to be implemented in a timely way to minimize the necessity for segregation.

One of the problems with the current system is that the resolution of cases of voluntary segregation often lack any sense of urgency; cases drift from review to review, with case management priorities focused on other inmates in the population, whose problems are less overwhelming than those in segregation. Members of the Task Force observed several segregation reviews where inmates had sat for many months awaiting the preparation of documentation for transfers or responses on a completed transfer package. The annual reports of the Correctional Investigator have highlighted the general issue of non-compliance with meeting the statutory time frames for transfers and the problem is particularly acute for those inmates who are in segregation. Professor Jackson suggests that the independent adjudicator can be more vigilant in requiring compliance with statutory time frames.

It should be noted that the Task Force agrees that, as a *best practice*, voluntary cases should be reviewed at the same frequency as involuntary cases, even though this exceeds the demands of the law. The Task Force has observed institutions where this practice of reviewing voluntary cases more frequently has resulted in successful and expedient reintegration of the inmate into less restrictive environments.

Another issue of compliance revolves around conditions of confinement. If, as the Task Force believes, the CSC is lawfully obligated to be far more pro-active in providing inmates in segregation with programs, then effective mechanisms must be in place to ensure this occurs. The Task Force has observed instances where administrative convenience and security considerations have all but eclipsed the delivery of programming.

Professor Jackson suggests that the neutrality of the independent adjudicator would remove the potential negative impact of administrative convenience on limiting fair decision-making and provide a mechanism to validate security considerations.

Taking into account the distinction between involuntary and voluntary cases, Professor Jackson has proposed the following framework for segregation decisions and review. With respect to involuntary segregation:

- the initial decision to segregate should remain with the Warden;
- 5- and 30-day reviews should be conducted by the independent hearing officer to verify that there are grounds justifying involuntary segregation and no reasonable alternatives exist;
- in cases where there is an ongoing investigation, the independent hearing officer should establish reasonable time frames for the completion of an internal investigation; and
- subsequent reviews should monitor the implementation of the reintegration plan.

With respect to voluntary segregation:

- the initial decision to segregate should remain with the Warden;
- a 5-day review should be chaired by the Warden or Deputy Warden;
- a 30-day review should be chaired by an independent adjudicator who would review the reintegration plan prepared by the institution to ensure that it had been developed and that all reasonable alternatives to segregation have been explored;
- if reintegration involves a negotiated return to the population of the institution, with the assistance of another party (for example, the Inmate Committee, Native Brotherhood or an Elder), the hearing should include these parties;
- if reintegration involves transfer to a special needs unit, a reasonable time frame should be set at the hearing for the transfer;
- if reintegration involves transfer to another institution, the adjudicator should ensure that the necessary Progress Summaries are prepared and that the transfer time frames are complied with; and
- if a transfer cannot be effected between institutions, a *Regional Segregation/Transfer Board*, chaired by a Deputy Commissioner or delegate, should be convened to effect the transfer as quickly as possible.

In both voluntary and involuntary cases, monthly reviews would provide a forum in which revised reintegration plans could be tabled; programming requirements addressed; and representations by inmates reviewed, including those related to restrictions or denial of rights and privileges.

The independent adjudicator, invested with the authority envisaged in this *Model Segregation Code*, would be able to issue directions and reports, and in certain cases

order the release of the inmate from segregation, where there is non-compliance with the law.

It should be clear that, according to Professor Jackson's proposals, the role envisaged for an independent adjudicator in segregation cases is not simply a replication of the independent chairperson of the disciplinary board. In the disciplinary model, the chairperson is the sole decision-maker in relation to issues of guilt or innocence and the institution's role is to present evidence in support of the charge. On the issue of sentence, the institutional advisor may give a recommendation if requested by the independent chairperson, but the chairperson is responsible for determining sentence. In the *Model Segregation Code*, the role and responsibilities of CSC staff are much greater and their participation in the decision-making process more extensive, particularly in the case of voluntary segregation. The overall objective of this model code is to harness the strengths of independent adjudication to the expertise of correctional staff, with a view to implementing the best population management alternatives.

(d) Introduction of Independent Adjudication to CSC

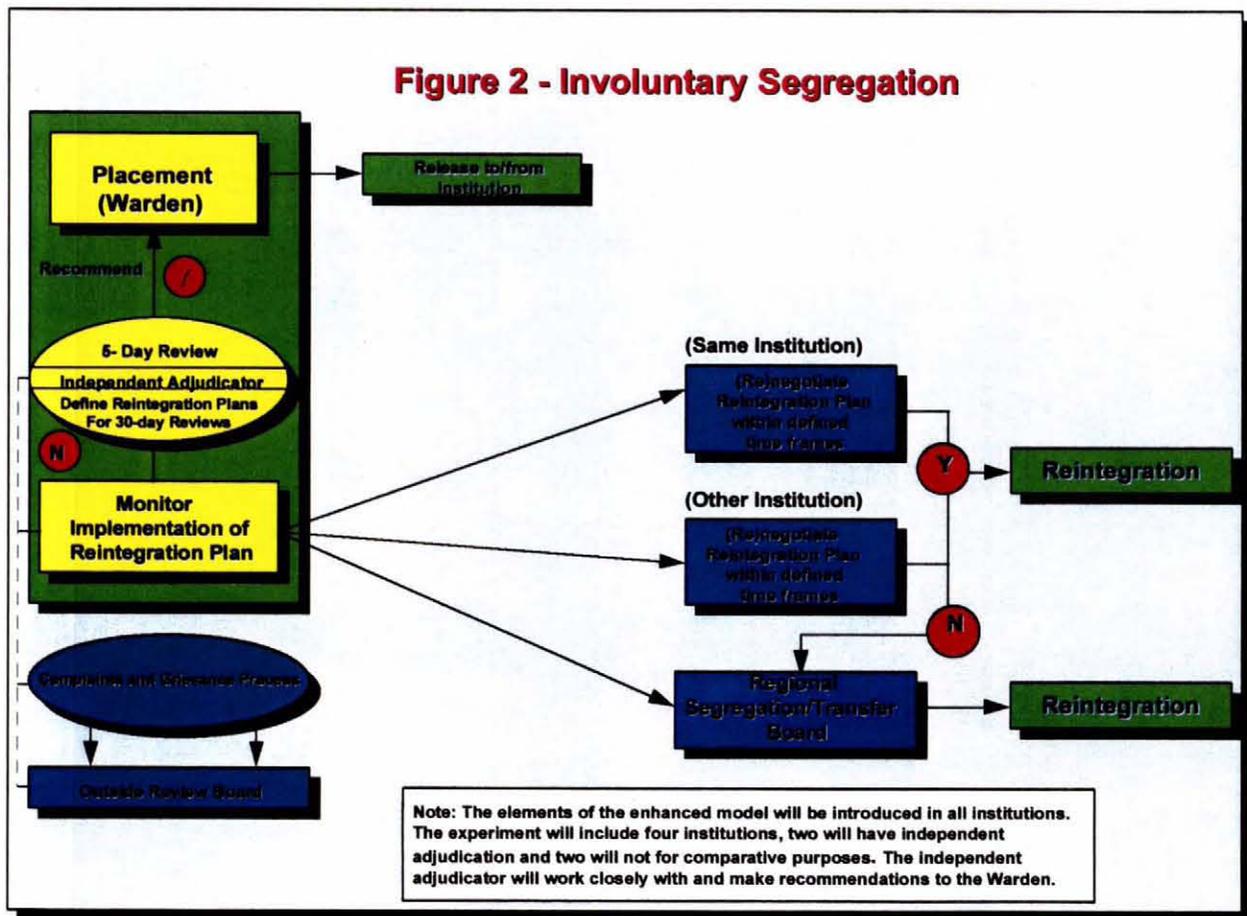
(i) The Purpose and Scope of the Experiment

The Task Force recommends that CSC experiment with a model for independent adjudication as soon as possible to evaluate both the impact of the operational requirements (organization, roles and responsibilities, and cost) and the potential advantages in terms of improving the fairness and effectiveness of the administrative segregation review process. In this context, the Task Force reviewed the introduction of judicial review as proposed by Madam Justice Arbour. Particular consideration was given to the operational and jurisdictional impediments that this alternative presented, and the impact that these impediments would have on the immediate implementation and experimentation with external review. Exclusive reliance upon the judiciary would require resolution of jurisdictional and resource issues associated with using federal or provincial judges within a federal correctional setting. In light of judicial case loads, the availability of a sitting judge to conduct frequent reviews within federal institutions, particularly those in remote locations, may be problematic. The workloads and time frames associated with centralizing the process either regionally or nationally also presented serious obstacles to implementation.

The Task Force, therefore, determined that the most feasible alternative for experimentation would be through independent adjudication under a model which, while it could include a member of the judiciary, would not be exclusively based upon a judicial model.

(ii) Models for Consideration

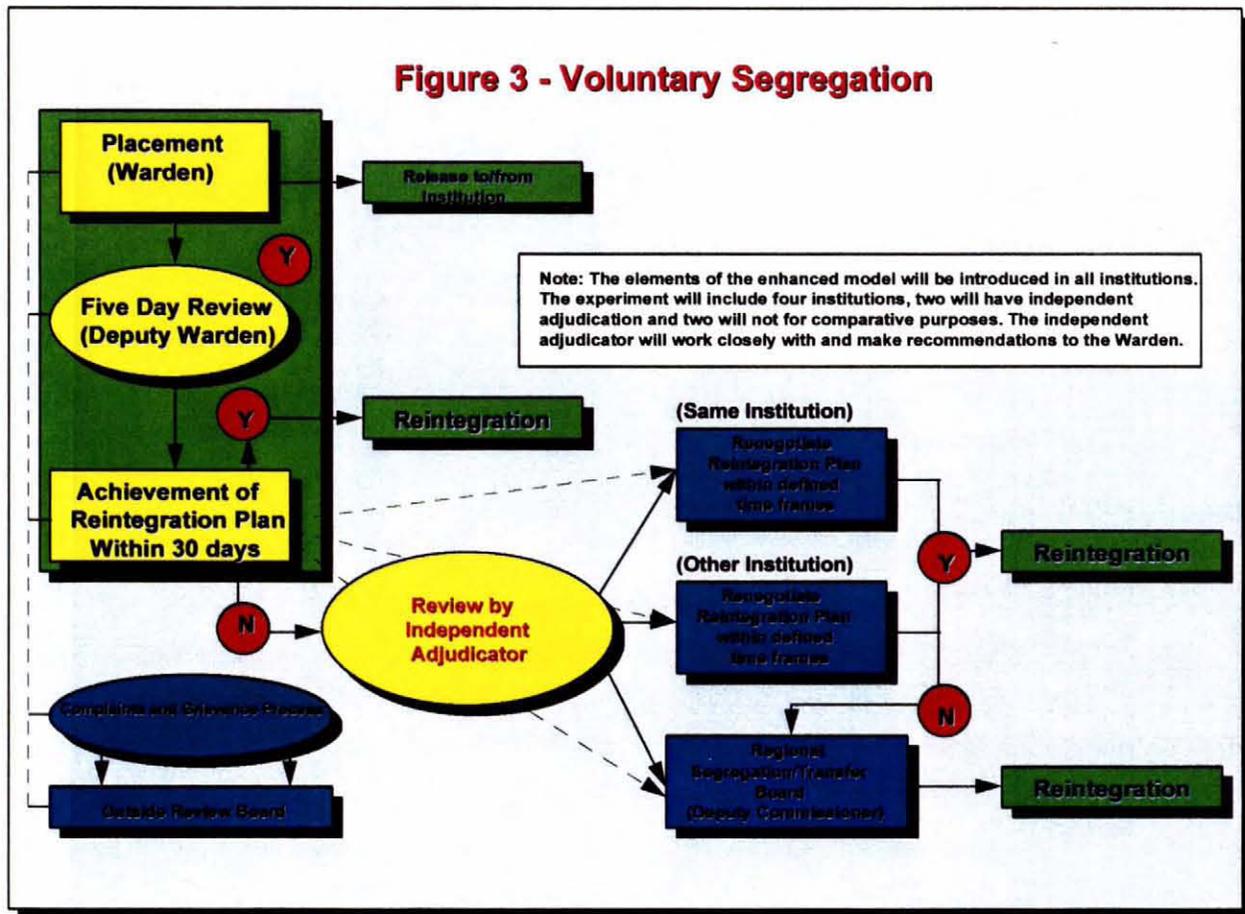
It is important to note that the Task Force is recommending an experiment to determine not only how the *best blend* between an enhanced segregation review process and independent adjudication could be achieved, but also whether independent adjudication improves the fairness and effectiveness of decision-making. Figures 2 and 3 illustrate the blending of the enhanced model with independent adjudication for involuntarily and voluntarily segregated inmates.



The design of the proposed experimentation is based on the following principles:

1. The use of the enhanced model is necessary to ensure that procedural fairness is maintained in the administrative segregation decision-making process, and that plans for reintegration are effectively implemented. Any

- independent adjudication model must be integrated with the enhanced model to maximize effectiveness.
2. Wardens must retain their authority, responsibility and accountability for ratifying all placement decisions and for finding and implementing solutions to reintegrate segregated inmates into less restrictive correctional environments.
 3. Reasonable time limits (thresholds) must be provided to institutional staff to reintegrate segregation cases. These time limits can vary for involuntarily and voluntarily segregated inmates.



Immediate implementation of an independent adjudication experiment presupposes no legislative changes. Therefore, CSC will have to develop an interim policy that provides for the authority of the independent adjudicator during the experiment. This authority will be similar to that of the chairperson of the SRB to work with and make recommendations to the Warden.

(iii) Criteria for Selection of Participants

The independent adjudicators selected for the experiment could include a member of the judiciary with some experience in corrections. The Task Force would note that among sitting members of the judiciary are several former members of the Parliamentary Sub-Committee on the Penitentiary System in Canada, a former Deputy Solicitor General, a former Correctional Investigator, and several lawyers with extensive experience working within corrections, both on behalf of inmates and the Department of Justice. Another appointment could be from within the ranks of experienced arbitrators and the selection could be through a joint process, commonly used in the appointment of arbitrators, involving stakeholders. For example, the appointment could involve input from the Office of the Correctional Investigator, community groups involved with corrections and Inmate Committees or Native Brotherhoods. Another possibility could be the appointment of someone from within the ranks of a law school or criminology department with expertise in correctional law and administration.

(iv) Developing Evaluation Criteria

It will be important to develop evaluation criteria for the experiment in order to enable CSC to determine the legal, policy and operational implications for the best blend of internal and external review. This evaluation should be performed by CSC and outside participants. The evaluation criteria should address both the issues of fairness and effectiveness and consequently should cover such questions as:

- What would the value-added benefit of the involvement of an independent adjudicator be over and above or instead of CSC appointed staff providing reviews at the regional level, external to the institution?
- Does independent adjudication result in a fairer process than that provided by an enhanced internal segregation review?
- Does independent adjudication ensure the protection of Aboriginal and Treaty rights?
- Which process provides for greater sharing of information required under the legislative and regulatory framework?
- Which process reduces the use of segregation and results in inmates, who are justifiably segregated, spending less time in segregation?
- Which process best promotes the development of viable alternatives to administrative segregation?

Consideration should be given to defining the following factors that underlie the effective and efficient management of a potential group of adjudicators.

- What is the most appropriate *infrastructure* required to appoint and manage this group? (Models for consideration could include appointment by and direct line reporting to the Commissioner; the establishment of an administrative tribunal that appoints and manages all aspects of the adjudication process, etc.)
- What are the specific *responsibilities and accountabilities* of the independent adjudicator, as reflected in a code of conduct, procedural rules for adjudication, and guidelines for appointments and dismissals?
- What *remuneration levels* would be appropriate?
- What should the selection criteria for these independent adjudicators be?
- What should their authorities, responsibilities and accountabilities be?
- What are the cost-benefit implications of introducing this external review infrastructure?

The results of the evaluation should include the clear definition of the factors that indicate the benefits and deficits of using independent adjudication; an analysis of the impact that independent review has had on the decisions that were taken; recommendations on the *best model* and *best fit* for independent adjudication; and proposals of an action plan for implementation if the recommendation is to adopt the model.

(v) *The CCRA Review*

The Task Force recommends that the experimentation with independent adjudication should be fast-tracked in order to ensure that evaluation results are available for review by EXCOM by the end of 1997. The Task Force has also considered the relationship between the proposed experiment with independent adjudication and the CCRA five-year review, which is presently underway. The Task Force is concerned that the window for legislative amendment provided by the review could be closed before the proposed experiment is complete. The Task Force therefore recommends that proposals for possible legislative amendments be drafted while experimentation is taking place. If regulatory measures are also deemed helpful then they could also be drafted in parallel.

(e) **Evaluation of the Use of Compensation**

Madame Justice Arbour stated that undue segregation of inmates constitutes an interference with the "integrity of the sentence imposed by the courts" and suggested that inmates have the right to some compensation. The Department of Justice Canada has been asked by the Ministry of the Solicitor General to review and provide advice on these recommendations. Consultation is being conducted with participants in the

criminal justice system. The Task Force recommends that the results of this consultation be included in the evaluation of the experiment on independent adjudication, and the issue of appropriate remedy be further reviewed by the Segregation Advisory Committee.

I. Population Management

(a) Introduction

The *CCRA* provides two specific incarceration status' - those inmates in the general inmate population and segregated inmates. It implies that offenders must be in one category or the other. While in a strictly semantic sense this may be true, the distinction does little to address the realities of managing inmates that fall into other population categories.

During the Task Force's visits, it quickly became apparent that some institutions used conditions of confinement that did not correspond to either the general inmate population or segregation, in the way that these are traditionally understood.

As an example, the Task Force saw units where inmates were separated from the general inmate population, usually for their protection or because of special needs, and had limited access to programs and privileges. Yet these offenders had free association with each other within the confines of the unit, and had greater freedom than that given to offenders in units officially designated as administrative segregation.

The *CCRA* demands that CSC abide by rigorous legal requirements to ensure that the use of segregation and its duration are minimized and that all segregated inmates are afforded full procedural fairness with respect to their isolation. Nevertheless, the *CCRA* is less clear with respect to the specific rules that should be applied in circumstances which conform to the view of segregation in its traditional form, namely, as a designated place in the institution.

At this point, it is important to note that the legal safeguards that are articulated in the *CCRA* regarding segregation procedures do not originate from the *CCRA per se*. If the safeguards outlined in the law were to suddenly disappear, CSC would continue to be bound by principles enunciated in the *Canadian Charter of Rights and Freedoms* and principles of administrative law (i.e. the duty to act fairly). Therefore, if the *CCRA* were silent on the applicable legal safeguards for administrative segregation, these principles would dictate that very similar standards be met. Being sensitive to these

principles and respecting them contribute in an important way to demonstrating a culture that respects the "Rule of Law".

In as much as CSC is committed to demonstrating a corporate culture that respects the law, it is reasonable to conclude that CSC would accept the obligation of respecting principles of due process and would apply those principles to the extent to which liberty interests of offenders are being intruded upon, for all conditions of confinement that are not in the general inmate population. Although the Task Force provided some preliminary guidance to staff members and managers regarding the management of some of these less restrictive situations, the Task Force concluded that staff members needed more comprehensive information on the application of the law to types of confinement that do not correspond to either general inmate population or segregation.

The Task Force has observed a hierarchy of "sub-populations" that are in place in varying degrees across all regions. In some cases, they are and can be used as alternatives to administrative segregation. In other cases, they may represent *de facto* segregation units which can be as intrusive as traditional segregation units. They are presented in this report to illustrate the need to define and understand the procedural safeguards applicable to inmates who are placed in any one of them.

The Task Force has reviewed the CCRA/CCRR in order to provide preliminary legal, policy and procedural clarifications. It believes that there is a requirement to differentiate among legal safeguards across these "sub-populations" to ensure CSC is in full compliance with the law, particularly in these less restrictive situations (less restrictive than administrative segregation but more restrictive than the general inmate population).

To facilitate this, the Task Force has defined 12 "sub-populations" (see Figure 4) that characterize the current range of situations that impact on an inmate's residual rights, freedoms and privileges. The Task Force, for purposes of illustration, has ranked them with respect to their degree of intrusiveness - the general inmate population being the least intrusive and disciplinary segregation being the most intrusive. It has developed preliminary definitions and legal principles (see Annex 2) that can be used to guide a more detailed review of the requirements associated with placement, the provision of due processes and early reintegration into less restrictive situations in the context of the law.

In many instances, administrative segregation is prolonged when less restrictive alternatives are not available. This situation usually gives rise to a single alternative - an involuntary and/or voluntary transfer to the general inmate population of another institution. The Task Force believes that other alternatives are possible.

The Task Force has seen examples of opportunities for creating less restrictive settings than administrative segregation for long-term, voluntarily segregated inmates or for inmates requiring specialized care for clearly-defined behavioural problems. The Task Force suggests that consideration be given to an evaluation of these alternatives and to the development of a medium-term approach to creating them in appropriate institutions.

(b) Current Population Management Practices

The Task Force has identified a hierarchy of 12 "sub-populations" based on the degree of intrusiveness on the rights, freedoms and privileges of inmates in their "sub-population". The model is a starting point for what the Task Force believes should be a comprehensive formal review of population management alternatives aimed at providing direction to staff members and managers on the legal grounds for their use and the degree of review required to protect the inmate's residual rights and freedoms under the law.

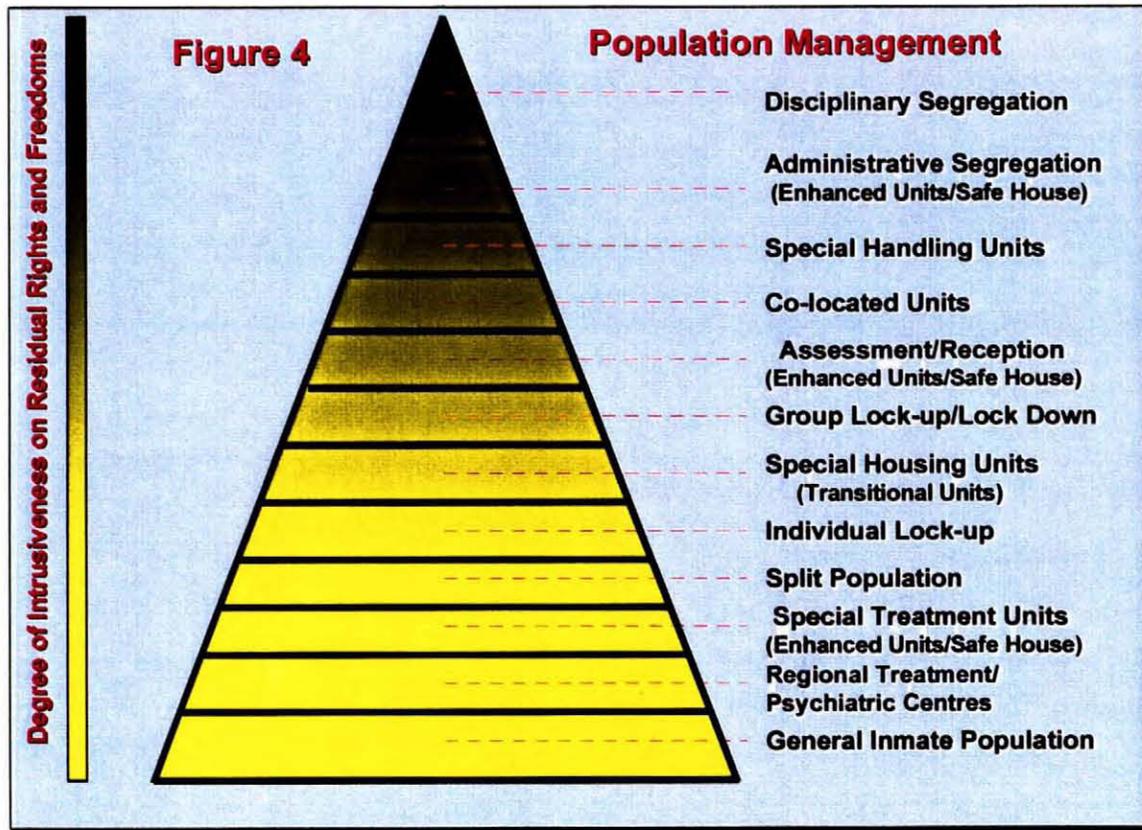
It should be noted that the model depicted in Figure 4 is intended to be an analytical tool rather than a definitive description of the degrees of intrusiveness and separation from normal association. For example, disciplinary segregation is located at the most intrusive end of the spectrum. The reason is that the basis for disciplinary segregation is legally viewed as punitive sanction, imposed following a determination of guilt by the independent chairperson of the disciplinary board. Such a sentence also has implications on security classification, transfer and decisions regarding conditional release.

It can be argued that even though administrative segregation is not legally a punitive response to proven misconduct, it can be regarded as more intrusive on inmates' liberties.

Unlike disciplinary segregation, which is limited to 30 days for a single offense with an overall maximum duration of 45 days for multiple offenses, it is not subject to any time constraints and can be imposed for considerably longer periods of time. In the eyes of many inmates, the indefinite nature of administrative segregation makes it a greater deprivation of liberty than disciplinary segregation. This was noted by J. Vantour in 1975 in his Study Group report on segregation.

A case could be made along the same lines that incarceration in a SHU should be located closer to the top of the hierarchy. Even though inmates have a greater degree of association than in administrative segregation units in maximum-security

institutions, the pervasiveness of control, the nature of the SHU regime and the implications that the placement has on all other correctional and conditional release decisions lead many inmates to consider it the most intrusive form of incarceration. The intention of Figure 4 is not to predetermine the location of any particular form of incarceration, but rather to focus on how each form of incarceration impacts on inmates' rights, freedoms, and privileges, so that appropriate due process and review mechanisms can be developed. It should be noted that, although the Task Force focused primarily on the intrusion of rights and freedoms associated with being segregated or separated, there is an ongoing requirement, in the context of population management, to ensure that rights and freedoms of inmates, in the general inmate population, are protected. This can mean protection from harassment, from being threatened, and from being victimized by other inmates. These rights and privileges must be considered in any discussion of intrusiveness.



Although the model depicts clear distinctions among these “sub-populations”, in reality, there may be more variations in restrictions and review processes. This should be taken into consideration in any future review.

The following observations and proposals are provided by the Task Force as a *guideline* for a formal review of legal and policy frameworks to ensure that CSC is in compliance with the law when it takes decisions to either segregate or separate inmates from the general inmate population.

(c) The Incarcerated Population in the Context of the Law

The Task Force has noted a lack of understanding around the application of the law to the status of inmates who are not segregated but who are *separated* from the general inmate population. Policies and practices do not clearly describe:

- the *legitimate grounds* that can be used for placing an inmate into one of these "sub-populations";
- the *legal processes* that define the extent to which rights, freedoms and privileges can be restricted, including association; programs and services provided, etc.; and
- the *degree of review* (monitoring) required to facilitate the return of the inmate to a less restrictive correctional environment.

It found that attempting to clearly designate these "sub-populations" as *general inmate population* or *segregation* is not a useful exercise. Effective management implies that the object is to provide appropriate supervision, programs, services and legal safeguards to inmates rather than simply placing them within the two categories of the law.

The Task Force believes that compliance with the law is better understood when segregation and separation from the general inmate population are viewed, and therefore managed, as a status and not a place. The extent to which association has to be limited - a matter of safety and security, and the unique needs of an inmate together contribute to determining the location.

In this context, the Task Force has briefly considered the risk/need issues impacting on whether an inmate should be considered for immediate placement in segregation or for placement in a less restrictive environment. There are many situations where segregation is not deemed necessary: an inmate was involved in a minor fight; was abusive to staff; was in a condition "other than normal". The Task Force has observed that the frequent response to these minor breaches of discipline is to require the inmate to "lock-up" in his/her cell or room for a temporary period of time, in order to calm down or to "return to normal". In addition, these actions are used to promote correct behaviour, while using the least restrictive incarceration option. In

these situations, the inmate is temporarily separated or restricted from association with other inmates.

The Task Force has witnessed the use of *special treatment units* to address the behavioural needs of individual inmates without resorting to more formal treatment provided in regional treatment or psychiatric centres. It has witnessed the effective use of peer support, behavioural management support, and skills development provided through non-core programs.

In these examples, staff have recognized the need to provide an alternative incarceration setting that differs from the general inmate population and traditional segregation.

(d) The Need to Extend the Legal Framework

The effective management of each of these "sub-populations" in the context of the law requires the application of several evaluative factors:

1. when an inmate is segregated or separated from the general inmate population, for any reason, there must be a legal justification for the decision, either through sections 31-37 or 38-44 of the *CCRA* or through some other compelling legal principle;
2. segregation or separation of inmates must occur in an environment that restricts their association with other inmates and their legal rights, to the least extent possible; that facilitates their return to a more open population, to the greatest extent possible and as soon as possible; and that maximizes the provision of programs and services which are necessary to achieve early release from this restricted environment and successful release into the community;
3. a distinction has to be made among various legitimate grounds for separation based on risk/need factors (e.g. the definition of the use of treatment units vs. segregation for safety/security purposes);
4. consideration has to be given to the special rules that complement the provisions of the *CCRA/CCRR* (e.g. provincial mental health care legislation);
5. *due process* must be afforded to the degree to which the inmate's rights are intruded on; the degree of restriction of rights and privileges will have to be considered; and due process and thoroughness of the review will vary;
6. where the regulations relating to the segregation review process do not apply, there must be another process which conforms to the principles noted earlier ((c) The Incarcerated Population in the Context of the Law); and

7. staff members and managers must fully understand the need for and application of these principles.

Accordingly, the Task Force recommends that, as a first step to developing a legal/policy and procedural context for the management of these "sub-populations", they should be clearly described (in the forms in which they are actually occurring in the institutions) and clearly distinguished as alternatives to administrative segregation. (when and how they should be used).

As a second step, principles governing placement in each "sub-population", the provision of appropriate rights, privileges and conditions of confinement, and due process (review) must be clearly stated for each "sub-population", taking into account the degree of *intrusiveness* placed on the individual's rights and freedoms.

When determining the scope of requirements to treat the inmate fairly and in accordance with the law, several key questions should be asked:

- Is the inmate being housed in a manner that restricts liberty to the least possible extent?
- Is the inmate being provided with the freedom of association in keeping the *CCRA/CCRR* and the *Charter*?
- Is the inmate being provided with statutory entitlements such as visits, correspondence, appropriate programs, and other services that would be provided if the inmate was in the general inmate population?

The Task Force has developed a preliminary set of definitions for each "sub-population" and a set of legal principles related to placement, reintegration and degree of due process necessary for each of these "sub-populations" (see Annex 2).

The Task Force recommends that these criteria form the basis for a formal review of the *CCRA/CCRR*, policies and procedures. The purpose of the review is threefold:

1. develop an integrated description of these "sub-populations" in the context of the law and current policy;
2. evaluate the extent to which the law and policy adequately support the management of these "sub-populations"; and
3. identify deficiencies in policy and the law and corrective actions that should be taken in the context of changes to CSC policy and/or the *CCRA* Review.

Note: The evaluation of conditions in a given unit or the characteristics of groups and individuals in that unit may disclose a situation which is, in fact, the

same as traditional administrative segregation, irrespective of how the unit is designated. Such units, groups or individuals must be treated according to the same rules as those applied in a traditional administrative segregation unit until such a time when conditions in the unit and/or characteristics of the group or individual change to permit other standards to be applied.

(e) The Need for Formal Review

Clarifying alternatives to administrative segregation and selecting appropriate procedural safeguards are important steps. The core legal principle that must be applied is that association in the general inmate population is the norm and that any change in this status must be fully justified.

The Task Force recommends that when consideration is being given to forming "sub-populations", institutional procedures be adopted to provide formal reviews of these "sub-populations" at their creation and at regular intervals. The purpose of these reviews would be to ensure that the law is being applied in a manner that minimizes restrictions and maximizes entitlements. These reviews should be monitored at the regional level.

Pending the enactment of legislation that provide remedies for identified "sub-populations", the only specific statutory remedy on which inmates can rely, if they wish to contest placement, is the segregation review process under the *CCRA/CCRR*. The Task Force believes that this process could be used for inmates who are involuntarily confined in any situation that is not considered to be that of the general inmate population, or inmates who believe that they are not being provided with the personal effects, programs and services to which they would normally be entitled in the general inmate population. This would allow involuntarily placed inmates to seek a decision with respect to:

1. the grounds of their *involuntary* presence in any condition of separation from the general inmate population, including segregation;
2. the measures which should be taken to permit release as soon as possible; and
3. the rights, privileges and conditions of confinement which they should be afforded.

J. Conditions of Confinement**(a) Introduction**

Section 37 of the CCRA indicates that inmates in administrative segregation shall be given the same rights, privileges and conditions of confinement as the general inmate population, except for those rights, privileges and conditions that can only be enjoyed in association with other inmates or cannot reasonably be given owing to limitations specific to the administrative segregation area or security requirements. It seems clear that the two limitations outlined in the CCRA were not intended to unreasonably restrict the rights and privileges of or punish segregated inmates. They were intended to address legitimate security concerns.

The Task Force advocates that CSC take a more assertive stand in providing the same rights, privileges and conditions of confinement to segregated inmates as those given to the general inmate population.

It should be noted that access to spiritual support (including Aboriginal spiritual practices), recreational activities and health care services are part of ensuring safe and humane conditions of confinement, and must therefore be provided regardless of the statutory limitations outlined in section 37 of the CCRA. The operational reality, however, has been that inmates, their advocates or program staff have had to demonstrate why they should be provided the same rights, privileges and programs. The legal reality is that CSC has to demonstrate why they should *not* be provided.

(b) Survey of Segregated Inmates

In order to assess this requirement, inmates were asked the following question: "Compared to when you were in the general population, how much access have you had to the following services, when needed, while in segregation?" A list of 32 items followed, each with the option to respond "Less", "More", "Same", "Does not Apply" and a space for narrative comments.

The inmate questionnaire was distributed to all segregated inmates in late November and early December, 1996 and results were tabulated based on the 397 valid responses received by January 9, 1997. Of this number, 393 were from male offenders, including 88 Aboriginal offenders, and 4 were from women offenders.

Note: the percentages that are displayed indicate the proportion of respondents who indicated that they had the *same* or *more* access to these services while in segregation, compared to when they were in the general inmate population.

Visits by Staff / Spiritual and Health Care Support

Access to CMO (25%)
 Access to psychological and psychiatric counselling (50%)
 Spiritual support (33%)
 Health care (65%)

As part of the segregation review process, inmates are generally seen at least once per month by their CMO and institutional psychologist, and daily by a health care professional.

Access in excess of these regular contacts normally occurs through an inmate request, which in many institutions would mean less ready access than in the general inmate population. Spiritual support while in segregation was of concern to a large proportion of the respondents, and is an issue that needs further attention. As inmates do not have access to religious services while in segregation, and chaplains in many institutions do not visit the segregation area regularly, spiritual support to segregated inmates is limited.

Visits and Correspondence

Telephone calls (42%)
 Mail (77%)
 Open visits (28%)
 Closed visits (62%)
 Private Family Visits (excluding SHU inmates) (46%)

Due to limitations in the physical structure, staffing and security issues in many segregation units, access to telephone calls is limited to a set number of calls per month per inmate (excluding legal calls). Many institutions do not permit open visits or Private Family Visits (PFVs) for most inmates in segregation. Over the course of the past few months, institutions have moved to evaluating PFVs on a case-by-case basis or reserving the open visits area for groups of segregated inmates.

Access to Programs, Education and Recreational Activities

Cell studies / Correspondence Courses (32%)
 Recreation Activities / Equipment (9%)

Hobbycraft (11%)
 Library Services (32%)
 Television (77%)
 Radio / Sound System (66%)

This was the area where the greatest concerns were raised by the respondents. For the most part, books, TV and radio are the only distractions available to inmates for the 23 hours each day that they are in their cells. The variety of books available, and access to TV and radio (particularly when the segregated inmates do not have one in their personal effects) were also of concern. Very few institutions permit hobbycraft in segregation. At the time of the first on-site visits, very little recreation equipment was available to inmates in their one hour of exercise. The second on-site visits indicated that efforts had been made to offer recreation equipment (basketball hoops, weights, baseball gloves, etc.) and consideration was being given to some "passive" hobbies such as painting and drawing.

With respect to programming, cell studies is the most common activity, but depends on the anticipated length of stay of the inmate in segregation and whether or not the inmate is expected to transfer out of the institution. Although a few institutions have initiated some programs in segregation (Alcoholics Anonymous, Breaking Barriers, etc.), it is an area that still needs improvement.

Services /Cell Effects

Food (48%) Clothing (62%)
 Cigarettes (65%) Laundry Services (40%)
 Toiletry Items (70%) Showers (56%)
 Canteen (44%) Barber/Hairstylist (38%)
 Bedding/Linen (71%)

One of the most common concerns across the country was food - the temperature of the food, the amount provided and the hours it was served. Access to canteen and cigarettes is an issue primarily because inmates in segregation receive a lower rate of pay than when they are working in the general inmate population. Although they may have the same access to the canteen and most of the same items, their purchasing power may be reduced as a result of their segregation.

Showers are subject to operational routine, so inmates do not have the opportunity to determine when, how often and how long they may shower. Similarly, laundry services in segregation are often limited to certain days of the week, or are provided by a unit cleaner, which in many institutions differs from the ready access to laundry machines in the general inmate population.

Access to Aboriginal Culture

Visits by Native Elder (31%), Native Liaison (25%), Native Brotherhood (19%)
 Access to Cultural Ceremonies (14%)
 Access to ceremonial objects (medicine bundles, sweet grass, ceremonial pipes,
 sacred waters, cedar, rattles, sage and eagle feathers) (from 31% to 44%)

The majority of respondents indicated that they were not permitted to have their ceremonial objects in segregation, and where there was access, that staff did not show respect for these items. In addition, most institutions do not provide Aboriginal inmates in administrative segregation with access to cultural ceremonies such as sweat lodges. There was also indication that Elders are not visiting the segregation area on a regular basis.

This is an area of concern. The response to the inmate questionnaire in this area confirmed that there is a need to increase the level of access to Aboriginal cultural items and spirituality while in segregation.

Other Support Systems

Inmate Welfare Committee (36%)
 Peer Support (29%)
 Grievance System (55%)

In general, the respondents felt that there was little support available to them while in segregation. The audit confirmed that in some institutions, there is little involvement by the Inmate Committee in segregation cases.

The main concerns communicated through the inmate survey were those relating to the day-to-day routine of the segregation unit and contacts with various parties. While some access has been limited due to operational and security requirements (i.e., telephone calls, showers, laundry, visits, etc.) in accordance with Section 37 of the CCRA, other areas were identified where improvements could be made to provide similar access as in the general inmate population. Of primary concern is hobbycraft and recreation equipment, programs and educational services, Aboriginal culture and spiritual support. The results of this survey and observations made by the audit teams have led the Task Force to conclude that the role of the Segregation Review Board must encompass the ongoing review of conditions of confinement, so as to ensure that they are in compliance with the law and that they respond to individual needs as defined in the segregated inmate's reintegration and/or Correctional Plan.

(c) Recreation and Programming

The purpose of delivering programs in administrative segregation is to offset the debilitating impact of segregation; to assist inmates in reintegrating into less restrictive environments, when and where possible; and to prepare offenders for reintegration into the community when release into the institutional population is not possible.

The Task Force recommends that as soon as possible after the five-day review, the inmate's Correctional Plan be amended to include a reintegration strategy for placement in a less restrictive population. The programs offered in segregation must be directed to achieving this new goal. The original goals of the Correctional Plan, to facilitate the reintegration of inmates into the community, must be reinstated if the timely return of an inmate into a less restrictive population is impossible.

The evaluation of programming options must entail an individual assessment of the level of association possible and an assessment of security risks. Clearly, the ability to associate with other inmates because of security concerns may vary greatly among segregated inmates. Therefore, programming options for segregated inmates should be evaluated on a case-by-case basis. Attention should be given to ensuring that generic programs are respectful of Aboriginal requirements.

When an offender is denied access to a program identified in the Correction Plan, the onus must rest on the institution to demonstrate and justify why the program cannot be provided. Segregation Review Boards should review program access on a case-by-case basis.

The Task Force acknowledges the constraints imposed by segregation on the delivery of *core programs*. Nevertheless, it believes that opportunities can be created for segregated inmates to address issues associated with the reasons for being segregated (e.g. anger management). There is an abundance of options to support individual cell studies, including individual access to educational tapes and/or videos (e.g. study related to achieving ABE or GED certification), and other types of correspondence courses. Consideration should also be given to the use of volunteer inmates and/or teachers to provide tutoring, when and where possible.

Accommodating various forms of programming may mean reconsidering the physical layout of the segregation unit to provide access to common rooms and/or individual rooms where possible.

The Task Force suggests that, as part of the review of program delivery in segregation, attention be given to the issue of inmate pay. Current policy (CD 730 *Inmate Pay*) states that "inmates in administrative segregation, where no programming

opportunities exist, shall be paid at level one". Consideration must be given to reviewing the relationship of pay and the delivery of non-core programs and the completion of the inmate's reintegration plan, to the pay structure that is currently defined for segregated inmates.

The Task Force acknowledges that CSC must make every reasonable effort to be responsive to segregated inmates' needs and special status. For example, due to the evidence of a high prevalence of severe mental disorders among segregated inmates, programming which addresses their special needs should be offered.

Aboriginal inmates have distinct needs and are legally entitled to spiritual and cultural support. Therefore, CSC must ensure that segregated Aboriginal inmates have access to Spiritual Leaders and Elders, Native Liaison Workers, sacred and cultural items, and appropriate spiritual ceremonies (i.e. sweat lodges). In addition, CSC must take an active role in offering programming that is tailored to their respective needs.

With respect to recreational activities, the Task Force strongly encourages the provision of additional exercise time whenever possible subject to the limitations of the segregation area, security requirements, and resource availability. All institutions should ensure that the exercise yards are equipped with some form of recreational equipment (e.g. chin-up bars, basketball nets, balls, etc.). Segregated inmates must have access to cards, board games, television, music, art work, or other cell hobbies.

(d) Physical Plant

Cleanliness of the administrative segregation units must be an ongoing priority. The Task Force has observed significant progress in all regions to attain and sustain this goal. The compliance audit indicated that major changes had occurred in all institutions with respect to conditions of the physical plant. No institution was cited as having any major deficiency in this area.

The Task Force recommends that part of proposed regular and random audits includes the systematic review of all factors contributing to cleanliness, health, safety and security.

(e) Informing Segregated Inmates of Their Rights and Privileges

The Task Force has strongly suggested that each unit develop an *Inmate Handbook* that would be provided to each segregated inmate at placement. An

example was developed and distributed by the Task Force to each administrative segregation unit across the country.

The handbook should clearly define what segregation is under the law; explain the rights, privileges, and conditions of confinement of segregated inmates; and define the steps that will be followed to review inmates' cases. Finally, the handbook should describe the daily routine of the unit and the responsibilities of segregated inmates while segregated.

(f) Cell Effects

Segregated inmates are entitled to their personal effects. As soon as an inmate is placed in administrative segregation, CSC must ensure that adequate bedding, clothing, and toilet articles for personal health and cleanliness are provided. Segregated inmates should receive all of their cell effects shortly thereafter. In most cases, all personal effects that do not jeopardize security should be provided to segregated inmates after their five-day review.

(g) Roles and Responsibilities

(i) Visits by the Institutional Head and the Health Care Professional

In view of the potential negative consequences on both mental and physical health of administrative segregation, there should be an on-going assessment of the inmate's physical and psychological well-being. The *CCRA* requires that a registered health care professional visit each inmate in administrative segregation on a daily basis. At least every thirty continuous days, a written psychological or psychiatric opinion on the inmate's current mental health must be completed.

The results of the compliance audit indicate that institutions must be vigilant in ensuring that segregated inmates are visited on a daily basis by the senior institutional authority. The *CCRA* requires that the institutional head visit the administrative segregation unit daily (including week-ends). This responsibility can be delegated to a senior staff member (not below Unit Manager) or to the officer-in-charge of the institution on weekends and holidays. Inmates must also be provided with the opportunity to meet with the institutional head, when requested (*CCRA*, S. 36(1)). This requirement ensures that there is a continuous assessment by a senior staff member that conditions of confinement are in compliance with the law and policy.

(ii) The Psychologists

The Task Force examined the role of the psychologist in the administrative segregation process. It believes that psychologists have a critical role to play in:

- monitoring segregated inmates' mental health (especially in view of the high prevalence of severe mental disorders among segregated inmates and the potentially harmful effects associated with the segregation experience);
- identification and promotion of appropriate alternatives to administrative segregation (e.g. special needs, mental health units, etc.); and
- elaboration of interventions which may (a) facilitate segregated inmates' return to less restrictive environments, and (b) negate the potentially harmful effects associated with the segregation experience.

The Task Force developed a questionnaire that allowed CSC psychologists to voice their opinions on five major areas with regard to their role in the administrative segregation process:

1. policy criteria for assessments in the current review process and the frequency of these assessments;
2. psychological factors that should be assessed; methods of assessment; and the need for national standards of practice;
3. role of the psychologist in the review process with respect to making recommendations to SRBs;
4. communicating findings and recording them on OMS; and
5. need for research on the impact of segregation on inmates' ability to cope and reintegrate successfully.

Based on the findings of the survey, the Task Force makes the following five recommendations:

1. The Task Force recognizes that a diversity of opinions exists on a number of important issues. The Task Force recommends that mental health professionals be brought together to share their expertise and best practices on assessments, interventions, preventive measures, alternatives, and research with regard to segregated inmates.
2. The policy criterion requiring the psychologist to determine "the inmate's capacity to remain in administrative segregation" must be reworded to clearly state that the psychological or psychiatric opinion required is limited to inmate's current mental health and their current ability to cope with segregation.

3. The Task Force encourages psychologists to take an active role in intervening shortly after an inmate's placement in segregation. The Task Force considers that early intervention by a psychologist can serve to establish a baseline for subsequent evaluations of mental health deterioration and to provide support to segregated inmates at times of crisis. The Task Force views this early intervention as a best practice.
4. Since there is a strong consensus among psychologists on the factors to be assessed during the 30-day assessment, the Task Force recommends that a national assessment form be developed and installed on OMS. As for the method of assessment, general guidelines should be developed to encourage consistency and best professional practices. Particular attention should be given to the development of assessment instruments and protocols which are tailored to Aboriginal and women offenders.
5. The Task Force considers that owing to the high prevalence of mental health disorders among segregated inmates, staff assigned to work in segregation units be sensitized and educated on mental health issues. The Task Force recommends, that in order to enhance mental health monitoring, the reference document include a section on the identification of factors and behaviours associated with mental health deterioration.

(iii) The Case Management Officer (CMO) and the Correctional Officer II (COII)

The Task Force has based many of its recommendations on the need to develop a reintegration plan for the segregated inmate, as early as possible after placement. It has observed that there is a requirement to ensure the modification and the implementation of the inmate's Correctional Plan. The Task Force has observed two approaches to case management in segregation - retaining the segregated inmate's existing CMO and COII or maintaining a separate case management function in administrative segregation. There have been advantages and disadvantages identified for both approaches. Two key requirements are identified:

- the need to maintain a clear relationship between an inmate's correctional and reintegration plans; and
- the need to ensure that segregated inmates, particularly voluntary cases, continue to remain a high priority for CMOs and COIIs.

The Task Force recommends that the *Case Management Manual* be reviewed and revised in the context of the its observations and recommendations. Particular attention should be given to the development of training models on the management of segregated inmates in the context of the law.

(iv) Staff of the Administrative Segregation Unit

The Union of Solicitor General Employees in its response to the recommendations of the Arbour Commission noted to the Deputy Solicitor General in May, 1996 that "there must be sufficient staff with reasonable workloads and that staff must be given complete and continuing training, including refresher training".

The Task Force fully supports this observation. In order to assist staff in carryout their responsibilities while the Task Force continued its work, the following support packages were developed and distributed:

- an information package was given to staff that provided an overview of the administrative segregation process in the context of the Charter, the CCRA/CCRR and CSC policy;
- a second information package responded to the *most frequently asked questions* that were being raised by staff about the administrative segregation process;
- an *Administrative Segregation Checklist* was drafted that staff could use as a reference to ensure that they were carrying out their legal responsibilities at the key stages of the administrative segregation process; it also contained examples of *best practices* being used in institutions across the country;
- a model *Inmate Handbook* was created that could be used by staff to inform segregated inmates about their rights and privileges and the rules and procedures of the segregation unit; and
- initial changes were made to some OMS screens that enabled staff to accurately document information at the time of placement.

The Task Force observed that the use of a dedicated unit management team provided the best approach to ensuring compliance with the law. The Task Force recommends that a dedicated staff should be assigned to the administrative segregation unit. The rotation schedule should be modified to allow staff to be assigned for designated periods, sufficient to ensure that administrative segregation units are staffed in a consistent manner by personnel familiar with the law; the unit and its routine and the segregated inmates. The roster should also provide staff with an opportunity to maintain contact with other staff and familiarize themselves with the day-to-day operation of other posts in the institution.

The Task Force has made recommendations with respect to continuous education on the overall context of the law and its application to the daily activities of the administrative segregation unit.

An important aspect of this training is respect of the rights and privileges of Aboriginal inmates under the law. The Task Force is recommending that particular attention be given to refamiliarizing staff with the applicable law and with Aboriginal entitlements to Native artifacts and ceremonies associated with spirituality and the healing process.

The Task Force recommends that institution-based training modules be developed and supplemented by integrated reference material that is easily accessible and understood by staff.

K. Women Offenders

The mandate of the Task Force is rooted in the findings of Madame Justice Arbour regarding the incidents at the Prison For Women. Although issues at penitentiaries for men have occupied the majority of the Task Force's discussions, the needs of women offenders remained a constant concern.

A number of Task Force observations flow directly from discussions held on the conditions under which some women offenders are being incarcerated.

It was at the Prison For Women that the Task Force first observed the effective use of a special needs unit designed specifically to meet the unique requirements of a small group of women offenders. The unit was intended to maximize the liberties of women offenders while still providing them with the required level of safety and supervision. All subsequent discussions on the role of such units for male offenders flowed from this experience.

The situation of women offenders with a maximum security classification incarcerated in co-located units (in men's institutions) gave rise to discussions on the nature of segregation and separation. These women offenders represent a group that is subject to complete separation from both the male inmate population in the institution where they are incarcerated and the general, women offender population housed in regional facilities. The extent of the segregation to which these women offenders are being subjected underscored the need for a broader range of "due process" considerations for all offenders.

The creative use of peer support for women offenders in crisis, the approach to "circle discussions" at the Healing Lodge, and the extraordinary lengths that the staff at the Healing Lodge go to avoiding the use of segregation, all serve as important models of intervention that institutions for men and other institutions for women could adopt.

The recognition of these special populations and approaches has served as a catalyst for the proposal of alternatives (sub-populations) to traditional administrative segregation and as a constant reminder that rights, privileges, and conditions of confinement must be managed in full compliance with the law.

There are a number of issues that demand more careful examination in the context of a *women's-centered approach* to defining alternatives to segregation and/or long-term separation from the general inmate population:

- administrative segregation may have more severe debilitating effects on women offenders; women offenders find it difficult to cope with separation from the general inmate population;
- there is evidence that women offenders who are housed in higher levels of security are more likely to be Aboriginal women;
- the use of flexible space (enhanced units) in institutions for women offenders, although responding to a number of institutional requirements to temporarily separate offenders (reception and assessment, special needs, short-term segregation, privacy, quiet-time, etc.), has an impact on the rights and freedoms of women offenders housed there and therefore raises questions about the compatibility among the various purposes for which it is being used; and
- the use of effective transition strategies to offset situations where segregation might otherwise be used.

The Task Force recognizes that the small numbers of women offenders create specific population management challenges and opportunities. Any efforts to respond to specific risk/need attributes of women offenders through separation from the general inmate population impact them significantly. The Task Force recommends that the Deputy Commissioner for Women develop, in conjunction with the proposed formal review of all population management practices, procedures to ensure that appropriate legal and policy safeguards are in place in all women sub-populations, irrespective of their expressed official purpose. This gives rise to the need to:

1. identify and describe sub-populations in terms of the characteristics that the Task Force has presented;
2. evaluate the continuing validity of each unit, and where a unit is considered valid, implement necessary improvements to safeguarding the rights, privileges and conditions of confinement; and
3. apply appropriate segregation review procedures to women offenders housed in each unit.

The Task Force recommends that the Deputy Commissioner for Women consider this review in close consultation with external stakeholders.

The Task Force suggests that the proposed Segregation Advisory Committee consult regularly with the Deputy Commissioner for Women. This will ensure that all segregation issues which demand an approach that is responsive to the needs of women offenders are dealt with accordingly.

L: Aboriginal Offenders

(a) Introduction

Aboriginal peoples possess distinct legal rights including those in the Constitution of Canada which recognize and affirm existing Aboriginal and treaty rights. This legal reality is reflected in the distinct legal rights possessed by Aboriginal offenders in the CCRA. As a consequence, CSC is by law bound to respect these rights. The CCRA provides a more specific framework for understanding the rights that Aboriginal offenders possess. Section 4 of the CCRA sets out the principles that CSC must respect in administering its duties. These principles specify a clear duty on the part of CSC to ensure that "all correctional policies, programs and practices respect gender, ethnic, cultural and language differences". This section further provides an additional level of responsibility to two groups: Aboriginal Peoples and women. This additional duty requires CSC to be responsive to the distinct needs of these two groups. The Task Force acknowledges that CSC has not made its staff sufficiently aware of the distinct constitutional and legal rights of Aboriginal inmates and the corresponding obligations of staff, within the context of administrative segregation.

Aboriginal offenders face distinct difficulties in administrative segregation and distinct (that is, Aboriginal-specific) solutions should seriously be considered because of their cultural and socio-economic backgrounds. The resolution of these difficulties must consider the cultural and socio-economic backgrounds of Aboriginal offenders. It must also remember that Aboriginal experiences and cultures are diverse. The law requires that access to spiritual and cultural support be made readily available during periods of segregation. The Task Force has observed serious problems in the context of delivering programs and services to Aboriginal offenders in administrative segregation, recommends that immediate action be taken to ensure access to spiritual leaders, Elders, Native Liaison Workers, sacred and cultural items, as well as spiritual ceremonies, such as the sweat lodge.

These rights are so fundamental that CSC must demonstrate that there are valid safety and security concerns if it intends to deny access to them. In addition, the Task Force recommends that Native Brotherhood representatives be provided the same access to segregation areas as provided to members of Inmate Welfare Committees.

Section 81 of the *CCRA* is perhaps the most important provision and the most innovative provision of the legislation relating to Aboriginal Peoples. It states:

The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

It creates the opportunity to address issues of long-term segregation cases in a proactive way, in partnership with Aboriginal communities. Accordingly, the Task Force recommends that CSC embrace and explore the challenges and opportunities presented by Section 81 in partnership with Aboriginal people and communities.

(b) An Aboriginal Vision - Proposed Pilot Project

The Task Force organized a two-day meeting (December 9 & 10, 1996) in Morley, Alberta to discuss Aboriginal issues with respect to administrative segregation². The following is a summary of the main Aboriginal issues raised with respect to administrative segregation.

The Aboriginal participants strongly felt that the practice of involuntary segregation was inconsistent with the driving principles of rehabilitation and reintegration as defined in the *CCRA* and the *Mission*. This practice is also inconsistent with Aboriginal principles of restoration of balance and harmony. In fact, the concept of incarceration is not consistent with the Aboriginal view of restorative justice. As a result, the group strongly recommended that CSC make a long-term commitment to abolishing segregation for Aboriginal inmates. This was not a point on which the Task Force could come to consensus but the point is raised in the report out of respect for the Aboriginal view and to underscore the degree of difference between the Aboriginal and non-Aboriginal views of segregation.

² The participants were: John Angus, Elder, Saskatchewan Penitentiary; Rose Auger, Elder; Phillip Auger, Elder, Kent Penitentiary; William Dreaver, Elder, Saskatchewan Penitentiary; Dale Leclair, Aboriginal Programming (N.H.Q.); a community representative; Janice Many Grey Horses, Aboriginal Programming (RHQ, Prairies), and member of the Task Force; Patricia Montur Angus, member of the Task Force; Darrell Tait, Elder's Helper; Clifford Rabbitskin, Elder, R.P.C. (Prairies).

The Aboriginal group suggested that the experience at the Healing Lodge should serve as a positive example of a creative model that does not rely on segregation. The participants pointed out that the Healing Lodge has never relied on segregation since its opening, and that its safety and security have not been jeopardized as a result. Although the Task Force recognizes that the Healing Lodge is a lower-security level facility which at times relies on higher security institutions to manage very disruptive offenders, the Task Force would be remiss if it did not acknowledge the unique, committed, effective and creative correctional environment that has been achieved there.

In addition, the group made several recommendations that address issues not limited to administrative segregation. For example, it recommended increased representation of Aboriginal people in CSC management; the establishment of an Office of Aboriginal Investigation and a Task Force on Aboriginal Correctional Issues.

The group proposed that a pilot project be initiated to evaluate whether alternatives to both voluntary and involuntary segregation of Aboriginal inmates could be successfully implemented. All members of the Task Force and the representatives of the Prairie Region recognize the desirability of initiating such a project. Therefore, the Task Force recommends that a pilot project be developed with the close collaboration of Aboriginal representatives. The Task Force recommends that the pilot project be conducted in an institution which has a high number of Aboriginal segregated inmates and that appropriate resources be allocated to it.

The project will seek alternatives to administrative segregation based on principles of restorative justice unique to Aboriginal people, as well as creative methods by which the segregation process can be made more respectful of the cultural and spiritual needs of Aboriginal offenders.

The Task Force believes that the reforms it is proposing, both in the form of an enhanced segregation review process and the experimentation with independent adjudication, will produce significant benefits for all offenders, both Aboriginal and non-Aboriginal. However, it is important to recognize that these reforms proceed largely from a non-Aboriginal perspective of justice. As the Royal Commission on Aboriginal Peoples has documented in its report, *"Bridging the Cultural Divide: A Report on Aboriginal People and the Criminal Justice System in Canada"*, there are distinctive Aboriginal concepts, of both the process and substance of justice. Some of these concepts have already been applied in the form of "circles sentencing", where offenders, victims and members of the community in which the offence has taken place give judges their views regarding the appropriate sentence to be imposed on the offender. This is part of a process that is quite different from the typical courtroom procedure, dominated by lawyers.

The National Parole Board has also conducted a number of parole board hearings in which Aboriginal Elders play an important role, and the process incorporates elements of an Aboriginal talking circle. The time constraints placed on the work of the Task Force has not enabled it to consider sufficiently the ways in which the segregation review process could be shaped to incorporate aboriginal processes, but it believes that this is an important area to explore, and one which should be reviewed as part of the pilot project being recommended. As in other areas of the criminal justice system, the incorporation of Aboriginal conceptions of justice may yield significant benefits for all those involved.

M. Research

Although the segregated inmate population represents approximately 5.5% of all federally incarcerated inmates, limited research on these offenders exists. For example, the literature on the effects of segregation is limited and contradictory, and little is known about the psychological make-up and different coping skills of segregated men, women, and Aboriginal inmates. The Task Force recommends that the following two research initiatives be undertaken.

(a) Screening Protocol: Identifying the Needs of Inmates at Risk of Becoming Segregated

The profile of segregated inmates suggests that they are very different from non-segregated inmates. Segregated inmates are higher risk and have distinct and higher needs than non-segregated inmates. Owing to the abundance of case-specific factors, the needs of inmates at risk of being segregated could possibly be better identified upon admission. The Task Force recommends that a research project be initiated using existing databases to develop a screening protocol that would better assess the needs of inmates at risk of becoming segregated. This information will help Case Management Officers to ensure that the inmates' needs are better identified and receive appropriate and early intervention.

The Task Force further recommends that the research project ensures that Aboriginal offenders and other cultural groups will not be adversely affected by the proposed screening protocol.

(b) The Effects of Long-Term Segregation

Although the literature on the effects of segregation is limited and contradictory, the Task Force is committed to the position that administrative segregation is harmful to inmates' mental health and social functioning.

The Task Force found that the evidence supporting the position that segregation is harmful is primarily based on case studies and anecdotal evidence, whereas the evidence supporting the position that segregation is *not* harmful is based on empirical studies that do not evaluate what today's segregation reality entails, and as a result, is difficult to generalize. The empirically-based evidence fails to evaluate factors that may affect inmates' mental health and social functioning.

The factors that are typically not part of the empirical studies are: reasons for being segregated; process by which inmates are segregated; physical facilities and daily routines; lack of meaningful contact with staff members and other inmates; high prevalence of mental disorders among segregated inmates; length of the period of segregation; uncertainty of the release date; uncertainty of the behaviour required to increase the possibility of returning to the general inmate population; and process by which inmates are returned to the general inmate population (see Arbour, 1996; Gendreau & Bonta, 1984; Vantour, 1975).

Little is known about the psychological make-up and different coping skills of segregated male, women, and Aboriginal inmates. Research in these areas will provide information that could be used to identify segregated inmates who are more likely to be negatively affected by segregation. This information will help to develop interventions which are designed to facilitate inmates' reintegration into the general inmate population and to negate the potentially harmful effects associated with segregation.

N. The Segregation Advisory Committee

Earlier in this report, the Task Force commented on the significant improvement which CSC has demonstrated, over the life of the Task Force, in its capacity to comply with procedural requirements of the law regarding segregation. It has also emphasized that this progress must be sustained and that the necessary improvements in compliance must be demonstrated. The Task Force has also recommended a number of reforms, including an enhanced segregation review process, experimentation with independent adjudication, a pilot project for Aboriginal offenders, and a review of the management of a variety of populations in the context of the law. While the Task Force has identified the contours of these reforms, there still remains significant work to be done in developing and implementing the recommendations contained in this report.

The Task Force recommends that this work of development should be coordinated through a Segregation Advisory Committee (SAC). As the Chairperson of the Task Force has observed in the opening comments to this report, the experience of the Task Force in bringing together people with different perspectives from both within and outside CSC, has proven to be a basis for productive partnership in exploring creative solutions to complex and oftentimes intractable issues. That energy and synergy, in the Task Force's view, contributed significantly and positively to its work and to the development of its recommendations. Since the members of the Task Force have become familiar over the past nine months with the issues and the principles underlying the recommendations, appointing some members to the SAC would provide continuity between the work of the Task Force and the work involved in the further development and implementation of the recommendations. The Task Force believes it vital that the balance between CSC and outside participants be maintained on SAC to provide a necessary measure of public confidence in CSC's openness, accountability and commitment to the strengthening of a culture that respects the "Rule of Law".

The SAC would offer advice on framing the experimentation with independent adjudication and the Aboriginal pilot project, monitor progress in developing and implementing the enhanced segregation review process, and provide further input on the review of population management in the context of the law. The SAC's mandate should extend over the next two years, with the provision that there be quarterly status reports on implementation of the recommendations and biennial reports to the Senior Deputy Commissioner.

O. Summary of Recommendations

In order to ensure that: (a) the procedural compliance which has been achieved to date is maintained; (b) substantive compliance, respect for the rule of law is entrenched in correctional operations; and (c) within this process, the specific needs of women and Aboriginal offenders are recognized, the Task Force recommends implementation of the following measures.

Maintain Continuity

1. A Segregation Advisory Committee should be created for a period of time, with membership from inside/outside CSC, to continue to work to making improvements in moving to an effective and compliant administrative segregation process.

Enhance The Segregation Review Process

2. Eight initiatives should be undertaken to enhance the segregation review process.
 - (i) A standard operating procedure should be developed and adopted outlining the roles and responsibilities of all parties involved in the administrative segregation process in the context of the relevant law, regulation and policy. Staff members and managers must be held accountable. Steps should be taken to include *compliance with the law* as a key factor in staffing, promotion and performance review processes.
 - (ii) A continuous education initiative must be targeted at staff members and managers with direct responsibilities for administrative segregation. The initiative must include training on the legal rights of Aboriginal people, more specifically, on their access to spiritual/cultural possessions and support, and the need to continue the healing process identified in the Correctional Plan. Further, OMS training on changes to the system with respect to the administrative segregation process must be immediately provided to all users who are involved in the process.
 - (iii) Institutions with segregation units should review the informal approaches used to prevent or discontinue segregation, and explore other alternatives, such as formal and informal mediation mechanisms.
 - (iv) More formal and disciplined segregation review hearings should be adopted. The Task Force recommends mandatory certification for all chairpersons of Segregation Review Boards.
 - (v) OMS should be recognized as the *principal file of record*.
 - (vi) Regional Segregation Review and Transfer Boards should be established in each region to expedite intra-regional transfers of segregated inmates. The

- Task Force also recommends that CSC create an Inter-Regional Transfer Board to arbitrate and effect transfers between regions.
- (vii) Proposed changes to expedite the resolution of complaints and grievances initiated by segregated inmates should be integrated into the implementation of the enhanced model.
 - (viii) Scheduled and random audits should be performed to ensure that the segregation review process and the conditions of confinement in segregation units are in compliance with the law and policy.

The implementation of recommendations will have to be respectful of both Aboriginal and women offender requirements and rely on input from both internal and external specialists and stakeholders.

Experiment With Independent Adjudication

- 3.(a) CSC should experiment with a model for independent adjudication as soon as possible to evaluate both the impact of the operational requirements (organization, roles and responsibilities, and cost) and the benefits that may accrue to improving the fairness and effectiveness of the administrative segregation review process. The experiment should be used to determine not only how the *best blend* between an enhanced segregation review process and independent adjudication could be achieved, but also to determine if independent adjudication improves the fairness and effectiveness of decision-making. The results of the evaluation should include the clear definition of the factors that indicate the benefits and deficits of using independent adjudication; an analysis of the impact that independent review has had on the decisions that were taken; recommendations on the *best model* and *best fit* for independent adjudication; and proposals of an action plan for implementation if the recommendation is to adopt the model.
- 3.(b) Experimentation with independent adjudication should be fast-tracked in order to ensure that evaluation results are available for review by EXCOM by the end of 1997. The Task Force has also considered the relationship between the proposed experiment with independent adjudication and the CCRA five year review, which is presently underway. The Task Force is concerned that the window for legislative amendment provided by the review not be closed while the proposed experimental model is being implemented. The Task Force therefore recommends that, while experimentation is taking place, drafting of proposals for possible legislative amendments could occur. If regulatory measures are also deemed to be helpful then they could also be drafted in parallel.

Review the Management of Sub-Populations in a Legal/Policy Context

- 4.(a) As a first step to developing a legal/policy and procedural context for the management of a range of "sub-populations", they should be clearly described in the forms in which they are actually occurring in the institutions and clearly distinguished (describing when and how they would be used) as alternatives to administrative segregation.
- 4 (b) As a second step, principles to govern placement in each "sub-population", provision of appropriate rights, privileges and conditions of confinement and due process (review) must be clearly stated for each "sub-population". The underlying factor for developing such descriptions must be the degree of *intrusiveness* placed on the individual's residual rights and freedoms.
- 4.(c) In light of (a) and (b), a formal review of the *CCRA/CCRR*, policies and procedures should be undertaken to -
- (i) develop an integrated description of these "sub-populations" in the context of the law and current policy;
 - (ii) evaluate the extent to which the law and policy adequately support the management of these "sub-populations"; and
 - (iii) identify deficiencies in policy and the law and corrective actions that should be taken in the context of changes to CSC policy and/or the *CCRA* Review.

Review the Elements of Conditions of Confinement

- 5.(a) The purpose of delivering programs in administrative segregation is to offset the debilitating impact of segregation; to assist inmates in reintegrating into less restrictive environments, when and where possible, and to prepare offenders for reintegration into the community when release into the institutional population is not possible. As a consequence, as soon as possible after the five-day review the inmate's Correctional Plan should be amended to include a reintegration strategy for placement in a less restrictive population. The programs offered in segregation must be directed to achieving this new goal.

The original goals of the Correctional Plan, to facilitate the reintegration of inmates into the community, must be reinstated if the timely return of an inmate into a less restrictive population is impossible.

- 5.(b) Aboriginal inmates have distinct needs and are legally entitled to spiritual and cultural support. Therefore, CSC must ensure that segregated Aboriginal inmates have access to Spiritual Leaders and Elders, Native Liaison Workers, sacred and

cultural items, and appropriate spiritual ceremonies (e.g. sweat lodges). In addition, CSC must take an active role in offering programming that is tailored to meet their respective needs.

6. With respect to recreational activities, additional exercise time should be provided when possible within the limitations of the segregation area, security requirements, and resource availability. All institutions should ensure that the exercise yards are equipped with some form of recreational equipment (i.e. chin-up bars, basketball nets, balls, etc.). Segregated inmates must have access to cards, board games, television, music, art work, or other cell hobbies.
7. Cleanliness of the administrative segregation units must be an ongoing priority. Significant progress has occurred in all regions to attain and sustain this goal. The compliance audit indicated that major changes had occurred in all institutions with respect to conditions of the physical plant. No institution was cited as having any major deficiency in this area. Part of proposed regular and random audits should include the systematic review of all factors contributing to cleanliness, health, safety and security.
8. Each administrative segregation unit should develop an *Inmate Handbook* that is provided to each segregated inmate at placement. An example was developed and distributed by the Task Force to each administrative segregation unit across the country. The handbook should clearly define what segregation is under the law; the rights, privileges, and conditions of confinement of segregated inmates; and define the steps that will be followed to review inmates' cases. Finally, the handbook should describe the daily routine of the unit and the responsibilities of segregated inmates while segregated.
9. Segregated inmates are entitled to their personal effects. Immediately upon placement in administrative segregation, CSC must ensure that adequate bedding, clothing, and toilet articles for personal health and cleanliness are provided. Segregated inmates should receive all of their cell effects shortly thereafter. In most cases, all personal effects that do not jeopardize security requirements should be provided to segregated inmates after their five-day review.

Review The Role of the Psychologist

10. The psychologist has a critical role to play in the administrative segregation review process. The Task Force engaged this community through a questionnaire that focused on their role and responsibilities. The result of this dialogue follow.

- (a) Mental health professionals should be brought together to share their expertise and best practices on assessments, interventions, preventive measures, alternatives, and research of segregated inmates.
- (b) The policy criterion requiring the psychologist to determine "the inmate's capacity to remain in administrative segregation" must be reworded.
- (c) The Task Force encourages psychologists to take an active role in intervening shortly after an inmate's placement in segregation.
- (d) A national assessment form should be developed and installed on OMS.
- (e) Staff assigned to work in segregation units should be sensitized and educated on mental health issues. The reference manual should include a section on the identification of factors and behaviours associated with mental health deterioration.

Review The Role of the Case Management Officer (CMO) and Correctional Officer II (COII)

11. The Task Force has based many of its recommendations on the need to develop a reintegration plan for the segregated inmate, as early as possible after placement. It has observed that there is a requirement to ensure the modification and the implementation of the inmate's Correctional Plan. There have been advantages and disadvantages identified for both approaches. Two important observations are noted -
 - the need to maintain a clear relationship between an inmate's correctional and reintegration plans; and
 - the need to ensure that segregated inmates, particularly voluntary cases, continue to remain a high priority for CMOs and COIIs.

The *Case Management Manual* should be reviewed and revised in the context of these observations and recommendations. Particular attention should be given to the development of training models on the management of segregated inmates in the context of the law.

Review The Role of the Staff of the Administrative Segregation Unit

12. The Task Force observed that the use of a dedicated unit management team provided the best approach to ensuring compliance with the law. A dedicated staff should be assigned to the administrative segregation unit. The rotation schedule should be modified to allow staff to be assigned for designated periods, sufficient to ensure that administrative segregation units are staffed in a consistent manner by personnel familiar with the law; the unit and its routine and the segregated inmates. The roster should also provide staff with an opportunity to maintain contact with other staff and familiarize themselves with the day-to-day operation of other posts in the institution.

The Task Force has made recommendations with respect to continuous education in understanding the overall context of the law and applying it to the daily activities of the administrative segregation unit. An important aspect of this training is the respect of rights and privileges of Aboriginal inmates under the law. The Task Force is recommending that particular attention be given to refamiliarization with the applicable law and Aboriginal entitlements to Native artifacts and ceremonies associated with spirituality and the healing process. Institutional-based training modules should be developed and supplemented by integrated reference material that is easily accessible and understood by staff.

Review The Observations and Recommendations in the Context of Women Offenders

13. There are a number of issues that demand more careful examination in the context of a *women's-centered approach* to defining alternatives to segregation and/or long-term separation from the general inmate population -
- administrative segregation may have more severe debilitating effects on women offenders; women offenders can be more deeply affected by separation from the general inmate population;
 - there is evidence that shows that women offenders who are housed in higher levels of security are more likely to be Aboriginal;
 - the impact of the use of flexible space (enhanced units) in institutions for women offenders, although responding to a number of institutional requirements to temporarily separate offenders (reception and assessment, special needs, short-term segregation, privacy, quiet-time, etc.) have an impact on the rights and freedoms of women offenders housed there and therefore the compatibility among the various purposes of its use;
 - the use of effective transition strategies to offset situations where segregation may be used otherwise; and

- the review of sub-populations in the context of the Task Force recommendations on the protection of rights, privileges and conditions of confinement under the law.

The Task Force recognizes that the small numbers of women offenders create specific population management challenges and opportunities. Any efforts to respond to specific risk/need attributes of women offenders through separation from the general inmate population impact them significantly. The Deputy Commissioner for Women should develop, in conjunction with the proposed formal review of all population management practices, procedures to ensure that appropriate legal and policy safeguards are in place in all women sub-populations, irrespective of their expressed official purpose.

Focus on Distinct Aboriginal Issues

14. Aboriginal peoples possess distinct legal rights including those in the Constitution of Canada which recognize and affirm existing Aboriginal and treaty rights. This legal reality is reflected in the distinct legal rights possessed by Aboriginal offenders in the CCRA.

- (a) Section 81 of the CCRA is perhaps the most important provision of the legislation relating to Aboriginal Peoples. It states:

The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

It creates the opportunity to address issues of long term segregation cases in a proactive way, in partnership with Aboriginal communities. Accordingly, the Task Force recommends that CSC embrace and explore the challenges and opportunities presented by Section 81.

- (b) At a meeting of Aboriginal participants at Morley Alberta, a pilot project was proposed to evaluate whether alternatives to both voluntary and involuntary segregation of Aboriginal inmates could be successfully implemented. All members of the Task Force and the representatives of the Prairie Region recognize the desirability of initiating such a project. Therefore, the Task Force recommends that a pilot project be developed with the close collaboration of Aboriginal representatives. The pilot project should be conducted in an institution which has a high number of Aboriginal segregated inmates and be appropriately resourced. The project should seek to define alternatives to

administrative segregation based on principles of restorative justice unique to Aboriginal people and should seek creative methods by which the segregation process can be made more respectful of the cultural and spiritual needs of Aboriginal offenders.

Conduct Research

- 15.(a) The Task Force recommends that a research project be initiated using existing databases to develop a screening protocol that would better assess the needs of inmates at risk of becoming segregated.

- 15.(b) Little is known about the psychological make-up and different coping skills of segregated male, women, and Aboriginal inmates. Research in these areas will provide information that could be used to identify segregated inmates who are more likely to be negatively affected by segregation. This information will help to develop interventions which are designed to facilitate inmates' reintegration into the general inmate population and to negate the potentially harmful effects associated with segregation

P. Bibliography

- Arbour L. (Commissioner), *Commission of Inquiry into Certain Events at Prison for Women in Kingston* (Ottawa: Queen's printer, April 1996).
- Benjamin, T.B., & Lux, K. (1977). Solitary confinement as punishment. *California Western Law Review*, 13, 265-296.
- Benjamin, T.B., & Lux, K. (1975). Constitutional and psychological implications of the use of solitary confinement: Experience at the Maine State Prison. *Clearinghouse review*, 9, 83-90.
- Birkinshaw, P. (1981). The control unit regime: Law and order in prison. *Howard Journal*, 20, 69-80.
- Bonta, J., & Gendreau, P. (1995). Reexamining the cruel and unusual punishment of prison life. In T.J. Flanagan (Ed.), *Long-term imprisonment: Policy, science, and correctional practice* (pp. 75-94). Thousand Oaks, CA: Sage.
- Brodsky, S.L., & Scogin, F.R. (1988). Inmates in protective custody: First data on emotional effects. *Forensic Reports*, 1, 267-280.
- Carriere, K.D. (1989). Protective custody in Canada: A review of research and policy responses. *Canadian Criminology Forum*, 10, 17-25.
- Coyle, A.G. (1987). The management of dangerous and difficult prisoners. *Howard Journal*, 26, 139-152.
- Dowker, F., & Good, G. (1993). The proliferation of control unit prisons in the United States. *Journal of Prisoners on Prisons*, 4, 95-110.
- Ecclestone, C.E.J., Gendreau, P., & Knox, C. (1974). Solitary confinement of prisoners: An assessment of its effects on inmates' personal constructs and adrenocortical activity. *Canadian Journal of Behavioral Science*, 6, 178-191.
- The Editors (1986). Note: Prisoner segregation. *Administrative Law Journal*, 2, 62-68.
- Ellis, J. (1993). Security officer's role in reducing inmate problem behaviors. *Journal of Offender Rehabilitation*, 20, 61-72.

-
- Gendreau, P., & Bonta, J. (1984). Solitary confinement is not cruel and unusual punishment: People sometimes are! *Canadian Journal of Criminology*, 26, 467-478.
- Gendreau, P.E., Freedman, N., Wilde, G.J.S., & Scott, G.D. (1968). Stimulation seeking after seven days of perceptual deprivation. *Perceptual and Motor Skills*, 26, 547-550.
- Gendreau, P.E., Horton, J.G., Hooper, D.G., Freedman, G.J.S., & Scott, G.D. (1968). Perceptual deprivation and perceptual skills: Some methodological considerations. *Perceptual and Motor Skills*, 27, 57-58.
- Gendreau, P., McLean, R., Parsons, T., Drake, R., & Ecclestone, J. (1970). Effect of two days' monotonous confinement on conditioned eyelid frequency and topography. *Perceptual and Motor Skills*, 31, 291-293.
- Gendreau, P., Tellier, M.-C., & Wormith, J.S. (1985). Protective custody: The emerging crisis within our prisons. *Federal Probation*, 44, 55-63.
- Goldenberg, E., & Cowden, J.E. (1977). An evaluation of intensive group therapy with male offenders in isolation units. *Corrective and Social Psychiatry and Journal of Behavior Technology, Methods, and Therapy*, 23, 69-72.
- Grassian, S. (1983). Psychopathological effects of solitary confinement. *American Journal of Psychiatry*, 140, 1450-1454.
- Groves, M. (1996). Administrative segregation of prisoners: Powers, principles of review and remedies. *Melbourne University Law Review*, 20, 639-689.
- Haney, C. (1993). "Infamous punishment": The psychological consequences of isolation. *National Prison Project Journal*, 8, 3-7, 21.
- Henderson, J.D. (1992). Managing protective custody units. *Federal Prisons Journals*, 3, 42-47.
- Hodgins, S., & Cote, G. (1991). The mental health of penitentiary inmates in isolation. *Canadian Journal of Criminology*, 33, 175-182.
- Immarigeon, R. (1992). The Marionization of American Prisons. *National Prison Project Journal*, 7, 1-5.

-
- Jackson, M. (1988). *Justice behind the Walls: A Report of the Canadian Bar Association Committee on Imprisonment and Release* (Ottawa: Canadian Bar Association).
- Jackson, M. (1983). *Prisoners of isolation: Solitary confinement in Canada*. Toronto: University of Toronto Press.
- MacGuigan J. (Chair), *Report to Parliament: The Sub-Committee on the Penitentiary System in Canada* (Ottawa: Queen's printer, 1977).
- Manson, A. (1996). Scrutiny from the outside: The Arbour Commission, the Prison for Women and the Correctional Service of Canada. *Canadian Criminal Law Review*, 1, 321-337.
- Manson, A. (1990). Solitary confinement, remission and prison discipline. *Criminal Reports*, 75 (3ed.), 356-364.
- Maxwell, W.W. (1987). Educating segregated inmates. *Corrections Today*, 2, 106, 108, 110, 112.
- Pierson, T.A. (1988). Use of protective custody: How different systems respond. *Corrections today*, 50, 150, 152, 154.
- Rold, W.J. (1992). Consideration of mental health factors in inmate discipline. *Journal of Prison and Jail Health*, 11, 41-49.
- Suedfeld, P., Ramirez, C, Deaton, J., & Baker-Brown, G. (1982). Reactions and attributes of prisoners in solitary confinement. *Criminal Justice and Behavior*, 9:3, 303-340.
- Vantour, J.A. (1975). *Report of the study group on dissociation*. Ottawa: Solicitor General Canada.
- Walters, R.H., Callagan, J.E., & Newman, A.F. (1963). Effect of solitary confinement on prisoners. *American Journal of Psychiatry*, 119, 771-773.
- Wormith. J.S., Tellier, M.-C., & Gendreau, P. (1988). Characteristics of protective custody offenders in a provincial correctional centre. *Canadian Journal of Criminology*, 30, 39-58.

Zubek, J.P., Bayer, L, & Shephard, J.M. (1969). Relative effects of prolonged social isolation and confinement: Behavioral and EEG changes. *Journal of Abnormal Psychology, 74*, 625-631.

Q. Annexes**Annex 1: Guide for Conducting SRB Hearings**

The institutional head may designate a person, or persons, to sit as members of a Segregation Review Board. The purpose of this Board is to conduct review hearings of cases where inmates are involuntarily confined in administrative segregation. The Board must make recommendations to the institutional head as to whether or not inmates should be released from administrative segregation (CCRA s.33; CCRR 21(1)). The final decision of whether the inmate should be released from or maintained in administrative segregation rests with the institutional head (CCRA s.32).

Step 1 - Preparations for the Hearing

Certain practical preparations need to be made before the hearing. These include reserving a closed room with a table, ensuring there are sufficient chairs for the participants, a tape recorder, notepads, pens, etc. (an OMS terminal).

Before commencing the hearing, activate the tape recorder.

Every SRB Hearing should be recorded on audio tape. This serves as a record of accuracy for the hearing in case there are any questions of irregularities. If the hearing is not taped, one person should be appointed to take minutes, which should detail, as much as possible, the procedure followed during the hearing and summarize what was said.

The record of each hearing should be retained for a period of at least two years after the decision is rendered, as required for serious disciplinary hearings (CCRR 33(2)). On request, an inmate should be given reasonable access to the record of the hearing (CCRR 33(3)).

Step 2 - Proper Notice

The Segregation Review Board must conduct a hearing within five working days after the inmate's confinement in administrative segregation, and at least once every 30 days thereafter (CCRR 21(2)).

The inmate must receive notice of the hearing and sufficient details of all the information that the Board will be considering at the hearing. This notice and

information must be given to the inmate at least three working days before the hearing, and it must be in writing (CCRR 21(3)).

The administrative segregation placement form must detail the substantive reasons why the inmate poses a risk to the safety of a person, the security of the institution or might interfere with an investigation.

Staff members must document, on the placement form, the specific and verifiable reasonable grounds for placement, in other words the "face of the record" should be able to justify the placement to any "reasonable person".

Any supporting documentation, such as observation reports, should accompany the placement form so that the Warden's one-day review can properly consider whether a reasonable alternative exists; whether segregation is the "last resort" and the least restrictive measure consistent with the risk. Potential reintegration plans should be developed at this point.

Notice of the time, place and date of the SRB hearing may be included on the placement form. Any reports or other information that are going to be considered at the hearing must be shared with the inmate as soon as practical. A record must be made of what was shared and when it was shared with the inmate, either in hard copy or in a summary format (subject to CCRA s.27(3)).

Step 3 - Composition of Board

The Board should consist of a core group - the Chairperson, the Unit Manager responsible for the administrative segregation unit, the IPSO, and a case management officer and may include one or more other participants as required (psychologist, member of the Program Board, the Elder, etc.). The Chairperson should be at the Deputy or Assistant Warden level. The institutional head must designate, by name or position in institutional standing orders, the persons who may be members of the SRB (CCRR 21(1)).

All persons who are present at the hearing should identify themselves by name, position and their role at the hearing.

The record must show exactly who acts as a decision-maker.

The Chairperson of the SRB must be "certified" through education, training and experience in the conduct of administrative review hearings, for example, through

successful completion of a program of national competency standards including legal awareness, the conduct of a hearing and administrative decision-making.

Step 4 - Purpose of the Board

Explain to the inmate the general purpose of the Segregation Review Board.

A statement explaining the purpose of the SRB should be read out loud to all the participants at the beginning of the hearing:

“The purpose of this Segregation Review Board is to conduct review hearings of cases where inmates are involuntarily confined in administrative segregation. This Board makes recommendations to the institutional head as to whether or not you should be released from administrative segregation at this time.”

Final decisions on an inmate’s segregation status are to be made by the institutional head. This power cannot be delegated but may be exercised by another person who is Acting Warden at the time, and identified as such on the decision form.

Where the institutional head does not intend to accept a recommendation to release an inmate from administrative segregation, the institutional head shall, as soon as practicable, meet with the inmate

- (a) to explain the reasons for not intending to accept the recommendation; and
- (b) to give the inmate an opportunity to make oral or written representations (CCRA s.33).

Step 5 - Checklist of Procedural Safeguards

Review the checklist of procedural safeguards orally to see if the appropriate requirements have been fulfilled.

Inmate Rights

- Has the inmate’s language preference been accommodated?
- Has the inmate been advised of his or her right to be present at the hearing?
- Was the inmate given an opportunity to attend the SRB hearing?
- Was the inmate given a reasonable opportunity to retain and instruct legal counsel without delay? (CCRR 97(2))

- Was the inmate given information regarding procedural rights, privileges, and the routine in segregation? (CD 590 s.22)
- Was the inmate given written notice of the reasons for segregation within one working day after the inmate's confinement? (CCRR 19)
- Was the inmate given written notice of the hearing at least 3 working days before the hearing? (CCRR 21(3))
- Did the inmate receive sufficient detail in writing of the information that the Board will consider at least 3 working days before the hearing? (CCRR 21(3))
- What are the reasons for any irregularity? Explain fully.

Requirements of Institutional Head

- Did the institutional head review the order to place the inmate in segregation within one working day after the inmate's confinement? (CCRR 20)
- Has the inmate received daily visits by a registered health care professional?
- Did the institutional head, or delegate (CCRR 6(e)), visit the segregation area daily? (CCRA s.36(1))
- Was the inmate given a daily opportunity to request a meeting with the institutional head or delegate during the daily visit? (CCRA 36(2), CCRR 6(e))

Procedural Requirements of the Board

- Is the hearing being held within 5 working days of the inmate's placement in segregation? (CCRR 21(2)(a)) or,
- Is the hearing being held at least once every 30 days after the placement? (CCRR 21(2)(b)) or,
- Is the hearing being held in addition to the routine 5/30 day reviews?

Step 6 - Proceeding with the Hearing Requirements

If the procedural safeguards have been respected, then the Board may continue with the next step of the hearing.

If any of the inmates' rights have been violated, or if any of the procedural safeguards have not been fulfilled, the decision-maker must consider whether such infringements affect the fairness of the proceedings in a significant enough way to warrant the granting of an extraordinary remedy. Re-scheduling of the hearing until the safeguards have been met is one possible remedy and another is recommending the inmate's release from segregation as a result of a high degree of unfairness in the process.

Inmates must have received copies of all written reports and collected information to be used at the SRB hearing, no later than three working days before the hearing.

If additional information becomes available after the 3-day notification and before the hearing, the Chairperson of the SRB must ensure that the inmate is given reasonable time to consider the information. The inmate should be given the opportunity to decide if he or she requires additional time to review the documentation. If an adjournment is requested, the adjournment period should not be for more than three working days, unless specifically requested by the inmate.

Step 7 - Issues to be Considered

Announce the specific issues to be considered.

The Chairperson of the SRB should describe the circumstances which gave rise to the inmate's confinement in segregation (the placement form), and must indicate that the Board will determine whether there are adequate grounds to justify keeping the inmate in segregation. This is similar to a court reading a charge to an accused. The inmate must know the case against him or her. More specifically, the inmate must be fully aware of the information the Board will consider and must have a fair opportunity to respond to the allegations and information.

Other issues include potential reasonable alternatives to segregation and the measures being taken to return the inmate to the general inmate population at the earliest appropriate time (CCRA s.31).

Step 8 - Procedure to be Followed

Announce the procedure that the hearing will follow.

The Board should conduct the hearing in a predetermined and orderly manner. The procedure to be followed must be clearly described so that all participants will know when they will have a chance to speak or make representations.

It must also be made clear to all persons present that the Board will follow an inquisitorial model, which means that Board members may ask questions and make inquiries in order to elicit information from the participants. The strict rules of procedure and evidence that apply to a court of law do not apply to SRB hearings, although there is a duty on the part of Board members to adhere to the principles of fairness. The

decision-maker must act in good faith, without ulterior purpose, improper motives or irrelevant considerations

The Board should announce the different stages of the hearing: grounds for placement, case management input, health care needs, and so on.

The inmate must have a reasonable opportunity to make representations, explain or clarify information, and answer the charges and allegations made against him or her at each stage of the hearing.

The Board must ensure that the information and evidence being considered is relevant, timely and adequate. The information must be credible and reliable.

Step 9 - Conducting the Hearing

A typical hearing should adhere to the following requirements:

If the inmate does not have an adequate understanding of at least one of Canada's official languages, arrangements must be made to have the assistance of an interpreter (CCRA s.27(4)), who may be another inmate, staff member, professional translator or other as required by the circumstances of the case.

The inmate is given the opportunity to ask any relevant questions of the Chairperson, or through the Chairperson, of other participants. Board members may address questions to the inmate.

Other staff members, board members or persons with relevant information may be asked to make representations.

When all representations have been made, the inmate is given the opportunity to present his or her case and to present evidence to the extent allowed by the Chairperson. Board members may ask questions.

The inmate may be given the opportunity to call witnesses if she or he requests to do so and the Chairperson agrees that it is reasonable and necessary in order to resolve a disputed fact or opinion in a fair manner. Board members may ask questions of these witnesses.

Final submissions by the inmates should be permitted, as well as submissions by any other person who has a right to participate in the hearing.

Step 10 - Evidence to be Considered

Consider all the evidence and make a decision on the appropriate recommendation.

In arriving at its decision, the Board should consider the relevant facts of the case, as well as any statutory, regulatory and policy considerations related to the inmate's placement in administrative segregation.

If the Board needs additional information before arriving at its decision, or cannot reach a decision immediately, it may recess and reconvene at a later time. If the inmate remains in segregation while the deliberations are recessed, then the resumption of deliberations should be the Board's highest priority.

The function of the Board is to determine whether there are sufficient grounds to justify the inmate's placement and retention in segregation (CCRA s.31(3)). Recommendations to the institutional head must be based on the considerations set out in section 31 of the CCRA (CCRA s.32).

It should be remembered that administrative segregation must not be used as a form of punishment. The purpose of administrative segregation is to keep an inmate from associating with the general inmate population (CCRA s.31(1)). The CCRA places an obligation on CSC to return the inmate to the general inmate population at the earliest appropriate time (CCRA s.31(2)).

Step 11 - Written Reasons

The review board must provide written reasons for its recommendations to the inmate and the institutional head. (CD 590 21 (g))

Written notification of the institutional head's decision resulting from each review must be given to the inmate within two working days of the hearing (CD 590 s.21(h)). The recommendation decision is usually given to the inmate verbally, after a few moments of deliberation.

The written reasons must also indicate, in sufficient detail, the information which was used to arrive at the decision or recommendation.

The quality of the decision-making process is enhanced by giving detailed reasons. Articulating clear reasons results in a more careful marshaling and weighing of the evidence, submissions and arguments.

In addition, the giving of reasons dispels any notion that the Board's conclusions might be frivolous or unfounded. Reasons provide a basis for future decision-making, reviews or appeals.

Step 12 - Reviews and Appeals

Existing review process includes:

- 1) If an inmate is not satisfied with the decision of the institutional head, the inmate may submit a grievance directly to the head of the region (CCRA s.90; CCRR 75(b)).
- 2) The head of the region, or a staff member in the regional headquarters who is designated by the head of the region, must review an inmate's case at least once every 60 days to determine whether, based on the considerations set out in section 31 of the Act, administrative segregation of the inmate continues to be justified.
- 3) An inmate may pursue judicial review by a provincial superior court or the Federal Court at any time in the process.

Potential review process may include:

- 1) A review body might be enabled at the institutional or regional level to make recommendations to the institutional head, regional head or Commissioner on the appropriateness of administrative segregation decisions. This review body could include external representatives who have legal training and/or expertise in the administrative decision-making process.
- 2) The review body should be enabled to review decisions expeditiously and their recommendations should carry significant weight with the Service.

The issue of Legal Counsel as currently exists:

When the potential consequences to an inmate's rights or interests are sufficiently serious, the issues are sufficiently complex, and it is not too operationally inconvenient, the decision-maker ought to favourably consider an inmate's request to have a lawyer

present. The assistance of legal counsel may be required by the duty to act fairly, in order to make "effective" representations more likely.

In the serious disciplinary process:

- 1) "The person who conducts a hearing... shall give the inmate... a reasonable opportunity at the hearing to (a) question witnesses through the person conducting the hearing, introduce evidence, call witnesses on the inmate's behalf and examine exhibits and documents to be considered in the taking of the decision; and (b) make submissions during all phases of the hearing..."(CCRR 31)
- 2) "The Service shall ensure that an inmate... is given a reasonable opportunity to retain and instruct legal counsel for the hearing, and that the inmate's legal counsel is permitted to participate in the proceedings to the same extent as an inmate....." (CCRR 31)

As existing in the parole process:

- 1) "[The NPB] shall permit the offender to be assisted by a person of the offender's choice... [who] is entitled (a) to be present at the hearing at all times when the offender is present, (b) to advise the offender throughout the hearing, and (c) to address, on behalf of the offender, the members of the Board conducting the hearing at times they adjudge to be conducive to the effective conduct of the hearing." (CCRA s.140(7)&(8))
- 2) The current state of the law is not clear what the exact role and extent of participation by legal counsel may be in a SRB hearing. It may be as formal as that in the existing serious disciplinary hearings, or as basic as the existing parole hearing "assistants". Offenders have a right to legal counsel at NPB revocation and detention hearings.

Annex 2: Preliminary Guidelines for Procedural Review

Sub-population	Definition	Principles
<p>Disciplinary Segregation</p>	<p>Under CCRA, s.44, an inmate who is found guilty of a serious disciplinary offense is liable, in accordance with the regulations made under paras. 96(i), (f), (j) to be restricted in his/her freedom of movement as sanctioned by an Independent Chairperson.</p>	<p>All reasonable steps must be taken to resolve a matter informally, where possible. Section 40 of the CCRA defines 19 disciplinary offences. Written notice of the charge, stating the evidence in support of the charge and whether the charge is serious or minor, must be provided in accordance with the Regulations. The role and authority of the Independent Chairperson are described in s. 24(1) of the Regulations. The key elements of fairness are set out in the description of the hearing and assure the high standard of proof that is required (s. 43 of the CCRA and ss. 27-33 of the Regulations). The right of the inmate to legal counsel is established in s. 31(2), CCRA. Section 44 of the CCRA limits the sanctions that can be imposed.</p>
<p>Administrative Segregation</p>	<p>This measure involves a decision to remove the inmate from the open and/or special treatment population and place the inmate in a designated area of the institution under strict supervision in a structured and controlled setting. Inmates can only be segregated if one of the three legislative criteria outlined in s. 31(3) of the CCRA is met, and when no reasonable alternatives exist.</p>	<p>The law and policy provide a clear set of options to segregate inmates for legitimate reasons and impose strict requirements for the timely review of segregation cases and reintegration of offenders. These principles are discussed in this report and other documents provided by the Task Force.</p>

Sub-population	Definition	Principles
<p>Enhanced Units/Safe House (Women Offenders)</p>	<p>Women offenders in FSW institutions can be removed from the open population and/or special treatment population and placed in a designated area of the institution under (strict) supervision in a structured and controlled setting. This may be done either voluntarily and/or involuntarily and is subject to the same sections of the CCRA as above. The location can also be used for assessment, reception and for special needs purposes. (Refer to sections on assessment/reception and treatment units below)</p>	<p>The rules governing the placement and treatment of women offenders in enhanced units and the safe house for purposes of administrative and/or disciplinary segregation are analogous to those set out above. Notwithstanding these rules, the Task Force underlines that it is essential to adopt the principles that figured prominently in the findings and recommendations of the Arbour Report. These principles create important distinctions in the use of segregation for women.</p> <p>In particular, the emphasis on alternatives to segregation and the effect of segregation on women offenders must be emphasized in institutional rules. These points represent only a few of the features which distinguish enhanced units from traditional segregation. There is a need for a further review to ensure that the management of these units is in line with the goals defined in the FSW approach (Choices).</p>
<p>Special Handling Unit</p>	<p>Dangerous inmates are separated from the general inmate population. An inmate is considered for placement in the SHU when he causes or commits an act causing serious harm <u>or</u> death <u>or</u> has shown a propensity for serious violence (CD 551, Special Handling Unit, para.7). SHUs are an alternative to long-term segregation and are designed to provide better conditions of confinement and access to association, services and programs.</p>	<p>CSC's policy has been established, in part, to pre-empt the use of long-term segregation of inmates who meet SHU criteria through the use of intensive supervision and programming to promote reintegration into maximum security populations. It therefore follows that SHU placement should not be more restrictive or provide less effective administrative fairness than would be provided during long-term segregation. While in the SHU, each inmate should be provided the rights, privileges and conditions of confinement that his individual circumstances warrant.</p>

Sub-population	Definition	Principles
Special Handling Unit (continued)		<p>Moreover, it follows that time spent in other institutions awaiting transfer to the SHU, or reintegrating, after transfer from the SHU, should also serve a useful purpose and be governed by applicable CCRA rules with respect to provision of effects and services and with respect to promoting timely return to normal association.</p> <p>Rules should be adopted to provide <i>status reviews</i>, while awaiting SHU placement, during SHU placement and on reintegration to traditional institutions. They should be as timely as segregation reviews and reflect the same standards. Consideration should be given to providing SHU inmates (or recommended inmates, or returnees) with voluntary access to reviews held for administrative segregation.</p> <p>Within the SHU, circumstances can result in justifiable use of administrative segregation. In these instances, s. 31 of the CCRA is applied as well as the procedures defined for the segregation review process.</p>
Co-located Unit (Women Offenders)	Federally-sentence women with maximum security classifications are housed in separate facilities in CSC institutions for men. They are entitled to the rights, privileges and conditions of confinement afforded to women in the general inmate population.	See description in I. Population Management, <i>(b) Current Population Management Practices</i>
Assessment/Reception Unit	Inmates are separated at the time of admission and/or post suspension for safety and security concerns, pending the acquisition and evaluation of information which will permit placement in the general inmate and/or other appropriate population.	The important principle is that inmates in such units would ordinarily be in the general inmate population, or some relatively less restrictive environment, except for the reasonable safety and security concerns related to their association with other inmates while in this unit or with other populations. These concerns remain legitimate until such a time as sufficient information is available to <i>normalize</i> the inmate's transfer to an institution.

Sub-population	Definition	Principles
<p>Assessment/Reception Unit (continued)</p>		<p>In keeping with the principle of achieving early integration of separated inmates, each unit must attempt to acquire relevant information as soon as possible. Once new, relevant information is obtained, it should immediately relax any existing restrictions and improve the provision of effects/services to a level consistent with any security or safety considerations which continue to exist.</p> <p>These adjustments may involve increased association with other inmates in the unit, access to programs, cell effects, visits etc., integration to another population in the institution or transfer to another institution with more suitable supervision. Continued accommodation in the unit, and the restrictions imposed there, cannot be justified by purely administrative concerns such as the convenience of Parole Board hearings; continuity of placement during assessment, or inconvenience with respect to provision of services and effects.</p> <p>Measures should be in place to ensure that changes in security status are identified and acted upon in a timely fashion. This should be a subject of regular management reviews. Particular attention should be paid to undue delays in the acquisition of information from CSC and from outside sources. Such delays must be the object of immediate corrective measures by appropriate levels of management. As well, inmates who believe that their circumstances should be changed should have voluntary access to the segregation review process.</p>

Sub-population	Definition	Principles
<p>Group Lock-down/Lock-up</p>	<p>Confinement of a group of inmates (may include a unit) in their cells is used in response to a crisis; to facilitate a search to provide effective supervision when insufficient staff are available or to temporarily separate groups of inmates to resolve minor conflicts or misbehaviours.</p>	<p>The administrative process for this sub-population is not governed by the legal/policy framework defined for administrative segregation. With respect to recurring situations such as the lock-down of unemployed inmates, emphasis must be placed on reducing and removing restrictions on association; access to programs, etc., even if this means the medium and/or long-term commitment of resources through reallocation strategies. Some forms of group lock-down are part of normal institutional procedures, e.g. at night, for counts, etc. The extent to which restrictions can be applied should be determined through comparisons with groups of inmates for whom similar supervisory concerns apply, e.g. lock-down of inmates when they are not at their regular jobs. Restrictions on association within the unit and outside the unit should be based on security considerations (the need to provide adequate supervision).</p> <p>(Lock-downs in emergency circumstances) The supervisory decision to effect a temporary lock-down/lock-up must be validated by the institutional head as soon as possible after the initiation of the lock-down/lock-up. This situation should be continuously monitored with a view to modifying the conditions of the lock-down/lock-up and/or terminating it. Restrictions on association within the group and with inmates outside the group should be limited to those necessary to provide appropriate supervision. Restrictions on association should be lessened as the conduct of the group allows or the capacity for supervision permits. Access to less restrictive conditions of confinement, services and effects should be maximized and enhanced as soon as feasible. Administrative fairness, including the right to access inmate representatives, must be provided following initial or subsequent restrictions on liberty.</p>

Sub-population	Definition	Principles
<p>Group Lock-down/Lock-up (continued)</p>		<p>The time-frames and procedures of the segregation review process are a logical remedy where inmates feel that a lock-down has continued too long or imposes overly restrictive conditions.</p> <p>While the above procedures will obviously be tempered by the safety or security requirements of a given situation, the existence of these limitations should be shown to have been continuously monitored and confirmed by management.</p> <p>(Routine Group Lock-ups)</p> <p>Day lock-up as a routine alternative for unemployed inmates may be justified by basic operational requirements when the control and appropriate supervision of these inmates cannot be reasonably accommodated in other less restrictive ways. The rationale for locking-up unemployed inmates has to take into account the methods of managing other inmates who might be off work on rest days or not attending a specific program, for example, a kitchen crew can maintain general association in its unit. Again, the segregation review process is an effective remedy for inmates who wish to contest such measures.</p>
<p>Special Housing Unit (Transitional Units)</p>	<p>Consideration should be given to reviewing the benefits of creating units that are less restrictive than administrative segregation for the following groups: selected long-term, voluntarily segregated inmates; inmates who require greater support before being returned to the general inmate population from administrative segregation; and/or transferred to another institution; and inmates awaiting release to the community.</p>	<p>When grounds for segregation are no longer justified and the inmate has been assessed as requiring more intense support for successful reintegration into either the general inmate population or the community, the possibility of temporarily moving the inmate into a transitional unit should be examined. This unit should involve the least restrictive conditions consonant with each inmate's security and safety status. The unit should be subjected to reviews as recommended for assessment and reception units.</p>

Sub-population	Definition	Principles
<p>Individual (cell/room) Lock-up</p>	<p>Confinement of an inmate in his/her cell or room is used as a temporary (usually during one shift) separation from the open population to resolve minor conflicts or misbehaviours.</p>	<p>This measure is generally accepted as a kind of informal discipline, provided that it is used as such, and not, in fact, for more serious reasons which justify traditional segregation. As soon as it is clear that the duration, frequency, or circumstances of the lock-up reflect administrative segregation, rather than a temporary (usually no longer than the current shift) placement to encourage better behaviour or avoid escalated conflict, then the rules respecting traditional segregation should apply.</p> <p>When <i>lock-up</i> occurs, there should be a record of the reason(s) why a less restrictive option was not used (perhaps in the form of a brief observation report). The inmate should be given the opportunity to contest the placement to the supervisor of the Correctional Officer who made the decision, and have this recorded in the observation report. The response to this rebuttal should also be included in the observation report.</p> <p>Management should conduct timely reviews of the validity of each placement and of the ongoing propriety of the use of this mechanism by staff.</p>

Sub-population	Definition	Principles
Split Population	<p>These are groupings of inmates who associate freely among themselves but are denied association with the general inmate population, for reasons common to the group and related to safety and security considerations. These populations are virtually managed as separate institutions, except for the occasional requirement to carryout activities in association with other sub-populations with whom they share common resources. Units such as Unit 3 at Atlantic Institution and populations at Kent and Donnacona institutions fall into this category.</p>	<p>Rules should be in place that allow for the review of individual placements. On-going reviews should be conducted by the institution of the services, programs, and conditions of confinement to demonstrate that they maximize liberty, association and reintegration into the general inmate population, at the earliest possible opportunity. Consideration should be given to making a formal review available to inmates who formally seek reintegration into the general inmate population. In addition, the status of inmates who want to remain in these populations should be reviewed to determine whether continued placement in the unit and the services and programs that are being provided meet the needs of the inmate. Otherwise, the segregation review remedy should be available for involuntary placements.</p>
Treatment Units	<p>Inmates requiring medical and/or psychological treatment, in response to physical and behavioural needs, are placed in these units. The purpose for using this type of separation is to treat individual case needs, while allowing for limited association, in order to prepare the inmate for return to the open population at the earliest possible opportunity.</p>	<p>The rules applying to separation within treatment units are analogous to those set out for Regional Treatment/Psychiatric Centres. The following principles should be considered regarding placement (usually voluntary), provision of services, and release from these units:</p> <ol style="list-style-type: none"> 1. there must be ongoing and periodic review of the validity and effectiveness of each unit, as an alternative to other forms of placement; 2. this review must also consider the restrictions which are placed on inmates and the services/effects which are provided; and 3. each inmate must have access to the review process when he/she contests further involuntary placement in the unit or seeks improvements in his/her rights, privileges and conditions of confinement.

Sub-population	Definition	Principles
<p>Regional Treatment/ Psychiatric Centres</p>	<p>Inmates are sent to special institutions for psychiatric assessment and/or treatment (CD 540, para. 17). Two types of centres exist - one that is defined as a CSC institution and subject to the provisions of the CCRA/CCRR and a second that is defined as a provincial hospital subject to the provisions of mental health legislation.</p>	<p>Inmates in these centres are usually temporarily placed on a voluntary basis for specific and limited programming purposes. Three sets of legislative rules apply to placement in such units:</p> <ol style="list-style-type: none"> 1. the CCRA/CCRR rules regarding placement, transfer, and administrative segregation and the more general provisions governing restrictions on liberty and access to services/effects; 2. the CCRA rules on informed consent to health services treatment; and 3. provincial rules on placement, release, consent to treatment and review of treatment decisions. <p>Provincial rules are applicable only when the treatment centre is designated as a hospital under provincial jurisdiction. These rules are also the basis for involuntary treatment of inmates. If an inmate is placed involuntarily in a treatment centre for other than treatment purposes, this must be justified and reviewed under federal rules. Specific procedural considerations respecting the above are set out under "Treatment Units".</p> <p>It is with respect to <u>isolation</u> of patients within these units that the most perplexing legal/policy issues arise. CCRA and provincial treatment rules apply to the use of <u>isolation</u> - separation from other patients and staff for treatment purposes. If the central purpose of <u>isolation</u> is to promote safety and security (order) for all patients in the unit or program, which is not considered to be a treatment objective, then isolation should be considered to be for non-treatment purposes and administrative segregation review rules should therefore apply.</p>

Sub-population	Definition	Principles
<p>Regional Treatment/ Psychiatric Centres (continued)</p>		<p>If the inmate consents to the isolation and the isolation is for a valid treatment purpose, any future challenge to the isolation by the inmate should be governed by both provincial and CSC rules governing treatment and any dispute settlement would occur in that context.</p> <p>If the inmate does not consent to treatment-centered isolation, but is certified for involuntary treatment under provincial legislation, then, rules governing treatment apply (CCRA and provincial). If the inmate is not certified and (1) does not consent to isolation (whether or not it is for treatment purposes) or (2) is not engaged in any treatment, the CCRA rules on administrative segregation apply.</p> <p>If the isolation is not for treatment purposes, then, the CCRA rules on segregation apply.</p> <p><u>Note:</u> if a patient is temporarily isolated for disruptive behaviour (etc.) outside the treatment context, the rules with respect to <i>Individual (cell/room) Lock-up</i> may be applicable.</p> <p>The rules governing isolation of patients under the CCRA will have to be reviewed with respect to the issue of consent to treatment. They should permit appropriate access to review of such decisions, bearing in mind the requirements of effective treatment and administrative fairness which characterize provincial rules. There will always be cases when it is unclear whether isolation is segregation or treatment. Management must therefore be prepared to provide immediate review of these circumstances and to provide patients with access to the protections provided under the segregation review process for this purpose.</p>

Sub-population	Definition	Principles
General Inmate Population	These are inmates housed in the institution on the basis of their security classification and/or the criteria for placement as specified in s. 28 of the CCRA. They can freely associate with other inmates; have access to programs and services and conditions of confinement defined for the safety and security of the institution.	N/A

